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September 27, 1971

MEMORANDUM

TO : PM - Thomas R. Pickering

THROUGH: PM/ISO - Jonathan D. Stoddart

FROM : PM/ISO - John E. Kelley

SUBJECT: TTPI Negotiations - Land

Attached is the second draft of a position paper to be used by Ambassador Haydn Williams in negotiating TTPI land rights. Sam Peale and I worked over the original DOD draft thoroughly before it was considered by the State-Interior Defense Committee which produced this version. You can get some idea of the changes we suggested by the number of footnotes DOD has inserted. I am generally satisfied that this paper will provide Ambassador Williams with a meaty initial position in the negotiations. We obviously have some work ahead with DOD in the next round, however.

Sam Peale tells me that IO/UNP is satisfied with the substance of the attached draft. Ambassador Williams is back in town now and has presumably already seen this draft. He will be leaving to commence negotiations on Friday.

Attachment

PM/ISO:JEKelley:ml

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REVIEWED BY	<u>B. H. BAAS</u> DATE <u>7/2/87</u>
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D. Land and Eminent Domain (Position I)

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(Note: Our objectives, in the general order to be approached, would be:

(A) to obtain the Status Committee's explicit acknowledgement that the US has requirements for land and interests in land in Micronesia that need to be satisfied, in a manner equitable to all parties. (Not only for DOD, but other US agencies such as Post Office and Coast Guard.)

(B) to make a record and correct incomplete and erroneous understandings concerning the past and current land situation in Micronesia (e.g., the extent of public lands, military retention areas).

(C) to relieve concerns, to the extent practicable, as to the magnitude of US land requirements.

(D) to reiterate our general position that no "public domain" land, which we now administer as Trustee, will be retained by the US except those which will be spelled out in the current negotiations or as may be mutually agreed.

(E) to convince the Micronesians that alienation of their privately-owned lands by non-Micronesians can be controlled both adequately and legally in a future relationship with the US.

(F) to ensure that the Micronesians clearly understand that land arrangements must be negotiated prior to any change in status -- to the point that satisfaction of our long-term needs is assured and agreement has been reached on any questions of compensation.

(G) to work out general principles to be followed in making Micronesian land or interests in land available to the US, specifically to obtain Status Committee agreement on the following: (1) that it would support and work toward satisfaction of the specified land requirements, (2) that future land needs would be on the basis of mutual agreement, (3) and that Micronesia would undertake in good faith to negotiate future, essential requirements of an emergency nature.¹

1 (Footnotes at end of Section)

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(H) to obtain the Status Delegation's ideas on how detailed land arrangements for each district can best be worked out.

In the October talks, we should:

(A) Be sufficiently explicit concerning our land requirements to assure the Status Committee that the needs are limited and not subject to later, arbitrary expansion.

(B) Attempt to avoid divulging further details of our land needs until the Congress of Micronesia creates a mechanism which can negotiate specific arrangements.

(C) Not give up our bargaining concessions on land (e.g. release of Eniwetok and retention lands of Saipan) unless we obtain identifiable concessions.^{2,3}

-- Dr. Williams recognizes that most of the Micronesian peoples look at land in a very different sense than we do. Land has always been plentiful in the US, where even today there are large areas of good, relatively inexpensive land.

-- He assures them that he recognizes fully that land is a key consideration to Micronesians when considering their future political status, and he is convinced that Micronesian fears over retention of their land can be set to rest.

At the same time, he knows that Micronesians recognize that some of their land must be devoted to such practical uses as hospitals, schools, airports which are for the common good. This, he recognizes, will be primarily a Micronesian concern to be settled among themselves.

-- There is, however, another aspect to the common good which should not be overlooked, and that is defense. For the past 25 years, there has been peace in the islands of the Pacific. This has not been due to an accident of history nor has it been due to the absence of predatory nations that might seize and exploit a defenseless area. There has been peace in the Pacific Islands over the past 25 years because of the deterrent effect of American military power. Micronesia has made an important contribution to peace, a contribution he does not wish to minimize. There still is a role for Micronesia to play. In past

negotiations, the Status Delegation has showed a willingness to work with the US for the security of the area, by making land available and in other ways. We are here to discuss how such land is to be made available in the future.

(Note: Even Senator Salii is on congressional record as having asked for USN help on Helen's Reef.)

-- He asks Senator Salii whether the Micronesians still hold this view. Do they continue to agree that the US has certain security and defense responsibilities in the Pacific on behalf not only of US interests but of other free peoples in the area, specifically including Micronesians. Would they be willing to make land available to us for this purpose?

-- Before turning to the needs we do foresee, he believes it will be helpful to all those present to review briefly the land situation in each of the districts as it has been up until now -- with particular emphasis on the public lands and military retention areas.

(Note: He would then use slides, large charts, or handouts coupled with an oral summary to convey the following:

- (1) location of public domain land in each district, giving percent of total,
- (2) acknowledgement that there are serious private claims against public domain land; at this point he makes clear that it has been and remains the USG position that public domain belongs to the Micronesian people.
- (3) location of current DOD land holdings (Marshalls, Marianas),
- (4) location and nature of holdings by other US departments and agencies,
- (5) itemization of military retention areas that have been released in past years, and
- (6) (If appropriate to show that Micronesia has profited from this relationship; Dr. Williams might cite following facts:) excess material (\$3-4 million annually); loan of boats and ships; Civil Action Teams; Search and Rescue operations, including such things as medical assistance of para-medics at inaccessible locations, and medical evacuations (52 MEDEVACS in the past 18 months); and direct financial benefits from our presence in the Marshalls. On this last point,

Kwajalein contributes \$2.5 million annually to the Micronesian economy through wages to Marshallese, is the largest tax base in Micronesia (\$2.8 million tax annually), and also pays \$420,000 annually to people temporarily displaced within the Atoll for safety reasons. This would be only a brief statement, which would be elaborated upon later when focusing upon financial arrangements.)

-- Dr. Williams inquires if the picture as he understands it and has presented it is correct for each district. (This is an opportunity to get members of the Status Committee other than Senator Salii to take part in the discussion.)

-- He has stated and reiterates that public domain land belongs to the Micronesian people. How the turnover of this land is accomplished, for example whether the land would go to one level of the Micronesian government or another, or to individuals, must be determined ultimately by the Micronesians themselves.

-- He hopes that our relationship never comes to be viewed strictly as a dollar and cents matter. He hopes that the obligations of Micronesia and the United States to each other would never come to be founded only on a narrow base of quid pro quo for land used.

-- He points out that the world is changing at an accelerating pace, and Micronesia may wish to shape its future on a more permanent basis with deeper and lasting ties to us.

-- Who can say whether in the future the US might want no land at all in Micronesia? If this were the case, and Micronesia had close ties with the US -- indeed if there were a true partnership among our peoples -- then Micronesia could not be viewed as merely an expense to be eliminated as soon as possible. Our first responsibility must be to those of our own political family. He urges the Status Committee to give careful thought before making land-use the principal basis for a relationship with the US.

-- As a matter of fact, our foreseeable needs for land in Micronesia may be far less than the Status Committee had expected. For example, we foresee no future needs of any kind for land for military purposes in Yap, Truk, or Ponape. (This last statement would serve to bring home forcefully the points he has just made.)

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-- Looking to the future, and projecting ahead as much as possible, the US has completed a reassessment of its needs for land in Micronesia. The US foresees no requirement at all for military land, either now or in the future, in Yap, Truk, and Ponape. (This point is worth re-emphasizing.)

-- We have already turned back all the lands that once may have been reserved for military use in these three districts

-- Eminent domain, he recognizes, poses great difficulties for the Micronesians because of the uncertainty of future requirements. Eminent domain has been recognized throughout history as an important power of government to act in the public interest. It minimizes the necessity to reserve land in advance because it assures that unknown, essential future needs can be satisfied. In May 1970, we proposed a unique provision of eminent domain that would have provided many safeguards and would have been awfully difficult for us to implement. Even this gave the Micronesians considerable difficulty.

-- How would the Micronesians propose to satisfy possible future needs?

(Note: This is predicated upon Salii's having shown a willingness to provide necessary land in the future. If he has not, Dr. Williams will need to decide whether he can proceed with this scenario.)

-- (Depending upon the Micronesians' response) Dr. Williams would say that an acceptable basis for satisfying US land needs -- both those we can foresee and unforeseeable future requirements -- might be along the following lines: (a) We would state specifically our foreseeable land needs and work out firm arrangements for these areas prior to a change of political status. (b) In a new political status, the US would acquire land only by private requisition in accordance with Micronesian laws, or by mutual agreement with Micronesian governmental authorities.⁴ (c) The Micronesian Government would, by its own laws, provide a speedy and efficient way to negotiate in good faith the temporary use of land by the US in emergency situations.

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(Note: The Status Committee is unlikely to commit itself without reservations at this point; and representatives from the Marianas, Marshalls, and Palau will be straining at the bit to learn the specifics of our requirements in their districts.)

-- In the Marshalls, we foresee no new needs for land. In fact, it may be possible to consolidate our testing activities in the Pacific and greatly reduce our land interests in the Marshalls in the years ahead.

(Note: This is as close as we should come, at this time, to saying that we might relinquish any land in the Marshalls.)

-- (If pressed on Eniwetok) Dr. Williams says that although an earlier program of missile testing indeed has been completed, another series of tests is planned. He repeats what he said earlier -- no technical development program can be expected to last forever, and Eniwetok could of course be a subject for discussion in the context of overall land arrangements in the Marshalls.

-- In the Marianas, we have definite requirements, particularly for Tinian. He is mindful that certain land now in a military retention status on Saipan is highly desired for commercial development. By consolidating any activities we might undertake in the future, both on Tinian and Saipan, it may be unnecessary for us to retain much of the military retention land on Saipan.

(Note: Requests for any additional detail on the Marianas should be deflected until detailed negotiations can be conducted with representatives authorized to act.)

-- In Palau, our requirements are not immediate. We would want to agree in advance on an area in which we would have the option at some future time if necessary to build structures, and store materials, plus a limited area of off-shore fill rights to avoid taking any of the limited land in the harbor area, and joint use of an airfield. Moreover, we would want to work out an arrangement that would permit the intermittent holding of training exercises ashore.

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-- He notes that for all areas land subject to any advance arrangements that is not to be used immediately would continue to be available for other uses.

-- Dr. Williams states that any specific, advance land arrangements no doubt would have to be acceptable to the districts concerned.

-- Recognizing that the details would have to be worked out, do the delegates from these districts believe that satisfaction of these requirements would pose any serious problems?

-- We need the Micronesians' views on the next steps to take.

(Note: This is an important consideration. The Status Committee will not have the authority to negotiate any specific land arrangements. We should seek to draw them out on this score in as much detail as possible, as below.)

-- Concerning the long-term land needs for which advance arrangements might be made, he wishes to learn the Status Committee's view of several important questions involving future land arrangements:

-- By what method would land be made available for military purposes? That is, would the Congress of Micronesia expect that the US Government would provide for its land needs using its present powers before there is a change in status? Or would the Congress expect to undertake to deliver any land to us which the two sides agreed were necessary for defense purposes?

-- How would compensation (e.g. rent, purchase payments) be effected? Does the Congress of Micronesia anticipate that payments would be made directly to a central Micronesian authority, which would in turn make the necessary payments to owners or ex-owners? Would the payments be made to districts? Or would the US Government directly compensate the landholders?

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- How would the amount of compensation for the land or its use be determined?
- How specific does the Status Delegation believe its mandate to be, in discussing the land question? Can it provide authoritative answers to questions such as those raised above, or would it require a further delegation of authority from the Congress of Micronesia?
- Can the Delegation bind the Congress in, for instance, arriving at an agreement with us concerning specific US land requirements?
- Or is this a matter in which we should both plan to arrive at fairly broad understandings, on the assumption that detailed negotiations concerning specific parcels of land should be left to delegations specifically authorized?

-- With respect to land required for non-military purposes, this will largely be a function of the services and benefits that are desired by Micronesia (e.g., post offices and Coast Guard stations).

(Note: At this point, he should be prepared to elaborate on any land needs specified by other departments and agencies of the US Government.)

-- Dr. Williams suggests that it is desirable

- (a) to formulate some agreed language concerning the broad area of agreement concerning the land issue. (Note: proposed language at III E (2).)
- (b) to agree that both sides should suggest to their principals that delegations be appointed to negotiate specific details concerning a definitive arrangement for land, and that the Micronesian delegation be given detailed instructions as to the responsibilities which the Congress of Micronesia would expect to assume in making the lands available -- in line with the questions which Dr. Williams has posed.

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FOOTNOTES - Section II D.

1. DOD believes that land, in general, should be made available to the US for public purposes in consideration of the totality of budgetary support and other benefits the US would provide Micronesia, with arrangements to ensure equitable treatment among individuals and districts making land available. Acceptance of this concept should be one of our objectives if the subject of US compensation for land use is discussed. STATE and INTERIOR do not agree, and point out that there are inter-Departmental differences as to possible means of financing Micronesia after the termination of the Trusteeship, which cannot be resolved prior to an understanding of the nature of the post-Trusteeship relationship. For that reason, an informal inter-Departmental understanding (including DOD) had been reached not to discuss specific forms of financing in the October meetings, beyond the general remarks in Section III A.

2. DOD believes that we should avoid divulging details of our land needs to the extent that such disclosure would stimulate speculation in land, raise undue hopes (in the Marianas), serve as a basis for adverse publicity prejudicial to subsequent negotiations on land matters, or reveal military contingency plans. STATE and INTERIOR do not concur, and note that the new lands required are primarily public domain and not subject to speculation, and that the other three conditions are too vague to provide guidance for Dr. Williams.

3. DOD recommends that we avoid making or agreeing to any suggestion -- incident to discussion of land or at any other point in the negotiations -- that the US would provide compensation to Micronesia for denial to foreign powers. It notes that anything that might be construed to be payment for denial, that smacks of extortion, or that suggests that Micronesia might employ a "highest bidder" approach would not only be anathema to the US Congress but would be incompatible with the relationships authorized under our current negotiating instructions. STATE and INTERIOR do not concur. STATE notes that we should not agree to pay for denial at this time, but that this issue should be addressed at a later date; moreover, the Micronesian negotiators have not yet suggested anything smacking of extortion or pursuing the "highest bidder" technique.

4. In this regard, DOD calls attention to Footnote 1 above.