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DEPARTMENT OF STATE

THE LEGAL ADVISER

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December 9, 1964

MEMORANDUM

TO : G/PM - Mr. Meyers
 FROM : L - Richard D. Kearney (L.W.T.)
 SUBJECT: Possible United States Acquisition of Indian Ocean Islands.

Your memorandum of November 20 to Mr. Meeker suggests that U.S. ownership of such islands as the Chagos Archipelago might conceivably prove a more desirable arrangement than continued British ownership, U.S. contribution of construction and maintenance costs, and U.S.-U.K. sharing of insular facilities.

The U.S. could acquire ownership of the Chagos by concluding a bilateral cession agreement with the U.K. International law prescribes no particular form for the cession of territory. There is nothing complicated about the technical task of drafting a cession agreement; its basic provision would merely state that the sovereign cedes specified territory to the U.S.* Provision for settlement of financial claims, nationality of inhabitants, and continuation in effect of legislation and judicial decrees might also be required. On the domestic side, a cession agreement would have to be submitted to the Senate for advice and consent, necessitating a full-fledged, open debate on the issue. This is to be contrasted with arrangements going no further than the acquisition of base rights, which could be accomplished by Executive action alone with a public debate of much lesser magnitude.

American acquisition of territory by cession was not uncommon earlier in our history. We acquired the Philippines, Puerto Rico and Guam by the 1898 Treaty of Peace with Spain; Eastern Samoa by the 1899

* Complications arise in the case of cession of inhabited territory. There is a real question whether a cession of territory not accompanied by a plebiscite would be recognized as valid in contemporary international law. Suggestions of plebiscite-as-pre-requisite-to-cession can be found in Grotius. Such a claim would undoubtedly be pressed vigorously in the U.N. (see below). Cession without a plebiscite would require the U.S. to make a contrary argument in the face of the deepest political traditions of the Republic.

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