

AdeGraffenried:kkc

MEMCON - U.S./MPSC LAWYERS GROUP

Participants:

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Date: 6 August 1974 - 10:00 A.M., J.M. Wilson's office

JW - COM extended to Friday, 9 August 1974

Salii amendments:

1. Apply Compact to all districts unless two-thirds of the voters in a district disapprove; this changed from a three-fourths disapproval requirement.
2. Traditional leaders entitled to vote.
3. Status plebiscite with CONCON referendum at same time.

HW - Saw dispatch where Salii notes no plebiscite until 1977.

JW - This is because of linking these two topics; HICOM has noted this approach is unacceptable and will require a veto. Salii has talked privately about vote in 1976.

- Also two new bills relative to CONCON (one Marshalls and one Palau) which require new CONCON election in some of the precincts.

HW - Understand Ad Hoc Report is to be official part of record; does U.S. have a copy?

JW - Not yet, it is being printed, also awaiting E. Pangelinan transcript.

HW - Members of the MPSC would like a copy.

JW - On separate administration.

- In past we talked about MDL action. From U.S. point of view MDL resolution might contain request from MDL to U.S., as administering

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authority, to separate Marianas administratively from the other districts of the TTPI, to include:

- separation of executive function from TT executive.
- non-participation of Marianas District in COM and request COM be relieved of further representation over Marianas District affairs.
- separate financial support.
- fair share of TTPI common property.
- non-participation in March in CONCON.
- relocation of capital from Saipan.

On timing, separate administration should take effect "as soon as possible" as determined by the U.S. Government in consultation with MDL and district leadership.

This provides maximum flexibility.

HW - Chairman has asked for a draft. We will prepare along these lines; MDL may want hearings due to importance of subject. This ought to be treated separately from public lands issue; had thought to treat these two together. Had thought TTPI would not take action to return land without consultation with district legal entities and district entities.

JW - For your information only, U.S. has notified leadership that if COM does not act appropriately on public land legislation then U.S. Government is prepared to act to transfer public lands by executive action on request of districts as outlined in policy statement.

HW - Matter for Marianas is complex due to fact that there is no public corporation law structure. So is slow and deliberate matter.

JW - U.S. executive action would be simple; e.g., have Secretary of

Interior order HICOM to effect policy statement as each district requests it and undertake appropriate action.

HW - U.S. thought about kinds of assistance and legislation the district will need under Phase I and separate administration.

JW - HICOM has asked TTPI staff to undertake a review of what separate administration of the Marianas would require in the Executive side of the house.

HW - Who is looking at the legislative side?

JW - No one yet.

HW - District Legislature doesn't have any assistance; realize this is a part of self-government but don't want the Marianas to make any important mistakes in undertaking the responsibility of self-government.

JW - In talking with E. Pangelinan realize that these issues may have to be examined before Phase I.

HW - Perhaps MPSC ought to consider creating a commission to examine with the U.S. Government what steps are needed for legislative action under separate administration.

JW - Is alright with U.S., you may want to know we have asked OMB to clear funds requested for Phase I.

HW - Would these monies be made available to the Marianas before signing the agreement?

JW - Actual allocation of funds would be conditioned upon signing of the agreement.

Item 6 - AGENDA

MH - We had some issues remaining in item 5; would we start here? Perhaps with U.S. district court proposal?

JW - Yes. The U.S. district court proposal hasn't changed from the original proposal; extending jurisdiction of the District Court of Guam and renaming it as W. court of the Pacific.

MH - Not have separate judge?

JW - No.

HW - U.S. covenant does not indicate this.

JW - Yes it does; covenant is intended to reflect this original stance. Is simple language.

MH - In Guam, the court is not a U.S. District Court in the sense that Puerto Rico courts were federal courts, although Puerto Rico courts were not Article III courts.

HM - U.S. Code created a court for Guam and gave it jurisdiction over federal matters and some jurisdiction over local matters; is extremely elastic approach by giving it jurisdiction over such local matters as Guam Government wants it to have.

MH - MPSC approach does not differ too much in this latter approach. Was deemed desirable to have separate federal district court for the Marianas with MDL authorized to give jurisdiction over local matters as it seems appropriate.

JW - Reason for dual court was there wouldn't be enough federal cases to warrant separate court for Marianas.

MH - Court reorganization in Guam giving more jurisdiction from federal courts to local courts was due to tremendous backlog in federal courts.

JW - We need to examine this then. We felt local court wouldn't have sufficient workload.

MH - If we have federal laws apply under interim formula vastly expanded legal issues will come before local Marianas court.

JW - Yes, but only have 15,000 population.

HW - U.S. District Court in Guam not created pursuant to Constitution (Article III) and is a special court, we feel that while we might not have an Article III court at first, would want one later.

JW - Federal court could act as court of appeals in local cases.

MH - In Guam, court acts as both court of original jurisdiction and court of appeals.

JW - We have no great difficulty with this.

MH - If we intend to give Marianas Legislature the authority to vest this court with local jurisdiction then status agreement should explain issue in more depth.

HM - U.S. draft addresses this...

HW - but this doesn't satisfy technical requirements to meet our needs.

JW - Have no problem with giving federal court such jurisdiction over local matters as local legislature determines. We can accept this approach.

HW - Now advising clients to take something less than an Article III court. New draft is shorter and specifically commits U.S. to establish separate federal court for the Marianas and a judge appointed. No need to have separate judges for Guam and Marianas, however.

HW - We also feel that quality of and high standards of federal judiciary would be health for Marianas judicial system as it grows. Is needed for the future, at least.

HM - We can examine former organic acts for language.

JW - We will also examine new MPSC language.

HW - Timing is an issue; we feel the court should be created at the same time that federal laws are extended.

JW - True, need court to interpret federal laws. Let's go on to Social Security issue. U.S. drafts says it would rebate Social Security taxes.

MH - Yes, both drafts are the same on this point.

MH - There are two issues involved:

(1) Existing TTPI Social Security laws relative to the Marianas folding into the U.S. Social Security system; need U.S. experts to tell us how to do it.

(2) OAIDS tax, which is U.S. tax, which supports Social Security trust funds should be phased into the Marianas system. Economic consultant feels that because employee deduction tax is now at 2% (1% by employee and 1% by employer) and U.S. requirement is 10% tax deduction, there would be too big a jolt; so MPSC wants phase-in over ten year period. They want a phase in of 1% increase a year until the two are equal.

JW - How is Guam handled? Suppose it was phased in at the time the new Organic Act was adopted?

MH - Informal contacts with Social Security Administration note that loss to U.S. system would be minimal.

JW - Would have to talk to U.S. Congress first.

MH - Covenant language would be broad, leaving specifics to experts to implement.

HW - We know how the U.S. Congress feels about special treatment on the Jones Act and are aware of the fact that some exceptions are made for other territories.

MH - The Jones Act does not now apply to the TTPI and this has no particular adverse effect on Guam.

JW - Yes, but not a real test. If we want to exclude the Marianas, we should talk to Won Pat to get Guam excluded also.

JW - There will be \$20 million for Tinian - just for docks, dredging. So shipping will be increased.

MH - Frankly, MPSC wants exemption from Jones Act because fish processing industry planned; American Samoa has had success in fisheries because it is exempted from the Jones Act and has special tariff treatment for fishery products.

MH - We want to promote fishing industry for the Marianas in the same manner.

JW - We'll examine this. On customs duties (Item 6) no reason to make exceptions for Marianas from Guam treatment. Have agreed that we would try to get GATT special treatment as developing area.

MH - U.S. draft does treat Marianas differently from Guam; as drafted, Guam can restrict imports from Marianas because it doesn't have the same restrictions.

AS - U.S. Constitution explicit in prohibiting the states (and territories) from imposing import duties on goods from another state (territory) without U.S. Congressional consent.

MH - No firm legal conclusion on this. I am only presenting this issue.

AS - We could provide explicit indication that goods from the Marianas would be given the same treatment as Guam.

MH - We could provide explicit treatment for free trade between the U.S. and the Marianas whether the goods are within/without the trade territory.

JW - Prefer to treat trade like Guam, without any exceptions; too much detail will result in problem with U.S. Congress.

030424

MH - Need to specifically state that the Marianas is to be "outside" customs territory of the United States.

JW - O.K. as long as we also state "like Guam"; Let's leave to our drafters.

AS - MPSC §608/609 incorporates language contained in earlier joint communiques. We should not make specific reference to GATT.

JW - Should be able to find language to supercede this and be broad enough to meet the issue.

HW - What about clarity on excise taxes.

MH - MPSC §610 - This is consistent with Guam.

AS - Why does MPSC want?

HW - We have had power in past; scrap iron tax for example.

JW - No problem; only need more simple language.

HM - MPSC draft is too specific to the point that it omits special benefits and exemptions permitted for Guam, e.g., one gallon of liquor and tourist exemption.

HW - We can agree to find language to include these benefits.

MH - MPSC §611 has no comparable U.S. approach. Language requiring consistency with U.S. foreign obligations protects U.S.

JW - No problem; Marianas have that authority anyway.

HM - Problem is word "exclusive".

JW - We can have A. de Graffenried check out with the Treasury Department. If the U.S. Congress saw fit to impose excise taxes in all territories, this might prohibit U.S. action in the Marianas.

MH - Marianas did not intend to prohibit imposition of excise taxes that were applied uniformly. Only want to protect local authority to raise taxes.

030425

HW - Yes, but we didn't do this; we will reexamine our language to see if we can meet our concerns.

MH - As regards §605 MPSC - on no taxation of U.S. Government property. We have our language for two reasons: (1) at earlier meeting about one and a half years ago U.S. said language was O.K., and (2) some contract laws say some contractors for the U.S. Government couldn't be taxed; U.S. version didn't incorporate prior legal interpretations to this effect.

JW - Substantively, we have no problems; we can find mutually agreeable language. Appears to be term of art.

MH - As regards U.S. 503(b) - limitations on local indebtedness. We have no comparable MPSC provision.

HM - Virgin Islands recently were given authority to appeal debt limitation clause (10%) but U.S. follows original approach in other territories (Virgin Islands and Guam).

HW - Issue is: Does this provide an unnecessary safeguard? Interested in knowing how this 10% limit on local bonds affected the local economic situation in Guam. Is it a meaningful restraint?

JW - A. de Graffenried can contact Treasury Department on this.

HW - We would prefer to have a limitation in time rather than absolute limit on limit.

JW - We can give it some thought.

HW - Prefer to postpone 6(d) Internal Revenue until Thursday.

MH - MPSC 606 and U.S. version on bonds is virtually identical.

JW - O.K.

JW - Let's move on to item seven Financial Provisions; no question that U.S. provisions when approved by the U.S. Congress will consti-

tute commitment by the U.S. Government and the U.S. Congress. Chairmand of the Committee says it would also constitute an authorization. The Hill says it is not constrained to go for a seven year appropriation. Multiyear authorizations are within the ballpark, but they would insist on a separate yearly appropriation bill to appropriate the necessary funds. We will check further.

JW - Another issue is whether approval of the agreement by Joint Resolution would constitute an authorization or whether the U.S. Congress should enact a special bill to implement the agreement and in that bill include provisions for authorization of funds. New budget act will have some impact, but as yet, not fully determined.

HM - Wonder if we can have anything except a year by year appropriation under the bill.

MH - Review of act doesn't appear to restrain multibudget acts; back door contracting by federal agencies is primary focus; MPSC feels that a multiyear appropriation is best and consistent for self-government; MPSC doesn't want to come back each year to justify monies, USC interjects its own policies at those hearings. Thus the U.S. Congress would attempt to influence local matters by use of purse strings.

JW - Agree, but U.S. Congressional approval is our major interest. If MPSC can get multiyear appropriation that is fine but that is very doubtful. Moreover, Congresswoman Hansen is leaving the U.S. Congress and the new Chairman is not likely to be so sympathetic.

HW - Would prefer to go to U.S. Congress this way (multiyear appropriation). If U.S. believes that it can't agree, then MPSC can't agree to the status relationship. MPSC can't keep falling off of key issues essential to its interests. We know U.S. executive is

sympathetic to our approach, but we have to be firm on this.

JW - We just want to know how strongly MPSC feels on this issue.

MH - How would U.S. Congressional committees handle the status agreement?

JW - Can't say. A lot depends on the Bolling Report. Many prefer to keep this under the Interior Committee although we have to go to the Appropriations Committee for the money matter.

MH - Then have a simultaneous review or a re-referral of the agreement.

JW - We also have problem of change of Congressmen and committee staff, but there are people interested in the agreement regardless of the Bolling Report.

HW - O.K., moving on, how do we handle finance?

JW - As regards the carry-over; if carry-over is too large there will be a difficult problem in getting monies from Congress; as regards "transferability", there would already be a great deal of flexibility in legislature's ability to allocate its own monies. We can always change agreement if U.S. approach doesn't work. No question that funds could not be held in Marianas until obligated and "carried-over" indefinitely.

HW - No specific language in our draft.

JW - Some sensitivity since we just fought this out with JCFS.

MH - U.S. doesn't want to give full amount; but use standard treasury "draw-down" procedure?

JW - Correct.

MH - MPSC wanted a check for full amount at first of year. But this seems out now.

JW - Yes, under current approach, U.S. treasury makes out check to

territory as the funds are obligated. Funds are obligated when contracts are signed and funds distributed according to terms of contract. No problem so far in states and territories.

MH - Accountability process affected by this approach?

JW - No, is done as an "ex-post-facto" audit after all funds spent. Another issue is that U.S. felt that best to address all items of U.S. support in one area, rather than spreading around over agreement. Wanted man in the street to be able to total up amount of U.S. monies in one step.

HW - MPSC felt dollar amounts would'nt be put into the agreement and that U.S. support would be addressed by subject.

JW - No. As to formula for rebate of taxes; U.S. using same formula for Guam and the Virgin Islands; MPSC changed somewhat. U.S. wanted to tell U.S. Congress that this was treated the same as Guam.

MH - O.K. we will reexamine.

JW - On accountability, question of whether we are addressing all the funds or only a part.

MH - References are different, and MPSC would like to exclude funds for fair market value, loans and federal programs.

JW - U.S. Congress would probably agree to exclude fair market value but would want GAO on all federal programs and Phase I & II monies.

MH - The report should address only the direct assistance funds provided programs will be audited separately by terms of the act.

JW - We can work something out.

AS - MPSC 805(d) speaks to U.S. "standard of living" and U.S. draft is more broad. Hasn't MPSC withdrawn from this?

MH - MPSC hasn't withdrawn as regards a specific dollar obligation for financial assistance.

AS - Sol Silver (U.S. Economic Advisor) was under the view that standard referred to in MPSC draft is too broad due to various and diverse levels of standards of living in the U.S.

JW - I wonder whether we need this at all.

HW - We have tried to bridge the gap. We will review; our client felt that this long term goal was reasonable U.S. commitment. MPSC recognizes practical problems.

HW - Maybe J. Wilson approach is good. maybe not.

JW - Problem is not insurmountable. We can find language to pick up the essence.

HW - Does U.S. have views on seven year review clause?

JW - Our financial assistance will no doubt continue, but we have so many imponderables at this stage that we can't be more definitive. No problem with leaving idea that U.S. finance will continue beyond first seven years, but can't guarantee amount.

HW - What happens if Phase II begins in the middle of a fiscal year. This is a technical problem MPSC felt ought to be addressed.

JW - Phase II should start at the beginning of the fiscal year.

HW - On consumer index, any OMB result?

JW - OMB has not yet answered, except to say Guam was not too accurate; some indexes too high, others too low. OMB has proposed that a Department of Commerce expert look at the problem. OMSN rejected this as too time consuming. U.S. will go ahead with Guam Price Index unless OMB can respond properly.

HW - We included a provision for a continuing resolution approach for appropriations to insure that the U.S. Congress acts on Marianas commitment.

JW - A multiyear authorization might take care of this.

MH - MPSC doesn't want a gap in funding. Under continuing resolutions, funds would continue at same level unless U.S. Congress acted.

HW - We will review; may want to couch language in terms of multiyear authorization.

HW - As regards problem of consultation and periodic review, this is complex and should be addressed later. MPSC put in certain standards for reevaluation of U.S. financial assistance to occur before first five year run out. This brings us to federal programs. MPSC has no language other than application of laws section. Did U.S. have anything else in mind?

JW - Real problem here is programs which may apply to one other territory, but not to all. So we need to see which of these MPSC would like applied that is not covered under general formula. We have discussed some under MPSC exceptions sections.

MH - Public Health Service Act is important. Applies to all territories except Guam.

JW - No problem there.

MH - Others are: (1) Consolidated Farmers Assistance Act which is being reviewed in light of U.S. loans provision and (2) Federal Crop Insurance Act which is being reviewed in light of H. Marcuse note that it isn't appropriate for Marianas. Also looking at Surplus Property Act (does not apply to Guam) which permits the U.S. Government to give surplus property away - may be wanted - Won Pat is trying to change; so may just wait.

JW - Foreign Assistance Act does apply to Guam and TTPI and they do get surplus property under this at a reduced purchase price. However,

Marianas and Guam cannot get benefits of both acts.

MH - U.S. §602(a)(3) and federal programs language may raise some conflict.

JW - Shouldn't conflict; we can cross reference these two.

HW - Some federal programs require costs so we would want to exclude these from the "free" U.S. programs language.

JW - We agree.

HM - There are a number of statutes, e.g., Coastal Zone Management Act, saying federal grant funds can't be used as "matching funds". MPSC would like to use these as matching funds to get more federal programs.

JW - How big a problem is this?

AS - May want to limit a permission to use federal monies as matching funds to a set number of years.

AdeG - Problem is with U.S. Congress which has been reluctant to give TTPI both federal grants and program, then permit federal grants to be used as matching funds so as to double federal programs.

JW - A. de Graffenried should check with Brewster on this.

MH - U.S. Congress doesn't understand; these federal monies are for use of local government as it wants to use them.

AdeG - Understand, but need to examine.

JW - Well, this concludes our agenda until next Thursday here at the same time.

HW - We will be prepared to take up Internal Revenue at that time.

JW - Fine.