

Message Text

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FM SECSTATE WASHDC
TO AMEMBASSY MANILA
INFO CINCPAC

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EXDIS , MIL ADDEES HANDLE AS SPECAT EXCLUSIVE

E.O. 11652: GDS

TAGS: PBOR, RP, CH, VN, TW

SUBJECT: US MDT COMMITMENT AND SPRATLYS
CINCPAC FOR POLAD
REF: A. MANILA 6840 B. STATE 116037

FOR CHARGE FROM ALDRICH

1. I REGRET ANY EMBASSY MISUNDERSTANDING RESULTING FROM REF B AS TO OUR LEGAL INTERPRETATION OF MDT COMMITMENTS. THIS TELEGRAM, WHICH IS STRICTLY FYI, EXPLAINS OUR LEGAL RATIONALE, AND DOES NOT OF COURSE, ALTER YOUR GUIDANCE SET FORTH IN REF B. WE CONCLUDE FOR REASONS SET FORTH BELOW, THAT BETTER LEGAL INTERPRETATION IS THAT MDT COMMITMENTS DO NOT REPEAT NOT APPLY IN EVENT OF ATTACK ON SPRATLYS OR ON GOP FORCES STATIONED THERE. OBVIOUSLY CONTRARY ARGUMENTS COULD BE MADE, BUT I BELIEVE THAT VALID LEGAL REASONS SUPPORT OUR PREFERENCE, AND AS NOTED REF B, DEPT HAS DETERMINED THAT AS A PRACTICAL MATTER THIS IS ONLY CONCLUSION WE CAN REACH. AS IS EVIDENT FROM OUR REASONING, THIS DOES NOT
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PORTEND ANY LEGAL ATTEMPT TO DENY APPLICATION OF THE TREATY

TO ANY TERRITORY OVER WHICH US HAS RECOGNIZED PHILIPPINE SOVEREIGNTY, OR TO PHILIPPINE FORCES IF ATTACKED IN SITUATION DESCRIBED PARA 3 REF A.

2. UNDER ARTICLE V OF MDT, TREATY COMMITMENT IS DEFINED TO APPLY IN THE EVENT OF ARMED ATTACK (1) ON METROPOLITAN TERRITORY OF EITHER PARTY; (2) ON ISLAND TERRITORIES IN PACIFIC UNDER JURISDICTION OF EITHER PARTY; AND (3) ON ARMED FORCES, PUBLIC VESSEL AND AIRCRAFT OF EITHER PARTY IN PACIFIC. THIS PROVISION IS IDENTICAL WITH ARTICLE V OF ANZUS TREATY.

3. IN USG VIEW, SPRATLEY ISLANDS DO NOT FALL WITHIN EITHER OF THE FIRST TWO CATEGORIES OF ARTICLE V RELATING TO TERRITORIES. FIRST CATEGORY EVIDENTLY COVERS THOSE TERRITORIES OVER WHICH A PARTY IS RECOGNIZED AS SOVEREIGN. AS YOU ARE AWARE, USG REGARDS QUESTION OF SOVEREIGNTY OVER SPRATLYS (INCLUDING "FREEDOMLAND" OR "KALAAAYAN") AS UNDETERMINED, AND WE TAKE NO POSITION ON MERITS OF CLAIMS OF VARIOUS DISPUTANTS. WE NOTE THAT AT TIME MDT SIGNED, GOP HAD ASSERTED NO CLAIM TO ANY OF SPRATLY ISLANDS, AND HAD PROTESTED NEITHER VIETNAMESE NOR CHINESE CLAIMS, WHICH HAD BEEN REITERATED AT TIME OF NEGOTIATION OF 1951 JAPANESE PEACE TREATY. USG ANNOUNCED PUBLICLY AT THAT TIME IT CONSIDERED SOVEREIGNTY QUESTION UNDETERMINED. FURTHERMORE, SPRATLY ISLANDS ALL FALL OUTSIDE PHILIPPINE TERRITORY AS CEDED TO US BY 1898 TREATY WITH SPAIN. USG MAPS ACCOMPANYING PRESENTATION OF MDT ALSO EXCLUDE SPRATLYS FROM TERRITORIES COVERED BY MDT.

4. SECOND CATEGORY, ISLAND TERRITORIES UNDER EITHER PARTY'S "JURISDICTION" WAS INTENDED TO COVER OTHER TERRITORY WHICH A PARTY ADMINISTERED BY INTERNATIONAL AGREEMENT BUT WAS NOT SOVEREIGN OVER, E.G., UN TRUST TERRITORIES AND (AT THAT TIME) OKINAWA. WE ARE NOT AWARE OF ANY PHILIPPINE ADMINISTERED TERRITORY FALLING WITHIN THIS CATEGORY. AS YOU ARE AWARE, US DOES NOT CONSIDER JAPANESE PEACE TREATY CREATED DE FACTO ALLIED POWER TRUSTEESHIP OVER SPRATLYS, AND WE WOULD NOT REGARD THE SPRATLYS AS THUS BEING ISLANDS UNDER JURISDICTION OF EITHER PARTY (OR BOTH).

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5. ABOVE DOES NOT MEAN PHILS COULD NOT EXPAND TERRITORY OVER WHICH IT IS SOVEREIGN. WE DO NOT SEE LEGAL BASIS AT THIS TIME, HOWEVER, FOR SUPPORTING THE CLAIM TO SPRATLYS OF ONE COUNTRY OVER THAT OF OTHER CLAIMANTS. CONTINUOUS, EFFECTIVE AND UNCONTESTED OCCUPATION AND ADMINISTRATION OF TERRITORY IS A PRIMARY FOUNDATION FOR ESTABLISHING SOVEREIGNTY IN ABSENCE OF INTERNATIONAL SETTLEMENT, BUT

PHIL OCCUPATION COULD HARDLY BE TERMED UNCONTESTED IN FACE OF CLAIMS AND PROTESTS OF CHINESE AND VIETNAMESE. USG WOULD WELCOME AND RECOGNIZE INTERNATIONAL SETTLEMENT AGREED TO BY ALL CLAIMANTS, THOUGH WE ACKNOWLEDGE THIS WOULD BE

COLD COMFORT IN LIGHT OF PRESENT POLITICAL REALITIES.

6. WE CONCUR EMBASSY VIEW THAT GOP, WHICH IS AWARE WE CONSIDER SOVEREIGNTY UNDETERMINED, WOULD BE MORE LIKELY TO INVOKE THIRD CATEGORY OF ARTICLE V IN THE EVENT OF DRV/PRG ATTACK ON PHIL GARRISONS IN SPRATLYS. HOWEVER, WE DO NOT BELIEVE THIS ASPECT OF TREATY GIVES EITHER PARTY CARTE BLANCHE TO DEPLOY FORCES ANYWHERE IN THE PACIFIC WITH THE ASSURANCE THAT THE OTHER PARTY WILL BE BOUND BY THE MDT IN THE EVENT OF ATTACK ON THOSE FORCES. COMMITMENT IN THE EVENT OF ATTACK ON FORCES MUST BE CONSTRUED IN CONTEXT OF OVERALL PURPOSE AND PROVISIONS OF MDT. PREAMBLE SETS FORTH COLLECTIVE DEFENSE PURPOSE OF MDT AND REAFFIRMS PARTIES' COMMITMENTS TO PRINCIPLES AND PURPOSES OF UN CHARTER, WHILE IN ARTICLE I PARTIES UNDERTAKE TO REFRAIN FROM "THREAT OR USE OF FORCE IN ANY MANNER INCONSISTENT WITH UN CHARTER."

7. UNDER MOST FORESEEABLE CIRCUMSTANCES, THE TREATY WOULD APPLY IF EITHER PARTY WERE ATTACKED ON HIGH SEAS OR IN INTERNATIONAL AIR SPACE. MDT COULD ALSO PRESUMABLY APPLY IN EVENT OF EXTERNAL ARMED ATTACK ON FORCES OF EITHER PARTY DEPLOYED IN A THIRD COUNTRY IN THE PACIFIC WITH THE CONSENT, AND FOR THE DEFENSE, OF THAT THIRD COUNTRY. FOR EXAMPLE, IN THE PRESIDENT'S MESSAGE TO THE SENATE ON THE ANZUS TREATY, IT WAS ASSERTED THAT THAT TREATY APPLIED IN THE EVENT OF ATTACK ON US FORCES STATIONED IN JAPAN PURSUANT TO OUR SECURITY TREATY WITH JAPAN. IN THE ANZUS
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CONTEXT, WE HAVE ALSO TAKEN THE POSITION THAT THE TREATY WOULD APPLY IN THE EVENT OF ARMED ATTACK ON GOA OR GNZ FORCES STATIONED IN COUNTRIES IN PACIFIC TO WHICH THEY HAVE SECURITY OBLIGATIONS, BUT HAVE ALSO TAKEN VIEW THAT WE MUST BE CONSULTED ON NEW DEPLOYMENTS WHICH COULD AFFECT OUR TREATY OBLIGATIONS AND THAT WE HAVE DISCRETION ON HOW WE WILL "ACT TO MEET COMMON DANGER."

8. IF MDT COMMITMENTS THEN CLEARLY EXTEND BEYOND CASES OF TERRITORIAL ATTACK, IT SHOULD BE NOTED THAT THE ABOVE CASES ALL HYPOTHESIZE AN ATTACK ON FORCES DEPLOYED FOR DEFENSIVE PURPOSES WHERE THEY HAVE A CLEAR INTERNATIONAL LAW RIGHT TO BE. ON THE OTHER HAND, DEPLOYMENT OF FORCES TO A THIRD COUNTRY WITHOUT ITS CONSENT AND WITHOUT LEGITIMATE PROVOCATION WOULD IN MOST CIRCUMSTANCES BE CONTRARY TO ARTICLE I

OF MDT AND OUTSIDE DEFENSIVE RUBRIC OF MDT, AND THEREFORE WOULD NOT, IN OUR VIEW, CREATE OBLIGATION UNDER ARTICLES IV AND V ON THE OTHER PARTY IN EVENT OF ATTACK ON SUCH FORCES. TO TAKE ANOTHER EXAMPLE, WE DOUBT GOP WOULD PERCEIVE ANY MDT OBLIGATION IN THE EVENT OF AN ATTACK ON USG NAVAL

VESSELS ENGAGED IN AN UNPROVOKED BLOCKADE OF A STATE WITH WHICH GOP WAS FRIENDLY.

9. HYPOTHETICAL ATTACK ON PHIL GARRISONS IN SPATLYS PRESENTS DIFFERENT CASE IN THE SENSE THAT USG HAS NOT RECOGNIZED SOVEREIGNTY OF ANY THIRD STATE OVER ISLANDS OCCUPIED BY GOP. HOWEVER, WE HAVE ALSO NOT RECOGNIZED GOP SOVEREIGNTY OVER ISLANDS. IN THIS SITUATION, WHILE WE WOULD NOT TERM PHIL OCCUPATION AS ILLEGAL INVASION OF ANOTHER STATE, NEITHER CAN WE TERM THIS DEPLOYMENT AS ASPECT OF COLLECTIVE DEFENSE PURPOSE OF MDT. RATHER, WE VIEW PURPOSE OF GOP GARRISON AS ESTABLISHING AND ENFORCING A CLAIM TO SOVEREIGNTY OVER OPENLY DISPUTED TERRITORY. MDT IN OUR VIEW DOES NOT OBLIGATE US TO SUPPORT THIS TYPE OF DEPLOYMENT IN EVENT OF ARMED ATTACK.

10. WE WOULD EMPHASIZE AS WELL THAT IN OUR VIEW TERRITORIAL DEFENSE COMMITMENTS OF PARTIES ARE EMBRACED IN FIRST TWO CATEGORIES OF ARTICLE V. WE DO NOT CONSIDER THAT COMMITMENT IN EVENT OF ATTACK ON FORCES CAN BE BOOT-SECRET

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STRAPPED INTO COMMITMENT FOR DEFENSE OF TERRITORY NOT INCLUDED IN FIRST TWO CATEGORIES BY DEPLOYING FORCES IN SUCH TERRITORY. AS NOTED PARA 7 ABOVE, MDT MAY APPLY IN EVENT OF ATTACK ON FORCES DEPLOYED TO THIRD COUNTRIES, WHICH WOULD OF COURSE HAVE ADDITIONAL EFFECT OF ASSISTING IN DEFENSE OF SUCH THIRD COUNTRY TERRITORY. DEPLOYMENT FOR DEFENSE OF THIRD COUNTRY TERRITORY, HOWEVER, IS FUNDAMENTALLY DIFFERENT FROM CASE WHERE DEPLOYMENT IS FOR PURPOSE OF ENLARGING PHILIPPINE TERRITORY.

11. ABOVE REPRESENTS LEGAL RATIONALE UNDERLYING REF B. AS A PRACTICAL MATTER, WE SEE PRECIOUS LITTLE CHANCE CONGRESS OR THE AMERICAN PEOPLE WOULD SUPPORT US INTERVENTION IN SPATLY DISPUTE. IF THE PHIL GARRISONS EVER WERE ATTACKED, IT SEEMS TO ME LESS HARMFUL POLITICALLY TO DENY OUR OBLIGATIONS ON LEGAL GROUNDS, THAN TO LEAVE UNFULFILLED AN ACKNOWLEDGED COMMITMENT. FURTHERMORE, CONTRARY INTERPRETATION WOULD ALSO CREATE DIFFICULTY FOR US IF PHILS EVER TRIED TO INVOKE MDT WITH RESPECT TO SABAH OR POSSIBLY IF NATO WERE INVOKED BY EITHER SIDE IN GREECE-TURKEY TERRITORIAL DISPUTES. KISSINGER

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