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CBChapman:pb
10/8/74

Memorandum

To: Amb. F. Haydn Williams

From: C. Brewster Chapman, Jr.
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Subject: Land Use and Occupancy Agreements - Northern Mariana Islands

A question has been raised as to whether the Use and Occupancy Agreements covering certain "public domain" lands on Saipan and Tinian Islands need to be renegotiated upon termination of the Trusteeship Agreement under which the United States has provided a civil administration for the Trust Territory since 1947.

These Use and Occupancy Agreements were entered into during the years 1955 and 1956 between the Civil Government of the Trust Territory of the Pacific Islands for the Northern Mariana Islands (Saipan District) and the Department of the Navy acting for the United States of America. They relate to current uses, occupancies and military retentions that generally had commenced in 1944 after the islands had been captured from the Japanese. The right of use and occupancy granted was "for an indefinite period of time, to continue so long as the grantee has use for said land."

In 1947, the U. S. military government in the Trust Territory was terminated and a civil government was established under the administrative jurisdiction of the Secretary of the Navy. E.O. 9875, July 18, 1947. In 1951, administrative jurisdiction over the civil

government of the Trust Territory was transferred from the Secretary of the Navy to the Secretary of the Interior; but by Executive Orders 10408 and 10470, November 10, 1952, and July 17, 1953, respectively, administration of the civil government of the Northern Mariana Islands (Saipan District) was returned to the Secretary of the Navy. This was done for security considerations relating to the conduct of the war in Korea and was permitted by Article 13 of the Trusteeship Agreement. In July 1961, administrative responsibility for the civil government for the Northern Mariana Islands was returned to the Secretary of the Interior where it has remained to date.

The right of the administering authority to acquire or establish naval, military and air bases or reservations is secured to it by Article 5 of the Trusteeship Agreement for the purpose of furthering international peace and security. See also, Article 76a of the Charter of the United Nations. This was a basic objective of the United Nations trusteeship system and obviously is an obligation of administering authority to the member nations which must continue beyond the term of any particular trusteeship agreement. Indeed, if any nation acting as an administering authority failed to assure that the steps it had taken to further international peace and security would continue as long as needed regardless of whether the trusteeship had terminated, it would be remiss in its international duties and in violation of Article 76, supra.

briefing - political issues, not legal -

In short, the questioned Use and Occupancy Agreements "for an indefinite period of time" even if extended beyond the end of the trusteeship, were clearly authorized and intended by both the Trusteeship Agreement and the Articles of the Charter of the United Nations. It cannot, therefore, successfully be argued that these agreements automatically expire upon termination of the trusteeship, unless it can be shown that the lands that they cover are no longer needed by the member nation and former administering authority for the purpose of the continuing furtherance of international peace and security.

The fact that, upon termination of the Trusteeship Agreement, the civil government of the Northern Mariana Islands may be structured somewhat differently than the government that existed prior thereto does not change this result. It will still be the civil government of the Northern Mariana Islands and, as such, in the orderly continuum of government, it will be bound by the lawful acts of the predecessor government which it replaces. Rights lawfully acquired under agreement with a predecessor government fall within this category and may not, short of anarchy, be unilaterally abrogated.

Insofar as the parties to the agreements are concerned, admittedly both were under the jurisdiction of the Secretary of the Navy at the time the contracts were signed; that is to say, the administrative responsibility for the civil government of the Trust

Territory was assigned to the Secretary and, of course, he was over the Department of Navy. But this does not mean that the civil government of the Trust Territory could not enter into an agreement with the Department of Navy or visa versa. Both parties, as separate entities, had the capacity to enter into contracts even with each other, because the Trust Territory Government is not a Federal agency or instrumentality even though it may be staffed, in part, at least, by Federal employees. Such employees would be acting for that Government - not for the United States. See, Porter, et al. v. U. S., No. 111-73, Ct. Cls., May 15, 1974.

It is also suggested that the United States was, in effect, bargaining with itself in making these agreements. Thus, they were not arms length transactions. Without agreeing to the premise, it is safe to say that, even if this were true, it would not affect the deal if it otherwise was a fair one. According to the information submitted, the United States paid $42.00 per acre for the lands in question. This value was established from available data on purchase and sales prices for land in the Northern Mariana Islands between 1932 and 1944. In other words, the United States paid for its use and occupancy rights the fair market value of a fee title as of the date when such use, occupancy or retention commenced in 1944. This seems imminently fair; particularly since, in a condemnation action, a court could not have possibly established a higher value.

Finally, it has been suggested that the U. S. Public Land Policy Statement will permit a different result because, in referring to the transfer of public lands to the respective districts subject to certain limitations and safeguards, it is stated, "These limitations and safeguards will apply until the trusteeship ends, at which time the new government will be free to modify them as it chooses."

Assuming without agreeing that this language was intended to apply to lands covered by use and occupancy agreements, the inference of the argument is that notwithstanding, the continuing obligation of the United States to further international peace and security through the use, occupancy or retention of these lands, it has consented to permit the agreements to be unilaterally modified or terminated after the trusteeship ends. This is patently absurd and clearly was not nor could it be the intent of Public Land Policy Statement. Indeed the statement makes it clear that public lands needed by the United States for the purpose of furthering international peace and security (defense) would not be transferred to the respective districts unless there is a formal commitment to accommodate those needs.

Under all the circumstances, therefore, I conclude that the termination of the trusteeship has no effect on the terms of the use and occupancy agreements under consideration.

- predecessor govt. -

- is the Trust Govt -
a predecessor govt?

- the arrangements must be solely for the period of the STA [illegible] — article 84.

- only public lands - are the right [illegible] [illegible]. -

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title - in Alien Prop. Cust. - in trust for - TTPI. -> to US Govt. ([illegible]) -> contract.

question whether actually [illegible]

- Et. claims. -

- belligerent occupants. -
- may apply here. -

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title - under what
govtal entity - if pres. govt entity. —

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