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Mr. Almond, OGC
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AGREEMENT UNDER SECTION 305, TITLE III OF THE COMPACT OF FREE ASSOCIATION BETWEEN THE UNITED STATES OF AMERICA AND THE PEOPLE OF MICRONESIA, REGARDING THE STATUS OF UNITED STATES ARMED FORCES IN MICRONESIA.

(SOFA)
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PREAMBLE

The United States of America and the People of Micronesia,
pursuant to Section 305, Title III of the Compact of Free Association
between the parties signed at _____ this date,
have agreed as follows:

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5 OCT 1972

ARTICLE I

In this Agreement the term:

a. Armed Forces of the United States means the land, sea and air armed services of the United States of America, including the Coast Guard;

b. United States Contractors means the legal entities, including corporations and natural persons, present in the territory of Micronesia solely for the purpose of executing their contracts with the United States Government, or subcontracts of such contracts, for the benefit of the Armed Forces of the United States, and who are designated as such by the United States Government;

c. United States Personnel means anyone included in any of the following categories of persons:

(i) Members of the Force: the military personnel on active duty with the Armed Forces of the United States who are in the territory of Micronesia;

(ii) Members of the Civilian Component: the civilian persons who are not citizens of Micronesia and who are in the employ of, serving with, or accompanying the Armed Forces of the United States and who are in the territory of Micronesia;

(iii) United States Contractor Personnel: the natural persons in Micronesia who are United States Contractors or officers or employees of United States Contractors, and who are not citizens of Micronesia.

(iv) Dependents: the spouse and children of persons included in subparagraphs (i), (ii), or (iii) above and, if they are

members of their household, other relatives or wards of such persons or their spouses.

d. Defense sites means those lands, areas, waters and facilities in Micronesia which have been designated for use by the United States of America in accordance with Section 303, Title III of the Compact of Free Association. For purposes of applying criminal law, they are sites reserved or acquired for the use of the United States of America and are under the concurrent jurisdiction of the United States of America and Micronesia.

*and the
air space
above them.*

e. *Government of Micronesia -
also means the ~~it~~ includes
all political subdivisions
and entities comprising
that government.*

ARTICLE 11

1. All aircraft, vessels and vehicles operated by, for, or under the control of the Armed Forces of the United States or United States Contractors shall enjoy freedom of movement in Micronesia and freedom of access to the defense sites and to Micronesian ports, harbors and airfields. All movement of such aircraft, vessels and vehicles, and all use by them of defense sites and Micronesian ports, harbors and airfields shall not be subject to any Micronesian taxes, fees or other charges, except as set forth in paragraph 2 of this Article.

2. The Armed Forces of the United States and United States Contractors shall pay reasonable amounts for services rendered and materials received at their request in connection with the use of Micronesian ports, harbors and airfields.

by the GOVT

from GOVT

*Government of
Micronesia*

5 OCT 1972

ARTICLE III

1. In the exercise of its responsibility for and authority over defense matters in Micronesia, the United States of America may bring United States Personnel and United States Contractors into Micronesia. United States Personnel shall be exempt from Micronesian passport and visa laws and regulations. They shall also be exempt from the laws and regulations of Micronesia on the registration and control of aliens, but shall not be considered as acquiring any right to permanent residence or domicile in Micronesia.

2. Upon entry into or departure from Micronesia, United States Personnel shall have in their possession individual or group travel or leave orders certifying the status of the individual or group and the travel or leave authorized.

3. For the purpose of their identification while in Micronesia, United States Personnel shall have in their possession a personal identification card which shall show the name, date of birth, rank or occupation, and photograph of the bearer. Such card shall be shown on request to the appropriate Micronesian authorities.

5 OCT 1972

ARTICLE IV

1. Neither the Government of Micronesia nor any entity or political subdivision thereof may impose any tax, fee, or other charge on:

a. The services, activities, facilities, equipment, material, income or any other property or transaction of the Armed Forces of the United States or United States Contractors;

b. Income received by United States Personnel for services with or employment by the Armed Forces of the United States or United States Contractors, or from sources outside the territory of Micronesia;

c. The ownership, possession, use, transfer by death, or transfer inter se by United States Personnel of movable property, tangible or intangible.

2. Neither the Government of Micronesia nor any entity or political subdivision thereof may require United States Personnel to obtain any license, permit, or certificate, or undergo any examination, in connection with the performance of their duties on behalf of the Armed Forces of the United States or United States Contractors.

5 OCT 1972

ARTICLE V

1. All materials, equipment and other property imported or exported by or on behalf of the Armed Forces of the United States or United States Contractors for the use or benefit of the Armed Forces of the United States, United States Contractors, or United States Personnel shall be permitted entry into and exit from the territory of Micronesia free from customs duties, license requirements, and other import and export taxes and charges.

2. United States Personnel may import into and export from the territory of Micronesia furniture, household goods and personal effects for their private use, including privately owned vehicles, and no duty, tax, fee or other charge shall be payable upon such import or export.

3. Customs examination shall not be made in the following cases:

a. United States Personnel when entering or leaving the territory of Micronesia under official orders except when under leave orders;

b. Official documents under official seal, and mail in the United States military postal channels;

c. Cargo consigned to or shipped by the Armed Forces of the United States or United States Contractors.

4. The appropriate authorities of the Armed Forces of the United States, in cooperation with the authorities of the Government of Micronesia, shall take appropriate measures to prevent abuse of privileges granted to United States Personnel under this Article.

5. Except as may be otherwise agreed by the two governments, property imported under this Article and subsequently transferred to a person not entitled to import free of duty shall be subject to the payment by the purchaser of import duties and other charges according to the laws and regulations of Micronesia.

6. The Armed Forces of the United States may establish, operate and maintain within the territory of Micronesia service facilities such as schools, commissary stores, military retail exchanges and related concessions, credit unions, banking facilities, radio and television stations, recreational facilities, and social and athletic clubs for the use of United States Personnel. Such activities and the importation, purchase, sale or dispensing of merchandise and services by them shall be free of all Micronesian taxes, duties, fees, charges, licenses and regulations.

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5 OCT 1972

ARTICLE VI

The Armed Forces of the United States may establish, operate and maintain military post offices within defense sites for the use of United States Personnel.

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ARTICLE VII

United States Personnel may own, possess and carry arms provided that they are authorized to do so by the appropriate authorities of the Armed Forces of the United States.

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ARTICLE VIII

1. Micronesia shall accept as valid, without a driving test or fee, the driving permits or licenses or military driving permits issued by appropriate authorities of the United States of America or any subdivision thereof to United States Personnel.

2. Official vehicles of the Armed Forces of the United States, vehicles owned or operated by United States Contractors, and privately owned vehicles of United States Personnel shall be identified by individual markings or license plates issued by the appropriate authorities of the United States of America or a subdivision thereof. Such vehicles shall not be subject to the motor vehicle registration laws of Micronesia.

ARTICLE IX

1. The United States of America may at any time notify the Government of Micronesia that a defense site, or a specific portion thereof, is no longer required. Upon such notification, the defense site or portion thereof shall revert to the Government of Micronesia.

2. The United States of America shall be under no obligation to restore any defense site, or any portion thereof, to its original condition upon its reversion to the Government of Micronesia, or to compensate the Government of Micronesia in lieu of such restoration.

3. Upon the reversion of a defense site or a portion thereof to the Government of Micronesia, the United States of America will be compensated by the Government of Micronesia for the residual value (including scrap value), if any, of any installations or improvements on such defense site or portion thereof that were constructed at the expense of the United States of America, if such installations or improvements have been or are to be sold, or if their use is desired, by the Government of Micronesia. The residual value, if any, shall be determined by mutual agreement between appropriate authorities of the Government of Micronesia and the Government of the United States of America.

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ARTICLE X

Except as may be otherwise agreed, title to removable equipment, materials, and other property brought into or acquired in the territory of Micronesia by or on behalf of the United States of America or United States Contractors shall remain with the United States of America or United States Contractors, as the case may be. Such equipment, materials and other property may be removed from the territory of Micronesia at any time, or may be disposed of in the territory of Micronesia in accordance with arrangements agreed upon between the two Governments.

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5 OCT 1972

ARTICLE XI

The courts of Micronesia shall have the right to exercise civil jurisdiction over United States Personnel, except for those matters arising from the performance of their official duties.

The Micronesian courts and authorities will accept a certificate from the authorities of the United States of America as sufficient proof of the performance of official duty.

5 OCT 1972

ARTICLE XII

1. Subject to the following provisions of this Article, United States Personnel shall be subject to the criminal jurisdiction of both Micronesia and the United States of America for offenses committed by them in Micronesia.

2. Micronesia shall have the right to exercise exclusive jurisdiction over United States Personnel with respect to offenses committed in Micronesia which are punishable by the law of Micronesia, but not by the law of the United States of America.

3. The United States of America shall have the right to exercise exclusive jurisdiction over United States Personnel with respect to offenses committed in Micronesia which are punishable by the law of the United States of America, but not by the law of Micronesia.

4. The United States of America shall have the primary right to exercise jurisdiction over United States Personnel with respect to offenses committed in Micronesia which are punishable by the law of both the United States of America and Micronesia. The United States of America shall give sympathetic consideration to a request from Micronesia for a waiver of its primary right to exercise jurisdiction in cases where Micronesia considers such waiver to be of particular importance. The United States of America shall notify Micronesia if it decides not to exercise jurisdiction in a particular case.

5. (a) The authorities of the United States of America and the authorities of Micronesia shall assist each other in the arrest of

United States Personnel in the territory of Micronesia. The authorities of Micronesia shall promptly notify the authorities of the United States of America of the arrest of any United States Personnel. The authorities of the United States of America shall promptly notify the authorities of Micronesia of the arrest of any United States Personnel in any case in which Micronesia has the right to exercise jurisdiction.

(b) The custody of United States Personnel accused or suspected of the commission of any offense in Micronesia shall be vested in the authorities of the United States of America unless such authorities decline custody in a particular case. United States Personnel over whom Micronesia is to exercise jurisdiction, if in the custody of authorities of the United States of America, shall be made available to the authorities of Micronesia for purposes of investigation and trial, and upon completion of all judicial proceedings, including appellate proceedings, shall be handed over to the authorities of Micronesia if a sentence to confinement has been finally adjudged.

6. The authorities of the United States of America and the authorities of Micronesia shall assist each other in the carrying out of all necessary investigations into offenses, and in the collection and production of evidence, including the seizure and, in proper cases, the handing over of objects connected with an offense. The handing over of such objects may, however, be made subject to their return within the time specified by the authority delivering them.

7. Where an accused has been tried in accordance with the provisions of this Article either by the United States of America or

5 OCT 1972

Micronesia and has been acquitted, or has been convicted and is serving, or has served, his sentence, or his sentence has been remitted or suspended, or he has been pardoned, he may not be tried again for the same offense by the authorities of the other party. However, nothing in this paragraph shall prevent the military authorities of the United States of America from trying a Member of the Force for any violation of rules of discipline arising from an act or omission which constituted an offense for which he was tried by the authorities of Micronesia.

8. United States Personnel prosecuted under the jurisdiction of Micronesia shall be entitled:

- (a) to a prompt and speedy trial;
- (b) to be tried only in a court presided over by a legally trained and qualified judge;
- (c) to be informed, in advance of trial, of the specific charge or charges made against him;
- (d) to be confronted with and to cross-examine the witnesses against him;
- (e) to have compulsory process for obtaining witnesses in his favor, if they are within the jurisdiction of Micronesia;
- (f) to have legal representation of his own choice for his defense throughout all investigative and judicial phases of the entire proceedings or, at his election, to have legal representation appointed by the court at no cost to him under the same terms and conditions applicable to Micronesian citizens;

- (g) if he considers it necessary, to have the services of a competent interpreter;
- (h) to communicate with a representative of the Government of the United States of America and to have such a representative present at his trial;
- (i) not to be held guilty of a criminal offense on account of any act or omission which did not constitute a criminal offense under the law of Micronesia at the time it was committed;
- (j) to be present at his trial which shall be public;
- (k) to have the burden of proof placed upon the prosecution;
- (l) to be protected from the use of a confession or other evidence obtained by illegal or improper means;
- (m) not to be compelled to testify against or otherwise incriminate himself;
- (n) not to be required to stand trial if he is physically or mentally unfit to stand trial and participate in his defense;
- (o) not to be tried or punished more than once for the same offense, nor to be subject to a greater punishment upon appeal than was adjudged by the court of first instance;
- (p) to have the right to appeal a conviction or sentence;
- (q) not to be subject to an appeal by the prosecution from an acquittal or finding of not guilty;
- (r) to have credited to any sentence of confinement his period of pretrial confinement in a confinement facility of the United States of America or Micronesia;

*Should read
criminal procedure*

(s) not to be subject to the application of martial law or trial by military courts or special tribunals; and

(t) to enjoy all guarantees and rights provided for in the Constitution and laws of Micronesia.

9. United States Personnel who have been tried in Micronesian courts and who have been convicted and are serving sentences in confinement facilities of the Government of Micronesia shall be entitled to receive visits not less than monthly from members of their families and from representatives of the Government of the United States of America. Health and comfort items such as clothing, medicine, and food may be delivered to and used by such United States Personnel in confinement.

10. Facilities of the Government of Micronesia used for the execution of a sentence to a period of confinement or for the detention of United States Personnel will meet standards agreed upon by appropriate authorities of the Governments of Micronesia and the United States of America.

11. United States Personnel convicted by Micronesian courts shall not be subject to the death penalty.

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5 OCT 1972

ARTICLE XIII

In addition to the rights set forth in the preceding Article, the United States of America shall have the primary right to exercise jurisdiction over all United States citizens with respect to offenses committed within the defense sites and punishable by the laws of the United States of America. The authorities of Micronesia shall assist the authorities of the United States of America in the arrest of any such person. The custody of any such person shall be vested in the authorities of the United States of America.

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5 OCT 1972

ARTICLE XIV

The authorities of the Armed Forces of the United States will pay just and reasonable compensation in settlement of meritorious claims (other than contractual claims) arising out of acts or omissions in Micronesia of Members of the Force or employees of the Armed Forces of the United States, including those locally-hired employees who are not citizens of the United States of America if the act or omission was done in the performance of official duty. All such claims will be processed and settled by the authorities of the Armed Forces of the United States in accordance with the laws and regulations of the United States of America.

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*Copy for Special Agent
Special Request - 10/10/72*

Conversation between Ambassador Williams and Senator
Salii, October 5, 1972

Washington
A. Fenried

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Conversation last/about an hour. Found him in quite a serious and quiet mood, yet altogether friendly and, once again, willing to volunteer information that he never has in the past. I asked him about the meeting of the pro-independence advocates and he said he thought they might be ready this afternoon or tomorrow morning and he would let me know. I told him that I would like to propose that we have a final plenary session tomorrow. Didn't mention time although implication was afternoon.

Went on to say that I thought it was the wisest course of action in light of what we have said and what they have said, etc. His reaction was perhaps it was the wisest thing to do. I talked about conversation with Warnke. Salii echo'd Warnke's statement -- if wanted free association, ought to go ahead with the Compact. This led to further discussion of Ponape and, for what it is worth, this is what he said.

First, that there were non-Micronesian and non-Congressional member influences at work. For the first time he mentioned Roger Gale and said he was not the only American member of the Friends of Micronesia there for the deliberate purpose of interfering in their political affairs. He said that they were joined by some younger Micronesian members of the staff of the Congress and encouraged by some American

Peace Corps people and others. I asked if this was pretty carefully organized. He said very much so. He said he saw it coming and that he thought that he had the votes to kill the independence movement and that he thought that the time had come and on SJR 117, he explained his conduct in this manner: He said he didn't think he could block it and he wanted to try to influence it by modifying the language. He said he argued that it was ridiculous to talk about concrete negotiations and he also said his (JFSC) mandate was to see whether free association would meet the needs first, he thought the timing was bad, etc. He then said that he drafted, after it had gone through the committee, an amendment to it which he wanted to introduce on the floor which would have stricken free association altogether and which would have made SJR 117 a mandate to negotiate for independence and he went to see the President of the Senate (he said he was not certain of A. Kabua's position, nor was anyone else, on the independence question) and Kabua convinced him not to do this, and that he had decided not to do it for 2 reasons:

- 1) there were about 3 members of the Senate that were not going to be there (4 free association people could have influenced the vote). He still thought the SJR 117 as amended would have lost in the Senate but was very afraid of Kabua;
- 2) that Kabua's influence in the house would have been such that it would not have passed in the House.

He went on to say that he felt that if the Marianas remained a part of the Senate that he had he thought a very clear 9-3 majority in the Senate. He said the only two certain (independence advocates) were Amaraich and Nakayama. He said he put both Tmetuchl and Kabua in the uncertain class. He said again he thought the Ponape session was a disaster and he acknowledged that he knew he had made a mistake. He said how difficult it was for him to carry on the negotiations with the Senate and the House always looking over his shoulder and introducing this and that new element, etc. In some ways he wished that they could have a stand down until he could complete his mandate and then take a look at it.

We got off on to the problem of misinformation, distortions, propaganda, and he admitted this was a problem. Talking about wide circulation of the pro-independence analysis, I asked how he could counter it; what about an analysis from his point of view. (He was talking like he was reading a script.) He said it is very hard to combat. He asked if I had the latest Friends of Micronesia Newsletter. He said it was highly inflammatory, all about Ponape. He said he had been told that they had printed an additional 3,000 copies for distribution in Micronesia. He said it was very hard because the local newspapers are controlled by the pro-independence advocates. He said the Catholic missionaries

and teachers are very strongly for independence and they are a very, very great influence. I asked if Father Castigan(?) was part of this. He said he thought he was but that the younger Catholic priests are very active and the hearings they had and the letter were widely distributed in advance throughout Ponape in the churches. Those on the other side are hard at work. (HW note - Setik said the center of anti-American sentiment and the independence movement in Truk was Xavier High School.) I said to Salii, Aren't you going to fight back? He said yes, there is a lot of talk about this. /I brought up the District Legislatures. He said he thought the members of the Congress would be able to swing the District Legislatures. I said the record shows Palau Legislature rejected it. (His tone was a little different than yesterday.) He said I think we can get the approval of the land -- he and Roman together. I said, Lazarus, this is a way down the road, but if we get a draft Compact, we can't afford to just let nature take its course--it will be ripped all apart. If we are going to both agree to it and support it together, I think the best thing would be for a joint team to go to each District. He listened but didn't say anything.

Then we got back and philosophized about this round. He said the only thing I am afraid of is that those who oppose free association will take advantage of the fact that

we were not successful in completing the Compact here. I asked what we could do to minimize this. He didn't immediately come up with anything. I said what can I do to help and he said he thought if we could say something about just how difficult and hard this work was. That is when he brought in business of all the factors and forces at work in Micronesia playing on the people, on him, and on the Congress during the ^(Pov upc) Congress. Then, I said, Lazarus, would it help or hurt you if I were to say we were aware of the problems your delegation has had. ^{He said YES.} Then he suggested that I say "and within his own delegation." Then he said that he hoped that we could leave the record here that this was in a sense a pause for both sides and that it was temporary and would be resumed. (I had the feeling he was a little disheartened.)

I have the feeling that Salii, unless he is totally dishonest, is in a position where he wants to work more closely to get a Compact of Free Association; that it is in his interest now to play ball more with us. It may be that some of his gyrations are going to make us angry. One could say his discussion with me on SJR 117 sounds pretty plausible; he was taking a risk and thought he might have it voted down.

He certainly did not open my eyes but gave me more reason to say that we have to face the fact that there is an organized campaign on the other side and no organized

effort to combat it. For instance, he said he had received a letter from someone in the Marshalls bitterly attacking the Compact; the next day copies of it were all over Colonia.

HW note: In final statement, feel it is necessary we weigh every word in terms of "Are we supporting our friends and not giving ammunition to our enemies?" That is the criteria against which we are going to have to weigh what we say.

Notes taken from
debriefing. dt