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TITLE XII - APPROVAL AND EFFECTIVE DATE

Background

The JCFS has proposed an amendment to Section 1201(a) which would require a 2/3 instead of a simple majority of those voting in a plebiscite in favor of the Compact for its approval. It has further proposed that the Compact would not become effective in any district where 2/3 of the voters (underlining ours) have voted for the compact in view of the Carmel provision which says that it would not become effective in any district where 3/4 of the voters voted against the compact. The latter part of the revised JCFS version is obviously a typographical error. Until we can ask Salii for clarification it must be treated in two stages (a) where 2/3 of the voters have voted against the compact or (b) where less than 2/3 have voted for. In case (a) there is only a simple change from 3/4 in the Carmel version to 2/3. In case (b) it is a brand new proposition.

In earlier discussions the U.S. has always acted on the assumption that a simple majority of those voting would suffice to put the compact into effect At Carmel we bought the 3/4 proposition with some reluctance in view of its possible implications for the Marianas and then only on the expressed basis that the compact would apply to only five districts.

Discussion

The first proposed change which would require an overall 2/3 vote instead of a simple majority is patently unacceptable. Salii will argue if it takes 2/3 to terminate it should also take 2/3 to put into effect. He should be told that this is what we have talked about since Hana. If the JCFS wants to change its mind at this late date we can't buy it. It would mean that all

those favoring some other status: territory, commonwealth, independence or status quo, could join up to defeat the Compact by getting just 34% of the vote - a manifestly impossible situation. After fifteen years trial on the other hand it should take a really healthy majority of the disaffected to effect a change.

The second proposed change in version (a) is probably just as acceptable or unacceptable than 3/4 was. We still run a risk on the Marianas, and if we buy this version it should again be made clear that we do so only on the basis that the compact applies to five and not six districts. To insist on a simply majority here is to go to full district option which we have tried to avoid in the past as a violation of the unity principle. To reject the idea entirely, however, after accepting at Carmel (and so informing the President and NSC USC) would do violence to the self-determination idea and possibly alienate the Marshalls and Palau away from the Compact.

Version (b) of the second proposed change is something else again. This turns the Carmel version around completely and makes it necessary for 2/3 of the voters in a district to vote <u>in favor</u> of the Compact before it becomes effective in that district. Unless the Compact gets a 2/3 favorable vote the district would be free to negotiate its own status separately with the U.S. This violates both the principles of unity and self-determination in a sense and is district option with a vengeance. While it is hard to believe this is what the JCFS really had in mind, it is conceivable they are ready to go this far to appease separatist in the Marianas, Marshalls and Palau. Taken in conjunction with the last proposed change it could mean almost full local option for those districts who want commonwealth, free association, independence or status quo. In the remote event this is what they really mean we

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would be well advised to ask for new instructions.

Recommendations

1. Refuse to accept the first change.

2. Accept the second proposed change in version (a) but only after repeating the U.S. understanding regarding the application of the Compact to five districts.

3, 3. In the remote event version (b) of the second change is what they really mean, explore their reasons thoroughly and then say we have to study it further and ask for new instructions.

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SUGGESTED RESPONSE ON FOREIGN AFFAIRS AUTHORITY

- New JCFS proposal represents significant change in previous position.
  - Do not intend to review past history of understandings.
  - Will say simply that in U.S. view this is a fundamental switch in basic ground rules under which two sides have been operating since Hana.
  - Ground rules were these:
    (1) That JCFS was seeking basic arrangement under which Micronesia could become freely associated with U.S. with Micronesia having basic responsibility for its own internal affairs giving it essential elements of self-government and U.S. responsibility for external affairs and defense.
    (2) That this arrangement would be terminable after a decent interval to give Micronesia a chance to try some other arrangement, which could be a closer or a looser arrangement ranging from commonwealth on the one hand to independence on the other.
  - JCFS proposal now brings into question a basic element of that equation: U.S. responsibility for foreign affairs.
  - Since beginning of these talks U.S. has said that if it is to have responsibility for foreign affairs it must entail full authority. Otherwise as a practical matter it will not work.
  - It cannot be an authority which is prey to someone else's whim or fancy or which is subject to arbitrary limitation by a withdrawal of delegation or enactment of conflicting legislation.
  - Our experience with our own Congress and the states has shown conclusively that foreign authority is indivisable and must have primacy over local

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legislation. Our own treaties supercede our domestic legislation.

- JCFS seems to be saying that the authority in foreign affairs is to be exercised by the U.S. subject to veto by the GOM any time in the latter's opinion internal domestic considerations are deemed to be more important by the GOM.

- This is no authority at all.

- It would not work. Here are some practical examples:

USE BERGESEN STOWE EXAMPLES

- Furthermore, it is legally impossible under new Vienna convention.

- In our view therefore if the new JCFS position is to prevail we would have a new equation wherein Micronesia would have full responsibility for its internal affairs and the U.S. would be expected to defend Micronesia and handle only those aspects of foreign affairs which the GOM might decide were consistent with its domestic policies - ill defined and subject to change though they might be and whether or not they were consistent with the overall foreign policy and security interests of the United States.

- This represents in our view something very close to independence and a distinct switch from what we have been talking about for the past two years.

- In our view if you want to talk about independence let us do so but not continue to talk about something called free association which in Carl Heine's terms is nothing more than camoflaged independence.

- You have said you have now had a chance to look at the Compact as a whole

- U.S. agrees that this must be done and has in fact approached problem in the same way - Believes that if a major element is to be changed, balance is

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upset, and other elements of package must be reexamined and adjusted appropriately.

- U.S. is perfectly willing to talk to you about independence and has offered to do so repeatedly in the past.

- As we said many times before, however, if we talk independence we begin from scratch and we would not under those circumstances consider it had any financial obligations.

- By the same token it must be made clear that U.S. would expect at minimum to continue present lease arrangements at Kwajalein and in view of continued strategic importance of area would insist that area not be opened up to armed forces of other nations.

- If you really wish to talk independence with us now we are prepared to do so.

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