

DECOLONIZATION

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A publication
of the United Nations Department of Political Affairs,
Trusteeship and Decolonization

No. 16

April 1980

ISSUE ON THE TRUST TERRITORY OF THE PACIFIC ISLANDS

	Pages
I. BASIC INFORMATION ON THE TERRITORY	3-4
II. BRIEF HISTORICAL OUTLINE	5-9
A. Spanish Ascendancy	5-7
B. German Rule	7
C. Japanese Control	7-8
D. United States Strategic Territory	8-9
III. CONSTITUTIONAL EVOLUTION AND POLITICAL DEVELOPMENTS. . .	9-28
A. Introduction	9-11
B. 1947 - 1965	11-13
C. 1965 to Present	13-28
1. Northern Mariana Islands	15-19
2. The Federated States of Micronesia	19-21
3. The Marshall Islands	22
4. Palau	23-24

	Pages
III. CONSTITUTIONAL EVOLUTION AND POLITICAL DEVELOPMENTS . . .	9-28
(continued)	
5. The proposed Compact of Free Association	25-28
IV. STRATEGIC ISSUES.	29-31
War and post-war damages	30-31
V. ECONOMIC, SOCIAL AND EDUCATIONAL CONDITIONS	31-35
VI. ACTION BY THE UNITED NATIONS.	36-45
A. Action by the Security Council and Consideration by the Trusteeship Council.	36-42
B. Question of the termination of the Trusteeship Agreement	42-44
C. Consideration by the Special Committee on Decolonization	44-45
TABLES:	
TABLE I: Facts and Figures on the Territory.	46-47
TABLE II: Membership of the Trusteeship Council Since 1946	48
APPENDICES:	
A. Relevant United Nations Charter Articles (76,82,83,86,87)	49-50
B. The Trusteeship Agreement	51-53
C. Map of the Trust Territory of the Pacific Islands.	55

I. BASIC INFORMATION ON THE TERRITORY

The Trust Territory of the Pacific Islands is a United Nations trusteeship under the administration of the United States. Composed of three archipelagos - the Marshalls, the Carolines and the Marianas,--the Territory, which is often referred to as Micronesia, encompasses more than 2,100 islands and atolls strewn over an area of approximately 7.8 million square kilometres of the Western Pacific north of the Equator from around 1 degree to 22 degrees north latitude and 130 degrees to 172 degrees east longitude. Truk in the Carolines, about 12,950 kilometres from the continental United States and 5,180 kilometres from the Philippines, is located at the approximate centre of the Territory. Guam, the southernmost island in the Mariana group and geographically part of Micronesia, is not included in the Trust Territory, having been administered separately by the United States as a dependent territory since 1898. ^{1/}

The Territory's total land area is 1,854 square kilometres, consisting of mountainous volcanic islands and low-lying coral atolls ranging in size from Babelthup, the largest island, with a land area of 244.8 square kilometres down to a myriad of others composed of less than 1.6 square kilometres apiece. The land areas for the Territory's administrative districts are as follows: Truk, 118 square kilometres; Ponape, 378.3 square kilometres; Yap, 121.7 square kilometres; Kosrae, 106.6 square kilometres; and Palau, 305.7 square kilometres, all in the Caroline Islands group; the Marshall Islands, 156.8 square kilometres; and the Northern Mariana Islands, 472.9 square kilometres.

Vegetation differs from the low atolls to the high islands, with the coconut palm breadfruit, casuarina and pandanus predominant on the former, while the mangroves on the coastal flats, the coconut palms on the inland slopes and the mixed forest growth on the uplands dominate the latter. Mineral resources are limited. Phosphate deposits which have been found on several islands have proven uneconomical to extract in light of the costs involved and the known deposits of bauxite, manganese, iron, copper, nickel and asbestos are of insufficient quantities for commercial exploitation. ^{2/} Various forms of marine life, including game and food fish, inhabit the surrounding waters.

^{1/} Area Handbook for Oceania, 1970, Supplement p. 429. Published by the American University. (Hereinafter cited as Oceania).

^{2/} Ibid., p. 511.

The 1973 census - the most recent official record - showed a growing population with an average annual increase of around 4.5 per cent. 3/ The total estimated population in 1977 was 126,239, distributed amongst the Territory's administrative districts as follows: Truk, 35,220; the Marshall Islands, 27,096; Ponape, 21,187; the Northern Mariana Islands, 16,264; Palau, 13,519; Yap, 8,482; and Kosrae, 4,471. Over 53 per cent of the people are under nineteen years of age and around 64 per cent are under twenty-five. Population is concentrated in the district centres. For instance, more than 80 per cent of the total population of the Northern Marianas live on Saipan. 4/

The people, broadly classified as Micronesian, are an amalgam, reflecting the mongoloid, polynesian, and melanesian emigration to the Territory from Southeast Asia, beginning around B.C. 1000. This intermingling (later modified by European, Chinese, Filipino, Japanese and United States elements) has resulted in cultural, ethnic, and linguistic differences which persist throughout the Territory today. Polynesian influences dominate in the eastern Carolines and the Marshalls; Melanesian, in the southern Carolines; and, Mongoloid, in the western Carolines and the Northern Marianas. There are nine major languages with dialectical variations spoken in the Territory which, while sharing a common source in the Malayo-Polynesian linguistic family, are mutually unintelligible. Although English is widely spoken, each administrative district has at least one indigenous language which is used by its people in general parlance. 5/

The Micronesian social structure, generally organized around the extended family, is based on a hierarchical system, usually traced matrilineally, which ascends from the village chief, the lowest level of control, to the paramount chiefs, who may control many villages, communities or island groups. 6/ While some weakening of traditional patterns is evident, notably in the Northern Marianas and Palau, tradition still remains a strong force throughout the Territory, especially in the more remote outer islands. 7/

According to the 1973 census, most of the population adheres to the Christian faith, with 56,287 people recorded as Protestants and 51,890 as Roman Catholics. The Northern Marianas and the Carolines are predominantly Roman Catholic; the Marshalls, Protestant.

3/ Donald F. McHenry, Micronesia: Trust Betrayed, 1975, p. 7 (Hereinafter cited as McHenry).

4/ Ibid.

5/ Oceania, p. 498 and pp. 511-514.

6/ Ibid., pp. 514-515.

7/ The Christian Science Monitor, November 14, 1975.

II. BRIEF HISTORICAL OUTLINE

A. Spanish Ascendancy

Micronesia's first contact with the West came in 1521 when Ferdinand Magellan's expedition, on its circumnavigation of the globe, sighted Guam, ^{8/} Saipan and Rota in the Marianas and landed briefly on Guam for food and water. Subsequently, Spanish ships sailed by the Marshall Islands in 1525 and the Carolines in 1527. However, as navigation was hazardous, those two archipelagos were generally avoided and remained largely unvisited until the end of the eighteenth century.

In 1565, Miguel Lopez de Legospi, claimed the Marianas as a Spanish possession while enroute to colonize the Philippines. Shortly thereafter, the Spanish galleon trade, which lasted until 1815, began plying the Pacific between Mexico and the Philippines, using Guam as a way station, but leaving the other islands of Micronesia generally unaffected. ^{9/}

The first significant contact with the West, however, came in 1668 when Spanish missionaries led by Diego Luis de Sanvitores, a Jesuit priest, arrived in Guam, accompanied by Spanish and Filipino soldiers. The Spanish missionaries, attempting to extend the Catholic faith throughout the islands of the Marianas, met resistance from the indigenous Chamorro people who, angered by missionary activities, especially a policy of forced baptism, fought the Spanish colonizers until 1681 when they were defeated by the superior European weapons. From 1695 to 1698, the Spanish, as a means of controlling the inhabitants of the islands, forcibly concentrated all the Chamorro people on Guam, depopulating the rest of the archipelago ^{10/} where, as one scholar has noted, they carried out "a planned and ruthless destruction of a people who would not, or could not, drop their traditions, customs, religion, life patterns, and even language." ^{11/} It has been estimated that as a result of Spanish policies, the Chamorro population of between 70,000 to 100,000 in 1668 was reduced to around 1,600 by 1756. During this period, the Chamorro population intermingled with Filipino, Spanish, Mexican and Chinese immigrants in Guam, with the result that by the mid-nineteenth century a new Chamorro physical type had emerged. According to an observer, by 1821 the people "could not bear foreign domination and resorted to hanging themselves, infanticide, and abortion." ^{12/} In 1816, when Spain allowed resettlement to the depopulated islands, the people, whose traditional way of life had been disrupted by Spanish colonization, had lost the skills of navigation and boatbuilding and, as a result, had to revert to subsistence farming as the primary means of livelihood. ^{13/}

^{8/} Elizabeth Anttila, A History of the Trust Territory of the Pacific Islands and their Education, pp. 90-91. (Hereinafter cited Anttila).

^{9/} Ibid., p. 91.

^{10/} Pacific Islands Monthly, p. 369 (Hereinafter cited as Pacific Islands).

^{11/} Anttila, supra, p. 91.

^{12/} Ibid.

^{13/} Ibid., p. 93.

Although Spanish missionaries made several unsuccessful attempts to proselytize the inhabitants of the Caroline Islands in the early eighteenth century, the Carolines and the Marshalls remained relatively unaffected by European activities until the late eighteenth and early nineteenth centuries. In the 1820s, American whalers began frequenting the two archipelagos and by the 1860s American, British and German traders had begun operations in the islands, competing in the trade of copra, which by the late nineteenth century had become a major commodity in the world market. The islands were also subjected during this period to the notorious "blackbirding" labour trade, the slave-like system which developed in the Pacific during the mid-nineteenth century. 14/ American Protestant missionaries arriving in the 1850s, founded the first Protestant mission on Kusaie in the Carolines in 1852.

Thereafter the Protestant faith spread, with intermittent success, throughout the Marshall Islands and the eastern Carolines, with the result that by 1900 fifty-seven Protestant churches and ninety-two schools had been established in the area. 15/

While Spain had claimed sovereignty over the Marianas in 1565, stationing a garrison of troops on Guam, it exerted little control over the rest of Micronesia and did not formally annex the Marshalls and the Carolines until 1874, when the rivalry for the expanded copra trade began to infringe on Spanish interests. In 1873, Spain issued a declaration requiring all merchant ships sailing for the Marshalls and the Carolines to obtain Spanish permission and to pay customs and licensing fees for the privilege of trading in the islands. 16/ Germany, supported by Britain, however, refused to comply, alleging that Spain had never occupied the area. In 1885, the dispute was submitted to Pope Leo XIII for arbitration, who rendered a decision which recognized Spanish sovereignty, but made recognition contingent on the establishment of a Spanish presence in the islands and the maintenance of free trade for all powers. 17/

Following this decision, Spanish troops and missionaries arrived in the Carolines in 1886, establishing an administrative centre on Ponape. During this period, Protestant missionaries and teachers were expelled and the indigenous population was subjected to forced labour conditions. Rebellion against the Spanish, which broke out shortly after their arrival, continued until the end of Spanish rule. 18/

14/ For further details on the labour traffic in the South Pacific, see Decolonization No. 12, Issue on Solomon Islands, at p. 3.

15/ Anttila, supra, p. 70; pp. 119-124.

16/ Pacific Islands, supra, p. 372.

17/ Oceania, supra, p. 499.

18/ Pacific Islands, supra, p. 372.

The Marshall Islands, however, were left unattended with the result that in 1885 Germany established an administrative headquarters at Jaluit and declared the area to be a German protectorate. 19/ Thereafter, Germany, with Spanish acquiescence, shared control of Micronesia with Spain until the latter's defeat in the Spanish-American war in 1898 changed the political alignments in the Western Pacific. 20/

Following the Spanish defeat, Guam was ceded to the United States and the rest of Micronesia was sold by an exhausted Spanish government to Germany, which then became the dominant power in the Territory.

B. German Rule

With German control, a policy of commercial exploitation of the islands was instituted which resulted, along with other oppressive practices, in the transfer of indigenous people throughout the Territory to fill German labour requirements. 21/ In 1910, protesting harsh working conditions, workers in Ponape in the Carolines, in the most violent uprising during German rule, killed four German nationals, including the German Governor. Following the rebellion, which was suppressed by German troops, 17 of its leaders were executed and approximately 400 of their followers were deported to Palau to work in the phosphate deposits. 22/ German occupation, however, lasted only a brief period and in 1914, at the outbreak of the First World War, the Marshalls, the Marianas (except for Guam), and the Carolines were occupied by Japanese forces.

C. Japanese Control

In 1921, the Territory was placed under Japanese administration as a League of Nations Mandate. Administered as an integral part of the Japanese empire, Micronesia soon felt the impact of its third colonial ruler, as Japan set out to develop the islands for its own economic and military benefit. In the process, the Territory's infrastructure was improved by the construction of road and harbour facilities and its agricultural and fishing production was increased. While barring other nationals from the islands, the colonial power encouraged Japanese immigration as a means of alleviating Japan's own problems of overpopulation. By 1938, it has been estimated, approximately 58 per cent of the Territory's population consisted of Japanese settlers, the chief beneficiaries of Japan's development programmes. 23/

19/ The German annexation of the Marshalls was confirmed by the Anglo-German Convention of 1886 which partitioned several island groups in the Pacific between Germany and Great Britain.

20/ Oceania, supra, p. 499.

21/ Anttila, supra, p. 136.

22/ Ibid., pp. 148-149.

23/ McHenry, supra, p. 5.

Although excellent schools were maintained for Japanese students, the schools provided for the indigenous people sought, in accordance with Japanese policy, to nurture individuals who would be "subservient to Japanese interests" and who were "not likely to rise beyond semiskilled labour". 24/ Indigenous Micronesians "were not trained to share in the new economy except on the lowest rung of the labour ladder." 25/ Classroom instruction, conducted in the Japanese language, was limited to a period of five years, with no secondary schools or schools of higher education provided for the Micronesian people. 26/ Although the islanders stoically endured Japanese occupation, the people of Yap, the most traditional region of the Territory, countered Japanese rule through methods of passive resistance while the people of Ponape staged periodic uprisings with the result that, as had been the case in their earlier rebellion against German rule, many Ponape islanders were either deported or executed for their resistance. 27/

After Japan's withdrawal from the League of Nations in 1935, the islands were fortified and developed for military purposes in violation of the League of Nations Mandate, with the Micronesian people being forced into workgangs to build air fields and fuel dumps. 28/

During the Second World War, Micronesia became a strategic focal point in the Western Pacific, as the Western Allies and the Japanese clashed in bitterly fought battles throughout the Territory. In 1944, the Marshall Islands and the Marianas were occupied by the allied forces. During the invasion of Saipan many of the indigenous inhabitants, forced by Japanese soldiers to walk backwards off high cliffs, were killed in the waters surrounding the island. 29/ Subsequently, Saipan and Tinian were turned into large military bases controlled by the Western Allies, with approximately 200,000 troops being stationed on Saipan in 1945. Except for one atoll, Ulithi, the Carolines remained in Japanese hands until the Japanese surrender in 1945. 30/

D. United States Strategic Territory

In 1947, in a trusteeship agreement between the United Nations and the United States, the islands were placed under United States administration as a strategic trust territory. Unlike the other ten trusteeship agreements, the strategic trust, which was seen by the United States as a means of safeguarding its control over the Territory, provided, inter alia, that the administering Power could establish military bases, erect fortifications, and station and employ armed forces in the islands, 31/

24/ David Nevin, The American Touch in Micronesia, 1977, p. 63. (Hereinafter cited as Nevin).

25/ Anttila, supra, p. 280.

26/ Ibid., p. 275.

27/ Ibid., p. 270.

28/ Ibid., p. 65.

29/ Nevin, supra, p. 68.

30/ Pacific Islands, supra, pp. 370 - 375.

31/ Trusteeship Agreement for the United States Trust Territory of the Pacific Islands, Article 5. (Hereinafter cited Trusteeship Agreement).

close any part of the Territory to outsiders for "security reasons", ^{32/} and, instead of reporting to the General Assembly, report directly to the Security Council where the United States maintained a veto. The United States for its part agreed to act in accordance with the United Nations Charter to promote the economic and social advancement of the people and to "promote the development of the inhabitants of the Trust Territory toward self-government or independence as may be appropriate to the particular circumstances of the Trust Territory and its peoples and the freely expressed wishes of the peoples concerned." ^{33/} As of 1980 the Trust Territory of the Pacific Islands was the only territory still held under the United Nations trusteeship system.

III. CONSTITUTIONAL EVOLUTION AND POLITICAL DEVELOPMENTS

A. Introduction

On 18 July 1947, the Trusteeship Agreement for the Trust Territory of the Pacific Islands, entered into by the United States and the Security Council of the United Nations on 2 April 1947, was approved by the United States Congress. ^{34/} Under the terms of the agreement, the United States is granted "full powers of administration, legislation, and jurisdiction over the Territory." The United States President delegated by Executive Order responsibility for the administration of the islands, on an interim basis, to the United States Secretary of the Navy ^{35/} and appointed a High Commissioner who, subject to the direction of the Secretary of the Navy, was vested with "all powers of government and jurisdiction in the Trust Territory of the Pacific Islands, and over all the inhabitants thereof, and final administrative responsibility." ^{36/}

In 1951, administration was transferred from the Secretary of the Navy to the United States Department of the Interior which, except for the period from 1952 until 1962 when the Northern Marianas were returned to Naval control, has continued to administer the Territory through the High Commissioner who is subject to the general supervision and direction of the Secretary of the Interior. ^{37/} In 1954, the United States Congress, accepting this arrangement, passed a bill stipulating that "until Congress shall further provide for the government of the Trust Territory of the Pacific Islands, all executive, legislative, and judicial authority necessary for the civil administration of the Trust Territory shall continue to be vested in such person or persons and shall be exercised in such manner and through such agency or agencies as the President of the United States may direct and authorize." ^{38/} As of 1980,

^{32/} Ibid., Article 13.

^{33/} Ibid., Article 6.

^{34/} Joint Resolution of the United States Congress 18 July 1947; 61 Stat. 397.

^{35/} Executive Order 9875 (18 July 1947).

^{36/} Trust Territory of the Pacific Islands Annual Report, 1948, p. 112.

^{37/} Since 1967, the appointment of the High Commissioner of the Trust Territory of the Pacific Islands has been made by the President upon the advice and consent of the U.S. Senate. (Public Law 90-16, Sec. 2; 81 Stat. 15.)

^{38/} United States Code Annotated, 48 Section 1681.

with the exception of the Northern Mariana Islands District, which entered into a separate "commonwealth" agreement with the United States in 1976, ultimate executive, legislative, and judicial authority was still vested in the United States Secretary of the Interior, acting through the High Commissioner.

Following United States precedents in its other dependent territories, 39/ the United States, in carrying out its obligations under the trusteeship agreement to "foster the development of such political institutions as are suited to the trust territory" and to "promote the development of the inhabitants of the trust territory toward self-government or independence", 40/ has treated the Territory's constitutional development and its future political status as two separate, though interrelated, issues. As a result, negotiations regarding future status, which began in 1969 between the administering Power and representatives of the Congress of Micronesia, have been carried out on one level while constitutional developments have been pursued on another.

As of 1980, the Territory has been separated into four entities - the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia (composed of four states - Yap, Truk, Ponape, and Kosrae - all in the Carolines), Palau (also in the Carolines), and the Marshall Islands.

Three of these entities - the Federated States of Micronesia, the Northern Marianas and the Marshall Islands - have adopted what is expected to be their final constitutions while only two - the Northern Marianas and the Marshalls - have defined their future relationship with the United States.

In common with some other Territories in the Pacific the growth of political parties in the Trust Territory has been slow. By 1980, organized political parties had been established only in the Northern Mariana Islands where the Territorial and Democratic Parties (previously the Progressive Party) have been active since 1960 and in Palau where Liberal and Progressive parties have engaged in political activity since 1963. While formal political parties have not developed in the other districts, ad hoc groups have been formed periodically in response to specific issues, such as the recently formed Voice of the Marshalls, which led the opposition to the Marshall Islands Districts' newly adopted constitution and campaigned in favour of remaining within the Federated States of Micronesia. 41/ Similarly in Palau various groups were formed both in favour and against unity with the Federated States.

39/ See Decolonization No. 13, Issue on American Samoa, at p. 6.

40/ Trusteeship Agreement, supra, Article 6 (1).

41/ Report of a Staff Study Mission to Micronesia, November 4 to December 1, 1978, U.S. House of Representatives Committee on Foreign Affairs, p. 8. (Hereinafter cited as Staff Report).

Traditional cultural patterns in the Territory continue to have an important influence on political affairs. In general, traditional leaders are consulted by the people for guidance on political matters and are often elected to political office. ^{42/} Active campaigning in a society which considers modesty one of its prime virtues is generally considered bad form; and, while there are signs of a weakening of this tradition - as seen in recent vigorous campaigns in the Northern Marianas and Palau, most elections in the Trust Territory are rather sedate, with a person's reputation, community position, and traditional ties remaining the important determinants in Micronesian elections.

B. 1947 - 1965

The Constitutional evolution of the Territory has been slow. The administering Power granted some governmental functions to the people on the municipal and district level prior to 1964, ^{43/} by establishing gradually in each of the Territory's administrative districts, elective district legislatures with limited power of legislation subject to the veto of the High Commissioner. However, there was little attempt to bring the people into the Trust Territory government prior to the creation of the Congress of Micronesia in 1964.

In 1952, a High Court, presided over by a Chief Justice appointed by the Secretary of the Interior, was constituted, together with a district court for each administrative district and a community court for each community. No provision was made for appeals from the High Court to the courts in the United States. ^{44/}

From 1956 until 1964, the High Commissioner was assisted by two successive Advisory Councils. The first, established in 1956, was an appointed body; the second, created in 1961, elective. However, as both councils served only an advisory role, they had little practical influence on the administration of the Territory.

^{42/} Oceania, supra, p. 526.

^{43/} Between 1947 and 1950, the administering Power established 116 municipal governments, under the supervision of the High Commissioner, which were drawn up generally on traditional geographical political lines and had elective or traditional forms of government depending on the circumstances of each municipality. The municipalities remain the basic unit of government in the Territory today. Elective District legislatures were created for Palau in 1955, Truk, 1957; Ponape, 1958; the Marshalls, 1958; Yap, 1959 and the Marianas, 1962.

^{44/} Executive Order No. 26. See also Secretariat Order No. 2918 (as amended 24 March 1976) and Title 5, Section 1 of the Trust Territory Code of 1 January 1971 and amendments.

In the early 1960s, amidst increasing international pressure for rapid decolonization and growing criticism of the United States administration of the islands, notably a 1961 report of a United Nations Visiting Mission to the Territory, ^{45/} the administering Power became increasingly aware of the need to carry out its trusteeship responsibilities and to confront the question of Micronesia's future political status. In 1962, the United States, according to a then confidential United States Government report, adopted a policy aimed at bringing "Micronesia into a permanent relationship with the United States." To this end, the administering Power sought to accelerate the "development of the area to bring its political, economic, and social standards into line with an eventual permanent association." ^{46/}

Pursuant to this policy, a United States mission led by Mr. Anthony N. Solomon, a Harvard University professor and later Under-Secretary of the Treasury, visited the Territory in 1963 to study economic, social, educational and political developments. The mission's report recommended that a plebiscite should be held by 1968 on the Territory's future status; and, that, in the interim, the United States should concentrate on obtaining the goodwill of the people through expanded economic and social programmes so as to ensure a vote which would comport with United States objectives of permanent association. ^{47/} In 1963, financial appropriations were tripled and educational and health care programmes strengthened. However, as United States interest turned to other concerns in the mid 1960s, particularly Viet Nam, Micronesia was once again accorded a low priority by the administering Power ^{48/} and the plebiscite proposed in the Solomon Report was never carried out.

The first grant of some legislative powers to the people on a Territory-wide basis came in 1964 when the administering Power established the Congress of Micronesia, an elected legislature with limited powers of legislation. ^{49/}

^{45/} Official Records of the Trusteeship Council, Twenty-seventh Session, Supplement No. 2 (T/1582). (Hereinafter cited as Visiting Mission 1961) The Mission was composed of representatives from Bolivia, Belgium, India and the United Kingdom, who, as in all United Nations Visiting Missions, served in their personal capacity. The Mission visited the Territory from 8 February to 10 March 1961.

^{46/} McHenry, supra, p. 17.

^{47/} Ibid.

^{48/} Ibid., p. 20.

^{49/} Secretarial Order No. 2882. Legislative Authority for the Congress of Micronesia, Trust Territory of the Pacific Islands, 28 September 1964.

The Congress, a bi-cameral legislature consisting of the House of Delegates and the General Assembly, was authorized to legislate only with respect to subjects of local application and was specifically prohibited from passing bills which were inconsistent with the executive orders of the President of the United States, orders of the Secretary of the Interior, treaties or international agreements of the United States, laws of the United States applicable to the Trust Territory, or the "bill of rights" section of the Trust Territory code. In addition, the Congress could not tax property held by the United States or tax the property of non-residents at a higher rate than that of residents.

The House of Delegates was composed of twelve members, two members from each of the six districts of the Territory, who served for a term of four years. The General Assembly consisted of twenty-one members, apportioned amongst the six districts on the basis of population, with each district, however, entitled to at least two Assemblymen. Members of the Assembly were elected every two years.

The House of Delegates and the General Assembly were granted identical powers. Bills could originate in either House and could be amended, altered or rejected by the other, with a majority of both Houses of the Legislature voting in the affirmative being required for passage of a bill. The High Commissioner, who retained executive power, was authorized to submit proposed legislation to the Congress for its consideration and to veto bills passed by the legislature. Any bills passed over his veto were subject to approval or disapproval by the Secretary of the Interior. The High Commissioner, with the approval of the Secretary, could also declare a bill passed if he designated it as urgent and the legislature failed to pass it "in its original form or an amended form acceptable to the High Commissioner."

The Congress of Micronesia remained the sole legislative authority in the Territory (except for the Northern Mariana Islands) until 1978 when it was abolished by an order of the Secretary of the Interior following the referendum which led to the division of the Territory into four units.

C. 1965 to Present

The first elected Congress of Micronesia convened in July 1965 and shortly thereafter considered the question of the Territory's right to self-determination. This was followed in 1966 by a petition to the administering Power that a Micronesian status commission be established. However, when a favourable response was not forthcoming, the Micronesian legislature created its own commission on 8 August 1967 50/ which, in July 1969, recommended that the Territory should become either a self-governing state in free association with the United States or completely independent.

50/ McHenry, supra, p. 89.

Shortly thereafter, the administering Power, seeking, according to a former United States Secretary of Defense, "only to change the form of the trusteeship agreement while retaining the basic objectives and responsibilities," 51/ reluctantly entered into negotiations with the Joint Committee on Future Status of the Congress of Micronesia. Since 1969 talks have continued at a slow, uneven pace. A staff report of the United States House of Representatives Committee on Foreign Affairs concluded in 1979 that "low priority and inadequate interest on the U.S. side, generally unprepared U.S. negotiations, and confusion as to political goals on the part of the Micronesians have all contributed to the slow pace of the negotiations." 52/

In 1976 the United States entered into a separate commonwealth agreement with the representatives of the Northern Marianas. Thereafter, negotiations for a "free association" relationship were conducted by the administering Power first with the Congress of Micronesia and subsequently with the three political status commissions representing Palau, the Marshalls, and the Federated States of Micronesia. During the mid-1970s, these negotiations were marred to some degree by allegations, which were subsequently confirmed by the U.S. Senate Intelligence Committee, that the U.S. Central Intelligence Agency had bugged the conference room where talks were being conducted in order to get information on the negotiations. 53/

In April 1978 all parties to the negotiations, meeting in Hilo, Hawaii, accepted a "Statement of Agreed Principles for Free Association" which provided that the Micronesians shall "enjoy full internal self-government" while the United States will maintain "full authority and responsibility for security and defense matters for a period of at least 15 years, subject to renegotiation. The administering Power recognized the right of unilateral termination by either side and the "authority and responsibility (of the Micronesians) for their foreign affairs including marine resources." Unilateral termination by the Micronesians was tempered, however, by the provision that should the relationship be terminated other than by the U.S. or by mutual consent the United States "shall no longer be obligated to provide the same amount of economic assistance... initially agreed upon. 54/

51/ Ibid., p. 3.

52/ Staff Report, supra, p. 2. According to the Carnegie study, the United States administration of the Territory has been "confused and inconsistent" as a result of "interminable bureaucratic squabbles" and "a lack of attention" by the administering Power. In the study, a statement is attributed to former Secretary of State Henry A. Kissinger that since "there are only 90,000 people out there, who gives a damn?" McHenry, supra, p. 12 and p. 87.

53/ The Washington Post, 9 May 1977.

54/ Trust Territory of the Pacific Islands Annual Report, 1978, p. 24.

In January 1980, the Marshall Islands initialled an agreement with the United States on a compact of free association, leaving the Federated States and Palau as the only entities which have not yet defined their future status. The administering Power has set 1981 as the target date for the termination of the trusteeship. 55/

The Trust Territory's judicial system is presently in the process of transition. Pursuant to an Order of the Secretary of the Interior issued in 1979, the judicial power in the Territory, except for the Northern Marianas which has had a separate judicial structure since 1977, will continue as established in 1952 until the Federated States of Micronesia, the Marshall Islands and Palau have established functioning courts pursuant to the terms of their respective constitutions. Once such courts are established, the old system will be phased out gradually as each entity sets up its own system of courts. The existing High Court, however, will continue as the appellate court of last resort from the courts of the Federated States of Micronesia, the Marshalls, and Palau. As is presently the case, no provision is made in the Secretarial Order for appeals from the High Court to the courts of the United States.

1. Northern Mariana Islands

Political Status

In February 1971, the unity of Micronesia began to erode when the Northern Marianas District Legislature, favouring a closer relationship with the United States than the other districts, voted to break with their fellow Micronesians and enter into separate status talks with the United States. While the catalyst for this action was reportedly a dissatisfaction in the Northern Marianas with a territory-wide tax bill passed by the Congress of Micronesia providing for a general revenue fund in which taxes paid by the people of the Northern Marianas would be diverted to pay for programmes in poorer areas in the Territory, the underlying reason for the move, according to a study by the Carnegie Endowment, was the history of separate administration by the administering Power "entirely for United States military purposes." 56/

As noted above, the Northern Marianas were placed between 1952 and 1962 under the administration of the U.S. Navy, reportedly due to military apprehension regarding the security of a United States Central Intelligence Agency base on Saipan. As a result, these islands, which have a land area of 293.8 square kilometres and a population of 16,264, were administered separately from the rest of the Trust Territory, entry was restricted for "security reasons", and priority was accorded to them in the assignment of development programmes. In 1962, when the CIA base was disbanded, civilian control was restored and the headquarters of the Trust Territory Government was moved from Guam to Saipan. According to a

55/ Staff Report, supra, p. 12.

56/ McHenry, supra, p. 130.

well-informed source "separate administration, location of the capital on Saipan, financial discrimination - all served (especially in the absence of any programme to promote unity in Micronesia) to encourage the Marianas to think of themselves as set off from the rest of Micronesia", supporting "the concept of separatism" with its subsequent impact on the political development of the Territory. 57/

In April 1972, the representatives of the Northern Marianas on the Joint Committee on Future Status, following the rejection by the Committee of a U.S. "commonwealth" proposal, petitioned the United States for separate negotiations. The United States, which had reportedly reserved the possibility of separate negotiations as a policy option, 58/ accepted the request immediately and began separate talks in December 1972. According to the Carnegie study,

"Separate negotiations resulted primarily from United States military considerations. The United States always preferred a 'Commonwealth Status' to free association, and free association to independence in the belief that the more permanent the set-up, the better United States military interests would be protected. . . The 'commonwealth' arrangement would make the Marianas a territory over which the United States has sovereignty. A military base on sovereign United States territory would present fewer problems than a base where the United States does not have sovereignty - such as the other Micronesian districts in free association with the United States. "59/

The negotiations between the United States and the Marianas Political Status Commission, in spite of opposition by the Congress of Micronesia, concluded with the signing on February 1975 of a "Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America". 60/ On 17 June 1975, this agreement was ratified in a plebiscite held in the Northern Marianas in which 93 per cent of the registered voters participated. The vote was 3,945 in favour, 1,060 opposed. On 24 March 1976, the Covenant was approved by the United States Congress, 61/ at which time the Secretary of the Interior issued an Order separating the Northern Mariana District administratively from the rest of the Trust Territory. 62/

57/ Ibid., p. 12.

58/ Ibid., p. 137.

59/ Ibid., p. 136.

60/ U.S. Public Law 94 - 241; 90 Stat. 263. The agreement between the Northern Mariana Islands and the United States is the second "commonwealth" relationship entered into by the U.S. and its dependent territories. The other is the commonwealth relationship established between the United States and Puerto Rico which came into force on 25 July 1952. See U.S. Code Annotated 48 Sec. 731 (d).

61/ Proclamation No. 4534.

62/ Secretarial Order No. 2989.

Pursuant to a U.S. Presidential proclamation, certain sections of the covenant came into force on 9 January 1978, with the remaining sections to take effect on the termination of the Trusteeship Agreement. The President, however, reserved the right "to suspend the application of any provision of law to or in the Northern Mariana Islands until the termination of the Trusteeship Agreement."

The Covenant provides for a "commonwealth" relationship between the Northern Mariana Islands and the United States, in which the former is granted authority over the internal affairs of the islands "in accordance with a Constitution of their own adoption," while the latter is granted responsibility for foreign affairs and defence. Sovereignty vests in the United States. 63/ Under the terms of the agreement, the Covenant and the provisions of the United States Constitution, treaties and laws applicable to the Northern Marianas are the supreme law of the islands. The U.S. Congress can legislate for the commonwealth as if it were a U.S. state and, except in certain cases, unilaterally alter the relationship. The commonwealth can only be terminated upon the mutual consent of the governments of the United States and the Northern Mariana Islands. The inhabitants of the Northern Marianas are United States citizens but do not have the right to vote in U.S. Presidential elections or to have a voting representative in the U.S. Congress. 64/

Regarding land, 7,557 hectares, approximately 15 per cent of the total land area, are reserved under the Covenant to the United States for defense purposes by a 50 year lease, renewable for an additional 50 years. The United States may also "exercise within the Commonwealth the power of eminent domain 65/ to the same extent and in the same manner as . . . in a State of the Union."

Under the United States federal system, there are two separate tiers of courts - the local and state courts and the U.S. federal courts. Whereas the local and state courts are provided for by the individual state constitutions, federal courts are established pursuant to the U.S. Constitution. Following this pattern, the Covenant provides for the establishment by the United States of a District Court for the Northern Mariana Islands with original jurisdiction "in all cases arising under the Constitution, treaties or laws of the United States" and those cases not entrusted to the local courts. The District Court is also granted "such appellate jurisdiction as the Constitution or laws of the Northern Mariana Islands may provide." In November 1977, the District Court for the Northern Mariana Islands was created by the U.S. Congress which conferred on it essentially the same jurisdiction as a district court of the United States. The federal judge who presides over the Northern Marianas District Court, however, unlike U.S. federal judges who serve for a life tenure, is appointed by the U.S. President for a term of eight years. Appeals from the Northern Marianas court lie to the Ninth U.S. District Court of Appeals 66/ and from there in turn to the United States Supreme Court.

63/ See *Downes v. Bidwell* 182 US 244 (1901).

64/ The Covenant provides that the people of "the Northern Mariana Islands may provide for the appointment or election of a Resident Representative to the United States." The U.S. also has similar arrangements with American Samoa, Guam, Puerto Rico, and the Virgin Islands.

65/ Eminent domain, under United States law, is the power to take private property for public use.

66/ The Ninth U.S. District Court of Appeals is composed of seven states in the western part of the continental United States plus Alaska and Hawaii and Guam.

The Covenant specifies the amount of financial assistance to be provided by the United States, subject to adjustments for inflation, for an initial period of seven years following termination of the Trusteeship Agreement. ^{67/} At the end of this seven year period, the level of assistance "will continue until (the U.S.) Congress appropriates a different amount or otherwise provides by law".

Constitution

As specified in the Covenant, the Constitution of the Northern Mariana Islands, which was approved by the people of that district in March 1977, provides for a presidential form of government with separate executive, legislative and judicial branches. The executive power is vested in the Governor and the Lieutenant Governor who are elected by direct popular vote for a four year term. The Governor is assisted by no more than fifteen heads of executive departments who are appointed by the Governor on the advice and consent of the Senate.

The legislative power is vested in a bicameral legislature composed of a Senate and a House of Representatives. The Senate has nine members elected at large for four year terms from each of three senatorial districts. The House of Representatives has fourteen members elected for two year terms, with twelve of its members being elected from Saipan and the islands north of it, one from Rota, and one from the combined electorates of Tinian and Aguiguan.

Under the Constitution, the Senate and House are granted the same powers. With the exception of appropriation and revenue bills, which may be introduced only in the House of Representatives, bills may be introduced in either house of the legislature. The Governor has the power of vetoing bills; but the legislature, on a two-thirds affirmative vote in both houses, can override a veto. Provisions are made for the people to enact new laws, outside the normal legislative process, through an initiative petition or to reject existing laws by a referendum petition.

A citizen must be eighteen years of age or over to be qualified to vote. The Constitution provides that judicial power shall vest in a judiciary, including trial and appeals courts, established by the legislature. In 1978, the legislature of the Northern Marianas established a Commonwealth Trial Court with original jurisdiction over matters involving land in the Northern Marianas and other civil actions where the value of the matter in controversy does not exceed five thousand U.S. dollars. A Commonwealth Appeals Court, however, has not yet been created, with the result that appeals from the trial court presently lie to the Federal District Court for the Northern Mariana Islands already referred to above.

^{67/} (US) \$8.25 million for budgetary support for government operations; \$4 million for capital improvement projects; and \$1.75 million for an economic development loan fund.

As required by the Covenant, the Constitution includes a bill of rights enforceable by the courts. The Governor is granted the power to "declare a state of emergency in the case of invasion, civil disturbance, natural disaster or other calamity and may mobilize available resources to respond to that emergency".

Land alienation is restricted "to persons of Northern Marianas descent". The Constitution can be amended by a constitutional convention as well as by popular and legislative initiatives, contingent on subsequent ratification of the voters.

On 6 March 1977, the people of the Northern Marianas District ratified the Constitution, by a margin of 93.2 per cent in a referendum in which approximately 58 per cent of the registered voters participated. On 24 October 1977, the Constitution was approved by a Proclamation of the U.S. President and, as a result, came into force on 9 January 1978. On 10 December 1977, Mr. Carlos S. Camacho, the Democratic party candidate, was elected Governor and thus became the first popularly elected executive official in the Trust Territory.

2. The Federated States of Micronesia

While the Northern Mariana Islands District was negotiating a separate agreement with the United States and adopted a constitution to govern its internal affairs, a constitutional convention, organized by the Congress of Micronesia in 1974, drafted a constitution for the remainder of the Trust Territory which was signed by the representatives to the convention on 8 November 1975.

The Constitution for the Federated States of Micronesia provides for a federal system of government, with power being shared between national, state and local governments. Executive power is vested in a President and Vice President who are elected by Congress from among its members for a term of four years but who are not, however, responsible to that body. The principal officers of the executive departments, established by statute, are appointed by the President on the advice and consent of the legislature.

Unlike the former bi-cameral Congress of Micronesia, the legislative power under the new Constitution is vested in a unicameral Congress composed of one member elected from each state who serves for a term of four years and additional other members elected from congressional districts in each state, as provided by law, apportioned on the basis of population, who serve for two year terms. A State may provide for one of its seats to be set aside for a traditional leader. To be eligible for election to the Congress, a person must be at least thirty years of age, a citizen of the Federated States of Micronesia for at least fifteen years and a resident of the State from which he is elected for a minimum of five years. A citizen must be eighteen years of age or older to vote in national elections.

Concerning public finance, one of the most sensitive issues at the Constitutional convention, the Constitution expressly delegates to the Congress the power to impose import "taxes, duties, and tariffs" as well as a national income tax, with not less than 50 per cent of the revenue therefrom being "paid into the treasury of the states where collected". Additionally, the Constitution provides

for the equal distribution of the net revenue derived from the mineral resources from the ocean floor between "the national government and the appropriate state government" and for the establishment of a foreign assistance fund for the deposit of foreign financial assistance which, in most cases, are to be distributed equally between the national and state governments.

The Congress exercises its legislative powers through the passage of bills which require, for adoption, an affirmative vote of two-thirds of all members of the legislature on a first reading as well as another affirmative vote of two-thirds of all the state delegations with each delegation having one vote, on a second reading on a separate day. Since there is no provision for a third reading in which bills might be passed by a simple majority, any bill which does not receive the required majority on both readings, does not become law.

The President has the right to veto bills, subject to the power of Congress to override a Presidential veto by an affirmative vote of three-fourths of all the state delegations, with each delegation casting one vote.

The Constitution makes provisions for a Supreme Court, presided over by a Chief Justice appointed by the President subject to Congressional approval, composed of a trial division with limited jurisdiction and an appellate division with the authority to hear and determine appeals from the trial division as well as appeals from state and local courts. No provision is made for appeals to the Courts of the United States.

The Constitution includes a legally enforceable bill of rights. The President is authorized to declare a state of emergency for a maximum of thirty days unless revoked, amended or extended by the legislature.

The Constitution also provides for a 200 mile maritime zone, prohibits agreements for "the use of land for an indefinite term", and forbids "radioactive, toxic chemicals, or other harmful substances from being "tested, stored, used or disposed of within the jurisdiction of the Federated States of Micronesia without the approval of the government of the Federated States of Micronesia."

Amendments to the Constitution may be made through a constitutional convention, a popular initiative outside the normal legislative process or an act of Congress followed by ratification of three-fourths of the states.

On 12 July 1978, a referendum, under United Nations observation, was held to approve the Constitution of the Federated States of Micronesia. Under a law adopted by the Congress of Micronesia an affirmative vote for the constitution in a majority of the districts voting in the referendum would be deemed as approval and ratification of the constitution by the people of Micronesia. However the constitution would not take effect in those districts in which it was rejected by the majority of voters. ^{68/} The results of the referendum showed that while the majority of voters in the central districts of Yap, Truk, Ponape and Kosrae were in favour of the Constitution, those in Palau and the Marshall Islands were opposed to it re-

^{68/} Section II of Public Law 5 - 60, as amended by Public Law 5 - 19 and as further amended by Public Law 6 - 61.

portedly due to a reluctance to grant the Federal government "permanent power over local financing" 69/ as well as "a fear of being dominated by the more populous (and less prosperous) islands". 70/

In September 1978, following the July referendum, the Secretary of the Interior issued an order which, with the acquiescence of the four districts voting in favour of the Constitution, separated Palau and the Marshall Islands from the other districts of the Territory. As a result, the Congress of Micronesia was abolished and replaced by three interim legislatures, namely the Federated States of Micronesia, Palau, and the Marshall Islands. In addition, the order provided for the separation of revenue and fiscal matters for the three new entities. 71/

On 27 March 1979, elections were held in Ponape, Kosrae, Truk and Yap for the first Congress of the Federated States of Micronesia, representing a land area of 278.7 square kilometres and a population of 69,365. Convening on 10 May 1979, the legislature elected Mr. Tosiwo Nakayama of Truk as President and Mr. Petrus Tun of Yap as Vice-President, 72/ who as of 1980 carry out their responsibilities under the general supervision of the Secretary of the Interior, acting through the Territory's High Commissioner.

69/ New York Times, 10 December 1978.

70/ According to the United Nations Visiting Mission that observed the referendum results in each of the six districts were as follows:

<u>District</u>	<u>Voters registered</u>	<u>Valid ballots cast</u>	<u>Percentage of those registered who voted</u>	<u>Percentage of those voting who voted:</u>	
				<u>Yes</u>	<u>No</u>
Marshall Islands	12,996	10,105	77.8	38.5	61.5
Palau	6,500	6,059	93.2	44.9	55.1
Ponape	11,177	7,990	71.5	74.7	25.3
Truk	17,736	14,001	78.9	69.7	30.3
Yap	4,650	3,545	76.2	94.8	5.2
Kosrae	2,182	1,822	83.5	61.4	38.6

(Report of the United Nations Visiting Mission to Observe the Referendum in the Trust Territory of the Pacific Islands, 1978.- Trusteeship Council Official Records: Forty-sixth Session, Supplement No. 2 (T/1795), para. 279.

71/ Secretarial Order No. 3027 (28 September 1978).

72/ Pacific Daily News, 7 April 1979.

3. The Marshall Islands

In December 1978, following the Marshall's negative vote on the Constitution for the Federated States of Micronesia, a Constitutional Convention of the Marshall Islands adopted a Constitution for that district, which has a population of 27,000 and a land area of 156.8 square kilometres. In a referendum held on 1 March 1979, also under United Nations observation, the Constitution was approved by 63.8 per cent of the voters.

Unlike the constitutions of the other districts of the Trust Territory, the Constitution of the Marshall Islands which came into effect on 1 May 1979, provides for a modified parliamentary system of government with a President responsible to a Parliament, the Nitijela. The President, elected by a majority of the total members of Parliament, also serves as head of State.

The executive authority is vested in the Cabinet which consists of the President and no more than ten ministers appointed by the President who must also be members of Parliament. The Cabinet is collectively responsible to the Nitijela and the President must resign if Parliament passes a motion of no-confidence in him by an absolute majority, in which event the Nitijela elects a new President.

The legislative power is vested in the Nitijela which is a single chamber legislature elected for four years unless dissolved earlier by the President in accordance with the terms of the Constitution. The Nitijela consists of 33 members elected from electoral districts apportioned on the basis of population. A person must be 18 years or over to be qualified to vote. The Nitijela is presided over by a Speaker who is elected by his fellow members of Parliament.

The Constitution provides for a High Court, with unlimited original jurisdiction to hear and determine any civil and criminal cases together with appellate jurisdiction over cases originally filed in subordinate courts and for a Supreme Court which serves as the final court of appeals. No provision is made for appeals from the Supreme Court to the Courts of the United States. The Chief Justice of both the High Court and the Supreme Court are appointed by the Cabinet acting on the advice of the Judicial Service Commission and with the approval of Parliament. Both Courts have jurisdiction to interpret the provisions of the Constitution, which includes a bill of rights enforceable before the courts. Certain provisions of the Constitution can be changed only through a constitutional convention and adoption by two-thirds of the voters in a referendum; others can be amended only by a bill which has been passed at three consecutive readings by an absolute two-thirds majority of the Nitijela and approved by a majority of the votes cast in a subsequent referendum.

On 10 April 1979, elections were held for the 33 seats in the Nitijela. Twenty-nine seats were won by independent candidates and 4 by candidates sponsored by the Voice of the Marshalls, an ad hoc political group which had led the opposition to the new Constitution. Mr. Amata Kabua, a former Congress of Micronesia senator and head of the Marshalls Political Status Commission, was elected by Parliament as the first President of the Marshall Islands. ^{73/} The new government was installed on 1 May 1979. Like the government of the Federated States of Micronesia, the government of the Marshall Islands operates, pending the termination of the Trusteeship Agreement, under the general supervision of the U.S. Secretary of the Interior, acting through the Trust Territory's High Commissioner, who retains a veto power over legislation.

^{73/} Pacific Daily News, 10 April 1979 and 23 April 1979.

4. Palau

Unlike the other three Trust Territory entities - the Marianas, the Federated States of Micronesia and the Marshalls which, as noted, have adopted what is expected to be their final constitutions - the Palau District, located in the Caroline Archipelago, did not, as of January 1980, have its own Constitution. As a result, Palau was being administered under an arrangement whereby executive power vested in the High Commissioner of the Trust Territory; judicial power in the Trust Territory judiciary established in 1952; and, legislative power in the interim legislative body created by order of the U.S. Secretary of the Interior in September 1978. The Palau District has a population of approximately 13,500 and a total land area of 305.8 square kilometres.

Following Palau's rejection of the Constitution of the Federated States of Micronesia in July 1978, the Palau District Legislature established a Constitutional Convention, which, in April 1979, adopted a proposed Constitution of the Republic of Palau providing for a federal system of government composed of separate executive, legislative and judicial branches. Under the terms of the draft, the executive power would vest in a President and Vice-President, with a cabinet composed of the heads of the major executive departments to be appointed by the President on the advice and consent of the Senate. A Council of Chiefs, consisting of a traditional chief from each of the states of Palau, chosen in a traditional manner, would advise the President on matters concerning traditional laws, customs and their relationship to the Constitution and laws of Palau.

The legislative power would be vested in the Olbiil Era Kelulau, a bicameral legislature composed of a House of Delegates and a Senate. Reversing the usual role of the two chambers, the draft Constitution provides that the House, consisting of one delegate elected from each state, would be the upper legislative chamber; while the Senate, composed of the number of Senators as determined periodically by a reapportionment commission, the lower. A citizen must be eighteen years of age in order to vote. Both legislative chambers would share equal powers, with revenue bills originating in either House. For a bill to become law, it must be approved by a simple majority of each House on three separate readings and signed by the President who is granted the right of vetoing bills. A Presidential veto, however, could be overridden on a two-thirds affirmative vote of the members of each chamber of the legislature.

The judicial power would vest in a Supreme Court, composed of both appellate and trial divisions and presided over by a Chief Justice; a National Court, which would have original and concurrent jurisdiction with the trial division of the Supreme Court except in matters reserved exclusively for the latter's jurisdiction, and such inferior courts of limited jurisdiction as might be established by law. The Supreme Court would be the final appellate court. There is no provision for appeals to the courts of the United States.

The Constitution included a bill of rights similar to those found in the constitutions of other districts. The President would be authorized to declare a state of public emergency, but his power to do so would be circumscribed by the constitutional provisions that a state of emergency could not last for more than 10 days without the approval of the legislature, which must be convened at the time the state of emergency was declared, to consider the President's action.

Additionally, provisions would be made for a 200 mile maritime zone as well as the prohibition of the use, testing, storage, or disposal in Palauan territory of "harmful substances such as nuclear, chemical, gas or biological weapons" without the express approval of voters in a referendum. The Constitution would also place tight restrictions on the acquisition of land for U.S. military purposes.

As of 1980, political activity in Palau was centered around the proposed Constitution, which the administering Power, objecting to the provisions concerning the 200 mile maritime zone, the nuclear testing and storage and the restrictions on military use, found incompatible with its defense responsibilities under a compact of free association. ^{74/} While the U.S. had also opposed similar language in the Constitution of the Federated States of Micronesia on both the question of the testing and storage of nuclear material as well as that of the 200 mile maritime zone, which it felt could be used to deny free ship and air passage through a 7.8 million square kilometre zone, ^{75/} it was particularly critical of the Palauan provision which made approval of nuclear activity dependent on the outcome of a popular referendum rather than by intergovernmental agreement, as provided in the Constitution of the Federated States of Micronesia.

In June 1979, reportedly owing to U.S. pressure, ^{76/} the Palau District Legislature, at a meeting which was boycotted by 10 members supporting the draft Constitution, passed a bill nullifying the proposed Constitution and cancelling a plebiscite scheduled for July. However, due to the fact that a lawsuit was subsequently filed in the High Court of the Trust Territory by pro-Constitution forces challenging the legality of the bill, the High Commissioner of the Trust Territory did not at that time act on the measure, which had been submitted to him for approval. Instead, he allowed the referendum to be held on 9 July 1979, under the observation of a United Nations Visiting Mission with the result that the Constitution of the Republic of Palau was approved by 92 per cent of the votes cast. In August 1979, however, the legislature's action abrogating the proposed Constitution was upheld by the High Court of the Trust Territory and the High Commissioner refused to certify the results of the July referendum approving the Constitution. Thereafter, the legislature, still meeting without a quorum, established a new Constitutional Drafting Commission which revised the draft Constitution so as to comply with the U.S. objections. Submitted to the people in a referendum on 23 October 1979, the revised Constitution was rejected by 70 per cent of the voters, leaving Palau, as of 1980, with an unsettled constitutional status. ^{77/}

^{74/} Staff Report, *supra*, p. 12.

^{75/} *Ibid.*, pp. 6 and 7.

^{76/} *The Washington Post*, 21 October 1979.

^{77/} *Ibid.*

5. The proposed Compact of Free Association

As mentioned above, 78/ in January 1980 the Marshall Islands representatives initialled the proposed Compact of Free Association with the United States.- The Compact - for it is envisaged that there should be one single Compact rather than three - has still to be agreed upon by the governments of the Federated States of Micronesia and Palau. It will come into effect coincident with the termination of the Trusteeship Agreement. Following is an outline of the basic provisions of the draft Compact.

The preamble recognizes that the peoples of the Trust Territory of the Pacific Islands 79/ "have and retain their sovereignty and their sovereign right to self-determination and the inherent right to adopt and amend their constitutions and forms of government". Article 1 declares that the peoples of Palau, the Marshall Islands and the Federated States of Micronesia are "self-governing".- Once the Compact becomes effective the laws of the United States applicable to the Trust Territory by virtue of the Trusteeship Agreement will cease to apply to the three Associated States. 80/

According to the Compact the United States would retain "full authority and responsibility for security and defence matters in or relating to Palau, the Marshall Islands and the Federated States of Micronesia" including the option to establish and use military areas and facilities under specific arrangements set forth in separate agreements which would come into effect simultaneously with the Compact. 81/ In addition the three Pacific governments "shall sympathetically consider" any United States request for military areas in addition to those specified in the above-mentioned agreements. 82/ The governments of the Associated States must also refrain from actions which "the Government of the United States determines, after appropriate consultations with those Governments, to be incompatible with its authority and responsibility for security and defence matters". 83/ The United States may conduct in the territory of the Associated States the activities and operations necessary for the exercise of its defence responsibilities but, unless otherwise agreed, it will refrain from conducting any test or discharge of nuclear, chemical or biological weapons. 84/ Limitations are also laid down on the right of the United States to store toxic chemical weapons and radioactive and toxic chemical materials intended for weapons use. 85/ Three Joint Committees, each

78/ See page 15.

79/ According to Section 461(a) of Title Four of the Compact, the term "Trust Territory of the Pacific Islands" does not include, for the purposes of the Compact, the area of the Northern Marianas.

80/ Title One, Section 171.

81/ Title Three, Sections 311 and 321(a)

82/ Ibid., Section 321(b).

83/ Ibid., Section 313(a).

84/ Ibid., Section 312 and 314(a).

85/ Ibid., Section 314(b).

composed of senior officials of the United States and the respective Associated State, shall be established to consider disputes concerning defence and security related matters. 86/

The Compact recognizes the capacity of the three Pacific governments to conduct their own foreign affairs including matters relating to the law of the sea and marine resources, to enter into commercial, diplomatic, economic and trade relations and to conclude treaties and other international agreements. 87/ However, "in recognition of the authority and responsibility" of the United States in the field of defence and security, the three Pacific governments "shall consult in the conduct of their foreign affairs with the government of the United States". 88/ The United States will support applications by the three governments for membership or participation in regional and international organizations "as may be mutually agreed". 89/

The Compact establishes the right of citizens of Palau, the Marshall Islands and the Federated States of Micronesia to enter the United States, and lawfully engage in occupations therein. 90/ Conversely a citizen or national of the United States may enter into, lawfully engage in occupations and reside in Palau, the Marshall Islands and the Federated States of Micronesia, subject to the right of those Governments to deny entry or deport any such citizen or national as an undesirable alien, provided such denial or deportation is pursuant to reasonable statutory grounds consistent with the free associated relationship between those countries and the United States. 91/ Citizens of the three Pacific countries are eligible for volunteer service in the Armed Forces of the United States but would not be subject to conscription so long as they did not establish habitual residence in the United States. 92/

The draft Compact contains detailed provisions concerning economic relations between the future Associated States and the United States.- 93/ As regards grant assistance the following amounts are to be provided for a period of fifteen years commencing on the effective date of the Compact: 94/

86/ Ibid., Section 351.

87/ Title One, Section 121.

88/ Ibid., Section 123.

89/ Ibid., Section 122..

90/ Ibid., Section 141.

91/ Ibid., Section 142.

92/ Title Three, Section 341.

93/ Title Two.

94/ Provision is made for some adjustment to be made yearly in the sums stated in the Compacts to take account of inflation. (Title Two, Section 217)

a) The government of Palau would receive \$7 million annually for the first ten years and \$6 million annually for the remaining five years. An additional \$1 million would be provided annually for infrastructure maintenance beginning on the fifth anniversary of the effective date of the Compact. 95/

b) The government of the Marshall Islands would receive \$19 million annually for the first five year period, \$15 million annually in the subsequent five year period and \$12 million for the remaining five years. 96/ In addition the United States would provide on a grant basis \$9 million a year in conjunction with the separate defence agreement to be entered into between the United States and the Marshall Islands. 97/

c) The government of the Federated States of Micronesia would receive annual grants of \$60 million for the first five years, \$51 million for the following five years and \$40 million for the remaining five years. 98/

The Compact provides that the annual expenditure of the grant amounts specified for the capital account by the governments of the Associated States "shall be in accordance with official overall economic development plans provided by those Governments and concurred in by the Government of the United States prior to the effective date of the Compact", though those plans may be amended from time to time by the governments of the Associated States. 99/

The three Micronesian governments are to report annually to the President and Congress of the United States on the implementation of the plans and the need, if any, for additional economic assistance for that year in the event of exceptional, adverse economic circumstances, it being understood that the United States government is not committed to seek or support such additional economic assistance. 100/

The three Associated States are not included in the customs territory of the United States but for the purpose of assessing duties on their products imported into the United States, the three Pacific countries are to be treated as if they were insular possessions of the United States. United States products imported into the territory of the Associated States would receive treatment no less favourable than that accorded like products of any foreign country. 101/

95/ Title Two, Section 211(a)(1).

96/ Ibid., Section 211(a)(2).

97/ Ibid., Section 213.

98/ Ibid., Section 211(a)(3).

99/ Ibid., Section 211(b).

100/ Ibid., Section 211(c).

101/ Ibid., Sections 241-243.

The Compact, after being signed, is to be submitted to the people of Palau, the Marshall Islands and the Federated States of Micronesia for approval through a plebiscite to be conducted simultaneously in the three units. The Compact shall be entered into by the government of any of the units in which a majority of the valid ballots cast in the plebiscite favours such action. 102/ The provisions of the Compact can be amended by mutual consent either by the four governments or by the Government of the United States and any one of the Associated States in which case the effect of any amendment is to be restricted to the relationship between the Governments agreeing to such amendment. 103/ Termination may occur by mutual agreement or unilaterally. In the first case, economic assistance by the Government of the United States shall continue on a mutually agreed basis. 104/

If the United States government terminates the Compacts unilaterally, certain provisions of the Compact will nevertheless remain in force until the 15th anniversary of the effective date of the Compact, including the section concerning grant assistance, the Title dealing with security and defence relations, as well as the separate agreement concerning defence. 105/

The Compact can also be terminated unilaterally by any of the governments of the Associated States following a plebiscite, which may be observed by the government of the United States, if it so wishes, as well as by a mutually agreed party.- However certain sections of the Compact, including the Title dealing with security and defence relations, cannot be terminated for the first fifteen years of the Compact and will remain in force notwithstanding notice of termination by the Pacific government concerned. Likewise the separate agreements dealing with defence and security will remain in effect in accordance with their terms.- 106/ Upon receipt of notice of termination, the government of the United States and the government so terminating are to consult promptly with regard to their future relationship, and to determine the level of economic assistance to be given by the United States for the remainder of the fifteen year period. The amount agreed shall not in any case be less than 50 per cent of the annual grant assistance laid down in the Compact. 107/

Disputes between the parties on matters relating to the provisions of the Compact or its related agreements may be referred to arbitration. 108/

102/ Title Four, Sections 411 and 412.

103/ Sections 431 and 432.

104/ Ibid., Section 451.

105/ Ibid., Sections 442, 452 and 454.

106/ Ibid., Sections 443, 453 and 454.

107/ Ibid., Section 453.

108/ Ibid., Section 423.

IV. STRATEGIC ISSUES

By virtue of Micronesia's designation as a strategic area, military considerations have played an important part in the United States administration of the Territory. While, as noted in the Carnegie study, the main objective of the administering Power has been to deny use of the islands to other powers, the U.S. has actively used the Territory to serve its own military needs. 109/ For instance, from 1952-1962, a CIA base, as already mentioned, was in operation on Saipan and since the mid-1940s weapon tests have been conducted in the Marshall Islands.

Between 1946 and 1958, Bikini and Enewetak atolls, located in the Marshalls, were used by the administering Power as sites for nuclear tests. As a consequence, in 1946 the 166 people living on Bikini were forcefully transferred by the administering Power first to Rongerik Island and two years later to Kili Island, 805 kilometres away; while in 1947, the 146 inhabitants of Enewetak were moved to Ujelang Island, 364 kilometres to the south. In 1954, a further involuntary evacuation of indigenous people occurred when the 82 inhabitants of Rongelap toll (also in the Marshalls) were transferred to Majuro Atoll, a distance of approximately 700 kilometres, following their exposure to atomic radiation. Provided with medical treatment, the islanders remained in Majuro until 1957 when they were permitted to return to Rongelap.

In 1958, following the cessation of nuclear testing in the Territory, the inhabitants of Bikini, crowded onto the 1.3 square kilometre island of Kili, sought permission from the administering Power to return to their home atoll with its thirty-six islets comprising a land area of 5.2 square kilometres. This request, however, was not granted until 1974 when the administering Power, after extensive bulldozing of the atoll to reduce the level of radiation, felt the area was safe again for human habitation. 110/ When the people returned, they found that, as a result of the nuclear tests, there had been a considerable alteration of their atoll, including the annihilation of one of its islets and severe damage to its reef. In 1978 it was discovered that the level of radioactive contamination on Bikini was still unsafe and the people had to be re-evacuated to Kili Island. As of 1979, the United States estimated that it would be another 30 to 60 years before Bikini would be usable for agricultural purposes.

After 1958, the United States used Enewetak Atoll for non-atomic explosions with the result that, in addition to the damage caused by the nuclear programme, Enewetak was further marred by craters measuring up to 15 metres in depth and 90 metres in circumference. 111/ In 1972, however, the tests were suspended when a United States federal district judge ruled that the programme violated United States laws on the environment. In 1979, in response to the inhabitants desire to return home, the administering Power indicated that it expected the people of Enewetak to be resettled in 1980.

109/ McHenry, *supra*, p. 58.

110/ *Ibid.*, p. 59.

111/ *Ibid.*

Since the mid-1940s, the U.S. Army missile range located in Kwajalein Atoll in the Marshall Islands has been an important testing site for U.S. missiles fired from Vandenburg Air Force Base in California, 13,000 kilometres away. Today, Kwajalein is the United States most active missile range. In July 1979, a group of Marshallese called for the suspension of all tests in the missile range following reports that the area was being contaminated by radioactive material contained in the weapons tested. Shortly thereafter, about 700 islanders staged a protest occupation of some of Kwajalein's islets demanding an end to the testing, the renegotiation of the terms of a lease signed with the United States in 1964 for the use of the land, and the improvement of the economic and social conditions of the Marshallese people. 112/

As a result of employment opportunities on the U.S. base, there has been an influx of people from throughout the District into Kwajalein Atoll. However, as U.S. policy prohibits those islanders working on the base from residing there after working hours, the Marshallese commute daily between the base and Ebeye, a nearby islet with a land area of 30 hectares. In 1978 a U.N. Visiting Mission pointed out that there were approximately 8,500 people concentrated on Ebeye in what a U.S. official has described as "slum" conditions. 113/ Of these, around 60 per cent were not indigenous to the Kwajalein Atoll. This situation, as noted in 1979 by another U.N. Mission, presented a "glaring contrast with the Kwajalein base, 15 minutes away by boat, where 3,000 people live in very comfortable conditions in an area much larger than Ebeye". According to the Mission's report Ebeye represents all the characteristics of an over-populated and undeveloped agglomeration which, unless corrected, could result in "very serious difficulties".

War and post-war damage claims

A major issue of concern in the Territory has been the question of claims against the Japanese Government, mainly for damages sustained by the indigenous inhabitants during the Second World War, and post-war claims against the Government of the United States resulting from personal injury or material damage, including claims for the acquisition, use or retention of property without adequate compensation. As a means of settlement, the United States and Japan agreed in 1969 to contribute U.S. \$5 million apiece to a Micronesian claims fund. In the agreement, it was stipulated that the United States would administer the fund and that Japan, by its contribution, would be discharged from any further liability.

In 1971, this arrangement was implemented by the U.S. Congress which passed the Micronesian Claims Act. This bill established a Micronesian Claims Fund, which consisted of the U.S. and Japanese contributions pursuant to the agreement, and set up a Micronesian Claims Commission which was authorized to receive, examine, adjudicate and render final decisions with respect to; (a) claims for damage directly resulting from hostilities between the United States and Japan between December 1941 and the dates of the securing of the various islands of Micronesia by the United States and (b) claims arising as post-war claims between the dates of securing the various islands by the United States and 1 July 1951, when the Territory was placed under civilian administration.

112/ Pacific Daily News, 16 July 1979.

113/ Ibid., 4 June 1979.

The Claims Commission completed its work in July 1976 and issued a final report in which the amount of the awards certified by the Commission exceeded the value of the fund. Although the United States has appropriated funds for the full payment of post-war claims, it has refused to pay the excess amount awarded for claims directly arising out of the hostilities unless Japan agrees to share the cost. Japan, relying on the 1969 agreement, has so far refused to contribute. According to a U.S. Congressional study, "Micronesians are very bitter about this and argue that if the Japanese will not pay, the United States should." 114/

V. ECONOMIC, SOCIAL AND EDUCATIONAL CONDITIONS

The Trust Territory of the Pacific Islands is an underdeveloped territory in which a money economy, concentrated principally in the district centres, has emerged alongside the traditional subsistence way of life, based on agriculture and fishing, which remains the primary livelihood for a majority of the population. The Territory has a weak economic base. According to the administering Power, "labor, land, natural resources, capital, and infrastructure basic to development are meagre". There is almost a complete absence of industry and such manufacturing as takes place consists primarily of cottage-type activities carried out in the subsistence sector of the economy. For those in salaried occupations, the principal employer is the Trust Territory Government which employs over half the work force.

The balance of trade is in deficit, with imports far exceeding exports. In 1977 - the last year for which official figures are available - exports were US \$ 16.2 million while imports totalled US \$ 44.2 million (excluding the Northern Marianas) - primarily industrial supplies, fuel, and consumer goods. The major exports were copra and fisheries, which together with tourism represented US \$ 11.2 million of the total amount exported.

The main support for the Territory's economy is provided by the administering Power through an annual appropriation and programme grants from U.S. federal agencies. In 1978, the annual appropriation was US \$ 114.1 million and programme grants were around US \$ 35 million, or about 94 per cent of the total cost of Trust Territory operations. The balance was met by local revenues collected primarily from the salaries of those employed by the U.S. Government. The official currency of the Territory is the U.S. dollar as the Trust Territory does not have its own monetary system.

According to the 1976 United Nations Visiting Mission to the Territory, the substantial inflow of funds from abroad has in some respect distorted the economy and impeded progress towards self-sufficiency. 115/ Grants from the administering Power, as noted by a Micronesian observer, have been devoted primarily towards social services and welfare programmes instead of towards the development of infrastructure and income-producing activities, with most expenditures, for both capital improvement and operations, being used almost entirely to encourage consumption of imported goods.

114/ Staff Report, supra, pp. 9 - 10.

115/ Official Records of the Trusteeship Council, Forty-third Session, Supplement No. 3. Report of the United Nations Visiting Mission to the Trust Territory of the Pacific Islands 1976, (T/1774), p. 37. (Hereinafter cited as Visiting Mission, 1976). The Mission, composed of members from the United Kingdom and France, visited the Territory from 5 March - 6 April 1976.

A staff report of the U.S. House of Representatives concluded that "from a development point of view, U.S. assistance has been questionable. After a long period of neglect about US \$ 1,400 per capita aid a year is now being provided by various Federal agencies but with ineffective oversight and coordination and little incentive for self-help". 116/ "The grants," a Trust Territory Official has pointed out, "don't get down to the people . . . Too much goes to government officials, experts and so on" 117/, with "a large part of the money," according to the New York Times, being "spent on administrative expenses, such as salaries and official travel" throughout the Territory. 118/ Recently, allegations of fraud and mismanagement have caused some to call for legislation to ensure resource accountability. 119/ As pointed out by the Carnegie Endowment Study "there seems to be general agreement that the United States has failed dismally to develop Micronesia economically". 120/

According to one authority, United States economic policies, whetting the Micronesia taste for the amenities of a modern technological society, have resulted in "a striking and pervasive unreality which affects every aspect of life in the islands" coloring "the way people think, what they expect and how they conduct themselves". 121/

As a result of a fast increasing population (3.5 to 5 per cent annually), the shift of population to district centres, and expectations of rising standards of living, the people have become heavily dependent on imported foods and materials. In 1974, a U.S. publication reported that eating habits "have changed radically, shifting from locally produced fruit, vegetables and fish to canned goods - such as macaroni - imported from the U.S." 122/ In 1978, a United Nations Visiting Mission noted that rice, which is not grown in the Trust Territory, had become a staple diet and was imported under the food aid programmes financed by the administering Power.

With limited natural resources, the Territory's future economic growth appears to lie largely with the development of marine resources and the tourist industry. Except for Palau, where successful pole and line fishing for skipjack and tuna has been conducted for some time by the Van Camp Seafood Company, most of the fishing carried out in the Territory is on a subsistence level. Rural areas usually supply their own needs while the crowded district centres depend on imported fish, including canned tuna, to meet their consumption requirement. By 1978, however, in addition to Palau, small-scale fisheries operations had been established in the district centres of Truk, Ponape, Yap and the Marshall Islands as a means of supplying fish to the local markets.

116/ Staff Report, *supra*, p. 4.

117/ The New York Times, 29 December 1978.

118/ Ibid.

119/ Honolulu Star Bulletin, 23 June 1979. Also Memorandum from Mr. Lee Hoskins, Chief, Micronesian Bureau of Investigation to Adrian P. Winkel, High Commissioner, 2 February 1979.

120/ McHenry, *supra*, p. 7.

121/ Nevin, *supra*, p. 25.

122/ U.S. News and World Report, 2 December 1974.

The utilization of the 200 mile economy zone, however, seems to offer the major potential for the exploitation of the Territory's marine resources. As a result of Micronesia's geography, the economic zone would actually represent 7.8 million square kilometres, containing "one of the last unexploited tuna fishing grounds in the world" 123/ with a possible annual yield of about 40,000 metric tons. Due to the fact that the indigenous fishing industry does not yet have the required capital, skill, and necessary infrastructure to exploit these resources successfully as well as a general Micronesian aversion to spending time at sea 124/, the four entities comprising the Trust Territory - the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Marshall Islands, and Palau - have turned to foreign fishing interests as a means of exploiting their marine resources. As of 1979, two districts, the Federated States of Micronesia and Palau, had concluded agreements with foreign fishing associations for the right to fish within their respective economic zones.

After copra production which accounted for US \$ 5 million of the Territory's exports in 1977, the nascent tourist industry is the second leading export industry. In 1977, 22,660 persons visited the Territory, spending approximately US \$ 2.3 million, an increase of 15 per cent over the preceding year. Although tourism is concentrated primarily in the Northern Marianas, the most economically advanced district of the Territory, a modest tourist industry is being developed on Palau and to some extent on Yap, Truk, Ponape and the Marshall Islands.

Regular air service links all district centres of the Territory and in 1978 the United Nations Trusteeship Council commended the administering Power for its continuing efforts to improve the transportation system in Micronesia.

While trade-unionism is not yet a significant force in the Territory, some development has occurred in Palau where the workers of four local businesses have formed their own trade associations, and in October 1979 held what was the first workers convention in Micronesia. At that meeting, it was indicated that efforts were also being made in Palau to organize teachers, port workers, and government employees. 125/

As noted by the 1976 United Nations Visiting Mission, land in Micronesia is a scarce commodity which commands a place in peoples' lives beyond any monetary value and confers on its inheritor an automatic position of prestige and power. The Territory has a land area of 183,231 hectares 126/ which is composed of approximately 6,480 hectares under cultivation - generally for subsistence farming - some 33,802 hectares planted with tree crops - coconut, breadfruit, bananas, and pandanus - and around 107,940 hectares representing forests, pastures, and savannas. The remaining land consists of swamp, rock and built-up areas.

123/ Staff Report, supra, p. 6.

124/ Nevin, supra, p. 196.

125/ Pacific Islands Monthly, February 1979.

126/ The Northern Marianas has a land area of 47,105 hectares; Palau, 46,000 hectares; Ponape, 37,675 hectares; the Marshalls, 17,935 hectares; Yap, 12,115 hectares; Truk, 11,751 hectares; and Kosrae, 7,632 hectares.

Of the total area, 73,647 hectares are privately owned and 109,584 hectares are classified as public land under the control of the Trust Territory Government. While most of the privately owned land is held by customary title in accordance with the custom and usages of the inhabitants, these traditional practices, as indicated by the administering Power, are being modified as a result of "decisions of the High Court of the Trust Territory and by the widespread receipt of money for land use and sale which have occurred since the U.S. administration of the Territory began". 127/

In the mid 1970s, it was estimated that most of the land in the Northern Mariana Islands, Palau, and Ponape was publically held, while in Yap, Truk and the Marshalls there were only minor public holdings.

In 1974 the U.S. Secretary of the Interior issued an order providing for the transfer of public lands to local control. Under the terms of the Covenant between the Northern Mariana Islands and the United States, public lands in that district were transferred to the Government of the Northern Marianas in 1978, with the United States, however, retaining the right to use for defense purposes approximately 7,203 hectares on Tinian, 72 hectares on Saipan, and all the 83 hectares on Farallon de Medinilla. 128/

Free compulsory public education is provided for students from 6 to 14 years of age. In 1978, there were 228 public schools and 20 private schools in the Territory, with an enrollment of 31,257 students, representing almost 100 per cent of the school age population. According to one authority, the educational system, based on the American model has resulted in problems of personal identity for many graduates vis-à-vis their traditional culture as well as a growing frustration amongst many students, who, upon completion of their schooling are unable to find jobs commensurate with their skills. 129/ Recently, the job market has failed to keep pace with the number of high school graduates with the level of unemployment being around 20 to 25 per cent in the overpopulated district centres. As noted in an article in The Washington Post, many of the newly educated Micronesians are "turning to alcohol, crime and suicide," with the latter being "now the leading cause of death among young men". 130/

127/ 1977 Annual Report of the administering Power.

128/ Covenant, supra, Article VIII. Tinian has a total land area of approximately 101.4 square kilometres; Saipan, 119.6 square kilometres.

129/ Francis X. Hezel, S.J. of Truk, In Search of a Home: Colonial Education in Micronesia, a pastoral letter provided by Father Hezel.

130/ The Washington Post, 22 April 1979.

In 1976, the United Nations Visiting Mission to the Territory reported that although English was the language used in secondary schools, programmes in local language were being introduced, as had been done at the elementary level since 1972.

While there are three colleges in the Territory, the Northern Mariana Islands Community College, the College of Micronesia in Ponape, and the Micronesian Occupational College, most students go abroad to pursue a university level education. In 1978, over 3,000 students were attending institutions of higher learning outside of the Trust Territory, primarily in the United States, largely under a programme of loans and grants established by the administering Power. Unfortunately this policy appears to have led to a "brain drain" in the Territory. As of 1976 United Nations visiting Mission noted, "too many graduates (studying abroad) tend to seek work outside the Territory". Expenditure for education totalled US \$12.7 million in 1976/77.

Total expenditures on public health for the same fiscal year amounted to US \$ 8.2 million, excluding the Northern Mariana Islands. According to the report of the administering Power there were seven main hospitals in the Territory and two subdistrict hospitals, one at Rota and the other at Ebeye. In 1977 there were 52 physicians, 24 dentists, and 587 nurses providing health care throughout the islands. Most of these were employed by the Department of Health Services which has the responsibility for planning, organizing, and administering all Micronesian medical and health programmes. 131/

In 1978, the Trusteeship Council noted with satisfaction that the immunization level in the Territory was now equal to that of many developed countries and that progress had been made in strengthening the health and hospital infrastructure of the Trust Territory.

131/ 1977 Annual Report of the administering Power.

VI. ACTION BY THE UNITED NATIONS

A. Action by the Security Council and Consideration by the Trusteeship Council

The Trust Territory of the Pacific Islands was one of the eleven territories placed under the international trusteeship system established by the Charter of the United Nations. ^{132/} Under the terms of the Trust Agreement between the United States and the United Nations Security Council entered into in 1947 the whole of the Territory was designated a strategic area pursuant to articles 82 and 83 of the Charter. Article 82 provides that "there may be designated, in any trusteeship agreement, a strategic area or areas which may include part or all of the trust territory". Under article 83 "all functions of the United Nations relating to strategic areas, including the approval of the terms of the Trusteeship Agreement and of their alteration or amendment shall be exercised by the Security Council" whereas in the case of non-strategic trusts their functions are carried out by the General Assembly. ^{133/} The Security Council, in turn, "shall subject to the provisions of the trusteeship agreements and without prejudice to security considerations, avail itself of the Trusteeship Council to perform those functions of the United Nations under the trusteeship system relating to political, economic, social and educational matters in the strategic areas". ^{134/} The Trust Territory of the Pacific Islands, which was the only territory designated as a strategic area, is today the sole remaining territory still held under trust.

Under Article 86 of the Charter, which provides for the composition of the Trusteeship Council, the Council was to be based on the principle of parity between members administering trust territories and non-administering members. Article 86 established that the Council should consist of the following members: those administering trust territories (Article 86, 1a), the permanent members of the Security Council which were not administering Powers (Article 86, 1b) and as many members of the General Assembly as were necessary to maintain parity (Article 86, 1c). Since 1968, upon Nauru's independence, parity became impossible to achieve since only two administering Powers remained - Australia and the United States. As a result, the Trusteeship Council and the General Assembly, after hearing an opinion from the Legal Counsel, decided that members from the General Assembly would no longer be elected to serve on the

^{132/} Following are the Territories, other than Micronesia, placed under the United Nations Trusteeship System between 1946 and 1950, with the date of termination of the trusteeship in brackets: Cameroons under British administration (1961), Cameroons under French administration (1960), Nauru (1968), New Guinea (1975), Ruandi-Urundi (1962), Somaliland under Italian administration (1960), Tanganyika (1961), Togoland under British administration (1957), Togoland under French administration (1960), and Western Samoa (1962). All the trust territories became independent either on their own or in union with a neighboring state, except for Ruanda-Urundi which became Rwanda and Burundi, two separate independent states.

^{133/} Article 85.

^{134/} Article 83(c). For the full text of the relevant Charter articles see Appendix A infra.

Council under Article 86 (1c). 135/ Since 1975, following the termination of the Trusteeship Agreement over New Guinea, the Trusteeship Council has been composed of the five permanent members of the Security Council, one of them-- the United States - being at the same time a member by virtue of Article 86 (1a). The other four are members pursuant to Article 86 (1b). China, however, has not participated in the Council's meetings since 1971 upon the restoration of the lawful rights of the People's Republic of China.

135/ On 22 November 1967 the Trusteeship Council requested the Secretary-General to submit a legal study on the future composition of the Council following the independence of Nauru, a Trust Territory administered by Australia on behalf of itself, New Zealand and the United Kingdom (See Trusteeship Council Records: T/PV.1323). The Council's request was made at the behest of Liberia which was serving as Council President in the light of the fact that the parity on the Council between administering and non-administering members provided for under Article 86 of the United Nations Charter would disappear after Nauru's independence since New Zealand would cease to be an administering Power and thus cease to be a member of the Council while the status of the United Kingdom in the Trusteeship Council would change from that of an administering to a non-administering Power under sub-paragraph 1b of Article 86. As a result, the Trusteeship Council's membership would consist of two administering members (Australia and the United States) and five non-administering members, including four members - China, France, U.S.S.R, United Kingdom - under Article 86 (1b), i.e. by virtue of their being permanent members of the Security Council, and one, Liberia, elected under Article 86 (1c). The Secretary-General, in an opinion submitted to the Trusteeship Council on 23 November 1967, (T/1674) noted that the "vital objective" of the Trusteeship Council in regard to the paramount interests and well-being of the inhabitants of Trust Territories "may be equally well achieved with administering members forming a permanent minority in the Council" and that the Council had functioned in the past with a non-administering majority on several occasions. He concluded by expressing the view that on Nauru's attaining independence on 21 January 1968, the Council membership as then constituted might continue until the normal expiration of the three-year term of Liberia, and that thereafter it might be composed of members administering Trust Territories and the permanent members of the Security Council which were not administering such territories "until all Trusteeship Agreements have been terminated or, in the case of an amendment of the Charter, until the amendment comes into force". On 23 November 1967, the Trusteeship Council took note of the Secretary-General's legal study (See T/1676) and on 19 December 1967 the General Assembly also decided to take note of this opinion (See Official Records of the General Assembly, Twenty-second Session, Vol. III, Plenary, 1627-1673, 1641 meetings). On 31 December 1968, Liberia retired as a member of the Council, its three-year term having expired.

On 7 March 1949, in accordance with Article 83 of the Charter, the Security Council adopted a resolution delegating its responsibility for the supervision of the Trust Territory of the Pacific Islands, except for security matters, to the Trusteeship Council with the request that the latter, inter alia, "submit to the Security Council its reports and recommendations on political, economic, social and educational matters affecting strategic areas under trusteeship". 136/ On 24 March 1949, the Trusteeship Council decided to undertake these responsibilities 137/ with the result that since 1949 the question of the Trust Territory of the Pacific Islands has been considered by the Trusteeship Council, with annual reports being submitted to the Security Council. 138/ As of March 1980, the Security Council had not held any sessions to discuss these reports.

136/ Security Council Resolution 70 (1949).

137/ Trusteeship Council Resolution 46 (IV) (24 March 1949)

138/ Up until 1976, the Trusteeship Council included information on the Trust Territory of the Pacific Islands in its annual reports on the Trust Territories submitted to the General Assembly pursuant to Rule 99 of the Rules of Procedure of the Trusteeship Council. Following the independence of Papua New Guinea in September 1975 which left Micronesia as the sole remaining Trust Territory, the Trusteeship Council at its forty-third session adopted a proposal sponsored by the United States to discontinue the practice of sending reports on Micronesia to the General Assembly. During the course of the discussion on this proposal, the representative of the United States argued that, as Article 83 of the United Nations Charter vests all functions relating to strategic areas in the Security Council, the Trusteeship Council was not authorized to send reports on strategic trust territories to the General Assembly. In rebuttal, the representative of the Soviet Union, asking why the representative of the United States had not objected to the inclusion of those matters in the Trusteeship Council's report on previous occasions, pointed out that there was "no logic" in the U.S. position. In the Council's vote, the U.S. proposal was adopted by 3 votes to 1 (USSR), with no abstentions. As a result, since 1976, reports have not been furnished by the Trusteeship Council to the General Assembly on the Trust Territory of the Pacific Islands. See Official Records of the Trusteeship Council, Forty-third Session (T/PV.1450-1459 and Corrigendum) 21 September 1976.

From 1951 through 1959, the Trusteeship Council, pursuant to Article 87(c) of the United Nations Charter, which provides for periodic visits by the Trusteeship Council to the respective trust territories, developed the practice of including in a single visiting mission all four Trust Territories in the Pacific - New Guinea, Western Samoa, Nauru, and the Trust Territory of the Pacific Islands. 139/ In 1960, the Council decided to send a separate regular visiting mission to Micronesia at the usual three year intervals in order to permit a closer study of developments in the Territory. 140/ In 1961, the first such Mission visited the Trust Territory and issued a critical report which, as indicated above, had an important impact on the administering Power's administration of the islands. 141/ The report noted, inter alia, that economic development was inadequate, resulting in "considerable dissatisfaction and discontent" amongst the people; that transportation and communications systems were poor; education programmes weak; and medical care insufficient. It also noted the administering Power's failure to settle war damages claims and the inadequate compensation provided for land taken for military purposes. The Mission expressed its concern for the political consequences arising from the division of the administration of the Territory between the U.S. Navy and the U.S. Department of the Interior, which it noted, encouraged separatist tendencies in the Territory and called on the administering Power "to take the heat off" any move towards territorial fragmentation. 142/

From 1961 until 1964, in a series of conclusions and recommendations, the Trusteeship Council recognized the need for the early establishment of a territorial legislature and its value in stimulating a sense of unity in the Territory and considered that the process of transforming the Inter-District Advisory Committee into a legislature composed of representatives of all seven districts elected by universal adult suffrage should be greatly accelerated.

In 1964, another Visiting Mission to the Trust Territory issued a report 143/ which, while critical again of the Territory's economic, social and educational development, focused primarily on the questions of political advancement and future status. In its report, the Mission urged the creation of a strong territorial legislature and an executive controlled and staffed by Micronesians. It noted that, while the administering Power did not have precise ideas

139/ Repertory of Practice of United Nations Organs, Vol. IV, Articles 73-91 of the Charter (1955), p. 365.

140/ Trusteeship Council Resolution 2017 (XXVI).

141/ McHenry, supra, pp. 13 - 14.

142/ For the composition of the 1961 Visiting Mission see supra footnote 45.

143/ Official Records of the Trusteeship Council, Thirty-First Session, Supplement No. 2. Report of the United Nations Visiting Mission to the Trust Territory of the Pacific Islands, 1964 (T/1628). The Mission was composed of representatives from China, Liberia, New Zealand, and the United Kingdom. The Mission visited the Territory from 11 February - 11 March 1964.

regarding the Territory's future status it had assured the Mission that it did not "contemplate integration or having Micronesia come under American Sovereignty."

Since 1965, the Trusteeship Council has repeatedly reaffirmed the right of the people of the Trust Territory of the Pacific Islands to self-determination, including the right to independence. It has also expressed frequent concern at the slow pace of economic and social development in the Territory, and called on the United States to accelerate progress in those fields.

In 1965, following the creation of the Congress of Micronesia, the Trusteeship Council expressed its satisfaction with the establishment of the national legislature and the hope that the Congress would direct its attention to all the possibilities regarding the future status of the Territory. In 1968, the last year in which members elected by the General Assembly were represented in the Trusteeship Council, the Council welcomed the creation of the Status Commission of the Congress of Micronesia. Since the beginning of status negotiations in 1969 the Trusteeship Council has repeatedly expressed its concern with the slow progress of the talks. In 1973, a Visiting Mission to the islands issued a report reminding the administering Power, which had refused to discuss independence as a possibility except under prior conditions, that "it is implicit in the Charter and in the Trusteeship System that the goal is eventual independence unless agreement is reached on some other status acceptable to the people of the Territories concerned through an act of self-determination". 144/

The Trusteeship Council has repeatedly shown its concern with the question of the unity of the Trust Territory. In this regard, it noted for the first time in 1972 that separate talks between the Northern Marianas and the administering Power would probably lead to a separate political status for that district.

In 1973 the Council expressed its regret "that the situation should have developed to a point where the Mariana Islands District might have a different political status from the rest of the Territory," but hoped that if secession could not be avoided, the Northern Marianas would maintain close political, economic and cultural links with the rest of Micronesia so as to leave open the possibility of future reunification.

In 1974, the Trusteeship Council expressed its "genuine concern" that the Marshall Islands had expressed the intention of initiating separate status negotiations with the administering Power; and, in 1975, regretted that it had not been possible to hold simultaneous consultations in the Mariana Islands District and in the other districts of Micronesia.

144/ Official Records of the Trusteeship Council, Fortieth Session, Supplement No. 2. Report of the United Nations Visiting Mission to the Trust Territory of the Pacific Islands, 1973 (T/1748). The Mission was composed of representatives from Australia, France, the Soviet Union and the United Kingdom, this being the only Visiting Mission which included a member from the Soviet Union. The Mission visited the Territory from 2 February - 7 March 1973.

In June 1975, the Trusteeship Council agreed to send a visiting mission to observe the plebiscite in the Northern Mariana Islands District. 145/ The Council's decision was reached despite opposition by the Soviet representative on the grounds that the Soviet delegation objected to any action aimed at separating the Mariana Islands from the rest of the Trust Territory and their subsequent inclusion into the United States. 146/ In 1976, the Trusteeship Council, again with Soviet disapproval, took note of the report of the Visiting Mission which concluded that the plebiscite in the Northern Marianas District had been "freely and properly conducted" and that the people of the Northern Mariana Islands had "in the free exercise of their right of self-determination" approved the Covenant to establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States. 147/ At the same time, however, the Council recalling its earlier concern about separatist tendencies in the Palau and Marshall Islands districts, affirmed its conviction that the political unity of the Carolines and the Marshalls should be maintained.

Since 1976, the Trusteeship Council has not made concrete recommendations on the future political status of the Territory. Instead, it has reiterated its view that, amongst all the options open to the inhabitants, including independence, the status of free association, if endorsed by the population, would not be inconsistent with the aims of the Trusteeship Agreement. According to the report of a 1976 United Nations Mission to the Territory, the Micronesian people expressed "a general but regretful feeling that the Territory was still too dependent on United States aid to be able to consider loosening its ties with the administering Authority."

In 1977, the Trusteeship Council noted the expressed desire of Palau and the Marshall Islands districts for separate political status negotiations with the United States and, in 1978, while reiterating the conviction that the political unity of the Caroline and Marshall Islands should, if possible, be maintained, recognized that it was ultimately for the Micronesians themselves to decide upon their future political relations with each other.

In July 1978 the referendum on the proposed constitution of the Federated States of Micronesia was observed by a Mission of the Trusteeship Council. 148/ Following the rejection of the constitution by the Marshall Islands and Palau,

145/ Trusteeship Council Resolution 2160 (XLII). The vote was four in favour and one opposed. Also Official Records of the Trusteeship Council, Forty-third Session, Supplement No. 2. Report of the United Nations Visiting Mission to Observe the Plebiscite in the Mariana Islands District, Trust Territory of the Pacific Islands, June 1975 (T/1771). The Mission was composed of representatives from Australia, France and the United Kingdom. The Mission visited the Territory from 12 June - 21 June 1975.

146/ T/PV.1443.

147/ Resolution 2163(XLIII).- See also T/PV.1459.

148/ Official Records of the Trusteeship Council, Forty-sixth Session, Supplement No. 2. Report of the United Nations Visiting Mission to Observe the Referendum in the Trust Territory of the Pacific Islands, 1978 (T/1795). The Mission was composed of representatives from France and the United Kingdom. The Mission visited the Territory from 28 June - 27 July 1978.

the Trusteeship Council sent visiting missions in March and July 1979 to observe the new constitutional referenda in those districts. 149/ The Soviet Union, reiterating its position in favour of maintaining the unity of the Territory, opposed the dispatch of the Missions to observe the referenda in the Marshall Islands and Palau, but abstained on the sending of a mission to the Federated States of Micronesia on the grounds that the Congress of Micronesia had not opposed the presence of members of the Trusteeship Council. 150/

In a letter addressed in February 1980 to the Secretary-General the Soviet Union drew attention to what it called the unilateral steps taken by the administering Power to dismember the Trust Territory and turn it "into a colonial appendage" bypassing the Security Council in violation of the provisions of article 83 of the Charter. 151/

B. Question of the termination of the Trusteeship Agreement

A question which has been discussed on several occasions in the Trusteeship Council in recent years has been the procedures to be followed for the termination of the Trusteeship Agreement. The Charter is silent on this issue both as regards strategic and non-strategic Trust agreements, 152/ though as regards the latter the consistent practice has been for the General Assembly to adopt a resolution resolving "with the agreement of the Administering Authority" that on the date of independence the Trusteeship Agreement with regard to the particular territory shall cease to be in force.

The Trusteeship Agreement for the Trust Territory of the Pacific Islands simply states in article 15 that "the terms of the present agreement shall not be altered, amended or terminated without the consent of the administering authority". In 1947 during the course of the discussion in the Security Council on the draft Trusteeship Agreement the representative of the Soviet Union sought unsuccessfully to amend that article so that the Council could terminate the agreement on its own decision, without the approval of the administering Power, arguing that the article as originally drafted did not give full recognition to the rights and powers of the Security Council. In opposing the Soviet amendment the representative of the United States declared that:

149/ Official Records of the Trusteeship Council, Forty-sixth Session, Supplement No. 3 and Forty-seventh Session, Supplement No. 1. The Missions were composed of representatives from France and the United Kingdom. The Missions visited the Marshall Islands from 25 February - 7 March 1979 and Palau from 3 to 12 July 1979. The International League for Human Rights, an NGO which has frequently taken an interest in conditions of the Trust Territory, in a petition before the Trusteeship Council in 1978, noted that in each previous instance in which a political status of less than total independence was being considered (e.g., political union with another State), the United Nations had always supervised rather than observed plebiscites involving Trust Territories (T/PV.1472).

150/ Official Records of the Security Council, Thirty-third year, Special Supplement No. 1 (S/12971) Paras. 34 and 35.

151/ A/35/113 and S/13817.

152/ Articles 83(1) and 85 state that all functions of the United Nations including the approval of the terms of the agreements and of their alteration or amendment, shall be exercised by the Security Council or by the General Assembly.

The United States wishes to record its view that the draft trusteeship agreement is in the nature of a bilateral contract between the United States, on the one hand, and the Security Council on the other. The Agreement confines itself to provisions for the powers, duties and responsibilities of the Administering Authority...and does not attempt to define the responsibilities of the Security Council in this respect; they are in the Charter; and no amendment or termination can take place without the approval of the Security Council. 153/

A distinguished legal scholar has cited the 1950 Advisory Opinion of the International Court of Justice in the South-West Africa case 154/ in support of the contention that Security Council approval is required for the termination of the Trusteeship Agreement. On that occasion the International Court unanimously rejected the view that South Africa could unilaterally terminate the League of Nations mandate over South-West Africa. In his view "there appear to be no textual differences in the relevant documents that permit the South-West Africa case to be distinguished in the present instance". 155/ This view is in agreement with the conclusion expressed in the Carnegie study that "the United States has a legal duty to obtain Security Council approval for termination of the Trusteeship Agreement". 156/

153/ Official Records of the Security Council, Second Year, No. 23, 116th meeting, 7 March 1947 at p. 476.

154/ International Status of South-West Africa, Advisory Opinion, 1950; International Court of Justice Reports (1950) p. 141 - 143.

155/ Roger Clark: "Self-Determination and Free Association.- Developments in the Trust Territory of the Pacific Islands" 21 Harvard International Law Journal (1980).

156/ McHenry, supra, p. 49.

These views appear to coincide also with the statements made on recent occasions by representatives of the United States in the Trusteeship Council that it was the intention of the United States to "seek termination of the Trust Agreement from the Security Council". 157/

C. Consideration by the Special Committee on Decolonization

In 1962, the Trust Territory of the Pacific Islands was placed on the list of Territories to which the Declaration on the Granting of Independence to Colonial Countries and Peoples applied; 158/ and, as such, it has been considered by the Special Committee responsible for monitoring the implementation of the Declaration. 159/ Beginning in 1964, the Special Committee has reported annually to the General Assembly on the Trust Territory; but, as of 1979, the General Assembly had not yet held any formal discussion nor adopted any resolution with specific reference to the Territory.

From 1964 up until 1971, when the United States withdrew from the Special Committee, 160/ the administering Power, although maintaining that the Committee lacked jurisdiction to consider the question of the Trust Territory of the Pacific Islands in view of Article 83 of the United Nations Charter regarding strategic trust territories, participated in the Special Committee's consideration of Micronesia, taking part in the discussions and supplying information on the Territory. 161/ Since its withdrawal, however, the administering Power has declined to participate in the Special Committee's examination of the situation in the Trust

157/ Statement made by the United States representative at the forty-second session of the Trusteeship Council held in May/June 1975. (T/PV.1439). See also statement at the forty-fifth session in May/June 1978 when the United States representative was reported to have reaffirmed that "it was the intention of the United States to take up the matter of termination with the Trusteeship Council and the Security Council at the appropriate time". (Official Records of the Security Council, Thirty-third Year, Special Supplement No. 1 (S/12971), para. 475).

158/ General Assembly Resolution 66 (I). See Decolonization Vol. II, No. 6 of December 1975, Table III.

159/ Its full title is: Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples.

160/ A/8277. In 1971, the Secretary-General expressed his regret on the simultaneous withdrawal of the United States and the United Kingdom from the Committee, noting that these two members had served on the Special Committee since its inception and together were responsible for the administration of the majority of the remaining dependent territories. See Official Records of the General Assembly, Twenty-sixth Session, Supplement No. 23 (A/8423/Rev.1), p. 13.

161/ Ibid., p. 162.

Territory, citing its position that under the Charter all United Nations functions relating to strategic Trust Territories are exercised by the Security Council and do not come within the jurisdiction of the Special Committee, a subordinate body of the General Assembly. ^{162/} Beginning in 1971, the Special Committee has consistently urged the administering Power to reconsider its position and to co-operate with the Committee by supplying it with the information necessary to assist it in formulating its conclusions and recommendations.

From 1964 until 1979, the Special Committee, in a series of conclusions and recommendations, has repeatedly reaffirmed the right of the people of the Trust Territory of the Pacific Islands to self-determination and independence and reiterated the view that factors of size, geographic location, and limited natural resources should in no way delay the implementation of the Declaration on Decolonization to the Territory.

The Special Committee has also consistently called upon the administering Power to preserve the unity of the Territory until the people of the Trust Territory exercise their right to self-determination in accordance with the Declaration on Decolonization. It has repeatedly regretted the lack of significant economic development in the Trust Territory and has urged the administering Power to promote the development of the kinds of production that can meet the population's needs, particularly regarding food, and to discourage purchases of similar products from abroad. In 1979, the Special Committee urged the administering Power in co-operation with the Trust Territory, to continue to take effective measures to safeguard and guarantee the right of the people of Micronesia to their natural resources and to establish and maintain control of their future development.

The Special Committee has also urged the administering Power on various occasions to allow a special mission of the Committee to visit the Territory in order to obtain first-hand experience of conditions in the Trust Territory and acquaintance with the views of the people. Up to the end of 1979, the United States, arguing the Committee's lack of jurisdiction and the fact that visiting missions of the Trusteeship Council regularly visit the Territory, had refused to allow a mission of the Special Committee to visit Micronesia. ^{163/}

^{162/} United States Participation in the United Nations. Report by the dent to the Congress for the year 1976, p. 307. As of 1980, the United States, in its capacity as administering Power, continued to provide information to and take part in the consideration by the Special Committee of the United States dependent territories of Guam, United States Virgin Islands and American Samoa.

^{163/} See statement made in 1964 in the Special Committee by the representative of the United States. Official Records of the General Assembly, Nineteenth Session, Annexes, Annex No. 8 (Part I), (A/5800/Rev.1), Chapter XVIII, para. 42.

TABLE I

FACTS AND FIGURES ON THE TERRITORY

	Area	Population	Exports*	Imports**	Constitutional Status	Future Political Status
A. <u>The Trust Territory of the Pacific Islands</u>	1305.1 sq. km.	115,407	US\$16,506	US\$53,816,671	Three entities of the Territory - the Northern Marianas, the Federated States of Micronesia, and the Marshalls - have adopted what is expected to be their final constitution. As of January 1980, Palau had not yet adopted a constitution.	The U.S. has set 1981 as the target date for terminating the Trusteeship Agreement. Until that time, however, the terms of the Trusteeship are applicable to the Territory as a whole. As of January 1980, the Northern Marianas and the Marshalls had defined their future relationship with the U.S., while the Federated States and Palau had not yet finalized their future status.

B. Territorial Entities

1. The Northern Marianas 118 sq. km. 16,264 US\$4,398,000 US\$19,488,000
 The Constitution of the Northern Mariana Islands, providing for a republican form of government with separate executive, legislative, and judicial branches was approved in a referendum on 6 March 1977 without UN observation.
 The Constitution of the Commonwealth: the "Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America" was opposed in a plebiscite under UN observation on 17 June 1975. Certain sections of the Covenant are in force pursuant to a U.S. Presidential Proclamation. The remaining sections will come into force on the termination of the Trusteeship Agreement.

TABLE I

FACTS AND FIGURES ON THE TERRITORY
(continued)

2. The Federated States of Micronesia (in the Carolines)

724.6 sq. km.	69,360	US\$2,041,000	US\$15,572,786	The Constitution of the Federated States of Micronesia, which provide for a federal system of government, was approved in a referendum under UN observation on 12 July 1978.	<u>Free Association:</u> Negotiations are in progress between the U.S. and the Federated States of Micronesia on a prospective future relationship of free association.
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3. The Marshall Islands

156.8 sq. km.	16,264	US\$1,321,000	US\$9,645,025	The Constitution of the Marshall Islands providing for a modified parliamentary form of government was approved on 1 March 1979 in a referendum under UN observation.	<u>Free Association:</u> On 14 January 1980, an agreement was reached between the U.S. and Marshall Islands on a Compact of Free Association. This Compact must be approved by the people of the District in a plebiscite and the U.S. Congress and President before it can come into effect.
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4. Palau (in the Carolines)

305.7 sq. km.	13,519	US\$8,746,000	US\$9,118,865	As of 1980, the Palau did not yet have a constitution.	<u>Free Association:</u> Negotiations are in progress between the U.S. and Palau on a prospective future relationship of free association.
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*As of 1977

**As of 1977 except for the figures for the Northern Marianas which are those reported as of 1978.

TABLE II
MEMBERSHIP OF THE TRUSTEESHIP COUNCIL SINCE 1946

	1946	1947	1948	1949	1950	1951	1952	1953	1954	1955	1956	1957	1958	1959	1960	1961	1962	1963	1964	1965	1966	1967	1968	1969	1970	1971	1972	1973	1974	1975	1976	1977	1978	1979		
Argentina					X	X																														
Australia	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
Belgium	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
Bolivia																																				
Burma																																				
China*	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
Costa Rica	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
Dominican Republic																																				
El Salvador																																				
France	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
Guatemala																																				
Haiti																																				
India																																				
Iraq	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
Italy																																				
Liberia																																				
Mexico	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
New Zealand	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
Paraguay																																				
Philippines	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
Syria																																				
Thailand																																				
Union of Soviet Socialist Republics	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
United Kingdom	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
United States	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
United Arab Republic																																				

* China has not participated in the meetings of the Trusteeship Council since 1971 upon the restoration of the lawful rights of the People's Republic of China.

APPENDIX A

ARTICLE 76

The basic objectives of the trusteeship system, in accordance with the Purposes of the United Nations laid down in Article 1 of the present Charter, shall be:

- 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;
- c. to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion, and to encourage recognition of the interdependence of the peoples of the world; and
- d. to ensure equal treatment in social, economic, and commercial matters for all Members of the United Nations and their nationals, and also equal treatment for the latter in the administration of justice, without prejudice to the attainment of the foregoing objectives and subject to the provisions of Article 80.

ARTICLE 82

There may be designated, in any trusteeship agreement, a strategic area or areas which may include part or all of the trust territory to which the agreement applies, without prejudice to any special agreement or agreements made under Article 43.

ARTICLE 83

1. All functions of the United Nations relating to strategic areas, including the approval of the terms of the trusteeship agreements and of their alteration or amendment, shall be exercised by the Security Council.
2. The basic objectives set forth in Article 76 shall be applicable to the people of each strategic area.
3. The Security Council shall, subject to the provisions of the trusteeship agreements and without prejudice to security considerations, avail itself of the assistance of the Trusteeship Council to perform those functions of the United Nations under the trusteeship system relating to political, economic, social, and educational matters in the strategic areas.

ARTICLE 86

1. The Trusteeship Council shall consist of the following Members of the United Nations :
 - a. those Members administering trust territories;
 - b. such of those Members mentioned by name in Article 23 as are not administering trust territories; and
 - c. as many other Members elected for three-year terms by the General Assembly as may be necessary to ensure that the total number of members of the Trusteeship Council is equally divided between those Members of the United Nations which administer trust territories and those which do not.
2. Each member of the Trusteeship Council shall designate one specially qualified person to represent it therein.

ARTICLE 87

- The General Assembly and, under its authority, the Trusteeship Council, in carrying out their functions, may :
- a. consider reports submitted by the administering authority;
 - b. accept petitions and examine them in consultation with the administering authority;
 - c. provide for periodic visits to the respective trust territories at times agreed upon with the administering authority; and
 - d. take these and other actions in conformity with the terms of the trusteeship agreements.

APPENDIX B:
TRUSTEESHIP AGREEMENT FOR THE
UNITED STATES TRUST TERRITORY
OF THE PACIFIC ISLANDS

PREAMBLE

WHEREAS Article 75 of the Charter of the United Nations provides for the establishment of an international trusteeship system for the administration and supervision of such territories as may be placed thereunder by subsequent agreements; and

WHEREAS under Article 77 of the said Charter the trusteeship system may be applied to territories now held under mandate; and

WHEREAS on 17 December 1920 the Council of the League of Nations confirmed a mandate for the former German islands north of the equator to Japan, to be administered in accordance with Article 22 of the Covenant of the League of Nations; and

WHEREAS Japan, as a result of the Second World War, has ceased to exercise any authority in these islands;

NOW, THEREFORE, the Security Council of the United Nations, having satisfied itself that the relevant articles of the Charter have been complied with, hereby resolves to approve the following terms of trusteeship for the Pacific Islands formerly under mandate to Japan.

ARTICLE 1

The Territory of the Pacific Islands, consisting of the islands formerly held by Japan under mandate in accordance with Article 22 of the Covenant of the League of Nations, is hereby designated as a strategic area and placed under the trusteeship system established in the Charter of the United Nations. The Territory of the Pacific Islands is hereinafter referred to as the trust territory.

ARTICLE 2

The United States of America is designated as the administering authority of the trust territory.

ARTICLE 3

The administering authority shall have full powers of administration, legislation, and jurisdiction over the territory subject to the provisions of this agreement, and may apply to the trust territory, subject to any modifications which the administering authority may consider desirable, such of the laws of the United States as it may deem appropriate to local conditions and requirements.

ARTICLE 4

The administering authority, in discharging the obligations of trusteeship in the trust territory, shall act in accordance with the Charter of the United Nations, and the provisions of this agreement, and shall, as specified in Article 83 (2) of the Charter, apply the objectives of the international trusteeship system, as set forth in Article 76 of the Charter, to the people of the trust territory.

ARTICLE 5

In discharging its obligations under Article 76(a) and Article 84, of the Charter, the administering authority shall ensure that the trust territory shall play its part, in accordance with the Charter of the United Nations, in the maintenance of international peace and security. To this end the administering authority shall be entitled:

1. to establish naval, military and air bases and to erect fortifications in the trust territory;
2. to station and employ armed forces in the territory; and
3. to make use of volunteer forces, facilities and assistance from the trust territory in carrying out the obligations toward the Security Council undertaken in this regard by the administering authority, as well as for the local defense and maintenance of law and order within the trust territory.

ARTICLE 6

In discharging its obligations under Article 76(b) of the Charter, the administering authority shall:

1. foster the development of such political institutions as are suited to the trust territory and shall promote the development of the inhabitants of the trust territory toward self-government or independence as may be appropriate to the particular circumstances of the trust territory and its peoples and the freely expressed wishes of the peoples concerned; and to this end shall give to the inhabitants of the trust territory a progressively increasing share in the administrative services in the territory; shall develop their participation in government; shall give due recognition to the customs of the inhabitants in providing a system of law

for the territory; and shall take other appropriate measures toward these ends;

2. 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;

3. promote the social advancement of the inhabitants, and to this end shall protect the rights and fundamental freedoms of all elements of the population without discrimination; protect the health of the inhabitants; control the traffic in arms and ammunition, opium and other dangerous drugs; and institute such other regulations as may be necessary to protect the inhabitants against social abuses; and

4. promote the educational advancement of the inhabitants, and to this end shall take steps toward the establishment of a general system of elementary education; facilitate the vocational and cultural advancement of the population; and shall encourage qualified students to pursue higher education, including training on the professional level.

ARTICLE 7

In discharging its obligations under Article 76(c), of the Charter, the administering authority shall guarantee to the inhabitants of the trust territory freedom of conscience, and, subject only to the requirements of public order and security, freedom of speech, of the press, and of assembly; freedom of worship, and of religious teaching; and freedom of migration and movement.

ARTICLE 8

1. In discharging its obligations under Article 76(d) of the Charter, as defined by Article 83 (2) of the Charter, the administering authority, subject to the requirements of security, and the obligation to promote the advancement of the inhabitants, shall accord to nationals of each Member of the United Nations and to companies and associations organized in conformity with the laws of such Member, treatment in the trust territory no less

favorable than that accorded there to nationals, companies and associations of any other United Nations except the administering authority.

2. The administering authority shall ensure equal treatment to the Members of the United Nations and their nationals in the administration of justice.

3. Nothing in this Article shall be so construed as to accord traffic rights to aircraft flying into and out of the trust territory. Such rights shall be subject to agreement between the administering authority and the state whose nationality such aircraft possesses.

4. The administering authority may negotiate and conclude commercial and other treaties and agreements with Members of the United Nations and other states, designed to attain for the inhabitants of the trust territory treatment by the Members of the United Nations and other states no less favourable than that guaranteed by them to the nationals of other states. The Security Council may recommend, or invite other organs of the United Nations to consider and recommend, what rights the inhabitants of the trust territory should acquire in consideration of the rights obtained by Members of the United Nations in the trust territory.

ARTICLE 9

The administering authority shall be entitled to constitute the trust territory into a customs, fiscal, or administrative union or federation with other territories under United States jurisdiction and to establish common services between such territories and the trust territory where such measures are not inconsistent with the basic objectives of the International Trusteeship System and with the terms of this agreement.

ARTICLE 10

The administering authority, acting under the provisions of Article 3 of this agreement, may accept membership in any regional advisory commission, regional authority, or technical organization, or other voluntary association of states, may co-operate with specialized international bodies, public or private, and may engage in other forms of international co-operation.

ARTICLE 11

1. The administering authority shall take the necessary steps to provide the status of citizenship of the trust territory for the inhabitants of the trust territory.

2. The administering authority shall afford diplomatic and consular protection to inhabitants of the trust territory when outside the territorial limits of the trust territory or of the territory of the administering authority.

ARTICLE 12

The administering authority shall enact such legislation as may be necessary to place the provisions of this agreement in effect in the trust territory.

ARTICLE 13

The provisions of Articles 87 and 88 of the Charter shall be applicable to the trust territory, provided that the administering authority may determine the extent of their applicability to any areas which may from time to time be specified by it as closed for security reasons.

ARTICLE 14

The administering authority undertakes to apply in the trust territory the provisions of any international conventions and recommendations which may be appropriate to the particular circumstances of the trust territory and which would be conducive to the achievement of the basic objectives of Article 6 of this agreement.

ARTICLE 15

The terms of the present agreement shall not be altered, amended or terminated without the consent of the administering authority.

ARTICLE 16

The present agreement shall come into force when approved by the Security Council of the United Nations and by the Government of the United States after due constitutional process.

