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In reply refer to:
I-9526/69
20 August 1969

**MEMORANDUM FOR REAR ADMIRAL TAZEWELL T. SHEPARD, JR.
DIRECTOR, EAST ASIA & PACIFIC REGION
OASD/ISA**

SUBJECT: Present Status of Micronesian Proposals

At this stage in the discussion and meetings relating to Micronesia our attention has largely been addressed to drafting model legislation for the United States Congress. The legal risks which are entailed in the procedures proposed for the association of "Micronesia" as an unincorporated territory of the United States are the following:

1. The Legal Considerations Relating to Self-Government.

Under the Trusteeship Agreement between the United States and the Security Council of the United Nations and under the United Nations Charter, the strategic Trust Territory of the Pacific Islands presently administered by the United States must move "toward self-government". This term has, to the best of our knowledge, been interpreted in case of other trust territories to mean that a given Trust Territory must have achieved self-government. In other words, it must no longer be simply in the process of moving toward self-government.

In the case of Micronesia the present proposals do not call for the achievement of self-government. But they do call for Micronesia, which is in the process of moving toward self-government, to secure first its independence from the United States, and then on the basis of a referendum administered presumably by their own Government, to seek free association with United States as an unincorporated territory.

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It is then anticipated that legislation similar to that which is presently being drafted will have been adopted by the United States Congress as legislation and that it in turn will be accepted by the Micronesians as the Act (presently called the "Micronesia Political Status Act") under which their territory will be governed.

It is evident, we believe, that these procedures entail a risk particularly since the Trusteeship Agreement is an agreement involving both the United States and the Security Council of the United Nations and because other agencies of the United Nations though not necessarily entrusted with surveillance of this arrangement may through political maneuvering propel the matter toward the International Court of Justice for an advisory opinion (the Security Council, General Assembly, and other principal organs of the United Nations may seek the advisory opinion of the International Court of Justice under the statute of that Court, per Article 65.) Therefore, assuming that the United States proceeds in this way, it will be necessary from a policy point of view to ascertain how serious these risks may be, and also to consider how through corridor negotiations or otherwise, their impact may be reduced.

2. The Question of Self-Government:
The Elected Governor.

If it is assumed that Micronesia must have achieved self-government before the United States is in a position unilaterally or otherwise to terminate the Trusteeship agreement with the Security Council, then the provision for the "executive", in Section 104 et. seq. of the proposed Bill, entails further legal risks. In particular, under Section 104, the draft calls for the Governor of Micronesia to "be appointed by the (United States) President, by and with the advice and the consent of the Senate of the United States" and to be "a citizen of the United States". This appointed Governor (and the Lieutenant Governor as well) is a United States official until January 1981 when the

proposed legislation calls for an elected Governor and Lieutenant Governor (Section 107). Therefore, the proposed legislation implies that the Micronesians have not reached self-government at least until 1981.

3. The United States Interests in Real Property of Micronesia.

Of particular interest to the Department of Defense is the right to maintain exclusive interests and control of certain property in Micronesia, the further right to acquire property in the future for defense or other governmental purposes, and the protection to be afforded by legislation wherein Micronesia cannot convey her real property to any other government. As to these matters, Commander E. A. Kuhn and I are presently engaged in assessing what steps will be taken to preserve the Department of Defense interests.

In concluding, we should like to point out that when the draft has been completed by the interagency groups (the Departments of Interior, State, Defense and Justice) Commander Kuhn and I will attempt to provide interpretive minutes or explanatory notes which will constitute the drafting record and deal with certain provisions of the Act that may require interpretation.

SIGNED

Harry H. Almond, Jr.
Office of Assistant General Counsel
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cc: Mr. Niederlehner
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