

Marianas Memo

Broad Outline

I. Introduction [less than a page]

- A. There are many issues facing the Marianas people regarding their future political status. Moreover, for most of these issues, there are a number of alternatives which could be selected. The law itself does not set many parameters on the decisions.
- B. The purpose of this report is to highlight the issues and suggest the alternatives. The organization is to: (1) report on our research and (2) discuss the specific issues and alternatives.
- C. Based on the legal limits which do exist, the experience of some analogous island entities, and on our tentative perceptions of the U.S. views and the wishes of the Marianas Political Status Commission, we are able to make some recommendations. These are included in the text and summarized at the end.

II. Our Research [1-2 pages]

A. Analogies

- 1. We started here. Analogies, which are carefully researched, provide a wealth of information on what are the important issues, what is possible, and how various efforts have worked. The analogies included ...[list]. They are attached.
- 2. These analogies not only include other island groups, but also the U.S. Commonwealth proposal (May 1970) to the Micronesians and the draft Compact of Free Association. It is important to remember and use this negotiating history since it demonstrates: (1) that the U.S. position can change and (2) that the U.S. has been willing to grant Micronesians considerable political autonomy.

B. Specific Legal Issues

- 1. We have also done much additional research of a more specific nature. Much is reflected in this report.

2. See also the more detailed memoranda on: (a) citizenship vs. non-citizen nationality; (b) restrictions on land holding...[other].

III. Specific Issues

A. Type of Political Status

Labels (or categories) are somewhat misleading. For example, there are significant differences between the Puerto Rico Commonwealth and the U.S. Commonwealth proposal.

The best way to proceed is to acquaint oneself with the possible labels (categories) and pass on to more specific issues -- e.g., citizenship, amending the political status. After deciding the position on the specific issues, we can determine which category is best applicable.

Briefly, there are four major categories.^{1/} (Independence is not discussed since this seems outside the mandated instructions and objectives of the Marianas Political Status Commission.)

1. Unorganized, Unincorporated Territory

- a. A brief note on the doctrine on unincorporated vs. incorporated territories.
- b. Category 1 essentially means the U.S. Constitution would provide only minimal protection and that there would not be an Organic Act. Result: The Marianas would be very much at mercy of the U.S. Executive and Congress. Discuss American Samoa briefly.
- c. Also, probably unacceptable to U.N.
- d. Some argue that category 1 plus U.S. non-citizen nationality makes it easier to have restrictions on land holding. We do not believe this is legally accurate. Moreover, we believe that the Marianas could select other categories and still politically obtain some restrictions on land holdings. (See lands memo, including Alaskan analogy.)

^{1/} I see no need to use Mr. Wilson's organization, though we can refer to it as appropriate.

e. Hence, recommend against. Serious disadvantages with few, if any, advantages.

2. Organized, Unincorporated Territory

- a. Generally, this affords more autonomy and protection from U.S. government than category 1 since there is an Organic Act. While Act can be amended, this is more difficult than the simple issuance of an Executive Order.
- b. However, U.S. can impose its will. E.g., creation in 1968 of a Comptroller General, appointed by Secretary of Interior. Termination and amending of status is entirely at will of U.S.
- c. This status might create problems with U.N.
- d. There are really two options here -- the Marianas could become a territory by itself or in association with Guam.

1) By Itself. In negotiations, the Marianas could influence the content of the Organic Act.

2) Associated with Guam.

a) In large part, this is a broad political decision. E.g., the advisability of associating with an entity which is much more populous

b) Some specific issues of importance.

(i) Land. Guam has no restrictions on land holdings.

(ii) Military requirements. The President has great discretion here.

e. Hence, as will become clearer later, advise against. Many disadvantages.

3. "Commonwealth-Compact"

a. The terms are especially vague.

b. Basic characteristics

1) Considerable internal autonomy

- 2) U.S. control over foreign affairs (though this would not rule out some international participation, especially on a regional level).
 - 3) The fundamental relationship cannot be changed without the consent of both parties. Lesser issues subject to some unilateral modification
- c. Compare in some detail Puerto Rico with the U.S. Commonwealth proposal.
 - d. This would probably be acceptable to U.N. as an exercise of self-determination and self-government.
 - e. We believe this is flexible enough vehicle that the Marianas should carefully consider it. If it is selected, the islands would strive more for the autonomy of P.R. than accepting the earlier U.S. proposal
4. Free Association
- a. This is essentially the same as category 3. (Note the Puerto Rican ambiguity in language). The real difference seems to be that a greater independence is suggested. Specifically, there would be a right to unilateral termination of the agreement.
 - b. This goal might reduce the U.S. inclination to negotiate separately with the Marianas. Even if the U.S. accepted the approach of free association, it would want to qualify carefully the right to unilateral termination.
 - c. Discuss the draft compact of Free Association and briefly note the Cook Islands and St. Vincent's Island.
 - d. U.N. is very likely to accept this.
 - e. The Marianas should carefully consider this alternative, but the benefit of a qualified right to unilateral termination does not seem worth the risk of undercutting the negotiations. "Commonwealth-Compact" seems more attractive.

B. Broad Incidents of Political Status

1. Citizenship vs. Non-Citizen Nationality
 - a. Discuss and also refer to separate memo.
 - b. Recommend for U.S. citizenship.
2. Application of U.S. Constitution and U.S. Laws
3. Internal Autonomy and Political Structure (Include, inter alia, representation to Congress and possibility of a Comptroller General)
4. Control over Foreign Affairs
5. Mechanism for Amending the Relationship
6. Mechanism for Terminating the Relationship

C. Land Issues

1. Military Land Needs
2. Federal Non-Military Land Requirements
3. Disposition of Public Lands
4. Restrictions on Land Holding
5. Federal Eminent Domain

D. Economics

1. Taxes
2. Customs
3. Eligibility for Federal Programs and Grants
4. Eligibility for International Assistance
5. Government Revenues and Expenditures -- Generally

E. Transitional

1. Legal Arrangements (We should emphasize ones which will be "permanent" even during transitional period -- e.g., leases, corporations.)

2. Financial Arrangements
 3. Procedures
- F. Termination of the Trusteeship
1. Legal Arrangements
 2. Procedures

CONCLUSIONS