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Fifty-fourth Session

VERBATIM RECORD OF THE SIXTEEN HUNDRED AND TWENTY-SIXTH MEETING

Held at Headquarters, New York,
on Tuesday, 12 May 1987 at 10.30 a.m.

President: Mr. BIRCH (United Kingdom)

- Statement by the President

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

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The meeting was called to order at 10.45 a.m.

STATEMENT BY THE PRESIDENT

The PRESIDENT: Before the Council continues with the examination of conditions in the Trust Territory of the Pacific Islands, I would like to mention that yesterday, with the glare of lights upon me, I failed to recognize amongst us Mr. Berezovsky of the Soviet delegation, and I would like to welcome him. He has a great deal of experience and knowledge of this Council, which I know he will be glad to share with us during our deliberations. I would also like to welcome Mr. Victor Ucherbelau, who is with us today from Palau.

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

The PRESIDENT: As agreed at its meeting yesterday, the Council will now begin hearing petitioners whose requests for a heasring are contained in documents T/PET.10/507-509 and Add.1, 510-511, 514-518 and 520-525. I understand from the Secretariat that Mr. David Anderson, whose request for a hearing appears in document T/PET.10/515, has withdrawn that request. I suggest that today the Council hear the following petitioners: Mr. Jonathan Weisgall and Mr. Henchi Balos, representing the people of Bikini; Ms. Sue Rabbitt Roff, Minority Rights Group; and Ms. Else Hammerich of the European Parliament.

If that is acceptable to members of the Council, I invite the petitioners to to take their places at the petitioners' table.

At the invitation of the President, Mr. Jonathan Weisgall, Mr. Henchi Balos, Ms. Sue Rabbitt Roff and Ms. Else Hammerich took places at the petitioners' table.

The PRESIDENT: I call first on Mr. Jonathan Weisgall, who will speak on behalf of the people of Bikini.

Mr. WEISGALL: I Thank you, Mr. President, and the other members of the Trusteeship Council for providing the people of Bikini the opportunity to address this body today.

As is known, the Compact of Free Association with respect to the Federated States of Micronesia and the Marshall Islands was passed by the United States Congress in December 1985 and signed into law by President Reagan on 14 January 1986. Late last year, by letter dated 23 October 1986 - United Nations document S/18424 - United States Ambassador to the United Nations Vernon Walters informed the Secretary-General that the Compact had come into effect on 21 October, and on 3 November 1986, a few weeks later, President Reagan issued a proclamation declaring that the Trusteeship Agreement was no longer in effect as of 21 October with respect to the Marshall Islands.

Missing from all those events is one key fact of critical concern to this body and the Security Council, that is, the termination of the Trusteeship Agreement. The United States Government has taken the position - in a presidential proclamation, in various United States court proceedings, and in this Chamber - that the Trusteeship Agreement has terminated with respect to the Federated States of Micronesia and the Marshalls and that it is not necessary to obtain Security Council approval of such termination. I do not believe that that position is valid.

I shall seek to demonstrate to the Council today that that strategic trusteeship cannot legally terminate until both the Trusteeship Council and the Security Council adopt resolutions approving termination. This analysis will involve a historical overview of the decision to establish these islands as a strategic Trust Territory, a review of the provisions and legislative history of the Trusteeship Agreement and Chapter XII of the United Nations Charter on the "International Trusteeship System", an examination of how other trusteeships have

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been terminated, the Vienna Convention on the Law of Treaties, and recent United States actions.

Let me begin with the historical setting. The question of post-war trusteeships created tension both between the United States and its allies and between different Departments within the United States Government. President Roosevelt expressed enthusiasm for the idea of post-war international trusteeships as early as 1943, but Great Britain resisted. As late as 1945 Prime Minister Churchill strongly opposed post-war trusteeships for fear that they would be used to justify breaking up the British Empire. According to official United States records, he interrupted the Yalta Conference on this subject "with great vigour to say that he did not agree with one single word of this report on trusteeships".

Towards the end of the war there was little doubt that Micronesia would remain under United States control; the only debate was whether to annex the islands or place them under the trusteeship system of the new United Nations. Military leaders in the United States urged outright annexation for strategic reasons: Secretary of War Henry Stimson, arguing that "they are not colonies; they are outposts", asserted that United States annexation of Micronesia would be "merely the acquisition by the United States of the necessary bases for the defence of the Pacific for the future world". To serve this purpose, he continued, the islands "must belong to the United States with absolute power to rule and fortify them". In 1944 the Secretary of War, Frank Knox, told the United States House Foreign Affairs Committee that "those mandated islands have become Japanese territory and as we capture them they are ours". The emotional appeal was quite strong. Admiral Ernest King said: "These atolls, these island harbours, will have been paid for by the sacrifice of American blood."

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Secretary of State Cordell Hull, however, pointed to the principle of no territorial aggrandizement in the Atlantic Charter and the Cairo Declaration and urged that Micronesia be made a trusteeship. He countered the annexation argument with the contention that "Russia would thereupon use this acquisition as an example and precedent for similar acquisitions by herself".

This disagreement within the United States Government prevented the United States from formulating a position at the July 1944 Dumbarton Oaks Conference in Washington with Great Britain, China and the Soviet Union. In fact the original "United States Tentative Proposals for a General International Organization", dated 18 July 1944, contained a chapter heading entitled "Arrangements for Territorial Trusteeships", but the chapter was omitted and contained only the following statement: "Note: Documents on this subject will be available later."

Secretary of War Stimson at one point thought that objections to annexation of the islands could be overcome by a unilateral "declaration of trust" under which the United States would simply announce that it intended to oversee Micronesia for the benefit "of all peace-loving nations". Stimson's real goal though was not annexation but simply United States control, so he was thus willing to accept a trusteeship proposal which would give the United States what he called "full control and full strategic rights" over the islands.

Accordingly, after the Dumbarton Oaks Conference, an Interdepartmental Committee on Dependent Areas was established to incorporate the military's objections into the framework of a trusteeship system. A January 1945 Committee draft stated, in part, that the "authorities responsible for the administration of dependent Territories should agree upon a general declaration of principles" which "should be formulated in accord with two essential assumptions". The second stated:

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"States responsible for the administration of dependent Territories should recognize the principle of some measure of accountability to the international community for such administration."

This language was discussed shortly thereafter at the Yalta Conference when Roosevelt, Churchill and Stalin reached agreement on several key United Nations issues, including the international trusteeship system under the United Nations Charter, the five permanent members of the Security Council, and the concept of the veto in the Security Council. However, the War and Navy Departments suggested changes to this plan in February. They proposed that not all Trust Territories should be treated the same but that some might be classified as having strategic importance. They also proposed that the Security Council, rather than the General Assembly, should oversee strategic Trust Territories, because under the Yalta voting formula unanimity would be required among the permanent members, thus giving the United States greater control to protect its strategic interests.

It thus seems fair to conclude from the diplomatic history that the role of the Security Council was critical to the establishment of the strategic trust concept. Indeed, I believe the history shows that the United States State Department was able to appease military hardliners by pointing to the Security Council, with the United States veto power, as the ideal framework within which to supervise strategic trusts.

The Navy and War Departments proposals, which were incorporated into the Interdepartmental Committee's final draft, were in substantial part adopted at the San Francisco Conference in May 1945, where the United Nations Charter was negotiated and signed.

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Article 82 of the Charter provides, in the relevant part, that

"There may be designated, in any trusteeship agreement, a strategic area or areas which may include part or all of the trust territory to which the agreement applies ..."

and Article 83 (1) provides:

"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."

Incidentally, the companion principle - that the General Assembly shall exercise all United Nations functions relating to non-strategic trusteeships - is contained in Article 85 (1).

On 26 February 1947, the United States, availing itself of these Charter provisions, submitted to the Security Council a draft trusteeship agreement for the future Trust Territory of the Pacific Islands. This agreement was unique for several reasons. First, it was the only one of 11 trusteeship agreements to be acknowledged under Article 82 to relate to a strategic area. Secondly, it was the only former League of Nations Mandate to become a United Nations Trust Territory under a new Administering Authority, switching, of course, from Japan to the United States. Thirdly, under the terms of Article 83 (1), all powers of the United Nations relating to this strategic trust were to rest with the Security Council and not, as in all non-strategic Trust Territories, with the General Assembly. Lastly, the agreement represents the only time in history that the United States has assumed the responsibility for administering a foreign Territory under the aegis of an international régime.

I should like to review briefly the legislative history of Article 15 of the Trusteeship Agreement, which provides:

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"The terms of the present agreement shall not be altered, amended or terminated without the consent of the Administering Authority."

This wording was opposed at the time by the Soviet Union, which proposed language which would have permitted the Security Council unilaterally to alter, amend or terminate the Agreement.

In opposing the Soviet proposal, the United States Representative, Ambassador Warren Austin, conceded that the Security Council had the power under the Charter to approve or disapprove termination of the Agreement, but he was unwilling to go beyond that point to make the Security Council's power unilateral, because such a provision would have undermined the rationale of the United States military to place Micronesia under a strategic trust. Quoting Articles 79 and 83 (1) of the Charter, Ambassador Austin argued:

"... obviously it is not the Security Council which originates the amendment; certainly it cannot authorize the termination; the most it can do, under the Charter, is approve or disapprove ...

"Thus article 15 of the draft agreement defines the action which would be required of the administering authority with respect to changes in the agreement, and does not attempt to define the responsibilities of the Security Council in this respect. The latter are already defined; they are in the Charter; and no amendment or termination can take place without the approval of the Security Council." (S/PV.23, pp. 475-476)

The United States position in 1947 could not have been clearer:

"no amendment or termination can take place without the approval of the Security Council."

The United States Ambassador made this point on two separate occasions in the debate. The leading history of the United Nations Charter, by Ruth B. Russell and Jeannette E. Muther, makes the same point:

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"The United States explained [at the San Francisco Conference] that the states originally concerned [under Article 79] would have to agree to any subsequent changes, which would then be submitted for approval by the Organization as in the case of the earlier agreement. Termination of a trust or a change in the administrator would constitute 'alterations' in this respect." (A History of the United Nations Charter, p. 837 (1958)).

Nevertheless, the United States argues today that no such Security Council approval is required. Indeed, in court papers filed in the Bikinians' lawsuit in Washington, which quoted Ambassador Austin's comments, the most the United States could tell the court was: "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."

In the face of this absolutely clear legislative history, the United States now disavows what its Ambassador said, and suggests, 40 years later, that he made a mistake. I submit that no mistake was made. Ambassador Austin's remarks make perfectly good sense, and they reflected the United States willingness to accept responsibility for Micronesia as a United Nations strategic Trust Territory, with the concomitant veto power in the Security Council.

Let me now approach the termination question from a completely different angle. I have sought to demonstrate that the United States successfully opposed an amendment to the Trusteeship Agreement that would have permitted the Security Council unilaterally to terminate the Agreement. Let us now look at the other side of that issue: can the United States terminate the Agreement unilaterally, which is what it has purported to do?

In reviewing this question, let us keep in mind one obvious point, but one that is worth bearing in mind. The Compact of Free Association for the Marshall

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Islands and the Federated States of Micronesia is an agreement between the United States and those entities; the United Nations is not a party to the Compact. Similarly, I shall now seek to demonstrate that: first, the Trusteeship Agreement is a bilateral agreement between the United States and the Security Council - the Marshall Islands is not a party, nor is the Federated States of Micronesia; secondly, the Security Council was competent to enter into the Trusteeship Agreement; thirdly, the Trusteeship Agreement is a treaty; fourthly, under the Vienna Convention on the Law of International Treaties the United States cannot unilaterally terminate the Trusteeship Agreement; it needs the consent of the other party - the Security Council.

To approach this argument, let me address a series of questions. First, who are the parties to the Trusteeship Agreement for the Pacific Islands?

There is a non-legal answer to this question, and it is perhaps the most telling. It is to look at the experience of the other 10 United Nations trusteeships that have been terminated. In all 10 cases the General Assembly has passed a resolution declaring that the trusteeship agreement in question shall cease to be in force or shall terminate on a specific date, and each and every General Assembly resolution terminating an agreement has been stated to be

"in agreement with the Administering Authority."

These actions clearly support the conclusion, first, that trusteeship agreements are bilateral agreements between the Administering Authority and the United Nations or one of its organs and, secondly, that termination of the agreement requires the consent of both parties.

Let me approach the same question in legal terms. Is the Trusteeship Agreement for the Pacific Islands an agreement between the United States and the

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United Nations? That was clearly the view of Ambassador Austin in 1947 in the debate over the Agreement. He may, of course, have misspoken again, but here is what the record says he said:

"The United States wishes to record its view that the draft trusteeship agrement is in the nature of a bilateral contract between the United States, on the one hand, and the Security Council on the other ... it is the Charter that defines the duties, the powers, and the responsibilities of the Security Council, which is one party to this agreement ...". (S/PV.23, p. 476)

Is a United Nations organ competent to enter into a trusteeship agreement? The answer is clearly "Yes". One need not look beyond Articles 85 (1) and 83 (1) of the Charter, which specifically grant to the General Assembly and the Security Council respectively the function of

"approval of the terms of the trusteeship agreements and of their alteration or amendment".

(Mr. Weisgall)

Let me move to the next question: is a Trusteeship Agreement - especially this one - a treaty between the parties? Again, I think the answer is clearly "Yes". Let me begin with the frequently cited definition of a treaty suggested in 1956 by Sir Gerald Fitzmaurice, the Special Rapporteur to the International Law Commission. His definition of a treaty is:

"an international agreement embodied in a single formal instrument (whatever its name, title or designation) made between entities both or all of which are subjects of international law possessed of international personality and treaty-making capacity, and intended to create rights and obligations, or to establish relationships, governed by international law."

A Trusteeship Agreement clearly falls within the ambit of this definition. As the International Court of Justice has stated in its advisory opinion concerning the international status of South West Africa, this type of agreement

"implies consent of the parties concerned ... The parties must be free to accept or reject the terms of a contemplated agreement. No party can impose its terms on the other party." (1950 International Court of Justice Reports, p. 139)

I would conclude, therefore, that the Trusteeship Agreement for the Pacific Islands is a treaty between the United States and the Security Council.

My next question is: Can one party unilaterally terminate a treaty, as the United States has sought to do here? The legal standard to judge this question, I submit, is the 1969 Vienna Convention on the Law of Treaties. I would argue that under that Convention, which the United States has signed, the United States cannot unilaterally terminate the Trusteeship Agreement.

Part V, section 3 of the Vienna Convention provides three ways that a party can unilaterally terminate a treaty. The first, set forth in article 56 (1), is

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not applicable here, because it presupposes the absence of a "provision regarding its termination", which is obviously not the case here, given article 15 of the Trusteeship Agreement, which specifically refers to termination.

The second way of unilaterally terminating a treaty under the Convention is article 62 (1), which permits termination based upon "a fundamental change of circumstances ... not foreseen by the parties," which (a) constituted an "essential basis" of the treaty, and (b) "radically" transforms the obligations "still to be performed under the treaty". How could the United States demonstrate changed circumstances here? It is virtually impossible to imagine how, except perhaps by arguing that it has now learned, after some 40 years, that termination of the Trusteeship Agreement requires the approval of the Security Council. But in light of Ambassador Austin's statements, it stretches credulity to see this fact as a changed circumstance, and the fact has not even occurred anyway, at least from the United States point of view, because it has not admitted that Security Council approval is needed. Moreover, it would be hard to construe such an event as "an essential basis" of the Treaty under sub-part (a). Lastly, the condition of sub-part (b) is not met because the change would not radically transform the extent of United States obligations still to be performed. With respect to this sub-part, the International Court of Justice stated in the case of the United Kingdom versus Iceland:

"The change must have increased the burden of the obligations to be executed to the extent of rendering the performance something essentially different from that undertaken." (1973 International Court of Justice Reports, p. 21)

After 40 years of serving as Administering Authority, it is hard to see how the United States could meet this standard.

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The third ground for termination under the Convention would be a material breach of the treaty by one of the parties - presumably the Security Council - which, under article 60 of the Vienna Convention, would trigger the rule that a treaty is voidable at the election of the injured party. What would constitute a material breach? Again, presumably a resolution by the Security Council that the Trusteeship Agreement cannot be terminated without its approval - an event, as I already noted, which has not even occurred. Moreover, such action would not fall within the definition of a "material breach" in article 60 (3) (b) as "the violation of a provision essential to the accomplishment of the object or purpose of the Treaty". A procedural ruling that the Security Council must be given the opportunity to vote on the Agreement's termination could not be construed as a material breach.

One could speculate that these different scenarios could never even come to pass, since the United States could exercise its veto power in the Security Council anyway. I would argue otherwise, however, because I think such a determination would involve a procedural finding that a "dispute" exists under Chapter VI of the Charter, and that under Article 27 (3), "a party to a dispute shall abstain from voting". Otherwise the United States, a permanent member of the Security Council, would act as judge in its own cause.

To summarize this argument, I have sought to establish that the Trusteeship Agreement is a treaty between the United States and the Security Council, and that under the Vienna Convention termination of the treaty requires agreement of both parties, except in the case of changed circumstances or material breach by one party, neither of which condition is present here. Put another way, just as the United States needed the approval of the Security Council under Article 83 (1) of

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the Charter to enter into the Trusteeship Agreement, it needs the Security Council's approval to terminate it.

Where does all this leave us? Has the Trusteeship Agreement, as a matter of fact and law, terminated? Last year, as was discussed yesterday, this body adopted resolution 2183 on 29 May requesting the United States to agree on a date for the entry into force of the Compact. Paragraph 3 of that resolution states that the United States has "satisfactorily discharged its obligations under the terms of the Trusteeship Agreement and that it is appropriate for that Agreement to be terminated" on the effective date of the Compact.

Only you can decide if that resolution constitutes a vote to terminate. If it does, it differs substantially from previous resolutions terminating trusteeships. Even if it does constitute your vote or your consent to termination, the resolution's preamble recites that the Trusteeship Council is "conscious of the responsibility of the Security Council in respect of strategic areas as set out in Article 83, paragraph 1, of the Charter". That Article states, as you know, that the Security Council exercises all functions of the United Nations relating to strategic areas, so it is reasonable to read resolution 2183 as contemplating an eventual vote by the Security Council on termination of the Agreement.

Last February - February 1986 - the United States told the United States Claim Courts in Washington that it

> "is preparing to take up the question of termination of the Trusteeship Agreement with the Trusteeship Council and the Security Council of the United Nations".

That is no longer the case. The United States is thumbing its nose at the Security Council and, to a certain extent, at this Council.

(Mr. Weisgall)

I ask the representatives of France and the United Kingdom, who voted for resolution 2183, to ask themselves if they intended by that resolution to end all United Nations consideration of the question of trusteeship termination. I think the answer is no. I think they intended to support the United States desire to put the Compact into effect, that they did not want the United States to terminate the Trusteeship Agreement piecemeal without Palau, and that they intended an eventual Security Council vote on the issue of termination of the Trusteeship Agreement.

(Mr. Weisgall)

The United States then turned around and proclaimed - not to the United Nations, mind you - that the Trusteeship Agreement had been terminated with respect to the Marshall Islands, the Federated States of Micronesia and the Northern Marianas. I say that because the presidential proclamation of 3 November has, to my knowledge, never been submitted to the Council as an official document.

The delicate politics of the situation do not escape anyone in the room. I have sought, as responsibly as I could, to raise questions concerning the termination issue. I ask members of the Council, especially France and the United Kingdom, to seek clarification from the United States - or from the Administering Authority - on the following questions, and/or to adopt a resolution answering some or all of these questions:

First, is it the United States position that the Trusteeship Agreement has terminated with respect to the Marshall Islands, the Federated States of Micronesia and the Northern Marianas?

Second, is it the United States position that, 40 years after the fact, it can argue that its Ambassador misspoke on two separate occasions concerning the role of the Security Council in the termination of the Trusteeship Agreement?

Third, what does the United States believe the role of the Security Council to be with respect to the termination of the Trusteeship Agreement? Has the Security Council fulfilled that role?

Fourth, a mirror question, what does the United States believe the role of the Trusteeship Council to be with respect to the termination of the Trusteeship Agreement? Has the Trusteeship Council fulfilled that role?

(Mr. Weisgall)

Fifth, who are the parties to the Trusteeship Agreement?

Sixth, is the Trusteeship Agreement a treaty? Seventh, assuming the absence of Security Council approval of the termination of the Trusteeship Agreement, is it the United States position that it can unilaterally terminate that Agreement?

Seventh, assuming the absence of Security Council approval of the termination of the Trusteeship Agreement, is it the United States position that it can unilaterally terminate that Agreement?

Eighth, why does the United States believe that no United Nations resolution is necessary to terminate the Trusteeship Agreement for the Pacific Islands, when all previous Trusteeships were terminated by United Nations resolutions?

Ninth, if it is the position of the United States that resolution 2183 constitutes the definitive United Nations approval needed to terminate the Trusteeship Agreement, how does the United States explain the clause in the preamble to that resolution that specifically refers to the functions of the Security Council with respect to strategic trusts?

Tenth, to the knowledge of the United States, have any countries, such as Japan and Australia, or international or regional organizations, such as the World Health Organization or the Asian Development Bank, questioned the sovereignty of the Marshall Islands because of the perceived continuance of the Trusteeship Agreement?

Eleventh - and last - assuming for the sake of argument that the Trusteeship Agreement has not terminated, is it nevertheless the United States position that

(Mr. Weisgall)

the Compact is in effect? Are the political statuses of free association and trusteeship mutually exclusive, or, put another way, does free association presuppose the termination of trusteeship?

Members of the Council may believe that they have taken definitive action with respect to the termination issue but I do not believe they have, nor do I believe they intended to until the Palau Compact came into effect. At a minimum, though, I believe that Security Council action is required to terminate the Trusteeship Agreement. That action certainly has not occurred. The Council may wish to refer the termination issue to the Security Council for its consideration, because if it takes the position, as a matter of procedure, that it cannot act on the termination issue until the Palau Compact comes into effect, this whole question will leave a cloud over the international status of the Marshall Islands and the Federated States of Micronesia for perhaps several years. They deserve better.

I should be pleased to answer any questions the Council may have.

The PRESIDENT: I thank Mr. Weisgall for his statement and for his offer to answer any questions from members of the Council. However, I propose that we should first hear the other petitioners and then give members of the Council an opportunity to question any of the petitioners they wish to, if that is acceptable to them.

Miss BYRNE (United States of America): The Trusteeship Council is unique among the principal organs of the United Nations because of its tradition of openness to petitioners, a tradition that my Government helped to institute and that it continues to respect. I am proud to state that no group or person has ever feared, or had any reason to fear, coming before the Trusteeship Council and speaking frankly.

(Miss Byrne, United States)

My delegation did not, therefore, wish to interrupt the petitioner's remarks with a point of order. Although we chose not to interrupt the petitioner, my delegation must point out that the question of the implementation of the new status agreements is not before the Trusteeship Council.

As Council members are aware, following unanimous and unconditional requests by the elected Heads of Government of Micronesia, the Trusteeship Council, at its fifty-third session, adopted resolution 2183 by a vote of three to one. My delegation cannot imagine a clearer, more definite statement denoting conclusion of the Council's consideration of the question of the implementation of the new political status agreements than this resolution.

The PRESIDENT: I call now on Ms. Susanne Roff, of the Minority Rights Group, to address the Council with her petition.

Ms. ROFF: As members know, Mr. Alcalay of the National Committee for Radiation Victims will be unable to attend this session of the Council. He has written the Council asking if I might read out his statement for him since he has been called away unexpectedly. However, I have asked whether I could possibly delegate that responsibility to another, owing to ny being indisposed.

Is this the time to decide on that, or should I deal with the petition of the Minority Rights Group solely?

The PRESIDENT: As Mr. Alcalay is not here to make his statement, I would prefer, if that is acceptable to other members of the Council, that his text be submitted to the Council in writing so that we may have an opportunity to study it. If members wished to put questions to him, he would not be here to answer them and, as we can all read, it would be simpler for us to have his statement in writing. I invite Ms. Roff now to deliver her own petition.

Ms. ROFF: I plan to read out a brief summary of my petition; copies of the complete text will be made available to members of the Trusteeship Council. I shall, of course, be available to answer questions by members.

There are several points of information relating to events over the past year in the Trust Territory of the Pacific Islands that we must bring to the Council's attention for urgent consideration at its present meetings. Our goal at this penultimate stage of the termination process is simply to ensure that the future political status of the people of the Trust Territory be as secure as those of the peoples of the Cook and Niue Islands.

Our information concerns four main items: First, the move towards unilateral termination by decree of the Trusteeship Agreement is incompatible with the expectations of legal scholars over the past 40 years that termination of a trusteeship agreement covering a strategic area requires Security Council action.

Secondly, the termination of a trusteeship agreement does not release the General Assembly from its obligations to the people of the Territory in question to monitor their progression towards the full standards of decolonization set out in General Assembly resolutions 1514 (XV), 1541 (XV) and 35/118.

Thirdly, none of the future political statuses now being proposed for the four entities in the Trust Territory of the Pacific Islands is tantamount to free association as enjoyed by the Cook and Niue Islands, the binding precedents for freely associated State status.

(Ms. Roff)

Finally, this Council and other organs of the United Nations have been misinformed about several aspects of the evolution towards a future political status in the Territory and have acted on that misinformation in a manner that should be corrected and reported in official United Nations publications.

Miss BYRNE (United States of America): My delegation wishes to state one more time that the issue of implementation has been addressed by the Council and is no longer before this body. Remarks on that matter are therefore not in order, and comments by petitioners cannot make them otherwise.

The PRESIDENT: I call now on Ms. Else Hammerich, member of the European Parliament.

Ms. HAMMERICH: I am grateful for the opportunity to speak here in the United Nations, an Organization with such high ideals of decolonization and disarmament.

I was a member of the independent international observers team that was in Palau in December to observe the plebiscite. The creation of an independent international observers team and the letters to the United Nations from 70 members of the European Parliament reflect a rapidly growing international attention to Micronesia and to the happenings in Palau. That greater awareness in Europe emerges from a mass interest in disarmament and a growing understanding of the connection between nuclear issues and third-world issues.

Most people in Europe who are now learning about Palauan history find it extremely impressive that that little island nation was so wise as to be the first country in the world to create a nuclear-weapon-free Constitution in 1979. Many people think that the creation of nuclear-free areas is one of the ways to lasting peace. I represent a country the majority of whose Parliament has an outspoken positive attitude to the creation of nuclear-free zones.

(Ms. Hammerich)

When people learn about the difficulties the Palauans are facing in upholding their Constitution in relation to the United States, they are surprised and worried. Why can Palau not gain freedom and independence on its own terms? Why is Palau constantly pressured to give up its nuclear sovereignty? This seems to contradict the United Nations principles of decolonization and disarmament, in which we all place so much confidence. It seems absurd that a nation of only 15,000 inhabitants could possibly represent a strategic threat to anybody. On the other hand it seems so obvious that a country of that size could, without insurmountable obstacles, gain economic self-reliance, taking into account the fertile land, the ocean and the climate.

Some years ago, only a few people in Europe knew about Palau. That is changing now, and Palau seems destined to be an issue widely known of and discussed in the coming years, for the Palauan issue mirrors all the aspects that occupy the international peace movement and all other people of good will: the rights of indigenous peoples; national self-determination; environmental protection; the right to be neither participants in nor victims of the arms race and the hostilities between the super-Powers; and the right to nuclear sovereignty.

The world's eyes will be on Micronesia and, specifically, Palau to an extent not known before. The role of the United Nations will especially be observed because Micronesia is a United Nations Trust Territory. For the next referendum in June 1987 there will be an independent observers team more internationally comprehensive than that at the last plebiscite. We are therefore pleased with the bill adopted by the national legislature of Palau about the referendum, stating that

"any independent international observing team, in addition to the United Nations observing team, shall be allowed to observe the referendum".

(Ms. Hammerich)

Since another referendum - the fifth on the Compact of so-called Free Association and the eighth on reaffirming the Constitution - seems likely to take place in June this year, it will be interesting to discuss the characteristics of the one we observed.

The independent observers team found that the conduct and arrangements of the referendum were fair and effective in most of the places we observed. In almost all the polling places we visited it was possible to cast votes in secrecy.

(Ms. Hammerich)

We have doubts about the security of some ballot boxes from outlying districts within Palau and those beyond its jurisdiction. We observed damaged ballot boxes and noted that the opposition lock on the container with all the boxes was removed one night. We have serious reservations about the fairness of holding the voting on different days at different polling places outside Palau. But these points of criticism are minor compared to those we have to make on the political education, the funding of the campaign, the pressure put on employees, the heavy use of governmental facilities to campaign for a "Yes" vote and the attempts to control the media.

Over all, political education was perceived as another effort of the Government to yet out a "Yes" vote. This perception was reinforced by the dual role played by the Political Education Committee's Chairman. As Minister of Administration, he was also the paymaster of the Task Force designed to agitate for a "Yes" vote. We believe that a sharp distinction between the Political Education Committee and the Task Force is necessary. A letter from the previous referendum of February 1986 addressed to Governor Uludong by President Salii of Palau demonstrates this necessity. That letter reads, in part:

> "It has been reported to me that during your trip to Guam and the Federated States of Micronesia as a member of the Political Education Committee you campaigned against the Compact. This surprised me since I had understood you to be now a supporter and it was on this basis you were nominated for the Committee ... It has been recommended to me that one basis for distribution of Compact funds should be the stand of each State or governor on the Compact."

The letter is dated 21 February 1986 and was signed by President Lazarus Salii. This statement shows not only the pressure exerted to bias the political-education process but also the gross economic threats that continue to be the prime determining factor in Palau's current political situation.

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There can be no doubt that vast sums of money were used to push for the "Yes" vote. Significant sums were paid to named individuals "to get out the vote," as they said. We know now that this money from the Administration had not been authorized by the Legislature. All this became very clear as we observed the gauntlets of the "Yes" vote campaign workers in front of the polling places and compared them to the humble stalls of the "No" campaign. The "Yes" areas were scenes of great activity; food and soft drinks were being handed out, cars - many of them Government vehicles - picked up voters at their homes and brought them back waving yellow "Yes" flags. The pro-Compact campaign denoted prosperity and wealth, in contrast to the poor and primitive "No" stalls. This discrepancy was shocking.

Of several other pressures, I shall mention two memoranda from the Administration to civil servants in general and to schoolteachers. The first called for "all personnel to vigorously campaign for the Compact" and for the reporting of anyone who "chooses to campaign otherwise". This was a clear threat and a breach of the principle of a non-partisan civil service and of the regulations governing the public service. So was the use of schoolteachers by closing down schools and urging them to use their so-called leave to campaign for the "Yes" vote. I observed a clear example of this abuse in Ngchesar State the day before the referendum. Children were playing outside and not going to school, while teachers were gathered in a classroom to plan the "Yes" campaign in front of the polling places the next day, and this was a use of Government time, facilities and service to promote only one side of the issue.

There is no local press in Palau except the Government-run The Palau Gazette, a voice for the positions of the Administration. The television station is privately owned and its signal can only be picked up in Koror, the capital of Palau. The Political Education Committee bought one hour every day to present

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programmes relevant to the referendum. The Political Education Committee said that this time was used solely for education, but many people, whom we have no reasons to mistrust, complained that the time-slots were used to send pro-Compact messages only by those favouring the "Yes" vote, and that the opposition was denied access to that time. Paid programming was available to both sides of the campaign for $15 per minute, but the abundance of money on the one side and the scarcity of money on the other had an obvious impact on the balance.

The radio plays a major role in Palau. It too is State run, and the Government had much more access to the airwaves than did the opponents of the Compact. However, the worst coercion, and much more sinister than all these irregularities, was the over-all economic threat that hung like a sword over the political act of voting. It is not necessary to document this since the economic issue was the main theme of all the Government's articles, speeches, radio addresses and so on. It was also the main theme of the popular discussions we learned about. The theme was very simple and very powerful, and it went as followed:

"We cannot survive without the Compact; we are so dependent; we need the hand-outs of the United States; we will become poor, we will become isolated if we do not accept; we do not want to go back to canoes and grass skirts."

That overwhelming theme made it very difficult for the Palauans to make a free political choice, and this is my most serious reservation about the whole process. At a political meeting in a village it was explained that electrical power was widely discussed - the village did not have electricity. A pro-Compact speaker told the villagers that they would get no electricity unless they voted "yes." I interviewed a young boy about this, and he said that he believed it and that he would vote in favour of the Compact precisely to gain that kind of facility. An

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American businessman who was in favour of the Compact told me that he would not give it a 20-per-cent chance if the people of Palau had, as he said, "good businesses and a fair standard of living."

With regard to the conclusions of the United Nations Visiting Mission, this factual and all-pervasive economic coercion - visible even down to the commercially produced signs reading "Ye$" - makes it hard to understand how the exacting and industrious United Nations Visiting Mission can conclude its report on the referendum with the statement:

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

How can they say such a thing? What is the matter with their eyes?

This lack of true political freedom to choose lays a heavy burden on the shoulders of the United States. We have stated in our report that the plebiscite was not an operation directly run by the Administering Authority, the United States. This is true: the presence of the United States was not felt very much.

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There were exceptions, though. A few days before the referendum, Howard Hills, the lawyer for OMSN, was quoted in the Pacific Daily News as saying that the United States would accept no renegotiation of the Compact. The strategy of the Constitution supporters was to demand renegotiation, so Howard Hills' statement had a great impact on the discussion and was widely distributed. The Compact advocates used the statement to show that there was nothing to do but to accept the Compact.

Of course no one was in doubt about the attitude of the United States Administration; it was obvious. For instance, Howard Hills' letter of 5 December to Avram Westin, Executive Producer 20/20, stating:

"Our willingness and desire to co-operate with Palau's leaders in their attempts to achieve the required 75 per cent approval of the Compact."

Or a letter to President Salii from the United States Department of the Interior about funding of the political education in which the following phrase is used: "If the plebiscite is successful". This reveals an attitude that hardly lives up to normal perceptions of democracy. In what circumstances is a plebiscite successful? Can it ever be a failure? Is not respect for the outcome of a plebiscite necessary?

But United States responsibility is not so much in interfering directly or in revealing of attitudes. It is far more severe, for the great question that emerges from the stalemate situation on Palau is: Has the United States fulfilled its responsibilities according to the 1947 Trusteeship Agreement?

The whole fate of the Palauan and other nations hoping for nuclear sovereignty depends on the answer that United Nations organs give to that question. I am not referring only to the oft-quoted wording of the Trusteeship Agreement "... promote the development of the inhabitants of the Trust Territory towards self-government or independence" but also to the more accurate demands in article 6, paragraph 2:

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"... promote the economic advancement and self-sufficiency of the inhabitants, and to this end shall regulate the use of natural resources; encourage the development of fisheries, agriculture and industries; protect the inhabitants against the loss of their lands and resources."

It is difficult to imagine that the phrase "protect the inhabitants against the loss of their lands and resources" can be done by, for instance, testing 66 atomic bombs over the Marshall Islands. But that is another story. It seems that the Republic of Palau, 40 years later, is in such a state of total dependency that the inhabitants have no possibility of choosing to uphold their Constitution, freely expressing their will and desire, or allowing them the enjoyment of complete independence in freedom, as provided in United Nations General Assembly resolution 1514 (XV).

I doubt if any independent experts on international law or anthropologists would argue that the United States has fulfilled those commitments. I think that future historians will question why the Trusteeship Council on 28 May 1986 adopted a resolution stating that the United States Government had "satisfactorily discharged its responsibility under the terms of the Trusteeship Agreement".

I turn now to the new referendum. On 1 May 1987, the Palauan National Legislature adopted Bill No. 2-6132-13S agreeing to a new referendum on the Compact by 30 June 1987. Before then the House of Delegates of the OEK had expressed its will to renegotiate the Compact with the United States, a condition which was summarily rejected by the United States. Against that background it seems totally absurd to conduct a new plebiscite on exactly the same document that the Palauan voters have already rejected.

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In House Joint Resolution No. 2-0070-14S, of 8 April 1987, the Palau House of Delegates urged the Trusteeship Council and the Security Council to express disapproval of United States refusal to conduct renegotiation with Palau. The House expressed dissatisfaction with certain aspects of the Compact, such as the situation of Palauan students and the right of the United States to designate land for military purposes.

The anger of the House of Delegates is understandable, considering the arrogance of Jim Berg, Director of the Office of Freely Associated States, who has said:

> "... the United States Government is willing to bring the Compact of Free Association fully into effect for Palau as soon as Palau completes its approval process ... and we will not reopen or renegotiate the Compact of Free Association."

That was taken from the transcript of a taped meeting between the Palauan House of Delegates and the Berg delegation in March 1987.

It is not only the refusal to negotiate that is arrogant; so, too, is the reference to Palauan voters' democratic choice as an "approval process". The fact is that the voters of Palau have four times rejected the Compact, in accordance with the provision of their Constitution demanding a majority of 75 per cent to cancel the nuclear ban. So it would be more correct to say a "refusal process" rather than an "approval process". May I respectfully remind the Council that that provision was itself originally approved by 92 per cent of the Palauan electorate.

The pressure did not stop with the visit of the Berg delegation but escalated with an intervention by three United States Congressmen, who arrived via United States military jet on 15 April with their wives, aides and two military officers, who referred to themselves as "fellow islanders" and vigorously campaigned for unconditional acceptance of the Compact.

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They repeated the position of no renegotiation, and the clear symbolic effect of their visit was to underline for the Palauan electorate its lack of choice with regard to the Compact. To borrow an American idiom, the United States Government was presenting the Palauan voters with a "heads we win, tails you lose" proposition.

Those two visits are very clear proof of United States interference in the democratic process in Palau, using the instrument of referenda as a means of domination. Both delegations pointed out very clearly that they were not there to negotiate but to find means to complete the approval process, that is, to pressure the electorate to vote against its own Constitution.

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For more than a month the Palauan Administration has withheld Government wages, making the employees accept 32 hours pay for 40 hours work per week, and has ordered nightly power blackouts, water shut-offs and cuts in hospital services. These provisions have been ordered with reference to the serious economic situation of the Republic:

"The President further noted that the failure (sic) of the voters to approve the Compact of Free Association has left the Republic in a grave financial crisis. This financial crisis will have significant impact on the lives of all the people." (Palau Gazette, 20 January 1987)

Since there is no logical reason to have another referendum on exactly the same text as was rejected by the voters last December, one can conclude only that economic coercion seems to be the only way in which a desperate Administration tries to make the voters accept what they rejected only five months ago, and which, in fact, has been ruled unconstitutional by the Palauan Supreme Court.

Such a referendum would be a travesty of the democratic process, and if it is held under the auspices of the United Nations and with the active agreement of the United States Congress, both bodies will be perceived by the international community to have betrayed basic democratic principles. In this context, I shall mention only that all this takes place at the same time as President Salii and members of his Administration are the defendants in more than eight lawsuits accusing them of economic criminality.

This complicated and undignified situation requires the United Nations to stop the runaway process and take responsibility for a fair renegotiation respecting the Constitution of Palau, in particular the nuclear ban and the eminent domain provisions, in accordance with United Nations standards and United Nations resolutions on decolonization. The United States could not terminate the

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trusteeship unilaterally. It must go through the Security Council. That is the only legal way to do it.

What we have in essence is a situation in which the very honour and integrity of the United Nations are called into question.

The main obstacle to free and fair elections in Palau is its total economic dependence on the United States. After 40 years of trusteeship, no self-sufficiency has developed as a result of American policy. On the contrary, more than 90 per cent of the national budget is supplied by the United States and 65 per cent of all employed Palauans work for the Government.

Unless this obstacle - total economic dependence - to free and fair elections is removed, no supervision, no observation and no technical provisions will make the election process truly democratic.

It now seems to be the responsibility of the United Nations to see to it that Palau's unique potential for economic self-reliance is realized, supported and developed. Until then the United Nations has nothing to do but to respect the highly civilized Constitution of Palau and the seven referendums in which the voters have upheld it. The United Nations should respect its own rules: no termination without the Security Council. This would demonstrate the integrity and effectiveness of the United Nations in fulfilling its commitment to uphold the right of all States, great or small, to self-determination.

Palauans in their wisdom have set a model for the rest of the world. Now it is possible to set a model in regard to Palau, which could so easily flourish with true international co-operation rather than coercion.

The only defences of indigenous peoples against the multiple threats of the nuclear cycle are the law, the ballot box and the United Nations. In a real sense,

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their efforts to achieve nuclear sovereignty are on behalf of us all, for the nuclear threat is a global threat, and in planetary terms we are all indigenous people.

The PRESIDENT: I shall now call on those members of the Council who wish to put questions to the three petitioners we have heard this morning.

Mr. BEREZOVSKY (Union of Soviet Socialist Republics) (interpretation from Russian): We have heard very important statements from the petitioners, statements which should be read carefully. I refer in particular to that by Mr. Weisgall, who put very serious and substantive questions about the legal basis for the unlawful actions being undertaken by the Administering Authority, the United States, regarding the Trust Territory of the Pacific Islands. We hope that the statements by the petitioners will appear in the records of today's meeting with all due speed and be submitted to members of the Council for study as soon as possible. We shall then naturally be ready to put questions of substance on today's statements.

I now wish to raise with you, Mr. President, a matter raised by Ms. Roff, who said that Mr. Alcalay, of the National Committee for Radiation Victims, was unable to come here to make a statement and had delegated his authority to her or another colleague. I recall that it has been the practice in the Council to grant the request of a petitioner that his petition be read out by one of his colleagues.

(Mr. Berezovsky, USSR)

It seems to me that the Trusteeship Council also in this case could act in the same way and listen to that statement. This would allow the members of the Council the opportunity to familiarize themselves as quickly as possible with the substance of the questions Mr. Alcalay wishes to present to the Council.

Lastly, I should like most seriously to comment on the statements made today by the representative of the Administering Authority in the Council after each if not all of the statements made by the petitioners. The representative of the Administering Authority tried to create the impression that certain issues, which were awkward for the United States regarding the so-called Compact of Free Association and the Covenant, were not suitable for discussion by the Trusteeship Council, that the petitioners should not be speaking about those subjects and that the Trusteeship Council is not discussing them because a resolution was already adopted at the last session of the Council.

In addition to the fact that such statements constitute open pressure on the petitioners who have come to the Council, we should like to note that the very formulation of the question by the Administering Authority cannot be accepted by the Council. The state of the Trusteeship and the action and effect of the Trusteeship Agreement have not been terminated by the United Nations and a unilateral statement by the Administering Authority cannot change this state of affairs. Until such time as the Security Council takes a decision to terminate the Trusteeship Agreement, the Trusteeship Council is obliged to discuss any question dealing with the Trust Territory, and the Soviet delegation hopes that the Council will act in that way.

Therefore, the Soviet delegation, as a member of the Trusteeship Council, cannot agree with the United States formulation of the question and believes that any petitioner can express his position on any question dealing with the Trust Territory of the Pacific Islands.

(Mr. Berezovsky, USSR)

The representative of the Administering Authority also dealt with the resolution of the fifty-third session of the Trusteeship Council. We should like once again to emphasize that the interpretation of that resolution by the Administering Authority is not a legal basis for putting an end to the Trusteeship. The Trusteeship Council cannot take a decision to terminate the Trusteeship. It is only the Security Council that can take such a decision. The Soviet delegation has already spoken on this question at the fifty-third session and at the seventeenth special session of the Trusteeship Council, and here we could once again refer to the United Nations Charter. I assume that the Charter is a document which is sufficiently well known to the representative of the Administering Authority. We could also refer to other United Nations documents, even including the rules of procedure of the Trusteeship Council itself.

The PRESIDENT: I believe that one of the points raised by the representative of the Soviet Union was addressed specifically to the President, and I shall therefore try to answer it.

The question concerns the petition of Mr. Glenn H. Alcalay. He wrote to the Secretariat, and it was agreed, as with all other petitioners, that he should give an oral petition. Unfortunately, he later discovered that he would not be in this country today and he asked that Ms. Roff should deliver the petition on his behalf, to which the Council, through me, agreed. Unfortunately, Ms. Roff, for reasons that she has explained, feels unable to read out what is, in fact, a very long petition, and she asked whether someone else might do it on her behalf. The Secretariat then attempted - I believe yesterday - to find Mr. Alcalay and to learn of his wishes. However, he could not be contacted. I am in the hands of the Council on this matter, but when I was approached about it this morning, it seemed reasonable to me that if a petitioner was not able to be present to deliver his

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petition and that if the person he nominated to do it were unable to do so for one reason or another, we could not go on seeking other people to come and read out the petition when that petition is already available to us in writing for members of the Council to study and when we would not have the opportunity to ask questions of the oral petitioner. That is why I took the view - and I am afraid here that our provisional rules of procedure give me no guidance - that it would be more sensible and in the interests of the expeditious work of the Council to take Mr. Alcalay's petition in writing, the same as we take many other petitions.

Since no other member of the Council wishes at this time to address questions to any of the petitioners, I should like to thank our three petitioners for their contribution to our work and to say that we shall be taking further petitions tomorrow. After members of the Council have had time to reflect on what they have said to us today, they may have further questions tomorrow. It would be useful if petitioners could be present tomorrow when perhaps further questions might be put to them.

Mr. BEREZOVSKY (Union of Soviet Socialist Republics) (interpretation from Russian): The Soviet delegation has taken due note of the President's statement regarding the petitioner Mr. Alcalay. I should like to ask whether the President or the Secretariat has any information available concerning whether Mr. Alcalay can appear before the Council at some future time during our work. If so, perhaps we could hear his presentation then.

The PRESIDENT: I am told by the Secretariat that we do not have any information about Mr. Alcalay's whereabouts or whether he will be available to be present during the course of these meetings, but we will continue with our efforts to contact him. The only point I would make is that we hope to have heard the petitioners at the beginning of our session. Nevertheless, I think it would be sensible to make Mr. Alcalay's statement available. I am told that we do not yet have a proposal to publish it but that it will be made available in the way that other petitions are to all members of the Council.

There are no further speakers or petitioners for this morning, or in fact for today. I therefore propose that we adjourn the meeting until tomorrow morning, Wednesday, 13 May at 10.30, when we shall then hear the remainder of the petitioners.

The meeting rose at 12.20 p.m.