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Fifty-fourth Session

VERBATIM RECORD OF THE SIXTEEN HUNDRED AND TWENTY-NINTH MEETING

Held at Headquarters, New York,
on Thursday, 14 May 1987 at 10.30 a.m.

President: Mr. BIRCH (United Kingdom)

- Examination of the annual report of the administering authority for the year ended 30 September 1986: Trust Territory of the Pacific Islands (continued)

- Examination of petitions listed in the annex to the agenda (see T/1908/Add.1) (continued)

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The meeting was called to order at 10.40 a.m.

EXAMINATION OF THE ANNUAL REPORT OF THE ADMINISTERING AUTHORITY FOR THE YEAR ENDED 30 SEPTEMBER 1986: TRUST TERRITORY OF THE PACIFIC ISLANDS (continued)

EXAMINATION OF PETITIONS LISTED IN THE ANNEX TO THE AGENDA (see T/1908/Add.1) (continued)

The PRESIDENT: As announced at yesterday afternoon's meeting, we shall now hear the remaining three petitioners on our list as follows: Ibedul Yutaka Gibbons, Mr. Tosiwo Nakamura and Ms. Anne Simon.

At the invitation of the President, Ibedul Yutaka Gibbons, Mr. Tosiwo Nakamura and Ms. Anne Simon took places at the petitioners' table.

The PRESIDENT: I call first on Ibedul Yutaka Gibbons.

Ibedul Yutaka GIBBONS: I am Yutaka M. Gibbons, appearing before this body in my capacity of leadership as High Chief Ibedul, the Traditional Paramount Chief of the Palau Islands, now the Republic of Palau since the adoption of our Constitution in 1980. I believe that your records will show that the Republic of Palau is still in the Trust Territory of the Pacific Islands, which was created under the International Trusteeship System set forth in Article 76 of the Charter of the United Nations. I am appearing today as a petitioner to express my concerns and those of many of my people regarding the Compact of Free Association and its incompatibility with the Constitution of the Republic of Palau. I also wish to express my concerns regarding the means which I believe will be employed in the next, the fifth, referendum for the Compact of Free Association now scheduled to be brought before the people of the Republic of Palau in June of this year.

First, I would like personally to express my sincere appreciation to this body for this opportunity to be heard. Without the forum of the United Nations, the voices of small nations such as Palau would never be heard. In the case of Palau, our Administering Authority is the United States of America, an advanced country

(Ibedul Yutaka Gibbons)

and super-Power of 250 million people. As you can easily imagine, a country the size of Palau, with approximately 15,000 people, can easily be lost in the political system of the United States. Therefore, for myself and on behalf of all Palauans, I wish to express our deepest gratitude for this forum and the principles on which it is founded. I believe that the United Nations since its inception has done more for the preservation of world peace and the promotion of human rights and decolonization than any other international institution in the history of mankind.

As you are all aware, the Trusteeship Agreement with respect to the Republic of Palau has not been terminated. This is due to the fact that the Compact of Free Association for Palau has been defeated in the last four plebiscites and that in no plebiscite has the Compact been approved by more than 75 per cent of the votes cast, as required by our Constitution. The highest court in the Republic of Palau has also ruled that the Compact of Free Association was not approved by the people of the Republic of Palau in our February 1986 referendum.

The source of the conflict between the Compact and our Constitution, as members know, lies in the nuclear-free provision of our Constitution. Our Constitution contains the expression of my people that Palau, and hopefully the Pacific, will be nuclear free. Our constitution was originally adopted in 1979 by 92 per cent of the Palauan electorate. That provision in our Constitution may only be waived by 75 per cent of the votes cast. The Compact of Free Association with the United States contains a provision allowing the United States neither to confirm nor deny the presence of nuclear substances on their aircraft and ships transiting, overflying or making port visits to Palau. I believe that for the Administering Authority to continue to seek to override our constitutional ban on nuclear weapons and technology in Palau undermines the integrity of our Constitution.

(Ibedul Yutaka Gibbons)

In spite of the fact that the Compact of Free Association between the United States and the Republic of Palau has failed to receive approval by our people pursuant to our Constitution, the Administering Authority has proceeded to approve - and has approved - the Compact of Free Association with Palau through an act of the United States Congress signed by the President of the United States, thus taking the position that the Compact of Free Association with Palau has been finally concluded and that the only remaining act to be taken in order for the Compact to be implemented is for the Republic of Palau to approve it. The Administering Authority, through its representatives, who have come to Palau in recent months, both from the executive and legislative branches of the United States Government, has declared that the problem with respect to the approval of the Compact of Free Association is "internal" to Palau. The same representatives have advised the Palauan leaders that the Compact cannot be renegotiated. This position of the Administering Authority has created an impasse, the only solution being for Palau to continue to have referendums indefinitely until the necessary 75 per cent vote is achieved. Alternatively, my people could amend their Constitution rendering it compatible with the Compact of Free Association.

In view of the position taken by the Administering Authority, the Government of the Republic of Palau has been forced to call for a fifth referendum to be held in June, despite the fact that this identical document was disapproved in the last referendum held on 2 December 1986. There is no reason to believe that the 75 per cent requirement can be achieved in this next referendum. Further, the Government of the Republic of Palau, which I believe is subordinate to the Administering Authority, has declared that in the event the Compact of Free Association fails to receive 75 per cent of the votes in the June referendum, a new referendum to amend our Constitution will be called for immediately thereafter.

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Therefore, in effect, the Administering Authority will, before the Council's next annual session, be in a position to require Palauans to amend their Constitution to remove the incompatibility with the Compact of Free Association. In my opinion, this amounts to coercion of international significance, and is, I believe, in violation of the provisions of article 76 of the Charter of the United Nations and the Trusteeship Agreement with respect to the right to self-determination. I believe that the United States of America, the Administering Authority, and possibly the most powerful nation in the world, should maintain the highest level of integrity as a Trustee. It should not even allow any appearance of impropriety that an effort is being made to subvert the Constitution of the Republic of Palau which was promoted by the Administering Authority in an effort to end the Trusteeship.

Our local Government, in preparation for the fifth referendum in June, has taken action to force our civil service employees to receive pay for 32 hours while working a 40-hour week, to ration electrical power and water, to cut off certain services to our hospital, and to put a blackout on news releases of the opposition on the only radio broadcasting station, which is government operated and owned.

I am most concerned because I believe these actions by the Government are calculated to attempt to force the approval of the Compact of Free Association on the basis of the belief that such approval will provide quick relief for the problems imposed or created by the Government. However, it appears that rushing to approve the Compact would only perpetuate our current problems, and possibly create new ones.

In this connection, I should like to address the issue of power rationing in the Republic of Palau. I believe, as the Council is aware, Palau is presently in debt and is being sued by a cartel of banks in the federal court in New York for

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approximately $40 million for payments for the IPSECO power plant which is located in Aimeliik State, Republic of Palau. The construction and cost of this power plant, I believe, received the approval of the Administering Authority through its appropriate officials. Many people in Palau believe that this power plant was intentionally built to put Palau further into debt to require the necessity for the approval of the Compact of Free Association as the only means to satisfy the debts incurred by the construction of this power plant. If true, this also amounts to coercion and paves the way for continuing financial problems for Palau after the Trusteeship. Many people in Palau believe that the $36 million for capital improvement projects provided in the Compact of Free Association is being earmarked for the payment of the approximately $36 million cost of constructing the IPSECO power plant, the price of which I believe was inflated to three times the actual cost. In spite of these exorbitant costs for our power plant, our Government is presently rationing power.

Presently in Palau, our Government is also engaged in the construction of asphalt-paved roads in Babeldaob without public bidding. These paved roads are unconnected and only serve local states and villages. They are being built by local state governments under contract with Japanese companies on the basis of guarantees by the President of the Republic of Palau. The presidential guarantees are premised upon the approval of the Compact of Free Association and are granted on a partisan basis as to whether the people in the states affected supported the Compact in the last referendum. Moreover, the Republic of Palau is presently soliciting bids to construct 22 miles of additional roads in Babeldaob. These construction projects are being undertaken when Palau is in the middle of its worst financial crisis due to mismanagement. There are several pending lawsuits by our taxpayers concerning these activities.

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Taken together, those activities by our Government put extreme pressure on the people of Palau to adopt the Compact of Free Association by not less than 75 per cent as required, or to amend our Constitution.

In the light of those activities, I should like to request the Trusteeship Council to undertake an independent investigation into these matters, so as to ensure that termination of the Trusteeship Agreement is based on the freely expressed wishes of the people of Palau with due respect accorded our duly adopted Constitution. In making that request I should like to point out that Article 76 of the Charter of the United Nations requires the Administering Authority

> "to promote the political, economic, social, and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory ... and the freely expressed wishes of the peoples concerned".

I should like now to address other, related, matters. The Compact of Free Association, in relevant parts, provides that the United States may establish and use defence sites in Palau and may designate for that purpose land and water areas for its use. Those defence sites are undefined as to location and area. The Compact of Free Association and related agreements grant the United States the right to request that the Republic of Palau make such defence sites available for its use within 60 days. If the Government of the Republic of Palau is unable to make such defence sites available, then the United States may take possession of such defence sites while negotiations and other proceedings are being undertaken by the Government of the Republic of Palau to ensure that such defence sites are made available to the United States. I believe that those provisions of the Compact of

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Free Association violate one of the principles of the Trusteeship Agreement, which requires the Administering Authority to protect the inhabitants of the Trust Territory against, among other things, the loss of their lands and resources.

I should like also to express my deep concern about the temporary nature of the Compact of Free Association. The Administering Authority has advised our people that after the Compact is approved amendments may be made to the Compact and that the Compact may be renegotiated at any time or when it expires. Yet now, before the Compact has been approved, we have been told that no renegotiation is possible. My concern is that once the Compact is approved and the Trusteeship Agreement is terminated there will be no forum such as the Trusteeship Council to monitor the subsequent negotiations between the United States of America and the Republic of Palau.

I also wish to express my concern about the fact that the approval by the United States of the Compact of Free Association is contained in a domestic statute of the United States of America. I am afraid that with that form of approval by the United States, using domestic legislation, the Compact may be amended unilaterally by the United States Government at any time. I submit that such a form of approval of the Compact of Free Association relegates the whole agreement between the United States and Palau to an internal and domestic matter within the United States political system and does not meet the standards of international law with respect to international agreements between two sovereign nations.

The Republic of Palau has advanced greatly under the tutelage of the United States as its Administering Authority. For that, I am most grateful. I only wish to request that the Council help ensure that the high and lofty standards set forth in the Charter of the United Nations with respect to the Trust Territories be maintained, particularly with respect to Palau, the smallest of the Trust Territories supervised by the United Nations.

Ibedul Tutkak Gibbons withdrew.

The PRESIDENT: I call next on Mr. Tosiwo Nakamura.

Mr. NAKAMURA: It is an honour for me to appear before the Trusteeship Council today and to address it on the matters that are confronting Palau today, which require the attention of the United Nations. I express my appreciation to you, Mr. President, and the other members of the Council for giving me this opportunity to speak.

My name is Tosiwo Nakamura, and I appear before the Trusteeship Council today not as a representative of the Government but as a citizen of Palau who will be affected, with many others, by the outcome of the termination of the Trusteeship Agreement and the implementation of the Compact of Free Association. As such, my testimony today will reflect the concerns of the citizens of Palau rather than the policies of the Government of Palau. I submit that, if this Council had taken the time to meet with the people in Palau, its members would have heard from many citizens of Palau concerns similar to my views. Because of the financial difficulties many could not appear here today.

The last time I appeared before this body was about eight years ago, and I was Speaker of the Seventh Palau District Legislature, the last district legislature under the formation of the Trust Territory Government. The issues then before this body were the Constitution of Palau, the Compact of Free Association, the termination of the Trusteeship Agreement and an orderly transition of the Trust Territory Government to the Government of a Freely Associated State. Today, after a period of eight years, I find those same issues, with the exception of our Constitution, still facing this body, although they have become more complex in some respects and have come to reflect the interests of the United States more than those of Palau.

(Mr. Nakamura)

I travelled to New York to make a statement before this body along with our Paramount High Chief Ibedul Gibbons, Mr. Francisco Nigrailemesang of our staff and, from the United States, Ms. Anne Simon, counsel in the case of Gibbons v. Salii. We are not here to undermine anyone or to antagonize the Council and the Administering Authority, but only to voice some of our concerns. We feel that those concerns will shed some light on the whole problem of the political impasse in Palau. The political impasse in Palau is not unsolvable.

If I may say so, we are perhaps very fortunate in having the Trusteeship Council still extant to hear our problems regarding our present Government under the Trusteeship Agreement and our future political status, which we base on our Constitution. I believe it is the Council's intention, under the Trusteeship Agreement, that the people of Palau will exercise their freedom to choose their own political status fairly, without force, coercion and intimidation. That is an honourable intention which we seek to have implemented; however, we have not been successful with the Administering Authority. We therefore request the Council to see to it once again that what we, the people of Palau, decide in our exercise of self-determination be honoured and respected and that the responsibilities of the Administering Authority be implemented before the Trusteeship Agreement is terminated.

Through the exercise and process of self-determination the Republic of Palau has come into being through its own Constitution. Although the creation of the Constitution of Palau took three months in a Constitutional Convention, it took some 40 years for us to be tutored by the United States in the democratic form of government and in what a constitution is all about. In creating our own Constitution, we put each and every American ideal and principle of democracy into it. Today, we find ourselves defending it from our tutor, or schoolteacher.

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In 1979 the people of Palau ratified their Constitution by an overwhelming vote of 92 per cent. The Constitution was considered by certain United States officials as unacceptable, in spite of the fact that the United Nations supported the referendum and legalized it by sending observers to Palau. As a result of certain United States pressure we were forced to abandon that Constitution and the expressed wish of our people and propose another constitution that was accepted by certain United States officials. That was rejected in a referendum three months after the first referendum was held. The third referendum was held after the second version of the constitution was rejected. This was a referendum on the original Constitution. The people of Palau ratified it overwhelmingly. Thus, these are the problems as far as our Constitution is concerned: after three decisive votes in a duly organized referendum, we are still told that we need more votes and more referendums to decide what we want. I submit to the Council that there is nothing wrong in the Consitution of Palau and that there is nothing wrong in upholding the constitutional doctrine and the principle that the Constitution is the supreme law of the land.

The biggest problem that has been created by the Administration is the idea that our Constitution is inadequate because what the United States Government may want to do under the Compact has already been declared illegal under our Constitution. But why is our Constitution a problem? The constitution of any nation is a supreme law, and every time a treaty or agreement is in conflict with it, such treaty or agreement shall be declared null and void. Is that not also the case in the United States?

This principle is especially important to us. I think that the Compact of Free Association has different meanings for Palau and for the United States. For the United States, it is basically a treaty which should protect United States interests. It will have very little effect on the Government or people of the

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United States. For the people of Palau, it is not simply a treaty; it is a surrender of our sovereign power over our defence and foreign affairs, and it will affect our daily lives and our Government in many ways. That makes it critically important for the Compact to be consistent with our Constitution, our supreme law.

The Compact of Free Association is an agreement between the Republic of Palau and the United States to incorporate a concept of a relationship of free association that the two countries have been negotiating over recent years. That status of free association is intended to be temporary, one stage in the process of self-determination for Palau. As such, it should be carefully crafted to be harmonious with our Constitution, which will continue to guide the Republic of Palau in the future long after the terms of the Compact have expired. As a temporary agreement, the Compact should not be made to supersede the Constitution of Palau. But that is what certain persons in the Administering Authority want it to do. It is rather interesting to note that after 40 years of being taught that the Constitution is the supreme law of the land, we are now told by our teachers that we cannot uphold that constitutional doctrine. Because of that difficulty about the supremacy of our Constitution in any free-association agreement, we ask the Council to help assure that our process of self-determination will work freely and fairly, now and in the future.

The four referendums we have had and the fifth that is planned for June on the Compact of Free Association are all evidence of the Administering Authority's refusal to recognize our Constitution as the supreme law of Palau. Why do we need another referendum when we have had enough? The people of Palau had to have three referendums to ratify their Constitution, while the people of the Marshalls, the people of the Federated States of Micronesia and the people of the Northern Marianas had only one referendum to ratify their own Constitutions. The people of

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Palau had to have five - and maybe more - referendums to ratify the Compact of Free Association, while the people of the Federated States of Micronesia, the people of the Marshall Islands and the people of the Northern Marianas had only one referendum to ratify their Compact of Free Association and the Covenant of Commonwealth.

I submit to the Council that a referendum is an act of self-determination and that once it has been duly conducted its result must be binding, regardless of what one group of people or nation may feel about it. The normal course is that any and all provisions of the Compact of Free Association that are incompatible with our Constitution should be declared null and void, and the Constitution of Palau should proceed to be the supreme law of the land, as our tutor taught us and as the Constitution of the United States holds.

(Mr. Nakamura)

A repeated referendum on the Compact of Free Association certainly would not help anyone. It would make the whole process of self-determination a game of those who are in power and those who do not share their political views. That should not be the case in the course of the solemn exercise of self-determination.

Contrary to the views of certain individuals in the Administering Authority, the Compact of Free Association with Palau has not been ratified. Since it is an agreement, one should know that it requires both sides to ratify it. The approval of one party is not the approval of the second party to the agreement, no matter how strong, rich and powerful that party may be. The ratification of the Compact of Free Association as far as Palau is concerned is set forth in Palau's Constitution. The Supreme Court has rendered a decision in Gibbons v. Salii that the Compact had not been ratified.

The fifth referendum being proposed on the Compact, to be held in June, is an indication that the Compact had not been ratified. If it had been duly ratified as certain officials in the United States Government claim, then why must we have another referendum on it?

There are those who are arguing that the Compact of Free Association of Palau was ratified because it received a majority vote - over 60 per cent of the people voted for it. While it is true that it received a majority vote, it is not true that it has been ratified. The question is not whether or not it is a majority vote but one of what is the constitutional requirement. The ratification of an agreement or a treaty in any nation has requirements: some nations require three fourths of the members of the Senate to approve agreements, while others require less. In our case, the ratification process requires the approval of both Houses - the Senate and the House - and three fourths, or 75 per cent, of the vote in a referendum.

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This approval requirement expresses our experience as Palauans. We do not believe that we have agreement when a bare majority of the people in a group agree. We look for a consensus, where almost everyone accepts and agrees with the decision or proposal. Because we are a small society we have the opportunity to talk to one another about our questions and decisions. In our daily lives we think that an 80-90 per cent majority indicates agreement. We have put those principles into our Constitution and in our procedures for the Compact ratification process. According to our principles and our constitutional procedures, the Compact has not been approved by the people of Palau.

The majority of the Palauan people in the creation and ratification of its Constitution approved the requirement of a 75 per cent vote by the people to approve any agreement or treaty which allows the introduction of nuclear and harmful substances. That was an exercise of self-determination which should not be ignored.

The prohibition of nuclear weapons and warships in our water is not a crime or something for which we should be made a fool. So often it has been said that those who support Palau's Constitution and its supremacy are anti-American or anti-West, or pro some unfriendly nations. I find that to be the biggest and most foolish diplomatic joke. Our Constitution and the setup of our Government indicate nothing other than our being pro-American and pro-West.

The nuclear control provisions in our Constitution express our desires for our own peace and security; they also express our hopes for the enhancement of peace and harmony in the Pacific region, and even our hope that small nations will be able to show the way to the super-Powers in seeking a peaceful world.

The proposed militarization of Palau under the Compact and the whole militarization of the Pacific region is based on the premises of defence and

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protection; but, for us in the Pacific, the defence of any one of the super-Powers is not our defence and never will be. History has taught us that the Pacific Islands were a battlefield in the name of defence and that we should not be part of any future international conflicts.

Our enemy in the Pacific is colonization, not any nation in that region or on the rim. If the United Nations has an obligation to protect our interests, let it protect us from colonial encroachment by any nation that may want to use us and our islands for its military might and expansion.

If the Compact of Free Association is not revised, there is a real chance that it will be perceived by the people of Palau and other countries as an instrument or a tool with which a colonial nation perpetuates its rights in the name of defence and protection of the free world. If the Compact is not revised and remains as is, we may end up having the "Association" with the United States, while the United States may have the "Free" over us and in our home.

Before closing, I should like to thank the previous petitioners who have expressed their concerns for the Palauan people, including the Micronesian Coalition, the United Methodist Office for the United Nations, the International League for Human Rights, the Minority Rights Group, the Independent Observer Mission to the December 1986 plebiscite, and others. I shall not bid farewell to you, Mr. President and members of the Council, because we shall see one another soon in Palau during the fifth referendum on the Compact.

I thank the Council for the opportunity to appear before it today.

The PRESIDENT: I call now on Ms. Anne Simon to present her petition.

Ms. SIMON: My name is Anne Simon. I am a staff attorney at the Center for Constitutional Rights in New York City, a non-profit legal and educational organization dedicated to advancing and protecting the rights guaranteed by the United States Constitution and the Universal Declaration of Human Rights.

I should like to thank you, Mr. President, and the other members of the Council for affording me the opportunity to address this body.

As co-counsel with J. Roman Bedor of Koror, Palau, I represent the plaintiffs in litigation concluded last fall in Palau in Gibbons v. Salii. At the request of the plaintiffs, I present this petition, which focuses on that litigation and its implications. It is a great honour and pleasure to appear before the Council in the company of High Chief Ibedul and Mr. Nakamura.

(Ms. Simon)

At the time the Trusteeship Council adopted resolution 2183 (LIII), on 28 May 1986, this litigation had just been begun. That resolution noted, in part, that

> ... the people(s) of ... Palau have freely exercised their right to self-determination in plebiscites observed by the visiting missions of the Trusteeship Council and have chosen free association with the United States of America ...".

The final decision in the Gibbons v. Salii case, however, makes clear that the people of Palau had not then, and have not yet, chosen free association with the United States.

The litigation challenged the declaration of the Government of the Republic of Palau that the proposed Compact of Free Association signed on 10 January 1986 between Palau and the United States had been approved by the people of Palau in a plebiscite held in February 1986. On 20 May 1986 Ibedul Yutaka Gibbons, Gabriella Ngirmang, Rikrik Spis and James Orak filed suit in the Trial Division of the Palau Supreme Court, challenging the assertion that the proposed Compact had been ratified, challenging the conduct of the political education campaign conducted prior to the plebiscite and the conduct of the voting, and challenging as premature President Salii's action in transmitting the proposed Compact to the United States Congress for its approval. On 16 June 1986 the plaintiffs' complaint was amended to include the claim that certain Compact provisions regarding use of land in Palau by the United States military violated restrictions on the use of the power of eminent domain embodied in the Palau Constitution.

After hearing oral argument of counsel on 1 July 1986 the Trial Division - Judge Robert Warren Gibson - in an oral ruling rendered 10 July 1986 held that the proposed Compact had not attained the 75-per-cent majority necessary for ratification and thus had not been ratified. The court dismissed all other claims

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advanced by the plaintiffs. The Government appealed the ruling that the proposed Compact had not been ratified. The plaintiffs cross-appealed the dismissal of their other claims.

The appeals were argued before the Appellate Division on 27 August 1986 and on 22 August 1986 Howard Hills, Legal Counsel of the United States Office of Micronesian Status Negotiations, filed a request to participate in the appeal as amicus curiae by filing a brief and arguing orally. The Appellate Division held a hearing on that request on 25 August 1986. The Court, ruling from the bench, denied the request on the grounds that it did not comply with the Palau Rules of Appellate Procedure, especially the rules about timely application for amicus curiae status.

In its decision on the merits issued on 17 September 1986 the Appellate Division of the Supreme Court - Palau's highest Court - held that the proposed Compact had not been ratified by the people of Palaun as required by the Palau Constitution.

The Court held that several sections of the proposed Compact of Free Association violated provisions of the Palau Constitution. Sections 312, 324 and 331 of the Compact were found to contravene what the Court described as the "nuclear-control provisions" of article II, section 3 and article XIII, section 6 of the Palau Constitution. I would note that in its opinion the Court referred to these sections as the "nuclear-control provisions" of the Constitution. That usage will be followed here, although it is important to remember that the restrictions also apply to chemical, biological and toxic gas weapons and wastes.

In its opinion the Court stated

"Specifically we hold that the four verbs, 'use, test, store or dispose of', in the nuclear-control provisions were meant to be a brief summation of all that could possibly be done with nuclear substances - in short, a general

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prohibition against the introduction of nuclear substances into Palau. Accordingly, these four verbs prohibit transit of nuclear powered vessels or vessels equipped with nuclear missiles. As a result, simple propulsion under nuclear power is a 'use' of a nuclear power plant and, if such a 'use' occurs within the territorial jurisdiction of Palau, this 'use' is prohibited by article XIII, section 6 of the Constitution. Additionally, carriage of a nuclear missile is a 'use' and a 'storage' within the meaning of both nuclear provisions."

It is plain also that the Court rejected the contention of the Palau Government, which has also been advanced by the Administering Authority, that the nuclear-control provisions do not apply to something denominated "transit":

"In each of the three constitutional plebiscites, it is apparent that the people of Palau perceived themselves to be voting on the question of 'transit' by nuclear vessels. The people were not making the fine, and at times distorted, distinctions in syntax which are necessary to uphold defendants'" - that is, the Government's - position on section 324. Specifically, the nuclear-control provisions approved by the people left no room for the Government of Palau to enter into an agreement with any nation, and particularly the United States, which allowed that nation to operate nuclear-capable or nuclear-powered vessels in the waters of Palau unless the agreement obtained prior 75-per-cent voter approval."

The Court unequivocally held that the conflict between the Compact provisions and the constitutional nuclear-control provisions triggered the Palau constitutional requirements that Compact approval needed a 75-per-cent majority of votes in a referendum in which a specific question on the nuclear issue was asked. Because this "required approval" was not obtained, "the Compact is not a valid agreement of the Republic of Palau". Indeed, the Court held that

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"the Republic of Palau may not enter into an international agreement permitting these 'use' and 'store' operations without first obtaining 75-per-cent voter approval under both nuclear control provisions."

The Court further

"... caution(ed) the Government of Palau that the exercise of eminent domain powers will be unavailable to it in attempting to comply with its obligations under the Compact to make land available to the United States."

These obligations are set out in section 322 of the Compact and article III of the related Agreement regarding Military Use and Operating Rights. However, the Court made no binding ruling on these issues.

On the substance of the issue of the compatibility of the military land-use provisions of the proposed Compact with the eminent-domain restrictions of the Constitution, the Court held that the Compact provisions did not on their face violate the Constitution, but that they were likely to require a constitutional violation at some future time if the Compact went into effect. The Court stated that the inclusion of the military land-use requirements

"... may eventually place the Government of Palau at a fork where one road points towards violation of the Constitution and the other leads to breach of the Compact."

The Court's affirmance of the trial court's dismissal of the land-use aspect of the plaintiffs' claims is, therefore, not a judgment that the proposed Compact is consistent with the eminent-domain restrictions of the Constitution. Rather, it is a judgment that, as the Court said,

"... the question of whether any particular proposed action of the Government would be constitutional is not ripe for decision."

Thus the Court found that the Compact conflicts with the Constitution but that the conflict does not need to be resolved by the courts at this time.

(Ms. Simon)

The Court also concluded that, in view of its decision that the proposed Compact had not been ratified, the challenges to the political education campaign and the conduct of the plebiscite were moot; accordingly, it vacated the trial court's judgment of dismissal of those claims. Finally, the Court affirmed the Trial Division's dismissal of the claim that President Salii's transmittal of the proposed Compact to the United States Congress violated R.P.P.L. 2-14, the enabling legislation for the February 1986 plebiscite.

(Ms. Simon)

The February 1986 vote at issue in the Gibbons v. Salii case was the third since 1983 on the question of ratification of one or another proposed version of a Compact. In the 1983 plebiscite, the Compact proposal received approximately 62 per cent of the vote. In the decision of the Trial Division of the Palau Supreme Court in Gibbons, et al. v. Remeliik, et al., this was held to be less than the 75 per cent needed for ratification of an agreement authorizing the introduction of nuclear weapons or power. The 1984 plebiscite, which was held without the presence of any United Nations observer mission, resulted in a 66 per cent vote in favour of the Compact proposal. The Government of the Republic of Palau took no steps to declare the 1984 vote a ratification. In the February 1986 plebiscite, yet a third Compact proposal received a 72 per cent affirmative vote. The identical proposal was put to the voters again in December 1986, when it received approximately 66 per cent of the vote. As we have heard, another plebiscite, the third in 16 months on essentially the same version of the Compact, has been authorized to be held before the end of June 1987.

All the plebiscites on Compact proposals have led to the question, "Has this Compact been ratified?" At issue is the application of the two nuclear control provisions of the Constitution of the Republic of Palau, article II, section 3 and article XIII, section 6. These provisions require that any agreement that would allow the introduction into Palau of any of the listed substances must be approved by a 75 per cent vote in a referendum that specifically presents that issue. Any agreement that conflicts with these - or any other - constitutional provisions is void. Article II of the Palau Constitution clearly provides:

"Section 1. This Constitution is the supreme law of the land.

"Section 2. 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."

(Ms. Simon)

The constitutional nuclear control provisions reflect deeply held views in Palau. They were the subject of extensive drafting work and discussion at the Palau Constitutional Convention, held January through April 1979. They formed a major aspect of the political campaign about the adoption of the Constitution, which was adopted by a 92 per cent majority in July 1979. That vote was subsequently invalidated by the Trust Territory High Court, on the grounds that the legislation authorizing the referendum had been repealed.

A Drafting Commission appointed by the Palau Legislature then produced a revised Constitution, intended to "reconcile, void and eliminate any conflicting inconsistencies or incompatibilities between the invalidated Constitution and the proposed political status of free association with the United States, that goal expressed in Republic of Palau Public Law No. 6-8-18." It eliminated or substantially weakened a number of the original provisions, including article XIII, section 6; article II, section 3; and article XIII, section 7. The revised version of the Constitution was rejected by 69 per cent to 31 per cent in a referendum in October 1979. The original - and current - Constitution was readopted by a 78 per cent majority in July 1980.

The nuclear control provisions may therefore safely be said to reflect the views of the people of Palau about their fundamental governing structure, about limits on the power of their government, about the importance of the preservation of their environment, and about the reservation to the people themselves of the ultimate decision about any proposed Compact of Free Association or similar agreement. The decision in Gibbons v. Salii gives concrete expression to those values. They were the basis on which the Court answered the immediate question posed in the litigation: "Was the proposed Compact ratified in the February 1986 plebiscite?" The answer is "No."

(Ms. Simon)

Unswayed by the determination of Palau's highest court, the Administering Authority has adhered to its position that the people of Palau must "complete" the Compact approval process by, in effect, reversing themselves: changing their "No" vote to a "Yes" vote. For example, the legislation enacted by the United States Congress in October 1986 purporting to approve the Compact, Public Law 99-658, states, in its preamble, among other things:

"Whereas the Supreme Court of Palau has ruled that the constitutional process of Palau for approval of the Compact of Free Association in accordance with section 411 of the Compact has not yet been completed ..."

More immediately, in its 39th annual report on the Trust Territory of the Pacific Islands, the United States reiterated its view that "Palau had not yet completed its constitutional ratification process." The United States, in its report, erroneously characterizes this view as the "holding" of the Appellate Division in Gibbons v. Salii. On the contrary, that Court expressly did not view the Compact approval process as incomplete. It categorically stated that the proposed Compact "is not a valid agreement of the Republic of Palau" because it had not been ratified.

This authoritative interpretation was clearly foreshadowed by the 1983 decision of the Trial Division in Gibbons v. Remeliik. In holding that the 62 per cent vote for the Compact was not a ratification, the Court observed:

"To accept defendants' position" - which was that the Compact could be 'approved' but could not 'take effect' with a less than 75 per cent majority - "would mean that the Compact is approved, but cannot be implemented or made effective until the Harmful Substances Agreement is resolved. In such event, the status quo would continue indefinitely until a new Harmful Substances Agreement is negotiated and approved. If no such agreement is approved the political status impasse becomes the political status of the Republic of Palau

(Ms. Simon)

and nothing is accomplished by the February 10, 1983 referendum and plebiscite."

This warning has come true as each plebiscite in which the Compact is rejected yields not a resolution of the status issue, or even additional steps toward a resolution, but a new plebiscite.

The Administering Authority clings to the position that the free association status has been approved, but the final details have not been worked out. This position is based on two premises that are, at best, dubious: first, that it is possible to "approve" the status of free association in the abstract, and, secondly, that the people of Palau have done so. It is worth pointing out, I believe, that here there is no free association in the abstract. There is only one or another version of the Compact, whose terms define free association between Palau and the United States. The status is contractual. In the absence of mutual agreement on those terms, free association simply does not exist.

The continued insistence of the United States that there already is something, an inchoate new status, for Palau, fails to take seriously the Palau Constitution as authoritatively construed by the Palau courts. It is unfortunate that the Trusteeship Council accepted and embodied this insistence in resolution 2138. But it is the Palau Constitution, not the United States Congress or Administration, that defines the process of status determination for Palau.

Apparently in response to repeated rejections of the Compact, the Administering Authority has taken the extraordinary position that the current version of the Compact is final, not subject to renegotiation, refinement, or further discussion. A few days before the December vote, both Ambassador Zeder and Howard Hills, Legal Counsel to the Office of Micronesian Status Negotiations, were quoted as saying that it was the position of the United States that the terms of the Compact could not be renegotiated.

(Ms. Simon)

This view has been reiterated in Palau quite recently by a visiting group of one United States member of Congress and the non-voting Congressional delegates from Guam and the United States Virgin Islands. In these circumstances, it is difficult to interpret the "no renegotiation" stance as anything other than a final effort to force approval of the Compact in Palau.

I want now to focus briefly on one important aspect of this rigid United States stance: the known unconstitutionality of the eminent domain provisions of the Compact. The proposed Compact allows the United States to require the Government of Palau, as the Council has heard, to turn over to the United States military, within 60 days, any land in Palau. The Court concluded that such a demand by the United States, if it were ever made, could not be constitutionally complied with by the Palau Government. Why, then, is the Administering Authority pursuing a course that could lead to a situation in which a future Government of Palau would have to choose between violating the Palau Constitution and breaching its obligations under the Compact? Why is there an apparently absolute refusal to respect the constitutional limits of the powers of the Palau Government over the land of the people of Palau?

I might note here that it does not suffice to say, as the United States Congress did in Public Law 99-658, section 104 (h) (1):

> "The Government of the United States recognizes and respects the scarcity and special importance of land in Palau. In making any designation of land pursuant to section 322 of the Compact, the Government of the United States shall follow the policy of requesting the minimum area necessary to accomplish the required security and defence purpose, of requesting only the minimum interest in real property necessary to support such purpose, and of requesting first to satisfy the requirement through public real property, where available, rather than private real property."

(Ms. Simon)

When read with a view towards making it meaningful, this opaque sentence I believe can only mean: "We promise not to take private land for military use unless we need to take it." Needless to say, this does not resolve the constitutional problem. In sum, on this point, why is the Administering Authority adhering to a course that could provoke a constitutional crisis in Palau?

In conclusion, I would note that the Gibbons v. Salii litigation led to authoritative judicial interpretations of important provisions of the Palau Constitution:

First, the process of determining Palau's future political status is a right of the people, not solely of the Government. Individuals have a right under the Constitution to vote on a proposed Compact.

Secondly, article II, section 3 and article XIII, section 6 constitute:

"... a general prohibition against the introduction of nuclear substances into Palau."

Thirdly, the prohibition on the use of the power of eminent domain "for the benefit of a foreign entity" applies to the use of land by the United States military, as set out in the proposed Compact.

Finally, and following from the previous point, the court decision establishes parameters for continuing the development of Palau's self-government and political life. It is unfortunate that the public statements and positions of the Administering Authority do not evidence the respect that should be due to the significant political and constitutional development expressed in the Gibbons v. Salii decision. The Administering Authority should welcome such developments rather than ignore them.

(Ms. Simon)

I respectfully request that the Trusteeship Council admonish the Administering Authority that it is under a continuing obligation to report fully and accurately on the legal and constitutional developments in Palau, and that it is not free to shape such reports to fit its own political position. I further request that the Trusteeship Council clarify its statement in resolution 2138 (LIII) to acknowledge that no agreement establishing the status of free association with the United States has been approved by the people of Palau, and that such clarification be transmitted to the Security Council and to the Secretary-General.

The PRESIDENT: I thank Ms. Simon for her petition.

Yesterday, the Reverend David Williams, who presented a petition to us, omitted a short passage from his petition, and he is particularly anxious that it should be in the record. So that that can be achieved, I have agreed that Miss Elizabeth Barnes, who had submitted her name to us as a petitioner, should be able to read that short passage to us so that it appears in the record. If Miss Barnes is here, I would ask her to take the petitioner's seat and read this passage to us.

At the invitation of the President, Miss Barnes took a place at the petitioners' table.

The PRESIDENT: I now call on Miss Barnes.

Miss BARNES: Reverend Williams had hoped to save the Council's time yesterday by omitting this piece, and we have ended up taking more of the Council's time and that of the Secretariat, so we are very appreciative of this opportunity.

What I will read today is simply the reiteration of our requests to this body which are simple requests, but often it is the simple that bears repeating.

The Micronesia coalition respectfully requests this body:

(Miss Barnes)

First, that the Visiting Mission take special note of any undue pressures on the Palauan people in their preparation for the upcoming plebiscite and that the mission present any such findings in their report;

Secondly, in support of the request of the International League for Human Rights, that the Trusteeship Council adopt a resolution affirming the role of the Security Council in the termination of the Trusteeship Agreement;

Thirdly, that the Trusteeship Council express its intent not to accept any unilateral declaration of the Administering Authority to stop further reporting on the Federated States of Micronesia, the Northern Mariana Islands, and the Marshall Islands until such time as full termination has occurred;

Fourthly, that the Trusteeship Council review the status of the Commonwealth of the Northern Marianas before any recommendation of its removal from the list of Non-Self-Governing Territories. We would request that this review be part of an overall consideration of termination and entry into new status in the light of decolonization procedures, in co-operation with the Special Committee of 24, as is provided for in item 12 on the Council's provisional agenda;

Fifthly, and finally, that the Trusteeship Council recommend the continuing responsibility of the United Nations for the Trust Territory of the Pacific Islands after termination until such time as full independence might be achieved.

The PRESIDENT: I thank Miss Barnes for her contribution.

Members of the Council now have the opportunity to put any questions they may wish to the petitioners.

Mr. GUINHUT (France) (interpretation from French): I do not really have any questions to ask but I should like, as the former Chairman of the Visiting Mission that observed the referendum in Palau, to make one clarification. The petition submitted to the Council the day before yesterday by Ms. Hammerich stated that it was difficult to understand how the United Nations Visiting Mission responsible for observing the Palau referendum in December 1986 affirmed in the conclusion of its report:

> "It is the view of the members of the Mission that the people of Palau were able to vote freely and in accordance with their wishes."
>
> (T/1906, chapter VI, para. 29)

On behalf of the members of the Visiting Mission, I should like to stress, as was clearly stated on several occasions, that it is obviously not the function of a Visiting Mission of this kind to render any judgement on the political or economic climate in which the referendum is taking place.

(Mr. Guinhut, France)

However, I think it is useful to recall that the Council directed the Visiting Mission

"to observe the plebiscite, specifically the polling arrangements, the casting of votes, the closure of voting, the counting of ballots and the declaration of results", (resolution 2184 (S-XVII), para. 3)

and was requested to submit a report on its observation of the plebiscite.

It is clear from the report of the Visiting Mission that my colleagues and I framed our conclusions in conformity with our directions from the Council. I hasten to point out that my colleagues and I concur fully with the conclusions of the Visiting Mission, in particular the final conclusion.

The PRESIDENT: If I hear no requests from members, I shall take it that members of the Council have no further questions they wish to put to petitioners.

Since we have now concluded the hearing of petitioners, I should like, on behalf of all members of the Council, to thank all the petitioners who have spoken in the Council, especially those who have come a long way to address us. We have listened with great attention to what you had to say to us, and we value the contribution you have made to our work.

I invite the petitioners to withdraw from the petitioners' table.

The petitioners withdrew.

The PRESIDENT: I mentioned yesterday that the Commonwealth of the Northern Mariana Islands had addressed a letter to me, transmitting a document entitled "Self-Determination Realized" and requesting that that document be published as a document of the Trusteeship Council. I should like to hear the views of members as to whether they consider that the document should be published.

Mr. SMITH (United Kingdom): I think that before we can decide whether or not to publish the document it would be helpful to have an idea of what the cost of translating and publishing it would be.

The PRESIDENT: As we have a very efficient Secretariat, it has anticipated that question. Enquiries of the relevant Secretariat department have shown that the cost of publication would be $16,000.

Mr. BUCZACKI (United States of America): My delegation is of the opinion that that is a considerable sum in these times of tight budgets for Governments and international organizations. It also strikes us that the individuals from the Commonwealth of the Northern Mariana Islands who presented the petition yesterday presented in their oral petition a good deal of the information contained in the written document. Their statements are reflected in the verbatim records of this Council. In addition, the individuals from the Commonwealth of the Northern Mariana Islands distributed copies of their document to members of the Council.

It seems that under those circumstances it would amount to duplication to publish the document as an official document, and my delegation therefore recommends that the Council not publish the document as an official document of the Trusteeship Council.

Mr. GAUSSOT (France)(interpretation from French): We have no objection in principle to the publication of documents such as this one - quite the contrary. But in the light of the extremely high cost of publication and since the ideas expressed in the document are also set out in other, published, documents, I too believe it would not be desirable to publish this document.

Mr. BEREZOVSKY (Union of Soviet Socialist Republics)(interpretation from Russian): The Soviet delegation has no objection to publishing this document as a document of the Trusteeship Council. In saying that, I am not addressing the substance of the document or our views regarding the substance of the document or even its title. I believe the document should be published because the people of the Commonwealth of the Northern Mariana Islands and their representatives here consider it important that differences of opinion between themselves and the

(Mr. Berezovsky, USSR)

Administering Authority, differences that have been stated in this Council, be set out in a document of the Trusteeship Council, along with that people's view that it has been the victim of deception.

My delegation's view applies also to other documents submitted to the Trusteeship Council, including the important report of the indepedent international observers team that was present in Palau at the time of the last referendum.

Mr. SMITH (United Kingdom): I thank the President for his prompt reply to my question on the cost of publishing the document. My delegation fully supports the view expressed by the representative of France and, indeed, the view expressed by the representative of the United States. While we too would not, in principle, be opposed to the publication of documents of this kind, we are concerned about the high cost of publishing and translating the document. We also feel that the views which the petitioners expressed have been adequately represented, both in the verbatim record of the Council and in its documents. We would therefore prefer that the document, "Self-Determination Realized," not be circulated as an official document of the Council.

Mr. BUCZACKI (United States of America): I would like once more to endorse the remarks just made by the representative of the United Kingdom. Just for the sake of the record, and perhaps for the benefit of the Soviet delegation, I would like to make clear that the individuals who yesterday petitioned on behalf of the Commission on Trusteeship Agreement Termination in fact represent a much smaller Task Force. They do not represent the Government, they do not represent the population of the Commonwealth of the Northern Mariana Islands, and, therefore, I do not think it is possible that anyone reading one of their documents could come to the conclusion that the population of the Commonwealth of the Northern Marianas therefore believed that it had been deceived. I would just like to enter that correction into the record.

Mr. BEREZOVSKY (Union of Soviet Socialist Republics) (interpretation from Russian): With respect to the statements just made, particularly that of the United States representative, we should like to say that the approach that has been taken by some delegations from the outset of the work of this session of the Trusteeship Council appears to be oriented more towards accountancy than towards political affairs. The United Nations Trusteeship Council is a Charter political

(Mr. Berezovsky, USSR)

body which should, first and foremost, be concerned about fulfilling its obligations as established in the Charter and entrusted to it by the Security Council. Yet such a purely accountancy or bookkeeping approach - which I understand to be dictated by political goals - has been quite evident.

Moreover, with regard to the statement made by the representative of the United States that the petitioners from the Northern Marianas do not represent the people of the Northern Marianas, that they do not represent the Government of the Northern Marianas and that they ostensibly represent no one - well, I think that that evaluation by the Administering Authority, with its implied assessment of the work of the Trusteeship Council, is not only unjust but, really, somewhat insulting. If one pursues the logic of the United States representative, it appears that we have now held several meetings in which we have been dealing with nothing and doing nothing. We have listened here to petitioners who do not, apparently, represent anybody. In addition, in line with the accountancy approach, we have been wasting a lot of money for nothing. I do not think we can agree with that at all.

I should like to make another point. At the last session of the Trusteeship Council the United States delegation included representatives of the local authorities of the Northern Marianas. The Council heard statements by them too. At this session we have not heard any "special advisers" from the Northern Marianas speaking in the United States delegation, just as we have not heard any statements by representatives of the Federated States of Micronesia or the Marshall Islands. In our opinion, that is how we should approach the statements by the representatives of other delegations, including the representative of the Administering Authority.

(Mr. Berezovsky, USSR)

Moreover, the statement by the representative of the United States to the effect that the petitioners from the Northern Marianas do not represent anyone raises another question: Should the United States, in implementing its obligations under the Trusteeship Agreement, not be promoting political, economic and social development in the Territory, including the Northern Marianas? When the United States delegation included special advisers from the Northern Marianas, those advisers were introduced here by the Administering Authority and the titles given them by the population of the Northern Marianas were announced.

(Mr. Berezovsky, USSR)

But now the representative of the United States, the representative of the same Administering Authority, says that these people do not represent anyone. I am looking at the text of the petition submitted by the petitioners from the Northern Marianas, according to which the Task Force consists of

(spoke in English)

Pedro Guerrero, Acting Chairman and member of the CNMI House of Representatives, Pedro M. Atalig, Larry L. Hillblom and Elias Okamura".

(continued in Russian)

Further on, the same paper says

(spoke in English)

"... Task Force appear here by direction of the Speaker of the CNMI House of Representatives and the President of the CNMI Senate and on behalf of the people of the CNMI".

(continued in Russian)

I have not mentioned the titles of other members of this group of petitioners from the Northern Marianas. I think the reprentative of the Administering Authority is in a better position to know them than anyone else here.

Mr. BUCZACKI (United States of America): I am somewhat surprised to find the representative of the Soviet Union putting words in my mouth. In fact I have never said that petitioners represent no one, nor has the Adminstering Authority ever taken that position. What I do think important is that the record reflect clearly whom the petitioners represent. In the case of the document whose publication we began discussing, the organization is not of the people of the Commonwealth of the Northern Mariana Islands, who were so eloquently and ably represented at this Council's fifty-third session by the popularly elected Lieutenant-Governor; rather the petitioners represented an organization entitled

(Mr. Buczacki, United States)

the Commission on Trusteeship Agreement Termination. That is what my statement was intended to clarify.

I would take this opportunity to reiterate that since so much of the document in question has been read into the record by, I believe, four separate petitioners, it really does not seem to be necessary to publish it again in the form of an official document.

The PRESIDENT: Perhaps I might remind members that I sought their guidance not on the status of the petitioners that have addressed us but on whether a certain document should be published.

Having listened to the remarks that have now been made, I think that - on various grounds, and cost is certainly one of the arguments I have listened to, and I think it is of significance since we receive a very large number of documents - I must conclude that it is not reasonable that any organization with finite resources should have to publish and distribute every document that is addressed to it. I am also persuaded by the arguments I have heard to the effect that the views expressed in the document have already been well presented to the Council and will appear in the verbatim record.

I shall therefore inform those who have submitted the document to us that it will not be possible to publish it as an official document of the Trusteeship Council.

I think that we have some time before we adjourn for lunch that members could use to put questions to the representatives of the Administering Authority, if they so wished.

Mr. BUCZACKI (United States of America): As we have now come to that part of the agenda at which questions are put to the Administering Authority, it has come to our attention that certain information and materials that we would wish

(Mr. Buczacki, United States)

to have at hand for that purpose are not now with us; we did not anticipate that we would actually arrive at this point so early in our proceedings. I wonder if the members of the Council and you, Mr. President, would consider adjourning for lunch a half an hour early. We would be prepared to come back a half an hour early for our next meeting, if that would be agreeable.

The PRESIDENT: I think we must accede to the request of the representative of the United States. However, I think it would perhaps be unreasonable to start again at 2.30 p.m. I therefore propose that we meet again at 3 o'clock, when I trust the representatives of the Administering Authority will be able to answer our questions.

The meeting rose at 12.30 p.m.