

July 2, 1974

NOTES ON MUTUAL CONSENT LISTS

I. We have reviewed your list, which as we understand it consists of the following nine areas:

1. Provisions relating to the establishment of the Commonwealth (essentially Covenant § 101);
2. The mutual consent provision itself;
3. Provisions granting people in the Marianas the option of U. S. nationality rather than U. S. citizenship;
4. Provisions granting the Marianas the right to be governed by its own constitution;
5. Provisions prohibiting the United States from amending the local constitution, or reviewing (other than in judicial proceedings) amendments thereto;
6. Provisions assuring local control of local courts;
7. Provisions making portions of the U. S. Constitution applicable in the Marianas;
8. Provisions granting the local government authority to restrict land alienation; and
9. Provisions placing safeguards against the exercise of the power of eminent domain.

We are in basic agreement that these areas should be subject to mutual consent.

II. One critical area not clearly on your list which we think should be, since it goes to the heart of the relationship: provisions dealing with local government authority (CA § 205(a); Cov. §§ 307-09) and U. S. authority (CA §207(a); Cov. § 102). To some extent these may already be covered by your suggestion that provisions granting the Marianas the right to be governed by its

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own constitution without U. S. review of amendments and assuring local control of local courts be subject to mutual consent.

Another important area is CA § 201(a), dealing with the notions that the status agreement governs the relationship between the Marianas and the U. S., and that it is mutually binding (i.e., can't be changed until termination and then only in accordance with its terms). These points may very well be included in your list anyway, but very important to us and vital to relationship.

III. Two areas of concern where we need more explanation of your position:

A. Citizenship -- What is source of prohibition against alteration of CA § 303 dealing with citizenship of persons born in Marianas after termination? Also, consider symbolic importance.

B. Phase II -- What do you mean "an enforceable commitment"?

IV. Our review tells us we are ready to remove from our list the following (all references to CA):

- § 201(b) re agreement not affecting trusteeship responsibilities,
- § 205(b) re supremacy of U. S. Constitution, Laws and Commonwealth Agreement,
- § 206 re U. S. authority over foreign and defense affairs,
- § 211 re oaths to support (not execute) U. S. law,
- § 305 re authority of local courts to naturalize,
- § 306 re definition of domicile,
- § 606 re tax free municipal bonds,
- § 612 re coverover of federal taxes,
- § 1203 re coming into effect of Commonwealth (if there is sufficient specificity in agreement about timing).

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V. We will continue to review in light of discussions. In many areas, a provision is on our list but is not on yours because Covenant doesn't deal with it at all, e.g. justiciability (CA § 210) and delegate (CA § 1101). In these areas and in others where, although both drafts deal with the issue, there are significant differences, we believe decision as to mutual consent should await resolution of differences. In general, we would (a) like your comments, if any, on the matters we have raised, and (b) believe we should then move on to discuss other matters (like CA § 207(a) or applicability of U. S. Constitution and exceptions CA § 208, on both of which it is U. S. move) and return to mutual consent with respect to individual items.

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