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DEPARTMENT OF STATE A/CDC/MR

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MEMORANDUM

To : L PA er MOI George H. 1 Ich
L/UNA - Mr. Steven C. Nelson
L/EA - Mrs. Elizabeth Verville

From : L/ECP - Charles Runyon

Subject: Re TTPI: A Preferred Approach to the Question of Termination - a humble submission



What will be in question are whether an asserted exercise of the right of self-determination is consistent with the rights of the inhabitants or in violation of those rights, and what are the legal consequences for the inhabitants, the administering authority and the UN community.

If the administering power violates the rights of the inhabitants, the United Nations, without that power's consent, is legally privileged to treat the rights of that power under the trust agreement as terminated or suspended. (Vide, by analogy, US Statement on Namibia). The United States has been unable to accede to the view that what is determinative of termination in the analogous mandate situation is a decision by the competent political organ of the United Nations, unless taken under Chapter VII by the Security Council. However, in Namibia, the ICJ found a Security Council Resolution a determinative decision under Articles 24 and 25.

As a matter of sound Charter law, the achievement of the right of self-determination and its protection against violation by an administering power are opposite sides of a coin the quality of which as legal tender should not depend on whether the Security Council can act without a veto being cast. That is to say, the veto can legitimately frustrate action by the United Nations through that Council respecting a mandate or trust situation, but it can't negate the legal consequences of achieving self-determination or of committing a violation.

The UN organ with greatest authority in defining such legal matters remains the ICJ, to which we should be prepared to go, if our conduct respecting the TTPI or the rights of its inhabitants to self-determination is placed in serious doubt in the Security Council or the General Assembly.

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