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AIR DIV.
AJAG
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Subj: **Maritime Agreement/Covenant**

1. In accordance with reference (a), the following comments are provided on the subject draft agreement.

2. Fragile

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

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

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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.

3. Section 105(1)(MPSC) Draft. In this draft the former Section 805 should be renumbered 80[4].

4. Section 203(c). To the end of the first sentence after "legislation" add the words "not otherwise inconsistent with the supreme law of the Northern Mariana Islands as defined in Section 102."

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

5. Section 60[3](b).

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

Reason: The present language appears to permit the imposition by the COMMI of customs duties on imports from areas outside the customs territory 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 Federal Government is avoided by the Federal immunity from state and territorial taxes. Military personnel are protected by Section 509 of the Soldiers and Sailors Civil Relief Act (50 U.S.C. App.; hereinafter SSCRA). The SSCRA would presumably be applicable in the Marianas by virtue of Section 502(a) (both U.S. and MPSC drafts) since the SSCRA is presently applicable in Guam. Unlike Guam which is a duty free port, the Northern Mariana Islands are expressly given authority to levy customs duties on imports and exports while the provisions of the SSCRA and the case law providing the Federal immunity from taxes is made applicable only by the implicit reference in Section 502 to law presently applicable in Guam. The concern of this Office is that in a conflict between these two sections of the agreement, a court might find that the express language of Section 60[3] rendered inapplicable contradictory sections of Federal law unless they themselves were expressly affirmed within the agreement. Unable to foresee with certainty which direction future courts might decide this question, the language above is recommended as a means 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 Mariana 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 levy a use tax on the purchase and consumption of goods in Guam. In the past the Government of Guam has attempted to collect that 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.

7. 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. Section 80[4].

Recommendation: In the eighth line of this Section after "alienation" add the word "title or long term". In the ninth line of the paragraph delete "persons of" and substitute "citizens of the Northern Mariana 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 Mariana Islands by reason of their employment or military orders. The first recommended change would limit such regulation to transfers of ownership or interests in property of sufficiently long-term to bear some resemblance to ownership. The second 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 ancestor came from the Northern Mariana Islands. The U.S. and MPSC drafts also prevent purchase of ownership or interest in real property by any first generation inhabitant of the Northern Mariana Islands.

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