

U.S. Department of Justice
Office of Legislative Affairs



Washington, D.C. 20530

Office of the Assistant Attorney General

24 JAN 1984

Honorable David Stockman
Director
Office of Management and Budget
Washington, D.C.

Dear Mr. Stockman:

This letter is in response to your request for the views of the Department on the draft Joint Resolution proposed by the Office for Micronesian Status Negotiations "To approve the Compact of Free Association, and for other purposes," together with a Speaker letter and a section-by-section analysis. The Department of Justice recommends the submission of the proposed resolution to the Congress.

The Compact of Free Association with the Federated States of Micronesia and the Marshall Islands is the result of negotiations which started in 1969.*/ A virtually identical version of the Compact was initialled by the parties in the fall of 1980 during the last months of the Carter Administration. In 1981, the Compact underwent a policy review process. During this policy review the Department of Justice indicated that it had serious reservations about § 174(c) of the Compact under which the United States subjected itself to a suit for claims of the inhabitants of a Trust Territory for claims arising from the administration of the Trusteeship. We

*/ The negotiations originally covered the entire Trust Territory of the Pacific Islands. The Northern Mariana Islands withdrew from the negotiations in 1972 because they desired a closer relationship with the United States than the one contemplated in the relationship of Free Association. They therefore concluded with the United States a Covenant to establish a Commonwealth of the Northern Mariana Islands which will come under the sovereignty of the United States upon the termination of the Trusteeship. Palau initialled and signed the Compact of Free Association and approved it in a plebiscite. As the result of the failure in the plebiscite to obtain the 75% majority necessary to override certain nuclear provisions in the Palauan Constitution, the Government of Palau has been unable to complete its constitutional approval process of the Compact.



were concerned in particular about claims resulting from the conduct of nuclear testing in the Marshall Islands and those made by the owners of the land on which the missile testing facilities in Kwajalein are located. The Department of Justice, however, indicated that it would not insist on its objection if the Compact were overall acceptable. We took a similar position on § 153(a) which exempts the representatives of the Marshall Islands and the Federated States of Micronesia from the requirements of the Foreign Agents Registration Act. The President approved the initialled compact in NSDD # 10, in which the President stated that the Compact meets the requirement of the United States and instructed the Administration to inform the Micronesian Governments that it accepts the initialled Compact.

The Compact now submitted for comments is substantially identical with the initialled Compact. The misgivings the Department of Justice had in 1981 with respect to § 174(c) have been alleviated to a large extent by the conclusion of agreements dealing with the nuclear testing claims and the claims of the Kwajalein landowners.

The Department therefore has no objections to the Compact.

Section 2 of the bill deals with the problem of criminal jurisdiction over civilians, mostly contractor employees, on Kwajalein. We have indicated to the Office for Micronesian Status Negotiations (OMSN) that that section contained certain flaws and submitted an alternate version. OMSN has accepted our version subject to approval by the Department of Defense.

We had a number of comments on the Speaker letter and the section-by-section analysis and brought them to the attention of OMSN. We understand that, at the request of the Department of the Interior, the Speaker letter will be rewritten completely. With respect to the section-by-section analysis, OMSN has undertaken to incorporate our comments in that document. In those circumstances it does not appear necessary to burden this letter with the many modifications of the section-by-section analysis recommended by us. We approve the section-by-section analysis subject to the incorporation of our pertinent comments.

Sincerely,

Robert A. McConnell
Assistant Attorney General
Office of Legislative Affairs