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A. Richard Kasdan, GC

September 13, 1976

Ellen W. Reath, GC

Extension of Title I Programs to the Northern Mariana Islands

You have requested a memorandum as to whether the Covenant with the Marianas, having been approved by Congress and signed by the President, operates as a treaty which automatically becomes the law of the land, or whether an amendment to Title I of DVSA will be necessary to extend domestic programs to the Marianas. It is my conclusion that the Covenant does not operate as a treaty. Since the language of the Covenant is somewhat unclear, I would agree with the June 28 memo from the Solicitor's Office at Interior that an amendment to DVSA will be needed.

According to the Vienna Convention on the Law of Treaties, a codification of international law, only a political entity which is self-governing and independent can be a party to a treaty, The Modern Law of Treaties, 1974, p. 19. This is also the philosophy of the Supreme Court of the United States as expressed in Worcester v. Georgia, 6 Pet. 515, 581 (1885). Since the Marianas are not at present a self-governing sovereign, they do not have the power to make a treaty with the United States. While the Covenant is an international agreement, it does not have the constitutional effect of a treaty which would become the supreme law of the land. U.S. Const., Art. VI.*

The Covenant was passed by the Congress, however, and is now contained in P.L. 94-241. As such, it is the law of the land. The difficulty comes in interpreting the Covenant's language concerning extension of Federal programs to the Marianas.

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*A treaty must also be approved by a 2/3 vote of the Senate. I do not know what the vote was on the Covenant.

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Sec. 703(a) states that "the United States will make available to the Northern Mariana Islands the full range of Federal programs and services available to the territories of the United States." This Section does not take effect until a date proclaimed by the President sometime within six months after a constitution for the Marianas has been approved. The Interior Department estimates that this date will be January 1, 1978. Even when Sec. 703(a) becomes effective, however, it does not by its language operate automatically to extend federal benefits. It merely makes benefits "available" to the Marianas to the same extent they are currently available to other territories. Since Title I programs are now authorized in other United States territories, they would also be "available" to the Marianas.

Adrian de Graffenreid, legal advisor to the Office for Micronesian Status Negotiations (343-9144), explained how his office interprets Sec. 703(b). There are two commissions in the Marianas currently studying the advisability of "accepting" Federal programs which will become "available" under the Covenant. It was Mr. de Graffenreid's opinion that once the various Federal programs were selected, Congress would amend the laws under which those programs are administered so that benefits would be extended to the Marianas. I do not know if the commissions have decided to "accept" benefits under DVSA.

The legislative history of Sec. 703(b) sheds no light on how Congress intended to make Federal benefits available. Because the language is not clearly self-effectuating, I would recommend an amendment to Title I in order to establish ACTION's authority to operate domestic programs in the Marianas.

cc:
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