

22 September 1972

MEMORANDUM FOR CAPT GORDON SCHULLER, USN
ISA/EA&PR

MR. PHILIP E. BARRINGER, ISA/FMRA

CAPT W. CROWE
DEPARTMENT OF THE INTERIOR

SUBJECT: WORKING PAPER - TTPI

The United States in the exercise of its powers and authority under Sec 201 (Title II) shall apply the rules of international law, and conduct the affairs of Micronesia in conformance with the principles of the United Nations Charter.

Comment.

1. The present proposal to apply general principles of international law recognized by civilized States - leads to a practical impossibility. They are not applied and implemented as legislative law or codified as such. They are adopted usually by the courts or in a sense by the executive branch. When the executive branch is engaged in foreign affairs it may then adopt such rules and principles - they may during the period prior to unilateral termination be adopted and applied by the United States. Thereafter, Micronesia as a sovereign State in the international sense applies such rules and principles within its own discretion.

2. When there is "implementation" of customary rules of international law into municipal law by codification, this has been done because it has been deemed essential by the legislative branch. In other words, only those customary rules of international law codified by statute that need to be codified to provide for appropriate diplomatic relations - hence the statutory provisions relating to diplomats, etc.

3. But the large substance of customary international law and in particular the "general principles" are "adopted" by the Courts - or are those which the Courts take "judicial notice." They are adopted in other words in a way similar to the adoption of the common law. (Cf The Paquete Habana. The Lola 175 U.S. 677, 1900.).

4. Conclusion.

With the above comments in view, I recommend deleting the references to rules or principles of international law in the Compact. If they are left in, (a) they will be embarrassing to us in negotiation since they will be resisted by the Micronesian negotiating team; (b) they will not reflect the actual practice envisaged under the Compact, to wit, that the United States is engaged in exercising on an executive basis the foreign affairs powers; (c) they will suggest that Micronesia itself is engaging in or exercising foreign affairs powers in a manner which is not realistic; (d) they will not be easily explained to the Congress or the Senate Foreign Relations Committee (if it receives cognizance of the Compact).

SIGNED

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