

12B

July 1, 1974

COMPARISON OF MPSC AND U. S. DELEGATION  
MUTUAL CONSENT LISTS

09.124

| Commonwealth Agreement | Covenant | Topic   | Comments  |
|------------------------|----------|---|---|
| §201(a)                | [§102]   | Relations between U. S. and Marianas governed by Agreement, which is mutually binding.  | U. S. willing to make Cov. §101, creating a Commonwealth under U. S. sovereignty, subject to mutual consent, and to make "the mutual consent concept itself" subject to mutual consent. Cov. §102 embodies the mutual consent concept, but also other concepts including relations governed by the instrument and U. S. legislative authority. Important to Marianas, especially insofar as "mutually binding" means unalterable until termination. |
| §201(b)                | [---]    | Agreement not intended to affect U. S. responsibility under Trusteeship Agreement.  | U. S. opposes this section. Does not seem important to Marianas.  |
| §202                   | §101     | Marianas to become self-governing Commonwealth.   | U. S. agrees.   |
| §203                   | §101     | Political union and U. S. sovereignty at termination.   | U. S. agrees.   |
| §204(a)                | §301     | People of Marianas to govern themselves pursuant to own constitution.   | U. S. agrees.   |
| §204(b)                | [§306]   | Requirements of Marianas Constitution, e.g. bill of rights; separate executive, legislative, judicial branches.   | Not on U. S. list. If U. S. can change this section, can it get around its inability to change CA §§ 204(a) and (c)? Probably ought to be kept on our list.   |
| §204(c)                | §305     | No U. S. authority to review amendments to Marianas Constitution, other than Federal Court review for consistency with status agreement and U. S. laws. | U. S. agrees.   |

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| <u>Commonwealth Agreement</u> | <u>Covenant</u> | <u>Topic</u>  | <u>Comments</u>   |
|-------------------------------|-----------------|---|---|
| §205(a)                       | [§§307-09]      | Commonwealth's authority extends "to all matters of local concern".   | Not on U. S. list, except insofar as it is covered by putting local constitution and local control of local courts on the list. Cov. §§ 307-09 treat local executive, legislative and judicial branches' authority separately. Seems important to Marianas, considering uncertain fate of CA §207(a). |
| §205(b)                       | [§308]          | CA and U. S. Constitution, laws and treaties supreme law of Commonwealth.   | Not on U. S. list. Cov. §308 states that local legislative authority cannot be exercised inconsistently with Agreement or U. S. Constitution and laws. Not critical to Marianas.  |
| §206                          | [Title VI]      | U. S. has full authority in defense and foreign affairs.  | Not on U. S. list. Not critical to Marianas.  |
| §207(a)                       | [§102]          | U. S. legislative authority (IV-3-2).   | Not on U. S. list. Cov. §102 really isn't comparable, since it just says that U. S. "will be guided by its traditional respect for local self-government." Very important to Marianas to have a limit on IV-3-2 and to make that limit subject to mutual consent.                                     |
| §207(b)                       | §102            | Mutual consent.   | U. S. agrees.   |
| §207(c)                       | [---]           | Procedures for giving mutual consent.   | No comparable provision in Covenant. Probably not critical to Marianas.   |
| §208(a)                       | §401            | Provisions of U. S. Constitution applicable.  | U. S. agrees.   |
| §208(b)                       | §402            | Exceptions from applicability of U. S. Constitution for land alienation restraints and unapportioned legislature. | U. S. agrees re land alienation restraints; Cov. §402 says nothing about one-man, one-vote. Very important to Marianas.   |

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| § 209 (a)              | [----]       | Commonwealth not an agency or instrumentality of U. S.   | No comparable provision in Covenant. By itself, probably not too important, but reflects MPSC view of a degree of independence from federal government different from U. S. view. Same philosophical problem underlies differences between parties re applicability of U. S. Constitution; §207(a); U. S. responsibility to pay for land for military purposes. |
| §209 (b)               | [Title IV]   | Citizens of Commonwealth entitled to privileges and immunities of citizens of states.                  | Not on U. S. list. U. S. may lump this in with group of rights protected by U. S. citizenship and due process but not so. However, once this is in status agreement, almost impossible to imagine Congress trying to change it.   |
| §209 (c)               | [----]       | Full faith and credit for Marianas.  | No comparable provision in Covenant. If it is in final status agreement, then hard to imagine Congress trying to alter it.  |
| §210                   | [----]       | Causes arising under Agreement intended to be justiciable and limits on federal authority enforceable. | No comparable provision in Covenant. Very important to Marianas; U. S. has agreed to this in principle.   |
| §211                   | [§310]       | Local officials to take oaths to support U. S. Constitution and laws.                                  | Not on U. S. list. Not critical to Marianas.  |
| § §301, 303            | [§§201, 203] | U. S. citizenship, <u>en masse</u> (§301) and then by birth (§303).                                    | Not on U. S. list on ground that this cannot be changed under due process anyway. Once citizenship is granted, that is probably true so assuming status agreement cannot be changed until termination and that on termination citizenship attaches, §301 presents no problem. But could Congress alter affect of §303 as to person not yet born?                |

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| §302                   | §202                          | Nationality option within six months after termination.           | U. S. agrees.  |
| §304                   | [---]                         | Special provisions relating to naturalization.                    | No comparable provision in Covenant. Important to Marianas, but tied up to immigration issue.  |
| §305                   | [§204]                        | Local courts have naturalization authority.                       | Not on U. S. list. Probably not critical.  |
| §306                   | [§205]                        | Definition of domicile.   | Not on U. S. list. Probably not critical.  |
| §601-03                | [§403(a)(3)]                  | Applicability of various U. S. laws:                              | Not on U. S. list.   |
| §604                   | [---]                         | Internal revenue; social security;                                |  |
| §607-11                | [§§501, 502]                  | Customs, duties and excises; immigration; maritime, respectively. |  |
| §701                   | [---]                         |   |  |
| §702                   | [---]                         |   |  |
| §605                   | [§§403(a)(3); 601(b); 503(a)] | Local exclusive control of local internal revenue laws.           | Major substantive difference between parties; and not on U. S. list. Very important to Marianas, but possible compromise have as an eminent domain is to take MPSC position but allow Congress to alter it without mutual consent. |
| §606                   | §504]                         | Local debt free from U. S. tax on interest.                       | Not on U. S. list. Probably not critical to Marianas since it will be treated like other territories.  |

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| §612                   | [\$602(b)]             | Cover-over of federal taxes.   | Not on U. S. list. Could be an important source of funds.  |
| §803                   | [\$602(a)<br>(1), (3)] | Phase II funds.  | Not on U. S. list because enactment is said to be an enforceable commitment by U. S. Query. But if status agreement is worded so as to be an appropriate not just an authorization, perhaps a compromise is possible, though this is very important to Marianas. |
| §901                   | [\$701]                | Transfer to Commonwealth of TTPI and U. S. property, real and personal.                      | Not on U. S. list. Could be important.   |
| §§902, 903             | [\$702]                | U. S. military land requirements, and terms of leases.                                       | Not on U. S. list. If leases are negotiated before status agreement is signed -- highly unlikely -- then this is not critical; otherwise it could be important; but tremendous political pressure on U. S. to follow status agreement.                           |
| §904                   | [\$702(b),<br>(c)]     | All U. S. rights in land governed by Agreement, not withstanding prior agreements with TTPI. | Not on U. S. list. May not be critical since once land is returned, U. S. can't get it back without eminent domain.  |
| §905                   | [---]                  | Lease is not cession of political jurisdiction.  | Not on U. S. list; no comparable provision in Covenant. Since it is an expression of <del>Marianas</del> intent, it probably need not be made subject to mutual consent.   |
| §906                   | [---]                  | Marianas commitment to protect U. S. land rights.  | Not on U. S. list; no comparable provision in Covenant. Not critical to Marianas.  |
| §907                   | [\$703]                | Eminent domain.  | U. S. agrees.  |
| §1101                  | [---]                  | Non-voting delegate.   | Not on U. S. list; no comparable provision. Importance may depend on what we get. Note CA § 1102 re resident commissioner is not on MPSC list.   |

| <u>Commonwealth Agreement</u> | <u>Coyenant</u> | <u>Topic</u>   | <u>Comments</u>  |
|-------------------------------|-----------------|--|--|
| §1203                         | [§801(b)]       | Commonwealth comes into effect 180 days after local constitution approved by President (after status agreement approved, but presumably before termination). | Not on U. S. list. Cov. § 801(b) leaves it up to President. Exact timing is not critical, but there is some danger in leaving matter entirely in President's discretion and not subject to mutual consent. |
| §1205                         | [§802(a)]       | Relations governed by Agreement and whole Agreement effective except citizenship and sovereignty at establishment of Commonwealth.                           | Not on U. S. list; Cov. § 802(a) is similar but leaves most pre-termination effectiveness up to President; this may leave too much discretion.   |