

DECLASSIFIED

~~SECRET~~

03
5

12 APR 1985

DOD 5200.1-R (1-603)
M. J. Caffaro

In reply refer to:
I-20402/72
January 18, 1972

MEMORANDUM FOR CAPT. GORDON SCHULLER, ISA, EAST ASIA
AND PACIFIC REGION

SUBJECT: Revision of Department of Defense Position-TTPI

1. The attached draft - in final form - is the proposed letter to be signed by you - and to be submitted to the Chairman, of the Working Group on the Trust Territories.

2. In accordance with your request the draft includes DOD proposals relating to negotiating tactics, and language which might be used for various positions of the United States, as well as for the "compact" with Micronesia.

3. Apart from the language in the attached letter, I would like to stress the need for the DOD team, and the United States negotiators in general, to be fully prepared to provide intelligible arguments and reasons for the Micronesians, carefully prepared in advance, to show the advantages to Micronesia emanating from the United States assuming the sizable burdens and responsibilities associated with maintaining the defense and security of the area, its contribution generally "to the maintenance of international peace and security," and the impossibility of Micronesia remaining "neutral" or unaffected by future hostilities of any major Power in that area of the Pacific.

Low key arguments of this kind go to the essence of the DOD position - and, I believe, are of the essence to the United States fundamental interests in the region.

266

DOWNGRADED AT 12 YEAR
INTERVALS; NOT AUTOMATICALLY
DECLASSIFIED. DOD DIR 5200.10

~~SECRET~~

AGC (IA) No. 8938
Copy 7 of 8
Page 1 of 3 Pages

10 410674

~~SECRET~~

DECLASSIFIED

2

4. Stress should also be made that "unilateral" termination of agreements which are "international" in character are very rare: even where there is a provision reserving the right to withdraw it has been the practice to qualify such a provision by calling for a showing of "extraordinary events" or of jeopardy to national security (e. g., in the arms control agreements) or for some showing of a substantial and reasonable cause.

But as to the present "compact" it should be noted that Micronesia and the United States are extending their objectives substantially beyond the arms control context, into one of a continuing and friendly relationship, and that withdrawal therefore calls for a showing that a substantial portion of the Micronesian people are so upset with the arrangement that it can no longer remain in force.

5. Finally, on account of the burdens assumed by the United States in behalf of its own interests and responsibilities, and the close link of those interests with Micronesia, it can be pointed out that the likelihood of the United States withdrawing or terminating unilaterally is remote.

6. Note should be made that the United States is empowered to act in defense matters in accordance with the "compact" to be entered into with Micronesia. It should be emphasized that provisions relating to defense, security and foreign affairs should be negotiated if possible on the basis that they will survive any termination of the "compact", or, in the alternative that the outdated or unneeded provisions in the compact, apart from these, might be terminated without terminating the entire compact. This proposal thus acknowledges the "sovereignty" of the Micronesian people. The "fall-back" as to this might be that the Micronesian Congress or a majority of the Micronesians might terminate such provisions, but that the referendum procedure, set forth in the memorandum, will apply as to termination of the provisions relating to defense, security and foreign affairs. In addition, we will have in view provisions for consultation relating to any termination, and for periodic reviews.

On page 2 it should be noted that the "locations" for stationing United States armed forces or facilities have not been filled in. This requires further discussion with the Ambassador.

~~SECRET~~

410675

~~SECRET~~

DECLASSIFIED

3

7. As to matters relating to nuclear weapons deployment, control over those weapons, or other weapons of mass destruction, and the like, I believe that these will require a separate statement and a separate communication to the Ambassador. A separate statement will also be needed indicating the preferred negotiating "plan" of the Department of Defense, complete with fall-back positions, and covering all critical features, including the nuclear weapons.

(SIGNED)

Harry H. Almond, Jr.
Office of the Assistant General Counsel
International Affairs

Attachment
a/s

cc: GC
Master Chron
Subject: ILP-Trust Territory
Circulating
Colonel Smith, JCS
ISA/R&C

Prep by: Harry H. Almond/18 Jan 72
OAGC(IA)/3C925/79247

~~SECRET~~

410676

~~SECRET~~

DECLASSIFIED

18 JAN 1972

**MEMORANDUM FOR THE CHAIRMAN, INTERAGENCY GROUP
FOR MICRONESIAN POLITICAL STATUS
NEGOTIATIONS**

SUBJECT: TTPI - Federal Powers in the Field of Defense

Reference is made to Department of Defense memorandum for the Chairman, Interagency Group for Micronesian Political Status Negotiations (I-27758/71) dated 4 October 1971. The comments and specific wordings indicated below are submitted as supplementary input, provided as a personal, uncoordinated update to that memorandum. A coordinated Department of Defense memorandum will be provided in the near future.

It was indicated in that memorandum that the United States would "act in close consultation" with Micronesia as to all matters and responsibilities in external affairs and defense. The language which might appropriately set forth power of the United States to act, based in part upon language to be found in our collective defense agreements embracing NATO and SEATO, can read:

"Article "A"

"Each 'Party' recognizes that aggression by armed attack, and that threats to the territorial integrity, political autonomy or security of either of them will endanger its own peace and security, and it is further recognized that the burden of meeting or anticipating such aggression or threats must be borne by the United States. The 'Parties'

~~SECRET~~

410677

~~SECRET~~
DECLASSIFIED

2

therefore agree to consult whenever in the opinion of either such aggression or threats call for measures to be taken. The United States may act in any event prior to consultations, if timely action is in the opinion of the United States of essence in a defense emergency."

We would add separately to the above article an "Agreed Minute" (which might be classified) providing the following:

"Agreed Minute to Article 'A'"

"With reference to matters relating to defense and security of Micronesia and the United States set forth in Article 'A', it is understood that the conduct of a foreign power set forth below will constitute an immediate and grave threat such that further consultation is rendered unnecessary, and measures taken to meet such conduct or threats will constitute the following:....

* * * *

As to the measures to be taken, we suggest the following:

(Model only)

-The United States shall with the prompt assistance of the Micronesian Government be empowered to deploy its armed forces and augment them in the following locations: (to be given)

-The United States will be empowered to act pursuant to Micronesian emergency legislation in behalf of the Micronesian Government and in accordance with Article "X" of the proposed compact with Micronesia.

~~SECRET~~

410678

DECLASSIFIED

-The United States will consult as required to provide prompt and full information to the Micronesian central and district governments relating to the actions which it is taking to meet such attack.

* * * *

(FYI) As to Conduct Constituting Per Se Attacks or Threats:

(Note: A "catalogue" of conduct which would bring Article "A" immediately into play will call for some discussion and briefing as to what we might add in. The appearance of hostile military forces, in the "area", certain types of armed mobilization, conflicts in the Pacific Ocean in general, conflicts involving the United States in the hemisphere, and the like would be fitted into the above "contingency" plans. As to these, it would be best for us to recommend the entire approach, somewhat as shown here, and then get down to the business of drafting up the appropriate language.)

* * * *

The provisions for United States responsibility in foreign affairs would not call for consultation, but instead would provide for notification to the Micronesian Government, and would read as follows:

"Article "B"

"The United States shall have and shall exercise full and effective responsibility over all matters relating to foreign affairs of Micronesia, and shall be responsible for determining which matters shall fall within the foreign affairs power."

* * * *

DECLASSIFIED

4

A separate "Agreed Minute" should also be added to Article "B":

"Agreed Minute to Article "B"

"With reference to matters relating to the foreign affairs of Micronesia set forth in Article 'B' it is understood that although the United States shall determine which matters relate to foreign affairs the United States shall report promptly to the Government of Micronesia through its representative in Micronesia, as to all action contemplated or undertaken. /However, if disputes or disagreements arise as to whether matters of foreign affairs are unduly infringing on internal affairs, they shall be resolved by consultation between the two governments./

/Note: The dispute settling clause is not politically advisable, but conceivably some clause will be needed. The suggested clause is fairly innocuous, but should be proffered only if needed, but not as a proposal. It should be made only if the Micronesians demand a dispute settlement device./

We have noted that the Micronesians may seek some statement as to how we envisage our authority to apply to Micronesia, how we embrace our responsibilities within a position acceptable to them, and the like. The following statement may be used as the United States position (subject to such modifications which you might want to propose):

"The United States envisages the people of Micronesia to be a self-governing territory, fully competent in their internal affairs, and subject to such constitutional provisions which they might adopt for the regulation and determination of those affairs. In reaching self-government the Micronesian people will have attained not only

410680

~~SECRET~~
DECLASSIFIED

5

the capacity to govern their internal affairs in pursuance of their own interests as they see them, but also will have reached that point where the United States can properly declare that its commitments under Article 6 of the Trust Agreement, and under Article 76(b) of the United Nations Charter have been fully complied with.

"Recognizing the benefits accruing both to the people of Micronesia and to the United States in preserving the full power and competence in the United States over the foreign relations and affairs of Micronesia with other nations, and over defense and security interests of concern to either or both Micronesia and the United States, the United States will exercise such powers and authority as will enable it promptly and effectively to react to these such external concerns.

"Prompt response to the needs of defense and security interests will call for effective procedures and the means effectively to respond without excessive delay. Consultation with Micronesia, taking into account the possibility of prompt response of this kind, will therefore seek out in advance those concerns in which both Micronesia and the United States can agree will call for action with a minimum of delay and reconsideration should emergencies or crises arise.

"These concerns in which our consultation will be made in advance have been listed and made part of the separate undertakings wherein we will be implementing in part defense actions, and providing for contingencies which we now can anticipate in advance.

~~SECRET~~
410681

DECLASSIFIED

6

"Consultation on other matters relating to defense and security interests which would not appear to call for advance planning and preparation may pursue a course conditioned less by urgency, and as to these, the United States would expect to express and notify to Micronesia its views or opinion as to its belief that the matter engages its security or defense interests or believes them to be affecting those of Micronesia. Similarly, Micronesia will as such events or contingencies occur take the same position as to matters affecting its own interests or those that might engage the United States. Since the United States will exercise responsibility in either case, such procedures will be designed to provide for effective action by the United States with no greater delay than that which can be reasonably tolerated in the light of the particular crisis.

"The representative of the United States will consult promptly with the appropriate Micronesian officials on matters of internal security, and procedures adopted for taking appropriate action. To this end, the Micronesian constitution should provide for emergency procedures which might effectively enable the consultation process to proceed rapidly, and to reach, through prompt and emergency action of the Micronesian government, agreement on the measures for dealing with the emergency or security crisis. Any use of U. S. military forces in such crises will require approval of the President of the United States in accordance with United States constitutional practices. However, in no event will U. S. armed forces be used to quell internal disorders arising out of political disorders between Federal and District governments, unless safety of the populace or critical U. S. security interests are at stake. Any such intervention will constitute automatic agreement that the U. S. will arbitrate between parties."

410682

DECLASSIFIED

7

The referenced memorandum further noted that under Position II (Unilateral Termination) it would be necessary to work out the strategic arrangements (denial and basing rights) which would survive termination in full force and effect. Although a more detailed statement must be forthcoming relative to any form of termination, the concerns of the United States to be included are:

-arrangements which deny to any third power (unless otherwise agreed to or consented to by the United States) any use of Micronesian territory that might enable it to secure the use of that territory or its surrounding seas for military purposes or for conduct contrary to United States and Micronesian defense and security interests.

-SOFA and other basing rights agreements which would provide the United States with the basing rights needed by the United States to maintain and to exercise its responsibility over defense and security interests of Micronesia and the United States; these agreements would include identification of the land or offshore areas required, identification to the extent possible of how the United States intends to use these areas, and identification of possible use of other areas should a serious or grave emergency arise.

-arrangements dealing with trade and commercial areas which might have a serious defense and security impact; among these would be the need to preserve Micronesian communications, shipping, transport, and the mails free from foreign influence, whether in the forms of shareholding, direct ownership, or through other means, and the means to preserve the Micronesian Congress and Administration from security leaks that might occur from irresponsible members or staff.

410683

-the above agreements -- in the event of termination -- would provide for a minimum of five years, following termination, for the United States to retain its full power and rights relating to defense and security affairs, and for two years' prior notice of termination; in addition, those surviving rights in the sense that they appear in separate agreements would not be affected by termination of the proposed compact. The duration of the right to maintain bases, in other words, would be either that set forth in the basing rights agreements or as provided in the compact, whichever is longer. Conceivably the rights of "denial" of foreign States might be a surviving right, with indefinite subsequent duration, even though the compact has been terminated; and, we would prefer that any termination shall be based upon a referendum receiving two-thirds majority of four-fifths of the Micronesian voters, the referendum to be called first by three-quarters of the Micronesian Congress.

* * * * *

In the tactics of negotiation, it is strongly suggested that the emphasis be made that the "sovereignty" of the Micronesian people shall in no way be jeopardized by the United States assuming the powers over foreign affairs and defense. There should be as little reference, or, if possible, no reference to the "State" of Micronesia, in the negotiations or in the instruments with which we establish our obligations. The negotiations should refer instead to the Government of Micronesia or to Micronesia.

Emphasis in the negotiations, in other words, should be toward the pragmatic: i. e., toward the functional relationship between the United States and Micronesia and toward the need to make this a firm and lasting relationship in order to ensure benefits accruing to both sides. If this functional relationship is firmly established, then the use of "terms" or concepts such as "sovereignty" independence and self-government, whatever

~~SECRET~~
DECLASSIFIED

9

their usual meaning, will ultimately have to encompass or be qualified by that functional relationship. And, in the relationship, the functional elements are, of course, the effective control of foreign and defense affairs.

In our view, this functional relationship can become the basis for a lasting relationship, provided that the United States is willing to shape it, in its relationships with Micronesia, in that direction.

The tactics in dealing with the issue of unilateral termination, which the Micronesians are seeking, will be more sensitive. But if either the Micronesians or the United States are to reserve the power to terminate unilaterally, even in a fallback position (which would be a position of last resort), such termination would have to be for reasonable cause, and with the support of the Micronesian people, in a referendum as indicated above.

It should be the position of the United States that the sovereignty of the Micronesian people is thereby protected from a rump group in their Congress or from internal dissension amongst them that might lead to a hasty termination, and in particular one that cannot be justified.

~~SECRET~~

Gordon J. Schuller, Capt. USN
Assistant to the Director
East Asia and Pacific Region

Attachments:

- Comments - Tab A
- Comments - Tab B
- Comments - Tab C

Prepared by HHAlmond, Jr.
OAGC(IA)

410685

~~SECRET~~
DECLASSIFIED

TAB A

Tab "A" addresses "sovereignty". We would prefer to avoid the uncertainties and ambiguities which this expression entails, particularly because its use might prevent either Micronesia or the United States from reaching an agreement sufficiently beneficial to either of them. We would prefer it possible to use just the term "self government" which is also used in Article 76(b) of the United Nations Charter.

On the other hand, it appears that the Micronesians may even where the United States negotiators have used their best efforts refuse to move from their position concerning "sovereignty" or "independence." Under these circumstances, it will be necessary for the United States, with the ambiguities of the term "sovereignty" and the reach of its concept in view, to press first for the term to apply to the domestic or internal powers of Micronesia. Justification for this position would be reinforced by pointing up the undertakings of the United States and its responsibilities to be assumed in the fields of foreign affairs, defense and security, noting that the term clearly has a recognized meaning in the "international sense" -- and in that sense means the full power and competence to represent a State and undertake its commitments with other States, or in taking steps to protect the State from attack or aggression.

The United States position would then, in brief, assume that "independence" and "self-government" in the internal or domestic sense has been reached, that as to all such matters Micronesia was unquestionably to be fully competent, or "sovereign".

410686

~~SECRET~~
DECLASSIFIED

TAB A

2

On the other hand, the relations between Micronesia and foreign States would call for the United States to exercise "sovereignty," in behalf of Micronesia. Bolstering the argument here, the United States negotiations would also draw upon its obligations and commitments set forth in Article 76(b) of the United Nations Charter and repeated in Article 6 of the Trusteeship Agreement, to wit: that Micronesia would thereby have reached "independence" and "self-government" as those terms are used there.

Note - FYI - The United States negotiating team might bear in view that the Micronesians might unilaterally withdraw from some of the compact provisions, and still leave the United States in control of defense and foreign affairs. The compact should be drafted with this possibility in view. /

410687

~~SECRET~~
DECLASSIFIED

TAB B

This Tab relating to "General Description of Defense Arrangements" needs only to be updated to the effect that the United States would as part of its "package deal" with the Micronesians seek to establish an appropriate regime for the status of armed forces to be located in bases within Micronesia.

410688

~~SECRET~~
DECLASSIFIED

TAB C

The content of Tab "C" should be reviewed and the final drafting of the provision proposed there should be worked out together with DoD personnel, including members of the Office of General Counsel.

~~SECRET~~
410689