



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

I-9977

October 31, 1974

MEMORANDUM FOR CAPT EDWARD C. WHELAN, JR., USN
EA&PR, ISA, OASD

SUBJECT: Opinion - Wilmer, Cutler & Pickering - Re United States
Claim to Land Leases in the Northern Mariana Islands

With respect to the opinion of the above legal firm prepared by Mr. Willens of that firm, you are aware that my position with respect to the survivability of military retention land leases - which is the present United States position - is opposed to the position taken by the Marianas Political Status Commission. In briefest outline I call attention to the differences between my position and that of the retained law firm:

1. The United States has leases for an "indefinite use" and has paid the fair market value for those leases a value which would have entitled it to a fee simple. For this reason the price paid at the time it was paid represents in my view the full price for the land no matter how long the period of indefinite use might run.

2. The primary legal position of the United States is based on legally acquired rights. Under international law such rights survive both state and government succession. It therefore does not matter whether or not the Trusteeship ends, or that the leases were entered into by the Trustee as administering agency for the Islands, since survival by succession in this case will be survival of public lands. The legally acquired rights will not be jeopardized simply because the Northern Marianas pass into a self governing commonwealth. The fact that public lands are involved, fair compensation paid, succession clearly established clinches the argument.

3. Although these are benefits inuring to the United States, they are benefits which were intended in the Strategic Trust Agreement. Their benefits continue as long as the area is deemed by the United States to be a strategic trust area, and the benefits are in no way

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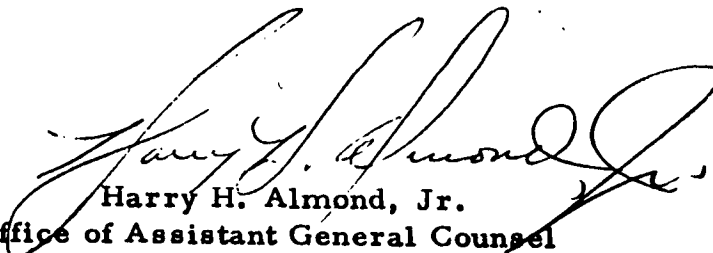
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inconsistent, as legal counsel suggests, with establishing some measure of independence in the inhabitants of the territory. His citation of authority on this matter is simply not relevant.

4. Implied in the arguments which I have set forth above is the fact that a strategic trust agreement was unique, its uniqueness arose out of demands and pressures of the United States, and accordingly it must be distinguished from the trusteeship agreements authorized by the General Assembly of the United Nations. The argumentation entirely ignores the fact that we are going to renegotiate the leases and that the new leases will have a definite time. I do not believe that a detailed response to this brief is required at this time but can be provided to supplement Mr. Chapman's statements at a later time.



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