

December 11, 1973

SUMMARY OF UNITED STATES' INFORMAL REMARKS ON MARIANAS POLITICAL STATUS COMMISSION PAPER ON LIMITATIONS ON FEDERAL AUTHORITY

The United States understands and has sympathy for the Marianas Political Status Commission's desire for "maximum self-government in regard to local affairs". In fact the United States wishes to work with the Marianas Political Status Commission toward this objective. As a historical and practical matter the Congress of the United States has not interfered in the internal affairs of its territories. Question in part is matter of faith and trust in the American system and its commitment to local government and home rule. The problem is primarily a political one, political in the sense that what is practical, what is realistic and what will be acceptable must be taken into consideration. The United States believes that it is politically feasible to write into an agreement the assurances the Marianas Political Status Commission seeks with regard to the non-interference by the federal government in its internal affairs. The United States has already tentatively agreed to limit the plenary powers of the Congress in internal affairs of the future Commonwealth. What is needed now are the views of the Marianas Political Status Commission on what are the "fundamental provisions" of the agreement that would be modifiable only by mutual consent and what specific limitations on federal authority does the Marianas Political Status Commission have in mind. A practical approach to this primarily political question is needed.

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Last May the United States tentatively agreed that "fundamental" provisions of the agreement creating the new political status for the Marianas would not be modifiable except by mutual consent. In the Marianas Political Status Commission's paper regarding limitations on federal authority it has been proposed that, in addition to the mutual consent requirement, United States' federal authority in the Marianas should be further limited to that which would obtain were the

Marianas State. The United States has fundamental difficulty with this proposal.

The basis of this difficulty is more fully discussed at the end of this summary. However, it should be noted at the outset in light of the history of federal treatment of Puerto Rico and the territories that the United States does not regard the Marianas Political Status Commission's apparently generalized fear of Congressional interference in the internal affairs of the Marianas as well-founded. That history does not indicate a Congressional practice of interfering in the internal affairs of the territories. Furthermore, practical considerations indicate that there is little likelihood of such Congressional interference in the future. To the extent the Marianas Political Status Commission is concerned, in spite of these historical and practical considerations, that the Congress may unilaterally tamper with specific fundamental aspects of the future relationship between the United States and the Marianas, the United States is willing to try to deal with those concerns under the mutual consent requirement.

Set forth below are the United States' responses to what we believe are the four principal points raised in the paper on limitations of federal authority in support of the Marianas Political Status Commission's proposal:

1. The Marianas Political Status Commission paper maintains that the authority of Congress under Article IV-3-2 is not necessarily plenary but may be limited in a manner which does not conflict with the United States Constitution.

UNITED STATES RESPONSE:

The United States has no argument with this proposition as a legal matter. Of course, it cannot be said with certainty what courts will say about the restrictions which may be imposed in this agreement on Congress'

sovereignty under IV-3-2. But the United States has said consistently for the past two years that the process by which the people of the Marianas will approve this agreement will constitute a sovereign act of self-determination. The United States also recognizes that its authority in the Marianas after termination of the Trusteeship will be subject to the limitations set forth in this agreement. Therefore we believe the proposition here should be enforceable.

2. The Marianas Political Status Commission has taken the position that United States sovereignty over the Marianas can "co-exist" with a limited application of IV-3-2.

UNITED STATES RESPONSE:

We agree that the authority of the United States in the Marianas can be restricted, within agreed limits, without bringing into question the sovereign nature of that authority. Too general a limitation, however, could raise troublesome questions of residual sovereignty which we wish to avoid.

3. The Marianas Political Status Commission has also taken the position that the Trusteeship Agreement and the U.N. Charter require that the Marianas achieve self-government in the manner set forth in the Marianas Political Status Commission's proposal:

UNITED STATES RESPONSE:

Whether the Marianas are self-governing due to customary Congressional forbearance from interference in their local affairs or due to an express prohibition against any such interference is an internal question which is of no legitimate concern to the United Nations.

The Marianas Political Status Commission makes the general assertion that unqualified application of IV-3-2 would leave the Marianas without adequate assurances of local self-government. Three sub-points are raised in support of this assertion:

a. Unqualified application of IV-3-2 would undercut the mutual consent requirement.

UNITED STATES RESPONSE:

There is no disagreement on this point. It is not our intention that Congress retain authority the exercise of which would be inconsistent with the mutual consent requirement. The United States views the mutual consent requirement if approved by the Congress as a clear limitation of Congress' authority under IV-3-2.

b. Unqualified application of IV-3-2 would mean that Congress could enact legislation affecting matters of purely local concern.

UNITED STATES RESPONSE:

This is correct, except, of course, for those matters which would come under the mutual consent requirement. But, as pointed out above, history does not indicate any likelihood that the Congress would enact legislation affecting matters of purely local concern.

c. Unless the status agreement provides that federal authority does not extend to internal affairs, local self-government for the Marianas will not be assured.

UNITED STATES RESPONSE:

In light of the mutual consent requirement to which we have already tentatively agreed and the intention of the United States to adhere to the traditional federal forbearance from interfering in the local affairs of territories, we believe the Marianas have adequate assurances of local self-government.

Conclusions:

As indicated above, the difficulty with the Marianas Political Status Commission's proposal that the authority of the Federal Government with respect to the Marianas be limited to that which it would have were the Marianas a state is not due to any legal shortcomings in the proposal. The difficulty is political in nature. Implementation of the statehood-model proposal would amount to creating a status for the Marianas which is materially different from that enjoyed by any other United States territory or commonwealth.

The United States cannot agree to restrict the power of Congress vis-a-vis the Marianas to any appreciably greater extent than it is willing to limit that authority vis-a-vis all other United States dependencies. Consultations within the Executive Branch and with the appropriate Congressional Committees have indicated that the Marianas Political Status Commission's proposal to restrict the authority of the Congress to that which it would have were the Marianas a state, in addition to whatever restrictions may be imposed under the mutual consent requirement, goes beyond this limit.

We understand your desire for assurances that the Congress will not interfere in your internal affairs. We believe that you have a most important practical and political assurance in this regard in the history of Congressional forbearance from such interference with respect to other territories. Furthermore, we have said that we are prepared to discuss with you whatever specific legal assurances you believe are truly necessary in the context of the mutual consent requirement. This combination of assurances can, we believe, satisfactorily deal with your reasonable concerns over federal interference in your internal affairs. We look forward to hearing from you regarding those fundamental aspects of our future relationship which you believe ought to be modifiable only by mutual consent.