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January 14, 1972

MEMORANDUM FOR CAPT GORDON SCHULLER, USN, ISA/EA&PR

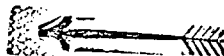
SUBJECT: TTPI - Forthcoming Negotiations - March 1972

1. Pursuant to your request I have prepared a working paper setting forth the basis for a letter from the Department of Defense to Ambassador Williams relating to revisions to be made in the Department's position as to Federal powers in Micronesia and particularly those powers concerning foreign affairs, defense and security interests.
2. The bracketed portions of the working paper call to your attention matters which I could not on the basis of my knowledge provide and therefore those sections will need to be prepared with inputs provided by you.

Att.  
Working Paper

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

cc: GC  
Chron  
Circulating  
File: TTPI -



COL Al Smith, OJCS

GROUP 4  
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Dear Ambassador Williams,

We have reviewed our Memorandum for the Chairman, Interagency Group for Micronesian Political Status Negotiations, dated 4 October 1971, and signed by Mr. Selden, and would like to make revisions indicated below.

We indicated in that Memorandum that we would want the United States to "act in close consultation" with Micronesia as to all matters and responsibilities in external affairs and defense. The language which might appropriately set forth power of the United States to act, based in part upon language to be found in our collective defense agreements embracing NATO and SEATO, can read:

"Article "A"

Each "Party" recognizes that aggression by armed attack, and that threats to the territorial integrity, political independence or security of either of them will endanger its own peace and security, and it is further recognized

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that the burden of meeting or anticipating such aggression or threats must be borne by the United States. The "Parties" therefore agree to consult whenever in the opinion of either such aggression or threats call for measures to be taken."

We would add separately to the above article an "Agreed Minute" (which might be classified) providing the following:

"Agreed Minute to Article "A"

With reference to matters relating to defense and security of Micronesia and the United States set forth in Article "A", it is understood that the following conduct of a foreign power will constitute an immediate and grave threat such that further consultation is rendered unnecessary, and measures taken to meet such conduct or threats will constitute the following:

As to the measures to be taken, we suggest the following:

(Model only)

-The United States shall with the prompt assistance of the Micronesian Government be

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empowered to deploy its armed forces and  
augment them in the following locations:

(to be given)

-The United States will be empowered to  
act pursuant to Micronesian emergency  
legislation in behalf of the Micronesian  
Government and in accordance with Article  
"X" of the Constitution of Micronesia.

-The United States will maintain continu-  
ous consultation and provide prompt and full  
full information to the Micronesian Minister  
of Internal Affairs relating to the actions  
which it is taking to meet such attack,

\*\*\*\*

(FYI) As to Conduct Constituting Per Se Attack or Threats:

(Note: A "catalogue" of conduct which would  
bring Article "A" immediately into play will  
call for some discussion and briefing as to  
what we might add in. The appearance of  
hostile military forces, in the "area",  
certain types of armed mobilization, conflicts

in adjacent areas, conflicts in the Pacific Ocean in general, conflicts involving the United States in the hemisphere, and the like would be fitted into the above "contingency" plans. As to these, it would be best for us to recommend the entire approach, somewhat as shown here, and then get down to the business of drafting up the appropriate language.

\*\*\*\*

The provisions for United States responsibility in foreign or external affairs would not call for consultation, but instead would provide for notification to the Micronesian Government, and would read as follows:

"Article "B".

The United States shall have and shall exercise full and effective responsibility over all matters relating to foreign affairs of Micronesia, and shall be responsible for determining which matters shall fall within the foreign affairs power."

A separate "Agreed Minute" should also be added to Article "B":

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"Agreed Minute to Article "B"

With reference to matters relating to the foreign or external affairs of Micronesia set forth in Article "B" it is understood that although the United States shall determine which matters relate to foreign affairs the United States shall report promptly to the Government of Micronesia through its representative in Micronesia, as to all action contemplated or undertaken.

When optional disputes or disagreements arise as to whether matters relate to foreign or internal affairs, they shall be resolved by consultation between the two governments

Note: The dispute settling clause is not politically advisable, but conceivably some clause will be needed. The suggested clause is fairly innocuous, but should be proffered only if needed, but not as a proposal. It should be made only if the Micronesians demand a dispute settlement device

We have noted on page 2 that the Micronesians may seek some statement as to how we envisage our authority

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to apply to Micronesia, how we embrace our responsibilities within a position acceptable to them, and the like. The following statement may be used as the United States position (subject to such modifications which you might want to propose):

"The United States envisages the people of Micronesia to be a self-governing territory, fully competent in their internal affairs, and subject to such constitutional provisions which they might adopt for the regulation and determination of those affairs. In reaching self-government the Micronesian people will have attained not only the capacity to govern their internal affairs in pursuance of their own interests as they see them, but also will have reached that point where the United States can properly declare that its commitments under Article 6 of the Trust Agreement, and under Article 76(b) of the United Nations Charter have been fully complied with.

"Recognizing the benefits accruing both to the people of Micronesia and to the United States in

preserving the full power and competence in the United States over the external relations and affairs of Micronesia with other nations, and over defense and security interests of concern to either or both Micronesia and the United States, the United States will exercise such powers and authority as will enable it promptly and effectively to react to these such external concerns.

"Prompt response to the needs of defense and security interests will call for effective procedures and the means effectively to respond without excessive delay. Consultation with Micronesia, taking into account the possibility of prompt response of this kind, will therefore seek out in advance those concerns in which both Micronesia and the United States can agree will call for action with a minimum of delay and reconsideration should emergencies or crises arise.

"These concerns in which our consultation will be made in advance have been listed and made part of the separate undertakings wherein we

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will be implementing in part defense actions, and providing for contingencies which we now can anticipate in advance.

"Consultation on other matters relating to defense and security interests which would not appear to call for advance planning and preparation may pursue a course conditioned less by urgency, and as to these, the United States would expect to express and notify to Micronesia its views or opinion as to its belief that the matter engages its security or defense interests or believes them to be affecting those of Micronesia. Similarly, Micronesia will as such events or contingencies occur take the same position as to matters affecting its own interests or those that might engage the United States. Since the United States will exercise responsibility in either case, such procedures will be designed to provide for effective action by the United States with no greater delay than that which can be reasonably

tolerated in the light of the particular crisis.

"Therefore, the representatives of the United States will consult promptly with the Micronesian ministers in charge of internal security, and procedures adopted for taking appropriate action. To this end, the Micronesian constitution should provide for emergency procedures which might effectively enable the consultation process to proceed rapidly, and to reach, through prompt and emergency action of the Micronesian government, the measures to deal with the emergency or security crisis."

Our Memorandum further noted that under Position II (Unilateral Termination) it would be necessary to work out the strategic arrangements (denial and basing rights) which would survive termination in full force and effect. Although a more detailed statement must be forthcoming, the concerns of the United States to be included are:

-arrangements which deny to any third power (unless otherwise agreed to or consented to by the United States) any use of Micronesian

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territory that might enable it to secure the use of that territory or its surrounding seas for military purposes or for conduct contrary to United States and Micronesian defense and security interests.

-arrangements which would provide the United States with the basing rights needed by the United States to maintain and to exercise its responsibility over defense and security interests of Micronesia and the United States; these arrangements would include identification of the land or offshore areas required, identification to the extent possible of how the United States intends to use these areas; and identification of possible use of other areas should a serious or grave emergency arise.

-arrangements dealing with trade and commercial areas which might have a serious defense and security impact; among these would be the need to preserve Micronesian communications, shipping, transport, and the mails free from foreign influence,

whether in the forms of shareholding, direct ownership, or through other means, and the means to preserve the Micronesian Congress and Administration from security leaks that might occur from irresponsible members or staff.

-the above arrangements - in the event of unilateral termination - would provide for a minimum of five years, following termination, for the United States to retain its full power and rights relating to defense and security affairs, and for two year's prior notice of termination; in addition, those surviving rights in the sense that they appear in separate agreements would not be affected by termination of the proposed compact the right to maintain bases in other words would be either that set forth in the basing rights agreements or as provided in the compact, whichever is longer; conceivably the rights of "denial" might be a surviving right, with indefinite subsequent duration, even though the compact has been unilaterally terminated; and, we would prefer that

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termination to be called shall be based upon  
referendum of three-quarters of the Micronesian  
people, the referendum to be called first by  
three-quarters of the Micronesian Congress.

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Tab A.

Tab "A" addresses "sovereignty". We would prefer to avoid the uncertainties and ambiguities which this expression entails, particularly because its use might prevent either Micronesia or the United States from reaching an agreement sufficiently beneficial to either of them. We would prefer if possible to use just the term "self government" which is also used in Article F6(b) of the United Nations Charter.

On the other hand, it appears that the Micronesians may even where the United States negotiators have used their best efforts refuse to move from their position concerning "sovereignty" or "independence." Under these circumstances, it will be necessary for the United States, with the ambiguities of the term "sovereignty" and the reach of its concept in view, to press first for the term to apply to the domestic or internal powers of Micronesia. Justification for this position would be reinforced by pointing up the undertakings of the United States and its responsibilities to be assumed in the fields

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withdraw from some of the compact provisions, and still leave the United States in control of defense and foreign affairs. The compact should be drafted with this possibility in view.]

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of foreign affairs, defense and security, noting that the term clearly has a recognized meaning in the "international sense" - and in that sense means the full power and competence to represent a State and undertake its commitments with other States, or in taking steps to protect the State from attack or aggression.

The United States position would then, in brief, assume that "independence" and "self-government" in the internal or domestic sense has been reached, that as to all such matters Micronesia was unquestionably to be fully competent, or "sovereign".

On the other hand, the relations between Micronesia and foreign States would call for the United States to exercise "sovereignty," in behalf of Micronesia. Bolstering the argument here, the United States negotiations would also draw upon its obligations and commitments set forth in Article 76(b) of the United Nations Charter and repeated in Article 6 of the Trusteeship Agreement, to wit: that Micronesia would thereby have reached "independence" and "self-government" as those terms are used there.

[Note - FYI - the United States negotiating team might bear in view that the Micronesians might unilaterally



Tab B.

This tab relating to "General Description of Defense Arrangements" needs only to be updated to the effect that the United States would as part of its "package deal" with the Micronesians seek to establish an appropriate regime for the status of armed forces to be located in bases within Micronesia.

Tab C.

The content of Tab "C" should be reviewed and the final drafting of the provision proposed there should be worked out together with DOD personnel, including members of the Office of General Counsel.

In the tactics of negotiation, we suggest strongly that the emphasis be made that the "sovereignty" of the Micronesian people shall in no way be jeopardized by the United States assuming the powers over foreign affairs and defense. There should be as little reference, or, if possible, no reference to the "State" of Micronesia, in the negotiations

or in the instruments with which we establish our obligations. We should refer instead to the Government of Micronesia or to Micronesia.

Emphasis, in other words, should be toward the pragmatic: i. e. toward the functional relationship between the United States and Micronesia, and if this functional relationship is firmly established, then the use of "terms" like "sovereignty" independence and self-government, whatever their usual meaning, will ultimately have to encompass or be qualified by that functional relationship. And, in our relationship, the functional elements are, of course, the control of foreign and defense affairs.

Moreover, over time, this functional relationship can become a lasting relationship, provided we are willing to shape it in that direction.

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

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