

AdeGraffenried:1/23/75:kkc

MEMORANDUM FOR:

The Chairman, Marianas Political Status Commission  
The President's Personal Representative for Micronesian  
Status Negotiations

Subject: Report of the Joint Drafting Committee on the negotiating  
history.

Pursuant to decisions taken in December during the fifth series  
of negotiations in Saipan on the future political status of the  
Marianas, the joint Marianas-U.S. Drafting Committee has met in  
Washington, D.C. and has undertaken to clarify the import of certain  
provisions of the Covenant. We submit our report herewith.

The results of our discussions are reflected in the attached  
draft negotiating history which is recommended by the joint drafting  
committee for your consideration. The draft serves to record our  
tentative agreement on a number of substantive matters. We recommend  
that it be approved by both delegations and incorporated into the  
official record.

Howard P. Willons  
Senior Representative  
MPSC Drafting Committee

James M. Wilson, Jr.  
Senior Representative  
U.S. Drafting Committee

REPORT OF THE DRAFTING COMMITTEE

Section 101. Inasmuch as the term "Northern Mariana Islands" is used in Article I in the sense defined in Section 1006 its definition cannot be changed except by mutual consent.

It is the intent of the parties that Section 103. The Government of the Northern Mariana Islands will not be an agency or instrumentality of the United States.

Section 104. is not intended to derogate from the/sovereign powers held by the United States under Section 101

Section 105. Prior to the termination of the Trusteeship the consent of the Northern Mariana Islands envisaged by this Section will not be given without the consent of the legislature.

Section 202.

The authority of the federal courts to determine whether or not the Constitution of the Northern Mariana Islands and subsequent

amendments thereto are consistent with the provisions of the Constitution, treaties, and laws of the United States applicable to the Northern Mariana Islands is not intended to be exclusive so as to preempt the power of the courts of the Northern Mariana Islands to make such determinations in appropriate cases.

Section 203(c).

The provision that the legislative powers of the Northern Mariana Islands will extend "to all rightful subjects of legislation" means that the power of the legislature will be limited only by the terms of the Covenant, the provisions of the Constitution, treaties and laws of the United States applicable to the Northern Mariana Islands, and the Constitution of the Northern Mariana Islands.

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Section 401. The establishment of a separate district court for Northern Mariana Islands does not preclude the appointment of a District Judge, United States Attorney and United States Marshal to hold the corresponding offices in the Northern Mariana Islands at the same time. Congress, in its discretion may provide ~~in analogy to Section 27 of the Organic Act of the Islands, 48 U.S.C. 1617,~~ that the United States Attorney ar

United States Marshal for the Northern Mariana Islands are authorized or required to perform, at the request of the Government of the Northern Mariana Islands, certain functions related to the execution of the local laws.

Section 402.

In view of some ~~confusion~~ which seems to have developed under somewhat similar language in the Guam Organic Act, the negotiating parties consider it appropriate to point out with respect to Subsection (c) that the Legislature of the Northern Mariana Islands--- is under no obligation to grant any appellate jurisdiction to the District Court for the Northern Mariana Islands. The Legislature may choose at any time and from time to time to establish appellate courts of the Northern Mariana Islands and to eliminate the appellate jurisdiction of the District Court.

[Section 403. Subsection (b) of this Section is intended to make applicable to the District Court for the Northern Mariana Islands a wide variety of procedural and housekeeping statutes applicable to the District Court of Guam, as well as such statutes as are now applicable with respect to Guam or citizens of Guam including 28 USC § 1332 (diversity jurisdiction in district courts of the United States) and 28 USC § 1738 (dealing with full faith and credit).]

Section 501.

to extend to the people of the Northern Mariana Islands the basic rights of United States citizenship and to make applicable to them certain of the constitutional provisions governing the relationship between the federal

government and the States. [It has no bearing on the authority of the United States to legislate with respect to the Northern Mariana Islands which is governed by Article I.]

provisions of the Constitution of the United States/to the Northern Mariana Islands ~~is~~-without prejudice to the power of Congress to authorize the Northern Mariana Islands (a) to distribute the membership of its legislature on considerations in addition to population (section 203); (b) to authorize exceptions to the requirements of trial by jury or indictment by grand jury (section 501); and (c) to limit the acquisition of permanent and long-term interests in land to persons of Northern Mariana Islands ancestry and to regulate the extent of the holding of formerly public lands (section 805).

Section 502. General Comments.

The formula stated in Section 502 is not intended to be the exclusive method by which laws of the United States are or can be made applicable to the Northern Mariana Islands. The Congress will have power consistent with the ~~Agreement~~ to alter the manner and extent to which laws covered by the formula apply to the Northern Mariana Islands, to make laws not covered by the formula applicable or to make laws covered by the formula inapplicable. The formula does not make the Northern Mariana Islands into a territory or possession of the United States prior to termination. In many instances, however, the Northern Mariana Islands will be treated as if it were a territory or possession of the United States prior to termination,

Insert for Section 501.

[The inclusion or omission of the power to legislate,

specific references to certain provisions of the Constitution is not designed to affect the authority of the United States to legislate with respect to the Northern Mariana Islands. That power is government by Article I.

for many laws applicable to Guam because it is a territory or possession will become applicable to the Northern Mariana Islands.

[The phrase "applicable to Guam" or "applicable to the Trust Territory of the Pacific Islands", in this Section is used in ~~the~~ sense of "applicable within ~~or~~ with respect to" the geographic areas mentioned or the people who reside in or who are citizens of those geographic areas.

Subsection (a). The term "the federal banking laws" in Subsection (a) has particular reference to Sections 13, 25 and 25(a) of the Federal Reserve Act, as amended (12 U.S.C. 466, and 601-632, respectively) and Section 5191 of the Revised Statutes (12 U.S.C. 143).

It is understood that the laws of the Trust Territory of the Pacific Islands as modified by the Government of the Northern Mariana Islands pursuant to its authority which relate to the subjects addressed in this subsection will continue to be effective after termination of the Trusteeship Agreement, except to the extent that they are modified by federal law after termination.

Section 504. The provision that the United States will bear the cost for the work of the Commission does not mean that the United States will pay the salary of the four Commissioners who are domiciled in the Northern Mariana Islands.

Section 601(a). The revenue provisions of the Covenant are not designed to render the Federal Unemployment Tax and the benefits derived therefrom applicable to the Northern Mariana Islands.

Section 603(b).

Section 603(c). The ~~negotiating~~ parties believe that the treatment provided for in this Subsection is consistent with the obligations of the United States under the General Agreement on Tariffs and Trade. This section is not intended to conflict with United States international obligations and does not require that the United States take any action which would be inconsistent with such obligations should such a conflict arise. The United States will, seek appropriate waivers or modifications of its international obligations.

Section 603(d). The term "a developing territory" as used in this subsection is intended to refer to the June 25, 1971 General Agreement on Tariffs and Trade waiver regarding preferential tariff treatment of goods from developing countries and territories, and to other similar benefits which may be available to the Northern Mariana Islands.

Section 702. It was not considered necessary to include Section 702 among the provisions listed in Section 105 which may be modified only by mutual consent. The reason for ~~the~~ omission ~~of~~ Section 702 is of a transitional nature, and will be limited to seven years following the establishment of the new Government. In addition a failure to appropriate funds as required by that section would constitute a dispute under Article IX which could be submitted to the courts pursuant to the provisions of <sup>that</sup> ~~this~~ Article.

Section 802.

Section 805. The parties intend that it will be the responsibility of the Government of the Northern Mariana Islands to implement the provisions of this Section. In particular, the parties understand that the local Government will define the operative terms in this Section, including such terms as "long-term interest in real property", "acquisition", and "persons of Northern Mariana Islands descent". Section 806(a). The use of any property or interest acquired by the United States pursuant to this Subsection will not be limited to the public purposes for which it was originally obtained. (Help)

Section 1001(a). The voter qualification set forth are the minimum eligibility requirements.

Section 1002. The parties note that the United States that it presently intends for all the districts no later than as stated publicly, to terminate the Trusteeship/by 1981.