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February 5, 1974

MEMORANDUM TO HPW

Re: Research Projects Necessary for Status Agreement

The questions listed below represent our initial view of what additional research is necessary to provide background information for the next draft of the status agreement. Unless a considerable number of new questions arise in the course of researching these initial questions, it is expected that the bulk of this research will be completed by the end of February. The questions are listed in the order that they will be researched and basically track the provisions of the present draft of the agreement. By February 25 we should be able to begin holding meetings on revised drafts of the sections, again proceeding through them by order of Titles. It is understood, however, that this order may need to be modified in order to accommodate the deadlines of other persons responsible for research on certain of the Titles such as III, IV, and VI.

1. What, tactically speaking, would be the best procedure for approval of the status agreement by the United States Government? What are the differences between enactment into law and various types of joint resolutions?

2. Title I (Political Relationship) and Title X (Transition).

a. Possible conflicts with U.N. trusteeship agreement.

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(1) Can the status agreement be binding before termination of the trusteeship agreement without changing the international status of the Marianas?

(2) If the agreement cannot be binding, then what provisions of the status agreement could come into effect before termination?

(3) Assuming the agreement could not be binding prior to termination, would it be advisable to provide that during the transition period, breach of the agreement by the U.S. would result in revocation of its lease?

(What does the trusteeship agreement say about land holding?)

b. Section 107: The U.S. position is that Commonwealth officials and employees should take an oath to enforce federal laws. Does a state officer have to take an oath that he will uphold the Federal Constitution?

3. Title III (Application of the United States Constitution and Federal Law).

a. Section 302(b): This section defines "laws of the United States." Is its inclusion of proclamations, Executive Orders, judicial decisions, and regulations too broad?

b. Section 302(c): This section provides that no statutory laws enacted after the effective date of the Section shall apply in the Marianas unless specifically made applicable. Is there any way that we could draft this to insure that the Commonwealth is not overlooked in statutes passed later?

c. Is it necessary or advisable to add a saving provision to the status agreement relating to contracts made or court suits begun prior to the effective date of the status agreement?

d. Is it necessary or advisable to add a provision to the status agreement (similar to the provision in the Guam Organic Act) providing that people of the Marianas should receive preference in employment for the Commonwealth government?

4. Title VII (U.S. Financial Assistance).

a. How can we build an inflation factor into the U.S. payments? (The Campaign Act of 1972 might provide an analogy.) Is such an inflation factor desirable?

b. Should we write a provision into the Title allowing the funds provided under Sections 702 and 703 to be used for matching? Does the Federal Revenue Sharing Act raise any problem with matching?

5. Title VIII (Public Property of the Commonwealth and Property Required by the United States).

a. Would a provision allowing the Marianas to tax federally owned property be possible or advisable? Can states now tax federal property?

b. How should the assets of the TT government be distributed among the various districts upon termination? What are those assets and who owns them now?

6. Title IX (Consultation Between the Parties).

a. Section 903(a): Would there be any problem if we drafted this section so that the recommendations of the joint commission would come into effect unless Congress disapproved its findings?

b. Section 904:

(1) Comparison of the technical provisions relating to non-voting delegates from Puerto Rico, the Virgin Islands, Guam and the District of Columbia and the American Samoan representative with the provisions in the status agreement, e.g., how are they chosen, who pays them, how are they financed, length of terms, how is the position filled in case of vacancy, etc.

(2) What was the population of the Virgin Islands and Guam when they received their non-voting delegates?

(3) What is the attitude of Puerto Rico toward having only a non-voting delegate?

7. Title XI (Miscellaneous).

Section 1103: Are there any other situations arising under the status agreement (besides the enforcement of the lease provisions) where the Marianas would want to sue the United States? If so, what type of consent from the United States would be needed in order to overcome sovereign immunity?

8. On a section-by-section analysis, how does the present draft of the status agreement compare with the analogous provisions of the organic acts of Guam and the Virgin Islands; the Puerto Rico Compact; the Executive Orders governing American Samoa; the U.S. Commonwealth Proposal (May 1970); the proposed U.S. Compact of Free Association (April 1973); and the proposed U.S. Covenant (December 1973)?

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