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DEPARTMENT OF STATE A/CDC/MR

REVIEWED BY: B.H. BAAS DATE: 3/25/87

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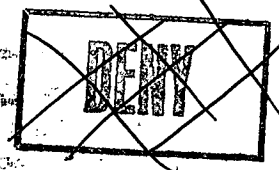
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**CONFIDENTIAL**

January 27, 1967



TO : **UMP - Mr. Gloystein**

FROM : **L/UNA - Robert Starr**

SUBJECT: **TTPI - Future Status**

DEPARTMENT OF STATE A/CDC/MR

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You have asked for our views on various legal issues which may have a bearing upon the formulation of U.S. Government policy with respect to the future status of the TTPI:

1. The status of the TTPI under U.S. law, including the question of the responsibilities of Congress.
2. Alternative forms of political status which must be offered to the inhabitants of the TTPI if the U.S. Government is to discharge its responsibilities under the Trusteeship Agreement. (Are there any alternatives which may not be offered?)\*

Conclusion

Since the United States does not claim "sovereignty" over the trust territory, the territory does not fall within the meaning of the term "territory...belonging to the United States" in Article IV, Section 3, of the Constitution. Nonetheless, Congress has full power to provide for the government of the trust territory in a manner similar to its power to provide for the government of territories which belong to the United States, subject to the terms of the Trusteeship Agreement.

\*It will also be necessary to examine the question of termination of the trusteeship status of the TTPI. We will discuss this matter in a separate memorandum.

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It would be mandatory as a practical matter to seek the approval of Congress for holding a "plebiscite" in the trust territory to ascertain the views of the inhabitants as to the future political status of the territory, since Congressional action would be required to give effect to their wishes. Congressional approval would also be appropriate if it <sup>were</sup> thought desirable to establish a status commission similar to the one established by Congress to look into the question of the status of Puerto Rico.

To comply with the obligations of the United States under the Trusteeship Agreement and to attain the U.S. objective of advancing the political status of the trust territory to the point where the Agreement may be terminated, the United States would wish to permit the inhabitants of the territory to express themselves on the question of future political status through a free and universal vote under U.N. supervision. The territory must be offered independence. It may, however, be offered a choice between independence and self-government in free association with the United States, or between independence and full integration with the United States; it may also be offered a choice among all three alternatives. On the other hand, it would be unsatisfactory to offer a choice which would include any political status of a lesser dignity than independence, free association, or full integration.

Discussion

1. Status of the TPI under United States law.

Under the Trusteeship Agreement with the Security Council (TIAS 1665) which entered into force on July 18, 1947, the former Japanese mandated islands were placed under the trusteeship system of the United Nations (Art. 1), and the United States was designated as

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administering authority (Art. 2). Although the United States does not claim "sovereignty" over the trust territory, the Trusteeship Agreement provides that the United States shall have full powers of administration, legislation, and jurisdiction over the territory subject to the provisions of the Agreement, and that it may apply to the trust territory such laws of the United States as it may deem appropriate to local conditions and requirements (Art. 3).

Article 16 of the Trusteeship Agreement provides that the Agreement "shall come into force when approved by the Security Council of the United Nations and by the Government of the United States after due constitutional process" (emphasis added). The Agreement was approved by the Security Council on April 2, 1947 and was submitted to the U.S. Congress by President Truman on July 3 of that year. In his letter of submission President Truman stated that he had given special consideration to the question whether the Agreement should be submitted to the Congress for action by a joint resolution or by the treaty process. He concluded that either method was constitutionally permissible and that the agreement resulting would "be of the same effect internationally and under the supremacy clause of the Constitution whether advised and consented to by the Senate or whether approval [was] authorized by a joint resolution." In view of the interest of both Houses of Congress in execution of the Agreement, however, the President thought "it would be appropriate for the Congress to take action by a joint resolution in authorizing this Government to bring the agreement into effect". (H.R. Doc. No. 378, 80th Cong., 1st Sess., p. 2) On July 18, 1947, the Congress by joint resolution authorized the President to approve the Trusteeship Agreement on behalf of the United States. (61 Stat. 397)

In his public statement of July 18, 1947, following signing the joint resolution of Congress, the President

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referred to Article 12 of the Trusteeship Agreement, which obligates the United States to "enact such legislation as may be necessary to place the provisions of this agreement in effect in the trust territory," and said: "This is a responsibility which falls upon the Congress of the United States...."

It was originally expected that the Administration would present suggestions to Congress for "organic legislation" for the trust territory. However, the legislation never came to pass. Instead, Congress later passed a law, on July 30, 1954 (68 Stat. 330, 48 U.S.C. §1681(a)), which provided:

"Until Congress shall further provide for the government of the Trust Territory of the Pacific Islands, all executive, legislative and judicial authority...shall be exercised...as the President of the United States may direct or authorize." (emphasis added)

By Executive Order 9875, on July 18, 1947, the President had terminated the military government then in effect and delegated on an interim basis to the Secretary of the Navy authority and responsibility for the civil administration of the trust territory. A series of executive orders issued thereafter resulted in a pattern of dual control over the trust territory by the Secretaries of the Navy and Interior which came to an end on May 7, 1962, when President Kennedy issued an executive order, pursuant to the 1954 law mentioned above, which had the effect of consolidating the civilian administration of all of the trust territory under the Secretary of the Interior (Executive Order 11021).

Since the United States does not claim "sovereignty" over the trust territory, the territory does not fall within Article IV, Section 3, of the U.S. Constitution,

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which relates to Congress' powers over <sup>the</sup> "territory or other property belonging to the United States". However, it is clear from the legislative history described above that successive Administrations have recognized, and Congress has asserted, the full power of Congress to provide for the government of the trust territory, including all executive, legislative, and judicial authority. Consequently, in planning for the future status of the territory, the Administration should assume that the Congress would wish to assert the same prerogatives as it has asserted in the case of "territories" of the United States in the Constitutional sense (e.g., Puerto Rico), subject only to the terms of the Trusteeship Agreement.

From the strictly legal point of view, it would not appear necessary for the Administration to obtain Congressional approval for holding a plebiscite in the trust territory in order to ascertain the views of the inhabitants as to the future political status of the territory. A Fortiori, such Congressional approval would not be necessary for some sort of status commission which would merely study and evaluate possible alternative forms of political status for the territory.

However, from the practical point of view, and particularly in the light of the Puerto Rican precedents, Congress must approve the holding of a plebiscite, since Congressional action would be required to give effect to the wishes of the inhabitants of the territory as expressed in the plebiscite. It would also be appropriate to seek Congressional approval for establishing a status commission similar to the one established by Congress to look into the question of the status of Puerto Rico (P.L. 88-771, February 20, 1964, 78 Stat. 17), assuming such a commission would be desirable.

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**2. What alternatives must be offered?**

This question is governed by the Charter and by the Trusteeship Agreement, although it will be important to take account of subsequent developments in the United Nations.

Article 76(b) of the Charter provides that one of the basic objectives of the trusteeship system is:

"to promote the political...advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the peoples concerned, and as may be provided by the terms of each trusteeship agreement;"

Article 6(1) of the Trusteeship Agreement sets forth the responsibility of the United States in discharging its obligations under Article 76(b) of the Charter in virtually identical terms.

Arguably, the Charter and Trusteeship Agreement do not require that a trust territory be given a choice of options which include independence: it might be argued that, if the inhabitants of the trust territory are merely given the choice of accepting or rejecting "self-government", and if they accept, the United States will have complied with its international obligations. However, such a view would fly in the face of the history over the last 20 years in connection with other trust and non-self-governing territories. In all cases where such territories advanced to the self-governing stage, they were given the opportunity to choose independence. Politically, it would be impossible not to give the same choice to the TTPI, particularly in light of the great stress placed on independence in the various GA resolutions since RES 1514 (XV).

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The paramount objective of the United States in respect of the trust territory is to advance its political status to the point where the Trusteeship Agreement may be terminated. The requirement of bringing the trust territory to "self-government or independence" under Article 6(1) of the Trusteeship Agreement and Article 76(b) of the Charter may be completely fulfilled, and the Agreement terminated, if the trust territory becomes self-governing by: (1) emerging as a sovereign independent State; (2) freely choosing to associate with the United States; (3) integration into the United States on a basis of complete equality between the peoples of the territory and citizens of the United States.\* The United States could bring the trust territory to self-governing status by offering a choice among these three options. It would also seem that the United States could do so by offering a choice between independence and either of the other alternatives. In any case, independence must be one of the choices available. Any choice which did not offer self-government, such as continuation of the trusteeship, would not accomplish our objective and might be political unwise due to the hostility it may encounter in the United Nations.

The question arises whether the United Nations or, in the case of the TTPI, the Trusteeship Council, has the right to supervise elections in the trust territory by which the inhabitants make a choice between the various forms of political status which would remove the territory from the non-self-governing category. Although no such supervision is required under the terms of the Charter or Trusteeship Agreement, it would appear highly desirable, if not indispensable for the United States to permit such supervision if we are to have a strong case

\*See GA RES 1541 (XV), Annex.

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subsequently for terminating our obligations under the Trusteeship Agreement. Plebiscites held in the case of General Assembly trusteeships were all supervised by the United Nations,\* and United Nations supervision of elections has even extended to other non-self-governing territories, e.g., the Cook Islands (GA RES 2064 (XX)).

In this connection it may also be important to consider whether the United Nations may dictate the terms of questions to be put before the inhabitants of a trust territory in the plebiscite. Here again, nothing in the Charter or any trusteeship agreement gives the United Nations or any of its organs such a right. However, the General Assembly has in the past recommended the terms of questions to be put before the inhabitants of a trust territory,\*\* and it is not inconceivable that some members of the Trusteeship Council would seek to have the Council take similar action in the case of the TTPI. Appropriate preparations by the United States could probably ensure that our policy objectives are not adversely affected by such a stratagem.

\*In the case of Tanganyika, where no plebiscite was held and the territory was granted independence, the question of supervision by the United Nations did not arise.

\*\*See GA RES 1569 (XV), on the Question of the Future of Western Samoa.

Clearance: L/UNA - Mr. Reis

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