

MEMCON

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Date: July 2, 1974

I. Land

JW: Trying to locate E. Pangelinan

15 July - Saipan meeting of general terms of reference

Then each side work on respective positions and get back together

1 week later.

HW: Experts also in attendance?

JW: No, principals only at first;

Three groups:

physical survey

joint use/lease back

means acquisition/price/mode payment

Once set up, let technical experts have at it.

HW: Will confirm dates through E. Pangelinan and let Jim White know schedule. Some problems with getting MPSC land experts on board by 15 July but once on board - have to "move-it" to meet deadline.

II. Mutual Consent

JW: At last meeting MPSC left U.S. with thought on what to include in mutual consent.

HW: Have had further thoughts in light last meeting. Nine basic areas U.S. wanted to be covered in mutual consent:

MPSC in agreement that these are important areas which should be subject to mutual consent and add one area provision dealing with local government authority and USG authority (§309 US 207(a) MPSC and 201(a) MPSC are central to the status relationship.

Right to be governed by own Constitution part of this problem;
requirement that local constitution not be reviewed by U.S. and local
courts for

201(a) - status agreement governs relationship and is binding
U.S. recognizes it wouldn't be changed whatever U.S./MPSC can negotiate out
within area should be subject to mutual consent.

2 areas of concern where MPSC needs more explanation:

(a) citizenship

MPSC concerned with legal problem that 303 MPSC could
not be altered by USC without consent is MPSC view that USC could change.
No constitution support (i.e., 1st Sec Art XIV) for U.S. position, to effect
that citizens become citizens of state so that those born in Marianas have
no constitutional right to U.S. citizenship but only by virtue of Commonwealth
Agreement which could be changed by USC. Some practical risk is small that
USC would change, but should want to assure clients that citizenship is
an essential fundamental part of agreement and subject to mutual consent.
Also is symbolic recognition of importance to Marianas people. But would
like U.S. constitutional expertise.

(b) Phase II - enactment of status agreement by USC would
create an inforceable commitment by USC to extent USC could pass appropriate
authority different from agreed sum is some risk. if USC reevaluates these
sums in later years. MPSC would like to be covered only financial area MPSC
desires covered.

Are prepared to remove from MPSC following list (other provisions
previously listed): (MPSC draft)

Title II

- (1) 201(b) - regarding U.S. trusteeship responsibilities
- (2) 205(b) - supremacy clause should remain in draft but not covered by mutual consent.
- (3) 206 - U.S. authority over Free Association/def.
- (4) 211 - oath to support Constitution.

Title III

§305 - Local courts to nationalize should remain in agreement but is not fundamental

§306 - def. of domicile

Title VI

§606 - non-taxable bonds

§612 - carry over of federal taxes

Title XII

§1203 - effective date of Commonwealth

Remainder of original MPSC list should be discussed as each issue discussed. If agreement on policy and goals, can determine whether to protect or not under mutual consent.

App of laws for instance should be listed as may not meet protection against U.S. action client desires.

Would like to discuss 207a citizenship, Phase II

JW: Citizenship/Phase II

Can appreciate MPSC desire to be satisfied with U.S. position.

HM will discuss in depth next meeting.

Don't disagree on citizenship question is important fundamental. Agree that it should be included within mutual consent and if any question whether it will be upheld in the courts. U.S. reading is that courts would uphold this, that U.S. Congress could not take away. HM agreement is on 14th amendment.

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How this would affect people born in Marianas as opposed to those born in U.S. is not fully known.

Once citizenship granted, can't take away.

MH: Agree that once acquired - can 303 MPSC 203 U.S. ...
to people born in Marianas after status.

JW: As regards Phase II, U.S. Congress approval is commitment it can't change without subsequent agreement with the Marianas.

Approval is by a process of joint resolution by both houses. Of a question of whether subject to change, then ought to be included in mutual consent. DOJ is that is would not be subject to change.

Want to have list curtailed as much as possible from practical standpoint. Concerned about fact USC going to be asked to limit its own power. The more we ask USC to except the more difficulty. Some thought to consolidating some of these into one heading so as to reduce list from 9 to 4, e.g., self-government would include together

We will be coming back to this section.

Considered these

(a) on their own merits as regards 207(a), is different conceptually both sub-sections deal with restricting plenary powers of USC MPSC not really asking for some sort standing as Puerto Rico, as theirs is much broader.

U.S. has 2 problems with 207 MPSC:

(a) Although no difficulty with anything applicable in the states, would be some procedural application of 4,3,2 MPSC at best, would have similar problem raised by Puerto Rico - naming Commonwealth by name and requiring it be in national interest. Congress would balk. U.S. Executive

has problem because is different in what happens in other territories. Isn't the vehicle that all laws will apply equally. Legal difficulty is defining "national interests". MPSC notes courts will define. This bothers people. What courts will be doing?

Problems with courts defining what is a "compelling national interest". USC not want courts second guessing therein.

Issue is certainly that Marianas should take alot on faith. U.S. will want to examine on item by item basis. Appreciate deletions. Test should be "whether is importnat enough to be included in mutual consent".

AS: Agreed approach items to be identified as (1) fundamental provisions (2) method by which U.S. Congress will rest itself in exercise of IV, 3, 2. As to later, effect be if some exceptions made by USC to M.C. Are we not including in M.C. items other than those powers in IV, 3, 2, i.e., USC power.

MH: IV, 3, 2 will apply to Marianas even commerce powers extended to Marianas under power of iV, 3, 2. Issue would be whether mutual consent would over restrictive to exercise of commerce power clearly if would by virtue of limit on exercise of 1V, 3, 2.

JW: For sake of argument, suppose we exclude Jones Act from applicable U.S. laws and insert in mutual consent section. Could USC not pass a new coastal shipping law and apply to Marianas.

HW: USC could not of course reextend Jones Act, and would not be able to extend by indirection what it has otherwise been presented. If a new set of maritime laws to meet changing conditions then USC dearly would have authority to extent.

JW: If USC attempted to apply Jones Act by mild amendment then presumably Marianas could take it to court.

MH: Yes, but only those impaired could bring suit.

HW: Remedies are not definitive in cases where USC acts where it has been agreed they would not. Certainly would not want to permit USC to indirectly act in an area it previously agreed not to legislate.

HW - JW: Touched on basic concerns reexamine of U.S. position on fact IV, 3, 2 not exercised only in selective occasion yet, this is an unusual exercise of Congressional authority. MPSC only asking that it be exercised deliberately and explicitly if it is exercised. No new problem for US Congress. Its exercise of authority always subject to court review. with USC usually winning. No suggestion USC authority more pervasive in Marianas than elsewhere.

"Maximum" local self-government was a MPSC concern in earlier sessions and U.S. agreed to explore safeguards. If U.S. has other methods to protect this from U.S. Congressional exercise of powers, MPSC would appreciate discussion.

JW: Problem is selling it to USC in first place. To extent that the agreement follows a familiar pattern it will be more acceptable to USC. Assessment being that if too many exceptions, USC would not act on the agreement - not necessary reject as just pigeon hold it and withhold consent is why U.S. wanted to limit to basic fundamentals and to avoid creating a special exceptions for Marianas and ignore other territories is a problem to getting it through USC especially where rep from those territories are objecting.

HW: Isn't Won Pat going to object to Marianas Status Agreement if
USG not make same benefits available to Guam?

JW: True, But

AS: Approach may be the essential method. MPSC method is to bring
courts to forefront. USC would object to having courts review USC judgment
on what is in national interest. 207(a) "compelling national interest" is
a problem in this regard and would agitate U.S. Congress. Could also be
argued that it raises separation of power issue.

MH: (a) USC is used to being a body of limited powers. Judicial
review is available whether 207(a) is included or not on grounds of USC
exceeding its authority.

(b) application of IV, 3, 2 not maximum
guarantees of self-government inherent in this document. USC retain power
to alter individual appropriation of district legislature, alter educational
policy not only by grants but by direct intervention.

AS: Appears to be to include this approach.

MH: Is not because requires USC to require whether a compelling
national interests.

JW: USC would argue this determination of national interests is what
USC does now.

AS: USC could erroneously misconstrue this language and raises
possibility of damaging political issues.

HW: U.S. have any other language or approach to go part way to meet
concerns raised in 207(a). Since U.S. would argue maximum self-government
already protected by saying local constitution not subject to change by USC.

JW: Very sympathetic to idea of maximum internal self-government. So,
§102 sent 2 is best U.S. could do on review.

HW: The kind of traditional respect is important if USC respects local legislative authority not local courts.

JW: U.S. will explore language.

HW: Any suggestions at all would be helpful.

JW: Are trying to define what we are trying to protect. Let's come back to these concerns and fo on to citizenship. MPSC/U.S. versions quite similar except one section.

Citizenship

JW: One major difference between U.S./MPSC version. Reason U.S. deleted section is that U.S. INS laws should apply without exception as they do in other territories. Are we going to ask for an exception to INS laws for Marianas.

MH: 701 addresses this as does 304(d).

HW: Not much to say. Is arrived at price of all over Marianas problem: MPSC paper indicates local concern about being an entry point for immigrant of non immigrant aliens. Look to same problems on Guam. Economic growth will require extensive reliance on alien labor. U.S. should be more concerned on these burdens. Has high emotional content for MPSC.

JW: U.S. is sympathetic. Issue is remedy that can be pursued. USC says this is a problem common to all territories. Don't want to handle on a piecemeal basis for Marianas but on a territorial basis as submerged lands. Burton, Haley, Foley, Clausen indicate this approach.

HW: Could legislation prepared by Won Pat on this be successful.

JW: Won Pat says he is working on it.

HW: Agree is a constitutional aspect with respect to residency.

JW: Immigration is a problem also common to Virgin Island, Puerto Rico.

HW: Fundamental issue is degree of local input on determination of how to handle immigration; is issential because decisions made in Washington without a feeling for local situation.

JW: USC feeling is partly that they don't want exceptions generally; some Congressmen specifically noted that they did not want any exceptions on this matter. Could have come about as a result of Burton's discussions with MPSC.

HM: Worked primarily with Guam. Problem is to facilitate immigrant of foreign labor and not to give local controls.

JW: Guam?Okinawa - U.S. does have agreement on immigration of Philp labor for USG activities. Under those agreements no residency is allowed. Might be useful to examine if that agreement be amended to include Marianas.

MH: Have examined. Applies only to aliens paroled in or work in those projects and not to other aliens coming in under other provisions of IMS. May be wise not to dump 304(a) and 701 together.

JW: No way to focus on 304(a) without making exceptions to IMS.

MH: (a) 304(a) should be separated as determines how certain aliens could be citizens under these provisions.

(b) 701 should deal with provisions of IMS not be applicable until end TA.

HW: If (IMS laws) not apply until at end of TA, then would reassure clients that Marianas could control immigration during transition phase which is delicate. Could U.S. state that immigration would be reexamined before end of TA; Marianas would have local control until end of TA; and U.S. IMS laws apply only upon end of TA. Would appreciate if U.S. would study.

JW: Does have merit. Lets study.

III. Next Session

JW: Now down to item 3. Most are purely mechanical. Specifically, could go forward to also discuss during next 2 weeks: Washington representative could be discussed at length as both recognize there is problem.

Could try hand at drafting on earlier items.

MH: Go to discuss at least through 5w.

JW: How about discuss from 3 down to 5(d). And start hand at drafting.
Have meetings at least once each week.

HW: Next Wednesday, OK.

At 9:30 here.