

THE APPLICABILITY OF THE PRINCIPLE OF SELF-DETERMINATION
TO THE TRUST TERRITORY OF THE PACIFIC ISLANDS

BY

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There can be no doubt that the principle of self-determination is applicable to the Trust Territory of the Pacific Islands.^{1/} The United Nations Charter applies it. The United States as administering authority under its 1947 trusteeship agreement with the Security Council has explicitly and repeatedly recognized its applicability. The real question is precisely what elements of the principle are applicable, how they are to be applied and within what framework.

Given the history of debates in this learned society on the topic of "Self-Determination", it would be clearly presumptuous on my part to enter into an academic argument about how that term is to be defined -- a case, if you will, of the diplomatist rushing in where legal scholars love to tread. I doubt, however, if we need to go quite as far as Professor Emerson in pointing out that "self-determination has from time to time been referred to as the right of a winner in a Darwinian conflict for survival."^{2/}

Matters have by no means reached that state in Micronesia. Instead for the sake of brevity let me confine myself to the easy definition of Harold Johnson, who says simply that "self-determination is the process by which a people determine their own sovereign status."^{3/} That is really what our current discussion with the Micronesians regarding their future political status is all about.^{4/}

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Indeed the situation in Micronesia is not nearly as complex in many respects as in other areas where the principle has been tested. The issues in Micronesia are reasonably straightforward, although a few of the answers may still be somewhat obscure. It should be enough, therefore, to outline briefly the factual situation and then go to an examination of those outstanding issues which result from the application of the principle of self-determination to the Trust Territory.

I. Obligations of the U.S. Government as Administering Authority.

The obligations of the U.S. Government as administering authority are clearly set forth in the 1947 Trusteeship Agreement, which is explicitly made subject to the provisions of the U.N. Charter regarding self-determination.^{5/} Of special relevance to today's discussion is that section of the Trusteeship Agreement which obligates the United States as administering authority to "promote the development of the inhabitants of the Trust Territory toward self-government or independence, as may be appropriate to the particular circumstances of the Trust Territory and its peoples and the freely expressed wishes of the peoples concerned."^{6/} This language of course parallels exactly the language of Article 76 of the U.N. Charter.

Also relevant are several resolutions of the General Assembly which though declaratory in nature represent at least a consensus so far as principles are concerned. I refer in particular to Resolutions 1514(XV) on the granting of independence to colonial countries and peoples, which declares that all people have the right to self-determination, Resolution 1541 (XV) regarding the principles to be applied in determining whether or not a non-self-governing territory has reached its full measure of self-government, and the 1970 Declaration on equal rights and self-determination

by the General Assembly's Special Committee on Friendly Relations.

Although the United States abstained in the vote on the first of these, it nevertheless agreed that the essential elements of the resolution were applicable to the Trust Territory.^{7/}

II. Negotiations To End the Trusteeship.

Since 1969 representatives of the U.S. Government and Micronesia have been engaged in negotiations to determine the future political status of the islands and terminate the trusteeship. The Congress of Micronesia in 1969, after examining various alternatives, expressed a clear preference for "a self-governing Micronesian state in free association with the United States".^{8/} Last fall they also asked for negotiations on "the establishment of Micronesia as an independent nation, while continuing negotiations toward Free Association."^{9/}

Following the rejection by the Micronesian Congress of earlier U.S. offers of unincorporated territorial status and a modified commonwealth status, agreement was finally reached last year on the idea of a "Compact of Free Association" under which Micronesia would have its own constitution and full responsibility for its own internal affairs. The United States would be responsible for external affairs and defense, and for the latter purpose limited amounts of land would be made available for U.S. military facilities for an agreed term of years.^{10/}

Still to be negotiated are specifics regarding financial arrangements, nationality, transition and termination. So far as the latter is concerned it has been agreed in principle that for a period of years the association would be terminable only by mutual consent but could be terminated thereafter unilaterally. When completed the compact is to be given to the Micronesian

and American Congresses for approval and thereafter put to the people of Micronesia in a plebiscite representing a sovereign act of self-determination on their part.

As early as 1950 the Marianas had publicly shown their dissatisfaction with the "accident of history" which had lumped the rest of the Marianas with the Carolines and Marshalls after the U.S. acquisition of Guam at the end of the Spanish-American War. The people of the Northern Marianas by history, tradition, language and ethnic and family ties had been linked with Guam from time immemorial and not with the rest of Micronesia. Their desire for a closer relationship had been expressed in a long series of votes and petitions to the United States and the United Nations.

The Marianas, nevertheless, had gone along with the other districts of Micronesia during the early stages of negotiations with the U.S. Government. However, in late 1971 when it became clear that the rest of the Micronesian delegation wanted a looser association than previously contemplated, the Marianas asked for separate negotiation of a much closer relationship between themselves and the United States. The United States finally agreed in the spring of 1972, and separate talks were initiated in Saipan last December.

The Congress of Micronesia in its 1969 Report on Future Status had recognized this desire of the Marianas for closer association and had stated it had no objection so long as this would not result in intolerable harm to minorities in the Marianas or to Micronesia as a whole.^{11/} Micronesian negotiators also interposed no objection when representatives of the Marianas on their delegation formally broke step. However, the end of February of this year a divided Micronesian Congress passed a "sense of the Congress"

resolution declaring that it considered its negotiating committee to be the sole authority authorized to negotiate with the U.S. on behalf of all parts of the Trust Territory.^{12/} The United States for its part was already on record with the U.N. Trusteeship Council stating its view that while the Trusteeship Agreement can be terminated only for all districts at once, there is no legal obstacle to a negotiation with one part of the Trust Territory which would lead to its separate status after the Trusteeship ends.^{13/}

III. Self-Determination Issues

At least two issues have been raised thus far regarding the application of the principle of self-determination to these Micronesian status negotiations. The first is by now almost a classic argument: can the result of the exercise of self-determination be anything less than full independence; that is, will the principle of self-determination be fulfilled if the people of Micronesia of their own free will choose a status of free association with the United States rather than full independence?

The U.S. Government has been consistent in its position on this score since the earliest days of debate on the U.N. Charter. Then the United States set forth an objective of self-government, which by definition could include independence for those who aspired to it and were capable of assuming the responsibilities involved but did not make independence mandatory. As Ralph Bunche explained it, "The issue as it affected the trusteeship system was finally resolved by providing alternative goals of self-government or independence in accordance with the particular circumstances of each territory and its peoples and their freely expressed wishes."^{14/}

Moreover, the obligation of the administering authority under the Trusteeship Agreement is also expressed in the alternative: self-government or independence -- meaning, of course, "self-government and independence or self-government alone". ^{15/}

The U.S. position is also perfectly compatible with the declaratory resolutions of the General Assembly. While Resolution 1514 speaks of the granting of independence to non-self-governing peoples, it points out that the exercise of self-determination involves a free determination of their political status; and this is what the U.S. and Micronesian delegations have agreed to do. In addition both Resolution 1541, adopted almost contemporaneously, and the 1970 Declaration on equal rights and self-determination recognize that a legitimate outcome of the exercise of self-determination may be not only independence but also association or integration with an independent state. ^{16/} It should also be noted that ample precedent exists for an arrangement of free association between dependent areas and independent states, possibly the closest example being the case of the Cook Islands whose desire for continued ties with New Zealand was accepted even by the Committee of 24.

The second issue concerns the right of the Marianas District to pursue separate negotiations with the United States. The argument here is also familiar. Self-determination is held by some to apply only in external relations, when it is directed against a foreign power, and not internally, when it might apply to minorities within the dependent unit. ^{17/} The question here is the unit to which the principle of self-determination is to be applied.

Before 1947 the several districts of the Trust Territory were never united politically except under very loose colonial administration. The

Northern Marianas was separately administered for years even under the Trusteeship. Also, as one of the current leaders of Micronesia has said, "Today there is no Micronesia - if there is to be one tomorrow we will have to create it."^{18/}

Since the start of the Trusteeship it has been U.S. policy to promote the unity of the Territory and avoid further fragmentation if at all possible. In finally agreeing to separate negotiations with the Marianas, however, the U.S. Government was strongly influenced by the unique history of the Marianas repeatedly expressed desire for a separate, close relationship. As stated by the U.S. Representative to the U.N. Trusteeship Council, "Had the United States responded other than positively to the Marianas initiative, that could have lead ultimately to an imposition upon the people of that district of a political status they had made abundantly clear they did not want."^{19/} Or as was observed in the formal U.S. response to the Marianas request, a negative reply "would deny them their right of self-determination."^{20/}

There is precedent again for separation in U.N. practice, found in the case of the termination of the British Trusteeship in the Cameroons. The contrary argument, however, goes back to the early discussions of the U.S. Charter itself where it was stated that the principle of self-determination "conformed to the purposes of the Charter only insofar as it implied the right of self-government of peoples and not the right of secession."^{21/} On the other hand, as I explained to the latest U.N. Trusteeship Council Visiting Mission before it visited the territory in February of this year, the Marianas did not regard this as a case of secession but rather a request for a divorce after a shot-gun marriage.

V. Conclusion

Possibly these issues will never be solved to the full satisfaction of all the scholars and all the countries of the world. The important thing in the Micronesian situation today, however, seems to be not the legal argument but a very pragmatic political consideration - how to assure the realization of the freely expressed will of the peoples concerned. In this regard there is much to be said for the views advanced in this forum five years ago by Professor Fisher when he made his plea for flexibility in the application of the principle of self-determination to Micro-states and said, "Self-determination is not a single choice to be made in a single day. It is the right of a group to adapt their political position to a complicated world to reflect changing capabilities and changing opportunities."^{22/}

FOOTNOTES:

1. Throughout this presentation the terms "Trust Territory of the Pacific Islands" and "Micronesia" will be used interchangeably, although it is recognized that the latter term is sometimes considered broader in scope and lacks the precision of the former.
2. Emerson, Rupert: "Self-Determination" 65 AJIL 474 (1971).
3. Johnson, Harold S.: "Self-Determination Within the Community of Nations" p. 200, Leyden (1967)
4. Nor is it profitable for present purposes to engage in a long exposition of the differences between the "right" and the "principle" of self-determination. Emerson, Higgins, Gross and others have worked this over well, with essentially inconclusive results. We are dealing wisely here with only the lesser of these and it is unnecessary to decide now whether there is also a legal "right". (See Emerson, op. cit., pp.460-461.)

5. Article 76 specifically makes reference to the Purposes of the United Nations, including inter alia the "principle of equal rights and self-determination of peoples", in establishing the objectives of the Trusteeship System.
6. U.S. TIAS 1665, 61 Stat. 3302-3303. (1947).
7. See statement of U.S. Representative to the Trusteeship Council, June 13, 1961. UN Doc. T/PV 1147 p.7.
8. Report - The Future Political Status Commission, p. 17, Congress of Micronesia, Third Congress, Second Session, Saipan, (1969).
9. Future Political Status of the TTPI Micronesia, p.13, Proceedings of the Sixth Round of Negotiations, Barbers Point, Hawaii Sept 28-Oct 6, 1972, OMSN, Washington (1972)
10. Text of incomplete tentative draft Compact is appended to Final Joint Communique issued in August, 1972. Proceedings of Fifth Round, Micronesian Status Negotiations, Washington, D. C. July 12-August 11, 1972. pp. 20-35., OMSN, Washington (1972)
11. Report, Footnote 8, supra, p.37.
12. Fifth Congress of Micronesia, First Regular Session, Senate Journal, 41st Day, p. 193, House Journal, 50th Day, p. 346, Saipan (1973).
13. U.N. Doc. T/PV 1389 p.11 (1972).
14. See Bunche, Ralph: "Trusteeship and Non-Self-Governing Territories in the Charter of the United Nations", XIII Bulletin, Department of State, No. 340, Dec 30, 1945, pp. 1037, 1038-1040.
15. See Toussaint, Chairman Edwards: "The Trusteeship System of the United Nations", pp. 58 ff. New York (1955).
16. See Emerson, op. cit., p.470.
17. Professor Emerson described it this way nine years ago "in its immediately present incarnation, the loudly proclaimed right of all peoples to self-determination must actually be read to mean that all overseas colonial peoples have a right to be liberated from the overlordship of their alien white masters. Once each non-self-governing territory has won its independence, its national unity and territorial integrity are not supposed any longer to be subject to attack by any within or without who might assert a claim to continued access to a right of self-determination for themselves. Now, as at earlier times, the right has been interpreted in such fashion as to suit the interest of those who seek to manipulate it for their own purposes." Emerson, Rupert: "Self-Determination Revisited in the Era of Decolonization", p.63, Center for International Affairs, Harvard (1964).

18. Quoted by Ambassador F. Haydn Williams in hearings before the Sub-Committee on Territories and Insular Affairs, House Committee on Interior and Insular Affairs, March 15, 1973. Forthcoming, but as yet unpublished, official transcript.
19. U.N. Doc. T/PV 1389, p.11 (1972).
20. "The Future Political Status of the TTPI" p.63, Official Records of the Fourth Round of Micronesia Future Political Status Talks, Koror, Palau, April 2-13, 1972, OMSN, Washington, D. C. (1972).
21. U.N. Conference on International Organization, p. 296, U.N. Vol. VI, New York (1945).
22. Roger Fisher: "The Participation of Micro-States in International Affairs", p. 166, Proceedings, American Society of International Law, Washington (1968).