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OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE
WASHINGTON, D. C. 20301

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23 January 1973

INTERNATIONAL SECURITY AFFAIRS

MEMORANDUM FOR MR. ALMOND, OGC (IA)
MR. W. COAKLEY, MANPOWER
CAPT. SMITH, ARMY JAG
MAJOR GEHRING, NAVY JAG
MR. B. W. ALLEN, SAFGC
CAPT. COPE, CINCPAC SJA

*Copied for Siemer
per specific Request
23 MAR 89 JAL*

SUBJECT: Micronesia SOFA

Attached for your information is the current DoD text of this document, incorporating CINCPAC's recommended article on labor as well as other matters agreed upon at our interservice legal drafting group meeting on 4 January. Most articles are dated 12 January, but Articles IV and IX reflect minor editorial suggestions and corrections from Boyd Allen yesterday.

It appears to be generally agreed that the phrase "Government of Micronesia", as defined in Article I, now appears at all points throughout the text where this is substantively required. Please let me know, however, if any of you have additional comments or suggestions on this or other points throughout the text.

We are still awaiting the definitive reaction of Justice and Interior to the draft as a whole, and particularly to the concept of special maritime jurisdiction set forth in Article XIV. I will continue to prod them on this subject; with the US negotiating effort now focused on the Marianas and on land issues generally, the Micronesia SOFA lies rather far down the pike at this time.

Signed

Philip E. Barringer
Director, Foreign Military
Rights Affairs

cc: Capt. Schuller, ISA/EA&PR
Lt Col. Kenty, J-5

Attachment
a/s

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Doc 51

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AGREEMENT UNDER SECTION 305, TITLE III OF THE COMPACT OF FREE
ASSOCIATION BETWEEN THE UNITED STATES OF AMERICA AND THE PEOPLE
OF MICRONESIA, REGARDING THE STATUS OF UNITED STATES ARMED FORCES
IN MICRONESIA.

PREAMBLE

The United States of America and the People of Micronesia,
pursuant to Section 305, Title III of the Compact of Free Associa-
tion between the parties signed at _____
this date, have agreed as follows:

*provided for review Ref Siemex
FOIA Request - Another Copy
left in Scotland File*

*23 MAR 89
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ARTICLE I

In this Agreement the term:

- a. Armed Forces of the United States means the land, sea and air armed services of the United States of America, including the Coast Guard;
- b. United States Contractors means the legal entities, including corporations and natural persons, present in the territory of Micronesia solely for the purpose of executing their contracts with the United States Government, or subcontracts of such contracts, for the benefit of the Armed Forces of the United States, and who are designated as such by the United States Government;
- c. United States Personnel means anyone included in any of the following categories of persons:
 - (i) Members of the Force: the military personnel on active duty with the Armed Forces of the United States who are in the territory of Micronesia;
 - (ii) Members of the Civilian Component: the civilian persons who are not citizens of Micronesia and who are in the employ of, serving with, or accompanying the Armed Forces of the United States and who are in the territory of Micronesia;
 - (iii) United States Contractor Personnel: the natural persons in Micronesia who are United States Contractors or officers or employees of United States Contractors, and who are not citizens of Micronesia.
 - (iv) Dependents: the spouse and children of persons included in subparagraphs (i), (ii), or (iii) above and, if they are

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members of their household, other relatives or wards of such persons or their spouses.

d. Defense sites means those lands, areas, waters and facilities in Micronesia which have been designated for use by the United States of America in accordance with Section 303, Title III of the Compact of Free Association. For purposes of applying criminal law, they are sites reserved or acquired for the use of the United States of America and are under the concurrent jurisdiction of the United States of America and Micronesia.

e. Government of Micronesia means the duly constituted Government of Micronesia, and encompasses all political subdivisions and entities comprising that government.

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ARTICLE II

1. All aircraft, vessels and vehicles operated by, for, or under the control of the Armed Forces of the United States or United States Contractors shall enjoy freedom of movement in Micronesia and freedom of access to the defense sites and to Micronesian ports, harbors and airfields. All movement of such aircraft, vessels and vehicles, and all use by them of defense sites and Micronesian ports, harbors and airfields shall not be subject to any Micronesian taxes, fees or other charges, except as set forth in paragraph 2 of this Article.

2. The Armed Forces of the United States and United States Contractors shall pay reasonable amounts for services rendered and materials received at their request in connection with the use of Micronesian ports, harbors and airfields.

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ARTICLE III

1. In the exercise of its responsibility for and authority over defense matters in Micronesia, the United States of America may bring United States Personnel and United States Contractors into Micronesia. United States Personnel shall be exempt from Micronesian passport and visa laws and regulations. They shall also be exempt from the laws and regulations of Micronesia on the registration and control of aliens, but shall not be considered as acquiring any right to permanent residence or domicile in Micronesia.

2. Upon entry into or departure from Micronesia, United States Personnel shall have in their possession individual or group travel or leave orders certifying the status of the individual or group and the travel or leave authorized.

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 or occupation, and photograph of the bearer. Such card shall be shown on request to the appropriate Micronesian authorities.

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ARTICLE IV

1. In the establishment, maintenance and use of defense sites in Micronesia, the Armed Forces of the United States and United States Contractors may employ United States Personnel and citizens of Micronesia.

2. In the employment of citizens of Micronesia, the Armed Forces of the United States and United States Contractors will conform with Micronesian labor laws provided those laws are compatible with the basic management needs and other requirements of the United States.

3. United States Personnel shall not be subject to the laws, regulations or customs of the Government of Micronesia with respect to the terms and conditions of their employment. The Government of Micronesia may not require United States Personnel to obtain any license, permit, or certificate, or undergo any examination, in connection with the performance of their duties on behalf of the Armed Forces of the United States or United States Contractors.

ARTICLE V

The Government of Micronesia may not impose any tax, fee, or other charge on:

a. The services, activities, facilities, equipment, material, income or any other property or transaction of the Armed Forces of the United States or United States Contractors;

b. Income received by United States Personnel for services with or employment by the Armed Forces of the United States or United States Contractors, or from sources outside the territory of Micronesia;

c. The ownership, possession, use, transfer by death, or transfer inter se by United States Personnel of movable property, tangible or intangible.

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ARTICLE VI

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1. All materials, equipment and other property imported or exported by or on behalf of the Armed Forces of the United States or United States Contractors for the use or benefit of the Armed Forces of the United States, United States Contractors, or United States Personnel shall be permitted entry into and exit from the territory of Micronesia free from customs duties, license requirements, and other import and export taxes and charges.

2. United States Personnel may import into and export from the territory of Micronesia furniture, household goods and personal effects for their private use, including privately owned vehicles, and no duty, tax, fee or other charge shall be payable upon such import or export.

3. Customs examination shall not be made in the following cases:

a.. United States Personnel when entering or leaving the territory of Micronesia under official orders except when under leave orders;

b. Official documents under official seal, and mail in the United States military postal channels;

c. Cargo consigned to or shipped by the Armed Forces of the United States or United States Contractors.

4. The appropriate authorities of the Armed Forces of the United States, in cooperation with the authorities of the Government of Micronesia, shall take appropriate measures to prevent abuse of privileges granted to United States Personnel under this Article.

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5. Except as may be otherwise agreed by the two governments, property imported under this Article and subsequently transferred to a person not entitled to import free of duty shall be subject to the payment by the purchaser of import duties and other charges according to the laws and regulations of Micronesia.

6. The Armed Forces of the United States may establish, operate and maintain within the territory of Micronesia service facilities such as schools, commissary stores, retail exchanges and related concessions, credit unions, banking facilities, radio and television stations, recreational facilities, and social and athletic clubs for the use of United States Personnel. Such activities and the importation, purchase, sale or dispensing of merchandise and services by them shall be free of all Micronesian taxes, duties, fees, charges, licenses and regulations.

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ARTICLE VII

The Armed Forces of the United States may establish, operate and maintain military post offices within defense sites for the use of United States Personnel.

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ARTICLE VIII

United States Personnel may own, possess and carry arms provided that they are authorized to do so by the appropriate authorities of the Armed Forces of the United States.

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ARTICLE IX

1. The Government of Micronesia shall accept as valid, without a driving test or fee, the driving permits or licenses or military driving permits issued by appropriate authorities of the United States of America or any subdivision thereof to United States Personnel.

2. Official vehicles of the Armed Forces of the United States, vehicles owned or operated by United States Contractors, and privately owned vehicles of United States Personnel shall be identified by individual markings or license plates issued by the appropriate authorities of the United States of America or a subdivision thereof. Such vehicles shall not be subject to the motor vehicle registration laws of Micronesia.

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ARTICLE X

1. The United States of America may at any time notify the Government of Micronesia that a defense site, or a specific portion thereof, is no longer required. Upon such notification, the defense site or portion thereof shall revert to the Government of Micronesia.

2. The United States of America shall be under no obligation to restore any defense site, or any portion thereof, to its original condition upon its reversion to the Government of Micronesia, or to compensate the Government of Micronesia in lieu of such restoration.

3. Upon the reversion of a defense site or a portion thereof to the Government of Micronesia, the United States of America will be compensated by the Government of Micronesia for the residual value (including scrap value), if any, of any installations or improvements on such defense site or portion thereof that were constructed at the expense of the United States of America, if such installations or improvements have been or are to be sold, or if their use is desired, by the Government of Micronesia. The residual value, if any, shall be determined by mutual agreement between appropriate authorities of the Government of Micronesia and the Government of the United States of America.

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ARTICLE XI

Except as may be otherwise agreed, title to removable equipment, materials, and other property brought into or acquired in the territory of Micronesia by or on behalf of the United States of America or United States Contractors shall remain with the United States of America or United States Contractors, as the case may be. Such equipment, materials and other property may be removed from the territory of Micronesia at any time, or may be disposed of in the territory of Micronesia in accordance with arrangements agreed upon between the two Governments.

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ARTICLE XII

The courts of Micronesia shall have the right to exercise civil jurisdiction over United States Personnel, except for those matters arising from the performance of their official duties.

The Micronesian courts and authorities will accept a certificate from the authorities of the United States of America as sufficient proof of the performance of official duty.

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ARTICLE XIII

1. Subject to the following provisions of this Article, United States Personnel shall be subject to the criminal jurisdiction of both Micronesia and the United States of America for offenses committed by them in Micronesia.

2. Micronesia shall have the right to exercise exclusive jurisdiction over United States Personnel with respect to offenses committed in Micronesia which are punishable by the law of Micronesia, but not by the law of the United States of America.

3. The United States of America shall have the right to exercise exclusive jurisdiction over United States Personnel with respect to offenses committed in Micronesia which are punishable by the law of the United States of America, but not by the law of Micronesia.

4. The United States of America shall have the primary right to exercise jurisdiction over United States Personnel with respect to offenses committed in Micronesia which are punishable by the law of both the United States of America and Micronesia. The United States of America shall give sympathetic consideration to a request from Micronesia for a waiver of its primary right to exercise jurisdiction in cases where Micronesia considers such waiver to be of particular importance. The United States of America shall notify Micronesia if it decides not to exercise jurisdiction in a particular case.

5. (a) The authorities of the United States of America and the authorities of Micronesia shall assist each other in the arrest of

United States Personnel in the territory of Micronesia. The authorities of Micronesia shall promptly notify the authorities of the United States of America of the arrest of any United States Personnel. The authorities of the United States of America shall promptly notify the authorities of Micronesia of the arrest of any United States Personnel in any case in which Micronesia has the right to exercise jurisdiction.

(b) The custody of United States Personnel accused or suspected of the commission of any offense in Micronesia shall be vested in the authorities of the United States of America unless such authorities decline custody in a particular case. United States Personnel over whom Micronesia is to exercise jurisdiction, if in the custody of authorities of the United States of America, shall be made available to the authorities of Micronesia for purposes of investigation and trial, and upon completion of all judicial proceedings, including appellate proceedings, shall be handed over to the authorities of Micronesia if a sentence to confinement has been finally adjudged.

6. The authorities of the United States of America and the authorities of Micronesia shall assist each other in the carrying out of all necessary investigations into offenses, and in the collection and production of evidence, including the seizure and, in proper cases, the handing over of objects connected with an offense. The handing over of such objects may, however, be made subject to their return within the time specified by the authority delivering them.

7. Where an accused has been tried in accordance with the provisions of this Article either by the United States of America or

Micronesia and has been acquitted, or has been convicted and is serving, or has served, his sentence, or his sentence has been remitted or suspended, or he has been pardoned, he may not be tried again for the same offense by the authorities of the other party. However, nothing in this paragraph shall prevent the military authorities of the United States of America from trying a Member of the Force for any violation of rules of discipline arising from an act or omission which constituted an offense for which he was tried by the authorities of Micronesia.

8. United States Personnel prosecuted under the jurisdiction of Micronesia shall be entitled:

- (a) to a prompt and speedy trial;
- (b) to be tried only in a court presided over by a legally trained and qualified judge;
- (c) to be informed, in advance of trial, of the specific charge or charges made against him;
- (d) to be confronted with and to cross-examine the witnesses against him;
- (e) to have compulsory process for obtaining witnesses in his favor, if they are within the jurisdiction of Micronesia;
- (f) to have legal representation of his own choice for his defense throughout all investigative and judicial phases of the entire proceedings or, at his election, to have legal representation appointed by the court at no cost to him under the same terms and conditions applicable to Micronesian citizens;

(g) if he considers it necessary, to have the services of a competent interpreter;

(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 at all stages of the proceedings, including pretrial hearings and examinations and appeals;

(i) not to be held guilty of a criminal offense on account of any act or omission which did not constitute a criminal offense under the law of Micronesia at the time it was committed;

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

(k) to have the burden of proof placed upon the prosecution;

(l) to be protected from the use of a confession or other evidence obtained by illegal or improper means;

(m) not to be compelled to testify against or otherwise incriminate himself;

(n) not to be required to stand trial if he is physically or mentally unfit to stand trial and participate in his defense;

(o) not to be tried or punished more than once for the same offense, nor to be subject to a greater punishment upon appeal than was adjudged by the court of first instance;

(p) to have the right to appeal a conviction or sentence;

(q) not to be subject to an appeal by the prosecution from an acquittal or finding of not guilty;

(r) to have credited to any sentence of confinement his period of pretrial confinement in a confinement facility of the United States of America or Micronesia;

(s) not to be subject to the application of martial law or trial by military courts or special tribunals;

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

(u) not to be prosecuted for any act or omission which is made a criminal offense solely by local custom.

9. United States Personnel who have been tried in Micronesian courts and who have been convicted and are serving sentences in confinement facilities of the Government of Micronesia shall be entitled to receive visits not less than monthly from members of their families and from representatives of the Government of the United States of America. Health and comfort items such as clothing, medicine, and food may be delivered to and used by such United States Personnel in confinement.

10. Facilities of the Government of Micronesia used for the execution of a sentence to a period of confinement or for the detention of United States Personnel will meet standards agreed upon by appropriate authorities of the Governments of Micronesia and the United States of America.

11. United States Personnel convicted by Micronesian courts shall not be subject to the death penalty, nor to any form of cruel and unusual treatment.

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ARTICLE XIV

In addition to the rights set forth in the preceding Article, the United States of America shall have the primary right to exercise jurisdiction over all United States citizens with respect to offenses committed within the defense sites and punishable by the laws of the United States of America. The authorities of Micronesia shall assist the authorities of the United States of America in the arrest of any such person. The custody of any such person shall be vested in the authorities of the United States of America.

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ARTICLE XV

The authorities of the Armed Forces of the United States will pay just and reasonable compensation in settlement of meritorious claims (other than contractual claims) arising out of acts or omissions in Micronesia of Members of the Force or employees of the Armed Forces of the United States, including those locally-hired employees who are not citizens of the United States of America if the act or omission was done in the performance of official duty. All such claims will be processed and settled by the authorities of the Armed Forces of the United States in accordance with the laws and regulations of the United States of America.

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