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January 7, 1977

UNITED STATES POLICY TOWARD THE FUTURE POLITICAL STATUS OF MICRONESIA

PART A. SUMMARY AND RECOMMENDATIONS

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January 7, 1977

MEMORANDUM FOR THE SPECIAL ASSISTANT TO THE PRESIDENT
FOR NATIONAL SECURITY AFFAIRS

Subject: United States Policy on the Future Status of Micronesia

PART A. Summary and Recommendations

For more than seven years the United States has attempted to negotiate an agreement for a new political status for Micronesia and thus terminate the last U.N. Trusteeship, now widely considered to be a political anachronism after nearly thirty years of U.S. control. While a separate agreement was reached and approved earlier this year for the Mariana Islands to become a Territory of the United States, full implementation of that agreement was made dependent upon a final resolution of the future status of the rest of the districts of the Trust Territory, negotiations for which have yet to succeed.

U.S. policy objectives in these negotiations have been, first, to assure strategic denial of all Micronesia to any potential adversary and to preserve U.S. military base and land use requirements (mainly the Kwajalein Missile Range in the Marshalls and certain options in Palau); second, to seek a close and enduring political relationship between the U.S. and Micronesia; and third, to continue to provide sufficient financial assistance to Micronesia to underpin a close political and military relationship in the future and to help Micronesia gradually become more self-sufficient economically, although its dependence on outside economic support will be inevitable for a long time to come.

Early in the negotiations the U.S. offered first, territorial or commonwealth status, which the Congress of Micronesia rejected and requested instead negotiations for a Compact of Free Association. Negotiations for that purpose (minus the Marianas since 1972) have continued for six years without final agreement. Respecting the principle of self-determination, the United States has never refused to negotiate for a status of independence, but the Micronesian side has so far shied away from pursuing that solution, apparently out of a principal desire for undiminished continued access to U.S. financial support. If the Micronesians, despite the long standing COM commitment to free association, should evince an intention to negotiate for independence, further study and instructions for the U.S. negotiator would be required.

Last year, however, the Micronesians produced a draft Constitution, which provides for complete indpendence and a relatively strong central government. This has had schizophrenic results among Micronesians and in their attitude toward the U.S.: On one hand the draft constitution has demonstrated a growing desire among many elected leaders to seek independence as a premise for a close relationship with the U.S., partly as a better basis on which to gain leverage with the U.S., as shown by their current attempts to subordinate a status of free association (as exemplified by the Compact) to a status of political independence (as exemplified by the Constitution). On the other hand that draft constitution has challenged deep traditional and historical differences and rivalries between and within the districts, stimulated separatist tendencies, and aroused such internal opposition that the constitution as drafted will probably fail of popular approval which it requires be given by at least four of the six districts. The United States is thus presented, for the time being but perhaps not for very long, with a situation where a majority of the people in most or all of the districts would opt for free association rather than independence and for maximum district autonomy rather than a strong central government. At the same time the U.S. is faced with a situation where some of those nationalistic leaders with whom the U.S. has perforce been negotiating prefer independence to free association and seek to delay or prevent a popular plebiscite on a Compact of Free Association. Other leaders would prefer free association but only under a treaty relationship between an independent Micronesia and the United States.

From a U.S. point of view the spectrum of future status options as they range from U.S. territory or commonwealth to free association to independence represents a decending order of military/strategic desirability and an ascending order of political desirability. The extension of U.S. sovereignty over Micronesia as a U.S. territory or commonwealth would provide the most reliable guarantee for strategic denial and preservation of the U.S. military presence in Micronesia. Such extension of U.S. sovereignty would, however, run counter to expressed Micronesian rejection of such a status and expose the U.S. to severe criticism in the U.N. and the world for failing to uphold the principle of self-determination and the U.S. responsibility under the Trusteeship Agreement to work for self-government or independence for its

trusteeship. An independence solution would, however, pose the greatest risk to our strategic denial objective and the continued protection of the U.S. military requirements in Micronesia, but would satisfy those in the U.N. and elsewhere who champion freedom for all colonies and dependencies as well as satisfy those in the U.S. Congress who oppose acquisition of additional, and in this case, a financially burdensome territory. Furthermore, in considering an independence option, the U.S. would presumably have to try to conclude a pre-negotiated security treaty with Micronesia in order to preserve our military interests; however, there can be no absolute assurance that such a treaty would in the end be honored by a legally independent government of Micronesia. Moreover, "independence with strings" in the form of a pre-negotiated treaty would still be subject to criticism by at least the more extreme anti-colonialists of the third world.

The concept of free association offers certain advantages not available in either of the foregoing options. First, in the form in which it has been negotiated so far, it would provide adequate assurances for U.S. strategic interests and defense requirements. Second, it would provide for full internal self-government, and match as best we can presently determine, majority popular preference in Micronesia. Third, it would allow for unilateral termination (albeit after fifteen years) which satisfies the U.N. definition of free association. Fourth, it would provide Micronesia and the U.S. with an evolutionary period of trial and test before the Micronesians would have to make a final irrevocable decision on their future status, which they appear to be reluctant to do at this stage.

There are several reasons for urgency in being able to move ahead with the status negotiations. Foremost is the Micronesian position on marine resources and law of the sea issues, strongly reaffirmed in the declaration issued at the conclusion of the Micronesian Law of the Sea Conference on November 25, and declaring full support for the Micronesian position at the U.N. LOS Conference. A second reason for early resumption of talks after a six-month hiatus is found in the process of fragmentation which, despite some election setbacks in the Marshalls, is continuing in that district and accelerating in Palau in the wake of their September referendum for separate talks with the U.S. Additionally, the forthcoming regular session of the Congress of Micronesia, scheduled to convene on January 10, is expected to take up

legislation that will almost surely put the U.S. in an awkward position with regard to consideration of Micronesian jurisdiction over marine resources. Although Marshallese and Palauan representatives will probably attend the COM session, they will be looking for ways to put pressure on the COM and indirectly on the U.S. to support their agitation for separatism, possibly including a threat of future secession from the Congress. Micronesia's increasing involvement in the international arena and its frustration at continuing U.S. delay in dealing with the marine resources issue is risking the souring of relations between us to an extent that increasingly threatens the establishment of a climate of confidence and respect which are essential to a meaningful relationship of free association.

Therefore, we conclude that it is in the best U.S. interest at this stage to make a further effort without delay to complete and have approved by both sides a Compact of Free Associaton essentially along the lines negotiated to date. To do so, however, will require solutions to two difficult, complex problems:

1. Marine Resources: The Micronesians clearly consider this their most important economic resource with the greatest potential for eventual economic viability. They are determined to seek the broadest possible control over their marine resources of all kinds as a means to gain the maximum benefits therefrom. To accomplish this in our bilateral Compact negotiations they have sought to be allowed to negotiate independently with foreign countries, to sign in their own name international agreements on this subject and to have direct access to international dispute settlement machinery for this purpose. To date the U.S. has not agreed to these demands because we prefer not to dilute our foreign affairs authority under the Compact and because we have feared such concessions to Micronesia might make our problems on this score with territories under U.S. sovereignty, especially Puerto Rico, more difficult and set an undesirable precedent in the Law of the Sea Conference for non-recognized entities. Meanwhile, the Micronesians have claimed, and we have admitted, a conflict of interest on this issue in the law of the sea context. We have allowed Micronesia to have separate observer status at the LOS Conference and thus direct access to all its machinery and its participants. At the same time we have so far declined in the Compact negotiations to go beyond the position that the benefits from Micronesian marine resources (still undefined) should accrue to the people of

Micronesia. This falls so far short of the Micronesian position that this issue remains unresolved in the Compact. Unless the U.S. is willing to recognize the crucial and fundamental difference between the U.S. legal relationship to Micronesia under the present Trusteeship Agreement, as well as a future free association agreement, and our relationship with territories under U.S. sovereignty including Puerto Rico, there is little chance that negotiations for a Compact of Free Association can succeed. Therefore, if the U.S. wishes to avoid pushing the Micronesians to seek independence as the only solution to this problem from their point of view, the U.S. will be obliged to make concessions on this issue.

2. Political Fragmentation: Particularly in the last six months the United States has come under increasing pressure from leaders in Palau and the Marshalls to agree to separate negotiations. In the case of Palau this move has been motivated primarily by the possibility that a "super port" complex for oil transshipment, storage and refining may be located there by a Japanese-Iranian consortium, by a presumed Japanese insistence that a potential $300 million investment be protected by a stable U.S.-Palauan relationship, and by Palauan fears that potential superport revenues would be jeopardized by a strong central government dominated by the larger districts. There are other factors which exacerbate this problem in Palau revolving around cultural, financial, administrative and political concerns. Hence, the Palauans' opposition to the proposed draft Constitution, their push for separation from the rest of Micronesia, and their pressure for a close but separate association with the U.S.

In the case of the Marshalls, there is a long history of confrontation with the Congress of Micronesia over sharing the revenues generated primarily from U.S. activities related to the Kwajalein Missile Range. Influential Marshallese leaders oppose the draft Micronesian Constitution, want the Marshalls to be, first, independent of the other districts and ultimately independent of the U.S., after a relatively short period of U.S. "stewardship". Their first objective in seeking separate negotiations with the U.S. is to induce the U.S. to pay a far higher price for the alleged "strategic value" of the Marshalls and for the leases for the missile range where the U.S. has invested nearly $750 million but has paid only $750 thousand for the primary KMR lease for a period of 99 years.

Throughout the negotiations to date, the U.S. has maintained the position that the future government of Micronesia

should honor current military leases and land use agreements. Most Marshallese leaders have never accepted this position and continue to press for renegotiation of current leases, particularly those granting the U.S. "indefinite use". The COM negotiators have also consistently opposed the continuation of indefinite use leases in the Compact.

There are a number of leases and land use agreements related to the Kwajalein Missile Range; some are for specific periods of time (99 yrs and 25 yrs) while others (approximating 77 acres) are for in indefinite period of time. In all cases, compensation was paid in a lump-sum for the duration of the lease or agreement. However, the Marshallese receive $704,000 annually in compensation for dislocation agreements applicable to the mid-atoll corridor. The Marshallese view these agreements as being grossly undervalued in relation to their duration. Land use agreements providing for indefinite tenure have become anachronistic and this legal principle is under challenge in Trust Territory courts.

Roi Namur island, a key element in the Kwajalein Missile Range, has been used by the U.S. since the end of World War II. In 1960 the Trust Territory Government in an agreement with the U.S. Navy granted the U.S. use and occupancy rights for an indefinite period on the assumption that the island was public land. In 1963, Roi Namur landowners filed a claim alleging private ownership of the island. Protracted negotiations to settle the Roi Namur lease failed and in April 1975 a suit was filed against the U.S. Government in the U.S. Court of Claims to recover for an alleged uncompensated taking of Roi Namur. On December 15, 1976 the Court decided the suit was barred because the six-year statute of limitations which applies to all claims in the court has expired. The judgment of the Court in regard to the suit does not settle the problem of Roi Namur. Roi Namur will continue to be a contentious issue between the U.S. and the people of the Marshall Islands until some agreement on the land lease issue is reached.

Current instructions authorize the U.S. negotiator, in close consultation with the Departments of Defense and Interior, to renegotiate the leases, should the issue become critical to the successful conclusion of the negotiations on free association. It is becoming more and more evident that this might indeed be the case.

If the U.S. should accede to the demands for separate negotiations from the Palauans and the Marshallese, the likelihood of further fragmentation by the other districts would be strong and would probably increase the possibility that at least the leaders of Truk, the most populous district, would seek independence more seriously and attempt to play off the U.S. against other potentially interested powers, including even the U.S.S.R. Meanwhile, the U.N. Trusteeship Council has consistently inveighed against any further fragmentation of the Trust Territory beyond the separate arrangement for the Marianas, and key U.S. Congressional leaders have taken the same position.

If the U.S. wishes to continue to preserve some form of unity in Micronesia for the sake of the U.S. objectives described above, which we consider still valid, the U.S. will have to cope realistically with the causes of separatism.

The U.S. would have to take cognizance of the underlying causes and try to deal with them as effectively as possible. Although the Compact as negotiated to date treats the future government of Micronesia under free association as an internal Micronesian matter, the U.S. would presumably have to take steps to explore the feasibility of a confederation concept wherein the central regime would have only limited powers restricted mainly to essential common services and powers with a maximum degree of local autonomy reserved for each of the districts. This would be consistent with moves already made by the Trust Territory Administration in the direction of decentralization and Micronization and could be seen as responsive to the expressed concerns of most of the districts themselves for greater control over their own affairs. However, it may not prove to be sufficient merely to discuss this concept with the Micronesians in the context of negotiations for the Compact. It would probably be more attractive and persuasive to Micronesians in all districts if further steps were accelerated by the U.S. in the near future to modify the present Micronesian governmental structure as well as the U.S. administration in that direction. Such tangible steps would help to convince the Micronesians of our seriousness and thus give them more confidence that such a limited form of unity could and would be implemented under a Compact of Free Association.

In pursuing the negotiations we must look at political leverages that might be applied. In any event, a major effort is required to insure that all U.S. federal programs and financial commitments are coordinated within the executive branch in a way that would not hinder but rather enhance the U.S. negotiating objectives.

We can give no complete assurance that even if the premises and recommendations contained herein are accepted, the U.S. negotiator will in the end be able to obtain Micronesian acceptance, with reliable support from all the districts, for a Compact of Free Association. Despite his best efforts with maximum reasonable flexibility in his negotiating instructions, the Micronesian negotiators may still hold out for more concessions on the subject of marine resources and related LOS matters than the U.S. is willing to offer. Even if the U.S. moves towards the concept of Micronesian confederation with much greater autonomy for the districts, the Marshallese and Palauans may still refuse to participate with other districts in further negotiations and hold out stubbornly for separate negotiations with the U.S.

If those developments should occur despite the best efforts by the U.S. in the next stage of negotiations, the U.S. will inevitably be faced with harder decisions involving eventual fragmentation and independence for all or part of Micronesia. We believe, however, that a further serious effort should be made to complete the Compact of Free Association along the lines recommended herein, and only if those efforts fail, should new recommendations be made to the President for further policy decisions in the light of that negotiating experience.

Recommendations:

1. That the U.S. negotiator make further efforts to complete negotiations for a Compact of Free Association.

2. Regarding the marine resources/law of the sea issue, that the U.S. accept the premise that the U.S. legal relationship to Micronesia, now under the Trusteeship Agreement or later under free association, is and would be fundamentally different from the U.S. relationship to territories under U.S. sovereignty, and therefore that the U.S. would be justified in reaching agreement with Micronesia which need not be considered a precedent for U.S. territories, such as Puerto Rico, on this subject.

3. That the U.S. negotiator be authorized to seek agreement on the marine resources issue on the basis of Position II (Part B, pp. 14, 15), and only if that effort should fail, to seek agreement on the basis of part, or if necessary all, of Position III (Part B, pp. 15, 16). The negotiator will inform NSC at such time as it becomes necessary, in his view, to move beyond Position II.

4. That the U.S. negotiator be authorized to offer up to $5 million annually, on a matching basis with Micronesian funding from potential foreign fishing fees, to support a fishery surveillance/enforcement program, such offer to be contingent upon completion and approval of the free association agreement by the people of Micronesia and the U.S. Congress and implementable after that approval during the period of transition to the new status.

5. That the U.S. continue to refuse to undertake separate status negotiations with any single district except that if the next negotiating effort shows that Palau and/or the Marshalls are continuing to boycott the Micronesian negotiating group and to refuse to be bound by its negotiations, the U.S. negotiator be authorized to:

a. Propose simultaneous talks directly with each district for the purpose of reaching bilateral agreements with each district for Compacts of Free Association, contingent upon each district accepting an overall "umbrella" free association agreement between the U.S. and a "confederation" of Micronesia on matters of common interest to the U.S. and Micronesia as a whole, the latter agreement to apply to all districts.

b. Propose that revenues generated locally within each district be retained by that district to the maximum extent.

c. Offer, in close coordination with the Departments of Defense and Interior to include within the Compact of Free Association provisions to:

(1) Settle the long-standing Roi Namur land issue.

(2) Reduce tenure of existing long term and "indefinite use" military land leases for the sole purpose of providing an agreed specific tenure or duration for those leases, no shorter than the first fifteen years of the Compact with provision for right of renewal.

(3) Provide additional compensation as appropriate for the Military land leases and agreements in the Kwajalein Atoll, provided that the added cost of any further compensation paid would be held within the currently authorized ceiling for total financial assistance under free association. This offer would be made only if the above proposals (para. 5.a. through 5.c.(2)) have proven to be insufficient to gain Marshallese acceptance of a free association arrangement under some form of unity and the broader issue of renegotiation of current leases in the Kwajalein Atoll has become critical to the success of the negotiations.

6. That the amounts specified in any political status agreement for Micronesia or for districts of Micronesia be specified in static amounts not automatically revised for the changing value of the U.S. dollar. In this regard the language of Section 405(b) of the June 2 draft Compact, which provides for periodic review, but does not require compulsory adjustment, is acceptable.

PART B MARINE RESOURCES, LOS AND RELATED ISSUES

The Problem

The remaining substantive issue to be negotiated between the U.S. and Micronesia in the nearly-completed Compact of Free Association concerns the question of authority and control over Micronesian waters and ocean resources. (The term "Micronesian waters" as used hereafter refers to a territorial sea and economic zone of Micronesia as may be defined by international agreement.) The new Micronesian Commission on Future Political Status and Transition (CFPST) seems to be prepared to move ahead to complete the status negotiations and has proposed to the U.S. negotiator that informal talks be held in early December toward that end, specifically naming the issue of marine resources for discussion. This issue, including the matter of patrolling Micronesian waters, was not considered at the time of the 1973 USC Study and the issuance of the current negotiating instructions. The U.S. cannot resume negotiations until instructions have been approved on the relevant issues presented in this paper.

Discussion

1. The Micronesian View

The series of informal and formal talks last spring with the Micronesian Joint Committee on Future Status and other Micronesian leaders and the strong stance taken subsequently by the Micronesians at the LOS Conference have underlined the critical importance which they

attach to having authority to control commercial activities in their territorial seas and in an exclusive economic zone. Marine resources off the coasts of Micronesia offer one of the few potentials for meaningful economic development and this fact has prompted the Micronesians to request the United States to recognize their special need to preserve and control the development and exploitation of their ocean resources for their own benefit.

The Micronesians have taken the position that the question of Micronesian ocean resources is an internal matter recognized as such by the Trusteeship Agreement, and that therefore the future Government of Micronesia has a right to exercise jurisdiction and authority over the living and non-living seabed and subsoil resources in a territorial sea and an adjacent exclusive economic zone to the full extent that such rights are or may be recognized by international law or by international treaties or agreements. These concepts are now embodied in the Micronesian draft Constitution. Micronesians see a fundamental conflict of interest between themselves as a coastal state wishing to protect tuna resources within Micronesian waters and the U.S. as predominantly a distant fishing state which regards tuna as a migratory fish exploitable wherever found. They believe their interests cannot be adequately protected by the U.S. because of this conflict unless special provisions are made in the Compact. They believe specifically that an exception should be made to U.S. authority over foreign affairs to enable Micronesia to represent its own marine resource interests internationally. The Micronesians

have agreed, however, that such authority should not infringe upon necessary U.S. Government powers and responsibilities in the field of defense, or of foreign affairs generally.

The minimum Micronesian requirement for completion of the Compact may be an acknowledgement by the United States of Micronesian jurisdiction over Micronesian waters to the same extent that any such authority is or may be established for coastal States by international law or treaty or agreement. Compromises may then be possible in the other technical areas of contention regarding the foreign affairs aspect of the problem.

2. The U.S. View

The U.S. position has been that control over Micronesian waters is an external matter. Accordingly the U.S. under current provisions of the Compact granting the U.S. full foreign affairs authority for Micronesia, would hold full authority and responsibility for Micronesian ocean resources and Law of the Sea matters for the duration of the Free Association relationship. The CFPST was, however, informed by the U.S. in a letter from the U.S. negotiator on October 17, 1976 that:

> "The United States shares the desire of the people of Micronesia that Micronesia progress toward economic self-reliance; further the United States is prepared to negotiate on the basis that the benefits derived from exploitation of the living and non-living resources off the coasts of Micronesia accrue to the people of Micronesia. Enunciation of this principle in the compact would have to be in accordance with international law and subject to international agreements now or hereafter applicable and compatible with the provisions of Titles II and III of the Compact."

The letter envisaged the possibility of an agreement on LOS

principles in section 605 of the Compact with detailed arrangements to be contained in a separate annex as a means to complete the status negotiations.

3. International Considerations

In regard to foreign affairs authorities, and in particular to jurisdictional matters relating to Micronesian marine resources, there is a clear difference between the three status options considered in the Interagency Study. In the case of Commonwealth where the U.S. would be sovereign over Micronesia the U.S. would have complete control and conduct of all foreign affairs matters relating to Micronesia. By extension, the U.S. would also have full responsibility for the protection and preservation of all marine resources off the coasts of Micronesia, including the surveillance of Micronesian waters as well as the enforcement of the various resource rights applicable. In the case of Independence with a mutual security treaty, the Government of Micronesia would have complete control and conduct of all foreign affairs matters relating to Micronesia. By extension Micronesia, not the U.S., would also have full responsibility, operationally as well as financially, for the protection and preservation of Micronesian marine resources. In both cases the matter of negotiating with the Micronesians on the issue of Micronesian Law of the Sea and Marine Resources becomes moot.

However, the Free Association relationship raises the questions of which government will control and conduct which aspects of Micronesian Law of the Sea and Marine Resources jurisdictional matters. Under this

status relationship jurisdictional questions should be resolved in a manner that meets legitimate Micronesian interests while reducing natural friction points between Micronesia and the U.S., yet preserving ultimate U.S. control over any actions which might impinge detrimentally on basic U.S. security interests or international obligations. It is in the U.S. interests that Micronesian Law of the Sea and Marine Resources matters be resolved within the initialled Compact rather than within the independence framework embodied within the draft Constitution or within the framework of the UN LOS Conference.

Micronesia now has an "official observer" status at the Law of the Sea Conference and has participated actively in the Caracas, Geneva and New York sessions. It has formally petitioned the Conference for signatory status which could be granted by a majority vote of the Conference perhaps even over the objections of the United States. The U.S. has taken the view that only States may become signatories. Whether or not Micronesia becomes a signatory, current language of Article 136 of the Revised Single Negotiating text of the draft Law of the Sea Convention would, regardless of the terms of the Compact of Free Association, vest in Micronesia during its status as a non-self-governing trusteeship certain important Law of the Sea rights beyond those which the U.S. is currently willing to grant to Micronesia under a Free Association status.

A number of additional issues continue to separate Micronesia and the United States at the Law of the Sea Conference and remain to be resolved. These include not only Micronesia's desire to sign the Law

of the Sea Convention in its own name, but also Micronesia's support for Article 136 which among other things would vest ocean resource rights in the inhabitants of dependent territories and possessions (including U.S. territories), and Micronesia's desire to have access to the LOS dispute settlement mechanisms of the Convention. The United States has informed the Micronesians of U.S. opposition to their positions on these issues.

With the Micronesians having already been given with U.S. concurrence their own voice at the Law of the Sea Conference, and with strong indications that, under Third World sponsorship, they would be given the right to sign an eventual Convention in their own name, it would be extremely difficult to persuade them to pull back from their present stance. An attempt on our part to do so at the next Law of the Sea session without resolving Micronesian concerns in a bilateral context could prove abortive and counter productive to U.S./Micronesian relations. The United States may have an increasingly serious problem in the United Nations generally if it is not possible to achieve an early resolution of the future status questions, including control of marine resources.

4. U.S. Domestic Considerations

a. U.S. Commercial Interests

There are no known exploitable mineral or petroleum resources within the Micronesian waters. There are known quantities of marine resources, primarily tuna, which are significantly underfished. At the present time, U.S. commercial fishing interests are interested in increasing their activities in the waters off the Mariana Islands but

have only limited interests in Micronesia (the Caroline and Marshall Islands).

Under the present Trusteeship and the current U.S. approved foreign investment policies of the Trust Territory Government, United States commercial interests concerned with the exploration and exploitation of Micronesian ocean resources do not enjoy preferential treatment over other foreign commercial interests. U.S. commercial interests likewise would not enjoy preferential treatment under the Compact unless otherwise provided for. The Compact does, however, provide for most favored nation treatment in terms of trade between Micronesia and the United States.

Retention by the United States of foreign affairs control over Micronesian marine resources under Free Association would enable the United States to assure protection for U.S. commercial activities vis-a-vis non-Micronesian firms, whose proposed commercial activities conflict with basic U.S. foreign policy or security interests. This would also be true if Micronesians were granted appropriate juisdiction and control over Micronesian waters pursuant to the provisions of the Compact and applicable international law.

United States maritime economic interests might be further protected by specifically providing for most favored nation treatment for the exploration and exploitation of Micronesia's ocean resources. The United States could additionally seek to obtain preferential economic access to Micronesian ocean resources in the Compact or in a separate protocol in return for consideration by the United States of preferential

trade treatment for Micronesian goods, including tuna products.

If the United States exercises jurisdiction over an exclusive economic zone off the coast of Micronesia, the tuna question (whether regulated by the coastal state or regulated by international agreement), would be resolved to the United States' advantage although Micronesians would still have the freedom of entering into commercial agreements (including tuna) with private foreign enterprises for operation within their territorial area as long as there was no conflict with basis U.S. security interests and international obligations.

b. Enforcement (Surveillance and Regulation) in the Coastal Waters of Micronesia.

Micronesian negotiators have asked for the services of the U.S. Coast Guard to protect local resources against illegal exploitation. To date, the United States has not made any commitment with respect to surveillance or enforcement but has suggested that such services are cost-prohibitive if provided along Micronesian guidelines (strict enforcement of the territorial sea and fishing zones in each district). In the post-trusteeship period, the Government of Micronesia will have full responsibility for and authority over its "internal affairs". Presumably this could include control and enforcement of Micronesian laws in territorial waters. The Government of Micronesia would, under the Compact, be required to enact domestic legislation that is consistent with and that may be appropriate or required to enforce or implement those treaties and international agreements (including law of the sea) applicable

to Micronesia.

In view of the prospect that under a Free Association relationship the U.S. may well have to accept--for other concessions on the Micronesian side--certain financial obligations for the surveillance and enforcement of Micronesian waters (albeit economic zone vice territorial sea), the U.S. negotiator should be granted a certain amount of financial flexibility if required during the course of the negotiations on Micronesian marine resources.

The financial cost of surveillance and enforcement need not be exhorbitant. Formulas are available for low cost programs designed to assist the districts in attaining a local maritime law enforcement capability to patrol local waters. Such formulas could be initially financed through limited grants or loans, through technical assistance, and through scholarship programs. After the programs are commenced the revenues from the licensing of exploration and exploitation rights could be utilized to pay for the surveillance and enforcement program and to repay any "seed money" advanced by the U.S. The carrying out of surveillance and enforcement activities in waters off the coasts of Micronesia would certainly serve U.S. security interests as well as Micronesian interests.

In 1974 the closeness of the Free Association relationship--and the greater protection of U.S. security interests--was determined to be worth a level of $60 million per year to the United States. In view of the inflation since 1974 such a political relationship could well be

considered as worth $78.6 million per year to the U.S. This figure would compare with the $64-74 million which the U.S. will be spending in Micronesia in Fiscal Year 1980 according to current projections.

It is therefore believed that the U.S. negotiator should be authorized to commit up to a maximum of $ 5 million per year for purposes of surveillance and enforcement of Micronesian marine resources if necessary to reach agreement on the overall issue of Law of the Sea and Marine Resources.

5. U.S. Foreign Policy Considerations

a. Foreign Affairs Authority

Although Title II of the Compact as initialled provides that the United States Government shall have "full responsibility for and authority over the foreign affairs of Micronesia". the Government of Micronesia has proposed that it be given primary jurisdiction and authority over marine resources in and beyond its territorial sea as may be defined by international agreement subject only to the protection of basic U.S. security interests as provided for in Title III of the Compact. In the exercise of such authority, the Government of Micronesia seeks to negotiate and sign treaties and international agreements in its own name, to participate as a full member in international organizations and conferences, to have access to all dispute settlement procedures with foreign nations as provided for in the Law of the Sea Convention (including access to the International Court of Justice), and to decide in its own right whether to recognize and apply the provisions of treaties and international

agreements having a substantial impact on Micronesian marine resources.

These Micronesian proposals raise important foreign policy issues. Permitting the Government of Micronesia to exercise what amounts to a broad range of attributes and powers of a fully independent nation even within a limited and prescribed area of activity, would be inconsistent with the principle of full United States foreign affairs authority under the terms of the Compact. This could exacerbate rather than minimize the practical friction points in United States-Micronesian relations under a free association arrangement. Full United States authority in this area, however, could on the other hand, engender continuous friction between ourselves and the Micronesians and this in turn could have a harmful effect on the entire relationship.

Issues relating to Micronesian marine resources will continue to be, as they are now, of the greatest interest to the Micronesians; they also promise to be the focal point of any foreign affairs activity involving Micronesia. Deleting this area from the scope of U.S. authority could enhance the possibility of conflict between the United States and foreign countries over Micronesian actions which might be in conflict with U.S. policies or other international obligations, although the potential for disputes would be existent even if the United States had full authority over Micronesia's marine resources. Foreign nations may well seek to hold the United States liable (financially or otherwise) for Micronesian actions within Micronesian waters, notwithstanding the language of the Compact. However, the United States, under the terms of the Compact will

also be liable diplomatically for Micronesian actions within the land areas of Micronesia and, by logical extension, within their territorial sea.

b. Diplomatic Responsibility

It must be presumed and accepted that the United States will be viewed as the residually responsible party in any international dispute over Law of the Sea matters between Micronesia and a third country because of the ultimate U.S. responsibility for the foreign affairs of Micronesia. This would be true whether or not Micronesia would have enforcement responsibilities. For example, Micronesian confiscation of a foreign flag fishing boat could result in third country appeals to the United States Government for redress or even outright diplomatic protest. This risk and other possible international complications, such as diplomatic problems if Micronesian waters become a major poaching area for other nations, are inherent in the free association relationship. These disadvantages must be weighed against the political and security advantages which would accrue to the United States under the Compact of Free Association.

6. The Position-by-Position Approach

The following positions are incremental and incorporate the provisions of each preceding position. The negotiator, in his descretion after strong testing of each incremental position, may move beyond the Current Position to additional positions, or any part thereof, to obtain agreement on the marine resource issue.

Current Position.

Recognize that the benefits derived from the exploitation of the living and non-living resources off the coasts of Micronesia accrue to the people of Micronesia. Reject Micronesian requests for full jurisdictional rights over a territorial and economic zone, including other requests vesting independent legal authority over such areas with the Government of Micronesia. U.S. enforcement services would be provided on a case by case basis but the U.S. would hold full enforcement responsibility and authority. This position has been presented to the Micronesian negotiators and rejected by them as inadequate.

Position I.

Agree to recognize a territorial sea and economic zone off the coasts of Micronesia as may be defined by international law but limit the exercise of jurisdiction and enforcement surveillance by the Government of Micronesia over a territorial sea to matters not in conflict with international law or with the rights and authorities of the United States under the Compact (Titles II and III). The U.S. would agree to provide limited surveillance services for enforcing laws within the territorial zone. The United States would agree to exercise authority and hold enforcement responsibility over the economic zone for the benefit of the people of Micronesia. The U.S. could agree to provide such assistance to Micronesia for the conservation, protection and exploitation of resources off the coasts of Micronesia as may be agreed to by the United States and Micronesia. Reject all Micronesian requests for full jurisdiction and authority over living and non-living resources off the coasts of

Micronesia, including requests for the right to veto all international treaties, to negotiate government to government agreements affecting resources within the waters off the coasts of Micronesia, to be members of international conferences and organizations (unless permitted under Annex A of the Compact) and to have access to international LOS dispute settlement machinery.

Position II.

(Agreement upon any provision of this position is conditioned upon the following action by the Government of Micronesia:

--agree to establish a joint consultative body to coordinate control over, and endeavor to resolve questions relating to, marine resources.

-- withdraw support for transition provisions of LOS Revised Single Negotiating Text.

-- agree not to seek separate signatory status to LOS Convention.

-- not discriminate against U.S. maritime interests.)

-- agreement in principle that the Compact would prevail over any inconsistencies in any Micronesian constitution during the life of the Compact.

Recognize that Micronesia will hold authority over an exclusive economic zone, as well as jurisdiction over a territorial sea, as may be defined by international law--but limit the exercise of such authority

to those matters not in conflict with international law or the rights and authorities of the United States under the Compact (Titles II and III). The U.S. would provide such conservation and protection services as may be negotiated, but the U.S. would retain ultimate enforcement authority over the economic zone by virtue of Title II of the Compact. Agree to negotiate, at the request of the Government of Micronesia but in the name of the United States, government to government agreements relating predominantly or exclusively to resources in the waters off the coasts of Micronesia provided such agreements do not conflict with the international commitments of the United States. Agree to obtain the consent of the Government of Micronesia to such agreements prior to conclusion and signing of the agreements by the United States.

Position III.

(This final position is to be taken only as a last resort to gain Micronesian agreement to an overall Compact of Free Association and would be conditional upon approval by the COM of the Compact as completed.) This position includes all features and conditions of Position II with the following modifications:

Agree to represent Micronesia in any international dispute other than in disputes between the United States and Micronesia involving the resources off the coasts of Micronesia.

Permit Micronesia to negotiate bilateral and regional inter-governmental agreements relating to marine resources in its own name. However, any such agreement shall be conditional on prior U.S./Micronesian consultation and on U.S. concurrence prior to Micronesian signature in order to assure that such terms are consistent with U.S. international obligations and national security

interests.

Require that both the United States and Micronesia will sign such agreements.

Agree that Micronesia may represent itself in regional and international conferences and organizations relating to the resources in the waters off the coasts of Micronesia.

Recommendations

In order to secure an overall agreement with the Micronesians on law of the sea matters, the negotiator should be permitted to move through Position II as the negotiating situation develops, testing strongly each incremental position in order to reach agreement at the highest possible level of the position spectrum. Utilization of the final position (Position III) in concluding the marine resources issue should be directly linked to final resolution by the Micronesians of how U.S. grant funds will be distributed to the districts, and to their agreement to sign the Compact and secure its approval by the Congress of Micronesia. It is arguable that the final position goes beyond the concept of Free Association which both parties have been negotiating; however, the authorities granted to Micronesia under Position III are limited, specific exceptions to U.S. foreign affairs authority under the Compact and yet permit the U.S. to retain substantial influence and control over Micronesian activities in these areas. It is also arguable that Position III would create many friction points between Micronesia and the United States; however, failure to resolve the marine resource issue by failing to accommodate to some of the Micronesians' major interests essentially means failure to reach agreement on a Free Association relationship. The consequence would be that Micronesia could become more hostile to U.S. interests and could

seek to obtain full independence and full control over foreign affairs and marine resources, and severely limit U.S. defense activities in Micronesia. Such a consequence would mean that all Micronesian activities would be free from U.S. control, and any conflict in interests would be resolvable only by mutual agreement of the parties in bilateral negotiations. Negotiations under such circumstances would be far more complex and difficult for the U.S. if Micronesian/U.S. relations had become strained as a result of a failure in the status negotiations.