

03

MAA

AdeGraffenried:1/23/75:kkc

MEMORANDUM FOR:

The Chairman, Marianas Political Status Commission
The President's Personal Representative for Micronesian
Status Negotiations

Subject: Report of the Joint Drafting Committee on the negotiating
history

Pursuant to decisions taken in December during the fifth series
of negotiations in Saipan on the future political status of the
Marianas, the joint Marianas-U.S. Drafting Committee has met in
Washington, D.C. and has undertaken to clarify the import of certain
provisions of the Covenant. We submit our report herewith.

The results of our discussions are reflected in the attached
draft negotiating history which is recommended by the joint drafting
committee for your consideration. The draft serves to record our
tentative agreement on a number of substantive matters. We recommend
that it be approved by both delegations and incorporated into the
official record.

Howard P. Willens
Senior Representative
MPSC Drafting Committee

James M. Wilson, Jr.
Senior Representative
U.S. Drafting Committee

[Handwritten scribbles and signatures]

REPORT OF THE DRAFTING COMMITTEE

Section 101. ~~As used in Article I, as elsewhere,~~ Inasmuch as the term "Northern Mariana Islands" ~~in a geographic sense refers to the area described in Section 100/67(b).~~ is used in Article I in the sense defined in Section 1006 its definition cannot be changed except by mutual consent.

It is the intent of the parties that ~~as in the case of the States~~ Section 103. The Government of the Northern Mariana Islands will be considered ^(Government)

not be an agency or instrumentality of the United States. Reference to federal

Section 104. Specific reference to the powers mentioned in this

~~section is meant to be illustrative and is not intended to derogate overall powers vested in the United States under Section 101.~~ s 105

Section 105. ^(As intended) Prior to ~~the~~ ^(Agreement) termination of the Trusteeship the consent of the Northern Mariana Islands envisaged by this Section ^{may not} will not be given without the consent of the ~~legislature.~~ ^(legislature)

Section 202.

[This section states the extent of the authority of the United States with respect to the Constitution of the Northern Mariana Islands, except for the power of the President to delay the effectiveness of certain provisions of the local Constitution until termination of the Trusteeship. Thus the United States will not have the power directly or indirectly to alter the Constitution of the Northern Mariana Islands after initial approval, except insofar as parts of the Constitution may be passed on by federal courts in particular cases.]

Add northern 4-3-2

The authority of the federal courts to determine whether or not the Constitution of the Northern Mariana Islands and subsequent

amendments thereto are consistent with the provisions of the Constitution, treaties, and laws of the United States applicable to the Northern Mariana Islands is not intended to be exclusive so as to preempt the power of the courts of the Northern Mariana Islands to make such determinations in appropriate cases. . . .

Section 203(c).

It is the intention of the parties that ^{the}
~~The~~/provision, ^sthat ^{stating} the legislative powers of the Northern Mariana Islands will extend "to all rightful subjects of legislation" ~~will~~ be broadly interpreted, consistent with Section 102 to mean ~~that~~ the power of the legislature will be limited only by the terms of the Covenant, the provisions of the Constitution, treaties and laws of the United States applicable to the Northern Mariana Islands, and the Constitution of the Northern Mariana Islands.

Section 401. The establishment of a separate district court for the Northern Mariana Islands does not preclude the appointment of the District Judge, United States Attorney and United States Marshal for Guam to hold the corresponding offices in the Northern Mariana Islands at the same time. Congress, in its discretion may also provide ~~in analogy to Section 27 of the Organic Act of the Virgin Islands, 48 U.S.C. 1617;~~ that the United States Attorney and the

United States Marshal for the Northern Mariana Islands are authorized or required to perform, at the request of the Government of the Northern Mariana Islands, certain functions related to the execution of the local laws. [~~The Executive Branch of the United States Government will recommend that the Congress enact legislation to accomplish this goal.~~]

Section 402.

[In view of some ^{question} confusion which seems to have developed under somewhat similar language in the Guam Organic Act, the negotiating parties consider it appropriate to point out with respect to Subsection (c) that the Legislature of the Northern Mariana Islands is under no obligation to grant any appellate jurisdiction to the District Court for the Northern Mariana Islands. The Legislature may choose at any time and from time to time to establish appellate courts of the Northern Mariana Islands and to eliminate the appellate jurisdiction of the District Court.]

~~[Section 403. Subsection (b) of this Section is intended to make applicable to the District Court for the Northern Mariana Islands a wide variety of procedural and housekeeping statutes applicable to the District Court of Guam, as well as such statutes as are now applicable with respect to Guam or citizens of Guam including 28 USC § 1332 (diversity jurisdiction in district courts of the United States) and 28 USC § 1738 (dealing with full faith and credit).]~~

~~This Section is intended among other things~~
Section 501. /The purpose of this section is to extend to the people of the Northern Mariana Islands the basic rights of United States citizenship and to make applicable to them certain of the constitutional provisions governing the relationship between the federal

As if the NMIF
were a state

government and the States, [It has no bearing on the authority of the United States to legislate with respect to the Northern Mariana Islands which is governed by Article I.] ~~The extension of certain~~
~~In addition to~~ which will apply of their own force
/provisions of the Constitution of the United States/to the Northern
the following will not
Mariana Islands/~~is without~~ prejudice to the power of Congress to
authorize the Northern Mariana Islands (a) to distribute the member-
ship of its legislature on considerations in addition to population
(section 203); (b) to authorize exceptions to the requirements of
trial by jury or indictment by grand jury (section 501); and (c) to
limit the acquisition of permanent and long-term interests in land
to persons of Northern Mariana Islands ancestry and to regulate the
extent of the holding of formerly public lands (section 805)....

Section 502. General Comments.
interim

The/formula stated in Section 502 is not intended to be the...
exclusive method by which laws of the United States are or can be...
made applicable to the Northern Mariana Islands. The Congress will
have power consistent with ~~the~~ ^{Covenant} Agreement to alter the manner and
extent to which laws covered by the formula apply to the Northern
Mariana Islands, to make laws not covered by the formula applicable
or to make laws covered by the formula inapplicable. The formula
does not make the Northern Mariana Islands into a territory or posses-
sion of the United States prior to termination. In many instances,
however, the Northern Mariana Islands will be treated as if it were
a territory or possession of the United States prior to termination,

Insert for Section 501.

[The inclusion ^{of omission} ~~or omission~~ of the power to legislate ^{in the} ~~and its exclusion~~ ~~from other~~ specific references to certain provisions of the Constitution is not designed to affect the authority of the United States to legislate with respect to the Northern Mariana Islands.... That power is govern^{ed} ~~ment~~ by Article I. The parties understand that those provisions of the Constitution of the United States which will apply to the Northern Mariana Islands of their own force include Article IV, Section 3, Clause 2, which will become applicable to the Northern Mariana Islands upon termination of the Trusteeship subject to the provisions of Section 105, and other provisions of the Constitution applicable of their own force to the territories of the United States.]

41 5187

for many laws applicable to Guam because it is a territory or possession will become applicable to the Northern Mariana Islands.

~~The phrase "applicable to Guam" or "applicable to the Trust Territory of the Pacific Islands" in this Section is used ^{to mean} ~~in the~~ sense of "applicable within ^{as well as applicable} ~~or~~ with respect to" the geographic areas mentioned or the people who reside in or who are citizens of those geographic areas. ~~It is understood, for example, that laws providing for the extradition of persons from one State or Territory to another State or Territory (see 18 USC § 3182), will be applicable with respect to the Northern Mariana Islands in the same manner and to the same extent as they are applicable with respect to Guam or a State. Thus a State or another Territory could be obligated to extradite a person to the Northern Mariana Islands, just as the Northern Mariana Islands would be under an obligation in appropriate cases to extradite a person to a State or Territory. Of course, certain laws which will be made applicable to the Northern Mariana Islands under this Section speak, by their own terms, only to citizens of the United States. Such laws would apply only to citizens of the United States in the Northern Mariana Islands, and would not apply to citizens of the Trust Territory until under the provisions of Article III of the Agreement, such citizens become citizens of the United States upon termination of the Trusteeship Agreement.]~~~~

Subsection (a). The term "the federal banking laws" in Subsection (a) has particular reference to Sections 13, 25 and 25(a) of the Federal Reserve Act, as amended (12 U.S.C. 466, and 601-632, respectively) and Section 5191 of the Revised Statutes (12 U.S.C. 143).

3188

~~It is intended that national banks would have authority to operate as is granted to them under the federal statutes to operate in the several states.~~

Section 503(a). ² ~~[It is understood by the negotiating parties that the immigration laws of the Trust Territory of the Pacific Islands will continue to be applicable to the Northern Mariana Islands under Section 506 after the new Government of the Northern Mariana Islands under the local Constitution comes into existence.]~~ It is understood that the laws of the Trust Territory of the Pacific Islands as modified by the Government of the Northern Mariana Islands pursuant to its authority which relate to the subjects addressed in this subsection will continue to be effective after termination of the Trusteeship Agreement, except to the extent that they are modified by federal law after termination.

Section 504. The provision that the United States will bear the cost for the work of the Commission does not mean that the United States will pay the salary of the four Commissioners who are domiciled in the Northern Mariana Islands.

Section 506. → new from UNMCOSE

Section 601(a). The revenue provisions of the Covenant are not designed to render the Federal Unemployment Tax and the benefits derived therefrom applicable to the Northern Mariana Islands. ~~[In this regard the treatment of the Northern Mariana Islands will be identical to that of Guam.]~~

[Section 603(b). The authority of the Government of the Northern Mariana Islands to impose ^{taxes and} customs duties will not extend to property brought into the Northern Mariana Islands by the United States or by military personnel of the United States for their own personal or official use.]

Section 603(c). The ~~negotiating~~ parties believe that the treatment provided for in this Subsection is consistent with the obligations of the United States under the General Agreement on Tariffs and Trade. However, ~~this~~ section is not intended to conflict with United States international obligations and does not require that the United States take any action which would be inconsistent with such obligations. ^S should such a conflict arise, ~~the~~ The United States will, ~~if necessary~~, seek appropriate waivers or modifications of its international obligations.

Section 603(d). The term "a developing territory" as used in this subsection is intended to refer to the June 25, 1971 General Agreement on Tariffs and Trade waiver regarding preferential tariff treatment of goods from developing countries and territories, and to other similar benefits which may be available to the Northern Mariana Islands.

Section 702. It was not considered necessary to include Section 702 among the provisions listed in Section 105 which may be modified only by mutual consent. The reason for ~~the~~ ^{this} omission ~~of~~ ^{is that} Section 702 is of a transitional nature, and will be limited to seven years following the establishment of the new Government. In addition a failure to appropriate funds as required by that section would constitute a dispute under Article IX which could be submitted to the courts ^{that} pursuant to the provisions of ~~this~~ Article.

Section 802. (Helper to consider deletion of this notation per U.S. desires; review will consider Article 1 S8 cl.7 re: U.S. Congress authority over forts and magazines).

Section 805. The parties intend that it will be the responsibility of the Government of the Northern Mariana Islands to implement the provisions of this Section. In particular, the parties understand that the local Government will define the operative terms in this Section, including such terms as "long-term interest in real property", "acquisition", and "persons of Northern Mariana Islands descent".

Section 806(a). The use of any property or interest acquired by the United States pursuant to this Subsection will not be limited to the public purposes for which it was originally obtained. (Helper The United States will follow the principles contained in this... /to review regarding necessity of establishing that U.S. will not exercise eminent domain powers/prior to end of Trusteeship Agreement/ and only with regard to the safeguards mentioned in 806(a) after the end of the Trusteeship Agreement.)

Section 1001(a). ~~The voter qualification set forth are the minimum eligibility requirements.~~

NOTES FOR ADMIN

The parties note that...
Section 1002. It is the present intention of the United States that it presently intends for all the districts no later than has stated publicly, to terminate the Trusteeship by 1981.

→ 901. ~~DCSP~~ New Vote Def.

3191

Other Provisions.

It is the intention of the negotiating parties that the invalidity of one section of the Agreement not affect the validity of other provisions.

3192