

CONFIDENTIAL

ARD-FYI
69 EXCISE
131.13
03
7

Discussions with the Micronesian Delegation
on the Future of the TTPI

Monday, October 13, 1969

During the week's recess agreed to at the previous meeting, the Micronesian delegation provided the US delegation with alternative language for five additional sections of the future status legislation. They deal with (1) Judiciary, (2) Defense, (3) External Affairs, (4) Lands and Property, and (5) Settlement of Damage Claims (all attached). We in turn tabled a new proposal on land (attached -- tabled prior to receipt of the Micronesian draft) and fiscal provisions (also attached -- an extract from the agreed interagency draft). Obviously we found major problems with the Micronesian drafts and Assistant Secretary Loesch shared the view of all interested Departments that we should make our position clear -- that we should say that we found these suggestions extreme and unacceptable -- and then to see whether the Micronesians really meant them.

The Micronesians, however, requested an informal meeting with Loesch prior to the regular scheduled session. This informal session ended up lasting all morning with a further informal meeting scheduled for the afternoon and perhaps a third in the evening. Loesch found the Micronesians much more forthcoming in this type of session than they had been previously, and we all agreed that it was better to proceed in this manner so long as progress is being made. At the same time it was agreed that frequent "in-house" meetings for interdepartmental coordination would have to accompany these informal sessions in which only Interior was represented.

Assistant Secretary Loesch reported the major portion of the morning discussion was devoted to the land issue. The Micronesians still find our position unacceptable. They said that the basic idea of the sovereign taking land was foreign to the Micronesian people. The delegation understood the purpose of eminent domain procedures and the Micronesians had seen them practiced by various sovereigns over the past seventy plus years -- but they still did not accept the concept and the delegation could not do so voluntarily.

CONFIDENTIAL

DEPARTMENT OF STATE A/CDC/MR

REVIEWED BY B.H. BAAS DATE 4/10/87
(CLASSIFIED) CONFIDENTIAL
RDS or XDS EXT. DATE OADR
TS AUTH YLS REASON(S) E, 1.2, 3, 5, 6
ENDORSE EXISTING MARKINGS SECS. 1.3(a)(5)
DECLASSIFIED RELEASABLE 1.3(b)
RELEASE DENIED IN PART
PA or FOI EXEMPTIONS B, 1, 5

05 423504

B1,15

Loesch told them he was skeptical, but we would explore this possibility and be back. Loesch also said that he felt the Mariana members of the delegation did not have the same attitude as the rest, but they did not wish to express contrary views and break the solidarity of the group.

The Micronesians were totally unimpressed by our provision for a Presidential tie breaker. They apparently felt their case would not get a fair hearing under such a system.

Other issues:

Funding

B1,15

Loesch felt that they understood that and that if (1) land and (2) the constitutional convention could be met they would accept an unincorporated territorial association.

Failure to agree - Loesch told the Micronesians that if we failed to agree on the land provisions, the trusteeship would presumably just continue. What would they do then? They said they would have to take their case to the UN.

B1,15

Note: In general Loesch felt things went very well and that communications back and forth were good for the first time. The points cited above were apparently not presented in a threatening or belligerent fashion on either side and an atmosphere of understanding appears to have prevailed.

The afternoon meeting was devoted largely to the question of Micronesian war claims. The group apparently had three concerns: (1) that they had not been consulted; (2) that the

amount was insufficient; (3) that the Congress of Micronesia be involved in establishing procedures for actual settlement. After some discussion, Assistant Secretary Loesch agreed to get the responsible State Department officer to discuss at least the first two points with them. (Steve Schwebel has agreed to attend a session to be held Wednesday afternoon at 2 p.m.)

IO:UNP:SRPeale:jkb 10/14/69

5107
7

THE JUDICIARY

SEC. 1. The judicial authority of Micronesia shall be vested in such court or courts as shall be established or provided for by the Constitution or Laws of Micronesia. The court or courts of Micronesia shall have original and appellate jurisdiction as shall be provided by law.

SEC. 2. The appointment, qualifications, tenure of office, and salaries of judges of courts of Micronesia shall be as prescribed by the Constitution and Laws of Micronesia.

SEC. 3. Subject to the provisions of the Constitution of Micronesia and this Act, an appeal shall lie to the United States Court of Appeals for the Ninth Circuit from a final judgment of the highest court of Micronesia:

(a) As of right, in all cases involving the Constitution, laws, or treaties of the United States or any authority exercised thereunder, from interlocutory orders, in all habeas corpus proceedings, and in all civil cases where the value in controversy exceeds \$3,000 exclusive of interest and costs;

(b) As of right, in all cases involving substantial question of law as to the interpretation or effect of any provision of the Constitution or Laws of Micronesia;

(c) As of right, from any conviction by the highest court of Micronesia in the exercise of its criminal jurisdiction whereby the appellant has been sentenced to death or to imprisonment for a term exceeding one year or to a fine of \$1,000 or over;

CS 423507

MPSD 10/9/69

(d) As of right, upon petition by the Government of Micronesia in all cases involving substantial questions of international law affecting the rights or claims of Micronesia or Micronesians;

(e) By the Government of Micronesia, with the leave of the United States Court of Appeals for the Ninth Circuit in any other case, if in the opinion of that court the question involved in the appeal is one which by reason of its general or public importance, or of the magnitude of the interests affected, or for any other reason, ought to be submitted to the United States Court of Appeals for the Ninth Circuit for decision.

SEC. 4. The determination of the United States Court of Appeals for the Ninth Circuit on any appeal from the highest court of Micronesia shall be transmitted to the Clerk of the highest court of Micronesia by the Clerk of the United States Court of Appeals for the Ninth Circuit under its seal, and judgment shall thereupon be entered by the highest court of Micronesia in conformity with that determination, or such other proceedings by way of a new trial or otherwise shall be taken in the highest court of Micronesia as are required by that determination.

SEC. 5. Any party may appeal to the Supreme Court of the United States from an interlocutory or final judgment, or order of the United States Court of Appeals for the Ninth Circuit, determining the constitutionality of an Act of Congress of the United States. A party who has received notice of appeal under this Section shall take any subsequent appeal or cross appeal to the Supreme Court. All appeals or cross appeals taken to other courts prior

05 423508

10/8/60

to such notice shall, after such notice, be treated as taken directly to the Supreme Court.

SEC. 6. (USC _____ shall be amended so as to carry out the above provisions.)

10/8/59

CS 423509

DEFENSE

SEC. 1. Upon request of the Government of Micronesia, and only during such time as the request is not withdrawn, the United States shall take such action on behalf of Micronesia as shall be required to assure the security of Micronesia in the face of foreign aggression.

SEC. 2. After the formation of the Government of Micronesia, Micronesia agrees not to allow any country other than the United States and the United Nations to enter into any part of Micronesia and its territorial waters for military purposes for such period of time as the Government of Micronesia shall determine.

MPSD 10/10/69

OS 423510

EXTERNAL AFFAIRS

SEC. 1. All Micronesian citizens shall be entitled to U.S. consular and diplomatic services and protection, to the same extent and under the same terms and conditions, as citizens of the United States.

SEC. 2. After the formation of the Government of Micronesia, no existing treaties, executive agreements or other international obligations to which the United States is a party shall apply to and be binding upon Micronesia unless and until the Micronesian Government expressly indicates in formal writing its accession thereto.

SEC. 3. Upon request of the Government of Micronesia, and only during such time as the request is not withdrawn, the United States shall:

(a) represent Micronesia, without cost to Micronesia, in all United Nations and international agencies; and

(b) conduct such external (international) affairs as Micronesia may assign to the United States, on behalf of the Micronesian Government.

--

05 423511

MPSD 10/9/69

LANDS AND PROPERTY

SEC. 1.

(a) All right, title and interest in and to all property, real and personal, now owned, retained, controlled, held, used or claimed by the Government of the Trust Territory of the Pacific Islands or as to waters and sub-water rights adjacent thereto are hereby transferred to the Government of Micronesia, to have and to hold, with right of free disposal, absolutely and unconditionally forever.

(b) All right, title and interest in and to all property, real and personal, now owned, retained, controlled, held, used or claimed by the United States Government in whatever capacity within the Trust Territory of the Pacific Islands or as to waters and sub-water rights adjacent thereto, except as provided in (c), are hereby transferred to the Government of Micronesia, to have and to hold, with right of free disposal, absolutely and unconditionally forever.

(c) Nothing stated in (a) or (b) above shall impair the existing agreements between the Trust Territory Government and the United States Government or any agency or instrumentality thereof insofar as they relate to land use and retention, except expressly as follows:

(i) Any "retained" or "use" land not in fact now in use by the United States Government shall pass under (a) and (b) above to the Government of Micronesia at once.

(ii) Any and all other "use" or "retention" land, whether acquired by the United States, whether from the Government of the Trust Territory of the Pacific Islands or otherwise, shall pass to the Government of Micronesia no later than five (5) years after the effective date of the Constitution of Micronesia.

(iii) The Government of Micronesia shall, by its own law, provide a speedy and efficient way to grant temporary use of any publicly owned property upon joint declaration of an emergency by the Government of the United States and the Government of Micronesia. Upon termination of the specific use for which "use" or "retention" rights have been given, any property held under such rights shall revert to Micronesia. A change in use shall not be permitted, except upon the consent of the Government of Micronesia.

(d) Micronesia shall have within its land areas and adjacent sea, such system or systems of ownership, use, title, registry and transfer as may be decided upon by the Government of Micronesia. The systems may be the same or different for different areas or districts.

(e) The Government of Micronesia shall determine and fix its rights in and to tidelands, the continental shelf, the territorial sea, the deep ("high") seas, the ocean floor or seabed, fisheries, and navigation of waters in accordance with such accepted theory of international law as may be in the best interests of Micronesia.

SETTLEMENT OF DAMAGE CLAIMS

SEC. 1. The U.S., in its sovereign or Trustee capacity, shall settle, effectuate and fully fund and implement, before the Micronesian Government shall come into existence or within the period of two years from the effective date of this Act, whichever is earlier, any and all pre-war, war, and post-war claims against the United States. The total amount of settlement and liquidation of claims against the United States shall require and be subject to prior consent and approval of the Congress of Micronesia.

SEC. 2. The United States shall use every effort on its part to negotiate and conclude the settlement of claims against Japan, Germany, or other country. The Congress of Micronesia shall choose such Micronesian Representatives as it shall deem necessary to assist, advise, and participate in any negotiation by the United States for the settlement and liquidation of Micronesian damage claims.

MPSD 10/13/69

05 423514

LANDS

SEC. 1. (a) The title to all property, real and personal, owned by the Government of the Trust Territory of the Pacific Islands, and all interest including rights of use in property held by the Government of the Trust Territory of the Pacific Islands, are hereby transferred to the Government of Micronesia, except that whatever right, title, or interest the Government of the Trust Territory of the Pacific Islands has in particular tracts of tidelands, submerged lands, or filled lands in or adjacent to the islands of Micronesia are hereby conveyed to the United States and shall be administered in accordance with the terms of Public Law 88-183 (77 Stat. 338). Public Law 88-183 (77 Stat. 338) is hereby amended to include "Micronesia" where appropriate in order to make said Act applicable to Micronesia. The term "tidelands, submerged lands, or filled lands" shall have the meaning ascribed to it in Section 1(a) of Public Law 88-183 (77 Stat. 338), but shall not include any such lands which by local or customary laws or rights are currently held in private or communal ownership.

(b) During the three year period referred to in subsection (c), nothing herein shall impair the existing agreements between the Trust Territory Government and the United States Government or any agency or instrumentality thereof insofar as they relate to land use

and retention, and the Government of Micronesia takes all such land as set forth in Section (a) above subject to such agreements; provided, however, that such retention and use will at all times be consistent with the public purposes of the United States.

(c) (i) Within three years from the effective date of this Act, the retention and use rights of the United States Government covered by subsection (b) shall terminate, unless, within that time the United States proceeds to acquire, in accordance with subsection (d) ^{or (e)} hereof, whatever rights in such lands may be considered necessary for the public purposes of the United States.

(ii) Departments and agencies of the United States Government, using and retaining land under agreements covered by subsection (b), are hereby authorized to initiate proceedings in accordance with the provisions of subsection (d) to acquire rights in such land deemed necessary in accordance with part (i) of this subsection.

(iii) In any such proceeding, the amount to be awarded by the Court for the land, or interest therein, shall be based upon the present market value of the interest taken; provided that, in any such award, there shall be deducted therefrom any amount or amounts previously paid, gratuitously or otherwise, for such use and retention.

(d) The United States Government shall have the right to acquire real property or any interest in real property, including

any temporary use for public purposes in Micronesia, in accordance with condemnation procedures established under United States Federal laws; provided that, in no event may the estate in property acquired by the United States be of a greater quantum than a base or determinable fee. The limiting event which will terminate such a fee will be the cessation for a period of ten years, of the use of the land for the public purpose ^{of the Department or agency} for which it was acquired. Upon termination, fee ownership in the land shall revert automatically to the person or persons ^{or entity} from whom it was acquired, or their heirs ^{or successors}. Except in cases of emergency as hereafter determined by the President of the United States, condemnation procedures shall not be used until the need for the use of the real property in question has first been reviewed and approved by a commission established for that purpose in accordance with the laws of Micronesia. In the event the commission does not approve the need for the taking by the United States Government or does not act within a reasonable period of time, the proposal to take the land in question, together with the adverse views of the commission, if any, shall be submitted through the Attorney General of the United States to the President for final determination as to whether the condemnation proceeding should be instituted.

(e) After the effective date of this Act, no privately or communally owned real property, or use rights in such property in

Micronesia may be transferred, sold, alienated or leased for a term in excess of ten years to non-residents or corporations owned or controlled by non-residents of Micronesia unless such transfer, sale, alienation, or lease is first approved in writing by the majority vote of a commission to be especially established for that purpose in accordance with the laws of Micronesia.

SEC. 2. The Public Land Laws of the United States shall not apply to land, if any, ceded to the United States, but the Congress of the United States shall enact special laws for its management and disposition.

SEC. 3. The territorial sea of the islands of Micronesia shall be delimited in accordance with the laws and treaties of the United States, and shall not exceed the limits maintained by the United States in its international relations. All laws and treaties of the United States of general application regarding navigable waters, the territorial sea, the high seas, including but not limited to the contiguous zone and the continental shelf, and fisheries shall be applicable with respect to Micronesia.

FISCAL PROVISIONS

SEC. . Effective on the first day of July following the effective date of this Act, all customs duties and Federal income taxes derived from Micronesia, the proceeds from all taxes collected under the internal revenue laws of the United States on articles produced in Micronesia and transported to the United States, its territories, or possessions, or consumed in Micronesia, and the proceeds from any other taxes which may be levied by the Congress of the United States on the inhabitants of Micronesia and all quarantine, passport, immigration, and naturalization fees collected in Micronesia shall be paid into the treasury of Micronesia and held in account for the Government of Micronesia, and shall be expended as the Congress of Micronesia may by law prescribe.

SEC. . Effective on the first day of January following the effective date of this Act, the Federal tax laws in force in the United States and those which may hereafter be enacted shall be held to be likewise in force in Micronesia except that the proceeds of such taxes shall be paid into the treasury of Micronesia.

SEC. . (a) As soon as possible after the end of each fiscal year, the Governor of Micronesia shall certify to the Secretary of the Treasury of the United States the net amount of revenue received by the Government of Micronesia during the preceding fiscal year. There shall thereafter each year be transferred and paid over to the Government of Micronesia, from funds in the United States Treasury not otherwise appropriated, a sum equal to the net amount of revenue received by the Government of Micronesia, as certified by the Governor.

(b) Until such time as funds available to the Congress of Micronesia are sufficient to meet the obligations of the Government of Micronesia, there shall be authorized to be appropriated by the Congress of the United States such additional sum as may be necessary to pay such obligations.

OS

423519