

DRAFT/AdeGraffenried/cg/6/18/75

Section 101. The Northern Mariana Islands are currently part of the Trust Territory of the Pacific Islands and are administered by the United States under a United Nations Trusteeship Agreement. On termination of that agreement, which the United States hopes will occur by 1981, the Mariana Islands will become a separate legal entity as a self-governing United States Commonwealth territory under the sovereignty of and in permanent political union with the United States.

The Covenant will become effective in gradual phases which assures that the people of the Northern Mariana Islands will have virtually all of the benefits of self-government under the Commonwealth relationship prior to the right of local self-government, establishing rights to a local constitution and a popularly elected governor and legislature and provisions for direct and indirect United States financial assistance. Provisions relating to United States citizenship and nationality, to U.S. sovereignty, and to the establishment of a Commonwealth in political union with the United States will be delayed until after termination of the Trusteeship Agreement. It would be inconsistent with the obligations undertaken by the United States under the Trusteeship Agreement for these provisions to become effective at an earlier date. Further discussion on effective dates for provisions of the Covenant are found in Section 1003.

U.S. sovereignty will extend to the Northern Mariana Islands in the same manner as the federal government extends sovereignty to all States of the Union and to all territories and possessions, including the Commonwealth of Puerto Rico.

The right of self-government is further defined in Sections 102 and 103 and Article II. As the sovereign, the United States inherently holds the authority, pursuant to Article IV, Clause 3, Sentence 2 of the Constitution, to enact federal legislation for the Commonwealth but this authority will be exercised in accordance with the terms of the Covenant. Thus, under Section 103, the Commonwealth will govern itself according to its own Constitution under Article II which will establish the local Commonwealth government. The Commonwealth government will be able to enact local laws which, under the requirements of Section 102, will be consistent with provisions of the U.S. Constitution specifically applied to the Commonwealth under Section 501, and with provisions of federal laws extended under Section 105, Article IV, and Sections 502, 503, 506, and 606. In this manner, the Covenant together with the provisions of the U.S. Constitution and federal laws extended to the Northern Mariana Islands will be the supreme law of the Commonwealth.

Section 102. The Covenant will govern all relations between the United States and the Northern Mariana Islands. Thus, as in the federal-state and federal-territorial relationships, all local laws that may be enacted must be consistent with the paramount legal document creating the status relationship, in this case the Covenant; and, all federal laws extended to the Commonwealth must be in accordance with the terms of the Covenant. Under the terms of the Covenant, various provisions of the U.S. Constitution and federal laws will apply to the Commonwealth which together with the Covenant will be the supreme law of the Northern Mariana Islands. This parallels Article VI, Clause 2 of the U.S. Constitution which makes the U.S.

Constitution, treaties and laws of the U.S. the supreme law in every State of the United States. Federal law is also supreme in the territories including the Commonwealth of Puerto Rico.

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Section 103. Section 103 guarantees to the people of the Northern Marianas the right of self-government, and assures that they can govern themselves with respect to their internal affairs in accordance with a constitution of their own adoption. Section 1 of the Puerto Rico Federal Relations Act (48 USC 731 b, July 3, 1950) provides the people of Puerto Rico a similar assurance. The United States territories of Guam and the Virgin Islands are governed pursuant to organic acts (Chapters 8A and 7 respectively of Title 48 U.S.C.) drafted by the United States Congress which act as local territorial constitutions. American Samoa has its own local territorial constitution and is thus not "organized" by the Congress.

The right of local self-government for the Northern Marianas also means that, as is the case with Puerto Rico, the Northern Mariana Islands will not be an agency or instrumentality of the United States Government and thus is completely responsible and accountable for its actions.

Section 104. The United States will have complete responsibility for and authority with respect to the foreign affairs and defense of the Northern Marianas. While Section 104 has been included to make clear that the United States will have this authority, United States sovereignty over the Commonwealth would in itself also vest complete foreign affairs and defense authority in the federal government.

In recognition of the geographical division between the Continental United States and the Northern Mariana Islands and the particular geographic location in the Western Pacific the

United States agrees to give sympathetic consideration to the views of the Northern Marianas government on international matters and agrees to permit the Northern Marianas to participate in international organizations concerned with social, economic and similar matters when and in the same manner such participation is permitted any other territory of the United States.

Section 105. The United States will hold full plenary powers and thus will be able to enact legislation applicable to the Northern Marianas. The Congress will have the same authority with respect to the Marianas, including its authority under Article IV, Section 3, Clause 2 of the United States Constitution, as it has with respect to Puerto Rico and the territories.

Section 105 imposes two qualifications on the exercise of the authority of Congress to legislate with respect to the Northern Marianas -

(1) the Northern Marianas will be specifically named in legislation which Congress could not also make applicable to a state. This is designed to ensure that legislation is not inadvertently made applicable to the Northern Marianas so that the U.S. Congress will fully consider the impact of federal legislation on the unique circumstances of the Northern Mariana Islands; and

(2) consent of both the Government of the Northern Mariana Islands and the Government of the United States will be obtained before legislation will be enacted that acts to modify certain fundamental provisions of the Covenant.

This constitutes an agreement by the Congress not to enact legislation which would have the effect of modifying the following:

-- All of the provisions of Article I, dealing with the political relationship between the United States and the Northern Marianas,

-- All of the provisions of Article II, dealing with the Constitution of the Northern Mariana Islands;

-- All of the provisions of Article III, dealing with United States citizenship or nationality for persons in the Northern Marianas;

-- Article V, Section 501, which applies specific provisions of the United States Constitution to the Northern Marianas;

-- Article VIII, Section 805, which grants the Northern Mariana Islands government the right to regulate the alienation of real property so as to prevent persons who are not of Northern Mariana Islands descent from acquiring title or long-term interests in land.

The mutual consent provision contained in Section 105 becomes effective immediately after the Covenant has been approved by both sides.

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