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August 1, 1974

MEMORANDUM FOR THE MARIANAS POLITICAL STATUS COMMISSION FILE

Subject: Meeting of the Joint Drafting Committee

A meeting of the Joint Drafting Committee was held on July 31, 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, Erica Ward and Michael Helfer.

Mr. Wilson opened the meeting by stating that a meeting of the Land Negotiating Committee was scheduled for August 5 in Saipan. Mr. Willens stated that he expected to be in the Marianas during the week of August 12.

In accordance with the previous agreement the discussion turned to the agenda of items which had been passed over during previous meetings because of Mr. Wilson's absence (attached).

Marianas Constitution. With respect to item (a), Mr. Wilson stated that he would consult with Congress and suggest that the President be empowered to approve the Marianas Constitution on behalf of the United States, but that he be required to submit the Constitution to Congress for 30 days before approving it. It was agreed that this provision of the status agreement would be drafted in alternative ways -- unencumbered presidential approval, and presidential approval after a waiting period of 30 days. With respect to item (b), Mr. Wilson stated that the United States had changed its position and would agree that the people of the Marianas should approve the Constitution before it is submitted to the President. With respect to item (c), Mr. Wilson said that the United States position was that the constitutional convention should be permitted to begin before the U.S. Congress approves the status agreement. Mr. Wilson stated that the U.S. Congress may well decide to see the Marianas Constitution before it approves the status agreement, and permitting the convention to begin before congressional approval of the status agreement is therefore desirable. With respect to item (d), it was agreed that the status agreement will provide that all of the Marianas Constitution will automatically come into effect after approval except so much as the President

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determines cannot lawfully come into effect prior to termination of the Trusteeship. This is a mechanism similar to the one developed for the interim applicability of laws formula. With respect to item (e), Mr. Wilson stated that the United States would agree to eliminate from its draft the requirement that the Executive Branch of the Commonwealth government faithfully execute the laws of the United States.

Washington Representative. Mr. Wilson stated that the United States has two basic problems. First, the grant of a nonvoting delegate is viewed as a matter peculiarly within the province of Congress. Second, there is an open question as to how Washington representation for the Marianas should be provided. Mr. Willens stated that the MPSC in proposing that the Marianas get a nonvoting delegate when it reached a population of 50,000 had backed off its original position that it was entitled to a delegate immediately. Mr. Willens asked whether the United States had discussed the MPSC proposal with members of Congress. Mr. Wilson indicated that this specific proposal had not been discussed. He stated that the United States position was that the subject of Washington representation for the Marianas would have to be treated as part of the political status arrangement. This means, he said, that Washington representation might be dealt with in the status agreement, in a separate exchange of letters, or by means of a unilateral declaration from the Executive Branch to Congress supporting a nonvoting delegate for the Marianas. Finally, Mr. Wilson noted that while there is some sympathy with the idea of automatically granting the Marianas a delegate when it reaches a certain population size, there is also a concern that this provision would serve to prevent unification with Guam at exactly the time when the Marianas reached a size and probably an economic strength making unification feasible. Mr. Willens, noting that the MPSC has in the past rejected such proposals, asked if Congress might be receptive to expanding the jurisdiction of the Guamanian delegate to include the Marianas. Mr. Wilson said that this matter would be taken up with members of Congress. The discussion turned to the question whether if there were no nonvoting delegate the status agreement could provide for a resident commissioner. Mr. Wilson stated that the United States had no objection to provisions in the status agreement requiring that official recognition be given to such a resident commissioner. The question whether the United States would pay the cost of such a resident commissioner was left unresolved.

Land Issues. With respect to item (a), Mr. Wilson stated that a portion of the congressional concern for making the land alienation restrictions mandatory is based on the fear that otherwise the level of economic assistance to the Marianas will have to continue to be high because the people of the Marianas will be tempted to sell off their most valuable asset. Mr. Willens repeated the MPSC's support of land alienation restrictions, but stated that this was a matter which should be left to the Constitution or laws of the Commonwealth, and not required by the status agreement. Mr. Willens suggested that perhaps land alienation restrictions should be mandatory only for a period of time. Mr. Wilson said he would consider this suggestion, and the issue was left unresolved. With respect to item (b), it was agreed that the Commonwealth could regulate the extent of individual holdings of public land without the necessity of an exception from the applicable provisions of the U.S. Constitution. Accordingly, if there is any provision in the status agreement requiring the Commonwealth to impose such regulations, it will not be in the section dealing with the applicability of the U.S. Constitution. Mr. Willens stated that while the MPSC anticipated that the extent of individual holdings of public lands would be restricted, it did not believe that this item should be in the status agreement, since it was basically a matter of local self-government. Mr. Wilson replied that from the United States' perspective it must be dealt with in the status agreement because after the status agreement is approved the imposition of such limitations would be an internal matter which would be out of Congress's reach. The issue was not resolved. With respect to instructions to the drafters, it was agreed that the provision relating to land alienation restrictions would be drafted in alternative ways (mandatory versus permissive); and with respect to the requirement that the Commonwealth regulate the extent of individual land holdings, it was agreed that the United States would develop language for an appropriate section of the status agreement.

Applicability of U.S. Constitution. A discussion was held concerning the necessity for an exception from the reapportionment decisions to permit the Commonwealth legislature to reflect interests other than merely population. Mr. Surena suggested that Congress might be willing to agree to such an exemption if it knew how disproportionate the representation would be. Mr. Willens stated that the MPSC did not want to limit the options of the constitutional convention with respect to the size, composition, or number of houses in the Commonwealth legislature. The issue was not resolved.

Mutual Consent. With respect to item (a), it was agreed that the status agreement will continue to have a section like CA § 303 and Cov. § 203 explicitly granting citizenship to persons born in the Marianas after termination of the Trusteeship. In addition, the first sentence of the first section of the Fourteenth Amendment would be made applicable to the Marianas. Since the applicability of certain portions of the U.S. Constitution is itself subject to mutual consent, and since the wording of the Fourteenth Amendment and the decisions thereunder provide protection against the withdrawal of the grant of citizenship, Mr. Willens said the MPSC will reconsider whether it is necessary to make the grant of citizenship to persons born in the Marianas after termination of the Trusteeship subject to mutual consent. With respect to item (b), Mr. Wilson stated that the Phase II economic assistance provisions would be in the nature of a contract, and enforceable against the United States. It was decided to postpone a final decision on this matter until agreement was reached whether the Phase II financial assistance provisions would be drafted in a form which made them an authorization as well as an appropriation or, instead, just an authorization with the commitment to appropriate the necessary funds at a later date.

Other. Mr. Wilson stated that the reason that the United States had altered the Covenant with regard to Commonwealth participation in certain international organizations was that this matter was under review by the Executive Branch with respect to all the territories. This review is expected to be completed shortly. Accordingly, consideration of this matter was postponed.

A draft formula for the application of existing laws of the United States to the Marianas was distributed (attached). This formula was developed after Mr. Marcuse and Mr. Helfer met to discuss the matter. It was agreed that the formula needed further study, but that there were no major policy differences except perhaps with respect to the "exceptions" which the formula contained. Mr. Willens stated that he understood the U.S. objection to making the Federal Crop Insurance Act apply to the Marianas in view of the fact that this Act does not apply to any other territory. Mr. Wilson asked, and Mr. Willens agreed, that the question whether Title III of the Consolidated Farmers Home Administration Act need apply should be reviewed in view of the grant of 1.5 million dollars a year to the Marianas for economic development -- of which \$500,000 a year is reserved for small loans to farmers and fishermen and to agricultural and marine cooperatives.

It was agreed that Mr. Marcuse and Mr. Helfer would continue to work on drafting portions of the status agreement with respect to which policy differences had already been resolved, while the Joint Committee as a whole would continue to work on the items contained in the agenda previously presented by the United States. Meetings will be held on Tuesday, August 6 and Thursday, August 8 at 10 a.m. in Mr. Wilson's office in an attempt to complete the first review of all items on the agenda.

Michael S. Helfer

Attachments  
cc: Howard P. Willens