



January 15, 1975

MEMORANDUM FOR MORTON I. ABRAMOWITZ
DEPUTY ASSISTANT SECRETARY OF
DEFENSE, EA&PA, ISA, OASD

SUBJECT: Covenant to Establish a Commonwealth of the
Northern Mariana Islands in Political Union with
the United States of America

Pursuant to your request for our opinion with respect to the power of eminent domain set forth in Section 806 of the above Covenant it is my opinion that this section preserves the power of eminent domain as an ultimate power to be exercised by the United States. Section 806 subjects such a right to safeguarding procedures intended to afford the Government of the Northern Mariana Islands and the landowners ample opportunity to be heard when land is acquired by the United States at any time in the future. However, Section 806(c) sets forth ample provision for the exercise of the power of eminent domain and in effect enables the United States to pursue Federal law and practices in its exercise.

Paragraphs (a) and (b) of Section 806 are designed to reflect the recognition that a deep concern is shared by both the United States and the Marianas Commonwealth in the scarcity of land. The acquisition of land is subjected to the test of "public purposes" a test which fully embraces any and all needs of land by the United States Government whether those needs are expressed in terms of defense, security, or for other reasons. Since this test applies to any taking by the United States under the eminent domain power, it adds no new restrictions on that power.

Section 802(b) does not derogate from this right of eminent domain and it has been added to the Covenant solely to affirm that

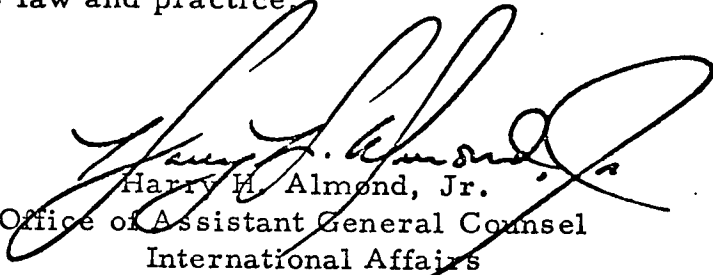
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the present defense needs of the United States do not extend beyond the land to be acquired concurrent with the entry into force of Section 802 of the Covenant. This provision is therefore drafted solely in terms of the United States present perception of its security interests and no more.

Section 501 is consistent with this reserved right of eminent domain particularly since it declares that Amendment 5 of the United States Constitution will be applicable within the Marianas.

Amendment 5 of the United States Constitution expressly recognizes in its "due process clause" the authority of the United States as a sovereign government to exercise its right of eminent domain and this amendment is therefore constitutional authority for the provisions already mentioned in the Covenant as well as for United States law and practice.



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