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United States Department of the Interior



OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

MAR 19 1973

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MEMORANDUM

From: The President's Personal Representative for Micronesian Status Negotiations

To: Chairman, NSC Under Secretaries Committee

Subj: Negotiations on the Future Political Status of the Mariana Islands District, Trust Territory of the Pacific Islands.

By memorandum of December 26, 1972, the Chairman of the Under Secretaries Committee requested that the Interagency Group be instructed to conduct and submit to the Under Secretaries Committee a study of "Options and Recommendations for the negotiation of a permanent association with the Marianas, together with a negotiating strategy and recommendations for necessary legislation and necessary executive action". It was further requested that new negotiating instructions be developed and forwarded with the study for Presidential approval.

Attached for your consideration is the study on this subject prepared by the Interagency Group, together with a recommended set of negotiating instructions.

For convenience the first section is a summary of the study, including its principal recommendations.

Franklin Haydn Williams
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STUDY CONCERNING THE NEGOTIATIONS ON THE FUTURE
POLITICAL STATUS OF THE MARIANA ISLANDS DISTRICT OF THE
TRUST TERRITORY OF THE PACIFIC ISLANDS

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SUMMARY

This summary presents an overview of the basic study; should any doubt arise with regard to intent the basic study should be consulted.

A. The Nature of the Problem; U.S. Negotiating Objectives (for fuller discussion see Part II of the study)

U.S. political and security interests in the Western Pacific require that the U.S. have a close continuing relationship with the Mariana Islands. The Marianans themselves have consistently expressed a desire for closer U.S. ties than the rest of the Trust Territory of the Pacific Islands (TTPI) seems prepared to accept. U.S. and Marianas representatives formally initiated discussions of the Marianas' future political status in a largely ceremonial round of talks on Saipan last December. It was agreed that in the spring of 1973 the two sides would launch substantive negotiations on the main elements of a close and permanent relationship including, inter alia, the nature of the political ties, U.S. land requirements in the Marianas, and financial arrangements. It is clearly in the U.S. interest to conclude and implement rapidly an agreement on future status. Fundamental U.S. interests in the Marianas translate into the following specific negotiating objectives:

PRIMARY OBJECTIVES

-- To fashion on a priority basis a close and permanent political relationship with the Mariana Islands District which will extend U.S. sovereignty to those islands and satisfy U.S. security requirements. The latter include: denial of the area for military use by third parties, U.S. control over foreign and defense affairs of the Mariana Islands, and the right to establish military bases in those islands.

-- To ensure establishment of a stable and friendly Marianas political entity through reasonable satisfaction of the political and economic aspirations of the people of the Marianas.

-- To satisfy U.S. obligations under the Trusteeship Agreement through an act of self-determination leading to self-government for the Marianas.

SECONDARY OBJECTIVES

-- To structure the status arrangements with the Marianas in such a manner as to have the maximum favorable impact on the negotiations with the remaining five districts of Micronesia.

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-- To keep the United States' financial obligations to the Mariana Islands within reasonable bounds and relevant to the character of the future relationship.

-- To keep U.S. political, economic, and administrative relationships with the Marianas as simple as possible while accomplishing the above objectives.

-- To establish a relationship with the Marianas which will (in addition to meeting U.S. obligations under the Trusteeship Agreement) obtain United Nations approval, or at least that of a majority of the Security Council and of the Trusteeship Council.

B. The Future Political Relationship
(Part III of the Study)

Any of the following forms of territorial status would extend U.S. sovereignty to the Marianas and meet U.S. security concerns:

1. Integration with Guam.
2. Integration with Guam, with special safeguards to ensure that the Marianas, initially the economically and politically weaker party to the union, would not be unduly dominated by Guam.
3. Unincorporated territory.
4. Commonwealth (The type of commonwealth envisaged is a true territorial status in that the Marianas would be subject to the plenary legislative authority of the U.S. Congress under Article IV, Section 3, Clause 2 of the U.S. Constitution. This relationship would fall short of being "in the nature of a compact" as is provided for in the enabling legislation for the Commonwealth of Puerto Rico, leading to questions about the extent to which Puerto Rico is subject to the plenary powers of the Congress. In sum, the 1970 Commonwealth proposal for Micronesia would be adapted to the special circumstances of the Marianas.)

Each of these four options would have several basic features in common:

- There would be U.S. constitutional supremacy.

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- The Mariana Islands would be included within the federal court system.
- The present residents of the Mariana Islands would acquire U.S. citizen or national status.
- The Mariana Islands would have a republican form of government with an elected executive and legislature and an independent judiciary.
- Local TTPI held public lands would be turned over to the Marianas Government.
- The relationship would be permanent with no provision for termination.
- Continuing U.S. financial assistance would be required.
- Implementation of any status option could take place only following its approval by the people of the Marianas.
- Full and final implementation will require U.S. Congressional action, and termination of the Trusteeship Agreement.
- Administrative convenience would tend to favor the Marianas' integration with Guam and there may be some sentiment in the U.S. Congress for integration with Guam or for the status of unincorporated territory rather than the establishment of a new commonwealth of such limited size. However, from the perspectives of the Marianas aspirations, the parallel negotiations with the rest of Micronesia, and the United Nations, commonwealth status appears to be the preferred and most practical alternative and hence the most reasonable negotiating objective for the U.S.:

Marianas' Aspirations. Within the framework of close association with the U.S., the Marianas insist upon maximum internal political autonomy. From fear of domination the Islands will resist early integration with Guam, while their desire to control their own affairs under a locally adopted constitution, will incline them against the status of incorporated territory. In general the Marianas tend to see the more prestigious commonwealth status as providing the attributes they desire in a relationship with the U.S.

Negotiations with the Remaining Districts. Commonwealth offers the best prospects for early agreement. On balance it is considered probable that an early settlement with the Marianas will have a beneficial effect on the negotiations with and status attitudes in

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the rest of Micronesia. It will give friends of the U.S. in the other districts something positive around which to rally. As the immediate and long-term benefits to the Marianas of the new relationship become apparent there could develop in Micronesia pressures on the JCFS to find a status formula which would be similarly advantageous for the remainder of the TTPI. While it is improbable that the current leadership in the other Micronesian Districts will retreat from free association or independence to a Commonwealth arrangement, the attractive provisions of the arrangement will be noted throughout the Trust Territory and could influence the other districts toward early agreement on a closer association than now appears likely.

United Nations. It will be difficult to fashion an agreement involving separate status for the Marianas which will meet U.S. objectives and also receive U.N. approval. However, Commonwealth status offers the highest degree of self-government and therefore clearly stands the best chance of gaining U.N. acceptance. (Final U.N. acceptance or rejection will, of course, be linked to resolution of the status of the remainder of Micronesia).

C. U.S. Land Requirements

I. Specific Requirements (Section IV, A., B., and C. of the Study)

U.S. requirements for land for non-military use are minimal (about 23 acres) and will be met without objection. Military land requirements are substantial, however, and their acquisition constitutes one of the major issues to be negotiated. U.S. military needs in the Marianas District, as in the rest of the TTPI, are predicated on an assessment of the strategic importance of the area and on the amount of land necessary to support current and future U.S. objectives.

From the overall strategic point of view the combination of Guam, the Marianas, and Palau offers the only practicable near-term, mid and long-range potential in the Western Pacific for the development of major U.S. joint service base complexes to handle current requirements and to provide for relocation from existing forward Western Pacific bases in Japan, the Philippines, Korea and Taiwan which may be required as a result of further limitations and restrictions placed on their use. The development of such base complexes requires maximum use of U.S. controlled land in a forward area which can be devoted to military purposes and is suitable for the development of an integrated homogeneous basing area. This would, inter alia, minimize the total land area necessary, costs to the U.S., logistics problems, and interference with (and by) civilian communities.

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-- Tinian. To achieve these goals it is hoped to consolidate most defense activities in the Marianas on Tinian Island. Acquisition of the entire island (26,200 acres) is thus the recommended primary objective. Early development is planned for joint service basing facilities, including an airfield, port facility, logistics complex, and a joint service maneuver and training area. (The cost of Tinian development through Phase VI -- see Annex III of the study -- is estimated to be \$114 million at the minimum). Tinian's acquisition would involve relocation of the present civilian population (781). If it proves impossible to acquire Tinian in its entirety, the minimum and essential requirement is for 18,515 acres, including the area around the current port, or 16.6% of the total land in the Marianas (See Annex III). Even this minimum requirement would necessitate extensive relocation of Tinian's population because of ammunition safety requirements.

-- Farallon de Medinilla. The small, uninhabited island of Farallon de Medinilla about 45 miles north of Saipan has been used as a bombing target since 1970. It has no conceivable economic value and is almost inaccessible and otherwise unusable because of the nature of the terrain. Its long-term acquisition should pose no problems.

-- Saipan. It is highly desirable that the U.S. acquire 500 acres adjacent to Isley airfield and 320 acres in the Tanapag Harbor area. The Isley acquisition would ensure availability of land and reserve the capability to locate certain ancillary activities on Saipan and support possible relocation of industrial, training, and supply facilities currently located in other countries. The Tanapag Harbor acquisition would support any future development of the Isley field area and support possible relocation of industrial and supply facilities currently located in other countries.

2. Optional approaches to satisfying land requirements;
relevant factors
(Section IV. D. of the study)

The Marianas leadership and the Marianans generally welcome U.S. military installations in the islands on the expectation their presence will promote economic development. On the other hand, U.S. requirements -- particularly in Tinian and perhaps at Tanapag Harbor as well -- are greater than the Marianans expect, and surfacing the maximum U.S. land package may well make the negotiations more difficult or prolonged. The Tinianese may well resist relocation off their island, and the Saipanese leadership, currently dissatisfied with restrictions placed on the commercial development of Tanapag Harbor as a result of the area's present military retention status, may balk at the harbor requirement. However, extensive inducements

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can be designed which might make relocation of the Tinian population off the island more palatable and U.S. rights in Tanapag Harbor more acceptable. The U.S. thus should be able to test its maximum proposal without seriously jeopardizing or delaying the negotiations or upsetting the current momentum.

Any relocation of the population of Tinian, on or off the island, will have an initial adverse impact on negotiations with the rest of Micronesia, particularly in Palau. At least until the specific Palauan land requirements have been publicly established and thoroughly understood those Palauans opposed to a U.S. military presence will cite the Tinian relocation as an example of what may happen in Palau.

On balance it is believed that putting forward the maximum U.S. land proposal is not likely seriously to impede the Marianas negotiations, and that the proposal's adverse impact elsewhere in Micronesia will be short-lived. The advantages of acquiring all of Tinian Island added to the strong desirability of acquiring rights on Saipan argue in favor of making a determined effort to achieve the maximum requirement. Accordingly, it is recommended that this negotiating effort be made. However, there must be a Presidential determination of whether this is to be done, or whether his Personal Representative is to open negotiations on land requirements with a lesser goal. There follow, in descending order of priority, four alternative land acquisition proposals. With alternative 1 as the optimum and recommended goal, alternatives 2, 3, and 4 would be successive fallbacks only if number 1 proved impossible to achieve.

a. Alternative 1

Tinian

- Purchase or lease entire island (26,200 acres) and relocate population off the island.

Saipan

- Joint Use Agreement permitting U.S. military landing rights on and access to facilities of civil airport.

- Purchase or lease 500 acres adjacent to Isley Field runway. Land can be leased back for agricultural purposes.

- Purchase or lease 320 acres at Tanapag Harbor.

Farallon de Medinilla Island

- Purchase or lease entire island (229 acres)
(The purchase or lease of Farallon de Medinilla Island is considered an essential part of all negotiating alternatives and variants, but will not be repeated below.)

If necessary the following variants to the above alternative should be explored thoroughly in the attempt to obtain all of Tinian (with population relocation off the island) and to obtain certain acreages of land/or access rights on Saipan.

(i) First Variant of Alternative 1

Tinian

- Purchase or lease entire island (26,200 acres) and relocate population off the island.

Saipan

- Joint Use Agreement permitting U.S. military landing rights on and access to facilities of civil airport.
- Purchase or lease 500 acres adjacent to Isley Field runway. Land can be leased back for agricultural purposes.
- Access and use rights to Tanapag Harbor (320 acres). As part of this proposal the Marianas representatives would be asked to agree that any subsequent development of Tanapag Harbor would meet criteria set by Department of Defense to insure that Harbor could be used by U.S. forces. The U.S. Government would be willing to furnish planning advice for any subsequent development. The U.S. Government will negotiate and pay rental fees for any usage at the time of U.S. Government use.

(ii) Second Variant of Alternative 1

Tinian

- Purchase or lease entire island (26,200 acres) and relocate population off island.

Saipan

- Joint Use Agreement permitting U.S. military landing rights on and access to facilities of civil airport.

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- Access and use rights to 500 acres immediately adjacent to Isley Field runway to develop some type of military installation for servicing equipment, etc., whenever the need arises. Any interim civic development would have to meet criteria established by Department of Defense. In turn, the U.S. Government would furnish planning advice and reassure Marianas that in event a military installation was built on this land it would be a high employer. The U.S. Government would negotiate and pay rental fees for any usage at the time of U.S. Government use.

- Access and use rights to Tanapag Harbor (320 acres) As part of this proposal the Marianas representatives would be asked to agree that any subsequent development of Tanapag Harbor would meet criteria set by Department of Defense to insure that Harbor could be used by U.S. forces. The U.S. Government would be willing to furnish planning advice for any subsequent development. The U.S. Government will negotiate and pay rental fees for any usage at the time of U.S. Government use.

b. Alternative 2

Tinian

- Purchase or lease entire island (25,200 acres) and relocate population off the island.

c. Alternative 3

Tinian

- Purchase or lease entire island (26,200 acres) but offer to lease back southeast corner for population relocation (about 7,000 acres). U.S. Government would be willing to sign long-term leases but would insist on controlling the uses the land can be put to and would not be obligated to leaseback to anyone not currently a resident of Tinian.

d. Alternative 4

Tinian

- Purchase or lease minimum needs (18,515 acres) and relocate population to southeast corner of island.

3. Eminent Domain
(Section IV. E. of the study)

The U.S. should attempt to obtain unqualified eminent domain

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authority as normally obtains in other U.S. territories and states. It seems likely, however, that the Marianas negotiators will try to circumscribe that authority to bring it into conformity with the restricted right the U.S. reluctantly proposed in its 1970 commonwealth offer for all of Micronesia. It is recommended that the President's Personal Representative seek unrestricted eminent domain authority, falling back to a more qualified form only if necessary to obtain an otherwise satisfactory status agreement.

D. Financial Arrangements
(Part V of the Study)

Since the Marianas do not have the economic resources to become self-supporting in the foreseeable future, the U.S. will have to continue subsidization of the Islands for an indefinite period. Marianas representatives have high financial expectations. U.S. assistance should be at a level to promote the economic development of the Marianas and to compare favorably with financial arrangements for the rest of Micronesia, but not so exaggerated as to stretch the Marianas' absorptive capacity or to discourage local initiative toward self-sufficiency. U.S. assistance should take the following forms:

1. Direct Grants, currently about \$9.3 million annually for the Marianas, help fund local government operations and capital improvement programs. Under the envisaged close political relationship the actual level of direct grants based on need would ideally be mutually determined annually by the U.S. and the local government as with other U.S. territories. It is likely, however, that the Marianas representatives will insist on a specific financial guarantee. The President's Personal Representative should have considerable flexibility in negotiating U.S. assistance. Authority to negotiate direct grants of up to \$12 million annually should furnish that flexibility. If it proves necessary to concede a specific amount of direct grant assistance, the commitment should be limited to five years, after which the Marianas will obtain financial support through the normal appropriation channel without reference to any fixed level. It will be made clear to Marianas representatives that any initial financial commitment of the Executive Branch is subject to U.S. Congress approval and funding.

2. U.S. Programs and Services

An important Marianas objective in seeking close association is full participation in the many Federal programs and services available to U.S. states and territories. The Marianas as part of the TTPI now receive approximately \$2.5 million annually in such services and

programs, e.g., Postal Service, Coast Guard, FAA, OEO, HEW, HUD, DOT, etc. The level of this type of support would probably increase with close association, although it is premature to try to place a dollar figure on the incremental cost. In this regard, the Marianas' eligibility would be largely determined by Congressional action, based perhaps upon a joint U.S.-Marianas survey of potentially desirable Federal programs and statutes. It is in the U.S. interest to be generously responsive to Marianas requests for federal programs, whose extension to the Islands is likely to strengthen their bonds with the U.S., as has been the case in other territories. Also, the contrast between the status of the Marianas and that sought by the rest of Micronesia will be sharpened by the magnitude and range of programs and services available to the former.

3. Transitional Costs

The President's Personal Representative should have considerable flexibility in negotiating appropriate special U.S. assistance to cover short-term transitional costs relating to implementation of the new status of the Marianas, including employment dislocation resulting from transfer of the TTPI headquarters from Saipan to another district.

4. Land and Relocation Costs

a. Land Costs

It is impossible to formulate specific cost guidelines for purchasing or leasing land in the Marianas. Local attitudes toward land and its scarcity translate into relatively high prices which are, in any case, a matter of negotiation. The following estimates are simply planning guidelines:

Tinian

- Buy 26,200 acres (entire island) up to \$28.65 million lump sum
- Lease 26,200 acres for 50-99 years
 1. up to \$28.65 million lump sum or
 2. up to \$3 million annual payment based upon 10% of estimated fee value
- Buy or lease 18,515 acres 50-99 years
 1. up to \$20 million lump sum or
 2. up to \$2 million annual payment

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Saipan

- Buy or lease 820 acres 50-99 years
1. up to \$2.1 million lump sum or
 2. up to \$200,000 annual payment

Farallon de Medinilla

- Buy or lease 229 acres for 50-99 years
1. up to \$229,000 lump sum or
 2. up to \$22,900 annual payment

b. Relocation

Since there is no existing replacement housing available for displaced Tinianese, it is probable that if it acquires all of Tinian the U.S. will have to build a new community for them on Saipan or on the southern portion of Tinian if it obtains only the minimum requirement of 18,515 acres. It is estimated that the total cost would be in a range of \$10-14 million for relocating the Tinianese to Saipan and somewhat less for relocating the population to the southeast corner of Tinian.

The President's Personal Representative must have considerable flexibility for negotiating land acquisition and relocation costs, since these, like direct grant assistance and the extension of federal programs and services, will have an important bearing on the Marianas' willingness to conclude an agreement with the U.S. At the same time, however, he should consult closely with and draw heavily on the land expertise of the Departments of Defense and Interior in the process of arriving at reasonable estimates and final cost proposals.

c. Presidential Decisions

The President will decide whether to authorize his Personal Representative to commit the Executive Branch: (1) to direct grant assistance up to a ceiling of \$12 million annually; (2) to the extension of appropriate federal services and programs; and (3) reasonable land and relocation compensation.

E. Interim Arrangements
(Sections VI. A. and B. of the study)

1. Desirability of Early Implementation of Agreement

The U.S. has taken the position consistent with U.N. thinking

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as well that the Trusteeship Agreement must be terminated simultaneously for all of Micronesia. However, it is likely that negotiations with the Marianas will be concluded satisfactorily before an agreement is reached with the other districts. To the extent feasible the U.S. will want to implement the Marianas agreement as soon as possible after its conclusion for the following reasons:

a. The people of the Marianas want to receive the benefits of their new status at the earliest possible date. Their leaders are sensitive to the uncertainties of the Marianas' present position as an integral part of Micronesia and believe early implementation of the separate status would satisfactorily clear up many of the prevailing ambiguities. (Marianas negotiators have indicated a desire to discuss early implementation at the status negotiations).

b. Should the U.S. not move rapidly toward at least de facto implementation of the new agreement local support for it could dwindle. An indefinite delay might even compromise the agreement.

c. A rapid Marianas agreement will hopefully have a favorable impact on negotiations with the rest of Micronesia. If a form of status is agreed upon having provisions attractive to the other districts the sooner it is implemented the more positive the influence.

d. Once the agreement is implemented there will be fewer opportunities for the Congress of Micronesia to attempt to thwart separate U.S.-Marianas ties through legislation applying to all six present districts of the TTPI.

e. The U.S. Department of Defense wishes to proceed expeditiously with its plans for acquiring land and developing military facilities in the Marianas. This requires early implementation of several basic elements of a new relationship.

2. Early Implementation Options

The goal of early implementation of the agreement within the Trusteeship framework can be achieved in the following ways: (a) The U.S. Congress could enact permanent status legislation for the Marianas to take full effect upon the end of the Trusteeship. The legislation would, however, authorize implementation as appropriate during the interim period by Executive Order. (b) the agreement could be implemented during the interim period by Congressional action with the post-Trusteeship status requiring subsequent and separate legislation,

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probably to be submitted at the same time as for the rest of Micronesia. This makes the legal assumption that the interim legislation could not also serve as the permanent status legislation. (c) The President could promulgate an Executive Order to implement the agreement during the interim period and later seek legislation from the Congress to formalize the post-Trusteeship status, probably at the same time as for the rest of Micronesia.

Options (a) and (b) are applicable to all four status options which were considered. Option (c), however, would not be practical with respect to either status option entailing Marianas-Guam integration.

The main distinction between the foregoing interim implementation options is the point at which the U.S. Congress would act with respect to the Marianas. Since option (a) promises an early cementing of the agreement and insures Congressional approval, it is clearly the most desirable route from the perspective of U.S. (and indeed Marianas) negotiators, provided that Congressional action promises not to be unreasonably delayed. Any realistic assessment of the options, however, rests upon one's reading of Congressional attitudes. It is impossible for this study to make such a judgement without extensive consultations with Congress. Accordingly, the President's Personal Representative should give this subject priority in his consultations with the Congress. Assuming there is a consensus, Congressional guidance should be considered authoritative. Indeed, such consultations may reduce the problems faced with any approach: the delay caused by seeking Congressional legislation first; or the opposition Congress may have to the initial Executive Order route.

F. Possible Impediments to Early Agreement (Part VIII of the Study)

1. Congress of Micronesia (COM) Interference

It is unclear whether the COM, which has not approved the separate U.S.-Marianas negotiations, seriously hopes to prevent a separate status for the Marianas or whether it simply wishes to increase its own bargaining leverage. In any case efforts are underway to obstruct or confuse the separate negotiations, e.g., the COM recently passed a Joint Resolution declaring it has sole authority to negotiate for all of Micronesia and has hinted it may press this claim by court action.

Should it appear that the COM's extension of legislation to the Marianas on matters relating to future status seriously threatens to complicate the U.S. ability to pursue separate negotiations with the Marianas, consideration can be given to promulgation by the Secretary

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of the Interior of an order specifying that such legislation will not be applicable to the Marianas. However, because of the political liabilities associated with this course and the possible implications for the negotiations with the rest of Micronesia, it should be taken only after consultations with the President's Personal Representative and the Under Secretaries Committee and as a last resort. It is requested that the President authorize the Secretary of the Interior to undertake the foregoing step if necessary within the context discussed above.

2. Marianas Timing

The Marianas' expressed interest in establishing at an early date a "close and permanent" relationship with the U.S. clearly differentiating them from the rest of Micronesia suggests they will wish to press expeditiously toward an accord on their future status regardless of what happens in the negotiations with the JCFS. However, given Marianan financial expectations and the size of U.S. land requirements, the nature of the final U.S.-Marianas relationship as well as the progress of negotiations toward it could conceivably depend in part on the pace and direction of U.S.-JCFS discussions, with the Marianas prolonging their own negotiations to scrutinize the other set of talks to identify targets of opportunity for exploitation, particularly in the financial field.

Because the U.S. interest will be best served by an early Marianas agreement, as discussed above, it is important that the U.S. actively pursue substantive discussions with the Marianas prior to the next round of negotiations with the JCFS in an effort to create sufficient momentum toward the early conclusion of a Marianas future status agreement that the Marianas representatives will be committed to that course.

G. Issues for the Future (Sections VI. C. and VII of the study)

The following issues relating to both the Marianas and JCFS negotiations cannot be resolved now, but merit preliminary consideration by the U.S. Government:

1. Termination of the Trusteeship: Self-Determination and the U.N.

Ultimate termination of the Trusteeship Agreement will necessitate an act of self-determination in the Mariana Islands as well as in the rest of the Trust Territory. There are no specific legal requirements as to how the act of self-determination should be conducted, but the general practice has been to confirm popular support for the newly

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agreed status arrangement by a plebiscite. There is general agreement that the Trusteeship Agreement can be terminated only for all six districts at once, although it is also agreed that the Marianas could be separately administered before that termination after a plebiscite confirming the status agreement.

There are differing views regarding the need and advisability of seeking U.N. Security Council approval for termination of the Trusteeship Agreement. The weight of legal opinion, past U.S. statements before the Security Council*, opinions of the International Court of Justice, and the precedent of past Trusteeship terminations strongly support the view that the U.S. should seek U.N. approval for termination. The likelihood of obtaining Security Council approval will depend largely on the terms of the plebiscite offered and the nature of the agreement reached. If the U.S. Government decides to try to obtain Security Council approval and then fails the President may wish to adopt the position that the U.S. obligations under the Trusteeship Agreement are fulfilled, regardless of the views of the Security Council.

If it should be clear in advance that the U.S. cannot hope for approval by the Security Council, the President could decide not to seek such approval and, instead, move directly to the position that the United States' obligations have been fulfilled. However, it would significantly strengthen the legal case for termination of U.S. obligations without the Council's consent if the U.S. first tried to obtain Security Council approval to termination, even if it failed. Therefore, no action should be taken with regard to the Marianas which would prejudice the United States' ability and option to seek Security Council approval.

Whatever course the U.S. Government follows, it will be most important to obtain as much support as possible for its position in the Security and Trusteeship Councils. In that regard, the following requirements appear to be basic with respect to the Marianas:

a. The act of self-determination should provide at a minimum the options of approval or disapproval of the negotiated agreement, be observed by U.N. officials, and be preceded by a political education campaign on the meaning of the options.

**The Department of State notes that, in 1947, the U.S. Representative to the Security Council (Senator Austin), during the Council's consideration of the draft trusteeship agreement, stated that "no amendment or termination can take place without the approval of the Security Council".*

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b. The negotiated agreement must receive a significant majority vote and popular participation must be massive.

c. The negotiated agreement must provide for the highest possible level of self-government. (Commonwealth status is thus the preferred option with respect to U.N. approval.)

The ultimate character, timing, and mechanics of the act of self-determination will be matters for negotiation with the Marianas Status Commission, and possibly the U.N., and must also take into account the likely character of the act of self-determination in the other districts (e.g., whether it will include an independence option). The question of U.S. tactics in the Trusteeship and Security Councils of the U.N., at the time of termination, can be resolved only toward the end of the Trusteeship, and will probably require further Presidential consideration and decisions at that time.

2. Relocation of the Capital of Micronesia

Separation of the Marianas from the rest of the Trust Territory will necessitate relocation of the Micronesian capital from Saipan to some other point within Micronesia. However, any such relocation should be deferred until the future status of the other districts is settled (unless that is long delayed), the organization and physical requirements of the new Micronesian Government are known, and the Micronesians have agreed upon a site for their new capital. The exact timing of relocation and the terms under which it is to be accomplished can be matters for negotiation with the JCFS. (This subject will be considered in greater detail in the companion study dealing with the Micronesian Status Negotiations).

When relocation becomes necessary, the U.S. Government will undoubtedly be called upon to assist in financing the new capital. Estimates of relocation costs run as high as \$30-40 million.

H. Timing Scenario

It is very much in the U.S. interest to move swiftly and forcefully toward establishment of a close relationship with the Marianas. The following lays out for planning purposes an illustrative schedule for negotiating and implementing a change of status for the Mariana Islands District. (Timing is, of course, in the area of tactics and falls largely within the discretion of the President's Personal Representative). The suggested goal is to achieve interim implementation of a new status for the Marianas by no later than the end of 1974 or early 1975. While this goal may later prove unrealistic, a timetable is valuable for planning an appropriate approach to these complex negotiations. There

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will be ongoing consultations with the U.S. Congress, as appropriate, throughout the process.

Step One, Early April 1973:

The President approves negotiating instructions for his Personal Representative containing the nature of the political relationship, the level of U.S. land requirements, and the level of U.S. financial assistance to be negotiated with the Marianas.

Step Two, April 1973:

After Congressional consultations, forward to the Mariana Status Commission an outline of the Presidentially-approved status proposal to focus that body's early consideration on arrangements satisfactory to the U.S. Hopefully, this will help to direct the first substantive negotiations in April-May toward concentration on concrete, substantive elements of a future relationship, rather than on abstract principles.

Step Three, Spring and Summer 1973:

Beginning in late April 1973 and continuing as long as necessary into the spring and summer, negotiate and conclude with the Mariana Status Commission a basic agreement on the future status of that district, and U.S. military land requirements.

Step Four, Summer 1973:

Obtain informal concurrence of interested committees of the U.S. Congress to this agreement.

Step Five, Fall 1973:

Marianas District Legislature consideration and approval of status agreement.

Step Six, Fall or Winter 1973:

Plebiscite (act of self-determination), sponsored jointly by the Mariana District Legislature and United States Government, on agreed status package.

Step Seven, Winter 1973:

Assuming successful outcome of the plebiscite, the Executive Branch's initiation of the necessary legislation and/or pertinent Executive Order providing for interim implementation of the status package during the remaining years of the Trusteeship. Implementation of those portions of

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an Order not requiring successful conclusion of a Constitutional Convention would result in partial but essential first steps toward administrative separation of the Marianas from the TTPI.

Step Eight, Winter 1973 - Spring 1974:

If the Commonwealth proposal is to be the basis of a new relationship, set in motion the machinery for convening a Constitutional Convention.

Step Nine, Summer or Fall 1974:

Adoption of constitution by popular referendum.

Step Ten, Fall - Winter 1974:

Full implementation of interim legislation or Executive Order culminating in the establishment of Marianas Government. At this point, administrative separation of the Mariana Islands District from the TTPI will be fully effective.

Step Eleven, Indefinite Timing:

Following an act of self-determination by the remainder of the Trust Territory, the initiation of action in the U.N. Security Council to end the Trusteeship throughout Micronesia or unilateral termination of the Trusteeship.

I. Recommendations

1. Matters Requiring Presidential Approval

It is recommended that the Under Secretaries Committee endorse and request Presidential approval of the following positions:

a. Negotiating Objectives

-- U.S. primary and secondary negotiating objectives are those listed in Section A of this Summary and in the draft negotiating instructions for the President's Personal Representative. It is in the U.S. interest to conclude an agreement on the future status of the Marianas at the earliest possible date.

b. Future Status

-- Commonwealth, as discussed in section B. of the Summary and Section II of the study, is the optimum future status for the

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Mariana Islands. However, should the Marianas unexpectedly prefer unincorporated territorial status or integration with Guam (and provided integration appears feasible), the President's Personal Representative is authorized to negotiate either.

-- If the Marianas representatives insist on a non-territorial relationship the President's Personal Representative shall seek further instructions.

c. Land

-- The President's Personal Representative, in coordination with interested agencies, will negotiate land acquisitions (preferably purchase, but failing that, long-term lease arrangements for 50-99 years) in the Marianas to meet the U.S. land requirements outlined in Section C of the Summary and Sections IV.A. and B. of the study.

-- These arrangements are to become effective prior to or upon termination of the Trusteeship.

-- The President's Personal Representative, in coordination with interested agencies, will negotiate as necessary the relocation of Tinian's population at a reasonable cost.

-- The President's Personal Representative will seek the unrestricted federal right of eminent domain, retreating to a qualified right similar to that in the U.S. Commonwealth proposal of 1970 only if necessary to conclude an otherwise satisfactory status agreement.

d. Finance

-- To obtain the Marianas' acquiescence to a territorial relationship, the U.S. is prepared to offer the following:

-- Initial direct grant assistance in a range up to \$12 million annually.

-- The extension of appropriate U.S. federal programs.

-- Appropriate compensation for land acquisition.

-- Short-term transitional assistance.

e. Interim Arrangements

-- To the extent practicable the future status negotiated

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with the Marianas will be implemented as soon as possible after negotiations and a plebiscite in the Marianas endorsing the results. Implementation will be accomplished in a manner consistent with Congressional views, which will be ascertained by the President's Personal Representative.

f. Possible Amendment of Secretarial Order Creating
Micronesian Congress

-- If legislation of the Congress of Micronesia seriously threatens to jeopardize the separate U.S. negotiations with the Marianas, the Secretary of the Interior will, in consultation with the President's Personal Representative for the Micronesia/Marianas Negotiations and the Under Secretaries Committee, decide on the advisability of amending the Secretarial Order establishing the Congress to remove explicitly from its purview authority to legislate for the Marianas in matters pertaining to the latter's future status.

g. U.S. Congress

-- The President's Personal Representative will consult with Congress throughout the negotiating process.

2. Recommendations to the President's Personal Representative

The foregoing recommendations will, if approved by the President and incorporated in negotiating instructions, constitute guidance for the President's Personal Representative on main points at issue in the Marianas negotiations. The following additional recommendations are relevant either to the negotiations or to the subsequent implementation of their results.

a. Land

-- The three possible solutions to the land acquisition problem offered in Section V.D.2. of the study should be examined with a view to exploring the matter with the Marianas Delegation.

-- U.S. positions should include the approach to land alienation described in Section IV.F. of the study.

b. Termination of the Trusteeship

-- A position should be formulated on the holding of a plebiscite taking into account the considerations noted in part VII of the study and, at the appropriate time, discussed with the Marianas Delegation.

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-- Preliminary consideration should be given to U.S. tactics to be used in the Trusteeship and Security Councils when terminating the Trusteeship, following an agreement on future status with the rest of Micronesia.

c. Timing Scenario

-- Note should be taken of the "timing scenario" in section I of the Summary.

3. Draft Terms of Reference

There is attached as Section J of the Summary, a set of draft negotiating instructions from the President to his Personal Representative. It is recommended that the Under Secretaries Committee endorse the draft instructions and transmit them to the White House for approval.

J. Draft Instructions for the President's Personal Representative

1. General

You are authorized to undertake on behalf of the U.S. Government negotiations with representative of the Mariana Islands with the objective of arriving as soon as possible at an agreement providing for the Marianas' close and permanent association with the United States satisfying the following U.S. objectives:

PRIMARY OBJECTIVES

-- To fashion a close and permanent political relationship with the Mariana Islands District which will extend U.S. sovereignty to those islands and satisfy U.S. security requirements. The latter include: denial of the area for military use by third parties; U.S. control over the foreign and defense affairs of the Mariana Islands; and the right to establish military bases in those islands.

-- To ensure establishment of a stable and friendly Marianas political unit through reasonable satisfaction of the political and economic aspirations of the people of the Marianas.

-- To satisfy U.S. obligations under the Trusteeship Agreement through an act of self-determination leading to self-government for the Marianas.

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SECONDARY OBJECTIVES

-- To structure the status arrangements with the Marianas in such a manner as to have maximum favorable impact on the negotiations with the remaining five districts of Micronesia.

-- To keep United States' financial obligations to the Mariana Islands within reasonable bounds and relevant to the character of our future relationship.

-- To keep U.S. political, economic, and administrative relationships with the Marianas as simple as possible while accomplishing the above objectives.

-- To establish a relationship with the Marianas which will (in addition to meeting U.S. obligations under the Trusteeship Agreement) obtain United Nations approval, or at least that of a majority of the Security Council and of the Trusteeship Council.

2. Status

You should seek initially to reach agreement with the Marianas on a commonwealth arrangement providing internal self-government under a locally drafted constitution. This arrangement should provide for U.S. sovereignty, full U.S. control of defense and foreign affairs, and access to the Federal Court system.

Should the negotiation of a commonwealth arrangement appear impractical because of a clear preference in the Marianas and on Guam for a union of the two areas, or because of a strong preference in the Marianas for unincorporated territorial status, you may negotiate either status.

You should resist pressure from the Marianas to negotiate any status other than a territorial relationship. If pressed, you should note that your instructions are to negotiate a territorial status in response to the Marianas' expressed wishes and that discussion of any looser form of association would logically call into question the desirability of conducting negotiations with the Marianas separate from the rest of Micronesia. If, nonetheless, Marianas negotiators continue to resist territorial status, you should seek further negotiating instructions.

3. Land

The U.S. military and non-military land requirements will be satisfied by arrangements providing for purchase or long-term lease by

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the U.S. Government to take effect as soon as possible. You should make a serious effort to obtain the optimum land requirements in the Marianas outlined by the Department of Defense and endorsed by the Under Secretaries Committee. Recognizing it may not be possible to negotiate this optimum land package, the alternatives are listed in descending order of priority and desirability.

a. Alternative 1

Tinian

- Purchase or lease entire island (26,200 acres) and relocate population off the island.

Saipan

- Joint Use Agreement permitting U.S. military landing rights on and access to facilities of civil airport.

- Purchase or lease 500 acres adjacent to Isley Field runway. Land can be leased back for agricultural purposes.

- Purchase or lease 320 acres at Tanapag Harbor.

Farallon de Medinilla Island

- Purchase or lease entire island (229 acres)
(The purchase or lease of Farallon de Medinilla Island is considered an essential part of all negotiating alternatives and variants, but will not be repeated below.)

If necessary the following variants to the above alternative should be explored thoroughly in the attempt to obtain all of Tinian (with population relocation off the island) and to obtain certain acreages of land/or access rights on Saipan.

(1) First Variant of Alternative 1

Tinian

- Purchase or lease entire island (26,200 acres) and relocate population off the island.

Saipan

- Joint Use Agreement permitting U.S. military landing rights on and access to facilities of civil airport.

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- Purchase or lease 500 acres adjacent to Isley Field runway. Land can be leased back for agricultural purposes.

- Access and use rights to Tanapag Harbor (320 acres). As part of this proposal the Marianas representative would be asked to agree that any subsequent development of Tanapag Harbor would meet criteria set by Department of Defense to insure that Harbor could be used by U.S. forces. The U.S. Government would be willing to furnish planning advice for any subsequent development. The U.S. Government will negotiate and pay rental fees for any usage at the time of U.S. Government use.

(2) Second Variant of Alternative 1

Tinian

- Purchase or lease entire island (26,200 acres) and relocate population off island.

Saipan

- Joint Use Agreement permitting U.S. military landing rights on and access to facilities of civil airport.

- Access and use rights to 500 acres immediately adjacent to Isley Field runway to develop some type of military installation for servicing equipment, etc., whenever the need arises. Any interim civil development would have to meet criteria established by Department of Defense. In turn, the U.S. Government would furnish planning advice and reassure Marianas that in event a military installation was built on this land it would be a high employer. The U.S. Government would negotiate and pay rental fees for any usage at the time of U.S. Government use.

- Access and use rights to Tanapag Harbor (320 acres). As part of this proposal the Marianas representative would be asked to agree that any subsequent development of Tanapag Harbor would meet criteria set by Department of Defense to insure Harbor could be used by U.S. forces. The U.S. Government would be willing to furnish planning advice for any subsequent development. The U.S. Government will negotiate and pay rental fees for any usage at the time of U.S. Government use.

b. Alternative 2

Tinian

- Purchase or lease entire island (26,200 acres) and relocate population off the island.

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c. Alternative 3Tinian

- Purchase or lease entire island (26,200 acres) but offer to lease back southeast corner for population relocation (about 7,000 acres). U.S. Government would be willing to sign long-term leases but would insist on controlling the uses the land can be put to and would not be obligated to leaseback to anyone not currently a resident of Tinian.

d. Alternative 4Tinian

- Purchase or lease minimum needs (18,515 acres) and relocate population to southeast corner of island.

4. Financial Arrangements

You may propose sufficiently generous financial arrangements to make territorial status attractive to the Marianas, though the arrangements should encourage the Marianas' eventual economic self-sufficiency. Guaranteed minimum levels of direct assistance, based upon mutually-agreed program needs, can be in the range up to \$12 million. In addition, the U.S. expects to extend federal programs and services to the Marianas as appropriate. You may commit the U.S. to short-term assistance to cover any extraordinary transitional costs. You are authorized to negotiate, in coordination with interested agencies, land purchases or leases at reasonable rates, taking into account current land values in the Marianas District. It is important to make clear to the Marianas that all financial arrangements are subject to Congressional authorization and appropriation.

5. Interim Arrangements

Once an agreement on future status has been reached with the Marianas, the U.S. Government will seek to implement its terms, particularly those relating to separate governance of the District, as soon as possible, consistent with the need for Congressional approval. In your discussions with members of Congress you should outline the advantages of early implementation and explore Congressional receptivity to available alternative methods.

6. Congressional Consultation

You should keep the U.S. Congress informed of significant developments in the negotiations with the Marianas.

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7. Responsibilities

Within the foregoing terms of reference, you are authorized to devise and implement the negotiating strategy best designed to achieve U.S. objectives in the negotiations and to determine the composition of the U.S. Delegation and appropriate procedural arrangements, taking into account the responsibilities and interests of the Departments of State, Defense, Interior, and Justice. All U.S. Government agencies and departments will provide you necessary assistance in seeing these negotiations carried to fruition.

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I. Background

A. Description of Mariana Islands District

The Mariana Islands District of the Trust Territory of the Pacific Islands (TTPI) embraces 16 islands (land area: 183.5 square miles) in a 338 mile long north-south chain to the north of the U.S. Territory of Guam. Saipan, the district capital and Trust Territory Headquarters island, lies 120 miles northeast of Guam.

The District's population is estimated at 13,000 with most of that population concentrated on Saipan (10,458*), Tinian (781*) and Rota (1,727*). Chamorro cultural and social values and organization are Hispanic-Filipino, while economic and political values are American oriented. The Chamorros of Guam and the Mariana Islands District are identical ethnically, culturally and linguistically, and have close family and other ties. Their political separation is purely an accident of history. By way of contrast, the Chamorros of the northern Marianas have few cultural, ethnic or other ties with the remainder of Micronesia -- except for the administrative ties of the past 25 years -- and with the Carolinian minority living in the Marianas.

The islands (including Guam) were discovered and claimed for Spain by Magellan in 1521. Spanish administration lasted until the Spanish-American War. Spain then ceded Guam to the United States and sold the northern Mariana Islands (and the other islands of Micronesia) to Germany. The Germans remained until 1914, when they were ousted by the Japanese. The Japanese placed Micronesia, including the northern Marianas, under a League of Nations Mandate at the close of World War I and intensively colonized and economically developed the major islands. In 1944, the U.S. recaptured Guam from the Japanese and also began the American period in the northern Marianas with the capture of the islands that today make up the Mariana Islands District of the Trust Territory.

There are no known mineral or other natural resources of significance in the Marianas. Economic life centers on Trust Territory Government employment and related service industries, a small but growing industry and modest agricultural activity.

**Figures quoted from page 214 of 1971 TTPI Annual Report.*

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Henceforth in this study the terms "Marianas" and "Mariana Islands" will refer to the existing administrative district of the TTPI, which does not include Guam.

B. United Nations and the Trust Territory of the Pacific Islands (TTPI)

On April 2, 1947, the United States concluded a Trusteeship Agreement with the Security Council of the United Nations which established the Trust Territory of the Pacific Islands (Micronesia - including the Mariana Islands) and designated the United States as Administering Authority.

The Trusteeship is unique in two respects. First, the U.S. has the power of veto, through both the terms of the Trusteeship Agreement with the Security Council and its membership on the Council, over any termination or amendment of the Trusteeship. Second, the Agreement characterizes the TTPI as a "strategic trust" and permits the U.S. to close off areas of the island for defense purposes. Moreover, the U.S. is allowed to fortify the islands. At the same time, however, the U.S. Government is obligated to develop Micronesia "toward self-government or independence as may be appropriate to the particular circumstances of the trust territory and its peoples and the freely expressed wishes of the peoples concerned".

The Trusteeship Agreement placed Micronesia under full U.S. administrative and legislative control although it did not give the U.S. de jure sovereignty over the area. But in the last decade pressures have begun to build within the United Nations and Micronesia itself which have reduced U.S. freedom of action in Micronesia and argue for an early termination of the Trusteeship. These pressures have been reinforced by the gradual disappearance of the Trusteeship system. Of the original eleven U.N. Trust Territories nine have been granted independence and only New Guinea and the TTPI remain. Australia, the administering authority of New Guinea, has announced its intention to grant independence to that territory in the near future.

C. The Course of Micronesian Status Negotiations and Marianas Separatism

In the 1960's the U.S. Government began to consider means of terminating the Trusteeship and extending U.S. sovereignty

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to Micronesia. On April 28, 1969, the President approved the recommendation of the Under Secretaries Committee that this be accomplished at an early date, preferably by means of an organic act establishing a U.S. Territory of Micronesia. Simultaneously an action program was to be undertaken to improve the U.S. image and promote Micronesia's economic, political and social development.

An exploratory round of future political status discussions with a Micronesian Congressional Delegation in October 1969, and a trip to the Territory by the Chairman of the U.S. Delegation in January, 1970, produced no agreement but rather made clear that the organic act approach stood no chance of acceptance. At a second round of talks on Saipan in May 1970 the U.S. Delegation proposed a permanent association with the United States as a "Commonwealth". The proposed Commonwealth would have been internally self-governing under a Micronesian-drafted Constitution which would have to have been approved by the residents of the islands and also be consistent with U.S. enabling legislation.

The Micronesian Delegation did not consider the Commonwealth proposal, other than to identify what it considered the objectionable features. Rather the Delegation indicated a strong preference for "free association" with the U.S. based on Micronesian sovereignty, the right of self-determination, the right to draft a Micronesian constitution and the right of unilateral termination of that association. Independence was cited as the delegation's second choice if free association should prove unacceptable to the U.S. An overwhelming majority of the Congress of Micronesia subsequently endorsed the Delegation's position and declared the U.S. Commonwealth proposal unacceptable.

It was at this point that Mariana Islands District separatist sentiment began to emerge in full force. The only members of the Congress of Micronesia to endorse the United States' 1970 Commonwealth proposal were from the Marianas. Following the Congress of Micronesia's rejection of the Commonwealth offer, the Marianas District Legislature passed a resolution endorsing that proposal. The resolution also urged that the Commonwealth proposal be submitted directly to the people of the Mariana Islands for their endorsement, and that the United States proceed with its implementation in the Marianas "until the other districts are ready to decide".

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This development was not unexpected. Since 1959 the Marianas District has sought close and permanent association with the United States. Significantly, the people of that district had clearly expressed and documented their desire for close association through a series of petitions to the U.S. Government and to the U.N., district Legislature resolutions, speeches by their representatives in the Congress of Micronesia, testimony before the United Nations and unofficial plebiscites.

In March 1971 the President appointed Dr. F. Haydn Williams as his Personal Representative for Micronesian Status Negotiations with the rank of Ambassador and in July provided him with a negotiating scenario and terms of reference (see Annex I). In essence a "modified Commonwealth" without a termination provision was set as the preferred status option; if that proved impractical he was to seek a modified Commonwealth arrangement with provisions for unilateral termination of the relationship. As further fallbacks he was authorized to pursue a multiple solution involving the fragmentation of Micronesia or a form of "free association" with close ties to the United States.

In October of that year Ambassador Williams met for the first time with the Joint Committee on Future Status (JCFS) of the Congress of Micronesia at Hana, Maui, Hawaii. It was clear at the conclusion of this round that both sides were once again talking and that a great deal of progress had been made in identifying the issues, although the nature of the future relationship remained to be defined. At these same talks the JCFS acknowledged in its opening statement that the Marianas aspired to become "more closely affiliated with the United States" than did the other districts. The U.S. Delegation and the Mariana Delegates on the JCFS informally discussed the possibility of separate negotiations, and the latter were informed that the U.S. would not impose on the Marianas any solution not acceptable to that district.

Near the end of the next round of negotiations in Koror, Palau, in April, 1972, the same Marianas Delegates presented Ambassador Williams with a formal "Statement of Position". This document described the desire of the people of the Marianas to affiliate politically with the

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United States and asked if the U.S. Government would be willing to consider separate discussions with the representatives of the people of that District. In a formal response Ambassador Williams expressed the willingness of the U.S. Government "to respond affirmatively" to the request for separate negotiations.

On April 18, 1972, immediately after the Koror Round and during a visit to Saipan, Ambassador Williams was presented a formal letter signed by eleven key Marianas leaders articulating the desire of the people of the Marianas to "open formal discussions with your government at the earliest opportunity for the purpose of effecting a close political union with the United States". In May, 1972, four representatives of the Mariana Islands presented statements before the Trusteeship Council in New York, in which they traced the history of the Marianas separatist movement and again expressed their peoples' "deep longing" for a closer association with the United States than that promised by negotiations with the JCFS.

Just prior to that Trusteeship Council session the Marianas District Legislature had adopted a resolution endorsing a "close and permanent affiliation with the United States of America" and formed a Mariana Political Status Commission to conduct separate negotiations on behalf of the people of the Marianas. In October, 1972, the Chairman of this Commission informed Ambassador Williams that the Marianas Delegation would be prepared to commence negotiations by the end of the year.

There have been two further rounds of Micronesian talks since Koror, but agreement has not yet been reached on all of the details of the proposed free association relationship. The JCFS continues to look toward a looser rather than a closer form of association. (There is currently underway an interagency study which assesses the state of the Micronesian Status Negotiations and reviews the U.S. position).

The Congress of Micronesia and the JCFS have not formally accepted the decision of the Marianas to negotiate a separate settlement with the United States. Some Micronesian Congressmen have criticized the United States for responding affirmatively to the Marianas' request and on occasion have also charged that the United States and the Marianas are acting

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illegally. A joint resolution was adopted in late February by the Congress of Micronesia which asserts that the JCFS is the sole body authorized to negotiate status matters for all six districts. Still, the Congress seems to recognize the strong separatist sentiments of the Mariana Islands and that it will eventually have to accommodate those views. The U.S. Government has maintained that it has the legal right supported by precedent to negotiate separately with the Marianas District and has so informed the United Nations. The Attorney General of the Trust Territory shares this view and has advised the Congress of Micronesia accordingly.

An immediate and troublesome problem is the Congress of Micronesia's insistence that its present legislative authority extends to all of the districts, including the Marianas. There is legal validity to this argument, so long as the current Secretarial Order establishing the Congress remains in its present form. The Congress of Micronesia could use this authority to attempt to obstruct or at least embarrass the Marianas' efforts to forge a separate relationship with the U.S. (See section VI below).

D. The Opening Round of the Mariana Status Negotiations

The initial negotiating session, held in Saipan on December 13-14, 1972, was mostly ceremonial and exploratory in nature. Nevertheless, it served not only to launch formally the separate negotiations but also to reaffirm the serious intent of both parties to negotiate a close association. The public meetings were characterized by mutual expressions of warm sentiment and were apparently well received by the local population. The one closed working session concentrated on procedural matters and on answering questions posed by the Marianas Delegation. The queries revealed the primary Marianas' concerns to be their future political structure, land, finances and transition to a new status.

The Marianas Delegation noted in its opening statement that it would be investigating three types of status in the U.S. system - unincorporated territory, incorporated territory, and Commonwealth. The Delegation also stated that if existing U.S. territorial models do not satisfy their requirements it might be possible to work out some "unique" status which would do so.

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It is clear that the Marianas Delegation has high financial expectations and will seek federal programs normally extended to members of the American political family, as well as direct budgetary support for the operation of the Marianas Government.

Additionally the Marianas Delegation holds strong views on land and is seeking means within the framework of the U.S. Constitution to prevent non-Marianans from gaining title to land in the Marianas. There are clear indications that, while the Marianas people are not averse to providing land to the U.S. for military basing purposes, they will be extremely tough bargainers with respect to both the area and costs of land.

In general, however, the Marianas Representatives and people appear to be both genuine and serious in their expressed desire for close association with the United States and it is expected they will make a sincere effort to reach an equitable agreement. Many of the hard positions which the Marianas negotiators are now taking and will take are no doubt designed primarily to strengthen their bargaining position and are in part a result of the extreme positions concerning Micronesian future status which the Congress of Micronesia has continued to publicize.

E. Next Steps

The current negotiating instructions make only a brief reference to the desire of the Marianas District for a separate status, and provide as one option the possibility of some fragmentation of the Trust Territory. But they furnish little guidance on conducting separate negotiations. The fundamental needs at this point are: an in-depth consideration of the issues which flow from the opening of separate Marianas negotiations; an assessment of the options and recommended courses of action; and a set of negotiating instructions tailored to the Marianas situation. In considering these issues and options, the study takes into consideration the obvious relationship between the negotiations with the Marianas, and those with the rest of Micronesia -- including the impact of the former on the latter, both positive and negative. The general time frame also must be kept in mind. The next negotiating session with the Marianas Political Status Commission is tentatively scheduled for April 1973. Hopefully, the negotiations can be successfully concluded sometime in 1973 and a plebiscite held shortly thereafter.

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II. U.S. Interests and Negotiating Objectives

It is essential first to describe the United States' fundamental interests in the Marianas, which are inextricably related to its interests in all of Micronesia, as well as Guam. To do this the Marianas will be examined from three perspectives - political, security, economic.

A. Political

From a political perspective U.S. interests are diverse and not necessarily fully compatible.

1. As in all strategically important areas the U.S. Government has a vested interest in a stable, friendly, and peaceful Marianas. The Trusteeship Agreement acknowledges this overriding fact of life. Further, the Marianas' central Pacific location is such that their "strategic" character will remain no matter what form their new political status may take.

2. The nature of the ultimate relationship between the Marianas and the United States will affect the ability of the U.S. to serve its interests in the Pacific. Close affiliation with these islands would strengthen the U.S. position as a Pacific power both strategically and psychologically. At the other extreme, loss of existing U.S. bases in the Western Pacific combined with loss of effective U.S. control over the Marianas could seriously reduce the ability of the United States to serve its broader interests in the Western Pacific. In this regard, the past history of the islands suggests that a political vacuum could eventually tempt adventurism from some quarter -- e.g., Chinese, Soviet, or even in time Japanese.

3. Under the Trusteeship Agreement we have a definite obligation to the Micronesians and the United Nations to develop the TTPI toward self-government or independence. A real or apparent failure to discharge that obligation could ultimately have a highly adverse impact not only in the U.N., but also throughout Micronesia. Further, America's colonial past and its traditional active support for the exercise of self-determination by others are significant facets of the U.S. international position and image. The Trusteeship Agreement was framed in that spirit. In dealing with

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the Marianas it is thus in the national interest to act consistently with this tradition unless overriding national security considerations preclude such action.

B. Security

U.S. policy and interests in the Pacific require an ability to project and support its military power throughout the Western Pacific. This capability permits the U.S. to carry out its treaty commitments, support its friends and allies in emergencies, protect lines of communication, and maintain a credible nuclear and conventional deterrent to armed aggression. Simultaneously this capability furnishes the United States defense-in-depth in the Pacific. By virtue of location and size the Mariana Islands influence U.S. calculations in carrying out this policy. The following are specific U.S. security interests in the Marianas.

1. It is essential that the United States deny foreign powers military access to the Marianas. In unfriendly hands, the Mariana Islands could serve as missile, air and naval bases. They would constitute a grave potential threat to U.S. control of sea and air communications in the central Pacific, as well as to United States soil.

2. The United States for its own defense and to support forward deployment policy and commitments in the Far East requires military access to the Marianas. As a result of its location, topography, and WW II air strips, Tinian Island in the Marianas has the best potential in the Trust Territory for a joint U.S. military base complex. In addition to the new requirements created by the reversion of Okinawa current U.S. bases elsewhere in the Western Pacific are subject to increasing political and other pressures which could deprive the U.S. of operating flexibility and produce a need for alternate base sites. Likewise population pressures and economic development in both Guam and the Trust Territory will continue to diminish the land available there for military purposes. Once the Trusteeship Agreement is terminated the U.S. ability to obtain land in that area will diminish or become non-existent. In turn the capability of the U.S. to carry out present commitments and to respond to unforeseen contingencies could be restricted. It is therefore necessary to secure in the Marianas certain minimal lands now. Any such

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land and basing options must be protected by political arrangements covering a sufficient period of time to justify the construction of facilities and the operational costs incurred.

C. Economic

The Marianas are an economic burden to the United States Government now and for the foreseeable future. The United States has no significant economic interests in the area. Permanent political association could lead to some increased U.S. private investment and development, particularly in tourism and marine resources. But the total probably would remain relatively small and not sufficient in itself to be an incentive for U.S. political involvement. On the other hand, the fact that the Marianas leadership seeks considerable economic benefit from its association with the United States provides a lever to achieve other U.S. objectives.

D. Negotiating Objectives

Taken as a whole, it is preferable to reach an agreement which protects the United States' security interests, meets Marianas' aspirations, and does not harm the United States' political image. Should these objectives prove to be mutually incompatible and a painful choice between objectives become necessary, primary emphasis would have to be given to those political and military objectives which concern the security of the United States.

The foregoing discussion of U.S. interests can be summarized and translated into negotiating objectives as follows:

PRIMARY OBJECTIVES

-- To fashion on a priority basis a close and permanent political relationship with the Mariana Islands District which will extend U.S. sovereignty to those islands and satisfy U.S. security requirements. The latter include: denial of the area for military use by third parties, U.S. control over foreign and defense affairs of the Mariana Islands, and the right to establish military bases in those islands (See section IV for specifics).

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-- To ensure establishment of a stable and friendly Marianas political entity through reasonable satisfaction of the political and economic aspirations of the people of the Marianas.

-- To satisfy U.S. obligations under the Trusteeship Agreement through an act of self-determination leading to self-government for the Marianas.

SECONDARY OBJECTIVES

-- To structure the status arrangements with the Marianas in such a manner as to have maximum favorable impact on the negotiations with the remaining five districts of Micronesia.

-- To keep the United States' financial obligations to the Mariana Islands within reasonable bounds and relevant to the character of the future relationship.

-- To keep U.S. political, economic, and administrative relationships with the Marianas as simple as possible while accomplishing the above objectives.

-- To establish a relationship with the Marianas which will (in addition to meeting U.S. obligations under the Trusteeship Agreement) obtain United Nations approval, or at least that of a majority of the Security Council and of the Trusteeship Council.

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III. The Nature of the Political Relationship

A. General

Given the expressed desire of the Mariana Islands District for a close association with the United States and a political status separate from the remainder of Micronesia, the United States Government must now determine what type of relationship it prefers with the Marianas.

While the details are a matter for negotiation, the Marianas representatives have to date consistently expressed interest in a relationship akin to U.S. territorial status. The U.S. Government had originally envisioned this type of status for all of Micronesia and it would, by definition, meet the fundamental U.S. negotiating objective of extending U.S. sovereignty to the Marianas.

If, however, the Marianas talks should drift toward a much looser type of arrangement, i.e., a status which does not recognize U.S. sovereignty, there might be little for the U.S. to gain from separate talks. For this reason alone no alternative will be considered here which does not provide for a territorial relationship with the U.S.

In this regard it clearly will be to the advantage of the United States if U.S. goals can be met within a framework which has some precedent within U.S. experience. This will provide a common point of departure, reduce the problems of meshing the Marianas into the American system, and ease the acceptance and implementation of any final agreement by the U.S. Congress.

B. Optional Approaches

Four basic forms of status which appear to offer practicable alternatives from the U.S. viewpoint are: (1) integration of Guam and the Marianas, (2) integration including safeguards for the Marianas, (3) separate unincorporated territorial status; and (4) commonwealth territorial status. Within each of these options, positing territorial type arrangements, there is latitude for designing a formula which might meet the separate needs of both the Marianas and the United States. The following descriptions of the options are not meant to be definitive, but rather to outline the broad framework of each approach in light of the goals outlined in Section II above.

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Finally, all four options discussed below would have several basic features in common.

-- U.S. sovereignty would be extended to the Mariana Islands on termination of the Trusteeship. There would be full U.S. control of the foreign and defense affairs of the Mariana Islands.

-- There would be U.S. constitutional supremacy.

-- The Mariana Islands would be included within the federal court system.

-- The present residents of the Mariana Islands would acquire U.S. citizen or national status.

-- The Mariana Islands would have a republican form of government with an elected executive and legislature and an independent judiciary.

-- Local TTPI held public lands would be turned over to the Marianas Government.

-- The relationship would be intended to be permanent.

-- Continuing U.S. financial assistance would be required.

-- Implementation of any status option could take place only following its approval by the people of the Marianas.

-- Full and final implementation will require U.S. Congressional action, and termination of the Trusteeship Agreement.

OPTION 1. "Integration" of the Marianas and the Territory of Guam

The U.S. Government would seek to work out with the leadership of Guam and the Marianas an arrangement whereby the Marianas would become part of the Territory of Guam or, in the alternative, establish a new "Territory of the Marianas" embracing both Guam and the Mariana Islands District. (Although this could correctly be called "unification", the terms "re-integration" and "integration" are more commonly used in Guam and the Marianas. The term "integration" will be used throughout this study). The Organic Act of Guam would be amended to include the Marianas and

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provide for any new arrangements. The United States would provide continued and special financial assistance for a period of years until the Marianas are no longer a burden on the new territorial unit. The people of the Marianas would become U.S. citizens eligible for the benefits of that status to the same extent as citizen residents of Guam.

PRO

1. Simplifies the negotiating process, since the Guam Organic Act would apply in its entirety. This option would avoid the need to negotiate a number of sensitive questions, e.g., federal eminent domain authority.

2. Provides the U.S. the simplest long-range solution from an administrative standpoint by avoiding the establishment of and separate U.S. administrative and financial support for another territorial government.

3. Requires less long-range financial support than options which do not involve integration since the Marianas would gradually develop as part of a larger territorial unit. Eventually there would be greater reliance upon Federal programs and services than upon outright cash grants.

4. For the above reasons, and because Guam's status is a known quantity, this option would probably be viewed favorably by the U.S. Congress.

CON

1. Acceptance by Guam voters is uncertain; an informal 1969 Guamanian plebiscite rejected integration. The Governor of Guam insists that Guam would vote differently today. The fact remains that this option would rest on U.S. ability to obtain bipartisan support for its proposal in the dynamic and extremely partisan political atmosphere of Guam.

2. Acceptance by the Marianas is questionable. Opinion in the Marianas, including that of the leadership, appears to have turned against integration with Guam in the short term. (A 1971 survey indicated widespread opposition to integration with Guam and strong support for separate Commonwealth status).

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3. More specifically, the people of the Marianas are concerned about losing control over their land and local affairs to government and private interests on Guam. They fear political and economic domination by the relatively affluent, sophisticated, and far more populous Guam.

4. Guam holds little appeal as a model for the remainder of Micronesia; this option would not therefore have a favorable impact on the negotiations with the other districts.

5. It would not meet the requirements of the Trusteeship Agreement's "self-government or independence" language, unless Guam had in the meantime been designated by the U.S. as "self-governing" within the U.N. context. In any case there would be little or no prospect of gaining U.N. approval.

OPTION 2. Integration with Guam with Safeguards (Variation on Option 1)

A variation on Option 1 would establish safeguards against domination of the Marianas by Guam, to be in effect for a specified period of years as a transition to a fully united status. There would be a separate local government for the Marianas which would have authority in areas of greatest concern, e.g., land regulation and control, commerce and development, and appropriation and disbursement of local revenues. Other program areas would be under a central administration serving both Guam and the Marianas. Option 1 pros and cons apply except as qualified below:

PRO

1. Establishing safeguards for protection of the vital interests of the Marianas would make the option more attractive to the people of the Marianas and would overcome some of the opposition to political union. The ability to vary the timing of full integration could be a strong selling point.

2. Sets the stage for eventual full integration of the Marianas and Guam.

3. Assuming eventual full integration with Guam, provides an attractive, long-range solution for the U.S. from an administrative standpoint, by avoiding permanent establishment and U.S. support of another territorial government.

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4. Again, requires probably less long-range financial support than options which do not involve integration, but there would be no particular advantage in the short term.

CON

1. Acceptance by both Marianas and Guam voters is still uncertain. The provision for safeguards would make the proposal less appealing to Guamanians.

2. Seriously complicates the negotiations by introducing the issue of safeguards which must be agreed to by three instead of two parties.

OPTION 3. Unincorporated Territory

An organic act, the details of which would be negotiated, would establish an unincorporated territory of the Marianas, similar to the present status of Guam. The organic act (rather than a local constitution) would establish the internal structure of the territorial government as well as the working relationship between the territory and the Federal Government. Any significant future changes in the local governmental structure would require action by the U.S. Congress.

PRO

1. Maintains considerable U.S. control over the internal affairs of the Marianas, but with a corollary increase in U.S. responsibilities.

2. If integration with Guam is deemed a long-term rather than a short-term goal, provides a parallel structure to that of Guam which could be merged with Guam's at a later date. Nevertheless, integration would require further U.S. Congressional action.

3. Offers good prospects for obtaining approval of U.S. Congress since it envisages a traditional territorial relationship and structure.

CON

1. Acceptance by the Marianas is very uncertain; even more so than with the previous options. The Marianas leaders desire wide control of their local affairs and have had their expectations raised by the JCFS negotiations and by the 1970 Common-

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wealth offer. They believe that to accept less would belittle them in the eyes of the remainder of Micronesia.

2. Similarly, this status is unlikely to assist negotiations with the remainder of Micronesia. The Micronesian representatives rejected such an offer in 1970.

3. More U.S. financial assistance will probably be required than under proposals to integrate with Guam, and for a longer period.

4. Provides basis for U.N. contention that minimum obligations of U.S. have not been met; in turn, U.N. approval is extremely unlikely.

OPTION 4. Commonwealth Proposal

The 1970 Commonwealth proposal for Micronesia would be adapted to the special situation of the Marianas. The structure of the Commonwealth government would be determined by a locally drafted and adopted constitution. That constitution would have to be consistent with the United States Constitution in the manner that would be required by general enabling legislation passed by the United States Congress, but it would not necessarily have to mirror exactly the U.S. Constitution. This arrangement would differ from Option 3 essentially in that under Option 3 the local government's constitution would actually be contained in an organic act passed by the U.S. Congress in terms that could require consent of the U.S. Congress to any future amendment of that local constitution. In the Commonwealth arrangement we would envisage that locally desired amendments would be subject only to a determination of the President that such changes would be consistent with the requirements of the U.S. enabling legislation.

Finally, it should be noted that the Commonwealth would be expressly subject to the plenary legislative authority of the U.S. Congress under Article IV, Section 3, Clause 2 of the U.S. Constitution, even though the Congress may decide to limit the scope of its exercise of that authority, particularly concerning certain internal affairs of the Marianas. This relationship, however, is envisaged as providing the possibility of tighter U.S. control than that provided for in the enabling legislation of the Commonwealth of Puerto Rico. While devising a Commonwealth proposal acceptable to the Marianas may necessitate concessions to accommodate particular local needs, substantive concessions which might erode the territorial nature of the relationship are not envisaged under this option.

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PRO

1. Has an excellent prospect of being accepted by the people of the Marianas. As mentioned earlier, the Marianas District Legislature has already endorsed the 1970 Commonwealth proposal and Marianas representatives have continued to express a strong interest in a Commonwealth arrangement.

2. Offers a relatively attractive example to the rest of Micronesia and some prospect for exercising a favorable influence on the Micronesian Status Negotiations, even though a similar offer was rejected in 1970 by the Congress of Micronesia.

3. If buttressed by strong local support, satisfies the requirements of the Trusteeship Agreement and offers a fair prospect for gaining U.N. approval of the new status (assuming it is linked to UN approval of the future status of the remainder of Micronesia).

CON

1. More financial assistance will probably be required than under proposals to integrate with Guam, and for a longer period, but no more than that for unincorporated territorial status.

2. U.S. Congressional position on Commonwealth status for such a small entity is uncertain. The 1970 Commonwealth proposal was not viewed unfavorably by the Interior Committees, but that proposal applied to all of Micronesia.

3. Granting the Marianas Commonwealth status may add to other pressures for a change in Guam's status. However, sooner or later Guam will seek a change in its relationship with the U.S. on its own merits.

4. May increase complexity of eventual union of Marianas with Guam.

C. Termination Issue

In negotiating any status option with the Marianas, provision for changes in or even termination of the relationship could become an issue. The Marianas Status Commission has as precedents (in a commonwealth relationship) Puerto Rico's open-ended status providing for possible independence, and the U.S. offer to the Micronesian negotiators in October, 1971 of a "modified commonwealth" proposal providing for termination by mutual

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consent.

Recent reports from Saipan indicate that the Marianas Status Commission may argue for either a bilateral or unilateral termination provision in any status agreement with the United States. Such a position might be taken by the majority of the Marianas leadership in order to line up support among the minority for close association with the United States.

Any formal recognition of the possibility of termination of a future relationship would tend to erode the "permanency" of the relationship the U.S. seeks, and would contradict not only the United States' basic negotiating objectives, but also the past expressed desires of the Marianas leadership. Consequently, there should be no formal provision for termination, either bilateral or unilateral, in any formal status agreement.

However, should the Marianas Delegation persist in pressing for a U.S. position on the possibility of change or termination of the future relationship, the President's Personal Representative could state for the negotiating record that, while the U.S. envisages a permanent relationship, that permanency does not imply that the future partnership will be inflexible or immutable. Although this formula could be interpreted to mean that the U.S. Government might consider a future request for termination from the Marianas, the U.S. position remains protected in that any change or termination of the basic status agreement would require U.S. consent.

D. Summary

The following discussion briefly assesses the appeal and feasibility of the four options from four different perspectives.

1. The Marianas

This study assumes that the people of the Marianas do in fact want self-government in close association with the U.S. Within that framework, however, the Marianas will strive for maximum internal political autonomy. From a fear of domination, the Marianas representatives will strongly resist early integration of their islands with Guam and their desire to control their own affairs will turn them away from the unincorporated territorial option. In general, then, the Marianas will prefer Commonwealth status. They may also require recognition of the possibility of termination or change of relationship by mutual consent.

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2. Negotiations with the Remaining Districts

While rapid conclusion and implementation of an agreement with the Marianas will doubtless make a negative impression on some people elsewhere in Micronesia, on balance it is considered probable that an early agreement with the Marianas will have a beneficial effect on the negotiations with the rest of Micronesia. Concluding matters with the Marianas expeditiously will give friends of the U.S. in the other districts something positive around which to rally. As the immediate and long-term benefits to the Marianas of the new relationship become apparent there could develop in Micronesia pressures on the JCFS to find a formula for settlement which would be equally advantageous for the remainder of Micronesia. (Although unrelated to negotiations with the JCFS, another advantage to the U.S. from early implementation of the Marianas agreement is that the Congress of Micronesia's opportunities for thwarting or complicating U.S.-Marianas ties through land, constitutional and other legislation applying to all six districts of the TTPI would be minimized).

A possible disadvantage to pushing for a quick conclusion to the Marianas status question is that it may increase the bitterness and resentment of those in the JCFS and among the Micronesian elite who presently charge that the U.S. is trying to divide and rule Micronesia. Unless this sentiment is offset by arguments from those Micronesians believing that arrangements negotiated for the Marianas contain the promise of an acceptable deal for Micronesia, the JCFS could become even harder to deal with than heretofore. This recalcitrance might be particularly reflected in negotiations on U.S. land requirements, since many in Micronesia will aver that sizeable American acquisitions in the Marianas foreshadow extensive U.S. demands elsewhere.

A major reason for concluding that, in terms of impact on negotiations with the JCFS, there is probably a net advantage to early resolution of the Marianas' future status, is that the visible beneficial aspects of a favorable Marianas settlement can affect the thinking of broader sections of Micronesian society, most of which are in the nature of a silent majority at present, and offset the outspoken critical minority. In this connection the Commonwealth option offers the best prospect both for reaching early agreement with the Marianas and for influencing the views of the remaining districts. While it is not expected that the current leadership in the other Micronesian districts will retreat from free association or independence to a Commonwealth arrangement, the attractive provisions of the

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arrangement will be noted throughout the Trust Territory and could influence the other districts toward a closer association than now appears to be in the cards. In this same regard the more prolonged the Marianas negotiations the greater the opportunity it will present some elements to criticize the U.S. for agreeing to separate talks.

3. United Nations

It will be difficult to fashion an agreement involving separate status for the Marianas which will meet U.S. objectives and also receive U.N. approval. However, Commonwealth status offers the highest degree of self-government, and therefore, clearly stands the best chance of gaining U.N. acceptance. (Final U.N. acceptance or rejection will, of course, be linked to resolution of the status of the remainder of Micronesia).

4. Administrative and Legislative Considerations and Prospects for Integration

a. Integration

As a long-range solution, there is little doubt that, from the U.S. view, it would be preferable for Guam and the Marianas to be joined in one U.S. territorial jurisdiction. There are clear administrative advantages to absorbing the new territory into an already established and functioning political unit. This does not mean, however, that integration need be the immediate negotiating objective, as previously discussed.

Unincorporated territorial status offers advantages for eventual integration with Guam by setting up a parallel governmental structure.

While Commonwealth is not the optimum preliminary step to a subsequent integration with Guam, unification at some future point would not present insurmountable problems. The U.S. proposal can be specifically tailored to promote this goal by fostering similar or joint Federal programs and program administration and by adopting similar laws and policies having a major impact (e.g., application of the minimum wage, Jones Act, etc.). Indeed Guam itself may move toward a Commonwealth-type status, in which case integration might come about by a somewhat different but quite satisfactory route.

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In any event, and under any option, the territory of Guam is vitally concerned with what happens in the Marianas, and the President's Personal Representative should himself, or through the Interior Department, keep the leadership of that island informed of significant developments.

b. Administrative Considerations

As noted above, integration with Guam offers clear administrative advantages by avoiding the establishment of a separate Marianas Government. Otherwise, however, there is little practical difference among the options, except that unincorporated territorial status provides somewhat greater Federal control over internal affairs than does Commonwealth.

c. Legislative Considerations

There is room for concern as to how the U.S. Congress would view a separate Commonwealth status of such limited size, but if the new status has the support of the local people and meets other U.S. interests, there is a likelihood of Congressional approval. This is especially so if Congressional resolution of the status of the Marianas is linked with that for the remainder of Micronesia. Comparison of the two forms of status will inevitably operate in favor of Commonwealth status for the Marianas.

* * * * *

Before drawing final conclusions and framing recommendations, it is necessary to look with more specificity at some of the problems of particular concern to the Marianas -- those which promise to become important issues in the negotiations, and which must be accommodated within any status framework offered by the U.S.

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IV. Land: U.S. Requirements and Related Issues

Land has been the most sensitive single question in the Micronesian Status Negotiations to date and likewise promises to be a significant issue in dealing with the Marianas. It is not simply a matter of the extent of U.S. land requirements but also extends to the arrangements for their acquisition and for protecting both public and private land. First, what is the extent of U.S. land requirements in the Marianas?

A. Non-Military Land Requirements

The Postal Service and the Coast Guard have current land holdings which will be required for the foreseeable future in the Mariana Islands. These are both on Saipan and are, respectively, 0.25 acres and 22.62 acres. Additional but minor federal agency land requirements are likely to emerge with time.

B. U.S. Military Land Requirements

U.S. military requirements in the Marianas District, as in the rest of the TTPI, are predicated on an assessment of the strategic importance of the area and on the amount of land necessary to support current and future U.S. objectives. From the overall strategic point of view the combination of Guam, the Marianas, and Palau offers the only practicable near-term, mid, and long-range potential in the Western Pacific for the development of major U.S. joint service base complexes. Such base complexes will support current requirements and the "fallback" of some, but by no means all, of the U.S. forces and activities now located at existing forward Western Pacific bases in the event that relocations are required as the result of further limitations and restrictions on the use of current bases.

In arriving at specific land requirements (which the Department of Defense considers minimal, reasonable, and if anything understated), Defense used the following guidelines:

1. Certain land is of such overriding, long-term importance that the U.S. should acquire it as soon as possible -- even if the ability to exercise eminent domain is retained.
2. The importance of land in the Micronesian culture and the political realities in the Marianas should be taken into consideration to the maximum extent practicable.

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3. Joint Service basing should be employed to preclude duplication and minimize requirements.

4. Land of least relative economic value to the people of the Marianas District should be specified wherever there is a choice.

5. Possible basing afloat and anticipated improvements in sea and air mobility should also be considered.

Given the above, the following long-term real property is required in the Marianas District for military purposes (a maximum of 27,240 acres of a total land area of 117,440 acres, or 23%).

TINIAN (26,200 acres - See Annexes II and III)

Such changing conditions in the Pacific as the reversion of Okinawa, basing restrictions in Japan, uncertainties in the Philippines, Korea, and Taiwan, and the growing assertiveness of Asian allies could result in a reduction of U.S. force levels and bases on the Asian periphery. Nonetheless, the U.S. must have the continuing capability to serve its interests in the Pacific. This requires maximum use of U.S. controlled land in a forward area which can be devoted to military purposes. Also, this area should be suitable for the development of an integrated homogeneous basing area, which would, inter alia, minimize the total land area necessary, costs to the U.S., logistics problems and interference with (and by) civilian communities. To achieve these goals, it is hoped to consolidate most defense activities on Tinian Island. The priority objective thus is the acquisition of the entire island (26,200 acres). Early development is planned for Joint Service basing facilities, including an airfield, port facility, logistics complex, and a joint service maneuver and training area. Plans for Tinian's development and detailed justification for acquiring the entire island are contained in Annex III. Its acquisition would involve relocation with appropriate inducements of the present civilian population (781). If it proves impossible to acquire Tinian in its entirety, the minimum and essential requirement is for 18,515 acres, including the area around the current port, or 16.6% of the total land in the Marianas (See Annex III). Even this minimum requirement would necessitate extensive relocation of Tinian's population because of ammunition safety requirements, and would result in the reduction or loss of the proposed joint service maneuver and training area. Relocation is discussed in detail later in this section.

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SAIPAN (820 acres - See Annexes II and IV)

Isley Air Field: Acquisition of 500 of the total of 1189.35 acres currently in the Isley retention area* is highly desirable. Because of its location, Isley Field presents a range of options for possible military use. It has the capability to accommodate certain ancillary activities and support possible relocation of industrial training and supply facilities currently located in other countries.

Tanapag Harbor: Acquisition of 320 of a total of 640.23 acres currently in the Tanapag Harbor retention area is highly desirable. This would support any future development of the Isley Field area and possible relocation of industrial and supply facilities currently located in other countries. This land is south of Pier C, with the exact area negotiable to permit civilian development of the desirable Micro Point area. The acquisition of the Tanapag Harbor land as a contingency area will be opposed, perhaps strenuously, by the Saipanese leadership, which is currently dissatisfied with the similar restrictions upon its commercial development as a result of the area's present military retention status. This opposition could retard or make more difficult the negotiation of other land requirements. This problem could be alleviated by a military commitment to assist materially in the development of the harbor area but DOD has no plans for the commitment of funds for the development of Tanapag Harbor. Contingency planning options for the possible utilization of the above land requirements are contained in Annex IV.

FARALLON de MEDINILLA ISLAND (229 acres)

This small, uninhabited island about 45 miles to the North of Saipan was redesignated Restricted area R-7201 by the FAA, effective November 1970, to permit its use as a bombing target. It has no conceivable economic value and is almost totally

*NOTE: *"Military retention areas" are in effect "first-use options". The U.S. Defense Department does not possess title or actual use rights for these lands, but rather has first claim to their use. They cannot be disposed of or utilized by the TTPI Administration without DOD authorization. On the other hand, DOD use normally would require prior negotiation of a lease with the TTPI Administration. All military retention areas are also TTPI public lands.*

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inaccessible because of the nature of the terrain. This island's long-term acquisition is essential and should pose no problems.

C. Relocation of Tinian Population

Although the Marianas leadership and most of the population of that district accept and indeed welcome the prospect of a U.S. military presence for its perceived economic benefits, it is doubtful that anyone in the Marianas is aware that the U.S. will seek acquisition of the entire island of Tinian. Those interested in land requirements presently assume that the U.S. has relatively minor requirements in the Tinian harbor area and a need for the northern portion of the island. The Tinian Islanders also assume that the major agricultural activities at the southern end of the island and the village of San Jose will be left undisturbed. In short, no one in the Marianas has had reason to contemplate the relocation of Tinian's population to other islands.

Planning for the Tinian port facility has been based on the use of the existing harbor as it is located at the only site on the island reasonably suitable for harbor development. The waterfront property and the anchorages are protected from the prevailing easterly winds. The piers are built on the only protected plain area on the west coast; moreover the adjacent off-shore anchorages are in the only location where the depths are less than 100 fathoms and where the area is extensive enough to provide an adequate anchorage. There is no other location on the island that possesses these natural characteristics.

A preliminary survey of the island revealed that a suitable alternative site to construct a harbor at a reasonable cost is not available. To develop another harbor would cost in excess of \$50 million because of the required construction in deep water and because of the amount of earth to be removed from the shoreline cliffs in site development. A harbor in a location other than the existing site would only be marginally useable because it would be unprotected, unsheltered, and lacking in suitable depths for an anchorage area.

Even if the U.S. retreats to its minimum land requirement, population relocation will still be required since the majority of the population is located in San Jose village and the Marpo Valley near the only harbor on the island, and inside the

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boundaries established by the safety criteria regarding the handling of dangerous cargo. Current Department of Defense regulations require that a certain safety separation be maintained between explosives and personnel or structures in order to minimize the effects of an accidental explosion. The intent of this regulation is to eliminate such incidents as occurred in Port Chicago, California in 1944 when a ship being loaded with ammunition exploded killing 250-300 people, most of whom were not involved in the loading operation. Waivers of this regulation are issued only when no other alternatives are available.

Even though the relocation of Tinian's population may be undesirable from a political point of view, the safety requirements are overriding in order to prevent future ammunition handling catastrophies and resultant political problems which could be even more undesirable than relocation. Since relocation of most of the population is mandatory in any event, without a safety waiver, the small population (781) might be resettled as a group on Saipan, thus leaving the military in control of the entire island.

The issue is important and difficult enough to justify the following analysis.

PRO

1. Acquisition of the entire island will satisfy current needs and provide added flexibility and more basing options for unforeseen future political and military developments in the Pacific area.

2. Tinian is unique with regard to the small population that would have to be relocated (781 people - 6% of the Marianas population) to obtain the acreage to meet U.S. military objectives in this strategic area. Moreover, the Tinian population arrived on the island only in recent years and has no ancestral or other historic ties to it.

3. Political and economic costs of obtaining the entire island now are considerably less than in the future. In fact, after military development has begun and any adjacent civilian community begins to develop, it may be impossible to expand military holdings except in a grave crisis.

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4. Acquisition of the entire island would permit the future concentration of military activity in an area of currently less commercial and economic value and population density than that on Saipan.

5. Relocation of the entire population would reinforce the long-term status of a U.S. military presence on Tinian psychologically (both sides would understand that no reversion of the land was contemplated) and legally (U.S. would hold title or long-term lease or similar instrument).

6. All military activity would be confined to an area separated from the nearest civilian community by a three mile strait thereby minimizing the potential for civilian/military friction, and rendering more manageable, or in some cases non-existent, the following problem areas usually attendant upon a civilian population's location within close proximity to a military complex:

a. Safety: The requirement for many special and routine community safety measures would be eliminated. There would be less possibility of accidental harm to civilian personnel or property resulting from training or operational accidents.

b. Security: With the entire island under military control, security would be greatly enhanced, easier and less expensive to maintain. Additionally, there would be less chance of disruptive demonstrations such as have occurred in Japan, Okinawa, and even in the U.S.

c. Claims against U.S. Government: Routine claims for damages resulting from military activities, such as training maneuvers, would be minimized.

d. Construction: Military projects could be undertaken without obtaining civilian concurrence, adjusting timetables, changing priorities, etc.

e. Operational Restriction: Fewer restrictions would be placed on types or hours of operations, noise abatement, flight patterns, maneuver areas, etc.

f. There would be fewer civilian demands on the military holdings which are not yet developed.

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g. Relocation would preclude development on Tinian of any undesirable civilian adjuncts to a large military installation such as cheap bars, brothels, etc.

CON

1. The Tinianese, who expect to obtain a better standard of living through military employment and by providing goods and services to the military on Tinian, would resent and resist relocation to Saipan from what they have come to regard as their homeland. Their leaders probably would anticipate a reduced role for themselves once their people are resettled away from Tinian. The relocation of the Tinian population to another island would disrupt their current economic, social and political patterns.

2. Many Saipanese, including some political leaders, may resent resettlement of the Tinianese on Saipan because of the additional pressures on Saipan's limited economic and social infrastructure (i.e., jobs, land, schools, hospitals) that would entail and because of the implications for Saipan's current political configuration.

3. There is a likelihood of alienating some people throughout the Marianas who may resent any major relocation on principle. People of this persuasion would consider such a major relocation a thoughtless way of treating the citizens of a new accession to the U.S. In this connection, the following comments from members of the Marianas Delegation at the ceremonial opening of negotiations in Saipan last December are relevant: "We believe that joint use of the developed easements and facilities is appropriate. ...We want the people of the Mariana Islands and the military to be involved together in the 'use and development' of our lands. We do not want a separate military establishment in the Mariana Islands that is not environmentally, economically, and socially integrated with the Mariana Islands society".

4. Any relocation of the population of Tinian, either on or off the island, will probably have an initial adverse impact on negotiations with the rest of Micronesia, particularly in Palau. At least until the specific Palauan land requirement has been publicly established and thoroughly understood, those Palauans opposed to a U.S. military presence will have a field day citing the Tinian relocation as an example of what may happen in Palau.

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5. The absence of a civilian community would result in some inconvenience, e.g., the need to ferry the entire civilian work force between Saipan and Tinian. However, ferry service will be required in any event to transport Saipanese to work on Tinian.

6. The statement was made by the U.S. Delegation during the third round of Micronesian Status Negotiations that all land not being immediately utilized could be made available for leaseback, if desired. However, positions taken on any issue at Hana were tentative and subject to agreement on other issues. Moreover, the statement in question was made in the context of negotiations with Micronesia as a whole.

INDUCEMENTS

The success of any effort to obtain all of Tinian may depend to a certain extent on the inducements accompanying the proposal. The following inducements should make the package more palatable and will, hopefully, assist in securing voluntary relocation of Tinian's population.

1. An offer to release military retention areas currently held on Saipan on and around Kobler Field, which would be suitable for resettlement of the Tinian population. In turn, an effort should be made to persuade the Marianas government to grant private title to this land at no cost to the Tinianese -- and hopefully none to the U.S.

2. An offer to relocate the Tinian community as a group at U.S. expense.

3. A promise to extend hiring preferences to relocated Tinian residents, commensurate with their work skills and aptitude for training, for civilian positions on the Tinian military complex.

4. An offer to plan jointly new community housing on Saipan for the relocated Tinianese. This housing would be funded and built by the U.S. Government prior to the actual relocation. (This would have the added advantage of providing additional jobs for the Marianas during the transition period.) Funding and construction should be considered as payment for vacated houses on Tinian.

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5. An offer for the U.S. Government to fund and assist in the construction of essential community infrastructure, including the preparation of land for agricultural purposes.

6. A proposal to establish a reliable ferry system to provide ready access between Tinian and Saipan. Perhaps the operation could be placed under contract to a local firm with an initial USG subsidy or low interest loan designed to help the company become financially independent. These same assets could be used to advantage during off-hours for tourist sight-seeing.

7. A commitment to make a reasonable cash settlement with those Tinianese desiring to relocate elsewhere than in the proposed new community on Saipan.

8. As a last resort, attempt a trade-off between acquisition of Tinian and falling back to the formula for qualified U.S. eminent domain authority (See following section on eminent domain issues)

D. Negotiating Alternatives

In the course of negotiations a serious effort should be made to achieve the maximum U.S. military land requirements (Tinian and Saipan). Recognizing that this may not be politically feasible, the following four alternatives are listed in descending order of priority. Alternative one is the optimum and desired goal.

Alternative 1

Tinian

- Purchase or lease entire island (26,200 acres) and relocate population off the island.

Saipan

- Joint Use Agreement permitting U.S. military landing rights on and access to facilities of civil airport.

- Purchase or lease 500 acres adjacent to Isley Field runway. Land can be leased back for agricultural purposes.

- Purchase or lease 320 acres at Tanapag Harbor.

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Farallon de Medinilla Island

- Purchase or lease entire island (229 acres)

If necessary the following variants to the above alternative should be explored thoroughly in the attempt to obtain all of Tinian (with population relocation off the island) and to obtain certain acreages of land/or access rights on Saipan.

First Variant of Alternative 1Tinian

- Purchase or lease entire island (26,200 acres) and relocate population off the island.

Saipan

- Joint Use Agreement permitting U.S. military landing rights on and access to facilities of civil airport.

- Purchase or lease 500 acres adjacent to Isley Field runway. Land can be leased back for agricultural purposes.

- Access and use rights to Tanapag Harbor (320 acres). As part of this proposal the Marianas representatives would be asked to agree that any subsequent development of Tanapag Harbor would meet criteria set by Department of Defense to insure that Harbor could be used by U.S. forces. The U.S. Government would be willing to furnish planning advice for any subsequent development. The U.S. Government will negotiate and pay rental fees for any usage at the time of U.S. Government use.

Farallon de Medinilla Island

- Purchase or lease entire island (229 acres)

Second Variant of Alternative 1Tinian

- Purchase or lease entire island (26,200 acres) and relocate population off island.

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Saipan

- Joint Use Agreement permitting U.S. military landing rights on and access to facilities of civil airport.

- Access and use rights to 500 acres immediately adjacent to Isley Field runway to develop some type of military installation for servicing equipment, etc., whenever the need arises. Any interim civic development would have to meet criteria established by the Department of Defense. In turn, the U.S. Government would furnish planning advice and reassure the Marianas that in the event a military installation was built on this land it would be a high employer. The U.S. Government would negotiate and pay rental fees for any usage at the time of U.S. Government use.

- Access and use rights to Tanapag Harbor (320 acres). As part of this proposal the Marianas representatives would be asked to agree that any subsequent development of Tanapag Harbor would meet criteria set by the Department of Defense to insure that Harbor could be used by U.S. forces. In this regard the U.S. Government would be willing to furnish planning advice for any subsequent development. The U.S. Government will negotiate and pay rental fees for any usage at the time of U.S. Government use.

Farallon de Medinilla

- Purchase or lease entire island (229 acres)

Alternative 2Tinian

- Purchase or lease entire island (26,200 acres) and relocate population off the island.

Farallon de Medinilla

- Purchase or lease entire island (229 acres)

Alternative 3Tinian

- Purchase or lease entire island (26,200 acres) but offer to lease-back southeast corner for population relocation (about 7,000 acres). U.S. Government would be willing to sign long-term leases but would insist on controlling the uses the land can be put to and would not be obligated to leaseback to anyone not currently a resident of Tinian.

Farallon de Medinilla

- Purchase or lease entire island (229 acres)

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Alternative 4Tinian

- Purchase or lease minimum needs (18,515 acres) and relocate population to southeast corner of island.

Farallon de Medinilla

- Purchase or lease entire island (229 acres).

In conclusion it is clear that surfacing the maximum U.S. proposal will make the negotiations more difficult and possibly prolong* them. But it is believed that the inducements previously mentioned should enable the U.S. to test the proposal without seriously jeopardizing the negotiations or upsetting the current momentum. On balance, therefore, the unique advantages resulting from acquiring all of Tinian and relocating the population to Saipan outlined in paragraph IV.C. and Annex III are considered sufficient to justify a determined effort to explore the possibility of acquiring the whole island and the specified acreage on Saipan before going to less desirable alternatives.**

E. Means of Acquisition of Land Requirements1. Discussion

U.S. land requirements must be satisfied prior to termination of the Trusteeship, and as a condition to that termination. Since alienation of Micronesian land, public or private is prohibited by TTPI law, and implicitly by the Trusteeship Agreement, this condition limits the U.S. Government to acquisition by leases -- at least until the Trusteeship Agreement is terminated. Every effort should be made, however, to negotiate the purchase of U.S. land requirements, to take effect with termination of the Trusteeship with short-term leases for the few remaining years of the Trusteeship. Failing to achieve this objective, negotiation of long-term leases (preferably 99 years but no less than 50 years) should be accomplished. Financial compensation arrangements are discussed under Section V, Finance.

In most respects, the land problem in the Marianas is far less complex than in any other TTPI District. Attitudes toward land are more western than elsewhere in Micronesia, and social or political status generally is not tied to the land

footnote: **In view of the wide range of inducements and fallback alternatives available to the President's Personal Representative the Department of Defense holds the position that surfacing the maximum U.S. proposal will not necessarily prolong the negotiations. On the contrary it is held that by surfacing the maximum requirements the chief negotiator is making possible the acquisition of U.S. optimum desires while providing both the U.S. and the Marianas maneuver room for further negotiation.*

***The Department of Justice recommends that the President's Personal Representative be given authority to determine the form and order of presenting the land requirements on the basis of his on-the-spot evaluation of the potential adverse effect on the successful conclusion of the negotiations of surfacing the maximum land requirements at the beginning of the negotiations.*

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as is the case in other TTPI districts. Most important, there are relatively few disputes as to what constitutes TTPI public land in the Marianas (especially on Tinian Island) where about 90 percent of the land area is TTPI (not Marianas or U.S.) public domain. Those land issues that do exist relate mainly to (a) boundary disputes, (b) administrative delays in granting homestead titles, (c) allegations to the effect that the TTPI Administration gives insufficient attention to the views of the Marianas leaders with respect to commercial leases of public lands and (d) public lands deeded out in exchange for private lands. Many of the recipients of these public lands claim the exchanges were inadequate.

Turning to land requirements in the Marianas, all areas on Saipan that might be acquired are public domain. On Tinian over 95 percent of the island is public domain, and about one-third of that area is also under military retention. A large segment of this land has been leased to a U.S. citizen for the grazing of cattle and this will present a problem. Privately held lands (including leases and homesteads of public lands) are almost exclusively of a residential or agricultural character with few major capital improvements.

The legal and political obstacles to U.S. acquisition of lands in the Mariana Islands are nonetheless formidable. The U.S. is publicly committed to satisfy its land requirements through negotiations with the Marianas leadership. Yet title to public lands in the TTPI is vested in the Trust Territory Government -- not the districts. There is currently therefore no authority at the district level which can legally negotiate the disposal of public lands within the Mariana Islands.

2. Possible Solutions to the Legal/Political Land Acquisition Problems

There are several possible means of resolving the above dilemma. These are as follow (Annex V provides a detailed discussion of these means).

a. The TTPI public lands in the Marianas could be transferred to the Marianas Government or to some other district-level legal entity. Once title is transferred the U.S. could negotiate its land requirements with the district entity which has received title. However, this course assumes either full implementation of a status agreement or at a minimum a secretarial order transferring TTPI public lands to a receiving entity (such as a public land trust board).

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b. U.S. land requirements could be negotiated with the TTPI Administration directly. To make this approach viable the Marianas leadership would have to authorize the TTPI Government to act in its behalf and also participate in the negotiations. The Marianas Political Status Commission would have to agree that (upon ultimate transfer of the TTPI public lands to the Marianas District) the leases for U.S. lands would remain in effect with the Marianas Government replacing the TTPI Administration as lessor or ultimate vendor.

c. U.S. land requirements could be negotiated with the Marianas leadership now in the form of a memorandum of understanding. Upon ultimate transfer of the public lands to the Marianas District the land agreements would come into effect.

All three courses of action assume ultimate transfer of title to a future Marianas Government of TTPI public lands. This is not an issue. The U.S. Government has intended from the outset to turn over TTPI public lands to successor governments or other local entities as desired by the Micronesians. At the latest such a transfer would take effect upon termination of the Trusteeship Agreement. However, such a transfer could also be a logical and necessary element of any administrative separation of the Mariana Islands from the rest of the TTPI before the Trusteeship is terminated and one which could ease the way for early implementation of any agreements for U.S. land requirements.

It is not yet possible to determine which of the above courses or a combination thereof may be the most practicable. Such a determination must be made by the President's Personal Representative taking into consideration all the circumstances at that time and in close consultation with the Interagency Group.

Aside from the above considerations, the relationships between land negotiations and actions in the Marianas and those in the rest of Micronesia must be taken into account. In particular it may become desirable or even necessary to implement an early and similar public lands transfer in the other five districts for much the same reason as in the Marianas. Whether the public lands transfer within the Marianas and the other districts will be paralleled by same or similar means will depend upon future discussions with the Micronesian leadership and an assessment of the situation at that time.

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F. Eminent Domain

Under any of the political arrangements envisaged for the Marianas full U.S. sovereignty will extend to those islands upon termination of the Trusteeship Agreement. For this reason alone U.S. eminent domain authority would normally extend to the Marianas as a matter of course. Apart from this, such authority is desirable on its own merits. The Marianas will have the benefits of membership in the American political family, and the U.S. Government will acquire the responsibilities toward those islands which go with such status. In return for assuming those responsibilities the United States should attempt to retain the right to exercise eminent domain in order to support national interests.

However the Marianas leadership will almost certainly attempt to reject or circumscribe U.S. eminent domain authority in the forthcoming status negotiations. Some precedents will be on their side. The U.S. Delegation has already agreed not to demand such authority for the rest of Micronesia. Further the Commonwealth proposal of 1970 offered a highly qualified form of eminent domain authority (In essence, eminent domain could be exercised by the U.S. only after exhaustive territorial executive and legislative action failed, and following a successful U.S. appeal through the federal court system or in the event of a national emergency).

In negotiating with the Marianas, the U.S. should attempt to obtain eminent domain authority as normally extended to other U.S. territories and states. The U.S. should fall back to the restrictive form of eminent domain authority offered in the 1970 Commonwealth proposal only if this is essential to obtain an otherwise satisfactory status settlement.

G. Prevention of Alienation of Land to Non-Marianans

A major concern of the Marianas leadership is how the basically agricultural economy and society of the Marianas can be protected against absorption by the advanced economy/technology of the U.S. under the proposed close and permanent political relationship. Experience throughout the Pacific, e.g., Hawaii, American Samoa, and most recently in Guam, has shown that such encounters with the U.S. are likely to affect adversely the economic status of the indigenous population and leave it landless unless adequate precautions are taken.

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One possible protective measure would be the enactment of legislation by the Marianas government which would preclude or limit the holdings of interests in land by persons who are not of Marianan ancestry. The question has been raised whether such legislation would be permissible under the Constitution of the United States, especially if United States citizenship should be conferred upon the inhabitants of the Marianas. On the basis of available precedents -- Indian land legislation, upheld by the U.S. Supreme Court, and the Hawaii Statehood Act and derivative legislation which has not been challenged in the courts -- it is concluded that in principle this question can be answered in the affirmative.

Such legislation could limit the future acquisition of interests in real estate to persons (and their heirs) who are local residents at the change in status and who will become U.S. citizens or nationals at that time. Clear guidelines will have to be established to avoid later disputes. These should not discriminate against ethnic minorities in the district, but could restrict Micronesians not becoming U.S. citizens or nationals under a new status from transferring real property interests now held in the Marianas and could prohibit them from acquiring new real property interests in the Marianas. Since 90% of Marianan land is currently public land, the bulk of the proposed legislation would relate to the disposition and administration of these lands by the future Government of the Marianas. Such legislation could take many forms. For example, it could provide that title to public lands could be conveyed only to persons descended from eligible persons, but that the land could also be leased to others. The deeds could contain covenants to prevent evasion of the restrictions against the holding of interests in land by other than eligible persons. The legislation could also follow the pattern of Hawaiian legislation and provide that all or a part of the public lands could be leased only to eligible persons and limit the acreage which any individual may hold, or the land could be controlled by a legal entity acting as trustee for the benefit of such persons alone.

Marianas representatives have indicated that protecting their islands against the alienation of land by non-Marianans is one of their priority concerns and that they will expect to negotiate the desired safeguards with the U.S. The arrangements for Hawaii statehood provide a precedent for negotiating

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this issue with the Marianas representatives and for including the result in any document on future status ultimately agreed to by them and the U.S. (The Hawaiian Statehood Act contains a provision in the nature of a compact between the U.S. and the State of Hawaii pursuant to which the home lands legislation became a part of the Constitution of the State of Hawaii). (For further discussion of this issue, see annex VI).

H. Land Summary

The U.S. Government's non-military land needs in the Marianas are minimal and will be easily met. Military land requirements present a greater problem and will entail hard bargaining. The unique advantages which would arise from consolidation of most defense activities in the Marianas on lightly-populated Tinian Island, and the utility of options on Saipan, suggest the first negotiating objective should be acquisition of: (1) all of Tinian (26,200 acres) with all of Tinian's population relocated off the island -- probably to Saipan (2) the 820 acres on Saipan, and (3) Farallon de Medinilla Island. The minimum essential military requirements are: 18,515 acres on Tinian and the small island of Farallon de Medinilla. In addition, it is highly desirable that the U.S. acquire rights to 820 acres on Saipan. Even if the U.S. obtains only its minimum requirements on Tinian, however, some relocation of the population on the island will be necessary.

U.S. land requirements in the Marianas must be satisfied prior to full implementation of any agreement on a new status with that district. It is in the U.S. interest to negotiate the purchase of those lands, effective upon termination of the Trusteeship Agreement, but if that proves impossible, long-term leases will suffice (99-50 years). In this connection, there arises the thorny legal question of who in the Marianas can authoritatively enter into an agreement with the U.S. on the acquisition of public land, now held by the TTPI. There are various alternative formulae by which this problem can be resolved.

Under any of the envisaged alternative political arrangements according the Marianas U.S. territorial status, the U.S. Government would expect to have eminent domain authority, as it does in other territories. The U.S. Government's defense and other responsibilities toward this new member of the American political family argue that it should have that

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authority. On the other hand, since the Marianas are aware that in its 1970 Commonwealth proposal the U.S. offered all Micronesia a highly qualified eminent domain provision, the Marianas may resist vesting an unrestricted right in the U.S. Government. However, the U.S. should hold out for unqualified eminent domain authority as long as its acquisition appears a realistic negotiating objective.

Under any of the proposed alternative territorial arrangements for the Marianas, a formula can be devised, consistent with the U.S. Constitution, to protect the people of the Marianas against alienation of their land, even though they become U.S. citizens or U.S. nationals.

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V. Financial Arrangements

A. General

A fundamental incentive for the residents of the Mariana Islands to seek close association with the U.S. has been the anticipation of economic benefits. Reinforcing that incentive have been Guam's remarkable economic growth in the past few years and to a lesser extent the recent prosperity of Saipan itself. There is no question but that the Marianas Political Status Commission will exercise any available leverage to attain the best possible financial arrangements from the U.S. Government, particularly in the areas of budgetary support and payment for land use.

The Mariana Islands currently receive financial assistance from the U.S. through annual grants and the extension of U.S. federal programs and services to the Trust Territory. The Marianas share of FY 73 TTPI grant funds (\$60 million) was about \$9.3 million, which was made up of \$7.1 million in district government operations costs and district capital improvement projects, and \$2.2 million in Trust Territory Headquarters expenditures apportioned to the Marianas. The Marianas share of Federal programs and services runs about \$2.5 million annually. Therefore, U.S. assistance normally totals around \$12 million per year. The location of TTPI headquarters on Saipan increases substantially actual government expenditures in the District (e.g., travel, wages, local purchases, etc.).

Tax revenues collected in the Marianas were estimated at \$2.0 million in FY 72, while operational costs in the District's executive branch alone were over \$5 million. Local capital development projects added \$2.2 million. Expanded facilities and services will keep government expenditures and costs in the future at or above their present levels. Although increased local tax revenues can be expected after a change in status, the need for U.S. financial assistance will continue.

Clearly the Marianas leadership considers the nature and level of financial assistance to be a critical issue. The Marianas Status Commission is currently examining the financial arrangements between the U.S. and its present territories to assist in identifying its own financial goals. Financial arrangements in other newly emergent island states such as the Maldives Islands, Western Samoa, and the Cook Islands will also be studied.

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In constructing an appropriate financial assistance package for the Marianas the U.S. Government must consider its impact on the financial agreement to be reached with the remainder of Micronesia. In prior negotiations with the JCFS the U.S. has argued that the amount of assistance should be related to the closeness of the political association. It is therefore important that the support provided the Marianas clearly compare favorably (on a per capita basis) with any financial proposals for the remainder of Micronesia.

B. Basis of Assistance

The provision of U.S. financial assistance to the post-Trusteeship Government of the Mariana Islands will necessarily be within the framework of one or the other of two possible approaches, referred to here as the "quid pro quo" and "program" approaches. As the term implies, assistance based on a quid pro quo would normally involve a contractual arrangement in which the U.S. Government would pay the Marianas the least acceptable amount in cash or programs in return for satisfaction of its strategic requirements in the district. (For example, the JCFS has argued that U.S. economic assistance to Micronesia should be the quid pro quo for satisfying U.S. strategic requirements).

A program basis implies a relationship wherein each party will assist the other as needed, relying less on a legal definition of rights and obligations than upon the pledged faith of the two parties. The actual level of financial assistance would depend largely upon the mutually determined needs of the local government and people. This has been the basis for providing assistance over the years to American Samoa, Guam and the Virgin Islands, where the U.S. has provided substantial aid in a number of forms as a supplement to local financial resources. In summary, a program basis for assistance is characteristic of the close association both parties are presumably seeking.

C. Nature and Level of Financial Assistance Program

1. General. The financial assistance program for the Marianas will have two parts: direct grants, and the provision of Federal programs and services. Direct Grants of any sort would require specific legislative authorization and subsequent

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Congressional appropriation. The extension of certain federal programs would require that the Marianas be designated as an eligible recipient by Congressional action. For other federal programs, however, the Marianas would be automatically eligible upon attaining territorial status.

2. Direct Grants. Under any of the status options discussed in section III the Marianas would require grant subsidies to assist the operations of a local government and to fund capital improvement programs. It is premature to develop an economic model for the district which factors in the applicability of Federal minimum wage laws, the loss of some TTPI activities, and an increase in military and tourist development. Until that can be done, no estimate of financial requirements can be precise. As noted above, the TTPI Government contributes \$7.1 million annually to the cost of running the Marianas District Government.

Local revenues, now about \$2 million annually, could be significantly increased by application of Federal income tax laws (with the rebate of resulting revenues) and institution of other revenue measures. The direct grant portion of the Federal Assistance program should be designed to foster and encourage the development of local revenue sources; this can best be done through a flexible system of matching grants, perhaps using a sliding scale. In addition provision should be made for the extraordinary transitional costs of starting up a new government and for providing essential infrastructure, whether prior to or after actual termination of the Trusteeship.

The President's Personal Representative should have considerable flexibility in negotiating U.S. assistance, which necessarily depends on many as yet undefined variables, e.g., the nature of the relationship and the financial needs as stated by the Marianas Political Status Commission. He should, however, be provided with guidance as to the range of the direct grants to which he is authorized to commit the Executive Branch, if such action becomes necessary. Such a commitment, of course, must be qualified so that the Marianas representatives clearly understand that U.S. Congressional approval will be required.

A direct grant range of up to twelve million dollars annually is recommended. It is, of course, recognized that the Marianas financial ambitions may very well exceed this figure and that this ceiling could possibly prolong the discussions. Nevertheless, \$12 million is considered an eminently reasonable

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figure. This range permits direct grants higher than the present level of funding for the Marianas (\$7.1 million). Furthermore, when considered in conjunction with other federal programs and military land payments or rent, it should allow sufficient latitude to insure favorable comparison with any settlement likely to emerge from the JCFS negotiations. Since assistance will be based essentially on the needs of the Marianas, there should be no serious problems with other U.S. territories. Finally, additional funds may stretch the absorptive capacity of the local economy and discourage local self-sufficiency. In this regard, the President's Personal Representative should be given flexibility to negotiate a financial commitment to meet the U.S. objectives.

It should be within the discretion of the President's Personal Representative to develop the specific proposals or formulas for providing this assistance in order to meet the goals discussed above. If this range should prove inadequate for assuring U.S. negotiating objectives, further guidance should be sought.

It is preferable for the U.S. to avoid a specific commitment, at least until the shape of the future relationship is fully agreed upon and the needs of the Marianas are better known. Still, the Marianas representatives may insist on a financial guarantee of some sort. If it proves necessary to concede to such a demand, the commitment should be limited to a fixed period of years (e.g., 5 years). Thereafter the Marianas would obtain financial assistance through the normal appropriation process without reference to any fixed level.

It is essential that the appropriate committees of the U.S. Congress be informed and consulted on this subject at the earliest opportunity. The Congress must be a part of the process from the outset and made to feel it has played a role in planning as well as authorization.

3. Programs and Services

In addition to direct subsidies, an important Marianas objective in seeking close association is full participation in the many Federal programs and services available to U.S. states and territories. The Marianas as part of the TTPI now receives approximately \$2.5 million annually in Federal services

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and programs, e.g., Postal Service, Coast Guard, FAA, OEO, HEW, HUD, DOT, etc. The level of U.S. services and programs would probably increase with close association. In this regard, eligibility would be determined by Congressional action, based perhaps upon a joint U.S.-Marianas survey of potentially desirable Federal programs and statutes. Two exceptions to this generalization are that: (1) if the Marianas should integrate with Guam from the outset, the whole question of Federal programs is moot, since the Marianas would be eligible to the same extent as Guam; and (2) the Marianas, by assuming territorial status, would be eligible automatically for a number of programs in which the statutory language refers simply to "territories".

It is in the U.S. interest to be generously responsive to Marianas requests for federal programs. The extension of such programs and services is likely to strengthen the Marianas' bonds with the U.S., as has been the case in other territories. Also, the contrast between the status of the Marianas and that sought by the rest of Micronesia will be sharpened by the magnitude and range of programs and services available to the Marianas. It is essential that the U.S. illustrate to all of Micronesia that a close association has some tangible and worthwhile benefits which free association or independence cannot match.

4. Land Payments

An important source of revenue for the Marianas will be the monies paid by the U.S. Government for the military and non-military use of local land to be acquired by sale or lease, as discussed in the foregoing land section. Although most of the land the U.S. expects to acquire is now TTPI-held public land, with some of it under military retention, compensation for the lands acquired should be negotiated and separately labelled in the final U.S.-Marianas agreement. This is necessary to forestall subsequent charges by disaffected local elements that the U.S. Government "seized" land for its use without payment. Compensation for public land will reduce the need for budget support and has been taken into account in establishing the proposed range of direct grant assistance.

As noted, the price paid for land purchase or lease will be negotiated as part of the overall status agreement. This will occasion hard bargaining because of local attitudes toward land and because of its scarcity. It is impossible to formulate

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specific guidelines, since the value of land in Micronesia cannot be estimated by using U.S. standards. The TTPI Government has negotiated as high as \$4,000 per acre for a 25 year lease, but local expectations vary from district to district. The objective is to arrive at an agreed price considered reasonable by all parties.

While there are many variables and unanswered questions which preclude defining at this time specific land acquisition costs for each Tinian option (Tinian accounts for most of the U.S. land requirements in the Marianas), the following estimates are presented as planning guidelines. It must be remembered that there are no market data or land transactions on the island of Tinian which could be used as a basis for a fair market value appraisal and any cost evaluation will be inexact at best. The cost estimates for the various negotiating options are considered to be reasonable estimates based upon what little information is available - historical data of sales and land transactions on other islands, economic trends, and court awarded compensation in land condemnation proceedings. One of the most important inputs is not available - the expectations of the Marianas Status Commission. They can only be determined in the course of land negotiations and may be rather inflated.

Given the above qualifications, the following average unit prices are considered reasonable estimates of fee value for the acquisition of land on the island of Tinian and are furnished to assist in planning for the land negotiations.

	<u>Acres</u>	<u>Estimate</u>
Commercial (@ \$4,500)	100	\$ 450,000
Village & Agricultural (@ \$2,500)	1,440	\$ 3,600,000
Public Land including Retention Area (@ \$1,000)	24,600	<u>\$24,600,000</u>
TOTAL		\$28,650,000

Under the first option to acquire the entire island and resettle the population, the total land cost estimate would be \$28,650,000. This estimate relates only to vacant land and does not include the value of any improvements. There is no

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available inventory of buildings or improvements that may exist on the island.* The value of such facilities would be added to the above when they are identified and assessed. A summary of the above acquisition cost estimates as they relate to the Tinian options follows:

Buy 26,200 acres	up to \$28.65 million lump sum
Lease 26,200 acres for 50-99 years	1. up to \$28.65 million lump sum or 2. up to \$3M/yr annual payment based upon 10% of estimated fee value
Buy or lease 18,515 acres 50-99 years	1. up to \$20 million lump sum or 2. up to \$2M/yr annual payment

The following tentative cost figures for acquisitions on Saipan and Farallon de Medinilla are based on estimated costs of \$2,500 per acre on Saipan and \$1,000 per acre on Farallon de Medinilla:

Saipan

Buy or lease 820 acres 50-99 years	1. up to \$2.1M lump sum or 2. up to \$200,000 annual payment
------------------------------------	--

Farallon de Medinilla

Buy or lease 229 acres for 50-99 years	1. up to \$229,000 lump sum or 2. up to \$22,900 annual payment
--	--

The above discussion does not address relocation and resettlement costs. P.L. 91-646** is designed to cover the relocation of families purchasing land and a dwelling elsewhere. This law authorizes differential payments of up to \$15,000 to a single family (over and above any payments for the original land and improvements) if necessary to obtain sanitary and adequate replacement living quarters. These funds are in addition to reimbursement to owners and tenants for the cost of moving. It is estimated that there are 150 families on Tinian which would put a limit of \$2.25 million on the amount which could be spent in this manner.

Where there is no substitute housing available P.L. 91-646** authorizes the U.S. Government to build such housing to accommodate relocated families. As discussed above, however, it may be necessary to go even further and provide for a new community in order to induce the Tinianese to relocate. In that event one of two approaches may be followed. The Defense Department can request MILCON funds for the project or special legislation and a companion appropriation can be sought. The latter course is recommended. The legislation would fall under the general rubric of legislation

FOOTNOTE: *Since the Micronesian negotiations commenced military appraisers have avoided demonstrating any interest in particular sites or islands in order to avoid undue speculation or arise in land values.

**P.L. 91-646: Uniform Relocation Assistance and Acquisition Policy Act of 1970

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implementing the final future status agreement. In either case funds would be requested to cover land acquisition (farm land as well as dwelling land), costs of construction (houses, school, dispensary, roads and services) and the expenses of moving. It is estimated that the total cost of such a project would run in the neighborhood of \$10 to \$14 million for relocating the Tinianese to Saipan and somewhat less for relocating the population to the southeast corner of Tinian. These estimates are necessarily very rough. The Saipan relocation estimate will vary markedly depending on what cost arrangements can be made for land on Saipan.

Of necessity, the President's Personal Representative must have a great deal of latitude in this area in order to arrive at an agreed land settlement. At the same time, however, he should consult closely with and draw heavily on the land expertise of the Departments of Defense and Interior in the process of arriving at reasonable estimates and final cost proposals.

5. Capital of Micronesia and Other Transitional Costs

The political considerations requiring the relocation of the capital of the rest of Micronesia from Saipan at some point are discussed elsewhere. Estimates by the Congress of Micronesia for relocating and building in another district run as high as \$30-40 million. These estimates may be highly inflated, but in any event the U.S. should be prepared to confront this issue at an early date. This, however, is a subject for negotiation with the JCFS and will be addressed in a companion study.

This problem concerns more, however, than just the relocation of the physical facilities. A large proportion of the wage earners on Saipan work for the TTPI government and many of them are seriously disturbed about their future once the capital of Micronesia is moved. They are concerned about the opportunities for new jobs -- i.e., the duration of the time lag before new jobs appear (e.g. through development of military bases, establishment of the new government, etc.), and whether the new opportunities will cover their talents and skills. The Marianas Commission is examining this problem and the U.S. Delegation should do likewise. It is incumbent upon the U.S. to insure that the economic disruption of relocating the capital is kept to a minimum. These costs should be handled not as a part of the direct grants but as a transitional cost. Once the new status has been effected and economic life returned to normal, the need for this assistance will ultimately disappear.

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D. Summary

U.S. assistance should be on a program basis. Direct grants should be at a level which will promote the economic well-being of the Marianas and which will compare favorably with financial arrangements with the rest of Micronesia. The President's Personal Representative should be authorized to negotiate direct grant assistance at a level of up to \$12 million annually. The U.S. should also be as forthcoming as possible in offering Federal services and programs. The President's Personal Representative should also be given the necessary latitude to negotiate compensation for U.S. land acquisitions. Finally, it should be noted that the foregoing discussion of possible financial arrangements can apply to any of the status options discussed in Part III.

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VI. Interim ArrangementsA. Early Implementation of the Agreement

The U.S. Government has taken the position, consistent with U.N. thinking as well, that the Trusteeship Agreement must be terminated simultaneously for all of Micronesia. Yet it is quite possible that the negotiations with the other five districts of the TTPI could be protracted or inconclusive and accordingly could delay for some time termination of the Trusteeship. Moreover, even if agreement on all of Micronesia's status should be reached at an early date, considerable time may be required to complete all the necessary steps, including the required plebiscites, U.S. Congressional action, and U.N. consideration.

If the U.S. is successful in concluding an agreement with the Marianas Political Status Commission, it will be faced with the complex administrative question of how the Marianas should be governed during the interim period between arriving at that agreement and eventual termination of the Trusteeship for all of Micronesia. A brief examination of this subject is in order since it will be a major issue in the negotiations and may bear on the form of status selected.

First, the people of the Marianas are concerned about the interim period. While they desire a smooth shifting of responsibility and authority to the new Marianas Government, they also wish to implement the basic elements of the new status as soon as possible, regardless of what happens to the rest of Micronesia.

Second, should the U.S. Government not move rapidly toward at least de facto implementation of the new arrangement, local support and enthusiasm for an agreement could dwindle. Conceivably an indefinite delay in implementation of an agreement with the Marianas could threaten the agreement itself.

Third, as mentioned in Section III, an early Marianas status agreement would hopefully have a favorable impact upon the negotiations with the rest of Micronesia. If a form of status is agreed upon which has provisions attractive to the other districts, then the quicker it is implemented the more positive the influence. Conversely, if the U.S. lags in implementation, the negative aspects of any agreement would be emphasized by the political opponents of close association in the other districts. This argument applies primarily to the commonwealth option previously

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outlined. As noted, neither integration with Guam nor unincorporated territorial status holds any substantial attraction for the rest of Micronesia and would have less of a positive impact.

Fourth, just as the people of the Marianas clearly desire to move ahead in implementing an agreement, the U.S. Defense Department would like to proceed with its plans for acquiring land and developing military facilities in the Marianas at the earliest possible time. To do so, however, the future status of the Marianas should have a high degree of certainty and not be vulnerable to later changes of position by the Marianas or the United States.

Based on the foregoing, the U.S. Government should seek to implement rapidly to the extent possible any agreement which may be reached with the Marianas without waiting for actual termination of the Trusteeship. This effort should be given special priority if the United States arrives at a Commonwealth-type status arrangement with the Marianas and it appears that negotiations with the rest of Micronesia may be protracted.

In the latter connection, it may become advisable (before proceeding to full implementation of the Marianas status settlement) to test once again and finally a Commonwealth arrangement in the other districts of Micronesia. Though the possibility of the other districts retreating from free association or independence is extremely remote, such action might have several important practical advantages for the U.S.:

(a) Such an offer would provide U.S. friends in the other districts a specific goal around which they could rally in their own efforts to undermine those who seek independence or the loosest possible relationship with the U.S. (b) it would provide a useful test of the level of sentiment for close association in the other districts. If that level is significant, this could be helpful in the negotiations with the other districts. (c) The very act of rejection (assuming such will be the case) by the other districts of a Marianas status formula will be a positive endorsement by those districts of Micronesian fragmentation. In effect the U.S. Government will have made one last effort to hold Micronesia together; an effort rejected by the other districts. This could be extremely helpful to the U.S. Government in the U.N. (d) The final test of the Marianas arrangement in the other districts could also be very helpful in resolving U.S. Congressional doubts as to the feasibility of any relationship closer than free association. A final decision on this possibility will depend upon the circumstances at the time a Marianas status agreement is concluded,

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and should take into account the views of the Marianas Delegation. Equally, whether to pursue such a course through the Congress of Micronesia, the district legislatures, or by referendum can be determined only at that time. It may be that political and practical considerations will rule out any possibility of testing the Marianas arrangements in the other districts.

B. Methods of Early Implementation

There are three basic ways to achieve the goal of early implementation of the agreement within the Trusteeship framework: (1) The U.S. Congress could enact permanent status legislation for the Marianas to take full effect upon the end of the Trusteeship. The legislation should also authorize implementation as appropriate during the interim period by Executive Order. (2) The agreement could be implemented during the interim period by Congressional action, with the post-Trusteeship status requiring subsequent and separate legislation, probably to be submitted at the same time as for the rest of Micronesia. This makes the legal assumption that the interim legislation could not also serve as the permanent status legislation. (3) The President would promulgate an Executive Order to implement the agreement during the interim period and would later seek legislation from Congress to formalize the post-Trusteeship status, probably at the same time as for the rest of Micronesia. The main distinction between these approaches is the point at which Congress acts with respect to the Marianas. There are important considerations bearing on each approach as set forth below.

1. Initial Congressional action, with interim implementation by Executive Order. (Can be used with any of the status options)

PRO

a. Assures Congressional support of ultimate status of Marianas at earliest possible date.

b. Permanently seals Marianas status at beginning of relationship.

c. Provides solid basis for early implementation of status by Executive Order.

CON

a. If Congress is slow to act, benefits of early implementation could be lost.

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b. Congress may not wish to act with respect to only one part of the Micronesian status issue.

2. Congressional legislation for interim period; separate legislation for post-Trusteeship status. (Applicable to all status options).

PRO

a. Assures Congressional support of interim implementation.

b. Permits Congress to consider ultimate status of all of Micronesia simultaneously.

CON

a. If Congress is slow to act on interim period legislation, benefits of early implementation would be lost.

b. Requires two separate Congressional actions, with attendant problems and dangers.

c. Lack of permanent status legislation provides Marianas with a handy wedge for increasing demands during interim period.

d. Marianas status not permanently sealed until enactment of final legislation.

3. Interim implementation of Marianas status by Executive Order. Subsequent Congressional legislation to formalize post-Trusteeship status. (Not practical with respect to Guam integration status option).

PRO

a. Provides the most immediate implementation of agreed new status.

b. Permits flexibility in tailoring eventual legislation to experience of interim administration.

c. Will permit Congress to handle complete Micronesian status situation simultaneously.

CON

a. Even with extensive Congressional consultations, this

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plan short-circuits traditional legislative authority at a time when this authority is of great concern to Congress.

b. Lack of permanent status legislation provides Marianas with a handy wedge for increasing demands during interim period.

Clearly, from the perspective of a negotiator, the first approach is the most desirable route. It promises an early cementing of the agreement and insures U.S. Congressional approval. Any realistic assessment of the approaches, however, rests upon one's reading of Congressional attitudes. It is impossible for this study to make such a judgement without extensive consultations with Congress. Accordingly, the President's Personal Representative should give this subject priority in his consultations with the Congress. Assuming there is a consensus, Congressional guidance should be considered authoritative. Indeed, such consultations may reduce the problems faced with any approach: the delay caused by seeking Congressional legislation first, or the opposition Congress may have to the initial Executive Order route.

C. Relocation of the Capital of Micronesia

Separation of the Marianas from the rest of the Trust Territory will necessitate relocation of the Micronesian Capital from Saipan to some other point within Micronesia. However, any such relocation should be deferred until the future status of the other districts is settled (unless that is long delayed), the organization and physical requirements of the new Micronesian Government are known, and the Micronesians have agreed upon a site for their new capital. The exact timing of relocation and the terms under which it is to be accomplished can be matters for negotiation with the JCFS. (This subject will be addressed in greater detail in the study dealing with the Micronesian Status Negotiations).

When relocation becomes necessary, the U.S. Government will undoubtedly be called upon to assist in the financing of the new capital.

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VII. Termination of the Trusteeship:
Self-Determination and the U.N.

Ultimate termination of the Trusteeship Agreement will necessitate an act of self-determination in the Mariana Islands as well as in the rest of the Trust Territory. There are no specific legal requirements as to how the act of self-determination should be conducted, but the general practice has been to confirm popular support for the newly agreed status arrangement by a plebiscite. There is general agreement that the Trusteeship Agreement can be terminated only for all six districts at once, although it is also agreed that the Marianas could be separately administered before that termination after a plebiscite confirming the status agreement.

There are differing views regarding the need and advisability of seeking U.N. Security Council approval for termination of the Trusteeship Agreement. The weight of legal opinion, past U.S. statements before the Security Council*, opinions of the International Court of Justice, and the precedent of past trusteeship terminations strongly support the view that the U.S. should seek U.N. approval for termination. The likelihood of obtaining Security Council approval will depend largely on the terms of the plebiscite offered and the nature of the agreement reached. If the U.S. Government decides to try to obtain Security Council approval and then fails the President may wish to adopt the position that U.S. obligations under the Trusteeship Agreement are fulfilled, regardless of the views of the Security Council.

If it should be clear in advance that the U.S. cannot hope for approval by the Security Council, the President could decide not to seek such approval and, instead, move directly to the position that the United States' obligations have been fulfilled. However, it would significantly strengthen the legal case for termination of U.S. obligations without the Council's consent if the U.S. first tried to obtain Security Council approval to termination, even if it failed. Therefore no action should be taken with regard to the Marianas which would prejudice the United States' ability and option to seek Security Council approval.

Whatever course the U.S. Government follows, it will be most important to obtain as much support as possible for its position in the Security and Trusteeship Councils. In that regard, the following requirements appear to be basic with respect to the Marianas.

**The Department of State notes that, in 1947, the U.S. Representative to the Security Council (Senator Austin), during the Council's consideration of the draft trusteeship agreement, stated that "no amendment or termination can take place without the approval of the Security Council".*

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A. The act of self-determination should provide at a minimum the options of approval or disapproval of the negotiated agreement, be observed by U.N. officials, and be preceded by a political education campaign on the meaning of the options.

B. The negotiated agreement must receive a significant majority vote and popular participation must be massive.

C. The negotiated agreement must provide for the highest possible level of self-government. (Commonwealth status is thus the preferred option with respect to U.N. approval)

The ultimate character, timing, and mechanics of the act of self-determination will be matters for negotiation with the Marianas Status Commission, and possibly the U.N., and must also take into account the likely character of the act of self-determination in the other districts (e.g., whether it will include an independence option). The question of U.S. tactics in the Trusteeship and Security Councils of the U.N., at the time of termination, can be resolved only toward the end of the Trusteeship, and will probably require further Presidential consideration and decisions at that time.

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VIII. Possible Impediments to Early AgreementA. Congress of Micronesia Interference

The Congress of Micronesia has not consented to the separate Marianas negotiations and resents the U.S. Government opening direct discussions without its approval. It is not clear whether the Congress of Micronesia is seriously attempting to prevent a separate status agreement for the Marianas, or whether it merely hopes to increase its own bargaining leverage on status. In any case, there are efforts underway to obstruct or at least confuse separate negotiations.

1. Negotiating Authority.

The Congress of Micronesia has now asserted by a Joint Resolution that it has sole authority to negotiate the future political status of all of Micronesia. This contention is rejected by the Office of Legal Counsel of the Department of Justice.

Should the efforts of the Congress of Micronesia to press this contention, including possibly by court action, seriously threaten the Marianas negotiations, consideration should be given to an amendment of Department of the Interior Secretarial Order 2918, which establishes the authority of the Congress. Because this step could adversely affect negotiations with the JCFS, it should be taken only after appropriate consultation with the President's Personal Representative and the Under Secretaries Committee.

2. Legislative Authority

Another problem area involving the Congress of Micronesia would be its inclusion of the Marianas in legislation relating to the future political status of Micronesia as a whole. For example, a bill was introduced in the recent session of the Congress to establish a Constitutional Convention, although no final action was taken. The enactment of this type of legislation by the Congress of Micronesia would not necessarily be an act of bad faith or an attempt to sabotage the separate Marianas talks. The Congress is justifiably concerned about its authority to exempt any district from such legislation. The Department of Interior and the Attorney General of the Trust Territory share this concern.

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Should it appear that the Congress of Micronesia's extension of legislation to the Marianas will seriously complicate the U.S. ability to pursue separate negotiations with the Marianas, consideration can be given to having the Secretary of the Interior issue an order specifying that COM legislation on this subject will be applicable only to the other five districts of the TTPI. However, because of the political liabilities associated with this course, it should be taken only after consultations with the President's Personal Representative and the Under Secretaries Committee, and as a last resort.

3. Land. The Congress of Micronesia also has the potential to interfere with the land negotiations in the Marianas as a result of its legislative authority over public lands. However, the Congress may be moving toward the position that all U.S. land requirements throughout Micronesia will have to be negotiated at the district level. In any event, the various courses outlined in the land acquisition discussion (Section IV.C.) provide means to circumvent any attempts at Congressional interference.

B. Marianas' Tactics

As noted elsewhere, the Marianas' expressed interest in establishing at an early date a "close and permanent" relationship with the U.S. clearly differentiating them from the rest of Micronesia suggests the Marianas will wish to press expeditiously toward an accord on their future status regardless of what happens in the negotiations with the JCFS. However, the nature of the final U.S.-Marianas relationship, as well as the progress of negotiations toward it, could conceivably depend in part on the pace and direction of parallel U.S.-JCFS discussions, with the Marianas prolonging their own negotiations in order to scrutinize the other set of talks and identify targets of opportunity for exploitation -- particularly in the financial field.

A few observers, including the American counsel for the JCFS, believe Marianan leaders are keeping their options open. In other words, some Marianas leaders may not have completely ruled out the possibility of remaining with the rest of Micronesia, if it should appear the Marianas cannot obtain from the U.S. a status and the prerequisites they consider appropriate, or if (as the two sets of negotiations develop) there appear as yet

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unforeseen advantages to continuing as part of Micronesia. Also, the Marianans may wish to keep open their lines to the rest of Micronesia as a hedge against the possibility of a U.S. retreat from separate negotiations with the Marianas.

The foregoing underlines the importance to the U.S. of actively pursuing substantive discussions with the Marianas prior to the next round of negotiations with the JCFS, and of pressing for early conclusion of a Marianas future status agreement.

C. The Negotiating Environment and the Political Opposition

The Marianas' decision to open separate negotiation with the United States suggests a relatively good negotiating environment. But, as noted earlier, there is a sizeable and vocal minority which is less certain about the desirability of fragmentation of Micronesia and separate status for the Marianas. This group includes much of the Carolinean community (about 3,000), and also a number of Chamorros including many of the business leaders. With a few significant exceptions, even this minority favors close association with the United States, and is thoroughly opposed to independence. But some do favor free association, and most, at least in part, have opposed Marianas separatism. Many in this minority also are not certain whether they are prepared to have a large U.S. military presence.

Inevitably this diligent and articulate group will gain further adherents to its cause as the U.S. negotiating proposals are surfaced. However, it is unlikely that its views will become those of the majority. A more serious problem is that the two political factions in the Marianas may be moving toward a compromise which would permit them to negotiate with the U.S. from a common position. Such a development would inevitably result in tougher positions on many key issues.

On the other hand, should the U.S. be able to reach agreement with a united Marianas leadership, based on compromises acceptable to all elements of that leadership, it could then reasonably expect massive popular support of the status agreement in any plebiscite.

Meanwhile, it is incumbent upon the U.S. Government to take the necessary steps to nourish pro-U.S. sentiment in the Marianas and to insure a favorable negotiating environment. The U.S. must coordinate all its activities in the Marianas to achieve these goals. These steps span a broad spectrum -- e.g., negotiating

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proposals, administrative policies and actions, political education, public relations, the negotiations with the remaining districts, visits to the Marianas by U.S. officials, etc. Such coordination is a vitally important part of the negotiating process, if the U.S. is to obtain the type of agreement it desires and a plebiscite endorsing that agreement.

D. Trusteeship Council Reluctance to Accept U.S. Position

Traditional concerns in the United Nations over fragmentation of territories together with the separate interests of the various governments represented on the Trusteeship Council have led to considerable reluctance on the part of the members of the Council to accept the U.S. position on the Marianas. Difficulties the U.S. experiences in the Trusteeship Council on this issue may reinforce the apparent belief of the Congress of Micronesia that it has considerable leverage over the U.S. in granting or withholding approval of separate status for the Marianas.

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IX. Timing Scenario

A. Time Factors

The following considerations impact on the negotiating time frame.

1. The U.S. Delegation is committed to meet again soon with the Marianas Political Status Commission, tentatively in April on Saipan.

2. In the context of the parallel negotiations with the other five districts of Micronesia, it is highly desirable (for reasons described in Section VI of this study) to conclude and implement an agreement on a new status for the Mariana Islands as soon as possible.

3. Although a majority of the present Marianas leadership favors early, separate, and close association with the United States, a significant minority does not. It is unlikely that this minority will prevail within the foreseeable future, but it may affect adversely both public and general leadership attitudes on many critical issues, including the question of a major United States military presence. Past unreserved support for such a presence is already being eroded.

4. The Marianas Status Commission is devoting considerable time and effort to examination of a number of alternative forms of status. Although all of them involve association with the United States, some may have undesirable or even unacceptable features. There is a need to focus the attention and energies of that Commission on concrete proposals acceptable to the U.S., and divert the Commission from consideration of the abstract principles which have become so troublesome in the negotiations with the other five districts.

5. Although difficult to pin down, there is some evidence of efforts by Japanese business interests to influence Saipan's leadership away from close association with the United States. These efforts (not to our knowledge supported by the Japanese Government) are allegedly having some impact on a small number of influential Saipanese business leaders and could become troublesome with the passage of time.

The above factors clearly suggest that time is operating against the U.S. It is very much in the U.S. interest to move swiftly and

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forcefully toward establishment of a close relationship with the Marianas.

B. Negotiating Schedule

The following lays out for planning purposes an illustrative schedule for negotiating and implementing a change of status for the Mariana Islands District. (Admittedly timing is in the area of tactics and falls within the discretion of the President's Personal Representative). The suggested goal is to achieve interim implementation of a new status for the Marianas by no later than the end of 1974 or early 1975. While this goal may later prove unrealistic, a timetable is valuable for planning how to approach these complex negotiations. There will be ongoing consultations with the U.S. Congress, as appropriate, throughout this process.

Step One, Early April 1973:

The President approves negotiating instructions for his Personal Representative containing the nature of the political relationship, the level of U.S. land requirements, and the level of U.S. financial assistance to be negotiated with the Marianas.

Step Two, April 1973:

After Congressional consultations, forward to the Mariana Status Commission an outline of the Presidentially-approved status proposal to focus that body's early consideration on arrangements satisfactory to the U.S. Hopefully, this will help to direct the first substantive negotiations in April-May toward concentration on concrete, substantive elements of a future relationship, rather than on abstract principles.

Step Three, Spring and Summer 1973:

Beginning in late April 1973 and continuing as long as necessary into the spring and summer, negotiate and conclude with the Mariana Status Commission a basic agreement on the future status of that district and U.S. military land requirements.

Step Four, Summer 1973:

Obtain informal concurrence of interested committees of the U.S. Congress to this agreement.

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Step Five, Fall 1973:

Marianas District Legislature consideration and approval of status agreement.

Step Six, Fall or Winter 1973:

Plebiscite (act of self-determination), sponsored jointly by the Mariana District Legislature and the United States Government, on agreed status package.

Step Seven, Winter 1973:

Assuming successful outcome of the plebiscite, the Executive Branch's initiation of the necessary legislation and/or pertinent Executive Order providing for interim implementation of the status package during the remaining years of the Trusteeship. Implementation of those portions of an order not requiring successful conclusion of a constitutional convention would result in partial but essential first steps toward administrative separation of the Marianas from the TTPI.

Step Eight, Winter 1973 - Spring 1974:

If the Commonwealth proposal is to be the basis of a new relationship; set in motion the machinery for convening a constitutional convention.

Step Nine, Summer or Fall 1974:

Adoption of constitution by popular referendum.

Step Ten, Fall - Winter 1974:

Full implementation of interim legislation or Executive Order culminating in the establishment of Marianas Government. At this point, administrative separation of the Mariana Islands District from the TTPI will be fully effective.

Step Eleven, Indefinite Timing:

Following an act of self-determination by the remainder of the Trust Territory, the initiation of action in the U.N. Security Council to end the Trusteeship throughout Micronesia or unilateral termination of the Trusteeship.

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X. RecommendationsA. Matters Requiring Presidential Approval

It is recommended that the Under Secretaries Committee endorse and request Presidential approval of the following positions:

1. Negotiating Objectives

-- U.S. Primary and Secondary negotiating objectives are those listed in paragraph II.A.3. and in the draft negotiating instructions for the President's Personal Representative. It is in the U.S. interest to conclude an agreement on the future status of the Marianas at the earliest possible date.

2. Future Status

-- Commonwealth, as discussed in Section II, is the optimum future status for the Mariana Islands. However, should the Marianas unexpectedly prefer unincorporated territorial status or integration with Guam (and provided integration appears feasible), the President's Personal Representative is authorized to negotiate either.

-- If the Marianas representatives insist on a non-territorial relationship the President's Personal Representative shall seek further instructions.

3. Land

-- The President's Personal Representative, in coordination with interested agencies, will negotiate land acquisition (preferably purchase, but failing that, long-term lease arrangements for 50-99 years) in the Marianas to meet the U.S. land requirements outlined in Sections IV.A. and B.

-- These arrangements are to become effective prior to or upon termination of the Trusteeship.

-- The President's Personal Representative, in coordination with interested agencies, will negotiate as necessary the relocation of Tinian's population at a reasonable cost.

-- The President's Personal Representative will seek the unrestricted federal right of eminent domain, retreating to a qualified right similar to that in the U.S. Commonwealth proposal

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of 1970 only if necessary to conclude an otherwise satisfactory status agreement.

4. Finance

-- To obtain the Marianas' acquiescence in a territorial relationship, the U.S. is prepared to offer the following:

-- Initial direct grant assistance in a range up to \$12 million annually.

-- The extension of appropriate U.S. federal programs.

-- Appropriate compensation for land acquisition.

-- Short-term transitional assistance.

5. Interim Arrangements

-- To the extent practicable the future status negotiated with the Marianas will be implemented as soon as possible after negotiations and a plebiscite in the Marianas endorsing the results. Implementation will be accomplished in a manner consistent with Congressional views, which will be ascertained by the President's Personal Representative.

6. Possible Amendment of Secretarial Order Creating Micronesian Congress

-- If legislation of the Congress of Micronesia seriously threatens to jeopardize the separate U.S. negotiations with the Marianas, the Secretary of the Interior will, in consultation with the President's Personal Representative for the Micronesia/Marianas Negotiations, and the Under Secretaries Committee decide on the advisability of amending the Secretarial Order establishing the Congress to remove explicitly from its purview authority to legislate for the Marianas in matters pertaining to the latter's future status.

7. U.S. Congress

-- The President's Personal Representative will consult with Congress throughout the negotiating process.

B. Recommendations to the President's Personal Representative

The recommendations contained in Section X.A. will, if approved by the President and incorporated in negotiating

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instructions, constitute guidance for the President's Personal Representative on the main points at issue in the Marianas negotiations. The following additional recommendations are relevant either to the negotiations or to the subsequent implementation of their results.

1. Land

-- The possible solutions to the land acquisition problem offered in Section V.D.2. should be examined with a view to exploring the matter with the Marianas Delegation.

-- U.S. positions should include the approach to land alienation described in Section IV.F.

2. Termination of the Trusteeship

-- A position should be formulated taking into account the considerations in Section VII, on the holding of a plebiscite, and be discussed with the Marianas Delegation at the appropriate time.

-- Preliminary consideration should be given to U.S. tactics to be used in the Trusteeship and Security Council when terminating the Trusteeship, following an agreement on future status with the rest of Micronesia.

3. Timing Scenario

-- Note should be taken of the "timing scenario" in Section IX.

C. Draft Terms of Reference

There is attached hereto (as part of the Summary at the head of the study) a set of draft negotiating instructions from the President to his Personal Representative. It is recommended that the Under Secretaries Committee endorse the draft instructions and transmit them to the White House for approval.

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Authority

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By

NARA Date

1/21/05

ANNEX I

THE WHITE HOUSE
WASHINGTON

November 1, 1972


CONFIDENTIAL

MEMORANDUM FOR

Ambassador Franklin Haydn Williams
The President's Personal Representative for
Micronesian Status Negotiations

SUBJECT: Micronesian Status Negotiations

We would appreciate your undertaking a reassessment of the U. S. negotiating position on the Micronesian status question in the light of the results of the last negotiating round in Hawaii. Your study should include the options available to the U. S. as well as your recommendations for a course of action and should be submitted for the President's consideration, through the Under Secretaries Committee, by November 20, 1972.



Henry A. Kissinger

GDS 1978
BY AUTH
Henry A. Kissinger

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