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MICRONESIAN STATUS NEGOTIATIONS

ROUND I

SEPTEMBER 30 - OCTOBER 17, 1969

AT

WASHINGTON, D.C.

COMPILED FROM EXISTING RECORDS BY
OFFICE FOR MICRONESIAN STATUS NEGOTIATIONS, WASHINGTON, D.C.
OCTOBER 1976

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SUMMARY OF
MICRONESIAN POLITICAL STATUS NEGOTIATIONS
SEPTEMBER 30 - OCTOBER 17, 1969

General: The Micronesians arrived on September 30 and began negotiations the following day. After a week of discussions it appeared to the U.S. group that the issue of U.S. military use of lands in Micronesia was important in obtaining agreement. During the second week, the Micronesians held a caucus to determine their position on various issues, and presented a number of issue papers to the U.S. group. During the final week, discussions resumed with further exchanges centered mainly on the land question.

Land Questions: The land issue appears to have become central to an agreement by the Micronesian delegation. It involves primarily the question of whether the United States should have the right of eminent domain in Micronesia. The Micronesian position is that the United States should not have that right, but that the Government of Micronesia or a body acting by its authority should have the power to permit or reject military acquisition of land in Micronesia. The U.S. position has been that whatever the procedure used, the United States would have the power to condemn land for military or other use. The two positions, as expressed, are irreconcilable; however, it is not yet clear that the position expounded by the Micronesian delegation is immutable.

On October 16 Assistant Secretary Loesch (the Chairman of the U.S. negotiating team) announced to the U.S. team that he had been directed by Secretary Hickel to make a proposal to the Micronesians without consulting with or informing other team members. He complied with these instructions, notifying the Micronesian delegation that, if it would commit itself to "permanent association" with the United States, Secretary Hickel would "agree to their land position" and attempt to obtain the approval of Secretaries Laird and Rogers. The Micronesians agreed to the proposition, and also that if either side failed to obtain "favorable response" to the proposition (the Micronesians on "permanent association"), then both sides would renew negotiations from the positions held prior to the Department proposal. The Interior proposal was clarified so as to exclude agreement on the totally unacceptable Micronesian position regarding territorial seas. Before departing the Micronesians indicated that they hoped to hear further from Secretary Hickel during his proposed trip to Micronesia planned for November.

Results: The concrete results of the October meetings were limited to the Micronesian concurrence to the tentative Interior proposal and the mutual agreement to continue meeting. However, for the first time there has been an opportunity for

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an exchange of views. A channel of communication has been opened for future discussions on both a formal and informal basis, in both the United States and the Trust Territory. The United States has learned of the prime importance of the land issue, at least at this time.

Obviously a settlement of some kind must be reached on this issue if an overall agreement is to be achieved. The question remains whether the United States can put its land proposal in an overall package of sufficient attractiveness to secure Micronesian acceptance, or whether only our foregoing of the right of eminent domain will suffice.

MEMBERS OF
UNITED STATES AND MICRONESIAN DELEGATIONS

For Micronesia:

Senator Lazarus Salii
Chairman, Palau

Senator Tosiwo Nakayama
Truk

Senator Bailey Olter
Ponape

Senator Francisco Palacios
Marianas

Senator Andon Amaraich
Truk

Representative John Mangefel
Yap

Representative Benjamin T.
Manglona, Marianas

Representative Olter Paul
Ponape

Representative Ekpap Silk
Marshalls

Representative Minoru Ueki
Palau

For the United States:

Harrison Loesch, Assistant
Secretary of the Interior
for Public Land Management

Elizabeth Farrington, Director
Office of Territories, Interior

George Milner, Interior

Arthur Day, State

POSITIONS PRESENTED
BY THE
MICRONESIAN POLITICAL STATUS DELEGATION
AT
WASHINGTON, D.C.
SEPTEMBER 30 - OCTOBER 17, 1969
DURING THE
FIRST ROUND
OF
MICRONESIAN FUTURE POLITICAL STATUS NEGOTIATIONS

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LANDS AND PROPERTY

Section 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.

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(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.

* * * * *

STATEMENTS IN SUPPORT OF THE PROPOSITION THAT:

I. The people of Micronesia should be allowed to draft and adopt their own constitution, i.e., to organize a government pursuant to a constitution of their own adoption.

A. The policy governing the relationship between the United States and Micronesia should be based on the principles of mutual consent and self-determination.

B. In accordance with the above principles, it is essential to any change in political status for Micronesia that United States fully understand the wishes of the people of Micronesia in order that it can be properly guided in working with the people of Micronesia to carry out their wishes.

C. As people, the Micronesians desire to live together under their chosen political system, and under a structure of government of their own making. They should be accorded the freedom by and through an enabling legislation passed by the United States Congress granting complete freedom to choose the form of government which they desire.

D. In order that the people of Micronesia may decide on the future constitution of their islands, it behooves the Micronesian people to decide whether, when, and in what manner they wish to express their preference.

E. The Micronesian Political Status Delegation poses the following steps and timeframe to be worthy of consideration:

1. Enactment by the U.S. Congress of an enabling legislation to allow Micronesians to organize a government of their own choosing, to authorize and otherwise direct the Congress of Micronesia to create a Constitutional Convention within three years from the effective date of the enabling legislation or by 1972, whichever date is the later, to draft a constitution to be submitted to the voters of Micronesia; to require a referendum by eligible voters of Micronesia to approve such a constitution by a majority vote; and to authorize the transmittal by the U.S. President of a ratified constitution to the Congress of the United States if the President finds such constitution to conform with the provisions of the enabling act and of the constitution of the United States.

2. Congress of Micronesia creates a Constitutional Convention, to be composed of members representing various ethnic and cultural groups and islands of Micronesia, to draft a constitution; Congress of Micronesia shall also be responsible to finance such a Constitutional Convention.

3. Constitutional Convention drafts a Constitution and submits it to the voters of Micronesia for ratification by a majority vote.

4. If Constitution ratified, the United States President submits same to the United States Congress.

5. Measures taken to terminate the Trusteeship Agreement.

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TARIFFS

SEC. It is the intent hereof that Micronesian products shall enter the United States and its territories free of United States duty and that United States products, upon the authorization by Micronesia by specific legislation, may enter Micronesia freed of any United States export duty and/or Micronesian entry duty, and to that end

SEC. (a) The following sections of the Tariff Act of 1930, as amended, are hereby amended by inserting "Micronesia", immediately after "Johnston Island", each place it appears therein:

(1) Section 401(k) (19 U.S.C., sec. 1401(k)).

(2) Section 557(a) (19 U.S.C., sec. 1557 (a)).

(3) Section 562 (19 U.S.C., sec. 1562).

(b) Section 401(a) of the Anti-Smuggling Act, as amended (19 U.S.C. sec 1709(a)), is hereby amended by inserting "Micronesia", immediately after "Johnston Island".

(c) Sections 542, 544, and 545 of Title 18 of the United States Code are hereby amended by inserting "Micronesia", immediately after "Johnston Island"; each place it appears therein.

(d) For the purpose of the Tariff Schedules of the United States, Micronesia shall be entitled to the same privileges as the insular possessions of the United States which are outside the custom territories of the United States.

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(e) This section shall apply with respect to articles entered or withdrawn from warehouse, for consumption after the effective date of this Act.

SEC. Micronesia is granted the right, upon its request and proper provision of Micronesian law, to have one or more "free ports" or "free trade zones" in so far as and in the manner provided in sections 81(a) and 81(u) of 19 U.S.C. as amended.

* * * * *

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;

(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 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).

* * * * *

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

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

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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.

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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.

* * * * *

CITIZEN ENTRY INTO THE UNITED STATES

SEC. Whether or not Micronesian citizens are made United States citizens or have and carry United States passports, all such citizens of whatever age, sex or condition shall at all times have free entry for any period into the United States and its

territories or possessions free of any restrictions and for any purpose, and while therein to engage in education, employment, business or other activity not inimical to the safety and security of the United States.

To this end and for this purpose, the following laws of the United States are amended as follows:

* * * * *

SHIPPING, AVIATION AND COMMUNICATIONS

SEC. It is the desire of Micronesia and the United States that, so far as feasible, the same laws, treaties, conventions, rules and regulations govern as to shipping, aviation and communications in, to and from Micronesia as apply to Hawaii, subject always to the unique features of Micronesia.

SEC. To this end and for this purpose the Government of Micronesia shall formally indicate, after survey by the Commission set up in sec. _____, what laws, treaties, executive agreements, conventions or rules and regulations on shipping, aviation and communications shall apply to Micronesia and to what extent.

SEC. No law, treaty, agreement, conventions, rule or regulation hereafter brought into effect by the United States shall apply as to Micronesia except after consultation and consent by the Government of Micronesia.

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BANKING, CURRENCY, POSTAL

SEC. Micronesia shall be entitled to maintain and use United States currency as its medium of exchange, and to that end the following laws are amended to add "Micronesia" immediately after "Liberia".

SEC. Micronesia shall be entitled to maintain and use United States postal services at the same rates and on the same terms as

apply in Hawaii, and to that end the following laws are amended to add "Micronesia" immediately after "Virgin Islands".

SEC. The banking services and particularly the federal reserve and federal deposit insurance systems of the United States shall apply to Micronesia as the presently do to Hawaii, and to that end the following laws are amended by inserting immediately after "Virgin Islands" the word "Micronesia".

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U.S. LAWS WITH RESPECT TO MICRONESIA; FINANCE

SEC. 1. Upon the effective date of this Act, no new legislation or act of the United States of America shall extend, or be deemed to extend, to Micronesia as part of its law, unless it is expressly declared in such act or law that Micronesia through its constitutional process has requested and consented to its being enacted and being made applicable to Micronesia.

SEC. 2. A Statutory Survey Commission is hereby created, consisting of fourteen members, seven of whom shall be appointed by the President of the United States and the other seven members to be appointed by the Congress of Micronesia. This Commission shall survey the Federal statutes and recommend within one year of the effective date of this Act to both the United States Congress and the Congress of Micronesia those laws of the United States which the Commission recommends shall apply or not apply to Micronesia. The Commission shall meet and coordinate its work with the members of the Constitutional Convention herein before authorized to be created pursuant to this Act. The Congress of Micronesia shall review the recommendations of the Commission and shall in turn recommend to the United States Congress those laws which it recommends shall apply to Micronesia.

SEC. 3. Effective on the first day of July following the effective date of this Act, all customs duties derived from Micronesia,

the proceeds of all taxes collected under the internal revenue laws of the United States, its territories and possessions, or consumed in Micronesia, and the proceeds of any other taxes which may be levied by the United States Congress and all quarantine, passport, immigration and naturalization fees collected in Micronesia shall be paid into the treasury of the Government of Micronesia and shall be expended as the legislature of Micronesia may by law prescribe.

SEC. 4. The Government of Micronesia shall have authority and power to enact such tax laws and other revenue laws for the support of public works and other essential government services in Micronesia. There shall be a Micronesian Government Account and such other public funds or accounts as may be provided by the legislature of Micronesia. No taxation shall be imposed except by law. All taxes and other revenues and money raised or received by the Government of Micronesia shall be paid into the Micronesian Government Account unless required or permitted by law to be paid into any other public fund or account.

SEC. 5. (a) As soon as possible after the end of each fiscal year, the chief executive of the Government of Micronesia shall certify to the Secretary of the Treasury of the United States the net amount of revenue raised by the Government of Micronesia pursuant to its tax laws and other revenue laws 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 raised by the Government of Micronesia, as certified by the chief executive of the Micronesian Government.

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

SEC. 6. The collection, receipt, custody, banking, issue, expenditure, care, management of money credited or to be credited to the Micronesian Government Account or to any other public fund or account shall be as prescribed by law.

SEC. 7. The Government of Micronesia shall provide for the auditing of its financial books by an auditor who shall be the auditor of the Micronesian Government Account and of all other public funds or accounts, and of the accounts of all departments and offices of the Government of Micronesia and of such other public, statutory, or local authorities or bodies as may be provided by law.

SEC. 8. No provision of this Act shall be construed to prohibit the Government of Micronesia from negotiating and concluding agree-

ments for financial and technical assistance or of a cultural or scientific nature with any other country.