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LETTER DATED 18 OCTOBER 1976 FROM MR. TOSIWO NAKAYAMA, PRESIDENT
OF THE SENATE, CONGRESS OF MICRONESIA, ADDRESSED TO THE PRESIDENT
OF THE TRUSTEESHIP COUNCIL

THE SENATE
CONGRESS OF MICRONESIA
Capitol Hill, Saipan, Mariana Islands 96950

18 October 1976

President
Trusteeship Council
United Nations
New York, New York 10017

Dear Mr. President:

I received a copy of the report of the Trusteeship Council to the Security Council 1/ on Micronesia only after it was completed and sent. The draft report was unfortunately not made available to the Micronesian advisers prior to its adoption on 13 July 1976, although I understand that the Council drafters had the benefit of advice from the United States staff during the drafting.

It is apparent that in one factual respect the Council was mistaken, and that two of its conclusions and recommendations rest on that factual misapprehension. The conclusions contain the following two paragraphs:

"527. The Council notes the provisions, agreed to in June 1976 between representatives of the Administering Authority and of the Congress of Micronesia, of the draft compact of free association ...

"528. The Council considers that the people of Micronesia should be given the fullest opportunity to inform themselves about the provisions of the draft compact of free association in its present form as well as other future political choices, including independence." 2/

1/ Official Records of the Security Council, Thirty-first Year, Special Supplement No. 1 (S/12214).

2/ Ibid.

As our counsel informs me he explained to you, the Trusteeship Council appears to have accepted a factual misapprehension which I took pains to seek to clarify in my opening and closing statements at the Trusteeship Council this year. Let me again make clear the following:

1. There is no finished draft compact that could legally be submitted or "explained" to the people of Micronesia at the present time. Our law provides that the draft compact (in its latest version of 2 June 1976) be now transmitted to the new and broadly based Commission on Future Political Status and Transition, composed equally of representatives appointed by the district legislatures and the Congress of Micronesia, for review, renegotiation to conform to our draft Constitution, and for completion with respect to our maritime rights, a subject that has been left blank and is concededly not yet covered by the incomplete draft of 2 June 1976 of a draft compact of free association between the United States and Micronesia. Until these steps are completed, it would be a violation of our law to seek to submit this partial, incomplete and unauthorized draft compact to our people. I am sure that the Trusteeship Council had not intended to recommend a violation of our law in such a basic matter as this.

2. The "initials" on the draft version of the incomplete version of 2 June of the compact appear to have misled the Council, and have been treated in various statements of the Administering Authority as suggesting a degree of finality to the draft of 2 June which does not correspond to the circumstances which led to the placing of the initials on that document. Those initialling it were specifically assured that placing their initials on the document would in no way inhibit a full and free review and renegotiation of that document in accordance with law by the Commission on Future Political Status and Transition. Initialling merely signified that the members of the expiring Joint Committee on Future Status of the Congress were satisfied to transmit that document to the new Commission for its proper work.

I myself was present at these events and can assure you of the correctness of this interpretation. In addition, the letter of 30 July 1976 (see enclosure) from the Joint Committee on Future Status transmitting its final report to the special session of the Congress of Micronesia confirmed the understanding of the members of that Committee that the incomplete draft compact of 2 June was to be turned over to the new Commission on Future Political Status and Transition for further negotiations in accordance with its mandate. The draft of 2 June has, in fact, been transmitted to the Commission. This is consistent with the agreement reached on 29 May 1976 between the Joint Committee and the new Commission prior to the initialling of the incomplete draft of 2 June. A copy of the minutes of the meeting of the two groups is contained in enclosure 2.

I respectfully request that this and the attached documents be forwarded to the Security Council as an attachment or otherwise to be associated with the Council's own report.

Sincerely yours,

(Signed) Tosiwo NAKAYAMA
President of the Senate
Congress of Micronesia

cc: Commission on Future
Political Status and Transition

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Enclosure 1JOINT COMMITTEE ON FUTURE STATUS
CONGRESS OF MICRONESIA
Saipan, Mariana Islands 96950
"MICRONESIA"

30 July 1976

The Honorable Tosiwo Nakayama
President, Senate
Sixth Congress of Micronesia
Second Special Session, 1976
Kolonia, Ponape

and

The Honorable Bethwel Henry
Speaker, House of Representatives
Sixth Congress of Micronesia
Second Special Session, 1976
Kolonia, Ponape

Dear Mr. President and Mr. Speaker:

The Joint Committee on Future Status has the honour to present herewith its report on the eighth round of political status negotiations with the United States of America, held at Saipan, 2 June 1976.

The draft compact of free association transmitted in this report represents the product of six years of labour of the Joint Committee. During those six years, five formal rounds of negotiations, and many more meetings between the heads of delegations, were held.

The report contains a comparison of the draft of June 1976 with the draft of October 1974. It also contains the verbatim proceedings of the eighth round and the final joint communiqué. Finally, it contains the Micronesian position on the law of the sea. This position was not delivered at the eighth round at the request of Ambassador F. Haydn Williams, but is made a part of the official record.

The report must be read together with our reports on previous rounds, which analysed the operative effects of each of the sections of the draft compact. The report does not contain recommendations to the Congress, and is not intended to require or urge formal action by the Congress on the draft compact itself. In this respect, it is a summary report only.

The compact of free association is not at this point a completed document. Although members of the Joint Committee and Ambassador Williams affixed their initials to the completed sections of the draft at the conclusion of the eighth

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round, neither our successors nor the Congress itself are bound by our action. Moreover, two important areas remain to be resolved: the rights of Micronesia in respect of the law of the sea and the formula for the division of United States financial assistance to be provided to Micronesia by the United States.

This is, however, the final report of the Joint Committee. At its second regular session, 1976, the Sixth Congress of Micronesia enacted Public Law No. 6-87, creating the Commission on Future Political Status and Transition and directing it, in part, to carry on the work of the Joint Committee. With the organization of the new Commission on 5 June 1976, the Joint Committee passed out of existence.

The responsibilities of the new Commission to the Micronesian people are awesome. The Joint Committee extends to the Commission its most sincere best wishes for success in the formidable tasks which yet lie ahead of it.

The Joint Committee wishes to extend its sincere appreciation to the staff and consultants which have assisted it through the course of its existence, and to whom must be credited much of our achievements. The Joint Committee also wishes to extend its greatest appreciation to the members of the third through sixth Congresses of Micronesia, whose support and guidance have been a constant source of inspiration to us.

Respectfully submitted,

Signed by the following persons:

(For) Lazarus E. Salii, Chairman
Ekapap W. Silk, Co-Chairman
Tosiwo Nakayama, Member
Bailey Olter, Member
Petrus Tun, Member
Ambilos Tehsi, Member
John Mangefel, Member
Ataji Balos, Member
Sasauo Haruo, Member
Isidoro Rudimch, Member

Enclosure 2

Minutes of a meeting held at Saipan on 29 May 1976 between
Mr. Andon Amaraich, speaking for the Commission on Future
Status and Transition, and Senator Lazarus E. Salii, speaking
for the Joint Committee on Future Status

AMARAICH: Mr. Chairman, during the early part of this meeting you posed a question of whether the Joint Committee should proceed with the formal negotiations with the United States negotiating group on Micronesia's future political status which is being held here at Saipan, or whether we should organize the new Commission on Future Status and Transition, which under the law, when organized, would have to carry on the negotiations as the Joint Committee goes out of existence, in accordance with that law. I believe the members of the Commission asked for time to confer amongst ourselves to give the Joint Committee our feelings. And, I have been given the unpleasant task of conveying to the Joint Committee the feeling of the members of the new Commission.

The first item that was discussed by the members of the Commission was the genuine desire on our part to have the Marshall Islands included in whatever negotiation is being carried on from now on regardless of which group handles the negotiations. It was pointed out that at least the Joint Committee has representatives from the Marshall Islands. It was not clear whether the Marshall Islands District would be ready to make appointments to the new Commission but that too would be needed. We realize that the informal exchanges among the members of the Joint Committee and the new Commission have been carried on and we have made progress and that the formal round is scheduled for Monday. It is the feeling of the members of the Commission that it is in the public interest that we try to avoid as much as possible any internal problems that the two groups might have, or members of each group might have. It is our recommendation, therefore, that perhaps the Joint Committee can proceed with the negotiations which have been scheduled, but there was one question that the members were not able to answer themselves or to which the answer has not been made clear during the last several days of our discussion and that is: what is the Joint Committee's plan as far as the compact or whatever agreement is reached at this round, whether the Joint Committee plans to go to the Congress with its result and ask Congress' action on it. The mandate of the new Commission is clear and that is to also deal with the political status matter. We feel that it is also in the public interest that we have some common understanding as to what would happen after this round of negotiations is concluded and a compact or partially completed compact is produced. It is the request of the members of the Commission that the Commission should be given an opportunity to carry out its mandate, one of which is to address the issue of political status before any compact or partially completed compact is presented to the Congress. If that could be agreed during this informal meeting, we would not hesitate to agree that the Joint Committee carry on until the Commission is fully organized. But, for planning

purposes, we would like to request that a definite, specific date for organizing the Commission be set and in order to give another opportunity for other members to come into Saipan, Thursday (3 June) next week is proposed. We would much prefer that the Commission be organized earlier, recognizing the fact that in addition to the political status matter, the new Commission has other equally important assignments to deal with and the earlier we get organized the better we can start charting our activities in terms of just getting staff, office space and research work lined up. But, we do want to co-operate with the Joint Committee in whatever we feel is in the best interest of Micronesia. We would like to avoid any embarrassment or any misunderstanding or differences or confrontation between the two groups on any of the issues, or in the manner in which our work is done.

There was concern expressed by the representative from Kusaie and that is this will be the first time Kusaie will be participating in political status activities, and second, they will not be fully represented in the Joint Committee.

Thought was given to the possibility of at least electing the Chairman of the Commission so that we would have somebody heading the Commission and can start doing some of the things that the Commission must do or try to line up things in terms of just planning, staffing or other things the Commission is required to do. So far, we understand that nobody is doing anything in terms of getting important documents together for the members or lining up temporary staff assistance and office space. We would like to have the benefit of the Joint Committee's views on all of these things.

I should also state that we would like to get some agreement amongst ourselves that the Joint Committee will not go to Congress with whatever compact or partially completed compact is produced here. If agreement can be reached on this, we would be willing to wait until Thursday to get the Commission organized.

I am also obligated to state that it was our general feeling - we wish we did not have to go through these unfortunate complications and perhaps save ourselves embarrassment - but I guess we must look to the future and our overriding consideration should always be for the interest of Micronesia, the unity of Micronesia and for those of us who are here. Thank you, Mr. Chairman.

SALII: I have one question. The recommendation, as I understand it, is for the Commission to be organized by 3 June, Thursday of next week, but that you also mentioned that earlier than 3 June would be better.

AMARAICH: I guess what I was saying would be if things could be done earlier without any problem between the two groups, we hope we can do that so that we can start working on other things, but we also feel that we should not delay any longer or beyond 3 June because that will not give the Commission time to get itself set up, assuming that the negotiations will continue on beyond Thursday and if you reach Friday and you go out of existence, naturally the Commission would have to come in, and coming in without any preparation at all is what we are concerned about. We hope this will not happen. Another consideration is that hopefully the rest of the members would show up before Thursday, and our request that you, as Chairman of the Joint Committee, and the Leadership of the Congress continue to urge the Marshall Islands if they can see their way of making the appointments.

SALII: If I may, I would like to report the response of the Joint Committee to the recommendations and requests which were expressed a few minutes ago by the members of the new Commission on Status and Transition.

With respect to the whole ability of the Commission to function as soon as possible, it is our suggestion that on staffing, if the Commission wishes, Mrs. Evelynna Akimoto can be available to serve as a secretary to the Commission until the Commission staffs itself in that regard. Also Mr. Michael White and Mr. Paul Warnke, again if the Commission would like to use their services, it is recommended that these two lawyers be approached and we hope that they will be available to work with the Commission until the Commission finds its permanent staff. With respect to space, the office which has been occupied by the Joint Committee, with the consensus of the Leadership of the Congress, will be made available to the Commission as soon as the Commission is organized. Also, it is the hope of the Committee that the entire staff of the Congress of Micronesia will continue to be available to assist when needed by the Commission. The Committee also has agreed formally that any decision or result of the current negotiations will be turned over by the Committee to the Commission and that the Committee will not submit the results of the negotiations to the Congress of Micronesia. It was also agreed that further attempts will be made to the Marshall Islands to appoint or select their members to the Commission, if they can see our way to doing this.

The Committee also agreed with the recommendation of the Commission that the Commission be organized no later than 3 June 1976, and if possible, earlier. I am very happy to report the response of the Joint Committee to the Commission.

Members present:

President Tosiwo Nakayama
Senator Lazarus Salii
Representative Ekpap Silk
Senator Petrus Tun
Senator John Mangefel
Representative Ataji Balos
Representative Isidoro Rudimch
Representative Resio Moses
Speaker Itor Harris
Mr. Andon Amaraich
Dr. Anthony Polloi
Mr. Jacob Nena
