

13
5,246

FIFTH ROUND OF MARIANAS TALKS

SECOND WORKING SESSION

DECEMBER 6, 1974

After a short opening statement by Senator Pangelinan, Mr. Howard Willens presented the position of the MPSC with respect to the draft agreement, in particular the various areas of disagreement.

1. Title. While MPSC would prefer the neutral term "Agreement" they accede to the wish of the U.S. to use the word "Covenant". It is their understanding that no legal implication is to be derived from the choice of that term.
2. Section 104. The MPSC understands the position of the U.S. that from a technical point of view this section may be unnecessary. The Commission, however, feels that the section may be useful to identify the allocation of responsibilities, and for the purposes of political education. The MPSC therefor would prefer to keep it.
3. Section 105.
 - a. Power to legislate. Commission considers this to be a high priority item.

To avoid misunderstanding, the requirement that Northern Mariana Islands be specifically mentioned and that there be a compelling national interests (as designed to) come into play only with respect to legislation which Congress could not enact with respect to States. (of Section 105(a)) The purpose is to make it evident that Congress intends to enact legislation with respect to the Northern Mariana Islands which it would not enact with respect to a State.

03- 032591

It is also recognized that under present legislative practices this is not a very practical problem. This consideration, however, should make Congress ^{even} less reluctant to accept [^] this proposal.

Section 105(a) does not impair the Congressional authority to legislate, it is rather in the nature of a ^o firm requirement. It is also prompted by the absence of a non-voting delegate. The MPSC is not wedded to any particular language and suggests alternative formulations by U.S.

NOTE: Can we find any acceptable substitute language?

b. Mutual Consent Requirement. The MPSC would like to separate the mutual consent requirement from the power to legislate. The MPSC agrees that the mutual consent requirement shall apply only to fundamental provisions of the covenant. But it feels that Sections 503, 702, 805 and 806 fall into that category. To some extent this problem is connected with the problem of Washington representation. This issue could be reexamined if the Northern Mariana Islands had a non-voting delegate.

(i) Section 503. This section represents a major compromise and is therefore important to the Commission.

NOTE: Possibly acceptable.

(ii) Section 702. ^(Appropriation Clause) The Commission is very much concerned by the failure of the U.S. to supply a formal opinion in this issue. MPSC must insist on the inclusion of this section in the absence of such opinion. But there may be some accommodation.

NOTE: Find out what kind of formal opinion they want, what kind of language is desired.

(iii) Section 805, land alienation. Commission considers this section fundamental, especially since U.S. wants it mandatory.

(iv) Section 806, Eminent Domain. The MPSC is ready to await the resolution of the substantive differences.

c. Section 105(c). This issue is basically of a substantive ⁽²⁾ nature. MPSC is ready to discuss alternative ways to deal with this problem.

NOTE: What alternatives do they envisage?

4. Section 202. The method of approval of Northern Mariana Islands Constitution. This is considered a high priority item. They are not opposed to the approval of their constitution by Congress but ^{concerned about} ~~with~~ the delays frequently attending such approval. They want to know within a reasonable time whether or not the constitution has been approved, and if not, why not.

With respect to Mr. Wilson's suggestion that the Covenant and the constitution may be before Congress as a package, the MPSC feels that the Constitutional Convention should follow the approval of the Covenant by the Congress.

NOTE: The last point is a change from their earlier position to start at the earliest possible time the process of drafting the constitution. Seek clarification of this point.

5. Section 301(a). There is a drafting problem in this section which will be brought up in the drafting committee.

6. Section 501. The MPSC wants the Northern Mariana Islands to be treated like a state with respect to indictment by grand jury and jury trial.

7. Section 504. Commission on Federal Laws. Here two problems are involved. First, how are the recommendations of the commission to be carried out? This problem has been prompted by experience of Guam where Congress did not act on the recommendation of the commission. This problem can be resolved by the drafting committee, possibly by giving the Northern Mariana Islands greater representation on the Commission.

NOTE: Inquire about such detail. Problem are there enough qualified people in the Northern Mariana Islands to consistite a majority in the Commission. ?

Second problem. U.S. position that Northern Mariana Islands should pay compensation of Northern Mariana Islands members appears to be in the right direction.

8. Section 506. U.S. proposal. Applicability of I&N legislation with respect to immediate relatives of U.S. citizens residing in Northern Mariana Islands prior to extension of I&N legislation to Northern Mariana Islands. MPSC favorably impressed with proposal but have some technical problems. U.S. position, however, does not meet all the problems with which MPSC is concerned.

9. Sections 601 and 602. Income Tax. MPSC is concerned by withdrawal of U.S. from its earlier position. MPSC is willing to examine the problem but is not yet willing to accept the U.S. position on a policy level. Any compromise in this area will be unwillingly made and will require U.S. concessions in other areas.

NOTE: This is a substantive problem.

10. Section 701. Financial Assistance. Standard of Living Clause. The MPSC hopes that satisfactory language can be found. The MPSC

asks merely for only for a statement that the U.S. is willing
to assist the Northern Mariana Islands, ^{not} and that the U.S. is
to bear the ^{entire} ~~extra~~ burden. The MPSC realizes that many U.S. citizens
have a low standard of living. One of the purposes of the standard
of living clause would be to furnish some guidance for the level
of support to be granted after the first multi-year period of
assistance has expired.

NOTE: Try to find some acceptable language.

11. Section 702. Appropriation provision. This is a high
priority item. The interest in securing this language is of
more than academic nature. The MPSC wants a positive commitment,
on which it can rely, that the funds will be forthcoming every
year. If the assurances ^{are immediate} ~~as pointed out by U.S. are that ironclad,~~
then the appropriation would be a mere ministerial act, and
Congress should not be concerned about the inclusion of that
language in Covenant.

MPSC is concerned about effect of absence of appropriation
provision ^{on the} ~~in~~ self-government of Northern Mariana Islands. Want
to avoid need for high Northern Mariana Islands officials to have
to appear every year before appropriations committees to justify
the appropriation of the annual direct grant assistance payments.

Absence of non-voting delegate aggravates this problem.

NOTE: 1. We have to point out to MPSC that expenditures of funds by Northern
Mariana Islands would be subject to audit by Guam Comptroller.

2. Can satisfactory language be found, e.g., commitment in lieu of authori-
zation and appropriation?

Incidentally what is the practice of appropriation committees with respect
to the justification of authorized funds?

032595

12. Section 703(a).

NOTE: Discuss problem presented by second sentence, i.e., that it may be in violation of law.

13. Sections 802 and 803. Acquisition of property by U.S. These items can be deferred to land discussion. But should get on agenda as soon as possible. Willing in principle to discuss a technical agreement. MPSC, however, feels that many of the provisions now in Section 803 should ^{remain} be in the Covenant ~~itself~~. Land arrangements are also critically important.

NOTE: Do not discuss ^{on} Chapter VIII ~~in~~ drafting committee level.

14. Section 804. Civilian Land Requirements. MPSC prepared to agree that there should be further discussion of this problem. Certain provisions of the Isely Field joint use agreement requires modification.

15. Section 805. Land Alienation. MPSC feels that the question whether or not restriction on land alienation should be mandatory ought to be determined in the constitution rather than in the Covenant. In any event, if the Covenant should make the restriction mandatory, a time limit should be placed on them, so that the problem can be reexamined after a protective period ^{at least} /HM suggestion. Restrictions must remain mandatory ^{at least} as long as U.S. provides direct grant assistance under Section 701, 702, 704(d) and 902.7 The long lease problem will require further examination.

The MPSC is not persuaded about restrictions to be imposed upon the acquisition of public lands. There are language problems.

This issue would best be left to local solution. The problem is not as important as the land alienation issue and should be in a separate section. If Section 805 is mandatory it should be subject to the mutual consent requirement.

16. Section 806. Eminent Domain. This is a high priority item. MPSC appreciates the U.S. constitutional safeguards protecting the individual against arbitrary taking. The concern of the MPSC is to protect the interest of the community at large, to insure the availability of land, and to make certain that land will be taken only when absolutely necessary. Their draft does not limit the powers of Congress which can authorize any taking by enacting ^{specific} legislation to that effect. The MPSC would limit only the eminent domain powers of the Executive and then only in those instances where the Government of the Northern Mariana Islands does not consent to a taking, and even in that case Congress can authorize it by passing specific legislation to that effect. These additional safeguards are required by the lack of official Washington representation.

17. Section 901. Washington Representation. This is a high priority item. Northern Mariana Islands want equality in treatment with Guam and Virgin Islands when their population reaches 50,000. Northern Mariana Islands will need all the protection asked for above if they lack a non-voting delegate in Washington. Reference apparently is made to Sections 105(b), 702, 806. HM quare: Why is Washington representation so important if it will not come into play in the Northern Mariana Islands until they have a population o

032597

2.
50,000.27 This matter is of highly political importance.

NOTE: Do not discuss. Try to select an appropriate title for the Washington representative.

18. Section 904. Participation in international organizations. Concerned by U.S. withdrawal from prior position. Matter of particular concern to members of Commission. With respect to second sentence of Section 904(c) cannot understand objection to this provision because it is conditioned on approval of the Secretary of State.

19. Section 1001. Plebiscite. Further exploration required of question who will be qualified to vote in plebiscite.

20. Section 1003. Termination. Northern Mariana Islands would like to have trusteeship terminated as soon as possible. Concerned about tie up of termination with reaching agreement with COM. Fear that such agreement may be delayed beyond 1981. He suggested the possibility of making commitment outside ^{Statu, A} Stalin agreement.

21. Section 1007. Separate Administration. Would agree to deletion if a commitment could be made in some other form. The MPSC is willing to explore these issues further and Willens has further in instructions.

Ambassador Williams pointed out that these areas where U.S. is in sympathy with the MPSC. Political realities, however, have to be taken into consideration. And Congress is reluctant to give Northern Mariana Islands preferential status. MPSC should remember that all agreements are tentative until the Covenant is signed. Executive stands by position to support non-voting delegate, but this is a matter within the prerogative of Congress.

032598