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August 9, 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 August 8, 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, David Lake and Michael Helfer.

Mr. Wilson opened the meeting by saying that a copy of the draft Compact of Free Association had been made available to the Congress of Micronesia. Mr. Wilson had just learned that Senator Salii had suggested a number of changes in the draft, although the United States thought the draft was an agreed text. Mr. Wilson made available to Mr. Willens a copy of the draft Compact and Senator Salii's proposed changes. Senator Salii has suggested that the military requirements of the United States in the Marianas be provided for in the Compact. The United States has made no response to the proposed changes, but Mr. Wilson agreed that the proposals would probably require a meeting with the Joint Committee in the fall. Mr. Wilson also reported that a resolution had been introduced in the Senate expressing the sense of the Congress of Micronesia that there should be no separate administration for any district prior to a vote on the Compact. Finally, Mr. Wilson said that there was no definitive word on revenue sharing legislation, and that the future of the land legislation was unclear, since many of the amendments proposed by the House had been rejected in the Conference Committee.

The discussion turned to Item 6(d) on the Agenda, the applicability of the Internal Revenue Code of the United States to the Marianas. Mr. Wilson stated that the position of the United States Delegation reflected in the May draft of the Covenant was intended to permit ten years during which the Marianas would move progressly toward using the Internal Revenue Code as a Territorial Code. This suggestion has been rejected by Congressman Burton. Congressman Burton wants full application of the Internal Revenue Code either as a local tax (as in Guam) or as a federal tax (as in a State) to come into effect as soon as possible--probably upon the establishment of a new government of the Northern Marianas

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(before termination of the Trusteeship). The Congressman has no objection to returning to the Marianas all revenues raised by the application of the Internal Revenue Code. His concern is that the Marianas not become a "tax haven" for wealthy individuals or corporations, and that there be no tax incentives for business to leave Guam and move to the Marianas. Congressman Burton is apparently unimpressed by the arguments that the application of the Code will leave many persons untaxed because of the income levels in the Marianas; to this he responded that the Marianas can impose a minimum tax as was done in American Samoa. With respect to the complexity of the Code, Congressman Burton is reported to have said that it does not appear to be a hardship in Guam.

Mr. Willens stated that from the Marianas viewpoint an important principle of self-government was involved. The Commission he said, was prepared to pledge in the status agreement that the income taxes imposed by the future government would be nondiscriminatory and would be progressive. Mr. Willens explained that an available alternative might be based on the way Puerto Rico is treated. Puerto Rico adopted the Internal Revenue Code as a Territorial Code, but has the authority to amend it. It was suggested that the power to amend might be restricted by the requirement that amendments be consistent with the general principles of the Internal Revenue Code and be nondiscriminatory with respect to Guam. Mr. Lake pointed out that the power to amend was needed for practical reasons: any "mirror image" tax system raises numerous technical problems which the local authority ought to have the power to correct; and there would be a necessity to adjust the rates and coverage of the Internal Revenue Code in order to take into account the general level of income in the Marianas.

After continued discussion Mr. Wilson suggested that the following scheme might be acceptable: The Marianas Legislature would have taxing authority, but it would be required to create a tax system comparable to, including tax levels, the federal system; amendments to the local tax code would be permitted so long as the local tax code remained comparable with the Internal Revenue Code; and by the conclusion of the Trusteeship the code in effect in the Marianas would have to be "fully comparable" with the Internal Revenue Code. Mr. Willens suggested that this approach had some merit, and that it might be worthwhile to try to articulate what was meant by "fully comparable". Since the concern is comparability with respect to corporations and wealthy individuals, and not obtaining advantages

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as compared to Guam, he said, perhaps these particular matters ought to be stated. Mr. Helfer suggested that the requirement of comparability might encourage law suits challenging amendments to the local tax code on the ground that they were not "comparable". After further discussion it was agreed that Mr. Willens would attempt to draft provisions for the status agreement consistent with Mr. Wilson's suggestion as modified by the discussion.

It was agreed to postpone consideration of Item 8(a) of the Agenda, present land requirements of the United States, on the ground that this matter is being considered by the Land Negotiating Committee. An extended discussion was had concerning Items 8(b), future land requirements, and 8(c), eminent domain. With respect to both items, one major concern on the part of the United States is the restriction in the Commonwealth Agreement prohibiting the United States from obtaining either by negotiation or by eminent domain title to land in the Marianas. The United States position is that as the central government it should have the authority to own land in the Marianas, just as it has the authority to own land in the states and all the other territories. Mr. Surena argued that permitting the United States to own land did not contradict the prohibition against persons of non-Mariana descent from owning land, since the purpose of that provision was to prevent exploitation by outsiders, and the Government of the United States would take lands only for public purpose and not private profit. Mr. Surena suggested that the United States might be willing to make an undertaking not to attempt to acquire title to land in the Marianas except in unusual circumstances, though it would not make a legally binding commitment not to acquire title. He indicated that the United States felt it important as a matter of principle to be able to hold title to land. The issue was left unresolved. Mr. Wilson stated that another concern of the United States with respect to fulfilling its future land requirements by negotiation was the requirement in the Commonwealth Agreement that it deal not with the private owners of the land but instead with the Marianas Government. Mr. Wilson stated that the United States was willing to notify the local government of its negotiations with private land owners. Mr. Willens asked if the United States would be willing to commit itself to try to fulfill its land needs in the future through the local government and to use public land whenever possible. Mr. Wilson agreed.

The discussion then turned to eminent domain. Mr. Willens explained the sensitivity of the issue to the MPSC, especially in view of the very large amount of land which

would be made available to the United States under the status agreement. Mr. Wilson stated that the United States would be willing to state publicly, though perhaps not in the status agreement, that it had no known future requirements for land in the Marianas. Mr. Surena stated in response to Mr. Willens' question that the United States might be willing "to undertake" not to use the eminent domain power to convert the leasehold interest proposed to be granted to it pursuant to the status agreement into a fee interest. It was agreed that any authority the United States may have to hold title to land in the Marianas or to exercise eminent domain in its own name would not come into effect until after termination of the Trusteeship. Until that time the authority of the central government of Trust Territory in this regard would, Mr. Wilson said, reside in the Marianas Executive to be created when separate administration for the Marianas comes into effect.

With respect to procedural safeguards against the arbitrary exercise of the eminent domain power in the Marianas, Mr. Wilson stated that the United States may be prepared to agree to the MPSC's suggestion that the authority not be exercised without specific congressional approval in each instance. The United States is concerned that it may need land in an emergency, particularly for defense purposes, and not have time to obtain the necessary congressional approval. Mr. Willens stated that this was a legitimate concern which might be accommodated by, for example, permitting the United States upon a finding of an emergency situation by an appropriate official to take a limited interest in land for a brief period of time, while legislation was sought. It was agreed that an attempt would be made to draft such a provision.

A brief discussion was had concerning Agenda Item 8(d), limitations on use of the land made available to the United States. It was agreed that there were few important substantive differences Cov. § 704 and CA § 902(b). The most significant difference concerned the provision in CA § 902(b)(10) which would permit the Marianas Government to terminate the lease to the United States for military lands in the event that the United States was judged in a court of competent jurisdiction to have breached a provision of the status agreement which it could not alter without mutual consent. Mr. Wilson stated that the United States was strongly opposed to any such provision in the status agreement. In response to a question he said the United States also opposed the Commonwealth Agreement's "justiciability" clause, on the ground that it would look bad and was unnecessary. Mr. Marcuse added

that if the Marianas could terminate the lease, the United States would be far better off if it insisted on obtaining title to the land on which the military base will be built. Mr. Willens explained that this provision was an attempt to safeguard the agreements which had been made in other portions of the status agreement. In view of the disparity in size, power and authority between the two parties to this Agreement, the MPSC believed it necessary to provide guarantees that the agreements would be honored. Traditional legal methods would be unavailable against the Government of the United States unless something like CA § 902(b)(10) was specifically provided. In response to Mr. Wilson's point that this was to be a political not a legal document and a relationship based on a trust not anticipation of breach, Mr. Willens pointed out that the traditional political safeguard of representation in the Congress--even non-voting representation--was being denied to the Marianas. If such representation were available, Mr. Willens said, the necessary safeguards might be present and provisions like this one might not be needed. The issue was not resolved.

It was agreed that the next meeting of the Joint Drafting Committee might be held promptly after Labor Day. In the interim Mr. Marcuse and Mr. Helfer are to continue to work on drafting portions of the Agreement where substantive issues have been resolved.

Michael S. Helfer

cc: Howard P. Willens

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