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United States Department of State

Washington, D.C. 20520

May 17, 1984

MEMORANDUM

TO: Ms. Cecilia Wirtz
General Counsel's Office
Office of Management and Budget
Old Executive Office Building, Room 467

FROM: Haley D. Collums *HDC*
Legal Adviser's Office (L/T)
Department of State, Room 5420

SUBJECT: Proposed Presidential Proclamation on the
Northern Marianas Islands

As requested, here are detailed comments supplementing the Department of State's previous letter on the subject proclamation. These matters were discussed at the interagency meeting in your office on May 11.

In the draft proclamation, section 2 (statutes relating to federal employment), delete paragraph (f) and redesignate the following paragraphs accordingly. As discussed, paragraph (f) concerns the Foreign Service Act of 1980 and should be deleted for the reasons stated in the Department's prior letter.

Regarding section 3 (statutes relating to protection and services in foreign countries), we have agreed with Mr. Marcuse of the Department of Justice on the following changes.

Paragraph (a). Delete the reference to section 351, so the paragraph would read: "Section 1486 of title 10, United States Code;" Reason: section 351 provides for the arming of American vessels during war or a threat to the national security; Article 5 of the Trusteeship Agreement already authorizes the United States to take appropriate measures for the local defense of the Trust Territory.

Paragraph (b). Delete. Reason: this paragraph concerns customs measures. The Northern Marianas are not part of the customs jurisdiction of the United States.

Paragraph (c). Delete. Reason: this paragraph concerns measures to be taken against countries which expropriate property owned by United States citizens. It is akin to other measures on this subject, e.g. 22 U.S.C. 2370 (e)(1) and (2) (the Hickenlooper Amendment), discussed in the Department's prior letter.

Paragraph (d). Delete. Reason: this provision authorizes the President to seek the release of U.S. citizens unjustly imprisoned by foreign governments; Article 11 of the Trusteeship Agreement already authorizes the United States to afford diplomatic and consular protection to inhabitants of the Trust Territory.

Paragraph (e). Delete. Reason: this provision concerns the Secretary of State's responsibilities for U.S. citizens imprisoned abroad; Article 11 of the Trusteeship Agreement already applies, as stated.

Paragraph (f). Delete. Reason: these provisions concern the President's authority to assist U.S. citizens in obtaining redress from foreign governments for violations of commercial (FCN) and tax treaties, and compensation for expropriations, e.g. 22 U.S.C. 2370 (e)(1) and (2) (the Hickenlooper Amendment). Article 11 of the Trusteeship Agreement already authorizes the United States to afford appropriate diplomatic and consular protection to inhabitants of the Trust Territory. As discussed in the Department's prior letter, it is not appropriate to extend the benefits conferred on U.S. citizens under FCN, tax and other treaties to persons who are not U.S. nationals.

Paragraph (g). Amend to read: "Section 3(g) of the Act of August 1, 1956, c. 841, 70 Stat. 890 (22 U.S.C. 2670 (g))." Reason: the subsection retained authorizes the Secretary of State to pay expenses for the rescue of American seamen, airmen or citizens; it may properly be extended to citizens of the Northern Marianas. A foreign vessel providing such services probably would look to the United States as administering authority to pay for the rescue of citizens of the North Marianas, in any event, under Article 11 of the Trusteeship Agreement.

Paragraph (h). Delete. Reason: this paragraph authorizes the provision of consular services to U.S. citizens in Taiwan. As stated, under Article



11 of the Trusteeship Agreement, the United States already is authorized to afford appropriate diplomatic and consular protection to inhabitants of the Trust Territory outside the limits thereof.

Paragraph (i). Delete the references to sections 1707, 1709 and 1711 of the Revised Statutes of 1878, as amended (22 U.S.C. 4193, 4195 and 4197), so that the paragraph would read: "Sections 1734 and 1737 of the Revised Statutes of 1878, as amended (22 U.S.C. 4217 and 4218);" Reason: the sections deleted authorize the provision of certain consular services to U.S. citizens. As stated, appropriate consular protection for inhabitants of the Trust Territory is already authorized under the Trusteeship Agreement. The sections retained impose penalties on consular officers for embezzlement or false certifications regarding property owned by U.S. citizens. As such, they are deterrents to misbehavior by such officers, and may be extended to protect the property of citizens of the Northern Marianas if, perchance, it comes into the possession of U.S. consular officers.

Paragraph (j). No change.

Paragraph (k). Delete the reference to section 4294 of the Revised Statutes (33 U.S.C. 382), so that the paragraph would read: "Section 4295 of the Revised Statutes of 1878 (33 U.S.C. 383);" Reason: the section deleted authorizes the President to utilize the public armed vessels of the United States to suppress pirates. As stated, Article 5 of the Trusteeship Agreement already authorizes the United States to take appropriate measures for the local defense and to maintain law and order within the Trust Territory. The section retained authorizes a right of self-defense by merchant vessels attacked by pirates.

Paragraph (l). No change.

Paragraph (m). Delete. Reason: this paragraph calls upon the President or federal agency taking action under the petroleum allocation laws to foster reciprocal and non-discriminatory treatment by foreign countries for U.S. citizens engaged in commerce therein. In part, this legislation implements treaty rights accorded to U.S. nationals, which cannot properly be extended to non-nationals.



As stated, Article 11 of the Trusteeship Agreement already authorizes the United States to take appropriate steps for the diplomatic and consular protection of Trust Territory inhabitants abroad.

Paragraph (n). Delete. Reason: this paragraph concerns various provisions of the Trading with the Enemy Act of 1917, 50 U.S.C. App. U.S. citizens are exempted from certain restrictions and accorded certain benefits therein. Since this Act is intimately involved in the execution of the national defense and foreign affairs powers of the United States, it would not be appropriate to extend such benefits to non-nationals.

Regarding section 5 (statutes relating to political and civil rights), the Department reaffirms the objection made in its prior letter concerning the proposed extension of the benefits of prisoner transfer treaties to Northern Marianas citizens. As discussed, eligibility for transfer is limited expressly by the texts of the treaties to nationals of the United States and the other country concerned. Allowing Northern Marianas citizens to transfer would be inappropriate because:

(1) It could set a precedent for the application of other U.S. treaties (e.g. consular, double taxation, friendship, commerce and navigation (FCN), social security, extradition), wherein persons receive certain rights, benefits, privileges or immunities based upon their status as U.S. nationals;

(2) A prisoner so transferred could challenge the validity of his transfer in habeas corpus proceedings on the ground such treaties do not apply to citizens of the Northern Marianas; if successful, the prisoner would obtain outright release from custody or conditions placed on parole; see, e.g., Reynolds v. Ralston, U.S.D.C., W.D.Mo., No. 79-3234-CV-S-WRC, 1980;

(3) It would increase public and Congressional pressure to extend the benefits of such treaties to other groups of non-nationals, who have ties to the United States, e.g. permanent resident aliens.

For these and other reasons stated in its prior letter, the Department urges the following change in section 5 of the draft proclamation.



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Paragraph (c). Delete the reference to subsection (b) of section 4100, so that the paragraph would read: "Sections 241 and 243, subsection (b)(5) of section 245, and subsection (a) of section 4001 of title 18, United States Code;"

I hope these comments will be helpful in preparing a revised proclamation. Please call if there are any further questions (632-2716).

cc: Justice - Mr. Marcuse
L/UNA - Ms. Willson
L/CA - Mr. Hergen
IO/UNP - Ms. Barnett
EAP/PIA - Mr. Millspaugh