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THE PROBLEM OF PUBLIC LAND IN MICRONESIA

Introduction

The problem of public land--its identification and especially its disposition--has created numerous complications in negotiations to determine the future political status of the five districts of the Trust Territory of the Pacific Islands which are expected to comprise Micronesia at the conclusion of the trusteeship. From the beginning of the trusteeship the United States has recognized the vital significance of land to Micronesians and has maintained and stated publicly that public lands in the Trust Territory, largely inherited from prior Spanish, German and Japanese administrations, belong rightly to the Micronesian people and that they were being held in trust for the people by the United States through the Trust Territory Administration.

So far as its own requirements for the use of public land in the Trust Territory are concerned, the Trusteeship Agreement provides for the establishment and maintenance of any necessary military facilities. So far as the post-Trusteeship period is concerned, ever since the October 1971 Third Round of status talks at Hana Maui, Hawaii,^{1/} the United States Government has stated publicly and consistently that:

- a. Presently known and identified U.S. military and civil land requirements (leases and options) would be negotiated prior to termination of the trusteeship and would be an integral part of any status settlements.
- b. Should new or emergency U.S. military requirements for land arise in the post-trusteeship period, the U.S. Government and the Micronesian Government would negotiate in good faith any additional uses of land by the U.S. military.
- c. At termination of the trusteeship title to all public lands still held by the TT Administration would be transferred to the new Micronesian Government to do with as it wished.

In recent years several of the districts of the Trust Territory ^{formally} have/requested the transfer of public lands to their control prior to termination of the Trusteeship Agreement. As early as 1968 the Marshall Islands Nitijela requested the High Commissioner to return the public lands in the Marshalls.^{2/} In April 1971, the Palau District Legislature requested the High Commissioner to consider the return of all public lands to the people of the Palau District,^{3/} and has repeated this request on several subsequent occasions.^{4/} The Marianas Political Status Commission in December 1972 also requested the return of its public land^{5/} and has maintained this position consistently since that time.

The Congress of Micronesia has given close attention to the Micronesian desire for return of the public lands. Recognizing at once the difficulty and the desirability of resolving the problem, the Third Congress (July-August 1969) passed HJR 67 setting up a Joint Committee on Land Acquisitions to represent the people of Micronesia in all matters pertaining to land acquisitions by U.S. Government agencies; but this committee never functioned.^{6/} Additionally, the Fourth Congress approved on February 28, 1972 a House Joint Resolution (HJR No. 40) to create a Joint Committee on Public Lands of the Congress "to investigate the policies, plans, programs, and objectives of the Trust Territory Government with regard to the leasing of public land and the use thereof".^{7/} No such committee was named, however.

In the course of the Fifth Round of negotiations between the U.S. (JCFS) and the Joint Committee on Future Status/which was held in Washington

July 12-August 1, 1972 the U. S. followed its earlier broad description of its military land needs following termination of the Trusteeship with the detailed description of its requirements embodied in Annex B of the Draft Compact of Free Association. This paper presents a relevant chronological record of discussions regarding public land in the context of status negotiations from that date onward.

Public Land Issues During 1972

In his opening remarks at the Fifth Round of status talks Ambassador Haydn Williams, the President's Personal Representative for Micronesian Status Negotiations, stated that "the United States has agreed that in the future, Micronesia would have free control over its internal affairs, its government, its laws, its land....".^{8/} This point was central to the work of the Joint Drafting Committee, which after considerable work came up with a draft for a Preamble and Title I (Internal Affairs), Title II (Foreign Affairs) and Title III (Defense) of a Compact of Free Association.

Annex B to the Compact outlined the rights and uses the U.S. would have in the lands and waters of Micronesia in the post-trusteeship period. As announced in the final Joint Communique of August 1, 1972 this draft was approved by both sides at the final plenary, the delegations agreeing "that the draft Compact language remains tentative and preliminary pending final agreement on the Compact as a whole".^{9/}

At the conclusion of the Fifth Round the Micronesian Joint Committee returned home for the special session of the Congress of Micronesia which the High Commissioner had convened to meet in Ponape on August 14 for the particular purpose of considering the draft Compact.

At the Sixth Round of Status Negotiations held at Barbers Point, Hawaii, September 28-October 6, following the Ponape special session, Senator Lazarus Salii, Chairman of the Joint Committee on Future Status (JCFS) announced on the subject of land that

the JCFS had appointed a sub-committee on land "which will deal with the United States' request for military land use in Micronesia".^{11/} This land sub-committee requested exact metes and bounds of U.S. military land needs in the Trust Territory. The U.S. responded the land requirements in the Marshalls were already clearly delineated, being identical to the land used now, and that the land requirements in the Marianas were irrelevant since the U.S. was negotiating separately with that district. As to Palau, the U.S. informed the JCFS that it had not settled on specific plots of land in Palau and would have to send some type of survey group to Palau to look at the land and consult with local people before finalizing its plans.^{12/}

Senator Salii, stressing the urgency of completing the draft Compact,^{13/} stated: "We will be happy to cooperate with you in the conduct of a survey to determine the exact specifications of your land requirements in Palau.... We shall also give further attention to... the steps necessary for the implementation of the Compact's provisions, particularly with respect to your land requirements".^{14/} The U.S. side offered no objections to having Micronesian observers from the land sub-committee present during the land survey, and agreed to expedite its survey and to keep the Micronesian delegation informed of its activities.^{15/} It immediately turned to planning the survey, keeping Senator Salii and the JCFS land sub-committee informed concerning plans for a U.S. survey group to go to Palau in the near future.^{16/}

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On November 16 Captain William J. Crowe, Jr., USN, Director of the Office for Micronesian Status Negotiations, addressed a letter to Senator Roman Tmetuchl of Palau, Chairman of the JCFS sub-committee on land, outlining plans for a U.S. survey group to go to Palau.^{17/} On November 27 Senator Tmetuchl replied informing Captain Crowe of a meeting of traditional and elected leaders of Palau on November 20 and enclosing a copy of the declaration adopted on that occasion.^{18/} In that declaration the traditional and elected leaders of Palau declared that they were "unequivocally opposed to the use of land in Palau by the United States military" and requested the Congress of Micronesia to "implement" this declaration. Senator Tmetuchl nevertheless stated in his letter that "it is not necessarily impossible to obtain leases from land owners and permission from village chiefs for U.S. military land use, in spite of opposition from Legislative Leaders", and he concluded his letter to Captain Crowe by saying: "Please let me know the date of your expected arrival so I can plan to be available to meet you".

Meanwhile the Congressional election in Micronesia a month after the recess of the talks at Barbers Point, had resulted in the defeat of two members of the JCFS. Referring to that complication, as well as to the Palauan declaration, Senator Salii stated in a letter of November 29 to Ambassador Williams that in light of the declaration and the changes in JCFS membership further negotiations should be postponed until "immediately after the First Regular session of the Fifth Congress of Micronesia",^{19/} i.e., March 1973.

Ambassador Williams and Captain Crowe met on Guam on December 18, 1972 with Senator Salii, who was accompanied by Representative Timothy Olkeriil of Palau, and arranged a joint visit to Palau.^{20/} During this visit, December 19-21, the local leadership indicated orally that its unwillingness to negotiate for U.S. land requirements/^{would last only} until Palauan public lands were returned to the district.^{21/} Both High Chief Reklai and the Acting Ibedul, however, said that they were in full accord that, despite the declaration, the survey for U.S. military land use leases should go forward, and Senator Salii said that if the U.S. considered an early survey imperative, it could be arranged. His advice, however, was to wait and make it a joint effort with the JCFS land committee.

Developments During 1973

On February 23, 1973 the High Chiefs on behalf of the Palauan leadership gave the United Nations Visiting Mission a resolution which said that the Palauan chiefs "refuse to consider any plan for the use of their land by the Army so long as there had been no satisfactory solution to the dispute concerning lands taken by foreign individuals or Governments".^{22/} Meanwhile on February 22 Senator Salii wrote the Ambassador saying:

"By now I am sure that you are familiar with the position taken by the people of Palau with relation to the question of the United States Delegation's proposal for options for military land in Palau. That position is that the people of Palau will consider the question only after all so-called 'public land' in Palau District has been returned to the traditional chiefs in trust for the people.

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"If your delegation is unable to agree to this condition prior to the start of the next round of talks, we will assume that you are either unable to do so or no longer desire the options previously requested. In that event, it is our intention to continue the negotiations on the basis that no land in Palau District will be made available to the United States. If, however, you agree to this condition, we will be prepared to discuss its implementation and the eventual sending of a land survey team to Palau."^{23/}

In his reply of March 16 Ambassador Williams said that the Senator's letter was the first word received on the subject from any responsible source since the Koror visit. "The United States" he said, "has made its position on land perfectly clear during the course of the negotiations. It intends to return to the Micronesian people title to all Micronesian lands now held under trust. The central questions are: to whom should the land be returned and when.

"I understand that there is a diversion of opinion within the Trust Territory and within the Congress of Micronesia on these questions. From your letter do I understand correctly that the JCFS now favors early action on the part of the Trust Territory administration transferring title to public trust lands in Palau to the traditional chiefs of that District for local decision as to the subsequent control and disposition of such land? Does the JCFS and the COM favor this same action for the other Districts as well and if so when?...

"Since my trip to Palau I have been giving the public land question my attention as I am basically in sympathy with the desire of those who

seek an early resolution to this problem. At the same time you may recall that you have said, and we have said, that the negotiations for U.S. land requirements as agreed in Annex B must be completed before the signing of a Compact.

"This entire question is one that deserves the most careful consideration. Therefore, it is very important that I have the further thoughts of the JCFS on this subject and the ramifications of your suggestion for all of the districts concerned. I would also be interested in the views of the JCFS on how it thinks the talks should proceed given the new position outlined in your letter that the political status negotiations should await the resolution of the disposition of the public trust lands before proceeding."²⁴

Meantime the Fifth Congress of Micronesia met in its first session in January-March 1973 but passed no legislation relevant to public land or status negotiations. In a letter of March 27 to Ambassador Williams Senator Sali'i stated, however, that the position of the JCFS on the question of public lands was also the position of the Congress of Micronesia (COM). He wrote:

"With reference to the question of to whom and when all public lands in Palau should be returned, the position of the Joint Committee on Future Status was, I had hoped, made clear in my letter of February 22nd. During the recently concluded session of the Congress, the Committee met and made the decisions which went into the letter, after meetings with the traditional chiefs and local elected leaders of Palau. Each member of the Joint Committee saw the finished draft of that letter and concurred in it. Accordingly I do not believe that it can be said that on this question there is a division of opinion on the question of public lands in Palau. Further, these questions had not been discussed in Congress until the Joint Committee took its position. Therefore, in the absence of any specific instruction to the contrary from the Congress on this question, you may consider the position of the Joint Committee as the position of the Congress.

"As to ramifications for other districts, no position has been taken by either the Congress or the Joint Committee.

"The situation, simply stated, is this: as we both understand, there can be no signing of any compact agreement until agreement has been reached on all issues, including U.S. land requirements. And in the

case of Palau no negotiations regarding U.S. land requirements can take place unless and until all public land in Palau is returned to the traditional chiefs in trust for the people.

"I recognize that this position may necessitate some additional consideration by your delegation as to its priorities. We would expect therefore to receive your response on this question prior to the resumption of talks, in order to avoid any unfortunately premature conclusion of them. We have arrived at a tentative date for the resumption of these talks, and I can assure you that I have every intention of going forward at that time should we receive your response. If we do not receive it, however, we must regretfully assume that the United States is unwilling or unable to accept our position, and hence has no further desire to continue negotiations. On the other hand, your reply might conceivably either agree to our position or abjure further U.S. demands for military facilities in Palau."^{25/}

The Ambassador's reply of April 14 noted that the Senator's letters of February 22 and March 27 had "introduced new elements and new conditions relating to the negotiations" and that the Senator's request "that Palau be singled out for special early consideration raises many complicated legal and jurisdictional questions, problems that cannot be resolved quickly".^{26/} The Ambassador assured Salii that the problem was being studied "as a matter of priority" but he pointed out that the introduction of "this new element" as a pre-condition to "further talks" had clearly made it impossible to proceed as earlier suggested with a meeting of the two delegations in May. He proposed instead that the heads of delegations meet in Hawaii during the first week of May.^{27/}

Pursuant to the Ambassador's suggestion, he and U.S. Deputy Representative James M. Wilson, Jr. met at Makalapa, Honolulu, on May 4 with Senator Salii, his co-chairman Representative Ekpap Silk/^{of the Marshalls} and Senator Bailey Olter of Ponape, also a member of the JCFS. At this meeting Senator Salii acknowledged that the JCFS insistence that there could be no resumption of negotiations until the public land had actually been returned was a new element.^{28/} The Senator said, however, that he felt a firm statement by the U.S. that it was willing to return the lands to the traditional leaders in the near future would be sufficient to permit talks to resume. He felt land negotiations should now be carried on with local authorities directly. Emphasizing that this was a very complicated

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and complex problem, the Ambassador said that in principle the U.S. has no difficulty considering the early return of public lands to the districts, if that is what the districts want. But it would be necessary to consult with the TT administration and with the districts. On the question of return of land to districts other than Palau, the Senator said he thought each district could decide for itself and that all would probably want their lands returned. Representative Silk and Senator Olter agreed.29/

With respect to Palau, the Ambassador reminded Senator Salii that requirement for an early survey in Palau was due to the JCFS insistence on knowing exact metes and bounds of U.S. land requirements.

Senator Salii said that the JCFS planned to visit the districts beginning in July to discuss status matters, and the Ambassador said the U.S. for its part would be undertaking further study on the public land question. The principals agreed to meet informally, concentrating on the land question, before calling a further formal round of negotiations.30/

Following their meeting in Honolulu, the Ambassador and the Senator flew to Majuro. On May 8 they met first separately and then jointly with the District Administrators where the Ambassador announced that the next round of status talks had been postponed by the declaration of the Palau chiefs regarding the return of all public lands in that district to the people. He said that while the U.S. has no difficulty in principle with such return, "what poses a problem is that the United States is requested to consider one district and not all the other districts. The issue is not return of public lands as such, but when and to whom these public lands should be returned".31/ Senator Salii informed the DISTADS that since United States options to use Palau land for military purposes were specifically mentioned in the present draft Compact of Association, the declaration of the Palau leaders on the subject in effect "blocks" further progress on the talks.32/

On the following day, May 9, Ambassador Williams sent a memorandum to Senator Salii reviewing with him the complexities of the situation regarding return of the lands in Palau, stressing the U.S. intention to give detailed study to the broad legal, jurisdictional and traditional matters involved, and requesting that the JCFS provide its views and

answers to a list of questions as follows:^{33/}

1. Should public land be returned simultaneously in all districts or should the districts have individual options as to timing and procedures?
2. Who would take title of the land on its return? If a corporate body, how and by whom should such body be established and what should be its composition?
3. What should be the procedures for adjudicating rival land claims at the district level?
4. Should the land management function and legislative authority concerning public land be transferred to the districts along with the transfer of the land?
5. How should tidal lands and lagoons be treated?
6. How can the rights of homesteaders be protected?
7. What should be done to protect current leases of public lands for public purposes in the districts and how should additional leases be handled to meet further public needs?

The Ambassador added, "The U.S. Government hopes that the Joint Committee can provide it with its views and answers to the questions posed in this memorandum at an early date. Pursuant to our discussion on May 4, I would like to propose that the informal meeting of the heads of delegation in June be devoted to an exchange of views on the general subject of this memorandum."

Meanwhile on April 30 the Palauan District Legislature passed Resolution No. 73(1)-30 accusing the Administering Authority of delaying the return of its public land and requesting the United Nations "to assist the people of Palau to support the purpose and intent of this Resolution". On May 21, Ambassador Williams was visited on Saipan by eleven chiefs from Palau, headed by High Chief Reklai, who had accepted his invitation to call on him. At the chiefs' request the Ambassador reviewed the subject of U.S. land requirements in Palau and the U.S. position on the return of public lands. Asked for their views, the Palauans responded that the U.S./Palau land question must be settled through the chiefs and land disputes must be resolved before any land settlement in the draft Compact can take place. The chiefs said further

that a return of land to them would be accompanied by a commitment to negotiate. The chiefs agreed in principle finally to accommodate the U.S. needs, reserving for negotiation the location and amount of land desired, and term and type of use.^{34/}

Shortly after this meeting on Saipan, the United Nations Trusteeship Council convened its annual session in New York in June at which the U.S. representative reported on the land issue, pointing out that the return of public land is a highly complex issue which cannot be resolved quickly.^{35/} Following that session, which he had attended, Senator Saliu met in San Francisco with Ambassador Williams on June 19.^{36/} On the public land question Senator Saliu provided preliminary answers to the questions raised by the Ambassador in his memorandum of May 9 along the following lines:

- a. In each district other than Palau district legislatures could decide when, how and to whom public land would be returned. The decision had already been made for Palau that the land should be returned to the traditional leaders.
- b. Responsibility for land management should be transferred to the districts along with title to the land.
- c. Transfer of public land should be conditional on agreement regarding land now used for public purposes and procedures for acquiring additional such land in the future.
- d. The central government should not have power of eminent domain.

With regard specifically to the land issue in Palau, Saliu said that "subsequent actions taken" had quietly nullified the declaration of November 20, 1972 and that the chiefs were now not opposed in principle to U.S. military options but wanted first to be assured that the land would be returned to them. Saliu said he foresaw future land negotiations being conducted at district level with landowners but that since such negotiations were an integral part of the larger status talks, the JCFS would want to be involved.

The Ambassador described his meeting with the Palauan chiefs on Saipan in May and noted their statements that they would be willing to commit themselves in advance to negotiate in good faith the options called for in Annex B of the draft Compact, provided they had firm assurances that the public land would be turned over to them. The U.S. would then be able to negotiate with the land owners concerned. The Ambassador

stressed the need to explore the public land matter thoroughly from all points of view. He noted in this regard that the Office for Micronesian Status Negotiations had invited some TT land experts to come to Washington the following week for consultations and that later in the summer the Office for Micronesian Status Negotiations staff members would be visiting the districts on fact-finding missions.

Following the return of the three TT officials from these Washington discussions on land, the JCFS, arguing that officials of the executive branch of the TT Government were responsible to the legislative branch, moved to obtain any reports and documents given the officials as part of the Washington discussions and issued subpoenas for them. The Trust Territory Attorney General declined on legal grounds to institute proceedings for contempt of Congress as requested when the officials did not respond to the subpoenas, and a civil case brought by the Congress before the High Court is still pending.

The U. S. sent its first fact-finding group to the field in July 1973, headed by U.S. Deputy Representative Wilson, which spent several weeks visiting the western districts of the Trust Territory. A similar group followed visiting the eastern districts. Both groups sought to ascertain first hand in the various districts the problems, attitudes and desires of the people with respect to the return of their land. Meetings were held throughout Micronesia with district legislatures, traditional chiefs, land commissioners, municipal councils, administration officials and other appropriate groups.

When Ambassador Williams advised Senator Salii regarding the purpose of the trips of these U.S. groups he also invited members of the JCFS to accompany them.^{39/} Except for the presence of Senators Salii and Edward Pangelinan/_{of the Marianas} U.S. however, during the Palau visit of the western/group, this offer was not taken up.

Meanwhile/_{during} the summer of 1973 two sub-committees of the JCFS/_{had} also toured the districts and delivered their reports both dated November 20, 1973 to the Congress of Micronesia. These covered a number of status

questions but stressed the importance of land as a fundamental element of Micronesian society.^{40/} In the western districts "it was the nearly unanimous sentiment of the people...that the so-called public lands in the districts should be returned to the people".^{41/} There were, however, wide variations in views as to how and to whom the lands should be returned. The western districts sub-committee found that the majority of the people in Palau "were willing to consider the subject of military lands in Palau if the public lands in that district were first returned to the people".^{42/} The eastern sub-committee reported that "at the minimum the future government of Micronesia should retain the discretion to accept or reject a request by the United States Government for land for its future military needs".^{43/} It pointed out, however, that there was an absence of consensus among the people with whom they met on the issue of disposition of public land in the eastern districts, and that therefore the sub-committee made no specific recommendation on the subject, believing that the issue should be explored further.^{44/}

report was submitted the

Before this report was submitted the United States, following the return of the two fact-finding teams on public land, prepared its findings. On September 21, Ambassador Williams cabled Senator Salii^{45/} pressing for answers to the questions posed in his memorandum of May 9 on the subject. Senator Salii's reply, sent on October 5, explained that the delay was due to the JCFS attempt "to get the views of the people of Micronesia on this important question";^{46/} He said that the information should be treated "in a flexible manner" and that the conclusions and recommendations "represent our impressions from the district hearings".^{47/} These were as follows:

1. Return of public lands should be accomplished by legislation adopted by the Congress of Micronesia. 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 by the High Commissioner or Secretary of the Interior, i.e., to quit claim all interests in public lands with respect to Palau. Simultaneous transfer to all districts is not necessary".

2. In general, legislation authorizing the transfer of land to the people of the district should provide that title be transferred to persons or organizations of persons specified by the people concerned.

3. In the absence of traditional means the Trust Territory courts should be utilized to adjudicate all conflicting land claims at the district level. No transfer of land from the Trust Territory Government should be immune from suit;

4. The land management function and legislative authority over land should be transferred to the districts along with the land; no eminent domain authority should be vested in the central government;

5. Title to tidal lands, lagoons and all submerged Trust Territory lands should also be returned to the districts.

6. An exception to the return of lands to the districts should be made for the purpose of protecting homestead entrymen who have not yet fulfilled the requirements for a certificate of compliance.

7. Public land presently used for public purposes should also be returned to the districts with the provision that the government could continue to use those lands presently used for public purposes.

Salii noted in his message that the people of Palau had requested the return of public lands in Palau prior to their further consideration of U.S. land requirements in that district. He stressed 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", and that a response was expected prior to the next round of talks.

Receipt of this message enabled the U.S. to complete its study of the public land question as it impinged on the status negotiations. This was followed by announcement by the Secretary of the Interior of a new U.S. land policy, contained in a formal statement of November 4, 1974, entitled "Transfer of Title of Public Lands from the Trust Territory of the Pacific Islands Administration to the Districts: U.S. Policy and Necessary Implementing Courses of Action".

In summary 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 United States found necessary in fulfilling its obligations as Administering Authority under the Trusteeship Agreement so long as that agreement remained in effect. The statement requested the Congress of Micronesia to pass enabling legislation to effect the early transfer of title/ It likewise requested the district legislatures to make known formally the wishes of the people in their districts as to their public land and to set up a legal entity for its return, if

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such is desired. The limitations and safeguards included provision for the land needs, ^{for public purposes,} present and prospective, of the Trust Territory Administration, protection of the interests of homesteaders and other tenants on public land, conditions for transfer of title to those public lands needed to meet U.S. defense needs under the terms of proposed future status arrangements, provision for settlement of unresolved claims to public lands, and for terms of disposition of tidelands and other marginal areas.

The Ambassador forwarded copies of the Policy Statement and an accompanying background paper to Senator Salif under cover of a letter of November 1 expressing the hope that they would serve as a framework for the resumption of status negotiations.^{48/} In his letter the Ambassador said: "You will note that the U.S. is inviting full Congress of Micronesia involvement in establishing the mechanisms for returning the public land to district control and effecting necessary changes in legislation. We believe such participation in this matter of concern to every Micronesian should help to insure that the desires of the people are met in fact. We thus assume that the Congress will wish to cooperate fully in this matter".

It was subsequently agreed by the two Chairmen that a meeting would be held with the JCFS on the public land issue to be followed, if that issue was satisfactorily resolved, by the resumption of formal status discussions in Round VII. JCFS agreement to the prospective Round was made contingent on results of the preliminary meeting on the land issue.

The public land meeting convened in Washington on November 13. In addition to the JCFS there was also present a delegation from Palau headed by the two High Chiefs and the Speaker of the District Legislature. The Ambassador noted that the purpose of the meeting was to clarify the new U.S. land policy and to answer any questions pertaining to it.^{49/} He stressed the fact that the U.S. had been holding land in trust for the people and was now willing to let the districts control it if this was their desire. "The central significance of the U.S. decision to return control over public land to those districts requesting it, is that the people of Micronesia, acting through their elected and territorial government and other types of leadership, are being asked to assume responsibility for managing matters pertaining to land, culturally the most prized and socially and economically the most significant commodity in Micronesia".^{50/}

With specific reference to lands in Palau, the Ambassador said: "I wish to emphasize that all of the lands in the Palau District on which, during previous negotiations, the U.S. has asked options for military use, are in fact included in the lands we are prepared to transfer to district control".^{51/}

The Ambassador expressed the belief that the policy met the principal Micronesian desires and should permit the Congress and the District Legislatures "great latitude in accommodating the major and sometimes diverse desires and concerns of each district relating to public lands".^{52/}

In his response Senator Salii stated that the terms and conditions set forth in the U.S. policy statement "will be generally acceptable to the Micronesian Delegation upon satisfactory resolution" of five points:^{53/}

1. Curtailment of the TT Government's power of eminent domain;
2. No agreement to lease of lands to the U.S. military as a precondition to return of title to public lands;
3. Leases on military retention lands should be subject to renegotiation before the termination of the Trusteeship Agreement;
4. Leases to individuals of land leased by the Trust Territory Government, but unused, should be terminated; and
5. All future negotiations for U.S. military land requirements must be conducted and concluded only with approval of the Congress of Micronesia and of a district legislature, if it so desires.

Ambassador Williams' response treated the Senator's points as follows:^{54/}

1. Power of eminent domain has been and will be exercised very sparingly and with strict regard for the requirements of due process of law; it can be shared with the districts but cannot be given up entirely during the Trusteeship;
2. Regarding military land, the Ambassador noted that the Palau delegation had said that it was prepared to make a formal commitment to negotiate in good faith and asked for confirmation that this commitment would be made prior to transfer of title to the district;
3. The U.S. policy does not address the problem of military retention land (all of which/is located in the Marianas), but that all of it would be returned except for that part which was to be used to meet U.S. needs as then being negotiated;
4. With respect to Trust Territory Government leases, if there were any subleases on unused lands, this situation would be corrected; and
5. As to/manner of negotiation the U.S. did not oppose the idea of leasing the

military land from or through the Congress of Micronesia or its agent or the districts so long as the lease was sufficient to bind the owners and any future Government of Micronesia to the terms of the lease. The U.S. could not, however, "finally sign off on a Compact until there is agreement on those provisions dealing with United States requirements to carry out the defense provisions of the Compact".

Following a recess, Senator Saliil stated that his delegation was "pleased at the willingness of the United States delegation to accept our basic position on the issues we have raised",^{55/} and confirmed that the Palau delegation, including himself, "has already made a formal commitment to negotiate (to accommodate U.S. defense requirements) after the land is returned" as contained in a formal statement of the Delegation of Palauan leaders, dated November 12, 1973, signed by the two High Chiefs, the Speaker and two selected members of the Legislature, with three witnesses including both Palauan Senators.^{56/} The statement declared that the Delegation "cognizant of the interests and wishes of the people of the Palau District approves of and hereby accepts the United States' proposals and recommendations contained in the United States Statement of Policy (on the transfer of public lands) subject however to the following specific terms or conditions:"

1. The Congress of Micronesia should not become involved in the process of returning title of public lands; if the COM fails to pass needed legislation in the forthcoming session, the lands should be returned by executive order.
2. Public lands in Palau should be returned to the traditional leaders.
3. Power of eminent domain should be exercised through the District Legislatures.
4. Return of public lands should not be conditions upon commitments to accommodate 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 accommodate the United States' defense requirements in the Palau District".

At the conclusion of the informal session, the Delegations issued a joint release which reported that they had "reached agreement on the basic principles relating to the transfer of title to Micronesian public land to the districts of Micronesia. Both delegations noted that they look forward to the early implementation of this policy regarding return of public lands".

The Seventh Round opened on November 14. In his opening remarks the Ambassador noted that "after an interminable period of waiting, stretching back over the years, indeed, the centuries, Micronesians now have the opportunity and responsibility to control, in accordance with their own laws and customs, the most precious commodity in all of Micronesia--land".^{57/}

In his response Senator Sali'i said, "Our Delegation preconditioned the resumption of these talks upon the return of so-called 'public' lands in Micronesia to their rightful owners.

"On the eve of our departure from Micronesia to Washington, we received from you a response to our request. It came as the people of Micronesia had long asked in the form of an official United States Government Policy. In its essence the policy is an agreement, a commitment, on the part of the United States that it will return the so-called public lands to the districts of Micronesia immediately.

"The actual implementation of this policy will, out of necessity, have to be held in abeyance for a few months pending certain actions on the part of the Congress of Micronesia and the District Legislature....

"I will only state here that your delegation and ours are able to open the talks this morning, because our Delegation finds the American policy acceptable with the clarifications and modifications agreed upon yesterday".^{58/}

Subsequently, the JCFS presented to the Congress its report on Round VII. The Committee's letter of transmittal signed by all twelve members addressed to the Speaker of the House and the President of the

Senate stated, "We are pleased to report agreement with the United States concerning the return of so-called public lands to the people of Micronesia".^{59/}

In Palau a special session of the District Legislature was convened to consider these developments, and on November 30 two relevant resolutions were adopted.^{60/} Resolution No. 73(S)-1 endorsed the Palau District position that public lands be returned to the traditional leaders of Palau and created a "body corporate consisting of said traditional leaders to be known as MENGKERENGEL A CHUTEM BUAI into which title to public lands shall be transferred to be held in trust for the people of Palau". The resolution specified that transfer of title to public lands in the district, whether by legislative enactment or executive order, should be made to this body.

The second resolution, No. 73(s)-3, declared it to be the consensus of the Legislature members, both elected and traditional, that the U.S. Land Policy Statement "as clarified and qualified" by the statement of the Palauan Leaders of November 12 (cited above) is "just, fair and long over due" and requested its speedy implementation with respect to Palau. The November 12 statement was declared by the resolution to be "hereby ratified, confirmed, adopted in its entirety and incorporated by reference by the Legislature in light of the interests, desires and wishes of the people of Palau". The resolution further urged the Congress of Micronesia to pass the necessary enabling legislation at its forthcoming session, but declared that if it fails to do so, the High Commissioner, the Secretary of the Interior or any other "responsible and proper authority of the United States Government are hereby most respectfully and urgently requested to consider and act favorably upon said Palau Legislature's statement by returning title to all 'public lands' in Palau through the medium of Executive Action no later than the last day of May, 1974 to its traditional leaders to be held in trust for the people of Palau".

Developments of 1974

Other districts too were giving thought to the resolution of the public land problem. It had been an integral part of the Marianas Status Talks from their inception in December 1972. In a letter to Ambassador Williams of January 11, 1974 the traditional leaders of Ponape, with the District

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Legislature concurring, affirmed that they expected all public lands in that district "to be returned to the people of Ponape" but that the Trust Territory Government could, "upon approval of the designated representatives of the people of Ponape" use such lands as it needs. The letter requested information as to the location and extent of such needs.^{61/}

The Second Regular Session of the Congress of Micronesia convened on Saipan on January 14 with the subject of return of public land high on its agenda. On February 11 the Administration bill the "Public Land Transfer Act of 1974", was introduced on the floor of the H0use.^{62/} As H.B. No. 298 it was assigned to the House Committee on Judiciary and Governmental Relations. On the following day, similar action was taken in the Senate^{63/}; and the bill (S.B. No. 296) was assigned to the Judiciary and Governmental Operations Committee.^{64/} The Senate Bill became the focus of attention and hearings.

Meantime Deputy Representative Wilson met on Saipan with Senator Salii. In a conversation on February 1 Salii assured Wilson that the Palauan leadership remained firm on their Washington commitment and underlined the subsequent approval action by the Palau District Legislature in its latest resolutions.

Salii said that not only Palau but also the Marshalls, Ponape, Yap, and Truk would not accept the idea of making a commitment as a precondition to return of public land which they believe to be rightfully theirs in the first place, even though Palau had been willing to give the commitment voluntarily and had done so when it was not made a precondition.^{67/}

On March 2 the Senate adopted Standing Committee Report No. 221 on S.B. No. 296^{68/} proposing extensive amendments. Senator Salii then stated: "I would just like to emphasize the point that this bill will, in fact, return to the people of Micronesia the so-called public lands which have been held, ostensibly, in trust for the people of Micronesia but which, for all practical purposes, have been controlled by the Administration. While there might be sections of the bill which might not fully satisfy one or more districts, the basic accomplishment of the bill is that most of the so-called public lands will be returned to the people of Micronesia".^{69/}

On the same day, March 2, the bill passed second and final reading of the Senate.^{70/} The bill was received by the House on the following day^{71/} (the penultimate day of the session), but a subsequent motion for recess meant that the bill could not be considered during the session^{72/} which came to a close on March 4.

In the wake of the Congressional session, Senator Salii and his co-chairman Representative Silk met for informal talks with Ambassador Williams and Deputy Representative Wilson at Carmel, California on April 1 to make plans for the next round of talks.^{73/} Salii observed that the failure of the House to pass the public land legislation was a major disappointment, but he hoped this could be remedied in the special session then requested for September/October. The Ambassador and Mr. Wilson reviewed the U. S. problems with the bill as it had emerged from hearings, pointing to specific areas where changes proposed in the original bill were contrary to the U. S. policy statement making it unacceptable. The Ambassador asked what the sentiment was now for having the public lands returned by Secretarial Order rather than COM action. Senator Salii said he thought it preferable to wait and see if the Congress would not pass an acceptable bill in the anticipated special session of the COM.^{74/}

With regard to U.S. land requirements the Ambassador repeated that there could be no signature of the Compact until these requirements had been met and recalled the need to send a military survey group to Palau. Salii said he felt it would be in the United States' best interests not to push for the survey just now but let the matter cool pending Congressional action on public land in the special session. Salii expressed confidence that the Chiefs would live up to their word as expressed in their declaration of November, 1973.^{75/}

A few weeks later at the end of April, the Ambassador and Salii met briefly on Guam and in a subsequent letter of May 2 the Ambassador wrote Salii that he hoped that by early summer the Palau survey could proceed so that subsequent negotiations for land options could get underway.^{76/}

Palau itself announced readiness to cooperate. A resolution of the Palau District Legislature of May 2, noting that negotiations for options required determination of sites, invited the U.S. "to show the Palauan Legislature at an early time the sites and locations of such possible options".^{77/}

On June 4, 1974 the forty-first session of the U.N. Trusteeship Council convened in New York and U.S. Representative Ambassador White reviewed for the Council developments during the past year on the subject of public land in Micronesia.^{78/} The Council subsequently noted "with satisfaction" and reported to the Security Council that the U.S. had announced its decision to return control over public lands to the districts.^{79/}

In early July the two status delegations met informally on Guam, following which the Ambassador accompanied by OMSN Director Captain Richard Y. Scott traveled to Palau.

In a meeting with the Palau District Legislature following up its resolution of May 2, the Ambassador asked for advice and suggestions as to when a small technical/engineering team should come to Palau to look over, with Palauan assistance, various sites for possible future facilities.^{81/} The Ambassador stressed that the U.S. had no plans for military activity in Palau in the foreseeable future, and there was no timetable for exercising the options. The Ambassador remarked that legislation for the return of public land was expected from the forthcoming special session of the Congress. Legislator Joshua Koshiba commented that Palauans felt that the High Commissioner should solve this problem even without COM action. The consensus of the meeting was that there was no objection to the coming of a military survey team to explore sites in Palau.^{82/}

The High Commissioner convened the special session of the Congress which met July 23-August 9. One of its particular purposes was the subject of public land. Administration witnesses outline at length the objectionable feature of Senate Bill No. 296 as amended. It was nevertheless passed by the House and after a conference confirmed the amended version it was transmitted to the High Commissioner on August 22.

Following adjournment of the special session, a U.S. survey team, headed by Rear Admiral Crowe visited Palau August 19-30 and explored suitable sites for the U.S. land requirements set forth in Annex B to the draft Compact. The team maintained close contact throughout the survey with Palauan leaders who facilitated the mission.^{83/}

On September 21 the High Commissioner addressed the President of the Senate and the Speaker of the House letters transmitting his veto message disapproving Senate Bill No. 296 due to its "many substantive and technical deficiencies".^{84/} The veto message included a detailed analysis of these deficiencies prepared by the Attorney General of the Trust Territory. At the same time it was announced that the High Commissioner was "prepared to take whatever executive action might be necessary to fulfill the administration's commitment to facilitate this transfer".^{85/}

On October 18 the Palauan District Legislature after hearing testimony from Senator Salii reversed its previous position and passed Resolution No. 74(2)-23^{86/} denouncing the High Commissioner's veto of the land bill, charging that by the veto "the United States has clearly demonstrated once again its utter unwillingness to return...public lands in accordance with the expressed desires of the people of Micronesia". Declaring that return of the lands by executive action would result in an "undesirable withholding of lands for the United States military", the resolution requested the JCFS "to suspend negotiations with the United States on the Draft Compact".

The U.S. and Micronesian principal negotiators met informally in Honolulu October 29-30 and discussed among other matters the transfer of title of public lands to the districts.^{87/} Senator Salii said that the shift in Palau's position regarding the U.S. options as shown in the District Legislature's resolution of October 18 was due to concern over two issues: eminent domain powers to be retained by the Trust Territory Government, and U.S. military retention land. Ambassador Williams said that the U.S. position regarding eminent domain had not changed since the November 1973 discussions. He hoped Palauans understood that there was no military retention land in Palau and that lands being considered under Annex B would be included in the transfer of public lands. With respect to the veto of S.B. No. 296 on

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the return of public land, the Ambassador said that testimony of the TTPI Attorney General had set forth U.S. requirements for an acceptable bill. The route now lay through executive action. On this Senator Salii commented that while his preference was for legislative action to transfer the land "It's the result that counts and not the method, and I do not rule out transfer by executive action".^{88/} The Ambassador checked with the Department of the Interior in Washington and was advised that the views of the Micronesian leaders would be welcome as executive action was being prepared and that Interior officials would be prepared to consult with Micronesian leaders in the process of preparing a Secretarial Order. The Ambassador outlined the steps that Palau would have to take before title to its public lands would be transferred by executive action and before negotiations for land options could begin and promised to confirm these in writing.

On his return to Saipan from Honolulu, Senator Salii, in a press release from the Congress of Micronesia, termed the meeting "very successful".^{89/} He noted that among the items discussed had been the issue of the return of public lands. In the release statement, the Senator, reporting that he had been informed by the Ambassador at the meeting that the Department of the Interior was in the process of drafting an executive order on the land return, said that the Joint Committee on Future Status took the position that it should participate in the drafting of the executive order to ensure that Micronesian interests are protected. According to the release, Senator Salii indicated that the draft Compact of Free Association was complete with the exception of Annex B concerning land use and options. He said no specific date had been set for the next round of negotiations "due to the U.S. position on Annex B, which requires further detailed negotiations prior to the next formal talks".

Ambassador Williams followed up the Honolulu meeting of principals with a letter of November 15 to Senator Salii. Among other points, the Ambassador said that the Department of Interior had agreed that Micronesian leaders will be invited to participate in a discussion of executive action to be taken for the return of public land. As requested at Honolulu by Salii, the Ambassador also reviewed in his letter the steps which Palau should take in order to expedite the land negotiations.^{90/} He also outlined these steps in his letter of the same day to Speaker Luif of the Palau District Legislature,^{91/} a copy of which was also forwarded to Senator Salii. The steps listed were: (1) Palau should formally request transfer of the public land; (2) the District Legislature should create a legal entity to receive title; and (3) in order to meet the Palauan commitment to negotiate in good faith the District Legislature should empower a local body with authority to negotiate regarding the U.S. land

options and to enter into a binding legal agreement. In the letter to Speaker Luii the Ambassador referred to certain specific points in the October 18 resolution of the Palau District Legislature (cited above) stressing that contrary to the resolution's assertion the amount of land to be returned by executive action on request would be exactly the same as that which would have been returned under the original land bill put before the Congress of Micronesia.

On November 18 Senator Salii cabled Secretary of the Interior Morton stating that the JCFS position was that the return of public lands "should be accomplished by legislation enacted by the Congress of Micronesia".^{92/} The Senator therefore sought the Secretary's approval of the re-passage of S.B. No. 296 over the High Commissioner's veto, and further urged in his message that representatives from the Department of the Interior, the Trust Territory Administration, and the Congress of Micronesia meet on Saipan "to attempt to cope with a mutually acceptable draft bill for the forthcoming COM session".

On November 20 Salii sent by cable a response to the Ambassador's letter of November 15.^{93/} Referring to the recent Honolulu meeting with the Ambassador, he repeated the JCFS preference for legislation rather than an executive order to return the public land. He said an executive order would be acceptable if: no conditions were set regarding return of public lands; only those conditions in S.B. No. 296 "and no others" were included in the order; and the order had prior "approval" of the JCFS, "rather than merely the views of local leaders". In the absence of such approval, Salii's message read, "I cannot agree to resumption of negotiations with you".

The Director of Territorial Affairs (DOTA) in Interior, Mr. Stanley Carpenter, communicated with the leadership of the Congress of Micronesia and others to arrange a meeting for consultation with Micronesian leaders. After considerable discussion of venue and timing, the meeting was set for December 9 in Honolulu.

Meantime Ambassador Williams replied on November 29 to Salii's message of November 20 expressing his surprise at the letter and at the message to Secretary Morton since they represented "departure in many important respects" from understandings at the recent Honolulu meeting.^{94/} The

Ambassador stated that neither he nor his associates had any recollection of any "conditions" laid down by Salii at the Honolulu meeting. The Ambassador also recalled that Salii had initially requested that the lands be returned by secretarial or executive order. Stressing that the U.S. policy is responsive to what the U.S. understands to be the wishes of the people of Micronesia, the Ambassador said: "We now know of nothing that should stand in the way of the...return of public lands to the districts to be held in trust for the people on exactly the same basis that was endorsed by the JCFS last year".

Meantime in Palau a special session of the District Legislature adopted a resolution on December 4 (No. 74(S)-1) to the effect that in the light of U.S. assurances that the method of return of public lands does not affect the amount to be returned and that the major conditions set forth in the Palauan Delegation's statement of November 12, 1973 would be taken into account in the return, the Legislature's resolution of October 18, 1974 (cited above) "is hereby rescinded and nullified" and the "previous position of the Legislature regarding the U.S. Land Policy is reaffirmed so that public lands in Palau might be returned with dispatch".^{95/}

The meeting with DOTA and TT officials took place December 9-10 in Honolulu under the chairmanship of Mr. Carpenter, and was attended by some eighty Micronesian leaders from all districts.^{96/} Principally at issue was the method of implementation of the U.S. Policy Statement on return of public land. Mr. Carpenter stressed that either method of implementation (by legislative or executive action) would return the same amount of land to the people of Micronesia. All districts expressed a desire for expeditious return of public lands. The Marianas, Marshalls and Palau supported a secretarial order, while representatives from Ponape, Truk and Yap supported the legislative method.

On December 26, 1974 by Secretarial Order Number 2969, Secretary Morton transferred the Trust Territory Public Lands to District Control. The accompanying press release stated that the Order, which becomes a part of the Trust Territory Code, "provides the legal framework for each district of Micronesia to request and receive title to applicable public lands within its jurisdiction". The Secretary forwarded the Order to

Micronesia in a letter of December 26 addressed to the Speaker of the House and the President of the Senate.^{45/} In his letter, pointing to the recent Honolulu meeting as latest evidence of the acknowledged fact that "there is certainly no congruency of opinion among Micronesians as to the most desired method" for return of public lands, the Secretary stated that "our main goal--to transfer title and control as the Micronesian peoples desire--need not be made hostage to this disunity of opinion". He stressed that the Order "when effective in every district will provide for the transfer of the same amount of land as any other approved mechanism of implementing the policy statement".

The Secretary concluded his letter with a reminder that "the United States is the only nation which has ever guaranteed the legality of the rights of Micronesians to their own land and has defended their land from foreign exploitation without fair compensation". He wrote further: "I feel....that there is no real connection between the public lands question and future political status. The peoples of Micronesia have asked for the return of their lands. In a manner consistent with its special responsibilities and its obligations to the United Nations, the United States has responded simply and directly by endorsing this request through the issuance of the policy statement and the Secretarial Order. This is a concern and a solution grounded in the present system of government under the Trusteeship; it is of concern for the future only in that it provides for a considerably wider degree of Micronesian ownership of land prior to the termination of the Trusteeship Agreement.

"It is in this light that the public land transfer has always been considered. It is in this light that the original Micronesian requests were made and through which the United States has fulfilled them".