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April 16, 1970

Honorable Hugh L. Carey
House of Representatives
Washington, D.C. 20515

Dear Congressman Carey:

In the absence of Herbert Reis, who is on assignment abroad for the month of April, I will attempt to answer the question you asked Elizabeth Farrington, Director of the Office of Territories, Department of the Interior, at hearings before the Subcommittee on Territorial and Insular Affairs, March 5, 1970. You inquired whether, under the 1947 agreement between the United States and the Security Council of the United Nations concerning Trusteeship for the Trust Territory of the Pacific Islands, the United States has unilateral authority to determine whether the Trust Territory shall become associated with the United States, be independent or enjoy some other status and to implement such a decision without approval by the Security Council.

Unfortunately, no definitive answer can be given to this question. We administer in the Trust Territory the only strategic trust ever established under the United Nations Charter. Consequently, there are no precedents governing termination or alteration of the trusteeship status. The agreement between the Security Council and the United States, which was approved by the Security Council April 2, 1947 and approved by the President and a joint resolution of the Congress July 18, 1947, and which entered into force on that date, contains no express provision on termination. A number of factors would, however, appear to be relevant

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in determining when and how the trusteeship status may be terminated or altered.

Article 15 of the agreement states that "The terms of the present agreement shall not be altered, amended or terminated without the consent of the administering authority."

United Nations functions with regard to the Trust Territory are, of course, exercised by the Security Council. Article 83, paragraph 1, of the United Nations Charter provides that:

"All functions of the United Nations relating to the strategic areas, including the approval of the terms of the trusteeship agreements and of their alteration or amendment, shall be exercised by the Security Council."

Paragraph 3 of the same Article further provides:

"The Security Council shall, subject to the provisions of the trusteeship agreements and without prejudice to security considerations, avail itself of the assistance of the Trusteeship Council to perform those functions of the United Nations under the trusteeship system relating to political, economic, social, and educational matters in the strategic areas."

Since the Security Council, by its resolution of March 7, 1949, did request and did subsequently receive the assistance of the Trusteeship Council, the Trusteeship Council will share with the Security Council a substantial interest in the development of the relationship between the people of Micronesia and the United States.

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The United States is obligated, both by the Charter and by the agreement with the Security Council, to act in a manner that will further the development of the Trust Territory to self-determination. This obligation appears most clearly in Article 6 of the agreement, which establishes that "under Article 76(b) of the Charter the administering authority shall:

"1. foster the development of such political institutions as are suited to the trust territory and shall promote the development of the inhabitants of the trust territory toward self-government or independence as may be appropriate to the particular circumstances of the trust territory and its peoples and the freely expressed wishes of the peoples concerned; and to this end shall give to the inhabitants of the trust territory a progressively increasing share in the administrative services in the territory; shall develop their participation in government; shall give due recognition to the customs of the inhabitants in providing a system of law for the territory; and shall take other appropriate measures toward these ends;"

It is apparent that the United States, the people of the Trust Territory, and the United Nations all have interests in the status of the Trust Territory that are provided for in the various documents that regulate the Trusteeship. The requirements and procedures for cooperation between the interested parties that this entails are, however, as yet undetermined. At the least no change in status can be effected without the consent of the United States, and no change in status can be effected that does not reflect the obligations assumed by the United States to the people of the Trust Territory under the United Nations Charter and the Trusteeship Agreement.

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The United States is seeking to prepare the people of the Trust Territory for an act of self-determination which would of necessity precede any alteration in status. We have informed the Trusteeship Council of this, and we would hope to have United Nations observers present at the time of this act, which would presumably be a vote on the status in question. However, in the absence of a more definite decision on what this status might be or when the United States and the people of the Trust Territory might be prepared to exercise it, it is difficult to say what other steps might be taken.

I hope this discussion is of use, and I regret its necessarily tentative nature. Please do not hesitate to call upon us if we may be of further assistance.

Sincerely yours,

Jon Greenwald
Attorney
Office of the Legal Adviser

cc: H - Mr. Leahy

Clearances:

UNP - Mr. Peale
Interior - Mrs. Farrington
Mr. Whittington
DOD/ISA - Commander Kuhn
JCS - Mr. Stockton

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