

UNITED STATES CONGRESS
COMMITTEE ON
INTERIOR AND INSULAR AFFAIRS
HOUSE OF REPRESENTATIVES

Oct. 28, 19⁷⁷

Howard:

Just found this clip in my "in" box. Thought you'd want to see it. Guy who wrote it was with TT govt and after Adrian took ~~it~~^{it} he was one of those whom Adrian let go.

Related to above, ACLU guy in NY office called me and asked me to send to him the various documents re No. Marianas covenant, constitution, etc. Said that someone had contacted them re 3 sections of covenant (same 3 referred to by Hall in 6th para) and he wanted to look everything over.

Sent him the stuff along with a note saying that Phil hoped that if the ACLU had any problems with anything relating to above, they'd contact him first and talk to him about them.

Pat Krause

OCT 20 1977

Constitution by default

The writer is a longtime Honolulu resident who until recently served as press officer for the U.S. high commissioner in the Trust Territory. An editorial on related matters is on this page.

By JAMES V. HALL

Sometime around Oct. 25, the Constitution of the Northern Marianas will go into effect — by default. This is certainly an odd way for the United States to make its first territorial acquisition in over 50 years.

The 1975 covenant between the United States and the Northern Marianas Islands states that the constitution "will be deemed to have been approved six months after its submission to the President on behalf of the government of the United States unless earlier approved or disapproved."

The proposed constitution has been in Washington since April of this year and neither the U.S. Congress as a body nor President Carter have approved it and the question that is raised is "Why not?"

WELL IT SEEMS that there are several embarrassing features in the constitution. The three major ones are a non-alienation of land clause (i.e. "The acquisition of real property . . . shall be restricted to persons of Northern Marianas descent"); provisions for a bicameral legislature which ignores the one-man, one-vote dictum (e.g. Tinian Island, population 700, has equal representation in the commonwealth legislature with Saipan Island, population 12,000); and the fact there is no explicit right to trial by jury.

Even though the covenant states that certain provisions of the U.S. Constitution will apply "as if the Northern Mariana Islands were one the several states" including the 6th and 14th amendments, the U.S. negotiators, in their haste to nail down the acquisition of the Marianas for U.S. defense purposes, placed a "catch 22" in the covenant, the fine print of which escaped the members of Congress who approved that document.

That catch (Sect. 501b) states: "The applicability of certain provisions of the Constitution of the United States to the Northern Mariana Islands will be without prejudice to the validity of the power of the Congress of the United States to consent to Sections 203, 506 and 805 and the provision in subsection (a) of this section." Those references are to the sections of the covenant

commentary

"Commentary" offers space to readers who want to express thoughtful, reasoned opinions at greater length than provided by the Letters column, generally, 500 to 700 words. Contributions are welcomed, especially those in disagreement with general prevailing viewpoints. All will be considered, but none can be returned. Each should be typed and bear signature, address and occupation of writer.

pertaining to a bicameral legislature, non-alienation of lands and the absence of the right to a jury trial.

THE WASHINGTON law firm of Wilmer, Cutler and Pickering, which handled both the negotiations and the drafting of the Constitution for the Northern Marianas, are well aware of these defects as they handle the movement of the constitution around Washington. They have been advised by the U.S. Justice Department that Carter "lacks the legal authority" to approve the constitution without concurrence by the U.S. Congress so rather than risk the congressional scrutiny the law firm and apparently the Administration have been content to let the six-months time limit run out and so as to allow the constitution to come into effect without congressional approval.

Several other questions come to mind. First, can the U.S. government negotiate full citizenship rights to a foreign territory and then grant them special exemption to the parts of the U.S. Constitution with which their representatives disagree? This is particularly onerous in regard to the non-alienation of land clause. Guam, a U.S. territory peopled primarily by Chamorros, the major ethnic group of the Northern Marianas, is 75 air miles from Rota, the southernmost of the Northern Mariana Islands. A person from Rota may purchase land in Guam but a Guamanian cannot purchase land in Rota. This restriction applies to U.S. citizens in all the 50 states as well.

Secondly, can the U.S. government conclude a binding arrangement in which the Northern Marianas Islands will become a self-governing commonwealth "in political union with and under the sovereignty of the United States of America" without explicit approval by the U.S. Congress?

And thirdly, will the U.S. Congress stand idly by and let this all happen?