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DEPARTMENT OF THE ARMY
OFFICE OF THE JUDGE ADVOCATE GENERAL
WASHINGTON, D.C. 20310

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REPLY TO
ATTENTION OF:

DAJA-IA

22 December 1972

MEMORANDUM FOR: MR. PHILIP E. BARRINGER, DIRECTOR, FOREIGN
MILITARY RIGHTS AFFAIRS, OSD (ISA)

SUBJECT: Micronesian SOFA

1. Reference your memorandum dated 18 December 1972, subject as above.
2. Concur with the changes to the draft SOFA recommended by Mr. Almond in his memorandum of 6 October 1972.
3. Also concur in the recommended change to Article XII (8) submitted by CINCPAC. It is suggested, however, that the following is an improvement on CINCPAC's draft for the labor article:

add to ARTICLE IV:

"3. Local labor requirements of the Armed Forces of the United States and United States Contractors may be met through employment of citizens of Micronesia. The Armed Forces of the United States and United States Contractors may recruit, employ and administer the personnel affairs of such employees. In such employment the Micronesian labor laws and customs will be followed to the extent those laws and customs are compatible with the basic management and security needs of the Armed Forces of the United States and United States Contractors. Detailed arrangements for such employment shall be in a manner to be agreed upon between the two governments.

4. United States Personnel shall not be subject to laws, regulations, or customs of the Government of Micronesia with respect to the terms and conditions of their employment."

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REASON: This formulation fits more neatly with other SOFAs (e.g., Art XVII, Korean SOFA). It is designed to accomplish the same thing as CINCPAC's version, but varies in two substantive ways. First, it deals only with "citizens of Micronesia" because the relevant DOD Directive (para. IV, DOD Directive 1400.10, 8 June 1954) specifies that inclusion of an article on labor is necessary to establish legal authority to hire local nationals; it says nothing about hiring U.S. citizens. Therefore, reference to U.S. citizens and third country nationals should not be made in the labor provisions. Indeed, such a reference seems unnecessary in light of the right of the U.S. Government in Article III, 1, to bring United States Personnel into Micronesia. The only category of person left undefined is the third country national who is resident in Micronesia when hired by the United States or a Contractor. That case could be handled in subsequent negotiations or an agreed minute if we deem it wise to provide him with the advantages of a United States Personnel. The second difference is that the proposed language includes the obligation to conclude some implementing agreements, an obligation required by the DOD directive.

4. Pursuant to further review by the Army Staff, this office recommends the following changes:

III:

a. ARTICLE/ change paragraph 3 as follows (changes underlined):

"3. For the purpose of their identification while in Micronesia, United States Personnel, ten years of age or older, shall have in their possession a personal identification card which shall show the name, date of birth, rank, status, or occupation, and photograph of the bearer. Such card shall be shown on request to the appropriate Micronesian authorities."

REASON: Current DOD policy requires ID cards only for persons over the age of ten. This suggested change would bring the SOFA into line with that policy. The insertion of the word "status" provides a category for dependents.

b. ARTICLE V: Delete the word "military" from the phrase "military retail exchanges and related concessions," in the sixth paragraph. The retail exchange on Kwajalien Missile Range is not a military exchange and the command wishes to retain the outlet in its present posture. As written, the SOFA refers only to military exchanges and the proposed change would eliminate this restriction. It may be necessary to assure the Micronesians that the patrons of these exchanges would be limited to United States Personnel.

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c. ARTICLE IX: Correct spelling of "there" to "their" in line 7 of the third paragraph.

d. ARTICLE XII: Change paragraph 8 as follows:

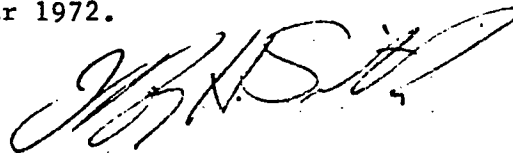
(h) to communicate with a representative of the Government of the United States of America and to have such a representative present at his trial and all stages of the proceedings, including pretrial hearings and examinations and appeals;

(j) to be present at all sessions of his trial which shall be public;

(t) to enjoy all guarantees and rights provided for Micronesians in the Constitution and laws of Micronesia.

REASON: It is believed that these changes strengthen the rights guaranteed to United States Personnel and clarify the language.

5. It may be necessary to consider these proposed changes in a meeting of our group. If so and if the matter is not pressing, I prefer that the meeting be scheduled in the first week of January as I will be absent during the week of 26-29 December 1972.



JEFFREY H. SMITH
CPT, JAGC
Army Representative
Interservice Legal Group