

TO : Ron Stowe - L/State
Tom Johnson - L/EA/State

From : A. de Graffenried, Legal Advisor OMSN

Subject : Draft Agreement with the Marianas

On review of your proposed draft agreement, I raise the following questions for your consideration :

- ✓ 1. You have proposed a US Congressional 'Act'; is it proper for the US delegation to be negotiating Congressional Legislation or would it be better to utilize a negotiated document (under whatever name : instrument, article, etc) which will be ratified by the US Congress in a joint resolution ?
2. You have classified the new territory as the "The Mariana Islands"; originally, we proposed a "Commonwealth" status and titled the new status for the Marianas as the "Commonwealth of the Mariana Islands". Although you do include reference to a 'self-governing commonwealth', wouldn't it be better from a tactical view to fall-back to our original proposal ?
3. As regards the 'power to sue', it would be more appropriate to permit the same with the consent of the "Legislature" rather than the "Government" so as to avoid confusion as to which specific authority shall extend its consent.
4. Original procedures for conducting and representation at the Marianas Constitutional Convention have been deleted; considering local attitudes, would it be better to include provision for representation from the now existing electoral districts within the Mariana Islands to insure that each will have at least one delegate ?
5. Should the High Commissioner have powers of certification of the Constitutional referendum or should he merely convey the results to the President ? If the latter, how do we insure a proper referendum and present the same to the UNTC at a latter date ?
- ✓ 6. Section 205 deletes reference to the requirements that amendments to the Constitution not be contrary to the US enabling legislation, US Constitution, or the agreement and also deletes mention that the amendments be ratified by a majority of qualified voters; to insure continuity and conformity and avoid future conflicts shouldn't we include these measures ?

✓ 7. There is no provision for a continuation of local laws, applicable TTPI Code provisions, district legislation, etc.; to insure a smooth transition into the new status shouldn't we make such a provision ?

8. A requirement for a republican form of government has been omitted ; since this is a standard provision in other territorial legislation, shouldn't we also include this in our proposal ? While this may not permit the local residents to adopt a parliamentary type of government or another of local choice, it does insure that the future integration with Guam would not be further hindered.

9. As to the requirement that local legislation conform to US legislation, etc., don't we need a provision to insure against conflict of local laws with prospective US legislation? As now drafted, it could be interpreted that local legislation could not conflict with US laws now existing and applicable to the Mariana Islands.

✓ 10. Shouldn't we note the specific parts of the US Constitution we want applicable to the Mariana Islands : Art. I §9, cl. 2-3; §10; Art. II §2, cl. 1-2; Art. IV §1, §2 cl.1, §3 cl.2; Amend. 1-9; 13; 14 §1 sent.2; 15; 19 ? These insure that US Sovereignty is applied and extends US authority for defense and foreign affairs and territorial authority.

11. On import levies, don't we want to include the TTPI since we will (1) administer the two separately and (2) will have some customs agreement with Micronesia that must be applied equally to goods from Micronesia into the Mariana Islands ? Also, we shouldn't delete reference to 'goods of US origin' wherever they may be sent from, nor should we want to exclude language covering 'goods from US territories entitled to duty free entry into the US'.

✓ 12. Provision for US eminent domain should be included in the draft without mention of the 'qualified' procedure utilized under the old 'Commonwealth' agreement offered to Micronesia.

✓ 13. Would we want the Guam Comptroller to extend his jurisdiction to the Mariana Islands ? The US Congress is currently considering such a move for the TTPI.

✓ 14. Specific application of the US Federal income tax is noted, but haven't we forgotten to deem it a 'separate Territory income tax' as in Guam Organic Act (§1421 i(b)) ?

15. What happened to the previous draft section on 'Real Property' which included provision for restriction of alienation of real property to persons of Marianas ancestry ? Since the MSC already is aware of our position on this matter, wouldn't we be more credible to include the same here ?

16. Should we limit the right of the USG to acquire interests in land to a fee 'subject to a condition subsequent' or should we permit the USG to obtain a full fee interest in real property ?

17. For potential application of US statutes and US programs and services, don't we expect to actually negotiate these items with the MSC ? Consequently, a commission would be an additional element with which we must contend and might be best omitted.

18. Wouldn't it be better to have two drafts, one to forward the MSC which would be our maximum proposals and one with which we can use as the ultimate position we are permitted negotiate to permit us a more readily comparable position on each item ?

Many of these are, of course, subject to tactical considerations and to the final position of the President after review of the USC report.