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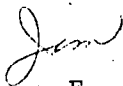
Mr. Howard P. Willens
Wilmer, Cutler & Pickering
1666 K Street N. W.
Washington, D. C. 20006

Dear Howard:

Enclosed please find some comments which were apparently originated by Oscar Rasa and possibly some other members of the Territorial Party. The concerns voiced within will probably be the subject matter of some discussion during the next session.

I have confirmed reservations for you and Jim at the Continental Hotel for February 2 through 14, 1975. I look forward to seeing you then.

Sincerely yours,


James E. White
Attorney at Law

Enclosures

3236

ARTICLE IX

NORTHERN MARIANAS REPRESENTATION AND CONSULTATION

Section 901 provides for the possible appointment of a Resident Representative to the United States.

Recommendation: Amend to "non-voting delegate" delete word "appointment". Amend "selection" to "election", "governor" to "chief executive" and delete words: "after termination of the Trusteeship Agreement."

Section 903 seems to be saying that obligations and undertakings by the Marianas are enforceable in the federal courts, but, by omission, also seems to be saying that the obligations and undertakings of the United States Government in the Covenant are not enforceable in the federal courts.

Recommendation: thorough research is needed, possibly deletion.

ARTICLE X

APPROVAL, EFFECTIVE DATE, AND DEFINITIONS

Section 1001 allows for approval by 50% plus 1 vote but does not permit termination even if 100% vote for it.

Recommendation: change "majority" to "2/3 majority of the eligible registered votes."

If the United States will not hesitate to breach that agreement where it is answerable to the United Nations, it certainly will not hesitate to breach an agreement where it is accountable to only 10,000 people.

Section 105 will give the United States the privilege to enact legislation for the Marianas, with certain limitations, where only certain sections of the Covenant may be modified with consent from both the United States and Marianas. This concerns basically, applicability of the United States Constitution and ownership of Marianas lands, the Marianas Constitution, citizenship and nationality, and terms of the political relationship. In other words, it appears that some very basic provisions of the agreement can be changed later on, including, for example, reintergration with Guam, allowing outsiders ownership of Marianas lands, etc. "With the consent of the Government of the Marianas"...sounds safe, but this may not be to the advantage of Marianas people as soon as statesiders outnumber Chamorros, a very likely possibility under this arrangement in a very short period of time.

Recommendation: Since statesiders cannot be barred from immigrating to the Marianas Commonwealth, this is very dangerous since they could represent the majority population in a short time period. This provision, therefore, must be deleted, or, rewritten to state that no fundamental provisions can ever be changed to alter this agreement.

ARTICLE II

CONSTITUTION OF THE NORTHERN MARIANAS ISLANDS

Section 201 permits the people of the Marianas to formulate and approve a Constitution, and amend it later on. However, it ignores limitations and confines set under Section 102 of Article I, and is, therefore, misleading.

Recommendation: delete "pursuant to the procedures provided therein."

Add: "which will be the supreme law of the land."

Section 202 deals with the consistency of the Constitution as it relates to the Covenant, United States Laws, Treaties, etc. Nothing is said if the United States rejects the Marianas Constitution and an impasse occurs, which could likely occur since many Marianas leaders do not understand the significance of the Covenant or its long range impact of the future of the Marianas and limitations that it imposes. This can also be interpreted as virtual veto power over the Marianas, initially by the President, and later on by the federal courts.

Recommendation: delete "on basis of" add: only with respect to."

Amend: "Laws of United States to be applicable" to "which are currently applicable." Line B: delete "the Constitution subsequent" amendment.

Section 203b precludes the possibility of having a form of government other than one modeled after the United States System, change "Governor: to "Chief Executive."

Section 203c has potentially frightening consequences. It could permit apportionment of the legislature on basis other than the one-man, one-vote principle in the United States Constitution. In theory, this could permit

a majority to discriminate against a minority, for example, as far as representation is concerned.

Recommendation: this portion pertaining to "appropriate considerations" should be deleted.

Section 204 says that all government employees must swear allegiance to the Covenant, etc.

Recommendation: No one should swear allegiance to anything they do not understand fully. Or, what happens if someone refuses; does he lose his job?

Recommendation: swear allegiance to Marianas first; U.S. second. If cases of conflict, the first takes precedence.

ARTICLE III

CITIZENSHIP AND NATIONALITY -

Section 301 seems to provide that a person born in the Northern Marianas but who is not domiciled there when the Covenant is approved will not become a U.S. citizen.

Recommendation: change "section" to "covenant" in all parts of section 300 A, B, C, etc.

Section 301b says a Trust Territory citizen living in the Northern Marianas when the Covenant is approved must have: a) domiciled here 5 years and b) have been registered to vote in a municipal or district election to be entitled to U.S. citizenship.

Recommendation: set registration in a Congress of Micronesia election as the standard to avoid what appears to be discrimination here.

Section 301c seems to make it easier for a foreigner domiciled in the Marianas to become a U.S. citizen than for a Trust Territory citizen from another district.

Recommendation: delete any residency requirement, or, have the same requirement for all.

Section 303: Amendment: grant automatic U.S. citizenship to all persons born in Marianas where atleast one (1) parent is a U.S. citizen or national.

ARTICLE IV

JUDICIAL AUTHORITY

Section 401 makes the Marianas part of the judicial circuit of Guam. As a completely different and separate political entity, there is no reason for this. North Dakota courts are separate from South Dakota courts.

Recommendation: establish a separate judicial system for the No. Marianas. Otherwise, this does not seem to be consistent with whatever "internal self-government: means. Taken another way, all of Article IV gives the U.S. unlimited judicial authority in the Marianas.

ARTICLE V

APPLICABILITY OF LAWS (U.S.)

A constitutional lawyer must study this part. However, re: 502a, the Mi
Micronesian Claims Act will apply as it does in the Trust Territory of the
Pacific Islands.

Recommendation: in addition to federal services applicable to the Marianas, the Micronesian Claims Act should be amended to pay 100% of claims filed in the Marianas, and not 16% as presently being done in the Trust Territory of the Pacific Islands, therefore, delete: "...as it applies to the Trust Territory of the Pacific Islands." Also amend parts of this section that states "as they apply to Guam/Virgin Islands" to "several states of the United States."

Section 503a (1) permits unlimited immigration (see Sec. 506) of U.S. citizens to the Marianas. This section must be deleted to guarantee the Marianas people control of their internal affairs in the future.

Section 503a (3) says the U.S. minimum wage will not apply to the Marianas. This must be amended to say it will apply.

ARTICLE VI

REVENUE AND TAXATION PROVISIONS

Section 601a models a proposed Marianas tax like to Guam's arrangement.

Recommendation: delete "under the provisions of Section 1421i of title 48, U.S. Code: to read: "or until such time as the Government of the Northern Marianas enacts its own local territorial income tax laws."

Section 603c would subject the Marianas to the same treatment re: imports into U.S. as Guam.

Recommendation: delete "Guam", add: "any of the several territories or possessions of the United States."

Section 604a re: excise taxes.

Recommendation: (same as 603c).

ARTICLE VII

U.S. FINANCIAL ASSISTANCE

(Basically, this section does not guarantee financial assistance before and after the initial 7 year period. Nor does the Marianas have a reciprocal right to terminate the covenant in the event the United States reduces or eliminates its financial assistance.)

Section 702 speaks of an "authorization" only following the 7 years period.

Recommendation: delete "authorization"; amend "section" to read: "Covenant" at end of 702.

Section 702a, b, separates government operations from capit l improvement funds.

Recommendation: seek a block grant with both put together, meaning 702a will read: \$12.25 million for both operations and CIP projects. Sections pertaining to Rota and Tinian funds are acceptable.

Section 704b again speaks of an "authorization" for appropriation.

Recommendation: delete "authorization".

Section 704d does not guarantee U. S. aid after 7 year period.

Recommendation: "until Congress appropriates a different amount or otherwise, provided by law" must be amended to read: "at the same annual level."

ARTICLE VIII

PROPERTY

Section 801 would distribute Trust Territory of the Pacific Islands equally among the 6 districts.

Recommend: this be accomplished by an appropriation from the U.S. to prevent the burden being carried by the Marianas. In other words, the las clause in this section would read: the property or "physical assets would become an outright grant to the Government of the Northern Marianas." Section 802b is vague. Delete it.

Section 803 mentions no re-negotiation after 50 years.

Recommend: "...at the end of first terms price for lands will be subject to re-negotiation."

Section 803d implies that \$2 million of the Marianas grant will be spent for this park.

Recommendation: this be done with separate U.S. grant, a separate appropriation, or read: "made available by the U.S. through a separate appropriation..."

Section 805 attempts to preserve Marianas land for ownership by persons of No. Marianas ancestry which is probably unconstitutional.

Recommendation: let it as is, but delete "until 25 years" and "may thereafter..."

Section 806 gives the U.S. the power of eminent domain.

Recommendation: delete entire section except to say: "The power of eminent domain resides exclusively in the hands of the Government of the Northern Marianas Any Additional U.S. land requirements are subject to negotiation."

Handwritten notes:
Kara
Dec 1974
Dec 2, 1974
late 1971
a Jan-Feb
1975

Handwritten numbers:
03
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GRIEVANCES AND RECOMMENDATION

Section 101: Recommendation: delete "under the sovereignty of

Section 102 says the Commonwealth Covenant, the United State Constitution, and all United States Treaties and Laws will rule over any proposed Marianas Constitution. In most democracies, a constitution is the supreme law of the land.

Recommendation: the provision must be deleted and a Marianas Constitution must declare itself supreme. Sovereignty must reside in the Marianas people.

Section 103 says local self-government, in accordance with the Marianas Constitution, will govern internal affairs. Yet, how much self-government is possible if a Constitution is governed by a Covenant, U.S. Constitution, treaties, laws, etc. This provision is nonsense. Again, sovereignty must reside in the Marianas people.

Recommendation: it must be deleted. Authentic internal self-government is not possible under this arrangement.

Section 104 gives the United States complete responsibility for foreign affairs and defense matters. However, it says nothing to guarantee the people of the Marianas that these responsibilities will be executed in the interests of the Marianas people. The recent Law of the Sea Conference proved that Micronesian (or Marianas) interests will not necessarily be accommodated. At that meeting, United States delegates renigged on an earlier written committment to the Micronesian delegation over certain issues, which the Congress of Micronesia considered a breach of the United Nations Trusteeship Agreement.