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DEPARTMENT OF THE NAVY
OFFICE OF THE JUDGE ADVOCATE GENERAL
WASHINGTON, D. C. 20370

IN REPLY REFER TO
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21 August 1969

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MEMORANDUM FOR MR. HARRY H. ALMOND, OFFICE OF THE ASSISTANT GENERAL COUNSEL, DEPARTMENT OF DEFENSE

Subj: Proposed "Organic Act - Micronesia: Mr. Meed's Bill and Joint Resolution

Ref: (a) Your memo dated 14 August 1969, w/subject enclosures

1. Subject materials appear to be an alternative method of accomplishing a permanent union between Micronesia and the United States. Pursuant to your reference (a) request the following comments are forwarded.

2. The major concern of this Office is the possible international legal and policy problems surrounding the implementation of any such measure. It is imperative that those considering any proposals designed to ensure a permanent union between the U.S. and the T.T.P.I. be made aware of the following factors:

a. In 1947 the United States placed the TTPI under United Nations trusteeship through an agreement between the United Nations Security Council and the government of the United States. Under this agreement, which entered into force on 18 July 1947, the territory was designated a strategic area, as provided for by Article 82 of the Charter of the United Nations. The United States retained the right to establish military bases in the territory and to close all or part of the territory for security reasons. Article 83(1) of the Charter describes the functions of the United Nations relating to strategic areas. Under these provisions, the Security Council must approve the terms of trusteeship agreements and of any alteration or amendment thereto. Any alteration in the status of the TTPI, such as the bringing of it into permanent association with the U.S., must reflect the expressed wishes of the inhabitants of the territory and is subject to Security Council approval. Article 76 of the UN Charter, which enumerates the basic objectives of the trusteeship system states the following objective: "to promote the political, economic, social, and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the peoples concerned, and as may be provided by the terms of each trusteeship agreement." General Assembly Resolution 1541 (XV) of 14 December 1960 declares that all peoples have the right of self-determination;

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by virtue of that right they must be allowed to freely determine their political status and freely pursue their economic, social and cultural development. This principle is embodied in Article 6 guaranteeing the right of self-determination "or independence" which appear in the Trusteeship Agreement on the Pacific Islands whereby the U.S. was appointed the administering authority of the area. The words "or independence" were inserted in the course of the consideration of the Agreement by the U.N. Security Council. The United States originally opposed the insertion of these words because of the unlikelihood that such independence "could possibly be achieved within any foreseeable future in this case."

b. It should be noted that although the Trusteeship Agreement does not enumerate the specific method of terminating the Agreement the U.S. has recently committed itself to accomplishing this end by means of a plebiscite offering self-government or independence. On 8 May 1968, then Under Secretary of State Katzenbach made a statement before the Subcommittee on Territories and Insular Affairs of the Senate Committee on Interior and Insular Affairs of the Senate Committee on Interior and Insular Affairs which read in part as follows:

> ...The trusteeship agreement does not specify procedures for its termination. Both the agreement and the U.N. Charter leave no doubt, however, that an exercise of self-determination in the TTPI would require that we offer the Micronesian people the choice of self-government or independence. Article 6 explicitly enjoins the United States to 'promote the development of the inhabitants of the trust territory toward self-government or independence as may be appropriate to the particular circumstances of the trust territory and its peoples and the freely expressed wishes of the people concerned.'
>
> While neither the charter nor the agreement specify how self-determination should be brought into being, the precedent of similar cases indicates the need for a plebiscite to ascertain the wishes of the inhabitants.
>
> The choices offered to the Micronesians in such a plebiscite must include self-government or independence. The plebiscite should represent a genuine and meaningful decision by all the inhabitants of the territory. As such, it would require all the preparation and care that must accompany such a solemn decision....
>
> The timing of a plebiscite must avoid two dangers. If the target date is postponed too long, we shall create serious disappointments which could cause us grave difficulties at a later time. A premature plebiscite, on the other hand, would not allow time to prepare a realistic program for carrying out the alternative chosen or to permit the education necessary if the Micronesian people are to make a meaningful choice. We believe that 1972 gives us enough time for preparation and education without risking the dangers inherent in extended delay.

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We propose a status commission because we are convinced that a qualified body should recommend how to give a fuller meaning to terms like 'independence,' 'self-government.' It would not be fair if the Micronesians-who are looking for greater, not less, certainty-were presented with a plebiscite in which the bare words describing each alternative were not backed up by a plausible and practical program. For example, it would be meaningless to offer Micronesia some form of self-government in free association with the United States if our proposals on such things as citizenship, form of government, budgetary arrangements, and economic relationships were not well understood ahead of time by the Micronesians. (LVIII Department of State Bulletin, No. 1510, June 3, 1968, pp. 729-30).

c. As pointed out above, under the present trusteeship arrangement the U.S., as administering authority, retains the right to determine military and security needs in the area free of U.N. Security Council control. However, the continuation of the U.S. trusteeship is being seriously challenged in the U.N. The United States is being subjected to considerable pressures from the U.N. General Assembly "Committee of Twenty-four," made up predominantly of so-called anti-colonialists and headed by the Soviet Union, to grant independence to all of the territories. The communist bloc exploits every opportunity to attack U.S. policies in the Pacific islands focusing attention on the questions of independence and U.S. military use of the area

The language of a Petition From the Senate, Congress of Micronesia, to the U.N. Trusteeship Council on 12 March 1969 voiced extreme criticism of the U.S. presence in Micronesia.

In light of the above it would appear essential that serious consideration be given to the problem areas noted if the U.S. is to be successful in changing the status of Micronesia to a U.S. territory and thereby more fully safeguarding its national security interest in Micronesia.

3. As to the contents of subject bill the following aspects appear to be of interest to the Department of Defense:

a. Subject bill contains no provision permitting the Government of Micronesia to request military aid from the U.S. in time of violence,

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insurrection or rebellion. Such a provision would appear desirable and could be framed along the lines of those contained in the Organic Act of Guam (48 USC §1422 (b)) or the Organic Act of the Virgin Islands (48 USC §1591).

b. Section 10 concerning the title to all property owned by the U.S. may be of questionable value as it relates to real property if it is determined that the U.S. does not hold title to any such property in the area covered by subject bill.

c. The Organic Act of Guam provides, inter alia, that:

> Nothing contained in this chapter shall be construed as limiting the authority of the President to designate parts of Guam as naval or military reservations, nor to restrict his authority to treat Guam as a closed port with respect to the vessels and aircraft of foreign nations.

Subject draft contains no such provision which would appear to be of vital interest to the national security interests of the United States.

for William F. Palmer

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