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PETITION FROM SENATOR PETER L. SUGIYAMA, THE SENATE, FIRST OLBIIL ERA KELULAU, CONCERNING THE TRUST TERRITORY OF THE PACIFIC ISLANDS

(Circulated in accordance with rule 85, paragraph 1, of the rules of procedure of the Trusteeship Council)

The Senate
FIRST OLBIIL ERA KELULAU
P.O. Box 8
Koror, Palau
REPUBLIC OF PALAU, 96940

3 October 1983

The President
Trusteeship Council
United Nations
New York, N.Y. 10017

Dear Mr. President:

By now you may have been informed that Ambassador Zeder will be submitting the compact of free association of the three Micronesian entities for United States Congressional approval.

Ambassador Zeder has cabled us regarding the United States' position on the recent ruling of our highest court's decision. 1/ For your information and consideration I am enclosing all of the information relative to Palau's defeat of the compact of free association with the United States, 2/ as well as a copy of my recent letter to Ambassador Zeder 3/ responding to his cable and a copy of his cable. 1/

As you read Ambassador Zeder's cable, it should become clear that the United States is meddling in the internal affairs of our political status and even purporting to challenge our Supreme Court decision that the compact was defeated.

With this background, I am anxious to know the official United Nations Trusteeship Council's position on our highest court's decision declaring that the compact was defeated. The Council should by now have an official position regarding this matter. I think this should come out, but it is up to you.

I trust you will be able to respond regarding your Council's position. Thank you very much.

Sincerely,

(Signed) Peter L. SUGIYAMA
Senator

cc: The Honourable Paul Poudade
Member, United Nations Trusteeship Council

Notes

1/ See enclosure 1.

2/ For the enclosure containing Justice Hefner's Order granting Partial Summary Judgement (Count III), see T/COM.10/L.342, enclosure.

3/ See enclosure 2.

Enclosure 1

TELEGRAM DATED 13 AUGUST 1983 FROM MR. FRED M. ZEDER, THE PRESIDENT'S PERSONAL REPRESENTATIVE FOR MICRONESIAN STATUS NEGOTIATIONS, ADDRESSED TO MR. LAZARUS SALII, AMBASSADOR FOR STATUS NEGOTIATIONS AND TRADE RELATIONS OF PALAU

1. Please pass following message to Ambassador Lazarus Salii from Ambassador Fred M. Zeder.

2. On 9 August, we received the text of the 5 August summary judgement ruling by Associate Palau Supreme Court Justice Hefner. a/ In that ruling, Judge Hefner opined that questions A and B of proposition one of the Palau plebiscite ballot were not severable and ruled that the compact of free association and its integral and subsidiary parts had been disapproved by the people of Palau on 10 February.

3. Question A on the ballot consisted of a plebiscite on the overall political status question seeking approval or disapproval of the status of free association and expressly indicated that a simple majority was required for approval. Question B was an internal referendum appended to the plebiscite ballot, needed, in Palau's view, for internal, domestic legal ratification and eventual implementation of the compact. We consider that the Court's decision purports to interpret the effect of the internal referendum results (question B) upon the plebiscite results (question A), when the two are considered together, completely without regard to the separate statement on each question concerning the majority required.

4. The United States' obligations as the Administering Authority under both the United Nations Charter and the Trusteeship Agreement require that the right of self-determination of the Palauan people be assured, for which purpose an opportunity has been provided to the Palauans to exercise that right in the plebiscite. When such a plebiscite that has been freely and fairly conducted yields a reasonably strong, unequivocal majority vote indicating a preference for the negotiated political status, the right of self-determination can be deemed satisfied in accordance with the general international practice concerning such plebiscites. Accordingly, in this international context, the strong majority plebiscite results suffice for approval of the compact. Section 412 of the compact, in fact, reflects the understanding between Palau and the United States that such a majority is sufficient. Although the Court's decision purports to invalidate the results of the question A plebiscite, it completely ignores the clear statement on the ballot reflecting the equitable and internationally accepted criterion of majority approval being applied to that question. We therefore take the position that the decision does not establish the approval criteria applicable to the plebiscite, which was set out in accordance with generally accepted practice, in the ballot and in section 412 of the compact.

5. In view of the above, the United States Government maintains, as it has since the 10 February plebiscite, that the people of Palau have approved the compact of free association and its related agreements. We believe that the United States, as Administering Authority, has discharged the above-mentioned obligation to afford the people of Palau the opportunity freely to choose self-government or independence. A United Nations visiting mission has attested to the validity of the plebiscite as an act of self-determination.

6. The next step in the approval process for Palau is approval of the compact by the Government of Palau in accordance with its domestic law. In this connection, the United States Government has been apprised of an Olbiil Era Kelulau Senate resolution which, with reference to the results of the internal referendum (question B), calls into question the effectiveness of the joint resolution approving the compact of free association enacted by the requisite two-thirds majority in both houses of the Olbiil Era Kelulau prior to the plebiscite. Because question B of proposition one was not approved by the requisite 75 per cent majority, the Governments of Palau and the United States negotiated an agreement on 1 July 1983, which would delete section 314 from the compact and rescind the section 314 subsidiary agreement to which question B of proposition one of the ballot had applied. The parties intended by this agreement to overcome any perceived need, under Palauan law, for a separate referendum approval of those provisions. Accordingly, only the results of question A of proposition one would have effect. Of course, any such agreement, with such additional changes as either the Palauan or the United States Government may wish to make (particularly in light of recent events, including the Court's decisions), would be subject to approval by the Government of Palau in accordance with its constitutional processes.

7. For reasons noted above concerning generally accepted practice and criteria followed in such plebiscites and, further, because the effectiveness of the vote results is enhanced by the changed circumstances concerning the modification of the compact and rescission of the subsidiary agreement, we consider the plebiscite results with respect to proposition one (A) to be completely valid. Finally, where the parties mutually agree to modify provisions of a government-to-government agreement, as our two Governments have done, we consider that the resulting version of the compact would be effective.

8. We also consider that changes to the compact and certain of its subsidiary agreements would not require a new plebiscite for approval, so long as the principal features of the political status established under the compact remain intact. We would therefore consider that the approval obtained in the plebiscite for such status would remain valid. Therefore we will continue to look to the 10 February plebiscite as the legitimate expression of the free exercise of the Palauan people's right to self-determination. If, for reasons necessitated by its domestic law, Palau determines that it needs to refer the matters at hand again to the people in a referendum, that is of course Palau's decision to make in accordance with its own laws.

9. Finally, we note that we will make any conforming changes necessary to the official texts of the compact that would be warranted by eventual approval of the United States-Palau agreement to modify the compact by rescinding section 314 and the agreement thereunder. In this way, we hope to facilitate avoiding any remaining apparent inconsistencies between the Constitution and the compact. To the extent that modifications of the compact and its subsidiary agreement which do not change the basic nature of the political status negotiated would enhance the completion of the compact approval process, we, like you, remain open to further discussions.

10. I look forward to hearing from you with respect to Palau's next steps in completion of the compact approval process. Best personal regards, Ambassador Fred M. Zeder, the President's personal representative for Micronesian status negotiations.

Notes

a/ See T/COM.10/L.342, enclosure.

Enclosure 2

LETTER DATED 27 SEPTEMBER 1983 FROM SENATOR PETER L. SUGIYAMA, THE SENATE, FIRST OLBIIL ERA KELULAU, ADDRESSED TO AMBASSADOR FRED M. ZEDER, THE PRESIDENT'S PERSONAL REPRESENTATIVE FOR MICRONESIAN STATUS NEGOTIATIONS

In response to your cable to Ambassador Salii concerning Palau's 5 August Supreme Court ruling, let me state categorically that there is no future in your maintaining such a position. I trust that President Remeliik has made the Palau position clear to you, that being, as he has expressed many times, the Government has accepted the Court's decision and will follow the letter and spirit of the ruling. In the event Palau officials have not yet made it clear to your Government, please allow me to explain the realities in Palau and the futilities of your position.

Progressing through your 13 August 1983 cable, a/ you state that Judge Hefner opined that the ballot questions are not severable and that the compact of free association and its integral and subsidiary parts were disapproved by the people of Palau on 10 February. Your use of the word "opined" as opposed to "declared" or "adjudged" leads to your apparent conclusion that a different view or opinion might be possible.

Mr. Ambassador, if there is a different "opinion" it could and should have been established in Justice Hefner's courtroom. An appeal also could have been made within the appropriate time. Your Government, since it apparently is of an opinion other than that put forth by the plaintiffs and declared by Justice Hefner, obviously should have attempted to intervene in the suit or, at the very least, offer legal assistance to the defending parties. To maintain, as your Government now does, that the compact of free association and its related agreements were approved on 10 February, thus disregarding our Court's ruling, will serve only to drive a wedge between our two Governments and generate world opinion against your position.

The third paragraph of your cable attempts to distinguish between the referendum and plebiscite, long after the fact. Question A asked the voters whether they approved of free association. Prior to the vote the United States consistently maintained that the compact could not take effect unless a 50 per cent majority vote approved of question A and a 75 per cent vote approved the "harmful substance" question B. Both requirements were set forth in our public law and confirmed in Supreme Court Civil Action No. 17-83, the latter yet another judgement which was not appealed.

It may simply and accurately be stated that the compact of free association was not approved in Palau. The concept set forth in the draft compact of free association was, arguably, approved. Simply put, question B failed to receive 75 per cent of the vote. The Supreme Court laid to rest, for those who had any lingering doubts, the idea that questions A and B were severable. In reply to your cable, paragraph 3, the Court disregarded the "separate statement on each question concerning the majority required" as it well should have done. The law was clear

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and the Supreme Court affirmed exactly what the previous United States position had consistently been, that this draft compact can never take effect unless and until 75 per cent of the votes cast approve of the agreement concerning "harmful substances". Once again to state the fact: only 52.9 per cent of the Palauan voters approved of question B. Saying now that part of that voted on was approved and other parts disapproved does not stand up to scrutiny of international law and offends the good sense of the Palauan voters.

Paragraph 4 of your cable attempts to sidestep the law and the facts again by focusing on United States obligations and Palau's self-determination. I guarantee you, Mr. Ambassador, taking Palau's compact of free association before either the United States Congress or the United Nations Trusteeship Council would serve only to invite ridicule of our self-determination and your own participation in it. Perhaps you should have separated the plebiscite and referendum by having them on separate days. My feeling, however, is that severance of section 314 of the draft compact from sections 311, 312 and others for your purposes, would be impossible.

Dwelling on section 412 of the draft compact on approval is futile also since the draft language has no legal effect. Focusing on the ballot, as you suggest, results in the conclusion I have set forth earlier. While the people of Palau did exercise their right of self-determination on 10 February 1983, the choice presented was defeated. You may, as you say have a "reasonably strong, unequivocal majority vote indicating a preference for the negotiated political status", but the majority vote was not enough to approve the agreement pursuant to the rules which you established. The people of Palau must be offered another choice to exercise their right of self-determination. For you to suggest otherwise is self-defeating.

I would not, if I were the President's Personal Representative for Micronesian Status Negotiations, place much emphasis upon the United States' record of offering self-government or independence. The independence option was never realistically provided to the people of Palau and to credit yourself with offering either it or education related to it is simply misstating the facts. Paragraph 5 suggests United States fulfilment of its obligations toward free choice of both; while the last sentence concerning the United Nations Visiting Mission's attestation to the validity of the plebiscite as an act of self-determination, though failed, is the more accurate portrayal.

Your paragraph 6 concerning the next step being that related to Palau's domestic law is misplaced and ill-advised. Focusing on the agreement of 1 July 1983 which purported to rescind the section 314 subsidiary agreement is like applying a band-aid to a severed arm. The rules of the game may not be changed after the game is lost. Not only Senate resolution No. 87 b/ pronouncing the compact disapproved but also Senate resolution No. 98 rejecting the United States-Palau treaty amending the draft compact as well as the Court decision should properly serve notice that further negotiations are necessary and the constitutional approval process of the compact must begin anew.

Please do not try to mislead the people of Palau with unsubstantiated "generally accepted practice and criteria followed in such plebiscites" language as you attempt in paragraph 7. As explained earlier, your conclusion that the

plebiscite results are completely valid is accurate only in the sense that the compact of free association and its integral and subsidiary parts were disapproved. Had you brought the draft compact along with your negotiated treaty before the people of Palau in a plebiscite you might have been on firmer ground. Paragraph 7 establishes only that you are adrift at sea.

Paragraph 8 offers more of the same. Please, if you sincerely want to conclude the 15 years of status negotiations in Micronesia and terminate the Trusteeship Agreement c/ do not "continue to look to the 10 February plebiscite" as our final expression of self-determination. Your key last sentence of paragraph 8 is correct except the word "plebiscite" should be added to or inserted in place of the word "referendum". The sentence should read: "If, for reasons necessitated by its domestic law, Palau determines that it needs to refer the matters at hand again to the people in a [plebiscite], that is of course Palau's decision to make in accordance with its own laws."

It is inconsistent of you, to say the least, that this entire matter is now for Palau to correct in accordance with its own laws; yet, at the same time you choose to ignore our highest court's determination that the plebiscite and the referendum both failed on 10 February. Palau's "decision" has been made; yet you refuse to honour it.

I sincerely hope that your cable's paragraph 9 is not your final offer of negotiations. The United States-Palau agreement to modify the compact by rescinding section 314 and its related agreement was deemed as an inadequate resolution to the problem and defeated by the Senate of the First Olbiil Era Kelulau. Only 7 of the 18 members were influenced by your latest offer. There is only one "remaining apparent inconsistenc[y] between the Constitution and the compact" but it is a very real one: The Palau-United States compact of free association and its integral and subsidiary parts were disapproved by the people of Palau on 10 February.

My recommendation is that you prepare to negotiate any and all of the terms of the defeated compact and its integral and subsidiary parts. The Government of Palau is working through its financial problems and until we do so, no Palau money may be spent on status talks. For the sake of your impressive record with respect to concluding compacts with two of the three Micronesian political entities, but more importantly, for the people of Palau who have waited much too long for a satisfactory resolution of their political status, I request that you withdraw the compact of free association and its integral and subsidiary parts from the United States Congress.

Sincerely,

(Signed) Peter L. SUGIYAMA
Senator

cc: The Honourable James McClure
Chairman, United States Senate Committee on
Energy and Natural Resources

The Honourable John Seiberling
Chairman, United States House of Representatives,
Committee on Interior and Insular Affairs,
Subcommittee on Public Lands and National Parks

The Honourable Stephen J. Solarz
Chairman, United States House of Representatives,
Committee on Foreign Affairs, Subcommittee on
Asian and Pacific Affairs

The Honourable Kaleb Udui
President of the Senate
First Olbiil Era Kelulau

Notes

a/ See enclosure 1 above.

b/ See T/COM.10/L.330.

c/ Trusteeship Agreement for the Trust Territory of the Pacific Islands (United Nations publication, Sales No. 1957.VI.A.1)
