

THE PROBLEM OF PUBLIC LAND IN MICRONESIA (abr.)

(An abridged chronology of U.S.- Micronesian discussions regarding public land in context of status negotiations 1972-4).

As Administering Authority the United States has been aware from the beginning of its trusteeship of the vital importance of land to the people of Micronesia, and has consistently and publicly taken the position that public lands in the Trust Territory belong rightly to the people of Micronesia and that the United States was holding these lands temporarily for the people through the Trust Territory Administration pending the development of feasible conditions for their return. With regard to its own requirements for land needed to fulfill its administrative responsibilities and security commitments in the Pacific area, the United States Government has held to the position ever since the Third Round of Status talks in October 1971 that: its known requirements would be negotiated before the end of the trusteeship and would be a part of any status settlements; if unforeseen military requirements should arise after the end of the trusteeship, the U.S. and Micronesian Governments would negotiate in good faith to meet those needs; and at the end of the Trusteeship, title to all public land still held by the Trust Territory Administration would be transferred to the new Micronesian Government.

In recent years several districts (the Marshalls, Palau, and the Marianas) have requested that their public lands be transferred to their control before the end of the trusteeship. The Congress of Micronesia too has shown its awareness of the general Micronesian desire for return of the public lands. The subject moved into prominence and some urgency at the time of the Fifth Round of status negotiations in July - August 1972 in Washington when the U.S. first provided some detailed definitions of its military land needs.

Public Land Issues During 1972.

At the Fifth Round the first three Titles of the Draft Compact of Free Association were drawn up. Title III on

on Defense included Annex B which outlined the rights and uses the U.S. would have in the lands and waters of Micronesia after the end of the trusteeship. The draft, approved by both sides, was presented to the special session of the Fourth Congress of Micronesia meeting at Ponape in August. Recommending its approval by the Congress, Senator Lazarus Salii, Chairman of the Joint Committee on Future Status, said "The partial draft Compact... represents.. an agreement which meets and exceeds all of our minimum requirements, if not our every desire." The Congress did not follow his recommendation, preferring to await completion of the Compact before taking action on a partial draft.

Discussions at the Sixth Round of status negotiations, held at Barbers Point, Hawaii September-October 1972, led to plans for a U.S. team accompanied by Micronesian observers, to go to Palau to select sites suitable for the U.S. military options described in Annex B. However, on November 20 the Palauan leadership declared that they were "unequivocally opposed to the use of land in Palau by the United States military". Nevertheless, in December Ambassador F. Haydn Williams, the President's Personal Representative for Micronesian Status Negotiations and Captain William J. Crowe, Jr., USN, Director of the Office for Micronesian Status Negotiations accompanied by Senator Salii visited Palau but found an unwillingness on the part of the local leadership to negotiate for U.S. land requirements until Palauan public lands were returned to the district. While both High Chiefs agreed that the proposed survey for U.S. military land use leases should go forward, Senator Salii advised that this should be delayed until it could be made a joint effort with the JCFS.

Meantime, the Micronesian Congressional elections of November had resulted in the defeat of two members of the JCFS, thus delaying the Committee's work pending necessary

reorganization.

Developments During 1973.

In a letter to Ambassador Williams of February 22, 1973, Senator Salii in effect set as a condition for a next round of status talks agreement that no options for military land use in Palau will be considered until all public land in Palau is returned to the traditional leaders in trust for the people. In his reply of March 16 the Ambassador stressed the U.S. intention to return to the Micronesian people title to all Micronesian public lands, but noted the problem of ascertaining to whom and when such lands should be returned. Salii's further letter of March 27, following adjournment of the first session of the Fifth Congress which had passed no legislation relevant to public land or status negotiations, maintained that the positions of the Congress and the JCFS were one and the same and stated that there can be no signing of any compact until agreement has been reached on all issues including U.S. land requirements. Specifically, in the case of Palau, Salii wrote, there can be no negotiations regarding U.S. land requirements "until all public land in Palau is returned to the Traditional Chiefs in trust for the people". In reply (April 14) the Ambassador pointed out that the Senator's letters had introduced new elements and conditions into the status negotiations, especially with regard to the singling out of Palau for special consideration.

At a meeting in Honolulu on May 4, the principals in the status negotiations agreed that some further study of the legal and administrative problems posed by early return of public lands to the districts was needed. At a subsequent meeting (May 8) with the District Administrators in Majuro, the Ambassador stressed that the issue is not return of public lands as such, but when and to whom the return should be made. On the following day the Ambassador handed the Senator a list of key questions, requesting answers from the JCFS to assist the U.S. in its study of the public land question. On May 21 a delegation of eleven

034145

Palauan Chiefs called on Ambassador Williams on Saipan and stated that the U.S./Palauan land question must be settled through the Chiefs and land disputes resolved before any land settlement in the Compact can take place. The Chiefs said that a return of land to them would be accompanied by a commitment to negotiate.

At a meeting on June 19 in San Francisco, Senator Salii told Ambassador Williams that the Palauan Chiefs were now not opposed to U.S. military options but wanted first to be assured that the land would be returned to them. Referring to his meeting with the Chiefs in May, the Ambassador stressed the need to explore the public land matter thoroughly from all points of view.

In July and August two fact-finding missions from OMSN visited the eastern and western districts respectively, meeting throughout Micronesia with district legislatures, traditional chiefs, land commissioners, municipal councils, administration officials and other appropriate groups, in order to ascertain the problems, attitudes and desires of the people of the various districts with respect to return of their land. During the same period, two teams from the JCFS were also visiting the districts on a similar mission. On the basis of the Committee findings, Senator Salii forwarded to Ambassador Williams on October 5 answers to the Ambassador's questions of the preceding May. Principal points included the position that return of public lands should be accomplished by legislation of the Congress of Micronesia, but in the case of Palau, "because settlement must take place prior to the next round... and because of the clear choice of the Palauans as to who should receive (them), return of public lands in that district (should) be accomplished by executive decree..." Salii stressed however, the position of the JCFS that the U.S. should agree "in principle to the return of these lands... to be accomplished by legislation adopted by the Congress of Micronesia".

Salii's message enabled the U.S. to complete its study of the public land question and on November 4 Secretary of the Interior Morton issued a formal statement embodying a new U.S. policy concerning Transfer of Title of Public Lands from the Trust Territory Administration to the Districts. In brief the policy statement, noting the extensive consultations with Micronesians which had preceded its issuance, provided for the transfer to those Districts requesting it of the title to public lands in each District, subject to certain limitations and safeguards which the U.S. found necessary in fulfilling its obligations as Administering Authority, and requested the Congress of Micronesia to pass enabling legislation. Forwarding copies of the Policy Statement to Senator Salii, the Ambassador stressed that the U.S. was inviting full Congress of Micronesia involvement.

A meeting on the public land issue with the JCFS, accompanied by a ranking Palauan Delegation, convened in Washington on November 13. The Ambassador reviewed the U.S. land policy and emphasized that all of the lands in Palau on which the U.S. had asked options for military use were included in the lands to be transferred to district control. He expressed the belief that the policy met the principal Micronesian desires and should permit the Congress and the Districts wide latitude to accommodate their diverse desires and concerns. Senator Salii stated that the terms and conditions of the U.S. Policy Statement would be generally acceptable to the Micronesian Delegation upon satisfactory resolution of five points. These points the Ambassador treated as follows in his reply to Senator Salii:

1. Eminent Domain: Power has been and will be used very sparingly;
2. Military Land: The Palau Delegation was prepared to make a formal commitment to negotiate in good faith;

the Ambassador received confirmation that this commitment would be made before transfer of title to the district;

3. Military Retention Land: The U.S. Policy Statement does not address the problem (which is confined to the Marianas), but all will be returned except for that part used to meet U.S. needs presently under negotiation;

4. Trust Territory Government Leases: If there are any subleases on unused lands, the situation will be corrected;

5. Manner of Negotiation: The U.S. is not opposed to leading military land through the Congress of Micronesia or the Districts, but leases must be binding and the U.S. cannot sign off on a Compact until there is agreement on the defense provisions.

Senator Salii confirmed that the Palau Delegation, including

himself, "has already made a formal commitment to negotiate (to accomodate U.S. defense requirements) after the land is returned" and in this connection he referred to a formal statement of the Palauan Delegation, dated November 12, 1973, accepting the U.S. Land Policy Statement subject to certain terms including the provision that if the Congress fails to pass needed legislation for public land return in the forthcoming session, the lands should be returned by Executive Order. Additionally the statement said that return of public lands should not be conditioned upon commitments to accomodate U.S. land requirements for defense purposes; however, "this Delegation, on behalf of the Legislature and the people of Palau, does hereby make a formal commitment to negotiate in good faith with the United States in order to accomodate the United States' defense requirements in the Palau District". The Palau District Legislature by resolution of November 30 "ratified, confirmed and adopted in its entirety" the leadership's Declaration of November 12.

The Seventh Round of status talks followed immediately after the land meeting. Senator Salii reporting to the Congress on the Seventh Round, said that the JCFS was "pleased to report agreement with the United States concerning the return of so-called public lands to the people of Micronesia". The Congress soon turned its attention to a bill introduced on behalf of the Administration, the "Public Land Transfer Act of 1974" (S.B. No. 296). On March 2 the Senate passed the bill with extensive amendments, but the House received it too late to take action during the session.

In April at a meeting of the principals in the status negotiations at Carmel, California, Senator Salii expressed hope that the Land Transfer Bill would be passed at the prospective special session of the Congress while the Ambassador reviewed some of the U.S. problems with the Bill as amended. With regard to U.S. military options in Palau, the Senator expressed confidence that the Chiefs would live up to their word as given in the declaration of November 1973. On May 2 the Palau District Legislature invited the U.S. to show it "at an early time" the locations of possible options.

In July the Ambassador in a brief visit to Palau to seek suggestions as to appropriate timing for a team to explore and select suitable sites for U.S. land needs, stressed that the U.S. had no plans for an active military presence in Palau in the foreseeable future, and there was no time-table for exercising the options. In accordance with the consensus of agreement which he found, the Ambassador sent a survey team in August which, in company with Palauan leaders explored suitable sites.

Meanwhile a special session of the Congress in July-August passed S.B. 296 as amended, but because of the substantive and technical deficiencies which he outlined in an accompanying message, the High Commissioner vetoed the Bill on September 21.

A month later, October 29-30, in a meeting at Honolulu, with Senator Salii, Ambassador Williams had occasion to emphasize the continuing U.S. position on two key points. On eminent domain,

he stressed that following the end of the trusteeship under a status of free association that power would be in the hands of the Government of Micronesia. On military retention land he stressed that there is none in Palau and that lands under consideration for military options in Palau were public lands which would be included in the general transfer of public lands to the district. Noting that despite earlier notification of U.S. requirements, the Congress had not produced an acceptable Bill on transfer of title to public lands, the Ambassador said that the route to such transfer now lay through executive action. He said that the views of Micronesian leaders would be welcome in this regard and that the Department of the Interior would be prepared to consult with the leaders in the process of preparing a Secretarial Order. Following the Honolulu meeting Senator Salii in a press release termed the meeting "very successful" but said that the JCFS should participate in the drafting of an executive order. In letters of November 15 to Senator Salii and Speaker Luii of the Palau District Legislature, the Ambassador outlined the steps to be taken by Palau to expedite the land negotiations and stressed that the amount of land to be returned to Palau through executive action on request would be exactly the same as that which would have been returned under the original land bill. In a resolution of December 4 the Palau District Legislature accepted this assurance, reaffirmed the Palau declaration of November 12, 1973, and hoped that "public lands in Palau might be returned with dispatch".

In several moves in November-December Senator Salii made clear his preference for legislation rather than an executive order to return the public land and threatened to terminate the status negotiations if this preference were not observed. However, on December 9-10 the Director of Territorial Affairs met in Honolulu with some eighty leaders, traditional and elected, from all districts of Micronesia to ascertain their views on the pending Secretarial Order.



On December 26 by Secretarial Order Number 2969, Secretary Morton transferred the Trust Territory Public Lands to District Control, writing at the same time in a letter to the Speaker of the House and the President of the Senate that the Order will provide for the transfer of the same amount of land as any other approved method under the Policy Statement of 1973.