

PALAU LAND AND POLITICAL STATUS

Following is a brief analysis of the Palau land question, likely contingencies upon HICOM veto of the public land transfer bill, and possible U.S. courses of action on each contingency.

Background:

a. Elements of the COM land return legislation are unacceptable to the United States. Because the HICOM line-item veto authority pertains only to budget and appropriations matters, the bill must therefore be vetoed or stand as written.

b. Palauan leaders, including the traditional leaders, except for unanimously agreeing that public lands should be returned to Palauan control, have presented an outward impression of vacillation, internal division, and indecision on how to achieve the early return of public lands and on how to internally manage these lands once returned.

(1) The Palauan district legislature (which has a resolution supporting almost every contingency) has alternatively discouraged and invited a U.S. land survey.

(2) The legislature and legislative leadership has supported traditional control of the land while subsequently making clear their intent of a high degree of legislative control. Speaker Lui in statement to Mr. Bergese even abrogated the stated position of his legislature and the traditional Palauan chiefs for land return by executive order.

(3) A clear internal policy or plan of action is not discernable and may have to await the Palauan legislature's actions in implementing the public land return.

(4) The traditional leaders have similarly vacillated on the land survey, but seemingly have not waived on their insistence of a full and unrestricted return of land to the traditional leadership.

(5) On the other hand, the death of the old Ibedul seems to have eroded some strength of the traditional leaders resulting in more frequent agreement (or acquiescence) to the shifting approaches of elected leaders (Salii, Luii, and Tmetuckl).

c. However, a policy of using all possible leverage to coerce the U.S. into granting Palauan desires is indicated. Such levers include:

- (1) public statements;
- (2) legislative actions;
- (3) vacillating cooperation on land survey efforts and subsequent acquisition negotiations;
- (4) impeding Micronesian status negotiations (by exerting pressure on Salii, adopting intransigent positions, etc.); and
- (5) pressuring the constitutional convention into adopting positions clearly in conflict with U.S. criteria for the land return. They may:

(a) threaten to destroy Micronesian unity if constitutional convention positions on public lands are not satisfactory and if other Districts do not support Palauan desires -- since the U.S. had made the availability of Palauan land a non-negotiable requirements for a new (Free Association) political status, Palauan leaders can be expected to overestimate the economic and strategic value of their land, as well as the amount of political leverage they can get from the land. Thus, they may be expected to inject this issue in every facet of Micronesian deliberations on their future status.

(b) insist on, and get the constitutional convention to agree, on a completely powerless central government, incapable of even enforcing the Compact of Free Association.

Assumption:

The land bill, as passed by COM, will be vetoed and Administrative/ Executive action remains the only viable means whereby the public lands can now be returned to District control (per Secretary Morton's land policy statement).

To mitigate criticism, the veto message is expected to include notice of the U.S. willingness to return the land by executive action, either outright or to those districts that ask. (However, no amount of HICOM justification will overcome what Micronesian leaders will allege to be a "Blazen U.S. disregard for democratic processes and the will of the people".)

Palauan Courses of Action:

a. Waffle and Wait - A strong case can be made that most of the Palauan leadership will express strong indignation over a U.S. veto, possibly accompanied by rash threats. Such would be followed by a period of waffling on previous statements, and awaiting subsequent U.S. actions.

b. They can initiate a series of threats and actions designed to coerce the U.S. into administratively yielding to many of the land return criteria prescribed by the Palauans. Such "shot gun" tactics may include:

(1) Refusal to take land transfer enabling action (or drag their feet) until we meet their demands.

(2) Conditioning Palauan continuation in the status talks and discussion of military needs, on a public land return, essentially as outlined by COM.

(3) Conditioning Palauan participation in, or agreement with, constitutional convention actions on satisfactory return of land. (This threat would be aimed largely at other Districts, and the COM, to get their support. However, such threats could also be expected to influence certain elements of the U.S. Executive and Congress (who want to end the Trusteeship??

(4) Filing a law suit, or series of law suits, alleging TT mis-handling of public lands and public trust, as seemingly permitted by a recent high court decision on a title controversy, and the decision of 9th Circuit Court of Appeals, permitting legal recourse against the TT Government.

(5) Continued participation in status talks and constitutional convention, while refusing to discuss land, or accept any other agreement, until U.S. meets their demands.

(6) A threat to declare, or possibly a formal declaration of, Palauan independence. (However, this action would have no legal force and would be taken more as a lever on the constitutional convention and status negotiations, -- and to embarrass the U.S. in the U.N.)

U.S. Courses of Action: U.S. actions, following veto, should be in the form of swift initiatives, not allowing time for developing consensus or hardening of Micronesian objections.

There are some steps that the U.S. should take without regard to the actions or pressures from the Micronesians while some actions are best taken in response to, or tailored to, differing circumstances. In taking any action however, U.S. decision makers should bear in mind that the U.S. still possesses most of the authority and leverage to do as it sees fit in the Territory -- There are those who argue that with no land or options, there will be no compact and thus no new status, and that the U.S. is squeezed the

most, by any further delay in reaching a status settlement. A balancing of all factors does not support this allegation. In addition to the factors expressed in d above, there is no appreciable rational world pressure for the U.S. to cut loose from Micronesia or to make a nation of such an economic vacuum. Neither is there pressure to fragment the Districts. Therefore the U.S., by having made an outgoing (and well publicized) effort at creating a unified quasi-independent Micronesia that can unilaterally cut all ties when the quid-pro-quo of U.S. economic subsidy is no longer needed, is in a good public position. Thus it is apparent that the U.S., in the event of Micronesia intransigence, retains the viable option of embracing unilateral imposition of a variety of actions ranging from executive creation of land boards, thru an announced policy of evolutionary change in present governmental structure, to conducting a plebiscite for determining and selecting a new status.

(ACTIONS APPLICABLE, WITHOUT REGARD TO POLITICAL PRESSURES OR TURMOIL)

- a. Full particulars and explanation of the U.S. difficulties with the COM land transfer bill should be widely publicized.
- b. The HICOM could, immediately following his veto: (1) promulgate the land transfer (to those Districts requesting return) by administrative order, minimizing opportunity for pressure by Palauans or Marianas. In promulgating this action, the HICOM should highly publicize the written positions of the Palauan legislature, Palauan chiefs, and MPSC that requested executive action if the COM was not satisfactorily responsive. (To all parties?) -- However, the implementation authority in his order should clearly require districts initiative (i.e. setting up their land authority) before the land is returned. (2) He could also return the vetoed bill to COM for January 75

action if the U.S. could accept a long delay in resuming status talks.

c. Every effort could be made to make clear that any further delay in effecting the transfer is due completely to local delays in taking appropriate administrative action.

d. Ambassador Williams may be able to pressure the MPSC, the COM and their members, to assist in expediting Palauan action to establish the legal entities and begin negotiating for U.S. land needs. For example:

(1) There is evidence that Sali needs a status solution soon, for his own political survival.

(2) Further delays in status talks increase the possibility of fragmentation and the loss of political power by many MPSC members.

(3) Changing situation could force U.S. to reevaluate (downward) its whole position.

e. U.S. actions to precisely identify and describe Palauan land needs should be completed as soon as possible and then passed (through OMSN) to the Palauan leadership and the JCFS as appropriate.

f. Necessary follow-ups of the on-going site determinations survey in Palau could be conducted without regard to political turmoil. (I.E., 2nd looks, and DOD participation in the TTPI Aerial photo survey effort.)

g. OMSN could remain aloof, except for involvement in the land negotiations itself (Ambassador Williams has fulfilled his commitment to JCFS and Palauan chiefs).

(ACTIONS APPLICABLE TO DIFFERING CIRCUMSTANCES)

h. In the event the Palauans only talk and wait, the OMSN could remain completely aloof, entering the picture after a reasonable time only to encourage implementation of the land transfer and speed up the land and status talks.

i. In those cases where the Palauans appear to be pressuring the U.S. mainly by threatening to take one or more of the possible actions discussed above, the U.S. could:

(1) Make clear, through all available media that the U.S. is ready to continue immediately, and regrets the threat of Micronesian intransigence on further status talks, land negotiations or Micronesian unity,

(2) Adopt a no hurry attitude! DOD is happy with current land arrangements wherein they do not have to pay to hold land for contingency uses. Variants of this action would be announcements of U.S. intents to modify the status-quo by accelerating transition to a strong elected central Micronesian government using the existing TT infrastructure and embracing the TT Legal Code; announced planning for plebiscites; and, or, proposing a long suspension of further talks;

(3) Call most bluffs! (To put the onus for delay on Palauans and MPSC or to determine whether they are indeed bluffs.)

j. If the Palauans refuse to enact the enabling legislation and are supported by the MPSC, we might:

(1) Suspend further status discussions (until those land questions are solved).

(2) Create the legal entities and promulgate other land transfer activities by executive action (thru DISTAD) in all recalcitrant districts, after a reasonable waiting time for local action -- such action would test local land-owner support of the positions adopted by their political leaders. If they do not negotiate satisfactorily for military land needs, land return of course, is not to be completed.

(3) Suggest the near-term possibility of U.S. imposing independence with an attendant cut-off of financial support and services.

(4) Initiate action for a Palauan or Micronesian plebiscite on status and land return.

k. If the Palauans link land return with the constitutional convention we might:

(1) Take any or all of the actions in j above; or

(2) Agree to wait, while making clear that the U.S. does not agree or support such delay!

l. If law suits on land title are filed (with or without Micronesia/Palauan refusal to negotiate further) we might:

(1) Ignore these suits as a matter between TTPI, the courts, and the plaintiffs.

(2) Offer full cooperation to expedite court decisions (since the legal basis for most such suits is tenuous at best).

(3) any of the actions in j above.

m. If the Palauans and JCFS continue status talks and participation in the constitutional convention while refusing land talks till the return meets their criteria, the U.S. might:

(1) Take any of the actions in j above.

(2) Continue maximum effort to reach agreement on all other facets of the compact (subject to land).

(3) Propose that the JCFS (new Micronesian and Palauan Governments) assume entire responsibility for obtaining U.S. land options - as part of Compact -- with understanding that transition to new status would be held up until land is assured.



(4) Accept the Compact without assurances on land.

(5) Fall-off the Palauan requirements completely.

n. In the unlikely event of a formal independence declaration, or more likely, the threat of such action, the U.S. might:

(1) Before making any response announce that Palauan independence if accepted, or the creation of other independent districts, would force U.S. into several immediate unilateral actions (Steps to deny use of Micronesia to other military powers, - a cut off of funding for the existing or future government, - and the elimination of all services, such as banking, postal, agriculture, OEO, HEW, FAA, et al).

(2) Take and of the actions in j and m with particular emphasis on a U.S. sponsored plebiscite.

(3) Ignore - leave as a matter for Interior Department to solve within existing trusteeship authority.

Discussion:

- The risks of utilizing the COM to promulgate the land return were made clear at the time the decision was made to go that route. Having failed there are many steps that can be taken to offset much of the probable adverse criticism that a veto will evoke. However, the United States is now in a position of having to accept some mud-in-the-face due to this abortive attempt to democratize the land return. The opportunity to effect the return by executive action without strong Micronesian criticism of the U.S. (destroyer of democracy - illegal - dictatorial or colonial imperialists, etc.) is past.

- Since any action the U.S. takes (short of acquiescing to Micronesian desires) will (justifiably or not) probably be criticized, all actions must first consider U.S. essentials and then be taken in a manner that shows basic

U.S. fairness and firmness (we tried - the COM failed - we are complying with previous requests of Palauans and Marianans).

- Once TTPI administrative action to transfer the land has been taken the greatest criticism is likely to come from the JCFS and some Palauan leaders. (Palau has been the source of most uproar to date and no change is expected.) Some Mariana leaders may also make short-lived denouncements, but largely for local political consumption. Since the U.S. status and land agreement with the Marianas is well advanced, it is unlikely that any further Marianas objection will develop,

- While it appears that the Palauans will eventually accept most any policy that returns to them essential control over their public land, it also appears that their leaders will initially be the most intransigent in order to obtain further U.S. concessions. Thus the U.S. should expect, and be prepared to accept, some delay in the progress of the status negotiations. Most probably, these leaders would initially only be playing out their game, real pressure to accept executive return would quickly come from the chiefs who have expressed a strong desire to get their land back. This is a strong U.S. lever.

- Next steps for OMSN: In order to avoid involvement in land transfer actions while maintaining clear credit to Ambassador Williams for getting the Palauans an early solution on their lands, as well as to expedite the progress of status negotiations, the following actions appear desirable:

-- Recommend to DOTA and TT HICOM an early preparation and staffing of a HICOM executive order, effecting the land transfer.

-- Recommend to DOTA, that the HICOM veto message of the COM land legislature make every effort to highlight the inherent fairness of the U.S.

position, and also include an offer or promise of executive action based on requests from the district legislatures.

-- Encourage the HICOM to issue his land transfer implementing directive immediately following the veto.

-- Ambassador Williams may wish to write personal letters to Salii, Luiu, Reklai and Ibedul (all chiefs) expressing his joy that (regardless of methodology) the land return has been authorized in accordance with their desires and previous requests --- He might express hope that the way is now cleared for expedited action in other areas.

-- No action towards the Marianas would appear to be indicated.

-- OMSN/DOA/HICOM take the Public Relations initiative on the above actions. Let the U.S. get in the first word, for a change.

-- Pressure may be exerted on Chairman Salii and JCFS to move expeditiously toward Compact approval and an agreement on land.

-- Propose to Luiu, Salii and Chiefs that in order to expedite status progress, an interim board be appointed immediately by Speaker of Palau District Legislature, to begin land negotiations while the legislature is considering details of implementing legislation.



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