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OFFICE FOR MICRONESIAN STATUS NEGOTIATIONS

Washington, D. C. 20240

June 12, 1975

To : IAG Working Group  
From : Adrian de Graffenried *ADG*  
Subject : Potential Issues Re: Covenant  
Review by U.S. Congress

Please review the attached and call any  
recommendations to OMSN as soon as possible.  
Current plans call for submission to the  
U.S. Congress by June 23rd.

Attachment

03-7-75

COMMONWEALTH COVENANT

POTENTIAL ISSUES

Article I.

1. A new territory.

- a separate political entity for 14,000 people;
- non-unification with Guam from the outset;
- no specific provisions for eventual unification with Guam;
- a separate political entity that will function apart from two or perhaps more other political entities in the Western Pacific with no formal political ties between them.

2. Nature of the U.S.-NMI Relationship.

- U.S. sovereignty;
  - U.S. has agreed to limit its plenary powers in certain areas;
  - NMI is given explicit right to internal self-government;
  - U.S. may not change the political relationship without the consent of the NMI;
- the NMI will be a Commonwealth but will be treated under federal law as a State of the Union;
- U.S. cannot alter the NMI Constitution;
- U.S. must include NMI by name in federal legislation.

Article II.

1. Approval of NMI Constitution.

- the U.S. Congress appears to have no role in the approval process;

- there is automatic approval upon 6 months if not disapproved by the President;
  - U.S. review is limited to consistency with provisions of Covenant and Federal law applicable to NMI, vice general review.
2. Structure of the NMI Legislature.
    - the NMI will have a bicameral legislature patterned on the U.S. Congress that will not follow the requirements that membership be based strictly on population.
  3. Power of the legislature.
    - the NMI legislative authority will extend to all "rightful" subjects of legislature which is broader than Guam;
    - the U.S. may not enact legislation which is of strictly local application.

#### Article III.

1. U.S. citizenship option.
  - granting an option between U.S. citizenship and U.S. national status permits local residents to reject U.S. citizenship;
  - preferable treatment is given to non-TTPI citizens in the exercise of the option in that TTPI citizens are required to be domiciled in the NMI for 5 years while non-TTPI citizens are only required to be domiciled in the NMI continuously since January 1, 1974.
2. Privileges and Immunities.
  - Although local residents will not become U.S. citizens until the end of the Trusteeship Agreement, NMI citizens eligible for U.S.

citizenship will receive the full privileges and immunities U.S. citizens enjoy immediately after the NMI Constitution is approved.

Article IV.

1. Federal Court of the NMI.

- a separate federal district court is established for only 14,000 people;
- there appears to be much duplicity of court administration between Guam and the NMI;
- the local NMI legislature is authorized to grant jurisdiction to the federal court over some local matters.

Article V.

1. Application of provisions of the U.S. Constitution.

- there are more provisions extended to the NMI than to Guam;
- there are specific exceptions made for the NMI that are not made elsewhere in the federal territories;
- which provisions apply "of their own force";
- the U.S. has agreed to limit its powers so as not to extend the rights and guarantees under other provisions of the U.S. Constitution without the consent of the NMI.

2. Specific application of certain federal laws.

- there is no uniformity of the application between the NMI and Guam;
- the NMI receives special treatment over Guam in Social Security

and Public Health;

- federal laws have to apply both to the States and to Guam before they apply to the NMI.

3. Specific exclusion of the NMI from the application of certain federal laws.

- the immigration and naturalization laws exclusion will permit the NMI to enact their own such laws to the detriment of U.S. immigration or foreign policy;
- the NMI is excluded from the Jones Act which applies to all except American Samoa.

4. Special application of the U.S. naturalization laws.

- immediate relatives of persons qualified for the U.S. citizenship option may also become U.S. citizens or nationals;
- local officials, not U.S. officials, are authorized to make a determination as to whether a person meets the tests set forth in federal statutes and is a permanent resident of the NMI which may lead to some discrimination or abuse of the privilege.

Article VI.

1. Local taxes.

- the NMI will be authorized to enact "other" taxes in addition to the federal income tax and rebate the revenues as it may wish, vice Guam which has only limited taxation authority.

2. Imports and Trade.

- the NMI may impose "import" duties while Guam may not;
- the U.S. is specifically obligated to attempt to obtain special

trade treatment for the NMI as if it were a "developing" territory although no other U.S. territory has this status.

3. Social Security.

- the U.S. is obligated to administer the NMI Social Security System apart from the TTPI Social Security System and outside the U.S. system until the end of the Trusteeship.

Article VII.

1. Multi-year authorization.

- the U.S. will provide financial assistance for 7 years at established levels as opposed to yearly budgetary review and authorization processes;
- these authorization amounts will continue until the U.S. Congress specifically acts to make other arrangements;
- the provisions in the Covenant will act as an authorization measure without the need to introduce separate legislation;
- the pledge of full faith and credit of the U.S. acts to make the U.S. liable in the federal courts for its commitments under the Covenant;
- there is no provision for readjustment of the financial levels by the U.S. Congress;
- the U.S. grants will be adjusted yearly by consumer price index to reflect monetary valuation changes and inflation;
- the U.S. grants can be used by the NMI as part of their share for matching grant requirements;
- no specific reference is made to the functions of the U.S.

Comptroller although this office would have the NMI within its jurisdiction under the general application of laws of Article V.

#### Article VIII

##### 1. U.S. land requirements.

- the U.S. will lease land in the NMI and will "out-grant" part of the lands back to local residents for their use for \$1 per acre per year;
- the U.S. currently holds valid lease agreements for an "indefinite" term to some of these lands but will be relinquishing these rights for new terms.

##### 2. Restrictions on local land ownership.

- citizens of the NMI will be U.S. citizens, but U.S. citizens will not be able to own or hold long term leases to local lands unless there are of "Marianas" ancestry;
- a specific exception to U.S. Constitutional provisions is therefore permit the NMI to have absolute control over local lands; this exception follows U.S. precedents in several areas with minority groups;
- the NMI will have the exclusive authority to determine who is of "Marianas ancestry".

#### Article IX.

##### 1. NMI Representation.

- NMI Resident Representative will be accredited through the State Department, vice Interior Department.

2. Consultation.

- regular consultation periods regarding financial and status agreements are specifically established to provide a continuing dialogue between the U.S./NMI on possible improvements in the relationship;
- no other U.S. territorial relationship has this specific requirement.

3. Justiciable Issues under the Covenant.

- the Covenant specifically provides that any controversy arising under the Covenant is justiciable in the federal courts;
- no other U.S. territory has this provision.

Article X.

1. Approval.

- the U.S. Congress will not alter the status agreement;
- the Covenant will be approved by both Houses of the U.S. Congress and will thereupon become law; the status agreement is therefore something between a treaty and an executive agreement.

2. Effective dates.

- specific provisions become effective during different time frames rather than the provisions becoming fully effective at one time.