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Fiftieth Session

VERBATIM RECORD OF THE FIFTEEN HUNDRED AND NINETIETH MEETING

Held at Headquarters, New York,
on Wednesday, 22 May 1985, at 3 p.m.

President: Mr. MAXEY (United Kingdom)

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

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

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The meeting was called to order at 3.20 p.m.

EXAMINATION OF THE ANNUAL REPORT OF THE ADMINISTERING AUTHORITY FOR THE YEAR ENDED 30 SEPTEMBER 1984: TRUST TERRITORY OF THE PACIFIC ISLANDS (T/1871) (continued)

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

The PRESIDENT: In accordance with the decision taken yesterday, we shall now hear a statement by Mr. Roger Clark of the International League for Human Rights.

At the invitation of the President, Mr. Clark took a place at the petitioners' table.

The PRESIDENT: I call on Mr. Clark.

Mr. CLARK: I appreciate the indulgence of the Council in hearing me today as I was unable to be present last week.

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. We believe that the League, which has always taken a special interest in matters of decolonization, has been represented at nearly all of the 52 regular sessions and 15 special sessions of the Council since its first meeting in 1947.

I first spoke on behalf of the League before this body at its 1976 session. On that occasion, I made the argument, on behalf of the League, that the then recently adopted commonwealth arrangement for the Northern Mariana Islands failed to meet the standards of the United Nations for a proper termination of a non-self-governing status. In particular, we argued that the commonwealth arrangement did not meet the standards of General Assembly resolutions 1514 (XV) and 1541 (XV). The Mariana arrangements did not constitute an adequate integration of the Territory within the United States; nor was it an adequate example of free association as that status is understood is resolution 1541 (XV) and the practice of the General Assembly, most notably in respect of the Cook Islands and Niue and their relationship with New Zealand. Nothing that has happened since then has caused us to change our views in that regard.

On this occasion I should like first to make some comments concerning the compatibility of the Compact documents in respect of the Federated States of Micronesia, the Marshall Islands and Palau with the United Nations decolonization

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norms. Then I propose to make a few remarks about the voting which took place in Palau on 4 September 1984 concerning the 23 May 1984 version of the Compact.

First, with regard to the Compact documents and United Nations norms on decolonization, there has been a somewhat bewildering array of versions of the Compact over the years, and, for the sake of clarity, let me note that I am speaking now of, first of all, the version originally signed by the Marshall Islands on 30 May 1982, by Palau on 26 August 1982 and by the Federated States on 1 October 1982; secondly, I shall speak of the Palau version of 23 May 1984. There are assorted subsidiary agreements to each of these documents, so that it is often more appropriate to speak of the "Compact package of documents" rather than just of the "Compact". Presumably, the Administering Authority has supplied the members of the Council with copies of each of these documents, although I have not been able to find all of them as official documents in the Council's publications. It will be recalled that the 1982 version of which I speak was disapproved by the Palau voters on 10 February 1983, but received adequate majorities in the Federated States and the Marshall Islands later that year.

The United States Congress was sent for its approval a later version of the Compact, which deletes references to Palau. It must have been written after the 10 February 1983 plebiscite in Palau. The version sent to the Congress purports to have been signed by the Federated States on 1 October 1982, a statement that is plainly inaccurate, since that was the date upon which the Federated States signed the 1982 version, which refers to Palau as well as to the Federated States and the Marshall Islands. Be that as it may, I shall be addressing myself to the 1982 version.

The 1982 version of the Compact was significantly different from an earlier 1980 version insofar as the power of the Micronesian entities to terminate the Compact unilaterally was concerned. It became more difficult for each of the three entities to opt out of the arrangement of free association and to go it alone. In the 1984 Palau version it became even more difficult for Palau to opt out than it had been in the 1982 version.

In the 1980 version there was power under Section 443 of the Compact for each of the three entities to terminate, following a plebiscite on the subject. In the event of such a termination, pursuant to Section 453 certain provisions of the Compact, primarily those concerning the security and defence powers of the United States, would remain in force until the fifteenth anniversary of the Compact "and

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thereafter as mutually agreed." The "and thereafter as mutually agreed" language meant that unless both sides agreed the arrangements would then, after 15 years, come to a complete end. A substantial change occurred to the package in 1982. Section 453 still read that in the case of a termination by the Marshall Islands or the Federated States the security and defence relations would continue in force for 15 years and thereafter as mutually agreed. The situation in the Marshalls became more complex later by the addition of a 30-year period for use of the Kwajalein facility. In the case of Palau, however, the period now became 50 years. Moreover, in the case of the Federated States and the Marshalls, the Compact was now accompanied by separate mutual-security pacts between the United States and those two entities. The most significant provisions of those treaties, which would come into effect upon the termination of the Compact, are those which would obligate the United States to defend the entities permanently and those which would make permanent the Compact grant of what is usually called the United States right of denial. "Denial" is what is referred to in Section 311 of the 1980 and 1982 Compacts as:

> "the option to foreclose access to or use of Palau, the Marshall Islands and the Federated States of Micronesia by military personnel or for the military purposes of any third country."

A 15-year commitment to denial by the Federated States and the Marshalls in the Compact became transformed into a permanent one by the security pacts. The 1984 Palau version of the Compact achieved the same result for Palau, but by a different route. The minimum 50-year life for Palau of the security provisions of the 1982 Compact was retained in Section 452 of the 1982 version. Beyond this, however, Section 453 (a) provides that

> "Notwithstanding any other provision [of the Compact] the provisions of Section 311, even if Title Three should terminate, are binding and shall remain in effect for a period of 50 years" -

and I wish to emphasize the next words:

> "and thereafter until terminated or otherwise amended by mutual consent."

Please note the words that I have emphasized.

(Mr. Clark)

What in the 1980 and 1982 versions of the Compact had been a provision permitting an extension by mutual consent and thus a veto by Palau, has now become the reverse - a provision continuing the arrangement in perpetuity unless the United States agrees otherwise. One might perhaps add that the provisions of Section 311 which are referred to in the 1984 version of Section 453, which I have just quoted, contain a more stringent version of the denial option which applies in the case of the other two entities. Denial is mandatory in the 1984 version. The section provides that

"The territorial jurisdiction of the Republic of Palau shall be completely foreclosed to the military forces and personnel or for the military purposes of any nation except the United States of America."

The increasing difficulty for the Micronesian entities entirely to opt out of the arrangements has some significant implications so far as the United Nations norms on decolonization are concerned. It is apparent that the intent of the Compact is to create a status of free association as contemplated in General Assembly resolution 1541 (XV). The Trusteeship Council and the Security Council have never yet clearly faced what is required for such a status to pass United Nations muster. Some consideration was given to the propriety of a status short of independence as a fulfilment of the self-determination provisions of the Charter during 1956 to 1958, when such a status was being considered for Togoland under French administration, which was prior to the adoption in 1960 of resolution 1541 (XV).

The Commission that examined the matter at that time on behalf of the General Assembly did not rule out the possibility of such a status, but it expressed the view that the Togoland entity should have full powers in respect of its own constitution and power to terminate the arrangement unilaterally. Ultimately, Togo became independent and the question of another status became moot.

In the case of the only two arrangements for free association which have obtained the approval of the General Assembly - the Cook Islands and Niue - the freely associated States concerned have the legal power to terminate the arrangement themselves at any time. Relevant here is Principle VII (a) of

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resolution 1541 (XV), which provides that an arrangement of free association

> "should be one which respects the individuality and the cultural characteristics of the territory and its peoples, and retains for the peoples of the territory which is associated with an independent State the freedom to modify the status of that territory through the expression of their will by democratic means and through constitutional processes." (General Assembly resolution 1541 (XV), annex)

We have concluded that the combined effect of the various 15-, 30- and 50-year provisions coupled with permanent denial is to place too great a fetter on the power of the three entities to opt out unilaterally. It will be virtually impossible for one or more of the entities to escape from the burdens of the military arrangements. Accordingly, we do not believe that those arrangements satisfy United Nations norms for a proper exercise of self-determination.

Secondly, we should like to discuss the Palau vote of 4 September 1984. In a written petition to the Council in 1983 and in a subsequent oral statement on 20 May 1983, the International League for Human Rights argued to what at the time seemed rather a sceptical forum that the plain language of the Palau Constitution required that any plebiscite to approve the Compact in that jurisdiction requires a 75 per cent majority of the votes cast.

This is because of the anti-nuclear provisions in two sections of the Constitution. The view that we espoused on that occasion was soon thereafter adopted by the Supreme Court of Palau in holding that the Compact had been disapproved in the referendum held on 10 February 1983.

A new version of the Compact, that of May 1984, was eventually agreed upon by the Palauan and United States authorities and was the subject of a new referendum, as the Compact and the ballot now called it - the earlier voting had been termed a plebiscite - on 4 September 1984. This Council, as I understand it, remained in session into the fall, eagerly awaiting an official invitation to attend the referendum - an invitation that never came.

On this occasion, Section 411 of the 1984 version of the Compact, dealing with the approval of the Compact, said that one of the steps to be taken was

> "approval by the people of Palau in accordance with the Constituion of Palau by not less than three-fourths of the votes cast in a referendum called for that purpose."

(Mr. Clark)

One might have thought that, once again, this was a plain enough statement that a 75 per cent majority was required, even without reading the Constitution. But again there seems to have been some confusion as to the majority required. In the event, some 66 per cent of the voters were in favour, which is of course less than 75 per cent. One might add that both a smaller absolute number and a smaller percentage - 71 per cent as opposed to 88 per cent - of the registered voters cast their ballots than in 1983. Once again, the Compact was not approved.

The relevant provisions of the Palau Constitution are as follows. Article II, Section 3 states:

"Major governmental powers including but not limited to defense, security, or foreign affairs may be delegated by treaty, compact, or other agreement between the sovereign Republic of Palau and another sovereign nation or international organization, provided such treaty, compact or agreement shall be approved by not less than two-thirds (2/3) of the members of each house of the Olbiil Era Kelulau and by a majority of the votes cast in a nationwide referendum conducted for such purpose, provided that any such agreement which authorizes testing, storage or disposal of nuclear, toxic chemical, gas or biological weapons intended for use in warfare shall require approval of not less than three-fourths (3/4) of the votes cast in such referendum." (T/1826, annex II, p. 5)

Article XIII, Section 6 provides that:

"Harmful substances such as nuclear, chemical, gas or biological weapons intended for use in warfare, nuclear power plants, and waste materials therefrom, shall not be used, tested, stored or disposed of within the territorial jurisdiction of Palau without the express approval of not less than three-fourths (3/4) of the votes cast in a referendum submitted on this specific question." (T/1826, annex II, p. 31)

(Mr. Clark)

An examination of the records of the Palau Constitutional Convention during the period in 1979 when this language was being drafted indicates that article XIII, section 6, of the Constitution was the first of the provisions drafted. It was apparently designed to prevent nuclear activity both by the Palauan authorities and by the United States. The Constitution was, of course, drafted with the Compact, then in draft form also, in mind. At a later stage in the deliberations of the Constitutional Convention there were apparently some fears that it might be possible to short-circuit article XIII, section 6, by means of approving a compact by a simple majority vote. In order to make absolutely certain that this could not happen, the second proviso - that concerning a 75 per cent majority - was added to article II, section 3, of the Constitution as then drafted.

These constitutional provisions, which were so important in the 1983 voting, were of crucial significance again in 1984, but that significance was lost sight of from time to time. The problem arose in this context. The 1982 version of the Compact, in section 314, contains language concerning nuclear and other harmful substances that could, to the innocent, be read in one of two ways: first, as a grant of power to use nuclear substances in the circumstances set out in the section - power which the United States would not otherwise have; or, secondly, as a limitation on the powers granted to the United States by some other provisions of the Compact. The United States appears consistently to have taken the view that section 314 of the 1982 version limits rather than expands United States powers. This position appears to be supported by the understanding of the negotiators when section 314 was being drafted, like the Palau Constitution, during 1979.

For the United States, its basic power to deploy nuclear and other material comes from sections 311 and 312 of the 1982 Compact. Section 311 deals with the "authority and responsibility" of the United States for the security and defence of the Micronesian entities. It refers to the obligation to defend the entities "from armed attack or threats thereof as the United States and its citizens are defended". Section 312 of the 1982 version provides that, subject to the terms of further agreements on defence facilities and operating rights, the United States may conduct "the activities and operations necessary for the exercise of its authority and responsibility" under the defence and security title of the Compact.

The United States position, as I understand it, is rather simple: the United States defends its citizens by nuclear means; the umbrella for Palau is likewise a nuclear umbrella. Section 314 limited this power in some respects. Unless

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otherwise agreed, the United States was not to test nuclear weaponry in Micronesia. Moreover, unless otherwise agreed,

> "other than for transit or overflight purposes or during a time of national emergency declared by the President of the United States, a state of war declared by the Congress of the United States or as necessary to defend against an actual or impending armed attack on the United States, Palau, the Marshall Islands or the Federated States of Micronesia, the Government of the United States shall not store in Palau, the Marshall Islands or the Federated States of Micronesia any toxic chemical weapon, nor any radioactive materials nor any toxic chemical materials intended for weapons use".

Some of all this, which is confusing enough to read, was confused at the time of the 1983 plebiscite by the wording of the ballot - a matter which the League tried unsuccessfully to persuade this Council to do something about on 16 December 1982.

Be that as it may, the Palau 1984 version of the Compact removed section 314 and redrafted and reshuffled the material in sections 311 and 312. Now section 311 simply refers to denial. Section 312 gives the United States "full authority and responsibility" for security and defence matters. It goes on to provide that

> "Subject to the terms of any agreements negotiated pursuant to Article II of this Title, the Government of the United States may conduct within the lands, water and airspace of Palau the activities and operations necessary for the exercise of its authority and responsibility under this Title."

The drafters of the Compact evidently thought that this authority included nuclear powers, since they included in section 411 of the Compact a reference to the 75 per cent requirement of the Palau Constitution. Indeed, if my understanding of the history of section 314 is correct, removing it removed the rather limited safeguards that it provided in respect of United States nuclear deployment. The "limitations" of section 314 have been removed.

The point seems to have been lost on the Office of the President of the Republic of Palau. An undated "Summary of the New Compact" prepared for use in the voter education programme on the referendum begins with the proposition that

> "The new Compact does not allow any nuclear or other harmful substances in Palau. For military purposes" -

a puzzling phrase that I am at a loss to interpret -

> "Section 314 of the original Compact which was disapproved by the voters in the last referendum has been taken out."

(Mr. Clark)

The second sentence of this statement is more or less true, if subject to interpretation, but the first is plain wrong. Apparently, however, it was used as a basis for arguing to voters that only a simple majority was required to meet Palau's constitutional standards.

The ballot itself, at least to the initiated, did not support such a position. It asked:

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

A careful voter thumbing through a dog-eared copy of the Compact and Constitution would quickly appreciate that a 75 per cent majority was required. He or she might wonder why there was no reference to article 13, section 6, of the Constitution, which had, quite properly, been mentioned in the ballot language agreed upon with the United States. But the ordinary person in the street would, I fear, have been at best bemused. It would have been very easy to add the words "by a three fourths majority" to the ballot language. That would have squelched a lot of confusion, but not all. As a reasonably educated observer, for example, I might add that I have still not been able to find a list of the particular "related agreements" referred to in the ballot, if indeed they had all been agreed upon at the relevant time. It was, for example, unclear whether a previously drafted and largely unintelligible law-of-the-sea bilateral agreement had been revived or simply shelved in the meantime.

Perhaps it is all water over the reef. The 1984 Compact, like its predecessor, was defeated in Palau and some new negotiations are obviously necessary. Yet one still feels in the air a disposition to treat the Palau Constitution as a mere inconvenient technicality to be brushed aside or slid by. The United Nations Charter and the Trusteeship Agreement do not bind the Palauans in permanent servitude to the United States military's view of the world. If they want a non-nuclear Constitution, indeed one adopted under the observation of this body, they are, in our humble submission, entitled to it.

Mr. MORTIMER (United Kingdom): I thank Mr. Clark for his well-researched petition.

I note that he said that in his view - he may have been referring just to the Palau Compact; on the other hand, he may have been referring to the Federated States of Micronesia and Marshall Islands Compacts as well - the United Nations norms for self-determination had not been satisfied. I find this an intriguing concept - that the United Nations should be setting down norms for what is frequently described as an inalienable right. A right is presumably something that is inherent, something that is not for United Nations bodies or anyone else to give or take away, something that people just enjoy. I wonder whether it is correct to talk about the United Nations laying down norms - that is, making qualifications about a right, making exceptions about a right, interpreting a right. Does Mr. Clark perhaps mean norms of self-government rather than norms of self-determination?

Mr. CLARK: There are several comments I might make by way of a response to that question.

It is of course very easy to talk about the right of self-determination. Unfortunately, there are some difficulties when one tries to give operational effect to the right. One has to qualify to some extent what that right means. Does it mean independence in all circumstances, or can it mean something short of independence in certain circumstances? Who is the "self" that is entitled to be "self-determined", and so forth? It is, of course, impossible to imagine that the right is magically given effect in particular circumstances. Inevitably, a degree of interpretation and a little give-and-take is required in particular instances.

Perhaps I used the word "norms" inadvisedly - although I think it is an appropriate word for an international lawyer to use, particularly bearing in mind resolution 1541 (XV), which is in many ways a modest resolution. It will be recalled that resolution 1541 (XV) talks in terms of principles and it contains, essentially, a bunch of principles designed to determine whether there is an obligation to transmit the material required by Article 73 of the Charter. Now, one can use those principles - or norms, if I may be permitted to use my term - to do one of two things. They can be used to determine whether a particular territory ought, for example, to be on the United Nations list of Non-Self-Governing Terrritories; or they can be used, flip-side, to determine whether something should be taken off the list.

(Mr. Clark)

I think it is fair to say, on the basis of the opinion of most of the international lawyers who have discussed this and in the light of the decision of the International Court of Justice in the Western Sahara case, that resolution 1541 (XV) provides the guidelines for the decision whether or not a Territory is non-self-governing, as that term is used in Article 73 of the Charter.

I hope that that was a helpful response to the question by the representative of the United Kingdom.

Mr. MORTIMER (United Kingdom): The response was indeed helpful and I am grateful for the clarification.

My point is this: Of course, there can be norms for self-government. Self-government is a political state. But it seems to me that there cannot be norms for rights. If I may slightly take issue with Professor Clark, the idea that in fact one can somehow apply give-or-take to an inalienable right, a universal right, seems to me a contradiction in terms. Either one enjoys a right or one does not.

I am not raising this matter simply to have an academic argument. One can hold the view that the Compacts as approved by the people of the Federated States of Micronesia and the Marshall Islands conform to norms of self-government as laid down by the United Nations, or that they do not. But the point at issue is that they were nevertheless legitimate expressions of an act of self-determination by the people. I myself do not regard self-determination as a particularly complicated concept: it is in fact very straightforward; it simply means allowing people to decide for themselves their own future.

It seems to me that, in terms of Professor Clark's analysis, we have a slight contradiction between norms of self-government and the right of people to decide their own future. That is perhaps the problem we face in this Council. We are informed, and we have reports produced by United Nations Visiting Missions which show, that acts of self-determination took place in the Marshall Islands and the Federated States of Micronesia during which a Compact of Free Association was approved. This reflected the will of the people. Are we to deny that will? That is my question.

Mr. CLARK: I think that in a way we might be missing the point that I was trying to make. Let me see if I can recast it somewhat.

At some stage the Trusteeship Council is going to be asked to sign off on the Trust Territory of the Pacific Islands. The proposition is going to be put to the Council that the Trust Territory has now reached a status where it is no longer appropriate to consider it; that, indeed, it is no longer appropriate for this body to meet, for this is the last of the Trust Territories. My point is that, for that conclusion to be reached, certain standards of the United Nations have to be applied. The General Assembly has in the past applied those standards, both in respect of Trust Territories and in respect of those other Non-Self-Governing Territories that came within the aegis of the Committee of 24. From time to time the General Assembly has become exercised about a particular Territory and has suggested that a particular status is just not good enough as a fulfilment of the Charter, and that the Charter obligations therefore continue.

My point is, very simply, that what is contained in the versions of the Compact agreed to at this stage by the Marshall Islands and the Federated States of Micronesia is simply not good enough, if one applies the standards developed by the United Nations in resolution 1541 (XV) and its decisions in particular cases - for instance, that of the West Indies Associated States. I referred in my petition to the discussions about Togoland; I referred also to the discussions that took place at the time when the arrangements with the Cook Islands and Niue were approved by the General Assembly.

Mr. RAPIN (France) (interpretation from French): I do not want to prolong the discussion unduly, but a few simple points should be borne in mind.

Mr. Clark constantly speaks of precedents in other Trust Territories and General Assembly resolution 1541 (XV). I should like to return to the Charter of United Nations, which governs the trusteeship system. Article 76 of the Charter, which is binding and is not a General Assembly recommendation, provides that one objective of the trusteeship system is to lead the trust territories to self-government or independence. So there we find clearly stated the choice that was put to the Trust Territory of Micronesia.

Secondly, the Trust Territory of Micronesia is different from the other trust territories in that it comes under Article 83 of the Charter, being the only trust territory considered to be strategic. Article 83 provides that:

"All functions of the United Nations ... shall be exercised by the Security Council."

That clearly shows that, as our United Kingdom colleague said, it is not for the General Assembly to establish standards for the implementation of a right of self-determination, which exists in international law, or for a Trust Territory where the Organization exercises its powers only through the Security Council, which has itself transferred them to the Trusteeship Council.

The PRESIDENT: Does Mr. Clark wish to add anything?

Mr. CLARK: The representative of France referred to the expression "self-government or independence". The question, of course, is twofold. First, what is meant by "self-government"? Secondly, is that a legal question or is it simply a naked political question? What I have tried to suggest is, first, that one can discern some meaning of the term "self-government" by looking at the practice of the Organization, by which of course I mean the practice of the Trusteeship Council, the General Assembly and the Committee of 24. It seems to me that there are some relatively clear rules that one might discern; for the most part they were codified in General Assembly resolution 1541 (XV).

Secondly, as I think is implicit in my first answer, my submission is that the Charter, albeit a flexible document, is a legal document which is subject to some legal interpretation. It is not simply a document which is interpreted in a nakedly political manner.

(Mr. Clark)

It follows that if one believes in the rule of law there should be some consistency about the ways in which the Charter is applied, and this is a case in which it consistently indicates that there are serious doubts about whether the Council should recommend to the Security Council that the Trusteeship Agreement should be terminated in the light of the arrangements so far entered into.

The representative of France said that the Trust Territory of the Pacific Islands was the sole strategic trust territory. That is true. Ultimately, though, as I read the Charter, what is paramount is not the United States view of strategic matters in the Pacific, but the right of the peoples of the Trust Territory to self-determination. What may have been true in 1945, when United States interests were at least temporarily paramount, is no longer true in 1985. Today, the lingering effects of its having originally been a strategic trust territory are very slight so far as the permanent outcome of an act of decolonization is concerned.

Mr. BEREZOVSKY (Union of Soviet Socialist Republics) (interpretation from Russian): First, we thank Mr. Clark for his well-argued and well-prepared statement. Can he shed more light on the following matter? We understood from what he said that even if section 314 disappears from the so-called Compact of Free Association, two other sections - sections 311 and 312 - enable the Administering Authority, the United States, to take any steps in the name of so-called defence action. Those steps include bringing into the Territory and deploying nuclear weapons and chemical and other highly dangerous substances. Is that so? If it is, one other question arises: Where is there a guarantee in the Constitution - in particular, the Constitution of Palau - preventing the importation of nuclear weapons into the Territory and their deployment there? How can we guarantee that that will not happen?

Mr. CLARK: The representative of the Soviet Union has accurately restated my understanding of the effect of sections 311 and 312 of the Palau version of the Compact. It will be appreciated that in the Marshalls and Federated States version there is still section 314, which contains some - I emphasize "some" - limitation on the rights of the United States to deploy the material to which the Soviet representative referred.

(Mr. Clark)

So far as the Palau Constitution is concerned, it seems to me that the position, at this point at least, is quite simple. The Palauans have been asked twice to provide the 75 per cent majority necessary to override their Constitution. They have not provided the necessary 75 per cent majority. The Compact has not been approved so far as Palau is concerned.

Mr. FELDMAN (United States of America): As I understand it, Mr. Clark was unable to be with us last week when we began this session of the Trusteeship Council, which is a pity. If he had been with us he would have been able to learn from my opening statement that we do indeed regard the Palau plebiscite as not having approved a compact, and precisely on that basis we have not sent any compact with respect to Palau to the Congress for action. While I am grateful for the very long and quite accurate dissertation on the Palauan constitutional requirements, they were already dealt with in the statement which I made on opening day - in rather briefer form, of course.

I also wish to correct one very minor misstatement. I believe that Mr. Clark informed us that this Council had remained in session continuously over the summer of 1984 awaiting an invitation to observe the plebiscite in September 1984, which, for unknown but doubtless evil reasons, the administering Powwer decided not to extend. As the Council will recall, the Trusteeship Council did not remain in session and it proved impossible to arrange for a visiting mission to observe the vote in September 1984 in view of the shortness of the notice given by the Government of the Republic of Palau. This is, as I have said, a minor point.

We seem to have had once again basically the same kind of objection that we have heard before - that is, that these Territories are not moving to independence, although Mr. Clark, I believe, unlike some other petitioners we have heard, grants that it is not in every case a requirement that a Non-Self-Governing Territory move to independence. It can move to integration, or it can move to free association. In the case of integration, with regard to the Commonwealth of the Northern Marianas, I took it that Mr. Clark's point was that the Covenant in itself does not contain a provision whereby the people of the Northern Marianas may, as it were, disaffiliate. Under the Covenant they will be American citizens and, while I am not, as Mr. Clark is, an international lawyer, it would seem to me as a non-lawyer a bit strange to say that a person shall be an American citizen and shall also have the right to, as it were, disaffiliate in a way other than is common to any citizen who wishes to expatriate himself.

(Mr. Feldman, United States)

With regard to free association, if I understand him correctly, Mr. Clark is telling us that there are criteria of free association and that the free association chosen by the Marshall Islands and the Federated States does not meet those criteria. Of course, opinions change with time, and I assume that that was what happened in the case of Mr. Clark, who said in an article in the Harvard International Law Journal in 1980:

> "It is apparent from the foregoing that United Nations practice with regard to free association arrangements is confused and that no clear norm has emerged which can be applied in the case of Micronesia."

Quite clearly his view has changed, and that is in no way inappropriate, of course.

Basically, what he have here once again, though - to use that phrase once again - is a petitioner telling us that he does not feel it is appropriate for the inhabitants of a Micronesian Territory to have chosen the status that they have chosen. I am sure that we shall all take Mr. Clark's views into account but we must also take into account, as has been said, the views of the people of the Territory as to what it is they want, and once again I have to stress that what we have here is not a matter of a blind choice, or a choice being made in the dark, but a choice which had been certified by the Trusteeship Council as having been made in full knowledge of the options and of the implications of the choice.

As I have said before, when Mr. Clark, unfortunately, could not be with us, the United States has no intention of building a military base in Palau, that the United States has no intention of storing, testing, disposing of or discharging nuclear weapons, toxic chemical or biological weapons or hazardous substances in Palau. I say that again, unequivocally, since Mr. Clark was not able to be with us to hear when I said it earlier. I repeat also that the United States respects the Constitution of Palau and will continue to do so, that the United States has no intention of forcing the people of Palau to adopt a different Constitution or to amend its Constitution - and so on and so forth. The choice is entirely up to the Palauans.

Finally, with regard to military arrangements, I think the point has already been made that this is a strategic Trust Territory. Mr. Clark tells us that in his view, while perhaps it might have been considered strategic in 1945, there is no reason to consider it strategic in 1985. Well, that is his view. It is not, clearly, the view of the United States Government; nor does it appear to be the view of the Micronesian peoples themselves.

The PRESIDENT: I call on Mr. Clark for a brief final intervention.

Mr. CLARK: I am most grateful to the representative of the United States for explaining why it was that the Trusteeship Council did not find it possible to attend the September referendum. I also appreciate the reference to my 1980 article in the Harvard International Law Journal; it is certainly nice to be taken seriously, although I feel that the quotation was taken somewhat out of context. I would suggest that if that article is carefully read it will explain my views in much more detail on the nature of the Northern Marianas Commonwealth and its difficulties with the United Nations decolonization norms. It will be noted that in that article I talk about the power to opt out of a free association arrangement, not about the power to opt out of an arrangement of integration. My point about the Northern Marianas and integration is that that Territory is not adequately integrated as that term is understood in United Nations usage and, in particular, in resolution 1541 (XV).

I should like to refer to the point about the will of the people. Any legal system has in its body of rules a rule which is based on the fact that there are certain kinds of deals which no self-respecting legal system will approve or give countenance to. To take a very simple proposition that is true of most legal systems, if I were to reach an agreement that I would henceforth be the slave of the representative of the United States, the Anglo-American legal system, at least, would say that that agreement was void, null and of no effect. My point is that international law also contains principles of that kind. My further point is that one of those kinds of principles has been breached in the case of these particular arrangements.

Finally, I should like to refer to the comment concerning the United States view of the Palau Constitution. I appreciate that it has no present intentions to conduct any military activity in Palau, although, as members well know, it does at least have some contingency plans that would involve tying up a considerable amount of the land of Palau. But, putting that aside, if the United States respects the Constitution of Palau, then for heaven's sake, why can it not get a compact with Palau that does not attempt to override the nuclear and other harmful substances provisions of the Palau Constitution? It ought to be something that skilful negotiators could negotiate. Why on earth do they not do it?

Mr. BEREZOVSKY (Union of Soviet Socialist Republics) (interpretation from Russian): I am very grateful to the petitioner for his answer and explanation, and I have one further question to him as a well-known international legal specialist.

(Mr. Berezovsky, USSR)

Will the Micronesians, with the relationship established by the United States, such as the Compact of Free Association, not to mention the Covenant for the Northern Mariana Islands, be able at any time in the foreseeable future to exercise their inalienable right to genuine self-determination, to become independent?

Mr. CLARK: My point again is that under the arrangements as at present entered into it will be extremely difficult, if not impossible, for the Micronesian entities to opt out of the arrangement and move on to a state of independence.

Mr. FELDMAN (United States of America): I believe that Chief Secretary DeBrum and Mr. Victorio Uherbelau wish to make some comments on the petition, with your permission, Mr. President.

Mr. DeBRUM (Special Adviser): My comments will be made in more detail when I make my closing remarks. I have been sitting here listening to various kind people say what we can have and what we cannot have or what decisions we have made that they think we should not have made. I am sure that they make those comments because of their interest in our welfare. It is 15 years since the inception of the negotiations that have led to where we are today. They have not been easy years; they have been very difficult. We were not able to obtain all that we wanted, and we realized that we could not give all the rights that other people wanted in the formation of a relationship of free association with the United States.

Free association means three things. It means that through our own Constitution we are a self-governing people. I would think that that would be in compliance and in accordance with the basic principles of the Trusteeship Agreement. It means that the Administering Authority would administer the islands and foster the economic, political and social advancement of the people so that some day in our own right and in our own freedom we can chose the type of relationship and the type of self-government that we should have.

(Mr. DeBrum, Special Adviser)

I would think that other friendly and developed countries in the world would sympathize with that view, because it is consistent with the principle of the Trusteeship Agreement. The other portions of the Compact of Free Association state that in recognition of this relationship, the United States will provide the financial assistance necessary to enable us to develop economic self-reliance, so that after 15 years we shall be free to make whatever decisions we wish from the standpoint of economic self-sufficiency, without having to depend on anyone. Another aspect of free association is that at the moment we are not able to defend ourselves; we are but a small country, we do not have the means or the finance necessary to defend ourselves. That is why we have requested the United States to continue to provide defence for the Micronesian Government, until such time as we are able to defend ourselves.

These are the three important concepts embodied in the Compact, and for 15 years we have negotiated these important concepts on a give-and-take basis. Nothing was ever easy for us. But in 1983, after comparing all the alternatives made known to them - complete independence, free association, commonwealth, or any other form of relationship with the United States - the people chose free association. It was an honest decision made by the people and I do feel, as one of those involved in the observation of that process, that the people were completely free to make their decision. As I have said, I shall deal with this in greater detail in my closing remarks, but I thought I should make these observations at this time.

Mr. UHERBELAU (Special Adviser): First of all, the Palau delegation wishes to associate itself fully with the views and sentiments expressed by the Chief Secretary of the Marshall Islands.

Secondly, I apologize to the Northern Marianas delegation, to the Marshallese delegation and to the Federated States of Micronesia delegation for the time that has been spent in this Council on discussion of the situation in Palau.

Finally, I thank Mr. Clark for reading out appropriate provisions of the Constitution of the Republic of Palau, which, as I told the Council yesterday, I myself and the Vice-President, the head of our delegation, helped to write. I also thank him for the chronological review that he has presented to the Council on the progress of the negotiations that Palau has had with the United States.

I will close my remarks again with the assurance that it is the policy of my delegation never to respond directly to things said about Palau, either good or bad.

The petitioner withdrew.

Mr. BEREZOVSKY (Union of Soviet Socialist Republics) (interpretation from Russian): Although technically we have concluded consideration of Mr. Clark's petition, I have two more questions in connection with his last comments. The first is a question to Mr. DeBrum - provided, of course, that he is ready to answer it. We listened very carefully to his statement just now when he said that the last 15 years had not been easy years in the negotiations between the Micronesians and the Administering Authority. He also noted that the Micronesians were not able to obtain all the rights they had wanted and to which the people were entitled. For this reason, they made concessions to the Administering Authority. That is a very important statement. I should like to hear more information about why the Micronesians were unable to obtain the rights - the same rights which the peoples of other Trust Territories obtained. What was the main reason for this?

My second question has to do with the part of his statement where he stated that Micronesia is a small Territory and that on its own it cannot organize its own defence, and that supposedly for this reason it has requested the United States to do so. Could Mr. DeBrum now tell us whether there has been any threat to Micronesia in the last 40 years, against whom would this defence be used, and against whom are the Micronesians preparing to defend themselves with forces of the United States?

Mr. DeBRUM (Special Adviser): Again I would like to deal with these in further detail in my closing statement, but I do wish to respond to some of the questions asked by the Soviet representative. I think that the first question was: What was it that you were not satisfied with, what was it that you felt you did not obtain or what right did you feel you lost through not being able to complete the negotiations in the way you wanted?

(Mr. DeBrum, Special Adviser)

The Compact of Free Association is a negotiated document and, like any negotiated document, when it is new it might be thought to be perfect. However, we have seen how the constitutions of governments or countries have been changed from time to time even though they were considered to be perfect when they were first drawn up. First of all, we did not get all the money we thought we would be able to get under the Compact, and that is a very important consideration. There was a limit to the financial assistance that the United States could give us. We wanted more but we could not get any more. Now we realize we have to learn to practise economic self-reliance, so that we can generate our own finances and no longer have to depend on the outside world. This is perhaps one blessing of the limitation on the financial assistance that we were able to get.

On the defence side, in response to the question from the representative of the Soviet Union, we feel that the presence of more than one metropolitan Power in our area could some day lead to disagreement - as can be seen in this very nice building. Sometimes there are differences of opinion, differences of ideology. Sometimes I think that we have become the victims of that. Nevertheless, those who negotiated the Compact felt that one metropolitan Power - that is, the Power that had taken care of the Territory from the beginning, the Administering Authority - would be sufficient for defence, to defend us against any possible intrusions, not only intrusion with dangerous weapons but intrusions into our economic zone. We see foreign vessels in our economic zone these days, and, while they claim to be fishing, they do not look as if they have bamboo poles for fishing; they seem to have antennae made of metal. So we do not know what kind of trawlers they are, but we know that more and more we shall see intrusion from outside. Because we are small and we will not be able to defend ourselves, we have asked the United States to defend us.

We have been used before as a stepping-stone for the commission of aggression which led to an unfortunate war, and we became the victims of that too. We would not like to see these things happen again. That is one of the important reasons why we asked the United States to be our defender in this case.

Mr. BEREZOVSKY (Union of Soviet Socialist Republics) (interpretation from Russian): Apparently the answer suffered because of possible mistakes in interpretation. I will try to make the question a little clearer. In his original statement Mr. DeBrum said that the Micronesians did not acquire under the Compact

(Mr. Berezovsky, USSR)

all the rights which other former Trust Territories had acquired. I asked why they did not acquire them. We were not interested in the question of money, although it is important, since to some extent it reveals the essential reason why the Micronesians did not acquire many rights.

Secondly, I asked a more direct question in relation to the case of Micronesia. I asked whether, during the 40 years since the Second World War, anyone had threatened the Micronesians in any way. References to the fact that Micronesia became a victim during the Second World War are quite correct and we understand them. We are familiar with the history. We know very well that there was fighting on the Territory of Micronesia during the Second World War. This is precisely why I asked this question. Judging from the report of the Administering Authority, the economic ties between the Territory and Japan, especially in the area of fishing, are constantly increasing. But that is just an incidental, secondary comment.

I have one more question, which has to do with territorial waters and the territorial requirements of the Micronesians. I would ask the representative of the Administering Power to answer this. According to the agreement on the jurisdiction and sovereignty of the Republic of Palau over its territory - that is, one of the agreements which are being concluded between the United States and Palau - Palau cannot claim any archipelago or the surrounding waters. The Palau Constitution, however, provides that the territory of Palau includes the archipelago of Palau - and that is also in the agreement and the Compact, incidentally. So the jurisdiction and sovereignty of Palau is limited to the land and the three-mile zone around the islands.

(Mr. Berezovsky, USSR)

How is it that the United States has the right of transit and is able to transport nuclear weapons within the borders of Palau? This of course also touches upon the question of burying radioactive materials. We should like to have clarification concerning this from the representative of the Administering Authority.

The PRESIDENT: Would Mr. DeBrum like to make any further comment?

Mr. DeBRUM (Special Representative): I think I shall do so when I make my remarks in detail at the final meeting.

Mr. FELDMAN (United States of America): I am happy to respond. First, it does seem to me that, as has been noted by our friend from the Soviet Union, there are problems of interpretation. I think he may have misheard what Mr. DeBrum said, because in the English version - which, of course, was the language in which Mr. DeBrum spoke - I do not recall him saying that they were denied any rights in the course of this negotiation. But perhaps Mr. DeBrum will want to clarify that later in his statement.

I also recall that he had remarked upon the strangely configured Soviet fishing vessels which occasionally turn up in Marshall Islands waters, speaking of territorial waters. I have a photograph of one such Soviet fishing trawler here. Perhaps our friend from the Soviet Union would like to have a look at the rather unusual configuration of this fishing trawler.

With regard to the question of Palauan territorial waters and what the United States recognizes and does not, I thought I had clarified that yesterday in my lengthy statement. I quoted from article I, section 1, of the Palau Constitution, as follows:

> "Palau shall have jurisdiction and sovereignty over its territory which shall consist of all of the islands of the Palau archipelago, the internal waters, the territorial waters, extending to two hundred (200) nautical miles from a straight archipelagic baseline, the seabed, subsoil, water column, insular shelves, and airspace over land and water, unless otherwise limited by international treaty obligations assumed by Palau."

Further, I stated:

> "It should be noted that the Government of Palau has expressed its intention to become a signatory of the Convention on the Law of the Sea as soon as practical following termination of the Trusteeship".

(Mr. Feldman, United States)

That would introduce a further qualification, given the terms of the treaty.

"The Compact of Free Association ... gives due recognition to Palau's claim of sovereignty and jurisdiction over sea and marine resources to the full extent recognized under international law. I submit, therefore, that any operable limits to Palau's archipelagic claim, if they do arise, would be grounded on international law, not on United States policy." (T/PV.1587)

Mr. BEREZOVSKY (Union of Soviet Socialist Republics) (interpretation from Russian): With regard to the comments the representative of the Administering Authority has just made, which even included a reference to photographs of ships, I would point out that photographs of ships are a matter for amateur photographers: they can be taken anywhere in the world. Photographs can represent anything one wishes, from a ship to a girl, or any part of the world.

However, I still have quite a few questions that relate, in particular, to the economic situation in the Trust Territory of the Pacific Islands, a situation that, in principle, forms the basis of what is now taking place in the Territory on the political level.

References have been made here by petitioners - and even by some members of the Council - to current economic conditions in Micronesia and those that prevailed prior to the United States trusteeship. The representative of the Administering Authority attempted to limit further discussion of that subject by qualifying it as digression, as romantic devotion to the time of the Japanese occupation of the islands. We are not devoted - and certainly not romantically devoted - to that time. All that interests us is the development of the economy in Micronesia over the past 40 years.

The report of the Administering Authority says that even in the 1930s, in addition to sugar-cane plantations, fishing and tropical agriculture, there was also mining of useful minerals. I have searched carefully through the report to its last page, but I have been unable to find anything about that kind of industry today.

(Mr. Berezovsky, USSR)

On page 19 of the same report, the second paragraph in the right-hand column, the Administering Authority states thata geological survey ship from the United States arrived to conduct a survey of possible cobalt, manganese, and copper deposits in the water of the Marshall Islands in July 1984.

This is what interests me, and I am not taking just last year; I am taking any period of time, beginning with the first day of administration of this Territory by the United States. Have any measures been taken by the Administering Authority aimed at developing an economy which would make it possible for the Micronesians, particularly in regard to mining and minerals, to become economically independent?

Mr. FELDMAN (United States of America): With your permission, Sir, I should like High Commissioner McCoy to respond.

Mrs. McCOY (Special Representative): Economic dependency is something that is brought up every year in this Chamber. The Administering Authority has never denied that the economic development of the islands has been far less than is desirable. We have, on the other hand, continually stressed that development must be consistent with the desires of the Micronesians and be within the means available.

Education, capital infrastructures and international and regional exposures have all been points of concentration. As a result, we now have a new class of Micronesian entrepreneurs, leading in the development of the islands. Road systems, communications, water and power are now available in varying degrees for commercial enterprises.

We have in the past 10 years begun to turn over authority to determine priorities in development to the new constitutional Governments of Micronesia. This includes the economic development loan fund, foreign investment controls, labour laws and related responsibilities.

In my opening statement I referred to some projects taking advantage of these developments. I should like to point out that in some mineral mining, particularly some on Palau, it would be too expensive to reopen the industry for the amount of minerals still present. This applies primarily to phosphate.

I should like the representatives of the Micronesian Governments to describe some of the developments in their jurisdictions in the recent past and perhaps some future projections. I speak particularly of the Marshall Islands and the geological survey that has just been done there, and the great promise that it holds.

Mr. DeBRUM (Special Adviser): I want to thank the representative of the Soviet Union for the good questions he asked and Mrs. McCoy for the frankness with which she answered them.

I shall give one example of economic development. We in the Marshalls feel that the fact that economic development has not been as great as we would have wished is not the fault of the United States alone but is also due to decisions made by the people themselves. For example, the copra industry in the Marshall Islands used to produce 36,000 tonnes of copra annually during the Japanese administration, according to a League of Nations report. Today, the Marshall Islands produces 7,000 tonnes, so there has been a drastic reduction in copra production. I, for one, do not feel that we can blame the United States for that decline.

One of the many reasons for this is perhaps that we became too dependent on the United States and its handouts, instead of trying to help ourselves. And that is why we have gone out on our own and, thanks to the British Government have been able to conclude an economic development loan. Thus we were able to purchase a good power plant system and a fuel system from Britain. In fact, our last year's bid for petroleum products went to Shell rather than to Mobil because of the attractive terms and prices on the basis of which we were able to arrange these economic development ventures.

Cobalt has been found, as I noted in my statement. The report of that complete operation and discovery is forthcoming. We have been told that in our economic zone the waters of the Marshall Islands contain clusters of cobalt, manganese and copper deposits of a higher quality than such deposits found elsewhere. We have not been told why - perhaps because we are closer to the equator or because of our warm weather. We do not have complete information on this, but the United States Geological Survey, through the Department of the Interior, has promised that when they have the full information they will consult with us and let us know what valuable resources we have in the economic zone and the seas around the Marshall Islands.

Mr. GUERRERO (Adviser): The Northern Marianas encourages light industry to invest in the Northern Marianas. One such industry is the garment industry. We know that something will come out of this in terms of our continuing consultation with the United States in trying to resolve the headnote 3 (a) problem.

(Mr. Guerrero, Adviser)

We are also encouraging other light industries to come out to the Northern Marianas. In fact, a group of investors is going to the Northern Marianas some time this week to consider the possibility of opening a certain type of industry out in the islands. So the Northern Marianas Government is doing something in terms of attracting industry to the Northern Marianas.

Mr. UHERBELAU (Special Adviser): We thank the representative of the Soviet Union for raising this question on economic development.

First, we covered some of the economic development programmes that we have in Palau in our opening statement. I might just add that, as the Council may be aware, we had the Micronesian Industrial Centre, which used to produce oil from copra. It was a copra processing mill similar to the one to which the Chief Secretary of the Marshalls referred earlier. Unfortunately the operator of the plant decided to close it down, and it has remained closed up to this day. We are attracting some investors and possible buyers, whether from the Philippines or from Japan, to take over the plant.

Similarly we had the Van Kamp Storage Industry, which, when it was operational, had vessels fishing in the Palau area; the fish catch was stored there and transported to American Samoa, Puerto Rico or San Diego for canning. But, like the copra plant, this cold-storage plant was also closed down, and we are looking for possible buyers, again from the Philippines or Japan, or the United States.

Lastly, following in the footsteps of the Marshall Islands, Palau too has through bank loans built a power plant in the major islands that has sufficient generation capacity and should be able to attract major developments to the islands.

As we reported in our opening statement, last year we completed two hotels, one with 50 rooms and one with 150 rooms, and both are now operational. But since we do not have enough electrical power generation, they have their own generation unit, but when the IPSECO power plant is completed they will be hooked up to the national power plant.

Mr. TAKESY (Special Adviser): I think the one major factor the Council should concentrate on is that the infrastructure necessary for economic development has been lagging in the past. We are, however, happy to report that much of that is either being completed or under construction. Under the National Development Plan for the Federated States we intend to complete these structures in order to provide the basis for a sound economic development scheme.

(Mr. Takesy, Special Adviser)

Planning is of course worthless without execution, and we are undertaking to train ourselves in the development area. As I mentioned earlier, we have beefed up our Planning and Statistics Department so that it can give us the necessary data upon which to make sound economic decisions.

Funding has been a factor that has been eluding the Federated States as they try to develop a consistent economy. Under the Compact this will be stabilized as the funding will come down in blocks of five years. We are confident that, given the opportunity not only to chart our own economic destiny but to execute the plans and to learn from our mistakes, we are well on the way to self-sufficiency, economically speaking.

I think it would be a mistake to assume that economic development can exist without the necessary social conditions. As the Council heard earlier, epidemics have occurred in the Federated States and steps were taken with assistance from the United States and the World Health Organization. The cholera epidemic in Truk has been checked. Hansen's disease in Ponape has to some extent been exaggerated, but let me state categorically that my Government is addressing it very seriously. Furthermore, the Senate resolution that would endorse the Compact contains language that will allow continued support from the United States in the eradication of the disease to which we have referred. We also have a commitment from the World Health Organization that funding and technical assistance will continue in order to bring the disease under control.

As for the field of education, we have emphasized those fields that deal with development, such as engineering, electronics, computers, economics and accounting. We do not give any scholarships to people who study political science, and we do not give scholarships or loans to those who study anthropology.

Finally, no one is hungry in the Federated States, and we believe we have a dignified life.

Mrs. McCOY (Special Representative): Just one last word on this.

If I might call the Council's attention to part V of the annual report, which deals with economic advancement, members will find, Government by Government, a description of projects and prospects in the Trust Territory.

Mr. BEREZOVSKY (Union of Soviet Socialist Republics) (interpretation from Russian): I have carefully examined and read part V of the report submitted by the Administering Authority, which leads me to ask a question not about projects, not about plans, about which the Administering Authority has told us, but rather about

(Mr. Berezovsky, USSR)

what has been done at any time, starting with the first day of the American administration of the Territory. How has the industrial sector of the Trust Territory developed? Has it developed, and if not, why?

I shall be ready to continue developing this subject in the future, when the President of the Council allows me to do so.

The meeting rose at 5.20 p.m.