

03  
7.2

August 22, 1973

MEMORANDUM FOR THE FILE

My review of the previous negotiations between the United States and Micronesia reveals two interesting points. First, the United States has apparently not insisted in the past that the land it needs for military bases be sold to it. Rather, the United States seems to have felt that long-term leases -- continuing beyond any possible termination of the Compact -- would provide protection for its military interests. Second, the United States has at least twice proposed an automatic matching of local revenues after the trusteeship is dissolved.

There follows a series of extracts from the data I have reviewed supporting these conclusions:

1. From Appendix C to the Report of the Political Status Commission 1970 ("Statement of Principles of the United States Delegation") at p. C-6: "Regardless of the sum of these taxes, [referring to locally-raised revenues and federal income taxes returned to Micronesia] the total of local revenues would be matched by an equal sum from the United States Treasury which would be credited to the Treasury of Micronesia and would be available for local appropriation. To the extent that local revenues plus the matching funds might be insufficient to provide for the budgetary needs of the

01-00019

Commonwealth, the United States Congress would be authorized to appropriate additional funds for specific purposes as needed." See also Sections 365(a) and (b) of Appendix D, p. D-19, the draft United States bill implementing the Compact.

2. From the source cited in Number 1, at p. C-7:  
"All property, real and personal including all of the so-called public lands now held or controlled by the Trust Territory would be turned over to the government of Micronesia. Provision would be made for the United States government to review the need for that land now held under agreement with the Trust Territory government and to enter into new agreements for those lands considered necessary for the public purposes."

3. Section 403 of the draft bill implementing the United States proposal of January 1970 for Micronesia to become an unincorporated territory of the United States provided for automatic matching of local revenues and authorized appropriation for such additional sums as may be necessary "to meet the obligations of the government of Micronesia."

4. Section 405 of the source cited in Number 3 provided that title to all property owned by the government of the Trust Territory would be transferred to the new government of Micronesia, but that for three years following the date of the act existing agreements between the Trust

Territory and the United States "insofar as they relate to land use and retention" would continue in effect. After three years, such agreements would terminate unless the United States acquired "whatever rights in such lands may be considered necessary for the public purposes of the United States." No "greater quantum than a base or determinable fee" could be acquired by the United States, and the amount to be paid was limited to "the current fair market value" of the land or interest therein. Provision was made for approval of any such provision by the Congress of Micronesia, with rights of appeal to the Ninth Circuit in the event of disagreement.

5. In a letter dated November 24, 1971 to the President, Ambassador Williams stated in explaining the October negotiations that "the United States proposed that land lease arrangements and options to meet the limited military land use requirements be concluded as part of the Compact of Association." (p. 2). At page 7 of the Report, the Ambassador said that instead of automatic termination of United States leases if the Compact was ended, "the United States delegation called instead for a negotiation of land arrangements which would be enduring through the terms of the lease and options." [ At page 105 of the Transcript, the Ambassador assured the Micronesians "that under the terms of the Compact of Association the United States government can,

*Prof. Legum  
4/25/73*

and will, legally bind itself not to exercise eminent domain."

6. In the November 24, 1971 letter to the President, the Ambassador reported that the Micronesian delegation had "asked what assurances could be given that United States financial support would be maintained over a period of years." The Ambassador continued: "[u]nderstandably, they stated that such assurances would be necessary to ordinary budget and development planning and requested that agreement on this matter be incorporated as part of the Compact of Association." However, consideration of this question was postponed to the next round of negotiations. On page 59 of the Transcript the Ambassador referred to the power of Congress in the "annual budget process" and said: "I can, however, speak for the executive branch, and it would be the intent of the latter to assure that in the future, the United States financial obligations that it assumes under any future relationship would be met."

7. The final Joint Communique issued after the Palau talks in April 1972 stated that "Micronesian lands would be under the control of the people of Micronesia and of its government" and that "any United States requirements for defense will be negotiated before the signing of the Compact." The

Communique further reported that "[b]oth sides agreed that new military leases and options to lease will continue for the length of their designated term and that a mutual security pact, which will provide for continuing United States defense interests" would be negotiated before the Compact was signed to go into effect if the Compact were terminated. On page 46 of the official records of the Palau negotiations the Ambassador is quoted as saying that the Micronesians' "suggestion that leases and options would continue for the length of their designated term even if the Compact was terminated, certainly accords with our thinking." Note that on April 12 Senator Pangelinan and Representative Guerrero presented the Ambassador with the Marianas statement of position, to which the Ambassador replied affirmatively.

8. During the third round of negotiations in Washington in the summer of 1972, a draft Compact of Association was produced which tended to be an agreement between all of Micronesia, except the Marianas, and the United States. Title III of the draft Compact relates to defense, and Section 303(b) provides that "the government of Micronesia shall assure the United States the rights and uses in lands and water specified in Annex B which shall be an integral part of this Compact." Annex B details the particular lands and waters the United States wants for

military purposes, but speaks throughout of "rights and uses" and only with respect to the Malikal Harbor area and the Island of Babelthuap does it speak of "the right to acquire . . . for use" the land and water listed."

M. Helfer

8/23 - spoke w/ JAY ABOUT THIS - NEED TO SEE ~~IF~~ WHAT US POSITION WAS DURING 1970 NEGOTIATIONS ON COMMONWEALTH STATUS RE LEASE/PURCHASE -