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MEMORANDUM

June 30, 1980

TO: C - Ambassador Ridgway
FROM: USUN - Ambassador McCall *CM*
SUBJECT: Proposals for Revisions in the Compact of Free Association

In advance of the meeting of the Inter-Agency group of July 1, I am providing you with the views of USUN on the subject to be discussed. The Department has informed USUN that Congressional staffs have worked out with the counsel for the Marshall Islands Government (MIG) an agreement to a new title in the Compact of Free Association designed to meet the desire, expressed by Senator Johnston during the closed Senate hearings on the Micronesian status negotiations held June 3, that the Compact provide for permanent denial of Micronesia to any other government for military purposes. We also have seen the June 20 letter from MIG President Kabua to Ambassador Peter Rosenblatt, proposing the specific package of modifications to the Compact initialed in January. In exchange for the new "Permanent Relations" title, the Micronesians would receive a guarantee of 100% instead of 50% of the funding provisions of the Compact for 15 years should an entity decide to terminate the Compact unilaterally. There is also a "full faith and credit" provision allowing the Micronesians to sue the USG in the U.S. district courts of Hawaii and Washington, D.C. should the annual payments promised in the Compact not be made.

USUN recognizes that these proposals offer some advantages. First, they would appear to remove the concern of some in the Congress that U.S. permanent security interests, particularly denial of Micronesia to hostile powers, be guaranteed in the

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post-Trusteeship arrangements, thus removing a major threat to Congressional disapproval of the Compact. Also, from the perspective of international acceptability, the proposal to guarantee the same funding for Micronesia for 15 years, even if the entities would unilaterally terminate their status as freely associated states and choose independence, would mitigate criticism that the U.S. had offered an unfair choice to the Micronesians in the Plebiscite on status by putting different values on free association and independence.

Nevertheless, over and above the question of whether it was appropriate for such negotiations to have been undertaken by the legislative branch, we have two serious reservations on the proposed revisions. First, we believe that Congressional opinion is misled in thinking that a proposal to put an "in perpetuity" clause into the Compact will actually permanently protect U.S. security interests. We do not find the previous examples of "international servitudes" (an unhappy term in itself), cited in the legal memo attachment to the Kabua letter, particularly convincing examples. Our experience with the Panama Canal, for one, demonstrated that a treaty relationship alone without an acceptable political framework is not enough to secure permanent interests. Attempts to secure these permanent interests through "in perpetuity" clauses in treaties strike us as outdated in an era of decolonization and nationalism which has given shape to the modern international community. We are concerned that the provisions circumscribing sovereignty being proposed by the Marshallese leadership of today, may be unacceptable to the generation of tomorrow (who may view Kabua as a 20th century Esau, who sold his birthright for a bowl of canned soup) and could in themselves be the cause for hostility and resentment against the U.S., which would be detrimental to U.S. interests. In short, in a deteriorating political relationship, the provision of permanent denial would be unenforceable without the use of force, and nothing in the proposals appears to legitimize the use of force by the U.S. to assure compliance with that provision. In addition, the lack of trust inherent in the proposal is a potential source of deterioration of relations with the Micronesian peoples. Indeed, while Kabua and company seem to have accepted the proposal, we wonder whether it would be acceptable to leaders of the other entities. We would hope that the U.S. would not come to agreement with the Marshallese over such a proposal if it were rejected in principle by the Federated States and Palau.

Our second reservation is based on our conviction that the inclusion of an "in perpetuity" denial clause in the Compact would not be acceptable to the international community and could be the basis upon which the UN would not concur in termination of the Trusteeship Agreement. The Trusteeship is viewed in the UN within the context of decolonization and against the backdrop of the colonial experience of most UN members. There is a strong disposition in favor of the unfettered exercise of sovereignty and independence. Drawing examples from European history will not be convincing precedents to most Third World governments. There already are strong sentiments in the UN against the establishment of military bases in Trust and colonial territories. That the Trusteeship Agreement permits U.S. military activities in the strategic Trust does not lessen the potential impact of Soviet rhetoric charging the U.S. with attempting to use Micronesia for aggressive military purposes. Our view has been, however, that the majority of the UN community will accept the current defense arrangements of the Compact largely because they are temporary in nature. We are afraid, however, the inclusion of the permanent denial provision might be the additional element which would turn many Third World countries against the Compact. Even assuming the Micronesian government go along with this provision, there might be overtones that this acquiescence had taken place under U.S. pressure as a U.S. precondition for Trusteeship termination. Also there would be those who would question, despite Micronesian views, why permanent denial should be limited only to third countries and not the U.S. as well, and who might propose the creation of a "zone of peace" in the area. They could point to precedents for declaring certain areas neutral, but demonstrate the lack of precedent for a territory being denied for military purposes to all but one foreign power.

The U.S. does have an interest in strategic denial (although we recall that Amb. McHenry concluded in his analysis that today Micronesia is strategically "useful" as opposed to "essential"). We believe, however, that denial can be better achieved through sound relationships with and policies toward the Micronesian entities. There are alternatives to the current proposals. One which occurs to us, which would remove the permanent denial language from the Compact and thus from the focus of international opinion, would be to seek agreement from the Micronesians to include permanent denial language in their local constitutions, through amendments. (We draw here on the experience of the Japanese constitution with respect to defense.) Long-term leases could be another.

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USUN believes the 100% financial guarantee regardless of status contained in the Congressional/Marshallese proposals should be included in the Compact. In addition, the proposal of a permanent U.S. commitment to guarantee the territorial integrity of the entities should be considered because in itself, it would constitute a weighty impediment to foreign meddling in Micronesia in the future.

Our real problem seems to be to convince Congressmen that their concerns are not properly focused and that the Compact must take into consideration certain foreign policy considerations. We understand that the concern of Senator Johnston is inspired principally by uncertainty over the direction of Palauan nationalism more than any other factor. Perhaps, something should be done to bring the Senator and other Congressional leaders more closely into contact with the Palauans and other Micronesians. While nationalism in Palau is strong, our contact with the Palauans leads us to believe the Senator's fears are misplaced. The peoples of the Pacific closely identify with the United States and the West. Outside of Europe, there is probably no area of the world with which we share more common political values than the Pacific region. This, and not "international servitudes", should be the basis of denial of Micronesia from hostile powers in the future.

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Mr. Farrow

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United States Mission
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As promised.

H. Carl McCall

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