

September 26, 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 September 25, 1974 in the Interior Department Offices of James Wilson. Attending for the United States were Mr. Wilson, Herman Marcuse, and Thomas Johnson. Attending for the Marianas Political Status Commission were Howard Willens and Michael Helfer.

Mr. Wilson opened the meeting by reporting on the Senate Interior Committee hearings on the proposed new authorization for the ~~Trust~~ Territory. He said that the major problem for the Committee was the increased authorization ceiling sought for the whole TTPI in accordance with the agreements with the Joint Committee on Future Status. The Senate Committee members expressed concern about the unilateral termination provision in the Compact of Free Association. With respect to the funds to implement the Ad Hoc Committee Report in our negotiations, Mr. Wilson said that the only problem was the possibility that Congress would not hold a post-election session and would not get to the matter this year.

Mr. Wilson said that he had been able to review the materials Mr. Helfer and Mr. Marcuse had drafted by September 10, although he had not been able to review the materials which had been drafted more recently. Mr. Wilson asked if there were any

comments on the more recent material. Mr. Helfer stated that the eminent domain provisions were subject to particular scrutiny by the MPSC, but that otherwise the materials were submitted on the same basis as the other drafts. It was agreed to delay the discussion of the newly drafted material and instead to work through the previously drafted material by Title.

Title II (Citizenship): Mr. Wilson said the United States had no problems with this Title. The only question raised concerned the bracketed dates in Sections 201 (b) and (c). Mr. Willens said that the dates had to be determined at least in part by taking into account the Compact of Free Association provisions making persons in the other portions of Micronesia U.S. nationals. Mr. Wilson said that those provisions were not yet firm, and agreed that the status agreement should prevent persons from moving into the Marianas now in order to become U.S. citizens. It was decided that the precise dates to be used in Sections 201(b) and (c) could be determined later. Mr. Johnson asked whether the term "any area in or under the jurisdiction of the United States" in Section 201(a) was a term of art or whether it should be defined. Mr. Helfer agreed to check the matter, and later noted that a similar phrase was used in the 13th Amendment to the U.S. Constitution.

Title III (Marianas Constitution): Mr. Wilson stated that he had no problems except for the bracketed material in Section 303(a) and (c). With respect to Section 303(a), he suggested postponing discussion until Title I was reviewed. Mr. Willens agreed. With respect to Section 303(c), dealing with the reapportionment issue, Mr. Wilson said that the matter had been brought up with members of Congress and that they had no strong reaction to it one way or the other. Mr. Marcuse said that from a technical point of view he had no suggested changes in the language in brackets in Section 303(c).

Title IV (U.S. Judicial Authority): Although there are presently two different versions of Section 401, Mr. Wilson said that he did not think the problem was terribly serious. The United States version, as he noted, simply lets Congress decide what to do, while the MPSC version requires that a District Court for the Northern Marianas Islands be established. Mr. Willens stressed that the MPSC version represents a significant change from the original MPSC proposal, and that now all that the MPSC was asking for is to be treated just like Guam. Mr. Wilson realized this change of position, and suggested that perhaps an appropriate way to handle the matter would be to use the MPSC version of Section 401(a) alone. With respect to Section 402, Mr. Wilson said that he had no problems with the bracketed sentence at the end. Mr. Willens said that he probably did not either but wanted to review the

matter once more. Mr. Wilson raised the question whether the provisions of Section 403 were necessary or whether they would not be handled by the formula for the applicability of laws. Mr. Helfer agreed to review the matter with this in mind.

Title V (Applicability of U.S. Constitution and Laws): Mr. Helfer stated with respect to Section 501(a) that some additional study was needed before the MPSC would agree to the application of Article I, Section 9, Clause 6 of the U.S. Constitution. Mr. Wilson raised the question how the grand jury and trial by jury provisions of the U.S. Constitution should apply. Mr. Helfer stated that the present MPSC position was that ~~these~~ provisions of the U.S. Constitution should apply in the Marianas as they do in the State. This means, under present interpretation, that federal felonies will have to be prosecuted by indictment, and that jury trials will be required whenever there is such a requirement in the federal civil or criminal actions generally. Mr. Helfer presented a proposed revision of Section 402 which would handle this problem by providing that the District Court for the Northern Marianas Islands would be considered a local court for purposes of the applicability of the United States Constitution when it sat with local jurisdiction. Mr. Marcuse and Mr. Wilson said that they would consider this proposal, and stressed that decision on how to handle these matters was up to the Commission.

With respect to Section 501(b), Mr. Marcuse tentatively suggested new language which would take into account the fact

that certain future amendments to the U.S. Constitution might be applicable of their own force, either because they involve fundamental rights or by their terms. Mr. Willens was agreeable to the proposed change. With respect to Section 502(a), Mr. Wilson said that he wanted further study to determine its affect on citizens of the Northern Marianas Islands who were nationals of the United States. He suggested that it might be necessary or desirable to change the wording of Section 502(a) so as to make clear that it applied only to U.S. citizens. Mr. Willens suggested that this was not necessary but deferred discussion until Mr. Wilson had studied the matter. Mr. Wilson asked that the MPSC representatives explore whether Sections 502(b) and (c) would be covered by the formula or could otherwise be treated in a simpler manner. Mr. Helfer agreed to investigate this question. With respect to Section 503, Mr. Marcuse said that the United States still had its own version and that the version in the September 10 working draft is not acceptable to it as a technical matter. Mr. Marcuse said that he thought the only substantive question outstanding was the one raised the bracketed material in Section 503(b), namely, whether federal laws will reach intra-territorial transactions in the Marianas. Mr. Willens pointed out that both for practical reasons relating to the distance from the Marianas to federal regulatory agencies, and for reasons of principle relating to self-government, the MPSC felt that

federal laws should not reach intraterritorial matters. With respect to Section 503(c), Mr. Willens noted that there were series of territorial statutes in 48 U.S.C. which would be applicable under this provision but which would be inconsistent with the thrust of the Agreement. He asked the United States to review these. Mr. Wilson agreed. Mr. Helfer noted that the term "law" was broad enough to include executive and secretarial orders, and those might continue in existence, but that the drafters had assumed that the executive branch would make appropriate changes in them and therefore had not dealt with them explicitly. Mr. Wilson agreed that appropriate changes would be made. With respect to Section 504, Mr. Willens stated that the MPSC was agreeable to Mr. Marcuse's suggestions that the phrase "or provision of the U.S. Constitution" be added and that the entire Section be moved to Title XI (Transition).

With respect to Section 505(a), dealing with immigration, Mr. Wilson said that there had been mixed reaction on the Hill and repeated his belief that these laws could not be applied until the termination of the Trusteeship. He asked whether it was necessary to put in the second sentence of Section 505(a). Mr. Helfer said that this sentence was intended to assure that there was no gap in immigration laws, particularly after the Trusteeship terminated. It was agreed that there should be further exploration of whether this sentence was needed.

Mr. Wilson repeated the United States' concerns about Section 505(b). Mr. Marcuse raised the additional concern that Section 505(b) (3) would permit persons who became nationals of the United States under the Agreement to become citizens of the United States more easily than can nationals who live in American Samoa.

The discussion then turned to Section 506 and 507. Mr. Wilson said that the reaction on the Hill was sympathetic to the desires to the MPSC, though there was a feeling that it should be made clear that the Cargo Preference Act and acts requiring that the minimum wage be paid in federal projects would apply, even though the coastwise laws and the minimum wage provisions would not apply to ordinary commercial transactions. It was agreed that there would be an attempt to draft provisions consistent with this view.

With respect to Section 506(b), Mr. Wilson said that United States is checking with the Commerce Department.

There was then a brief discussion of Section 508. Mr. Wilson indicated that the staff reaction on the Hill was negative.

Title VI (Revenue and Taxation): The United States had taken the responsibility of checking with the Social Security Administration about Section 605. Mr. Wilson reported that the initial reaction of the Administration was negative because of a perceived constitutional problem with having different

tax rates in the Marianas than elsewhere. Mr. Willens asked for a memorandum explaining that position. Mr. Wilson agreed that such a memorandum would be supplied as soon as it was obtained from the Social Security Administration.

It was agreed that the Joint Drafting Committee will meet twice next week, to continue discussion of the matters raised at this session and to discuss the other Titles of the Agreement. Mr. Willens said that he would attempt to have draft provisions of the income tax provisions completed by next week. The meetings were tentatively set for 3:00 p.m. Tuesday, October 1, and 10:00 a.m. Friday, October 4.

Michael S. Helfer

cc: Howard P. Willens