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ADDENDUM A

MICRONESIAN CONSTITUTIONAL CONVENTION

Legal Obligations to Include the Mariana Islands

The COM was legally obligated to include the Mariana Islands District in legislation calling a Micronesian Constitutional Convention. The COM holds legislative power extending to "all rightful subjects of legislation"(Part III, Section 2, Secretarial Order 2918, as amended) and is "... primarily responsible for .... problems of territory-wide concern", (Title 2, Trust Territory Code, Section 1). Clearly, a Constitutional Convention bill is such a concern. Furthermore, the COM is prohibited from enacting legislation inconsistent with the first twelve sections of the Trust Territory Code (The Micronesian Bill of Rights). Part III, Section 2(d), Secretarial Order 2918, as amended. The Micronesian Bill of Rights includes, inter alia, the right to equal protection of the laws. That right has been interpreted as a right that guarantees that all persons will be treated alike under like circumstances. This concept is a part of the law of the Trust Territory (Ichiro vs. Bismark (1953), 1 TTC 57, 60-61; Mesechol vs. Trust Territory (1959), 2 TTC 84, 87-90).

Residents of the Mariana Islands would be treated in a significantly different and unequal manner than the residents of those other districts participating in a constitutional convention if the Marianas would be excluded by legislation from participating in a constitutional convention particularly if any Marianas resident shared the political aspirations of the other Micronesian districts. This view is supported by legal opinions from the Attorney General of the Trust Territory and the Office of Legislative Council of the COM.

Constitutional Convention Bill

A. Background.

The Micronesian Constitutional Convention Bill (S.B. 231) was first introduced during the COM Special Session at Ponape, August, 1972, following the Fifth Round of JCFS Status Negotiations at Washington, D.C. in July,1972, and following the USG's acceptance of the Marianas request for separate status negotiations in Koror, Palau, April, 1972. S.B. 231 was a companion bill to S.B. 233, a bill to establish a Commission on National Unity, both introduced by Chairman of the JCFS, Lazarus Salii. The U.S. status delegation had long advocated early resolution of the structure of the future Government of Micronesia and offered financial assistance toward a Micronesian Constitutional Convention at the Koror talks. The Micronesian COM, however, in the interim, reacted strongly to the separate Marianas - U.S. status negotiations and began open criticism of separatist moves during the Fourth Session of the COM (January, 1972) through today. The Ponape Special Session was especially tense due to final recognition by the JCFS that the U.S. would not include the Marianas in the free association formula after the U.S. specifically omitted U.S. land requirements in the Marianas from the free association negotiation process.

Prior to this move, the Marianas had experienced extended difficulty in dealing with the COM especially in a more equitable distribution of COM revenues and in review of U.S. Congressional CIP appropriations. In short, the Marianas delegation was being ignored in the COM policy making process and the COM was particularly emphatic in its rejection of the commonwealth status sought by the Marianas and in moves to deny the Marianas their right to pursue this separate status objective.

Debate on the Constitutional Convention measure centered on whether to exclude the Marianas Islands - whether it was legally permissable or politically desirable. Inevitably, as the Journal of the COM shows, (pp 94-99 Senate Journal, 4th Special Session COM, August, 1972), the discussions focused on the political status issue but was resolved on legal grounds by opinions from the TTPI Attorney General and COM Legislative Counsel Office that the Marianas could not be legally excluded from the Micronesian Constitutional Convention without amendment to the Secretarial Order to this effect. The bill was passed by the Senate but held in committee in the House due to a shortage of funds.

The new COM constitutional bill, S.B. No. 38, was also authored by Chairman Salii. It embodies the major consepts in the former bill and more explicitly attempts to impede the separate Marianas status talks.

B. Outline of the Constitutional Convention Bill.

The major features of S.B. 38, as amended, include: (1) Saipan as the site of the convention; (2) a total of sixty (60) delegates; (3) the election of delegates-at-large (42) on June 4, 1974 - Marianas 4 - Marshalls 9 - Palau 5 - Ponape 9 - Truk 12 - Yap 3; each COM delegations to select one members as a delegate; traditional leaders in each district will send two additional delegates (if no traditional leaders, the district administration will choose one and the district legislature will choose one delegate); (4) a pre-convention committee (one delegate from each district with the President of the COM Senate as Chairman) will select the timing of the constitutional convention; (5) the convention will last ninety days; (6) convention questions will be decided affirmatively by three-fourths

(3/4) of all delegates entitled to cast votes (or 36 affirmative votes); (7) a total of $550,000 is available for staff, per diem, and travel expenses ($450,000 from U.S. sources); and (8) the convention shall draft constitution for the future Government of Micronesia, provide for an effective date of the constitution, and shall require approval by a referendum.

C. Implications for the Commonwealth Talks.

The COM noted that in moving the convention site from Palau to Saipan, the primary considerations were costs, accomodations, materials, and supplies, staff support and legal assistance. The COM did not, however, mention that in choosing Saipan, the Marianas District would be more formally committed to participating in the convention and that the attention of local residents would be focused away from the Commonwealth negotiations and their own separate government towards the JCFS free association concepts of self-government.

Timing the election of delegates in June, 1974, would coincide with the UNTC hearings and would emphasize that the Marianas are yet within the free association objectives by their inclusion and election of delegates to the convention.

Taken together, these views support the contention that the Micronesian Constitutional Convention bill is an overt attempt to undermine the separate Commonwealth status negotiations and to commit the Marianas to the free association status objectives.