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AdeGraffenried: ~~10-1-74:kke~~

MEMCON

Participants:

Howard Willens  
Michael Helfer  
Bob Kelley

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

Date: 25 July 1974: 10:30 A.M.

Wilson: Other topics first.

1. As for the Joint Land Committee, all MPSC members were present plus Pangelinan, Santos, Muna and White. It was a good session during which we discussed:

- a. the terms of reference
- b. agenda

(1) Survey. We need a survey to establish the definitive boundaries, then we will make line adjustments; this is a most important factor needing our immediate attention.

(2) Joint Use/Lease Back.

(3) Method of Acquisition/Fair Market Value. We discussed procedural methods to determine fair market value. The MPSC desired to hire experts; the U.S. outlined the complex procedures that were mandatory for the U.S. Government if the appraisal technique was followed.

We will convene next the first part of August, perhaps in Honolulu for a preliminary conference. Most U.S. experts are in Hawaii. Problem is one of money. If MPSC does not have sufficient funds to meet in Hawaii then we move to Saipan. Willens: The MPSC experts are now on board on how to determine fair market value which we probably won't determine until mid-September.

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Wilson: Very late considering JCFS/U.S. agreement on draft compact in Guam two weeks ago and JCFS strategy to have the Marianas vote on it before the JCFS will recognize separate negotiations with the Marianas; so time is of the essence.

Willens: Does U.S. want a vote on the commonwealth agreement prior to any COM action?

Wilson: Yes, if at all possible.

Willens: We would be faced with having to put both status alternatives to the people. Does U.S. have a position?

Wilson: MPSC does not desire this approach but no final U.S. decisions as yet.

Willens: MPSC may be responsive to U.S. views; so we need U.S. views, especially on separate administration.

Wilson: We discussed separate administration with E. Pangelinan on Guam. There can be no separate administration prior to the November elections as it will raise the issue of Marianas representation in the COM and problems in the Marianas of local selection of delegates for the November races. Pangelinan/Santos do not want a separate referendum on a separate administration, rather only one plebiscite to determine everything. They both felt strongly that vote on status for Marianas should come prior to convening of the COM Constitutional Convention which may be scheduled for April 1974. Minimum time between Marianas District Legislature approval of completed agreement and plebiscite would be approximately three months. So there is a strong push for early agreement on status. Santos and Pangelinan now feel the Marianas cannot participation in the November elections. So,

Marianas would not have separate administration on this basis until final plebiscite held on status agreement.

Willens: There are separate considerations. We all want agreement before the end of the year. But market values are important to our client and a couple of extra weeks are needed. This may push things into the first of October for our next status meeting.

Wilson: October is a problem with elections going on, so cannot meet until November if we miss September date.

Willens: Well, what can be accomplished at our next status meeting depends on our lawyers group. Myself and J. Leonard may get involved in the next land negotiation meetings. Can the U.S. advise whether both status agreements have to be put to the Marianas simultaneously?

Wilson: No, but this is present JCFS position.

Willens: Should not both be on ballot?

Wilson: What will be on ballot is matter for discussion at next JCFS meeting. Salii said at Carmel that a successful vote on commonwealth will resolve matter. But his position seems to be shifting toward having the Marianas vote on free association compact either simultaneously or before their vote on commonwealth.

Helper: Any anticipation of timing on plebiscite for free association?

Wilson: No conclusions as yet. Question is whether to vote on COM constitution first or status agreement or vote on both together.

Helper: Why do we need to have a plebiscite in the Marianas in the first place?

Wilson: Marianas leaders say they need to have determination of Marianas status prior to constitutional convention.

Willens: Would next negotiating session be two to three weeks in length?

Wilson: Hope it will be a "wind-up" session.

Willens: Agree.

Wilson: This depends of course on the outstanding issues to be resolved.

Willens: The outstanding issues could require another two to four weeks to resolve.

Wilson: Also, our schedule is tight due to the fact that we need to have the Marianas District Legislature pass on our agreement.

Willens: That's right it is tight.

AGENDA ITEM 5 (b)

Wilson: Seems group got down to item 5 (b) on our agenda, so let's start here.

Willens: How do we handle outstanding issues? Perhaps Helfer and Marcuse could establish such a list.

Helfer: We will send over a list to the U.S

Willens: The U.S. draft has a formula for Applicability of Laws that will come into effect upon termination of the trusteeship agreement or earlier by Presidential proclamation. MPSC is concerned about.....

First, why give the U.S. President discretion to determine what will or will not apply? Is U.N. a factor?

Wilson: MPSC need not worry about U.N. This is a U.S. Government responsibility.

Willens: Second, financial aid laws. A great bulk of U.S. applicable laws are those federal grants which form basis for the MPSC Phase II levels. If their application is delayed, then these financial levels need to be readjusted.

Third, need early resolution of allocation of powers between federal government and GOM as soon as possible as regards the application of federal regulatory laws.

Wilson: We are not far apart at all. U.S. felt at the beginning that as soon as the U.S. Congress approved the agreement and the new constitution was approved and the new GOM ready the U.S. would go into Phase II. All of the Constitution relating to GOM would be effected which would be consistent with the Trusteeship Agreement. There are a few problems: Can't call it a commonwealth, no U.S. citizenship, etc. So, this is the basis of the Presidential discretion. This is not arbitrary; we will discuss. This could all probably be done by Executive Order, a technical difference from Secretarial Order. Marcuse to discuss other problems of concern.

Marcuse: We have discussed some applicable federal laws. The U.S. has some problems with the MPSC proposals for U.S. citizenship and Marianas protection of land interests versus Trusteeship Agreement obligations to protect against alienation of lands.

Willens: We are concerned with applicable federal laws; not land interests.

Marcuse: Yes, but this is part of the problem. We would hesitate

to apply federal laws which evidence sovereignty. No problem with financial grants. Some problems would arise with federal administrative statutes.

Helfer: We need to identify those federal laws that will not apply to the Marianas.

Wilson: As a general rule, everything should apply that can; we need to identify exceptions

Willens: We are agreed on goal, but need to identify specific exceptions for our clients. We have some concern as to whether you can accomplish all of the Phase I goals in two years. We need to find some interim formula with an acceptable caveat for exemptions or some mechanism that will determine the exemptions. If a mechanism, need to establish as soon as possible.

Wilson: Do not disagree, but there is a practical problem of whether you want an executive commission to determine all laws or approval by U.S. Congress on a general formula.

Helfer: There are two different methods \_\_\_\_\_? \_\_\_\_\_?

Wilson: We looked at the problem more simply. The U.S. looked at an "interim" formula to apply laws then commission would review over the long-term all the federal laws to be applied. If this approach is used, we could still find specific exceptions to this applicability formula.

Willens: We agree with this as a goal. The MPSC conclusion is that this formula should be more than "interim" and that we could make it more permanent and put it into the status agreement. Would the U.S. interim formula continue in effect after termination with exceptions?

Wilson: Yes, we need to identify those statutes that would not apply until end of Trusteeship. There are a lot of these statutes.

Helfer: We could have an interim formula but give the U.S. President authority to decide that certain laws cannot be applied until the end of the Trusteeship Agreement. This would give a standard for review and reassure the MPSC.

Wilson: This is what the U.S. had in mind.

Marcuse: We could clearly provide application of our financial laws.

Helfer: Yes.

Willens: U.S. needs more flexibility and time than this schedule permits. MPSC would like assurances as soon as possible but this is something the U.S. would be working on during Phase I, i.e., should the whole body of federal regulatory laws apply (anti-trust, food drugs, FCC, FAA, etc.) prior to termination?

Wilson: If applicable in the Trust Territory at present, would apply.

Willens: U.N. might look at this and object if all applied. We are talking about two to three years during which these laws would apply.

Wilson: Case in point is selective service act. Making the Marianas subject to it would be difficult.

Surena: Making exceptions requires flexibility.

Helfer: The U.S. President would have flexibility.

Wilson: The standard for the U.S. Government not applying federal laws would be to avoid any conflict with our obligations under the Trusteeship Agreement.

Helper: Would this standard and the applicable laws be reviewable in court?

Surena: Yes it would be.

Wilson: The review would be extremely limited.

Willens: Under the MPSC approach all laws would apply unless a positive act by the President to withhold them was made; under U.S. approach no application of any of the federal laws until the President acts to apply them.

Willens: Do we need to review the provision for the "statutory review commission"?

Wilson: The issues are composition when to meet and what to do.

Helper: On when to come into existence; the U.S. wants to establish at end of trusteeship--MPSC desires establishment before the end of trusteeship. In line with discussions here, let us do it sooner. Both versions call for Presidential appointments.

Willens: Need to have recommendations of the Commission on applicable laws at time of termination not afterwards.

Wilson: U.S will rethink.

Willens: Need to have statutory list presented to U.S. Congress and resolved before establishing the Commonwealth.

Wilson: We prefer to have statutory review commission established during Phase I and it is better to have them recommend statutes to be applied to the U.S. Congress. U.S. Congress cannot react until they know how GOM will be established.

Willens: Some official agency should be charged with handling these recommendations.



Willens: MPSC would not want U.S. Government employees on the commission; we are concerned that the commission should be composed entirely of U.S. employees; we want outside, diversity of views represented.

Marcuse: Will the commission really be important?

Willens: It may not be; depends on the work done on the interim formula. This is really a fail safe device to get U.S. laws extended to the Marianas which MPSC wants.

Marcuse: Since package will be small--much smaller than Guam-- U.S. Congress should accept its recommendations.

Willens: Cannot have a formula without some safeguards in light of experience with Guam. On the formula, some of the questions raised are the numerous exceptions.

Helfer: Let's put internal revenue laws aside.

Wilson: Agree.

Kelly: U.S. should reply to the MPSC approach.

Wilson: U.S. would prefer to apply the laws now extended to Guam. We had not included any exceptions because we had not heard from the MPSC. Also we continue application of TTPI laws if a conflict between them and those extended to Guam exists.

Willens: No significant law applicable under formula that does not now apply to the Marianas under TTPI.

Wilson: Correct.

Kelly: Found laws that apply to Guam are those the U.S. Congress extended to the TTPI.

Helfer: Grant laws primarily extended to the TTPI.

Wilson: Worried about those applied exclusively to the TTPI and not to Guam; these should continue to apply to the Marianas.

Willens: There are no laws exclusively for the TTPI.

de Graffenried: Are some federal laws enacted exclusively for the TTPI; i.e., Micronesian Claims Commission.

Wilson: True, there would be a need to get a definitive list of law applied only to the TTPI and not to Guam.

Marcuse: We have some laws applied differently between Guam and the TTPI, i.e., pollution laws.

Wilson: Let's put a question mark around this.

Willens: Let's then get B. Chapman memo to list those applied to Guam, those applied to TTPI and which should be extended to the Marianas.

Helper: What about orders of the U.S.-TTPI Executive?

Wilson: This problem is one the U.S. is going to have to address. We will have de Graffenried confer with B. Chapman on this matter. The U.S. has two considerations on exceptions: (1) the U.S. Congress; and (2) if an exception for the Northern Marianas should be granted where those laws apply to Guam causing a problem of administration, i.e., Jones Act, does apply to Guam. The U.S. is sympathetic to MPSC position and notes Won Pat's call for the same treatment. It is a problem if the Marianas and Guam are not treated the same; a really tremendous problem.

Helper: Only a few areas where the Marianas would be treated differently from Guam: (1) minimum wage laws; they apply to Guam; we don't want them for the Marianas and (2) public health services; some do not apply to Guam; we want them to apply to the Marianas (these are not regulatory aspects, but financial).

Kelly: We also note that the Homestead Act applies in Puerto

Rico and the Virgin Islands but not in Guam we want it for the Marianas.

Helfer: There would be serious dislocations in the local economy if the U.S. applied federal minimum wage laws.

Willens: Many in the Marianas felt that this statute meant there was a wage guarantee rather than what it really is (interstate commerce device). If we can find a way to have the statutory review commission undertake the task to have its application delayed, like immigration, until the end of the Trusteeship Agreement.

Wilson: Will have to get U.S. Congress reading and U.S. executive branch readings so let's come back to exceptions.

Helfer: As to the interim formula, the two formulations are similar but there are some language changes. What is the U.S. understanding?

Marcuse: MPSC appears to eliminate statutes that relate to commerce within a territory. The U.S. did not want these originally and we since have agreed.

Wilson: We need to draft language then.

Willens: We also need a new exception providing for Presidential exception.

Wilson: Need to keep as simple as possible for U.S. Congressional approval. Let's get our differences set out and try to agree on some present language. Let's draft what we have agreed to and have a double column split where we disagree. Leaves some very important items. This about wraps up our agenda for today. It has been very productive. Let's keep it up.