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JOINT COMPACT DRAFTING GROUP

July 31, 1972

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Ron Stowe to provide notes.

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JOINT COMPACT DRAFTING GROUP

July 12, 1972

U. S. Participants:

Lindsey Grant
William J. Crowe
Herman Marcuse
Ronald Stowe
Thomas Whittington

Micronesian Participants:

Ekpap Silk
Roman Tmetuchl
Andon Amaraich
Paul Warnke
Michael White
Jim Stovall

The meeting opened at approximately 3:15 p.m.

The first subject for consideration was that of how the Joint Compact Drafting Group would operate procedurally. Lindsey Grant made a number of suggestions, all of which were accepted by Ekpap Silk. First, the three subjects to be initially discussed, before proceeding on to less important subjects, are the Compact's preamble, the internal affairs responsibility of the Micronesian Government and the foreign affairs and defense responsibility of the United States Government. No formal notes of the meetings will be kept in order to increase informality and permit flexibility. Meetings will be held as often as possible without setting up regular hours.

The first discussion concerned the Preamble to the Compact and each side gave the other its July 12th draft (the Micronesian preamble, for all practical purposes, includes Title I of its July 12th draft which sets forth the Micronesian four principles.) Each side met in private to discuss the other's preamble and upon reconvening, Paul Warnke allowed that they had no great objection

to our preamble, except that they thought it to be useful to state our mutual intention to terminate the trusteeship and also to set forth the Micronesian four principles, which are the principal description of the status of free association. We agreed to the need for a termination statement in our preamble, but suggested that the statement of the four principles as well as other background material could only cause confusion and bog the talks down in conflict over the inclusion of gratuitous statements. With respect to the four principles in particular, we stated that the Micronesians should indeed use them as criteria for evaluating the Compact in its entirety, but that we saw little need for specifically including them, especially since doing so may set up a later conflict with substantive provisions of the Compact. They tentatively agreed to this suggestion, but it is clear they may wish to include the four principles later.

In looking at the U.S.-proposed preamble the Micronesians took exception to the use throughout of the word "peoples" rather than the singular form "people." Lindsey Grant made a determined effort to justify the plural form, but in the end both sides reserved on the question. Finally, we gave the U.S. draft of Title I (Micronesian internal self-government) to the Micronesians and they gave us draft copies of their Title II draft, which relates to finance. Session ended at 4:30 p.m. and was scheduled to reconvene at 1 p.m., Thursday, July 13.

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JOINT COMPACT DRAFTING GROUP

July 13, 1972

U. S. Participants:

Lindsey Grant
William J. Crowe
Herman Marcuse
Ronald Stowe
Thomas Whittington

Micronesian Participants:

Ekpap Silk
Roman Tmetuchl
Andon Amaraich
Olter Paul
Michael White
Jim Stovall

The session began at 1:05 p.m.

First subject of discussion was the preamble. Mr. Stovall, acting as head counsel for the Micronesian group, said that the US 7/12 draft #2 preamble which Lindsey Grant gave to them was preferable to our earlier draft and was probably all right with their delegation, but that he wanted to check back on the exact language. Lindsey Grant said that we would be willing to drop the "s" in the word "peoples" in its first and last usage in the latest draft, but that we would leave it up to them as to whether the "s" should be included in the word "peoples" in its three other uses in the draft. In particular, he stated that there might be benefits to parrotting the wording of the Trusteeship Agreement wherever it was paraphrased: that where the Trusteeship Agreement used the term "peoples" in one context, that the Micronesians might wish to use the plural form as well.

Discussion then turned to Title I of our draft, which deals with the internal self-government of Micronesia. Lindsey Grant said

that we were not sure whether Sections 101 and 102 were in their proper order, and that perhaps they should be reversed if the Micronesians so desired. Jim Stovall said that they had no objection to the present order, that it seemed appropriate to have discussion of the constitution precede that of self-government.

With respect to Section 101 (b), Lindsey Grant expressed our desire to have some language included in the Compact specify that the Government of Micronesia would be democratic in nature, and have some separation of its branches. The reason for this, he said, was to assure Congress that we would not be supporting a dictatorship, remote as the possibility might be. Jim Stovall said that he understood the logic of our reasoning and the desirability of some such statement; the present wording, however, seemed to them somewhat restrictive. For example, the constitution might have the chief executive elected from an executive council. He was sure, however, that something could be worked out in this regard.

Discussion next centered on the specification in Section 101 (b) of the fundamental human rights and freedoms. Our 7/10 draft listed basic human rights which would have to be guaranteed, while the Micronesian 7/12 draft, at Section 102 (c), provided that the constitution had to guarantee the freedoms designated in Article 7 of the Trusteeship Agreement. The Micronesians were apparently

unhappy at the prospect of their basic freedoms being dictated by the Compact. We expressed concern about the confusion which was bound to arise through an incorporation by reference to an extraneous document, particularly one which would then be obsolete and perhaps difficult to obtain. In addition, however, the question of whether qualifications in Article 7 would also be applicable. Finally, we objected to their statement that the people of Micronesia would have the right to revoke, as well as to amend or change their constitution or form of government at any time. Jim Stovall agreed that the ability to revoke was not proper in this case and should be deleted.

Next, with respect to Section 101 (c), the Micronesians questioned the need for the laws as well as the constitution, to be consistent with the provisions of the Compact. Bill Crowe pointed out that in some cases subjects would not be covered by the constitution of Micronesia but would be subject to legislation. This might relate, for example, to Micronesian enactment of laws necessary to enforce standards contained in the federal programs applicable to Micronesia. The Micronesian group apparently recognized this possibility, and accepted our wording.

Section 102 which states that full internal authority shall be vested in the Government of Micronesia, was the subject of the day's major discussion. The Micronesians stated their strong objection to the word "vest" and stated that they greatly preferred

"resides." Lindsey Grant said that one of our major criteria in the use of any word or phrase was to let it be symmetrical; that the same term be used to give the Micronesians internal authority and the U.S. foreign affairs and defense authority. They quickly fell off of the word "resides" at this point, clearly not wanting to agree that foreign affairs and defense authority resides in the U. S.. As a result, they suggested, without saying that they would accept parallel wording in the foreign affairs and defense area, the following wording for Section 102: "The duly constituted Government of Micronesia shall have full authority to govern the internal affairs of Micronesia." We said we would think about this and both sides recognized that Section 102 could best be discussed along with our Section 201, which would assign foreign affairs and defense responsibility. Lindsey Grant at this point gave a long exposition on the reasons why free association was of greater benefit and worth more money to us than independence; that we had come prepared to talk about free association by their definition and that if they don't want to discuss it in free association in its recognized terms, then we will have to look at other alternatives. In this regard, Ron Stowe read the so-called United Nations/on free association which Lindsey Grant stated had been their definition in 1970, and that this was what we were proposing. More specifically, unless we had full authority in foreign affairs and defense, we would not be talking about free association.

Lindsey Grant gave them our foreign affairs draft from Title II, but not the defense draft. He also provided them with our paper on the areas of foreign affairs which would be delegated back to the Micronesians, a procedure which also goes back to the UN definition, noting that they would be able to do many things under such delegation which would be of great importance to them.

Mike White asked for the "metes and bounds" of our land requirements which Bill Crowe said would be provided them in general form somewhat later.

Discussion finally came to Section 103, where they quickly objected to the term "peoples." We agreed to the single form without objection. Jim Stovall then asked whether there was reference in this section to Page 54 of the Micronesian transcript of the Palau Talks which referred to the ability of one or more districts to remain in free association in the event of termination of the Compact. Lindsey Grant said that we were not pushing this concept but were leaving it up to their discussion and decision. Jim Stovall said that he clearly considered this arrangement an internal matter for Micronesia, to be decided by the constitution.

The meeting broke up at 2:20 p.m. and was scheduled at 2 p.m. on Friday, July 14th.

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JOINT COMPACT DRAFTING GROUP

July 14, 1972

U. S. Participants:

Lindsey Grant
William J. Crowe
Herman Marcuse
Ronald Stowe
Thomas Whittington

Micronesian Participants:

Ekpap Silk
Roman Tmetuchl
Andon Amaraich
Paul Warnke
Michael White
Jim Stovall

The meeting began at 3:05 p.m.

With respect to the preamble, the Micronesians (they) approved the draft which we gave them yesterday, using the singular word "people" throughout the paragraph.

With respect to Section 101, we presented them with our 7/14 draft which reflects their suggestions on our earlier drafts. Mike White questioned the use of the word "the" before the phrase "human/fundamental rights", and it was decided that the phrase should read "their fundamental human rights." After a short confab out of the room, the Micronesian Delegation approved our 7/14 draft of Section 101 with the single change already noted.

With respect to Section 102, we stated that we would accept their suggestion of yesterday, using the "shall have" wording. At the same time, we recognized the need for parallelism to the delegation of foreign affairs and defense authority (FA & D) authority in Section 201.

With respect to Section 103, they accepted our draft language, recognizing that there may later be some question with respect to termination.

Jim Stovall next turned to Title II, and reviewed their impressions of our description of the FA & D authority. Generally, they did not wish to assign full authority to the United States, but at the same time saw no problem in assigning certain authority in FA & D to each side. They don't think free association is so absolutely defined that there cannot be some mixture of authority. In particular, they did not like the concept of full authority in the United States, with a delegation back to Micronesia, but prefer a reservation to Micronesia in certain areas. He stated that this was primarily a problem in FA rather than defense, but there was not much to reserve in the area of defense. In general, they have a problem with the breadth of Section 201 (a) and want to avoid the carte blanche approach to defining FA & D under 201 (b). In Section 204 they have a problem with respect to the extent of the U.S. treaty power; they won't consent to the application of a treaty to Micronesia. With respect to Section 205 (c) as rewritten, they don't like the delegation power outside the Compact. Section 206 - they stated that it seemed inappropriate to place this within the FA & D power, that technical and safety aspects of transportation as well as licensing and routing, should be set forth in a separate appendix listing federal programs which would apply in Micronesia, such as FAA and CAB.

Lindsey Grant stated that we have long recognized Micronesia's desires for ambivalence in this area, but that it was easier to work from specific links than from general statements. We wish to underline the importance of this area to the U.S. -- it's a real hang-up. He stated the example of Wheelus AFB in Libya as an example of the undesirability of mixed authority in FA & D. Moreover, he stated that we are now up against a wall on

free association, that we have permission for this much but can't really go any further. Most important, we have gotten permission based on their 1970 Report, which stated that the U. S. would have full authority for FA & D. He stated that with respect to Section 204 the application of laws to Micronesia could be placed later in the Compact.

Ron Stowe gave an exposition on the foreign affairs nature of Section 206 concerning air safety and routes. In general, he said that there were international rules for safety and technical aspects of flights in international airspace or over the high seas. Thus, these would apply except, for example, for flights from one end of Babelthaup to the other. He said that we have a responsibility to insure adherence to these internationally accepted rules of the road but that we are not concerned about landing arrangements, rate schedules, etc. The same is true for maritime standards. We think that they would want these and we have an obligation to enforce them if we have the FA responsibility. In particular, the awarding of international air routes is so linked with FA that we have need for the authority. On the other hand, we are not asking the power to award routes which are not wanted by Micronesia - they must consent to new routes.

Jim Stovall noted that this would not prevent a U.S. veto of routes desired by the Micronesians. Lindsey Grant noted that this was true but that this was indeed a middle of the road proposal because neither party could operate without the other. Jim Stovall said that he didn't see any bugs under the bed but still insisted that it should not be under 201 but rather in a separate federal programs index. In particular, he was concerned about the air routes portion, which might restrict a Micronesian airline. Lindsey Grant noted that by putting it in the federal program category

mutual consent would be required, which could be withdrawn at any time. Tom Whittington noted the problems that would come up if Micronesia were able to pick and choose at will the application of regulations.

Jim Stovall suggested as an alternative to 201(a) language to the effect "The U. S. shall have all FA & D authority except as otherwise specified in the Compact," and that reservations would be set forth elsewhere. He noted that they subscribe to much of the language in the FA delegation paper, but not in the format of that draft. Lindsey Grant suggested that they set forth their thinking and their language in our format so that discussion can be simplified. He then gave their group our defense proposals.

Jim Stovall said that they wanted to know if we could get by this roadblock in FA & D, to which Bill Crowe said that we shared their curiosity. Lindsey Grant again suggested that they use our structure and work through the same organization in these important areas. Bill Crowe noted that in the defense papers just handed out the land requirements are set forth in general in the Compact and would be set forth in terms of "metes and bounds" in an Annex to the Compact. Lindsey Grant asked them not to hang up on a lack of/definition of land needs, that the annex provision in the will be part of the Compact document.

Bill Crowe mentioned that the Coast Guard had land requirements for LORAN which had not been previously mentioned as part of the military land requirements. He noted that these were civilian and military and that he would not wish to give the impression that the military needs had been increased. Mike White said that they had understood that this was one

of our needs but had simply considered it as a civilian activity under Commerce.

Jim Stovall asked if we had any theories (to which we might not ourselves adhere) on how to get around the 201 (b) problem of defining FA & D authority. Lindsey Grant said that we had based our draft on the West Indies formula to which they had referred in their 1970 Report and which left no doubt in drawing a line between internal and foreign affairs. Jim Stovall noted that they still felt they were talking about free association but considered it a dynamic concept, that they didn't want independence. Lindsey Grant lyricized and choreographed to the effect that we had gone the route on their definition of free association, that we had found a way to provide them with internal self-government, that we had found a way to give them termination; in fact, in FA we had moved toward a delegation in certain areas without asking for a similar delegation by them in internal affairs. In effect, we have gone the limit on free association.

Jim Stovall noted that they were not talking about vesting FA & D in the Government of Micronesia, then delegating it back to the U.S. Rather, <u>almost</u> full authority in FA & D would vest directly in the U.S. from the people of Micronesia, and not through the Micronesian Government. Lindsey Grant noted that this was Salii's basic 4/10/72 position but not talking about almost full authority, they were talking about being "a little bit pregnant." Jim Stovall noted that the Micronesians wanted some authority in the area of greatest concern to the home folks.

Next, Jim Stovall suggested that the 201 (b) question, the definition of FA & D authority, be jointly decided in the case of dispute by Micronesia and the United States. Bill Crowe noted that in terms of military operations, this was not a very practical solution.

Jim Stovall suggested that in the area of defense that as a definition of defense authority the Compact set forth the three basic principles of defense, with a statement that Micronesia won't infringe or interfere in these areas. Bill Crowe noted that this might have merit.

Bill Crowe asked what their environmental problems were in the area of defense. Jim Stovall said that they were primarily concerned about the storage of chemical and biological weapons and atomic tests. Bill Crowe asked if that was the problem or whether it was simple pollution. Jim Stovall said pollution was part of it. Ekpap Silk said that they were afraid of chemical and biological weapons to which Bill Crowe said that the President has eliminated biological warfare altogether. Jim Stovall asked about garden variety environmental problems to which Bill Crowe said that we could presumably extend protections to Micronesia, as that indeed our own standards are very high. Lindsey Grant said there was a possibility that we could apply environmental standards as strict as any requied by U. S. law.

Lindsey Grant stated that with respect to nuclear weapons, we have a treaty with Japan at present which causes real operations problems because of a Japanese veto of certain activities involving such weapons. Jim Stovall reiterated that they were primarily concerned about testing and Bill Crowe said that maybe we could do something about this. Mike White asked

about the PACE tests on Eniwetok, whether these were permissible under environmental standards; Bill Crowe explained the background of CEQ as being a public information and commenting process.

In response to a direct question as to what area most concerned him, Ekpap Silk said that he was most concerned about nuclear testing, and Bill Crowe reiterated that we can accommodate some of this.

The meeting ended at 4:30 p.m. and is cheduled to resume at 3:00 p.m. on Monday, July 17th.

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JOINT COMPACT DRAFTING GROUP

July 17, 1972

U. S. Participants:

Lindsey Grant
William J. Crowe
Herman Marcuse
Ronald Stowe
Thomas Whittington
Athol M. Smith

Micronesian Participants:

Ekpap Silk
Roman Tmetuchl
Andon Amaraich
Olter Paul
Michael White
Paul Warnke
Jim Stovall

The meeting began at 3:05 p.m., with Paul Warnke presenting us with the Micronesians' new Title II proposal on FA & D. (Sections 201-209). They had worked over the weekend on language in this area to describe their definition of FA & D.

The U. S. side left at 3:15 for a 20-minute private session to go over the new papers.

Upon reconvening, Lindsey Grant stated that we wished to make some general points, ask some questions, and that we welcomed their questions. Further, he said we were glad to get areas of disagreement down to real ones of language. Discussion follows on a section-by-section basis, referring to their 7/17 draft.

On Section 201 (a), we noted their inclusion of the phrase "except as specified elsewhere," which refers to reservations to U. S. foreign affairs authority. (They gave us their revised draft on FA reservations.) They made clear they intended no reservations to defense authority.

On Section 201 (b), we pointed out our basic conflict with them; that the U. S. needs the ability to determine what is FA & D. Also, there are the allied problems of the settling of disputes and the Micronesian enactment of laws to enforce international commitments.

Section 203 (a), which would give Micronesia the right of consent to international treaties and agreements, was also pointed out by Lindsey Grant to be inconsistent with U. S. authority for FA, and that this shaved our difference to the point where a "yes-no" decision had to be made. It would be difficult for us to sign a treaty not knowing whether it would apply to Micronesia. This problem must be resolved, and we suggested it be done in the same way as for the Cook Islands and the West Indies.

Next, in Section 203 (b), we noted the use of the term "application principally to Micronesia" with respect to treaties negotiated by the U. S. only at the request and with the consent of Micronesia. Paul Warnke said that this was not really an issue, but that they were concerned with treaties of principal effect in Micronesia but which might also include other minor areas under U. S. jursidiction. He said that they were not concerned about the specific language of this provision. He further said that Micronesia would generally be willing to enact laws of a local nature to support international treaties.

In Section 204 (b) we noted our disagreement with the notion of "reserving" areas of authority to the Government of Micronesia.

With respect to Section 205, which sets forth period of U. S. defense responsibility, Bill Crowe asked if they could elaborate on how this section relates to our sections on defense. Paul Warnke said that they had tried to set defense and foreign affairs out as separate areas, and that their Section 205 is a combination of our Sections 202 and 207. He said that Section 205 sets forth the U. S. defense responsibility in sub-paragraph (a) and in (b) insures that there are no restrictions on that authority. He said there was no intention of nuance of difference between our definition and theirs, but that they believe it better to spell out in full what the defense responsibility is so as to avoid a definition (201 (b)) problem at a later date. He said that they could not think of anything that would not come within their 205 language, and that they wished to assure us of the plenary nature of the defense responsibility. On the other hand, they did wish to avoid the overly broad application of our Section 201 language, that they did not want language such as that in the West Indies agreement.

The next discussion centered on Section 206 (c), which appeared to require the renegotiation of existing land leases. Bill Crowe asked for their reasoning in continually proposing such a section. Paul Warnke said that they had two points in mind, but then proceeded to discuss only one. It was their thinking that since these leases are generally between two parties, one of which is going out of existence (TTPI) that we would want to get some sort of a commitment from the new

government of Micronesia, and also that there should be set up a regular mechanism to handle these leases. Lindsey Grant said he assumed the U. S. Government would simply take over the TTPI position in the leases. Paul Warnke said that it was their desire to have all of the leases start at one point in time -- at the time of the coming into effect of the Compact. He also said that he could not say there was not a problem with the terms or conditions of the leases since he was not familiar with this side of the situation. In response to Lindsey Grant's question, Ekpap Silk said that there was no real problem or confusion in the leases as to who actually owns the land. Paul Warnke added that they wanted to avoid hiatus so that the existing leases would terminate on the day of the Compact when all new land arrangements would commence. He said there was no effort to prejudge the nature of these new leases, that if we were dissatisfied on the terms of the new leases then we could stall on the effective date of the Compact. He also said that it might be the same lease but with the names of the parties simply changed. Bill Crowe said we liked the leases as they are.

Lindsey Grant next brought up the question of specifying military land requirements: whether they should be set out in both the Compact itself and Annex A, since each position had been used by each party. Paul Warnke said that frequently they were simply curious as to the U.S. land requirements and having received our 7/14 draft of Section 208 they had achieved their purpose. As a result they now doubt the advantage of specifying land needs within the Compact and prefer that

specifications go only into Annex A. The question in their mind was whether land needs can be set forth in sufficient specificity in the Compact to be worthwhile.

Lindsey Grant next noted a difference in Section 207 which relates to our 7/17 draft of Section 209. The area of concern is whether other countries have access to Micronesia "without the express consent of the United States," as set forth in our draft. Paul Warnke said the Micronesians question the ability of foreign military to come in, that they did not want U. S. bases to be assignable to other countries. Lindsey Grant said that there was no thought of assignment but only that we would want to support our allies, ANZUS, for example, who might be working with us on exercises. Paul Warnke suggested in that case that it would be wise to split up the use of facilities in conduct of military activities within the Section to achieve our objective. He said that they want foreign military activities only under the control of U. S. forces, but not without the U. S. being completely in charge. Otherwise, they believe there would be an inconsistency with our desire for denial. Finally came a discussion of Section 209, with respect to which Lindsey Grant pointed out that we were using the term "permanent residents" with respect to eligibility to the draft. He noted that this term is usually used for aliens and that this section had been written on the assumption that they do not wish to be Nationals of the United States. Ron Stowe noted that the term "permanent resident" is a term of art. Paul Warnke acknowledged this

and asked the U. S. Delegation for a discussion of the history and merits of National status vis alien or citizen status. It became clear that no one had a full description at hand of the differences, but thatthe Micronesians are quite interested in this question.

In summary, Lindsey Grant said that we would attempt to change any section we could to conform to theirs, without changing our general position on the big issue of foreign affairs authority, that we are under instructions on the form of association we can agree to, and at this point it might be wise to send the issue back up to the principals. Accordingly, no meeting was scheduled at this time. The meeting ended at 4:25 p.m.

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JOINT COMPACT DRAFTING GROUP

July 19, 1972

U. S. Participants:

Lindsey Grant
William J. Crowe
Herman Marcuse
Ronald Stowe
Thomas Whittington
Athol M. Smith

Micronesian Participants:

Ekpap Silk
Roman Tmetuchl
Andon Amaraich
Olter Paul
Michael White
Paul Warnke
Jim Stovall

The meeting began at 2:10 p.m. with a long initial statement by Paul Warnke. He asked if there were any way to cut the Gordian Knot. He said that they had tried to isolate the basic problems so as to get to their resolution. He said that the basic problem is that the U. S. proposition does not really assure the Micronesians control over their internal affairs, but there is no way to get around this fact and that, as a result, he cannot recommend that the Micronesians accept our present proposal.

He said that the difficulty comes clear in our FA & D proposals, and other sections which implement our proposal. Essentially the U. S. would have full authority in FA & D as well as the power to define what is FA & D. He said that virtually anything that happens in this unique part of the world, however, is potentially laced through with foreign affairs implications. This is particularly important in the case of treaties and agreements for which the Micronesians would have to enact appropriate domestic legislation. The U. S. Section 206, for example, deals with internal concerns of air and sea transportation,

yet is laced through with foreign affairs implications and is thereby sewed up by the U. S.

Paul Warnke continued that they have endeavored to present an alternative, not to try to carve out an independent status but rather to preserve the right to determine what will happen in Micronesia. He said that under the U. S. formula everything is within the discretion of the U. S. -- treaty powers for such treaties as the U. S. elects to enter into -- full authority over everything is within the potential U. S. responsibility. He said that this makes merely token the statements that Micronesia can run her internal affairs.

He continued by saying that their solution was to vest specific authorities in both the U. S. and Micronesia, that the Compact would speak for itself as we had agreed at Koror. As a result they want to present substantial modification of the Micronesian position which should be the basis for a compromise . His solution was to carve out specific authorities in the gray areas, and recognize certain areas as implicit in the internal authority of Micronesia.

He said that international agreements could be broken down into three areas, according to their latest formula. First, there were multilateral treaties, which would be automatically applicable to Micronesia if applicable to the U. S. Examples are treaties on territorial waters—and the law of the seas. Second, are treaties with specific impact predominantly on Micronesia; these should be initiated and concluded by the U. S. on the request of the Government of Micronesia. Finally, there are bilateral treaties and agreements on which the Micronesians

want the ability to consent if they have specific impact on Micronesia. He said they had general difficulty with the traditional definition of free association, that until we enter into a relationship there is no pattern.

Lindsey Grant summarized some of our thinking at this point. First, that we recognize the problem of defining what is external and internal affairs. The problem from our standpoint, however, is that no one yet has succeeded in successfully resolving this matter. He said that the Micronesians were in effect saying that the traditional description of free association does not protect their interests. The idea of free association, however, was theirs, and after much work we thought we could live within it. But now they were saying that they could not live within free association and were thereby moving away from the frame of reference in which we had been working for a long time. The problem perhaps was to find a way for them to avoid defining away their powers just as they were saying we should define away ours.

Paul Warnke then replied that the proposed status was separate from any previous definition of free association because it is the first time the United States has entered into such an arrangement. In their minds, because of the strategic nature of Micronesia, there is a large gray area, with authorities which should be fully described in the beginning. In their mind there is no gray area in defense as shown by the fact that defense is within the dispute mechanism of their draft Section 202 (7/19 draft). The area is primarily in foreign affairs, where about six reservations are necessary to preserve Micronesian control of internal affairs.

Bill Crowe asked if this was basically the same proposal they had made before to which Paul Warnke replied that there was a major difference. Lindsey Grant said that we would go out to look over their new proposals, but if they had managed to square the circle that he would be both pleased and amazed.

After a 10-minute recess, Lindsey Grant presented a U. S. statement on their draft. First, he congratulated them on imaginative drafting, while noting that it wouldn't move us toward resolution of the problem to simply put a great deal of foreign affairs under the heading of internal affairs. "Calling a tail a leg doesn't make it so." He said that this was very much a resolution in their interest but poses us even greater problems.

He continued by stating that to say a definition of free association doesn't exist just because the U. S. doesn't have one is not conclusive, that we had flagged the problem of defining free association at Palau. In the treaty-making field he said he guessed that this kind of consent arrangement on treaties would create such problems for us that we would rather have nothing to do with Micronesia than to tie our hands in such a way in their treaty-making authority. The problem is to determine whether free association as they defined it is what they want. Having focussed on the definition problem they now have the choice whether their desired status of 1970 is any longer desirable and whether their latest position imperils their chances of getting a free association relationship.

He philosophized that a free association would require good faith on the sides of both parties; for example, in their Section 203 (b) (7/17 draft),

we thought we could clear up the differences in language. We said that we were not trying to trap them and that there can't be anything but an assumption of good faith in an association such as this. He asked them to determine whether the U. S. should take up major obligations, which would otherwise terminate with the trusteeship, where the interests of the U. S. are not really protected. As for the next step, he suggested that we leave this situation to our respective principals.

Paul Warnke replied by making 3 points. First, as a lawyer, he said he could not accept a hard definition of free association, that they had described the present position at Koror and that they could not go beyond these basic proposals. Second, he said that their latest proposal constituted substantial concessions, that the U. S. would have full authority in foreign affairs although there would be a list of instances in which the Government of Micronesia would be able to exercise some authority in areas of importance to the people of Micronesia. Third, their proposal provided expressly that multilateral treaties would apply to Micronesia of themselves, that the Micronesians wanted a consent authority only where the treaty was designed to apply primarily to Micronesia. He summarized by saying that the United States would retain sufficient powers to protect its interests -- that it would have total control in defense and sufficient control in foreign affairs to meet U. S. needs.

The meeting ended at 4 p.m.

U N C CONFIDENTIAL F I

JOINT COMPACT DRAFTING GROUP

July 21, 1972

U. S. Participants:

Lindsey Grant
William J. Crowe
Herman Marcuse
Ronald Stowe
Thomas Whittington
Athol M. Smith

Micronesian Participants:

Ekpap Silk
Roman Tmetuchl
Andon Amaraich
Olter Paul
Michael White
Paul Warnke
Jim Stovall

The meeting began at 1:45 p.m. with a general statement by Lindsey Grant. He said that the issues had been well stated by Paul Warnke at the last meeting and that we understood their feeling that the U. S. might wipe out their internal affairs authority. He said that he didn't need to underline that this was not the case, that we had no intention of taking back such authority. We do, however, recognize the difficulty of the problem.

Lindsey Grant continued by discussing our notion of the Compact. Either side could potentially cheat the other without much recourse; that a Compact is not like a court of law. Should one side sign a contract and later refuse to comply with its provisions, the subject acts could cause problems but could not be resolved within the provisions of the Compact. He said that neither side had reason to enter the Compact unless they believed the other would live up to their obligations, that we are asking each other to show good faith. For example, the U. S. expects to carry out the foreign affairs side of the Compact and fully expects the

Micronesians to carry out the internal aspects of foreign affairs; this depends on good faith on their part.

Lindsey Grant continued by discussing our latest proposals. He said that with respect to our Foreign Affairs proposals that these would show considerable evolution in an effort to set forth the relationship we envisage. (The U. S. side passed out its 7/21 drafts of Titles II and III.) With respect to their recent Section 103 proposals he noted that we had rearranged these by putting some in Title II and some in our foreign affairs delegation declaration (which was retitled Annex B) and some in later titles. With respect to Section 103 provision for regulation of air and surface transport (formerly our Section 206), he said that we could see their thinking but that we also believe it incumbent to retain the foreign affairs aspects of this question. We will be putting in some language which will hopefully clear this up. Lindsey Grant continued by discussing our new Title II. In Section 201 we had combined some of their previous language and some of ours. In Section 202 (b) we accept their use of the word "predominantly" in discussing treaties or agreements relating "exclusively or predominantly to Micronesia." In the same section he noted that we had not accepted their desire for consent on bilateral treaties affecting Micronesia; the breadth of our foreign affairs responsibility for the United States as a whole would be hindered by such an authority, where the overall effect on Micronesia might not be all that clear. Section 203 had been revised to reflect U. S. responsibilities in foreign affairs. Finally, he briefly

discussed Annex B, our foreign affairs delegation, he said that we had no intention of giving authority to them one day and taking it away the next.

Bill Crowe next discussed Title III, the defense authority. He said first that we had accepted their format of separating FA & D. We had accepted Section 301 as they had proposed and had accepted 302 with some minor changes. He said that Section 303 was our biggest problem at this point, that it was both a mechanical and substantive problem, which posed something of a dilemma. He said that before we go past Title III, we want agreement in general and acknowledgement of our land requirements. At the same time, Annex A will be a difficult area to negotiate and may take some time, thus if we stop to negotiate Annex A, this will hold up further drafting. Accordingly, we may wish to put some land language in Title III of the Compact which they could accept at this point. Paul Warnke said that there seemed to be two problems in this area. First, to get agreement on the extent and location of the required land, and second, to get agreement on the conditions and terms of the leases and options. He assumed that at this point we wanted to get their approval on the former. Bill Crowe said that this assumption was basically correct, but that he wanted to emphasize how fundamental to our interests their acceptance was. With respect to Section 204 Bill Crowe said that we were having something of a language problem and were not wedded to the present wording, but that we wanted the right to bring some allies into Micronesia under our control.

He said that Sections 305 and 306 were essentially the same but that changes had been made in Section 307 to make it symmetrical to foreign affairs sections.

At this point the Micronesians left the room and had a 20-minute discussion of our proposals. Upon their return, Paul Warnke said that he would try to provide us with their initial reactions to our latest proposals. He said that they recognized that it was a serious attempt to meet their wishes in the areas of difficulty in that it provided a basis for their consideration. He said that they recognized that they did not have the whole package as yet, that, in particular, they didn't have all the sections to which had been scattered their authority under their earlier Section 103. They said that they would like this as soon as possible so as to fill out the picture, that they considered these provisions integral to free association. He said that they felt our general approach was an attempt to accommodate their interests and as a result they wished to suggest a meeting for Monday morning, July 24th by which time they would be able to provide us with more substantive comments. Accordingly, a meeting was scheduled for 10 a.m. on that day.

Paul Warnke continued to discuss our proposals. He said that as they understood it, our intention was to eliminate Section 103 altogether and that some of its provisions as well as others from Section 204 were to be included in Annex B, which would be an integral part of the Compact. He said that as for Annex B, they were concerned about the breadth of the language of IV.

In the defense area again, Bill Crowe indicated that the U. S. wanted their assurance on lands to go into Annex A. Paul Warnke said that this could be discussed; of the list of lands presented earlier, he said that only the second on the list (Eneu in Bikini Atoll) had come as any surprise. He said he was under the impression that Bikini had been returned. Bill Crowe said that there had been a reservation of 1.98 acres at the time of the return, and Al Smith explained that this was for the purpose of an unmanned space-tracking station. Paul Warnke said that the question of land requirements was probably no great problem but that they were concerned with the separate specific areas rather than general descriptions.

Paul Warnke continued that their greatest concern from their brief reading of our papers was in Section 303 (b), which concerns provisions for subsequent U. S. land needs. He said that there appeared to be a major change having a substantive effect and wondered whether our intention was to prevent the Government of Micronesia from having the right of denial on requests for further land by the U. S. Bill Crowe said that Micronesian consent was still required but that our intention was to stress the urgency of a response. He said that we were not changing our position and were not wedded to this language but would be happy to re-work the wording to recognize Micronesian consent.

Paul Warnke said that in Section 304, which deals with denial and foreign military activities that they liked our general approach but that in 304 (b) they might wish to stress that foreign activities should be in conjunction with and under the control of U. S. forces. Lindsey Grant said that we were not tied to this language but that we had had some problem

with the use of the word "control" which was something of a term of art in military circles, but that we would be working to find suitable language.

Bill Crowe said that with respect to Annex A, he proposed that it be separated from the responsibilities of this drafting committee and assigned to another one on land matters, that this would enable the Defense Department to bring in land lawyers who were particularly knowledgeable in this area. Paul Warnke said that he saw no reason why this could not be done, that initially all we should be concerned with is the specification of the pieces of land and not the conditions and terms which could be worked out later.

Finally, Lindsey Grant said that three Section 103 subjects were to be included within the next three titles: Micronesian exit and entry, internal surface and air transportation, and the importation of goods and tariffs. He said that at this point we do have some wording problems which relate to some of the international aspects of these three areas. These sections must, for example, be cognizant of GATT with respect to tariffs and foreign affairs aspects, of transportation, and the possible security aspects of immigration.

The meeting closed at 2:45 p.m. and is scheduled to resume at 10 a.m., Monday, July 24.

CONFIDENTIAL

JOINT COMPACT DRAFTING GROUP

July 21, 1972

U. S. Participants:

Lindsey Grant
William J. Crowe
Herman Marcuse
Ronald Stowe
Thomas Whittington
Athol M. Smith

Micronesian Participants:

Ekpap Silk
Roman Tmetuchl
Andon Amaraich
Olter Paul
Michael White
Paul Warnke
Jim Stovall

The meeting began at 1:45 p.m. with a general statement by Lindsey Grant. He said that the issues had been well stated by Paul Warnke at the last meeting and that we understood their feeling that the U. S. might wipe out their internal affairs authority. He said that he didn't need to underline that this was not the case, that we had no intention of taking back such authority. We do, however, recognize the difficulty of the problem.

Lindsey Grant continued by discussing our notion of the Compact. Either side could potentially cheat the other without much recourse; that a Compact is not like a court of law. Should one side sign a contract and later refuse to comply with its provisions, the subject acts could cause problems but could not be resolved within the provisions of the Compact. He said that neither side had reason to enter the Compact unless they believed the other would live up to their obligations, that we are asking each other to show good faith. For example, the U. S. expects to carry out the foreign affairs side of the Compact and fully expects the

Micronesians to carry out the internal aspects of foreign affairs; this depends on good faith on their part.

Lindsey Grant continued by discussing our latest proposals. He said that with respect to our Foreign Affairs proposals that these would show considerable evolution in an effort to set forth the relationship we envisage. (The U. S. side passed out its 7/21 drafts of Titles II and III.) With respect to their recent Section 103 proposals he noted that we had rearranged these by putting some in Title II and some in our foreign affairs delegation declaration (which was retitled Annex B) and some in later titles. With respect to Section 103 provision for regulation of air and surface transport (formerly our Section 206), he said that we could see their thinking but that we also believe it incumbent to retain the foreign affairs aspects of this question. We will be putting in some language which will hopefully clear this up. Lindsey Grant continued by discussing our new Title II. In Section 201 we had combined some of their previous language and some of ours. In Section 202 (b) we ~~note~~ accept their use of the word "predominantly" in discussing treaties or agreements relating "exclusively or predominantly to Micronesia." In the same section he noted that we had not accepted their desire for consent on bilateral treaties affecting Micronesia; the breadth of our foreign affairs responsibility for the United States as a whole would be hindered by such an authority, where the overall effect on Micronesia might not be all that clear. Section 203 had been revised to reflect U. S. responsibilities in foreign affairs. Finally, he briefly

discussed Annex B, our foreign affairs delegation, he said that we had no intention of giving authority to them one day and taking it away the next.

Bill Crowe next discussed Title III, the defense authority. He said first that we had accepted their format of separating FA & D. We had accepted Section 301 as they had proposed and had accepted 302 with some minor changes. He said that Section 303 was our biggest problem at this point, that it was both a mechanical and substantive problem, which posed something of a dilemma. He said that before we go past Title III, we want agreement in general and acknowledgement of our land requirements. At the same time, Annex A will be a difficult area to negotiate and may take some time, thus if we stop to negotiate Annex A, this will hold up further drafting. Accordingly, we may wish to put some land language in Title III of the Compact which they could accept at this point. Paul Warnke said that there seemed to be two problems in this area. First, to get agreement on the extent and location of the required land, and second, to get agreement on the conditions and terms of the leases and options. He assumed that at this point we wanted to get their approval on the former. Bill Crowe said that this assumption was basically correct, but that he wanted to emphasize how fundamental to our interests their acceptance was. With respect to Section 204 Bill Crowe said that we were having something of a language problem and were not wedded to the present wording, but that we wanted the right to bring some allies into Micronesia under our control.

He said that Sections 305 and 306 were essentially the same but that changes had been made in Section 307 to make it symmetrical to foreign affairs sections.

At this point the Micronesians left the room and had a 20-minute discussion of our proposals. Upon their return, Paul Warnke said that he would try to provide us with their initial reactions to our latest proposals. He said that they recognized that it was a serious attempt to meet their wishes in the areas of difficulty in that it provided a basis for their consideration. He said that they recognized that they did not have the whole package as yet, that, in particular, they didn't have all the sections to which had been scattered their authority under their earlier Section 103. They said that they would like this as soon as possible so as to fill out the picture, that they considered these provisions integral to free association. He said that they felt our general approach was an attempt to accommodate their interests and as a result they wished to suggest a meeting for Monday morning, July 24th by which time they would be able to provide us with more substantive comments. Accordingly, a meeting was scheduled for 10 a.m. on that day.

Paul Warnke continued to discuss our proposals. He said that as they understood it, our intention was to eliminate Section 103 altogether and that some of its provisions as well as others from Section 204 were to be included in Annex B, which would be an integral part of the Compact. He said that as for Annex B, they were concerned about the breadth of the language of IV.

In the defense area again, Bill Crowe indicated that the U. S. wanted their assurance on lands to go into Annex A. Paul Warnke said that this could be discussed; of the list of lands presented earlier, he said that only the second on the list (Eneu in Bikini Atoll) had come as any surprise. He said he was under the impression that Bikini had been returned. Bill Crowe said that there had been a reservation of 1.98 acres at the time of the return, and Al Smith explained that this was for the purpose of an unmanned space-tracking station. Paul Warnke said that the question of land requirements was probably no great problem but that they were concerned with the separate specific areas rather than general descriptions.

Paul Warnke continued that their greatest concern from their brief reading of our papers was in Section 303 (b), which concerns provisions for subsequent U. S. land needs. He said that there appeared to be a major change having a substantive effect and wondered whether our intention was to prevent the Government of Micronesia from having the right of denial on requests for further land by the U. S. Bill Crowe said that Micronesian consent was still required but that our intention was to stress the urgency of a response. He said that we were not changing our position and were not wedded to this language but would be happy to re-work the wording to recognize Micronesian consent.

Paul Warnke said that in Section 304, which deals with denial and foreign military activities that they liked our general approach but that in 304 (b) they might wish to stress that foreign activities should be in conjunction with and under the control of U. S. forces. Lindsey Grant said that we were not tied to this language but that we had had some problem

did not trust U. S. actions in this important area. Paul Warnke said that the language was offensive and that the right of revocation was not necessary to the United States, since it had primary authority for foreign affairs. He cited the hypothetical case of a trade mission to Red China which would be difficult for the U. S. to withdraw whether or not it had the revocation power under Roman IV -- that revocation did not give the capability of enforcing U. S. policy. Lindsey Grant cited the hypothetical case of repeated violations by a delegate to an international organization -- that the only way to avoid such violations might be to revoke the power itself. Again, Paul Warnke said that revocation does not give the capability to enforce, that it is meaningless in practice and offensive in theory. He said that this sort of provision would threaten the Compact and that they would have to keep to their present position on termination (apparently referring to the 5-year bilateral provision). Lindsey Grant said that our termination proposal depended, of course, on their acceptance of U. S. authority in FA & D. Paul Warnke said that he realized this but that the revocation provision increased the likelihood of dissatisfaction and termination as soon as possible by the Micronesians. Again, Lindsey Grant stressed that if they had a problem with our language, that they should give us new language. Paul Warnke suggested that Roman II, III, and Section 204 (b) would give the United States veto authority over Micronesian foreign affairs activities and that this should be sufficient. He said also that while these may be matters of appearances, that they are of considerable significance to the Micronesians.

The meeting concluded at 12:15 p.m. with no future meeting scheduled at that time.

JOINT COMPACT DRAFTING GROUP

July 24, 1972

U. S. Participants:

Lindsey Grant
William J. Crowe
Herman Marcuse
Ronald Stowe
Thomas Whittington
Athol M. Smith

Micronesian Participants:

Ekpap Silk
Roman Tmetuchl
Bailey Olter
Tosiwo Nakayama
Michael White
Paul Warnke
Jim Stovall

The meeting began at 10:15 a.m. with a general statement by Paul Warnke. He said that the Micronesian Delegation had given a great deal of thought to our proposals and had concluded that they provided a basis for further negotiations and that our format goes a long way toward satisfying their basic concerns. He suggested that we proceed from the latest drafts to see if there are any major problems. He noted some particular concerns that they had: (1) that they wanted to see the three elements of their earlier Section 103 in some form (immigration, imports and tariffs, and regulation of air and sea transportation); clarification was needed in some other areas.

With this background, Paul Warnke proceeded to give their comments on our 7/21 draft, making reference at some points to their 7/20 draft. He said that we were agreed on the preamble, and Sections 101 and 102 (although there may be need for more work to insure parallelism with other sections). Their earlier Section 103 is dropped and replaced with the annex on foreign affairs, Annex A (from this time forth the foreign affairs annex is Annex A, the military lands

annex is Annex B). The previous Section 104 is renumbered to become Section 103.

Moving on to Title II in 201 (a), they want the "notwithstanding" clause deleted for the reason that it may conflict with Annex A. Section 201 (b) is satisfactory and Section 201 (c) would also be satisfactory but they suggest that it be made parallel in wording to Sections 102 and 201 (a) (avoid the "vested" language). With respect to Section 202, the U. S. treaty power, Paul Warnke said they are prepared to basically accept our format but believe that sub-sections(a)and(b)should be combined, since the distinction is now rather slight. He said, however, that they needed an understanding that treaties would apply to Micronesia without local consent in instances of general international concern -- non-particularized treaty. He wished to distinguish this from any situation where a treaty is intended to relate primarily to Micronesia. The U. S. Sections 203 and 204 were also acceptable.

Paul Warnke then began a lengthy discussion of Annex A. He said first that the first two lines of the Annex should be thrown out as being tautological. Next he said that there was no reason for distinguishing sub-sections (b) and (c), that they should be combined so as to take out the prior consent requirement in sub-section (c). (Lindsey Grant at this point said that (c) related to obligations incurred by the Government of Micronesia, that it is easier to provide for working out problems before the critical stage, which would avoid friction and misunderstanding.) In sub-section (d) (new (c)), Paul Warnke suggested that we omit the final sentence relating to foreign trade representation in Micronesia, this could, if necessary, be put elsewhere in modified form; for example, as

part of the security proviso in the section giving Micronesia control over entry and aliens.

Paul Warnke then stated that Roman IV is unacceptable and unnecessary from their standpoint, that it derogates Micronesia's limited power in foreign affairs and operates to nullify those powers. Further, it looks to be too punitive and should come under Section 204 (b). (Lindsey Grant noted that Roman IV states the clear U. S. intention in lines 1 and 2, that the assignment would be permanent but it is nevertheless an assignment of authority -- do they want no citation that the assignment is revoked?) Paul Warnke said that they wanted no such citation, that if their power is so limited then it was almost offensive from their standpoint.

Discussion moved on to Title III. Paul Warnke said that Sections 301 and 302 are satisfactory, although 301 should be parallel to its corresponding sections. He said that they would prefer 303 (a) to be placed in Annex B and that they want the non-mandatory nature of 303 (b) to be made clear. He suggested that the word "request" be substituted for "require" in the second line of 303 (b) and that the words "to achieve" be inserted before "an acceptable agreement" in the next to last line. He suggested that 303 (c) be deleted for the time being; that this was a procedural matter. Bill Crowe said that he would like to have the ground rules for land acquisition in the Annex to which Paul Warnke said that there was no real problem, that both sides could reserve on this subsection. Bill Crowe asked at this point whether they preferred to have the U. S. land requirements stated in the Annex rather than in Title III to which Paul Warnke replied that they wished to avoid any possible conflict

between the Annex and Title III. They have no problem in putting Annex B language back into Section 303, they wish to avoid any inconsistency in language which might cause confusion or appear to give either side greater rights than is intended. Based on this, Bill Crowe suggested that we proceed promptly to the Annex and the land descriptions.

Paul Warnke next discussed Section 304 (b) asking if this would permit foreign forces to be stationed in Micronesia. He noted that there are local sensitivities to having foreign sailors on liberty in Micronesian ports. Ekpap Silk noted that there might be problems with Filipinos and Okinawans coming on shore unless local leadership were consulted. Lindsey Grant noted that this was quite a way beyond the simple problem of stationing foreign forces since it related to men simply coming on shore; he said we might have a problem with keeping foreign military out on what appeared to be a racial basis. Bill Crowe suggested that this subject could be discussed within the SOFA, and it was agreed that we will address the whole question later. Sections 305-307 were acceptable according to Paul Warnke.

After a 20-minute break, Lindsey Grant stated some of the American positions. In Title I he said that insofar as symmetry relates to the subject matter, we believe we can re-do Section 102 to go along with Section 201. He then presented some of our thinking on the security and foreign affairs qualifications relating to air and sea transportation, Micronesian control over immigration procedures, as well as local control over import and export of goods.

In Title II he noted that some areas were quite substantive. He said that we considered "notwithstanding" in Section 201 (a) to be important although as set forth in that section, we did not use their authority lightly. With respect to Roman IV in Annex A he said that we want full authority in foreign affairs but would delegate areas back to the Micronesians, that they would have for all practical purposes full and permanent authority over an area of foreign affairs. He said that this was not compromising/but as an idea, we would be glad to work with any improvement in language they might suggest. As for the other points in Roman IV, we will give them our careful study.

Bill Crowe said that in the defense area we were ready to go to a sub-group for the purpose of conducting land negotiations and he asked how this grabbed Ekpap. Ekpap said he would check with Lazarus Salii.

Paul Warnke said in discussing the Annex A revocation clause that it was difficult to understand the U. S. position. The Micronesians have made substantial concessions and the violation of U. S. policy by the Micronesians is carefully fenced off by Section 204 (b). They are not permitted to violate U. S. policy by the terms of this section yet apparently the U. S. needs to doubly protect its authority in this area. He said in his opinion this derogated significantly from U. S. authority in foreign affairs: how could the U. S. revoke the Micronesian exercise of authority in areas where they had no authority to act? Lindsey Grant suggested that it might be better to set forth the ratification power in clearer form which Paul Warnke said would simply cause them to break off the talks. Lindsey Grant drew an analogy at this point to discussions on/land the situation several years ago at which time they said that they

did not trust U. S. actions in this important area. Paul Warnke said that the language was offensive and that the right of revocation was not necessary to the United States, since it had primary authority for foreign affairs. He cited the hypothetical case of a trade mission to Red China which would be difficult for the U. S. to withdraw whether or not it had the revocation power under Roman IV -- that revocation did not give the capability of enforcing U. S. policy. Lindsey Grant cited the hypothetical case of repeated violations by a delegate to an international organization -- that the only way to avoid such violations might be to revoke the power itself. Again, Paul Warnke said that revocation does not give the capability to enforce, that it is meaningless in practice and offensive in theory. He said that this sort of provision would threaten the Compact and that they would have to keep to their present position on termination (apparently referring to the 5-year bilateral provision). Lindsey Grant said that our termination proposal depended, of course, on their acceptance of U. S. authority in FA & D. Paul Warnke said that he realized this but that the revocation provision increased the likelihood of dissatisfaction and termination as soon as possible by the Micronesians. Again, Lindsey Grant stressed that if they had a problem with our language, that they should give us new language. Paul Warnke suggested that Roman II, III, and Section 204 (b) would give the United States veto authority over Micronesian foreign affairs activities and that this should be sufficient. He said also that while these may be matters of appearances, that they are of considerable significance to the Micronesians.

The meeting concluded at 12:15 p.m. with no future meeting scheduled at that time.

JOINT COMPACT DRAFTING GROUP

July 26, 1972

U. S. Participants:

Lindsey Grant
William J. Crowe
Herman Marcuse
Ronald Stowe
Thomas Whittington
Athol M. Smith

Micronesian Participants:

Ekpap Silk
Roman Tmetuchl
Bailey Olter
Tosiwo Nakayama
Michael White
Paul Warnke
Jim Stovall

The meeting began at 10:05 a.m. with Paul Warnke's discussion of our latest Title II proposals on foreign affairs. He noted that in Section 201 (a) we had retained the "notwithstanding" clause and that he was not sure why we needed this phrase. He said that the appearance of reiteration weakened in their opinion the statement of our full authority, that it seemed to say "the U. S. has full authority and we really mean it." He said, however, that if we felt we wanted the notwithstanding clause that they were prepared to accept it, that his delegation had given him such authorization. Lindsey Grant replied that it was an attempt to delineate the authority of each party, that in case of confusion between internal affairs and foreign affairs that this clause would clear up any conflict. In other words, the Micronesians would have to enforce treaty actions of the United States. Paul Warnke suggested that we put a line next to the section at this point, and that we could come back later to decide whether or not it was really desirable. He said this was an area where later cleanup might be possible although there was no substantive point of disagreement.

Paul Warnke said that Section 201 (b) and (c) were satisfactory, although (c) should be revised to read "full responsibility and authority" to make it parallel with (b). He said that Section 202, which combined former Sections (a) and (b) is satisfactory. In Section 203, while he had no problem with intent of the language, he suggested that Sub-section (c) not be limited by stating specific areas, that the phrase "of foreign commerce, technical, cultural and educational exchange" be deleted. He said that Section 204, as revised, was satisfactory, noting the addition of the last sentence in 204 (b). With respect to Annex A, Paul Warnke's suggestions were relatively minor. Page 1 was all right, but it was suggested that the listing in Sub-section (b) be alphabetized so as to read "cultural, educational, financial, scientific, or technical nature."

In Sub-section (d) he made the same recommendation and also suggested that the word "commercial" be added to the list. In Romans III so as to maintain the same standard as in Romans II and IV, he suggested that the phrase "pursuant to this Annex" be substituted for "with respect to foreign affairs" in the third line. In Romans IV he recommended that the phrase ", after appropriate consultations," be added at the end of the first line. It was noted by both sides that the term "appropriate" depends on the circumstances. It was also agreed that the word "activity" in the last line of IV should remain singular. Accordingly, while there were U. S. reservations to these suggestions for the time being it was noted that general agreement had been reached on Title II.

Bill Crowe proceeded to discuss our response to their recent comments on Title III. He said that we could accept most if not all of their comments. Specifically, we agreed to the inclusion of the word "of" in Section 302 (a) (2). In Section 304 we agreed to their phrase "in conjunction with and under control of" in Sub-section (b). Section 305 to 307 was apparently also satisfactory on both sides.

Paul Warnke made some further comments on the defense title. First, he noted that the question of shore liberty for foreign sailors is not covered by Title III which rightfully deals more with the authority of the U. S. to bring in foreign military, rather than with the details of status of forces or jurisdiction. He suggested that this be put in Annex B or in the SOFA agreement. We suggested that it be in the SOFA to which he had no objection. In Section 302 (a) (3), Paul Warnke stated that he thought the "policeman of the world" language may be offensive to some elements of the U. S. Congress but that this was more our problem than theirs. In Section 305 he noted that the final phrase had been deleted -- "shall remain in force for as long as U. S. forces are stationed in Micronesia." Al Smith said that the reason for the deletion was that the SOFA agreement would speak for itself as far as its continuation in force, and also that the jurisdictional agreement might be required even though U. S. forces were not actually stationed in Micronesia. This appeared to be a satisfactory explanation.

Bill Crowe mentioned that their comments on 303 (b) and (c) were satisfactory but that of course the bigger issue was the general land

problem. Lindsey Grant asked how they thought we should approach the problem. Bill Crowe noted that this was a subject of some confusion to us following Ambassador Williams' meeting with Lazarus Salii yesterday and asked for the Micronesian thinking in this area. Paul Warnke stated that the Micronesians were not prepared to negotiate a final agreement on land at this time but that they were of the opinion that land and financing should be handled together. As for a briefing on land, the Committee does not think they should be briefed until the finance discussions although they were willing that Warnke receive such a briefing. He continued that there was no disagreement with respect to the scope of their land requirments, that our July 14th paper was not unsatisfactory. He said that their reason for eliminating a listing of land in Section 303 was to avoid inconsistencies with the land annex. He did, however, suggest language to be put in brackets in the space after Section 303 (a) which they thought would satisfy our requirement for assurance on the availability of land:

"It is the understanding of the parties that subject military facilities and areas will include: (listing of U. S. land requirements)"

Lindsey Grant pointed out that financing does not relate exclusively to land but rather the whole nature of the relationship. Paul Warnke replied that while this may be so, that land is a large factor in the finance question and that they should be handled together, that he realized that this was something of a "chicken and egg" proposition.

Paul Warnke continued that they were providing assurances for our land needs but they wished to avoid an inconsistency between the Annex and Section 303, and that it would be understood that the terms of the land deals would be spelled out later in Annex B.

Finally, he noted that there was no mention of land in the Marianas. Bill Crowe said that Ambassador Williams had spoken to that in his opening statement. Lindsey Grant said that somewhere in the Compact we would have to include a definition for Micronesia as being five districts. Bill Crowe said that our land requirement formulation was drawn under that assumption.

Paul Warnke said that they had no real objection to our earlier land list although they considered it rather general. Bill Crowe said that our side would go back to Ambassador Williams and would be back in touch with them to discuss how we go from here on briefing or whatever. Paul Warnke accepted this and said he would be ready for a briefing at ana time.

Lindsey Grant broughtup our thinking on the subject of aviation and transport. He indicated some flexibility as to where the provisions would be located and continued that the U. S. would have general international responsibility in this area, including safety. On route negotiations we would not finally negotiate a route without their consent. With respect to safety technical aspects, we would provide them with international regulations which would then be enforced by Micronesia.

Paul Warnke asked when they would get a new paper from us. Bill Crowe said that we had to clarify the defense land situation before we went further in other areas. Paul Warnke asked about a finance paper, referring to yesterday's meeting between Ambassador Williams and Senator Salii. Bill Crowe said that there might be some misunderstanding but that Ambassador Williams had indicated that he did not wish the Micronesians to leave without getting some further informal indication from us that we were fairly far apart on our positions on financing.

The meeting ended at 1045 with no further meeting scheduled.

CONFIDENTIAL

JOINT COMPACT DRAFTING GROUP

July 27, 1972

U. S. Participants:

Lindsey Grant
William J. Crowe
Herman Marcuse
Ronald Stowe
Thomas Whittington
Athol M. Smith

Micronesian Participants:

Ekpap Silk
Roman Tmetuchl
Bailey Olter
Tosiwo Nakayama
Michael White
Paul Warnke
Jim Stovall

The meeting began at 4:00 p.m. Lindsey Grant stated that we would be putting together a clean copy of Title I and II and the Preamble and would furnish them with copies for their group. He asked Jim Stovall about the question he had raised by phone concerning consultations in Annex A which Stovall said he had had no chance to go over. Paul Warnke, who had just arrived, questioned the new language, asking if this was a one-step process in Romans III and IV. Ron Stowe replied that it was. Paul Warnke suggested that the language "seek to consult" be used in Roman III, dropping the phrase "wherever feasible" and that it would be the general understanding that there would be consultations pursuant to Section 201 (a) in any case.

Bill Crowe made a general statement on Title III to the effect that in accordance with our understanding with Lazarus Salii and Ekpap Silk that we have gone ahead with a new Section 303. This section lists our land requirements as well as general terms and conditions and thereby avoids the need for a separate annex as we had previously discussed. There will still be an Annex B but this will simply include the land leases themselves.

Al Smith gave his basic briefing on the extent, nature and expected use of our military land requirements in the Marshalls and Palau. He emphasized the contingent use of the Palau options and the fact that we would not even need to plan for or specify such options were it not that we had foregone eminent domain in Micronesia. Following the presentation, Bill Crowe noted that no live ammunition was used during maneuvers and also that land used for maneuvers would remain civilian land.

The subject was opened up for questioning. Mike White asked what percentage of Babelthuap was encompassed by the land requirements to which Bill Crowe replied that it was 28 per cent.(Actually the 28% figure related to the percentage of land in Palau District. This should be corrected. T.W.)

Responding to a query about the number of men who would be on maneuvers, we replied that the maneuver area would be able to handle a brigade which could amount to up to 4,000 men, in this case almost certainly Marines. As to the frequency of maneuvers, we stated that Palau maneuvers were contingent in any case, that once a year would be a reasonable estimate of their frequency. Mike White continued his questioning by asking the extent of the exclusive use area we required at the airport. We replied that the area was not very large and would be within the airport boundaries, that a joint use agreement would make clear the extent of our requirements. Paul Warnke asked about any restrictions on civilian use of land within the maneuver area, to which

we replied that there were no restrictions and we would work around the civilian use of the area; further there would be full pre-planning of the maneuvers with civilian authorities so that the activities would be coordinated. Ekpap Silk queried the use of tanks or heavy equipment to which we responded that they might be used, depending upon available roads and trails but that there would be consultation on their use with local authorities. At this point Paul Warnke said that this was all they could do at this point which Bill Crowe clarified to refer to right now.

The U. S. Group left the conference room for about 15 minutes while the Micronesians conferred. Upon our return, Paul Warnke said that he didn't think they had much to add at this time but that they wanted to raise two points. First, he said that the charter of the Joint Committee is to negotiate a future status on behalf of the people of Micronesia which includes the Marianas. He said that for the first time the inclusion of the Marianas in this round of negotiations had come up as a direct issue in the discussions -- in the specification of U. S. land requirements. He said that their Committee had no authority to discuss the status for less than the six districts. Lindsey Grant replied that somewhere in the Compact we would have to make clear what we were talking about in referring to Micronesia, most likely through the use of a definitions section. He referred back to Ambassador Williams opening statement to our statement that the Marianas were not included in these talks. Paul Warnke said that he assumed the U. S. would refuse to negotiate the

status of the Marianas with the Congress of Micronesia Joint Committee. He said, however, that in discussing the subject with the Congress of Micronesia they would need to get authority from that body to negotiate for the five districts alone. Referring to our response he suggested to Ekpap Silk that this answered his question. Paul Warnke made one last comment to the effect that they considered the last sentence of 303 (a), that "these rights and uses shall not be restricted." to be redundant with respect to 302 (a) and inconsistent with our earlier statements that there would be no restrictions on use of the maneuver area.

The meeting closed at 4:55 p.m. with the understanding that the Micronesians would be back in touch with us to set up the next meeting.

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JOINT COMPACT DRAFTING GROUP

July 28, 1972

U. S. Participants:

Lindsey Grant
William J. Crowe
Herman Marcuse
Ronald Stowe
Thomas Whittington
Athol M. Smith

Micronesian Participants:

Ekpap Silk
Roman Tmetuchl
Bailey Olter
Tosiwo Nakayama
Michael White
Paul Warnke
Jim Stovall

Paul Warnke started the meeting which was solely for the discussion of Section 303 (US Draft 7/27) by stating that they generally believed that Sub-section (c) should be part of Annex B, because the list of lands therein could become obsolete and cluttersome. He said that the present placement of (c) was o.k. for the time being but they preferred reestablishing Annex B which would be an integral part of the Compact; moving the land descriptions to Annex B would make no legal difference.

He then raised the major subject of the meeting - that the second sentence of Section 303 (a) "these rights and uses shall not be restricted" should be deleted. He said that this question raised a serious question with respect to the 30,000 acres maneuver area and that it was redundant and inconsistent with Section 302 (b). Bill Crowe asked if it would provide something that 302 (b) didn't. Paul Warnke indicated that this could presumably override provisions in the lease. Bill Crowe suggested that the 30,000 acre maneuver area alleged inconsistency could be worked out separately but that basically the problem seemed to be whether the subsequent lease could override

the full freedom of use of the U. S. pursuant to 302 (b). Paul Warnke acknowledged this but said that if the "unrestricted" sentence was tied to the first sentence in 302 (a) then it is redundant; if it is independent of the rest of 303 (a) then it is ambiguous. Bill Crowe said that the purpose of the sentence is to provide for unrestricted use of bases which Paul Warnke said that we had already under 302 (b).

Lindsey Grant suggested that they look at our analogy on this -- that 302 (b) may give us freedom of use as on a highway but subject to local laws and regulations on traffic. Could local Micronesian municipalities impose restrictions on our use of bases? Bill Crowe said that Section 303 would set guidelines for drawing up the leases -- we don't want the leases to say that we can use the bases for some things and not others. Paul Warnke said that the problem may be substantive then, because they intended that such restrictions would be in the leases -- for example, that there would be no storage of CBW in the middle of Koror. Lindsey Grant said that we wanted to get to these restrictions that they might propose right away. Paul Warnke said that they can't discuss these right now -- that they are not prepared. He said that they were not prepared to discuss them in detail.

Paul Warnke said, however, that they did not want the U. S. to have completely unrestricted use, for example, to have the ability to cart away the 2,000 acres on Babelthuap or to blow it up. He said in this respect that he thought Section 302 gave us all we need. He said there was no attempt by the Congress of Micronesia to try

to limit the purpose for which the land is to be used by the U.S. Lindsey Grant said that we had a problem in understanding their distinction expressed at Koror between the purpose and manner of U. S. use of land. He said that on BW weapons, we can give them some assurance;that we had no real problem on nuclear testing and then asked what other problems there might be. Paul Warnke said that they hadn't gotten beyond that stage in their thinking. He said however that what they are concerned about is whether the U. S. might use its bases in Micronesia in such a manner as to impede the use of the remainder of Micronesia by her people. Bill Crowe retorted that there will be a number of uses on the various pieces of land and that we should work to set up the general principles here in the Compact.

Paul Warnke said that they should be worked out in the leases saying that obviously no Compact could be concluded or put into effect until the leases are worked out. He said that they had other objections to 303, which seems to prejudge the the content of the leases. Lindsey Grant suggested that they take a new look at this problem, talk it over within their delegation and offer their thoughts on how to resolve the problem. Bill Crowe said that we on the U. S. side can see that they are discrediting the statement that we will have full freedom of use in 302 (b) and that we will have to go back to 302 (b) to satisfy this problem. Paul Warnke said that they didn't think that gross restrictions on use would be objectionable to the U. S., to which Bill Crowe replied that we don't know what their

gross restrictions are, that there is a basic disagreement on our approaches to this situation. Paul Warnke then stated some of their other comments on Section 303. In 303 (b) he queried what is meant by "and interests therein." Bill Crowe said that it might be the right of access, use rights to appear, etc. Paul Warnke said that this was too general in that the use of the word "interests" raises the question as to whether there is some conveyance of title. Bill Crowe said this language was standard.

In 303 (c) Paul Warnke said that the language was awkward, generally not parallel and should be corrected as follows. The introduction should not refer to facilities since no facilities are listed but rather should read as follows "these rights and uses shall be as follows:". In sub-section 1) he recommended that references to Bikini and Kwajalein Atolls be phrased in the same manner as those for Eniwetok. Thus, for example, 303 (c) (1) a) would begin: "Within Kwajalein Atoll, continuing rights to use of land and waters ...". In 303 (c) (2) b) he suggested that it read "rights to the joint use of an airfield ...". In Section 303 (c) (4) he suggested that the phrase "within the terms of existing agreements"be deleted, since he was not aware of the terms of the agreement. He suggested that the first sentence of 303 (d) be revised to read as follows: "If, in the exercise of its authority and responsibilities under this Title, the United States Government may require the use of areas within the territory of Micronesia in addition to those specified above on the effective date of the Compact, request may be made to the Government of Micronesia." In the second sentence

of that section he suggested that the phrase "on reasonable terms" be deleted as redundant.

Paul Warnke suggested that Section 303 (e) be rewritten as follows "e) agreements for land and waters specified in para. (c) are listed below. Any subsequent agreements for the use of land and waters concluded after the effective date of this Compact shall be added to this list." He suggested that sub-section (d) remain within 303 and that (c) and (e) should be put in the Annex referred to at the beginning of the meeting.

With respect to 303 (f) Paul Warnke stated that he frankly didn't understand the purpose nor intent of the section. Bill Crowe replied that the intention of 303 (f) was two-fold; first, to have some assurance that land leases can be removed if the Compact is still in effect at the time that the leases run out; second, to provide for the survival of the leases in the event that the Compact is terminated. Paul Warnke replied that they had no objection to this general provision in principle. Mike White reflected that they might tie the lease term to the Compact. Paul Warnke held on that he had thought the leases would go the length of the Compact unless the Compact was terminated and again that he had no objection to the thinking behind this provision but was rather confused by the language.

The discussion then returned to the original problem of unrestricted base rights. Paul Warnke said that they wanted to avoid foreclosing their ability to make appropriate restrictions during the lease

negotiations. Lindsey Grant stated that from our point of view this undermined our knowledge of their assurance of use as had been discussed in the beginning. Bill Crowe said that an important element of this discussion was that we knew what we would be doing on the bases in the Marshalls but did not know what we sould be doing on the very contingent lands in the Palau District and that we did not want to tie our hands before our actual need for the bases was clear. Paul Warnke stated that until a Compact is signed, nothing is finally settled. He said that the lease negotiations will undoubtedly raise serious questions and that any guidelines inserted in the Compact at this time would probably not be binding, that they want to keep their options and minds open until the leases are finally settled upon. Lindsey Grant suggested that they had not developed their restrictions which Paul Warnke readily admitted, but said that they were concerned with risk to life posed by some kinds of weapons and with general ecological safeguards. Bill Crowe stated that it was not our position that limitations on use should be sluffed off to the leases since these restrictions struck right to the heart of what we use these bases for. Paul Warnke said that he was not prepared to begin negotiating the leases and that it was unnecessary here and didn't serve any purpose to put in general restrictions such as those discussed.

The meeting wad adjourned at 12:30 with the understanding that we would get in touch with them.

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JOINT COMPACT DRAFTING GROUP

July 31, 1972

U. S. Participants:

Lindsey Grant
William J. Crowe
Herman Marcuse
Ronald Stowe
Thomas Whittington
Athol M. Smith

Micronesian Participants:

Ekpap Silk
Roman Tmetuchl
Bailey Olter
Tosiwo Nakayama
Paul Warnke
Jim Stovall

The meeting began at 10:10 a.m. with a general explanatory statement by Lindsey Grant on the subject of finance, on which Ambassador Williams had given the basic position yesterday. He said that he wanted to make clear that in our position on finance we were trying to take care of some of the problems which the Micronesians had set forth at Hana and Palau. First, we impose no restrictions on their use of monies provided in Section 401. Second, they had made clear that they didn't want to go through a process of joint financial planning for the future so we had changed our approach. Finally, they had said that they wanted assurances of support on an annual basis, so we were providing such assurances, at least over a 5-year period as set forth in Section 404.

He said that there still may be differences of approach since we consider this association to be closer than simply a quid pro quo arrangement with alien peoples for FA & D authorities; the financial provisions are meant to cover the whole relationship, not just FA&D. He noted that our foreign aid budget has gone down steadily in past years while increases for domestic purposes have been great. Accordingly, we can do better by portraying the association as a domestic

arrangement than on a straight quid pro quo basis. In addition, it will be important to get more knowledge of their thinking on financial arrangements, for the reason that it is easier to get monies from the U. S. Congress if we can show why it is needed. In addition, it may be important to show that the other side, the Micronesian Government, is putting up its own resources, which is reflected in the matching fund proposal of Section 402. Next, the present level of U. S. assistance to Micronesia--some $700 per capita--is much larger than the total per capita income of most underdeveloped countries (some $200 per capita). While it is possible that the Micronesians may get assistance from other nations or groups of nations, it is our expectation that they will have little bargaining power, due to their relative wealth, compared to other underdeveloped areas. Finally, Lindsey Grant apologized for not being able to give them figures but said that we simply don't have authority to give them figures at the present time or we would do so.

Paul Warnke opened the Micronesian discussion of financing by saying that the U. S. overall approach provides a basis for further negotiations, and that they appreciate the need for tying financial assistance to the nature of the overall relationship rather than simply to the defense angle on a quid pro quo basis. Otherwise, a change in the leases or U. S. use of land might have the effect of cutting the U. S. payment.

He continued by saying that without having definite figures to work with that the drafting committee were playing Hamlet without the

Prince of Denmark; at the same time they understand the problem in arriving at figures. In general, he said that our Title IV still required some negotiation on language. In 404, for example, he suggested a statement that the amount of financial assistance should come up for review at the proposed 5-year intervals, a concept which was not clear from the present language. On the other hand, they did not consider it desirable to renegotiate at the same time the rentals under Section 401 (c).

In Section 402 he said that the Congress of Micronesia will wish to look at the possibilities for a matching grant arrangement but that they recognize the principle involved and appreciate the idea. In Section 403 he said that it is their understanding and appreciation that Federal services listed are in addition to the Federal payment in Section 401. He said that they may wish to discuss the inclusion of others such as Coast Guard patrol services and the continued use of U. S. currency, in addition to others listed. Lindsey Grant noted that as a practical matter, U. S. dollars could be used by anyone and were in fact used as local currency by several smaller nations. Paul Warnke said that he understood this but that they assumed that we would want some control over currency matters as soon as there is a substantial payment involved.

Paul Warnke then listed several other areas in which they would like to have our thinking for their consideration prior to the sixth round of talks. The three areas listed were Title X (Termination);

the period specified in the Compact in Section 303 (e) as the basic lease period (he mentioned the term of 5 years), and the 3 foreign affairs adjuncts, including the movement of goods, the movement of people, and air and sea transportation. Lindsey Grant said that we would see what we could do but that we noted that the movement of persons (?) is so related to the issue of whether Micronesians would have the status of U. S. nationals that we would appreciate an indication by their side as to their desires on this other issue. Paul Warnke said that some thought had been put forward in a December 1971 draft that Micronesians would be U. S. nationals for immigration purposes and asked for their opinion as to other aspects of national status. Ron Stowe mentioned that simply giving them national status for immigration purposes would not prevent Micronesians from being subject to state restrictions on aliens for the liscensing of professions, land ownership, etc. Paul Warnke said that this was not a considered position at this time and would be reviewed in the light of better knowledge.

It was agreed that the drafting committee would meet again at 4 p.m. to work out a draft joint communique to be released to the press describing the status talks; both sides favoring a short general statement. The meeting ended at 10:45 a.m.