

June 21, 1974

MAJOR DIFFERENCES BETWEEN U.S. DELEGATION
AND MPSC DRAFT STATUS AGREEMENTS

Differences in Approach

Integrated Whole: The Covenant has both Titles and Articles, while the Commonwealth Agreement (CA) does not. The Covenant has space for signatures after the Titles and before the Articles, while the CA has signatures at the end of the entire document.

Enactment into Law: Both sides apparently agree on enactment, but the CA is in a form which obviates the need for subsequent substantive legislation to implement its provisions. The Covenant is sometimes in such a form (§ 602(b) re coverover), is sometimes not (§ 405 re courts), and is sometimes unclear (§ 602(a)(1) re Phase II funding is probably not sufficiently precise to be an appropriation, though this is not certain).

Timing: Under the CA, the Commonwealth would come into being before termination of the Trusteeship, and the provisions of the CA, except for U.S. sovereignty and citizenship, would become effective prior to termination. The Covenant provides that the Commonwealth will come into being at termination, though portions of the Covenant would become effective earlier (including Phase II direct grants, though perhaps not federal programs; and U.S. land use rights), and the President could make additional provisions effective prior to termination in his discretion (§ 802(a)). [Note that § 802(a)(1) of the Covenant, probably inadvertently, makes the citizenship provisions effective prior to termination.]

Specific Differences

Local Authority: CA § 205(a) grants Commonwealth authority in all matters of "local concern," while Covenant § 308 uses the term "local application" with respect to local legislative authority and spells out local executive and judicial authority in separate provisions, Covenant §§ 307 and 309, respectively.

U.S. Legislative Authority: CA § 207(a) places certain limits on U.S. legislative authority under IV-3-2 to assure local self-government; Covenant § 102 has no such limits.

Provisions Subject to Mutual Consent: CA § 207(b) has list of provisions of CA which cannot be changed without mutual consent, while Covenant § 102 has space for such a list, but does not contain one.

Applicability of U.S. Constitution: There are some differences between the portions of the U.S. Constitution proposed to be made applicable by CA § 208(a) and Covenant § 401. In addition, while CA § 208(b) reserves for the Commonwealth the power to control land alienation, Covenant § 402 requires such regulation, and in addition requires limits on individual land holdings. Finally, CA § 208(b) permits the Commonwealth legislative branch to be structured so that the three main islands are equally represented; the Covenant has no such provision.

Justiciability: CA § 210 implements the agreement of the parties with respect to justiciability; the Covenant contains no such provision.

Oath to Support U.S. Laws: Both CA § 211 and Covenant § 310 require public officials to take oaths to support U.S. laws. But Covenant § 307 requires the Commonwealth executive branch to execute the laws of the U.S.; there is no such provision in the CA.

Naturalization: CA § 304 contains special provisions relating to naturalization in the Marianas; the Covenant has no such provisions.

Interim Applicability of Laws Formula: CA § 401 provides for the interim applicability of federal laws under a formula, like Covenant § 403. The major differences between the formulas seem to be these: the new U.S. position on federal income tax laws is reflected in Covenant § 403(a)(3); CA §§ 401(a)(1) and (2) contain adjustments to the formula (e.g., concerning financial aid laws) not found in the Covenant; and CA § 401(b) reserves space for special provisions relating to matching.

Commission on Applicability: Both CA § 402 and Covenant § 404 provide for a Commission on Applicability, but the CA provides that unless disapproved by one house of Congress within a year after transmittal, the Commission's recommendations will become effective.

Federal Court: CA §§ 501-507 provide for a federal territorial court which will become a constitutional court; Covenant §§ 405 and 406 provide that the U.S. will establish a court in the Marianas analagous to that in Guam.

Federal Income Tax Laws: CA §§ 601 to 603 implement the previous agreement with respect to these laws; Covenant §§ 403(a)(3) and 601(b) reflect the new U.S. position -- which may be that the federal Internal Revenue Code should become a territorial code for the Marianas. Also, compare CA § 605 (exclusive local power over local internal revenue laws) with Covenant § 601(b) (interim Marianas internal revenue laws shall be progressive and include estate and gift taxes).

Customs and Excise Taxes: CA §§ 607 to 611 implement the agreements with respect to these laws; Covenant deals with them in §§ 501 and 502. The differences here may be primarily technical.

Other U.S. Laws: The CA has special provisions for social security laws (CA § 604), immigration laws (CA § 701, presently reserved), and maritime laws (CA § 702). The Covenant does not deal with these laws specifically.

Debt Limit: CA contains no provision comparable to Covenant § 503(b) which imposes a debt limit on the Commonwealth Government.

Economic Support: CA § 801 lays out the general principles of U.S. economic support, and is comparable to Covenant § 601; the prime difference seems to be that the CA refers to the goal of a standard of living comparable to that in other parts of the U.S. while the Covenant refers to the goal merely of a higher standard of living. Provisions in both documents relating to Phase II support will have to be rewritten to take into account the agreements at Marianas IV, compare CA § 803 with Covenant § 602(a)(1). CA § 805 contains procedures for determining

the level of financial aid for the next multi-year period, and CA § 803(d) provides that the annual payments during the first multi-year period shall continue until Congress otherwise provides. The Covenant contains no comparable provisions.

Land for Military Purposes: CA §§ 902 and 903 implement the prior positions of MPSC with respect to land, and will have to be rewritten to take into account the agreement at Marianas IV. The comparable portion of the Covenant is § 702(a). There are still outstanding differences between the parties with respect to the terms under which the land will be made available and the price to be paid (compare CA § 902(b) with Covenant § 702(a) and § 602(a)(2)).

Cession of Jurisdiction: CA § 905 provides that the lease of land to the U.S. for military purposes does not cede political jurisdiction to the U.S.; the Covenant has no comparable provision.

Eminent Domain: CA § 907 places certain restrictions on the exercise of the power of eminent domain; Covenant §§ 703(a) and (b) have no restrictions.

Consulation Between the Parties: CA § 1001 describes procedures for consulation between the parties; Covenant has no comparable provisions.

Consulations on International Matters: CA & 1002(b) implements agreement that U.S. will support Marianas membership in certain types of international organizations; Covenant does not address this issue, although the May Draft of the Covenant did so in Title V.

Delegate/Resident Commissioner: CA §§ 1101 and 1102 deal with a non-voting delegate or a resident commissioner for the Marianas. The Covenant has no comparable provisions.

Approval of Marianas Constitution: CA § 1202 provides procedures for approval of local constitution; Covenant §§ 303 and 304 deal with the same matter. The primary differences seem to be that the CA provides for approval of the Marianas Constitution by the President after approval by the people, while the Covenant provides for approval by the Congress before approval by the people.

Termination of Trusteeship: CA § 1206(a) requires U.S. to make good faith effort for early termination of Trusteeship in whole or in part; Covenant does not contain comparable provision.

Second Plebiscite: CA § 1206(d) permits President to call second plebiscite if necessary; Covenant does not deal with this issue.

Separate Administration: CA § 1207 specifically permits separate administration upon request of the District Legislature, but no later than the establishment of the Commonwealth; Covenant leaves this entirely in the hands of the President, Covenant § 802(a)(2).