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Fifty-fifth Session

VERBATIM RECORD OF THE SIXTEEN HUNDRED AND FIFTIETH MEETING

Held at Headquarters, New York,
on Thursday, 12 May 1988, at 10.30 a.m.

President: Mr. GAUSSOT (France)

- Examination of petitions listed in the annex to the agenda (T/1922/Add.1) (continued)
- Organization of work

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The meeting was called to order at 10.55 a.m.

EXAMINATION OF PETITIONS LISTED IN THE ANNEX TO THE AGENDA (T/1922/Add.1) (continued)

The PRESIDENT (interpretation from French): As I announced at the Council's meeting yesterday afternoon, this morning we shall continue the hearing of petitioners. I suggest that today the Council hear the following petitioners: Mr. Glenn Alcalay, Professor Roger Clark, Ms. Elizabeth Bounds, Mr. Santos Olikong, Mrs. Gabriella Ngirmang, Mr. James Orak, Mr. Hans Ongelungel and Ms. Sara Rios.

At the invitation of the President, Mr. Glenn Alcalay, Mr. Roger Clark, Ms. Elizabeth Bounds, Mr. Santos Olikong, Mrs. Gabriella Ngirmang, Mr. James Orak, Mr. Hans Ongelungel and Ms. Sara Rios took places at the petitioners' table.

The PRESIDENT (interpretation from French): I now call upon Mr. Glenn Alcalay, representative of the National Committee for Radiation Victims, whose petition is contained in document T/PET.10/701.

Mr. ALCALAY: I am grateful to the Trusteeship Council for the opportunity to appear before it today to present a petition on behalf of the National Committee for Radiation Victims, a public-interest organization which works on behalf of people exposed to radiation from nuclear testing and from all phases of the nuclear-fuel cycle.

At issue today is the situation in the Trust Territory of the Pacific Islands, where numerous problems are continuing to proliferate as we await the termination of the last remaining Trusteeship created in the post-war period.

In past years the Council has heard me speak about the ongoing radiation-related problems in the Marshall Islands, which stem from the nuclear-weapons tests conducted between 1946 and 1958 at Enewetak and Bikini. I am sad to report that today, as we approach the 1990s, several atoll populations in the Marshalls have yet to find a home in which to settle permanently. There has been some recent progress for the Bikini resettlement programme, and plans are

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under way to establish a base camp on Eneu Island until Bikini Island itself can be completely rehabilitated and habitable. But the fate of the Bikini people, known throughout the Pacific as the "nuclear nomads", is completely dependent upon annual appropriations from a fickle Congress which changes in composition on a regular basis. If the past is any indication of how things may look in the future for the Bikini people, we can only say that the future will remain uncertain and tenuous. Forty-two years after the Bikini people made the ultimate sacrifice for the "benefit of mankind", the people of Bikini understand only too well what it means to deal in such unequal fashion with the Administering Authority.

To underscore the unequal nature of this relationship we need only recall a recent article in The New York Times about the plight of the Bikini people. In an article of 10 April on the prospective Bikini project, Mr. Howard Hills, an Administration attorney who represents the Office of Freely Associated States, which oversees the Trust Territory, remarked that it was

> "time the Bikinians became self-reliant and stopped being the perpetual victims". (The New York Times, 10 April 1988, p. A-1)

Mr. Hills went on in the article to say that the Bikini people were continuing to receive "handouts" from the Administering Authority.

Despoite the extreme callousness inherent in Mr. Hills' remarks, Mr. Hills seems to forget that it has always been the policy of the Administering Authority to create economic dependency in the Trust Territory, and we need only recall the so-called Solomon Report's "master plan" of 1963 - to which I have alluded on numerous occasions in this Chamber - to expose the contradictory nature of Mr. Hills' remarks. To blame the victims of the colonial legacy of the Administering Authority, including the ongoing radiological legacy from

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nuclear-weapons tests, calls into question the noble-sounding pledges made by the Administering Authority to the international community in 1947.

As the Council knows, the people of Rongelap Atoll decided to evacuate their home atoll in May 1985 because of persistent fears about current radiation-related illnesses. At a recent congressional hearing before Representative Sid Yates' Subcommittee on Appropriations for the House Committee on Interior and Insular Affairs, it was revealed that the Department of Energy (DOE) has hidden crucial data about radiological contamination at Rongelap. Speaking before Representative Yates' Subcommittee on 26 April, Senator Jeton Anjain of Rongelap accused the DOE of "withholding" important information concerning plutonium contamination at Rongelap. Senator Anjain went on to say:

> "The data in the 1982 DOE study contains errors. There are important omissions in the 1982 study. The DOE knew of our exposure to plutonium, but the DOE withheld this information from our people."

Having been the most heavily exposed group in the Marshall Islands the people of Rongelap are now forced to endure the second trauma of now being one more displaced community in the Pacific.

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With recurrent reports about "jellyfish babies" among the women of Rongelap, it now appears that the 1985 evacuation may have been justified, especially in light of the very troubling report of dangerous levels of plutonium at Rongelap. What is urgently needed at this time is an independent and non-governmental radiological study of Rongelap, and I call upon the Council to request that the Administering Authority provide immediate funds for such a study. In addition, while an independent study is being performed Senator Anjain has requested that the United States Congress provide adequate funding at the present time so that the people of Rongelap may move from their present island of Mejato, in Kwajalein, to a more hospitable island until Rongelap is finally rehabilitated.

As a social scientist, one of my chief concerns resolves around the cultural crises faced by the nascent Micronesian entities following more than four decades of American rule. A front-page story in the 29 April Marshall Islands Journal concerns the bludgeoning to death of Jeltin Ankeid, a Marshallese man in his early twenties, by two young Marshallese suspects and is indicative of the increasing number of violent crimes being committed throughout the Trust Territory. When asked about this rise in violent crimes the Administering Authority usually states that responsibility for the internal affairs of the freely associated States is now in the hands of the local Micronesian Governments. But what usually gets left out of the discussion is that these types of violent crimes were virtually non-existent before the arrival of the Administering Authority in the mid-1940s, and the great majority of social scientists who have worked in Micronesia lay the blame for this new violence at the door of the Administering Authority.

An anthropologist from the University of Hawaii, Professor Donald Rubinstein, has been looking into the problem of suicide in Micronesia for several years. Following on the heels of the admirable work of Father Francis Hezel of Truk, Rubinstein has noted a "suicide subculture" among young Micronesia males, in

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addition to the startling rise in the suicide rate in Micronesia. According to Professor Rubinstein, suicide rates in Micronesia are among the highest to be found anywhere in the world, and he finds the suicide rate to be highest in Truk and in the Marshall Islands throughout the Trust Territory. As one ponders the historical legacy of the Administering Authority during its stewardship over its Micronesian wards, one must consider the entire spectrum of that legacy, a legacy which portends much cultural and social trouble for the future.

In March of this year the base commander of the Kwajalein missile range, Colonel Richard Chapman, convened a series of public hearings on the impact of the upgrading of Kwajalein to accommodate a new and dangerous escalation of the arms race. Colonel Chapman spoke about how Kwajalein has been used to perfect the accuracy of the United States intercontinental missile delivery systems, and he remarked that "Kwajalein is in a great position to monitor Soviet satellite launches." Colonel Chapman went on to explain in the public hearing about the radars, optics, telemetry and scoring systems used to track reentry vehicles after they have been launched from missiles fired from Vandenburg Air Force Base in California. The Colonel went on to explain about the three prime strategic defence initiative (SDI) tests being planned for the 1990s, which are: the Space-Based Interceptor (SBI), the Exoatmospheric Re-entry Vehicle Interceptor Sub-System (ERIS) and the High Endoatmospheric Interceptor (HEDI). Colonel Chapman also mentioned the addition of 2500 more Americans at Kwajalein to facilitate the enhanced military programme. If one were to inquire into some of the causes of the unfortunate social and cultural chaos evident in the islands today, an obvious starting point would be the impact of Kwajalein and its consequent ghetto of Ebeye on the fragile integrity of Marshallese society.

Turning to Palau, we once again see all of the myriad manifestations of a culture in serious trouble. Having gained a measure of international notoriety

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over their David-and-Goliath confrontation with the Administering Authority, the 15,000 people of Palau are far worse off today than they were 40 years ago.

And what exactly is at stake in Palau? Despite rumours that the Pentagon intends to use Palau for future military bases, representatives of the Administering Authority have provided mixed signals over the years about Palau's future. For example, Mr. James Berg, Director of the State Department's Office of Freely Associated State Affairs, said in a 4 November 1987 letter to The New York Times that

"The United States Government has stated in writing that it has no present intention to create any military bases in Palau".

Yet we find that Mr. Berg was stating exactly the opposite in an interview with the Washington Post just one year before. In reference to the so-called fallback arc, consisting of Guam and the Northern Marianas, in the event the United States loses its bases in the Philippines, Mr. Berg remarked:

"To the degree one looks at the next forward area for naval and air installations, we have completed the arc."

So just where does Palau figure into the calculus of the aims of the Administering Authority? Speaking before a hearing of the House Foreign Affairs Committee on 9 March of this year Admiral William Crowe, the chairman of the United States Joint Chiefs of Staff, laid the United States cards on the table. Speaking candidly before the congressional Committee, Admiral Crowe said that Palau would be "one of the first or priority areas that we would have to look at" in case of the loss of the Philippine bases. Admiral Crowe also said at the hearing that "We are very interested in proceeding with the military arrangements with Palau", and he added: "We would like to see it approved and march forward."

As a prelude to the "march forward" envisaged by Admiral Crowe, the December visit by a United States Navy vessel to Koror provided a glimpse into what a

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militarized Palau might look like. According to reports from Palau the December Navy visit resulted in a drunken brawl, with sailors harassing the women of Koror, and the experience left the Palauan people with a taste of what may lie ahead if the Pentagon gets its way.

We have heard in the Council about the scandalous power-plant fiasco known as IPSECO. What has recently come to light is the very intimate connection between the now-bankrupt IPSECO director, Gordon Mochrie, and the former Micronesian ambassador, Fred Zeder. According to an article in Pacific Magazine, Gordon Mochrie viewed former Ambassador Zeder as a Washington ally who could help cement the power-plant deal. As related in the Pacific Magazine article, then Ambassador Zeder

> "dismissed much of the current criticism of IPSECO's Palau plant as so much carping by petty bureaucrats who have very little grasp of what the business world is all about, particularly the international business world."

In his characteristically strong support for the IPSECO power-plant contract for Palau, former Ambassador Zeder gave very high marks to the British bankers who were the backbone of the financing for the plant, and he referred to them as "our British allies helping the United States in the Pacific."

The Council has heard of the recent rash of violence, including the cold-blooded murder of the father of Palauan attorney Roman Bedor and his sister Bernie Keldermans, as well as the recent Government Accounting Office (GAO) and Drug Enforcement Agency (DEA) reports about the approximately 400 regular heroin users in Palau. Moreover, the DEA report about Palau being a transshipment point between South-East Asia and North America for heroin bodes ill for the future of that tiny nation.

(Mr. Alcalay)

Problems in the Trust Territory are not confined merely to the Marshalls and Palau. The Council just yesterday heard of the ongoing complaints by residents of the Commonwealth of the Northern Marianas, who have painfully come to realize that what they voted for in 1975 is not what they see in 1988. As the smoke and mirrors begin to subside in the aftermath of a rigorous public-relations effort by the Administering Authority, we in this Chamber will continue to hear about the disillusionment felt by the indigenous people of Micronesia in the wake of four decades of American colonialism.

(Mr. Alcalay)

In conclusion, I respectfully request the Trusteeship Council to urge the Administering Authority: (1) to seek congressional appropriations for an immediate independent radiological assessment of Rongelap Atoll to determine the future habitability of the now-abandoned atoll; (2) to seek congressional funding for the interim relocation of the Rongelap islanders until the status of Rongelap is determined by an independent agency; and (3) to renegotiate the Palauan Compact in strict conformity with that nation's internationally-respected Constitution.

When one examines the legacy of the Administering Authority in the Trust Territory - replete as it is with irradiated islanders and contaminated islands, epidemic suicide and spiralling homicide rates, bankrupt economies due to inappropriate power plant scandals, and plans to further militarize once-pristine marine environments - one sees a notable pattern of Pentagon interests taking precedence over human beings. It is not too late for the Administering Authority to make the policy changes necessary to correct our myopic and military-oriented administration of the Micronesian islands. One can only hope that the Administering Authority has the will and the integrity to provide at long last the unselfish and compassionate guidance for our Micronesian friends that is worthy of a great super-Power.

The PRESIDENT (interpretation from French): I call next on Mr. Roger Clark of the International League for Human Rights, whose petition is contained in document T/PET.10/703.

Mr. CLARK: I appear before the Council on behalf of the International League for Human Rights, a non-governmental organization in consultative status with the Economic and Social Council. When the founders of this Organization included provisions for such status in Article 71 of the Charter they must have known that from time to time human rights organizations which did their job

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properly would offend the Governments of States, large and small. I know that my organization has taken to task, forcefully on occasion, each of the Governments represented on the Trusteeship Council. I note from the comments by the representative of President Salii on Tuesday last that we have now offended the Government of the Republic of Palau. We are honoured by his reference to us and by the company in which we find ourselves.

When I first represented the League here, in 1976, along with the then Honorary President of the League, the late Roger Baldwin, we were the only petitioners objecting to the way in which the Trust Territory of the Pacific Islands was being "decolonized". We felt like lone dissenting freaks. It is therefore heartening to learn of the large number of other petitioners who are here this week, including several from various parts of the Trust Territory.

The Administering Authority's annual report, for the period 1 October 1986 to 30 September 1987, deliberately avoids mention of parts of the Territory other than Palau. I should like to make some comments about the necessity for continued vigilance by the Council over all parts of the Territory until the Council's supervisory powers are terminated by the Security Council in the lawful manner contemplated by the United Nations Charter. I should like to supplement some of what the Administering Authority's report ignores or glosses over. Events in several parts of the Territory over the past few months underscore the need for continuing United Nations supervision of the area.

In Palau, following its failure to obtain the 75 per cent referendum majority which the Palau Constitution requires for approval of the so-called Compact of Free Association with the United States, the Government of Palau sought to amend the Constitution. This effort was plainly illegal, as I explained to the Council at its meeting last December and as the trial division of the Supreme Court of Palau

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held on 22 April this year. The closing words of Judge Hefner's order and judgement in the constitutional case have a ring to them. He held that the proposed constitutional amendment was "null, void and of no effect": appropriate words indeed for an ill-considered travesty of the constitutional process aimed at neutralizing the nuclear-control provisions of the Constitution.

In a written statement which I supplied to the United States Senate Committee on Energy and Natural Resources, and which I believe most members of the Council have seen, I referred to at least three reasons why I believe the constitutional amendment was void. I characterized them as the high, medium and low ground. Judge Hefner in his well-reasoned opinion took both the low ground and the medium ground.

The low ground argument turns on the requirement that the constitutional provision on which the Government relied for the 4 August 1987 referendum - article XV, section 11 - is a procedure which permits an amendment to the Constitution "for the purpose of avoiding inconsistency with the Compact of Free Association". Judge Hefner, not unreasonably, looked in his dictionary for the meaning of the term "inconsistency". He saw it described as "the quality or state of being inconsistent... lack of agreement, consonance, harmony or compatibility". There was no such inconsistency between Constitution and Compact. "Put in the simplest terms possible," he said,

> "the Compact requires that nuclear substances be allowed entry into Palau. The Constitution allows this so long as 75 per cent of the voters approve of the arrangement in a referendum".

This is no inconsistency. The attempt at amendment sought

> "simply to amend the 75 per cent requirement so that only a majority (more than 50 per cent) need approve the entry of nuclear substances".

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This, he held, applying the plain meaning of the Constitution, "does not resolve any conflict or inconsistency". It merely tried to change the rules of the game in the middle of play.

The middle ground argument relates to the procedure to be followed in the making of amendments. The Government referred to the fact that there are two separate amendment procedures, so called, in the Constitution. One is article XIV, which provides inter alia that an amendment to the Constitution may be proposed by a resolution supported by not less than three fourths of the members of each house of the legislature, the Olbiil Era Kelulau. It was conceded by the Government that the majority in the legislature which approved the legislation for the "amending" referendum was less than three fourths of the total membership and that accordingly the procedural standards of article 14 had not been met. The Government's lawyers relied, however, on a second amending provision, article XV, section 11, which deals with inconsistency amendments. It has no reference in it to any particular procedure to be followed. The Government drew the implausible inference from the silence of article XV, section 11, that a simple majority of the legislature was all that was required. The judge drew the rather more obvious inference from the structure of the Constitution that the two provisions must be read together and that the same procedure applies in both cases. Thus, the effort at amendment simply did not get off the ground in a lawful fashion. The procedures of the Constitution had not been followed.

(Mr. Clark)

Because of the way in which the argument in the particular case developed, neither counsel for the plaintiff nor the judge found it necessary to elaborate upon what I have called the "high-ground" position on why the effort to amend the nuclear-control provisions was unconstitutional. Since further efforts to amend the Constitution may be in the wind, I should like to say a word or two about that position. The matter is of some significance since, if the two "amending" provisions of the Constitution, read together, may be used to change the nuclear-control provisions, and if the authorities in Palau could command the necessary majority in the legislature, it might be possible to delete or otherwise amend the nuclear provisions at the time of the general election later this year, again if the proposed amendment were approved by a simple majority of votes cast in not less than three fourths of the 16 states. Article XIV permits amendments to be made only at the time of a regular general election, which occurs every four years. I believe that an attempt to amend the nuclear-control provisions pursuant to articles XIV or XV, or both combined, would itself be unconstitutional. The only way in which the Constitution of Palau permits an override of the nuclear-control provision is in its own terms: by a 75 per cent majority.

Let me explain. The decisions of the Supreme Court of Palau in interpreting the nuclear provisions of the Constitution have emphasized the determination of the drafters on the nuclear issue. The drafters of the Constitution had a mandate to produce a constitution which would be compatible with a Compact arrangement with the United States. The voters, in turn, were not averse to accommodating such an arrangement. But both the drafters and the voters had another objective: making Palau nuclear-free. They did not want a Compact at any cost. With that in mind the drafters devised three different ways of dealing with constitutional change. In so far as matters nuclear are concerned they provided in two different sections

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for a 75 per cent override as the mode to take care of the matter. Barring the exercise of the power of the people to override by means of the 75 per cent procedure, those provisions stand. The other two amendment provisions, which I have already mentioned, are available to deal with all changes other than those dealing with nuclear issues. There is a relevant maxim, both of Anglo-American principles of documentary interpretation - which apply in the Palauan courts - and of international law. It is that generalia specialibus non derogant. Stripped of its Latin disguise, that means that a general provision does not override a specific one. The reference to the 75 per cent procedure for overriding the nuclear-control provisions are so specific that they must be read as not being the subject of either of the more general amending provisions.

The nuclear-control provisions are not constitutionally immutable. The founders merely set out a particular procedure, a difficult one to attain, as is common with constitutional amending provisions. If the people do not provide the 75 per cent majority, then a change cannot occur.

Judge Hefner made the underlying philosophical point eloquently in his opinion. He stated:

> "Constitutional government assures its citizens that their every-day lives will be guided and protected by its written document - unaffected by the immediate desires of some or of even a majority unless those desires comport with its Constitution."

Again, he said:

> "The Constitution exists to protect the rights of the majority as well as the minority. In the final analysis, the minority has more to gain from a stable constitution than the majority. Their rights are preserved regardless of the circumstances."

(Mr. Clark)

May those basic principles of constitutionalism, which the world has received through the American experience, be the Council's legacy to the people of Palau.

In the period surrounding the attempt to amend the Constitution and the ensuing litigation there was a serious breakdown of the rule of law in the Republic, a matter to which I also referred in December. One of the series of outrages which occurred has apparently been cleared up with the arrest and conviction of Joel Toribiong, special assistant to President Salii, and two other Government employees, for the firing of guns at the home of the Speaker of the lower House of the Palauan Parliament. Other matters, including the murder of Bedoir Bins, have not been cleared up.

A strong report from a very distinguished delegation sent to Palau by the International Commission of Jurists has now made detailed findings which establish that the situation was even worse than I believed in December. I understand that the Council heard from Mr. Butler, one of the authors of that report, yesterday. The report details, among other things, the breakdown of the legislative and judicial processes, illegal and improper interference with the independence of the judiciary, citizens being prevented fdrom continuing properly filed suits on the constitutionality of the amendment, legislators being forced to vote for the constitutional changes by threats of violence to person and property, unacceptable pressures being put on the judges and the spinelessness of the organized Bar in Palau. New light is cast in the report on the intimidating role of the so-called Furlough Committee, to which a tantalizingly vague reference was made in the report of the Trusteeship Council's mission to observe the 21 August referendum. This is a sorry tale, one of which the Administering Authority has nothing to be proud. The only heartening signs on the horizon are that the very brave plaintiffs and their counsel in the constitutional suit felt able to regenerate the action, that

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the Court proceeded to hear the case and that none of them ended up dead in the process. I commend the Jurists' report to the Council's attention.

One further development in the Palauan courts bears mention. The Appellate Division of the Supreme Court earlier this year granted a rehearing requested by the Palauan Government in the case Republic of Palau v. Tmetuchl and others, the case in which the Court had dismissed the proceedings against the three men charged in the assassination of President Remeliik. Following the rehearing the Court remained convinced that its original holding was correct and that the evidence was quite insufficient to sustain the convictions. The Court was, moreover, strongly critical of the conduct of the case by both prosecution and defence. As the Court put it:

> "How the prosecution could justify calling Mistyca Maidesil" - the main prosecution witness - "as one of its witnesses and vouching for her veracity defies rational explanation except on terms which do not speak well of the aims of the prosecution. ... Suffice it to say that the foregoing and other questionable tactics did not lend to the proceedings below those indicia of an earnest search for the truth with which trials are supposed to be marked, nor did they do honour to the prosecutorial function."

The defence efforts were characterized by the Appellate Division very simply as "ineffective assistance of counsel." The Palauan authorities failed in an endeavour to proceed further with the case in the Appellate Division of the High Court of the Trust Territory - which lacked jurisdiction - so we have at least seen the last of those embarrassing proceedings. Meanwhile, the assassins of the late President remain undetected.

In the Commonwealth of the Northern Mariana Islands a dispute rages as to the exact nature of the deal that was struck between the United States and the

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inhabitants of that part of the Trust Territory. Representatives of the legislative and executive branches of that entity spoke to the Council yesterday to discuss their position that they have at least managed to salvage sovereignty over their internal affairs from this sorry mess. Their request to speak was circulated as a petition.

(Mr. Clark)

It is a sad commentary on the Trusteeship Council's supervision of the United States stewardship of the Territory that official representatives of an entity that has supposedly engaged in self-determination find it necessary to come to New York as humble petitioners. Indeed, I venture to suggest that the present dispute would not be with us if the Council had, over the past dozen years, made a serious effort to measure the validity of the Covenant arrangement for the Marianas against the Organization's decolonization standards contained in General Assembly resolutions 1514 (XV) and 1541 (XV).

Back in 1976 I suggested in this Chamber that a group of second-class United States citizens was being created in the Northern Marianas. Once again, I understated the case. Many of those inhabitants of the Marianas who thought they had automatically obtained United States citizenship under the Covenant have had difficulty in securing even that.

In the case of the Marshall Islands, provisions contained in omnibus legislation adopted by the United States Congress at the end of last year permit an exploration of the possibility of using parts of the Marshall Islands as a site to dump nuclear waste from the United States mainland, as if the nuclear-testing programme had not wreaked enough havoc to the environment there! The testing issue itself seems determined not to go away. On 15 April 1988 a brief was filed in the United States Court of Appeals for the Federal Circuit in the case now consolidated as People of Bikini, Enewetak, Rongelap, Utrik and other Marshall Islands Atolls v. the United States. That case raises the validity under international law of the so-called espousal provisions in the Marshalls Compact and the United States domestic-law issue of whether the legislation approving the Compact successfully took away jurisdiction of the Court of Claims halfway through the cases seeking redress for nuclear damage to the Marshalls.

(Mr. Clark)

The same month of April witnessed a very troubling statement by Senator Jeton Anjain made on behalf of the Rongelap Atoll Local Government before the Subcommittee on Interior and Related Agencies of the Committee on Appropriations of the United States House of Representatives, to which Mr. Alcalay has already made mention this morning. The people of Rongelap are currently living in difficult circumstances on Mejato in the Kwajalein Atoll, where they moved in 1985 after they concluded that their own land was unsafe because of radioactivity. There are many serious questions raised in the Senator's statement, which points to the need for further careful study of the problem and efforts at rehabilitating the Atoll. Genuinely independent research is still needed. It seems incredible that this late in the nuclear era there should be so much uncertainty on the matter.

I appreciate this opportunity to share a number of concerns with the Council and urge it to give careful consideration to the issues facing all parts of the Trust Territory

The PRESIDENT (interpretation from French): I now call upon Ms. Elizabeth Bounds, representing the Micronesia Coalition. Her petition is contained in document T/PET.10/716.

Ms. BOUNDS: Mr. President and members of the Trusteeship Council, thank you for permitting me to appear today to offer, on behalf of the Micronesia Coalition, a petition concerning the Trust Territory of the Pacific Islands.

For over 10 years the Micronesia Coalition has monitored, on behalf of United States Catholic and Protestant churches, the process of self-determination in the Trust Territory of the Pacific Islands. The complexity of the negotiations between the Administering Authority and the Micronesian leadership has been overwhelming, resulting in detailed legal agreements probably fully understood by only a few experts.

(Ms. Bounds)

There have been important achievements along this road, a road which has claimed the hard work of the United States and Micronesian Governments and Members of the United Nations. The Coalition has welcomed every step that has enabled Micronesians to build an autonomous Government and self-reliant economy as part of their effort to determine their own future.

Yet, as citizens of the United States, which has been responsible for the well-being of the Trust Territory, we have much to answer for. United States involvement in Micronesia has helped promote democratic institutions, but at the price of painful economic dependency, nuclear contamination and cultural destruction. The negotiations for a post-trusteeship status have been marked by the desire of our Government, consistent throughout many different presidential administrations, to preserve perceived United States defence and security interests at whatever cost. The economic condition of the islands meant that independence never really was an option. What has been at stake has been the degree of sovereignty the Micronesian entities might hope to achieve in the face of overwhelming dependency.

Given the particular situation of Micronesia, free association was not necessarily a bad option. As defined in General Assembly resolution 1541 (XV) and realized in New Zealand's relationship with the Cook Islands and Niue, it offered a temporary resting-place in a process leading to full self-determination. However, the United States Compacts of Free Association do not offer such a temporary stop. As we have repeatedly stated before this body, several features of the agreements - the inability of the Micronesian Governments unilaterally to terminate all parts of the Compact, the lack of an impartial process of dispute resolution and the absence of any clear procedure for determining a post-compact status - all raise grave questions about the ability of Micronesians freely to leave free association in favour of a different status.

(Ms. Bounds)

Such ambiguities prevent Micronesians from controlling their sovereignty. Absence of such control is already apparent in the commonwealth status of the Northern Mariana Islands. Ever since the Covenant between the United States and the Marianas has come into force there have been disputes over the meaning of Covenant provisions and over the ability of the citizens of the Marianas to conduct their domestic affairs, disputes that have resulted in the presence of petitioners at this session of the Trusteeship Council.

All of the present and potential threats to Micronesian self-determination need to be given comprehensive review by the Trusteeship Council before there can be a final termination of the Trusteeship. We ask the Council to authorize an impartial and comprehensive evaluation of the Compacts and the Covenant in light of standards of international law and the full complement of United Nations resolutions on decolonization.

The unresolved status of Palau continues to demand the Council's special concern. The development and ratification of both the Palauan Constitution and the Compact of Free Association between the United States and Palau have included use of intimidation and manipulation on the part of both the United States and Palauan Governments, which violate the protections afforded under the United Nations Charter. The Palauan petitioners will describe their efforts to ensure a free association that would not violate their Constitution. These efforts have, at best, been ignored by the Administering Authority and, at worst, been met with violence by groups linked to the Palauan Government.

The history of voting on the Constitution and the Compact show the Palauan commitment to consensus decision-making and to protecting their land and water from the United States military and nuclear presence. The United States refusal to recognize this democratically expressed wish, linked to its power over the Palauan

(Ms. Bounds)

economy, has created intolerable social pressures. Last September those pressures erupted in the murder of one Palauan, and they continue to create an atmosphere of fear among Palauan citizens.

We recognize that there are many complex forces at work in Palauan society. Consequently, we have been disappointed in the narrow mandate of the recent Visiting Missions sent by the Council, which have examined only the minute details of voting rather than considering the context in which the voting takes place. We hope that future visiting missions will be empowered with a broader mandate that enables them to consider the entire process of preparation and voting.

(Ms. Bounds)

The 22 April decision by the Palauan Supreme Court voiding the amendment of the Palauan Constitution means that the Compact of Free Association between the United States and Palau has not been approved. Thus we assume that the Trusteeship may not be terminated. We hope the Council will use this time to review carefully the positive and negative aspects of the agreements between the United States and Micronesia. We ask it to review them under the broadest possible mandate, considering international law, Micronesian history and the duties and responsibilities embodied in the Charter and the Trusteeship Agreement.

We hope that in the light of such a review the Council will then consider the role of the United Nations in the future of Micronesia. Since the present choices of Micronesians have been made within a context of dependency, the possibility of future choices of a different political status must be guaranteed. The United Nations must guarantee, under its own standards for full self-determination, a forum for Micronesian concerns in a post-Trusteeship era. By clearly designating a forum, the United Nations can offer Micronesians the protection of visibility and possible international response. In the current situation, the Coalition feels this is the minimal expression of responsibility mandated to this body by the United Nations Charter.

I thank the Council again for this opportunity to present our views.

The PRESIDENT (interpretation from French): I now call on Mr. Santos Olikong, Speaker of the House of Delegates, Palau National Congress, whose petition appears in document T/PET.10/709.

Mr. OLIKONG: It is an honour and a privilege for me to address the Trusteeship Council for the purpose of bringing to its attention the situation in Palau and the needs of the people of Palau. I asked to appear before the Council as a petitioner because of the extremely serious problems that Palau faces. Our

(Mr. Olikong)

Administering Authority is insisting that we enter into free association in order to receive the same assistance as we are entitled to as a Trust Territory. We need the Trusteeship Council to remind the Administering Authority that Palau is still a Trust Territory and that the United States, as Administering Authority, has obligations to Palau.

The Administering Authority has used its position as Palau's major source of funding to put great pressure on Palau to enter into free association. The Compact is held up to our people as the only solution to our financial problems. This, of course, is not true. The Administering Authority is obligated to adequately fund Palau as a Trust Territory. However, the Administering Authority has not done so, and this has contributed to our problems. The truth of the matter is that the Administering Authority is eager for Palau to enter into free association so that the Administering Authority's past failure to meet its obligations under the Trusteeship Agreement will become moot and no longer subject to scrutiny. Fortunately, these efforts to force Palau out of Trusteeship status have not succeeded and we still have the Trusteeship Council to turn to. It is with deep gratitude that I do so today.

A great deal has happened in Palau since August 1987, when a United Nations Mission observed our constitutional amendment referendum and our sixth referendum on the Compact of Free Association with the United States. On 22 April 1988 the Supreme Court of the Republic of Palau declared the constitutional referendum to be null and void. The impact of this decision is that the Compact of Free Association has been found not to have been constitutionally approved by the people of Palau. The Court held that no further attempt could be made to amend the Constitution until November 1988. It is therefore a certainty that Palau will remain a Trust Territory, and entitled to the protection of the Trusteeship Council, for some time to come. Through the years there have been those who have repeatedly used the

(Mr. Olikong)

imminent termination of the Trusteeship as justification for the failure of the United States to fulfil its obligations under the Trusteeship Agreement. I ask the Trusteeship Council to help ensure that Palau is treated as a Trust Territory for as long as it remains in that status. Under the guise of helping Palau to become ready for independence, the United States, the administrator of our trust, has been withholding needed assistance from Palau. Every year since 1982 has been proclaimed to be the final year of the Trusteeship. This has kept Palau in a state of limbo, which has only contributed to our problems.

Immediately following the August 1987 referendum, a mad dash to implement the Compact began. Let me remind the Council that 900 executive branch employees were still furloughed at that time, and the Compact was being put forward as the only solution to Palau's financial problems. The lawsuit that I previously mentioned was originally filed during this time. As a result of intimidation and violence, including murder, directed at the plaintiffs, that lawsuit was withdrawn by the plaintiffs. Following the constitutional amendment referendum, the President of the Republic was quick to certify that the amendment process complied with the Constitution of the Republic. Certification by the President of the United States followed. Our Supreme Court had this to say about that certification:

> "... Palau is still under the Trusteeship umbrella of the United States, the Constitution was formulated under the auspices of the United States Trust Territory administration ... under all the circumstances surrounding this case ... and the political background and intimate connection of the United States with Palau ... the unquestioned reliance upon the certification of the President of Palau does not comport with the reputation of the United States for fostering and supporting democracies for emerging countries under its political wing."

(Mr. Olikong)

Certain Committees of the United States Congress also moved quickly towards Compact implementation, despite the serious problems that Palau faces and despite the fact that the validity of the Compact approval has not been tested in our courts. In fact, one Committee of the United States House of Representatives even proceeded to approve the Compact after our Supreme Court had ruled that the constitutional amendment referendum was null and void. This lack of respect for Palau's constitutional processes is most discouraging. It is as though the Compact were a train going at full speed and nothing could stop it. We are not opposed to entering into free association with the United States; we just do not want to be railroaded. Palau has serious problems that simply must be resolved before we enter into free association, if Palau is to have a fair chance to succeed in its new political status. Certain members of the United States Congress understand this and are trying to help us.

(Mr. Olikong)

I am referring to the House Committee on Interior and Insular Affairs and its Sub-Committee on Insular and International Affairs, chaired by, respectively, the Honourable Morris K. Udall and the Honourable Ron de Lugo. They understood the importance of the Compact lawsuit being litigated to conclusion. Their investigators verified that it was intimidation and violence that caused the plaintiffs to withdraw the lawsuit. The Committee's support made it possible for the lawsuit to be reinstated and litigated to a conclusion without a recurrence of the violence and intimidation of last year. It understands that the IPSECO scandal should be investigated and that the persons responsible should be made to pay or that the United States should assist Palau. The scandal could not have occurred without the involvement of the United States, and the United States should bear the responsibility.

The Committee sent investigators to Palau. The investigators concluded that there was widespread corruption among the highest officials of Palau and that it was linked to drug-trafficking. The Committee understands that it would be a disaster for Palau to enter into free association before the drug-trafficking and corruption in Palau were brought to a halt. Palau does not have the means to do this alone; we desperately need United States law-enforcement assistance. The Committee has repeatedly asked the United States Department of the Interior to provide this assistance. That assistance has been withheld. This refusal may be based upon the fact that investigation and prosecution of high officials of Palau would hamper speedy Compact implementation. There is no other reasonable explanation for the United States to withhold law-enforcement assistance that is so desperately and so obviously needed.

(Mr. Olikong)

The House Committee on Interior and Insular Affairs has pinpointed other areas in which steps must be taken, before the Compact is implemented, to help Palau on its way to independence. These include needed modifications and additions to our five-year economic development plan and procedures to ensure that Compact funds are used properly.

The Committee is on the right track. It is for the Compact and we are for the Compact. But we both realize that the rush towards free association of the last several years has not worked. Palau is still a Trust Territory, and will remain a Trust Territory for some time. It is our wish that this time be used to prepare Palau for free association by solving the problems that stand in our way. We need the United States to help us. We need the United States to fulfil its obligations under the Trusteeship Agreement. Only then, when Palau is on its feet, will Palau be ready to stand alone.

We urge the Council to ask the United States, the Administering Authority, to follow the lead of the House Committee on Interior and Insular Affairs, and give us the assistance that we need. If the Administering Authority does so, we will be able to set out on our way to implementing the Compact of Free Association in the very near future.

The PRESIDENT (interpretation from French): The next petitioner is Mrs. Gabriela Ngirmang, whose petition appears in document T/PET.10/704. Her statement will be read by Mrs. Isabella Sumang, on whom I now call.

Mrs. SUMANG: The statement is as follows:

"My name is Gabriela Ngirmang. I do not speak English, so Isabella Sumang will read my statement and interpret for me. I live in Koror, Palau. I have been a plaintiff in the last two suits about the proposed

(Mrs. Sumang)

Compact of Free Association, Gibbons v. Salii, 1 ROP Intrm. 333 (App. Div., Supreme Court of Palau, Sept. 1986) and Fritz (Ngirmang) v. Salii, Civil Action No. 161-87, appeal pending. I thank the Council for giving me the opportunity to present this petition. I should also like to introduce Yosiko Ramarui, one of the plaintiffs in the current case.

"After more than 40 years of United States administration, the days of the Trusteeship are clearly numbered. I ask the Council to consider, however, whether the goals of the Trusteeship Agreement have been achieved, at both the economic and political levels.

"Over the past 40 years the United States has given us money, but never taught us how to use that money to develop our own resources. The United States has brought to Palau a process of Westernization. But if the goal is for us to live that way, we need the tools to be successful at it. We do not need to be on welfare all the time. The United States Administration has failed us in this crucial task. The Trusteeship should not be terminated while there is no economic development that would enable us to be self-sufficient. I urge the Council to instruct the United States to make available to us resources for economic development that is appropriate in scale and environmentally sound, rather than to dangle in front of us large amounts of money with no particular direction promised in the Compact. I also urge the Council to make available the expertise of United Nations agencies to aid our economic development.

"We do not want to be forced to make a choice about our status while the United States Trusteeship responsibilities have not been fulfilled. I invite you, Mr. President, and other members of the Council, to become patients in our hospital for a day and then decide how the United States has carried out

(Mrs. Sumang)

its responsibilities. First, the United States should complete its responsibilities: finish the road network, make the hospital a decent health facility and set up development projects that we will be able to sustain ourselves. After this, under the supervision of the Trusteeship Council and other appropriate United Nations bodies, there must be thorough and impartial discussion of all options for our future status. Only then will we be ready to make our own choice.

"The present efforts to terminate the Trusteeship by adopting the proposed Compact of Free Association have been very detrimental to Palau. Instead of furthering the development of the whole of Palau, the United States divided us by continuing to insist that we must ratify the proposed Compact. We have been diverted from our common interests in developing our country and implementing our Constitution by the divisive referendums on the Compact proposal.

"Very few people in Palau understand what the Compact actually says. The political educators have themselves been educated improperly. Instead of education, they have too often given us propaganda directing us to vote for the Compact proposal. This problem has not received the attention it deserves from the Council's Visiting Missions. The Visiting Mission to observe the 21 August 1987 vote arrived the day before the balloting. Its members could not possibly have observed, much less understood, the atmosphere of intimidation and misinformation before that vote. If another Mission to observe another status vote is sent to Palau, it should have a mandate to vigorously investigate the political education process and to talk to people with a wide range of opinions, not simply to observe the counting of the ballots.

(Mrs. Sumang)

"The United States military rights in Palau under the proposed Compact are another matter of grave concern - even alarm - to me and to many other Palauans. During the Second World War we experienced bombings and attacks on our land. But the attacks were not against the Palauans. The attacks were against the Japanese who had a military presence on our islands. We believe that the presence of the American military bases would invite attacks by other countries aimed not at the Palauans, but at the Americans.

(Mrs. Sumang)

"Because of our bitter experience, we wrote our Constitution to control military uses of our country. As the Administering Authority, the United States should respect our wishes, so clearly expressed in our fundamental law. I ask the Council to remind the United States of its obligation to respect our Constitution, especially our strict control over foreign appropriation of our land and over the introduction of nuclear weapons and other harmful substances. I have been assured repeatedly that the United States has no present intention of exercising its rights to use our land for military purposes. I am not reassured. We do not seek options on United States land. We assume that if the United States seeks options on Palauan land it will at some point use them. If those options are not important to the United States, they should be removed from the discussions in the future.

"For us, accepting the Compact as it has been proposed would mean paying debts in the dark, with no future. We would have the American military surrounding our freedom, binding us with 'defence' agreements. If the Council accepts the current Compact proposal as Palau's future, it would be allowing the United States to bring something very destructive into Palau. The current Compact proposal would destroy peace in Palau.

"We have already had a very bitter experience of the destruction of our peace by the Compact process. In August 1987 I became the lead plaintiff in a lawsuit brought by more than 20 women, challenging the attempt to amend our Constitution and then pass the Compact. We persisted in the lawsuit until a series of violent acts, culminating in the murder of Mr. Bedor Bins on the evening before a public court hearing in which our arguments were to be heard led us to drop the lawsuit. We feared that we, like Bedor, would be killed and that our families would be hurt. I have been insulted by a variety of

(Mrs. Sumang)

questions about whether the intimidation was real. Shots were fired outside plaintiff Rafaela Sumang's house. That same evening she was visited by a striker who said that if she did not withdraw the lawsuit worse things would happen to her. The following night Bedor was murdered. The same night as Bedor was murdered a firebomb was ignited on my land, blowing up in the rear of my house some time between 10.30 p.m. and 11 p.m. This happened after the Government turned off the power in all of Palau. My family and young children were sleeping in the house at the time, and one of my daughters, Ida, suffered injury to her eyes.

"Although Palau is a very small place, no one has been arrested for these outrages. I urge the Council to require the United States to make a detailed report to it on its efforts to apprehend the people responsible for this violence. In addition, the United States should set out its plans to help our Government provide security for the plaintiffs in our lawsuit, and to maintain order through our national elections this fall. I note that some members of the United States Congress, notably the members of the House Committee on Interior and Insular Affairs, and its Sub-Committee on Insular and International Affairs, have supported efforts to end the violence and allow us to exercise our democratic rights.

"Many people in Palau feel that we are being driven to end the Trusteeship without either the economic base or the political education to make a wise choice of another future status. We are out of breath after six referendums on the proposed Compact of Free Association in the past five years. We should like a break from the repetitive voting, so that we may better inform ourselves about the facts of all status alternatives. I ask the Council to urge the United States not to press for another vote on any status

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option until there has been comprehensive and impartial education, under United Nations supervision, about all status options. We have our own national elections this fall, and want to be able to focus on choosing our own leaders, who will be able to lead us in making a free, informed decision about our future.

"Our decision on our future status is very important to us. Even more important, however, is that the decision be ours. I urge the Council to fulfil its obligations to ensure that our decision is made freely, fairly, and legally by all Palauans.

"In conclusion, I reiterate my requests for the Council's consideration and action, as follows.

"The Trusteeship Council should encourage economic development in Palau that is appropriate in scale and environmentally sound, both by instructing the United States to devote resources to this issue and by making available the expertise of United Nations agencies.

"The United Nations, and the Council in particular, should supervise a thorough and impartial programme of education in Palau on all status options.

"The Trusteeship Council should urge the Administering Authority not to encourage any more votes on status in Palau until after such an education programme has been conducted to the satisfaction of all Palauans.

"Any future United Nations Visiting Missions to observe referendums in Palau should be mandated to pay close attention to the political education process.

"The Trusteeship Council should require the Administering Authority to make a full report to the Council on its efforts to aid in the apprehension of the perpetrators of the violence in Palau in September 1987.

"I shall be happy to answer questions through my interpreter."

The PRESIDENT (interpretation from French): I now call on Mr. James Orak, whose petition appears in document T/PET.10/704.

Mr. ORAK: I am James Orak, a native Belauan living in Portland, Oregon. I appreciate this opportunity to appear before the Council regarding the Compact of Free Association and the termination of the Trusteeship for Belau. I was one of the few plaintiffs in the successful lawsuit in 1986, Gibbons v. Salii, in which we were represented by the Center for Constitutional Rights. The case affirmed our Constitution's requirement of a 75 per cent vote for approval of the proposed Compact.

I am also a plaintiff in the recent lawsuit that was refiled by the women of Belau, who were forced to withdraw it through the use of violence and intimidation last September. I felt very strongly about signing the lawsuit with the women, because I believed it was our only option to stop the approval process of the Compact in the United States Congress and the United Nations. I also want to point out that when violence was directed at the women plaintiffs the men of Belau, especially the chiefs, were unable to fulfil their traditional responsibility to protect the women. As a man and a faithful citizen of Belau, I felt a responsibility to support and protect the mothers of Belau, who bravely defended their mother earth, for our future generations, against being taken away and destroyed for the benefit of the United States.

(Mr. Orak)

I also believe that the lawsuit will help us begin to clarify many important issues that we Belauans face today. The issues include bribery, corruption, mismanagement of public funds and possibly criminal wrongdoing by high Government officials.

I have two major concerns that I want to address today: the Compact of Free Association between Belau and the United States and the United Nations Trusteeship Agreement. First, the Compact of Free Association between Belau and the United States is a document that is over 400 pages long and written in English. It is very hard to read and understand. Its provisions are expressed in a very tricky legal manner that confuses us.

The Compact was first presented to us in a referendum in 1983. I witnessed a very biased political education, which included misleading statement regarding the Compact by the Government of Belau. For example, the political educators told us that if we did not approve the Compact there would be no scholarships for students and that immigration would be a problem for us. I know those statements by the Belauan Government were meant to influence and mislead the voters, especially the overseas students. At that time I joined the grass-roots political education in Belau and in the United States, which tried to tell the whole story. I believe that in a democratic society people should have the right to be fully educated on the issues and to choose accordingly. This United Nations principle for self-determination has unfortunately never been put into practice in Belau.

In six plebiscites on the Compact of Free Association Belauans have continuously rejected the Compact by exercising the democratic right taught us under the administration of the United States. Outsiders viewing the plebiscites in Belau often raise a very important question, that is, the question of majority rule. For instance, in the last referendum in August 1987, 73 per cent of the Belauans voted in favour of the Compact. This is considered majority rule by many

(Mr. Orak)

Governments. However, according to Belauan traditional ways, under the leadership of the traditional chiefs, minority opinions are honoured and prevail until there is consensus. This process of making important decisions has been incorporated in our Constitution.

I come now to another obstacle blocking approval of the Compact. This is the Belauan Constitution, which is most important to us Belauans. It is our national security and serves our national interest. Our Constitution, the world's first nuclear-free Constitution, was drafted and approved by an overwhelming margin of 92 per cent of the Belauan voters in 1979. It took effect in January of 1981. The Belauan Constitution was based on our traditional laws and values. According to our Constitution, any treaty or agreement between the Government of Belau and any foreign entity regarding the storage, use and disposal of nuclear, biological and harmful substances requires a 75 per cent approval by the Belauan voters. That 75 per cent provision is not an accidental figure. It is part of our heritage of decision-making that more than a majority must agree, especially on a controversial issue.

Our Constitution also protects our lands from use by any foreign entity. The Compact of Free Association contradicts our Constitution and gives the United States virtually unlimited rights over our lands and waters, which have sustained our lives for the last 400 or more years of our existence. While the Compact says the United States will not store, use or dispose of nuclear materials, when it is read closely other sections override that ban. Clearly, the Compact gives the United States the right to do anything it wants to do militarily.

The United Nations General Assembly has stated that military activities may pose a threat to full and free self-determination. Therefore, we Palauans should not have to accept the United States military in our islands in order to have self-determination. The United Nations must support us when we act consistently

(Mr. Orak)

with United Nations principles. Certain sections of the Compact deal with security and defence. But this is the security and defence of the United States, not the Belauans? Our land and our waters are our security. The Compact poses a grave threat to the livelihood of the Belauan people.

I come now to my second concern, which is the United Nations Trusteeship Agreement. First of all, I would ask the Council not to recommend termination of the Trusteeship of Belau. Article 6, paragraph 1, of the Trusteeship Agreement provides that, in accordance with its obligations under Article 76 (b) of the Charter, the Administering Authority

> "shall promote the ... development of the inhabitants of the Trust Territory ... towards self-government or independence as may be appropriate to the particular circumstances of [the Trust Territory] and its peoples and the freely expressed wishes of the peoples concerned".

Instead, the United States has created a total welfare state for the people within the Republic of Belau. Today there is no independent economy in Belau. There are insufficient schools and health facilities, an unreliable power plant and faulty water and sewer systems. All those issues are given little attention in ordinary times, but they become vital issues during the Compact plebiscites, when money is promised to develop such needed services. Our country has not been developed towards self-sufficiency. We have been trained to dependency, and when we vote on the Compact the money is used as bait to hook us more deeply. This is contrary to the promise of the Trusteeship Agreement.

We Belauans are the world's first people to have a nuclear-free Constitution, but we also may be the world's first people to be required to vote six times on the same agreement. We have experienced a bogus democratic process imposed by the United States on Belau.

(Mr. Orak)

We do understand how democracy works. The ideal of democracy was taught us under the United States system. After all, the United States is the strongest advocate of democracy around the world. But I believe the Belauan people have not been treated according to a true democratic process. I would like to ask members of the Council to investigate this situation. Belau deserves respect for its Constitution by the United States and other nations that wish to do business with Belau. We deserve the right to determine our own future. The Belauan people have spoken. Yes, many Belauans are in favour of a Compact of Free Association with the United States, but there are also many of us who do not want another country's military forces, which is not in our interest.

As a child I had a lot of faith in the United States. I believed that the United States was helping us to help ourselves. In 1961 the United States President, John Kennedy, addressed the United Nations General Assembly on decolonization. He said:

> "Within the limits of our responsibility in such matters, my country intends to be a participant, and not merely an observer, in the peaceful, expeditious movement of nations from the status of colonies to the partnership of equals. That continuing tide of self-determination which runs so strong has our sympathy and our support. ...
>
> "Let us debate colonialism in full and apply the principle of free choice and the practice of free plebiscites in every corner of the globe." (General Assembly Official Records, Sixteenth Session, 1013th plenary meeting, paras. 76 and 78.)

Today I am disheartened when I recall those those meaningful principles, for they have not been applied in the relationship of my country to the United States. I am happy to say that there are some exceptions to that disheartening picture. Many members of the United States Congress, particular the members and staff of the

(Mr. Orak)

House Committee on Interior and Insular Affairs, have expressed their support for the rule of law and the continued vitality of our democratic institutions. We are grateful for the conscientious efforts of those people and hope that other officials of the Administering Authority will follow their example.

(Mr. Orak)

We have many issues to resolve before Belau can complete the self-determination process. Currently we are experiencing many serious internal problems. In March, a report was released by the International Commission of Jurists after a delegation from that organization visited Belau. That report, copies of which have, I believe, been submitted to the Council, describes many of those problems. Our Administering Authority also needs to assist us in resolving the many alleged illegalities and the misuse of Government funds that have been brought to light before we can move to a new political status.

I urge the Council to take no action on termination of the Trusteeship until the United States, as Administering Authority, fulfils its obligation to help Belau achieve self-reliance or independence.

I was grateful to the United States, which gave us an opportunity to come to this country and educate ourselves in various fields of knowledge. Now I am ready to go home, but my vision for Belau's future and how I would like to apply my knowledge and my expertise in what I have learned are in jeopardy. United States plans reflected in the Compact of Free Association with Belau are threatening to our livelihood.

I believe that the wishes of Belauans and the United States wish to keep any other country from building military bases in Belau are very compatible. Why can Belau and the United States not honour their common interests and keep Belau nuclear-free and our land not subject to military use?

We may be a small nation, but we have our pride and our spiritual belief in our country, and we will struggle for as long as it takes to keep our identity and preserve our culture from alienation in our homeland.

The PRESIDENT (interpretation from French): I call next on Mr. Hans Ongelugel, the text of whose petition is contained in document T/PET.10/704.

Mr. ONGELUNGEL: My name is Hans Ongelungel. I am appearing before the Trusteeship Council as a citizen of the Republic of Palau, part of the Trust Territory of the Pacific Islands, established under Article 76 of the United Nations Charter. I am one of the plaintiffs in the recent lawsuit Fritz (Ngirmang) vs. Salii, civil action no. 161-87. I am here to express my concerns about the Compact of Free Association between the United States and Palau and its incompatibility with the Palau Constitution. I am also here to urge continuing United Nations oversight to monitor further developments towards a political status for Palau and to make certain that the United States has met its obligations under the Trusteeship Agreement.

I should like to express my sincere appreciation for the opportunity to testify. On behalf of those Palauans who have worked together throughout this political struggle, I should like to express our gratitude for this forum and for the principles on which it was founded.

Regarding the Compact, the use of our land for military purposes is my greatest concern. The Compact allows for the appropriation and use of an unlimited amount of our land. The Palau Government must turn over this land within 60 days of a request by the United States. In the recent past, United States representatives have stated that they have no plans to install the military in Palau. We do not feel that is true. If the United States does not intend to use our land and waters for military purposes, we strongly believe those provisions should be taken out of the Compact.

Under the Compact, the United States takes responsibility for the defence of Palau, but we do not need that defence. Whom must Palau fear? Yap? We believe if the United States military is placed in Palau it will be for the defence and interests of the United States and not of Palau.

(Mr. Ongelungel)

We foresee that under the Compact Palau could become militarized, like Guam and the Marshall Islands. The Marshallese are hired mainly to do service jobs; they are restricted from Kwajalein and must live on Ebeye Island like second-class citizens. Guam is another example where "Off Limits" signs are being posted on land and beaches. Restrictions like those could happen in my state, which is located on Babeldaop, an area that has been designated to be a United States jungle-warfare training camp.

We also know that an influx of United States military personnel and their money will bring us greater social problems. Our small islands already face problems with alcohol and drugs.

Another reason I oppose the Compact is that many Palauans do not understand it. When it was presented to the people, including those of us living outside Palau, the presentations were one-sided. The political educators, paid by the Government of Palau with United States funds, limited the discussions and refused to answer any questions that fell outside their mission of getting the Compact approved. In one case, a political educator claimed to be a representative of Palau's traditional leaders. In our traditional ways, this meant that we should respect his opinion. We found out later that he was misrepresenting himself and our leaders.

Our leaders and the political educators have also used the threat of immigration problems to gain support for the Compact. They have often implied that United States-based Palauans might have problems with their immigration status and have promised that the Compact would give all Palauans the ability to come and go freely between countries. As children, we Palauans were required to study English, United States history and United States geography. We had little instruction in our own culture and language. We saluted the United States flag every day. Now we

(Mr. Ongelungel)

are told that unless we approve the Compact of Free Association in toto we will be treated like illegal aliens in the United States.

During the political education period before each of the referendums on the Compact, we requested copies of the Compact from our Government representatives. Instead, we were given only small booklets which presented the Government's pro-Compact arguments. Although there are many subsidiary agreements to the Compact, we have had no access to them, so most of us have no idea what they contain, although we have been expected to approve or disapprove them along with the rest of the Compact.

The General Assembly has affirmed that political-status choices made in the process of decolonization must allow all political-status options to be presented and that no option should be presented as having adverse consequences. Yet we have been presented with ballot after ballot with only one "option". Does that meet United Nations standards? It is not even a choice, because a choice has to be between two or more things.

Certain Palauan leaders are pushing hard for the Compact, but with the recent disclosures of Government corruption we are asking what it is they are trying to cover up. Serious questions have been raised about several of our leaders receiving large payments related to the IPSECO power plant. And there is evidence that some leaders have not been truthful in their explanations about the money. The Compact gives our rights away, but it appears only a few people will benefit if it passes.

(Mr. Ongelungel)

Opposition to the Compact proposal continues in spite of economic pressure by our Government to approve it, including the laying off of two thirds of our Government employees for several months in 1987. Reinstatement of their employment was tied to approval of the Compact. I should like to point out that the percentage of Palauans holding firm in oppostion to the Compact is about the percentage of Palauans who are mostly not dependent on Government salaries for their livelihood.

There was also violence directed towards opponents, including fire-bombings, threats and the death of Mr. Bedor Bins. If given a real choice, without economic pressure and intimidation, we are certain many more would vote against the proposed Compact. This pressure should not be condoned by the Trusteeship Council.

I became a plaintiff in the lawsuit Fritz (Ngirmang) vs. Salii because the more I became familiar with the situation the more I realized that the Compact and the process of approving it were illegal under our Constitution.

In the first place, United States and Palauan negotiators ignored our Constitution when they wrote the Compact. One Government spokesman who came to our community told us our Constitution was invalid until the Trusteeship was terminated. That is the type of misinformation we have been given by representatives of our Government in an effort to get around the Constitution. They have underestimated our understanding of the Constitution and our support for it. But it is also the responsibility of the United Nations to provide education for Palauans. The United Nations' absence has been an important part of the misinformation and deception we have had to face.

The Palau Constitution is a statement of our national purpose. Ninety-two per cent of us voted for it in 1979, and we consider it the supreme law of our land. The Palau Constitution protects us against the loss of our land and from nuclear weapons and nuclear waste. No other agreement can overrule it.

(Mr. Ongelungel)

Another reason I signed on to the lawsuit was that the August 1987 referendum process to amend our Constitution was illegal and rushed. Many did not understand the confusing ballot language and many did not have the chance to vote. We were informed of the plebiscite and had to vote within less than a month on both an amendment to the Constitution and the Compact. This was done amidst violence and intimidation against Palauans who opposed the Compact. There was no education on the amendment and what it meant. The amendment implied that the United States would not have the right to bring any nuclear weapons or materials into Palau, although we know the Compact permits this. The authorization for the text of the ballot read as follows:

"The Amendment Referndum Ballot shall be worded as follows:

"Place an 'x' or other mark in one box.

"Do you approve the following amendment to the Constitution of the Republic of Palau?

"Amendment:

"Section 1. For purposes of avoiding inconsistencies between the Compact of Free Association and its subsidiary agreements with the United States of America and the Constitution of the Republic of Palau, article II, section 3 and article XIII, section 6 of the Constitution shall not apply to the Compact of Free Association and its subsidiary agreements during the term of such Compact and agreements; provided, however, article II, section 3 and article XIII, section 6 of the Constitution shall continue to apply and remain in full force and effect for all other purposes; and provided further that the obligation of the United States under section 324 of the Compact of Free Association to not use, test, store or dispose of nuclear, toxic chemical, gas

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or biological weapons intended for use in warfare and other obligations of the United States under the Compact shall continue to apply and remain in full force and effect.

"Section 2. This Amendment shall enter into force and effect immediately upon its adoption.

"...

"There shall be no other question or issue on the ballot. The ballot shall be printed in English and Palauan."

When women leaders of Palau attempted to bring a lawsuit regarding the amendment process they were threatened and felt it necessary to withdraw. Those events were a travesty of justice, and I felt I must join others in re-filing the lawsuit in 1988.

Our President says democracy is working in Palau, but I do not believe it is, according to the ideals we were taught in school. Palauans who have expressed their opposition to the Compact have been intimidated, and one man was killed. Our Government has control of the only island newspaper, and owns the only radio station. During the violence last summer, the Government did not provide the necessary law enforcement or investigations.

The Palauan and United States Governments have pressured Palauans to vote on the Compact six separate times, although the agreement is unconstitutional. Under a democratic Government, we should be guaranteed equal protection under the law, and our Constitution and our votes should be respected.

I hope that some day Palau will be truly democratic and follow our Constitution, which we worked so hard to write. Palau needs to concentrate on its most important resource, which is the younger generation. Rather than using millions of dollars on projects such as the costly IPSECO power plant, Palau needs

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to improve our schools and hospitals. Our country needs to work on the drug problems affecting our youth. We need step-by-step development, where Palau is in control of its own growth, not pressured by outsiders or sold out by our own elected officials. We need projects that make sense for Palau, and we need employment opportunities so that Palauans living outside the country can return home in the future.

Many people appreciate the role of the United States Congress's House Committee on Interior and Insular Affairs because it is probing into the problems in palau and has not taken hasty action on the Compact. Since that Committee has the primary responsibility in the United States Congress for oversight on Palau, it has more information than other congressional committees. It is following up that information in a way that shows its concern for the citizens of Palau.

The Compact has been handed to us as the only solution. In five of the six referendums only the Compact has been on the ballot. The only time "independence" appeared on the ballot it was in an optional question which many refused to answer because it was not binding. No one understood what it meant, politically or economically. We have been faced with an all-or-nothing choice, and the United States has refused to renegotiate the Compact. Is this decolonization?

We urge the United Nations to study whether the Compact meets United Nations standards for decolonization. We want to know about all our options for political status, not just free association.

(Mr. Ongelungel)

We understand that under the United Nations Charter the United Nations has th obligation to assist Palau to develop towards whatever status it freely chooses. We urge the United Nations to see that the United States lives up to that obligation. We urge the Council to go to Palau. Look at the sad state of the hospoital, the lack of an effective network of roads and other important economic infrastructure. We would like to see the United Nations have more contact with citizens of Palau - not just the Government - and actively provide education on what directions we might take in the future.

Many of us feel that the presence of military installations of a foreign Powe is not decolonization for Palau. In 1923 Japan took control from Germany of most of Micronesia, under a mandate of the League of Nations. The League Covenant stated, in Article 22, that for the islands

> "inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that th wellbeing and development of such people form a sacred trust".

Instead, Palau was used for Japanese military purposes and suffered many effects from the Second World War. We must not let this happen again.

Thank you for the opportunity to speak here today.

The PRESIDENT (interpretation from French): I now call upon Ms. Sara Rios, who is representing the Center for Constitutional Rights. Her petition is contained in document T/PET.10/711.

Ms. RIOS: My name is Sara Rios. I am a staff attorney for the Center for Constitutional Rights located here in New York City.

I would like to take this opportunity to thank the members of the Trusteeshi Council for permitting the Center for Constitutional Rights (CCR) to address you today regarding our representation of Palauan citizens seeking to defend their Constitution.

(Ms. Rios)

In our petition presented in December 1987 the Center for Constitutional Rights put before the Council evidence regarding the climate of violence and the breakdown in the rule of law in Palau that led 27 elder women to withdraw their suit challenging the August 1987 amendment of Palau's Constitution and the subsequent Compact-of-Free-Association vote.

At the time of our previous petition we urged a return to the rule of law in Palau so that those Palauans who wished to challenge the amendment and Compact votes could exercise their absolute right to do so. In our previous petition we also expressed our strong and considered opinion that the process used to amend Palau's Constitution and authorize the subsequent vote on the Compact of Free Association was seriously flawed. It was the opinion of attorneys at the Center for Constitutional Rights that, if allowed to proceed, a legal suit challenging the amendment and subsequent vote would have great merit.

Since our last petition, we have been formally retained by the plaintiffs to prosecute their suit. On 31 March 1988 the case was officially reactivated by order of the Trial Division of the Supreme Court of Palau. The outrageous conditions under which the original suit was withdrawn strengthened the determination of many supporters of the Constitution, including other petitioners here today, who also became plaintiffs in the suit. The suit, entitled Fritz (formerly Ngirmang) v. Salii, now includes over 160 plaintiffs. It was argued before the Trial Division of the Supreme Court of Palau on 21 April of this year.

The Center for Constitutional Rights appears before the Council today to inform it that the plaintiffs were successful in their challenge to the amendment of Palau's Constitution. Associate Justice Robert Hefner declared the 4 August 1987 amendment vote null and void. As a consequence of that holding by the Court, the proposed Compact of Free Association has not been ratified because it received less than the constitutionally required 75 per cent-majority vote in

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the referendum held on 21 August 1987. The basis for the judge's decision can be summarized briefly. The Court held that the attempt to amend the Constitution had improperly invoked article XV, section 11, a special procedure to be used only to reconcile conflicts between the Constitution and a Compact of Free Association. The Court determined that it was inappropriate to try to amend the Constitution under the authority of article XV, section 11, to remove the nuclear-control provisions with their 75 per cent-approval requirement. By its very terms, that section is designed to cure inconsistencies between a Compact and the Constitution.

The Court, however, held that there was in fact no inconsistency between the nuclear-control provisions of the Constitution and the Compact of Free Association. Rather, the 75 per cent voting requirement is itself the way to cure a conflict between the Compact of Free Association and the Constitution on the introduction of nuclear weapons or other harmful substances. If the Compact proposal receives the requisite 75 per cent majority, the ban on harmful substances is suspended for the Compact. If less than 75 per cent of the voters approve, the Compact proposal is simply not ratified.

It was also the Court's determination that article XV, section 11, was subsidiary to the article XIV amendment procedure. As such, the Court held that defendant's attempt to amend the Constitution was ineffective, since the article XIV requirement that three fourths of each House of the Olbil Era Kelulau (OEK) vote in favour of putting a proposed amendment to the Constitution before the people was not met.

Before concluding my reference to the Court's memorandum decision, I would like to call the attention of members of the Trusteeship Council to the judge's comments on page 32 of the opinion, which is appended to copies of my statement made available to the Council, regarding the Administering Authority's disrespect for the full process of law as an element of self-determination. In this regard

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the Court states that, given the circumstances and political background surrounding the case, the United States'

> "unquestioned reliance upon the certification of the President of Palau [that the Constitution was amended constitutionally] does not comport with the reputation of the United States for fostering and supporting democracies for emerging countries under its political wing."

Not only did the United States fail to foster or support democratic processes in Palau, it fell far short of meeting its responsibilities as Administering Authority of the Trust Territory. It fell far short of meeting its responsibilities to ensure the progress of the Territopry towards self-government or independence in accordance with the freely expressed wishes of the peoples concerned, for it was the freely expressed wish of a great majority of the Palauan people to adopt the Constitution that is currently in force in Palau. We need not remind members of the Council that 92 per cent of the Palauan voters initially ratified their current Constitution.

Moreover, the United States also failed to meet its responsibility by not attaching sufficient significance to the fact that several acts of extreme violence had been carried out against the plaintiffs in the suit on the eve of a Court hearing. In the face of Judge Hefner's memorandum of 7 September 1987 strongly suggesting that violence directed at the plaintiffs was the reason for the withdrawal of their suit, the United States Administration accepted President Salii's certification of the constitutionality of the amendment vote. In spite of the United States Government's receipt of a memorandum dated 12 September 1987 from Palau's acting Attorney General to its Department of the Interior, specifically outlining the extent of the violence on Palau, the United States chose to ignore the implications of such violence and accepted President Salii's certification of the amendment vote. Finally, additional documents received by the United States

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indicate that it had full knowledge of the fact that the violence was directed specifically at those legally challenging the amendment vote. In a letter dated 21 September 1987 from Charles Jordan of the Office of the High Commissioner of the Trust Territory of the Pacific Islands to Mr. Mark Hayward of the Department of the Interior, it is plainly stated that

"Everything in Palau is very quiet. If any additional problems arise it will be because of someone else filing a new lawsuit."

(Ms. Rios)

Let us not underestimate the potentially devastating effect that this situation could have had on the democratic institutions that have developed and that are developing in Palau. Institutions such as an independent judiciary and the election process which resulted in the adoption of Palau's Constitution are at the heart of every democracy. Let us be thankful that these institutions have so far survived, as evidenced by the court's recent decision.

However, it is important for us to ask ourselves who should be credited for ensuring the survival of these institutions. It is certainly not the Administering Authority, which was all too willing to overlook its own evidence of the dire situation in Palau. Similarly, the credit cannot go to this body, whose responsibility it is to oversee the fulfilment of the Trusteeship Agreement. Indeed, this Council failed even to acknowledge the violence that took place in Palau.

The credit for preserving Palau's democratic institutions belongs to the courageous and persistent plaintiffs in Fritz (Ngirmang) vs. Salii. Their undaunted determination to defend their Constitution and their faith in Palau's judicial system should be supported and encouraged by all bodies of the United Nations as well as by the Administering Authority.

Although the plaintiffs have won an impressive victory they have not yet come to the end of this legal battle. The defendants in the case have appealed the trial division's decision to Palau's highest court, the appellate division of the Supreme Court. The appeal will mean at least one more court appearance this summer, with a great deal of public attention still being focused on the plaintiffs and their families. We urge the Trusteeship Council to take all available steps to ensure that the rule of law continues to prevail in Palau and that the courts remain open to the plaintiffs as they defend their legal victory. It is imperative that the plaintiffs be able to pursue their suit free from harm or the fear of harm.

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To that end, it is incumbent on the United States as Administering Authority to foster and preserve security for the safety of the plaintiffs. Among other things, this means ensuring that the economic situation in Palau remains stable and that it does not deteriorate to the extent that the Palauan Government, the largest employer in Palau, determines that it is necessary to lay off large numbers of its employees. Extensive governmental layoffs are precisely what occurred prior to - and we believe encouraged and contributed to - the wave of violence which resulted in the September 1987 withdrawal of the suit. The United States could further fulfil its responsibility under the Trusteeship Agreement by providing public information regarding the importance of an independent court system and the law in general.

As for the role of this body, we respectfully suggest that it is time the Trusteeship Council played an active role in truly overseeing the fulfilment of the Trusteeship Agreement and in ensuring that United Nations guarantees be extended to Palau. Most important among those guarantees is the opportunity to vote on and choose from among several defined, viable political-status options consistent with Palau's Constitution. It is unjust and an insult to Palau's sovereignty to continue to place before the Palauan people only the proposed Compact of Free Association as, in essence, Palau's only route to national existence. It is an agreement they have rejected six times. Palauans must also be guaranteed an opportunity to receive political education with regard to each political-status option and information with regard to what each option means for Palau.

Finally, the Center for Constitutional Rights would like to take this opportunity to express our great concern over Trusteeship Council's ever-narrowing and limiting mandate for Visiting Missions to observe plebiscites in the Trust Territory of the Pacific Islands. In July 1978, the Council, in adopting its

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resolution 2165 (XLV), mandated its observer mission to the constitutional referendum in the Trust Territory of the Pacific Islands to observe the polling process and "obtain first-hand information concerning the political, economic and social developments" in the Territory. Observation by a Visiting Mission of the 1979 constitutional referendums also carried that broad mandate.

However, in December 1982 the Trusteeship Council resolution 2174 (S-XV) authorizing Visiting Missions to the plebiscites on the poltiical status agreement between the three new constitutional entities and the United States limited the work of the Mission members to

> "observ[ing] the plebiscites, including the campaign and polling arrangements, the casting of votes, the closure of voting, the counting of ballots and the declaration of results".

Alarmingly, the most recent Trusteeship Council Mission to observe the 21 August Compact of Free Association vote that followed the amendment vote in Palau mandated the observers only to observe the polling and vote count. There was no direction given to observe the campaign in spite of the Council's knowledge of the coercion of some voters and an ethnic minority group and the intimidation of some members of the judiciary. The previous 4 August vote on the constitutional amendment took place without any United Nations observation.

Given the recent and serious developments in Palau, future observer missions must receive a much broader mandate so that the wishes of the Palauan people can truly be fulfilled. Genuine acts by them of self-determination must receive the Council's support and encouragement, while those acts which undeservedly and falsely receive that label must be recognized for what they are and be promptly disregarded.

(Ms. Rios)

I trust that members of the Council have listened to the wishes of the Palauans who have petitioned here today, and I hope they will heed their requests. Let them guide the Council in its effort to make it possible for Palau to steer towards what its people truly desire.

The PRESIDENT (interpretation from French): The Council has now completed its hearing of petitioners listed in documents T/PET.10/698, 701 to 704, 707 to 711 and 713 to 716.

The petitioners withdrew.

ORGANIZATION OF WORK

The PRESIDENT (interpretation from French): I wish to inform members interested in the film mentioned in document T/PET.10/712 that the arrangements have been made for the screening of the film tomorrow, Friday, 13 May, at 2.30 p.m. in studio 4, located on the B-1 level. The film runs approximately 50 minutes.

Based on consultations with Council members, it is my understanding that they would like to have some time to study the petitions before putting questions to the petitioners. That being the case we shall not meet this afternoon.

At tomorrow morning's meeting we shall continue consideration of the report of the Secretary-General on disseminaton of information on the United Nations and the International Trusteeship System in Trust Territories, and then give members an opportunity to put questions to the petitioners.

The meeting rose at 1 p.m.