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19 June 1972

MEMORANDUM FOR CAPTAIN GORDON SCHULLER, USN
ISA/EA&PR

SUBJECT: Draft Compact Micronesia - U.S. Proposal -
Comments - Memorandum dated June 15, 1972.

The following comments and substitutions are largely self-explanatory; I have therefore refrained from providing extensive review in this memorandum, and recommend that if in their brevity the comments are not clear, we consider any questions raised by telephone. I assume that drafting in more precise language will take place after matters of substance are disposed of, and call attention here only to substance:

* * * * *

Sec. 101.

Subpara. b means that the Compact is the governing constitutive instrument rather than the Micronesian Constitution. Therefore, in the event of dispute over inconsistencies that might arise between the two instruments, the Micronesians must resolve that dispute with the United States. Dispute settlement proceeds in accordance with Section 901, to be settled by negotiation between the two governments, or by a tribunal of three, offering a binding opinion on both parties. In my view, this procedure, particularly when addressing disputes involving the Constitution, would probably meet with stiff resistance by both the United States Congress and the Micronesians. In fact, a tribunal might even follow the maxim that in the event of language interpretation creating disputes, a decision may be made

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against the drafting Party. I recommend retaining the first sentence of Section 901 and deleting the rest.

Subpara. (a) may cause difficulty in implementation; although under (a) "guarantees" are to be made part of the Micronesian Constitution relating to civil rights, those guarantees may turn out to be inadequately worded. I recommend either rewriting (a) or providing an adequate interpretive minute, * to the effect that the "guarantees" shall be in the same language as the corresponding language found in the United States Constitution.

Section 102.

The reason for adding this section is not entirely clear; it appears to repeat Sec. 101. I recommend its deletion.

Section 103.

This section might more properly be made a part of Part X of the Compact.

Section 104.

This section appears to be unnecessary and should be deleted; it grants nothing to the United States, while envelopping in vagueness what rights the United States already has.

Section 201.

Delete the clause in para. 1 of this section which reads "notwithstanding any other provision of this Compact." It is meaningless as it stands.

* In general, however, I believe "agreed minutes" should be avoided and care taken to get agreed language in the Compact.

Subpara. (b) is awkward in wording and substance. The clause should be reworded since the present language gives the United States the absolute power to decide what international treaties to which it is a party shall apply to Micronesia, yet suggests that in spite of this power the Micronesians have a power to "participate" through some form of consultation.

Section 202.

Does this mean that Micronesians are to be issued United States passports? If not, which is presumably the intention, what kind of passports are intended? The section should be rewritten.

Section 203.

This section merely calls for consultation on a number of subjects; it should be made part of a general section or "Part" of the Compact devoted to consultation and sharing of decision-making.

Section 204.

Replace the first sentence with:

"The United States shall have full (and exclusive) authority and competence to regulate air commerce to and among the districts of Micronesia. This authority shall extend over both internal and foreign air commerce and shall be exercised in consultation....." etc.

Section 205.

Rewrite the first part of the section:

The United States shall have full authority and competence over all matters pertaining to the defense of Micronesia, including but not limited to the power to take all necessary measures to protect Micronesia against armed attacks or the threats of armed

attack, to protect the security of the United States, its bases and defense facilities on Micronesia, and to exercise its responsibilities under the United Nations Charter in the maintenance of international peace and security."

The last sentence of Section 205 should be omitted, since it is a matter to be resolved by the SOFA or other base operating rights agreement with Micronesia.

Section 206.

Rewrite the section:

"The United States shall have the exclusive right to establish and maintain military bases and conduct military activities within the territory of Micronesia, and shall have full freedom of access to all bases and facilities and to areas used for the conduct of military activities. No other country shall enjoy rights or access without the express consent of the United States. These rights shall continue for the duration of this Compact, or for the duration or period of time set out in the military base agreements whichever is longer."

Section 207.

Eliminate the words "continue to" in the first line.

Section 208.

Rewrite the second line to read: "...shall be eligible to volunteer...."

Section 209.

In the third line substitute "by mutual agreement" for "in a special agreement," and in fourth line "shall remain in effect" in place of "shall continue in effect"

Section 210.

Delete. Section 206 should cover this, or should be rewritten to cover it.

Section 213.

Delete the first line. Superfluous. Only the sovereign State has the power of eminent domain unless otherwise agreed.

Section 214.

Consider rewriting. The present language is very broad and ambiguous, and might be used against the United States.

Section 303.

Omit the phrase "until such time as the Government of Micronesia shall adopt its own currency." The United States currency should remain the official legal tender at least during the duration of the Compact.

Section 304.

This section on Banking seems incomplete. Check out with appropriate offices of United States Treasury particularly since United States currency to be official currency and participation with FRB intended.

Section 401.

This section is awkward in wording. I recommend that language to the effect that all laws of the TTPI inconsistent with the Compact shall be repealed or modified to harmonize with the Compact.

Section 402.

The language in this section lacks precision, and should be rewritten. The following might be used as a draft of the first sentence:

"The Government of Micronesia shall enact any legislation necessary to ensure compliance within its jurisdiction with United States laws and measures relating to foreign affairs and defense or to any responsibilities assumed by the United States, or rights vested in the United States under this Compact." The remainder of Section 402 should be compatible with the proposed SOFA.

Section 501.

Reword the MFN clause here and in Sections 502 and 702 to read: "no less favorable than the treatment extended....etc." This wording "opens up" the grant and affords more liberal treatment. The sections should be reworded to meet with the clause drafting to be found in United States FCN treaties covering the same subject matter.

Section 901.

See previous comments under Section 101.

Section 1002.

Use the period of 25 instead of 15 years, "justifying" the term as being identical with that under which the TTPI enjoyed trust territory status.

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-Provide a "Part" dealing with "consultation" rather than distributing such undertakings throughout the compact.

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By way of final comment: the Compact appears to "defer" to the Micronesians to an unnecessary degree. The United States is in a position to "declare" what its position is and insist upon substantial acceptance.

The territories have been under United States power and have benefited from United States government for 25 years. The basic "conditions" under which the United States assumed the mandate are best set forth by Ambassador Austin in his submission to the Security Council of the United Nations on February 26, 1947. I have attached that statement here by way of reference.

SIGNED

Harry H. Almond, Jr.
Office of Assistant General Counsel
International Affairs

Att.

cc: Col. A. Smith, JCS
Capt. Shaid, ISA
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trusteeship of these islands. All the members which may have special interests in the islands have been sent copies of the draft agreement which the United States, as the responsible administering authority in the islands, has submitted to the Security Council.

Under the above circumstances, it is the view of this Government that the conclusion of a trusteeship agreement, pursuant to the Charter, for the former Japanese Mandated Islands clearly can take effect at this time and does not depend upon, and need not await, the general peace settlement with Japan.

The United States Government considers that it has fulfilled its immediate responsibility to the United Nations by having responded on last November 6 to the call of the General Assembly and by taking this occasion today to submit the draft agreement to the Security Council and to present some of the more important aspects of the agreement.

The United States Government will continue to administer the former Japanese Mandated Islands in the spirit of the proposed trusteeship and in conformity with the provisions of the draft agreement which implement the basic objectives of the trusteeship system during the time these proposals are under consideration.

It is the profound belief of the Government of the United States and of the American people that the administration of these islands by the United States in accordance with the terms of this draft agreement would contribute both to the maintenance of international peace and security and to the well-being and advancement of the inhabitants of the islands.

The Security Council began consideration of the draft trusteeship agreement on March 7, 1947 and continued examination of it on March 12, 17 and 28 and April 2, 1947.⁸ In a five and one-half hour session on April 2, the Council considered the entire agreement article by article.

During the course of the debates, requests were received from the Governments of New Zealand and India, that under Article 31 of the Charter, they participate in the discussions. New Zealand also requested that the members of the Far Eastern Commission not represented in the Security Council be invited to participate if they so desired. The United States agreed to these requests and the Security Council accordingly invited Canada, India, the Netherlands, New Zealand and the Republic of the Philippines to be represented at subsequent discussions. The representatives of all these states took an active part in the deliberations thereafter.

⁸ Verbatim records of the Security Council discussions on the United States draft trusteeship agreement are contained in the following United Nations documents: S/P.V. 113, February 26, 1947; S/P.V. 116, March 7, 1947; S/P.V. 118, March 12, 1947; S/P.V. 119, March 17, 1947; S/P.V. 123, March 28, 1947; S/P.V. 124, April 2, 1947.

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It is true that the fulfillment of the basic objectives of the trusteeship
system will depend in all trust territories—and this territory is no excep-
tion—upon the good faith of the administering authority as well as upon
effective supervision by the United Nations.

I can assure you on behalf of the Government of the United States that
the United States will faithfully support the principle of effective super-
vision by the United Nations as fully in this trust territory as in any other
trust territory within the limits imposed by its obligation to administer this
area in such a way as to preserve the security of the United States and
to strengthen collective security under the United Nations.

Articles 6 and 7 of the draft trusteeship agreement submitted to the
Security Council contain strong provisions relating to the political, economic,
social, and educational advancement of the inhabitants of this territory and
to guaranties of their basic human rights. These are the fundamental ob-
jectives of the trusteeship system, aside from the strengthening of interna-
tional peace and security. The United States is glad to invite the members
of the Security Council to make a searching examination of the provi-
sions contained in these articles not only in relation to the requirements of
the Charter but in relation to the comparable provisions of the trusteeship
agreements approved by the General Assembly last December. The United
States believes these articles, taken together with other provisions of the draft
agreement, provide a maximum degree of protection for the welfare and
advancement of the inhabitants of these islands.

The United States believes it has fulfilled the requirements of article 79
of the Charter, first by transmitting copies of a draft trusteeship agreement for
the former Japanese Mandated Islands to all members of the United Na-
tions which, in the view of the Government of the United States, may have
special interests in these islands, and now by formally submitting the draft
agreement to the Security Council for its approval.

The United States Government does not consider that there is any barrier
to the placing of these islands under trusteeship in accordance with the
Charter whenever the Security Council approves the draft agreement.

As a result of the war, Japan has ceased to exercise, or to be entitled to
exercise, any authority in these islands. The islands were entrusted to Japan
under mandate from the League of Nations following the first World War.
In utter disregard of the mandate Japan used the territories for aggressive
warfare, contrary to the law of nations, against the United States and others
of the United Nations. By Japan's criminal acts of aggression, she forfeited
the right and capacity to be the mandatory of the islands. The termination
of Japan's status as mandatory in the islands has been frequently affirmed,
as in the Cairo Declaration of 1943, subsequently reaffirmed in the Potsdam
Declaration and in the instrument of surrender accepted by the powers re-
sponsible for Japan's defeat.

All authority in these islands is now exercised by the United States. The
United States in repelling Japanese aggression occupied, and is in possession
of, the former Japanese Mandated Islands. This Government is not aware
that any other member of the United Nations has asserted any claim for

agreements it will conclude with the Security Council for the provision to the United Nations of "armed forces, assistance, and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security" as envisaged under article 43 of the Charter.

Pending conclusion of these permanent agreements under article 43 the United States will undertake that these islands play their part in whatever action the United States may be called upon to take in accordance with the obligations imposed by article 106 relating to transitional security arrangements.

The United States draft agreement provides that the administering authority may from time to time specify certain areas as closed for security reasons. This provision will not, of course, prejudice the full application to the entire trust territory of all international control and inspection measures that become part of a system of international control of atomic energy, other weapons of mass destruction, and conventional armaments.

The United States is willing to submit to international supervision, as provided in the agreement, the political, economic, social, and educational development of the inhabitants of the trust territory. It is equally willing to submit military and naval installations to whatever degree of supervision and control may be provided by agreements for the international control of armaments and armed forces.

In preparing this draft trusteeship agreement the Government of the United States bore constantly in mind article 73 of the Charter:

"Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants."

The United States Government believes that the draft trusteeship agreement now before you conforms fully with this principle in its provisions for the political, economic, social, and educational advancement of the inhabitants of the trust territory.

Although this is a strategic area vital to that system of international peace and security to which articles 73 and 76 refer, the United States draft agreement goes beyond the requirements of the Charter in strategic areas: it provides that articles 87 and 88—relating to reports, petitions, visits, and questionnaires in non-strategic trusteeship areas—shall be applicable to the whole of this trust territory, except that the administering authority may determine the extent of applicability in any areas which may from time to time be specified by the administering authority as closed for security reasons. This exception has been made in recognition of the fact that the administering authority of a strategic trust territory should have the authority necessary to safeguard the installations established in the discharge of its responsibilities for the maintenance of international peace and security.

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Most of the strategically important areas of the world, including those in the Pacific, are at present under the exclusive sovereignty of various of the larger nations. The United States, however, is proposing trusteeship rather than annexation as the basis for its administration of these highly strategic islands.

In undertaking to place under trusteeship a territory of such strategic importance to the United States as these islands, the United States is expressing its faith in the United Nations.

Our purpose is to defend the security of these islands in a manner that will contribute to the building up of genuine, effective, and enforceable collective security for all members of the United Nations.

The first of the four basic objectives of the trusteeship system set forth in article 76 of the Charter is "to further international peace and security." Since the area of the former Japanese Mandated Islands is of paramount strategic importance, the United States proposes, in accordance with article 82 of the Charter, that the trust territory be designated a strategic area.

In preparing this draft trusteeship agreement, the Government of the United States gave long and careful study not only to the Charter as a whole and to its specific provisions for strategic needs in special areas, but also to the draft agreements for non-strategic areas recently submitted to the General Assembly by five of the mandatory powers. This draft trusteeship agreement is viewed by the Government of the United States as conforming, in substance and in form, with the Charter and as promoting the interests both of the inhabitants of the islands and of the United Nations. It contains the terms upon which the United States is prepared to administer the former Japanese Mandated Islands as a trust territory.

In conformity with the provisions of the Charter for strategic areas the trust territory will contain bases. Many atolls in the territory have potential value as base sites or as anchorages. Few such sites, however, are being developed and maintained at present.

The United States will administer this strategic trust territory in accordance with the provisions of the Charter. In particular, the United States will administer the territory in accordance with the obligations contained in article 2, paragraph 4, to "refrain . . . from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations."

The United States as administering authority will insure that this trust territory shall play its part in the maintenance of international peace and security in accordance with its obligation under article 1 of the Charter—"to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace." Its administration will also be in accordance with article 84 of the Charter, relating to the part to be played by trust territories "in carrying out the obligations towards the Security Council" of the administering authority.

The United States intends, therefore, to include this trust territory as fully as those territories under its sovereignty in the special agreement or

The tremendous strategic value of the Mandated Islands to Japan is evident, however, in the way these islands were used in carrying out its basic plan of aggression. Before Japan entered the war on December 7, 1941, she had established fortified positions, naval bases, and air bases in the islands of the Japanese Mandates. As a whole, the islands formed a deep, well-defended barrier between the United States and Guam, the Philippines, and its British and Dutch Allies in the Far East.

The major part of the Japanese submarines which participated in the attack on Pearl Harbor staged through Kwajalein in the Marshall Islands. From this same base, Japanese submarines continued to carry out extensive operations against the United States shipping in the eastern half of the Pacific Ocean for years.

Air bases and amphibious staging points in the Marianas facilitated the capture of Guam in December 1941.

Air forces and naval forces operating from the Marshalls were used in the capture of Wake Island.

On the outbreak of war, the Japanese Mandated Islands, with their naval and air forces and shore defenses, served to screen and protect the southward advance of the Japanese against the Philippines and British and Dutch possessions in the southwestern Pacific Ocean.

The Palau group in the western Carolines served as the main forward support base for the attack on the Netherlands East Indies and Timor.

It was this interlocking network of naval and air bases in the Mandated Islands that prevented sending early and effective support to China except by circuitous and highly difficult routes.

The atoll of Truk was used by the Japanese as a great naval and air base from which they launched their attacks against New Britain, New Ireland, New Guinea, and the islands of the Solomons chain. It was a base for their projected attack against Australia. From Truk and other bases Japanese naval and air forces could and did penetrate to the eastward to threaten the Allied lines of communications between the United States, Australia and New Zealand.

Until they were reduced, or by-passed and rendered innocuous by air and naval attack, the Mandated Islands threatened our lines of communications to Australia and prevented our early return to the aid of the Philippines and to China. It was only after neutralization of Truk and capture of Peleliu and Angaur in the Palaus that it was feasible to return to the Philippines, and it was only after capture of the Marianas that serious military pressure could be placed on Japan itself by our B-29's.

Tens of thousands of American lives, vast expenditures of treasure, and years of bitter fighting were necessary to drive the Japanese aggressors back from these islands. These islands constitute an integrated strategic physical complex vital to the security of the United States.

The American people are firmly resolved that this area shall never again be used as a springboard for aggression against the United States or any other member of the United Nations.

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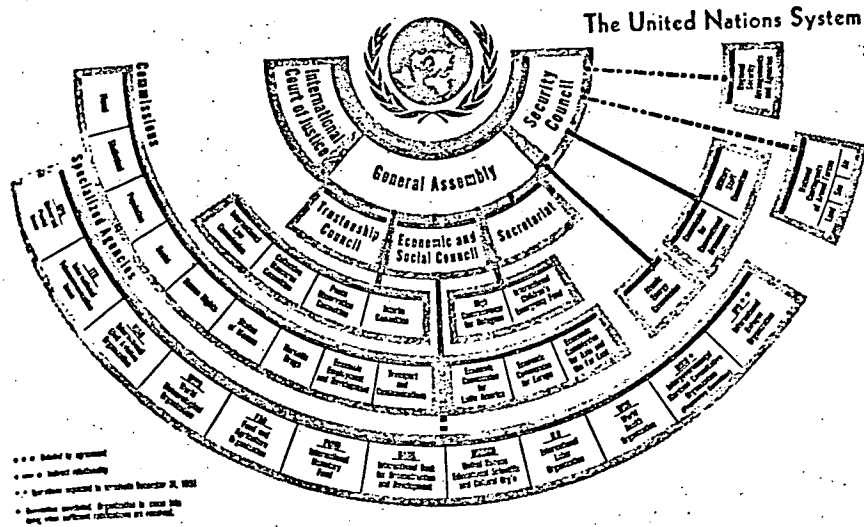
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The United Nations System

draft of a strategic area trusteeship agreement which sets forth the terms upon which this Government is prepared to place those islands under trusteeship. At an early date we plan to submit this draft agreement formally to the Security Council for its approval."

Final disposition of islands belonging to Japan must, of course, await the peace settlement with Japan. The draft trusteeship agreement submitted to the Security Council for its approval relates only to the former Japanese Mandated Islands, which never belonged to Japan but were a part of the League of Nations mandate system. The United States has consistently and strongly supported the position of the General Assembly that former mandated territories should be placed under the trusteeship system as soon as possible.

The General Assembly, at the first part of its first session, called on "those members of the United Nations which are now administering territories held under mandate" to undertake practical steps for the implementation of article 79 of the Charter. Since the United States was, and is, occupying the territory formerly mandated to Japan, the United States desired to play its part in attaining the objectives of the General Assembly resolution, namely that trusteeship agreements for all former mandated territories should be concluded promptly and the trusteeship system organized as soon as possible.

The Japanese Mandated Islands—the Marshalls, Marianas, and Carolines—consist of some 98 islands and island clusters with a total land mass of only 846 square miles, a total population of only about 48,000 native inhabitants, and negligible indigenous economic resources.

the motives of most men as mean and vulgar, with, of course, one notable exception. If I should send a commission to the Pacific islands to report to me on . . . the current results of naval administration they will all be yes-men . . . Mr. Ickes, among other things, is an expert on yes-men. He has taken pains to have a satisfactory number around him . . . For tolerance, understanding, wisdom and devotion to the cause of human freedom, I believe the admirals, when called upon for their final accounting before their Maker will not have to step aside, unless Harold Ickes does it by force.⁵

The text of the draft trusteeship agreement for the Pacific Islands was submitted to the Secretary General of the United Nations by the United States Representative to the United Nations, Ambassador Warren R. Austin, on February 1, 1947,⁶ with the request that it be placed on the agenda of the Security Council at an early date. It was scheduled on the provisional agenda for the 113th meeting of the Security Council.

Ambassador Austin formally submitted the draft agreement to the Security Council on February 26, 1947 together with article-by-article explanatory comments.⁷

In presenting this text, Mr. Austin read the following statement to the Security Council:

Mr. President, the United States, like other nations adhering to the United Nations Declaration of January 1, 1942, subscribed to the Atlantic Charter principle that "their countries seek no aggrandizement, territorial or other."

It was for the purpose of making clear that the United States adheres unwaveringly to this principle that the President of the United States on November 6, 1946 declared our intentions regarding Pacific islands whose control by Japan enabled her to attack the United States. The President said:

"The United States is prepared to place under trusteeship, with the United States as the administering authority, the Japanese Mandated Islands and any Japanese islands for which it assumes responsibility as a result of the second World War. In so far as the Japanese Mandated Islands are concerned, this Government is transmitting for information to the other members of the Security Council (Australia, Brazil, China, Egypt, France, Mexico, the Netherlands, Poland, the Union of Soviet Socialist Republics, and the United Kingdom) and to New Zealand and the Philippines a

⁵ *The Forrestal Diaries*, p. 232.

⁶ Security Council doc. S/281 of 17 Feb 47.

⁷ U.S. Delegation doc. US/S/119 of Feb 47; Security Council doc. S/281 in *Official Records of the Security Council*, Second Year, Supplement No. 8, Annex 17. For text of draft agreement and Ambassador Austin's comments, see app. 2, p. 1121.



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