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To: Captain William J. Crowe, Jr.
From: Adrian L. de Graffenried, Legal Advisor
Subj: A Future Government of Micronesia and Its Relationship to Existing Land Use Agreements with the United States

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Upon termination of the present Trusteeship Agreement, full internal powers of government for Micronesia will rest completely with the Micronesian people. This Government of Micronesia, however it may be structured, will have full legislative and judicial powers. It will also assume the rights and obligations, currently held by the United States under the TTPI Administration, to these land areas under use by the Department of Defense.

Current lease agreements have not been renegotiated primarily because (1) additional funds may be required and (2) the time periods for the length of these agreements sufficiently protect U.S. security interests. However, considering this emergence of a Government of Micronesia with attendant powers, it may not be in the best interests to the United States to continue to operate under the present leases and it may be desirable to renegotiate all current use agreements held by the United States in Micronesia. This is underscored by the following issues which evolve from a review of DOD lease agreements:

I. Consideration

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There are serious questions arising as to whether sufficient consideration was tendered to the Micronesian land owners for their agreement to lease these areas. It is significant to point to the lump sum payments, the price levels per acre in comparison to other USG lease agreements for island areas around the world, the time period of the lease agreements, and questionable negotiating tactics used by the Trust Territory Administration as related by various Micronesian land owners.

II. Period of Agreement.

The current lease agreements are not consistent in their period of length and have no relationship to the time period for which the Compact is to run. This inconsistency may not permit full coordination of military contingency planning for this area of the Pacific or Micronesia. A final termination date for all lease and use agreements to Micronesian land and marine areas would permit a unified approach to future negotiations and to resolution of any problematical issues that may arise respecting these land areas or their use.

The following listing is illustrative of the points raised above:

<u>ISLAND</u>	<u>LAND AREA</u>	<u>PRICE PAID</u>	<u>PERIOD OF AGREEMENT</u>
1. Roi Namur	400 acres	\$10.00 total consideration paid to TTPI	Indefinite time (This area is currently being renegotiated as a result of a court decision made recently)
2. Kwajalein North Loi South Loi Ebeye Dalap	750 acres	\$1,000 per acre lump sum payment from TTPI to Micronesian land owners	99 years
3. Same	Same	\$1.00 lump sum to TTPI from the USG	99 years
4. Kwajalein	Quarry rights	\$.05 per cubic yard of coral to TTPI	25 years
5. Ennugarret	5.92 acres	\$1.00 lump sum from USG to TTPI	Indefinite
6. Ennylabagan	? acres	\$1.00 lump sum from USG to TTPI	Indefinite
7. Eniwetok Gellinam Omelek	30.21 acres	(no figure available; land taken by eminent domain powers)	
8. Gellinam	Quarry rights	\$.05 per cubic yard of coral to TTPI from USG	25 years
9. Gagan	6.093 acres	\$1,000 per acre lump sum payment from TTPI to land-owners	25 years
10. Legan Gagan Omelek	Quarry rights	\$.05 per cubic yard of coral from USG to TTPI	2 years

11. Illeginni	31.22 acres	\$1,000 per acre Lump sum payment from TTPI to land- owners	25 years
12. Illeginni	Same	\$1.00 lump sum from USG to TTPI	Same
13. Meik Legan Ningi	37 acres 18 acres 47 acres	\$1.00 lump sum from USG to TTPI	99 years
14. Gugeegue Ningi	Quarry rights	\$.05 per cubic yard of coral to TTPI from USG	5 years
15. Islands in the Mid-Corridor	420 acres. Right to remove in- habitants	\$1,000 per acre Lump sum to land- owners	Indefinite

III. The Nature of the Use Rights.

A. Military use of land areas and powers of a future GOM

After WWII the Micronesian people were not considered sufficiently developed economically or politically to prevent use of their islands by foreign military powers. It was considered essential in order to maintain peace in this part of the Pacific Ocean that these islands not be used by military powers for offensive purposes - specifically against the United States and other Pacific Island nations. The problem was solved by designating the area a "strategic trust" under the administration of the USG. Although the Trusteeship Agreement grants authority to the USG to establish bases and fortifications, there is some debate as to what privileges this gives the USG after termination of the Trust.

Termination of the Trusteeship Agreement by whatever means is, however, recognition that the Micronesian people are moving towards self-government and towards the ability to control the use of their island and marine areas. Perhaps more importantly, it should be recognized that the establishment of a Government of Micronesia will have full internal control over the judiciary, legislative and executive branches with full power to enforce the rights and obligations of the TTPI under current lease and use agreements. This assumption of power by a GOM may work against the interests of the United States.

Some of these leases currently provide that the TTPI is empowered to review the "continuing need for these areas". Under the new status, if the old lease remains in effect, the GOM will

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make this determination. Although these leases do have another provision for appeal to the President of the United States to resolve disputes and conflicts arising from these periodic reviews, a determination at the local level that the continued use of these land areas by the USG is undesirable may well be final.

The following islands are leased by agreement with such provisions:

1. Roi-Namur
2. Kwajalein
North Loi
South Loi
Dalap
3. Ebeye
4. Ennugarret
5. Ennylabagan
6. Eniwetok
Gellinam
Omelek
7. Gagan
8. Illeginni
9. Meik
Legan
Ningi
10. Mid-Corridor Islands

A determination by a GOM that a continuation of the USG military in Micronesia for whatever reason is undesirable leaves no recourse open to the USG in a practical sense since these actions by the internal governmental branches are not subject to review or veto except by appeal on a Presidential level. At this level there are few methods available to enforce a Presidential decision other than military intervention. On the Micronesian level, however, a repudiation of the continued need may be enforced by the GOM calling upon other foreign powers, a possibility that has been discussed among the Micronesian leadership.

Thus, in the final analysis, a determination by the GOM to terminate current lease agreements of the USG will require a decision be made on whether the use of these areas is essential. If so, then it may require the unilateral decision by the USG to intervene militarily with the possibility of

confrontation with other foreign military powers. Regardless of world opinion or confrontation possibilities, such an action would not be supported by the local Micronesians who have proven themselves to be able to disrupt the use of the USG missile range at their leisure. Other local disruptive actions by the Micronesians could be expected, with ramifications not dealt with here.

B. Dissatisfaction with current agreements

The present Micronesian leadership has strongly insisted upon renegotiation of all leases held by the USG both military and non-military. Considering the possible eventual consequences for the USG in requiring continuance of existing lease agreements, it may be advantageous to the USG to enter into renegotiation with the future leaders of a GOM to obtain their concurrence to a continuation of the uses of these areas before the Trusteeship Agreement is terminated.

It should be remembered that the GOM can resort to the tactic of revoking any agreement replacing the Trusteeship Agreement which attempts to resolve these issues of defense. Local disruptive actions and powers of review strengthen the factors held by a future GOM regarding current leases.

C. Marine areas for quarry purposes and ecological protection clauses

To utilize these islands under the lease agreements it was essential to fulfill construction requirements. The USG therefore obtained from the TTPI the right to quarry coral from underwater areas adjacent to several of the Micronesian islands. Under U.S. and international law, as well as under Japanese law during their occupation, all rights and legal titles to areas below the high water mark belong to the sovereign, the administering authority in this situation. Under Micronesian law and custom, these marine areas belong to individual Micronesian owners or to the communal entity holding power over the area in question.

Regardless of applicable law or traditional concepts, full title will fall to the Government of Micronesia or to the individual Micronesian landowners upon termination of the Trusteeship Agreement. Additionally, it must be noted that lease provisions would permit a GOM to cancel or amend these quarry agreements if these quarry operations conflict with "ecological balance or environmental values of the marine areas as to constitute a danger" to the island or surrounding reef. These provisions also permit the sovereign authority to require the USG to undertake such "reasonable" steps as may be necessary to conserve and protect the marine areas from unnecessary damage. By Micronesian standards, any destruction of any part of a coral reef disturbs the

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ecological balance, conflicts with their environmental values, and is unnecessary. A Micronesian Government would press these positions to revoke, substantially amend, or require considerable USG action on the following quarry agreements:

1. Kwajalein
2. Gellinam
3. Legan, Gagan, Omelek
4. Illeginni
5. Gugeegue, Ningi

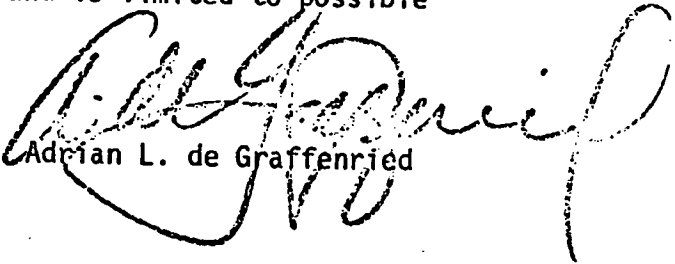
IV. Summary

1. Current lease agreements held by the USG to various Micronesian land and marine areas contain provisions that work against the interests of the USG and that will not adequately safeguard present rights of the USG to continue operations.

2. A requirement in the Compact or by international law that a future GOM "honor" current lease agreements does not preempt the GOM from future breaches of the Compact or lease agreements.

3. The GOM will assume the rights and obligations of the TTPI under the current leases and will have more than considerable power with respect to the USG by being able to submit the agreements for interpretation and enforcement to a completely controlled Micronesian judicial and executive system.

4. The USG response to any unilateral GOM action to cancel or amend the current lease agreements by local Micronesian responses is restricted and is limited to possible military intervention.



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