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TRIP REPORT
LONDON DUMPING CONVENTION CONSULTATIVE MEETINGS--NOVEMBER 1991

This report describes the activities at the London Dumping Convention (LDC) meetings in November 1991, and then offers suggestions regarding future actions that the Association of Pacific Island Legislatures can undertake in the coming years to help protect the ocean environment of the Pacific.

The Meetings. Two separate meetings were held this year. During the week of November 18-22, 1991 the meeting of the Intergovernmental Panel of Experts on Radioactive Wastes (IGPRAD) took place, and then during the week of November 25-29, 1991 the Fourteenth Consultative Meeting of the Contracting Parties took place.

I arrived in London late Wednesday evening, November 20, and spent Thursday and Friday, November 21 and 22, attending the IGPRAD meetings. Because these meetings are limited to representatives of the contracting parties, I attended as Legal Adviser to the delegation of the Republic of Nauru; my main goal was to monitor events there to determine what issues APIL should be aware of.

The IGPRAD meetings have been designed to develop information regarding the many different dimensions of the issues related to ocean disposal of radioactive wastes. The London Dumping

Convention currently bans the ocean disposal of high-level nuclear wastes but does permit the dumping of low-level wastes under certain conditions. As you know, Japan developed a proposal in the late 1970s to dump low-level radioactive wastes at a point between Tokyo and the Northern Mariana Islands; although this proposal has been set aside for the time being, Japan is clearly interested in keeping the ocean disposal option open. The United Kingdom was dumping substantial amounts of low-level wastes into the Northeastern Atlantic until 1983 when a nonbinding moratorium was adopted by the LDC members. The United Kingdom appears eager to resume its dumping, and France, the United States, and several other countries have also been active in trying to keep the ocean dumping option available. Although the United States has not dumped any radioactive waste into the ocean since 1970, it nonetheless maintains an interest in this possibility.

Nauru and Kiribati introduced an amendment in 1985 to prohibit the ocean dumping of all radioactive wastes, and this amendment is still pending while the IGPRAD studies are underway. The studies are being completed at the present time, and it appears that a final report will be submitted for the 1993 Consultative Meeting. The scientific reports will probably state that ocean dumping should remain as a possible option, to be balanced against other options by each country. I am attaching to this report an article that has just been published by Calmet and Bowers on this topic. Calmet has been representing the International Atomic Energy Agency at the IGPRAD meetings, and Bowers has been chairing the IGPRAD

Scientific Committee. Also attached are earlier two articles I helped prepare which provide a different perspective on this issue.

IGPRAD has also been analyzing the legal, economic, political, and social issues related to radioactive waste dumping, and these studies tend to emphasize the negative aspects of such dumping. IGPRAD will have another meeting in the fall of 1992 and after IGPRAD submits its final report to the LDC Consultative Meeting in 1993 it is likely that a formal vote will take place on the proposed amendment to prohibit all radioactive waste dumping in the oceans. The draft final report of IGPRAD--with my notes and marked corrections--is enclosed with this report.

On Saturday morning, November 23, 1991, I met Senator Matthias Kuor of the Yap Legislature at the Heathrow Airport and helped him become settled at the hotel we were using, the Dolphin Square. He spent most of the day resting, and we met again that evening for dinner and further discussions regarding strategy and developments. On Sunday, November 24, 1991, we had lunch together, and then went to the International Maritime Organization building for a meeting with the Chair of the London Dumping Convention (Mr. Tromp from the Netherlands) and the other nongovernmental organizations. At this meeting, each organization explained its interests and proposed interventions, and we discussed the events of the coming week.

Also during this period, I drafted (after discussions with Senator Kuor) two interventions for him to make on behalf of APIL, which are enclosed with this report. The major intervention concerns the incineration at Johnston Atoll and APIL's position

that it should be governed by the LDC because Johnston is essentially an artificial island (it is presently 12 times its original size, and the incineration plant is totally on fill material). The other intervention concerns radioactive wastes and was designed to affirm APIL's support for a complete prohibition on all ocean dumping of these wastes.

The LDC Consultative Meeting opened on Monday, November 25, 1991. Senator Kuor and I sat together as APIL delegates, and I introduced him to some of the delegates he had not met last year. At lunch, we dined with Vili Fuavao, the Director of the South Pacific Environmental Programme (SPREP), and delegates from Nauru, New Zealand, and Australia, to discuss issues of particular interest in the Pacific. That evening we scheduled another dinner with delegates from the Pacific to develop further strategies for this week and coming meetings.

I attended the morning session on Tuesday, November 26, 1991, but then had to leave to return to Honolulu to teach my classes at the University of Hawaii. Senator Kuor remained at the meeting and made the interventions for APIL on Wednesday.

The intervention on Johnston was met by an immediate, sharp response by the U.S. delegation, as was to be expected. The United States argued that it had declared a territorial sea around Johnston long ago, and thus that this island was in the category of a real rather than an artificial island by virtue of this early declaration. The delegations of the Solomon Islands and Nauru supported the APIL position, and Canada gave some support to the

U.S. position. The Consultative Meeting did not take any action on APIL's proposal, and thus did not refer the matter to the Ad Hoc Legal Committee, as we had proposed. Although this failure to act was a disappointment, the intervention by APIL on this matter should nonetheless be viewed as a positive action. It brought the actions at Johnston to the attention of the other delegations and made the United States realize once again that its actions at Johnston will be scrutinized carefully by the international community. A number of delegations told Senator Kuor afterwards that they were sympathetic to his position but did not have sufficient instructions to make a formal comment at the meeting. All delegations appreciated the fact that at this meeting there was--for the first time--a real Pacific Island presence, and the other delegations are interested in the Pacific perspective being voiced clearly in future meetings.

The intervention on radioactive wastes was also appreciated, and the Consultative Meeting devoted considerable time to the question of formally amending the LDC on this topic. Twelve nations submitted a resolution calling for an Amendment Meeting--which is enclosed. After discussion, this amendment was withdrawn, but it was agreed that at the 1992 meeting a formal agenda item would be added to determine whether amendments should be considered in 1993. There is strong sentiment for this position, but a two-thirds vote is needed for an amendment, so careful preparation is needed for such an effort to be successful.

Recommendations for Future Actions:

1. The most important step for APIL would be to encourage nation-states to ratify the LDC and thus become formal contracting parties. APIL's status is that of a nongovernmental organization, and although it can play a useful role in this status it does not have the same power as a contracting party. Nongovernmental organizations can play only a limited role in IGPRAD, and are not encouraged to intervene as often as contracting parties in the consultative meetings. Also, only contracting parties can vote, and it would be most helpful to have additional contracting parties that oppose radioactive waste dumping to support the Nauru/Kiribati amendment that will probably be brought to a vote in 1993. As mentioned above, a two-thirds vote is needed to pass this amendment. The Federated States of Micronesia (FSM) and the Marshalls have the capacity to ratify the LDC and should be encouraged to do so at the earliest possible time.

The process of ratification is a simple one. A country must simply submit a document indicating its ratification to one of the depository countries--the United Kingdom, the United States, or Mexico--and should send a copy of this notice to the International Maritime Organization in London. For a nation that is a member of the International Maritime Organization (IMO), no additional costs are required, because all secretarial expenses are covered by the IMO. For a non-IMO nation, it is conceivable that there could be a request to assist with the meeting costs, but no such actions have ever been taken even though several non-IMO nations are now members of the LDC.

2. The second area of immediate concern involves the renegotiation of the SPREP Treaty, formally known as the Convention for the Protection of the Natural Resources and Environment of the South Pacific Region, done in Noumea, Nov. 25, 1986, reprinted in 26 I.L.M. 38 (1987). The decision has been made by the South Pacific independent nations to disassociate the SPREP organization and treaty from the South Pacific Commission (SPC) and to relocate it to Apia, Western Samoa, and establish it as a free-standing organization. It has been decided that a new treaty will need to be negotiated to accomplish this, and a draft has already been prepared; a meeting to examine the draft and put it into final form has been scheduled for Apia in September 1992. When the SPREP treaty was negotiated under the auspices of the SPC in Noumea, the U.S. territories and commonwealths (American Samoa, Guam, the Commonwealth of the Northern Marianas, and Palau) participated in the negotiations with full and equal delegations. It is unclear, however, whether they will be able to participate in the Apia negotiations in September 1992. The U.S. State Department position is that they can join the U.S. delegation, but that the United States must negotiate for them.

APIL should take a strong position supporting the right of the U.S. territories and commonwealths to participate independently in the SPREP negotiations. If the U.S. State Department remains inflexible on this matter, the question should be presented to the U.S. Congress. Article I, section 10, paragraph 3, says that Congress can authorize states to enter into agreements of compacts

with foreign nations, and that power clearly also extends (under Article IV, section 3, paragraph 2) to authorizing territories and commonwealths to do so. Efforts could also be made to encourage the FSM and Marshall Islands governments to exercise leadership on this question and argue that the U.S.-affiliated islands should be full negotiating partners.

3. It may also be appropriate to argue that the "Convention Area" of the SPREP treaty should be expanded to cover Johnston Atoll and even Hawaii. The current area includes only the 200-nautical-mile zones around the contracting parties, and explicitly does not include Johnston or Hawaii. Surely the environmental protections governing the rest of the Pacific should also cover these islands and APIL can exercise leadership in arguing that they should be included. This action would allow greater attention to be given to Johnston, and allow the SPREP nations to monitor activities there.

4. Finally, APIL can support the effort to require France to prepare an environmental impact statement regarding its nuclear testing in French Polynesia. I am enclosing two related documents on this topic that were introduced to the South Pacific Forum meeting in Pohnpei this past summer. They explain the legal arguments and factual basis for this position.

Please let me know if you need any further information on any of these matters. It was a great honor to be able to represent APIL at the London Dumping Convention and to work with Senator Kuor on this project. He did an excellent job in making his

presentations and represented the Pacific very well. It is of substantial importance that continuity be maintained on these efforts, and so I would strongly encourage APIL to continue to send Senator Kuor, if he is available, to the LDC meetings in 1992 and 1993. Please let me know if you would like me to assist again next year, and let me know how else I can be of assistance to APIL.

