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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 Babelthuap, 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 favor of the Constitution, those in Palau and the Marshall Islands were opposed to it.

^{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).