



OFFICE OF GENERAL COUNSEL
WASHINGTON, D. C. 20301

I-27017

11 December 1973

MEMORANDUM FOR CAPTAIN ROBERT A. SHAID, USN
EA&PR, ISA, OASD

SUBJECT: Guam Study.

The Guam study presently appears in Sections I - III, Draft No. 2 of November 30, 1973 with revisions. Pursuant to your request for written comments on the first three sections:

1. In general the study ranges over matters more relevant to policy than to legal issues at this time. However, the study indicates, rightly, that the peoples of Guam have enjoyed a fair amount of power over their domestic affairs, exercising that power through a legislative body which they control, an elected governor, and they have in addition a non-voting delegate to the United States Congress. They have a judicial system which answers to their needs. They have a non-voting status as far as United States elections are concerned but they are United States citizens. The Secretary of the Interior which at one time could veto legislative enactments no longer has that power. Except for voting rights in United States Federal elections they have almost all of the powers of self-government exercised by other citizens within the United States. This extensive authority and competence ranging over their affairs has led me to take the position in earlier opinions that Guam has greater powers of self-government than those which are enjoyed by many so-called independent countries throughout the world.

2. My comments in Paragraph 1. apply therefore to the international implications discussed at Page 13 (and subjected to further redrafting). Apparently in large measure by unilateral decision, the United States agreed to report to the United Nations on Guam along with Puerto Rico thereby treating those territories as non-self-governing. The Compact with Puerto Rico in 1952

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Classified by EA&PR, ISA, OASD
SUBJECT TO GENERAL DECLASSIFICATION SCHEDULE OF
EXECUTIVE ORDER 11652. AUTOMATICALLY DOWNGRADED
AT TWO YEAR INTERVALS. DECLASSIFIED ON 31 Dec 1981.

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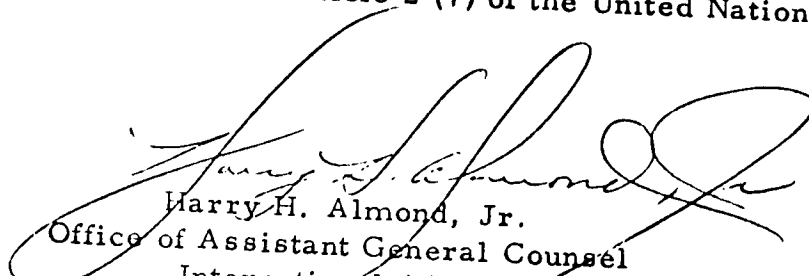
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was then treated by the United States and the United Nations as a Compact of self-government and reporting for that territory ceased.

It is my opinion that there is no obligation for the United States to report to the United Nations on Guam, since a sufficient degree of freedom and independence in their own affairs is exercised by the peoples of Guam. This position has not been accepted at the Department of State because it is apparently their position that Guam is not fully "free" and that this is the requirement which the appropriate resolutions of the General Assembly require (General Assembly Resolution 1541 (XV) of December 15, 1960).

The issue here is who decides when self-government has been achieved and for what purposes. It has not been in United States interests to conform to the positions taken by the so-called Committee of 24 since those positions have been dictated by the political attitudes of countries totally unsympathetic to the United States. These Afro-Asian countries have a substantial majority in the Committee. The natural outcome of their views would lead to "obligations" imposed on the United States to provide total independence to Puerto Rico, the Virgin Islands, Samoa, the Trust Territories, and Guam. I therefore repeat in this opinion my view that the United States can justify on a legal basis the current self-governing status of Guam and can unilaterally refrain from providing reports to The Committee of 24. There is no clear-cut test that resolves the question of self-government, and the Committee unquestionably will impose a political interpretation. This argument in turn would be justified by a United States claim that any further intervention by that Committee would amount to interference with the domestic jurisdiction of the United States inconsistent with Article 2 (7) of the United Nations Charter.


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cf: Mr. Barringer, FMRA, ISA

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