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INFORMAL TALKS - CARMEL - APRIL 1974
POSSIBLE REOPENING OF TITLES II AND III

The texts of Titles I (internal affairs), II (Foreign Affairs) and III (Defense) of the draft Compact of Free Association remain as agreed at Washington (V) in July 1972. However, in his closing plenary statement at round VII (Nov 21, 1973) Senator Salii noted:

"Titles II and III as negotiated ad referendum in July 1972 would commit the Government of Micronesia to allow a virtual U.S. domination of Micronesian foreign affairs and the liberal use of Micronesian territory for U.S. security purposes. We are firmly of the view that the level of U.S. financial support embodied in your present proposal is totally inadequate to justify this degree of continuing association between Micronesia and the United States."

Salii went on to say that, unless Micronesian financial demands were met, "we would contemplate a significant curtailment of the degree of authority to be delegated to the United States in foreign affairs and defense matters under Titles II and III."

Ambassador Williams' reply pointed out that "the willingness of the U.S. to commit itself to continuing financial support to a future Micronesia would depend on the nature of our future relationship... At one end of the scale is commonwealth or membership in the American family with all its obligations and also all its benefits, including the widest range of federal programs and services. At the other end is independence with no U.S. financial obligations".

The position assumed by the JCFS in the Seventh Round with respect to the level of support to be provided by the U.S. was endorsed by the Congress of Micronesia in its vote for SJR 102 as the "minimum...acceptable".

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There are also recent examples of Micronesian dissatisfaction with the already-agreed Titles per se, especially with respect to the conduct of foreign relations:

(1) Continued unhappiness about the Micronesian War Claims settlement negotiated between Japan and the United States, most recently manifested by the COM's refusal to grant tax exemption to Japanese nationals deriving income in the TTPI pursuant to implementation of this agreement.

(2) Concern that the U.S. will not adequately represent the Micronesian position on territorial waters in the upcoming Law of the Sea Conference.

However, the basic issue about reopening Titles II and III appears to be, in Micronesian eyes, the linkage between the level of U.S. financial support and the extent of U.S. authority for the defense and foreign relations of Micronesia.

Recommended U.S. Position.

1. As noted by Ambassador Williams at Hana, the draft compact's provisions on defense and foreign affairs embody the COM's July 1970 proposal:

"The responsibility for external affairs and defense would be handled by the United States, and it would therefore be necessary for the United States to retain sufficient powers in these areas to enable it to fulfill its responsibilities."

2. We consider that the present language embodies the minimum degree of U.S. control in foreign relations which is consistent with the concept of free association to which the JCFS has agreed. We would be unable to carry out our responsibilities with any decrease in this authority which, in fact, would result in some other status, such as independence.

3. A Micronesian effort to reopen Title II (or III) might be met by our indicating concern that II already goes too far by giving Micronesia permission

(in Annex A to the draft compact) to establish "temporary or permanent representation of Micronesian trade or other commercial interests" in third countries. We could maintain that such representation, especially if permanent, would open the door to the Micronesians' undertaking consular or quasi-diplomatic functions, and inevitably infringe on U.S. prerogatives as set forth in Section 201(a). We could also argue that we now foresee serious problems of privileges and immunities for Micronesian representatives in third countries.

Comment

There is a theoretical possibility of our responding to a Micronesian suggestion to reopen Titles II and III with a counter-suggestion that we would seek to reopen Title I. We might, for example, advocate continued controls over the judicial process in the interests of preserving individual or contractual rights, or insuring objectivity and proper legality. The objection to such a move by our side is that it would be liable to push the Micronesians toward a new approach, which at this point would more likely be independence than commonwealth.