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November 10, 1975

MEMORANDUM FOR GERARD C. SMITH

Attached is a draft of a letter prepared by Howard Willens concerning the reasons our client opposes delay in consideration of the Covenant.

I expect to have a revised draft prepared for you and Howard to consider tomorrow.

Michael S. Helfer

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Nov 10, 1975

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Dear

This law firm has served as counsel to the Marianas Political Status Commission during the negotiations that resulted in the signing of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America. We are writing on behalf of the people of the Marianas to respond to the suggestion made during last week's Foreign Relations Committee hearing that the Senate should take no action on the Covenant at this time. It was argued that delay -- for some unspecified period of time -- would be in the interests of the United

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States and in no way prejudice the people of the Marianas. We respectfully disagree. We submit that indefinite delay would serve no useful purpose and might, indeed, adversely affect the interests of both the United States and the Marianas.

1. Delay of the Covenant Would Deny  
the People of the Marianas Increased  
Self-Government.

Many of the important provisions of the Covenant become effective upon approval by Congress. For example, under the Covenant the Marianas will be able for the first time to draft and approve a constitution creating democratic governmental institutions. Similarly, approval of the Covenant will lead to enhanced control by the Marianas over their future economic development. Under the provisions of the Covenant, these important advances in self-government can be accomplished without changing the international legal status of the Marianas or requiring action by the United Nations. (Those provisions of the Covenant which could change the international legal status of the Marianas do not become effective until the Trusteeship Agreement is actually terminated.) If Congress defers action on the Covenant, the people of the Marianas will be denied these benefits. This would be directly contrary to the obligation of the United States under the Trusteeship Agreement to promote self-government in the Marianas.

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There is no realistic alternative to the Covenant that can bring self-government to the Marianas. An executive order cannot possibly provide the legal guarantees and permanent self-government available to the Marianas under the Covenant. An executive order that purports to grant increased self-government can be promulgated and revoked without even any need to consult the people of the Marianas. Moreover, congressional deferral of separate Commonwealth status for the Marianas will undoubtedly be viewed by the Executive Branch as evidencing a desire that Micronesia be continued under a single administration, notwithstanding the express wishes of the Marianas people for a separate political future.

If Congress refuses to approve the Covenant, the people of the Marianas will not even be able to begin planning for their future political status. Congressional inaction will be viewed as reopening the basic question whether a commonwealth affiliation with the United States is possible. With this uncertainty, it is simply not feasible to have a constitutional convention within the Marianas to consider a constitution for some unknown future political status. Delay by the

Senate, therefore, threatens to defer for many years a full range of political, social, economic and physical planning programs that were carefully negotiated between the United States and the Marianas to begin after approval of the Covenant. This is not an insignificant cost, for these planning programs will permit the Marianas and the United States to avoid the problems of uncontrolled development and exploitation that have been experienced in many other island communities.

2. Deferral of Action on the Covenant Would Serve No Useful Purpose.

It is true that the problems confronting the Senate would have been simplified if the peoples of Micronesia had decided that their interests lay in a unified political future. They did not. There is no reason to think that the Marianas will ever decide to join with the other five districts of Micronesia, whose political aspirations seem to be increasingly distant from those held by the people of the Marianas. Delay will not change this fundamental political fact.

Nor are any other developments likely to occur within the next two, four or more years which will simplify the choices presently before Congress. The

Covenant has been studied extensively by Congress over the years of negotiation, and rests on well-established precedents like Guam and Puerto Rico. Negotiations between the United States and other Districts have been conducted on an active basis since 1969. The responsible Committees in both the Senate and the House of Representatives have closely monitored these negotiations, especially during the last three years. The basic principles of the political status desired by the other Districts of the Trust Territory -- an independent Micronesia in free association with the United States, a status that does not include American citizenship or U.S. sovereignty -- are clear. It is misleading at best to suggest that any significant information not available now will be available in the future to ease the decision.

Finally, there is no reason to believe that any problems which may arise at the United Nations from termination of the Trusteeship Agreement will be easier to deal with if Congress elects to defer action on the Covenant. Approval of the Covenant would not constitute amendment or termination of the Trusteeship Agreement; it therefore raises no immediate problems with respect to the United Nations. The United States has indicated

its tentative plan to terminate the Trusteeship Agreement in about 1980-81, at which time the reaction in the United Nations to different political status arrangements for distinct parts of Micronesia will obviously depend on political and international factors which cannot be clearly anticipated today.

Proponents of delay have proposed no defensible reason for inaction. It seems clear that delay is being proposed by those who are opposed to commonwealth status for the Marianas. Their basic position seems to be that the peoples of Micronesia -- both those of the Marianas and those of the other five districts -- should be forced into a common political status whether they like it or not. Of course, opponents of the Covenant are understandably reluctant to advance this unattractive position boldly -- both because it is so clearly a denial of basic human rights and because it is unlikely to be accepted by the Senate.

3. Deferral of Action on the Covenant Would Threaten to Extend the Trusteeship Agreement Into the Indefinite Future.

Prompt approval of the Covenant is an essential first step toward concluding the responsibilities of the United States under the United Nations' Trusteeship

Agreement entered into in 1947. As the last remaining administering authority, the United States has recognized its obligations to terminate the Trusteeship Agreement as soon as possible. A target date of 1980-81 has been tentatively established by the United States in consultation with the representatives of the Congress of Micronesia. The people of the Marianas would prefer quicker termination. But if the Congress fails to act promptly on the Covenant termination may be delayed even further -- until some distant date in the 1980's or 1990's.

Prompt approval of the Covenant will provide concrete evidence of the willingness of the United States to terminate the Trusteeship Agreement as soon as the peoples of Micronesia have expressed their desire with respect to their future political status. The people of the Marianas have spoken decisively through the recent plebiscite regarding their preference for a commonwealth relationship with the United States. The leaders of the Congress of Micronesia testified in support of the Marianas Covenant. Failure to approve the Covenant is certain to be taken as an indication that the United States may not terminate the Trusteeship on the currently proposed timetable. Delay would call into question the

willingness of the United States Congress ever to approve the Covenant. If this forced the people of the Marianas to begin again to explore other, and in their view less desirable, political status alternatives, then no one can say how long termination might have to be delayed. For it is clear that the people of the Marianas will not voluntarily accept a future political status in common with the rest of Micronesia, and that, unless a satisfactory alternative to the Covenant can be found, the Marianas could not agree to a termination of the Trusteeship.

Moreover, inaction on the Covenant would condemn the people of the Marianas to a period of great difficulty and controversy within the Trust Territory of the Pacific Islands. If the Covenant is not approved and the Marianas cannot be separately administered, they will be exposed to the possibility of serious discrimination by the Congress of Micronesia. In light of the determination of the Marianas to pursue a separate political future, it would be unreasonable to expect that the other five Districts -- despite their support for the Covenant -- would be truly concerned during the next several years about treating the Marianas on a fair and non-discriminatory basis. Inaction on the Covenant, in

effect, would force the people of the Marianas and the other five Districts to co-exist although both sides have clearly decided that their futures should be separate. The practicalities of the situation in Micronesia provide still another reason for prompt approval of the Covenant. Only by such definite action can the United States prevent the issue of future political status from threatening continued order and stability in Micronesia.

4. Rejection of the Covenant Would Deny the People of the Marianas Their Basic Right of Self-Determination.

Rejection of the Covenant, whether in the guise of deferral or not, would amount to a serious breach of faith. The people of the Marianas have been encouraged, by representatives of the United States Congress as well as by officials of the Executive Branch, to believe that their desire to become affiliated on a permanent basis with the United States could some day be realized. To dash these long-held aspirations at the last moment would be deeply offensive to the basic sense of fairness that has characterized American policy towards dependent peoples. The people of the Marianas, after decades of petitioning and years of negotiations, are entitled to an affirmative or negative decision on the Covenant. A

failure to act upon the Covenant for some indefinite future period would only prolong the uncertainties and deprivations of the Marianas people.

Furthermore, rejection of the Covenant would deprive the people of the Marianas of the right to self-determination which they are promised under the provisions of the United Nations Charter and the Trusteeship Agreement. Once the United States undertook the responsibilities of an Administering Authority, it assumed obligations to the people of Micronesia different from those which it has for any other people outside the United States. The many fine distinctions of international law advanced by opponents of the Covenant cannot obscure two basic facts: (1) previous trusteeships have been terminated by dividing the dependent territory into two separate political entities, so it would not be unprecedented if Micronesia were not to remain a single political entity after termination and (2) rejection of the Covenant would amount to forcing the people of the Marianas into a political arrangement with the other five Districts contrary to the express wishes of all the peoples of Micronesia. Opponents of the Covenant are urging Congress to deny the people of the Marianas their basic human rights -- and to do so for

some abstract and unarticulated objective. We ask you to reject this approach and to support prompt favorable action on the Covenant.

Sincerely,

Howard P. Willens  
for  
Wilmer, Cutler & Pickering  
Counsel to the Marianas  
Political Status Commission