

*Marsh. file*

9/15/76

INFORMAL MEMOPossible Legal Basis for AEC Support of Medical Examinations of the Marshallese Islanders Exposed to Radioactive Fallout in 1954

At the time of the weapons testing in March 1954, which resulted in the accidental exposure to the people of the islands of Rongelap, Rongerik and Uterik, the Marshall Islands were a Trust Territory of the U.S.

The initial response to the incident was undertaken by the Task Force Commander of the testing operation, who evacuated the 28 American personnel manning weather stations on the islands and the 236 Marshallese natives to the naval establishment at Kwajalein for medical supervision.

The first examinations in 1954 after the fallout were conducted by an emergency medical team requested by the AEC, directed by Dr. E. P. Cronkite and composed largely of Navy medical personnel. In 1956 the surveys were placed under the direction of Dr. R. A. Conard at BNL. The surveys have been conducted in conjunction with the Department of Health Services of the Trust Territory, Armed Forces Medical Specialists and specialists from the U.S.

Largely as a result of the concern felt throughout the country following the March 1, 1954, thermonuclear test explosion at Bikini, a number of scientific bodies in the U.S. passed resolutions requesting that a study be made of the possible effects on the human race of continued nuclear weapons testing. The Bikini fallout incident made it abundantly clear that fallout was important from the standpoint of continued weapons testing.

Relevant to this effort in the Marshall Islands are the following sections from the Atomic Energy Act, as amended:

"i.<sup>4</sup> In order to protect the public and to encourage the development of the atomic energy industry, in the interest of the general welfare and of the common defense and security, the United States may make funds available for a portion of the damages suffered by the public from nuclear incidents, and may limit the liability of those persons liable for such losses."

"j. The term 'extraordinary nuclear occurrence' means any event causing a discharge or dispersal of source, special nuclear, or byproduct material from its intended place of confinement in amounts offsite, or causing radiation levels offsite, which the Commission determines to be substantial, and which the Commission determines has resulted or will probably result in substantial damages to persons offsite or property offsite. Any determination by the Commission that such an event has, or has not, occurred shall be final and conclusive, and no other official or any court shall have power or jurisdiction to review any such determination. The Commission shall establish criteria in writing setting forth the basis upon which such determination

shall be made. As used in this subsection, 'offsite' means away from 'the location' or 'the contract location' as defined in the applicable Commission indemnity agreement, entered into pursuant to section 170."

"k. The term 'financial protection' means the ability to respond in damages for public liability and to meet the costs of investigating and defending claims and settling suits for such damages."

"q. The term 'nuclear incident' means any occurrence, including an extraordinary nuclear occurrence, within the United States causing, within or outside the United States, bodily injury, sickness, disease, or death, or loss of or damage to property, or loss of use of property, arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear, or byproduct material: Provided, however, That as the term is used in subsection 170 l. it shall include any such occurrence outside of the United States: And provided further, That as the term is used in section 170 d., it shall include any such occurrence outside the United States if such occurrence involves a facility or device owned by, and used by or under contract with, the United States."

"bb. The term 'United States' when used in a geographical sense includes all Territories and possessions of the United States, the Canal Zone and Puerto Rico."

"i. After any nuclear incident which will probably require payments by the United States under this section, the Commission shall make a survey of the causes and extent of damage which shall forthwith be reported to the Joint Committee, and, except as forbidden by the provisions of chapter 12 of this Act or any other law or Executive order, all final findings shall be made available to the public, to the parties involved and to the courts. The Commission shall report to the Joint Committee by April 1, 1958, and every year thereafter on the operations under this section."