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January 4, 1971

TO : S/PC - Claus W. Ruser

FROM : L/EA - Kristine Strachan

SUBJECT : Comparison of US Legal Position With Respect
To Various Micronesian Options

I. Permanent Continuation of Trusteeship (Sovereignty in abeyance)

While in effect, the Trust Agreement gives complete legal protection to US strategic interests. Should Micronesia abrogate any provisions of the Trust Agreement, the US would be legally justified in using reasonable force to protect its interests in proportion to the danger posed. However, our legal obligations for defense, political development, and economic, social and educational advancement would also continue. For example, the US would be both legally justified and obligated to intervene militarily to protect against domestic insurrection and foreign attack. Neither Micronesia nor the US has the right to unilaterally terminate any of these protections or obligations.

There are no legal problems regarding eminent domain, application of the Constitution or federal supremacy, since we are authorized (but not obligated) to apply those laws we determine appropriate.

II. Commonwealth Proposals (US Sovereignty)

If Commonwealth status not unilaterally terminable, US has legal right to exercise eminent domain and federal supremacy powers at any time, despite agreements with Micronesia to the contrary. US has legal right and obligation to intervene militarily to protect against domestic insurrection and foreign attack. Should Micronesia abrogate any provisions of the Commonwealth Agreement, the US would be legally justified in using reasonable force to protect its national security in proportion to the danger posed. Depending on whether Micronesians made US Nationals or Citizens, US obliged to guarantee certain Constitutional protections.

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If Commonwealth unilaterally terminable, upon such termination by Micronesians, we would have no legal rights unless the military basing agreements are independent from the Compact. In the latter case, we would have the same legal basis for protecting our military rights as we have in the Philippines, Turkey or Cuba. In short, there would be no legal justification for the use of force against Micronesia if they illegally abrogated the military arrangements. Assuming principle of denial of access to foreign powers embodied in military agreement, analysis is the same.

III. Free Association (Micronesian Sovereignty)

If Compact is not unilaterally terminable, US has legal right and obligation to intervene militarily to protect against foreign attack. If illegally terminated by Micronesians, US would not, in general, be legally justified in using force to protect its interests; however some degree of force might be justifiable in order to protect US nationals or citizens there. As long as Compact in effect, US would have right to protect military facilities against threats posed by domestic unrest, but no obligation to quiet domestic insurrection. Depending on provisions of the Compact, US would have legal right equivalent to eminent domain or a limited form thereof. Constitutional protections would depend on whether Micronesians are US Nationals, Citizens or aliens. No problems with federal supremacy.

If Compact unilaterally terminable, upon such termination same analysis as in second paragraph of II above.

IV. Summary

Apart from a justification for the use of reasonable force to counter an illegal abrogation of agreement (present in Option I and II), there is no distinction with respect to legal rights among the options.

With respect to legal obligations, there is no difference regarding the obligation to intervene militarily against foreign attack. There is a difference regarding domestic insurrection; no obligation to intervene militarily in Option III. Finally there is a sliding scale of political, economic and social obligations -- obligations largest in Option I; slightly less in Option II, but burdensome (viz. Puerto Rico); depend completely on terms of Compact in Option III.

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Caveat: the preceding paragraph is not really subject to legal analysis; the non-military obligations depend almost completely upon political considerations.

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