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April 4, 1974

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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 U.S. draft 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> 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.

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>

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\*/ 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 trusteeship agreement was approved by means of a joint resolution which incorporated the agreement by reference. See Pub.L. No. 80-204, 61 Stat. 397.

\*\*/ International Brotherhood of Electrical Workers v. Washington Terminal Co., 473 F.2d 1156, 1163 (D.C. Cir. 1972), 154 U.S.App. D.C. 119, 126, cert. denied, 411 U.S. 906 (1973) (hereafter cited as "International Bhd. of Electrical Workers"); L. Deschler, Jefferson's Manual and Rules of the House of Representatives, H.R. Doc. No. 439, 91st Cong., 2d Sess. § 397 (1971) (hereafter cited as "Jefferson's Manual"); C. Cannon, 7 Cannon's Precedents of the House of Representatives ¶ 1036 (1936) stating that the term "bill" is a generic one and includes joint resolutions; A. Hinds, [footnote continued on next page]

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Hearings may be held on a joint resolution and legislative history developed. <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 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

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4 Hind's Precedents of the House of Representatives ¶ 3375 (1907) reporting that the Speaker of the House had stated that a joint resolution is the same as a bill.

The one exception to the procedure of passage by House and Senate and signature by the President is with joint resolutions which propose a Constitutional amendment. Such joint resolutions, while approved by both House and Senate, are not sent to the President for approval. See International Bhd. of Electrical Workers, 473 F.2d at 1163, 154 U.S.App.D.C. at 126; and Jefferson's Manual at § 397.

\*/ O'Hara, Reader in Government Documents 44 (1973).

\*\*/ See R.M. Gibson, "Congressional Concurrent Resolutions: An Aid to Statutory Interpretations," 37 ABA JOUR. 421 (1951) at 422-423.

\*\*\*/ See U.S. Constitution, Art. I, Sec. 7; International Bhd. of Electrical Workers, 473 F.2d at 1163, 154 U.S.App. D.C. at 126; 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.

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act of Congress, <sup>\*/</sup> to suspend an act of Congress, <sup>\*\*/</sup> to extend the effectiveness of an act; <sup>\*\*\*/</sup> or to abrogate a treaty. <sup>\*\*\*\*/</sup>

One court has suggested that it is unresolved whether a joint resolution should be considered an "act of Congress" when a statute specifically uses those words. <sup>See,</sup> for example, 28 U.S.C. § 2282 providing for a three-judge court where an injunction against an "Act of Congress" is requested. <sup>\*\*\*\*\*/</sup>

While the issue may never have been squarely faced, the implication is clear that if it were, 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), 118 U.S.App.D.C. 100, cert. denied, 377 U.S. 918 (1963) a three-judge court was convened to determine the effect of a joint resolution without a discussion of whether a joint

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

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

<sup>\*\*\*/</sup> See Watts v. United States, 161 F.2d 511 (5th Cir. 1947), cert. denied, 332 U.S. 769 (1947) (joint resolution was effective for extending the Emergency Price Control Act of 1942).

<sup>\*\*\*\*/</sup> See Jefferson's Manual at § 599.

<sup>\*\*\*\*\*/</sup> See Powell v. McCormack, 266 F.Supp. 354, 355 (D.D.C. 1967), cert. denied, 387 U.S. 933 (1967).

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resolution is an act of Congress.<sup>\*/</sup> Any other interpretation could go contrary to the well-accepted proposition that joint resolutions have the force and effect of law and would create unnecessary complications where a joint resolution has been used to amend an act of Congress.

II. Whether the status agreement 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> These categories encompass everything from the most minor matters to such significant matters as the admission of states to the Union.<sup>\*\*\*/</sup> Thus, there is no reason to believe that approval by means of an act rather than a joint

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<sup>\*/</sup> See also F.H.E. Oil Co. v. Commissioner of Internal Revenue, 150 F.2d 857 (5th Cir. 1945), where the court stated at 858 that a concurrent resolution is "not an Act of Congress approved by the President or 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 does make law and is an "act of Congress."

<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 C. Cannon, Cannon's Procedure in the House of Representatives (1920).

<sup>\*\*\*/</sup> See, e.g., Pub. Res., No. 62-8, 37 Stat. 36 (1911) admitting Arizona and New Mexico to the Union.

resolution would add significant dignity to the status requested.

Nonetheless, 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 convention in New Mexico, was passed by statute.<sup>\*/</sup> Similarly, the status of Puerto Rico is defined by statute.<sup>\*\*/</sup>

Alternatively, a joint resolution could incorporate the agreement by reference and that incorporation would give the agreement the force and effect of law.<sup>\*\*\*/</sup> But that procedure seems of limited advantage since the status agreement itself would then not be codified and therefore not easy to reference.

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<sup>\*/</sup> Pub.L.No. 61-219, ch. 310, 36 Stat. 557.

<sup>\*\*/</sup> See Pub.L. 600, 48 U.S.C. §§ 731b-e; and Federal Relations Act, 48 U.S.C. § 731(e).

<sup>\*\*\*/</sup> See International Bhd. of Electrical Workers, 473 F.2d 1156, 154 U.S.App. D.C. 119; and Resolution adopting the U.N. Trusteeship Agreement, Pub.L. No. 80-204, 61 Stat. 397.