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

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



MR. PHILIP E. BARRINGER
DIRECTOR, FOREIGN MILITARY RIGHTS
AFFAIRS, ISA, OSD

SUBJECT: Political and Territorial Relationship Between the
United States and the Marianas.

With respect to the proposed political relationship between the United States and the Marianas appearing in the most recent set of draft proposals, bearing in view that the United States present position is to seek this association in the event that the Compact with Micronesia falls through, or alternatively in the event that a relationship with the Marianas is intended that will truly protect United States interests reaching beyond the protection afforded in the Compact develops:

1. In terms of legal policy alone, but bearing in view the critical role of legal policy in connection with United States security interests and the exercise of defense powers in the South Pacific, it is absolutely essential that the relationship between the United States and the Marianas be territorial as well as political in nature. The territorial ties may be any of those recognized under constitutional practice. It is immaterial to the legal argument whether that territorial relationship be formulated as an unincorporated territory (e.g. commonwealth, or other variation) or as an incorporated territory.

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Classified by OSD OAGC (A)
SUBJECT TO GENERAL DECLASSIFICATION SCHEDULE OF
EXECUTIVE ORDER 11652. AUTOMATICALLY DOWNGRADED
AT TWO YEAR INTERVALS. DECLASSIFIED ON 3 (Dec) 1979.

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2. If this territorial relationship is not achieved, then it will not be possible for the United States to secure commensurate with its security and defense interests the necessary powers of eminent domain for the acquisition of future lands. Moreover, its power to protect intended uses for lands already held will also be jeopardized. Second, its power in terms of defense powers will be seriously undermined because the legal basis for asserting those will be insufficient or tenuous and its legal authority for implementing those powers inadequate. Third, its staying power to protect itself against unilateral termination of a "political relationship" which is not territorial in nature will be based solely upon the legal obligation of a Marianas "government" to maintain that relationship in good faith under international law, and this too will be too tenuous.

3. The draft proposals from the Department of Interior addressing the political relationship with the Marianas and the means for securing it do not clearly identify for the purposes described above the territorial ties with the United States. They are therefore deficient and should be rewritten.

4. In view of these observations I recommend:

-United States position and posture papers and United States proposals dealing with the Marianas be set forth solely and with no further negotiating fallback in terms of a territorial relationship.

-The United States seek such a territorial relationship with the Marianas even though

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successful negotiations toward a Compact are pursued or even in view of a possible Compact with Micronesia as a whole.

-United States instruments and constitutive documents being prepared for the Congress reflect this proposal as an administrative proposal, clearly identifying that the territorial relationship is essential to United States security and defense interests.

-All differences with other agencies with respect to these recommendations be resolved at the highest policy level.

SIGNED

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

cc: Mr. Dennis Doolin, ISA, OSD
LTC W. R. Kenty, J-5

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