



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

I-9360

16 October 1974

MEMORANDUM FOR MR. PHILIP E. BARRINGER  
DIRECTOR, FMRA, ISA, OASD

SUBJECT: Land Use and Occupancy Agreements - Northern  
Mariana Islands

The attached memorandum in draft was submitted to me for comment. We discussed this matter in a meeting at the Department of Interior at which Mr. Chapman and Mr. Wilson were present and it was agreed that our written statements would be forthcoming. I offer the following comments:

1. The fundamental legal position of the United States depends upon lawfully acquired rights under international law. With this premise in view the United States can argue under international law that these rights continue unmodified notwithstanding changes in administration or in government with respect to the Trust Territory. I believe that this legal position should be given the strongest emphasis and raised at the outset on Page 2 instead of following the section concerning the Strategic Trust Agreement.

2. The issues raised in the first paragraph should be restated to read:

"A question has been raised as to whether the use and occupancy agreements covering certain "public domain" lands on Saipan and Tinian Islands are legally modified or terminated upon the termination of the Strategic Trust Agreement . . . . ."

3. The references to the United Nations Charter and the Trusteeship Agreement have a two-fold intent not clarified in the paper. First. They relate to the authority and competence vested in the administering authority, the United States, which is set forth under Article 84 as well as Article 76 of the United Nations Charter.

cf: GC  
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Second. Mr. Chapman indicates, but should give greater emphasis to, the expectations and perspectives which underlay the Trusteeship Agreement. I recommend the following sentences:

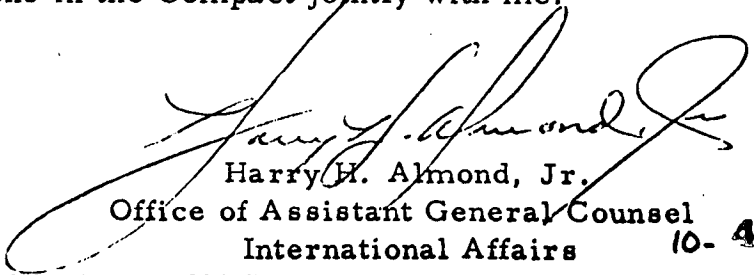
"The expectations of the United States and of the United Nations when the Trusteeship Agreement was entered into were primarily directed toward the maintenance of international peace and security. This objective controls the administering authority's obligations with respect to the Trust Territory and extends as long as measures are required to satisfy these objectives. It is particularly related to the land required to ensure the undertaking of security measures. The territory is therefore distinguished from other Trust Territories which were subject to the administration and supervision of the United Nations General Assembly and is more closely associated with the authority and competence connected with the United States as a Major Power enjoying a permanent position as a member of the United Nations Security Council."

4. On Page 4 I recommend the second to last sentence commence:

"In other words, although the United States had secured a leasehold, it paid the fair market value for its use and occupancy rights in this leasehold an amount which it would have paid if it were seeking a fee title, with the fair market value assessed as of the date when such use occupancy or retention commenced in 1944."

5. Although our office will continue to follow developments with the Compact, Mr. David Ream, OGC (I&L), will follow the land provisions in the Compact jointly with me.

Encl

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

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cf: Mr. Roy Markon, NFAC