

AdeGraffenried:11/14/74:mjw

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MEMCON

U.S./MPSC Joint Drafting Group

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Date and Time: 12 November 1974, 2:00

JW: Review of Marianas election results (EP lose; march on hill, J. Cruz singing "God Bless America").

HW: Cable from EP who wants to keep December 2 schedule; requested HW 2 weeks early. Trying to call P. Tenorio regarding "counter-proposal" on land; had contacted PT in Majauro, but details on counter offer not settled.

JW: Other MPSC member (F. Pal. as chairman of Territorial Party) not want to meet December 2; but this is up to MPSC. U.S. does not want to get involved; but officially we deal with chairman. U.S. willing to do whatever Commission wants to do, but we note that the difficulty is the "split" on MPSC.

HW: If status becomes a partisan matter we shouldn't meet.

JW: F. Pal. says they want to reorganize the MPSC.

HW: If so, this means we can't meet until after Dec/Jan.

HW: In phone conversation no disposition by P. Tenorio to delay session; he only noted Tinian homestead moratorium problem and priority need to resolve it prior to next round.

JW: This is aggravating. P.T. said he clearly understood when he was here in September that was no moratorium. This was local issue and he agreed.

HW: Understand, but this is not my view only P.T.'s' as to our next meeting. U.S. liaison may have better idea on how status was involved in the Marianas elections.

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JW: We are told "Pace" is only status issue raised during elections.

HW: As you know, closer we get to new status, more the local residents have high emotions and reservation to change status quo.

JW: Note that Mr. Raza is a problem; he is an independent advocate so territorial party will have to get him on board. If not he will be undermining us. JCFS also chose 2 new members of MPSC via choice of Marianas representative on JCFS (our concern is that opponents in COM to Commonwealth could get Raza on JCFS especially if COM Territorial party members so determine).

JW: Well, that's how it stands. Really up to Marianas now, but those are our concerns. At least we can proceed with joint drafting group. Do you want to go over the items recently drafted?

HW: We are prepared to go directly to tax matters in Sections 601 and 602.

JW: Yes, we left off at end of Article VI having skipped §601/602. We have consulted with Department of Treasury and will want to have joint session with them and your Mr. Lake. It is very technical matter; U.S. comes to this situation: Treasury feels strongly that on practical grounds (given recent development in VI and Guam) they can advocate only a Guam system for the Marianas including Guam income tax rebate system. Recent development I refer to redid Guam as relates to relation between statesiders living in Guam with income from Guam and U.S. and as relates to Guamanians living in U.S. with Guam and U.S. income. Now cleared up with series of simple rules which are still complex. Even the Treasury people were correcting themselves on these points as they presented them to us. Guam and VI used to be the same but the rebate change together with a new filing law made Guam superior to the VI. Treasury now trying to change regulations of VI to follow Guam; will be presented next USC session. Because interrelationships of Guam/NMI Treasury's feeling is that Guam system is best system for

NMI and most equitable. Treasury pointed out that Guam's power to give rebates effectively acts to let Guam alter territorial tax as if it were an internal tax law. P.R. is also along these lines given that the '39 US IRC applies in lieu of the '54 code. Guam does draw line at being able to give rebates only to U.S. source income. If we superimpose PR tax approach on Guam system and extend these to NMI we have the same arrangement as existed in Guam prior to '73. Treasury objects to this result. So in essence, U.S. will go along with Section 601(a)(b)(c)(d) but not (e) and we will revise Section 602 to make tax system conform to Guam.

HW: This is out of the question. We have come too far towards establishing local self-government to accept Guam system. We had agreement a year ago to follow Puerto Rico approach. No technical arguments by Treasury are persuasive. We will not fall in line with Guam "period". We have the principle of self-government involved; Marianas needs power to amend its own tax system. Marianas not agree to back door on amendments vis "rebates". U.S. would have power to step in and make adjustments to any Marianas change under our proposal so need to get Lake together with Treasury if U.S. thinks this is appropriate.

JW: Treasury has a whole series of proposals. Its problem would be that Marianas scheme would create another variation to existing tax situation in the territories; we note this would block our goal of eventual unification with Guam. So, if significant difference with Guam tax approach we have difficulty in tying the two systems together and this has resulting problem with Burton on the hill.

MH: MPSC has heard tie-in with Guam argument on 2 aspects (1) income tax and (2) representative in USC. I note that this unification argument is not likely to be persuasive with the MPSC as it relates to the very integrity of the status agreement we are negotiating (e.g., unique status for the Marianas).

JW: There is no problem with the "integrity" of the agreement; there will be no unification with Guam without NMI consent. This is the basics of our relationship. But if we create a status too inconsistent with Guam, we make it more difficult for unification to take place at all.

HW: Well, we just disagree. On social security issue, we have discussed this further. I believe we have similar understandings.

JW: Yes, we have your draft. We still wonder whether our U.S. Social Security System can legally take over administration of Marianas social security in accord with the laws of TTPI at time status agreement become effective.

MH: Yes, it would appear to be an issue; we need to rewrite the section to do this.

JW: No substantial problem with the U.S. undertaking to protect the integrity of the separate funds and manage them.

MH: However, there are still some technical questions on how U.S. social security will administer Marianas social security fund.

JW: Take this from TTPI and give to a new executive during interim; then give to U.S. Social Security Administration which would administer pursuant to local law.

MH: Would not be under control of COM?

JW: Not from time of separate administration.

MH: Is U.S. prepared to supplement funds to insure fund receive same benefits as if staged in TTPI?

JW: Not sure why not. As to Section 603 - add phrase to sub (c) "subject to the accomplishment of obtaining the appropriate action under the provisions of (d)".

MH: I'm not sure this (c) operates independently.

OTJ: You're right. I missed this new (d) which takes place of old language.

JW: OK go back to legislative history approach to note out intent. What about brackets?

MH: Title 26 USC is an exemption from U.S. excise taxes on certain exports of U.S. products. Our applicable laws formula would omit as the exemption is not applicable generally to the States and to Guam. 26 USC not apply to States generally because

JW: On Section 604, no problem with?

HM: Seems that 604(a) conflicts with 603(e).

HW: Right, we'll correct. Lets move to Article VII.

JW: We still have problem on Section 701.

HM: Any way to suggest "standard of living"? We agree we want S/L to be comparable with U.S. so this is an unsurable problem.

JW: Right. We can find appropriate language.

HW: All this does is identifies NMI will be part of U.S. and will achieve a comparable standard of living.

JW: OK as you know we have a little different perspective on standards. As to appropriation, any reason for multiyear?

MH: Yes, to implement our agreement in the joint communique and to permit multiyear planning.

JW: Right, but we say we will appropriate for 7 years already. In Section 701(a) 2nd line following bracket, that approval by USC for authorization is also constitute on appropriation; why did you put "following the effective date of this Section"? Also lets leave (b) bracketed for time being due to USC. On (c) U.S. executive branch agrees with MPSC but is bracketed only because of USC. Is it more appropriate to put this under (b)? Insofar as revenue sharing is concerned we have no problems.

HW: Remove brackets on last sentence of (c)?

JW: Yes, this is OK; now as to (d) we would rather only say "approval of agreement by USC will constitute authorization for appropriate", because we don't know if agreement is to be "enacted into law" or will be treated as if it is enacted.

MH: U.S. has cited use of a joint resolution. We note that joint resolution go to President in any event as if enacted.

JW: True but if enacted by USC through a bill would also go the President. This is a USC matter. As to §704, we discussed this issue at last meeting regarding Guam comptroller. Sure USC want retain comptroller function for Marianas as long as he remains for Guam. He may not be needed in that case we could just have report requirements.

MH: Under current U.S. laws applied to TTPI, Marianas has a comptroller so Marianas would continue to have a comptroller until end of Trusteeship; then, USC determine if it wants to continue it.

JW: Let's go to Article VIII.

MH: This is largely old stuff.

JW: U.S. put forward a new Section 801 (Transfer of government property) to clear up possible ambiguity. 1st transfer of land will take place during separate administration; so all TTPI land used by Marianas goes to NMI government and other TT property retained as needed by interim administration executive. Still note that TTPI HQ will have to stay in MD until a place to move to. But, prior to end TA, it will move our and take personal property with it; any remaining TTPI property go to MD. Now that we have public land policy maybe we don't need our old Section 801.

MH: Section 801 effectively says that TTPI will retain property as it needs it.

HW: In any case seems well to have some provision dealing with this. I would recommend so to client and also that this transfer would occur no later than at this date. Most important is a firm U.S. commitment that all TTPI property in Marianas will go to MD at end TA.

MH: Why "or held" language dropped?

JW: This was a defense objection; language could include MARAD equipment owned by USG but out to TTPI. Only Section 802 problem now is "lease" versus "purchase". I note that "purposes" for which base to be used was dropped from this new draft.

MH: Right I am not sure U.S. wanted to restrict use of the land to a set purpose.

JW: That's a good point, I agree. I also note land survey report is in:

(a) 17,808 acres on Tinian not accounting for adjustment on the Harbor;

(b) 484 acres Isley; (c) 133 acres Tanapag; and (d) 226 acres Farallon.

On the terms/conditions of land transfer our tentative thinking is that if land entity is in being at the time we are ready to sign, no problem; but, if no legal entity exists at time we sign agreement then maybe we can include in a technical agreement all the items which are to be included in the lease so that when entity is created terms could then be included in a formal lease agreement. Not sure who would sign technical agreement.

HW: We are prepared to consider a technical agreement; to pull it out from a status agreement but make it part of the status agreement. We still prefer to deal with U.S.-OMSN not DOD.

JW: Agreeable, but technically still have to get DOD to sign. A lot of standard language would go into technical agreement, but would leave to real estate lawyers most important items to be in the technical agreement.

HW: Prefer to focus on that kind of agreement rather than agreement on joint land draft report.

JW: Make while thing subject to condition subsequent. Going on to U.S. §804, split is on whether Marianas is "to be empowered" on regulating land alienation. On the return of military retention land there is no substantive problem but we want to see MPSC language on §805, leave it in brackets.

MH: We note military was concerned that it won't be able to get apt. leases in Marianas, so we put in "short-term" interests.

JW: We have some other technical suggestions.

MH: Note that can't use present "except as otherwise provided" clause on the alienation language. We will have to refer to specific applicable provisions of U.S. Constitution and this agreement.

JW: OK; Section 806 would then become 807 (eminent domain).

HW: We have just seen U.S. draft.

MH: U.S. 607(a) is description how U.S. eminent domain works. As such it is superflous. The Guam formula would apply. This is no change in initial U.S. position.

HW: So a substantive difference.

JW: Quite right.

HW: Suggest we draft separate language to put in separate brackets.

JW: How about drafting joint language except for substantive differences.

OTJ: Defense emphasized that current procedure gives USC review over land acquisition and felt that high lighting this would satisfy MPSC.

HW: Our initial reaction is that it doesn't. If DOD wants USC review should agree to MPSC approach.

ITJ: That would require a bill to go through both houses of USC. House Committee approval.

HW: Right; MPSC is insisting on a change in existing procedure. We want full USC to review all DOD acquisitions in the Marianas.



JW: We seem to disagree on what we can or can't do. This is up to USC.  
As to Article IX, Burton had difficulty with term "resident commissioner".

MH: Why?

JW: Burton notes (1) PR still has resident commissioner in USC (2) Resident commissioner is considered superior to a delegate and would have problem with Guam and VI, which have "delegates".

HW: We reject this. This interferes with our basic representational and self-government rights. Burton may have to swallow MPSC approach.

JW: U.S. will try to come up with a suitable term; we have examined "agent" "emissary", etc. and are still searching. Going on to Section 902, no substantial difference between U.S./MPSC. We do have a modified version. No problem with MPSC 1st bracket: consultation at request and not less frequently than every 10 years.

HW: OK

JW: On Section 903 we agree. On Section 904(c) membership in regional organization, issue is clear. Might note that Guam just denied a request for ESCAP membership.

MH: But, we agreed to this in our joint communique.

JW: Quite right, but is where "Homer" nodded. On Article X, we might delete "promptly"submitted.

HW: OK.

JW: As to Section 1001 and difficulty on "enactment" issue?

MH: Is substantial difference.

JW: Lets get some language to overcome "enactment" issue - all agreement it will have "effect of laws". What about Section 1002.

MH: Problem. Section 1001 provides commonwealth come into being on end trusteeship. So 1002(a) repetitive; (c) also. If read 1002 literally -

Commonwealth can't come into existence until proclamation issued by President. We felt this would not turn on issuance of a proclamation but on end of trusteeship.

HW: No problem with language saying Commonwealth coming into effect "on termination of Ta or declaration that termination is effected".

JW: Right. Lets get some language.

MH: We note if §202 language adopted then we can eliminate all of Section 1002.

JW: Lets go to §1004 and effective date. 1st difference is Section 104 (U.S. def/FA provs). This would come into effect at end of the trusteeship. There is no need to be given FA/D'se provs. during interim as have therein under TA.

HW: Persuaded by this legis. Agree to change.

JW: Section 503; during interim period you would not want U.S. to change provisions on 503 so this should become effective immediately. U.S. problem is that conceptually you say you don't want certain laws to apply but immediately apply the provision. No real substantial difference.

HM: Why shouldn't 502 and 503 come into effect at same time since 503 is an exception to 502.

HW: At the time the Commonwealth government becomes effective is time at which all laws applied to it.

JW: No problem with making 503 applicable immediately. On Section 504; U.S. doesn't have new draft ready. Anything else on effective date provision?

MH: Section 602 - treats Marianas as a possession under US IRC, so we don't want it effective until end of the TA.

JW: Does MPSC want postpone 601 to end of TA?

HW: Client should have 601 (IRC as a local territorial tax) apply during interim to get idea of local income available. Could want 602. Also want

different effective dates so that they will have only 1 tax return to file until end of TA and give locals idea of the mysteries of the US IRC return.

JW: As to 605 and 801, we'll save for further discussion. Is Section 901 a problem?

MH: Section 901 should come into effect when new government comes into effect. --

JW: Right. As to §1006 - 1st sentence is superfluous. Going to §1007 definitions. No problems except DOD is to check inclusion of certain shoals in the definition of NMI.

HW: Right.

JW: No need to put separate administration in agreement; timing is to be solved in the next month or so. At Hawaii, we agreed that it would be some time after the plebiscite.

HW: Agree not include, in light of this new information.

JW: Next meeting - next week?

HW: OK. I'll be out of town through Monday. I will call Adrian and set up a time.