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REPRESENTATION IN WASHINGTON

The Covenant permits the Northern Mariana Islands to have a resident representative in Washington to represent the Northern Marianas people and act generally as a liaison between the Commonwealth government and the United States government. This paper discusses a possible Constitutional provision authorizing such a representative. The first section of the briefing paper sets forth relevant background information for the delegates and discusses some policy considerations that appear pertinent to the creation of this office. The second section of this paper examines the specific issues that should be addressed by the Convention.

I. BACKGROUND AND GENERAL CONSIDERATIONS

A. Relevant Provisions of the Covenant and the United States Constitution

Section 901 of the Covenant provides the authority for the office of resident representative. The complete provision states:

The Constitution or laws of the Northern Mariana Islands may provide for the appointment or election of a Resident Representative to the United States, whose term of office will be two years, unless otherwise determined by local law, and who will be entitled to receive official recognition as such Representative by all of the departments and agencies of the Government of the United States upon presentation through the Department of State of a

certificate of selection from the Governor. The Representative must be a citizen and resident of the Northern Mariana Islands, at least twenty-five years of age, and, after termination of the Trusteeship Agreement, a citizen of the United States.

The United States Constitution does not impose any particular limitations on the Convention in considering the implementation of section 901.^{1/}

B. Background Information

Section 901 of the Covenant continues a tradition begun in 1795 when Tennessee sent two "senators" to Washington to push for action on a bill to admit Tennessee as a state. A century and a half later the Territory of Alaska adopted the "Tennessee Plan," electing two senators and one representative to lobby in Washington for the admission of Alaska as the 49th state.^{2/} Guam has maintained an elected representative in Washington since 1965,^{3/} the Virgin Islands since 1968,^{4/} and American Samoa followed their example in 1971.^{5/}

^{1/} Here, as elsewhere, there are restrictions on action by the Commonwealth arising from generally applicable provisions of the U.S. Constitution. For example, if the Convention provides for an elected Representative, the election must satisfy the equal protection requirements of the Fourteenth Amendment.

^{2/} Office of Guam's Representative in Washington, ANNUAL REPORT p. 1 (1972).

^{3/} Id. at 8.

^{4/} U.S. Department of the Interior, HIGHLIGHTS: OFFICE OF TERRITORIES p. 9 (1969).

^{5/} AMERICAN SAMOA CODE tit. 19, ch. 1, § 2 (1971), as amended, tit. 19, ch. 1, § 2 (Supp. 1975).

In 1972 the United States Congress enacted a law permitting Guam and the Virgin Islands to have non-voting delegates in the United States House of Representatives.^{6/}

Puerto Rico has had a non-voting resident commissioner in the House since 1906, and the District of Columbia elected its first non-voting delegate in 1971.^{7/} Although section 901 does not provide for a non-voting delegate, there is good reason to believe from the experience of Guam and the Virgin Islands that Congress will at some point authorize such an officer for the Northern Marianas Islands.^{8/}

^{6/} 48 U.S.C. § 1171 (1975). Spain ceded Guam to the United States in 1898, and the United States purchased the Virgin Islands from Denmark in 1917. The U.S. Congress, through the passage of organic acts, provided each territory with a formal structure of government. In 1970 the citizens of both territories elected their own governors for the first time. The provision for non-voting delegates reflected Congressional response to "an increasingly mature grasp of their responsibilities" by the people and governments of the territories, and a recognition that "rapidly changing economic and social conditions" required direct representation of these territories in the House of Representatives. S. REP. NO. 92-709, 92d Cong., 2d Sess., pp. 1-2 (1972).

^{7/} A non-voting delegate receives the same compensation, allowances and benefits as a United States congressman. According to the Rules of the House, the delegates have the right to speak in the House and in committees, to introduce legislation, and to vote and acquire seniority in committees. The delegates cannot vote on the floor of the House. RULES OF THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES, NINETY-FOURTH CONGRESS, H.R. DOC. No. 416, 93d Cong., 2d Sess. §§ 603, 631, 741, and 760 (1975).

^{8/} The principal reason given for not granting the Commonwealth representative such status in the Covenant is the small population in the Northern Mariana Islands compared to the population in Guam [86,926] and the Virgin Islands [63,200] at the time those territories were given non-voting delegates. Hearings on S.J. Res. 107 Before the Senate Comm. on Interior and Insular Affairs, 94th Cong., 1st Sess. p. 481 (1975).

In anticipation of the implementation of section 901, the Office of Transition Studies and Planning has appointed a representative to serve in Washington during the transitional period until the Northern Mariana Islands are governing themselves under the provisions of their own Constitution. The representative is meeting with members of Congress and the executive branch in an effort to promote a favorable attitude towards the Northern Mariana Islands. The representative explains the recent political union between the United States and the Northern Mariana Islands, encourages support of the union, acts to ensure adherence to the provisions of the Covenant, advocates extension of United States programs to the Northern Mariana Islands, promotes the passage of new legislation of interest to the Northern Mariana Islands, and seeks to facilitate the process of transition to Commonwealth status.

C. General Considerations

In making decisions with respect to the new representative provided for by the Constitution, the Convention will want to discuss both the representative's functions and relationship with the other agencies of the new Commonwealth government.

One of the representative's important duties will be to monitor the new relationship between the United States and the Commonwealth. The representative must promote coopera-

tion between the two governments and safeguard the Commonwealth's interest in the full measure of self-government authorized by the Covenant.^{9/} This role may require the presentation of Commonwealth views to officials of the United States executive branch and members of Congress and their staffs. It will also require reports to the Commonwealth government with respect to the views of these United States officials regarding the new Commonwealth and any United States proposals affecting the status of the Northern Mariana Islands.

The representative will also have responsibilities in connection with legislation under consideration in the United States Congress. Section 105 of the Covenant permits the United States to:

enact legislation . . . applicable to the Northern Mariana Islands, but if such legislation cannot also be made applicable to the several States the Northern Mariana Islands must be specifically named therein for it to become effective in the Northern Mariana Islands.

One of the representative's duties will be to encourage the executive branch to include reference to the Commonwealth when new legislation of interest to the Northern Marianas is drafted, and to encourage Congress to make such favorable

^{9/} Section 902 of the Covenant provides that "[t]he Government of the United States and the Government of the Northern Mariana Islands will consult regularly on all matters affecting the relationship between them."

legislation specifically applicable to the Commonwealth. It will also be the representative's duty to persuade Congress that legislation opposed by the people of the Northern Marianas should not be made applicable to the Commonwealth.

Third, the representative will carry an important burden in trying to obtain maximum Federal programs and services for the Commonwealth. This will require detailed knowledge of federal programs and grant procedures and diligent (but tactful) lobbying in Washington on behalf of the Commonwealth.

The representative, in addition to official governmental duties, will also meet with business corporations and with members of local chambers of commerce in the United States in order to promote good relations and interest in the Northern Mariana Islands. Less frequently, the representative might contact the Washington representatives of foreign countries in an effort to promote good relations and to foster economic development.

Evaluation of these and other possible functions may affect the Convention's decisions with respect to any Constitutional provision relating to the creation of this office. An effective representative will need to work in close harmony with the executive and legislative branches of the Commonwealth government. In addition, the representative requires the stature and political skills necessary to communicate effectively and to accomplish the objectives of

his office in Washington. As the Convention considers the office of Washington representative, it will also wish to keep in mind how best to accomplish the long-range objective of having a non-voting delegate from the Northern Marianas in Congress.

II. SPECIFIC ISSUES FOR DECISION

Within this general context, the delegates must decide initially whether to have any Constitutional provision authorizing the Washington representative and, if so, what particular aspects of the office should be treated in the Constitution.

A. Desirability of a Constitutional Provision

The Covenant states that the Constitution or laws of the Northern Mariana Islands "may provide for" a resident representative to the United States. Thus, the Convention has the option of omitting any reference to the representative in the Constitution and thereby leaving the matter for legislative resolution.

Ample reasons are apparent for including in the Constitution a provision creating the office of the resident representative in Washington. A constitution should contain the basic framework of governmental institutions through which the authority available to the Commonwealth is exercised. As a symbolic and functional link between the Commonwealth and the United States, the resident representative is a basic part of the new political union between the two governments.

Measured by the standards of Constitution drafting discussed in Briefing Paper No. 1, this office qualifies in importance for express consideration in the Commonwealth Constitution.

There is another more practical reason why the Convention may conclude that a provision on this subject is necessary. If the Constitution omits reference to the representative, the Commonwealth legislature will have the authority to provide for a representative within the Covenant's guidelines. Although it is difficult to imagine any circumstances that might cause the legislature to forego exercising this authority, this is a possibility that should not be ignored. A Constitutional provision, therefore, may provide a desirable preventive measure that will ensure the benefits of Washington representation afforded by the Covenant.

B. Substance of a Constitutional Provision

If the delegates conclude that a Constitutional provision on this topic is desirable, there are two basic options -- a general provision directing the legislature to create the office of resident representative or a specific provision spelling out some of the attributes or requirements of the office.

1. General provision

The Constitution could include a general provision that requires the legislature to provide for a representative. This alternative gives the legislature great flexibility not only in providing initially for the representative, but also in meeting future needs and circumstances. A provision reflecting

this approach might read: "The legislature shall provide for a resident representative to the United States who shall have the powers and responsibilities provided by law." Besides providing flexibility, such a provision eliminates the remote possibility discussed above that the legislature without such express direction in the Constitution might fail to create the office of resident representative.

2. Specific provision

This alternative is available if the Convention decides to address in the Constitution some of the more important aspects of the office of Washington representative, such as the method of selection, the length of term, the qualifications for the office, and the duties of the office. Such specific provisions should be included in the Constitution only if the Convention is convinced that these matters are truly fundamental and should not be left to legislative discretion.

a) Method of selection

The Convention has four principal alternatives with respect to the method of selection of the representative:

- ° appointment by the governor
- ° appointment by the governor with the advice and consent of the legislature
- ° election by the legislature
- ° popular election

There are some advantages and disadvantages to each of these methods of selection. The choice among them by the delegates is largely a function of the Convention's perception of how the resident representative should perform his duties and the political viability of each of these options.

The evident need for close cooperation between the representative and the executive branch of the Commonwealth government can be cited in support of appointment of the representative by the governor. The Commonwealth government will have programs and policies which it seeks to implement with the cooperation of the United States government. Agreement with respect to the goals and objectives to be achieved might enhance the effectiveness of the representative; disagreement between the governor and a representative, especially if made public, might diminish the force of the Commonwealth's representation and, indeed, give the United States government an excuse for inaction. The governor, as principal executor of Commonwealth laws and policies, may be in the best position to appoint a person who would follow the government's policies. The governor might also be in the best position to select the most capable person available for the office, recognizing, of course, that political considerations might also play a role in any such appointment.

Appointment of the representative by the governor with the advice and consent of the legislature (either one or

both houses) provides a more democratic base for the selection of the representative and would limit the governor's discretion in making the choice. It would also be a means of indicating that the representative is responsible to the legislative branch of government as well as the executive branch.

Providing for election of the representative by one or both houses of the legislature would give the representative a more popular base. This would be a fairly unusual way of selecting the holder of such an important non-legislative office and it lacks the advantages connected with appointment by the governor or popular election.

Selecting the representative by popular election might give the representative increased stature, both in the Commonwealth and before the officials and members of the United States government. An elected representative working with people who are also popularly elected might be in the best position to encourage Congress to grant the Commonwealth representative non-voting delegate status. Requiring the representative to win his office by election might also ensure that the representative possesses some of the political skills necessary to perform the duties of the office successfully. Finally, the voters might judge the capabilities of candidates for the office of representative better than the governor or

the legislature, or at the very least, have more confidence in the representative if he is popularly elected. On the other hand, popular election might encourage rivalry between the representative and the governor -- the only two officials likely to be elected on a Commonwealth-wide basis -- at a time when cooperation is crucial. Further, popular election is more costly than the other methods of selection.

Having decided upon a method of selection, the Convention should consider two subsidiary issues: provision for removal of the representative, and provision for filling a vacancy in the office of the representative. The Convention's decisions with respect to these matters will most likely depend on the method of selection preferred by the Convention. Its decisions on these matters should probably parallel its decisions with respect to removal and filling vacancies in similar offices in the executive and legislative branches of government.^{10/}

b) Term of office

The Covenant provides for a two-year term of office "unless otherwise determined by local law."^{11/} The alternatives for the Convention include:

^{10/} Methods of removal and filling vacancies are discussed in BRIEFING PAPER NO. 2: THE EXECUTIVE BRANCH §§ II(A)(4), II(B)(1)d) and in BRIEFING PAPER NO. 3: THE LEGISLATIVE BRANCH, § II(F)(5).

^{11/} COVENANT art. IX, § 901.

- ° a two-year term
- ° a two-year term subject to change by the legislature
- ° a specified term other than two years
- ° a specified term other than two years subject to change by the legislature

Here again, the Convention's decision will depend on its view of the role of the representative. If the Convention seeks to promote cooperation between the governor and the representative, then the Convention might coordinate the representative's term with that of the governor. A longer term of office, such as four years, would give the representative a greater opportunity to pursue and implement long-range plans, would give the office more stability, and would aid the ability of the representative to perform his duties by allowing more time to establish relationships in Washington. The considerations relevant to the length of the representative's term of office are essentially the same as those with respect to the terms of the members of the Commonwealth legislature which must also be discussed by the Convention.^{12/}

Regardless of its views on the appropriate length of the representative's term of office, the Convention may

^{12/} These considerations are discussed in BRIEFING PAPER NO. 3: THE LEGISLATIVE BRANCH, § II(F)(1).

wish to permit the legislature to change the term in the future as experience and circumstances may suggest is appropriate. Providing for such flexibility seems consistent with the Convention's overall objective of reducing the need for future Constitutional amendments to only those subjects considered fundamental by the delegates.

Subsidiary issues with respect to the representative's term of office include the problems of reeligibility and a prohibition on the concurrent holding of any other public office. The reeligibility issue could parallel the Convention's decision with respect to reeligibility of the governor for office. If the Constitution limits the governor's reeligibility, it might also limit the representative's reeligibility.^{13/} On the other hand, the value of experience argues against this kind of restriction.

A prohibition on the concurrent holding of any other public office may be advisable, although perhaps not of constitutional importance. The Convention presumably will make the same decision here as it does with respect to members of the executive and legislative branches.^{14/}

^{13/} The factors affecting the decision on reeligibility are set forth in BRIEFING PAPER NO. 2: THE EXECUTIVE BRANCH, § II(B)(1)(c).

^{14/} A brief discussion of concurrent office-holding is contained in BRIEFING PAPER NO. 2: THE EXECUTIVE BRANCH, § II (B)(1)(e).

c) Qualifications

The Covenant requires the representative to be at least 25 years of age, a citizen and resident of the Northern Mariana Islands, and, after the termination of the Trusteeship Agreement, a citizen of the United States. The alternatives for the Convention are to freeze these as minimum qualifications in the Constitution, to specify more stringent qualifications, or to authorize the legislature to make more stringent requirements. There appear to be no strong arguments for increasing the stringency of these requirements.

d) Duties

The Constitution might include a general statement that the representative will have powers and responsibilities as provided by law. If the Convention wishes to be more specific on this subject, it could identify some of the representative's principal responsibilities in the Constitution. Care must be exercised, however, to ensure that any list of duties cannot be construed as limiting the representative's discretion to respond to unanticipated representational demands in the future or to accept new duties from the legislature that may become necessary or desirable.