STANDING COMMITTEE REPORT NO. CC-SCR-04-18

DATE: June 21, 2022

RE: Committee Proposal No. 04-06, CCD1

The Honorable Redley Killion
President
Fourth Constitutional Convention of the
Federated States of Micronesia
Palikir, Pohnpei FM 96941

Dear Mr. President:

Your Committee on Style and Arrangement to which was referred Committee Proposal No. 04-06, CCD1, entitled:

ARTICLE IX

Section 6. Net revenue from ~~ocean floor~~ seabed and subsoil mineral and other non-living resources exploited from the jurisdiction of the Federated States of Micronesia beyond 12 miles from island baselines ~~under Section 2(m)~~ shall be divided equally between the national government and the appropriate state government or state governments. Where two or more state governments are entitled to such net revenue, such state governments shall be entitled to fifty percent (50%), divided equally among them. Congress shall give effect to this provision by statute in a manner consistent with the international treaty obligations of the Federated States of Micronesia.

begs leave to report as follows:

Pursuant to Rule 20.(e) and Rule 51, your Committee on Style and Arrangement reviewed Committee Proposal 04-06, CCD1 for "in accuracies, repetition, inconsistencies [and] poor drafting." Your Committee unanimously found that Committee Proposal 04-06, CCD1 is consistent with the other provisions of the Constitution. Your Committee, however, is recommending three changes that are consistent with the Convention's purpose and intent in passing the Proposal.

First, your Committee determined that the word "derived" was accidentally removed from Committee Proposal 04-06, CCD1. Prior to its amendment, Committee Proposal 04-06 had included the word "derived" in the first sentence of Section 6 between "revenue" and "from" which is the current language of Article IX, Section 6 of the FSM Constitution, your Committee determined that there was no intent to remove the word "derive" from Section 6. Thus, your

Committee has reinserted the word "derived" between "revenue" and "from;" so, that the first sentence of Committee Proposal 04-06, CCD1 reads: "Net revenue derived from ~~ocean floor~~ seabed and subsoil mineral and other non-living resources exploited from the jurisdiction of the Federated States of Micronesia beyond 12 miles from island baselines ~~under Section 2(m)~~ shall be divided equally between the national government and the appropriate state government or state governments."

Second, your Committee determined that "mineral" should be the plural "minerals" so that it is consistent with the plural "resources." Based on the discussion in Standing Committee Report No. 04-06 and the discussion in the Committee of the Whole, your Committee determined that it was the intent of the Convention to include net revenue from the mining of all minerals within this revenue sharing provision. Thus, your Committee recommends that "mineral" be "minerals."

Third, your Committee determined that the word "the" which is located between "consistent with" and "international treaty" should be removed from the last sentence of the proposal. Your Committee discussed that "the" is a definite article that refers to a specific thing known to the reader and could be interpreted to refer to one specific treaty obligation of the FSM. Your Committee was concerned that if the definite article is used the proposal would be interpreted to only refer to the United Nations Convention on the Law of the Sea, the only international treaty obligation specifically identified in Standing Committee Report No. 04-06. Your Committee recognized that there may be other treaty obligations that are relevant to the subject matter of this Proposal and that it was the intent of the Convention that when Congress gives effect to this provision, the statute enacted be consistent with all of the FSM's treaty obligations. By removing the definite article, it becomes clear that when Congress enacts the referenced statute the statute must be consistent with all of the FSM's international treaty obligations. Thus, your Committee recommends that the last sentence of the proposal read: "Congress shall give effect to this provision by statute in a manner consistent with international treaty obligations of the Federated States of Micronesia."

Finally, your Committee believes that it is important to recognize the importance of ownership of the seabed and subsoil to the history and development of the FSM as a nation. To that end, your Committee has included an Addendum to this Report which sets out that history.

For the reasons stated herein, your Committee on Style and Arrangement recommends adoption of Committee Proposal 04-06, CCD1 as amended.

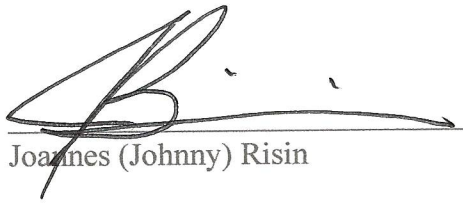
Respectfully submitted,

Salomon Saimon, Chairman

James Naich, Vice Chairman

Andy P. Choor

Myron I. Hashiguchi

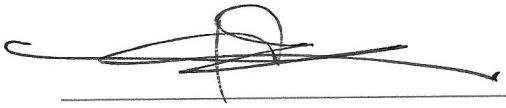


Joannes (Johnny) Risin

Asterio Takesy

Johnson Asher

Mason Albert



Ricky F. Cantero

ADDENDUM TO

STANDING COMMITTEE REPORT NO. 04-___

Re: Committee Proposal 04-07, CCD1, CCD2

This addendum is included in the Standing Committee Report to provide an adequate historical context of the above-referenced proposed amendment which has been a subject of careful discussions by your Committee and the Convention as a whole.

Words like ocean floor, seabed and subsoil are technical terms for the marine geologists and marine biologists, including lawyers specializing in the international law of the sea. But for the ordinary citizens, which means most of us, these words do not hold much meaning or relevance -- unless they are presented in the context they were propped up and treated by our Founding Fathers and framers of our Constitution as an argument for the assumption of full self-government by our people after they had been successively held for more than four hundred years as "wards of other nations." It is worth recalling that the third international effort under the auspices of the United Nations (UNCLOS III) to codify the law of the sea, including its relevant parts such as the seabed, subsoil, and continental shelf, was a driving force for the founding architects of our government in their mandate to "create one nation of many islands" and to draw up the "supreme law" of our land. The founding Fathers also hoped that the resources of the sea could be sustainably exploited to augment the new nation's economic viability and to blunt the arguments by the detractors summed up in the oft-repeated statement: "there cannot be political independence without economic independence.".

"Ocean floor" could be dismissed as being "Old English" or archaic, perhaps a bit vague, hence the desirability of injecting some measure of modernity and precision in the word as the amendment strives to do. The general semanticists would love us for doing this; but the historians are understandably withholding their judgement for the time being to determine whether we are being honest to ourselves and our future generations about the circumstances in which our country was born as a state with full international personality. We are urged to listen with our heart's minds to the melody of inspiration in the word ocean floor, along with seabed and subsoil, which resonates with – or reminds us about -- the "Song of Micronesia's Sovereignty and Independence" composed by our founding nation-builders. It is this song that we must not lose sight of in our debates about the semantics and intent of the proposed amendment.

How does "ocean floor" become relevant here? It captures center-stage attention because it was a critical issue in the push for gaining the practical meaning of our sovereignty, to place nation-building on the top shelf, and to ensure that the exercise of our right to self-determination met the standards of the international community, particularly the UN, including the US. It was a concept that helped to glue Micronesia together as an entity at a time when the unity of Micronesia was subject increasingly to wear and tear by the allure of separation or to break up the Trust Territory of the Pacific Islands (TTPI), forerunner of the FSM. The law of the sea also had a prominent place and a rich history in the aspirations of our leaders in seeking economic viability for the future Micronesian government. It was part of the political vocabulary of those

men who drove the three-prong process that led us to where we are today as the Federated States of Micronesia.

The subject matters of the three phases of the process were inter-related; therefore, conscious efforts were made to keep them aware of their respective activities and to align or coordinate them with each other. These three phases were: 1) the protracted negotiations on the future political status of the Trust Territory of the Pacific Islands (TTPI), forerunner of the FSM government, which extended for about sixteen (16) years and culminated in the Compact of Free Association between the FSM and the US; 2) the testy convening of the 1975 Constitutional Convention of Micronesia, which in the end created the FSM; and 3) the drawn-out petition initiated by the Micronesian leaders to have representation in UNCLOS III. Not surprisingly, most of the key players in the three processes were the same individuals, thus, with the benefit of hindsight, it was important to keep Micronesia's positions on critical issues, such as the law of the sea and its many related subjects, well informed and consistent.

To begin with, it is to be recalled that the TTPI was a "sacred" trust created by the United Nations after the Second World War. The US insisted that it be appointed as the "administering authority" of the brand-new strategic trust, only one of its kind in the world. It justified its petition as the victor in the Pacific theater and, as such, as the guarantor of international peace. Ultimately, the intention was for the administering authority to fulfill the socio-economic and political development requirements of the TTPI to enable the Micronesians to meaningfully exercise their right to self-determination in choosing their political destiny.

The catalyst event occurred when the duly elected leaders of Micronesia assembled in the Congress of Micronesia took the stand to seek termination of the "trusteeship" status by engaging directly with representatives of the US Government to negotiate the political status of the future government of Micronesia. The first so-called "round" of political status talks took place in 1969 in Washington, D.C. As history would readily confirm, the US was vehemently opposed to releasing Micronesia from its grips. Growing impatient in part by the slow pace and inadequacy of promoting credible economic development in the TTPI and in part by Washington's laisse-faire attitude on the question of future political status, the Micronesian leaders were undeterred by what they felt were unhelpful obstructions by the administering authority. Armed with mounting support from within Micronesia and from the international community, including from "Micronesian friends and supporters" within the US government, the Micronesian leaders pressed ahead.

From the very start of the future political status negotiations, the Micronesian representatives insisted that they reserved the right to write and amend their own constitution. This was one of the "11 Points" presented to the US during the first round of talks held in Washington. The US was represented not by a diplomat but by a mid-level Interior Department staffer in charge of "parks, wildlife, and public lands." Micronesia was subsumed in his portfolio as another area of responsibility. Beginning with the inaugural round of negotiations, the Micronesians argued they had to have a constitution in hand, one that would empower them to negotiate treaties with foreign countries and to enter into such treaties in their own name and right.

At about the same time, a separate set of negotiations were underway under the auspices of the UN to update and codify the UN Convention on the Law of the Sea. The Micronesian leaders were aware of the third UN law of the sea initiative. Micronesia was still a "trust territory" at that time, but the Micronesian leaders had high ambitions to take part in the law of the sea negotiations and to be a signatory to the final product of the negotiations.

It is to be emphasized that, after the political status talks had already begun, the Micronesian leaders deliberately decided to postpone their participation in the status talks until they finish writing their constitution. To them, writing their own constitution was a matter of priority. Regrettably, the bugging of the Micronesian negotiators and other leaders by the CIA was one major factor that delayed the negotiations. The Micronesian leaders called off the status talks to protest CIA bugging of the Micronesian status negotiations which was prominently reported on the front page of *The Washington Post.* This prompted the Congress of Micronesia to pass resolutions of protest and inquiry to the US Government. This led to the dispatch of Senator Andon Amaraich of Chuuk, then Chair of the Judiciary and Government Operations Committee, to Honolulu during a Christmas holiday to receive a "briefing" on the CIA bugging from US Senator Daniel Inouye of the US Senate Select Committee on Intelligence. Senator Amaraich recalled that Senator Inouye confirmed that the CIA had been -spying on the Micronesian leaders and apologized for not having information on the details of the "spying on the Micronesian negotiators." It was on the basis of the assurances of Senator Inouye that the Micronesians reconsidered their position to go back to the status negotiations table.

However, the Micronesians remained perplexed by US's knee-jerk reaction to its proposal to hold a constitutional convention: first, it sought to make the impression that holding a pan-Micronesian constitutional convention would be too costly or that there were no funds in the TTPI budget for holding a huge convention; second, the constitution was incompatible with Washington's first offer of "commonwealth" status to the TTPI and that it was likely to be at variance with America's priorities in the future government arrangements that the Micronesian "angry nationalists" were contemplating. When the call for a constitutional constitution could no longer be held back, the US made another move: a "big splash" about the responsibility of conducting "ESG" (education for self-government) in the TTPI, not just on the choices of political status available to the Micronesians, but also on the terms of the chosen status or the new agreement between the US and the new Micronesian government, and any other relevant issues in the transition of government. ESG is an American coinage based on its post-WWII experience in administering its sphere of influence in Germany. The US exported the acronym to the TTPI in the latter years when the FSM was beginning to take shape and transition was anticipated.

As the administering authority, the United States argued it should play a prominent role in the overall ESG activities in Micronesia. The Micronesians approached the US initiative with maximum caution. Inferring from recently declassified US Government information, the matter of ESG in the TTPI was a serious, contentious issue; it was "sensitive" enough to be passed up to the higher echelons of the White House staff, such as John Ehrlichman, Counsel and Domestic Policy Advisor, and National Security Advisor Henry A. Kissinger, including President Richard

M. Nixon himself. The result was a policy decision to drastically cut back the number of Peace Corps Volunteers to serve in the TTPI (which was then the recipient of the largest number of PCV on a per capita basis in the early years), and especially to put a stop to dispatching "those young and damned trouble-making Peace Corps lawyers" to Micronesia.

The Micronesian leaders made it clear it would welcome and appreciate US assistance as an administering authority in providing logistics and the wherewithal for the ESG program in the TTPI, but the design and conduct of the program should be left to the elected representatives of the Micronesian people. The issue of possible "frolicking" came to the surface, i.e., fears that the administering authority might quietly intervene in the ESG to advance its own interests and unduly influence the Micronesian people. The recommendations of the "Solomon Report" and the CIA wiretapping were still fresh on the minds of the Micronesian "angry nationalists." Ultimately, the US backed off, with the UN weighing in on the ESG issue on the side of the Micronesians.

The Micronesian leaders continued to be confronted with what they saw as US obstructions at the status talks, such as Washington's emphasis on "centralized" administration while the Micronesians insisted on "decentralizing" the locus of authority to the "districts." What was more, US promulgation of its Magnuson Act relating to fisheries resources and unabated advancement of its "creeping maritime jurisdiction" – i.e., unilateral expansion of its EEZ from 12 miles to 200 hundred miles – angered the Micronesian leaders and their opposition also spilled into the status negotiations, in fact, derailing their participation in the status talks for some time.

Meanwhile, American prescription for economic self-sufficiency in the TTPI had not shown a credible result. In fact, an American journalist depicted Micronesia as Rust Territory, a reference to the dilapidated Quonset buildings housing the TTPI government offices, just as US Congresswoman Patsy Mink of Hawaii called it in the *Texas Journal of International Law* as "Bungled Trust." Professor Donald F. McHenry of New York State University, who later served as US Ambassador to the United Nations, took another jab at the administering authority. He called the TTPI a "Trust Betrayed," which he entitled his book on American "altruism and self-interest" in Micronesia.

Confronted with perceived recalcitrant US attitude at the status talks and the growing pessimism of prospects of American economic "miracles" to take place in the TTPI, the Micronesians devised another strategy. They petitioned to be released from the status of "advisor" on the US delegation to the UNCLOS III and to acquire at least "observer" status in the sessions of UNCLOS III where they would be free to advance Micronesian interests on matters of the law of the sea which positions were often in opposition to US interests. Staff attorneys in the Congress of Micronesia, former law school classmates and law school colleagues with attorneys in the State Department and serving on the US LOS Delegation sought to arrange consultations between Micronesian representations and State Department officials on the issue of having observer status but this proved a formidable task. The US was adamantly opposed to the Micronesian petition, arguing, among other things, that Micronesia was a "trust territory" and lacked standing to have "speaking privilege" in international forums such as UNCLOS III. The

Congress of Micronesia created its own Special Joint Committee on the Law of the Sea; its first chairmanship fell to the stately and illustrious Senator Andon Amaraich to head the heavy lifting task.

There were instances in Washington's Foggy Bottom and in Caracas, Venezuela, which was the venue of the critical and longest session of UNCLOS III, as well as in New York City during inter-sessional working groups, where the Micronesians deployed their unique brand of "civil disobedience" to counter the American objections and to advocate what they strongly believed to be in the best interests of Micronesia. The US LOS Delegation came close to reprimanding the Micronesian "advisors" in Caracas on at least two occasions for behavior the US Delegation found unacceptable. The Micronesians were amused by what they saw as American over-reactions to sharing their concept papers with like-minded delegations and to their holding their own parties and inviting their own friends, including Americans. The Micronesians quipped that one of their valuable lessons from the administering authority was how to engage in "civil disobedience." However, it was in Caracas that, after many attempts, Chairman Amaraich finally was able to meet with Ambassador John Stevenson, head of the US Delegation, for a "heart-to-heart exchange of thoughts" on a number of law of the sea issues, including Micronesia's separate representation in UNCLOS III and desire to be a signatory to the final product of the multilateral negotiations if deemed acceptable to the Micronesians. Stevenson agreed that the US and Micronesia had divergent interests in law of the sea and assured Amaraich he would make his recommendation to his Washington to let the Micronesians be free to advance their own interests at UNCLOS III.

The official response from Washington was slow in coming, and what was perceived as US delaying tactic did not deter Senator Amaraich and his colleagues. Senator Amaraich took his case to a meeting of the UN Trusteeship Council in New York where he rebutted the arguments put forth by the lawyers in the State Department's Legal Bureau. He stated that the emerging Micronesian government was anticipated to have the capacity to transition to a government arrangement qualified to have a voice in LOS matters, hence its participation should be "anticipatory" of that potential eventuality, repeatedly invoking the Trusteeship Agreement and the assumption of the fundamental responsibility of the administering authority to the trustee. Congressman Masao Nakayama, a member of the Micronesian Law of the Sea Committee, who subsequently served as FSM Ambassador to Japan and later to the UN, observed that, at that time, there was a growing consensus among the Micronesian leaders that the resources of Micronesia's EEZ as well as the ocean floor would augment the economic viability of the future government of Micronesia. For Nakayama and his colleagues, the resources of the sea – both in the EEZ and on the ocean floor – were seen as essentiaon to the new nation attaining economic viability, contributing to the credibility of its political self-government. The exploitation of the resources from the EEZ and ocean floor were seen to foster national stability and unity.

In further consolidating Micronesia's positions on the various issues at UNCLOS III, the role of the traditional leaders of Micronesia should not be overlooked. The first pan-Micronesian conference of traditional leaders focusing on the law of sea issues was held in Koror, followed

by the second conference in Chuuk. Issues of traditional ownership of reefs and historic uses of the maritime space were discussed and were useful in formulating the positions advocated by members of the Law of the Sea Committee of the Congress of Micronesia.

In his statement to the UN Trusteeship Council, Chairman Amaraich expounded on the urgency of the Micronesians to assume full responsibility for the ownership, exploitation, and management of their marine resources as provided for under international law. With limited land-based resources, the resources of the sea were seen as the only credible prospect for the economic stability of the future Micronesian government. There was more in Amaraich's statement: he saw the early engagement in the UNCLOS III, while Micronesia was still a trust territory and long before the termination of the Trusteeship Agreement in 1986, as a deliberate move by the Congress of Micronesia to make the necessary steps to expand the "recognition of the Micronesian government in transition" in the international arena. The UNCLOS III process provided the very first opportunity for Micronesia to test out its "fitness" in the international arena. It prevailed.

In his statement to the UN, Senator Amaraich also served notice that Micronesia's engagement in UNLOS III was a "test case" to the administering authority to demonstrate its commitment to its international obligations under the Trusteeship Agreement and intentions toward the future Micronesian government. In the course of the three-prong process, the Micronesian leaders continually evaluated their positions. No doubt, the Americans did likewise. . Diplomats, to be useful, must continually monitor the ebb and flow of events having significant bearing on the state of their relations, so that necessary adjustments can be made. UNCLOS III created enlightened statesmen, Micronesian and American alike, driven to uphold their national interests, yet fully aware that some level of accommodation must be made, especially in a multilateral setting, to protect the integrity of their respective higher interests.

So, the Micronesian and American diplomats at UNCLOS III understood the urgency for accommodation. Among the first area of accommodation was Micronesian representation. After their interface in Caracas, Stevenson informed Amaraich that the US would be supportive of Micronesia's petition to have "observer" status. As earlier alluded to, the US had initially threatened to "reprimand" the Micronesians for ignoring "instructions" from the US Delegation to cease issuing "position papers" (or passing on to other like-minded delegations Micronesian positions to advance as their own) on the then contentious subject of archipelagic states or archipelagic zone. Micronesia was among the pioneering coastal entities championing the concept of archipelago in UNCLOS III. The US was concerned about the mobility of its naval fleet, and it sought to convince the Micronesians that the concept of the EEZ would adequately safeguard their interests, particularly their claim to the resources of the expanded area.

The word "ocean floor", along with seabed and subsoil, was raised by our founding fathers as a critical ingredient in the formative stage of our nation-building.

Authored by: James Naich, Delegate, Chuuk

Committee Proposal No. CC-PR-04-06, CCD1, CCD2
Committee on Style and Arrangement
Standing Committee Report No. CC-SCR-04-18

Relating to the distribution of net revenue derived from seabed and subsoil mineral and other non-living resources exploited from the jurisdiction of the Federated States of Micronesia beyond 12 miles from island baselines.
RESOLVED, that the following be agreed upon as an amendment to the Constitution:

ARTICLE IX

Section 6. Net revenue derived from ~~ocean floor~~ seabed and subsoil minerals and other non-living resources exploited from the jurisdiction of the Federated States of Micronesia beyond 12 miles from island baselines ~~under Section 2(m)~~ shall be divided equally between the national government and the appropriate state government or state governments. Where two or more state governments are entitled to such net revenue, such state governments shall be entitled to fifty percent (50%), divided equally among them. Congress shall give effect to this provision by statute in a manner consistent with ~~the~~ international treaty obligations of the Federated States of Micronesia.

Date: June 21, 2022 Offered by: Committee on Style and Arrangement