



# THE PRESIDENT'S PERSONAL REPRESENTATIVE FOR MICRONESIAN STATUS NEGOTIATIONS WASHINGTON, D.C. 20240

November 23, 1979

Honorable Clement J. Zablocki Chairman, Committee on Foreign Affairs House of Representatives Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your letter of November 16, 1979, received this morning; and for the enclosed copy of a print of the Committee on Foreign Affairs dated August 1979 and entitled "Micronesian Political Status Negotiations--Report of a staff Study Mission to Micronesia, November 4 to December 1, 1978."

I hope that my inability to respond sooner to the staff report has not inconvenienced the Committee. My office did not learn of its existence until late in September. According to a newspaper report, (copy enclosed) we understand there also exists an "expurgated" section of this staff report which we have not seen.

The Administration sees great merit and advantage in the report's primary recommendation, that the "Foreign Affairs Committee keep a closer watch on the progress of the (Micronesian political status) negotiations." We have sought and continue to seek every opportunity to bring the members and staff of the Committee up to date on the progress of the negotiations and to share our hopes and concerns with them. We draw particular encouragement from the expression of interest contained in your own November 16 letter.

We do feel the need to point out that many of the findings and judgments in the staff report are out of date or inaccurate and have already proven disruptive to the negotiating process. We strongly believe that closer consultation with your Committee, its East Asia and Pacific Subcommittee and their staffs, is indispensable to the development of a unity of view and purpose as to these important negotiations. We are particularly pleased and encouraged to note that such consultation has recently been initiated.

By way of background, the United States is negotiating the future political status of the Trust Territory of the Pacific Islands (except for the Northern Mariana Islands whose future as a United States Commonwealth has already been approved by Congress) with democratically selected political status commissions representing the three emerging Micronesian political entities -- Palau, the Marshall Islands and the Federated States of Micronesia. Our negotiations, which began some ten years ago, produced an agreement, signed on April 9, 1978 at Hilo, Hawaii, which set forth the principles of a new political relationship between the Micronesian states and the United This relationship, to be known as "free association," would replace the current United Nations trusteeship. Since Hilo, we have been engaged in expanding those principles into a full "compact" of free association. Progress in the negotiations has been rapid in recent months, with agreement having been reached on most of the remaining serious issues, and it seems reasonable to anticipate full agreement in the near future with at least the Marshall Islands and the Federated States of Micronesia. The situation in Palau is seriously complicated by internal political disagreements over a new constitution.

I have enclosed a brief summary analyzing some of the major areas of the staff report which we believe are incorrect, together with a copy of the 1978 Hilo Principles and a briefing document which details the state of the negotiations and key Administration goals.

We looks forward to a close and continuing relationship with the members of your Committee and its staff.

Peter R. Rosenblatt

Ambassador

Enclosures

### Current situation and prospects.

The staff report concludes that attainment of President Carter's announced 1981 trusteeship goal is unlikely and by implication undesirable from both US and Micronesion points of view. We do not concur in this assessment.

This date was originally set as a target date in 1974. The Marshall Islands and Palau political status commissions have embraced 1981 as the expected termination date for the Trusteeship Agreement. While the Federated States of Micronesia (FSM) in the past expressed severe reservations about the termination of the trusteeship in 1981, and some important figures in that government continue to express reluctance to proceed expeditiously, the newly-formed FSM Government has accepted 1981 as the expected termination date and is working with us actively to bring the negotiations to a successful conclusion in the near future. United Nations Trusteeship Council has been on record for the last four years as supporting trusteeship termination as early as possible and by 1981 at the latest. The principal steps which must be taken to fulfill this objective are: full agreement of the negotiating parties in the near future, ratification of a negotiated agreement by the Micronesian peoples, congressional concurrence, and proceedings in the United Nations. The negotiations appear to be close to success and the Micronesian peoples apparently strongly back free association. The principle remaining negotiating difficulties are focussed on Palau.

In mentioning the Hilo Agreement, the staff report accurately observes that its eight principles represented two significant departures from the stillborn free association compact of June, 1976. The two departures, however, were not those cited in the report: Micronesian assumption of foreign affairs authority subject to a U. S. defense-based veto and complete Micronesian control over their marine resources. The first of the departures was, rather, recognition by the United States of Micronesian responsibility for their own foreign affairs, including management of their marine resources, but subject to a U. S. defense veto. second departure which made agreement at Hilo possible was the de-linking of U. S. defense interests in Micronesia from the political status of free association. Thus, the U. S. or any of the Micronesian governments could terminate free association without affecting the full U. S. defense authority and responsibility which would continue uninterrupted for a minimum of fifteen years, and thereafter as mutually agreed.

It was the U. S. reluctance to permit the Micronesians to freely negotiate the exploitation of their maritime rescurces, together with internal Micronesian political problems, that were primary factors in the collapse of the previous seven years' negotiating efforts.

### Foreign Affairs.

The staff report seems to object that under free association, as a concomitant to their foreign affairs authority, the Micronesian governments are insisting:

- A. On the right to sign their own treaties, and
- B. On the right to accept or opt out of treaties (except for defense treaties and international security agreements) which the U. S. has applied to them by virtue of its authority under the Trusteeship Agreement.

The report alleges that the Department of State is opposed to Micronesian assertion of both of these rights. This is not so. At the January 1979 round of negotiations in Saipan, the United States agreed that Micronesian responsibility for managing their own foreign affairs, subject to the U. S. defense veto, included the authority to enter into treaties.

It is standard practice in international law that when a previously non-self-governing area achieves authority for its international relations, it may embrace or reject those treaties previously applied to it by the former metropolitan power. The language of the draft compact dealing with the devolution of non-defense treaties has been cleared by legal experts throughout the Executive Branch, including the Department of State.

The staff report makes a number of observations regarding the assertion by the new Micronesian states of 200-mile economic resource zones and of positions on highly migratory species - most notably tuna - which differing from that of the U. S. Many of these observations are inaccurate. Thus:

A. The staff report does not take account of the fact that the Congress has exempted the Trust Territory from the provisions and coverage of the United States Fisheries Conservation and Management Act (PL 94-265) precisely because of the differing positions of the United States and the Micronesians, even while still

under Trusteeship, on the maritime issues. Nonetheless, out of regard for the U. S. position, the Micronesian legislatures did not purport to regulate highly migratory species in the economic resource zones which they established. The Marshall Islands and the Federated States have, furthermore, assured us in writing that their constitutional provisions regarding maritime zones will be interpreted in a manner consistent with international law as well as with agreed United States security and defense responsibilities under free association. We believe that a similar agreement can ultimately be reached with Palau which has, at this writing, not yet achieved constitutional government.

- B. While it is true that the Trust Territory Government lacks the resources to patrol the Micronesians' 200-mile economic zones, well over a year ago the Administration offered the Micronesian negotiating commissions economic and technical assistance that will enable them to establish their surveillance capability. The U. S. Coast Guard feels that a program at a modest cost could be effective.
- C. The staff report's references to fisheries negotiations by the Micronesian entities are likewise incorrect or badly out of date. The FSM, the Marshall Islands and Palau each entered into fisheries agreements with Japanese and Taiwanese fisheries associations some in 1978. None of these agreements is exclusive and none provides for surveillance of Micronesian maritime zones by foreign nationals. Under free association, these agreements must also be consistent with U. S. defense and security authority.

### 3. Defense.

On the question of United States defense and security objectives in the negotiations, the staff report correctly points up the importance of our continued access to the Kwajalein Missile Range. It criticizes the Department of Defense for its alleged failure to emphasize that facilitie's importance to the Marshallese economy. The staff report fails to note that we reached an understanding with the Marshall Islands Government in July 1979 on satisfactory terms for post trusteeship use of the base.

More fundamentally, the staff report makes no mention of other primary United States strategic objectives in the negotiations; to insure our continued right to foreclose the area to the military forces of other nations and to secure options for the use of land in other areas. Each of the Micronesian negotiating delegations readily conceded these U. S. objectives in early 1978 in the Hilo principles.

The staff report states that there is disagreement among the parties to negotiations on the question of a dispute settlement mechanism. Agreement in principle was reached with the Micronesians on this issue in late July and early August of this year.

The staff report claims that the question "of who would make the 'veto' decision if the Micronesians take actions unacceptable to the United States," given its defense and security responsibilities, is not resolved. The point was resolved at Hilo in April 1978, under Principle 5, which states clearly that the United States unilaterally may make such a determination. Although detailed compact provisions have not been worked out, this principle has not been an issue in any of our subsequent negotiations.

# 4. Micronesian Constitutional Developments and "Human Rights."

The staff report mentions certain of the political groups which have ranged themselves in opposition to the dominant political forces in each of the emerging Micronesian states and criticizes the Administration and Ambassador Rosenblatt personally for having "declined to include representatives of these groups in the negotiations."

Until May 1979, when constitutional governments were formed in the FSM and the Marshall Islands, each of the Micronesian entities was represented in the negotiations by a political status commission composed of members designated by its elected legislature. There is nothing irregular in the fact these designees tended to reflect the political views of the majority elements in the legislatures which appointed them. It should be recalled that a representative of the U. S. Government cannot dictate the composition of the Micronesian negotiating teams.

However, because of the fact that many of the minority representatives are also significant local political figures in their own rights, Ambassador Rosenblatt has taken great care personally to seek out their views and has sought to establish ties of confidence with them to the fullest extent possible under varying circumstances. He has been exposed to their charges of election irregularities and the countercharges of the winners. Most of these have been carefully investigated by Trust Territory Government authorities, special commissions or hearing panels. None of these authorities, nor visiting missions from the United Nations Trusteeship Council which observed and reported on several of the elections, has found any elections or referenda unfair. Further, the approval of the

compact by the Micronesian peoples will occur only through a United Nations observed plebiscite.

In May 1979 two of the three emerging Micronesian states, the FSM and the Marshall Islands, inaugurated freely elected governments based on constitutions written by elected constitutional conventions. Those governments, which now participate in the status negotiations, are founded on the principle of majority rule. The Administration continues to respect this as the only appropriate foundation for orderly government in a democratic society, which we firmly believe each of the Micronesian states to be.

The preparation and adoption of these constitutions constituted a crucial phase in the Micronesian process of self-determination. It has presented a problem of particular delicacy because the U. S. has felt bound to respect the right of each of these peoples to write its own constitution while simultaneously engaging in negotiations for an unprecedented political status for which allowance must be made in those constitutions.

The FSM constitution presented numerous problems of fundamental incompatibility with the status of free association and with U. S. policy and responsibility thereunder. The methodology for resolving these problems, to which the staff report refers as if they were continuing issues, was agreed to in writing at Hilo in April 1978. The solution provided, in effect, for suspension of incompatible constitutional provisions during the lifetime of the free association relationship. In addition, the FSM Government has agreed to exercise its constitutional authority so as to eliminate any remaining conflict problems.

The Marshallese constitution was drafted during the current phase of the negotiations in close consultation with concerned offices of the U.S. Government. We are aware of no conflict problems.

Palau presents by far the most complex of the constitutional problems; and this remains unresolved at this writing. We note that the staff report appears to concur with the Administration's assessment of the seriousness of the conflict situation. The Administration has declared that three provisions of the Palauan draft constitution render that constitution an unsatisfactory basis for a relationship of free association with the U. S. However, the staff report also characterizes U. S. efforts to advise and caution the Palauans about this fact "as having at least the appearance of U. S. interference in internal Palauan affairs."

The three constitutional provisions would (a) prevent, inter alia, passage through Palau of U. S. ships or aircraft bearing nuclear weapons or powered by nuclear engines, (b) render essentially impossible the condemnation of land by the Palauan Government for U. S. military purposes and (c) annex to Palau vast stretches of the high seas. The Administration decided that these provisions would be incompatible with U.S. security responsibilities under the Hilo principles and that our view had to be communicated to the Palauans so that they could make an informed choice in their constitutional referendum. Ambassador Rosenblatt did so in person on April 30, 1979. He advised the leadership of all Palauan political groupings of the Administration's position that they had a choice between retaining the constitution unaltered, thereby foreclosing free association with the U. S., or amending the constitution in these three particulars, thereby making free association possible. He told them that the decision was theirs, and theirs alone.

The situation remains unresolved at this time. We are informed that continuing internal Palauan confusion has been fed, at least in part, by apparently conflicting signals from Washington which have inspired the conviction among some Palauans that the Administration's position need not be taken at face value.

## 5. Trusteeship responsibilities and post-trusteeship aid.

The staff report observes, accurately, that the U.S. has few achievements to its credit over the years in the area of economic development despite high expenditures on federal programs. The report further (a) complains that U.S. proposals for post-trusteeship economic assistance have been classified and are not available, (b) attacks the Administration for offering lump sum grants to the Micronesian governments, (c) assumes that Micronesian governments will misuse these funds to their own economic detriment and to the embarrassment of the United States, (d) declares that little or no economic analysis has been performed by the Micronesians and (e) that OMSN is shortsightedly and "heartlessly" casting Micronesia adrift to sink or swim.

The details of the Administration's economic assistance offers to the Micronesians have always been and remain available to the Committee and its staff.

The structural details of the U. S. proposals are at variance with those described in the staff report. offer to each Micronesian government is divided among one fund for support of government operations and services, another for infrastructure construction and economic development and several smaller special-purpose funds. The terms of the offer require that the fund for economic development must be spent in accordance with national economic development plans to be drawn by the local governments, but which will require United States Government concurrence. Reports will be submitted to Congress each year at appropriation time on past and intended use of U. S. grants. Finally, to aid the appropriation committees in reaching informed judgments, the offer contains a provision for thorough United States Government audit of all the funds. The strengthened audit provisions of the draft compact were, in fact, strongly influenced by observations which the staff report's authors made during their last meeting with OMSN, which occurred some six months prior to the report's publication.

We see no reason to assume that the Micronesian governments will misuse U. S. economic assistance. Each of the Micronesian delegations to the negotiations has produced a detailed economic proposal which outlines its approach to national development. These were presented to the U. S. delegation at the January 1979 negotiating round. The staff report's statement that "little realistic work has been formally presented by the Micronesians on what assistance is needed" is not accurate. We might also note that the fundamentals of the United States economic proposals were developed by a group of developmental economists representing several departments including State, AID, Treasury, OMB and Interior.

- Any U. S. proposal for post-trusteeship economic assistance is going to be faced with a dilemma for which the U. S. bears historic responsibility. Some of the ingredients are touched on in the staff report, but the authors have neglected to spell it out for the Committee's benefit. It is compounded of the following factors:
- -- The U. S. has spent ever increasing amounts of money on the Trust Territory during the past seventeen years. A great deal of it has been spent on social programs, with less on infrastructure construction and economic development.
- -- The peoples of the Trust Territory have therefore become accustomed to spending levels on health, education and other government services greatly in excess of those which prevail in other Pacific societies.

- The is the policy of the Carter Administration, and has been that of its two immediate predecessors, to terminate the trusteeship as quickly as possible in favor of a new political status resulting from free, arm's-length negotiations with the Micronesians.
- The economic aspects of the new relationship must take account of the foregoing economic realities which flow from our own historic trusteeship policies if the new relationship is to win the approval of the Micronesian peoples.
- The minimum economic requirements of the Micronesians under the new relationship will be defined by taking into account the need (a) to avoid a sharp fall-off in levels of government health, education and other services which the Micronesians now regard as essential, (b) for economic development which will gradually reduce Micronesian dependency on outside assistance, and (c) for a closer relationship between budget levels and local resources.

The Administration has come to a tentative agreement with the Micronesians on post-trusteeship funding which takes each of these last three factors into account. An important aspect of this approach will be reduction of expenditures for governmental services by the U.S. Government during the remaining years of the Trusteeship, bringing these more closely into line with the levels of expenditure which the Micronesian governments will be able to sustain in the post-trusteeship period. The only alternative to current reductions would be to substantially increase the cost to the U.S. Government of the post-trusteeship settlement. This would simultaneously accentuate Micronesian dependency on outside support and make attainment of self-sufficiency that much more remote.

### 6. U. S. Negotiating Team Structure

The staff report's analysis of the role in the negotiations of the President's Personal Representative and of the various participating Executive Branch agencies is incorrect. All Executive Branch decisions concerning the negotiations are reached only after careful interagency consideration and with the participation of technical experts as well as policy-level agency personnel. We believe the structure has proven unusually effective.

### STATS TENT OF AGREED PRINCIPLES FOR FREE ASSOCIATION

- I. An agreement of free association will be concluded on a government-to-government basis and executed prior to termination of the United Nations trusteechip. During the life of the agreement the political status of the peoples of Micronesia shall remain that of free association as distinguished from independence. The agreement will be subject to the implementing authority of the United States Congress.
- 2. The agreement of free association will be put to a United Mations observed plebisoite.
- 7. Constitutional arrangements for the governance of Mioronesia shall be in accord with the political status of free association as set forth in these principles.
- #. The peoples of Micropesia will enjoy full internal self-grantment.
- responsibility for security and deferse matters in or relating to Micronesia, including the establishment of necessary military facilities and the exercise of appropriate operating rights. The peoples of Micronesia will refrain from actions which the United States determines after appropriate consultations to be incompatible with its authority and responsibility for security and defense matters in or relating to Micronesia. This authority and responsibility will be assured for 15 years, and thereafter as mutually agreed. Specific land arrangements will remain in effect according to their terms which shall be regotiated prior to the end of the Trusteeship Agreement.
- 6. The peoples of Micronesia will have authority and responsibility for their foreign affairs including marine resources. They will consult with the "mited States in the exercise of this pariority are will refrain from actions which the United States delerations to be incompatible with its authority and responsibility for security and defense matters in an relation to Micronesia. The United States may act or behalf of the security of Micronesia in the area of foreign of Tairs as manually agreed from time to time.

- The presence will permit unliateral terminates of the free presention political status by the processes through which it was entered and set forth in the agreement and subject to the certineation of the United States defense authority has requestibility as set forth in Principle 5, but any plabisaits terminating the free association political status will not require United Nations observation.
- S. Should the free association political status be obtually terminated the United States' economic assistance shall continue as mutually agreed. Should the United States terminate the free association relationship, its economic assistance to Micronesia shall continue at the levels and for the term initially agreed. If the agreement is otherwise terminated the United States shall no longer be obligated to provide the same amounts of economic assistance for the remainder of the term initially agreed.
- At parly free association agreement based on the foresping eight principles shall be pursued by the parties.

Hila. Mawaii

April 0, 1079

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Chairman

President's Personal Pepresentative to the Negotiations on the Future Political Status of Micropesia

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November 1979

NEGOTIATIONS FOR THE FUTURE POLITICAL STATUS OF THE TRUST TERRITORY OF THE PACIFIC ISLANDS

#### SUMMARY

Negotiations for the political future of the Trust Territory of the Pacific Islands have been underway since 1969. The islands are now administered by the United States under a "Strategic Trusteeship" Agreement with the United Nations. After reaching agreement in 1976 on Commonwealth status for the Northern Marianas, the negotiations with representatives of the remaining areas of the Trust Territory became dead-locked. The Carter Administration resumed the negotiations in 1977 and has brought them to near completion. An agreed Compact of Free Association between the United States and the three Micronesian governments may emerge from a December 1979 negotiating round. The Compact will be designed to insure continued realization of U.S. security and defense objectives while according to the Micronesian peoples the right to self-government which they have long sought.

#### BACKGROUND

The Trust Territory, or Micronesia, consists of 2,141 islands in the Marshall, Caroline and Northern Mariana groups. These islands and their 120,000 inhabitants, were ruled as colonies, successively, of Spain and Germany and as a League of Nations Mandate of Japan until American forces seized them from the Japanese in World War II as part of our Pacific campaign. In 1947, the Senate ratified a Trusteeship Agreement with the United Nations which vested administering authority for the islands in the United States. This agreement, alone among United Nations trusteeships, accords the administering power full military rights in the territory. This was intended to accord appropriate recognition of the islands' strategic importance.

Micronesia was administered by the Navy Department until 1952 and since then, by the Interior Department. A Presidentially appointed High Commissioner serves as chief executive of the Trust Territory Government and is the senior resident U.S. official.

Annual Congressional appropriations for the Trust Territory have risen from \$1.5 million in 1948 to nearly \$150 million (including federal categorical programs) in FY 1979. A system of universal primary and secondary education and comprehensive health care has been established and a major developmental construction program for roads, harbors, airfields, power and water is nearing completion.

During the late 1940's and 1950's, several islands in the Marshall Islands chain were used by the U.S. for nuclear weapons testing and are now being rehabilitated, to the extent possible, by the Departments of Defense, Energy and Interior.

The foremost continuing United States strategic interest in the Trust Territory of the Pacific Islands is the ability to foreclose the area to third nations for military purposes. At the present time, the principal Defense Department activity in the Trust Territory is the Kwajalein Missile Range in the Marshall Islands.

The United States reports annually on its progress and programs in the Trust Territory to the United Nations Trusteeship Council. In furtherance of its Trusteeship Agreement objective to move the Micronesian peoples toward "self-government or independence" in accordance with their wishes, the United States has encouraged the development of democratic forms of government throughout the islands. These efforts culminated in the recent installation of locally elected constitutional governments in three of the four political entities emerging in the Trust Territory, the Northern Mariana Islands, the Federated States of Micronesia (consisting of the states of Yap, Truk, Ponape and Kosrae) and the Marshall Islands. Palau, the fourth area, is expected to reach this stage by January 1, 1980.

### THE POLITICAL STATUS NEGOTIATIONS

In 1969 the Nixon Administration and the elected representatives of the Micronesian peoples commenced discussions on termination of the Trusteeship Agreement and the Micronesian political status to succeed the Trusteeship. The U.N. agreement has no termination date but an informal 1981 target date was established in 1974. This was publicly endorsed in 1977 by President Carter as Administration policy.

In the early years of the negotiations, the people of the Northern Mariana Islands decided to seek a separate political status as a United States commonwealth. A negotiated Commonwealth Covenant, effective upon termination of the entire Trusteeship, was approved by the Northern Marianas people in 1975 and by the United States in 1976 (P.L. 94-241). Difficult negotiations for free association status with the other Micronesians proceeded to the initialling of a draft compact in July 1976. This agreement collapsed a month later due, in part, to internal political differences among the various Micronesian elements. Negotiations resumed in late 1977 after a reassessment by the Carter Administration and a political realignment of the Micronesians into three distinct entities--Palau, the Marshall Islands and the Federated States of Micronesia.

In April 1978, an agreement in principle was signed between the chief U.S. negotiator, Ambassador Peter Rosenblatt, and the chairmen of each of the three Micronesian delegations. Known as the "Hilo Principles", this agreement (copy attached) sets out the conceptual basis for a completely unique free association status under which the Micronesian governments will manage their own domestic and foreign affairs, while the U.S. retains plenary defense and security authority. Subsequent negotiating rounds have concentrated on translating these principles into a full Compact of Free Association. When negotiation of the Compact has been completed it will be submitted to the Micronesian peoples in a plebiscite and to the U.S. Congress for majority approval by both houses. Formal termination of the United Nations Trusteeship would follow these Micronesian and U.S. actions.

### U.S. OBJECTIVES IN THE NEGOTIATIONS

- --To fashion a new political relationship with the Micronesian peoples and governments based on their freely expressed will;
- -- To assure that long-standing U.S. strategic interests and objectives in the area are protected, including the ability of the U.S. to foreclose the Micronesian area to the military forces of other nations;

-- To assure, on fair terms, continued U.S. use of the missile testing range at Kwajalein Atoll in the Marshall Islands and to secure rights for the U.S. to use of other land areas in the islands should circumstances warrant; and

--To assist the Micronesian governments in providing for the well-being of their citizens in the context of self-government and thus to help them create a stable political environment in this vast area of the Central Pacific.

#### CONCLUSION

The free association negotiations reached an important turning point over the summer of 1979 when the U.S. and Micronesians reached agreement in principle on the levels of U.S. economic assistance and on U.S. milaitary operating rights in the islands. A negotiating round is planned for December 1979 at which the Administration hopes significant progress will occur. Agreement on a compact will be followed by work on a number of related agreements and approval by the Micronesian governments and peoples. The Administration expects a completed package will be ready for Congressional action by early in 1981. This timetable is necessary to meet the President's stated policy of Trusteeship.

Attachments:
Hilo Principles
TTPI Map



