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In reply refer to:

I-9668
July 21, 1972

MEMORANDUM FOR MR. PHILIP BARRINGER, ISA/FMRA

SUBJECT: Defense Powers and Annex A Draft Dated 20 July 1972.

I have received the above, and will concur in the drafts, if amended as follows:

1. As to Annex A:

"All existing rights of the United States in land and water areas and all facilities constructed by the United States or used by the United States in the territory of Micronesia shall remain in full force and effect under this Compact, subject to the modifications herein set forth. The United States shall have the right to acquire land, or interests in land, and in water areas, or interests in water areas, for such uses as harbor facilities, research and development facilities, base sites, communications facilities, airfield facilities and operating rights, training rights and maneuver rights, as specified herein.

The Signatories to this Compact shall assure the United States the availability of all such lands, waters, and interests therein, and shall further assure the United States as to all such lands, waters and interests therein all rights accorded under this Compact. Such rights and uses, and the measures taken for their protection and defense, shall not be restricted.

The rights specified in this Annex, and Compact, in existing agreements and in any agreements negotiated in the future with respect to the use of land or facilities or both in Micronesia, shall, notwithstanding the terms of the Compact, extend in full force and effect to the termination date set forth in those agreements. Should those agreements terminate before the Compact, the Signatories to this Compact shall assure that they may be extended through negotiation on a reasonable basis for the period specified in Title XI of this Compact."

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Comment. The above changes are largely self-explanatory; however the entire Annex should, in my view, be released in terms of a "talking paper" as to United States objectives; acceptable language meeting those objectives can be substituted. As it stands, it reflects the policies of the United States as I understand them.

2. As to Section 302:

I recommend that in place of (a) (2) the following language to be substituted:

"(2) The right to prevent third parties from using the territory of Micronesia for military purposes."

Comment. This "right" - a legal right - includes the right to permit - or not to prevent third parties from doing these things. In other words, in my view, it enables the United States also to determine what third parties might use the territory of Micronesia when in the interests of the United States. If explanatory comments are needed they can be added at the time of negotiation, but Section 304 (a) takes care of friendly forces.

3. As to Section 303.

The end of 303 (b) calling for "sympathetic consideration" should be deleted. As it stands, there is no way - specified in the Compact - to compel the Micronesians to accept each, or any, or all requests by the United States. If the requests can be refused, the remainder of the provision upon which our acquisition powers depend is without force.

Secondly, the language referring to negotiate on "reasonable" terms an "acceptable" agreement reinforce the "veto" power thus vested in the Government of Micronesia. If the language must be accepted, then the negotiations must proceed in such a way as to

clear up what the standards for "sympathetic consideration" shall be, and provide an indication of what "reasonable terms" shall be, etc. so that a record establishing our joint understanding is clear. Since such negotiations would - to be effective - reduce or nullify the substance of this last clause, it is possible that we can negotiate our way out of using language such as this.

Signed

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

cc: Capt Shuller, ISA
Col. AL Smith, JCS
Chron
GC
Circulating
File: TTPI

ISA/A&C

