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SEP 9 - 1971

Memorandum

To: Ambassador Arthur W. Hummel, Jr.
From: Associate Solicitor, Territories, Wildlife and Claims
Subject: The Four Points - some suggestions

I have read Mr. Lindsey Grant's September 6, 1971, "Draft 2 - Negotiating Strategy and Tactics", and believe it represents a sensible way to get to the issues without stumbling over nomenclature or the so-called four principles. pp. 22-23, 27-28. However, if we reach the point envisioned at page 32, I suggest that, with some modifications, explanations or reservations we could recognize the four nonnegotiable principles set forth by the Micronesians without seriously jeopardizing our negotiating goals.

- (a) That sovereignty in Micronesia resides in the people of Micronesia and their duly constituted government.

It seems to me that we can readily agree that sovereignty in Micronesia resides in the people of Micronesia. Indeed this is one of the very basic foundation stones upon which our whole concept of democracy is promised. We have a government of the people, for the people and by the people. To the government is delegated the sovereignty of the people, in a form of government prescribed and proscribed by the people, and it is run by the people. The government has only those powers given it by the people. In short, the people are supreme. To deny, or even hedge, that this principle may not be fully applicable in Micronesia is to deny or hedge on the fundamentals of democracy. I don't think we should do this.

Equally, I think we can agree to the principle that sovereignty, to the extent it is delegated by the people, will lie in a government duly constituted by them. Again this concept is inherent in our own system of democracy.

The obvious hedge here is that as yet Micronesia does not have a government duly constituted by its people. Accordingly, as yet there is no governmental repository of sovereignty to which the people

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can delegate their powers. What exists in Micronesia is a government created by executive authority of the United States. We deal, therefore, with the Congress of Micronesia, not because it is the government of Micronesia, but because it is composed of the elected representatives of the people of Micronesia and presumptively, at least, speaks for them. However, the ultimate test of the desires of the sovereign people will be through a referendum in which they will freely express their wills and wishes. Thereafter, by Constitutional Convention, they can create the form of government they wish which, by delegation, will exercise their powers.

- (b) That the people of Micronesia possess the right of self-determination and may therefore choose independence or self-government in free association with any nation or organization of nations.

If we can agree that sovereignty is in the people of Micronesia, how can we disagree that they have freedom to choose whatever form of government or association they wish? I think we can readily agree that the people of Micronesia have this freedom. Indeed it is implicit, if not explicit, in Article 76 of the Articles of the United Nations, and I think we have already agreed to it in Article 6 of the Trusteeship Agreement.

The hedge here is, of course, that, while we recognize the principle, we have, at the moment, at least, little reason to fear any option other than a form of association with the United States which will afford some reasonable degree of protection to our national defense interests. To recognize this principle may present a limited risk, but since in the last analysis I think we will, as a practical matter, probably have to offer independence as an option in any referendum, I see no harm in facing up to it now and recognizing it in principle as a fundamental right of the people.

- (c) That the people of Micronesia have the right to adopt their own constitution and to amend, change or revoke any constitution or governmental plan at any time.

We can certainly agree that the people of Micronesia have the right to adopt their own constitution. However, in the world community today no one is free to adopt a constitution without limitations; and we would have to insist that the constitution contain provisions which would guarantee to the people protection of their basic human rights.

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These human rights should, in substance at least, be comparable to those enumerated in the UN Human Rights Convention. If they are, they would at the same time undoubtedly meet the fundamental requirements of the U.S. Constitution.

Indeed, Article 76(c) of the Articles of the UN requires the administering authority of a trust territory "to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion, and to encourage recognition of the interdependence of the peoples of the world..." and the Micronesian people, therefore, should be ready to agree to demonstrate such respect as a condition to the termination of the trusteeship. Incidentally, Article 76(c) is incorporated by reference into the Trusteeship Agreement as containing obligations to be discharged by the U.S.

For the same reasons, we could not agree to an unlimited right to amend, change or revoke any constitution or government plan at any time. Any amendment, change or revocation would of necessity have to assure protection of basic human rights.

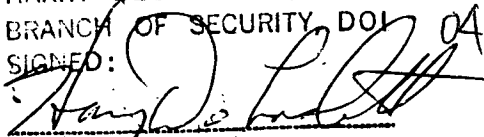
Further, any authority to amend, change or revoke "any... governmental plan at any time", while cognizable as a right of the people, would have to be limited or conditioned in such a way as to insure that changes in government could not be frivolously or lightly made. To argue to the contrary would be to argue for anarchy - not for the stability of political institutions envisioned by Article 6 of the Trusteeship Agreement as a condition precedent to self-government or independence.

Finally, the authority to amend, change or revoke any constitution or governmental plan, would have to be limited so that the obligations of any compact with the U.S. were not impaired or altered except in accordance with terms of that agreement.

- (d) That free association should be in the form of a revocable compact, terminable unilaterally by either party.

This is perhaps the most difficult of the four principles to deal with. Yet, in its purest sense, as an abstract principle, we could probably recognize this as a fundamental principle of Free Association

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as defined in Resolution 1541 of the 15th General Assembly of the United Nations. However, it should be quickly pointed out that that is only one form of association. There are other forms where unilateral rights of termination may not be essential to or conducive of the most beneficial bilateral relationship. The idealism of principle must yield to the practicalities of the situation so long as the fundamental rights of the people remain protected. As the old expression goes, "No man is an island," and in the give and take of negotiation, it may prove more beneficial to the public interest of Micronesia to yield, albeit only slightly, on this principle. The pros and cons should be fully explored with all their ramifications before insistence on a principle is allowed to freeze a party out of needed negotiating flexibility.

In other words, we can recognize the principle for what it is, but we should not have to take a position pro or con on it, at this time, insofar as it relates to the other issues to be discussed and negotiated. It may well turn out for the Micronesians, after we have reached agreement (hopefully) on all other issues, that the principle of unilateral termination may not loom so important. If it still does, we could then fall back (i) to bilateral termination, as suggested by Mr. Peale, and, if that fails, to unilateral termination as authorized by Position II. Position II, of course, recognizes that ultimate sovereignty is in the people of Micronesia and in the government they create and, of necessity, therefore, embodies all four of their principles.

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