

DEPARTMENT OF STATE

AIRGRAM

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HANDLING	CLASSIFICATION CONFIDENTIAL	MESSAGE REFERENCE NO. A-27
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TO: Department of State

INFO: CANBERRA, MANILA, PORT MORESBY, TOKYO, USUN
CINCPAC, HONOLULU HI; CINCPACREPGUAM/TTPI; COMTWELVE,
SAN FRANCISCO CA

FROM: Status LNO SAIPAN

DATE: 11/11/75

E.O. 11652: GDS

TAGS: PINT TQ

SUBJECT: The ConCon and Future Status Negotiations
PASS INTERIOR FOR DOTA AND OMSN FOR ACTION

REF: A. Status LNO 327 (HICOMTERPACIS 040917Z NOV)
B. Status LNO 244C (CINCPACREPGUAM 290652Z AUG)

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Introduction

With the Constitutional Convention's approval and signature of the new Constitution of the "Federated States of Micronesia" on November 8, 1975, the political development of the Trust Territory has been put on a new and reasonably well-defined course. This does not mean that everything that has been done in the past in negotiating Micronesia's future relationship with the United States has now been undone; far from it. It does mean, however, that the Constitutional Convention has provided some parameters, and probably reasonably firm ones at that, for negotiations with the United States about "future political status" and the eventual termination of the 1947 Trusteeship Agreement. In addition to the text of the Constitution itself, the Convention passed several resolutions which, though perhaps "nonbinding" in a formal-legal sense, made the delegates' sentiments and opinions clear (Status LNO 332 and 335). The purpose of this airgram is to set forth and discuss in a preliminary fashion those factors in the future political relationship to which the Convention has given attention, and to a lesser extent to comment on some of the other important issues dealt with by the Convention. It is based on the assumption, which obviously remains to be tested, that at least four districts (Truk, Ponape, Yap, Palau) and possibly the Marshalls as well will approve the new Constitution

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in an eventual referendum (the law as amended requires for approval of the Constitution but a simple majority in each district).

Attitude Toward the United States

Many of the provisions of the proposed Constitution are evidently taken verbatim or almost so from the American Constitution and American practice, especially the Declaration of Rights (Article IV). There has been an undercurrent of criticism, sometimes voiced, that delegate and committee proposals leaned too heavily on non-Micronesian precedents and experience, and some criticism that delegates relied too much on the young American lawyers working for the Convention who evidently wrote a number of the speeches, but none of the delegates looked to the political structure of Japan or (more pertinent) Britain and its former colonies in the Pacific as a model. A democratically chosen government of three branches--executive, legislative, and judicial--was assured from the start. Aside from imitation being the sincerest form of flattery, it was noteworthy that there was practically no overt criticism of the United States or its administration of the TTPI. This is notable because a common criticism of the Congress of Micronesia over the decade of its existence has been the observation that the only thing the Congress could unite on has been criticism of the United States. Despite this not-unfavorable attitude toward the U.S., there was no indication that the Compact's provision for U.S. nationality was of any interest to the Convention, and it would seem incompatible with the Constitution's citizenship and nationality provisions.

Defense

Aside from delegating to the new Congress the power "to provide for the national defense" this issue was hardly mentioned in the Constitution or on the floor. The assumption is that it will be delegated to the United States; implicit, I believe, was the expectation that (together with foreign relations) this was something the United States would be willing to pay for the privilege of undertaking. It appears unlikely that Micronesia's future status negotiators will accept a clause which, in effect, precludes unilateral denunciation of a bilateral defense arrangement.

Foreign Relations

Again, there was little or no discussion. It seemed assumed that "Free Association" was the agreed goal, and such vagaries as Senator Kendall's remark to the U.N. Trusteeship Council that "the negotiations (for Free Association) have failed" and the Congress of Micronesia's rejection of Title IV (financial provisions) of the Compact were generally ignored. However,

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the new Constitution is the constitution of a sovereign, and possibly independent, state, and any future relationship involving delegating major powers of the new state to another government will have to be incorporated in a treaty and approved by a complicated ratification process (two-thirds of the members of Congress plus majority approval of two-thirds of the state legislatures). Even less was said about such carefully negotiated topics as the continued use of U.S. currency and the U.S. postal and weather services. From the Convention's point of view "Free Association" with the United States seems to be the accepted objective; whether, given the limitations on what can be negotiated under the new Constitution, this would be of interest to the U.S. remains to be seen.

In considering the possible assumption by the United States of responsibility for a quasi-independent Micronesia's foreign relations the ambitious (although in the final version less categorically stated) jurisdictional claims of what is to constitute Micronesia's territory need to be kept in mind. In the LOS forum and elsewhere the Micronesians have claimed a far-flung marine area; the Constitution states "jurisdiction extends to a marine space of 200 miles measured outward from appropriate baselines, the seabed, subsoil, water column, insular or continental shelves, airspace over land and water, and any other territory or waters belonging to Micronesia by historic right, custom, or legal title" (Article I, Section 1). If a future treaty (on the Law of the Sea, for example) fails to support this definition, the Constitution allows a graceful way out ("Unless limited by international treaty obligations assumed by the Federated States of Micronesia") but it seems unlikely at present that the Micronesians would agree to another country negotiating this vital subject for them. If there is no LOS treaty, it is reasonable to assume they will maintain this claim. Would we want to try to maintain it for them? There is an escape clause: the "unless limited" phrase quoted above is followed immediately by "or by its (the Federated States of Micronesia) own act" which would apparently permit the future government to accept a more restricted jurisdiction if it so desired; but Micronesian expectations about future revenues from marine resources are such a fundamental part of their vision of the future that it is hard to say what might persuade them. Whatever developments the future brings, this jurisdictional claim will be a thorny problem in Micronesia's future relations with the rest of the world.

Financial Considerations

It would, I think, be safe to say that the ConCon, to the extent that it paid any attention to the future budget of Micronesia, failed to heed the U.S. message as delivered by Ambassador Williams at the closing plenary session of the Seventh Round of Micronesian Status Negotiations in November 1973: "At one end of the scale is commonwealth or membership in the American family

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with all its obligations and also with all its benefits, including the widest range of federal programs and services. At the other end is independence with no U.S. financial obligations." It is probably unfair to blame the ConCon for failing to heed this warning; the Congress of Micronesia, presumably much closer to the status negotiations, has shown little sign of understanding either. In 1974 agreement was reached ad referendum on the level of financial support in a Free Association arrangement as defined in the draft Compact, and then rejected by the Congress of Micronesia when it turned down Title IV. Although several members of the COM and of the JCFS were ConCon delegates (e.g., Senators Tosiwo Nakayama, Bailey Olter, Petrus Tun, Lazarus Salii) the most knowledgeable, Senator Salii, had a poor ConCon attendance record and did not even sign a number of committee reports; Salii seemed more interested in staying in tune with the Palauan delegation as it pursued its determined way. Nakayama's own position continued to be in favor of sovereignty for Micronesia. Unlike most other Micronesian leaders, he has recognized that this might be accompanied by a lower standard of living and would be willing to make some sacrifices, e.g., his proposal at the last COM session for lower salaries for members of Congress (which, needless to add, got nowhere). Bailey Olter seems to have been personally offended by those limitations in the Compact on the Constitution (see para 5 Status LNO 304/HICOMTERPACIS 220545Z Oct for the record of his October 17 outburst on this subject) even though the operative phrase is nothing harsher than that the Constitution "shall not be inconsistent with the provisions of this Compact." Petrus Tun was primarily interested in preparing a Constitution which would provide as much "unity" as possible.

The nearest recent approach to a detailed discussion of the future financial needs of Micronesia was contained in a "Dialogue for Micronesia" by Dr. Hiroshi Ismael (Ponape/Kusaie), Chairman of the Concon's Committee on Governmental Functions, on October 9. Dr. Ismael's rough listing, the amounts attributed to the budget officer of the Congress, was as follows:

Foreign Affairs	\$ 3,000,000
Tax Collections	250,000
Regulation of Shipping and Communications	500,000
Regulation of Commerce	1,600,000
Immigration	124,000
Social Security	130,000
Postal Service	400,000
Administration	2,000,000
Legislature	1,700,000
Education	2,900,000

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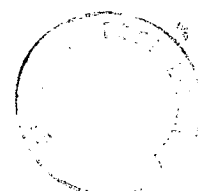
Health	
Legal Affairs	\$ 1,800,000
Courts	1,500,000
Agriculture and Marine Resources	430,000
	<u>600,000</u>
TOTAL	\$17,434,000

It may be no coincidence that this amounts to almost exactly half of the \$35 million which was to have been provided annually to Micronesia for the first five years of Free Association by the U.S. under the rejected Title IV of the Compact. Senator Salii in an October 31 interview (reftel A) referred to the "diminishing level" of support as the major problem with Title IV, although the Congress' rejection was simply on the basis of inadequacy. As to foreign relations, Dr. Ismael said in his Dialogue interview that his committee considered that \$3,000,000 would suffice to support a limited number of ambassadors in places like Washington, D.C., and the United Nations as well as officials in places where there are TT liaison officers at present (note: Guam, Honolulu, and Okinawa). He made no attempt to reconcile these activities with the generally-held assumption that Micronesia's foreign affairs responsibility could be delegated to the United States. It is also interesting that even this casual discussion of financial matters does not appear in the comprehensive report (No. 33 on Committee Proposal 21) prepared by Dr. Ismael's Committee on Governmental Functions. Finally, it should be noted that opinions vary locally as to how much the present Congress of Micronesia costs to operate; the figure of \$1,700,000 used by Dr. Ismael is obviously less than the \$2 million per year (or more) being spent currently.

In brief, although for debating purposes there was discussion of the need to hold down the new government's operating expenses, the question of how these funds could, in the event, be obtained was not really dealt with by the Convention.

Unity of Micronesia

Next only to agreeing on a Constitution, what made the delegates proudest was their commitment and contribution to the unity of Micronesia, the subject of many self-congratulatory speeches. This is not to say that the unity of Micronesia has been achieved. The idea of a strong central government has had no real support so that what was discussed in the ConCon was variations on the theme of federation. Until the last week this issue proved intractable, with delegations repetitively debating the structure of both executive and legislative branches. This was a real debate about

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some real problems. To oversimplify somewhat, the larger districts sought an arena in which their greater strength could be deployed, while the smaller districts, especially Palau, sought protection by insisting on the equality of the districts as the cornerstone of the new structure. In this regard, for example voting arrangements in the new legislature, it appears that the Palauans won. Nonetheless, all the delegations and almost all the delegates agreed on the various compromises incorporated in the Constitution's final provisions (only two abstained on the final vote, and they both signed the Constitution). Without being unduly cynical, it should be observed that no one seemed willing to make, for himself or his district, any sacrifice to any other district. If the Constitution is approved, it will start as a marriage de convenance, not an occasion for pledging one's life, fortune, and sacred honor. Until the last week, there wasn't even any log-rolling, just a stubborn effort to make sure no other district had any real say in one's own. The Palauans have been the most outspoken in this regard, but no one else has offered to make any sacrifices either. Given the lack of any outside threat, and the well-known parochialism of the districts, this situation is not surprising. While it did not seem very inspiring, either, the compromise developed just might work in Micronesia. Certainly the feeling of confidence and hope as the Constitution was successfully completed was real and pervasive.

The tenuous nature of Marshallese participation must be kept in mind. The Marshallese delegation voted for the Constitution; as previously reported Carl Heine and John Heine participated actively and positively in the Convention's work. Carl Heine told the reporting officer after the Convention that he was reasonably optimistic and that he and his Convention colleagues would do their best in propagandizing the Marshalls in favor of the new Constitution. However, unless Amata Kabua and the Nitijela (the Marshalls legislature) change their minds, approval of the Constitution by the people of those islands seems the most doubtful of any of the five districts.

Eminent Domain

As reported earlier, the inability of the ConCon to agree on any provision with respect to eminent domain was one of the Convention's most conspicuous failures. There is a high degree of emotion about this issue; it is said that eminent domain is basically un-Micronesian and that lands for public purposes should be provided "in Micronesian fashion." The new Constitution prohibits indefinite leases and those with the USG are to be renegotiated. While the more sophisticated delegates recognized the validity of the arguments for specific eminent domain power at the district/state level at least, the expression itself has become so odious to many delegates that

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it was a lost cause. This in turn makes provisions for another country to assume an active defense posture in a new Micronesia exceedingly difficult and makes agreement with the U.S. on the "Palau options" even less likely to be realized (although the Palauans offered a site "free" for the new capital to offset their "nonnegotiable" demand that it be located in Palau).

Traditional Leaders and Their Rights

The issue of the rights and prerogatives of the traditional leaders proved fully as thorny (though hopefully not as divisive) as had been feared. The chiefs certainly did not like to be out-voted, but they brought that possibility on themselves when they asked, in last November's meeting of traditional leaders in Truk, that they be allowed to vote, and the Congress of Micronesia amended the ConCon legislation accordingly. The chiefs, or at least some of them, share Heinrich Iriarte's sentiments (expressed on the ConCon floor) that some are born to rule and some to serve, and what this can mean in some parts of Micronesia was epitomized by the general expectation that a prominent Marshallese chief's administering a fatal beating to his wife (who died in Honolulu while the Convention was proceeding in Saipan) would go unpunished. The Convention has left the question of whether traditional leaders should have a formal role in the central government open for future legislation. The most impressive display of moral courage has been the opposition, polite but definite, of several younger delegates, principally Maketo Robert and Iskia Sony of Truk and Kuniwo Apis of Ponape (who became known as the "Devil's Advocates") to enshrining the chiefs' position in a national constitution. The challenge to the traditional leaders was made by Sam Falanruw of Yap early in the Convention (para 8 ref B). While this issue is of limited direct importance in the future status negotiations, the check provided by the ConCon to some of the more ambitious pretensions of the traditional leaders was due in large measure to the American-style education of the younger delegates, in my opinion. The Convention's solution, although it may leave something to be desired by libertarian standards, is likely to prove vital to the Constitution's acceptance.

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Next Steps on Status

In an article published in the Pacific Daily News (Guam) on November 10 Senator Salii was quoted as saying the Joint Committee on Future Status would meet within two weeks to talk about the implications of the new Constitution on their negotiations with the United States. While he would not speculate about possible new directions which the talks might take, inclusion of defense and foreign relations as responsibilities of the new

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legislature makes the Micronesian position firmer, Salii "conceded." The ConCon had not addressed the status question directly, but during the meeting the leaders of Micronesia had unconsciously coalesced and found a "consensus" while working on the Constitution, Salii said.

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