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POSITION PAPER
JCFS COMPACT - TITLE XII - SECTION 1201(a)

1. Summary

Salii has suggested (as underlined) the following approach for Section 1201(a):

"This Compact will be approved by Micronesia if a two-thirds majority of those voting in a plebiscite to be held in Micronesia vote in favor of the Compact, except that the Compact shall not become effective in any district in which two-thirds of the voters have voted for the Compact. Such district shall be given an immediate opportunity to negotiate with the United States with respect to that district's future political status. All persons who would be eligible to vote in elections for the Congress of Micronesia, if such elections were to be held on the day the plebiscite is conducted, shall be eligible to vote in the plebiscite. In determining whether a majority has voted for or against the Compact, only the affirmative and negative votes shall be counted."

The JCFS proposes two changes: (1) that the Compact will be ratified only if 2/3rd's majority of those voting approve the Compact; (2) that the Compact will not become effective in any district in which (less than-?) 2/3rd's of those voting approve the Compact. However, the second proposed language is unclear and does not accomplish its intended meaning. Apparently, the JCFS approach is intended to entice the U.S. to permit the Marianas to participate in the free association plebiscite and to force a "yes/no" plebiscite.

2. Issues

a. As to the first proposal, does the increased consensus requirement for overall approval (from a majority of those voting to 2/3rd's of those voting) adversely affect U.S. interests?

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b. As to the second proposal, is deletion of the concept that the Compact will automatically apply unless rejected by 3/4th's of those voting detrimental to U.S. interests?

c. Is the new approval requirement designed to require that the Mariana Islands must be included in the free association plebiscite?

d. What are the implications if a "yes/no" plebiscite is not held in Micronesia?

3. Background

The U.S. proposed at Round Seven the following approach to Section 1201(a):

"The Compact will be approved by Micronesia, if a majority of those voting in a referendum to be held in Micronesia, vote in favor of the Compact. All persons who would be eligible to vote in elections for the Congress of Micronesia, if such elections were held on the day the referendum is conducted, shall be eligible to vote in the referendum. In determining whether a majority has voted for or against the Compact, only the affirmative and negative votes shall be counted".

The U.S. draft provisions governing the plebiscite and the applicability of the Compact to the districts required only a simply majority of those voting. This requirement was designed to insure easy approval of the Compact by the Micronesian people and to avoid any potential rejection by virtue of (1) boycotting of the polls; or (2) requiring that all registered voters be used as a basis for determining approval. Under the U.S. approach, the Compact would automatically apply to all five districts if a majority of all Micronesians voting approved the Compact.

The JCFS proposed in its 1969 Report that the right to self-determination would be exercised by approval of the COM and by the people of Micronesia in a plebiscite called to approve the Compact. In 1970 the JCFS draft agreement determined that the Compact would be approved by the "respective governments", omitting reference to an explicit requirement for a plebiscite; in Hana (1971) and Koror (1972), however, the JCFS reaffirmed that the Compact must be approved by the Micronesian people as part of their right to exercise their sovereign right to self-determination. This approach was not significantly altered, with the exception of debate on the requirement to include U.N. observers and to include an independence option, until the Carmel Talks.

At Carmel, Salii suggested a new tact (as underlined) for approval of the Compact and its application to the districts:

"This Compact will be approved by Micronesia if a majority of those voting in a plebiscite to be held in Micronesia vote in favor of the Compact, except that the Compact shall not become effective in any district in which 3/4 of the voters have voted against the Compact. Such district shall be given an immediate opportunity to negotiate with the United States with respect to that district's future political status. All persons who would be eligible to vote in elections for the Congress of Micronesia, if such elections were held on the day the plebiscite is conducted, shall be eligible to vote in the plebiscite. In determining whether a majority has voted for or against the Compact, only the affirmative and the negative votes shall be counted."

The U.S. agreed (in light of tacit agreement that the Compact would apply only to five districts) to Salii's suggestion. This would permit insertion into the approval section of a provision

parallel to the so-called "Yap" termination clause. This new approach would permit a district to opt-out of the association from the inception. It would also permit that district to negotiate a separate political status with the U.S. However, that option was formulated so as to severely curtail its exercise. As a result, the Compact would automatically become effective in all districts as a consequence of a Micronesian-wide plebiscite, unless an overwhelming majority of the voters (3/4) in a district rejected the terms.

The IAG review of this provision revealed that some modifications were in order. If the option were exercised, these changes would adjust (lower) the financial and other U.S. assistance. A change was also suggested to clarify that the option would be exercised by those voting, in lieu of those registered to vote some of which (usually 20%) fail to vote.

4. Analysis

The JCFS proposals would (1) increase the mandate required to ratify the status agreement (2) appear to force the "yes/no" option into the plebiscite issue, (3) appear to be a ploy to entice the Marianas into participating in the free association plebiscite, and (4) appear to be a technique to allay the growing fears of the individual districts that a status would be imposed upon them against their wishes.

The first change would make ratification of the Compact less certain. At present, the ESG program has not materially increased local comprehension levels about the status agreement

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or its implications. Most Micronesians today would appear to support the status quo, as a reading of the JCFS trip-reports indicate.

As the plebiscite approaches, more uncertainty may arise from the confusion over the implications of the Micronesian Constitutional Convention. It would consequently appear that a 2/3 approval requirement would jeopardize early ratification of the free association status agreement. This technique would also appear to raise the issue of whether a "yes/no" vote would be used in the status plebiscite. Salii has consistently supported this approach, although the COM is thought to oppose it. The U.S. has not yet resolved its position on this matter.

As to the second of the JCFS proposals, the JCFS change more accurately reflects political realities in Micronesia. Although a clear majority of all Micronesians may support the Compact, there can be no assured method to force any district into a common status relationship that includes other districts if a majority of the residents in a district expressed their opposition to such a relationship. Stated in the alternative, there can be no method to force a majority of the residents of a district to accept a status position preferred by a small minority who may work their will by using an external majority of those in support of the Compact. This would effectively block the local political processes and impose minority views.

The new JCFS position consequently abandons its Carmel approach that a Micronesian-wide plebiscite bind all the

districts unless a significant majority in a district affirmatively opposes the Compact. Apparently, the Marshallese and Palauan separatist movements have convinced the JCFS membership that a relaxation of the voting requirements in the plebiscite is warranted. The JCFS may also believe that this approach serves to entice the Marianas into participating in the free association plebiscite by making the "opt-out" provision more acceptable to the MPSC leadership by reducing the consensus requirement. This new proposal also makes the JCFS plebiscite tactics (Micronesian-wide plebiscite vice district by district option) less transparent to the various district leaderships. To this end, the JCFS apparently now determines that the Compact should not become effective in a district unless at least 2/3rd's of those voting in the district have voted in favor of the Compact. The JCFS proposal does not, however, accomplish this result, but instead effects the following: that the Compact will not be applied to a district if 2/3rd's of those voting favor the Compact.

5. Options

a. Accept JCFS Proposal

PRO

(1) Would permit JCFS/U.S. more flexibility to deal with the fragmentation movement in the Marshall and Palau Islands.

(2) Would allay local district fears that a future political status common to all districts might be imposed on them when a clear local majority did not wish this result.

CON

(1) Works against early approval of the Compact.

(2) Works against unity be weakening the concept that the Compact will automatically apply unless 3/4th's of the local voters affirmatively reject the Compact.

(3) Would give the JCFS leverage to require the Marianas to participate in the free association plebiscite.

b. Accept with modifications. The language could be tightened to permit a reduction from 3/4th's to 2/3rd's in the consensus required to effect the "opt-out" provision.

The U.S. should retain the concept that:

(1) A majority can approve the Compact;

(2) The Compact will automatically apply to all districts unless a district votes by 2/3rd's of those voting against the Compact; and

(3) The IAG proposals should be incorporated to reduce U.S. obligations in the event the "opt-out" provisions is exercised.

PRO

(1) Would ease the consensus requirements for the "opt-out" provision to give the JCFS a concession but would retain the leverage for Micronesian "unity".

(2) Would be some clear indication that the U.S. is concerned about fragmentation movements and desires the five remaining districts to remain together under one future political status.

CON

(1) May not be accepted by the districts because it would still require that the Compact be applied unless rejected by more than a clear majority.

(2) May not be acceptable to U.S. Congress or U.N. as contra to concepts of self-government (majority will).

c. Accept with qualification. The JCFS language could be accepted entirely, provided that the JCFS affirmatively endorses the separate status negotiations and agrees that the Marianas would participate in the free association plebiscite only if it rejected the Commonwealth status in a separate plebiscite.

PRO

(1) Would allay districts' fears of imposing a political status when a majority do not support the agreement.

(2) Would provide U.N. and U.S. Congress with express COM endorsement of the separate status agreement with the Marianas

(3) Would permit the U.S. to make a major concession to the JCFS but only as regards the future unity of the Caroline and Marshall Islands.

CON

(1) Jeopardizes early approval of the Compact.

(2) Could be used against U.S. to include the Marianas in a free association plebiscite, if the JCFS is not able to sell the agreement to the COM on this provision.

(3) May impose an approval consensus requirement that is too high to receive any approval by the Micronesian people,

so as to either force the independence issue or to maintain the status quo.

d. Reject the JCFS proposal.

PRO

(1) Enhance chances for approval of the Compact.

(2) Would require the JCFS to honor commitments it has earlier suggested.

(3) Would retain the concept of automatic application to all the districts by virtue of a Micronesian-wide plebiscite unless a clear superiority affirmatively opposed the status agreement.

CON

(1) Retention of this provision may be used by the JCFS to oppose COM approval of the Compact.

(2) The districts will react to the requirement that they remain within a status association with other districts notwithstanding their desires, and thus initiate local opposition to the agreement.

f. Reject the JCFS proposal and insist upon the pre-Carmel U.S. version on approval

PRO

(1) This shift in tactics may gain leverage with the JCFS regarding other provisions of the Compact which they might be thinking of changing.

(2) Would permit the U.S. to regain, if successful, its original concept of a simplified approval process (simple majority vote).

CON

(1) Would not remove the concern of the districts that a political status might be imposed upon them against their will.

6. Recommendation

a. Obtain clarification on JCFS language and intent.

b. Accept with modifications. Accept the reduction from 3/4th's to 2/3rd's consensus requirement to effect the "opt-out" provisions but require (1) compact be ratified by simple majority (2) retention of the concept that the compact will automatically apply unless rejected, and (3) incorporation of the IAG provisions to safeguard U.S. interests if the "opt-out" provision is exercised.

(1) The U.S. understands the difficulty in obtaining the large consensus.

(2) The U.S. retains its understanding that the primary purpose of the Carmel change in this matter was to promote Micronesian unity and stands by this position.

(3) The U.S. cannot permit a major modification to a major concession made by the U.S. in earlier talks; this would be an undesirable precedent for reopening other titles of the compact.

c. Reject the JCFS proposal

(1) The U.S. Government made a major concession to the JCFS at Carmel.

(2) It now appears that the JCFS wants to expand upon that concession to make another major modification to the plebiscite process.

(3) The U.S. should avoid a possibility that the JCFS will attempt to persuade or to force the Marianas into a free association plebiscite by lessening the consensus requirement.

(4) Deleting the concept that the Compact will automatically apply unless 3/4th's of those voting affirmatively reject the Compact would appear to work against Micronesian unity and toward a district by district plebiscite that strengthens fragmentation.

(5) Accepting would set an undesirable precedent for reopening other of the Carmel concessions to further refinement.