



~~CONFIDENTIAL~~

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

*Copied for Science NC
per Request
C ITEM # 15 on
request list) The date
July 10, 1972*

MEMORANDUM FOR CAPTAIN G. SCHULLER, ISA/EA&PR

SUBJECT: Trust Territories of the Pacific - Washington
Negotiations - The Question of "Defense Powers."

*subject
match -
but subse
worded
different
jal
24/2/78*

Pursuant to your request and Ambassador William's request for negotiating strategies - in terms of legal policies - relating to United States proposed "defense powers" in Micronesia, I offer the following preliminary remarks for our internal review:

1. The Overall Problem.

In discussions previously held on this matter, the question was raised whether the United States should discuss with the Micronesians the full extent of defense powers sought by the United States in Micronesia. My operating assumptions here are: we have had clearly in view that the United States powers must embrace (a) the primary need to defend and protect all bases and facilities against any threat that might be made regardless of the source; (b) powers that will need to be exercised to deny other foreign military presences access to the territory of Micronesia; (c) Powers to defend and protect Micronesia wherever we have undertaken express commitments to do so, or, even if we do not, wherever necessary to protect our facilities and bases, regardless of obligation; and (d) the further right to protect and defend United States interests to the extent they are addressing the maintenance of international peace and security, in conformance with United Nations practices, or obligations imposed by the United Nations, or under the United Nations Charter. In addition (e) there is the power - which has not been decided amongst us - that extends to exercising defense powers wherever needed to protect and defend United States security and defense interests generally.

Classified by H. H. Almond, OAGC (IA)
SUBJECT TO GENERAL DECLASSIFICATION
SCHEDULE OF EXECUTIVE ORDER 11652
AUTOMATICALLY DOWNGRADED AT TWO
YEAR INTERVALS
DECLASSIFIED ON DECEMBER 31, 1978

~~CONFIDENTIAL~~

10-430957

~~CONFIDENTIAL~~

2.

2. Executive Powers Available.

a. Executive powers available by virtue of a declaration of war or national emergency (as of January 1, 1968) range up to nearly 300 items, some of them relatively trivial in impact, and others of major importance. The legal powers to be exercised in Micronesia may however extend even farther and require the exercise of command functions by United States commanders on the bases in accordance with emergency powers generally vested in them to protect their bases. Such powers would be somewhat greater than the term "defense powers" connotes. They would be flexible in nature. (They may even include the power to act in behalf of an official request by the Micronesians themselves.)

b. In my view the overwhelming nature of a catalogue or list of this kind - for negotiating Micronesians or their representatives - suggests that they might be too difficult for our negotiators to "put across." They may become confusing and indicate dictatorial powers are being reserved to be used arbitrarily. They may in other words suggest that the Micronesians are being subjected to a kind of "garrison state" over which they have no independent control. For reasons such as these there should be no reference to the total list of 300 items (as amended). The United States negotiator would be best advised to note the totalitarian nature of cataclysmic wars will unquestionably call for the exercise of "totalitarian powers" to preserve the security, but that such conflicts are not envisioned. Of primary importance, it would be emphasized that the place of Micronesia in the United States defense and security posture is intended to avoid this from occurring. The deterrent element of a United States presence endowed with and capable of exercising the full panoply of powers can therefore be raised at this stage.

c. The United States can allude as it should to emergency but temporary powers of varying degrees of impact dependent upon and reflecting the crisis or emergency itself. The temporary nature of the exercise of such powers should be emphasized. The "historical precedents" indicating the exercise of a sound or reasonable discretion may be referred to.

~~CONFIDENTIAL~~

10 - 430958

~~CONFIDENTIAL~~

3.

3. The Exercise of Powers - Various Circumstances.

a. Example 1. The United States is confronted with a major conflict in the South Pacific. The United States delegation would then refer to the salient and relevant points in the Nixon Doctrine, * taking note of the nature of the conflict (i. e. whether nuclear or conventional, limited or totalitarian). As long as such conflict remains conventional and limited the defense powers would meet with the needs of such a conflict, i. e.

-full protection of the bases and surrounding areas.

-more rigid control and discipline in terms of civilian access, use, etc., of the bases; more rigid controls over employees working on the bases.

-full legal powers to react to internal disturbances preventing access and use: emphasis upon the use of Micronesian authorities, or cooperation or participation with such authorities, to provide protection.

b. Example 2. The conflict in Example 1 reaches a conflict of major scale. It might either be a conventional or nuclear war. Under these circumstances - again referring and adapting to the general propositions of the Nixon Doctrine:

-The United States and Micronesia recognize and promptly impose substantial - perhaps complete - controls over the civilian population.

-Emergency steps are taken to increase the protection of the territory.

-Increased numbers of American and allied personnel and material including all needed sophisticated weapons are introduced.

*Provide Ambassador Williams with appropriate materials.

~~CONFIDENTIAL~~

10 - 430959

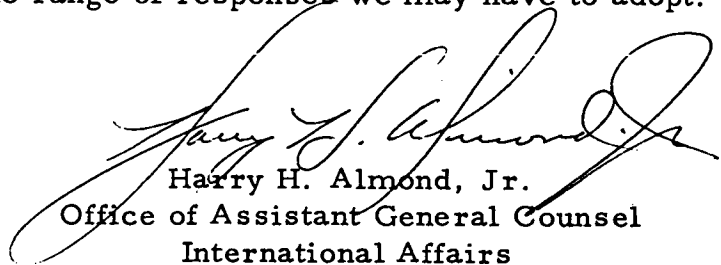
~~CONFIDENTIAL~~

4.

-Almost all of the defense powers available to a nation are invoked. All are invoked if the conflict necessitates this. Such powers will extend deeply into every aspect of civilian life. Micronesia may be drafting its own men and women.

c. Example 3. Internal disturbances break out in Micronesia. The government in power needs the assistance of the United States to quell them. The United States powers will include those necessary to provide effective assistance, but whether they are exercised or not will depend upon a policy determination, the consent of the Micronesians, and the nature of the disturbances, unless the United States objectives or interests, set out in Para 1 of this memorandum, are endangered. If such objectives are endangered, the United States in accordance with its general practices would advise the Micronesians of the circumstances, the needed action, and the proposed measures it will take unless the emergency will not permit such notification. It will be given as quickly as possible in any event.

Other scenarios might be attempted, particularly with the aid of the Joint Staff or the services, but they should, in my view, follow the lines outlined above. We should eschew the reference to detailed procedures, or to detailed sets of measures. The negotiations should leave such matters "open" and accessible to options that might be needed, and that would properly reflect the range of responses we may have to adopt.


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

~~CONFIDENTIAL~~

10 - 430960