

DRAFT REMARKS - WORKING SESSION - May 23, 1973

The last working session reviewed major areas of preliminary understanding between our two delegations. Judging from the responses of your commission, it appears to me that we have reached a large measure of agreement on the principal points involved in our future political relationship.

In one area, however, an important difference in our respective positions was uncovered. That concerned the exclusiveness of the powers of local self government to be exercised by the Marianas in the future and whether consideration should be given to possible means of circumscribing the application to the Marianas of Article IV, section 3, clause 2 of the U.S. Constitution.

This latter point caught the U.S. Delegation by surprise inasmuch as it had not been raised earlier. Further, since it is a matter of fundamental importance to us, it occasioned substantial concern on this side of the table. This clause establishes the primary authority of the U.S. Congress to legislate for U.S. Territories.

Since Monday's meeting the matter has been studied and discussed extensively in both working sessions and in smaller meetings between members of the two delegations. The U.S. Delegation has sought to understand the problems and concerns of the Marianas Delegation in this regard. We wanted to learn more about your worries and suggested informal exploratory sessions between the two delegations in a further attempt to cast light on the matter.

We have already tentatively agreed to attempt to work out some sort of arrangement under which the major provisions of the basic agreement establishing the commonwealth relationship would be subject to modification only by mutual consent. If we are successful in this endeavor, this should have the effect of safeguarding your major interests in such matters as protection of your land or U.S. efforts to impose a different relation-

ship with Guar.

Beyond this, it is our firm belief, based on the United States' long constitutional and legislative experience, that you need have no real worries on this score. The long history of the relations of the U.S. Congress with the U.S. territorial areas indicates no desire on the part of Congress to intervene in purely local matters in any significant way and a real sensitivity to the interests and desires of these areas when legislation is considered which might affect them. We are aware of no important instances of the abuse of Congressional legislative power in this regard.

We nevertheless understand your desire to look further at the question of possible restraints on your future powers of self government and believe you should have time to study it.

At the same time it is only fair to reemphasize that the U.S. position on Article IV, section 3, clause 2 remains unchanged. The U.S. has stressed from the outset that it is necessary that there be no uncertainty or ambiguity regarding the authority of the U.S. Congress. There is no precedent for express restraints on Congress' power in this area. In essence the political and practical considerations will almost certainly preclude any limitations on this authority. This judgment is based among other things on my consultations with key members of the U.S. Congress.

The U.S. offer on "mutual consent" regarding major structural changes falls outside of the traditional pattern and provides the Marianas a safeguard which no other U.S. territory has. I can assure you that it will be difficult to sell such a provision to the U.S. Congress. It could be impossible if the agreement further qualified the authority of the U.S. Congress. This explains in part why it was necessary for the U.S. offer regarding mutual consent to be made conditional upon your acceptance of other features of the U.S. proposal.

As a result of our recent conversations I think it is fair to say we now have a preliminary understanding that Article IV, section 3, clause 2 of the U.S. Constitution will apply to our future relationship. This is a tentative agreement made subject to the two delegations working out an arrangement under which modifications of the basic agreement establishing the commonwealth relationship are made only by mutual consent. Furthermore, this tentative understanding is subject to the reservation on the part of your Commission that it will study the matter further and may wish to reopen discussion of Article IV, section 3, clause 2, prior to drafting a final agreement.

Before leaving status and moving on it is important to us to know if our understanding on the foregoing matter is correct and if not in what particular it is objectionable.

If these understandings are shared by your Commission, Mr. Chairman, we are prepared to proceed to the remaining areas. I must emphasize that our proposals in the areas of finance and land are predicated on the type of political arrangement which was set forth in my summary statement Monday. Obviously, if the U.S. political assumptions prove to be unfounded, this may subsequently occasion major changes in or a total reassessment of these proposals.