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In reply refer to:
I-24543/69

September 9, 1969

MEMORANDUM FOR COMMANDER KUHN, ISA

SUBJECT: Trust Territories of the Pacific Islands: Legal
Issues Raised by CINCPACFLT

In a discussion on 5 September 1969 the following positions were taken with the JAG's and Captain Miller, JCS, in connection with 4 cables received from CINCPACFLT.

Cable No. 16620:

1. Item 2 of this cable indicates that the Navy does not hold any TTPI property in fee title. Unless we hear otherwise from you, we anticipate that no other governmental agency holds TTPI property in fee.

2. In Item 3 it is noted that the Micronesians might take a strong position against any alienation of their property, particularly in fee simple, to such alienation. Prejudice arises from their practice and local customs. This matter, we believe, is a question to be reviewed and managed during the negotiations of the proposed Act. However, we agree with Cable No. 95113, item 4, that the qualified alienation clause, if made part of the Proposed Act in Section 150 (d) may conceivably be invalid on constitutional grounds if raised in the Supreme Court.

Should this be a matter of concern, we recommend that an opinion from the Department of Justice be secured. On the other hand, it was suggested that the question of constitutionality be set aside and if the issue arises to deal with it at the time. In the alternative

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the matter may be taken care of when the legislative draftsmen of the United States Congress take over the Act for its final draft.

3. Item 4 refers to legal impediments addressed to the status of TTPI territory. This is a problem which we have all recognized may create serious risks.

Cable No. 95113:

1. Item 1 - require no specific comment.
2. Item 3 is a matter to be mentioned during the negotiations of the Proposed Act and Item 4 has already been mentioned above.
3. The remaining items have been noted but raise no serious questions. We concur with Item 6.

Cable No. 95120:

1. We have noted in Item 2 that the existing use and occupancy agreements might be characterized as tantamount to a fee contrary to the view taken in Cable 16620. It is our position that this is not an accurate characterization of the use and occupancy agreements even though those agreements extend for a period of indefinite duration. Either a residuary fee, or if they are public lands, sovereignty, here in the form of a fee, will remain with the grantors.

2. We concur with Item 3 of this Cable and recommend that you call this point directly to the attention of Mr. Chapman and the Department of the Interior for an appropriate provision to be made in the Act.

3. We have noted Item 4 but believe that this comment is based upon an unclear reading of the Act. We recommend therefore that you send a message asking for clarification of Item 4 in view of the language used in the Act itself.

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4. Referring to Item 5: it has already been agreed that the terms "reasonable period of time" would be more appropriate in the Act than a time limit of "three months."

5. Item 6 refers to titles of submerged and tide lands areas and although we do not anticipate that issues will be raised in this matter, it should be called directly to the attention of Mr. Chapman for his views and for those of the Department of the Interior.

6. Item 7 in this cable points out that foreign interests might have the power to secure monopoly controls over public utilities or other areas of business in the Micronesian Islands. The Act makes no provision to prevent such control from being secured. However, should safeguards be required, we recommend that you consider either an Executive Order or legislation to deal with this question in the Act.

Cable-No. 98307:

1. Items 1 - 3 of cable do not require comment.

2. Item 4 we believe will be the subject of the negotiations of the Act and need not be commented upon here. However, if there are claims in the submerged lands, the question was then raised by one of the members at a meeting that the Act would then in effect constitute a conveyance of real property without due process of law and with no provisions of assessing value and making compensation. The Act itself calls for condemnation procedures to be followed which would safeguard the land owner (Section 150(c)). We therefore believe that this matter should be called to the attention of Mr. Chapman for his comments and review.

General Comments:

In addition to the above comments we need your assistance on the following:

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1. Legislative/Drafting Record:

It was proposed that a drafting and interpretative record be made part of the Organic Act to be drawn up by the four agencies involved in the drafting.

2. The Powers of the Commission in Sec. 150(d):

Concern was voiced whether Sec. 150(d) applied to non-residents of Micronesia, and therefore to United States citizens. If so, would this section lead to a Commission which might through its veto power restrain the commerce, trade, and development of the islands.

3. Programs or Plans for Adopting the Organic Act:

The members of the JAG have requested a complete and accurate schedule of the procedures to be taken (a) within the United States, (b) within the United Nations, (c) with United States allies and (d) with the Micronesians for achieving incorporation within the United States.

4. Background Materials:

The members of the JAG have requested:

(a) Copies of any Department of State studies relating to the incorporation of Micronesia into the United States, or for dealing (strategies, negotiation plans) with the United Nations, especially the Security Council, or for dealing with the Micronesians.

(b) A review by the Department of State of the travaux preparatoire (legislative history) to the United Nations Charter provisions (Arts 73-85 inclusive).

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(c) A review by the Department of State of the action taken and procedures dealing with other trust territories (it is recognized that the United States was the only country administering a "strategic" trust territory, but there should be similarities).

(d) A review of United Nations action related to plebiscites (or referendums) as they may have occurred in (c).

procedures, and reactions

We would also like to know whether - in a proposed referendum of the Micronesians - one of the options will include the expressed right to vote against (a) incorporation into the United States, (b) the enactment and entry into law of the proposed "Micronesian Political Status Act." and further (c) whether any of the political procedures proposed in connection with the independence/association will be "supervised" by the United Nations.

Signed

Harry H. Almond, Jr.
Office of the Assistant General Counsel
International Affairs

cc: Army JAG
Navy JAG
AF JAG
Captain Miller, JCS
Mr Niederlehner
Circulating
Subject: ILP-Trust Territory
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