



DEPARTMENT OF DEFENSE  
OFFICE OF GENERAL COUNSEL  
WASHINGTON, D. C. 20301

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In reply refer to:  
I-11762/73

October 10, 1973

MEMORANDUM FOR CAPTAIN E.C. WHELAN, OSD/ISA

SUBJECT: Draft on Micronesian Compact

1. See my handwritten comments on the draft which I am returning.
2. See my special comments on Sections 501 and 502 at the end of this memorandum.
3. Determine by way of policy whether these sections of the Compact should be negotiated without raising at this time the fundamental sections (not here included) with respect to defense and foreign affairs powers.
4. With respect to MFN treatment Sections 602ff, change the language to read:

"The Government of the United States will grant Micronesian treatment with respect to all matters concerning trade and commerce including the goods and services that flow in that trade and commerce no less favorable than that accorded to its trade and commerce with any other country." Reason: Reference to "goods" alone is too narrow.

5. My comments on Sections 501 and 502:

Section 501

(a) Delete "and generally recognized principles of international law." Reason. There is no way in which such principles can readily be identified for the purpose of interpretation or application.

(b) No change. /

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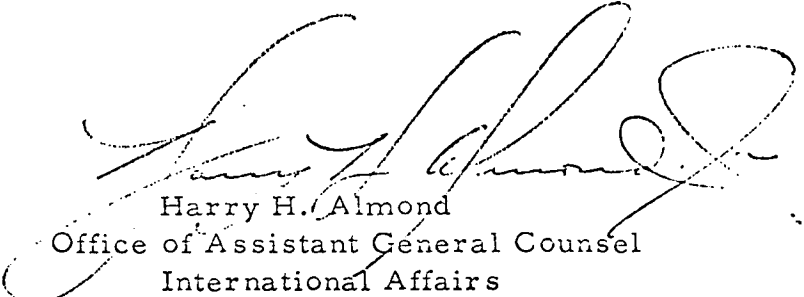
Section 502Rewrite:

"(a) Treaties and international agreements applicable to Micronesia under Section 501 (a) shall have the force of internal law in Micronesia.

"(b) Treaties or international agreements treated by the United States as self-executing shall be similarly treated by Micronesia.

"(c) The Government of Micronesia will enact appropriate domestic legislation to implement all treaties or international agreements which are not self-executing. Pending the enactment of Micronesian legislation, the implementing legislation applicable to Micronesia shall be that enacted by the United States. The Government of Micronesia may however adopt and promulgate its own legislation if in the opinion of the United States it adequately implements such treaty or international agreement."

Reason. The changes which I have made in the draft submitted to us are made first to provide clarity and simplicity to the mandate. Second. The reference to "general principles of international law" are omitted because they are not "implemented" nor treated by the United States as domestic law. In fact they are simply principles that apply in the relations between States, and the United States will be by the State accountable for Micronesian foreign affairs. Third. The language on self-executing treaties is not entirely clear, and I have attempted clarification accordingly. Fourth. Para. (c) in the original draft is unnecessary in view of the obligation of Micronesia to treat treaties, etc. as "internal law."



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