

M. Marcuse

1/9/75

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DRAFT:ADEG:ml: 1/14/75

Memorandum of Conversation

NEGOTIATING HISTORY
JOINT DRAFTING GROUP

At Howard Willens Office, January 9, 1975 at 2:00 p.m.

Participants:

- | | |
|-----------------------|----------------|
| Herman Marcuse | Michael Helfer |
| O. Thomas Johnson | |
| Adrian de Graffenried | |

I. Form

We want to study whether this negotiating history should be:

- (1) A Report of Drafting Committee; and
- (2) Could be officially endorsed by EPangelinan/FHWilliams.

(NOTE: M. Helfer prefers to discuss this with Howard Willens.

II. Content

A. Lead-in: Helfer to draft; mostly depends on form of report. We want a short one sentence introduction to note fact this document addresses why we are doing this and why there are omissions, etc. in the Covenant.

B. Section 101. Adopt Marcuse' version but move to Section 103. As regards sovereign immunity should note Mariana Island Commonwealth is not a U.S. agency now nor will it be one after our agreement. After Constitution Helfer feels the Government of the Northern Mariana Islands should have its own sovereign immunity.

C. Section 102. Drop "supremacy" version by Helfer but move idea to notation: tax immunity, etc., in Section 604 notation.

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D. Section 104. Agreed to make a note that reference to Foreign Affairs and Defense authority is not related to sovereignty but is only a further specification of these powers. Note that U.S. holds full powers as a sovereign and this section does not derogate from Section 101. OK by M. Helfer.

E. Section 105. Mutual Consent.

Keep paragraph 2 of Helfer version regarding the geographic description of Marianas but move to Section 101. Agree to drop paragraph 1 of Helfer version of Section 105 but keep Marcuse' notation.

F. Section 202. M. Helfer will consider to drop his first paragraph. Agrees to drop reference in his paragraph 2 regarding the power of local courts to review and agrees to drop reference to supremacy clause citation. Otherwise agrees to consider merging remaining M. Helfer version with H. Marcuse' paragraph.

Section 203(c). "Rightful subject of legislation". Use H. Marcuse' language and consider adding a sentence to effect: "this is broadest possible authority" (although case citation stands for this position). Delete case citations. Helfer to draft language on disproportionate representation; he noted that Reynolds v. Sims is a U.S. ruling against disproportionate representation (under the 14th Amendment) in local legislature and this does not extend to NMI by its own force. Disproportionate representation in the States was not allowed as was not a fundamental concession of a State to join the U.S.. Helfer notes that disproportionate

representation section is, however, fundamental element for the NMI joining the U.S.

Section 203(d). Drop reference to this section.

Section 301. Put "somicile" back in to the covenant as 1005(e); remove from explanatory notes.

Section 401. H. Marcuse' language is OK; add Helfer sentence to effect that U.S. Executive will recommend to USC that these powers be granted to the District Attorney and Marshall.

Section 402. Drop M. Helfers' paragraphs 1 and 2; leave open whether to keep paragraph 3. - As regards paragraph 2, Helfer notes that the legislature is under no obligation to establish appellate jurisdiction for Federal court over local matters (U.S. will regard in this light - consider paragraphs' language).

Section 403 (a) drop explanation on this subsection.

(b) retain this in legislative history per Helfer version with changes to make sure the two Covenant sections specifically referred to in this section are merely examples (e.g., use "including section 1738" etc.).

Section 501 - First two sentences of H. Marcuse' draft OK; - On sentence 3, M. Helfer is to add a provision that regardless of U.S. cases, nothing can't be used to invalidate section 805 or otherwise prevent regulation of alienation of land by the Marianas; Helfer says this should be prevented only by the fact the due process clause applies of its own force to the Marianas.

- Helfer's last paragraph (4) to be deleted.

Section 502. On general comments by Helfer keep only paragraphs 2/3. In paragraph 2 on page 12 reference to banking laws should address fact that national banks can move into Guam and can therefore move into Northern Mariana Islands but in a manner different from the states and would thus have more autonomy in the Marianas than in a State contrary to our intentions.

(NOTE: also that term: "Federal Banking Laws" is not a term of art, so need a list of these. Drop rest of the paragraph by Helfer on his draft version, pg. 12. Drop M. Helfer explanation of §502(b) and §502(c) and put them into a section by section analysis (but not needed here in history).

Section 503. Renumber as 503(a). Tom Johnson's language modifying paragraph 1, sentence 2 of Helfer draft as it regards continuing effect of TTPI immigration laws. Note that not until U.S. Congress acts do the U.S. immigration laws apply (§503 language not clarify this). Also, we don't want to say U.S. is preempted from acting in this area by its failure to act immediately upon end of TA (under existing preemption doctrines this could occur). We should also remember all TTPI/Marianas Government laws should remain in effect until modified and adding a note in our document addressed just to immigration area may raise problems in this area of continuing effect of local laws; to correct this add a provision for the continuing

effect of all local laws, not just immigration, until U.S. Congress acts in this area.

Section 504. 1. Marcuse paragraph is OK.

2. Helfer suggests adding language to give some guidance in our negotiating history for Commission and to further address some specific questions on Commission's work deleted from the Covenant (U.S. - OK).

Section 506. Explanatory language will be needed (re: close relatives and children born abroad) once language is drafted by INS.

Article VI Section 601(a). Move H. Marcuse's general tax provisions to §203. Existing 1001(a) to be revised by U.S.; Note that FUDA does not apply to Guam so wouldn't extend under our formula but ^{we} should also note specifically here. This is now Marcuse's §601(b). Move H. Marcuse's §601(a) to §602 (this section refers to U.S. immunity from taxation and could be addressed either "supremacy" clause or in the section dealing with the power of Marianas Legislature).

Section 603(c). Use Helfer draft (revised by T. Johnson language to assure that U.S. not obligated).

Section 603(d). Keep Helfer "developing territory" language.

Section 702. Keep Marcuse's language (note 12).

Section 703. Regarding "coverover", not essential; OK to drop.

Section 801. Not need a reference to land policy statement but leave this for section by section analysis.

Section 802. U.S. prefers to drop. Helfer will review in light of U.S. Constitution Article 1 §8, cl7 re:

U.S. Congress authority over lands under use for defense purposes (forts and Magazines). Helfer notes Marianas is not a state and this is not a purchase of land.

Section 804(b). This section should be the wording found in 49 USC 1110; so no need for this note unless the wording differs. Check with Jim Wilson on whether to drop.

Section 805. Revise language (Helfer to rewrite).

Section 806(a)(1). The second sentence is intended to set only the minimum (not all) qualifications on Marianas voters. U.S. as administering authority will set other additional qualifications after appropriate consultation with Marianas.

Helfer needs language here regarding separate administration.

Section 1002. Termination of Trusttship Agreement at end of 1981. Agree to say instead of Helfer language that "it is present intention of U.S. to do this," as we have stated publicly.

Section 1004. May want to explain why Section 104 and 904 are not effective until termination (U.S. to check out).

-Other page 20 on Helfer draft re: comments on "other". OK.