

12
5

DELIVERED BY AMBASSADOR WILLIAMS
2:30 P.M., December 9, 1974
MARIANAS V WORKING SESSION #3

U.S. Comments on Draft Covenant in Response to MPSC
Presentation of 6 December 1974

I. Introduction.

- As I have already said the U.S. appreciated the careful and clear presentation by the MPSC's counsel last Friday on the draft agreement (now Covenant).
- The Commission's views on the important questions remaining to be resolved were given careful consideration over the weekend.
- Also members of the joint drafting committee, namely Mr. Helfer and Mr. Marcuse met on Saturday and progress was made in reaching ad referendum agreements on a number of technical yet important points.
- Some further drafting issues remain but I would now like to turn to our response to the Commission's presentation and to the most important substantive issues in the draft text of the covenant.

II. Comments on the Covenant

1. The Title

- Appreciate MPSC willingness to adopt "covenant" as the title
- biblical connection--wonder if your protection re 702 (authorization and appropriation) isn't to be found in the scriptures with respect to what happens to those who break the covenant, i.e. incurring the full wrath of Jehovah.
- In any case we, as you will learn, are willing to give you more earthly assurances of our good intentions and for the moment all I want to say is that we are grateful that we have cleared the first hurdle--the name.

16-401308

2. Article I, Section 104

- Understand and accept views expressed by your counsel.
- Willing to drop the suggestion that Section 104 unnecessary.

3. Article I, Section 105

- MPSC subsection (a).

- With specific regard to MPSC proposed subsection (a) problem with suggestion that in cases of legislation not of general application to states Northern Marianas must be specifically named and that there be a special finding of national interest.

- As stated last Thursday U.S. Congress is not receptive to this exception and particularly cold to the idea of special national interest finding. The U.S. must object to provisions that imply it would legislate with respect to the Northern Mariana Islands for reasons other than compelling national interests.

- We would be willing to try to get the Congress to accept a simple formula which requires naming of Northern Marianas in particular cases but with caveat that if further Congressional inquiries produce active opposition we will have to drop it.

- Suggest following. Add to first sentence of U.S. version of Section 105. ---"so long as legislation not of general applicability to the states specifically provides for its application to the Northern Marianas".

- MPSC subsection (b)

- Suggest we review question of appropriateness of application of mutual consent provisions to specific sections--beyond the agreed first four (Articles I, II, III and Section 501)--as we

come to the particular sections in question.

-- however would like to say at this point that we are somewhat confused by the suggestion that a non-voting delegate might help reduce the list to be included under the mutual consent provision.

--- MPSC proposal for non-voting delegate would not come into force until population reached 50,000. Even with high population growth rate this could take several years.

--- Protection lies in precedent and practice of U.S. Congress. Little or no probability that Congress will unilaterally modify covenant or pass legislation arbitrarily that would deliberately discriminate against the Northern Marianas.

-- And during period before you reach 50,000 (if the Congress were to agree) when you would not have a non-voting delegate, you would have to rely on the alertness and the competence of your Washington resident representative to protect your interests and to see that you are not being inadvertently left out or discriminated against.

- MPSC subsection (c)

-- Hope this matter can be taken care of by joint drafting

committee--suitable language for inclusion in negotiating history.

4. Article II, Section 202/1003. Approval of Northern Mariana Islands Constitution

- Recognize importance of this section to MPSC and sympathize with its concern, which we share, that there be no unnecessary delays in approval process for new Marianas Constitution.
- May be misunderstanding of what we said on subject of timing of constitution in relation to approval process for covenant.
 - Agree completely that covenant approval should precede development of a constitution.
 - May want to start process of developing constitution before final steps taken in approval of covenant by U.S., but certainly agree it is best to have finished covenant before constitutional convention makes its final decisions.
 - There could, however, be hitches in this proposed schedule.
- Problem is that while executive branch perfectly willing to see President alone certify lack of conflict with Covenant we have no way of guaranteeing that Congress won't insist on seeing Constitution as well and believe it unwise to risk Congressional disapproval of entire Covenant on these grounds by putting in specific provision which would preclude their review.
- Therefore believe wisest thing to do is to leave out MPSC proposal. Will look for some ways before the Covenant is signed to provide for rapid approval by the President.
- We will have to consult further with the Congress on this problem.

5. Section 204. Oath of Office

- We concur with MPSC counsel's request to make effective date of this section (on oath of office) the establishment of the new Government of the Northern Mariana Islands.

6. Section 301(a) and (b). Qualifications for Citizenship

- U.S. concurs with MPSC suggestion for deletion of "reside or" in subsection (a) and change "to vote in elections for the Marianas District Legislature" in (b).

7. Section 501. Application of U.S. Constitution

- Concur also with MPSC counsel's views on this section expressed in drafting committee regarding grand juries and trial by jury.

8. Section 503. Inapplicable Federal Laws

- Question is applicability of mutual consent provisions.
- Note that this is an essentially temporary provision at best since applies mandatorally only through transition period.
- So far as MPSC particular concerns go with respect to immigration and naturalization legislation, we note the Marianas people would not be citizens during transition anyway and Marianas would not yet be a territory or commonwealth so it is highly unlikely this will even come up during this period or that Congress would act to apply I&N legislation to Marianas before end of trusteeship at earliest.
- Note that we are trying to make this section as inconspicuous as possible so as to avoid potentially damaging confrontation on the application of specific politically sensitive laws, and that making it subject to mutual consent will serve to focus intense Congressional

and public interest on it (The Jones Act).

9. Section 504. Joint Commission on Federal Laws

- Appreciate MPSC concerns regarding this.
- Prepared to agree with MPSC proposal that there be four Marianas representatives and three U.S. on Commission to be appointed by the President if MPSC willing to drop bracketed language (on automatically adopting the commission's report if Congress fails to act within one year.)

10. Section 506. Immigration and Naturalization Law

- Agree there may be a few remaining technical problems but unable to concur with MPSC views regarding extended coverage beyond "immediate relative" problem, and not prepared suggest any modifications in I&N legislation for Marianas at this time.
- Therefore must hold to U.S. version subject to working out technical changes within drafting committee in light of final INS comments.

11. Sections 601 and 602. Internal Revenues

- Will await further word from MPSC on this score.
- Meanwhile agree with MPSC counsel views in drafting committee on Saturday that subsection 601(c) U.S. or (e) MPSC should be included in any final version provided words "and this Covenant" are added at end of sentence.

12. Section 605. Social Security

- Concur with MPSC counsel suggestion in drafting committee on Saturday that language be drafted providing that changes in Social Security

laws by Government of the Northern Mariana Islands during transition may not be inconsistent with U.S. system, which will clear up any remaining differences on this section.

13. Section 701. Economic Development--Standard of Living

- Suggest as substitute for bracketed language the following after "assist": "the Government of the Northern Mariana Islands in its efforts to achieve a progressively higher standard of living for its people as part of the American economic community and to develop", etc.

14. Sections 702 & 704(b)&(d). "Appropriation Clause"

- This is another matter where executive branch fully sympathetic with MPSC concerns, but matter is one lying within prerogative of Congress not executive branch, and Congress has indicated it is not prepared to make exception for Marianas to its general rules on annual appropriations.
- MPSC also needs to consider practical problem of how cost of living factor might be reflected on annual basis without process of annual adjustment in appropriations.
- U.S. would be willing to make "commitment" or "guarantee" explicit in language of 702 and prepared to propose such language. We would suggest for your consideration the following amended language:
"Section 702. Approval of this Covenant by the United States will constitute a commitment and pledge of the full faith and credit of the United States for the payment, as well as an authorization for the appropriation of the following guaranteed annual levels of direct grant assistance to the Government of the Northern Mariana

Islands for each of the seven years following the effective date of this Section:"

- Also prepared as indicated earlier to put language in negotiating history to effect that failure to appropriate funds on time would constitute dispute under Article IX and could go to courts pursuant to terms of that article if not satisfactorily resolved in reasonable period of time. This would have same effect as MPSC suggestion of last Friday.
- Believe this should take care of mutual consent problem and we would therefore hold to position that 702 not be included on mutual consent list.

15. Section 704(c). Constant Dollars

- Prepared to accept MPSC Counsel suggestion of last Saturday that FY 1975 constant dollars be figured from beginning of FY 1975.

16. Section 804

- Would appreciate knowing what changes in Isely joint use agreement the MPSC proposes.

17. Section 805. Land Alienation

- The U.S. is prepared to add this section to mutual consent list if MPSC prepared make provision mandatory.
- Agree with counsel there are many problems of definition and detail involved but believe most of these should be handled by the Government of the Northern Mariana Islands for itself in its own legislation and any basic questions of definition might be covered in negotiating history.

- Drafting committee can look at latter.
- Question of last bracketed sentence still remains, and would appreciate further MPSC views. (Limitation on holdings)

18. Section 806. Eminent Domain

- Agree to your proposal that we defer mutual consent aspects until substantive issues resolved.
- Would like to see following modifications in language of 806(a):
 - a. delete "will respect" and substitute "respects"
 - b. delete "by careful and reasonable selection".
- With regard to MPSC version of 806(c) have reexamined language and remain unable to accept suggestion that the Congress must act specifically to approve the exercise of eminent domain in the Marianas or that any time limits or reversions should be provided for.
- Consider that legal procedures and due process that have provided protection for every other American through long trial process should be also adequate to protect Marianas interests. We prepared to review with Commission procedures and due process.
- Arbitrary action by government agencies nowadays is simply impossible.
- It would seem to us whether or not Washington representative casts a vote in these circumstances is essentially irrelevant.

19. Section 901. Washington Representation

- Must say again that we are sympathetic to MPSC viewpoint but Congress has indicated solid opposition and this goes for every single member thus far consulted.

- Matter strictly one of Congressional prerogatives.
- U.S. therefore cannot go along with putting anything on this in the Covenant if we know in advance Congress will reject entire Covenant because of this one issue.
- Possible alternative is for Marianas to ask to share Guam representative for time being (which could possibly be an arrangement additive to having own Marianas resident representative who would work closely with Guam representative).
- All of this (the process of getting non-voting delegate) likely to take some time, as it did in case of some other territories. So results should not be prejudged.
- Recognize MPSC feels strongly on this and if it so desires would be willing to arrange special meeting in Washington for representatives of MPSC and members of U.S. Congress on the subject as soon as feasible to all parties considered.
- On Secretary of State vs. Secretary of Interior willing to change to former, subject to a reservation that further consultation may be necessary.

20. Section 903. Consultation

- MPSC counsel suggestion in drafting committee on Saturday that the effective date to time of approval of Covenant be changed is acceptable to the U.S.

21. Section 904(c). Membership in Regional and International Organizations

- Regret answer this time is no.

22. Section 1001. Approval--Plebiscite

- MPSC proposed change is acceptable re voter qualification, with possible minor technical modifications in language.

23. Section 1003

- Wish to correct for record an impression on part of MPSC that U.S. may be dragging its feet in bringing trusteeship to a close.
- JCFS, not U.S., suggested long transition period. U.S. proposed 1980. JCFS - 1981 to 2000.
- U.S. has also taken consistent public position in U.N. and elsewhere that the trusteeship will only be terminated for all districts simultaneously, and it is not prepared to modify this position.
- Believe Marianas will be provided for under Phase II in any event, and will certainly enjoy almost all privileges of commonwealth during that time except becoming citizens.

24. Section 1007

- Will be glad to discuss under heading of transition and separate administration.