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DEPARTMENT OF DEFENSE  
OFFICE OF GENERAL COUNSEL  
WASHINGTON, D. C. 20301

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Mr. H. Marcuse  
Special Legal Adviser,  
Trust Territories,  
Department of Justice

March 21, 1972

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

SUBJECT: Proposed Joint Use Agreement, Isley Airfield, Saipan

I am attaching Mr. Nissel's opinion on the above subject addressed to Mr. Rogner, OASD (I&L), dated 17 March 1972. Following upon Mr. Nissel's opinion I suggest:

1. The opinion and positions expressed by Mr. Nissel coincide with those of our office.
2. However, in addition to the statements in Mr. Nissel's opinion I call attention to the need for Interior, Justice and State lawyers to examine the agreement dated 9 July 1944 and to assure themselves that that agreement is fully effective and binding upon the Micronesian people. That agreement was signed by representatives from the Departments of Interior and Navy one of which was acting as a representative of the people of the Trust Territory. A possibility that this agreement may be attacked as lacking authentic signatures in United States/Micronesian negotiations must not be overlooked.
3. To reconcile the differences in the proposed agreement and in the earlier land and use agreements, a clause to the effect that the proposed agreement shall be the controlling agreement or subordinate to the earlier agreements is needed. This matter should also be examined by the above mentioned legal departments.
4. Neither Mr. Nissel nor I have had access to the agreement for the use and occupancy of area 15 and as Mr. Nissel points out

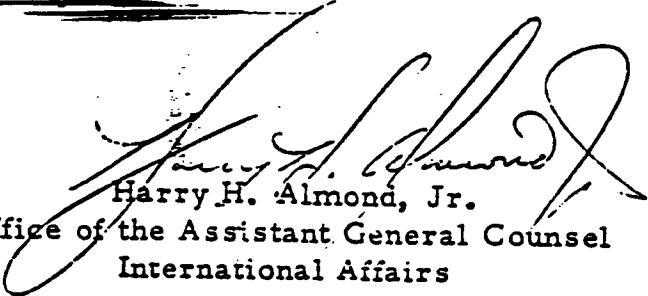
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its relevancy remains uncertain as far as our opinions are concerned.  
~~Therefore, the opinions~~ ~~therefore~~ are based solely upon the other two  
~~agreements and subject to whatever~~ relevancy the third agreement  
might have.

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

Att. as

cc: R. Stowe, L/UNA, Dept of State  
H. Marcuse, Special Legal Adviser,  
Trust Territories, Dept of Justice  
B. Chapman, Assistant Solicitor, Dept of Interior  
Col. A. Smith, JCS

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17 March 1972

MEMORANDUM FOR MR. E. A. ROONEY, CASD(H&L)

SUBJECT: Proposed Joint Use Agreement, Isley Airfield, Saipan

In connection with my review of the attached proposed joint use agreement for Isley Airfield, I have obtained two additional agreements; the "Land Agreement Trust Territory of the Pacific Islands", dated 15 September 1955, and the "Use and Occupancy Agreement for Area No. 13 . . .", dated 9 July 1944. I have been unable to obtain a third agreement for the use and occupancy of area number 15; the relevancy, therefore, while apparent, is undetermined. These additional agreements, also enclosed, appear to be basic to the area. The status of these other agreements and their relationship to the proposed new agreement need to be established before the new agreement can be approved. I would think this should be done by ISA together with Interior and State.

Lacking any indication that the new joint use agreement intends to and can overrule these "basic agreements", I have examined them all to see if they are consistent. Section 3 of the "Use and Occupancy Agreement for Area 13" permits us to make available to the Trust Territory (TT) areas we are not actively using on a revocable license basis. See also, in the same volume, section 7 of the "Land Agreement". These sections also appear to require certain restrictions which would seem to be not entirely consistent with the proposed joint use agreement. See, for example, (d) and (f) of section 7 and (A), (C) and (D) of section 3 as compared with articles 2 and 7 of the proposed agreement.

In addition, I am concerned about the provision in article 2 of the proposed agreement which limits our right to suspend the agreement unilaterally only in the event of war or national emergency has been declared. As you know, we have been under a declaration of national emergency by the President since December 1950, and it seems unlikely that another would be declared while this one remains in effect. Article 2, therefore, apparently denies to us the right to unilaterally terminate

the agreement under the current national emergency declaration agreement in the event of need to do so. In connection with this point, I also question article 6 of the proposed agreement which indicates that any future improvements that TT may construct be for its exclusive use. It would seem that in the event we need this area because of national emergency or war, we ought to be able to have immediate use of the entire facility, including any such improvements.

SIGNED  
*Stanley N. Nissel*

Stanley N. Nissel  
Office of the Assistant  
General Counsel (Logistics)

SNN/pw

cc: Mr. Niederlechner  
AGC(L) Subject Files  
Chron

Mr. Nissel's Chron

*M. H. Almond*