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Palau's Struggle for Self-Determination

# RESISTING THE SERPENT

**Bob Aldridge and Ched Myers**

*Foreword by Roger S. Clark*

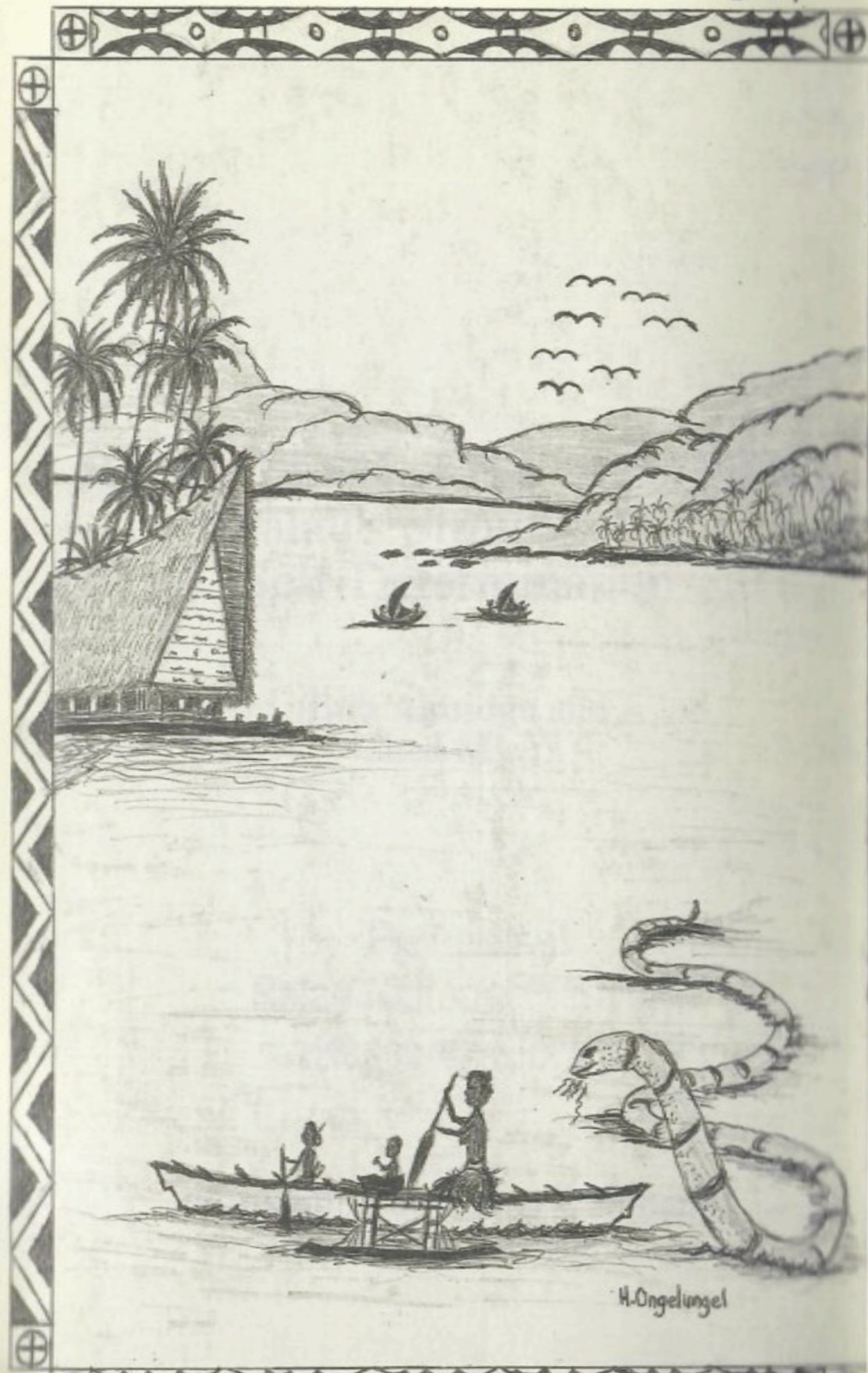


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REFERENCE—NOT TO BE  
TAKEN FROM THIS ROOM

Cover sketch and frontispiece by Hans Ongelungel, a Palauan now living in the United States. They depict "The Escape from the Sea Serpent of Oikuul," a Palauan legend from which the title of this book is taken (see Preface).



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**RESISTING THE SERPENT**  
Palau's Struggle For  
Self-Determination

Bob Aldridge and  
Ched Myers

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To the memory of Bedor Bins,  
A great man  
who loved Palau and her people.



## ACKNOWLEDGEMENTS

Our gratitude goes to Jim Douglass, whose study of The Solomon Report is used throughout this book to highlight US covert activities in Micronesia. We are also indebted to Jim for his analysis of the nonviolence practiced by the Palauan people to preserve their islands. But for his reluctance to accept the credit, he would have been shown as a co-author of this book.

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We also wish to thank the numerous friends all around the Pacific, too numerous to list, who contributed to this book in many different ways.

*Yes—we know that when you come, we die.*

— Chiparopai,  
an old Yuma Indian

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## FOREWORD

by Roger S. Clark\*

*Though the story takes place in a relatively remote corner of the world, we believe that it is in fact a microcosm of the global structure for survival against militarism, and thus profoundly illuminating to the choices we face as a civilization.*

So write Bob Aldridge and Ched Myers in their Preface to this remarkable little book. It is a story that I have followed at the United Nations since the early 1970s, both as an international lawyer and as a representative of the International League for Human Rights, a non-governmental organization which has consultative status with the United Nations.

I believe that the authors have quite fairly captured the essential facts of the situation. A small nation of some 15,000 people finds itself, as a result of the vagaries of history, under the tutelage of the greatest nation on earth. Its status is governed by a Trusteeship Agreement entered into between the United States and the Security Council of the United Nations. The Security Council delegated the day-to-day supervision of the Trust Territory of the Pacific Islands thus created to the Trusteeship Council, which is where most of the United Nations discussion has occurred.

The Trust Territory of the Pacific Islands has been moving towards a different relationship with the Administering Power from the late 1960s as the parties endeavored to give effect to Article 76(b) of the United Nations Charter, which speaks of the obligation of the Administering Authority "to promote the political, economic, social and educational advancement of the inhabitants . . . and their progressive development toward self-government or independence. . . ." Some disintegration of the larger entity occurred (whether due to indigenous forces or to divide-and-conquer tactics by the

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United States or both is disputed) resulting in the emergence of four smaller entities: the Commonwealth of the Northern Mariana Islands, the republic of the Marshall Islands, the Federated States of Micronesia, and the republic of Palau. The Northern Marianas was annexed to the United States. Its inhabitants became second-class citizens, occupants of an entity lacking foreign-affairs power, and even complete power over its internal affairs, with no representation in Congress and no vote for president.<sup>1</sup> The Marshalls and the Federated States moved, like Palau, toward an intermediate status between annexation and independence, described as "free association."

Palau, in a different process with much soul-searching, in 1979-80 adopted a Constitution which owed much to the United States model, but which contained some home-grown features that were anathema to Palau's trustee. Notably, the document<sup>2</sup> contained two "nuclear control" provisions which forbade the introduction of nuclear substances without the approval of three-fourths of the voters in a referendum. At the same time, the elected representatives of the Palauans were negotiating with the United States a relationship of "free association." This would leave them close to independence, but not quite. While Palau would have the capacity to conduct foreign affairs in its own right,<sup>3</sup> the United States would have "full authority and responsibility for security and defense matters in

<sup>1</sup>See Clark, "Self-Determination and Free Association—Should the United States Terminate the Pacific Islands Trust?" 21 *Harvard International Law Journal* 1, 75-78 (1980); Prince, "The United States, the United Nations and Micronesia: Questions of Procedure, Substance and Faith," 11 *Michigan Journal of International Law* 11 (1989); Rodriguez Orellana, "In Contemplation of Micronesia: The Prospects for the Decolonization of Puerto Rico Under International Law," 18 *University of Miami Inter-American Law Review* 457 (1987).

<sup>2</sup>Reproduced in A. Blaustein & P. Blaustein, eds., *Constitutions of Dependencies and Special Sovereignities, Palau* (Oceana, Dobbs Ferry, NY, 1988).

<sup>3</sup>*Compact of Free Association with Palau*, Section 121. Current (1986) version of the Compact reproduced in Public Law 99-658, in A. Blaustein & P. Blaustein, eds., *Constitutions of Dependencies and Special Sovereignities, Palau*, *supra* note 2.

or relating to Palau."<sup>4</sup> Where the borders of foreign affairs and defense cross, the United States could call the shots. Section 313 of the Compact provides that the Government of Palau shall refrain from actions which the Government of the United States determines, after consultation with that Government, to be incompatible with its authority and responsibility for security and defense matters in or relating to Palau. The language is blunt. The United States made the determination: Palau shall refrain.

It was in this context that the nuclear control provisions became a sticking point between the United States and at least a significant minority of the Palauan population. The defense which the United States would provide would include a nuclear element. However cute the drafting might be in successive editions of the Compact and its associated agreements, it would prove impossible to find a formula that masked this simple fact of the United States position. It has not been possible, moreover, to obtain a sufficiently large majority in a referendum to over-ride the nuclear-control provisions of the Constitution. An attempt to amend the Constitution to set the nuclear-control provisions aside, at least for the purposes of the arrangement with the United States, was found illegal in the courts of Palau. I must confess that I expected the United States to have found a way to finesse the affair at least a decade ago, but it has not. The result is a standoff with the trusteeship still in force, but the nuclear-free Constitution also still intact.

At the international level, the issue has been joined primarily in the Trusteeship Council. The United Nations Charter, Article 71, gives a kind of institutionalized pressure group status to non-governmental organizations when it speaks of the power of the United Nations Economic and Social Council to "make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence." An increasing number of groups with such status have taken an interest in the Trust Territory since the mid-1970s. Moreover, the Trusteeship Council has, since

<sup>4</sup>*Compact of Free Association with Palau*, *supra* note 2, Section 312.



1948, heard oral petitions both from inhabitants of trust territories and from others with information to offer. Human rights NGOs who do their job well inevitably offend governments of many political shades. An NGO Mission to the December 1986 referendum in Palau, of which I was a member, was accused by a Palauan official of being from Greenpeace—as if a desire to protect the environment made one automatically suspect. A high-water mark of such attitudes came at the 1988 meeting of the Council when Mr. Haruo Wilter, then Special Assistant for Financial Affairs to the President of Palau, and more recently the United States Interior Department's field representative in Palau, asserted that:

We wish this Council, and any other international organization for that matter, to assist Palau and its people from undue interference by outside influences such as the Greenpeace organization, Minority Rights group, International League for Human Rights, European Parliament, and now, International Commission of Jurists. Why don't these external organizations simply let us be? Why don't they keep out and stop meddling with our own internal affairs? Why don't they just leave us alone to settle our own local affairs amicably, peacefully and in our own way?<sup>5</sup>

(He might have given some credit to the Center for Constitutional Rights in New York whose splendid legal talents have helped to preserve the Palau Constitution!) Whatever international law may have once said about human rights being nobody's business but the territorial sovereign—be it democrat, tyrant or colonial master—the United Nations Charter makes human rights, including the right to self-determination, everybody's matter. As the representative of one of the organiza-

<sup>5</sup>Opening statement of Haruo N. Wilter, Presidential Assistant for Financial Affairs, the 55th Session of the United Nations Trusteeship Council, 10 May 1988. Mr. Wilter was referring to the Report of the International Commission of Jurists that documented the breakdown of the rule of law in Palau and the intimidation of plaintiffs in the lawsuit challenging (ultimately with success) the 1987 effort at constitutional amendment. *Palau: A Challenge to the Rule of Law in Micronesia* (International Commission of Jurists, NY, 1988).

tions taken to task by Mr. Wilter, I was honored by his reference and the company in which we found ourselves. When I first represented the League at the Council in 1976, along with the then Honorary President of the International League for Human Rights, the late Roger Baldwin, we were the only petitioners objecting to the way in which the trust territory was being "decolonized."<sup>6</sup> We felt like lone dissenting freaks. It has been heartening as the years passed by to see many more dissenters at the Council, including, most important, a substantial number from the Territory itself.

Aldridge and Myers tell this true microcosm fable for our time in much greater detail than I have sketched it, and with a great deal of new Freedom of Information material that I had not seen before. It is a tale that raises questions about many cosmic things: about the survival of the planet, about the aftermath of the War in the Pacific, about the attitude of the peoples most affected by United States, British and French nuclear testing in the Pacific, about self-determination of small territories, about modernization and indigenous cultures, about decision-making procedures in post-traditional societies, about fundamental human rights including the right to survival and the right to peace, about the relationship between the earth, the sky and the people, about the nature of security in the world with The Bomb.

It also touches some only slightly less cosmic themes to which I add my lawyer's thoughts in the Appendix. There I discuss "constitutionalism," or the habit of remaining faithful to a written constitution, and the standards of the United Nations for a legally-acceptable outcome to an exercise in self-determination. Together these are aspects of the broader question of the rule of law.

<sup>6</sup>On that occasion I made the argument that the then recently-adopted Commonwealth arrangement for the Northern Mariana Islands failed to meet the United Nations standards for a proper termination of a non-self-governing status. Debate still rages about the nature of that status and nothing that has happened since suggests that I was wrong at the time. See references *supra* note 1.



The authors open up many themes to those who choose to think about the future of our planet. I commend this very fine book to you.

## PREFACE

*Reporter: Mr. Gandhi, what do you think  
of Western Civilization?*

*Mr. Gandhi: I think it would be a good idea!*  
—graffiti on a Harlem tenement

The title of this book is taken from a traditional Palauan legend known as "The Escape From the Sea Serpent of Oikuul." The tale can be roughly narrated as follows:

A man from Ngiwal kidnapped a young woman of Oikuul village in Airai and forced her to marry him. The violent man had the power to change himself into a striped sea serpent at will. In time, two children were born of this forced coupling, a son and an owl-daughter. When the children reached maturity, the mother told them all about her abduction and unhappiness. The children despised their father from then on, and began to plot their escape to their mother's village.

The son built a strong canoe and they paddled out to sea. As they neared Airai, the owl-daughter flew ahead to Oikuul to announce their arrival. As the people waded out to meet the canoe they saw a striped sea serpent thrashing furiously, trying to overturn the craft. So they launched an attack and managed to slay the serpent. The children were free at last, and they were received with huge feast in the village, where they lived ever after.

This book narrates a similar story: of disinheritance, a journey toward freedom, and a people's struggle with a "serpent."

The legacy of US trusteeship in Palau (and the rest of Micronesia), which has culminated in American insistence upon defining future relations in a *Compact of Free Association*, is not unlike a forced marriage. And when Palauans sought to end the indignities of this colonial administration with a democratic experiment of their own, they discovered (like Guatemalans in 1954 and Chileans in 1972) how quickly their patron could turn into a vicious serpent. Since Palau's adoption of its exemplary Constitution in 1979,



the serpent has "shown its true stripes," endeavoring at every turn to overturn the canoe journeying toward freedom. But unlike the legend, the outcome of the struggle between serpent and canoe, between one of the world's smallest nations and its most powerful, is unknown.

Whatever the outcome of the story of Palau's struggle for self-determination narrated herein, it is bound to be uncomfortable for American readers. This is because it dramatically unmasks the contradiction between our political ideals (and our government's rhetoric) about democracy on the one hand, and our cynical policies of militarism on the other. So too does the legendary tale hold a troubling lesson for those of us who, to borrow Cuban patriot Jose Marti's metaphor, "live in the serpent and know its entrails."

It is the thesis of the authors of this book that this "serpent" represents the greatest obstacle to the achievement of a just and peaceful civilization in our time, indeed to our survival as a species. The serpent is what Michael Klare aptly calls "the scourge of modern militarism." By militarism we do not mean only the obvious manifestations of organized violence, i.e., the dozens of wars currently raging around the globe, the huge standing armies, or the proliferation of nuclear arms. We mean also the steady militarization of economics and politics (and even more dramatically geopolitics), the hegemony of military establishments in the division of technological labor and genius, and the subservience of social thought to ideologies of "national security." In fact, so ubiquitous and monopolizing are those complex, interlocking systems, that we might legitimately refer to militarism as the true "colonial master" of the modern era, under whose *de facto* control more and more peoples have fallen prey.

Sadly, most citizens of the US, arguably one of the most militarized societies history has ever known, cannot seem to see the forest for the trees. "Militarism" seems to us so abstract, and by no accident. For nowhere else are the concrete mechanisms of the military-industrial-academic complex so sanitized, so overlaid with official mystification. How else could the citizenry of the world's largest debtor nation continue to accept and subsidize such huge levels of

military spending? Militarism, to extend the metaphor, has "colonized our minds."

But our domestication is most troubling when it deludes us to think that militarism, apart from an overt foreign intervention and short of nuclear war, is at best an economic boom and at worst a victimless crime. The fact is, without a strategic missile ever being launched, militarism is wreaking destruction upon human life and culture. Perhaps North Americans might see this more clearly if we suspend our scenarios of what might happen to our world in the event of all-out war long enough to listen to the voice of those whose worlds have already been ravaged.

The focus of this book is the Pacific Basin, and as far as many of its peoples are concerned, World War III is already being waged on their shores. Whether it is US forward bases in the Philippines or missile testing in the Marshall Islands, French rapid-deployment forces in New Caledonia or warhead testing in Polynesia, third world lives and ways of life are being lost. Nowhere else in the world is the process of military colonialization so advanced and persistent. And perhaps the most dramatic case study in the region is the small western Pacific archipelago of Palau (indigenously known as Belau). Here a traditional people's commitment to preserve their islands is pitted against the Pentagon's plans for a strategic military base. Though the story takes place in a relatively remote corner of the world, we believe that it is in fact a microcosm of the global struggle for survival against militarism, and thus profoundly illuminating to the choices we face as a civilization.

The tale of Palau's aspirations toward self-determination will inevitably seem obscure and convoluted to those unfamiliar with it. Unfortunately, many westerners whose attention has been caught by the beauty and tragedy of Palau have all too soon lost interest due to the complexity and lack of clear resolution to the many issues at stake there. The aim of this book is to put in coherent, narrative form the mass of people, events, testimony and data pertaining to Palau's political status struggle over the last decade. We hope the following will provide to those new to this story a good



introduction, and to those already familiar with it a useful compendium.

Because of the courage of a few dedicated Palauans, patient and perseverant in telling their story to whoever will listen, and thanks to the support and advocacy of the many groups working with the wider regional Nuclear Free and Independent Pacific movement, the struggle of little Palau has become remarkably widely known. We believe it is precisely this international profile that has inhibited potential US covert operations in Palau to date. Another aim of this book is to promote continuing solidarity, in the hope that ever-increasing world attention to Palau will ensure a fair and self-determining outcome to the political status question there.

The 1978 "Peoples' Treaty for a Nuclear Free and Independent Pacific" asserted that the struggles for demilitarization and self-determination are inseparable. The story of Palau clearly speaks to this perspective which, in our opinion, has a great deal to teach concerned first world citizens about how to understand and challenge the grave problems of militarism. Nor should we underestimate what is ultimately at stake here, suggested by the wry graffiti citing Gandhi. As we will argue in our Afterword, at issue is the very heart of what we presume to call western civilization, in its struggle to recover its humanity from the grasp of the serpent.

## CHAPTER ONE A SOCIETY OF PEOPLE VS. A SOCIETY OF MONEY

*There are only two societies in the whole world. One is the society of the people, the other is the society of money. In the society of the people—and that is the society that we have and live in—the land, the water, the ocean, and the people are the source of life. In that society human life is valued more than military equipment and other tools of destruction and death. In the money society the people are no longer human but are another form of computer where they are programmed to do things. Thus in all the work they do they must put economic interests above human life, and weapons of destruction and death are considered more important than people. In the society of the people, life is a simple but happy one. If we do accept the military bases here in this state, or in Belau as a whole, then that means we are giving away a society of people and accepting the society of money, as the two societies cannot exist together in Belau. We will not survive, for in the society of money only a few and the rich survive.*

—Chief Lawrence Ngirturong  
Ngaremlengui, Palau

The efforts by Palauans to retain their republic's populist, nuclear-free Constitution and to resist US attempts to impose a military base has aptly been characterized as a kind of "David and Goliath" story. Despite this absurd mismatch, the result so far has been something of a draw, as this book will show. In and of itself, this stalemate suggests something about the paradox of power in international politics today, a lesson we North Americans would do well to reflect upon. There is much more to the Palau story, however, than the plight of yet another underdog in the face of US hubris. This is a story about two worlds—the world of "people" and the world of "money," as Chief Lawrence puts it—in collision.



### *a. Background: Palau as a Colonial Prize.*

The westernmost cluster of the Caroline Islands, Palau is situated seven degrees above the equator and about 500 miles east of the Philippines. The archipelago consists of some 200 volcanic and coral islands and atolls, with most inhabitants living on eight main ones. Fringed by sandy beaches, the 178 square miles of land are blanketed with lush vegetation. Barrier reefs several miles to sea protect most of the islands and shelter a dazzling array of marine life. At the convergence of four ocean currents, Palau is widely renowned for its complex and beautiful living coral reef system, which attracts divers, undersea photographers, and marine biologists from around the world. Most important, the islands have also been home for thousands of years to a highly-developed, matrilineal, self-sustaining culture.

Largely due to its strategic maritime location, Palau has been under foreign domination for almost four centuries, changing colonial hands in conjunction with a succession of great power wars. Spain controlled the islands from 1598 until the collapse of its colonial empire in the Spanish-American war. In 1899 Germany assumed power in Palau, until its defeat in the First World War. From 1919 to the end of World War II, Japan occupied Palau under a League of Nations mandate, using the islands as a military outpost and an economic colony.

As late as 1880, up to 50,000 Palauans lived on the islands, but foreign rule, imported diseases and war took a devastating toll. During the Pacific war, fierce fighting on the southern islands of Peleliu and Angaur claimed about 2,000 American soldiers and many thousands more Japanese. Some islander civilians lost their lives. All the Palauans on Peleliu and Angaur were displaced to Babeldaob with the exception of some 120 trapped on Angaur who had to hide in caves. People on Babeldaob left their coastal villages to hide in the jungle. There were many casualties from hunger and disease. At the end of the war there were only about 6,000 Palauans left (today there are about 15,000). The memory of this war remains a powerful influence in Palauan consciousness.

The US State Department began planning as early as 1942 to place all territories acquired during World War II under a United Nations trusteeship. The US military, however, wanted tighter control over the islands of Micronesia for military purposes. A compromise was reached in 1945 after conceptualizing a "strategic trust" under the jurisdiction of the UN Security Council, on which the US holds veto power. An inter-governmental agency group of the US then drafted the trusteeship agreement for Micronesia according to Pentagon guidelines which provided that "no limitation be placed upon the utilization of all or any part of the area for United States security purposes."<sup>1</sup> Because of its veto power on any action proposed by the UN Security Council, the US could conduct military operations in Micronesia with impunity. Objections could be ignored, and proposed changes to the trusteeship agreement could be vetoed. Dr. Thomas Renahan observed that a strategic trusteeship did not amount to "any sacrifice of national interests" over outright annexation of the territory.<sup>2</sup> (In more recent history, Security Council oversight has been an obstacle to US ability to end the Trusteeship for the now-fragmented parts of Micronesia, and has been meticulously circumvented by the US. The obvious reason for this is the fact that the Soviets also have veto power on the Security Council and they would insist that the US fulfill its responsibility as Administering Authority, or provide adequate compensation for improper administration, before the Trusteeship is terminated.)

Bowing to the strong influence the US had over the United Nations in the early postwar period, the UN in 1947 accepted the Strategic Trusteeship Agreement as drafted by the US. The Micronesian islands (consisting of the Caroline, Marianas and Marshalls groups) were designated as the Trust Territory of the Pacific Islands, with the US as administrator (see

<sup>1</sup>Thomas M. Renahan, *The Political Status of Micronesia: National Interests and American Strategic Interests* (PhD dissertation, Georgetown University, August 1976) p. 108; cited by Giff Johnson, *Collision Course at Kwajalein: Marshall Islanders in the Shadow of the Bomb* (Honolulu, Pacific Concerns Resource Center, 1984) p. 6.

<sup>2</sup>*Ibid*, p. 7.



Chapter 2a). The ten non-strategic post-war trusts fell under the jurisdiction of the General Assembly, which has grown into a forum for the emerging independent third world countries. The Security Council, overseer of Micronesia, remains a monopoly of the nuclear superpowers. The strategic Trust arrangement allowed the US to exploit Micronesia as a "military colony": first as a suitably remote location for atmospheric nuclear testing (northern Marshalls), then as a secret CIA counter-insurgency training ground (Marianas), then as a terminal point for strategic missile testing and ballistic missile defense development (Kwajalein), and today as a "fallback" for forward basing options (see Chapter 2c).

Over the last two decades Micronesia has been negotiating with the US for an end to the Trusteeship and the establishment of a new, self-determining political status (see Chapter 3). Palau's fate alone remains unresolved. The US wishes Palau to "freely associate" itself with the US, an arrangement in which Palau would gain limited internal autonomy and financial subsidy from the US in exchange for granting broad military access to the Pentagon. It is this latter point that has deadlocked the status negotiations, and that represents the deeper conflict between the "two societies."

The US sees Palau much in the same, instrumental way previous great powers have: as a strategic outpost crucial for the projection of military power and the maintenance of geopolitical interests in the region (see Chapter 2b and c). With the global economic and strategic balance shifting decisively toward an Asian-Pacific center in the 1990s, the US is deeply concerned with preserving the unchallenged hegemony in the Pacific it has enjoyed since the end of World War II. Specifically, as security arrangements with Asian rim client-states such as the Philippines become tenuous, Palau is highly prized as a "fallback" site by the Pentagon. To this end, contingency plans for military development have been proposed for Palau which include air and port facilities, weapons storage, and access to any of Palau's land area, if desired. All this the US sees as fair exchange for its self-appointed task of "defending" Palau, and its continued propping up of the island's thoroughly dependent economy.

### *b. Roots of Conflict: Palauan Culture and Westernization.*

That most Palauans do not visualize their homeland as a mere strategic stepping stone for the US's forward defense is hardly surprising. Their islands are neither "prize" nor "paradise"; they are home. Behind the conflict between the protectiveness Palauans feel toward their home and US attempts to move in are deeper issues of cultural collision. There are at least three important characteristics of traditional Palauan culture that diverge sharply from the western way of life the US has so actively promoted during its colonial administration, differences that are in each case significantly relevant to the current struggle over Palau's political status.

The first characteristic is what westerners pejoratively refer to as the "subsistence" indigenous economy. The Palauan flag is blue with a yellow moon. The moon is significant to Palauans: by its phases they plant their crops and even plan their elections. The ocean and jungle are Palau's "supermarkets." Food for most meals is taken from nearby gardens, jungles and lagoons. Bananas, papaya, mango, coconut, oranges and limes grow abundantly in the wild while taro, tapioca and sweet potatoes are cultivated in small patches. Dozens of varieties of fish are caught from one of the richest fishing grounds in the Pacific, which also yields an assortment of shellfish, including the highly-prized giant clam. At least half of the 15,000 island residents continue to be self-sufficient, existing relatively independently of the cash economy that dominates the westernized district center of Koror. People live simply but without poverty, due to a highly-sophisticated clan-welfare system where resources are pooled to provide for members of their extended family. This practice, what anthropologists term an economic model of "reciprocity," has ensured that no Palauan will be without housing and food. A deep tradition of hospitality has also extended to foreigners—often with painful results to the hosts.

Local people insist that no one would ever go without in Palau—provided that the lands and waters remain out of the hands of a foreign military. Conversely, to take away access



to the land and water is the quickest way to undermine a subsistence culture which depends directly upon its natural resources. This is of course well understood in the classic strategies of western colonialism. Thus US administration has on the one hand made every effort to undermine self-reliance by ignoring local enterprise and development, and on the other encouraged integration into the consumer-oriented American economy through massive import subsidies. Economic advisors to Palau continue to insist that the islands are resource-poor in relation to the global political economy, and therefore must pursue grand development projects, such as tourism, that will only bind Palau ever closer to foreign capital and control (see Chapter 5). In this context, efforts to preserve and even revive the traditional subsistence culture become an act of indigenous resistance (See Chapter 3d). Other Palauans see a middle-of-the-road solution with small development projects and Palauan-controlled tourism.

A second characteristic of Palauan life—again common to indigenous cultures—is that land is considered sacred, and cannot be commoditized. The "ownership" of Palauan land belongs to the clans which date back as far as 3,000 years; its "title" is handed down from generation to generation. Hence there can be no sale or exchange of "real estate"; neither can there be tax or rent charged upon the land. Although the Palauan Constitution now allows limited appropriation of land by the government for the good of Palau's evolving society, eminent domain cannot be used to benefit a foreign power or business. Palauans feel quite strongly about this issue, and after World War II were the most adamant among Pacific islanders to have military-appropriated land returned to traditional title. It is therefore no wonder that the eminent domain issue was central to the Palauan Constitution, and appropriation of land for foreign military bases has been one of the key battle grounds with the US in political status negotiations.

A third characteristic is Palauan polity, which is matrilineal and consensus-based. The traditional form of government in Palau is the Council of Chiefs, each chief representing one of the sixteen municipalities. Two of these chiefs are "high" chiefs, the Ibedul and the Reklai, and have authority to speak for the others after consultation. Though this Council has no

official standing under the "democratic" system imposed by the US, it remains influential; if the chiefs recommend a certain vote, the people will usually follow their lead.

This male leadership, however, is subtly but firmly guided by an undercurrent of matrilineal authority. Women distribute the land in the name of the clans and are the trustees of family inheritance. The women elders elect the chiefs, and if necessary also impeach them. As elder Gabriela Ngirmang explained:

In Palau women play an important role in issues of policy. . . . We control the clan [traditional] money. We traditionally select our chiefs; women place and remove them. Having observed their upbringing closely, we are able to decide which men have the talent to represent our interests. From birth, Palauan women are responsible for the men. When the men marry, the women arrange for the settlement and when the men die, the women bury them.<sup>3</sup>

Those familiar with Palauan politics are well aware of the reputation male politicians have for drifting back and forth on key issues—very few prominent Palauan public figures have remained steadfast, for example, to the principles of the original Constitutional Convention (see Chapter 3c). In contrast, the women have assumed responsibility to uphold traditional ideals, and while their leadership is usually exercised through quiet, behind-the-scenes persuasion and influence, when they perceive a threat to the Palauan way of life they are quite capable of taking courageous action (see Chapter 6). Unless this matrilineal character to Palauan politics is appreciated, any interpretation of recent political events there will be unreliable.<sup>4</sup>

<sup>3</sup>*Compact Of Free Association*, transcript of hearings before the US Senate Committee on Energy and Natural Resources (S. Hrg. 100-498), 28 January 1988, p. 4. (Testimony of Gabriela Ngirmang).

<sup>4</sup>Along this same line is the linkage of names. When a child is born, he or she is given only one native name. Closer identity can be specified in the traditional way by adding the village name or the name of a parent or prominent relative, such as "Roman of Meyungs" (village) or "Roman of Bedor and Ikelaui" (father and mother). When a woman marries she is usually then identified by her husband, such as "Ikelaui of Bedor" for the name of Roman's mother. After Christianity was introduced, a newly-



Another aspect of Palauan polity that radically differs from western republics is the commitment to consensus rather than majority rule. Traditionally, community decision-making was characterized by a decentralized series of consultations (extended family, village, clan, etc.), each of which would delegate representatives to the next level of conversation. Conversely, each decision of the Council of Chiefs was tested back down the chain of consultation. The process was slow, marked by long meetings where everyone was given the opportunity to speak (the ubiquitous habit of chewing betel nut, a mild narcotic stimulant, is often attributed to the need to stay awake and alert during interminable proceedings). The goal was not the engineering of slim majorities to push through the agenda of special interest groups, but the attainment of unity.

It may be relevant to note that such consensual polity is rooted in what cultural anthropologists speak of as "dyadic personality" (what used to be referred to as "collectivism") in traditional cultures. In stark contrast with western individualism, which measures personhood by an index of personal achievement (rising above the crowd), the dyadic personality is distinguished by its solidarity with the group. Individual fortunes are shared by the community, and vice-versa; hence anything short of consensual unity is considered a betrayal of group identity. Within this context, western majority-rule politics has functioned as a new form of the old divide-and-conquer tactic.

Under US administration, Palauans set up a constitutional government patterned after the American system, with an executive branch, a bicameral congress, and a judiciary. Almost all government offices are held by men, who inevitably cam-

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baptized child or person would be given an additional baptismal, or Christian, name. Westernization has increased the pressure on "last" names so the Palauans usually take the name of their mother or father, a prominent relative, or their Christian name. Likewise when a "middle" name or initial is needed for some document. Thus was derived the name of Roman Bedor, son of Bedor Bins and Ikelau Bedor. It can be seen that brothers and sisters may have different "last" names (some taking their baptismal names and others the names of relatives). Likewise for husband and wife.

paign on the basis of clan status as well as personality. In this sense the traditional system continues to operate in parallel with the imposed one, often creating confusion and anxiety among the people. This is particularly true at election time, when the Palauan tradition of honor and respect takes a thrashing from American-style public muckraking. Plebiscites described in this book (see Chapters 4 and 6), which appear when examined through western eyes to have signaled overwhelming approval for the *Compact of Free Association* (COFA), have in fact resulted in deep divisions in Palauan society, testimony to the havoc that a western system can wreak upon a consensus culture. Many Palauans who live away from the district center, and the Americanized political intrigue that prevails there, take a skeptical and even patronizing attitude toward the new government. As one villager told it, modern democracy has only set up a structure to pay people for what they used to do as a service and duty to their society.

Nationalism is something Palauans have acquired only in the last century. Internally within Palau, loyalty is mainly to their village or clan. Throughout all of Palau there exists a traditional factionalism which has been described as the yin and the yang of Palau. Geographically it is defined as the northern islands (Babeldaob) and the islands from Koror south (Yoeldaob). This division is not merely competitive—it is also a form of check and balance. One of the two high chiefs represents each area. The first two administrations under a democratic government consisted of a president from Yoeldaob and a vice president from Babeldaob (president and vice president are elected separately in Palau).

When threatened by outside encroachment, the Palauan people, at least those who still hold traditional values, can unite against a foreign threat to their land and culture. The 900-foot-long bridge built in 1977 between Koror and Babeldaob is called the bridge of unity. It has the strong symbolism of being the first physical linkage between the northern and southern islands.

Besides these traditional characteristics of "the society of people" that clash with the "society of money," there is, as already mentioned above, another important influence upon how



Palauans perceive the present struggle over political status: the experiences of World War II. It is no accident that the most consistently anti-military clan in Palau lives on land (Meyuns village, see Chapter 3d) that was formerly taken by the Japanese before World War II for military operations. Many of the village elders remember the forced relocation and the destruction of their homes by the Japanese, signs of which are still visible today. And of course Palauans remember the fierce fighting, including American aerial bombing, which decimated the southern islands and destroyed the Palauan way of life. Peleliu and Angaur have never been the same.

One hears many anti-military comments such as these from Palauans old enough to remember the war, which make little distinction between what flag flies above a base:

"We're just getting over World War II, and now the military wants to come again."

"Any military is the same: except one speaks Japanese, one speaks Russian, and one speaks American—that is the only difference."

Although they once battled among themselves in village/clan feuds, and occasionally with other island cultures, oppression from without and the experiences of modern warfare have shaped a kind of intuitive philosophy of nonviolence among Palauans.

On one occasion when a community organizer, frustrated by the overt manipulations of the US, was advocating a more angry and aggressive stand, an elder cautioned: "You cannot calm an ocean with a strong wind." Such compassion goes painfully deep as epitomized by the mission of sixteen Palauans to Japan in August 1981 for a commemoration of Hiroshima and Nagasaki. To a rally of thousands of Japanese, in one of the nations that had destroyed Palau during World War II, the Palauans sang a song they had composed, entitled: "No Matter What You Did to Us, We are Still Your Friends." The Japanese wept with them. It is therefore no accident that from such people came the world's first nuclear-free Constitu-

tion, and an admirable fortitude to stand by that Constitution in the face of the world's mightiest military.

*c. Spreading the "Allergy":  
The Wider Struggle for a Nuclear-Free  
and Independent Pacific.*

Palau cannot be studied out of context. To understand the precise situation in those islands, one must be familiar with the broader backdrop. What is happening in Palau epitomizes a struggle for self-determination which is taking place all over the Pacific, and beyond. Palauan activist Roman Bedor began his address to the UN Special Session on Disarmament in 1982 with the following words:

The Pacific region covers nearly one-third of the earth. It includes many thousand islands, a huge ocean, and hundreds of diverse cultures. It is an exploited region, and remains under the heavy hand of foreign domination. To France, the Pacific is a nuclear bomb testing ground; to Japan, it is a dumping ground for low-level nuclear wastes; to China, the Pacific is a missile testing site; and for the Soviet Union, a military toe hold. And to the US, it is all these things, as well as a theater for forward deployment of the mighty nuclear Navy, and an ever-expanding string of military bases projecting power into Asia and the Indian Ocean. But to many people like myself, the Pacific is a home, an environment with which our cultures have lived in harmony for thousands of years . . . <sup>5</sup>

Indeed, the Pacific has been uniquely victimized by the technocratic militarism and persistent colonialism of the great powers in the post-war era. But the tide is beginning to turn.

The situation in Palau, far from being isolated, is representative of the turmoil throughout the Pacific. In 1975 the Against Testing On Moruroa (ATOM) Committee on Fiji decided to convene a gathering of indigenous independence and Pacific Rim peace activists to reflect on the prospects of a

<sup>5</sup>Speech before the UN SSD-II, New York, April 1982.



demilitarized Pacific region. It had the sponsorship of about one hundred organizations in and outside the region. Indeed, when this first "Conference for a Nuclear-Free Pacific" was held in Fiji in 1975, there was reason for cautious optimism. The Southeast Asian war was winding down, Labor governments in both Australia and New Zealand were reassessing their traditional military alliances with the US, sustained governmental and popular opposition to the French atmospheric nuclear testing in Polynesia had driven the testing underground in 1974, and most important, several Pacific nations had completed or were in the process of decolonization (Western Samoa, Fiji, Tonga, Papua New Guinea, Tuvalu, Kiribati, Solomon Islands).

By the time of the follow-up Nuclear-Free Pacific (NFP) consultation in Pohnpei (Ponape), Micronesia in 1978, things had changed. The US had signaled its intention to extend its military presence in Micronesia, the two Labor governments had fallen to pro-US conservative coalitions (in the case of Australia, with "help" from the CIA), the French had signaled they had no intention of pulling their testing program out of Polynesia, Japan was making noises about "experimental" nuclear dumping in the Marianas Trench, independence movements in Vanuatu (New Hebrides) and New Caledonia were facing intransigent colonial resistance, and an Indonesian invasion had driven the provisional Fretilin government of newly-independent East Timor into the hills. On top of all this, the fledgling NFP movement was teetering on the verge of a three-way polarization among Pacific-Rim environmentalists, anti-nuclear activists and indigenous-self-determination advocates.

Nevertheless, the 1978 conference drafted a document which, with minor revision, remains the popular charter for the movement: the "Peoples Treaty for a Nuclear-Free Pacific." Its preamble stated in part:

The western imperialistic and colonial powers invaded our defenseless region, they took our land and subjugated our people to their whims. This form of alien colonial, political and military domination unfortunately persists as an evil cancer in some of our native territories such as Tahiti-Polynesia, Kanaky [New

Caledonia], Australia and Aotearoa [New Zealand]. Our environment continues to be despoiled by foreign powers developing nuclear weapons for a strategy of warfare that has no winners, no liberators and imperils the survival of all humankind. We, the people of the Pacific will assert ourselves and wrest control over the destiny of our nations and our environment from foreign powers, including the Transnational Corporations. We note in particular the racist roots of the world's nuclear powers and we call for an immediate end to the oppression, exploitation and subordination of the indigenous people of the Pacific.<sup>6</sup>

This new vision—fusing nuclear-free and self-determination politics, and integrating the traditionally alienated North-South and East-West perspectives—has subsequently had a profound influence on progressive and non-aligned thought in the Pacific.

Through the third NFP conference, convened in Honolulu in May 1980, a new unity was attained, with new, forceful leadership coming from activists representing internally colonized peoples (Hawaiians, Maoris, Aborigines, and Native Americans). It was portentous that this conference celebrated two recent signs of a new era in the Pacific—independence for Vanuatu, and Palau's new Constitution. Both countries would soon emerge on the forefront of the struggle, now understood as the Nuclear-Free and Independent Pacific (NFIP) Movement.

In February of 1982 Vanuatu turned away a "friendly" visit from a US nuclear warship, becoming the first Pacific nation ever to do so, and sending ripples all the way to Washington. At the same time the public relations ambassadors of Japan's Science and Technology Agency were encountering unprecedented hostility to their waste-dumping plans. In Kwajalein atoll the US military was arresting Marshallese landowners who were mounting a nonviolent "sail-in" to reclaim islands in the restricted zone of the Pacific Missile Test Range. Kanak resistance to French colonialism in New Caledonia was beginning to stiffen, while resurgent movements for Maori sovereignty and Aboriginal land rights were shaking the

<sup>6</sup>Preamble to the Peoples Charter, clauses 2-4.



white governments of New Zealand and Australia. The NFIP struggle was deepening.

During this period William Bodde, former US ambassador to Fiji, Kiribati, Tuvalu, and other South Pacific nations, commented that the NFIP movement represented the greatest barrier to US strategic policy objectives in the Pacific, and the US government "must do everything possible to counter this movement."<sup>7</sup> When in 1984 the Labor Party returned to power in New Zealand and brought international attention by announcing a nuclear warship ban, the Americans spoke openly of their concern about the "anti-nuclear virus," and set about "disease control" with the typical medicine. US officials began to evince new candor about their strategic commitments to the Pacific, and the "Soviet threat" to the region was vociferously resurrected. Threats of excommunication from the western military alliance failed to elicit repentance from the heretic New Zealand Prime Minister, David Lange, however. Worse still, Fiji was flirting with a similar warship policy, as was the Solomon Islands, the pesky Palauans were refusing to jettison their Constitution, and the South Pacific Forum, a regional body of government leaders, was considering again the notion of a South Pacific Nuclear-Free Zone (which it signed as the Raratonga Treaty in August 1985).

In light of superpower concern, it is little wonder that the political violence and covert terrorism that so characterizes international relations soon came to the Pacific with a vengeance. June 1985 brought the first assassination of a Pacific leader when Palauan president Haruo Remeliik was gunned down (see Chapter 4c). Shortly afterward, in July, the Greenpeace boat *Rainbow Warrior* was blown up by French agents. Fresh from the Marshall Islands, where the boat had helped relocate Marshallese radiation victims, the *Rainbow Warrior* was scheduled to lead a protest flotilla into the French testing zone. Instead, lying half submerged in Auckland harbor, it became a new symbol of the world's awakening to the struggle for justice and peace in the Pacific. Meanwhile, violence was escalating in New Caledonia with the deployment of thousands of

French troops in response to the declaration by the FLNKS liberation front of a provisional government of Kanaky. Guerrilla fighting was continued in East Timor and now also in West Papua, which since 1962 had chafed under the yoke of Indonesian annexation. The non-aligned government of Vanuatu came under intense western pressure to cease its support for its fellow Melanesians in their struggle for independence.

In early 1986 the Marcos regime fell in the Philippines, putting the future of the crucial US bases there in doubt. Not long after, a new Labor coalition for the first time in Fiji's history gained a parliamentary majority, and new Prime Minister Timoci Bavadra promised a new, NFIP-oriented foreign policy. The anti-nuclear, anti-colonial virus, it seems, had gone far enough. Barely a month after assuming office, Bavadra and his cabinet were taken under house arrest in an early-morning assault. Leading the Pacific's first military coup was pro-US strongman Colonel Sitiveni Rabuka—and there was compelling evidence that the US was involved. Thus in the space of a year the NFIP movement was suddenly faced with the brutal realities of entrenched power. In the subsequent two years, activists and governmental leaders have had to soberly reassess what is at stake in the Pacific.

It is within this broader struggle for demilitarization and self-determination that we must understand the story of Palau. Conversely this story symbolizes the wider movement. All over the Pacific indigenous people are trying to survive and resist the "society of money" legacy of colonialism and militarism. It can only be hoped that the "society of people" will force us to re-examine our values and practices, which now hold the world hostage.

<sup>7</sup>Cited by Robie, David, "Rising Storm in the Pacific," *Greenpeace*, January/February 1989, p. 9.



## CHAPTER TWO TRUST BETRAYED: US INTERESTS IN PALAU

*Micronesia is said to be essential to the United States for security reasons. We cannot give the area up, yet time is running out for the United States in the sense that we may soon be the only nation left administering a trust territory. The time could come, and shortly, when the pressures in the United Nations for a settlement of the status of Micronesia could become more than embarrassing.*

—The Solomon Report, p. S-2

When Japan governed Micronesia as trustee under the League of Nations, it was authorized to integrate Micronesia into its own economy, but the mandate forbade using the islands for Japan's own purposes. As Dr. Harrop A. Freeman of Cornell University's Law School wrote in 1971: "When Japan armed the islands, forced the inhabitants to participate in the war, took and destroyed their property and brought death and injury to them, it became liable for the breach of its trust. . . . [A] trustee must always place the interest of the beneficiary above the interests of the trustee and can never deal with the beneficiary to their detriment and the trustee's gain."<sup>1</sup> Under the United Nations trusteeship, Micronesia has fared no better.

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<sup>1</sup>The *Young Micronesia* (a University of Hawaii student newspaper), May 1971, p. 5.



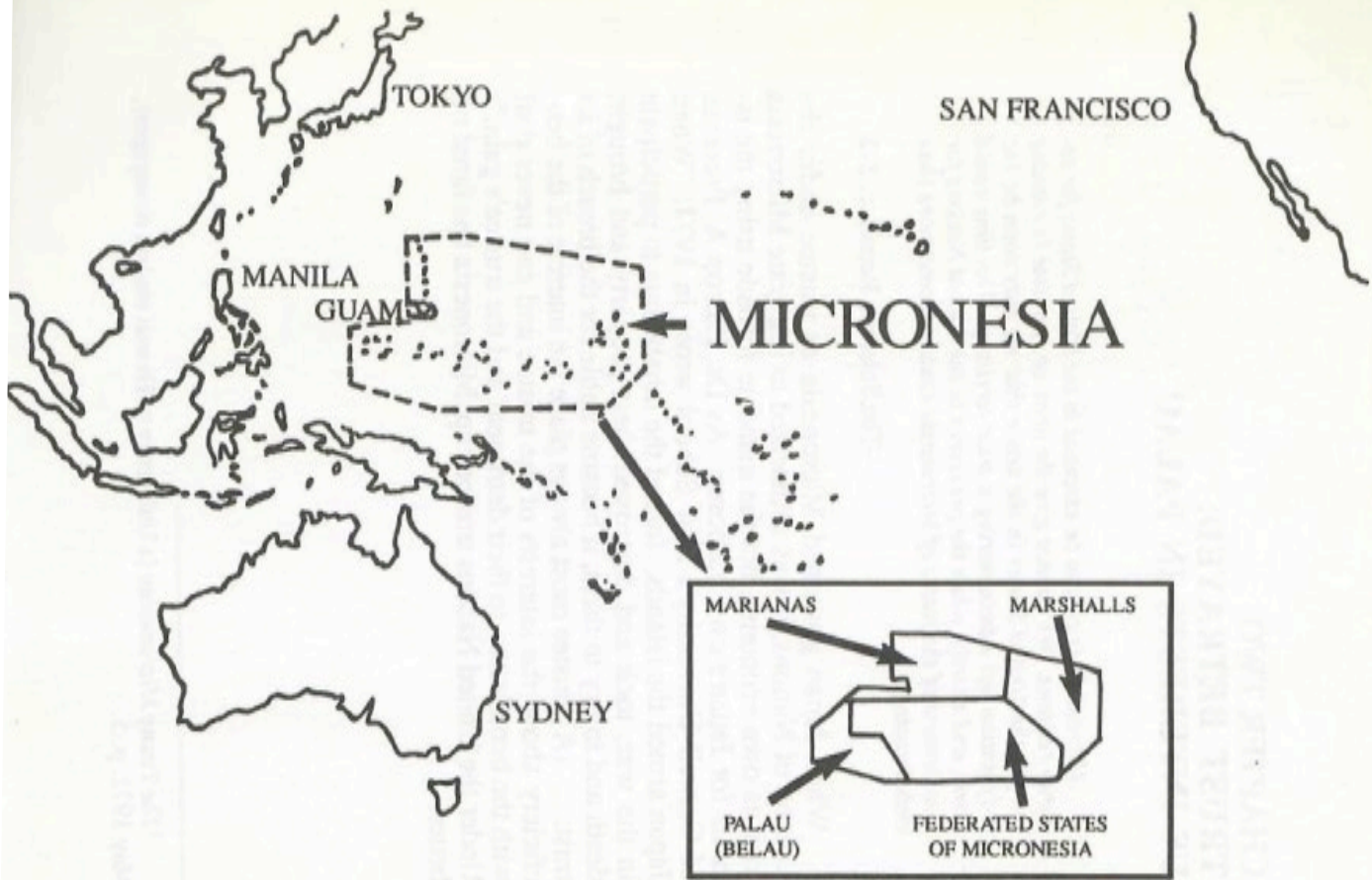


FIGURE 2-1 — MAP OF MICRONESIA

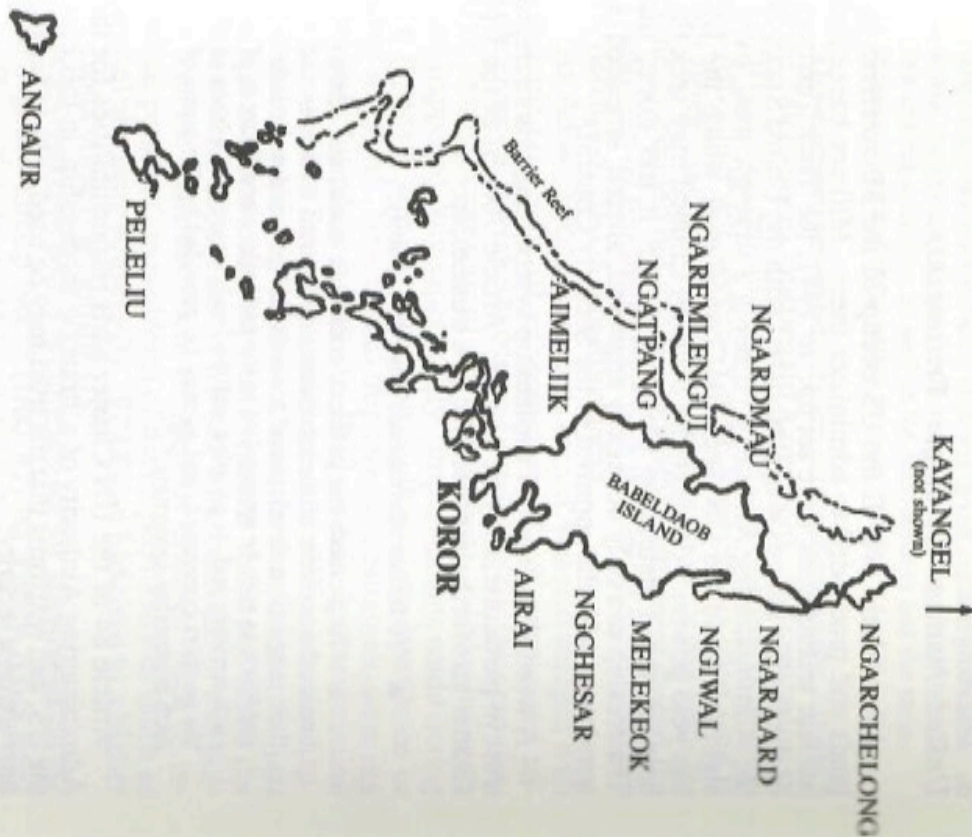


FIGURE 2-2 — MAP OF PALAU



*a. Micronesia:  
United Nations Strategic Trusteeship.*

After World War II the US occupied the Micronesian islands and proceeded to administer them. Military bases and nuclear testing sites were set up. In 1947, the Trust Territory of the Pacific Islands was established with the United States as the Administering Authority. It being a strategic trust, oversight fell upon the UN Security Council over which the US has veto power. Although the Security Council may seek the help of the Trusteeship Council, which it has done, the Trusteeship can only be legally approved, altered, amended or terminated with the approval of the Security Council.<sup>2</sup>

A word about the UN trusteeship system, and this strategic trust in particular, may be helpful. Article 76(a,b) of the UN Charter sets forth the objectives of a trusteeship:

a. To further international peace and security.

b. To promote the political, economic, social and educational advancement of the inhabitants of the trust territories and their progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the peoples concerned, and as may be provided by the terms of each trusteeship agreement.<sup>3</sup>

Article 84 of the UN Charter adds responsibilities for the Administering Authority of a strategic trusteeship, in this case the US, and reaffirms that the trust may be used only to further *international security*:

It shall be the duty of the administering authority to ensure that the trust territory shall play its part in the maintenance of international peace and security. To this end the administering

<sup>2</sup>United Nations Charter, Article 83, Paragraph 1.

<sup>3</sup>United Nations Charter, Article 76(a,b).

authority may make use of volunteer forces, facilities, and assistance from the trust territory in carrying out the obligations towards the Security Council undertaken in this regard by the administering authority, as well as for local defense and the maintenance of law and order within the trust territory.<sup>4</sup>

These objectives and duties are summarized under Article 5 of the Micronesian Trusteeship Agreement. The constraints of a strategic trust prohibit the use of Micronesia just to develop the American war system. Yet Micronesia was used, and is still being used, to do just that. Furthermore, it has been repeatedly pointed out that the proposed instrument to end the Trusteeship by free association with the United States provides for defense of the US, not Micronesia.

As Administering Authority, the US was also charged with promoting the political, economic, social and educational advancement of the inhabitants, and providing for their progressive development toward self-government or independence. That happened only superficially. Improvements made during the Japanese administration were allowed to deteriorate or were removed. New capital improvement programs were not seriously introduced until the 1980s, when free association with the United States was nearing a vote. What actually happened under US administration was the introduction of just enough modern technology and western culture to make the Micronesians dependent on US aid. One outcome of this policy was the transition from indigenous diseases (such as intestinal parasites) to problems of developed countries (such as alcohol and drug abuse). By 1979 Palau had risen to a higher per capita crime rate than the US.

Administrative policy is currently set for Micronesia by the Inter-Agency Group No. 5 (IAG #5) on Freely Associated State/Trust Territory Affairs. It is made up of representatives from the executive branch—members come from the National Security Council, the Pentagon's Joint Staff, the White House Office of Management and Budget, and the Departments of State, Defense, Justice, Commerce, Energy and Interior.

<sup>4</sup>United Nations Charter, Article 84.



Chairman of IAG #5 is Dr. Gaston J. Sigur, Assistant Secretary of State for East Asian and Pacific Affairs. Most of the policy and strategy mapped by this group for Palau, and the rest of Micronesia, is secret. However, Dr. Sigur has predicted that the "region will be a major global player in the decades ahead . . ."<sup>5</sup>

**b. *The Solomon Report:  
Blueprint for Neocolonialism.***

Political factors which have surfaced over the years in Palau can be traced through The Solomon Report, prepared for President John F. Kennedy in the fall of 1963. When Kennedy addressed the United Nations General Assembly on decolonization in 1961, 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 state 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.<sup>6</sup>

On 18 April 1962 Kennedy signed National Security Action Memorandum No. 145 (NSAM-145) setting forth a policy contrary to his United Nations speech—a policy to bring Micronesia into permanent relationship with the US within the US political framework. Kennedy appointed Harvard Busi-

<sup>5</sup>"East Asia and the Pacific: The Roads Behind and Ahead," speech by Gaston J. Sigur before the Philadelphia World Affairs Council, Philadelphia, Pennsylvania, 6 June 1988. Published in "Current Policy No. 1084" by the Bureau of Public Affairs, US State Department, p. 1.

<sup>6</sup>Cited in "Petition Regarding the Trust Territory of the Pacific Islands Presented to the Trusteeship Council of the United Nations Meeting at United Nations Headquarters, New York, New York," by James Orak, Portland, Oregon, 12 May 1988.

ness School professor Anthony M. Solomon on 9 May 1963 to head a nine-man Government Survey Mission to study Micronesia. During the six-week Pacific junket, the mission visited all the Trust Territory district centers and many outlying islands. The Mission's report, dated 9 October 1963, detailed a five-year plan to bring Micronesia into closer ties with the US.

Classified "confidential," and known as The Solomon Report after its author, it was sent anonymously in 1969 to *The Young Micronesian*, a publication of Micronesian students at the University of Hawaii. Although the time frame has now extended well past the five-year goal, President Kennedy's unilateral decision in 1962 to move Micronesia into a permanent relationship with the US, laid down in NSAM-145 and followed by each succeeding administration, has determined US policy toward Palau, which is now the lone holdout in Micronesia to US military demands.

The Solomon Report is the blueprint for US neocolonialism in the Pacific. It provides disturbing reading on American political ambitions. This book will show how that blueprint has in fact determined US policy in the emerging nation of Palau.

Palau's traditional, anti-military religion was described, though underestimated, in The Solomon Report: "In Palau there is also a nonviolent religion (Modekngei) which has somewhat anti-foreign overtones, but it hardly seems to be a political movement."<sup>7</sup>

**c. *"American Lake":  
Palau as a Military "Fallback".***

Defense Secretary Frank Carlucci pointed out in his fiscal year 1989 report to Congress that the "US Commander in Chief, Pacific, with headquarters in Hawaii and forces spread

<sup>7</sup>A Report by the US Government Survey Mission to the Trust Territory of the Pacific Islands, by Anthony M. Solomon, Chairman, 9 October 1963, p. 30.



throughout the region, has responsibility for US military operations in an area covering 50 percent of the earth's surface."<sup>8</sup> Following World War II the United States established a network of military alliances and bases in the Pacific. The forward line of defense off the coast of Asia started from Alaska in the north and down through the Aleutian Islands, which are US territory. Then it secured the chain from Japan to Okinawa by the Treaty of Mutual Cooperation and Security with Japan. The post-war Soviet occupation of Japan's four northern islands in the Kuril chain removed that important link, but it was compensated by the Mutual Defense Treaty with Korea. From Okinawa the chain proceeds southward through Taiwan and then to the Philippines, where major base agreements were exchanged for reconstruction assistance. Farther south, Australia and New Zealand were brought into the alliance through the ANZUS Security Treaty.

Micronesia is the fallback line of fortification and takes in the Northern Marianas, Caroline and Marshall Islands groups. Immediately after World War II, the US started testing nuclear weapons on Bikini and Enewetak in the Marshalls. A US Navy base was retained at Kwajalein Atoll, the largest atoll in the world, also in the Marshalls. This atoll was picked as the target for ICBM testing in 1959 and became the terminal end of the Western Missile Test Range. It was officially taken over by the US Army in 1964. It is the site where ABM systems have been tested and it currently plays a major role in the US "Star Wars" program. There were other US facilities on other islands such as Saipan and Tinian in the Marianas. Guam, formerly part of the Marianas but which has been a US territory since the Spanish-American War, is also heavily fortified.

Although it has been denied by some in high levels of US government, Palau has long been considered one of the critical fallback locations for Philippine bases should that country cancel the leases. An early hint that military bases might be needed in Palau came from the US Ambassador for Micronesia

<sup>8</sup>Annual Report to Congress, Fiscal Year 1989, by Frank C. Carlucci, Secretary of Defense, 18 February 1988, p. 83

status negotiations in 1971: "In Palau, our requirements are not immediate . . . However, we would want to agree in advance on areas in which we would have options to use lands at some future time, if necessary."<sup>9</sup> Lt. Col. A.R. Giroux told the Army War College in 1973:

Our complete withdrawal from Vietnam, gradual reduction of forces in Thailand and Taiwan, precarious position in the Philippines and our questionable long-term presence in South Korea and Okinawa have limited our fallback options in the Pacific. . . . The only feasible fallback position is unquestionably located in Micronesia where island bases unlike those in East Asia would be under permanent US control. . . . Palau has excellent anchorages, Ponape [Pohnpei in Federated States of Micronesia] and Babelthaup [Babeldaob, in Palau] have land areas in excess of 100 square miles and are suitable for nuclear weapons storage and training areas.<sup>10</sup>

Referring to the lease of large land areas on Palau's largest island of Babeldaob—the largest island in Micronesia excluding Guam—Admiral Kent Carroll, then Commander of US Naval Forces in the Marianas, said in 1975: "If we lose or pull out of additional areas in the Western Pacific, we will have to pull back. Tinian is our priority area, but Babelthaup [Babeldaob] would be needed for contingency operations."<sup>11</sup>

In 1981 Noel C. Koch, Principal Deputy Assistant Defense Secretary for International Security Affairs, wrote:

Even though there are no US military installations in Palau at the present time, it is an area of very great strategic importance to the Department of Defense. Should use of bases in the

<sup>9</sup>"The Future Political Status of the Trust Territory of the Pacific Islands: Report by the President's Personal Representative for Micronesia Status Negotiations on the Status Talks Held at Hana, Maui Island, Hawaii, October 4-12, 1971," page 33.

<sup>10</sup>Cited in "Micronesian Support Committee Bulletin," 20 April 1976, p. 2.

<sup>11</sup>"Military Plans For Palau: Admiral Backs Superport," *Pacific Islands Monthly*, January 1976. Cited in *Micronesian Support Committee Bulletin* 20 April 1976, p. 2.



Philippines be denied or restricted in the future, Palau, together with Guam and the Northern Marianas, would become the next available alternative for the conduct and support of US military operations in the Western Pacific and Indian Ocean. Accordingly, *it is a condition of terminating the Trusteeship that Palau will grant the US a 50-year option for extensive base and operating rights in its territory.*<sup>12</sup> (Emphasis added.)

Unequivocal proof that Micronesian islands are the primary fallback option should US bases be ousted from the Philippines and other areas came from Admiral James D. Watkins when he was Chief of Naval Operations. In early 1986 he told Congress in regard to this fallback option:

The Unified Commander in the Pacific has done some alternative studies. They have been submitted to the Department of Defense. . . . That is for Subic Bay complex and Clark Airfield. . . . *We have always negotiated our Micronesian Treaty in that regard.* There is always an open door for the national security aspect in favor of the United States. I am talking about the Palau, Tinian, Saipan, Guam region as an alternative. We have been talking about that region for many, many years. *In all the negotiations in that part of the world, those portions of the treaty which address national security allow that kind of contingency to be included.* We do have the funding stream prepared for that alternative. But it is the kind of alternative you do not like to lay on the table because of the implications.<sup>13</sup> (Emphasis added.)

As Palauan concerns rose over their country becoming a Philippine fallback, the way information was laid on the table changed. The role of Palau in fallback plans was gradually minimized in order to make it seem inconsequential and improbable. Nevertheless, Admiral Watkins' testimony was substantiated by Philip E. Barringer, director of the Pen-

tagon's office of Foreign Military Rights Affairs, who told the House Foreign Affairs committee in 1986: "Alternatives to present United States activities in the Philippines would therefore have to include using or expanding our facilities on Guam, and taking up our long-term options in the Northern Mariana islands, as well as those in Palau."<sup>14</sup>

One of the most recent references to Palau being a fallback option came during House Foreign Affairs Committee hearings on 17 December 1987. Deputy Assistant Defense Secretary Karl D. Jackson testified:

The rights we retain under the Compact are limited, and even if we exercised them we would maintain only small-scale naval or air units. I do not, of course, rule out such use. Should events in the Philippines or elsewhere deprive us of facilities closer to the Asian mainland, we would have to consider placing small units in Palau, though most of our fallback positions are in Guam and the Northern Marianas.<sup>15</sup>

Those units may not be as small as implied. An aircraft carrier battle group could be accommodated in the deep-water harbors of Palau. That could not be done at Guam without extensive dredging, while the harbors at Saipan and Tinian are too small and unprotected. Furthermore, Palau has two airports with runways of 7,000 and 7,600 feet. They could both be extended to 10,000 feet with enough room for storage and parking to facilitate military airlift operations. In addition, forces based in Palau would have shorter transit time to their operating stations in the South China Sea/Southeast Asia area and shorter runs for supplying Diego Garcia and other Indian Ocean bases. Finally, Palau could best provide air and naval

<sup>14</sup>The Compact of Free Association Between the United States and Palau, transcript of hearings and markup before the House Foreign Affairs Committee, 8 May 1986, p. 99.

<sup>15</sup>Statement of Karl D. Jackson, Deputy Assistant Secretary of Defense (International Security Affairs) for the East Asia and Pacific before the Subcommittee on Asian and Pacific Affairs, Committee on Foreign Relations, House of Representatives, regarding the Compact of Free Association with Palau, 17 December 1987, page 4.

<sup>12</sup>"Memorandum For The Secretary Of The Army," Control No. 111872/81, dated 21 October 1981 and signed by Noel C. Koch, Principal Deputy Assistant Secretary of Defense for International Security Affairs.

<sup>13</sup>Department of Defense Appropriations For Fiscal Year 1987, transcript of hearings before the Senate Appropriations Committee, 21 February 1986, Part 1, pp. 178 & 180.



defense of the deep-water Sunda, Lombok and Ombai-Wetar straits of Indonesia through which supertanker traffic must pass. When all things are considered, it does not appear that Palau will be relegated to a minor part of the fallback options. Bases in Thailand or Singapore would complement a fallback to Micronesia but would need a link to Palau in order to sustain them.<sup>16</sup> Congressman Ron de Lugo, chairman of the House Subcommittee on Insular and International Affairs, told the full House of Representatives:

These base rights figure into almost any scenario for alternatives to our important bases in the Philippines, which are just 500 miles from Palau. In combination with bases in Guam and base rights in the Northern Marianas Islands, they are a factor in the current negotiations with the Philippines for further use of the Philippine bases.<sup>17</sup>

During US Senate hearings in January 1988, the State Department's director of freely associated state affairs, James D. Berg, added more obfuscation to the picture, saying: "The question with respect to a third of Palau's land is not an accurate statement of what the compact contains." In a somewhat contradictory vein he continued: "Under the Compact of Free Association [COFA] the United States has contingency options to acquire use rights over portions of Palauan land and waters which we request. There is no one-third of Palau that is earmarked or outlined or otherwise set out in any agreement that we have with Palau that is reserved, shall we say, for the military."<sup>18</sup> He is perfectly correct because there was no agreement with Palau. At the time of his testimony the COFA was

<sup>16</sup>For a discussion and comparison of fallback options see Captain Alva M. Bowen, Jr. (US Navy retired), "US Facilities In The Philippines," *The Philippine Bases: Negotiating For The Future American And Philippine Perspectives*, Fred Green, ed. (NY, Council On Foreign Relations, 1988).

<sup>17</sup>*Congressional Record—House*, 6 October 1988, p. H9763.

<sup>18</sup>*Compact of Free Association*, transcript of hearings before the Senate Committee on Energy and Natural Resources (S.Hrg. 100-498), 28 January 1988, p. 71.

not constitutionally approved, although Berg maintained it had been. Berg is also correct in that the current version of the COFA does not specify the land area on which the US wants options. It could exceed one-third by a substantial amount.

Berg then addressed another popular objection to the COFA: "There is also no restriction at all under the Compact with respect to how Palauans may use their land. There is no restriction at all." After saying that he proceeded to outline the restrictions: "The only time that any kind of jointly-agreed restriction would ever come into play is if the United States were to exercise any of the contingency options."<sup>19</sup> It is precisely that "jointly-agreed restriction" to which the Palauans do not want to agree. Once that agreement is formalized the US will only "consult" the Palauan government. Consultation does not mean veto power. Exercising the options will be strictly a unilateral decision by the US.

Gabriela Ngirmang, a senior woman elder of Palau, was not deceived. At the same Senate hearing she testified: "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 US land. We assume that if you seek options on Palauan land, you at some point will use them. If they are not important to you, then please remove them from the discussions in the future."<sup>20</sup>

But as we have already seen, they *are* important to the US. All the Micronesian treaties have been or are being negotiated to provide for military plans. Military aspirations are the key to US behavior toward Micronesia. And those aspirations, of course, are motivated by economic opportunities.

Also hotly denied by US State Department and Pentagon officials is that Palau's deep-water Malakal Harbor is attractive as a forward base for US Trident submarines. It is actually the most logical location for such a base. Besides being geographically centered in the Southwest Pacific, this harbor would allow Trident submarines immediate access to the open

<sup>19</sup>*Ibid.*

<sup>20</sup>*Ibid.*, p. 10.



ocean by way of two exits. The vessels could actually dive before leaving port. No other harbor in that area can match the capabilities of even one of those exits. Palau is also aligned with the deep-water Sundra and Lombok Straits through which submerged Trident submarines would have to pass to reach the Indian Ocean. All that is necessary to set up such a base is for a tender ship to steam into Malakal Harbor and drop anchor.

Trident missiles have always been justified because their greater range allows the submarine to hide in ten times the ocean area. But when forward basing is brought up as a means of using this expanded area, Navy officials merely say the missiles can reach their targets from a greater distance; therefore, the submarine can remain closer to home port and forward bases are not needed.

For Trident missiles to operate at the peak of their first-strike efficiency, they would have to be launched close to Soviet shores from locations encircling the USSR. That can't be done by staying close to home. What limits the operating area at present seems to be communication. Current EC-130 aircraft using very-low frequency to reach submerged submarines have limited airborne time and that restricts their flight range. Known by the acronym of TACAMO, which stands for "Take Charge And Move Out," they would give the order to launch missiles if normal channels of command have been destroyed. Naval communications director Rear Admiral Lawrence Layman testified in early 1985 that as "more Tridents come on line, the operating areas must increase to minimize [Trident] density."<sup>21</sup> While Assistant Navy Secretary Melvyn R. Paisley stated that to "be able to take advantage of the expanded ocean area from which the Trident-2 missile can be launched, we are improving the TACAMO communications

<sup>21</sup>Defense Department Authorization and Oversight, transcript of hearings before the House Armed Services Committee, 13 March 1985, Part 2, p. 532.

systems . . . "<sup>22</sup> That improvement is a new Boeing 707-derivative aircraft designated E-6A. Vice Admiral Albert Bacciocco, Jr., reaffirmed that E-6As will allow expansion of the Trident operating area because they have greater range and higher speed.<sup>23</sup> And Defense Secretary Caspar Weinberger stated in his fiscal year 1987 report that the "E-6A's ability to operate over vast expanses of the ocean will permit [Trident submarines] to expand their operating areas and still receive messages from the National Command Authority."<sup>24</sup>

Forward basing is not just a possibility, it is being practiced. The *USS Georgia* (the fourth Trident submarine) concluded its fifth 70-day patrol in Guam on 1 May 1986. The crew was changed there and the submarine was outfitted for its next patrol in nine days by the submarine tender ship, *USS Proteus*. That exercise, ostensibly to demonstrate the ability to continue on patrol if the submarine's home port were destroyed, earned both crews the Meritorious Unit Commendation "for this highly successful forward deployment of a Trident submarine."<sup>25</sup>

Again on 6 February 1988 the *Georgia* docked alongside the *Proteus* in Guam's Apra Harbor. The purpose of the four-day layover was once again, according to gold crew skipper Captain John M. Rushing, to "demonstrate our ability to operate away from Bangor in event it becomes necessary."<sup>26</sup> Rushing said this second refit at Guam was to "iron out" problems experienced the first time.<sup>27</sup> This quiet testing of

<sup>22</sup>Department of Defense Appropriations for 1986, transcript of hearings before the House Appropriations Committee, 2 April 1985, Part 7, p. 368.

<sup>23</sup>*Ibid.*

<sup>24</sup>Annual Report To Congress, Fiscal Year 1987, by Caspar W. Weinberger, Secretary of Defense, 5 February 1986, pp. 225-226.

<sup>25</sup>"USS Georgia (SSBN 729) Command History" published in a Navy booklet distributed at an open house aboard the vessel at Bangor, Washington on 15 June 1988.

<sup>26</sup>Cited in Seattle, WA *Post Intelligencer*, 16 June 1988, in a column by Ed Offley.

<sup>27</sup>Cited in the Bremerton, WA *Sun*, 18 June 1988, in a column by Lloyd Pritchett.



forward deployment since 1986 was described by the Navy as an intense effort. If forward deployment is needed in case of home-base destruction, a prominent harbor like Guam's would also be vulnerable. Forward deployment is more credible in a less-visible location like Palau.

Forward basing for launching missiles may be only part of the picture. According to a heavily-censored chapter on nuclear directed-energy weapons published in the Strategic Defense Initiative's *Directed Energy Handbook*, Trident submarines may be used to launch a rapidly-deployable version of the X-ray laser for destroying Soviet submarine-launched ballistic missiles. Such a scenario requires a 620-mile operating radius which would make forward basing mandatory. A discussion of survivability in the document states:

The viability of pop-up basing for the near-term X-Ray Laser weapon system on mobile, covert platforms (such as submarines) introduces inherent survivability attributes for which there is an ample experience base. Current studies by the Navy are identifying what, if any, advances in submarine survivability are required for forward basing of strategic defensive weapons for engagement of the submarine-launched ballistic missile threat. Preliminary results suggest that a marriage of new SSN-21 (attack submarine) silencing technology with existing Trident designs may provide acceptable survivability for the 1000-km [620-mile] range operational area required by the mission.<sup>28</sup>

It is this interaction of facts and events that US officials prefer not to discuss, particularly with reference to Palau. On the contrary, disclaimers of plans for a Trident forward base in those islands have been so vociferous that one wonders if they doth protest too much. Nevertheless, in the absence of binding restrictions Palau can expect to see Tridents in Malakal

<sup>28</sup>Nuclear Directed-Energy Weapons Chapter, *Directed Energy Handbook*, Part 1: X-Ray Lasers, p. IV-55. A sanitized version of the Strategic Defense Initiative Organization (SDIO) Concepts Working Group X-Ray Laser Study (1987) obtained under the Freedom of Information Act by the Committee to Bridge the Gap, Los Angeles.

Harbor. Another point in Micronesia will then be added to the Kremlin's strategic-targeting list.

#### *d. Island Stepping Stones: MICPAC and Japan.*

There is also present and potential Japanese involvement in Palau. "Keen Edge '87" was the first joint US-Japan maneuver to integrate Army, Air Force and Navy exercises—coded "Orient Shield," "Cope North," and "ASWEX '87" respectively. The latter, an acronym for Anti-Submarine Warfare Exercise, holds implications for Micronesia, especially Palau.

During the 1970s, Japan started supplementing its P-2J anti-submarine warfare (ASW) airplanes through the purchase of P-3 maritime patrol aircraft from the US, and in the process became involved in the 1975 Lockheed scandal. More recently, Japanese officials agreed to expand protection of sea lanes out to 1,000 nautical miles, which takes in large portions of Micronesia.

A 1975 paper by US Navy Captain N.R. Gooding is helpful in understanding the US influence behind this enlarged Japanese role in the Pacific. The full text of his report, entitled "A Role For Japan In Micronesia?", was submitted to President Gerald Ford as advice from an expert. It became the model for the Ford administration's "New Pacific Doctrine" announced 7 December 1975 in Honolulu. Under the section entitled "Sharing Mission of Sea Lane Protection," Captain Gooding described Japan's contribution as "tied closely to the [proposed oil] transshipment port [in Palau] as well as to any other increase in Japanese capital investment."<sup>29</sup>

Captain Gooding proposed "the eventual establishment of a joint US/Japanese naval command with the mission . . . centered on ASW and surveillance capabilities."<sup>30</sup> He then explained that:

<sup>29</sup>An Extract From "A Role For Japan In Micronesia?" by US Navy Captain N.R. Gooding, Jr., published by the National War College, Washington, D.C., 21 July 1975.

<sup>30</sup>*Ibid.*



A Micronesia-Pacific Defense Force (MICPAC), commanded by a US Rear Admiral and a Japanese deputy with headquarters in Yokosuka or Guam and operating bases in Guam and [Micronesia] is envisioned. . . .

The arrangement would not have to be a formal one requiring a separate Treaty or Executive Agreement. Indeed, it would probably stand more chance of success under the framework of the already existing Treaty of Mutual Cooperation and Security.<sup>31</sup>

Gooding's report bathes the US/Japan "ASWEX-87" maneuvers in a new light by suggesting that a "very gradual evolutionary process would be required with the focus on proper low-key tactics for implementation. Perhaps the first phase could center about expanded Japanese Maritime Self Defense Force (JMSDF) exercises with US naval forces out of the area."<sup>32</sup>

Next Gooding provides insight regarding what to watch for in the future: "After a suitable period, a joint Maritime Protection Service could be formed with missions of air/sea rescue, hydrographic survey, medical service, and the like." After pointing out that this force could take over many of the duties of the Coast Guard in the waters of the Trust Territory, he suggests: "Perhaps, in conjunction with establishment of a Maritime Protective Service, homeporting of one or two Japanese destroyers plus a squadron of P-2Js on Babelthaup [Babeldaob, in Palau] would merit study." Then he cautions: "Only after such evolutionary steps had been taken (or if the threat to shipping substantially increased) could MICPAC have much chance of success."<sup>33</sup>

Economic advantages for the US would be substantial under MICPAC, according to Gooding. As Defense Secretary Caspar Weinberger made clear: "One of the reasons we have urged Japan to expand their own protection out to 1,000 nautical miles is to free the [US] Navy to do other tasks that are . . .

<sup>31</sup>*Ibid.*

<sup>32</sup>*Ibid.*

<sup>33</sup>*Ibid.*

of critical importance."<sup>34</sup> So it seems that besides assuming ASW duties elemental to a US and allied first strike capability, Japan's participation will also allow US ASW forces to spread that capability into other areas.

Admiral Ronald J. Hays, then commander-in-chief of the US Pacific Command, told Congress in early 1988, "With the assumption of a commitment to sea lane defense out to 1,000 miles from the Japanese islands, and a growing capacity for self-defense, plus participation in burden sharing, Japan is indeed an active partner in the Pacific alliance network."<sup>35</sup>

But what is the reason for this Pacific alliance network? Certainly it is not so critical to protect sea lines of communication during peacetime. Neither is it likely that the Soviet, or any other government, is going to invade the islands of Micronesia. Furthermore, Rear Admiral William O. Studeman, Director of Naval Intelligence, told Congress that "Soviet forces abroad, such as those at Cam Ranh Bay, Vietnam, or in Ethiopia, South Yemen, Cuba or the South Atlantic are still too few and too weak to enable the Soviets to engage in any significant power projection, particularly over a prolonged period."<sup>36</sup> So what is this crisis of regional security?

#### *e. The Century of the Pacific.*

In US diplomatic and business circles the 21st century is referred to as "The Century of the Pacific." That slogan refers to economic opportunities anticipated in the undeveloped Pacific Basin area. Such expectations are inextricably linked to US military policy—from the Aleutians to Australia, from Hawaii to Hong Kong.

<sup>34</sup>Department of Defense Appropriations, Fiscal Year 1987, transcript of hearings before the Senate Appropriations Committee, 19 June 1986, Part 4, p. 328.

<sup>35</sup>Department of Defense Appropriations for 1989, transcript of hearings before a subcommittee of the House Appropriations Committee, 3 February 1988, Part 2, p. 128.

<sup>36</sup>Cited by Michael R. Gordon, "Soviets Cut Back Ship Deployments in Distant Waters," *New York Times*, 17 July 1988.



The Chairman of the Joint Chiefs of Staff, Admiral William Crowe, said in 1986 that the "Soviets are in real trouble in the Pacific. They haven't been able to make much headway ideologically or politically. . . . The whole Far East—not just Japan—is becoming the most active, most prosperous market in the world, and the Soviets can't even penetrate it."<sup>37</sup>

Now we are beginning to see the real threat—the economic threat to the profitability of America's and Japan's business ventures. Japan is being pressured to shoulder a heavier share of defending the region because, to contain this threat, the US deems it necessary to confine the Soviet fleet to the inland waters of east Asia.

"Our own relations with Japan will continue to be the cornerstone of our East Asian policy," reports US Under Secretary of State Michael H. Armacost.<sup>38</sup> That is understandable when one considers that the combined economies of the US and Japan now account for almost one-third of the world's gross national product (GNP). Japan has grown into an economic superpower—not just in the Asian-Pacific region, but globally. Japan's share of world exports now exceeds ten percent, and it operates the world's second-largest economy. Its per-capita GNP in 1987 topped \$19,000 which is larger than that of the US.

Armacost goes on to explain that the US "can expect some erosion of the dominant position we have exercised in the Pacific since World War II," but he quickly adds that this does not foreshadow "an eclipse of America's position as a major power. We will continue to offer the largest market for Asian exports . . . and we will continue to deploy the most flexible and diversified military power in East Asia, allowing us to

play a pivotal role in regional security."<sup>39</sup> Notice, again, the connection between economics and military security. And just what is that large market for Asian-Pacific exports provided by the US? Nothing more than shipments from one branch of a large American company to another—a US business sets up manufacturing in the third world where labor is cheap, and then ships the manufactured goods to the marketing branch of the same firm in the US. Those shipments are touted by the US as helping the small country develop by providing a market for its exports, whereas it really perpetuates poverty with sub-minimum wages. This practice is epitomized by a shipping label for integrated circuits which are manufactured by an American firm. The label reads: "Made in one or more of the following countries: Korea, Hong Kong, Malaysia, Singapore, Taiwan, Mauritius, Thailand, Indonesia, Mexico, Philippines. The exact country of origin is unknown."<sup>40</sup> Note that eight of the ten countries listed are in the Asian-Pacific region.

Against this backdrop we see unfolding the nature of Soviet expansion in the Asian-Pacific region, as outlined by General Secretary Mikhail Gorbachev during his Vladivostok speech on 28 July 1986. His first priority is to warm relations with the People's Republic of China in order to make the eastern USSR a "highly developed national economic complex."<sup>41</sup> Simply put, the Russians want a slice of the profits from Asian-Pacific exploitation. In the words of Armacost: "Heretofore, the Soviet Union has been a negligible factor in the Pacific Basin economy. However, Mikhail Gorbachev has recognized the dynamism of East Asia and served notice that the Soviets intend to play more actively in the area."<sup>42</sup> That

<sup>37</sup>Cited in *Bulletin of the Atomic Scientist*, April 1987, p. 6.

<sup>38</sup>"The United States in the Changing Asia of the 1990s," an address by Michael H. Armacost, Under Secretary for Political Affairs, before the Japanese-American Society of New York, New York City, 6 June 1988. Published in *Current Policy No. 1078* by the US Department of State, Bureau of Public Affairs, p. 3.

<sup>39</sup>*Ibid.*, p. 4.

<sup>40</sup>*Ibid.*

<sup>41</sup>Cited in Boobbyer, Philip C., "Soviet Perceptions of the South Pacific in the 1980s," *Asian Survey*, Vol. XXVIII, No. 5, May 1988, p. 574.

<sup>42</sup>"The United States in the Changing Asia of the 1990s," *op. cit.*, p. 2.



potential competition is what really threatens American and Japanese interests.

Gorbachev went on to say that the USSR is prepared to widen its reach into the north and south Pacific. He pointed out that it already has diplomatic links with "Papua New Guinea, Western Samoa, the Kingdom of Tonga, Fiji, the Republic of Kiribati, the Republic of Nauru, Tuvalu, the Republic of Vanuatu."<sup>43</sup> (The Fiji coup in 1987 has since severed one of those links.) Furthermore, Australia is favorably considering Moscow's proposal to achieve landing rights for the Soviet national airline, *Aeroflot*, and for port access and repair facilities for Russian fishing vessels, as well as a cooperative marine research project. Some two years later Gorbachev reaffirmed his Asian-Pacific goals at Krasnoyarsk in Eastern Siberia on 16 September 1988. He said the program for rebuilding relations among states in that area has been "supplemented and concretized" and that "we're only at the start of the road into the future of the great Asian and Pacific part of the world. Much is to be done. We are in for difficulties, obstacles and novel, unusual tasks. But we shall be marching stubbornly, step by step, gaining experience and skills. The goal is worth it."<sup>44</sup>

US hawking of the Soviet menace in the Pacific is also an attempt to mask its own diplomatic failures—the banning of nuclear warships by New Zealand and other island countries, the failure to negotiate the Compact of Free Association with Palau, the Soviet purchase of fishing rights in Kiribati and Vanuatu, the real possibility of losing Philippine bases, the Rorotonga Treaty establishing a nuclear-free zone in the south Pacific, and the call of ASEAN nations for a Zone of Peace, Freedom and Neutrality. All of these conditions and events threaten America's freedom to exploit the region with impunity.

IAG #5 chairman, Gaston Sigur in mid-1988 warned of this anti-nuclear trend and what the US must do:

<sup>43</sup>Cited in Boobbyer, *op. cit.*

<sup>44</sup>Cited in *International Affairs: Soviet Views* (P.O. Box 27-246, Wellington, New Zealand), pp. 1 & 14.

For its part, the United States must be prepared to handle sensitive nuclear issues skillfully and intelligently. We must be better prepared to explain the importance of our "neither confirm nor deny" policy and the hazards of nuclear-free zones proliferation to strategic deterrence; and we must communicate the proven linkage between strategic "deterrence" and maintaining the peace. As part of our realistic approach to the region, it is a mission we cannot ignore.<sup>45</sup>

Of course it becomes more difficult to accomplishing that feat as indigenous peoples become more and more enlightened. Nevertheless, Dr. Sigur went on to say:

The United States must explain more effectively to the region's leaders and populace how their support for our regional military presence and deterrent capability contributes directly to world peace and security. We deeply appreciate the contribution made by those states of the South Pacific that welcome visits by US ships and aircraft. We also must strive to minimize adverse influences in the area by providing the island states with realistic alternatives to alluring economic and political initiatives from those with no stake in the region's stability.<sup>46</sup>

Meanwhile, American conservatives lament the absence of a political constituency in Japan to lobby for increased military spending. Weapons and ammunition comprise less than one percent (0.37 percent in 1982) of Japanese industrial output. Only about 3.1 percent of the labor force works on military contracts and the overall profit on military sales is so small that it is of little concern to the businesses that make Japan one of the world's leading industrialized giants. In the decades which have passed, Japan has correctly seen prosperity in minimizing military spending, maximizing economic development, and seeking security through granting foreign aid.

<sup>45</sup>"East Asia and the Pacific: The Roads Behind and Ahead," *op. cit.*, p. 4.

<sup>46</sup>"East Asia and the Pacific: The Roads Behind and Ahead," *op. cit.*, p. 6.



### CHAPTER THREE DEMOCRACY OR DUPLICITY? CONSTITUTION VS. COMPACT

*Micronesia is not now US territory; we wish it to become so. To accomplish that we must convince the United Nations and the Micronesians that a measure of self-government will be given.*

—The Solomon Report, p. 68

In 1965, two years after The Solomon Report was submitted, the US set up the Congress of Micronesia as a "measure of self-government." Patterned after the US legislative branch, it had representatives and senators who were elected from each of the Trust Territory districts. It was this unified Micronesian body, operating under careful guidance from the American high commissioner, with which the US hoped to negotiate the future status of those Pacific islands.

#### *a. The Key Players in Palau.*

Of the many players in the drama of recent Palauan history there are some who have figured more prominently. One was Haruo Ignacio Remeliik, born on the island of Peleliu on 1 June 1933. He attended Koror Elementary School and Mindszenty Intermediate School. After graduating in 1950, he spent two years in Xavier Minor Seminary on Truk. Leaving that, he returned to Palau and worked in the court system, eventually becoming an associate judge. In 1968 he was elected to the Fourth Palau Legislature and served as vice speaker. Two years later, in 1970, Remeliik was appointed deputy district administrator for Palau under the Trust Territory government. Later he chaired the convention which drafted Palau's nuclear-free constitution and then became the first president of the Republic of Palau, and the first president in contemporary Pacific history to be assassinated.



Two other significant players and political archrivals were mentioned in the 1963 Solomon Report as potential Palauan leaders: "Men like Lazarus Salii, the political affairs officer, . . . and Roman Tmetuchel, the administrative assistant to the [Palau] district judge, all members of the district legislature, stand out as potential."<sup>1</sup> Lazarus E. Salii was born on the southernmost island of Angaur in 1934 and learned English from Coast Guard personnel stationed there following World War II. He attended a Jesuit missionary high school on Truk, 1,200 miles to the east, and graduated as a political science major from the University of Hawaii. In the early 1960s he was the political affairs officer in Palau.

When the Congress of Micronesia was instituted, Salii was elected to represent Palau. It was while a senator in the Congress of Micronesia that he was chosen to chair the newly-formed Committee on Future Status, set up to examine options of future political relationships to the United States. Although he sometimes advocated Palauan independence during his youth, Salii became the major architect of free association. He served as chairman of that commission until 1976, when it approved the modified October 1974 draft of the *Compact of Free Association*. At that time Micronesia was fragmenting into four states and Salii was edged out of Palauan politics by separatist leader Roman Tmetuchel. Salii spent the next few years on Saipan working for the Trust Territory. He was a businessman whom some Palauans described as an "operator"—a product of his American education.

During the 1979 Constitutional Convention in Palau and the subsequent presidential elections, Salii saw his chance to re-enter Palauan politics and join forces with Haruo Remeliik to unseat Roman Tmetuchel as the key figure. Later under President Remeliik, Salii again became head of Palau's status negotiating team. After Remeliik's assassination, and with Tmetuchel conveniently disqualified as a candidate because of spurious assassination charges against his relatives, Salii be-

came the second elected president of Palau—commencing a reign of intrigue also to end in tragedy.

The Solomon Report goes on to say that "Tmetuchel is the president of the legislature and has had a year of law training in the Philippines. He is extraordinarily quick, articulate and independent minded. . . . No doubt he can be outspoken, but he has convictions and could be an important leader in Micronesia."<sup>2</sup> Born in 1926, Roman Tmetuchel was a public defender from the middle 1950s until the early 1960s. He then worked for the Palau district judge until the late 1960s. From then until 1978 he represented Palau in the Congress of Micronesia—as a representative for two years and then as a senator. In 1978 the Congress of Micronesia expelled Tmetuchel because, as a leader of Palau's movement to separate from the rest of Micronesia, he refused to attend sessions. During his early political career Tmetuchel advocated independence and headed Palau's drive for separate negotiations on future status. From early 1978 until January 1980, after edging Salii off center stage, he chaired the Palau District Legislature's Political Status Commission. It was under him that the Hilo Principles, the new framework for free association, were negotiated. He was acting chief of Airai and later became governor of that state.

Younger than the three players described above, Yutaka M. Gibbons was born on Koror and served in the US Army. During the early 1970s he left the Army in Germany and returned to Palau to accept the honor of high chief, the Ibedul, of Koror. He advocated a united Micronesia during the 1976-78 debate on whether Palau should split off for separate status negotiations or remain with the rest of the Trust Territory. Gibbons was possibly the most instrumental in revealing the cultural and ecological impact of an oil superport proposed in the mid-1970s. He also opposed construction of a power plant which far exceeded Palau's need and financial ability, but later was apparently caught up in the corruption associated with the IPSECO scandal (see Chapter 5b). Gibbons became

<sup>1</sup>A Report by the US Government Survey Mission to the Trust Territory of the Pacific Islands, by Anthony M. Solomon, Chairman, 9 October 1963, pp. 30-31.

<sup>2</sup>*Ibid.*



mayor of Koror municipality and ran unsuccessfully several times for the presidency of Palau.

Throughout recent Palauan history these players have interacted with the outside forces affecting Palau—business, banking, the military, and westernization. Business seems to be the major force along with banking which provides the capital for investment. The military provides the protection needed from interference and competition in these economic deals and westernization increases the market and labor force for business interests.

With that brief sketch of the drama's cast, we can now trace their roles through the history of events over the last two decades.

#### *b. The Compact of "Free" Association (COFA).*

In 1969 the Congress of Micronesia initiated negotiations to end the trusteeship by creating a Future Status Commission charged with exploring greater political autonomy and increased freedom under the guidelines of four essential and non-negotiable principles, which were:

1. That sovereignty in Micronesia resides in the people of Micronesia and their duly constituted government.
2. That the people of Micronesia possess the right of self-determination and may, therefore, choose independence or self-government in free association with any nation or organization of nations.
3. That the people of Micronesia have the right to adopt their own constitution and to amend, change or revoke any constitution or governmental plan at any time.
4. That free association should be in the form of a revocable compact, terminable unilaterally by either party.

Those four points were modeled after the free association agreement between the Cook Islands and New Zealand. New

Zealand received nothing from the arrangement but recognized (1) national sovereignty, (2) the right to self-determination, (3) an autonomous constitution for the Cook Islands, and (4) unilateral termination of free association.

American negotiators insisted otherwise. The essence of the US position was summed up in a statement by Hans Wilander, then chairman of the Micronesian Independence Coalition:

- (1) National sovereignty. Micronesian national sovereignty would be recognized only at the time of the plebiscite but thereafter delegated to the United States.
- (2) Self-determination. The Micronesians would exercise the right of self-determination at the plebiscite and thereafter require prior American approval in further exercise of this inalienable right.
- (3) Constitution. The Micronesians would have a right to formulate, amend or change their constitution, provided such a constitution would provide for the protection of American citizens and businesses.
- (4) Termination. The US rejected unilateral termination and instead proposed termination [of the Compact] by "mutual consent."<sup>3</sup>

In addition, from the very start, the US has insisted on military options in exchange for economic aid. Those options were outlined in the US negotiator's report on the October 1971 status talks. For Palau, four areas of possible future land use would have to be agreed upon in advance:

1. An option on about forty acres of submerged land and adjacent lands to establish by means of landfill a very small naval support facility in the vicinity of Malakal Harbor.

<sup>3</sup>Cited in *The Young Micronesian* (University of Hawaii), November 1971, p. 4.



2. An option that will permit assured use of land on Babelthaup [Babeldaob] to build structures and store material.
3. An option that would permit the intermittent holding of training exercises ashore for ground units.
4. Finally . . . it would be necessary to support the above facilities with an airstrip capable of supporting military aircraft.<sup>4</sup>

Following the third round of negotiations at Hana, Maui, in October 1971, and due to American recalcitrance regarding the four principles, there emerged in Micronesia a strong movement for independence. Late in 1972, the sentiment of the people of Palau was expressed in a joint declaration against military use of their land, prepared by their united leadership:

WHEREAS, The People of Palau were subjected to untold suffering and misery during World War II as a result of the fact that Palauan land was used by an alien military power; and

WHEREAS, The People of Palau have no desire to have military installations and personnel on Palauan land in the future, because this could result in suffering for human beings within and without Palau; and

WHEREAS, The People of Palau see the right to control their land as the basis of Freedom, Justice and Equality, both at present and in the future; now, therefore,

We, traditional and elected leaders representing the entire people of Palau, assembled in Koror, Palau on the 20th day of November, 1972, hereby declare that we are unequivocally opposed to the use of our Land in Palau by the United States Military; and

<sup>4</sup>"The Future Political Status of the Trust Territory of the Pacific Islands," report by the President's Personal Representative for Micronesian Status Negotiations on the status talks held at Hana, Maui Island, Hawaii, October 4-12, 1971, pp. 33-35.

We further declare that the Joint Committee on Future Status of the Congress of Micronesia is hereby respectfully requested to implement this declaration.

(Signed by High Chief Reklai and 28 traditional and elected representatives of the District of Palau, TTPI.)<sup>5</sup>

On 2 June 1976, during the eighth round of Micronesian status negotiations which took place on Saipan, the October 1974 version of the Compact was approved. Several years of negotiation under the leadership of Senator Lazarus Salii had worn the sharp edges off those four essential and non-negotiable principles. But in December 1976, the *Washington Post* revealed that the CIA had been tapping the telephones and bugging the rooms of, and otherwise spying on, Micronesian negotiators for the past four years. This spying on a dependent ward so discredited the Ford Administration that, together with new Micronesian demands for a 200-mile economic zone, COFA negotiations came to a grinding halt and were begun anew under the Carter Administration. As stated by Pohnpei Senator Ambilos Iehsi, the draft Compact "was negotiated with a lot of hard work, good will, and honest intentions by our side over something like seven or eight years. It embodies the hopes and aspirations of the people of Micronesia for self-government after 400 years of colonial rule. But now we must take a second look at this document."<sup>6</sup>

The Solomon Report warned that "the United States will be moving counter to the anti-colonial movement that has just about completed sweeping the world and will be breaching its own policy since World War I of not acquiring new territorial possessions if it seeks to make Micronesia a United States territory."<sup>7</sup> Nevertheless, for the first time in 51 years the US acquired a new permanent territory as the Northern Marianas

<sup>5</sup>Published in *Micronesia Support Committee Bulletin*, Vol. 2, No. 1, January/February 1977, p. 4.

<sup>6</sup>Cited in *Micronesia Support Committee Bulletin*, 3 April 1977, p. 1.

<sup>7</sup>The Solomon Report, *op. cit.*, p. S-6.



split off from the rest of Micronesia in mid-1975 and approved a Covenant to become a Commonwealth of the United States—a manipulation on the part of the US which further estranged remaining Micronesian states. Left were the Marshall Islands, Federated States of Micronesia (the Caroline Islands minus Palau) and Palau. Palau voted in September 1976 to negotiate its future political status separately from the rest of Micronesia.

Although this division made it easier for the US to negotiate separately with each small district, the full impact of the fragmentation had not yet surfaced. According to international law—the United Nations Trust Territory Agreement and its predecessor, the Japanese Mandate under the League of Nations—Micronesia is recognized as a single unit. The trusteeship termination must be negotiated for all of Micronesia before any portion can be terminated. In this vein, the trusteeship over the Northern Marianas has never been terminated by the UN Security Council, only by US declaration and tacit Trusteeship Council approval. And it cannot be legally terminated until the agreement is negotiated with Palau. Likewise for the Federated States of Micronesia and the Marshall Islands.

Even before the Marianas had voted on commonwealth status, *The Young Micronesian*, a student newspaper at the University of Hawaii, enunciated editorially in 1971:

... I would like to congratulate Mr. Anthony Solomon and the members of his group for mission accomplished in the case of the Marianas District ... back in 1969, when the majority of the people in the Marianas voted to integrate with Guam, [it was] a clear indication of Micronesians asking to be a colony of the United States. Even though the plebiscite didn't take place in 1968 for the whole of Micronesia as proposed in 1963, it nevertheless manifested that the recommendations were carried out successfully in one part of Micronesia. ... What all this amounts to is that the Marianas faithfully followed the manipu-

lation of America through The Solomon Report and other confidential designs.<sup>8</sup>

In April 1978, now under the leadership of Roman Tmetuchel, Palau's status negotiating team joined similar teams from the Federated States of Micronesia and the Marshall Islands to meet with US negotiators at Hilo, Hawaii. It was there that the "Agreed Principles of Free Association," the so-called Hilo Principles, were adopted. These became the framework for the Compact of Free Association, although military land use options remained the same. The main body of the first COFA on which the new Republic of Palau would vote was not specific about land-use rights for military purposes. It did address economic assistance which is a critical necessity to Palau, given its carefully-orchestrated dependency on the United States. Upon the COFA going into effect, Palau would be guaranteed something like \$14 million per year for government operation which is adjusted annually for inflation, thus averaging about \$23.5 million per year over 15 years.

Later drafts of the COFA, which Palau would negotiate alone, would provide for 50 years of US aid. The first fifteen were the same. For the remaining 35 of the 50 years the COFA would be in force, Palau would receive the \$23.5 million annually (based on the average over the first 15 years), but that is not guaranteed and there is no adjustment for inflation.

Regarding capital improvements for development (schools, sewers, hospitals, roads, ports, buildings, utilities, etc.), the first-plebiscite COFA made no definite commitment of funds. It only provided that such projects be negotiated and agreed.

While allowing Palau political autonomy pertaining to domestic and international affairs, the first-plebiscite COFA provided exclusive US responsibility for security and defense of Palau for fifty years and allowed the US permanent (100-year) denial rights for the military use of the area by other countries. This provision has carried through in every subsequent draft of the COFA and was succinctly evaluated by Palauan leader

<sup>8</sup>*The Young Micronesian*, May 1971, p. 22.



Gabriela Ngirmang: "We see that the Compact says military rights may end in fifty years if mutually agreed. This means, we understand, that if the United States wishes to continue its control of our land, it need only say so and this will go on forever. This is unacceptable."<sup>9</sup>

Attached to the first-plebiscite COFA were more specific subsidiary agreements—one of which was called the radioactive agreement and, as later established by Palau courts, would require a 75-percent majority vote to override the nuclear-free provision of the constitution (to be discussed below). The subsidiary agreement in question was consistent with the military options outlined in 1971 and were almost identical to the 1976 draft Compact. It provided that the US would pay \$20.5 million for military land use over 15 years in return for the following military base rights for 50 years:

1. Exclusive use of forty acres of dry and submerged land in Malakal Harbor for a naval port facility, plus joint use of all anchorage rights. The latter is expected to eventually accommodate a forward base for the new Trident strategic missile-launching submarines.
2. Exclusive use of two areas totaling 2,000 acres on Babeldaob, the largest island in Micronesia, for storage use—presumably for the nuclear, chemical-biological, and conventional weapons associated with other bases.
3. Non-exclusive use of 30,000 acres on Babeldaob—about a third of the island and taking in five states—for a jungle warfare training area. This includes four contiguous beaches on the east coast for practicing amphibious landing operations.
4. Joint military/commercial use of the airports on Babeldaob and Angaur and extension of runways to 9,600 feet, with provisions for a 65-acre exclusive use area at each airport.

<sup>9</sup>*Compact Of Free Association*, transcript of hearings before the US Senate Committee on Energy and Natural Resources (S. Hrg. 100-498), 28 January 1988, p. 9.

Later drafts of the COFA did not specify the number of acres reserved for option, which meant a larger area, up to 100 percent, could be used. The latest COFA which seems to say less about land actually claims more land for the US.

In 1981, US Congressman Phillip Burton did the Palauans what in one respect was a great favor. As chairman of the House Subcommittee on Territorial and Insular Affairs he insisted that the COFA be treated as a joint House-Senate public law rather than a Senate-ratified treaty. That meant the US House of Representatives would be involved in the approval process. Recent events have shown that influential factions of the House are more sympathetic to Palauan self-determination and due process than the Senate. It is a good thing for Palauans that the House has been involved during ratification.

The COFA as a public law is not a new concept to be attributed to Burton. The Commonwealth Covenant with the Northern Marianas was also a public law, as was the Trusteeship Agreement itself. Such joint resolutions can appropriate financial aid and pledge full faith and credit, whereas a Senate-ratified treaty can not. Nevertheless, whether a joint-resolution public law or a Senate-ratified treaty, according to the Vienna Convention on the Law of Treaties, and other international law, the COFA cannot be unilaterally changed by either party.

The present COFA pertaining to Palau was signed on 10 January 1986 but has not yet been constitutionally ratified by Palau. The US administration says the terms are non-negotiable and must be accepted as they presently are, although congressional insistence forced further agreements in 1989 which provided better financial assistance. This COFA would give Palau \$460 million over the first 15 years. US funding for Palau during the 16th through 50th years would be provided entirely out of an investment fund established during the first effective year of the COFA.

If the COFA ever goes into effect, however, the situation may not be so clean cut. US domestic laws allow Congress to unilaterally change public laws. The Commonwealth Covenant is an example. The Northern Marianas government has now set up a Task Force on the Termination of the Trusteeship



ship. Larry Hillblom, vice chair of that task force, pointed out that the "people of the Northern Marianas voted by more than 75 percent [in a 1987 referendum] to reserve the right to reject or renegotiate the Covenant if the Administering Authority does not agree to honor, as a matter of international law, the Northern Mariana Islands' inherent right to self government."<sup>10</sup> Task force chairman Pedro M. Atalig added: "For the first ten years of the Covenant, with respect to the relationship between the Administering Authority and the people of the Northern Marianas, the people were led into believing that they retained the right to self-government. . . . It appears that there was a secret agenda to wait until the United Nations oversight was over and then strip the Northern Mariana Islands of self-government. . . . [I]t is clear from the Administering Authority's statements that [it is] the Administrative Authority acting under the territorial clause [of the US Constitution], and not the locally elected government, who would run the internal affairs of the Northern Mariana Islands."<sup>11 12</sup>

Petitioners from the Northern Marianas during May 1988 hearings before the United Nations Trusteeship Council did not want the Trusteeship terminated until the US abides by its responsibilities. For instance, the US Congress has changed the meaning in one section of the Covenant after it went into effect and had two other bills pending to revise the Covenant.<sup>13</sup>

<sup>10</sup>"Statement of Larry Hillblom, Vice Chair of the Northern Marianas Task Force on the Termination of the Trusteeship," to the UN Trusteeship Council in May 1988.

<sup>11</sup>"Statement by Pedro M. Atalig, Chairman, Northern Marianas Task Force on the Termination of the Trusteeship," to the UN Trusteeship Council in May 1988.

<sup>12</sup>Article IV, Section 3, Paragraph 2—the "Territorial Clause" of the US Constitution—states: "The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State."

<sup>13</sup>See "Statement of Representative Antonio M. Camancho [of Saipan] before the Trusteeship Council of the United Nations," May 1988, pp. 2 and 3. Public Law 97-357 was offered as an example of

Petitioners' testimony itemized other grievances: payments agreed to in the Covenant being several years behind because the islanders could not agree to conditions attached which interfere with local government; passports denied to some 1,000 inhabitants whom the US interprets as ineligible because their parents are foreign-born; and failure to consult regularly as prescribed in the Covenant to resolve differences. These are from a growing list of grievances affecting the sovereignty of the Northern Marianas people vis-à-vis the US Administering Authority.

A year later during the May 1989 hearings before the UN Trusteeship Council, Benjamin T. Mangiona, president of the Northern Marianas Senate, testified that the US, despite guarantees of the Covenant, has failed to give adequate consideration to Commonwealth views on international matters and trade agreements. He repeated a litany of US abuses:<sup>14</sup>

- In the trade agreement with Canada the US failed to provide for tariff-free entry of Commonwealth goods into Canada, although it did so for other "insular possessions."
- In negotiating the COFA with other Micronesian entities, the US gave them free access to Northern Marianas soil.
- Though directed to do so by US law, the US president has yet to report to Congress regarding the impact of the freely-associated states on immigration into the Commonwealth.
- The US entered into a bilateral aviation agreement with Japan that would double the air carriers to Commonwealth airports.
- Also, the US has ignored Commonwealth requests to avail itself of third-party assistance offered by Japan to build a control tower to ensure the safety of this added air traffic.

changing the Covenant. The two bills outstanding are S.1047 and H.R.2234, both of the 100th Congress.

<sup>14</sup>See *Pacific News Bulletin*, September 1989, pp. 8-11.



- The US refuses to recognize Commonwealth sovereignty over fisheries and seabed resources and would deny local control over 240,000 square miles of ocean floor.
- The US continues to insist that the Northern Marianas do not have the right to license foreign fishing boats in their territorial waters.
- The US Federal Bureau of Investigation operates in the Commonwealth without consent.
- US federal auditors demand access to records of Commonwealth governmental departments that operate with solely local funds.
- Despite Covenant guarantees that Commonwealth bonds shall be tax free, the US refuses to officially recognize the fact.
- The District of Columbia treats the Washington DC office of the Commonwealth as US property for taxation matters.
- The US has appointed federal officials for service in the Commonwealth without consultation with local officials.
- The president of the United States violated the Covenant by appointing the Department of Interior to supervise US relations with the Commonwealth without prior consultation with the Northern Marianas.

Senator Mangiona concluded by pointing out that the list of grievances grows longer each year that they appear before the Trusteeship Council.

Representative Antonio Camancho from Saipan says the US "has lost touch with . . . basic human rights. . . . It does not require sophistication to recognize when someone genuinely encourages freedom and when they interfere with it." He then concludes: "Until the Administating Authority complies with the letter and spirit of the Trusteeship Agreement and the Covenant and acknowledges that the political relationship between them and the Northern Marianas people is one of

free association, the Trusteeship should not be terminated."<sup>15</sup> Regarding UN oversight, Professor of Law Roger S. Clark, speaking for the International League For Human Rights, observed that 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."<sup>16</sup> This should be a warning to Palau of things to come.

### *c. The Constitution of the Republic of Palau.*

To formally satisfy the UN Charter as well as international opinion, The Solomon Report recommended that US policy prepare the people of Micronesia for a plebiscite in which they could be counted on to vote freely for an end which the United States government had in fact already chosen: permanent affiliation with the United States. Toward such an end it is necessary that there be "a reasonable appearance of self-government."<sup>17</sup>

That reasonable appearance of self-government was granted the people of Palau when the 6th Palau District Legislature, influenced by its political status negotiating chairman, Roman Tmetuchel, passed legislation for a constitutional convention (ConCon). On 28 January 1979 a popularly-elected 38-member ConCon was convened under the watchful eye of the United States. Although there was pressure from other emerging independent nations for Palau to follow the UN

<sup>15</sup>"Statement of Representative Antonio M. Camancho," *op.cit.*, pp. 3, 4 and 5.

<sup>16</sup>"Petition Concerning the Trust Territory of the Pacific Islands presented to the United Nations Trusteeship Council on behalf of the International League For Human Rights," by Roger S. Clark, Distinguished Professor of Law, Rutgers University, Camden, New Jersey and Vice President of the International League For Human Rights, 12 May 1988, p. 11.

<sup>17</sup>The Solomon Report, *op. cit.*, p. S-18.



General Assembly standards for this constitutional activity, US officials and the 6th Palau District Legislature were counting on a document which would support the COFA and US military base options.

Those hopes were not fulfilled. The determining factor in the Constitutional Convention was that its delegates consulted continuously with village people. Under the chairmanship of Haruo Remeliik and responding to popular demands, the convention drafted the world's first nuclear-free constitution which also outlawed chemical and biological weapons, insisted on eminent domain for Palauan benefit only, and proclaimed a 200-mile territorial limit around the islands. Johnston Toribiong, a US-educated lawyer, was elected vice president of the ConCon. Lazarus Saliu returned from Saipan to join forces with Remeliik in opposing Roman Tmetuchel, the latter strongly against the nuclear-free constitution which would conflict with the COFA. Saliu headed the Executive Branch Committee at the ConCon. The Legislative Branch Committee was chaired by Kaleb Udui, a US-educated attorney and former Trust Territory administrator. Bonifacio Basilius headed the Committee on Civil Liberties and Fundamental Rights, and Tosiwo Nakamura was chair of the Committee on General Provisions.

It was under Tosiwo Nakamura that the nuclear-free section was drafted. He said it "was not an anti-American provision. I wrote that hoping that maybe it would give the United States, Russia, and the Chinese the idea to start a peace movement. . . . I made it so maybe a small, tiny island will start a movement for building peace in the Pacific, maybe the whole world."<sup>18</sup>

Two factions quickly developed. Most popular was the group which comprised most of the ConCon delegates. They recognized a duty to draft a Constitution to meet Palau's needs, not America's. The opposition was led by Tmetuchel and included most of the 6th Palau District Legislature which had passed the enabling legislation and mandated the ConCon

to produce a document compatible with the Hilo Principles, which Tmetuchel had negotiated the previous year.

US officials were shocked at the direction the ConCon took. A week before the convention's adjournment, US Ambassador Peter Rosenblatt hastily submitted a series of objections. Some minor changes were made but, on 2 April 1979, 35 of the 38 convention delegates signed the nuclear-free constitution.

Four weeks later, Ambassador Rosenblatt flew to Palau and addressed the members of the Legislature in closed session, demanding that they change the constitution, adding, "I cannot overstate the importance which we place on these issues, or their centrality, in the view of the United States government, to free association and to our future relationships with Palau."<sup>19</sup> Hundreds of citizens demonstrated peacefully outside to protest such pressure. Nevertheless, Rosenblatt's speech succeeded in creating a factional split in the Legislature. In June, with less than a quorum present, it voted to repeal the Constitutional Convention and thus void the draft constitution before the people could vote on it.

Disregarding legislative action, a UN-observed constitutional referendum was held on 9 July 1979, and Palau's nuclear-free constitution was approved by 92 percent of the voters. One month later the High Court of the Trust Territory upheld the Legislature's less-than-quorum repeal of the Constitutional Convention, thus nullifying the overwhelming popular vote in favor of the Constitution and allowing it to be revised according to US demands.

In September the indignant public voted in a new Legislature, with 27 of the 28 new members in favor of the original nuclear-free Constitution. But prior to the second referendum, outgoing members of the 6th Palau Legislature, which drafted the revised Constitution, allocated themselves \$125,000 to conduct a program of "political education." AMPO described US activity:

<sup>19</sup>Statement of Ambassador Peter R. Rosenblatt, the President's Personal Representative For Micronesian Status Negotiations, Koror, Palau, 30 April 1979.

<sup>18</sup>San Jose [CA] Mercury News, 4 October 1987, p. 1A.



The efforts of the United States to pass the second constitution were extremely blatant. It gave \$100,000 to the pro-American supporters . . . It also drew up a "Palau Improvement Plan" contingent on the second constitution's passage. . . . Not content to utilize TV and radio for advertising, the United States sent members of the CIA to take charge of the activities. . . . Masquerading as private American citizens, CIA agents went to individual houses in Palau and tried to persuade people to vote for the second constitution. Sometimes they paid money under the table. Supporters of the second constitution, using this money, held barbecue parties every day in order to persuade people. Several days before the vote, on October 20th, someone fired three bullets into the office of the "Peoples' Committee" against the second constitution. Nobody was hurt.<sup>20</sup>

Regardless of these pressures, a strong majority of the Palauan people remained firm in their resolve that their islands not be used for military purposes, and rejected the revised Constitution on 23 October 1979 by a 69 percent majority.

For the third time, on 9 July 1980, Palauans went to the polls to vote on their future, and 78 percent approved the original nuclear-free Constitution. According to a poll of voters as they left the booths, the overwhelming reason for voting for the Constitution was to keep the military out of Palau. The Constitution went into effect on 7 January 1981. Six years and one month later, in February 1987, the Philippines followed Palau's lead and ratified a nuclear-free Constitution for that country.

There are four sections of Palau's Constitution to understand in order to interpret events which have occurred since 1980. The nuclear-free sections are Article II, Section 3 and Article XIII, Section 6. Article II, Section 3 provides for delegating major government powers to other countries by treaty, compact or other agreement, but states that any such agreement authorizing use, testing, storage or disposal of nuclear, toxic

<sup>20</sup>Arakawa Shunji, "Palau's Constitutional Struggle: Micronesia Strives for a Nuclear-Free Future," *AMPO: Japan-Asia Quarterly Review*, Vol. 12, No. 3, 1980, pp. 15-16.

chemical, gas or biological weapons intended for use in warfare shall require approval of not less than two-thirds (2/3) of the members of each house of the Palau National Congress, and be approved by three-fourths (3/4) of the votes cast in a nationwide referendum.

Article XIII, Section 6 reads as follows:

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 three-fourths (3/4) of the votes cast in a referendum submitted on this specific question.

It is no accident that the 75 percent approval was included. It is consistent with Palau's heritage of consensus decision-making, especially on controversial issues. The Constitution reflects Palauan traditional laws and values.

The third pertinent section to understand is Article XIV which sets forth the normal amendment process for the constitution. Section 1 provides that amendments be proposed by one of the following methods: (a) a constitutional convention to revise or amend the Constitution, (b) a petition signed by not less than twenty-five percent (25%) of the registered voters, or (c) a resolution approved by not less than three-fourths (3/4) of the members of each house of the Olbiil Era Kelulau [Palau National Congress]. It is this latter method which became a point of contention in subsequent activities.

Section 2 of that same article then provides that a "proposed amendment to this Constitution shall become effective when approved in the next regular general election by a majority of the votes cast on that amendment and in not less than three-fourths (3/4) of the states."

The fourth section important for the reader to understand is Article XV, Section 11, which provides for a temporary and restricted amendment to avoid conflict with the COFA. It reads:



Any amendment to this Constitution proposed for the purpose of avoiding inconsistency with the Compact of Free Association shall require approval by a majority of the votes cast on that amendment and in not less than three-fourths (3/4) of the states. Such amendment shall remain in effect only as long as the inconsistency continues.

Presumably, the amendment-proposal process is the same as for Article XIV, a presumption later affirmed by judicial clarification. It seems ambiguous that amendments passed according to either of these procedures should override the 75 percent approval stipulation of the nuclear-free sections. International law professor Roger S. Clark insists they would not.<sup>21</sup>

Haruo Remeliik, former ConCon chairman and leader of the People's Committee for a Nuclear-Free Constitution, was elected the first President of Palau on 4 November 1980. He obtained the Modekngei block of votes. Modekngei (Unity) is the traditional religion of Palau. It holds that the land and water are the mother of the people and that it is necessary for the people to pray before they till the lands. This religion also holds a political constituency today—a block of 2,000 votes, a significant percentage of the total, which go to a single chosen candidate.

Remeliik was strongly challenged by Roman Tmetuchel, who lost by only 300 votes. Lazarus Sali was the third runner-up. The total vote was split between five candidates, four of whom were pro-constitution—Tmetuchel was at that time still a critic of the nuclear-free Constitution.

The new legislature—Palau National Congress, called Olbiil Era Kelulau (OEK)—is composed of a Senate and a House of Delegates. The Senate consists of 14 members which represent the population. The House of Delegates has

<sup>21</sup> See "Petition Concerning The Trust Territory Of The Pacific Islands" presented to the United Nations Trusteeship Council on behalf of The International League For Human Rights by Roger S. Clark, Vice President of the League and Distinguished Professor of Law, Rutgers University, Camden, NJ, December 1987.

16 members—each representing one of the 16 states, which correspond to the traditional 16 tribal municipalities.

The struggle for self-determination, however, was far from over. The Constitution was considered by the US to be an internal document. Still to be resolved was the political status between the US and Palau in order to dissolve the Trusteeship.

#### *d. Local and International Support for the Constitution.*

In the mid- and late 1970s, most advocates of Palauan self-determination found themselves working together in a movement called "Tia Beluad" ("This is our Nation"). The leadership of the group consisted mostly of a new generation of US-college-educated Palauans, many of whom have gone on to become political leaders today; an example is Moses Uludong, former senator and now governor of Ngchesar state. During the ratification referenda which followed the Constitutional Convention, the popular educational effort was led by the "Peoples' Committee for a Nuclear-Free Constitution." Commonly known as the "Peoples' Committee," it was led by ConCon chair Remeliik. After the reaffirmation of the Constitution in 1980, factional divisions split Tia Beluad, and it subsequently faded from the scene.

At that time a group which included veteran leadership of both Tia Beluad and the Peoples' Committee decided on a new, locally-based political strategy, and formed "Kltal-Reng," which means "brotherhood/sisterhood." While by no means the only proponent of Palauan self-determination since 1980, Kltal-Reng has arguably demonstrated itself to be the most consistent and grassroots pro-Constitutional force in the islands. Because Kltal-Reng is a significant experiment in preserving traditional political culture, as well as an important factor in the political status struggle, we will focus here upon it as an organization representative of progressive Palauan thought and practice.



Palauan matrilineal culture is strongly evidenced in Kltal-Reng, whose leadership consists predominantly of women elders and younger educators. Most members live in Meyuns and Ngerkebesang villages on Arakabesan Island, located across the causeway from Koror. Those villages were the site of a major Japanese military presence before World War II. After the Trust Territory government finally quitclaimed that land, the clans were able to reclaim it. Many Kltal-Reng members have since had to resist development speculators. Good examples are the revered elder Kebekol couple. The late "old man," as he was called, had been severely disabled when his legs were shattered in the mid-1950s—he found an unexploded shell from the war while clearing his land. Carried in by his family and obviously in great pain, the old man was regularly in attendance at Kltal-Reng meetings, and many younger members looked to him for wisdom and strength. The Kebekol-occupied land, adjacent to a small and scenic natural cove on the edge on Ngerkebesang, had been coveted by developers. Yet no one has been successful in removing the Kebekols from their use of clan land, not even the recent multimillion-dollar Japanese Palau Resort Hotel that was built right across the road. To this day Mrs. Ros Kebekol remains in their modest wooden home, living from selling ice-pops to local children, a testimony to total resistance.

The Palau Pacific Resort is an example of how foreign business interests circumvented traditional land use. Local people who were actually partners in the enterprise succeeded in purchasing land from the chief, on which the resort was built. Thus, through using these local fronts, foreigners succeeded in gaining use of clan land.

Kltal-Reng is unique in Palau for its strategy that combines a local village base, a strongly national scope and program, and serious attention to the tasks of international solidarity. Its village programs include:

- cooperative gardening, marketing and promotion of traditional staple goods.
- youth job-assistance programs.
- rotating responsibilities and resources for traditional ceremonies and celebrations.
- road and community space maintenance.
- workshops in traditional culture such as hand crafts, story telling, healing practices, fishing, etc.
- literacy and language classes (Japanese, English and traditional Palauan).
- political education/current events meetings.

The village programs focus on a philosophy and practice of cultural pride and economic self-sufficiency, with a particular concern to provide an alternative to residents of the district center who have been drawn into the powerful vortex of westernization.

When it comes to meaningful campaigning, Kltal-Reng has been the vanguard of those insisting upon intelligible public education and debate on the Compact. Members have spent long hours translating the complex COFA documents to Palauan, disseminating information around the village circuit, and monitoring the government's official educational activities. At referendum time Kltal-Reng members watch the polls to try to mitigate vote-fraud and/or intimidation. Despite the organization's pro-Constitutional stance, it remains non-partisan as regards political personalities and parties. Indeed, members are privately critical of the way in which Palauan politicians have forsaken their traditional principles. Members also share a deep concern for the debilitating effect that repeated and inconclusive referenda have had on the people, pointing out the high level of popular cynicism that makes it increasingly difficult to persuade people to vote. Understanding the divisive role that western-style politics has played in Palau, Kltal-Reng



has advocated suspending further referenda on the Compact in order to convene a traditional gathering of all political factions in Palau to talk about options for the future.

No group has been more responsible for informing the international community of the struggle over Palau's Constitution than Kltal-Reng. This solidarity work is coordinated through the office of the Belau Pacific Center (BPC), located in a former warehouse in the heart of Meyuns village, and staffed by counselor Roman Bedor. The strategy for building unity is two-fold: exposing foreigners to Palau, and traveling abroad to tell the story. The former has evolved from receiving random visits by activists who had heard of the struggle, to the present system of coordinated hospitality and education. Since 1981 an internship program has welcomed visitors to work at the BPC from Europe, North America, Aotearoa (New Zealand), Australia, and Japan. Internships range from one month to one year, during which time the interns live with a local family, help staff the BPC, and learn about local culture through the ongoing activities of Kltal-Reng. The organization also occasionally receives larger groups of politically-interested observers. Exchanges with other indigenous peoples' organizations have been particularly pursued, and distinguished visiting activists are always hosted at a community feast, followed by lively exchanges and expressions of mutual solidarity.

Since 1980 Kltal-Reng members have tried to take their cause to every available international forum, grassroots or official. Its spokespeople have traveled throughout Asia and the Pacific, North America, Europe, and Scandinavia. Representatives routinely endure exhausting itineraries and taxing travel schedules to address such groups as the UN Trusteeship Council and Special Sessions on Disarmament, US congressional committees, the European Parliaments, lawmakers and media, and countless church and popular organizations. Despite ever-increasing opportunities and the pressure of international media exposure, invitations are carefully screened, financial arrangements responsibly processed, and the privilege and responsibility of diplomacy broadly shared among qualified members. Decisions about travel are weighed carefully

against the current situation at home and its demands, and returning representatives faithfully report their learning to the community as a whole.

Even before the prominent role they played in the 1980 Nuclear-Free Pacific Conference (see Chapter 1c), Kltal-Reng members were intimately involved in promoting pan-Pacific grassroots unity. BPC director Roman Bedor has been on the international steering committee of the Pacific Concerns Resource Center since its inception, most recently carrying through with his responsibilities at the 1987 Nuclear-Free and Independent Pacific Conference in Manila despite threats to his own safety (see Chapter 6b). A highlight of international solidarity came in 1985, when Kltal-Reng hosted the Pacific Concerns Resource Center Steering Committee meeting. At a public opening of the newly-renovated BPC building, Pacific independence leaders addressed a full house concerning the wider struggle for indigenous self-determination. In such moments, the profound connection between local and global struggle is manifest.

Both in its constructive economic and cultural efforts and its nonviolent opposition to colonial and neocolonial policies, the work of Kltal-Reng exhibits many of the characteristics of Gandhian programs and politics. There is a desire to integrate the best of progressive and traditionalist socioeconomic practices, in order to show the way forward in a situation of profound stalemate. In light of such work, it is no wonder that Kltal-Reng has been consistently targeted by pro-government harassment and terrorism, culminating in the murder of Bedor Bins in 1987 (see Chapter 6b). Hospitality, so much a part of Palauan tradition and so freely exercised by Kltal-Reng members, has in the last few years had to be curtailed under such pressures. Predictably, Kltal-Reng has been accused of being controlled by external "communist" forces, forcing the organization to carefully screen and even discourage visitors, in order that the presence of foreigners not be seized upon as a pretext by its critics.

Yet the work of local development and building international support continues, despite its deepening cost. Thrust by circumstances into a whirlwind, this small, unassuming village



organization has shown remarkable grace and fortitude under pressure, and more important, demonstrates that there is hope for a political future that is genuinely Palauan, yet genuinely engaged with the global community.

## CHAPTER FOUR STORM CLOUDS GATHER: THE REMELIK ERA

*... the plebiscite should be publicly announced only a few months in advance. This would provide time for most of the preparatory groundwork needed to reduce the shock of the announcement. It would also reduce the time in which the opposition—either in Micronesia or the United Nations—could campaign against affiliation.*

—The Solomon Report, p. 42

A September 1981 Associated Press dispatch in the *Oakland Tribune/East Bay Today* telling of strikes and violence in Palau was particularly disturbing news from a small island republic not yet a year old. Its nuclear-free Constitution had gone into effect only ten months before. The Solomon Report had warned that the United States "might have to decide to proceed with a series of actions that would make the trusteeship agreement a dead issue, at least from the Micronesian viewpoint."<sup>1</sup> With the US government involved in negotiating military bases in Palau over the heads of the Palauan people and their repeated ratification of that nuclear-free Constitution, the political factors for provocation were already present.

### *a. Beginnings of Unrest.*

The September 8 "mini-revolution," as Palauans called it, started as a government-employee strike which is inexplicable in terms of labor relations. Almost all of the wage jobs are centered in the capital city of Koror and most are government-related. Those who do have jobs (about 2,000) are dependent on a money economy and it is this sector where further incen-

<sup>1</sup>A Report by the US Government Survey Mission to the Trust Territory of the Pacific Islands, by Anthony M. Solomon, Chairman, 9 October 1963, p. S-6.



tives and more dependency is offered. But luxury items remain few enough, and the family way of life pervasive enough, for there to be little parallel in Palau to the consuming needs fueling the American-type wage-price spiral.

Wednesday, September 9, 1981 *Tribune/TODAY* A-6

## WORLD/TODAY

# Island nation of Belau has trouble — bombs, walkouts

KOROR, Republic of Belau (P) — This tiny Pacific island nation, less than a year old, was facing its problems Tuesday — a president's office was destroyed in a bomb blast, government workers walked off the job, and prisoners walked out of the

Meanwhile, Air Micronesia canceled its single flight to Belau because there was no manned engine at the airport as required by the Federal Aviation Administration.

Some U.S. citizens in Koror sought refuge with a few U.S. Navy Seabees stationed in Belau, which was formerly known as Palau and is 750 miles southwest of Guam in the Caroline Islands. The 1980 census counted 12,177 residents.

The troubles Tuesday began shortly before 6:30 a.m. when a bomb destroyed the president's office in Koror, the capital

city.

No one was injured and no one claimed responsibility, said Daniel High, acting high commissioner for the Pacific Trust Territories, based in Saipan.

Then government workers walked off the job demanding better pay. They converged on the legislative building next door to the gutted presidential office. No violence was reported.

Next, Belau jail inmates, taking advantage of a local police strike, walked away from their cells. The most dangerous of the escapees were two men convicted of manslaughter, High said.

All electric power was knocked out for most of the day by the bomb blast, said Lt. j.g. Sandy Stairs, spokesman for the U.S. Navy on Guam. Stairs added that Belau had not requested military assistance to maintain order.

Belau president Haruo Remeliik

and other leaders were to meet with High in Saipan today to discuss the strikers' demands. Most workers apparently agreed to return to work to await the results of that meeting.

High didn't know how many workers are employed by the government or what they are paid. But he said the Trust Territory government couldn't afford a pay raise.

Belau's budget for fiscal 1981 was \$13.1 million, he said, and \$9.4 million of that came from the U.S. Department of the Interior. The fiscal 1982 budget was the same, he said.

The government of Belau was established Jan. 1, 1981, when Remeliik took office and the nation's new constitution took effect.

The nation will remain in the domain of the Pacific Trust Territories.

Thus the "mini-revolution" had as its seedbed the only sizable group which relies on jobs—government employees—and only a minority of them. A wage-increase petition was circulated several weeks beforehand but it garnered only 250 signatures from the then 934 government employees. There had been little dissatisfaction with wages and many workers didn't even bother to sign the petition because the 100 percent increase demanded was preposterous for a local government whose funding ceilings are set by the Trust Territory administration. Those employees recognized that to put an unnecessary labor squeeze on the new government was to play into the hands of foreign control.

Against this backdrop, a strike-vote meeting was held at Koror's Peleliu Club on Monday, 7 September 1981—a Labor Day holiday. About 300 attended. Airai State Governor Roman Tmetuchel, Senator Joshua Koshiba and Senator Lucius Malsol gave speeches—Malsol had previously been on the radio advocating a strike. Senator Johnson Toribiong was attorney for the strikers, and Roman Tmetuchel was asked to be their spokesperson. Those attending were told to be on the road in front of the Palau National Congress building at 6:00 o'clock the following morning, September 8.

No mention was made of explosives at the meeting, but a Public Affairs official said he had heard of the intended bombing four days before it happened. But when he tried to warn people they only scoffed, saying the strike would be peaceful.

After the meeting an all-night drinking party got under way in a public park. Many strikers were drunk when, at 5:45 AM, the Palauan flag in front of the president's office was burned, while an American flag not far away was left untouched. One eyewitness described dynamite being passed out, and at 7:07 AM the first blast went off. The second followed within five minutes, single sticks electrically detonated. One blew out the front door of the president's office building and the other the back door. The debris was carried back inside the office and the building set on fire.

Police cars were used to help the strikers—Palau's police force was then under the authority of the Trust Territory ad-

FIGURE 4-1 — OAKLAND TRIBUNE ARTICLE  
Used with permission of Associated Press



ministration. Police also obstructed government employees from going to work and roused others out of the buildings to take part in the strike.

These events were witnessed by about 700 people. Although no reporters are stationed in Palau, on that morning the place was described as swarming with Japanese reporters and an unusually high number of American "tourists." Photographs appeared in Japanese newspapers two days later. Local people possess color pictures of the flag and office burning. The deeds were done with the fullest public exposure but some of the specific influences on them are less traceable.

About an hour later, the main office of Palau's only radio station was bombed with a single stick of dynamite—allegedly by a police officer who was driving a police car. Damage was just enough to prevent people on outlying islands from knowing what was going on. The Islands' Communication Center (to the outside world) was occupied by government workers who threatened to blow it up.

A ranking member of the House of Delegates related how the Palau National Congress building was also laced with dynamite in about fifty places, but some of the strikers objected—apparently coming to their senses and saying that blowing up the building was not part of the plan.

After the bombings, the strikers demanded to see President Remeliik. People were shouting, "We want his head." When he came, many feared he would be assassinated on the spot. Some senators pressed him to accept US military aid to bring the situation under control but he refused. He promised no one would be prosecuted, urging the people to forget this and work for the betterment of their nation. The people were then embarrassed and many strikers cheered. Remeliik pointed out that it was not in his power to increase wages. That is the function of the Legislature and some of the senators were the ones urging the strike.

Thirteen Palauans were charged with arson and rioting. On 14 March 1982 another bomb exploded in the attorney general's front yard, apparently a warning against prosecuting

the thirteen. Nevertheless, they were brought to court on March 19 but their trial was postponed a week.

On the following Monday, March 22, another government worker strike took place with Roman Tmetuchel as the strikers' representative. It was of dubious success but on that same day President Remeliik and Roman Tmetuchel signed a memorandum of understanding outlining seven steps toward resolving the wage dispute.

Two days later, on March 24, Remeliik issued an executive order granting amnesty to those accused of violence during the September rioting—thereby fulfilling his promise that no one would be prosecuted. The document stated: "As Chief Executive, given the spirit of cooperation and unity among all our people, I exercise my pardon power with firm belief that we the people of the Republic of Palau will work with determination to overcome the obstacles that lie before us and build a nation that reflects our people, our traditions, our hopes and our aspirations."<sup>2</sup>

At this same time, April 1982, the Trust Territory administration was organizing training for a Micronesian SWAT team, which took place on Pohnpei in the Federated States of Micronesia. This "FSM-Palau Emergency Task Force Training Session" instructed participants on arrest procedures, search and seizure, use of gas masks and bullet-proof vests, and crowd dispersal methods; as well as practice with shotguns and .38-caliber revolvers. Instructors were from the FBI and the Trust Territory Bureau of Investigation (TTBI).<sup>3</sup>

A third government worker strike occurred on 22 November 1982. On the 26th President Remeliik declared a ten-day state of emergency. He ordered all employees back to work for a cooling-off period—asserting that he would do whatever necessary to restore public services and employ whatever means necessary to restore law and order, including arrests.

Although these early disturbances were of short duration and largely uneventful, they provided a degree of understanding of the temperament and ductility of government employees

<sup>2</sup>"Presidential Pardon," Republic of Palau, 24 March 1982, p. 2.

<sup>3</sup>*Marianas Variety*, 26 March 1982.



who could be motivated and manipulated to violence where wages and jobs are concerned. This knowledge was applied to a strategy of strikes and intimidation carried out by a later administration.

The Galaxy 10 incident about seven months before the "mini-revolution" could have brought about a different outcome. The first visit of this Panama-registered ship was on 12 November 1980—a week after the presidential election. It anchored in Palau's Malakal Harbor and was claimed by its four-man American crew to be a supply boat for a salvage operation near Borneo. They said they were on vacation and planned to travel through Micronesia and possibly to the United States.

The ship was very well maintained—worth well over a million dollars, with about half of that in sophisticated electronics equipment. The 102-foot vessel had a computerized navigation system, a dual radar unit, three radios, a radio scrambler to prevent eavesdropping, and a computerized weather information system capable of producing maps from meteorological satellites. It departed November 25.

The second visit was on 16 February 1981. The crew of four came right ashore to get drunk that evening at the Burger Hut. The new captain said they were on their way back from the US.

Early the next morning, police boarded the vessel while the crew was still asleep. Police first said local fishermen thought the ship was smuggling drugs and tipped them off. No drugs were found on the ship but members of the boarding party reported finding M-16-type rifles, ammunition, hand grenades, and \$1 million in American currency.<sup>4</sup> On that same day the Coast Guard flew in a special plane carrying members of the Trust Territory Bureau of Investigation (TTBI) and FBI. They secured the boat, but it was gone without clearance before 7:30 the next morning, February 18.

Since the crew had already been arrested there was no need to fly in a special plane and remove the ship without proper clearance, unless US officials wanted to get it out fast before

local people could learn more. After that the Palauan police would not confirm the cargo reports and denied that the fishermen's tip prompted the arrest. They then claimed that a cable from the TTBI/FBI told them to arrest the crew when they arrived. A local lawyer asked to see the Galaxy 10 file but was refused with the excuse that the police search warrant had been deficient and they didn't want to lose the case on that technicality. Needing a search warrant doesn't fit with the story of receiving a telegram to make the arrests, but it would have been necessary to board the ship on the fishermen's tip.

The seized ship was taken to Guam, where newspaper reporters were told it had been involved with multi-ton smuggling of marijuana from South America to the US west coast. No mention was made of munitions or money and no explanation given why the ship was in the Western Pacific. Then it was moved to Hawaii, where the story changed to carrying Thai stick marijuana from Asia and cocaine from South America. The vessel was put up for auction but none of the fishermen could meet the opening bid. It was then sold to the US Navy for the \$50,000 invested in its seizure, and the Navy gave it to the University of Hawaii for a research vessel. Members of the crew were tried and convicted in San Diego on drug smuggling charges.

An attempt to contact one Chadwick Lerner who corresponded with Palau port authorities regarding the Galaxy 10 was unsuccessful. His Beverly Hills address was a mail and answering service. Letters sent to be forwarded were returned, marked "addressee unknown." There still remains no satisfactory explanation of the events surrounding the Galaxy 10. We do know that the CIA routinely subsidizes drug traffickers and gun runners. Such covert US operations date back forty years. Some people in Palau feel that had the Galaxy 10 mission been successful, the "mini-revolution" would have had a sadly different ending.

Three government-employee strikes occurred during the Remeliik Administration, and their effect on Palau's economic problems were described in a 1981 letter from Noel C. Koch, principal deputy secretary of defense for international security affairs, written shortly after the first strike: "... the newly

<sup>4</sup>Information about the Galaxy 10 while it was in Palau was obtained through personal interviews during late 1981, with people involved.



formed Palauan Government is faced with considerable financial stringency; the Department of Interior has just imposed an 8 percent cut in its anticipated fiscal year 1982 programs for the Trust Territory, and recent disorders in Palau will require the expenditure of unprogrammed funds for internal security purposes.<sup>5</sup> How these financial straits were used to provoke unrest in the hope of gaining a pre-defined US goal will be discussed in a later chapter.

### *b. COFA Plebiscites Under Remeliik.*

President Remeliik appointed his former election opponent, Lazarus Salii, as ambassador for trade relations and status negotiations in March 1982. The negotiating team refused to disclose information until all subsidiary agreements had been signed, thereby severely shortening the time for public education prior to the plebiscite. A Micronesian worry was that the talks were merely rubber stamping the US position.

On 26 August 1982 the COFA was signed in Washington, DC. This was the second time that Salii led Palauan negotiators in agreeing to a close relationship with the US. The plebiscite was originally scheduled for 5 November 1982—barely 2½ months from the date of signing—but negotiations continued into November on subsidiary agreements which the Palau National Congress would not accept. It was at this critical time that the third government-worker strike and the ten-day state of emergency took place. In January 1983 the Palauan Senate delayed the election again, partly because the education process had been slow.

After four postponements, a COFA plebiscite was finally held on 10 February 1983. The traditional chiefs were anti-COFA because they were not consulted by Salii or his negotiating team. Several irregularities characterized pre-election events. The US Interior Department provided \$315,000 (in

addition to the \$250,000 appropriated by the Palau National Congress) for public education by the pro-compact government. No one explained why 16,000 ballots were printed for only 7,200 voters. A confidential telegram from CINCPAC reported that "tensions rose noticeably in the Koror area in the 36 hours preceding the vote."<sup>6</sup> The telegram went on to say that the UN Mission report was expected to be favorable with mild criticism of the educational process and allegations of irregularities.

Ten days before the election, the Palauan Supreme Court ordered revision of the US-demanded ballot wording which wrongly implied that the nuclear-materials subsidiary agreement, a separate issue on the ballot, would restrict the US military and was therefore desirable. The original ballot wording stated:

#### PROPOSITION ONE

- A. DO YOU APPROVE FREE ASSOCIATION AS SET FORTH IN THE COMPACT OF FREE ASSOCIATION?

\_\_\_ YES

\_\_\_ NO

Before the Compact can take effect, Question B must be approved by 75% of the votes cast.

- B. DO YOU APPROVE THE AGREEMENT UNDER SECTION 314 OF THE COMPACT WHICH PLACES RESTRICTIONS AND CONDITIONS ON THE UNITED STATES WITH RESPECT TO RADIOACTIVE, CHEMICAL AND BIOLOGICAL MATERIALS?

<sup>5</sup>"Memorandum For The Secretary Of The Army," Control No. 111872/81, dated 21 October 1981 and signed by Noel C. Koch, Principal Deputy Assistant Secretary of Defense for International Security Affairs.

<sup>6</sup>Confidential telegram dated 15 February 1983 from Commander-in-Chief of the Pacific Command (CINCPAC) to the US Mission to the UN in New York, with copy to the Secretary of State in Washington, DC.



\_\_\_ YES

\_\_\_ NO

## PROPOSITION TWO

You may mark a box below to indicate to your government your preference for the political status to be negotiated and mutually agreed between Palau and the United States in the event that free association is rejected.

\_\_\_ A RELATIONSHIP WITH THE UNITED STATES CLOSER THAN FREE ASSOCIATION.

\_\_\_ INDEPENDENCE.

By judicial order, Proposition 1B was revised to say: DO YOU APPROVE OF THE AGREEMENT CONCERNING RADIOACTIVE, CHEMICAL AND BIOLOGICAL MATERIALS CONCLUDED PURSUANT TO SECTION 314 OF THE COMPACT OF FREE ASSOCIATION? Absentee votes (roughly 22 percent of the total) had already been cast with the old ballot language. Finally, on the day of the plebiscite and contrary to printed instructions on the ballot, President Remeliik announced that it was not necessary to vote for both the COFA and the separately-listed subsidiary agreement.

Returns indicated 62 percent of the voters were in favor of the COFA but only 53 percent voted for the nuclear-materials subsidiary agreement—far from the constitutionally-mandated 75 percent necessary. Although the ballot specifically stated that 75 percent of the voters must approve the subsidiary agreement for the COFA to go into effect, Remeliik, faced with a severe money shortage, tried to implement the COFA anyway. The resulting "Executive Agreement" between Palauan Ambassador Salii and US Ambassador Fred Zeder, which would have allowed transit of American nuclear aircraft and ships, was defeated by the Palau National Congress.

In a March 1983 secret memorandum to the US Inter-Agency Group No. 5 on Micronesia, Commander John Armstrong (ranking legal advisor in the Office of Micronesia Status Negotiations) posed the question: "In light of Palau plebiscite results, what political and legal measures can Palau and the United States take to ensure that United States responsibility and authority under Title Three of the Compact [the military/nuclear provisions] cannot be successfully challenged in the courts of Palau on the basis of the Palau Constitution?"<sup>7</sup> The discussion of this question, which took up the rest of the page, was completely censored out of the declassified copy of this memorandum.

Another confidential memorandum from US Ambassador Fred Zeder to the secretary of state indicated that "there are several means, in addition to a new referendum, by which the Constitution and the Compact might be reconciled, and we are exploring these."<sup>8</sup> Again in the sanitized version the discussion which followed was censored out. This makes one wonder why, if these are legal and appropriate measures being considered, that national security classifications of "confidential" and "secret" are imposed.

In spite of this clandestine planning, on 5 August 1983 Justice Hefner of the Palau Supreme Court ended the controversy. Concluding a lawsuit filed the previous May by Ibedul Yutaka Gibbons against President Remeliik, Hefner ruled that the COFA had been rejected because the vote was insufficient to override the nuclear-free provision of the Constitution. After 14 years of negotiating, the concept of free association was generally accepted by the Palauan people but they still would not allow the military options.

On 21 June 1983 the Federated States of Micronesia (FSM) approved the COFA by over 79 percent of the vote.

<sup>7</sup>Secret Memorandum to US Inter-Agency Working Group on Micronesia from Cmdr. John Armstrong, dated 1 March 1983.

<sup>8</sup>Confidential Memorandum from US Ambassador Fred Zeder to the Secretary of State; Subject: Micronesia: Status Report of the Approval of the Compact of Free Association, date indistinguishable but probably April 1983.



The Republic of the Marshall Islands (RMI) did likewise on 7 September 1983 with 58 percent of the vote. Free association with these two Micronesian republics took the form of US Public Law 99-239 which was approved by the House of Representatives on 11 December 1985, by the Senate on 13 December 1985, and signed by President Reagan on 14 January 1986. Free association between the US and the RMI took effect on 21 October 1986, and between the US and the FSM on 3 November 1986. Also on 3 November 1986 the Northern Mariana Islands officially became a Commonwealth of the US.

After the first plebiscite failed, Palau submitted an eight-page revised COFA to Ambassador Zeder on 24 October 1983. It was approved by the Palau National Congress on November 4. Negotiations in Honolulu during November 10-16 resulted in all but one section being initialed. Palauan Ambassador Salii stated that "Nothing that is not allowed by the constitution is here."<sup>9</sup> After the Honolulu meeting, however, the draft COFA swelled to 30 pages and Title III on military defense allowed everything the military wanted. Still, Salii said publicly that "the compact does not bring nuclear weapons or military to Belau," and, "if the US wants to use land for military purposes, then they will have to negotiate with the government of Belau."<sup>10</sup>

With the FSM and the Marshall Islands out of negotiations, the new draft COFA was tailored for Palau. Title III also refers to a "related" agreement and a "separate" agreement which would go into effect with the compact. Those agreements were not publicly available but were presumed to be nothing more than the old subsidiary agreements outlining military land-use options.

On 25 November 1983 the Palau National Congress, at the request of President Remeliik, set December 29 as the date for another plebiscite. When negotiations resumed in Washington, DC, on November 27, the Palauan delegation was presented with an again-revised draft using more specific lan-

guage regarding base rights. This session broke up on December 3, mainly over the economic issue, and the plebiscite was cancelled.

A December 8 joint meeting of Kltal-Reng members, governors and chiefs demanded four goals for continued action:

1. Stop the plebiscite.
2. Stop negotiations on future status long enough for Palau to investigate all options.
3. Remove all current negotiators.
4. Get the government organized to educate the community to determine what future status it wants and how to get there.

Ambassador Zeder on 10 February 1984 offered a new draft COFA supposedly addressing Palauan demands. He claimed this draft would require only a majority vote for approval. Earlier that month the Council of Chiefs had called for independence as the only viable option for Palau. Meanwhile, the US Interior Department refused Remeliik's request for an advance of funds to run the government until June.

On 23 May 1984 Salii and Zeder again signed the draft COFA, which had now swelled to a complicated 400-page document with 10 subsidiary agreements. President Remeliik asked the Palauan National Congress to set July 31 as Referendum Day for a plebiscite. It was passed by the House of Delegates without a hearing but a survey showed that 99 percent of the people wanted more time and better education. The Senate set a date in May 1985—almost a year away.

In mid-July, Remeliik issued Executive Order No. 25 calling for the second plebiscite on the COFA on 4 September 1984. Then the Presidential Task Force on the Compact of Free Association was revised to include Lazarus Salii and other top administrative officials. Its task was to work toward

<sup>9</sup>*Han-Genpatsu News*, published by Jishu-Koza, Tokyo, January 1984, p. 7.

<sup>10</sup>*Ibid.*



the "successful conclusion and going into effect [of] the Compact of Free Association."<sup>11</sup>

On July 23 the Senate filed suit to invalidate the executive-ordered plebiscite as an unconstitutional act but Palauan Supreme Court Justice Hefner dismissed the suit because the Senate, not being a person, had no right to sue. Meanwhile the government-sponsored pro-compact campaign intensified. According to Kltal-Reng and the Belau Pacific Center, through this village-to-village campaign the government was spreading misleading and possibly deliberately-false propaganda on nuclear materials, military land-use rights, rights of Palauans to seek employment in the US, improved financial provisions, and additional cash programs and technical assistance.<sup>12</sup> Ambassador Zeder came to Palau in late August to campaign for the COFA.

Anti-COFA coalition Osobel Belau (Save Belau Committee) then filed a class action suit to halt the plebiscite because it would deny the people of Palau the right to an informed vote. Palau Supreme Court Justice Sutton refused to issue a restraining order and the plebiscite was held as scheduled on September 4th—without a UN observer team to evaluate voter education and plebiscite procedures. Fully 17,800 ballots were printed for only 9,036 registered voters. Although poll-watching committees were set up at a few places, the polls were staffed by appointees of President Remeliik.

A favorable vote of 67 percent still failed to meet the constitutional criteria for approval. But Remeliik maintained that the COFA had passed. On October 4 he certified the plebiscite results without interpretation. The Senate immediately passed a resolution requesting the president, the attorney general, the chair of the Presidential Task Force, Ambassadors Salii and Zeder, US Congressman Seiberling, and the US attorney general to each submit an interpretation of the plebiscite by October 31.

<sup>11</sup>Cited in "Belau Plebiscite 1984: An Independent Report," by Kltal-Reng/Belau Pacific Center, November 1984, p. 14.

<sup>12</sup>*Ibid.*, pp. 16 and 22-23.

For quite some time Remeliik had taken a go-for-broke position on the COFA. If the Kltal-Reng people felt betrayed by anyone, it was by the President. He forced the September 4 plebiscite, apparently in collusion with Zeder. He seemed to try every possible means, legal or otherwise, to get the COFA through. Some people think bribes may have caused Remeliik to turn his hat around. Government financial problems certainly played a part. Nevertheless, he was re-elected by a 50 percent margin on 30 November 1984.

Airai State Governor Roman Tmetuchel was a strong opponent with support from elders, traditional leaders, elected leaders and young voters. Ibedul Yutaka Gibbons was another contender, vying for the Modekngei religion vote which originally put Remeliik into office. Both Tmetuchel and Gibbons campaigned on being more responsible to the people rather than to the vested interests which seemed to be controlling the Remeliik Administration. One may wonder, then, why Remeliik was so handily re-elected. According to Kltal-Reng people it was simply that there was no organized political opposition since the demise of the People's Committee, of which possibly 75 percent had defected from their original position. In lieu of this, the government brought resources to bear on the campaign which could not be matched. The deciding faction seemed to be the government employees who, with their extended families and dependents, constituted a large portion of the total vote. Some employees said they voted for Remeliik to keep their jobs because the opponents threatened to cut government to a more workable level.

Tmetuchel ran a strong campaign but could not match the government-sponsored drive. While his position was suspect during the "mini-revolution," Kltal-Reng members feel he changed after he recognized that a majority of the people really wanted to preserve their constitution. He then took a very critical position on the COFA, and also towards the corruption in the Remeliik Administration. He also gained respect for what he achieved as governor of Airai state, such as the alternative energy programs and community development schemes.

President Remeliik unsuccessfully tried to persuade the Senate to approve the COFA, saying that 67 percent of the



people want it and it had already been approved by the House of Delegates. On January 25 the attorney general of Palau opined that there was a substantial chance the court would rule that the COFA had not been approved by the electorate.

The climate in the Senate changed considerably after the elections, however. All but three of the anti-COFA senators were defeated. Lazarus Salii had been elected as senator and Remeliik dissolved the office of Ambassador of Trade Relations and Status Negotiations, thus reaffirming the administration's position that negotiations had been concluded and the COFA was accepted by the people. At Remeliik's prompting, the new Senate on 20 February 1985 ambiguously approved by 11-to-3 the COFA which had failed the required 75 percent popular vote the previous September. Essentially the senators endorsed the COFA but indicated it would have to be renegotiated—a classic Palauan way of saying both yes and no. While it hardly meant endorsement for Remeliik's position, it did signal that Senate opposition would not be as unequivocal as in the past. Hence another obstacle had been neutralized for the pro-COFA faction.

The 10 February 1983 plebiscite drew on 88 percent of the registered voters and had 62 percent approval. On 4 September 1984, voter turnout dropped to 71 percent and approval rose to 67 percent. This trend worried Kltal-Reng because it reflected increasing public cynicism. On the September 4 election Kltal-Reng had to really persuade the people to go to the polls and did not feel at all confident about getting the vote out still another time. People recognized they were being railroaded with all these referenda and were beginning to simply withdraw from the process. In terms of Palauan culture that is a legitimate expression of dissent, but in the mechanisms of democracy, a non-vote was essentially a "yes" vote for the COFA.

In the face of this dilemma, Kltal-Reng hoped for a moratorium on referenda during the Remeliik Administration, and advocated that Palau simply remain under the trusteeship to give the people time to really educate themselves on the issues and heal recent political wounds. Kltal-Reng's assessment was that the best action at present was no action at all. It rec-

ognized that anti-COFA forces were being systematically worn down by the government. On the other hand, it thought that if Remeliik tried to directly amend the Constitution as the US advised, there would be a real fight.

It was in this air of uncertainty that Remeliik pretended to go forward with the COFA, which even the US would not accept, presumably because of the Palauan government's dire need for finances. But even if implemented, which it could not be without US approval, the COFA would spark a rash of legal litigation because it violates both states' rights and eminent domain laws in Palau. Some Kltal-Reng members were confident that the COFA could be stopped in this manner but neither side wanted to take the chance of playing the last card.

On the other hand, there were indications that if anti-COFA forces were to regroup and really reach out, they could rebuild some kind of consensus. Few signs of that happening were visible, however. Ground was being lost rapidly both economically and culturally, as Americanization of the country increased each year. Palauan people had voted five times now—thrice on their Constitution and twice on the COFA—to preserve their nuclear-free land. Would the battle be lost by default?

### *c. The Assassination of Remeliik.*

Twenty-five minutes past midnight on 30 June 1985, President Remeliik returned home from a day of fishing and recreation with friends. While he was walking from his car, four shots rang out. The 51-year-old president of that island republic fell, mortally wounded, the first assassination of a head of state in modern Pacific history. Koror Hospital confirmed that he died from four bullet wounds in the forehead, neck and left thigh. The weapon was believed to be a .30-caliber assault rifle.

Vice President Alfonso R. Oiterong, chief negotiator of the IPSECO power plant contract (see Chapter 5b), immediately returned from the US to assume control. Two FBI agents who were conducting a training session for Palauan police



were called in to help local officials investigate. A curfew was imposed between 9 PM and 6 AM.

Some alleged that Japanese international crime gangs were responsible since they had been escalating their activities in US-held Pacific islands. Palau in particular was suspected as being a trans-shipment port for east-Asian heroin being smuggled to the US. Tokyo-based crime syndicates were also believed to have major interests in multimillion-dollar development and resort projects in Palau. According to Palau's attorney general, American-born Russell E. Weller Jr., "There's no doubt President Remeliik was adamantly opposed to these groups coming in here."<sup>13</sup>

Deeper suspicion was evinced by island legislators and tribal chiefs that Remeliik was killed because he was against US bases and nuclear weapons in Palau. His assassination occurred the night before his scheduled national address over public television. House of Delegates Speaker Santos Olikong said shortly after the assassination, "You go back and tell your leaders in Washington that no matter what kind of pressure they put on us—whether it's forcing us into economic bankruptcy or killing our president—we will not compromise on our independence or the nuclear issue."<sup>14</sup>

Although Remeliik had become strongly pro-COFA, possibly for economic reasons, he seemed to be reverting to a pro-Constitution stand. Only 17 days before he was shot, the Palau National Congress sent a letter to the US Interior Department in which counsel Martin Wolff stated that "IPSECO was CIA-funded to compromise . . . Palau into accepting the Compact of Free Association rather than face international embarrassment over financial default"<sup>15</sup> (see Chapter 5b below). When asked about Wolff's statement, Palau's Attorney General Weller replied, "I can't say it's wrong, I would highly doubt it, but look at what's happening in the Philippines. America is losing its grip and Palau has been mentioned

prominently as a fallback for the American military bases there."<sup>16</sup>

American officials categorically denied any US role in an assassination plot, adding routinely that the government makes no comment on US intelligence activities. They claimed the slaying was being actively investigated and prosecuted.

It was on 2 March 1985, shortly before Remeliik's assassination, that Palau defaulted on its first payment for the IPSECO power plant (see Chapter 5b), thus throwing Palau even deeper into financial crisis. An American Civil Liberties Union Briefing Paper reports:

According to Martin Wolff, then a legislative counsel to the Palauan Senate, this crisis led Remeliik to plan an appearance on Palauan television and radio to "come clean" on the power plant scandal. Presumably, by revealing the bribery and fraud he would then be able to repudiate the loans, establish a legal defense and save the economy of Palau. Remeliik was assassinated the day before his speech was scheduled. Wolff says he was told, just hours after the murder, that the President had been killed to prevent him from "going public" on the power plant scandal. Wolff's car was firebombed when he was in Palau, and he now lives in Hawaii.<sup>17</sup>

On 20 July 1985, four men were arrested on suspicion of murder: Melwert Tmetuchel, Leslie Tewid, Anghenio Sabino and Francisco Gibbons—the first two being the son and nephew, respectively, of Remeliik's strongest political rival, Airai State Governor Roman Tmetuchel. Governor Tmetuchel, also Salii's archrival and now believed by Kltal-Reng people to have acquired a critical stance regarding the COFA, was to be a candidate in the 28 August 1985 special election to replace Remeliik. But he was forced to withdraw

<sup>13</sup>*The Philadelphia Inquirer*, 22 July 1985, p. 2A.

<sup>14</sup>*Ibid.*

<sup>15</sup>*Ibid.*

<sup>16</sup>*Ibid.*

<sup>17</sup>"A.C.L.U. Briefing Paper Re: Assassination of President Remeliik of Palau, Subsequent Convictions of Three Defendants and Related Events," prepared by American Civil Liberties Union, New York, NY, 1 September 1986, p. 10.



because of the charges against his son and nephew. With his strongest opponent eliminated, Salii was elected.

No gun was ever recovered, no fingerprints or other physical evidence discovered, no eyewitnesses found, and no strong motive uncovered. The prosecution's only substantial evidence was one questionable witness—Mistycia Maidesil, a regular heroin user and a former girlfriend of Tewid and Melwert Tmetuchel. At one point she offered to name the assassin for a specific price. She first told police the assassin was Masanori Sugiyama, a former convict that Remeliik ordered returned to Guam. Later she changed her story, saying she had overheard Tmetuchel and Tewid planning to kill Remeliik. She also said Tewid admitted he had driven Francisco Gibbons to Remeliik's home and that Gibbons had shot the president. Finally she said she saw Tmetuchel throw the gun into the lagoon.

When Maidesil failed an FBI polygraph test on 24 July 1985, she confessed that her story against the accused was false. Palau's Attorney General Weller admitted that the witness was unreliable and dismissed the charges on August 16, twelve days before the election from which Governor Tmetuchel had been forced to withdraw.

Another four months of investigation turned up no new evidence. Maidesil was taken to the US, where she reverted to her original story against the four men. Failing two more polygraph tests she again admitted to fabrication. Rebutting a November 1985 story about Maidesil in *Asian-Pacific Issues News*, Attorney General Weller replied:

... the informant referenced in your article did not "change her story," as you allege. Virtually everything this informant has told us has been confirmed by other witnesses. The [informant] did "fail" a polygraph examination. However, that "failure" was caused by the informant knowing more than the information she had told us at that point. Since that time the informant has pro-

vided us with the additional information. We are satisfied the informant is telling the truth.<sup>18</sup>

Weller went on to say that he expected to file charges in the death of President Remeliik within 45 days.

Tmetuchel, Tewid and Sabino were again arrested on 6 December 1985. Francisco Gibbons was not, ostensibly due to lack of evidence. The three accused went to trial on 24 February 1986 and were found guilty on March 6—two for first-degree murder and one for conspiracy to commit murder. Although they had not waived a jury trial, they were tried without one because there are no jury trials in Palau. Justice Robert A. Hefner, an American and now chief judge of the Commonwealth Trial Court of the Northern Marianas, was designated to preside. Two other non-lawyer, non-judge Palauans were designated by Salii to sit with Hefner.

One of the two principal prosecution witnesses was Maidesil, who testified to her previous story except for seeing a gun. She falsely testified that she had not twice repudiated her testimony. She also admitted that she had identified the defendants after being harassed by the police. Palau Assistant Attorney General Philip D. Isaac told the court that the government's star witness could be lying about who assassinated the first Palauan president.<sup>19</sup>

The other government witness was Namiko Ngiraikelau, who testified she had seen two of the defendants about one-half hour before the murder, approximately a half-mile from

<sup>18</sup>Letter to Asian-Pacific Committee of American Friends Service Committee in Portland Oregon, on Republic of Palau letterhead, dated 29 November 1985 (Serial:AG1498), signed by Russell E. Weller Jr., Attorney General, Republic of Palau. Also published in *Asian-Pacific Issues News*, February 1986.

<sup>19</sup>"Palau's Evolving Relationship with the United States: Introduction and Chronology of Developments," by Luella S. Christopher, Analyst in Asian and Pacific Affairs of the Foreign Affairs and National Defense Division of the Congressional Research Service, CRS Report No. 88-442F, p. 24, 28 May 1988.



the scene, standing by a pickup truck. Previously she had told police she had seen only one man and could not identify him.

Defense witness Oliver Delbert contradicted Ngiraikelau's story. He was with her at the time and testified he had seen only one man, not a defendant, and there was no pickup truck. He also testified he had been pressured by the police to adopt the same story as Ngiraikelau. On this evidence, the defendants were convicted and sentenced to 25-35 years in prison.

Defendants then requested the Supreme Court of Palau to release them on bail. After being extensively briefed on the trial proceedings, the court was unanimous in granting their request. It speaks a lot about the weaknesses of the court's decision when it granted bail to convicted presidential assassins.

The Appellate Division of the Palauan Supreme Court in early July 1987 ordered acquittals for the three accused on the grounds that prosecution witnesses were "inherently incredible." The lower court was ordered to arrive at a "not guilty" verdict. Many questions are still left hanging, however. First is why these men were accused on such flimsy evidence that it seemed almost like a frame-up. Then one might wonder why further investigation into this assassination has not been apparent. Finally, what role did the trial of the three men play in removing Salii's political rival, Roman Tmetuchel, from the presidential election? Possibly history will some day shed light on these mysteries.

## CHAPTER FIVE QUESTIONABLE ENTERPRISES: FROM PORT PACIFIC TO THE IPSECO SCANDAL

*The early definitive resolution of the political future of Micronesia as a United States territory will make it easier for the United States, if it so decides, to permit Japanese businessmen, technicians, and fishing vessels into non-sensitive areas of the Trust Territory which would supply a very great stimulus to economic development at no cost to the United States and thereby permit reductions in the United States subsidization of the territory.*

—The Solomon Report, p. S-14

Before going on with the story of Palau under the Salii administration, it would be helpful to review some of the business deals that have been proposed and/or consummated regarding Palau. Understanding the economic as well as the military aspects of Palauan history is essential in order to fully grasp the significance of events that followed the assassination of President Remeliik. Although the oil superport study occurred during the mid-1970s—before Palau's nuclear-free Constitution was adopted and before Remeliik was elected to the presidency—it was the first significant post-World War II business overture associated with those islands and is a good starting point.

### *a. Port Pacific and Early Japanese Business Overtures.*

Japan was hit hard by the 1973 Arab oil embargo. To ensure a continuous flow of oil in the future, plans were laid by an international business consortium to build a petroleum transshipment port in Palau. Port Pacific, as it was called, would provide a 90-day supply (five million tons) of crude oil for Japan as a buffer against future embargoes.





FIGURE 5-1 — OIL SHIPMENT ROUTES

Palau was chosen because of its strategic location to the shipping lines. Since supertankers are no longer allowed through the wide but shallow Strait of Malacca, they must cross the Indonesian chain through the deep-water Sunda or Lombok Straits, northward through the Strait of Makassar to the east of Borneo, up through the Celebes Sea and the Philippine Sea close to Palau, and then to Japan. Many Japanese ports are not deep enough for supertankers, so Port Pacific would be an offloading spot and the oil would then be shuttled on to Japan by smaller ships.

Some Palauan politicians and businessmen established contact with superport promoters in 1974. The main liaison was Lazarus Salii, chairman of the Micronesia Political Status Commission. According to Roger Gale, assistant professor of area studies at Japan's Tsukuba University, "In a sudden about face, Salii, who has long been the principal architect of Micronesian unity, has now threatened to lead a separatist movement aimed at giving Palau more control of its economic and political development."<sup>1</sup> The separatist movement began in Palau as plans unfolded to build the superport, thus precluding the need to share proceeds with the remaining portions of Micronesia.

As plans became known for an oil transshipment port five times bigger than any in the world at that time, the Pacific Science Association issued a strong statement, saying in part, "... marine scientists consider the site to be of value unequalled in Oceania and of an order of importance rendering it eligible for designation as a World Heritage Area as defined by UNESCO . . . Therefore, be it resolved that the Pacific Science Association strongly urges the appropriate authorities that this project should be abandoned for Palau on scientific grounds and also on grounds of potential adverse affects upon the human population in Palau."<sup>2</sup>

<sup>1</sup>Roger W. Gale, "The Imperative For Port Pacific," *New Scientist*, 28 July 1977, p. 241.

<sup>2</sup>*Marianas Variety*, 3 December 1976; cited in *Micronesia Support Committee Bulletin*, 14 December 1976, p. 1.



The Industrial Bank of Japan, Nissho-Iwai Co. Ltd., Teijin Ltd. and the Iranian National Oil Company commissioned Robert Panero Associates of New York to complete two superport studies in April and May of 1975. Iran would participate through the Iranian National Oil Company and the National Iranian Tanker Company. (This was prior to the Iranian revolution.) In December of 1975 the Palau District Legislature established the Special Committee on Palau Port Authority to oversee development.

To counter this trend, the young Ibedul (High Chief) Yutaka Gibbons, a US Army veteran, started the Save Palau Organization. He had international support from the Natural Resources Defense Council, Friends of the Earth, the World Wildlife Fund, the Environmental Defense Fund, the Sierra Club, the National Wildlife Federation, the International Union for the Conservation of Energy, and the Audubon Society. The late US Congressman Phillip Burton, then chairman of the House Subcommittee on Territorial and Insular Affairs, was also outspokenly critical of Port Pacific. One of the Save Palau Organization's projects was to conduct hearings in all the villages to find out exactly how the people felt about superport plans.

In early 1975, Navy representative Robert Weicha made an effort to befriend the Ibedul. He arranged meetings between the Ibedul and Admiral Kent Carroll, then Navy commander for the Marianas. Carroll told the Ibedul that the superport would create military interest in Palau.<sup>3</sup> Weicha also indicated that the US would like to put the Ibedul on retainer—that what he was making wasn't enough—and that when he traveled the US would foot the bill for first-class airfare. Weicha indicated he wanted to help the Ibedul but that he wasn't going to be there forever. When urged to be more frank, Weicha told the Ibedul: "Some day, I want you to say, 'Bob, I'd like to see the military come to Palau.'"<sup>4</sup>

<sup>3</sup>Micronesia Support Committee Bulletin, 5 October 1976, p. 2.

<sup>4</sup>Cited in Micronesia Support Committee Bulletin, 5 October 1976, p.

2. Ibedul Yutaka Gibbons made notes immediately after the conversation.

In the following April of 1976, Robert Panero Associates joined with Japanese companies to become the Port Pacific Development Corporation of New York. At that same time the US Trust Territory Administration signed an agreement with Nissho-Iwai Company and the Industrial Bank of Japan granting them exclusive rights to do a feasibility study for the superport.

Although media reference appears nonexistent, Palauans say there were also plans for a nuclear power plant on the reef to accommodate Port Pacific.

Besides solving Japan's oil-reserve dilemma, the superport was expected to cause secondary energy-intensive industries (such as oil refineries and petrochemical plants) to crop up. An eventual "superindustrial complex" was envisioned. Although Port Pacific would make some Palauans rich, the Ibedul pointed out that with few exceptions the Palauan people were against the superport. He wrote to Congressman Phillip Burton, "A superport they call it—rejected by Okinawa, rejected by Singapore, rejected by Japan, because it kills the fish and oil covers the beaches . . . Our future beyond the short lifetime of your oil line, depends on the preservation of the reefs, and islands, and culture."<sup>5</sup>

Environmental concerns stemmed from, first, the construction phase (dredging, cutting and filling, erosion of defoliated land, siltation which destroys the reef system) and, second, the pollution from operation (waste disposal and oil leakage which destroys the beaches and reefs). Hawaii was held up as an example of commercial development's effect on the environment. Hawaii was also used to illustrate the ramifications of such development on cultural and social conditions. Nevertheless, Palau, with its small population and remote location, with minimal pollution control and virtually no enforcement, was a juicy plum for developers and oil magnates.

Contingent to all this investment was that Palau remain on friendly terms with the US. That was a point of concern. According to Roger Gale, the chief attraction of Palau was political. Gale quoted Panero Associates as saying Palau is "the

<sup>5</sup>Cited in *Calypso Log*, March/April 1977.



only site where stability and security is guaranteed by the US," and which is "strategically located within the US military sphere of influence."<sup>6</sup>

Twenty-five-year-old Isaac Soaladaob, then youngest member of the Palau District Legislature and representing Ngaraard near the proposed superport, opined: "Once we put it in here and something goes wrong, there is no more Palau. Everybody in Palau seems to be thinking only money can make man happy, because the system has been feeding them with money. This is the greatest problem we're facing, the dollar sign."<sup>7</sup>

Palau would not have to wait for a mechanical failure to spell its doom. Importing 10,000 or more aliens and their families, and relocating indigenous people, would constitute a takeover of the islands from its 15,000 inhabitants. Harvard biologist and Nobel Laureate George Wald explained: "The Palauans will wind up a minority in their own land. They will end up serving tables and washing floors."<sup>8</sup>

Not all Palauans were against the superport, however. The Special Committee on Palau Port Authority, chaired by Johnson Toribiong, went on record in October 1977 as favoring the superport. It did reject the Kossol Harbor site in northern Palau but recommended either Barnum Bay near the southern island of Peleliu or Ngardmau Bay on the northwest coast of Babeldaob. Vice Speaker Joshua Koshiba of the Palau District Legislature was also a superport proponent and in December 1977 that legislature passed Resolution No. 77(4S)-1 adopting Toribiong's special committee report.

Senator Roman Tmetuchel, owner of Palau Fisheries Co. and acting chief of Airai, was also in favor of the superport at that time, as was Ngiratkel Etpison, businessman and acting chief of Ngatpang. Tmetuchel and Legislature Speaker Sadang Silmai were on the coordinating committee for the project made up of Japanese, Iranian and Palauan representa-

tives, along with Panero Associates. Tmetuchel and Silmai assured that committee of their "active participation and cooperation," their ability to "secure land, reefs, shoals, and deep water areas for port purposes" through the Palau Port Authority, that a "consensus existed in Palau in favor of implementing the concept with the Iranians, Japanese and Americans," and that "they recently petitioned the US for direct commonwealth negotiations and that they expected that this formal and permanent tie to the US would be formalized thereby assuring economic and strategic support and protection of the island group."<sup>9</sup>

The Palau District Legislature, although not authorized to borrow money, illegally guaranteed a 1977 loan of \$22,500 to Toribiong's Special Committee on Palau Port Authority for travel expenses. The loan was secured from the Palau Savings and Loan Association, owned by Senator Tmetuchel. This immediately prompted the attorney general for the Trust Territories to prohibit such practices.

By early 1978, after 2½ years of superport promotion, Tmetuchel, by now chairman of Palau's Political Status Commission, changed his position. He told the UN Trusteeship Council: "The only reason that Palauans were ever interested in a superport was their desire to get off the United States dole." He explained his switch: "We were conscious of the choice that the world was forcing us to make—either destroy our unequalled natural environment or remain dependent on United States welfare. Under those circumstances, I could not choose the latter; I could not ask my people to revert to the jungle."<sup>10</sup> Meanwhile, Japanese interest was waning and promoters announced they were reconsidering plans for a superport in Palau.

The House of Chiefs of the Palau District Legislature adopted a resolution during its April 1978 session opposing renewal of the superport-feasibility-study contract which ex-

<sup>6</sup>Roger W. Gale, *op. cit.*

<sup>7</sup>*Marianas Variety*, *op. cit.*; cited in *Micronesia Support Committee Bulletin*, *op. cit.*, p. 6.

<sup>8</sup>Cited in *Micronesia Support Committee Bulletin*, July 1977, p. 2.

<sup>9</sup>*Marianas Variety*, *op. cit.*; cited in *Micronesia Support Committee Bulletin*, *op. cit.*, p. 4.

<sup>10</sup>Cited in *Honolulu Star Bulletin*, 18 May 1978, p. H-2. Also, *Micronesia Support Committee Bulletin*, May-June 1978, p. 7.



pired April 30th. At the same time, the House of Elected Members urged the Trust Territory High Commissioner to renew the contract. Despite the chiefs' opposition, the Special Committee on Palau Port Authority approved a new contract which was worse than the first in that it did not provide for environmental impact studies, it did not specify technical and environmental standards, it did not outline the Palauans' financial employment gains from the port, and it placed the ultimate decision over construction in the hands of the Japanese. Roman Tmetuchel, as chairman of the Palau District Legislature's political status negotiating team, arranged for introduction of a resolution in the Legislature to dissolve the contract before it was approved by the Japanese government and impose a moratorium on superport feasibility studies.<sup>11</sup>

Although the oil superport is now shelved, it could easily re-emerge as soon as the US military umbrella is established. Nevertheless, continued Japanese capital investment continues, and was early exemplified by purchase of the Palau Continental Hotel in Koror during the early 1980s by Japan Air Lines—now renamed the Nikko-Palau Hotel. Another Japanese businessman suggested building a big tourist hotel which "will be the Las Vegas of the Pacific."

Many are concerned that Japanese capital in Palau is related to the Japan Syndicate, and that to help establish Japanese businesses the syndicate has loaned money to local politicians. According to local people, Palau businessmen tried to introduce a casino to the village of Melekeok on the east coast of Babeldaob—believed to be in alliance with Japanese business.

Whatever the influence of the Japanese connection, and however it is applied, pressure on Palau will grow. The US-Japanese alliance is powerful.

### *b. Instant Bankruptcy: The IPSECO Fiasco.*

Washington started to really put the financial squeeze on Palau in about 1981. President Remeliik's 22 March 1982 memorandum of understanding with Roman Tmetuchel, pertaining to the government employees' salary increase, would be good only if the United States were to provide more money. The September 1981 pay package and the March cost-of-living allowance totaled an additional \$7.8 million. At that time Palau's annual budget was \$16.4 million, with much of that earmarked for capital improvements. Congress approved only \$8.9 million for wages in 1982, and the Interior Department refused to request a supplement. It was recognized that the wage increases could bankrupt Palau or cause massive layoffs. The ramifications of this condition were underscored in the Solomon Report which stated that the power to withhold or withdraw funds "would be enough to compel any Micronesian government to follow the wishes of the High Commissioner in most matters. Withdrawal of funds could certainly be used, for example, to force the resignation of a Chief Executive who might be acting contrary to United States interests."<sup>12</sup>

When Palau was under the Japanese mandate, economic options grew. In 1940 the big island of Babeldaob had a gravel road running from Airai to Aimeliik and Ngatpang. A continuation to Ngaraard was passable by a motorcycle with a sidecar. Farmers were able to farm some of the interior of Babeldaob and send goods to the populated areas. Docks, harbors, communications and electrical supplies were better than under the early US administration. Various foods and raw materials were exported. The capital city of Koror had a paved road lined with trees. According to The Solomon Report, "Per capita Micronesian cash incomes were almost three times as high before the war than they are now and . . . the Microne-

<sup>11</sup>Letter to "Individuals Concerned With Palau" on Natural Resources Defense Council (Washington, DC) letterhead from Gregory Thomas and Faith Campbell, dated 17 April 1979, p. 2.

<sup>12</sup>A Report by the US Government Survey Mission to the Trust Territory of the Pacific Islands, by Anthony M. Solomon, Chairman, 9 October 1963, p. 75.



sians freely used the Japanese-subsidized extensive public facilities."<sup>13</sup>

After the war the US administrators tore out many of the Japanese improvements and allowed the rest to deteriorate. The first American-built road since the beginning of the trusteeship was not completed until 1980 in Koror. There are currently only 16 miles of paved roads. The Capital Improvements Program continues under a budget controlled by Trust Territory headquarters. But aside from the highly visual paving of streets in the capital, which stops a few miles out of town, most of the improvements are designed to support future military bases. A road has again been constructed on Babeldaob which will provide access to the proposed jungle training and storage areas. Many acres of land have been leveled and filled on Babeldaob to extend the existing airport runway from 6,000 feet to 7,200 and build the new terminal.

In addition to capital improvements, just before the first COFA plebiscite the Palauan police received new jeeps and cars from the Trust Territory headquarters. The message was that money is coming through connections with the US, not an independent Palauan government.

In 1983 the London-based International Power Systems Company Ltd. (IPSECO) build a \$32.5 million, 16-megawatt, diesel-fired electrical power plant and fuel storage facility in Palau. That price is twice Palau's yearly budget. President Remeliik signed a preliminary contract in September 1981. An April 1983 report by the US Interior Department's inspector general concluded that Palau could never afford the plant which would cost twice what it should and would provide three times the power needed. Interior also objected to not having competitive bids as required by law, to estimates of income from the plant being grossly inflated, and to unsound management practices.

In spite of public objections by the Interior Department, the US secretly encouraged the IPSECO deal, presumably with the intention of financially strapping Palau and making it more receptive to the COFA's military-bases provisions. While the

Palauan delegation, including Lazarus Salii, was in London during May of 1983 to complete the IPSECO deal, US Ambassador Fred Zeder, under authority of Secretary of State George Shultz, sent a telegram to the American embassy in London. He instructed the embassy to make certain information known to the British government—a note verbale—with the expectation that the British government would pass the information on to the British banks making the IPSECO loan. The note verbale read in part:

The government of the United States and the government of Palau have negotiated a Compact of Free Association which was approved by the people of Palau in a February 13, 1983, plebiscite. After approval by the government of Palau, it will be submitted to the United States Congress for approval. . . . The Compact contains provisions for direct grant assistance to the government of Palau from the government of the United States. . . . There will be provided the amount of \$28 million to be disbursed at the rate of \$2 million per year for 14 years to be used by the government of Palau for energy-related activities. In the second category, there will be available to Palau \$36 million during the first year of the free association relationship for capital needs. The government of Palau will have full authority to determine the application of both categories of funds. The government of the United States would view the application of the operational funds and a reasonable portion of the capital funds to a project for the proposed IPSECO project as being consistent with the intent of the Compact. Similarly, during the remaining period of the trusteeship before the Compact comes into effect, Palau receives from the United States . . . annual funding of which a portion is appropriated for energy-related operations and maintenance. These funds are now being used to operate and maintain Palau's present power-generating units. Were Palau to use these operational funds for the proposed IPSECO project, such use would be considered by the US as consistent with the general purpose for which these funds were provided. . . . Historically, the Congress has appropriated to Palau sums ranging from \$1.5 million to \$2 million per year for this purpose . . . the government of Palau should be able to meet its scheduled debt-service obligations in light of present and future funds granted to the government of Palau by the US government. . . .

<sup>13</sup>Cited in *Oceans*, No. 1, 1979, p. 63.



The US government is concerned with the welfare of the people of Palau and recognizes the importance of adequate electrical power for the islands. Please be assured that the Office of Micronesian Status Negotiations and the Office of the Assistant Secretary of Interior for Territorial and International Affairs fully support the efforts of the government of Palau to improve its present power-generating capability.<sup>14</sup>

Interior Department's inspector general advised President Remeliik again in June not to consummate the loan agreements or the construction contract "because, among other things, a DOI [Department of Interior] review of revenue projections and Palau's other available revenue sources had caused DOI to conclude that Palau could not service the debt."<sup>15</sup>

Nevertheless, President Remeliik signed the final IPSECO papers. With assurance of the note verbale from the State Department, the American agency negotiating Palau's future status, the British banks closed the deal. US Congressman Ron de Lugo pointed out five years later that the "US compact negotiator sent a cable which assured the banks which guaranteed the debt that it could be paid with compact funds that are even now still unappropriated. It is clear that this assurance made the deal possible. . . . These and other actions were taken in spite of the clear warning of Interior Department officials that the facilities would not pay for themselves as their promoters had promised."<sup>16</sup>

As history has revealed, and as the US government should have known, the COFA was not constitutionally approved. Nevertheless, as a strategy for dependence this episode follows the familiar pattern: a country is granted cosmetic autonomy while at the same time being lured into development

schemes which plunge it deeply into debt.<sup>17</sup> Financially beholden countries are more easily politically-controlled. It is worth noting that US Ambassador Zeder was taking an increasingly hard-line stand on the Compact, declaring that Palau must first sort out its constitutional problem. Meanwhile the US went ahead without Palau in the Compact ratification process for the Marshall Islands and the Federated States of Micronesia, thus further isolating and pressuring Palau.

Palau received a loan from a consortium of British banks, led by Morgan Grenfell & Co. Ltd., to pay for the plant. IPSECO earlier negotiated a contract for a similar power plant on Majuro in the Marshall Islands and in 1985 tried to build a third one on Truk in the Federated States of Micronesia. These areas represented the three Micronesian states still negotiating the COFA with the US State Department at that time.

After the IPSECO plant was built, Palauan officials discovered they had no money to build power transmission lines, so the plant sat idle until a loan could be negotiated from Japan.

The special consultant and legal counsel to the Palau National Congress, Martin Wolff, in December 1985 made formal but unsuccessful motions before the Palau Supreme Court and the Palau National Congress for the disbarment and impeachment of Carlos Salii. Wolff alleged that the president's brother acted in a conflict of interest in 1983 by entering into business relationships with IPSECO to act as its lawyer while he was speaker of the House of Delegates.<sup>18</sup>

<sup>14</sup>Department of State Telegram signed by Shultz to American Embassy in London, dated 25 May 1983; published in *Compact of Free Association*, transcript of hearings before the US Senate Energy and Natural Resources (S. Hrg. 100-498), 28 January 1988, pp. 109-110.

<sup>15</sup>"Opinion," *Morgan Guaranty Trust Company of New York, et al v. Republic of Palau*, Case # 86 Civ. 0590 (RWS), Southern District of New York, 5 August 1988, p. 13.

<sup>16</sup>*Congressional Record*, 6 October 1988, p. H9761.

<sup>17</sup>For a treatment of the strategy of dependence see Bruce Knapman, "Aid and the Dependent Development of Pacific Island States," *The Journal of Pacific History*, 1988, pp. 139-152. On page 151 Knapman cites the *Washington Post* (17 July 1978) regarding Micronesia: "US trusteeship in Micronesia has created a society dependent on government jobs and benefits, an island welfare state whose people are so inundated with handouts that they are abandoning even those elemental enterprises—fishing and farming—that they had developed before the Americans came."

<sup>18</sup>"Palau's Evolving Relationship with the United States: Introduction and Chronology of Developments," by Luella S. Christopher, Analyst in Asian and Pacific Affairs of the Foreign Affairs and National Defense Division of the Congressional Research Service, CRS Report No. 88-442F, p. 23, 28 May 1988.



IPSECO declared bankruptcy in 1987 and the British Department of Trade appointed the firm of Cork Gully to liquidate the company. Accountants found records of kickbacks from money paid by the Palauan government to IPSECO for building the plant. In November 1987 it was publicly revealed that \$450,000 in payments was made to three top Palauan officials. Later that figure expanded to over \$1 million and involved more officials. L.E. Salii (Lazarus E. Salii, later President of Palau but then Palau's ambassador to the US for trade and status negotiations) received \$100,000 on 19 July 1983—deposited in a Bank of America account in Kowloon, Hong Kong. Salii claimed the payment was for his travel agency to gather data on a private airline into Palau—a study for British Aerospace that had nothing to do with IPSECO. IPSECO president Gordon Mochrie was also representing British Aerospace but Salii expressed confusion on why the payment had come through IPSECO. The airline was never started.<sup>19</sup>

In hearings before the House Subcommittee on Asian and Pacific Affairs on 17 December 1987, Salii maintained the payment was for legitimate business although there was no written contract on what the money was to be used for. Asked if that is the way people do business in Palau, Salii responded, "It's not uncommon, in my experience, in Palau."<sup>20</sup> Although Salii admitted to receiving only \$100,000 in these hearings, it was revealed in early 1988 that he received a second \$100,000 from IPSECO.<sup>21</sup> Ron de Lugo, chairman of that subcommittee, later said:

\$200,000 . . . was paid to [Salii] who was a key figure in arranging the deal while he was Palau's Compact and trade negotiator. He obtained the pledge from Ambassador Zeder to the guarantor banks that still unauthorized compact funds could be used to pay for the facilities. He did this after meeting with the banks that knew the facilities would not pay for themselves. He did this

without telling Palau's Congress that they had been misled by the promoters of the facilities into believing that they would be self-financing.<sup>22</sup>

The audit also showed that C. Salii (Carlos Salii, the brother of Lazarus Salii and then a pivotal influence in the power plant deal as speaker of the House of Delegates) received \$100,000 on 18 July 1983, another \$75,000 in March 1984, and a final \$75,000 in November 1984. All of this was deposited in a Hong Kong and Shanghai Banking Corp. savings account in Kowloon. Carlos claimed he had been retained as an attorney by IPSECO but refused to tell what he did.<sup>23</sup> Carlos Salii was expelled from the House of Delegates in May 1988 because of a "serious ethical breach" in connection with the IPSECO contract. The House resolution labeled it as "unethical and unbecoming of a public official of the Palau government . . . when he enriches himself financially to the amount of a quarter of a million dollars at the expense of the general public and government of Palau."<sup>24</sup> That resolution was later nullified by the Palauan Supreme Court.

Finally, the records showed that Y.M. Gibbons (Yutaka M. Gibbons, High Chief Ibedul of Palau) received \$100,000 as a political contribution from IPSECO. Asked why IPSECO was interested in his political cause, the Ibedul said there were several reasons but he couldn't remember them all because it had been such a long time.<sup>25</sup> In early 1983 the Ibedul had filed a lawsuit to stop the IPSECO plant, saying it was illegally contracted and procured by bribery. He was represented by American lawyer Patrick Smith. Smith's house was fire-bombed after the investigation of the IPSECO deal, and soon after the filing of the suit in April. He and his wife narrowly escaped death and left Palau immediately. The Ibedul later withdrew the suit. A US District Court document referred to a suggestion that "the Ibedul's position was to some degree re-

<sup>19</sup>San Jose [CA] Mercury News, 29 November 1987, p. 28A.

<sup>20</sup>San Jose [CA] Mercury News, 9 January 1988, p. 14A.

<sup>21</sup>San Jose [CA] Mercury News, 2 April 1988, p. 14A.

<sup>22</sup>Congressional Record, 6 October 1988, p. H9761.

<sup>23</sup>San Jose [CA] Mercury News, 29 November 1987, p. 28A.

<sup>24</sup>Cited in San Jose [CA] Mercury News, 1 June 1988, p. 3A.

<sup>25</sup>San Jose [CA] Mercury News, 29 November 1987, p. 28A.



lated to a demand for payments in exchange for permission to go forward with the project on Koror. The plant was subsequently constructed on Babeldaob, not Koror."<sup>26</sup>

Other IPSECO payments revealed early in 1988 were to Polycarp Basilius, chairman of Palau's national development bank (\$100,000 on 18 July 1983 and \$75,000 on 9 March 1984), and Senator Hokkons Baules, an ally of Salii (\$50,000 on 18 July 1983 plus another \$50,000 at another time).<sup>27</sup> Another \$200,000 was paid on 12 August 1983 by IPSECO, out of money received for the Palau power plant, to President Amata Kabua of the Marshall Islands. This was apparently in connection with a land deal on Majuro for a similar power plant IPSECO built in the Marshalls.<sup>28</sup> According to Congressman de Lugo: "There are also hundreds of thousands of dollars of unidentified payments."<sup>29</sup>

IPSECO bankruptcy books also reveal a revolving door for American officials in Micronesia. Within a month after John Armstrong left his job as attorney for the US Office of Micronesia Status Negotiations, his Washington, DC, firm was retained by IPSECO and over the ensuing sixteen months earned \$135,000 in fees.<sup>30</sup> Daniel High served as attorney general and then high commissioner for Micronesia between 1976 and 1983. He was later hired as IPSECO's representative in Hawaii and given \$50,000 to renovate the company's penthouse Honolulu office.<sup>31</sup> Peter Coleman, a former governor of American Samoa and Trust Territory High Commissioner of Micronesia, was appointed to the IPSECO board of directors.<sup>32</sup>

<sup>26</sup>"Opinion," *Morgan Guaranty Trust Company of New York et al v. Republic of Palau*, *op. cit.*, p. 13.

<sup>27</sup>*San Jose [CA] Mercury News*, 2 April 1988, *op. cit.*, p. 14A. Also see *Pacific Islands Monthly*, April/May 1989, p. 10.

<sup>28</sup>*San Jose [CA] Mercury News*, 2 April 1988, *op. cit.*, p. 14A and 6 April 1988, p. 6A.

<sup>29</sup>*Congressional Record*, *op. cit.*, p. H9761.

<sup>30</sup>Jack Anderson and Dale Van Atta, "Revolving Door in Micronesia," *The Washington Post*, 19 June 1988, p. C7.

<sup>31</sup>*Ibid.*

<sup>32</sup>*Ibid.*

Also, according to IPSECO bankruptcy records, the company paid the round-trip plane fare for Fred Zeder between London and Scotland to attend the 1984 British Open Golf Tournament. Zeder denies that IPSECO footed the bill for his and his wife's expenses. With business interests in Hawaii, Zeder was US Ambassador to Micronesia from 1982 to 1987 and headed the American team in status negotiations.<sup>33</sup> He quit that job in 1987 to raise money for George Bush's presidential campaign. Bush in 1989 picked Zeder as president of the Overseas Private Investment Corporation, a government agency established to help American businesses and investors obtain safe investments free from political risks in developing countries. His nomination was confirmed by the US Senate on 21 July 1989.

There are rumors and allegations of more apparent conflicts of interest of this type, many of which seem well-founded. Americans using official positions to enhance their personal finances appears to be a popular practice.

In the spring of 1985, Palau defaulted on its first power plant-loan payment. A year later, Majuro also failed to meet its first payment. So far Palau has not made a single payment on the loan and was being sued by the banks. A trial was originally scheduled to commence 7 December 1987 in Federal District Court of New York City. The litigation showed that President Salii knew at the time the deal was made that the plant wouldn't be self-financing, as claimed. This was especially embarrassing for Salii in light of his involvement and his acceptance of \$200,000 in suspicious payments. On 8 August 1988 the court ruled that Palau must pay more than \$44 million in principal and interest which had accumulated up until then.<sup>34</sup>

The IPSECO plant provides several fold the power needed in Palau for years to come. Because the Ibedul would not allow the plant in Koror, it is in Aimeliik State on Babeldaob, just north of Koror. That is also near proposed military land-use options and would be convenient to supply needed power

<sup>33</sup>*Ibid.*

<sup>34</sup>"Opinion," *Morgan Guaranty Trust Company of New York et al v. Republic of Palau*, *op. cit.*, p. 13.



for future military bases. Regardless of the plant's location, however, its capacity was undoubtedly a motivating factor for the US to encourage Palau into the IPSECO project.

### *c. The Selling of Palau: More Dubious Dealings.*

On 28 August 1986, in Honolulu, Palauan President Lazarus Salii and Palau National Development Bank Chairman Polycarp Basilius signed documents that put in place \$398,840,000 in municipal bonds. They were to be issued as five series of industrial development bonds by the Palau National Development Bank. Some of the projects considered for Palau were housing units, airports, a Palauan airline, telephone and television systems, quarrying/rock crushing/dredging, a national seaport, a government office complex, construction of a capital city on Babeldaob, electrical power distribution, health/retirement/tourism projects, sewer and water systems, and government offices overseas.

Bond financing was to be arranged with the help of Matthews and Wright, a Wall Street underwriting firm. Representing the firm were Arthur Abba Goldberg (executive vice president and a principal stockholder) and Frederick L. Mann (a consultant to the firm). The deal was cancelled the following December 10 when Goldberg and Mann were indicted by a Guam grand jury with 52 criminal counts—five of violating federal racketeering laws, two conspiracy counts, three of bribery, 26 of mail fraud and 16 of wire fraud.

The indictments were mainly for a \$300 million bond deal in Guam during 1975, for which the former Guam governor was allegedly paid \$70,000, but also for the aborted Palau enterprise and an \$80 million housing bond for Saipan in 1974 which was also cancelled. Investigation extended to at least 20 Matthews and Wright deals to float inflated municipal bond issues amounting to about \$2 billion. Outside of Guam, Palau and Saipan, the other schemes took place in poor and small municipalities in the US, including a \$125 million bond deal involving the Sac and Fox Indian tribes in Oklahoma.

Goldberg and Mann were alleged to have bribed small local political leaders to float the bond issues. The development projects were never built but promoters received huge profits by investing the revenues from these tax-exempt municipal bonds in high-interest investment while purportedly waiting for the projects to commence. Thus the underwriters reaped high profits by defrauding some of the poorest municipalities in America, even though the projects were never started. Only Goldberg and Mann were alleged to have received the fees produced.

The relevant question for Palau is who in that country paved the way for this fraudulent arrangement, and what bribery money did they receive? Since they signed the deal in Honolulu, President Salii and Bank Chairman Basilius are open to suspicion.

Salii signed another agreement at Palau's Pacific Resort Hotel on 23 October 1987, with CIC International Ltd. (an American company) and HOWA Company Limited of Japan. The agreement was to construct a \$70 million Palau International Airport in the states of Ngatpang, Ngchesar, and Ngaremlengui in central Babeldaob. Salii said "today we are witnessing the signing of an agreement in which our partners agreed to construct our international airport at no cost to the people of Palau."<sup>35</sup>

At the same time an agreement was also signed with Japan Airport Consultants, Inc., giving it a franchise to design the airport. The consulting company promised to help Palau get a non-stop air route to Japan. Touted as the largest single project in Palau which will accommodate jumbo jets and meet international airport standards, the airport is to be completed over a three-year period. CIC is to manage the facility for 25 years while at the same time training local people to take over the entire operation.

That sounds pretty good for Palau but a closer look at the agreement reveals otherwise. This project hinges on considerable tourist traffic and it is written into the agreement that "the

<sup>35</sup>*The Palau Gazette*, published weekly by the Executive Branch, Republic of Palau, 26 October 1987.



parties must coordinate or establish by their direct involvement adequate hotel, communication facilities and recreational facilities to attract and accommodate tourist traffic."<sup>36</sup> In line with that, the agreement also stipulates that the Palauan Government "will provide and be responsible for the acquisition of all land for the project. Said land shall be free of liens or legal impediments which may arise during and after implementation. Additionally, [Palau] shall be responsible for providing right-of-ways, passages, quarry areas, dumping sites, access roads, water, and related services necessary for the implementation of the project."<sup>37</sup>

There is more to the agreement. CIC retains sole right, albeit with the approval of Palau and HOWA, to select hotel owners and operators as well as concessionaires for the airport and tourism implementation. However, and here is a key phrase: "CIC and HOWA shall retain the right to itself act as an owner or operator of the projected hotels and/or concessions."<sup>38</sup> CIC is to be manager of the airport and all related facilities; and receive all fees from them "until such time, if ever, that CIC recoups its investment for the project plus a sum equivalent to ten percent (10%) of any profits derived up to the point of repayment . . ." This includes all grants, loans, donations or any other source of income related to the project that Palau might receive.<sup>39</sup>

From the point that investment is recouped "if ever" CIC will then have the right to manage the airport and related facilities during the next 25 years for 41 percent of the profits. If, however, CIC or HOWA should themselves obtain concessions, they shall be governed by the concession contract. With regard to the tourist facilities, any investment in such by CIC or HOWA entitles them to retain ownership in whole or in

<sup>36</sup>Agreement between the National Government of the Republic of Palau, CIC International Ltd. of the USA and Howa Company Limited of Japan, dated 23 October 1987, Article 5.

<sup>37</sup>*Ibid.*, Article 7.

<sup>38</sup>*Ibid.*, Article 6.

<sup>39</sup>*Ibid.*, Article 11.

part. Furthermore, those hotel chains and tourist concessions are to be provided for without a fee.

What this all adds up to is that an American-Japanese joint venture is being provided with free land and access to the entire Palauan Islands to run a profitable tourist enterprise. Furthermore, all materials for all construction are to enter Palau duty-free, and personnel imported into Palau to run the airport or engage in tourist concessions are to be granted all amenities reasonably necessary. CIC can also engage in joint ventures with other entities in operating the airport or tourist accommodations. Of course there are some ostensible benefits for the Palauan people. Twenty percent of construction work will go to Palauan contractors—if there are any qualified to build airfields and hotels. Also, employment preference will be given to qualified Palauan citizens which will constitute no less than 12 percent of the work force, if they are available. Those may be some big "ifs."

One other aspect of the airport is that it is strategically centered in the area in which jungle warfare training and nuclear/conventional storage is desired. Fifty-five miles of road planned to connect the airport with other areas of Palau could also serve military needs.

Such things as environmental impact statements are nonexistent in Palau, which makes investment endeavors a tender morsel for entrepreneurs. Ramifications from the airport agreement will spread in all directions. Do the Palauan people understand the real cost of this airport purportedly being built for them? The way of life of the people on Babeldaob, as well as their environment, will be completely destroyed. Clan ownership of land will become a moot point as the Palauans actually do become a minority in their own land. Palau will become the Bahama of the Pacific. That would undoubtedly please the Koror elite—the business people, the high government officials, and others who have become estranged from the land, the water, and the ocean—but it would devastate the village communities.

The Palau House of Delegates, with the Senate concurring, passed a resolution in July 1989 establishing a Special Committee on the new airport. This five-member committee was



given all the powers and authorities of any standing committee in the Palau National Congress (such as power to subpoena witnesses, documents, and other matter), and was to be granted any assistance it may request from the legal counsel and staff of the Palau National Congress. It was charged with collecting any and all information relating to the construction of the proposed airport, and with assessing its advisability in terms of the comprehensive economic and social development plan for Palau.<sup>40</sup>

There are other suspicious events which have taken place in Palau. One is that the Palauan Government had 10,000 Palauan passports printed in the US without money being appropriated for such. Why were a private Palauan citizen and an American attorney working for President Salii found by customs officials in Guam to be carrying "what have variously been described as blank Republic of Palau passports or diplomatic identification documents"?<sup>41</sup>

Other serious allegations under investigation are drug trafficking, counterfeit US money, misappropriation of federal and local funds, and high-level corruption.<sup>42</sup> Some 2.7 per cent of Palau's citizens are addicts—twelve times the US average. Heroin first appeared in Palau in 1984 and marijuana has been described as Palau's largest cash crop. The UN World Health Organization noted that it "is understandable that Palau is on the way to becoming a center for illicit traffic in narcotics considering its geographic location and other features, such as clandestine shipping activities."<sup>43</sup> Congressman Lewis of Florida, chairman of the House Foreign Affairs Committee's Task Force on International Narcotics Control, further pointed out that "the Compact permits Micronesians to enter the United

States from as nearby as Guam . . . without regard to immigration requirements . . . This could make it difficult to keep track of possible money launderers or smugglers."<sup>44</sup>

The World Health Organization and the US Drug Enforcement Agency reported high rates of drug trafficking and other abuses in Palau early in 1988. They also disclosed that an investigation had turned up allegations that senior Palauan officials were involved in drug trafficking. At that time the Reagan and Salii administrations strongly disputed reports of serious drug abuse and particularly challenged the allegations of official involvement. A year later with both Palau and the US under different administrations, the long period of inaction was broken. Palauan officials and police cooperated with several US agencies in a large drug bust during July 1989, resulting in a dozen arrests for heroin and cocaine trafficking. Among those arrested were two former allies of President Salii who were members of the Palau National Congress.<sup>45</sup>

Ngchesar State Governor Moses Uludong claimed in mid-1987 that of the \$1,000 cash, rather than check, his state received in an envelope from the Palauan national government to campaign for the COFA, four \$100 bills were counterfeit. Uludong questioned "why public funds in the amount of \$16,000 in check should be cashed, kept in the Minister's [of State] office for some days and disbursed in [cash] envelopes to each state."<sup>46</sup> He pointed out that this was highly irregular and contrary to government financial procedures. In requesting FBI help to track down counterfeiters, Palau Senate President Joshua Koshiba said: "We have reason to suspect that perhaps officials in high positions of the government are involved in this crime . . . which makes it very difficult to track down culprits and bring them to prosecution."<sup>47</sup> Koshiba alleged that the fake money, usually in \$100 bills, is printed in

<sup>40</sup>House Joint Resolution 3-20-3, Third Palau National Congress, 20 July 1989.

<sup>41</sup>Letter written under the Palauan Senate letterhead to Harold Bloom, Office of the Inspector General, US Interior Department dated 17 February 1988 and signed by Senate President Joshua Koshiba.

<sup>42</sup>Letter dated 2 March 1988, on Congressional Committee letterhead, from Congressmen Ron de Lugo and Morris K. Udall to Congressman Dante Fascell.

<sup>43</sup>Cited in *Congressional Record*, 25 July 1985, p. H6341.

<sup>44</sup>*Ibid.*

<sup>45</sup>News Release from US House of Representatives Committee on Interior and Insular Affairs, dated 11 July 1989.

<sup>46</sup>Letter dated 20 June 1987 on Ngchesar State letterhead from Governor Moses Uludong to the editor of the *Pacific Daily News* in Guam.

<sup>47</sup>Cited in *Pacific Daily News*, 17 April 1987.



the Philippines and smuggled into Palau. He also said that Attorney General Russell E. Weller's maid was suspected at one time and that, "Perhaps such involvement by the attorney general's employee has clouded his judgment and influenced him from actively pursuing the investigation of this matter."<sup>48</sup> Over a three-week period the attorney general claimed to have confiscated at least 30 fake \$100 bills.

A US General Accounting Office investigation found that the Palau attorney general's office has initiated no investigation into allegations of misuse of government funds and improper conduct of government officials. The GAO found numerous areas in need of investigation, some of which are:

- \* A former attorney general was paid by companies to prepare their applications for government business permits while serving as attorney general. He used government resources to do so.
- \* In October 1987 President Salii contracted with a company formed by his lawyer and an assistant attorney general, granting the company exclusive rights to produce and sell coins and medals for Palau. This contract was approved by the assistant attorney general who was co-founder of the company.
- \* Salii also awarded these same officials a non-competitive contract to plan and lease back to the government a new capital for Palau. A government commission had already planned a new capital and the \$3 million for it. This contract was also approved by the assistant attorney general who was co-founder of the company.
- \* Palauan officials and the US Secret Service have reported Philippine-produced counterfeit US currency in Palau. A US Secret Service investigator was told it is a local matter which has been taken care of.
- \* A Palauan governor's associate, considered a COFA and Salii opponent, was framed in substituting counterfeit for

valid currency. The associate was later stabbed by Salii's public relations aide.

- \* When Senate President Joshua Koshiha requested Trust Territory officials to investigate counterfeit money circulation, among others by the Filipino maid of the attorney general of Palau, the matter was referred to the attorney general of Palau by the US high commissioner's office.
- \* Four Palauan states have contracted with Japanese firms for road and water projects, and a fifth has entered into a similar contract, despite the fact that states are financed mainly by the national government and are unable to pay for the projects.
- \* In January 1986 President Salii signed a conditional guarantee for an \$8 million debt with a Japanese contractor for a project already completed. The contractor said he was waiting for the COFA to take effect to seek payment.
- \* Between April and August 1986 Salii signed conditional guarantees for three other projects totaling about \$18 million.
- \* In March 1987 Salii cut government red tape to award a foreign permit to Gary Camm for an air charter business. Palauan officials ordered rockets and other weapons from Camm. He is suspected by the US State Department of being a drug and arms trafficker. According to a representative of the Australian government, less than a month later Camm was arrested in the Philippines for drug and arms smuggling and, under police interrogation, admitted to being a "hit man out on a mission to kill a group of foreign nationals." Camm was deported to Hong Kong but a warrant for his arrest is outstanding in the Philippines.
- \* A California company which obtained rights to mine in Palau was told by President Salii's counsel that the required foreign investor's license could be obtained only by giving part ownership to another company without compensation. The other company wrote the California firm

<sup>48</sup>*Ibid.*



that the "president's office has advised us that you must negotiate a transfer of your interests . . . Sanctions against your company have been delayed . . . pending negotiations with our company." The message indicated that the president's office was to receive a copy.<sup>49</sup>

These were just some of the matters of concern held by GAO investigators regarding Palau.

Paul F. James was an assistant to Palau's Attorney General Weller during the first half of 1987. In his written testimony to support January 1988 hearings before the US Senate Committee on Energy and Natural Resources (mysteriously not included in the transcript furnished to the public), James itemized four lawsuits filed against President Salii. The first, known as the "Contracts Suit," alleged that Salii obligated more than \$26,926,199 of national funds by illegally signing agreements with foreign contractors without legislative approval or competitive bidding. A second alleged that he used over \$50,000 of government funds to remodel his own house and that Attorney General Weller refused to take action on the matter. A third lawsuit, known as the "Bond Deal," alleged that the \$398,840,000 Matthews & Wright bond agreement was illegal because the Palau National Development Bank was not authorized to issue more than \$100,000,000 in bonds.<sup>50</sup>

James testified that he was assigned the fourth lawsuit against Salii, known as the "Over-expenditure Suit," which charged that, in violation of Palauan law, government officials were overspending their allotted funds without legislative authorization. James worked closely with Palau's Auditor's Office and National Treasury to undertake an extensive investigation of Palau's executive, judicial and legislative branches. He uncovered a deficit of \$4,679,307 for fiscal year 1986.

<sup>49</sup>All of the concerns listed are documented in *Congressional Record—House*, 6 October 1988, pp. H9768 and H9769.

<sup>50</sup>"Statement of Paul F. James, Former Assistant Attorney General, Republic of Palau," provided to the Senate Committee on Energy and Natural Resources to support its hearing on 28 January 1988. (Not published in transcript of hearings.)

When he informed Attorney General Weller, James was encouraged to stall as long as possible before filing the information. Following that, Weller told Guam's Pacific Daily News that it was unclear whether the Palauan government was engaged in deficit spending or not.<sup>51</sup>

During the course of his investigation, James also made inquiries regarding the other three lawsuits. With respect to the "Contracts Suit," he was told that each of the contracts was grossly disproportionate to the work involved. In addition, money amounting to about ten percent of each contract price was passed under the table to pay certain individuals to assure their cooperation.<sup>52</sup>

James was informed that money was also passed under the table with regard to the "Bond Deal," and that the president of Palau's National Development Bank was ordered to approve the deal with Matthews and Wright or be fired. He was also told that Matthews and Wright would gain as much as \$8 million over and above what it should reasonably have earned as profit. When James looked into where this under-the-table money was deposited, he found that a Palauan government employee could open a Swiss Bank account in a branch near Hong Kong, and it would never be traced by the US Internal Revenue Service.<sup>53</sup>

Becoming concerned as to the depth of such practices, James looked into other public-works-type projects. He found several contracts which violated Palau's competitive bidding laws which had been approved by the Office of the Attorney General. Asking how this happened, he was told that the attorney general's office approves only the form of the contract, not whether the contract is legal or illegal.

James then made inquiries into the IPSECO power plant contract and again found that money had passed under the table to ensure its being exempt from competitive bidding. He found that the fair cost of the power plant was between \$16

<sup>51</sup>*Ibid.*

<sup>52</sup>*Ibid.*

<sup>53</sup>*Ibid.*



million and \$20 million, not the \$32.5 million which was actually paid.<sup>54</sup>

Later James discovered that a person from the public auditor's office was working with the attorney general's office to determine whether certain anti-COFA legislators and citizens were delinquent in their taxes. Then James was assigned to begin a lawsuit on behalf of the Palauan government against Roman Tmetuchel and Francis Toribiong. In the latter's case, James was told the suit was retaliation for Toribiong's having initiated the "Contracts Suit" against the government.<sup>55</sup>

Toward the end of his tour of duty in Palau, James was assigned to draft documents for competitive bidding on 22 miles of road on Babeldaob. He said that while he was working on the project, "it became apparent to me that the bidding was a sham as I was told who would be awarded the contract. Once again, I was told that money had been paid under the table in order to secure the award of the contract." James provided copies of the bidding documents to US Trust Territory officials, who told President Salii to call off the bidding but he refused. Salii chastised James on 5 June 1987, ordering him to never again speak to a US official. James left Palau four days later.<sup>56</sup> Attorney General Weller also resigned in mid-June and was succeeded by his assistant, Philip Isaac. Isaac also resigned in early 1989 after a newly-elected administration pardoned the younger brother of High Chief Gibbons, whom Isaac had prosecuted for possession of a firearm, which is illegal in Palau.

Senator Joshua Koshiba in a three-page letter to President Salii in November 1987 expressed many concerns regarding two contracts for road and airport building on Babeldaob. He pointed out that according to the COFA, the US was to be the contracting party for roads, not Palau, and that there had been no authorization or certification of funds by the Palau National Congress. Koshiba also expressed curiosity about the bidding process for road construction. Regarding the airport, Koshiba

questioned how the president would obtain land for the project, and how the constitutional prohibition against the Palauan government taking property for the benefit of a foreign entity would be accommodated.

Koshiba closed his letter with some pointed demands for answers. He wrote: "The entry into these two contracts without legislative authorization or absent any legislative policy raises even more profound and fundamental issues about the very structure of our government and the separation of powers." He continued: "I have very grave concerns that the road contract and, based on what little information I have at this point, the airport contract in particular, may represent a serious overstepping of the boundary of executive authority, and an unacceptable infringement on legislative powers."<sup>57</sup>

The situation in Palau was aptly summed up in an April 1988 letter from Lawyer David G. Richenthal to the Department of Interior:

I can only stress to you—as it was brought home to me in my most recent trip to Palau—that the corruption, criminal activity and conflicts of interest run so deep in the executive branch of the Palauan government that self-policing is simply not possible at this time. In effect, there is no sheriff in town. Your view that the legislative branch should conduct investigations does not address the problem because the legislature does not have prosecutorial power and only the real threat of incarceration will be a powerful enough ingredient to counter the forces of greed and illegality that now prevail.<sup>58</sup>

Government corruption was one focus of a GAO investigation in December 1987. Until the COFA is implemented, the US Interior Department has full responsibility for law en-

<sup>57</sup>Letter dated 6 November 1987 on Palau National Congress letterhead from Joshua Koshiba, President of the Senate, to President Lazarus E. Salii, with a wide distribution to high US and Palauan officials.

<sup>58</sup>Letter dated 20 April 1988 from David G. Richenthal to Mark S. Hayward, Deputy Assistant Secretary of Interior for Territorial and International Affairs; with wide distribution to high ranking officials in the US executive and legislative branches.

<sup>54</sup>*Ibid.*

<sup>55</sup>*Ibid.*

<sup>56</sup>*Ibid.*



forcement in Palau. In four separate letters—9 December 1987, 1 March 1988, 24 March 1988 and 31 March 1988—the House Committee on Interior and Insular Affairs has called these issues to the attention of Interior Secretary Donald P. Hodel, in the Reagan administration, and urged that he initiate a full investigation—pointing out that he has a moral as well as a legal obligation to do so. Specific information was furnished but Hodel took no action.

## CHAPTER SIX TERRORISM, TARNISH AND TRAGEDY: PALAU UNDER SALII

*It also makes good sense at the time of the plebiscite to have some inducements left to offer as a reward for a favorable vote.*

—The Solomon Report, p. 51

Having examined the economic adventures experienced by Palau, we can now return to events following the assassination of President Remeliik and the election of Lazarus Salii to take his place. Planning for another COFA plebiscite began shortly after Salii's inauguration. But in the meantime the proposed COFA had been changed to provide that the US would not use, test or store nuclear weapons on Palau. It did, however, retain the US right to operate nuclear-powered and nuclear-weapons-capable ships and aircraft within Palau jurisdiction without having to confirm or deny the presence or absence of such weapons.

### *a. COFA Plebiscites Under Salii.*

The third COFA plebiscite was held on 21 February 1986, the eve of the trial for the accused assassins. Seventy-two percent of those voting endorsed the COFA but it was still lacking the three-fourths majority needed to override the nuclear-free Constitution. Referring to the US assurance that it would not use, test, store or dispose of nuclear weapons on Palau, at least under peaceful conditions, President Salii told the US Congress on 8 May 1986: "The issue of nuclear weapons has been fairly resolved . . . At the same time, United States nuclear-propelled or powered vessels or aircraft are allowed entry into Palau territorial jurisdiction and Palau agrees not to require the United States to confirm or to deny the presence of nuclear weapons on board said vessels or air-



craft."<sup>1</sup> On 10 July 1986, Judge Gibson of the Trial Division of the Palau Supreme Court held that the COFA violates Palau's Constitution and the vote was not high enough for approval. This ruling was unanimously upheld by the Appellate Division in September.

A fourth COFA plebiscite took place on 2 December 1986 with 66 percent of the turnout favoring free association. This was the same COFA as the previous vote. President Salii led pro-COFA factions in an all-out effort. People holding government jobs were ordered to campaign for the COFA and anyone taking a stand against it was to be reported, according to official correspondence from the Ministry of Social Services, which concluded: "It is no longer tolerable for civil service employees to oppose the system while remaining in it and enjoying all benefits due dedicated employees."<sup>2</sup> Students and teachers were dismissed from school during the week preceding the plebiscite to campaign for the COFA. A memorandum from the Bureau of Education requested all high school students to wear their uniforms at the government rally and ordered that: "All public school teachers shall go on administrative leave and campaign for the Compact of Free Association with the United States."<sup>3</sup> A more conciliatory letter from the Minister of State tried to smooth ruffled feathers but was still strongly pro-COFA.<sup>4</sup>

After this fourth plebiscite failed to approve the COFA, Salii imposed regulations that reduced most government employees to a 32-hour work week. Government operations were curtailed, including supplying electricity, water, and meals to patients in the hospital. Those actions had a paralyz-

<sup>1</sup>*The Compact of Free Association Between the United States and Palau*, transcript of hearings and markup before the House Foreign Affairs Committee, 8 May 1986, p. 7.

<sup>2</sup>Memorandum from Minister of Social Services to all directors and acting directors, dated 17 November 1986.

<sup>3</sup>Memorandum from Assistant Director of Education to all public school principals, dated 21 November 1986.

<sup>4</sup>Letter from Election Commissioner/Minister of State to all government employees, dated 28 November 1986.

ing effect on the economy, travel and communications, and they demoralized social attitudes. But Salii claimed such reductions were necessary because the COFA was not approved to provide more money. That was untrue because Palau had been granted adequate funding through 30 September 1987, the end of the fiscal year. One problem was that funds for the plebiscites on the COFA—about \$250,000 each, mostly for pro-COFA campaigning—were taken out of Palau's operating budget.

Salii's credibility plunged after the December 1986 plebiscite, and his position was weakened further by his brother, Carlos Salii, being head of the company that runs the new IPSECO power plant. That firm hired a full crew of imported Filipino workers, and the 30 Palauans working at the old electric plant found themselves without a job. Seven lawsuits were filed against Salii and his administration for personal misuse of funds and other charges. Many who supported him for president were now calling for his impeachment.

Legitimate requests to renegotiate the COFA were refused by the US. Since November 1986 it had been the adamant US position that no renegotiation was possible because the US Congress had approved the COFA. That approval in principle, however, still required further legislation after the COFA had been approved by Palau, and before it could be implemented.

A fifth plebiscite on the same COFA of the two previous elections was scheduled for 23 June 1987, but the Palau Supreme Court postponed the election because of improper absentee ballot regulations which could result in illegal voting. During court proceedings it was discovered that 2,000 ballots, of the 18,000 printed (for only some 10,900 registered voters) were unaccounted for, and that the election commission had withheld information about the existence and location of the missing ballots. There has never been a means, such as numbering, to account for all ballots printed. Only a few fraudulent ballots would have a great effect on the election considering the small number of voters in Palau.



Ironically, the election was rescheduled for 30 June 1987—the second anniversary of President Remeliik's assassination—with nothing being done about the inconsistencies. Palauans were told the economic crisis would be immediately remedied with passage of the COFA. Salii promised payment of withheld salaries within 30 days of the COFA being certified. In the words of Surangel Whipps, Palauan businessman and congressman whose son was burned when his house was firebombed because he opposed the COFA, "We are just repeating, everything is the same as in December, except that the economic coercion has escalated."<sup>5</sup> Nevertheless, an insufficient 67 percent voted in favor of the COFA. It was defeated again.

On the day of the referendum, without even waiting for the polls to close, President Salii promulgated emergency regulations for the furlough (layoff) of government employees. He cited lack of funds as the justification and presented approval of the COFA as the only remedy. Three days after the election, he laid off 900 of the 1,331 government employees (65 percent of Palau's paid workers are employed by the government) until the next fiscal year beginning October 1. Salii also shut down schools and impounded government funds, including those to the Palau National Congress, the judiciary, state funds, and social programs. This brought an already staggering economy to a full-blown crisis. Although Palau received more in fiscal year 1987 than in the previous year, Salii claimed a \$1.6 million shortfall. The laid-off workers' actions and anger were orchestrated by a furlough committee led by special presidential assistant Joel Toribiong. They demonstrated daily outside the Palau National Congress building and threatened violence if their situation was not remedied by July 17. Weapons and explosives were displayed to add coercion. Pro-Constitution legislators were physically prevented from entering the Legislature and the president did not try to re-establish order. The police, although present, did not inter-

<sup>5</sup>Cited in "Report to the United Nations, the Trusteeship Council," by Else Hammerich, member of European Parliament and member of International, Independent Observers' Team, 14 December 1987, p. 6.

vene. Demonstrators sent a 10-day ultimatum to Ibedul Gibbons, House Speaker Olikong, and other members of the Legislature, which read:

We the undersigned, representatives of the 900 furloughed government workers, hereby demand from you and members of the "NO" faction as follows:

1. We are willing to sacrifice our lives and the lives of our families to handing you and your colleagues our life savings and other funds which may be available for our next pay day to be expended and utilized to go outside the Republic of Palau to obtain and secure the funds necessary to financially support and reinstate us between now and September 1987.
2. We are ready to request President Salii to give you the necessary authority to negotiate on behalf of the Republic of Palau with the United States Government and its Agencies and US Congress to secure funds that you said are available.
3. We have written a similar letter to the seventeen (17) members of the Olbiil Era Kelulau making a similar offer. A copy of said letter is attached hereto for your information.
4. We firmly believe that the only available financial resources for necessary support of our lives and the lives of our families is through the Compact of Free Association funding. However, since you and your faction contributed to the defeat of the Compact and its available funding, we are left with no other alternative but to look to you, as a last resort, for salvation.
5. You must take necessary steps to implement the mandate of the letter by no later than July 17, 1987, 4:30 pm.
6. Should you fail to timely comply with the letter we will take appropriate action against you and your political associates.<sup>6</sup>

<sup>6</sup>Letter to Ibedul Yutaka Gibbons from representatives of the 900 furloughed government employees, dated 7 July 1987.



Tire slashing, firebombings, and gunshots continued during mid-July, along with demonstrations and threats of more violence. Amid cries of an economic crisis, police funding was increased and some of the still-working government officials were issued firearms. Rumors abounded of illicit weapons and of members of John Singlaub's Taiwan-based World Anti-Communist League infiltrating Palau. Dr. John Whitehall, an Australian pediatrician who is a close associate of Singlaub and vice president of the US-based Christian Anti-Communist Crusade, came to Palau in early 1987 to propagate fear of the Soviets and stimulate pro-Pentagon attitudes. Visitors to Palau report that the crowd demonstrating outside the Palau National Congress were, indeed, led by the president's special assistant, Joel Toribiong, and a member of the presidential press staff. The demonstrators were wearing red headbands, a symbol that they were ready to fight anyone challenging their stand.

Against this backdrop, Washington lawyer Arnold Leibowitz arrived in Palau to advise President Salii to hold another referendum on August 4 for a constitutional amendment. This amendment would specify that only a simple majority was needed to approve the COFA, not 75 percent. Likewise, only a simple majority was, according to Leibowitz, needed to pass this constitutional amendment. Leibowitz advised Salii to follow that with an August 21 plebiscite on the COFA.

With only 11 members present and under siege by a threatening mob camped outside, the House of Delegates on July 19 voted 9-2 in favor of a constitutional-amendment referendum (far short of three-quarters of the members, as specified in the Constitution). Laid-off government employees had removed legislators from their homes and brought them to the Palau National Congress in an attempt to form a quorum, and then intimidated those legislators to vote for the amendment. This paved the way toward the popular vote on August 4 in which the amendment passed by 73 percent. There were no UN observers and there was no political education effort. Voter turnout dropped because people feared for their lives and did not want to vote against their nuclear-free Constitution. The pertinent part of the amendment, as passed, read:

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; . . .

The subsequent and sixth plebiscite on August 21 favored the COFA by a 73-percent majority. This was not enough to override the nuclear-free clause of the Constitution but was sufficient in light of the dubious amendment. Again, the higher vote in favor was attributed to a low voter turnout. International law professor Roger S. Clark commented:

In a climate where those in power are conniving at assaults on its ramparts, the rule of law is a fragile fortress indeed. We have witnessed this year in Palau a referendum which purported by a simple majority vote in a referendum to amend the Palau Constitution so as to remove the 75 percent majority requirement of its nuclear-free provision, in so far as it affects approval of the proposed Compact with the United States. . . . It is at least highly illogical to suggest that the drafters of a Constitution would put in their work a requirement for a 75 percent majority . . . and then permit that provision to be negated by a 50 percent vote.<sup>7</sup>

<sup>7</sup>"Petition Concerning The Trust Territory Of The Pacific Islands" presented to the United Nations Trusteeship Council on behalf of The International League For Human Rights by Roger S. Clark, Vice President of the League and Distinguished Professor of Law, Rutgers University, Camden, NJ, December 1987, page 1.



## COFA PLEBISCITES

DATE	APPROVED	TURNOUT	COMMENTS
10 Feb. 1983	62% for COFA 4,452 YES 2,715 NO  53% for nuclear materials subsidiary agreement 3,717 YES 3,309 NO	88% of registered voters 7,246 ballots cast 8,213 registered voters	<ul style="list-style-type: none"> <li>* Advisory vote on "Independence" or "Closer ties with U.S." if COFA failed.</li> <li>* U.S. Department of the Interior provided \$315,000 (in addition to \$250,000 appropriated by Palau National Congress) for public education by the pro-COFA Remeliik administration.</li> <li>* 16,000 ballots printed.</li> <li>* U.S. reported that tensions rose in the Koror area in the 36 hours preceding the election.</li> <li>* Absentee ballot wording implied the nuclear-materials subsidiary agreement restricted the U.S. military and was therefore desirable.</li> <li>* U.N. observers watched campaign and polling arrangements, casting of votes, closure of voting, counting of ballots, and declaration of results. (Not instructed to obtain first-hand information concerning political, economic and social development.)</li> <li>* 5 months for political education.</li> </ul>
4 Sept. 1984	67% for COFA 4,290 YES 2,103 NO	71% of registered voters 6,485 ballots cast 9,023 registered voters	<ul style="list-style-type: none"> <li>* Advisory vote on "Independence" or "Closer ties with U.S." if COFA failed.</li> <li>* Date set by presidential order only six weeks prior to the plebiscite. No time for proper voter education process.</li> <li>* 17,800 ballots printed for only 9,036 registered voters.</li> <li>* Polls staffed by appointees of President Remeliik.</li> <li>* \$250,000 taken from Palau's operating budget to campaign for the COFA.</li> <li>* No U.N. observer mission.</li> <li>* 48 days for political education.</li> </ul>
21 Feb. 1986	72% for COFA 5,079 YES 1,957 NO	76% of registered voters 7,036 ballots cast 9,905 registered voters	<ul style="list-style-type: none"> <li>* COFA was the only choice on the ballot.</li> <li>* Held on eve of trial of Remeliik's alleged assassins.</li> <li>* Nuclear storage, use, testing, and disposal prohibited by COFA, but Palau not to ask U.S. ships/aircraft to confirm or deny presence of nuclear weapons.</li> <li>* \$250,000 taken from Palau's operating budget to campaign for the COFA.</li> <li>* U.N. Mission observed same as 1983 plebiscite.</li> <li>* 48 days for political education.</li> </ul>

DATE	APPROVED	TURNOUT	COMMENTS
2 Dec. 1986	66% for COFA 5,789 YES 2,986 NO	82% of registered voters 8,824 ballots cast 10,760 registered voters	<ul style="list-style-type: none"> <li>* COFA was the only choice on the ballot.</li> <li>* Same COFA as the February 1986 plebiscite. U.S. refused to renegotiate.</li> <li>* President Salii ordered government employees to campaign for the COFA.</li> <li>* Students and teachers were dismissed from the schools one week before the plebiscite to campaign for the COFA.</li> <li>* \$275,000 taken from Palau's operating budget to campaign for the COFA.</li> <li>* U.N. Mission observed same as 1983 plebiscite.</li> <li>* 28 days for political education.</li> </ul>
30 June 1987	67% for COFA ___ YES ___ NO	___% of registered voters ___ ballots cast ___ registered voters	<ul style="list-style-type: none"> <li>* COFA was the only choice on the ballot.</li> <li>* Same COFA as the February 1986 plebiscite. U.S. refused to renegotiate.</li> <li>* Some government employees were furloughed and others had their pay cut after the previous plebiscite.</li> <li>* Plebiscite held on second anniversary of Remeliik's assassination.</li> <li>* The plebiscite was originally scheduled one week earlier but was halted by court order because of 2,000 ballots unaccounted for and lack of control over absentee votes. Nothing was done about these inconsistencies.</li> <li>* Violence, voter intimidation, and economic coercion preceeded the plebiscite.</li> <li>* U.N. Mission observed same as 1983 plebiscite.</li> <li>* ___ days for political education.</li> </ul>
21 Aug 1987	73% for COFA 5,961 YES 2,200 NO	75% of registered voters 8,175 votes cast 10,955 registered voters	<ul style="list-style-type: none"> <li>* COFA was the only choice on the ballot.</li> <li>* Same COFA as the February 1986 plebiscite. U.S. refused to renegotiate.</li> <li>* 900 of the 1,331 government employees were furloughed after the previous plebiscite.</li> <li>* Schools were shut down and government operating funds were impounded by the Salii administration after the previous plebiscite.</li> <li>* There was a significant increase in violence, intimidation, and economic coercion against anti-COFA voters and legislators prior to the plebiscite.</li> <li>* U.N. Mission only observed the polling places and vote count.</li> <li>* ___ days for political education.</li> </ul>

FIGURE 6-1



Numerous election irregularities have been noted by independent observers and others. A summary of the most prominent:

- \* Funds supplied by the US for public education were used for pro-COFA propaganda.
- \* Government facilities and equipment were used for pro-COFA purposes.
- \* Government-controlled media were used to favor the pro-COFA faction.
- \* Ballots were produced by photocopy machines, which makes them easy to reproduce by unauthorized persons.
- \* Ballots were not numbered.
- \* Excessive numbers of ballots were printed.
- \* Possibility of tampering with ballot boxes outside of Palau. (Roughly 22 percent of Palauans live outside of Palau.)
- \* Potential for tampering during overnight storage and transportation of outer-island ballot boxes within Palau.
- \* Government refusal of escort and locks by anti-COFA faction for outer-island and out-of-Palau ballot boxes.
- \* Allowing voters to register at the time of voting.
- \* Observers unable to cover all the polls at all times.

Further aggravating the crisis of violence in Palau, President Salii refused to meet with officials in an attempt to solve the problem and placate the disgruntled furloughed employees. After an unsuccessful attempt to meet with Salii, Ibedul Yutaka Gibbons requested the UN Security Council to send a peace-keeping force to Palau. He wrote, "The situation in Palau threatens to deteriorate quickly, and assistance is desperately needed to prevent tragic consequences." When Belhaim

Sakuma, public information officer for the House of Delegates, went on Palau radio in early July to explain that the financial crisis was due to poor management, not failure to pass the COFA, his home was burned to the ground. This was the beginning of the most dangerous era in Palauan history since it was a battleground during World War II.

#### *b. Legal Challenges: Intimidation and Terrorism.*

Trial assistant Roman Bedor on July 29 aided in filing a civil lawsuit on behalf of Alex Merep (the Ibedul's youngest brother), Francis Toribiong and Ngiraului Rechebei, challenging the constitutional amendment process. This case was known as *Merep v. Salii*, and plaintiffs were believed to be acting at the behest of High Chief Ibedul. Previous attempts to obtain injunctions against both the amendment and COFA referendums were unsuccessful. A trial was set for September 8 in the Trial Court Division of the Palauan Supreme Court. One charge in the lawsuit was that the Constitution requires three-quarters of the members of each house of the Palau National Congress (not just three-quarters of those present) to approve an amendment before it is presented to the voters. Neither house had that favorable majority. House Speaker Olikong explained the vote as it was, "We had no choice. Our families were in danger and Palau is in a state of siege."<sup>8</sup>

On August 25, after being jostled in his chambers and receiving threats to him and his family, Palauan Supreme Court Chief Justice Mamoru Nakamura excused himself from hearing the lawsuit. Robert Hefner, now chief justice of the Marianas Trial Court, was assigned to preside. Meanwhile, plaintiffs and their attorneys were visited by the furloughed government employees, threatened and cajoled to withdraw their lawsuit. Tires were slashed, cars vandalized, and gunshots fired.

<sup>8</sup>*The Guardian*, London, 1 August 1987, p. 6.



Four days later Ibedul Yutaka Gibbons met with President Salii and signed a memorandum of understanding that the Merep lawsuit would be dropped in exchange for Salii's word that he would charge the Council of Chiefs with "the responsibility of considering all requests by the United States government for land use rights within the Republic of Palau pursuant to the Compact of Free Association."<sup>9</sup> One month later the Ibedul gave a conciliatory speech at the Asahi Ball Field in Koror, saying that his agreement with the president had removed the last impediment to the COFA, and urging national unity behind free association with the United States.

Outraged over this turn of events, the women elders decided to assert their authority. Led by Gabriela Ngirmang (66 years old and mother of eleven) and Rafaela Sumang (a hospital nurse and mother of six), and including Gloria Gibbons (sister of the Ibedul, wife of Carlos Salii, and head clanswoman in Palau), twenty women on August 31 picked up the lawsuit challenging the constitutional amendment. This case was known as *Ngirmang v. Salii*. Thirty more women plaintiffs remained in reserve. Roman Bedor assisted them in filing their case *pro se*. Later they were helped by the Center for Constitutional Rights in New York City. Trial date remained at September 8.

Intimidators went on Palau TV to threaten the women and their children if the suit was not withdrawn. Anti-COFA trial assistant Roman Bedor says things started getting really tense on Friday, September 4, when furloughed government employees came to his office and attempted to shut off the electricity. Then they went to the home of his sister, plaintiff Bernie Keldermans, a Palauan-rights activist and educator, and turned off the power. The following night—Saturday, September 5—thugs in a red sedan fired shots at House Speaker Olikong's house shortly after the power was turned off all over the island. That act was repeated early the next

morning when about twelve people were inside the house or in the vicinity, but no one was injured. On Sunday night the power was also turned off just before shots were fired outside Rafaela Sumang's home. Later that evening a furloughed government worker came to her door and threatened worse things if she did not withdraw from the lawsuit.

On Monday night—7 September 1987, the eve of the trial—the power went off again at about 11:30 PM and plaintiff Gabriela Ngirmang's home was firebombed. The bomb damaged part of her house in which her family and young children were sleeping. Her daughter, Ida, suffered injury to her eyes. The Bai Ra Metal (House of the Shark) night club used for men's gatherings was also partially destroyed by arsonists that night.

On that same Monday night, Bedor Bins, elderly father of Roman Bedor and Bernie Keldermans, was murdered at the Belau Pacific Center where Roman has his law office. The slaying took place shortly after 11:30 PM when the electricity went off. The bullets that killed Mr. Bedor are believed to have been meant for Roman, who was actively helping the women with their lawsuit. While the assassins were fleeing in a red car, they fired shots at Roman's brother-in-law, Pete Sugiyama, who had come outside his store to see what the trouble was. Roman described the murder of his father:

They were threatening me to stop arguing the case. They attempted to burn down my office previously. There was a hearing scheduled for Tuesday [September 8] and on Monday night they shut off the island's power and went to bomb the home of the woman who is the principal plaintiff in the case.

They came to the office where I was supposed to be working—preparing myself for the case on the following day. I had just left the office for my parents' house a few minutes earlier. While at their house the power was turned off all over the island. My father went to the office to pick up a flashlight . . . They knocked on the door and he opened it. They thought it was me and fired two shots.

I took my father in my arms and took him to the hospital, but he died. . . . the doctors could not operate on him . . . we had to go out and find a private doctor to bring to the hospital . . .

<sup>9</sup>Cited in *Palau: A Challenge to the Rule of Law in Micronesia*, report of the mission to Palau by The International Commission of Jurists, Geneva, and The American Association for the International Commission of Jurists, New York, 1988, p. 32.



When he arrived it was an hour later and my father had lost so much blood and was already unconscious.

There is no protection in the islands. I went to the minister of justice but he said everything is normal. The people who do this violence are on government salaries—I know them. They had passed the word that they are coming to get me. My relatives say that they will book me into a tourist hotel for protection, or that I should flee to Guam.

But I have decided to stay. I cannot travel to town—it is not safe. I have decided that if I am killed, it's OK. I know what I am doing is right. I am not afraid.<sup>10</sup>

Roman said that President Salii came to the hospital and asked who had been shot. Roman didn't know how the president knew because no report had been made. The car used by the killers and snipers matched one used by furloughed employees that was frequently parked near the Palau National Congress building where demonstrators were camped. There has still been no explanation for the power failures which always preceded the acts of violence by one or two minutes.

It could only have been the example of their parents, Bedor Bins and Ikelau Bedor, which set Roman and Bernie on their dedicated path to preserve the rights of their people. It was Clan Elder Bedor Bins who in the 1950s led a prolonged campaign to have land restored to the traditional owners—land which had been unlawfully acquired by the Japanese military and subsequently occupied by US troops. That was a long but ultimately successful struggle. Because of attachment to their land, ocean and water, Palauans were the most persistent people in all Micronesia in demanding the return of land. Bedor Bins' clan numbers some of the most consistent supporters of Palau's nuclear-free Constitution.

Out of duress and fear for their children, the women were forced to drop their lawsuit. When asked why they did not seek protection, they later explained: "You do not ask a person from the enemy's camp to help you, to protect you, be-

<sup>10</sup>Portions extracted from a personal letter from Roman Bedor to Ched Myers dated 18 November 1987. Other portions cited in *San Jose [CA] Mercury News*, 8 October 1987, p. 7B.

cause the . . . government and all the forces in the government are pro-Compact."<sup>11</sup> House of Delegates Speaker Santos Olikong added: "If [President Salii] asked the US marshals and state troopers from the United States [to provide protection for the women plaintiffs], we will be happy with the arrangement. But if it is local law-enforcement people, I have my doubts."<sup>12</sup> In a letter to Congressman Solarz, Rafaela Sumang said, "But . . . even if the president did offer protection I could not accept it because I don't trust him. He made no effort to stop the earlier intimidation and violence so why should I believe that things would be different? Also, some of his people were involved with the violence."<sup>13</sup>

Rafaela explained how the lawsuit was withdrawn on September 8:

When I returned to Gabriela Ngirmang's house to meet the other women to go to court for the hearing, Chief Ibedul was still there. He reiterated to us that if we went on with the case now, something terrible, like the events of the night before, would happen that night. . . . I went with Chief Ibedul to the office of the president to discuss the matter.

We understood that both the furloughed workers and the attorney general wanted us to withdraw this case. We, however, only wanted to postpone it until it was safe to proceed. . . . I was under tremendous pressure to come up with a resolution very quickly, since the possibility of mob violence was very real and we had just suffered through a night of unprecedented intimidation.

During the meeting . . . Chief Ibedul and President Salii did most of the talking, without really consulting me. Then Mr. Isaac from the office of the attorney general stated that he would draw up the paper . . .

<sup>11</sup>*Compact Of Free Association*, transcript of hearings before the US Senate Committee on Energy and Natural Resources (S. Hrg. 100-498), 28 January 1988, p. 83.

<sup>12</sup>*Ibid.*

<sup>13</sup>Rafaela Sumang, 4 March 1988, in a letter to Congressman Stephen J. Solarz.



After the paper was drawn up, I was driven around by police officers in a police car, to obtain the signatures of the plaintiffs on withdrawal. As I was going around to the plaintiffs, the police were constantly on the radio, asking the officers with me if we had finished yet.

By this time I was very upset, afraid and harried. I simply asked each of the plaintiffs to sign the stipulation, without explaining what exactly it said or what it meant. I felt that I could not take the time to have a long discussion about it, or the violence that we all feared would erupt.<sup>14</sup>

No plaintiffs appeared at court the next day but two of them signed affidavits describing terrorism against them. Justice Hefner dismissed the case with the statement that, "There are indications that the dismissal signed by the plaintiffs may not be voluntary. There are indications that the dismissal was brought about by intimidation through the use of violence. Should any of the plaintiffs wish to have the dismissal vacated later and the action reinstated, they may file the appropriate proceedings. . . . If intimidation of the plaintiffs has prevented utilization of the doctrine of due process, then the citizens, the government, the counsel and this court have nothing to be proud of and the justice system has failed. . . ."<sup>15</sup>

House of Delegates Speaker Olikong wrote to US Congressman Ron de Lugo of the House Committee on Interior and Insular Affairs:

Because of your demonstrated concern for the dangerous situation in Palau, I am writing to advise you of events as they now stand. In short, Palau is in a reign of terror and intimidation. The last hope of those of us who want to see freedom and democracy survive in Palau, that the court would issue a decision nulli-

<sup>14</sup>Affidavit by Rafaela Sumang dated 10 March 1988, Supreme Court of the Republic of Palau, Trial Division, Civil Action No 161-87, *Ngirmang v. Salii*.

<sup>15</sup>Memorandum signed by Justice Robert A. Hefner, dated 9 September 1987; in the case of *Gabriela Ngirmang, et al. v. Lazarus E. Salii*, Civil Action No. 161-87, Supreme Court of the Republic of Palau, Trial Division.

fying the recent illegal constitutional amendment and subsequent compact ratification, has been smashed. . . . The only law in Palau right now is the law of the jungle."<sup>16</sup>

Against this backdrop, James D. Berg, director of the State Department's Office of Freely Associated State Affairs, said in a letter to the editor of the *New York Times*:

There was, as you reported, violence and a murder in Palau, but several weeks after the votes. The United States registered its firm opposition to those events, which the Palau government is investigating with our assistance. We expect the perpetrators to be brought to justice. Concern about this violence is well placed, but does not create a causal relation with the earlier votes.

Palau has now approved the Compact, and so has Congress. We look forward to joining Palau in a new political relationship which Palau itself has freely chosen.<sup>17</sup>

That was a blatant glossing over of the violence, and saying it had no effect on the vote dodges the central fact that it was the plaintiffs challenging the vote who were the targets of terrorism. A telegram of regrets was probably sent to Palau, but it is hard to discern any assistance from the US in catching the thugs. The US Interior Department, which had law-enforcement jurisdiction, continued to follow a hands-off policy. Furthermore, saying that Palau and the US Congress had already approved the Compact was untrue. It was the lawsuit, which Mr. Berg avoided mentioning, which would have challenged the approval process. Furthermore, the cognizant committees of the US Congress hadn't yet scheduled hearings on the Compact.

Some perpetrators of intimidation were brought to justice. Three men—presidential assistant Joel Toribiong, Paul Ueki and Tadashi Sakuma—were arrested in late December for shooting into Speaker Olikong's residence. Police officers had seen them driving a red car in the vicinity when the shots

<sup>16</sup>Letter from Palauan House of Delegates Speaker Santos Olikong to US Congressman Ron de Lugo, dated 11 September 1987.

<sup>17</sup>*New York Times*, Letter to the Editor, 4 November 1987.



were fired. But there have been no arrests in the case of Bedor Bins' murder. Through error or otherwise, the police report indicated he was in his own house, not his son's office, when he was shot. It implied that the killing was part of a robbery, not political terrorism. Such negligence emulates the stagnated Remeliik assassination investigation and reflects a desire not to apprehend the guilty parties. It is clear that both the Palauan and US governments at best condoned, and at worst encouraged, the terrorism which scuttled the lawsuit.

On October 1, the beginning of the new fiscal year, most of the furloughed government employees were rehired. Those who showed pro-Constitution leanings, though, were not.<sup>18</sup>

### *c. The Push to Implement the Compact.*

President Salii on 29 August 1987 notified the US that Palau's approval process for the COFA had been completed and that Palau wished to proceed with its implementation. The next step, assuming acceptance of Salii's certification, was for the US president to certify to Congress that the COFA had been freely and constitutionally approved in Palau. Finally, each house of the US legislature must then enact a joint resolution reported by appropriate committees—the Senate Committee on Energy and Natural Resources, the House Committee on Interior and Insular Affairs, and the House Committee on Foreign Affairs. (Other committees have lesser roles but these are the three required to mark up legislation for COFA implementation.) President Reagan made the required certification of the COFA on 30 November 1987. The ball then went to the three legislative committees.

COFA approval was not easily forthcoming, however. There was concern by some members of Congress that the Palauan people had not freely chosen its provisions but did so out of intimidation, and that due process to challenge the approval process was also denied. On 18 September 1987 the

US House Committee on Interior and Insular Affairs, which oversees the trust territory, requested Interior Secretary Donald Hodel to take immediate action to investigate the escalating violence and threats stemming from the recent vote on the COFA. The committee also sent a terse letter to President Salii, expressing concern over the firebombings, killing and intimidation. The Department of Interior has the power to dispatch US law-enforcement officials. The House Committee requested that this be done and affirmed that "we will need to be assured that the Compact of Free Association has been constitutionally approved in the islands with individual rights and constitutional processes secure before we will be able to support legislation to implement the Compact."<sup>19</sup>

Interior's oblique response was that although the Department retained authority over Palau, the islands were pretty much independent already. That prompted a stronger letter on October 6 in which Ron de Lugo, subcommittee chairman directly responsible for oversight of Palau, demanded that Hodel take action. Hodel still refused to act.

At the request of the House Committee on Interior and Insular Affairs, a delegation from the US General Accounting Office (GAO) on 3 December 1987 landed in Palau to investigate Palau's financial condition and how the leaders have managed the US-supplied budget. Salii has been accused of several counts of financial mismanagement. There were also allegations that, besides being bossed by Washington, he is also heavily influenced by Asian investment and international crime syndicates. It was expected that the GAO might also look into the IPSECO payments to President Salii, his brother, High Chief Gibbons, and others. Ron de Lugo's committee had asked the Department of Interior for an independent investigation into the IPSECO payments, but to no avail.

Without even waiting for the GAO investigative team to return, Congressman Stephen J. Solarz, chairman of the Foreign Affairs Subcommittee on Asian and Pacific Affairs, ap-

<sup>18</sup>"Belau Update: Constitution Still Holds," written by Charles Scheiner (Box 1182, White Plains, NY 10602) 27 February 1988, p. 2.

<sup>19</sup>Letter from US House of Representative Committee on Interior and Insular Affairs to Honorable Donald Paul Hodel, Secretary, US Department of Interior, 18 September 1987.



parently gave in to the administration's pressure and called hearings for December 17. On such short notice, many key witnesses for the nuclear-free position were unable to attend. In his opening statement, Solarz focused the investigation on whether the COFA had been freely and constitutionally approved, and an attempt to "get to the bottom of this question of intimidation and violence." He continued: "While this subcommittee has already gone on record last year in support of the Compact, it cannot—and it will not—countenance the use of violence to secure the ratification of the Compact in Palau."<sup>20</sup>

US Government witnesses offered the usual platitudes about majority approval and US advantages from the COFA—all seasoned with a taste of the Russian threat. Besides President Salii, the only other witness from Palau was House Speaker Santos Olikong, who testified that "the Compact is 60 percent to 70 percent in the best interests of Palau. . . . The early approval of the Compact, however, by your Congress must rest upon the conclusion that the Compact was duly approved by the people of Palau in strict compliance with their constitutional processes and that the choice was freely made and given." He then related his personal experiences in being intimidated:

Evidence of intimidation directed at me as a person took its form in posters all over Koror, in private telephone threats to me and my family, in personal encounters at various places and different times, and in the actual shooting at my residence while my family and I were home. The intimidation and violence were directed at me because of my stand in the Compact plebiscite and my public endorsement with respect to a court suit challenging the constitutionality of the constitutional amendment procedure . . . The "protesting" government employees occupying the tents in front of the House of Delegates chambers became "strikers" for the speedy approval of the Compact . . . From then on, the members of the House of Delegates were literally held "hostage"

<sup>20</sup>Opening Statement by Congressman Stephen Solarz, hearings conducted by the Subcommittee on Asian and Pacific Affairs of the House Foreign Affairs Committee, 17 December 1987.

to the striking government employees. . . . It is bad enough to influence a lawmaker to vote against his conscience, but it is most undemocratic for the striking government employees in Palau to hunt down members of the House of Delegates in their houses, bring them to the House chamber to make sure a quorum was present, and to make sure the House members voted in favor of the Compact legislation . . . All too frequently and conveniently the law-enforcement personnel were either not there, too busy, or indisposed when they were contacted for assistance or when striking government employees were harassing members of the general public.<sup>21</sup>

Apparently concerned that the Solarz hearings were premature, ranking member of the House Interior and Insular Affairs Committee, Congressman George Miller, submitted a "letter for the record" to Mr. Solarz. Saying that under present circumstances he "had to conclude that—although the compact has been supported by a majority of the people of the islands—it has not been constitutionally approved by them." He continued:

There are arguments on both sides of this question. At most it should be considered to be an open one which only the Palau Supreme Court can definitely resolve. Resolution by the Court must be allowed if there are Palauans who desire litigation. There is little doubt that there are . . . We also know, though, that outspoken opponents of the Compact are in danger of being harmed through targeted violence. . . . persons within the Palau administration have allegedly resorted to such acts to further approval of the Compact. This corruption must be fully investigated and be rooted out. . . . The Congress also cannot be assured by the assertion by the President of the United States that the Compact has been constitutionally approved by Palau. The President has not evaluated the President of Palau's assertion on

<sup>21</sup>Statement by Palauan House of Delegates Speaker Santos Olikong before the US House Committee on Foreign Affairs on the Compact of Free Association, 17 December 1987.



this matter to the degree which should be required for an objective analysis . . . <sup>22</sup>

Congressman Miller further pointed out in his letter that other problems in the islands raise doubts about whether trusteeship obligations are being met. He referenced the GAO investigation that was then in progress and urged that Solarz's subcommittee not come to any conclusions until the facts from an independent investigation are in. Nevertheless, on 27 April 1988 Solarz's subcommittee approved the COFA and passed it up to the full House Foreign Affairs Committee, which approved a resolution to implement the COFA.

Another hearing took place in the Senate on 28 January 1988 before a subcommittee of the Senate Energy and Natural Resources Committee. Senator J. Bennett Johnston was the only member of 19 who was present to hear testimony. Testimony was heard from Rafaela Sumang, Gabriela Ngirmang through interpreter Isabella Sumang, Speaker Santos Olikong and President Lazarus Salii from Palau. US Government witnesses were James D. Berg of the State Department and Larry Morgan of the Interior Department. In addition, a letter from five pro-Compact Palauan chiefs showed impatience at the delay in approving the Compact and castigated certain US Congressmen (presumably from the House Committee on Internal and Insular Affairs) for causing that delay. In particular, the letter emphatically asserted that Palauan society is male-dominated and declared that it was insulting to the men, particularly the chiefs, for the US Senate to invite Palauan women to testify.

The testimony of President Salii and US Government witnesses added no new information. It merely reasserted their belief in the legality of the constitutional amendment and COFA votes, deplored but downplayed the violence and intimid-

ination, and urged speedy approval of the COFA. Speaker Olikong's presentation related how violence and intimidation influenced political processes and the lack of administrative leadership. He said:

Mr. Chairman, I went somewhat extensively into the merits of the plaintiffs' case to impress upon you and your committee that the case of *Merep v. Salii* deserved the judicial wisdom and disposition by the Supreme Court of Palau.

Despite this fact, however, events of harassments, intimidations, arson, power outages believed induced by roaming felons, bombings, shootings and killing—with law-enforcement agency of the Government unable to contain the lawlessness and with the incumbent leaders of the Palau National Government sympathizing with and providing material support to suspected perpetrators to some of these unlawful acts combine to make mockery to any claim that law and order prevailed when the Palau Constitution was amended or when the voting on the Compact of Free Association was being voted upon for the sixth time.<sup>23</sup>

During Isabella Sumang's testimony she announced that the women would definitely be refiling their lawsuit when they felt it was safe to do so. After two hours of testimony a frustrated Senator Johnston, trying to get the women to set a date for their lawsuit, asked impatiently: "When will that be done?" Mrs. Sumang replied: "As soon as we get ourselves together and have all the security and the proper, you know, things together. What is the hurry? It is our future."<sup>24</sup>

Gabriela Ngirmang was supposed to testify but she was hospitalized with pneumonia complicated by a heart condition. However, in her prepared statement, delivered by Isabella Sumang, Gabriela expressed her viewpoint:

A representative of the United States Department of State visited me in my home in Palau when he gave me Senator Johnston's invitation. One of the questions he asked me was why I

<sup>22</sup>Official letter under House Committee on Interior and Insular Affairs letterhead to Honorable Stephen J. Solarz, Chairman, Subcommittee on Asian and Pacific Affairs, US House of Representatives, dated 17 December and signed by George Miller, ranking member of the Interior and Insular Affairs Committee.

<sup>23</sup>*Compact Of Free Association*, transcript of hearings before the US Senate Committee on Energy and Natural Resources, *op. cit.*, p. 19.

<sup>24</sup>*Ibid.*, p. 29.



didn't like the Compact. I told him that 50 years was too long and there was not enough funding for all that time. Then he asked . . . "Aren't you interested in the United States protecting you from another country, such as the Philippines, coming to attack you?" I told him that during the Second World War we experienced bombings and attacks . . . not against the Palauans. The attacks were against the Japanese . . . So you can be sure that the presence of the American military bases would invite attacks of other countries, not at the Palauans, but against Americans. . . . I have been assured repeatedly that the United States has no present intention of exercising its rights to use our land for military purposes. . . . If they are not important to you, then please remove them from the discussions in the future. In any event, the Trusteeship Agreement involved the promise that our country would be given roads, docks, hospitals, power—the things we need to live in a dignified way. And forty years later we do not have them. So promises with regard to future actions are not as important to us as keeping our land.

This Committee has the responsibility to make a recommendation regarding the implementation of the Compact. I do not believe you can vote in favor of implementation now.<sup>25</sup>

In stark contrast, James Berg recited the official but duplicitous US government view:

. . . There are those who allege that these events created an atmosphere of intimidation resulting in the withdrawal of lawsuits pending in the Palau Supreme Court challenging the legality of the August 4 constitutional amendment referendum. . . . the dominant political reality in Palau is that the reconciliation effected between the Palau president and the Palau traditional leadership represented by Ibedul Yutaka Gibbons was responsible for both the withdrawal of the lawsuits and the fact that no lawsuits have been filed in the intervening half a year. Mr. Chairman, the administration affirms to this committee that Palau is a country united in its desire to bring the Compact into effect immediately . . .<sup>26</sup>

<sup>25</sup>*Ibid.*, pp. 9-11.

<sup>26</sup>*Ibid.*, p. 77.

Such fabrications insult the credibility of the Palauan legislature, the Palauan judiciary, the Palauan traditional leadership, and the Palauan people who are trying to preserve their autonomy and culture.

On 23 March 1988, this Senate committee approved the resolution to put the COFA into effect. On April 2, with only three senators present, the US Senate "unanimously" approved implementation of the COFA. Only the House Interior and Insular Affairs Committee now prevented the COFA from being approved, in spite of strong pressure from the Departments of Interior and State. This is some tribute to the checks and balances of democratic processes.

Why were the executive branch and certain congressional committees so insistent on approving the COFA before litigation on constitutional processes in Palau were exhausted? One reason may be seen in a US State Department response to a written question from the Senate committee regarding US rights under the COFA if a Palauan court should rule the approval process unconstitutional. The State Department drew on Article 27 of the Vienna Convention on the Law of Treaties, which states: "A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty." State continued:

. . . Indeed, President Salii, acting in accordance with the general foreign affairs powers entrusted to him under the Palauan Constitution, certified in his letter that his government had approved the Compact in accordance with its constitutional process. Hence, after the Compact comes into effect, Palau could not invoke a contrary ruling by a Palauan court as grounds for refusal to abide by the terms of the Compact.

Such a ruling would, of course, create domestic legal issues for Palau. Such issues would not, however, affect the rights and obligations established bilaterally between the US Government and the Government of Palau under the Compact. Palau would instead be required under international law to take all internal measures that were necessary in order to meet its obligations under the Compact.<sup>27</sup>

<sup>27</sup>*Ibid.*, pp. 97-98.



The State Department tried to use that same rationale after the February 1986 Palauan plebiscite on the COFA.<sup>28</sup> But it is a 180-degree turnaround from State's attitude when Palauan President Remeliik was trying to implement the COFA after the first plebiscite in 1983. Counsel for the American ambassador for Micronesian status negotiations explained why the US would not implement the COFA at that time: "The United States, as Administering Authority of the Trusteeship, considered itself to be seized with knowledge of the requirements of the Palauan Constitution. Therefore the United States concluded that in implementing the Compact as to Palau it *could not rely* on the principle of international practice that a state (i.e. Palau) may not invoke, as invalidating its consent to be bound by the terms of an international agreement, the fact that such consent has been expressed in violation of a provision of its internal law regarding competence to conclude treaties."<sup>29</sup> (Emphasis added.) As Administering Authority the US is still seized with knowledge of the Palauan Constitution as well as the violence and intimidation surrounding the August 1987 plebiscites. Conditions still exist to invalidate reliance on the above-stated principles of international law, but it appears that the State Department will do just that if congressional cooperation can be obtained in the future.

The GAO team returned to the US on 20 December 1987. Their report was expected out in April 1988. It was not re-

leased, however, because some congresspeople objected to it as being too strong. Others thought it was not complete enough. Some of the findings, however, were made public:<sup>30</sup>

<sup>31</sup>

- \* The furloughed workers committee wrote to anti-COFA state governors and leaders threatening that measures would be taken to phase the states out of existence and urge that funding to them be cut off.
- \* President Salii, himself, wrote a state governor who challenged the COFA, saying "it has been recommended to me that one basis for distribution of Compact funds should be the stand of each state or governor on the Compact."
- \* Arson was committed at a governor's home and the home of a legislator [presumably Surangel Whips] who challenged the COFA approval.
- \* The home of the House of Delegates spokesman was burned down after a speech critical of the COFA [presumably Belhaim Sakuma].
- \* A legislator was threatened to his face with physical violence. Other legislators were threatened in person or by mail or telephone.
- \* The chairman of the furloughed workers committee demanded in person and in writing that \$2,000 be paid by a legislator [presumably Surangel Whips] who challenged the COFA, and it was paid after the legislator received several threatening phone calls.

<sup>28</sup>See "Petition Concerning the Trust Territory of the Pacific Islands," presented to the United Nations Trusteeship Council on behalf of The International League For Human Rights by Roger S. Clark, Distinguished Professor of Law, Rutgers University, Camden, NJ, 13 May 1986, pp. 12-13.

<sup>29</sup>"The Negotiations for the Future Political Status of Micronesia (1980-1984)," *American Journal of International Law*, Vol. 78, pp. 487-488 (1984); cited in "Petition Concerning The Trust Territory of the Pacific Islands," presented to the United Nations Trusteeship Council on behalf of The International League For Human Rights by Roger S. Clark, Distinguished Professor of Law, Rutgers University, Camden, NJ, 13 May 1986, pp. 13-14.

<sup>30</sup>All of these findings have been documented by Congressman Ron de Lugo in the *Congressional Record—House*, 6 October 1988, pp. H9764 and H9765.

<sup>31</sup>The full two-volume report was finally released by the General Accounting Office in July 1989 and is a damning indictment of US behavior and negligence, and Palauan corruption at high levels. It is entitled "US Trust Territory: Issues Associated With Palau's Transition to Self-Government," GAO/NSIAD 89-182 and GAO/NSIAD 89-182S.



- \* The cars of a legislator and a lawyer challenging the COFA were damaged.
- \* A legislator was forcibly taken from his home [presumably Surangel Whips].
- \* Certain furloughed workers were organized to individually warn and threaten COFA challengers with whom they had a close relationship.
- \* The homes of lawsuit plaintiffs were besieged by furloughed workers.
- \* Government employees were permitted to campaign for the COFA during working hours and were allowed to use government equipment to do so. Similar opportunities were not allowed COFA challengers.
- \* Reprisals were taken against government employees who challenged the COFA.
- \* Schools were closed weeks before a COFA referendum. Teachers were instructed to campaign for COFA approval and students were bused to pro-COFA rallies.
- \* The government radio station and newsletter—the only radio station and print outlet in the islands—publicized pro-COFA information and denied access to COFA challengers.
- \* Contrary to President Salii's statements to GAO, GAO found that he had given the furloughed workers committee \$10,000 and cars to use. A number of persons allege that food was given as well.
- \* The Palau executive branch did not adequately document COFA education funds expenditures, and provided funds primarily for COFA supporters.
- \* The furloughed workers committee operated out of the president's office and was led by several persons very close to President Salii.

- \* The chairman of the furloughed workers committee was presidential assistant Joel Toribiong, later convicted of shooting into the home of Speaker Olikong. The shooting and other acts of violence were preceded by a speech by Toribiong, broadcast by the government radio station, threatening that any steps necessary would be taken against individuals in the way of the COFA's approval.
- \* Convicted with Toribiong was a Salii agency director and the third was an employee of the IPSECO power plant—noteworthy since the power was mysteriously cut off immediately prior to the shootings and other violent incidents.
- \* The secretary of the furloughed workers committee was a Salii public relations aide who later stabbed an associate of a governor regarded as a COFA challenger. The victim of the stabbing had been framed with counterfeit US currency by an associate of Salii's Minister of State who was responsible for distributing COFA education funds to state governors.
- \* Furloughed workers formed a political party to support Salii and the COFA, with the public relations assistance of the government news media.
- \* Furloughed workers were allowed to attach a notice to the government checks of persons challenging the COFA. It said that a failure to support the COFA "may result in an adverse action against you."

The last item, the note, was attached to back pay for the 20 percent reduction imposed the previous February. It is not known where the funds came from to make the payment. The note read:

Dear \_\_\_\_\_,

*You are urged to come and join us, the representatives of the "900 Furloughed Government Workers," at the Olbiil Era Kelulau, to support the August 21st Compact referendum to ensure its success.*



*Your failure to comply with this request may consequently result in an adverse action against you!*

The International Commission of Jurists in Geneva and the American Association for the International Commission of Jurists in New York also sponsored a "Mission to Palau" on 17-23 January 1988. Mission members were Executive Committee Chairman William J. Butler, New South Wales (Australia) Supreme Court Justice Michael Kirby, and Senior US Court of Appeals Judge George C. Edwards. Its report, released 14 April 1988, described a substantial breakdown in law and order between July and September 1987 which caused illegal and improper interference with the judiciary. In addition to reaffirming the events of terrorism and intimidation, the mission accused the Palauan Bar Association (headed by Carlos Salii, the president's brother) of neglecting its duty of protecting lawyers who are carrying out their responsibilities to clients. It put the US on notice of these conditions and urged five steps to uphold the rule of law in Palau:<sup>32</sup>

1. The COFA should not be implemented until the constitutional process of Palau has been exhausted.
2. These processes of constitutionality must finally be determined by the Supreme Court of Palau.
3. Palauan authorities should ensure protection not only for the litigants but also for the judiciary and lawyers, in the event litigation to determine the legality of the August referendum is initiated.
4. Palauan authorities should, without delay, investigate and charge those responsible for acts of violence, including murder, and other criminal acts.

<sup>32</sup>These five recommendations are as summarized in the press release from the International Commission of Jurists dated 14 April 1988 and announcing release of their report: *Palau: A Challenge to the Rule of Law in Micronesia, op. cit.* A more detailed wording of these recommendations is found on pp. 48-49 of the report.

5. The government of Palau should initiate programs to educate its citizens on the need for an independent judiciary and on the constitutionally-guaranteed rights of citizens.

Presidential assistant Toribiong and the two other men were convicted on February 26 and sentenced to 15 years in prison. That night the "Committee of Furloughed Workers" met and shots were later fired in the vicinity of Koror's general store—a sinister omen that the potential for violence still existed.

Fearing more violence from another possible layoff before the end of the fiscal year, and beset by corruption in high places, a majority of the Palau National Congress members in April appealed to the US administration for help. A terse letter to Interior Secretary Hodel signed by seventeen of the thirty delegates and senators read in part:

Many of us in Palau have grown weary of the insistence of yourself and other officials of the United States Department of Interior, in the face of mounting evidence of widespread corruption in our government, that this staggering problem is an internal matter for Palau. We do not have the means to solve it without United States assistance. . . . Why is it necessary for us to remind you, again and again, that Palau is a Trust Territory and that the United States has responsibilities, as well as rights, in Palau? . . .

It has been a year since you were first requested to provide United States law-enforcement assistance to Palau. The situation in Palau has gotten steadily worse since that time. It should be obvious to anyone that Palau is not capable of handling that wide-spread corruption internally.<sup>33</sup>

Receiving no satisfactory reply from Hodel, those same seventeen legislators sent another letter to President Ronald Reagan. It stated in part:

<sup>33</sup>Letter to US Interior Secretary Donald P. Hodel signed by seventeen of the thirty members of the Palau National Congress, dated 15 April 1988; published in *Congressional Record*, 9 May 1988, p. E1446.



The early years of Palau's Constitutional Government have been fraught with difficulty. The IPSECO scandal, the murder of our first president, repeated exposes of the bribery and corruption of our highest officials, and the violence and intimidation of last summer, have threatened the very foundation of our democracy. . . . It is also unfortunate that despite the repeated requests of [Chairmen Udall and de Lugo of the US House of Representatives] law enforcement assistance was not made available to Palau during this turbulent time. Now that the importance of a United States Interior Department presence and United States law enforcement assistance has been made clear, we take this opportunity to request that . . . law enforcement assistance be provided to Palau on an on-going basis.<sup>34</sup>

Those pleas continued to fall upon unheeding ears.

Subcommittee chairman Ron de Lugo opened COFA hearings on the 7th and 12th of July 1988. He introduced House Joint Resolution 597 (HJR 597), also known as the "Palau Compact of Free Association Implementation Act." It bogged down in the conference between House and Senate, however, and died when the 100th US Congress adjourned for 1988. This bill would have given Palau more money, relief from the IPSECO debt, and \$200,000 for the next referendum. It would also have ensured that Palau could immediately implement its public auditor law and its special prosecutor law, to oversee the budget and preclude embezzlement, and would have also provided financial assistance for those two offices as well as for drug enforcement. Critics said HJR 597 did not address the issues which are at the core of controversy—land rights, national sovereignty, and nuclear-free policies. Paulette Wittwer, editor of *Asian-Pacific Issues News*, describes the de Lugo bill as "a good example of the contradictions in US policy in Micronesia," it aimed at getting the COFA approved in a responsible manner, pre-empting resolution of the Constitution and COFA issues by Palauans, but it

did not question the assumed US rights on land and nuclear weapons.<sup>35</sup>

Although Salii, according to de Lugo, had agreed to the content of HJR 597 when they met in Hawaii the previous June, the Palauan president later opposed the bill. Salii objected to the provisions for a public auditor and special prosecutor, contending that such requirements perpetuate US control over Palau by appointing auditors and representatives to oversee the administration of the Palauan government.

Shattering hopes that a report from the GAO mission of the previous December would be released at his hearing, de Lugo announced that a second GAO investigation was to take place. Apparently motivated by findings from the first mission, de Lugo apologized to Palauan House Speaker Olikong, saying: "When you first came to me with your concerns, I was not easily persuaded. Far from it. At first, I thought that this was local politics, that many of the things you were saying were exaggerated. Unfortunately, and to my sorrow, the investigations of this committee have borne out all you said."<sup>36</sup>

Salii reacted strongly to the prospects of another GAO investigation. He said he did not want it. Through his Washington spokesman he proclaimed: "Tell them they're not coming to Palau . . . I don't even want to hear their schedule."<sup>37</sup>

In his August 9 response to President Salii's letter criticizing de Lugo's actions, full committee Chairman Morris Udall said he had full confidence in his subcommittee chairman. He pointed out that "events which took place in Palau last year required greater congressional scrutiny," and because of the seriousness and extent of the problems a GAO mission was requested which "with your cooperation should complete its investigation within the next few months." Udall also pointed out that the GAO is not equipped to investigate for law enforcement purposes, and "when it became apparent from the GAO's investigation and other sources that investigations of

<sup>34</sup>Letter to US President Ronald Reagan signed by seventeen of the thirty members of the Palau National Congress, dated 26 April 1988; published in *Congressional Record*, 17 May 1988, p. E1571.

<sup>35</sup>Cited in *Pacific News Bulletin*, 5 August 1988, p. 3.

<sup>36</sup>Cited in "Belau Update," (Charles Scheiner, Box 1182, White Plains, NY 10602) 10 September 1988, p. 5.

<sup>37</sup>Cited in *The Washington Pacific Report*, 15 July 1988, p. 2.



potential criminal wrongdoing were required," the provision for a special independent prosecutor was written into the proposed legislation.<sup>38</sup>

A concern regarding HJR 597 was that it would have been a sleeper to automatically implement the COFA the next time a Palauan president certifies it has been constitutionally approved in that country, and before there is a chance for litigation on the constitutionality of that approval in the Palauan courts. Public Law 99-658, passed by the US Congress in 1986, approved the COFA in principle but required additional legislation to implement it after being approved by Palau. HJR 597 would have fulfilled that legislative requirement with added "domestic" changes—that's what US congressional oversight committees call unilateral changes to a COFA already negotiated as a public law. HJR 597 would have allowed the US president to immediately implement the COFA, after such certification by the Palauan president, without any further legislative action. This appears to have been yet another ploy to rush approval of the same COFA after the 7th plebiscite.

#### *d. Stalemate: The Women Elders' Suit.*

Mr. Thomas Dunmire, special consultant to the House Committee on Interior and Insular Affairs and member of the previous GAO team, returned to Palau along with others in late March "to continue oversight work regarding Palau's approval of the Compact and the right of individuals to test it in court."<sup>39</sup>

On 31 March 1988, 22 Palauan women elders filed a motion to reopen their lawsuit against President Salii. They felt that assurances from US congresspeople, congressional oversight personnel being in Palau, and widespread international support gave them some degree of safety. Nevertheless, in a

letter to President Salii the plaintiffs recalled previous dangers to themselves and requested 24-hour police protection. This they were given to some degree as local police drove around and kept their homes under surveillance.

Chief Justice Robert Hefner was again called in to hear the case, now known as *Fritz v. Salii*, which was expanded to include 15 counts. Some 140 additional plaintiffs were added in April. The women were represented by Anne Simon of the Center for Constitutional Rights. Arnold Liebowitz from Washington, DC, represented the Salii Administration.

Justice Hefner ruled on April 22 that the constitutional amendment was null and void and that the subsequent August 21 plebiscite on the COFA was, therefore, invalid because it fell short of the required 75 percent voter approval. The court also ruled that there is no inconsistency between the COFA and the Constitution with regard to nuclear materials because the Constitution allows nuclear materials if 75 percent of the voters approve.

Palau's nuclear-free Constitution remains intact and, for the sixth time, after almost 19 years of negotiation, the COFA remains unapproved. Although the US Senate had approved its version of COFA implementation, the full House of Representative had not because legislation had not yet been marked up by its Committee on Interior and Insular Affairs. Therefore Compact implementation was not completed before the court ruling and for the sixth time the COFA is dead.

The Palauan government appealed Justice Hefner's decision to a three-judge panel of the Palau Supreme Court. That court's opinion was handed down on 29 August 1988, and upheld the lower court's ruling that the constitutional amendment referendum was null and void because it was not proposed by three-quarters of the members of each house of the legislature. Therefore the subsequent COFA plebiscite also failed because it did not garner the constitutionally-mandated 75 percent approval.

The Appellate Division did disagree with the lower court's decision by ruling that an inconsistency does exist between the Constitution and the COFA, even though the COFA is not yet ratified. Therefore, it appears that the pro-Constitution, anti-

<sup>38</sup>Congressional Record, 9 August 1988, p. E2678.

<sup>39</sup>Official letter under House Committee on Interior and Insular Affairs letterhead to President Lazarus Salii, dated 17 March 1988 and signed by Committee Chairman Morris K. Udall and Subcommittee Chairman Ron de Lugo.



nuclear people in Palau have won the battle, but the war still goes on. One prominent pro-Constitution attorney from Palau commented: "I think it's really bad. The decision is not very coherent, the reasoning is not really there. I do not see how they were able to arrive at the position that the Constitution can be amended at any time before the Compact takes effect."<sup>40</sup>

But with regard to the women, their attorney, Anne Simon from the Center for Constitutional Rights, stated: "This decision is a tribute to the courage of the plaintiffs. They persisted in seeking a legal resolution of their claims despite severe violence and intimidation."<sup>41</sup>

In December 1988 these women plaintiffs established Otil A Beluad (OAB—"Anchor of Our Land"), a grass-roots educational organization for Palau. Gabriella Ngirmang and Augusto Naruo Michael are co-chairpersons and Isabella Sumang is secretary. OAB's aim is to create a forum to encourage women's increased participation in current political dialogue, to uphold the Palauan Constitution, to challenge corruption in government, and to support policies that benefit the majority of the people. Yet, although a great majority of the members are women, they do not exclude anyone with similar values and goals who is willing to actively work toward those goals.

Three projects are the immediate priority of OAB: (1) set up a resource center to develop and distribute educational materials on contemporary life in Palau, (2) establish a coordinating office to increase communication and share responsibilities among members, and (3) create a communal and neutral meeting place for women. Although Kltal-Reng's educational activities stretch throughout the islands of Palau, its membership is drawn mainly from one village. The membership of Otil A Beluad comes from all over Palau. Combined and co-operating with the efforts of Kltal-Reng, this makes a formidable force for Palauan self-determination.

### e. The Death of Salii.

The day was Saturday, 20 August 1988. At about 1:00 PM President Salii's wife, his driver and their maid were eating lunch in an open-air summer house behind their home. They heard a noise which sounded like a rock thrown against the house, and looked around outside but found nothing. About 20 minutes later Mrs. Salii went inside and discovered the 54-year-old president slumped in a chair with a single bullet wound in the head. There was no suicide note. He was rushed to the hospital but was dead on arrival. Later the police confiscated a .357-caliber Magnum pistol from Carlos Salii, claimed to have been found next to the body and handled by family members. Presidential spokesman Bonifacio Basilius said that for unknown reasons the president had borrowed the pistol from a security guard about four months earlier.

Vice President Thomas O. Remengesau, Sr. (also the minister of justice, who refused assistance to people being terrorized the previous year), was sworn in that same evening as acting president until the November elections.

People who had seen Salii that morning said he was in good spirits. He had spent the previous day preparing his announcement as a candidate for the November election, which he expected to make the next day. All may not have been rosy with the president, however. Haruo Wilter, Salii's representative to Washington, had arrived in Palau the day before. Wilter spent two hours with Salii that Saturday morning and was presumably briefing him on the de Lugo hearings and the IPSECO trial in New York. Wilter said, however, "Everything we talked about while driving in my car were things he already knew and which we had discussed by telephone on numerous occasions . . . He was in a very good mood."<sup>42</sup>

Another setback for Salii was that the state of Koror, having half the nation's population, had replaced twelve of the

<sup>40</sup>Cited in "Belau Update," 10 September 1988, *op. cit.*, p. 5.

<sup>41</sup>Cited in *Asian-Pacific Issues News*, September 1988, p. 2.

<sup>42</sup>*Pacific Daily News*, 10 September 1988, Associated Press story by Howard Graves headlined "Salii Offered to Resign Before Death."



seventeen state Legislature seats with pro-Constitution people. Second highest in the popular vote was Isabella Sumang who was prominent in the Women's Lawsuit—a bad sign for those in favor of the COFA.

Two days before his death, according to the *Palau Free Press*, GAO Associate Director Nancy R. Kingsbury had written a letter dated August 18 to Salii expressing GAO's intention to return to Palau to conduct further probes on several issues.<sup>43</sup> Presumably the letter arrived after his death, but Salii was undoubtedly briefed on the contents by Wilter who had been in contact with GAO. Some of the additional points the GAO wished to investigate were the Babeldaob road contracts, the Matthews and Wright bond issue, renovation costs to the president's house, Palauan views on military land use, events leading to the IPSECO contract, "and providing an opportunity for Palauan officials who received payments from IPSECO to explain the purpose of those payments."<sup>44</sup> The letter also rebuffed President Salii's objection to another visit, saying the GAO "has authority to audit all financial transactions, including IPSECO power plant purchase, bond issues, and contracts and expenditures of Palau's national and state governments, irrespective of whether they included expenditures of US funds."<sup>45</sup>

Prior to Salii's death a group of political opponents formed the Coalition for Open, Honest and Just Government. They were:

Roman Tmetuchel (Salii's archrival and governor of Airai)  
Yutaka Gibbons (the Ibedul)  
Thomas Remengesau (then vice president)  
Santos Olikong (House of Delegates speaker)  
Moses Uludong (governor of Ngchesar)  
Kaleb Udui (former president of the Palau Senate)  
Tosiwo Nakamura (former speaker of the House of Delegates)

<sup>43</sup>*Palau Free Press*, 17 September 1988.

<sup>44</sup>Cited in *Palau Free Press*, 17 September 1988.

<sup>45</sup>*Ibid.*

Alfonso Oiterong (former vice president and acting president after Remeliik's assassination)

Some of them were running against each other for the upcoming presidential election but they were all united against Salii. It is interesting, though, to notice the juxtaposition of players which is so typical of Palauan politics. Roman Tmetuchel was pro-COFA and anti-Constitution during the ConCon, but is now pro-Constitution and allied with former ConCon delegates such as Kaleb Udui and Tosiwo Nakamura. Yet, ironically, Tmetuchel was the Coalition's choice candidate for president. Salii also changed sides from being pro-Constitution during the ConCon. It is difficult to say if Salii was ever anti-COFA since he was the Micronesian pioneer for free association. But in his last days he was strongly trying to subvert the Constitution in order to implement the COFA.

According to Haruo Wilter, and substantiated by Jeffrey Farrow (de Lugo's subcommittee staff director), Salii knew that Palau's Vice President Remengesau supported de Lugo's HJR 597 bill. Salii instructed Wilter to "Find out what they want . . . Do they want me to step down?"<sup>46</sup> But Farrow said that Congressmen de Lugo and Udall "were not trying to get Salii out of office," and that they "have no sides in Palau as to who they support politically."<sup>47</sup>

Acting President Remengesau on September 16 released an "Official Statement on the Death of President Lazarus E. Salii" which concluded that the bullet was self-inflicted—a conclusion reached after reviewing the autopsy, FBI ballistics tests, and the statements of witnesses.

Although all evidence made public seems to rule out assassination, the violent nature of Salii's death makes the still-unsolved murders of President Remeliik and Bedor Bins even more bizarre. Besides the gunshot wounds, there are other parallels between the deaths of the only two elected presidents of Palau:

<sup>46</sup>*Pacific Daily News*, 10 September 1988, *op. cit.*

<sup>47</sup>*Ibid.*



- Both died on a Saturday.
- Both supported the COFA at the time of their death.
- Both died on the day before making a national announcement.
- A police academy was in session in Koror with visiting FBI instructors when each was shot. Verbal reports are that the same Americans headed the FBI team both times.

Many are convinced that Remeliik was killed so he would not reveal the details of the IPSECO power plant scandal and COFA coercion, and the prominent people behind each. In Salii's case, there seems to be no doubt that he was upset about the continuing GAO investigation and an independent special prosecutor. That could cut both ways; as motive for suicide, or for assassination—whether that be with respect to political intrigue or international racketeering.

Salii's funeral was a quiet family mourning. He was buried on Angaur, the island of his birth.

\* \* \* \* \*

Seven candidates ran for the presidential seat in November 1988—Acting President Thomas O. Remengesau, Ibedul Yutaka Gibbons, Minister of State John O. Ngiraked, House Speaker Santos Olikong, Airai State Governor Roman Tmetuchel, Ngatpang State Governor Ngiratkel Etpison, and Ngchesar State Governor Moses Uludong. Etpison was the candidate for the Ta Belau (One Belau) Party which was formed the previous year by the furloughed workers and President Salii. Tmetuchel was the choice of the Coalition for Open, Honest and Just Government, and campaigned on the slogan that laws must be upheld and constitutional procedures followed. His stand on the COFA is less clear.

Sixty-three-year-old businessman Ngiratkel Etpison won the election with 2,392 votes out of 9,092 cast. According to Palauan law, the candidate with the most votes wins. With the vote split seven ways, Etpison became president on a small 26 percent plurality, rather than a majority, and edged Roman Tmetuchel out by a mere 31 votes. Remengesau came in third

with only 1,773 votes. Since Etpison replaced the late President Salii on the Ta Belau ticket, he is expected to continue the pro-COFA stance of his predecessor.

Two constitutional provisions create a dilemma in Palau—the 75 percent vote needed to introduce harmful materials vis-à-vis the low plurality needed to elect a president. The latter has consistently introduced an administration which tries to compromise the former. In the long run, it may be the ability of a mere 26 percent of the voters to install a president that introduces the most harmful substance of all. It is in this regard that a constitutional amendment may be most helpful.

Senator Kuniwo Nakamura of Koror won the vice-presidential seat with a comfortable lead—62 percent majority—over his single opponent, Delegate Frank Kazuo Asanuma. He is the candidate chosen by the Coalition for Open, Honest and Just Government. The vice president is elected separately in Palau. The Coalition also won a strong majority in both houses of the Legislature, making the election of Etpison even more suspect. Etpison's Ta Belau party captured only five of the 16 House of Delegates seats and a mere four of the 14 Senate positions. Joshua Koshiro remained as Senate President and former Vice Speaker Shiro Kyota became speaker of the House.

After the Coalition's requests for a recount were rejected by the Election Commission, Coalition attorney Johnson Toribiong filed a lawsuit on behalf of Roman Tmetuchel and others of the coalition challenging the validity of the election. Among the voting irregularities cited were:

- \* 18,000 ballots were printed for only 11,000 registered voters.
- \* In Guam, extra ballots were made on a copy machine when more than 1,200 voters arrived at the polls and only 700 official printed ballots were available.
- \* Many Palauan voters living in Hawaii or the mainland US received absentee ballots late or not at all. (Of the estimated 800 voters from this strongly-Tmetuchel consistency, rumor has it that only 106 were tallied.)



- \* In Imeong, a Babeldaob village where no votes for Tmetuchel showed up on the final tally, several citizens came forward with affidavits stating that they had cast votes for Tmetuchel.<sup>48</sup>

On 19 December 1988, Palauan Supreme Court Associate Justice O'Brien dismissed the case. It then went to the Appellate Department which on December 29 unanimously upheld the election. Etpison was sworn in as president on 1 January 1989, and the formal inauguration which followed on January 26 was well-attended by US officials and a conspicuous military presence from Guam.

So we again witness the yin and the yang of Palau—a pro-COFA president and a pro-Constitution vice president, the president from Babeldaob and the vice president from Yoeldaob. A new episode is beginning in the Palauan drama. But there is little evidence that things will be different.

<sup>48</sup>The Nuclear Sovereignty Newsletter, P.O. Box 1047, Bolinas, CA 94924, 2 December 1988, p. 2.

## CHAPTER SEVEN CONCLUSION: TOWARD SELF-DETERMINATION

*The Americans came to teach us about Constitutional democracy. Apparently we have learned too well.*

—Roman Bedor  
Palauan trial assistant and activist

It is clear enough from the events related in this book that in order for there to be a just resolution to the political status question in Palau, two things must change: the locally executed but doubtless foreign-sponsored intimidation and violence must be stopped, and the noose of economic blackmail must be loosened. Neither of these things is likely to happen without increased international solidarity and continued exposure of the Palauan story to the world public. But what are the fundamental elements of a political solution? Three have filtered through as essential.

First, since the notion of "Free Association" as it has been articulated in the COFA has lost credibility, the UN Trusteeship should remain in force in the interim. However, meaningful United Nations authority, and if necessary intervention, must be established for the duration of the Trusteeship. Second, the United States should be compelled by the UN to recognize that its socioeconomic obligations to Palau under the Trusteeship are not contingent upon agreement to the COFA, and that it bears responsibility for Palau's current economic straits. Further, the US must be restrained from forcing any more plebiscites on the political status question for at least several years, to allow a healing and renewal process within Palau and a full and fair discussion of the issues free from intimidation, physical or financial. Third, the Palauan people should be allowed as much time—and sociocultural space—as they need to find a process by which they can reach consensus about the future of their nation. Achieving the goal of true self-determination will require each of these three elements.



### a. *Establishing Genuine United Nations Oversight.*

UN supervision of the Administering Authority was mandated in the Trusteeship Agreement, but was never exercised. For more than twenty years the UN Trusteeship Council applied only mild pressure on the US to commence political status negotiations. Throughout the decade of negotiations on the shape of the status question between the US and Micronesia, the UN again played a thoroughly minimal role. And since the popular political processes began in Micronesia on the COFA, UN oversight has not only been dubious, but has waned as the process has become more conflict-ridden.

What has been described as the UN Trusteeship Council's ever-narrowing and limiting mandate to visiting missions for observing plebiscites in trust territories can be illustrated. During the 1978-79 constitutional referenda in Palau, the Trusteeship Council mandated its observer missions to "obtain first-hand information concerning the political, economic and social developments in [the territory]."<sup>1</sup> Then, according to a December 1982 Trusteeship Council resolution, UN visiting missions for the COFA plebiscites were required only to "observe the plebiscites, including the campaign and polling arrangements, the casting of votes, the closure of voting, the counting of ballots and declaration of results."<sup>2</sup> There was no direction to report on political, economic and social develop-

ments, as previously mandated. Indeed, the December 1982 resolution has been interpreted as a restriction from fully reporting the conditions under which the plebiscite took place.

Visiting Mission function declined further in 1987—there was none during the August 4 constitutional amendment vote, and for the following August 21 COFA plebiscite the observers merely observed the polling places and vote count. Such oversight indifference is inexcusable when there is widespread knowledge of aggravated economic crisis, voter intimidation, and interference with legal processes.

Oversight of the educational process leading up to the plebiscites is crucial. Hans Ongelungel, a Palauan living in Portland, Oregon, told the UN Trusteeship Council that one reason he opposes the COFA is that most people don't understand it and the presentations were one-sided:

... The political educators, paid by the government of Palau with US funds, have limited the discussions ... 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 our leaders and himself. ... we requested copies of the [over-400-page] Compact from our government representatives. Instead we were given only small books which represent the government's pro-Compact arguments. ... One government spokesman, who came to our community, told us that our Constitution was invalid until the Trusteeship was terminated. This is the type of misinformation we have been given by representatives of our government ... [UN] absence has been an important part of the misinformation and deception that we have had to face. ... 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. ... only the Compact has been on the ballot. ... We have been faced with an "all or nothing" choice, and the United States has refused to renegotiate the Compact. Is this decolonization?<sup>3</sup>

<sup>1</sup>"Statement Before the Special Committee on the Situation with Regard to Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples," by Susan Quass, United Methodist Office for the United Nations, at the United Nations Headquarters, 3 August 1987, pp. 5-6. Also cited in "Petition Concerning the Trust Territory of the Pacific Islands Presented to the United Nations Sub-Committee on Small Territories of the Special Committee on the Situation with Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Territories and Peoples," on behalf of the Center for Constitutional Rights by Sara E. Rios. Presented at the United Nations, New York, New York, 12 May 1988.

<sup>2</sup>*Ibid.*

<sup>3</sup>"Petition Regarding the Trust Territory of the Pacific Islands Presented to the Trusteeship Council of the United Nations Meeting at



Rather than sending observers only at the time of actual voting, oversight should take place during the education phase leading up to the plebiscite to prevent intimidation and assure availability of adequate public information both pro and con. With proper oversight the UN could minimize and probably eliminate misleading practices in voter education, and likely preclude further intimidation. We have already seen the mitigation of violence as news of the 1987 events circulated outside of Palau.

Susan Quass, Asian and Pacific Resource Coordinator at the United Methodist Office for the United Nations, summarized five critical action items which she had previously explained in detail to the Special Committee of 24 during her August 1987 testimony. They were:

First, I urge this Committee to insure that UN visiting missions to observe plebiscites carry out their function to assess the substance as well as the form of self-determination.

Second, I urge you to seek complete answers from the Trusteeship Council, the Administering Authority and the government of Palau, to questions about the reduction in living standard of the people of Palau before and during the 30 June [1987] plebiscite.

Third, I urge you to take action in response to Trusteeship Council and the Administering Authority advocacy for a particular outcome in an act of self-determination. Assess your own role in assuring that future acts of self-determination in Palau offer voters an opportunity to choose from several defined, viable political status options which are consistent with their Constitution.

Fourth, assess whether the illegal and questionable activities of the government of Palau represent the normal conditions for self-determination or an aberration of the process.

United Nations Headquarters, New York, New York," by Hans Ongelugel, Portland, Oregon, 12 May 1988.

Finally, I urge you to find ways to act quickly and decisively in favor of self-determination for all peoples, even those living in the strategic Trust Territory of the Pacific Islands.<sup>4</sup>

The Salii administration wanted no resistance to its biased educational techniques. When Haruo N. Wilter (then President Salii's special assistant for financial affairs and appointed after Salii's death as the US Interior Department's field representative in Palau) addressed the UN Trusteeship Council in May 1988, he departed from the usual practice of reporting on economic, educational and social advancements in Palau—all of which would have been embarrassing to explain. Instead, he rebutted the International Commission of Jurists' report and bewailed the delay in ratification of the COFA by the US Congress. Seeming somewhat frustrated by such opposition, he concluded:

... We wish this Council, and any other international organization for that matter, to assist Palau and its people from undue interference by outside influences such as the Greenpeace organization, Minority Rights Group, International League of Human Rights, European Parliament, and now, International Commission of Jurists. Why don't these external organizations simply let us be? Why don't they keep out and stop meddling with our own internal affairs? Why don't they just leave us alone to settle our own local affairs amicably, peacefully and in our own way?<sup>5</sup>

Wilter's plea would be pathetic if it wasn't so blatantly misleading. There is a difference between meddling with the internal affairs of a small country and supporting a people fighting for self-determination. Presence of the organizations identified by Wilter were needed in the absence of adequate

<sup>4</sup>Statement Before the Special Committee on the Situation with Regard to Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples," *op. cit.*, pp. 15-16.

<sup>5</sup>Opening Statement, Haruo N. Wilter, Presidential Assistant for Financial Affairs, Republic of Palau, to the 55th Annual Session of the United Nations Trusteeship Council, New York, New York, 10 May 1988.



UN oversight, which is enough in itself to signal serious troubles with the Palauan self-determination process. The "leave us alone" plea was uttered at the same time internal corruption and US manipulation were being drawn to global attention. In previous chapters we have cited numerous instances when Palauan legislators and traditional leaders have pleaded for outside help, both from the US and the UN.

In her testimony before the United Nations Trusteeship Council on 12 May 1988, Gabriela Ngirmang said the people of Palau want a break from the repetitive voting so they can better inform themselves about all status alternatives. She made a plea for five action items:

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

2. The United Nations, and this council in particular, should supervise a thorough and impartial program of education in Palau on all status options.

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

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

5. 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.<sup>6</sup>

<sup>6</sup>"Petition Regarding the Trust Territory of the Pacific Islands Presented to the Trusteeship Council of the United Nations Meeting at United Nations Headquarters, New York, New York," by Gabriela Ngirmang, Koror, Palau, 12 May 1988.

The problem seems to lie in the character of the Trusteeship Council itself, which is made up of representatives from the same countries as the permanent members of the Security Council but with no individual veto power. Fifteen days after hearing convincing testimony from many credible and respected petitioners urging the UN to take its oversight responsibilities more seriously, the Trusteeship Council, with only the Soviet delegate dissenting, approved progress toward Palau's means of accepting the COFA. The United States, Britain and France urged approval of the COFA and recommended that differences in interpretation be resolved between Palau and the United States. Had that resolution been made in the Security Council, it would have been killed by the Soviet veto.

In failing to live up to its responsibility for Trusteeship oversight, the UN Trusteeship Council has been deeply at fault in the failure of the US to live up to its Trusteeship mandates. The way to make amends for this neglect is not, as the US would have it, to rush the Trusteeship toward termination, thus burying the whole sad legacy and getting off the hook for its miserable record of administration. Rather, it is for the UN to reassert its authority precisely at this crucial time and amidst the current difficult circumstances. For this to happen the Trusteeship must continue. This is obviously not the long-term solution, but it is the necessary short-term one in the face of Washington's strategy of trying to railroad approval of the COFA.

Predictably, when faced with this prospect both the US and the pro-COFA forces in Palau have objected that extension of the Trusteeship cuts against the grain of self-determination. The way in which administrative officials suddenly wax eloquent about ending colonialism would be humorous if it were not so baldly duplicitous. The fact is that the UN is the only international body which can stand in the way of US exploitation and manipulation of tiny Palau on the one hand, and insist that unfulfilled Trusteeship obligations be honored on the other. For this reason the most consistent pro-independence organization in Palau—Kltal-Reng—advocates continued Trusteeship for the time being as the only leverage Palauans



can have over the US until a new political status can be decided, on equal and fair terms.

It is further evident of UN negligence in oversight that the visiting mission did not observe the other three governmental districts of the Trust Territory—the Northern Mariana Islands, the Federated States of Micronesia, and the Marshall Islands. This tacitly accepts US claims that the Trusteeship is terminated in those entities despite that termination never being approved by the UN Security Council, where the Soviets hold veto power. Lamenting the lack of US reporting on any district except Palau, Professor Roger Clark told the Trusteeship Council: "We should have thought that this Council might generate just sufficient shame about that to insist on seeking its own information."<sup>7</sup>

On the brighter side, the UN Special Committee of 24 continues to carry Micronesia on its list of non-self-governing trust territories. During its August and September 1989 meetings this committee decried the lack of cooperation from the Trusteeship Council and the US. It passed a strong resolution noting the problems of potential military bases, lack of economic self-sufficiency, maritime economic zones, and self-determination.<sup>8</sup> In like fashion, the UN General Assembly Fourth Committee (on decolonization), in its September-October 1989 meeting, passed a strong resolution by a very favorable margin of 86-12. That resolution restated the Committee's condemnation of all military activities being carried out by colonial powers in territories under their administration.<sup>9</sup>

<sup>7</sup>"Petition Concerning the Trust Territory of the Pacific Islands," presented to the United Nations Trusteeship Council on behalf of the International League for Human Rights by Roger S. Clark, Distinguished Professor of Law at Rutgers University, Camden, NJ, and vice president of the International League for Human Rights, 16 May 1989, p. 1.

<sup>8</sup>UN General Assembly Document A/44/23, Part VI, 21 September 1989.

<sup>9</sup>*Belau Update #17* published by the WESPAC Foundation (c/o Charles Scheiner, Box 1182, White Plains, NY 10602), 22 November 1989, p. 7.

But resolutions, alone, will not help Palau. How can stronger UN oversight be promoted? The UN is a body of governments and is, therefore, influenced by governments. Groups of governments have the most influence. Groups like the European Economic Committee (EEC), Association of South East Asian Nations (ASEAN), and the non-aligned movement all have influence, as do the demands of Pacific countries for decolonization. In that regard, each person working to improve the policy of his or her own government does, over the long haul, help strengthen the UN for decolonization.

### *b. Ending US "Democratic" Duplicity.*

The US was remiss in accepting President Salii's certification that the COFA was constitutionally approved in Palau when there was so much evidence of intimidation. Judge Hefner in his April 1988 opinion castigated US disrespect for the full processes of law as an element of self-determination: "Under all the circumstances surrounding this case (presumably within the knowledge of the United States Government) and the political background and intimate connection of the United States with Palau (certainly within the knowledge of the United States), 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."<sup>10</sup>

How the United States supports emerging democracies under its political wing is epitomized by US behavior following the first COFA plebiscite in 1983. The UN Special Committee on Decolonization (the Committee of 24) assigned a subcommittee to investigate conditions in Palau in the wake of that plebiscite. In its report, the subcommittee recommended that the Special Committee should:

<sup>10</sup>"Memoranda of Opinion," *Fritz vs. Salii*, Civil Action No. 161-87 in the Trial Division of the Supreme Court of Palau, 22 April 1988.



1. Reaffirm the inalienable right of the people of the Trust Territory of the Pacific Islands (Micronesia) to self-determination and independence, and the importance of ensuring that Micronesians fully and freely exercise those rights and that the obligations of the Administering Authority (US) are duly discharged.
2. Reiterate the view that size, geographical location, population, and limited natural resources should in no way delay the speedy implementation of decolonization.
3. Express regrets at the repeated refusal of the US to cooperate with the Special Committee on Decolonization by declining to participate in the examination of the situation in Micronesia.
4. Reiterate that it is the obligation of the US to create the conditions enabling the people of Micronesia to exercise freely and without interference their inalienable right to self-determination and independence.
5. Note that the 10 February 1983 plebiscite in Palau did not approve the COFA.
6. Recall previous appeals to the US that the people of Micronesia be given the fullest opportunity to inform and educate themselves about the various options open to them and that the US not take any action which might impede the unity of Micronesia or the rights of its people.
7. Reaffirm its strong conviction that US military installations and activities, along with agreements pertaining to them, not hinder the people of Micronesia from exercising their rights to self-determination and independence.
8. Express regrets that the US High Commissioner of Micronesia can suspend local legislation and reiterate that the US is duty bound to transfer all power to the freely-elected representatives of Micronesia.
9. Express a view that economic assistance should be increased so the people of Micronesia can achieve economic

independence to the greatest extent possible, and recall the US obligations toward the economic development of Micronesia.

10. Reaffirm that it is the right of Micronesians to own and dispose freely of their natural resources, and to establish and maintain control of their future development including the 200-mile economic zone surrounding their islands.
11. Call attention to Article 83 of the UN Charter which gives the Security Council jurisdiction over the Micronesian Trusteeship.
12. Encourage the local authorities of Micronesia to develop closer relationships with various regional and international agencies, especially those within the United Nations.<sup>11</sup>

These recommendations set off a flurry in Washington. Assuming that they would become the text of the Special Committee's resolution, Secretary of State George Shultz sent a telegram to the US ambassador or the US intelligence agent in each of the countries (now 25) which have representatives sitting on the Special Committee. They were instructed to approach the foreign ministry to solicit support for the US position (which, of course, is against such a resolution) in the Special Committee vote. The confidential telegram noted the short lead time allowed "due to the unusual dilatoriness of the subcommittee" but stated a belief that this "exercise is worthwhile in serving notice of our concern and preparing ground for a later fight."<sup>12</sup>

Why was the US so concerned when all the subcommittee did was recommend what was already set forth in the UN Charter and the Trusteeship Agreement? It was because the US was, and still is, following a different agenda—one which was laid down in The Solomon Report twenty years earlier.

<sup>11</sup>See US Department of State Telegram 273725 from Secretary of State George Shultz to 25 American Embassies or US Intelligence Agents, and the US Mission to the UN, dated 24 September 1983.

<sup>12</sup>*Ibid.*



The United States failed to meet its obligation as Administering Authority by failing to guarantee the territory's progress toward self-government or independence according to the freely-expressed will of the Palauan people, and by failing to ensure democratic processes in Palau. In an earlier election when the people truly had a free choice, 92 percent of the voters ratified their nuclear-free Constitution. The support dropped in later COFA plebiscites in proportion to increased intimidation and US-imposed economic pressures.

Neither can the US plead ignorance regarding the violence surrounding the most recent plebiscites and their ensuing litigation. A detailed five-page report of all the events was transmitted to the US Interior Department by the acting Attorney General of Palau, Philip Isaac, on 12 September 1987.<sup>13</sup> Later, on 21 September 1987, after the women had dropped their lawsuit, Chuck Jordan wrote from the Office of the US High Commissioner in Saipan that: "Everything in Palau is very quiet. If any additional problems arise it will be because of someone else filing a new lawsuit."<sup>14</sup> There is no excuse for American officials not knowing of the violence, its cause, and its effect on the people's free choice—and for failing to dispatch adequate law-enforcement capabilities to punish offenders and ensure due process. Instead, US officials chose to ignore reports of intimidation and accepted President Salii's certification that the COFA was freely chosen according to constitutional processes, and vigorously attempted to rush ratification of that document in order to secure US interests in Palau.

It should be recognized that the US strategy to simply keep holding plebiscites until the desired outcome is achieved makes a mockery of the democratic process. American administration of Palau provides a dramatic indictment of the duplicity of US

foreign policy, subverting the very ideals it ostensibly promotes and defends in the third world. In the long run, the result of this duplicity will not be different in Palau than elsewhere around the world: people who may well have been predisposed toward friendly relations with the US will become embittered and alienated, and American "influence" will recede rather than advance.

### *c. Allowing a Palauan Decision-Making Process.*

As in any self-determination struggle, the decision over Palau's future must ultimately lie in the hands of the Palauan people themselves—with or without UN or US cooperation. The only thing outside bodies can do—and this they must do—is to make every effort to guarantee that Palauans decide in an atmosphere free of foreign coercion, disruption, and influence peddling. To expect the US to "police" the Palauan political environment is of course like asking the fox to guard the chicken coop; that role belongs to the UN. What must be demanded from US lawmakers is that Congressional and Executive action on termination of the Trusteeship be suspended, and not resumed until there is absolute satisfaction that a free and indigenous decision-making process has been instituted in Palau.

This process may take a while, especially if attempts to resolve the COFA question in a more traditional fashion are made. Kltal-Reng, for example, has suggested three criteria for a more consultative process. First, a moratorium on referenda would be declared for some significant period, during which time there would be exhaustive and multi-faceted education and debate concerning options for Palau's national future. Second, the debate must not be limited to the COFA, but must include serious consideration of all options, including independence. Third, a nation-wide consultation of chiefs and political representatives would be convened and mandated to try to achieve the more traditional consensus.

<sup>13</sup>Fax (160) 680-862 on Republic of Palau letterhead from Philip Isaac, Acting Attorney General, to Kittie Baier, OTIA, 12 September 1987, 3:15 PM; marked URGENT.

<sup>14</sup>Letter dated 21 September 1987 from Chuck Jordan of the Office of the High Commissioner of the Trust Territory of the Pacific Islands, Saipan, to Mark Hayward of the US Administration.



#### d. *Efforts Toward A Moratorium.*

When events settled down following the presidential-election activity of late 1988 and the inauguration of Etpison as President of Palau, the people of that country started to regroup. Vice President Nakamura, who also fills the key position of finance minister, emerged as the only politician with a clear national mandate. Meanwhile, none of Etpison's nominations for cabinet members were confirmed by the Palau National Congress because of their former close ties to the Salii administration.

Both chambers of the Palau National Congress have written letters to the US protesting the appointment of Haruo Wilter, former special assistant to the late President Salii and a major player in the IPSECO deal who has little credibility with current Palauan leadership, as the US Interior Department's field representative in Palau. The appointment was made late in 1988 under the Reagan administration by then Assistant Interior Secretary Janet McCoy, presumably to alleviate pressure for a permanent presence in Palau.

In many respects the Vice President and the Palau National Congress have effectively isolated President Etpison from the decision-making process. Most noteworthy was the early January 1989 working group of Palauan leaders—consisting of Vice President Nakamura, three presidential special assistants, and eight legislators—which generated a "Position Statement on the Future Political Status of Palau." It was signed on January 16 by President Etpison, Senate President Koshiba, and House Speaker Kyota, and read:

The leaders of Palau are unified and have agreed to place a high priority on the ultimate resolution of the future political status of Palau. The Palau leaders find that the six unsuccessful attempts by the Palau electorate to ratify the Compact of Free Association in the past demonstrates clearly the need to address and resolve the political status issues which impact on the sovereignty and lives of the Palauan people.

Despite repeated failures by the Palau electorate to muster the 75-percent constitutionally-mandated majority approval of the

Compact of Free Association, Palau leaders continue to believe that an overwhelming majority of the Palau electorate still favors and supports the concept of a fully-constituted and self-governing Palau freely associated with the United States. This concept is based on the recognition of two inescapable realities. On the one hand, there is the expressed desire of Palau to control its land and other resources and on the other, the obvious need for outside technical and financial assistance. The long-standing American interest in this area for defense and for the promotion of international peace and security in this part of the world is recognized.

What is more, the international trusteeship obligations of the US towards Palau to prepare Palau to achieve self-government or independence as may be appropriate to circumstances of the people of Palau fell far short of expectations and will now have to be accomplished under the terms of reference of the Compact of Free Association. *In that regard, it is the Palau consensus that any reconciliation of any possible conflict or inconsistency between the Palau Constitution and the Compact with the US will ultimately result in the changes to be sought within the four corners of the Compact with the US and any proposal to accommodate changes by effecting amendments to the Palau Constitution will not be considered.* (Emphasis added.)

On another plane, Palau wants to establish a political status of free association with the United States because its present status as the last Trust Territory smacks of a quasi-colonial status which is degrading to Palauan people and unworthy of America. A Compact of Free Association with all its subsidiary agreements, if it properly addresses identified needs in and without the Compact, could forge a unique partnership between Palau and the United States, not as between guardian and ward, but more as between equal partners.

A Compact of Free Association, in order to obtain the unqualified approval of the overwhelming majority of the Palau electorate, must take into account minimum political, economic and social requirements of the Palauan people to enable them to make a smooth transition from their present status to a new one. *To this end, a political status entity will be organized at the earliest possible time representing all segments of Palau leadership and reflecting varying points of view on the future political status issues of Palau.* This entity should be given mandates to address Palau's basic concerns with the United States toward resolv-



ing the future political status of Palau and to seek broad agreements on a Compact of Free Association which in its opinion will be best suited to the needs, interests and aspirations of the Palauan people. (Emphasis added.)

The Palau National Congress then established a Commission to study and renegotiate the future status of Palau, as well as investigate any misdealings of recent times, within the mandate of the Position Statement. The Commission comprised 20 members: one representative from each of the sixteen states of Palau, one representing the Council of Chiefs, one representing the President's office, one representing the House of Delegates, and one representing the Palau Senate. It was to report back to the Palau National Congress in January 1990. Vice President and Finance Minister Nakamura was the chairman, thus giving him a triple approach to influencing Palauan politics. Roman Bedor was chosen to represent the Senate on this Commission.

This in essence established the moratorium suggested by Kltal-Reng and Gabriela Ngirmang. It gave time to re-think the political status issues, and provided opportunity for wide public education. However, while this move held promise for more-informed and less-hasty decision-making, the commission was not allowed to investigate options other than free association with the US. Given the history of US manipulation, this signaled a need for vigilance. Vigilance was further suggested when James Berg, executive director of the US State Department's office of freely associated state affairs under Reagan, stated after the 100th Congress failed to pass HJR 597: "We've said before, and we're saying again, that we're not going to renegotiate [the COFA]."<sup>15</sup>

The US representative to the UN Trusteeship Council on March 1 invited the Council to send a visiting mission to Palau to observe Palau's progress toward adopting the COFA. Under pressure for being lax in its oversight role, the UN Trusteeship Council, after a hastily-called meeting on March

16-17, voted to accept the US offer and send a special delegation to Palau. The mission was escorted by Don Yellman of the US State Department. Yellman was given the Palau assignment in 1986 after his stint in El Salvador.<sup>16</sup>

Only the Soviet representative Dmitri V. Bykov objected to the haste of the meeting and its decision, stating that the mission would only cover up the United States' militarization and nuclearization of Palau. The UN mission brushed aside those Soviet claims and reported that Palau's complaints of inadequate development and economic dependency on the US were nothing more than bargaining tactics aimed at getting more money in the COFA.

Against this backdrop, a letter was circulated in late March to all Palauan legislators and to President Etpison and his Ta Belau party. Although vague and indirect, it implied harm to anyone who would obstruct passage of the COFA. It mentioned the Belau Liberation Organization and was signed "Blackhand September." Although the source is unknown, Palauans believe it is the core group of the 1987 furloughed workers who used violence, intimidation and murder against those critical of the COFA.<sup>17</sup>

#### *e. Palauans "Just Say No"—The Seventh Plebiscite.*

In May of 1989 the one-year moratorium seemed to shrink. The Palauan status commission met with US negotiators on Guam during that month and signed an agreement enfolding many of the points contained in the defunct HJR 597. This new subsidiary agreement signed on 29 May 1989 gave the impression of renegotiating the COFA but did nothing to address the core issues of military land use and nuclear weapons. The US team limited discussion to auxiliary requirements mandated by the de Lugo committee. Substantial

<sup>15</sup>Cited in *Pacific News Bulletin* (PO Box 489, Petersham, NSW 2049, Australia), January 1989, p. 5.

<sup>16</sup>*Palau Action Alert*, published by The Nuclear Sovereignty Project, PO Box 1047, Bolinas, CA 94924, 9 April 1989.

<sup>17</sup>"March 1989 Report" by Otil A. Beluad, c/o Box 273, Koror Palau 96940, p. 4.



changes could not be addressed. Some critical observers denounced the Guam Agreement, as it was called, as merely "additional funding and sweetened rhetoric."<sup>18</sup>

Additional funding applied to such things as a new hospital and prison, money to fight drug abuse, provisions for a special prosecutor and public auditor, assistance in debt relief, and some additional reimbursement for use of private land. Sweetened rhetoric provided more time for acquisition of private land for military purposes, committed the US to request only the minimum amount, and required the US to request public land where possible. In accordance with the latter, the Guam Agreement also required the Palauan government to take possession of the Airai Airfield on Babeldaob and Malakal Harbor, in preparation for turning it over to the US.

Also in May, the UN Trusteeship Council again held hearings. These followed the announcement by the US Office of Freely Associated States that "Palau remains the sole entity under the trusteeship pending entry into free association, expected during 1989." (emphasis added)<sup>19</sup> Nevertheless, testimony by the Palauan administration, members of the Palau National Congress, the women leaders, and the Palauan Status Commission were unified on two main issues:<sup>20</sup>

1. The trusteeship needs to be maintained until the Palauans have time to make a truly-informed and democratic choice.
2. The US must fulfill UN obligations to assist Palau with economic and community development (hospitals, schools, roads, etc.) prior to termination of the Trusteeship.

In July 1989 the Palauan House of Delegates passed a resolution calling for the seventh plebiscite on the COFA,

<sup>18</sup>*Pacific News Bulletin* (PO Box 489, Petersham, NSW 2049, Australia), July 1989, p. 7.

<sup>19</sup>"Trust Territory of the Pacific Islands and Freely Associated States," a paper prepared by the Office of Freely Associated State Affairs, US Department of State, 2 May 1989.

<sup>20</sup>*Asian-Pacific Issues News*, June 1989, p. 2.

containing the recently-signed subsidiary agreement, to take place no later than 25 September 1989. The Palauan Senate did not agree, preferring that the plebiscite wait until June 1990. It was finally agreed, and legislation passed, that the seventh COFA plebiscite would take place sometime during the first half of 1990. The legislation also specified that the President must announce the date of the plebiscite at least two months in advance in order to ensure that adequate public education precedes the vote. One Palauan woman who had been active in the court case said she had hoped that people would not be afraid next time they vote, but that does not seem likely.

To pressure Palauans living in the United States, the US Immigration and Naturalization Service (INS) has been brought into the act. Several Palauans on the US west coast have been deported because they overstayed their temporary visas. INS officials have stated that, because the COFA has not yet been signed, the US government is more actively enforcing immigration limits. Should the COFA be ratified, Palauans would be able to live, work and study in the US for prolonged stays without meeting immigration requirements—which, according to several Palauan deportees from Oregon, INS agents sharply reminded them.<sup>21</sup> It appears that deportation is being used to lever absentee voters to cast ballots in favor of the COFA.

Back in Palau, some tried to muster signatures on a petition to force a referendum on a proposal to revise the Constitution so that the COFA would need only a simple majority for approval. This effort proceeded despite the January 1989 resolution which stated that all differences between the COFA and the Constitution must be resolved in the COFA alone. However, the petition campaign failed.

Meanwhile, the Asian-Pacific Anti-Communist League, a division of General John Singlaub's World Anti-Communist League, held its 1989 conference at the luxurious Palau Pacific Resort. Some observers believe the timing was intended to revive the fear of communism so the Palauan people would be

<sup>21</sup>Reported in *Asian Pacific Issues News*, November 1989, pp. 2 & 4.



more inclined to vote for the COFA and the US "protection" it would provide. Curiously, the names of Roman Bedor and Bernie Keldermans—both staunch nuclear-free advocates and both out of the country at the time—appeared on the roster of the local World Anti-Communist League organizing committee, an obvious attempt to discredit their pro-Constitution leadership.<sup>22</sup>

On the US side, the pieces are being put into place to implement the COFA immediately after it is certified as approved in Palau. After leading a 54-person congressional delegation (including Manual Lujan, the new US Interior Secretary under the Bush administration) to Palau in February and staying less than 24 hours, Congressman Ron de Lugo and 65 others on March 8, 1989, introduced House Joint Resolution 175 (HJR 175). It essentially does what the former HJR 597 would have done with some areas to be negotiated with Palau. Those issues were negotiated in the Guam Agreement. The main portions of this implementing legislation include:<sup>23</sup>

- Providing \$300,000 per year for five years for a public auditor and special prosecutor.
- Providing \$5 million for hospital needs if Palau dedicates an equal amount over fifteen years. Also requires Palau to submit a plan for hospital construction and operation.
- Providing \$800,000 not later than fiscal year 1991 for prison improvement.
- Providing \$2 million over five years to fight drug trafficking and abuse.
- Authorizing energy-development and capital improvement-funds to help pay for the IPSECO power plant.

<sup>22</sup>*Pacific News Bulletin* (P O Box 489, Petersham, NSW 2049, Australia), November 1989, p. 4

<sup>23</sup>*Congressional Record—House*, 27 June 1989, pp. H3195-H3224.

- Requiring Palau to prepare a development plan with priorities for development.
- Providing for US responsibility in seeing that the COFA assistance is spent wisely. Also requires the US Department of Interior to set up a US Representative's Office in Palau to coordinate all federal programs.
- Committing the US to request only the minimum amount of land for military bases, and to attempt to request public rather than private land. Requires the Palauan government to obtain rights to land at Airai Airfield on Babeldaob and Malakal Harbor, as necessary to meet US military plans. For other land, Palau can *request* agreements for financial assistance before being obligated to make land available for military purposes. If Palau *justifies* an extension of the 60-day period in which requested land must be made available to the US, the US must grant an extension. (Emphasis added.)
- Requiring the Secretary of Interior to provide \$200,000 toward the seventh referendum on the COFA.

The "sweetened rhetoric" regarding military base rights is also especially vague. Requesting agreements for financial assistance is not the same as guaranteeing that assistance, nor is it any assurance that the request will be honored. What justifies an extension of the 60-day period, and how is the length of the extension determined? These ambiguities will only be answered when the US is ready to set up the bases and we can be certain, based on past performance, that the well-being of the Palauan people will not be top priority. What HJR-175 does do is provide the enabling legislation so that the COFA can go into effect thirty days after the US President certifies that it has been constitutionally approved in Palau—litigation to challenge that constitutionality notwithstanding.

The US House of Representatives passed HJR-175 on June 27, 1989, and the Senate voted favorably the following November 21. The Palauan National Congress then passed all necessary legislation for the President of Palau to call the sev-



enth plebiscite on a two-month notice. President Etpison executed that announcement and the seventh plebiscite on the COFA was set for February 6, 1990. However, the process for the Palauan President to declare the COFA constitutionally-passed was not clear, as events following previous plebiscites have shown.

On February 6, 1990, almost ten years after the Palauan Constitution was approved, the seventh plebiscite on the COFA took place. This time the voter turnout was lower than the first six plebiscites, a sure sign that Palauans are wearying of this game. But the result was the same—the COFA again failed to muster the needed 75 percent. Indeed, the outcome (60 percent in favor) was lower than any previous COFA plebiscite and fell considerably below the 73 percent garnered on the previous attempt. Violence and intimidation were not used, but economic pressures were evident: the people were told by their government that money would not be released for local projects—roads, hospitals, schools, etc; all the development which should have been accomplished long ago during the trusteeship era—unless they voted for the COFA. Pro-Constitution forces in Palau, employing videotapes to more effectively inform voters, attributed the outcome to the fact that for the first time the majority of voters really understood the issues.

When President Etpison reported the outcome of the plebiscite to the US Department of Interior, rather than dwell on the COFA's defeat, he announced that the mechanism has been cranked up to amend the Constitution. This fall-back strategy appears to be motivated from the US side. The question, then, remains unresolved. However, it is no longer a question of political status. It has become: How many times can the democratically-expressed will of the people be trampled upon?

The future does not look calm for Palau. Decisions will be difficult to make and may carry personal risk. It is vital that safeguards be put in place to ensure autonomous self-determination. Whatever shape the internal decision-making process takes, one characteristic is non-negotiable—it must be *freely* decided by Palauans alone. Insofar as the US is unwilling,

and the UN unable, to honor this charge, each forfeits its respective mandate to facilitate self-determination under the Trusteeship. In this case, it is up to the international community to stand by those mandates.

It should be emphasized that Palau does not have to negotiate its self-determination. Self-determination is a right under the UN Charter. As mentioned above, Palauans are not against the idea of free association. Economically they see it as a necessity, at least for the present. They *are* against some of the conditions the US wants to impose. And their insistence on self-determination in these negotiations is an inspiration to human-rights advocates, and the international community must continue to support the innate right of the people of Palau to be the architects of their own destiny.

Palauans have already made a profound contribution to world political culture with their 1979 Constitution. There is no reason to doubt that, if allowed, they will continue to make other equally exciting innovations. It is extraordinary that in this new era where democratic movements are dramatically rearranging the old Cold War order in Europe and Asia, the US continues to stonewall tiny Palau's efforts to decide their own future. If Palauans "learned too well" the way of democracy, we Americans still have a lot to learn.



## AFTERWORD

### A WIND TO DIVERT THE STORM: HARD LESSONS FOR A "SOCIETY OF MONEY"

*Being Palauan is being human, and being human means putting  
human life before anything else in the world.*

—Temol Ongelungel

In relating the story of Palau's struggle for self-determination, it has not been the purpose of this book to offer simply one more analysis of misguided US policy, yet another tragic tale of exploitation of the third world by the first. Regardless of the outcome of Palau's political status, we believe there are some very deep and fundamental issues that this story raises. For anyone who knows what it is to struggle for liberation from domination, it is a chronicle of persistence and hope. But for those of us who by race, class, or gender have stood to benefit from the imperial legacy, the story raises some very hard questions. In these closing reflections, we wish to articulate in a broader, but no less sharp, manner some of the dilemmas that militarism and colonialism, as we suggested in the Preface, pose to the project of western "civilization."

#### *a. The Apocalypse of Progress.*

According to the simple but unassailable wisdom of Temol Ongelungel, a Palauan elder from Melekeok village, the true measure of a people's humanity lies finally in their commitment to preserving the humanity of all. Similarly, to invoke the biblical tradition ostensibly revered in the west, the plumb line of civilization is not the achievement of the great, but how the "least" have been treated. The first world measures very poorly by these standards, as the indigenous cultures of the world know all too well.

Centuries of European conquest and colonization have brought to native cultures not a "New World," but an end of



their world, a virtual apocalypse of conquest and subjugation. From Africa to the Americas, from the Arctic to the south Pacific, white culture—with its self-justifying ideologies, its insatiable appetite for other peoples' land, and its strategies of technological domination—has wreaked havoc upon the humanity of the "least": small, local cultures. And today, with geopolitics still defined by the great ideological struggles of "East" and "West," we have yet to come to terms with the historical legacy of genocide.

Third world critics of modern imperialism have rightly argued that "dependency" is the necessary product of global capitalist development. The unequal distribution of political and economic power that arose first from the colonial era and, subsequently, the so-called "decades of development," compel us to shift the focus of geopolitics to a "North-South" axis. We have come to recognize the ravages of the "structural violence" that keeps the few rich and the majority desperately poor. None of this, however, should cause us to overlook the historically prior, and in some ways more fundamental, violence that our society still refers to as the "age of discovery." For the Industrial Revolution, let us not forget, was predicated upon four centuries of global European conquest which left few indigenous cultures around the world untouched.

Since Columbus, European culture has demonstrated repeatedly that it has no tolerance for those who stand in the way of its exploration, expansion and exploitation. Lying at the root of the "disease," according to Maori activist Donna Awatere, is the fact that:

... the key concepts of white culture conflict radically with those of all indigenous people who have been colonized, whether in the Pacific, Caribbean, Africa, the Americas or Asia. And yet it is these very key concepts which have allowed white culture to invade and dominate, eliminate languages, spirituality, to destroy with a never-ending, mind-boggling blindness.<sup>1</sup>

<sup>1</sup>Awatere, Donna, *Maori Sovereignty* (Auckland, New Zealand: Broadsheet, 1984) p. 60.

Two primary "concepts" incompatible with the indigenous way of life, Awatere goes on to assert, around which the whole of western political culture is organized, are "progress" and "mechanical materialism."

The ideology of "progress" was, in historian W.A. Williams' words, "A psychologically justifying and economically profitable fairy tale: the myth of empty continents dotted here and there with the mud huts, the lean-tos, and the teepees of unruly children playing at culture."<sup>2</sup> The myth of "Manifest Destiny" in North America is symbolized in a late-19th-century poster picturing the inexorable westward push of "civilization" (read: *European settlement*), before whose "light" the indigenous "savage" can only retreat (see Figure A-1). An old Creek Indian, speaking at the time of President Andrew Jackson's forced relocation of eastern Indians to west of the Mississippi, summed up the meaning of Manifest Destiny for the native peoples of Great Turtle Island:

When he first came over the wide waters, he was but a little man, very little. His legs were cramped by sitting long in his big boat, and he begged for a little land to light his fire on . . . But when the white man had warmed himself before the Indians' fire and filled himself with their hominy, he became very large. With a step he bestrode the mountains, and his feet covered the plains and the valleys. His hand grasped the eastern and the western sea, and his head rested on the moon. Then he became our Great Father . . . I have listened to a great many talks from our great father. But they always began and ended with this: "Get a little further; you are too near to me."<sup>3</sup>

<sup>2</sup>Williams, William Appleman, *Empire as a Way of Life* (Oxford: Oxford University Press, 1980) p. 25.

<sup>3</sup>McCluhan, T.C., *Touch the Earth: A Self-Portrait of Indian Existence* (NY: Pocket Books, 1972) p. 73.



At its most benevolent, the ideology of "progress" was repressively paternalistic; but when unmasked its true character was plainly murderous. This is encapsulated in a 1910 French government pamphlet concerning colonial policy in Melanesian New Caledonia toward the indigenous Kanak people:

When we have done our task of kind civilized people toward the weak, we will then just have to bend to the irreversible natural law which suppressed the population ill-adapted to the struggle for life, and then exploit the lands freed by the extinction of our subjects of black race.<sup>4</sup>

No matter what its justifications—the Enlightenment imperative to "civilize," the Christian missionary mandate, or the ethno-egoism of Social Darwinism, the result was the same: *genocide*.

The colonizing cultures have also been obsessed with the ideology of "mechanical materialism," explained by J. Rifkin as:

... the scientific principles of mechanics to rearrange the stuff of nature in a way that best advanced the material self-interests of human beings. The logical conclusion to this grand new paradigm was simply this: The more material well-being we amass, the more ordered the world must be getting.<sup>5</sup>

Lakota Indian Frank Black Elk acridly but accurately described the spiritual consequences of such an ideology:

A hundred years ago a great Lakota spiritual leader, Tatonka Yatonka, the Sitting Bull, observed of whites that, "the love of possession is a disease with them" . . . Of course, Sitting Bull didn't know much about the psychoanalytical theories of Sigmund Freud . . . that there is a certain neurotic behavior charac-

<sup>4</sup>Quoted by I. Kirchner, *The Kanaks of New Caledonia* (London: Minority Rights Group, 1986) p. 6.

<sup>5</sup>Rifkin, Jeremy, *Entropy: A New World View* (NY: Viking, 1980) pp. 28ff.





terized by a driving compulsion to gather up material and play with it and that it's an obsessive preoccupation with purely physical accumulation and arrangement . . . I mean, consider the implication of a tradition which compels its people to march across half a continent, engage in a major war to steal the land from my people, engage in genocide in order to preserve their conquest, and all primarily so they can dig gold out of a small portion of that land, transport it back across the continent, and bury it again at Fort Knox! The virulence of the disease Sitting Bull spoke of is truly staggering.<sup>6</sup>

To indigenous peoples, the objectification of nature through the commercial exploitation of the land necessarily led to an objectification of human cultures tied to the land.

Land-grabbing to pave the way for European migration was "progress" in its classical form: from the southwest deserts to the Siberian steppes, from Brazilian jungles to the Australian outback, indigenous cultures were herded onto "worthless" reservation lands. However, the "closing of the frontiers" has given rise to a new kind of colonialism, as in the last few decades powerful corporate interests have discovered that these conceded lands are, in fact, rich in strategic minerals and resources needed to fuel the machines of industrial culture. And, as before, the historical mission of "civilization" will not be deterred: the market for uranium, coal, oil and diamonds makes the reappropriation and/or exploitation of reservation lands imperative. Neither sacred mountains nor treaty commitments nor cultural survival dare stand in the way of the engines of progress.

This sordid history of displacement and genocide is not yet exhausted. The struggle between indigenous peoples and the dominant cultures spans the globe: in an Amazon rain forest, on a sacred Hawaiian island, by a fishing stream in the Pacific Northwest. On one side is a culture of materialism which commoditizes all relationships among humans and with the earth. On the other side is a tenacious spirituality of the land

<sup>6</sup>Churchill, Ward, ed. *Marxism and Native Americans* (Boston: South End Press, 1982) pp. 144ff.

and a profound will to survive. And today, Manifest Destiny has put on yet another face. The superpowers now scour the horizons to find suitably remote sites for forward military bases, the backbone of interventionist policies of "rapid deployment," and for command, control and communications systems, which will act as the "eyes and ears" of global thermonuclear war. Some of the last outposts of traditional culture—like Palau—suddenly find themselves caught in the apocalyptic whirlwind of progress.

### b. A Common Politics of Survival.

The "fruits of progress," from the perspective of the underside of history, has been this: countless once-flourishing native cultures have been either eradicated, "assimilated," or decimated and pushed onto reserves. In the totalist systems of modernity there seems to be no place—other than museums—for indigenous minorities who refuse to cooperate with the grand western project of progress. If there is a kind of "primal sin" of modern capitalist development, then, it is the violence, deception and theft perpetrated during the "age of discovery." It is the legacy that attests to the truth of Walter Benjamin's dictum: "There is no document of civilization which is not at the same time a document of barbarism."<sup>7</sup> While this legacy is systematically suppressed in the historical consciousness of the inheritors of empire, it remains a fire in the hearts of those who have survived the apocalypse, and who continue to struggle to preserve their land and their way of life.

Meanwhile, since the dawn of the nuclear age at Hiroshima, North Americans have become fascinated with, and haunted by, apocalyptic themes, now commonplace in our cultural mythology. We speculate about the "end of the world"; take, for example, the clock, hands poised precariously at just a few minutes to midnight, which adorns the

<sup>7</sup>Benjamin, Walter, "Theses on the Philosophy of History," in *Illuminations*, edited and introduced by H. Arendt, (NY: Schocken, 1969) pp. 256ff.



masthead of the *Bulletin of the Atomic Scientist*. And indeed as an icon of our era, this clock is not inappropriate. Between the nuclear arms race and the proliferating signs of environmental revolt such as the "greenhouse effect," time is running out for "civilization." It remains to be seen, however, how we in the first world, benumbed by the affluence of our privileged existence, will respond to this historical ultimatum. Will we take refuge in denial or despair in order to bury the pain of our repressed, murderous cultural past and our profound sense of futurelessness? Or will the challenge compel us to finally begin confronting ourselves and our history in order to discover what it will take for us to become fully human?

To borrow from the parlance of family therapy, western culture can come out of its systematic dysfunctionality only by the painful process of acknowledging the illness and its roots. First we must confront the violence deep within our historical unconscious, and then find the courage to live differently. And perhaps it is this quest for survival that is the thread that mysteriously binds oppressor to oppressed: the overdeveloped world who labors under the shadow of an apocalyptic future, and indigenous peoples who have endured the apocalypse inflicted upon them, past and present. It brings to mind the aboriginal myth about the "end of the world": when the giant green ant of the sacred mountains is awakened, the earth will be destroyed. When we consider uranium mining on aboriginal land, which represents the front end of the nuclear fuel cycle that culminates in the H-bomb, who can say that the traditional people have not stated the truth of the matter to the "people of progress"?

It is time, wrote W.A. Williams, to "think about the people who lost":

Now is the time to learn from them. . . . What happens if we simply say "no" to empire? Or do we have either the imagination or the courage to say "no" to empire? It is now our respon-

sibility. It has to do with how we live and how we die. We as a culture have run out of imperial games to play.<sup>8</sup>

<sup>8</sup>Williams, William Appleman, *op. cit.*, pp. 212ff.



## RESOURCES

### Publications

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*Belau Update*, Charles Scheiner, Box 1182, White Plains, NY 10602.

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## APPENDIX CONSTITUTIONALISM AND PALAU'S SELF-DETERMINATION: A LAWYER'S PERSPECTIVE

By Roger S. Clark

I have encountered the notion when discussing the Palau Constitution with diplomats at the Trusteeship Council and listening to their debates that somehow the founding fathers of the Palau Constitution knew not what they wrought when they wrote the nuclear-control provisions. I have heard the view expressed, moreover, that what they did was create some kind of albatross around the neck of the body politic. I think that Aldridge and Myers demonstrate conclusively that the founders knew exactly what they were doing and that they had learnt the political science of their tutors well. The nuclear-control provisions are no more an albatross, no more undemocratic, no more a denial of sovereignty than the first or fourteenth amendments to the United States Constitution.

Sovereign peoples have a habit of writing down the rules of the game by which in future years the voice of the sovereign is to be manifested, and even some substantive limitations on what can be done by the sovereign in the future. In the United States at the federal level, the sovereign sometimes speaks through Congress, by a simple majority. In the case of advice and consent to treaties, a two-thirds majority (but of only one house of the legislature) is required. Sometimes the president vetoes. Often the veto holds—on others the legislature may over-ride by a special procedure. Some things, however, Congress cannot do—only a constitutional amendment may change some laws. That always requires a special procedure (two-thirds approval in both houses, or application by legislatures in two-thirds of the states, followed by ratification by legislatures in three-fourths of the states or by conventions in three-fourths thereof, whichever mode is proposed by Congress). And in the case of one class of amendments, those under the proviso of Article V of the Constitution, the consent



of any state is required if it would be affected by an amendment removing the equal representation of states in the Senate.

The Palau Constitution is of the same ilk. It is difficult to rid it of the nuclear-control provisions, just as it would be difficult to take away (say) one of Delaware's two votes in the Senate of the United States. A minority has a right—a fundamental right even—that the procedures be followed. As the Judicial Committee of the Privy Council in London once wrote in a case for Ceylon:

The question of sovereignty arises. A Parliament does not cease to be sovereign whenever its component members fail to produce among themselves a requisite majority, e.g., when in the case of ordinary legislation the voting is evenly divided or when in the case of legislation to amend the Constitution there is only a bare majority if the Constitution requires something more. *The minority are entitled under the Constitution of Ceylon to have no amendment of it which is not passed by a two-thirds majority.* The limitation thus imposed on some lesser majority of members does not limit the sovereign powers of Parliament itself which can always, whenever it chooses, pass the amendment with the requisite majority. (Emphasis added.)<sup>1</sup>

The same is true in Palau; the minority is entitled not to have nuclear materials absent a 75 percent vote.

And yet there are still those who see the Palau Constitution as some sort of nuisance that should be slid by or subverted. I happen to think that this notion of constitutionalism, a strikingly American contribution to legal philosophy, is one of the great features of the governmental structure of the United States. It may sometimes be frustrating to remember it, but the Palau Constitution, like its model, is not just a minor technicality to be brushed aside or slid around when it creates a problem.

Then there is the second rule-of-law issue: the United Nations Charter. Under that document the colonial powers undertook some obligations towards their colonial territories,

obligations which are supervised by the relevant organs of the United Nations. In the case of the Trust Territory, those organs are notably the Security Council and the Trusteeship Council, although there are situations where the General Assembly<sup>2</sup> and the International Court of Justice may well have a role. It is my belief that those organs have so far failed to exercise the kind of diligence in their stewardship that might reasonably have been expected. The degree of involvement of the organization in the many referendums in the Territory has been perfunctory at best. Indeed, Aldridge and Myers demonstrate how, over time, the attention given to the referendums became even more perfunctory.

The failure to respond seriously to the Administering Authority's nuclear testing program in the Marshall Islands was hardly compatible with keeping the United States to its obligation contained in Article 6, paragraph 2 of the Trust Agreement, amplifying the language of Article 76(b) of the Charter, to "promote the economic advancement and self-sufficiency of the inhabitants and to this end shall regulate the use of natural resources, encourage the development of fisheries, agriculture and industries, protect the inhabitants against the loss of their lands and resources, and improve the means of transportation and communications." What a hollow ring those words have!

Even as we move towards an end of the Trusteeship,<sup>3</sup> the organization has continued to decline to examine the arrange-

<sup>2</sup>While the Security Council and derivatively the Trusteeship Council have been given primary responsibility for the supervision of the Trust Territory, the General Assembly, through its Fourth (Decolonization) Committee and its Special Committee on Decolonization (Committee of 24) have examined the issue too—and sometimes more critically than the Trusteeship Council which has a more limited membership. The United States has challenged the Assembly's actions. The Assembly's power to do so, however, is plain under Article 10 of the Charter which empowers the Assembly to "discuss any questions or any matters within the scope of the present Charter, and [with exceptions not relevant here] make recommendations to the Members of the United Nations or to the Security Council or to both on any such questions or matters."

<sup>3</sup>I have written elsewhere about the Administering Authority's illegal efforts to terminate the trust unilaterally as to the other three entities in

<sup>1</sup>*Bribery Commissioner v. Ranasinghe* [1965] Appeal Cases 172.



ment in Palau (and the Marshall Islands and the Federated States of Micronesia, to say nothing of the Northern Mariana Islands<sup>4</sup>) against the standards set forth in the Charter and the Resolutions interpreting it.

What I have tried to argue at the Trusteeship Council for many years is that the organization should take its own standards seriously and that a careful examination of the Palau arrangement for free association (and also the Marshalls and Federated States arrangements) would suggest that it fails to pass legal muster under those standards.

Article 76 of the Charter lists as one of the "basic objectives" of the international trusteeship system (and thus an obligation of the Administering Power) promoting the "political, economic, social and educational advancement of the trust territories, and their progressive development towards self-government or independence. . . ." A similar obligation is imposed under Article 73 of the Charter on all states which have responsibilities for the administration of non-self-governing

the Territory without the involvement of the Security Council. See Clark, Letter to the Editor, 81 *American Journal of International Law* 927 (1987). The Compacts with the Federated States of Micronesia and the Marshall Islands, and the Marianas Covenant have received the support of a 3-to-1 majority in the Trusteeship Council but have not yet had the approval of the Security Council as required by Article 83 of the United Nations Charter. On other occasions, the United States would be complaining bitterly if some other state tried to avoid application of the rules of the Charter. To their credit, the members of the Trusteeship Council have continued to hear petitions discussing events in the Commonwealth of the Northern Mariana Islands, the Marshalls and the Federated States thereby supporting the view that the trust is still in force.

<sup>4</sup>See the Council's recent slap in the face to representatives of the Marianas who pleaded their case to the Council: "The Council considers that any difficulties over interpretation of the new status agreements should be resolved bilaterally by the parties concerned in accordance with the procedures mutually agreed and laid down in the relevant new status agreements." See "Conclusions and Recommendations" paragraph 4 in *Report of the Trusteeship Council to the Security Council on the Trust Territory of the Pacific Islands*, 20 July 1988-1 August 1989, UN Doc. S/20843 (1989).

territories, even if there is no trust agreement applicable to them. In 1960 the General Assembly undertook in Resolution 1541 (XV)<sup>5</sup> to develop criteria which would indicate when a state's obligation to foster self-government in its dependent territories had been fulfilled to the extent that no further obligation was owed to the United Nations. Resolution 1541 (XV) asserts that a non-self-governing territory can be said to have reached a full measure of self-government by (a) emergence as a sovereign independent state, (b) free association with an independent state, or (c) integration with an independent state. The resolution regards independence as the normal outcome and sets out some criteria, which I will discuss shortly, for acceptable types of free association or integration.<sup>6</sup> I believe that General Assembly resolution 1541 (XV) which authoritatively described the status of free association for the first time should be taken seriously. Those who drafted Resolution 1541 (XV) were rightly suspicious of neocolonial chicanery. They endeavored to provide some prophylactic rules to prevent a new status relationship from being the previous colonial rosebush by a different name.<sup>7</sup> Resolution 1541 (XV) and its

<sup>5</sup>15 UN GAOR, Supp. (No. 16) 29, UN Doc. A/4864 (1960). The South Pacific Forum States made excellent use of Resolution 1541 (XV) in their successful effort to have New Caledonia "reinscribed" on the list of non-self-governing territories. See UN Doc. A/41/668 (1986).

<sup>6</sup>For efforts to apply the integration criteria to the Commonwealth of the Northern Marianas, see Clark, "Self-Determination and Free Association—Should the United Nations Terminate the Pacific Islands Trust?", 21 *Harvard International Law Journal* 1, 75-78 (1980); Prince, "The United States, The United Nations and Micronesia: Questions of Procedure, Substance, and Faith," 11 *Michigan Journal of International Law* 11 (1989); Rodriguez Orellana, "In Contemplation of Micronesia: The Prospects for the Decolonization of Puerto Rico Under International Law," 18 *University of Miami Inter-American Law Review* 457 (1987).

<sup>7</sup>The only relationships of free association, so labeled, so far unequivocally approved by the United Nations are those between New Zealand on the one hand and the Cook Islands and Niue on the other. Great Britain's associated states arrangements in the West Indies did not obtain United Nations approval. Some states in the General Assembly



companion, 1514 (XV), the Declaration on the Granting of Independence to Colonial Countries and Peoples, were treated as international law by the International Court of Justice in the Western Sahara Case.<sup>8</sup> One can reason to that end, either by regarding 1541 as principles of customary law, or as an authoritative interpretation of the Charter. I mention the legal status of the relevant standards because I assert the proposition that no matter how enthusiastically or "voluntarily" people—or in this case "a people"—agree to some kinds of arrangements, those arrangements may nonetheless not be enforceable because of some fundamental policies of the legal system. In my home state, New Jersey, our Supreme Court has recently dramatically reminded us of this in the Baby M, surrogate mother case—some things are not for sale.<sup>9</sup>

had problems with the merits of those arrangements, others objected to the British refusal to involve the UN in the approval process.

<sup>8</sup>Western Sahara, Advisory Opinion, (1975) ICJ 12. Resolution 1541 (XV) is contained in 15 UN GAOR, Supp. (No. 16) 66, UN Doc. A/4864 (1960).

<sup>9</sup>In the Matter of Baby M, 109 NJ 396, 440 (1988): "The point is made that Mrs. Whitehead agreed to the surrogacy arrangement, supposedly fully understanding the consequences. Putting aside the issue of how compelling her need for money may have been, and how significant her understanding of the consequences, we suggest that her consent is irrelevant. There are, in a civilized society, some things that money cannot buy. In America, we decided long ago that merely because conduct purchased by money was 'voluntary' did not mean that it was good or beyond regulation and prohibition. *West Coast Hotel Co. v. Parrish*, 300 US 379 (1937). Employers can no longer buy labor at the lowest price they can bargain for, even though labor is 'voluntary,' 29 U.S.C. Section 206 (1982), or buy women's labor for less money than paid to men for the same job, 29 U.S.C. Section 206 (d), or purchase the agreement of children to perform oppressive labor, 29 U.S.C. Section 212, or purchase the agreement of workers to subject themselves to unsafe or unhealthy working conditions, 29 U.S.C. Sections 651 to 658 (Occupational Health and Safety Act of 1970). There are, in short, values that society deems more important than granting to wealth whatever it can buy, be it labor, love or life. Later the Supreme Court added: 'In sum, the harmful consequences of this surrogacy arrangement appear to us all too plausible. In New Jersey the surrogate mother's agreement to sell her

One way of analyzing the implications of a failure to comply with the relevant standards of self-determination is through Article 53 of the Vienna Convention on the Law of Treaties<sup>10</sup> which provides that a treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm, a basic rule, of general international law. A peremptory norm is described in the Convention as "a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character." There are, in short, some basic rules of the international system which simply trump efforts to avoid them—even efforts "consented to" by each side. It is widely accepted that the principle of self-determination, as understood in Resolution 1514 (XV) and 1541 (XV), is just such a norm.<sup>11</sup>

Another way of looking at it is this: every legal system contains in its corpus of law a doctrine that some contractual arrangements are simply void because they contravene community policies. One might mention an agreement to sell oneself into slavery or an agreement for prostitution. The law speaks of those and comparable agreements as "contrary to public policy," "*contra bonos mores*," or, in the blunt terms of the United States Commercial Code, "unconscionable."

My contention is that some aspects of the Micronesian Compacts are unacceptable as being contrary to the peremptory decolonization norms of the United States and just plain unconscionable.

The main problem with the Compact arrangements lies in the military contingency deals that go with them and the effect

child is void. Its irrevocability infects the entire contract, as does the money that purports to buy it." *Id.*, 442-444.

<sup>10</sup>UN Doc. A/CONF. 39/27 (1969). This "Treaty on Treaties" is generally regarded as codifying the basic rules on the law of treaties.

<sup>11</sup>See General Assembly Resolution 35/118, 35 UN GAOR, Supp. (No. 48) 21, UN Doc. A/35/48 (1980); L. Hannikainen, *Peremptory Norms (Jus Cogens) in International Law* 381 (Finnish Lawyers' Publishing Co., Helsinki, 1988).



these contingency deals have on the ability of the Micronesian entities to opt out of the arrangement of free association. This should come as no surprise since the main desire of the United States negotiators throughout the lengthy negotiations has been to keep the US military options open, and independence appeared to those negotiators to be incompatible with those options.<sup>12</sup>

Principle VII (a) of Resolution 1541 (XV) provides, *inter alia*, 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 the territory through the expression of their will by democratic means and through constitutional processes." Having been marginally involved in some of the early work which led to the Cook Islands free association, I recall vividly that this aspect of Resolution 1541 (XV) was viewed carefully<sup>13</sup> and interpreted as a requirement that the freely associated state be free to opt out of the deal and move to complete independence at any time that it might wish.<sup>14</sup> This principle had, indeed, been established in United

<sup>12</sup>See, e.g., D. McHenry, *Micronesia: Trust Betrayed* 39-42 (Carnegie Endowment, New York, 1975); A. Leibowitz, *Colonial Emancipation in the Pacific and Caribbean* 80-81 (Praeger, New York 1976). This failure to place all the options, including independence, fairly before the negotiators and the voters, is in itself a ground for criticizing the Compacts under the spirit of Resolution 1541 (XV).

<sup>13</sup>And see discussion of the significance in New Zealand thinking of Resolution 1541 (XV) in Aikman, "Recent Constitutional Changes in the South-West Pacific," (1968) *New Zealand Official Yearbook* 1104, 1108; Frame, "The External Affairs and Defence of the Cook Islands," 17 *Victoria University of Wellington Law Review* 141, 142 (1987); Boyd, *New Zealand and Decolonization in the South Pacific* 25, NZ Institute of International Affairs, Occasional Paper No. 1 (1987).

<sup>14</sup>I do not believe that anyone has focused in the literature on the reciprocal power of the larger state involved to opt out. The New Zealand arrangement, legally, permits New Zealand to thrust the Cooks or Niue out of the nest. One could argue strongly that reasonable notice must be given and that there is an obligation of good faith to make both some

Nations practice at the time when Resolution 1541 (XV) was still in a stage of gestation, in the context of the self-determination of the Trust Territory of Togoland under French administration. The Commission that examined the matter between 1956 and 1958 on behalf of the General Assembly (when continuing relationship between France and Togo was contemplated) did not rule out the possibility that some kind of status of free association might be acceptable as an act of self-determination. Nevertheless, it expressed the view that the Togoland entity should have full powers with respect to its own constitution, and power to terminate the arrangement unilaterally.<sup>15</sup>

The drafting of the Micronesian Compacts is complex, which contrasts sharply with the arrangements between New Zealand on the one hand and the Cooks and Niue on the other. These are characterized by an almost total absence of any written agreement setting out the deal.<sup>16</sup> The Compacts went

interim and continuing aid arrangements in such a case. But absent some specific agreement on the subject (as appears in the United States Compacts) both sides must retain their ultimate freedom of action. Section 7 of the Niue Constitution Act 1974, adopted by the New Zealand Parliament, states that it "shall be a continuing responsibility of the Government of New Zealand to provide necessary economic and administrative assistance to Niue." There is no similar provision in the corresponding Cook Islands legislation. The 1974 Act could readily be repealed as a matter of New Zealand law but some continuing obligation would presumably be implied at the international level. In spite of the silence of the Cook Islands legislation, it should be possible to imply a continuing obligation of some sort there too.

<sup>15</sup>UN Doc. A/3677 at paragraph 471 (1957). Togo became independent in 1969 and the question of a status other than independence became moot.

<sup>16</sup>I say "almost" because in the case of the Cooks, following some differences of opinion in 1973, there was an exchange of letters expressing some generalities about the relationship. "Exchange of Letters Between the Prime Minister of New Zealand and the Premier of the Cook Islands Concerning the Nature of the Special relationship Between the Cook Islands and New Zealand," *Appendices to the Journals of the [New Zealand] House of Representatives*, Paper A.10 (1973). Neither



through many changes. It should be recalled that the version approved by Congress in the case of the Marshall Islands and the Federated States of Micronesia was a version originally signed by the Marshalls on 30 May 1982, by Palau on 26 August 1982 and by the Federated States on 1 October 1982.<sup>17</sup> That version was approved in referendums in the Federated States and the Marshalls in 1983 but failed to achieve the necessary 75 percent majority required by the Constitution of Palau. A later version signed by Palau in 1986<sup>18</sup> was defeated several times in referendums and then became the subject of the invalid<sup>19</sup> effort to amend the Palau Constitution in order to make approval possible by a majority of less than 75 percent.

The 1982 version of the Compact was significantly different from the earlier 1980 version in so far as the power of the Micronesian entities to terminate unilaterally was concerned.<sup>20</sup>

government seems to have regarded this exchange as a treaty but it fits the basic notion of an international agreement in writing and thus appears to be a treaty as the term is used in the 1969 Vienna Convention on the Law of Treaties.

<sup>17</sup>It is reproduced with the references to Palau deleted in the (United States) Public Law 99-239 (1985).

<sup>18</sup>Reproduced in A. Blaustein & P. Blaustein, eds., *Constitutions of Dependencies and Special Sovereignities, Palau* (Oceana, Donns Ferry, NY, 1988).

<sup>19</sup>*Fritz v. Salii*, Civil Appeal No. 8-88, Supreme Court of Palau, Appellate Division. I have argued that the amendment was invalid on broader grounds than those ultimately espoused by the Court. See my Statement for the Record, Amendment of Palau Constitution, 4 February 1988, in Senate committee on Energy and Natural Resources, Hearing in S.J. Res. 231, S. Hrg. 100-498 (1988).

<sup>20</sup>The version of the Compact initialed by the United States and the Marshall Islands on 14 January 1980 is reprinted in 7 *Brooklyn Journal of International Law* 283 (1981). A modified version of this (but in the present respect similar) was initialed by all three entities later that year. I discussed the 1980 version in my *Harvard International Law* article, *supra* note 6, and concluded that it was just acceptable as an application of Resolution 1541 (XV) since the Micronesian entities might bail out unilaterally, albeit with the security and defense obligations up to fifteen

In a 1984 Palau version it became even more difficult for Palau to opt out than it had been in the 1982 version and the language is carried through into the 1986 version.<sup>21</sup>

In the 1980 version, there was power under Section 443 of the Compact for 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 defense powers of the United States) would remain in force until the fifteenth anniversary of the effective date of the Compact "and thereafter as mutually agreed." The words "and thereafter as mutually agreed" meant that unless both sides agreed, the arrangements would then come to a complete end.

A substantial change occurred in the package in 1982.<sup>22</sup> Section 453 still read that in the case of termination by the

years. Professor Rodriguez Orellana has gently taken me to task for conceding that much. Rodriguez Orellana, "In Contemplation of Micronesia: The Prospects for the Decolonization of Puerto Rico under International Law," 18 *University of Miami Inter-American Law Review* 457 (1987). Be that as it may, the agreement became much more onerous for the Micronesians during the negotiations which followed in the next two years.

<sup>21</sup>In fact the process of tightening up Palau's power to opt out began with a draft Military Use and Operating Rights Agreement initialed in 1980 which contained what amounted to a hundred-year "denial" clause to be read into the Compact (see *infra* next note).

<sup>22</sup>Apparently as a result of pressure from members of the Senate Committee on Energy and Natural Resources. Commander Armstrong, then legal adviser to the Office of Micronesia Status Negotiations, explains: "Briefings of members of Congress by United States negotiators during the summer of 1980 disclosed that a number of senators, long involved in oversight of the Trust Territory, had reservations about the fifteen-year limitations of United States security and defense authority in the draft Compact which had, by then, been initialed by the Marshall Islands." Armstrong, "Strategic Underpinnings of the Legal Regime of Free Association; The Negotiations for the Future Political Status of Micronesia," 7 *Brooklyn Journal of International Law* 178, 224 (1981). Writing early in 1981, he added: "All four governments have agreed in principle to the concept of long-term denial, and have further agreed that



Marshall Islands or the Federated States the security and defense relations would continue in force for fifteen years and thereafter as mutually agreed. In the case of Palau, however, the period now became fifty years. Moreover, in respect of the Federated States and the Marshalls,<sup>23</sup> the Compact was now accompanied by separate mutual security pacts between the United States and these two entities. The most significant provisions of these treaties, which would come into effect upon 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."<sup>24</sup> A fifteen-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 and 1986 Palau

the most appropriate place for the expression of its duration is the bilateral military use and operating rights [agreement] which each of the freely associated states enter into with the United States pursuant to Section 321 of the Compact." *Ibid* 225. Bury it in the fine print?

<sup>23</sup>The Marshalls situation was further complicated by the later addition of a thirty-year period for use of the Kwajalein facility.

<sup>24</sup>"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 of or for the military purposes of any third country." The 1986 Palau version makes denial mandatory rather than "optional." Section 311 of the 1986 Palau Compact 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, and as provided for in Section 312." Section 312 provides that "The Government of the United States has full authority and responsibility for security and defense matters in or relating to Palau. 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 air space of Palau the activities and operations necessary for the exercise of its authority and responsibility under this Title. The Government of the United States may invite the armed forces of other nations to use military areas and facilities in Palau in conjunction with and under the control of United States Armed Forces."

versions of the Compact achieved the same results for Palau, but by a different route. The minimum fifty-year life for Palau of the security provisions of the 1982 Compact was retained in Section 452 of the 1984 and 1986 versions. Beyond this, however, Section 453(a) provides that "Notwithstanding any other provision [of the compact] the provisions of Section 311,<sup>25</sup> even if Title Three should terminate, are binding and shall remain in effect for a period of fifty years *and thereafter until terminated or otherwise amended by mutual consent.*" (Emphasis added.) Please note the words that I have emphasized. What in the 1980 and 1982 versions of the Compact had been a provision permitting extension by mutual consent and thus a veto by Palau, now became the reverse, a provision continuing the arrangement in perpetuity unless the United States agrees otherwise.

I would suggest that the combined effect of the various fifteen- and fifty-year provisions coupled with permanent denial<sup>26</sup> is to place too great a fetter on the power of the three entities to opt out unilaterally. The weight of the military is simply too great.<sup>27</sup> Accordingly, I do not believe that the arrangements meet the fundamental prerequisite for free association as understood in the United Nations definition of that sta-

<sup>25</sup>See *supra* immediately preceding note.

<sup>26</sup>Commander Armstrong has defended the legality of permanent denial as an "international servitude"—an unhappy choice of concept in the context of "decolonization." Armstrong, *supra* note 22, 226.

<sup>27</sup>And see to the same effect the thoughtful discussion in Rodriguez Orellana, "In Contemplation of Micronesia: The Prospects for the Decolonization of Puerto Rico under International Law," 18 *University of Miami Inter-American Law Review* 457 (1987). The General Assembly in its important Resolution 35/118, *supra* note 11, has asserted that: "Member States shall oppose all military activities and arrangements by colonial and occupying Powers in the Territories under colonial domination, as such activities and arrangements constitute an obstacle to the full implementation of the Declaration [on the Granting of Independence to Colonial Countries and Peoples], and shall intensify their efforts with a view to securing the immediate and unconditional withdrawal from colonial Territories of military bases and installations of colonial Powers."



tus. Palau and the other entities would carry too much military baggage with them into "independence," and the criteria for fulfillment of the United Nations Charter's right of self-government would simply not be met.

Like many Micronesians, I had hoped that arguments such as these would find a sympathetic hearing in a body, the Trusteeship Council, supposedly dedicated to fostering self-determination. Perhaps I was naive and the foxes were guarding the chickens. The fact is that the United States has been able to command the votes of its friends Britain and France—and since it first appeared at the Council in 1989, China—without too many questions being asked. But all is not lost. The time may come when Palau or another of the entities may decide to take unilateral action to treat the Compact as simply null and void on the basis of the arguments I have suggested. The principle of self-determination, as described in General Assembly Resolution 1541 (XV), is a peremptory norm, a fundamental rule of the international system. Article 65 of the 1969 Vienna Convention on the Law of Treaties permits a party evoking a ground such as a breach of a peremptory norm<sup>28</sup> for impeaching the validity of a treaty to notify the other party of its claim. It must give the other party at least three months to respond and if the other party makes no objection it may go ahead and declare the treaty invalid. If the other party objects, it may be necessary to litigate. The recent action of another Micronesian mini-state, Nauru, in hauling its erstwhile former trustee, Australia, before the International Court of Justice to claim for breaches of trust in the use of its valuable fertilizer resources,<sup>29</sup> perhaps shows the way that may lie ahead. I can readily see a future Micronesian Government evoking the spirit of the rules governing slavery,

<sup>28</sup>A precedent for the kind of action I have in mind is to be found in Iran's denunciation of provisions of its Treaty of Friendship with the USSR which permitted Soviet intervention in certain cases. See Reisman, "Termination of the USSR's Treaty Right of Intervention in Iran," 74 *American Journal of International Law* 144 (1980).

<sup>29</sup>7 *Washington Pacific Report*, No. 17, 1 June 1989, p. 8.

prostitution, and surrogate motherhood as it seeks to set aside an unconscionable deal left over from the era of colonization.