

NSC UNDER SECRETARIES COMMITTEE

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DRAFT 12/9/70

MEMORANDUM FOR THE PRESIDENT

Subject: Political Status Negotiations with
Congress of Micronesia

On December _____, 1970, the Under Secretaries Committee reviewed the political status negotiations with the Congress of Micronesia. Initiated some 18 months ago, these negotiations have failed to produce appreciable progress, and there is need for a reassessment of our strategy and options.

Status of Talks

As you recall, the U.S. offer of last May for a Commonwealth permanently associated with the U.S. was not accepted. Instead, the Congress of Micronesia this summer declared the U.S. offer "unacceptable in its present form" and endorsed four "non-negotiable" principles affirming Micronesia's sovereignty and right to independence or unilaterally terminable "free association with any nation".

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The Micronesians continue to press for "free association" with the U.S.--a status which they have defined only in general terms but which, in essence, would preserve residual Micronesian sovereignty, while assigning defense and foreign affairs responsibilities to the U.S. As a "freely associated" state, Micronesia would fully control its internal affairs and would have the right to terminate the relationship with the U.S. under appropriate procedures safeguarded by its constitution.

Assessment

In reviewing this situation the Under Secretaries Committee agreed on the following major points:

-- There is no expectation that the Micronesian Congress will accept our Commonwealth proposal in its present form--even though the Marianas district where pro-U.S. sentiment is strong has elected a new slate of representatives who favor Commonwealth status.

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-- Modification of our Commonwealth offer to bring it closer to the Micronesian concept of a "free association" might conceivably result in Micronesian acceptance. However, we can by no means be sure of this. There are constitutional and practical political limits on how far we can go in diluting Federal authority under the Commonwealth approach.

-- A termination provision, however hedged and qualified, entails risks to our interests--essentially, the military exclusion of other powers and access to high priority land areas for military purposes--inasmuch as we would have only a very limited legal hold on a fully sovereign successor state to the Commonwealth. As a practical matter, there is, however, a risk to these interests in any course we might follow regardless of what legal rights we might be able to negotiate now. Conversely, once Micronesia has become fully part of the U.S. system and

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fully eligible for Federal programs, it would be even more difficult for the Territory's leaders to sever relationships with the U.S. than is the case now.

-- A district-by-district plebiscite on the U.S. offer would allow the Marianas to vote for accession to the U.S.--but it would also, in all likelihood, be strongly opposed by the Micronesian Congress and would risk a permanent rupture with many of Micronesia's younger American-educated political leaders; furthermore, it would risk instability in the other districts--existing missile tracking facilities are now located in the Marshall Islands--which quite likely might result in further fragmentation and political disarray.

-- Maintenance of the Trusteeship, accompanied by rapid Micronization of the Trust Territory's

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administration and movement towards full internal autonomy--all highly desirable in any case--would meet some of the Micronesians' desires and might strengthen Micronesian interest in association with the U.S.; but while it would help to build up countervailing interests, it is highly debatable whether it would satisfy the Congress of Micronesia and would solve our political problem.

Alternative Approaches

In summary, in light of developments in the Territory over the last few years, the Committee believes that it is not practicable to maintain the status quo and that time does not work in our favor. Our major options are:

Option 1: Move Micronesia toward full internal autonomy under its own constitution; maintain the Trusteeship Agreement indefinitely as an envelope to provide a legal basis for protecting our defense interests.

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Option 2: Modify our Commonwealth offer to bring it closer to the Micronesian concept of a "free association". To gain Micronesian acceptance, this approach would probably entail our agreement to accept limitations on eminent domain procedure, the right for Micronesia to terminate the Commonwealth relationship unilaterally under agreed constitutional procedures, and limitations on Federal supremacy (except in the areas of defense and foreign affairs and in case of national emergencies). We would assure access to high priority land by purchase or long-term lease arrangements now and would insist on provisions designed to safeguard the continued exclusion of other powers in the event of termination.

Option 3: Accept the Micronesian request for a "free association". This would place Micronesia under a protectorate-type arrangement, modeled after the Cook

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Islands arrangement with New Zealand. The U.S. would assure access to high priority land through purchase or long-term leases. Micronesia, while self-governing internally under its own constitution, would have access to Federal courts and would remain eligible for Federal programs as well as a budget subsidy. The Federal Government would have no supremacy powers. The arrangement would be terminable only through agreed constitutional procedures. Under international law, the status would be that of _____.

Option 4: Arrange for a district-by-district plebiscite, which gives the Micronesian electorate a choice between association with the U.S. and independence. The Marianas would become a U.S. territory--if, as expected, they vote for association. Some--if not all--of the other districts might vote for independence and would be offered appropriate treaty relationships, including base rights agreements where appropriate.

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Recommendations

The Committee was able (was not able) to reach agreement on a preferred course.

The Department of State, ... recommend that the Administration be prepared to offer a modified Commonwealth relationship, if Congressional consultations indicate that this approach would be acceptable to the U.S. Congress. While we would try to negotiate as favorable an arrangement as possible, the U.S. should be prepared to go to the following limits:

Termination - Micronesia would have the right to terminate the compact unilaterally provided termination is approved by a two-thirds majority of the Micronesian Congress and electorate.

Eminent Domain - We would agree not to exercise eminent domain unilaterally. Highest priority land requirements would be assured by long-term lease arrangements. Purchase or lease of other lands would require Micronesian consent.

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Federal Sovereignty - We would seek an understanding with the U.S. Congress whereby U.S. laws would not be extended to Micronesia without Micronesian concurrence (except in national emergencies and in the areas of defense and foreign affairs).

Constitutionally, the U.S. evidently cannot relinquish these rights--if Micronesia is under U.S. sovereignty--merely agree not to exercise them. Such an undertaking cannot bind future Congresses or Presidents. However, we can write into the compact a stipulation which would entitle Micronesia to terminate the Commonwealth relationship if the U.S. violates these undertakings.

If a modified Commonwealth approach is not negotiable or not acceptable to the U.S. Congress, the Administration will have to consider whether:

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- to agree to a free association type arrangement (Option 3); or
- to insist on a district-by-district plebiscite (Option 4).

A choice between these two alternatives is not practicable at this time--although we should alert the Congress to the fact that we may confront this problem. Much will depend on developments, including the vigor and articulateness with which spokesmen for the Marianas will press their case for accession to the United States.

(Space to describe views of dissenting agencies.)

Congressional Consultations

The Executive Branch is committed to consult with the Interior committees before making definitive proposals to the Micronesians. The Committee believes that a Congressional Steering Group, including representation from the White House Congressional Liaison

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Staff, should be established to develop a scenario for these consultations. White House assistance will be required to gain Congressional acceptance to these far-reaching proposals.

Timing and Tactics

The Committee believes that the U.S. should, in a low key manner, indicate its willingness to continue discussions on all aspects of the status issue and its readiness to explore areas of agreement. We would not press for early reopening of status negotiations but respond to Micronesian requests for such talks.

* * *

In addition to the Committee's regular members the following agencies have participated in this review: Interior (which chairs the Interdepartmental Group on Micronesia), Justice, and OMB.

John N. Irwin II
Chairman

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