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Possible Modifications for the Draft Organic Act for Micronesia

General Comments

Although the draft Organic Act for Micronesia was provided to Congressman Aspinall as a drafting service without any commitment of the Executive Branch, it will appear as our starting point both to Mr. Aspinall and those Micronesians who are given a copy.

The draft Organic Act is essentially a compilation from provisions of the Guam and Virgin Islands Organic Acts and certain Secretarial Orders of the Department of the Interior which now apply to the TTPI. The status proposed for Micronesia is not one of self-government; nor is there any cosmetic treatment to give it the appearance of self-government.

To the extent that the final Organic Act closely resembles this draft, it will serve to increase our difficulties in the United Nations in trying to obtain acceptance of our declaration that we have fully executed our responsibilities under the Trusteeship Agreement (see IO memorandum to the Under Secretary of July 16, 1969). Furthermore, even allowing for the likelihood that the Micronesian Status Commission's proposals represent a maximum position for bargaining purposes, the status set forth in the draft Act would seem certain to cause major difficulties in our negotiations with the Micronesians.

Problems and Possible Revisions

It is the object of this paper, therefore, to examine those aspects of the draft Organic Act -- both substantive and otherwise -- which are likely to provide the greatest problems both in New York and in Micronesia, and to set out a range of alternative formulations on certain key provisions. In considering these alternative proposals, the possibility of striking a balance -- of making concessions in one area so

as to maintain required provisions in another -- should be kept in mind. While more pertinent to Micronesian acceptance than to our problems in the United Nations, changes in one aspect of the Organic Act may obviate the need for a revision elsewhere.

Terminology: In general the draft must use the terms of self-government and avoid terms such as "territory"; it should avoid the appearance of maintaining the status quo; it should not highlight the role of the Secretary of the Interior.

Executive: In defining the Executive, there must be more appearance and some more substance of self-government:

-- An appointive governor could be tied to and be made more responsive to the Micronesian people.

-- The governor could be elected with limitations placed on his powers. He could be an elected figurehead; he could have limited powers with specific provisions for progressively greater responsibility; or he could be under the less obvious control of an advisor, whose powers would diminish in time.

Legislature: The powers and responsibilities of the legislature should not appear so obviously identical to those currently in existence.

-- The veto power needs to be as clearly defined as possible, emphasizing the extent of powers given the Congress of Micronesia and minimizing the powers reserved to the Federal Government.

-- Further steps could be taken to give the Congress of Micronesia a real voice in fiscal matters, ranging from greater freedom to appropriate existing local funds to provisions for outright grants from the US Congress -- perhaps on an increasing scale -- which the Congress of Micronesia would be free to appropriate.

-- The Micronesians should be given the right to elect a non-voting representative to the US Congress (and the right to vote for President if this becomes constitutionally possible).

Judiciary: The role of the local judicial system should be more clearly defined, putting Micronesia in the same status as Puerto Rico with regard to the roles of local courts and federal district courts.

Eminent Domain: Reference needs to be made in the Act to the problems of eminent domain, pledging the Micronesian the same right to prior notification and to be heard on the actions planned as is now given by law to the fifty states through the advance notice given the US Congress.

Special Problem: The right of review.

-- Although we assume the Micronesians can be talked out of their stated desire for an opting out provision, consideration may have to be given to meeting the essential point, i.e., their desire to have some continuing say in their status -- conceivably through provision in the Act for a periodic review or perhaps through a Presidential statement.

A more detailed discussion of these possible revisions is attached.

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Discussion of Possible Revisions to the Organic Act for Micronesia

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For example:

1. In Section 101(a) Micronesia should be described as an "unincorporated self-governing territory" and it should be known as "Micronesia" rather than the "territory of Micronesia".

2. Although the Secretary of the Interior will continue to have responsibility for the administration of the territory in its new status, this could be left unstated so as to avoid an aura of the status quo. The Guam and Virgin Islands Organic Acts state that the President will designate an agency to exercise supervision as he sees fit. The analogous provision in the Micronesian Organic Act should similarly leave the designation for later determination; it might even use the language "an agency to serve as the single point of contact" rather than give the designated agency "general administrative supervision".

3. The requirement in Section 104(b) for an annual report on the activities of the government of Micronesia should be dropped, since such a report is closely tied with the concept of non-self-government.

The Executive

The Executive as described in the draft Organic Act, and specifically the manner of selecting the Governor, represents

one extreme of the existing possibilities -- namely, a Presidential appointee, explicitly working under the supervision of the Secretary of the Interior, and exercising strong controls over the operations of the Micronesian Government. On the other hand, the provision likely to be favored by the Micronesians and the one most consistent with standard definitions of self-government, would be popular election of a Governor, possessing all powers not usually reserved for the Federal Government. (Some of his powers could be delegated to the Congress of Micronesia or the Districts, but this would be a Micronesian choice and the powers would remain with Micronesians.)

An appointive governor as defined in the Organic Act is clearly inconsistent with self-government and is probably not acceptable either to the Micronesians or the United Nations. On the other hand, a popularly elected and fully governing executive is perhaps beyond the current capabilities of the Micronesians and is unacceptable to key elements in the US Congress at this time. Thus possible alternatives need to be examined.

A. Appointed Governor (Limited)

1) Require that Governor be a Micronesians (i.e., up the requirements for prior Micronesian residency to ten years or in any case to a longer period than the five years required for election to the Congress of Micronesia; 2) fix his term at four years with removal only for cause; 3) allow the Lieutenant Governor to be elected and provide him with real powers (probably only useful if appointed Governor is non-Micronesian); 4) minimize the supervision of the Secretary of the Interior and disguise supervisory provisions.

B. Elected Governor as a Figurehead

1) Elect the Governor but rest real power, both to initiate action and make decisions, with a Presidential appointee, perhaps with a title such as "Executive Officer"; 2) make provision, for the sake of appearances, for consulting the Governor on all major decisions; 3) define the Executive Officer's powers only to the extent necessary, leaving as

much implicit as possible -- i.e., the Act might give him the final decision (a) on recommending legislation (including the budget) to the Congress of Micronesia; (b) on the veto power; and (c) on the appointment of personnel "and such other duties as the President might designate".

C. Elected Governor with Increasing Powers

Define the powers of the Governor so as to be limited in the beginning, but with provision for increasing responsibility after specified periods of time, leading toward full executive power. The system could even provide for an acceleration of the process, at the recommendation of the President and with the consent of Congress, depending on the experience gained and the quality of the administration demonstrated.

Comment: Although such a system has much merit, particularly in view of the limited Micronesian executive experience to date, it would have the effect of highlighting the absence of full self-government in the initial stages. Thus, while perhaps acceptable to the Micronesians, such a proposal would pose serious difficulties in the United Nations. Even our close friends and allies feel that this is the sort of evolution that should precede, not follow, the termination of the trusteeship status.

D. Elected Governor with an Advisor

Provide for the election of the Governor who, however, could only act on certain specified matters with the advise and consent of an advisor, appointed by the President, perhaps having a title such as "Presidential Liaison Officer". Such a system would give executive initiative to the elected Governor, thus providing useful training, but the Liaison Officer would have to concur and could, if the need arose, make specific recommendations or even take actions on his own. A provision could be made for appeal of the Liaison Officer's decisions to the President or his designated representative. The Micronesians could be informed that the functions of the Liaison Officer would be subject to review after a specified period and that his powers would be reduced as soon as possible.

Comment: This proposal, provides for the same gradual increase in power to the elected Governor, while at the same time emphasizing increased experience and training for the governor and his staff.

The Legislature

The potential difficulty with powers and responsibilities of the legislature as defined in the draft Organic Act stem from limitations such as veto rights given to the Governor and the President, budgetary control reserved for the US Congress and so on. There is also a procedural problem in that, by setting forth the powers and rules of the legislature in such detail in the Organic Act itself, subsequent changes will be very difficult. For example, even a change in the salaries of the members would require an amendment to the Act by the US Congress.

The Veto

The provision to permit the legislature to override the Governor's veto on bills not involving "national defense or national interest" is presumably a feature which should strengthen the power of the legislature, and every effort should be made to define this provision so as to avoid misunderstandings. Rather than automatically referring to the President every bill dealing with national defense or national interests in which his veto has been overridden, the Governor, or whoever has the veto power, could be empowered to accept the legislature's decision and sign the bill. The Act should also require the person exercising the veto and the referral authority to provide a written explanation to the legislature, explaining both his reasons for opposing the legislation and for assigning it to the special category for referral to the President.

Budgetary Control

The provisions for review of the budget by the legislature

prior to its submission to the US Congress through the Department of the Interior are identical to those now in existence and thus clearly provide for continuation of the status quo. One relatively simple improvement might be to permit the submission of budget requests directly to the US Congress. This would provide more autonomy of action, while maintaining controls through whatever restrictions on the Governor are in effect, with ultimate authority remaining with the US Congress.

A more significant measure of self-government could be provided by increasing funds available to the legislature for direct appropriation. This could be done in several ways:

1. All recurring administrative costs for the government which now appear to have first call on local revenues could be transferred to the US Congressional appropriation. This would allow the Micronesian legislature to have full latitude to appropriate the limited local revenues for any projects they felt advisable. With the increased tax revenues included in the Act, this change would be significant.

2. A more significant change could be developed from Section 135 of the Act which provides for the US Treasury to match, on a one for one basis, all locally raised funds. Such funds would be available for local appropriation, subject to final approval by the Secretary of the Interior. This idea could be improved by removing the requirement for outside approval, or by at least giving this responsibility to the Governor or his advisor. (Since the amount of money involved would not be large, such a grant, without strings, should be possible.) The provision for providing matching funds could be further improved by providing, after a fixed period and based on performance, for an automatic increase to $2 for every $1 raised locally, and subsequently up to $3 for $1 and so on, perhaps with an eventual ceiling, such as a certain percentage of the Micronesian budget.

Comment: Such provisions would not only provide greatly increased local control -- i.e. self-government -- but would also serve to provide an incentive to increase local revenues and hopefully improve the economy as a whole. Since the budget would still be subject to yearly review and direct

US Congressional appropriation, any Congressional dissatisfaction with the manner in which Micronesia used its grant could be easily expressed in word and deed.

Legislative Representative

The Organic Act could also provide for a non-voting representative to the US Congress. Such a proviso would give the Micronesians some voice in Washington. It would have the useful bonus of putting them in the same category with the US Territory whose status they most admire -- Puerto Rico. (This would presume the enactment of a similar provision for Guam and the Virgin Islands.)

Judicial Provisions

Although there is obviously a need for a federal district court for Micronesia as provided for in the draft Organic Act, the Act should also have specific provisions for local courts whose judges would be appointed by the Governor or, if preferred, elected by the people. Again the model of Puerto Rico might be followed, with the result being that the District Court would have jurisdiction similar to District Courts in the fifty states, and local courts would have a role analogous to State courts. At least initially there might be the need for some outside control, or at least US personnel, in the local judicial system, but provision should be made for turning these functions over to Micronesians.

Questions of Eminent Domain

It is not clear how matters of eminent domain, particularly as they relate to the acquisition of land for military purposes, would be handled under the terms of this Organic Act. Considering the Micronesian interest in this subject, it seems advisable to include a specific provision in the Act dealing with this problem. Obviously the Micronesians cannot be given absolute veto over such acquisitions. It should be possible, however, to incorporate provisions in the Act which would make

clear a) that the Government of Micronesia would be informed in advance of any US Government plans to acquire lands; b) that it would be given sufficient time to study the proposal and express its views; c) that these views would be considered and every effort would be made to accommodate them; and d) that if national interests dictated that Micronesian views could not be accepted, a complete explanation would be provided. Although such a provision would be far from the right of veto, the Micronesians would be assured of rights similar to those provided the fifty states through their representatives in Congress.

IO/UNP - July 17, 1969