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14 September 1972

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Mr. Phillip E. Barringer
Director, Foreign Military Rights
Affairs
Office of the Assistant Secretary
of Defense (ISA)
Washington, D. C. 20301

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TTP1
(SOFA)

Dear Mr. Barringer:

Reference is made to your letter of 22 August 1972 (1-11962).

Our informal comments concerning the draft US - Micronesian SOFA are enclosed. They are keyed to the 23 August 1972 draft. We have no comments concerning the draft Title V of the Compact.

While I regret problems have set back the schedule on SOFA negotiations, the delay will provide valuable time to carefully consider in detail what the United States needs and wants in a status of forces agreement. It has also enabled us to forward our comments by letter, rather than by telephone or wire.

I appreciate being given the opportunity to have our ideas considered. Perhaps in the near future it can be arranged that a later draft of the SOFA be forwarded to CINCPAC for staffing and formal comment.

Sincerely yours,

H. B. COPE
Staff Judge Advocate

Encl (1): Comments Keyed to Draft of 23 August 1972 (FOUO)

cc: SECDEF GC (Mr. Forman) ✓
DAJA-IA (COL Solf)
CSAF/JACI (COL Reed)
Navy JAG/Inter Law (CAPT Fruchterman)

~~_____~~
10-412864

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[REDACTED]

COMMENTS KEYED TO DRAFT OF 23 AUGUST 1972

1. Reference: ART Id

Recommendation: Suggest an additional sentence to the effect that "Children include step-children and wards, as well as natural born and adopted children, of members of the United States Armed Forces and the civilian component."

Reason: To remove any doubt as to the status of step-children and to definitely include wards, who are sometimes unrelated to their guardians.

2. Reference: ART If

Recommendation: Suggest "dependent" be pluralized.

Reason: Editorial.

3. Reference: ARTS If, IV 4, VI 1b and c, VII 1, 4a, and 7, and XIII 1 and 2

Recommendation: Suggest consideration be given to changing "the territory of Micronesia" to "Micronesian territory" in these articles.

Reason: Even though there is no intention that Micronesia be considered a Territory of the United States, it may be best, for optical reasons, to avoid use of "the territory of Micronesia."

4. Reference: ART IV 1

Recommendation: Suggest that words, "subject to ordinary Micronesian traffic and safety regulation," be deleted.

Reason: The deleted language appears even stronger than that in the US-Japan SOFA (ART V 2) and the Agreed Minutes (ART V 4) thereto. If the language is left in, the Micronesians would have even stronger arguments to preclude movement of US aircraft, vessels, and vehicles than the Japanese (who have held up tank and armed personnel carrier movements for over a month) now have. ART II gives an assurance that the US, "shall, to the fullest extent consistent with defense interests, respect Micronesian laws and regulations. Thus, ART III could be cited to the Micronesians as assuring that most Micronesian traffic and safety regulations would be observed.

5. Reference: ART VI 1c

[REDACTED]
[REDACTED]

Enclosure (1)

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Recommendation: Suggest insertion of the word "ownership" before the word, "possession."

Reason: To preclude taxation where the incidence of the tax is on "ownership."

Recommendation: Suggest the last phrase reading, "property held for the purpose of investment in the territory of Micronesia" be amended to read, "property held or used for purposes of investment in business or other enterprises, excepting those facilities listed in ART VII 7, operating in Micronesian territory."

Reason: The amended language would make it clear that property invested in enterprises in Micronesia are not tax exempt. The present language could be interpreted to apply to property held for purposes of investment, but not actually invested in enterprises in Micronesian territory that is, property merely held in Micronesia, such as stocks in US companies operating elsewhere. Also, investment in US credit unions, military banking facilities, etc., should be tax exempt.

6. Reference: ART VII 1

Recommendation: Suggest the words, "and export," be inserted between "import" and "taxes" in the last line.

Reason: To insure that taxes and charges are not levied on exports.

7. Reference: ART VII 3

Recommendation: Suggest that tax exempt importation and exportation of automobiles not be limited to one automobile per household.

Reason: Similar provisions in other countries which do not produce automobiles have imposed hardships on US personnel where their private automobiles have been stolen or damaged beyond economical repair. Tax exempt importation and exportation of automobiles can be limited to automobiles for private use. To preclude US personnel from going into the automobile sale business, a caveat could be added to ART IX to the effect that, "Members of the Force may sell or transfer in Micronesia no more than two automobiles per household which have been imported exempt from taxes, fees, and charges in accordance with Articles VII 3."

8. Reference: ART VII 7

Recommendation: Suggest that radio and television stations and military banking facilities be added to the list of service facilities. Suggest also that the last

FOR [REDACTED]

sentence be amended to reflect service facilities shall be free of all Micronesian regulations and licensing requirements, as well as taxes, duties, fees, and charges.

Reason: Self-explanatory.

9. Reference: ART IX

See para 7, Reason, above.

10. Reference: ART IX

Recommendation: Suggest that a provision respecting the licensing of private automobiles of Members of the Force be added.

Reason: Self-explanatory.

11. Reference: ART X 2 (first sentence)

Recommendation: Suggest the words, "in the United States" be deleted.

Reason: Such deletion would preserve US jurisdiction where jurisdiction has been conferred in the United States by US law and court-martial jurisdiction over persons serving with or accompanying US armed forces in the field in time of war (ART 2(10), UCMJ).

12. Reference: ART X 2 (second sentence)

Recommendation: Suggest the word "otherwise" be deleted and the words, "to exercise of criminal jurisdiction by the Government of Micronesia," substituted in lieu thereof.

Reason: To make it clear that, unless agreed otherwise in particular cases, the US exercises exclusive criminal jurisdiction over members of the Armed Forces of the United States.

13. Reference: ART X 3a

Recommendation: Suggest amendment to read, "the Government of Micronesia shall have the right to exercise criminal jurisdiction over all other Members of the Force for offenses prescribed by statute or ordinance provided such jurisdiction is not exercised in a Community Court or its equivalent".

Reason: Included would be members of the civilian component and dependents in peacetime and where US jurisdiction in the United States has not been conferred by US law. With

regard to Community Courts on defense sites, the present draft language would divest the Micronesians of all jurisdiction over offenses carrying a maximum punishment of a \$100 fine or six months imprisonment or both (5TTC §151). The suggested language would permit the Trial Division of the High Court (5TTC §53) or District Courts (5TTC §101) to try such offenses, while still precluding exercise of jurisdiction by the objectionable Community Courts whether or not located on defense sites. Furthermore, the inclusion of the caveat, "for offenses prescribed by statute or ordinance," would preclude trial for violation of unwritten custom. (See present "custom" jurisdiction of District Courts [5TTC §101] and Community Courts [5TTC §151].)

14. Additionally, suggest that provision for US military postal facilities be written into the SOFA. While it may be that the US may continue to operate the postal system within Micronesia after the Compact becomes effective, it is believed that the SOFA should hedge against the day when the Micronesians assume control over the postal system.

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DoD 9/14/72

TITLE VI
TRADE AND COMMERCE

Micronesian
Control of
Imports

Section 601

The Government of Micronesia may establish, change or eliminate import duties and other regulations including internal charges, laws and conditions governing the importation of and commerce in goods from outside of Micronesia, subject only to compatibility with relevant United States international obligations, other provisions of this Compact, and other agreements between Micronesia and the United States.

DoD 9/14/72

TITLE VI
TRADE AND COMMERCE

Treatment of
U.S. Goods

Section 603

The Government of Micronesia will admit into Micronesia goods of United States origin on terms no less favorable than those extended to any other non-Micronesian goods.

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DoD 9/14/72

TITLE VI

TRADE AND COMMERCE

Aviation and
Maritime
Commerce

Section 604

(a) In the exercise of its authority and responsibility under Section 201(a), the Government of the United States will apply to Micronesia, and the Government of Micronesia will implement, appropriate international treaties and agreements which relate to ^{international} air and maritime commerce.

(b) The Government of the United States agrees to obtain the consent of the Government of Micronesia before granting any new authority to any United States or foreign air carrier for international air commerce to or from Micronesia. ☐ Add provision excepting military charter aircraft. ☒

(c) The Government of Micronesia will be responsible for the domestic regulation of air and maritime commerce wholly within the territory of Micronesia.

*Civil aircraft operated
for or under the control of
U.S. Govt of U.S. in connection
with the conduct of defense
activities are not within
scope of this paragraph.*

412871

DoD 9/14/72

PART VII

CITIZENSHIP AND NATIONALITY

Section 701 /delete/

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DoD 9/14/72

PART VII
CITIZENSHIP AND NATIONALITY

Section 701

All persons who by birth or naturalization have become citizens of the Trust Territory of the Pacific Islands between July 18, 1947 and the effective date of this Compact, and who take no affirmative steps to preserve or acquire any other citizenship or nationality, shall be nationals but not citizens of the United States.

Is this section necessary?

412873

DoD 9/14/72

PART VII
CITIZENSHIP AND NATIONALITY

Foreign
Nationality

Section 702

Any person described in section 701 who is a citizen or national of a country other than the United States, and who desires to retain that citizenship or nationality, shall make a declaration under oath of such desire within one year after the effective date of this Compact or within six months after becoming 21 years of age, whichever comes later, such declaration being made as prescribed by regulations. Having made such a declaration, any such person shall not be a national of the United States by virtue of this title. This section shall not be construed to preclude persons otherwise qualified under this title from becoming citizens of Micronesia and nationals of the United States.

/Can Micronesia compel anyone to reassert his desire to
retain foreign citizenship, other than US?/

412874

DoD 9/14/72

TITLE X

ENVIRONMENT

In the conduct of its activities, the Government of the
United States shall endeavor to protect the surrounding
environment from permanent or irreparable damage:

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DoD 9/14/72

PART XI

AMENDMENT AND TERMINATION

Amendment

Section 1101

This Compact may be amended at any time by agreement of
the Parties.

412876

PART XI

AMENDMENT AND TERMINATION

Duration and
TerminationSection 1102

(a) This Compact shall enter into force on the date of exchange of instruments of ratification and shall continue in force for a period of twenty-five years, and thereafter until two years from the day on which either party shall give official notice to the other of its intention to terminate this compact. Official notice shall be given only after completion of the following procedures:

- (1) ^{For} The Government of the United States ^{as termination made} ~~shall proceed~~ in accordance with its constitutional processes.
- (2) ^{For} The Government of Micronesia shall proceed upon the affirmative vote of two-thirds of the members of each chamber of the Micronesian legislature and the approval in referendum of two-thirds of the Micronesian people eligible to vote in such a referendum. At least ninety days must elapse between introduction of such a measure in the legislature and its approval by that legislature, and at least sixty days must elapse between the time of final legislative approval and the date of the public referendum.

in the agreements referred to herein,

(b) Unilateral termination of this Compact shall not
alter the [rights] of the United States Government relating to
defense which are contained in Title III [Sections]
and in Annex B [of this Compact]. Those provisions shall continue
in force [and be binding for at least fifty years, or] ^{except} as other-
wise [mutually] agreed, after the remainder of this Compact is
terminated, or, in the case of the land use agreements specified
in Annex B, for as long as the terms of those agreements may
provide.

*authority
and
responsibility
and
rights*