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June 16, 1971

To: Honorable Patsy T. Mink
From: American Law Division
Subject: Separation of the Marianas Islands from the Trust Territory of the Pacific Islands

This memorandum is furnished in reply to your inquiry for additional information than that contained in our memorandum of May 3, 1971. Assuming that the United States favors the annexation of the Marianas Islands as a United States territory, you have asked whether the United States can separate the Marianas Islands from the rest of the Trust Territory or must all of it be kept together; what steps the United States, particularly Congress, must take to accomplish this; and what other bodies or peoples must concur in such action.

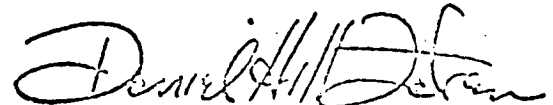
The crux of the problem is whether there can be a partial termination of a strategic trust. Unfortunately, there does not seem to be any definitive legal conclusion in this regard. As can be gleaned from our earlier discussion, the texts of both the Charter of the United Nations and the Trusteeship Agreement are unclear in

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this regard. It appears that both positions have been expounded, i.e., that all the people of the Trust Territory must be ready to choose, at the same time, either self-government or independence, and that there is no legal reason why the United States cannot seek an amendment to the Trusteeship Agreement to provide for the separate achievement of self-government by the people of any district in the Trust Territory in a form which is in accordance with their wishes. See pages 9 and 10 of our earlier memorandum. Assuming that the United States favored such a step, perhaps the best way to clarify this problem would be to attempt to get the Trusteeship Council or the Security Council to request the International Court of Justice to give an advisory opinion on this legal question. Of course, the particular practical situation with respect to the Trust Territory, e.g., that it covers a vast area, is comprised of numerous islands, and that its scattered and diverse inhabitants have many different customs and languages, might or might not have some effect on such a decision.

What is clear is that the United States would not be able to unilaterally modify the international status of the Trust Territory, and that the competence to determine and modify the international status thereof rests with the United States acting with the consent of the Security Council. See our earlier memorandum as well as the International Status of South-West Africa case, [1950] I.C.J. 128.

Since Art. 6 of the Trusteeship Agreement provides that the United States is to foster and 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 peoples and the freely expressed wishes of the people concerned" (emphasis added), this would seem to indicate that some sort of consent or request for such modification be made by the peoples of the Trust Territory. For example, this might necessitate a plebiscite under United Nations supervision. In this regard, as suggested in our earlier memorandum, Congress can act by authorizing a commission to examine the issues with a view to enabling the people of the Trust Territory to express their wishes as to the future status either of the Trust Territory as a whole or as to just the Marianas Islands.



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