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MEMORANDUM ON MARIANAS CITIZENSHIP PROPOSAL

Following receipt of the United States draft proposal on U.S. citizenship, Barry Carter and I attempted to come up with a counter-draft. That draft is attached to this memorandum. The differences from the U.S. draft more often than not reflect our dissatisfaction with inadequacies in the draftsmanship of the U.S. proposal -- rather than substantive disagreements with the terms thereof.

Before explaining our counter-draft, I wish to observe that it seems highly inappropriate, and indeed premature, for us to be drafting sections of the status agreement at this early stage of the negotiations. It seemed to me that the purpose of this exercise was merely to assure that the U.S. had a basic understanding of the Marianas' position on citizenship. I think we have accomplished that. A number of important outstanding questions need to be resolved by our client before we can sign off on any specific language, however. Therefore, I suggest that when we submit our counter-draft to the U.S., we propose that the U.S. need not respond specifically to the language changes but that the legal subcommittee should attempt to work out a statement of terms, acceptable to the U.S., which could form the basis of an agreement on citizenship to be included in the status agreement.

Marianas Counter-Proposal

Subsection (a). The lead-in to subsection (a) is a form used with other territories. It is more comprehensive than the U.S. proposal in that it picks up children of the persons who qualify for U.S. citizenship. Also it strikes me as a more economical way to state the general conditions for citizenship.

Subsection (a)(1). This is the same as the United States proposal with two exceptions. First, "domicile" as well as "residence" will qualify (this picks up students and others temporarily overseas). Second, residence or domicile in the U.S. also qualifies. The U.S. proposal, probably through oversight, is limited to residence in the territories.

Subsection (a)(2). This subsection picks up TT citizens, not born in the Marianas, who had clearly cast their lot with the Marianas long before termination of the Trusteeship. The five-year domicile requirement could be made longer or shorter. By relying on domicile, rather than residence, this provision would exclude TT government officials who have kept their homes and continued to vote in other districts of Micronesia. Obviously we would want to discuss this specific provision with the client.

Subsection (a)(3). This provision is enclosed in brackets because it is clearly optional. It depends largely on the determination of fact: whether there are significant numbers of non-TT citizens living in the Marianas whom we would want to pick up. It struck me on reading the TT Code provision for TT citizenship that it may be impossible for certain types of people, not born in the TT, to become TT citizens. I selected the July 1, 1962, date as the point in time at which the Marianas were "opened up" upon transfer from the Navy to the Interior Department. It may be that we would want to push this date up a bit in order to pick up more recent "alien" settlers such as Eddie Pangelinan's wife. Again, we will want to discuss this category of persons with the client.

Subsection (a)(4). This basically parallels the U.S. provision with some minor elaboration. It is enclosed in brackets only to indicate that the option of national status could be eliminated under various alternative citizenship proposals.

Subsection (b)(1). This provision is identical to the U.S. draft.

Subsection (b)(2). This provision is designed to continue the option of national status for those descendants of the present Marianas population. The United States draft tried to accomplish this result but did not do so. For example, it excluded descendants of the present population who happen to be born outside the Marianas and it may have included children of American expatriates such as Jim White who happen to be born in the Marianas.

Subsection (c). This provision is largely self-explanatory. The United States draft attempted to include conforming amendments to existing law but was technically sloppy in a number of respects and was not in "status agreement" language. The purpose of these provisions is

to assure that residents of the Marianas are treated no differently from residents of a State, both for purposes of naturalization and for purposes of nationality (i.e., acquiring citizenship at birth overseas, if born of U.S. citizens who were "physically present" in the U.S. during a certain period of time). This provision also allows local Marianas courts to naturalize United States citizens -- just as State courts are apparently entitled to do. It would seem that we should not rely exclusively on the availability of a U.S. District Court, whose jurisdiction could be beyond our control, for this important function.

Additional Comments

Obviously we have some fact-finding and consultation ahead of us before we can settle upon a definition of whom to include and whom to exclude from U.S. citizenship. It seems to me we also have an obligation to inform the client as to our views on the status of U.S. nationals. In my judgment, the basic proposals set forth in both the U.S. draft and our counter-proposal are quite complicated and will perpetuate a confusing duality of status in the Marianas which may serve no useful purpose. Indeed, my review of the materials collected by Barry on this subject suggests that the status of U.S. national in a territory has absolutely no advantage over the status of U.S. citizen and, in a number of important respects, is distinctly inferior.

The only possible benefit of the status of U.S. national is that it may bolster the legality of any discriminatory legislation which consistently benefits the class of nationals over the class of citizens. Even this is not very certain. In any event, under the current proposals the Marianas would not fit within such a formula because many of the beneficiaries of discriminatory legislation would undoubtedly elect to become U.S. citizens. It seems that the only way to get the benefit of whatever marginal legal or political support for discriminatory legislation flows from the status U.S. national would be to make everyone nationals and make it difficult to become a United States citizen -- such as is the case in American Samoa.

Obviously the client will have to decide what it wants for the people of the Marianas. But, I think we ought to suggest that the alternatives to everyone becoming United States citizens are not particularly viable. If the only

issue is the "symbolic" problem of forcing existing inhabitants to adopt U.S. citizenship, perhaps we could limit the availability of national status to the present generation.

Obviously this rambling discussion will be refined upon our further review of the problem. I suggest that a carefully-drawn memorandum be prepared for the client on the basis of our further analysis. In the meantime, a brief explanatory memorandum could be submitted to the U.S. along with our counter-draft. Although it seems that any discussion we could have with Chapman, et al., is doomed inevitably to be unproductive, it might be worthwhile to try to have an open and informal discussion about some of these issues at a future session of the legal working group.

JFL

CITIZENSHIP

(a) The following persons, and their children born before [the date of termination of the Trusteeship], who are not citizens of the United States under any other provision of law, and who have taken no affirmative steps to preserve or acquire foreign nationality, are declared to be citizens of the United States:

(1) All persons born in the Marianas who are citizens of the Trust Territory of the Pacific Islands on [the date of termination of the Trusteeship], and who on that date reside or are legally domiciled in the Marianas or in the United States, the Virgin Islands, Guam, the Commonwealth of Puerto Rico or any other possession or territory of the United States; and

(2) All persons who are citizens of the Trust Territory of the Pacific Islands on [the date of termination of the Trusteeship], and who have been legally domiciled continuously in the Marianas for at least [five] years immediately prior to that date; and

[(3) All inhabitants of the Mariana Islands (excluding Guam) on July 1, 1962, including those temporarily absent from the island on that date, who after that date continued to reside in the Marianas.]

[(4) Any person who becomes a citizen of the United States solely by virtue of the provisions of paragraphs (1) through (3) hereof may within six months after [the date of termination of the Trusteeship], or within six months after reaching the age of eighteen years, whichever date is the later one, make a declaration under oath before a court in the district wherein he resides in the form as follows:

> "I . . . being duly sworn, hereby declare my intention not be become a citizen of the United States."

Any person who makes this declaration shall be a national but not a citizen of the United States; provided further, that any person hereinbefore described who, within the period allowed for making the aforesaid declaration, shall have taken any affirmative steps to preserve or acquire foreign nationality, shall not be a citizen or national of the United States.]

(b)(1) All persons born in the Marianas on or after [the date of termination of the Trusteeship], and subject to the jurisdiction of the United States, shall be citizens of the United States.

[(2) Any person who becomes a citizen of the United States at birth after [the date of termination of the Trusteeship], and who is born of parents either [both?] of whom

had a right to become a national but not a citizen of the United States in the manner provided in subsection (a)(4), shall also have the right to become a national but not a citizen of the United States by making a declaration, within six months after reaching the age of eighteen years, in the manner and form provided in subsection (a)(4).]

(c) Notwithstanding the foregoing, persons residing in the Marianas after [the date of termination of the Trusteeship] shall have a right to become naturalized citizens of the United States to the same extent as persons similarly situated but residing in a State; for purposes of satisfying any residency or physical presence requirement under the nationality and naturalization laws of the United States, residence or physical presence, respectively in the Marianas after [the date of termination of the Trusteeship] shall qualify to the same extent as residence or physical presence, respectively, in a State; the courts of general jurisdiction established under the Constitution of the Marianas shall have jurisdiction to naturalize persons as citizens of the United States in accordance with applicable law.