



DEPARTMENT OF THE NAVY
OFFICE OF THE JUDGE ADVOCATE GENERAL
WASHINGTON, D. C. 20370

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IN REPLY REFER TO
JAG:104.1:RWG:srw
25 October 1974

MEMORANDUM FOR FILES

Subj: Draft Marianas Agreement

Ref: (a) Telcon Mr. Adrian de Graffenreid (OMSN) and Major Gehring of
24 October 1974
(b) JAG memo for Captain Whelan Ser: 7661 of 21 Oct 74
(c) JAG memo for Mr. Barringer Ser: 7527 of 15 Oct 74

1. Pursuant to request of Captain Whelan I initiated a telephone call, reference (a), to discuss difficulties Mr. de Graffenreid had with the comments of this Office on the draft Marianas Agreement, included in references (b) and (c).
2. Concerning those recommendations for changes in the preamble of the draft Agreement contained in reference (b), Mr. de Graffenreid explained that the preamble was not regarded as legally binding and therefore it was designed more to bolster the ego of the Marianas than to reflect legal accuracy.
3. I explained our concern with Section 202, included in reference (c), that Marianas' interpretation and practices under their constitution's original provisions, could evolve in a manner not foreseen by us in our original review of their constitution. Under the draft agreement our courts would have no jurisdiction to ensure consistency between the agreement and the Marianas' interpretation and practices under the original provisions of their constitution unless the case raised questions of U.S. law or under U.S. Constitution. He pointed out that we have no such safeguards for Puerto Rico, the Virgin Islands, or Guam and that we have never had any problem with them; therefore, no problem was anticipated with the Marianas. I explained that I didn't think that the additional language that we were recommending was so important that the U.S. must be prepared to make other substantial concessions to obtain it since we would have jurisdiction of the case involved the U.S. constitution and law; however, I thought this safeguard would be valuable if we could obtain it without too great a cost. He agreed that it should be considered further.
4. I explained our recommendation concerning Section 203(c) in that we feared "rightful subjects" was an ambiguous phrase which could possibly be interpreted in such a way as to permit the Marianas' legislature to enact legislation which overlapped with our areas of concern, particularly under Section 104 of the draft Agreement concerning foreign affairs and

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defense, and possibly inconsistent with our own desires. Mr. de Graffenreid indicated that "rightful subject" was a phrase taken from various judicial decisions concerning the authority of the Puerto Rico legislature. I raised the question whether the determination of a "rightful subject" is determined by its consistency with the draft Agreement, which could be acceptable to us, or by some other means. He did not know the answer to this offhand and agreed that this recommendation needed further consideration.

5. I then proceeded to our recommendations concerning Sections 602(b), (c) and [b]. Mr. de Graffenreid's belief was that no protection for U.S. agency imports would be necessary by virtue of our sovereign immunity, and he cited the example of Guam where we have had no trouble. I pointed out that the draft Agreement was expressly placing the Marianas outside the customs area of the United States and expressly giving them authority to levy these various duties and excise taxes. Even if the U.S. Government still was protected by its sovereign immunity, that immunity would not extend, necessarily, to our non-appropriated fund activities or to our personnel who might be transferred to the Marianas from overseas locations and would be bringing in their household goods, etc., from areas outside the U.S. I pointed out that in our SOFA's we always find it necessary to provide protection not only for U.S. Government, but also non-appropriated fund activities and our personnel. He agreed that this required further consideration also.

6. I referred briefly to Section 805 and he indicated that a new Title 8 was being drafted at that time.


ROBERT W. GEHRING
Major, U.S. Marine Corps