



OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE
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INTERNATIONAL SECURITY AFFAIRS

18 DEC 1974

MEMORANDUM FOR THE RECORD

SUBJECT: Issue of Eminent Domain

Background

During Marianas V DOD advisers noted probable restrictions on US power of eminent domain, i.e., acquiring no greater interest in land than that initially taken. As talks progressed, the decision to lease became apparent, and the Covenant was continually revised; it became clear that the Covenant, coupled with the decision to lease lands on Tinian, etc. would have the effect of changing US (DOD) policy towards the acquisition of land in the Marianas, and essentially limiting or restricting the exercise of eminent domain powers. The limitation would be to acquire no greater interest in land than a lease. The US right to purchase land in fee simple in the Northern Mariana Islands would be denied by the Covenant, an operative legal document.

Instructions

The Ambassador's Instructions from the President state that a primary objective is "To fashion ... a close and permanent political relationship with the Mariana Islands District which will extend US sovereignty to those islands ..."

"You should seek initially to reach agreement with the Marianas on a commonwealth arrangement providing ... U.S. sovereignty, full U.S. control of defense and foreign affairs ..."

"Within the foregoing terms of reference, you are authorized to devise and implement the negotiating strategy best designed to achieve U.S. objectives in the negotiations ..."

Draft Covenant

In the attached Covenant, Article 8 covers the acquisition of real property, including land. Section 806.(a) is intended to be only a "cosmetic" statement of U.S. policy with respect to future acquisition of land in the Northern Mariana Islands. Section 806.(c) directly addresses the application of eminent domain proceedings in the Northern Mariana Islands.

U.S. Position

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On presenting the offer to the Marianas Status Commission on December 1974, Ambassador Williams firmly stated that U.S. offer of leasing

(instead of purchasing) the land at a total sum of \$20,000,600 was conditional upon their accepting full eminent domain in the Commonwealth of the Northern Marianas. Publicly and privately he reiterated this position.

Marianas Response

In their response on Dec. 17, 1974, the Marianas Commission responded to the Ambassador's position on eminent domain as embodied in Section 806 of the Covenant as follows:

" The Commission has given most intensive consideration to the United States version of Section 806, particularly subsection (c) dealing with the power of eminent domain. This is a highly sensitive matter with our people. In view of the U.S. willingness to state that it has no present intention to acquire or need for additional land for defense purposes, or for any greater interest in land than the lease to be granted to it -- and in view of the statement of policy you are willing to make in Section 806 (a), the protections offered by United States law, and the basic good faith and trust that must mark our future relationship -- the commission will agree to provisions in the Covenant granting the United States Government the same power of eminent domain it has elsewhere in the United States."

U.S. Delegations Advisors Comments

On 17 December following the above MPSC response land when questioned by DOD Advisor, other U.S. advisors indicated that they suspect that the MPSC legal counsel may be working toward limiting the interest the U.S. can acquire in land in the Marianas, but that it was now too late to try and change the Covenant. It was agreed they would support an acknowledgment in the negotiating history that 806 (a) did not set a precedent to limit the application of eminent domain.

When shown the draft statement early on Dec 18, Mr. Marcuse indicated he would not support the attempt to include such a statement. He considered that the question of the extent of eminent domain may never come up and that this was a sensitive topic to the MPSC and their counsel. Pursuing it in the manner suggested by DOD advisors could cause the negotiations to break down. Shortly thereafter, Mr. Wilson indicated he was fed up with discussing the issue and that it was too late to change the Covenant; however, he did agree to read the DOD proposal.

Disposition

At noon on 18 December, Ambassador Williams reviewed the DOD concerns and after arguing that the construction of paragraph 806 (b) set aside all previous methods of acquiring land (penultimate sentence) and set the stage for paragraph 806 (c) to address the application of the US power of eminent domain in the Northern Mariana Islands.

However, after some discussion plus an interpretation by one of the legal advisors, Ambassador Williams agreed that the wording of 802 (b)

could be viewed as limiting eminent domain in the future to the acquisition of no greater interest in land than a lease. He directed that 802 (b) be changed so that it applies only to those lands acquired in the Covenant.

I indicated that such a change would be a definite improvement, but DOD would still like to leave its General Counsel in Washington review the final draft.



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