

OFFICE FOR MICRONESIAN STATUS NEGOTIATIONS

WASHINGTON, D.C. 20240

June 26, 1975

MEMORANDUM

To: Ambassador F. Haydn Williams
From: Adrian de Graffenried, Legal Adviser, Office for
Micronesian Status Negotiations
Subj: Review of "Section by Section Analysis"

The following general comments are provided on the "Section by Section Analysis". The comments are intended as additions to the basic draft and reflect the understanding of these provisions as we discussed and drafted them in the lawyers working group as are contained in the memorandums of conversation of those meetings and in the U.S. drafts exchanged with attorneys of the Marianas Political Status Commission:

TITLE: Minor grammatical changes required.

ARTICLE I:

Section 101

The plenary powers of the U.S. Congress to enact legislation for the Northern Mariana Islands under Article IV, 3, 2 of the Constitution are established in this section by virtue of extending U.S. sovereignty to the Northern Mariana Islands. Sovereignty will also flow directly from the Trusteeship agreement to the United States to avoid any issue of whether "Residual" sovereignty will remain with the Northern Marianas that would otherwise permit them to exercise some authorities independent of the Covenant agreements.

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Adrian*

The Commonwealth is to be a territory (vice Territory) of the United States. The geographic integrity of the Northern Mariana Islands will be respected and will not be integrated with the remainder of the Mariana Islands without local consent.

Self-government includes authority by the government of the Northern Mariana Islands to enact local laws which are to be consistent with applicable provisions of the U.S. Constitution and federal law and with provisions of the Covenant.

We should note that the Northern Mariana Islands is now an administrative district of the Trust Territory of the Pacific Islands administered by the United States according to the terms of the Trusteeship Agreement. The Covenant therefore is essential to define the future legal and political relationship between the United States and the Northern Mariana Islands.

Section 102

(a) While the Covenant is the fundamental governing document after the end of the Trusteeship Agreement, until the end of the Trusteeship Agreement the United States will hold certain authorities and powers in the Northern Mariana Islands apart from those defined in the Covenant by virtue of the Trusteeship Agreement; but, the United States will exercise such rights in accordance with the terms of the Covenant. At the end of the Trusteeship Agreement, the

Covenant will govern all relations between the Northern Mariana Islands and the U.S. Government.

(b) Although the "supremacy" clause provides a basic parallel to the U.S. Constitutional practice requiring conformity of local laws with the federal constitution and laws, the "supremacy" clause in the Marianas also requires that local laws conform to the provisions of the Commonwealth Covenant in addition to applicable provisions of the U.S. Constitution and federal law.

Section 103

(a) "Self-government" is also a guarantee against federal interference in strictly local affairs and follows federal practice with regard to Puerto Rico. Section 734, Title 48, U.S. Code. In this respect, the Northern Mariana Islands authority, read together with Section 105, parallels that of a State--the exclusive right to address and resolve matters of local concern.

(b) Both Puerto Rico (Section 731d, Title 48 U.S. Code) and American Samoa (Section 1661(c), Title 48 U.S. Code and Executive Order 10264 of June 29, 1951 authorizing the Secretary of the Interior to administer American Samoa) have locally drafted Constitutions. The Organic Acts of Guam (Chapter 8A, Title 48 U.S. Code) and the Virgin Islands (Chapter 12, Title 48, U.S. Code) act as a territorial constitution for these territories; because the acts are subject to change by the U.S. Congress, the Congress can void legislative acts by Guam or the Virgin Islands of a local

nature. The Covenant avoids this result by specifically vesting local self-government with the Northern Mariana Islands Government and by concurrently restricting the exercise of plenary power of the United States.

Section 104

(a) The Northern Mariana Islands' remote geographical location in the far western Pacific Ocean led to the U.S. Government agreeing to consider participation for the Northern Mariana Islands in international and regional organizations; it was decided, however, that since the U.S. Government held the full fundamental responsibility for Foreign Affairs, such participation could occur only when and to the same extent other U.S. territories and dependences so participated but the U.S. would consult with the Northern Mariana Islands on matters affecting the Northern Mariana Islands.

(b) The United States will hold the full attributes of the sovereign, including Foreign Affairs and defense; it was agreed that this section would not derogate from the other sovereign powers vested in the U.S. Government and thus would be illustrative only of the federal powers of the U.S. Government.

Section 105

(a) The requirement for specific inclusion of the Northern Mariana Islands in federal legislation as a

precondition to its applicability in the Commonwealth was in recognition that the remote geographical location of the Northern Mariana Islands and the particular economic, social, and political developmental levels of the islands should be full considered by the Congress before federal legislation is applied.

As regards the requirement for local consent to alter any enumerated provision, it is understood that until the end of the Trusteeship Agreement that the consent of the local legislature will be obtained to satisfy this requirement.

The U.S. Congress will hold the full plenary powers with which it is constitutionally vested under Article IV, Section 3, Clause 2, U.S. Constitution to enact legislation regarding all U.S. territories, but in the exercise of that authority it will refrain from acting in certain areas without the consent of the Commonwealth.

ARTICLE II

Section 201

It should be noted that both American Samoa and Puerto Rico have a locally drafted constitution; the former approved by the U.S. Executive and the latter approved by the U.S. Congress.

Section 202

Approval of the Commonwealth Constitution by the United States will be obtained by submitting the document to

the President for referral to the U.S. Congress; if the President or Congress do not act to disapprove the Constitution within six months after it is submitted to the President, the Constitution will be considered approved. This process was adopted to preclude unnecessary delay for local self-government for the Northern Mariana Islands.

Local courts will hold concurrent jurisdiction with federal courts to determine whether or not the Northern Mariana Islands Constitution and subsequent amendments are consistent with applicable provisions of the U.S. Constitution, treaties and federal laws.

Section 203

(b) The Northern Mariana Islands will elect its governor and may elect or appoint all other executive officials, (e.g., Lieutenant Governor, judges, land officers).

(c) (1) The Northern Mariana Islands legislative authority ("to all rightful subject") equals that vested with the Virgin Islands Legislature under Section 1574, Title 48, U.S. Code; this authority is more broad than other territorial legislative powers (e.g., Guam under Section 1423a, Title 48, U.S. Code: "to all subjects of legislation of local application"; and American Samoa under Section 1, Article II, American Samoa Constitution: "subjects of local application"). The authority of the Virgin Islands legislature is defined by numerous federal court interpretations. The Northern Mariana Islands legislative authority is also circum-

scribed only by the terms of the Covenant, applicable provisions of the U.S. Constitution, treaties and federal laws and the Commonwealth Constitution.

(2) The bicameral legislature of the Northern Mariana Islands is constituted on a basis other than proportional representation required for State Legislatures; the membership of one house will be comprised of equal representation from each of the presently chartered municipalities in the Northern Mariana Islands. Membership is patterned on the bicameral U.S. Congress so as to reflect the particular level of local political development in the Northern Mariana Islands under the Trusteeship at the present time and as to reflect local island demographic circumstances. The non-proportional representation also follows the American Samoa precedent under Article II, Section 3 and 4, American Samoa Constitution.

Section 204

The oath of loyalty for local officials is patterned after similar requirements found in the Virgin Islands under Section 1406j of Title 48, U.S. Code, since superceded by Section 1543, Title 48, U.S. Code.

ARTICLE III

Section 301

The method of establishing classes of Mariana Islands residents qualified for U.S. citizenship follow the

approach taken in Guam under Section 1421e, Title 48, U.S. Code. In the Northern Mariana Islands, these are: (1) persons born in the Mariana Islands who are Trust Territory citizens and who have maintained their residence in the Northern Mariana Islands or in the United States or any U.S. territory. U.S. jurisdiction was included within the domicile requirement because the United States is the administering authority of the U.N. Trusteeship of which the Northern Mariana Islands is an integral part; this class includes some local residents who have established residency in U.S. jurisdiction for work or education purposes; (2) Trust Territory citizens not of the Mariana Islands but who have clearly cast their future with the Northern Mariana Islands as evidenced by at least five years local residency; this class includes Trust Territory citizens from other districts of Micronesia who have come to the Northern Mariana Islands for permanent residency and those TTPI citizens who were born in Yap District of parents originally from the Northern Mariana Islands who themselves were residing in Yap as administrative personnel under the Japanese and who after World War II moved to the Northern Mariana Islands; and (3) persons otherwise meeting local residence requirements but who were not granted Trust Territory citizenship under restrictive Trust Territory Code provisions; this class includes aliens such as Philipinos, Koreans, Okinawans, and

others who worked under the former administering authority and who remained in the Northern Mariana Islands after World War II; it also includes aliens who have come to the Northern Mariana Islands since World War II; A requisite for U.S. citizenship under this class, however, is that these people not owe allegiance to their former country.

Section 302

The option to permit local residents to become U.S. nationals was related to some local views desiring to preserve Carolinian and Chamorro traditions and who felt that the American Samoan precedence granting U.S. national status to local residents should be followed in the Mariana Islands to permit each person a free choice. The United States has never before in its territorial acquisitions taken an "option" approach to U.S. citizenship.

Section 303

This provisions follows customary U.S. practice in conferring U.S. citizenship to persons born in areas under or subject to United States sovereignty, see Section 1421(1), Title 48, U.S. Code respecting Guam.

Section 304

This clause is the converse to Section 501; in Section 501, U.S. citizens will be granted the same rights and privileges (except those dealt with specifically such as jury trials, and those providing exclusions such as land

ownership) in the Northern Mariana Islands as they enjoy in the several states. Although local Northern Mariana Islands residents will not become U.S. citizens until the end of the Trusteeship Agreement they will be given all of the rights and privileges of American citizenship enjoyed in the United States prior to actually becoming U.S. citizens. Northern Mariana Islands citizens will remain under the Trusteeship and subject to its special protections until it is ended and thus could not be extended formal U.S. citizenship.

ARTICLE IV

Section 401

The Virgin Islands precedent under Section 1617, Title 48, U.S. Code was used as a model to permit certain enforcement functions of local laws by the U.S. District Attorney and Marshall.

Section 402

(a) No additions or changes required.

(b) The Northern Mariana Islands federal district courts will have jurisdiction over local matters as the legislature may vest which follows the current Guam practice under Section 1424, Title 48, U.S. Code. It should be noted that Guam requires, under laws passed by the legislature for the local civil procedure, that the federal court will have jurisdiction if the matter involves a controversy over \$2,000; Virgin Islands requires under

Section 1613, Title 48 only \$500 for civil and \$100 for criminal action cases arising under local law.

The authority of the federal court to act as an appellate court for judgments of local courts on local matters as may be set by the local legislature finds precedence in the Virgin Islands under Section 1612, Title 48, U.S. Code, and Guam under Section 1424, Title 48, U.S. Code.

Section 403

No additions or changes required.

Section 404

No additions or changes required.

ARTICLE V

Section 501

(a) Selected provisions of the U.S. Constitution were made specifically applicable to the Northern Mariana Islands to clarify the federal-Commonwealth relationship and avoid any future ambiguities as have arisen in other territories. In this regard, certain provisions extended are those also specifically extended to Guam under Section 1421(b) of Title 48, U.S. Code and to the Virgin Islands under Section 1561 of Title 48 U.S. Code; these are: Article I, Section 9, Clause 2, 3; Article IV, Section 1 & Section 2, Clause 1; Amendments 1-9; Amendment 13; Amendment 14, Sentence 2; Amendment 15 and 19.

Also, other provisions were extended relative to

certain actions reserved to the federal government and those which the States should not undertake.

The special treatment extended to the Northern Mariana Islands regarding grand jury and trial by jury parallel similar provisions extended to the Virgin Islands under Section 1561, Title 48 U.S. Code; and to Guam under Section 1424b, Title 48, U.S. Code.

The language "which do not apply of their own force" is inserted to recognize that some provisions of the U.S. Constitution do not apply in the territories and must be specifically extended to be locally operative; other provisions do apply of their own force, e.g., powers of the President under Article II and Congress under Article I, Sections 1-8.

Section 501

(b) No additions or changes required.

Section 502

(a) Laws of the United States to be effective in the Northern Mariana Islands:

(1) Social Security. Section 228 of Title II and Title XVI which now apply only to the States will apply to the Northern Mariana Islands as if it were a state. Other social security laws and benefits are enumerated in Section 606.

(2) General Laws. The U.S. Congress is also required to specifically name the Northern Mariana

Islands before federal law will apply locally, as set forth in Section 105; that section also contains other restrictions on the exercise of the plenary powers of the U.S. Congress. Otherwise, the U.S. Congress may enact federal legislation in accordance with the provisions of this section and Section 703.

(3) Federal laws now extended to the Trust Territory of the Pacific Islands will continue to apply as they recognize the particular development requirements of the area and as many federal programs now operative in the Northern Mariana Islands are extended under these laws.

(b) No additions or changes required.

Section 503

(a) No additions or changes required.

(b) The provisions of the coastwise laws of the United States are also not extended to the Virgin Islands (see Section 1405(c), Title 48 U.S. Code) nor to American Samoa (see Section 1664, Title 48 U.S. Code). The particular geographic locale of the Northern Mariana Islands in the far Western Pacific and the state of its economic development raised significant concerns that application of these laws might inhibit local economic growth.

Additionally, many of the provisions of the coastwise laws prohibit or otherwise restrict the sale of U.S. vessels to none except U.S. citizens so that the applications of these laws to the Northern Mariana Islands whose

citizens may become U.S. nationals and not U.S. citizens appeared unduly harsh. Also since the coastwise laws would otherwise become applicable before the end of the Trusteeship and local Northern Marianas residents, who would not become U.S. citizens until the end of the Trusteeship, could not purchase U.S. vessels until the end of the Trusteeship, although U.S. citizens from the mainland or other territories who are in the Northern Marianas would not otherwise suffer such restrictions. In particular the restrictions posed under Sections 802, 808, 835(b)(1) of Title 46 U.S. Code, as well as Sections 221, 236, and 883 of Title 46 U.S. Code would be avoided until the U.S. Congress has reviewed the related issues and acted to specifically apply these provisions to the Mariana Islands.

The treatment of U.S. fisheries laws was provided to encourage local development of fish canneries by prohibiting the landing of "finished" (or "processed") fish in the United States; it was thus intended to discourage the practice of using foreign owned "mother ships" which act as floating canneries and processing plants while exploiting local marine resources which does not provide local employment or development opportunities for the Northern Mariana Islands. This approach follows the exclusionary treatment extended to Guam and American Samoa from Section 251 of Title 46 U.S. Code so as to stimulate the local economies and to provide an additional food source to local families.

(c) No additions or changes required.

Section 504

The approach for a Presidential Statutory Review Commission is found in particular in prior commissions for Guam under Section 1421c, Title 48 U.S. Code, the Virgin Islands under Section 1574(d), Title 48 U.S. Code, and Puerto Rico under Executive Order 10005, October 6, 1948, 13 FR 5854, issued under Section 7936 of Title 48 U.S. Code, repealed July 3, 1950.

Section 505

No additions or changes are required.

Section 506

No additions or changes are required except deletion of provisions indicated on page 32.

ARTICLE VI

Section 601

(a) Slight grammatical changes are required to note the taxes operate as a "mirror" image of the U.S. federal income tax code; this follows the treatment of the Internal Revenue Code extending to Guam under Section 1421i, Title 48, U.S. Code.

(b) The filing requisites of this section follow that now extended specifically to Guam under Section 935, Title 26 U.S. Code.

(c) No additions or changes are required.

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Section 602

No additions or changes are necessary.

Section 603

(a) No additions or changes are necessary.

(b) No other U.S. territory or possession is authorized to levy customs duties.

(c) U.S. customs treatment of goods from the Northern Mariana Islands to the United States are the same as those extended to Guam under Section 1421e of Title 48 U.S. Code, which in turn refers to Section 1301(a) of Title 19 U.S. Code.

(d) This obligation is in recognition of the U.S. obligations to promote local economic development under Article 6 of the Trusteeship Agreement. It is also intended to induce development incentives from sources other than the United States in recognition of the proximity of the Northern Marianas to East Asia countries which may provide favorable markets for Northern Marianas products.

Section 604

The excise treatment extended under this section is that provided Guam under Section 1423a, Title 48 U.S. Code

Section 605

The exclusion of military and civilian personnel from Northern Marianas customs duties is to avoid, on a one time basis, the burdens of taxation on household and other

goods of those who are officially assigned to or officially transferred from duty in the Northern Mariana Islands; to the extent these personnel thereafter import articles subject to local taxation, custom duties may be levied and collected.

Section 606

(a) The United States will administer the Marianas Social Security System through the U.S. Social Security Administration.

(b) The full benefits of Section 228 of Title II and all of Title XVI as they now apply to the States will, however, apply to the Northern Mariana Islands prior to the end of the Trusteeship Agreement, under Section 502(a) of the Covenant.

(c) Reference to Guam's social security system is inaccurate.

Section 607

The provisions exempting local Northern Mariana Islands government bonds from taxation are adopted from similar provisions established for Guam under Section 1423(a) of Title 48 U.S. Code and for the Virgin Islands under Section 1574(b)(ii) of Title 48 U.S. Code; the 10% ceiling on debts does not follow these provisions in that the debt ceiling is required only during periods of U.S. financial assistance.

ARTICLE VII

Section 701

This section is not intended to commit the United States to a particular standard of living but only expresses general principles of U.S. intentions.

Section 702

The pledge of full faith and credit of the United States is intended to reflect a binding, legal obligation of the U.S. Government for the enumerated levels of financial assistance. The obligation was intended to be enforceable in the federal courts.

Section 703

(a) The federal programs, which are available to the other territories, to be extended to the Northern Mariana Islands represent a somewhat different approach than that taken in the interim general application of federal laws under Section 502(b). Under that section U.S. regulatory laws applicable both to the States and Guam will initially be extended to the Northern Mariana Islands thereafter, such laws may be extended if the Northern Marianas is specifically named as provided under Section 105. Under Section 703, the full range of U.S. programs and services available to any territory will also be immediately extended to the Northern Mariana Islands. Additionally, the matching revenues provision is the privilege now granted to the Trust Territory of the Pacific Islands but not to other

States or territories and is in recognition of the special situation and state of local development in the revenues; this also reflects that the Northern Marianas is not presently capable of generating sufficient local revenues to meet matching grant requirements under U.S. laws.

(b) This provision is adapted from Section 1421(h) of Title 48, U.S. Code extending similar treatment to Guam for U.S. revenues collected in that territory and from Sections 1406(h) and (i), Title 48 U.S. Code providing similar treatment for the Virgin Islands.

Section 704

(a) This provision specifically recognizes the need to permit the Northern Mariana Islands some latitude in obligating funds to promote, to the maximum extent possible, social and economic development projects from federal funds; and, it recognizes the experience of the Northern Mariana Islands government in handling fiscal matters.

(b) No additions or changes required.

(c) No additions or changes required.

ARTICLE VIII

Generally speaking, references to the Technical Agreement should be deleted and a separate analysis memorandum prepared on the specifics of that document.

Section 801

The lands described in this section are:

(1) public lands actively used by the Trust Territory Government in the administration of (a) the Trust Territory and (b) the Mariana Islands; (2) public lands not otherwise transferred by Secretarial Order No. 2969. This transfer will thus encompass those lands sited for: the Trust Territory Headquarters and its staff; the Congress of Micronesia and its staff; the District Administration Headquarters and its staff; and public roads, utilities, airfields and docks. All other public lands held by the Trust Territory in trust for the local people have been or are being returned pursuant to Secretarial Order 2969.

The personal property subject to transfer encompasses files, typewriters, desks, and office equipment used exclusively by the Mariana Islands District Administration and a portion, equal to that to be transferred to the other districts (1/7), of such equipment and property held by the Trust Territory Headquarters Administration.

Section 802

The United States currently holds valid land use agreements to these areas and has agreed to new terms to reflect the scarcity of land in the Northern Mariana Islands and the more recent and thus more accurate land requirements of the U.S. Government.

Farallon de Medinilla will continue to be used by the U.S. Government.

The United States has no current intentions (vice "present need") to establish any defense installations in the Northern Mariana Islands.

Section 803

(a) The Northern Mariana Islands "legal" entity is a non-profit public corporation with legal characteristics and authority officially designated as the Mariana Islands Public Land Corporation; it was established by the Mariana Islands District Legislature in response to meeting the requirements of Order No. 2969 of the Secretary of the Interior as a precondition to an early transfer of public lands from the Trust Territory Government to local control. The Corporation will hold local public lands in trust for the people of the Northern Mariana Islands and may be the authority to enter into agreements to satisfy U.S. land requirements.

(b) The U.S. agreement on land payments will constitute an authorization for appropriation upon approval of the Covenant by the U.S. Congress.

It should be noted that if the U.S. Congress does not appropriate (vice authorize) funding within five years

after the effective date of the Covenant for such acquisition, the provisions of Sections 802 and 803 will become inoperative, and the lands will be returned to local control under the provisions of Section 2667 of Title 10 U.S. Code, relative to excess federal military property.

Section 804

(b) Provision for continued use by the military of local airfield facilities follows Paragraph 5, Section 1718, Title 49 U.S. Code, requiring that airfields constructed with federal funds be open to use on a reimbursable basis to the U.S. defense aircraft.

Section 805

The Northern Mariana Islands legislature will define what is meant by a "long term interest" (in excess of 25 years); "acquisition" and "persons of Northern Mariana Islands descent". It is to be noted that the parties intended that "persons of Northern Mariana Islands descent" includes both those of Chamorro and Carolinian heritage.

The agreement to provide protection for local land ownership is in recognition of the special relationship of the U.S. Government to the people of the Northern Mariana Islands under the Trusteeship Agreement which under Article 6, Paragraph 2, obligates the U.S. Government to protect local inhabitants against the loss of their lands. This provision also finds precedence in the administration and protection of Indian tribal lands under the Indian Trade and Intercourse Act

of 1790, of Hawaiian lands under the Hawaiian Homes Commission Act of July 9, 1921, 42 Stat. 108; Section 693, Title 48, U.S. Code, and of Samoan lands under Section 1661, Title 48 U.S. Code, which ratified the Instrument of Cession of 1904 ceding title of Samoa to the United States and specifically recognizing customary rights to property.

Section 806

(a) The provisions of this section states the intention of the U.S. Government regarding the use of eminent domain powers to acquire land interests in the Northern Mariana Islands. The policies or guidelines enumerated are to be followed to the practical extent possible. The scope of judicial inquiry into any legal issue arising under federal eminent domain practice is that now obtaining in federal courts under Section _____, Title _____, U.S. Code and as set forth fully in subsection (c) of this section.

Land acquired under this section may be used later for purposes other than that for which it was originally obtained.

(b) No additions or changes required.

(c) No additions or changes required.

ARTICLE IX

Section 901

Provision for an official representative of the Northern Mariana Islands to the United States is based on the practice followed with respect to other U.S. territories

which do not have voting representation in the U.S. Congress and a factor which of itself led to the broad United States guarantees to the Northern Mariana Islands of local self-government in Sections 103 and 105, and Article II. The rights to a "Resident Commissioner" in Washington, D.C. was earlier granted to Puerto Rico under Sections 891-4, Title 48 U.S. Code; Guam and the Virgin Islands were each granted non-voting representation in the House of Representatives under Section 1711, Title 48, U.S. Code. The Congress of the United States will have the authority to determine whether to confer non-voting delegate status to the Northern Mariana Islands Resident Representative.

Section 902

No additions or changes required.

Section 903

No additions or changes required.

Section 904

As a Commonwealth, the territory's views on foreign affairs directly relating to local matters will be sought and will be represented by the United States under Sections 101 and 104, notwithstanding the operative sub-provisions of this section. The Northern Mariana Islands may, of course, discuss matters of mutual concern with other Pacific Island communities.

ARTICLE X

Section 1001

(a) Technical changes are required to reflect that the plebiscite has been conducted and to note how the registration of voters and plebiscite were conducted.

(b) No additions or changes required.

Section 1002

Note: The Trusteeship Agreement presently encompasses all six districts of the Trust Territory of the Pacific Islands inclusive of the Northern Mariana Islands and the United Nations Trusteeship Agreement. The United States hopes to terminate the Trusteeship Agreement simultaneously for all six districts by 1981. The Trusteeship Agreement does not address the procedures for termination and further review of this matter is required to satisfy the legal obligations of the United States to the United Nations and to the Commonwealth and other districts of the Trust Territory.

Section 1003

No additions or changes are required.

Section 1004

No additions or changes are required.

Section 1005

No additions or changes are required.