

November 8, 1974

03

MEMORANDUM FOR THE MARIANAS POLITICAL  
STATUS COMMISSION FILE

Meeting Of The Joint Drafting Committee

A meeting of the Joint Drafting Committee was held on November 6, 1974 in the Interior Department Offices of James Wilson. Attending for the United States were Mr. Wilson, Herman Marcuse, Adrian deGraffenreid and Thomas Johnson. Attending for the Marianas Political Status Commission were Howard Willens and Michael Helfer.

Mr. Wilson opened the meeting by providing information concerning the results of the elections in the Northern Marianas. There was a discussion concerning the timing of the next session of the negotiations. Mr. Wilson said that the target date is still December 2. He said that it had been agreed that there would be an informal meeting of Ambassador Williams and Senator Pangelinan during the week of November 18 in Washington. Mr. Wilson reported that there had been no progress in the Land Negotiations Committee. He said that the lack of a counter-offer from the Commission would hamper the next session of the negotiations, and that in order to obtain the necessary authority within the United States Government in response to the Commission's counter-offer it would be extremely helpful for him to have the counter-offer quickly as possible.

There was a brief discussion of the items which would be on the agenda of the next session of the negotiations. Mr. Wilson thought that the method of acquisition of the land and the amount which would be paid would be on the agenda, as well as the limited number of issues which he thought would be left over after the Joint Drafting Committee completes its work. He said there ought to be a discussion of the manner in which the Marianas will proceed following the veto of the District Legislature's public land bill.

Mr. Wilson said that no negotiations were scheduled with the Congress of Micronesia Joint Committee. He said that Ambassador Williams and Senator Salii had agreed to a new text of the draft Compact of Free Association last week and that it would be presented to Congress of Micronesia in January. Finally, in response to Mr. Willens' question, Mr. Wilson said that he was not sure whether the United States would have a formal response to the Commission's military retention land memorandum.

The attention of the committee then turned to the Joint Drafting Committee Working Draft dated November 1, 1974. A discussion was held concerning all matters in the draft from the title through Article VI. The following points of substantial importance were made.

Section 105. There is no change in the United States position with respect to limitations on federal authority in the Marianas. With respect to the Commission's proposed subsection (c), the United States believes that the Agreement should not determine the manner in which either side can give consent. Mr. Wilson thought it unnecessary to assure that prior to termination the Marianas Executive would not attempt to give consent on behalf of the Marianas. He agreed to an explicit recognition of this fact in the legislative history if subsection (c) were dropped. With respect to the mutual consent lists, Mr. Wilson said that Ambassador Williams strongly felt that the lists were far too long. After further discussions it was agreed that Mr. Willens would draft language adding to the United States mutual consent list certain substantive sections of the Agreement now on the Commission's list only. Mr. Wilson said that he was not optimistic that any such additions could be accepted by the United States.

Section 202. A discussion was held concerning the problems addressed by Section 202. It was agreed that provisions would be drafted providing that unless the United States acted within a certain period of time to disapprove the original provisions of the local constitution, the local constitution would be considered to have been approved by the United States Government. This will leave flexibility as to

whether the Congress or the Executive Branch of the United States Government should act on behalf of the United States.

Section 203(c). Mr. Wilson said the United States would withdraw its objection to the bracketed material in this section, and propose revised wording. He noted that the United States concern about the legality of the provision.

Section 203(d). The United States will agree to striking the bracketed language.

Section 402(b). Mr. Wilson said the United States had no objection in principle to the bracketed material in this section but would propose revised language.

Section 403(a). Mr. Wilson said the United States opposed the bracketed language in this section because it provided a treatment for the Marianas different from that of Guam and Puerto Rico. Mr. Willens said that he would review the language.

Section 403(c). Mr. Wilson said that he thought the Marianas would want this kind of a provision, but if the Commission did not, he was prepared to withdraw.

Section 501(a). It was agreed that the bracketed material reflected a technical problem, and ought, one way or another, to be dealt with in the legislative history.

Section 502. There was an extended discussion of the formula for the applicability of laws. Mr. Wilson agreed that the formula should be structured so that it did not make laws apply to intra-territorial matters in the Northern Marianas where similar intrastate matters are not reached. The matter was referred to the technical subcommittee. With respect to those laws found in Chapter 14 of Title 48, Mr. Wilson said that it was his view that they should continue to apply to the Marianas until termination of the Trusteeship.

Section 503(a)(2). Mr. Wilson said that the United States was prepared to withdraw its objection to excluding the Marianas from laws against foreign vessels landing fish or fish products in the United States, subject to a further check within the Executive Branch.

Section 504. There was extended discussion of Section 504, which Mr. Wilson said gave the United States many problems as a matter of principle, because it provided for treatment of a national like a citizen. It was agreed that an alternative way to handle the problem was to state explicitly in the legislative history that the Joint Commission on Federal Laws would study this problem and make recommendations.

Section 505. Mr. Wilson said that the United States continued to have serious problems about the bracketed material in this section.

Section 507. Mr. Wilson said that the United States continues adamantly to oppose this section.

Sections 601 and 602. Mr. Wilson said the United States Delegation had only recently received comments on the sections from the Internal Revenue Service and would have to review them before making further comment. He said that Congressman Burton seemed amenable to permitting the Marianas to amend the Internal Revenue Code insofar as it applied as a territorial tax if Congress had subsequent powers.

Section 603. Mr. Willens said the Commission was prepared to withdraw from its proposal and accept the United States proposal with respect to subsection (d)(1).

With respect to subsection (c), it was agreed that the best procedure would be to provide for the agreed treatment of imports from the Mariana Islands into the customs territory of the United States, and reflected in the legislative history that this was not intended to interfere with the international obligations of the United States, if any, and that if it did, appropriate waivers would be sought.

Section 604. There was a discussion concerning the necessity for a section prohibiting the Marianas from taxing the United States Government. Mr. Helfer stated that this provision had been eliminated as unnecessary in view of the supremacy clause in section 102. Mr. deGraffenreid raised a question concerning the power of the Marianas to tax materials

imported in connection with the base construction. Mr. Helfer replied that he had asked Mr. deGraffenreid for a statement of the manner in which Guam handled such matters, and that the Marianas were almost certainly prepared to be treated as Guam. Mr. Wilson noted that the Soldiers and Sailors Civil Relief Act would apply as well.

Section 605. The United States continues to take the position that benefits and payments should become applicable at the same time. Mr. Willens agreed to consider an alternative approach for the interim.

Section 606(b). Mr. Wilson stated that he thought that the minor difference between the two drafts with respect to this section could be resolved if it is made clear that the necessity of the limitation on indebtedness and the limitation itself would be reviewed in conjunction with the negotiations concerning subsequent multi-year periods of financial assistance.

At the conclusion of the meeting Mr. Willens presented to the United States Delegation a revised discussion draft of Article VIII and a revised draft of Section 1004. Mr. Wilson presented to the Marianas representatives a draft of Article VIII. It was agreed that Mr. Helfer and Mr. Marcuse would meet on Friday, November 8 to discuss technical matters. The next meeting of the Joint Drafting Committee is tentatively scheduled for Wednesday, November 13, but will be held earlier if possible.

Michael S. Helfer

cc: Howard P. Willens