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DEPARTMENT OF DEFENSE
OFFICE OF GENERAL COUNSEL
WASHINGTON, D. C. 20301

April 25, 1973

MEMORANDUM FOR LTC WILLIAM R. KENTY, OJCS, J-5

SUBJECT: Marianas Federal Relations Agreement

Pursuant to your request, I raise the following concerns regarding the Department of State draft:

A. Preamble.

1. Refers to the Trust Territory under the "administrative authority" of the United States, but fails to provide a basis or foundation for the Marianas District - under that authority - to determine for themselves as a District, apart from the total Micronesian territory, of Micronesia to become part of the United States territory.

2. Reference should be made that the peoples of the Marianas have chosen to achieve self-government as a part of the territory of the United States, not by "entering into a close and permanent political relationship...etc."

3. The plebiscite provision is not clear: query whether it must be decided by a majority or larger plurality, whether by the people or their representatives, by adults, and if so what constitutes an adult, by persons franchised to vote, etc. (Part of this need not be specified here, but must be footnoted to this provision).

TITLES I and II

1. Section 101(a) not entirely clear: will the Marianas be a self-governing commonwealth operating autonomously, or as earlier intended to be assimilated within Guam?

2. The terms "self-governing commonwealth" by themselves convey no particular meaning.

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3. Query whether the United States should not provide by law for assimilation of the Marianas as a territory of the United States - following the practices for Guam - and seeking the consent of the Marianas to respect and consent to that law, or whether, as adopted here, the "precedent" of Puerto Rico should be followed. (See 48 U.S.C. Sections 731 et seq; and 1421 et seq)

4. Since the Puerto Rico model is being followed here, a comparative table of articles should be made to indicate the differences in the present proposals and those used for Puerto Rico in order to make a more effective analysis.

5. There is no showing what role if any the United Nations shall assume in this process - through observers, its criteria for self-determination, etc.

6. Amendments to be made must be consistent with the provisions of the present Act and also consistent with the United States Constitution. (Change 205 accordingly).

TITLE III

1. Section 301 somewhat unclear. Indicates that the Constitution shall contain the following provisions, etc. in place of existing language. See 48 U.S.C. sec 737 for incorporation of "bill of rights" in detail in Puerto Rico Act.

2. Note Puerto Rico Act with respect to tax laws, which might more closely be followed in Section 301(b).

3. Query the reference to making the laws of Marianas consistent with laws of "the territories of the United States." No such reference in Puerto Rico Act.

TITLE IV

1. Section 402 uses undefined term "outlying possession of the United States."

2. Bear in mind Federal Courts and judicial provisions are incomplete.

3. Section 441 relating to government property is the "eminent domain" section. See my memorandum dated 25 April 1973 on this subject for clarification, and determine on basis of policy what is most appropriate means to deal with United States present and future needs in Marianas lands.

4. Proposed sections on acquisition of lands differs from language in Draft Compact for Micronesia - which I believe preferable; determine whether such language should not be substituted here. Note also that Section 101(c) refers to and incorporates United States Constitution Article 4, Sec. 3 Cl. 2 which provides very wide powers - exceeding those of Section 441 with respect to power over lands. Compare provisions relating to lands in Puerto Rico Act.

5. Note special problem that Government of the Marianas under Section 441 must "agree" with the United States that there is a "need for the acquisition by the United States" of lands, etc. This means that at this stage the Government has a "veto" power over such decisions. Note that the Marianas court decides the question of value, not the United States Federal District Court (in Guam). Appeal is then made from that local (high) court to the Ninth CCA - query having the matter decided through this chain, or through federal courts entirely. Note that if there is a deadlock as noted above over the agreement to acquire lands, the United States can circumvent the veto of the Government of the Marianas by court proceedings in United States courts, applying Federal law procedures and practices. Thus there is interwoven Mariana decisions and determinations and United States decisions and determinations. These proceedings will not necessarily resolve political conflicts and resentment and may intensify them.

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cc: Captain Schuller, ISA/EAPR
Mr. Barringer, ISA/FMRA