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DRAFT:AdeGraffenried:7/1/74:mjw

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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. Use - MPSC will consider suggestion - Willens supports idea.

II. Wilson: 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 to get names of its members and "advisers".
3. E. Rice for OMSN

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

1. High degree of prospect for COM land legislation that makes MDL land legislation necessary.
2. Legal group reaches high degree of progress to require Willens to confer with MPSC to resolve some legislative issues.

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

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

Wilson: Yes. Lets discuss!

Substance ....on all items then draft actual language.

Willens: Some problem.. Wish to draft

Wilson: No problem along with this approach.

Item 1. Political Relationship

Wilson: U.S. felt that (1) establishing relationship more important and higher priority than establishing commonwealth. (2) USG needs to understand "give/take relationship" and U.S. draft accomplishes this.

Willens: This appears to reflect a slight difference in perspective. It is clear from MPSC draft that Commonwealth is a territorial relationship.

MPSC draft has

- (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) desire for maximum applicability of provision of Commonwealth agreement pre-Trusteeship Agreement termination.

Want U.S. guarantee that Marianas gets full benefits of relationship prior to end Trusteeship Agreement consistent with obligations of U.S. under Trusteeship Agreement.

Wilson: Question is what is possible to effect prior to end of Trusteeship Agreement:

- (1) Legal - few limitation on U.S. authority that could apply
- (2) Political - U.S. not going to use full authority as one of TA objectives to achieve high degree of self-government during Trusteeship.

As practical matter, U.S. will put almost everything into effect (see Title VIII) prior to end of TA except:

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

Helper:

A. No problem with this approach. Slight typo error in VIII 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 GMD (interim).

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

Willens: Also had a problem with application U.S. laws during pre-termination.

Marcuse: Yes - indicates attribute of sovereignty which can't have during pre-termination.

(Surenna dialogue) 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.  
but U.S. makes U.N. reports.

Willens: Not far apart then, so that if cannot resolve tough problems  
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.

Wilson: Why include specific reference to U.N. in the provisions.

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

Helper: 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

Willens: Could U.S. identify precise MPSC laws challenging U.S.  
sovereignty?

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

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

Helper: 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 on 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.

Helper: Might note that U.S. approach to "Applicable" provisions of U.S. Constitution raises a problem regarding U.S. sovereignty, e.g., ArI Execut. Powers Am: 1455, Trial/Jury Fed. Cts.

These aren't needed. MPSC uses Mink Amendments acts plus a few others. 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 (I.C.): U.S. have its list of items for "mutual consent"?

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

(1) No need to put into 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 very sensitive to this issue.

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"

(d) 301 Commonwealth Constitution

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 powers of USC so have problems with inclusion of "maximum self-government" within concept of 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 want to say

(1) can't change.

(a) concept commonwealth in its political relationship

(b) Commonwealth Constitution.

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Helper: Clients concerns on mutual consent are to translated into:  
205(a) - 207(a) - grants full powers of and others.

Willens: M.H. is really talking about another issue. U.S. Congress plenary power - would exercise of local Commonwealth Legislative authority be protected against intrusions of exercise of federal probe 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 saleability to MPSC as regards protections for maximum self-government whereas U.S. concerned now also about 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 as a state. In Marianas, we are agreed U.S. will have plenary power to extent as in a State plus as in a territory. So want to get out in area where U.S. will pass legislation only if specifically include Marianas and states it is required for a "compelling" national interest.

de Graffenried: 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.

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  
§1205 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.