UNITED NATIONS

TRUSTEESHIP COUNCIL

Distr.
GENERAL

T/PV.1585
22 May 1985

ENGLISH

Fifty-second Session

VERBATIM RECORD OF THE FIFTEEN HUNDRED AND EIGHTY-FIFTH MEETING

Held at Headquarters, New York,
on Thursday, 16 May 1985, at 10.30 a.m.

President: Mr. MAXEY (United Kingdom)

Examination of the annual report of the Administering Authority for the year ended 30 September 1984: Trust Territory of the Pacific Islands (continued)

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

Organization of work

85-60424 1479V (E)

35p.

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 1984: TRUST TERRITORY OF THE PACIFIC ISLANDS (T/1871) (continued)

EXAMINATION OF PETITIONS LISTED IN THE ANNEX TO THE AGENDA (see T/1872/Add.1) (continued)

The PRESIDENT: I see that of yesterday's petitioners, Ms. Quass, Mr. Weisgall and Mr. Alcalay are present this morning. I propose that the Council should first devote itself to the questioning of those petitioners and go on to hear further petitioners at a later stage.

I hope that both questions and answers will be to the point and that we can complete this first part of our morning's programme with a minimum of delay.

Does any member of the Council now wish to address questions to the petitioners?

I call on the representative of the Soviet Union.

Mr. BEREZOVSKY (Union of Soviet Socialist Republics) (interpretation from Russian): I intended to put questions to Mr. Weisgall yesterday. With the President's permission, I shall do so now.

Everyone knows the situation of the inhabitants of Bikini. They have had to suffer the effects of the nuclear tests of the United States and they have had to be tranferred to other islands. It is quite natural that everyone should follow closely the struggle of the inhabitants of Bikini to have their home returned to them, so that they might lead a normal life and pursue their development.

We know that this question is of considerable importance for the Trusteeship Council. We have noted that repeated efforts to obtain from the Administering Authority the elimination of all consequences of nuclear testing in Bikini have not yet met with success.

We know that the inhabitants of Bikini had instituted a lawsuit against the Administering Authority. We note from documents of this session of the Trusteeship Council and from Mr. Weisgall's statement that a settlement has been reached between the United States and the people of Bikini.

Mr. Weisgall took part in the negotiations that led to that settlement and signed a document in that connection, and I should like therefore to ask him his opinion as a lawyer of the settlement. How is it that the years-long struggle of the people of Bikini to obtain justice led to the settlement we have before us, a settlement which is subordinate or linked to the so-called Compact of Free

(Mr. Berezovsky, USSR)

Association as far as eliminating the aftermath of United States nuclear testing in Bikini is concerned - something which the administering Power ought to have seen to long ago?

How does Mr. Weisgall assess that linkage, and how did it come about? What would Mr. Weisgall consider to be appropriate United States action on the restoration of Bikini Atoll, on the elimination of the radiation there, on the restoration of normal living conditions, and on ongoing medical monitoring of the people subjected to the aftermath of nuclear radiation? Does Mr. Weisgall not feel that this should have been done without any linkage to this Compact?

We certainly feel that it should have been done, but we see in documents, and it was stressed by Mr. Weisgall in his petition, that the so-called Compact should come into effect so that something can be done for Bikini. What if it does not come into effect? What would happen then?

Mr. WEISGALL: Let me try to respond to the several parts of the question raised by the representative of the Soviet Union. A general question that he asked was how I assess the agreement, and why the settlement agreement is subordinate or linked to the Compact of Free Association.

I shall then address the second part of the question: What happens if there is no Compact?

The lawsuit was brought in May 1984 in United States District Court in Honolulu. The position of the United States Government, not surprisingly, was that the lawsuit would be rendered moot, or would be dismissed, once the Compact came into effect, under the so-called espousal provision of the section 177 agreement to the Compact. The United States strategy was to ask the judge for what is called a tay, or a delay, of the lawsuit, arguing to the court that the Compact would be coming into effect and that the lawsuit would therefore be rendered moot. The judge imposed a stay through June of this year.

When the question came up of the possibility of negotiating a settlement with the United States Government, the Bikinians recognized that they had some strong points in the negotiations and some weaker points. The weakness has always been the possibility that a judge would uphold the validity of the espousal provisions of the Compact and dismiss any lawsuits that might be pending as of the effective date of the Compact. It is for that reason that the Bikini people felt it in their interest to see if an amicable resolution of the lawsuit could be brought about prior to the implementation of the Compact.

(Mr. Weisgall)

Why tie an agreement to the Compact? I think what the United States wanted from its point of view was as much support as possible for the Compact, and by tying the rehabilitation of Bikini to the Compact the United States can argue to the Congress, quite legitimately, that passage of the Compact is the most effective way to bring about the rehabilitation of Bikini.

Why did it take so long to bring about an agreement? That is a much more difficult question to answer, and I can only suggest a couple of reasons.

First, I feel that most people in the United States Government have always believed that it is the right thing to do to support the rehabilitation of Bikini. After all, the United States Government, in the late 1970s, conducted a radiological clean-up at Enewetak Atoll that cost some $105 million. The same arguments that would support a clean-up of Bikini applied at the time the Enewetak decision was made, so I think that the first point is simply a recognition that it was the right thing to do.

The second point is that the establishment of the Bikini Atoll Rehabilitation Committee finally helped everyone put a price-tag on the clean-up. I had had informal discussions with representatives of the United States Department of Energy who had once said that they thought the clean-up would cost upwards of $1 billion, which is simply an unrealistic figure to hope for. We now know that the clean-up of the main island of Bikini can be accomplished for in the neighbourhood of $40 million, which is a much more reasonable cost.

Point three is that we have learned from the science committee for the first time that a clean-up is feasible. That point had never been established.

So I think there was a coming together of all of these various points that triggered a change in attitude on the part of the United States Government to begin to look at the possibility of a settlement. The United States was unwilling to settle the lawsuit outside the context of the Compact because that was the most important factor that would help the United States. In other words, tying the clean-up of Bikini to the Compact will help the executive branch in the Congressional deliberations that are going on right now in Washington.

In response to the last part of the question as to what happens if there is no Compact and how does one then accomplish the clean-up under this lawsuit, the answer is that the United States Congress can appropriate funds at any time for the clean-up of Bikini. Indeed, someone asked me: "Why did you even bother settling your lawsuit? You can still go to the United States Congress and ask for funds."

(Mr. Weisgall)

The answer is that that is correct, but it would be much easier to get that funding from the United States Congress if the executive branch of the United States Government were supportive of a funding request.

Indeed, just two weeks ago the Bikini people appeared before the Appropriations Committee of the House of Representatives asking for $14.4 million to commence the clean-up of Bikini. That request is not tied to the Compact because there is no Compact. But the Congress in its wisdom may go forward immediately to appropriate money for the clean-up, and I certainly hope that it will.

If it turns out that there is no Compact, the actual settlement agreement would be difficult to implement, but it does not prevent the Bikini people from again going to Congress to seek funding. So I feel that one way or the other, the funding for the rehabilitation will come about, either by the Bikinians themselves asking the United States Congress for the funding, or under the settlement agreement whereby the Bikini people and the executive branch of the United States Government together would go to the Congress under the settlement agreement to seek that funding.

Mr. BEREZOVSKY (Union of Soviet Socialist Republics) (interpretation from Russian): I thank Mr. Weisgall for his answers to the questions I have asked. I should like to ask him a few more questions.

First, yesterday, after Mr. Weisgall presented his petition here on the question of the Enewetak and Bikini atolls, the representatives of the Administering Authority read out quite a lengthy letter. I should like to ask Mr. Weisgall whether he would like to comment on the statement made by the representative of the Administering Authority.

Mr. WEISGALL: Yesterday, Mr. Feldman did read out a lengthy letter that was sent to a British publication, I believe, written by a Mr. Roger Ray of the United States Department of Energy. Mr. Ray in his letter quoted one sentence of a United States Government publication about the "Bravo" shot which said:

"Winds at 20,000 feet were headed to Rongelap in the east."

Mr. Ray then quoted the next sentence of the document and said that various petitioners, lawyers and journalists had seized on the first sentence, which supported their arguments, without going to the source - to the document itself - to discover the context within which the statement was made.

(Mr. Weisgall)

Mr. Ray said that at best this represented a failure in intellectual discipline and at worst constituted a deliberate misrepresentation. For better or for worse, I happen to be the petitioner, lawyer and sometimes journalist who first revealed that document in a 30 March 1984 article in the Los Angeles Times.

Mr. Ray is inaccurate in stating that only one sentence of the document was quoted. The article quoted the document discussing the weather briefing at 11 a.m. the day before the shot, which predicted "no significant fall-out for the populated Marshalls". At 6 p.m., however, "the predicted winds were less favourable". Nevertheless, the decision to shoot was reaffirmed but with another review of the winds scheduled for midnight.

The midnight briefing "indicated less favourable winds at 10,000 to 25,000 foot levels", winds at 20,000 feet were, as I quoted earlier, headed for Rongelop to the east, and lastly, "it was recognized that both Bikini and Eneman Islands would probably be contaminated".

I have two points I should like to make here. First, in my examination of the document in question and other United States documents, I have found no evidence of a deliberate decision to irradiate the populations of Rangelap and Utirik. At the same time, however, there was a deliberate decision to contaminate Bikini and Eneman Islands; as the document said: "It was recognized that both Bikini and Eneman Islands would probably be contaminated."

In other words, the United States did deliberately detonate the "Bravo" shot knowing that it would contaminate lands that it held and protected under a sacred trusteeship with the United Nations.

The second point I wish to make is that in the article in which this document was discussed and in my appearances before this body and other bodies of the United Nations, I have quoted extensively from the document, upwards of five or six of the key sentences - not one sentence, as Mr. Ray stated in his letter.

Perhaps I could also say of Mr. Ray that he should perhaps have looked a bit more carefully at my article in the newspaper and at my petitions before this body. I would say that at best, this represents a failure in intellectual discipline on the part of the writer of the letter, and at worst a deliberate misrepresentation. I did not quote only one sentence, and I did not quote a sentence out of context. I hope that this sets the record straight.

The more important point, however, is that the document does support a conscious decision to contaminate Bikini and Eneman Islands at Bikini Atoll.

Mr. MORTIMER (United Kingdom): I think Mr. Weisgall has actually given a very large part of the answers I wanted to questions I had intended to ask. In case I did not quite understand him fully, could he repeat or give his views, if he has not already done so, as to whether the money available under the Bikini settlement agreement is new money in addition to the money already envisaged under Section 177 or whether this will simply be money appropriated from the funds already allocated.

Mr. WEISGALL: No, I did not address that question. I think that the best way to answer it is to begin with the Section 177 Agreement as it currently reads. I do not have it in front of me, but it is, fortunately or unfortunately, on the tip of my tongue. I believe that article VI, section 1, states that the United States "reaffirms its commitment to provide funds for the resettlement of Bikini Atoll at a time which cannot now be determined". So the situation with regard to the Compact, regardless of the settlement of this lawsuit, is that there is an open-ended commitment by the United States to provide funds for the resettlement of Bikini. That money would be forthcoming under the Compact, but there is no particular dollar amount associated with that commitment.

The settlement agreement in the lawsuit expands the meaning of article VI, section 1, by stating that the United States will provide funds under article VI, section 1, to assist in the resettlement and that the United States intends that these funds be used for resettlement activities which contribute to the maximum extent practicable to the rehabilitation of Bikini. So what the settlement of the lawsuit does, in essence, is expand the meaning of article VI, section 1, of the Section 177 Agreement from simply resettlement - which I think most people would interpret to mean roads, housing, churches, schools, the infrastructure of the island - to include rehabilitation, the actual clean-up effort needed to result in the resettlement.

The funding mechanism will still be article VI, section 1, but I feel that the settlement of the lawsuit results in a greater commitment by the United States to provide funding. To answer the question directly, the funding is new money; it is money that would be on top of whatever other funds were provided under the Compact or the Section 177 Agreement.

I hope that adequately answers the question.

Mr. MORTIMER (United Kingdom): Mr. Weisgall, as a good lawyer should, spoke in his petition of, I think, two additional issues of concern to the Bikini Islanders. One is the so-called espousal clause, which I think in practice means

(Mr. Mortimer, United Kingdom)

that in return for the money under the Section 177 Agreement Bikini Islanders will not be permitted to pursue separate claims in United States courts. The implication of Mr. Weisgall's petition was that the Bikini Islanders had not been consulted on this, that they had not agreed to this, and that they should be allowed to pursue their claims in United States courts - in addition, I assume, to receiving the money under the Section 177 Agreement.

Is this not a case of having one's cake and eating it?

Mr. WEISGALL: It sure is a case of having one's cake and eating it, or, to use another expression, getting two bites at the apple. But there is a very good legal mechanism to take care of that particular situation. I think that any judge faced with a monetary award of damages to the Bikini people, which is what the Section 177 Agreement is all about, would undoubtedly subtract that amount from or set it off against any award that he would make. The Bikini people will receive a total of $75 million in damages under the Compact. If the judge were to find $100-million-worth of damage, it would seem only reasonable to set off the $75 million and award the Bikini people $25 million on top, or make any such similar mathematical calculation.

Obviously, I could not predict what would happen, but the Bikinians' argument is that they should be entitled to that day in court, and I think that the simple set-off mechanism would take care of the problem that the representative of the United Kingdom quite correctly points out.

Mr. MORTIMER (United Kingdom): I am grateful to Mr. Weisgall for those answers, and I have no further questions to address to him.

I have one very general question to address to Ms. Quass, who spoke yesterday. I confess that I do not have her petition in front of me today, and I apologize for that, but she spoke of the fact that too many unnecessary plebiscites in Palau tended to undermine the democratic fabric there. This stuck in my mind, because later Mr. Alcalay, I think, asked the Council why the September 1983 plebiscite in the Marshalls should be considered sacrosanct - in other words, why could they not have another one.

It seems to me that democracy is unfortunately a messy business, but nevertheless perhaps the best guarantee that people will be allowed to express their views on conventions or laws or whatever it might be. I find it difficult to agree that somehow plebiscites can be regarded as undermining the democratic fabric

(Mr. Mortimer, United Kingdom)

of a country. It seems to me that, if plebiscites are recognized means of expressing political views, the more plebiscites the better.

I wonder if Ms. Quass could comment on that.

The PRESIDENT: I call on Ms. Quass.

Ms. QUASS: I thank the Council for this chance to clarify the remarks I made yesterday.

I think this is perhaps one of the most important issues that the Trusteeship Council must face in its dealings with the Republic of Belau. As the Council knows, since 1979 there have been five plebiscites in Belau and, if I am not mistaken three of them - not all five - were observed by the Trusteeship Council.

I am not arguing against having a plebiscite for the purpose of a people's expressing its views on its own self-determination. I am questioning having plebiscites which are not observed by this body, which takes responsibility for ensuing fairness and for the full education of the inhabitants of the Territory in their decision-making process. So I would just stress the fact that there have been two plebiscites that have not been observed by this body.

The Council will note from my testimony that 17 per cent fewer registered voters participated in the 1984 plebiscite than in the 1983 plebiscite. In fact, since 1979 fewer and fewer registered voters of Belau have participated in these plebiscites. I submit that this is an indication that there is something very wrong about continuing the plebiscite process when the people understand themselves to be stating their opinion and not having it heard. I believe that the three votes on the Constitution of Belau clearly showed that the people of Belau wanted to uphold their Constitution, with its strong statement of the territory and the limits based on an archipelagic baseline and its strong environmental protections, including the nuclear ban. These were the choices offered in the votes on the Compact and the votes on the Constitution, and the people have continued to uphold their original choice of 1979.

It seems to me that the only way a plebiscite process can erode the democracy of that country is if the international community does not recognize the validity of the decision of the people of the Republic of Belau. As I have said, fewer and fewer registered voters are voting there, and I believe it is because the decisions they made in 1979 have not yet been honoured by the international community.

Mr. MORTIMER (United Kingdom): Again I am at a disadvantage. I do not have Ms. Quass's petition here. But did she not say that in the September 1984 plebiscite in Palau 66 per cent of the registered voters voted in favour and 33 per cent voted no? According to my calculations, that was a 99 per cent turnout.

Ms. QUASS: The point in my testimony about the 66 per cent of the voters is, perhaps, an incorrect statement on my part. Sixty-six per cent was the official certified result by the President of Belau of the votes cast in the referendum. So there was an erosion: 788 persons who were registered voters did not vote in that plebiscite. Sixty-six per cent of the voters who turned out voted for the Compact.

The Council will note that not only Belau's Constitution but also the provisions of the Compact itself, under title IV, state that the Belaun people, the voters, must have a 75 per cent agreement on the terms of the Compact in order for it to be implemented.

Mr. BEREZOVSKY (Union of Soviet Socialist Republics) (interpretation from Russian): My question is addressed to Mr. Weisgall.

So far, it is completely clear to everyone that the results of the nuclear tests carried out by the United States in the Trust Territory of the Pacific Islands should be cleaned up by those responsible for those results. And, as far as I understand it, that is the Micronesians' own view as well as the general feeling world-wide.

Once again I am speaking to Mr. Weisgall as a legal specialist who took part in the preparation of the Agreement about which we have been speaking. I shall read out article I of that Agreement:

(spoke in English)

> "The United States views with favour the rehabilitation and resettlement of Bikini Atoll by the people of Bikini and pledges to the people of Bikini to use its best efforts to facilitate" - I stress "to facilitate" - "the steps necessary to achieve these objectives." (T/COM.10/L.355, p. 2)

(continued in Russian)

How would Mr. Weisgall assess that provision? Perhaps I am not very experienced or sophisticated in legal terminology or the legal approach to any given article here. But in my view - and it may not be completely enlightened in this regard - it follows from this article that, in general, the rehabilitation - as it is called here - of the Bikini Atoll is a matter for the people of Bikini, while the United States should facilitate this act, react favourably to it.

(Mr. Berezovsky, USSR)

In other words, it seems to be apparent here that responsibility for what happened and responsibility for the future fate of the Atoll and its people are actually being transferred from those who should be responsible for eliminating the results of their action. Without any additional agreement they seem to be divesting themselves of all their obligations under the United Nations Trusteeship Agreement. It seems that these people are now putting all the responsibility on the shoulders of the people of Bikini. How else can we view that provision? I should like to hear from Mr. Weisgall on that.

Mr. WEISGALL: The representative of the Soviet Union has demonstrated a very keen legal eye, because he has pointed out a very important subtlety in the Agreement. I might also add that section 2 of article I says:

> "The United States shall provide funds ... to assist the people of Bikini in their resettlement of Bikini Atoll." (Ibid., p. 3)

That language was quite deliberate. I shall try to provide some backgrond and then explain why that language is there.

In the late 1970s the Defense Nuclear Agency - a part of the United States Defense Department - conducted the clean-up of Enewetak Atoll. Not a single resident of Enewetak, to my knowledge, was involved in that clean-up; the work was done entirely by United States Government employees. History has shown - not much history, but history since the late 1970s, the last eight years - that there were some serious problems with the clean-up effort at Enewetak Atoll. There was an attempt certainly to involve the people of Enewetak: the plans for and layout of the housing were discussed with members of the community, but they were never really as involved as they perhaps ought to have been in the clean-up and resettlement of their own island.

The United States did not want to repeat at Bikini some of the - I do not want to call them "mistakes", so I shall start again. I think everyone involved in the settlement of the lawsuit - both the Bikini people and the representatives of the United States Government - wanted to learn from the Enewetak experience and try to improve on it. Since coming into office the Reagan Administration has stressed the concept of moving various functions of Government to the private sector, and the Administration did not want to be in the business of itself cleaning up Bikini. That was stated quite openly in the negotiations. That position is perfectly acceptable to the people of Bikini. The Council has heard from many petitioners over the years about the level of distrust that lingers in the Marshall Islands

(Mr. Weisgall)

among the radiation victims with respect to representatives of the United States Government, especially the Department of Energy. So in the negotiations it was perfectly acceptable to the Bikini people as well that the private sector, not the United States Government, carry out the clean-up.

However, the most important part of the agreement is that the United States shall provide the funds. So we have a situation in which the United States is to provide the money. It will be appropriated through the Interior Department, the State Department or one of the agencies of the Government down to the Bikini-Kili-Ejit local government council, which will contract with private companies to conduct the clean-up. All the normal auditing and fiscal policies of the United States Government will apply, because Federal funds will be involved.

So we have an arrangement acceptable to both sides. The Bikinians want to be in charge of the clean-up and resettlement; they want to be back on their atoll; they want the jobs involved in the clean-up; they want to build their own houses, to rebuild their homeland. That, I think, was one of the areas in which the Enewetak clean-up could have been more successful. I do not believe that this arrangement in any way constitutes a shirking of responsibility under the Trusteeship Agreement by the United States. As long as the United States foots the bill, I think its obligations are being met.

With the United States, for reasons to do with the political philosophy of the Republican Party and the Reagan Administration, looking for Government to do less and less, and with the Bikini people themselves looking to be involved more and more in the clean-up, we had a very convenient meeting of minds, which in no way detracts from the United States obligation under the Trusteeship Agreement.

I hope that that adequately addresses the question. I may have misunderstood its thrust, and I apologize if I did so.

Mr. FELDMAN (United States of America): I should like to clarify one matter. A reference was made to a letter that I read yesterday. I want to make it clear - because I did not read the opening paragraph of the letter, which is to the editor of New Scientist magazine in London - that the author of the letter does not refer to Mr. Weisgall. I want to say this so that there will be no imputation whatsoever of incorrect or irresponsible behaviour, or anything other than the most ethical behaviour, on the part of Mr. Weisgall. The author of the letter comments on an entirely different article written by an entirely different person, an article in fact published in New Scientist, not in the Los Angeles Times.

(Mr. Feldman, United States)

I wanted to say this so that there should not be the slightest shred of suspicion that Mr. Weisgall's conduct or interpretation was under attack.

Mr. BEREZOVSKY (Union of Soviet Socialist Republics) (interpretation from Russian): I am grateful to Mr. Weisgall for his answer to my question, but, as he ended by saying that perhaps he had not fully understood its thrust, I must offer some further clarification.

In asking the question I was not referring to the technical details of the way in which the United States was meeting its obligation to clean up the results of the nuclear tests on Bikini Atoll. I was referring to a more serious, general matter - the Administering Authority's responsibility. How it is to be met, by Government agencies or private companies, is simply a matter of details. The main point is that the Agreement says very clearly that the so-called rehabilitation and resettlement of the people of Bikini is a matter for the people of Bikini, while the extent to which the United States will pay is still a subject that I understand from the petitioner's statement gives rise to many additional questions and problems. My question to Mr. Weisgall was meant to bring that out.

The direct responsibility of the United States to rehabilitate the homes and living conditions of the people of Bikini Atoll is being put on the shoulders of those people by the United States Government. That is the crux of the problem I want to bring out.

Mr. WEISGALL: Let me try to approach this matter from a different direction. There are two ways in which the clean-up, the rehabilitation and resettlement, could come about. First, the Bikini people could stay down on Kili and Ejit and wherever else they are and wait for however many years it takes for the United States Government to engage in the rehabilitation - get the equipment out to Bikini, scrape the soil, revegetate the islands, build the houses, roads and churches - and then tell the Bikinians "OK. Here it is. You can go back. We've done our job." That is essentially what was done at Enewetak. The United States cleaned it up, built the houses and said "OK, folks. Here it is. You can go back."

The other way in which it could be done would be for the United States to pay the same amount of money, but to involve the Bikini people to a much greater extent in that effort. The Bikini people want to be involved in the clean-up. Obviously, they do not have the scientific expertise to determine how much soil should be scraped, and where, but the Bikini people themselves would contract with a kind of project manager, any one of a number of very well-qualified United States companies

(Mr. Weisgall)

with which have all the expertise that the agencies of the United States Government have, but are not tied to the United States Government.

So we have a situation here where the Bikini people want to be involved in the rehabilitation and resettlement. The United States - and I want to make this as clear as possible - is not shifting responsibility to the Bikini people, to scrape the soil themselves, to build the houses themselves. The United States is going to provide the funds to the Government of the Bikini people, their local Government - the Bikini-Kili-Ejit local Government - which will contract with private companies to do the work. Those companies will probably employ Bikinians. They want the jobs; they want the employment; they want to be involved both in the rehabilitation and in the resettlement; they want to have a very active say in what happens at Bikini.

Let me give one brief example. The houses that were built at Enewetak by the United States contain louvers - slats - in the windows. Unfortunately, those slats do not move, so when it rains, the rain comes in. Had anyone spent a little more time with the Enewetak people discussing the minute design details, someone probably would have suggested a mechanism for closing the louvers during the rain. Well, the Enewetak people moved into these houses; and when it rained, the rain came in.

I repeat that the Bikini people want to be involved in every minute detail of the resettlement of Bikini. But the point here is that the fiscal responsibility remains with the United States. That is the key point. There has been no shifting of responsibility to the Bikini people - other than their desire to be intimately involved in the clean-up. They are, I guess, a little tired of remaining wards of the United States. Of course, the situation is a bit artificial because there will still be Federal funding. So they may remain wards in one sense of the word. But they want to take an active role in deciding on how the money is spent. Thus, to the extent that any responsibility is shifted, that is something they will welcome because they want to have an active say in what happens at Bikini Atoll.

The PRESIDENT: We shall proceed now to hear a further group of petitioners.

At the invitation of the President, Father William Wood, Ms. Elizabeth Bounds, Reverend B. David Williams and Reverend Edwin Luidens of the Focus on Micronesia Coalition; Ms. Jovita Pangelianan Nabors and Mr. William Nabors of Tinian; Ms. Susan Rabbitt Roff of Minority Rights Group; and Mr. Robert Solenberger took places at the petitioners' table.

The PRESIDENT: I call first on Father William Wood, of the Focus on Micronesia Coalition.

Father WOOD: Thank you, Mr. President, for granting the request of our organization, the Micronesia Coalition, to appear before the Trusteeship Council today in order to offer testimony concerning the Trust Territory of the Pacific Islands.

Before I begin my formal statement, I should like to say this: In order to shed more light on the situation in Micronesia, we should like to submit two publications that we hope can eventually be given to the United Nations Library. The first publication is a report of a conference on economic development in Micronesia sponsored by the Micronesian Seminar. In it will be found a paper entitled "A Brief Economic History of Micronesia" by Father Francis Hezel. In his paper, Father Hezel studies in detail the economy of Micronesia during Japanese rule. The second publication is a reprint from the Journal of Pacific History of an analysis by Brother Henry Schwalbenberg, concerning the plebiscite in the Federated States of Micronesia. We feel that the article demonstrates that the option of independence, rather than being foreclosed by the Micronesian people, seems to be the ultimately desired goal of a large majority of the people - at least in the Federated States of Micronesia.

There is a third document, to which I shall refer in my testimony. It is from the Congressional Research Services of the Library of Congress and is entitled "The Compact of Free Association, Foreign Policy Provisions: A Section-by-Section Legal Analysis".

I shall submit these documents to the Conference Officer, and I hope that they will be made part of the materials available to the members of the Trusteeship Council.

I shall now make my formal statement.

As the Trusteeship Council knows from our previous testimony before it, we speak as members of the United States and international church communities that support Micronesian dignity and independence. We respect and appreciate the hard work done by Micronesians, members of various United States Administrations and members of the United Nations Trusteeship Council during the long and difficult process of negotiating the Compact. The search for a new status for Micronesia, together with the results of plebiscites held on the Compact, clearly show a common desire to end the trusteeship. Besides this recognition, we think there is also common agreement that peace, self-reliance and self-government in Micronesia are

(Father Wood)

the most appropriate fulfilment of the goals of trusteeship and the best guarantee of the long-term stability of the region.

The proposed relation of free association, as defined by the United Nations in General Assembly resolution 1541 (XV), is held to be an acceptable status of self-government - the goal of trusteeship as stated in both article 6 of the Trusteeship Agreement and Article 76 b of the United Nations Charter. Yet it is not independence but, rather, lies somewhere between independence and integration. Thus, in the Coalition's view, free association must be seen as an interim status, lasting for 15 years, subject to extension by mutual agreement or termination by either party. These 15 years could be a time for self-study and self-development leading towards independence, or they could be a continuation of the spiralling dependency of Micronesia which can end only in the cultural and political absorption of the Territory into the United States.

In the light of these goals and possibilities, we should like to offer some comments about the proposed Compact of Free Association. We fear that the needs of Micronesians, as fostered by economic dependency, combined with the security desires of the United States, led to compromises short of Micronesian hopes and United States responsibilities. We note that President Kabua of the Marshall Islands recently acknowledged these compromises when he said that free association was the most acceptable compromise in view of the fact that independence is that natural right of any people. This was cited in the Marshall Islands Journal on 12 April 1985. These compromises must be evaluated in view of the impact on the present possibility of full internal self-government in Micronesia. They must also be evaluated in terms of the options open to Micronesians at the end of the period of free association.

First, the Coalition questions the provision of the Compact giving the United States Government veto power over matters it unilaterally determines "incompatible with its authority and responsibility for security and defence". In testimony last year before the United States Senate Energy and Natural Resources Subcommittee, Ambassador Fred Zeder made it clear that this provision means that the United States has the power to say that any activity affects security and is thus subject to United States veto. Such authority allows Micronesians nothing like full self-government and could limit their ability to build economic relations with other countries, endangering their development towards independence. Recognition of these limitations can be found in a recent United States Congressional Research

(Father Wood)

Service analysis of the Compact which we are submitting with this testimony. With reference to this provision and to the requirement that the Micronesian governments "consult" with the United States Government in the conduct of their foreign affairs, the analysis says, "It can be argued that there cannot be a true exercise of any sovereign power to conduct foreign affairs" under these conditions.

Secondly, we question the provisions granting the United States authority to foreclose access to any third country for military purposes which lasts in perpetuity, with no possible unilateral termination by the Micronesian governments. In United Nations General Assembly resolution 1541 (XV), it states that free association:

"... retains for the peoples of the territory ... the freedom to modify the status of that territory". (Annex, principle VII)

Yet this subsidiary agreement denies the Micronesians the right to change this aspect of their status, calling into question the future autonomy of Micronesia and suggesting that the proposed relation of free association does not meet United Nations standards. We ask whether the terms of this agreement demonstrate good faith on the part of the United States and we fear that the result may be the bitterness and violence currently seen in some Pacific dependencies.

Thirdly, the Compact also allows the United States to end its responsibility for the effects of past military activity in Micronesia. In section 177 of the proposed compact with the Marshall Islands, the United States is released from responsibility for the effects of the nuclear-bomb tests conducted in the Marshall Islands, even though no one yet knows the full effects of low-level radiation exposure. We realize that some settlements have already occurred involving groups of the affected people, but United States moral responsibility for those events and their effects cannot be terminated by a financial transaction. A continuing relationship with Micronesia requires acknowledgement of a continuing responsibility - not necessarily financial - for the effects of United States activities.

Fourthly, any chance of future autonomy for Micronesia depends on the creation of a strong and self-reliant economy over the next 15 years. Free association can stimulate economic development or it can create even more dependency, depending on Micronesian and United States implementation of the compact. In a recent Marshall Islands Journal, Father Francis Hezel, director of the Jesuit Micronesian Seminar on Truk, has described how the original compact goal of self-reliance has been

(Father Wood)

jeopardized through the addition of Federal programmes and monies; a copy of the article has been submitted with this testimony. Economic dependency has deeply affected the Micronesian spirit and identity. Consequently, the underlying question of the Compact for Micronesians is "how they see themselves vis-à-vis the United States under free association and beyond". Father Hezel asks all parties involved to look beyond "the amount of dollars and the number of jobs they will buy" and to "recall some of the other factors in the quality of life". The solution is not more money, but, rather, money carefully spent for plans and projects that will eventually become self-generating. We regret the trend of Micronesians looking to Federal programmes and to the sale of rights to their territories as the primary source of economic livelihood.

The opening statements of the Micronesian and United States Governments at this fifty-second session of the Trusteeship Council have given a new perspective on the unresolved position of Palau. As the Council is aware, the compact with Palau has not yet even been submitted to the United States Congress because of the conflict between provisions of the compact and of the Palauan Constitution concerning transit, storage, testing, and disposal of nuclear and toxic substances. The history of this refusal begins with the development of the Palauan Constitution and continues through several plebiscites held over this issue. We have found the refusal of the United States Government to honour the wishes of the Palauan people to keep nuclear substances out of their Territory, as clearly expressed both in their Constitution and through their plebiscites, to be a painful disregard of democratic procedures.

The Palauan compact has further troubling features. Unlike the compacts with the Federated States of Micronesia and the Marshall Islands, it lasts for 50 years, too long a mortgage, we believe, on the Palauan future. In the version of the compact initialled by Palau and the United States in May 1984, the United States Government can designate at any time any portion of Palauan land for military use and the Palauan Government "shall make available the designated area", or another acceptable area, within 60 days. This de facto right of eminent domain conflicts with the Palauan Constitution which specifies that the Palauan President may not give land for the benefit of a foreign entity.

At the moment, two options have been offered to resolve the related problems of Palauan status and termination of the trusteeship. One is an amendment proposed by the Foreign Affairs Committee of the United States House of Representatives

(Father Wood)

which would add the compact with Palau to the bill containing the compacts with the Marshall Islands and the Federated States of Micronesia currently before the United States Congress. The amendment would allow Congress to approve the compact with Palau on the condition that the President of the United States would report to Congress by a certain date that he is satisfied that the nuclear issue is resolved. The other option is the proposal made by the representative of the Palauan Government to this Council, that the termination of the trusteeship for the other Micronesian entities "should not and must not be held up on account of Palau". Thus, a request would be submitted for fragmented termination leaving Palau as part of the trusteeship until the conflict between compact and constitution might be resolved.

The first option would allow approval of the Compact without the review and consent of the Senate and the House on the specific conditions of the Compact. In the Coalition's view, such a process goes against democratic procedure. The second option goes against the United Nations precedent, since all previous trusteeships have been terminated as one unit. Extraordinary reasons would have to be offered for such a break with precedent, especially since the present fragmentation of the Territory into four entities has been the source of ongoing problems. However, recognizing that the Palauans have expressed their wish to terminate, ultimately, the Trusteeship, this extraordinary option might allow Palau time to consider its future options, especially as the repeated plebiscites aimed at getting approval of the changes in the Palauan Constitution desired by the United States have torn the Palauan people apart.

Such time might be an important opportunity for needed political education in Palau. During the preparation for the last plebiscite in September 1984, the official Palauan Government position was that the nuclear question had been resolved and the vote was merely to affirm the Compact. We note that the United Nations was not even invited to observe the vote. Recently, when asked by Pacific Islands Monthly" if the Compact is passed as it is written now, will Palau remain 100 per cent nuclear-free?", President Remeliik replied, "It will." Since the existing version of the Compact does, in fact, include the provision allowing entrance of nuclear-related materials, the Palauan Government must be held to a higher level of veracity and there must be more education about the implications of the conflict between the Compact and the Palauan Constitution. Such an education process could also give Palauans time to consider the different possibilities of free association and independence.

(Father Wood)

Because of the lack of clarity surrounding the less-than-independent status of Micronesia, and because of the limitations on the Micronesian future entailed in certain Compact provisions, the Coalition sees the Compact as having the potential for achieving greater self-reliance or greater dependency. Given these uncertainties, we feel that the United Nations and the Trusteeship Council still have important roles to play in monitoring this relationship, and so we submit to the Council the following requests:

First, that the Trusteeship Council conduct a visiting mission to Micronesia this summer to keep informed of current developments - with special attention given to the situation in Palau - and, should there be another plebiscite in Palau, send an observation mission to evaluate the political education and the voting process;

Second, that the United Nations guarantee the Micronesian states the fullest representation in the United Nations, or, if this is impossible under the less-than-independent status of free association, ensure technical assistance and provide a forum within the United Nations which would guarantee the continuing representation and review of Micronesian concerns.

We believe finally, that Micronesian independence is the only possible status fulfilling the goals of the United Nations Trusteeship System and guaranteeing peace for all in the Micronesian region. Independence is a chosen, not a granted, state, ideally reached after a process of self-study and self-development. In our comments on aspects of the Compact of Free Association, the Coalition seeks to make the Compact part of such a process leading to full dignity and independence for the Micronesians.

We thank the Council for the time it has allowed us and would be happy to answer any questions members might have.

The PRESIDENT: I call now on Ms. Susanne Roff, of the Minority Rights Group.

Ms. ROFF: Minority Rights Group has three principal aims: one, to secure justice for minority or majority groups suffering discrimination, by investigating their situation and publicizing the facts as widely as possible, to educate and alert public opinion throughout the world; a second is to help prevent, through publicity about violations of human rights, such problems from developing into dangerous and destructive conflicts which, when polarized, are very difficult to resolve; and the third is to foster, by its research findings, international understanding of the factors which create prejudiced treatment and group tensions, thus helping to promote the growth of a world conscience regarding human rights.

(Ms. Roff)

Minority Rights Group was formed in London in 1965. Its American affiliate, Minority Rights Group (New York), Inc. was formed in 1982. Minority Rights Group has published 66 reports on issues of discrimination on the basis of group characteristics, and is affiliated as a roster non-governmental organization with the Economic and Social Council of the United Nations.

Minority Rights Group affirms the inalienable right of all peoples to self-determination and independence in accordance with the principles of the Charter of the United Nations and of the Declaration on the Granting of Independence to Colonial Countries and Peoples contained in United Nations resolution 1514 (XV) of 14 December 1960. Minority Rights Group affirms the Universal Declaration of Human Rights of the United Nations.

Minority Rights Group therefore affirms the right of the peoples of Micronesia to defend their basic and fundamental political freedoms, including their rights to determine the environment in which they wish to live free of external dominating forces, human or chemical.

The Trust Territory of the Pacific Islands was established from the former Japanese-mandated islands by the Trusteeship Agreement, approved by the United Nations Security Council on 2 April 1947 and by the United States on 18 July 1947. The Trusteeship Agreement itself was formulated in furtherance of the principles of the Atlantic Charter of 1941, the Cairo Declaration of 1943 and the United Nations Charter of 1945.

In termination of the Trust Territory of the Pacific Islands, Minority Rights Group urges the Trusteeship Council to protect the right to sovereignty of the peoples of Micronesia. As presently formulated, the Compact of Free Association appears to undermine the sovereignty of the peoples of Micronesia. None of the four entities being created in the process of termination meets the four criteria for sovereignty established by 40 years of precedent in United Nations practice in the process of decolonization of more than 70 territories into sovereign States. These four juridical criteria of statehood are that there should be: first, a defined territory; secondly, a distinct population; thirdly, a government with substantial control over that population and territory; and, fourthly the capacity to engage in foreign relations.

Daniel Hill Zafren, specialist in American Public Law of the American Law Division, has pointed out in his study of "The Compact of Free Association - Foreign Policy Provisions: A Section-By-Section Legal Analysis" - which we

(Ms. Roff)

submitted to the Trusteeship Council on 17 April 1985 as a document to be circulated, if possible - prepared for the Congressional Research Service of the United States, that:

> "On its face, [section 121 of the Compact] represents a recognition by the United States that these Governments have their own international legal personality. Yet, legally, at most this can be deemed to be a recognition in the declaratory sense. ... This section should be read in conjunction with Section 123, which provides that in the conduct of such affairs the Governments must consult with the United States. It can be argued that there cannot be a true exercise of any sovereign power to conduct foreign affairs, in general or in specific fields, if there has to be consultation with another nation and such conduct stymied if that nation makes a contrary unilateral determination."

Moreover, according to Zafren, section 471 of the Compact bestows the power of amending the Compact unilaterally on the United States, since:

> "Despite any provisions within the Compact calling for mutual agreement to amend the Compact, by virtue of declaring the Compact a statute under the laws of the United States such would seem to give the United States the right to unilaterally amend the Compact by any subsequent statute."

Not only does the present formulation undermine the sovereignty of the peoples of Micronesia, but it fails to meet the international standards required of a political status less than independence - that the entity should have, in the first place, the power to terminate the arrangements unilaterally; and, secondly, full powers over its own constitution.

The demands of the United States that the Palauan people

> "must now devise an acceptable method of reconciling their constitutional provisions to comply with the mandate of the Palauan electorate for free association with the United States ..."

- a quotation from a State Department press release dated 18 February 1983 - is a clear indication that the entities do not have full powers over their own constitution.

These powers are further eroded by the same degree of enduring fiscal and economic control by the United States after the termination of the trusteeship as is exercised by South Africa over the so-called homelands.

(Ms. Roff)

In 1978 Henry J. Richardson III, then a member of the staff of the United States National Security Council and a professor of law at Indiana University explained one major international objection to the claims for independence of the homelands:

"One class of these agreements deals with basic services and were described by a South African government speaker as being 'concluded to provide for the maintenance of the status quo in regard to the many facilities or services to which citizens have grown accustomed'. These agreements cover the maintenance by the South African Department of Education of certain schools in the Transkei, the generation of electricity and the mandate agreement for Escom, the maintenance of certain public roads in the Transkei, and the maintenance of private hospitals by the Cape Administration. A second class of agreements includes those 'necessitated by changed circumstances arising from the independence of Transkei', including financial assistance, the conditions of the secondment of South African officials to the Transkei, Transkei citizenship, movement across borders, a non-aggression pact, and technical aid. Further, land will be continued to be bought by the South African Bantu Trust after independence and transferred to the Transkei.

"This system of supplementary agreements is a focus of major concern and differing expectations for both the South African Government and Transkei officials and people, as reflected in the South African parliamentary debates on the Act. In a position striking international chords, opposition members argued that these agreements established controlling arrangements far beyond the mere implementation of a consensus-based public order within the Transkei and that they were of real and pervasive constitutive significance such as to render the Transkei impermissibly controlled by and dependent on South Africa. These agreements apparently govern major values of power, wealth, skills transfer, and other sources of authority and influence in such a way as to leave major value allocations still remaining with South African Government officials, notwithstanding the Transkei's change of status. Moreover, South African Government speakers joined in confirming the value significance of these agreements, not only because they maintained a status quo beyond the Transkei's change of status but also because of the need for continuing interdependence between South Africa and the Transkei in the areas of labour, agriculture and food, as well as the need for common policies to enable South Africa to supply the Transkei with knowledge and the methods of production."

(Ms. Roff)

United States officials have more than once acknowledged that the emerging relationship between the entities of Micronesia and the United States "has no precise precedent either in international practice or in United States constitutional practice". This was said by John C. Dorrance of the Office of Australian and New Zealand Affairs of the United States Department of State in September 1983. In fact, the closest parallel to these anomalous arrangements are the homelands of South Africa, which have been repudiated in successive United Nations resolutions as

> "fraudulent, a violation of the principle of self-determination and prejudicial to the territorial integrity of the State and the unity of its people". (General Assembly resolution 2671 F (XXV))

We urge the Trusteeship Council to insist on sufficient reformulation of the Compact of Free Association to ensure that it meets the basic standards of international law and practice for the termination of a Trust Territory that is non-contiguous to the United States and peopled by a different ethnic group.

Fourteen months ago the President of the United States transmitted the proposed Compact of Free Association for two of the three entities to the United States Congress. It was first proposed that these arrangements should be ratified not by the Foreign Affairs committees of the Congress but by the Committee on Energy and Natural Resources of the United States Senate and the Committee on Interior and Insular Affairs of the House of Representatives. Hearings on the matter were held by those Committees throughout 1984. During those hearings it became quite apparent that the Administering Authority was in violation of all requirements of article 6 of the Trusteeship Agreement.

The political institutions of the Territory do not meet the standards for either self-government or independence since the purse-strings are held and withheld by the Administering Authority on all governmental functions and this will continue to be so after the termination of the trusteeship on these terms, and since changes in the form of administration of the resulting entities can be changed by United States statute, including the right to terminate the agreements involved in the Compact.

The Administering Authority has failed to promote the economic advancement and self-sufficiency of the inhabitants; has failed to encourage the development of fisheries, agriculture and industries; has alienated rather than protected the lands and resources of the inhabitants; and has only belatedly improved the means of transportation and communications.

(Ms. Roff)

The Administering Authority, far from protecting the health of the inhabitants, has - according to one specialist witness to the Congressional hearings - allowed Hansen's Disease, or leprosy, a fully controllable disease, to run rampant in the Federated States of Micronesia, where it could affect 2,000 of the 78,000 people of Pohnpei State or 40 per cent of the island of Kapningamarangi. Cholera broke out in Truk State in 1982. Tuberculosis rates are seven times higher in the United States administered trust territory than in the State of Hawaii.

The educational opportunities offered the peoples of the Trust Territory lag far behind those offered American citizens and the only way that Micronesian students can compete is by leaving their island homes and becoming assimilated into American society in Hawaii or the West Coast of the United States.

The attempt to "decolonize" the Trust Territory from the Committees on Energy and Natural Resources and Interior and Insular Affairs of the United States Congress reflects the United States perception of the future of the Trust Territory beyond termination of the Agreement. The Northern Marianas will be a commonwealth along the same lines as Puerto Rico and will probably suffer the same fate, which is to become a half-and-half community - half of the people on the island depending on remittances from the other half working on the mainland. The Federated States and the Marshalls will have precisely the same dependency on the United States after termination as before. But in the process of termination the population will have been as effectively disfranchised as have been the populations of the South African homelands.

This, indeed, would seem to be the point of the arrangements that have been formulated in the Compact. The people of the Trust Territory will have no claims against the United States since they will in effect have "espoused" them by the terms of the agreements and the subsidiary agreements. They will have insufficient international personality to make claims in international law: they will not, for instance, be able to become Members of the United Nations, even though the 10 smallest Members of the United Nations are all islands with smaller populations than that of the Trust Territory of the Pacific Islands. The only jurisdiction to which the people of the Trust Territory will be able to appeal after termination is the courts of their own entities, which are to continue to be funded and monitored by the United States Congress in perpetuity, since all fiscal arrangements stem from congressional appropriations, which must themselves be competed for with all the other elements of the United States Government.

(Ms. Roff)

During 1985, critics of these proposed procedures for terminating the Trusteeship Agreement have prevailed in insisting that the Foreign Affairs Committees consider these matters, since any act of decolonization, as distinct from annexation, can be properly processed only by those committees charged with treaty-making powers. Hearings began in April in the Sub-Committee on Asian and Pacific Affairs of the House Committee on Foreign Affairs. We were disappointed by the fact that, in the first round of hearings, members of Congress took testimony from only two witnesses, who had never held a Government appointment in the Trust Territory. But we are pleased that the United States has begun to consider the criteria for decolonization rather than simply the criteria for annexation as relevant to the Trust Territory, and in this context we can see no acceptable reason for the United States failing to respond to the desire of the Special Committee on decolonization to examine the processes of preparation for the future political status of what is clearly a dependent Territory.

The most extraordinary thing about all these highly anomalous processes, of course, is the separation of Palau from the arrangements sent to the United States Congress in March 1984. The United States position continues to be that the people of Palau must accept nuclear substances in their territory as part of the arrangements for termination of the trusteeship. The people of Palau have affirmed their desires five times since they adopted their Constitution as the Republic of Palau, under United Nations supervision, on 9 July 1979, by 92 per cent of the votes cast. The administering Power, however, objected to the so-called nuclear-free clauses of that Constitution, article XIII (6) of which provides that

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

The administering Power hastily called a constitutional convention to rewrite the Palauan Constitution but, on 23 October 1979, 70 per cent of the Palauan people rejected that new Constitution, which did not include the nuclear-free clause. On 9 July 1980, 78 per cent of the Palauan people reaffirmed the original Constitution with its nuclear-free clause.

(Ms. Roff)

The administering Power then offered Palau a future political status, which it called a compact of free association, which would require Palau to accept nuclear and other toxic substances on its land, in its air and in its sea despite the clear threefold affirmation of the Palauan people of their rejection of such substances in their territory, by constitutional provision.

The administering Power sought to tie acceptance of this future political status to amendment of the Constitution to cure the problem. After a voter education campaign that many have criticized - including Prime Minister Michael Somare of Papua New Guinea, whose country was one of the United Nations observers of the plebiscite, in his address to the General Assembly at its thirty-eighth session - the people of Palau were faced with a very complex proposition on which to vote.

The question was divided into two parts: A and B. Prior to the ballot the administering Power frequently stated that parts A and B of Proposition One were inseparable. Part A required a simple majority to succeed; part B, because it involved a change in the Palauan Constitution, required a 75 per cent majority to succeed. Despite objections from many Palauans who sought to enjoin the formulation of the issues in this form, the vote was held on 10 February 1983. Part A succeeded with 61.44 per cent in favour; part B failed because only 51.3 per cent of the voters supported it. The Palauans had voted for close association with the United States, but only so long as that did not entail acceptance of nuclear substances on their territory. But instead of honouring the logic it had itself argued prior to the ballot the administering Power now tried to argue that part A bound part B, and began referring to the vote as an "internal referendum", even though the ballot paper had been headed simply as a plebiscite.

In a courageous decision, the Supreme Court of Palau found against the administering Power. The lawyer who argued the case for the plaintiffs against the administering Power was fire-bombed off the island of Palau a week after that decision was handed down in August 1983.

The response of the administering Power to this fourth affirmation of the nuclear-free clause of the Palauan Constitution by the people of Palau is one that embarrasses deeply those members of Minority Rights Group who are United States citizens. Official documents of the administering Power declared that

> "the Palauan authorities must now devise an acceptable method of reconciling their constitutional provisions to comply with the mandate of the Palauan electorate for free association with the United States."

(Ms. Roff)

In other words, the administering Power will not accept the act of self-determination four times reiterated by the Palauan people because it rejects nuclear substances and weapons in what in many situations the administering Power represents as a purportedly sovereign independence.

The administering Power then proceeded to present the Compact of Free Association as accepted by the other three entities of the Trust Territory to the United States Congress on 30 March 1984. All references to the Republic of Palau had been excised from the documents submitted to the United States Congress. In sending the proposal to Congress, President Reagan stated clearly that

> "The defence and land-use provisions of the Compact extend indefinitely the right of the United States to foreclose access to the area to third countries for military purposes."

That these are not sovereign entities that are being created was further underscored by the fact that the President sent these documents not to the Foreign Affairs Committees of the United States Congress, but to the Energy and Natural Resources Committee of the Senate and the Interior Committee of the House of Representatives, neither of which have the authority to make treaties with sovereign entities, but both of which are responsible for United States public lands.

Meanwhile, the administering Power continued to press the Palauan people to "reconcile their constitutional provisions to comply with free association". A new Compact agreement for Palau was signed on 23 May 1984. Independent observers noted that the new terms would narrow Palau's archipelagic claims, and that since defence responsibility would still be vested with the United States, which maintains a nuclear defence, the new Compact would have to be ratified by the 75 per cent majority required for Constitutional amendment of the nuclear-free clause.

The issue became how to resolve this new Compact. The previous year, the Administering Authority had been very keen to present the February 1983 vote as a plebiscite until it lost it. Then the United States began referring to the "internal referendum" which had not resolved the problem, which was an "internal" problem for the Palauan Government, which it must find a way to resolve if it wished to enter into the Compact of Free Association. The United States attitude now was that a plebiscite had been held on 10 February 1983 which gave clear support for the Compact, (Proposition A), but that an internal referendum held at the same, (Proposition B), had failed to resolve the inconsistency. This was

(Ms. Roff)

despite the fact that the ballot paper for that vote was headed only "Official Ballot Plebiscite on the Compact of Free Association, February 10, 1983, Republic of Palau". The word "referendum" appeared nowhere, least of all prior to part B of Proposition One.

Now, however, the United States was hoist on its own petard. Either this new vote was a plebiscite on a new Compact - and most observers considered that the changes were so substantive that it must be so regarded - and therefore required United Nations observation before it could be submitted to the Trusteeship Council as part of the self-determination process, or it was a referendum to override the Palauan Constitution. But in either case, it required a 75 per cent majority to succeed, since both cases involved a constitutional amendment.

The House of Delegates of Palau voted on 12 June to hold the vote - still not determined to be either a plebiscite or a referendum - not later than 31 July. But the Palauan Senate refused to agree. There were still fewer than 30 copies of the full Compact plus subsidiary agreements in the islands, and the documents were never translated into Palauan in their entirety. The Senate felt that it should hold a series of public hearings before rushing into another vote. It voted to postpone the vote until 31 May 1985. The House rejected this Senate proposal. The President of Palau then issued an executive order setting the date for 4 September. The Senate considered this illegal and filed a lawsuit to enjoin the President from pursuing this action. While the court denied a restraining injunction, it reserved a decision on the basic issue of the constitutionality of the vote.

However, the Office of Micronesian Status Negotiations realized that a vote held on 4 September under these conditions would find no legitimacy in the Palauan courts or the United Nations. The United States did not request an official observer mission from the United Nations to monitor the 4 September vote. Even as the vote proceeded, a petition containing 4,900 signatures was being circulated calling on President Remeliik to resign.

Seventeen thousands eight hundred ballots were printed for an electorate of barely 8,000 people. Fifty thousand dollars provided by the United States was spentby the Palauan Government on sending an education team to absentee voters on the West Coast of the United States. The Office of the President of Palau circulated a Summary of the New Compact, which stated in its first paragraph that:

(Ms. Roff)

"The Compact does not allow any nuclear or other harmful substances in Palau. For military purposes, Section 314 of the original Compact which was disapproved by the voters in the last referendum has been taken out."

But the leadership of the Palauan Senate asked:

"If by deleting Section 314 and all references to nuclear and other harmful substances, the United States is willing to abide by the letter of the Palauan Constitution and not bring nuclear and other harmful substances into the Republic, then why call for the Compact's approval by three-fourths of the votes cast?"

That is to say, the President and the Senate stood 180 degrees apart in their interpretation of the new Compact.

The ballot question itself was a masterpiece of obfuscation. Frankly, I do not know the answer to this question, but I hope that more experienced observers know which way they would vote. The question is:

"Do you approve free association with the United States as set forth in the Compact of Free Association, in the manner specified by Compact Section 411 (b) and in accordance with Article II, Section 3 of the Constitution of the Republic of Palau?"

Some days I think this involves a double negative, some days I think it involves a triple negative.

The Secretary-Treasurer of the Minority Rights Group in New York, Vincent McGee, travelled to Palau to observe the referendum on 4 September. He testified to the Subcommittee on Public Lands and National Parks of the Committee on the Interior of the United States House of Representatives on 25 September 1984 as to what he saw:

"The other emerging Trust Territories were able to have one plebiscite to determine their status, yet Palau has had five national votes in a series, the latest of which, on 4 September 1984, I was able to witness, and which by any description of fairness and clarity should have failed miserably as a true test of anyone's self-determination ... Opposition to the Compact included traditional chiefs, church women, grassroots organizaions and the Palauan National Senate. The Palauan Constitution contains not only a complete ban on nuclear and hazardous substances, but it narrowly restricts eminent domain, reserves land ownership to blood Palauans and establishes a Palauan Territory based on an archipelagic base line. The Compact would circumvent these

(Ms. Roff)

protections, yielding much sovereign authority to the United States ... The President had stated publicly in a broadcast to the nation on its television station that the referendum would not affect the nuclear ban and that there were good reasons for the country to accept this Compact. I was told that Government workers, which comprise a major portion of the wage-earning population, were told that, since the Government supports the Compact, they must vote for it and they must work to have their families and friends vote for it.

"Legal challenges are still pending on the referendum, which was the first to be called by an executive order rather than with legislative approval of both houses of the Palauan Congress and without funds specifically authorized by the legislature. This was the first referendum held without official observers from the United Nations. It was financed by a special appropriation from the United States of $200,000, of which $150,000 was to be used for public education. It was easy to observe that most of the public education was in the form of pro-Compact statements by Government officials and by visits from high-ranking Americans such as Ambassador Fred Zeder. On several occasions it was reported that the official education team visiting outlying villages stated under questioning that they had not in fact read the total Compact.

"There were almost as many views about what the Compact would mean as persons interviewed. Various documents which were circulated as part of the education campaign, either in Palau itself or among Palauan citizens in Hawaii or Guam, left out key parts of the Compact or were contradictory as to the necessity of obtaining a 75 per cent approval, or, as the President repeatedly claimed, approval by only 50 per cent plus one vote."

In the event, 66 per cent of the voters who turned out supported the Compact and 34 per cent opposed it. For the fifth time, the people of Palau had reaffirmed their nuclear-free Constitution over the demands of the Administering Authority.

The balance of power changed in the Palauan Senate with the elections of 30 November 1984. A group of senators sought to bypass the wishes of the people by proposing an amendment to the Palauan Constitution modifying the Section 6 prohibition on nuclear substances. However, since that amendment is a constitutional amendment, it would itself require a 75 per cent vote to succeed, which the Palauan people have five times refused to supply.

(Ms. Roff)

A more recent piece of sophistry has been proposed by elements in Palau anxious to see the financial terms of the Compact begin to come into operation. President Haruo Remeliik told the Pacific Islands Monthly, in an interview published in April 1985, that the Compact no longer requires a 75 per cent majority since the contentious items have been deleted from it, and only requires Senate approval. Fortunately, not even the Administering Authority, with all its wish to see the Palau problem resolved, has been willing to countenance such a blatant contravention of the wishes of the people of Palau, expressed five times in five years. We recall in this connection that the people of the Transkei were eventually coerced into accepting homeland status - whatever that may be - after three elections in which the Transkei National Independence Party was eventually elected by 55.2 per cent of a 43.4 per cent turnout of the electorate in 1976.

The urgency from the Palauan Administration's point of view of terminating the trusteeship is due to the fact that the Administration has contracted massive obligations to the International Power Systems Company (IPSECO) in connection with the building of a power plant, which has burdened Palau with a $32.5 million debt liability which it is having to service by bridging loans from IPSECO itself until it can garnish the post-termination funds from the administering Power. Interestingly, those funds are borrowed from British banks.

The United States Department of the Interior has evaluated the IPSECO project as vastly exceeding Palau's need for power or its capacity to pay. What the IPSECO plant will provide, apart from $15 million in debt-servicing on a $32.5 million debt for non-Palauan interests, is a power plant and fuelling capacity either for the fleet of 400 Japanese and non-Palauan fishing boats now operating in Palauan waters or for the military station planned by the United States for Babeldaob. The fact that two member States of the Trusteeship Council have a vested interest in this project, which does not seem to be appropriate for the Palauan economy, is one reason why we have urged scrutiny by the Special Committee on decolonization of the arrangements being imposed on Palau.

If by some sixth means the United States manages finally to force the people of Palau to reconcile their Constitution with the needs of the administering Power for a nuclear presence in the Territory, how will the Palauan segment of the Compact be processed through the United States Congress and then transmitted to the United Nations? One proposal we have heard is that an amendment to the proposed Compact for the Federated States of Micronesia and the Marshalls will be added

(Ms. Roff)

providing for the President of the United States to accept the Compact as applied to Palau retroactively as soon as he is convinced that the national security needs of the United States are met. In other words, the Palauan segment could be transmitted to the United Nations without review by the United States Congress.

No matter how it is connived, if the proposals that are brought to the Trusteeship Council for Palau include the acceptance of nuclear substances after the people of that island have five times in five years stated their opposition to the presence of such substances, then such proposals will not have been freely arrived at.

Annexation may be an appropriate political status for the people of the Trust Territory of the Pacific Islands, but only annexation knowingly and freely entered into. The arrangements being proposed for the termination of the trusteeship by the Administering Authority at this time - even after 40 years of responsibility during which the United Nations has established noble precedents for the decolonization of more than 70 Territories into full independence and 30 Territories into statuses less than independence - are, as in the case of the South African homelands,

> "fraudulent, a violation of the principle of self-determination and prejudicial to the territorial integrity of the State and the unity of its people". (General Assembly resolution 2671 F (XXV), para. 3)

We therefore ask the Trusteeship Council, in the name of the great achievements of the United Nations, to apply the same standard principles of decolonization to the Trust Territory of the Pacific Islands in its present and future status.

Mr. FELDMAN (United States of America): To respond fully to this - what shall I call it? - farrago of lies, misstatements of fact, half-truths, non-truths and so on to correct every error, even the small ones, would take about as long as the very lengthy statement we have just heard. For example, the statement that the President of the United States sends compacts to certain committees of Congress, thereby determining whether they shall be treated, as a matter of annexation or decolonization is typical of the absolute distortion or misunderstanding of fact. The President sends the compacts to the President of the Senate and the Speaker of the House of Representatives, and those worthies decide what committees shall have jurisdiction. I could go on and on, but it would take much too long.

I assume that the representatives of the Micronesian States will themselves wish, at the appropriate time, to comment on the allegation that they have allowed themselves to become bantustanized or that the status they seek is like that of a

(Mr. Feldman, United States)

bantustan. I assume that the representatives of France, the United Kingdom, Fiji and Papua New Guinea, who formed the Visiting Mission to observe the plebiscites, will in their own time wish to deal with the implication that they have collaborated in such an enterprise as the creation of bantustans.

Of course, the logic involved is rather like that old syllogism: "Socrates is a man, Socrates is mortal, therefore all men are Socrates."

However, there is one thing mentioned by both Ms. Roff and Father Wood that I want to comment on now: that is, their contention that free association is unacceptable in international law as a status unless it is a way-station towards independence. I should like to point out that the annex to General Assembly resolution 1541 (XV) - which has been cited - says in principle VI:

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

"(a) Emergence as a sovereign independent State;

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

"(c) Integration with an independent State."

Further, the annex to General Assembly resolution 2625 (XXV) - which contains the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, states

"The establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people."

Free association has also been recognized in practice. For example, both Cook Islands and Niue are recognized as self-governing Territories in free association with New Zealand. In that form of free association, New Zealand retains responsibility for foreign affairs and defence.

I shall in due course deal with the rest of Ms. Roff's statement.

ORGANIZATION OF WORK

The PRESIDENT: A revised timetable for the Council's current session has been circulated to members of the Council. It differs slightly from the previous one to reflect the progress made so far and the wishes of certain delegations.

The Council will not hold a meeting on Monday, 20 May, and the concluding statements by the representatives of the Administering Authority are now scheduled for Friday, 24 May, instead of Thursday, 23 May.

As I hear no comments, I take it that the Council agrees to follow the revised timetable.

It was so decided.

The meeting rose at 12.50 p.m.