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Harry Almond
30925

WORKING PAPER
REPORT BY THE J-5

to the
JOINT CHIEFS OF STAFF
on

~~115/11~~ 72
2/15/72
TT/P1

NIGERIAN STATUS NEGOTIATIONS -
ADDITIONAL ASSUMED NEGOTIATING SCENARIO (U)
Reference: J-5 2327/92

Notes by the Secretaries

1. The Secretary, Joint Chiefs of Staff requires this report by 16 Feb 72.
2. The attached report, approved by the Director, J-5 and responsive to J-5 2316/92, is circulated to the Directors, J-3, J-4 and the Service Planners for comment or concurrence by 1600, 15 Feb 1972.
3. This is Item on the J-5 Summary.
4. Due to the urgency of this paper, it is planned to obtain approval of the Joint Chiefs of Staff by a telephone vote.
5. All preliminary working papers incident to the preparation of this report will be destroyed in accordance with pertinent regulations.

C. K. ROBER
G. P. REYNOLDS
D. E. WEISGERBER
Secretaries

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J-3 51 - 53
J-4 54 - 56

PREPARED BY:
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ACC (TA) No. 9311

Agency	Concur or Nonconcur	Name
Army		MGEN St John
Navy		CAPT Gersuk
Air Force		BGEN Chapman
Marine Corps		COL Wilcox

303

GROUP 4
DOWNGRADED AT 3 YEAR INTERVALS;
DECLASSIFIED AFTER 12 YEARS.

Harry - This is a good rundown of the facts to date. Use ^{William's proposed} in conjunction with draft Memo to Pres. that I sent down earlier. F/L. Doc 9

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MICRONESIAN STATUS NEGOTIATIONS -
ADEQUACY OF APPROVED NEGOTIATING SCENARIO (U)

THE PROBLEM

1. To provide the Secretary of Defense, Joint Chiefs of Staff comments on a draft Memorandum for the President,* prepared by the Office of Micronesian Status Negotiations, that requests a change to White House negotiating instructions.

FACTS BEARING ON THE PROBLEM

2. On 11 March 1971, the NSC/Under Secretaries Committee distributed,** for concurrence, a proposed Memorandum for the President that recommended a negotiating track (scenario) for the next round of Micronesian status talks. The recommended track included four approaches that encompassed three of six status options previously developed by an NSC/USC Interagency Committee.

3. On 18 March 1971, the Joint Chiefs of Staff concurred*** in the above draft memorandum.

4. On 20 July 1971, the White House approved**** a Negotiating Scenario for Dr. Williams generally as recommended by the Under Secretaries Committee.

5. During the period 4 thru 12 October, at Hana, Maui, Hawaii, a US Delegation, headed by Ambassador Williams, conducted status talks with the Political Status Committee of the Micronesian Congress.†

DISCUSSION

6. Comments of the Services have been reviewed and accommodated, as appropriate, in the enclosed proposed Memorandum for the Secretary of Defense. This memorandum addresses the major issue

* JCS 2326/92

** JCS 2326/58-18

*** Encl to JCS 2326/58-19

**** Attachment to JCS 2326/58-21

† Transcript of US-Micronesian Status Talks, 4-12 Oct 71

raised in the proposed Memorandum for the President of whether a change in negotiation instructions would be to the interest of the military. No attempt was made to edit or comment on several possible inaccuracies of mis-representations in the draft that did not weigh on the main issue.

CONCLUSION

7. The enclosed Memorandum for the Secretary of Defense is responsive to the ASD/ISA request* and presents the interests of the Services in protecting a guaranteed contingency basing capability in the Trust Territory of the Pacific Islands.

RECOMMENDATIONS

8. It is recommended that:

- a. The memorandum at Enclosure A be forwarded to the Secretary of Defense.
- b. A copy of this paper be forwarded to CINCPAC.
- c. Copies of this paper NOT be forwarded to US officers assigned to NATO activities.
- d. Copies of this paper NOT be forwarded to the Chairman, US Delegation, United Nations Military Staff Committee.

Action Officers: Col A. M. Smith, USA
Capt W. H. Morgan, USN
Extension 72400/59924

* JCS 2326/92

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ENCLOSURE A

DRAFT

MEMORANDUM FOR THE SECRETARY OF DEFENSE

Subject: Micronesian Status Negotiations - Adequacy of
Approved Negotiating Scenario (U)

1. (U) Reference is made to:

a. ASD/ISA memorandum* I-21782/71, 18 March 1971, which recorded OSD/JCS concurrence with a draft NSC/USC Memorandum for the President, that proposed a negotiating track (scenario) for the next round of Micronesian status negotiations.

b. White House memorandum** for the Chairman, Under Secretaries Committee, Subject: Future Political Status of the Trust Territory of the Pacific Islands--Negotiating Scenario and Dr. Williams' Terms of Reference, July 20, 1971. This memorandum specified a negotiating scenario for use in status negotiations with the Micronesians.

c. The transcript*** of United States-Micronesian Status Talks, Hana-Maui, Hawaii, 4 thru 12 October 1971.

d. ASD/ISA memorandum**** I-2111/72, 10 Feb 72, which requested Joint Chiefs of Staff concurrence/comments to an attached draft Memorandum for the President.

2. (S) In reference 1d, ASD/ISA requested Joint Chiefs of Staff concurrence/comments on a draft memorandum for the President, proposed by the Department of the Interior Office of Micronesian Status Negotiations, to request a change in Presidential guidance to permit an offer of Micronesian sovereignty with Position II (Modified Commonwealth with unilateral termination). These comments follow.

* Encl to JCS 2326/58-19

** Attachment to JCS 2326/58-21

*** Transcript of US-Micronesian Status Talks, 4-12 Oct 71

**** JCS 2326/92

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3. (S) Background:

a. In reference 1a, the Joint Chiefs of Staff concurred in an NSC/USC developed negotiating scenario that endorsed the progressive presentation of three (out of five), previously endorsed, Micronesian Status Negotiating Options, in four progressive steps.

(1) Modified Commonwealth - Extend US sovereignty over the territory as a whole, with concessions limited to eminent domain and Federal Supremacy.

(2) Modified Commonwealth #2 - Add to Step 1, a carefully circumscribed right of unilateral termination only if----(a) it were clear that all other provisions of the modified commonwealth proposal were acceptable to the Micronesians and that (b) there was explicit agreements that the pre-negotiated strategic arrangements would legally survive a possible termination.

(3) Multiple Solutions - A district-by-district plebiscite, offering a choice of modified commonwealth, variations to the modified commonwealth, or other options to each district.

(4) "Free Association" - Abandon the goal of US sovereignty, seek a relationship as close to modified commonwealth as possible, with the same legally survivable strategic arrangements, but not to offer (at this time) unilateral termination as outlined in the Free Association Option in the attachment to the basic memorandum.

b. Subsequently, in reference 1b, 20 July 1971, the President approved (with some modification) the above negotiating scenario, except that independence was not included as a possible alternative option in a district-by-district plebiscite. Because of this omission, the White

House guidance appears to have retained the aim of a residual US sovereignty in every approved position. The guidance also stated that, if the problem cannot be resolved through any of these four approaches, a new look at the situation will be made and authorization for a new negotiating position sought from the President.

c. During the period 4-12 Oct 71, at Hana, Maui, Hawaii, status negotiations were conducted (reference 1c) with a Status Delegation of the Micronesian Congress.

d. The modification proposed in the draft proposed Memorandum for the President represents a departure from the negotiation sequence (track) concurred in by the Joint Chiefs of Staff.

(1) Prior JCS concurrences were based on the assumption that negotiations would begin with a Modification of the 1970 Commonwealth offer (most desirable from the military viewpoint) and progressively fall back through less desirable options to a final position, offering an alternative status of a freely associated State. The White House guidance was essentially the same.

(2) In the October negotiations at Hana, Hawaii, the US negotiators

made offers on key issues that were more akin to "Free Association" (White House Position IV).

(a) It was conceded (though indirectly) that sovereignty resides in the people of Micronesia. Such was not authorized in White House Positions I or II but was included as a part of White House Position IV.

(b) It was conceded that the US would retain "No legal right to exercise Eminent Domain"---.
White House Positions I and II called for a "restraint on the exercise of Eminent Domain"...foregoing the exercise as distinguished from inherent power. However, relinquishment of all US rights of eminent domain was approved as a part of White House Position IV.

(c) It was conceded that the (as yet un-named) status arrangement could be legalized by a "Compact".--
White House Positions I and II require extension of US sovereignty by means of a modified commonwealth agreement, without specifying the exact nature of the legal contract. White House Position IV specified the use of a "Compact."

(d) It was conceded that the US would agree to forego Federal Supremacy in the internal affairs of Micronesia. The US would allow the Micronesians to select the US federal domestic programs to be applied in Micronesia, and allow replacement of US laws applicable to Micronesian internal affairs, even laws governing application of US domestic programs, with Micronesian laws.--White House Positions I and II called for limitations on Federal Supremacy and applications of Federal laws. However, specific recognition of divided sovereignty, as well as authority for Micronesians to select US Federal domestic programs and pre-empt US laws with their own internal laws, was approved as a part of White House Position IV.

(e) It was conceded that the US would agree to termination of an agreement by mutual consent of

both parties.--Termination was not addressed in White House Position I, but negotiation of a carefully circumscribed right of unilateral termination was approved in Position II, specifically as part of a commonwealth arrangement. Termination by mutual consent was approved in White House Position IV.

4. Discussion:

a. From the above background, it is apparent that the negotiations with the Micronesians at Hana, Hawaii, essentially bypassed White House Positions I, II and III, in favor of White House Position IV. The significant difference in the Position presented at Hana and the White House Position IV is that the hope of some residual US sovereignty was not abandoned. There was no statement during the negotiations that the new Micronesian State would be sovereign. A progressive negotiation of US positions, which was the basis of JCS/OSD concurrence, and the apparent intent of the White House scenario has, as yet, not been attempted. Since these concessions were made without concessions by the Micronesians, this leaves the US in a familiar role of being near the limit of approved negotiation concessions at the outset of the negotiating process.

b. The draft memorandum for the President in question, states the US side is still at Position I and asks the President to change Position II (Position I with unilateral termination) to permit abandonment of US sovereignty as an objective. However, since the present US proposal was essentially Position IV, calling it Position I, with a capability to subsequently fall back to Position II effectively adds unilateral termination to Position IV. This, coupled with the requested change to Position II, would constitute

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approval of a new negotiating position, considerably more liberal than the current White House Position IV ("Free Association").

c. In agreeing with the inclusion of unilateral termination in a modified commonwealth package, the Joint Chiefs of Staff assumed this right to be synonymous with the right of secession, as interpreted by many constitutionalists, leaving the federal government sovereign until the secession actually takes place. However, subsequent legal interpretations have indicated a major dichotomy in the concept of unilateral termination when it is included in a modified commonwealth status that does not directly or indirectly recognize the pre-eminence of US sovereignty. Specifically, these interpretations now indicate ultimate sovereignty would rest with the party having unilateral termination authority. It is now apparent that any agreement containing this feature would put any base rights retained by DOD in a tenuous legal position that holds no greater guarantee than agreements the US now have with its allies. For example, the land options desired in the Palau district would face the same legal uncertainties as those in the Philippines. Thus, development of these options to replace lost capabilities in the Philippines could be fiscally unrealistic. In short, the value of options requested in the TTPI would be eroded--use would be largely limited to development for temporary emergencies only and may not justify their acquisition cost to the DOD.

d. Thus, it is clearly in the interest of the Department of Defense to oppose inclusion of even a carefully circumscribed right of unilateral termination in any agreement with the Micronesians, short of a commonwealth agreement that

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recognizes the pre-eminence of US sovereignty. Since a modified commonwealth offer, in the form previously visualized, no longer appears as a possible option except in a district-by-district plebisite, it is necessary to aggressively test the position offered at Hana, Hawaii, before making further US adjustments. Further, because "Free Association" with unilateral termination has become an undesirable option from a defense viewpoint, a Memorandum for the President that would result in such authority is considered premature. Until the Department of Defense can analyze the concessions and positions in the expected Micronesian response to the US proposals, at the next round of negotiations, an objective appraisal of the advantages of such a shift is improbable. Further, there are many persuasive indications that the Micronesians will make some concessions at the next round, to include concession on the termination issue. In this event, many existing concerns could be erased.

f. There are editorial inaccuracies and possible misinterpretations in the proposed draft Memorandum for the President, which should be changed, if the memorandum is submitted. However, unless the main issue of whether it is desirable to offer the Micronesians a unilaterally terminable "Free Association" without a progression through Position III (plebisite) is decided in the affirmative, editorial changes are not germane.

4. Conclusions:

a. The US position offered to the Micronesians in the October round of status negotiations, is in effect Position IV, as detailed in the White House approved negotiating scenario.

