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REVIEW OF SUMMARY, PARAGRAPH BY PARAGRAPH, BY HOWARD WILLENS

COMMONWEALTH STATUS

There has been agreement on this side that the political status which was outlined in our position paper would be territorial as that term was used in the United States Constitution. The paragraph following that Section 3, with respect to Article 4/Clause 2 that raises some implication regarding self government that we think is so technical and complicated that it requires additional work. We believe that the political status we want can be implimented under those Congressional powers. We do accept the suggestion that we should endeavor to reach an understanding regarding the modification of the agreement by mutual consent and that this can be done consistently with those Congressional powers. It is in the combination of that sentence pluse the subsequent discussion under delf government that we believe the particular issues with respect to self government are riased and are still not resolved between the two delegations.

With respect to the paragraph entitled Defense and Foreign Affairs, we appreciate your (interpolation by Ambassador Williams) Mr. Willens, may I interrups? May we ask questions as you go along? ~~Willens~~: You certainly may, and I don't promise that I or members of this commission all are prepared to anser/your questions. Williams: We understand that. We certainly do understand that. Do you have a question? _____: I am not exactly clear, but taking the subsequent paragraphs along with ~~the~~ our views on 432, are we part in principle? I thought we were together as just described? Willens: I think the combination of Article 4, Mection 3, Clause 2, with your acceptance in principle of our common desire to achieve modifacation through mutual consent we have indeed eliminated one very important difference that was identified last week between the delegations. There still remains some ambiguity here as to the relationship between the

plenary powers of Congress under Article 4 and the desire of this Commission set forth in a position paper for the Commonwealth of the Marianas to have maximum self government in the areas of internal affairs. That is a different issue and one I believe neither side has really singled out specifically for further discussion and detailed analysis and it is indeed a complicated one ~~that~~, but one that is very important to both delegations.

_____ : Would you give us an illustration of that?

Willens: If I may reserve that until we get down to self government.

Williams: Under the first one, Commonwealth, you say that the Commission accepts that the relationship within the context of the term territorial as it is used in the constitution. Does the Commission object to any of the other statements made in the first paragraph?

Willens: The Commission recognizes the sovereignty issue and the sovereignty of the United States. I must tell you that the members of the Commission are very apprehensive about the way in which the term was used but are prepared to recognize it and ^{we say} ~~we say~~ nothing in our position paper that suggests it.--any challenge to the sovereignty of the United States--and we are aware from your statement on the Puerto Rico incident that you are ^{concerned} concerned by the threats to U. S. sovereignty that have been developed by extreme statements by partisans of the Puerto Rican experiment. We think to that extent there are concerns about sovereignty in the foreign affairs that can be dealt with precisely in our agreement or perhaps by reference to the provisions of the Constitution as were discussed with the lawyers on Saturday, or perhaps by some other expressed provision designed to make clear the paramount sovereignty of the United States in the foreign affairs area to the extent that the concern about sovereignty is predicated upon some apprehension ^{about} ~~maybe~~ of the U. S. Congress to legislate in the Marianas. We are into the self government arena and the extent to which one can reconcile a self governing entity within

the American family with the plenary powers of Congress under Article 4

Williams: Would it be fair to say, Mr. Willens, that the concern is more with respect to internal self?

Willens: You are absolutely correct. It is our concern with trying to develop a self governing entity consistent with the attributes that the United Nations has espoused and that...

Williams: The concern is not with the term as used internationally, but...

Willens: I think we can deal with any concern in the international field with expressed provisions and as you know from our position paper there it is some desire of the Marianas to participate in the international and regional organizations consistent with the rules of those organizations,

you have allowed in your paper as an agreeable position, and I think one can only work that out in technical language. I would also state in line with defense and foreign affairs, paragraph 9, that the Commission would like to continue to discuss whether or not there can be some official recognition in the agreement for soliciting views of the Marianas in those areas of international or foreign activities which have a particular effect on the Marianas. We recognized in the discussion last week that consultation has certain connotations that are troublesome to the United States and I think they are prepared to fine language and approaches that would eliminate those concerns and yet still leave on the table for our mutual deliberation the desire of this Commission to try to insure in some official way that our views will be solved on foreign affairs matters when they are directly affected by the _____ the United States. The Commission recognizes that the veto power is an issue and I think they recognize the strong position of the United States on that point.

Now with respect to the paragraph on the self government area, the Commission is concerned by the substance of the self government that would

be permitted the Commonwealth of the Marianas. We recognize from the discussions last week that the U. S. takes the position that the principle difference between a Commonwealth and an unincorporated territory within the American family is that a Commonwealth is entitled to have its one constitution. We believe that is an important distinction also. We are concerned, however, by the suggestion that a constitution which provides for institutions of self government in the Marianas may not be, in fact, as reliable and dependent an instrument as we had hoped and we are interested in exploring the extent that this constitution will, in fact, give the people of the Marianas--the ability to organize their own institutions of Government, to make their own mistakes in areas of internal affairs, and to recognize some acceptance by Congress that upon accepting the Marianas into the American family they are giving the Marianas the authority to govern themselves in connection with ~~xxx~~ their internal affairs. Now, obviously the Marianas are recognized that congress has certain plenary powers under other provisions of the constitution which they exercise in the States. And the Commonwealth, I think, would be prepared to accept all such exercises of congressional power. But that is something that the Commission has not deliberated on in detail and are not prepared to take a position on. But it is in the area beyond that where Congress might see fit to exercise _____ on some peculiar internal matter, such as curriculum in the school system, or the location of a particular hotel, or the review of zoning laws, or a review of any land alienation restraints that the Commission is concerned about. And we think that this should not be viewed as inconsistent with Congressional powers, but we think it is an area that does require ~~is~~ considerably more _____ analysis so that we can, in fact, insure the people of the Marianas that the results of this new political status will be ^a meaningful, self government with respect to our internal affairs.

That is the principle issue, I believe, that was raised by this paragraph. We welcome your position with respect to our proposal in connection with the constitution of the Marianas, and particularly with respect to your position that the matter of sufficiency or insufficiency could be left to the United States Federal Courts. Are there any questions that you have with respect to what I have just said in connection with the self government program?

William: Mr. Willens, I think in principle we certainly agree with what you have said about the desire of the people of the Marianas for meaningful self government. That is our objective too, but I would like to reserve on this statement you have just given us and maybe come back to it.

Willens: I certainly would like also to qualify my comments by saying that the Commission has not reviewed this in detail and indeed I have advised the Commission that this is an areas in which I would like to devote additional time and study before I make any recommendations to them as to how to reconcile their desire ^{for} and full self government in internal matters with the necessities of the situation and the powers of the Congress.

XXX: Could I ask one question, sir? I think I understand it ^{this} but you are not talking now ^{about} with identifying the major structural changes in the mutual consent columns. You are going beyond this 432 as ~~xxx~~ opposed to internal .

Willens? : That is correct. I think there is an area of concern there that requires further work, and I think it is a separate problem for the purposes of our discussions from the mutual consent change in the political status we arrive on. It may be that the two forms are analytically separate that ^{perhaps} should not be made separate, and I would certainly be flexible on that if there is a way to deal with one problem ^{in the context of dealing with} ~~on~~ the mutual consent issue.

Williams: This question of internal self government. To what extent was it discussed last week? Or are you raising in a sense now, not necessarily a new ~~xx~~ question, but you are thinking in terms of analyzing in greater depth than we have so far in this entire question of self government. If so, we are perfectly willing to hear your views and concerns on this matter now or later.

Willens: We believe it was discussed by the Commission certainly before it prepared its position paper, and on page 5 of that position paper regarding political status the Commission stated its position that, excepting the fact that there be a Republican form of Government with three separate branches, the Commission "believes that the people of the Marianas should have full self government and absolute control over their internal affairs. It is essential, for example, that the people be entitled to elect their own Chief Executive and have the other attributes of a self governing people." And it ^{was} ~~is~~ in that connection that we believe that your responsi~~lx~~ve position paper addressed the issue, but only in a glancing way, and on that I do think perhaps can only be dealt in that preliminary way at this particular time. And frankly, we were concerned that the emphasis by the United States Delegation on Article 4, Section 3, was designed to curtail the opportunities for meaningful self government within the Commonwealth of the Marianas, and it is in that respect that I am now trying to _____ on the table a sensitive and technical, but important issue, and I think it requires further reflection and discussion.

_____ : I would like to call on Mr. Wilson.

Wilson: I think perhaps in the light of what you said this morning it is _____ . We did say, if I recall in the discussions, that as far as we are concerned it is our desire to see the Marianas have the maximum possible ~~xxx~~ for self government

_____ . And I think probably it would be most profitable from the standpoint of our mutual understanding if we can talk specifically about such other attributes that you have in mind so that we can really focus on them, and perhaps not try to get so involved in generalities and principles that we lose sight of the immediate _____ .

Willens: That may be possible, but I question whether the Commission is prepared to do that until they have had ^{time} to do further work and ^{discussions} ~~discussion~~ among themselves, and again I think this is something that should not stand in the way of our pursuing other areas of discussion. It is particularly an area in which I think some technical work would be of some assistance to both delegations so that we fully understand the terms that we are using and advise our respective delegations accordingly. But I reserve my personal view as to what would be the best way to proceed and I appreciate any different views.

With respect to the Privileges and Immunities clause, I believe we have stated in our negotiations and sessions that we appreciate the point you made in terms of eliminating the exemptions of the privileges and immunities clause, and I believe that so long as our concerns of land alienation can be _____ appropriate language could be drafted.

Williams: Mr. Willens, I wonder if we could go back to the self government section? Do you have any comments at all ^{or} in the paragraphs dealing with the process of the United States of approving the Marianas Constitution? Also, the one dealing with the question of public courts being _____ to determine sufficiency or insufficiency and so forth?

Willens: In both respects that reflects agreement with the positions advanced by the Commission, and we welcome that agreement. I understand from some of your technical advisors what your concern was with respect to the approval of the U. S. Congress and I appreciate that advice. It is a matter on which we would want to reserve final judgment in light of your experience. But at

the moment that represents the position of the Commission on both points.

Williams: Fine. Before proceeding I still would like to say that we will probably want to come back to that self-government question.

Willens: We will want to come back to it too. The ^{only} question is ^{exactly} when and how.

With respect to the Judicial System, I think ^{this} your paper has accurately summarized the substances of our discussions last week, and the direction ^{in which} that both parties seem ^{to} move. We ^{do} believe that some of the ^{specific} questions regarding local courts and the precise structure of the Federal Court with jurisdiction in the Marianas could be resolved expeditiously after these discussions.

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With respect to the question of ~~Marianas representation~~ in Washington, we are appreciative of the express ^{or} commitment in this paper by the United States to fully support the request of the Commission for a non-voting delegate in Washington. As we discussed last week, this Commission is interested in exploring further with your representatives how the Marianas might secure the benefits of some representation in Congress, assuming that Congress is not receptive to our request for an exclusive non-voting delegate. I believe that is a matter, however, on which we would like to address further attention and perhaps weight a good deal of some subsequent point.

With respect to your identification of the remaining questions, I think that you have highlighted in the first paragraph there, with respect to mutual consent on the very important items which require further work by both delegations. We agree with the suggestion that it will take some very careful drafting to figure out how to handle this problem, but our goal should be to try to identify those fundamental changes in the political status which could be made only through mutual consent. I want to reserve judgment as to whether such an effort to identify specific changes would be sufficient for this Commission or whether ^{indeed} it might want the additional

safeguards of a generalized position that fundamental changes in the political status ^{might} be implemented only through mutual consent. I recognize the uncertainty and ambiguity that might be created by such a revision, but I would like to reserve judgment on that issue until I have a chance to draft specific provisions and had a chance to discuss those provisions with this Commission.

On the subject of....we would assume that any substantial change in the Commonwealth relationship would comprehend changes in the Constitution of the Commonwealth of the Marianas as well as such matters as forced assimilation with Guam or other traumatic or fundamental changes.

In the review procedure area, I believe that this Commission does want to discuss this matter further. We thought the review of this matter last week was helpful, but the Commission, I think, still ~~has~~ perseveres in its position that there should be some official review mechanism set forth in our agreement which will ensure the opportunity and the procedure through which ~~the~~ these concerns could be heard by the United States Government in an official sense. We recognize the fact that problems regarding the political status and other arrangements in connection with the Marianas will be raised on a sporadic and regular basis so that we look forward to a receptive hammering of such problems in Washington as they arise. On the other hand, I think the Commission feels that there would be some realm for re-assurance and greater confidence if they felt there was some officially guaranteed process so that in the event the ~~review~~ ^{employed} mechanism did not work as effectively as they should, then the Marianas would have an opportunity to highlight those inefficiencies in the course of an official review procedure. We are prepared to discuss this further and to work with your representatives in any further drafting or sketching

out of an appropriate review mechanism. In connection with your Roman Numeral III entitled questions requiring questions before the deliberation, you have identified here questions that have all been discussed among the delegates and among the legal representatives/ last weekend. We agree with your summary of those discussions and the necessity to do additional work. We believe that one of the areas of self-government should be added to this list and so that attention to the applicability of the U. S. laws to the Marianas and questions of citizenship and nationality. We propose that the question of self-government for the Marianas be added to this agenda so that additional work can go forward with your suggestion--consistent with whatever guidelines are set forth during the course of these negotiations.

In summary, then, on behalf of the Commission, we believe that your summary of what occurred last week is ^{an} accurate summary. We do believe that the issue of self-government is a critical one to which we must address additional attention. We also have identified in the course of this discussion that the Commission still adheres to some positions which it advanced in its position paper and would like to discuss them further. We welcome the fact that the U. S. has ^{produced} this paper for us and we are hopeful that my comments have been responsive to your request for additional detail as to the ~~extent~~ extent to which this summary does represent an accurate production of our discussions ~~and those~~ and those areas of agreement.

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It is reasonable to express much optimism today that we can reach an agreement which will be fully protective of Micronesian interests.

And yet, we take very seriously the oft-quoted portion of the 1970 Visiting Mission's Report, repeated by this Council on many occasions since then, that the resolution of the issue of future political status must come "sooner, rather than later." There is no future in the status quo; there is only the promise of a continuation of the present, almost entirely unsatisfactory, order. Obviously, there must be change. The United States has demanded the continuation of the status quo in more than a few critical areas.

It is also obvious to many of us on the Congress of Micronesia's Joint Committee on Future Status that, contrary to its stated policy, and contrary to the policy of the United Nations regarding the Trust Territory, the United States has been and in fact is continuing to follow a policy which encourages the political fragmentation of Micronesia. At Koror, the Representatives of the

Marianas Delegation on the Joint Committee transmitted a document to the United States Delegation exploring the possibility of separate negotiations with the United States. We, of course, recognize the desire of the people of the Marianas; the provisions in the United Nations Charter regarding the right of self-government apply equally to all. We do, however, think it extremely presumptuous of the United States to have expressed a willingness to negotiate with the representatives of the people of any single district while bypassing completely the Congress of Micronesia, whose Joint Committee on Future Status is charged with the responsibility of negotiating a political future for all the people of Micronesia. If the people of a single district are to enter separate negotiations, only the Congress has the authority to permit them to do so; any other interpretation would be a violation of the doctrine that the powers of the Congress in the legislative area are superior to those of the District Legislatures. The United States, which certainly was not surprised by this request, could and should have taken the position that until the Congress

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Micronesia specified otherwise, the people of Micronesia would have to be dealt with as a whole. It did not do so. The only logical conclusion is that the United States is attempting to foster disunity in the Trust Territory, and to fragmentize Micronesia.

In preparing my remarks for this Council this year, I chanced to glance back at the statement which I made before the Council almost exactly ten years ago today, when I was previously privileged to be a member of the Trust Territory Delegation. Then, I said:

"I should like, if I may, to express my personal opinion with respect to the granting of independence to the Trust Territory. It is my conviction that the people of the Trust Territory ought not to behave like a child who asks his father to give him something merely because he knows that his elder brother was given the same thing. Likewise, the United Nations ought not to act like the father who, after having given something to his older child, feels he must also give the same thing to his younger child at the same time, merely to please both of them."

Times have certainly changed in the past ten years. During those ten years, Micronesian goals, aspirations have changed; I, too, have changed. If the Trust Territory was a fifteen year old child then, it is a young man of twenty-five today, fully capable to take its place in the world.

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