

JOINT DRAFTING COMMITTEE WORKING DRAFT

December 16, 1974

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COVENANT TO ESTABLISH A COMMONWEALTH OF THE NORTHERN MARIANA
ISLANDS IN POLITICAL UNION WITH THE UNITED STATES OF AMERICA

Whereas, the Charter of the United Nations and the Trusteeship Agreement between the Security Council of the United Nations and the United States of America guarantee to the people of the Northern Mariana Islands the right freely to express their wishes for self-government or independence; and

Whereas, the United States supports the desire of the people of the Northern Mariana Islands to exercise their inalienable right of self-determination; and

Whereas, the people of the Northern Mariana Islands and the people of the United States share the goals and values found in the American system of government based upon the principles of government by consent, individual freedom, and democracy; and

Whereas, for over twenty years, the people of the Northern Mariana Islands, through public petition and referendum, have clearly expressed their desire for political union with the United States;

Now, therefore, the Marianas Political Status Commission, being the duly appointed representative of the people of the

Northern Mariana Islands, and the Personal Representative of the President of the United States have entered into this Covenant in order to establish a self-governing commonwealth for the Northern Mariana Islands within the American political system and to define the future relationship between the Northern Mariana Islands and the United States. This Covenant will be mutually binding when it is approved by the United States, by the Mariana Islands District Legislature, and by the people of the Northern Mariana Islands in a plebiscite, constituting on their part a sovereign act of self-determination.

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ARTICLE I

Political Relationship

Section 101. The Northern Mariana Islands upon termination of the Trusteeship Agreement will become a self-governing commonwealth to be known as the "Commonwealth of the Northern Mariana Islands," in political union with and under the sovereignty of the United States of America.

Section 102. The relations between the Northern Mariana Islands and the United States will be governed by this Covenant, which, together with the provisions of the Constitution, treaties and laws of the United States applicable to the Northern Mariana Islands will be the supreme law of the Northern Mariana Islands.

Section 103. The people of the Northern Mariana Islands will have the right of local self-government and will govern themselves with respect to internal affairs in accordance with a Constitution of their own adoption.

Section 104. The United States will have complete responsibility for and authority with respect to matters relating to foreign affairs and defense affecting the Northern Mariana Islands.

Section 105.

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ARTICLE II

Constitution of the Northern Mariana Islands

Section 201. The people of the Northern Mariana Islands will formulate and approve a Constitution and may amend their Constitution pursuant to the procedures provided therein.

Section 202. The Constitution will be submitted to the Government of the United States for approval on the basis of its consistency with this Covenant and those provisions of the Constitution, treaties and laws of the United States to be applicable to the Northern Mariana Islands. [MPSC: The Constitution will be deemed to have been approved four (4) months after its receipt by the President on behalf of the Government of the United States unless earlier disapproved. If disapproved, the Constitution will be returned and, after revision, will be submitted as was the original Constitution.] Amendments to the Constitution of the Northern Mariana Islands may be made by the people of the Northern Mariana Islands without approval by the Government of the United States, but the courts established by the Constitution or laws of the United States will be competent to determine whether the Constitution and subsequent amendments thereto are consistent with this Covenant and with those provisions of the Constitution, treaties and laws of the United States applicable to the Northern Mariana Islands.

Section 203. (a) The Constitution will provide for a republican form of government with separate executive, legislative, and judicial branches, and will contain a bill of rights.

(b) The executive power of the Northern Mariana Islands will be vested in a popularly elected Governor and such other officials as the Constitution or laws of the Northern Mariana Islands may provide.

(c) The legislative power of the Northern Mariana Islands will be vested in a popularly elected legislature, and will extend to all rightful subjects of legislation. The Constitution of the Northern Mariana Islands may provide for a distribution of the legislature's membership on the basis of appropriate considerations in addition to population, notwithstanding other provisions of this Covenant or the provisions of the Constitution or laws of the United States applicable to the Northern Mariana Islands, provided such distribution is ratified by the people of the Northern Mariana Islands by their approval of the Constitution or amendments thereto.

(d) The judicial power of the Northern Mariana Islands will be vested in such courts as the Constitution or laws of the Northern Mariana Islands may provide. The Constitution or laws of the Northern Mariana Islands may rest in such courts jurisdiction over all causes in the Northern Mariana Islands over which the District Court established pursuant to Section 401 of this Covenant does not have exclusive jurisdiction.

Section 204. All members of the legislature of the Northern Mariana Islands and all officers and employees of the

Government of the Northern Mariana Islands will take an oath or affirmation to support this Covenant, the provisions of the Constitution, treaties and laws of the United States applicable to the Northern Mariana Islands, and the Constitution and laws of the Northern Mariana Islands.

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ARTICLE III

Citizenship and Nationality

Section 301. The following persons and their children under the age of 18 years on the effective date of this Section, who are not citizens or nationals of the United States under any other provision of law, and who have taken no affirmative steps to preserve or acquire foreign nationality, are declared to be citizens of the United States, except as otherwise provided in Section 302:

(a) all persons born in the Northern Mariana Islands who are citizens of the Trust Territory of the Pacific Islands on the day preceding the effective date of this Section, and who on that date are domiciled in the Northern Mariana Islands or in the United States or any territory or possession thereof;

(b) all persons who are citizens of the Trust Territory of the Pacific Islands on the day preceding the effective date of this Section, who have been domiciled continuously in the Northern Mariana Islands for at least five (5) years immediately prior to that date, and who, unless under age, have registered to vote in elections for the Mariana Islands District Legislature or for any municipal election in the Northern Mariana Islands prior to January 1, 197[5]; and

(c) all persons domiciled in the Northern Mariana Islands on the day preceding the effective date of this Section, who, although not citizens of the Trust Territory of the Pacific Islands, do not on that day owe allegiance to any foreign state, and who on that date have been domiciled continuously in the Northern Mariana Islands since at least January 1, 197[4].

Section 302. Any person who becomes a citizen of the United States solely by virtue of the provisions of Section 301 may within six (6) months after reaching the age of eighteen (18) years, whichever date is the later, become a national but not a citizen of the United States by making a declaration under oath before any court established by the United States or any court of record in the Commonwealth in the form as follows:

"I.....being duly sworn, hereby declare my intention to be a national but not a citizen of the United States."

Section 303. All persons born in the Commonwealth on or after the effective date of this Section and subject to the jurisdiction of the United States, will be citizens of the United States at birth.

Section 304. Citizens of the Northern Mariana Islands will be entitled to all privileges and immunities of citizens in the several states of the United States.

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ARTICLE IV

Judicial Authority

Section 401. The United States will establish for and within the Northern Mariana Islands a court of record to be known as the "District Court for the Northern Mariana Islands." The Northern Mariana Islands will constitute a part of the same judicial circuit of the United States as Guam.

Section 402. (a) The District Court for the Northern Mariana Islands will have the jurisdiction of a district court of the United States, except that in all causes arising under the Constitution, treaties or laws of the United States it will have jurisdiction regardless of the sum or value of the matter in controversy.

(b) The District Court will have original jurisdiction in all causes in the Northern Mariana Islands not described in Subsection (a), jurisdiction over which is not vested by the Constitution or laws of the Northern Mariana Islands in a court or courts of the Northern Mariana Islands. In causes brought in the District Court solely on the basis of this Subsection, the District Court shall be considered a court of the Northern Mariana Islands for the purposes of determining the requirements of indictment by grand jury or trial by jury.

(c) The District Court will have such appellate jurisdiction as the Constitution or laws of the Northern Mariana Islands may provide. When it sits as an appellate court, the District Court will consist of three (3) judges, at least one (1) of whom will be a judge of a court of record of the Northern Mariana Islands.

Section 403. (a) The relations between the courts established by the Constitution or laws of the United States and the courts of the Northern Mariana Islands with respect to appeals, certiorari, removal of causes, the issuance of writs of habeas corpus, and other matters or proceedings will be governed by the laws of the United States pertaining to the relations between the courts of the United States and the courts of the several states in such matters and proceedings, except as otherwise provided in this Article; provided, that for the first fifteen (15) years following the establishment of an appellate court of the Northern Mariana Islands, the United States Court of Appeals for the judicial circuit which includes the Northern Mariana Islands will have jurisdiction of appeals from all final decisions of the highest court of the Northern Mariana Islands from which a decision could be had in all cases involving the Constitution, treaties or laws of the United States, or any authority exercised thereunder, unless those decisions are reviewable in the District Court for the Northern Mariana Islands pursuant to Section 402(c).

(b) Those portions of title 28 of the United States Code which apply to Guam or the District Court of Guam will be

applicable to the Northern Mariana Islands or the District Court
for the Northern Mariana Islands, respectively, except as
otherwise provided in this Article.

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ARTICLE V

Applicability of Laws

Section 501. (a) The following provisions of the Constitution of the United States will be applicable within the Northern Mariana Islands as if the Northern Mariana Islands were a State of the Union: Article I, Section 9, Clauses 2, 3 and 8; Article I, Section 10, Clauses 1 and 3; Article IV, Section 1 and Section 2, Clauses 1 and 2; Amendments 1 through 9, inclusive; Amendment 13; Amendment 26; provided, however, that neither trial by jury nor indictment by grand jury will be required in any civil action or criminal prosecution based upon local law, except as may be required by local law. Other provisions of or amendments to the Constitution of the United States, which do not apply of their own force within the Northern Mariana Islands, will become applicable within the Northern Mariana Islands only with the approval of the Government of the Northern Mariana Islands and the Government of the United States.

(b) Nothing in this Section will be deemed or will operate to prohibit the Government of the Northern Mariana Islands from undertaking any activity permitted or required by Sections 203 and 805 of this Covenant.

Section 502. The following laws of the United States in existence on the effective date of this Section, and subsequent amendments to such laws, will apply to the Northern Mariana Islands as follows, except as otherwise provided in this Covenant:

(a) those laws which provide federal services and financial assistance programs, Titles I, X, XIV and XVI of the Social Security Act, and the federal banking laws will apply as they apply to Guam; the Public Health Service Act will apply as it applies to the Virgin Islands; and the Micronesian Claims Act will apply as it applies to the Trust Territory of the Pacific Islands;

(b) those laws not described in Subsection (a) which are applicable to Guam and which are of general application to the several states will apply as they are applicable to the several states;

(c) those laws not described in Subsections (a) or (b) which are applicable to the Trust Territory of the Pacific Islands, but not their subsequent amendments unless specifically made applicable to the Northern Mariana Islands, will apply to the Northern Mariana Islands as they apply to the Trust Territory until termination of the Trusteeship Agreement, and will thereafter be inapplicable.

Section 503. (a) The following laws of the United States, presently inapplicable to the Trust Territory of the Pacific Islands, will not apply to the Northern Mariana Islands

except in the manner and to the extent made applicable by the United States Congress by law after termination of the Trusteeship Agreement:

(1) the immigration and naturalization laws of the United States except as otherwise provided in Section 506;

(2) the coastwise laws of the United States, and any prohibition in the laws of the United States against foreign vessels landing fish or unfinished fish products in the United States; and

(3) the minimum wage provisions of the Fair Labor Standards Act, as amended.

(b) Nothing in this Section shall be deemed to prevent the application to the Northern Mariana Islands of laws of the United States to the extent that they affect United States Government shipments or impose minimum wage requirements with respect to employees or contractors of the United States Government.

Section 504. The President will appoint a Commission on Federal Laws to survey the laws of the United States and to make recommendations to the United States Congress as to which laws of the United States not applicable to the Northern Mariana Islands should be made applicable and to what extent and in what manner, and which applicable laws should be made inapplicable and to what extent and in what manner. The Commission will consist of seven (7) persons (at least four [4] of whom will be citizens of the Trust Territory of the Pacific Islands who are and have been for at least five [5] years domiciled continuously in the Northern Mariana Islands at the time of their appointments)

who will be representative of the federal, local, private, and public interests in the applicability of laws of the United States to the Northern Mariana Islands. The Commission will make its final report and recommendations to the Congress within one (1) year after the termination of the Trusteeship, and before that time will have made such interim reports and recommendations to the Congress as it considers appropriate to facilitate the transition of the Northern Mariana Islands to its new political status. In formulating its recommendations, the Commission will take into consideration the potential effect of each law on local conditions within the Northern Mariana Islands, the policies embodied in the law, and the provisions and purposes of this Covenant. The United States will bear the cost of the work of the Commission.

Section 505. The laws of the Trust Territory of the Pacific Islands, of the Mariana Islands District and its local municipalities, and all other Executive and District orders of a local nature applicable to the Northern Mariana Islands on the effective date of this Section and not inconsistent with this Covenant or with the provisions of the Constitution, treaties or laws of the United States applicable to the Northern Mariana Islands will remain in force and effect until and unless altered by the Government of the Northern Mariana Islands.

Section 506.

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ARTICLE VI

Revenue and Taxation Provisions

Section 601.

Section 602.

Section 603. (a) The Northern Mariana Islands will not be included within the customs territory of the United States.

(b) The Government of the Northern Mariana Islands may, in a manner consistent with the international obligations of the United States, levy duties on goods imported into its territory from any area outside the customs territory of the United States, and impose duties on exports from its territory.

(c) Imports from the Northern Mariana Islands into the customs territory of the United States will be subject to the same treatment as imports from Guam into the customs territory of the United States.

(d) The United States will seek to obtain from foreign countries favorable treatment for exports from the Northern Mariana Islands, and will encourage other countries to consider the Northern Mariana Islands a developing territory.

Section 604. (a) The United States may levy excise taxes on goods manufactured, sold or used or services rendered in the Northern Mariana Islands in the same manner and to the same extent as such taxes are applicable within Guam [MPSC: provided that such tax is also applicable within the several states].

(b) The Northern Mariana Islands will have the authority to impose excise taxes upon goods manufactured, sold or used or services rendered within its territory or upon goods imported into its territory, provided that such excise taxes imposed on

goods imported into its territory will be consistent with the international obligations of the United States.

Section 605. (a) Not later than at the time this Covenant is approved, that portion of the Trust Territory Social Security Fund attributable to the Northern Mariana Islands will be transferred to the Treasury of the United States, to be held in trust as a separate fund to be known as the "Northern Mariana Islands Social Security Retirement Fund." This fund will be administered by the Social Security Administration of the United States in accordance with the social security legislation of the Trust Territory of the Pacific Islands in effect at the time of such transfer, which may be modified by the Government of the Northern Mariana Islands only in a manner which does not create any additional differences between such legislation and the laws described in Subsection (b). The United States will supplement such fund if necessary to assure that persons receive benefits therefrom comparable to those they would have received from the Trust Territory Social Security Retirement Fund under the laws applicable thereto on the day preceding the establishment of the Northern Mariana Islands Social Security Retirement Fund, so long as the rate of contributions thereto also remain comparable.

(b) Those laws of the United States which impose taxes to support, or which provide benefits from Title II of the Social Security Act of 1935, as amended, and those regulations promulgated under the authority provided therein; and Chapters 2 and 21 of the Internal Revenue Code of 1954, as amended and the

regulations promulgated under the authority provided therein will not be applicable to the Northern Mariana Islands until termination of the Trusteeship Agreement or such earlier date as may be agreed to by the Government of the Northern Mariana Islands and the Government of the United States except that Section 228 of Title II referred to herein will not be applicable.

(c) At such time as the laws described in Subsection (b) become applicable to the Northern Mariana Islands:

(1) the Northern Mariana Islands Social Security Retirement Fund will be transferred or appropriated in proportion to the taxes levied as appropriate into the Federal Old Age and Survivors Trust Fund, the Federal Disability Trust Fund, the Federal Hospital Insurance Trust Fund, and the Federal Supplementary Medical Insurance Trust Fund; and

(2) contributions to the Trust Territory Social Security Retirement Fund or the Northern Mariana Islands Social Security Retirement Fund will be considered to have been made to the Federal Old Age and Survivors, Disability and Hospital Insurance Trust Funds for the purposes of determining eligibility of persons in the Northern Mariana Islands for benefits from such funds; and

(3) persons who are entitled to social security benefits under the laws of the Trust Territory of the Pacific Islands or of the Northern Mariana Islands will not lose their entitlement and will be entitled to benefits under the laws described in Subsection (b).

Section 606. (a) All bonds issued by the Government of the Northern Mariana Islands or by its authority will be exempt,

as to principal and interest, from taxation by the United States, or by any state, territory or possession of the United States, or any political subdivision of any of them.

(b) During the initial seven (7) year period of financial assistance provided for in Section 702, and during such subsequent periods of financial assistance as may be agreed, the Government of the Northern Mariana Islands will authorize no public indebtedness (other than bonds or other obligations of the Government payable solely from revenues derived from any public improvement or undertaking) in excess of ten percentum of the aggregate assessed valuation of the property within the Northern Mariana Islands.

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ARTICLE VII

United States Financial Assistance

Section 701. The Government of the United States will assist the Government of the Northern Mariana Islands in its efforts to achieve a progressively higher standard of living for its people as part of the American economic community and to develop the economic resources needed to meet the financial responsibilities of local self-government. To this end, the United States will provide direct multi-year financial support to the Government of the Northern Mariana Islands for local government operations, for capital improvement programs and for economic development. The initial period of such support will be seven (7) years, as provided in Section 702.

Section 702. Approval of this Covenant by the United States will constitute a commitment and pledge of the full faith and credit of the United States for the payment, as well as an authorization for the appropriation, of the following guaranteed annual levels of direct grant assistance to the Government of the Northern Mariana Islands for each of the seven (7) years following the effective date of this Section:

(a) \$8 million for budgetary support for government operations; and

(b) \$4 million for capital improvement projects, of which \$500,000 each year shall be reserved for such projects on the island of Tinian and \$500,000 each year shall be reserved for such projects on the island of Rota; and

(c) \$1.5 million for an economic development loan fund, of which \$500,000 each year shall be reserved for small loans to farmers and fishermen and to agricultural and marine cooperatives.

Section 703. (a) The United States will make available to the Northern Mariana Islands the full range of federal programs and services available to the territories of the United States. Funds provided under Section 702 will be considered to be local revenues of the Government of the Northern Mariana Islands when used as the local share required to obtain federal programs and services.

(b) There will be paid into the Treasury of the Government of the Northern Mariana Islands, to be expended to the benefit of the people thereof as the Government may by law prescribe, the proceeds of all customs duties and federal income taxes derived from the Northern Mariana Islands, the proceeds of all taxes collected under the internal revenue laws of the United States on articles produced in the Northern Mariana Islands, and transported to the United States, its territories or possessions, or consumed in the Northern Mariana Islands, and the proceeds of any other taxes which may be levied by the Congress on the inhabitants of the Northern Mariana Islands,

and all quarantine, passport, immigration and nationalization fees collected in the Northern Mariana Islands, except that nothing in this Section shall be construed to apply to any tax imposed by chapters 2 or 21 of title 26, United States Code.

Section 704. (a) Funds provided under Section 702 not obligated or expended by the Government of the Northern Mariana Islands during any fiscal year shall remain available for obligation or expenditure by the Government in subsequent fiscal years for the purpose for which the funds were appropriated.

(b) Approval of this Agreement by the United States will constitute an authorization for the appropriation of a pro-rata share of the funds provided under Section 702 for the period between the effective date of this Section and the beginning of the next succeeding fiscal year.

(c) The amounts stated in Section 702 will be adjusted for each fiscal year by a percentage which will be the same as the percentage change in the Guam Consumer Price Index using Fiscal Year 1975 as the base.

(d) Upon expiration of the seven (7) year period of guaranteed annual direct grant assistance provided by Section 702 the annual level of payments in each category listed in Section 702 will continue until Congress appropriates a different amount or otherwise provides by law.