



OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20240

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Memorandum

To: Secretary

From: Assistant Secretary - Public Land  
Management

Subject: ~~Briefing Materials for the November 26~~  
~~Interdepartmental Meeting~~

*SEC. ROGERS, SEC. LAIRD & MR. KISSINGER*

Attached are three copies of the briefing materials prepared for the interdepartmental meeting on Micronesian status. Included within the materials are the following documents:

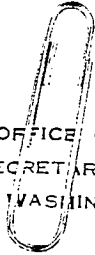
1. Procedural agenda for the meeting with brief discussion of the subjects to be covered.
2. (Tab A) Review of the October political status discussions - the interagency group report.
3. (Tab B) The Micronesian position papers on land and other matters which were presented to us during the October status discussions.
4. (Tab C) A discussion of the Department of the Interior land proposal prepared by our staff.
5. (Tab D) Constitutional convention draft bill containing the last agreed upon US land position and also alternative proposals on elected and appointed executives.

*Harrison Soesch*

Attachments

BRIEFING MATERIAL  
MEETING ON MICRONESIAN STATUS

ADMINISTRATIVELY CONFIDENTIAL



OFFICE OF THE  
ASSISTANT SECRETARY OF THE INTERIOR  
WASHINGTON

Note to the Secretary:

Pages recommended for careful  
examination lined in yellow  
along right-hand margin.

PROCEDURAL AGENDA FOR INTERDEPARTMENTAL MEETING  
ON MICRONESIAN POLITICAL STATUS

I. Introduction. The purpose of the interdepartmental meeting is to undertake, in the light of the recent discussions with the Micronesians, a review of the United States alternatives and further negotiating strategy.

II. Review of October Political Status Discussions. The recent discussions with the Micronesian delegation (see Interagency Group Report -- Tab A) closed on the issue of US land acquisition in Micronesia. The talks ended with an offer by the Interior Department to seek acceptance of the Micronesian position (See Micronesian Land Position -- Tab B) -- in essence that the United States would forego the right of eminent domain -- if the Micronesian delegation would commit itself to an undefined "permanent association" with the United States and would seek Micronesian support for this course. The Micronesian delegation has returned to the islands and is awaiting the result of Interior's efforts.

Assistant Secretary Harrison Loesch plans to visit the Trust Territory as soon as a decision is made in order to report results to the Micronesian delegation. If the US decision on the Interior land proposal is negative, the question then arises of an alternative proposal which he can offer.

III. Department of Interior Land Proposal. The first decision is, therefore, whether the Interior land proposal should be adopted as the US position. This essentially involves a decision as to whether the US is willing to forego the right of eminent domain in Micronesia. (Interior's views are set forth in detail at Tab C).

Pros. The Interior proposal is based upon the belief that this concession on land is imperative to early settlement with the land-conscious Micronesians, and that if an amicable settlement is reached there will be little problem in making necessary acquisitions. The Interior proposal envisages specific revisions in the Micronesian proposal, short of reinstating the right of condemnation, which should facilitate such acquisitions. It would deny military use of the area to all others and at the same time down-play internationally our own military interest in the area. Finally, it would not foreclose acquisition of land under the emergency powers of the President which would be subject to subsequent Congressional approval and/or judicial review.

Cons. The major argument against the proposal is that it does not ensure the acquisition of land by the US in Micronesia under all circumstances. The use of Presidential emergency powers could correctly be viewed by the Micronesians

only as a form of eminent domain and hence probably unacceptable. Unless and until modified, the Micronesian proposal would envisage the dissolution of our current facilities in the Marshall Islands within five years. Finally, since the term "permanent association" has not been defined with Micronesians, even foregoing the right of eminent domain may not result in a mutually acceptable status.

Decision. If the Interior proposal is adopted, Assistant Secretary Loesch should so inform the Micronesian delegation and provide them with an appropriate draft of the proposal. He would make no additional concessions, but would try to clarify with them the meaning of "permanent association."

If the Interior proposal is rejected, he should so inform the Micronesians, and reoffer the last US land proposal which was presented during the discussion and which made major concessions toward the Micronesian views short of foregoing eminent domain (see Chapter 8, pages 27-32 of Tab D). Since it is not new, however, and was not accepted by the Micronesian delegation, Assistant Secretary Loesch should be in a position to make a new and positive offer as well.

IV. Constitutional Convention. The Interagency Working Group recommends that Assistant Secretary Loesch be authorized in this eventuality to offer the draft legislation prepared by the group last August as a fallback position and since revised (see Tab D).

This draft would permit the Micronesians, within specific parameters, to draft their own constitution. The parameters would maintain all essential substantive elements of the draft Political Status Act approved by the Under Secretaries Committee on August 28.

Included in the draft, at the recommendation of the Interagency Working Group, are two alternative sections relating to the selection of the executive of the Government of Micronesia (see Tab D, pp. 12-18; 24-26). One provides for an appointed executive until 1981, with an elected executive after that date. The other provides for an elected executive from the outset, with a Federal Presidential Representative as the US watchdog on foreign affairs and national defense matters and a Federal Government comptroller as the fiscal watchdog. The alternative proposals will allow us to learn the Micronesian position on an elected executive and, most important in light of our international commitments, will put us on record as having at some point offered an elected executive to the Micronesians.

Pros. This proposal meets a Micronesian request for a Constitutional Convention which they apparently consider second in importance only to the land question. It thus puts our last offer on the land issue in the best possible context, hopefully inducing some give in the Micronesian position. Since this proposal contains all elements of a future status, it should elicit from the Micronesians some indication if they are actually thinking of the type of association we have in mind -- or if they are really after some form of independence. If it does lead to an agreement, the appearance of self-determination will be obviously enhanced.

Cons. We are switching from an issue-by-issue approach and are instead putting most if not all of our cards on the table while we are still unclear as to Micronesian intentions. Any US disagreement with Constitutional Convention results would be public and subject to UN and other exploitation. Finally, the similarity of this proposal to the Puerto Rican pattern would probably raise Congressional opposition which could endanger the entire objective.

Decision. If the recommendation of the Interagency Group is accepted the Constitutional Convention draft would be provided to the Micronesians concurrently with an explanation of the land and executive power questions.



REVIEW OF OCTOBER POLITICAL STATUS DISCUSSIONS

General: The Micronesians arrived on September 30 and began negotiations the following day. After a week of discussions it appeared to the US group that the issue of US 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 US group. During the final week, discussions resumed with further exchanges centered mainly on the land question.

Land Question: 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 US 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 US negotiating team) announced to the US 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 this 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 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.

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

... ~~shall be regained~~ or "use" land not in fact now in use by ~~the 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 ~~and to~~ tidelands, the continental shelf, the territorial sea, the ~~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 ~~stand~~ 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.~~

## 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 and 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 ~~or 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 or 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.)

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