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MARIANA POLITICAL STATUS COMMISSION

P. O. Box 825
Saipan, Mariana Islands 96950

March 1, 1973

Mr. Paul Blanc, Chairman
1973 U.N. Visiting Mission
U. N. Trusteeship Council
New York, New York

Dear Mr. Chairman:

In response to a recent request for clarification on the legal capability of the Marianas Political Status Commission negotiating with the United States in reference to political status, enclosed please find a memorandum from our Executive Director on the subject. I hope this memorandum satisfactorily answers any questions you might have in this area.

If further clarification is desired we will do all in our power to comply.

Sincerely yours,

Edward DLG. Pangelinan
Chairman
Mariana Political Status Commission

01-63712

MARIANAS POLITICAL STATUS COMMISSION
P. O. Box 825
Saipan, Mariana Islands 96950

March 1, 1973

MEMORANDUM

TO: Chairman
FROM: Executive Director
SUBJECT: The Effect of Recently Passed S.J.R. No. 38

In light of the recently adopted S.J.R. No. 38, and the statements made in the Standing Committee Report No. 62, dated February 16, 1973, a question arises as to whether or not our Commission has the legal authority to seek a separate political status for the Marianas District of the Trust Territory of the Pacific Islands. In order to adequately answer a question of this importance, a review of the appropriate mandates and dictates of the larger governmental bodies that apply to our district need to be stated. Under Chapter XII of the Charter of the United Nations, Article 76, subsection b, it indicates that it is the purpose of the United Nations

"to promote the political, economic, social and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the peoples concerned, and as may be provided by the terms of each trusteeship agreement"; (emphasis added)

Additionally, under the same Charter, Article 73, the following indication is created:

By inference, the United States is to

"accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security ...the well-being of the inhabitants of these territories, and, to this end:

"a. ...

"b. to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement";

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"Further, at subsection d,

"to promote constructive measures of development ...with a view to the practical achievement of the social, economic, and scientific purposes set forth in this Article";

With these dictates in mind, the Trusteeship Agreement for the Trust Territory of the Pacific Islands, Article 6, subsection 1, indicates that the administering authority; i.e., the United States, shall:

"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";
(emphasis added)

Additionally, the United States, under Executive Order 11021, Administration of the Trust Territory of the Pacific Islands by the Secretary of the Interior, Section 1, indicates:

"The responsibility for the administration of civil government in all of the trust territory, and all executive, legislative, and judicial authority necessary for that administration, are hereby vested in the Secretary of the Interior".

Pursuant to the dictates of the United Nations Charter, the Trusteeship Agreement, and Executive Order 11021, it is well established that it is the proper function of the United States Government to promote political stability for the Trust Territory of the Pacific Islands. In accordance with Article 73, subsections b and c of the United Nations Charter and the Trusteeship Agreement, Article 6, subsection 1, it becomes apparent that it is the function of the Trusteeship Agreement to promote self-government, taking into account the particular circumstances within the Trust Territory and the wishes and concerns of its peoples. Consequently, the actions by the United States Government in acquiescence to our request for political status discussions for the Marianas District is appropriate in accordance with the Trusteeship Agreement, and is in compliance with the general dictates of the United Nations Charter by "fostering of the development of such political institutions as are suited to the Trust Territory". The indications by the use of the word "institutions" in the plural is that from the Trusteeship Agreement it is recognizing the possibility of more than one political entity developing as a result of the "particular circumstances of the Trust Territory and its peoples", creating a need for the United States to more appropriately align itself with the various "free expressed wishes of the peoples concerned" as has been indicated by the peoples of our district.

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With the above analysis, the United States clearly has the ability to negotiate with the Marianas District if the Marianas District has not been precluded from such negotiations with the United States by a pre-emption of the field of negotiations by the Congress of Micronesia. It is indicated in the Standing Committee Report No. 62, at page 3,

"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 into 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 contravention to the dictates of the Standing Committee Report is the Department of Interior Order 2918 which indicates at Part III, Section 2, Legislative Power, that:

"The legislative power of the Congress of Micronesia shall extend to all rightful subjects of legislation, except that no legislation may be inconsistent with

"(a) treaties or international agreements of the United States;

"(b) laws of the United States applicable to the Trust Territory;

"(c) Executive Orders of the President of the United States and orders of the Secretary of the Interior; or

"(d) Sections 1 through 12 of the Code of the Trust Territory".

Consequently, even if the Congress of Micronesia were to create legislation that could conceivably be construed as a pre-emption of the field that legislation would be in contravention to the stated dictates of the Department of the Interior Order 2918, as violative of the restrictions placed upon any Congress of Micronesia legislation that would be in contravention to any international agreements, laws, or Executive Orders of the United States applicable to the Trust Territory. To restrict the development of political institutions that are the free expressed wishes of the peoples concerned would be an abuse of the legislative authority of the Congress of Micronesia. Additionally, S.J.R. No. 38, indicating that the Joint Committee on Future Status be the only organization with authority to negotiate with the United States on political status, and the initial resolution creating the Joint Committee on Future Status are not of sufficient force and effect to pre-empt other organizations from negotiating with the United States, even if such pre-emption was not violative of Department of the Interior Order 2918 as stated above in that these are resolutions and not laws.

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Resolutions do not require the signature of the High Commissioner which is the operational effect in order to establish a law within the Trust Territory that would have sufficient standing to qualify for pre-emption purposes. These resolutions do not receive the approval of the High Commissioner, consequently, they do not have the status of legislation. They merely constitute internal manifestations of the Congress of Micronesia in reference to a specific problem and do not have any legal force and effect. Therefore, they do not bind the Marianas District from its pursuit of separate status negotiations with the United States.

James E. White

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