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July 14, 1972

MEMORANDUM FOR CAPTAIN GORDON SCHULLER, ISA (EA&PR)

SUBJECT: Draft Proposals - Dated July 13, 1972 - Sections 201
and 202 - Proposed Compact.

Comment was requested on the above.

1. Tendencies for these drafts to come for continuous review and modification reflect the fact that a DoD representative is not on the negotiating team, participating in the discussions themselves, and directly advising Ambassador Williams. The positions and draft, carefully prepared within the Department of Defense, continue to represent the most effective, and most appropriate positions for the Department to take. New drafts tend to "compromise" or at least modify that stance much if not all of which must be regarded as non-negotiable.

2. Section 201 (a). One of the problems that this section creates is combining defense and foreign affairs powers together. By doing this, it becomes difficult to separate the two, and to treat them, once the Compact is terminated, as separate powers. But the Defense position has called for survival of both defense powers and powers relating to denial of foreign military presence. The Compact, once terminated, means the termination - not the survival - of foreign affairs powers. For this reason, there are tendencies for confusion to arise in using Section 201 (a) as presented here.

In part this problem can be avoided by providing with great care how these powers flow. I recommend the use of the otherwise redundant language "as hereinafter set forth in this Compact" to be added after the word "vested" in the third line.

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The language at the close of Section 201 (a) as provided here, i. e. the phrase "notwithstanding any other provision of this Compact" is misleading. Either full responsibility and authority is vested or it isn't. Unless there are reasons, not shown on the face of the Compact, for leaving the phrase in, I recommend its deletion.

Finally the clause is set out in the "passive" voice. I recommend that the sentence commence: "The United States shall have full responsibility, etc."

With the above comments in view, rewrite with additional changes included as underlined as follows:

"(a) The United States Government shall have full authority and responsibility over all matters which relate to or arise out of foreign affairs of and defense in Micronesia."

The term "arise out of" is different from "relate to." It is added to cover the "gaps" that might otherwise occur unless the reach of authority and responsibility is made clear.

3. Section 201 (b). This Section may be offensive to Micronesia, but, at any rate, is awkwardly written. I recommend its deletion or substitute language. In its place the subject-matter can be covered in an "Agreed Minute" (which would be made an integral part of the Compact, as in various SOFA's). However, if language must be used in the Compact, then, since it is very similar to that of the West Indies Act (U. K.), and as offensive, or inoffensive as that, I recommend the use of the West Indies language.

4. Section 202(a). The deficiency in this section is that it provides a continuing "undertaking" upon the United States apparently in perpetuity (which I understood was not automatically intended to operate once and if the Compact has been terminated); secondly, it is limited to "external attack or threats thereof" which is a limitation that was not proposed by us. The possibility was even raised (though clearly remote) that Micronesian districts might end up in conflict with one another.

Apart from this, reference should be made to various collective defense treaties of the United States wherein protection and defense are subjected to "constitutional processes", and reference made to "armed" attack. See for example the language used in Articles I-IV inclusive in SEATO.

5. Section 202 (c) The first sentence of this Section is not clear.

Signed

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cc: P. Barringer, ISA
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