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OFFICE OF THE SECRETARY OF DEFENSE

12 July 1974


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PLC 5/22/74
Request C (2 Jul)
not 15 Jul
23 Mar 74
JML

Memo For Mr. Almond - OSD/GC
Col. Kenty - J-5
Capt. Smith - ODUSA
Maj. Gehring - Navy/JAG
Mr. Boyd Allen - SAFGC
Capt. Whelan - ISA/EA&P ←

SUBJECT: Micronesia Compact and Status
of Forces Agreement

The draft memoranda which Phil circulated by his note of 25 June has been revised by deleting the point concerning Title V of the Compact. Both Navy and Army JAGs agreed that the important point was to secure the proper sequence of negotiations, so that the Jurisdictional Agreement would be successfully negotiated prior to completion of negotiations on the Compact. The other point was considered to be somewhat obscure and too legalistic for an approach by the DepSec Def.

I would appreciate your review and appropriate clearances by noon on Tuesday, 16 July. Again, departmental rather than legal clearances are needed, and should be at about the two-star level.

Richard G. Long 
Acting Director, Foreign
Military Rights Affairs
(x 54888)

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7/12/74

MEMORANDUM FOR THE CHAIRMAN, NSC UNDER SECRETARIES COMMITTEE
SUBJECT: Micronesian Compact and Status of Forces Agreement

(C) As you are aware, the Micronesian negotiations have moved forward substantially in recent months under Ambassador Williams' direction, and he has reached an understanding with the chief Micronesian negotiator regarding many major provisions of the Compact itself. Nevertheless, we have one concern which I believe should be resolved by the NSC Under Secretaries Committee.

(C) We are concerned about the timing and sequence of negotiations on the proposed Compact of Free Association and on the so-called Jurisdictional Agreement which will establish the legal status and operating rights of US forces in Micronesia. As we understand the matter, Ambassador Williams contemplates concluding his negotiations on the Compact as soon as practicable, and then addressing the Jurisdictional Agreement. Such a course of action, however, would postpone a number of important issues until the Jurisdictional Agreement is negotiated, rather than in considering them in connection with the Compact itself. Among these issues are such matters as exemption of US contractors from Micronesian taxation, the status of nationals from third countries present in Micronesia in connection with defense activities there, and special maritime and territorial jurisdiction over US citizens within the defense sites.

(C) The Department of Defense position with respect to these matters is set forth in our draft Jurisdictional Agreement circulated to other interested

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Executive Branch agencies in January 1973. However, no formal interagency consideration has been given to the Jurisdictional Agreement by non-Defense agencies since that time, apparently on the ground that such matters should be deferred until after conclusion of the Compact. In our view, this represents a serious misplacement of emphasis, ^I since important issues such as those referred to above ~~would then~~ be addressed only after the US had substantially exhausted its financial and other negotiating leverage in the course of concluding the Compact. In this connection, we have noted a recent Micronesian desire to delete from the Compact a provision which would make Presidential approval contingent upon satisfactory conclusion of the Jurisdictional Agreement. It is therefore highly important that the Jurisdictional Agreement be ^{negotiated concurrently with} successfully negotiated prior to conclusion of negotiations of the Compact.

(C) I therefore urge early consideration of this point by the Under Secretaries Committee.

(for signature of Mr. Clements)

cc:
Ambassador Franklin Haydn Williams, Special
Representative of the President for
Micronesian Status Negotiations
The Special Assistant to the President for
National Security Affairs
The Deputy Attorney General
The Under Secretary of the Interior

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Slocum + PC
Specific Request - 23 Mar 74 JEL

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REDRAFT
7/12/74

MEMORANDUM FOR THE DEPUTY SECRETARY OF DEFENSE

SUBJECT: Micronesian Compact and Jurisdictional Agreement - ACTION
MEMORANDUM

(C) Ambassador Williams, the President's Personal Representative for Micronesian Status Negotiations, desires to conclude as early as possible the basic Compact on Free Association with Micronesia, and to relegate to later subordinate negotiations the Jurisdictional Agreement (equivalent to a status of forces agreement). DoD circulated a draft Jurisdictional Agreement to interested US agencies in January 1973, but formal consideration within the US Government has never taken place. This agreement would include a number of important rights for the United States, and particularly the following which Micronesia might not consider as authorized by the Compact to be included in the agreement:

(1) Exemption of US contractors from Micronesian taxation. For the past several years, as a total exception to our policy in other overseas areas, DoD contractors in the Kwajalein Missile Range have been paying Micronesian income taxes. Because of the extensive nature of the Army Safeguard program in Kwajalein, these taxes amount to some \$5 million annually. DoD has accepted this arrangement only because of the unusual responsibilities of the US as the administering power of the Trust Territory. Once that arrangement ends, however, DoD contractors should be placed on the same basis as in other host countries worldwide, in order to avoid a precedent which could lead to greatly increased defense costs overseas.

(2) The status of nationals from third countries present in Micronesia in connection with Defense activities. In accordance with the practice elsewhere it is our view that such personnel, particularly those of a technical

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or highly skilled character, should be entitled to the same privileges and immunities as comparable US personnel.

(C) In order to be sure that all important rights are included in the final Jurisdictional Agreement, we believe that negotiations for the Jurisdictional Agreement should be completed prior to conclusion of the negotiations on the Compact, which will contain the major quids which the US will offer. We have not been able to secure acceptance of this point within the interagency group supporting the Micronesian status negotiations, and therefore believe that it should be addressed in the larger senior forum of the NSC Under Secretaries Committee.

(U) Your signature is therefore recommended on the attached memorandum to the Under Secretaries Committee outlining the problem and urging early consideration of this point.

(for signature of ASD(ISA))

Concurrence:

Department of the Army -
Department of the Navy -
Department of the Air Force -
General Counsel -
Joint Staff -

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