



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

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16 JUN 1973
Marianas

MEMORANDUM FOR ROY MARKON

SUBJECT: United States Legal Rights in the Military Retention
Lands in the Marianas-the Issues Raised in Extending
or the Continued Enjoyment of the Existing Leases.

A major concern which will be raised at the forthcoming meetings with the representatives from the Marianas is the legal status of leases under which the United States Government has an indefinite right to use and occupy certain lands on the islands. (A few of the leases may provide for a fixed term, and some I understand may specify 50 to 90 years). It is hoped that a strong case can be made out to show that the leases need not be renegotiated nor that there is a legal obligation to make additional rental payments. May we have the assistance of your office in this matter, which is reviewed briefly below.

We have been asked:

-whether the United States is under any obligation to return any of the Military Retention lands which it leases and occupies in the Marianas, or whether it is obligated to negotiate for the use and occupancy of those lands once the Strategic Trust Agreement terminates with respect to the Marianas, and once the power to govern is transferred to the Marianan people.

By way of background, I have been informed that the Marianas were among the islands taken by conquest by the United States from Japan, June-July 1944. At the end of the Korean War (1955), the United States set aside a portion of both public and private lands to be held as "retention land," embracing 22,500 acres on Saipan, Tinian, Pagan and Nafutan Rock. The United States paid a lump-sum of \$42/acre, for indefinite use and occupancy in the total amount of \$984,000. The price used was based on the value of the land, reflected in purchases and sales made between 1932 and 1944.

The Agreement for the Saipan District (representative of the Agreements entered into by the United States), dated 9 July 1944, provides for the use and occupancy of the land, for an indefinite period of time,

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the lease to be held so long as the United States "has a use for said land," such use "to be consistent with the Trusteeship Agreement" the lease has a provision for review of use to be undertaken every five years with the Government of the Trust Territory (which was the Grantor), and it reserves the right of the people of the Trust Territory to use the land by license "when not actively used by the United States."

In making out the "legal case" set forth at the beginning of this memorandum, the following issues are raised (others may be included if they are anticipated), and documentation supporting the United States position is required, along with the appropriate support from legal authorities.

1. Has the Trusteeship of the Pacific Islands, Saipan District, legitimately represented the "rights" of all interested Parties in conveying the retention lands to the United States in the use and occupancy leases?

The question raised here raises the following concerns: (a) the leases took place as early as 1944 while the islands were under belligerent occupation and subject to the applicable rules from the laws of war (e.g. Article 55 of the Hague Regulations of 1907, annexed to Fourth Hague Convention); (b) the leases presumably continued in force at the time of administration changed from that exercised during belligerent occupation (perhaps based upon succession to administration by Japan under the League of Nations Mandate) to administration pursuant to the Strategic Trust Agreement with the Security Council (in force July 18, 1947, 61 Stat. 3301; TIAS 1665), and are presently in force under that Agreement.

Associated with these concerns are the following related concerns:

- (i) whether the lump-sum payment for a right to "indefinite" use and to occupation of the Marianas' lands in an amount equal to the "purchase price was a fair price for the lands, and validly determined."

The issues raised under this concern are whether the average prices paid during the period between 1932 and 1942 were fair, whether the determination, apparently made unilaterally by the United States, as an executive or administrative actions, was proper, and required no adjudication, no hearings, or other means of determining a "fair price," and whether in view of the

price paid, the United States can claim that the lump-sum figure extend to a lease indefinite in time, running if need be periods of 90 years.

A second concern of somewhat lesser significance is:

- (ii) Should the leases be treated as conveyances in fee simple but with a condition subsequent or other qualification calling for the land to revert in the people or prior land-owners (including the government) of the Marianas?

These issues should be examined to determine whether the leases, since they run for an indefinite period of time, operate as conveyances in fee. If this proved to be the case, it can be argued more convincingly that the United States rights and interests in the lands clearly need not be renegotiated. If leases were in fact created, then issues tend to arise as to the nature and even the validity of a lease extending for an indefinite period of time, and the legal case for a continuation of such a lease, may be weaker, or a case calling for renegotiating the "rental" price may be stronger. In this connection, it should be noted that the "rental" paid in 1944 was an amount equivalent to earlier "sales" prices.

A third concern is of great importance:

- (iii) Whether the leases survive the termination of the Strategic Trust Agreement, or the change from government by the administering authority to a new form of government.

The issues raised under this concern are (a) whether the United States would be compelled to renegotiate its "leases", even if the Marianas choose to become a Commonwealth of the United States, the charge-once in government will pass through a period in which the Marianas, acting in their own sovereign capacity, make such a choice, (b) whether under international law there is a survival of rights when governments change as in cases such as these (cf a somewhat analagous situation occuring when Eire was given independence), (c) whether the leases were in any way subjected to the operation of the Strategic Trust Agreement that qualified their reach as well as their continuation once the Agreement was terminated.

These are issues which call for documentation from sources (perhaps including the negotiating records if any) including but extending beyond the leases themselves. (These may be available in Mr. Barringer's office).

The third of the above issues our office can manage by coordination with the Department of State. The other issues may require coordination either with the Departments of Justice or Interior or both. But as the negotiating agency, the Department of the Navy appears to be the primary action source.

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

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SIGNED

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

cc: GC
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