

O. W. K. *origin* ~~SECRET~~ 15/5/4

The Department of Defense believes that, contrary to the argument made by the Department of State in Annex O, the legal considerations are not straightforward. Article 6 of the Trusteeship Agreement requires the United States to promote the development of the trust territory for "self-government or independence as may be appropriate to the particular circumstances of the trust territory and its peoples and the freely expressed wishes of the peoples concerned" (emphasis added). Virtually the same language appears in Article 76b of the United Nations Charter. It should be noted that during the discussion of the draft Trusteeship Agreement in the

Security Council the phrase "or independence" was inserted by the Soviet Union. The U.S. then added the clause beginning "as may be appropriate." As time amended, the Agreement was adopted.

On 14 December 1960, the General Assembly of the U.N. adopted a "Declaration on Granting Independence to Colonial Countries and Peoples" GA/Res 1514 (XV). That resolution stated, in part, that the General Assembly "considering the important role of the United Nations in assisting the movement for independence in Trust and Non-Self-Governing territories . . . Declares that . . . All peoples have the right of self-determination; by virtue of that right they freely determine their political status." The next day the General Assembly adopted a set of principles which were to serve as guides to determine whether or not a territory was self-governing, GA/Res 1541 (XV), 15 December 1960. Among these principles were the following:

#### Principle VI

"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.

#### Principle VII

"(a) 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.

"(b) The associated territory should have the right to determine its internal constitution without outside interference, in accordance with due constitutional processes and the freely expressed wishes of the people. This does not preclude consultations as appropriate or necessary under the terms of the free association agreed upon.

On 24 October 1970 the General Assembly adopted a resolution which proclaimed a set of principles concerning friendly relations among states, GA/Res 2625 (LIV). One of the principles was that

"The establishment of a sovereign and independent state, the free association, integration with an independent state or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people."

As a matter of law then, free association and independence are treated as separate and distinct. It is possible to meet U.N. standards for self-determination through the mode of free association. The key is whether that mode is "freely determined" by the people. The DOD believes that these U.N. documents do not require that a people must formally consider and reject independence in order to have "freely determined" their future political status.

Members of the U.N. who oppose free association between the U.S. and Micronesia might argue that a "yes-no" plebiscite on free association without the opportunity to consider independence is not free-determination. That argument is based on a "logical" extension of the language of the U.N. resolutions. Those resolutions do not, however, require that independence be formally considered and DOD believes that is not implied.

Political and tactical considerations may suggest that an independence option be offered, but the Department of Defense does not believe that one must be offered as a matter of law.