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Marcuse Gauf

September 18, 1974

MEMORANDUM

TO: Ambassador P. Haydn Williams
Office of Micronesian Status Negotiations

FROM: Herman Marcuse */
Attorney-Adviser
Office of Legal Counsel

RE: Judicial review of controversies arising under
the proposed Status Agreement with the Northern
Marianas.

You have inquired whether controversies arising under the operation of the proposed Status Agreement with the Northern Marianas could be adjudicated by the courts and ultimately by the Supreme Court. In my view this question is to be answered in the affirmative.

The proposed agreement would provide for a federal court for the Northern Mariana Islands which would have the jurisdiction of a district court of a United States; in particular it would have jurisdiction over all causes which arise under the Constitution, laws, and treaties of the United States. If the proposed agreement is enacted by Congress, as envisaged by us, it will be a law of the United States within the meaning of that jurisdictional provision. Disputes arising under the agreement therefor could be adjudicated by the courts in the same manner and to the same

*/ This memorandum represents my personal views and does not necessarily reflect those of the Department of Justice.

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~~extent of controversies arising under other federal statutes.~~ If the Congressional approval should take the form of an authorization that the President conclude the agreement, the latter would be a treaty for jurisdictional purposes. Altman v. United States, 224 U.S. 583, 600-601 (1912).

The May 1974 draft of the Marianas Political Status Commission contains a provision to the effect that it is the intention of the parties that cases and controversies arising under the agreement should be justiciable in the federal courts and that the limitations on the federal authority provided for in the agreement should be enforceable in such proceedings. In our view such provision is unnecessary, but harmless. We could accept it, if insisted upon, provided it contains reciprocal provisions with respect to limitations on the powers of the Commonwealth.

The proposed agreement envisages that the decisions of the District Court provided for the Northern Mariana Islands would be subject to review by the appropriate Court of Appeals and by the Supreme Court in the same manner as those of the District Courts of the United States.

With respect to litigation the status of the Commonwealth of the Northern Mariana Islands would differ from that of a State in one respect. Pursuant to Article III, section 2, clause 2 of the Constitution the Supreme Court has original jurisdiction over certain litigation to which a State is a party. See 28 U.S.C. 1251. It is unlikely that the Commonwealth will be considered to be a State in this constitutional sense. Litigation involving the Commonwealth therefore would have to be instituted in the district court even in those situations in which the Supreme Court would have original jurisdiction if a State, rather than the Commonwealth, were a party.