

C-4

Draft/MSH  
November 20, 1974

12  
2, 3, 4, 5, 6

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, signed by the Marianas Political Status Commission and the President's Personal Representative in Saipan, Mariana Islands, on \_\_\_\_\_, 197\_.

Section 101.

The negotiating parties considered it unnecessary to state explicitly in the Agreement 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 relation-

06-417283

ship 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 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.

As used in Article I, as elsewhere, the term "Northern Mariana Islands" in a geographic sense refers to the area described in Section 100[6](b). The inclusion of the provisions of Article I in the mutual consent list, then, has the effect of guaranteeing the territorial integrity of the Commonwealth. The geographic boundaries of the Commonwealth cannot be altered without the consent of both the Government of the United States and the Commonwealth of the Northern Mariana Islands.

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. Thus 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 formu-

lation 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, as well as population. 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.

*Recognize  
"let's  
and  
man  
the  
the  
the  
the*

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 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 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 <sup>cases involving diversity of citizenship</sup> 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 -- when jurisdiction is bottomed on Section 403(b) of the Agreement -- 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.

In view of some confusion which seems to have developed under somewhat similar language in the Guam Organic Act, the negotiating parties consider it appropriate to point out with respect to Subsection (c) that the Legislature of the Northern Mariana Islands is under no obligation to grant any appellate jurisdiction to the District Court for the Northern Mariana Islands. The Legislature may choose at any time and from time to time to establish appellate courts of the Northern Mariana Islands and to eliminate the appellate jurisdiction of the District Court.

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 in appropriate cases appeal or certiorari to the United States Supreme Court from decisions of the highest court in the Northern Mariana Islands in which a decision could have been had.

Subsection (b) of this Section is intended to make applicable to the District Court for the Northern Mariana Islands 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 or citizens of 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 such 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 with respect to the Northern Mariana Islands all the authority it has with respect to the States, both under the provisions of the Constitution listed in Section 501 and other provisions 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 international agreements.

Section 502.

This Section states a formula for determining the applicability of laws of the United States to the Northern Mariana Islands. The formula is based on those laws which are applicable to Guam and of general application to the several States.

General Comments. With respect to the phrase in the introductory clause of Section 502 which refers to other portions of the Agreement which provide for the application of laws of the United States to the Northern Mariana Islands, the negotiating parties believe that at least the following Sections may be relevant depending on

the circumstances: Sections 103, 105, 203(c), Article III, Sections 402, 403, 501, 503, 504, 506, Article VI, Sections 702, 801, 803, 804, 805, 806, 901, 903 and 100[5].

The formula stated in Section 502 is not intended to be the exclusive method by which laws of the United States are or can be made applicable to the Northern Mariana Islands. The Congress will have power consistent with the Agreement to alter the manner and extent to which laws covered by the formula apply to the Northern Mariana Islands, to make laws not covered by the formula applicable, or to make laws covered by the formula inapplicable. The formula does not make the Northern Mariana Islands into a territory or possession of the United States prior to termination. In many instances, however, the Northern Mariana Islands will be treated as if it were a territory or possession of the United States prior to termination, for many laws applicable to Guam because it is a territory or possession will become applicable to the Northern Mariana Islands.

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 or who 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 become 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 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.

Subsection (a). This Subsection determines the applicability of certain named laws of the United States. Titles I, X, XIV and XVI of the Social Security Act are not applicable at all to the States and therefore would not be covered by Subsection (b). Those laws which provide federal services and financial assistance programs sometimes apply differently in the States than in Guam with respect to the distribution of funds, and it is appropriate for the Northern Mariana Islands to be treated as is Guam. The same is true for the federal banking laws. The term "the federal banking laws" in Subsection (a) has particular reference to Sections 13, 25 and 25(a) of the Federal Reserve Act, as amended (12 U.S.C. 466, and 601-632, respectively) and Section 5191 of the Revised Statutes (12 U.S.C. 143). Although the negotiating parties understand that virtually all of the Public Health Service Act applies in Guam as it does in the Virgin Islands, there seems to have been some confusion about this point and it was considered the safer course to include a specific reference to it in Subsection (a) because of its importance. Similarly, the explicit reference to the Micronesian Claims Act is appropriate because of its importance, even though it might be covered elsewhere.

Subsection (b). This Subsection is intended to establish a two-prong test: applicability to Guam and applicability generally to the States. This test is employed for

two reasons. First, it is intended to avoid the application to the Northern Mariana Islands of legislation which is uniquely applicable to Guam, such as the Guam Organic Act or laws providing for certain public works on that Island alone. Second, it is intended to prevent the application of laws so as to reach intraterritorial matters within the Northern Mariana Islands where similar intrastate matters within States of the Union are not reached. It would be inconsistent with the guarantee of local self-government to the people of the Northern Mariana Islands to reach such activity. This subsection also removes all doubt by assuring that certain "territorial" laws found in chapters 10 and 11 of title 48 of the United States Code (Annotated) do not apply to the Northern Mariana Islands.

Subsection (c). This Subsection assures that at least until termination of the Trusteeship any laws not covered by Subsections (a) and (b) but applicable to the Trust Territory will continue to be applicable to the Northern Mariana Islands. One example is 26 U.S.C. § 872(b)(4) dealing with the federal tax treatment of bonds bought by persons in the Trust Territory.

Section 503.

It is understood by the negotiating parties that the immigration laws of the Trust Territory of the Pacific Islands will continue to be applicable to the Northern Mariana Islands under Section 506 after the new Government of the Northern Mariana Islands under the local Constitution comes into existence. It is understood that those immigration laws, as modified by the Government of the Northern Mariana Islands pursuant to its authority, will continue to be effective after termination of the Trusteeship Agreement, except to the extent that they are modified by federal law after termination.

It appears that the laws described in Subsection (a) (2) concerning the landing of fish and fish products would not apply to the Northern Mariana Islands under the formula found in Section 502 in any event, because such laws are not applicable to Guam. These laws are included in Subsection (a) (2) out of an abundance of caution.

Section 505.

The negotiating parties recommend that the Commission begin work promptly after it is established to determine the precise effect of the formula for the applicability of laws stated in Section 502 of the Agreement, and that it make recommendations to Congress of such modifications as may be

06-427225

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 number of nationals of the United States in the Northern Mariana Islands following termination -- and considering that nationals owe the same 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 602.

It is understood by the negotiating parties that the Federal Unemployment Tax and the benefits derived therefrom will not be applicable to the Northern Mariana Islands. In this regard the treatment of the Northern Mariana Islands will be identical to that of Guam. It is further understood that federal laws which impose taxes to support, or which provide benefits from, the Old Age, Survivors, Disability and Health Insurance Trust Funds of the United States will not be applicable prior to termination unless otherwise agreed

by the Governments of the United States and of the Northern Mariana Islands. This matter is covered by Section 605 of the Agreement.

It is understood by the negotiating parties that the wording of Subsection (c) of this Section is broad enough to assure that articles going into the Northern Mariana Islands will be treated for purposes of the internal revenue laws of the United States in the same manner that articles going into Guam and the possessions are treated. See 26 U.S.C. § 7653(b).

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 appropriate waivers or modifications of its international obligations.

The term "a developing territory" used in Sub-section (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 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 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.

Section 1004.

This Section states the effective dates of the provisions of the Agreement. It is the understanding of the negotiating parties that, in accordance with the request of the Mariana Islands District Legislature, 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 States, a limited number of provisions become effective. Then, 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 both been fully approved, the new Government of the Northern Mariana Islands, under its

*Then  
why do  
we need  
the Gov  
before  
1997*

own Constitution, will come into being. On this day as well, the bulk of the provisions of the Agreement will become effective. This assures that 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. At that point the remaining provisions of the Agreement -- primarily those relating to United States sovereignty, citizenship and nationality -- will become effective.

The effective date of Section 104 and Section 904 of the Agreement has been postponed until the termination of 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.

[Signatures?]