

DRAFT:AdeGraffenried:10/7/74:mjw

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DRAFT MEMCON

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Date and Time: October 4, 1974 - 9:50am

JW: We have made some changes. (1) Want to make different from Compact of Free Association which uses Titles. (2) For better impact, have switched Articles II and III, HW original idea; for optics only. Article 1 up for discussion. Was to have been delivered.

MH: E. Rice meeting - didn't get.

JW: Lets go through slowly.

HW: Assume much like earlier drafts.

JW: Right except oath deleted. U.S. 101 virtually same is 1 sentence vice 2 substantial difference.

HW: Better approach.

JW: U.S. 102 = comb. of 102 and 1st part of MPSC 107.

MH: Leaves out final phase "courts shall be bound thereby".

JW: Yes does delete, was no reason to include - courts are to be bound regardless.

103 gets to real problem takes up MPSC 104 (1st part) with some modifications and omits last sentence of 104.

HW: Resp. to omission to phase "_____".

JW: Connotations of residual sovereignty.

HW: Don't understand, clear in 101, that Marianas under U.S. sovereignty.

JW: Is it the words "and shall retain. Yes

HW: No problem with right of self-government though.

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JW: No substantive problem.

HM: How about "will govern themselves with respect to local affairs" would this work.

MH: Not sure, we see your problem.

MH: 2nd omission.

JW: U.S. not sure what it means.

MH: Agency or instrumentality of U.S. has a

HM: But is not necessary.

JW: No. U.S. 104 is 1st part of MPSC 106 with modifications. 2nd part = MPSC 109.

MH: "All matters which relate to" why include.

JW: U.S. desires to have something a little different with respect to Marianas than with Micronesia. Can talk about it if MPSC has problems. Lets move to U.S. 105 leadin = is MPSC 103 with a different leadin clause. Is also related to MPSC 105. 106 - is 2nd half of MPSC 105 which we stuck in with brackets because U.S. can't use it, but recognize MPSC has substantive interests.

MH: MPSC 111?

JW: We move to Title IX. As to what we include in list of 105. We are discussing it. MPSC can address also.

HW: MPSC can develop a list. Let us check our prior positions and resolve any substantive differences.

JW: OK. As to Article II is old Title III. 201 is shortened version of 301; no substantive difference. 202 - 1st sentence - slightly difference version. 2nd sentence - slightly revised. No substantive difference except U.S. not make on ground Constitution subject to review in federal courts to avoid controversy after U.S. Congress has reviewed. If courts want to they will assume

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HW: ? government mean.

JW: Government mean all departments/agencies.

MH: Lets check.

JW: No substantial difference. 203 - we left out seq. brackets in MPSC 303(a) no substantial problem. Should have put sq. brackets in (c) as 303(c).

(d) slight change. Sup. clause takes care of (d). Right. 204 - is oath of office from MPSC Title I. Article III same as Title III except 304 - privileges and clause brought forward.

Article IV is same as old Title IV except 401(a) language revised to include incorp. of U.S. with MPSC. 401(b) is same as old 401(b). 402 same as old version omitting sq. brackets but including its language. 402(b) is new. 403(a)/(b) is an effort to meet U.S. problems but substance is same.

MH: Same as §1254 USC _____ Right - Problem was how to handle applicants from local citizens. Want to borrow PR model to avoid Guam problem.

HM: Not quite. Guam/Hawaii to go to 9th circuit. Does Marianas want to go directly from local supreme court to U.S. Supreme Court or to 9th Circuit. Is really a matter of and convenience in that you go only to West Coast or go all the way to Washington, D.C.

HW: We'll check.

MH: Old MPSC 403 was based on 18 USC 1332, drop out because of gen. formula.

HM: Yes, would be picked up under Guam formula; also under 18 USC 1332 which talks of territories but no Guam.

MH: Had sub. alternative 402 added section to effect that wherein federal court site as local court in Marianas, that Marianas be treated as a state for purposes of 5, 6, 7 Amendments. U.S. decide to reject. Would take care

HM: Not address. Will do.

MH: 9th Circuit rev. - vice U.S. Supreme Court gives 9th or by appeal.

HM: By appeal - only review ? of federal law.

HW: So wouldn't be descutionary.

MH: To some extent.

HM: Perhaps best to require review at 1st especially of _____

HW: Right.

JW: As to Article V, we did drop Article 1, 9, clause 6. Then put brackets on several items.

MH: 1st brackets Article IV, § 1 issue is whether sentence 2 also applies?

JW: Yes, we have really same issue - as to U.S. Congress authority.

MH: Some danger to U.S. because no Article VIII included - the list of USC powers.

JW: We'll look at. 501(b) is same except that the bracketed clause is deleted. Old 502(a) put forward (b) need because is cought under _____. U.S. 502 is old 503 - no substantive difference - phraseology mainly until we get to (A)'s (b)'s (c)'s. Also took social security out - should consider under Article VI.

MH: Those provisions of Social Security talked about related to welfare.

JW: Fin./bank laws need to be spelled out. Is awfully broad. Can find some phraseology to make these apply.

MH: 502(a) aside from inter territory transitions, there are laws which otherwise fall under general formula which apply differently to Guam. So issue as to whether they apply as Guam or as in States has to be addressed. We feel old 503(b) addresses this - is a technical matter once substantial issue resolved.

JW: Old 504 moved to Article X. 503 covered in old 505, 6, 7 represents U.S. part to ignore for is really up to USC to resolve.

HW: Is a good effort to compromise.

MH: Note that 503(c) F.L. Act doesn't cover federal employees/contractors.

HM: But Davis Bacon Act does apply.

JW: Right, we'll review.

MH: Left out 505(b).

JW: Right on theory that up until time USC addresses, is up to local legislature to determine subject to reviewing of Trusteeship e.g. limited veto authority by authority.

HW: May want to bracket after consider further review for substantive issue.

MH: Those provisions in old agreement related to immigration/naturalization dropped pick up later?

JW: No - leave to USC. As to 504 now in brackets was old 505(b).

MH: This was addressed to provision relating to transfer of vessels from citizens to non-citizens would be guided by Commerce Department views.

HW: Don't want to have the boats confiscated and people . If Commerce has authority could delete this provision.

JW: OK; 505 is same. Section 506 is moved forward from old Title XI. no change. We were going to have Title VI ready but OTJ sick today. As to Article VII

HW: Going back to Article V, § 505 as to Statutory Review Commission. It will need funds if it is to function.

JW: Could put something in, no problem with this.

MH: ? reports - 2 copies.

HW: Review Jones Act - etc.

JW: Lets see.

JW: As to Article VII, 701 - put in brackets the standard to which we are looking. Too ambiguous. 702 - have inserted a new (b) relating to federal programs. Old (b) and (c) are part of the same. (d) (e) (f) same. Are checking with on budget people to see if any technical problems. 703 is old 607. 704 = old 703a. 703b moved to Article VI.

HW: In discussing federal provision we discussed phrase "without" cost. Don't know if we needed language in light of federal statutes requiring

JW: 6 - 8 - 9 - 10 are still in gestation process.

HW: In return, we can offer a short memorandum relating to territorial income tax. This would go in Article VI as I understand it. Memo designed to review pre-ent status of our negotiations, summarize our previous proposal which has cause concern on hill. Try to provide reasoning that no abuses would occur e.g. wealthy individuals finding Marianas as a tax haven. Certain safeguards and 931.

JW: §931 also include Guamanians?

HW: Believe MPSC and U.S. could together defend original MPSC proposals. Compromise is that IRC adopted as a territorial tax with local power to amend, applicable when federal laws are extended to Marianas.

JW: Want essentially the Guam system with local power to amend.

HW: Don't want full Guam system despite Won Pat's efforts to change system. Would reassure position that U.S. IRC would apply from the inception. Recognize that to and could be attacked, as this is unlikely. Is like Puerto Rico and no abuse of power there.

JW: Could adopt a sirtax as W Pat proposes.

MH: Sirtax would be held to be an amendment to the IRC. Not best way.

HW: U.S. would retain power to intervene to correct the system.

During Phase I would be available to check best tax system. This

new approach would give Marianas some specificity to deal with during the interim period. P. Rico has adopted 139 IRC no. Either under Title I proposed changes in IRC would not be subject to veto by Marianas Legislature during Phase I - II.

HW: Do you want us to review U.S. language or give you some MPSC language?

JW: If you have language, then make it available.

MH: You will send us the missing revisions 6,8,9,10.

JW: Yes, with some blanks. e.g. IRC, Social Security.

HW: Lets have some to develop joint language and try to continue process of bracketing areas where we are not in substantive agreement.

JW: The drafts we have given reflect agreements we have reached.

HW: ? about report.

JW: Can be short/sweet give draft - and show what we have accomplished.

HW: I would identify substantive issues to be resolved?

JW: Yes, could be put in brackets or whatever.

MH: When

JW: Hopefully by next week but need to check carefully.

HW: Meet next Friday?

JW: OK