

12-10<sup>13</sup>/<sub>5</sub>

12/19/73 Johnson

TALKING POINTS ON MPSC'S PROPOSAL REGARDING ARTICLE IV, SECTION 3,

CLAUSE 2

*As Frank indicated*

Last May, we tentatively agreed that "fundamental" provisions of the agreement creating the new political status for the Marianas would not be modifiable except by mutual consent. In your paper of December 6 you have proposed that in addition to the mutual consent requirement, United States federal authority in the Marianas should be further limited to that which would obtain were the Marianas a

*to be* state. For reasons which ~~I will discuss later~~ *we find that we are* ~~unable to agree to this proposal.~~ *we have real difficulty with* But, let me say <sup>now</sup> that we do <sup>not</sup> regard

your generalized fear of Congressional interference in your internal affairs as well-founded in light of the history of Federal treatment of Puerto Rico and the territories. <sup>from Hawaii</sup> In our view your concern in this

*The practical concern in recent times has been exemplified by your* regard is, as a practical matter, academic. <sup>to the extent you are</sup> *still* concerned about Congress unilaterally tampering with specific funda- <sup>of your</sup> *would*

mental aspects of your future relationship with the United States, we <sup>are</sup> *are* <sup>willing to try</sup> *are ready* to attempt to deal with them under the mutual consent requirement. <sup>What we can't do politically is to give you</sup> *a blanket exemption to the full extent of the 53 states & that would*

1. The authority of Congress under Article IV-3-2 is not necessarily plenary but may be limited in a manner which does not conflict with the United States Constitution.

MPSC Proposition

RESPONSE: We have no argument <sup>and agree as a matter of fact</sup> with this proposition. <sup>But</sup> We have consistently said for the past two years that the process by which the people of the Marianas will approve this agreement

will be the product of a process of self-determination.

(A)

Of course, we cannot say with certainty what courts will say about about the restrictions we may impose in this agreement on Congress' authority under IV-3-2. <sup>But</sup> For our

~~part,~~ <sup>also</sup> however, we certainly recognize that the authority of the United States in the Marianas after termination of the trusteeship will be subject to the limitations set forth in this agreement. Therefore, it strikes us as fairly clear that Congress' authority vis-a-vis the Marianas can be effectively limited by this agreement.

2. United States sovereignty over the Marianas can "co-exist <sup>This should be enforceable - though it obviously can't be guaranteed like</sup>

with a limited application of IV-3-2:

RESPONSE: We agree that the authority of the United States in the Marianas can be restricted within limits without bringing

into question the sovereign nature of that authority. <sup>But I see a limitation however - particularly an ill defined statute in the UN Charter</sup>

3. The Trusteeship Agreement and the UN Charter require that the Marianas achieve self-government in the manner set forth in the MPSC's proposal. <sup>not a question of self-sovereignty which is well known</sup>

RESPONSE: Whether the Marianas are self-governing due to customary Congressional forbearance from interference in their local affairs or due to an express prohibition against any such interference is an internal question which, it strikes us, is of no legitimate concern to the United Nations. <sup>our best interest is to make any limitation quite specific</sup>

*The agreement, in its words, should give to vest full self-governance in the Marianas, except for the limited purposes of the Trusteeship Agreement, announced by all relevant parties in the past.*

MPSC / 4. Unqualified application of IV-3-2 would leave the Marianas without adequate assurances of local self-government.

MPSC / a. Unqualified application of IV-3-2 would violate the mutual consent requirement.

RESPONSE: We have no disagreement on this point. It is our intention that Congress retain authority, the exercise of which would be inconsistent with the mutual consent requirement. We view the mutual consent requirement as a clear limitation on Congressional authority under IV-3-2.

MPSC / b. Unqualified application of IV-3-2 would mean Congress could enact legislation affecting matters of purely local concern.

RESPONSE: This is correct, except, of course, for those matters which would come under the mutual consent requirement.

MPSC / c. Unless the status agreement provides that federal authority does not extend to internal affairs, local self-government for the Marianas will not be assured.

RESPONSE: In light of the mutual consent requirement to which we have already tentatively agreed and <sup>our traditional P.C.P.</sup> ~~the customary~~ forbearance of the Congress from interfering in the local affairs of territories, we believe the Marianas have adequate assurances of local self-government.

Conclusion:

As I have just indicated, our difficulty with your proposal that the authority of the U. S. Congress with respect to the Marianas be limited to that which it would have were the Marianas a state is not due to any legal shortcomings in the proposal. Our difficulty is

political in nature. For us to agree to your statehood-model proposal would be to create a status for the Marianas which is <sup>materially</sup> different ~~in kind~~ from that enjoyed by any other United States territory of commonwealth.

This is the crux of our objection to your proposal. We have said for the last two years, and we believe you understand, that we cannot agree to restrict the power of Congress vis-a-vis the Marianas to any <sup>appreciable</sup> greater extent than we, and the Congress, are willing to limit that authority vis-a-vis all other United States dependencies. Our consultations within the Executive Branch and with the appropriate Congressional Committees have indicated that your proposal to restrict the authority of Congress to that which it would have were the Marianas a state, in addition to whatever restrictions may be imposed under the tentatively agreed to mutual consent requirement, goes beyond this limit. We simply cannot create for the Marianas a new status that would be <sup>so</sup> superior to that of all other U.S. territories.

We understand your desire for assurances that the Congress will not interfere in your internal affairs. As I said earlier we believe that you have a most important practical and political assurance in this regard in the history of Congressional forbearance from such interference with respect to other territories. Furthermore, we have said that we are prepared to discuss with you whatever specific legal assurances you believe are truly necessary in the context of the mutual consent requirement.

We believe that this combination of assurances can satisfactorily deal with your reasonable concerns over federal interference in your internal affairs and, at the same time, stay within the limits of what is acceptable to Congress. We look forward to hearing from you regarding those fundamental aspects of our future relationship which you believe ought to be modifiable only by mutual consent.