

OFFICE FOR MICRONESIAN STATUS NEGOTIATIONS  
WASHINGTON, D.C. 20240

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19 November 1973

MEMORANDUM FOR THE RECORD

Subject: Fourth Session of Drafting Committees, 19 November 1973

1. The Fourth Session of the Drafting Committees opened at 1125, 19 November 1973. Present were:

U.S. DRAFTING COMMITTEE

Mr. James M. Wilson, Jr.  
Captain Richard Y. Scott  
Mr. Harmon Kirby  
Mr. Herman Marcuse  
Mr. O. Thomas Johnson  
Mr. Solomon Silver

JCFS COMMITTEE

Representative Ekpap Silk  
Mr. Paul Warnke  
Senator Ambilos Iehsi  
Representative Herman Guerrero  
Senator Petrus Tun  
Representative Resio Moses  
Mr. Michael White

2. Mr. Wilson responded to the Micronesian statements of 17 November. We had the opportunity to study the latest JCFS positions and since this morning have looked over the actual text of revised Title IV.

In general, we are gratified that as a result of a review of respective positions during the latter part of last week both sides appear to have come considerably closer together. We appreciate the Joint Committees' efforts to work in this fashion.

Nevertheless, we still have considerable difficulty with the new figures presented by the Joint Committee. It is noted that on the operations side of the budget, the requested figures are still \$8 million or 17 per cent higher than present actual level of expenditures. On the development side, figures are \$20 million higher than the present level for CIP which is three times the present level, and if the amount for loans is included the figure is \$25 million or 3 1/2 times higher.

Mr. Wilson then stated that he considers the U.S. offer to be eminently fair and reasonable. It is aimed at continuing the operational budget at present levels taking into account economies the COM itself has said it wishes to make. With regard to the development assistance offer, the U.S. offer is much lower for two reasons:

a. There are definite limits to Micronesian absorptive capacity and maintenance capabilities.

b. There are other sources of income and revenue definitely available to the new GOM and the U.S. feels it is decidedly in the interests of both the USG and GOM to have them increasingly less dependent on single U.S. source. For example, other countries can aid, international financial institutions are ready and willing, an open door policy with regard to foreign investment, and the CIP for the remainder of the Trusteeship provides a major leg up on basic infrastructures. The U.S. proposed level for development assistance is at exactly the average level of the past few years. Also

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consideration should be given to the difference in terms of years - i.e., 15 for U.S. and 10 for JCFS versions.

3. Mr. Wilson said that the conclusion he draws from the reviews and discussions is that we are much closer together in our thinking and we are encouraged from this point of view. However, before looking further at the numbers involved we believe it is necessary to look at the nature of the future relationship itself. We must do this before trying to make any final decision on numbers.

Mr. Wilson then made comments on the JCFS proposed changes in Title IV of the Draft Compact. Although we are very close there remain some major differences:

- Comments on JCFS Counter Draft 11/17/73

-- Section 401 - The U.S. was willing to drop "subject to Congressional approval", but had to reserve on the 405 formulation.

-- Section 402 - "at fair market values" was dropped by JCFS, why?

-- Section 403(a)

--- The U.S. understands that the JCFS wants the FAA for technical services only (Airways, traffic control, safety), not airport construction. Could this be confirmed.

--- The U.S. has great problems with including the Coast Guard.

---- What does the JCFS mean by the present level of services.

---- Now we have Loran A and C only with Loran A to be phased out shortly. No other services are provided.

--- We can't buy termination at Micronesian request.

---- The U.S. has FAA responsibilities under Titles II and VI of the Compact that are continuing.

---- Loran C can't be terminated at will either in view of U.S. responsibilities to international users.

---- Post Office and Weather, however, could be terminated if the GOM no longer wanted them.

-- Section 403(c)

--- The JCFS version drops "personnel", why?

--- The U.S. could agree to dropping Annex C if "personnel" is left in.

-- Section 405

--- On the first sentence we share the JCFS desire to do this but can't undertake it as absolute obligation since it depends on what the U.S.

Congress will do.

---- Believe we should jointly explore further how to proceed.

---- It is, however, an internal U.S. procedure, and the important thing from the JCFS point of view is that they get the money, not how they do it.

--- On the second sentence why presume failure? Other U.S. agreements don't cover this sort of eventuality.

---- What of Micronesian failure to perform in other respects under the Compact such as taxing the Post Office? If the U.S. retaliated by stopping the service, the Compact shouldn't end.

---- Ordinary rules should apply.

-- Section 406

--- On the added final phrase why single out this one thing?

--- It is bad optics.

--- There are also technical defects as pointed out by Mr. Silver, e.g., what standards are to be applied?

Although Title V was not considered by the Drafting Committee, we understand there was some resolution of the differences by the lawyers. We are prepared to distribute the new draft of Title V in a few minutes. (one page had to be retyped and copiers were given to Representative Silk on Tuesday morning). Mr. Wilson then asked for the JCFS reactions to the U.S. Draft Title XI, noting that since the Micronesians will need time to think over the U.S. reactions to the Finance Title, it would save time to walk through the rest of the Compact, i.e., Title V and other titles, including Termination.

4. Mr. Warnke responded for the JCFS by saying that the Drafting Committee instructions were to deal with Finance before handling anything else. He did not consider that the gap had been narrowed very much. The JCFS figures were not bargaining figures. They represent the ultimate concession on their part. He said that the JCFS had fully considered each factor the U.S. raised as follows:

Operations - The FY-76 budget was used because of cost growth implicit in the transition period.

CIP - The question of absorptive capacity was a problem for the GOM. If they couldn't use it they might bank it for future use.

Other revenues and incomes - The authority of the U.S. in Title II imposes restrictions on this. Also, foreign investors would not regard Micronesia as they do other foreign countries.

CIP/Transition - They don't doubt U.S. intentions to complete CIP projects but the current record of the U.S. Administration is not too good. The JCFS

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feels that guaranteed limits must be built in.

He agreed that the two drafts are quite close together and sees no serious problem.

Specifically:

- Section 401

-- The JCFS is glad to see the U.S. drop the phrase "subject to Congressional approval".

- Section 402

-- "At fair market value" seems incongruous. It gives the U.S. an opening to reduce rents if the rental figures is subsequently judged to be "unfair". It is really the U.S. obligation to negotiate rents.

- Section 403. The JCFS has been uncertain of these programs.

-- On the FAA, technical services are all the JCFS wants.

-- On the Coast Guard the JCFS anticipation was for traditional operations and they were surprised that SAR and patrol services were not being performed,

-- The JCFS sees no problem on termination regarding FAA and Loran C. They had in mind Postal Services and in particular their freedom to print their own stamps if they were under the U.S. Postal Service. (Mr. Wilson said we would look into this, but there may be no serious problem).

- Section 403(c) - They feel the GOM should be able to tax Micronesians employed by the U.S. Postal System. (Mr. Wilson said there were technical difficulties here in avoiding double taxation.)

- Section 405 - This section is not an ultimatum. It merely conveys their apprehension and could be handled as legislative history. They won't insist on specific language - perhaps just a firm understanding in whatever form, such as an implementing article.

- Section 406 - They left in the phrase on value of the dollar for Mr. Silver to comment on. Mr. Warnke said they would be appalled if it remained in the section.

Mr. Warnke concluded his comments by restating the instructions to the JCFS drafting committee - see what movement there is in Title IV; if none they cannot continue with the other Titles, including XI.

The Fourth Session adjourned at 1200.