

DRAFT/DLSchiele/cg/11/28/75

MEMORANDUM

To : Ambassador F. Haydn Williams
From : David L. Schiele
Subject : Percy Amendment to H.J.Res. 549

Senator Percy circulated a "Dear Colleague" letter on November 20 in an attempt to gain support for an amendment to H.J.Res. 549. The wording of the proposed amendment is ambiguous but Percy's letter clearly states that its purpose "is to defer approval of the Marianas Covenant until the Administration submits to Congress an agreement or agreements covering the future political status of the whole Trust Territory of the Pacific Islands." The letter also makes it clear that it is Percy's intent to encourage the Northern Marianas to seek unity with Guam or with the other districts of the Trust Territory, either of which "would be preferable to creating a separate U.S. Commonwealth in the far Western Pacific for the 14,000 Northern Marianas people." The proposed amendment would, however, permit early separate administration of the Mariana Islands District.

Effective date of approval: The present language in H.J.Res. 549, as amended, is the same as introduced by the Administration and would provide for unqualified approval of the Covenant. If passed by the Congress in this form, the Covenant would become effective upon signature by the President and its terms would be immediately implemented. The

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proposed Percy amendment states that approval of the Covenant would "take effect upon the date of approval by the Congress of an agreement or agreements between the United States and representatives of the people of the Trust Territory of the Pacific Islands covering the future political status of the entire Trust Territory in a form that is consistent with United States international responsibilities and national interest." This language is unacceptable from the Administration point of view primarily because it would indefinitely postpone approval of the Covenant and make the Northern Marianas hostage to the negotiators for the rest of the Trust Territory (the JCFS or any alternate body). The insertion of a date certain, such as January 1, 1978, for Covenant approval would substantially improve the amendment from our perspective. This would eliminate the additional negotiating leverage which the amendment would hand the JCFS negotiators and assure the people of the Marianas that their political status would be resolved within a reasonable time frame.

Unity with Guam or the other Districts of the TTPI: The final sentence of the Percy amendment is that "Nothing in this joint resolution is intended by Congress to prevent or discourage the people of the Northern Marianas from achieving self-determination either in union with the territory of Guam or with the people of the Marshall and Caroline Islands." This language would appear to be without effect, as it only points out options that the Northern Mariana Islands have had all along. It does not require any action and would not seem to push the Northern

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Marianas toward any change from their expressed desire for Commonwealth as expressed in the Covenant. Percy's letter makes it clear, however, that he hopes the people of the Northern Marianas will change their determination before the effective date of Covenant approval and that they will opt either for unity with Guam or the rest of Micronesia. The real danger in the amendment is not that the people of the Northern Marianas might be reminded of options they have always had, but that they might feel they are being forced to take an option other than the one they have already selected. It is inevitable that this language will make them feel they are being nudged in that direction, but the impact would be minimized by inclusion of a date certain for approval of the Covenant, as recommended above. Despite Percy's intent, the language would not appear damaging in view of the determination of the Administration to build a mutually beneficial relationship between the Northern Marianas and the United States based on the long term interests of both parties.

Separate Administration: The Administration has legal authority to administer the Mariana Islands District separately from the rest of the Trust Territory if it so chooses, but separation prior to approval of the Covenant would have an extremely adverse impact in Congress and be unwise. In the absence of firm indications to the contrary, we would have to tentatively interpret Senate action against the Covenant or a decision to postpone consideration of the Covenant as a sign that the

Congress is not prepared to approve a close and permanent relationship with the Northern Marianas. In such a situation, administrative separation of the Mariana Islands District would appear to be a defiance of Congressional will and an attempt by the Administration to create a de facto situation in which the Congress would eventually have no choice but to acquiesce in "Administration plans" for the Marianas. The Percy amendment would avoid this problem by specifically stating that "nothing in this joint resolution is intended by the Congress to prevent or delay the institution of separate administration for the Northern Marianas or further progress toward self-government by any or all portions of the Trust Territory." This language would clear the way for separate administration and would make it possible for the installation of a constitutional government in the Northern Mariana Islands along the lines described in the Covenant. The Percy amendment would provide specific Congressional approval of the creation of a situation which would make it virtually impossible to do anything but eventually approve the Covenant should that remain the desire of the leaders and people of the Northern Marianas. [In] addition of the phrase "and constitutional government" after "Nothing...is intended...to prevent or delay the institution of self-government" would further strengthen our position.

Other Problems: Several other aspects of the amendment are troublesome and would require modification to make it acceptable. The reference to agreement or agreements "covering the future political

status of the entire Trust Territory", should be changed to read the "rest of the Trust Territory" in order to clarify the fact that agreement has already been reached with the Mariana Islands District and that it is only agreement with the other Districts that is outstanding. The language calling for approval in a "form that is consistent with United States international responsibilities" should be amended to read "in a manner consistent with United States obligations under the United Nations Charter and Trusteeship Agreement." This is necessary to add precision to the language as well as to specify and limit United States international responsibilities in this context. Failure to amend the language could leave it open to question, for instance, whether international obligations include resolutions passed by the United Nations General Assembly, which should not be permitted to change our obligations under the Charter and the Trusteeship Agreement.

Impact of the Amendment:

A. Favorable aspects

-- The Percy amendment would clear the way for separation of the Marianas and installation of a separate administration on terms consistent with the Covenant. This would create a situation in which it would be virtually impossible for the Congress not to eventually accept the Covenant or some other very similar document. It would virtually assure a close relationship with the United States separate from the rest of the Trust Territory if that remains the desire of the people of the Northern

Mariana Islands.

-- Delay in implementation of the financial provisions of the Covenant would eliminate the basis for charges in the United Nations and elsewhere of discriminatory treatment of various districts of the Trust Territory.

B. Unfavorable aspects.

-- Postponing approval of the Covenant, even while allowing separate administration, would deny the Northern Marianas the financial benefits negotiated under Article VII.

-- Delay would create uncertainty in the Marianas.

-- Delay would make the Northern Marianas hostage to the negotiators for the rest of the Trust Territory.

-- Delay would undermine the credibility of the United States negotiators.

Conclusion: The Percy amendment as drafted is unacceptable to the Administration, but it could be made acceptable. If properly amended, the amendment would still create discomfort for the Administration and for the people of the Northern Marianas, but it would also provide the Administration with significant advantages, not the least of which would be a reasonable assurance of eventual approval of the Covenant. The negative impact of the amendment would be substantially reduced if amended along the lines recommended above. The only disadvantage which would not be significantly reduced or eliminated is the short term loss of the agreed financial benefits to the Northern Marianas,

and even this is not all bad from the Administration point of view. The dilemma which must be resolved is that only by agreeing to support the amendment is the Administration likely to gain any of the changes which could make it acceptable, but that support for the amendment, even if modified, could be plausibly seen by the Northern Mariana Islands leaders as a breach of faith.

Attachment