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July 3, 1972

MEMORANDUM FOR CAPTAIN SCHULLER, EAST ASIA AND
PACIFIC AFFAIRS, OASD/ISA

SUBJECT: Micronesia - Compact - (Memorandum, June 30, 1972)

In connection with the memorandum of 30 June 1972, I note, by way of comments, that our office will need to review the legal impacts of any proposals relating to the Compact concerning Micronesia. The following comments are based on the materials attached to Mr. Barringer's memorandum of June 30, 1972:

1. Section 301, as initially prepared, included provision for the "protection of "Micronesia," and it is proposed in the June 30 memorandum that this be deleted. The reason why it was included, and the reason I am not persuaded that it should be deleted - from the point of view of legal political and defense policies - are: (a) in including the provision of the United States may readily assert, bargain and negotiate for, and justify and defend a wide range of defense powers; (b) a "fall back position for the United States includes a provision for the defense of Micronesia, and a "treaty" to that effect, should it be required, would largely depend upon such provision; (c) if the Micronesians do not want "protection" let them bring the matter up, but, in such event, the United States must make it apparent that it will need to "defend" its bases, and need full powers and responsibility to do so; and may be required to convince the Micronesians accordingly. (d) the full intent of the first sentence of Section 301 calls for "defense" in Micronesia and hence is inconsistent with second sentence in the same section; (e) the United States Congress will be concerned with the matter and probably insist upon it; (f) United Nations agreement with the United States which is still in effect, and has an impact upon future relations is premised upon the theory that the United States will include Micronesia in its sphere of defense and responsibility. I see nothing persuasive in eliminating the provision.

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2. To avoid United States commitments becoming obligatory, Section 303 should refer, in the last line, to the "provisions" and not to "agreements." Under this change, the United States will have a continuing responsibility relating to Micronesia. But to avoid the implications of obligation the first sentence of Section 301 may be changed to read:

"The United States shall have, during the presence of its military facilities in Micronesia, sole responsibility and full authority" (underlined portions added).

Section 302 should then have the last two sentences changed to read: To make Micronesia's denial obligations continued.

"No other country shall enjoy rights or access in Micronesia, at any time, notwithstanding the duration of any of the provisions, or of the termination of any of the provisions, of this Compact, without the consent of the United States.

3. The first sentence of Section 302 should be reworded and corrected to read:

"The United States shall have the exclusive right to establish and maintain the military facilities . . . etc."

Elimination of the word "exclusive" releases the obligation imposed upon Micronesia to exclude other foreign military presence. The last line, as corrected above, indicates that this "exclusive right" also entails the "consent" of the United States as to other such presences.

4. The other changes appear largely to be "cosmetic".

5. A very brief comment is required on "denial". Under the proposals I am suggesting in Para. 2 above, Micronesia has a continuing obligation to "deny" Micronesian territory to other countries should Micronesia fail to live up to such an obligation, the United States might either maintain its military

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facilities, and reach a new agreement relating to the exercise of defense powers (assuming that we can anticipate an intention in Micronesia to relinquish these obligations), maintain token facilities throughout the islands (stretched out in such a way that Micronesia is fully engaged in the territorial sense), or maintain limited facilities for serving naval vessels, and keeping these vessels and their aircraft in the vicinity. The use of force to compel Micronesia to live up to its obligations is not contemplated here, and it should not be necessary. This "obligation" is almost analogous to the notion of neutrality, to the extent that it entails a duty assumed by Micronesia and includes an "obligation" on the part of the United States to help Micronesia satisfy the duty. Unfortunately, if Micronesia has a change of government into one hostile to the United States, the United States might be compelled to intervene in Micronesia domestic affairs - a matter which cannot be embraced under these considerations.

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International Affairs

cc: Mr. Kent, SAFGC
Major Stone, Army JAG
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