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July 25, 1974

MEMORANDUM FOR MARIANAS POLITICAL
STATUS COMMISSION FILE

Subject: Meeting of the Joint Drafting Committee

A meeting of the Joint Drafting Committee was held on July 25, 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, Robert Kelley and Michael Helfer.

Mr. Wilson first reported on his recent trip to Guam and the Marianas. With respect to the initial meetings of the Land Negotiating Committee (LNC), Mr. Wilson said that terms of reference had been agreed upon, though several points were still to be worked out by Senator Pangelinan and Ambassador Williams. A proposed agenda was also discussed. Mr. Wilson gave to Mr. Willens copies of these two documents (attached). Mr. Wilson stated that it had been agreed that the LNC would divide its work into three general areas: (a) the surveys; (b) joint use and lease back arrangements; and (c) issues relating to the method of acquisition, the terms of payment and the price to be paid for land. The purpose of the surveys is to locate the boundaries which have tentatively been agreed upon at the last round of negotiations. Where the exact lines are still open to negotiation, tentative boundaries will be surveyed. Procedures for determining the price to be paid for the land (fair market value) were also discussed, Mr. Wilson said. The United States presented to the MPSC representatives on the LNC an explanation of the U. S. Government's appraisal process, and the reasons that the United States does not want to engage in a formal appraisal. Mr. Wilson stated that the difficulty with an appraisal process from the United States side relates to the problem of obtaining funds from Congress. Recognizing that the MPSC wants to have its experts complete their work before it agrees to a price with the United States, Mr. Wilson said that the U. S. had agreed that price will be the last item on the agenda of the LNC. Mr. Wilson stated that it was hoped that the LNC could reconvene in Honolulu approximately August 1 for substantive discussions, but that the MPSC had difficulty in financing such a meeting. The United States is looking into the possibility of the MPSC using money which was to have been used by the Ad Hoc Committee for the LNC instead. Mr. Willens stated that the MPSC's land experts are at work, but that their final report is not expected until September. Mr. Wilson stated that it would be very undesirable to delay that long.

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Mr. Wilson pointed out that an agreed draft of the Compact of Free Association has already been prepared. This draft will be given to the Congress of Micronesia informally during its July session, and, assuming that the draft is approved by the full Joint Committee and signed this fall, presented formally to the Congress of Micronesia for approval in January, 1975. The leadership of the Congress of Micronesia wants the people of the Marianas to vote on the Compact before voting on a status agreement creating a Commonwealth. The leadership of the Marianas wants this status agreement put to the people first. The United States has no official position on this dispute. Mr. Wilson said that the U. S. position would probably be that so long as the Compact of Free Association was available at the time of a vote on the status agreement -- so that the alternative was known by the people of the Marianas -- U. S. obligations under the Trusteeship Agreement would be fulfilled. Mr. Wilson pointed out that the earliest vote on the Compact would probably be in the fall of 1975, since the present thinking of the leaders of the Congress of Micronesia is the Compact and the Micronesian Constitution should be voted on at the same time. It is anticipated that the Micronesian Constitutional Convention will take place in April, 1975.

The discussion turned to separate administration for the Marianas, and the relationship of separate administration to the problems of timing previously discussed. Mr. Wilson said separate administration had been discussed in Guam by Senator Pangelinan, President Santos, Ambassador Williams and himself. The United States anticipates problems in the U. S. Congress and at the United Nations if separate administration in the Marianas occurs without a plebescite. The MPSC does not want a referendum on separate administration alone; and the MPSC wants very much to have a plebiscite on the status agreement before the convening of the Micronesian Constitutional Convention -- with a minimum of three months of political education before the plebiscite. The only way to accommodate these interests, Mr. Wilson concluded, is to have the status agreement signed this fall so that the plebescite in the Marianas can occur next March. Separate administration could come into effect promptly after a successful plebescite. This will avoid the necessity of the Marianas sending delegates to the Micronesian Constitutional Convention.

Mr. Wilson stated that in view of this timetable Senator Pangelinan and President Santos had decided that their party would nominate candidates for seats in the Congress of Micronesia in the upcoming elections. In particular, Senator Pangelinan will run for reelection. This means that most of the

month of October will be unavailable for negotiations.

Mr. Willens replied that the schedule outlined by Mr. Wilson seemed generally satisfactory, if somewhat optimistic. Mr. Willens noted, however, that the MPSC felt that it had to have the report of its appraisal experts in order to discuss with the United States the price which will be paid for land. If this means a delay of a few weeks, Mr. Willens said, such a delay would simply have to be accommodated.

The discussion turned to Agenda Item 5(b) concerning the interim applicability of federal laws. Mr. Willens stated that the primary difference between the Commonwealth Agreement and the Covenant concerned the time as of which the interim formula would come into effect and the mechanism for having it come into effect. The Commonwealth Agreement provides that the formula automatically comes into effect upon approval, while the Covenant has the formula come into effect at termination unless the President makes it effective sooner. Mr. Willens identified three problems with the approach taken by the Covenant: the discretionary power it grants to the President to make the formula come into effect; a lack of guarantee that federal laws granting financial assistance will be applicable with respect to the Marianas during Phase II; and the potential vacuum which might be created if the general body of federal regulatory laws are not applicable until termination of the Trusteeship.

Mr. Wilson stated that he did not think the MPSC and the United States were very far apart on this issue. He noted that under the Trusteeship Agreement the United States has the power to make virtually all of its laws applicable with respect to the Marianas. The reason that discretion was given to the President is that there are certain laws which might otherwise be made applicable under the general formula which are so closely related to sovereignty that they should not be made applicable until termination. In general, however, Mr. Wilson said, the United States position is that when Congress approves the status agreement, and when a new constitution is in place, and when a new government is in operation (i.e., the beginning of Phase II), virtually all the laws of the United States should go into effect in the Marianas. Mr. Marcuse stated that areas of law which raised the concerns Mr. Wilson had spoken about are laws relating to citizenship, laws which might prevent restrictions on land alienation, laws granting the United States the power to acquire title to land, and selective service laws. Mr. Wilson stated that the United States anticipated no difficulty whatsoever with respect to making laws granting financial assistance

applicable in the Marianas prior to termination.

Mr. Willens stated that the MPSC basically agreed with the views presented by Mr. Wilson, but that the status agreement would have to provide explicitly that all laws which can possibly be put into effect consistent with the Trusteeship will be put into effect at the beginning of Phase II. A discussion ensued concerning methods by which this might be accomplished. It was agreed that probably the most desirable method of accomplishing this goal was to have a provision in the status agreement for an interim formula for applicability of laws which would go into effect at the beginning of Phase II, but that the President would have the authority to except, until the termination of the Trusteeship, such laws as he determined could not be put into effect without violating the terms of the Trusteeship. Mr. Willens pointed out that there will be time during Phase I to determine which laws could not be made applicable because of the Trusteeship Agreement, but said that it would be very useful for the MPSC to have the general views of the United States on this topic before the status agreement is signed.

A discussion was held concerning Cov. § 403(a)(2), which makes the existing laws of the United States applicable to the TTPI applicable to the Marianas under the interim formula. Mr. Willens stated that it was the MPSC's view that this provision was unnecessary. Mr. Marcuse thought that omitting this provision might lead to procedural gaps with respect to, for example, venue provisions in certain environmental laws. Mr. DeGraffenreid thought that this provision might be read to remove the applicability of the Micronesian Claims Commission Act to the Marianas. Mr. Wilson stated that the United States wanted to explore this matter in more detail.

A brief discussion was had of the exceptions to the interim formula contained in CA § 401(a)(1) and (2). Mr. Helfer explained that the only law which was applicable to Guam which was proposed to be made inapplicable to the Marianas was the minimum wage provisions of the Fair Labor Standards Act. The other exceptions found in this section of the Commonwealth Agreement were necessary to prevent the Marianas from being treated like a state when everyone agreed they should be treated like Guam. With respect to CA § 401(a)(2)(ii), Mr. Helfer stated that the most important aspect of this section concerned certain provisions of the Public Health Services Act which were not applicable in Guam which should be applicable in the Marianas. He noted that legislation was pending in Congress to

make these provisions applicable in Guam, and that this legislation apparently faced no serious difficulties. Mr. Wilson stated that the United States had two concerns with respect to these exceptions. One is the general concern about exceptions in the status agreement. The other is the particular political problem raised by granting certain benefits to the Marianas which are not available to Guam. The exception for the Marianas from the Jones Act provided in the Commonwealth Agreement is an example of a provision which raises this kind of problem, Mr. Wilson said, although he noted that the United States delegation was sympathetic to the desires of the Marianas.

A brief discussion was had concerning the exception from the minimum wage provisions of the Fair Labor Standards Act. Mr. Kelley explained that while the FLSA was applicable in Guam, it was not applicable in Puerto Rico and the Virgin Islands, which have special provisions relating to the determination of the local minimum wage. Mr. Wilson noted that Guam has local laws requiring a higher minimum wage than the federal minimum, so that the applicability of the FLSA to Guam is not particularly important. Mr. Willens noted that the MPSC's economic consultant believed that the economy in the Marianas was such that the application of the minimum wage laws could result in serious dislocations. This was a situation, Mr. Willens suggested, where it might be most appropriate for the Joint Review Commission to study the problem and to make a recommendation which would then come into effect after termination of the Trusteeship.

Mr. Helfer asked whether the different wording of CA § 401(a)(1) and Cov. § 403(a)(3) reflected any policy differences. Mr. Marcuse stated that the purpose of the Covenant was to prevent laws uniquely applicable to Guam, like the Organic Act, from applying to the Marianas. The Commonwealth Agreement, he said, seemed designed to accomplish this goal and to prevent laws which reach intra-territorial commerce from applying to similar commerce in the Marianas. Mr. Kelley confirmed Mr. Marcuse's view. Mr. Marcuse said the U. S. had no objections to the MPSC's position in this regard.

A brief discussion of the Joint Review Commission (JRC), Agenda Item 5(c) ensued. Mr. Wilson stated that the United States was agreeable to having the JRC established promptly. Mr. Willens suggested that the status agreement provide for it to come into being no later than the beginning of Phase II. It was agreed that that portion of CA § 402(a)

which prohibits employees of United States from being members of the JRC will be dropped. Mr. Marcuse asked whether the JRC had any importance in view of the fact that the interim applicability of laws formula would be so structured as to provide for the continued applicability of federal laws after termination of the Trusteeship. He stated that the recommendations of the JRC would essentially be recommendations adjusting the effect of the formula, and because they would be limited, would be more likely to be accepted by Congress than the massive report of the similar Guam Commission. Mr. Willens stated that the JRC was viewed as a mechanism to provide insurance against the possibility that the interim formula will not work satisfactorily and stated that if a comprehensive interim formula could be drafted, then the MPSC would consider giving up its request that the recommendations of the JRC go into effect automatically unless vetoed by one house of Congress.

Mr. Wilson suggested that Mr. Marcuse and Mr. Helfer meet to draft a formula which reflects the agreements reached at this meeting, and which leaves room in its structure for exceptions with respect to the pre-termination period. In addition, Mr. Marcuse and Mr. Helfer were directed to prepare a list of open issues which had been reserved at prior meetings of the Joint Drafting Committee. These matters will be taken up at the next meeting. Mr. Wilson also suggested that in view of time pressures, some thought be given at the next meeting to establishing a drafting subcommittee to reduce to writing the agreements already reached. Mr. Willens agreed with both suggestions. The time and place of the next meeting of the Joint Drafting Committee will be determined after Mr. Helfer and Mr. Marcuse have completed their assignments.

Michael S. Helfer

cc: Howard P. Willens (without attachments)
Robert Kelley