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M E M O R A N D U M\*

Subject : Significance of the compact clause of the United States  
Constitution to Puerto Rico.

It would be worthwhile to determine whether the compact clause of the U. S. Constitution and the experience under it can be used to advantage in fostering the growth of the Commonwealth of Puerto Rico in its relationship with the United States, with foreign nations and with international organizations.

The following summarizes salient points contained in a booklet entitled "The Interstate Compact since 1925" by F. L. Zimmerman and Mitchell Wendell, published in 1950 by the Council of State Governments:

The Compact Clause and Experience Thereunder

Article I of the U. S. Constitution provides in part that "No state shall, without the consent of Congress, enter into any agreement or compact with another state, or with a foreign power." The interstate compact has the following characteristics:

- a. It is formal and contractual.
- b. It is an agreement between the states themselves, similar in content, form and wording to an international treaty.
- c. It is enacted in substantially identical words by the state legislatures concerned.

- d. At least in certain cases, consent of Congress must be obtained; in all cases, Congress may forbid the compact by specific enactment.
- e. It can be enforced by suit in the U. S. Supreme Court if necessary.
- f. It takes precedence over an ordinary state statute.

Interstate compacts usually have been negotiated by joint compact commissions composed of representatives of each state, appointed by the Governor. There are wide variations in procedure, however. For example, the Interstate Compact for the Supervision of Parolees and Probationers was formulated by an extra-legal organization--the Interstate Commission on Crime, composed of attorney-generals and other state officials, but without authority to negotiate a compact. The Commission recommended enabling legislation to the states which would authorize the Governor to "execute" the compact with other states.

Interstate compacts have been used for various purposes such as the following:

- a. To establish joint administrative machinery (e.g. New York Port Authority).
- b. To exchange information (e.g. fisheries).
- c. To effect legal settlements (e.g. allocation of Columbia River water and settlement of boundary disputes).
- d. To promote regional development (e.g. Columbia River Compact). There has been considerable

controversy as to whether regional development should be fostered through interstate compacts or through Federally controlled arrangements like TVA and FPC.

- e. To facilitate interstate tax adjustments; and
- f. To regulate certain types of activities for social and economic reasons.

The interstate compact is the most formal expression of interstate cooperation. Commissions on Interstate Cooperation, composed usually of ten legislators (five from each house) and five administrative officials, have been established in many states. They work closely with the Council of State Governments to foster uniform state laws, to eliminate trade barriers, and to substitute cooperation for conflict in such fields as crime control, conservation of resources, motor vehicle registration, movement of transients, migration of industry, and banking and securities practices. Interstate compacts are sometimes the result of work carried out by these Commissions. The Compacts, however, must be ratified by the state legislatures concerned and approved by the Governors, in addition to meeting the constitutional requirement of Congressional consent.

There is no firm rule or court decision which provides guidance as to whether Congressional consent is required in any given agreement or compact. It is clear, however, that the courts are more inclined to hold that consent is required in the case of an agreement with a foreign power than with another state. Also, where the subject matter of an agreement is clearly within the autonomous powers of a state,

the consent of Congress appears less necessary. If the compact is one which does not require consent, the failure to obtain the consent of Congress does not pose any problem.

Congress can give its consent in advance of a pact being concluded. Its consent has usually taken the form of a joint resolution which the President must approve to become effective.

An innovation was made in the Civil Defense Act of January 12, 1951. This Act provided that interstate defense compacts will be deemed to have the consent of Congress if the House and Senate do not register their disapproval of same by concurrent resolution (effective without President's concurrence) within sixty days after a copy of the compact has been filed therewith.

The consent of Congress is just as necessary to the continuation of a pact as it is for its consumation. The United States can terminate unilaterally a compact which it enters. It has, moreover, entered compacts on behalf of the District of Columbia.

On the question of whether the District of Columbia, territories or possessions (Puerto Rico was still a possession when the booklet was published) can themselves be a party to a compact or agreement, the authors feel that both on policy and legal grounds the answer should be in the affirmative. These jurisdictions "are in contact with member governments of our Federal system in many of the same ways and for many of the same purposes that states are in contact with one another. Consequently, it is desirable to recognize this practical similarity of position by permitting the various territories under exclusive federal

jurisdiction to enter into cooperative arrangements with the states. A somewhat analogous situation is presented by the extension of diversity of citizenship jurisdiction to the District of Columbia and the territories." The Supreme Court, in upholding this extension, found the sanction in the general Congressional power over territories conferred by Article I. A concurring opinion of Justice Rutledge, however, was to the effect that the word "state" in Article III was broad enough to include the District of Columbia and the territories (337 U. S. 582,604). It is interesting also to note that the administrators of the interstate parole compact have approved its extension to the District of Columbia and territories and possessions of the U. S. The Congress, in granting consent to a tobacco compact among producing states and providing for a detailed plan to control tobacco marketing, directed that in the event a tobacco pact came into existence the Secretary of Agriculture should put the plan into operation in Puerto Rico (24 Stat 1240, 27 USCA Sec. 608, 1936. The Congress thus chose to legislate the provisions of the proposed pact into force instead of authorizing Puerto Rican participation or having the Federal Government participate in the compact in behalf of Puerto Rico.

Although there have been few compacts between a state and a foreign power, two factors have suggested its further use:

- a. The development of international conventions in labor and other matters normally regarded as within the primary jurisdiction of states.
- b. Agreement between states and foreign powers are legally

possible. Specific constitutional authority for such agreements exist, although Article I, Section 10 of the Constitution declares that "No state shall enter into any treaty, alliance or confederation." In those court cases which have concerned state compacts with foreign powers, none of the compacts has been invalidated on the grounds that the "treaty" attempted was beyond the power of Congress to validate; all have turned on the question of whether any consent was required and if so, whether consent was given.

A North Dakota court held that an agreement between a drainage board and a Canadian municipality relative to the construction of drainage works by the Board in Canada was a permissible compact and also that it was one which, involving no national interest, required no national consent (37 N. D. 59, 163 N. W. 540 - 1917). A cooperative arrangement between Oregon, Washington and British Columbia for tourist advertising and information has also been carried out without Congressional consent (38 Ky. L. J. 347, 351 - 1950).

In order to overcome difficulties involved in Federal participation in international undertakings in fields normally regarded as lying within state jurisdiction, it has been suggested that the following procedures be followed to obtain adherence by all the states, or where the entire country is not involved--as in a regional arrangement--by the particular states concerned:

- a. Congress should assent to the states making compacts with a foreign nation with reference to a specific subject.
- b. States interested would then send delegates to an international conference.
- c. Any convention there signed would then be submitted to the legislature of each state concerned for ratification and upon adoption would become the law of such state.


The U. S. State Department has discouraged development of compacts between states and foreign powers. However, several have been authorized, such as the Northeastern Interstate Forest Fire Protection Compact which is open to adherence by Canadian provinces subject to the consent of Congress.

Possible Relevance of Compact Clause to Puerto Rico

Several hypotheses are suggested by the above points, on which legal research would seem desirable:

1. That the Congress cannot now take unilateral action to participate in an inter-state compact on behalf of Puerto Rico, as it has for the District of Columbia; nor can Congress provide unilaterally for the extension of the terms of an interstate compact to Puerto Rico as it did in the Act authorizing a tobacco marketing compact.
2. That Puerto Rico has the same rights as states of the Union to legislate or otherwise to signify its approval or

disapproval of the terms of international labor and other conventions which include special provision for separate approval by the constituent units of federally organized nations or in which the U. S. has, in approving the conventions, made a reservation limiting the scope of application to states which approve the terms or have laws conforming therewith.

3. That Puerto Rico and, for example, New York could enter into a compact on a matter lying primarily within their respective jurisdictions without the necessity for Congressional consent.
  4. That Puerto Rico and, for example, New York State could enter into a compact on any matter, provided that the Congress consents.
  5. That Puerto Rico and a foreign nation (e.g. Cuba) could enter into a compact, provided that the Congress consents.
  6. That an agreement with an international organization constituted by independent nations is in effect an agreement with a foreign power; and that membership in an international organization, conveying as it does rights and obligations, is in the nature of an agreement. If this reasoning is valid, it would support the contention:
    - a. That Puerto Rico, either with or without Congressional consent, can legally seek and accept membership in international organizations which deal with matters primarily within the jurisdiction of the Commonwealth Government.
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b. That Puerto Rico can, with Congressional consent, accept membership in international political bodies such as the United Nations and the Organization of American States. The Congress can constitutionally give its consent to such membership.

7. That Puerto Rico has no less freedom than a state to undertake negotiation of a compact or agreement with a state of the Union or with a foreign nation.