

~~SECRET~~

JAGO SC No. 1596-28

03
7

DAJA-IA 1973/117

Interagency Group Study on Negotiations with the Joint
Committee on Future Status (Micronesia) (U)

DAMO-IAP/MAJ Helvey

DAJA

27 AUG 1973

CPT Smith/lbs/59354

1. (S) Following are comments on the study titled as above:

a. Draft Instructions for the President's Personal Representative *X HTP 1*

(1) Insert the following sentence on p.2, para. 2 Status, line 8, after the sentence ending "foreign affairs."

You should also seek to conclude a Status of Forces Agreement (SOFIA) with the Micronesians which will provide for standard SOFA matters concerning the presence of U.S. military forces and their personnel in Micronesia.

Rationale: Micronesia will have internal autonomy and accordingly U.S. personnel and operations require certain jurisdictional guarantees for efficient performance of their mission.

(2) Make a separate paragraph of para. 2 Status, p. 2, beginning with the sentence beginning with "If the Micronesian" line 12.

Rationale: Editorial.

(3) Add the following clause to the last sentence of the second full paragraph, p. 3:

"for 50 years."

Rationale: Completeness. IOD seeks to have the denial right survive termination of the Compact and the instructions should also provide for survival in the event of independence.

b. Chapter III, Nature of the Relationship

(1) Add the following footnote to the Department of State footnote, p. 9:

The Department of Defense believes that, contrary to the argument made by the Department of State in Annex F, the legal considerations are not straightforward. Article 6 of the Trusteeship Agreement requires the United States to promote the development of the trust territory for "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" (emphasis added). Virtually the same language appears in Article 76b of the United Nations Charter. It should be noted that during the discussion of the draft Trusteeship Agreement in the

CLASSIFIED BY DAMO-IAP
SUBJECT TO GENERAL DECLASSIFICATION
SCHEDULE OF EXECUTIVE ORDER 11652
AUTOMATICALLY DOWNGRADED AT
TWO YEAR INTERVALS
DECLASSIFIED ON DECEMBER 31, 1981

~~SECRET~~

AGC (12) No. 9917. 128
Copy No. 3 of 5 Copies

08 412688

~~SECRET~~

DATA-IA 1973/117

SUBJECT: Interagency Group Study on Negotiations with the Joint Committee on Future Status (Micronesia) (U)

Security Council the phrase "or independence" was inserted by the Soviet Union. The U.S. then added the clause beginning "as may be appropriate." As thus amended, the Agreement was adopted.

On 14 December 1960, the General Assembly of the U.N. adopted a "Declaration on Granting Independence to Colonial Countries and Peoples" GA/Res 1514 (XV). That resolution stated, in part, that the General Assembly "considering the important role of the United Nations in assisting the movement for independence in Trust and Non-Self-Governing Territories . . . Declares that . . . All peoples have the right of self-determination; by virtue of that right they freely determine their political status." The next day the General Assembly adopted a set of principles which were to serve as guides to determine whether or not a territory was self-governing, GA/Res 1541(XV), 15 December 1960. Among those principles were the following:

Principle VI

"A Non-Self-Governing Territory can be said to have reached a full measure of self-government by:

- "(a) Emergence as a sovereign independent state;
- "(b) Free association with an independent state; or
- "(c) Integration with an independent state.

Principle VII

"(a) Free association should be the result of a free and voluntary choice by the peoples of the territory concerned expressed through informed and democratic processes. It should be one which respects the individuality and the cultural characteristics of the territory and its peoples, and remains for the peoples of the territory which is associated with an independent state the freedom to modify the status of that territory through the expression of their will by democratic means and through constitutional processes.

"(b) The associated territory should have the right to determine its internal constitution without outside interference, in accordance with due constitutional processes and the freely expressed wishes of the people. This does not preclude consultations as appropriate or necessary under the terms of the free association agreed upon.

On 24 October 1970 the General Assembly adopted a resolution which proclaimed a set of principles concerning friendly relations among states, GA/Res 2625(XXV). One of the principles was that

~~SECRET~~

~~SECRET~~

DATA-IA 1973/117

SUBJECT: Interagency Group Study on Negotiations with the Joint Committee on Future Status (Micronesia) (U)

"The establishment of a sovereign and independent State, the free association or integration with an independent State of the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people."

As a matter of law then, free association and independence are treated as separate and distinct. It is possible to meet U.N. standards for self-determination through the mode of free association. The key is whether that mode is "freely determined" by the people. The JOD believes that these U.N. documents do not require that a people must formally consider and reject independence in order to have "freely determined" their future political status.

Members of the U.N. who oppose free association between the U.S. and Micronesia might argue that a "yes-no" plebiscite on free association without the opportunity to consider independence is not free-determination. That argument is based on a "logical" extension of the language of the U.N. resolutions. Those resolutions do not, however, require that independence be formally considered and DOD believes that is not implied.

Political and tactical considerations may suggest that an independence option be offered, but the Department of Defense does not believe that one must be offered as a matter of law.

Rationale: The State position paper, Annex B, overstates the case in arguing that there is a legal requirement to extend an independence option. This footnote is a direct, legal response to that position paper.

(2) Delete the prefix "dis" from the first word, "disadvantages," on p. 16, para. c, line 7.

Rationale: Editorial.

(3) Add the following footnote to page 17, para. (1), line 3, the asterisk to be inserted following the words "legal responsibilities":

The Department of Defense does not believe that our legal responsibilities to the people of Micronesia require an independence option. In this regard reference is made to the JOD footnote on p. 9 ~~above~~. DOD also notes that this independence option is the only one considered which is characterized as satisfying our "legal obligations" (see second advantage under PRD, below). If the U.S. truly has a legal obligation to extend

~~SECRET~~

~~SECRET~~

MAJA-IA 1973/117

SUBJECT: Interagency Group Study on Negotiations with the Joint Committee on Future Status (Micronesia) (U)

an independence option, the other options considered should also be characterized as satisfying that obligation. If, as DOD believes, the U.S. has no such legal obligation, then the decision to extend an independence offer should be grounded on political, not legal, reasons.

Rationale: Further supports the DOD view that there is no legal obligation to extend an independence.

(4) Delete the sentence beginning with "There," in the DOD footnote, p. 20a, first full paragraph, line 5, and replace it with the following:

If Micronesia chose to refute the treaty it could insist that the United States vacate our bases. Micronesia could also demand that the United States not exercise its treaty right to deny third country military forces access to the area.

Rationale: Substituted language is legally more correct.

(5) Insert on p. 33, second full paragraph, line 3, the words "consideration of" between "for" and "a genuine independence offer."

Rationale: Editorial and accuracy.

c. Chapter IV. U.S. Land Requirements and Related Issues.

(1) Add the following footnote to the first full paragraph p. 4. Asterisk to be located at the end of the paragraph:

The DOD points out that if the United States is entitled to rely on the generally accepted principle that a successor state assumes the obligations of its predecessor. Legally there is no requirement to re-negotiate the leases.

Rationale: Suggested footnote sets forth accepted legal principle and strengthens DOD's case for no re-negotiation.

(2) Delete last sentence of the third full paragraph on p. 10. Insert the following:

Negotiations are continuing, while the U.S. uses Roi Namur under a valid use and occupancy agreement between the Trust Territory Government and the United States.

Rationale: Accuracy.

~~SECRET~~

~~SECRET~~

DAJA-IA 1973/117

SUBJECT: Interagency Group Study on Negotiations with the Joint Committee on Future Status (Micronesia) (U)

d. Chapter VII, United Nations Issues

(1) Insert the following footnote to paragraph B, Trusteeship Council, p. 1. Asterisk to be inserted after the word "plebiscite" in line 14:

The DOD notes that under GA/Res 1541 free association is one of the modes by which a people may accomplish self-determination. (See DOD footnote, Chapter III, p. 9).

Rationale: Accuracy.

(2) Delete the word "All" on p. 1, paragraph B, line 13. Insert the word "Many."

Rationale: Accuracy. The United States, for one, is a member of the Trusteeship Council and has made no such statement.

2. (U) It is recommended that the above changes be submitted to the Interagency Group for consideration.

FOR THE JUDGE ADVOCATE GENERAL:

SIGNED

WILLIAM H. WILLIAMSON
Colonel, JAGC
Chief, International Affairs
Division

NFRG: Attach to DAJA-IA 1973/107

(Micronesian Draft Study attached)

International Affairs Division, JAGO							
Act 0	Act 1	Act 2	Act 3	Act 4	Act 5	Coord	
						1	2
<i>[Signature]</i>		<i>[Signature]</i>	<i>[Signature]</i>				

~~SECRET~~