

even if the government has expressly agreed to forego such powers. 1/ However, the power of eminent domain depends upon the sovereignty of the government over the property to be taken. 2/ The United States asserts authority over the Trust Territory not as a sovereign, but merely as a trustee. 3/ Accordingly, the United States lacks the power of eminent domain over the land or contract rights to be acquired by the corporation. It is true that the Trust Territory has the power of eminent domain under Title 10 of the Code, but this authority may only be exercised upon compliance with specified procedures, 4/ and upon the payment of "just compensation." 5/

In conclusion, we believe that the rights created by the contract between the United States and the corporation, combined with the due process and contract clauses of the United States Constitution and the Trust Territory Code, afford substantial protection against actions by the United States or Trust Territory governments which

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1/ Pennsylvania Hospital v. Philadelphia, 245 U.S. 20 (1917); United States v. Village of Highland Falls, 154 F. 2d 224, 226 (2d Cir.), cert. denied sub. nom Volkringer v. United, 329 U.S. 720 (1946).

2/ Nicholas on Eminent Domain §§ 1.13; 1.14; 3.1; 3.11[1] (rev. 2d ed. 1973); Albert Hanson Lumber Co. v. United States, 261 U.S., 581, 587 (1923).

3/ See, e.g., Callas v. United States, 253 F.2d 838 (2d Cir.), cert. denied, 357 U.S. 936 (1958).

4/ 10 T.T.C. §§ 51-59.

5/ 1 T.T.C. § 4; 10 T.T.C. §§ 3(1), 54.