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CLASSIFICATION _____

HANDLING	CLASSIFICATION UNCLASSIFIED	MESSAGE REFERENCE NO. A-3
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TO: Department of State

INFO: USUN, CINCPAC, COMTWELVE

AUG 23 4 27 PM 1974

4 35 20003 74

Status LNO SAIPAN

DATE: August 20, 1974

N/A
TQ PGOV
Senate Debate on Micronesia's Future

TADR
DOCUMENT ANALYSIS

PASS OMSN FOR ACTION AND INTERIOR/DOIA FOR INFORMATION
CINCPAC FOR POLAD; COMTWELVE FOR AMB WILLIAMS

Handwritten: Honolulu (IN RV) South Pacific

SUMMARY: Public discussion of two measures in the Senate of the Congress of Micronesia August 8 brought out the differing views of the Chairmen of the two status negotiating committees about the status of the future constitution of Micronesia and the interaction of the two prospective status agreements. In the latter context, Senator Sali (JCFS) made a strong plea for consultation with the Congress before the U.S. moved to separate the Marianas formally from the rest of Micronesia for administrative purposes.

On August 8, the penultimate day of the Special Session of the Congress of Micronesia (COM), two leading senators engaged in an almost unprecedented public discussion of Micronesia's future legal status. The occasion of this discussion was upper house consideration of Senate Bill 369 "Declaring the Constitution of Micronesia, and the Laws of Micronesia Made Pursuant Thereto, the Supreme Law of Micronesia" and Senate Joint Resolution 131 "Expressing the Sense of the Congress of Micronesia Concerning the Possibility

- Attachments:
1. Excerpts from Senate Journal, COM, August 8, 1974
 2. Text of July 31 speech by Senator Tmetuchl
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CONTENTS AND CLASSIFICATION APPROVED BY: LNO: Aif E. Bergesen

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of the Separate Administration of Any Part of Micronesia Prior to the Termination of the Trusteeship." Both measures passed the Senate, but only the latter passed the House. . . .

The two senators represent basically different views of Micronesia's future. Senator Edward Pangelinan of the Marianas is Chairman of the Marianas Political Status Commission (MPSC) which is seeking for its district permanent and close political association with the United States, while Senator Lazarus Sali of Palau is Chairman of the Joint Committee on Future Status (JCFS), engaged in negotiating a compact of free association with the U.S. Sali has consistently espoused the view that his Committee's mandate from the Congress is to negotiate the future political status of all six districts, while the MPSC (and the United States) consider that the decision made two years ago to proceed with separate negotiations with the Marianas has in effect foreclosed JCFS pretensions to continuing to speak for all six districts. The August 8 discussions were noteworthy because the Congress has generally ignored the fact that the mandates of the two Committees are inconsistent, even conflicting. The upcoming constitutional convention, for which delegates have been elected from all six districts, has added to the legal and civic confusion.

Senator Pangelinan's initial objection to S.B. 369 was that neither he, nor his constituents, nor anyone else knew what the Constitution would contain, and he wanted to know more about it before he could vote for a bill making it the supreme law. Pangelinan's Marianas colleague, Senator Borja, pointed out that other documents, such as the Trusteeship Agreement and the Secretarial Order, might now be paramount. Senator Sali responded somewhat obliquely, belittling earlier criticism that the Congress was seeking to give instructions to the constitutional convention. Pangelinan reiterated his objection to proclaiming an as-yet-nonexistent document the supreme law of the land, especially as it might fail to protect minorities, e.g., the Marianas. Sali responded that the Senate had earlier (in considering amendments he sponsored to the constitutional convention law) sought to insure, by lowering the margin by which a district would need to disapprove the constitution to render it inapplicable in that district, that all minorities--and each district by itself was a minority--were protected. It was noteworthy that in this discussion no one mentioned the provision of the Compact of Free Association that "...the constitution and laws of Micronesia shall remain consistent with the provisions of this compact..." although this had been brought out by executive branch witnesses in hearings on the bill. The bill passed the Senate eight to three (Pangelinan, Borja, and Senator Tmetuchl of Palau).

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Senate discussion then moved to Senate Joint Resolution No. 131, which, in rather intemperate language, protested against the possible separate administration of a single district. Again, Senator Pangelinan was the first to discuss the measure, protesting that there were different aspirations and desires in the Trust Territory. He suggested that if one district wanted to be separated for whatever reason Congress should discuss it with that district. Senator Borja pointed out that under the strategic Trusteeship, the administering authority could create a separate district as had happened before. Senator Salii responded that, like all resolutions, it was a "prayer" that expresses the sense of Congress. Salii continued:

"I think that we have to recognize certain things.... It's common knowledge in Micronesia that the talks with the Marianas are proceeding very rapidly and that they might reach an agreement before too long, while the rest of Micronesia-- the talks between the Congress and the United States are progressing more slowly. And so, the question naturally comes out, and I think we had better face this, what if the Marianas and the United States conclude an agreement while the rest of Micronesia is still deciding what to do?"

The U.S. had already told the Trusteeship Council, Senator Salii continued, that it might be possible to put a separate administration into effect even under the Trusteeship. But a separate administration of the Marianas before the whole question of termination was resolved would create a host of problems. If separation becomes inevitable, everyone should be invited and coordination would take place (note - apparently he means under the terms of this resolution) as otherwise a host of problems would arise. Addressing his Marianas colleagues, Salii concluded "you must understand our position that the United States must consult with the rest of us before taking unilateral action on any of these matters." Senator Pangelinan expressed his appreciation for Senator Salii's "eloquence" and "courageous act" in speaking up on these matters in Congress.

Senate Joint Resolution No. 131 was passed by the Senate and, later, by the House of Representatives as well.

The text of the Senate Journal containing the remarks cited above is enclosed, as is an earlier address to the Senate by Senator Roman Tmetuchl (Palau) objecting in measured terms to the continued participation of representatives from the Marianas in the constitutional convention and the JCFS.

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Floor Leader Iehsi: Mr. President, I have a question now. Is there anyone saying that the Constitution of Micronesia will not be the supreme law of Micronesia? In other words, are there any governments that their Constitution is not the supreme law of that government or those states?

The Chair recognized Senator Pangelinan.

Senator Pangelinan: Mr. President, I don't know why we have to anticipate by making this legislation before we see the product of that particular matter. It seems to me the Convention should organize itself and we are now trying to make a Constitution of the future be the supreme law of the land. Before I vote on that I want to know what is in it. I am very much concerned that I am voting on something which I don't know what will happen, so I think this is somewhat premature. In addition to that, I see Section 2 here which is somewhat ambiguous. It says, "The Micronesian Constitutional Convention shall not adopt any article or constitutional provision inconsistent with the provisions of Section 1 of this act.", and Section 1 doesn't say anything other than making the Constitution the supreme law of the land, so this proposed legislation is full of holes and I can't in conscience vote for something where I don't know what will happen.

Senator Borja: Mr. President, I just want to add my sentiments on the same points my colleague raised. I believe we have established the enabling act and law for the Constitutional delegates to receive the responsibility to draft the Constitution to build our nation in Micronesia and yet we are making another piece of legislation that, again, I feel not only questions the integrity of our delegates, but we are assuming too much of the prerogative which should be vested in the delegates. I think this matter should be taken up in the Convention and if the delegates agree the Constitution should be the supreme law of Micronesia, then I would like to

see the delegates exert that power instead of me telling them that in no circumstances the Constitution cannot be inconsistent with whatever it is going to be. As a matter of fact, I have a reservation whether if we pass this it could be considered the supreme law of Micronesia because at the present time our situation is so ambiguous that I just don't know where we stand. Which one is our supreme law; is it the Secretarial Order or the Trusteeship Agreement? So, I think it is only fair to leave it up to the Constitutional Convention delegates to solve this problem and once it is solved, and if accepted by the people, then it would become the supreme law and I can see that even the Secretarial Order or the Trusteeship Agreement will surpass all of whatever the law considered to be the supremacy of any of the others as the supreme law when the delegates themselves finish with their work of building our Constitution, and I, therefore, would like to ask my colleagues to reconsider this and rather than passing this, I would like to see the delegates exercise the options and the prerogatives on this one. Thank you, Mr. President.

Floor Leader Iehsi: Mr. President, I have a question now. Is there anyone saying that the Constitution of Micronesia will not be the supreme law of Micronesia? In other words, are there any governments that their Constitution is not the supreme law of that government or those states?

Senator Tmetuchl: Mr. President, I presumed all along that the Constitution would be the law of the land, including treaties and compact and whatnot, so maybe we should not act on this bill.

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Vice-President Salii: Mr. President, there are some questions as to whether the Constitution will be subject to something like the Trusteeship Agreement or the Secretarial Order establishing this Congress, or just what status the Constitution of Micronesia will have with respect to basic laws governing the Government of Micronesia today or future agreements which may be worked out, and the term "Constitution" while it may be clear to the minds of some people based on certain assumptions is not clearly defined in the bill which calls for the Constitutional Convention, but, suppose we assume that the Constitution will be the supreme law of the land, what harm will we cause if we make that clear by giving further instructions to the delegates to draft a Constitution that will clearly be the supreme law of the land? I don't see any harm in making the assumption even more obvious. Secondly, there may be a question as to the relationship of the Constitution of Micronesia with agreements between the future Government of Micronesia and other countries of the world and I think that if we intend that Constitution to have the final say as far as internal matters of Micronesia are concerned, it is incumbent upon us to make that clear. I am aware that there are concerns that this Congress is imposing on the Convention by giving it further instructions. Well, gentlemen, the fact of the matter is that this Congress is giving instructions to the Convention and I think we overlook the fact or possibility that the Convention may come up with a document which in some respects may not be the supreme law of the land, and I think it is very much in order if the Congress desires that this kind of instruction and limitation is placed on the Convention. I see no reason in opposing this measure. I think it makes the position of this Congress clear. I think it is a good instruction to pass on to the Constitutional Convention.

Senator Pangelinan: Mr. President, I appreciate the remarks of my colleague from Palau and I believe there are merits in it. My question is setting up a Constitution requires not only legal input but it's a question of politics. Any constitution that has been promulgated involved political decisions. As a representative of a minority group, this is the center of my concern. I feel that in order to protect my constituents I would like to know exactly what that product is. I feel that if the Constitutional Convention agreed to have a unicameral legislature in which minority groups have no protection, then to vote on this legislation to make the Constitution the supreme law of the land is to deny my future constituents their rights to protect themselves. This is one of the crucial questions we should look into in making the Constitution the supreme law of the land. I'd like to see first this Convention identify those political issues and later on we can -- there is no question that if later on we want to make that the law of the land, we can. I can appreciate Senator Salii's position that we have to make guidelines for our Convention so that they can formalize their product, but, on the other hand, unless I know what that product is and the implication of the Constitution, I cannot vote at this time to make that the supreme law of the land.

Vice-President Salii: Mr. President, I think the remarks of Senator Pangelinan are very much in order and the concern he expressed. I would like to point out that this Congress has enacted a bill previously in this Special Session which protects what it terms minorities from being subject to a Constitution which they feel is not to their advantage by providing that any district which by two-thirds majority rejects the Constitution will not have to be bound by that Constitution. I think, in that respect we must recognize that while the present districts of the Trust Territory are different in terms of population, when it comes to something as basic as the Constitution and the structuring of the government, the six districts of Micronesia are minorities by themselves and, therefore, the provision which states that any district which by a two-thirds majority -- and if I recall correctly, my two colleagues from the Marianas convinced the rest of the Senators to make it go from three-quarters to two-thirds -- I think when we consider this measure we have to consider it in terms of all actions that have been taken to protect everybody's interest in that respect.

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Senator Borja: Mr. President, I would like to say that, as our constituents in this district, or any other district considered to have different aspirations of the political destiny of Micronesia, there are provisions already acted upon by the Congress, as it was pretty well brought out by my very good friend, Senator Sali. The only questions that I raised on this particular bill, Senate Bill No. 369, is the authority we have delegated already to the Constitutional Convention delegates. I think they are the ones, on behalf of the people of Micronesia, to come out with some Constitution, and whatever the Constitution is adopted by the district according to the rules we have in the law, as pointed out by Senator Iehsi, that will automatically be the supreme law of the land. We take it that the Constitution will be one of the top laws to be recognized in the Trust Territory, so I go along with the principle; my only point here is I would like to see the authority vested in our delegates so our delegates could go ahead and do exactly what they feel is acceptable to us, to the people, and that will be the supreme law of the land. I just want to make that clear that I think that is the only point I have raised and I would like to see the responsibility assumed by the delegates.

Floor Leader Iehsi: Mr. President, I was quoted as saying that the Constitution is the supreme law of the land. I don't remember making that statement. I know I asked a question. Mr. President, I think the point has to be made clear here so that this bill deals with the Constitution that is already adopted and it has nothing to do with how many drafts the Convention comes out with. Am I understood?

Senator Olter: No.

Senator Borja: Mr. President, I would just like to say a few words about what Senator Iehsi said. No, I don't think I recall saying that he made a statement. What he pointed out would be actually the supreme law of the land after the whole Constitution is drafted and the Congress and the people adopted it, as he pointed out, then there would be no question about that.

The Clerk called the roll with the following result:

Senator Mangefel	Aye
Senator Amaraich	Aye
Senator Iehsi	Aye (Abstained twice)
Senator Sali	Aye
Senator Olter	Aye (Abstained once)
Senator Kabua	Excused
Senator Kendall	Aye
Senator Pangelinan	No
Senator Borja	No
Senator Tmetuchl	No
Senator Tun	Aye
Senator Nakayama	Aye

S.B. No. 369, S.D.1, passed Second and Final Reading of the Senate.

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Floor Leader Lehs moved for adoption of S.J.R. No. 131, "EXPRESSING THE SENSE OF THE CONGRESS OF MICRONESIA CONCERNING THE POSSIBILITY OF THE SEPARATE ADMINISTRATION OF ANY PART OF MICRONESIA PRIOR TO THE TERMINATION OF THE TRUSTEESHIP." Senator Mangefel seconded.

The Chair recognized Senator Pangelinan.

Senator Pangelinan: Mr. President, we have similar resolutions in which the Congress takes it upon itself to say the question of separate status is a prerogative of the Congress of Micronesia. Here, now, we are addressing ourselves to the question of separate administration. It appears to me that the Congress is very much aware of what is going on and we are trying to delude ourselves. The fact is there are different aspirations and desires here in the Trust Territory. For that reason, it seems to me we are more or less expressing to the world that we do have this problem and that we cannot cope with it and in disguise we are trying to force the districts to become part of an entity in which they may not want to continue. It seems to me that is the only value and purpose of this resolution. I think if one district wants to be separated for whatever reason that this Congress should discuss it with the district. I think our approach here is not one of seeking to understand the reasons for a separate desire, but rather announcing to the world that we do have this problem and it seems to me, Mr. President, that that is the wrong approach. We are very much concerned and we are aware of what is going on here in the Trust Territory and I think our function here is to try to reach those districts, talk to them and find out exactly why they are taking that course of action. Thank you very much.

Senator Borja: Mr. President, I just want to make a very brief comment on Senate Joint Resolution No. 131 and that is I do question the validity of the intent and purpose of this joint resolution since right now under the Secretarial Order, or under the Trusteeship Agreement designating the Trusteeship as a strategic trusteeship, the Administering Authority can go ahead and create a separate district, as happened in the past with Saipan and other sister districts in the Trust Territory. I think coming out to show our total opposition in this matter is just expressing our sense, but the question I have is whether or not if we pass this the Administering Authority could exercise their inherent right under the Trusteeship Agreement and for this reason I would rather ask the Senate not to take any action on this since from the last election we had for delegates to the Constitutional Convention, all of the districts took part, especially the Marianas, and we are looking forward to working together and I don't know what prompted this resolution, whether some kind of a feeling has come to some of the Congress here that very likely separate administrations might be created or what. Even tomorrow if the United States wants to create any separate administrations in the districts, they can very easily do it under the Trusteeship Agreement. So, Mr. President, my point here is I don't think there's any legal aspect involved if what we are trying to do is not really up to our authority but is up to the Administering Authority, and my concern is whether or not if we pass it, how much weight or regard would this have to restrict the Administering Authority to separate any administration from one district to another. I believe that's just about the point I have, in addition to what my colleague, Senator Pangelinan, has expressed already. Thank you, Mr. President.

Senator Tmetuchl: Point of information, Mr. President. Would someone care to explain to me what we can achieve by passage of this resolution?

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Vice-President Salii: Mr. President, I don't know if I can respond to that question from my colleague except to say that like all other resolutions, it is a prayer that expresses a sense of the Congress, but there is no guarantee what it will do, like other resolutions that we adopt here. I think that we have to recognize certain things. There are separate talks going on between the people of the Marianas and the United States. It's common knowledge in Micronesia that the talks with the Marianas are progressing very rapidly and that they might reach an agreement before too long, while the rest of Micronesia -- the talks between the Congress and the United States are progressing more slowly. And so, the question naturally comes out, and I think we had better face this, what if the Marianas and the United States conclude an agreement while the rest of Micronesia is still deciding what to do? I think, in that connection, with these circumstances, two years ago, if I recall correctly, the United

States informed the United Nations Trusteeship Council that in that eventuality, it may be possible -- and this is within the legal rights of the United States as Administering Authority -- to, in effect, put a separate administration in effect even under the Trusteeship.

Now, I do not think, personally, and I do not think anyone in Micronesia would be opposed to separate administrations of any district or the Marianas if we feel they reach agreement while the rest of us are still struggling to work out some other agreement with the United States. But, because there is already this division in Micronesia, and separate talks, and because Saipan happens to be the provisional capital of Micronesia, it will create a lot of administrative problems if a separate administration of the Marianas took place before the whole question of termination was resolved. That assumes, however, that the arrangement with the rest of Micronesia will take an unduly long period of time which may inconvenience the Marianas. I think if that eventuality takes place, then we all sit down and determine how this thing is to be coordinated. It involves the Marianas; it involves the other five districts; it involves the Administering Authority one way or the other, in any case.

I think this resolution simply points out that the United States does not take unilateral action to separate people of this territory for administrative purposes. I think if it becomes inevitable to make a separation, even before termination, then I think that everyone should be invited and coordination would take place because if, for instance, next year the United States, without consulting the Congress of Micronesia, decided to separate the Marianas, a whole host of problems would arise that would make the situation messy. So, I would ask my colleagues from the Marianas if you reach a time when you are ready to move and the rest of us are sitting back doing nothing, there is nothing to prevent our discussing this matter, but you must understand our position that the United States must consult with the rest of us before taking unilateral action on any of these matters.

Senator Tmetuchl: Mr. President, I don't think the United States is ready to take unilateral action to establish a separate administration for the Marianas without termination of the Trusteeship Agreement. I think it is a matter between the people in the United States and not the people of the Marianas.

Senator Pangelinan: Mr. President, when we attempt to discuss political status, especially when it's separate status, it is always a very sensitive and somewhat emotional subject. I think Senator Salii has spoken very eloquently on a matter we have been trying to avoid for some time, and I believe he has opened a forum for us to address ourselves to this particular problem. I for one have been involved in this particular subject for quite some time, and I feel very uncomfortable when I try to represent my constituents on the one hand, and uphold my responsibility to this Congress as a member of Congress. There is a direct conflict there and

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a very serious one. Perhaps it is time we in the position of leadership undertake to fulfill that leadership responsibility. We have not, in some ways, discussed this matter openly because we, perhaps, were kidding ourselves that it would go away. Senator Tmetuchi has been more or less the prophet in this matter since at the beginning of the session he raised this matter but, as we do all too often in Micronesia, we take things gradually and always with the hope that the problem will disappear.

I think Senator Salii has opened a new avenue, perhaps a dialogue of status talks, and I very much appreciate his courageous burst in speaking up as the Chairman in these Chambers. I think that is the kind of action those of us involved in the separatist movement have been looking forward to, a mutual dialogue. Perhaps it is too late now to pursue this in this session, but I would like to thank my colleague for his courageous action in bringing this up and those of us in the Marianas who have been involved in separate status talks may find in our hearts that it is not a matter between ourselves and the United States but it involves Micronesia as a whole.

I believe Senator Salii is right when he mentioned that there are a gamut and a host of problems with any separate discussions on the status question, or even for that matter, separate negotiations, etc. I think there is still time to discuss all these problems. After all, we are part of Micronesia and we can reach across the table without too much difficulty and I hope that this kind of dialogue will continue before the termination of the Trusteeship Agreement and I think it is our responsibility to take this action. After all, we are in the position of leadership and we should take this action. Thank you.

The motion to adopt carried and S.J.R. No. 131 was adopted by the Senate.

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Remarks by Senator Tinotuchal
Micronesian Senate - July 31, 1974

Mr. President, my colleagues in the Senate:

I would like this morning to speak about a matter which has been concerning me for several years. This the relationship of the Marianas District to the rest of Micronesia.

Some of you will remember that it was in 1971 that I first spoke in the Senate about this. At that time I argued that the economy and recent history of the Marianas was so different from that of the other districts that it was unrealistic to assume that we would in the end all follow a common course. I do not know how many members agreed with my estimate then, but they did not act upon it in any way.

Neither at that time or now have I felt that the people of the Marianas have taken a wrong or harmful course for themselves or for us.

I was simply saying that Saipan in particular has had a very different history and development than the other districts of Micronesia, and we should accept and recognize that fact.

I also feel it is proper that the members of the Marianas delegation should participate fully in all decisions of this Congress as long as we have a common government.

However, the reality of which I warned three years ago is now upon us; the Marianas are indeed set upon a different course. Yet we are still failing to take the steps which history has, in my opinion, now made mandatory for us. I refer of course, to the participation of the people and leaders of the Marianas in decisions which are of great importance to our future, but not theirs. These are the negotiations over our future political status and the writing of our constitution. By this I do not in any way intend to criticize the positions taken by my distinguished colleagues from the Marianas on the Joint Committee on Future Status. Throughout its history their performance has always been statesmanlike and sensitive to our needs. Nevertheless, there is no longer any more logic to their participation on this committee than if they were members of the Legislatures of Guam or even Hawaii. We from the other districts do not participate in their status negotiations for exactly this reason.

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The same is even more true of the Constitutional Convention. We should welcome observers from the Marianas to our convention, but to have delegates from the Marianas actually vote on our form of future government will inevitably make it more difficult to reach a consensus on the proper ways in which to meet our own particular needs.

The future of our government and of our people now depends in important ways on the laws and policies we determine here in this Congress. I hope that with the cooperation of our colleagues from the Marianas we can work out arrangements which will permit us, like them, to determine our own destiny for and by ourselves.

By this, however, I do not mean that we should stop talking with our friends from the Marianas about our joint future. We will be neighbors. We also have a long history of working together, especially during the nine years since the Congress of Micronesia was founded. We will inevitably continue to have close relations of many kinds in the future. What we should be doing now is discussing realistically how we and the Marianas will travel the separate roads we are each mapping for ourselves in cooperation and neighborliness. We cannot do this as long as we pretend that the separate roads do not exist.

Thank you, Mr. President.

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