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POSITION PAPER  
JCFS COMPACT - TITLE IV - SECTION 403

1. Summary

The JCFS language change reflects a desire to soften the approach to provide free use of lands for U.S. programs. The JCFS proposes that the GOM "agrees" to make arrangements for land use by the USG in lieu of being "directed" to provide such lands as indicated by the U.S. draft which includes language that the GOM "shall make provision" for land use.

2. Issues

- a. Is the JCFS proposal legally sufficient to require that the GOM provide full land use for federal programs?
- b. Should the GOM be "directed" to furnish lands for USG programs in Micronesia?

3. Background

The JCFS proposed as early as 1970 that the USG continue to provide ongoing USG programs to Micronesia after a change in status, e.g., Post Office, Weather, FAA, U.S. Coast Guard, OEO, Agriculture, HEW, HUD, etc. The JCFS also requested the USG to renegotiate those land use agreements these agencies hold in Micronesia. This position was a part of an earlier, but on-going, JCFS demand that the USG renegotiate all land use agreements (military and non-military) the USG holds in Micronesia. The USG at Barbers Point (in the land working sessions) noted that if the JCFS did not provide the free use of these lands so as to permit the USG to operate these federal programs in Micronesia without additional costs, the requested USG pro-

grams would not be extended. The JCFS then concurred that those lands required by the agreed-upon federal programs would be provided free of cost to the USG. The JCFS noted it still required that land use agreements held by DOD be renegotiated.

4. Options

a. Reject JCFS proposal

PRO

(1) Present language would legally bind the JCFS and future GOM to provide lands for U.S. programs per Barbers Point agreement.

(2) Would keep U.S. financial commitments for land use within negotiating instructions by requiring GOM to provide free land areas.

CON

(1) Would appear to make USG insensitive to Micronesian approaches to land alienation.

(2) Could be used as propaganda by independence advocates that GOM is subservient to U.S. by being forced to part with Micronesian land.

b. Accept JCFS proposal

PRO

(1) Would remove an issue from the anti-free association advocates.

CON

(1) New language would not be legally sufficient to bind GOM to provide lands in exchange for U.S. programs as GOM is not now in existence and lands must be providing during transition period.

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(2) May permit JCFS to gain leverage vis-a-vis the U.S. so as to provide free U.S. programs and renegotiate land use agreements by making USG appear to withhold the programs until Micronesians "sacrifice" their lands upon a situation arising where arrangements (set up by the JCFS or GOM) for free land use are not successful.

c. Compromise Language

The GOM "...will make arrangements"

PRO

- (1) Less emphatic directive than "shall".
- (2) Is legally sufficient.
- (3) Less subject to attack by dissidents.

CON

- (1) Language is still directive and may be potentially offensive to Micronesian cultural values.
- (2) Would require numerous changes throughout Compact to reflect new "balanced approach".

5. Recommendation

a. Option 1. Reject.

b. Rationale

- (1) There is no GOM in existence to agree to undertake compliance with the Compact provisions.
- (2) It is necessary to establish a legal obligation on Micronesia to provide lands to enable USG to implement U.S. programs as agreed to at Barbers Point.

c. Talking Points

(1) U.S. has committed itself to provide certain federal programs to Micronesia but only on condition the lands required for thier operation are provided free of charge.

(2) JCFS agreed at land group sessions at Barbers Point to provide these lands.

(3) USG believes that original USG language more legally precise to reflect this agreement.

(4) New JCFS proposal would not legally commit Micronesia to provide these lands but only commits GOM to make "arrangements for land use by the United States".

(5) New JCFS language

(a) Is vague on what these "arrangements" are;

(b) attempts to bind an entity that is not now in existence.

(6) U.S. team has represented to U.S. Congress that USG will not be required to pay for lands to be used by federal programs to be extended to Micronesia.