



DEPARTMENT OF THE ARMY  
OFFICE OF THE JUDGE ADVOCATE GENERAL  
WASHINGTON, D.C. 20310

*1191* 03

REPLY TO  
ATTENTION OF:

DAJA-IA

03 OCT 1973

MEMORANDUM FOR: CAPTAIN EDWARD E. WHELAN, JR., USN, EA&PR, ISA, OASD  
SUBJECT: Commonwealth of the Northern Marianas

Pursuant to your request attached is some proposed language for inclusion in the OSD letter to the Office of Micronesian Status Negotiations. The proposed language raises the question of how, as a technical matter, we intend to establish the commonwealth, and it provides a suggested scheme.

JEFFREY H. SMITH  
Captain, JAGC  
International Law Team  
International Affairs Division

Incl  
as

*Harry*  
*for your information*  
*JMS*

It is not clear how this agreement will, as a technical matter, operate to create a commonwealth. The form and manner in which a commonwealth is created acquire great legal significance as a frame of reference used by courts in resolving disputes. In particular, they serve as keys to determining the relationship under the United States Constitution between the Federal government and the Commonwealth government. Puerto Rico, the only present U.S. Commonwealth, illustrates this point.

The creation of a commonwealth clearly requires some action by the U.S. Congress. It is not clear how, or even if, this document styled an "Agreement Establishing a Permanent Union Between the Northern Mariana Islands and the United States" will be presented to Congress. It is also unclear what it is designed to accomplish, or how it will become effective (submitted as a treaty, be approved by joint resolution, or form the basis for enabling legislation). Because the situation appears to be unique, there are no clear precedents, the Department of Defense would appreciate some explanation of these technical points.

The creation of a commonwealth status appears to be a technical matter within the discretion of Ambassador Williams and, therefore, the Department of Defense recommends consideration of the following approach, based upon the establishment of the Commonwealth of Puerto Rico. First, reach agreement with the Marianans on a set of principles along the lines of those set forth in the draft agreement. Those principles would then be submitted to Congress as the basis for establishing the Commonwealth. Congress would then adopt those principles in an enabling Act "in the nature of a compact" (see Public Law 600, July 3, 1950, 64 Stat. 319 (1950) and advising the Legislature of the

Marianas District that these principles should be submitted to the people of the Marianas in a referendum. The Act would further provide that, if the referendum approves the instrument, the legislature should convene a Constitutional Convention. Upon adoption by referendum of the draft Commonwealth of the Marianas Constitution, it should be transmitted to the President who, upon finding that it complies with the enabling Act and the U.S. Constitution, would refer it to the U.S. Congress. The Congress would then adopt it in a joint resolution after which the Commonwealth would be proclaimed.

This approach would accomplish rapid conclusion of the basic principles and bind the Marianas to the commonwealth concept. It would permit a thorough Presidential and Congressional review of the draft Constitution. It also follows precedent and might buttress the United States' position in the United Nations that we had complied with the necessary safeguards concerning the establishment of a legitimate Marianas political status.