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DRAFT/AdeGraffenried/cg/5/8/75

Memorandum

To : Chuck Schmitz
From : Adrian de Graffenried
Subject : Commonwealth Covenant, Presentation to U.S. Congress

It is my understanding Ed Archer has prepared a paper on how the Covenant is to be presented to the U.S. Congress. I indicated to Ed I couldn't agree to his points, and feel it necessary to add to that memorandum.

In all discussions held in the lawyers working group and with Ambassador Williams and Mr. Wilson, the basic question in this matter was what legal status the Covenant should have within the U.S. Executive. Essentially, there were three possible positions:

1. it would be a treaty;
2. it would be an executive agreement; or
3. it would be a bilateral agreement somewhat in between a treaty and an executive agreement.

The fundamental problem arose from the fact the Mariana Islands is not now a legally constituted sovereign entity but is a non-self-governing administrative district of a larger trust territory. To avoid any recognition that the Marianas was self-governing and therefore holding some of the attributes of sovereignty (which raised some possible problems of residual sovereignty if the U.S. authorities were not complete) and to avoid similar problems with the COM, the U.S. took the view that the Covenant would not be a treaty. For similar reasons and to avoid

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U.S. Congressional sensitivities to executive powers and "secret deals", agreement option was eliminated.

While the "in-between" hybrid agreement characterization is awkward it does avoid a myriad of legal and political issues. The following is offered as a comparison of how the U.S. "acquired" other territories, and extended its sovereignty over them; nevertheless, it was further determined that it would be best to submit the agreement to the U.S. Congress for approval by a joint resolution as it stood. Once approved, the basic aspects of the Covenant would be incorporated into a Marianas-Federal Relations Act that would be supplemented by legislation from the Executive departments to extend the necessary federal laws to the Northern Mariana Islands and to include the Northern Mariana Islands in their programs. As specified in the Covenant, this procedure would blend the American Samoan example with that of Puerto Rico. In the former, the U.S. Congress approved the U.S. executive agreement by a joint resolution. On the latter, the U.S. Congress joined with the Executive to negotiate a Compact to improve the Puerto Rican status which was then incorporated into a Federal Relations Act. The actual procedural aspects as to submitting the Marianas-Federal Relations Act legislation is of course a matter of separate assignment which I have undertaken in consultation with Justice and the White House.

CHARACTERISTICS	PUERTO RICO COMMONWEALTH	GUAM	VIRGIN ISLANDS	AMERICAN SAMOA	PHILIPPINE COMMONWEALTH 1934 - 1946
Original Sovereign	Spain	Spain	Denmark	Germany Grt. Brit.	Spain
Method of US Acquisition					
Conquest of War	10 Oct '98				
Treaty		✓	✓	✓	✓
Character	<u>of</u> T/Peace	<u>of</u> T/Peace	<u>Treaty of</u> Cession	<u>Treaty of</u> Partition (All Samoa Islands)	<u>of</u> T/Peace
Date/Agreement	10 Dec '98	13 Dec '98	4 Aug 16	2 Dec '99	10 Dec '98
Date/Ratification (SENATE)	6 Feb '99	6 Feb '99	17 Jan '17		6 Feb '99
Date/Effective Transfer			11 Mar '17		
US Congressional Action without Executive Compact					
Executive Agreement				(Deed) Instrument	
Character				Cession of the Samoa C. Is. Amer. Gov.	
Party-Sovereign					
Date/Agreement				1900-1904	
US Congress Action					
Type				J. Resolut.	
Date				20 Feb. '29	