7407
B15294

DECLASSIFIED

2080

11N 02/7

January 28, 1966

SECRET

INFORMATION MEMORANDUM

TO : L - Mr. Meeker

FROM : L/UNA - H. Rowan Gaither

SUBJECT: Trust Territories and the United Nations

Background:

UNP drafted and circulated around to Defense and Interior a plan for the future of the U.S. Territories and the Trust Territory of the Pacific Islands. In brief, it was proposed that we make an effort to provide for a terminal status for our territories and for the TTPI which assures their continuing association with the U.S. while meeting our obligations under the U.N. Charter and the Trusteeship Agreement. The proposal called for a status which would not foreclose later alternatives such as independence, statehood or some other status "upon mutual consent".

Interior, which is reluctant to accept all of the premises upon which UNP's program is based, much less all of the proposals, has put forth three legal arguments upon which you will probably be called to comment. These arguments are:

1. The Trust Territory and the U.S. Territories could not be honestly represented as having become self-governing in the sense of General Assembly Resolution 1541(XV) unless Article IV of the U.S. Constitution were first amended. Resolution 1541, Principle VII(a) states:

"Free

SECRET

DEPARTMENT OF STATE A/CDC/MR
REVIEWED BY B.H. Baas DATE 8/4/87
RDS☐or XDS☐EXT. DATE
TS AUTH. REASON(S)
ENDORSE EXISTING MARKINGS ☐
DECLASSIFIED☒ RELEASABLE☒
RELEASE DENIED☐
PA or FOI EXEMPTIONS

DEPARTMENT OF STATE A/CDC/MR
REVIEWED BY B.H Baas DATE 3/25/87
RDS☐or XDS☐EXT. DATE
TS AUTH. REASON(S)
ENDORSE EXISTING MARKINGS ☐
DECLASSIFIED☐ RELEASABLE☐
RELEASE DENIED
PA or FOI EXEMPTIONS

DECLASSIFIED

"Free association should be the result of a free and voluntary choice by the peoples of the territory concerned expressed through informed and democratic processes. It should be one which respects the individuality and the cultural characteristics of the territory and its peoples, and retains for the peoples of the territory which is associated with an independent State the freedom to modify the status of that territory through the expression of their will by democratic means and through constitutional processes."

This is interpreted by Interior as requiring the U.S. to give the people of these areas the unilateral right to change their form of association with the U.S. If not, they are not "self-governing" within the meaning of 1541. Absent a Constitutional change, Interior argues, it would be impossible for the U.S. to accord this right because Article IV of the Constitution gives to the Congress power over the territories (Self-governing or otherwise).

2. If it is constitutionally feasible to comply with Principle VII(a) of resolution 1541, then the result is two classes of U.S. citizens--those who have the right to opt out of the system and those that do not. (Interior does not spell out any legal contention, but the inference is that there is some constitutional prohibition involved. One argument might be based upon Article IV, § 2, "The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states." If one citizen could opt out of the system and another could not, this provision would be violated.)

3. The Trusteeship Agreement does not require the extent of integration pressed for by the State Department. The status of a non-self-governing territory would meet our legal commitment.

Discussion:

1. The need for an amendment to Article IV.

Article IV, Section 3, contains the following paragraph:

"The

"The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States...."

The answer to Interior's argument lies in the fact that Article IV grants to the Congress the unrestricted authority to deal with U.S. property or territory in the manner in which it pleases. The Supreme Court in the Hooven & Allison case stated that, in exercising the power conferred upon it by Section 3 of Article IV of the Constitution, "Congress is not subject to the same constitutional limitations, as when it is legislating for the United States. ...And in general the guaranties of the Constitution, save as they are limitations upon the exercise of executive and legislative power when exerted for or over our insular possessions, extend to them only as Congress, in the exercise of its legislative power over territory belonging to the United States, has made those guaranties applicable." This language infers that the Court's interpretation of Section 3 is very broad indeed.

In actual practice, the United States has governed territory with certain restrictions. The Trusteeship Agreement for the former Japanese Mandated Islands, which was approved by the President pursuant to authority granted by joint resolution of the Congress, restricts in various ways the ability of Congress to administer them. In the case of the Philippines, the Senate adopted a resolution disavowing an intention to annex the islands permanently and, in effect, left to the local inhabitants the decision to obtain independence which was exercised when they voted to accept their constitution. The Supreme Court in Hooven & Allison v. Evatt found no constitutional difficulty in the grant of independence to the Philippines. The Philippine case approximates a procedure that could be followed by the inhabitants of the U.S. territories under the proposal by the Department of State: i.e., the Congress would act responsively to the freely expressed will of the inhabitants of the territory.

Puerto

Puerto Rico may also be in point. (Interior has said of this subject: "In my judgment we engaged in misrepresentation when we implied in 1953 that Puerto Rico's status could be modified only by the mutual consent of Puerto Rico and the U.S.") In a memorandum from Mr. Phleger to the Secretary (on which you were co-drafter), it was stated that Puerto Rico would probably not be held to be an incorporated part of the federal Union, but even if it were, "there is no authoritative precedent for holding that incorporated territory cannot be ceded or granted independence."

2. Unequal citizenship.

Assuming that Interior would make a legal argument on this point, I cannot think of an argument which could be upheld. If based on Section 2 of Article IV, that provision applies to the citizens of "each state". The Department's paper concludes that statehood is presently out of the question. The question would then be the applicability of this section to an associated territory. The Supreme Court, in Hooven & Allison v. Evatt stated that a territory such as the Philippines may not be subject to and enjoy the benefits and protection of the Constitution as do the States which are united by and under it. Thus a distinction would appear to exist between a state and a territory for the purpose of application of the Constitution.

I would doubt that such a problem would exist were the U.S. to grant statehood to one or all of these territories since it would undoubtedly then be assumed that the option of statehood would be a final one.

3. The Nature of Self-Government.

Article 6 of the Trusteeship Agreement says in part:

"...the administering authority shall...promote the development of the inhabitants of the trust territory toward self government or independence as may be appropriate to the particular circumstances of the trust territory and its people and the freely expressed wishes of the peoples concerned...." (Emphasis added by Interior.)

Interior

Interior argues:

> "I should think a respectable argument could be made that the status of a non-self-governing territory of the United States, given the history of other such territories and given the representations which we could honestly make concerning the probable future of this one, is a step 'toward self government'. If such an argument can be made, and if there are no policy reasons to militate against making it, then the Trust Territory could presumably become a non-self-governing territory of the U.S."

The difficulty with this argument that the term "self-government" has been defined by the General Assembly in Principle VI of resolution 1541,

> "A Non-Self-Governing Territory can be said to have reached a full measure of self-government by:
>
> "(a) Emergence as a sovereign independent State;
>
> "(b) Free association with an independent State; or
>
> "(c) Integration with an independent State."

(The U.S. abstained on the resolution.) Principle VII(a), quoted above, goes on to define the requirement of free association.

Thus it would be argued that resolution 1541 would present an authoritative interpretation of "self-government", incompatible with that advanced by Interior. UNP has informally stated that Interior's interpretation is politically unacceptable.

L:L/UNA:HRGaither:mab