



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

10 July 1972

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

SUBJECT: Existing Instruments - Acquisition or Use of Land from
Private Landowners in Micronesia - Question of State
Succession.

Issues of "state" or "government" succession are complex and may lead to difficulties in establishing a legal basis for United States use or "lease" of existing land under existing instruments in Micronesia. The problem arises because these instruments have been made with private landowners. The extent to which a "Government" of Micronesia will become "obligated" to the United States under such instruments will remain in doubt under Annex A's present language unless steps are taken under the "Compact," or in separate instruments to accompany the compact.

The following provision which has been informally discussed with Mr. Nash might be considered in this connection:

Micronesia shall acquire the entire right, title and interest of all lessors or landowners holding leases with the United States as of the date of this Compact, and shall enter into leases with the United States and at no cost to the United States as to the same land upon the same terms and conditions as are in the leases acquired.

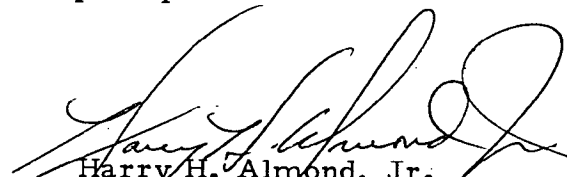
Comment. It is my understanding that there are no "public" landowners or lessors on the islands, and hence "succession" to such entities is not in question. As to such landowners, or lessors, if any, differing steps will be required, and we should be advised accordingly.

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The provisions in Annex A presently contain the language:
"The Government of Micronesia will assure the availability to the
United States of such (reference made in the body of the Annex)
lands, facilities, and areas." It is my opinion that this language
does not provide adequate protection to the United States.

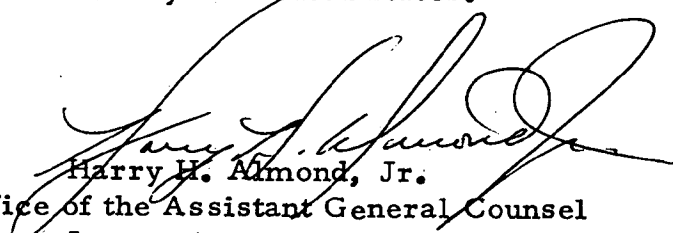

Harry H. Almond, Jr.
Office of Assistant General Counsel
International Affairs

P.S.

I agree generally with your Talking Points for Ambassador Williams relating to State or government succession of obligations relating to Micronesian leases - bearing in view that this paper is strictly a layman's backgrounder and no more - (particularly if issues arise during the negotiations calling for a more detailed inquiry into state succession). But the last paragraph on page 2 of the paper must be modified to reflect our intention noted above to establish by the Compact itself Micronesia's obligation to exercise either alone or with the United States (if necessary) the appropriate eminent domain powers to assure the United States that Micronesians are the lessors/landowners of United States facilities and bases. The exercise of "eminent domain" for certain maneuvering areas (which would probably be used under license rather than lease) will call

for careful separate attention, and should be the subject of a separate undertaking between Micronesia, private landowners, and the United States. The appropriate action to be taken to record these instruments is also a separate matter: I am not familiar with what recording statutes if any are in existence or apply to Micronesia, or what are contemplated. I recommend therefore that this matter be coordinated with the Department of Interior's solicitors to assure that recording and other procedures for legal protection of Micronesia's acquisition of title and leasing to the United States will be properly undertaken.

On the other hand we should remain ~~un~~aware if further attention must be given that in "creating" a Government of Micronesia, that government technically succeeds to the de jure governmental powers previously exercised by the United States.



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

cc: P. Barringer, OSD ISA
J. Nash, AGC, Logistics
Col. A. L. Smith, JCS