



THE SENATE
CONGRESS OF MICRONESIA
SAIPAN, MARIANA ISLANDS 96900

COMMITTEE on
JUDICIARY and
GOVERNMENTAL OPERATIONS

Andon Amaralich, Chairman

Lazarus E. Sailli, Vice - Chairman
Olympio T. Borja
Ambilos Iehsi
Petrus Tun
Wilfred I. Kendall

STANDING COM. REPT. NO. 62

FEBRUARY 14, 1973

RE: S.J.R. No. 38

The Honorable Posiwo Nakayama
President of the Senate
Fifth Congress of Micronesia
First Regular Session, 1973

Dear Mr. President:

Your Committee on Judiciary and Governmental Operations, to which
was referred S.J.R. No. 38, entitled:

S.J.R. No. 38, "A SENATE JOINT RESOLUTION EXPRESSING THE SENSE
OF THE CONGRESS OF MICRONESIA WITH REGARD TO
CERTAIN ISSUES RELATING TO THE FUTURE POLITICAL
STATUS OF MICRONESIA, AND DIRECTING THE JOINT
COMMITTEE ON FUTURE STATUS TO CONDUCT NEGOTIATIONS
ACCORDINGLY."

begs leave to report as follows:

The intent and purpose of this resolution is to express the sense of
the Congress of Micronesia on two matters crucial to the progress of
our negotiations with the United States regarding the future political
status of Micronesia: that the Trust Territory is one single political
unit, and thus, that the Trusteeship must be terminated simultaneously
as to all districts, and may not be terminated or modified as to some
and not others; and that only the Congress of Micronesia has the right
and responsibility to conduct negotiations regarding the future
political status of Micronesia, which right and responsibility extend
to all parts of Micronesia.

As to the former proposition, the termination of the Trusteeship in all
districts of the Trust Territory simultaneously has always been implicit
in the Congress' thinking, as can be readily seen from the many resolutions
and bills referring to "an" end to the Trusteeship. The United States

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Government's position, announced most recently before the Thirty-Ninth Session of the United Nations Trusteeship Council, is in complete accord with such position. At that Session, the United States Ambassador to the Council said,

"The United States adheres to the position that the termination of the Trusteeship Agreement must be simultaneous for all districts-- which is to say that we are not prepared to see the dismemberment of Micronesia piece by piece and to request the dissolution of the Trusteeship Agreement district by district." T/PV 1390, p 7-10.

Fragmentation of the Trust Territory is, we believe, a violation of the Trusteeship System and the Trusteeship Agreement, at least in principle.

And yet, despite its announced position, the United States has recently abandoned its previous position that it would negotiate only with the Trust Territory as a whole, through the Congress of Micronesia, and has embarked upon a course of action with relation to one of the districts of the Trust Territory that leads to the inescapable conclusion that it is encouraging, if not actually fomenting, the political division of the single political unit which is the Trust Territory. We speak, of course, of the initiation of separate negotiations with one of the districts of the Trust Territory without any consideration of the lawful prerogatives of the Congress, let alone the proprieties of the situation, whatsoever. We cannot be sure that similar attempts will not take place in the future. Thus, despite its professions to the contrary, the actions of the United States indicate that we must take a strong stand now with regard to the political unity of Micronesia, or be precluded from doing so in the future.

The second provision is equally important. Your Committee has conducted careful research into this proposition, and finds that it is thoroughly justified in law. To determine the intention of the Congress in the creation of the Joint Committee on Future Status, we must first look at the very language of House Joint Resolution No. 102, Third Congress of Micronesia, which created the Joint Committee.

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That resolution provides, in part, as follows:

"The Purpose of the Committee shall be 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 Trusteeship Status and the obtaining of a new political status for Micronesia."

This, and other mandates which the Congress has given to the Joint Committee and its predecessors over the years, have charged the Committee with exploring political alternatives for representing the interests of the Micronesian people as a whole, and not less. There is nothing in any official journal or other record to indicate that the intention of the Congress was anything other than that which we have mentioned above.

Thus, the conclusion is presented that no other entity besides the Committee has authority to conduct negotiations with the United States, at least in the absence of a specific authorization from the Congress of Micronesia. Our laws and our constitutional customs make it clear that, once the Congress of Micronesia has legislated in a particular field, it preempts the right of other legislative bodies in Micronesia, including a district legislature, to enact valid legislation in that field. At the very least, such legislation would prevent such other legislative bodies from adopting legislation contrary to, or in conflict with Congress of Micronesia legislation; we are of the opinion that any district which attempts to provide for negotiations regarding future political status, already provided for by the Congress, would be in contradiction of the Congressional legislation."

In this connection, the Trust Territory Code, at 2 T.T.C. Section 1, points out, "The Government of the Trust Territory through the High Commissioner and the Congress of Micronesia...shall be primarily responsible for... (1) matters of territory-wide concern." Clearly, the future political status of Micronesia is such a matter. By implication, then, since Micronesia is composed of subordinate political units; the future political status of all such units is properly within the purview of the Congress. The Code further provides, at 3 T.T.C. Section 2, that the district governments, in the exercise of their legislative functions, are subject to all territory-wide laws. Finally, it is a well-settled constitutional custom that relations with a foreign power should be the responsibility of the national government, and not a lesser political unit.

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Thus, your Committee believes that the statement of policy make in the second resolving clause is totally justified, from a legal point of view. We are able to make no other finding in the absence of an authorization from Congress for individual districts to negotiate their own future political status. Pending such action, it is the considered opinion of your Committee, and the logical conclusion which can be drawn from the resolution itself, that such separate negotiations are extralegal.

The fact that the Joint Committee has endorsed this resolution and has sponsored it for introduction by the Chairman only lends weight to our conclusions. Clearly, the positions expressed in the resolution are not only legally justifiable, but are logically drawn from the past actions of the Congress of Micronesia itself.

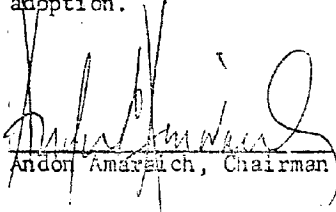
Further, your Committee believes that these declarations have merit, not only in that they clarify the intent of the Congress and make it plain to the United States that the interpretations of the Joint Committee which have been expressed to the United States in these two matters are actually the intent of the Congress of Micronesia itself. Additionally, they make clear the Joint Committee's obligation to negotiate for Micronesia as a whole, which is intended to prevent the United States from following, either actively or passively, a policy of "divide and conquer". There is no more truth than in the maxim, "in unity there is strength." This is particularly true in the case of our future political status negotiations. Finally, this resolution reinforces the idea of Micronesian unity, on its own merits. We cannot stand idly by and watch while district governments erode the proper prerogatives of the territorial government. We will not be content to watch while Micronesia is fragmented, as one, and possibly more, districts attempt to conduct separate negotiations without authorization from the Congress, and thus outside the boundaries of the law. And finally, we view it as the solemn obligation of the Congress to make sure that all citizens of the Trust Territory have the opportunity to participate in a determination of the choice of future political status which the Congress of Micronesia, through the Joint Committee on Future Status, acting on behalf of the best interests of all of the people of Micronesia, has agreed upon and approved.

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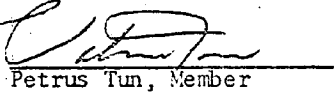
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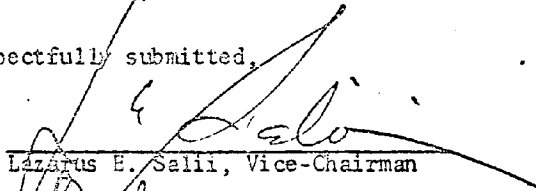
Your Committee is thus in complete accord with the intent and purpose of Senate Joint Resolution No. 38, and recommends its adoption.

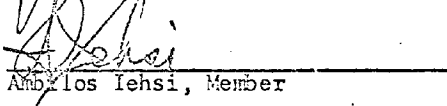

Andon Amarauch, Chairman

Olympio T. Borja, Member


Petrus Tun, Member

Respectfully submitted,


Lazarus E. Sali, Vice-Chairman


Ambros Iehsi, Member

Wilfred I. Kendall, Member