

Draft
October 31, 1974

MEMORANDUM FOR THE MARIANAS POLITICAL STATUS COMMISSION FILE

SUBJECT: Legislative History of the Northern Marianas
Status Agreement

The following is a list of the matters proposed to be included in the legislative history of the status agreement. It is anticipated that this legislative history will take the form of an official document explaining the status agreement, to be drafted by representatives of the Commission and the United States after the status agreement is signed.

Section 101.

(A) The government of the Northern Mariana Islands and the government of the Commonwealth will have sovereign immunity.

(B) The Northern Mariana Islands will not be an agency or instrumentality of the United States government.

(C) The territorial integrity of the Northern Mariana Islands will be respected, and the reference in Section 101 to the Northern Mariana Islands means the Northern Mariana Islands as defined in Section 1007(B).

Section 102.

(A) The supremacy clause is modeled on the supremacy clause of the United States Constitution.

Section 103.

(A) This section is intended to carry out the commitment in the joint communique that the Northern Marianas will have maximum local self-government.

Section 105.

(A) An act in contravention of a provision subject to mutual consent would obviously be a de facto attempt to alter the agreement and could not be done by either side without the other's permission.

Section 202.

(A) This section is not intended to be an independent grant of jurisdiction to the courts established by the Constitution or laws of the United States, but simply to review when appropriate. The local courts, of course, will be bound by the supremacy clause found in section 102, and will also be competent in proper cases to determine whether the Constitution of the Northern Mariana Islands and subsequent amendments thereto are consistent with the agreement and with the Constitution and laws of the United States applicable to the Northern Mariana Islands.

(B) Section 202 states the entire amount of the authority of the United States with respect to the Constitution of the Northern Mariana Islands and amendments thereto, except for the power of the President to delay the effectiveness of certain provisions of the Constitution until termination of the Trusteeship.

Section 203.

(A) The phrase in subsection (C) extending the legislative power of the Northern Mariana Islands Legislature "to all rightful subjects of legislation" is based on the phrase used with respect to the Virgin Islands, and is intended to be the broadest possible formulation of legislative power to assure the right of local self-government.

Section 301.

(A) "Domicile" is understood to mean that place where a person maintains a residence with the intention of continuing such residence for an unlimited or indefinite period, and to which such person has the intention of returning whenever he is absent, even for an extended period.

Section 401.

(A) It is understood that the United States may assign as the judge for the district court for the Northern Mariana Islands the same person who is the judge for the district court of Guam if the workload is such that one judge can expeditiously and adequately handle both courts.

(B) It appears desirable that the Northern Mariana Islands be able to call on the services of the United States Attorney and the United States Marshall for the District of the Northern Mariana Islands to perform local functions. It is recommended that appropriate

implementing legislation be enacted by the Congress to permit the Northern Mariana Islands government to call on the services of these officials.

Section 402.

(A) The jurisdiction granted to the District Court for the Northern Mariana Islands under subsection (A) of this section is not intended to be exclusive, except to the extent that District Courts of the United States have exclusive jurisdiction over certain matters. Thus, for example, the local courts of the Northern Mariana Islands may be granted by the local legislature jurisdiction over diversity cases involving more than ten thousand dollars.

(B) The second sentence of subsection (B) [now] is intended to assure that when the District Court for the Northern Mariana Islands sits with solely local jurisdiction under this subsection, the provisions of the 5th, 6th and 7th Amendments to the United States Constitution will apply as if the District Court for the Northern Mariana Islands were a local court established by the government of the Northern Mariana Islands.

Section 403.

(A) The provisions of subsection (A) are, in case of conflict, intended to prevail over the provisions of subsection (B).

Section 501.

(A) This section is intended to make the provisions of the Constitution of the United States applicable against the actions of the government of the Northern Mariana Islands and the actions of the government of the United States, as the case may be, within the Northern Mariana Islands.

(B) The application of Article I, Section 10, clauses 1 and 3 of the United States Constitution is understood not to prevent the Northern Mariana Islands from entering into international agreements to the extent permitted by Section 904(C).

Section 502.

(A) The phrase "applicable to Guam" in the formula is used in the sense of applicable "within or with respect to". It is understood, for example, that laws providing for extradition from a state or territory to Guam and for full faith and credit to be given to the judgments of Guamanian courts in the states and territories will be applicable with respect to the Marianas in the same manner and to the same extent as they are applicable with respect to Guam.

(B) Nothing in this section is intended to imply that the United States could reach intra-territorial affairs within the Marianas given the power of local self-

government assured under Section 103.

(C) It is understood that the term "laws" is broad enough to include executive orders and regulations of agencies with the effect and force of law. It is further understood that the Executive Branch of the government of the United States will make appropriate changes in executive orders and regulations to take into account the new political status of the Northern Mariana Islands.

(D) Nothing in this section is intended to make laws which by their terms apply only to U.S. citizens apply to citizens of the Trust Territory until, under the provisions of Article III, citizens of the Northern Mariana Islands will generally become citizens of the United States.

(E) It is understood that this agreement will override certain laws now applying to the Trust Territory in 48 United States Code which will be inappropriate in view of the new status. The Executive Branch of the United States government will recommend that these laws be modified promptly in view of the new political status.

[Under MPSC Guam formula, it is intended that Chapters 10 and 11 of 48 United States Code will be excluded from applicability.]

Section 503.

(A) It is understood that the prohibitions in the laws of the United States against foreign vessels landing fish or fish products in the United States are not applicable to Guam in any event and would therefore not be applicable under the formula in Section 502, but this portion of Subsection (B) is included out of an abundance of caution.

(B) It is understood that the government of the Northern Mariana Islands and the government of the Commonwealth will have the power to control immigration into the Northern Mariana Islands except in the manner and to the extent to which Congress may choose after termination of the Trusteeship to make the immigration laws of the United States applicable to the Northern Mariana Islands.

Section 602.

(A) It is not intended that the FUTA or provisions of the Internal Revenue Code imposing social security taxes will be governed by this section. The imposition of taxes for social security purposes is governed by Section 605 of the agreement. Provisions of law imposing taxes for unemployment compensation or providing benefits for unemployment compensation will not be applicable to the Northern Mariana Islands. They are not applicable to Guam.

(B) Section 872(B)(4) of the Internal Revenue Code provides for special tax treatment of certain United

States bonds purchased by non-resident aliens in the Trust Territory. It is understood that the Executive Branch of the United States government will recommend enactment of provisions which would continue the applicability of this section of the Internal Revenue Code with respect to bonds purchased in the Northern Mariana Islands prior to the date of the signing of the agreement.

Section 603.

(A) With respect to subsection (C), the parties to the negotiations do not believe that an exemption from the General Agreement on Tariffs and Trade will be necessary in order to implement this section, but have provided for the United States to obtain such a waiver if it is necessary.

(B) With respect to subsection (D) of this agreement, the term "a developing territory" is understood to refer to the June 25, 1971 General Agreement on Tariff and Trade later regarding preferential treatment for goods from developing countries and territories, and other similar benefits.

Section 605.

(A) Note the comments made with respect to the applicability of the Internal Revenue Code under Section 602.

Section 606.

(A) The word "property" in subsection (B) is intended to refer to real and personal property.

Section 701.

(A) The provision for successive multi-year financial support is intended to assure self-government and planning over the long term.

(B) The government of the United States will continue to provide such direct multi-year financial support so long as is necessary until the goals stated in Section 701 are met.

Section 702.

(A) Subsection (B) of this section is a restatement of the effect of the formula in Section 502. The operative legal provision is intended to be Section 502.

(B) [Commitment to the first seven years of funding is in the nature of a contractual commitment enforceable against the United States.]

Section 703.

(A) This cover over provision is intended to assure that the government of the Northern Marianas will receive from the federal government payments under the circumstances under which the government of Guam receives such payments, and is intended to include those provisions of 26 U.S.C. § 7654(B) which are applicable to Guam.

Section 802.

(A) The lease of land to the United States by the government of the Northern Mariana Islands is not intended to be, by itself, a cession of jurisdiction from the government of the Marianas to the United States.

(B) The United States need for land for civilian purposes will not specifically be covered by this agreement, but acquisition of land will be in accordance with Section 805. Leases presently in effect for land will continue until terminated or renegotiated as may be determined.

Section 804.

(A) The phrase "notwithstanding Article V" means, of course, notwithstanding those portions of the Constitution and laws of the United States made applicable by Article V.

Section 805.

(A) This section becomes effective upon termination of the Trusteeship Agreement. Until that time the United States will have no power of eminent domain in the Northern Mariana Islands.

Section 901.

(A) [If the MPSC agrees to a resident commissioner as proposed by the United States, the United States Executive Branch will support the Marianas request for a non-voting delegate.]

Section 902.

(A) It is understood that the United States intends to appoint officials of appropriately high rank to take part in the consultations provided by this section.

Section 904.

(A) An example of the matters on which the advice of the government of the Northern Mariana Islands will be given sympathetic consideration by the government of the United States is the favorable treatment of exports from the Northern Mariana Islands to be sought by the United States under Section 603 (D).

Section 1001.

(A) It is understood that this agreement could be enacted into law by the United States either by means of a bill or a joint resolution.

Section 1005.

(A) With respect to subsection (B) it is the intention of the parties that the new government of the Northern Mariana Islands under separate administration will come into effect as provided in the Constitution of the Northern Mariana Islands 180 days after the agreement and the local constitution are approved. The government of the Commonwealth of the Northern Mariana Islands will succeed this government of the Northern Mariana Islands upon termination of the Trusteeship and the establishment of the Commonwealth.

Other Comments.

(A) Explanation of how the United Constitution provisions relating to grand jury and trials in civil cases needs to be added.

(B) Intention that the invalidity of one section is not intended to affect other provisions needs to be added.

(C) Phase I funding will be dealt with by a separate memorandum of understanding and not in the status agreement; it might be proper to mention it in conjunction with Article VII.