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MEMORANDUM FOR CAPTAIN WHELAN, ASSISTANT FOR THE JAG (104/104)

Subj: Draft Covenant with the Northern Mariana Islands

- Ref: (a) Your conversation with Major [redacted] of this Office on 29 January 1975
- (b) Mr. Abramowitz ltr of 23 Jan 1975 to Ambassador F. Hayden Williams concerning the subject Covenant

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1. Reference (a) relayed the response of GNM and of the counsel for the Marianas negotiators to the changes to the draft Covenant recommended in reference (b), and asked for our comments thereon. The following comments are provided:

2. The specific changes recommended in reference (b) to Sections 502, 602, 603(b) and 604(b) were refused by the Marianas counsel, but it was agreed to add a new subsection to Section 602 as follows:

"(b) Nothing in this Article will be deemed to affect the operation of the Soldiers' and Sailors' Relief Act, as amended, which will be applicable to the Northern Mariana Islands. It is applicable to Guam."

This change proceeds in the correct direction, but does not go far enough. It leaves unanswered whether the GNM will be permitted to tax imports from outside the customs territory of the United States by the United States or by its instrumentalities, to levy sales and other taxes upon USI instrumentalities such as nonappropriated fund activities, and generally whether the tax status of military servicemen and employees of the USG will be similar to that in the United States and Guam, or whether additional financial hardships will be imposed upon them when they are assigned to the Northern Mariana Islands. Additionally, the reference to the Soldiers' and Sailors' Civil Relief Act is incorrect. To solve these problems, the following language for Section 602(b) is recommended:

"(b) No provision of this Article shall be deemed to authorize the Government of the Northern Mariana Islands to levy any taxes or duties on the United States Government or its instrumentalities; nor shall any thing in this Article be deemed to authorize the Government of the Northern

*Trust Term - Marianas Base + Fac. Nego Spud*  
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Mariana Islands to levy any duties or taxes on the household goods, personal effects or motor vehicles shipped for employees of the United States Government, members of the United States Armed Forces, and the dependants of each, by the United States Government pursuant to their contract for employment or orders assigning them to the Northern Mariana Islands or reassigning them therefrom. Nor shall any provision of this Article be deemed to affect the operation of the Soldiers and Sailors' Civil Relief Act of 1940, as amended, which will be applicable to the Northern Mariana Islands as it is applicable to Guam."

3. The Marianas counsel agreed to a revision of Section 802(b) to read as follows:

"(b) The United States affirms that it has no present need for or present intention to acquire any property additional to that which is listed in subparagraph (a), or to acquire any greater interest in such property than that which is granted to it under Section 803."

This revision is deficient in that it still could be construed as indicating that the United States right to acquire property in the NMI is granted by the Covenant rather than based upon the U.S. Constitution and federal statutes. This interpretation is lent greater force by the introductory paragraph of Section 502 which makes all federal law applicable to the Northern Mariana Islands subject to exceptions which may be found elsewhere in the Covenant. The Marianas counsel declined to change Section 502 since it is intended to modify by implication of provisions in the Covenant various federal laws not expressly mentioned in the Covenant. To avoid the possible conclusion that the U.S. right to acquire property in the NMI is based upon the Covenant rather than the U.S. Constitution and federal legislation, it is recommended that section 802(b) read as follows:

"(b) The United States affirms that it has no present need for or present intention to acquire any property additional to that which is listed in subparagraph (a), or to acquire any greater interest in the property listed in subparagraph (a) than that which is described in Section 803(a)." The changes are underscored. Additionally, it is recommended that the USG insist upon the changes recommended in reference (b) to the third line of Section 806(a), again to avoid any inference that the U.S. rights in property are based upon the Covenant rather than upon the U.S. Constitution and federal legislation.

4. Reference (a) disclosed that Mr. Wilson of OMSN declined to raise with the Marianas counsel the change to the first three lines of Section 806(c) recommended by reference (b), namely, the deletion of the three words "will have and". The inclusion of those three words implies that the United States has no power of eminent domain in the Northern Mariana Islands until the prior condition is met that the required real property

