

DRAFT:EEArcher:mjw:7/10/74

MEMCON

Marianas Legal Committee

Participants:	Herman Marcuse - Justice	Howard Willens - WC&P
	Andre Surena - State	Michael Helfer
	Ed Archer - OMSN	Erica Ward

Date: July 10, 1974

HW: We should begin with Agenda item 3.- Constitution of the Northern Marianas.

MH: Said the issues were (1) approval of Constitution either by President or Congress and (2) approval of Constitution by U.S. either after or before plebiscite.

HM: Said another issue is when does Commonwealth become effective.

HW: Nothing in constitution could be made effective which gives sovereignty to U.S. before termination.

HM: Believe approval of constitution by President rather than Congress before plebiscite would minimize disagreements. Also can not require veto by Congress in lieu of affirmative vote.

HW: Believe constitution must be given legal basis before it conveyed to U.S. for approval as done in Puerto Rico model.

AS: Said this is part of issue of having Congress rather than President approve constitution before it goes to plebiscite. Congressional approval would carry greater weight.

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MH: It may not be necessary that Congress formally approve constitution if prior consultation between executive and Congress exist.

HM: Do not believe that we can get away with a status agreement which had only executive approval of constitution.

HW: Believe that other methods exist which would provide for more expeditious approval of the constitution, rather than formal Congressional approval which might take two years to accomplish.

MH: Noted that U.S. is opposed to total separate administration because executive wants to look at constitution before giving away benefits to Marianas.

HW: Noted that there are many ways to meet Congressional concern about approving the constitution, however, cannot defer benefits of self-government to our clients while U.S. get immediate benefits. May recommend deferral of U.S. use of land until benefits derived from some self-government given to Marianas.

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HM: Noted that Congress admits states by looking at the state constitution. Once admitted, however, Congress no longer looks at the amendments or changes in the state constitution.

HW: Would like to bridge difference between our two drafts without fully involving Congress. Timing, of course, is the biggest problem. Lets go on, we'll submit a new draft later.

#### Procedures for Amendment and Approval

MH: In your Section 303(d) and our Section 1202 we have approval by High Commissioner, you have it by the Secretary of Interior. There shouldn't be any problem here. Concerning election districts why do you have use present districts rather than districts as at the time of the election.

HM: Section was to avoid overrepresentation by islands such as Rota and Tinian, However, we have no problem with your draft.

HW: What about timing. Needs about 3 to 6 months for education and debate for approval of constitution.

MH: In Section 1202(a) there are some differences in timing of the status agreement and constitutional convention. Our draft states that status agreement first and then constitutional convention. Yours suggests that status agreement must be approved by U.S. before constitutional convention can begin.

HM: Ambassador Williams believes this is the best way, however, constitutional convention can be authorized before status agreement approved under existing law.

AS: Our draft may be more appropriate as Congress may not act on status agreement if they see a constitution being prepared.

HW: In that case need at least 18 months between signing of status agreement and a draft constitution.

HM: Another point of differences between our draft is "Only affirmative and negative votes will be counted". If invalid and spoiled ballots counted, may reduce a majority to a plurality of votes cast.

HM: Stated practically you could not prevent anyone from using total votes cast as propaganda against the agreement. This section not needed.

AS: Noted that in the United Nations, abstentions are not counted as present and voting.

HW: Countered with in the MPSC abstentions are counted as affirmative votes.

MH: Will look at TTPI laws concerning ordinary elections to determine new draft of this section.

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MH: This is alright, agree to change.

HM: Noted some inconsistency in provision for Judicial Review. He said Judicial Review of constitution with commonwealth agreement is provided in your 204(c), if you place a period after "constitution".

Mandatory Provisions - MPSC Section 204(b) - U.S. Section 306

HM: Strike out "other" from Section 204(b).

Executive Legislature and Judicial Branch - MPSC 205(a) and U.S. Section 307, 308, 309

HW: Is your 307, 308, 309 duplicative of 204(b) or is it more restrictive. Do not believe, these sections necessary.

HM: Would like to postpone discussion of "in addition to..." in Section 307 until discuss matter with Jim Wilson.

HW: In 308, the second sentence is similar to our Section 205(a). Your 309 is similar to our 507, there is no substantive problem, only of form, concern where courts are to be treated. Only substantive problem is definition of authority of commonwealth government.

MH: In talking about extent of legislative authority and its distribution, these are determined by constitution. Therefore authority of commonwealth in these sections better expressed in a single sentence.

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AS: Noted Section 205 says "all matters of local concern" rather than our "matters of local application". Is this a term of art?

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**030487**

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HW: Believe there are political sensitivities requiring a provision for Washington representation. Perhaps a provision extending the authority of Guam's representative to the Northern Marianas could be worked out, if an approval of Guam people is sought. This would cause some problems with the MPSC but if executive branch and Congress would approve this we will present it to the MPSC. However, continue to believe in a need for a provision for Washington representative.

MH: Also the "joint communique" said U.S. would support delegation request for a "non-voting delegate". Would this support include a formal provision for this after population grows.

HM: Would like to talk about this with Jim Wilson.

HW: An alternate solution would be a commitment by Congress to give a non-voting delegate when the population of the Marianas gets to 50,000 - 60,000.

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MH: I will redraft this!

Oath of Office - MPSC Section 211 U.S. section 310.

MH: Believe we are almost identical in this section.

HM: There is some difference. Article 6 U.S. Constitution is similar to our Section 310.

HW: The U.S. Section 310 is less rigorous, we can accept if you include "to support laws of commonwealth!" Would like to continue agenda at the next meeting. Now would like to talk about Washington Representation Issue.

Washington Representation

AS: Strongly believe should not treat the subject in the agreement because of strong congressional opposition to a non-voting delegate. This is a preminently congressional matter.

HW: Would a non-controversial solution such as a American Somoa -type representative be acceptable to include in the status agreement. The purpose of this is to (1) cover the subject; (2) assure recognition of the representative by the U.S. Government; and (3) to cover the cost of his office.

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