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7 July 1972

MEMORANDUM FOR CAPTAIN GORDON SCHULLER, USN
ISA/EALPR

MR. PHILIP E. BARRINGER
ISA/FMRA

SUBJECT: Commentaries on Clauses 209, 210, and 211
(State Ref. 305, 306, and 307).

Pursuant to our discussions, I offer the following brief commentaries on the above "Defense powers" clauses - intended for the personal use of Ambassador Williams in negotiating the Compact.

Section 305

"The legal status of United States military personnel and US citizen civilian employees while stationed in Micronesia shall be established by agreement."

Commentary.

Section 305 is largely self-explanatory. The terms "legal status" are somewhat vague, but they may be modified and clarified in later drafting if need be. They are intended to refer to what law shall govern under what circumstances, and in particular to the undertakings to be reached in a Status of Forces Agreement.

Section 306

"If in the exercise of its responsibility under Section B the United States should as an emergency measure require areas within the territory of Micronesia other than those

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specified in Annex A, the Government of Micronesia shall give sympathetic consideration to any such request by the United States and shall negotiate in good faith a mutually acceptable agreement for the temporary use of such areas."

Commentary.

The clause refers to an undertaking by Micronesia to give appropriate, i. e. "sympathetic", consideration to United States emergency needs. The clause requires Micronesia to entertain the request by the United States, and, unless overwhelming arguments or reasons to the contrary are adduced, to negotiate to a good faith conclusion the land desired. The clause reflects the fact that the United States is taking the position that Micronesia cannot be compelled to provide the land for "emergency measures" but on the other hand that it will not withhold its consent unless there are reasons for doing so. The areas specified in Annex A are those which the United States is insisting must be made available to satisfy its responsibilities under the Compact and required on a long term basis. The land to be acquired here is conditioned entirely by the idea that "emergency measures" (which may run the gamut of emergency crises or situations) call for the temporary use of such land.

Section 307

(Duration - Final Version of Clause to be made available later.)

Commentary.

The above provision (not quoted here - to be available).

This clause is intended to ensure that United States rights and Micronesian obligations relating to defense powers will survive

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the termination of the compact, and that rights acquired under leases or other arrangements specified in Annex A will also survive (and be drafted to survive as set out here). In the event of a change of government in Micronesia, these rights and obligations would have a legal basis - here - to survive via state succession. (FYI. The clause does not refer to change of governments or the fragmenting of governments in Micronesia or other possibilities, but relies solely on the general rules of state succession to avoid misunderstandings particularly during negotiation. Denial of Micronesian "territory" to foreign military presence is not touched by this clause since it is fully covered in Section 302. End FYI)

SIGNED

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