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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-United States Drafting Committee has met and has undertaken to record the intention of the parties regarding 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 set out 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
Counsel
Marianas Political
Status Commission

James M. Wilson, Jr.
United States
Deputy Representative

Approved by the delegations of the Northern Mariana Islands and the United States on February fifteenth, 1975.

Edward DLG. Pangelinan
Chairman
Marianas Political
Status Commission

Ambassador F. Haydn Williams
The President's Personal
Representative for
Micronesian Status Negotiations

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REPORT OF THE DRAFTING COMMITTEE

Section 101. Inasmuch as the definition of the term "Northern Mariana Islands" in Subsection 1005(b) 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.

Subsection 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.

It is also the intention of the parties, as reflected in the unanimous view of the members of the Marianas Political Status Commission, that the Northern Mariana Islands Constitution provide for a distribution of the membership of one house of the legislature on the basis of appropriate considerations in addition to population and in particular that the phrase "chartered municipalities of the Northern Mariana Islands" be interpreted to mean the present chartered municipalities of Rota, Saipan and Tinian as constituted at the time of signature of this Covenant and any additional future chartered municipalities that may be added pursuant to the terms of

the Constitution of the Northern Mariana Islands.

Section 401. The establishment of a 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. The United States 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.

Subsection 402(c). It is the intention of the parties with respect to this Subsection that the Legislature of the Northern Mariana Islands be 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 or reinstate the appellate jurisdiction of the District Court.

Subsection 501(a). This Subsection 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 Mariana Islands were a State. As reflected in this Subsection the parties recognize that certain provisions of the Constitution of the United States will apply to the Northern Mariana Islands of their own force by virtue of Article I of this Covenant.

The inclusion or omission of the power to legislate in the specific reference to certain provisions of the Constitution of the United States 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.

Subsection 501(b). The provisions of the Covenant referred to in this Subsection constitute integral parts of the mutual compromises and concessions without which the accession of the Northern Mariana Islands to the United States would not have been possible. The inclusion of any of those provisions in this Subsection should not imply that these provisions are in conflict with the Constitution of the United States.

Section 502. The interim formula stated in this Section 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 of the United States will have power subject to Section 105 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.

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). The reference to the Micronesian Claims Act in Subsection (a) is not intended to preclude the Northern Mariana Islands from seeking such amendments to the Act, or increased appropriations for its implementation, as appear appropriate or desirable.

Subsection 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 or by the Government of the Northern Mariana Islands.

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 the United States law does not apply, the Northern Mariana Islands has the power over immigration into its territory. An immediate relative of a United States citizen residing in the Northern Mariana Islands may gain admission to the Northern Mariana Islands in accordance with local law without claiming at that time entitlement to immediate relative status under the United States Immigration and Nationality Act.

Section 601. 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.

Subsection 603(b). The 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 Subsection 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.

Subsection 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 this Section among the provisions listed in Section 105 which may be modified only by mutual consent. The reason for this omission is that, while Section 702 constitutes a commitment on the part of the United States Government, it is of a transitional nature extending for 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.

Subsection 704(c). The reference in this Subsection and in Subsection 803(e) to a United States Department of Commerce composite price index is intended to refer to the United States Gross National Product Implicit Price Deflator.

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 for the people of the Northern Mariana Islands.

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 Constitution or laws of the Northern Mariana Islands 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".

Subsection 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. This Section is not intended to preclude

the Government of the Northern Mariana Islands from requesting the Congress of the United States to confer non-voting delegate status on the Resident Representative provided for in this Section.

Subsection 904(c). The parties note that this Subsection is not intended to preclude the Government of the Northern Mariana Islands from discussing matters of mutual concern with other Pacific island communities.

Section 1001. In accordance with the request of the Marianas District Legislature, the United States intends to administer the Mariana Islands District separately 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 with representatives of the Marianas District Legislature and other local leaders.

Section 1002. The parties note that the United States has stated that it is now planning on a provisional basis to terminate the Trusteeship for all the districts by 1981.