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19 October 1973

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DEPT
JAG

File: Marianas

Third Draft Agreement Between Mariana Islands and the United States

Ref: (a) Captain Whelan memo of 15 Oct 1973

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1. In accordance with reference (a) the following comments are submitted on the subject Draft Agreement.

2. The nature of this document and its position in the sequence leading to commonwealth status for the Mariana Islands is unclear. If intended as an executive agreement, it would deprive Congress of an opportunity to decide whether to accept the Marianas as a Commonwealth. This would raise severe Constitutional problems as well as severe political problems with Congress. General Principle No. 8 of this Draft Agreement implies that this Agreement will be submitted to Congress for approval. However, the sequence remains unclear since it is not stated whether this document would be submitted to Congress and to a plebiscite by the residents of the Marianas before or simultaneously with a Marianas Constitution. It is recommended that the sequence to be followed be expressly detailed in this document.

3. The Draft Agreement is amazingly long and detailed, particularly as compared to the "Act in the nature of a compact" providing for Puerto Rico to become a Commonwealth. 64 Stat. 319. Such great detail is both unnecessary and undesirable. It could easily distract both Congress and the residents of the Marianas from the basic question for their decision when this Agreement is submitted to them, namely, whether the Mariana Islands should become a Commonwealth of the United States. Such great detail and the need to defend it all could seriously dilute the testimony before Congress by members of the Administration supporting this document in its final form. Finally, such detailed provisions could seriously limit the flexibility of Congress under Article IV, Section 3, of the U.S. Constitution. Consequently, it is recommended that the Agreement be limited to a statement of the general principles which would govern the relationship between the proposed Commonwealth and the U.S. Of course, the principles could be expanded beyond the present draft "General Principles". Details, including the applicability of various Federal laws and programs to the Marianas, could be placed in separate memorandum of understanding.

4. If it is decided that a detailed agreement similar to the subject Draft Agreement is preferred, much more drafting is required before the document will be ready for presentation as a position of the United States. A few of the more immediately obvious defects are detailed below:

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a. The geographical boundaries set forth in Section 101 appear incorrect in that at least one of the Mariana Islands, Farallon de Pajaros, lies north of 20° north latitude.

b. Section 103 provides for restricting acquisition of property interests to persons of Marianan descent. This would permit acquisition of property interests by persons whose ancestors were residents of the Marianas, but who have since emigrated to the U.S. or elsewhere. This is inconsistent with General Principle No. 5 which would limit transfers of property interests to persons of permanent Marianan residency.

c. Throughout the Draft Agreement occur references to provisions of the U.S. Constitution, the most extensive list being in Section 104. These references assume that the U.S. Constitution would not otherwise apply to the Commonwealth. This is an assumption I am not yet prepared to accept. It is understood that the Justice Department is preparing a memorandum on this question. Accordingly, additional comments on the subject will be deferred until that memorandum is received.

d. The nationality and citizenship of residents of the Marianas District is discussed in Sections 105 and 106; however, the language leaves some questions unanswered. What is the status of these residents while awaiting their choice under Section 105? If they fail to make the contrary declaration provided for under Section 106(b), do they become U.S. citizens at the expiration of the prescribed waiting period, or are they citizens of the U.S. on the termination date with the option for a limited period of denouncing that status?

e. Section 203 provides for the proposed constitution to be transmitted by the High Commissioner to the U.S. Congress. There is no indication that there would be any review of the proposed constitution by Executive Branch agencies of the U.S. Government before transmission to the U.S. Congress. It is recommended that the proposed constitution should be initially transmitted to the President of the U.S., who will transmit it to the U.S. Congress for certification if the President determines that it meets the criteria set forth in the Agreement.

f. Section 304 should be amended to include the Constitution of the United States in the oath on affirmation taken by members of the Commonwealth legislature and officers of the Commonwealth Government. The definition in this section of the extent of the legislative power of the Commonwealth refers to those U.S. statutes which are "specifically applicable" to the Mariana Islands. Earlier references to this concept in Sections 203 and 205 refer only to "relevant" provisions of Federal law.

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g. Section 402 of the subject Draft Agreement makes U.S. income tax laws applicable in the Commonwealth. Section 403 assumes that other revenue laws of the U.S. providing for customs duties on imports into the Commonwealth from the U.S. and imports and excise taxes on articles produced in the Commonwealth are applicable even though no section comparable to Section 402 makes them applicable. In addition, Section 605 declares that no taxes or levies will be imposed on goods imported into the Commonwealth from the U.S. or exported from the Commonwealth to the U.S. These inconsistencies should be resolved.

h. Section 406 provides for the disposition of funds received from the U.S. Government for the sale of lands to the U.S. Government for security purposes. It is unclear whether this provision assumes renegotiation of existing agreements between the U.S. and the Commonwealth respecting property interests held by the U.S. attendant to its defense responsibilities. If so, this would be inconsistent with Section 503. If Section 406 applies only in the event of future sale of additional lands to the U.S. Government for security purposes, this intent should be stated more clearly.

i. Section 504 provides for the U.S. to pay a sum to be negotiated for title to the lands and adjacent waters described in Section 503. It is believed that the U.S. holds use and occupancy rights for an indefinite term to some portions of the lands and adjacent waters described in Section 503. Under Section 503, these existing agreements are to continue without renegotiation. This inconsistency should be resolved. Perhaps the Section 504 payment should be expressly limited to those areas described over which the U.S.A. does not already possess use and occupancy rights.

j. Section 603 provides for existing local laws and regulations to remain in force until repeal or amendment by a Commonwealth Government. This section should provide for the possibility that some of those local laws may be inconsistent with the subject Agreement or Federal legislation applicable after a Commonwealth status is achieved.

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19 October 1973/srr

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