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April 18, 1975

Mr. D. F. McHenry,
Carnegie Endowment for International
Peace
11 Dupont Circle, N.W.
Washington, D. C. 20036

Dear Don:

Thank you for the opportunity to review the current draft of the Carnegie Study on Micronesian status. Enclosed are my comments, one reflecting my general observations regarding the Study and the other containing more specific comments regarding the Study's chapter on the Marianas.

Although many of my comments are critical, I hope that you and the authors of the study will accept them in the spirit with which they are offered. As counsel to the Marianas Political Status Commission during the recently concluded negotiations, I am understandably concerned that your Study accurately portray these negotiations and the Covenant signed by the parties on February 15, 1975. I appreciate that this is a difficult undertaking indeed, and I and my associates familiar with these negotiations are available at your convenience to discuss the negotiations generally or specific provisions of the Covenant.

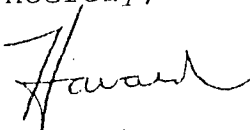
As my comments indicate, I do have some basic differences with the positions and attitudes reflected in the Study. You and I have discussed these matters on more than one occasion. I agree that Micronesia is an appropriate subject for critical study and that reasonable men can differ on some of the questions considered in the Study. Nevertheless,

I hope that you and your colleagues will evaluate my suggestions on the merits and I, in turn, will respect your right as authors to make the final judgments regarding the contents of the Study.

I continue to believe that your Study will suffer from the decision not to solicit the advance comments of responsible officials of the U.S. Government. Much of the Study deals with the internal workings of the various agencies and the positions taken by the U.S. Delegation during the negotiations. Relying as the Study does largely on anonymous informants carries with it a significant risk of error and misunderstanding. I can see no good reason why an effort to prevent such error should not be undertaken.

Best personal regards,

Sincerely,



Howard P. Willens

cc: Members of the Advisory Panel
Mr. Thomas L. Hughes
bc: Messrs. James R. Leonard
Lloyd N. Cutler
Jay F. Lapin
Michael S. Helfer

GENERAL OBSERVATIONS

REGARDING

THE CARNEGIE STUDY ON MICRONESIA

In a separate attachment I have listed many specific comments regarding the chapter of the Carnegie Study on Micronesia most directly related to the separate status negotiations between the Marianas and the United States resulting in the Covenant signed on February 15, 1975. This memorandum summarizes certain general observations regarding the Study as a whole.

1. Issue of Fragmentation:

The authors of the Study make a very strong case that the separate Marianas negotiations are an example of improper, if not illegal, fragmentation of the territorial unity of Micronesia. This contention is the foundation for the Study's serious and repeated criticism of both the United States and the Marianas for engaging in separate status negotiations. In my judgment, the Study's position on fragmentation is one-sided and highly theoretical.

(a) The frequent references in the Study to the Marianas as the United States "Namibia" (see e.g., p. 20 of the chapter on self-determination) are both offensive and inaccurate. Although analogies can always be made, it seems that the authors of a Carnegie Study should exercise some informed judgment before making such comparisons. In light of the decades of repeated statements of preference by the Marianas people for union with the United States, it seems extreme to suggest that the justification offered by the United States for the separate negotiations is "not unlike the South African position." Moreover, I would think it is unnecessary to suggest that the records of the two countries - South Africa and the United States - on the subject of human rights are significantly different. The fact that fragmentation may incidentally serve the interests of the United States is simply beside the point.

(b) I agree that legal arguments can be advanced on both sides of the fragmentation issue. Just as the Study seeks to distinguish the precedent of the Camerons, it is a simple enough legal undertaking to counter the tendered distinctions. Authorities other

than those cited in the Study could be relied upon to defend the proposition that the term "peoples" must have some meaning different than the singular form of the word and that Micronesia, in light of its 400 years of foreign domination, cannot be fairly considered to be a generally accepted political unit. Interestingly, the Study takes a more rigid position on the fragmentation issue than the Report of the 1973 U.N. Visiting Mission.

(c) Debating points aside, however, the Study basically ignores the practical considerations underlying the desires of the Marianas for a separate status. Although the Study on occasion recognizes the close relationship between the people of the Marianas and Guam, it does not explore the consequences of these similarities on the status objectives of the Marianas. (Note the "common" characteristics of Micronesians listed on page 9 of the Introduction to the Study are not shared by most residents of the Marianas). The Study would benefit from a more self-conscious and balanced approach to the fragmentation issue which pays as much attention to the political cultural and geographic realities as it does to abstract political theories.

(d) I do not think the Study can ignore the logical consequence of the position on fragmentation so vigorously advanced. In essence, the Study is asserting that the rights and desires of 15,000 people in the Marianas should be subordinated to the desires of the citizens of the other five Districts. I think that a Study devoted to humanitarian concerns would reflect long and hard before taking a position which (in its extreme form) would appear to justify the use of force to keep the Marianas people in line. The Marianas people, after all, are fully prepared to let the other Districts exercise their right of self-determination as they think best for their citizens; the Marianas people are asking only for reciprocal respect from their brethren in the other Districts.

2. Status Alternatives for Micronesia:

Much of the Study is devoted to analysis of the proposed Commonwealth status for the Marianas with the status alternatives of Independence and Free Association.

(a) The Study reflects a very clear, but never explicitly discussed, preference for independence or free association for Micronesia. Throughout the Study a commonwealth status is characterized as "colonial" in

nature. In part, this bias against commonwealth seems to reflect the Study's uncertainty as to how to deal with a status which is not expressly specified by United Nations Resolutions as one clearly deserving the label of "self-government." The fact remains, however, that informed residents of United States off-shore possessions have repeatedly approved such a relationship with the United States, notwithstanding the fact that citizens of such territories do not enjoy all the rights of citizens of the 50 States. The Study would benefit, I believe, from some recognition of the fact that the United States system has evolved in a way which permits a status alternative different from either independence or free association. The basic question should be whether the status is one of dignity and meaningful self-government freely chosen by the people involved rather than whether the political status falls into a category defined by the United Nations without specific regard to the peculiarities of the American system.

(b) In discussing independence and free association, the Study consistently fails to consider the economic factors which bear critically on the choice of an appropriate status for Micronesia. Notwithstanding the existence of numerous economic studies of the Trust Territory, the Study nowhere undertakes a serious effort to assess whether Micronesia, either as six Districts or five, could be a viable economic entity. If such economic viability is impossible given the limited human and material resources in the Marianas (as many experts maintain), then the Study must examine more critically than it does whether independence and free association are in fact practical alternatives for Micronesia which in the long run will benefit the people of the islands. More attention to the economic factors, and less to the political rhetoric of the Congress of Micronesia, would substantially improve the Study.

3. Military Considerations and Status Objectives:

As the study makes abundantly clear, it believes that the asserted military need for the Marianas is unfounded. The Study emphasizes also that the separate status negotiations between the Marianas and the United States were prompted largely by military considerations. Even if these conclusions are accepted, however, the Study fails properly to distinguish between the military questions and the status issues in its discussion of the Marianas negotiations and proposed Commonwealth.

Under the Covenant the question of making land available in the Marianas for military purposes is treated independently of Commonwealth status for the Marianas. It is clear that Congress can approve the Commonwealth status defined in the Covenant without committing itself to the proposed base on Tinian. Under Article VIII, the Marianas are committed, once the Covenant is approved by the people of the Marianas and the U.S. Congress, to make specified parcels of land available to the United States on a lease basis if the United States Congress appropriates the necessary funds. If these funds are not appropriated within five years after approval of the Covenant, then the Marianas are no longer obligated to make the land available on the terms defined in the Covenant. The Study fails to acknowledge these provisions and thereby suggests that one's position on the appropriateness of Commonwealth status for the Marianas is necessarily dictated by his views regarding the strategic importance of the Marianas.

4. Relationship with Other Territories:

The Study seems ambivalent regarding the impact of the Covenant upon the relationships between the United States and its other off-shore possessions. On the one hand, the Study emphasizes the dissatisfactions expressed by the people of Guam and elsewhere regarding their present status. On the other hand, the Study criticizes (at page 24 of the chapter on Guam and Others) the United States for "the necessity to entertain changes for U.S. Territories as a result of the Marianas Government and the Micronesian Compact." Rather than criticizing the United States, the Study should recognize that one of the principal benefits of the Marianas Covenant is that it provides a basis for "improving" and rationalizing the status of other U.S. territories. The Study seems to ignore or contradict the following:

(a) The Micronesian Compact is not realistically a meaningful precedent for any other U.S. territory, including the Commonwealth of Puerto Rico whose residents are U.S. citizens.

(b) The Marianas Covenant is such a precedent precisely because the relationship between the Marianas and the United States is analgous to that of other territories, and yet the Covenant contains major concessions on issues which have been the subject of long standing petition and complaint in these other territories.

(c) The Covenant provides for a comprehensive and evolving relationship, including a mechanism for periodic review of status-related matters. In general, the Study seems preoccupied with the suggestion that the United States-Marianas relationship is essentially "colonial" and thereby ignores the pragmatic advances toward meaningful self-government for off-shore dependencies that are embodied in the Covenant.

Howard P. Willens
April 18, 1975

NOTES ON CHAPTER ENTITLED
"THE MARIANAS BREAK AWAY"
OF THE
CARNEGIE STUDY ON MICRONESIA

We recognize the difficulties involved in any attempt to report fully and accurately on the status negotiations between the Marianas and the United States during the past 2-1/2 years. In many respects, the drafters of the chapter have done very well in identifying the principal issues which arose during the negotiations and the way in which these difficulties were eventually resolved in the Covenant. Although we disagree with some of the conclusions reached by the Study, our principal purpose in making the following specific comments is to insure that the Study's description of the negotiations and the Covenant is accurate.

1. Pages 2 - 4

The comment on page 2 relating to the tendency of the Marianas people to "look down on other Micronesians" is one example of many reflecting a bias in the Study against the Marianas people. It is, of course, virtually impossible to document (or refute) this characterization. More generally, this discussion places undue emphasis on the economic motivations of the Marianas people and understates the real differences which exist between the Marianas and the other five Districts. In other chapters of the Study these considerations are more fairly and completely discussed.

2. Pages 7 - 8:

The discussion on these pages of the attitude of the Micronesian negotiators to the separate negotiations strikes me as reasonably fair but somewhat inconsistent with the charge in other places in the Study that the separate negotiations were "illegal."

3. Pages 9 - 10:

The discussion regarding possible separatist movements in other Districts needs to be substantially updated. For example, the Marshalls have done very little to pursue separate status talks and most informed observers

believe that the Marshalls were taking this tact only as a bargaining weapon in their controversies with the Congress of Micronesia. Some of the most important issues in controversy between the Marshalls and the Congress of Micronesia were worked out during the session of the Congress earlier this year.

4. Page 10:

The discussion relating to the distinction between the movements in the Marshalls and the Marianas overlooks two important factors. First, the Marianas have a long history of seeking a different status from the remainder of Micronesia whereas the Marshalls have never indicated that their status goals are different from the other Districts. Second, the discussion omits any reference to the political differences between the Districts, although later in the Study Congressman Foley has a very illuminating quote with respect to the power of tribal chiefs that makes the point very clearly. In short, the Study never faces up to the fact that the people of the Marianas are generally prepared to accept the United States Constitution and the Bill of Rights whereas the other Districts could not do so without radical changes in existing traditions and practices.

5. Page 11:

The suggestion that the separate Marianas movement might result in a situation where the other five Districts "are forced to a status less than desirable" is both alarmist and inaccurate. In fact, the Study eventually concludes that the status of free association being negotiated by the other five Districts is about the best in terms of political and economic benefits that could be obtained. In other words, the fact that the Marianas want a Commonwealth status has not served as a real deterrent to the other five Districts obtaining their principal status objectives. It would be fair to recognize this.

6. Pages 11 - 16:

By assigning full responsibility to the United States for the separate negotiations, this discussion in the Study ignores the real differences between the Marianas and the other five Districts. The fact, for example, that the Marianas have much closer bonds with Guam than with the other five Districts is acknowledged elsewhere in the Study. The Study never grapples with the issue as to how these differences could have been resolved in the absence of separate negotiations. For example, the suggestion at the top of page 16 that the United States should

have dashed Marianas hopes and thereby enabled the Micronesians to "negotiate from a unified and strengthened position" seems highly naive and unrealistic.

7. Page 17:

Although it may be a fact, I do not think you have the support to state that the law suit seeking to enjoin the signing of the Covenant was brought by the Congress of Micronesia. I think it is also misleading to say that the Marianas brief was prepared in "cooperation with U.S. negotiators." The brief was prepared by the attorneys of the Marianas Political Status Commission and the Marianas District Legislature; all decisions regarding the arguments to be advanced were made solely by these lawyers. It is quite true, however, that the United States Delegation offered assistance and was interested in how we were going to defend against the suit.

8. Page 17a:

The sentence reminding the reader that the presiding Judge who ruled in favor of the Marianas is appointed by and removable by the Secretary of the Interior is demeaning to the legal process. This kind of comment reflects the underlying bias of the Study. It also is a completely unnecessary comment since the source of the judicial appointments in the Trust Territory is clearly stated in an earlier chapter of the Study.

9. Page 18:

The quotation the unidentified "Micronesian staff member" made regarding Messrs. Pangelinan and Guererro is another example of the Study's bias. In the first place, one should assume that the representatives of each District to the Micronesian status delegation was there to protect the interests of their Districts. I am aware of no evidence suggesting that any members of the Micronesian group preferred the interests of the TTPI as a whole to their own Districts.

10. Page 20:

This discussion regarding the use of the word "permanent" seems to have been outrun by events. In view of the language of the Covenant, there seems to be little point in dwelling on the many ephemeral or minor issues which arose in the course of the negotiations. There is no present significance which can reasonably be drawn from the earlier discussions regarding the word "permanent."

11. Pages 21 and 22:

The description of counsel's function on page 21 is excessively narrow; the responsibilities of Wilmer, Cutler & Pickering included general legal and strategic advice regarding all aspects of the negotiations. The information regarding the fees paid to the Commission's law firm and economic consulting firm is inaccurate and incomplete. These matters are all on the public record in Saipan. It is interesting that the Marianas consultants are the only consultants whose fees are discussed in the Study.

12. Page 22:

I have a recollection different from that embodied in the last two sentences on the page. I do not remember any public criticism by the Marianas of a joint press release on economic measures. I do remember that at approximately this stage of the negotiations there were acknowledged differences between the parties as to the adequacy of the economic settlement by the United States and that the Commission made a statement on the subject.

13. Page 22a:

Although it may be too much to say that the final agreement was "openly arrived at," the characterization in the Study is basically unfair. This summary ignores the fact that detailed oral reports were made to the Marianas District Legislature by the Commission after each session of negotiations and that there were regular appearances of members of the Commission before municipal councils and other community groups to report on the progress of the status talks. This is another example of bias in the Study in that the Marianas Political Status Commission and the United States are being held subject to standards different from those being applied in the Study to the Micronesia-wide Joint Committee on Future Status.

14. Pages 24 ff:

There are two basic problems common to this chapter's discussion of the principal issues in the negotiations. First, the discussion has not been updated in light of the final provisions of the Covenant. Second, the organization of the discussion is confusing. Although this might have been an appropriate way to organize the chapter before the Covenant was signed, perhaps some further consideration should be given to the alternative form of directing the reader's attention to the Covenant's provisions, and then, to the extent believed desirable, forcing the background of the various provisions or issues, and indicating how the originally differing positions of the parties were finally accommodated.

15. Pages 29 - 30:

The discussion on these pages confuses two separate issues relating to "mutual consent" and "territorial." With respect to the mutual consent provision, it is the opinion of counsel to the Commission that there is constitutional authority for such voluntary restriction by Congress on its own powers. We are not aware that the Department of the Interior has ever opined to the contrary. This is quite a different issue, however, from whether the Marianas will have a "territorial" status as that term is used in the Constitution. From the very beginning, the Marianas negotiators recognized that the proposed status would be a "territorial" relationship within the meaning of Article IV(3)(2). It is misleading, therefore, to suggest that the omission of the word "territorial" has any legal or other significance. As the Study indicates at several points, it is clear that the future Marianas Commonwealth is under the sovereignty of the United States and this fact should certainly put to rest any question regarding the nature of the relationship.

16. Pages 31-33:

Contrary to the discussion in these pages, there is not any ambiguity under the Covenant regarding the extent of Congressional legislative authority in the Marianas under the proposed status. In the first place, the United States removed its reservation on the clause discussed on page 31. More importantly, the Marianas tried to avoid ambiguity of the kind that arguably exists in the case of Puerto Rico. Under the Covenant it is clear that Article IV(3)(2) is applicable to the Marianas, except as limited by the mutual consent provisions of the Covenant. To the extent that Congress enacts legislation which could not also be made applicable to the States, however, the Covenant requires that the Northern Mariana Islands be specifically named. This is considerably different than the position which has been advanced by representatives of Puerto Rico, who reportedly want to limit the authority of Congress to make legislation applicable in the States also applicable to Puerto Rico. As the Study points out on pages 32 - 33, the Marianas do hope that Congress will not legislate on internal matters but will rather defer to the machinery for local government provided for in the Covenant.

17. Pages 34 - 35:

Although it is a minor point, I think most of the persons actively engaged in the negotiations would not agree that agreement on the political relationship came easily and was basically resolved at the second round of negotiations. Some of the most important questions dealing with the applicability of Federal laws generally and certain selected important Federal laws were discussed at great length during subsequent rounds of negotiations.

18. Page 39:

The acreage calculation set forth near the bottom of the page is undoubtedly wrong. The Pacific Daily News is a notoriously poor source.

19. Pages 40 ff:

Throughout this chapter statements are made about the sentiments of the people of Tinian regarding the stated U.S. military requirements. Although it is certainly fair to say that at various points during the negotiations substantial opposition was expressed by some Tinian residents to these requirements, the most recent expression of popular opinion fully supports the agreements reflected in the Covenant. The seven members of the Tinian Municipal Council have unanimously approved the land arrangements set forth in the Covenant and, in fact, have criticized Mr. Mafnas, their representative to the Congress of Micronesia, for his "irresponsible action" in instituting a suit to prevent the signing of the Covenant. At one point there was a battle of petitions by supporters and opponents of the land arrangements, with the majority of people signing the petition in support of making the land available to the United States. If there is any discussion in this chapter of popular opinion, the above facts certainly should be included.

20. Page 44:

Review of the terms and conditions set forth on page 44 in light of the provisions of the Covenant indicates that all of these conditions, with the exception of the first, were finally obtained by the Marianas Political Status Commission in its negotiations with the United States. In addition, of course, the Commission was successful in obtaining U.S. agreement to a lease of the land rather than a purchase.

21. Page 46:

The material regarding land speculation on this page is heresay and innuendo in their purest form. The reference to the Oberdorfer article is particularly unworthy of inclusion in the Study. In addition, the following points should be considered. First, Mr. Pangelinan has denied any speculation in land on Tinian and I know of no facts to the contrary. Second, Tinian has been open to "homesteading" for years. Third, many residents of Saipan have invested in land on Tinian in anticipation of the spread of tourism to that island. Fourth, there is no basis for the unstated assumption that any Commission member acted on any "inside" information concerning U.S. intentions on Tinian; the Study itself points out that the plans to build a major base on Tinian were broadcast as early as 1971 by the United States.

22. Page 48:

With respect to the different acreage figures contained on this page, the Study should consider the fact that these differences were described to the Marianas negotiators as reflecting errors in the original assessment by the United States of its need for particular parcels. Lower figures with respect to Tanapag Harbor and Isley were based on surveys which yielded these allegedly more accurate figures.

23. Pages 49 - 51:

This section should be reexamined in light of the final provisions of the Covenant. There are no "remaining" land issues in the negotiations. I am surprised that the provisions relating to alienation of land are not discussed at greater length.

24. Page 54:

The quotation attributed to Mr. Pangelinan is accurate. It is my recollection as I indicated above that this Commission statement was communicated across the negotiating table to the United States and was not a comment on a joint press release.

25. Page 57:

It is seriously misleading to include in the total financial package for the Marianas the estimated \$50 million cost of moving the Micronesian capital from Saipan. This question or possibility was never an issue in the Marianas negotiations. Furthermore, unlike the other sums listed, any expense associated with moving the capital would not accrue to the Government or people of the Marianas. In addition, there is no commitment, or even realistic probability at this point, that the capital will be moved from Saipan in the very few years remaining before the termination of the Trusteeship in 1981. If this \$50 million is to be included anywhere, it should be mentioned as part of the financial settlement with respect to the other five Districts.

26. Page 58:

The second sentence under the sub-heading is misleading. All negotiations with respect to land on Tinian was done by the Commission (not "Saipan") among whose members were included two representatives from Tinian. There is an important mistake in the middle of this page in that the newly-elected representatives are from the Territorial Party. Although I do not agree with his status views, I must speak up on behalf of Mr. Rasa and suggest that your use of the term "Marxist" is both perjorative and old-fashioned.

27. Page 58a:

The inclusion in this Study of Rasa's allegations is another sign of the Study's bias. There is absolutely no foundation in fact for this suggestion. It might also be of interest to the Study's readers that the two members who refused to sign the Covenant changed their minds after the Covenant was approved unanimously by all members of the Commission. The Study's drafters may think that the Covenant was negotiated in "haste," but most of those actively engaged in the negotiations for 2-1/2 years of negotiations would respectfully disagree.

28. Pages 59 ff:

The assumption on page 59 that United Nations approval of termination is required before the Covenant takes complete effect is certainly far from self-evident since it assumes that the United States would not terminate in the absence of U.N. approval. The listing at pages 59-60 of the major benefits obtained by the Marianas in

the Covenant is accurate but not as complete as a similar list contained at pages 23-24 of the Study's chapter on Guam and other U.S. territories. With respect to the list of failed objectives on page 60, it is inaccurate to state that the United States will be able to decide how the funds appropriated to the Marianas under Article VII will be spent. It is the clear understanding of the negotiating parties that these funds can be spent as the Marianas Government deems appropriate within the broad categories contained in Section 702. It also should be pointed out that there is no provision for financial oversight by a Federal comptroller in the Covenant. Moreover, it should be obvious that the Marianas did not seek the right to vote in the U.S. national elections since the Commission was fully aware that the U.S. Constitution prohibits such participation to persons not resident in the 50 States.

29. Pages 60 - 61:

The discussion regarding possible future obstacles to the Marianas is wonderfully gloomy. Whereas some of the provisions of the Covenant are undoubtedly ambiguous, it remains the most extensive and detailed effort to define a territorial relationship in our history. It is very possible that mistakes were made or that subsequent events will prove that particular provisions of the Covenant were misguided or insufficiently flexible to withstand the test of changed circumstances. The Covenant contains, however, a built-in mechanism to deal with such problems, specifically the provisions guaranteeing high-level discussions at least every decade between representatives of the Marianas and the United States regarding the status defined in the Covenant. If such a provision or regular practice had existed with respect to Guam or Puerto Rico, it is certainly a fair guess that some of the tensions now apparent in these territories regarding their status could have been systematically alleviated before they developed into major political issues.

Howard P. Willens
April 18, 1975

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