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October 9, 1974
Draft Michael S. Helfer

MEMORANDUM CONCERNING "MILITARY RETENTION LANDS" IN THE NORTHERN MARIANA ISLANDS

During the Fourth Session of Marianas Future Political Status Negotiations, the Marianas Political Status Commission agreed that the entire United States requirement for land for military purposes in the Northern Mariana Islands would be met under the status agreement. This means that approximately 18,000 acres--nearly one quarter of the entire land area of the islands--will be made available to the United States for military purposes. The United States has agreed to pay just compensation for the land which will be made available to it.

During and since the Fourth Session of Negotiations, the principals and their representatives have attempted to agree on a sum which would represent just compensation for this land. The determination of just compensation has been impeded however, by the insistence of the United States that it already has permanent use rights with respect to approximately 14,000 acres of land in the Northern Marianas under a series of "Use and Occupancy Agreements" it entered into with the Trust Territory Government. This land is commonly called "military retention land". Most of it is located within areas which will be made available to the United States under the status agreement. The Commission believes that the United States' use rights with respect to all military retention land terminate no later than the termination of the Trusteeship Agreement under which the United States,

through the Trust Territory Government, administers the Northern Marianas.

This memorandum analyzes the Use and Occupancy Agreements and the relevant legal framework to determine whether the United States did or could obtain use rights which extend beyond termination of the Trusteeship Agreement.

SUMMARY AND CONCLUSIONS

[to be added]

BACKGROUND

History of the Use and Occupancy Agreements

In 1956 the Saipan District of the Trust Territory of the Pacific Islands (the principal islands of which were Saipan and Tinian) was administered by the Department of the Navy, see Executive Order No. 10408, 17 F.R. 10277 (November 10, 1952); Executive Order No. 10470, 18 F.R. 4231 (July 17, 1953), unlike the remainder of the Trust Territory which was administered by the Department of the Interior, see Executive Order No. 10265, 16 F.R. 6419 (June 29, 1951). "Responsibility for the local administration [of the Saipan District] rest[ed] with the Commander-in-Chief of the United States Pacific Fleet at Honolulu", U.N. Visiting Mission Report on the Trust Territory of the Pacific Islands, 1956, p. 34, and was exercised through the Commander of Naval Forces in the Marianas, at Guam, and a Naval Officer in Saipan known as the Naval Administrator of the District, id. at p. 30.

In approximately June 1956, the Commander of Naval Forces in the Marianas, acting on behalf of the Government of the Trust Territory of the Pacific Islands and under the

direction of the Secretary of the Navy executed a series of "Use and Occupancy Agreements" conveying to the United States Government use rights in approximately 14,000 acres of land in the Marianas. These Agreements were signed on behalf of the United States by the Director of the Pacific Division of the Navy's Bureau of Yards and Docks, also acting under the direction of the Secretary of the Navy.

The Agreements, which state that they are "made as of the 9th day of July, 1944", assert that the Trust Territory is the "owner" of land which the United States desires to use. The Agreements provide that in return for the sum of approximately $40 an acre, the Trust Territory grants to the United States "the right to use and occupy the land . . . for an indefinite period of time, to continue so long as the [United States] has a use for said land."*/

The Agreements also impose several conditions on the grant of use rights to the United States. First, use by the United States must be "consistent with the provisions and purposes of the Trusteeship Agreement relating to the administration of the Trust Territory of the Pacific Islands."

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*/ The money received by the Trust Territory was placed in a trust fund and was supposed to have been used for the benefit of the people of the Saipan District. See generally U.N. Visiting Mission Report on the Trust Territory of the Pacific Islands, p. 119.

Further, representatives of the United States and of the Trust Territory are to review and determine the continuing need for the Use and Occupancy Agreements every five years. In the event that the review does not result in an agreement as to need, the President of the United States is given authority to make a final determination.

Today, approximately 14,000 acres of land in the Northern Mariana Islands are subject to Use and Occupancy Agreements. This means that military retention land accounts for approximately 18% of the total land area of the Marianas, and approximately 22% of all public land.*/

Approximately 9,300 acres of the military retention land is included in the land which will be made available to the United States for military purposes in accordance with the new status agreement. This is slightly over half of the land which will be made available to the United States for military purposes. This military retention land includes all of the very valuable land at Isley Field and Tanapag Harbor on Saipan which the United States will obtain; it also includes approximately 8,450 acres of the 17,450 acres the United States will obtain on Tinian

The remaining 4,700 acres of military retention land is no longer needed by the United States and will not be made

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*/ It is clear that military retention land is public land since title to it is held by the Trust Territory Government. See 67 T.T.C. § 1 (1970). The United States does not claim to have obtained title to land subject to use and occupancy agreements.

available to it under the status agreement. The Use and Occupancy Agreements with respect to this land, the United States has agreed, will be cancelled and the land will continue to be held by the Trust Territory Government until title is transferred to the local Government of the Northern Marianas.

Positions of the Parties

The position of the United States is that the Use and Occupancy Agreements grant it permanent use rights--rights which last as long as the United States believes it needs the land, even beyond the termination of the Trusteeship Agreement. Based on this postition, the United States argues that with respect to the approximately 9,300 acres of military retention land which will be made available to it under the new status agreement, it has already paid for the land and need not "pay again". The United States estimates that the value of the Trust Territory Government's reversionary interest in this land is approximately 2% of the fair market value of title to the land, and is willing to pay this amount if it acquires title to all the land which will be made available to it. With respect to the approximately 4,700 acres which it no longer needs and which will not be made available to it under the status agreement, the United States insists that since it has permanent use rights to such land the amount of just compensation which it will pay to the Marianas for the non-military retention land which will be made

available to it should be reduced by an amount which reflects the fair market value of the United States' interest in this approximately 4,700 acres.

The position of the Marianas Political Status Commission is quite the opposite. Though it has considerable doubts, the Commission is prepared to agree for purposes of the negotiations that the Use and Occupancy Agreements were valid when entered into, and do grant to the United States use rights until termination of the Trusteeship. However, the Commission believes that both the structure of the Agreements themselves and the legal obligations imposed upon the United States as Trustee show that the Agreements were not intended to and could not grant to the United States use and rights which extend beyond the termination of the Trusteeship. Based on this conclusion, the Commission is willing to allow the United States a credit in the determination of just compensation reflecting the United States' rights in the approximately 9,360 acres of military retention land which will be made available to it under the status agreement. This credit would be based on the amount the United States paid for its use rights ($40 an acre) over the anticipated period between the date as of which the agreements were entered into (1944) and the termination of the Trusteeship Agreement (approximately 1982). With respect to the approximately 4,700 acres which the United States no longer needs and with respect to which Use and Occupancy Agreements will be cancelled, the Commission believes that no credit of any sort

is due, for under the terms of the Agreements themselves the use rights of the United States are extinguished because no longer needed.

ANALYSIS OF THE USE AND OCCUPANCY AGREEMENTS

The United States position that its rights in military retention lands extends beyond the termination of the Trusteeship must be based on the language in Section 1 of the Agreements, which read as follows:

> "1. Estate Granted. Grantor [Trust Territory Government under the direction of the Secretary of the Navy] for and in consideration of the sum of [$40 per acre], hereby grants and conveys to the grantee [United States of America, under the direction of the Secretary of the Navy], the right to use and occupy the land described aforesaid for an indefinite period of time, to continue so long as the grantee has a use for said land."

Any argument that this Section of the Use and Occupancy Agreements grants to the United States rights which extend beyond the termination of the Trusteeship Agreement cannot withstand analysis.

In the first place, the Use and Occupancy Agreements, like other contracts, must be interpreted as a whole. An argument based exclusively on Section 1 ignores the conditions on the grant imposed by Section 2 of the Agreements. Section 2(A) provides that "[t]he use to which the land is put by the grantee shall be consistent with the provisions and purposes of the Trusteeship Agreement . . . . " If the Use and Occupancy Agreements were intended to grant rights which extended beyond termination of the Trusteeship Agreement, it would be odd indeed that the United States would have written them so as to bind itself by the Trusteeship Agreement in perpetuity. It is possible, of course, that parties to a contract can refer to other documents by reference, and can agree to conduct their relationship in accordance with such documents, even though those documents may no longer have a legal effect for their original purpose. But the Trusteeship Agreement imposes a wide variety of obligations on the Administering Aithority, and no sensible reason appears why the United States would have bound itself to follow "the provisions and purposes of the Trusteeship Agreement" after termination. So bound, the United States might well be required to permit a considerable degree of United Nations' involvement in the United States' use of the land after termination, for example. See Trustee-

ship Article 13; U.N. Charter Articles 87 and 88. See also Sayre, Legal Problems Arising From the United Nations Trusteeship Agreement, 42 Am.J. Int'l L. 263, 294; U.S. Explanatory Comments on Draft Trusteeship Agreement, Article 13, Dept. of State Bull. March 9, 1947, p. 422 (Trusteeship Council authorized to "keep itself informed" of developments even with respect to areas closed by the Administering Authority for security reasons). Surely if the Use and Occupancy Agrements had intended to grant permanent rights, they would contain only the requirement that for so long as the Trusteeship Agreement is in effect, the use of the land by the United States must be in accordance with that Agreement.

The intent to grant rights only until the Trusteeship Agreement is terminated is also indicated by conditions 2(B) and (C). Under these provisions the United States' need for the land is to be reviewed every five years by a representative of the Trust Territory and a representative of the Department of the Navy. If this review does not result in agreement as to the need for the continued operation of the Use and Occupancy Agreement "the matter shall be presented to the President of the United States for final decision." This is a sensible and a common way for disputes between two federal agencies to be resolved. It is also a sensible way for disputes between the Trust Territory

government and agencies of the United States to be resolved so long as the Trusteeship is in existence. But after the Trusteeship is terminated, an independent soverign might succeed the Trust Territory Government. Surely the United States, when it drafted the Use and Occupancy Agreements, did not intend to bind a future sovereign country to a determination of the need for land within that country made by the President of the United States. An international agreement between two sovereigns would not normally grant one this extraordinary power.

In sum, the Use and Occupancy Agreements taken as a whole are most sensibly read to grant to the United States use "for an indefinite period" prior to termination. The use of the phrase "for an indefinite period" in Section 1 is hardly surprising and is not inconsistent with termination of use rights upon termination of the Trusteeship Agreement. The Trusteeship Agreement itself makes no provision for its termination. As the court noted in Brunell v. United States, 77 F. Supp. 68, 72 (S.D.N.Y. 1948) "the United States has . . . undertaken for an indefinite period to act as trustee of [Saipan] on behalf of and for the benefit of the United Nations" (emphasis supplied). In 1956 no one knew how long the Trusteeship might last. The United States Representative to the Security Council during the debate on the Trusteeship Agreement had expressed the view that the peoples of the Trust Territory could not possibly achieve

independence in the foreseeable future. 23 Security Council Official Records 474 (March 7, 1947). In view of the United States own expressed security interests in Micronesia, and in view of the fact that the Trusteeship Agreement cannot be terminated without the permission of the United States, see Article 15, it was appropriate and natural that the use rights granted by the Use and Occupancy Agreements would be of an indefinite term. But the indefiniteness of the term of use does not necessarily imply permanency of use, in the context of these Agreements.

Finally, as will be demonstrated below, the agreements would be unlawful if they are interpreted to grant to the United States use rights which extend beyond the termination of the Trusteeship. In accordance with generally accepted principles of construction, and in view of the structure of the Agreements themselves, it seems clear that the proper interpretation of the Use and Occupancy Agreements is that in return for what may well have been at the time a fair payment for the rights received, the United States obtained use rights to large amounts of public land in the Northern Marianas for so long as it needs those lands until the Trusteeship terminates. This interpretation of the Agreements, unlike the interpretation proposed by the United States, is consistent with the pledge made by the United States Government in accepting the Trusteeship that it would

take no "advantage, for its own benefit and to the detriment of the inhabitant, of the meager and almost non-existent resources and commercial opportunities that exist in these scattered and barren islands." Statement of Senator Austin, 31 Security Council Records 664 (April 2, 1947). It is also more consistent with the impression which was clearly given to the United Nations Visiting Mission in 1970 that the public lands in the Trust Territory had not been taken over by the United States Government. See U.N. Visiting Mission Report on the Trust Territory of the Pacific Island, 1970, 38.

ANALYSIS OF THE TRUSTEE'S RIGHTS AND OBLIGATIONS

If the Use and Occupancy Agreements are interpreted to grant to the United States use rights which extend beyond termination of the Trusteeship, they would be ineffective in granting such rights, for, to that extent, they would violate the internal common law of the Trust Territory as well as the Trusteeship Agreement itself. This conclusion follows inevitably from the review of the circumstances under which the Use and Occupancy Agreements were entered into--a review which shows that the Use and Occupancy Agreements represent the plainest sort of self-dealing by the Trustee.

United States Control of the Trust Territory Government

At the time the Use and Occupancy Agreements were entered into, the Trust Territory was governed pursuant to what is now 48 U.S.C.A. § 1681 (Supp. 1974), which provides that "all executive, legislative and judicial authority necessary for the civil administration of the Trust Territory shall continue to be vested in such person or persons and shall be executed in such manner and through such agency or agencies as the President of the United States may direct or authorize." Under Executive Order No. 10408, 17 F.R. 10277 (Nov. 10, 1952), President Truman transferred from the Secretary of the Interior to the Secretary of the Navy the administration of the Saipan District, and directed that "the Secretary of the Navy shall take such action as may be necessary and appropriate, and in harmony with applicable law, for the administration of civil government in that portion of the Trust Territory . . . and shall . . . carry out the obligations assumed by the United States as the administering authority of the Trust Territory under the terms of the Trusteeship Agreement . . . and under the Charter of the United Nations . . . ." The Secretary of the Navy apparently delegated his authority to the Commander-in-Chief of the United States Pacific Fleet. The Commander of Naval Forces, Marianas, acting under the

direction of the Pacific Fleet Commander and the Secretary of the Navy signed the Use and Occupancy Agreements on behalf of the Trust Territory Government. There was no participation whatsoever in the decision to lease vast amounts of land in the Marianas to the United States by the local population or leaders. It cannot be seriously disputed that the United States, the Trustee, was doing anything other than dealing with itself when it caused the Trust Territory Government (acting through one Rear Admiral) to enter into the Use and Occupancy Agreements with the United States (acting through another Rear Admiral).

The issue that is involved here is not one of determining whether the Trust Territory Government is an agency of the federal government for purposes of one or another specific federal law. That issue may be decided in different ways depending on the law at issue and the circumstances involved, Compare People of Saipan v. Department of Interior, 356 F. Supp. 645, 657 (D. Haw. 1973), modified another grounds, No. 73-1769 (9th Cir. July 16, 1974) (executive branch of Trust Territory Government is component of Department of Interior) with Porter v. United States, 496 F. 2d 583 (Ct. Claims 1974) (shipping contract entered into by Trust Territory Government in 1968 did not obligate United States under circumstances). What is involved here

is the attempt of the United States to obtain permanent rights in land with respect to which it was a trustee. That, in this circumstance, the United States was dealing with itself is clear. As noted, two Admirals acting under the direction of the same United States civilian official signed the Agreements. In sigining the Agreements on behalf of the Trust Territory Government in 1956, the Commander of Naval Forces, Marianas was "undisputedly acting on behalf of "the United States, Porter v. United States, supra, 496 F.2d at 592, explaining Fleming v. United States, 352 F.2d (Ct. Claims 1965) (taking of property by Naval Administrator of Saipan District challenged in suit against United States; Court of Claims accepted jurisdiction). If any further indication of the identity of the interests of the United States and the Trust Territory Governments is needed, one can look at the license which the Department of the Air Force granted to the Trust Territory Government to use certain military retention land. That document purports to grant a "license to other [sic] federal government department or agency" -- namely, the Government of the Trust Territory.

Indeed, even today, when there is a semblance of local self-government in the Trust Territory, the High Commissioner and his superiors in the Department of the Interior retain complete control over the actions of the

Trust Territory Government. See Executive Order No. 11021 (May 8, 1972), 48 U.S.C.A. § 1681 note (Supp. 1974); Department of Interior Order No. 2918, as amended (March 26, 1971), 1 T.T.C. Sources of Governmental Authority (Supp. 1972). The authority of the High Commissioner "does not come from the people of the Trust Territory, nor do they have any method of removing him when dissatisfied with his actions or policies," People of Saipan v. Department of Interior, supra, 356 F. Supp. at 655. As the Congress has recognized, "U.S. authority [with respect to the Trust Territory] is vested in [the] High Commissioner . . .," S.R. No. 62, 90th Cong., 1st Sess., reprinted in 1967 U.S. Code Cong. 1158, 1159. The control which the United States exercises over the Trust Territory government was recently and clearly shown in a matter dealing with public land. At the request of the people of Micronesia, the United States developed a policy with respect to the transfer of title to public lands from the Trust Territory Government to the local districts. See Letter from F. Haydn Williams, the President's Personal Representative for Micronesian Status Negotiations, to Edward E. Johnson, High Commissioner of the Trust Territory, Nov. 1, 1973, with attached policy statement. Although title to this land was nominally held by the TTPI, that Government did not develop the policy relating to transfer. Rather, the policy was

dictated by the United States. Id. Then, after the Congress of Micronesia passed legislation which directed the High Commissioner to convey title to public land to the Districts, the High Commissioner vetoed the legislation based almost entirely on the fact that the legislation was perceived to be inconsistent with the policy statement issued by the United States outlining the terms under which public land would be transferred to the Districts from the Trust Territory Government. See letter from Edward E. Johnson to Tosiwo Nakayama, President of the Senate of the Congress of Micronesia, September 21, 1974, with attachment.

Indeed, even if the actions of the Commander of Naval Forces, Marianas in entering into the Use and Occupancy Agreements, would not otherwise be considered to be the actions of the United States, the influence which the United States inevitably had over this Navy Officer made his actions its own. In Turney v. United States, 115 F.Supp. 457 (Ct. Claims 1953), the Government of the Philippines -- an independent, sovereign nation -- placed an embargo against the removal from the Philippines of property of the plaintiff until such time as the plaintiff agreed to return certain of that property to the United States Government, from whom he had purchased it. There was no formal legal relationship by which the United States Government could have forced the Philippines Government to impose the embargo, but in view

of the close relationship between the two governments, the court held that the United States had taken plaintiff's property and that plaintiff was entitled to just compensation under the Fifth Amendment. If the action of the Philippines Government in that situation can be considered the action of the United States, how can it be doubted that when one Admiral acting under the direction of the Secretary of the Navy executes an agreement with another Admiral acting under the direction of the same person, the actions of the first are not the same as the actions of the second?

The close relationship between the Trust Territory Government and the United States Government, and the control of the former by the latter, cannot be overcome by the legal fiction that there was an independent Trust Territory Government which was capable of granting rights to the United States without regard to the wishes of the Administering Authority. It follows that the Use and Occupancy Agreements are agreements by which the United States granted itself indefinite use rights in land in the Marianas. As is demonstrated below, this self-dealing could not possibly have resulted in the creation of rights in favor of the United States after termination of the Trusteeship.

Self-Dealing By The Trustee

The United States, "as administering authority in the Trust Territory of the Pacific Islands, has always

considered public land in Micronesia to be property held in trust for the people of Micronesia." Transfer of Title of Public Lands From The Trust Territory of the Pacific Islands Administration to the Districts: U.S. Policy and Necessary Implementing Courses of Action 1. However, the United States now claims that by Agreements which it entered into with itself, it has obtained permanent use rights to 14,000 acres of land in the Northern Marianas. Self-dealing of this sort by a trustee cannot create rights; and, specifically, the self-dealing by the United States reflected in the Use and Occupancy Agreements cannot create and use rights which last beyond termination of the Trusteeship.

The Use and Occupancy Agreements were apparently entered into in the Marianas, and in any event concern land located there. Accordingly, the local law of the Marianas is an appropriate starting place to determine the rights the United States obtained by the Agreements. Anglo-American common law serves as the law of the Trust Territory in the absence of specific local or customary law. 1 TTC § 103 (1970). A similar provision was in effect at the time the Use and Occupancy Agreements were entered into, see Fleming v. United States, supra, 352 F.2d at 536. The common law with respect to the duties of the Trustee is clear. In the absence of a specific grant of power in the instrument creating the trust, "a trustee of land cannot

properly occupy the land for his own purposes or make a lease of the land to himself . . . . Where the trustee makes a lease to himself, the beneficiaries can set aside the lease, or can charge the trustee with the fair value of the use of the land or with the profit, if any, which it makes from such use." 2 Scott on Trusts, § 170.17 at 1351-52 (1967). See also Restatement of Trusts, § 170 (1).*/ Now, under the Trusteeship Agreement, the instrument of the Trust, the United States has the right "to establish naval, military and air bases and to erect fortifications in the Trust Territory," Trusteeship Agreement, Article 5 (1). By implication of this Article, as well as under its general authority of administration, Article 3, the United States can no doubt arrange for its use of land for military purposes while the trusteeship is in effect. But the rights and obligations of the United States under the Trusteeship Agreement will be terminated by the conclusion of the Trust. As the International Court of Justice said in Case Concerning the Northern Cameroons, (Preliminary Objections), 1963 ICJ Reports 15, 34, reprinted in 3 International Legal Materials --, 127 (1964), when a Trusteeship Agreement is terminated, the

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*/ To the extent, if any, that Use and Occupancy Agreements cover land which came under the control of the Trust Territory Government because it was alien property, 27 T.T.C. § 2(1) imposes on the Government an obligation to "deal with alien property in the interest and for the benefit of the indigenous inhabitants of the Trust Territory, in accordance with the terms of the Trusteeship Agreement . . . .

the "trust itself disappeared; the [administering authority] ceased to have the rights and duties of a trustee with respect to the [trust territory] . . . ." The instrument of the Trust in the present situation only permits the United States to use land and to establish military bases while the Trusteeship continues. It does not permit such use after the Trusteeship is terminated. That being so, the common law rule against a trustee granting himself such rights works to void the Use and Occupancy Agreements to the extent they grant rights in land which extend beyond termination.

One need not rely just on Anglo-American common law to reach the same result. For to the extent that the Use and Occupancy Agreements grant rights in land to the United States after termination of the Trusteeship, they violate the Trusteeship Agreement itself -- and that Agreement, aside from its force in international law, is a part of the local law of the Trust Territory, 1 T.T.C. § 101(5) (1970). [I assume this was so in 1956, but I do not know.]

Plainly, the Trusteeship Agreement does not by its terms grant the United States the power to grant itself land use rights in the Trust Territory which extend beyond termination of the Trusteeship. Nor is there any need found in the purposes of the Trusteeship Agreement to imply such a power. As one commentator has put it:

> "Like the rights of a trustee in our law, so the rights of an international trustee state have their foundation in its obligations under the Charter and under the Trusteeship Agreement; they are tools given to it in order to achieve the work assigned to it, and the measure of its powers, the test by which its possession of any particular power must be determined, is that the law has provided it with all the tools that are necessary for its task, but with those only."

Brierly, The Law of Nations 166-67 (5th ed. 1955).

Indeed, a number of the provisions of the Trusteeship Agreement shows that for the United States to grant itself such rights is inconsistent with the Agreement. Article 6(2), for example, obligates the United States to "protect the inhabitants against the loss of their lands and resources." If the United States could grant itself permanent use rights with respect to lands in the Marianas -- without any participation by the local population and without the existence much less the acquiescence of a meaningful local government -- then this provision of the Trusteeship Agreement would be meaningless. The military retention lands in the Marianas take up a large portion of the total land in these islands; and they include some of the most valuable lands in the islands. If the United States has the power to grant itself the use of one acre after termination of the Trusteeship, it has the power to grant itself the use of all of the land in the Marianas after

termination. This it cannot do, for nothing could more clearly cause the inhabitants of the Trust Territory to lose their lands -- their most precious resource -- than for the trustee to reserve to himself the use and occupancy of that land forever.

Moreover, the grant of permanent land use rights to itself by the United States violates Article 6(1) of the Trusteeship Agreement, which requires the United States to "promote the development of the inhabitants of the Trust Terriroty toward self-government or independence . . . ." See also U.N. Charter Article 76(b), made applicable by Trusteeship Article 4. The United States has repeatedly recognized that independence is one option which must be offered to the peoples of Micronesia. E.g., Statement of Undersecretary of State Katzenbach, 58 Department of State Bulletin, June 3, 1968, pages 729-730. If the United States could validly grant to itself use rights in land in the Trust Territory that will extend for so long as the United States wishes beyond the termination of the Trusteeship Agreement, it would make a mockery of the right of the peoples to choose independence. How could the peoples of the Trust Territory realistically choose independence -- or any other form of self-government not closely tied to the United States -- when, even after they had supposedly obtained it, a foreign power would control permanently vast amounts of land in their midst?

Finally, even aside from the applicable requirements of the common law, and even aside from the precise terms of the Trusteeship Agreement, the very existence of the Trusteeship Agreement shows that the United States could not validly have granted itself land use rights which extend beyond the Trusteeship. The United States accepted "a sacred trust" when it entered into the Trusteeship Agreement, see U.N. Charter Article 73; Trusteeship Article 4, as it recognized, Statement of U.S. Representative Austin, 20 Security Council Official Records 411 (Feb. 26, 1947). Whatever may be the exact obligations of that trust, one very minimum obligation is clear: the obligation of the trustee not to benefit from the trust at the expense of the beneficiaries. See Ngodrii v. Trust Territory, 2 T.T.C. 142, 147 (1960) (Trust Territory Government, as trustee, cannot profit when inhabitant relies on its statement to his detriment); International Status of South West Africa, 1950 I.C.J. Reports 128, 149-50 (in every legal system there is an institution comparable to an Anglo-American trust, and in each the trustee is precluded from putting the property in trust to his benefit) (separate opinion of McNair, J.).

If the United States granted itself permanent land use rights, it would benefit at the expense of the beneficiaries of the Trusteeship, the people of the Marianas,

who would lose both the land and the just compensation to which they are entitled if they decide to give up their land. As trustee the United States cannot so benefit, and accordingly the Use and Occupancy Agreements, to the extent they grant land use rights beyond termination, are invalid.

Wilmer, Cutler & Pickering
Counsel to the Marianas
Political Status Commission

October, 1974

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MEMORANDUM FOR:

The Chairman, Marianas Political Status Commission
The President's Personal Representative for Micronesian Status Negotiations

Subject: Report of the Joint Drafting Committee

Pursuant to decisions taken in May during the fourth series of negotiations in Saipan on the future political status of the Marianas, the joint Marianas-U.S. Drafting Committee has met in Washington,D.C. and considered various matters referred to it in the Joint Communique of May 31, 1974. We submit herewith our report to the full delegations.

The results of our discussions are reflected in the attached draft agreement which is recommended by the committee for consideration of both delegations. The draft serves to record our tentative agreement on a number of substantive issues in addition to representing a recommended format.

Several substantive issues remain for resolution as reflected in the sections of the draft appearing in square brackets. These will require further examination and discussion by principals before the drafting process can continue.

Also left unresolved are two issues of form which will require further resolution. The first is the name to be attached to the agreement. The United States has suggested it be referred to as a "Covenant". The MPSC has suggested "Commonwealth Agreement". The second issue is the desirability of including a list of "general principles" between the preamble

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and the articles which would set out in broad terms the major points of agreement between the United States and the Marianas, details of which would appear in the articles. The United States favors such inclusion; the MPSC Counsel does not.

The joint committee is prepared to continue its deliberations as necessary to refine the text of the agreement further prior to the next formal negotiating session of the two delegations if that is the wish of the principals.

Howard P. Willens
Senior Representative
MPSC Drafting Committee

James M. Wilson, Jr.
Senior Representative
U.S. Drafting Committee

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