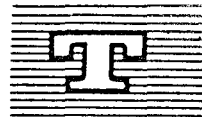


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COMMUNICATION FROM MR. JOSHUA KOSHIBA, PALAU DISTRICT,
CONCERNING THE TRUST TERRITORY OF THE PACIFIC ISLANDS

(Circulated in accordance with rule 24 of the rules of
procedure of the Trusteeship Council)

AN OPEN LETTER TO THE CITIZENS OF PALAU AND THE CHAIRMAN OF THE
PEOPLE'S COMMITTEE. THIS LETTER IS WRITTEN IN RESPONSE TO
MR. OITERONG'S LETTER OF 24 SEPTEMBER 1979 1/

I would like to take this opportunity to thank Mr. Alfonso R. Oiterong for acknowledging my letter of 20 September 2/ and agreeing that my attempt to "separate the issues is at least a step in the right direction".

I would at this time like to draw a brief historical sketch of the recent political events that have occurred in Palau and respond to Mr. Oiterong's letter.

In September 1978, Public Law No. 6-5S-1 calling for a constitutional convention for Palau was passed into law. In discussing the issues before us at the moment there is one section of this Public Law which I would like to quote:

"Section 9. Duties. The Convention shall draft a constitution for the future Government of the sovereign state of Palau which shall make allowance for the establishment of free association with the United States of America ..."

At the conclusion of the Constitutional Convention, came the opening of the April session of the Palau Legislature. It was clear at that time that the constitution was incompatible with the compact of free association. This is evidenced by the fact that a commentary on the position of the United States of America was submitted to the convention on 21 March and in fact Legislators Polycarp Basilius and Kuniwo Nakamura recommended that the Legislature create a task force to review the sections of the Constitution in question. Legislator Nakamura, during the 1 May session of the Legislature, "expressed belief that there was still room and allowance for compromise somehow in order to avoid a

1/ See T/COM.10/L.272.

2/ See T/COM.10/L.270.

vacuum between the two parties". Legislators John O. Ngiraked and Itebang Luii also supported the move to create the Special Task Force to investigate the claims of incompatibility and inconsistency between the draft compact of free association and the draft constitution as communicated by the United States. In addition, Ambassador Peter R. Rosenblatt came to Palau and delivered the view of the United States on the incompatibility between the constitution and the compact of free association on 30 April 1979. Ambassador Rosenblatt's stated purpose in coming to Palau was to clearly outline the areas of incompatibility to prevent future misunderstandings as to the position of the United States in regard to certain provisions of the draft constitution and to make it clear to the leaders of Palau that in the view of the United States the draft constitution threatened future negotiations on the status of free association.

The Special Task Force created by resolution 1015, sponsored by Kuniwo Nakamura and Polycarp Basilius, to investigate the matter was chaired by Legislator Basilius and Special Committee report No. 7 submitted to the Legislature stated that in examining the major areas of conflict identified by the United States we find that these provisions concerning territorial waters, nuclear weapons and land use do in fact go too far. "They do restrict the United States' ability to carry out its security and defence responsibilities under a compact of free association." The report further states as quoted above that Public Law No. 6-5S-1 which created the Constitutional Convention clearly states that the Convention shall draft a constitution for the future Government of Palau which shall make allowances for the establishment of free association with the United States. The Committee found that the constitution drafted by the Convention does not make allowance for free association.

Ambassador Rosenblatt, in his 30 April statement to us, stated:

"Firstly, certain provisions of the draft constitution assert claims to sovereignty and jurisdiction which are contrary to international law both under current practice and as under consideration in the Third United Nations' Conference on the Law of the Sea ... the United States cannot accept the validity of these claims, the United States will not accept responsibility of defending the sovereignty and jurisdiction of Palau as defined in the draft constitution. ... Secondly, certain other provisions of the draft constitution would seriously impair the defence functions of the United States as envisioned under the Hilo principles 3/ ... Thirdly, another provision of the draft constitution would prevent the exercise of eminent domain by the Palauan Government to acquire land for a public use when that use is for 'the benefit of a foreign entity', a term which would include the United States ... It is my responsibility to inform you of the seriousness with which the Government of the United States views these issues. There is no question but that we would like to proceed with negotiations on a compact of free association pursuant to the Hilo principles and on the

3/ See Official Records of the Trusteeship Council, Forty-fifth Session, Sessional Fascicle, annexes, document T/1789.

schedule that we have laid out. However, the Government of the United States would not be prepared to enter into such a compact if the existing ambiguities were permitted to remain as to the ability of the United States to exercise its defence rights and responsibilities under a compact of free association ... I cannot overstate the importance which we place on these issues or their centrality in the view of the United States Government to free association and to our future relationship with Palau ... it is in ... the spirit of frankness, concern and friendship that I am here today to indicate that the particular matter which I have set forth are of fundamental importance to the United States."

Ambassador Rosenblatt made it clear that these remarks were those representing the President and Government of the United States. I do not see how anyone can think that the United States will enter into a status of free association under the original draft constitution. The United States has made it very clear that it will not entertain free association with Palau under the original draft constitution.

In an attempt to allow us time to rectify some of the issues pointed out by the United States, on 30 April I introduced Bill No. 1110 attempting to postpone the date of the 9 July referendum until the Special Task Force could complete its work and we could make an enlightened and informed decision on the matter prior to the publication, distribution and education processes connected with the draft constitution. Bill No. 1110 was not acted upon because of the position taken by the boycotters at that time. This action was taken prior to the time that we in the Legislature realized that we could legally operate on a simple majority basis.

On 10 May, Bill No. 1140 repealing Public Law No. 6-5S-1 was introduced and subsequently passed by a simple majority, and as a result of the court's action initiated by the People's Committee, it became effective as of 8 July 1979, one day prior to the 9 July referendum. This is evidenced by a cable transmitted to us by the High Commissioner of the Trust Territory of the Pacific Islands on 27 July (see attachment to enclosure) and supported further by a letter dated 30 July to Tosiwo Nakamura (see enclosure) attaching above cable from the High Commissioner advising Mr. Nakamura that the results of the 9 July constitutional referendum should not be certified. Civil Action 71-79 was instituted by members of the People's Committee to challenge the simple majority quorum; the court found in favour of the Legislature. Plaintiffs have filed an appeal on Civil Action 71-79. However, as of this date, according to court records, no action has been taken by the plaintiffs to comply with Rule 16 to process the appeal. At this time it appears as though the referendum which was held on 9 July was not legal and therefore the High Commissioner asked that the results not be certified by said cable of 27 July.

The elective, legislative, executive and judicial processes are all part of the system of an organized Government in society. As leaders we cannot limit our responses nor our responsibilities to any one segment of organized Government. We have a responsibility to the citizens of our country to respect, protect and work within the framework of the whole system. The 9 July referendum did not begin and end with the vote of the people.

/...

I would at this time like to address your statement that: "It is not true that the People's Committee agreed during the Guam meeting that the constitution as originally drafted was incompatible with the draft compact of free association. It is also not true that the People's Committee agreed that the change should be made on the original constitution". We have in our files a copy of a summary of the pro-constitution position which was handwritten by Acting District Administrator Kim Batcheller. This statement indicates that you in fact did agree that Palau should enter into free association with the United States and that you further agreed that the three provisions in the draft constitution needed to be changed. In an interview with WALU-TV, Mr. Haruo Willter stated clearly that you had also agreed to these changes. Although I did not attend the meeting in Guam, Messrs. Willter and Batcheller were there with you, Mr. Oiterong. In addition, I would like to point out that the Pacific Daily News reported in various releases between 5 and 19 August that all parties to the controversy agreed that the islands' constitution should be changed to allow for a free association agreement with the United States.

The record shows clearly the United States' view on the incompatibility of the draft constitution with the status of free association. It has been stated clearly by the United States that it will not enter into negotiations with Palau as long as the existing ambiguities exist in the draft constitution. The position of the People's Committee at present seems inconsistent with what has been reported to this Legislature, to the United States representatives in Guam and to the Pacific Daily News. I would therefore like to request that the People's Committee come forth with its position on the status of free association and a plan for the realization of such a status through the original draft of the constitution. Mr. Oiterong, during his statement to WALU-TV, stated that there was a mechanism which allows for the status of free association in the original draft constitution. I would like to ask that you show us this mechanism and that you explain to us how you expect the United States to enter into a compact of free association under the original draft of the constitution given the position that the United States has taken on the matter as outlined above.

(Signed) Joshua KOSHIBA

cc: Adrian P. Winkel, High Commissioner of the Trust Territory of the Pacific Islands
Kim B. Batcheller, Acting District Administrator
Ruth G. Van Cleve, Director, Office of Territorial Affairs
Ambassador Peter R. Rosenblatt
Sheila Harden, President, United Nations Trusteeship Council
WALU-TV
WSZB
MNS
PDN

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Enclosure

30 July 1979

Tosiwo Nakamura, Chairman
Palau Post-Convention Committee
Koror, Palau
Western Caroline Islands 96940

Dear Mr. Nakamura,

As Election Commissioner I have been asked to certify the results of the 9 July 1979 referendum on the proposed Palau constitution.

Attached is a copy of a dispatch I received from the High Commissioner directing that I not certify the results because of the recent High Court ruling on this matter.

Very truly yours,

(Signed) Kim B. BATCHELLER
Acting District Administrator
Palau District

cc: Speaker, Palau Legislature

Attachment

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Attachment

27 July 1979

District Administrator
Palau
Caroline Islands

Attorney General advises that results of the 9 July constitutional referendum should not be certified by your office in view of previous action taken by Legislature with respect to referendum, which action was held to be lawful, as the result of recent court decision on the quorum issue.

Adrian P. Winkel
High Commissioner
