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In Reply Refer To:
I-11808

17 August 1972

MEMORANDUM FOR MR. PHILIP E. BARRINGER, OSD, ISA
SUBJECT: MICRONESIAN SOFA.

I have made a preliminary review of the above instrument. It is an acceptable working document, but the following changes should be considered:

1. In Article I item C third line use the phrase "nationals or citizens" in place of nationals.
2. In Article II, substitute "the authority and responsibility under Title III of the Compact" in place of "its defense rights and responsibilities."
3. In Article X Para. 3, consideration must be given where United States wants civilian component and dependents to be subject to Micronesian criminal jurisdiction, or whether some "safeguard" needed, particularly if we anticipate a fair number of such persons present in the area.
4. In Article XI commence with "The United States will pay..." or "The United States Government... etc."
5. In Article XII -Delete Para. 1. It creates an unnecessary obligation; the return should be in the discretion of the United States in any event.

Comment.

Micronesia so far has shown no interest in these sites or activities. Hence Para. 3 of Article XII should be withheld until negotiations proceed. Otherwise may be somewhat "inflammatory" in putting costs upon Micronesia for items they do not want.

cc: GC
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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 to 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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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 'bperative" 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).