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In reply refer to:
I-24580/69

September 10, 1969

**MEMORANDUM FOR COMMANDER KUHN, EAST ASIA AND
PACIFIC REGION, ISA**

SUBJECT: Micronesian Referendum

The following questions concerning the proposed referendum in Micronesia are intended to raise issues of concern, but not to prejudge the action contemplated. Aside from the guidelines offered by the United Nations General Assembly, the relevant-legal-political consideration is whether - against appropriate criteria, accepted (expressly or implicitly) by the United Nations, or by its members - the peoples of Micronesia by democratic processes have effectively exercised their consent to be incorporated into the United States, and subject to legislation to this effect, satisfactory to the United States Congress (and President). Put in terms of international law, have they the "sovereignty" to exercise the choice that would lead to incorporation? Or can the United States effectively argue - and assume the position - that this is not the relevant legal consideration?

In any event, the referendum - or plebiscite - to be used to secure the incorporation of Micronesia into the United States as a territory is a key element in satisfying United States interests in the area.

To assess the risks the following questions must be addressed:

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M. J. Carino

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Issues relating to the will or consent - popular sovereignty of the Micronesians:

1. What risks does the United States take if the referendum is voted in by a narrow majority? Is a clear majority required?
2. Will the Micronesians be given the option to (a) vote against the referendum or (b) for qualified terms of incorporation? If not, are there any risks involved?
3. Who will supervise the referendum? Will it be an official (authorized) body appointed to represent the United Nations? Will it be an independent body? How selected and constituted?
4. What criteria will be applied to:
 - a. Show that the popular will or consent has been given.
 - b. Show that "sovereignty" for the purpose of referendum (or pleibiscite) was reposed in the Micronesians?
 - c. Determine who are the qualified voters (age, sex, property-ownership, etc.)

Issues relating to the propositions offered in the "Micronesian Political Status Act,"

1. Do the "economic clauses" in the proposed Act entail risks that it cannot be readily accepted?
 - a. Those relating to the transfer of "tidelands" to the United States?
 - b. Those - constitutionality aside - relating to restraints on the Micronesians power to alienate?

c. Those (proposed) affecting the rights of "foreign interests" purportedly to be afforded most-favored-nation or national treatment.

Issues relating to an international concern:

1. Are there risks arising from the possibility of treating the referendum as too narrowly a question of domestic (United States) concern, i. e. -

a. How far can any referendum - involving the "sovereignty" of a separate people be divorced from an international concern.

b. Is not the Micronesian referendum a matter of international concern also because (1) there is a trusteeship arrangement with the Security Council, (2) there are duties and obligations under the United Nations Charter and (3) there are political factors alive in the United Nations General Assembly which can reinforce this concern?

c. Therefore, how do we establish the key element of "popular sovereignty" upon which a referendum or plebiscite must rest? How far must we go to show that "democratic principles" were effective in the procedures adopted and used? To what extent would it be possible to show that "political pressures" might have played a dominant role? To what extent might other members of the United States denounce the referendum itself as merely a ratification of a forced fait accompli?

Signed

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

cc: Captain Miller, JCS
Army JAG
Navy JAG
Air Force JAG

Mr. Niederlehner
Circulating
Subject: ILP-Trust Territories
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*These elements:
Nationality
Democracy
Sovereignty

J. - Collier, National
Self Determination
IX-144.5, P. 73*