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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. Willens  
Senior Representative  
MPSC Drafting Committee

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

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REPORT OF THE DRAFTING COMMITTEE

Section 101. Inasmuch as the definition of the term "Northern Mariana Islands" in Section 1001 is incorporated in Article I, it is understood that the geographic integrity of the Northern Mariana Islands is subject to the mutual consent requirement of Section 105.

Section 103. The Government of the Northern Mariana Islands will not be considered an agency or instrumentality of the United States Government.

Section 104. Reference to the federal powers mentioned in this section is not intended to derogate from the sovereignty-vested in the United States by Section 101 or the legislative powers vested in the United States by Section 105.

Section 105. It is intended that, prior to the termination of the Trusteeship Agreement, the consent of the Northern Mariana Islands envisaged by this Section may not be given without the consent of the popularly elected legislature. It is understood that the authority of the United States under this section will be exercised through, among other provisions of the United States Constitution, Article IV, Section 3, Clause 2:

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) It is the intention of the parties that the provision stating that the legislative powers of the Northern Mariana Islands will extend "to all rightful subjects of legislation" be broadly interpreted, consistent with Section 102 to mean 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.

Section 401. The establishment of a separate district court for the Northern Mariana Islands does not preclude the appointment of the District Judge, United States Attorney and United States Marshal for Guam to hold the corresponding offices in the Northern Mariana Islands at the same time. Congress, in its discretion may also provide that the United States Attorney and the 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. [The Executive Branch of the United States Government will recommend that the Congress enact legislation to accomplish this goal.]

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 501. This Section is intended among other things 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, as if the Northern Marianas were a State. It has not bearing on the authority of the United States to legislate with respect to the Northern Mariana Islands which is governed by Article I. The inclusion or omission of the power to legislate in the 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 governed by Article I. The parties intend that the extension of certain provisions of the Constitution of the United States to the Northern Mariana Islands shall not under any circumstances operate to prevent the Northern Mariana Islands from distributing membership of its legislature on the basis of considerations in addition to

population (Section 203), or from conducting trials without juries or prosecuting criminal cases without indictments by grand juries (Section 501), or from limiting the acquisition of permanent or long-term interests in land to persons of Northern Mariana Islands descent or from regulating the extent of the holding of land which is now public land (Section 805). Nor is the extension of certain provisions of the United States Constitution to the Northern Mariana Islands intended in any way to prohibit the United States Congress from authorizing or requiring any of the actions mentioned in this paragraph.

Section 502. General Comments.

The interim 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 Covenant 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, 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 to mean "applicable within" as well as "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).

Section 503

(a) 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 506. To the extent that United States law do not apply, the Northern Mariana Islands has the power over immigration into its territory.

An immediate relation of a U.S. citizen residing in the Northern Mariana Islands may gain admission to the Northern Mariana Islands in accordance with local law without claiming immediate entitlement to national status under the U.S. Immigration and Nationality Act.

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

(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. However, 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.

(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 this omission is that 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 that Article.

Section 803. It is understood that the Government of the Northern Mariana Islands may exercise its obligations and rights under this Article through a legal entity established to receive and hold public lands in trust in accordance with Order Number 2969 of the Secretary of the Interior, as it may be amended.

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 or 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.



Section 901. The parties note that the Executive Branch of the United States Government intends to support a request from the Government of the Northern Mariana Islands to the Congress of the United States that the Resident Representative provided for in this Section be given non-voting status.

Section 1001. In accordance with the request of the Marianas District Legislature the United States intends to administer the Mariana Islands District separate from the remainder of the Trust Territory following approval of the Covenant by the people of the Northern Mariana Islands. In establishing other qualifications for voting in the plebiscite, the United States will consult, as appropriate, with local leaders.

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