03
3,5

September 11, 1973

MEMORANDUM FOR THE FILE

SUBJECT: Meeting of the Working Committee on Political Status/Legal Issues, September 11, 1973

The Working Committee on Political Status/Legal Issues held its second meeting today. The meeting started at 9:30 a.m. in C. Brewster Chapman's office and continued for about 1-1/2 hours. The U.S. representatives were Chapman, Herman Marcuse, and Harmon Kirby; representatives for the Marianas side were Howard Willens, Jay Lapin, and Barry Carter. The following is a summary of the important issues which arose during the meeting:

1. Applicability of U.S. Laws.

Chapman provided the Marianas side with separate computer printouts of laws applicable through December 31, 1971 to: (1) The Trust Territory of the Pacific Islands; and (2) all other U.S. territories and the Commonwealth of Puerto Rico. Herman Marcuse, who had supervised the preparation of the lists in the Department of Justice, said that he had also tried to get the computer to print out laws regulating commerce "within" each territory, but the computer did not do this well and he had not pursued this.

Chapman said he did not intend for the two sides to resolve in the Working Committee any disputes over whether particular laws should apply or not. However, he said that the two sides should try to identify the important laws and to agree on which laws should and should not apply. He put the burden on the Marianas side for the next steps of the review, including establishing a timetable and making specific proposals. He did say that Adrian deGraffenried on the U.S. side would look at the list as well.

2. U.S. Nationality Versus Citizenship.

The U.S. side introduced a draft proposal. (Attachment A.) The discussion focused on three basic issues: (a) basic value decisions on who should be citizens; (b) the mechanisms for effectuating these value decisions; and (c) the legal implications of nationality versus citizenship.

(a) Basic value decisions

(1) Should TTPI citizens, who were born outside of the Marianas but who now live in the Marianas and want to stay there, be made U.S. citizens? A distinction might be drawn between early settlers and those who have come more recently to avoid the problem of too many TTPI citizens moving to the Marianas as a back-door method for obtaining U.S. citizenship. However, it was generally felt that U.S. citizenship should be offered to at least some of the TTPI citizens not born in the Marianas since the Marianas might well want to encourage some talented people now in the Marianas to stay. Moreover, some of these people have close ties to the Marianas.

Harmon Kirby did not foresee that the United States would have any trouble allowing U.S. citizenship to some, if not all, of the people in this category. 1/ He thought the obstacle would instead be the desire of the Marianas people to limit the number of people in the Marianas. Chapman ventured that he did not think Congress would be opposed to citizenship for people in this category unless the cutoff date was set very late. He did feel we should try to avoid creating many cases of dual citizenship.

(2) Would TTPI citizens born elsewhere in the Trust Territory and now residing in the Marianas be made U.S. citizens even if they do not intend to stay in the Marianas? For example, this category would include present employees of the TTPI Government who intend to return to their home islands. The general consensus was that these individuals should not be made U.S. citizens as a result of the Marianas becoming more closely associated with the United States.

(3) Should citizens of a foreign country (other than the TTPI) be made citizens of the United States? The general consensus here, too, was that such aliens should not be made U.S. citizens as a result of the Marianas becoming more closely associated with the United States.

1/ He saw a complicated, but minor, problem being presented by the children of people in this category who had also been born elsewhere, had lived briefly in the Marianas, but now were abroad and who would essentially rely upon their parents' citizenship to determine their own. Would they become U.S. citizens?

(b) Mechanisms.

The first important question is whether everyone eligible for citizenship would first be a national and have to take an affirmative step to become a citizen, or whether these people would automatically become citizens unless they took the affirmative step of indicating that they wanted only to be nationals.

As for those people who decided to remain or become nationals (depending on the basic approach chosen), Marcuse said the United States had not yet decided the procedures by which such a person could later become a U.S. citizen. Would the procedure be the same as for other nationals? For aliens? Or would there be some special easy route which would be maintained for Marianas nationals?

Besides the questions above, two specific mechanisms (and several variations on each) were discussed as ways to help define who was eligible for citizenship. These were: (1) specific cutoff dates and (2) the use of the concept of "permanent resident" or "resident." It was asked whether there should be any residency requirement for persons born in the Marianas. The issue was raised whether the concept of domicile might be more useful than that of residency; Chapman thought that there was no important difference.

It was asked whether the United States might be able to make people in the Marianas destined to be U.S. citizens under the U.S.-Marianas status agreement U.S. citizens before the actual termination of the Trusteeship. Chapman seemed to think this was possible if the people renounced their other citizenship -- e.g., their TTPI citizenship. Even if Congress might have the constitutional power to speed up the granting of citizenship here, Marcuse questioned whether it was allowed under the Trusteeship Agreement. He said the State Department would have to be questioned on this. Harmon Kirby said he expected a negative answer from the State Department since the United Nations would view such an act by the United States as partial termination of the Trusteeship.

(c) Legal implications of nationality versus citizenship.

It was generally agreed that there were few legal implications in selecting U.S. nationality rather than citizenship. The possible implications which were mentioned included:

-- It was much more difficult to lose one's citizenship involuntarily than to lose one's nationality.

-- Citizenship makes one more eligible for the draft. However, some thought this distinction tenuous since draft eligibility depends in large part on the geographic area defined under the Selective Service Act. (If the Marianas were part of the United States under the act, some thought even nationals would be subject to the draft.)

-- A U.S. citizen who moves to a state of the United States and establishes citizenship in that state is allowed to vote in Presidential and Congressional elections. However, nationals can easily become citizens of any state by fulfilling the relatively short residency requirements for U.S. citizenship and thence becoming state citizens. (Chapman indicated that nationals becoming U.S. citizens could, under the U.S. proposal, fulfill their residency requirements by residing in the Marianas.)

-- On a more general basis, some felt that, as in American Samoa, remaining as nationals strengthened the argument that the people should be more insulated from acts of Congress or the Executive Branch. However, this is not certain.

-- It was generally agreed that the issue of taxes was separate from the issue of citizenship versus nationality.

Marcuse added that the Immigration and Naturalization Service very much preferred not having more nationals since it finds the category a troublesome one. Chapman said that he would provide the Marianas side a memorandum which the Library of Congress staff had prepared a few years ago for Patsy Mink on this very subject of nationality and citizenship.

Chapman concluded the discussion on citizenship by asking the Marianas side to take the initiative at this point. The Marianas representatives indicated that they would consider the alternatives, try to narrow them as much as possible, and hopefully prepare alternative language. They made it clear that some decisions would have to be made after careful discussion with the Marianas Political Status Commission.

3. Review Provisions.

Chapman said that the United States was not committed to accepting a formal or automatic review provision in the

18132

proposed status agreement. He said there was a feeling on the U.S. side that there should not be a mechanism which, like the Puerto Rico case, exasperates the issues of political status. The Marianas representatives said that the purpose of a review provision would be to provide some assurance that the United States would take subsequent complaints by the Marianas seriously and not shove them under the rug. A review provision in the status agreement could act as a safety valve to be called on if necessary. Since the Working Committee had a number of other pressing issues to discuss which were very complicated, it was decided not to pursue the question of review provisions further in the Committee.

4. Jurisdiction of the Federal Court.

Speaking rather off-handedly, Chapman said that the Marianas side should make a proposal regarding the jurisdiction of the federal courts and that the U.S. side would probably be amenable to any reasonable request.

The representatives agreed that the Marianas side would convene the next meeting after it had reviewed the computer printouts of U.S. laws and after it had prepared some responses on the draft proposal regarding U.S. citizenship. The meeting would be held in the offices of Wilmer, Cutler & Pickering.

Barry Carter BC

cc: Mr. Willens
Mr. Lapin
Mr. Helfer