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STATEMENT OF THE INTENTION OF THE NEGOTIATING  
PARTIES WITH RESPECT TO THE AGREEMENT TO ESTABLISH A  
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS IN  
POLITICAL UNION WITH THE UNITED STATES OF AMERICA

The following is a statement of the intention of the negotiating parties with respect to certain provisions of the Agreement to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, <sup>Signed</sup> ~~agreed to~~ by the Marianas Political Status Commission and the President's Personal Representative in Saipan, Mariana Islands, on \_\_\_\_\_, 197\_.

Section 101.

~~This Section provides that the Northern Mariana Islands will, upon termination of the Trusteeship Agreement, become a self-governing commonwealth in political union with and under the sovereignty of the United States of America.~~

9] The negotiating parties have considered it unnecessary to state explicitly in the Agreement that the Government of the Commonwealth will have sovereign immunity, ~~See e.g., Porto Rico v. Rosaly, 227 U.S. 27,~~ or that the Government of the Commonwealth and its predecessor, the Government of the Northern Mariana Islands, will have sovereign immunity, and will not be considered an agency or instrumentality of the United States Government.

Section 102.

The supremacy clause contained in this Section is modeled on the supremacy clause of the United States Constitution, and the negotiating parties intend that the relationship between the Northern Mariana Islands and the United States delineated by this clause be comparable to the relationship between the States and the United States delineated by Article VI, Clause 2 of the United States Constitution.

Section 103.

~~This Section, guaranteeing to the people of the Northern Mariana Islands the right of local self-government, is intended to carry out the commitment in the Joint Communique of June 4, 1973 that the people of the Northern Mariana Islands would exercise a maximum amount of self-government. The legislative powers of the United States with respect to the Northern Mariana Islands will be exercised with strict regard for the preservation of the internal self-government of the Commonwealth.~~

Section 105.

With respect to those provisions which cannot be altered without mutual consent, as provided in this Section, it is understood that an act by either Government in contravention of such a provision would be a de facto attempt to alter the

Agreement and could not successfully be accomplished without the permission of the other Government.

The phrase " . . . Northern Mariana Islands as defined in this Agreement" is used in this Section in order to guarantee the territorial integrity of the Commonwealth. The geographic boundaries stated in Section 1006(b) of the Agreement, by virtue of this Section, cannot be allowed without the consent of both the <sup>(Government of the )</sup> United States and <sup>(the Government of the )</sup> Northern Mariana Islands. ~~Governments.~~

Section 202.

This Section states the entire ~~amount of the~~ authority of the United States with respect to the Constitution of the Northern Mariana Islands, except for the power of the President to delay the effectiveness of certain provisions of the local Constitution until termination of the Trusteeship. <sup>This</sup>  
~~The~~ United States will not have the power directly or indirectly to alter the Constitution of the Northern Mariana Islands after initial approval, except insofar as parts of the Constitution may be passed on by federal courts in particular cases.

This Section is not intended to be an independent grant of jurisdiction to the courts established by the Constitution or laws of the United States. Rather, it is simply intended to acknowledge their authority to review the local

Constitution in appropriate cases. The courts established by the Constitution or laws of the Northern Mariana Islands, of course, will also be competent in proper cases to determine whether the local Constitution and its amendments are consistent with the Agreement and with the provisions of the Constitution and laws of the United States applicable to the Northern Mariana Islands, in accordance with the supremacy clause found in Section 102.

Section 203.

With respect to Subsection (c), which describes the legislative power of the Northern Mariana Islands, the negotiating parties have provided that the power "will extend to all rightful subjects of legislation" because of their understanding that this is the broadest possible formulation of legislative power for the Commonwealth. The second sentence of Subsection (c) is intended to permit the people of the Northern Mariana Islands to distribute the membership of their legislature in a way which is appropriate to their island community. The establishment of the Commonwealth will require compromise and concessions which reflect the historical and geographic interests of the major islands in the Marianas group. ~~Compare Reynolds v. Sims, 377 U.S. 533, 674-74 (1964).~~

This sentence will permit the Northern Mariana Islands to have a legislature analogous to the Congress of the United States, or a unicameral legislature whose membership reflects interests other than merely population.

Section 301.

"Domicile" is understood to mean 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.

Section 304.

~~This Section assures that citizens of the Northern Mariana Islands will have the privileges and immunities of citizens of the several States of the United States. Citizens of States are assured comparable treatment in the Northern Mariana Islands by the extension to the Northern Mariana Islands of Article IV, Section 2, Clause 1 of the United States Constitution, see Section 501 of the Agreement.~~

Section 401.

This Section is intended to require that a separate court be established for and within the Northern Mariana Islands by the United States. It is understood, however, that it may be appropriate for the United States to assign as the judge for this court the same person who is the judge of the District Court of Guam, if one judge can expeditiously and thoroughly handle the workload of both courts. It also appears desirable that the Northern Mariana Islands be permitted to call upon the services of the United States

Attorney and the United States Marshal for the District of the Northern Mariana Islands to perform functions related to the execution of local law. The Executive Branch of the United States Government will recommend that the Congress enact ~~implementing~~ legislation to accomplish this goal.

Section 402.

The jurisdiction granted to the District Court for the Northern Mariana Islands under Subsection (a) of this Section is not intended to be exclusive, except to the extent that district courts of the United States have exclusive jurisdiction over certain matters. Thus, for example, the local courts of the Northern Mariana Islands may be granted by the local legislature jurisdiction over diversity cases involving more than \$10,000. This jurisdiction would be concurrent with that of the District Court for the Northern Mariana Islands, just as such jurisdiction in a State is concurrent. Provisions for removal of such cases from the local court will be applicable to the Northern Mariana Islands under Section 403(a) of the Agreement.

The second sentence of Subsection (b) of this Section is intended to assure that when the District Court for the Northern Mariana Islands sits with solely local jurisdiction under this Subsection, the provisions of the 5th, 6th and 7th Amendments to the United States Constitution apply as if the District Court were a local court established

by the Constitution or laws of the Northern Mariana Islands. The local legislature of the Northern Mariana Islands will thus determine the requirements of grand jury indictments and trials by jury in the District Court as well as in the local courts, to the extent that a State legislature is permitted by the United States Constitution to make similar determinations for its local courts.

Section 403.

Subsection (a) of this Section makes applicable to the Northern Mariana Islands those laws of the United States which govern the relationships between the courts of or established by the United States and the courts of a State in a State of the Union. An exception is provided so that for the first fifteen years after the Northern Mariana Islands establishes an appellate court, review of federal questions can be had in the appropriate United States Court of Appeals, unless the local legislature provides that appeals shall be taken to the appellate section of the District Court for the Northern Mariana Islands -- from which, of course, appeals would lie to the Court of Appeals in accordance with applicable law. After the fifteen year period has elapsed, Subsection (a) of this Section will have the effect of permitting appeal or certiorari to the United States Supreme Court from decisions of the highest court in the Northern Mariana Islands

*in appropriate cases*

in which a decision could have been had <sup>6</sup>~~in appropriate cases.~~

Subsection (b) of this Section is intended to make applicable a wide variety of procedural and housekeeping statutes applicable to the District Court of Guam, as well as such statutes as are now applicable with respect to Guam as 28 USC § 1332 (diversity jurisdiction in district courts of the United States) and 28 USC § 1738 (dealing with full faith and credit).

Section 501.

This Section is intended to make certain provisions of the Constitution of the United States applicable against the actions of the Government of the Northern Mariana Islands and the actions of the Government of the United States, as the case may be, within the Northern Mariana Islands, just as they are applicable in a State of the Union.

The wording of the Section is broad enough to make applicable within the Northern Mariana Islands certain provisions of the United States Constitution granting to Congress legislative power. For example, Article IV, Section 1 of the United States Constitution, requiring that full faith and credit be given in each State to the public acts, records and judicial proceedings of other States, is made applicable within the Northern Mariana Islands



as if the Northern Mariana Islands were a State. The second sentence of Article IV, Section 1 grants certain powers to Congress with respect to the full faith and credit provision. See also, e.g., Section 2 of Amendment 15. The fact that these Congressional power provisions are included within Section 501 is not intended in any way to limit or to expand the authority of the United States with respect to the Northern Mariana Islands under Sections 104 and 105 of the Agreement. Under Section 105, for example, Congress will have the authority with respect to the Northern Mariana Islands which it has with respect to the States both under the provisions of the Constitution <sup>listed in Section 501 and other provisions</sup> not listed therein -- for example, and of particular importance, Article I, Section 8.

The application of Article I, Section 10, clauses 1 and 3 of the United States Constitution within the Northern Mariana Islands is understood by the negotiating parties to be consistent with the provisions of Section 904(c) of the Agreement permitting the Northern Mariana Islands, with the approval of the United States, to join certain international organizations and enter into certain limited international agreements.

Section 502. [Further explanation to be added when drafting complete]

The phrase "applicable to Guam" or "applicable to the Trust Territory of the Pacific Islands" in this Section is used in the sense of "applicable within or with respect to" the geographic areas mentioned or the people who reside in <sup>who</sup> or ~~are~~ citizens of those geographic areas. It is understood, for example, that laws providing for the extradition of persons from one State or Territory to another State or Territory (see 18 USC § 3182), will be applicable with respect to the Northern Mariana Islands in the same manner and to the same extent as they are applicable with respect to Guam or a State. Thus a State or another Territory could be obligated to extradite a person to the Northern Mariana Islands, just as the Northern Mariana Islands would be under an obligation in appropriate cases to extradite a person to a State or Territory. Of course, certain laws which will be made applicable to the Northern Mariana Islands under this Section speak, by their own terms, only to citizens of the United States. Such laws would apply only to citizens of the United States in the Northern Mariana Islands, and would not apply to citizens of the Trust Territory until, under the provisions of Article III of the Agreement, such citizens became citizens of the United States upon termination of the Trusteeship Agreement.

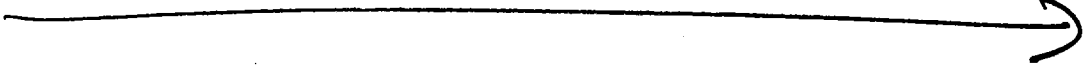
It is understood by the negotiating parties that the term "laws" is broad enough to include executive orders

and regulations of federal agencies which have the force and effect of law. It is further understood that the ~~Executive~~ <sup>B</sup> Branch of the Government of the United States will make appropriate changes consistent with this Agreement in executive orders and regulations to implement this Section and the Agreement.

Under Subsection (c) of this Section certain laws now applicable to the Trust Territory of the Pacific Islands <sup>and</sup> found in 48 USCA §§ 1681 through 1688, will continue to be applicable until termination of the Trusteeship Agreement, although amendments to such laws would not be applicable unless they specifically provide for their applicability to the Northern Mariana Islands. The Executive Branch of the Government of the United States will recommend that these laws be reviewed and appropriately modified to take into account the guarantee of local self-government in the Northern Mariana Islands which will become effective prior to termination.

Section 503.

It is understood by the negotiating parties that the immigration laws of the Trust Territory of the Pacific Islands will <sup>(continue to)</sup> be applicable in the Northern Mariana Islands under Section 506 <sup>after the New Government of the Northern</sup> ~~upon the effective date of that Section.~~

Mariana Islands under the local Constitution comes into existence, 

It is understood that those

~~those~~ immigration laws, as modified by the Government of the Northern Mariana Islands pursuant to its authority, will continue to be effective, except to the extent that they are ~~subsequently~~ <sup>promptly after it is established</sup> modified by the United States Congress by law ~~after termination.~~ <sup>enacted</sup> after termination of the Trusteeship Agreement.

Section 505.

The negotiating parties recommend that the Commission ~~immediately~~ <sup>promptly after it is established</sup> begin work on determining the precise effect of the formula for the applicability of laws stated in Section 502 of the Agreement, and make recommendations to Congress of such modifications as may be necessary and appropriate. The Commission on Federal Laws should also review problems which may arise after termination of the Trusteeship Agreement. There are a number of federal laws, particularly in the shipping and air transportation fields, which prohibit citizens of the United States from taking certain actions, and which prohibit persons or corporations which do not meet certain citizenship requirements from engaging in certain activities. In view of the possibility that there will be a ~~large~~ <sup>9</sup> number of nationals of the United States in the Northern Mariana Islands following termination -- and considering that nationals owe the same duty of allegiance to the United States as do citizens -- there may be circumstances in which such laws

would work unnecessary hardships if applicable without modification to the Northern Mariana Islands.

Section 603.

[With respect to Subsection (b), it is understood that the authority of the Government of the Mariana Islands will not extend to the levying of duties brought into the Northern Mariana Islands by the United States Government or its personnel, including military personnel, for its or their own personal or official use.]

With respect to Subsection (c), the negotiating parties believe that the treatment provided for in this Subsection is consistent with the obligations of the United States under the General Agreement on Tariffs and Trade. This Section is not intended to conflict with United States international obligations, and the United States will, if necessary, seek to obtain appropriate waivers or modifications of its international obligations <sup>1</sup>if the understanding of the ~~negotiating parties is not fully correct.~~

The term "a developing territory" used in Subsection (d) of this Section is intended to refer to the June 25, 1971 General Agreement on Tariffs and Trade waiver regarding preferential tariff treatment for goods from developing countries and territories, and to other similar benefits which may be available for the Northern Mariana Islands.

Section 703.

This "cover over" provision is intended to assure that the Government of the Northern Mariana Islands will receive from the Government of the United States payments under the same circumstances under which the Government of Guam receives such payments, and is intended to include those provisions of 26 USC § 7654(b), applicable to Guam, to the extent appropriate in view of the taxing system established by this Agreement.

Section 802.

The lease of land to the United States by or on behalf of the Government of the Northern Mariana Islands is not intended to be by its own force a cession of ~~political~~ *legislative* jurisdiction from the Northern Mariana Islands to the United States, *with respect to such land.*

The United States has announced that it plans to use the bulk of the land to be made available to it at Tanapag Harbor for a memorial park, which will include recreational facilities to be available to the people of the Northern Mariana Islands.

Section 806.

It is the understanding of the negotiating parties that, pursuant to the Trusteeship Agreement, the United States has no power of eminent domain in the Northern Mariana

It is the understanding of the negotiating parties that, in accordance with the request of the Mariana Islands District Legislative, the Mariana Islands District will be separately administered following the approval of this Agreement by the people thereof. Upon approval of this Agreement by both the Northern Mariana Islands and the United

- 15 -

Islands in its own name prior to termination of the Trusteeship Agreement. After termination of the Trusteeship Agreement, United States land acquisition will be accomplished in accordance with this Section.

States, a limited number of provisions become effective. Then,

#### Section 1004.

This Section states the effective dates of the provisions of the Agreement. ~~Only a few provisions are brought into effect upon the approval of the Agreement, and only a few are delayed until the termination of the Trusteeship and the establishment of the Commonwealth. The bulk of the provisions of the Agreement will come into effect on a day to be determined and proclaimed by the President of the United States which is within 180 days after the Agreement and the local Constitution have<sup>both</sup> been fully approved, on this date the new Government of the Northern Mariana Islands, under its own~~

Constitution, will come into being. ~~Thus~~ the goal of maximum local self-government will largely be secured even while the Trusteeship is still in existence. The Government of the Commonwealth of the Northern Mariana Islands will succeed the Government of the Northern Mariana Islands upon termination of the Trusteeship and the establishment of the Commonwealth.

The effective date of Section 104 and Section 904 of the Agreement ~~has~~<sup>have</sup> been postponed until the termination of

On this day as well, the bulk of the provisions of the Agreement will become effective. This assures that

At that point the remaining provisions of the Agreement -- primarily those relating to United States sovereignty, citizenship and nationality -- will become effective.

12090

the Trusteeship Agreement because the United States has the authority over the international and defense affairs of the Northern Mariana Islands under that Agreement. The delay of the effective date is not intended to imply that the United States does not have this authority prior to termination or that it will not or should not consult with the Government of the Northern Mariana Islands with respect to the exercise of that authority in appropriate situations.

Section 1005.

The President of the United States is given authority to prevent any portion of the local Constitution or of the laws of the United States, the application of which to the Northern Mariana Islands would be inconsistent with the Trusteeship Agreement, to be delayed until termination. It is not anticipated that there will be any such provision in the local Constitution; and the negotiating parties are aware of only a very small number of laws which might otherwise be applicable to the Northern Mariana Islands but whose application may have to be delayed by the President, such as the Selective Service laws.

Other.

It is the intention of the negotiating parties that the invalidity of one section of the Agreement not affect the validity of other provisions.