

QUESTIONS AND ANSWERS RELATING TO THE MEETING  
ON MICRONESIAN POLITICAL STATUS

INTERIOR LAND PROPOSAL

1. What is the essence of the Interior Land Proposal?

The Interior Land Proposal would accept the Micronesian position on Lands and Property as set out in their position paper (Tab B), with the exception of Subsection (e), relating to territorial waters.

2. To what would the Interior's Land Proposal specifically agree by accepting the Micronesian position? (Tab B)

a. All right, title, and interest to all real and personal property now owned or retained by the Trust Territory Government and the U.S. Government would be transferred to the Government of Micronesia, including water and sub-water rights.

b. Any "retained" or "use" land not presently in use by the U.S. Government would pass to the Government of Micronesia.

c. All other "use" and "retention" land would pass to the Government of Micronesia not later than five years after the effective date of the Constitution of Micronesia.

d. Emergency use of land by the U.S. would be governed by Micronesian law, which would provide a speedy and efficient way to grant temporary use of any publicly owned property, upon joint declaration of emergency by both the U.S. Government and Government of Micronesia.

EMERGENCY POWER

3. If we were to forego the right of eminent domain, do we reserve the use of our emergency power?

According to the interpretation of the Solicitor's Office, under the Constitution, the emergency power of the President is inherent in statehood and territorial status. Therefore, regardless of other factors, the U.S. would have the emergency power in Micronesia, even though this power might not be mentioned or included in the organic act or other legislation.

4. What is the understanding of the Micronesians with respect to our use of emergency power?

Micronesian understanding of the issue of emergency power, within the context of the Interior land proposal, is probably lacking. The Interior land proposal implicitly accepts the Micronesian position on emergency use of land, (see question 2). Whether the Micronesians consider that the Interior proposal accepts their position on this matter is not known; in any case, the Micronesian emergency power provision was not specifically excluded as a condition of the Interior proposal, as was the Micronesian position on territorial seas. Their understanding may be confused because it was not made explicit to them that the emergency powers of the President are inherent in territorial status. Therefore, it is quite possible that, unless they have since been counseled otherwise, they may be under the impression that the Interior proposal would accept their position on the emergency use of land in Micronesia.

5. What can be done to clarify this possible confusion of the Micronesians?

It would probably be unwise for the U.S. to forego its Constitutional emergency powers of the President. Therefore, if the essence of the Interior proposal were accepted by the U.S., this emergency power could be explained to the Micronesians as an exception to or condition to acceptance of their

land position. Since it is a Constitutionally-based power, it would probably be accepted by the Micronesians if explained in that context.

6. How does the emergency power compare to the right of eminent domain?

Although both are inherent powers of the sovereign, the emergency powers are limited to true emergency situations, while the right of eminent domain might be used in situations as mundane as the acquisition of land for a school house or as critical as the acquisition of land for a military base in war time.

The emergency power is not limited to the acquisition of land, but this is the major area of concern expressed by the Micronesians.

7. What U.S. entity would determine the necessity of emergency processes for acquiring land?

The emergency power remains at the discretion of the President, subject to legislation by the Congress or review by the Supreme Court. These constitutional limitations would likely satisfy the Micronesians' fear of misuse of such emergency powers.

RIGHT OF EMINENT DOMAIN

8. The Micronesian position paper on lands and property makes no mention of the U.S. having the right of eminent domain in Micronesia. What then would be the process for U.S. acquisition of land?

The U.S., in other than emergency situations, would acquire land by normal commercial processes - leasing or buying interests in land on the open market.

9. What land will the U.S. specifically want in Micronesia, and for what purposes?

a. Military use -

1) Present installations: Kwajalein Atoll missile test site, and existing Coast Guard installations (Loran) in Saipan and Palau.

2) Possible future installations: mentioned have been a supply depot in Saipan or Tinian, a Marine Corps training base in Palau (Gen. Walt's visit), and alternate military aircraft landing rights in possibly the Marianas or Palau.

b. Non-military use -

Non-military use would probably be limited to operational space for Federal agencies operating or having programs in the Trust Territory, e.g., Post Office, Peace Corps or Vista, OEO, HEW, HUD, etc.

Presumably most of these needs could be met through the leasing of facilities rather than the purchase of land.

c. Trust Territory use -

The Trust Territory Government would be superseded by the Government of Micronesia, which would have the power of condemnation for its own public uses, e.g., roads, schools, public buildings, etc.

10. The Micronesian position paper states that all land presently used or retained by the U.S. would pass to the Government of Micronesia within five years of the enactment of the constitution. Since the U.S., under the Interior proposal, would forego its right of eminent domain, how would the U.S. continue to use such lands if they are needed after the five year period?

It may be expected that rental fees would be based to some extent on the value of the installation both in dollar terms to the U.S. and in terms of service to Micronesia. It is therefore likely that rental fees to Kwajalein would be substantially higher than those for the Coast Guard stations, which are of great benefit to the people of Micronesia. On the other hand, there are several factors which could make settlement amicable and reasonable in cost:

- a. The continuing financial support of the Government of Micronesia by the U.S., which would probably occur in any case.
- b. The fact that, as Micronesia becomes more closely associated with the U.S., our mutual goals may become more aligned.
- c. Greater Micronesian control of governmental affairs, which would likely lessen fear of military domination.

In addition, it should be noted that the U.S. pays substantial fees to foreign governments, having no connection with the U.S., for the privilege of establishing bases and conducting military operations.

12. Is there any possibility of reaching some agreement with the Micronesians on continuation of U.S. land use before passage of an organic act or other legislation?

In considering any piece of draft legislation on status, it is clear that whatever can be decided regarding continued use of lands (Kwajalein, in particular) before enactment of an organic act will be to our advantage, especially if the U.S. foregoes the right of condemnation. In other words, if we can exclude the return of Kwajalein from any agreement and be certain

of being able to use the Marianas for possible base locations, we may lose almost nothing by foregoing the right of eminent domain.

13. Going back to the routine acquisition of land by the U.S., which, as stated in question 7, would be by ordinary commercial process, would the Congress of Micronesia or any other Micronesian governmental body be required to approve such acquisition?

This is not clear, since no mention of non-emergency acquisition of land is made in the Micronesian land position paper. Under previous U.S. drafts, however, there was provision made for approval by the Congress of Micronesia to U.S. acquisition under modified condemnation procedures. In the Constitutional Convention draft bill, provision is made for approval by the Congress of Micronesia to U.S. land acquisition, with appeal to Micronesian and U.S. courts, (see Tab D, page 27-31).

If the U.S. does not have the right to eminent domain, the need for approval would be unpleasant, but at the same time it would help to alleviate Micronesian fears of U.S. military personnel scouting around and buying up land.

#### MILITARY PRESENCE IN MICRONESIA

14. What are present Micronesian feelings regarding the military in Micronesia?

Micronesians are aware of economic benefits which occur from military presence, e.g., roads, sewers, transportation, communications and tourism. However, as the result of their experiences under colonial rule, they are hesitant to accept outside influences which could subvert both their cultural and their chance for true self-government, not to mention the possible recurrence of the dreadful events which engulfed the islands during World

War II. Confidence in the U.S. military was seriously hindered by the atomic testing following World War II and the subsequent use of Kwajalein for missile testing, under circumstances which many, if not most, knowledgeable Micronesians consider unfair to their people. Although the reputation of the military is rising as the result of civic action teams, settlements for Bikini and Eniwetok, and military willingness to help the people of Micronesia, suspicion has also been created by numerous visiting military delegations and publicity regarding the returning of Okinawa.

15. How can the military reputation in Micronesia be improved?

The only truly effective way to remove suspicion is for the U.S. to forego its right of eminent domain and to require Congress of Micronesia or District Legislature approval for any military land acquisition, which is the essence of the Interior proposal.

U.S. LAWS APPLICABLE TO MICRONESIA

16. Would the Interior proposal permit the Micronesians complete control over commercial transactions, land transfers, and second party arrangements with foreigners?

Yes, subject, of course, to those laws of the United States made applicable to Micronesia by the Congress of the United States, upon recommendation of the commission appointed by the President to survey the field of Federal statutes (Con.Con. draft bill, Sec. 404, p. 33).

An additional control over legislation enacted by the Congress of Micronesia would be the veto power of the Governor of Micronesia, or, in the case of an elected Governor, the veto power of the President in matters affecting U.S. foreign relations or national defense (Con.Con. draft bill, Sec. 343, p. 26-7).