

C O N F I D E N T I A L

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M E M O R A N D U M

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Subject: The Surinam-Netherlands Relationship and its Significance
for Puerto Rico.

This memorandum has been prepared for various reasons. First and most important, some aspects of the Surinam-Netherlands relationship may be adaptable to the Puerto Rican scene, particularly the arrangement under which Surinam participates in the legislative process when the Netherlands legislature acts on measures affecting Surinam. This is discussed at the end of the memo. Second, the mere fact that Surinam--with only 221,000 people as compared with the Netherlands population of 10,380,000--has been given a significant role at the kingdom level in executive as well as legislative decisions affecting Surinam, provides a good talking-point for Puerto Rico in any bid made for greater participation by the Commonwealth in national decisions which bear directly on Puerto Rico. Third, Puerto Rico's role in international organizations might influence, and be influenced by, that of Surinam and the Netherlands Antilles. Finally, the Commonwealth may wish to consider helping pave the way for the UN General Assembly to accept the Netherlands decision that Surinam and the Netherlands Antilles are no longer non-self-governing within the meaning of Article 73 (e) of the UN Charter. (The constitutional status of the Netherlands

Antilles is almost precisely the same as that of Surinam). The information summarized below can be supplemented if desired.

Facts about Surinam

Surinam has an area of 60,000 square miles, only about one-fourth of which is inhabited. Its population of about 22,000 includes 38,000 Indonesians, most of whom are aliens and normally cannot vote, and 25,000 Bush Negroes and American Indians--most of whom do not vote. Of the remaining 158,000 people, who constitute the active citizenry, 67,000 or 42 per cent are Hindustani. Almost all the rest are Creoles (Afro-Americans) who are mainly Dutch-oriented culturally and politically. Some of the Creoles view association with the Netherlands not only as a means of handling their defense and external affairs, but also as providing added security against cultural and political domination by the Hindustani. Concern about the East Indians is real. It is believed, for example, that East Indians want to unify the three Guianas--French, British, and Dutch--in the belief that they would have an effective political majority in the unified area.

The election system (i.e. the demarcation of election districts, the assignment of legislative seats thereto, and the practice of allowing the voter to vote for as many candidates as there are seats assigned to his district) is designed to give the Creoles a majority in the Surinam legislature. The Creoles live mainly in Paramaribo; the Hindus and Indonesians live in the rural areas. While the election system favors the Creoles, the Hindus do not have clear cause for complaint because there are fewer Hindus than Creoles and most of the non-Hindu

rural population either cannot or do not vote. In elections held a few weeks ago, a coalition group under the banner of the Unity Party gained control of the government from the Creole Surinam National Party, an almost exclusively Creole party. This being the first election after the charter was adopted, the Indonesians were allowed to vote. I understand that Indonesian leaders agreed not to join up with the East Indians, two-fifths of whom are Moslems. The Indonesians voted with the Unity Party which gained 11 seats, two of which were won by Indonesians. The Indian National Party won 8 seats.

There is only one level of government in Surinam. There is no municipal government--not even in Paramaribo, the capital.

The government of Surinam is structurally similar to that of the Netherlands. Legislative power resides in a legislature elected by universal adult suffrage of Surinam citizens. Executive power resides in ministers selected by the majority party in the legislature. The ministers are not members of the legislature. Curiously enough, the Attorney General, though nominated by the Surinam Cabinet, is appointed by the Queen, presumably on the theory that criminal prosecution will thereby be further removed from local politics. Judicial authority is vested locally in judges nominated by the Surinam Cabinet and appointed by the Queen. The consent of the High Court of the Netherlands has heretofore been required before the Queen makes Surinam judgeship appointments; I believe it will still be required under the new charter. The Governor serves as a representative of the Queen and, insofar as domestic affairs are concerned, his functions are circumscribed in much the same way as that of a constitutional monarch.

The Government of Surinam, is free to change its internal organization without intervention of the Netherlands, provided however, that such changes are adopted by two-thirds of the votes cast in the Surinam legislature. Surinam has complete freedom in all matters which are not specifically identified in the new charter as affairs of the Kingdom. In addition to having all the usual domestic functions, the Surinam Government controls and establishes duties on imports; administers postal services; has its own monetary and exchange control system, central bank, and foreign exchange reserves; and, within certain limits, controls immigration.

Except for the Army, no Netherlands ministry exercises functions in Surinam. Netherlands laws do not normally apply to Surinam, and Surinam is not dependent upon financial subsidies from the Netherlands. Although Surinam gets much of its investment capital from the Netherlands, its trade is predominantly with the United States and other areas. It is not dependent economically on the Netherlands.

The New Charter for the Kingdom

The charter proclaimed by Queen Wilhemina in December 1954 states in the Preamble:

"The Netherlands, Surinam and the Netherlands Antilles, taking into consideration that they have declared of their own free will that they accept in the Kingdom of the Netherlands a new legal order in which they will autonomously manage their own affairs and on a footing of equality care for their joint affairs and reciprocally give each other assistance, have in

joint consultation resolved to establish the Charter for the Kingdom as follows."

The charter was drawn up by officials of the three representative governments and approved by more than the required two-thirds majority in the Netherlands Legislature and unanimously in the legislature of Surinam and the Netherlands Antilles. The charter cannot be amended unless all three legislatures approve. The charter is, in effect, the Supreme law of the kingdom and even the Constitution of the Netherlands must be made to conform with it.

Kingdom matters are limited to those specified in the charter and include the following:

- (1) Appointment and removal of the Governor
- (2) Defense
- (3) Foreign relations
- (4) Nationality of ships and maritime regulations
- (5) Netherlandship (i.e. nationality) and the general rules regarding admission and expulsion of Netherlanders and of aliens. (The law governing local citizenship is a country matter).
- (6) Extradition
- (7) Distribution of costs for defense and for managing other Kingdom affairs, with the proviso that the Governments of Surinam and the Netherlands Antilles must agree on their respective shares.

(8) Other subjects if approved in the same manner as a charter amendment.

In effect, the charter creates a new government, composed of all three countries, to discharge Kingdom responsibilities. For the most part, the organs of the Netherlands Government provide the instrumentality through which Kingdom affairs are handled. As noted below, the Governments of Surinam and the Netherlands Antilles are effectively represented in these organs of the Netherlands Government when they deal with Kingdom affairs.

Executive Organs. The Council of Ministers of the Kingdom is composed of the 12 or more Ministers forming the Netherlands Cabinet plus one Minister plenipotenciary from Surinam and another from the Netherlands Antilles. These Ministers Plenipotentiary are appointed, instructed and removed by their respective Governments. The Minister Plenipotentiary participates in meetings of the Council of Ministers and its subsidiary committees on affairs of the Kingdom affecting his country. The Minister Plenipotentiary decides whether a matter will affect his country. As a rule each member of the Kingdom Cabinet has one vote. However, if the Minister Plenipotentiary of Surinam states that a regulation or other administrative measure proposed for general application to all three countries would cause serious harm to Surinam, the measure will not be applied thereto unless its application is deemed essential to the partnership of Surinam in the Kingdom. If the Council of Ministers makes a provisional decision that the measure must be applicable to Surinam, consultation takes place between

the Prime Minister, two Ministers, and the two Ministers Plenipotentiary. If the Netherlands Antilles is not involved, the Minister Plenipotentiary therefrom would not attend and Surinam would be entitled to have another representative participate. The Council is bound by the result of such consultation. This means, in effect, that the Prime Minister has the controlling voice on whether the measure will be applied in Surinam over the objections of the Government of Surinam. The Council would follow the same procedure in deciding whether a draft kingdom statute should be forwarded to the Council of State and the King for transmittal to the Legislature.

As noted previously, the Netherlands ministries ordinarily provide the machinery through which kingdom functions are carried out. However, a kingdom statute can call upon the Surinam government to provide for its execution. The statute cannot designate the agency of the Surinam Government which will have executive responsibility. This is a matter for the Surinam Government to decide.

The Governor is responsible for kingdom matters discharged in Surinam by Netherlands ministries. The Governor is commander of kingdom armed forces placed at his disposal. In these kingdom functions, the Governor is an official of the national government and is not bound by the countersignature of the Surinam ministers but by the instructions of the Crown, formulated by the responsible kingdom ministers.

The Council of State of the Kingdom, an advisory body, may include a member from Surinam and one from the Netherlands Antilles

if the Government of the country concerned so desires and agrees on the person to be appointed by the King. These State Councillors participate in the meetings of the Council of State and its committees when the Council is consulted on kingdom statutes and kingdom ordinances which are to apply in their countries and on other kingdom matters.

Legislative Organ: The States General of the Netherlands serves also as the legislative organ of the kingdom and as such enacts kingdom statutes. The States General consist of two chambers, the first composed of 50 members elected by the provincial States General and the second consisting of 100 members elected by direct vote. The First House can only approve or reject legislation; it cannot initiate or amend legislation. The King sends drafts of kingdom statutes to the legislatures of Surinam and the Netherlands Antilles simultaneously with the submission to the States General. As indicated in paragraph 12, above, the Ministers Plenipotentiary participate in the Council of Ministers' decision as to whether a draft should be sent to the States General. Draft kingdom statutes which originate in the States General are transmitted to the Surinam and Netherlands Antilles legislatures before they are discussed in Committee. The Ministers Plenipotentiary may also suggest to the lower house that it take the initiative for proposing a kingdom statute. Once a measure has been proposed and is sent to the legislatures of Surinam and the Netherlands Antilles, it is provided that:

(a) The legislature of Surinam and the Netherlands Antilles are given time, before public discussion of the measure, to submit a report in writing thereon;

(b) The Minister Plenipotentiary and any special delegates sent by the legislatures of Surinam and the Netherlands Antilles may participate in debates of the draft in the States General and may propose amendments; and

(c) "Before the final vote is taken on any proposal for a kingdom statute in the chambers of the States General, the Minister Plenipotentiary of the country in which the provisions shall apply (or the special delegate named for the purpose by the respective legislature) is given the opportunity to express his opinion on such a proposal. If... (he) declares himself opposed to the proposal, he may at the same time request the chamber to postpone the vote until the following meeting. If, after the Minister Plenipotentiary (or special delegate) has declared himself opposed to the proposal, the Second Chamber accepts it with a smaller majority than three-fifths of the votes cast, the consideration is postponed and further consultation on the proposal takes place in the Council of Ministers." (Article 18 of the Charter)

(d) When the Second Chamber passes a measure by less than a three-fifths majority, the measure presumably goes to the Council of Ministers which decides, as it does on other kingdom matters (e.g. through its committee of five), whether parliamentary consideration of the measure should be resumed. This process apparently continues until the measure fails to get a simple majority in the Second Chamber, a three-fifths majority is obtained, or the Council of Ministers decides to suspend further Parliamentary consideration of the measure.

Thus, although the population of Surinam is only 2 per cent of that of the Netherlands, Surinam's representative can postpone action on a kingdom statute in either chamber and he has voting weight in the Second Chamber of the Netherlands legislature which is equivalent to 10 per cent minus one of the votes cast therein.

Judiciary: There is no judicial organ for the kingdom. The High Court of Justice in the Netherlands has virtually no jurisdiction over judicial matters in Surinam or the Netherlands Antilles. Before World War II decisions of the Surinam Supreme Court could be appealed to the Privy Council at the Hague. The Surinam Legislature has expressed the desire that this right of appeal be reestablished, with appeal to the High Court of Justice instead of the Privy Council. The charter makes it possible for such jurisdiction of the High Court to be established by kingdom statute. The charter also provides that, upon request of the country concerned, the statute shall cause an extraordinary member or an advisory member to be added to the High Court. The Charter also provides that judgments of the courts in any part of the kingdom shall be enforceable throughout the kingdom.

Provision is made for joint consultations on all matters of interest to two or more countries, including cultural, social, economic, financial and monetary matters. Special representatives may be appointed for such consultations. Uniformity of civil and commercial law, penal procedure, copyright law, weights and measures and in certain other fields is to be pursued through separate legislative action. No drastic amendments will be made by any country to laws in these fields without consulting with the Governments of other countries.

Extraordinary measures: No changes in Surinam laws affecting fundamental rights and freedoms, the legal system, or the powers of the Governor and the legislature can be made without the assent of the Government of the Kingdom. Such changes cannot even be submitted to the Surinam legislature until the opinion of the Kingdom Cabinet has been obtained. The Governor has an important role in determining whether the opinion of the kingdom cabinet should be sought. A Surinam legislative or administrative measure which is in conflict with the charter, a kingdom statute or other interest which the kingdom is supposed to protect, may be annulled by the King upon recommendation of the Kingdom Council of Ministers. If any organ of the Surinam Government fails to carry out its kingdom obligations, a Kingdom statute may prescribe what shall be done. In case of war or internal disturbance, or the threat of either, the King (on recommendation of the Kingdom Cabinet) may declare a state of emergency anywhere in the Kingdom, civil authority may be subordinated to military authority, and civil rights may be suspended,

Secession: The right of secession, though not explicitly stated, is contained within the unlimited provision for amendment of the Charter. It is not a right which can be exercised unilaterally since the Charter can be amended only with the approval of the legislatures of all three countries.

International Organizations and Agreements: Surinam and the Netherlands may become full members of international organizations. They are to participate in the preparation and implementation of international agreements affecting them. Agreements with foreign powers or

with international bodies requiring approval by the States General of the Netherlands are to be sent simultaneously to the legislatures of all three countries. If the Ministers Plenipotentiary so request, these agreements must be approved by explicit vote in each chamber--thereby enabling them to exercise their extraordinary powers in the second chamber. Neither Surinam nor the Netherlands Antilles can be bound by economic or financial agreements against its will, but such agreements binding on them alone are to be concluded if they desire, unless it would affect adversely the partnership principle. This leaves little more than political and defense treaties unrestrictedly to be dealt with by kingdom officials. The Surinam Government expects to have a voice in diplomatic appointments of primary concern to it (e.g. Ambassador to Venezuela).

Conscription: While armed forces are under kingdom jurisdiction, conscription can be imposed only by country statute and the statute can stipulate that army recruits may be sent outside the territory only with their own consent. The charter provides that defense forces in the Caribbean should, as much as possible, be made up of residents of those territories.

Applicability of Netherlands Kingdom Relationship to
United States-Puerto Rican Relations

Recognizing the dangers inherent in any attempt to transplant constitutional principles from one place to another, it is nevertheless believed that various aspects of the Netherlands-Surinam relationship are noteworthy and that at least the legislative aspect may be adaptable

to United States-Puerto Rican relations. Developments in the arrangement for a common nationality, with each constituent country allowed wide discretion in defining local citizenship and controlling immigration, should be followed closely. The details of this arrangement have yet to be worked out. The provision for adding a member to the High Court of the Netherlands upon extension of the jurisdiction of the High Court to judicial matters arising in Surinam is of particular interest in view of the possible desirability of arranging for the people of Puerto Rico to be represented in the Federal judiciary when matters affecting Puerto Rico are adjudicated. Surinam's freedom under the charter to become a member of international organizations and its voice in the adoption of international agreements affecting it are also, of course, relevant.

While these and other aspects of the Surinam-Netherlands relationship are of interest to Puerto Rico, the relationship which is most unique and suggestive for Puerto Rico is that under which Surinam has a voice in kingdom legislation affecting it. It is believed that the principle involved could be adapted to Puerto Rico's situation without amending the United States Constitution.

The adaptation could, for example, take the form of an amendment to Section 9 of the Federal Relations Act, which relates to the application of laws of the United States to Puerto Rico. The amendment could provide that a law shall be deemed inapplicable to Puerto Rico if the Resident Commissioner states, prior to final vote on the measure in each House, that the measure is objectionable to the Government of Puerto Rico unless by separate vote in each House on

the question of the applicability of the measure to Puerto Rico two-thirds (or a specified number more than a simple majority) of the members voting decide that the national interest requires that the measure shall be applicable to Puerto Rico. The above formula is subject to numerous variations. The only caution noteworthy here is that care be taken in drafting any such amendment to avoid a charge that the amendment would not bind a future Congress since the Constitution specifically states that "Each House may determine the Rules of its Proceedings". This has been interpreted to mean that the power of each House of Representatives to make its own rules may not be impaired by a previous House or by a law passed by a prior Congress. Although additional research is needed to establish clearly that such a charge could be successfully answered, the principle involved appears to be much the same as that involved in the limitations on the power of the Congress to amend the compact itself. Moreover, there is precedent for a statute to prescribe an enacting procedure in each House which is binding on both Houses (e.g. Reorganization Act of 1945). However, the proposed amendment should contain the least possible procedural provisions.

Under the proposed amendment, the Resident Commissioner would not have the power to cast a vote. Furthermore, his objection, on behalf of the Commonwealth, to the substance of a proposed law would carry weight only insofar as its application to Puerto Rico is concerned. Moreover, the objections of the Government of Puerto Rico could be overruled if it was deemed necessary in the national interest.

On the other hand, the Resident Commissioner's objection to a measure's application to Puerto Rico would automatically prevent its application unless members wanted to vote to make it applicable. And then the Commonwealth would be able indirectly to cast votes against the application of the measure to Puerto Rico just as effectively as if it had the same representation as States in the Congress and more so if the Congress agreed that a measure objectionable to Puerto Rico could only be made applicable thereto by a two-thirds vote. Moreover, Puerto Rico would always have a psychological advantage since even members who support a law would be disinclined to vote for its application to Puerto Rico over the Commonwealth's objections, assuming the objections are reasonable.

The above arrangement seems admirably suited to the Commonwealth's needs. Most important, it provides a workable basis for Puerto Rican participation in the formulation of national laws designed for application to Puerto Rico. It would give Puerto Rico effective representation without providing cause for charges of representation without taxation, since voting weight would be given Puerto Rico's objections only insofar as these objections refer to the applicability of the provisions of a bill to Puerto Rico.

In view of the close organic ties between the United States and Puerto Rico, such an arrangement seems far more workable than one requiring a positive expression of consent in each case. There are relatively few laws among the many passed at each session of Congress which the Commonwealth Government would not want applied to Puerto Rico.

The above arrangement would allow the Commonwealth to object when it desired and to avoid having to register approval on the bulk of laws in which it has little interest. The arrangement would also be more palatable to the U. S. Government than one requiring consent of the Commonwealth in each case or which would otherwise make it possible for the Commonwealth to prevent a law from applying to Puerto Rico. In view of the intricate network of relationships between the United States and Puerto Rico, it is doubtful that the Congress (or the Executive Branch) will regard any arrangement as satisfactory which would give the Commonwealth a veto over changes in the general laws and functions of the U. S. government applicable to Puerto Rico.

If the principle involved in the above suggestion appears worthwhile from a policy standpoint, additional research should be undertaken to develop it further and to gain deeper insights into its implications.