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

I-11293

25 September 1973

MEMORANDUM FOR CAPT. EDWARD C. WHELAN, JR., USN  
EA&PR, ISA, OASD

SUBJECT: Draft Proposal - Marianas Federal Relations Agreement.

Apart from corrections which I have proposed in handwriting on the draft of the Marianas Agreement (attached) I call the following important matters to your attention.

1. The action to be taken with respect to the Marianas affords us an additional basis for insisting on the self-government option instead of independence in the Micronesian negotiations generally with the understanding that self-government applies under the sovereignty of the United States. What we are doing for the Marianas here is to provide them with foreign affairs and defense powers but enabling them to provide for their own self-government. In other words, conforming to Article 6 of the Strategic Trust Agreement, we have taken positive steps toward affording self-government, but not affording independence.

2. I recommend in the General Principles that we clarify what the right of eminent domain shall be, i. e. a taking for a public purpose subject to payment of full and adequate compensation. Second. I recommend adding to the General Principles a Sixth Principle stating the following:

"These Principles shall be subject in any event to approval and acceptance by the United States under its constitutional practices."

3. Reference is made throughout the Agreement to a constitution which shall conform to the Articles in the Agreement. I suggest instead

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that we refer to the General Principles, the Articles, and the Preamble collectively as "this Agreement" and therefore make the constitution of the Commonwealth accord with the total Agreement and not simply part of it.

4. Provision is made in Section 301 that the Legislature "shall be popularly elected." Since these terms are not clear, I recommend that the Department of Justice provide terms that are clear, identifying what is meant. (See also Puerto Rican Legislation)

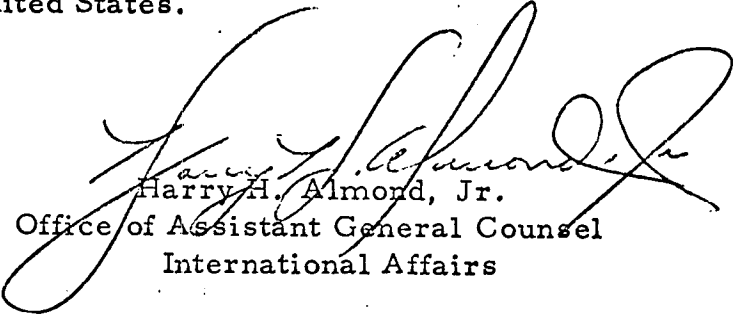
5. The Principles provide that residents of the Marianas shall have the option of having United States citizenship. Section 411 in the Articles which operates automatically provides that persons who are not chosen to acquire some other citizenship or nationality shall become citizens of the United States. These two provisions are therefore inconsistent and I recommend that Section 411 be modified accordingly. Modification will depend on what is intended in affording or establishing citizenship and I will therefore not attempt a redraft of this Section here. (See Puerto Rico Constitution, Article IX, Section 5)

6. Chapter 4, Section 441, is of crucial interest to the Department of Defense. In paraphrase, that Section transfers public lands presently held by the Trust Territory Government to the Marianas Government. It then provides a three year moratorium under which existing agreements providing for land use and retention by the United States shall not be impaired for the three year period except that such retention and use for this period must be "consistent with the public purposes of the United States." But after the three year period, these land agreements automatically terminate, unless the United States proceeds to acquire those lands. Re-acquisition is then to take place under negotiations or under the power of eminent domain. This means that existing use and retention rights which may have extended for a substantial period into the future, some of which may have been fully paid up by lump sum payments, will terminate with no provision for the United States to receive its proportionate share of moneys back. Subpara. (c) (2) does provide that we can apply such moneys in connection with the acquisitions made by new negotiations or by the eminent domain procedures which take place

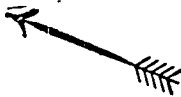
after the three year period. These Sections may mean in practice and implementation that the United States will be negotiating new terms for lands and retention which may be more onerous in many respects and which may provide for increased rents or lump sum payments over those originally agreed upon. This policy question others must decide. But it did not appear to me that this was the understanding which the Department of Defense had sought.

7. By way of several concluding remarks: (a) the establishment of a commonwealth in the Marianas must be reviewed against the present status of Guam (also in the Marianas), the impacts upon that (unincorporated) territory, and the like; (b) the extent to which more detailed "notice" should be given the residents of the Marianas as to the kind of constitution they should be considering must be determined: i. e. note that the constitution of Puerto Rico is a detailed document, and presumably would be a model (in substantive part) for the Marianas; (c) Section 101 is the operative article on sovereignty, and I strongly recommend adopting the suggestion I have made on the draft identifying such sovereignty as primarily the exercise of foreign affairs and defense powers by the United States.

Attachment

  
Harry H. Almond, Jr.  
Office of Assistant General Counsel  
International Affairs

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