



DEPARTMENT OF DEFENSE  
OFFICE OF GENERAL COUNSEL  
WASHINGTON, D. C. 20301

30 April 1973

MEMORANDUM FOR LTC W. R. KENTY  
FAR EAST, SOUTH ASIA REGION, J-5

SUBJECT: Eminent Domain - Procedures.

With respect to the question of eminent domain you should be aware that detailed procedures are questions which must be addressed by the Department of Justice (Herman Marcuse) and that I am only providing you here an overview in connection with the immediate interests of the Department of Defense.

The following should therefore be borne in mind:

-The usual procedure under Federal practice is to request the Attorney General to institute proceedings under eminent domain. Such proceedings generally include a determination by an appropriate administrative official that the proposed use is necessary and is a public use. The criteria for public use will appear either in United States Federal legislation or in the Compact with the Marianas. The court proceedings may raise the question of use or application of the criteria but such proceedings are primarily intended to resolve the problem of compensation.

-Eminent domain proceedings may be used for a temporary use or a permanent use. They may be used to take land by way of lease or by acquisition in fee (i. e. transfer of title).

-In the Compact and the legislation relating to Puerto Rico it was determined that the public lands in that territory belonged to the United States and appropriate

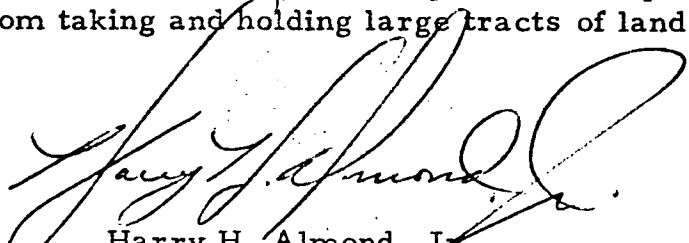
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legislation was adopted to convey public lands back to the people of Puerto Rico. Therefore the question of public lands in the Marianas, which is still open, must be resolved.

- Under United States practice, proclamations or recitals by the United States Government that land is no longer needed do not constitute binding determinations for all time. The United States may seek and assert further use of relinquished land during any subsequent crisis or emergency. In other words, the sovereign power of the United States must remain intact notwithstanding the measures which it might take from time to time concerning its immediate interests.

With the above in view the negotiations should not derogate from these rights and powers which we are seeking for defense interests and needs and it would be appropriate to inform the Marianas delegates of the nature of these powers in a general way. The emphasis on the intended taking will be based not only on a reasonable showing of a public use but the taking will be made primarily in the event of emergency, with the further emphasis that lands taken will be returned as promptly as possible. We can provide procedures for the judicial or administrative testing of any continued use. By further indicating that these procedures apply for similar reasons at least in substance throughout the United States, it should be possible to soften the apparent harshness of what future takings will be about and maintain a low key approach. On the other hand the need for a right to exercise domain must remain in view since there are no adequate substitutes protecting us with respect to land needs, apart from taking and holding large tracts of land at the outset.

(not necessarily)<sup>2</sup>



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