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To: Captain William J. Crowe, Jr.
From: Adrian L. de Graffenried, Legal Advisor
Subj: Speculation on possible requests for amendments to the Draft Compact from the JFSC

The Ponape Special Session of the Congress of Micronesia witnessed a great deal of comment on the current draft of the Compact. This memorandum attempts to pose a number of possible requests for amendments to the Compact by the JFSC in the forthcoming Hawaii negotiations. These potential amendments are suggested from testimony before the Joint Future Status Committee in its hearings, from speeches by members of the Congress of Micronesia, and from articles and reports commenting on or reviewing the Compact.

Title I. Internal Affairs. A general summation of the questions raised about the internal powers of the future Government of Micronesia suggests that a future Constitution of Micronesia may be the legal vehicle for independence although it will not be a formal declaration of such. Specific language and comment from both district and Congressional leadership interprets the future Constitution and laws of the GOM to be superior to the Compact. Micronesian leaders also note that language in a Compact requiring the Government of Micronesia follow a "democratic" form of government and govern itself consistent with provisions in the compact cannot be binding on the Government of Micronesia. From the Micronesian view, these islands and their cultures have always been sovereign entities, albeit several separate identities and not a single unit, and the Compact should expressly recognize this fact. Regardless, the views imply that American control over events in Micronesia are to be severely restricted if not eliminated.

The JFSC may propose to broaden the current language in Title I to (1) insure the superiority of a future GOM Constitution; (2) insure that internal laws will remain superior to any U.S. law, the Compact provisions or international agreements, and the foreign affairs policy of the United States; and, (3) insure that the form of the internal government for Micronesia is a non-negotiable Micronesian issue.

The JFSC may propose the following specific changes to the Compact:

Sect. 101. delete the requirement that the Constitution and laws of the GOM be consistent with the Compact

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102. clarify the exclusiveness of the authority of the GOM over internal matters.

103. clarify the termination procedure to insure that these follow the Cook Islands [unilateral termination after 2/3 vote of the legislative assembly of the government with ratification by a 2/3 vote by popular referendum]

Title II. Foreign Affairs. Micronesians want greater authority in matters of foreign affairs. Generally, they want to insure that the sovereignty of Micronesia is recognized, and that it will be clear to all that only a portion of the inherent rights of this sovereign GOM to conduct foreign affairs are to be delegated to the United States. Micronesia wants to be free to (1) exercise its foreign affairs authority as a sovereign entity in areas not delegated to the USG, (2) require that treaties and international agreements applicable to Micronesia are submitted to the GOM for ratification before they become binding on a GOM, and (3) insure that the United States is to be required to conduct the foreign affairs of Micronesia in a manner approved by the GOM. The Micronesians contemplate amplified contact with other governments on a government to government level, freedom to join any international group or organization, and limit and control the U.S. in its undertaking of foreign affairs activities in behalf of the GOM.

The JFSC may request the following specific amendments:

Sect. 201(a). restrict the USG's responsibility for the foreign affairs activities of Micronesia to reflect the wishes of a Micronesian sovereign entity; require that the USG recognize the authority of U.S.G. to conduct foreign affairs activities is by delegation of these powers from the GOM and that the GOM reserves the power to act on a direct government to government level in other foreign affairs areas not specifically delegated to the USG.

(b) require that the wishes of the GOM in matters of foreign affairs activities be followed by the USG notwithstanding a possible conflict of these wishes with US FA policies.

(c) JFSC may request that this subsection be dropped or that U.S. expressly recognize that foreign affairs policies of USG cannot interfere with or be paramount to the internal powers of the GOM (i.e. the power of the GOM to establish a 50 mile territorial zone despite USG 3 mile or UN 12 mile standard).

Sect. 202 require all international treaties and agreements relating to Micronesia or which GOM is expected to honor be submitted for GOM ratification before they become effective.

Sect. 203 - - - - -

204(a) delete requirement that the GOM conduct its FA activities in accordance with the provisions of Annex A.

(b) delete the requirement that foreign affairs activities of GOM not conflict with USG foreign policy.

Title III. Defense. The military is greatly feared in Micronesia, primarily because Micronesians recognize that the military holds superior force and because of the Micronesian experiences with the Japanese military occupational forces. Consequently, the Micronesians will want to reduce the powers of the U.S. military as much as possible. One recognized method to accomplish this objective is to control the types and levels of U.S. military activities on Micronesian land and in marine areas. Another is to control the military personnel and subject them to Micronesian legal jurisdiction. Still another is to control and limit the location and area where the U.S. military will be operating. This is done primarily through limitation on land acquisitions.

In matters of defense, the JFSC may request the following specific changes to language in Title III:

Sect. 301 Require that the USG seek the consent of the GOM before the exercise of defense "responsibilities and authorities". i.e. control of military activities and purposes for which bases to be used.

302 Restrict the military activities of the USG to only those Micronesian land and marine areas as the GOM may permit. i.e. no uncontrolled use of Micronesian waters.

303(a) Require the USG obtain prior consent before use of or access to Micronesian land and marine areas to be used for military purposes. i.e. as to those areas permitted for military activities USG must still request permission to use prior to each exercise

(b) Require the complete re-negotiation of all USG lease agreements; require the consent of the GOM to the use of any Micronesian land and marine areas by foreign military forces invited at the request of the USG; - - - -require the prior consent of local Micronesian leadership to the use of Micronesian land and marine areas by the U.S. military.

- (c) eliminate completely (or provide a right to the GOM to deny a future request by the USG to the use of additional land and marine areas in Micronesia)
- (d) eliminate
- (e) require the prior consent of the GOM

304.

305. SOFA agreement negotiations will be protracted and provisions may be inserted to insure that USG personnel (military and civilian) are under jurisdiction of Micronesian government (judiciary and executive); and require that off-base activities of USG personnel be under control of local authorities; and other provisions that insure Micronesian control over USG personnel.

306.

307. Require that USG accede to the wishes of the GOM.

Annex A - - - - - Foreign Affairs.

Proposals for changes in the language of the Annex by the JFSC may take the general approach of broadening the foreign affairs powers of the future GOM and reducing or eliminating the power of the USG to intervene in the foreign affairs activities of the GOM should these activities contradict USG foreign policy. Primarily, any aspect which enhances an interpretation that sovereignty has been recognized will be proposed, such as requiring the USG to comply with the directives of the GOM to conduct negotiations or foreign affairs business of interest to Micronesia and as permitting the GOM to conduct wider Government to Government contacts, negotiations and agreements in its own right.

Specifically, the JFSC may suggest changes to the language as follows:

- I(a) permit the GOM to join any international organization without regard to the U.S. foreign affairs positions
- (b) - - - -
- (c) - - - -
- (d) delete the power of the USG to have final authority to determine whether or not to accede to the wishes of the GOM in the USG's conduct of foreign affairs relating to Micronesia.

Annex B - - - - - Defense

The general changes that may be requested by the JFSC range from total re-negotiation of the entire section to insurances that the GOM will have more power over the use of Micronesian lands and marine areas by the U.S.

...military and over USG personnel. A fundamental requirement is language to insure that all lease and use agreements will be renegotiated and that the GOM not be required to permit the use of additional lands and marine areas as may be required by the USG under an emergency. With respect to the latter, the GOM will at least want to be able to have the power to define what is or whether an emergency exists and to unilaterally determine the length of time these additional areas will be used and what they may be used for.

Specifically, the JFSC may wish to make the following changes:

- (a) insert a renegotiation clause applicable to all existing land and marine areas now under lease agreement; reduce the "non-exclusive" use acreage in Palau to 5,000 acres; eliminate the right to use the Babelthaup airfield; elimination of or modification of (3) to require prior consent of local government before each use.