

OFFICE OF THE GENERAL COUNSEL

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9 October 1973

Memorandum for Captain Edward C. Whelan, Jr., USN  
EA&P Region, ISA, OASD

Subject: Draft Agreement Establishing a Union Between  
the Northern Mariana Islands and the United  
States.

Attached are my comments on the subject paper.

SIGNED

Encl

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

cf: Chron  
File: ILP - TTPI



D 4012

10-410560

*This at our meeting  
Marianas (less 27th)  
Will see this Wed. 22 W*

MEMORANDUM FOR THE DIRECTOR OF THE OFFICE OF MICRONESIAN STATUS NEGOTIATIONS

SUBJECT: Draft Agreement Establishing a Union Between the Northern Mariana Islands and the United States

In response to your request of 27 September, the rough draft "Agreement Establishing a Union Between the Northern Mariana Islands and the United States" has received an initial, broad review within the Department of Defense, bearing in mind that it may be provided to the Marianas Political Status Commission a week or two prior to the next round of talks. Therefore, we believe that:

- If the US intends to ~~propose this~~ *submit any formal* document in good faith, it ~~should~~ *must* be complete and accurate and we should be prepared to sign it. *constituting a United States position,*
- ~~A proposed~~ *any* agreement intended to implement the policy and provisions of the Presidential negotiating instructions, as well as being consistent with the US constitution and laws, should be studied thoroughly by the Interagency Group before it is presented.
- An agreement fully acceptable to the US side would of necessity reflect ~~the optimum~~ *an acceptable* US position on all major issues. Revelation of all these positions prematurely would reduce significantly the US negotiating flexibility and trade-offs, without a concurrent commitment by the other side.

*working*  
Since such documents are intended for negotiation, and the negotiation process they should not contain detailed positions. They should leave critical general positions to be...

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- As presently structured, the draft Agreement would make it difficult for Guam to be amalgamated in the Commonwealth of the Marianas. This option must be left open.
- On the other hand, a draft concentrating on the general principles of the future association would provide the basic framework of an agreement from which the details could be negotiated in a more flexible and beneficial manner.

Therefore, we recommend that the attached draft be reviewed and refined by the Interagency Group ~~for early provision~~ to the Marianas Political Status Commission. In the meantime, the complete draft agreement provided by your office can be developed in a more thorough and deliberate manner to ensure full protection of U.S. interests in the final arrangement with the Marianas.

*and drafted in confidence  
with the points just made  
prior to submission*

As a related matter, it is not clear how this agreement will, technically, 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, <sup>it will serve</sup> ~~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 being no clear precedents, the Department of Defense believes the technical points of creating a commonwealth be considered along with the draft Agreement.

6. 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 Marianas 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, 1959, 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.

D. Doolin

Copy to:

Dept of State (Mr. O.T. Johnson)

Dept of Justice (Mr. Herman Marcuse)

Dept of Interior (Mr. James Berg)

Organization of the Joint Chiefs of Staff (Col W.R. Kenty)