

Marianas Negotiations

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after June 1, 1971

The Trust Territory administered by the Department of the Navy was transferred to the Department of the Interior in 1951. Only the Marianas were returned to naval administration in successive transfers in the years of 1952 and 1953. 1/ Not until 1962 were these islands returned to the jurisdiction of the Department of the Interior and unified administration with the rest of Micronesia achieved. 2/ United States strategists prize the military potential of the Marianas greater than any other district of the Trust Territory and, unlike plans for the other five districts, have been hesitant to disclose future military projections in the Marianas to the Micronesian Joint Committee. Further, United States holdings of "public lands" in the Marianas has been calculated at 90% which is significantly higher than the average throughout the Trust Territory. 3/

The location of the Office of High Commissioner and the headquarters for the government of Micronesia on Saipan since 1962 has resulted in particularly heavy United States influence in the Marianas. The economic significance of the capital's location on Saipan is illustrated by the tentative agreement by the United States to cover the costs of relocating the present capital to a new site as part of the Micronesian status agreement. 4/

In the past the Marianas have expressed a desire for reunification with Guam, which geographically and ethnically is part of the Marianas chain.

However, the people of Guam rejected this idea in 1969. When the rest of Micronesia began moving toward a lesser relationship of free association with the United States in the summer of 1970, the Marianas representatives asked for a different status arrangement for themselves. At first the United States rejected this request saying that it was committed to discussions on a territory-wide basis.

Then, at the Second Regular Session of the Fourth Congress of Micronesia, during January and February 1972, the Micronesian Independence Coalition grew to include half the membership in the Congress. In August of that year, the House and Senate of the Congress of Micronesia directed the Micronesian Status Committee to negotiate regarding the establishment of Micronesia as an independent nation. 5/ When the Marianas reaffirmed their request for a closer relationship and separate talks with the United States in April 1972, the United States this time responded affirmatively.

In response to this potential separation and loss of an "inestimable value to the Trust Territory," the Congress of Micronesia resolved that it was the only law-making body duly empowered to authorize a separate political future for the Mariana Islands District. The Congress of Micronesia offered to authorize such a separate political future for the Marianas on the promise of the United States to pay \$200 million to the Government of Micronesia. 6/

Despite this action and possible U. N. criticism, the United States began the first round of status talks with the Marianas in December 1972. This session was characterized by warm expression from both sides toward a close and permanent affiliation between the United States and the Marianas. 7/ During the second round of talks in the Spring of 1973, the parties concentrated on particular issues such as the applicability of the United States Constitution and Federal laws, national security considerations, representation in Washington, citizenship and nationality, features of a Marianas Constitution, and the extent of self-government possible for the Marianas. 8/ The parties tentatively agreed that the political arrangement to be worked out would be that of "commonwealth," following the model of the Commonwealth of Puerto Rico.

Agreement on the specifics of the political relationship have not as yet reached the stage of a draft status agreement. 9/ Both parties agreed at the fourth session that a joint drafting committee would be established and that their draft will be presented to the Marianas Political Status Commission and the United States at the next negotiating session. The drafting will require somewhat greater precision than the Micronesian status agreement because the relationship will be much closer and the United States government will be given greater powers.

The parties tentatively agreed at the second session that "sovereignty" over the Marianas would be vested in the United States and that the "territorial clause" of the U. S. Constitution would apply to the

Marianas if an acceptable arrangement could be worked out. The necessity for a precise arrangement is to clearly delineate the limits of United States power over the new commonwealth. Past interpretation of the "territorial clause" of the U. S. Constitution has given the U. S. Congress an almost unrestricted hand in legislating for the territories. 10, Because of its plenary powers, Congress may legislate for territories in purely local affairs and can also modify the organic legislation establishing the territorial government. In fact, Congress could dissolve and replace the territorial government if it so chose. The people of the Marianas will presumably limit the ability of the United States to unilaterally change position and alter the institutions or Federal relationship of the Marianas.

At the third session of negotiations in December 1973, the parties tentatively agreed to explicitly state that those provisions of the Status Agreement cannot be amended or repealed except by the mutual consent of both parties, a position which is still unclear in the Puerto Rico-United States relationship. To this extent, United States authority in the Marianas would not be plenary. Thus, once the Status Agreement has indicated the respective powers of the two governments, the U.S. Congress could not alter the relationship unilaterally.

1. Powers of the U. S. Government

"Sovereignty" over the Marianas would be vested in the United States government. 11/ While generally certain powers are considered to be "inherent in sovereignty" and include the right to control immigration 12/

and the power of eminent domain, <sup>13/</sup> the parties have left open for explicit provision in the Status Agreement whether or not the immigration laws will apply <sup>14/</sup> and have referred to a Joint Drafting Committee the development of appropriate safeguards in the area of eminent domain.<sup>15/</sup> Agreement in this area may be difficult since, to take one example, the United States has repeatedly indicated its desire to acquire land outright for military purposes, while the Marianas Political Status Commission proposes long-term, 50 year leases.

Retention of "public lands" by the United States administering authority is a critical issue in the status negotiations. In the Marianas, the level of such retained lands is highest in the Trust Territory and close to 90% of all land. Like the Micronesian negotiators, the Marianas Political Status Commission expressed its general satisfaction with the United States policy statement of November 2, 1973, on the return of public land to the district. <sup>16/</sup> Implementation of that policy statement will return surplus lands back to district control with appropriate safeguards and still allow the United States to retain rights over those lands currently being used by the Trust Administration, land identified as needed for capital improvement projects and public land to be used to meet defense needs under the future status agreements. The parties generally agreed that military retention land not needed for military purposes would be returned to the public domain. At the fourth negotiating session, the United States indicated its intent to

relinquish its use rights on all military retention land in the Northern Marianas not covered by the tentative agreement. This amount to 4,691 acres (1,898 hectares) which will be returned to the public domain no later than the effective date of the formal status agreement. While the type of property interest, either lease or outright purchase, has not been decided, the parties have tentatively agreed on which specific lands the United States will hold interest in. 17/

Tentative agreement made at the second session would vest the United States with the responsibility for, and complete authority over, the fields of foreign affairs and defense, while the Commonwealth of the Marianas would exercise a maximum amount of self-government "consistent with relevant portions of the U.S. Constitution and Federal laws." 18/ Just where this distinction lies is unclear, especially in relation to commerce between the new commonwealth and the United States.

Clearly, the United States will have exclusive control over all military operations and fortifications in the Islands and will be able to negotiate and enter into international agreements regarding the commonwealth. The advice of the future commonwealth government on international matters directly affecting the Islands would be "considered" by the United States government. 19/ The United States will also support the membership of the Marianas in regional or other international organizations dealing with economic or social matters and will permit the Marianas to establish offices abroad to promote local tourism or economic or cultural interests. 20/

Whether specific Federal laws dealing with immigration, banking, social security, maritime, labor standards, postal service, and others will apply to the new commonwealth is still unclear. However, it appears that the Congress of the United States will retain the power to legislate in these areas. At the third session in December 1973 the parties agreed to explore such laws and "at an appropriate time after the Status Agreement is signed," a detailed study will be submitted to the U.S. Congress for their action. 21/ This clearly suggests that unless the Status Agreement otherwise specifies, in a provision "designed to assure maximum self-government," the Congress of the United States will retain full power to apply Federal laws to the Islands.

The only areas of Federal legislation on which tentative agreement have been reached are in the areas of Federal taxation and customs duties. The "future government of the Marianas would have exclusive power to enact, amend or repeal its internal revenue laws" 22/ which suggests that the United States may relinquish its power to apply Federal internal revenue laws to the commonwealth.

However, this could be interpreted as merely freeing the Marianas at present from an inflexible reflection of the U. S. Internal Revenue Code as is now operating in Guam. Under this interpretation the United States could at another time impose Federal taxes. While the parties also agreed that specific provisions of the I.R.C. will extend to U.S. citizens doing business in the Marianas, these particulars may not necessarily be embodied in the Status Agreement; and, if not, they would remain subject to unilateral alteration by the United States.

The Marianas would not be included in the customs territory of the United States and the Government of the Marianas would be able to enact its own local customs laws. 23/ However, this authority must be exercised in a manner consistent with the international obligations of the United States, including the General Agreement on Tariffs and Trade. 24/ While the parties agreed that the Government of the Marianas could levy taxes against imports from foreign countries and impose duties on exports from the commonwealth, no mention was made regarding tariffs on goods originating from the United States. Exports from the Marianas entering the customs territory of the United States would be free of import duty under the same conditions now applicable to the Territory of Guam. 25/ which allow free entry except when more than 50% of the value of the product was derived from foreign materials. Whether all of these provisions and concessions by the United States will be embodied in the Status Agreement and will become permanent unless the parties mutually agree on rescission is unclear. Based on past precedent the United States might well permit Marianas authority over its customs but may retain control over goods flowing to or from the United States.

2. Powers of the Government of the Marianas

The government of the Marianas is to exercise the "maximum amount of self-government" 26/ consistent with the U. S. Constitution and Federal law. Presumably, this would give the commonwealth powers as extensive as those of a state; and unlike a mere territory, these powers could not be revoked by the U. S. Congress. Moreover, unlike a state, the



Government of the Marianas will be able to establish its own customs laws and lay duties on imports and exports, so long as consistent with United States international obligations, and the future government of the Marianas would have "exclusive power to enact, amend, or repeal its internal revenue laws." 27/

In legislating for the commonwealth, various provisions of the U.S. Constitution will apparently restrict the full power of the Marianas government just as the Constitution restricts the powers and actions of a state. While discussions have not focussed on many fundamental Constitutional provisions, such as Equal Protection, Due Process, Free Speech, and others, the parties have acknowledged that the "Privileges and Immunities Clause" 28/ will apply subject to "appropriate limitation in the formal status agreement to assure that the ability of the future Marianas government will not be compromised." 29/

The extension of the Clause to the Territory of Puerto Rico before commonwealth and to the Territories of Guam and the Virgin Islands has been to prevent taxation of non-residents (statesiders) at a rate higher than residents and to guarantee to all United States citizens in or entering--including the corporations of any of the United States--rights of national citizenship, such as the right to engage in interstate and foreign commerce, the right to appeal in proper cases to the national courts, and the right of protection abroad. 30/ Thus, in order to allow

U. S. citizens the same rights as people of Marianas ancestry and still prevent alienation of Marianas land, appropriate safeguards will have to be carefully worked out.

Even if the new commonwealth is vested with the power to control immigration of aliens, it is unlikely that the commonwealth could create barriers to free entry by U. S. citizens. Since the proposed commonwealth relationship intends to bring the Marianas within United States sovereignty and vest self-government only so far as not inconsistent with the relevant portions of the U. S. Constitution, U. S. citizens could expect the rights to travel to, and engage in interstate and foreign commerce with, the commonwealth. Any power to restrict the entry of U. S. citizens would seemingly conflict with the rights of national citizenship.

Other restrictions on the power of the Marianas government will stem from its own constitution which must be consistent with relevant provisions of the U. S. Constitution, the final Status Agreement, and relevant Federal laws. 31/ The parties envision that the local constitution will contain a bill of rights, provide for a separation of powers, and provide for a popularly elected chief executive. 32/ These may be spelled out in the Status Agreement and restrict possible future amendment by the Marianas people. Any future amendment must be consistent with the Status Agreement and relevant Federal laws and "Federal courts would be competent to pass on the consistency of such amendments." 33/

Like a state, the new Marianas commonwealth will have the right to establish local courts to handle cases arising under local laws and the jurisdiction of the United States District Court in the Marianas will be at least the same in the Marianas as it would be in a state. 34/ However, the U. S. Constitutional requirements of indictment by grand jury and of a jury trial in civil cases need not be made applicable. 35/

### 3. Rights of U. S. Citizens in the Marianas

Concern by the people of the Marianas over the alienability of their scarce lands will probably result in special provisions giving people of Marianas ancestry special protection and rights in lands in the Marianas. 36/ If these rights are established along blood lines, then U. S. citizens coming to the Marianas would effectively stand in the same position as non-U. S. citizens and aliens. The amount and extent of lands which will be so protected is unclear. However, in other areas, extension of the Privileges and Immunities Clause of the U.S. Constitution would guarantee U. S. citizens the rights of national citizenship in the new commonwealth: the right to engage in interstate and foreign commerce, the right to appeal in proper cases to the national courts, and others. Thus, except for limitations on land acquisitions, U. S. citizens would have the same rights in the Marianas as anywhere under United States sovereignty.

4. Rights of Citizens of the Marianas in the United States

Generally, all persons born in the Marianas prior to Commonwealth will become U. S. citizens and be eligible for all the benefits of such citizenship including free entry into the 50 States. 37/ As citizens, they will presumably owe military service to their country if called. However, unlike a citizen of a state, the people of the Marianas would have no vote in the election of the United States President and would likely not possess voting representation in the U. S. Congress. The U. S. Delegation to the negotiating sessions has agreed to "support" a request by the Marianas for its own non-voting delegate in the U. S. Congress. 38/ At least in the near term, the people of the Marianas would not be subject to Federal income, estate, or gift taxes.

5. Compensation

The two delegations have tentatively agreed on an initial seven-year financial program to begin following the establishment of the commonwealth, which could come as early as 1976. 39/ Under the program, the United States will provide roughly \$16.5 million of assistance with \$13.5 million coming in the form of direct financial grants:

1. \$8 million per year for general operations of the Marianas government;
2. \$15 million per year for funding of economic development loans with \$500,000 reserved for small loans to farmers, fishermen, and agricultural and marine cooperatives;
3. \$4 million per year to fund capital improvement projects with \$500,000 a year to be reserved for Rota and another \$500,000 to be reserved for Tinian; and
4. Approximately \$3 million per year to be spent by the United States in providing a wide range of services and assistance under regular U. S. Federal programs.

To protect against inflation, United States assistance will be provided in constant 1975 dollars. In addition, the United States has tentatively agreed to pay the transitional costs for the necessary constitutional convention, 40/ plebiscite and election of the necessary government to implement the Status Agreement. Additional expenses, including social and economic planning and research, will increase the costs of planning and implementing the political status change to about \$1.2 million.

Funding after this seven-year initial period is still open with the hope that the Commonwealth will be able to achieve greater self-sufficiency and fulfill the demand for capital improvement programs.

6. Adoption and Termination of the Status Agreement

Adoption of the Status Agreement, once the negotiating parties have drafted the formal document, will require the approval of the Marianas people in a plebiscite held as an act of self-determination. Ratification by the United States will involve the usual U. S. Constitutional process of Congressional approval in both the House and Senate. Once the parties have adopted the Status Agreement, the new government of the commonwealth of the Marianas will take office only after a Constitutional Convention has been held to draft a local constitution, the constitution has been ratified by the people of the Marianas by another ballot, and new representatives have been elected pursuant to general election.

The critical provisions of the Status Agreement, once adopted, will not be subject to unilateral termination or revocation by either party. Unlike the provision for unilateral termination after a fifteen year period now discussed in the Micronesian negotiations, the people of the Marianas appear willing to enter into a binding permanent relationship with the Federal power.

Any disputes arising out of the interpretation of the Status Agreement will be reviewable in the Federal courts. 41/

Footnotes

- 1/ The single exception was the Island of Rota which was not returned to naval control and remained administratively isolated as the only island of the Marianas not under naval control.
- 2/ Ex. Order No. 11021, 27 F.R. 4409 (May 8, 1962).
- 3/ U. S. Policy Statement of November 2, 1973, Transfer of Title of Public Lands from the Trust Territory of the Pacific Islands Administration to the Districts: U. S. Policy and Necessary Implementing Courses of Action (printed in Micronesian Status Negotiations, Proceedings of the 7th Round 25 (1973)).
- 4/ The President's Personal Representative for Micronesian Status Negotiations has agreed, subject to the approval of Congress, that the United States will contribute an undetermined sum to the Government of the Trust Territory to cover in part the costs of relocating the present capital to the new site in Micronesia to be chosen by the people of Micronesia.
- 5/ Congress of Micronesia, S. J. Res. 117, August 30, 1972.
- 6/ Congress of Micronesia, S. J. Res. 114, August 25, 1972.
- 7/ Hearings to Hear Progress Report on Negotiations Concerning the Future Status of the Trust Territory of the Pacific Islands Before the Subcomm. on Territorial and Insular Affairs of the House Comm. on Interior and Insular Affairs, 93d Cong., 1st Sess., ser. 93-4 at 6 (1973).
- 8/ Joint Communique, Marianas Political Status Negotiations, 2d Sess, at 7-11 (June 4, 1973). Hereinafter cited as "Joint Communique, 2d Sess."
- 9/ Through the Fourth Session of negotiations, May 1974.
- 10/ Dones v. Bidwell, 182 U.S. 244 (1901).
- 11/ "Joint Communique, 2d Sess.," at 8.
- 12/ "It is admitted that sovereign states have inherent power to deport aliens, and seemingly that Congress is not deprived of this power by the Constitution." Tiaco v. Forbes, 228 U.S. 549, 556 (1913).
- 13/ "The right of eminent domain inheres in the Federal Government by virtue of its sovereignty and thus it may, regardless of the wishes either of the owners or of the States, acquire the lands which it needs within their borders." James v. Dravo Contracting Co., 302 U.S. 134, 147 (1937).
- 14/ "Joint Communique, 2d Sess., at 9.

15/ Joint Communique, Marianas Political Status Negotiations, 4th Sess., at 3 (May 31, 1974). Hereinafter cited as "joint Communique, 4th Sess."

16/ See discussion in the "Micronesian" section at note 47.

17/ "A summary of the tentative agreements reached on land requirements follows:

1. Farallon de Medinilla. This island consisting of 229 acres (93 hectares) will continue to be made available to the United States as a target area. Maximum safety precautions will be enforced by the United States.

2. Tanapag Harbor area. Approximately 197 acres (78 hectares) in the southern portion of the Tanapag harbor area, now under military retention, will be made available for future contingency use by the United States. Most of this land will be used by the United States for the development of an American Memorial Park which will be used as a recreation area by the people of the Marianas. Preliminary plans for the park call for cleared beaches, an amphitheatre, a family picnic area, an arboretum, a swimming pool and other athletic facilities in addition to a monument. Land in the Tanapag harbor area not used for the Memorial Park or for military purposes will be made available to the future Government of the Northern Marianas for possible sub-lease for civilian harbor-related activities. There are no current plans for military use of this area. Subject to the limitations imposed by any future military use, the United States has agreed to permit maximum feasible joint use of any land and facilities which are developed for military purposes.

3. Isely Field area. Approximately 482 acres (193 hectares) south and adjacent to the southern runway of Isely Field and within the south boundary road also will be made available for future contingency use by the U.S. forces. As at Tanapag harbor this land will be made available to the future Government of the Northern Marianas for use or lease for industrial or agricultural purposes compatible with possible future military use.

4. Tinian. Approximately 17,475 (6,993 hectares) will be made available for the development of a joint service military base in accordance with the plans newly presented by the United States. These plans reduced the acreage required by approximately 1,200 acres (485) hectares) and eliminated the necessity for relocating San Jose Village. The United States will carefully reevaluate its military land needs in the area south and east of the northeastern portion of the proposed runway in order to make as much of this land as possible immediately available to the Government of the Northern Marianas under a land use arrangement for agricultural and other purposes compatible with planned military activities."

"Joint Communique, 4th Sess.," at 1-2.



- 18/ "Joint Communique, 2d Sess.," at 8.
- 19/ "Joint Communique, 2d Sess.," at 8.
- 20/ "Joint Communique, 2d Sess.," at 8.
- 21/ Joint Communique, Marianas Political Status Negotiations, 3d Sess., at 7 (December 19, 1973). Hereinafter cited as "joint Communique, 3d Sess."
- 22/ Ibid, at 8.
- 23/ Ibid.
- 24/ Supra, note 21.
- 25/ General Headnote 3(a) of the Tariff Schedules, 19 U.S.C. §1202.
- 26/ "Joint Communique, 2d Sess.," at 8.
- 27/ "Joint Communique, 3d Sess.," at 8.
- 28/ U.S. Const., art IV, §3, cl. 1.
- 29/ "Joint Communique, 2d Sess.," at 8.
- 30/ In discussing the proposed extension of the privileges and immunities clause, the due process clause, and the equal protection clause of the U. S. Constitution to Guam, Harry R. Anderson, Assistant Secretary of the Interior, noted that: "This will guarantee to all U.S. citizens in or entering Guam--including the corporations of any of the United States--rights of national citizenship such as the right to engage in interstate and foreign commerce, the right to appeal in proper cases to the national courts, and the right to protection abroad." H.Rpt. No. 1521, 90th Cong., 2d Sess. 14 (1968).
- 31/ "Joint Communique, 2d Sess.," at 8.
- 32/ Ibid.
- 32/ Supra, note 31.
- 33/ Supra, note 31.
- 34/ Supra, note 31.
- 35/ Supra, note 31.
- 36/ "The question of how to implement the prior agreement that the Marianas Government will have the authority to prohibit the alienation of land to persons not of Marianas descent was also referred to the Joint Drafting Committee. This Committee will consider as well limitations on the amount of public lands which might be made available to or held by any one individual." "Joint Communique, 4th Sess.," at 3.

37/ "Joint Communique, 3d Sess.," at 7.

38/ "Joint Communique, 2d Sess.," at 8.

39/ "Joint Communique, 4th Sess.," at 4.

40/ Ibid.

41/ "Joint Communique, 2d Sess.," at 7.