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MEMORANDUM

TO: Mr. Willens  
FROM: R. K. Kelley  
RE: Applicability of Federal Laws

This memorandum examines the question whether "general formula" approach should be employed to govern the application of United States federal law to the Marianas. At issue is whether any such general formula will adequately protect the interests of the Marianas at two stages: (1) any application of existing federal law upon the termination of the U.S. trusteeship (or in any earlier transitional period, and (2) any application of future federal legislation enacted after the creation of a new political association between the Marianas and the United States.

This memorandum is divided into \_\_\_ sections. Section I sets out the various approaches that have been proposed during the course of the negotiations between the United States and the Marianas Political Status Commission, including the proposals discussed in the joint working group of lawyers. Section II reviews the approaches for determining the applicability of federal law used in situations analogous to the proposed new political status for the Marianas. In Section II, the memorandum examines the applicability of federal law in Guam, Puerto Rico and the Virgin Islands. Section III of

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the memorandum attempts to assess the practical and legal consequences of applying federal law during the two stages outlined above under various general formulas.

I. Proposals in the U.S.-Marianas Negotiations to Date for Determining the Application of Federal Laws to the Marianas.

As a starting point for the analysis presented in subsequent sections of the memorandum, this section outlines the proposals and tentative approaches that have been developed in the negotiations to date. This review may also serve as background to aid in the formulation of a bargaining position for further negotiations with the U.S.

1. First Session of Status Negotiations, December 1972.

Although there were no detailed negotiations or formal proposals exchanged during the first session of the status negotiations, it should be noted that Ambassador Williams expressed the view of the United States that political association with the United States would involve "continuing assistance being provided to the Marianas." According to Ambassador Williams, the assistance would include, among other things, Federal grants matching revenues collected in the Marianas, and

"the provision of the full range of federal programs and services which are available to all the states and territories of the United States for such things as public

works, health and education, housing and other programs of an economic and social nature. . . ."\*/

Ambassador Williams, pointing out that he foresaw the Marianas "becoming ultimately a part of the larger American System," went on to state that the Marianas "should thereby derive those benefits which accrue from such a status, just as other parts of the American nation do."<sup>\*\*/</sup>

2. Second Session of Status Negotiations, May-June, 1973.

During the second session of the status negotiations that culminated in the June 4 Joint Communique, the Marianas Political Status Commission addressed the question of the applicability of federal laws in its position paper dated May 10, 1973. In that paper the Commission solicited the views of the United States "as to which statutes should be evaluated at an early point in these negotiations regarding their applicability or non-applicability to the Marianas." The Commission prefaced this request by noting that it was likely that many U.S. statutes embodied such benefits that they should be made applicable to the Marianas, provided the unique status of the Marianas did not raise problems of interpretation or

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/ Report of the Marianas Political Status Commission on the First Session of Status Negotiations, 28 (December 1973).

\*\*/ Id.

application.<sup>\*/</sup> The Commission also proposed that a joint commission be established to review all other Federal laws with a view to determining which existing United States laws should apply in the Marianas. Under this proposal, such a joint commission would also develop "general guidelines to be used in deciding what future United States Laws should apply "in the proposed Commonwealth of the Marianas." And it was expressly stated in this proposal that these qualities

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\*/ The position paper stated:

"In order to prevent future uncertainty, the Commission is prepared during these negotiations to discuss the applicability or non-applicability to the Marianas of the most important United States laws. With respect to some of these statutes, such as the U.S. postal and currency laws, the Commission is ready at this time to accept in principle their applicability to the Commonwealth of the Marianas. We are confident that there are many other statutes whose benefits are such that they too should be made expressly applicable to the Marianas, but we require additional time to ascertain whether there are incidental questions regarding details of interpretation or application which should be raised because of the unique geographical, historical, and cultural factors which pertain in the Marianas. The Commission solicits the views of the United States as to which statutes should be evaluated at an early point in these negotiations regarding their applicability or nonapplicability to the Marianas." Marianas Political Status Commission, Position Paper Regarding the Future Political Status of the Marianas Islands, 12-13 (May 10, 1973).

"must necessarily reflect the unique circumstances of the Marianas and the aspirations of the Marianas to achieve full self-government over their affairs."<sup>\*/</sup>

For its part, the United States expressed its agreement with the recommendation that a joint commission be established to review the applicability of existing federal law which would not be specifically addressed in any status agreement and for discussion at the technical level of the appli-

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\*/ The position paper stated:

"In addition, the Commission proposes that a joint Commission be established at an appropriate time to review all other Federal laws with a view toward determining which United States laws should apply in the Marianas. Such a Commission, comparable to that used in connection with Guam, would have the duty also of developing general guidelines to be used in deciding what future United States laws should apply in the Commonwealth of the Marianas. These guidelines must necessarily reflect the unique circumstances of the Marianas and the aspirations of the people of the Marianas to achieve full self-government over their internal affairs." Id., at 13

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cability or non-applicability of certain major areas of federal legislation.\*/

With respect to participation by the Marianaas in federal financial assistance programs, the United States indicated that certain federal programs would require specific Congressional action to extend their benefits to the Marianas, while other programs would be "automatically

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\*/ See, U.S. Statement on Political Status for May 16 Working Session:

We agree with your suggestion that our two delegation discuss the major federal laws which are to be applied to the Marianas and those which should be inapplicable. In order to begin that discussion, we would appreciate hearing your specific views in this regard.

We also agree with your useful recommendation that a joint commission be established to review the great body of other federal legislation to determine which parts of it might appropriately be applied in the Marianas. The same must be done for federal rules and regulations as well.

See also, U.S. Informal Summary of Status Issues:

Before leaving the subject of the applicability of federal legislation, let me re-state U.S. concurrence with your recommendation that a joint commission be established to study the large body of remaining federal legislation, rules and regulations the applicability of which we will not address specifically in our agreement.

extended.<sup>\*/</sup>

Subsequently, the Joint Communique of June 4, 1973, set forth the tentative agreements of the parties (1) that the question whether "certain major areas of federal legislation" will apply in the Marianas may be dealt with explicitly in the formal status agreement<sup>\*\*/</sup> and (2) "at some

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<sup>\*/</sup> See, U.S. Response on Economics and Finance,

"The two forms of annual financial assistance that we have in mind are 1) direct financial grants in support of the costs of government operation and capital improvement programs, 2) the extension and provision of federal programs and services to the Marianas. The extension of certain federal programs would require that the Marianas be designated as an eligible recipient by Congressional action. For other federal programs the Marianas would be automatically eligible upon attaining commonwealth status." (Emphasis supplied)

<sup>\*\*/</sup> The Joint Communique stated that these "major areas" include taxes, immigration, custom, banking social security, maritime laws, labor standards and the postal service.

future date" a Joint Commission would be established to study and make recommendations on the applicability in the Marianas of the large body of federal laws which will not be specifically addressed in the status agreement.

The Communique also recorded the agreement of the parties:

"that the joint working group of lawyers will study federal laws in these and other areas to determine whether and how their application in the Marianas should be circumscribed by the formal status agreement and whether that agreement might provide generally for resolving questions as to the applicability of future federal laws in the Marianas." (emphasis supplied.)