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July 2, 1974

MEMORANDUM TO MARIANAS POLITICAL STATUS
COMMISSION FILE

Subject: Meeting of the Joint Drafting Committee

A meeting of the Joint Drafting Committee was held on June 28, 1974 in the Interior Department offices of James Wilson. Attending for the United States were Mr. Wilson, Herman Marcuse, Adrian DeGraffenreid, and Andre Surena. Attending for the Marianas Political Status Commission were Howard Willens and Michael Helfer.

Mr. Wilson opened the meeting by stating that Ambassador Williams wanted to know whether Senator Pangelinan would report to the Congress of Micronesia on the progress made at the last round of negotiations. Mr. Willens said he would raise this matter with the Senator. Mr. Wilson said he hoped to meet with Senator Pangelinan and the members of the Land Negotiating Committee for an organizational session in Saipan, perhaps on the 15th of July.

With respect to scheduling matters and procedures for the Joint Drafting Committee, Mr. Wilson stated that Mr. Marcuse will represent the United States in his absence. Mr. Willens stated that he expected to be in the United States at least until the end of July. It was possible, he said, he would not go to the Marianas at all this summer, depending on the progress made by this Committee, and on the prospects that land legislation would be enacted and approved. Mr. Willens stated that in his absence Mr. Helfer would represent the Commission.

The United States presented a proposed agenda, a copy of which is attached to this memorandum. Mr. Wilson stated that the agenda covered topics which had been listed in the memorandum entitled "Major Differences Between U.S. Delegation and MPSC Draft Status Agreements" presented by Mr. Willens to Mr. Wilson on June 21, 1974. Mr. Willens stated that the proposed agenda was acceptable, and urged that the Committee move promptly into the substance of the matters on the agenda, with the idea that as much drafting as possible would be accomplished as the Committee moved through the individual items. Mr. Wilson agreed.

The discussion turned to the first item on the agenda, the political relationship between the United States

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and the Marianas. Mr. Wilson stated that the United States thought that the status agreement should primarily be concerned with the nature of the post-termination political relationship and not with the time as of which the Commonwealth of the Northern Marianas would be established. Mr. Willens agreed that this was an important consideration and noted that the intent of the MPSC draft was to make clear that the United States would be sovereign in the Marianas, and that the relationship between the two political entities would be "territorial" in the broadest sense after termination. However, Mr. Willens pointed out, the Marianas also wanted to obtain the benefits of the new status as soon as possible, especially in light of the fact that the United States has apparently agreed with the Joint Committee on Future Status to delay termination of the Trusteeship -- without consultation with the Commission, and contrary to the position the Commission would take.

Mr. Wilson stated that the United States would also like to put as much of the status agreement as possible into effect before the termination of the Trusteeship. Legally, he said, almost the entire agreement could be put into effect, except for U.S. citizenship, U.S. sovereignty, and the naming of the political entity as a Commonwealth of the United States. [The provision of the Covenant which made citizenship come into effect before termination of the Trusteeship was, he said, simply a technical error.] This is why, Mr. Wilson said, the Covenant uses the term "Commonwealth of the Northern Marianas" only with respect to matters which will occur after termination, while it uses the term "Government of the Northern Marianas," as defined in Section 102, for matters relevant to the pre-termination period. Mr. Wilson said that the United States would plan to put into effect as much of the status agreement as possible before termination under its general Trusteeship powers, and not under the authority of the status agreement. This means, for example, that the governmental structure called for by the local constitution, once approved, would be put into effect before termination by the United States as trustee, though the local constitution itself would not come into effect until termination.

Mr. Willens said that in view of this explanation he thought the two sides were quite close together on this issue. The Commission, he noted, has also taken the position that U.S. citizenship and U.S. sovereignty cannot come into effect before termination. With respect to the naming of the political entity, he thought that the Commission was prepared to defer to the United States' view. Mr. Willens

stated that the Commission would, however, want to explore more carefully the guarantees which the United States would make to assure that those portions of the status agreement which both sides apparently agree should come into effect before termination would actually come into effect, whether under the authority of the status agreement or otherwise.

Mr. Willens raised the question of the United States' position with respect to the binding nature of the status agreement once approved. Mr. Wilson stated that the United States had no problem with the concept of the status agreement being mutually binding, in the sense that it could not be changed unilaterally in any respect during the period prior to termination.

Mr. Willens asked the United States to explain why it felt that the Commonwealth Agreement was less than satisfactory insofar as it granted the United States sovereignty in the Marianas. Mr. Wilson stated that the major problem was Section 203 of the Commonwealth Agreement, which states that ". . . the United States shall have sovereignty in the Commonwealth in accordance with the terms of the Commonwealth Agreement." The last phrase, Mr. Wilson said, created an undesirable ambiguity. Asked if there were other portions of the Commonwealth Agreement which raised the same sort of problem, Mr. Surena stated that the eminent domain provisions of the Commonwealth Agreement raised questions about U.S. sovereignty. Mr. Helfer replied that the eminent domain restrictions were plainly restrictions which the Congress could impose on the executive branch with respect to the states, and that in that context no one would doubt that the United States had sovereignty. The sovereignty issue would arise, if at all, Mr. Helfer said, if restrictions on the exercise of eminent domain could not be altered without mutual consent. It was agreed to postpone discussion of eminent domain until that point on the agenda was reached.

Mr. Willens asked Mr. Wilson if the United States had prepared a list of those portions of the status agreement which it thought should be covered by the mutual consent provisions. Mr. Wilson said that he had a tentative list, based on the following assumptions: (a) that nothing in the status agreement could be changed at least until termination of the Trusteeship; (b) that certain provisions, such as those relating to U.S. citizenship, would be enforced by the courts under the due process clause regardless of the agreement, and therefore need not be subject to mutual consent; and (c) that Congress wants a very short list of items which

cannot be changed without mutual consent. Based on these assumptions, Mr. Wilson proposed that the following portions of the status agreement be alterable only with the mutual consent of the Marianas and the United States:

1. Provisions relating to the establishment of the Commonwealth (essentially Covenant § 101);
2. The mutual consent provision itself;
3. Provisions granting people in the Marianas the option of U.S. nationality rather than U.S. citizenship;
4. Provisions granting the Marianas the right to be governed by its own constitution;
5. Provisions prohibiting the United States from amending the local constitution, or reviewing (other than in judicial proceedings) amendments thereto;
6. Provisions assuring local control of local courts;
7. Provisions making portions of the U.S. Constitution applicable in the Marianas;
8. Provisions granting the local government authority to restrict land alienation; and
9. Provisions placing safeguards against the exercise of the power of eminent domain.

Mr. Willens stated that the Commission's representatives would have to review the list presented by the United States. One very important question, Mr. Willens said, was whether there would be provisions in the status agreement limiting in any way the authority of Congress to legislate for the Marianas, other than the mutual consent provision itself. In particular, Mr. Willens pointed to the Section 207(a) of the Commonwealth Agreement, which grants Congress the authority in the Marianas which it does not possess in a state, but requires that that authority be exercised purposely and where there is a compelling national interest in doing so. If there is such a provision -- and the Commission feels very strongly that there should be -- then it, too, should be subject to mutual consent. Mr. Wilson replied that the United States feels strongly that the only limit on Congress' otherwise plenary power should be specific limitations subject to mutual consent.

Mr. Helfer summarized the differences between those provisions which the United States proposes to make subject to mutual consent and those which the Commission has proposed to make subject to mutual consent. Section 207(b) of the Commonwealth Agreement makes the following provisions of the Commonwealth Agreement subject to mutual consent: Title II relating to the political relationship; Title III relating to citizenship and nationality; Title VI relating to income tax, customs and excise tax laws; Title VII relating to immigration and maritime laws; Section 803 relating to Phase II economic funding; Title IX relating to land issues; Section 1101 relating to the Washington representative; and Sections 1203 and 1205 relating to the establishment of the Commonwealth.

Mr. Wilson responded that the tentative United States views on the differences between the two lists were as follows. With respect to provisions which govern the applicability of certain United States laws, the United States would have to review the laws at issue, in light of its concern about the number of exceptions which the Commission had requested. With respect to Phase II economic funding, Mr. Wilson said there was no need to make it subject to mutual consent since congressional approval of the status agreement would be a commitment to such funding, and would be enforceable. With respect to U.S. land requirements, the United States does not think it necessary to make this subject to mutual consent because it expects that the land will be made available immediately. With respect to Washington representation for the Marianas, the United States is hesitant to make this subject to mutual consent because it is a matter so clearly within the discretion of Congress.

It was agreed that the Marianas representatives would be prepared to respond to the United States' list at the next meeting. The United States, for its part, would be prepared to give its views on Section 207(a) of the Commonwealth Agreement, and to explain why certain provisions of the United States Constitution were proposed to be made applicable in the Marianas though not applicable in Guam and the Virgin Islands.

The next meeting will be held Tuesday, July 2, at 2 p.m. at Mr. Wilson's office.


Michael S. Helfer

cc: Howard Willens

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