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November 29, 1976

MEMORANDUM FOR THE SPECIAL ASSISTANT TO THE PRESIDENT
FOR NATIONAL SECURITY AFFAIRS

Subject: United States Policy on the Future Status of Micronesia

PART A. Summary and Recommendations

For more than seven years the United States has attempted to negotiate an agreement for a new political status for Micronesia and thus terminate the last U.N. Trusteeship, now widely considered to be a political anachronism after nearly thirty years of U.S. control. While a separate agreement was reached and approved earlier this year for the Mariana Islands to become a Territory of the United States, full implementation of that agreement was made dependent upon a final resolution of the future status of the rest of the districts of the Trust Territory, negotiations for which have yet to succeed.

U.S. policy objectives in these negotiations have been, first, to assure strategic denial of all Micronesia to any potential adversary and to preserve U.S. military base and land use requirements (mainly the Kwajalein Missile Range in the Marshalls and certain options in Palau); second, to seek a close and enduring political relationship between the U.S. and Micronesia; and third, to continue to provide sufficient financial assistance to Micronesia to underpin a close political and military relationship in the future and to help Micronesia gradually become more self-sufficient economically, although its dependence on outside economic support will be inevitable for a long time to come.

Early in the negotiations the U.S. offered first, territorial or commonwealth status, which the Congress of Micronesia rejected and requested instead negotiations for a Compact of Free Association. Negotiations for that purpose (minus the Marianas since 1972) have continued for six years without final agreement. Respecting the principle of self-determination, the United States has never refused to negotiate for a status of independence, but the Micronesian side has so far shied away from pursuing that solution, apparently out of a principal desire for undiminished continued access to U.S. financial support. If the Micronesians, despite the long standing COM commitment to free association, should evince an intention to negotiate for independence, further study and instructions for the U.S. negotiator would be required.

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Last year, however, the Micronesians produced a draft Constitution, which provides for complete indpendence and a relatively strong central government. This has had schizophrenic results among Micronesians and in their attitude toward the U.S.: On one hand the draft constitution has demonstrated a growing desire among many elected leaders to seek independence as a premise for a close relationship with the U.S., partly as a better basis on which to gain leverage with the U.S., as shown by their current attempts to subordinate a status of free association (as exemplified by the Compact) to a status of political independence (as exemplified by the Constitution). On the other hand that draft constitution has challenged deep traditional and historical differences and rivalries between and within the districts, stimulated separatist tendencies, and aroused such internal opposition that the constitution as drafted will probably fail of popular approval which it requires be given by at least four of the six districts. The United States is thus presented, for the time being but perhaps not for very long, with a situation where a majority of the people in most or all of the districts would opt for free association rather than independence and for maximum district autonomy rather than a strong central government. At the same time the U.S. is faced with a situation where some of those nationalistic leaders with whom the U.S. has perforce been negotiating prefer independence to free association and seek to delay or prevent a popular plebiscite on a Compact of Free Association. Other leaders would prefer free association but only under a treaty relationship between an independent Micronesia and the United States.

From a U.S. point of view the spectrum of future status options as they range from U.S. territory or commonwealth to free association to independence represents a decending order of military/strategic desirability and an ascending order of political desirability. The extension of U.S. sovereignty over Micronesia as a U.S. territory or commonwealth would provide the most reliable guarantee for strategic denial and preservation of the U.S. military presence in Micronesia. Such extension of U.S. sovereignty would, however, run counter to expressed Micronesian rejection of such a status and expose the U.S. to severe criticism in the U.N. and the world for failing to uphold the principle of self-determination and the U.S. responsibility under the Trusteeship Agreement to work for self-government or independence for its

trusteeship. An independence solution would, however, pose the greatest risk to our strategic denial objective and the continued protection of the U.S. military requirements in Micronesia, but would satisfy those in the U.N. and elsewhere who champion freedom for all colonies and dependencies as well as satisfy those in the U.S. Congress who oppose acquisition of additional, and in this case, a financially burdensome territory. Furthermore, in considering an independence option, the U.S. would presumably have to try to conclude a pre-negotiated security treaty with Micronesia in order to preserve our military interests; however, there can be no absolute assurance that such a treaty would in the end be honored by a legally independent government of Micronesia. Moreover, "independence with strings" in the form of a pre-negotiated treaty would still be subject to criticism by at least the more extreme anti-colonialists of the third world.

The concept of free association offers certain advantages not available in either of the foregoing options. First, in the form in which it has been negotiated so far, it would provide adequate assurances for U.S. strategic interests and defense requirements. Second, it would provide for full internal self-government, and match as best we can presently determine, majority popular preference in Micronesia. Third, it would allow for unilateral termination (albeit after fifteen years) which satisfies the U.N. definition of free association. Fourth, it would provide Micronesia and the U.S. with an evolutionary period of trial and test before the Micronesians would have to make a final irrevocable decision on their future status, which they appear to be reluctant to do at this stage.

There are several reasons for urgency in being able to move ahead with the status negotiations. Foremost is the Micronesian position on marine resources and law of the sea issues, strongly reaffirmed in the declaration issued at the conclusion of the Micronesian Law of the Sea Conference on November 25, and declaring full support for the Micronesian position at the U.N. LOS Conference. A second reason for early resumption of talks after a six-month hiatus is found in the process of fragmentation which, despite some election setbacks in the Marshalls, is continuing in that district and accelerating in Palau in the wake of their September referendum for separate talks with the U.S. Additionally, the forthcoming regular session of the Congress of Micronesia, scheduled to convene on January 10, is expected to take up

legislation that will almost surely put the U.S. in an awkward position with regard to consideration of Micronesian jurisdiction over marine resources. Although Marshallese and Palauan representatives will probably attend the COM session, they will be looking for ways to put pressure on the COM and indirectly on the U.S. to support their agitation for separatism, possibly including a threat of future secession from the Congress. Micronesia's increasing involvement in the international arena and its frustration at continuing U.S. delay in dealing with the marine resources issue is risking the souring of relations between us to an extent that increasingly threatens the establishment of a climate of confidence and respect which are essential to a meaningful relationship of free association.

Therefore, we conclude that it is in the best U.S. interest at this stage to make a further effort without delay to complete and have approved by both sides a Compact of Free Associaton essentially along the lines negotiated to date. To do so, however, will require solutions to two difficult, complex problems:

1. Marine Resources: The Micronesians clearly consider this their most important economic resource with the greatest potential for eventual economic viability. They are determined to seek the broadest possible control over their marine resources of all kinds as a means to gain the maximum benefits therefrom. To accomplish this in our bilateral Compact negotiations they have sought to be allowed to negotiate independently with foreign countries, to sign in their own name international agreements on this subject and to have direct access to international dispute settlement machinery for this purpose. To date the U.S. has not agreed to these demands because we prefer not to dilute our foreign affairs authority under the Compact and because we have feared such concessions to Micronesia might make our problems on this score with territories under U.S. sovereignty, especially Puerto Rico, more difficult and set an undesirable precedent in the Law of the Sea Conference for non-recognized entities. Meanwhile, the Micronesians have claimed, and we have admitted, a conflict of interest on this issue in the law of the sea context. We have allowed Micronesia to have separate observer status at the LOS Conference and thus direct access to all its machinery and its participants. At the same time we have so far declined in the Compact negotiations to go beyond the position that the benefits from Micronesian marine resources (still undefined) should accrue to the people of

Micronesia. This falls so far short of the Micronesian position that this issue remains unresolved in the Compact. Unless the U.S. is willing to recognize the crucial and fundamental difference between the U.S. legal relationship to Micronesia under the present Trusteeship Agreement, as well as a future free association agreement, and our relationship with territories under U.S. sovereignty including Puerto Rico, there is little chance that negotiations for a Compact of Free Association can succeed. Therefore, if the U.S. wishes to avoid pushing the Micronesians to seek independence as the only solution to this problem from their point of view, the U.S. will be obliged to make concessions on this issue.

2. Political Fragmentation: Particularly in the last six months the United States has come under increasing pressure from leaders in Palau and the Marshalls to agree to separate negotiations. In the case of Palau this move has been motivated primarily by the possibility that a "super port" complex for oil transshipment, storage and refining may be located there by a Japanese-Iranian consortium, by a presumed Japanese insistence that a potential $300 million investment be protected by a stable U.S.-Palauan relationship, and by Palauan fears that potential superport revenues would be jeopardized by a strong central government dominated by the larger districts. Hence, the Palauans' opposition to the proposed draft Constitution, their push for separation from the rest of Micronesia, and their pressure for a close but separate association with the U.S.

In the case of the Marshalls, there is a long history of confrontation with the Congress of Micronesia over sharing the revenues generated primarily from U.S. activities related to the Kwajalein Missile Range. Influential Marshallese leaders oppose the draft Micronesian Constitution, want the Marshalls to be, first, independent of the other districts and ultimately independent of the U.S., after a relatively short period of U.S. "stewardship". Their first objective in seeking separate negotiations with the U.S. is to induce the U.S. to pay a far higher price for the alleged "strategic value" of the Marshalls and for the leases for the missile range where the U.S. has invested nearly $750 million but has paid only $750 thousand for the primary KMR lease for a period of 99 years.

Throughout the negotiations to date, the U.S. has maintained the position that the future government of Micronesia

should honor current military leases and land use agreements. Most Marshallese leaders have never accepted this position and continue to press for renegotiations of current leases, particularly those granting the U.S. "indefinite use". The COM negotiators have also consistently opposed the continuation of indefinite use leases in the Compact.

There are a number of leases and land use agreements related to the Kwajalein Missile Range; some are for specific periods of time (99 yrs and 25 yrs) while others (approximating 77 acres) are for an indefinite period of time. In all cases, compensation was paid in a lump-sum for the duration of the lease or agreement. The Marshallese view these agreements as being grossly undervalued in relation to their duration. The U.S. position in regard to the "indefinite use" agreements is weak in the absence of any known legal precedents for land use agreements providing for indefinite tenure. Roi Namur island, a key element in the Kwajalein Missile Range, has been used by the U.S. since the end of World War II, and protracted negotiations for lease payment having failed, the Marshallese have brought suit in a U.S. Court of Claims which is still pending.

Current instructions authorize the U.S. negotiator, in close consultation with the Departments of Defense and Interior, to renegotiate the leases, should the issue become critical to the successful conclusion of the negotiations on free association. It is becoming more and more evident that this might indeed be the case.

If the U.S. should accede to the demands for separate negotiations from the Palauans and the Marshallese, the likelihood of further fragmentation by the other districts would be strong and would probably increase the possibility that at least the leaders of Truk, the most populous district, would seek independence more seriously and attempt to play off the U.S. against other potentially interested powers, including even the U.S.S.R. Meanwhile, the U.N. Trusteeship Council has consistently inveighed against any further fragmentation of the Trust Territory beyond the separate arrangement for the Marianas, and key U.S. Congressional leaders have taken the same position.

If the U.S. wishes to continue to preserve some form of unity in Micronesia for the sake of the U.S. objectives described above, which we consider still valid, the U.S. will have to cope realistically with the causes of separatism.

The U.S. would have to take cognizance of the underlying causes and try to deal with them as effectively as possible. Although the Compact as negotiated to date treats the future government of Micronesia under free association as an internal Micronesian matter, the U.S. would presumably have to take steps to explore the feasibility of a confederation concept wherein the central regime would have only limited powers restricted mainly to essential common services and powers with a maximum degree of local autonomy reserved for each of the districts. This would be consistent with moves already made by the Trust Territory Administration in the direction of decentralization and Micronization and could be seen as responsive to the expressed concerns of most of the districts themselves for greater control over their own affairs. However, it may not prove to be sufficient merely to discuss this concept with the Micronesians in the context of negotiations for the Compact. It would probably be more attractive and persuasive to Micronesians in all districts if further steps were accelerated by the U.S. in the near future to modify the present Micronesian governmental structure as well as the U.S. administration in that direction. Such tangible steps would help to convince the Micronesians of our seriousness and thus give them more confidence that such a limited form of unity could and would be implemented under a Compact of Free Association.

In pursuing the negotiations we must look at political leverages that might be applied. In any event, a major effort is required to insure that all U.S. federal programs and financial commitments are coordinated within the executive branch in a way that would not hinder but rather enhance the U.S. negotiating objectives.

We can give no complete assurance that even if the foregoing premises and recommendations are accepted, the U.S. negotiator will in the end be able to obtain Micronesian acceptance, with reliable support from all the districts, for a Compact of Free Association. Despite his best efforts with maximum reasonable flexibility in his negotiating instructions, the Micronesian negotiators may still hold out for more concessions on the subject of marine resources and related LOS matters than the U.S. is willing to offer. Even if the U.S. moves towards the concept of Micronesian confederation with much greater autonomy for the districts, the Marshallese and Palauans may still refuse to participate with other districts in further negotiations and hold out stubbornly for separate negotiations with the U.S.

If those developments should occur despite the best efforts by the U.S. in the next stage of negotiations, the U.S. will inevitably be faced with harder decisions involving eventual fragmentation and independence for all or part of Micronesia. We believe, however, that a further serious effort should be made to complete the Compact of Free Association along the lines recommended above, and only if those efforts fail, should new recommendations be made to the President for further policy decisions in the light of that negotiating experience.

Recommendations:

1. That the U.S. negotiator make further efforts to complete negotiations for a Compact of Free Association.

2. Regarding the marine resources/law of the sea issue, that the U.S. accept the premise that the U.S. legal relationship to Micronesia, now under the Trusteeship Agreement or later under free association, is and would be fundamentally different from the U.S. relationship to territories under U.S. sovereignty, and therefore that the U.S. would be justified in reaching agreement with Micronesia which need not be considered a precedent for U.S. territories, such as Puerto Rico, on this subject.

3. That the U.S. negotiator be authorized to seek agreement on the marine resources issue on the basis of Position II (Part B, pp. 14,15), and only if that effort should fail, to seek agreement on the basis of part, or if necessary all, of Position III (Part B, pp. 15,16).

4. That the U.S. negotiator be authorized to offer up to $5 million annually, on a matching basis with Micronesian funding from potential foreign fishing fees, to support a fishery surveillance/enforcement program, such offer to be contingent upon completion and approval of the free association agreement, but implementable during the transition period from Trusteeship to the new status.

5. That the U.S. continue to refuse to undertake separate status negotiations with any single district except that if the next negotiating effort shows that Palau and the Marshalls are continuing to boycott the Micronesian negotiating group and to refuse to be bound by its negotiations, the U.S. negotiator be authorized to:

a. Propose simultaneous talks directly with each district for the purpose of reaching bilateral agreements with each district for Compacts of Free Association, contingent upon each district accepting an overall "umbrella" free association agreement between the U.S. and a "confederation" of Micronesia on matters of common interest to the U.S. and Micronesia as a whole, the latter agreement to apply to all districts.

b. Propose that revenues generated locally within each district be retained by that district to the maximum extent.

c. Offer renegotiation by the U.S. of existing "indefinite use" military land leases and only if necessary the tenure and/or compensation as appropriate for those other military land leases and agreements in the Kwajalein Atoll, provided that any further compensation paid would be within the overall currently authorized financial ceiling for free association.

d. Offer bilateral negotiation by the U.S. directly with the Marshallese authorities for settlement of the Roi-Namur land lease in lieu of resolution by U.S. courts.

6. To regain adequate control over U.S. federal programs in Micronesia during a transition period and in preparation for a new status, that the President assure, preferably by Executive Order, that all Federal Departments and Agencies coordinate their programs in Micronesia through the Interior Department for suitability and cost-effectiveness as well as compatibility with U.S. negotiating objectives and tactics.