



DRAFT

MEMORANDUM FOR MR. HERMAN MARCUSE  
SPECIAL LEGAL ADVISER  
TRUST TERRITORIES  
DEPARTMENT OF JUSTICE

SUBJECT: Position of the United States Government -  
Department of Justice - Proposed Micronesian  
Compact.

Following discussions of the Department of Defense Working Group with respect to the Draft Compact for Micronesia a number of questions have been raised with respect to the scope and limitations of the Draft.

May we have your opinion with respect to the following general questions:

1. Whether or not the Compact as drafted is binding upon the "State" of Micronesia and upon its central government and on the political subdivisions whatever form they may take? In the event that it is not so binding, appropriate language to provide binding force will be required.

2. Assuming that the Compact is binding on all levels of government within Micronesia, should the Compact refer to political subdivisions and the various provisions?

3. Is the United States delegation able to determine at this point in the negotiations whether certain provisions of the Compact shall apply solely to the central government and whether other provisions shall apply to all levels of government?

4. In the event the United States at any time believes a local government practice does not conform with a provision of the Compact when it refers solely to the central government, whether that omission then means that the local government or political subdivision is not bound?

5. In the event that there are local government practices to be considered under a provision of the Compact which refers to both the central and local government, whether in the event of grievances by the United States it must deal with the local government or the central government?

6. Can the Government of Micronesia under the Compact decline responsibility for local government practices on the basis that a Micronesian Constitution (whose form we do not yet know) allocates concurrent authority to the local governments or solely to the local governments?

The following questions are raised with respect to particular provisions of the Compact. These include:

7. With Section 101 in view and assuming that the terms "Government of Micronesia" will include local levels of government, does this broaden the forms of government available for choice by the Micronesians in their drafting their constitution pursuant to Section 101 and in particular the standard therein "consistent with the provisions of this Compact?"

8. Is language needed in Section 102, which refers to the duly constituted government of Micronesia, to provide that this Section will require a Micronesian constitution to vest all authority in their central government, and if necessary should it also be added to Section 201(c)?

9. Does the President of the United States have the implied duty under Section 1202.2 to determine whether the Constitution adopted by the people of Micronesia pursuant to Section 101 is "consistent with the provisions of this Compact?"

10. Referring to Sections 201(b) and 307, is it intended that the United States is to accommodate "the expressed wishes" addressed directly to the United States Government by a single local government if we define Government of Micronesia to include its political subdivision?

11. Referring to Section 202, will consent be required for the negotiation of international agreements from a central government, concerned local governments, or from all "governments", i. e. both the central governments and the local governments? The same question is raised under Section 203(b) relating to the establishment of Consulates in Micronesia.

12. With Section 204 and Annex A in view advise whether the United States agrees only that the central government may undertake the activities specified there or whether the other levels of government may undertake them.

13. Under Section 302(b) we note an implied obligation on the Government of Micronesia (the Government is not referred to) to permit the U.S. Government activities and operations described therein and the concern is raised whether local levels of government if not referred to or if not implied as subject to this obligation may impede U.S. Government activities and operations?

14. Referring to Section 303(d) which prohibits the inclusion in Annex B agreements any limitations on the use of lands and waters which conflict with the basic defense authority of the United States and bearing in view that such negotiations must be made with local authorities, is specific language required to protect the United States with respect to this restraint on limitations?

15. Under Section 303(e) the minimum duration of Annex B agreements is set forth. Since these are negotiated with local government bodies, will additional language be needed referring to such bodies and binding them?

We are aware that these questions raise to some degree overlapping concerns or concerns which are similar largely

because of the uncertainty as to the authority to be vested by the unknown constitution of Micronesia. The possible political fragmentation of Micronesia would create a further uncertainty of political structure which might be inconsistent with United States objectives. Therefore the purpose of our request is in part to be assured that these objectives are fully met, and alternatively to raise the issues in such a way that if the objectives are not met we can at this time clarify the provisions in the Compact.

Harry H. Almond, Jr.  
Office of Assistant General Counsel  
International Affairs

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8. <sup>additional</sup> Is language needed in Section 102, which refers to the duly constituted government of Micronesia, to <sup>indicate if</sup> provide that this Section will require a Micronesian constitution to vest all authority in their central government, and if necessary should it also be added to Section 201(c)?