



8 August 1969

MEMORANDUM FOR CHIEF, INTERNATIONAL AFFAIRS DIVISION  
OJAG, DEPARTMENT OF THE ARMY

DEPUTY ASSISTANT JUDGE ADVOCATE GENERAL  
INTERNATIONAL LAW, OJAG, DEPARTMENT  
OF THE NAVY

CHIEF, INTERNATIONAL LAW DIVISION 1-159209  
OJAG, DEPARTMENT OF THE AIR FORCE

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LEGAL ADVISER, DIRECTOR, JOINT STAFF

SUBJECT: Proposed Organic Act for Micronesia

The following specific issues have been raised in recent discussions. If you have any comments on these issues, may we hear from you either by telephone or personally since the discussions are presently under way.

1. The Bill of Rights contain the following provisions:

"(s) No person who advocates, or aids or belongs to any party, organization, or association which advocates, the overthrow by force or violence of the government of Micronesia or of the United States shall be qualified to hold any public office of trust or profit under the government of Micronesia."

We would like your comments on first whether this provision should be made part of the Organic Act. Secondly, if you believe it should be made part of the Organic Act (and not of other United States legislation, Executive Orders or provided through regulation of a different kind) whether it should be part of the Bill of Rights in the Act.

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2. The Organic Act contains in Section 118 in the second paragraph the following language:

"When a bill is returned by the Governor to the Congress with his objections, the Congress shall enter his objections at large on its journal and proceed to reconsider it. If, after such reconsideration, two-thirds of the Congress agree to pass it, it shall be sent to the Governor, and shall become law unless it affects the National defense or National interest of the United States, in which event he shall within ten days transmit it to the President of the United States. If the President of the United States approves it, he shall sign it. If he shall not approve it, he shall return it to the Governor so stating, and it shall not be a law. If he neither approves it nor disapproves it within ninety days from the date of transmittal to him by the Governor, it shall be a law in like manner as if he had signed it."

This language, relating to the power of the United States President, presupposes that there will be a Governor appointed by the United States who will be a United States citizen. It is intended however that after a transitional period, the Micronesians will have a Governor whom they have elected.

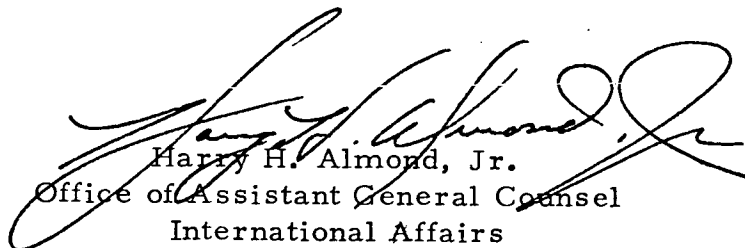
On the other hand, the language relating to the "national defense" or "national interest" of the United States has been proposed by the Bureau of the Budget. The Congress opposing this proposal  has already on one occasion taken the view that identical language should not be made part of the Act. The main problem facing the Department of Defense is how the United States is appropriately to safeguard itself in situations of this kind. The Department of Interior at the present time has proposed that there will be sufficient protection through

the "emergency powers" which the President of the United States may exercise under the Constitution and Federal laws, coupled with the power of the United States Congress to legislate (but that is what it is doing here) and the powers of the United States District Attorney to bring an action which might invalidate any Act contrary to the "national defense" or "national interest" of the United States.

However, we are tentatively taking the view that these are not satisfactory procedures and that the Organic Act is intended to provide a working and effective system of Government, and that a safeguard based on such reserved powers as enumerated above is not satisfactory.

We would appreciate your comments as to these safeguards or to what safeguards might be used bearing again in view that the territory of Micronesia will move toward some form of self-government and therefore toward an elected Governor.

3. Citizenship. Section 102 of the Organic Act relates to citizenship. May we have your comments on this Section particularly having in mind that it will make United States citizens out of persons residing on the islands as of the date of the Organic Act. Apart from the problems of dual citizenship, may we have your comments affecting United States security interests to the extent that foreign nationals might thereby be given United States citizenship contrary to the best interests of United States.

  
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 Office of Assistant General Counsel  
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cc: Mr. L. Howard Bennett  
 Acting Deputy Assistant Secretary  
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Commander Kuhn, OSD/ISA

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