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Mariana

Possibility of Attempts by the Congress of  
Micronesia to Obstruct the Current Negotia-  
tions with the Marianas Status Commission.

There appear to be three areas in which potential interference by the Congress of Micronesia with the current separate negotiations with the Marianas Political Status Commission are most likely to occur.

1. The Congress of Micronesia may assert that it has preempted the field of the future political status of Micronesia; hence, that no District has the power to maintain separate talks. Such contention would be unfounded as set forth in detail in the Opinion of the Office of Legal Counsel of the Department of Justice, dated September 21, 1972, a copy of which is attached.

The Secretarial Order establishing the Congress of Micronesia specifically enjoins the Congress from taking any action inconsistent with (a) treaties or international agreements of the United States, and (b) the Bill of Rights of the Trust Territory. An attempt by the Congress of Micronesia to preclude separate talks by the Marianas would violate both limitations on the powers of the Congress of Micronesia.

Under Article 6(1) of the Trusteeship Agreement between the United States and the Security Council concerning Micronesia--which is an international agreement of the United States--the United States has assumed the obligation to--

"\* \* \* promote the development of the inhabitants of the trust territory toward self-government or independence as may be appropriate to the particular circumstance of the trust territory and its peoples and the freely expressed wishes of the peoples concerned \* \* \*." (Emphasis added.)  
61 Stat. (Part III) 3301, 3302.

The use of the term "peoples" recognizes that the inhabitants of the Trust Territory do not form a homogeneous group. Any action of the Congress of Micronesia which would interfere with the freely expressed wishes of a geographically or ethnically identifiable minority with respect to its future political status therefore would violate Article 6(1) of the Trusteeship Agreement and therefore would be beyond the powers of the Congress. Such action would also violate the right of petition guaranteed by the Micronesian Bill of Rights.

Recommendation: The argument that the Congress of Micronesia has preempted the power of separate status talks of the several Districts is specious, and not likely to be pressed seriously. It is therefore felt that it can be ignored at the present time. Should this problem nevertheless arise in the

future, the Secretary of the Interior would have the power to head it off by an amendment of Secretarial Order 2918. It is assumed that the Secretary will exercise that authority only after appropriate consultation.

2. Another possible interference by the Congress of Micronesia with the separate status talks with the Marianas would be the enactment of legislation relating to the future political status of Micronesia as a whole, e.g., legislation calling for a Constitutional Convention which would include the Marianas. Such legislation would be confusing and cast doubt on the efficacy of the separate status talks with the Marianas. The enactment by the Congress of Micronesia of future status legislation which would include the Marianas would not necessarily be an act of bad faith or an attempt to sabotage the separate status negotiations with the Marianas. The Congress has expressed its doubts as to its power to enact status legislation for less than all six Districts and fears that such legislation would be challenged in the courts. The Department of the Interior and the Attorney General of the Trust Territory have indicated that they share those doubts.

Whatever the validity of those legal arguments may be, it must be recognized that status legislation enacted by the Congress of Micronesia which would not apply to the Marianas may well be challenged in court. Such litigation would result at best in considerable delay, which could adversely affect the negotiations with the remaining five Districts as well as with the Marianas.

Recommendation: In view of the potential adverse effects of future status legislation enacted by the Congress of Micronesia purporting to extend to the Marianas, and of litigation challenging the legality of future Micronesian status legislation not applicable to the Marianas, it appears desirable to head off such complications if they should become imminent. This could be done by an Order of the Secretary of the Interior providing the legislation of the Congress of Micronesia relating to the future status of Micronesia should be applicable only to the five Districts other than the Marianas, or that such legislation should contain a provision that each District Legislature shall have the power to determine whether it should be applicable in its District. The Secretary of the Interior already has this authority; it is presumed that he will not exercise

it except after consultation with the Interagency Group.

Further instructions do not appear to be required.

3. Under existing law the Government of the Trust Territory holds the public lands in trust for the people of Micronesia. This may give the Congress of Micronesia or its Committee on Public Lands a pretext to assert jurisdiction over the public lands, in particular to claim that, since the public lands in the Marianas are held in trust for [all] the people of Micronesia, the United States and the Marianas lack the power to agree among themselves about the disposition of the public lands located in the Marianas.

Recommendation: This issue raises a problem which is not limited to our negotiations with the Marianas. Our problems in Palau have brought to the surface the general question whether the disposition of the public lands is a matter over which the Congress of Micronesia should have jurisdiction or whether it should be settled between the U.S. and the District, or even at a lower level. While it is appropriate to cut off any interference by the Congress of Micronesia with the disposition of the public lands in the Marianas, it may be preferable to deal with this

problem not piecemeal but on a general basis. It is therefore recommended to obtain the pertinent views of the Working Group on Micronesian Status Negotiations.