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DEPARTMENT OF STATE

Washington, D.C. 20520

Marianas status

NSC UNDER SECRETARIES COMMITTEE

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NSC-U/SM 86T

April 10, 1973

TO: The Deputy Secretary of Defense
The Assistant to the President for National Security Affairs
The Director of Central Intelligence
The Chairman of the Joint Chiefs of Staff
The Deputy Attorney General
The Under Secretary of the Interior
Mr. James Wilson, Jr., Office of Micronesian Status Negotiations, Department of Interior
The Assistant Director, Office of Management and Budget

SUBJECT: Negotiations on the Future Status of the Marianas

The Under Secretaries Committee staff has received a copy of the attached letter to Ambassador Williams from Ambassador Marshall Green, Assistant Secretary of State, and circulates it herewith for your information.

Seymour Weiss
Acting Staff Director

Attachment:
As stated.

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DEPARTMENT OF STATE

Washington, D.C. 20520

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March 27, 1973

Dear Ambassador Williams:

The Department of State has reviewed the Interagency Group's study on the future political status of the Mariana Islands, Trust Territory of the Pacific Islands. With minor recommendations and qualifications, the Department believes that the study provides a comprehensive basis for decisions by the Under Secretaries Committee and the President, as well as adequate guidance for the forthcoming negotiations with the Marianas Future Political Status Commission. The Department of State has therefore concurred in the Interagency Group's recommendations to the Under Secretaries Committee.

However, the Department does believe that some issues were inadequately addressed in the study, and that in at least one instance a degree of ambiguity could lead to a conflict in negotiating objectives. The Department of State's views on these issues are summarized in Tab A to this letter, and elaborated on in Tabs B, C, and D. The Department of State trusts that you, and all concerned agencies and departments of the U.S. Government, will give due weight to the considerations and points of view expressed in these tabs.

With all best wishes for success in your negotiations with the Marianas, I am,

Sincerely,

Marshall Green
Assistant Secretary
Bureau of East Asian
and Pacific Affairs

The Honorable Franklin Haydn Williams,
President's Personal Representative for
Micronesian Status Negotiations,
Office of Micronesian Status Negotiations,
Department of the Interior,
Washington, D.C.

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Attachments:

Tab "A" - Department of State Reservations and Recommendations

Tab "B" - The Impact of Potential Japanese Economic Activity in the Mariana Islands on the Status and Land Negotiations

Tab "C" - Strategic Importance of the Mariana Islands and DOD Planning for Bases in those Islands

Tab "D" - Termination of the Trusteeship Agreement

Department of State Reservations and Recommendations

A. Termination of the Trusteeship and the United Nations: Section VII of the Marianas study, and Section G(i) of the summary of the study, briefly highlight the legal and political problems associated with termination of the trusteeship agreement, the importance of obtaining UN consent to termination of that agreement, and the fact that actions and decisions which may be taken in the near future could significantly bear on our ability to seek and obtain UN consent to termination. A critical recommendation of that study is: "No action should be taken with regard to the Marianas which would prejudice the United States ability and option to seek Security Council approval."

Since the Interagency Group study on the Marianas inadequately covers the legal and political considerations which underlie this important recommendation, the Department of State wishes to draw the attention of the Under Secretaries Committee to its views on the matter as outlined in Tab D to this memorandum.

B. Land Requirements and U.S. Negotiating Goals: Throughout the Marianas study it is clearly stated that a priority U.S. objective should be early agreement on and implementation of a close and permanent Marianas relationship with the United States. This is explicit in the objectives described on page 1 of the Summary, and again in the draft instructions for the President's Personal Representative (summary page xxi).

Elsewhere (in the summary discussion of defense land requirements on page vi), it is recommended that a "determined effort" be made to negotiate acquisition of the Defense Department's maximum land requirement, i.e. all of Tinian Island, two parcels of land on Saipan, and Farallon de Medinilla Island.

The Department of State concurs in both recommendations, i.e. that priority be given to achievement and early implementation of a status agreement, and that a determined effort be made to obtain the Defense Department's maximum land requirements.

However, the Department is concerned that the two goals could come into conflict and that an unrealistically determined effort to obtain the maximum Defense land requirement could threaten the priority objective of an early status settlement.

The Department of State believes there is little or no prospect of actually acquiring the maximum land requirements, and that the effort to obtain those requirements must be considered as no more than a useful tactical device to assure that minimum land requirements will be met.

It is the Department of State's understanding that the Department of Defense concurs in the relative priority of the political status and optimum land requirement objectives. In particular, we understand that it is not the intent of the Department of Defense that negotiation of the optimum land requirement be pressed in the event that it becomes clear: (a) that the requirement cannot be satisfied under reasonable conditions, and (b) that a continuing "determined" effort to obtain that requirement may significantly delay or threaten the objective of early agreement on and implementation of a satisfactory status settlement.

The Department of State believes that, if this interpretation of the Department of Defense's position is correct, no amendment or change in the Under Secretaries Recommendations to the President, or in the proposed draft instructions for the President's Personal Representative, is required.

C. Marianas Basing Requirements and NSSM 171: The Defense Department's plan for the development of Tinian Island, and contingency planning for Saipan, were developed prior to the NSSM 171 requirement, and conceivably could be in conflict with the assessments and decisions that will flow from that NSSM. These concerns are elaborated on in detail in Tab C to this memorandum.

In the above circumstances, the Department of State believes that a final decision on the development of Tinian Island should be deferred until it can be considered within the context of a completed NSSM 171 study. This view is not intended to defer or delay the acquisition of land in the Mariana Islands for basing purposes, nor does it require any change in the negotiating instructions for the President's Personal Representative.

D. Impact of Japanese Economic Activity on Marianas Status and Land Requirements: The study does not adequately discuss increasing Japanese interest in investment in the Marianas Islands' tourist and other industries and resultant changing Marianan perceptions concerning the level of dependency of their islands on the U.S. This problem is discussed in Tab B to this memorandum and underscores the importance of an early status agreement, and early resolution of our land requirements.

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The Impact of Potential Japanese Economic Activity in the Mariana Islands on the Status and Land Negotiations

There is a strong presumption in the study that the Marianans see their future economic growth as almost totally dependent on the establishment of large scale U.S. military facilities. This may well have been true when the Marianas leaders first began actively pursuing separate status. Defense activities had been the corner-stone of the prosperity of nearby Guam which they have looked upon as an example of what they might achieve. Other sectors of the Guam economy have boomed, however, in the last few years with heavy influxes of investment from the United States, Japan and Taiwan. The Marianans have been in close touch with Guamanian leaders who continue to attach great economic importance to U.S. defense activities on the island but have become increasingly concerned that military land requirements not inhibit the growth of conventional commercial activity.

The Marianas political leadership is well aware that their islands have a considerable potential for the development of tourism and agriculture. Saipan already attracts more tourists than the rest of Micronesia and further heavy investment in hotel construction is soon to come. The exercise by Japan Airlines of landing rights on Saipan which they already hold is only a matter of time. The Mayor of Tinian has publicly discussed plans for the construction of a four hundred room hotel on that island which would hardly square with Department of Defense plans for the utilization of Tinian. Tinian is also the site of one of the few attempts at large scale agricultural development in Micronesia with several thousand cattle now grazing on TTPI public lands.

As is the case in Guam, the Marianas leaders will probably welcome our defense requirements to the extent that they do not preclude other types of development. The opening position suggested by Defense (all of Tinian, and harbor and airfield requirements on Saipan) will considerably exceed Marianan expectations and could delay completion of the negotiations if pursued for any length of time. Economic perspectives in the Marianas are changing rapidly and it is important that our requirements be quickly agreed upon before they become unattainable or unduly expensive.

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The above considerations do not require any change in the Under Secretaries' recommendations to the President, nor in the proposed draft instructions for the President's Personal Representative. But they do underscore: (a) the importance of our primary objective of early agreement on and implementation of a status settlement; and (b) the fact that the Defense Department's optimum land requirement is, realistically viewed, not a feasible negotiating goal and should be considered only as a tactical tool to obtain at least the minimum land requirement.

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TAB C

Strategic Importance of the Mariana Islands and Defense Department Planning for Bases in Those Islands

1. Strategic Rationale - The Department of State accepts the point in the summary of the Marianas status study (page IV) that the TTPI plus Guam provides the most logical alternative to our current WESTPAC base structure in the event we lose existing bases in Japan, the Philippines, Korea and Taiwan. However, even here, the strategic rationale for the TTPI as a fallback is credible only if there was a persuasive mission in East and Southeast Asia for our forces deployed in the TTPI. We do not consider that such a case has been effectively made.

The Department of State has repeatedly endorsed the concept of forward deployment. "Forward deployment" in Saipan and Tinian is, however, at best a pale shadow of the original concept. Many of the advantages inherent in deployment to forward areas: the deterrent effect, the quick reaction effect, the reassurance to allies, the tripwire effect, are lost when the point of "forward deployment" is no closer to the probable scene of action than the islands of Micronesia. Bases in Micronesia will provide very little comfort to the South Koreans. For all the political and deterrent advantage to be gained, the bases might as well be in Hawaii.

More to the point is the confusion and ambiguity in the paper arising between contingency land requirements in the TTPI vs operational requirements. DOD's thinking is expressed on page V, first paragraph, where we are told that for Tinian "early development is planned for joint service basing facilities, including an airfield, port facility, logistic complex, and a joint service maneuver and training area." DOD's intention to proceed with actual funding for the development of facilities at Tinian is fortified in Annex III to the Marianas status study where a price tag of $114 million "at a minimum" is cited for development of Phase I - VI of the proposed Tinian complex. The Annex (page 1) indicates that the JCS has already authorized the services to proceed with facility programming actions for the near term Tinian requirements, an authorization which we presume includes Military Construction Program funding in the near future.

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The foregoing clearly indicates that DOD is viewing Tinian as an additive to our current WESTPAC basing structure and intends to proceed with the development of facilities there without adequate reference to the status of our current base structure in WESTPAC or to the conclusions of the NSSM 171 Study. In our judgment DOD should be closely queried on what may at this time be a redundant base complex at Tinian developed at considerable cost. This particularly applies given the relative viability of our current WESTPAC base structure where we have little reason to assume our presence in Japan (to include Okinawa) or the Philippines will be terminated or significantly altered in the foreseeable future. Consequently, a final decision on development of the Tinian base complex should be deferred until it can be considered within the context of NSSM 171.

2. Tinian and Saipan Land Requirements - We can see valid reasons from a purely military point of view for securing use of the entire island and support a negotiating probe to see if this could be effected without damage to our overall political interests and negotiating objectives. We do feel however that in moving to a possible fallback (alternative III or IV pages VIII-IX of the Summary) we should assure ourselves that relocation of the resident population to the southeast corner of Tinian is absolutely mandatory. DOD argues ammunition safety requirements dictate such relocation but we will wish to be absolutely satisfied that this is the case.

Under ideal circumstances the conversion of the entire island of Tinian into a military reservation could offer long term freedom from political pressure, provided a very generous settlement can be offered to the relocated residents of Tinian. The same thing cannot be said for the requirements on Saipan, unless early action is taken to establish some sort of military activity at the Saipan locations which will provide gainful employment or other economic advantage to the population of the island.

There are certain inherent weaknesses in the plans for Tanapag harbor and Isley Field. Vehicle rehabilitation and repair and ship repair facilities will operate much less efficiently on Saipan than the comparable facilities do now on Okinawa and at Subic Bay. These two proposals are probably not cost effective. In fact we sericusly doubt that indigenous labor is sufficient

in quantity or potential technical proficiency to perform the high quality skills now carried out at the Navy ship repair facility at Subic. As this fact becomes increasingly apparent, the military may find itself importing labor from Okinawa, Korea or the Philippines or using U.S. labor, with consequent antipathy in the Marianas toward the military as local labor finds itself displaced by imported labor. The Defense Department's plans for resolving these problems need to be carefully weighed before any future base construction on Saipan is approved.

Additionally the Under Secretaries Committee should seek from the Department of Defense a breakdown into fiscal year periods of planned expenditures on the Tinian complex. This information would be useful to Ambassador Williams as a demonstration of the economic benefits of a military presence provided the Tinian requirement is found to be consistent with the conclusions of the NSSM 171 Study.

3. Palau - From a tactical standpoint we consider that a negotiation which will satisfy DOD land requirements on Tinian will reduce the case for land requirements in Palau, since many of the Palau requirements can be satisfied using bases in the Marianas.

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TERMINATION OF THE TRUSTEESHIP AGREEMENT

The Interagency study on Marianas' future political status is seriously deficient in its analysis of the requirements for terminating the Trusteeship Agreement. Insufficient attention is given to the relative advantages and disadvantages of the several procedures for termination discussed. Because significantly different consequences would result from adoption of any one of those alternatives over the others, we believe it is important to bring the following points to your attention.

In essence, our position is that the preponderant weight of both political and legal considerations clearly calls for the United States to seek Security Council approval of termination of the Trusteeship Agreement. We recognize, on the other hand, that if Security Council approval is not forthcoming after we in good faith have fulfilled our obligations as Administering Authority, then the President could and may wish for national security reasons to implement a new status agreement regardless of the opinion of the Security Council. We believe most firmly, however, that if it is at all possible to implement that agreement with Security Council consent, United States interests would be far better served if we do so, particularly those interests involved in the stability and international acceptance of our future relationship with the Marianas and with a future Micronesia, those relating to our broad range of interests in the United Nations, and those relating to our general national interest in promoting the development of respect for commitments made through international agreements.

There is some disagreement among the agencies concerned whether the United States should try to obtain Security Council consent. A final decision on this issue can be taken closer to the time of actual termination when our estimates of political reactions by other states will be more reliable. However, we believe it is of considerable importance that the Under Secretaries Committee does decide now that no action should be taken or statements made by the U.S. negotiator indicating that we will not seek U.N. approval for termination, or otherwise prejudicing our ability to seek such approval at an appropriate time.

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Even if we cannot reach interagency agreement now that the United States definitely will seek such approval, we should decide at the very least not to preclude that option, and the recommendations of paragraph 2.b, pages xx and xxi of the Interagency study should expressly be interpreted in that light.

* * *

Although neither the U.N. Charter nor the Trusteeship Agreement contain express procedures for terminating the Agreement, the following factors strongly support the view that we should seek Security Council approval.

(a) Of the eleven Trusteeships established by the United Nations, nine have so far been terminated. In every one of those nine cases the appropriate administering authority, including Belgium, France, Italy, New Zealand and the United Kingdom, sought and received United Nations approval before that termination. Australia, the administering authority of the only other remaining trusteeship, clearly plans to seek U.N. approval of its termination in the near future.

The argument is sometimes made that insasmuch as the TTPI is the only "strategic" trusteeship ever established, precedents relating to the other trusteeships are irrelevant. In fact, however, the only essential differences between strategic and non-strategic trusteeships are that the former are supervised by the Security Council rather than the General Assembly and that the administering authority of a strategic trusteeship can for security reasons close certain areas to outside inspection. The same objectives of administration of the trusteeship are expressly made applicable in the U.N. Charter to both strategic and non-strategic trusts (Article 83(2)). There appears to be no basis in the Charter or Trusteeship Agreement for distinguishing United Nations practice with respect to termination procedures for strategic trusteeships from those that are non-strategic.

It is also frequently argued that because Article 15 of the Trusteeship Agreement specifically provides that the United States has a veto over alteration, amendment or termination of the terms of the agreement, we therefore can proceed with termination however we desire to do so. This argument is unconvincing on its face. Although our veto power would allow us to preclude passage by the

Security Council of resolutions to alter, amend or terminate the Agreement in a way we oppose, it clearly would not, however, affirmatively provide us with the approval of either Council for a proposal that we might put forward. Because the TTPI is a strategic trusteeship, and hence the Security Council must be dealt with rather than the General Assembly, all five permanent members have the power to veto proposals to amend or terminate the Agreement. It is not a power unique to the United States. Furthermore, the immediate issue before us is how to obtain Council approval, not how to block Council initiatives.

(b) During the negotiation of the Trusteeship Agreement in 1947 the United States, represented on the Security Council by Senator Austin, stated squarely that ". . . no amendment or termination can take place without the approval of the Security Council." He stated also that "The United States wishes to record its view that the draft trusteeship agreement is in the nature of a bilateral contract between the United States, on the one hand, and the Security Council on the other." Senator Austin, in the debate on this issue, offered on the record to accept the formula "The terms of the present agreement shall not be altered, amended or terminated, except by agreement of the administering authority and the Security Council." The debate in the Security Council focused principally on the Soviet proposal that the Council be empowered unilaterally to amend or terminate the trusteeship, not whether the administering authority should alone have such power. At no point was the latter possibility proposed by the United States or by the Council.

(c) The United States and 46 other countries have signed the Vienna Convention on the Law of Treaties which states in Article 56 that "A treaty which contains no provision regarding its termination and which does not provide for denunciation or withdrawal is not subject to denunciation or withdrawal unless (a) it is established that the parties intended to admit the possibility of denunciation or withdrawal; or (b) a right of denunciation or withdrawal may be implied from the nature of the treaty." The negotiating history of this Convention within the International Law Commission and at the Vienna Conference indicate a general understanding to which we subscribed that the implications described in (b) above can probably not be drawn if the treaty is one establishing a special

international regime for a particular area or territory, inter alia, as is obviously the case with the Trust Territory. In addition, the negotiating history of the Trusteeship Agreement, including statements by the United States representative quoted above, clearly indicate it was not the intention of the parties to admit the possibility of unilateral denunciation or withdrawal.

Although the Vienna Convention was designed to apply to international agreements between states, and hence technically its scope does not include international agreements between international organizations and states, such as the Trusteeship Agreement, this in no way indicates that the Trusteeship Agreement should be treated in any different manner. In fact, the principles of Article 56 can be considered as largely reflecting longstanding principles of customary international law which would indeed apply to termination of that Agreement.

(d) In 1950 the International Court of Justice unanimously expressed the opinion that "the Union of South Africa acting alone has not the competence to modify the international status of the Territory of South-West Africa, and that the competence to determine and modify the international status of the territory rests with the Union of South Africa acting with the consent of the United Nations." The Court reaffirmed this position in its opinion in the South-West Africa cases of 1962. In each case the United States Government expressly supported the principle that the bilateral international agreement could not be terminated unilaterally by the action of the mandatory power.

Although the fact patterns are necessarily not identical in the case of Micronesia as in that of Namibia, the same principle regarding termination would seem to apply to both. If we do not seek Security Council approval for termination, our actions are most likely to be identified with those of South Africa which both we and the International Court of Justice have formally characterized as illegal. Whether we might then be subject to attempts within the United Nations to request an advisory opinion on the legality of our actions would depend on the political

climate at the time. However, that possibility does exist, and there is some question whether such a request by the Security Council would be subject to a veto. Such a request by the General Assembly clearly would not. If such a request were made, we could not expect a favorable ruling from the Court.

* * *

The above factors are not an exhaustive list of arguments that could be made on either side of this question, and they do not mean that unilateral termination of the Trusteeship is impossible to effect, at least as a practical matter. Obviously because of the absence of effective international enforcement machinery, we could, as a practical matter, if we consider it sufficiently important to our national interest, simply adopt the position after a plebiscite that our obligations as administering authority have been fulfilled and that we consider the operation of the agreement terminated. We do believe, however, that it is most important for the Under Secretaries Committee and eventually for the President to be aware of the weight of the legal arguments that will be raised in opposition to such a posture and the likelihood of significant political costs that would probably be incurred if we adopt it.

Just as the present international legal system provides no compulsory litigation procedure which might rule against our unilateral action, it similarly contains no procedure, except Security Council approval, which might conclusively support our position and effectively put an end to debate on the subject. If we do not obtain Council approval, the question will probably remain on the agenda of one or more U.N. bodies to be considered for years in the future, as has the South-West Africa case, seriously damaging our position as a non-colonial power, detracting from other important interests which we will wish to promote in the U.N., and providing both incentive and world forum to any dissident Micronesians unhappy with the status arrangements. In this connection we cannot discount the possibility in time of unfriendly states using this forum and others to promote unrest and conceivably even physical violence in the islands against our presence there.

In nearly all foreseeable cases we would be politically and legally in a better position having sought Security Council approval even if we fail to obtain it. If we have clearly fulfilled our obligations in good faith, including the administration of a proper plebiscite of self-determination, we are likely to be supported by most if not all of the Council. Should there be a Soviet or Chinese veto for immediate political reasons we would still be likely to receive at least acquiescent support from the majority of the Council even if we undertake subsequent unilateral action. It would appear that only if our proposal is widely considered not to constitute a genuine fulfillment of our obligations as administering authority would we be opposed by a majority of the Council. In such a case the advantages to us of seeking Council approval would seem marginal. A decision not to seek Council approval would not, of course, preclude debate on our action, and the points outlined above would doubtless be addressed. In this exigency we could probably not count on the active support of any other states, including those otherwise most friendly to us.

It is the opinion of the concerned bureaus within this Department that there exists a substantial chance for us to obtain Security Council approval without a veto at the same time that we accomplish our strategic and political goals in Micronesia. With strong Micronesian support for a new status agreement and continuation of a general spirit of detente, the Soviets and Chinese are perhaps even more likely to abstain, albeit with critical speeches, than to veto, if we have demonstrably met our obligations in good faith. In any case, because of the considerable and perhaps unnecessary costs involved in not seeking Security Council approval, we strongly recommend that no action be taken by the U.S. negotiator or any U.S. agency which would prejudice our ability to seek that approval in the future.

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Clearances: L - Mr. Aldrich GHA R3S
L/UNA - Mr. Nelson R3S
IO/UNP - Mr. Sylvester R3S
EA - Mr. Dorrance

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