01/6

M. Stowe

Marianas Studies

Ron —
Would you please look at this. JD thinks we should be able to agree with it and so inform the USC
Charlie

OK RS

MAR 29 1973

Mr. Seymour Weiss
Acting Staff Director
Under Secretaries' Committee
National Security Council
Department of State
Washington, D. C. 20520

Dear Mr. Weiss:

This is in response to your letter dated March 23, 1973--received by the Department of Justice in the afternoon of March 26, 1973--in which you ask for the comments on, and/or concurrence of this Department, in a study prepared by the Interagency Group for Micronesian Status Negotiations on the Future Status of the Marianas.

The Department of Justice regrets that it cannot concur unconditionally in the staff study and the recommendations contained in it, as finalized at the last two meetings of the Interagency Group. Unfortunately, short deadlines regarding congressional testimony prevented the Department representative from attending the last two meetings. Nevertheless, the Department of Justice believes that it must call attention to deficiencies which in its view may jeopardize or at least prolong the negotiations.

I.

Nature of the Political Relationship

The Department of Justice is in basic agreement with the recommendation that Ambassador Williams initially should propose the type of Commonwealth relationship described under B-4 on p. 11 of the Study, or, if the Marianas prefer,

SECRET

CLASSIFIED BY LSD
AUTOMATICALLY DECLASSIFIED as determined by Dept of State

401226

should negotiate either for a union of the Marianas with Guam or for unincorporated territorial status. The instructions are ambiguous, however, as to the scope of Ambassador Williams' authority in the likely contingency that the Marianas should seek a Commonwealth relationship looser than the one described on p. ii of the Study.

According to the draft instructions, Ambassador Williams' present negotiating power does not extend to a status other than a "territorial" status. Pp. xxii, 17. The Study, however, does not define territorial status, i.e., whether the test of territoriality is merely the recognition of U.S. sovereignty (p. 12), or a relationship at least as close as the type of Commonwealth relationship described under B-4 on p. ii. If the latter is the test, the relationship between the United States and Commonwealth of Puerto Rico, which utilizes a compact concept not found in the definition on p. ii, would have to be considered non-territorial. The Study suggests (at p. ii) that the Puerto Rico-type of relationship is not "truly" territorial, but not "truly" territorial is not necessarily "non-territorial."

Clarification of this issue is urgent, since, as indicated above, the Marianas are likely to ask for a relationship looser than the one described on p. ii. Ambassador Williams should be in a position to determine whether he is in a position to accede to such demands without seeking further instructions, which, in view of the communication problems on Saipan, would almost certainly require an adjournment.

The Department of Justice is not aware of any serious obstacle to the grant to the Marianas of a Puerto Rico-type relationship if they insist on it, as long as U.S. sovereignty is unequivocally recognized. Moreover, it appears to us that any narrower negotiating authority would make it very difficult to comply with the instruction to arrive as soon as possible at an agreement with the representatives of the Mariana Islands, and to meet the objective of establishing a relationship which will obtain United Nations approval, or at least that of a majority of the Security Council and of the Trusteeship Council.

SECRET

401227

Regarding the instruction to reach a speedy agreement, it has been indicated above that there is a strong likelihood that the Marianas will not during the first round of talks accede to the type of Commonwealth relationship provided for under B-4 on p. ii. Ambassador Williams should have the authority to bring the negotiations to a successful conclusion at the first round of talks, if he can do so by agreeing to a Puerto Rico-type relationship.

Regarding the objective of United Nations consent, the approval of the type of Commonwealth relationship described on p. ii by the United Nations, or at least the majority of the Security Council and of the Trusteeship Council may be difficult to obtain. In 1953, the position of the United States that the status of the Commonwealth of Puerto Rico amounted to self-government within the meaning of Article 73(e) of the U.N. Charter met with considerable opposition in the United Nations. In the twenty years which have passed since then, the composition of the UN has changed radically, and attitudes toward "colonial issues" have hardened. In those circumstances an arrangement under which the U.S. would have a stronger measure of control over the internal affairs of the Marianas than it has over those of the Commonwealth of Puerto Rico (p. 17) may have a very difficult time.

The Department of Justice therefore recommends that the third paragraph of Draft Instruction, 2. Status, on p. xxii be amended approximately as follows:

> You may accede to proposals of the Marianas for a type of Commonwealth relationship other than the one described on p. ii, as long as it recognizes U.S. sovereignty. If pressed for a status which does not recognize U.S. sovereignty, you should note that your instructions are to negotiate a close relationship, in contrast to a "free association" in response to the Marianas' expressed wishes. The discussion of any form of association so loose as to deny U.S. sovereignty, therefore would logically call into question the desirability of conducting negotiations separate from the rest

of Micronesia. If, nonetheless, the Marianas negotiators continue to insist on a status which does not recognize U.S. sovereignty, you should seek further negotiating instructions.

II.

Land Requirements

The Department of Justice is fully aware of the advantages attributed by the Interagency Group to the agreement by it reached on the method in which the land requirements are to be presented to the Mariana representatives.

The Department of Justice nevertheless feels that it is impossible to determine from Washington whether and to what extent the surfacing of the maximum land requirement, in particular the acquisition of the entire island of Tinian and the relocation of its population, may seriously jeopardize the negotiations, and "upset the current momentum." P. 34. This matter depends on attitudes of people whose culture and values are quite different from ours, and is too serious to be determined by speculation. To paraphrase the statement of Daniel Webster: "Tinian may be a small island, and yet there are those who love it."

The Department of Justice therefore hesitates to concur in the mandatory negotiation instructions that the President's Personal Representative begin negotiation with the maximum land requirement and then fall back to other alternatives if he cannot negotiate the first one. The Department of Justice suggests that it might be preferable, in this delicate and unpredictable situation, to leave to the Ambassador's discretion 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 outcome of the negotiations of surfacing at the outset the maximum land requirement.

In addition to these comments the Department of Justice submits the following observations with regard to the Study itself:

1. It is pointed out on p. 19 of the Study that the Marianas may require a provision for termination or change of relationship by mutual consent. The Study does not appear to contain any discussion of or guidance on this issue except to state, on p. 21, that a Commonwealth status, especially with a termination provision, stands the best chance of gaining UN approval.

2. In support of the proposition that the United States should have the right of eminent domain in the Marianas, it is stated, at p. 37, that the Marianas will have the benefits of full membership in the American political family. P. 37. If the delegation should make the point in that form, the Marianas may reply that they would not have the right to vote for President and that they would lack voting representation in Congress. This argument therefore must be made more guardedly, e.g., that the Marianas would have substantially the same material benefits and services as the rest of the American political family.

3. On p. 39, second complete paragraph, the second sentence reads:

> "It is in the U.S. interest to negotiate for the purchase of those lands, but if that proves impossible long-term leases will suffice."

According to p. 34 of the Study, however, the U.S. cannot acquire title to land prior to the termination of the Trusteeship Agreement, and is limited to leases up to that time. For that reason the above sentence should be modified by inserting the words "effective upon the termination of the Trusteeship Agreement" after the words "purchase of those lands."

4. In the section on Termination, it is stated (at p. 55, third paragraph) that--

> "* * * 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."

SECRET

401730

In the view of the Department of Justice an attempt to obtain the Security Council's consent to termination would constitute an admission that such consent is legally required and would make it difficult to claim subsequently that such consent is not needed.

Sincerely,

Joseph T. Sneed
Deputy Attorney General

SECRET

401731