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III. Progress in Negotiations With The Marianas

A. Background

Since December, 1972 we have been engaged in a series of negotiations with representatives of the Marianas District of the Trust Territory aimed, at their request, at bringing that district into a close and permanent relationship with the United States. For over twenty years the people of the Northern Marianas after several popular referenda have sent requests and petitions to the United States and the United Nations asking to become part of the American political family like their neighbors in Guam, with whom they are tied ethnically, culturally and geographically.

When the Congress of Micronesia in 1971 rejected a United States offer of commonwealth status for all of the TTPI, the Marianas asked for separate negotiations to establish a relationship much closer than that apparently desired by the other districts. After careful consideration the United States agreed on the basis that it was more important to observe the right of self-determination for the people of the Marianas than it was to insist that they remain with the other districts.

The several peoples of the TTPI after all until recently have had little in common beyond their governmental structure imposed by outside authority. Notwithstanding this the

had tried since the beginning of the trusteeship to keep the districts together and to avoid the many disadvantages of fragmentation. But the repeated and insistent voice of the Marianas over the years and the clear desire of a large majority of its people to have a different form of political relationship with the U.S. from that of the other districts finally an exception to an otherwise consistent policy of unity for the Trust Territory.

The most recent series of negotiations - the fourth formal session with the Marianas District - was completed the end of last May, and ~~necessary~~ technical level discussions have been going on since. At the same time, lawyers on both sides have been meeting to draft the terms of an instrument reflecting the major substantive points of agreement reached to date. When finally approved this would bring the Marianas District under U.S. sovereignty after the Trusteeship is ended and establish it as a Commonwealth of the United States.

B. Principal Elements of the Agreement

The principal elements of agreement now being incorporated into the draft instrument are set out in the Joint Communiqué dated May 31, 1974, a ~~copy~~ of which ~~has been~~ made available earlier to this Committee, and is attached to this statement. It has been thus far agreed that if the people of the Marianas and the U.S. Congress approve the Northern Marianas will become fully self-governing in internal affairs, with its own constitution

and its own freely elected chief executive and legislature and its own courts in addition to a federal court. When the trusteeship ends (this must be done for all the districts of the Trust Territory simultaneously and may take some time), the Northern Marianas will come under full U.S. sovereignty and its people will become American citizens except for those individuals who may choose the lesser status of American nationals.

The new Commonwealth at the request of the Northern Marianas would be separate from Guam at the outset. There is real concern that in the initial period of their new status, at least the northern islands might be swallowed up by their larger cousins to the south. The possibility of eventual union with Guam, however, remains very much open and has in fact already been the subject of several general discussions between representatives of Guam and the Northern Marianas.

In recognition of the continuing economic dependence of the area the United States, if Congress approves the agreement, would supply substantial continuing economic and financial assistance to the new government over an initial period of seven years, renewable through negotiation at the end of that period. Indeed the Congress will be asked within the next few days to provide special funds for the Northern Marianas in the amount of \$1.5 million, to finance among other things a series of transitional studies and plans on how federal financial assistance can best be used over that seven year period.

Following final approval of the new commonwealth agreement and the new Marianas' Constitution, which might occur as early as July 1976, and before the Trusteeship officially ends, the new government of the Northern Marianas would be put into effect on a transitional basis except for those features which would be incompatible with the existence of the Trusteeship Agreement. Included in the latter category are U.S. sovereignty the name "Commonwealth", U.S. citizenship and the application of certain federal laws. We are also discussing now with the Marianas' District, at the request of their Legislature, the idea of establishing by Secretarial Order a separate administration for the Marianas District even before this transitional government is established, perhaps as early as the time the people of the Marianas approve the new agreement in a popular plebiscite. This would be a move designed to facilitate the relationship between the Marianas and the other districts of the Trust Territory while the Trusteeship Agreement remains in effect.

D. Military Bases

As part of the negotiations the representatives of the Northern Marianas have now also agreed to make certain land areas available to the federal government for military purposes. The principal area involved is some 17,475 acres on the island of Tinian to be developed as a major joint service military base. This would include a

multi-purpose airfield, complementary to Anderson Field in Guam, important storage and logistics support facilities for all services and a maneuver area large enough to accommodate field exercises with one amphibious brigade. Almost half of the area has already been reserved under U.S. lease from the TT Government for possible military use and set aside as military retention land. The remainder will have to be acquired. Additionally, the Marianas representatives have agreed to make available on a continuing basis for aerial target practice and naval shore fire the small, uninhabited and inaccessible island of Farallon de Medinilla which the U.S. military forces have had under lease for several years for similar purposes.

Over and above these areas which are needed immediately, there are two smaller areas on Saipan which it has been agreed can be set aside for possible contingency use sometime in the future. These are 197 acres adjacent to Tanapag Harbor and 482 acres bordering the new Saipan international airport previously known as Isely Field. Most of the Tanapag acreage will be ~~put to immediate use~~ and developed as a living memorial park honoring the American dead of World War II and used by the public as a recreation center. The remainder, like the Isely acreage, will be leased to the new Marianas' Government, who can in turn lease it out for private and commercial purposes not incompatible with possible future military use.

Both areas are within present U.S. military retention lands. When the new arrangements are consummated the U.S. will relinquish all of its remaining rights to U.S. military retention lands in the Marianas and return approximately 4,691 acres to the public domain.

E. Financial and Economic Support

The principal features of the proposed seven years financial assistance package are the following, expressed in terms of constant 1974 dollars:

1. \$8 million annually for continuing support of government operatives;
2. \$4 million annually for Capital Improvement Projects, of which \$500,000 each will be earmarked for the islands of Tinian and Rota;
3. \$1.5 million annually to be used for economic development loans, \$500,000 of which to be reserved each year for small loans to farming, fishing and agricultural cooperatives; and
4. The full range of federal programs available to other U.S. territories, estimated to run about \$3 million annually in value.

The United States would also, with the approval of Congress, rebate to the treasury of the Northern Marianas all customs duties and federal income taxes derived from the commonwealth of the Northern Marianas; the proceeds of all taxes collected under the internal revenue laws of the United States on articles produced in the Marianas and

transported to the United States, its territories or possessions, or consumed in the Marianas; the proceeds of any other taxes which may be levied by the Congress of the United States on the inhabitants of the Marianas; and all quarantine, passport, immigration and naturalization fees collected in the Marianas Commonwealth. Finally, the Marianas would be expected to benefit increasingly in financial terms from the buildup of U.S. military facilities and personnel. In particular, it would receive as a rebate all of the income taxes collected from U.S. military personnel stationed in the Marianas.

G. Outstanding Issues

A number of issues still remain to be settled before the new agreement can be / ^{completed.} One of the most important of these is how to ensure that the new government of the Northern Marianas will be able to enjoy maximum freedom from federal interference in internal affairs. We are working now on a formula for inclusion in the agreement which if approved would have the effect of voluntarily limiting the plenary powers of the federal government in certain specified areas of commonwealth internal affairs. These would be set forth in the agreement and be subject to change only by mutual consent. Examples of these would be agreement not to change the Commonwealth status without mutual consent and a prohibition against legislating away the right of the people of the Northern Marianas to modify their own constitution without outside approval, subject only to review by federal courts for consistency

with the basic agreement and other federal laws.

These are points on which there is a high degree of sensitivity and one in which we recognize the U.S. Congress has a major interest, ~~as well~~. There is no question, however, of any limitation of U.S. sovereignty. Nor would there be restraints on federal powers beyond these specific voluntary limitations to be included in the agreement.

Another matter not yet fully resolved is the extent to which the Northern Marianas would be exempted from the application of federal laws applying to other territories, particularly Guam. The new commonwealth would like to be excepted from such laws as the Jones Act, the minimum wage law and others which they contend create a hardship on an outlying new territory. They would also like to be exempted from the application to its citizens of the Federal Internal Revenue Code, at least during the early days of the commonwealth, although they are willing to establish their own progressive income tax and minimize the possibility of any tax havens for U.S. or foreign corporations. These issues are presently being discussed at the technical level and will be negotiated out at the next formal session. We have been consulting your staff on these matters as well and can profit by your advice on how they should be handled.

Another area where final agreement is still to be reached concerns details of the arrangements for the use of military land including the amounts to be paid

the Government of the Northern Marianas, how the land is to be acquired, i.e., by lump sum or periodic installments. Terms of lease back of areas not immediately needed and joint use of various facilities are also being worked on prior to final agreement. The United States will of course retain the basic power of eminent domain, though special procedural safeguard are under discussion with Marianas negotiators.

G. Prospects For the Future

Much work remains to be done still at technical levels. Informal meetings between heads of delegations are taking place meanwhile to assure as much as possible that work continues at a steady pace. It is hoped that all this can be completed next month and that a fifth formal round can be scheduled for early November following the Micronesian elections.

If agreement can be reached then on all outstanding issues it may be possible to sign the agreement as early as the end of November.

Thereafter, the pace of action will depend on a number of other factors. The agreement must first be approved by the Marianas District Legislature to whom the present status commission with whom we are negotiating is responsible. This might be possible as early as December. After a period of popular study and education on its provisions the agreement could possibly be put before a plebiscite as early as March of next year and presented to the U.S. Congress for its approval immediately thereafter. This projected sequence of events is highly tentative, however, and we know that the members of this Committee may perhaps have some further views on the subject.

Thereafter, we will of course wish to put the completed status arrangement before the United Nations. Indeed, we are already on record in the U.N. Trusteeship Council as saying we will want U.S. participation in any plebiscite

that takes place. The Marianas arrangements as finally approved will probably not be put officially to the United Nations until the arrangements for the other districts are approved as well, since we are also on record in the U.N. Trusteeship Council as saying that the Trusteeship under the present agreement can only be terminated for all of its parts at once and not piecemeal.

IV. Highlights of the Micronesian Negotiations

A. Background

Negotiations to determine the future political status of the other five districts of the Trust Territory comprising the Marshalls, and Carolines Islands have been going on for a protracted period of time dating back to 1969. Following rejection by the Congress of Micronesians of the United States offers of territorial and commonwealth status, these negotiations have been aimed at establishing a so-called free association between the future state of Micronesia and the United States, a goal declared by the Congress of Micronesians to be its objective. In July we reached a referendum agreement with the leaders of the Micronesian delegation, which is the Congress of Micronesians Joint Committee on Future Status, on a Draft Compact of Free Association. Since then the full committee has met and proposed certain additional changes, which we are still considering and will discuss with the Micronesian leadership at our next informal meeting. A copy of the Draft Compact as agreed in July has been made available to the Committee Staff together with the changes

since prepared by the Joint Committee on Future Status. A copy is attached to this statement.

B. Principal Features

The principal features of the Draft Compact are as follows:

1. The people of Micronesia will be self-governing and responsible for their own internal affairs, with their own constitution, laws and system of justice and will be free to choose their own form of government. Their constitution is to guarantee fundamental human rights and other democratic principles and to be consistent with the Compact. ~~Their constitution~~ would not otherwise be subject to U.S. approval.

2. United States will have full responsibility for and authority over both foreign and defense affairs. We have agreed to consult with the new Government of Micronesia on matters of mutual concern relating to foreign affairs and not to enter into agreements that pertain exclusively to predominantly to Micronesia without its consent.

3. The U.S. will have the right to deny Micronesian territory to third parties for military purposes and to make use of certain military facilities. Among the latter are the present ABM test range at Kwajalein in the Marshalls, and possibly certain facilities in Palau for which we are seeking at the present time options only. These include the right to develop port facilities in Koror, logistics base and a 30,000 acre maneuver area in Babelthaup and

and the right to future joint use of the civilian airfield. All Palauan requirements are for contingent use only in the event other facilities in the Pacific become no longer available to us.

4. The U.S. has offered substantial financial and economic assistance over the first fifteen years of the life of the Compact.

5. The Compact can be terminated only by mutual consent during the first 15 years. Thereafter it would be terminable by unilateral action but only after a satisfactory security agreement has been concluded embodying U.S. base rights and denial of the area to third parties.

The Micronesians have asked for a long transition period during which major progress could be made towards putting in place basic infrastructure thus for and the new government, established under the constitution could be phased in gradually without a major political shock. We have suggested this period not be as prolonged as they had originally suggested and that it be divided into two stages, the first extending from the present time until the compact and the new constitution are approved by the people of Micronesia in a plebiscite, the second extending from that time to the end of the trusteeship when the Compact becomes effective.

If the agreement is approved by Congress the U.S. would be committed to provide on a grant basis \$35 million annually in support of the operations of the new Government

of Micronesia during the first five years of the Compact. This amount would drop to \$30 million annually during the next five years and \$25 million during the remaining five years of the fifteen year period; for capital improvements the U.S. would also be committed to \$12.5 million annually for the first five years of the Compact, \$11 million annually over the next five years, and \$9.5 million during the last five years. In addition we would provide up to \$5 million annually in loans for specified economic development projects; half of this amount would be reserved for small business loans at the district level to be administered by the District Governments. The U.S. is also prepared to continue three federal programs without compensation; the postal, weather and FAA services; The costs of any other agreed services would be charged against the grants mentioned above or could be paid for by Micronesia from its own resources. All the above amounts would be adjusted annually to reflect any changes in the purchasing power of the dollar as reflected by changes in the Guam consumer price index. During the period between now and the end of the Trusteeship (Stage I and II of the Transition Period) the United States would reduce the present level of support for government operations by providing, with Congress' approval, operational grants on a descending scale but in constant dollars: \$48 million in FY 76; \$47 million in FY 77; \$46 million in FY 78; \$44 million in FY 79 and \$39 million in FY 80. However, the United States would provide increased amounts for the

Capital Improvements Program through FY 78 and then taper off: \$22 million in FY 76, \$26 million in FY 77, \$30 million in FY 78 \$18 million in FY 79 and \$14 million in FY '80. We will be seeking Congressional approval of the first two years of this schedule in the very near future and the remainder after the Compact itself is approved by the people of Micronesia.

E. Outstanding Issues

The principal item of unfinished business following the July ad referendum agreement on the Draft Compact of Free Association was the land options in Palau. We have just had a survey team in Palau looking over alternate sites and hope to be able to conduct negotiations for the actual sites with the Micronesian Joint Committee, the Palau District Legislature and the owners, as the case may be sometime in the near future. The matter of price to be paid for the desired options is likely to be critical.

Beyond this there may be further delays stemming from the future of the Congress of Micronesia at its recently concluded special session to pass an entirely satisfactory bill transferring public lands in the districts from the central government to those districts requesting such a transfer. This transfer was made at one time last year by the Micronesians a condition precedent to completion of the Compact of Free Association. The U.S. responded after careful study of a highly complex subject with a policy statement approved by the Secretary of the Interior

announcing a willingness to transfer such lands which had been previously held in trust for the people of Micronesia but subject to certain safeguards, necessitated by the terms of the Trusteeship Agreement. The Congress of Micronesia was asked to enact appropriate enabling legislation consistent with the U.S. policy statement. The bill was finally enacted last month but is being carefully studied now by the U.S. High Commissioner and others to determine its consistency with policy. If there are major difficulties it may be necessary to effect the transfer entirely by executive action.

Beyond the land issue there are the changes recently suggested by the Micronesians Joint Committee which we are still studying. In general we would not be sympathetic to any changes which might derogate substantially from U.S. foreign affairs or defense responsibilities, or might undermine in substantive fashion other key elements of the compact such as the termination formula. In the latter content, the Joint Committee has now suggested that any serious breach of the provisions of the compact during the last 15 years of its life might be considered grounds for terminating the compact immediately. We clearly could not subscribe to such an interpretation.

The Micronesian Joint Committee has also now said - despite its early acquiescence in separate negotiations with the Marianas that it is unwilling to accept the separate Marianas negotiations or separate administration

of the Marianas District unless the Marianas first rejects the Compact of Free Association. The United States, however, is now publicly committed to allowing the Marianas to vote freely on accepting a closer relationship as a manifestation of its people's right of self-determination and considers the compact of free association as presently drafted to apply only to the Carolines and Marshalls. If the peoples of the Marianas on the other hand reject the idea of commonwealth relationship or the U.S. Congress disapproves, the people clearly should be given the right to select alternatives and the Compact of Free Association could be included as one of these. The choice for the Marianas in any event must be clear and must be freely exercised to be effective.

F. Prospects for the Future

If sub-negotiations for land can be successfully concluded this fall and we can reconcile any differences regarding the changes most recently suggested by the Micronesian Joint Committee it may be possible to complete the Compact by late November or early December of this year. Thereafter it would have to go to the full Congress of Micronesia for its approval. The Congress next regular session begins in January 1975 and lasts until March

Thereafter the Micronesian Joint Committee has suggested the Compact be given for study to the delegates to the upcoming Micronesian Constitutional Convention and be put to the people of Micronesia for approval in a plebiscite which would be held at the same time as the referendum on the new constitution. We have

certain reservations regarding this proposal and are studying the matter carefully before responding. Under the Micronesian proposal, however, the plebiscite would not occur until possibly the summer of 1976 and if the Compact is approved then it would be referred to the U.S. Congress immediately thereafter.

This scenario again is highly tentative. It would mean that submission of the entire package to the Congress could be delayed for some time and its presentation to the United Nations after Congressional approval would be even later. Under the Micronesian proposal, the new government would not begin to phase in until the summer of 1976 at the earliest and the phase in would be stretched out over an extended period of four years, during which the U.S. Congress would be considering the agreement, following by U.N. action if the U.S. Congress approves it.

V. The Role of the U.S. Congress.

Throughout the course of these negotiations we have endeavored to keep key members of the U.S. Congress and committee staffs informed of the progress of negotiations and to solicit their frank advice. These have been informal contacts primarily but there have been occasional formal presentations as well. Our last formal session took place in the Senate before the Insular and Territorial subcommittee in the spring of last year; but there have been many informal fill-ins for members of the Committee and the staff since that time. There have also been several occasions to update information in connection with the annual authorization and appropriation hearings before Senate Committees. We will in this connection appear two weeks from now along with the Interior

Department witnesses in connection with the supplemental authorization request.

Throughout this process the advice and views of Senate members have been actively solicited. In this situation we have strongly felt the need to benefit from Congressional thinking and experience. We need also to anticipate the problems which may face individual members of the Congress and the issues which are likely to surface when our completed agreements are put to the U.S. Congress officially for approval. We recognize that Congress cannot be committed in advance, but desire to avoid as much as possible taking any action contrary to presently known Congressional views. We want as well to avoid any suggestion to the other side in these negotiations that it would be to their interest to attempt to drive a wedge between Congress and the Executive Branch in these sensitive matters.

In view of the fact that both houses of the U.S. Congress approved the Trusteeship Agreement back in 1947, the Administration has been operating from the beginning of these negotiations on the assumption that both houses would wish to approve the arrangements which will end the Trusteeship. This assumption has been thus far affirmed informally by the Congressional leader we have contacted on the subject. How Congress will do this is of course a matter for Congress to decide. The suggestion has been made, however, that since the Trusteeship Agreement approved by Joint Resolution it would be appropriate to have the new agreements which are designed to replace the Trusteeship approved in the same manner. The result in legal terms, as we understand

it, would be to give the new agreement when so approved the effect of law. If this committee has contrary views we would very much appreciate being advised as to their nature.

We also have assumed after informal consultations with individual members and the staff that the Congress would not wish to have any more elaborate structure of enabling legislation presented to it than is absolutely necessary. We recognize that some amendments to specific laws may be necessary, especially in case of the Marianas negotiations, but we are still studying this matter and will stay in close contact with the committee staff on the point. We have not assumed that an organic act is either necessary or appropriate under current circumstances in view of the unique nature of the present trusteeship, anymore than it would have been appropriate to have negotiated a treaty or executive agreement with the Marianas or the Micronesian Joint Committee in view of the TTPI's less than sovereign status.

We recognize that there may well be varied and different views in the U.S. Congress about many specific points covered in the Marianas arrangements and the Compact of Free Association. These are complex issues, and many details are necessarily involved. Several of these were touched on earlier in this statement. We would be most grateful to be told we are not on the wrong track in certain major respects, such as the proposals under the Marianas arrangements for voluntary limitation of certain otherwise plenary federal powers. Also would appreciate the Committee's views regarding such basic questions as the Congressional desire or

non-desire to approve the new Marianas Constitution and the timing of its presentation in relation to the submission of the new agreement for Congressional approval.

We would also like Congressional views informally on the proposed timetable. Our thinking now is that the Marianas package could be ready for presentation to Congress as early as next spring or summer, if it is to come to Congress after the plebiscite is held. This could be earlier, however, if the new agreement is to be presented before the plebiscite. But this would delay the plebiscite contrary to the expressed wishes of the Marianas Commission who would like to see the vote taken as early as possible. We need the committee's thoughts on this.

The Micronesian Joint Committee has expressed somewhat different views about the presentation of its Compact of Free Association to the people once it has been signed and approved by the Congress of Micronesia. As indicated earlier the United States has reserved judgment on their suggestion that the status plebiscite and referendum on new Micronesian constitution be held at the same time, one consideration being the question of whether the U.S. Congress would like to have the Compact for approval before or after the plebiscite. There are other considerations which might argue both for and against this scenario.

In summary, we are in many ways blazing new territory in procedural as well as substantive terms with these negotiations and have adopted from the beginning the principle that we must work just as closely as possible with the U.S. Congress in putting

this complex package together. We need your frank and considered views and your advice. We will continue to work with you in the spirit of full cooperation until the job is done with a view to seeing that the best interests of the United States are served thereby and that U.S. obligations under the Trusteeship are faithfully carried out.