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5 June 1973

**MEMORANDUM FOR CAPTAIN GORDON SCHULLER, USN  
ISA/EA&PR**

**SUBJECT: Marianas Negotiations - Joint Communiqué United States Sovereignty.**

The Joint Communiqué, concluding the May-June 1973 meetings on the Marianas - dated June 4, 1973 (Defense 27198) contains language that is not entirely clear or consistent. It should be carefully reviewed with the Department of Justice.

Paragraphs 1 and 2 indicate that the Marianas shall "exercise a maximum amount of self-government consistent with relevant portions of the United States Constitution (sic) (i. e. Constitution) and Federal Law. Sovereignty would be vested in the United States." They further note that the "Commonwealth relationship would be subject to modification only by mutual consent." (underlining added).

The United States Constitution provides in Article IV, Section 3, Clause 2:

"The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State."

Citing *Simms v. Simms* 175 U.S. 162, 168 (1899) (and other cases), Corwin (THE CONSTITUTION OF THE UNITED STATES OF AMERICA, Senate Document No. 39, 88th Cong, 1st Sess, USGPO, Washington 1964) at page 794 declares that in United States territories

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the Congress "has the entire dominion and sovereignty, national and local, and has full legislative power over all subjects upon which a State legislature might act." Although the Congress - according to Corwin - may transfer legislative power to a legislature elected by the citizens of the Marianas, the transfer of that power and its exercise shall be subject to the limitations imposed by the Constitution and "acts of Congress."

Accordingly, the proposal made in this Joint Communique for modification of a Commonwealth relationship "only by mutual consent" raises the question whether such an arrangement can bind a future Congress, and whether it properly reflects the fact that acts of Congress in the future - notwithstanding the possible modification of the Commonwealth arrangement by such acts can and will operate to supersede that arrangement. As noted above, this is a matter which should be determined by the Department of Justice.

In Paragraph 4 of the Joint Communique it is declared only that the Marianas Constitution "would be drafted by a local constitutional convention; and would be subject to the approval of the peoples of the Marianas." In the procedures adopted for Puerto Rico, and in the federal legislation relating to the establishment of the Commonwealth of Puerto Rico (see 48 U.S.C. Sec 731d - entitled "Ratification of constitution by Congress"), it was provided that the Puerto Rican constitution would be "adopted by the people of the territory," and that then "The President of the United States if he finds that such constitution conforms with the applicable provisions (of the federal legislation relating to Puerto Rico) and of the Constitution of the United States" would be authorized to transmit the constitution to the United States Congress.

Since Paragraph 4 of the Joint Communique does not follow this procedure, I believe that we should consult the Department of Justice - to determine whether differing procedures are to be adopted here from those adopted for Puerto Rico and if so to advise us that such differing procedures conform with our constitutional and federal practices.

Mr. Barringer, ISA  
LTC Kenty, J-5

SIGNED

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