

N. Mariani
file

4/8/77

Honorable Bert Lance
Director, Office of Management
and Budget
Washington, D. C. 20503

Dear Mr. Lance:

This is in reply to your request for Department of Defense comments on the Constitution of the future Commonwealth of the Northern Marianas which was transmitted to the President by the Secretary of Interior on 21 April 1977.

This Constitution marks a critical step toward full internal self-government by the people of the Northern Marianas under the existing United Nations Trusteeship and as a future incorporated territory of the United States. Since the Covenant to establish a Commonwealth of the Northern Marianas (Public Law 94-241) also authorized the long-term lease of 18,182 acres of land for United States defense purposes, we are interested particularly in the way this Constitution will bear upon civil-military relations in the years ahead.

In the past two months, we have referred several questions related to the Constitution to the Department of Justice for response. Most of these questions have been answered to our satisfaction. Those that have not and some additional questions that have arisen during this review are addressed in the paragraphs which follow.

As to quartering (Article I, section 7), rather than following the United States Constitution literally, it would appear more appropriate to the present time and situation to use the term "military personnel" instead of "soldier" and "emergency" instead of "war". This issue is raised because the term "war" is presently ambiguous and secondly because with respect to this matter it may be possible that the United States Constitution need not restrict these acts.

Shelton
US Const

Section 8 of Article I provides for trial by jury which shall be in the discretion of the legislature in criminal or civil cases. It is not clear whether this means that there is no guaranteed constitutional right to

Ys NO
a trial by jury and if this is inconsistent with the United States Constitution.

Article I, section 9 and the section by section analysis dealing with a clean and healthful environment are silent regarding public or private courses of action. This could be remedied by adding at the end "environment which shall be protected by law." In addition, it is not clear what is meant by the analysis that this section shall not alter the "usual" legal principles of sovereign immunity.

Section 10 of Article I relates to a "fundamental constitutional right to individual privacy." The analysis indicates that this provision extends to governmental or private conduct but again it is ambiguous as to how it is to be implemented and the section by section analysis goes to great lengths to show what the nature of the so-called "right" is. We query in any event the application of such a constitutional provision regarding private conduct as well as the ambiguity of this provision.

Section 1 of Article II relates to a "fundamental constitutional right to individual privacy." The analysis indicates that this provision extends to governmental or private conduct but again it is ambiguous as to how it is to be implemented and the section by section analysis goes to great lengths to show what the nature of the so-called "right" is. We query in any event the application of such a constitutional provision regarding private conduct as well as the ambiguity of this provision.

Section I of Article II addresses limitations of the legislature to pass laws and raises questions whether this is not also limited by international law, the Trusteeship Agreement while it remains in effect, and relevant constitutional law of the United States.

Article XI of the Constitution and the section by section analysis address in considerable detail the manner in which public land will be returned to the Marianas Public Land Corporation, but there is no reference to or discussion of the "Technical Agreement regarding use of land to be leased by the United States in the Northern Marianas Islands." Approval of the Covenant by U. S. Public Law 94-241 should cause the Technical Agreement to enter into force, but it is not clear whether this Public Law takes precedent over the Constitution on matters pertaining to the acquisition and use of land for United States defense purposes.

deleted
-
con

Y

With respect to land matters, Article XI also indicates that submerged lands off the coast of the Commonwealth of the Northern Marianas belong collectively to the people of the Commonwealth who are of Northern Marianas descent. The agreement to lease 18,182 acres of land to the United States for defense purposes should be resolved to include also the United States' right to use submerged land adjacent to these lease areas without additional cost and as necessary to provide for base security and operations by any United States forces temporarily or permanently stationed there.

Article XIV (Section 3) addresses places and things of cultural and historical significance to be protected and preserved for public access as provided by law. As written, this Section could be interpreted to impose an obligation to open such military bases as might be established in the future to the public on a regular basis if such bases include things of cultural or historical significance.

One final question is not addressed by the Constitution but should be during the review process, that is, adoption of the Constitution itself might be construed to constitute an act of self-determination and therefore automatically put an end to the United States trusteeship over the Northern Marianas. This is not a course of action which the Department of Defense desires to pursue, but one which the people of the Northern Marianas may want to explore if we are unable to resolve the future political status of other districts within a reasonable timeframe. The answer to this question also influences the timing of our approach to the United States Congress for an appropriation of \$19,520,600 necessary to lease the land described in Article VIII of the Covenant. This land, of course, will replace existing military retention areas which, under the Covenant and the Constitution, must be returned no later than trusteeship termination.

Sincerely,

Deanne C. Siemer