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Fifty-third Session

VERBATIM RECORD OF THE SIXTEEN HUNDRED AND FOURTH MEETING

Held at United Nations Headquarters, New York,
on Tuesday, 13 May 1986, at 3 p.m.

President: Mr. RAPIN (France)

- Examination of the annual report of the Administering Authority for the year ended 30 September 1985: Trust Territory of the Pacific Islands (continued)

- Examination of petitions listed in the annex to the agenda (continued)

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The meeting was called to order at 3.20 p.m.

EXAMINATION OF THE ANNUAL REPORT OF THE ADMINISTERING AUTHORITY FOR THE YEAR ENDED 30 SEPTEMBER 1985: TRUST TERRITORY OF THE PACIFIC ISLANDS (T/1888) (continued)

EXAMINATION OF PETITIONS LISTED IN THE ANNEX TO THE AGENDA (T/1887/Add.1) (continued)

The PRESIDENT (interpretation from French): I invite the petitioners who appeared before us this morning to take their places at the petitioners' table. In addition, I invite Mr. Peter Watson of the Pacific Islands Association and Mr. Roger Clark of the International League for Human Rights to take places at the petitioners' table.

At the invitation of the President, Mr. Peter Watson and Mr. Roger Clark took places at the petitioners' table.

The PRESIDENT (interpretation from French): Before calling on those two petitioners, I invite members who wish to do so to put questions to the petitioners we heard this morning. In that connection, I remind members that it is only at tomorrow's meeting that Mr. Butler will be represented by Ms. Roff.

Mr. BEREZOVSKY (Union of Soviet Socialist Republics) (interpretation from Russian): Am I correct, Mr. President, in understanding that we are starting with questions to the petitioners who spoke this morning?

The PRESIDENT (interpretation from French): We shall indeed begin by putting questions to petitioners who spoke this morning, since what they said is fresh in our minds. After we have completed questioning them I shall call on the two petitioners whom I have just mentioned, and then I shall once again call upon representatives who wish to put questions to them.

Mr. BEREZOVSKY (Union of Soviet Socialist Republics) (interpretation from Russian): We wish to put a series of questions following the petitioners' statements this morning. We have already had the opportunity today to declare that

(Mr. Berezovsky, USSR)

we attach great importance to the evidence they presented to the Council. We wish to have some additional clarification of their statements with respect to the situation now obtaining in the Trust Territory of the Pacific Islands. We are particularly grateful to Mr. Butler for being present this afternoon, since we have a whole series of questions to put to him in particular.

My first question to Mr. Butler is as follows: Was the holding of a plebiscite on Palau in conformity with Palau's Constitution?

Mr. BUTLER: As I explained this morning, there have been several plebiscites. I assume that the Soviet representative is referring to this year's plebiscite, after the 10 January 1986 Compact of Free Association was signed.

I am not a Belauan lawyer, but, as I said this morning, the Compact was signed on 10 January this year, only six weeks before the scheduled plebiscite. As late as 27 January, almost three weeks later, there was neither an English nor a Belauan language version of the Compact available to the general public. It was a complicated matter - an attempt to amend the Constitution through a plebiscite on a Compact of Free Association, which, by the way, is a legal principle unknown to us lawyers; we do not think it is viable or possible, pursuant to law. The issue put to the Belauan people was extremely complicated. Some thought they were voting for a Compact of Free Association, which I said this morning was favourably received by the Belauan people. Very few people understood they might be voting to amend their Constitution at the same time. In view of the complicated nature of the question submitted to the people, two to three weeks is hardly enough time for public education on such an important act of self-determination.

Mr. BEREZOVSKY (Union of Soviet Socialist Republics) (interpretation from Russian): I am grateful for Mr. Butler's explanation. I have another question on the same subject, arising from his reply. There is a need to clarify the extent to which the time allowed for holding the latest plebiscite on Palau was in conformity with national practice with respect to the holding of such plebiscites and to what extent it accorded with international practice, particularly in other Territories. For example, what was the practice adopted with respect to the time given for holding such plebiscites when the United Nations was involved in them?

Mr. BUTLER: I am sorry to say that I do not have at my finger tips a history of how much time is allowed in certain plebiscites held by the United Nations in other areas where decolonization is taking or has taken place. But in terms of fairness and reasonable time it is not unusual in matters of this kind to have periods of from six months to one year. I would not want to give an opinion here because I am really not prepared at this moment to do so. Certainly for such a complicated issue three weeks is unreasonable and, I think, unacceptable in terms of international norms and standards.

Mr. BEREZOVSKY (Union of Soviet Socialist Republics)(interpretation from Russian): My next question is this: To what extent does Palau's Constitution allow the United States right of transit through Palau's waters for nuclear-powered vessels and vessels carrying nuclear weapons? There is some surprise at the fact that, although Palau's Constitution does not permit the use or storage in Palau of weapons of mass destruction or substances harmful to human life, if American vessels carrying such life-threatening substances used Palau's waters - and this has been neither admitted nor denied by the United States - that would be quite normal and it would appear that the Constitution would not be violated.

I apologize to Mr. Butler in advance because I am not a legal expert and my question is perhaps not very precise in legal terms, but I am concerned at the fact that there seems to be some contradiction here.

Mr. BUTLER: Of course we discussed this question thoroughly this morning. Distinguished international lawyers disagree with the basic premise that the Constitution of Belau can be amended by a vote on a compact of free association with the administering Power. That, in our opinion, is a legal impossibility. The Constitution stands on its own, it has its own amending procedure and it can be amended only by 75 per cent of the votes cast in a plesbiscite called specifically for the purpose of amending the Constitution. That is not the case here.

It is the speculation of many observers of this situation if the issue of whether the Belauan people want nuclear materials to be stored or used on their territory were submitted to them in that form, the Belauan people would vote down any such amendment to their Constitution. That is precisely why the administering Power and its supporters in Belau chose not to confront the Belauan people with amendment of their Contstitution but rather to insert clauses inconsistent with the Constitution in the Compact of Free Association in the hope that the wave of approval for free association would carry with it the right to allow the administering Power to station nuclear weapons, nuclear arms, nuclear aircraft and so on on the islands of Palau. That is the first point.

The second point is that the Belauan Constitution provides very clearly that harmful substances such as nuclear, chemical, gas or biological weapons intended for use in warfare, nuclear power plants and waste materials shall not be used, tested, stored or disposed of within the territorial jurisdiction of Belau. Section 324 of the new Compact of Free Association, which in effect tracks in its first part the constitutional provisions prohibiting the use and storage of nuclear materials, goes on to provide that the use or storage of nuclear materials by visiting warships or in transit vessels or in transit methods of communication

(Mr. Butler)

would be allowed. The precise issue that would be submitted to the Belauan court would be whether even a temporary use - and I understand that the terms of visits are not specifically stated; they could be for a long of time, because how long is a visit? - would be in violation of the specific provision preventing the use or storage of nuclear materials on Palau.

Some of us feel that section 324 contains inconsistent provisions: Whereas on the one hand it says the administering Power cannot store nuclear weapons on the islands of Belau, on the other it says it can. To us it is a judicial question that must be submitted to the Belauan courts, and we hope it will be in the near future, because we do not feel that this provision will stand judicial scrutiny. We believe that it will be held unconstitutional, with the court saying that the issue of the amendment of the Constitution must be submitted directly to the Belauan people in a plebiscite held specifically for that purpose alone.

That is really what we are talking about here. The 1983 decision said just that: that a 62 per cent vote on the Compact of Free Association was not enough, because it did not come anywhere near the 75 per cent required to amend the Constitution. But we go a step further and say that, even if they got more than 75 per cent on the Compact of Free Association, the issue of whether the Constitution was to be amended would not have been properly decided by the people, because that issue must be submitted to them in a separate referendum, apart from the Compact of Free Association, so that the issue is clear and the people know exactly what they are voting on.

Mr. ROCHER (France) (interpretation from French): In an effort to understand this matter, I should like to put a simple question.

Mr. Butler just said that the referendum in February 1986 in Palau related to an amendment to the Palau Constitution. Now, I was there at the time of the referendum and that was not my impression. Could Mr. Butler tell us where he was during the referendum week?

Mr. BUTLER: I really do not remember where I was - where I left my bicycle, as we used to say. But I do not understand the purport of the question. Is it a personal, facetious question put to me for some other reason? I fail to see the relevance of where I was at a particular time to a particular international issue. I have served for 15 years as Chairman of the International Commission of Jurists. I have been involved in these issues for long periods of time.

I repeat that I do not quite understand the purport of the question. Perhaps the representative of France could clear it up for me.

I would make this comment: The representative of France said that I had stated that the referendum involved an amendment to the Constitution. I did not say that. I said that arguments had been made that section 324 of the Compact is not inconsistent with the Constitution. I think that that is a legal question that has to be submitted to the judiciary having jurisdiction; indeed it will be submitted in the near future.

Mr. ROCHER (France) (interpretation from French): I must sincerely apologize to the petitioner. I am afraid I expressed myself badly. My question was not malicious and had no ulterior motive.

I apologize on two counts. First, I had understood that Mr. Butler believed that the referendum in February 1986 related to an amendment to the Constitution of Palau. I see that I was mistaken; Mr. Butler has stated that he did not say that.

(Mr. Rocher, France)

With respect to where Mr. Butler was during the referendum, the purpose of my question - and I repeat that it was not a malicious question - was to ascertain whether he had taken part in the political campaign and had been present in the territory of Palau when the referendum had been held.

Mr. BUTLER: No, I was not in the territory. I have no special interests here. I am an international lawyer in consultative status with the United Nations. I think my positions were expressed clearly enough, and I hope they will be taken in the spirit in which they were presented.

Mr. MORTIMER (United Kingdom): I am very grateful to Mr. Butler for coming back this afternoon. I had understood that he was otherwise engaged, and I am grateful that he has given up his time to be with us this afternoon and answer our questions.

I really have to come back to the question I asked Mr. Butler this morning concerning the incompatibility between the Constitution of Palau and the Compact of Free Association. Mr. Butler reverted to the point that a plebiscite on an issue that would have the effect of amending the Palau Constitution would have to be a separate question. From that he seemed to extrapolate - if I understood him correctly - that the plebiscite on the Compact of Free Association should really have been divided into two: there should have been a separate plebiscite on section 324 and a separate plebiscite on the Compact in general.

I confess to being still puzzled why it is that, in Mr. Butler's view, section 324 of the Compact is incompatible with the Palau Constitution; and why it is, by implication - I am interpreting what he said - that he thinks that a separate plebiscite should have taken place on that question.

From my reading of section 324 - and, as I said this morning, I am not a lawyer - it does seem to me that that section explicitly prohibits the use or

(Mr. Mortimer, United Kingdom)

storage of nuclear materials in Palau. That is precisely what the Constitution says.

I wonder if Mr. Butler could comment on that.

Mr. BUTLER: I shall repeat what I said this morning. Section 324 of the Compact of Free Association does provide that:

"In the exercise in Palau of its authority and responsibility under this Title, the Government of the United States shall not use, test, store or dispose of nuclear, toxic chemical, gas or biological weapons intended for use in warfare, and the Government of Palau assures the Government of the United States that in carrying out its security and defence responsibilities under this Title, the Government of the United States has the right to operate nuclear-capable or nuclear-propelled vessels and aircraft within the jurisdiction of Palau without either confirming or denying the presence or absence of such weapons within the jurisdiction of Palau".

Now, I have said here three or four times today that section 324 contains inconsistent provisions. The United States, the administering Power, has stated that it understands that the word "operate" in section 324 would include "manoeuvres, anchoring and port calls". The Belauan Constitution contains a specific ban on nuclear weapons - indeed, this is clear in section 324.

The question that has to be submitted for judicial determination is: Do the words "use" and "store" in the Belau Constitution extend to transit and port calls, to manoeuvres and operations of the United States military in that area? In short, is the presence of nuclear weapons within the jurisdiction of Belau banned by the Belauan Constitution, therefore making section 324 inconsistent with the constitutional provisions and thus invalid? That is the legal argument that should be submitted, and will be submitted, to judicial authority.

(Mr. Butler)

I hope that the issue is now clear: there is a great difference of opinion on whether or not the constitutional provision is actually inconsistent with the second part of section 324.

I hope that that answers the question by the United Kingdom representative. This is an issue that is not resolved at the present time.

I might add that this whole issue - this whole mess, if I might refer to it in that way - is the result of the fact that the United States, the administering Power, and the people supporting it in Belau failed to submit cleanly to the Belauan people the question of whether or not they want nuclear weapons stored or used or operated or manoeuvred - or whatever it might be - on their island. If this issue were presented in a plebiscite directly to the Belauan people - a plebiscite designed solely for the determination of the issue - I do not think any question would arise here. It is a clean issue of law. Until the powers-that-be bring the issue legally and fairly before the Belauan people, I think that there are inconsistencies here which will not survive any action taken either by the Congress of the United States or by the United Nations Trusteeship Council.

Mr. BEREZOVSKY (Union of Soviet Socialist Republics) (interpretation from Russian): I have another question to ask Mr. Butler. He has today repeatedly quoted provisions of the Compact, as it is called, on the use, testing, storage or disposal of nuclear weapons and materials. In these provisions we can see that mention is made that such weapons and materials will not be used, tested or stored in the territory within Palau's jurisdiction. We know that, in accordance with the Compact of Free Association and its accompanying Agreements, "exclusive zones" are also provided for in Palau. I am interested in the following: Will these "exclusive zones" be under the jurisdiction of Palau or of the United States? And if they are under the jurisdiction of the United States, may we then take it that all these prohibitions the United States seems to recognize in the Compact will not apply to the "exclusive zones", which are nevertheless in the territory of Palau?

Mr. BUTLER: In order to make our position as clear and as simple as possible - and although it may seem like a legal argument it is the only way I think it can be presented - let me state that Article II, Section 1 of the Constitution of Belau makes this Constitution the "supreme law of the land". Section 2 of that Constitution reads as follows:

> "Any law, act of Government or agreement to which a Government of Palau is a party shall not conflict with this Constitution and shall be invalid to the extent of such conflict."

By incapacitating itself to determine whether or not the right of the people to be free of such weapons is being violated, it would be urged that the Government waive such a right, in whole or in part. But as I said this morning, neither this Government nor its executives or its legislature, contrary to other countries in the world, has the power to waive a constitutional right. To the extent that the Compact of Free Association is inconsistent with the basic provisions of the Belauan Constitution, that Compact is invalid and not binding, and the issue as to

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whether or not the Administering Authority should be able to use Belau to station nuclear materials has not been resolved, and the issue of whether or not that provision of the Constitution had been waived is moot.

As I said this morning, the Constitution is etched in stone and can be changed only by a direct plebiscite of the Belauan people. This is constitutional law in the first form and it is a point the Council must undertake to confront if it is fairly to adjudicate the question of whether or not it is protecting the right of the Belauans freely to express their wishes for their future.

Mr. MORTIMER (United Kingdom): I am grateful to Mr. Butler for that answer. I think my delegation's problem is that we do not immediately see what constitutional provision is being violated in this case. I would not for one moment wish to take issue with the fact that the Constitution of Palau is quite clear on the need for a separate plebiscite on issues that have the effect of amending the Constitution, but in this case it does not seem to me that we are talking about the use or storage of nuclear materials in Palau, which is explicitly forbidden under Section 324 of the Compact. But I do not think we can take this argument any further this afternoon.

I want to turn now to a separate issue raised by Mr. Butler, and that is the question of the length of the political education programme in advance of the plebiscite. If I may paraphrase him again, he said that he thought it was far too short for an issue of this complexity.

I was present in Palau in advance of the plebiscite and I agree that it was, indeed, a short political education programme. Whether it was too short is really a subjective point, I think, and one has to take into account the fact that the Palauan voters had been subjected to political education programmes, both in 1983 and 1984, as well as in 1986; and it was explained to us - indeed, I perfectly understood the reason for that - that the reason that there was a short political

(Mr. Mortimer, United Kingdom)

education programme was that much of the ground had already been gone over prior to the 1983 and 1984 plebiscites. I submit to Mr. Butler that there is a limit to the amount of political education that any self-respecting, normal human being can be expected to absorb, and it seemed to me that the Palauan voters in February 1986 had probably got about as much political education as they probably could be expected to absorb. While it was perfectly clear to me that very few of the voters could actually quote chapter and verse of the Compact and its detailed provisions, I think that the vast majority of those who participated did have a good understanding of the broad outlines on which they were being asked to vote. Indeed, that is reflected in the report of the Visiting Mission, which we shall be discussing later on.

The PRESIDENT (interpretation from French): If there are no other questions from delegations, I would suggest that we now listen to the statements of the two petitioners scheduled to speak this afternoon.

I call first on Mr. Peter Watson, who will be speaking on behalf of the Pacific Islands Association.

Mr. WATSON: The Pacific Islands Association (PIA) welcomes the privilege and opportunity to appear before the Council today to address the subject of the termination of United States trusteeship over the Trust Territory of the Pacific Islands.

During this presentation, the representatives of the Commonwealth of the Northern Mariana Islands will perhaps forgive us if we refer to the Trust Territory of the Pacific Islands collectively as the freely associated States.

(Mr. Watson)

The Pacific Islands Association (PIA) is an independent organization established in 1981 as a forum for the discussion of issues affecting the Pacific island nations and their relations with the United States and other metropolitan States. The Pacific Islands Association's three directors are from, respectively, the Cook Islands, Western Samoa and, in my case, New Zealand. A central goal of PIA is to expand economic development of the island nations through, in part, their full participation in regional and international organizations. PIA has sponsored a number of symposiums on Pacific island issues, and this year will sponsor two further conferences, one on regional economic development and one on strategic issues. We see the termination of the trusteeship and the commencement of full self-government by the freely associated States as a prerequisite for full regional economic development, co-operation and self-sufficiency.

We further believe that the Governments of the freely associated States are well capable of independently pursuing and achieving those goals, an effort, however, that seems to be made more difficult by the perhaps well-intentioned activities of certain non-governmental self-interest and other groups outside and inside the freely associated States. These people seem not to respect the sovereignty of the Governments of the freely associated States and to ignore their ability to address their own internal and external matters on behalf of all of their citizens, not just special groups thereof.

The members of this body are doubtless aware of the historical background of this region. However, it is perhaps valuable to lay the historical groundwork underlying the current trusteeship status of the freely associated States in order to indicate why we believe the trusteeship should be terminated now.

(Mr. Watson)

Until the United States trusteeship the freely associated States had been subjected to colonial domination for an extended period. Ever since the early days of the European explorers, the Micronesians had been subjected to colonialism touching all aspects of their lives. Spain, for example, first discovered Guam in 1521, and over the next 250 years located other Micronesian islands. The Spanish violently imposed their cultural and religious preferences on the people of the Marianas. Beginning in the late 18th century traders also found their way into the Marshall and Caroline Islands. The whaling industry finally brought Westerners to the Marshalls and Carolines. Again, differences in culture resulted in violence and misunderstanding between the Westerners and the local inhabitants.

In 1885 Germany gained effective control of the Marshall Islands through its dominant trading interests and attempted to gain control of the Caroline Islands as well. Eventually, Germany was in dispute with Spain over who had the prior claim to the Marshalls. The dispute was settled by Pope Leo XIII in favour of the Spanish because of their prior discovery. However, the Pope recognized the right of Germany to restricted trade in the Carolines. Taking advantage of the Spanish defeat in the Spanish-American war of 1898, Germany increased its dominance by purchasing the Carolines and the rest of the Marianas for 25 million pesetas. Germany used brute force to put down any opposition to its colonialism during its governance of the Marshalls. However, in 1914 Germany became involved in the First World War and simply could not expend any more resources in trying to preserve its dominance of the Marshalls. Therefore, with Germany out of the picture, the Japanese began colonization of the Micronesian Islands.

The Japanese emphasized economic development. In 1920 they signed a Mandate agreement with the League of Nations which sought to incorporate Micronesia fully into the growing Japanese empire. In the early 1930s there was a large influx of Japanese immigrants into the Micronesian islands and they supplied a great deal of

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manpower to run Japanese economic development programmes. The economic development stopped, however, with the coming of the Second World War. The Japanese seized large tracts of land for military installations and conscripted Micronesians into forced labour. In fact, the Japanese soldiers simply took over all the agricultural produce available on the islands and used it for supplies. When the American liberation forces finally landed on the islands they found an oppressed and impoverished local populace.

The American entry onto the islands after the Second World War began a new chapter in the history of the islands, a movement away from colonialism and, recently, towards self-determination and self-government. In 1947, as we know, the United Nations put into place the existing trusteeship, and ever since the United States has administered the Micronesian islands under the Trusteeship Agreement with the United Nations.

No historical overview of the era is complete without a short coverage of the United States nuclear programme. Certainly, few activities in the region have been subject to so much later untruth and revisionism. The historical and strategic context of the tests was adroitly stated by Sir Winston Churchill, who at the time the testing was taking place commented:

> "Unless a trustworthy and universal agreement upon disarmament, conventional and nuclear alike, can be reached and an effective system of inspection is established and is actually working, there is only one sane policy for the free world in the next few years. That is, what we call defence through deterrence. This we have already adopted and proclaimed."

Prior to those tests, such a disarmament agreement did not exist, despite United States attempts to conclude one.

Atomic tests had been held at Bikini in 1946, and reports of the tests appeared in the world's newspapers throughout the period when the Trusteeship

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Agreement was passing through the stages of preliminary discussion, drafting and presentation to the Security Council. In this context, the debate on the Trusteeship Agreement in the Security Council confirmed by explicit multiple reference that the United States was to be given virtually unfettered powers in matters relating to security, whether its own or that of the world.

At the fourteenth session of this body, following a number of these tests, the representatives of two nations in the Trusteeship Council brought petitions which alleged that the United States was in violation of the Charter and the Trusteeship Agreement. The Trusteeship Council rejected those petitions. Domestically, in the United States, courts rejected the contention that the testing was in violation of the United Nations Charter or the Trusteeship Agreement. As we shall later see, at the appropriate request of the Marshall Islands Government a mechanism for the settlement of claims arising out of the testing was included in their Compact.

Early on the Administering Authority became keenly aware of the need to accelerate the process of self-determination and bring about self-government for the Micronesians. In 1965 the Administering Authority created the Congress of Micronesia. That Congress in turn created the Future Political Status Commission to investigate and report on various forms of future political status that might be available to Micronesia. The Commission concluded that a free association agreement should be entered into between the United States and Micronesia establishing four points: first, that the Micronesians and their duly constituted Governments are sovereign; secondly, that the Micronesians possess the right to self-determination and may elect complete independence rather than free association with any nation; thirdly, that the Micronesians may adopt their own Constitution and modify it as they see fit; and, fourthly, that the agreement of free association should be revocable unilaterally by either party.

(Mr. Watson)

As part of the process of allowing the citizens of the freely associated States full power to exercise their retained sovereignty and determine their own political future, the citizens held a series of free elections. As we know, the final result was the establishment of four separate political States. The citizens of the freely associated States then voted on their own constitutions and formed their own freely elected Governments, all of these elections being observed by the United Nations.

Interestingly, and perhaps perversely, the Administering Authority, in allowing the citizens of the freely associated States to exercise their sovereign powers of self-determination and form separate States on the basis of culture and language, has subsequently been charged with subdividing the Trust Territory and politically fragmenting it. A knowledge of the political status negotiations proves that not only to be a baseless claim but to ignore the mandate of the Trusteeship Agreement, which speaks in terms of the future outcomes of the peoples of the Trust Territory. Those arguments also ignore the fact that administratively it would have been substantially easier for the Administering Authority to deal with one political entity, not four.

(Mr. Watson)

Negotiations regarding self-government commenced. The Micronesians were represented in those negotiations by their Government leaders, who were all very capable and many of whom had been educated in American and other universities. For example, during the course of many rounds of negotiations the Micronesians rejected several offers from the United States concerning their future political status. The Micronesians rejected both territorial and commonwealth status. That, of course, excepts the Northern Mariana Islands, which freely became a Commonwealth in political union with the United States in 1975. As the Council is aware, after intense negotiations on both sides the other Governments finally agreed on the relationship known as "free association". In the course of the negotiations over the Compact of Free Association it became obvious that the different Governments had peculiar interests to be addressed with the United States. Those concerns resulted in bilateral agreements between the United States and the particular island Governments involved.

In particular, the Marshall Islands Government was rightfully concerned to address the claims of its citizens arising out of the nuclear testing. This was so because claimants faced a very uncertain outcome for their lawsuits in the United States. Accordingly, the Marshall Islands Government properly indicated that it would not complete the Compact approval process unless a mechanism for the settling of the claims of its citizens was included in the Compact. The result, as we know, is a fund of $150 million to provide the Marshall Islands Government with an endowment for payment of the claims. Further, that fund will allow the Marshallese to establish a claims tribunal to hear such claims.

The Compact approval process required approval by the respective Governments of the United States and of the freely associated States. It also required apoproval by their respective citizens. As we know, both of those events subsequently occurred, all through plebiscites held with United Nations observers.

(Mr. Watson)

In January 1986 the United States House of Representatives and the United States Senate passed a joint resolution approving the Compact of Free Association for the Marshalls and the Federated States of Micronesia. President Reagan signed the joint resolution of Congress approving those Compacts on 14 January 1986. Congressional action on the Palau Compact is proceeding swiftly, and Congressional approval is considered imminent. Thus, all the major necessary steps for terminating the Trusteeship Agreement of 1947, but for United Nations action, have been completed.

We submit to the Council that, given the long-term history we have reviewed, terminating the trusteeship is not only the right thing to do now but the only thing to do. The people of the freely associated States have elected their Governments, and they have represented them in negotiating the Compacts. Those freely elected Governments have done their job, and we respectfully believe they have done it well. In addition, after the respective Governments have completed their negotiations with the United States agreeing on the Compacts, popular plebiscites were held in the freely associated States. The people of the freely associated States made their will clear in those United Nations-observed plebiscites. Those people had a free choice, and they exercised it. We respectfully submit that their choice should be given swift endorsement by this body.

While such actions might not be controlling on this body, we should like to point out that the Compacts comply with the actions of the United Nations Special Committee on decolonization, the Special Committee of 24. As members of the Council are no doubt aware, United Nations General Assembly resolution 1514 (XV), entitled Declaration on the Granting of Independence to Colonial Countries and Peoples, provides that the subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to

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the Charter of the United Nations and an impediment to the promotion of world peace and co-operation. It states that all peoples have a right to self-determination and, by virtue of that right, they must freely determine their political status and freely pursue their economic, social and cultural development. That is exactly what is at stake here - the right of the people of the freely associated States freely to choose and determine their own political status and to pursue their chosen economic, social and cultural development. And the people have spoken. They want free association. We submit that this body should recognize the peoples' choice and, based on such recognition, the Council should recommend termination of the trusteeship status. This will allow the people of the freely associated States to experience the full level of self-government in which they have expressed interest by their support of the Compact of Free Association and by voting in the plebiscites observed by the United Nations.

It is critical to note that Principle VI contained in the annex to United Nations General Assembly resolution 1541 (XV) reads as follows:

"A Non-Self-Governing Territory can be said to have reached a full measure of self-government by:

"(a) Emergence as a sovereign independent State;

"(b) Free association with an independent State; or

"(c) Integration with an independent State."

Thus, free association is one of the three alternatives for the people to reach a full measure of self-government.

Principle VII states:

"Free association should be the result of a free and voluntary choice by the peoples of the territory concerned expressed through informed and democratic processes. It should be one which respects the individuality and cultural characteristics of the territory and its peoples, and retains for the

(Mr. Watson)

peoples of the territory which is associated with an independent State the freedom to modify the status of that territory through the expression of their will by democratic means and through constitutional processes."

That is exactly the situation under the Compact of Free Association concluded by the freely associated States. We know this was the result of a free and voluntary choice and that it was done through a democratic process. There can be no question that the Compact respects the individuality and the cultural characteristics of the Territory and its people. The people of the freely associated States have full right and capacity to pursue their own cultural, social and economic development and, in addition, they gain the advantage of economic and other assistance from the Administering Authority, in the present case the United States. Moreover, the Compact of Free Association spells out a dynamic and living relationship. No doors are closed. That document allows for a wide range of consultative and other mechanisms for dealing with logistic and other issues that will probably arise in the future. In addition, the Compact can be revoked unilaterally by either side. If and when the freely associated States want to terminate the Compact, they are free do so do and, of course, they have already exercised their right to determine their internal constitutions without outside interference.

In addition to complying with the General Assembly resolutions just mentioned, the Trusteeship Agreement clearly contemplates termination of the trusteeship status of the freely associated States. Article 6 of that Agreement provides that the Administering Authority shall foster the development of Trust Territories' inhabitants towards self-government and independence. Thus, the Trusteeship Agreement implies that when the Trust Territories are ready and willing the

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Trusteeship should be terminated and some form of self-government chosen. Again, free association is one of the forms of self-government approved by the United Nations.

In addition, Article 76 of Chapter XII of the United Nations Charter, "International Trusteeship System," specifies that one of the basic objectives of the trusteeship system is to promote the territories' development towards self-government or independence in accord with the freely expressed wishes of the people concerned. We submit that without terminating their Trusteeship status the freely associated States cannot achieve the full measure of self-government and independence contemplated by the United Nations Charter and the 1947 Trusteeship Agreement.

Further, free association has precedent in United Nations practice. One need only look at the Cook Islands and Nieu, which reached agreement with New Zealand in 1965 and 1974, respectively, to establish such a prececent. The United Nations willingly endorsed the free-association status of the Cook Islands and Niue based on the fact that United Nations representatives supervised the elections in both Territories and in each case reported that they were conducted fairly. There is every reason for the Council to approve and support the termination of the trusteeship status with respect to the freely associated States. The Compacts of Free Association meet every condition for self-government, free expression and mutability - that is, unilateral revocability - specified in the resolutions of the United Nations General Assembly. It could also be noted that the Compacts of Free Association concluded with the peoples of the freely associated States are even more favourable to those peoples than the ones concluded by New Zealand with the Cook Islands and Niue because, whereas in those cases New Zealand was left largely

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in charge of foreign relations, the United States has agreed that the freely associated States should have full control of their external affairs. The United States remains responsible only for defence and security matters.

(Mr. Watson)

Thus, the freely associated States will have an even more independent status than that given to the Cook Islands and Niue, since the United States Government's power retained over them is smaller than that which New Zealand reserved for itself. Further, substantial economic and other assistance is being provided.

With the conclusion of the Trust Territory and introduction of full self-government will come the achievement of a goal much supported by the Pacific Islands Association: greater Micronesian integration into the Pacific community and full sovereign participation in regional bodies and organizations. That will permit the full development of those organizations, which until now have not had the benefit of the freely associated States fully participating in them. Greater regional economic development and self-sufficiency will result. This will benefit not only all the Pacific island-nations themselves, but will also provide greater stability in the entire region.

Now, as the members of this Council are aware, representatives of certain self-interests and other groups have, throughout the years, come before this body to complain about one perceived grievance or another, or to espouse particular views or actions. We know that throughout the years the Council has heard a series of speeches by individuals and groups from one or more of the freely associated States who have particular matters that they wish this body to act on. Some of the representatives of the disaffected sections of the freely associated States may be presenting petitions now to the Council, urging it either not to approve the termination of the trusteeship or to take some other action.

While one can certainly sympathize with the views of these people, we would submit that this body would wish to recall that these people became part of the freely associates States by virtue of a free vote. As we have seen, all of the freely associated States had constitutional conventions which established freely

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elected representatives of the people, and their respective Governments held elections determining their own status under the Compacts. People who have had particular grievances have had their chance to present them.

What members have here, we believe, is that freely associated States citizens, who retained their sovereignty at all times, have exercised it. They informed their Governments what they wanted their Governments to do. They wanted an agreement providing for a Compact of Free Association. Finally, they voted in a democratic way to approve the agreement negotiated by their Governments. As in all true democracies, the will of the people must be expressed by a representative Government representing all of the people. To the extent that there are concerns on the part of individual citizens of the freely associated States, we believe that these are best addressed to and by their freely elected Governments.

The representative from California, Robert J. Lagomarsino, when speaking in the House of Representatives in January of this year and explaining the reasons why the Compact was a favourable development for the freely associated States, said that there was one point ignored by those expressing concerns about the rights of the Marshallese claimants with respect to nuclear testing claims - that is, that the percentage of those voting for the Compact and the claims settlement procedure was significantly higher in the parts of the Marshall Islands inhabited by nuclear claimants than in the Marshall Islands generally. The Trust Fund established to address these claims was seen clearly preferable to the uncertainty and unpredictability of litigating those claims in the United States courts.

With respect to the Kwajalein claims, the payment mechanism from the United States to the Republic of the Marshall Islands is one that has been negotiated on a Government-to-Government basis and ratified by all of the Marshall Islands people in the United Nations-observed plebiscite. The self-interests of individual groups

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within a freely-elected democracy must, of course, be waived to that of the greater interest.

The same principle applies to the most recent Palau Compact and plebiscite. The Palauan people have previously rejected subsidiary agreements under the Compact and have now approved a modified version. The vote of in excess of 72 per cent of the populace finally resolves this matter. As to those complaining from within Palau, they really have no grievance. They have had their vote; it has been ratified by their Government. For those in Palau who persist in the allegation that the terms of the Compact are in some manner inconsistent with their Constitution, an opinion by their own Attorney-General categorically states otherwise. That opinion has been acted upon by the Palauan Government.

As for non-Palauan individuals and groups that raise the same constitutional issue, one can have great sympathy with Congressman Solarz, who in his hearing on the Palauan Compact last week posed to these individuals the question that has no valid response: Who are you, as non-Palauans, to tell a sovereign nation what is or is not contrary to its own internal Constitution? Some individuals who appeared before this body last year also complained that the Palauan people had been subjected to a continuing series of plebiscites - allegedly to get a version of the Compact acceptable to the United States.

I should like to quote two responses made respectively by the representatives of France and the United Kingdom concerning plebiscites in Palau. In response to the allegation, Mr. Rapin of France stated:

> "I am not a specialist in international law, but purely on the basis of general culture and information I think I can say, in reply to Ms. Roff that in Switzerland, the question of women's suffrage has been submitted to the population in referendums at least seven or eight times, and the reply has

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always been the same: 'No.' Many of us hope that they will continue asking the question until a different answer is finally obtained." (T/PV.1586, p. 16)

Again, Mr. Mortimer of the United Kingdom also addressed comments about too many allegedly unnecessary plebiscites in Palau:

"It seems to me that democracy is unfortunately a messy business, but nevertheless perhaps the best guarantee that people will be allowed to express their views on conventions or laws or whatever it might be. I find it difficult to agree that somehow plebiscites can be regarded as undermining the democratic fabric of a country. It seem to me that, if plebiscites are recognized means of expressing political views, the more plebiscites the better." (T/PV.1585, pp. 8 and 9)

So much for too many plebiscited in Palau. Yes, democracy is, indeed, a messy business, as Mr. Mortimer so eloquently stated, but it is the best way to declare the will of the people. It matters not how many plebiscites Palau has held, what is critical in the final analysis is that the will of the people prevails.

Over the years the members of this Council have also heard from, we assume, well-intentioned, individuals and groups from non-freely associated States addressing other claims and issues. We submit the important thing to remember is that all of these claims have been discussed and considered by both the Council and the respective freely associated States Governments. The annual reappearance of these individuals in an attempt to persuade this body that their positions are correct and essentially that freely associated States Governments are mismanaging issues in their countries constitutes, we suggest, cultural imperialism at best, and at worst, assumes without any justification, the inability of the freely associated States Governments to address the needs of their own people either

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internally or in relation to the United States. The majority of the people have spoken. They authorized their Governments to negotiate the Compacts, and they later approved the final product. There is always and always will be the minority who does not agree with what is being done. Clearly, this is inevitable in a democracy.

We applaud the work of the Council over the years and, in the interests of pursuing the self-determination and self-government of the freely associated States as well as overall regional economic development, we wish it a speedy and imminent demise.

The PRESIDENT (interpretation from French): I now call on the last petitioner for today, Mr. Roger Clark, who will speak on behalf of the International League for Human Rights, before giving delegations the opportunity to ask questions of the petitioners who have spoken during our last two meetings.

Mr. CLARK: I appear before the Council on behalf of the International League for Human Rights, a non-governmental organization in consultative status with the Economic and Social Council. We believe that the League, which has always taken a special interest in matters of decolonization, has been represented at nearly all of the sessions of the Council since its first meeting in 1947. I am grateful, therefore, for this opportunity to speak at what may well be the last session of this body. The drafters of the United Nations Charter included a role for non-governmental organizations in the Charter scheme in the hope that they would raise some hard questions that might otherwise not be considered by the Organization. It was in this spirit that the League sought to have this body take up the question of Namibia, or South West Africa as it was then known in 1947 and 1948. It is in this spirit that we have approached the question of the last Territory on this body's agenda.

(Mr. Clark)

We agree with much of the historical analysis made by my countryman who spoke for the previous petitioners. However, it will become apparent as I speak that we disagree fundamentally with his conclusion that the creation of freely associated States terminates colonialism. In our humble view, it merely continues colonialism under a new name.

I first spoke on behalf of the League before the Council at its 1976 meeting. On that occasion, I argued that the then recently adopted Commonwealth arrangement for the Northern Mariana Islands failed to meet the standards of the United Nations for a proper termination of non-self-governing status. In particular, we argued that the Commonwealth arrangement did not meet the standards of General Assembly resolutions 1514 (XV) and 1541 (XV), to which the previous speaker referred. The Mariana arrangements did not constitute an adequate integration of the Territory within the United States, nor was it an adequate example of free association as that status is understood in resolution 1541 (XV) and the practice of the General Assembly, most notably in respect of the Cook Islands and Niue and their relationship with New Zealand. Nothing that has happened since 1976 has caused us to change our views in that regard.

The relevant provisions of resolution 1541 (XV) concerning integration require that there be

"complete equality between the peoples of the erstwhile Non-Self-Governing Territory and those of the independent country with which it is integrated".

That standard is not met. The inhabitants of the Northern Marianas will not have a representative in the United States Congress; they may not vote in an election for the President of the United States; and they may be affected by federal legislation in the making of which they did not participate and which could not be made applicable to the States. The United States retains complete responsibility for,

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and authority with respect to, matters relating to foreign affairs and the defence of that non-sovereign Territory, the Northern Marianas.

As a matter of free association, the arrangement with the Northern Marianas also falls short. The people of the Northern Marianas are not free to terminate the arrangement unilaterally, nor do they have complete freedom to determine their internal Constitution without interference from the United States. We do not believe that the Council has ever adequately addressed such problems with the Marianas Covenant, problems which have largely been swept under the carpet this past decade, as the Council has focused mostly on the other three entities in the Territory.

On this occasion, I should like first to make some comments concerning the compatibility of the Compact documents in respect of the Federated States of Micronesia, the Marshall Islands and Palau with the United Nations decolonization norms. Then I propose to make a few remarks about the voting which took place in Palau in February of this year concerning the 1986 version of the Compact.

I begin with the Compact documents and United Nations norms on decolonization. There has been a somewhat bewildering array of versions of the Compact over the years. For the sake of clarity, let me note that I am speaking now of, first, the version originally signed by the Marshall Islands on 30 May 1982, by Palau on 26 August 1982 and by the Federated States on 1 October 1982, and, secondly, the Palau 1986 version. There are assorted subsidiary agreements to each of those documents, so that it is often more appropriate to speak of the Compact package rather than just the Compact.

(Mr. Clark)

It will be recalled that the 1982 version of the Compact was disapproved by the Palau voters on 10 February 1983, but received adequate majorities in the Federated States and the Marshall Islands later that year. The 1982 Federated States/Marshall Islands version has now been approved, subject to some alterations, by the United States Congress, and the 1986 Palau version is now being considered by the Congress.

The 1982 version of the Compact was significantly different from an earlier, 1980, version as far as the power of the Micronesian entities to terminate the Compact unilaterally was concerned. It became more difficult for each of the three entities to opt out of the arrangement of free association and to go it alone. In a 1984 Palau version, it became even more difficult for Palau to opt out than it had been in the 1982 version, and the same language is carried through into the 1986 version.

In the 1980 version of the Compact there was power under section 443 for each of the three entities to terminate, following a plebiscite on the subject. In the event of such a termination certain provisions of the Compact, primarily those concerning the security and defence powers of the United States, would remain in force until the 15th anniversary of the Compact "and thereafter as mutually agreed". The words "and thereafter as mutually agreed" meant that unless both sides agreed the arrangements would come to a complete end.

A substantial change occurred to the package in 1982. Section 453 still read that in the case of a termination by the Marshall Islands or the Federated States the security and defence relations would continue in force for 15 years and thereafter as mutually agreed. The situation in the Marshalls became more complex later with the addition of a 30-year period for use of the Kwajalein facility. In the case of Palau, however, the period now became 50 years.

(Mr. Clark)

Moreover, in respect of the Federated States and the Marshalls the Compact was now accompanied by separate mutual security pacts between the United States and those two entities. The most significant provisions of those treaties, which would come into effect upon the termination of the Compact, are those which would obligate the United States to defend the entities permanently and those which would make permanent the Compact grant of what is usually called the United States right of denial. "Denial" is what is referred to in section 311 of the 1980 and 1982 Compacts as

> "the option to foreclose access to or use of Palau, the Marshall Islands and the Federated States of Micronesia by military personnel or for the military purposes of any third country."

A 15-year commitment to denial by the Federated States and the Marshalls in the Compact became transformed into a permanent one by the security pacts.

The 1984 and 1986 versions of the Compact achieved the same result for Palau, but by a different route. The minimum 50-year life for Palau of the security provisions of the 1982 Compact was retained in section 452 of the 1984 and 1986 versions. Beyond that, however, section 453 provides that

> "Notwithstanding any other provision of this Compact:
>
> (a) The provisions of Section 311, even if Title Three should terminate, are binding and shall remain in effect for a period of 50 years and thereafter until terminated or otherwise amended by mutual consent".

(Mr. Clark)

Please note the words I have emphasized: "thereafter until terminated or otherwise amended by mutual consent". What in the 1980 and 1982 versions of the Compact had been a provision permitting an extension by mutual consent and thus a veto by Palau has now become the reverse: a provision continuing the agreement in perpetuity unless the United States agrees otherwise.

The increasing difficulty for the Micronesian entities to opt entirely out of the arrangements has some significant implications so far as the United Nations norms on decolonization are concerned. It is apparent that the ostensible intent of the Compacts is to create a status of free association as contemplated by resolution 1541 (XV). The Trusteeship Council and the Security Council have never yet faced clearly what is required for such a status to pass United Nations muster.

Some consideration was given to the propriety of a status short of independence as a fulfilment of the self-determination provisions of the Charter during 1956 and 1958 when such a status was being considered for Togoland under French administration, prior to the adoption in 1960 of resolution 1541 (XV). The commission that examined the matter then on behalf of the General Assembly did not rule out the possibility of such a status but expressed the view that the Togoland entity should have full powers in respect of its own constitution and power to terminate the arrangement unilaterally. Ultimately Togo became independent and the question of another status became moot. In the case of the only two arrangements for free association which have obtained the approval of the General Assembly - the two referred to by the previous speaker, the Cook Islands and Niue - the freely associated States concerned have the legal power to terminate the arrangement themselves at any time.

Relevant here is principle VII (a) of resolution 1541 (XV), which provides that an arrangement of free association should be one which

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"respects the individuality and the cultural characteristics of the territory and its peoples, and retains for the peoples of the territory which is associated with an independent State the freedom to modify the status of that territory through the expression of their will by democratic means and through constitutional processes".

We have concluded that the combined effect of the various 15, 30-and 50-year provisions coupled with permanent denial is to place too great a fetter on the power of the three entities to opt out unilaterally. It will be virtually impossible for one or more of the entities to escape from the burdens of the military arrangements. Accordingly we do not believe that the arrangements satisfy the United Nations norms for a proper exercise of self-determination.

One way of analysing the implication of the failure to comply with the relevant standards of self-determination is through article 53 of the Vienna Convention on the Law of Treaties, which provides that a treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. It is widely accepted that the principle of self-determination is just such a principle.

Another way of viewing the matter is this. Every legal system represented in this Chamber contains in its corpus of law a doctrine that some contractual arrangements are simply void because they contravene community policies. In Anglo-American law, one might mention an agreement to sell oneself into slavery or an agreement for prostitution. The law speaks of those and comparable agreements as contrary to public policy, contra bonos mores, or, in the blunt terms of the United States Uniform Commercial Code, unconscionable. The Civil Codes of the Soviet Republics speak of agreements that are void as being contrary to the interests of State and society, while the French Civil Code speaks of those that are contrary to ordre public or to bonnes moeurs.

(Mr. Clark)

My contention is that the Compact falls foul of comparable general principles of law recognized in the international community - those contained in the United Nations instruments to which the previous speaker and I have referred. It is contrary to the decolonization standards of the international community, and just plain unconscionable.

Secondly, I have some remarks on the Palau vote of February 1986.

In a written petition to the Council in 1983, and in a subsequent oral intervention, the International League for Human Rights argued that the plain language of the Palau Constitution requires that any plebiscite to approve the Compact as then drafted in that jurisdiction required a 75 per cent majority of the votes cast. This was because of the anti-nuclear provisions in two sections of the Constitution. The view that we espoused on that occasion was soon thereafter adopted by the Supreme Court of Palau in holding that the Compact had been disapproved in the referendum held on 10 February 1983. A new version of the Compact, that of May 1984, was eventually agreed upon and was the subject of a new referendum in September 1984. On that occasion section 411 of the 1984 version of the Compact, dealing with approval of the Compact, said that one of the steps to be taken was

> "approval by the people of Palau in accordance with the Constitution of Palau by not less than three fourths of the votes cast in a referendum called for that purpose".

In the event, some 66 per cent of the voters were in favour, which of course is less than 75 per cent. Once again the Compact was not approved.

A third version of the Compact was presented to the voters in February of this year and received a positive vote of some 72 per cent; 72 per cent is close to but not quite 75 per cent. We believe, for the reasons I shall state, that the 1986 version also required a 75 per cent majority and that once again the Compact has not been legally approved by the people of Palau.

(Mr. Clark)

The relevant provisions of the Palau Constitution provide as follows. Article II, section 3, says that

"Major governmental powers including but not limited to defence, security, or foreign affairs may be delegated by treaty, compact, or other agreement between the sovereign Republic of Palau and another sovereign nation or international organization, provided such treaty, compact or agreement shall be approved by not less than two thirds of the members of each house of the Olbiil Era Kelulau and by a majority of the votes cast in a nationwide referendum conducted for such purpose, provided that any such agreement which authorizes use, testing, storage or disposal of nuclear, toxic chemical, gas or biological weapons intended for use in warfare shall require approval of not less than three fourths (3/4) of the votes cast in such referendum."

Article XIII, section 6, provides that

"Harmful substances such as nuclear, chemical, gas or biological weapons intended for use in warfare, nuclear power plants, and waste materials therefrom shall not be used, tested, stored or disposed of within the territorial jurisdiction of Palau without the express approval of not less than three fourths (3/4) of the votes cast in a referendum submitted on this specific question."

I pause to stress for the benefit of the representative of the United Kingdom the reference to "votes cast in a referendum submitted on this specific question" - the language to which Mr. Butler referred in his response to questions.

(Mr. Clark)

Section 324 of the 1986 Compact was written with the Constitution in mind. It provides that

"In the exercise in Palau of its authority and responsibility under this Title," - that relating to security and defence relations - "The Government of the United States shall not use, test, store or dispose of nuclear, toxic chemical, gas or biological weapons intended for use in warfare and the Government of Palau assures the Government of the United States that in carrying out its security and defence responsibilities ... the Government of the United States has the right to operate nuclear capable or nuclear propelled vessels and aircraft within the jurisdiction of Palau without either confirming or denying the presence or absence of such weapons within the jurisdiction of Palau."

The first part of this statement is benign enough; it merely tracks the language of the Constitution. The second part causes some difficulties. These difficulties come from two sources: the references to the United States power to "operate" some types of vessels and aircraft and to the policy of neither confirm nor deny.

"Operate" is not a verb that appears in the Constitution, which speaks instead of "use", "store" and "dispose of". What is meant by "operate"? So far as nuclear-propelled vessels are concerned, it must mean to move them in and out of Palauan territory. If this is not a "use" within the ordinary meaning of that term, it is hard to tell what it is. That this kind of use might raise a constitutional issue was asserted in a document entitled "Common questions" distributed by the Palauan authorities as part of the educational campaign for the 1986 referendum. It asserted in response to the question "Why is 75 per cent voter approval of the improved Compact required?" that

(Mr. Clark)

"Although the United States agrees not to use, test or store nuclear weapons in Palau, they have ships whose engines run on nuclear fuel which fall within the definition of nuclear power plants. Article XIII, section 6, of the Palau Constitution requires 75 per cent voter approval for nuclear-powered ships in Palau's waters. Only a court could decide that less than 75 per cent is required."

It will be noted that this argument relies upon the second of the two constitutional provisions that I have quoted - article XIII, section 6.

So far as nuclear-armed ships and aircraft are concerned, both constitutional provisions are involved. "Operate" in respect of nuclear-powered and armed vessels must mean bring such vessels, including the material on them, in and out of Palauan territory - what was referred to as "transit and overflight" in some of the earlier documents. I say bring in and out, because anything docked in a harbour in a ship for any appreciable time must be within the ambit of "stored". But surely nuclear items being brought in and out are being "used". This is indeed the normal use for nuclear arms. We do not plan to use them on the other side. We have them to deter the other side. We move them around so that we can be ever vigilant. If moving nuclear armaments in and out of the territory of Palau is not using them within the meaning of the Constitution, I do not understand the semantic trick that avoids such a result: clever, but not clever enough, in our submission.

There is another way to look at the second part of section 324. It may be viewed as a piece of double-talk, a contradiction of the first part, an agreement by Palau to turn a blind eye to the Constitution - the so-called Japanese nuclear solution. The question then becomes whether the Palauan Executive can bind Palau under international law in such a way as to commit the State, regardless of what the Constitution really requires. This, or some similar argument, was propounded

(Mr. Clark)

on 18 April by James Lilley, Deputy Assistant Secretary of State for East Asian and Pacific Affairs, before the Subcommittee on Public Lands of the United States House of Representatives in hearings on the Palau Compact. Referring to the process of approving the 1986 Compact by a simple majority, he asserted that

> "In its 24 February 1986 certification of the plebiscite results, the Government of Palau informed the United States formally that the Compact approval process was complete and was accomplished in full compliance with the requirements of the Palau Constitution. Thus, as a matter of international law and practice, Palau cannot invoke any subsequently stated reasons based upon internal Palauan law to avoid its compliance with the provisions of the Compact."

I presume that the principles of international law to which the speaker referred are those in articles 27 and 46 of the Vienna Convention on the Law of Treaties. Article 27 provides that, without prejudice to article 46, a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. Article 46 provides that a State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent, unless that violation was manifest and concerned a rule of fundamental importance. A violation is said in the Vienna Convention to be "manifest" if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and good faith. The rationale behind such rules is that sovereign, equal States should be able to rely upon representations made by those normally regarded as spokesmen for another State without trying to delve into the other's domestic law.

(Mr. Clark)

There are grave doubts whether such a principle may be applied to override the Palauan Constitution in the present circumstances as between the world's greatest Power in its capacity as trustee and its erstwhile ward. Certainly this was the view expressed by Messrs. Armstrong and Hills, respectively the former and the present counsel to the President's Personal Representative for Micronesian Status Negotiations, in an article entitled "The negotiations for the future political status of Micronesia", which appeared in the 1984 volume of the American Journal of International Law. The authors, speaking of the aftermath of the 1983 referendum, state that:

> "The United States as Administering Authority of the trusteeship considered itself to be seized with knowledge of the requirements of the Palauan Constitution. Therefore the United States concluded that in implementing the Compact as to Palau it could not rely on the principle of international practice that a State (i.e. Palau) may not invoke, as invalidating its consent to be bound by the terms of an international agreement, the fact that such consent has been expressed in violation of a provision of its internal law regarding competence to conclude treaties."

(Mr. Clark)

Exactly. The nuclear provisions of the Palau Constitution are rather plainly rules of its internal law of fundamental importance. The United States has ample legal talent capable of interpreting the Palau Constitution, even if it has been wrong in its interpretations in the past. There is no question but that the Palauan authorities have been under some pressure from the United States to close the deal. If the ward has been placed in a position of compromising its Constitution, it would be hard to envisage an independent international tribunal deciding that the United States had clean hands and was acting in accordance with normal practice and in good faith in relying upon an interpretation obtained from the local authorities in such circumstances. A blind eye will not make the Constitution go away.

One further point on the matter of Palau: We are troubled by reports received through our affiliate, the American Civil Liberties Union, that the three Palauan citizens convicted of a conspiracy to murder the late President of Palau were convicted on the basis of the flimsiest of evidence. We are awaiting further information about this apparent miscarriage of justice.

A final thought: The United Nations Charter and the Trusteeship Agreement do not bind the Palauans in permanent servitude to the United States military's view of the world. If they want a non-nuclear Constitution - indeed, one adopted under the observation of this body - they are, in our humble submission, entitled to it.

The PRESIDENT (interpretation from French): I shall now call on any representatives who wish to put questions to the petitioners who have spoken this afternoon as well as to those who spoke this morning.

Mr. MORTIMER (United Kingdom): I should like to go back briefly to Mr. Weisgall's statement this morning. He spoke with his customary eloquence and

(Mr. Mortimer, United Kingdom)

attention to detail. I should be grateful, however, for clarification of a couple of points.

Before I put those points, however, I have a direct question, as it were, to address to Mr. Weisgall. He spoke both this year and last year of the Memorandum of Agreement between the United States Administration and the Bikini islanders concerning the rehabilitation and resettlement of Bikini Atoll. He went on to say that pursuant to that Memorandum the United States had agreed to provide funds under section 177 of the Compact "to assist the people of Bikini in their resettlement of Bikini Atoll".

Mr. Weisgall said earlier in his statement that we, as Council members, might think that a clean-up of Bikini was close to reality but that, in fact, the Administration had not included in the 1987 budget any funds to continue the work on Bikini. Yet, later in his statement, he referred - I think I am right in saying this - to the fact that it was probably premature for the Administration to seek such funds since the Compact had not yet been passed by Congress.

I wonder if that last point is not really the answer to his first question. The reason that the money has not been forthcoming is that it has been earmarked in the Agreement relating to section 177 of the Compact, which has indeed not yet gone through Congress - in the sense that the Trusteeship Agreement has not been lifted, and so this money is not yet forthcoming.

Mr. WEISGALL: The representative of the United Kingdom is correct in that I did state that last year, in 1985, the Administering Authority had not requested any clean-up funds from Congress and that, in my opinion, it would have been premature to do so last year because there was no Compact.

(Mr. Weisgall)

I sought to make several points flowing from that fact. The first was this: Notwithstanding that fact, the United States House of Representatives - perhaps recognizing that 40 years is long enough - nevertheless voted to appropriate $8 million for the process to begin, Compact or no Compact. It felt, I believe, that the lawsuit settlement and the commitment by the executive branch to go forward were a recognition by the executive branch that clean-up was the right thing to do, and that it therefore made sense to move forward. The other House of the United States legislative branch, the Senate, did not go along with that vote. But the first point I wanted to emphasize was that at least one House of Congress thought it was important to move ahead, regardless of the passage or lack of passage of the Compact.

The second point I sought to make, and seek to make now, is that the Compact is now law. There is no legal reason now, in my opinion, for the Administering Authority - or let us simply call it the United States Government, because it will probably cease being the Administering Authority some time soon - to use as a reason for not asking for these funds the fact that there is no Compact. The Compact is law.

Unfortunately, in the United States legislative process the authorization of funds must be followed by a second step: the funds have to be appropriated by Congress. I believe that with the passage of the Compact it is now incumbent upon the United States to take that second step and to request the clean-up funds.

I hope that that adequately answers the question put by the United Kingdom representative.

Mr. MORTIMER (United Kingdom): Yes, it does clarify the matter to some extent.

(Mr. Mortimer, United Kingdom)

I have a supplementary question. Was the $8 million that had been appropriated by the House of Representatives new money, over and above the Section 177 Agreement, or was it simply money put up front, as it were - money that it had already been envisaged would be granted under the Section 177 Agreement?

Mr. WEISGALL: That is a very good question. Let me try to answer it as quickly as I can and without too much "legalese". I realize that the United Kingdom representative's lack of a law degree is a cross he must bear; but he manages to express himself with enough precision to embarrass other members of my profession.

Article VI of the Section 177 Agreement states:

"The Government of the United States reaffirms its commitment to provide funds for the resettlement of Bikini Atoll by the people of Bikini at a time which cannot now be determined".

What does that mean? I think a fair reading of it is that when this document was signed, in 1983, the United States recognized that there was a commitment to resettle Bikini. No one knew the cost, so the United States said: we will provide the funds at a time in the future.

The Agreement settling the lawsuit states in article I, section 2, that

"The United States shall provide funds, pursuant to article VI of the Compact Section 177 Agreement, to assist the people of Bikini in their resettlement of Bikini Atoll".

It goes on to make clear that these funds shall be used for resettlement activities that contribute to rehabilitation and clean-up.

(Mr. Weisgall)

When we put the two together, I think we have here a commitment by the United States to provide new funds, to give a precise answer to the question. There is money under the 177 Agreement for the Bikini people; that money is for settlement of claims. If it were to be the view of the United States that that money - I will use the expression old money or existing Compact money - should be used for the clean-up, there would be no reason for the United States to say in article VI of the 177 Agreement that it shall provide funds in the future or in the lawsuit settlement that the United States shall provide funds. So I think it is fair to say that the $8 million appropriated by Congress or the money that I hope the United States Government will provide in the future would be viewed as "new" money, money additional to that provided already out of the Trust Fund established by the Section 177 Agreement.

Mr. MORTIMER (United Kingdom): Turning to another point that Mr. Weisgall raised, here we enter into the difficult territory of legal matters again.

He talked about the fact that the United States had asked the United States Claims Court in Washington to dismiss a $450 million lawsuit on the part of Bikini islanders, and then, in a somewhat throwaway remark, said, "although not on the ground of the so-called espousal provision of article X" (T/PV.1603, p. 13) - I assume of the Section 177 Agreement. Could he enlighten us a little on what is meant by "espousal provision"?

Mr. WEISGALL: Notwithstanding the fact that I received a law degree from a decent United States law school, I did have to look up "espousal" when it first came up in the negotiations. It is a difficult concept. I think in the normal sense of the word someone was espousing or taking over certain claims of the Bikini people; some entity was going to step in the shoes of the Bikini people and take over that claim. That, I think, is what the 177 Agreement boils down to.

(Mr. Weisgall)

The United States Government, during the course of the litigation in the United States Claims Court, constantly stressed this provision. In fact, as recently as December 1985 it sought to suspend the proceedings in the case and requested the Court to order the parties to brief for it the legality of the espousal provision. The United States pointed to articles X and XII of the 177 Agreement and stated in a pleading to the Court that they "strike at the very heart of this Court's jurisdiction over pending claims", and requested that the issues be briefed.

And, indeed on 8 January 1986 the Court issued an order telling the parties to brief three issues: the jurisdiction of the court, espousal and something called the political question doctrine that I will not go into. Surprisingly, the United States did not brief the espousal question when it filed its papers on 28 February; it was silent on the question of espousal.

Then, in a related case brought by the people of Enewetak, the United States made a very interesting statement in a footnote, in which it said:

> "In regard to the espousal issue, Defendant [the United States] has concluded that it is not properly a matter before this Court in this case. Because the claims of the citizens of the Marshall Islands were espoused by the Government of the Marshall Islands and not by the United States Government, espousal appears to be a matter between the citizens of the Marshall Islands and their Government which must be resolved to the extent that there is any conflict, by the courts of the Marshall Islands."

The United States went on to say:

> "Because espousal in Defendant's estimation is irrelevant to resolution of pointless claims in this litigation, Defendant will not be briefing the issue."

Indeed, Judge Harkins, the judge in the case, later wrote that this view represented "an indication that Defendant [the United States] has now abandoned the espousal issue".

(Mr. Weisgall)

So what I sought to point out in my earlier remarks was that it appears that the United States has recognized that if there is espousal of anyone's claims it is the Marshall Islands Government, not the United States Government, that is doing the espousing. Therefore the United States does appear to have abandoned the espousal issue.

Mr. MORTIMER (United Kingdom): I thank Mr. Weisgall for that admirably clear answer.

He went on to talk about the fact that article XII of the Section 177 Agreement sought to divest all United States courts of jurisdiction to hear the claims of the Bikini islanders, and on behalf of his clients, the Bikini islanders, he said that this was unconstitutional. He then added - and I thought that he chose his words carefully here - that

> "The United States Congress has rarely sought to deprive claimants of all opportunities to seek judicial redress, simply because this notion is so patently offensive to the United States constitutional system." (T/PV.1603, p. 13)

He used the word "rarely"; he did not use the word "never". I wonder if he would be so bold as to enlighten us about other cases in which the United States Congress has indeed sought to deprive United States claimants of their right to seek judicial redress.

Mr. WEISGALL: Let me use as an example a series of events with which we are all familiar, namely, the Iranian hostage crisis in the 1979-80 period. I think that the legal resolution of those issues perhaps illustrates my point, which I admit is an argument. I am obviously not the one to decide it; it will be for the court.

In that case the President of the United States, invoking Congressional legislation, cut off all pending claims in United States courts by United States

(Mr. Weisgall)

citizens - really they were United States corporations - against the Government of Iran or any Iranian companies. And, as many here will recall, a Claims Tribunal was established - which is currently sitting in The Hague - and it was that vehicle that was used to terminate the hostage crisis. I think there are several points in connection with the legal manner in which that crisis was resolved that demonstrate the validity of espousal in that case, the validity of what the United States Government did in terminating claims, as opposed to the present situation.

First, in that situation the United States Government - I refer here to the executive branch, but it was the President acting under Congressional law - terminated the claims of its own citizens. Here, by contrast, it is seeking to terminate the claims of its wards under a Trusteeship System.

Secondly, and perhaps most important, what the United States did in the Iranian case was to terminate claims pending against Iran, not against itself. That is a critical distinction. By contrast, in section 177 the United States effectively is seeking to terminate lawsuits against itself. It is as if I were to bring a lawsuit against the representative of the United Kingdom and he were somehow able to invoke a legal provision that would terminate my lawsuit against him. So this is different from the case of Iran, where the United States terminated claims against that country.

(Mr. Weisgall)

Thirdly, the United States Government, in the Iranian situation, recognized that the termination of these lawsuits might well be unconstitutional, that they might well constitute a taking of property without just compensation. What the Government did was to make it very clear that United States companies could come back to United States courts if they found that claims tribunal system inadequate. This matter was resolved by the United States Supreme Court in 1981 in a case called Dames and Moore v. Regan, who was then, of course, Secretary of the Treasury. In that case, the United States Supreme Court stated specifically:

"We do not suggest that the settlement has terminated the petitioners' possible taking claims against the United States".

The Supreme Court also said - and this is the critical difference between the Iran case and the present one - that

"To the extent Petitioner believes that it has suffered an unconstitutional taking by the United States by the suspension of the claims, we see no jurisdictional obstacle to an appropriate action in the United States Court of Claims".

Thus, we had in the Iranian situation a case in which claims were terminated, but the United States Government said, in effect, that if United States companies did not get enough money from this claims tribunal, if there is not enough there - and I think there was either $1 billion or $2 billion put in - they could come back to the United States Claims Court to claim that their property had been taken by the United States. By contrast, the United States, in the nuclear situation here, has set up a claims tribunal and given it a modest amount of money - $45 million over 15 years - but has terminated all possible rights of litigants to come back to United States courts and say, "That is not enough".

(Mr. Weisgall)

There are pending, I believe, about $10 billion worth of claims from Marshallese citizens in United States courts. The trust fund is there for $150 million; the claims tribunal is there for $45 million. Is that enough? I do not know. But the point is, if it is not enough, the claimants cannot come back to United States courts.

Iran was different, and it is for that reason, I would maintain, that the United States Supreme Court upheld the validity of the mechanism to end the Iranian hostage crisis. That system is not the same one we have here, because that fundamental right to go back to court is not present in this case.

I apologize for the length of that answer, but I hope I was able to provide perhaps the best illustration of when terminating claims makes sense and is not unconstitutional.

Mr. MORTIMER (United Kingdom): I am grateful for that lengthy and detailed answer. Yet, leaving aside the legal arguments, does the following scenario not seem reasonable? Someone comes along to you and says, "Okay, you have been wronged: here is a trust fund of $75 million dollars over 15 years, which should produce $150 million, and in return for that you should give up your right to pursue similar claims in United States or any other courts." In my own non-legal way, I would rather regard this as a sort of out-of-court settlement. Surely, it does not seem reasonable for the United States to agree to the establishment of a trust fund - and by all accounts a fairly generous trust fund - and then at the same time allow the beneficiaries of that trust fund to pursue the selfsame claims in United States courts. Perhaps Mr. Weisgall would care to comment.

Mr. WEISGALL: The representative of the United Kingdom has put his finger on the problem. His words were, "It seems to me that if someone comes along and says, 'Let's settle, and here is a trust fund,' that would make sense; it sounds like an out-of-court settlement". The problem is, no one came to the people of Bikini. The United States Government went to the Marshall Islands Government and said, "Let us settle these claims". The people of Bikini were consulted; the people of Bikini were invited to attend the negotiations; they attended the negotiations. The agreement, however, was between two separate Governments. The piece of paper is signed by two Governments; it is not an out-of-court settlement.

If I am in litigation with the representative of the United Kingdom and we want to settle out of court, we sign a piece of paper: he signs it and I sign it. If it is good enough for him and it is good enough for me, we shall reach an agreement. No one said to the people of Bikini, "Would you like to sign on the dotted line?" It was a Government-to-Government agreement. That is the first point.

The second point is that the people of Bikini want their day in court. I have not argued to the United States Claims Court that it should ignore the amount of money contained in the Section 177 Agreement: you cannot ignore a $150 million trust fund. What I have said and what I say here is that it should be taken into account, but that the people of Bikini should be given a day court, to let a court decide if the United States has taken their property in violation of the United States Constitution and if so what the damages should be. If the damages turn out to be less than $75 million, so be it: the day in court is over. If the damages are more than $75 million, perhaps a judge could take into account the present value of that $75 million and discount it from some kind of award.

But the key point is that the Bikinians wanted and continue to seek to invoke the fundamental right of the members of every democratic society: the right to go to court with a grievance and have a judge resolve it.

Mr. MORTIMER (United Kingdom): We could, of course, pursue this at greater lengths, and I do not wish to take up too much time on it, but the obvious answer to Mr. Weisgall's first point is that no one, indeed, consulted the Bikini islanders - I am prepared to concede that - but they did of course consult the Government of the Marshall Islands, which was presumably elected by Bikini islanders as it was by other islanders in the Marshall Islands. Mr. Weisgall talked later in terms of the right in democratic societies to have one's day in court, but I think that, in the case of the Marshall Islands, surely there is a price to be paid for the setting up of a constitutional Government, and that is that one is part of a wider whole and does not simply operate as one has done previously, as one single island irrespective of the political entity to which one belongs.

I wish now briefly to question Mr. Clark. I was interested to hear him equate a nuclear-capable or nuclear-propelled warship with a nuclear power-station. I had not heard that definition before, and it seems to be an interesting reflection of a failure to distinguish between military uses of nuclear energy and peaceful uses of nuclear energy, one which I do not personally find very helpful. I wonder if Mr. Clark could elaborate a little on why he considers that nuclear-propelled warships can realistically be considered as nuclear power-stations.

Mr. CLARK: There are several ways in which I can answer the question. First, when I put that argument I was quoting from a document produced by the Palauan authorities as part of the educational campaign for the referendum that was held there, and I was making the point that, at the very least, the Palauan authorities themselves took the position that a nuclear-powered vessel is to be equated with a nuclear-power plant.

I will explain, if I can, the way in which the problem arises pursuant to the Palau Constitution. As I mentioned in my presentation and as I have mentioned in this Council in prior years, there are two relevant provisions in the Palau Constitution, the second of which says:

"Harmful substances such as nuclear, chemical, gas or biological weapons intended for use in warfare, nuclear power plants, and waste materials therefrom, shall not be used, tested, stored ..."

The equation of the two kinds of problems, nuclear weaponry and nuclear-power plants, is, of course, a matter that has raised issues in other Pacific countries as well as Palau, but the Palauans in their constitutional convention made this particular equation.

Of course, there is a subsequent question: is a nuclear-powered ship a nuclear-power plant, as that term is used in the Palau Constitution? It does not matter how I or the representative of the United Kingdom might use those words in common, everyday speech; the problem is what they mean in the Palau Constitution. It would seem - and the Palauan representatives apparently took that position at least at some stage in their referendum - that a strong case can be made for the proposition that a nuclear-powered ship is a nuclear-power plant as that term is used in the Palau Constitution.

Mr. MORTIMER (United Kingdom): Mr. Clark talked at some length of the strategic denial provisions in the Compact of Free Association, and specifically of the extent to which they were not terminable unilaterally. I think he was implying that strategic denial continued somehow in perpetuity under the Compact of Free Association.

Assuming for a moment that that is true - and I am not saying that it necessarily is - what does Mr. Clark find wrong with strategic denial? It seems to me that if I were a Micronesian whose lands had been subjected to bloody conflicts over the decades I would be only too glad to enter into a relationship with a Power that was prepared not only to grant me certain sums of money over a given period, but also to ensure my defence and to exclude from the area that I called my home all foreign predators - in other words, to keep the area peaceful.

I do not want to seem naive about this, but looking at the history of Micronesia one can see that it would not be surprising to find Micronesians whose overall objective was to ensure that in the future, in perpetuity indeed, their area of the Pacific would be kept peaceful. That is presumably the objective of strategic denial, and I wonder whether Professor Clark has any deep-seated objections to that.

Mr. CLARK: I will put my point as bluntly as I can. My contention is very simple: the notion of strategic denial and the permanent defence relationship that goes with it make it impossible in perpetuity for the Micronesian entities to opt out of the arrangement should they want to. If they cannot opt out if they want to, my position is that that contravenes the standards laid down in General Assembly resolution 1541 (XV) as those standards were understood by the Organization at the time the arrangements with the Cook Islands and Niue were approved by the General Assembly on behalf of the United Nations.

Mr. KUTOVOY (Union of Soviet Socialist Republics)(interpretation from Russian): My delegation would like to address a question to Mr. Weisgall, but first we wish to thank him for his warm words about the historic contribution of Russian explorers in the discovery of the Micronesian islands.

Yesterday, we heard a great deal from the representatives of the Administering Authority about the "flowering" - to use the language of the 18th century - of crafts, arts and education in the Trust Territory. Today, in Mr. Weisgall's statement, we heard how the rights of the citizens of those islands had been violated. That appears on page 9 of his statement, and on page 12 he referred to depriving a person of property without due process of law or without just compensation.

Could he give us in detail some specific examples of what he was referring to on page 12 of his statement?

Mr. WEISGALL: Before embarking on too long an answer, I should like some clarification. Is it the statement at the top of page 12 to which the representative of the Soviet Union is referring?

Mr. KUTOVOY (Union of Soviet Socialist Republics) (interpretation from Russian): I am referring to page 9, in particular, but there is a reference to the same thing on page 12. Could Mr. Weisgall give us some examples?

Mr. WEISGALL: Without in any way wishing not to respond, I would ask if the question could perhaps be rephrased. There may be a problem in interpretation, but I honestly do not understand the question. I see what I say on pages 9 and 12, but a little more clarification might help. I am sorry.

The PRESIDENT (interpretation from French): Perhaps the representative of the Soviet Union could ask his question in a different way.

Mr. KUTOVOY (Union of Soviet Socialist Republics) (interpretation from Russian): I will do so at a later stage.

The PRESIDENT (interpretation from French): I call on Mr. Anderson.

Mr. ANDERSON: I should like, if I may, to reply to the question and the comments of the representative of the United Kingdom with respect to the lawsuits. As the Council is aware, the people of Enewetak have a lawsuit which is in all respects similar to the one brought by the people of Bikini, and the representative of the United Kingdom observed that it was appropriate for the people to look to the Marshall Islands Government to settle the lawsuit since they were our duly elected Government. I should like to make the point that we did not elect them to represent us in this lawsuit. The Government of the Marshall Islands is not a party to the lawsuit, has not been involved in either the preparation or prosecution of it and is not, we submit, the appropriate party to settle it.

I should like to add for the record that in the early stages of the negotiation of the current version of the Compact, we had an understanding with the representatives of the Marshall Islands Government that, because of the considerations I have just stated, they would not agree to a settlement unless we agreed to it. We did not agree to that settlement and, under the circumstances, we think it was inappropriate for the Government of the Marshall Islands to agree to it. We believe now, as we did then, that the appropriate forum for the settlement of the lawsuit is the Court of Claims and that the appropriate party to settle the lawsuit is the plaintiff, that is to say, the people of Enewetak.

Mr. ROCHER (France) (interpretation from French): I wish to ask a question of Mr. Weisgall, who was kind enough to provide us with a copy of Report No. 4 of the Bikini Atoll Rehabilitation Committee. I must admit that I have not had time to look through this important document. Hence, I would ask the petitioner to excuse me if the answer to my question is to be found in that document. My question is: can Mr. Weisgall tell us how much time would normally be required for the decontamination of Bikini and once that clean-up had been carried out, how long would it take for the soil of the island to be productive?

Mr. WEISGALL: In answering the question, let me refer to page 32 of the document entitled, "Bikini Atoll Rehabilitation Committee, Report No. 4", dated 31 March 1986. This is not a formal document before the Council, but I did seek to provide members with copies on an informal basis. It is a very lengthy document, as the representative of France pointed out.

On page 32, the science Committee provides an estimate of the number of years that would be required to execute each of the three clean-up methods and then for the revegetation process. In other words, the scientists are looking at three methods. The first is excavation, scraping the top soil; the second is potassium treatment; and the third is irrigating with sea water. Each of those methods has two parts to it: one, how long will it take to execute the method, and, two, how long will it take for the revegetation of the island to occur?

With respect to the scraping, the scientists estimate that it would take two years to carry out the programme and eight years for revegetation, thus taking a total of about 10 years for the whole process.

As to the potassium treatment, the scientists make an interesting statement, as to the number of years it would take. They say 40 years - with a question mark. I think that is their shorthand way of saying that it may be necessary to make these potassium treatments on an annual basis, a point I referedr to earlier. There would be no revegetation delay because there would be no removal of top soil. Indeed, the potassium would enhance revegetation.

With respect to the third option - and again this is only an estimate - the scientists say the sea-water irrigation method would take two to three years to execute and would delay the revegetation process by somewhere between one and two years.

That is the best answer I can give. I hope that it responds adequately to the question.

Mr. KUTOVOY (Union of Soviet Socialist Republics) (interpretation from Russian): I listened to the interpretation but I did not quite understand the reference to the document Mr. Weisgall just made. I should like to ask him, through you, Mr. President, or through the Secretariat, to have this document distributed to us, if possible.

The PRESIDENT (interpretation from French): I should be grateful if Mr. Weisgall would recall for us the number of the document, which, I understand, has been informally circulated to at least some of the delegations.

Mr. WEISGALL: The document does not have any formal numbering from the United Nations. I provided copies yesterday to the representatives - I believe - of the Soviet Union, France and the United Kingdom and to the Secretary. The United States Government had previously received copies. The document, which was submitted to the United States Congress, is by the Bikini Atoll Rehabilitation Committee - the science Committee established by Congress, to which I referred in my petition earlier today - and it is entitled, "Report No. 4", and dated 31 March 1986. As I said, I believe I have already provided a copy to the representative of the Soviet Union. I do have several extra copies with me here and I would be delighted to make those available as well.

I note that the abstract of the scientists' findings is one page long. The basic summary runs about 25 pages, and then there are approximately four to five hundred pages of appendices, which, if one is not a soil scientist, nuclear physicist or engineer, may be tough sledding.

Mr. KUTOVOY (Union of Soviet Socialist Republics) (interpretation from Russian): I should like to ask Mr. Butler to answer the following question: What specific assistance have the people of Palau received which would help them to ensure their independence?

Mr. BUTLER: I really do not think I am competent to answer that question in detail. I am sorry to say that that is something on which I would need much more time to prepare myself in order to be in a position to give the representative of the Soviet Union the adequate answer he deserves.

Mr. ROCHER (France) (interpretation from French): Referring to what Mr. Weisgall said about his report, which, I repeat, I have not had an opportunity to read it, can he tell us for how long, in his opinion or that of the scientific experts, the radiation problems are likely to be felt on Bikini Atoll?

Mr. WEISGALL: Let me state at the outset that it is not my report. I do not mean that facetiously. It is important to understand that the United States Congress appropriated funds for an independent science committee to prepare the report. The committee consists of a professor of radiation biology at Harvard, a nuclear engineer, a professor of hydro-geology at the University of Hawaii and a soil science professor at Cornell. I have made strenuous efforts to influence the committee in what it says and does; some of those efforts have been successful, others unsuccessful. I wish it were my report, but it is not.

My specific answer to the question is that in the absence of any of the three clean-up methods - scraping, potassium treatment or irrigation with sea water - it would take approximately 80 years for the radiation levels of the soil at Bikini Island to comply with Federal radiation standards. The radiation levels on Eneu Island are in compliance with Federal radiation standards today, which means that the island of Eneu, which is the second largest, about five miles from Bikini, can be resettled today, provided - and this is important - that imported food is available.

The PRESIDENT (interpretation from French): On behalf of the Council, I thank the petitioners for coming here to assist us in our work by answering the questions put by members of the Council.

The meeting rose at 5.55 p.m.