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STATEMENT OF JOSE A. CABRANES

BEFORE

THE UNITED STATES SENATE COMMITTEE ON FOREIGN RELATIONS

ON H.J. RES. 549

November 5, 1975

03- 025076

STATEMENT OF JOSE A. CABRANES, COUNSEL

OF

THE INTERNATIONAL LEAGUE FOR THE RIGHTS OF MAN

(A non-governmental organization in consultative status to the United Nations Economic and Social Council, the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the Council of Europe)

BEFORE THE UNITED STATES SENATE COMMITTEE ON FOREIGN RELATIONS

ON H.J. RES. 549

Mr. Chairman, I am Jose A. Cabranes of New Haven, Connecticut. I am grateful to you for your invitation of last week to submit my views and those of the International League for the Rights of Man (the "League") on some of the international law and policy questions raised by H.J. Res. 549, to approve a "Covenant" between the people of the Northern Mariana Islands and the United States and to establish a so-called Commonwealth of the Northern Mariana Islands. I am a member of the Bars of the State of New York, the District of Columbia and the Supreme Court of the United States. I have been an international lawyer for ten years, with experience in that field drawn from private practice, law school teaching and public service. I received my training in international law at the Yale Law School and the University of Cambridge in England.

The League opposes approval of this proposal because it would create a new "unincorporated territory" or colony under the American flag; because such an annexation of new territory contradicts this nation's highest ideals; because it is a significant deviation from well-settled international law and practice; and because it is designed to avoid the decision-making processes of the United Nations.

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The organization which I represent today is described in the statement I filed in its behalf on July 29, 1975 with the Senate Committee on Interior and Insular Affairs, and which I submit to you for inclusion in its entirety at this point in the record of this hearing. That statement sets forth in summary fashion the international legal and political grounds on which we have based our opposition to this ill-conceived scheme to annex the Northern Marianas and establish a new unincorporated territory in the western Pacific. I would like to request that at this point in the record there also be included a copy of a letter of September 24, 1975, from The Honorable Daniel P. Moynihan, the Permanent Delegate of the United States to the United Nations, to Mr. Roger Baldwin, the Honorary Chairman of the League. We have the highest possible regard for Ambassador Moynihan and his distinguished colleagues at the United States Mission to the United Nations. We respect and value their service to the nation and their devotion to its welfare. On this issue, however, we believe they are defending a policy which is wrong and one which does not serve the interests of the United States or the interests of the world community.

Mr. Moynihan's letter purports to answer the various objections to the Commonwealth of the Northern Marianas raised by our July 29, 1975 statement. Accordingly, these two documents provide convenient points of reference for our additional comments on the international law and policy issues raised by H.J. Res. 549.

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In his letter to Mr. Baldwin, Ambassador Moynihan states that our characterization of the Marianas Commonwealth as U.S. colony "seems particularly unfortunate," because in a plebiscite held on June 17, 1975, the people of the Northern Marianas approved "Commonwealth" status as set forth in the Covenant "by an overwhelming vote of over

seventy-eight percent of the registered voters, of whom ninety-five percent went to the polls." Mr. Chairman, the fact that seventy-eight percent of the voters of the Northern Marianas favor this new political status does not alter its essentially colonial character.. "Colonialism " is an appropriate description of a political association betweem a great power and a small and powerless people in which most significant law-making powers are under the effective control of the metropolitan state. I refer you, for example, to Section 105 and Article V of the Covenant, on the applicability of Federal law in the projected Commonwealth. Please note, moreover, that the legislative body whose laws are to apply in the "Commonwealth" -- namely, the Congress of the United States -- is one in which the people of the Northern Marianas will not be represented. The term "colonialism" accurately describes a system for the government of an alien people without their effective participation. It accurately describes this proposed arrangement. The people of the Northern Marianas may have consented to this political status, but that does not make it any less colonial. The United States Congress is under no obligation to add its imprimatur to the concept of colonialism by consent of the governed.

Mr. Chairman, a word about the June 17, 1975, plebiscite which is so dear to the proponents of this incredible proposal. Mr. Moynihan and the administration he represents boast of "an overwhelming vote of seventy-eight percent of the registered voters," but they rarely bother to mention the fact that barely 5,000 votes were cast in the plebiscite. The record should clearly show that the administration now urges you to endorse the United States' first territorial acquisition in more than half a century on the basis of an affirmative vote of 3,945 persons and a negative vote of 1,060.

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Ambassador Moynihan quite rightly notes in his letter of September 24, 1975, that the objective of the United Nations Trusteeship Agreement is "self-government or independence," and that under well-established international law and practice (embodied in U.N. General Assembly Resolution 1541 (XV) of 1960) "self-government" may include "free association with an independent state." Mr. Moynihan is wrong, however, in his assertion that the definition of "free association" in Resolution 1541 (XV) "would appear to include the Marianas Commonwealth Agreement." I submit for the record at this point a copy of General Assembly Resolution 1541 (XV). I refer the Committee to Principle VII (a), which requires that the people of a territory associated with an independent state retain "the freedom to modify the status of that territory through the expression of their will by democratic means and through constitutional processes." This provision of Principle VII (a) has been uniformly interpreted to mean that the people of the associated state must be free to modify their political status through <u>their own</u> constitutional processes -- and that they must be free unilaterally to choose independence. It does not mean, and cannot possibly mean, that a change of status is possible only after the successful invocation of the constitutional processes of the metropolitan state as well as of the associated territory. But that is precisely what the Covenant before you requires -- it requires that the United States approve of any subsequent claim to independence.

Moreover, by granting the people of the Northern Marianas United States citizenship, this Covenant creates a bond which is well nigh impossible to break, as a matter of American constitutional law and as a matter of simple human psychology.

When you extend the citizenship of a great, powerful and wealthy nation to a poor and isolated people, you effectively foreclose the possibility of alternative political choices. In addition, some students of American constitutional law -- including the Chairman of the Senate Committee on Interior and Insular Affairs, Mr. Jackson -- have argued that the United States citizens of another territory, Puerto Rico, are not now free to choose to become independent without the adoption of a constitutional amendment by the United States. Citizenship is a tie that binds, and clearly has been made a part of this Covenant in order permanently to foreclose the possibility that the people of the Northern Marianas will be able to re-evaluate their political status at a later time.

Mr. Moynihan acknowledges that the United Nations Trusteeship Council is on record as favoring the unity of Micronesia and claims that "it has also recognized the repeated requests of the Northern Marianas for a status separate from the rest of Micronesia and in closer union with the United States than that presently contemplated by representatives of the other districts." I respectfully submit that Mr. Moynihan's suggestion of United Nations approval for the dismemberment of the Trust Territory is in error. The Trusteeship Council and other organs of the United Nations are clearly on record as favoring the territorial unity and integrity of dependent areas generally and the Trust Territory in particular. I submit for the record a copy of General Assembly Resolution 1514 (XV) of 1960, the Declaration on the Granting of Independence to Colonial Countries and Peoples, and refer the Committee to Paragraph 6, which provides that "Any attempt at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the United Nations." I also submit for the record excerpts from several reports of United Nations Visiting Missions to Micronesia, which explicitly warn

about the dangers of territorial disunity and encourage the United States to maintain the territorial integrity of the Trust Territory.

There is no inconsistency between the principle of self-determination and the principle favoring the territorial integrity of colonial areas. International law and practice since the founding of the United Nations are quite clear on this point. Professor Rupert Emerson of Harvard University, a leading authority on the subject of decolonization and self-determination, has written, that "the customary verdict has been that self-determination does not embrace secession"; and, it may be added with respect to territories still under colonial rule or trust administration, it does not embrace fragmentation or dismemberment prior to the completion of the process of decolonization. As Dr. Rosalyn C. Higgins of the Royal Institute of International Affairs has summarized the law on the subject, self-determination is "the right of the majority within an accepted political unit to exercise power." The people of the Northern Mariana Islands constitute a distinct minority of the people of the Trust Territory and cannot be said to have a "right" of self-determination separate and apart from the other people of the Trust Territory. Any other principle of law would have created havoc in the developing world during the process of decolonization, and today would strike at the foundations of world public order.

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Mr. Moynihan notes that the Trusteeship Agreement "will continue to apply to the Northern Mariana Islands until termination of the Trusteeship," and states, in effect, that the United States may in the meantime begin the process of annexation of that area. This interpretation of the Trusteeship Agreement, and the U.N. Charter provisions on which it is based, suggests that substantial changes in the government of the Trust Territory are possible without the approval of the United Nations. We find no basis in Article 3 of the Trusteeship Agreement for the proposition that the U.S. may effectively divide the Trust Territory into two. I submit a copy of the Trusteeship Agreement for your consideration. Moreover, this proposed Covenant clearly entails an "alteration or amendment" of the Trusteeship Agreement requiring approval by the U.N. Security Council under Article 83 of the U.N. Charter. Indeed, the 1973 U.N. Visiting Mission addressed the issue as follows: "We do not find in the Trusteeship Agreement anything which authorizes the population of a part of the Trust Territory to set up its own distinctive political organs - and, even less, to enter into separate negotiations about its future with the Administering Authority." All of this raises the suspicion that the United States ultimately will attempt simply to "notify" the United Nations of its plans for the Northern Marianas, and that it will resist the Charter-mandated decision-making processes of the Trusteeship Council and the Security Council. Faced with the possibly unpleasant prospect of placing its proposals before appropriate organs of the

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U.N., in which China, the Soviet Unionand Afro-Asian states play a role, the United States seems to be setting the stage for avoidance of its Charter obligations. Note, for example, that United Nations action is nowhere even suggested by the terms of the Covenant. Indeed, Section 1002 of the Covenant clearly implies that the U.S. looks upon termination or effective amendment of the Trusteeship Agreement as a unilateral act -- a position previously asserted (and then only before 1950) by the Union of South Africa in connection with its wish to terminate the mandate over South-West Africa. This position was rejected by the International Court of Justice in its Advisory Opinion of the Status of South-West Africa of 1950.

The Congress has a duty to determine with precision the administration's policy and expectations with respect to review by the United Nations. The American people have a right to know the administration's views with regard to its obligations under the Charter, inasmuch as it has led many of us to believe that the U.S. is prepared openly to evade them.

Many commentators have noted that the dismemberment of the Trust Territory inevitably will bring into question the viability of the remaining island groups. By supporting the pretensions of the Northern Marianas group, the United States clearly has made it difficult, if not impossible, for the other island groups to survive as a unit. These islands have simply been left to "twist in the wind," either to petition for accession to the Northern Marianas

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arrangment, or to conclude separate arrangements on terms more readily acceptable to the United States than the original Draft Compact of Free Association between Micronesia and the United States. In any event, everyone in a position to know the facts asserts that approval of the Northern Marianas Commonwealth will necessarily inflict great damage on the political aspirations of the remaining islands and peoples of the Trust Territory, in flagrant violation of the spirit if not the letter of the Trust Agreement and of the United Nations Charter.

Mr. Chairman, having offered some comments on what the United States should not do, we would like to suggest an alternative to this anachronistic annexationist proposal -- an alternative to what others have called "island grabbing." We suggest that the United States promptly resume negotiations with the representatives of all of the people of Micronesia, the Congress of Micronesia, and that it revert to a policy of reinforcement of the territorial unity and integrity of the Trust Territory. Finally, we recommend that the Congress review the long-range strategic and political objectives of the American presence in this area, and that you make it quite clear to the administration that the expansion of the territory of the United States, and the creation of a new American colonial possession, is not a policy favored by the people of the United States in the year of their bicentenary.

Thank you, Mr. Chairman.

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