



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

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November 30, 1973

MEMORANDUM FOR CAPT. EDWARD C. WHELAN, JR., USN
EAST ASIA AND PACIFIC REGION/ISA

SUBJECT: Survival of Leases and Land Use Agreements Upon
Termination of the Strategic Trust Agreement

You have requested our opinion with respect to the survival of leases or agreements entered into either with private parties or with the public authorities in Micronesia once the Strategic Trust Agreement has terminated. It is my opinion that such termination will not affect the legal standing, relations or rights and obligations of the Parties under these agreements. In place of the public authorities which have entered into such agreements, and whose legal status is affected when either governments or States succeed one another, there is substituted those public authorities embracing the same competence and authority. The legal status of private parties are not changed by such termination.

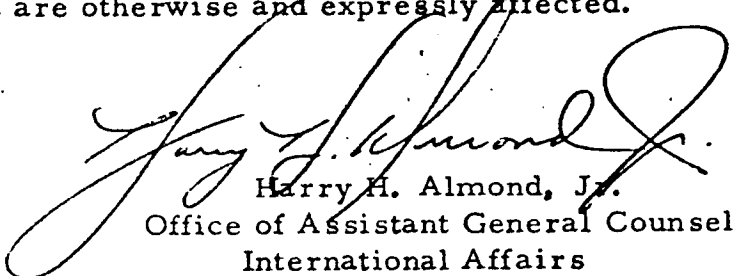
These matters are not resolved by the Strategic Trust Agreement, nor by the municipal law of the United States, nor by the law apart from United States law, applying in the Trust Territories. There are no provisions in the leases or other land use and occupancy agreements that expressly provide for this contingency and determine its legal effect. Therefore, the relevant and applicable law is to be found in the general principles of international law.

The issue of "succession" does not arise in the present context of termination in such a way that the general principles of international law are subject to exception. The general principles require us to examine the context of the arrangements - how and why they were entered into, and what were the expectations of the Parties. It is evident, without providing a detailed analysis here, that the United States was in the unique situation of being the administrating

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authority of the territory, that its presence was in large measure supported by its legally protected claims related to its own security, and that its wide legal interests call for entering into arrangements commensurate with the promotion of international peace and security. This context has not changed, and is and will be reflected in any future arrangements to be made with governments in the trust territories. For its own protection, the United States will seek to provide in its new arrangements for precisely the protection described here. But notwithstanding this intention, it is my opinion that it may continue to enjoy the benefits secured by it from the leases and land and use arrangements made while it was the administering power in the territory.

Reinforcing this view is the nature in which succession takes place with the Trust Territory Government. That Government, subject to administration by the United States, will be replaced by a new and separate government created by and with the consent of the United States. Succession under these circumstances must take place under business-like conditions, and amongst those will be the full recognition of existing rights and obligations of the United States, unless in the new arrangements agreed to by the Parties those rights and obligations are otherwise and expressly affected.


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

CC: Mr. Barringer, ISA/FMRA
 Col. Kenty, JCS, J-5
 Mr. Solf, JAG-A
 GC
 Master Chron
 Subject: ILP-Trust Territory
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