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DRAFT:OTJohnson/JMWilson:11-14-74

MEMORANDUM OF CONVERSATION

DATE: October 29, 1974 and October 30, 1974

PLACE: CINCPAC Guest House, Pearl Harbor, Hawaii

PARTICIPANTS:
For the United States:
Ambassador Haydn Williams
Mr. James Wilson
Mr. Tom Johnson (counsel)
For the Joint Committee on Future Status:
Senator Lazarus Salii
Representative Ekpap Silk
Mr. Paul Warnke (counsel)
Mr. Michael White (counsel)

October 29, Morning Session

After the initial pleasantries were completed, Ambassador Williams suggested that we discuss the question of the return of public land in Palau. Senator Salii said that the Palau District Legislature (PDL) passed its October 18 resolution (according to which Palau would not accept the return of lands by executive action) because they found the reasons for the HICOM's veto of the public land bill unacceptable. In particular, they found unacceptable the comments in the analysis of the bill regarding military retention land and eminent domain. Ambassador Williams asked if there might be some misunderstanding regarding the amount of land which would be returned by executive action. He indicated that he had heard from Alf Bergesen that such a belief might be one reason for the October 18 resolution. Senator Salii said that this was not the problem. Ambassador

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Williams then asked why the PDL cared about military retention land. Senator Salii said that they objected to the fact that there was no provision in the U.S. land policy for the return of military retention land.

Ambassador Williams then addressed the question of executive action vs. legislative action, pointing out that Senator Salii and others, such as the executive committee of the PDL, had in the past urged return by executive action. Senator Salii replied that such statements were made strictly for the benefit of the Congress of Micronesia (COM) because at that time the Congress seemed reluctant to enact the necessary enabling legislation. However, during the special session Speaker Luii had sent Ambassador Williams a message informing him of the adverse consequences of a veto of the land bills and these earlier contrary indications were no longer relevant. Ambassador Williams responded that, while he had received a report of a conversation between Bergesen and Speaker Luii, he had not received any direct message from Luii or the Palau District Legislature.

Ambassador Williams then stated that the return of public lands by executive order would follow the Secretary of the Interior's policy statement. Salii said that there was a need to coordinate with the COM

on the content of such an order, particularly on any conditions attached to the transfer. He also said that he could not understand why we still could not return the land by legislation. Salii pointed out that the COM prefers legislation because they believe that they would have no input into an executive order.

Ambassador Williams explained that we have been holding this land in trust as the administering authority; that we responded to requests to return this land to the districts with the Secretary of the Interior's policy statement. He pointed out that this statement had been approved by both the JCFS and the PDL last November. He said that he did not believe the issues of military retention land and eminent domain presented substantive problems. The differences seemed to be chiefly procedural. In the case of military retention land, we have already agreed with the Marianas Political Status Commission to return all military retention land not included in agreed base areas. Since all military retention land is located within the Marianas district, this appears to be a non-issue. Regarding eminent domain he said that the TT administration would have to maintain this authority as long as the trusteeship agreement was in force, but that we would use it only in cooperation and consultation with the COM and the district legislatures and as a last resort. The position taken by the U.S. in November 1973 in Washington and accepted by the JCFS and Palauan leaders remained unchanged. He indicated we understood that the eminent domain authority had been used only twice in th

history of the trusteeship. Ambassador Williams concluded by saying that public land could be returned if the COM would pass an appropriate bill. However, if the COM does not accept our authority in the trust territory we will have difficulties. There was no question, he said, about our willingness to return the public land.

At this point Salii interjected that the United States was willing to return the land but only subject to conditions. Ambassador Williams replied that Salii and the JCFS had accepted those conditions last November and that he (Williams) had no authority to change the conditions. The Ambassador asked how we might clarify the situation.

Salii replied that the policy of the United States was clear. The problem was to determine how the COM could have a role in implementing that policy. He suggested that United States and COM representatives get together to see if a new bill could be worked out.

Ambassador Williams said that we would be issuing a statement on this matter in due course. Salii responded that it was up to the United States what it did with the land and suggested that possibly the land return bill could be revised next spring. Salii also indicated that possibly Palau would accept a transfer

by executive action if it was unconditional. Ambassador Williams made the point that it would be unfortunate if the people were to have the return of their land further delayed over the non-issues of eminent domain, which we aren't going to exercise, and military retention land, which exists only in the Marianas. Salii replied, rather weakly at this point, that possibly there had been some misunderstanding and again suggested that we try to work together on a bill.

Ambassador Williams pointed out that Wilson had been over the difficulties with the COM bill in some detail at Carmel. Moreover, we had tried, to no avail, to get together with the COM on this subject before the special session of the COM in July. Salii responded that the latter attempts were not effective because the TT Administration is in limbo and does not really speak for the United States on political status issues. The COM could not work through Craley on this. Mr. Warnke entered the conversation for the first time at this point repeating the suggestion that we get together and produce an agreed bill to submit to the COM. He specifically suggested that we include some statement in the bill which would provide protection in the area of eminent domain.

Salii went on to say that any consultations on a new bill should not involve the HICOM. Ambassador Williams replied that this was an Interior responsibility and that he was really not involved. At this point

Warnke expressed his belief that we had been working through the wrong intermediary during the special session. Salii picked up this point, commenting that the HICOM was out of touch and relied on the advice of the wrong people. Ambassador Williams pointed out that Jim Berg had been on Saipan during the hearings on the bill, to which Mike White responded that he (Berg) had refused to testify in open session. Warnke described the problem somewhat more diplomatically saying that we did not have available a medium for resolving differences. Ambassador Williams pointed out that the land return policy was not a subject for negotiation. In response to Mike White's assertion that we were negotiating over the policy last November the Ambassador said that we explained the policy and we answered questions, after which the JCFS said it was satisfied. At no time did we negotiate.

Mr. Johnson asked what substantive differences there would be between a pre-cooked executive order and a pre-cooked bill, other than that an executive order could be implemented more quickly. Salii replied that there was no real difference; that he was concerned with the substance of the land transfer, not with

whether it was accomplished by executive or legislative action. Salii indicated that the desire in Palau to have some input into the land return measure might well be satisfied by an executive order--if there were adequate consultations beforehand.

At this point Ambassador Williams changed the subject, asking who would be on the other side of the table in the negotiations for the options in Palau and inquiring as to the status of the PDL resolution on the establishment of a legal entity to hold title to the returned land. Salii replied that the negotiations would be with the leaders of Palau, though he was not certain as to precisely who they might be. Salii also commented that it would require a bill, not a resolution, for the PDL to establish the legal entity.

Ambassador Williams pointed out that the Palau resolution called for the district legislature to approve any final agreements. Mr. Johnson added that the United States would have to negotiate with others in addition to those in control of the legal entity inasmuch as we were seeking options for some private, as well as public, lands. Salii was noncommittal on this matter.

At this point Warnke said to Salii that he thought all we could do now was reach agreement that we would try to put together a mutually acceptable executive order. Salii said he thought such a procedure would be satisfactory for Palau. Mike White commented that some COM input would be needed. Ambassador Williams replied to all of this by restating the U.S. policy, which is to take executive action to return public lands to those districts requesting their return. Warnke interjected that they were not proposing a change in that policy but only that they be given an opportunity to look at the executive order before it is promulgated. Ambassador Williams said this was not unreasonable. Salii then repeated that the COM was worried about being by-passed in the land return process but emphasized that it had now approved the basic policy of returning public land to the districts. Wilson noted that this meant that we needed now only to be concerned with how this was to be done.

Ambassador Williams suggested that the executive order could well provide for some sort of COM action. In an effort to encourage legislative rather than executive action, Mike White pointed out that COM legislation would have the advantage of eliminating the possibility of later criticism. In an apparent effort to move White off his legislation kick, Warnke observed that any transfer of public land would require executive action

at least for the purpose of transferring title.

Leaving this matter ~~somewhat unresolved~~, Ambassador Williams inquired as to the status of the second Palau resolution. Salii explained that this resolution expressed the concern of the PDL that, under the Draft Compact, Palau would be shouldering the whole burden of military presence in Micronesia. Ambassador Williams responded that we were asking only for options, which was no rea sacrifice. He then asked how long Salii thought it would take t negotiate our options in Palau once the public land were transferred. Salii indicated that he really didn't know but would not expect it to take long, once the Palauans knew exactly what areas the United States wanted. Ambassador Williams again asked with whom we would be negotiating and Salii responded, somewhat more precisely this time, that the PDL would appoint a negotiating group. Salii also volunteered that he knew the COM wanted to participate in these negotiations but that he did not know if such participation would be acceptable in Palau.

Mr. Johnson asked whether this group would represent the title holders of both the private and public lands concerned. Salii said he thought this would be so; that both the legal entity and the private land owners would appoint a single negotiating agent. He volunteered that it might be useful for them to start organizing this negotiating group now.

Again leaving the land issue somewht up in the air, Ambassador Williams inquired as to when we should negotiate the status of forces agreement. He suggested that Salii might want to think about it and consult with his colleagues. Warnke asked whether Defense was not going to produce a draft which would essentially be boiler plate. He said that as he saw it the only real issue would be how we handle the civilian component on Kwajelein. Ambassador Williams said that we would see how soon we could get a draft agreement to them.

At this point Salii asked for a summary of where we stood on the land issue. Ambassador Williams responded that he agreed with Salii's statement that results were what counted and that it might be possible to effect the return of public lands by means of an executive order which met the concerns of the COM and the PDL, as well as the conditions set forth in the land return policy statement. Ambassador Williams said that he would recommend to the Secretary of the Interior that Micronesian leaders be given the opportunity to review and comment upon the draft executive order prior to its promulgation. He concluded however that our policy was unchanged--we will,

by executive action, return public land to any district that requests such action.

Salii indicated that at the same time as these consultations were going on Palau would begin work on legislation creating its legal entity. Warnke said that he assumed the PDL would set up the entity but that we would negotiate with a representative group. Mr. Wilson commented that the executive order was now being worked on at Interior.

Salii then set forth as follows the items on his agenda remaining to be discussed:

- suggested JCFS changes in the Draft Compact;
- transition;
- separate administration of the Marianas and the position of the JCFS that the Marianas must have a chance to vote on the Compact;
- financial assistance; and
- Senate Joint Resolution 351.

- MORNING BREAK -

Salii resumed the discussions by going through the changes in the Draft Compact suggested by the JCFS.

(1) Suggested change in title and deletion of reference to free association. Salii commented that the deletion of the term free association would help eliminate some of the confusion regarding the meaning of that term, which, he said, was common in Micronesia. Ambassador Williams responded that it was important also that we avoid confusion on an international scale regarding the status of Micronesia. He specifically referred to UN General Assembly Resolution 1541 which sets forth free association as one of only three statuses which achieve the goal of self-government. The Ambassador also pointed out that both he and the JCFS were required by their respective mandates to negotiate the terms of a relationship of free association between the United States and Micronesia. Finally, the Ambassador asked what one could appropriately call the new relationship if not free association. He asked whether Micronesia might be called a dependency or a protectorate, pointing out that it certainly could not be called a territory or a commonwealth.

Mr. Warnke explained that the problem for the JCFS was an internal one. He said that as far as the JCFS was concerned the United States could tell the UN that the relationship was one of free association. He said that the relationship certainly would meet the definition of free association as set forth in Resolution 1541.

Ambassador Williams commented that the United States could not accept a situation, such as that described in Salii's September 9 letter, in which the parties were free to label the new status as they saw fit. He pointed out that for six years free association had been the preferred status of the Congress of Micronesia.

Mr. Johnson then asserted that it was important that the people of Micronesia know that the status they were voting on was free association, rather than commonwealth or independence, so that they would not appear ignorant when questioned by UN observors inquiring as to the adequacy of the political education effort. Mr. Warnke responded that the people would be voting on the agreement, not its name, and it was only important that they understand the substance of the agreements provisions. Ambassador Williams said that some name for the new status would certainly have to be used on the plebiscite ballot.

(2) New "desiring" clause in Preamble. Ambassador Williams suggested substituting for the Micronesian proposal language such as "desiring to establish a new relationship between the people of Micronesia and the United States." Ambassador Williams also said that this additional clause would cause us difficulty because it seemed to conflict with the provisions of Title XI and because its description of the relationship as "close and enduring" was not consistent with previous JCFS descriptions of the relationship. In this regard he pointed out that Title IV already refers to a "special relationship."

Mr. Warnke ignored the objection with respect to Title XI. With regard to the description of the relationship he said that if this inconsistency with previous statements exists that was all the more reason to clear the matter up by using the phrase "close and enduring" in the Compact. Ambassador Williams extended his argument on this point, saying that such a description might cause some to confuse free association with commonwealth status. Mr. Warnke replied that the question should be only whether "close and enduring" is an accurate description of the relationship.

(3) Modification of Section 101 ("not be inconsistent" instead of "remain consistent"). Ambassador Williams said that this change was acceptable but that the interpretation of the change contained in the September 9 letter was unacceptable. Mr. Warnke explained that the intention of the change was only to make it clear that the Micronesian Constitution could be amended in the future. The trouble was with the word "remain". He said all agreed that the Constitution could not be changed so that it became inconsistent with the Compact. Ambassador Williams said that the change was acceptable on that understanding.

(4) Modification of Section 102 to conform with Sections 201 and 301. Ambassador Williams began by suggesting that rather than modify Section 102 we change Sections 201 and 301 to conform to the existing language of 102. Salii, White and Warnke all indicated that this would be acceptable--that their only concern was that all three sections be parallel. Wilson noted "defense matters" would be necessary in Section 301.

(5) Modification of Section 202 (regarding the application of international agreements). Ambassador Williams began by explaining that the language suggested by the JCFS was too vague to be workable. Mr. Warnke replied to the effect that they only wished it to be

clear that it was only necessary that the interest of Micronesia in an agreement be greater than that of the United States, rather than that of all other parties combined, for the consent provision of Section 202 to be effective. A series of specific examples were discussed more or less helpfully. At one point Mr. White raised the example of a multilateral fishing agreement of general applicability which would affect both the United States and Micronesia. He said that they wished to have a veto over the application of such an agreement. Mr. Warnke corrected Mr. White, pointing out that since such an agreement would relate at least as much to the United States as to Micronesia it was the desire of the United States to exclude such an agreement from the consent provision. White backed off of this example and the possibility of a veto of the application of such agreements to Micronesia was not raised again.

Mr. Warnke proposed the following language for the purpose of making the desired classification (new language underlined):

> ". . . agreements . . . which are intended to relate exclusively or predominantly to Micronesia or where the Micronesian interest is substantially greater than that of the United States . . . ."

Ambassador Williams agreed to consider this language.

(6) Modification of Section 406(d) to provide for consultations on financial assistance whenever agreeable to both governments. Ambassador Williams accepted this change.

(7) Modification of Section 601 to authorize the Government of Micronesia to regulate exports as well as imports. Ambassador Williams accepted this change and also proposed that we add the phrase "in a manner consistent with international agreements applicable to Micronesia" to make it clear that the authority vested in the Government of Micronesia by this section would be limited by applicable international agreements.

Mr. Warnke questioned the need for this language, asserting that it was clear in the existing language that this was the case. In particular, he pointed to the language in Titles II and V as covering the interests of the United States in this regard. Both sides agreed to consider this suggestion further.

(8) Modification of Titles VII and VIII to provide that Micronesians be accorded "treatment as nationals." Ambassador Williams began by saying that the United States had no serious objection to this change but that we felt compelled to inform the JCFS

that if they did not become United States nationals we would not be able to guarantee that they would receive the same consular protection as is available to nationals. Mr. Wilson and Mr. Johnson explained that this was the case because, under our bilateral consular agreements and the multilateral Vienna Convention on Consular Relations, the United States has a right to provide consular services in foreign countries only to U.S. nationals. Therefore, we could not be certain that we would be allowed to provide the same services to Micronesians, even if we were obliged to do so by the Compact. Ambassador Williams further indicated that, because of this problem, we would feel compelled to modify our obligation in Title II to provide consular protection.

The Ambassador also informed Salii that we would not be able to provide Micronesians with U.S. passports unless they became nationals.

Salii, Warnke and White all indicated that they understood the problem and that they wished to reconsider their position in light of our presentation. Mr. Warnke volunteered the comment that he had never understood why the Micronesians would not want national status.

Mike White asked if their suggested deletion of the words "by birth" in Section 701 was acceptable. Ambassador Williams replied that we had not really focused on this and would get in touch with Washington about it. Mr. Johnson pointed out that the deletion of these words could present a problem in that it would allow the future government of Micronesia, through the establishment of its citizenship requirements, to determine who would become a United States national.

(9) Addition of Marianas land requirements to Annex B. Ambassador Williams began by asking whether their new subparagraph (3) in Annex B was intended to replace our subparagraph (3). Salii responded that they were suggesting an addition, not a substitution. Ambassador Williams then said that we could not agree to the proposed additions; that it went to the heart of the whole Marianas question.

Mr. Warnke commented that the JCFS had to follow its mandate from the COM which required that they negotiate a status which also could be applied to the Marianas. He said that we needed to be prepared if the Marianas should opt for free association. Digressing briefly to the subject of the timing of the constitution referendum, Warnke said that he did not think it would

be desirable to require that the constitution and the Compact be voted on simultaneously, if only because that would have the effect of delaying the status plebiscite. He repeated that the Marianas must be given a choice and that we should allow them the opportunity to reject the Compact.

Ambassador Williams, reading from notes of the Carmel meetings, reminded Warnke that last spring we had all agreed that, should the Marianas reject commonwealth status, we would appropriately modify the Compact and give them a chance to vote on free association. Warnke responded by reminding everybody that "a foolish consistency is the hobgoblin of little minds". He said that he had been wrong to take that position and that, now that it appeared the Compact would be completed in short order, he didn't see any reason why the people of the Marianas could not be presented with a choice.

Ambassador Williams asked whether the JCFS would go along with putting a commonwealth option on the plebiscite ballot in Micronesia. Both Salii and Warnke indicated that this would give them no trouble. Ambassador Williams asked about putting independence as an option on the ballot. For the first time Salii said that they would also like to see independence on the ballot in order to meet the Ponape Resolution.

Ambassador Williams indicated that, as he envisioned the Marianas plebiscite, the people would have a very clear idea of the alternatives to commonwealth. Warnke thought this indicated we were very close to agreement. He said that all the JCFS was proposing was the addition of language which was necessary if the Compact was to apply in the Marianas. He also volunteered, with respect to an independence option, that independence was something one didn't negotiate; rather it was something that was declared or granted.

The status of this JCFS suggestion was left somewhat up in the air.

October 29, Afternoon Session

Ambassador Williams began the afternoon session by quickly going through the four interpretative statements contained in the September 9 Salii letter. In so doing he commented that the third of these (nonassignability of the rights or obligations of the Compact) was a non-issue.

Before moving to an item by item discussion Salii commented that it was the position of the JCFS that unless the COM's delegation to the Law of the Sea

Conference agreed to the terms of any treaty that might result from that conference, that treaty should not be applied to Micronesia and questions regarding the territorial sea of Micronesia would come under the internal affairs authority of the GOM.

(1) "Section 302(b) does not create in the United States the right to use any of the land and waters of Micronesia other than those specified in Annex B, except a right to transit." Ambassador Williams began by stating that the United States could not be responsible for the defense of Micronesia and have our authority subject to the limitation set forth in this statement. He went on to say that we could not allow this statement to stand undisputed as part of the negotiating history. He said that the exception for transit was simply too narrow.

Mr. Warnke agreed that the transit exception was too narrow, but said that he thought the rights of the United States in the defense area were adequately covered by the language of the Compact.

Ambassador Williams acknowledged that we did not have a right under the Compact to establish new bases or to conduct land maneuvers without the agreement of the Government of Micronesia. There was some disagreement as to whether the United States would have the

right to conduct naval maneuvers in the territorial waters of Micronesia without government consent. Though this particular point was never really resolved, there was substantial agreement that the United States could do whatever was reasonably necessary to carry out its defense responsibilities.

(2) "The provisions of Section 303(d) do not infringe upon or limit in any way the Joint Committee's right to seek limitations on the storage and use of nuclear, chemical, and biological weaponry and to preserve and protect the environment, questions which will be dealt with in connection with the negotiations on the leases of the lands concerned." Ambassador Williams stated that we simply disagreed with this statement. Mr. Johnson explained that this section precluded any provisions in these agreements which conflicted with the basic authorities and responsibilities of the United States under Title III, one of which is contained in Section 303(a)--i.e. the right to "full freedom of use and access to all facilities and areas used for the conduct of military activities." Provisions in the leases such as those envisioned in this interpretative statement would certainly conflict with this fundamental right.

Salii responded, rather lamely, that this interpretative statement did not change Section 303(d). Ambassador Williams said that we certainly had to agree that Section 303(d) spoke for itself. Salii tried to terminate discussion of this matter by saying that he would note our position. Ambassador Williams did not allow this, saying that we needed to reach agreement on this matter before moving to the subnegotiations on land. He also pointed out that Section 506 dealt with the matter of environmental protection exhaustively.

Mr. Warnke again tried to minimize the extent of our disagreement, saying that their statement only meant that the Micronesians could ask for these restrictions, to which the United States could refuse to agree. Mr. Johnson responded that the question before us was whether we would argue about these restrictions every time we negotiated a lease. He said that the United States viewed Section 303(d) as dispositive of this matter, foreclosing future arguments. Salii replied that he would note our objection and that we would come back to this point.

(3) No presumption of assignability of rights or obligations. (A non-issue--dealt with at the beginning of the afternoon session.)

(4) "The termination of the Compact, without regard to the limitations imposed by Title XI in terms of time, is a proper remedy for any material breach of the obligations of the Compact." Ambassador Williams began by asking whether Salii wanted to go back to the arbitration language that we had agreed to in Carmel for Title X. Mr. Wilson commented that he had the same problem now as he did last November when this issue arose. He pointed out that there was a great deal in the way of political pressure available to the Micronesians in the event the United States should default on any of its obligations under the Compact.

Mr. Warnke responded that this interpretative statement only says what is true anyway under "inherent law" and, therefore, does not really need to be said. He commented further that he would advise his clients, in the event of a material breech by the United States, to give notice of termination. He noted that, of course, the United States could argue about the appropriateness of such a termination at such time as it might occur.

At this point the discussion of the four interpretative statements was recapped as follows:

Section 302(b)--agreement reached;

Section 303(d)--disagreement;

Section 304(c)(nonassignability)--agreement reached;

Material breech--the United States is considering its position.

Salii then raised the question of flexibility in the use of financial assistance provided under Sections 401 and 404. He said that in the view of Messrs. Setik and Olter more flexibility was needed.

Ambassador Williams next raised the possibility that the United States might have to change its position on unilateral termination of the Compact and insist on pre-negotiated defense arrangements to follow such termination. (The Ambassador did not mention congressional concerns in this regard.) He made it clear that we were not proposing anything now but just preparing them for the possibility that we might in the future.

Salii responded that the compromise struck in Carmel providing for continuation of the Compact until agreement was reached on the defense arrangements to follow was the most important of all our compromises on the Compact. He said he regarded this provision as very basic. Ambassador Williams responded that we might

wish to give up our de facto veto power over unilateral termination which, in many ways, might leave the Micronesians better off. Mr. Warnke commented that he was opposed to pre-negotiated defense arrangements because we were certain to write the wrong sort of agreement this far in advance.

All agreed that further discussion of this matter should wait until the U.S. makes a proposal. In closing, Salii commented that the JCFS might, in the future, wish to add language to the Compact regarding law of the sea.

Salii then recapitulated where we stood on the nine changes suggested by the JCFS as follows:

(1) Salii agreed to leave in the term free association, both in the title of the Compact and in its text. He said he was convinced that this change should have been requested much earlier but agreed that now such a change would probably cause undue confusion.

(2) Salii agreed to withdraw their suggested new "desiring" clause.

(3) The United States has accepted the suggested language but rejected the interpretation set forth in the September 9 letter.

(4) The United States' counter-proposal to conform Sections 201 and 301 to the language of Section 102 is acceptable.

(5) The United States is considering the new language of Section 202 suggested by Mr. Warnke.

(6) The suggested change to Section 406(d) is acceptable to the United States.

(7) The United States accepts the change in Section 601 suggested by the JCFS; but the JCFS does not believe the additional language suggested by the United States is necessary.

(8) On Titles VII and VIII Warnke said that the JCFS was leaning in the direction of becoming nationals.

(9) On Annex B Warnke said that we had agreed to disagree. Ambassador Williams commented that the Marianas land requirements would not be put in the United States draft. Warnke added "until and unless the Marianas rejects commonwealth." Ambassador Williams affirmed this addition to his statement.

Salii, Warnke and White then went into a discourse on the service to Saipan case. The most notable comment in this discussion was that of Mike White to the effect that the United States' handling

of this case was being viewed by many in Micronesia as a test of the United States' ability to manage Micronesia's foreign affairs.

October 30, Final Session

The morning session began with the discussion of the veto of the constitutional convention bill. Salii said that the JCFS would go along with a separate status for the Marianas. Ambassador Williams pointed out that a simultaneous vote on the Compact and the constitution was not ruled out by the veto. Salii commented that the Compact should be voted on in all six districts at the same time, to which the Ambassador responded that the procedures by which the Compact would be approved were the responsibility of the administering authority. Furthermore, he said, the views of the JCFS on the question whether the plebiscite on the Compact should be held in the Marianas had changed since Carmel. Salii said that there was no reason to discuss this matter further; that both sides had their positions and that the JCFS was adamant

Ambassador Williams suggested that the timing of the Micronesian status plebiscite be discussed at Micronesia VIII. Warnke commented, somewhat off the subject, that he thought we might need more in the way

of political education if there were to be two separate votes on the Compact and the constitution.

Ambassador Williams then asked Salii about the timing of the constitutional convention. Salii responded that there should be a decision on this in two or three weeks by the pre-convention committee. He said that there might be pre-conventions, on the order of state constitutional conventions, in Palau, Ponape and the Marshalls.

Mike White inquired as to when we would discuss what would appear on the ballot in the plebiscite. Ambassador Williams responded that this would be discussed at Micronesia VIII, if we finish the Compact. Salii approved of this idea.

Salii then wished to discuss transition financing. He gave the Ambassador a copy of a memo by Ray Setik, which, he said, took the position that the United States could not have known what Micronesian needs would be in the transition period since his committee had not been consulted. Wilson commented that this was not because they hadn't been asked to consult. They simply hadn't appeared. Salii said that the present five-year plan was regarded as inadequate.

Ambassador Williams said that he could not comment on this matter. He said that we were going to have

trouble as it was getting the U.S. Congress to appropriate the money required under the present plan.

Salii then commented that the COM was having trouble obtaining economic advisers and that the HICOM was not being much help. Ambassador Williams and Mr. Wilson agreed that the COM had to have expert advice. Salii said that they needed the Ambassador's help on this matter. Ambassador Williams said we would keep in touch on this matter and do what we could to be of assistance. Salii closed this discussion by suggesting that a more detailed discussion of transition matters be put on the agenda for the next formal round of negotiations. Ambassador Williams agreed.

At this point Mr. Wilson initiated a discussion of the contents of the transition memorandum of understanding. He said, with respect to treaties, that we would include language in the memorandum saying that Section 202 would apply during the transition period. With respect to guaranteed levels of programs and services, he said that we could agree to keep the three services specified in the Compact constant during transition and that Micronesia would continue to be eligible for all others, but would have to follow usual procedures for getting funds for them.

With regard to increased participation in the financial decision-making process, Mr. Wilson indicated that the Department of the Interior was waiting to hear the views of Messrs. Setik and Olter on this matter. Salii commented that he saw no indication of disagreement here.

Finally, Mr. Wilson told Salii that we were agreeable to using the Guam Consumer Price Index for determining increases in U.S. financial assistance necessitated by inflation. He also told Salii that the Department of Commerce was looking into the accuracy of the Guam CPI and was exploring the possibility of establishing a Trust Territory CPI.

At this point Salii raised the question of increased COM control of land alienation during the transition period. Now, Salii explained, only the approval of the HICOM is required for the lease of any lands to non-Micronesians for a period of more than one year. Thus, the HICOM could tie up great amounts of land in non-Micronesian hands for periods extending beyond the termination of the trusteeship. Mr. Warnke added that the JCFS should give the United States a specific proposal on this matter. Ambassador Williams responded that he understood the problem; that it would be helpful if we knew what the procedures were now for

approving long-term leases; and that he would be glad to consider the views of the JCFS in this regard. Mr. Warnke concluded this discussion by volunteering Mike White to prepare a memorandum on this subject.

Mike White asked for the Ambassador's reaction to SJR 115 on increased Micronesian participation in Government. Ambassador Williams responded that you don't win the minds and hearts of the people by spitting in their eye. He said we also needed the views of the COM on the question of moving the capital, but this could be taken up later.

Ambassador Williams then asked Salii what he had heard about the super port proposal while he was in Palau. Salii responded vaguely and noncomittally.

Mr. Warnke then returned to the four interpretative statements. With regard to the fourth of these (material breach) Warnke said that he did not believe this matter warranted further discussion since the substance of their statement "goes without saying."

With regard to the second interpretative statement (storage of nuclear and other weapons on U.S. bases) Warnke said that this was merely an expression of concern on the part of the JCFS. He said that in conducting the negotiations for land leases the Micronesians would be bound by the terms of the Compact, which, he said, are clear. Ambassador Williams reminded Salii that he had said earlier the land negotiations would be with a tripartitite body which included JCFS representation. Mr. Warnke responded that the JCFS would participate in the process of approving leases and that these leases would contain no restrictions on use, even though the COM might not be happy about this.

Returning to the more general question, Ambassador Williams again stated that the United States could not accept the JCFS interpretation of Section 303(d). Mr. Warnke responded that he recognized that there was a conflict of interpretations but he pointed out that the JCFS could not enforce their interpretation. He said it was "an expression of concern only" and that the JCFS "recognized that these conditions cannot be insisted upon as part of a lease". He said they appreciated the fact that the practice of the United States of neither confirming nor denying the presence of nuclear weapons in location would preclude the United States from agreeing to any restrictions on the storage of such weapons at its Micronesian bases. Salii added that, of course, the JCFS could never accept a U.S. proposal to introduce nuclear weapons into Micronesia. Ambassador Williams responded that no one was asking for such acceptance in public terms but neither can the U.S. accept any limitations in this regard.

In an attempt to terminate this discussion, Mr. Warnke said that the JCFS interpretation does not mean that the language of the Compact is dead--Section 303(d) is controlling. Mr. Johnson said that the point of this discussion was what would the JCFS do in the land negotiations. He said that the U.S. regarded Section 303(d) as disposing of the issue and that we expected the JCFS to take the same view. Both Salii and Mike White responded

by saying that we were beating a dead horse.

Mike White then summarized where we stood on all of the issues:

(1) The term free association would not be deleted;

(2) There would not be an additional "desiring" clause;

(3) Section 101 was acceptable as changed;

(4) The U.S. proposal to conform the language of Sections 201 and 301 to that of Section 102 was acceptable;

(5) Awaiting U.S. language on Section 202;

(6) Section 406 is acceptable as changed;

(7) The JCFS change in Section 601 has been accepted; the suggested U.S. change is under consideration;

(8) The U.S. is considering deletion of "by birth" in Titles VII and VIII.

(9) No agreement on Annex B.

With respect to Section 202, Ambassador Williams said that we could not yet give final agreement to any new language. He asked Warnke whether he still liked the language he proposed yesterday. Warnke responded affirmatively. Mr. Johnson explained that we had some difficulty with the word "interests"--it seemed rather vague. Various formulations based on the "relate to" language of the present Section 202 were tried. Tentative agreement was reached on the following language:

> ". . . provided, however, that any treaty or other international agreement which in its effect relates exclusively or predominantly to Micronesia rather than to the United States, will be applied to Micronesia only with the consent of the Government of Micronesia."

Ambassador Williams said we must reserve on this pending Washington clearance which we would try to obtain as soon as possible.

With regard to the addition to Section 601 suggested by the United States, Warnke and Salii both asserted that the "except as otherwise provided" clause in this section made it clear that the foreign affairs provisions of Title II and Title V would take precedence over this provision in the case of a conflict. On this understanding Ambassador Williams agreed to withdraw the U.S. suggestion.

With regard to Title VII and Title VIII Ambassador Williams said that we could not accept the deletion of the words "by birth." Mr. Warnke inquired as to how we would go about naturalizing spouses of nationals. In particular he asked how this problem was handled in Samoa. He was concerned that we not have stateless people in Micronesia. Mr. Johnson pointed out that there probably would not be any stateless people in Micronesia since Micronesian citizens who did not qualify for U.S. nationality would presumably retain their foreign nationality. Mike White asked about the case of someone who might renounce his United States citizenship in favor of Micronesian citizenship. He again raised the question of the status of foreign spouses and foreign adopted children of U.S. nationals living in Micronesia. Ambassador Williams said that we would inquire as to how this matter is handled in

American Samoa. Salii asked that the text of these titles remain substantially as in the Guam draft--giving Micronesians U.S. national status, with a few minor word changes but said he would have to get final approval on this from the JCFS and would advise us.

Technical changes in Sections 203(c), 405, and 901, suggested by the United States were accepted.

Returning to the question of the return of public lands, Ambassador Williams said the United States would allow the JCFS to review the draft executive order and would consult with Micronesian leaders regarding its content. He then outlined the following steps which need to be taken in Palau as soon as possible:

(1) A formal request that public lands be returned;

(2) The establishment by legislation of a legal entity to hold title to the returned public lands; and

(3) The establishment of a body to conduct negotiations with the United States.

Mike White asked whether we would obtain the approval of Micronesian leaders before promulgating the executive order. Ambassador Williams responded that we would not supply the draft order for approval, only for comment and consultation. Salii said that he could not go along with simple consultations. Trying to be conciliatory, Warnke made the point that the return of public lands required bilateralism in that the United States not only had to be willing to transfer the land

but the district had to be willing to accept the transfer. Mr. Wilson asked if a letter on this matter would be helpful. Salii responded that it would be good to put our understanding in writing and that the letter should go to the JCFS.

The service to Saipan case was the next subject of discussion. Mr. Warnke said that they would appreciate it if State and Interior would send letters to the CAB clarifying the positions taken in their previous letters. In particular he wanted the CAB to be told that they should give more weight to the opinions of the COM than to the opinions of other elected leaders. On this occasion Warnke joined Mike White in asserting that this case was regarded by many in Micronesia as a test of the ability of the United States to handle their foreign affairs. Ambassador Williams responded that he had no comment other than to say he was sure the CAB would act on the merits of the case.

Returning to the four interpretative statements, Ambassador Williams told Salii that we would probably be sending them a letter responding to those statements.

Salii then asked when we would meet next. He said that he thought we were ready for a formal round which would culminate in the signature of the Compact.

Ambassador Williams responded that he did not see the need for a formal round inasmuch as we had reached agreement on the language of the Compact already. In any event, he added, we would not be signing the Compact until agreement had been reached on the land leases.

Mr. Warnke responded somewhat testily to this position, asserting that we had never told him that this was our position. Ambassador Williams replied that this had been our position since 1972 and, furthermore, Annex B requires the listing of these agreements and there is still a blank in Title IV for the amount of money to be paid for the leases. He concluded that we were not going to send an incomplete Compact to our Congress for approval. Mr. Johnson added that, to us, signing the Compact meant that it was ready to be sent to our Congress.

There followed a rather lengthy and heated discussion of the pros and cons of holding a formal round and/or signing the Compact at an early date. Warnke asserted that Annex B did not require the completion of the lease agreements prior to signature, but refrained from reasserting this position after Annex B was read to him. Both Warnke and Salii argued

that they needed some indication from the United States that the present language of the Compact was acceptable, so that they could go to the COM and get authorization to conduct the land negotiations. Mr. Johnson asked whether a letter might be an adequate indication. Salii indicated that this would probably be acceptable. Ambassador Williams said that he would consider sending such a letter.

Salii said that he needed the letter by the 7th of November, the date of the next scheduled JCFS meeting. Ambassador Williams said that he could not promise a letter by that date but that we would keep in touch.

Mr. Warnke repeated the point that the COM would not authorize the negotiation of the leases until they had approved the Compact as it now stands. Ambassador Williams replied that he had not known that this was their situation. Warnke said, without explaining why they were now in this position, that they had never before been at a point where they needed COM approval for the negotiations to proceed any further. Ambassador Williams said that he understood and that we would follow through.