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C O N F I D E N T I A L 5147

SECTION 1 OF 2

FROM 15013A1FHRA

SDO _____ AT _____

SUBJ: MICRONESIAN COMPACT

FOR AMBASSADOR WILLIAMS FROM DOOLIN

1. REVIEW OF DRAFT MICRONESIAN COMPACT INDICATES NECESSITY FROM DOD STANDPOINT FOR MAKING A NUMBER OF CHANGES, AS SET FORTH IN THIS MESSAGE. WE RECOGNIZE DIFFICULTY OF REOPENING PORTIONS ALREADY AGREED WITH MICRONESIAN SIDE, IN SOME CASES AS FAR BACK AS 1972, BUT LEGAL AND SUBSTANTIVE IMPORTANCE OF MATTERS INVOLVED IS SUCH THAT SUBSTITUTION OF NEW TEXT (OR OF ALTERNATIVE LANGUAGE ACCOMPLISHING SAME PURPOSE) WILL BE PREREQUISITE TO CLEARANCE BY DOD OF COMPACT AS A WHOLE. FOR THE PURPOSE OF ACCURACY THE ENTIRE SECTION OR SUBPARAGRAPH OF A SECTION IS QUOTED, WITH CHANGES INCORPORATED.

2. SECTION 302(B) SHOULD READ AS FOLLOWS:

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"THE GOVERNMENT OF THE UNITED STATES MAY CONDUCT ALL ACTIVITIES AND OPERATIONS WITHIN THE LANDS, WATERS AND AIRSPACE OF THE TERRITORY OF MICRONESIA NECESSARY FOR THE EXERCISE OF ITS RESPONSIBILITY AND AUTHORITY UNDER SECTION 302(A)."

COMMENT THIS MAKES IT EXPLICIT THAT US OPERATING RIGHTS EXTEND TO MICRONESIAN AIRSPACE AS WELL AS LANDS AND WATERS.

3. SECTION 305 SHOULD READ AS FOLLOWS:

"THE LEGAL STATUS OF MEMBERS AND NON-MICRONESIAN CIVILIAN EMPLOYEES OF THE UNITED STATES ARMED FORCES, AND THEIR DEPENDENTS, WHILE PRESENT IN MICRONESIA, SHALL BE ESTABLISHED BY MUTUAL AGREEMENT. THAT JURISDICTIONAL AGREEMENT SHALL COME INTO FORCE SIMULTANEOUSLY WITH THIS COMPACT."

COMMENT THIS EXCLUDES SOFA COVERAGE FOR US CIVILIAN EMPLOYEES OTHER THAN THOSE OF DOD, BUT INSURES THAT SOFA WILL COVER TDY PERSONNEL AS WELL AS THOSE STATIONED IN MICRONESIA.

4. SECTION 402 OF THE DRAFT COMPACT SHOULD BE DELETED AND THE SECTIONS THAT FOLLOW RENUMBERED.

COMMENT AS A MATTER OF PRINCIPLE, US DOES NOT COMPENSATE COUNTRIES OR AREAS WHICH IT UNDERTAKES TO DEFEND. MOREOVER, BASE AND OPERATING

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RIGHTS IN COUNTRIES WITH WHICH US HAS DEFENSE COMMITMENT ARE

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NORMALLY NOT SUBJECT OF EXPLICIT QUID PRO QUO ARRANGEMENTS. FINALLY, ESTABLISHMENT OF AN OVERALL FIGURE IN ADVANCE WOULD APPEAR TO PRECLUDE LATER DETERMINATION OF FAIR MARKET VALUE IN CONNECTION WITH INDIVIDUAL LEASES GOVERNING SEPARATE LAND PARCELS WHICH US MAY REQUIRE, EITHER NOW OR IN FUTURE;

IF RETENTION OF SOME PROVISION IS NECESSARY FROM YOUR OVERALL NEGOTIATING STANDPOINT, IT SHOULD BE REVISED TO READ AS FOLLOWS:

"SECTION 402

THE GOVERNMENT OF THE UNITED STATES SHALL MAKE AVAILABLE TO THE GOVERNMENT OF MICRONESIA COMPENSATION TO COVER THE FAIR MARKET VALUE FOR LAND ACQUIRED FOR THE USE OF THE UNITED STATES;

5. ADD A NEW SECTION 501(C), READING AS FOLLOWS:

"NOTHING IN THIS TITLE SHALL LIMIT THE JURISDICTION, RIGHTS, POWER OR AUTHORITY OF THE UNITED STATES AS ESTABLISHED BY THE JURISDICTIONAL AGREEMENT CONCLUDED UNDER SECTION 305."

COMMENT THIS SECTION IS ESSENTIAL TO PROTECT JURISDICTION OVER

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CIVILIANS AND MILITARY PERSONNEL AGAINST ANY LIMITING LEGISLATION OF MICRONESIA WITH RESPECT TO THE SOFA.

6. SECTION 506 SHOULD READ:

"IN THE CONDUCT OF ITS ACTIVITIES IN MICRONESIA, THE GOVERNMENT OF THE UNITED STATES WILL ENDEAVOR TO PROTECT THE SURROUNDING ENVIRONMENT FROM PERMANENT OR IRREPARABLE DAMAGE BY ADHERENCE TO ENVIRONMENTAL QUALITY STANDARDS NO LESS RESTRICTIVE THAN THOSE ESTABLISHED BY UNITED STATES LAW, EXCEPT AS OTHERWISE MAY BE AGREED."

COMMENT LIMITATION EXTENDS SOLELY TO SUBSTANTIVE ENVIRONMENTAL STANDARDS ONLY, AND DOES NOT INCORPORATE US STATUTORY PROCEDURES IN THE SENSE OF EXTENDING THEM BEYOND THEIR OWN TERMS.

7. SECTION 1001 CONCERNING DISPUTES SHOULD BE REWRITTEN TO READ AS FOLLOWS

"IN THE EVENT OF A DISPUTE WHICH RELATES TO THE INTERPRETATION OR APPLICATION OF THE PROVISIONS OF THIS COMPACT, THE GOVERNMENT OF MICRONESIA AND THE GOVERNMENT OF THE UNITED STATES SHALL NEGOTIATE IN GOOD FAITH IN AN EFFORT TO SETTLE THE DISPUTE. EACH GOVERNMENT MAY REQUEST ARBITRATION WITH RESPECT TO ANY DISPUTE WHICH CANNOT BE SETTLED BY

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NEGOTIATION. IN THE EVENT THAT THE TWO GOVERNMENTS PROCEED TO ARBITRATION, THEIR DISPUTE SHALL BE SUBMITTED FOR AN ADVISORY OPINION OF A THREE-MEMBER ARBITRATION PANEL SPECIALLY SELECTED TO CONSIDER THE DISPUTE. EACH GOVERNMENT SHALL SELECT ONE MEMBER OF THE PANEL. THE TWO MEMBERS THUS SELECTED SHALL THEN BY AGREEMENT BETWEEN ONE ANOTHER SELECT THE THIRD MEMBER OF THE PANEL."

COMMENT: DOD CONSIDERS IT IMPORTANT TO USE WORDING THAT LEAVES THE CONSTITUTION OR ESTABLISHMENT OF AN ARBITRATIONAL ENTITY

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WITHIN THE DISCRETION OF USG. THIS IS PURPOSE BEHIND LANGUAGE
ADDED.

8. CORRECTIONS TO SECTION 1102 SHOULD BE MADE IN ACCORDANCE WITH
THE CONSENSUS ALREADY AND EARLIER REACHED BY MEMBERS OF US DEL,
INTENDED FOR PURPOSE OF CLARIFYING PARAGRAPH (B).

9. SECTION 1103 SHOULD READ AS FOLLOWS:

"(A) IN THE EVENT EITHER PARTY GIVES NOTICE OF INTENTION TO
TERMINATE THIS COMPACT PURSUANT TO SECTION 1102(B) AND BEFORE
ANY TERMINATION CAN BECOME EFFECTIVE, THE UNITED STATES
RIGHTS AND USES IN THE LANDS AND WATERS COVERED BY THEN
EXISTING LEASES AND THE RIGHTS OF DENIAL SET FORTH IN

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CONFIDENTIAL MESSAGE (ATOR PAPER)
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C O N F I D E N T I A L 5147
SECTION 2 OF 2

SECTION 302 OF THIS COMPACT SHALL BE EMBODIED IN A MUTUAL SECURITY AGREEMENT BETWEEN THE GOVERNMENT OF MICRONESIA AND THE GOVERNMENT OF THE UNITED STATES, WHICH SHALL ENTER INTO FORCE SIMULTANEOUSLY WITH THE TERMINATION OF THIS COMPACT." COMMENT: CHANGE IN FIRST LINE IS EDITORIAL. ADDITION OF LAST CLAUSE IS MADE TO INSURE THAT THERE IS NO TEMPORAL GAP BETWEEN THE TERMINATION OF THE COMPACT AND THE ENTRY INTO FORCE OF THE MUTUAL SECURITY AGREEMENT.

13. CAPT. WHELAN IS FAMILIAR WITH EACH OF FOREGOING ITEMS AND CAN PROVIDE ADDITIONAL INFORMATION PERTAINING TO THEM;
GDS DEC 31, 1980
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