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AdeGraffenried:~~10-1-74~~:kkc

MEMCON

Participants:

Howard Willens  
Michael Helfer

James M. Wilson Jr.  
Adrian de Graffenried  
Andre Surena  
Herman Marcuse

Subj: Marianas Covenant

Date: June 28, 1974

I. MPSC IV

Wilson: Will Pangelinan and/or Guerrero report to COM Special Session on MPSC IV. Is important if COM to address status issue at special session.

Willens: MPSC and Wilmer, Cutler and Pickering have MPSC report for local briefing, e.g., DISTAD, District Legislature. --MPSC certainly will consider U.S. suggestion and Willens supports the idea.

II. Joint Land Committee

Wilson: As regards the U.S.-Marianas Joint Land Committee, Willens may wish to know:

1. U.S. proposing organization session in Saipan 15 July after Guam meetings with JCFS to determine:
  - a. Terms of Reference
  - b. Agenda
  - c. Tasks
  - d. How to proceed
2. DOD will provide names of its two members (and "advisers" to provide technical expertise as needed).
3. Emmett Rice will be joining OMSN as J. Wilson's Deputy

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on Joint Land Committee.

III. On-going drafting work

Willens: Will stay in D.C. at least until last week of July going out for Marianas District Legislature August session.

Will go out to Marianas earlier only if there is:

1. A high degree of prospect for COM land legislation that makes Marianas District Legislature land legislation necessary;

or

2. if the legal group reaches a high degree of progress to require Willens to confer with MPSC to resolve some outstanding issues.

IV. Agenda, drafting group

Wilson: On the matter of our agenda for Legal Group - does Willens have any problems with U.S. proposal?

Willens: Agree to proposed U.S. agenda on the understanding U.S. agenda covers all MPSC topics if not explicitly, then implicitly by topic-subject content.

Wilson: Yes. As a matter of procedure, what is Willens reaction to discussing substance first, covering all items, then returning to draft actual language of each topic?

Willens: Some problem. Wish to draft as we discuss.

Wilson: No problem with this approach.

ITEM 1. Political Relationship:  
U.S. Sovereignty/Establishing Commonwealth

Wilson: U.S. felt that (1) establishing relationship more important and higher priority than specifically the establishment of a commonwealth government (2) U.S. Congress needs to understand

the "give/take relationship" we are forming and U.S. draft accomplishes this.

Willens: This appears to reflect a slight difference in perspective. MPSC believes establishing Commonwealth is of paramount interest, but it is also clear from MPSC draft that Commonwealth will be a territorial relationship.

MPSC draft has also:

1. deleted reference in Title II to latitudes/longitudes (It is included in "definitions").

2. establishes Commonwealth at an earlier date than U.S. recognizing:

- a. certain actions (U.S. sovereignty, citizenship) not possible until end of Trusteeship without violating trusteeship agreement; and

- b. MPSC desires for maximum application of provisions of the Commonwealth agreement before the termination of the Trusteeship Agreement.

MPSC wants U.S. guarantee that Marianas will get full benefits of territorial relationship prior to end of Trusteeship Agreement but consistent with obligations of U.S. under Trusteeship Agreement

Wilson: Question is what it is possible to effect prior to end of Trusteeship Agreement. These appear to be separate legal and political issues.

1. As regards legal issues, there are few limitations on U.S. authority that could be implemented. U.S. can put almost

everything into effect prior to end of Trusteeship Agreement except those provisions relating to:

- a. citizenship;
- b. sovereignty; and
- c. actual legal establishment of the "Commonwealth".

2. As regards political issues, U.S. wants to use its full authority under the Trusteeship Agreement to achieve a high degree of self government for the Marianas during the Trusteeship and as a practical matter is willing to go very far (see Article VIII).

Helper: No problem with this approach. A slight typographical error in Article VIII on what would be effective prior to the end of the Trusteeship Agreement had given rise to some misunderstanding. Is MPSC to understand then that all provisions of Commonwealth Constitution might come into effect prior to end of the Trusteeship Agreement?

Also understand that definition of term "Commonwealth" means "successor government" to interim government of the Mariana Islands.

Wilson: There may well be some provisions of the Constitution that are not fully effective until the end of the Trusteeship. Our definition of Government of the Northern Marianas is in Section 102.

Willens: Also had a problem with the full application of U.S. laws during pre-termination e.g., citizenship. Herman and he had discussed this at Marianas IV.

Marcuse: Yes. Citizenship indicates an attribute of sovereignty which U.S. cannot have during pre-termination phase.

Surena: We should take care to note that we do not want to indicate to the United Nations that the United States is extending sovereignty over Marianas prior to the end of the Trusteeship

Wilson: Want to restate that Constitution would come into effect prior to end of the Trusteeship. Only a few provisions of the local constitution may not be in full effect, e.g., statement that the Commonwealth is under U.S. sovereignty. But there could be an elected governor with the understanding that the United States is still responsible for making reports to the United Nations, etc.

Willens: We are not far apart then; so, if we cannot resolve tough problems we should find a mechanism so problems could be deferred until the end of the Trusteeship, e.g. immigration.

This raises another issue: changes in the agreement prior to the end of the Trusteeship Agreement.

Wilson: On this whole issue, United States does understand MPSC concerns.

Willens: MPSC has specifically included this in §201: "mutually binding" when entered into. So agreement is a final document and is not subject to unilateral change.

Wilson: Agree, but is not legally necessary to expressly include this. No United States thoughts to change once the Marianas people and the U.S. Congress have approved it. Why does MPSC include specific reference to U.S. action in the United Nations in the agreement?

Willens: This is an express provision that there will be no status agreement until approval by the United Nations Trusteeship Council.

Helfer: This acts as a public notice. MPSC only put this into agreement to note publicly that we are not trying to do something not permitted by the Trusteeship Agreement.

Surena: May cause problem with United Nations as drafted.

Wilson: This whole matter is a U.S. concern and there is no need to include it in the agreement.

Willens: As regards the sovereignty issue, could the U.S. identify those precise sections of the MPSC draft that challenge United States sovereignty?

Wilson: Section 203 of the MPSC draft is troublesome. Is contra to concept that U.S. is unqualified sovereign.

Surena: MPSC draft limitation on eminent domain coupled with MPSC draft §203 raises the issue of whether other MPSC provisions might also restrict U.S. sovereignty. This is also significant since the MPSC also wants to include eminent domain in mutual consent.

Helfer: Mutual consent on eminent domain has no relationship to U.S. sovereignty. The United States has already agreed to limit its exercise of eminent domain in the "Wild Rivers Act" and no one states this limits U.S. sovereignty. So in essence, U.S. restriction on the exercise of its powers of eminent domain in the Marianas has no relation to U.S. sovereignty over the Marianas.

Wilson: Problem of sovereignty really arises in mutual consent provision which we will discuss later.

Helper: Might note that U.S. approach to "applicable" provisions of U.S. Constitution raises other questions regarding U.S. sovereignty, e.g., Article I. Executive Powers of the President. Amendment 14, sentence five, Trial/Jury, Federal Courts.

We don't believe these are needed in the Marianas. MPSC uses "Mink Amendments" as authoratative list of provisions of U.S. Constitution to be extended plus a few others. Need to get H. Marcuse to state why U.S. wants each one as listed in the U.S. draft and need to know if the U.S. has plans to apply this provisions before the end of the Trusteeship Agreement.

Willens: Does the U.S. have its list of items to be subject to "mutual consent"?

Wilson: Before we get into that it should be noted

1. No need to put into the list those provisions which cannot be changed (or taken away) anyway under U.S. Constitution, e.g., citizenship, public land returned to Marianas District, since courts will enforce them.

2. Assume there will be no changes in the agreement prior to the end of the Trusteeship Agreement without mutual consent.

3. U.S. Congress is very sensitive to this issue of limiting the plenary powers of the U.S. Congress.

U.S. has no list for mutual consent but believes the following might be discussed as "possible candidates" for inclusion in the mutual consent provision:

1. establishment of the commonwealth within the U.S.; under Section 101 implying an inability to change this political relation without mutual consent e.g., to force political union with Guam;

2. mutual consent idea itself (third sentence of Section 102);

3. Ability to select "national status" in lieu of citizenship within six months after the end of the trusteeship;

4. §301 - Right to own constitution;

§305 - No U.S. approval of amendment to Commonwealth Constitution

§309 - right to establish and maintain local courts

5. §401 - applicable sections of U.S. Constitution;

6. §402 - land alienation;

7. §703(b) - eminent domain safeguards.

Willens: To the extent U.S. provides mutual consent protection for Marianas constitution, need to provide protection for authority of local government over internal affairs and its authority over local legislation. Marianas wants to protect its right to maximum self-government and would like to see this included in the mutual consent section.

Wilson: This is intended to establish specific exceptions to the exercise of the plenary powers of the U.S. Congress so have problems with inclusion of "maximum self-government" within U.S. concept of Marianas right of local self government.

Willens: Want to emphasize concern of clients for maximum local self-government.

Helper: Clients concerns on mutual consent are translated in MPSC 205(a)-207(a) which grants the Marianas the same powers as a State and other protections for U.S. exercise of sovereign powers.



Willens: Helfer is really talking about another issue - U.S. Congress' plenary power and how it would be exercised. MPSC is concerned that local Commonwealth Legislative authority. They desire that authority to be protected against intrusions by the exercise of federal power which is that other than that exercised generally for the states, e.g., U.S. Congress could directly regulate garbage collection.

de Graffenried: It seems Willens is concerned mostly about saleability to the MPSC as regards protections for maximum self-government whereas the United States is concerned about the saleability to the U.S. Congress. Puerto Rico issue has recently arisen that makes the Congress more sensitive to restriction of its plenary powers.

Helfer: Puerto Rico is asking for something different; i.e., it wants to be excluded from general legislation unless specific action is taken to include it by name. The MPSC has no objection to having the Marianas included in general legislation for states, but wants no special legislation for territories made applicable unless the Marianas is included by name and there is a special finding of national interest.

de Graffenried: U.S. Congress does not share views on local self-government for Puerto Rico because the U.S. Congress believe Puerto Rico is still a U.S. territory. Puerto Rico has noted that it wants the U.S. Congress to no longer extend any legislation except where such legislation specifically includes Puerto Rico by name. So the MPSC position reflects Puerto Rican approach which is now of concern to the U.S. Congress.

Wilson: This matter is an area of real sensitivity to the Congress and we will have to examine it in greater detail.

Helfer: There seem to be some differences in the degree of coverage under mutual consent. Briefly, the MPSC thinks it should include 207(a) and all other parts of MPSC Title II

- citizenship
- applicability of certain U.S. laws--maritime, etc.
- Phase II
- U.S. land requirements
- Washington representative

There are also two other areas:

- §1203 & §1205: Look at in the light of earlier discussion regarding the effective date for the Commonwealth's Constitution. Issue assurance in document or elsewhere?

Willens: Pick up on mutual consent next time.

Wilson: Take up substance in first three topics before starting to draft language.

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MEMCON

Participants: Howard Willens  
Michael Helfer

James M. Wilson, Jr.  
Adrian de Graffenried  
Andre Surena  
Herman Marcuse

Subject Marianas Covenant

Date: June 28, 1974

I. Wilson: If there is any MPSC report on MPSC IV, has MPS considered giving it to COM? Is important if COM to address status issue.

Willens: Have "up-dated" report for local brief <sup>MPSC and W&DP</sup> <sup>MPSC</sup> <sup>Use</sup> - MPSC will <sup>US</sup> <sup>And</sup> <sup>the</sup> consider suggestion <sup>idea</sup> Willens supports idea.

II. Wilson: <sup>the</sup> <sup>regis</sup> On the U.S.-Marianas Joint Land Committee, MPSC may wish to know:

1. Organization session after Guam (15 July) to determine:

- a. Terms of Reference
- b. Agenda
- c. Tasks
- d. How to proceed

2. DOD <sup>will</sup> to get names of its members (and "advisers" <sup>will be added</sup> <sup>BY A RICE AS MEMBER</sup>).

3. E. Rice for OMSN <sup>AS SULLIVAN'S DEPT</sup>

III. Willens: Will stay in D.C. at least until last week of July and will go out to Marianas only if <sup>if</sup>

(1.)<sup>a</sup> High degree of prospect for COM land legislation that makes MDL land legislation necessary; <sup>or</sup>

(2.)<sup>n</sup> Legal group reaches high degree of progress to require Willens to confer with MPSC to resolve some <sup>old standards</sup> (legislative) issues.

AGENDA  
IV. DRAFTING

Wilson: On the matter of our agenda for Legal Group - does Willens have any problems? *with US proposal?*

Willens: Agree to proposed U.S. agenda on <sup>the</sup> understanding <sup>US</sup> agenda covers all MPSC topics if not explicitly <sup>these</sup> ~~explicitly~~ implicitly by topic-subject content.

Wilson: Yes. *As a matter of procedure, what is Willens' position?*  
*Lets discuss*  
Substance *first evening* *returning to* *on all items, then draft actual language.*

Willens: Some problem. Wish to draft *US proposals.*

Wilson: No problem ~~along~~ with this approach.

Item 1. Political Relationship ; *US State Dept. / Political Dept. / ...*

Wilson: U.S. felt that (1) establishing relationship more important and higher priority than <sup>specifically the establishment of a</sup> ~~establishing~~ commonwealth, <sup>relationship</sup> (2) US needs to understand <sup>the</sup> "give/take relationship" <sup>we are forming</sup> and U.S. draft accomplishes this.

Willens: This appears to reflect a slight difference in perspective. *MPSC believes establishing Commonwealth is of paramount importance*  
It is clear from MPSC draft that Commonwealth <sup>is</sup> a territorial relationship.

MPSC draft has also:

- (1) deleted reference in Title II to latitudes/longitudes
  - (2) established commonwealth at different time than U.S., recognizing:
    - (a) certain actions (U.S. sovereignty, citizenship) not possible until end without interference to trusteeship agreement; and
    - (b) <sup>MPSC</sup> desires for maximum applicability of provision of ~~the~~ Commonwealth agreement <sup>before the</sup> ~~Pre-Trusteeship Agreement~~ termination <sup>of the</sup>
- MPSC* Wants U.S. guarantee that Marianas <sup>will</sup> get full benefits of relationship prior to end Trusteeship Agreement <sup>but</sup> consistent with obligations of U.S. under Trusteeship Agreement.

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Wilson: Question is what is possible to effect prior to end of Trusteeship Agreement. *These appear to be local and national issues.*  
(1) <sup>as regards</sup> Legal - few limitations on U.S. authority that could apply <sup>be understood</sup>  
(2) <sup>to prevent</sup> Political - U.S. ~~not going~~ to use full authority <sup>under</sup> as ~~one of~~ <sup>for various</sup>

TA objectives to achieve high degree of self-government during Trusteeship.  
*How to*  
As practical matter, U.S. will put almost everything into effect (see Title VIII) prior to end of TA except *local provisions relating to*

- (a) citizenship
- (b) sovereignty
- (c) actual (establishment) legal "Commonwealth"

U. Helfer:

A. No problem with this approach. *Slight typo error in VIII is what had given rise to some misunderstanding.*

→ Understand then that all provisions of Commonwealth Constitution might come into effect prior to end of TA!

B. Also understand that definition of term "Commonwealth" means "successor government" to ~~the~~ *interim government*

Wilson: Yes, definition is not limited just to §102.

Willens: Also had a problem with application <sup>of</sup> U.S. laws during pre-termination, *eg. citizenship*

Marcuse: Yes, <sup>Citizenship</sup> indicates attribute of sovereignty which <sup>is</sup> can't have during pre-termination <sup>phase</sup>

(Surena dialogue) *We should take care to state that we don't want to indicate to U.N. that U.S. extending sovereignty prior to end of TA.*

Wilson: Want to restate that Commonwealth Constitution would come into effect prior to end Trusteeship.

Only a few provisions of local constitution may not be in full

effect, e.g., statement Commonwealth under U.S. sovereignty, elec. gov. *with*

*the world is not... but* U.S. makes U.N. reports *applied UN...*

Willens: *we are* Not far apart then; so *we are* that if cannot resolve tough problems *we* find a mechanism so problems could be deferred until end of Trusteeship, e.g., immigration.

This raises another issue ~~on~~ changes in the agreement prior to end of TA.

Wilson: On this whole issue, U.S. does understand MPSC concerns.

Willens: MPSC has specifically included this into §201: "mutually binding" when entered into. So agreement is a final document and is not subject to unilateral change.

Wilson: Agree, but is not legally necessary to expressly include this. No U.S. thought to change once people approve it. *Mindus*

Wilson: Why include specific reference to U.N. in the provisions? *lets MPSC*

Willens: *is* Is there express provision that there will be no agreement until approval by UNTC.

Helper: *acts* *MPSC* But as a public notice, only put into agreement to not publicly that we aren't trying to do something not permitted by T Agreement.

Surena: May cause problem with U.N. as drafted.

Wilson: Still this whole matter is a U.S. concern, no need to include in agreement.

sovereignty *U.S. records...*  
Willens: Could U.S. identify precise MPSC laws challenging ~~ing~~ U.S. sovereignty?

Wilson: *Section 203* §203 MPSC is troublesome, to concept U.S. is unqualified sovereign.

*MPC*  
Surena: Limitation on eminent domain coupled with §203 raises issue of whether other MPSC provisions might restrict U.S. sovereignty. *also* *the MPSC*

Helfer: Mutual consent has no relationship to eminent domain. U.S. has already agreed to limit its exercise of eminent domain in the "Wild Rivers Act" and no one states this limits U.S. sovereignty. So in essence, U.S. restriction on *the exercise of its powers* of eminent domain in the Marianas has no relation to U.S. sovereignty over Marianas.

Wilson: Problem of sovereignty really arises from mutual consent which we will discuss later.

Helfer: Might note that U.S. approach to "Applicable" provisions of U.S. Constitution raises a problem regarding U.S. sovereignty, e.g.,

Art I Execut. Powers ~~Am 1455~~, Trial/Jury, Fed. Cts. *We don't believe in the Marianas.* These aren't needed, MPSC uses "Mink Amendments" ~~etc.~~ plus a few others. *"as authorized in the Constitution"*

Need to get H. Marcuse to state why U.S. want each one in U.S. draft and need to know if U.S. plans to apply this before end TA?

Willens ~~(S.S.)~~: *Dec 1* U.S. have its list of items *to be subject* to "mutual consent"?

Wilson: Before we get into that, it should be noted:

(1) No need to put into *the* list those provisions which can't be changed (or taken away) anyway without an amendment to U.S. Constitution, e.g., citizenship, public land returned to MD.

(2) Don't plan to change agreement prior to end TA - ~~at that time~~ will change certain provisions only by mutual consent.

(3) U.S. Congress *is* very sensitive to this issue *of limiting the*

So, in this light - following are up for discussion ~~on~~ mutual consent:

(a) establish concept commonwealth within U.S.; ~~not force~~  
~~commonwealth~~ into a different political relation with U.S. without its  
consent, e.g., §101.

(b) mutual consent idea itself.

(c) §202 - renouncing citizenship in lieu "Nat" ~~and~~ "State"

(d) §301 - Commonwealth Constitution

(e) §305 - no change Commonwealth Constitution

§309 - Local courts

(e) §401 - applicability U.S. Constitution

(f) §402 sent 2 - rest. land alienation

(g) §703(b) - eminent domain.

Willens: To the extent U.S. provides mutual consent protect for  
Marianas constitution, need to provide protection for authority of local  
government over internal affairs and its authority over local legislation.  
Marianas wants to protect its right to maximum self-government and would  
like to see this included in the mutual consent section.

Wilson: This is a grant of specific exception to the exercise of ~~the~~  
~~plenary~~ powers of USC so have problems with inclusion of "maximum self-  
government" within <sup>US</sup> concept of <sup>Marianas</sup> right of local self-government as set out  
in U.S. 301.

Willens: Want to emphasize concerns of clients for maximum local  
self-government.

Wilson: Seemed <sup>WSE</sup> want to say:

(1) can't change:

(a) concept <sup>WSE</sup> commonwealth in its political relationship <sup>with USA</sup>

(b) Commonwealth Constitution <sup>WSE</sup>

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Helper: Clients concerns on mutual consent are to translated into: 1/13  
205(a) - 207(a) - grants full powers of state and others <sup>protections from US</sup>

Willens: M.H. is really talking about another issue. U.S. Congress  
plenary power <sup>and how it be</sup> would exercise <sup>of</sup> local Commonwealth Legislative authority  
be protected against intrusions <sup>by the</sup> of exercise of federal <sup>power</sup> which is  
that other than that exercised generally for the states, i.e., U.S. Congress  
could directly regulate garbage collection.

Wilson: Really are concerned about exercise of federal power in  
contravention of local constitution?

Willens: Yes.

de Graffenried: It seems (Willens) is concerned mostly about sale-  
ability to MPSC as regards protections for maximum self-government whereas  
U.S. concerned now also <sup>about</sup> saleability to U.S. Congress. Puerto Rico  
issue has recently arisen that makes Congress more sensitive to restricting  
its plenary powers.

Helper: P. Rico not really a problem here because U.S. is already  
limited to refraining from legislating in P. Rico except to same extent  
<sup>as a state</sup>. In Marianas, we are agreed U.S. will have plenary power to <sup>the</sup>  
extent as in a State plus as in a territory. So want to get out <sup>the</sup> area  
where U.S. will pass legislation only if specifically include Marianas  
and states <sup>it is</sup> required for a "compelling" national interest.

de Graffenried: <sup>USE</sup> Not share views on local self-government for P. Rico  
because U.S. Congress believes P. Rico is still a U.S. territory. And,  
Puerto Rico has noted that it wants U.S. Congress to not extend any further  
legislation except where it specifically includes Puerto Rico by name.

<sup>So MPSC will be affected Puerto Rico on appeal. The legislation is  
U.S. Congress</sup>

Wilson: This matter is really a sensitive area to the Congress and we will have to examine it in greater detail.

Helper: Seems to be some differences in degree of coverage under mutual consent. Briefly, MPSC covers:

207(a) and free other Title II

- citizenship
- applicability of certain U.S. laws maritime, etc.
- Phase II
- U.S. land requirements
- Washington representative
- §1203, (look at in light of earlier discussion regarding effective date for Commonwealth Constitution. Issue assurance in document or elsewhere?)

Willens: Pick up on mutual consent next time.

Wilson: take up substance in 1st 3 topics before start drafting language.