WASHINGTON D.C. 20301

I-05578/80

1 Aug 1980

MEMORANDUM FOR THE CHAIRMAN, MICRONESIA INTERAGENCY GROUP

SUBJECT: Marshallese Proposal on Permanent Denial

This is in response to your memorandum of 18 July, forwarding a report of the IAG legal committee and the views of Ambassador Rosenblatt on the above subject.

From the standpoint of the Department of Defense, an arrangement assuring permanent denial of Micronesia to third country military use without US consent is clearly desirable. Moreover, having participated in the recent hearing of the Senate Energy Committee, I am well aware of the force of Congressional sentiment on this issue. The key questions are therefore whether the arrangement is viable, and whether the Marshallese price is acceptable, particularly in view of the gravity of the US commitment to a perpetual guarantee of territorial integrity.

On balance, I believe the answers to both questions should be affirmative, but not without certain qualifications, as follows:

(a) As pointed out by the Legal Committee, a permanent servitude of this nature is vulnerable to attack, both on legal and political grounds. Indeed, our research suggests that agreements of the type being considered here are not as well recognized by the international community as is suggested by the legal committee (see attachment hereto). Accordingly, the US and the Micronesian Governments concerned should have well-prepared positions on both points and concert them with Allies and other friendly nations, particularly in the United Nations context, where this proposal would certainly increase chances of a Soviet veto in the Security Council.

(b) The exact language to be included in the Compact needs further study and refinement. For example, Section 412 as proposed by the Marshallese goes beyond the provisions of the North Atlantic Treaty and other major security arrangements to which the US is a party. In the Micronesian context, this is understandable, but the second part of Section 412 raises a quite separate matter - a permanent guarantee that Micronesian territory will not be used for military purposes without the consent of the Micronesian government concerned. At the very least, this in part is inconsistent with Section 315 of the Compact, making it necessary to cross-reference that Section, so that the guarantee under

OUSD(PF)
7 AUG 1980

CONFIDENTIAL

9 8/21/00

412 would be without prejudice to Section 315. A far more desirable ...se, however, would be to seek deletion of that portion of Section 412 entirely.

Finally, I would point out that the permanent US territorial guarantee would be unaccompanied by any parallel arrangement for permanent basing rights. In our view, this underlines the importance of securing long-term US operating rights arrangements in the Marshall Islands and Palau.

Walter Slocombe
Deputy Under Secretary of Defense
(Policy Planning)

cc: Ambassador Rosenblatt
J-5, Joint Staff

International agreements in perpetuity of the type being considered here are not well recognized by the International community. After two decades of evolution in international law, such agreements are now generally considered as valid only in regard to boundary and other agreements crucial to the maintenance of regional or international peace. Moreover, a permanent denial provision is subject to legal attack due to the incompetence of the Trust Territory governments, especially prior to trust termination, to enter into an arrangement based upon the sovereignty of both contracting states. Finally, the Trusteeship provisions of the UN Charter, including those relating to self determination, are generally accepted principles of international law binding on the United States, which lends increased legitimacy to arguments that will be advanced in the United Nations that a perpetual denial provision is inconsistent with the United States' obligation to promote Micronesian self-government and independence.