October 18, 1973

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MEMORANDUM FOR THE JOINT WORKING GROUP OF LAWYERS,
U.S. - MARIANAS STATUS NEGOTIATIONS

Subject: Citizenship Proposal for the Marianas

We agreed at our last meeting to study the U.S. draft citizenship proposal (dated 9/5/73) -- with a view toward preparing a critique of that draft. We have found it convenient to express our comments in the form of a counter-draft which is attached to this memorandum and which is explained on a section-by-section basis below.

At the outset we should state our belief that the objective of our principals in delegating this matter to the working group level has been realized: the U.S. proposal reflects an understanding of and concurrence in the basic components of the tentative position of the Marianas Commission. Specifically, the Commission proposed that U.S. citizenship be readily available to Marianas residents and that there be an alternative provided (other than the status of "alien") for those persons who did not wish to become United States citizens.

As the U.S. representatives in the Joint Working Group have recognized, there are two basic approaches which satisfy these requirements. One approach would automatically make a designated class of persons U.S. nationals, with the

opportunity of individuals to opt for U.S. citizenship. The other approach, and the one adopted for discussion purposes in both the U.S. draft and our counter-draft, would make the class of persons U.S. citizens, with individuals having an option to become U.S. nationals. We believe that the Joint Working Group is in agreement that there are no technical objections to either approach and that the choice between them is a matter for decision by our principals.

In the counter-draft, as described below, the principal differences from the U.S. proposal are not, we believe, matters of substantive disagreement with the U.S. position. Rather, beside minor matters of draftsmanship, our counter-draft attempts to set forth additional options for extending citizenship to persons other than those born in the Marianas. Some of these options were discussed at our last meeting, and we suggest them only tentatively and for purposes of discussion. Obviously additional fact-finding (as to the consequences of the various additional categories of persons to be made citizens) will be required before any final decisions can be made on this subject. Also, we recognize that the ultimate decision as to what persons should be offered U.S. citizenship is a decision to be made by our principals.

Other minor differences from the U.S. proposal are set forth in our counter-draft. As more specifically described below, these changes were designed to more precisely achieve the objectives that we believe were implicit in the U.S. proposal.

It should be understood that our counter-draft is submitted tentatively and for discussion purposes only. We have not reviewed it with our client. Indeed, although the preparation of draft language with respect to citizenship and nationality in the Marianas has been a most useful and productive exercise, the final "status agreement language" will undoubtedly materially depart from either of our proposals since it will have to reflect the many substantive decisions which have yet to be made.

Section-by-Section Analysis of Marianas Counter-Draft

Subsection (a). Subsection (a) should be compared with "(a)" of the U.S. draft. It describes the classes of persons to whom citizenship will automatically be extended upon termination of the Trusteeship. The lead-in to the subsection is a form used in collective naturalization acts for 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. Since we have a number of subclasses of recipients of citizenship, the use of this lead-in provides an economical way to state the generic conditions for citizenship.

Subsection (a)(1). This class of persons is almost identical with the class described in the U.S. proposal, with two exceptions. First, "domicile" as well as "residence"

will qualify (this picks up students and others temporarily overseas on the date of termination of the Trusteeship). Second, residence or domicile in the U.S. also qualifies. The U.S. proposal, probably through oversight, is limited to residence in the territories. We have introduced the concept of "domicile" into this and other subsections. We believe it is an essential concept because of the fact that many persons in the Trust Territory have multiple residences. This concept is not new to Micronesia: the present TT Code provisions for citizenship uses the term "domicile." The concept of "domicile" also has a fairly well-established meaning in U.S. law. To the extent this term may raise complications, we believe they could be solved through appropriate qualification, or through substitution of other language with equivalent meaning.

Subsection (a)(2). This is the first of the two subsections setting forth options for extending U.S. citizenship to additional classes of persons -- some of which we discussed at our last meeting. As noted above, there is some fact-finding required to determine the consequences of (and need for) these options. In addition, such options must be reviewed by the Marianas Commission, even before they become a subject of negotiation between our principals. Subsection (a)(2) describes 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.

Subsection (a)(3). Subsection (a)(3) is an attempt to deal with a problem which may be significant for many permanent residents in the Marianas. The TT Code naturalization provisions are much narrower than the equivalent provisions for the U.S. They make it impossible for certain persons, not born in the TT, to become TT citizens. We are sensitive to the problem of "back-door" citizenship. However, we think the principals should have an opportunity to consider whether persons who have clearly cast their lot with the Marianas (and many of whom are long-time Marianas residents and/or have married TT citizens) should be denied the opportunity for U.S. citizenship merely because the TT Code prevented their naturalization as TT citizens. In this connection it is interesting to note that the collective naturalization acts for other territories typically have extended to all "inhabitants" of the territory -- and have not been limited to "citizens" of the territory under its previous administration. We would welcome any suggestions the U.S. might have as to how better to accomplish the objective of this subsection.

Subsection (b). This subsection basically parallels "(c)" of the U.S. draft -- with some minor elaboration.

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

Subsection (c)(2). This provision is designed to continue the option of becoming U.S. nationals for the descendants of the class of Marianas residents to be collectively naturalized. The U.S. draft intended to accomplish this result but did so imprecisely. For example, descendants of the collectively naturalized class who happened to be born outside the Marianas are denied the right to become U.S. nationals; at the same time, any person who happens to be born in the Marianas, regardless of his ancestry, would automatically obtain the right to become a U.S. national.

Subsection (d). This provision is largely self-explanatory. In part it attempts to duplicate "(d)" of the U.S. draft which contained conforming amendments to existing U.S. law. We had some question as to the effect of the U.S. draft on this score since the conforming amendments were somewhat inconsistent. Subsection (d) of the counter-draft assures that the opportunity for persons to become naturalized U.S. citizens in the Marianas is equal to that of persons residing in a State. Subsection (d) also makes clear that any "physical presence" or "residence" requirement that qualifies the right of U.S. citizenship for children born overseas (of parents who are

U.S. citizens) shall be satisfied by residence or physical presence in the Marianas as if it were a State. Finally, subsection (d) proposes that the courts of general jurisdiction organized under the Marianas constitution would have jurisdiction to naturalize persons as citizens of the United States -- as if they were "State courts" in the United States. This proposal in no way presupposes the absence or presence of naturalization jurisdiction in any federal court whose process would run to the Marianas. In our view, the conforming amendments suggested in "(d)" of the U.S. draft would result in local Marianas courts having such jurisdiction in any event.

October 16, 1973
Marianas Counter-draft

UNITED STATES CITIZENSHIP AND NATIONALITY
IN THE MARIANAS

(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;

(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 persons who were lawfully residing as permanent residents of the Trust Territory of the Pacific Islands at least five years prior to 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 the date of termination of the Trusteeship.

(b) Any person who becomes a citizen of the United States solely by virtue of the provisions of paragraphs (1) through (3) of subsection (a) 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 to become a national but not 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.

(c)(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 (b), 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 (b).

(d) 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 residence 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.