

822-0101

I am writing in my capacity as U.S. Special Representative for the status of Guam. In this position, I am the President's Negotiator for Guam Commonwealth status which has been proposed by the people of Guam to redefine our relationship with the Territory. During our discussions, I have been impressed with the uniqueness of Guam in the U.S. economic and political system and, frankly, that prompts me to write you.

As you are aware, Guam is one of the remaining Non-Self-Governing Territories (which the U.S. voluntarily inscribed on the list of the same by U.N.G.A 66-1 (1946)) pursuant to Chapter XI of the U.N. Charter. As such, we have assumed a "sacred trust" with respect to the people of the territory and their self-governance. Among the responsibilities we accepted with respect to these Territories under the Charter was a recognition "that the interests of the inhabitants...are paramount" and "to take due account of the political aspirations of the peoples." (All, U.N. Charter at Article 73).

From these responsibilities which we assumed under the Charter with respect to the people of colonial territories has emerged the right of "self-determination." I fully appreciate that the issue of "self-determination" today conjures up numerous images, and that our government is careful with respect to how such language is used in international instruments. Such was the discourse of the U.S. Delegation to the Open-ended inter-sessional working group on a draft United Nations Declaration on the Rights of Indigenous Peoples (First session, 20 November-1 December 1995). [I appreciate that we must proceed carefully with loose use of a term that might be seen to vest peoples and populations within our national framework with additional or special rights contrary to our internal governing mechanisms.]

The right of self-determination with respect to colonial territories, however, is understood. Since I believe it so clearly accepted, I will not here cite the host of historical references our country has used to acknowledge this right nor the host of scholarly work on this question which clearly separates the unequivocal "external" right of self-determination (applicable to the people of Non-Self-Governing Territories) and the developing issues surrounding "internal" self-determination (like those issues raised with respect to the draft U.N. Declaration on the Rights of Indigenous Peoples).

I would, however, like to point to two recent references which demonstrate our government's understanding of the right of self-determination as it applies to the people of Non-Self-Governing Territories. In June of 1992 the U.S. Senate ratified the International Covenant on Civil and Political Rights, which provided:

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories shall promote the realization of the right of self-determination and shall respect that right, in conformity with the provisions of the Charter of the United Nations. (Part I, Article 1; no reservations or understandings were recorded by either the Administration or the senate on this provision)

In recent deliberations on the draft Declaration on the Rights of Indigenous Peoples, the U.S. Delegation contrasted the issues of "internal" self-determination and the right of self-determination in the colonial context:

More generally, self-determination also means the full enjoyment and free exercise of civil and political rights in a representative, democratic government, by which indigenous people and others freely determine their own political affairs.

Under contemporary international law, however, the term self-determination is open to varying interpretations, depending on the specific context. In the context of colonialism, the term has been interpreted to mean the right to an independent state [amongst other options]. As a result, the draft declaration [on the rights of indigenous peoples] is seen by many as going beyond the principle of self-determination as set forth in the Charter and other international instruments.

(U.S. Delegation Comments on Article 3: Self-Determination of the Draft U.N. Declaration on the Rights of Indigenous Peoples, Open-ended inter-sessional working group on a draft United Nations declaration on the rights of indigenous peoples, First session, 20 November-1 December 1995).

The right of "self-determination" for "the people" of Guam would at first place, then, appear to be an issue which could be discussed on a level of common understanding. In the process of examining Guam's status I have, unfortunately, found that this is not the case. [While I should note that the Department of Interior historically bears some responsibility for obfuscating the issue (a former Secretary of Interior in 1989 went so far as to assert in a letter to the Secretary of State that all U.S. territories were already fully-self-governing), the Department of State's frequent deviation from the clearly*understood meaning of "self-determination" in the colonial context ~~is a well-documented~~

*By deviating from the clearly etc.**
With respect to Guam, the United States Mission to the United Nations (USUN) has historically displayed many faces. In the mid-1980's, as Guam began to push the issue of self-determination, U.S. Representatives began making statements which equated legislative elections with self-determination for Guam ("...the principle of self-determination is exercised in Guam every two years", Press Release, USUN 35-(85)).

In 1988 after passage of the draft Commonwealth Act by Guam voters, U.N.G.A. Resolution 43/42 urged

...the administering Power to give full recognition to the status and rights of the Chamorro people as provided for in the draft Commonwealth Act.

In 1989 this provision came under attack from the U.S. Mission which described the Commonwealth Act as an "internal matter," notwithstanding the important distinction that it contained the first and only proposal (to date) that would provide for an exercise of self-determination by the people of Guam. In 1991, the U.S. Mission proposed – fallaciously in the

name of the "government of the territory of Guam" -- amendments to the resolution on Guam which suggested that the exercise of self-determination in Guam be subject to the "presence of military bases and installations in the Territory" (U.N.G.A. Resolution 46/68 B.VI. Guam). In 1992, the U.S. Mission informed the President of the General Assembly that it would ~~no~~ longer ~~X~~ provide information to the Decolonization Committee, but would continue to provide information pursuant to the General Assembly on U.S. territories (February 4, 1992).

In 1993, when the Clinton Administration came into office, the Government of Guam approached the U.S. Mission about the conflicts between the U.S. position and international standards with respect to self-determination. The Government of Guam also made it clear that it intended to represent its own views at the United Nations given what it believed were U.S. inconsistencies with international standards. At meetings in May and October of 1993, representatives of the Department State and the USUN made it clear that in their view Guam was a Non-Self-Governing Territory and would remain such until there was a structural change in the relationship. (NOTE: Al Stayman was at the meeting in May; Ms. Sheila Berry from State's International Organization Division came to NY in October during presentations by Guam before the 4th Committee.)

Between 1993 and 1994, the position of the USUN with respect to Guam appeared to exhibit standards more consistent with our international obligations. Our government supported removal of the language (erroneously advanced in the name of the territorial government by the Bush Administration in 1992) which suggested that self-determination in Guam was subject to military considerations; we supported inclusion in the resolution's language which recognized "political rights" of the Chamorro people; and, the addition of language which recognized the need for the U.S. government to respond to concerns of the territorial government with respect to immigration. These steps taken by the Clinton Administration reversed the misrepresentations and inappropriate approaches of the previous two Administrations and re-began the process of framing the question of self-determination in Guam within the "external" context.

In 1995, however, the U.S. Mission attempted to reverse some of the provisions that had been supported in 1993 and 1994. In particular, at the Fourth Committee meeting of the General Assembly in 1995, the U.S. Mission advanced a proposed language change in the draft resolution on Guam. The two changes offered (but which were not successful), dealt with deleting reference to the "political rights" of the Chamorro people as well language calling on the U.S. Government to "to take the necessary steps to safeguard their (the people of Guam's) property rights." (Doc A/C.4/50/L.6 27 October 1995).

The failure of these proposals offered by the U.S. Mission prompted a Statement of the U.S. Mission on December 6, 1995 (USUN Press Release #232-(95)) which made light of the self-determination process in the U.S. territories by noting that they "have long since made clear their satisfaction with the United States." With specific reference to Guam the U.S. Mission released the following statement:

A series of plebiscites has given the people of Guam ample opportunity to voice their preferences on political status. A Commission on Self-Determination was established in

1988 (sic) as a vehicle for the elected government of Guam to use for discussing a proposal for a commonwealth status with the U.S. federal government. *The Commission will ultimately put into effect legislatively the freely-expressed wishes of the people on this matter.* (Ibid, emphasis provided) .

This most recent position of the U.S. Mission to the United Nations appears now to purport similar images of "self-determination" advanced during the Reagan and Bush Administration; attempting to delete reference in these international instruments to the people whom the right of self-determination accrues, while simultaneously advancing that the people of Guam have already exercised self-determination. Moreover, the confused statements of the most recent USUN statement (that the Guam Commission will put into effect the freely-express views of the people of Guam), is inaccurate and is deserving of additional attention.

The manner in which our government carries out its international obligations is not a trivial matter, even if these responsibilities apply to a small island like Guam. It seems clear to me that the inconsistencies in our government's position on self-determination within a colonial context, and in this case as it applies to Guam, should be rectified. [I would be pleased to work with you closely in this regard.]

As you are aware, Guam is one of the remaining Non-Self-Governing Territories (which the U.S. voluntarily inscribed on the list of the same by U.N.G.A 66-1 (1946)) pursuant to Chapter XI of the U.N. Charter. As such, we have assumed a "sacred trust" with respect to the people of the territory and their self-governance. Among the responsibilities we accepted with respect to these Territories under the Charter was a recognition "that the interests of the inhabitants...are paramount" and "to take due account of the political aspirations of the peoples." (All, U.N. Charter at Article 73).

From these responsibilities which we assumed under the Charter with respect to the people of colonial territories has emerged the right of "self-determination." I fully appreciate that the issue of "self-determination" today conjures up numerous images, and that our government is careful with respect to how such language is used in international instruments. Such was the discourse of the U.S. Delegation to the Open-ended inter-sessional working group on a draft United Nations Declaration on the Rights of Indigenous Peoples (First session, 20 November-1 December 1995).

I would, however, like to point to two recent references which demonstrate our government's understanding of the right of self-determination as it applies to the people of Non-Self-Governing Territories. In June of 1992 the U.S. Senate ratified the International Covenant on Civil and Political Rights, which provided:

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