

The Commonwealth Of The Northern Mariana Islands: A Mass Grant Of United States Citizenship

“Breathes there the man, with soul so dead,
Who never to himself hath said,
This is my own, my native land!”¹

On February 15, 1975 representatives of the United States and the Northern Mariana Islands signed the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (Covenant).² The Covenant provides that the Northern Mariana Islands will become a commonwealth within the American polity.³ By its provisions most of the people residing in the islands will become eligible for United States citizenship.⁴ But, some people will be excluded. This article will examine the ramifications of the provisions of the Covenant which grant United States citizenship to the people of the Northern Mariana Islands.⁵ This article will contend that the Covenant should provide United States citizenship or some other form of political status to certain groups of people whom the provisions of the Covenant presently exclude.

I. BACKGROUND

The Northern Mariana Islands are one of three archipelagos that compose the Trust Territory of the Pacific Islands.⁶ The United

¹W. SCOTT, “The Lay of the Last Minstrel,” POETICAL WORKS 39 (J.L. Robertson ed. 1967).

²*New York Times*, Feb. 16, 1975, at 3, col. 1.

³Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, § 101 [hereinafter cited as Covenant].

⁴Covenant, *supra* at note 3, at § § 301, 303.

⁵Questions may arise about the propriety of dissolving the trust territory and creating in its place a commonwealth with a closer relationship with the United States. A question of separation of powers between the executive and legislative branches of the United States government in providing for the creation of the commonwealth may also exist. This article does not address these questions.

⁶The Trust Territory of the Pacific Islands is composed of the Mariana Islands, except Guam; the Caroline Islands; and the Marshall Islands. U.S. DEPT. OF STATE, TRUST TERRITORY OF THE PACIFIC ISLANDS 1 (1973).

Nations Security Council created the trust territory in 1947.⁷ At the Security Council's direction, the United States has served as the administering authority for the trust territory since its inception.⁸

According to the United Nations Charter⁹ and the Trusteeship Agreement,¹⁰ the goal of the trusteeship is the attainment of self-

⁷Trusteeship Agreement for the Former Japanese Mandated Islands [hereinafter cited as Trusteeship Agreement], 61 Stat. 3301, 8 U.N.T.S. 189. Of the eleven trust territories the United Nations created, only the Trust Territory of the Pacific Islands was designated a strategic trust territory as allowed by U.N. CHARTER art. 82, para. 1. The major difference from the other trust territories is that within the United Nations the Security Council rather than the General Assembly administers a strategic trust territory. U.N. CHARTER art. 83, para. 1, at 85. The Trust Territory of the Pacific Islands will be the last trust territory to become self-governing. For a background of the trust territory, see S. DESMITH, *MICROSTATES AND MICRONESIA* (1970) [hereinafter cited as DESMITH]; C. HEINE, *MICRONESIA AT THE CROSSROADS* (1974) [hereinafter cited as HEINE]; E.J. KAHN, JR., *A REPORTER IN MICRONESIA* (1966) [hereinafter cited as KAHN]; R. WENKAM & B. BAKER, *MICRONESIA: THE BREADFRUIT REVOLUTION* (1971) [hereinafter cited as WENKAM & BAKER]; Dobbs, *A Macrostudy of Micronesia: The Ending of a Trusteeship*, 18 N.Y.L.J. 139 (1972); Mink, *Micronesia: Our Bungled Trust*, 6 TEX. INT. L. FORUM 181 (1970).

⁸Trusteeship Agreement, *supra* note 7, art. 2, 61 Stat. 3301, 8 U.N.T.S. 189, 190.

⁹The U.N. CHARTER art. 73 provides that

[m]embers of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories, and, to this end: . . . b. to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement

The U.N. CHARTER art. 76, para. b provides that one purpose of the trusteeship system is

to promote the political, economic, social, and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the peoples concerned, and as may be provided by the terms of each trusteeship agreement

¹⁰The Trusteeship Agreement, *supra* note 7, art. 6, para. 1, 61 Stat. 3301, 3302, 8 U.N.T.S. 189, 192, 194, provides that the Administering Authority shall [f]oster the development of such political institutions as are suited to the Trust Territory and shall promote the development of the inhabitants of the Trust Territory toward self-government or independence as may be appropriate to the particular circumstances of the Trust Territory and its peoples and freely expressed wishes of the peoples concerned; and to this end shall give to the inhabitants of the Trust Territory a progressively increasing share in the administrative services in the Territory; shall develop their participation in government; shall give due recognition to the customs of the inhabi-

government or independence for the islands. In 1969 the United States and the trust territory began negotiations concerning the future status of the islands. The Northern Mariana Islands sought separate negotiations because they desired a closer relationship with the United States than the rest of the trust territory.¹¹ These negotiations commenced in 1972 and have resulted in the Covenant of February 15, 1975.

II. COVENANT

Before the Covenant can go into effect, several events must occur.¹² The first of these events, approval of the Covenant by the Mariana Islands District Legislature,¹³ occurred on February 20, 1975.¹⁴ The Covenant now must be approved by at least 55% of the votes cast in a plebiscite,¹⁵ a local constitution must be enacted,¹⁶ and the Covenant must be approved by the United States Congress.¹⁷ The anticipated timetable¹⁸ for these required steps is as follows:

1. June, 1975: United Nations plebiscite approves the Covenant.¹⁹
2. July, 1975: United States Congress approves the Covenant.
3. August-September, 1975: constitutional convention in the Northern Mariana Islands.
4. December, 1975-January, 1976: plebiscite on the Northern Mariana Islands constitution.
5. March-April, 1976: local elections.

The Covenant will become effective in parts at three distinct points in time. Enabling provisions will go into effect immediately

tants in providing a system of law for the Territory; and shall take other appropriate measures toward these ends

¹¹In 1961 a plebiscite in the Northern Mariana Islands showed that 2517 of 2847 registered voters preferred to become United States citizens either through unification with Guam or as a separate territory. T. ADAM, *WESTERN INTERESTS IN THE PACIFIC REALM* 179 (1967). In 1969 a second plebiscite indicated this continued desire. *New York Times*, November 10, 1969, at 8, col. 4.

¹²Covenant, *supra* note 3, at § 1001-03.

¹³Covenant, *supra* note 3, § 1001(a).

¹⁴Letter from Michael S. Helfer, Esq., Consultant to Marianas Political Status Commission to author, March 24, 1975; letter from Tom Dunmire, Staff Consultant, House Subcommittee on Territorial and Insular Affairs, to author, March 26, 1975.

¹⁵Covenant, *supra* note 3, at § 1001(a).

¹⁶Covenant, *supra* note 3, at § 1003(b).

¹⁷Covenant, *supra* note 3, at § 1001(b).

¹⁸Telephone conversation with Edward S. Archer, Office of Micronesian Status Negotiations, January 20, 1975.

¹⁹United Nations observance of the plebiscite has not been arranged as yet because the date for the plebiscite has not been established. The United Nations was expected to discuss the trusteeship in a meeting scheduled for May 27, 1975. Arrangements may be made at that meeting. *Id.* A political education program on the Covenant, *supra* note 3, was to have begun in March, 1975. *Id.*

when the people of the Northern Mariana Islands, the Mariana Islands District Legislature, and the Congress approve the Covenant.²⁰ These provisions authorize the enactment of a local constitution²¹ and a tripartite, republican form of local government.²²

Next, portions of the Covenant dependent upon the local constitution will go into effect no later than 180 days after the constitution is approved.²³ This second segment of the Covenant includes provisions for the creation and jurisdiction of a United States District Court for the Northern Mariana Islands,²⁴ application of parts of the United States Constitution to the Northern Mariana Islands,²⁵ and financial assistance to the islands.²⁶

The remaining parts of the Covenant will become effective upon creation of the commonwealth.²⁷ The final sections include provisions for the creation of the commonwealth²⁸ and the granting of United States citizenship.²⁹

The trust territory cannot be dissolved in parts: the entire trust territory must be dissolved simultaneously.³⁰ The creation of the

²⁰Covenant, *supra* note 3, at § 1003(a).

²¹The local constitution shall be consistent with the applicable provisions of the United States Constitution, laws, and treaties. Covenant, *supra* note 3, at § 202. The applicable provisions of the United States Constitution are set out in note 25, *infra*.

²²Covenant, *supra* note 3, at § 203.

²³Covenant, *supra* note 3, at § 1003(b). The President of the United States shall determine or proclaim the date. *Id.*

²⁴Covenant, *supra* note 3, at § § 401-03. The District Court for the Northern Mariana Islands may be the same as the District Court of Guam. Report of the Joint Drafting Committee on the Negotiating History, February 15, 1975, at 3 [hereinafter cited as Report on the Negotiating History].

²⁵The Covenant, *supra* note 3, at § 501(a) says:

To the extent that they are not applicable of their own force, the following provisions of the Constitution of the United States will be applicable within the Northern Mariana Islands as if the Northern Mariana Islands were one of the several states: Article I, Section 9, Clauses 2, 3 and 8; Article I, Section 10, Clauses 1 and 3; Article IV, Section 1 and Section 2, Clauses 1 and 2; Amendments 1 through 9 inclusive; Amendment 13; Amendment 14, Section 1; Amendment 15; Amendment 19; and Amendment 26; provided however, that neither trial by jury nor indictment by grand jury shall be required in any civil action or criminal prosecution based on local law, except where required by local law. Other provisions of or amendments to the Constitution of the United States, which do not apply of their own force within the Northern Mariana Islands, will be applicable within the Northern Mariana Islands only with the approval of the Government of the Northern Mariana Islands and of the Government of the United States.

²⁶Covenant, *supra* note 3, at § § 701-04.

²⁷Covenant, *supra* note 3, at § 1003(c).

²⁸Covenant, *supra* note 3, at § 101.

²⁹Covenant, *supra* note 3, at § § 301-03.

³⁰*Hearings on Territories Orientation Briefing Before the Subcomm. on Territorial and Insular Affairs of the House Comm. on Interior and Insular Affairs*, 92d Cong., 1st Sess., ser. 92-6, at 32-33 (1971); letter from John A. Baker,

commonwealth will occur when the trusteeship is dissolved. Because of the state of negotiations with the remainder of the trust territory, dissolution is not expected until 1981.³¹

The trust territory, however, can be administered in parts.³² After the approval and implementation of the Covenant, the United States will govern the Northern Mariana Islands as a separate administrative entity from the Caroline and Marshall Islands (hereinafter referred to as Micronesia).³³

III. GRANTING OF UNITED STATES CITIZENSHIP

The Covenant provides that United States citizenship will be granted, upon the creation of the commonwealth, to certain groups of people.³⁴ The Covenant specifies four such groups: (1) trust territory citizens born in the Northern Mariana Islands who are domiciled³⁵ in the islands, the United States, or any other United States territory or possession;³⁶ (2) trust territory citizens not born in the Northern Mariana Islands who have been domiciled continuously in

Director for United Nations Political Affairs, United States Department of State to author, December 4, 1974 [hereinafter cited as letter from John A. Baker].

³¹ Report on the Negotiating History, *supra* note 24, at 9.

³² Letter from John A. Baker, *supra* note 30; 28 U.N. SCOR, Special Supp. No. 1, June 17, 1972-June 22, 1973, at 74, 78, U.N. Doc. S/10976 (1973).

³³ Presently, the entire trust territory is commonly referred to as Micronesia. The Caroline Islands and the Marshall Islands will probably become a state in free association with the United States. Draft Compact of Free Association, July 12, 1974 [hereinafter cited as Draft Compact]. The new entity will be known as Micronesia, but will not include the Northern Mariana Islands.

³⁴ Covenant, *supra* note 3, at § § 301(a), 303. This is a proper method of granting United States citizenship en masse. The Constitution provides that persons born or naturalized in the United States and subject to its jurisdiction are its citizens. U.S. CONST. amend. XIV, § 1. In the past, international agreements and statutory extensions of citizenship have supplemented this constitutional grant of citizenship. See 8 U.S.C. § 1404 (1970) (Alaska); 8 U.S.C. § 1405 (1970) (Hawaii); 8 U.S.C. § 1402 (1970) (Puerto Rico); 8 U.S.C. § 1406 (1970) (Virgin Islands); 8 U.S.C. § 1407 (1970) (Guam); 8 U.S.C. § 1403 (1970) (Canal Zone); 1952 U.S. Code Cong. & Ad. News 1734.

The Covenant, *supra* note 3, is a self-executing bilateral treaty which would become a part of United States law upon Congressional approval. The terms of the Covenant could then go into effect at the prescribed times without further legislation. Some supplementary legislation may be enacted by the Congress; for example, an amendment to the Immigration and Naturalization Act, 8 U.S.C. § § 1101-503 (1970), to include the granting of citizenship to the people of the new commonwealth. MCNAIR, THE LAW OF TREATIES 80 (1961); 14 M. WHITEMAN, DIGEST OF INTERNATIONAL LAW 302-16 (1963) [hereinafter cited as WHITEMAN]. Thus, no question should exist about the granting of United States citizenship in this manner.

³⁵ Covenant, *supra* note 3, at § 1005(e) defines "domicile" as that place where a person maintains a residence with the intention of continuing such residence for an unlimited or indefinite period, and to which such person has the intention of returning whenever he is absent, even for an extended period.

³⁶ Covenant, *supra* note 3, at § 301(a).

the islands for at least five years before the creation of the commonwealth and who have registered to vote in a local election³⁷ prior to January 1, 1975;³⁸ (3) non-trust territory citizens who have been continuously domiciled in the islands beginning prior to January 1, 1974;³⁹ and (4) persons born in the commonwealth on or after its creation.⁴⁰ Additionally, the Covenant requires that all such persons "not owe allegiance to any foreign state"⁴¹ in order to qualify for United States citizenship. Those persons eligible for citizenship will have the option of becoming non-citizen nationals of the United States.⁴²

As the administering authority for the trust territory and as the future sovereign of the people, the United States bears the primary responsibility to provide for the political status of the people living in the Northern Mariana Islands.⁴³ The United States undertook this burden as part of her role as administering authority to further the trust territory's development toward self-government.⁴⁴ The United States is seeking to meet this obligation by extending her citizenship to the people of the Northern Mariana Islands. This does not mean that United States citizenship should be given to every person found in the islands. For example, citizenship should not be given to persons who move to the Northern Mariana Islands immediately before the commonwealth is established and citizenship is granted in order to avoid immigration and naturalization procedures.

The provisions of the Covenant specifying the four groups above provide the only indication of who the negotiators intended to be eligible to receive United States citizenship.⁴⁵ An examination of those provisions reveals that they confer citizenship only on persons

³⁷Mariana Islands District Legislature or any municipal election in the Northern Mariana Islands, Covenant, *supra* note 3, at § 301(b).

³⁸*Id.*

³⁹Covenant, *supra* note 3, at § 301(c).

⁴⁰Covenant, *supra* note 3, at § 303.

⁴¹Covenant, *supra* note 3, at § 301.

⁴²Covenant, *supra* note 3, at § 302. Although all citizens of the United States are nationals of the United States, not all nationals are citizens. *Chow Sing v. Brownell*, 217 F.2d 140, 142 (9th Cir. 1954); *Brownell v. Lee Mon Hong*, 217 F.2d 142, 145 (9th Cir. 1954); *Law Don Shew v. Dulles*, 217 F.2d 146, 147 (9th Cir. 1954); *Ly Shew v. Dulles*, 219 F.2d 413, 415 (9th Cir. 1954). The status of non-citizen nationals is recognized by the United States in the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(22) (1970); however, the rights and obligations of a non-citizen national have never been fully identified. See McGovney, *Our Non-Citizen Nationals, Who Are They?*, 22 CALIF. L. REV. 593 (1934); *Developments in the Law — Immigration and Nationality*, 66 HARV. L. REV. 643, 703-04 (1953).

⁴³This concern does not extend to those persons who are citizens of another country. The Covenant, *supra* note 3, specifies that such persons are not eligible for United States citizenship. Covenant, *supra* note 3, at § 301.

⁴⁴U.N. CHARTER art. 76, para. b; Trusteeship Agreement, *supra* note 7, art. 6, para. 1, 61 Stat. 3301, 3302, 8 U.N.T.S. 189, 192.

⁴⁵See *supra*, notes 34-42 and accompanying text. The Report on the Negotiating

tied to the Northern Mariana Islands by birth⁴⁶ or domicile who do not, at the time the commonwealth is created, owe allegiance to a foreign country.⁴⁷ Thus, the United States will provide citizenship (or nationality)⁴⁸ only to people who have had lasting contacts with the islands. But, as mentioned before, the four groups specified in the Covenant do not include all persons who have lasting contacts with the islands. These persons should not be excluded from receiving United States citizenship or nationality.

IV. EXCLUDED GROUPS

The Covenant fails to provide United States citizenship for certain classes of people who might be found in the islands at the time United States citizenship is extended. These excluded groups are: (1) trust territory citizens born in the Northern Mariana Islands but domiciled in Micronesia;⁴⁹ (2) trust territory citizens born in the Northern Mariana Islands but domiciled in a foreign state; (3) trust territory citizens not born in the Northern Mariana Islands and domiciled in the islands for less than the requisite five years; (4) trust territory citizens domiciled for the requisite five years, but not born, in the Northern Mariana Islands who have not registered to vote in a local election prior to January 1, 1975; and (5) stateless persons continuously domiciled in the Northern Mariana Islands commencing after January 1, 1974.

A. DOMICILE IN MICRONESIA

The United States is responsible for providing for the future political status of trust territory citizens, whether they live in the Northern Mariana Islands or Micronesia. The Covenant excludes persons born in the Northern Mariana Islands and domiciled in Micronesia from receiving United States citizenship. The United States apparently will meet its obligation to these persons through the agreement providing for the future status of Micronesia. The latest draft of the Compact of Free Association⁵⁰ would freely associate Micro-

History, *supra* note 24, is silent on the sections of the Covenant providing for the granting of citizenship.

⁴⁶Whether a person was born in the Northern Mariana Islands should not be difficult to ascertain.

⁴⁷Covenant, *supra* note 3, at § 301.

⁴⁸Covenant, *supra* note 3, at § 302.

⁴⁹Although associated with the United States (*see infra*, notes 50-51 and accompanying text), Micronesia is not a United States territory or possession for purposes of § 301(a) of the Covenant, *supra* note 3. The Covenant, *supra* note 3, at § 1005(d) defines "territory or possession" as including only the District of Columbia, Puerto Rico, the Virgin Islands, Guam and American Samoa.

⁵⁰Draft Compact, *supra* note 33.

nesia⁵¹ with the United States. The draft Compact would make all trust territory citizens non-citizen nationals of the United States unless they are eligible to become United States citizens.⁵² The draft Compact makes no distinction among trust territory citizens eligible to become non-citizen nationals on the basis of place of birth. Since persons born in the Northern Mariana Islands are trust territory citizens, under the draft Compact they would become non-citizen nationals of the United States.⁵³ The Covenant and draft Compact are compatible on this point, and, if these draft Compact provisions are not altered, the United States will meet its responsibility to provide political status to this group of people whom the Covenant otherwise excludes from receiving United States citizenship.

B. DOMICILE IN A FOREIGN COUNTRY

Persons born in the Northern Mariana Islands and domiciled in a foreign country may become stateless persons by operation of the provisions of the Covenant. Since United States citizenship will be extended when the trusteeship is dissolved, trust territory citizenship will cease to exist at that moment. Trust territory citizens not eligible to become United States citizens or nationals will become stateless persons. A trust territory citizen domiciled in a foreign country, but not a citizen of that country, would lose his trust territory citizenship. If the Covenant does not extend any political status to such a person, he will become a stateless person. He will not be a citizen of the United States, the Trust Territory of the Pacific Islands, or the foreign country where he is domiciled.

The Covenant does not extend United States citizenship to persons born in the Northern Mariana Islands but domiciled in a foreign country, at the time the commonwealth is created. This exclusion is effected by the requirement that persons eligible for United States citizenship be domiciled in the Northern Mariana Islands.⁵⁴ By definition⁵⁵ only those persons who do not intend to return to live in the Northern Mariana Islands will be precluded from receiving United States citizenship.

The interest of the United States in not conferring political status

⁵¹What being freely associated with the United States means for Micronesia and Micronesians is not clear. Perhaps it would be akin to being an unincorporated territory of the United States.

⁵²Draft Compact, *supra* note 33, at § 701. The Draft Compact, *supra* note 33, also requires that these persons not take "any affirmative steps to preserve or acquire any foreign citizenship or nationality." *Id.*

⁵³The Draft Compact, *supra* note 33, may also be applicable to persons born in the Northern Mariana Islands and domiciled in a foreign country. The former are trust territory citizens and the Draft Compact, *supra* note 33, could make them non-citizen nationals.

⁵⁴Covenant, *supra* note 3, at § 301(a).

⁵⁵See *supra* note 35.

on persons who owe allegiance to a foreign state justifies this exclusion. Generally, a person owes allegiance to the country of which he is a citizen. If a person is a citizen of another country, the United States has no reason to extend its citizenship to him. He would have a political status provided by that other country. Similarly, so the theory goes, a trust territory citizen domiciled in a foreign state would owe allegiance to that foreign state.⁵⁶ Thus, the United States should have no responsibility to provide political status for that person. The responsibility of the United States to provide political status extends only to people who have had lasting contacts with the Northern Mariana Islands.⁵⁷ The responsibility does not extend to persons who have forsaken their ties with the trust territory. Hence, the United States would be relieved of her obligations under the

⁵⁶In *Carlise v. United States*, 83 U.S. 147, 154 (1873), Mr. Justice Field, writing for the Court, said:

The citizen or subject owes an absolute and permanent allegiance to his government or sovereign, or at least until, by some open and distinct act, he renounces it and becomes a citizen or subject of another government or another sovereign. The alien, whilst domiciled in the country, owes a local and temporary allegiance, which continues during the period of his residence.

If a person owing permanent allegiance to one country owes temporary allegiance to the country in which he is domiciled, then a person with no permanent allegiance to any country should also owe temporary allegiance to the country in which he is domiciled. See 8 WHITEMAN, *supra* note 34, at 370-72. Thus, an otherwise stateless person would seem to owe "allegiance to a foreign state" and would not receive United States citizenship under the Covenant, *supra* note 3.

This result should follow even if the use of "allegiance" in the Covenant, *supra* note 3, does not include temporary allegiance since the definition of "domicile" would not change. The requirement that one be domiciled in the Northern Mariana Islands or the United States would exclude those domiciled elsewhere.

Before it was finalized, the Covenant, *supra* note 3, provided that citizenship would not be given to those otherwise eligible persons who have taken any affirmative steps to preserve or acquire foreign nationality. Draft Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, December 19, 1974, § 301 [hereinafter cited as Draft Covenant]. Given the definition of domicile (see *supra* note 35) in the Covenant, *supra* note 3, the establishment of a domicile in a foreign country could be viewed as an affirmative step to acquire foreign nationality. By voluntarily removing themselves from the trust territory and settling in another country, such persons would have indicated a severance from the islands. This action could be viewed as an abandonment of trust territory and subsequent United States citizenship. The signed Covenant deleted this provision and substituted that persons otherwise eligible for citizenship must not owe allegiance to any foreign state. Covenant, *supra* note 3, at § 301. The Report on the Negotiating History, *supra* note 24, offers no explanation for the change or what is to become of stateless persons. There is a general hostility to statelessness. See 8 WHITEMAN, *supra* note 34, at 84-97; J. STARKE, AN INTRODUCTION TO INTERNATIONAL LAW 342-43 (7th ed. 1972); Note, *Statelessness and Its Place in International Law*, 42 IA. L. REV. 107 (1956); 3 C. GORDON & H. ROSENFELD, IMMIGRATION LAW AND PROCEDURE § 11.3e (1974) [hereinafter cited as GORDON & ROSENFELD]; Universal Declaration of Human Rights art. 15, G.A. Res. 217, U.N. Doc. A/810 at 71 (1948).

⁵⁷See *supra*, notes 45-48 and accompanying text.

United Nations Charter and the Trusteeship Agreement.

Although the excluded persons will become stateless persons, the exclusion is valid. It prevents persons from receiving the rights and protections of United States citizenship while avoiding the obligations that accompany such status. Such persons might never live in the United States nor ever return to the Northern Mariana Islands. Although temporarily stateless, such persons could become naturalized citizens of another country.

C. FIVE-YEAR DOMICILE REQUIREMENT

The Covenant requires that trust territory citizens not born in the Northern Mariana Islands must have been domiciled continuously in the islands for five years before the creation of the commonwealth if they are to receive United States citizenship.⁵⁸ A durational domicile requirement is desirable to ensure that individuals do not move into the Northern Mariana Islands simply to gain United States citizenship. Such a requirement would limit the benefit of citizenship to those for whom it is meant: the people of the Northern Mariana Islands. But why a period of five years?

One possible explanation for the five-year length of the domicile requirement is that the period was borrowed from our own five-year residency naturalization requirement. Five years is regarded as sufficient time for the individual to become familiar with the social and political way of life and to gain a certain affinity for it. Another explanation is that since the Covenant is dealing with a prospective grant of citizenship a five-year period will prevent a flood of people to the islands for the sole purpose of obtaining United States citizenship.

1. FIVE-YEAR RESIDENCY REQUIREMENT FOR NATURALIZATION

The Immigration and Nationality Act⁵⁹ sets a five-year United States residency requirement⁶⁰ for naturalization.⁶¹ The five-year domicile requirement of the Covenant is consistent with this statutory requirement for naturalization. Both procedures have a common goal — United States citizenship. The five-year residency requirement for naturalization was “designed to insure that the alien become thoroughly familiar with the American way of life before receiving

⁵⁸ Covenant, *supra* note 3, at § 301(b).

⁵⁹ 8 U.S.C. § § 1101-503 (1970).

⁶⁰ 8 U.S.C. § 1427(a) (1970).

⁶¹ This five-year residency requirement has existed continuously since 1795. Act of Jan. 29, 1795, ch. 20, § 1, 1 Stat. 414. See 3 GORDON & ROSENFELD, *supra* note 56, at § 15.2 for a brief discussion of the history of the five-year residency requirement.

United States citizenship."⁶²

Although this rationale might explain a domicile requirement for non-trust territory citizens,⁶³ it cannot explain why trust territory citizens not born in the Northern Mariana Islands should have to meet this five-year requirement if they had been previously domiciled in the trust territory. The United States has been the trust territory's administering authority for the past twenty-eight years. The people of the islands are already familiar with the American way of life and will continue to become familiar with it. The Covenant recognizes that "the people of the Northern Mariana Islands and the people of the United States share the goals and values found in the American system of government. . . ."⁶⁴ One commentator, a Micronesian, notes that

Micronesians have lately lived under the American system of government and American way of life. . . . The so-called American experience or orientation is a reality that must be dealt with. Almost all of the younger generation of Micronesians, born since 1945, are truly American oriented, and those who were born during the latter part of the Japanese era have had an American education.⁶⁵

Thus, the American way of life is not foreign to the trust territory. For those people not born in the Northern Mariana Islands, but citizens of the trust territory and living in the trust territory, the purpose of familiarization is therefore served without the five-year domicile requirement.

2. PROSPECTIVE GRANT OF CITIZENSHIP

This grant of citizenship to the people of the Northern Mariana Islands is the first instance of the United States providing for the en masse granting of citizenship years in advance of the actual conferment.⁶⁶ This circumstance helps to explain and justify a durational

⁶²1952 U.S. Code Cong. & Ad. News 1737.

⁶³See *infra*, notes 81-85 and accompanying text.

⁶⁴Covenant, *supra* note 3, preamble. The Bill of Rights of the Trust Territory Code contains most of the protections which the United States Constitution grants to United States citizens. 1 T.T.C. § 1-14 (1970). The Trust Territory Code also recognizes the applicability of some United States statutes and common law. 1 T.T.C. §§ 101(2), 103 (1970). Furthermore, the local government of the trust territory is similar to the American structure of government. 2 T.T.C. §§ 1-353, 3 T.T.C. §§ 1-58, 4 T.T.C. §§ 1-157, 5 T.T.C. §§ 1-513 (1970). See also DESMITH, HEINE, KAHN, and WENKAM & BAKER, *supra* note 7.

⁶⁵HEINE, *supra* note 7, at 70.

⁶⁶See *supra* note 34. In some cases, e.g., the Virgin Islands and Alaska, treaties providing for citizenship were concluded before the cession of territory. In such cases, citizenship was based upon the date of the treaty rather than the cession date. This discussion involves the granting of citizenship to persons living in a United States territory or possession at the time of creation, not citizenship acquired by birth subsequent to the creation of the territory or possession. The Covenant, *supra* note 3, provides for citizenship by birth in the commonwealth at § 303.

domicile requirement. Citizenship is to be conferred upon only those persons who, at the time the commonwealth is created, are domiciled in the Northern Mariana Islands.⁶⁷ Because of this prospective conferring of citizenship, the experience of the Northern Mariana Islands differs from that of other United States territories and possessions. Unless some precautions are taken, this prospective granting of citizenship will provide an opportunity for persons not domiciled in the Northern Mariana Islands to move to the islands solely to gain United States citizenship. The domicile requirement will prevent such a result. But, again, why a period of five years?

One explanation can be found by examining the proposed provision for the future status of Micronesia. The Joint Committee on Future Status of the Congress of Micronesia has been negotiating for a delay in the implementation of any final compact placing Micronesia in free association with the United States.⁶⁸ Presently, this anticipated delay is four years, although the Micronesian negotiators had been negotiating for a five-year period.⁶⁹ This four-year delay would coincide with the five-year domicile requirement for the commonwealth. The delayed implementation of the Micronesian Compact will establish the date of the dissolution of the trust territory, the creation of the state of Micronesia in free association with the United States, the creation of the Commonwealth of the Northern Mariana Islands, and the granting of United States nationality or citizenship. The durational domicile requirement for citizenship applies only to trust territory citizens not born in the Northern Mariana Islands.⁷⁰ Without the domicile requirement, the delay in the implementation of the Micronesian Compact will give trust territory citizens residing in Micronesia the opportunity to move to the Northern Mariana Islands, just before the commonwealth is created, to gain United States citizenship. Any durational domicile requirement of a term equal to or longer than the delay in the implementation of the Micronesian Compact would serve this purpose; any lesser term would fail. Once the Micronesian Compact sets out that trust territory citizens domiciled in Micronesia will become United States nationals, such persons would know that the only way they could become United States citizens through the Covenant or the Micronesian Compact would be if they were domiciled in the Northern Mariana Islands at the time the commonwealth is created. A five-year (or any other sufficiently long) domicile requirement would prevent such persons from moving to the Northern Mariana Islands to gain

⁶⁷Those born in the Northern Mariana Islands may be domiciled in the United States or a United States territory or possession and still receive citizenship. Covenant, *supra* note 3, at § 301(a). See *supra*, note 35 and accompanying text.

⁶⁸Telephone conversation with Edward E. Archer, *supra* note 18.

⁶⁹*Id.*

⁷⁰Covenant, *supra* note 3, at § 301(a), (b).

United States citizenship through the Covenant after the Micronesian Compact is signed. Hence, because of the prospective granting of citizenship and nationality, the five-year domicile requirement will screen out those people who would otherwise come to reside in the Northern Mariana Islands merely to obtain United States citizenship. It will insure that only those people with lasting contacts with the Northern Mariana Islands receive citizenship.

Therefore, a major purpose of the five-year domicile requirement is to prevent the influx of trust territory citizens domiciled in Micronesia. Although this is a valid purpose and a legitimate interest of a government,⁷¹ the argument has two failings. First, it presumes that people would rather have United States citizenship than reside in their familial and cultural homeland. To the Micronesian people, the importance of their homeland will probably outweigh any benefits United States citizenship might confer. The Micronesian people are tied closely to their culture and customs. An example of the importance of custom to the people of the trust territory is the recognition of customary law in the laws of the trust territory.⁷² Furthermore, Micronesia itself will probably be freely associated with the United States and its citizens will enjoy certain benefits and protections as nationals of the United States.⁷³

A second shortcoming of the argument is that it overlooks the prospect of obtaining United States citizenship by naturalization. Even if an individual does not acquire citizenship as part of the mass grant, he could still become a naturalized citizen. The Covenant provides a United States District Court for the Northern Mariana Islands⁷⁴ which will have jurisdiction to naturalize persons as citizens of the United States.⁷⁵ Furthermore, non-citizen nationals from

⁷¹The United States government should not want to give citizenship to people who come to reside in the islands only to obtain that citizenship in order to avoid immigration and naturalization procedures. The Northern Mariana Islands should want to exclude such persons because they would have little interest in the welfare and future of the islands.

⁷²1 T.T.C. §§ 14, 102 (1970). Cf. *Customs, Codes and Courts in Micronesia*, 5 STAN. L. REV. 46 (1952); KAHN, *supra* note 7.

⁷³See *supra* note 42. The extent of the protections is unclear. If Micronesia were considered an unincorporated territory (see *supra* note 51), the fundamental provisions of the Constitution should be applicable under the doctrine of territorial incorporation. See *Downes v. Bidwell*, 182 U.S. 244, 287-344 (1901) (White, J., concurring opinion); *Government of Virgin Is. v. Rijos*, 285 F. Supp. 126 (D. V.I. 1968); Coudert, *The Evolution of the Doctrine of Territorial Incorporation*, 26 COL. L. REV. 823 (1926).

⁷⁴See *supra* note 24.

⁷⁵The Immigration and Nationality Act empowers the federal district courts in any state and the District of Columbia, Puerto Rico, the Virgin Islands, and Guam to naturalize persons as citizens of the United States. 8 U.S.C. § 1421(a) (1970). The Covenant, *supra* note 3, gives the District Court for the Northern Mariana Islands the same subject matter jurisdiction as other federal district courts. Covenant, *supra* note 3, at § 402(a). The Draft Compact, *supra* note 33,

Micronesia or the Northern Mariana Islands will have free entry into the United States and will probably be required to fulfill only a six-month residency requirement⁷⁶ rather than the five years required of resident aliens⁷⁷ to obtain citizenship. Hence, although the Covenant might deny citizenship to Micronesians at the time the commonwealth is created, it will not necessarily stop migration or the eventual attainment of United States citizenship.

Even with these shortcomings, the five-year domicile requirement does serve a valid purpose by helping to determine whether a person has enduring contacts with the Northern Mariana Islands as implied in the Covenant's definition of "domicile."⁷⁸

D. VOTER REGISTRATION REQUIREMENT

The Covenant requires that trust territory citizens born in Micronesia, in addition to being domiciled in the Northern Mariana Islands for five years before the creation of the commonwealth, must register to vote in a local election prior to January 1, 1975 in order to receive United States citizenship.⁷⁹

A general objection to the voter registration requirement of the Covenant can be made. United States citizens do not lose their citizenship because they fail to register to vote.⁸⁰ Similarly, in this

does not provide a district court for Micronesia. Therefore, persons could not obtain citizenship there. But a non-citizen national can enter the United States without going through immigration procedures. 1 GORDON & ROSENFELD, *supra* note 56, at § 2.3c; *Gonzales v. Williams*, 192 U.S. 1 (1904). Once the national is in a state and meets the applicable requirement, he could become a naturalized citizen.

⁷⁶8 U.S.C. § 1427(a), 1436 (1970). The Immigration and Nationality Act allows nationals seeking naturalization to use residence and physical presence within the outlying possessions of the United States in meeting the five-year residency and physical presence requirements for naturalization, although it does require that a person seeking naturalization reside at least six months in the state where he files a petition for naturalization. The Act includes as outlying possessions of the United States only American Samoa and Swains Island, whose residents are nationals. 8 U.S.C. § 1101(a)(29) (1970). Since persons domiciled in Micronesia will likely become nationals, the definition of outlying possessions of the United States in the Immigration and Nationality Act may be expanded to include Micronesia. It might also include the Northern Mariana Islands, since persons eligible for United States citizenship will have the option of becoming non-citizen nationals.

⁷⁷8 U.S.C. § 1427(a) (1970).

⁷⁸See *supra* note 35.

⁷⁹Covenant, *supra* note 3, at § 301(b). The Covenant, *supra* note 3, at § 301(b) provides an exception for failing to register because a person is underage. The Trust Territory Code, which would govern one's eligibility to vote since it will have been the governing law before January 1, 1975, specifies only two requirements: trust territory citizenship and 18 years of age. The code also provides that the right to vote shall not be denied because of property, language, income, literacy, tribal custom, social position, race, color, ancestry, sex, or religious belief. 2 T.T.C. § 108 (1970).

⁸⁰*Cf. Crosse v. Board of Supervisors of Elections*, 243 Md. 555, 221 A.2d 431, 435 (1966).

country the attainment of citizenship by birth or naturalization is not conditioned upon a person's registering to vote. But, participation in the electoral process does indicate, to some extent, one's commitment to a government. It also can serve to familiarize a person with the government and the American way of life. In these ways the voter registration requirement aids in determining whether a person has lasting contacts with the Northern Mariana Islands.

Although such a requirement furthers the policy of determining who has lasting contacts with the Northern Mariana Islands for the purpose of conferring United States citizenship, the fixed cutoff date does not contribute to this policy. The rigid cutoff date will unfairly deprive persons of United States citizenship without promoting any countervailing interest if the trust territory is dissolved after 1981. Persons could be domiciled and registered to vote for five years (or longer) before the commonwealth is created, but because they registered to vote after January 1, 1975 they would be denied United States citizenship.

A domicile requirement helps determine whether a person has lasting contacts with the Northern Mariana Islands. So does a voter registration requirement. But in their present form the two requirements conflict with each other and prevent the granting of citizenship to persons who should receive it. If a voter registration requirement is desired, then a simple registration requirement not tied to any date would serve to tie a person to the commonwealth. So would a flexible requirement, such as one based, like the domicile requirement, upon the date of the establishment of the commonwealth.

E. STATELESS PERSONS

A person who does not owe allegiance to any country is a stateless person.⁸¹ The Covenant will grant United States citizenship to non-trust territory citizens who do not owe allegiance to any foreign state if they have been continuously domiciled in the Northern Mariana Islands beginning prior to January 1, 1974.⁸² This provision applies only to stateless persons because by its terms the affected persons would not previously have been a citizen of the United States, the trust territory, or any other country. Neither the Covenant nor the Report on the Negotiating History⁸³ explain why a January 1, 1974 cutoff date is applied to stateless persons while trust territory citizens are subjected to a five-year domicile requirement and a January 1, 1975 voter registration cutoff date. The January 1, 1974 cutoff date is applicable even if a stateless person is determined to be domiciled after the cutoff date in the Northern Mariana Islands.

⁸¹ 8 WHITEMAN, *supra* note 34, at 84-85, 370.

⁸² Covenant, *supra* note 3, at § 301(c).

⁸³ Report on the Negotiating History, *supra* note 22.

The requirement may be justified because it affords such persons an opportunity to become acquainted with the Northern Mariana Islands and the American way of life. Making the durational requirement longer for stateless persons than for other groups probably reflects a notion that it would take more time to adequately familiarize such people with the Northern Mariana Islands and American way of life.⁸⁴ But such a notion is inconsistent with our own laws governing naturalization which require only a five-year period of domicile. A five-year requirement will serve adequately any governmental interest in promoting familiarity by stateless persons with the American way of life.⁸⁵ A flexible domicile requirement such as the five-year domicile requirement applicable to trust territory citizens domiciled, but not born, in the Northern Mariana Islands would be preferable to the January 1, 1974 cutoff date.

V. CONCLUSION

The requirements set out in the Covenant disallow certain people who might be living in the Northern Mariana Islands at the time the commonwealth is created from receiving United States citizenship or nationality. The Covenant and other sources, such as the Report on the Negotiating History,⁸⁶ do not make clear why a five-year domicile requirement to receive citizenship was included in the Covenant. Why the Covenant provides rigid cutoff dates for voter registration and stateless persons commencing domicile in the islands is much less clear. This article has suggested that the latter requirements should be made more flexible in order to encompass all persons who have made the Northern Mariana Islands their home and who have otherwise become familiar with the Northern Mariana Islands and the American way of life.

A mass grant of United States citizenship has not occurred since 1950.⁸⁷ The grant of United States citizenship in this manner is an extraordinary act of Congress. Although the negotiators have sought to comprehensively provide for the future status of the people of the Northern Mariana Islands, as it now stands the Covenant might work hardships on persons who should qualify for United States citizenship. This article has sought to point out the problems in some of the

⁸⁴See *supra*, notes 63-65 and accompanying text.

⁸⁵See *supra* note 61.

⁸⁶Report on the Negotiating History, *supra* note 24.

⁸⁷The last grant of citizenship en masse was achieved through the Organic Act of Guam 8 U.S.C. §1407 (1970). The Immigration and Nationality Act of 1952, 8 U.S.C. §§1101-503 (1970), merely carried forward the citizenship status included in the Nationality Act of 1940, 54 Stat. 1137, or codified citizenship or nationality provisions contained in treaties, statutes, or organic acts. It did not alter the citizenship rights that had existed previously. 1952 U.S. Code Cong. & Ad. News 1734.

provisions and to offer a few suggestions as to their resolution.

The United States has a legal, political, and moral responsibility to provide for the future status of the Northern Mariana Islands and its people. The Congress must approve the Covenant before a local constitution is enacted, a new local government is created, and the commonwealth comes into being. Although all the parties may be desirous of implementing the Covenant as soon as possible, time exists, in light of the Micronesian negotiations, for careful Congressional study of the Covenant prior to its approval to ensure that citizenship will be extended to everyone who should receive it.⁸⁸ A comprehensive review of the Covenant by Congress will resolve the doubts of administrators, judges, attorneys, and, most importantly, the people most directly affected — the people of the Northern Mariana Islands. In this way, the Congress can assure a smooth entry of the people of the Northern Mariana Islands into the American political system.

Earl T. Sato

Addendum: On June 17, 1975 the people of the Northern Mariana Islands voted to accept the Covenant by a 3 to 1 margin. About 85% of those eligible to vote cast their ballots in the plebiscite.⁸⁹

⁸⁸When the Congress approved the Puerto Rican constitution, it conditioned approval upon the enactment of three amendments. 66 Stat. 327; Leibowitz, *The Applicability of Federal Law to the Commonwealth of Puerto Rico*, 56 GEO. L. J. 219, 223 (1967). If the Congress feels changes are necessary in the Covenant, approval could be similarly conditioned upon amendments to the Covenant.

⁸⁹*Honolulu Star-Bulletin*, June 17, 1975, at A-1, col. 6.

