



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

OCT 25 1979

Memorandum

To: Director of Public Affairs

From: Director, Office of Territorial Affairs

Subject: Uludong article in October 21, 1979, Washington Post Outlook Section

The chronology and most of the facts reported by Mr. Uludong in his story about the Palau constitution are correct. He does distort certain events in his efforts to make his point.

There are two major political factions in Palau at this time--one that controls both the legislature, elected four years ago, and the Palau Political Status Commission, and the other, a coalition of political groups opposed to the current legislature and status commission leadership. The latter are supporters of the April constitution that was, as noted by Uludong, approved 92% to 8% in a July 9 referendum.

As the constitutional convention completed its work, Ambassador Rosenblatt traveled to Palau and expressed the view that certain provisions of the draft constitution relating to nuclear materials, the archipelagic basis for 200 mile jurisdiction over adjacent seas, and the land acquisition provisions were inconsistent with the concept of free association with the United States as it was then being negotiated. Proposals to adjust the constitution were rejected, the convention holding that the document could be amended, if need be, after it was ratified.

In an effort to facilitate the transfer of authority to governments organized under locally ratified constitutions, and recognizing the decision of the Marshall Islands and Palau to separate from the remainder of the Trust Territory, the Secretary in late 1978 had conferred on the Palau District Legislature the same authority formerly exercised by the former Congress of Micronesia. Although the order was intended to be a step toward government under a local constitution, and although there was progress without hitch toward that goal in the Marshall Islands, the order in Palau set the groundwork for much of the legal maneuvering that has complicated the already complex Palau political scene.

After adoption last spring of the Palau constitution by the elected delegates to the Palau Constitutional Convention, the legislature, rather than appropriating political education funds and funds to finance the July 9 referendum, proposed to repeal the law by which it had created the constitutional convention and to declare the draft constitution null and void. This move was temporarily blocked when the pro-constitution minority boycotted the

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legislature, preventing a quorum to transact business. Finally, the legislature, by majority vote but minus the minority, passed the bill and suit was brought in the Trust Territory High Court on whether Congress of Micronesia rules or Palau Legislature rules prevailed. Congress of Micronesia rules required half the legislature's membership to constitute a quorum; Palau Legislature rules required 3/4's. The former quorum requirement was met, but given the boycott, the latter was not. The legal question was which of the two quorum requirements applied.

The suit was pending when the referendum, financed with local funds and donated services, was held on July 9, 1979. The High Court, thereafter, ruled that the Congress of Micronesia quorum rule prevailed, legitimizing the Legislature's enactment of the repeal bill, and also, in effect, ruling it had become law without the High Commissioner's signature. Under the Palau Legislature's rules, 30 days were available for the High Commissioner to act-- a date after the July referendum--but under the former Congress of Micronesia rules, only 10 days were available, a deadline that preceded the July 9 referendum.

Although an appeal had been filed, no further court action has been taken.

The Legislature then created its Constitutional Drafting Committee which prepared a new constitution, actually differing but little from the earlier document, and this new constitution was intended to overcome or to offset the United States concerns. Legislative proposals were also enacted to postpone the regular September 1979 elections to the Legislature until after the scheduled October referendum on the new constitution and, if it was ratified, to cancel them entirely in favor of elections to the new legislative body created by the constitution.

In August, in an effort to facilitate a working out of differences among the Palauan leadership, the High Commissioner, with our express approval and encouragement, invited leaders of the two groups to a meeting on Guam-- neutral territory. He and Ambassador Rosenblatt presided. The meeting failed, although all parties expressed satisfaction that it had taken place and that the High Commissioner had attempted the reconciliation.

The High Commissioner vetoed the proposal to postpone or cancel the September election and, as noted by Uludong, the "pro" elements won virtually every seat. Through an inconsistency in the Palau Code, a further controversy arose over whether the newly elected legislators should take office immediately on election or in January 1980.

The problem and its resolution are summarized in a letter to the Palau political leadership from the Deputy High Commissioner on September 23:

". . . the (Palau) charter provides that their respective terms run from the date of election for a period of four years. It therefore follows that their terms expired on September 2, 1979. Under either the charter provisions or those of Secretarial Order 2918, the legislators recently elected pursuant to the Palau District Code do not take office until January 3, 1980. This leaves a period of approximately four months, during which membership in the legislature is in question.

It is the opinion of the Attorney General, in which I concur, that in the absence of prohibitory statutory or constitutional language, the incumbent legislators hold over in office. They serve, under an extension of their initial term, as 'de facto' public officers until January 3, 1980. At that time the newly elected membership will be seated.

The decision allowing legislators to hold over in office, rather than immediately seating those elected in September, or leaving the seats vacant, is not based on political preference, or any attempt to interfere in the operations of the election process in Palau. Rather, it results from close adherence to the rule of law as evidenced by the pertinent court decisions in similar instances."

Contrary to Uludong's implication, the United States did not, arbitrarily or illegally, empower the old legislature to continue in existence and prevent the new legislature to take office immediately.

The final--to date--controversy revolves around the October 23 referendum on the "revised" constitution. If it is defeated, which most observers expect, the state of the law would appear to be that Palau will have no ratified constitution unless some further action is taken. Again, some observers believe the new legislature will give higher priority to consolidating its position than to providing for a constitution.

The question that will be put to the Secretary of the Interior again will be whether he should by Secretarial Order install a constitution (if so, which one) or otherwise intervene in the Palau governmental process.

So far Interior has largely successfully prevented the other agencies of the United States executive from taking steps that would violate or overturn the democratic political institutions, or their workings, that have been established in Palau.

We did not by fiat set aside or order a constitutional referendum.

We did not by fiat overturn a court ruling.

We did not by fiat set aside or postpone lawfully scheduled elections.

We did not by fiat install a newly elected legislature before the start of its statutory term.

We were importuned at various times by various people to do each of these things, but we consciously refrained--and urged the High Commissioner to do likewise--so as not to substitute our judgment for the decision-making provided for under the laws applicable to Palau.

Depending on the outcome of the October 23 referendum and the rate at which the new legislature turns to forming a constitutionally-based government, the Secretary will probably again be urged to intervene in the Palauan governmental process--either to move along and support status negotiations or to protect defense or international positions.

To date my office has received no inquiries from outside the U.S. Government concerning the Uludong article. I have, as we agreed, drafted an "Op-Ed" letter, which is attached, but I do not believe we should enter into the fray, particularly since the "fray" may be non-existent insofar as the Secretary and the Department of the Interior are concerned. We have endeavored to keep the Congressional staff people we work with apprised of the progress--if that be the word--of the Palau constitutional development and they are aware of the narrow line we have tried to tread. Some parts of the general public are probably disposed to believe the worst of the United States, and they will find support in Uludong's article for such a conclusion, but I don't really believe a letter to the editor would make any difference where it counts.

(Sgd.) Ruth Van Cleva

Mrs. Ruth G. Van Cleva

Attachment

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Letter to the Editor:

On October 21 the Post published in its "Outlook" section an article headlined "How America Killed a Constitution." The article purported to chronicle how the United States has interfered with the processes by which Palau has been struggling to adopt--or reject--a constitution.

Mr. Uludong has chosen in his article to misinterpret the actions of the United States. First, Ambassador Rosenblatt informed the constitutional convention of U.S. concerns with the draft document in terms of its affect on the free association states being negotiated. The convention rejected his position. He did not oppose or endorse the proposed constitution as such.

The Palau legislature did vote to repeal the law that had created the constitutional convention and to prevent the July 9 referendum. The day following the referendum the High Court of the Trust Territory of the Pacific Islands ruled that the legislature had acted with a legal quorum. One of the effects of court ruling was to state that the repeal law was in effect when the referendum occurred--the 92% to 8% vote in favor of the constitution notwithstanding.

The "Anti-constitution" legislature proceeded to draft its own constitution. In an effort to bring the differing political groups together, the High Commissioner invited them to Guam, neutral territory, in an unsuccessful effort to facilitate a resolution of differences.

Mr. Uludong also asserts that, following the September 4 elections, the United States "empowered the old legislature, whose four year term

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expired September 2, to continue in existence until January." Since the Palau code is inconsistent on legislative terms, after careful legal review by the Attorney General of the Trust Territory it was concluded that the sixth legislature should hold over until January, a practice not uncommon elsewhere in the American system.

Mr. Uludong is, of course, entitled to his view of the conduct of negotiations between Micronesian status commissions and the United States. In fairness to the people of Palau and an informed electorate, Ambassador Rosenblatt made known the concerns of the United States with respect to certain specific aspects of the constitution drafted last April. The United States has otherwise made every effort to avoid interfering with the functioning of the governmental institutions in Palau. To name but a few-- we did not arbitrarily overturn a court decision, which is still subject to appeal; we did not cancel the referendum simply because it was subject to a legal challenge; we did not prematurely act to seat a legislature the terms of whose members under the provisions of the Palau Code do not start until January 1980.

The people of Palau have a well deserved reputation for being skilled politicians. Working out their future government is well within their capabilities.

Sincerely,

SECRETARY OF THE INTERIOR

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