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SECTION BY SECTION ANALYSIS OF THE  
COVENANT TO ESTABLISH A COMMONWEALTH  
OF THE NORTHERN MARIANA ISLANDS

TITLE

The term "covenant", as used in the title of this agreement, signifies that the relationship between the United States and the Northern Marianas is intended to be permanent, but is not intended to have independent legal significance.

The term "commonwealth" refers to a political entity which governs itself pursuant to a constitution of its own adoption but is a part of another, larger political unit such as a nation.

PREAMBLE

The first clause notes that under the United Nations Charter and the Trusteeship Agreement the people of the Northern Marianas are guaranteed the right freely to express their wishes for self-government or independence. The second clause states that the United States supports the desire of the people of the Northern Marianas to exercise their inalienable right of self-determination. The third clause emphasizes that the people of the Northern Marianas and the people of the United States share the goals and values found in the American system of government, based on the principles of government by consent, individual freedom and democracy. Finally, the fourth clause takes note of the fact that for over 20 years the people of the Northern Marianas have expressed their desire for political union with the United States in public petitions and referenda.

The Preamble's conclusion, the "NOW, THEREFORE" clause, states the

essential purposes of the Covenant: "to establish a self-governing Commonwealth for the Northern Mariana Islands within the American political system and to define the future relationship between the Northern Mariana Islands and the United States." The clause also states that the Covenant will be binding on both the Northern Marianas and the United States after it is approved by the Mariana Islands District Legislature, by the people of the Northern Marianas in a plebiscite, and by the United States. The process by which the Covenant is to be approved is explained in detail in Section 1001. Finally, this clause of the Preamble recognizes that the approval of the Covenant by the people of the Northern Marianas will constitute on their part a sovereign act of self-determination -- an exercise of their right freely to express their wishes for self-government or independence and to determine their own political future.

#### ARTICLE I -- POLITICAL RELATIONSHIP

Section 101. This Section establishes the basic relationship between the United States and the Northern Marianas. Since the Northern Mariana Islands is now an administrative district of the Trust Territory of the Pacific Islands administered by the United States by virtue of the Trusteeship Agreement, the Covenant is essential to define the future legal and political relationship between the United States and the Northern Mariana Islands.

The Commonwealth of the Northern Mariana Islands will be self-governing. As established in Sections 102, 103 and 104, this right of self-government will extend to local affairs and be subject to the supremacy of federal law

made applicable in accordance with the provisions of the Covenant. Article II provides for a commonwealth constitution, formulated and approved by the people of the Marianas, which would define the manner in which the people will govern themselves.

By virtue of this Section, the United States will have sovereignty with respect to the Commonwealth of the Northern Mariana Islands as it does with respect to every state and territory. As a consequence the plenary powers of the U.S. Congress, under Article IV, 3, 2 of the Constitution, to enact legislation for territories under U.S. sovereignty will be applicable to the Northern Mariana Islands when it becomes a Commonwealth. These powers will be exercised in accordance with the provisions of Section 105.

The Commonwealth of the Northern Marianas will not come into being until the termination of the Trusteeship Agreement.

Section 102. Section 102 provides that the relations between the Northern Marianas and the United States will be governed by the Covenant. The Covenant, together with the applicable provisions of the Constitution, treaties and laws of the United States, will be the supreme law of the Northern Mariana Islands. In this respect Section 102 is similar to Article VI, Clause 2 of the Constitution of the United States, which makes the Constitution, treaties and laws of the United States the supreme law in every state of the United States.

While the Covenant is the fundamental governing document after the end of the Trusteeship Agreement, until the end of the Trusteeship Agreement the United States will hold certain authorities and powers in the Northern

Mariana Islands apart from those defined in the Covenant by virtue of the Trusteeship Agreement. However, if the Covenant is approved by the Congress, the United States will have undertaken to exercise such rights in accordance with the terms of the Covenant. At the end of the Trusteeship Agreement, the Covenant will govern all relations between the Northern Mariana Islands and the U.S. Government.

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 (Section 731 b of Title 48 U.S.C.) provides the people of Puerto Rico a similar assurance. American Samoa (Section 1661(c), Title 48 U.S.C. and Executive Order 10264 of June 29, 1951 authorizing the Secretary of the Interior to administer American Samoa) also has a locally drafted constitution. The Organic Acts of Guam (Chapter 8A, Title 48 U.S.C.) and the Virgin Islands (Chapter 12, Title 48 U.S.C.) act as territorial constitutions for these territories. Because the acts are subject to change by the U.S. Congress, the Congress can void legislative acts by Guam or the Virgin Islands of a local nature. The Covenant avoids this result by specifically vesting local self-government with the Northern Mariana Islands Government and by concurrently restricting the exercise of plenary power of the United States.

The right of local self-government also means that the Northern Mariana Islands will not be an agency or instrumentality of the United States Government and that it will have sovereign immunity, so that it cannot be sued on

the basis of its own laws without its consent.

Section 104. This Section provides that the United States will have complete responsibility for and authority with respect to the foreign affairs and defense of the Northern Marianas.

Because the United States will hold the full attributes of the sovereign, including foreign affairs and defense, it was agreed that this Section would not derogate from the other sovereign powers vested in the U.S. Government and thus would be only illustrative of the federal powers of the U.S. Government.

Section 105. Under Section 105 the United States will have the same authority with respect to the Marianas, including its plenary authority under Article IV, Section 3, Clause 2 of the United States Constitution, as it has with respect to the territories.

Section 105, if approved by the Congress, would constitute a voluntary relinquishment of its authority to exercise its plenary powers to legislate with respect to the Northern Marianas as follows: First, laws which Congress could not also make applicable to a state cannot be made applicable to the Northern Marianas unless the Northern Marianas is specifically named in the legislation; this is to ensure that legislation is not inadvertently made applicable to the Northern Marianas. Second, specified fundamental provisions of the Covenant may be modified only with the mutual consent both of the Government of the Northern Marianas and of the Government of the United States. As regards the requirement for local consent to alter any enumerated provision, until the end of the Trusteeship Agreement the consent of the local legislature will be obtained. This constitutes

an agreement by the Congress not to enact legislation which would have the effect of modifying a fundamental part of the Covenant.

The following provisions of the Covenant would be subject to the mutual consent requirement:

-- All of the provisions of Article I, dealing with the political relationship between the United States and the Northern Marianas, and providing for the establishment of a self-governing Commonwealth of the Northern Marianas upon termination of the Trusteeship; the territorial and political integrity of the Commonwealth of the Northern Mariana Islands will thus be altered only with the consent of the local people;

-- 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, dealing with the application to the Northern Marianas of portions of the United States Constitution;

-- Article VIII, Section 805, dealing with the right of the Northern Mariana Islands government 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.

Consequently, with respect to the Northern Mariana Islands, the U.S. Congress will hold the full plenary powers with which it is constitutionally vested under Article IV, Section 3, Clause 2, U.S. Constitution to enact legislation regarding all United States territories but in the exercise of that authority it will refrain from acting in certain areas without the

consent of the Government of the Northern Mariana Islands.

ARTICLE II -- CONSTITUTION OF THE NORTHERN MARIANA ISLANDS

Section 201. This Section provides that the people of the Northern Marianas will formulate and approve their own constitution and that they may amend their constitution pursuant to procedures which will be established by that document. Both American Samoa and Puerto Rico have locally drafted constitutions; the former approved by the U.S. Executive and the latter approved by the U.S. Congress.

Section 202. This provision provides for approval of the Commonwealth Constitution by the U.S. Government. It is somewhat similar to Section 3 of the Puerto Rico Federal Relations Act, 48 U.S.C. 731 d, which provided for the United States Government approval of the Constitution of the Commonwealth of Puerto Rico. The basis of approval or disapproval of the local constitution is confined to its consistency with the Covenant and the applicable provisions of the Constitution, treaties and laws of the United States. The period of time available for review of the Constitution by the United States is six months after the local constitution has been submitted to the United States after which if it is not specifically approved or disapproved, it will be deemed to have been approved.

Amendments to the local Constitution will not be submitted to the United States for approval. However, federal courts will be competent to determine whether there is a conflict between the local constitution, including any amendments, and the Covenant or federal law. Under Section 402, local courts will also have authority, in appropriate cases, to review the

local constitution and its amendments for compatibility with federal law.

Section 203. Section 203 establishes certain requirements for the local constitution.

Subsection (a) requires that the local Constitution provide for a republican form of government with separate executive, legislative and judicial branches, and contain a bill of rights.

Subsection (b) provides that the executive power of the Northern Marianas will be vested in a popularly elected governor and in such other officials as the people of the Northern Marianas provide for in the Constitution or laws. Local election of the Chief Executive follows Puerto Rico (Constitution of Puerto Rico, Article IV, Section 1); Guam (48 U.S.C. 1422); and the Virgin Islands (48 U.S.C. 1591). The Northern Mariana Islands may elect or appoint all other executive officials, (e.g., Lieutenant Governor, judges, land officers).

Subsection (c) provides that the Northern Marianas legislature will be popularly elected, and that its power will extend to "all rightful subjects of legislation". The extent of Northern Mariana Islands legislative authority ("to all rightful subjects") follows the authority granted the Virgin Islands Legislature under Section 1574, Title 48 U.S.C.; see also Section 1423 a , Title 48, U.S.C., vesting the Guam Legislature with authority "...to all subjects of legislation of local application", and Section 1, Article II, American Samoa Constitution, granting legislative authority in American Samoa to "...subjects of local application". In this regard, the Northern Mariana Islands legislative authority is circumscribed by the terms of the Covenant, applicable provisions of the U.S. Constitution, treaties and federal laws and the Commonwealth Constitution.

The bicameral legislature of the Northern Mariana Islands is consti-



tuted on a basis other than proportional representation; membership of one house will be comprised of equal representation from each of the presently chartered municipalities in the Northern Mariana Islands. The basis of membership in the bicameral legislature is in response to local requests that the legislature reflect that the Northern Mariana Islands are island communities and reflect local cultural and historical development and demography. Recognition of cultural requirements in constituting membership in the legislature follows American Samoa under Article II, Sections 3 and 4, American Samoa Constitution.

Subsection (d) provides for local Northern Marianas courts with such jurisdiction as is established by the local constitution or local law. The manner of selecting judges is also to be locally determined. The local courts will not have jurisdiction with respect to any case over which a United States court has exclusive jurisdiction. The relationship between the federal court and the local courts is more fully explained under Section 403(a).

Section 204. Section 204 provides that all members of the Legislature of the Northern Marianas and all officers and employees of the local government will take an oath or affirmation to support the Covenant, the applicable provisions of the Constitution and laws of the United States, and the local Constitution and laws. This follows analogous provisions for Puerto Rico (48 U.S.C. 874); Guam (48 U.S.C. 1473 d); and the Virgin Islands (48 U.S.C. 1543).

### ARTICLE III -- CITIZENSHIP AND NATIONALITY

Section 301. Section 301 provides that, upon termination of the Trusteeship Agreement, the following persons and their children under 18 who are not already citizens or nationals of the United States and who do

not owe allegiance to any foreign country, which is a country other than the United States or the Trust Territory, will become citizens of the United States unless they choose to become U.S. nationals instead:

-- All persons who were born in the Northern Marianas, who are citizens of the TTPI and who are domiciled in the Northern Marianas or the United States or any territory or possession of the United States.

-- All persons who are citizens of the TTPI, who have been domiciled continuously in the Northern Marianas for at least five years immediately prior to the termination of the Trusteeship and who, unless under age, registered to vote in elections for the Mariana Islands District Legislature or for any municipal election in the Northern Marianas prior to January 1, 1975.

-- All persons who, immediately prior to the termination of the Trusteeship, are not citizens of the TTPI but have been permanent residents of the Northern Mariana Islands continuously since before January 1, 1974.

The method of establishing classes of Mariana Islands residents qualified for U.S. citizenship follow a similar approach taken in Guam under Section 1421  $\ell$ , Title 48, U.S.C.

Section 302. This Section provides that any person who would become a citizen of the United States solely because of Section 301 of the Covenant may within six months after the termination of the Trusteeship or within six months after reaching the age of 18, whichever is later, become a national instead of a citizen of the United States by making a declaration under oath before any federal court or any court of record in the Northern Marianas. Both options have the same obligation for

allegiance to the United States taxation and draft laws. See 8 U.S.C. 1101(21). It was agreed to in this case to take account of the feelings of a small number of generally older residents of the Northern Marianas for whom the psychological commitment implicit in U.S. citizenship would be difficult. See 8 U.S.C. 1408, 1101(29) regarding national status for citizens of American Samoa.

Section 303. Under this Section persons born in the Northern Marianas after termination of the Trusteeship will, for purposes of citizenship, be treated the same as persons born in the states, the territories and the Commonwealth of Puerto Rico: that is, they will be United States citizens at birth. Similar provisions exist for Puerto Rico (8 U.S.C. 1402); Guam (8 U.S.C. 1405); and the Virgin Islands (8 U.S.C. 1406). The phrase "subject to the jurisdiction of the United States" is included to assure that persons who are outside United States jurisdiction such as children born of diplomats do not become United States citizens solely by virtue of their being born in the Northern Marianas. This provision follows customary United States practice in conferring U.S. citizenship to persons born in areas under or subject to United States sovereignty. See also Section 1421 *l*, Title 48, U.S.C. respecting Guam.

Section 304. This Section provides that citizens of the Northern Marianas will be entitled to all privileges and immunities of citizens in the several states of the United States so that a state could not discriminate against a person from the Northern Marianas present within its borders just as it could not against a person from another state. A similar provision is in effect for Puerto Rico, 48 U.S.C. 737. It is modeled after Article IV, Section 2, Clause 1 of the United States Constitution, which assures citizens of each state the privileges and immunities of citizens in the several states.

ARTICLE IV -- JUDICIAL AUTHORITY

Section 401. Section 401 requires the United States to establish for and within the Northern Mariana Islands a court of record to be known as the "District Court for the Northern Mariana Islands." The establishment of a separate District Court for the Northern Mariana Islands will not preclude the District Judge, United States Attorney and United States Marshall for Guam from holding simultaneously the corresponding federal offices in the Northern Marianas. The Congress will be asked by the Northern Marianas Government to enact legislation permitting the Northern Marianas Legislature to instruct the United States Attorney and United States Marshall for the Northern Marianas to perform certain functions related to the execution of local law. Similar local functions are now authorized by these officials on Guam under Paragraph (b) of Section 1424, Title 48, U.S.C. The Virgin Islands, under Section 1617, Title 48, U.S.C., is also permitted to authorize the U.S. District Attorney and Marshall to enforce local laws.

This Sections also provides, as a matter of administrative convenience, that the Northern Marianas will constitute a part of the same judicial circuit of the United States as does Guam.

Section 402. This Sections deals with the jurisdiction of the federal court which will be established in the Northern Marianas.

Subsection (a) provides that the District Court for the Northern Marianas will have the same jurisdiction as a district court of the United States in a state of the union, except that, in cases raising questions of federal law, it will have jurisdiction regardless of the amount in dispute. This follows Guam (48 U.S.C. 1424) and the Virgin Islands (48 U.S.C. 1612).

Subsection (b) provides that the District Court for the Northern

Marianas will have jurisdiction over local cases unless the Constitution or laws of the Northern Marianas vest such jurisdiction in a court established by the local government. The local government will thus be able to rely on the federal court to help the local courts with their caseload. Similar provisions are established in the Organic Act for Guam, 48 U.S.C. 1424(a)(1). See also, the Virgin Islands, 48 U.S.C. 1612, 1613.

Subsection (b) also requires that, when it hears a local case, the federal court determine the requirements of indictment by grand jury and trial by jury in both civil and criminal cases as would a court of the Northern Marianas.

Subsection (c) provides that the Federal District Court in the Northern Marianas will have such appellate jurisdiction as the Constitution or laws of the Northern Marianas may provide. The authority of the federal court to act as an appellate court for judgments of local courts on local matters as may be set by the local legislature finds precedence in the Virgin Islands under Section 1612, Title 48, U.S.C., and Guam under Section 1424(a)(2), Title 48, U.S.C. There apparently has been some question whether the Guam Organic Act required or only permitted the Guam Legislature to grant appellate jurisdiction to the Guam District Court. This Subsection does not require the Legislature of the Northern Marianas to grant such appellate jurisdiction.

Subsection (c) also provides that when the District Court sits as an appellate court it will consist of three judges, at least one of whom must be a judge of a court of record of the Northern Mariana Islands.

Section 403. This Section deals with a variety of technical matters

relating to United States judicial authority within the Northern Mariana Islands.

Subsection (a) assures that the relations between federal courts and the courts of the Northern Mariana Islands will be essentially the same as the relationship between the federal courts and the courts of the states. It is based generally on 28 U.S.C. 1258 and 48 U.S.C. 864 governing the relationship between the local courts of Puerto Rico and the federal courts. The Section also provides that for the first 15 years after the establishment of an appellate court of the Northern Mariana Islands, the United States Court of Appeals for the judicial circuit which includes the Northern Marianas (now the Ninth Judicial Circuit of the United States) will be able to review final decisions of the Marianas Courts where those decisions involve the Constitution, treaties or laws of the United States, unless those decisions are reviewable in the Federal District Court for the Northern Marianas. In the absence of this provision such appeals would have to go directly to the Supreme Court of the United States in Washington. Under this provision, appeals could still be taken from the Court of Appeals to the Supreme Court. The special provision for appeals to the Court of Appeals is not applicable if appeals can be taken to the Federal District Court in the Northern Marianas because, under federal law (28 U.S.C. 1291) appeals would go from that court to the Court of Appeals in any event. After the expiration of 15 years, appeals from the Courts of the Northern Marianas will be taken only to the United States Supreme Court, unless the local Constitution or the local legislature directs that such appeals be heard in the Federal District Court for the Northern Marianas.

Subsection (b) provides that those portions of Title 28 of the United States Code which apply to Guam or to the District Court of Guam will be

applicable to the Northern Marianas or the District Court for the Northern Marianas except as otherwise provided in Article IV. This Section assures that the rules of procedure and other relevant federal laws are applicable. It also assures that several important statutes which are now applicable with respect to Guam will be applicable with respect to the Northern Marianas. In particular, 28 U.S.C. 1332, which permits courts of the United States to hear cases which involve citizens of Guam, and 28 U.S.C. 1738, which requires that full faith and credit be given to the acts, records and judicial proceedings of Guam, will also be applicable with respect to the Northern Marianas.

#### ARTICLE V -- APPLICABILITY OF LAWS

Section 501. Section 501 deals with the application of the United States Constitution to the Northern Mariana Islands, and makes applicable to the Northern Marianas, as if it were a state, certain of the Constitutional provisions governing the relationship between the federal government and the states. In this regard, the provisions extended include those also specifically extended to Guam under Section 1421 b, Title 48, U.S.C. and to the Virgin Islands under Section 1561, Title 48 U.S.C.; these are: Article I, Section 9, Clause 2, 3; Article IV, Sections 1 and 2, Clause 1; Amendments 1-9; Amendment 13; Amendment 14, Sentence 2; Amendments 15 and 19.

Subsection (a) provides that the following provisions of the United States Constitution will be applicable to the Northern Marianas as if the Northern Marianas were a state:

-- Article I, Section 9, Clause 2, which prohibits the suspension of the writ of habeas corpus except when, because of rebellion or invasion, the public safety requires suspension.

-- Article I, Section 9, Clause 8, which prohibits the United States from granting titles or nobility, and prohibits a person holding an office of profit or trust of the United States from accepting presents or titles or offices from any foreign country without the permission of Congress.

-- Article I, Section 10, Clause 1, which prevents a state from, among other things, laying a duty on tonnage, keeping troops or ships of war in time of peace, entering into a compact with a foreign state, or engaging in war unless actually invaded, without the consent of Congress.

-- Article IV, Section 1, which provides that each state shall give full faith and credit to the public acts, records and judicial proceedings of every other state.

-- Article IV, Section 2, Clause 1, which entitles the citizens of each state to the privileges and immunities of citizens in the several states.

-- Article IV, Section 2, Clause 2, which provides that a person who is charged in any state with treason, felony or another crime and who flees from justice and is found in another state shall on demand of the executive of the state from which he fled be delivered up to be removed to the state having jurisdiction of the crime.

-- First Amendment, which prohibits the federal government from making any law respecting an establishment of religion or prohibiting the free exercise of religion or abridging freedom of speech or of the press or the



right of the people peaceably to assemble and to petition the federal government for a redress of grievances.

-- Second Amendment, which prohibits infringement of the right of the people to keep and bear arms.

-- Third Amendment, which provides that no soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war except in a manner which is prescribed by law.

-- Fourth Amendment, which protects the right of the people to be secure in their persons, houses and papers and effects against unreasonable searches and seizures, and prevents the issuance of warrants other than on probable cause supported by oath or affirmation and particularly describing the place to be searched and the persons or the things to be seized.

-- Fifth Amendment, which prohibits holding any person to answer for a capital or "infamous" crime unless they have been indicted by a grand jury, and which prohibits trying a person twice for the same offense, or compelling a person in a criminal case to be a witness against himself, or depriving a person of life, liberty or property without due process of law, or taking private property for public use without just compensation. Note that the requirement of indictment by grand jury will not apply in civil or criminal cases in the Northern Marianas arising under local law.

-- Sixth Amendment, which assures an accused in any criminal prosecution the right to a speedy and public trial by an impartial jury of the state in which the crime was committed, and which grants to an accused the right to be informed of the nature and cause of the charge against him, to be confronted with the witnesses against him, to have compulsory

process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

-- Seventh Amendment, which provides a right of trial by jury in cases in which it has traditionally been available and where the amount in controversy exceeds \$20.00; and which prohibits the re-examination of a fact tried by a jury by any court of the United States except where permitted under traditional procedures. Note that the requirement of trial by jury will not apply with respect to civil or criminal cases in the Northern Marianas arising under local law.

-- Eighth Amendment, which prohibits excessive bail or excessive fines and cruel and unusual punishment.

-- Ninth Amendment, which assures that the enumeration in the Constitution of certain rights is not construed to deny or to disparage other rights retained by the people.

-- Thirteenth Amendment, which prohibits slavery or involuntary servitude, except as a punishment for a crime after due conviction, in the United States or in any place subject to its jurisdiction.

-- Fourteenth Amendment, Section 1, which provides that all persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the state in which they reside; which prohibits any state from making or enforcing any law which abridges the privileges and immunities of citizens of the United States; which prohibits any state from depriving any person of life, liberty or property without due process of law, or from denying to any person the equal protection of the laws.

-- Fifteenth Amendment, which prohibits the United States or any state from denying any citizen of the United States the right to vote on account of race, color or previous condition of servitude.

-- Nineteenth Amendment, which prohibits the United States or any state from denying any citizen of the United States the right to vote on account of sex.

-- Twenty-sixth Amendment, which prohibits the United States or any state from denying any citizen of the United States who is eighteen years of age or older the right to vote on account of age.

Because the due process clause and equal protection clause of the Fourteenth Amendment will apply to the Northern Marianas as if it were a state, the local government will also have to comply with many of the fundamental provisions of the Bill of Rights in its dealings with the local citizens.

Subsection (a) is intended to extend the basic rights of United States citizenship and to establish certain structural relations between the local government and the federal government. It is not intended to grant legislature power to the Congress.

Subsection (a) also provides that other provisions of or amendments to the Constitution of the United States which do not apply of their own force within the Northern Mariana Islands will be applicable only with the approval of the local government and of the Government of the United States. This assures that future amendments to the United States Constitution can be reviewed before they become applicable to the Northern Marianas, unless they are applicable of their own force.

Subsection (b) is intended to make clear that the applicability of certain provisions of the Constitution to the Northern Marianas will not prohibit the local government from imposing land alienation restrictions under Section 805, or from providing for a bicameral legislature as specified under Section 203, or from controlling jury and grand jury procedures in local cases in the Northern Marianas under Section 501. The treatment extended to the Northern Mariana Islands regarding grand jury and trial by jury parallel similar provisions extended to the Virgin Islands under Sections 1561, 1616, Title 48 U.S.C., and to Guam under Section 1424(b), Title 48, U.S.C. Similarly, Subsection (b) is intended to make clear that Subsection (a) is not intended to reflect that the parties do not support the constitutionality of the provisions of Subsection (a). Neither is the Subsection intended in any way to prohibit the United States Congress from authorizing or requiring any of these actions by the local government or from approving Section 506.

Section 502. This Sections deals with the general applicability of United States laws to the Northern Mariana Islands under the new status.

Subsection (a) contains a formula for determining the initial manner in which federal laws other than the United States Constitution will apply to the Northern Marianas to have a full body of federal law applicable to the Northern Marianas when the new Government of the Northern Marianas comes into effect.

The formula 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 the power consistent with the Covenant

to alter the manner and extent to which laws covered by the formula apply to the Northern Marianas, to make laws not covered by the formula applicable, or to make laws covered by the formula inapplicable.

The phrases used throughout Subsection (a) "applicable to Guam" or "applicable to the Trust Territory of the Pacific Islands" are 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, 18 U.S.C. 3182, will be applicable with respect to the Northern Marianas in the same manner and to the same extent as they are applicable with respect to Guam or a state.

It was also understood that the term "laws" is broad enough to include executive orders and regulations of federal agencies which have the force and effect of law.

Subsection 501(a)(1) assures that certain significant laws apply in certain ways:

-- Laws which provide federal services and financial assistance programs for the States and territories will apply to the Northern Marianas as they apply to Guam and are more fully discussed under Section 703.

-- Section 228 of Title II and Title XVI of the U.S. Social Security Act will apply in the Northern Marianas as they apply in the States.

-- The federal banking laws will apply as they apply in Guam. Particularly, 12 U.S.C. 143, 466 and 601-632 will apply. The Government of the Northern Mariana Islands will thus have the authority to charter local banks and other financial institutions.

-- The Public Health Service Act will apply as it does in the Virgin Islands. There is doubt whether this Act applies in full in Guam. In view of the importance of the law's provisions, including those relating to health maintenance organizations, it appeared the wisest course was to provide that the Public Health Service Act would apply as it applies in the Virgin Islands.

-- The Micronesian Claims Act will continue to apply to the Northern Marianas as it applies to the Trust Territory of the Pacific Islands. Special provision had to be made for those who are entitled to payments for war-related claims.

Subsection (a)(2) is the general formula for the application of federal laws. It contains a two-part test: applicability to Guam and applicability generally to the states. This test is intended to avoid the application to the Northern Marianas 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. It is also intended to prevent the application of laws which would affect local matters within the Northern Marianas but which do not affect similar matters within the states.

Subsection (a)(3) provides that those federal laws which are not dealt with by subparagraphs (1) and (2) and which are applicable to the Trust Territory, including all those federal laws which now apply to the TTPI but not to Guam, will continue to be applicable to the Northern Marianas. Subsequent amendments to such laws, however, will not be applicable to the Northern Marianas unless specifically made applicable. Upon the termination of the Trusteeship Agreement, laws which are applicable to the Northern

Marianas solely because of this Subsection will cease to be applicable.

After the new Government of the Northern Marianas comes into being, but prior to the termination of the Trusteeship, the United States Congress can amend laws applicable to the Trust Territory without making those amendments applicable to the Northern Marianas.

Subsection 502(b) provides that the laws of the United States regarding coastal shipments and the conditions of employment, including the wages and hours of employees, will be applicable to the activities of the United States Government and its contractors in the Northern Mariana Islands.

Section 503. Section 503 deals with certain laws of the United States, not presently applicable to the Northern Marianas. It provides that these laws will not apply to the Northern Marianas prior to termination of the Trusteeship and will not even apply after termination unless and until the Congress of the United States specifically acts to make them applicable.

Section 503(a) provides that until and unless Congress acts to make the immigration and naturalization laws applicable, the Northern Marianas will have local control over immigration. Upon the establishment of the new Government of the Northern Marianas, the immigration laws of the Trust Territory will become effective as the immigration laws of the Northern Mariana Islands, subject to such changes as may be enacted by the Northern Mariana Islands Legislature.

Section 503(b) provides that the coastwise shipping laws of the United States and the laws of the United States which prohibit foreign vessels from landing fish or unfinished fish products in the United States will not apply except in the manner and to the extent Congress should determine,

except to the extent provided in Section 502(b) relative to the United States Government and its contractors. The provisions of the coastwise laws of the United States are also not extended to the Virgin Islands (see Section 1405 c , Title 48 U.S.C.) nor to American Samoa (see Section 1664, Title 48 U.S.C.).

Many provisions of the coastwise laws prohibit or otherwise restrict the sale and use of United States vessels to U.S. citizens and application of these laws to the Northern Mariana Islands and application of these laws to the Northern Mariana Islands whose citizens may become U.S. nationals and not U.S. citizens appeared discriminatory because U.S. citizens from the mainland or other territories who are in the Northern Marianas would not suffer such restrictions. Also, since the coastwise laws would otherwise become applicable before the end of the Trusteeship and since local Northern Marianas residents would not become U.S. citizens until the end of the Trusteeship and could not therefore purchase U.S. vessels until the end of the Trusteeship, exclusion from this prohibition during the interim period was desirable. The Section addresses, in particular, the restrictions posed under Sections 802, 808, 835(b)(1) of Title 46 U.S.C., as well as Sections 221, 236, and 883 of Title 46 U.S.C.

The treatment of United States fisheries laws was provided to encourage local development of fish canneries by prohibiting the landing of "finished", or "processed", fish in the United States. It was thus intended to discourage the practice of using non-shore based processing plants which does not provide local employment or development opportunities for the Northern Mariana Islands. This approach follows the treatment extended to Guam



and American Samoa excluding these territories from Section 251 of Title 46 U.S.C., to stimulate local economies and to provide additional food sources to local families.

Subsection (c) provides that the federal minimum wage provisions will not presently extend to the Northern Mariana Islands to the extent they apply to private employers and employees. This recognizes that special conditions do exist locally which Congress also recognized under 26 U.S.C. 206. The local Northern Mariana Islands economy cannot now support U.S. minimum wage laws which were based on the cost of living and prevailing wage levels in the highly developed American economy. The Government of the Northern Marianas, therefore, will have the authority to set local minimum wage laws for private employers, as well as for its own employees, if such laws appear appropriate.

Under Subsection 502(b) employees of the United States and the United States military and its contractors will receive the minimum wage in accordance with federal law. Other provisions of the federal Fair Labor Standards Act and those labor laws providing protections to employees which deal with such matters as maximum hours and overtime pay, will be applicable to the Northern Marianas under the formula stated in Section 502(a).

Section 504. Section 504 provides that the President of the United States will appoint a Commission on Federal Laws to survey the laws of the United States and make recommendations to the United States Congress as to which laws should be made applicable to the Northern Marianas and to what extent and in what manner. The approach for a Presidential Statutory Review Commission is found in particular in prior commissions for Guam under Section 1421 c(b), Title 48 U.S.C., the Virgin Islands under Section

1574(d), Title 48 U.S.C., and Puerto Rico under Executive Order 10005, October 6, 1948, 13 FR 5854, issued under Section 7936, Title 48 U.S.C., repealed July 3, 1950. The Commission will consist of seven persons, at least four of whom must be citizens of the Trust Territory who have been domiciled in the Northern Marianas for at least five years. The members of the Commission will be representative of the various public and private interests concerned with the applicability of United States laws to the Northern Marianas. The Commission on Federal Laws must make its final report or recommendations to the United States Congress within one year after termination of the Trusteeship. Before that time the Commission will make such interim reports and recommendations to the Congress as it considers appropriate to facilitate the transition of the Northern Marianas to its new political status. In formulating its recommendations the Commission will take into consideration the potential effect of each law on local conditions in the Northern Marianas, the policies embodied in the federal law, and the provisions and purposes of the Covenant itself.

The United States will bear the cost of the work of the Commission. It is understood that this provision means that the United States will pay for the staff work which will be necessary as well as for the expenses and salaries of the members from the United States. However, the United States will not be responsible for the salary of the four commissioners who are domiciled in the Northern Marianas.

Section 505. This Section provides that the laws of the Trust Territory and of the Mariana Islands District and its local municipalities, and all other executive and district orders of a local nature applicable to the

Northern Marianas upon the establishment of the new Government of the Northern Marianas under its own Constitution will continue in force until and unless altered by the Government of the Northern Marianas, to the extent such laws are not inconsistent with the Covenant or with the applicable provisions of the Constitution, treaties and laws of the United States. Thus, immediately upon the establishment of the new local government under its own Constitution, a fully functioning body of law will be in existence. These laws may be modified as the Northern Marianas Legislature considers appropriate, in accordance with its powers under Section 203(c) of the Covenant.

Section 506. Section 506 provides for limited application of the Immigration and Nationality Act of the United States to the Northern Marianas and is necessary if children born outside of the United States of persons who are United States citizens who live in the Northern Marianas are themselves to be citizens and to provide for the naturalization of immediate relatives of citizens who live in the Northern Marianas. Since these problems cannot arise until after termination of the Trusteeship, Section 506 is not applicable until that time. As noted under Section 503(a), the Congress may make the Immigration and Nationality Act applicable in whole or in part as appropriate following termination of the Trusteeship if it so desires.

Subsection (a) provides that the Immigration and Nationality Act applies in the Northern Marianas only for the purposes specified in the remaining subsections. Section 506, in this regard, is supplementary to the laws of the Northern Mariana Islands. Until and unless Congress acts

to make it otherwise after termination of the Trusteeship, the laws of the Northern Marianas will set the conditions under which people will be able to immigrate to the Northern Marianas. This Section provides only for a limited application of federal immigration and naturalization laws for certain purposes.

Subsection (b) assures that if citizens or non-citizen nationals of the United States who permanently reside in the Northern Marianas have a child outside of the United States or the Northern Marianas, the child will not be considered an alien. Such children born of parents who are non-citizen nationals will be nationals of the United States. Such children born of citizens will be citizens of the United States, as will all persons born in the Northern Marianas and subject to the jurisdiction of the United States after termination of the Trusteeship.

Subsection (d) deals with the problem of immediate relatives of citizens of the United States permanently residing in the Northern Marianas. "Immediate relatives" are defined by the Immigration and Nationality Act to be spouses, parents and children. Without this provision such immediate relatives who came to the Northern Marianas could not use their residence there for purposes of becoming naturalized United States citizens after termination of the Trusteeship. Under Subsection (c) an immediate relative who wanted to come to the Northern Marianas and become a United States citizen by his residence there would claim immediate relative status under the Immigration and Nationality Act and follow the procedures established by federal law to enter the Northern Marianas. The federal law would apply with respect to this person upon the making of his claim for immediate

relative status. This claim could be made after the immediate relative had been admitted to the Northern Marianas under local law.

There may be persons who qualify for "immediate relative" status who move to the Marianas before the effective date of this Section (Termination of the Trusteeship) but too late to have been covered by the provisions of Section 301(c). Subsection (c) of Section 506 provides a method by which the Government of the Northern Marianas may certify that such persons meet the immediate relative qualification and are lawfully admitted to the Northern Marianas at the time the Trusteeship is terminated. This certification will result in a presumption permitting such a person eventually to become a United States citizen without following all of the procedures otherwise applicable. This provision is of a transitory nature only and is included as a matter of administrative convenience. Persons who come to the Northern Marianas after termination of the Trusteeship and who meet the immediate relative requirements will have to follow all of the procedures required by the Immigration and Nationality Act if they wish to use their residence in the Northern Marianas for purposes of naturalization.

Subsection (c) also provides that the Northern Marianas will be deemed to constitute a state for the limited purposes for which the Immigration and Nationality Act of the United States will be applicable to the Northern Marianas under this Section. This assures that residence in the Northern Marianas can count toward the residency requirements for a person to become a United States citizen; but such residence will count only for persons who are immediate relatives and who enter under the provisions of Subsection (c) of Section 506.

Finally, Subsection (c) provides that the courts of record of the Northern Mariana Islands and the District Court for the Northern Mariana Islands will be able to naturalize persons who are eligible to be naturalized in accordance with the limited applicability of the Immigration and Nationality Act provided for in this Subsection and who reside within their respective jurisdictions.

Subsection (d) makes applicable to the Northern Marianas certain portions of the Immigration and Nationality Act which deal with the loss of citizenship or the loss of non-citizenship nationality. These provisions will be applicable to persons who become United States citizens under Article III as well as those who become United States citizens pursuant to the limited application of the Immigration and Nationality Act under Section 506, just as they are applicable to other United States citizens. These are the standard provisions of United States law, which deal with the loss of United States citizenship or non-citizenship nationality under particular circumstances.

#### ARTICLE VI -- REVENUE AND TAXATION

Section 601. This Section deals with the application of the federal income tax laws.

Subsection (a) provides that the federal income tax laws of the United States will come into force in the Northern Marianas as a local territorial income tax on the first day of January following the establishment of the new Government of the Northern Marianas. Prior to that time the income tax laws of the Trust Territory, as modified by the local

legislature pursuant to its authority, will be applicable.

Under Subsection (a) revenue laws will operate in the Northern Mariana Islands as a "mirror" image of the United States federal income tax code; this follows the treatment of the Internal Revenue Code extending to Guam under Section 1421 i, Title 48, U.S.C. The federal unemployment taxes are not extended to Guam and will thus not be extended to the Northern Mariana Islands, which will enact local unemployment taxes and benefit schedules as are appropriate to meet local circumstances.

Northern Marianas income taxes will be determined not be applying the United States income tax laws, but by substituting the words "Northern Marianas" for the words "United States" wherever they appear in the Internal Revenue Code. These taxes will be collected by the Government of the Northern Marianas.

Subsection (b) provides that persons who are residents of the Northern Marianas will file only one income tax return, depending on the taxpayer's residence at the end of the taxable year. The taxpayer's entire income tax liability under the Internal Revenue Code (i.e., except for state and local taxes in the United States or additional local taxes which might be imposed by the Northern Marianas on its residents) is discharged by paying a single tax to the jurisdiction in which the return is filed. The filing requisites of this Section follow that now extended specifically to Guam under Section 935, Title 26 U.S.C.

Subsection (c) provides that references in the Internal Revenue Code to Guam will be deemed to also refer to the Northern Marianas, where not otherwise distinctly expressed or manifestly incompatible with the intent

of such sections or of the Covenant. This assures that the benefits which are available to Guam under the Internal Revenue Code will also be available to the Northern Marianas. These benefits include, for example, 26 U.S.C. 7653(b) which exempts articles shipped from the United States to Guam from certain federal excise taxes.

Section 602. This Section specifically recognizes the authority of the Government of the Northern Marianas to impose taxes in addition to those imposed by the local territorial income tax under Section 601. It also recognizes that the Government of the Northern Marianas may rebate any taxes received by it, except those taxes received by it under the local territorial income tax which were derived from income from sources outside the Northern Mariana Islands. This authority is similar to the power which Guam has with respect to its local territorial income tax under Section 1421 i , Title 48 U.S.C.

Section 603. This Section deals with customs and other matters relating to trade with respect to the Northern Marianas.

Subsection (a) of this Section provides that the Northern Marianas will not be included within the customs territory of the United States. Guam and the Virgin Islands are outside U.S. customs territory, though Puerto Rico is within U.S. customs territory. See 19 U.S.C. 140(h), Tariff Schedules of the United States, General Headnotes 2 and 3. Remaining outside the customs territory will mean that the only import duties on goods entering the Northern Marianas will be those imposed by the local government pursuant to Section 603(b), below.



Subsection (b) allows the local government to levy duties on goods imported into the Northern Marianas from areas outside the customs territory of the United States in a manner which is consistent with the international obligations of the United States. The local Northern Mariana Islands Government will also be able to determine, under Section 502(a)(3), whether Trust Territory laws authorizing export duties should be continued in effect.

Subsection (c) assures that imports from the Northern Marianas into the customs territory of the United States will be subject to the same treatment as imports from Guam into the customs territory of the United States. See Section 1421 e, Title 48 U.S.C. At present, this would mean that exports from the Northern Marianas would enter United States customs territory -- the states and Puerto Rico -- duty free, if 50 percent or less of the value of the product (whether manufactured, produced or grown) derives from foreign materials, and if (in the case of goods manufactured in whole or in part from United States material) there was no refund of United States taxes paid upon export of United States material for further manufacture from the Mariana Islands. In addition, residents of the United States returning from the Northern Mariana Islands will be entitled to the personal exemptions provided for in Items 813.30 and 813.31 of the United States Tariff Schedules.

The treatment provided for in Subsection (c) is consistent with the obligations of the United States under the General Agreement on Tariffs and Trade, is not intended to conflict with the international obligations of the United States, and does not require that the United States take

action which would be inconsistent with those obligations. If such a conflict arises, the United States is obligated to seek appropriate waivers or modifications of its international obligations.

Subsection (d) provides that the United States will seek to obtain from foreign countries favorable treatment for exports from the Northern Marianas and will encourage other countries to consider the Northern Marianas a developing territory for this purpose.

Section 604. Section 604 deals with excise taxes. Under Subsection (a) the United States is permitted to levy excise taxes on goods manufactured, sold or used or services rendered in the Northern Marianas in the same manner and to the same extent as such taxes are applicable within Guam.

Subsection (b) provides that the Northern Marianas can impose excise taxes on goods manufactured, sold or used or services rendered here or on goods imported into the Northern Marianas, provided that excise taxes on goods imported into the Northern Marianas will be consistent with the international obligations of the United States. The excise authority extended under this Section is similar to that provided Guam under Section 1423 a , Title 48 U.S.C. and the Virgin Islands under Section 1574, Title 48 U.S.C.

Section 605. This Section provides that the Government of the Northern Marianas cannot impose customs duties on the property of the United States, and that it cannot impose any taxes on the property or activities of the United States except to the extent that a state could impose such taxes on such activities and property.

This Section also provides that the Soldiers and Sailors Civil Relief Act, as amended, will apply to the Northern Marianas as it applies to Guam. Though this law would be applicable to the Northern Marianas under the general formula of Section 502(a)(2) it was desirable to make clear the local taxing authority provided for in Article VI was not intended to affect the applicability of this Act. The exclusion of military and civilian personnel from Northern Marianas customs duties is to avoid first installation taxation on household and other goods of those who are officially assigned to or officially transferred from duty in the Northern Mariana Islands. If such people thereafter import articles subject to local taxation, customs duties may be levied and collected.

Section 606. Section 606 deals with the application of the United States Social Security System to the Northern Marianas.

Subsection (a) provides that not later than the time the Covenant is approved, that portion of the Trust Territory Social Security Retirement Fund attributable to the Northern Marianas will be transferred to the United States and held in trust in a separate fund to be known as the "Northern Marianas Social Security Retirement Fund." The United States will administer the Marianas Social Security System through the U.S. Social Security Administration in accordance with the laws of the Trust Territory in effect at the time of such transfer. Like all Trust Territory laws which continue to apply to the Northern Marianas, these laws may be modified by the Northern Marianas Government, but only in a manner which does not create any additional differences between such laws and United States laws.

The United States is committed under Subsection (a) to supplement the

Northern Mariana Islands Social Security Retirement Fund if necessary to assure that persons receive benefits from that Fund comparable to those they would have received from the Trust Territory Social Security Retirement Fund if there had been no transfer. This obligation is effective so long as the rate of tax imposed to secure contributions to the Northern Marianas Fund is comparable to the rate of tax which had been imposed for contributions to support the Trust Territory Fund at the time the Funds were divided.

Subsection (b) assures that the laws of the United States which impose taxes to support or which provide benefits from the United States Social Security System will become applicable to the Northern Marianas as they are applicable to Guam upon termination of the Trusteeship Agreement or at such earlier time as may be agreed to by the Government of the Northern Marianas and the Government of the United States. At that point, the full benefits of the United States Social Security System will be applicable and benefits will be available from the Federal Old Age and Survivors Trust Fund, the Federal Disability Trust Fund, the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund. The full benefits of Section 228 of Title II and all of Title XVI as they now apply to the States will apply to the Northern Mariana Islands prior to the end of the Trusteeship Agreement, under Section 502 (a) of the Covenant.

Subsection (c) provides that at the time the United States Social Security System becomes applicable in the Northern Marianas, the Northern Mariana Islands Social Security Retirement Fund will be transferred into the appropriate trust fund of the United States Social Security System.

At the same time, under Subsection (c)(2) contributions to the Trust Territory Social Security Retirement Fund or to the Northern Mariana Islands Social Security Retirement Fund will be considered to have been made to the appropriate United States Social Security Trust Fund for the purposes of determining eligibility of persons in the Northern Marianas for benefits from the federal trust funds.

Finally, Subsection (c)(3) assures that persons who are eligible for or entitled to social security benefits under the laws of the Trust Territory or of the Northern Marianas at the time that the federal social security laws become applicable, will not lose their entitlements so that persons who are receiving benefits or are eligible for or entitled to benefits will continue to receive them.

Section 607. This Section deals with the indebtedness of the Government of the Northern Marianas.

Under Subsection (a) all bonds or other obligations issued by the local government or by its authority will be exempt, as to principal and interest, from taxation by the United States, or by any state or territory of the United States, or by any political subdivision of any of them. The provisions exempting local Northern Mariana Islands Government bonds from taxation are adopted from similar provisions established for Puerto Rico under Section 745, Title 48 U.S.C., for Guam under Section 1423 a, Title 48 U.S.C., and for the Virgin Islands under Section 1574(b)(ii), Title 48 U.S.C.

Subsection (b) provides that during the initial seven-year period of financial assistance under Section 702 of the Covenant, the Government of

the Northern Marianas will authorize no public debt (other than bonds or other obligations of the government payable solely from revenues derived from a particular public improvement or undertaking) in excess of ten per cent of the aggregate assessed valuation of the property within the Northern Marianas. The 10% ceiling on debts differs from the provisions established for Guam and the Virgin Islands in that the debt ceiling is required only during periods of United States financial assistance. Subsection (b) also provides for such debt limitations during subsequent periods of financial assistance as may be agreed.

#### ARTICLE VII -- UNITED STATES FINANCIAL ASSISTANCE

Section 701. This Section provides the general principles regarding United States financial assistance. The Government of the United States will assist the Government of the Northern Marianas in its efforts to achieve a progressively higher standard of living for the people of the Northern Marianas as a part of the American economic community, and to develop the economic resources needed to meet the financial responsibilities of local self-government. In order to help reach this goal, the United States will provide direct multi-year financial support to the Government of the Northern Marianas for local government operations, for capital improvement programs and for economic development.

Section 702. Section 702 provides that the approval of the Covenant will constitute on the part of the United States a commitment and pledge of its full faith and credit for the payment of the guaranteed annual levels of direct grant assistance to the Government of the Northern Marianas pro-

vided for in this Section for each of the seven fiscal years following the establishment of the new local government. In addition, the approval of the Covenant will constitute an authorization for the appropriation of such funds.

For each of the seven years covered by Section 702 the following amounts will be provided:

-- \$8.25 million for budgetary support for government operations. Of this amount each year \$250,000 will be reserved for a special education training fund connected with the change in the political status of the Northern Mariana Islands. This fund can also be used for reorientation of the curricula of the schools in the Northern Marianas and for in-service training courses, internships and public administration fellowships for Northern Marianas civil service personnel.

-- \$4 million for capital improvement projects. Of this amount, \$500,000 each year will be reserved for such projects on Tinian and \$500,000 each year will be reserved for such projects on Rota.

-- \$1.75 million for an economic development loan fund, of which \$500,000 each year will be reserved for small loans to farmers and fishermen and to agricultural and marine cooperatives, and of which \$250,000 each year will be reserved for a special program of low interest housing loans for low income families.

Section 703. This Section deals with federal programs and the cover-over of federal taxes to the Northern Marianas.

Subsection (a) provides that the United States will make available to

the Northern Marianas the full range of federal programs and services available to the territories of the United States. Under Section 502(a)(1) laws which provide federal services and financial assistance programs will be applicable to the Northern Marianas as they are applicable to Guam. This Section restates and expands that commitment.

Subsection (a) also provides that the funds that the Northern Marianas receives under Section 702 will be considered to be the local revenues of the Northern Marianas Government when used as the local share required to obtain federal programs and services.

Subsection (b) provides that the federal government will pay to the Government of the Northern Marianas, to be expended for the benefit of the people of the Northern Marianas as the local government determines, the proceeds of essentially all taxes and duties and fees collected with respect to the Northern Marianas, other than those which relate to social security benefits. Similar provisions have been extended to Puerto Rico, Guam and the Virgin Islands under Sections 740, 1421 h , and 1642, Title 48 U.S.C.

Section 704. Section 704 deals with a variety of important but largely technical matters relating to financial assistance.

Subsection (a) provides that funds which are received by the Government of the Northern Marianas under Section 702 during any fiscal year will remain available for obligation or expenditure by the local government in subsequent fiscal years for the broad purposes for which the funds were appropriated. This provision specifically recognizes the need to permit the Northern Mariana Islands some latitude in obligating funds to promote, to the maximum extent possible, social and economic development projects from



federal funds. The purposes for which the funds are appropriated refers to the category of funds under Subsections (a), (b) or (c) of Section 702.

Subsection (b) provides that approval of the Covenant by the United States will constitute an authorization for the appropriation of a pro rata share of the funds provided by Section 702 for that period of time between the establishment of the new Government of the Northern Marianas and the beginning of the next succeeding fiscal year, so as to assure that funds will be available immediately upon the establishment of the local government if that does not coincide with the beginning of a fiscal year.

Subsection (c) provides that the amounts stated in Section 702 will be adjusted for each year for changes in the value of the dollar. The method by which they will be adjusted will be based on the percentage change in the U.S. Department of Commerce composite price index since the beginning of fiscal year 1975.

Subsection (d) provides that after the expiration of the seven-year period of annual direct grant assistance provided by Section 702, the annual level of payment in each category listed in Section 702 will continue until Congress appropriates a different amount or otherwise provides by law. This Section eliminates the risk that direct financial assistance to the Northern Marianas would be halted inadvertently.

#### ARTICLE VIII -- PROPERTY

Section 801. Section 801 provides that all right, title and interest of the Government of the Trust Territory of the Pacific Islands to real property in the Northern Marianas will be transferred to the Government of

the Northern Marianas. The transfer will take place no later than the time of the termination of the Trusteeship. The Section applies to all land to which the Trust Territory Government has rights on the date the Covenant was signed, or which it may thereafter acquire in any manner. Northern Mariana Islands public lands are now held in trust for the local people and are also being transferred to local control pursuant to Order No. 2969, of the Secretary of the Interior.

This Section also provides that all right, title and interest of the Government of the Trust Territory in personal property on the date the Covenant was signed or thereafter acquired by it, will, no later than the termination of the Trusteeship, be distributed equitably in a manner to be determined by the Trust Territory Government after consultation with those concerned, including the Government of the Northern Marianas. These consultations will also include appropriate representatives of the other districts of the Trust Territory.

Section 802. This Section provides that the following property will be made available to the United States, to enable it to carry out its defense responsibilities, by lease by the local Northern Mariana Islands Government or by a legal entity which is authorized under Secretarial Order 2969, noted above, to hold public land in trust for the people of the Northern Marianas:

- On Tinian, approximately 17,799 acres and the waters immediately adjacent thereto.
- On Saipan, approximately 177 acres at Tanapag Harbor.
- Farallon de Medinilla Island, approximately 206 acres encompassing the entire island and the waters immediately adjacent thereto.

The acquisition of the use of these lands is subject to Congressional approval. Both the United States and the Northern Mariana Islands will be released from the obligations to acquire or provide lands under this Section if the United States does not make payment within five years after the Northern Mariana Islands Government is established.

Subsection (b) is an affirmation by the United States that it has no present need for or present intention to acquire any greater interest in the property being leased to it on Tinian, at Tanapag and on Farallon de Medinilla than the lease interest which is granted to it under Section 803(a). This statement is to reaffirm that the United States has no plans to convert its leasehold interest into ownership. Subsection (b) also contains an affirmation by the United States that it has no present need for or present intention to acquire any additional property, other than that being leased to it in accordance with the Covenant, in order to carry out its defense responsibilities.

Section 803. This Section concerns the details of the land arrangement under which the United States will lease the land described in Section 802.

Subsection (a) provides that the Government of the Northern Marianas will lease the property described in Section 802(a) to the Government of the United States for a term of fifty years, and that the Government of the United States will have the option of renewing this lease for all or part of such property for an additional term of fifty years, at no additional cost, if it so desires at the end of the first term.

The obligations and the rights of the Government of the Northern Marianas

under Section 803 and elsewhere in Article VIII may be exercised by or through the legal entity established to hold land in trust for the people of the Northern Marianas.

Subsection (b) provides that the United States will pay to the Government of the Northern Marianas in full settlement of the lease, including the second fifty-year period of the lease if extended under the renewal option, the total sum of \$19,520,600. This total sum was determined by assigning to each parcel the following valuation: for that property on Tinian, \$17.5 million; for that property at Tanapag Harbor on Saipan Islands, \$2 million; and for that property known as Farallon de Medinilla, \$20,600. The total sum which will be paid by the United States for the leasehold will be adjusted by a percentage which is the same as the percentage change in the U.S. Department of Commerce composite price index from the date the Covenant was signed until the sum is paid. This obligation reflects that these lands became encumbered with the obligations for potential use from that time.

Subsection (c) states that a separate Technical Agreement Regarding Use of Land to be Leased to the United States in the Northern Mariana Islands will be executed simultaneously with the Covenant, and that the terms of the lease to the United States will be in accordance with the Technical Agreement as well as with the Covenant. This has been done and the Technical Agreement has been submitted to the Congress for its information. If the Covenant is approved, the Technical Agreement will become effective when the new Government of the Northern Mariana Islands comes into existence.

Subsection (d) provides that from the property to be leased to it

under the Covenant, the United States will lease back, in accordance with the Technical Agreement, for the sum of \$1 per acre per year approximately 6,458 acres on Tinian and approximately 44 acres at Tanapag Harbor. This land may be used only for purposes compatible with the intended military use.

Subsection (e) provides that the Government of the United States will make available to the Government of the Northern Marianas 133 acres at no cost at Tanapag Harbor. This property will be set aside as a public park to serve as a memorial to the American and Marianas dead in World War II. Two million dollars of the total funds paid by the United States for the lease will be placed in a trust fund by the Government of the Northern Marianas or by the legal entity, and the income from the fund will be used to develop and maintain the park. Income from the fund can be used for other purposes with the concurrence of the United States.

The United States agreement of land payments will constitute an authorization for appropriation upon approval of the Covenant by the United States Congress.

Section 804. This Section provides for the cancellation of military retention land and other land use agreements from which the Government of the United States benefits in the Northern Marianas, and the future use of land by the Federal Government for civilian purposes.

Subsection (a) provides that the Government of the United States will cause all agreements between it and the Trust Territory Government which grant to the United States use or other rights in real property in the

Section 805. This Section assures that the people of the Northern Marianas will be able to retain ownership of their land. This Section expressly recognizes the importance of the ownership of land for the culture and traditions of the people of the Northern Mariana Islands and the desirability of protecting their land against exploitation. This provision finds precedence in the protection of Indian tribal lands under the Indian Trade and Intercourse Act of 1790, and under rulings of the U.S. Supreme Court. See, Board of Commissioners v. Seber, 318 U.S. 705 (1943), and Contractors Ass'n of Eastern Pa. v. Secretary of Labor, 442 F.2d 159, (C.A. 3, 1971), cert. den., 404 U.S. 854. The concept was also followed by the Congress in enacting the Hawaiian Homes Commission Act of 1920, 42 Stat. 108, to protect local lands while Hawaii was still a territory. A precedent is found also in the Instrument of Cession, under which Samoan chiefs ceded sovereignty over Samoa to the United States; the Instrument specifically obligates the United States to recognize customary rights to local lands and was ratified by the Congress under the provisions of 48 U.S.C. 1661.

Under this Section the Government of the Northern Mariana Islands must, for 25 years following termination of the Trusteeship, regulate the alienation of permanent and long-term interests in property so as to restrict the acquisition of such interests to persons of Northern Mariana Islands descent, including both those of Chamorro and Carolinian ancestry. After the expiration of this 25-year period, the Government of the Northern Mariana Islands may regulate the alienation of property as described. The Government of the Northern Marianas is specifically authorized to regulate

Northern Marianas to be terminated upon or before the establishment of the new Government of the Northern Marianas.

Under this Section, lands under Use and Occupancy Agreements with the United States, approximately 4,691 acres of military retention land, will be returned to the local government under the provisions of Section 2667, Title 10, U.S.C., relative to excess federal military property. Since title to the land is also presently held by the Trust Territory Government, this Subsection also provides that all of the Trust Territory Government's interest in such land will be transferred to the Northern Marianas Government or the legal entity no later than the time the new Marianas Government comes into being. This Section also obligates the local government to assure the United States the continued use of such property as is then being used by the United States for civilian governmental purposes on terms comparable to the terms presently enjoyed by the United States.

Subsection (b) provides that the facilities at Isley Field developed with federal aid and all facilities there usable for the landing and take-off of aircraft will be available to the United States for use by military aircraft in common with other aircraft at all times without charge. If use by the military is substantial, a reasonable share, proportional to such use, of the cost of operating and maintaining the facilities may be charged to the military. This is in accordance with Paragraph 5, Section 1719, Title 19 U.S.C. which requires the United States to obtain these rights when it has made contributions to airport facilities.

the extent to which any one person may hold or own land which is now public land.

It will be the responsibility of the local government to implement the provisions of this Section. In particular, the local Northern Mariana Islands Legislature will define the operative terms of the Section, including such terms as "long-term interest in real property" (those in excess of 25 years), "acquisition" and "persons of Northern Mariana Islands descent".

Section 806. Section 806 deals with the authority of the United States to acquire land in the future which it may need for governmental purposes.

Section 806(a) provides that the United States will continue to recognize and respect the scarcity and special importance of land in the Northern Marianas as an island community. It further provides that if the United States must acquire any interest in real property which it does not obtain under the Covenant, the United States will follow the policy of seeking to acquire only the minimum area necessary to accomplish the public purpose for which the real property is required; of seeking only the minimum interest in real property necessary to support that public purpose, of acquiring title only if the public enterprise cannot be accomplished with a lesser interest; and of seeking first to satisfy its requirement by acquiring an interest in public rather than private land.

Subsection (b) provides that the United States may, after written notice to the Government of the Northern Marianas, acquire for public purposes in accordance with federal laws and procedures any interest in real property in the Northern Marianas by purchase, lease, exchange, gift or





official representative of the Northern Mariana Islands to the United States is based on the practice followed with respect to other U.S. territories which do not have voting representation in the U.S. Congress. This is a factor which led to the guarantees for local self-government in the Northern Mariana Islands under Sections 103 and 105, and Article II.

The rights to a "Resident Commissioner" in Washington, D.C. was earlier granted to Puerto Rico under Sections 891-4, Title 48 U.S.C.; Guam and the Virgin Islands were each granted non-voting representation in the House of Representatives under Section 1711, Title 48, U.S.C.

The term of office of the Resident Representative will be two years, unless otherwise determined by local law. The Representative must be a citizen and a resident of the Northern Mariana Islands, must be at least 25 years of age, and, after termination of the Trusteeship Agreement, must be a citizen of the United States. The manner in which the Representative will be selected is left to the local government.

Section 902. Section 902 provides that the Government of the United States and the Government of the Northern Marianas will consult regularly on all matters affecting the relationship between them. At the request of either Government, and not less frequently than once every ten years, the President of the United States and the Governor of the Northern Marianas will designate special representatives to meet and to consider in good faith such issues affecting the relationship as may be designated by either Government. The special representatives will be appointed in any event to consider and to make recommendation regarding future multi-year financial assistance to the Northern Marianas pursuant to Section 701, and will meet

at least one year prior to the expiration of every multi-year period of such financial assistance.

Section 903. This Section provides that nothing in the Covenant, in particular Article IX dealing with consultation, shall prevent the presentation of cases arising under the Covenant to the federal courts. Section 903 expresses the intent of the United States and the Northern Marianas that such cases be heard in those courts, and that the undertakings or promises by the Government of the United States and by the Government of the Northern Marianas provided for in the Covenant will be enforceable.

Section 904. Section 904 deals with three aspects of international relations which are of particular concern to the Northern Marianas.

Subsection (a) provides that the United States Government will give sympathetic consideration to the advice of the Government of the Northern Marianas on international matters directly affecting the Northern Marianas. It also assures the Government of the Northern Marianas that it will be provided with opportunities for the effective presentation of its views on such matters to no less an extent than such opportunities are provided to any other territory or possession under comparable circumstances.

Subsection (b) provides that the United States will assist and facilitate the establishment by the Northern Marianas of offices in the United States and in foreign countries to promote local tourist and other economic and cultural interests of the Northern Marianas.

Subsection (c) provides that the Northern Marianas may, upon its request, participate in regional or other international organizations concerned with social, economic, educational, scientific, technical and cultural matters

when similar participation is authorized other United States territories or possessions under comparable circumstances.

ARTICLE X -- APPROVAL, EFFECTIVE DATES, AND DEFINITIONS

Section 1001. This Section deals with the method by which the Covenant will be approved.

Subsection (a) provides for approval on behalf of the Northern Marianas. As required by this subsection, the Covenant has been submitted to the Mariana Islands District Legislature, which has approved it for submission to the people of the Northern Marianas in a plebiscite. The next step was the plebiscite. Only persons who were domiciled exclusively in the Northern Marianas and who met other requirements promulgated by the United States as administering authority were eligible to vote in the plebiscite. The United States consulted with the leaders of the Northern Marianas in determining the requirements for voting in the plebiscite.

In accordance with the request of the Mariana Islands District Legislature, the United States as administering authority over the Trust Territory of the Pacific Islands, intends to separate the Mariana Islands District from the remainder of the Trust Territory for purposes of administration following the approval of the Covenant.

Subsection (b) provides that the Covenant will be approved by the United States in accordance with its constitutional processes. This process will include approval by the Congress, and signature of the approved document by the President. The Covenant will thereupon become part of the law of the United States.

Section 1002. This Section provides that the President of the United States will issue a proclamation announcing the termination of the Trusteeship Agreement and the establishment of the Commonwealth. Any such determination by the President that the Trusteeship has been or will be terminated will not be reviewable by any authority, judicial or otherwise, of the Trust Territory, of the Northern Marianas, or of the United States. The United States hopes to be able to terminate the Trusteeship by 1981.

The reason for this provision is to prevent a lapse between the termination of the Trusteeship Agreement and the establishment of the Commonwealth which may result from judicial proceedings challenging the Presidential determination that the Trusteeship Agreement has terminated. For a precedent of a provision precluding reviewability of Executive action, see, e.g., 38 U.S.C. 211(a).

Section 1003. Section 1003 deals with the effective dates of various provisions of the Covenant. It provides for the provisions to become effective in three phases: the first phase upon approval of the Covenant by both sides; the second phase on a date to be determined and proclaimed by the President of the United States which is within 180 days after the Covenant and the local Constitution of the Northern Marianas have been approved by both sides; and the third phase upon termination of the Trusteeship Agreement and the establishment of the Commonwealth of the Northern Marianas in accordance with the Covenant.

Subsection (a) provides that a few important provisions of the Covenant will be effective immediately upon approval by both sides. The

provisions relating to: the requirements for mutual consent; drafting and approving the Constitution of the Northern Marianas; the inapplicability of certain federal laws; the establishment of the Commission on Federal Laws; the trust arrangements relating to the Northern Mariana Islands Social Security System; the requirement that land held by the Trust Territory Government will be transferred to the Northern Marianas Government; the enforceability of undertakings by both the United States and the local government; and the provisions for establishing the effective dates of the provisions of the Covenant all will become effective upon approval of the Covenant.

Under Subsection (b) all the remaining important portions of the Covenant, other than those which relate to United States sovereignty and United States citizenship and nationality, will become effective on a date which will be within six months after both the Covenant and the Constitution of the Northern Marianas have been approved by both the United States and the Northern Mariana Islands. These include provisions relating to: the relations between the United States and the Northern Marianas; extension of federal laws; establishing the federal court; the specific application of provisions of the United States Constitution; revenue and taxation provisions will become effective; all of Article VII dealing with financial assistance will come into effect; most of Article VIII dealing with land will come into force; and the provisions in Article IX guaranteeing to the Northern Marianas a Resident Representative in Washington and the right of periodic consultation will become effective.

Subsection (c) provides that the remaining provisions of the Covenant will become effective upon termination of the Trusteeship Agreement. These are: Section 101, which creates the Commonwealth in political union with and under the sovereignty of the United States; Section 104, which grants the United States authority with respect to foreign affairs and defense (the United States will continue to have this authority under the Trusteeship Agreement until its termination); Sections 301-03, which deal with United States citizenship and nationality; Section 506, which is designed to handle certain problems which may arise because the immigration and naturalization laws of the United States will not be applicable to the Northern Marianas; Section 806, which deals with the authority of the United States to acquire property in the Northern Marianas; and Section 904, which deals with Marianas participation in certain international affairs. It was inappropriate to bring these Sections into effect prior to termination of the Trusteeship because of the special nature of the Trusteeship Agreement and the relationship between the United States and the Trust Territory of the Pacific Islands.

Section 1004. This Section deals with certain transitional matters pending the termination of the Trusteeship and the establishment of the Commonwealth of the Northern Marianas.

Subsection (a) provides that the application of any provision of the Constitution or laws of the United States which would otherwise apply to the Northern Marianas may be suspended until termination of the Trusteeship Agreement if the President finds and declares that the application of such provision prior to termination would be inconsistent with the Trusteeship

Agreement. This provision is intended to give the President some flexibility to prevent a law which might otherwise be made applicable by the formula or otherwise from being applicable if it would conflict with the international obligations which the United States undertook in the Trusteeship Agreement.

Subsection (b) provides that the Constitution of the Northern Marianas will come into effect on a day chosen by the President of the United States which is within 180 days after both the Covenant and the local Constitution have been approved by both sides. Subsection (b) also gives the President of the United States the authority to delay the effectiveness of any provision of the local Constitution prior to termination of the Trusteeship if he finds that implementation of such a provision would be inconsistent with the Trusteeship Agreement. Again, this provision gives the President the flexibility necessary to assure that the United States does not violate any of its obligations under the Trusteeship Agreement.

Section 1005. This Section defines certain important terms used in the Covenant.

Subsection (a) defines "Trusteeship Agreement".

Subsection (b) defines the "Northern Mariana Islands" in geographic terms.

Subsection (c) defines the term "Government of the Northern Mariana Islands" to include, as appropriate in the context, the Government of the Mariana Islands District at the time the Covenant is signed and its successors, including the Government of the Commonwealth of the Northern Mariana Islands.



Subsection (d) defines the term "Territory of possession" with respect to the United States to include the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam and American Samoa.

Subsection (e) defines the term "Domicile" 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. This is the standard legal definition of domicile.