H. MARCUSE

JOINT COMMITTEE ON FUTURE STATUS
CONGRESS OF MICRONESIA
Saipan, Mariana Islands, 96950

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April 11, 1972

The Honorable Lazarus E. Salii, Chairman
Joint Committee on Future Status
Congress of Micronesia
Koror, Palau 96940

Dear Mr. Chairman:

You have asked for our opinion concerning the legal and policy implications for the Joint Committee on Future Status of the presentation of a separate Statement of Position by the Marianas delegation.

First, it is our opinion that the Joint Committee itself is not authorized, from a legal standpoint, and should not, from a policy standpoint, present such a paper to the United States delegation. From a legal standpoint, we take our justification for our reasoning from the several mandates which the Congress has given to the Committee and its predecessors over the years. Without exception, the mandates have charged the Committee with exploring political alternatives for and representing the interests of the Micronesian people as a whole, and not the people of any district in particular. Typical is the language employed in [illegible] Joint Resolution No. 102, adopted by the Third Congress of Micronesia. The language employed in this resolution includes a direction to the Committee "to continue the work of the Future Political Status Commission and the Micronesian Political Status Delegation relating to the termination of the Trusteeship Agreement and Trustee status and the obtaining of a new political status for Micronesia when trusteeship ends." Also indicative is similar language contained in the latest expression of Congress' direction to the Joint Committee, Senate Joint Resolution No. 92, Fourth Congress of Micronesia.

From the standpoint of negotiating policy, we question the propriety of the presentation by the Chairman, as the spokesman for the Committee and therefore for the entire Congress, of the position of the people of one district, particularly when that position is at such great variance with the

position which the Committee has adopted. It seems to us that the more appropriate method of presenting the paper would be to have the representatives from the Mariana Islands District present it to the United States delegation.

It is our second conclusion that the representatives of the Mariana Islands District on the Joint Committee can, with the consent of the Committee, present their paper if they so desire. As noted above, the Committee is charged with representing the position of the Congress as a whole in the area of future political status negotiations with the United States. The Committee's broad mandate, as set forth in Senate Joint Resolution No. 91, gives it wide latitude in this area. Certainly includable within the scope of the Committee's authority is the granting of permission to the Marianas delegation to present their separate Statement of Position. The Committee's mandate from the Congress, however, indicates that the consent of the Committee would be required prior to presentation of the paper by the Mariana Islands delegation.

Thirdly, it is our opinion that authority to conduct actual negotiations with the United States would require authorization to a Mariana Islands Political Status Delegation from the Congress of Micronesia. Micronesian laws and constitutional customs make it clear that, once Congress has entered a field by its legislation, it preempts the right of other legislative bodies, including the district legislatures, to enact valid legislation in such field. The Trust Territory Code points out, at 2 TTC Section 1: "The Government of the Trust Territory through the High Commissioner and the Congress of Micronesia . . . shall be primarily responsible for . . . (1) problems of territory-wide concern." It is further provided, at 3 TTC Section 2, that the district governments, in the exercise of their legislative functions, are subject to all territory-wide laws. Clearly Congress has preempted the field of negotiating with the United States toward the creation of a new political status for all the people of Micronesia. This would, in our opinion, prevent any district legislature from authorizing, by law or resolution, any negotiations with the United States. Any such authorization by a district legislature could, then, come only after the Congress has given its express permission to conduct such negotiations.

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It is recognized that the Marianas' position paper in question does not seek immediate direct negotiations with the United States, but only seeks to determine if the United States would be willing to undertake such negotiations at some time in the future. Given our third conclusion above, it is our recommendation that, to avoid any possible misunderstanding, the position paper should make it perfectly clear that prior authorization from the Congress of Micronesia would be required before separate negotiations between representatives of the Mariana Islands District and the United States could take place.

Finally, it seems unlikely that the United States would be willing to pursue separate negotiations without the approval of the Congress of Micronesia. Such approval would seem necessary in order to avoid the charge that the United States, by negotiating separately with any individual district, is seeking to forestall a move towards self-government and to perpetuate a neo-colonial rule. These same concerns undoubtedly underlie the previously expressed conclusion of the United States that the Trusteeship must be terminated as a whole. Accordingly, no separate status for the Marianas would be permitted to go into effect prior to the effective date of a new status for Micronesia as a whole.

We thank you for the opportunity to have been of assistance in this matter and would be pleased to explore this topic further at your request.

Very truly yours,

Paul C. Warnke, Esquire

Michael A. White, Esquire