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MEMORANDUM CONCERNING JOINT RESOLUTIONS

This memorandum deals with the question of whether the status agreement should be drafted to become law by means of a joint resolution of Congress or by means of an act of Congress. The December 1973 draft by the United States of the status agreement provides in the conclusion of the Covenant that the Covenant "shall be approved by the United States in accordance with its constitutional processes."<sup>\*/</sup> The only specific reference in the U.S. draft to the use of joint resolutions is in Article II, concerning the Constitutional Convention, where it is provided that Congress shall certify its approval of the constitution to the High Commissioner of the Trust Territory by means of a joint resolution. In contrast the MPSC draft of January 19, 1974 provides in the preamble that Congress shall approve the Commonwealth Agreement by an Act of Congress and that the constitution shall be certified by the Secretary of the Interior.

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<sup>\*/</sup> This language is almost identical to Article 16 of the United Nations Trusteeship Agreement which provided that the agreement would come into force "when approved . . . by the Government of the United States after due constitutional process." On July 18, 1947 the President approved a joint resolution of the House and Senate which had authorized him to approve the trusteeship agreement.

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I. Descriptions of Joint Resolutions.

A joint resolution is a bill which has been passed by both Houses of Congress and approved by the President.<sup>\*/</sup> Joint resolutions are different from simple resolutions and concurrent resolutions. A simple resolution is a motion passed by the members of a single legislative house which expresses the will or opinion of the house adopting it and usually affects matters relating only to the house concerned. Concurrent resolutions are passed by both houses of Congress

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\*/ International Brotherhood of Electrical Workers v. Washington Terminal Co., 473 F.2d 1156, 1163 (D.C. Cir. 1972) (hereafter cited as "International Bhd. of Electrical Workers"); L. Deschler, House Doc. No. 439, Jefferson's Manual and Rules of the House of Representatives § 397 (1971) (hereafter cited as "Jefferson's Manual"); 7 Cannon's Precedents ¶ 1036 (1936) (hereafter cited as "Cannon's Precedents") stating that the term "bill" is a generic one and includes joint resolutions; 4 Hind's Precedents ¶ 3375 (1907) (hereafter cited as "Hind's Precedents") reporting that the Speaker of the House had stated that a joint resolution is the same as a bill. The one exception to this procedure is with joint resolutions which propose a Constitutional amendment. Such joint resolutions are not sent to the President for approval. See International Bhd. of Electrical Workers, 473 F.2d at 1163; and Jefferson's Manual at § 397.

and are generally vehicles for expressing facts, principles, opinions and purposes.<sup>\*/</sup>

Unlike simple or concurrent resolutions, joint resolutions have the same force and effect of law as an Act of Congress.<sup>\*\*/</sup> They can, for example, be used to amend an Act of Congress<sup>\*\*\*/</sup> to suspend an Act of Congress,<sup>\*\*\*\*/</sup> to extend the effectiveness of an Act; or to abrogate a treaty.<sup>\*\*\*\*\*/</sup>

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<sup>\*/</sup> See R.M. Gibson, "Congressional Concurrent Resolutions: An Aid to Statutory Interpretations," 37 ABA JOUR. 421 (1951) at 422-423 Cited in H. Read, Cases and Other Materials on Legislation (2d Ed. 1959) at 117-118.

<sup>\*\*/</sup> See U.S. Constitution, Art. I, Sec. 7; International Bhd. of Electrical Workers, 473 F.2d at 1163; Jefferson's Manual at § 397; "Resolutions of Congress," 6 Opin. Atty. Gen. 680 (1854). The Attorney General stated that "[A] joint resolution, properly enacted, . . . differs from an act of Congress only in form." 6 Opp. Atty. Gen. at 682.

<sup>\*\*\*/</sup> See C. Zinn, How Our Laws are Made (1959) at 4.

<sup>\*\*\*\*/</sup> See Levey v. Stockslager, 129 U.S. 470 (1889) (joint resolution suspended indefinitely an Act of Congress granting land to certain individuals.)

<sup>\*\*\*\*\*/</sup> See Jefferson's Manual at § 599. See Watts v. United States, 161 F.2d 511 (5th Cir. 1947) (joint resolution was effective for extending the Emergency Price Control Act of 1942).

One court has suggested that it is unclear whether a joint resolution should be considered an "Act of Congress" when a statute specifically uses those words.<sup>\*/</sup> In fact the issue seems never to have been directly raised. However the implication is clear that if the issue arose an "Act of Congress" would be construed to include joint resolutions for example, in Brotherhood of Locomotive Firemen and Engineers v. Certain Carriers Represented by the Eastern, 331 F.2d 1020 (D.C. Cir. 1964) without discussion of the issue a three-judge court was convened to determine the effect of a joint resolution.<sup>\*\*/</sup> Any other interpretation would go contrary to the well-accepted proposition that joint resolutions have the force and effect of law and create unnecessary complications where a joint resolution has been used to amend an Act of Congress.

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<sup>\*/</sup> See Powell v. McCormack, 266 F.Supp. 354 (D.D.C. 1967). See e.g., 28 U.S.C. § 2282 providing for a three-judge court where an injunction against an "Act of Congress" is requested.

<sup>\*\*/</sup> See also FHE Oil Co., 150 F.2d 854 where the court stated at 858 that a concurrent resolution is "not an act of Congress approved by the President if passed over his veto. It does not make law, or change the law made by a previous Congress or President." The implication of this language appears to be that a resolution approved by the President which does make law or amend law is an "act of Congress."

II. Whether the status agreement or the Constitution of the Marianas should be approved by act or joint resolution.

It appears to make little practical difference whether the status agreement is approved by Congress through a statute or through a joint resolution. Jefferson's Manual at § 397 states that joint resolutions are used only for the "incidental, unusual, or inferior purposes of legislating." <sup>\*/</sup> The fact that joint resolutions are not only used for "inferior" purposes is shown by the admission <sup>\*\*/</sup> of a number of states to the Union by joint resolutions.

Long documents such as the status agreement would ordinarily become law by means of a statute. For example, while New Mexico was admitted to the Union by means of a joint resolution, a detailed enabling Act, setting out the terms for admission and providing for a constitutional <sup>\*\*\*/</sup> convention in New Mexico, was passed by statute. Similarly, the Puerto Rican Federal Relations Act was passed in <sup>\*\*\*\*/</sup> statutory form. Nonetheless, a joint resolution can incorporate an agreement by reference and that incorporation

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<sup>\*/</sup> It also points out that while at one time they were used for purposes of general legislation, the House and Senate finally concluded that a bill was the proper instrumentality for this purpose. See also Cannon's Procedure in the House of Representatives (1920).

<sup>\*\*/</sup> See, e.g., Pub. Res., No. 8, 62d Cong., 1st Sess. (1911) admitting Arizona and New Mexico to the Union.

<sup>\*\*\*/</sup> [cite].

<sup>\*\*\*\*/</sup> [cite].

gives the agreement the force and effect of law, so that it would be possible to have the customary short resolution as a vehicle for approving the status agreement.<sup>\*/</sup>

Although there is no important distinction which can be drawn between joint resolutions and statutes, the precedent of the states and of Puerto Rico would seem to indicate that the status agreement, being a long and detailed document, should be passed by an act of Congress. On the other hand, if Congress were to approve the constitution, that should probably be adopted by a joint resolution.

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<sup>\*/</sup> See International Bhd. of Electrical Workers, 473 F.2d 1156 and the Resolution adopting the U.N. Trusteeship Agreement