



THE JOINT STAFF

MEMORANDUM FOR: Ambassador Rozanne L. Ridgway
Chairman, Micronesian Interagency Group
Counselor, Department of State

Subject: Marshallese Proposal on Permanent Denial (U)

1. (C) In response to your request of 28 July 1980, the Joint Staff and Services have reviewed the subject proposal and Ambassador Rosenblatt's recommendations thereon. The following changes are suggested:

a. (C) Section 411 (a) as rewritten changes the words of President Kabua's proposal from "undertake not to permit or tolerate" to "shall not permit." Recommend this section be changed to "Shall not permit or tolerate" to add strength to the Micronesian commitment.

REASON: If a third country established a foothold on Micronesian territory without their consent, they could not be said to have permitted it in any legal sense, particularly if they protested the foreign presence. But their resistance might well end there; whereas if they also had committed themselves not to "tolerate" such a presence, they would be bound to continue to protest.

b. (C) Section 412 as proposed in the OMSN recommendation appears to be in conflict with and more restrictive than Section 315 as presently written in the Draft Compact. Section 315 allows the US to invite members of the armed forces of other countries to use military facilities in Palau, the Marshall Islands, or the Federated States of Micronesia, in conjunction with and under the control of the US Armed Forces. Use by these third country armed forces other than for transit or overflight purposes, shall be the subject of consultation with and in the case of major units, approval by the Governments of Palau, the Marshall Islands or the Federated States of Micronesia. However, Section 412, as contained in the legal analysis, requires the consent of the above countries before their territories, territorial waters or airspace can be used by any third

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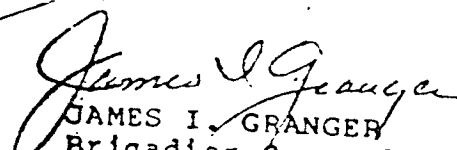
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country for military purposes. - Consideration should be given to deleting or revising the last four lines of Section 412, beginning with "...shall not be used by any third country,..." through to the end of the sentence, to eliminate the conflict with Section 315. ch
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2. (C) A more serious concern with the paper as written is the failure to highlight and address fully the permanent US defense commitment that would be extended to the Freely Associated States (FAS). Due to the extensive and apparently legally binding nature of any such commitment recommend a legal and policy analysis be added to the proposed NSC report prior to formal coordination. The analysis should include as a minimum:

- a. (U) A comparison with the US NATO commitment.
- b. (C) To what degree the FAS can seek legal enforcement in US courts.
- c. (U) US flexibility.
- d. (C) US ability to unilaterally limit the duration of the commitment.

3. (C) The foregoing is not necessarily to suggest opposition to the concept of "permanent commitment", but rather to highlight the need for a top-level policy decision that such an undertaking is in the best interest of the United States. Any report to the NSC should thus include a full analysis thereon prior to submission.


JAMES I. GRANGER
Brigadier General, USAF
Assistant Deputy Director,
Politico Military Affairs

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