



INTERNATIONAL SECURITY AFFAIRS

ASSISTANT SECRETARY OF DEFENSE  
WASHINGTON, D. C. 20301

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Marianas  
Land  
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24 OCT 1974

In reply refer to:  
1-9614/74

MEMORANDUM FOR MR. JAMES WILSON, DEPUTY REPRESENTATIVE FOR MICRONESIAN  
STATUS NEGOTIATIONS

SUBJECT: Military Retention Lands in the Northern Mariana Islands

The attached memorandum of Mr. Chapman, Assistant Solicitor, Department of the Interior, dated October 8, 1974, has been reviewed by the Office of General Counsel and the following modifications are recommended:

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. We 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. Second. Although the draft memorandum indicates it should give greater emphasis to, the expectations and perspectives which underlay the Trusteeship Agreement. We 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 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

401657

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, we 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."

Additionally, I am forwarding for Ambassador William's use a memorandum from Wilmer, Cutler and Pickering which examines the U.S. position vis-a-vis military retention lands in the Marianas. This undated memorandum was received by Assistant Secretary of Defense (ISA) Ellsworth from Gerrad Smith, a representative of Wilmer, Cutler and Pickering, on October 21, and has not been reviewed by the Department of Defense.

Attachment



Morton I. Abramowitz  
Deputy Assistant Secretary