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DRAFT
March 8, 1974

MEMORANDUM CONCERNING JOINT RESOLUTIONS

This memorandum deals with the question of whether the status agreement should become law by joint resolution of Congress or by an act of Congress.^{*/} There is no question that a joint resolution has the force and effect of law as acts of Congress.^{**/} In International Brotherhood of Electrical Workers v. Washington Terminal Company, 473 F.2d 1156 (D.C. Cir. 1972), cert. denied, ___ U.S. ___ 1973, the Court in confronting the question of whether a joint resolution could be used to prohibit a strike, concluded that the use of a joint resolution was possible. See 473 F.2d at 1163. The Court stated that Congress legislates through "acts" and "joint resolutions". It went further to say that resolutions are recognized in the Constitution and that a joint resolution is a bill within the meaning of the Congressional rules and processes of the Congress.^{***/}

07459

^{*/} In addition to joint resolutions there are also simple resolutions and concurrent resolutions. A simple resolution is a motion passed by the members of a single legislative house. It expresses the will or opinion of the house adopting 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. 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.

^{**/} [Cite].

^{***/} See also Levey v. Stockslager, 129 U.S. 470 (1888) at 475 where the Supreme Court concluded that a joint resolution has all [footnote continued on next page]

A joint resolution after initiation by either house is passed by both houses of Congress and is approved by the President. ^{*/} Hearings may be held on joint resolutions and the same procedures are used by their passage. ^{**/}

The one exception to this rule is a joint resolution proposing a constitutional amendment. These resolutions, although passed by both houses of Congress, are not sent to the President for approval. ^{***/}

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the characteristics and effects of an act of Congress; Watts v. U.S., 161 F.2d 511 (___ Cir. 1947) at ___ where the Court stated that a joint resolution of the House and Senate when approved by the President has the effect of law; Resolutions of Congress, 6 Opin. Atty. Gen. 680 (1854) stating that a joint resolution properly enacted differs from an act of Congress only in form. See also Atty. Gen. at 682; 4 Hind's Precedents (1907) at ¶ 3375 where the Speaker of the House stated that a joint resolution is in fact a bill; 7 Cannon's Precedents (1936) at ¶ 1036 stating that the term "bill" is a generic one and includes joint resolutions.

^{*/} [Cite].

^{**/} See Zinn, How Our Laws are Made (1959) at 4.

^{***/} International Brotherhood of Electrical Workers, 273 F.2d at 1163. See L. Deschler, Jefferson's Manual and Rules of the House of Representatives (91st Cong. 2d Sess. 1971).

07450 A

The only significant question about the effect of a joint resolution is whether it is an "act of Congress" within the meaning of various statutes such as the Tucker Act, 28 U.S.C. § 1491 (1970) or the Three-Judge Court Act, 28 U.S.C. § 2282 (1970). In Powell v. McCormick, 266 F.Supp. 354 (D.D.C. 1967), cert. denied, 387 U.S. 933 (1967), the Court in dictum stated that the question of whether a joint resolution of Congress, approved by the President, would be an "act of Congress" within the meaning of 28 U.S.C. § 2282 is not before this Court, the Court stated "it is not decided." In fact, the issue seems never to have been directly raised. However, were the issue raised, it would seem only logical that a court would find that joint resolutions should be interpreted as acts of Congress for such purposes. Otherwise, the well-accepted proposition that joint resolutions have the force and effect of law, would have a very limited meaning. In addition, joint resolutions can be used to amend acts of Congress.^{*/} If joint resolutions were construed as not acts of Congress, then the amendment by joint resolution would have no effect for purposes of these acts. Furthermore, in Brotherhood of Locomotive Firemen and Engineers v. Certain Carriers, 331 F.2d 1020, a three-judge court was convened to determine the effect of a joint resolution.^{**/}

*/ Watts, Opinion of Attorney General, Levey, Zinn at 4.

**/ 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 of 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
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07460B

Since a joint resolution has the same force and effect of an act of Congress, it does not appear to be of great significance which procedure is used by Congress for approval of the status agreement. Nonetheless, there is a certain implication that joint resolutions are used only for less important matters (with the exception of their use to propose constitutional amendments). Jefferson's Manual suggests that they should be used only for the "incidental, unusual, or inferior purposes of legislating." At 186. See also Electrical Workers, 473 F.2d 1156. In 1871 the Speaker of the House said ". . . joint resolutions shall be confined to inferior style of legislation as well as to the highest style of legislation, proposing amendments to the Constitution of the United States" 4 Hind's Precedents at ¶ 3372. See also Cannon's Precedents in the House of Representatives (1920). This conclusion, however, could be difficult to support since the trusteeship agreement itself authorized the President by means of a joint resolution to approve that agreement between the United States and the Security Council. Furthermore, joint resolutions have been used for admitting, among others, the states of New Mexico, Arizona and Texas to the Union. ^{*/}

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a resolution approved by the President which does make law or amend law is an "act of Congress."

^{*/} But see the Puerto Rico Federal Relations Act which was passed in statutory form.

1946
07461

In addition, as presently drafted, the status agreement lends itself more appropriately to passage by joint resolution. The preamble to the status agreement with its various whereas clauses, is far more typical of the form of a joint resolution than of a statute. The statutory form would more likely include the sense of the whereas clauses in a section labeled congressional findings and purposes or declaration of policy. On the other hand, however, it is true that joint resolutions seem never to approach the length of this document, but rather are only at most several sections long.

The ideal solution might be for this agreement to be approved in the same manner as the trusteeship agreement, i.e., for Congress by joint resolution to authorize the President to approve the agreement.