

AdeGraffenried:11-6-74:kkc

MEMORANDUM OF CONVERSATION

U.S./MPSC JOINT DRAFTING GROUP

November 6, 1974, 3:15 P.M.

02  
31564

Present

H. WILLENS  
M. HELFER

J. WILSON  
A. deGRAFFENRIED  
H. MARCUSE  
O.T. JOHNSON

JW: General discussion on Marianas election returns - Possible winners - Pete Tenorio over E. Pangelinan.

HW: 2 December next round

JW: Tentative, elections may affect. E. Pangelinan wants to talk with Ambassador Williams.

HW: May call Eddie Pangelinan; if not by 2 December then not before Christmas.

JW: Discussed possibility of informal meeting during 15 November week; then Santos/Pangelinan return to discuss meeting with MPSC.

HW: Would have to leave by 17 December due to prior client commitment; feel can be finished within two weeks. E. Pangelinan, Santos can't do much without full committee. Even if defeated E. Pangelinan can continue as Chairman MPSC until replaced by MDL; is member by virtue of his membership in COM.

JW: Is member by member of JCFS so will affect, but MDL resolution might permit E. Pangelinan to stay on MPSC. Too confusing at present. If no major change, then still questionable what can be done during informal meeting. This depends on drafting committee. E. Pangelinan surprised U.S. not receive MPSC counter-offer.

06-416743

HW: U.S. want progress before next round?

JW: Yes

HW: E. Pangelinan or Santos ill advised to make a counter-proposal without consultation with MPSC.

JW: Is essential to next round as U.S. views agreement as one package--terms/price on land tied together. MPSC presentation on land value was proposed as only tentative.

HW: If counterproposal too high, still have negotiations.

JW: Yes.

JW: U.S. understands problem is with elections. We need a response and haven't even been able to find anyone to talk with about it. Also, according to E. Pangelinan in Hawaii. key to land agreement is price. We presented other agreement issues but didn't discuss substance of them. Has the MPSC met on our land discussions here in Washington?

HW: Think not. We would like to separate what happens on land issue matter from next round of talks. Consultant report just arrived.

JW: Be useful to U.S. to have some land meetings prior to E. Pangelinan/Ben Santos meeting. Still have some difficulty with next steps by MDL on legal entity bill. Trying to get MDL 'hold-over' committee, Marianas DISTAD, Marianas District Attorney, TTPI Attorney General together. Hope Wilmer, Cutler and Pickering get involved to get matter back on track. Santos indicated willingness to call special session to get entity created. MDL needs some legal help especially in drafting matter.

HW: JCFS retain stance?

06-416744

HW: What about U.S. response to MPSC military retention paper.  
Well, what are next steps with draft agreement?

JW: Have about 36 issues to resolve. Suggest we go through  
draft bracket by bracket.

Bracket #1 - Title - Why MPSC propose "self-governing" since  
we address this in body of preamble?

HW: We will delete

JW: §102 - U.S. wants to insert at line 4, "or other laws"  
applicable to NMI - Is technical change

MH: OK, but this follows U.S. Constitution language is as  
MPSC section is drafted.

JW: §105 - first of U.S. non-negotiables major substantial  
differences. We cannot change U.S. draft version. USC has  
endorsed.

MH: Well what about §105(c). U.S. reaction?

AdeG: Can't buy. We don't need to include specific reference

MH: Why

AdeG: U.S. has agreed to permit autonomy of local government  
during interim period.

JW: (Explain) - U.S. will retain some executive authority to  
meet trusteeship responsibility - eletion will not prejudice  
how done, U.S. not to exercise veto; is a question of good faith

MH: MPSC would like reassurances that U.S. executive not act  
to make changes in agreement especially in light of TTPI actions  
regarding other local actions. U.S. had proposed at one time that  
the agreement not subject to change prior to end of trusteeship.  
We want to reinsert.

HW: Will consider U.S. position; we certainly need to put in legislative history.

JW: No problem with legislative history including this understanding.

HW: What about the mutual consent list?

JW: As you recall during earlier negotiating rounds, U.S. talked only about fundamental relationship being subject to mutual consent; USC conculsted USC further, USC will consider mutual consent to fundamentals. US not consider list that sets Marianas apart from other territorial relationships.

HW: You know our feelings about outmoded territorial relationships. This is a different relationship. We are surprised that U.S. not want include some of items in MPSC list, e.g., land alienation.

JW: U.S. reading with USC is that it will limit its authority only in a few areas.

HW: We want to assure client that the items being negotiated will be protected from change by the USG later.

JW: Understand, but question is whether an item is fundamental to our relationship.

HW: What is fundamental to one person, is another's hobby, e.g., eminent domain is highly significant. Not prepared to review list if U.S. is not prepared to accept risks on hill.

JW: U.S. problem is that USC is loath to accept any restraints on their power.

HW: We know USC not understand; need to draft another (e) so as to get some protection for §503, §804 and §805. Still need DOJ opinion re: judicial review on disputes.

JW: Our feeling re default or less than perfect act by USG would affect Article IX to permit courts to review so no need for separate opinion.

MH: Article IX not affect court review of financial provisions since is this in the nature of a contract

HW: Would be in our mutual interest to avoid long list under dispute. MPSC will cut back on procedural issues subject to agreement that one item in mutual consent list be judicial review of disputes.

JW: U.S. not authorized to go further than present U.S. list. This is said with some finality but will consider any further MPSC thoughts.

HW: How do we resolve?

JW: Principals have to resolve. Might say this is something FHW feels very strongly on. Doesn't understand why we can't stop on fundamentals of relationship. Much has to be done on good faith. Can't expect to join club by asking for change in rules. Best thing to do is agree to disagree.

HW: U.S. promised reading on whether to include financial assistance in mutual consent provision.

JW: Agree, will examine

JW: ART II, 202. Approval Process. U.S. wants to keep as flexible as possible; how Constitution and agreement is approved by Marianas' is local matter; U.S. concerned only with major features of Constitution and whether it conforms to our basic agreement here. We don't want to say how will be approved by USG. Will be one less matter for USC to address if avoid putting in agreement.

HW: We discussed last year that USC may delay approval for one year or more if they reviewed Constitution; we wanted to avoid this.

JW: Yes, but a specific provision in agreement will have no effect. USC may want a role.

HW: We can't have MPSC in limbo on drafting approved constitution and not have assurances that U.S. address--even if U.S. addresses, there is a lack of standards for USC action and review.

JW: Agree to MPSC concern; but we can't get USC to address this.

HW: Not in mutual best interests to leave open

OTJ: Review standards are known; we agree that we should want to avoid limbo situation. We may want to include a reference that Constitution will be considered approved if no USG action within 180 days.

HW: That is a possible compromise, but we would want more specific USG assurances that the Marianas efforts will not be frustrated.

JW: Let's draft language to say if Constitution not rejected it will be considered approved and without reference to a particular branch of USG.

JW: As to 203(c) need to simplify language. + \_\_\_\_\_.

JW: As to 203(d) U.S. will drop its bracket language

MH: Is already covered in \_\_\_\_\_ sections

MH: U.S. changed "shalls" to "will". MPSC will agree.

JW: In Article IV, MPSC 402(b). U.S. go along with idea but get more precise language to reflect section addresses jury trials/grand juries.

HW: OK. We will get a new draft

JW: IN bracketed language of 403(a) U.S. has difficulties;  
issue is: is it necessary?

MH: Provision relates to review by Supreme Court of decision  
by court of state which deals with its own laws

JW: Question is what happens in Guam

HM: 403(a) doesn't apply to Guam or Puerto Rico. So should  
go out.

MH: If sentence is out, there could be no appeals from the  
three judge court on a review of Marianas status; certiorari  
would however, lie to U.S. Supreme Court. 403(a) considered  
essential, but MPSC will review.

JW: 403(b) Why "except-----"

MH: -----

JW: As to 403(c) HM says MPSC should want but U.S. is willing  
to drop if MPSC not want

HW: Will examine technical language

JW: As to Article V - Brackets in 501

HM: MPSC would drop if U.S. addressed in legislative history

MH: Not say \_\_\_\_\_

JW: Is technical point for decision by our drafting group. We  
should drop it out.

MH: Right

JW: Don't want to preclude USC for acting in these areas

MH: No

HW: However, if specifically exclude these sections then legis-  
lative history can't correct.

JW: Need some language for legislative history and omit brackets.

JW: As to 501(b) slight language change for flexibility - drop "Congress"

MH: Also strike word "future"

JW: As to 502, convinced both sides trying to say same thing

HW: All U.S. interstate laws do apply to Guam but some laws have intrastate applicability that would impinge on MPSC authority.

JW: U.S. problem is making an exception for Marianas that does not apply to Guam

HW: Guam never pick up if we bury in body of agreement

JW: Well, let's put in 503 for U.S. Congress to decide, not 502

JW: Might say Burton approved 503 approach. If we can find acceptable language for these items (Mann Act, anti-trust, bottle laws) and put in 503, U.S. will agree.

MH: Might say that some U.S.-TA admin review issues are troublesome, e.g., audit of funds by USG. This is not consistent with local self-government.

JW: Had addressed this in finance and at present Guam Comptroller seized with responsibility to audit U.S. funds for TTPI. Certain that Guam Comptroller continue to review. No need for reports if Comptroller reviews. USC wants accountability for its funds. May leave open under 503.

MH: U.S. want to pick up audit functions until termination?

JW: Yes; USC may want to continue after end of trusteeship.

HW: Let's discuss under reports paragraph. Number of alternatives available.



MH: Just talking about federal funds?

JW: Yes. As to §503 re: fishing laws U.S. agrees to MPSC language subject to check with Commerce/maritime

AdeG: Question is purpose of MPSC proposal.

MH: Permit Marianas be treated as Samoa, encourage canneries, and fishing industry; would enable local vessels to retain TTPI registry and permit TTPI ships, foreign vessels ship fish to Guam/U.S. even to Marianas.

HM: 503(b) Burton wanted to include "hours"

MH: As now drafted 502/3 together act to include both hours/wage so hours provision would apply to Marianas except to "minimum wage" for overtime, etc.

JW: 504 - Giving a major privilege of citizenship to a national which U.S. not agree to do.

MH: §504 not a requirement but "permissive" for USG officials

JW: Understand, but according to memo provision would permit Joe Ten to enter shipping business.

HW: But current provision has criminal sanctions for transfer of vessels of U.S. ownership to non-U.S. citizens in time of national emergency.

OTJ: How handle in American Samoa?

MH: Probably ignore.

JW: So let's handle like American Samoa and note we are only concerned with large vessels falling under criminal sanctions.

HW: Executive desires not to create loophole?

JW: Right and also desires not to give citizenship privileges to a national.

HW: Well, there should be some review after termination to see no such inequities arise, "e.g., statutory review commission might examine. MPSC will consider dropping if some U.S. commitment to review problem and willingness to correct inequities.

JW: Perhaps put in legislative history.

JW: As to 505(c) Payments for statutory review commission.

U.S. checking

- As to square bracket language in 505 - USC says no.

- As to 507, some difficulty with U.S.; thought we would defer to USC - put under 503 formula and leave there

HW: MPSC will consider 507 deletion

JW: As to Article VI,

- Very complex Treasury response just prior to this meeting.

- Burton liked Guam treatment with rebate authorized and with local amendment power authorized subject, however, to USC action to correct any local amendment. Burton staff to check out.

Treasury has some concern with:

(1) Juxtaposition with GOJ and Guam

(2) GOM being able to amend without restriction that might create discrimination.

HW: Let's pass for now but let's get together with Treasury.

JW: U.S. needs to review.

HW: OK let U.S. review. What about 603(b)?

MH: We'll agree to 603(b)(2) in lieu of 603(c) but need to check.

JW: What about U.S.(c)?

OTJ: We haven't had response from State technical people. So I can't address.

MH: Our problem is that it has been addressed over a year ago. Why can't U.S. respond to our question. If it is not that serious why put in agreement?

MH: If not serious, put in legislative history.

JW: We could put in the report to the principals.

OTJ: Might, if we can put somewhere what we really mean to do.

JW: OK, let's do. We do have problem: need to put in new 604 relating to no taxation of USG.

MH: Was dropped out because of supremacy clause which overrides any authority to tax.

AdeG: Still some difficulty with granting specific authority for Marianas to levy import and excise taxes which could control supremacy clause. We agreed to put in legislative history that Marianas not tax goods imported for personal use; only goods for resale.

JW: This is a defense concern. We know Soldiers and Sailors Relief Act applies to Guam and would apply in Marianas to prevent some taxation.

MH: Right.

MH: Thought we were to get expert advice on how to "fold-in" deductions into U.S. system.

JW: May have misunderstanding. Thought MPSC was going to rethink.

HW: May be misunderstanding.

JW: Did discuss constitutional objections by Social Security Administration -- not concerned as legal point, but were concerned as a practical problem with picking up full benefits if no full deductions.

HW: Social Security Administration does have expertise.

JW: We can put something together but wouldn't meet MPSC concerns, e.g., U.S. Social Security is willing only to apply full payments if full deductions.

HW: U.S. willing to fold-in, pick up full payments if full deduction?

JW: Yes.

HW: OK

MH: What about Marianas share of TTPI Social Security Fund?

JW: Being studied by the TTPI administration; will check with DOTA. Would want U.S. Social Security System to administer Marianas portion?

HW: Yes

JW: Can check with Social Security if they will administer Marianas Social Security separately until end of Trusteeship.

AdeG: U.S. Social Security says OK to administer and agrees to protect Marianas share of social security taxes. Not sure about how.

HW: MPSC will prepare memorandum to have Social Security check out.

AdeG: Fine.

Meet next Wednesday, 13th - 1:30

06. 416754