

**Commission on Self Determination's
Briefing in Washington on
the Draft Commonwealth
Act**

ARTICLE 1

POLITICAL RELATIONSHIP

SECTION 101

SELF-GOVERNMENT

CSD BRIEF

Section 101(b)

February 1992
Washington D.C.

Section 101(b) involves four elements:

- 1.) The context of Guam's internal self-government in relation to federal preemption;
- 2.) The framework for the Guam Constitution;
- 3.) The process by which the Guam Constitution is adopted;
- 4.) A recognition that the Commonwealth Act is not the final act of self-determination.

Internal Self-Government

The issue of the language to define Guam's internal self-government has been hotly debated between the CSD and TF. In recent informal meetings with TF staff, Counsel Israel reports that in sticking to its position, the CSD has not fallen prey to the TF design for the Commonwealth of Guam to be subject to the preemption of federal laws (see Counsel's Memo attached).

The Task Force language would provide for the powers of the Commonwealth of Guam to be "liberally interpreted" if its powers were challenged by a Guam resident. However, "liberal interpretation" would not apply to disputes between Commonwealth law and federal laws: the TF language would preserve a power of "federal preemption."

Based on the TF position, they will not sign off on our language (which is similar, but different in construction) which would preclude federal preemption.

The Commonwealth of Guam requires limits on unilateral federal authority and interpretation of federal statutes. The CSD language which was offered in October 1991 would accomplish this purpose.

Framework of the Guam Constitution

The CSD and TF have signed off on most of this language in §101(b)(2), however, the CSD approach is stylistically different. This provision should be agreed to in total.

Process of the Constitution's Adoption

The CSD and TF disagree on the process by which the Constitution of Guam will be adopted: the TF has proposed Congressional fast-track approval while the CSD (although Counsel is exploring other options

at the CSD direction) seeks approval only by Guam.

Since it appears unlikely that the U.S. government will allow Guam to unilaterally adopt its own constitution, and because the GCA so clearly lays out the parameters of the Constitution of Guam, the CSD has endorsed Counsel exploring other options for the approval of Guam's Constitution if Congress authorizes Chamorro self-determination.

A second issue dealing with the provision with respect to the Constitutional approval has to do with its placement. Both the CSD and TF recognize that the approval process is more appropriately placed in Article 12 where other implementation procedures are located.

Commonwealth as an Interim Status

§102(b)(3) was added by the CSD in October 1991 meetings with the Task Force to provide additional recognition that Commonwealth was not Guam's final political status. The TF is prepared to adopt language similar to what the CSD offered (see Counsel's Memo attached).

It is likely that the TF, however, will not interpret this language as a lead up to Chamorro self-determination. Rather, their view of self-determination is "philosophical" not based on the rights of an indigenous people: i.e. they believe that an act of self-determination is a continuing one that could be expressed by opinions, disagreements, agreements or even violence.

Leland Bettis
January 1992

Section 101(b)

As I expected, we will not be able to reach agreement on §101(b). The problem for the TF relates to the concept of federal preemption and is a particularly sensitive issue as a result of the conflicts with the CNMI. Justice is adamant that when a question arises over which law has priority, the benefit of the doubt will be in favor of Federal law. If the meaning of this section and of self-government generally is that when conflicts arise over whether a particular law applies to Guam the benefit of the doubt should be given to Guam, Justice will never agree.

There are three areas in which this could arise:

1. A resident of Guam challenges an action by GovGuam on the grounds that the government has exceeded its powers granted by Congress. Justice agrees that in this circumstance the concept of self-government should be broadly construed in favor of the government.
2. A law names Guam as being covered and the coverage is clear except that, as in the case of the CNMI, Guam were to assert that the application of this law is inconsistent with self-government and, therefore, ought not to apply. The draft Act seeks to avoid this conflict by agreeing that all laws applicable to Guam on the date of Commonwealth continue to apply and that new laws must have Guam's agreement. If Guam does not succeed with this mutual consent principle, Congress will, of course, be in a position to limit self-government through unilateral legislation.

My view is that if the CSD does not prevail on mutual consent, Congress will be able to impose its legislative will no matter what words are used in §101(b).

3. The more difficult situation is where a law names Guam in the general definition of applicability but takes an action under the law which is not clearly authorized and which interferes with self-government. This is an especially important point if the CSD prevails on mutual consent since existing law will continue. It is in this area that I think the liberal interpretation provision is the most important.

I discussed with DOJ limiting the limitation on federal preemption to number 3 but they would have no part of it.

If the CSD does not wish to accede to federal preemption, I suggest we sign two bracketed provisions:

One as proposed by the TF

[The people of Guam shall have all rights of internal self-government, and to that end the preceding clauses shall be liberally construed, subject, however, to those provisions of the Constitution, treaties and laws of the United States that are applicable to Guam];

and the following by the CSD which is based on the CSD's proposal offered on October 2, 1991 in Washington:

§101(b)

The people of Guam:

- (1) shall have all rights of internal self-government, extending to all rightful subjects of government, and this Act shall be liberally interpreted in this

regard, consistent with those provisions of the Constitution, treaties and laws of the United States that are applicable to Guam; and

- (2) shall govern themselves in accordance with this Act through a Constitution of their own adoption. Such Constitution shall:

[maintain the 4 subparts in the signed version]

The original October proposal contained a sub-para. 3 which read as follows:

- (3) Neither this Act nor the adoption of the Constitution of Guam shall be interpreted as the final act of self-determination pursuant to §101(a).

I believe that the TF is prepared to accept this section with two stylistic changes and to place it in Title XII where it fits more appropriately. The changes are to change the "the" before the word final to the word "a" and to end the paragraph after the word "determination".

The Task Force has also proposed that the Congress' review of the Guam Constitution be placed here. The CSD has authorized me to work on an approval process. If we agree to one, I believe it too should be moved to Title XII. The process I will probably recommend will involve congressional approval on a fast track basis. I originally was going to suggest presidential review but, if the Chamorro vote provision is placed in the Constitution, having the congressional approval adds to our argument that Congress has authorized the action.

CSD BRIEF

Section 101(d) Retained Powers Provision

Section 101(d) establishes a retained powers clause for the Commonwealth of Guam. This provision provides:

"(d) Nothing in this Act shall be deemed to waive or limit the inherent powers of the Commonwealth of Guam or of its Government, except as expressly set forth in this Act."

This provision serves to bolster the rights of the government of the Commonwealth of Guam in relation to the federal government. In essence the provision allows all rights of self-government to accrue to the Government of the Commonwealth of Guam except where the Act provides for the federal government's powers.

This broad power of inherent self-government is not supported by the federal TF who apparently only wish for Guam to have the narrow powers of self-government expressly given by the Act. The TF's limited view of self-government is inconsistent with Guam's desire for complete internal self-government.

This particular provision was placed in the GCA in lieu of a specific list of powers of the Commonwealth of Guam. The CSD was concerned that if a list of Guam's powers was delineated, some powers might not be specifically stated and future judicial interpretations of the Commonwealth Act might preclude Guam from having "unlisted" powers.

The TF and CSD will agree to disagree on this issue.

SECTION 101

QUALIFIED AGREEMENT

(Brackets indicate areas of disagreement.)

TITLE I: POLITICAL RELATIONSHIP

SEC.101. CREATION OF THE COMMONWEALTH AND [FULL] SELF- GOVERNMENT

(a) Guam shall become a self-governing Commonwealth under the sovereignty of the United States, known as the "Commonwealth of Guam". The political relationship between Guam and the United States will be governed by this Act, which together with those provisions of the Constitution, treaties, and laws of the United States that are applicable to Guam, and the Constitution of Guam, shall be the supreme law of the Commonwealth.

(b) The people of Guam shall have the right of [full] self-government, which shall extend to all rightful subjects of government not inconsistent with this Act and with those provisions of the Constitution, treaties, and laws of the United States that are applicable to Guam, and shall govern themselves in accordance with this Act through a Constitution of their own adoption. Such Constitution shall

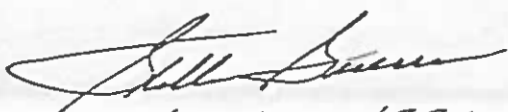
(1) recognize, and be consistent with, the sovereignty of the United States over Guam, and the supremacy of those provisions of the Constitution, treaties, and laws of the United States that are applicable to Guam;

(2) provide for a republican form of government;

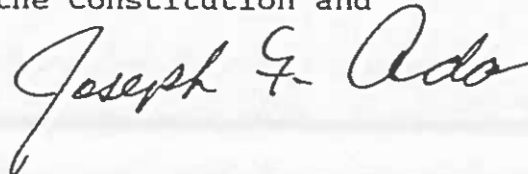
(3) provide for three branches of government; and

(4) contain a bill of rights.

[The Constitution of the Commonwealth of Guam shall be approved by the Congress of the United States at the time and in the manner provided for in Title XII of this Act. Amendments to the Constitution may be made by the people of Guam without approval by the Government of the United States, but the courts established by the Constitution or laws of the United States will be competent to determine whether the Constitution and


11th Feb. 1991

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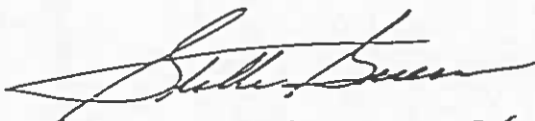


(Brackets indicate areas of disagreement.)

subsequent amendments thereto are consistent with this Act and with those provisions of the Constitution, treaties, and laws of the United States that are applicable to Guam. Any amendments to the Constitution of Guam shall be transmitted to the President of the United States for any comments he may wish to make.]

(c) The Government of the Commonwealth shall have the power to sue in its own name, and it may be sued with the consent of the Legislature, evidenced by enacted law.

(d) [Nothing in this Act shall be deemed to waive or limit the inherent powers of the Commonwealth of Guam or of its Government, except as expressly set forth in this Act.]


11th Feb. 1991

Joseph F. Ada

SECTION 102

SELF-DETERMINATION

SECTION 102

B R I E F

BRIEFING

Subject: Federal Support of and Local Authorization for Chamorro Programs (§102(c)) and Residency Requirements under the Guam Constitution (§102(g))

Prepared by: Joseph Bradley, Commission Ad Hoc Staff

Date: January 17, 1992

Section 102(c) of the Commonwealth Act calls for additional federal funding of cultural, educational, social and economic programs directed toward the preservation and enhancement of opportunities of Chamorros in Guam. The Task Force prefers that the federal government "may" provide such funding, while Guam continues to insist upon the work "shall." Further, it is important that Congress authorize Guam to establish Chamorro-specific programs so as to ensure that such programs will meet the test of constitutionality. If the Task Force persists in its position on this subsection, it may be necessary to agree to disagree in these matters.

In §102(g) of the Act, Guam seeks the authority to set residency requirements for voter eligibility and other purposes through the Commonwealth's Constitution. Among the other purposes for which residency requirements would apply is the participation in publicly funded programs, such as entitlement programs which Guam funds in whole or in part.

The Federal Interagency Task Force had no objection in its 1989 Report to the Commonwealth setting residency requirements, so long as they are "reasonable." However, the Task Force does object to Guam's suggestion that the Commonwealth may set a residency requirement of up to three years through its Constitution, citing Supreme Court rulings fixing thirty (30) days as being reasonable for this purpose. Another basis for the Task Force objection is that they believe that Guam may set residency requirements that are discriminatory in order to effectively exclude outsiders from various democratic processes. They propose that Guam's residency requirements either be set by federal statute or that these requirements (along with the remainder of the Commonwealth Constitution) be subject to federal approval.

The central motivating factor behind Guam's insistence on setting residency requirements is that this is yet another measure of full internal self-government, but there are other reasons, as well. Among these are the distortion in election results caused by the significant number of military personnel and other transients who register to vote in Guam's local elections, and the high number of individuals and families from the Federated States of Micronesia who have moved to Guam and entered directly into the welfare system. In this latter case, these FSM citizens are allowed to

enter Guam without local approval, are eligible for welfare benefits without Guam's agreement, and yet place claims on local funds devoted to the welfare system. This last is true because any increase in welfare payments or costs are obligations of the local government due to inadequate funding from the federal government.

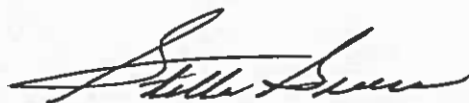
SECTION 102

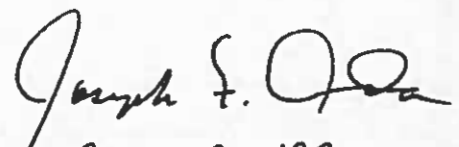
QUALIFIED AGREEMENT

TITLE I, SECTION 102 (a) - CHAMORRO SELF-DETERMINATION

[THE CONSTITUTION OF GUAM SHALL ESTABLISH A PROCEDURE FOR A PLEBISCITE ON THE FUTURE POLITICAL STATUS OF GUAM. THOSE QUALIFIED TO VOTE IN ANY ELECTION CONCERNING GUAM'S FUTURE POLITICAL STATUS SHALL BE LIMITED TO RESIDENTS OF GUAM:

1. WHO WERE BORN ON GUAM BEFORE AUGUST 1, 1950; OR
2. WHO ARE DESCENDANTS OF THOSE REFERRED TO IN SUBPARAGRAPH 1 OF THIS SECTION, AT LEAST ONE OF WHOSE PARENTS WAS BORN ON GUAM BEFORE AUGUST 1, 1950, OR AT LEAST ONE OF WHOSE PARENTS DESCENDED FROM SUCH A PERSON;]


2nd October 1991


Oct. 2. 1991

SECTIONS 102(c) AND (d)

102(c) THE UNITED STATES GOVERNMENT [SHALL] BY MEANS OF ADDITIONAL FEDERALLY FUNDED PROGRAMS[, AND THE CONGRESS OF THE UNITED STATES AUTHORIZES THE COMMONWEALTH OF GUAM TO ADOPT PROGRAMS, TO] PROMOTE:

(i) THE MAINTENANCE AND PRESERVATION OF THE CHAMORRO LANGUAGE, CULTURE AND TRADITIONS;

(ii) THE ENHANCEMENT OF ECONOMIC, SOCIAL AND EDUCATIONAL OPPORTUNITIES FOR CHAMORROS; AND

(iii) TRAINING OF CHAMORROS FOR EMPLOYMENT AS PROFESSIONALS, SKILLED WORKERS AND LEADERS IN BUSINESS AND INDUSTRY.

102(d) THE ESTABLISHMENT OF THE ADDITIONAL PROGRAMS DESCRIBED IN 102(c) SHALL NOT AFFECT THE CONTINUED ELIGIBILITY FOR THE BENEFITS OF EXISTING PROGRAMS OF MEMBERS OF ALL MINORITY GROUPS PRESENTLY QUALIFYING FOR SUCH PROGRAMS UNDER CURRENT LAW.

13th August 1991

Aug. 13, 1991

SECTION 102 (e) WILL BE DELETED FROM THE DRAFT COMMONWEALTH
BILL.

John Brown
2nd October 1991

Joseph F. Quinn
Oct. 2, 1991

TITLE I - SECTION 102 (g) - RESIDENCY FOR VOTING

THE CONSTITUTION OF THE COMMONWEALTH OF GUAM MAY ESTABLISH A REASONABLE RESIDENCY REQUIREMENT [, NOT TO EXCEED THREE YEARS,] FOR THE RESIDENTS OF THE COMMONWEALTH OF GUAM FOR THE PURPOSE OF DETERMINING ELIGIBILITY TO

(1) EXERCISE THE RIGHT TO VOTE IN COMMONWEALTH OF GUAM ELECTIONS;

[(2) RECEIVE ASSISTANCE UNDER PROGRAMS MADE AVAILABLE AND FUNDED BY THE GOVERNMENT OF THE COMMONWEALTH OF GUAM TO ITS RESIDENTS.]

Shirley F. Brown
2nd Oct. 1991

Joseph F. Ada
Oct. 2, 1991

SECTION 103

MUTUAL CONSENT

SECTION 103

B R I E F

BRIEFING

Subject: Mutual Consent to Changes in the Commonwealth Act
(§103)

Prepared by: Joseph Bradley, Commission Ad Hoc Staff

Date: January 22, 1992

Section 103 of the Commonwealth Act seeks a commitment from the United States to limit its authority over Guam in order to respect the self-government granted under Commonwealth. This limitation is requested in the form of a commitment by the Congress to refrain from modifying the Act or any of its provisions without the consent of the government of Guam.

The Task Force argues that only the "fundamental provisions" of the Act should be subject to the mutual consent clause, and this is the source of disagreement on the matter: the Task Force views only a few Sections of the Act as being "fundamental", while Guam views the entire Act as such. What the Task Force views as being "fundamental" are primarily matters of U.S. interest. In addition, the Task Force cites the problem of one Congress binding the actions of subsequent Congresses, pointing out that there can be no guarantee that the mutual consent provision will be respected after the Act is passed.

The Task Force also raises the question as to how Guam's consent is to be evidenced if §103 is passed unaltered.

There have been extensive discussions on the issue of mutual consent, and there appears to be no progress on the matter. Therefore, it may be necessary for the Commission to agree to disagree with the Task Force on this subject, so that the process can move forward to the congressional stage.

SECTION 103

TASK FORCE REPORT POSITION

we have no objection to including this subsection in the bill.

Section 103 provides that the Congress agrees to limit the exercise of its authority so that the Guam Commonwealth Act "may be modified only with the mutual consent" of the Government of the United States and the Government of the Commonwealth of Guam. Differently stated, section 103 states that, following enactment of the Guam Commonwealth Act, the Congress will refrain from amending any provision of the Act, unless the Government of the new Commonwealth agrees.

The section presents two difficulties. The first, and more important, is the appropriate breadth of the mutual consent requirement. The second is how Guam's consent would be evidenced.

We understand that the underlying purpose of section 103 is to provide insurance to the people of Guam that its foreseen new Commonwealth status is firmly based, and that it could not later be unilaterally undone by an Act of the U.S. Congress modifying the foundation of the Commonwealth or key features of it.

First, two historical precedents are relevant here. The laws giving rise to the Commonwealth of Puerto Rico -- Public Law 600 of the 81st Congress (1950) and Public Law 447 of the 82d Congress (1952) -- contain no amendment-by-mutual consent provision, but it should be noted that neither has been amended by the United States. The Covenant that establishes the Commonwealth of the Northern Mariana Islands, Public Law 94-241 (1976), does contain in section 105 a mutual consent provision, but it is confined to specified Articles and sections of the Covenant only. The Congress has not acted to amend any of those provisions. Congress has authority to amend other sections of the Covenant without the consent of the Northern Marianas, and it has done so, but such amendments have related to provisions not named in section 105.

We believe that section 105 of the Northern Marianas Covenant provides useful guidance for the modification of section 103 of the Guam Commonwealth Act. Section 105 of the Covenant provides that

In order to respect the right of self-government guaranteed by this Covenant the United States agrees to limit the exercise of that [Federal legislative] authority so that the fundamental provisions of this Covenant, namely Articles I, II and III and Sections 501 and 805, may be modified only with the consent of the Government of the United States and the Government of the Northern Mariana Islands.

These references are to Article I, which defines the political

relationship; Article II, on the Constitution of the Northern Mariana Islands; Article III, on citizenship and nationality; section 501, concerning the applicability of specified provisions of the United States Constitution; and section 805, which provides restrictions on land alienation.

We believe that the mutual consent provision in the Guam Commonwealth Act should similarly be confined to its "fundamental provisions". Many of the provisions of the Commonwealth Act are not "fundamental", in our view, and with respect to them we believe that the Congress should retain its full power to legislate. An obvious example is Title IV, which deals with, among other things, the Federal District Court of Guam. The Congress needs to be free to make provision for all of the Federal District Courts, at any time, without the limitation of a mutual consent provision from any jurisdiction.

These are precedents for an agreement by Congress to agree to refrain from modifying "fundamental provisions", unless Guam's consent is obtained. Taking into account the modifications to the bill that are recommended in this report, we suggest that the fundamental provisions of the Guam Commonwealth Act are section 101, the creation of the Commonwealth and self-government, including the Constitution of Guam; section 103, mutual consent; section 201, applicability of United States Constitution; and section 301, United States authority.

With respect to the manner in which Guam's consent is evidenced, section 103 is now silent. The Northern Marianas Covenant is also silent on that matter, and the Government of the Commonwealth of the Northern Marianas has lately by local law provided that its consent can be provided only through a popular referendum. Because the referendum process is inevitably costly and usually slow, that Northern Marianas law has complicated the relationship between the United States and the Northern Marianas. (But, as noted above, it has not yet been put to a test, for no effort has been made to modify any of the "fundamental provisions" of the Covenant, as designated in its section 105.) To avoid that kind of complication in connection with the Commonwealth of Guam, but in order also to insure that Guam's consent would be provided only after thoughtful and public consideration, we suggest that the consent be "evidenced by enacted law". That would require action by both the legislative and executive branches of the Guam Government.

We therefore adopt the language of section 105 of the Northern Marianas Covenant but add to it the words "(the United States) enters into a compact with the people of Guam pursuant to which it (agrees to the limit)" in order to make it clear in "unmistakable terms" that this section is intended to constitute a binding contractual obligation, and not merely a policy,

subject to revision or repeal. See Rowen v. Agencies Opposed to
Sit. Sec. Entrap, 477 U.S. 41, 52 (1986); National R. Passengers
Corp. v. AT & SRF Co., 470 U.S. 451, 486 (1985).

If amended in the manner that we have suggested, section 103
would read as follows:

In order to respect the self-government granted to the
Commonwealth of Guam under this Act, the United States
enters into a compact with the people of Guam pursuant to
which it agrees to limit the exercise of its legislative
authority so that sections 101, 103, 201, and 301 may be
modified only with the mutual consent of the Government of
the United States and the Government of the Commonwealth of
Guam, evidenced by enacted law.

ARTICLE 2

APPLICABILITY OF FEDERAL LAW

SECTION 201

APPLICABILITY OF

U.S. CONSTITUTION

BRIEFING

Subject: Applicability of the U.S. Constitution to the Commonwealth of Guam (§201)

Prepared by: Joseph Bradley, Commission Ad Hoc Staff

Date: January 24, 1992

In its present form, §201 of the Commonwealth Act would continue the applicability of all provisions of the U.S. Constitution that apply to Guam at the time of its passage, except as otherwise provided by Congress in the Act. However, the Task Force wants to bracket the language underlined above; they do not agree with having the current applicability of the Constitution modified by the Act. This is troublesome, since many of the provisions of the Act, taken collectively, would implicitly modify the way that the Constitution is applied here.

Another matter of concern with regard to this Section is that the Task Force seeks to insert specific language reinforcing the applicability of the so-called "Territories Clause" (Article IV, Section 3, Clause 2 of the Constitution) to the Commonwealth of Guam. The Territories Clause is to continue to apply to Guam, but having this explicitly stated may affect judicial interpretations of the Act's provisions. In combination with the Task Force objection to §1201(a) (regarding liberal interpretation) in its 1989 Report, it appears that this is an attempt to undermine Guam's objectives in self-government, as defined in the Act.

Given the respective positions of the Commission and the Task Force regarding §201, it may be necessary to agree to disagree on the Section's language so that the political status process can move forward.

SECTION 201

Application of the Constitution

Section 201 - Justice now wants to add a specific reference to the Territorial Clause to the list of provisions of the Constitution applying to Guam. They would add the reference in the first sentence which confirms that those sections of the Constitution applicable to Guam prior to Commonwealth will continue to apply. I think this is an unnecessary and redundant addition.

Their purpose in adding this section is related to the disagreement over §101(b) and mutual consent. They do not want any dispute in the future concerning applicability of the Territorial Clause. The CSD's position has been that the Territorial Clause will apply but limited by mutual consent, if a way can be found to accomplish this goal.

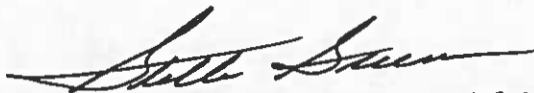
LEGAL COUNSEL MEMO
JANUARY 31, 1991

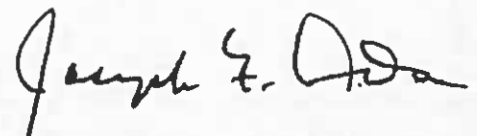
SECTION 201

QUALIFIED AGREEMENT

SECTION 201 - PROVISIONS OF THE U.S. CONSTITUTION
APPLYING TO GUAM

THOSE PROVISIONS OF THE UNITED STATES CONSTITUTION WHICH APPLY TO GUAM ON THE DAY PRIOR TO THE EFFECTIVE DATE OF THIS ACT SHALL CONTINUE TO APPLY UNDER THIS ACT [, EXCEPT AS OTHERWISE PROVIDED BY CONGRESS IN THIS ACT]. IN ADDITION, THE FOLLOWING PROVISIONS OF AND AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES SHALL APPLY TO THE COMMONWEALTH OF GUAM AND SHALL HAVE THE SAME FORCE AND EFFECT IN GUAM AS IN THE UNITED STATES OR IN ANY STATE OF THE UNITED STATES: ARTICLE I, SECTION 9, CLAUSE 8; ARTICLE I, SECTION 10, CLAUSES 1 AND 3; ARTICLE IV, SECTION 2, CLAUSE 2; ARTICLE IV, SECTION 4; THE FIRST SENTENCE OF THE FIRST SECTION OF THE FOURTEENTH AMENDMENT; AND THE TWENTY-SIXTH AMENDMENT.


2nd October 1991


Oct. 21 1991

SECTION 203

JOINT COMMISSION

SECTION 203

B R I E F

CSD BRIEF

Section 203 Joint Consultative Group

Several issues remain to be resolved in the December 1991 qualified agreement on the Joint Consultative Group. All these issues are ones objected to by the TF. The issues are:

1. The JCG's review of land held by the federal government and subsequent recommendations on return of excess lands to Guam;
2. The setting of the first Joint meeting 180 days after the adoption of the GCA or organization of the Guam Commission;
3. The requirement for an annual report to the Congress on the work of the JCG.

Two other important issues are related to the JCG. These are:

1. The CSD's view of the relationship between the JCG and the legislative fast-track process; and,
2. The probability of including a JCG role in discussions on removing restrictions on land previously released by the federal government.

JCG Review of Excess Lands

The JCG review of excess lands is a critical element of the Commonwealth Act's proposal to change the philosophical base of reviews of federally-held lands in Guam. The TF objects to the JCG review of land, and instead prefers to continue the existing review of land needs by the military on their own.

Moreover, the TF position on continuing a sole military review of excess lands would provide no assurances that the vast amounts of unused federally-held lands are returned. Given Guam's growing population and land needs, a new mechanism for land review should be established. A joint Guam-U.S. review through the JCG provides the most balanced approach to excess land reviews in the future.

First Meeting of the JCG (180 days)

The CSD has called for the first meeting of the JCG to be within 180 days of the passage of the GCA or within 180 days of the creation of the Guam Commission. The TF objects, citing their belief that Congress cannot compel the Executive Branch.

Reports to the Congress

The CSD has required that the JCG report annually to the Congress on its meetings. This is important so that the Congress is

apprised of the status of on-going issues. Congressional understanding of the issues dealt with between the Guam and Federal Commissions is further necessary since their positions could form the basis of Congressional fast-track legislation.

The TF objects to the reporting requirement based on supposed separation of powers issues.

The Fast-Track Process and the JCG

The CSD views the JCG and the legislative fast-track process to be intertwined i.e. the fast-track process would be used to modify federal laws, rules, regulations, policies and other standards which continue under Commonwealth.

The TF views the fast-track process as only partially connected to the JCG procedure. The TF view of the fast-track process is that it is a replacement for the CSD's requirement of consent to federal laws, rules and regulations in §202.

The JCG and Removing Restrictions from Previously Released Lands

Depending on the outcome of discussions on §1001(f) dealing with the removal of restrictions on previously released federally-held lands, a section may need to be added to the JCG provision. Given the fact that it is not possible at this time to document all land return transactions to date (due to the wide dispersal of documents), a partial listing of restrictions removed would have to be complimented with a process to remove restrictions on other lands when documentation becomes available.

Even if the CSD sticks to a principle that all restrictions on all previously released lands must be removed (instead of trying to list all lands), an added provision may still be needed in the JCG process for expediting the restriction removal operation.

Leland Bettis
January 1992

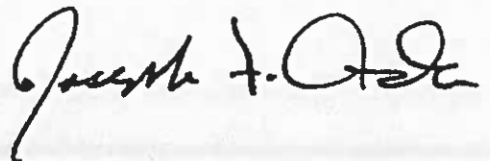
SECTION 203

QUALIFIED AGREEMENTS

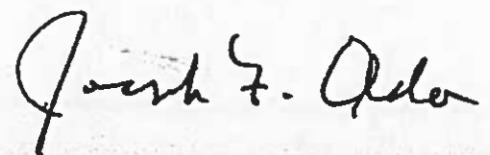
SECTION 203: THE JOINT CONSULTATIVE GROUP

(TO REPLACE THE JOINT COMMISSION)

- (a) If the Government of the Commonwealth of Guam creates by law an agency of the Commonwealth Government to be known as the Commission on the Application of Federal Laws (hereinafter the "Commission), such Commission may perform the functions described in this section, together with such additional functions as the laws of Guam may provide. The number of Commissioners, their appointment, the procedures of the Commission, and all other matters related to the creation and the functioning of the Commission shall be as provided by the laws of the Commonwealth of Guam.
- (b) The Commission may, without impairing national security interests:
- (i) be used for regular consultations, pursuant to subsection (c) of this section, between the Government of the United States and the Government of the Commonwealth of Guam on matters affecting the relationship between them;
 - (ii) study and make recommendations to the appropriate Federal agency or to the Congress concerning the application of existing Federal statutes and regulations to the Commonwealth of Guam;



- (iii) study and make recommendations to the appropriate Federal agency or to the Congress concerning the application of Federal benefit and financial assistance programs to the Commonwealth of Guam;
- (iv) review and comment on the policies and procedures of the Federal agencies as such policies and procedures relate to the Commonwealth of Guam;
- (v) compile data as may be necessary for the conduct of the Commission's work or for the implementation of this Act;
- (vi) draft and present for consideration to the appropriate Federal agencies or the Congress such modifications in existing laws, regulations, policies, and procedures as will, in the judgment of the Commission, best serve to carry out the purposes of the Commission or this Act;
- (vii) obtain, if possible, the modifications of these laws, regulations, and procedures by negotiation and mediation, pursuant to Title XII, section _____, or through the submission of draft legislation to the Congress or through the submission of proposed changes in regulations to the appropriate Federal agencies pursuant to section _____;



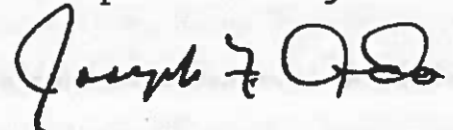
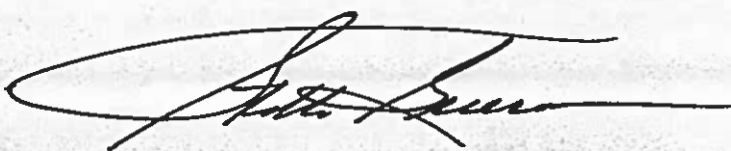
(viii) seek to obtain the maximum economic development and political autonomy for the Commonwealth of Guam; [and]

(ix) study legislation pending in the United States Congress in order to assist in the implementation of this Act [; and][.]

[(x) review the use of land currently held by the United States and make recommendations to the appropriate Federal agency and the Congress in regard to the restrictions on the use or the transfer of these lands to the Commonwealth of Guam pursuant to Title X, section _____, of this Act.]

(c) The Commission or such members thereof as the Commission may determine shall meet semi-annually, unless otherwise mutually agreed, with senior policy-level officials of the Executive Branch of the United States Government who shall have been designated by the President or his designee to a permanent inter-agency policy group on insular areas. [The initial meeting of this inter-agency policy group with the Commission shall occur no later than one hundred eighty (180) days after the later of the adoption of this Act or the organization of the Commission.]

(i) The purpose of such meetings will be to provide for joint



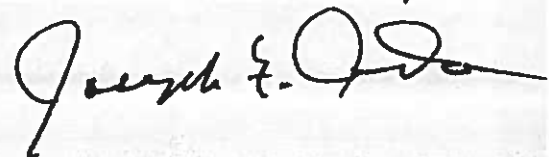
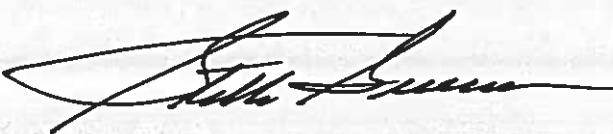
consultations between the Commission and the appropriate Executive Branch officials from the policy group on matters of mutual interest affecting the United States-Guam relationship, including the work of the Commission under subsection (b) hereof.

(ii) The Executive Branch members of the policy group in making decisions on matters that directly affect Guam will give serious consideration to the views of the Commission expressed during the joint consultations.

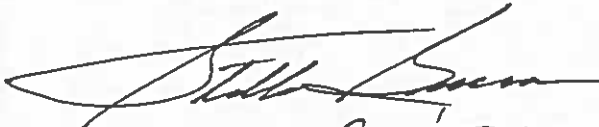
(d) When requested by the Commission, the heads of the Federal departments and agencies, at no cost to the Commission, may provide such personnel and other assistance to the Commission, as authorized by law, and such documentary information, as authorized by law, as may be necessary and useful for the performance of the Commission's functions or for the joint consultations referred to in subsection (c) hereof.

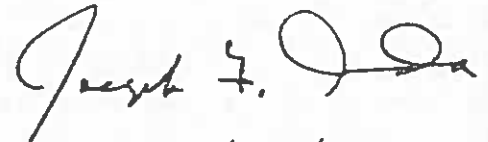
[(e) The policy group and the Commission shall prepare annually a joint report to the Congress, with the first such report being due at the end of the fiscal year after the year in which this Act is enacted, setting forth the matters discussed in the joint consultations and the results thereof.]

(f) To meet the costs of the Commission, the United States and Guam shall each contribute fifty (50) per cent of such costs,



but the annual contributions of the United States will not exceed one hundred thousand (100,000) dollars. Such sums are hereby authorized to be appropriated.


12 Dec. '91


12/12/91

SECTION 203

FAST TRACK PROCESS

CSD BRIEF

Fast-Track Legislative Process

The CSD/TF qualified agreement of December 1991 on the fast-track legislative process sets up a procedure whereby Guam could pursue Congressional remedies to the impact of federal laws and policies that are in effect in Guam.

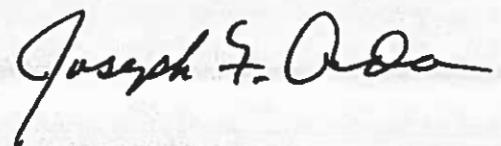
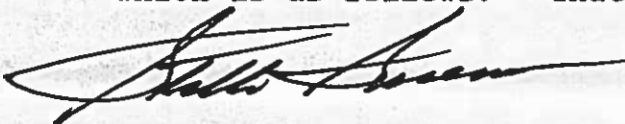
Differences between the CSD and TF continue on two issues in the qualified agreement on the fast-track legislative process. These issues are areas which the TF wants excluded from the fast-track process. The areas are:

1. restrictions on land;
2. issues before the Senate Agriculture Committee.

In the first instance, the CSD seeks to continue to have back-up access to policy makers on land related issues. In the second case, there seems to be no legitimate reason for the role of the senate Agriculture Committee to be exempted from the fast-track process.

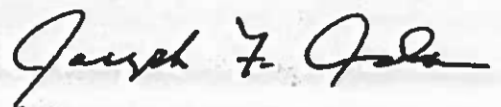
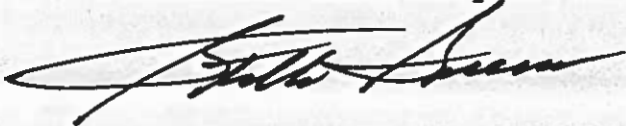
SECTION ____: "FAST-TRACK" REVIEW PROCESS

- (a) Notwithstanding any other provision of law, the Governor of the Commonwealth of Guam may certify from time to time to the Speaker of the House of Representatives and the President of the Senate that the Legislature of the Commonwealth of Guam has adopted a recommendation that states that a Federal law or provision thereof should no longer apply to the Commonwealth of Guam because it is not suited to Guam on account of the particular conditions prevailing there, especially those of a geographical, climatological, social, or economic nature. A Federal law or provision thereof so certified shall no longer apply to the Commonwealth of Guam if a joint resolution approving the recommendation of the Government of the Commonwealth of Guam is enacted.
- (b) This section is enacted by the Congress as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but is applicable only with respect to the procedure to be followed in this section; and it supersedes other rules only to the extent that it is inconsistent therewith.
- (c) For purposes of this section, the term "resolution" means only a joint resolution, the matter after the resolving clause of which is as follows: "That the House of Representatives and



the Senate approve the recommendation of the Government of the Commonwealth of Guam in the certification submitted to the Congress on (date)". Such resolution shall include the certification received from the Government of the Commonwealth of Guam.

- (d) A resolution once introduced with respect to such a certification by the Governor of the Commonwealth of Guam shall immediately be referred by the Speaker of the House of Representatives and the President of the Senate, as the case may be, to the House Committee on Interior and Insular Affairs and to the Senate Committee on Energy and Natural Resources and at the same time to such other committees as the Speaker of the House of Representatives or the President of the Senate, respectively, shall determine.
- (e) If the committee or committees to which a resolution with respect to a certification by the Governor of the Commonwealth of Guam has been referred has not reported it at the end of forty-five calendar days after its referral, it shall be in order to move to discharge the committee from further consideration of such resolution.
- (f) A motion of discharge may be made only by an individual favoring the resolution and shall be highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same submittal), and debate



thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(g) If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution with respect to the same submittal.

(h) When the last committee has reported, or has been discharged from further consideration of a resolution, it shall be at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion to proceed to the consideration of the resolution shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(i) Debate on the resolution referred to in subsection (h) shall be limited to not more than ten hours, which shall be divided equally between those favoring and those opposing such resolution. A motion further to limit debate shall not be debatable. An amendment to or motion to recommit the

resolution shall not be in order, and it shall not be in order to move to reconsider the vote by which such resolution was agreed to or disagreed to.

(j) Motions to postpone, made with respect to the discharge from committee, or the consideration of a resolution and motions to proceed to the consideration of other business, shall be decided without debate.

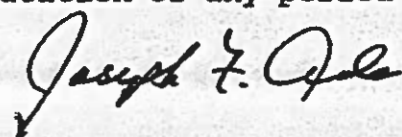
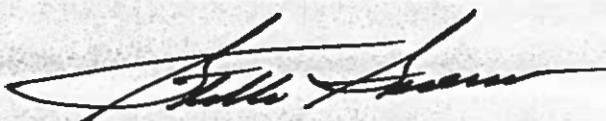
(k) Appeals from the decision of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution shall be decided without debate.

(l) Notwithstanding any of the provisions of this section, if a House has approved a resolution with respect to a submittal, then it shall not be in order to consider in that House any other resolution with respect to the same such submittal.

(m) For the purpose of this section:

(i) Continuity of session is broken only by an adjournment of the Congress sine die; and

(ii) The days on which either House is not in session because of any adjournment of more than three days to a day certain are excluded in the computation of any period of



time in which the Congress is in continuous session.

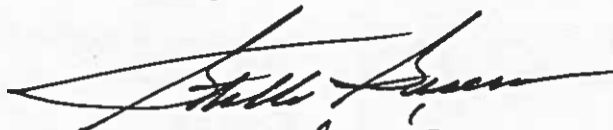
(n) This section shall not apply to any Federal law or provision thereof:

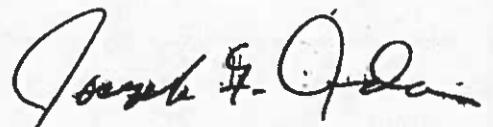
(i) Establishing directly or indirectly grants and/or services to citizens of the United States as individuals;

(ii) Relating to legislative matters within the jurisdiction of the Committee[s] on Finance [and Agriculture] of the Senate;

(iii) Relating to citizenship; or

(iv) Pertaining to the foreign relations, defense, or national security [, except for those relating to restrictions on land].


12 Nov. 91


12/12/91

SECTION 204

DELEGATION OF AUTHORITY

SECTION 204

B R I E F

BRIEFING

Subject: Delegation of Authority to the Governor of Guam
(§204)

Prepared by: Joseph Bradley, Commission Ad Hoc Staff

Date: January 24, 1992

In a qualified agreement covering §204 of the Act, signed on January 11, 1991, language calling for the periodic consultation between the President (or his designee) and the Governor of Guam regarding the delegation of federal authority to the Governor was bracketed by the Task Force. Because sufficient consultations are now provided for elsewhere in the Act, it is now possible for the Commission to agree to the deletion of the bracketed clause.

SECTION 204

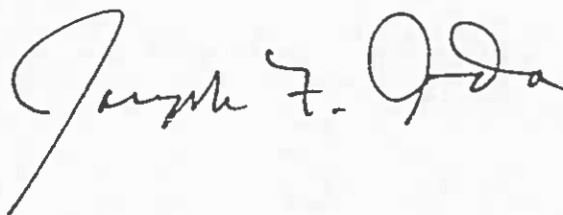
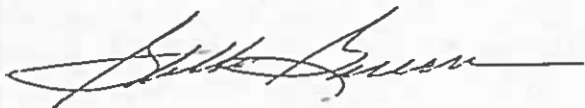
QUALIFIED AGREEMENT

January 10, 1991
Agaña, Guam

(Brackets indicate areas where further consideration is required)

TITLE II -- APPLICABILITY OF FEDERAL LAW

§204. The President alone or the head of an executive agency that has program responsibilities in Guam may appoint the Governor of Guam or, after consultation with the Governor of Guam, an officer of the Government of Guam to perform in Guam any functions vested in that agency. [The President or his designee and the Governor of Guam shall consult from time to time on the implementation of this provision.]



ARTICLE 3

FOREIGN AFFAIRS AND DEFENSE

SECTION 301

UNITED STATES AUTHORITY

SECTION 301

B R I E F

CSD BRIEF

Section 301 U.S. Defense & Foreign Affairs Authority

The issue of U.S. Defense and Foreign Affairs authority is central to U.S. interests in Guam. The Commonwealth Act, as drafted, however, does not meet the TF representatives view of these U.S. interests being in the form desired.

Two issues emerge in relation to further discussion on §301.

1. The CSD is reticent to agree fully to primary U.S. interests in Guam so long as the TF does not acknowledge Guam's primary interest in complete internal self-government; and
2. The Commonwealth Act proposes to alter some of the ways in which U.S. military activities are carried out in Guam as they relate to land, planning needs, and economic conditions.

Primary Interests: Guam and the U.S.

The primary U.S. interest in Guam is commonly understood to be strategic: interests represented by Defense and Foreign affairs authority. Given Guam's current status, there is little Guam can do to prevent the U.S. from carrying out current activities in this area, however, within the framework of a new political status Guam does not have to agree to a continuation of present practices.

Guam's primary interest is attaining internal self-government. This includes a buffer from unilateral federal decision-making powers. In on-going discussions, the TF has not been prepared to recognize Guam's primary interest. Instead, the TF has proposed that secondary U.S. interests in Guam (bureaucratic control and unilateral decision-making powers) continue, thereby subverting Guam's primary interest.

If the CSD were to accommodate primary U.S. interests before the federal government recognizes Guam's primary interests, the possibility of Guam's interests being recognized are minimal.

The Commission's posturing on not accommodating U.S. military interests in the manner that is desired appears to be showing some results. The Department of Defense in recent weeks has become much more active in the process in both Guam and Washington. This activity may lead to increased pressure of other federal agencies to recognize Guam's primary interests. Until such time as DoD pressure results in an actual change in the federal position, the CSD should continue to hedge on full recognition of U.S. interests in the area of defense and foreign affairs.

Existing DoD relationship to land, planning and the economy are proposed to be changed by the Commonwealth Act.

The Commonwealth Act proposes a new way for the federal government to deal with lands, civilian planning needs and the impact of some military actions which could adversely affect Guam. In this regard, current military privileges would be mitigated under Commonwealth.

Land

The Commonwealth Act changes the basic philosophy of excess land determinations, and future federal interests in land.

Under Commonwealth, the federal government would have to justify why it needs lands it is not using as opposed to the current practice of Guam justifying why it wants land back. This change is expressed in the Commonwealth act in the Joint Consultative Group review of excess lands and in the fast-track legislative review of excess lands.

Future federal interests in land are also addressed in the Commonwealth Act. The CSD and Tf have agreed that should the federal government require more lands it would have to seek public lands first, and then could only use lands voluntarily released and for which the Congress had appropriated funds. Under Commonwealth, federal eminent domain powers would be limited to times of declared war.

Planning Requirements

The Commonwealth Act requires consultation and consent in relation to certain types of military activities that necessitate prudent civilian planning. Changes in the permanent defense force structure in Guam requires consultation with Guam.

Economic and Social Issues

The Commonwealth Act requires Guam's consent to the imposition of a military security zone around the island (except in times of war) to prevent the possibility of a return to the pre-1962 crippling economic situation. Also, Guam would have to consent to the permanent deployment of foreign troops to Guam.

Agreement to the TF pursuit of "complete" U.S. authority for defense and foreign affairs would be incompatible with the CSD strategy and could undercut the limits on federal action that the Commonwealth Act lays out in terms of land use, planning requirements and other conditions unique to Guam's historical experience. The only card with Guam has to deal in pursuit of Commonwealth is in relation to U.S. primary interests in Guam. For Guam to acquiesce before receiving recognition of its primary interests would diminish the possibility of Guam's primary interests being attained.

SECTION 302

CONSULTATION WITH GUAM

SECTION 302

B R I E F

CSD BRIEF

Section 302 Defense Consultations and Consent

Section 302 involves measures of consultation and consent in relation to U.S. military and foreign affairs activities in Guam. Presently, the CSD and TF have a qualified agreement on defense consultations, however, no position has been taken on foreign affairs consultations nor the areas where Guam's consent is required.

Three issues in §302 remain to be resolved:

1. consultation "in advance of negotiations toward any treaties or international agreements, including Executive Agreements, which affect the well-being of the people of Guam." (§302(a));
2. Guam's consent to the establishment of a security zone and the stationing of foreign troops (§302(b)); and,
3. the areas of dispute in the qualified agreement on consultations (July 1990).

Foreign Affairs Consultation

The CSD needs to make sure that the language of Section 302(a) is dealt with in this round of discussions with the TF. The qualified agreement of July 1990 on consultations deals only with defense issues.

Consent to certain types of Military Activities

The qualified agreement of July 1990 expressly excludes matters of consent contained in the Commonwealth Act. The CSD needs to make sure that the language of the first half of §302(b) which deals with consent issues is dealt with.

Areas of Dispute in the July 1990 Agreement on Consultation

Two areas of dispute remain in the July 1990 qualified agreement on Defense Consultations. These are:

1. the definition of national security; and,
2. the ability of either Guam or the U.S. to call a consultative meeting.

In neither of these areas does it appear that agreement will be reached. In the first case the TF wants to keep the definition of national security so broad that it could undercut the requirement for consultations. In the second case, the ability of Guam to request a consultative meeting is vital, since it is Guam that would be affected by federal action. Guam needs the ability to call a consultative meeting in case the federal government "overlooks" the need for consultations.

SECTION 302
QUALIFIED AGREEMENT

July 12, 1990

The Federal Interagency Task Force on the Guam Commonwealth Bill and the Guam Commission on Self-Determination agree to the following principles that will underlie the defense consultation provisions of the Guam Commonwealth Bill. (Brackets indicate areas of disagreement.)

1) Broader Consultations:

The second clause of Section 302(b) and Section 302(c) should include foreign relations, defense, and other (related) major Federal governmental activities, policy changes, and initiatives that would have a direct social, economic or environmental impact on Guam.

2) Nature of consultations:

Prior consultations, consistent with national security interests (with "national security" to be defined) would be provided to the Government of Guam. Through these consultations, the Government of Guam would be provided an opportunity for the effective presentation of its views, and the United States will give serious consideration to those views in its decision-making process.

3) Consultations Framework:

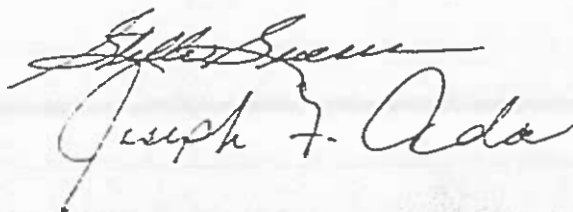
A separate consultative group would be established for this purpose in Section 302.

4) Federal Government Membership:

Washington-based and other senior policy-level Federal officials would represent the Federal government on the consultative group.

5) The consultative group would meet semi-annually, unless otherwise agreed, and upon the request of either government when (both agree that) an urgent matter arises upon which prior consultations should occur.

A matter on which agreement has not been achieved concerns Section 302(b): the requirement for Guam's prior approval of the creation of a military security zone in and around Guam, and the stationing of foreign military personnel in Guam. The Task Force and the Commission agree that this issue is specifically excluded from these agreed principles, and shall be addressed at future meetings.


Joseph F. Ada

SECTION 303

UNITED STATES CONSULAR

AND

TRADE ASSISTANCE

SECTION 303

B R I E F

CSD BRIEF

Section 303 Consular Assistance

The CSD redraft proposal on Consular Assistance (attached) breaks down the types of activities the Government of the Commonwealth of Guam could engage in. The language is based on the Constitutional provision in Article 1, Section 10, Clause 3 which provides:

No State shall, without the Consent of Congress,
enter into any Agreement or Compact with another State,
or with a foreign Power..."

The Commission, through the Commonwealth Act seeks an up-front Congressional authorization that would be monitored by the State Department and obviated U.S. foreign policy and defense interests.

The CSD proposal provides for Guam to:

1. seek membership in regional and international organizations consistent with U.S. policy;
2. accept financial assistance and grants from foreign governments, international and regional organizations, and public or private foundations where not inconsistent with U.S. policy;
3. enter into bi-lateral and multi-lateral agreements with foreign governments and international organizations to promote private and public business ventures where such agreements are not binding on the U.S. and not inconsistent with U.S. policy;
4. enter into trade and taxation agreements with foreign governments and giving the U.S. State Department 30 days to review such agreements; and,
5. allow the U.S. to encourage foreign governments to provide exports of Guam with favorable treatment.

Counsel reports that the State Department has not been particularly receptive and that the CSD and TF will probably agree to disagree on this issue.

CSD 049/

D.C.

TITLE III, Section 303 - CSD REVISED PROPOSAL

- (a) [already agreed to with brackets]
- (b) The Commonwealth of Guam may seek membership or participate in regional and international organizations concerned with social, economic, educational, environmental, scientific, or cultural matters, provided that the rules of the organization permit such membership or participation, and such membership or participation is not inconsistent with United States foreign policy interests of general applicability to the States, Commonwealths and territories.
- (c) The Commonwealth of Guam may accept (1) financial grants and technical assistance from foreign governments; (2) financial grants and technical assistance from international and regional organizations in which it has membership or participates, providing that all members of or participants in such organizations are also eligible for such assistance and grants; (3) and technical assistance and financial grants from foreign public or private foundations and other similar institutions, provided that any such technical assistance or financial grants are not received from an organization, institution or foreign government whose assistance to Guam is inconsistent with United States foreign policy interests of general applicability to the States, Commonwealths and territories.
- (d) The Commonwealth of Guam shall have the right to enter into exchange programs and bilateral and multilateral agreements with foreign governments or international and regional organizations to promote private and public business ventures, provided that such programs and agreements (1) are not binding on the Government of the United States; (2) are not inconsistent with those of the United States; and (3) are not inconsistent with United States foreign policy interests of general applicability to the States, Commonwealths and territories.
- (e) The Commonwealth of Guam may enter into negotiations concerning tax and trade agreements with foreign governments and shall give the Secretary of State notice of its having entered into any such negotiation along with periodic reports on their progress, and may enter into any such trade & tax agreements after giving the

Secretary of State thirty (30) days notice of its intention to enter into such an agreement, provided that the agreement (1) is not binding on the Government of the United States; (2) is not inconsistent with those of the United States; and (3) is not inconsistent with United States foreign policy interests of general applicability to the States, Commonwealths and territories.

- (f) To the extent feasible and consistent with the trade policy of the United States, the Government of the United States shall encourage foreign governments to accord favorable treatment to exports from the Commonwealth of Guam under the Generalized System of Preferences and other trade preference programs and will encourage other foreign states to consider the Commonwealth of Guam as a beneficiary developing territory.

SECTION 303
CSD PROPOSAL

ARTICLE 4

COURTS

ARTICLE 4

B R I E F

CSD BRIEF

Article 4 & §1203 Courts

Three areas of dispute remain in the qualified agreement on Courts signed in April 1991. These areas are:

1. the transition period for the appeals process of the Supreme Court of Guam;
2. a Congressionally established special jurisdiction for the District Court of Guam; and,
3. certification that the Guam appellate court is operational.

Transition Period

The Commonwealth act propose no transition period for the appellate process for the Guam Supreme Court. Rather the Commonwealth Act proposes that the Guam Supreme Court would, upon being established, operate as Supreme Courts do in the several States: appeals of local law going directly to the U.S. Supreme Court .

The TF (and the earlier Congressionally enacted statutes providing for the creation of a Supreme Court of Guam) provide for a period of appellate transition whereby the Ninth Circuit Court of appeals would review the decisions of the Guam Supreme Court.

In the April 1991 qualified agreement, the Tf agreed that the years of operation of the Guam Supreme Court prior to the establish of the Guam's Courts under the Constitution of Guam, would be credited toward the years of the transition. With this "credit" in mind, the CSD considered, and offered to the TF a five-year transition period provided appeals went to the 9th Circuit on writs of certiorari and not automatic appeal. The Task Force response to the CSD proposal (in meetings with Counsel) was that if the CSD insisted on certiorari, then the Task Force would insist on of a 15 year transition period; on the other hand if the CSD accepted automatic appeal, the TF would support a 7 year transition period.

Into this discussion emerged an August 16, 1991 draft report of the 9th Circuit Court on the Commonwealth act provisions¹. The report establishes that the 9th Circuit Court has no active interest in a transition period but rather that any transition period is a "political" decision.

The TF position, spearheaded by the Department of Justice is indeed political and smacks of colonialism. Their proposal for an

¹ The report is attached to this brief.

extended transition period together with an instance on automatic appeal rather than certiorari would serve to undercut the creditability of the Guam Supreme Court and allow a lower federal court to establish cases of first impression in Commonwealth Law.

Given the position of the TF, and that of the 9th Circuit Court, the CSD might do better by sticking with no transition period and resolving the issue in Congress.

Special Jurisdiction for the District Court

The Task Force has proposed that the Congress retain the power to give the District Court of Guam special jurisdiction. At best this proposal is paternalistic, and its potential for intrusion into Guam's internal affairs is almost boundless.

Guam only seeks for its Court system to be treated equally with that of the several States. The CSD has adopted the position that unless the Congress grants to all U.S. District Courts the same powers, then no special jurisdiction should be extended to the District Court of Guam.

Certification of the Operation of the Guam Supreme Court

The CSD and TF signed off on a December 1991 agreement which provided for the Governor of Guam and the Chief Judge of the Federal Circuit to establish that the appellate division of Guam's court system was operational. However, the recent report of the 9th Circuit recommends that no federal court be involved in this process. The 9th Circuit recommends that the Guam Judicial Council establish the operation of the Guam Supreme Court.

The 9th Circuit recommendation, however, fails to envisage the possibility that the Guam Judicial Council may not be operational, nor may it have the same function under Commonwealth as it now has. In many respects the present Guam Judicial Council oversees functions that might not otherwise be required if there were an operation Guam Supreme Court.

If the CSD considers revisiting the December 1991 agreement, it might place the Governor of Guam as the sole individual to establish that the Guam Supreme Court is operational.

ARTICLE 4

Courts

I am afraid that we are at an impasse on the term of the Ninth Circuit's review and on the brackets in §402. I have already explained the reason we cannot reach agreement on the term of years. Justice is willing to shorten the term if the CSD agrees to Ninth Circuit review by appeal rather than certiorari. The Judge and others disagree for sound reasons. I have attached the two bracketed alternative proposals. I suggest the Governor sign them and agree to disagree.

I thought we had agreement on §402 but Justice has dug its heels in here as well. The bracketed section deals with the possibility that Congress could give the District Court special jurisdiction and thereby limit self-government. The CSD's position has been that any provision which applies to Guam should apply equally to all other federal courts. Justice proposed removing all the brackets but would not agree to interpreting the section as meaning that the Guam district court could not be singled out for special jurisdiction. In my opinion, agreeing that Congress can single Guam's district court out for special treatment is very dangerous.

LEGAL COUNSEL MEMO
JANUARY 31, 1991

REPORT OF THE COMMITTEE ON THE PACIFIC ISLANDS**SUMMARY****Page**

The Committee has considered the implications of S. 692, the Guam Commonwealth Act, for the efficient and effective operation of the federal judiciary. A summary of the Committee's recommendations follows:

1. **Section 401 - The Committee has no recommendation on two controversial political questions:**
 - a. Whether a period for transition to an independent island supreme court system is appropriate.
 - b. Whether Ninth Circuit review of Guam Supreme Court decisions on federal questions be by certiorari or by direct appeal.
2. **Section 401 - If Congress provides for a transition period, the Committee urges it to consider several technical matters:**
 - a. The conditions terminating the transition period after 15 years should be explicit.
 - b. The Guam Judicial Council should report on the readiness of the Commonwealth's Supreme Court to function without review by the Ninth Circuit.
3. **Section 402 - Guam's district court jurisdiction should correspond with the jurisdiction of other federal district courts, including removal jurisdiction. . .**
4. **Section 403 - Certain drafting problems in the Commonwealth Act concerning rules of practice and procedure should be corrected.**
5. **Section 404 - Judges of U.S. district courts, wherever situated, should be Article III judges. Accordingly, the U.S. District Judge of Guam should be an Article III judge.**
6. **Section 1203**
 - a. The Judicial Council of Guam should certify when the Guam Supreme Court is "operating" based on certain objective criteria. Once it is certified to be operating, review of questions of local law would be filed in the Supreme Court.
 - b. The District Court Appellate Division would retain jurisdiction to determine cases in which a Notice of Appeal had been filed prior to the Judicial Council of Guam's certification of the Guam Supreme Court's operation.

UNITED STATES COURTS FOR THE NINTH CIRCUIT**Pacific Islands Committee****R E P O R T****To the Judicial Conference of the United States****August 16, 1991**

Although the propriety of commonwealth status for Guam is a matter for Congress to determine, the Judicial Conference should examine the implications of commonwealth legislation for the national judicial system. Title IV of S. 692, the Guam Commonwealth Act, adjusts the relationship between the federal courts and the local courts of Guam. Title IV modifies Guam's judicial structure as established by the Guam Organic Act in 1984. 48 U.S.C. § 1424 *et seq.*

The Guam Commonwealth Act seeks to preserve effective federal review within a system of federal deference to local courts on questions of local law. The Act would give the courts of Guam some of the characteristics of a state's judiciary, with appeals of decisions involving federal issues going to the U.S. Supreme Court.

The Organic Act Court System

Under the Organic Act, judicial power in Guam is now exercised by the federal district court and by the Superior Court established by the Guam legislature. Guam Civ. Proc. Code § 51 (Supp. 1974). The District Court of Guam has much of the jurisdiction Congress provides to all district courts; it also has appellate jurisdiction in civil and certain criminal cases from the Superior Court. Guam Civ. Proc. Code § 62 (Supp. 1974). The Organic Act also provides the district court with certain exclusive jurisdiction, such as that over territorial income tax prosecutions. 48 U.S.C. § 1421i(h). A judge appointed by the President for a ten-year term presides in the district court. 48 U.S.C. § 1424b(a).

The 1984 Omnibus Territories Act dealt with jurisdictional difficulties arising from

an earlier attempt by the Guam legislature to create a supreme court. The Ninth Circuit and the U.S. Supreme Court held that under the Organic Act the local legislature could not transfer the appellate function performed by the federal district court to a newly-created Guam court. See Guam v. Olsen, 431 U.S. 195, 198-202 (1978). The Omnibus Act provided a mechanism for the legislature to establish a territorial supreme court which would assume a relation to the federal courts similar to that which a state's supreme court has to the U.S. Supreme Court. The Act provided a transition period for the development of Guam's Supreme Court. 48 U.S.C. §§ 1424-1 & 1424-2. However, difficulties achieving consensus on a Guam Constitution have delayed any transition.

A substantial obstacle to the Constitution was the fear that review by the U.S. Supreme Court of Guam Supreme Court decisions would not suffice to provide effective federal court review. This concern led the local bar to oppose the second Guam Constitution. See Leibowitz, Defining Status: A Comprehensive Analysis of U.S. Territorial Relations 337 (1989).

The Guam Commonwealth Act attempts to remove this obstacle. It provides for a transitional period during which federal questions decided by the Guam Supreme Court will be subject to review by the Court of Appeals for the Ninth Circuit. The Guam Supreme Court will remain the final authority regarding questions of local law with no further review.

The Committee's analysis of the Act follows:

Section 401

A. Judicial Relationship of Guam to the United States

Unlike the Organic Act (48 U.S.C. § 1424), Section 401 of S. 692 provides for no federal review of questions of local law. In general, decisions of the Guam Supreme Court would be reviewed by certiorari to the Supreme Court of the United States, just as decisions of state supreme courts are. For a transitional period of fifteen years, however, review of federal questions would be by certiorari to the Ninth Circuit rather than to the U.S. Supreme Court. Every five years during this period, the Judicial Council of the Ninth Circuit would report to Congress on whether the Guam Supreme Court had "developed sufficient institutional traditions to justify direct review by the Supreme Court of the United

States" rather than by the Ninth Circuit.

This 15-year transition device is also found in the Guam Organic Act, and in similar legislation dealing with the Northern Mariana Islands, 48 U.S.C. § 1694c(a). The transition period provided by the Guam Organic Act was never activated because no Guam Supreme Court was established.

In the Committee's view, whether or not to have a transitional period of review in the Ninth Circuit is a political question. The Committee accordingly declines to make a recommendation on that issue. However, should Congress determine that a transition period is not necessary, the Appendix to this report provides legislative language to accomplish this goal. See Appendix A, Option 1.

B. Technical Recommendations If Transition Period Is Provided

If Congress does decide to provide a transition period, however, the Committee urges Congress to consider certain technical matters concerning the implementation of that transition. Section 401 now provides that the Judicial Council of the Ninth Circuit should report to Congress on the establishment of "traditions" by the Guam Supreme Court, but does not make clear what effect the presence or absence of those traditions will have on the termination of the transition period. As Section 401 is now written, the transition period appears to last for 15 years and then terminate, unless Congress passes additional legislation terminating the period earlier or extending the period. If that is Congress's intent, the Committee urges that it be specified in Section 401. See Appendix A, Option 2. If Congress chooses by legislation to extend the transition period, it might lack the power to do so, because Sections 103 and 202 will limit Congress's modifications of the Act to changes to which the Government of Guam consents.

Section 401 contains no definition of "sufficient institutional traditions." In a previous report by the former Committee on the Pacific Territories (March 16-17, 1983), the Committee suggested that the availability of detached and independent review by the supreme court of Guam be the standard for terminating the transition period. The availability of such detached and independent review could be demonstrated by such factors as: whether the Guam Supreme Court is operating under established Rules of Procedure; whether the judges of that court sit in review of their own decisions or decisions of courts

to which they were assigned; and whether the court demonstrates an ability fully and fairly to apply the laws of the United States in its proceedings.

Finally, the Committee recommends that the reports to Congress on the development of traditions be made by the Judicial Council of Guam, rather than by the Judicial Council of the Ninth Circuit. The Guam Judicial Council is the policy making body of the Guam Superior Court. It promulgates rules and procedures. Its membership consists of the Presiding Judge of the Superior Court, the Attorney General, the President of the Guam Bar Association, and the Chair of the Legislature's Committee on Justice. This body has the requisite expertise and experience, and the broad representation, to advise when the Guam Supreme Court has developed "sufficient institutional traditions." It could report, if Congress so desired, through the Judicial Conference of the United States.

Options 2 and 3 in Appendix A to this report provide suggested statutory language which would establish either an unconditional 15-year transition period (Option 2) or a conditional transition period without a time limitation (Option 3).

C. Nature of Federal Review

Section 401 provides that review by the Ninth Circuit during the transition period is to be by writ of certiorari. Experience of the Committee indicates that local lawyers might well favor review by direct appeal. The Committee believes, however, that this question, too, is a political one. It therefore makes no recommendation on this point.

The Committee notes, however, that it makes very little difference to the Ninth Circuit, or, indeed, to litigants whether appeal is by right or review is by certiorari. Section 401 provides for review only of federal questions, by analogy to the U.S. Supreme Court's review of state court decisions under 28 U.S.C. § 1257. Even if appeals were by right, the Ninth Circuit would have to conduct an initial review to determine whether a substantial federal question was presented, and would dismiss the appeal if not. That process is sufficiently close to the operation of discretionary review by certiorari so that the two processes are not likely to differ greatly.

D. Implementation of Any Transition Period Provided

Section 401 provides that the transitional period begins to run after the Guam supreme court "has become operational." If Congress provides a transition period which is

time-bound, it should consider when time begins to run on the transition. That date is presumably to be ascertained by the certification procedure set forth in Section 1203(f). It might be wise to cross-reference the certification of Section 1203(f) in Section 401. The Committee's comments on the certification procedure, and on the provisions regarding appeals pending at the commencement of the transition, are set forth below in connection with Section 1203(f).

Section 402

Jurisdiction of District Court

The Committee recommends that Section 402 should provide for the exercise of removal jurisdiction by the district court. Section 402 and its predecessor, 48 U.S.C. § 1424(b), provide that the Guam district court have the "jurisdiction of a district court of the United States," specifying diversity and bankruptcy jurisdiction. Some suggest that this grant is broad enough to encompass removal jurisdiction. But others suggest that Section 402 should include a precise reference to removal jurisdiction. This is an appropriate way to deal with the possibility of "home-towning" by the Guam courts.

The Ninth Circuit has noted that when Congress has intended to allow removal from courts other than state courts, it has expressly said so. Guam v. Landgraf, 594 F.2d 201, 205 (1979). For example, 18 U.S.C. § 864 permits removal of cases from Puerto Rico courts to the U.S. District Court for Puerto Rico. The Committee proposes that the statute providing removal jurisdiction to the Commonwealth of Puerto Rico's federal District Court be replicated in Section 402.

Section 403

Applicable District Court Rules

Section 403 replicates the current 48 U.S.C. § 1424-4. However, some drafting defects should be corrected. For instance, Section 403 refers to "provisions of part II of Title 18 and of Title 28" of the U.S. Code. But this reference to Part II of Title 28 may be a typographical error. Part II of Title 18 encompasses 18 U.S.C. §§ 3001 to 3740 dealing with criminal procedure; Part II of Title 28 encompasses 28 U.S.C. §§ 501 to 599, concerning the U.S. Department of Justice. What was probably meant by the drafters of 28 U.S.C. § 1424-4 was Part V of title 28 (28 U.S.C. §§ 1651 to 2201) involving civil procedure.

Another revision to Section 403 would state that rules which are effective under the Rules Enabling Act (28 U.S.C. §§ 2072(a) and 2075(a)) would apply to the District Court of Guam. This is a more direct reference to the applicable Rules of Practice and Procedure than the draft proposal provides.

Section 404

District Court Judge

The Committee recommends that the current version of section 404 not be adopted because an important principle is at stake. The Committee strongly believes that all federal judges in courts holding the jurisdiction of a United States district court, wherever located, should be Article III judges. The present status of the U.S. district court judges on Guam and the Northern Mariana Islands is inconsistent with this principle. Therefore, the federal judge of the U.S. District Court on the Commonwealth of Guam should be an Article III judge, as are the district judges in the Commonwealth of Puerto Rico.

Such a measure would achieve the purposes Congress advanced in granting Article III status to federal judges in Puerto Rico: to achieve the "full integration of the district court in Puerto Rico into the Federal Constitutional judicial system." H. Rept. No. 91-887. It would gratify the wishes of the Guam bench and bar for equal consideration in the federal system. It would enable the Chief Judge of the circuit to utilize the judges where needed on general assignment. Finally, it would facilitate independent federal adjudication, free from the pull of local politics and at little cost in "proliferation" of additional Article III judgeships.

The Committee suggests legislative language to accomplish this result. Such a grant should be clear, to avoid litigation of the sort which arose concerning the status of the district judge of Puerto Rico. See United States v. Montanez, 371 F.2d 79 (2nd Cir. 1967). With an Article III judge sitting as the district judge in Guam, the Commonwealth Act's provisions concerning the assignment of judges to the District Court will also have to be changed.

Section 1203(f)

A. Implementation of Transition

Section 1203(f), concerning the judicial transition, was added after the Act's May 1991 introduction. The Committee notes that with Section 1203(f), the Commonwealth Act now has two sections repealing the Organic Act's provisions on the judiciary. Section 1203(f) of the Commonwealth Act provides that repeal will occur on a date after the constitution has been adopted and after a Guam supreme court begins to operate. Yet, Section 1203(c) states that the judiciary sections of the Organic Act are repealed on the effective day of the Guam Constitution. These provisions appear to be in conflict.

Section 1203(f) provides a method for determining when the supreme court of Guam is "operating." The method includes a certification by the Chief Judge of the Ninth Circuit. The Committee believes that it is inappropriate for the Chief Judge of the court that will thereby obtain the power of review to make this certification. Instead, the Committee recommends that the Judicial Council of Guam, described above in connection with Section 401, be the body to certify that the Guam Supreme Court is operating. The Committee also recommends that Section 1203(f) provide standards for that certification. The Guam Supreme Court should be deemed to be operating when (1) all authorized judges have been appointed and have assumed office on that court, and (2) the court has appointed a clerk who is on duty and ready to receive papers for filing and to process appeals pursuant to the Court's established procedures of appellate review.

B. Jurisdiction of Courts During Transition

Section 1203(f) also makes provision for appeals pending at the inception of the transition period. The Committee believes that those provisions can be made clearer. The determinative date is the date when the Guam Judicial Council certifies that the Guam Supreme Court is "operating." Appeals from the Superior Court in which notices of appeal are filed before the date of certification are deemed pending in the Appellate Division, and will continue within the jurisdiction of the Appellate Division until final disposition, including any proceedings after further appellate review. Appeals from the Superior Court in which a notice of appeal was filed on or after the date of certification will be within the jurisdiction of the Guam Supreme Court.

APPENDIX A

Alternate Language for Guam Commonwealth Act

Note to Section 401 - Alternative Versions:

- *Option 1: Section a only
(provides no transition period)*
- *Option 2: Sections a+b(alternative 1)+c
(provides non-conditional 15 year transition period)*
- *Option 3: Sections a+b(alternative 2)+c
(provides conditional transition period)*
- *[Bracketed] text indicates alternate language, depending
on whether appeal as of right or by writ of certiorari
is to be provided.*

TITLE IV - COURTS

Section 401. Judicial Relationship of Guam to the United States

(a) With respect to appeals, certiorari, removal of causes, the issuance of writs of habeas corpus, and other judicial proceedings, the relations between courts established by the Constitution or laws of the United States and courts established by the Constitution or laws of the Commonwealth of Guam shall be governed by the laws of the United States pertaining to the relations between the courts of the United States, including the Supreme Court of the United States, and the courts of the several States in such matters and proceedings.

Alternative 1 attaches unconditional transition period of 15 years to Section (a).

(b) Notwithstanding section 401(a) of this Act, review of cases involving questions of federal law pursuant to section 1257 of title 28 shall be exercised by the United States Court of Appeals for the Ninth Circuit [by writ of certiorari] for a period of fifteen years. Such period shall commence on the date of repeal of Sections 22 through 22D of the Organic Act of Guam. The United States Court of Appeals for the Ninth Circuit shall retain jurisdiction to consider [appeals/applications for writ of certiorari] which have been properly filed during this period.

1 *Alternative 2 attaches a conditional transition period to Section (a).*

2 (b) *Notwithstanding section 401(a) of this Act, review of cases involving questions of*
3 *federal law pursuant to section 1257 of title 28 shall be exercised by the United States Court of*
4 *Appeals for the Ninth Circuit [by writ of certiorari]. The Court of Appeal's jurisdiction under*
5 *this Section shall commence on the date of repeal of Sections 22 through 22D of the Organic*
6 *Act of Guam. The Court of Appeal's jurisdiction to [consider such appeals/issue such writs]*
7 *shall terminate upon the certification to Congress by the Judicial Council of Guam that*
8 *detached and independent review is available in the supreme court operating under established*
9 *Rules of Procedure in the commonwealth of Guam. Such certification will be based upon the*
10 *development of the supreme court's efficiency and integrity, as demonstrated by such factors as:*

- 11 (1) *the frequency with which judges of that court sit in review of their own decisions*
12 *or in review of decisions of courts to which they have been designated or assigned, and*
13 (2) *the supreme court's demonstrated ability fully and fairly to apply the laws of the*
14 *United States in appeals and other proceedings, as demonstrated by the record of*
15 *affirmances or reversals by the Court of Appeals.*

16 (c) *Actions of the United States Court of Appeals for the Ninth Circuit pursuant to*
17 *section 401(b) of this Act, [including the denial of a petition for a writ of certiorari,] shall be*
18 *reviewable in the Supreme Court of the United States pursuant to section 1254 of title 28.*

19

20 ***Section 402. Jurisdiction of District Court***

21 (a) *The judicial authority of the United States shall be exercised on Guam through*
22 *a court of record known as the "District Court of Guam."*

23 (b) *The District Court of Guam shall have the jurisdiction of a district court of the*
24 *United States, including the diversity provided for in section 1332 of title 28, and of a bankruptcy*
25 *court of the United States and shall have such other jurisdiction as may be expressly provided*
26 *by this Act.*

7 (c) *Pursuant to section 202 of this Act, Congress may provide the District Court of*
28

1 *Guam special exclusive jurisdiction that does not apply to other District Courts of the United*
2 *States.*

3 (d) *The laws of the United States relating to removal of causes as between the courts*
4 *of the several states shall govern in such matters and proceedings as between the U.S. District*
5 *Court for Guam and the courts of Guam.*

6

7 *Section 403. Applicable District Court Rules*

8 (a) *Where appropriate, the provisions of part II of title 18 and of part V of title 28,*
9 *United States Code, and the rules of practice and procedure effective in the District Courts of*
10 *the United States pursuant to sections 2072(a) and 2075(a) of title 28, United States Code shall*
11 *apply to the District Court of Guam and to appeals therefrom.*

12 (b) *When applicable to cases arising under the laws of Guam, including the Guam*
13 *Commonwealth income tax, the terms, "Attorney for the government" and "United States*
14 *Attorney", as used in the Federal Rules of Criminal Procedure, Federal Rules of Civil Procedure*
15 *and Federal Rules of Appellate Procedure shall mean the Attorney General of Guam or such*
16 *other person or persons as may be authorized by the laws of Guam to act therein.*

17 (c) *All offenses prosecuted in the District Court of Guam shall continue to be*
18 *prosecuted by information except as may be required by local law to be prosecuted by indictment*
19 *by grand jury.*

20

21 *Section 404*

22 *District Court Judge*

23 (a) *The President shall appoint, by and with the advice of the senate, a judge for the*
24 *District of Guam, who shall hold office during good behavior and shall reside in the district of*
25 *Guam. The district judge of Guam shall receive a salary at an annual rate determined under*
26 *section 225 of the Federal Salary Act of 1967, as adjusted by section 461 of Title 28, United*
7 *States Code.*
8

1 (b) The Chief Judge of the Ninth Judicial Circuit of the United States may assign a
2 circuit or district judge of the ninth circuit, or the Chief Justice of the United States may assign
3 any other United States circuit or district judge, to serve temporarily as a judge in the District
4 Court of Guam whenever such assignment is necessary for the proper dispatch of the business
5 of the court. Such assignments will be effective upon the consent of the judge so assigned and
6 the consent of the chief judge of his or her circuit.

7
8 **Section 1203(f).**

9 **Effective Date of Guam Commonwealth Act**

10 (a) Sections 22 through 22D of the Organic Act of Guam (49 U.S.C., sections 1424
11 through 1424-4) shall be repealed on the day the Judicial Council of Guam certifies to the
12 Judicial Conference of the United States that a supreme court established pursuant to the
13 Constitution and laws of Guam is operating.

14 (b) For purposes of this Act, the Guam supreme court shall be deemed operating
15 when:

16 (1) all authorized judges of the supreme court have been appointed and
17 assumed office, and

18 (2) the supreme court has appointed a clerk who is on duty and ready to receive
19 papers for filing and to process appeals according to that Court's established rules
20 of appellate procedure.

21 (c) Any appeal properly filed in the Appellate Division of the District Court of Guam
22 prior to the day the Judicial Council certifies the operation of the Guam supreme court pursuant
23 to Section 404(a) of this Act, shall continue to final judgment in the Appellate Division, as if
24 there had been no change in the law.

25 (d) On or after the date of Judicial Council certification to the Judicial Conference
26 of the United States pursuant to Section 404(a) of this Act, all appeals from the Guam Superior
7 Court shall be filed in the supreme court established by the Constitution and laws of the
8

ARTICLE 4

QUALIFIED AGREEMENT

TITLE IV, Section 401 (b) - RULES OF DECISION ACT

(b) THE RULES OF DECISION ACT, 28 U.S.C. SECTION 1652,
[AS IT HAS BEEN INTERPRETED THROUGH THE DAY PRIOR
TO THE EFFECTIVE DATE OF THIS ACT,] SHALL APPLY TO
THE COMMONWEALTH OF GUAM SO THAT ITS LAWS,
INCLUDING THE DECISIONS OF ITS COURTS, ARE GIVEN
THE SAME DEFERENCE ACCORDED TO THE LAWS OF THE
SEVERAL STATES IN COURTS OF THE UNITED STATES.

Edith Auer
2nd Oct., 1991

Joseph F. Qda
Oct-2, 1991

ARTICLE 5

T R A D E

ARTICLE 5

CSD BRIEF

BRIEFING

Subject: Trade (Article 5)

Prepared by: Joseph Bradley, Commission Ad Hoc Staff

Date: January 24, 1992

Substantial progress on the provisions of Article 5 of the Act has been made by the Commission's special legal counsel on trade matters. Working directly with the U.S. Trade Representative's office, an agreement is very nearly completed that would stabilize Guam's trade preference with the United States.

The agreement will base the "Country of Origin" of Guam's products on a substantial transformation requirement alone, doing away with the present second criterion of "value added." Substantial transformation would be defined by reference to changes in a product's classification under an internationally-standardized commodity nomenclature which the U.S. cannot unilaterally change, and the products of Guam's existing exporting manufacturers would not be affected by the change in Guam's trade preference (they would be "grandfathered" in).

Some technical details remain to be resolved in discussions on trade, but it may be possible to devise language that will allow for an agreement on Article 5 in this round of meetings with the Task Force.

ARTICLE 5
CSD PROPOSAL

ARTICLE 6
TAXATION

ARTICLE 6

B R I E F

CSD BRIEF

Article 6 Taxation

Taxation issues are currently being addressed by the Guam Commission on Self-Determination and the Guam Tax Code Commission. Both Commission appear to be in pursuit of the same objectives.

The Guam Tax Code Commission is tasked with implementing the 1986 Tax Reform Act. The Guam Commonwealth Act used the 1986 Tax Reform Act (TRA) as its starting point and sought additional powers (e.g. bonding authority). Since the passage of the GCA, the Commission has seen the need to include other tax related issues such as estate taxes, a single filing provision, and tax treaty arrangements.

The Tax Code Commission, although initially tasked with only implementing the 1986 TRA has seen the need to seek additional modifications to the law and these modifications are almost identical to those sought by the GCA and the subsequent CSD position. The federal government, however, has apparently become confused by dealing with the two groups and it is now necessary to present a joint statement to the various federal entities dealing with the taxation issue to assure them that the CSD and Tax Code Commission are working along the same lines. A Guam strategy which preempts any possibility of the federal government playing two Guam groups off against each other is desirable.

A proposed strategy is to agree to the Tax Code Commission pursuing changes to the existing tax law. Should the Tax Code Commission be successful, then these changes would be marked-up in the Commonwealth Act. Those areas which the Tax Code Commission is not successful in changing, the CSD will follow-up on within the framework of a new Federal-Guam relationship.

It is possible that some parties may view this as a piecemeal approach. However, this is not the case, since the GCA provision itself is by and large already federal law -- a federal law that only requires being locked in by mutual consent. It does not seem particularly important whether additional amendments to the existing federal law are accomplished before Commonwealth or through the Guam Commonwealth Act -- so long as the Commonwealth Act locks whatever new provisions exist into a mutual consent provision.

Leland Bettis
January 1992

ARTICLE 6
CSD PROPOSAL

ARTICLE 7

I M M I G R A T I O N

SECTION 701

GUAM IMMIGRATION AUTHORITY

SECTION 701

B R I E F

BRIEFING

Subject: Immigration Authority (§701) and Investor Visas
(§70_)

Prepared by: Joseph Bradley, Commission Ad Hoc Staff

Date: January 30, 1992

In the qualified agreement signed on February 11th, 1991, a portion of the language that is bracketed relates to Guam's guarantee of retaining the immigration provisions it gains under the Commonwealth Act. In the Commission's preferred language, if federal immigration law is repealed or modified, Guam would have the authority to adopt legislation that provides for equivalent rights no longer available under federal law. The Commission may agree to continue to disagree on this language if the Task Force does not alter its position, but may also wish to consider any alternative language that the Task Force might offer.

In draft language approved by the Commission, legal counsel has worked out language for §701 which he believes the Task Force will be willing to accept. One gain made in this language is the adoption of the limited two-year window allowed for present permanent residents to bring in relatives. There has still been no resolution as to who (the Governor or the U.S. Attorney General) will be allowed to certify the need for additional immigrants within occupational categories in short supply in Guam.

There appears to be a good prospect for agreement on making entrants under the exclusions (military spouses and children, spouses and children of U.S. citizens, and spouses and unmarried children of permanent residents) excludable if they would no longer qualify for entrance under the exclusions. For instance, if a military spouse divorces or does not follow the military personnel upon departure from Guam, that spouse could be removed from Guam.

With regard to investor visas (under an as yet un-numbered Section of Article 7), it may be in Guam's best interests to agree to allow entrants under this status to change to permanent-resident status after a period of two years. It should be understood, though, that time spent in Guam will not count toward citizenship for the investor. The resulting investor visa arrangement would be more of an economic development and diversification provision than an immigration provision. If the Task Force is willing to offer the appropriate language, this could be an area of agreement.

Immigration

I met with Mike Miller from INS. As we expected, Justice has abandoned its constitutional objections to the Governor's making the labor certification on H(ii)(c) workers. Several months ago, we had given them our own constitutional analysis and they now have agreed with our position. I am attaching a revised immigration section with the necessary changes. These are:

1. Remove the brackets in the paragraph amending §101(a)(15)(H) and changes the language in the quotation marks to read as follows: "who is coming temporarily to Guam to perform labor or services if unemployed persons capable of performing such services or labor cannot be found in Guam..." This new sentence removes the direct reference to the person certifying and is designed to track existing law.
2. Because the reference to the person certifying is removed and because the TF wants to track existing law and new amendment to the Immigration and Naturalization Act is necessary. That amendment is shown in bold at the bottom of the first page and carries over to the second page. Under current law, the Attorney General is directed to consult with the appropriate agency and the Secretary of Labor is named as the appropriate agency for (H)(ii) workers. I have also attached a copy of the current law. Under the revised Immigration provision, the Governor would be designated.

We are now in a position to sign off on this provision.

The investor visa provision needs further discussion with the

CSD. As I pointed out in an earlier memorandum, as now drafted, the investors will be eligible for permanent residency and citizenship. The U.S. investor visa program is not a treaty trader program where investors can come to the U.S. for a limited period to establish there businesses. It is an independent program offering the right to citizenship if the statutory requirements are met.

If the CSD does not wish to permit permanent residency, we could explore with INS a provision which permits them to establish the same habitual residency enjoyed by the residents of the freely associated states. I sense that Nancy Boone is resisting the investor visa idea and our changing U.S. law so drastically will add to her arguments that this is a new issue and ought not to be incorporated into our discussions.

Mike Miller on the other hand is prepared to work with us, although he honestly does not know what the policy reaction will be within his own agency.

I do not think it will make sense to attempt to impose our proposal on the treaty trader concept. Treaty trader status depends on treaties between the U.S. and a particular country. Current treaties are listed at 8 USC §101 (at p. 29 of the supplement). They cover most areas of interest but Hong Kong is a notable exception. In any event, Guam is already an eligible location under them and there is virtually no chance that the U.S. will renegotiate these treaties to provide a special program for Guam.

SECTION 701

QUALIFIED AGREEMENT

(Brackets indicate areas of disagreement.)

TITLE VII - IMMIGRATION

SEC. 701. GUAM IMMIGRATION AUTHORITY

(a) The Congress recognizes that Guam is a small and densely populated insular commonwealth with limited infrastructure and resources, that it is that part of the United States in closest proximity to the nations of Asia and the Pacific which contribute a substantial proportion of the immigrants coming to the United States, that significant numbers of such immigrants have in recent years chosen to make Guam their home, and that the admission of substantial additional numbers of immigrants to Guam threatens the limited infrastructure, health, education, housing and other services available to Guam.

(b) Congress further recognizes that there is a necessary and compelling need henceforth to limit the number of persons permitted to immigrate to Guam and, therefore, the Immigration and Nationality Act is hereby amended as follows:

Add section 212(A) -

212A Aliens Seeking to Enter Guam. -- Notwithstanding any other provision of law, an alien seeking to enter Guam for initial admission as an immigrant, or for adjustment of status to lawful permanent resident of the United States, shall be ineligible to receive a visa and shall be excluded from admission into the United States, unless:

a) the alien is the immigrant alien spouse, child or other dependent relative of a member of the United States armed forces serving on active duty in Guam, which armed forces member is a United States citizen or lawful permanent resident alien, if accompanying or following to join such citizen or such alien armed forces member; or

b) the alien is the spouse, parent, child, or son or daughter of a United States citizen permanently residing in Guam [on the effective date of this Act, or who establishes residence in Guam within two years after the effective date of this Act]: Provided, That in the case of parents, such citizen resident must be at least twenty-one years of age; or

c) the alien is the spouse or unmarried son or

Stella L. Guerrero
11th Feb. 1991

Joseph G. Ada

daughter of a lawful permanent resident alien permanently residing in Guam [on the effective date of this Act or who establishes lawful permanent residence within two years after the effective date of this Act], if such lawful permanent resident alien was admitted or is eligible for initial admission to Guam under this paragraph; or

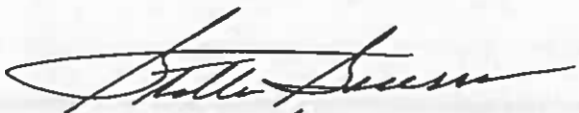
d) the alien establishes by a certificate issued by the [Governor of Guam] [Attorney General after consultation with the Governor of Guam] that such alien is coming to Guam to engage in an occupation or profession in short supply in Guam.

[Amend Section 241 (a)(1) to add paragraph (Classes of Deportable Aliens. -- Any alien in the United States shall, upon the order of the Attorney General, be deported if the alien is deportable as being within one or more of the following classes of aliens:) (H) an alien who continues to reside in Guam who gained the status of an alien lawfully admitted for permanent residence under section 212A who, if not naturalized as a United States citizen, fails to remain married to the sponsoring armed forces member he or she came to join, during the tour of duty of such sponsoring member, or who fails to depart Guam when the sponsoring member departs Guam.]

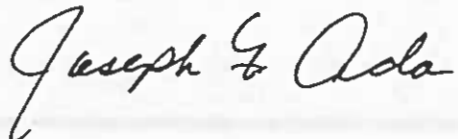
Further amend Section 241 of the INA Act to redesignate former paragraph (H) as paragraph (I).

Amend Section 101(a)(15)(H) of the I&N Act to add a subsection (ii)(c) as follows: "who is coming temporarily to Guam to perform labor or services if the [Governor of Guam] [Secretary of Labor, after consultation with the Governor of Guam,] certifies to the Attorney General that unemployed persons capable of performing such labor or services cannot be found in Guam: Provided, That any alien admitted to Guam under this subsection who has been continuously physically present, except for brief, casual, and innocent departures which do not meaningfully interrupt the continuous physical presence in Guam, for a period of six years, shall not be eligible for readmission or further stay in Guam unless such alien has been outside Guam or any of the several States for a continuous period of at least six months."

Amend Section 310 of the I&N Act by adding as paragraph


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(e), "Notwithstanding any other provision of law, residence in Guam shall not qualify a person for naturalization unless such person was admitted, or is eligible for initial admission to Guam under the exceptions to subsection 212A of this Act."

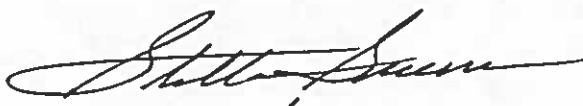
Amend Section 316 of the I&N Act to replace current subsection (f) with: "Notwithstanding subsection (a) of this section or any other provision of law, no person who is a resident of Guam shall be eligible for the application of subsections (a),(b),(c),(d) and (e) of this section unless admitted, or eligible for initial admission to Guam under the exceptions to section 212A of this Act."

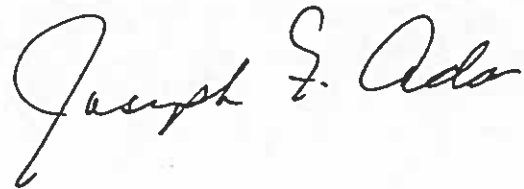
Further amend Section 316 of the I&N Act to redesignate former paragraph (f) as paragraph (g).

Amend Section 319 of the I&N Act by adding paragraph (e) as follows: "Notwithstanding any other provision of law, no person who is a resident of Guam shall be eligible for the application of subsections (a),(b) and (c) of this section unless admitted, or eligible for initial admission to Guam under the exceptions to section 212A of this Act."

SEC. 702. PRESERVATION OF AUTHORITY

[If any section or subsection of the Immigration and Nationality Act referred to in section 701 is repealed or modified, and not replaced with equivalent provisions of law, so as to repeal or reduce any of the powers of the Commonwealth of Guam or the limitations contained in the provisions of section 701, the Commonwealth of Guam shall be entitled to adopt legislation, including its own immigration laws, which provides for the equivalent rights no longer available to the Commonwealth of Guam under the laws of the United States.]


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SECTION 702
GUAM-ONLY VISA

SECTION 702

B R I E F

SECTION 702
CSD PROPOSAL

ARTICLE 9

TRANSPORTATION

AND

TELECOMMUNICATIONS

SECTION 901

MARITIME SHIPPING

SECTION 901

B R I E F

BRIEFING

Subject: Maritime Transportation (§901)
Prepared by: Joseph Bradley, Commission Ad Hoc Staff
Date: January 24, 1992

In the time since the Commonwealth Act was accepted by Guam's voters in 1987, conflicts have arisen between Guam and the U.S. shipping lines serving the island. Because of this, the application of the Jones Act to the Guam trade has come under increasing scrutiny, and the position taken by Guam just a few years ago may no longer be in the best interests of the community.

There is a case before the Federal Maritime Commission, currently being adjudicated, between the government of Guam and a few local importers as plaintiffs and SeaLand and American President Lines as respondents. It is likely that this case will ultimately reach the U.S. Supreme Court, and its resolution may have significant consequences for maritime transportation between the U.S. and Guam. Because of this, neither the Commission nor the Task Force can proceed with any confidence in discussions on this Section.

There is a tacit agreement between legal counsel and the Task Force to await the outcome of the pending rate case before attempting to formulate final language governing maritime transportation. It is possible that this agreement could be made more firm, with a formal agreement reached to forego action on Section 901 until such time as the rate case is resolved. This is recommended.

SECTION 902

A I R L I N E S

SECTION 902

B R I E F

BRIEFING

Subject: Airlines (§902)

Prepared by: Joseph Bradley, Commission Ad Hoc Staff

Date: January 24, 1992

Legal counsel has submitted draft language intended to replace the original language of §902. The proposed language is carefully justified, and in most areas has existing precedents in federal law and/or regulations.

Counsel's proposal would allow the Governor to sponsor foreign air carriers into Guam by joining with the carriers in their applications submitted to the Department of Transportation. Such applications, if joined by the Governor, would be subject to simplified procedural rules, and foreign carrier landing rights in Guam could only be traded off in negotiations against foreign landing rights of U.S. carriers serving the same route.

The proposed language would require the submission of every foreign application to serve Guam simultaneously to the Department of Transportation and the Governor (in those cases where the Governor does not join in the application). It would also make Guam a party in every proceeding directly affecting air transportation into Guam. The Secretaries of Transportation and State would be required to consult with the Governor in negotiating policies affecting Guam, to the maximum extent practicable. Upon prior request, the Governor or his designee would be allowed to attend international aviation negotiations affecting Guam, but only as an observer.

Although this substitute language would not allow the Governor to directly sponsor foreign carriers into Guam, it ensures Guam's participation in the process and streamlines the procedures. No mention is made in this substitute language regarding so-called Essential Air Service, but this is probably unnecessary in any case, since Guam receives a far greater level of air service than would be accorded under the provisions of EAS laws and regulations.

If the Task Force is willing to accept the language worked out by legal counsel, this may be an area of agreement that can be reached.

INTERNATIONAL AVIATION SECTION 902 - AIRLINES

Section 902. Airlines

(a) The Governor of Guam may sponsor qualified foreign air carriers to serve Guam by joining in an application submitted to the Department of Transportation by such a foreign air carrier seeking either a foreign air carrier permit or an exemption from the permit requirements. In the case of such a joint application, permit or exemption rights shall be granted only in the name of the foreign air carrier.

This subsection permits Guam to "sponsor" a foreign air carrier by "joining in" an application essentially as an endorser. It makes clear that the permit is to be issued only in the name of the air carrier to deal with the insignificant procedural reality that the award of permits is to operating entities not governments.

Authority for applications is found at 49 U.S.C.A. app. §1372(c). The implementing regulations are found at 49 C.F.R. Part 302. At §302.1703, "[a]ny person" (defined in the Act to include a "body politic" at 49 U.S.C.A. app. §1301) is entitled to file an application described in §302.1701, including foreign air carrier permits. Applications for foreign air carrier permits are dealt with in §211.2 of the regulations which again refer to "[a] person applying for" permits. While GovGuam clearly could not supply much of the information sought under the subsection nor receive a permit, much of the information sought could be supplied by GovGuam or at least supported by it.

I believe such a special procedure will not complicate the process at all but could very well enhance Guam's ability to attract foreign air carriers to the unique and limited Guam market.

(b) The disposition of applications sponsored by the Governor of Guam for a permit to engage in foreign air transportation to Guam by a foreign air carrier shall be subject to simplified procedural rules established by the Department of Transportation. When such applications are reviewed or when United States international air transportation policy is formulated in so far as it affects foreign air transportation to Guam, the Congress intends to open opportunities for carriers of foreign countries to increase their access to Guam if exchanged for benefits of similar magnitude for United States carriers on the same route, in addition to the other statutory requirements and goals set forth in the Federal Aviation Act.

The first sentence directs the Department to establish simplified procedural rules for any application sponsored by GovGuam. The statutory precedent for this is

found at 49 U.S.C.A. app. §1372(h) where Congress has already directed simplified procedures. This provision ensures that such procedures are applicable.

The second sentence states Congress' intention on a standard to be applied to the granting of permits. Its purpose is to adopt by statute what you have described as existing policy toward Guam air service. The standard is that reciprocal rights will be required only between Guam and the originating foreign point. The statutory authority is 49 U.S.C.A. app §1372(b) which authorizes the granting of permits "in the public interest".

This sentence also applies that same standard to the formulation of international aviation policy in so far as it affects Guam. The authority for application of this principle to international transportation policy is found at 49 U.S.C.A. app. §1502(b) in which Congress established 10 goals for international aviation policy.

(c) Whenever an application is filed by a foreign air carrier to serve Guam, the applicant shall simultaneously serve a copy of the application upon the Governor of Guam.

This provision ensures that Guam is automatically notified whenever an application is filed and provided with a copy of the application. At present, it appears that the Guam Airport Authority is only served with a notice that an application has been filed, but the Airport Authority must act affirmatively to obtain details. 49 C.F.R. §302.1705(a). This requirement also implements subparagraph (d) to this section which requires that Guam automatically becomes a party to any proceeding.

(d) In any proceeding directly involving air transportation to Guam, the Government of the Commonwealth of Guam shall be a party.

At present to become a party to a proceeding, GovGuam must file a timely pleading. 49 C.F.R. §302.1709. This could create difficulties given Guam's distance and perhaps a carrier's unfamiliarity with Guam. By imposing the statutory requirement that Guam is initially a party, we solve both these problems.

Precedent exists for this kind of treatment. In implementation of the Compact of Free Association, the United States agreed that both the FSM and RepMar would be parties to any proceeding directly affecting their air transportation rights. See Federal Programs and Services Agreement, Article IX, ¶6. This requirement is now in the hearing regulations at 49 C.F.R. §302.9.

(e) To assist in developing and implementing international aviation negotiating policy in so far as it directly affects foreign air transportation rights to Guam, the Secretaries of State and Transportation shall consult, to the maximum extent practicable, with the Governor of Guam.

At present, the Secretaries of State and Transportation are required to consult with a broad category of groups and agencies. 49 U.S.C.A. app §1502(c). Because air transportation is so essential to Guam's development and survival, a specific direction to consult with Guam when it is directly affected is justifiable.

(f) The Secretary of State shall grant the Governor of Guam or his designee the privilege to attend international aviation negotiations as an observer when those negotiations address foreign carrier access rights to Guam if such privilege is requested in advance in writing.

At 49 U.S.C.A. app §1502(d), the Congress required that each House have the right to send an observer to the negotiations. Congress has this same power under the Territorial Clause to require that Guam be represented. We have limited Guam's attendance as an observer only to those sessions when Guam is on the agenda. Again, because of the special role air transportation plays in Guam, this is an area where the United States ought to support special treatment for Guam.

SECTION 902
CSD PROPOSAL

SECTION 903

TELECOMMUNICATIONS

SECTION 903

B R I E F

TELECOMMUNICATION

Brief for CSD Meeting with TF December 1991

The CSD will present a proposal on telecommunications. The CSD proposal takes into consideration the substantive and substantial impact of U.S. statutes that have changed the U.S. telecommunications system since the Commonwealth Act provisions were drafted.

Section 903 of the GCA calls for Guam to be domestic for the purposes of rate-setting by the Federal Telecommunications Commission (FCC). This language was originally intended to see Guam's long distance telephone users get reduced rates. This intent may have never been accomplished by the language, and given the "break-up" of the U.S. telecommunications system after this language was written, would cause Guam telephone users great mischief.

Guam's present telephone system is subsidized by long-distance carriers (approximately \$25 million per year). This subsidy is utilized to provide continuous upgrades to the GTA system, and keeps telephone use rates to relatively low levels, making it easy for residents to receive phone service. Long-distance service is comparatively high, but cost reductions have recently been evident as a result of technological improvements and increased competition. While long-distance service is only about 10% of Guam's telephone traffic, without the long-distance carriers subsidy, local users would be paying in excess of \$30 per month for telephone use, plus many additional costs, including increased hook-up fees and charges for financing systems upgrades.

The present U.S. system overseen by the FCC is "cost driven" which requires telephone users to pay higher costs for local telephone use than Guam telephone users do. Long-distance carriers charge only the costs of service, and do not subsidize local carriers. Moreover, the new FCC regulations are intricately involved in assuring that customers pay for all kinds of subsidiary charges (additional phones, outlets, per charge fees) that we take for granted.

Guam's situation is clearly different than the U.S.: our residents do not have as high a use of phones as do U.S. residents and long-distance carrier subsidies allow for systems improvements and minimum costs to users; long-distance carriers in the U.S. are abundant, while in Guam they are limited. Guam needs continued long-distance carrier subsidies to keep local rates low and to proceed with systems improvements. Local rate regulation over the long-distance carriers would provide for a reasonable rates (in relation to the subsidies they provide) in the absence of competition.

The CSD proposal, consistent with Guam's "self-government" agenda

in Commonwealth, would allow Guam to control its own telephone system. Moreover, local conditions would be better dealt with under a system of local control, as opposed to regulation by the FCC which is set in relation to different conditions in the mainland.

LRB
12.01.91

SECTION 903

CSD PROPOSAL

ARTICLE 10

Land, Natural Resources and Utilities

SECTION 1001

Authority Over Land and Resources

CSD BRIEF

Section 1001(d), (e) & (f)

Land:

Eminent Domain, Return, Previous Restrictions

The provisions in Section 1001 that require further discussion are:

1. §1001(d) limiting federal powers of eminent domain;
2. §1001(e) on the fee simple restriction free return of federally-held property; and,
3. §1001(f) on the lifting of restrictions previously imposed on federally-held lands transferred to Guam.

Section 1001(d)

Section 1001(d) limits federal land taking through eminent domain to times of declared war. This provision was included in view of the present amount of unused lands held by the federal government and the process of voluntary land acquisition provided for in §1001(c).

The Task Force argues that the right of federal eminent domain follows U.S. sovereignty and that limitations on eminent domain are inconsistent with U.S. sovereignty over the Commonwealth of Guam.

The CSD has maintained that the federal government has not demonstrated the need for eminent domain in Guam in the future, and that except in times of declared war the federal government should only acquire property that it can voluntarily obtain and for which Congressional appropriations are made. The history of the federal government's use of eminent domain in Guam is one of redundant land takings, and of holding property long after an apparent usefulness has passed.

Arguably, eminent domain is something which the federal government will insist on. Alternative language has been proposed which would give those affected by eminent domain a due process judicial recourse. However, since eminent domain is an area which may be considered by DoD to be central to their interests, the acceptance of alternative language until (such time as Guam's interests are recognized) may be premature.

Section 1001(e)

Section 1001(e) calls for the return of all excess properties to Guam fee simple and without restrictions, conditions or reversion clauses. Additionally, any returned lands would be free from the GSA requirements in sale and transfer.

The TF objects to this provision on the basis that the decision about the restriction free return of property to Guam should be on

a case-by-case basis. The TF notes that Congress has in the past returned property under the terms that are sought in §1001(e), but that this process should not be required for all future parcels of property returned.

The CSD, however, seeks for Guam to be free from any future limitations on land use, and that such properties should be returned free from the GSA process. The U.S. GSA process of returning lands has proven often cumbersome, restrictive and even has involved the possibility of non-Guam residents being the beneficiaries of land no longer desired by the federal government.

Given the scarcity of real property in Guam, and the history of federal land takings in Guam, the fee simple, condition free return of federally-held property should be plainly established in the Commonwealth Act.

Section 1001(f)

Section 1001(f) seeks the removal of all restrictions on properties previously returned to Guam. The TF has sought a list of these properties with a description of the restrictions which are to be lifted. However, given the fact that the federal government has over the years been unable to identify all such lands and restrictions, and are aware that Guam is equally unable to provide such a listing, the TF position is nothing short of delay tactics.

A partial list of properties has been compiled, but it is not exhaustive and is further compounded by varying manners of returning parcels (some parcels have been returned by lot number, others by land sectors).

The resolution to this problem may be to state the principle of removing all restrictions and provide the Joint Consultative Group with the power to expedite the removal of restrictions as they are identified.

Leland Bettis
January 1992

SECTION 1005

E E Z

ARTICLE 11

U.S. Financial Assistance

BRIEFING

Subject: Federal Payment and Transition Assistance to the Commonwealth (§§1104 & 1105)

Prepared by: Joseph Bradley, Commission Ad Hoc Staff

Date: December 3, 1991; revised January 30, 1992

A preliminary analysis on the economic impact of §1104 is being prepared, and will be available in Washington, D.C., on Saturday, February 8, 1992.

In addition to the annual requests for funding from the federal government under §1101 of the Commonwealth Act (which is the parallel of the Organic Act's §30), §1104 calls for Guam to be compensated for its net costs in providing services to the federal government and for the foregone revenues caused by the withholding of nearly one-third of Guam's land from productive private activities by the Department of Defense. The compensation under §1104 is to be "in lieu of taxes." Section 1105 requires that Guam prepare plans for long-term capital improvement projects in support of economic development and procedures for the administration of a revolving fund to support private development activities; in exchange, §1105 would authorize expenditure of the funds necessary to support the long-term capital improvement program and to establish the private development revolving fund.

The Task Force has objected to §1104 in its entirety because they believe that the monies provided in Title VI (Taxation) and §1101 of the Commonwealth Act (roughly parallel to §§31 and 30 of the Organic Act, respectively) adequately compensate Guam for the sacrifices made due to the federal presence here. While Guam's proposal is similar to a provision granting federal funding to the District of Columbia, the Task Force finds sufficient differences (including the disposition of Income Tax revenues) between D.C. and Guam to draw significant distinctions between the two.

With regard to transition assistance under §1105, the Task Force would agree to funding only the referendum adopting the Commonwealth Act, but would not agree to funding the activities of the CSD. Our argument in this is that Guam has proceeded at its own initiative in a process that should have been completed by the federal government decades ago.

The Task Force proposes to continue the present ad hoc funding of capital improvement projects here, and will only support the continuation of the Guam Economic Development Loan Fund, established in 1968 with an authorization of \$10 million (of which only \$6.7 million has been appropriated to date). The Task Force would prefer that Guam issue debt in its own name to cover capital improvement projects, and disregards the substantial impact that the federal presence has on infrastructure here.

It is unlikely that the Task Force will modify its views on these two Sections of the Commonwealth Act, in light of the present federal deficit problems and the Bush Administration fiscal policies. These Sections of the Act cover issues in which it may be best to agree to disagree, so that discussions with the Executive Branch can be completed. They will have to be taken up with Congress in any case, and Guam may get a more receptive hearing in that forum.