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#14

July 10, 1972

MEMORANDUM FOR CAPTAIN G. SCHULLER, OSD/ISA (EA & PR)

SUBJECT: Draft #2 - Compact - TTPI - Dated June 28, 1972.

The above draft was prepared with some of the suggestions and comments made in my earlier memorandum adopted. The draft falls short of my expectations in several important respects, which are outlined briefly here:

1. Section 101 (b). The weakness in Section 101 remains. It is advisable for the Compact to spell out the precise language of the guarantees to be made by the Constitution of Micronesia. Reason. Unless this is done, it will be impossible politically at least for the United States government to make the needed changes at a later time, and it would cause unnecessary Congressional haggling by our Congress if not acceptable to that body.

2. Section 101 (c). This provision now reads:

"The Constitution of Micronesia shall remain consistent with the provisions of this Compact."

This language continues to trouble me both on legal and policy grounds. The language seems intended to read as follows:

"(c) This Compact shall be incorporated in and made part of the Constitution of Micronesia, and in the event of any inconsistencies between other provisions in the Constitution, and this Compact, the terms of this Compact shall control."

Comment. But when changed to read as above, it seems apparent that this might cause the Micronesians concern. Yet this is the clear intent of the provision and I therefore refer to my earlier comments.

3. Section 102. See my previous comments. It would be preferable to deal with this matter by reading it into the "record" in connection with Section 101. Section 102 is clearly redundant in view of Section 101.

4. Section 103. Do not include the terms in the bracketed section "sovereign and." As noted earlier this can cause concern and raise a fruitless exercise over where sovereignty lies. The right of self-government, independence and the like can be read into the negotiating and drafting records.

5. Section 104. Delete. See earlier comments. The "Alternative Text" is not an adequate substitute.

6. Section 201. If it is necessary to combine "foreign affairs" and "defense" in Title II, then subdivide the two further by making the first "Section A" and the second "Section B". Our discussions bear this out.

7. Section 201 - Introductory Paragraph. Rewrite: "The Government of the United States shall have full responsibility and authority...."

8. Section 201 (a) - Rewrite (a) to begin: The Government of Micronesia and the Government of the United States may consult (or alternatively shall consult) with each other at any time on matters of mutual concern... "Reason. The vesting of a legal "right" is out of place in this instrument. Either they shall or may consult, or they will be doing nothing.

9. Section 201 (b). Rewrite the beginning of (b) to read: "The United States shall apply to Micronesia any appropriate international treaty or agreement to which the United States is a party." Reason. This provision establishes a "duty" not a legal right.

10. Section 201 (b). Rewrite the second sentence to read:

"The Government of Micronesia agrees to enact such domestic legislation as necessary to implement or render legally effective such treaties or agreements."

Reason. The present language uses the unclear term "enforcement."

11. Section 203. This section is highly controversial. Recommendation: delete the section, and deal with the matter in the drafting and negotiating record. If need be, return for instructions.

12. Section 204. Rewrite the first sentence "The United States is authorized pursuant to Section 201 to regulate air commerce and maritime navigation in Micronesia." The vesting of a "legal" right in the United States seems inappropriate in view of the language used in Section 201.

13. Section 204. The second sentence of this section may cause some concern. What does "close consultation with the Government of Micronesia entail?" A veto power? The power to set air and navigation traffic patterns and schemes? Should reference be made here to the fact that the authority of Section 204 shall be exercised in conformance with international law, etc?

14. Section 205, et seq. Compare and propose the provisions adopted by the Department of Defense in place of Section 205 et seq.

15. Section 208. In the language adopted falls short of immigration laws applicable in the United States. Consult with Department of Justice/ Immigration for correct language. Distinguish citizens and nationals for this purpose. Determine whether this provision "survives" the termination of the compact.

16. Section 209. The term "legal status" is somewhat confusing. Consider instead starting with "The rights, duties and obligations..."

17. Section 210. It appears to be a "slap in the face" to use the first line. Instead, I recommend that the first sentence read:

"The Government of Micronesia shall have the (exclusive) right of eminent domain over all lands and the territory of Micronesia."

Reason. The change proposed pursuant to constitutional practices shows where the power lies, not where it does not lie.

18. Section 211. This section may need further consideration. In any event the first phrase is probably too limiting; it will be necessary to refer to all activities of the United States in the territory or affecting the territory of Micronesia. I recommend that this section be reconsidered by the Department of State accordingly.

19. Section 303. See prior comments recommending that the currency of the United States shall be the official legal tender of Micronesia during the duration of this Compact or during any term in which the provisions of Title II, Section B survive, Reason. A change in currency will cause serious problems fiscally, monetarily, and in banking activities (which are being undertaken by the United States); If these suggestions seem inconsistent with the objectives presently proposed, they should, in any event, be resolved by consulting the United States Treasury and appropriate officials there or at the Federal Reserve Bank. Finally, if the Micronesians seek to change their currency for any reason, there should be a provision here for consultation with the United States.

20. Section 303 - Comments and Fallback. The statement that the United States does "not really care if the Micronesians adopt their own currency" seems false, and the fact noted that "admittedly it would probably be a monetary disaster for them if they chose to do so" would also have severe implications upon United States activities on the islands, as well as upon the political and economic stability of the islands, upon which the United States power in large part depends. See comments in Para. 19 above.

21. Section 304. Supplementing the above comments of Paras. 19 and 20, this section enables the Government of Micronesia to "participate in United States federal banking programs in accordance with applicable United States laws and regulations." It would be appropriate in the negotiating record to indicate here and above why the Micronesians must - for their own self interest - retain United States currency.

22. Section 304. Comments and Fallback. This section is not clear. Would it not be appropriate for Micronesia to have the benefits and expertise available from United States banking practices?

23. Section 601. N.B. Section 602. Recommend that this be given further consideration. It would be more appropriate to avoid uncertainty for the Government of Micronesia to be "obligated" to establish citizenship criteria. In such event, rewrite:

"The Government of Micronesia shall establish by appropriate legislation and regulations criteria for Micronesian citizenship."

24. Section 601 et seq. Recommend that consideration whether these provisions will "survive" and if they do not survive in toto, I recommend that we consider in any event the separate survivability of Section 208.

25. Section 701. Consideration should be given - separately - whether advisable to have citizens of Micronesia who are not United States nationals to be accorded treatment as aliens. Reason. If a differing approach is taken to give such persons more favorable treatment it will enable United States to maintain stronger ties with Micronesia. This may be a desirable objective of United States policy. Secondly, compare the practice in other United States "territories", and with the British practice. Thirdly, if Section 701 is adopted as drafted, what about the quota requirements?

26. Section 702. Rewrite in accordance with United States MFN practice: "Micronesia agrees that citizens of the United States will be treated no less favorably than other non-Micronesians are treated." Reason. Leaves open the possibility that they may even and perhaps should be given preferential treatment.

27. Section 702. This provision leaves unclear the situation regarding United States MFN treatment of business or commercial enterprise. Should such enterprise and commerce be given "national" or preferential treatment? Check with the Department of Commerce on these matters.

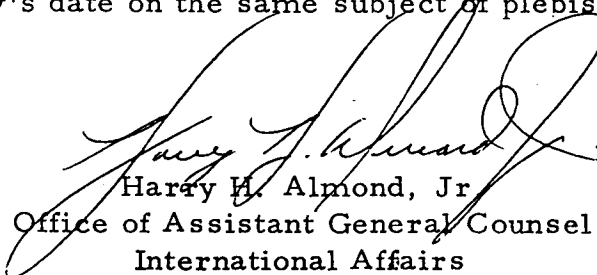
28. Section 703. Note that the Compact waives obligations on the part of the United States; no comparable waiver exists for Micronesia. May become a negotiating stumbling block.

29. Section 901. Comments and Fallback. Emphasis must be given to the position taken here. The United States should not be compelled to submit to using the United Nations or other third parties for settling issues relating to the compact. The Micronesian draft is unacceptable.

30. Section 1001. Delete the word "and" prior to "in accordance with their constitutional processes." The last phrase is a modifying phrase.

31. Section 1002. Termination. Adopt the proposals made in the Department of Defense meetings.

32. Section 1101. Note that this important matter must be made the subject of an appropriate inquiry. (See my memorandum of today's date on the same subject of plebiscite.)



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