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Subj: Marindes Agreement/Covanant

Ref: (a) Your memo of 50 cetaber 1974 with attached draft of Markettes agreement dated October 23, 1974

- 1. In accordance with reference (a), the following transfer are provided on the subject draft agreement.
- 2. The draft memorandum to be signed by Mr. Williams and Mr. Hilson and attached to the subject agreement, refers the question, data with whether a list of "general principles" should be added between the granted and the articles of the draft agreement. The United States is reported as favoring its inclusion, while the MPSC deas not. This Office tentatively opposes inclusion of any list of "general principles". Any list acceptable to the MPSC would probably work to the detrisent of the U.S. in interpretation of the criticism of the agreement. A list of "general principles" would set the frame work within which all articles must be interpreted. Unfavorable phrasings to the U.S. would have a the more severe impact than if located in the presable which is only an aid to interpretation.

2. Presable

Recommendation: Revise the first paragraph to read as follows:
"Whereas, under the Charter of the United Mations and the Triotechia
Agreement between the Courity Courill of the United Harions and the
United States of America, the Delta States of America is obligated to
promote the development of the people of the Wirthern Marieso Islands
toward colf-government of Indian Maries on any be appropriated to their
particular circumstances and their Treaty depressed within and.

Radion: The entering Language enteringuisty speaks of a "guerantee" to the people of the Tautonic. There is no each language in cities the Trustcoolide Agreement of Afficial 76 of the United Markons Chartes to which the Trustcoolide Agreement refers. Lat 10 set build up the Markons Logal bergoiding restains it from the 12.

Becommendation: In the Milit paragraph of the Broadle, delete the

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Reason: If their right of self-determination is inclimable, 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.

- 3. Section 105(1) (MPSC) Draft. In this draft the former Section 805 should be resumbered 80[4].
- 4. Section 209(c). To the end of the first sentence after "legislation" add the words "not otherwise inconsistent with the supreme law of the Northern Hariann Islands as defined in Section 102."

Reacon: The recommended language points to the standard by which "rightful subjects" are determined.

5. <u>Section 60[3](b)</u>.

Recommendation: To the introductory clause of this subparagraph offer: "United States" add the following language "and not otherwise inconsistent with the law of the United States applicable in the Northern Mariane Islands."

Reason: The present language appears to permit the imposition by the GONAI of customs duties on imports from areas outside the customs cerritory of the United States and on exports from its territory both for U.S. Governmental agencies located in the Marianas and for their personnel present in the Marianas solely by reason of their employment or military orders. Normally the imposition of such taxes within the United States on agencies of the Foderal Covernment is avoided by the Vederal framilty from state and territorial tames. Military personnel are protested by Section 509 of the Soldiers and Sations Civil Relief Act (50 U.S.C. App.; hereinafter SSCRA). The SSCRA would presumably be applicable in the Marianas by virtue of Section 301(a) (both U.S. and MPSC drafts) cince the SSCRA is presently applicable in Suem. Valika Guess which is a duty free port, the Northern Mariana Islands are expressly given sutherity to levy customs duties on imports and emports while the provisions of the SSCRA and the case law providing the Vederal immitty from cames in made applicable only by the implicit reference in Section 902 to law presently applicable in Gum. The concern of this Office is that in a conflict between these two sections of the agreement, a court might find that the empress language of Section 60[3] rendered inapplicable contradictory sections of Federal law unless they themselves vere empressly affirmed within the agreement. Unable to foresee with certainty which direction future courts might decide this question, the language above 16 recommended as a meson of reducing this uncertainty.

6. Section 60[4](b).

Recommendation: At the conclusion of this subparagraph after "United States" add the following words: "and are not otherwise inconsistent with the law of the United States applicable in the Northern Mariane Islands."

Reason: As given in the preceding paragraph. It may be noted that the Government of Guam, which lacks authority for imposing customs levies, does lavy a use tax on the purchase and consumption of goods in Guam. In the past the Government of Guam has attempted to collegethat tax on liquor purchased in the United States and sold in Navy exchange package stores in Guam and upon household goods shipments of military personnel present in Guam under military orders. Both 60[3](b) and 60[4](b) recognize that the taxing authority conferred must be limited so as to be consistent with the international obligations of the United States. It would appear important also to limit that authority by requiring consistency with the laws of the United States applicable in the Northern Mariana Islands.

. Section 80[3]. This Office will reserve comment upon this Section until the U.S. draft is available for comparison with the MPSC draft

8. <u>Section 80[4]</u>.

Recommendation: In the eighth line of this Section after "slienation" add the we is "title or long term". In the ninth line of the paragraph delete "persons of" and substitute "citizens of the Northern Marianes Islands."

Reason: The present language permitting restrictions of alienation of all interests in real property would apparently prevent even the lease of an apartment or house by U.S. civilian and military personnel present in the Marinna Islands by reason of their employment or military officers. The first recommended change would limit such regulation to transfers of consciently or interests in property of sufficiently long-term to bear some resemblance to concretip. The oscend change is intended to identify with more equitable language those persons for whose benefit the restrictions are to operate. Both U.S. and MPSC drafts would permit persons who are not residents of the Mariana Islands to purchase land there if some remote encester came from the Northern Mariana Islands. The U.S. and MPSC drafts also prevent purchase of concretip or interest in real property by any farct generation inhabitant of the Mariana Islands.

RICHARD L. FRUCH F. MAN, Jr. Captain, JAGC. U. S. Navy Deputy Assistant Jacob Advocate General (International Law)

Prepared by: MAJ R.W. GEHRING, USMCC International Law 2D369 79161 5 Nov 74/srw