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COMMUNICATION FROM MR. JOSHUA KOSHIBA, CHAIRMAN, SENATE COMMITTEE ON
FOREIGN AFFAIRS, FIRST OLBIIL ERA KELULAU (PALAU NATIONAL CONGRESS)
CONCERNING THE TRUST TERRITORY OF THE PACIFIC ISLANDS

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COMMITTEE ON FOREIGN AFFAIRS
THE SENATE
FIRST OLBIIL ERA KELULAU
Republic of Palau
Koror, Palau
96949

7 January 1983

The Honourable Haruo I. Remeliik
President, Republic of Palau
Koror, Republic of Palau 96940

Dear Mr. President,

As Chairman of the Senate Committee on Foreign Affairs, certain information has come into my possession regarding the Law of the Sea Convention and the upcoming plebiscite on the compact of free association. While the matters are unrelated, both are deserving of your immediate attention and action.

As for the Law of the Sea Convention, I have learned that no representative from Palau attended the December meeting of the convention in Jamaica. 1/ Thus, Palau was deprived of the opportunity to sign the Final Act 2/ of the Convention and to attempt to sign the Convention itself. Both the Federated States of Micronesia and the Republic of the Marshall Islands were able to sign the Final Act and meet with representatives of the United States and various signatory States to discuss their possible signing of the Convention.

Signing of the Final Act is important because it allows a nation to participate in the Preparatory Commission 3/ which will deal with seabed mining

issues. The Preparatory Commission would also constitute an excellent forum for Palau, the Federated States of Micronesia and the Marshalls to attempt to gain United Nations' approval to sign the Convention under Article 305(1)(e), a provision inserted into the treaty apparently to accommodate all the Trust Territory Governments.

The Law of the Sea Convention is extremely important to Palau, especially considering the effect it would have on the Agreement Regarding Jurisdiction and Sovereignty of Palau subsidiary to the compact of free association. It is incomprehensible that Palau is not participating as an observer in these talks. It is equally incomprehensible that Palau is not actively attempting to fight the Government of the United States in its attempt to prevent Palau's signing.

On 3 November 1982, Ambassador Salii, in a letter to you, indicated that he intended to sign the Law of the Sea Convention if the compact were approved. My question to you is why should we wait; why shouldn't we attempt to sign immediately, as have the Federated States of Micronesia and the Marshalls? Approval of the compact has no legal significance unless and until the compact takes effect, which may be after 9 December 1984, the deadline for signing the Convention.

Palau has obviously made a serious diplomatic blunder. This error should be corrected at the earliest possible time by arranging to have Palau sign the Final Act, participate as an observer in the upcoming meeting of the Preparatory Commission and work closely with the Federated States of Micronesia and the Marshalls to assure that we can sign the Convention at the earliest possible time.

As regards the upcoming plebiscite on the compact of free association, I have recently had the opportunity to review the proposed ballot, particularly Section B of Proposition One. Not only is this portion of the ballot substantially different than is mandated by Republic of Palau Public Law No. 1-43, but it is clear that whoever drafted the ballot is engaging in a game of artistic drafting in an attempt to confuse, mislead and trick the people of Palau into voting in favour of the agreement on chemical, biological and nuclear substances. As mandated by Republic of Palau Public Law No. 1-43, the ballot should read as follows:

"Do you approve of the agreement concerning radioactive, chemical and biological materials concluded pursuant to Section 314 of the Compact of Free Association?"

Instead, the ballot has taken the following form:

"Do you approve the agreement under Section 314 of the Compact which places restrictions and conditions on the United States with respect to radioactive, chemical and biological materials?" (Emphasis added)

The language on the ballot gives voters the impression that if they vote in favour of the agreement, the United States, during the compact period, will be more restricted as to their use of hazardous substances than they would be if the agreement were not approved. Because of our Constitution, however, this impression is false. The ballot also implies that a vote against the agreement will enable

the United States during the compact period to use hazardous substances at will. Again, this is totally false.

It is clear that the ballot, as written, is totally false and misleading, and is intended to trick the Palauan people. I do not know who is responsible for this distortion of the ballot language. If the United States is responsible, your Administration should refuse to accept the language and formally complain to the United States and the United Nations. If officials in Palau were responsible, their decision should be overridden immediately and serious thought should be given to firing them.

I find it interesting that when my Committee was conducting public hearings on the compact, Ambassador Salii strongly objected to several questions put forth by the Committee members and our staff because in his words, they were "subjective questions". Apparently, subjective questions are objectionable to the Ambassador and your Administration but subjective ballots are not. This evidences an absurd perspective and a dangerous intent, and threatens the total destruction of principles of free and informed choice without which democratic societies cannot survive.

Mr. President, both of the aforementioned errors are inexcusable and must be corrected now. I trust you will undertake to correct them. Otherwise, we will be forced to seek alternative routes of redress.

Sincerely yours,

(Signed) Joshua KOSHIBA
Chairman

Senate Committee on Foreign Affairs

cc: Ambassador Lazarus E. Salii
Republic of Palau

Ambassador Fred Zeder II
United States of America

High Commissioner Janet McCoy
Trust Territory of the Pacific Islands

Assistant Secretary Pedro Sanjuan,
Territorial and International Affairs
United States Department of the Interior

President Paul Poudade
United Nations Trusteeship Council

Notes

1/ The final part of the eleventh session of the Third United Nations Conference on the Law of the Sea was held in Jamaica from 6 to 10 December 1982.

2/ For the text of the Draft Final Act of the Third United Nations Conference on the Law of the Sea, see document A/CONF.62/121 and corrigenda.

3/ Preparatory Commission for the International Sea-Bed Authority and for the International Tribunal for the Law of the Sea.
