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

03
5

I-7783

13 June 1973

MEMORANDUM FOR MR. PHILIP E. BARRINGER
DIRECTOR, FMRA, ISA, OSD

SUBJECT: Marianas Negotiations.

The forthcoming conferences with respect to the Marianas raise several questions which we believe are becoming crucial.

1. The Role of The Security Council.

I understand that a position concerning the possible decisions or actions which might be taken in the Security Council of the United Nations are these:

-the Security Council may be advised of the United States decisions with respect to the Marianas, and without comment, or without making a decision, take no action concerning its role in terminating the trusteeship, or in qualifying the conditions of termination. This seems unlikely.

-the Security Council may take limited "action" insisting that termination meet certain qualifications, perhaps including those set out in General Assembly Resolution 1541 (XV) of 14 December 1960 (69/2.21)* perhaps including additional or differing criteria. This "decision" is also unlikely, and instead, may be coupled with a demand that the criteria be satisfied before termination take place.

---

* The commission gave its view on the conditions that would justify the end of the tutelage. There were two preliminary conditions:

(1) The existence in the territory concerned of de facto conditions which justify the presumption that the country has reached the stage of development at which a people has become able, in the words of Article 22

-the Security Council may entertain serious reservations to the United States/Marianas (or Micronesian) decision, with the Council members requiring, apart from or including the qualifications just mentioned, certain conditions relating to the pleibiscite, or to the time-frame of termination (i.e. with an extended phase-out), or as to United States powers and rights within the territory. This action may require a United States veto coupled with potential consequences that should be explored.

-the Security Council may entertain an action denying the rights and powers of the United States, calling for veto by the United States.

Comment.

Each of these potential decisions or "actions" overlapping in part call for a United States position, and fall-back. In my view, each of them should probably be explored with the United States Congress. I suggest a Department of Justice/Interior review, with

---

* (continued)

"to stand by itself under the strenuous conditions of the modern world."

(2) Certain guarantees to be furnished by the territory desirous of emancipation to the satisfaction of the League of Nations, in whose name the Mandate was conferred and has been exercised by the Mandatory.

The commission found that it was a question of fact observable over a sufficient period as to whether that stage has been attained. It laid down the following conditions as indicative:

(1) It must have a settled Government and an administration capable of maintaining the regular operation of essential services.

(2) It must be capable of maintaining its territorial integrity and political independence.

"pros" and "cons", if need be, dealing with each of the possible courses of action, and setting out for early consideration what steps should be taken in shaping views of members of the United Nations (esp. those serving on the Security Council, but including those serving in key positions in the General Assembly and Trusteeship Council).

On account of the nature of the Strategic Trusteeship Agreement, it is my preliminary view that it should be treated, and shaped, in a differing way from that of the other trusteeship agreements subjected to General Assembly "control." The General Assembly Resolution 1541 (XV) can be referred to solely as a "guideline" since much of it is incompatible with the Strategic Trust Agreement. This shaping process, and the United States position rationalizing and showing justification of its proposed decisions should be worked out as soon as possible.

2. The Namibia Case.

The International Court of Justice - in the Namibia Case - determined among other things that any fragmenting of "regimes" within that mandated territory (mandated under the League of Nations, and continued under United Nations auspices) was contrary to the legal obligations imposed in the mandate, and also by implication, at least, would be inconsistent with the interests of the peoples within the territory.

* (continued)

(3) It must be able to maintain the public peace throughout the whole territory.

(4) It must have at its disposal adequate financial resources to provide regularly for normal government requirements.

(5) It must possess laws and a judicial organisation which will afford equal and regular justice to all.

It further suggested that the new state must protect all minorities within it as well as the interests, privileges, and immunities of foreigners. It must also respect obligations entered into on its behalf by the former government. (Report of Permanent Mandates Commission to League of Nations)

The United States position is not comparable to this situation, since the fragmenting is not inconsistent with United States obligations, nor, in my view, is it prima facie inconsistent with the interests of the Micronesians, whom we are intended to protect and benefit. But the position requires careful elaboration such that the United States will not be caught up in discussions or debates that become unmanageable either before the termination decision, or at its close. The comparison of the United States with South Africa, the attitudes taken by members of the United Nations concerning United States misconduct as a "colonial power," or as frustrating legitimate claims of self-determination can be anticipated.

3. The United States Congress.

As emphasized in prior memoranda, the various agencies involved must keep the Congress of the United States fully apprised of the actions and issues which we foresee. The Department of Defense, in particular, must concern itself with those agencies most closely identified with its interests (e.g. House Armed Services Committee).

4. Conclusion.

The continuing - at times growing - pressures relating to self-determination make the United States position more difficult. These pressures have moved in two directions both of which would have impacts here, i.e. there is a growing international concern in the right of people to change their governments and thereby provide a greater degree of "self-government". This move might occur if the Micronesians (Marianas) were to press to an extreme degree dissatisfaction with their own representatives. The other direction has been the drive to divest themselves from "colonial rule". This move would be confusing the United States role in Micronesia, since we are by United Nations Mandate the administering power, and not there by colonial ties (in the usual sense).

These concerns with self-determination are appearing in a variety of contexts: e.g. the ICRC Conferences addressing the laws

of war (where peoples engaged in self-determination, according to some views, including those of African nations, are entitled to prisoner of war treatment in their "war" against a colonial power). The appearance of such concerns in other political contexts (e.g. Puerto Rico, Portugal, etc.) is widely known, and requires no further elaboration here.

Harry H. Almond, Jr.
Office of Assistant General Counsel
International Affairs

cc: Capt Schuller, ISA/EA&PR
LTC W. R. Kenty, J-5
Mr. O. T. Johnson, State, L/EA