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What does Willens  
propose as alternative  
in the formula  
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MEMORANDUM

To: Captain Scott

From: Adrian deGraffenried

Subj: MPSC/U.S. legal group; issues to be resolved

There are a number of important substantive and procedural differences between the U.S. and MPSC members of the joint legal working group arising from the 26 April meeting with Howard Willens. These should be resolved as soon as possible. They are:

1. The status document. The MPSC will be considering its own version of a future political status agreement called the "Mariana Islands Commonwealth Agreement" and proposing that the U.S. adopt its draft language. Willens comments that the document covers more topics, is in greater detail, and will incorporate all the substantive issues agreed upon during the status negotiations. This would appear to be a tactic of forcing the U.S. to respond to the MPSC initiatives and to assume the burden of persuading the MPSC of the intrinsic value of abandoning MPSC positions for the U.S. proposals. It should also be observed that the MPSC approach of negotiating precise language after MPSC IV and in Washington (under the auspices of the Joint Legal Working Group) removes the MPSC members from active participation in the drafting of a "local" political document, will lend itself to highly technical language that will not be clearly understood by the MPSC membership or by the people of the Mariana Islands, and will no doubt delay an early status agreement with the MPSC. Willens is evidently pursuing his belief that the MPSC should provide a detailed negotiating history of the intentions of the MPSC in the future political status talks that is capable of interpretation and enforcement in the federal judicial system. Willens

has insisted upon detailed MPSC position "papers" and upon taping the sessions in prior sessions. Preparing an accurate and full historical record of the status negotiations is desirable. Although there are some items of local concern which require specific legal language, preparing a detailed and comprehensive legal document in lieu of a general political agreement to establish the respective rights and obligations of the United States and the Mariana Islands would not be desirable. A simplified political document drafted in part by MPSC members would be the most preferable approach.

2. Applicable Laws. A general formula for the interim applicability to the Marianas Commonwealth of federal laws now extended to Guam was initially endorsed by the MPSC. Willens has consistently insisted throughout the negotiating sessions that the Marianas be treated locally as if it were a State of the Union so as to establish its local autonomy and prevent undue interference from the U.S. Congress. Willens now indicates that the MPSC will not accept an interim approach and will also be insisting that the Marianas be excluded from U.S. laws dealing with the intra-territorial relations, especially as regards commerce. These approaches should be rejected by the U.S. To permit the Marianas to become a new U.S. territory and receive the special benefits and privileges deriving from that territorial status and yet permitting the establishment of local autonomy as if the Marianas were a State of the Union effectively creates a political status for the Mariana Islands that would be in excess of that enjoyed by the States. The Marianas would as a consequence be far beyond the reach of federal control and authority in many areas which are not completely foreseeable. This elevated status would have immediate repercussions in U.S.-territorial relationships which could require the U.S. to relinquish federal authority in these areas. The Marianas should continue to fall within the general territorial relationships as now exist with some exceptions to meet particularly unique local circumstances.

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3. The Commonwealth status. Another element of the MPSC approach to creating a status elevated above that enjoyed by other territories and even States, is the MPSC desire to create a special and unique territorial status for the Mariana Islands that does not parallel the current U.S.-Guam relationship. The MPSC approach to date has been to adopt selected positions that provide the maximum in benefits and local autonomy to the Mariana Islands, e.g., the income tax approach taken in Puerto Rico; the immigration and naturalization approach taken in American Samoa; the Jones Act approach taken in the Virgin Islands and American Samoa; the duty free port approach taken in Guam. It would appear that the U.S. must make a fundamental determination on how to approach the Marianas status:

a. whether to closely follow the Guam example and agreeing that local adjustments will be made as Guam's status is elevated; or

b. agreeing to a political status that meets the MPSC desire for a unique territorial status and hoping that the U.S. Congress will accept that status and adjust other U.S. territorial relationships accordingly.

Study I and initial Congressional contacts indicate that it <sup>is necessary</sup> would be preferable to adopt the former approach.

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