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July 11, 1975

EXPLANATION OF THE COVENANT

Section 101. This section constitutes the basic provision of the Covenant. It provides (1) that the Northern Mariana Islands will be under sovereignty of the United States, (2) that they will be in political union with the United States, and (3) that they will be a self-governing commonwealth, when the Trusteeship Agreement between the United States and the Security Council of the United Nations terminates. The section establishes beyond any question that the Northern Mariana Islands will be subject to the sovereignty of the United States. Pursuant to section 105 of the Covenant the political union between the United States and the Northern Mariana Islands can be dissolved only by mutual consent.

The term "commonwealth" is not a word describing any single kind of political relationship or status. A number of the States of the Union, including Virginia, Massachusetts and Kentucky, have the official name of Commonwealth. The same title is or was held by political entities as dissimilar as England under the Cromwells, Australia, Puerto Rico, and the Philippines during the ten-year period preceding their independence. The choice of the term "commonwealth" for the Northern Mariana Islands therefore does not denote any specific status, in particular not identity with the one held by the Commonwealth of

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of Puerto Rico. The commonwealth status of the Northern Mariana Islands was developed on the basis of their particular needs drawing on the experience of all other territories of the United States, especially those of Guam, with the advantages and disadvantages of which the people of the Northern Mariana Islands have first hand acquaintance.

It is hoped that the Trusteeship Agreement will terminate in 1980 or 1981. Most of the provisions of the Covenant, however, will become effective within 180 days after the approval of the Covenant and the Constitution of the Northern Mariana Islands at which time a "new" Government although not yet the Commonwealth Government will come into being. Section 1002(b). The principal exceptions are those provisions of the Covenant which are inconsistent with the Trusteeship Agreement, such as U.S. sovereignty and U.S. citizenship. See Section 1004.

Section 102. This provision is analogous to the Supremacy Clause (Article VI, Section 2) of the Constitution of the United States. However, since the Northern Mariana Islands will not be incorporated into the United States, this section has been limited to the provisions of the Constitution, treaties and laws of the United States applicable to the Northern Mariana Islands.

Section 103. This section gives the people of the Northern Mariana Islands the right of self-government. This, however, does not mean that the "internal affairs" of the Northern Mariana Islands are immune from congressional legislation. Congress has that power under Section 101 (U.S. sovereignty); Section 102 (supremacy) and Section 105 (power to enact legislation which could not be made applicable to the States). The only limitations on the plenary power of Congress to legislate with respect to the Northern Mariana Islands under Article IV, Section 3, Clause 2 of the Constitution, are the self-imposed ones contained in the second sentence of Section 105.

Section 104. This section gives the United States the exclusive responsibility and authority in the fields of foreign relations and national defense. In Section 904, the Government of the United States agrees to give sympathetic consideration to the views of the Government of the Northern Mariana Islands on international matters and agrees to permit the Northern Mariana Islands to participate in international organizations concerned with social, economic and similar matters to the extent that such participation is permitted to any other territory or possession of the United States.

Section 105. The main point of this section is that the United States may enact legislation applicable to the Northern

Mariana Islands in accordance with its Constitutional processes. There are two exceptions to this rule. One is formal, the other substantive. The formal one is that legislation which could not be made applicable to the several States shall not be applicable to the Northern Mariana Islands unless they are specifically mentioned therein. The purpose of this provision is to prevent any inadvertent interference by Congress with the internal affairs of the Northern Mariana Islands to a greater extent than with those of the several States.

Under the second limitation the United States agrees to limit the exercise of its legislative authority over the Northern Mariana Islands to the extent that certain fundamental provisions of the Covenant may be modified only by the mutual consent of the Government of the United States and the Government of the Northern Mariana Islands. The idea underlying this provision is that the political status of the Northern Mariana Islands has been agreed upon by a negotiating process and Congress undertakes not to modify its fundamental provisions unilaterally. This obligation does not derogate from United States sovereignty. To the contrary, it is an incident thereof. Perry v. United States, 294 U.S. 330, 353 (1935). The fundamental provisions of the Covenant subject to the mutual consent requirement are: Article I (Political Relationship);

Article II, (Constitution of the Northern Mariana Islands); Article III (Citizenship and Nationality); Section 501 (Applicability of the Constitution of the United States to the Northern Mariana Islands); and Section 805 (Limitation of the Right to Acquire Permanent and Long-term Interests in Land to Persons of Northern Mariana Islands descent).

Section 201. Under this provision the people of the Northern Mariana Islands will have the right to adopt and amend their own Constitution. The people of Puerto Rico were given the same right. 48 U.S.C. 731b. The basic law of Guam and Virgin Islands, respectively, however, is an Organic Act.

Section 202. Under this provision the Constitution of the Northern Mariana Islands will be submitted to the Government of the United States for approval on the basis of its consistency with the Covenant, and the provisions of the Constitution, treaties, and laws of the United States applicable to the United States. The Covenant does not specify how the consent of the United States is to be given. Instead it provides that the Constitution shall be submitted to the President on behalf of the United States and shall be deemed to have been approved six months thereafter unless approved or disapproved at an earlier date.

Amendments to the Constitution of the Northern Mariana

Islands are not subject to approval by the Government of the United States, but are subject to judicial review as to their consistency with the Covenant and applicable federal law.

Section 203. This section establishes certain requirements for the Constitution of the Northern Mariana Islands.

Subsection (a) requires a republican form of government and its separation into three branches.

Subsection (b) requires that the Governor be elected by the people, as they are in 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).

Subsection (c) vests the legislative power in a popularly elected legislature and provides that it extends "to all rightful subjects of legislation". This clause is based on the 1958 amendment to section 8 of the Organic Act of the Virgin Islands (48 U.S.C. 1574(a)) and has been defined there to cover "the ordinary area of sovereign legislative power as limited and circumscribed by the Revised Organic Act of the laws of the United States made applicable to the Virgin Islands". S. Rept. 2267, 85th Cong., p. 2; Virgo Corporation v. Paiewonsky, 384 F. 2d 569 (C.A. 3, 1967), certiorari denied, 390 U.S. 1041. The subsection also requires that the Constitution of the Northern Mariana Islands shall provide for a bicameral legislature and that in one House thereof each of the presently chartered muni-

cipalities shall be equally represented. This provision was inserted at the insistence of the chartered municipalities of Rota and Tinian. Without the votes of their representatives in the Marianas Political Status Commission this Covenant could not have been concluded. This departure from the One Man-One Vote rule thus is justified under Reynolds v. Sims, 377 U.S. 533, 574 (1964). Moreover, the municipalities of Saipan, Tinian, and Rota are not governmental subdivisions created by the legislature, but are separate island communities with divergent histories, traditions and problems. Id. at 575.

Subsection (d) provides for a judicial system which may exercise jurisdiction over all causes over which the federal courts do not have exclusive jurisdiction.

Section 204. Provides for the oath of office to be taken by all members of the legislature of the Northern Mariana Islands and all officers and employees of the Government thereof. Analogous provisions exist for Puerto Rico (48 U.S.C. 874); Guam (48 U.S.C. 1473d); and the Virgin Islands (48 U.S.C. 1543).

Section 301. This section confers United States citizenship on three categories of persons and their children under the age of 18, who do not owe allegiance to any foreign country:

(a) Those born in the Northern Mariana Islands who are citizens of the Trust Territory of the Pacific Islands and

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domiciled in the United States or any territory or possession thereof. The terms "domiciled" and "territory and possession of the United States" are defined in Section 1005(d) and (e).

(b) Those citizens of the Trust Territory of the Pacific Islands who have been domiciled in the Northern Mariana Islands for at least five years prior to the effective date of the section (presumably 1980 or 1981) and who, unless under age, have registered to vote for the Mariana Islands District Legislature or any municipal election in the Northern Mariana Islands prior to January 1, 1975. The purpose of this provision is in general to extend United States citizenship to citizens of the Trust Territory of the Pacific Islands who have established a bona fide permanent settlement in the Northern Mariana Islands, but to deny it to those citizens of the Trust Territory of the Pacific Islands whose presence in the Northern Mariana Islands is only temporary, in particular those whose presence in the Northern Mariana Islands is due only to their employment by the Trust Territory Government and the Congress of Micronesia.

(c) Those persons who are not citizens of the Trust Territory of the Pacific Islands who have been domiciled continuously in the Northern Marianas since January 1, 1974. This subsection has been prompted by the circumstance that there are a number of aliens lawfully admitted to the Trust

Territory of the Pacific Islands and who have been domiciled in the Northern Mariana Islands for extended periods but who have not been granted TTPI citizenship due to its restrictive policy on naturalization. The cut-off date of January 1, 1974 prevents any abuse of this provision.

Section 302. Under this section persons entitled to become citizens of the United States pursuant to Section 301 will have the option to become nationals of the United States by taking an oath to that effect. This provision has been included in the Covenant to satisfy the request of a small number of generally older residents of the Northern Mariana Islands who felt that acquisition of United States citizenship would be contrary to their local traditions, and who preferred the national but not citizen status held by the residents of American Samoa. 8 U.S.C. 1408, 1101(29). A national owes permanent allegiance to the United States. 8 U.S.C. 1101(21).

Section 303. Under this section all persons born in the Northern Mariana Islands and subject to the jurisdiction of the United States after the effective date of the section, i.e., after the termination of the Trusteeship (1003(c)) will be citizens of the United States at birth. Similar provisions exist with respect to Puerto Rico (8 U.S.C. 1402); Guam (8 U.S.C. 1405); and the Virgin Islands (8 U.S.C. 1406). Persons who acquire United States citizenship at birth pur-

suant to this provision do not have the power to opt for national status under Section 302.

Section 304. Under this section citizens of the Northern Mariana Islands will be entitled to all privileges and immunities of citizens in the several States. This section dovetails with Article IV, Section 2, Clause 1 of the Constitution, which, pursuant to Section 501 of the Covenant, will be applicable within the Northern Mariana Islands as if the Northern Mariana Islands were a State. Thus the several States may not discriminate against citizens of the Northern Mariana Islands and the Northern Mariana Islands may not discriminate against citizens of the rest of the United States. A similar provision is in effect in Puerto Rico. 48 U.S.C. 737.

Section 401. This section provides for the establishment of a District Court for the Northern Mariana Islands. The alternative of extending the jurisdiction of the District Court of Guam to the Northern Mariana Islands was rejected for the practical reason that the court would have different powers on Guam than in the Northern Mariana Islands. For example:

(1) There are slight differences in the language of Section 402 of the Covenant which governs the jurisdiction of the District Court for the Northern Mariana Islands and the corresponding provisions of the Organic Act of Guam (48 U.S.C. 1424(a)). As explained in the notes on Section 402

this difference is not one of substance but designed to cure an ambiguity in the language of the Organic Act of Guam.

(2) The Organic Act of Guam provides specifically that the District Court of Guam will have jurisdiction in certain tax cases (48 U.S.C. 1421 i(1), (5)). There is no corresponding provision in the Covenant.

(3) It may be appropriate to terminate the jurisdiction of the District Court over cases arising under local law at a different time on Guam than in the Northern Mariana Islands. At the present time, legislation is pending in Congress which would terminate the local law jurisdiction of the District Court of Guam.

However, for technical legal reasons it was considered preferable to have two separate courts. This, of course, will not prevent Congress from providing that the District Judge, United States Attorney and United States Marshal for Guam shall hold the corresponding federal offices in the Northern Mariana Islands at the same time. Congress may be requested by the Northern Mariana Islands to provide that the United States Attorney and United States Marshal for the Northern Mariana Islands may be charged with the enforcement of certain local law enforcement responsibilities. A pertinent precedent exists in the Virgin Islands. 48 U.S.C. 1617. Section 402. Subsection (a) provides that the District Court for the Northern Mariana Islands will have the jurisdiction

of a district court of the United States with the exception that no jurisdictional amount is required in federal jurisdiction cases. Analogous provisions exist for Guam (48 U.S.C. 1424) and the Virgin Islands (48 U.S.C. 1612). Certain ambiguities in the language of those sections have been corrected on the basis of the interpretation of 48 U.S.C. 1612 in Ferguson v. Kwik-Chek, 308 F. Supp. 78, 79-80 (D.C. V.I., 1970), and Government of the Virgin Islands v. May, 384 F. Supp. 1035, 1037-1038 (D.C. V.I., 1974). See also Econo-Car International, Inc. v. Antilles Car Rentals, Inc., 499 F. 2d 1391, 1393 (C.A. 3, 1974).

Under Subsection (b) the District Court for the Northern Mariana Islands also has original jurisdiction over all local cases arising in the Northern Mariana Islands unless local law vests such jurisdiction in a local court. This provision will be beneficial until the Northern Mariana Islands is able to develop a sufficient body of trained lawyers. A similar provision exists on Guam. 48 U.S.C. 1424(a)(par. 1).

Pursuant to subsection (c) the District Court will have such appellate jurisdiction over the decisions of the local courts of the Northern Mariana Islands as the laws of the Northern Mariana Islands provide. Similar provisions exist for Guam, 48 U.S.C. 1424(a)(par. 2), and the Virgin Islands, 48 U.S.C. 1612.

Section 403. This section contains technical provisions designed to fit the local courts of the Northern Mariana Islands into the federal judicial system. 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. There is, however, one exception. For the first fifteen years following the establishment of a local appellate court for the Northern Mariana Islands the decisions of that court involving federal questions will be reviewable in the Court of Appeals for the Judicial Circuit which includes the Northern Mariana Islands (now the Ninth Circuit). A similar provision was in effect for Puerto Rico until 1961. This would insure mandatory review by a Court of Appeals rather than discretionary Supreme Court review of federal question cases which are bound to arise during the early years of the Commonwealth.

Subsection (b) analogizes the status in the federal system of the District Court for the Northern Mariana Islands to that of the District Court of Guam. It also assures the applicability with respect to the Northern Mariana Islands of important provisions such as 28 U.S.C. 1332 pursuant to which the courts of the United States can hear diversity cases involving citizens of Guam, and 28 U.S.C. 1738 pursuant to which the acts, record, and judicial

proceedings of Guam are entitled to full faith and credit.

Section 501. Subsection (a) deals with the applicability of the Constitution of the United States to the Northern Mariana Islands. The formulation of this subsection has been complicated by a certain ambivalence in the decisions of the Supreme Court which hold that the provisions of the Constitution protecting fundamental rights of citizens extend to the territories of the United States by their own force, while the other provisions of the Constitution apply to unincorporated territories, such as the Northern Mariana Islands, only if expressly extended to them. This subsection expressly extends to the Northern Mariana Islands certain provisions of the Constitution as if the Northern Mariana Islands were a State. Those provisions fall into two groups: (a) the basic rights of citizenship which were made applicable to Guam and the Virgin Islands in 1968 in connection with their Elected Governor acts, see 48 U.S.C. 1421b(u), and 1561 (last two paragraphs), as well as the subsequently adopted Twenty-sixth Amendment to the Constitution, and (b) certain provisions of the Constitution limiting the power of Congress and defining the relationship between the Federal Government and the States, which were not relevant to the 1968 legislation. These are in particular Article I, Section 9, Clause 8, Section 10,

Clauses 1 and 3.

The subsection exempts proceedings in the local courts-- except where required by local law--from the requirements by indictment by grand jury and trial by jury. Similar provisions exist with respect to Guam (48 U.S.C. 1424(b)), and the Virgin Islands (48 U.S.C. 1561, 1616). They are supported by decisions such as Dorr v. United States, 195 U.S. 138 (1904), and Balzac v. Puerto Rico, 258 U.S. 298 (1922), holding that the Constitution does not require jury trials in the local courts of unincorporated territories which do not have the common-law tradition. The subsection also provides that other provisions of the Constitution or future Amendments thereto will become applicable to the Northern Mariana Islands only with the consent of the Government of the United States and the Government of the Northern Mariana Islands, unless, they apply to the Northern Mariana Islands of their own force, i.e., because they relate to "fundamental rights".

Subsection (b) specifically exempts certain provisions of the Covenant from the applicability of the Constitution to the Northern Mariana Islands. They are section 203, providing for a departure from the One-Man One-Vote rule; section 506, which permits a potentially nonuniform rule of naturalization in the Northern Mariana Islands; section 805, which limits the acquisition of property to persons of

Northern Mariana Islands descent; and the proviso in Section 501(a) which permits dispensation from the right to jury trial in local court proceedings. This subsection has been inserted only out of superabundance of caution. In the discussion of those provisions it has been pointed out that they are in accord with the Constitution.

Section 502. The purpose of this section is to provide a workable body of law when the new government of the Northern Mariana Islands becomes operative pursuant to section 1003(b). This section does not relate to the power of Congress to legislate with respect to the Northern Mariana Islands; that issue is dealt with in section 105.

The basic principle underlying section 502 is that the federal laws applicable to Guam and which are of general application to the several States shall also apply to the Northern Mariana Islands. This means in effect that the federal laws applicable to Guam will be extended to the Northern Mariana Islands, unless they are locally restricted to Guam, such as the Organic Act of Guam. See subsection (a)(2).

There are a number of exceptions to that rule. The laws which provide federal services and financial assistance programs, as well as certain banking laws (12 U.S.C. 143, 466, and 601-632) will apply to the Northern Mariana Islands as they apply to Guam and not to the several States. Section

228 of Title II and Title XVI of the Social Security Act which applies to all the States will apply to the Northern Mariana Islands, although it is not applicable to Guam. The Public Health Service Act will apply to the Northern Mariana Islands as it applies to the Virgin Islands because its applicability to Guam is uncertain. The Micronesian Claims Act, which authorizes payment for war and post war damages caused by the United States and which does not apply to Guam, will apply to the Northern Mariana Islands as it applies to the Trust Territory of the Pacific Islands. See subsection (a)(1).

Federal laws applicable to the Trust Territory of the Pacific Islands which do not fall into any preceding category--in general those federal laws which apply only to the Trust Territory of the Pacific Islands--but not their amendments unless specifically made applicable to the Northern Mariana Islands, will apply to the Northern Mariana Islands until the termination of the Trusteeship. See subsection (a)(3).

Subsection (b) provides that with respect to the activities of the United States and its contractors in the Northern Mariana Islands, the federal laws concerning coastal shipments and the conditions of employment, including wages and hours, will be applicable. This provision is important because those laws will be generally inapplicable to the

Northern Mariana Islands until the Congress undertakes to fully apply these laws to the Northern Mariana Islands as provided in section 503(b) and (c).

Section 503. This section deals with certain laws of the United States which are not now applicable to the Northern Mariana Islands and provides that they will remain inapplicable except in the manner and to the extent that they are made applicable by specific legislation enacted after the termination of the Trusteeship. These laws are:

The Immigration and Naturalization Laws (subsection (a)). The reason this provision is included is to cope with the problems which unrestricted immigration may impose upon small island communities. Congress is aware of those problems. See, e.g., Alien Labor Program in Guam, Hearing before the Special Study Subcommittee of the Committee on the Judiciary, House of Representatives, 93d Cong., 1st Sess., pp. 19-25. It may well be that these problems will have been solved by the time of the termination of the Trusteeship Agreement and that the Immigration and Nationality Act containing adequate protective provisions can then be introduced to the Northern Mariana Islands. Section 506 provides for a limited applicability of that Act in the interim period for the benefit of the children and immediate relatives of permanent residents of the Northern Mariana Islands.

Other laws covered by section 503 are the coastwise laws

of the United States and the prohibitions against foreign vessels landing fish or unfinished fish products in the United States. Subsecton (b). The immediate introduction of those laws into the Northern Mariana Islands may cause serious economic dislocation. For that reason their introduction should await special scrutiny to be made after the establishment of the Commonwealth.

The same consideration applies to the introduction of the Minimum Wage Laws. (Subsection (c)). Congress realizes that the special conditions prevailing in the various territories require different treatment. 29 U.S.C. 206. See the specific provisions relating to American Samoa, Puerto Rico and the Virgin Islands. In these circumstances, it would be inappropriate to introduce the Act to the Northern Mariana Islands without preliminary studies. There is nothing that would prevent the Northern Mariana Islands from enacting their own Minimum Wage Legislation. Moreover, as set forth in section 502(b), the activities of the United States and its contractors in the Northern Mariana Islands will be subject to existing pertinent Federal Wages and Hours Legislation.

Section 504. This section provides for the establishment of a Commission on Federal Laws to make recommendations to the Congress as to which laws of the United States not applicable to the Northern Mariana Islands should be made applicable and

which applicable laws shall be made inapplicable. A similar Commission was established in the Organic Act of Guam, 48 U.S.C. 1421c. Congress did not act immediately on its voluminous report. Most of its recommendations, however, were ultimately put into effect. It is believed that the work of this Commission will be greatly simplified by section 502 which extends to the Northern Mariana Islands a substantial body of federal law now applicable to Guam. The Commission will consist of seven persons, at least four of whom must be citizens of the Trust Territory of the Pacific Islands, who have been domiciled in the Northern Mariana Islands for at least five years. The United States will bear the cost of the work of the Commission, but not the salaries of the four Commissioners domiciled in the Northern Mariana Islands.

Section 505. This section deals with the laws of the Trust Territory of the Pacific Islands and the local laws of the Northern Mariana Islands and provides in general that it will remain in effect to the extent consistent with the Covenant and applicable federal laws, until and unless altered by the Government of the Northern Mariana Islands.

Section 506. This section contains a number of highly technical provisions necessitated by the circumstance that, while the Immigration and Nationality Act will not be applicable to the Northern Mariana Islands until and unless the Congress

so provides, most of the residents thereof will be United States citizens. Subsection (b) is designed to protect the citizenship or nationality status of children born abroad to permanent residents of the Northern Mariana Islands.

Subsection (c) is intended to enable "immediate relatives" of permanent residents of the Northern Mariana Islands to immigrate under the Immigration and Nationality Act and to become naturalized United States citizens. This provision is enacted under Article IV, Section 3, Clause 2 of the Constitution and therefore need not comply with the uniformity requirement of Article I, Section 8, Clause 4 of the Constitution.

Subsection (d) makes the loss of nationality provisions of the Immigration and Nationality Act applicable to those who acquire United States citizenship pursuant to Article III of the Covenant and Section 506.

It will be noted that until the introduction of the Immigration and Nationality Act into the Northern Mariana Islands the latter will have the power to enact its own Immigration and Nationality laws subject, however, to the requirement of applicable federal law.

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

Subsection (a) states that the federal income tax laws of the United States will come into force in the Northern Mariana Islands as a local territorial income tax on the first day of January following the establishment of the new Government of the Northern Mariana Islands.

Under subsection (a) the federal income tax laws will apply as a local territorial income tax in the same manner as those laws are enforced in Guam. It is desirable that Guam and the Northern Mariana Islands have coordinated tax laws since they operate in the same economic and geographic sphere.

The operation of the federal income tax laws in the Northern Mariana Islands under this subsection can be summarized as follows. The income taxes of the Northern Mariana Islands will be determined not by applying the United States income tax laws directly, but by substituting the words "Northern Mariana Islands" for the words "United States" wherever they appear in the Internal Revenue Code. These taxes will be collected by the Government of the Northern Mariana Islands.

Given the general level of incomes in the Northern Mariana Islands it appears very likely that for a number of years the impact of the federal tax code as a local territorial

income tax will not be significant. Moreover, under section 602, the Government of the Northern Mariana Islands will have authority, similar to that enjoyed by the Government of Guam, to rebate income taxes collected on income derived from the Northern Mariana Islands and so will be able to adjust the impact of the tax to suit local conditions. Moreover, the Government of the Northern Mariana Islands will, as noted under section 602, have the authority to impose additional local taxes.

Subsection (b) of this section assures that persons who are residents of the Northern Mariana Islands will file only one income tax return.

Subsection (c) provides that references in the Internal Revenue Code to Guam will be deemed to also refer to the Northern Mariana Islands, 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 Mariana Islands. 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 allows the Government of the Northern Mariana Islands to impose taxes in addition to

those imposed by the local territorial income tax under section 601. It also provides that the Government of the Northern Mariana Islands 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 is similar to the power which Guam has with respect to its local territorial income tax. This authority will allow the Government of the Northern Mariana Islands to adjust the impact of the local territorial income tax to the local conditions in the Northern Mariana Islands. Section 603. This section deals with customs and other matters relating to trade with respect to the Northern Mariana Islands.

Subsection (a) of this section provides that the Northern Mariana Islands will not be included within the customs territory of the United States. Guam and the Virgin Islands also are outside the customs territory, though the Commonwealth of Puerto Rico is within the customs territory. See 19 U.S.C. 1401(h) and 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 Mariana Islands 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 Mariana Islands from areas outside the customs territory of the United States. This power must be exercised in a manner which is consistent with the international obligations of the United States. Goods coming in from the customs territory of the United States will enter the Marianas duty free, just as goods of Northern Mariana Islands origin going into the U.S. customs territory will be free of duty under subsection (c). Subsection (b) also allows the Northern Mariana Islands to impose duties on exports from the Northern Mariana Islands again in a manner which is consistent with the international obligations of the United States. At present, the Trust Territory Government imposes duties on certain exports.

Subsection (c) assures that imports from the Northern Mariana Islands 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. At present, this would mean generally that exports from the Northern Mariana Islands would enter the customs territory--consisting of the several States and the Commonwealth of Puerto Rico--duty free, provided, generally, that 50 percent or less of the value of the product (whether manufactured, produced or grown) derives from foreign

materials. In addition, residents of the United States returning from the Northern Mariana Islands will be entitled to increased personal exemptions provided for in Items 813.30 and 813.31 of the Tariff Schedules of the United States.

The parties believe that the treatment provided for in subsection (c) is consistent with the obligations of the United States under the General Agreement on Tariffs and Trade. However, this subsection 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. In the event 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 Mariana Islands, and will encourage other countries to consider the Northern Marianas a developing territory for this purpose. Such treatment would obviously be beneficial to the Northern Marianas.

Section 604. This section 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 Mariana Islands 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 Mariana Islands, provided that excise taxes on goods imported into the Northern Mariana Islands will be consistent with the international obligations of the United States.

Section 605. This section deals with the immunity from customs duties and taxation of the United States, its activities and instrumentalities and its military and civilian personnel. It provides specifically that the Soldiers and Sailors Civil Relief Act of 1940, as amended, will be applicable in the Northern Mariana Islands as it is applicable to Guam to make clear the local taxing authority provided for in Article VI was not intended to affect the applicability of that Act. The exclusion of military and civilian personnel from Northern Mariana Islands customs duties is to avoid taxation of household and other goods of those who are officially assigned to or officially transferred from duty in the Northern Mariana Islands.

Section 606. This section contains highly technical provisions relating to the transfer of the Social Security System of the Northern Mariana Islands to that of the United States. At present the Northern Mariana Islands are covered by the

Social Security System of the Trust Territory of the Pacific Islands which provides for contributions and benefits which are different than those prevailing under the United States system. Upon the approval of the Covenant, that portion of the Trust Territory Social Security Retirement Fund attributable to the Northern Mariana Islands will be transferred to the United States Treasury and held as a separate trust fund. It will be administered by the United States in accordance with the Social Security laws of the Trust Territory of the Pacific Islands.

The laws of the United States relating to Social Security contributions and benefits will be introduced to the Northern Mariana Islands upon the termination of the Trusteeship or at such early date as may be agreed upon by the Government of the Northern Mariana Islands and the Government of the United States.

Section 607. This section deals with the indebtedness of the Government of the Northern Mariana Islands.

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 the Commonwealth of Puerto Rico, or by any political subdivision of any of them. Obligations of the Governments of Puerto Rico, Guam and the Virgin Islands enjoy similar privileges. 48 U.S.C. 745, 1423(a), 1574(b)(ii)

Subsection (b) provides that during the initial seven-year period of financial assistance under section 702 of the Covenant, the Government of the Northern Mariana Islands will not authorize any public indebtedness (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 percent of the aggregate assessed valuation of the property within the Northern Mariana Islands. Similar provisions are in effect on Guam (48 U.S.C. 1423a) and the Virgin Islands (48 U.S.C. (b)(ii)). For Puerto Rico see 48 U.S.C. 745, as amended by Public Law 87-121. Subsection (b) also provides for such debt limitations during subsequent period of financial assistance as may be agreed.

Section 701. This section states the general principles regarding United States financial assistance. It provides that the Government of the United States will assist the Government of the Northern Mariana Islands 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 Mariana Islands for local government operations, for capital improvement programs and

for economic development. The initial period of such support, outlined in section 702 will be for seven years. Section 702. This section deals with the initial seven-year period of financial assistance. It provides that the approval of the Covenant will constitute on the part of the United States a commitment and a 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 Mariana Islands provided 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. A failure to appropriate funds as provided for in section 702 would constitute a dispute which could be submitted to the courts pursuant to section 903 of the Covenant.

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 dislocations caused by the change in the political status of the Northern Mariana Islands.

-- \$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 services and the payment of certain federal tax receipts to the Northern Mariana Islands.

Subsection (a) restates the provision contained in section 502(a)(1) that the United States will make available to the Northern Mariana Islands the full range of federal programs and services available to the territories of the United States. The value of those federal programs and services is estimated to be approximately \$3 million per year. Subsection (a) also provides that the funds which the Northern Mariana Islands receive under section 702 will be considered to be local revenues of the Northern Mariana Islands 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 Mariana Islands, to be expended for the benefit of the people of the Northern Mariana Islands as the local government determined, the proceeds of essentially all taxes and duties and fees collected

with respect to the Northern Mariana Islands, other than those which relate to social security benefits. Puerto Rico, Guam, and the Virgin Islands enjoy similar benefits. 48 U.S.C. 740, 1421(h), 1642.

Section 704. This section 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 Mariana Islands 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.

Subsection (b) provides that the 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 Mariana Islands (section 1003(b)) and the beginning of the next succeeding fiscal year. This assures that funds will be available immediately upon the establishment of the local government even if that date does not coincide with the beginning of a fiscal year.

Subsection (c) provides that the amounts stated in section 702 will be adjusted for inflation each year. The method

by which they will be adjusted will be based on the percentage change in the United States Gross National Produce Implicit Price Deflator (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. Section 902 envisages consultations regarding future multi-year financial assistance. Subsection (d) requires that Congress must take positive action if it wishes either to alter the amount of assistance set by section 702 (as adjusted by section 704(c)) or to eliminate assistance altogether, even after the seven-year period ends. It eliminates the risk that direct financial assistance to the Northern Mariana Islands would be halted inadvertently.

Section 801. This section provides for a transfer of property in the Northern Mariana Islands to the Government of the Northern Mariana Islands no later than the time of the termination of the Trusteeship.

This section also provides for a transfer of personal property no later than the termination of the Trusteeship. Such property will be distributed equitably after consultation with those concerned, including the Government of the

Northern Mariana Islands and representatives of other districts. Section 802. This section provides that the Government of the Northern Mariana Islands will lease the following property to the United States to enable it to carry out its defense responsibilities:

-- 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 United States affirms 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 a lease interest. This reaffirms the United States has no plans to convert its leasehold interest into ownership. There is also 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 by the terms of the Covenant, in order to carry out its defense responsibilities.

Section 803. This section concerns the details of the lease arrangement.

It provides that the Government of the Northern Mariana Islands will lease the property 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 the property for an additional term of fifty years, at no additional cost.

The obligations and the rights of the Government of the Northern Mariana Islands in Article VIII may be exercised by the legal entity established to hold land in trust for the people of the Northern Marianas.

The United States will pay to the Government of the Northern Mariana Islands in full settlement of the lease, including the renewal option, a 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 Island, \$2 million; and for that property known as Farallon de Medinilla, \$20,600. The total sum will be adjusted by a percentage which is the same as the percentage change in the United States Gross National Product Implicit Price Deflator from the date the Covenant was signed until the sum is paid.

A separate Technical Agreement Regarding Use of Land to be Leased to the United States in the Northern Mariana Islands was executed simultaneously with the Covenant. The terms of the lease to the United States will also be in accordance with that agreement. The Technical Agreement has been submitted to the Congress for its information. 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.

From the property to be leased to it, 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.

The Government of the United States will make available to the Government of the Northern Mariana Islands 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 Mariana Islands or by the legal entity, and the income from the fund will be used to develop and maintain the park.

Approval of the Covenant by the United States Congress will constitute an authorization for appropriation for the land payments.

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 Mariana Islands, and provides for 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 agreement between it and the Trust Terri

tory Government which grant to the United States any rights in real property in the Northern Mariana Islands to be terminated upon or before the establishment of the new Government of the Northern Mariana Islands.

Since title to such land is also held by the Trust Territory Government, this subsection also provides that all of the Trust Territory Government's land interests will be transferred to the Northern Mariana Islands' Government or the legal entity no later than the time the new Marianas Government comes into being. The local government is obligated to assure the United States the continued use of such property as is now being used by the United States for civilian governmental purposes on terms comparable to current agreements.

Subsection (b) provides that the facilities at Isely 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.

Section 805. This section assures that the people of the Northern Mariana Islands will be able to retain ownership of their land. It 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. Under this section the Government of the Northern Mariana Islands must until 25 years after the 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, i.e., of Chamorro or 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. Moreover, the Government of the Northern Mariana Islands is specifically authorized to regulate the extent to which any one person may hold or own land which is now public land.

It is intended that it will be the responsibility of the local government to implement the provisions of this Section. In particular, the local government will define the operative terms of the section, including such terms as "long-term interest in real property", "acquisition" and "persons of Northern Mariana Islands descent", i.e., Chamorro or Carolinian ancestry.

The limitation of the right to acquire land to persons of Northern Mariana Islands descent would not constitute an invidious discrimination on racial grounds prohibited by the Due Process Clause of the Fifth Amendment or the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States. Its purpose is not to confer an undue

privilege on the persons of the Northern Mariana Islands descent but rather to protect them from the expected exploitation from aggressive and economically more advanced outside groups. Similar legislation has been upheld with respect to the American Indians. See, e.g., Board of Commissioners v. Seber, 318 U.S. 705, 715-718 (1943), pointing out that these laws were required to protect the Indians from the selfishness of others. See also Contractors Ass'n of Eastern Pa. v. Secretary of Labor, 442 F. 2d 159, 177 (C.A. 3, 1971), cert. den., 404 U.S. 854, holding that differentiations and even quotas designed to remedy past evils are not inconsistent with the equal protection aspects of the Fifth Amendment. The same considerations would apply to measures designed to avoid future wrongs.

There is precedent for legislation designed to protect similar interests. The Hawaiian Homes Commission Act of 1920, 42 Stat. 180, was enacted by Congress for the protection of the native Hawaiians while Hawaii was still a Territory. Section 4 of the Hawaii Statehood Act contains a provision in the nature of a compact to the effect that the Hawaiian Homes Commission Act shall become a part of the Constitution of the State of Hawaii subject to amendment and repeal only with the consent of the United States. Guam recently adopted legislation analogous to the Hawaiian Homes Commission Act.

Section 806. This section 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 Mariana Islands 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 Mariana Islands, acquire for public purposes in accordance with federal laws and procedures any interest in real property in the Northern Mariana Islands by purchase, lease, exchange, gift or otherwise under such terms and conditions as may be negotiated by the United States and the owner of the property. The United States is required by this section in all cases to attempt to acquire an interest in real property for public

purposes by voluntary means before exercising the power of eminent domain.

Subsection (c) provides that in the event it is not possible for the United States to obtain an interest in real property for public purpose by voluntary means, the United States will have and may exercise within the Northern Mariana Islands the power of eminent domain to the same extent and in the same manner it has and can exercise the power in a state. The power of eminent domain will be exercised only to the extent necessary and in compliance with applicable federal law, and with full recognition of the due process required by the United States Constitution. Section 901. This section provides that the Constitution or laws of the Northern Mariana Islands may provide for the appointment or election of a Resident Representative to the United States, who will be entitled to receive official recognition as such Representative by all of the departments and agencies of the United States Government. 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. This section provides that the Government of the United States and the Government of the Northern Mariana Islands 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 Mariana Islands will designate special representatives to meet and to consider in good faith such issues affecting the relationship as may be designated by either Government. Special representatives will be appointed in any event to consider and to make recommendations regarding future multi-year financial assistance to the Northern Mariana Islands 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 assures 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 Mariana Islands 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 Mariana Islands provided for in the Covenant will be enforceable.

Section 904. This section deals with three aspects of international relations which are of particular concern to the Northern Mariana Islands.

Subsection (a) provides that the United States Government will give sympathetic consideration to the advice of the Government of the Northern Mariana Islands on international matters directly affecting the Northern Mariana Islands. The subsection also assures the Government of the Northern Mariana Islands that it will be provided with opportunities for the effective presentation of its views to no less an extent than such opportunities are provided to any other territory or possession (see section 1005(d)) under comparable circumstances.

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

Subsection (c) provides that the Northern Mariana Islands may, upon their request, participate in regional or other international organizations concerned with social, economic, educational, scientific, technical and cultural matters when similar participation is authorized for other United States territories or possessions under comparable circumstances.

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

Subsection (a) deals with approval on behalf of the Northern Mariana Islands. As provided in this subsection the Covenant was submitted to the Mariana Islands District Legislature, which approved it for submission to the people of the Northern Mariana Islands in a plebiscite. The next step was the plebiscite itself. Only persons who were domiciled exclusively in the Northern Mariana Islands 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 Mariana Islands in determining the requirements for voting in the plebiscite. Approval had to be by a majority of at least 55% of the valid votes cast in the plebiscite. The Covenant has been approved on June 17, 1975, by a majority of 78.8% of the votes cast. The result of the plebiscite was certified to the President of the United States.

Subsection (b) of section 1001 provides that the Covenant will be approved by the United States in accordance with its constitutional processes and that it will thereupon become law. The approval of the Covenant by the Congress therefore will not have the effect of the approval of an Executive Agreement but will constitute the enactment of its provisions into statutory law.

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

Section 1003. This section deals with the effective dates of various provisions of the Covenant. Basically 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 Mariana Islands 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 Mariana Islands in accordance with the Covenant.

Subsection (a) makes a few important provisions of the Covenant effective immediately upon approval by both sides. They are the provisions relating to mutual consent; the Constitution of the Northern Mariana Islands; the inapplicability of certain federal laws; the establishment of the Commission on Federal Laws; the arrangements relating to social security; the requirement that land held by the Trust Territory Government be transferred to the Government of the Northern Mariana Islands; the enforceability of undertakings by both the United States and the local government; and the provisions relating to approval, effective dates, and definitions.

Under subsection (b) virtually all of the remaining important portions of the Covenant will become effective on a date determined and proclaimed by the President which will be within six months after both the Covenant and the Constitution of the Northern Mariana Islands have been approved by both sides. The main exceptions are those provisions the effectiveness of which would be inconsistent with the Trusteeship Agreement. At that time the relations between the United States and the Northern Mariana Islands will be governed by the Covenant; federal laws will become applicable; the federal court will be established; the applicable portions of the United States Constitution will come into effect; the 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 Mariana Islands 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); section 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 State will not be applicable to the Northern Mariana Islands unless and until Congress so provides; section 806, which deals with the authority of the United States to acquire title to property in the Northern Mariana Islands; and section 904, which deals with the participation by the Northern Mariana Islands in certain international affairs. It was considered 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 Mariana Islands.

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 Mariana Islands 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 set forth in section 502 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 Mariana Islands will come into effect in accordance with its terms on the same day that the provisions of the Covenant specified in section 1003(b) become effective--that is, 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. This means that there will be a new Government of the Northern

Mariana Islands, although not yet the Commonwealth Government, headed by an elected Governor and an elected bicameral legislature, as provided for in section 203. 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 if he finds that implementation of such a provision would be inconsistent with the Trusteeship Agreement. Again, this provision gives the President 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 terms "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 or 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.

July 11, 1975

EXPLANATION OF THE COVENANT

Section 101. This section constitutes the basic provision of the Covenant. It provides (1) that the Northern Mariana Islands will be under sovereignty of the United States, (2) that they will be in political union with the United States, and (3) that they will be a self-governing commonwealth, when the Trusteeship Agreement between the United States and the Security Council of the United Nations terminates. The section establishes beyond any question that the Northern Mariana Islands will be subject to the sovereignty of the United States. Pursuant to section 105 of the Covenant the political union between the United States and the Northern Mariana Islands can be dissolved only by mutual consent.

The term "commonwealth" is not a word describing any single kind of political relationship or status. A number of the States of the Union, including Virginia, Massachusetts and Kentucky, have the official name of Commonwealth. The same title is or was held by political entities as dissimilar as England under the Cromwells, Australia, Puerto Rico, and the Philippines during the ten-year period preceding their independence. The choice of the term "commonwealth" for the Northern Mariana Islands therefore does not denote any specific status, in particular not identity with the one held by the Commonwealth of

of Puerto Rico. The commonwealth status of the Northern Mariana Islands was developed on the basis of their particular needs drawing on the experience of all other territories of the United States, especially those of Guam, with the advantages and disadvantages of which the people of the Northern Mariana Islands have first hand acquaintance.

It is hoped that the Trusteeship Agreement will terminate in 1980 or 1981. Most of the provisions of the Covenant, however, will become effective within 180 days after the approval of the Covenant and the Constitution of the Northern Mariana Islands at which time a "new" Government although not yet the Commonwealth Government will come into being. Section 1002(b). The principal exceptions are those provisions of the Covenant which are inconsistent with the Trusteeship Agreement, such as U.S. sovereignty and U.S. citizenship. See Section 1004.

Section 102. This provision is analogous to the Supremacy Clause (Article VI, Section 2) of the Constitution of the United States. However, since the Northern Mariana Islands will not be incorporated into the United States, this section has been limited to the provisions of the Constitution, treaties and laws of the United States applicable to the Northern Mariana Islands.