



DEPARTMENT OF DEFENSE
OFFICE OF GENERAL COUNSEL
WASHINGTON, D. C. 20301

In Reply Refer To:
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1 August 1972

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MEMORANDUM FOR MR. PHILIP E. BARRINGER, ISA OSD ←

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CAPTAIN GORDON SCHULLER, ISA OSD

SUBJECT: Comments - the "Agreed Draft" - Micronesian Compact.

The Agreed Draft of the Compact calls for comments with a view toward (a) making such editorial changes (marked "E") as possible in future drafting sessions, and (b) such substantive changes (marked "S") as might be possible to harmonize with United States overall objectives.

1. Preamble. (S)

The Preamble contains no reference to the authority and responsibility of the United States to maintain defense powers, nor foreign affairs powers with a view to reflecting their significance in the United States/Micronesian relationship. It is recommended that if possible a clause to such effect be added as one of the preambular recordings. The language can be adopted from Sections 201 and 301.

2. Section 201 - "Human Rights." (E)

Original proposals were more precise in identifying the "human rights" provisions to be added to the Constitution of Micronesia. Section 201 now operates as a directive affording broad guidelines. Following the trend in other newly formed governments, it is recommended that the Micronesians be encouraged to adopt the Universal Declaration of Human Rights, as a guideline to their human rights provisions (See General Assembly Resolution 217 A (III) of December 10, 1948).

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3. Section 103/Preamble. (E)

The term "sovereign" right of self-determination used in the Preamble is not used in Section 103. It is recommended that the term "sovereign" in the Preamble (3rd or 'operative" clause), which is too vague, be deleted.

4. Section 202 - Succession or Duration of Treaty Application (S)

If possible this section dealing with treaties should be modified to provide that treaties will continue to apply to Micronesia after any termination of the Compact, unless Micronesia upon consultation with the United States expressly terminates, or requests the United States to terminate them. This provision is essential to avoid confusion, and to provide a means to determine, via consultation whether they should continue.

5. Section 302 (b) Limitations upon Section 301 (S)

It is important to note that Section 302 (b) casts a limitation on the operation of Section 301. The term "shall include" in Section 302(a) can be interpreted as referring to an inclusive list of matters rather than illustrative. This can be clarified by an interpretive record, an agreed minute, or by amendment if deemed necessary. The "gap" which is referred to here is that Section 302(a)(1) covers only "armed attacks". No other attack can be envisaged within the context of the Compact. But it does not cover other acts of "aggression" including subversion and the like. It is assumed now that this is and reflects the intention of the United States.

Section 303(d) which refers to the use of lands and waters, on the other hand, refers back directly to Section 301. But since it includes Section 302, and since Section 302(a) is a limitation on Section 301 it too is limited in the same way as Section 302(b).

6. Section 303. (E)

The term authority and responsibility should be used throughout. The terms "authorities" and "responsibilities" should be corrected accordingly.

(b) All leases negotiated pursuant to this Section should contain a "savings" clause, which should read:

"All provisions herein shall conform to the provisions of the Compact. Where inconsistencies of any kind arise, the provisions of the Compact shall govern."

7. Section 304 (S)

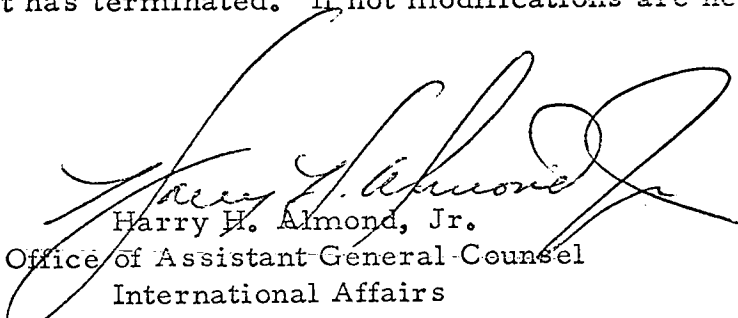
Place entire section in brackets. It is of the essence of our objectives that duration be expressed precisely in the final draft.

8. Section 305 (E)

The term "that jurisdictional agreement" is awkward. Delete the word "jurisdictional".

9. Section 306 (S)

Does this provision apply as to "citizens" of Micronesia, once the Compact has terminated. If not modifications are needed to the Section.


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*N. B. Apropos earlier discussion of the use of the term "shall include" which appears in Section 302. The same term is used in Annex B, and means "shall include and is limited to..."

cc: BG Wm. T. Meredith, OSD (I&L)

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