

# DEPARTMENT OF STATE AIRGRAM

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TO: Department of State  
INFO: USUN; COMTWELVE, SAN FRANCISCO CA

FROM: Status LNO SAIPAN

DATE: 2/6/76

E.O. 11652: N/A  
TAGS: PDEV PGOV TQ  
SUBJECT: Future Status Negotiations: Constitution and Compact

REF: (A) 75 SAIPAN A-27, (B) 75 SAIPAN A-29, (C) STATUS LNO 27C

PASS INTERIOR FOR DOTA AND OMSN  
COMTWELVE FOR AMBASSADOR WILLIAMS

Introduction and Summary

Now that the future status of the Marianas seems reasonably assured, preliminary Micronesian comments on the compatibility of the draft Constitution and the draft Compact of Free Association have been received, and the interagency effort to update the negotiating instructions is underway in Washington, it appears appropriate to define and comment upon some of the political and timing problems which confront the U.S. and Micronesia in working out a new political relationship. As seen from Saipan these problems include the current importance of the area to the United States, considerations involved in the level of future U.S. financing, and how to force the pace of negotiations if we are to be able to terminate the Trusteeship satisfactorily in the reasonably near future. This report does not deal with the legal and technical incompatibility of the draft Constitution and the draft Compact.



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JCFS Analysis of Constitution and Compact

With the transmittal on or about January 27, 1976, to Ambassador Williams and the Office for Micronesian Status Negotiations of an analysis of the relationship between the draft Constitution of the Federated States of Micronesia and the draft Compact of Free Association prepared for the JCFS and the approval, on January 27, of the Marianas Covenant by the Senate Armed Services Committee the way seems clear for resumption of negotiations about the future political status of Micronesia. The abandonment by the Congress of Micronesia and its Joint Committee on Future Status of the long-drawn-out effort to negotiate for the Marianas can only be regarded as a major positive step. So, also, though with some qualifications noted below, was the approval and signature of Micronesia's new Constitution on November 8, 1975, the most important step toward the achievement of political unity in Micronesia in the territory's history.

The JCFS analysis (evidently the work of Mike White, an American attorney who has served as legal adviser to that Committee for a number of years) is primarily a legal, rather than a political, approach to the problem, but it reflects the publicly-expressed view of JCFS Chairman Salii and the implicit view of the Constitutional Convention that Free Association (however defined) with the United States remains Micronesia's objective. (See p. 2 ref B for background.) Thus the analysis fails to deal with such fundamental political questions as whether the degree of sovereignty provided by the Constitution is compatible with any form of relationship which could be called "free association" (although this may be primarily a semantic problem), why it remains in the interests of the United States to undertake the obligations it was earlier willing to assume, and whether the stringent requirements of the new constitution would permit, in practice, the assumption by another country of responsibility for Micronesia's defense and foreign relations.

Submitted along with White's analysis was an uncaptioned paper which, it appears from Senator Salii's letter to the Status Liaison Officer in Saipan, contains the JCFS recommendations for changes in the draft Compact.\* Both White's analysis and the JCFS recommended changes make it clear that the movers on the Micronesian side intend to go forward with the Constitution, not the draft Compact, as the driving document. This was the position of the delegates to the ConCon, and it has been endorsed by the JCFS. It is the Compact, not the Constitution, that is to be adjusted. While this point of view is understandable, even inevitable, as seen from Micronesia, it means that the changes necessary to make the two documents compatible are almost all concessions by the United States. If the

\* The JCFS-recommended changes include proposed alternative language, but whether these are firm negotiating positions or merely suggestions is unclear.

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Compact was viewed from the U.S. side as a reasonable balance of obligations and benefits for the United States (as it obviously was), the question the U.S. side must now answer is, in effect, whether there is still enough in it for us to justify the continuation of negotiations with the Compact as the basis.

In this context several more fundamental problems should be considered.

1. Strategic Importance of the Area

This office has noted previously the continuing efforts of Senator Saliu to reassure all and sundry of Micronesia's great strategic importance. Obviously, he considers this the vital element in Micronesia's search for continuation of the U.S. subvention. If we are prepared to downplay Micronesia's strategic importance (and with the future of the Northern Marianas and continued access to Philippine bases reasonably assured, there is no reason why we shouldn't) then we need not get carried away by this argument. It is the reporting officer's conviction that the long-sought "Palau options" are unobtainable in any realistic or useful sense. Further months, or years, of negotiations would give us no more than an agreement to negotiate further if we ever needed the land. Note also that the new constitution makes no provision for eminent domain on a national level, and working out use rights in an area where land tenure is as complicated as it is in most of Micronesia without the threat of eminent domain would be a formidable task.

2. Micronesia's Financial Needs.

Under UNDP auspices an economic planning effort is now underway in the TT. The preliminary impressions of the UNDP team leader as set forth in a January briefing to members of the COM are, though not unexpected, discouraging to the Micronesians, and will no doubt have the effect of confirming to them the continuing need for support by the United States Government more or less at present levels. In its recommendations the JCFS noted that the dollar amounts previously negotiated (Title IV of the draft Compact) had been rejected by Senate Joint Resolution 6-45 last year and that the "Congress has also criticized the theory of declining support during the Compact period. These merit exclusive (sic) renegotiation." (Note - I can only guess that "exclusive" is a misprint for "extensive".) The U.S. position in past negotiations has been that there was a direct correlation between the closeness of the future relationship between the United States and Micronesia and the amount of money the United States would be obligated to provide. The Micronesian position will evidently be to seek more for less. This will be the key issue of

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the future status negotiations, in my opinion.

Further, it is not only a question of how much we are willing to pay, but the tactics of discussing this issue with the Micronesians: if we raise it soon, and the amount we propose is vastly below Micronesian hopes, we might well be accused of seeking to "sabotage" popular approval of the Micronesian constitution by making clear that the constitution is incompatible with continued U.S. support at the previously discussed levels. On the other hand, if we do not take the initiative in the money problem, we might be accused of seeking to make the Micronesians believe we are willing to be more forthcoming than we have been.

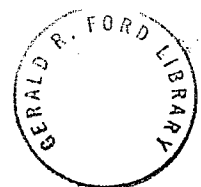
### 3. The Unity of Micronesia

At this point the most fundamental question is whether the five districts will remain together and vote for the new Constitution of the Federated States of Micronesia. The telegram under reference reports an approach by the Chairman of Palau's Political Status Commission looking to separate negotiations with the United States. The proposed superport in Palau has no doubt influenced Palauan views of its future economic prospects, but its importance is difficult to assess at present.

The compatibility of the new Constitution with Palauan pretensions to autonomy and a peculiar and unique Palauan identity reportedly was under heavy attack in the District Legislature's recently-ended special session, with something of a division on party lines; we shall continue to report as more information becomes available. From the Marshalls the silence is deafening; Senator Amata Kabua is in Saipan for the Congress of Micronesia session, but sits quietly behind his dark glasses. (We have not yet seen the promised copy of a lengthy discussion of the new Constitution prepared for the Marshalls District Legislature.) Other Marshallese, not necessarily supporters of the Kabuas, also favor a closer relationship with the United States and are not supporters of the "unified Micronesia" described in the Constitution. It is too early to tell whether the Trust Territory would be able to vote on the new Constitution in conjunction with the regular November 1976 COM election, as has been suggested informally, but preparations are going forward very slowly. On the other hand, discussions about the date of the referendum are underway now on Saipan.

In a January 29 speech Senate President Nakayama asked for the U.S. position on the "Constitution, Micronesian unity, and political status matters" (Status LNO 28, HICOMTERPACIS 291205Z January).

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4. Reorganizing the JCFS

For the third time since January of 1975 legislation has been introduced in the Congress of Micronesia to reorganize the Micronesian future status negotiating team. The present effort, embodied in duplicate bills introduced in both houses in late January, provides for a new 15-man commission: six appointed jointly by the President of the Senate and Speaker of the House, one from each district appointed by the district legislature, one from Kusaie, and two appointed by the High Commissioner (Status LNO A-1, February 4, 1976).

There is no prognosis yet as to how this proposal will fare in the present session, but the two previous efforts failed in large measure because they were introduced late in the session. It is likewise not yet possible to predict what difference the proposed reorganization would make in the negotiations, except that some delay while new members get up to speed would seem inevitable. In the Senate, the bill has been referred to both the Committee on Ways and Means and to Judiciary and Government Operations. It has been reported unofficially that the appropriations committee is reluctant to approve the funding requested (\$500,000) until it knows when negotiations will resume.

In sum, the difficulties and opportunities for delay seem formidable, as viewed from Saipan. Fissiparous tendencies among and even within the districts remain strong. In previous reports over the past year or more this office has outlined some of the problems that have to be overcome to achieve a Micronesia united on any rational basis; as noted earlier, the status quo serves as a kind of security blanket, and it is far from certain that even with the new Constitution the Micronesians are really ready to go on their own.

The U.S. Position

With the future of the Marianas apparently assured, the prompt termination of the Trusteeship seems to be the primary objective of U.S. policy with respect to Micronesia. The other remaining interests of the U.S. in this area include the viability of the Kwajalein Missile Range, denial of Micronesian bases to any third country for military purposes, and perhaps some residual assistance (once the present ambitious infrastructure program is completed) as a sort of detoxification treatment. The Senate debate on the Marianas Covenant, at least as reported out here, made it appear that the U.S. Congress (or at least the Senate) is reluctant to undertake any extensive additional obligations on behalf of

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the United States, either political or financial, in this area.

The level of continued U.S. financial support, whatever the political status, is undoubtedly the primal issue for most Micronesians, particularly in the district centers where the evidence of U.S. funding is most apparent (and where a rapidly increasing proportion of Micronesia's rapidly-growing population lives). The Micronesians have few chips to bargain with, except whatever moral obligation the U.S. sees fit to meet, unless we exaggerate our military interest in the area. The idea of preparing Micronesia for economic independence, or self-reliance, or self-support, is chimerical--unless one accepts the concept of reverting to the breadfruit-and-taro economy which allegedly existed once upon a time. So the problem of adjusting to a new level of support will be exceedingly painful; a low level of support (which probably cannot yet be quantified) might well lead to rejection of any future status arrangement by the electorate and/or the Micronesian legislature.

#### Future Prospects

As seen from Saipan the prospects for swift and easy conclusion of agreement covering Micronesia's future relationship with the United States are not good. There is a very real chance that the Marshalls and/or Palau will press for separate status negotiations. At present, our posture should be to decline to negotiate separately at least until the new Constitution has been submitted for popular approval by the Micronesian electorate. If one or both districts reject the Constitution the U.S. will, no doubt, be blamed for having encouraged, or insufficiently discouraged, separatist tendencies, especially with the example of the Marianas. The prospect of seeking approval by the U.S. Congress for additional arrangements (in addition, that is, to one for the five districts) is a bleak one.

The disparate interests and characteristics of the five districts are, for the moment, subsumed in the draft Constitution. It has some peculiar features, but it also has the considerable merit of being a Micronesian concoction. It is hard to see how some of its provisions can be made compatible with external, e.g., U.S., responsibility for Micronesia's foreign relations. Ref A notes (on p. 3) some of the problems which will inevitably arise in view of Micronesia's LOS pretensions.

These are some of the questions which will have to be examined on the U.S. side and discussed and negotiated with the Micronesians. If it becomes apparent that (a) the present Micronesian Constitution has

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general support and (b) it is incompatible with fundamental aspects of the present draft Compact, we might consider a much more limited relationship: an independent Micronesia allied with the United States by a treaty covering, basically, defense only. Its principal feature could be an agreement by Micronesia to continue the Kwajalein Missile Range under present arrangements and not to tolerate third country military activity, specifically bases, in its territory, in return for a fixed subvention by the United States on the order of what was negotiated at Carmel for Micronesian government operations. But the need for, and desirability of such an approach is for future consideration.

One conclusion which the reporting officer has reached is very simple. Unless we are prepared to act as the Australians ultimately did with respect to their trusteeship of Papua New Guinea ("ready or not, we're going" -- as of a fixed date) the future status of Micronesia will not be resolved by 1981 and we will be saddled with the Trusteeship, with all its neo-colonial ramifications, indefinitely.

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