

July 1974

TO : James M. Wilson,
FROM : A. de Graffenried, OMSN
SUBJECT : Summary, US-MPSC lawyers Meetings

US-MPSC drafting Committee

The drafting committee has reached the following agreements :

Marianas Constitution.

- Consistency with status agreement. Resolved. Marianas Constitution will be consistent with the status agreement and applicable federal laws. US adopted MPSC section 204(b) provided the word "other" before "respects" was deleted.
- Judicial Review. Resolved. US Courts to review and determine whether the Constitution and its amendments are consistent with the status agreement, US Constitution, and applicable federal laws.
- call of the Convention. Unresolved. MPSC desires convention to be called prior to US approval of status agreement to shorten the time span before Marianas enjoys rights of self-government. US version calls Convention after approval of status agreement by the US Congress.
- approval of the Constitution. Unresolved. MPSC prefers no USC involvement but only US Executive action. US notes requirement for a USC role in review process. MPSC to submit a new draft to US.
- Establishing functions of Executive, Legislative, Judiciary. Partially resolved.
 - Executive. Unresolved. Requirement for Marianas executive to execute the laws of the GOM and US applicable to Marianas (last sentence of US draft section 307) may be eliminated.
 - Legislative authority. Unresolved. MPSC prefers to avoid use of the terms of art : "...power will extend to all subjects of local application..." to avoid narrow legal interpretations of legislative authority in Virgin Islands which uses this phrase; MPSC feels Marianas Constitution and not status agreement should establish extent of legislative authority. US prefers to address this in the status agreement as contained in US draft.

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Legislative Composition. Unresolved. MPSC notes that by applying the 14th. Amendment, that the local legislature must be fully representational according to a population census per the 1 man 1 vote rule; MPSC prefers to adopt a bicameral system with one house composed of equal representation based on an island membership so as to avoid local frictions and insure a more balanced viewpoint in local matters; the MPSC notes that the US Senate has such a basis and questions why it cannot. US feels that this matter is of merit but feels that it should be addressed in the sections outlining the functions of the legislature and not make a specific exemption to the 14th. Amendment as proposed by the MPSC.

-- Judicial authority. Unresolved. MPSC prefers to address in the local constitution. US prefers to incorporate a section into the status agreement.

Washington Representation. Unresolved. MPSC desires provision in the status agreement; US does not. MPSC proffered suggestion that we extend the authority of Guam's representative to include the N. Marianas.

Oath of Office. Unresolved. MPSC desires to include the requirement that the local official support the laws of the Commonwealth. US feels that there is some differences in approaches.

Approval of the Status Agreement.

- Vote tabulation. Unresolved. Issue is whether to count only the affirmative and negative votes. MPSC is to restudy the TTPI election laws to resolve how to handle mutilated and voided ballots (void or not?)
- Election districts. Resolved. Election districts as constituted at the time of the election will be used (MPSC preference).
- Certification of results. Resolved. US primacy in the plebiscite recognized. MPSC prefers HICOM certify; US prefers Secretary of the Interior.

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Applicable Provisions of the US Constitution.

- Article I, Section 9, Clause 2 - Apply to Marianas
- 3 - Apply to Marianas
- 4 - Not Apply
- 5 - Apply, but MPSC to study
- 6 - Apply, but MPSC to study
- 7 - Not Apply
- 8 - Not Apply

- Article I, Section 10, Clause 1 - Apply
- 2 - Not Apply, but address subject elsewhere in agreement.
 - 3 - Apply; MPSC would like specific provision for MPSC membership in regional organizations

Article IV, Section 1 - Apply as in MPSC draft, a special exception re: alienation of land will be addressed elsewhere

Land Alienation. Unresolved. MPSC prefers to address this matter in the Constitution; believes that US is being paternalistic by dictating this matter. MPSC does not fully understand whether the provisions apply only to public or also include private lands. The former will be addressed in the creation of the public land corporation; the latter will, or should, be addressed either in the local constitution or by local legislation. US notes that USC prefers MPSC adopt specific provision in the status agreement to regulate the alienation of local lands and promote the holdings of land in those of Marianas ancestry.

✓ Article IV, Section 2, clause ¹2 - Apply ✓

Article VI - Unresolved. MPSC wishes to avoid the possibility that all provisions of the Constitution might be applicable by interpretation of the 'supremacy' clause, but does accept principle of US supremacy clause. US wishes to avoid any inference that status agreement is the controlling document in the status relationship so that US sovereignty will not be impeded; therefore desires clear expression that Commonwealth is under US sovereignty.

Amendments 1 - 4 - Apply

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Amendment 5 - Unresolved. MPSC believes that (1) recent Guam decision frees local government from requirement of indictment by grand jury, but only binds the federal government in cases arising locally; (2) that GOM should have the right on whether the US should be bound by the 5th. Amendment requirements for indictment by grand jury in cases arising in the Marianas. US notes that Mink Amendment extends the amendment to all the other territories except the Virgin Islands.

Amendments 6 & 7 - Unresolved. Need to determine desires of local residents. MPSC desires further time to consult with clients.

Amendments 8 & 9 - Will apply to the Marianas

Amendment 13 - Will apply to the Marianas

Amendment 14, Section 1, Sentences 1 & 2 - Apply

Amendment 14, Section 5 - Unresolved. MPSC feels there is no need to empower the USC to enforce the application of this amendment.

Amendments 15 & 19 - Apply

Amendment 26 - Apply, but study enforcement provision.

Amendment 27 - Apply if later adopted by the States; further study by MPSC desired.

Interim Applicability of US laws. Unresolved. MPSC desires a US commitment for early application of this formula especially as to obtain full benefits of US grant programs. US notes the problem of evidencing US sovereignty prior to termination of trusteeship and issues of timing respecting the interim separate administration, establishing Commonwealth government, and USC feelings. US to study further.

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