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- Micronesia

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PETITION FROM MESSRS. JULIO M. AKAPITO AND AMBILOS IEHSI, SPECIAL
JOINT COMMITTEE ON REFERENDUM REVIEW CONCERNING THE TRUST
TERRITORY OF THE PACIFIC ISLANDS

(Circulated in accordance with rule 85, para. 1, of the rules
of procedure of the Trusteeship Council)

CONGRESS OF MICRONESIA
Kolonia Ponape Eastern Caroline Islands 96941

18 September 1978

The President
United Nations Trusteeship Council
New York, NY 10017

Dear Mr. President:

The referendum on the draft constitution for the Federated States of
Micronesia took place on 12 July 1978, in Micronesia. The results of the
referendum from all the six districts have been submitted to the Congress of
Micronesia by the High Commissioner.

The Congress of Micronesia, pursuant to Public Law 5-60, is the sole judge of
the referendum results. The Congress, by House joint resolution No. 7-134, created the Special Joint Committee on Referendum Review to examine the results and make recommendations to the Congress. The Committee is also empowered to investigate challenges to the results of the referendum that merit such investigation.

A challenge has been made to the referendum result from Palau District.
Documents and oral testimony have been presented to the Committee on specific

1/ For the text of the draft constitution, see T/COM.10/L.174, annex I.

2/ See T/COM.10/L.236.
allegations of voting irregularities, intimidation, and bribery, relating to the conduct of the referendum.

The Committee has decided that these allegations merit clearance or substantiation. Accordingly, the Committee is scheduled to go to Palau on 27 September to conduct an investigation to the challenge that has been made. A full hearing on the challenge is also scheduled to be held in Ponape during the week of 16 to 20 October.

The presiding officers of the Congress of Micronesia, in a cable several days ago, invited representatives from the United Nations Trusteeship Council and the Security Council to observe the proceedings of the investigation by the Special Joint Committee on Referendum Review. The resolution that created the Committee also extends an invitation to you to observe the proceedings of the Committee.

As Chairman and Vice Chairman of the Committee, we like to again stress the importance of your participation as observers in the proceedings of the Committee.

On 15 September 1978, the Vice Chairman of the Committee received a letter from Palau District attached herewith. The letter threatens the safety and lives of the members of the Committee. This threat suggests that the emotional climate has heightened, which may interfere with a responsible conduct of the investigation and the process for certification of the referendum results by the Congress of Micronesia. It is, therefore, important that you once again send your representatives to observe this final step of the constitutional process in Micronesia that began in 1974.

We hope you will once again accept our invitation. We want no less than an impartial, fair and responsible investigation pursuant to law.

(Signed) Julio M. AKAPITO
Chairman
Special Joint Committee on Referendum Review

(Signed) Ambilos IEHSI
Vice Chairman
Special Joint Committee on Referendum Review

cc: President,
United Nations Security Council

3/ The enclosure has been placed in the files of the Secretariat and is available to members of the Council for consultation.
Mr. Tang Ming-chao  
Under-Secretary-General for Political Affairs and Decolonization

The Secretary-General

Referendum on the draft Constitution for the Federated States of Micronesia, July 1978

27 September 1978

Thank you for your memorandum of 25 September 1978 informing me of developments relating to the referendum on the draft Constitution for the Federated States of Micronesia.

I have taken note of the decision of the Visiting Mission to send one of its members to observe the proceedings of the Special Joint Committee on the Referendum Review established by the Congress of Micronesia.
MEMORANDUM INTERIEUR

DATE: 25 September 1978

REFERENCE: ________

TO: The Secretary-General

THROUGH: S/C DE:

Tang Ming-chao
Under-Secretary-General for Political Affairs and Decolonization

FROM: DE:

SUBJECT: Referendum on the draft Constitution for the Federated States of Micronesia, July 1978

As you recall, the Trusteeship Council on 31 May 1978 adopted resolution 2165 (XLV) in which it decided to dispatch a visiting mission to observe the referendum on the Micronesian Constitution. The Council directed the Mission to observe the referendum including the campaign and polling arrangements, the casting of votes, the closure of voting, the counting of ballots and the declaration of results.

The Mission arrived in Ponape on 21 June and remained in the Trust Territory until 27 July. On 26 July, the High Commissioner of the Trust Territory announced the unofficial results of the referendum which showed that four of the districts had approved the Constitution while two, the Marshall Islands and Palau, had rejected it. The Congress of Micronesia which, pursuant to Public Law 5-60 of the Territory, is the sole judge of the referendum and the results thereof, was informed of these results by the High Commissioner.

Subsequently, in a letter dated 14 September 1978 addressed to the Presidents of the Trusteeship Council and the Security Council (a copy of which is herewith enclosed), the presiding officers of the Congress of Micronesia informed the recipients that the Congress had established a Special Joint Committee on Referendum Review which had done an initial review of the referendum results in all districts. They pointed out that the Committee had received challenges from the Marshall Islands of a general nature and that specific information was therefore being requested. They stated that allegations of serious and widespread irregularities in the conduct of the referendum had been made with regard to Palau and that an oral testimony of some of those allegations had been presented to the Committee.
The presiding officers of the Congress of Micronesia indicated that the Special Joint Committee intended to investigate the circumstances of the referendum in Palau District. They refer, in this connexion, to a resolution of the Congress of Micronesia by which it invited the Trusteeship Council, the 1978 Visiting Mission to the Trust Territory, and the Security Council, to observe the proceedings of the Committee. The purpose of their letter was therefore to add their personal appeal to the request of the Congress that United Nations representatives be present for the review of the referendum results in Palau.

The Acting President of the Trusteeship Council is consulting members of the Council on the subject. In accordance with the mandate entrusted to it under resolution 2165 (XLV), the Visiting Mission has decided to send one of its members, Miss Sheila Harden of the United Kingdom, to observe the proceedings of the Special Joint Committee beginning on 2 October 1978. She will be accompanied by Mr. Girma Abebe, Secretary of the Trusteeship Council.

The Administering Authority has been consulted and has agreed to the dispatch of the Mission to Palau.
The Representative of the United States of America to the United Nations presents his compliments to the President of the Trusteeship Council of the United Nations and has the honor to transmit herewith the text of a letter addressed to him and to the President of the Security Council from the President of the Senate and the Speaker of the House of Representatives of the Congress of Micronesia.
As you know, the Trusteeship for the Trust Territory of the Pacific Islands is nearing an end. A vital step in the process of the achievement of self-government and the realization of the right of the people of Micronesia to self-determination was the referendum on the Constitution of the Federated States of Micronesia held on July 12, 1978. As you also know, the referendum was observed by a visiting mission sent by the Trusteeship Council. The final vote tally resulted in four administrative districts; Yap, Truk, Ponape and Kosrae, approving the Constitution, and two, the Marshall Islands and Palau, rejecting it. Public Law 5-60 Section 11 (6), legislation enacted by the Congress of Micronesia and signed into law by the High Commissioner of the Trust Territory, declares the Congress to be the "sole judge of the referendum and the results thereof". In exercising its functions mandated by this law, the Congress has created the Special Joint Committee on Referendum Review composed of one member from each of the six administrative districts. This Committee has done an initial review of the referendum results in
all districts, but has decided to delay releasing its findings as to any one district so that all can be reported to the Congress at the same time. The Committee has received challenges to the referendum results from two districts, Palau and the Marshall Islands. The challenge made with respect to the Marshall Islands was very general and so more specific information is being requested. With respect to Palau district, however, allegations of serious and widespread irregularities in the conduct of the referendum have been made documents and and oral testimony on some of these allegations have been presented to the Committee. The alleged irregularities in Palau district include bribery, intimidation, misuse of public funds for political activity against the Constitution, forged ballots, voting by ineligible voters, denial of the right to vote to eligible voters and improper handling of absentee ballots. The Committee intends to investigate the circumstances of the referendum in Palau district. To assist in the investigation, the Congress of Micronesia has retained the services of Mr. James Hamilton, Esq. Mr. Hamilton distinguished himself as Assistant Chief Counsel to the Senate Watergate Committee of the United States Congress and is an acknowledged expert on legislative investigations. Mr. Hamilton is being brought into the investigation so that the Committee may have the advantage of his expertise and to assure all parties that the investigation will be carried out with
complete impartiality. The Committee intends to begin its investigation in Palau about September 27, and would like United Nations representatives to observe its proceedings. One of the operative paragraphs of House Joint Resolution 7-134 which created the Special Joint Committee states: "Be it further resolved that representatives from the United Nations Trusteeship Council, its 1978 visiting mission, the United Nations Security Council, and the administering authority are invited to sit as observers in all proceedings of the Special Joint Committee, and are hereby respectfully urged to do so." The investigation should not last more than two weeks. While we realize that it may be difficult to compose a delegation to send to Micronesia at this time, we feel that it is extremely important that you do so. We feel that your observation of the July 12 referendum would not be complete without first-hand observation by the United Nations of this last but vital step in the referendum process, the certification of the referendum results. The purpose of this letter is to add our personal appeal to the request of the Congress that United Nations representation be present for the review of the referendum results in Palau.

Regards,

Tosiwo Nakayama
President of the Senate

Bethwel Henry
Speaker of the House of Representatives
Congress of Micronesia
Further to Mr. Tang's memorandum of 15 March 1978 to you on the above subject, I enclose herewith a copy of a memorandum dated 16 March 1978 from Mr. John Scott, Office of Legal Affairs, with regard to the respective rights and functions of the Security Council and the Trusteeship Council under Article 83 of the Charter.
This is with reference to your note of 17 February 1978 on the above subject.

With regard to the respective rights and functions of the Security Council and the Trusteeship Council under Article 83 of the Charter, it seems to me that Article 83 (1) establishes prima facie the primary responsibility of the Security Council with respect to strategic areas. Although Article 83 (3) suggests a role for the Trusteeship Council ("shall ... avail itself of the assistance of"), the language of Article 83 as a whole would not seem to support the view that the Security Council is under an obligation to delegate such function to the Trusteeship Council.
Mr. Rafeeuddin Ahmed
Executive Assistant to the Secretary-General

TO: Mr. Rafeeuddin Ahmed
A: Executive Assistant to the Secretary-General

THROUGH:
S/C DE:

FROM: Tang Ming-chao, Under-Secretary-General for Political Affairs and Decolonization

SUBJECT: Request by presiding officers of the Congress of Micronesia to be received by the Secretary-General

DATE: 19 March 1978

DATE:

SUBJECT:

OBJET:

Mr. Leo A. Falcam, Liaison Officer, Micronesian Washington Office, telephoned from Washington yesterday and informed me that Messrs. Tosiwo Nakayama, President of the Senate, and Mr. Bethwel Henry, Speaker of the House of Representatives, Congress of Micronesia, would be in New York on 20 March and that they have requested to be received by the Secretary-General. They would contact the Secretary of the Trusteeship Council for information regarding their request for an appointment with the Secretary-General.

It is possible that they may raise with the Secretary-General the question of the referendum on the draft Micronesian constitution, which is scheduled to take place on 12 July 1978. The position of Messrs. Nakayama and Henry is that the referendum should be supervised by the Security Council.

The background on the referendum is as follows:

At the forty-fifth session of the Trusteeship Council on 6 June 1977, the representative of the United States invited the Trusteeship Council to dispatch a mission to observe the referendum on the draft Micronesian constitution. On the same date, the Trusteeship Council decided in principle to send a visiting mission to observe the referendum in the Trust Territory on 12 July, or on such other date as might be fixed.

On 10 February 1978, the President of the Senate of the Congress of Micronesia and the Speaker of the House of Representatives addressed a letter to the President of the Security Council which contained a formal request to the Security Council that its representatives supervise the said referendum. The letter has subsequently been issued as an official document of the Trusteeship Council (T/PET.10/124), a copy of which is herewith enclosed.
In this connexion, I enclose herewith, a memorandum dated 17 February 1978 from Mr. Minchin of my department, to Mr. Sloan, Office of Legal Affairs, concerning the request made by the Micronesian leaders. In that memorandum, Mr. Minchin has indicated that the letter raises a legal point with regard to the respective rights and functions of the Security Council and the Trusteeship Council under Article 83 of the Charter. He further indicated that this question would arise in the event, rather remote, that the Administering Authority should support its request. Does the Security Council under the Charter have the right to supervise an act of self-determination in the Territory or is it obligated to delegate such function to the Trusteeship Council.

(Circulated in accordance with rule 85, paragraph 1, of the rules of procedure of the Trusteeship Council)

CONGRESS OF MICRONESIA

KOLONIA PONAPE EASTERN CAROLINE ISLANDS 96941

10 February 1978

The President
Security Council
United Nations
New York, N. Y.

Dear Mr. President:

The people of the Trust Territory of the Pacific Islands will have the opportunity to participate in a Territory-wide referendum on the proposed constitution of the Federated States of Micronesia on 12 July 1978. In this connection, we hereby formally request that representatives of the Security Council be made available to closely supervise the referendum throughout the remaining six districts of the Territory.

The purpose of this request, which we consider of paramount importance in determining our future relationship as a united entity, is to ensure adequate involvement by the United Nations in the process whereby the people of Micronesia collectively determine their future.

In recent months, United States Ambassador Peter Rosenblatt, President Carter's Personal Representative to the Micronesian Status Negotiations, has made public statements within the Trust Territory that the proposed constitution of the Federated States of Micronesia is inconsistent with the concept of free association. However, it is our opinion that such public statements by the Ambassador are in themselves a form of interference in our constitutional development and are not
in accord with the concept of free association as defined by General Assembly resolution 1541 (XV) and declarations of the United Nations which respect and support non-interference in the internal affairs of all States, including the Trust Territory. We also wish to note that unofficial referenda have been held in two districts of the Trust Territory aimed at achieving political separation.

It has been alleged that serious election irregularities occurred in both areas. Therefore, we believe that close supervision of the constitutional referendum by the Security Council will be the only way to ensure that the proper conditions exist for all the people of the Trust Territory to exercise their right to vote freely in the referendum.

We also wish to note that during the 1469th meeting of the Trusteeship Council on 23 June 1977, the Council decided in principle to send a visiting mission to observe the referendum in the Trust Territory. However, due to the sensitive and complex nature of the problems involved, we believe that anything less than active supervision by the United Nations during the referendum and observation during the period of political education prior to it will invite further intimidation of Micronesian voters both from within and without the Territory.

We further note, in this connection, that while the Security Council delegates the nominal responsibility to the Trusteeship Council to review activities of the Administering Authority in Micronesia on its behalf, it is in fact the Security Council which will make the final decision on termination of the trusteeship. Accordingly, while we can understand why the Trusteeship Council, on behalf of the Security Council, has monitored the activities of the Trust Territory on a year-to-year basis and through tri-annual visiting missions, it would seem both appropriate and necessary that the Security Council become actively involved in the process by which the people of Micronesia will exercise their sovereign rights, and which act will set into motion the termination process.

In closing, we trust that the Security Council will endeavour to execute its responsibilities towards the people of the Trust Territory in accordance with the Charter of the United Nations and Trusteeship System. We look forward to working closely with the Council in the months ahead in making the necessary administrative arrangements to dispatch a mission to Micronesia to observe political education efforts prior to the vote and to supervise the constitutional referendum itself.

Sincerely yours,

(Signed) Tosivo NAKAYAJA
President of the Senate

(Signed) Bethwel HENRY
Speaker, House of Representatives

cc: President, United Nations General Assembly
Chairman, Special Committee of 24
President, Trusteeship Council
Cyrus R. VAHCE
Andrew YOUNG
Peter ROSENBLATT
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1. Following our telephone conversation I am enclosing herewith a copy of a letter from the leaders of the Congress of Micronesia. This letter followed an earlier resolution by the Congress calling for observation of the forthcoming constitutional referendum in the Territory by either the Security Council or the Trusteeship Council. You will note that this letter contains a formal request to the Security Council that a Council mission supervise the referendum. This letter is being circulated informally among members of the Security Council and will be issued as a document of the Trusteeship Council.

2. At present the letter has the status of a petition since, clearly, it is the Administering Authority which can invite the United Nations to send a mission to the Territory. However, the letter raises an interesting legal point with regard to the respective rights and functions of the Security Council and the Trusteeship Council under Article 83 of the Charter. This question would arise in the event, rather remote, that the Administering Authority should support its request. Does the Security Council under the Charter have the right to supervise an act of self-determination in the Territory or is it obligated to delegate such function to the Trusteeship Council. Article 83 (3) seems to support the latter interpretation.

3. I should be grateful for your informal opinion,
This is with reference to your note of 17 February 1978 on the above subject.

With regard to the respective rights and functions of the Security Council and the Trusteeship Council under Article 83 of the Charter, it seems to me that Article 83 (1) establishes _prima facie_ the primary responsibility of the Security Council with respect to strategic areas. Although Article 83 (3) suggests a role for the Trusteeship Council ("shall ... avail itself of the assistance of"), the language of Article 83 as a whole would not seem to support the view that the Security Council is under an obligation to delegate such function to the Trusteeship Council.