0&2
516

OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE

JAG:104.1:RWG:cff
Ser: 7661
21 October 1974

MEMORANDUM FOR CAPTAIN WHELAN, USN, ASST FOR TTPI, OASD(ISA)

Subj: Draft Marianas Agreement

Ref: (a) Your memo of 16 October 1974

Encl: JAG memo JAG:104.1:RWG:cff, Ser: 7527 of 15 October 1974 to Mr. Barringer, Director, FMRA, OASD(ISA)

1. In accordance with reference (a), the following comments are offered on the attachment to reference (a). The enclosure contains previous comments on the subject draft agreement, all of which remain applicable.

2. Preamble

Recommendation: Revise the first paragraph to read as follows: "Whereas, under the Charter of the United Nations and the Trusteeship Agreement between the Security Council of the United Nations and the United States of America, the United States of America is obligated to promote the development of the people of the Northern Mariana Islands toward self-government or independence as may be appropriate to their particular circumstances and their freely expressed wishes; and".

Reason: The existing language erroneously speaks of a "guarantee" to the people of the Marianas. There is no such language in either the Trusteeship Agreement or Article 76 of the United Nations Charter to which the Trusteeship Agreement refers. Let us not build up the Marianas" legal bargaining position better than it is.

Recommendation: In the third paragraph of the Preamble, delete the word "inalienable".

Reason: If their right of self-determination is inalienable, then at some future time the people of the Marianas can decide unilaterally to vote themselves out of the Commonwealth relationship. Their present decision to join in a Commonwealth relationship would not be irrevocable. I do not believe that this is the U.S. understanding. Additionally, no adjective before "right" is necessary.

Prepared by:
MAJ R.W. GEHRING, USMC
Int'l Law
Room 2D343, Ext. 79161
21 Oct 74/cff

RICHARD L. FRUCHTERMAN, Jr.
Captain, JAGC, U.S. Navy
Deputy Assistant Judge
Advocate General
(International Law)

07-413104

ENCL 5-7