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OFFICE OF GENERAL COUNSEL  
WASHINGTON, D. C. 20301

I-11933

16 October 1973

MEMORANDUM FOR CAPTAIN EDWARD C. WHELAN  
EA&P REGION, ISA, OASD

SUBJECT: Third Draft - Marianas

Introduction

Several general comments must comprise this introduction. They are provided here to establish the total context of the proposed negotiations.

First. The understandings presently coming into view between the United States and the Trust Territories envisage ultimate sovereignty - that is both internal and external (domestic and foreign affairs) sovereignty - to be vested in the people of the Islands. They are to be treated as independent, having chosen, through the exercise of their right to "self-determination" the right to self-government through a free association with the United States. This right enables them in the future, subject to the terms of our Compact with them, to retrieve an exclusive claim to managing their foreign and defense affairs.

Second. The use of a compact rather than a treaty means under United States practice that both Parties must determine in accordance with the provisions of the Compact its termination, modification, and the like. The Compact is distinguished from a treaty since a treaty generally enables either Party to make these determinations unilaterally under certain circumstances. The Compact characteristically provides how such constitutive matters shall be resolved - and generally requires the action of both Parties.

ISA, EA&PR, OASD

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SUBJECT TO GENERAL DECLASSIFICATION SCHEDULE OF  
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Third. The United States is primarily interested in maintaining defense powers, the denial of military access to third powers, and the exercise of those foreign affairs powers related to defense for an indefinite period into the future. Assuming that a commonwealth is established, we might therefore consider a minimum period of exclusive United States control - perhaps 15 to 20 years as presently proposed. Thereafter, the United States might provide a clear and definite program for phasing out of its role, and phasing in the Trust Territory (or part thereof). This approach is gradually appearing with respect to Puerto Rico (also a Commonwealth). A timetable would provide the means to convince the peoples of the Islands that they are moving toward some autonomy. Such autonomy might be established even though the commonwealth under United States primary control of external sovereignty continues, but with a gradual increase in the Commonwealth's reach over foreign affairs. (Cf. the proposals that would recognize a role in international affairs, and membership in certain international organizations - made part of the Draft Compact for Micronesia as a while. The proposal here is to use the same approach taken there.)

Fourth. The agreement, principles and other agreed positions with the Territory must emphasize that the moneys to be made available are dependent upon Congressional appropriations, or in the law-making area or decision/policy area upon Congressional and constitutional practices.

Fifth. With respect to a current issue - the law of sea preliminary conferences - emphasis should be given that in taking an observer status, the representatives from the Islands recognize that they will not be seeking a status for the Islands inconsistent with United States positions.

Specific Comments.

1. Eliminate the preambles, and provide for these to be adopted in a "final act" of the Conferences. They have no close connections with the proposed agreement.

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2. Under the "General Principles:"

-refer to the right to self-government in place of the exercise of "self-determination;" the terms "self-government" are used in the UN Charter and the Trust Agreement.

-consider the draft of Principle 3 - that "The United States will have responsibility for and complete authority in defense and foreign affairs, as agreed under the Compact..." During negotiations introduce my proposals for the phase in of Micronesia's foreign affairs' powers in these fields. (same applies to the Marianas.)

-Add a "principle" reflecting the United States claim to land on the islands, omitted from (or not clear in) this draft, but made part of the earlier draft;

-To sweeten and to afford precision to the proposal with respect to acquiring land add at the end of Principle 5 (earlier draft) "in accordance with its authority and responsibility under these Principles and in conformance with United States constitutional practices and procedures."

-Concerning Principle 8: best to identify the "agreement" as a "compact" and then construe as indicated in my introductory remarks.

Agreed Articles.

1. The negotiators should treat the "principles" and the "agreed articles" separately in the sense that the principles will frame the ultimate agreement, while the agreed articles are to be treated in the negotiating context, and subject to fall-back or compromise conforming to policy judgments discussed with your office and the interagency group.

2. Section 102, after the words "... Constitution of the

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United States," add the words "except as otherwise agreed in this Compact."

3. Section 104. Flag Justice/Interior to clear up the confusion in this Section, already noted in our meeting at Interior.

4. Section 105 et seq. These are matters for Justice. But they have policy ramifications - it is not to the necessary advantage of the United States to treat doubtful cases of citizenship as establishing United States citizenship. Perhaps we might be willing to treat all Micronesians as United States nationals including these. Note. Puerto Rico has emerging problems arising in part because some groups suggest that United States citizenship is a form of neo-colonialism, retarding their rights to become totally independent and autonomous.

5. -Presumably foreign affairs and defense powers will be safeguarded for United States control as in Puerto Rico. In other words the United States Constitution/Federal laws would fill any omissions such as this in the "compact." Note that the term "compact" was used with Puerto Rico rather than agreement. However, in the event a timetable is adopted to re-vest these powers in part in the Islands, we should seriously consider such a provision now. (Please check with me).

6. Section 502. References to "fair market value" of land to be acquired must be examined more closely. General understanding at our meetings has suggested that such terms are meaningless in the Islands. This means we are imposing our real property standards upon the Islands, and may be a point of serious contention. Suggestion: delete term "market."



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Attachment - Annex

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ANNEX.

1. United States Land Requirements.

I have concurred in the provisions in the Third Draft with respect to land requirements of the United States with the understanding that based on the correct state of facts the United States presently has either full right, title and interest in the lands as set forth in the "compact" or the right to use and occupancy of those lands. I recommend that a statement of verification of the fact that United States lands are adequate be made part of the record and our files and available for the negotiations.

2. Time-Table for Foreign Affairs.

The following proposal for foreign affairs may be introduced into the "Principles:"

"10. Under the Compact to be entered into with the peoples of the Northern Marianas District, it will be agreed that United States foreign affairs powers shall be exclusive with full authority and competence to extend not less than \_\_\_\_\_ years Upon the expiration of that period, and during the period itself, the United States will take appropriate measures to enable the Marianans to participate in those foreign affairs which directly affect their own interests, commensurate however with those United States interests relating to security and defense, through membership, associated status or observer status in international organizations and forums. The United States will enlarge the area of Marianas' participation as far as possible, compatible with the interests of the peoples of the Northern Marianas District."


Comment. This is intended as a working draft. The "timetable" is somewhat vague and indefinite which is intended here, but the undertaking requires a bona fide effort by the United States and therefore would be implemented by appropriate consultation by the Marianas with the United States under Sections 506 and 601 as they

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are presently drafted. More express language is a policy matter, and adjustment of the language to provide greater precision can follow the policy determinations. That language should then be adopted for one of the operating sections in the Compact itself. The advantage of my proposal is to offer the Marianas increasing control and direction over their affairs in return for stronger and longer control over defense and security powers. With Puerto Rico again in view, there is no reason to deny this opportunity. It may cause concern with respect to Guam, but I suggest that on the surface the same argument applies. Second. It should reinforce popular support to United States presence.

  
Harry H. Almond, Jr./OAGC (IA)  
16 October 1973

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