-Capt. Schuller

Status Country Report.

-From Harry H. Almond, Jr.

My comments - in brief - and in preliminary form are:

1. The theory that we can have a "compact" which amounts to a "binding agreement with a legal definition of its own, recognized by both parties and the world community" causes me real concern. The only agreements so recognized, under international law, are "treaties" or agreements with other names treated in the same way as treaties.

2. It would be possible to use the term "compact" but the resulting agreement would amount to a "treaty" in the sense that its binding force - under international law - is the same "law" that binds a treaty.

3. Under the United States Constitution there is provision for the States of the United States - with the consent of the Congress - to enter into compacts (Article I, Section 10 Clause 3 - wording in this article is in the form of restraints against making compacts, but the cases indicate that compacts between the States within the United States "adpt to our Union of sovereign States the age-old treaty-making power of independent sovereign nations," Hinderlider v. La Plata Co. 304 U.S. 92, 104 (1938). But this arrangement is not an arrangement determinable and made pursuant to international law - it is made under domestic law. Presumably the same arrangement was made for Puerto Rico. But the distinction between the States of the United States or of territories such as Puerto Rico is crucial (see Para 4. below).

4. The Trust Territories differ from States or "territories" of the United States for two related reasons: first, their status is determined by the Trusteeship Agreement, the United Nations Charter, and by international law; second, their "sovereignty" which is determined by the sources just mentioned, is to be vested in the Micronesians, or their representatives, and they therefore in the exercise of that independence and sovereignty (once they receive it) then act with the United States as an independent, sovereign State. The discussion papers, and the proposed compact, skate over this crucial distinction and element - and, as indicated below, may cause the United States embarrassment with its allies, with the Micronesians, and conceivably in the United Nations and with hostile countries. *

(2)

3. Page 4 - further relating to the proposed "compact" remains confusing and ambiguous - because it is stated there (bottom of the page to page 5) (a) that the Micronesian/US duties etc are those set forth in the compact, (b) but that the compact does does operate as the basis of Micronesian "legitimacy," rather that (c) the Micronesians are, in effect, sovereign people ~~in~~ entering into the compact.

This would simply mean that the Micronesian State has come into being, and that it has entered into the compact, and that the compact is a treaty with the United States.

4. But on page 5 it is said that the United Micrnonesians "self-government" would operate "within the framework of the compact," and that the compact would have greater force (operate as a "higher law") than the Micronesian Constitution. The difficulty here is that the Constitution of any State is its higher law, and under general principles of law, takes precedence over all other law. It may - and the United States does provide - that treaties can become part of the "supreme law of the land." But to my knowledge, no sovereign people can be prevented - without being said to lose its powers as a sovereign people - from withdrawing from a treaty, regardless of the fact that this might otherwise be wrongful under international law.

5. Therefore, the arrangement that the compact overrides the Micronesian constitution would - to be consistent with this line of argument - be avoided by making the Compact a part of the Micrnnesian Constitution, Yet even then, the problem arises in that all sovereig people xx reserve the right to amend or modify thieir constitutions.

6. The conclusion must be reached that if the above course of argument (and action) is followed the Micronesian people are not sovereign, but instead are subordinate to the United States. Moreover, this conclusion is reinforced by the fact that the Micronesians would not (and could not under the above argument) unilaterally terminate the compact.

7. Part of the difficulties raised in the above analysis are brought out furtherby the fact that we have taken the position that the Micronesians are sovereign for certain internal purposes, but not for international or foreign affairs. The interplay in today's world of domestic and international sovereignty, assuming arguendo that such a dichotomy is possible, means that trying to separate the two becomes difficult, particularly as security affairs in the international sense becomes increasingly significant in its impacts upon the domestic affairs of the country.

8. If the Micronesians are truly sovereign, they would have the power to "recall" their power over foreign affairs. Short of such a power, it would appear that their power is that "delegated" by another sovereign State, i.e. the United States. (Whether they transferred their

sovereign - full and complete - to the United States, and then the delegation was made back, or whether the United States always had the sovereign power and delegated a part of it, is immaterial.

AS TO THE PROPOSED COMPACT:

9. The Preamble of the Compact in the "Now therefore" clause, indicates that its purpose is to terminate the trusteeship and to to establish the sovereign State of Micronesia. The Congress of Micronesia is acting as an executive body - or at least as a body enabled to engage in an agreement with another State. The Congress is presumed to act in behalf of the Micronesians - authorized to represent a sovereign people.

10. Where does sovereignty fit into this picture? It appears, prima facie, that there is an inconsistency in having the Congress terminate the Trusteeship and in having that Congress represent a sovereign people. In other words, the theory appears more likely to be that upon becoming a sovereign people, the Trusteeship was in effect "executed," and for that reason of no further force and effect. (The possibility that the Security Council must still be a party to such termination is overlooked in this analysis - but might have to be considered more closely at a later time).

11. The inconsistency noted in Para. 10 is that it seems to be said in the compact first that the Congress represents a sovereign people - and then says that the compact, which the Congress of Micronesia enters into, establishes that sovereignty. On this line of argument - and based on these inconsistencies - other States in the World Community might object either to the validity of the compact, or consider the whole process one of continuing colonialization, or refuse to recognize the new State of Micronesia, attacking the United States for its conduct, or embarrass the United States in the Security Council, etc.

12. One possible answer is to indicate these difficulties - and to propose that the Micronnesians become sovereign - and then choose to be a "free territory"

of the United States. If it is then further provided that they might - in the future - by appropriate procedures (e.g. referendum) seek through a pleibiscite to become sovereign and free again, the United States shall recognize that referendum, and its ~~xxxxxx~~ outcomes. Under this theory they would not be sovereign, but the United States would recognize that the peoples of the free territory could choose to become sover ign.

13. The present proposal though attempting to avoid the "rigidities" and "formalities" of international law - in my view - falls victim to them. The rest of the world uses them - it may compel the United States to recognize and abide by them. In the process it may destroy any real arrangement of strategic interest to the United States.

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