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August 14, 1995

BY FAX

Mr. Herman T. Guerrero, Chairman
Post Convention Committee of the
Third Northern Marianas
Constitutional Convention

Dear Mr. Chairman:

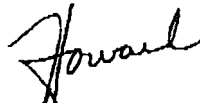
We arrived home successfully late Friday evening and are still trying to get adjusted to the change in time zones and an urban dress code. Attached for your review and distribution is an article regarding the Convention's work with respect to the Commonwealth's claim to submerged lands and marine resources. We will try to send articles on a regular basis over the next few weeks.

We are very interested in knowing what has happened with respect to the scheduling of the amendments for consideration by the voters. Please let us know as soon as you hear.

If you have sent the letter to the Georgetown Law Journal, please send us a copy. Deanne and I would like to visit them either this week or next to discuss a law review article regarding the work of the Convention.

Please give Alicia our warmest regards. We will be talking with you soon.

Sincerely,



Howard P. Willens

Attachment

August 14, 1995

POST CONVENTION SUMMARY

The amendments passed by the Constitutional Convention extend the Commonwealth's claim to submerged lands and marine resources to the full extent available under any legal theory now or in the future. This claim, described in the Analysis of the Convention's amendments, was intended by the delegates to give the Commonwealth the best possible position with respect to future negotiations or enforcement activities about claims to the seas surrounding the islands.

Lt. Governor Jesus Borja, long an advocate of the Commonwealth's position in law of the seas negotiations, asked the Convention early in its proceedings to expand the coverage of the Constitution to support the Commonwealth's claims. Responding to Lt. Governor Borja's request, the delegates on the Committee on Land and Personal Rights, under Chair Jose R. Lifoifoi, came up with broad language to support the Commonwealth's claims.

Two broad claims were made. The first, in Article 11, which covers Commonwealth lands, makes a claim for all submerged lands. The Article 11 language, in Section 1, lays claim to "submerged lands off the coast of the Commonwealth to which the Commonwealth now or hereafter may have a claim of ownership." This article covers the seabed itself, sunken galleons or other treasure resting on the seabed, and mineral resources below the seabed.

The second claim, in Article 14, which covers natural resources, makes a claim for all marine resources. The Article 14 language, in Section 1, claims all "the marine resources in waters off the coast of the Commonwealth over which the Commonwealth now or hereafter may have any jurisdiction." This article covers fish, whales, other marine animal life, and marine plants.

"The key is flexibility," Mr. Lifoifoi explained. "You don't want to get locked in to any particular claims because the law might expand in the future, and then the Commonwealth might be limited in what it could get." The Convention delegates were urged by various lawyers, including some in Washington, D.C. who have represented the Commonwealth from time to time, to adopt detailed language pinning the Commonwealth's claims to the 200-mile EEZ (exclusive economic zone) now the subject of negotiations within the United Nations context. "But what happens if the United Nations disappears in 20 years," said Lifoifoi, "and we are stuck with a concept that no longer works.

The delegates wanted our Constitution to last for a long time, so we opted for language that was as broad as possible."

The Analysis, an explanation of the Constitution adopted by the Convention, makes clear the sweeping intent of the language in these two articles. The Commonwealth's claim "includes the two hundred mile exclusive economic zone, and extends beyond two hundred miles if that becomes available. The claim includes everything available under United Nations provisions for jurisdiction over area waters, and again, will extend beyond the United Nations provisions where available."

Although current negotiations, being supervised by Lt. Governor Borja, are focussed on the 200-mile EEZ, "we looked beyond that," said Lifoifoi. "Maybe we are entitled to 250 miles if the 50-mile bulge protects the migration pattern of tuna that are an important resource for us to protect. We tried hard, in the Convention, to get beyond what people are doing today and to look as far into the future as we could."

The Analysis also anticipates and protects against possible litigation by foreign fishing or mining interests, for example, that might try to have these broad claims declared unconstitutional under the U.S. Constitution. As the value of the seabed and marine resources around the Commonwealth rises, as is expected in coming decades, the possibility of this type of litigation increases. "If there were a successful attack of this kind," explained Howard Willens, counsel for the Convention, "the Commonwealth could lose all of its claims to the seabed and marine resources. For that reason, we included language making clear that the Commonwealth's claims respect its obligations under the U.S. Constitution and laws. This will guide a court in interpreting the broad claims, asserted by the amendments, as consistent with U.S. governing law."

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Date: August 14, 1995

For: Herman T. Guerrero **Facsimile Number:** 011 670 235-0842
Company: **Main Number:** 011 670 235-0843
From: Howard P. Willens, Esq.

COMMENTS:

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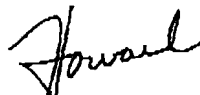
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