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Fifty-fourth Session

VERBATIM RECORD OF THE SIXTEEN HUNDRED AND TWENTY-SEVENTH MEETING

Held at Headquarters, New York,
on Wednesday, 13 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)

- Organization of work

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The meeting was called to order at 10.45 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: I invite the petitioners who appeared before the Council yesterday to take their places at the petitioners' table. I also invite the following petitioners who are scheduled to speak today to take places at the petitioners' table: Mr. Pedro Guerrero, Mr. Pedro Atalig, Mr. Larry Hillblom, Mr. Elias Okamura and Mr. Jose Lifoifoi from the Northern Mariana Islands; Mr. Roger Clark, International League for Human Rights; Mr. Douglas Faulkner; Mr. Peter Watson, Foundation for the Peoples of the South Pacific; Mr. Jeton Anjain, Rongelap Atoll, Marshall Islands; and the Reverend David Williams, Micronesia Coalition, National Council of the Churches of Christ in the United States of America.

At the invitation of the President, Mr. Pedro Guerrero, Mr. Pedro Atalig, Mr. Larry Hillblom, Mr. Elias Okamura, Mr. Jose Lifoifoi, Mr. Roger Clark, Mr. Douglas Faulker, Mr. Peter Watson, Mr. Jeton Anjain and the Reverend David Williams took places at the petitioners' table.

The PRESIDENT: I have already indicated that members of the Council would have an opportunity to put questions to yesterday's petitioners. I propose to delay that phase of our work in case those petitioners join us later. We shall therefore proceed with the hearing of this morning's petitioners and then pause to give members of the Council an opportunity to put questions if they wish to do so.

I call first on Mr. Pedro Guerrero of the Northern Mariana Islands.

Mr. GUERRERO: Mr. President, on behalf of the Commonwealth of the Northern Marianas Task Force on United Nations Termination of Trusteeship Status and the people of the Commonwealth of the Northern Mariana Islands (CNMI), we congratulate you on your election to the presidency of this body and we thank you for giving us the opportunity to be present here today to address this Council as regards the political relationship of the people of the CNMI and the United States Government agreed upon in the Covenant "to establish a Commonwealth of the Northern Marianas".

This statement is being presented by the Commonwealth of the Northern Marianas Task Force on United Nations Termination of Trusteeship Status, an entity created by statute duly enacted by the Legislature and signed into law by the Governor of the Commonwealth of the Northern Mariana Islands. The Task Force is composed of myself, Pedro R. Guerrero, Chairman and member of the CNMI House of Representatives; Pedro M. Atalig; Larry L. Hillblom; and Elias Okamura. The Task Force is also accompanied today by Peter Doinnici, Carl Gueterez and José C. Tenorio. Also present is our Washington representative, Frilon C. Tenorio and some of his staff from Washington. The members of the 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 CNMI.

With this brief statement, we have distributed the CNMI Joint House resolution No. 5-14 which recommends that Trusteeship status of the CNMI be terminated on the basis of the understanding of the people and the Government of the CNMI concerning the meaning and interpretation of the "Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America". That understanding and interpretation is contained in a document entitled "Self-Determination Realized", which is submitted herewith and which was

(Mr. Guerrero)

incorporated by reference into said House Joint resolution No. 5-14 by the CNMI Legislature. We respectfully request that the Trusteeship Council include a copy of the Covenant House Joint resolution No. 5-14 and "Self-Determination Realized" together with the amendment thereto into the permanent record of proceedings of the Council.

The issue at present before this Council is whether to recommend that the trusteeship status of the Trust Territory of the Pacific islands, in general, and the CNMI, in particular, should be terminated. We are here to address the limited issue concerning the CNMI, but much of what we have to say impacts all of Micronesia.

We begin by noting that the Trusteeship Agreement, in article 6, mandates that the United States foster the political, economic, social and educational development of the inhabitants of the Territory. Foremost among the considerations articulated in article 6 is promotion of political development of the people "... toward self-government or independence ..." according to the freely expressed wishes of the peoples concerned.

The people of the CNMI have appropriately and freely expressed their wishes for self-government in matters of internal concern in conjunction with their execution of the Covenant. The Covenant also establishes a political association with the United States in which responsibility is delegated to the latter respecting international affairs and military and security matters.

In view of the above quoted language from article 6 of the Trusteeship Agreement, it would seem clear that this Council should recommend termination of Trust status only upon a clear and unambiguous commitment by the United States that the CNMI shall enjoy either "self-government or independence" with respect to its internal affairs. Such self-government is assured so long as the interpretation and construction of the Covenant is consistent with the considerations articulated in

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the attached document, "Self-Determination Realized", which was distributed to most members of the Council.

Given that the CNMI has no voting representation in the political decision-making processes of the United States Government, it would be an intolerable situation for the people of the CNMI to have their local and internal affairs dictated by a Government whose seat of power is located nearly 10,000 miles from them and whose decision-makers are wholly unfamiliar with their social and cultural customs and institutions. Such a situation would be the epitome of colonialism and completely contrary to the mandate of self-government.

It was, and is, for this reason that the founding pillar of the Covenant, section 103, expressly provided:

> "Section 103. The people of the CNMI will have the right of local self-government and will govern themselves with respect to internal affairs in accordance with a Constitution of their own adoption."

The Task Force on behalf of the people of the CNMI now appears before this Council in support of the termination of the trusteeship status of the CNMI upon a finding by the Trusteeship Council that the Covenant as explained in the document "Self-Determination Realized" complies with and carries out the requirement of article 6, section 1, of the Trusteeship Agreement.

We believe that the terminating resolution itself should and indeed must include reference to the continuing obligation to respect Covenant section 103's guarantee of CNMI self-government and control over internal affairs as opposed to foreign affairs and defence given to the United States under section 104. Any agreement between the CNMI and the United States which does not include such a guarantee would be void under the Trusteeship Agreement.

(Mr. Guerrero)

We worry that without this continuing obligation expressly appearing in the resolution itself, as a matter of record, this solemn obligation to respect the CNMI's right to self-government will, with time, be forgotten by certain administrative officials acting for the United States.

Recently we have experienced serious challenges by such officials to the guarantees of section 103. For example, some United States officials have stated that certain United States laws not included in section 502 of the Covenant should nevertheless be applied in the CNMI, even though such laws interfere with principles of CNMI self-government. Also, other officials have argued that the territorial and commerce clauses of the United Staes Constitution apply to the CNMI, even though those provisions are not applied to the CNMI in section 501 of the Covenant. In both instances, we fear that the United States officials involved seek to impose their laws in ways not authorized by the Covenant to regulate the internal affairs of the people of the CNMI in violation of section 103 of the Covenant. Moreover, efforts to resolve differences through the negotiation procedures of section 902 of the Covenant have not been successful.

The recognition by this Council of the critical nature of CNMI self-government to the ultimate termination of trusteeship status would be instructive to the section 902 negotiation process and avoid the potentiality for more difficult alternative procedures, such as judicial enforcement under section 903 or the option under the Javits amendment to the congressional resolution approving the Covenant, which anticipates giving the people of the CNMI the "option to review their decision" to enter into the Covenant.

(Mr. Guerrero)

The problem areas noted above are but a few examples of what the people of the CNMI perceive to be an evolving problem of enormous proportions. They indicate a desire or propensity on the part of certain United States officials to erode the solemn commitment to and cherished value of CNMI self-government over its own internal affairs.

To fulfil the obligations imposed by the Trusteeship Agreement and to avoid the terrible spectre of neo-colonialism, the Council must, as an express and specific condition to trusteeship termination, assure that there are in place clear and unambiguous documents protecting the people of the CNMI in their inalienable right to self-government. The Task Force and the people of the CNMI believe that the Covenant, as construed by the document "Self-Determination Realized", is such an unambiguous and enforceable protection of CNMI self-government.

Therefore, the Task Force on behalf of the people of the CNMI respectfully requests the Council to recommend termination of the trusteeship status of the CNMI on the basis of the United States specific and unambiguous commitment to respect CNMI self-government as expressed in the documentation herein presented. The other members of the Task Force will fully explain why the Covenant complies with article 6 of the Trusteeship Agreement. With this I ask Mr. Atalig to begin with his presentation, and he will be followed by Mr. Okamura and Mr. Hillblom. Honourable Speaker Jose R. Lifoifoi will make the closing remarks.

The PRESIDENT: I thank Mr. Guerrero. I call now on Mr. Pedro Atalig of the Northern Mariana Islands.

Mr. ATALIG: The United States Ambassador and the Trust Territory High Commissioner reported to the Council two days ago that the Northern Marianas has exercised its right to self-determination and that a democratic system of self-government is in place in the Northern Marianas. We fully agree that such a system is in place and that the Northern Marianas is fully self-governing in local

(Mr. Atalig)

and internal matters. Matters of defence and foreign affairs are handled by the United States. It would be absurd for a Government 10,000 miles away, in which we have absolutely no participation, to dictate or govern internal or local matters. Thus, section 103 of the Covenant, which provides for a system of democratic self-government over local or internal matters, is the most fundamental and important provision of the political relationship. Section 103 of the Covenant fulfils the obligations of the Administering Authority and the United Nations to the inhabitants as set forth in article 6 of the Trusteeship Agreement.

The Council and the parties to the Covenant must fully understand the nature of the political relationship established to avoid potential conflict and dispute. Why? Because the Northern Marianas will not have the Trusteeship Council for redress, and the Northern Marianas, under the Covenant, does not have representation in the United States Congress.

The political relationship between the CNMI and the United States can best be described as creating a shared and qualified sovereignty. That is, the CNMI has agreed to cede a certain share of its inherent sovereignty to the United States on the condition that the United States exercise its power only in the areas of defence and foreign affairs. In essence, the United States is the recipient of a grant of qualified sovereignty, much like a party who acquires an easement over a parcel of property belonging to another party. While the recipient may have complete control over the easement, he has no right to encroach on any other portion of the owner's property without the consent of the owner. Similarly, the degree of control granted to the United States is expressly limited by the terms of the Covenant:

> "The people of the Northern Mariana Islands will have the right of local self-government and will govern themselves with respect to internal affairs in accordance with a Constitution of their own adoption."

(Mr. Atalig)

Section 104 of the Covenant provides:

"The United States will have complete responsibility for and authority with respect to matters relating to foreign affairs and defence affecting the Northern Marianas."

Like the territorial principle stated in the case of Challoner v. Day and Zimmerman, Inc., 512 F.2d 77:

"A nation is understood to cede a portion of her territorial jurisdiction when she allows the troops of a foreign nation to pass through her dominions".

The CNMI has agreed to cede a portion of its territorial jurisdiction by allowing United States sovereignty over its external affairs.

The continuing political relationship of the CNMI and the United States must necessarily be defined on the basis of the history of the Territory, the relevant United Nations objectives and Mandates, and the specific provisions of the Covenant. So viewed, certain considerations become clear. The United States has never been possessed of any inherent sovereign power over the CNMI and its people. The CNMI, in entering into a political union with the United States, is pursuing voluntary action as a sovereign, entering into a consensual and mutually beneficial relationship. In exercising its sovereignty and power to govern its own affairs, the CNMI has determined that it will be in its best interests to enter into a limited political relationship with the United States, and has delegated a limited quantum of sovereignty to the United States as specified in the Covenant. Accordingly, consistent with the United Nations mandate for self-government by the CNMI, the power of the United States to exercise governmental power vis-à-vis the CNMI is strictly limited to those powers expressly conferred through the Covenant.

Based on our understanding of the mandates of the United Nations trusteeship system and our unique position in relation to the United States, the people of the CNMI view the situation as follows: Under the Covenant, the CNMI retains a greater

(Mr. Atalig)

degree of inherent sovereignty than that held by Puerto Rico by virtue of Public Law 600 because, unlike Puerto Rico, we have never been a possession of the United States subject to its broad plenary power under the territorial clause of the United States Constitution. We are not, nor have we ever been, a United States Territory. Annexation was considered and rejected. There was no acquisition of the islands by treaty or by conquest, and title to the islands has never rested in the United States. The same is not true of Puerto Rico. In other respects, however, the current relationship between the United States and Puerto Rico is quite similar to that established by the Covenant:

> "The Commonwealth relationship embodied in the Covenant is patterned after the relationship between the United States and Puerto Rico as well as the relationship between the United States and the Territory of Guam, though it contains a number of significant features not present in either of those relationships."

In the hierarchy of dually sovereign relationships to the federal Government, the CNMI stands in a wholly unique position. Our concern is that this position be fully understood by the United Nations, the United States, and the CNMI, at the time of termination so that the record reflects a responsive framework in anticipation of any future dispute. The Covenant, properly understood, successfully provides this framework, and reflects the intent of both parties, that it stands as the inviolable definition of their mutual rights and obligations. In an article by Leibowitz, entitled "The Marianas Covenant Negotiation", which closely examines the Covenant negotiations which occurred between 1972 and 1975, concluding that the result was:

> "the first time in the history of the United States territorial affairs, that the federal government agreed to an unambiguous limitation on its power".

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It is further stated that

"the Covenant was a unique method of expanding the Union. Previous acquisitions were made by purchase or by treaty. Regardless of the method of acquisition, the Federal power to unilaterally restrict the local government and its political and economic relationship with the United States was accepted. The term 'covenant' was used to remove the Marianas agreement from these precedents and to require the Federal Government, not only morally but also legally, to carve out the terms of the agreement. Its use in American law is unprecedented, but its intention was to convey the solemn and binding character of the agreement."

While the opening sentence of the quotation erroneously implies that the Commonwealth of the Northern Mariana Islands was an 'acquisition', the author correctly observes that the carefully designed relationship embodied in the Covenant was intended to be uniquely solemn and binding. Our consent to the termination of the Trust was granted only given recognition and assurance that the terms of the Covenant would be treated as such.

Because the concept of sovereignty is, under any circumstances, an imprecise one, it becomes all the more essential in terminating the Trust status of the Commonwealth of the Northern Mariana Islands to attempt to define the respective powers of the Commonwealth of the Northern Mariana Islands and the United States with as great a degree of specificity as is possible under the circumstances. In a practical sense, sovereignty is largely a matter of degree. Some States enjoy more power and independence than other States. This leads to the familiar distinction between independent sovereign States and non-independent, or non-sovereign, States or entities, for example protectorates and colonies. Even here it is difficult to

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draw the line, since although a State may have accepted important restrictions on its liberty of action, in other respects it may enjoy the widest possible freedom. Sovereignty is therefore a term of art rather than a legal expression capable of precise definition.

To assure that the imprecise nature of sovereignty as an abstract concept should not serve as a basis for intrusion upon the right of the Commonwealth of the Northern Mariana Islands to self-determination, it must be recognized that any attempt made by the United States to exercise power with respect to the Commonwealth of the Northern Mariana Islands must be based on the precisely delineated power outlined in the Covenant. The limited delegation of sovereignty to the United States shall be strictly confined to the following: the United States shall have responsibility and authority with respect to foreign affairs and military defence affecting the Commonwealth of the Northern Mariana Islands; the Covenant specifies the general form and structure of the governmental organization of the Commonwealth of the Northern Mariana Islands; the designation of Commonwealth of the Northern Mariana Islands citizens as citizens of the United States; the designation and description of the jurisdiction of the District Court for the Northern Mariana Islands and its relationship to other courts of the United States; the designation of the specific provisions of the United States Constitution explicitly made applicable to the Northern Mariana Islands through the Covenant and the procedure for making applicable additional provisions through mutual approval and consent; the Northern Marianas will be deemed to be part of the United States under the Immigration and Nationality Act only to the limited extent specifically indicated in the Covenant; and the United States must resolve disputes and other matters such as financial assistance exclusively through the provisions

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found in article VII and sections 902 and 903 of the Covenant, and not act unilaterally. As to section 902, both parties have an implied obligation to bargain and negotiate in good faith, and not act unilaterally.

There are additionally several procedural provisions empowering the United States Government, for example, to impose excise taxes in the Commonwealth of the Northern Mariana Islands, the proceeds of which would be turned over to the Northern Marianas, and for United States administration of the Social Security retirement fund. In all other respects the sovereignty of the Commonwealth of the Northern Mariana Islands and its autonomy over all its internal affairs are mutually recognized by both parties and legally enforceable against any encroachment by the United States.

This sovereignty, unlike that delegated in a strictly limited manner to the United States, is expansive, in that with respect to the particular areas delineated in the Covenant, the people of the CNMI enjoy the widest possible freedom and liberty of action. The sovereignty retained by the CNMI when it entered into the Covenant relationship is plenary. Some examples of the immediate application of such sovereignty may be outlined as follows:

First, the people of the CNMI has the right to self-government and is assured the right to govern itself with respect to its internal affairs in accordance with a constitution of its own adopting. The Government of the Northern Mariana Islands shall not be considered an agency or instrumentality of the United States Government.

Second, the people of the CNMI has the right to formulate and approve its own constitution subject only to initial United States approval, which has been done.

(Mr. Atalig)

Third, the legislative power of the CNMI is vested in a popularly elected legislature.

Fourth, the Northern Marianas retains judicial power over all matters not subject to the exclusive jurisdiction of the United States courts.

Fifth, the CNMI consents to the applicability of certain specific provisions of the United States Constitution, as we are in agreement on the principles thereby established and as such applicability is administratively convenient.

Sixth, all pre-existing laws of a local nature applicable to the CNMI and not inconsistent with the Covenant or applicable Federal law remain in force and in effect unless altered by the Government of the Northern Mariana Islands.

Seventh, the CNMI governs its own tax system, beginning with a mirror tax code, as is in place in Guam, as a local territorial income tax similar to that of Puerto Rico, as well as having the authority to impose or rebate any other taxes it deems appropriate. All bonds of the CNMI shall be tax-free and during periods of financial assistance from the United States the amount of the tax-free bonds shall be limited to 10 per cent of the value of the property in the CNMI.

Eighth, upon termination of the Trusteeship Agreement, all right, title and interest of the Government of the Trust Territory of the Pacific Islands in and to the real property in the CNMI shall be transferred to the Government of the Northern Mariana Islands.

Finally, the Government of the Northern Mariana Islands may regulate the alienation of permanent and long-term interests in real property.

Those examples represent a sampling of areas in which the CNMI remains completely autonomous in its exercise of power. It must be recognized that the Constitution and the laws of the United States do not apply of their own force in the CNMI because the CNMI is neither an instrumentality of the United States

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Government nor one of the states of the Union. Certain provisions of the United States Constitution, statutes and administrative regulations will have effect within the CNMI only because the CNMI in the exercise of its own sovereign power voluntarily consented to their application through the Covenant. Later amendments to the United States Constitution can be adopted by the CNMI but do not have to be. The CNMI may have a bicameral legislature of which one house is not based on population. That is but one of the many examples of the Constitution of the United States not applying to the Government of the CNMI unless required by the Covenant.

It is imperative to recognize that the law governing the internal affairs of the CNMI cannot be imposed by unilateral action on the part of the United States. Only those statutes of the United States which were in existence on the effective date of the Covenant, and amendments to those specific statutes which are not violative of the Covenant - in particular, the guarantee of self-government defined in section 103 thereof - are applicable to the CNMI. The keystone of the Covenant is section 103, which mandates CNMI self-government concerning such internal affairs. That interpretation necessarily follows from article 6 of the Trusteeship Agreement, which expressly states that

"In discharging its obligations under Article 76 (b) of the Charter, the Administering Authority [in this case the United States] shall

"... promote the development of the inhabitants of the Trust Territory towards self-government or independence".

(Mr. Atalig)

It would seem clear, then, that the Trusteeship can be terminated only upon satisfaction of the specific goal articulated in article 6. In the cases of the Federated States of Micronesia and the Republic of the Marshalls, the choice was independence through the Compact of Free Association, under which Micronesian entities exercise full power of self-government as to internal and foreign affairs and voluntarily delegated to the United States responsibility for security and defence matters. The CNMI, through the Covenant, achieved equal power of self-government respecting local and internal matters but voluntarily delegated responsibility to the United States with respect to both foreign affairs and security and defence.

What is clear, however, is that, under article 6 of the Trusteeship Agreement, the trustee status of any of the Micronesian entities cannot be terminated in the absence of an unambiguous commitment by the United States that it has accorded independence, or at least full and effective self-government respecting internal affairs, to each entity subject to the Trusteeship Agreement.

If, after termination, the United States were to exercise the power to unilaterally impose its law to govern the internal affairs of the CNMI, such would constitute a form of prohibited colonization. It is to be understood that section 103 of the Covenant strictly prohibits such unilteral imposition of United States law. Moreover, in sections 501 and 502 of the Convenant, the CNMI, exercising its right to govern itself, has voluntarily adopted certain United States constitutional and statutory provisions in existence on the effective date of those Covenant sections. Indeed section 504 of the Covenant anticipated the appointment of a Commission on Federal Laws, which would consider which United States laws should apply in the CNMI, based on:

> "... the potential effect of each law on local conditions within the [CNMI], the policies embodied in the law and the provisions and purposes of this Covenant".

(Mr. Atalig)

Obviously, since the United States laws in question were or will be enacted by a government in which the CNMI and its residents have no voting representation, involuntary imposition of same on the CNMI would violate the Covenant's mandate of CNMI self-government over its internal affairs and raise the spectre of colonialism. Such a scenario would violate the provisions and purposes of the Covenant as well as article 6 of the Trusteeship Agreement.

Inasmuch as the Commission on Federal Laws is no longer in existence, it should be clear that any differences between the United States and the CNMI concerning the applicability of laws in the CNMI must be resolved through the mechanism provided by section 902 of the Covenant. To the extent that any such United States laws impact local CNMI affairs, they cannot be imposed on the people of the CNMI without the latter's consent.

In the final analysis, no termination of the trusteeship status of the CNMI can be recommended or approved by the United Nations until such time as it is satisfied, pursuant to article 6 of the Trusteeship Agreement, that the independence or self-government of the CNMI is assured under the Covenant and that the United States is effectively prohibited from unilaterally imposing its laws on matters of local and internal affairs within the CNMI.

Now, Mr. President, Mr. Elias Okamura would speak in regard to the Covenant as a contract.

The PRESIDENT: I call upon Mr. Elias Okamura.

Mr. OKAMURA: When the United States enters into a contract with another party it has rights and incurs responsibilities similar to those of individuals who are parties to such instruments.

Perry v. United States, 294 US 330:

"It is as much beyond the power of a Legislature, under any pretense, to alter a contract into which the government has entered with a private

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individual as it is for any other party to a contract to change its terms without the consent of the person contracting with him. As to its contract the government in all its departments has laid aside its sovereignty, and it stands on the same footing as private contractors."

Sinking Fund Cases, 99 US 700, 731-32:

"The Northern Marianas political status agreement is called a 'covenant'. A covenant is a binding agreement like a contract or compact ... the relationship between the United States and the Northern Marianas will be a permanent one which in its fundamental respects will not be able to be changed by one party without the consent of the other."

Viewed from a contract perspective, if the agreement is subject to unilateral change on the part of either the United States or the Commonwealth of the Northern Mariana Islands (CNMI), then it is clearly illusory and, as such, invalid. However, the Covenant is actually effective and supportable, but only in so far as it may be construed to disallow any unilateral change respecting a fundamental provision. Since we have concluded that every provision of the Covenant which relates, in any way, to the CNMI's ability to exercise its autonomy over its own internal affairs must be taken as fundamental, then it must similarly be recognized that to allow a unilateral change in any area would effectively destroy the purpose, effectiveness and validity of the Covenant.

The CNMI and its people have entered into the Covenant with the United States and hereby support termination of trust status materially and expressly relying on the analysis present in this position paper. It should be further noted that the CNMI, in entering into the Covenant and now favouring the termination of its Trust Territory status, has been and is additionally and materially relying upon provisions in the Constitution of the United States, including, but not limited to, the Fifth Amendment thereto, which inherently limits any branch or agency of the

(Mr. Okamura)

United States Government from taking action which has the effect of unilaterally modifying or repealing, in whole or in part, any fundamental or material provisions of the Covenant. Specifically, it is the position of the CNMI that the Fifth Amendment protects its liberty and property interests from any infringement such as would be caused by the attempts of the United States unilaterally to modify or adversely affect its right to govern its own internal affairs.

(Mr. Okamura)

In article 1, section 10, the United States Constitution expressly forbids states from impairing the obligations of contracts. I would refer to United States Trust Company v. New Jersey, 431 US 1 (1977). The due-process clause of the Fifth Amendment applies to restrict the Federal Government from retrospectively modifying or repealing contracual terms or other rights. Thus, for example, in Lynch v. United States, 292 US 571 (1934), the Supreme Court of the United States ruled that rights against the United States arising out of a valid contract are protected by the Fifth Amendment. As one commentator observes:

"When Congress attempts to alter its own obligation of contract, the Court will give force to its traditional bias against retroactive legislation and rely on the due-process clause of the Fifth Amendment to test the constitutionality of the impairing legislation."

The CNMI gains comfort in relying on these principles and authorities for the position that any attempt by the United States unilaterally to modify or repeal any provision of the Covenant which in any way relates to the CNMI's solemn right to self-governance of its internal affairs will be prohibited under United States Constitutional law.

The PRESIDENT: I now call upon Mr. Larry Hillblom.

Mr. HILLBLOM: We are concerned that the limited sovereignty ceded to the United States by the Covenant not be defined by the United States more broadly after termination than was intended by us when originally agreed to in 1975. Termination of the Trusteeship is appropriate only with the understanding that the Covenant be viewed expansively with respect to the rights of the people of the Commonwealth of the Northern Marianas Islands (CNMI) and narrowly with respect to the unilateral authority of the United States under section 105 of that Covenant. This interpretation is particularly logical in view of the United States obligation as Administering Authority under the Trusteeship. The primary interests protected

(Mr. Hillblom)

in the Covenent Agreement are those of the inhabitants of the Territory. During the Covenant negotiations, the United States was obligated to treat those interests as paramount, and the legislative history of the Covenant as we now present indicates that this solemn duty was met. However, although the interests of the inhabitants were recognized as paramount in 1976, we request in any terminating resolution that the same meaning be perpetuated when the Covenant is interpreted currently and, more particularly, as it would be interpreted in the future. For this reason we wish to highlight several aspects of the Covenant Agreement which we think will be the most reliable defence against encroachment on the part of the United States upon what we understand are our inviolable sovereign rights to self-government.

First of all we note that excluded from the list of United States constitutional provisions to which we voluntarily submitted under the Covenant is the territorial clause, article IV, section 3, clause 2. We consented to the applicability of the specific constitutional provisions listed in section 501 in the belief that their operation within the system would guarantee our people rights which we deem important without encroaching on our coextensive right to self-government and self-determination. The fact that the territorial clause is not among the constitutional provisions included is consistent with the views expressed herein concerning the CNMI's authority to govern its own internal affairs. Its exclusion is intended to ensure against Congress's use of an independent plenary source of power to encroach upon the sovereign prerogatives of the CNMI. In short, Congress is not authorized under the guise of the territorial clause of the United States Constitution to designate or treat the CNMI as a United States Territory and, by such rubric, impose rules and regulations in a manner which it considers to be appropriate for regulation of the internal affairs of the CNMI. Neither Congress nor any other branch of the United States Government may

(Mr. Hillblom)

utilize the territorial clause - or any other source of power, for that matter - to supersede the sovereign power of the CNMI to control and regulate matters of local concern.

Secondly, section 105 of the Covenant mandates a clear limitation on the authority of the United States to legislate with respect to the CNMI in any way that might modify a fundamental term of the Covenant. We are supporting termination of the Trusteeship Agreement with the clear understanding that the terms will be construed conservatively to the benefit of the people of the CNMI. Where a political union has been created between two entities of such disproportionate power, equity favours the construction of ambiguity in favour of the lesser Power. We believe that the Covenant, construed substantively, accords our interest that due respect.

The United States authority with respect to the CNMI emanates exclusively from the Covenant. There is no independent constitutional basis for the exercise of Federal authority over the CNMI. The territorial clause is the most explicit basis for the exercise of Government authority over areas which are not states but which are nevertheless subject to some level of United States control. That clause represents a broad grant of plenary power to Congress to

> "make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States."

Therefore, the United States does not at present have broad plenary power over the CNMI pursuant to the territorial clause.

To the extent the CNMI never granted and, in fact, reserved to itself sovereignty over internal affairs and other matters set out in the Covenant, the territorial clause is inapplicable. The relationship between the CNMI and the United States is governed exclusively by the Covenant, the very basis for termination. It represents the sole source of power ceded to the United States from

(Mr. Hillblom)

the CNMI. The relationship is distinguishable from relationships between the Federal Government and the several states, Territories, colonies or possessions. We are concerned and wish to protect against unilateral action on the part of the United States not sanctioned by the Covenant but which affects the right to self-determination. In defence of such legislation, certain United States employees might argue that the territorial clause is an independent source of sovereignty over the CNMI. But that clause is not an independent grant of sovereignty; rather, it authorizes Congress to act within the realm of previously established sovereignty. It is clear that the Covenant is the only basis for the United States exercise of sovereignty over the CNMI, and we must look only to the specific grants in the Covenant to define the parameters of that sovereignty. It would defy the boundaries of fairness and logic to allow the territorial clause to be used as an independent source of sovereignty. To clarify this concept we will look to the case of Puerto Rico, where the United States in fact gave up sovereignty over the internal affairs of that Commonwealth. In looking to Puerto Rico, however, we must remember that the United States at one time enjoyed full sovereignty there; by contrast, it never had sovereignty over the internal affairs of the CNMI. With this important difference in mind, several similarities between the CNMI and Puerto Rico serve to reinforce the degree of sovereignty absolutely protected from United States intrusion by the Covenant.

(Mr. Hillblom)

Puerto Rico was ceded to the United States by the Treaty of Paris and it became a Territory or colony governed by the United States under a system of delegated powers granted by the territorial clause. Between 1899 and 1950 those powers were exercised pursuant to two organic acts which provide for the internal government of Puerto Rico. However, Puerto Rico's status as a Territory under complete United States control changed significantly in 1950 with the passage of Public Law 600, which provided "for the organization of a constitutional government by the people of Puerto Rico", and was approved in the nature of a compact. Through Public Law 600 Puerto Rico was granted a right to self-determination far beyond that it had known as a completely subordinate Territory and instrumentality of the United States Government. After reciting that "the Congress of the United States by a series of enactments has progressively recognized the right of self-government of the people of Puerto Rico", it was enacted:

> "That, fully recognizing the principle of government by consent, this Act is now adopted in the nature of the compact so that the people of Puerto Rico may organize a government pursuant to a constitution of their own adoption."

The power that the United States exercised over Puerto Rico previously had been based upon Spain's force of conquest. The new political status within the American political system rests on the consent of its people.

Although Puerto Rico entered into a relationship as a possession - unlike the CNMI - the current relationships are quite similar to the extent that both came into existence in furtherance of the right of self-government by formerly dependent peoples. In fact, Public Law 600 and the United Nations Trusteeship System can be viewed as parallel byproducts of a strongly anti-colonial tenor of post-war foreign relations, a sentiment which actually began as early as the League of Nations. The status acquired by Puerto Rico in 1952 was new and thoroughly unique in the

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spectrum of United States territorial relationships. It demonstrated for the first time that a flexible association between the United States and a formerly Non-Self-Governing Territory, not necessarily fitting within the territorial categories previously defined, is politically feasible. The addition of this precedent contributed greatly to the opportunity which emerged for the CNMI for the first time in the early 1970s. It enabled the CNMI to pursue and form a similarly unique relationship in that the CNMI retains an unusually wide degree of independence over internal matters, yet gains the benefits of a close association with the United States over foreign affairs and security.

The right to self-government gained by Puerto Rico by the passage of Public Law 600 was an accession to sovereignty where none previously existed. In contrast, on termination of the trusteeship the CNMI will take control of the inherent sovereignty recognized as belonging to it in 1947 and protected for the past 40 years by the Trusteeship Agreement. The most important similarity between the two relationships is the idea that consent of the governed is the crucial element in recognizing the right to self-determination by formerly dependent peoples. With respect to the CNMI, this idea is embodied in the "freely expressed wishes of the people" clause of Article 76 of the United Nations Charter.

In the case of Puerto Rico the principle of consent recognized in Public Law 600 has been construed to mean that Puerto Rico no longer falls within the purview of the territorial clause, despite its having been governed entirely pursuant to that provision prior to 1952:

> "From 25 July 1952, on which the Commonwealth of Puerto Rico was born, Puerto Rico ceased to be governed by the unilateral will of Congress; now it is being governed by the express, though generic, consent of its people through a compact with Congress. Whatever authority was to be exercised over

(Mr. Hillblom)

Puerto Rico by the Federal Government would emanate therefrom, not from article IV of the Constitution, but from the Compact itself, voluntarily and freely entered into by the people of Puerto Rico."

There is a whole series of cases in United States courts which acknowledge that, but I shall cite only Mora v. Mejias, 115 F. Supp. 610.

The judicial definition of Puerto Rico's status since the passage of Public Law 600 represents a remarkable development in the history of its otherwise ordinary territorial relationship with the United States. Its rise to internal self-government status is equally remarkable against the broader background of United States territorial relations in general. The relationship between Puerto Rico and the United States boldly illustrates the delicate balance struck in modern territorial relations. The limits on each party's power are of the utmost importance. With respect to the CNMI, like Puerto Rico the relationship was designed in sufficient detail to determine where sovereignty resides in most cases. The boundaries are fairly unambiguous. However, in some cases, lines will meet, and that is where we request that the construction of the Covenant be treated with the highest regard. The precedent set in Puerto Rico is directly relevant. In a relationship which confers commonwealth status and the right to self-government on a formerly dependent Territory, the source of federal authority to act with regard to the Commonwealth flows singularly from that agreement; it is not - and, in the case of the CNMI, never was - a broad, constitutional plenary power.

According to section 102 of the Covenant,

"The relations between the Northern Mariana Islands and the United States will be governed by this Covenant which, together with those provisions of the Constitution, treaties and laws of the United States applicable to the

(Mr. Hillblom)

Northern Mariana Islands, will be the supreme law of the Northern Mariana Islands."

That provision does not contemplate the territorial clause in any way.

According to section 105 of the Covenant:

"The United States may enact legislation in accordance with its constitutional processes which will be applicable to the Northern Mariana Islands... In order to respect the right of self-government guaranteed by this Covenant, the United States agrees to limit the exercise of that authority so that the fundamental provisions of the Covenant, namely, articles I, II and III and sections 501 and 805, may be modified only with the consent of the Government of the United States and the Government of the Northern Mariana Islands."

We view the quoted mutual consent provision as being vital to the protection of our inherent sovereignty under the Covenant.

As we have previously shown, it is unmistakable that the Covenant is a legally binding contractual commitment between the United States and the CNMI. Congressional action with regard to the Covenant represents a clear Congressional acceptance of this contract which had earlier been negotiated on behalf of the United States by the duly authorized representative of its President. As such the Covenant, as distinguished from certain legislative acts of Congress, may not be unilaterally amended, modified or repealed, in whole or in part, by subsequent action of Congress or any other branch or agency of the United States Government. The aforementioned established principles must guide, control and limit any future United States action with respect to the Covenant, particularly in view of section 105 of that document which is quoted above.

(Mr. Hillblom)

As is clear from the language of section 105, all provisions of the Covenant which in any way relate to the CNMI's right to self-government are unquestionably fundamental and may be modified by the United States only with the consent of the Government of the CNMI. The reference to fundamental provisions as "namely, articles I, II and III and sections 501 and 805" is provided by way of example and is not intended and must not be considered as an exclusive listing of the fundamental provisions of the Covenant. Indeed, examples of other fundamental provisions of the Covenant are found in articles VI and VIII and sections 103, 105, 501, 503, 601, 602, 607 and others.

(Mr. Hillblom)

This view of usage of the term "namely" in such documents is supported by the Louisiana case Garrison v. City of Shreveport, 154 So. 622. While the context is quite different the reasoning is directly on point. Garrison specifically held that use of the word "namely" is intended to particularize that which is too general without restricting the broader mandate of a statute:

"The office of the word 'namely' following a general grant of authority was not to exclude any particular municipal improvement which might reasonably be included within the general grant, but to make certain the inclusion of those specifically named."

Analogously, every material provision of the Covenant is reasonably included within the limiting mandate of section 105. In section 105, the "office of the word 'namely'" is found following a general limit on authority rather than 8 grant, but the same reasoning applies. The Covenant is the supreme definition of what is plainly a fundamental relationship; it follows that every material provision of the Covenant is "reasonably included" within the limiting mandate of section 105. There are clearly provisions in every article of the Covenant, not only articles I, II and III, that are fundamental to the rights reserved by the CNMI in their relationship with the United States. The fact that so many significant provisions would be excluded were the term "namely" provision be read as an exclusive list indicates that more than just the enumerated provisions are to be treated as fundamental.

This construction is further fortified by section 102, which unequivocally states "(t)he relations between the Northern Mariana Islands and the United States will be governed by this [not an amended] Covenant." It is clear that article 1, including section 102, cannot be amended.

(Mr. Hillblom)

If the "namely" clause is read as establishing an exclusive list, it means that every unnamed provision of the Covenant is potentially subject to unilateral modification by the United States. Clearly this was not the intent of the parties. Not only would such a construction be unreasonable in light of the overall objectives and interests at stake in the Covenant; it would make what is effectively a contract between the United States and the CNMI illusory and thereby invalid, and as such could not form the basis of termination under article 6. In any case, if section 105 is ambiguous, doubts must be resolved in favour of the CNMI and clearly section 102 cannot be amended, which means that any provision affecting the "relations" between the CNMI and the United States is fundamental and not subject to unilateral amendment, modification or qualification.

We have attempted to describe our Covenant so that this body could find that the Covenant as detailed fully complies with article 6 of the Trusteeship Agreement. We say this without reservation.

Further we believe any amendment or further terminating resolution must contain the admonition that all parties have given assurances they intend to comply with the Covenant as detailed and described in the documents presented.

We apologize to the Council for the length of our statement, but to terminate the trusteeship without a clear understanding of the agreement that would replace it would constitute an injustice to the Trusteeship Agreement and leave us answerable to future generations for negligence.

Our final speaker is the Honourable José R. Lifoifoi, Speaker of the House of Representatives of the Commonwealth of the Northern Mariana Islands.

The PRESIDENT: I should like to inform members that after we hear the next petitioner they will have the opportunity, if they so wish, to ask questions of the petitioners.

I now call on Mr. José R. Lifoifoi to present his petition.

Mr. LIFOIFOI: Mr. President and members of the Trusteeship Council, I am José R. Lifoifoi, Speaker of the House of Representatives of the Commonwealth of the Northern Mariana Islands - hereinafter referred to as the "CNMI". I am most honoured and grateful for this opportunity to address the Council. I am here to endorse the statements presented by the Task Force on this matter of critical importance to the people of the CNMI.

The people of Micronesia in general and of the CNMI in particular are devoted and fully committed to self-government. Some areas of Micronesia have chosen independence through Compacts of Free Association with the United States. We in the CNMI have chosen Commonwealth Status through a "Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America" - hereinafter referred to as "the Covenant".

Under the Covenant, just like the Compacts in other Micronesian areas, the CNMI is to have the power of self-government regarding its local and internal affairs. This inalienable right to govern ourselves is guaranteed to the CNMI by section 103 of the Covenant and mandated by article 6 of the Trusteeship Agreement.

We of the CNMI firmly believe that the Covenant does preserve our right to self-government, and we have set forth our understanding and interpretation of the Covenant's mandate of self-government in a most important document entitled "Self-Determination Realized."

The CNMI Legislature, in adopting House Joint resolution No. 5-14, endorsed by our Governor, has adopted and incorporated by reference that document in our joint resolution to demonstrate that "Self-Determination Realized" represents our official understanding and interpretation of the CNMI's right to self-government under the Covenant.

(Mr. Lifoifoi)

It is for that reason that we believe and strongly urge the Council to adopt and publish the document "Self-Determination Realized", and the amendment thereto, as an official document of the Trusteeship Council. The CNMI House Joint Resolution has already been so published under the symbol T/Com.10/L.366, dated 21 October 1986. "Self-Determination Realized", which is an integral part of the Joint Resolution, should be officially published as "Add.1" to "T/Com.10/L.366".

I was most gratified to hear the United States representatives to this Council expressly confirm their commitment to the CNMI's right to self-government. We have previously, in September 1986, presented our views and the document "Self-Determination Realized" to the Security Council and are pleased to have the opportunity to make this full presentation again to the Council. To assure that the people of the CNMI and their children and their children's children are accorded meaningful internal self-government we request that any resolution relating to termination of the trusteeship include the following language:

> "Mindful that the People of the CNMI have entered into the Covenant with the United States in order to assure their binding right to self-government and the guarantee of complete autonomy in the regulation of their internal affairs, and mindful that both parties, the CNMI and the United States, have given assurances that they will abide, now and in the future, with the terms of the Covenant, the Administering Authority has fully complied with their solemn obligation to promote self-government as expressed in article 6 of the Trusteeship Agreement."

The Covenant is our binding contract with the United States. It reflects a great deal of mutual compromise and concessions on both sides. We of the CNMI welcome our commonwealth status with and grant of United States citizenship by the United States. Also, we have delegated to the United States power over our international affairs and military and security matters.

(Mr. Lifoifoi)

However, we insist on maintaining our right to self-government as is required under article 6 of the Trusteeship Agreement. We would find it to be an intolerable situation and a violation of the Covenant if the United States attempted to use its legislative power - that is, under the commerce or territorial clauses - to impose its regulations upon the internal and local affairs of the CNMI.

Both the Trusteeship Agreement and the Covenant prohibit and condemn all forms of colonialism with respect to the United States relationships with Micronesia. The United States seat of government is nearly 10,000 miles away from the CNMI and the CNMI has no voting representation in the United States Government's political decision-making processes. Officials of the United States are wholly unaware of social and cultural customs and institutions in the CNMI. Under these circumstances, any attempt by the United States to impose its laws to regulate the local affairs of the people of the CNMI would be a prohibited form of colonialism and a flagrant violation of the solemn obligation to respect CNMI's self-governance as required by the Covenant and the United Nations Trusteeship Agreement.

In summary, then, I am most happy, on behalf of the people and the Government of the CNMI, to recommend termination of the CNMI's trusteeship status. However, of equal importance, we, the people of the CNMI, plead with and strongly urge the Trusteeship Council to include in its resolution recommending termination certain clear and unambiguous language which will establish a continuing obligation for the United States to respect the solemn commitment to CNMI self-government over its own local and internal affairs.

The PRESIDENT: I thank Mr. Lifoifoi for his petition. As members of the Council will have heard during that petition, he has asked that a certain document from the Northern Marianas, entitled "Self-Determination Realized" should be

(The President)

published as an official document of the Council. I have arranged for copies of this document, and the covering letter under which I received it, to be distributed to members of the Council. I am not suggesting that we should take a decision on this now, but I should just like to give members an opportunity to study the document, and I shall later be seeking members' views and guidance on whether we should agree to publish it as an official document.

As I indicated, I think we should pause now to see whether members of the Council have any questions, or comments, they wish to put to the petitioners who have addressed us this morning and yesterday.

Mr. BEREZOVSKY (Union of Soviet Socialist Republics) (interpretation from Russian): I should first like to say that the Soviet delegation attaches great importance to this part of the work of the Trusteeship Council, that is, having an opportunity to listen to statements by petitioners. We view the information with which they have provided us as extremely meaningful and important. We are grateful to them for this and we hope to receive the same kind of information in the future.

As regards the statements made by the petitioners today at this meeting, the Soviet delegation would like to study carefully the texts of those statements and at a subsequent stage - perhaps tomorrow, or when the President deems it appropriate - to put some questions to the petitioners and the Administering Authority.

Regarding the statements that were made by petitioners yesterday, we would like to make a point about the petition submitted to the Council by Mr. Weisgall, who in his statement yesterday touched upon a very important topic - that is, the question of the termination of the Trusteeship Agreement. Quite rightly, from the point of view of the principles and norms of international law, he demonstrated

(Mr. Berezovsky, USSR)

that what is being undertaken by the United States - that is the unilateral attempts to terminate the validity of the Agreement - is unjustified and, in fact, runs counter to the Charter of the United Nations.

We would like you, as a jurist, Mr. Weisgall, to go into some elements of your statement in more detail. In particular, you mentioned that the policy of the United States for the unilateral termination of the Trusteeship Agreement reflects, inter alia, a review of certain cases that are now going on in American courts. Could you now clarify this Mr. Weisgall? In respect of what cases exactly did this question arise? That is my first point.

My second point is that we would also like to ask you, Mr. Weisgall, to go over your comments on the substance of the petition you submitted yesterday and the comments that were made here by the representative of the Administering Authority after you spoke.

The PRESIDENT: Mr. Weisgall, would you like to respond?

Mr. WEISGALL: Let me address the second question first, if I may, requesting a comment on the response by the representative of the United States after I spoke yesterday, and then I will address the first question later.

The United States representative, Ambassador Byrne, was quite careful with her language, I believe. According to my notes, the point she made was that resolution 2183, passed by the Council last year, is conclusive on the issue of the implementation of the Agreements. I think she said words to that effect. She said that the question of the implementation of the Agreements is not before us today because that has been resolved completely by resolution 2183. That statement is partially correct, but I think it leads to perhaps a misunderstanding of the points I was raising yesterday.

(Mr. Weisgall)

In the course of my remarks I said, "This is a very obvious point, but let me belabour it for a moment". There are two very different documents and processes at issue here. One is the Compact of Free Association; that is a document negotiated between the United States and the Marshall Islands and between the United States and the Federated States of Micronesia. The second is the Trusteeship Agreement. The focus of my remarks yesterday was on the Trusteeship Agreement.

I think Ambassador Byrne was perhaps accurate in her statement that resolution 2183 (LIII) is conclusive on the question of the implementation of the agreements. The Compact of Free Association, as a matter of domestic United States law, has been implemented. It is a public law of the United States: Public Law 99-239. It has been passed by the Congress; it has been signed by the President of the United States. I take no issue with anyone saying that the Compact has been put into force by the United States.

But that is not what I was talking about yesterday. I was talking about the second document: the Trusteeship Agreement. Has that document been terminated? That document was entered into by the United States on the one hand and the Security Council on the other hand. That document, I believe, has not been terminated. But more important, I do not believe that resolution 2183 (LIII) is conclusive on the issue of the Trusteeship Agreement, so I think that some clarification there is needed.

A second point: The Ambassador's attempt to argue after I and the second petitioner spoke that for some reason the issue of termination may not be before the Trusteeship Council is certainly not in the spirit of United States law, British law or, I believe, most principles of international law. There is a fundamental principle of law that virtually all courts apply. Put briefly, it is that a court always has jurisdiction to determine whether it has jurisdiction. The

(Mr. Weisgall)

point I was trying to raise yesterday concerned the validity of resolution 2183 (LIII) with respect to the termination of the Trusteeship Agreement. I may be completely wrong: it may be that for some reason the Trusteeship Agreement has magically terminated. But it seems to me that to raise the question in this body, to challenge the actions of the United States in seeking to assert that the Agreement has terminated, is a legitimate activity because it goes to that very question: it is questioning this body's jurisdiction.

The speakers from the Northern Marianas, who just preceded me, have raised some other questions, and I think there may be an interesting illustration in the legislative history of the Northern Marianas Covenant that touches directly on the questions before the Council. As members know, that Covenant was adopted by the United States back in 1976 - I believe it is Public Law 94-241. There is a very interesting passage in the authoritative Congressional report on the Covenant by the Senate Foreign Relations Committee, Senate report 94-596 of 1976:

> "At the time the Trusteeship Agreement with the United Nations is terminated, the President [of the United States] will issue a proclamation establishing the Commonwealth of the Northern Mariana Islands. According to documentation supplied to the Foreign Relations Committee, the Department of State recognizes it is obligated to seek Security Council approval of the termination of the Trusteeship Agreement".

For Ambassador Byrne, it could be that nothing could be more clear, as I think she said yesterday, than resolution 2183 (LIII) on the questions before the Council. I submit that the last quotation and the issues I raised yesterday at a minimum suggest that the issue is a very complicated and delicate one.

Let me turn to the first question raised by the representative of the Soviet Union, which concerns whether the issues I discussed yesterday have been raised in United States courts and what their status is.

(Mr. Weisgall)

Three separate cases arising out of the United States nuclear testing programme are currently pending in the United States claims court in Washington. One of them is called Juda v. the United States; this is United States claims court case number 172-81. That case has been pending for about six and a half years. The other two cases concern the people of Enewetak, in what is called the Peter case, and a group of 12 consolidated actions, called Nitol, involving plaintiffs from other northern Marshallese atolls, including Rongelap and Utirik. I am counsel for the people of Bikini in the Juda case.

Following the passage of the Compact by the United States Congress and its signature into law by President Reagan, the United States moved to dismiss those lawsuits on several grounds. One was that the issues raised in the lawsuits were political questions that should not be addressed by the courts. The second was that the section 177 agreement to the Compact effectively settled and espoused those cases and that they were therefore moot. The third argument was that article 12 of the section 177 agreement withdrew the courts' jurisdiction. Briefs were filed by both sides over a period of some 14 months, and oral argument in the case was heard last month in Washington. At the end of oral argument, the judge ruled in plaintiff's favour - in favour of the Marshallese - on two of the three issues. He said he did not believe this was a political question which would effectively allow him to go to the merits of the case. He said he intended to rule for the Marshallese on the espousal issue - he did not give his reasons. On the third question, of his own jurisdiction, he asked for more briefs on two questions. The first boils down to the question of whether the Compact and subsidiary agreements to it are in effect, and the second is whether the United States Congress can pass a law withdrawing the judge's jurisdiction in a pending case.

(Mr. Weisgall)

The first question of whether the Compact is in effect is really one of the issues that I and other petitioners yesterday and today are addressing. It involves that nexus between the Compact on the one hand and the Trusteeship Agreement on the other hand. If the Compact is in effect as a matter of United States domestic law, does that mean somehow that the Trusteeship Agreement has terminated. One of the questions I asked the members of this Council to put to the United States - since a petitioner cannot do that - was whether the political status of trusteeship is inconsistent with the political status of free association.

(Mr. Weisgall)

I would submit that the very simple answer is yes, you cannot be both. And if the Trusteeship Agreement has not terminated, it is hard to see how the Compact could come into effect.

So the Court of Claims in Washington may well rule on some of the issues being raised here today. I would hope that the representatives of France and the United Kingdom especially would express their views on these questions because they are of importance and could provide guidance to the Court in Washington. I do not mean to exclude the Soviet Union; I simply mean that I think its views are known. They were expressed at the opening meeting, on Monday, and yesterday as well.

The Court in Washington may rule on this issue before this Council does. If the past is any track record, that probably will be the case.

So there is a nexus between these two documents - the Compact, on the one hand, and the Trusteeship Agreement, on the other. My comments, as I think the record makes clear, were devoted 99 per cent to the Agreement, because that Agreement is the one between the United States and the Security Council. It is that Agreement which should be of concern to this body - and of more concern to this body than the Compact.

The PRESIDENT: Does any member of the Council have any further questions to put to the petitioners we have heard so far?

Mr. WITTEN (United States of America): I should like to reiterate my delegation's point of yesterday that the matter of implementation of the political status arrangements is not before the Council.

As has been our practice at past sessions of the Council, my delegation will make a single response to the petitions that have been presented and will be presented later on during this session.

The PRESIDENT: Are there any further questions to be put to the petitioners?

Mr. BEREZOVSKY (Union of Soviet Socialist Republics) (interpretation from Russian): I should like to ask one more question of Mr. Weisgall in the light of the additional information we have received from him today.

I should like clarification on his opinion as a jurist regarding the priorities among the domestic laws of countries' internal jurisdiction and the international obligations of countries. How does he view the relationship between those two factors?

The PRESIDENT: Would Mr. Weisgall care to respond?

Mr. WEISGALL: That is a complicated question, and I will try to keep my answer brief, because legal scholars have written many articles and books on this kind of subject; it is very difficult to answer in the abstract. Let me, though, provide a few examples that might provide some clarification on this question.

I think the best way to answer it with respect to this issue - the whole question of termination - is to look at the number of times the United States has readily conceded the fact that it must go to the Security Council to raise the termination question. The issue was raised many times in Congressional hearings on the Compact of Free Association. It has been raised many times in the past, and the United States has always taken the position, in differing language, that it would raise this issue with the Security Council.

The United States has to its credit occasionally couched its answers - I am thinking of some hearings held three years ago on the Compact, when the United States had already begun to signal that it might be backing away a little bit from its position - in language to the effect that it would take up the question of termination at the appropriate time. And that phrase "at the appropriate time" began to crop up in some United States statements several years ago. In Court papers in Washington, however, as I indicated yesterday, the United States said unequivocally that it did intend to raise this issue with the Security Council.

(Mr. Weisgall)

So I think the United States itself has admitted by and large, over the years, that this international obligation would take precedence. I think the sentence I quoted earlier from the Congressional report - the definitive report on the Marianas - makes the same point: that the Department of State recognizes that it is obligated to seek Security Council approval of the termination of the Trusteeship Agreement.

In a broader sense I would refer back to the Vienna Convention on the Law of Treaties, to which I referred yesterday. I believe that article 27 of that Treaty provides that international law overrides domestic law, so that may also provide some guidance to the Soviet Union.

But let me stress that I am not convinced that there exists this tension between United States domestic law and international law. I think that there is a very clear body of precedents - not court decisions, but legislative history - statements made by United States representatives both here, as I quoted yesterday from 1947, and in various other forums, including the United States Congress - in which the United States has readily conceded that there is a role to be played by the Security Council.

So I would not even go so far as to say that there necessarily exists a conflict. I think it was only last year, with the passage of resolution 2183 (LIII) and then the subsequent Proclamation of 3 November by President Reagan, that there began to develop this sleight of hand in which suddenly the United States was arguing that perhaps magically the Trusteeship Agreement had terminated. To me it is ironic that that presidential Proclamation, stating that the Trusteeship Agreement had terminated, was not submitted to the United Nations until very recently. You would think that such an important document would find its way to this body or to the Security Council. That was not the case. So I do not really see a conflict, but, to the extent there is one, I would say that international law would override.

Mr. BEREZOVSKY (Union of Soviet Socialist Republics)(interpretation from Russian): I have no further questions of Mr. Weisgall. I thank him for the thorough information he provided us today in answer to our questions. I am sure the Council would welcome any additional information he might be able to provide during this session of the Trusteeship Council or in future.

The PRESIDENT: I now call upon Mr. Roger Clark.

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. I should like to address two matters concerning the Trust Territory of the Pacific Islands: first, the proclamation by President Ronald Reagan dated 3 November 1986, which is referred to in the International League's written petition (T/PET.10/507) dated 2 April 1987, and, secondly, the December 1986 referendum in Palau.

In preparing for today's meeting I looked back over the League's petitions on the Trust Territory for the past dozen or so years. A constant theme that we have stressed is the rule of law. We have argued that there are some clear legal standards involved in the issues before this body. Some of those standards are contained in the United Nations Charter; some are contained in legal principles progressively developed by the Organization since 1945 under the aegis of the Charter; some are contained in general international law; some are contained in the Constitution and laws of the Administering Authority; some are contained in the constitutions and laws of the entities which are emerging from the Trust Territory. Two disappointing features appear from an examination of the history of the Territory: the surprisingly large number of illegal actions which have occurred, and the way in which the Council nearly always finds a way to avoid taking a stand on any of those legal issues.

(Mr. Clark)

For example, in December of 1982 we pointed out that the question proposed for the pending Palau referendum was a misleading one and in dubious compliance with the empowering legislation. It was left to the Palau Supreme Court to straighten that problem out. The following May, we pointed out that the majority achieved in the February 1983 Palau referendum was not large enough to meet the mandate of the Palau Constitution, which required a 75 per cent majority. Again, it was left to the Palau Court to take the necessary action. Last May, we pointed out that the February 1986 referendum had again failed to produce the required majority for Compact approval. Once again, it was necessary for the Palauan courts to speak. We also mentioned in last year's petition a report from our affiliate, the American Civil Liberties Union, about an apparent miscarriage of justice in the case of the three men convicted in Palau of the assassination of President Remiliik. We have since had the opportunity to review some of the papers filed in the appeal in that case and the article which appeared on the first page of The New York Times on 27 November last. We continue to be troubled by the lack of evidence of guilt. We understand that the Appellate Division of the Palau Supreme Court is likely to issue its decision soon.

It is against that background that I refer to the matter which is discussed in the League's written petition of 2 April and which has already been discussed before the Council by Mr. Weisgall, a matter that, I submit, should not be left to the courts to decide. This is the Administering Authority's apparent intention to treat the Trusteeship as being at an end in respect of three of the four entities of the Territory, without obtaining the necessary approval of the Security Council.

On 28 May 1986 the Trusteeship Council adopted resolution 2183 (LIII) on the future of the Trust Territory In the last preambular paragraph of that resolution, the Trusteeship Council noted that it is

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"Conscious of the responsibility of the Security Council in respect of strategic areas as set out in Article 83, paragraph 1, of the Charter".

In the operative paragraphs of the resolution the Council noted the statuses chosen by the Marshall Islands, the Federated States of Micronesia, Palau and the Northern Mariana Islands and requested the Government of the United States, in consultation with the Governments of those entities, to agree on a date not later than 30 September 1986 for the full entry into force of the relevant arrangements, and to inform the Secretary-General of the United Nations of that date. The resolution further expressed the opinion that the Government of the United States had satisfactorily discharged its obligations under the terms of the Trusteeship Agreement and that it was appropriate for that Agreement to be terminated with effect from the date referred to previously. It concluded by requesting the Secretary-General to circulate as official documents of the Security Council resolution 2383 (LIII) and all material received from the Administering Authority pursuant to that resolution.

Article 83, paragraph 1, of the Charter, to which the Trusteeship Council's resolution refers, provides that

"All functions of the United Nations relating to strategic areas, including the approval of the terms of the trusteeship agreements and of their alteration or amendment, shall be exercised by the Security Council."

It was the understanding of the International League for Human Rights and, we believe, of the Trusteeship Council, that resolution 2183 (LIII) contemplated that, in accordance with the Charter, the Security Council would in due course receive a request from the Administering Authority, accompanied by appropriate documentation,

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for its approval or disapproval of the termination of the Trusteeship. The majority of the Trusteeship Council had expressed its view - one which the League has argued against, I might add - that the United States had brought the Micronesian entities to self-government in accordance with the Organization's standards. The Council forwarded its recommendation to the Security Council for that body to take the definitive action in conjunction with the Administering Authority. This would follow the precedent, for example, of the course followed by the Trusteeship Council in 1974, on the last occasion the termination of a Trusteeship was being contemplated - that of Papua New Guinea. The Trusteeship Council expressed its views for the benefit of the General Assembly, which later adopted a resolution approving termination. Subsequent events suggest that the Administering Authority has instead set out to ignore the role which the Charter accords the Security Council in this matter.

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On United Nations Day 1986, the Secretary-General circulated a letter dated 23 October 1986 from the Permanent Representative of the United States. That letter referred to resolution 2183 (LIII) and informed the Secretary-General that:

> "... as a consequence of consultations held between the United States Government and the Government of the Marshall Islands, agreement has been reached that 21 October ... is the date upon which the Compact of Free Association with the Marshall Islands enters ... into force. Furthermore, I am pleased to inform you that the Compact of Free Association with the Federated States of Micronesia and the Commonwealth Covenant with the Northern Marianas ... will enter into force on 3 November 1986." (S/18424)

The letter further stated that the Permanent Representative would inform the Secretary-General

> "of arrangements for entry into force of the Compact of Free Association with Palau once accord has been reached on the effective date of that agreement".

It will be noted that this document merely refers to the "entry into force" of the relevant arrangements and makes no mention of the question of terminating the trusteeship.

A few days later, on 3 November 1986, President Reagan issued a proclamation "Placing into full force and effect the Covenant with the Commonwealth of the Northern Mariana Islands and the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands". This document - which was not sent to the United Nations until the delivery of the Administering Authority's annual report on 14 April 1987 - goes further than the letter of the Permanent Representative. The President of the United States makes the assertion that "the United States has fulfilled its obligations under the Trusteeship with respect to the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands and the Federated States of Micronesia". He goes on to

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"determine that the Trusteeship Agreement is no longer in effect as of 21 October 1986, with respect to the Republic of the Marshall Islands, as of 3 November 1986 with respect to the Federated States of Micronesia, and as of 3 November 1986 with respect to the Northern Mariana Islands".

In a postscript on the inside of the cover page of its 1986 report, the Administering Authority states:

"In compliance with the Presidential proclamation (found on page 273 of this report) this is the final report of the United States of America to the Trusteeship Council of the United Nations with respect to the Federated States of Micronesia, the Republic of the Marshall Islands and the Commonwealth of the Northern Mariana Islands."

On 3 November 1986, a proclamation was also issued by President Nakayama of the Federated States of Micronesia, the relevant part of which asserts that:

"The United Nations Trusteeship Agreement no longer applies to the Federated States of Micronesia, and from this day forward the people of the Federated States of Micronesia shall no longer be the wards of any nation or organization of nations."

In the submission of the International League for Human Rights, the appropriate body to make a determination that the trusteeship is terminated is the Security Council of the United Nations, not the Presidents of the United States and the Federated States of Micronesia.

It is true that Article 83 of the United Nations Charter, in referring to the role of the Security Council, does not make specific reference to termination; it speaks of "alteration or amendment". In context, however, those words must include termination. It strains credulity to believe that the founders of the Organization would have given the United Nations the function to approve an agreement, the function to approve changes to that agreement, short of its complete abolition, but

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have given it no role in the abolition. Moreover, it is hard to argue that a change in the nature of the Trusteeship Agreement effectively removing three of the four entities to which it applies is not an alteration or amendment, as those terms are normally understood.

Whatever view one might take of the words "alteration or amendment" were the question now suddenly appearing for the first time, past practice is overwhelming that they encompass "termination". That Article 83 envisages Security Council action on termination - even of the whole of a trust agreement - was stated firmly by Ambassador Warren Austin, the United States representative in the Security Council, when the Trusteeship Agreement was being approved by that body in 1947. The Soviet Union had proposed an amendment to the draft agreement which would have made it possible for the Security Council to terminate the agreement unilaterally. Ambassador Austin successfully opposed that amendment, arguing that the Trusteeship Agreement "is in the nature of a bilateral agreement between the United States, on the one hand, and the Security Council, on the other" and that "no amendment or termination can take place without the approval of the Security Council". The Trusteeship Agreement itself provides that the consent of the United States is required before the Agreement may be "altered, amended or terminated". The Charter requires the consent of the Security Council to termination.

The same view was expressed more recently by the representative of the United Kingdom, the Chairman of the United Nations Mission to Observe the Plebiscite in Palau in February 1986. In response to an allegation by the USSR that the Security Council was being bypassed, Mr. Gore-Booth stated on the record:

> "It is simply not true that there is any attempt to bypass the Security Council. The United Nations Mission has made it clear, both to political leaders and at public meetings, that the termination of the trusteeship will have to be decided by the Security Council."

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United States officials have - as Mr. Weisgall has pointed out - indeed conceded many times in the past decade that it would be necessary to take up the termination of the Pacific Trust with the Security Council.

A position diametrically opposed to all of this has been asserted by the United States Justice Department in Nitol v. the United States - one of the cases to which Mr. Weisgall referred - a case in the United States Court of Claims arising out of the nuclear testing in the Marshall Islands. In that case the Justice Department takes the position that Security Council approval is not required for termination. They say:

"It is not clear whether Ambassador Austin misspoke himself, or whether he erroneously assumed at that time that Article 83 specifically requires Security Council approval for termination."

We are somewhat puzzled by the conceptual difference between "misspeaking" and making an erroneous assumption, but it is plain that Ambassador Austin's statement is now being disavowed. Be that as it may, the Justice Department goes on to assert that Ambassador Austin had "successfully opposed all amendments to the Trusteeship Agreement that would have required Security Council approval of termination of the trusteeship."

That, in the League's submission, is a complete distortion of what the Ambassador was about. He was endeavouring - successfully - to prevent the inclusion in the Agreement of a unilateral power of the Security Council to terminate or otherwise amend or alter. He conceded the point that the Security Council must approve of any termination, and defeated the effort to give the Council a unilateral power. Action by both the Security Council and the administering Power was necessary.

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Since the Trust Territory of the Pacific Islands was the only strategic Trust created, the precise question of the procedure to be followed has not arisen in the past practice of the Security Council. It has, however, been dealt with in completely analogous circumstances in the General Assembly. Article 85 of the Charter confers powers of approval of the terms of trusteeship agreements over non-strategic areas, including their alteration or amendment, on the General Assembly. The invariable practice of the Assembly has been to consider a request for termination of the trust made by the Administering Authority - and to act on that request, when appropriate, by adopting a resolution approving termination. By the same token, in the case of other Non-Self-Governing Territories within the scope of Chapter XI of the Charter, the Assembly has repeatedly reaffirmed its position that "in the absence of a decision of the General Assembly itself that a Non-Self-Governing Territory has attained a full measure of self-government in terms of Chapter XI of the Charter, the administering Power concerned should continue to transmit information under Article 73 e of the Charter with respect to that Territory." It is inconceivable that the Security Council should proceed differently from the General Assembly in recognizing the end of trust and other non-self-governing obligations.

Moreover, the view that South Africa could unilaterally terminate the mandate over South West Africa (Namibia) was unanimously rejected by the International Court of Justice in 1950; that decision represents another close analogy to the present case.

The precise form of an appropriate resolution by the Security Council approving termination of part or all of the Trust is for the Security Council to decide; it is master of its own procedure. But we would certainly expect it to act by taking some formal decision. Thus, it is pertinent also to draw the attention of

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the Trusteeship Council to another remarkable document which was forwarded with our written petition, namely, a memorandum dated 10 February 1987 from the Department of External Affairs of the Federated States of Micronesia, entitled "Emergence of the Federated States of Micronesia as a State within the Community of Nations". That document makes the assertion that the Trusteeship terminated on 3 November 1986 in respect of the Federated States and that the termination was "accomplished through notification by the United States to the United Nations Secretary-General (Security Council document S/18424, 24 October 1986) and subsequent acceptance by acquiescence on the part of the Security Council." The notion of the Security Council acting by means of "acquiescence" in carrying out its Charter functions is a startling one, and completely unprecedented. Moreover, the alchemy by which a notification of bringing an arrangement into force, as contained in the Secretary-General's memorandum of 24 October, is transformed into a termination by means of a step of which the Security Council has neither been informed nor asked for its approval, is, we confess, difficult to fathom.

These events can only leave the impresion that something is being swept under the carpet. The members of this Council, to say nothing of the whole of the international community, the League submits, have a stake in the proper procedures of the Organization being followed.

Accordingly, the International League for Human Rights respectfully requests that the Trusteeship Council adopt a resolution at this 1987 session reaffirming the position of the Security Council in respect of termination.

In the meantime, we believe that the powers of this Council under the Trusteeship continue, not only as to Palau, but in respect of the other entities as well. In particular, this Council continues to have the power and duty to hear petitioners pursuant to Article 87 of the Charter and, as the Secretariat has

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pointed out in its proposed Programme Budget for the Biennium 1988 to 1989, to dispatch visiting missions. A striking example of the point I am making occurred with the presentation this morning from the Commonwealth of the Northern Mariana Islands. It would appear from the statement made on behalf of their Task Force on Termination that there is a fundamental disagreement between representatives of the Northern Marianas and the representatives of the United States as to what the Covenant does. There seems also to be a fundamental disagreement about the matter of the termination of the Trust Agreement in respect of the Northern Marianas. In short, there is a dramatic role for this body to play in that regard.

Article 76 of the Charter speaks of progressive development towards self-government. The present statuses in the various parts of the Territory do represent development; they do not represent sufficient development to constitute grounds for terminating the Trust and the definitive steps to do so have not yet been taken.

I turn to the December 1986 Palau referendum. Professor Amelia H. Boss and I represented the International League for Human Rights as members of an International Observer Mission to that referendum. The report of the Mission has been made available to the members of the Trusteeship Council and I would be happy to supply further copies.

Members of the Council will appreciate from their reading of the United Nations Visiting Mission's rather mild report that the Compact of Free Association was again defeated by the electorate, it having received a positive vote of some 65.97 per cent - well short of the 75 per cent required by the plain language of the Constitution as confirmed by the Palauan Supreme Court.

As a non-governmental body, we felt more free to be critical than the Visiting Mission. In particular, we believe that the Salii administration quite improperly

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comingled its political education and propaganda efforts. On the basis of what we saw of the difficulties with the political education campaign, we believe that the educational campaign for a referendum such as that on self-determination can be done effectively only if an outside agency, such as the United Nations, takes over substantial responsibility for it. What we have in mind is perhaps better described as United Nations "supervision" as opposed to the "observation" which has taken place. There are various degrees of involvement that an international organization might take in a referendum, ranging from a fleeting visit of a few days around the time of the vote - as occurred here - to a substantial involvement over a period of weeks or even months in all of the process leading up to the balloting. Something like this latter model occurred, for example, in relation to the 1956 plebiscite on whether or not Togoland under British administration would join with what was to become the independent State of Ghana. If there is really to be another referendum on the present Compact in Palau, it should be one for which the educational process is done properly and is not another "rush job" like the last one.

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There was, moreover, a serious breach of the impartiality of the civil service in two memorandums, one to the civil service in general and one to the schoolteachers in particular. The first of them called for "all personnel to vigorously campaign for the Compact" and for the reporting of anyone who "chooses to campaign otherwise". The plain language of that document carried the threat that something would happen to those who opposed - and many of those in its target audience perceived this as its message. A subsequent softening of position by the Minister of State and Referendum Commissioner was too little and too late to undo the damage. Another memorandum closed the schools and directed the schoolteachers to campaign for a "Yes" vote. The Government of Palau overstepped the mark in this regard also.

Then there were some very complex financial dealings involving the use of government funds for purposes other than those for which the Legislature had appropriated them. We believe that there should be a full accounting on this to the Palauan people.

There is, finally, the question of what happens now in Palau. The Council has before it the letter dated 4 May 1987 from the acting Permanent Representative of the United States announcing a new referendum on 31 May and 2 June. We expressed the thought in our report that the inordinate number of votes already held on the Compact was putting extreme pressure on the Palauans. We have since received reports of visits to Palau by members of the Office of Freely Associated States Affairs and by members of the United States Congress engaged in what was perceived by many in Palau as a "hard sell". In an affidavit filed in the Nitol nuclear testing case, to which I referred earlier, the former Minister of Foreign Affairs of the Marshall Islands, who is currently the Minister of Health there, has made strong allegations concerning undue United States financial pressures which, he argues. caused his Government to accept the so-called espousal provisions, to which Mr. Weisgall referred, in the Marshalls Compact. The Council should take great

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care to ensure that something of this nature is not happening in respect of the newly announced referendum in Palau.

There is also talk of an attempt to remove the 75-per-cent constitutional requirement for Compact approval. As we discuss in the report, it is dubious whether the nuclear control provisions can be changed by the amending procedures in the Constitution - the 75-per-cent override provision may be the only way to deal with them.

In our many discussions with Palauan voters, there was a sense of frustration; many felt that the Compact question had been asked and answered several times already. It was time to go on to other matters. Where to go is, of course, for the Palauans to decide. Security interests, as determined by Washington, were certainly not contemplated as eternally paramount by the drafters of the United Nations Charter. Even a strategic trust is subject to the basic objectives of the trusteeship system, as set out in Article 76 of the Charter. These include:

> "... progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the peoples concerned ...".

At some point, enough is enough. After four unsuccessful votes on the Compact, with its less than independent status, it may well be time to explore the other options further.

ORGANIZATION OF WORK

The PRESIDENT: I propose now that we adjourn the meeting until 3 o'clock this afternoon, when we will hear further petitioners, and if Mr. Clark is able to be with us, we will then have an opportunity to ask questions when we have heard the last petitioner this afternoon.

The meeting rose at 1.10 p.m.