Statement of Mr. James Wilson - United States State Department Representative - December 10, 1973

As Ambassador Williams has just indicated, last May we tentatively agreed that the fundamental provisions of the agreement creating the new political status of the Marianas would not be modifiable except by mutual consent. It is a tentative agreement, but it is a very basic agreement in the whole concept of our future relationships.

In the paper which we have just reviewed, you proposed that in addition to this, at least as we understand it, the United States federal authority in the Marianas should be further limited to that which would obtain were the Marianas a state. For reasons which I will get into in a moment, we do have quite a few real difficulties with this latest proposition. Let me say now, though, that we do not regard your generalized fear of congressional interference in your internal affairs as being very well founded in the light of the history of federal treatment of Puerto Rico and the Territories. It just does not stand up, particularly in the light of recent history. In our view, your concern for this is as a practical matter somewhat academic.... a series of fears which are not borne out in fact or in practice.

But to the extent that you are still concerned about the United States Congress of the federal government unilateraly tampering with specific fundamental aspects of your future relationships with us, we are certainly willing here and now, as the Ambassador has indicated, to try to deal with them under the mutual consent requirement. But what we can't do politically is to give you a blanket exemption to the full extent given the 50 states of the Union. That would put you, in our view, in too much of a preferred position vis a vis Puerto Rico and the Territories. Let me explain this perhaps by going down the list of the individual points which are raised in your paper and perhaps this will become a little bit clearer to you.

As we have analyzed it, the first proposition which you have put to us is that the authority of Congress under Article 4, Section 3, Clause 2, is not necessarily plenary; that is to say all encompassing, but may be limited in a manner which does not conflict with the United States Constitution. Let me say right off the bat that, from a legal point of view and a matter of law, we have really no argument with your proposition. Except, of course, we can't say with certainty what the courts will say about restrictions we may impose within this agreement on Congress authority under Section 432. But we have consistently

said for the last two years that the process by which the people of the Marianas will approve this agreement would constitute a sovereign act of self determination, and we also recognize that the authority of the United States in the Marianas, after the termination of the trusteeship, will be subject to the limitations which we have set forth in the agreement, once it is agreed to. Therefore, it strikes us as very clear that Congress authority vis a vis the Marianas can be effectively limited in this agreement and this in our view should be enforceable in the courts, but, obviously, we can't guarantee this until it's actually been tested in the courts.

The second proposition is that the United States' sovereignty over the Marianas can co-exist with a limited application of Section 432. Again, I think we can agree with you as a matter of law that the authority of the United States in the Marianas can be restricted within limits without bringing into question the sovereign nature of the United States authority. Too large a limitation, however, particularly an ill-defined blanket limitation could, in our view, give rise to legal questions of residual sovereignty, which we wish to do our very best to avoid by making any limitations quite specific. The agreement, in other words, should in our opinion serve to vest full authority in the federal government except for the specific limitations

set forth in the mutual consent provisions, and also the exception of the announced intention of the federal government to forbear from the exercise of its authority generally in internal affairs by allowing a maximum self government in the new commonwealth of the Marianas, but I think it is important to note that the federal government would have the authority except where there are specific limitations in our view.

The third proposition that you have advanced is that the trusteeship agreement and the U.N. Charter require that the Marianas achieve self government in the matter set forth in your proposal. This one does give us some problems. In our view, the question of whether the Marianas are self governing due to customary congressional forbearance from interference in their local affairs or because of an expressed prohibition against any such interference is really an internal question, which it strikes us is really of no legitimate concern to the United Nations.

The fourth proposition in your paper has essentially three parts, as we read it. This has to do with the idea that the unqualified application of 432 could leave the Marianas without adequate assurances of local self government. I should say in the first place that we, of course, are not really talking about an unqualified application of 432; we are talking about

one which would include by definition limitations. But your first sub-proposition, as we read it, says that unqualified application of 432 would undercut the mutual consent requirement. Here we have really no disagreement. It is not our intention that Congress retain the authority to exercise which would be inconsistent with the mutual consent requirement. We view that the mutual consent requirement is a clear limitation on the Congress authority under 432.

Secondly, you said that the unqualified application of 432 would mean that Congress could enact legislation affecting matters of purely local concern. The response to this, I think, is that, yes it's correct, except, of course, for those matters which are excepted under the mutual consent requirements. Again, this is a point which is academic in a sense, though we in fact qualify the authority of Congress in specific areas.

Thirdly, you suggested that unless the status agreement provides the federal authority does not extend to internal affairs, local self government for the Marianas will not be assured. In the light of our mutual consent requirement, to which we have already agreed, and our intention to adhere to the additional federal forbearance from interference in local affairs of the territories, we really believe that the Marianas do have

adequate assurances of local self government. The system is geared to this, as the Ambassador indicated a moment ago. There are areas here, which in addition to being subject to legal argument perhaps really have as their basic governing consideration the practice which has been followed by the Congress and the good faith which we propose to put into it in our future relationships. I think, in sum, that our difficulty with your proposal that the authority of the federal government with respect to the Marianas be limited to that which you 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 materially different from that enjoyed by other U.S. Territories or Commonwealths. This is really the crux of our objection. We have said, and we think that you understand on the Commission, that we can't agree to restrict the power of Congress vis a vis the Marianas to any appreciatively 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 Congressional Committees have indicated that your proposal to restrict the authority of Congress to what it would have were the Marianas a state, in

addition to whatever restrictions may be imposed under the mutual consent requirement, goes beyond this limit. We simply cannot create for the Marianas a new status that would be so superior to that of all the other U.S. Territories. As the Ambassador said, we understand your desire for assurance that the Congress will not interfere in your internal affairs. We believe that you have a most important practical and political assurance in this regard in the history of Congressional forbearance. Furthermore, we have said we are prepared to discuss with you and would welcome your views on specific legal assurances that you believe are truly necessary in the context of the mutual consent requirement. We stand ready to hear your suggestions on this. We believe that the combination of assurances 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 the United States Congress. We really do look forward to hearing from you regarding those fundamental aspects of our future relationships that you believe ought to be modified only by mutual consent. We have talked about some of them. We are anxious to hear from you what others of these would be.