

12
5,2,3,4,6,9

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.

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 mandatorially 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