

**REPORT OF THE UNITED NATIONS
VISITING MISSION TO OBSERVE THE
REFERENDUM IN PALAU,
TRUST TERRITORY OF THE PACIFIC ISLANDS,
JULY 1979**

TRUSTEESHIP COUNCIL

OFFICIAL RECORDS: FORTY-SEVENTH SESSION

(May-June 1980)

SUPPLEMENT No. 1



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NOTE

Symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

T/1813

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LETTER OF TRANSMITTAL

4 February 1980

Sir,

I have the honour to transmit to you herewith, in accordance with Trusteeship Council resolution 2168 (XLVI) of 6 June 1979 and rule 98 of the rules of procedure of the Council, the report of the United Nations Visiting Mission to observe the referendum in Palau, Trust Territory of the Pacific Islands, 1979.

This report is subscribed to by both the members of the Visiting Mission.

Accept, Sir, the assurances of my highest consideration.

Jean-Claude BROCHENIN
Chairman of the United Nations
Visiting Mission to observe the
referendum in Palau,
Trust Territory of the Pacific
Islands, July 1979

His Excellency, Mr. Kurt Waldheim
Secretary-General, United Nations
New York, N.Y. 10017

CHAPTER I

TERMS OF REFERENCE AND COMPOSITION OF THE VISITING MISSION

1. At its forty-sixth session, the Trusteeship Council had before it a letter dated 16 May 1979 from the Alternate Representative for Special Political Affairs of the United States Mission to the United Nations, addressed to the President of the Council, 1/ enclosing the text of resolution No. 27 adopted by the Palau Constitutional Convention. 2/
2. By that resolution, adopted on 9 March 1979, the Convention resolved to request the Trusteeship Council to send representatives to observe the constitutional referendum to be held in Palau on 9 July 1979. In his letter, the Alternate Representative stated that his Government endorsed with pleasure that invitation.
3. At its 1493rd meeting, on 6 June 1979, the Trusteeship Council adopted resolution 2168 (XLVI) by 3 votes to 1, by which it decided to send a Visiting Mission to observe the referendum in Palau, the Mission to begin on or about 28 June 1979 and to end as soon as practicable after the declaration of the results. The Council further decided that the Visiting Mission should be composed of two members, one nominated by France and one by the United Kingdom of Great Britain and Northern Ireland. 3/ The Council directed the Mission to observe the referendum, including the campaign and polling arrangements, the casting of votes, the closure of voting, the counting of ballots and the declaration of results. At the same time and to the extent that its primary purpose permitted, the Mission was to obtain first-hand information concerning political, economic and social developments in Palau. The Trusteeship Council requested the Mission to submit to the Council as soon as practicable a report on its observations of the referendum, containing such conclusions and recommendations as it might wish to make. Finally, the Council requested the Secretary-General to provide the necessary staff and facilities to assist the Mission in the performance of its functions.
4. The Visiting Mission was composed of the following members:

1/ Official Records of the Trusteeship Council, Forty-sixth Session, Sessinal Fascicle, Annexes, document T/1808.

2/ For the text of the resolution, see T/COM.10/L.251.

3/ The representative of the Union of Soviet Socialist Republics stated in the Council that his delegation objected to the dispatch of a Visiting Mission, and he voted against the resolution. For an extended summary of the statement made by the Soviet Union representative, see Official Records of the Security Council, Thirty-fourth Year, Special Supplement No. 1 (S/13759), paras. 80-83. China did not participate in the forty-sixth session of the Trusteeship Council.

Mr. Jean-Claude Brochenin (France) (Chairman)

Mr. Ian A. Woods (United Kingdom)

The Mission was accompanied by the following members of the United Nations Secretariat: Mr. Girma Abebe, Principal Secretary; Ms. Neuza de C. Costa, Political Affairs Officer; Mr. Raymond East, Administrative Officer; and Mr. Henri Pieters, Secretary/Stenographer. The Mission was escorted by Mr. Daniel A. Strasser, Adviser, Political and Security Affairs, of the United States Mission to the United Nations.

CHAPTER II

PALAU

A. Land

5. Palau is the westernmost district of the Caroline Islands, located in the south-western part of the Trust Territory of the Pacific Islands. It consists of a main group of islands known as the Palau group and four small coral islands scattered between the Palau group and the north-eastern islands of Indonesia. The Palau group comprises more than 200 islands, some volcanic and others of coral limestone composition, extending over an area about 200 kilometres in length by 40 kilometres in width. Only eight of the islands are permanently inhabited: Angaur, Babelthuap, Kayangel, Koror, Peleliu, Pulo Anna, Sonsorol and Tobi. The total land area of the district is 492 square kilometres. The island of Babelthuap, with an area of 404 square kilometres, is the largest in the Trust Territory. With the exception of the island of Angaur and the atoll of Kayangel, all of the Palau islands are located within a single barrier reef. Kayangel, the only true coral atoll in the Palau group, is located about 45 kilometres north of the upper tip of Babelthuap.

6. Palau is divided into 16 municipalities, 10 of which are located on the island of Babelthuap. The administrative headquarters of Palau, on the island of Koror, is the most populous.

7. Land has always been a very important asset in Palau and is conceived ultimately to be the property of a whole clan group. Sales of land are very rare. Traditionally, land was divided into public domain and clan lands, with the public land controlled by the village council. There were communal areas for fishing, timber resources, etc., under the public land title which could freely be used by the local villagers. Those outside the local village were required to ask the local council for permission to use those lands. This extended even to the fishing waters of the village.

B. History

8. Linguistic and cultural evidences suggest that the islands of Palau were first discovered and settled by people migrating from Asia, most probably Indonesia, the Philippines and New Guinea.

9. Until its first contact with Europeans, Palau pursued an independent existence, with a culture all its own. Occasionally people drifted to Palau in canoes from the Philippines, Indonesia, and islands farther west in the Pacific, but these were assimilated into the Palauan culture. About the time of early Western contact in 1783, the Palauan world was divided into two competing embryonic semi-states: Babelthuap (High Seas) and Youlthuap (Low Seas). Capital villages were established in Melekeok and Koror as governing village clusters.

10. Late in the nineteenth century, Spain extended its administrative domain in Micronesia to the Caroline Islands, including Palau, and the Marshall Islands. Direct administration by Spain was not established until 1885 when the Palau group was ruled by a governor at Yap.

11. In 1899, at the end of the Spanish-American War, Spain sold its Micronesian possessions to Germany, which ruled them until 1914, when Japanese naval squadrons took possession of the islands.

12. In 1920, the League of Nations placed the Caroline, the Marshall, and the Northern Mariana islands under Japanese mandate, which lasted until the United States armed forces occupied the Territory in 1944.

13. In 1946, the United States agreed to place the Territory of the Pacific Islands, consisting of the islands formerly held under mandate by Japan, under the International Trusteeship System established under the Charter of the United Nations. The draft trusteeship agreement for the Trust Territory of the Pacific Islands was formally submitted to the Security Council of the United Nations on 17 February 1947, and approved by it on 2 April 1947, in accordance with Article 83 of the Charter. 4/ The agreement came into force on 18 July 1947 following its approval by the Congress of the United States.

C. People

14. The people of Palau comprise a composite of physical types which indicate a long history of racial mixture. Because of Palau's geographical location at the threshold of the Pacific, numerous waves of migration passed through the area. The racial types and blends of Palau, as well as of Micronesia as a whole, include Polynesians, Malayans, Melanesians and, in recent times, Japanese.

15. The Palauan culture, less limited than those of typical Pacific atolls because of its highland environment, was relatively complex for Oceania, with an economy dependent on taro and yam agriculture by the women and fishing and hunting by the men. Palauan villages have always been situated near the coast or on a water-way leading to the reef-protected tidal flats. Palauan society consisted of clans hierarchically oriented and matrilineally organized.

16. According to 1978 estimates, the population of Palau totalled 14,000. Koror, the district headquarters, and Babelthua have populations of about 8,000 and 4,000, respectively.

D. Economic and social conditions

General

17. Palau District has sufficient marine and agricultural resources to provide for the needs of its inhabitants. Its tiny surface area, lack of mineral resources, small population, isolation from inhabited States, and especially its remoteness (two hours by plane from Guam) are all obstacles to its integration in the economic development of the modern world.

18. The current living standard of the Palauans is mainly subsidized by grants from the Administering Authority for governmental services and infrastructure costs.

4/ Trusteeship Agreement for the Trust Territory of the Pacific Islands
(United Nations publication, Sales No. 1957.VI.A.1).

Over half of the working population is employed by the Administration; many others are involved in consumption-related activities and those which use imported goods. The volume of imports is more than 10 times greater than that of exports, and includes most food-stuffs (rice, meat, vegetables, beverages, etc.).

19. At the present time, the district has only two industrial activities: a copra-processing plant, for which \$US 4 million 5/ worth of raw materials, slightly less than the value of the exported product, must be imported; and tuna fishing, in which few local inhabitants are employed.

Development prospects

20. Because its stay in the district was so short, the Mission was unable to give special attention to economic problems. Its Chairman was nevertheless able to meet with those in charge of the economic planning services, who outlined the five-year development plan prepared by experts from the United Nations Development Programme (UNDP) in anticipation of the end of trusteeship status. Four goals have been set: self-sufficiency in food production; diversification of resources; equitable distribution of increased income; and improvement of living standards.

21. The Mission was in agreement with those goals. Concerning the first in particular, it felt that the development of taro, cassava and sweet potato farming could enable rice and potato imports to be greatly reduced. The production of fruits, such as papaya and avocado, also offered interesting possibilities, and poultry, hog and cattle raising could fill local meat needs.

22. Fishing is a sector that can be developed not only for the local market but also for export. Currently, a United States company, the Van Camp Sea Food Company in Palau catches and refrigerates tuna before sending it to canneries. Large investments in fishing boats, tackle and cold-storage warehouses are necessary, as is extensive work in the field of vocational training.

23. Palau has magnificent landscapes for tourists (e.g., the "Rock Islands"); however, the lack of beaches, especially on Koror and Babelthuap, and of hinterland will restrict the development of tourism as long as Palau remains outside major traffic routes.

24. A network of roads is planned on Babelthuap to facilitate increased crop production and to provide walking routes for tourists. The Mission has doubts about the profitability of that project: in addition to the large investments that would be required, it would become a heavy burden for the district, which would have to ensure maintenance and to repair the network under particularly difficult climatic conditions. The Mission wonders whether it would not be more useful merely to plan, at least initially, for a few transverse roads to transport products to coastal villages, where they could be taken away by boat.

25. Finally, since the production of electricity from petroleum is becoming more and more costly and leads to an excessive dependence on petroleum supplies, there is an urgent need to study the possibility of using solar and wind energy.

5/ The local currency is the United States dollar (\$US 1.00).

Education

26. The Mission found the level of education in Palau to be generally satisfactory. The main problem faced by the Palauan authorities is how to focus the education of young people so that they can find local employment upon completing their studies. In order to encourage them to stay in the country and to avoid cultural alienation, as many training institutions as possible should be set up in the district; however, the scarcity of trainees does not justify the necessary investments.

27. The Mission's attention was drawn to the problem of educational establishments which, built with imported materials according to United States standards, are unsuitable for the climatic conditions and are difficult and costly to maintain.

Health

28. In its visits outside the district centre, the Mission noted that the existing clinics were capable of providing some health care in satisfactory conditions.

29. The hospital at Koror seemed to be very well run. From its meeting with the director of that institution, the Mission found that the staff are currently coping with problems for which they have not been prepared. The sociological changes to which the population of the district has been subjected have led to increased alcoholism and drug abuse (marijuana) and the emergence of severe psychological problems.

30. Moreover, the health services are concerned at the growth of the population (3 per cent) and think that the family planning policy, so far unsuccessful, should be revitalized.

CHAPTER III

SEARCH FOR FUTURE POLITICAL STATUS IN PALAU

A. Quest for separation from the rest of the Trust Territory

31. The first elected Congress of Micronesia was convened in 1965. Palau was represented in that Congress by two senators and three representatives. However, there have been moves among the people of Palau to seek separate political status for their islands for some years, particularly since 1973. A number of resolutions on the subject were adopted by the Palau District Legislature, and petitions and communications (see T/COM.10/L.192, T/PV.1454 and T/PV.1462) containing these decisions were duly transmitted to the Trusteeship Council and the Administering Authority.

32. In its report, the 1973 United Nations Visiting Mission to the Trust Territory reported that it had become aware of centrifugal tendencies in Palau and that the Palau District Legislature had been contemplating setting up a separate future status negotiating commission. 6/ The Mission observed that it was therefore a matter of urgency that the Congress of Micronesia and the Administering Authority give the utmost attention to the question of preserving the unity of the Territory.

33. In 1974, the Congress of Micronesia passed an act calling for a Constitutional Convention for the Trust Territory. The Palau Legislature, at its sixth session, in 1974, adopted resolution No. 74(1)-5 (see T/COM.10/L.132), by which it expressed its opposition to the haste with which the Constitutional Convention of Micronesia was being undertaken.

34. Further, on 26 April 1974, the Legislature adopted resolution No. 74(1)-9, by which it fully supported the platform of a loose federation of states for Micronesia as had been expounded by Palauan representatives during the preceding session of the Congress of Micronesia.

35. By resolution No. 75(1)-2 of 28 April 1975 (see T/COM.10/L.155), the Legislature created the Palau Political Status Commission to conduct such studies as it might deem necessary concerning the future political status of Palau and its relations with the rest of Micronesia and the United States or other nations. In carrying out its duties, the Commission was empowered to establish contacts and to conduct negotiations with the Government of the United States or any other nation on the future political status of Palau and to enter into a preliminary status agreement with the United States. Should the Commission decide that such contacts, discussions and negotiations were necessary and appropriate, the approval of the Legislature and of the people of Palau District through a plebiscite would be required.

36. The Commission was required to conduct political education within the district

6/ Official Records of the Trusteeship Council, Fortieth Session, Supplement No. 2 (T/1748), para. 526.

and to review any draft constitutions prepared by the Micronesian and Palauan constitutional conventions and make appropriate recommendations thereon. Finally, the Commission was requested to submit periodic reports on its activities to the Palau Legislature.

37. At a meeting in Saipan in early 1976 with the Personal Representative of the President of the United States for Micronesian Status Negotiations, representatives of the Palau Political Status Commission expressed the desire to conduct separate negotiations with the United States concerning future political status. They listed the reasons for Palau's determination to undertake separate negotiations and expressed the explicit desire to enter into a close and enduring relationship with the United States.

38. In a report published on 15 October 1976, the Palau Political Status Commission stated that, before taking part in the Micronesian Constitutional Convention, the Palau delegation had formulated a specific "outline of position" and that many of the points included had been rejected by the Convention.

39. The 1976 United Nations Visiting Mission reported that, during a meeting in February of that year with members of the Executive Committee of the Palau District Legislature and the Palau Political Status Commission, speakers had maintained that the people of Palau should be given the opportunity to choose a political life separate from the rest of Micronesia. 7/ Individual districts of Micronesia had their own distinctive cultures and traditions; the concept of unity had been imposed on them. Union required mutual consent, but Palau was not being given the opportunity to state its views in matters affecting Micronesia's future. Palau wished to avoid becoming a minority within the proposed Government of the Federated States of Micronesia, which would be dominated by the eastern districts. Furthermore, the formation of the Federated States was based on the undesirable concept of a strong central Government. There was a consensus in Palau to seek a separate status.

40. By resolution No. 687 of 19 May 1976 (see T/COM.10/L.185), the Palau Legislature requested the Government of the United States to recognize the desires and political aspirations of the elected members and traditional leaders of Palau District for separate political status negotiations based on an agreement similar to the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States, 8/ adopted by plebiscite in 1975. It further requested the President of the United States to authorize the Office of Micronesian Status Negotiations to discuss with the Palau Political Status Commission the establishment of a close association between Palau and the United States.

41. Speaking as a petitioner at the forty-fourth session of the Trusteeship Council, on 1 July 1976, Congressman Kuniwo Nakamura stated, on behalf of the Chairman of the Palau Political Status Commission, that it was Palau's desire and intention to seek a future political status separate and apart from the rest of Micronesia. It was also the wish and aspiration of the people and leaders of Palau to seek a close and enduring relationship with the United States. It was

7/ Ibid., Forty-third Session, Supplement No. 3 (T/1774), para. 50.

8/ Ibid., Forty-second Session, Sessional Fascicle, annexes, document T/1759.

their request that both the United Nations and the Administering Authority reconsider and refashion their policy concerning Micronesia realistically, in accordance with the actual political conditions and make-up of Micronesia. The speaker urged the Trusteeship Council to place the wishes and aspirations of the people concerned above any other legal and philosophical concept or argument advanced by people whose interest in Micronesia was, at best, academic.

B. Referendums conducted in 1975 and 1976 to ascertain the wishes of the people concerning their future political status

42. On 8 July 1975, an advisory referendum was conducted throughout the Trust Territory to ascertain the wishes of the people concerning their future political status. The ballot designed by the Congress of Micronesia had three categories. The first asked the Micronesian people to indicate their personal preference as to independence, commonwealth, free association, statehood or the current status. The second sought an opinion on the concept of preserving Micronesian unity. The third sought an opinion on the role of the Congress of Micronesia as the negotiating body on the question of future political status.

43. In Palau, the results of the advisory referendum indicated that the majority of those who voted had dismissed independence, commonwealth and statehood. Of the other two options, 1,120 favoured the status of free association while 526 were opposed; 1,288 opted for a continuation of the current status and 370 were opposed to it. 9/

44. Concerning the unity of Micronesia, 1,210 voted in favour of its preservation, while 399 were opposed. In response to the question as to whether or not the Congress of Micronesia should negotiate the future political status of the Trust Territory, 1,206 favoured the Congress continuing as a negotiating body for the whole of Micronesia, while 466 voted against authorizing it to do so.

45. At its second regular session, in May 1976, the sixth Palau Legislature passed an act calling for a referendum throughout Palau District to determine whether or not the district should negotiate its future political status with the United States, separate and apart from the rest of Micronesia. On 21 May, that act was signed into law (Public Law 6-2-12) by the District Administrator of Palau, and the referendum was held on 24 September. Of the valid ballots, 3,534 (88.5 per cent) favoured the proposal that Palau District should negotiate its political status separate from the rest of the Trust Territory, while 458 (11.5 per cent) voted against the proposal.

C. Attitude of the Administering Authority towards the future political status of Palau

46. In 1976, the negotiations on future political status between the United States and the Joint Commission on Future Political Status and Transition of the Congress of Micronesia came to a deadlock. Therefore, at the status negotiations held at Guam in July 1977, an understanding was reached with representatives of all six

9/ Since voters were not instructed to vote for only one preferred status, many voted for more than one.

districts and the Congress of Micronesia that the discussions would be conducted on a "two-tier" basis. Multilateral negotiations would focus on those aspects of the relationship between Micronesia and the United States, such as defence, foreign relations and the over-all question of the status of free association, which were common to all six districts. Bilateral discussions between the United States and Palau, the United States and the Marshall Islands and the United States and the four central districts represented by the Congress of Micronesia would cover all other matters.

47. On 9 April 1978, a statement of agreed principles for free association for Micronesia was signed at Hilo, Hawaii, between the Administering Authority and the various Micronesian representatives, including the Palau Political Status Commission. 10/ The agreement of Hilo thus paved the way for holding the constitutional referendum on 12 July 1978 as planned.

48. At the forty-fifth session of the Trusteeship Council, the Administering Authority reported that it would await the outcome of the constitutional referendum to be held on 12 July 1978 for the Federated States of Micronesia and would then hold talks with representatives designated by the legislatures concerned regarding the future status of the Trust Territory.

49. Two groups of petitioners from Palau addressed the Trusteeship Council at the same session. They were almost equally divided between those who supported separate political status talks with the Administering Authority and those who favoured unity for Micronesia as a whole. The former pointed out that informal referendums had shown that Palau preferred separate negotiations with the Administering Authority. They considered that the proposed constitution of the Federated States of Micronesia (see T/COM.10/L.174, annex I) would be politically, economically and socially disadvantageous to Palau.

50. The petitioners who spoke in favour of unity maintained that the Trust Territory would be in a stronger position to conduct negotiations concerning its future political status if it remained united. They felt that the proposed constitution should be supported since it protected the political and economic interests of Palau.

D. Referendum on the draft constitution of the Federated States of Micronesia, 12 July 1978

51. In May 1978, at the forty-fifth session of the Trusteeship Council, the representative of the Administering Authority said that if the draft constitution of the Federated States of Micronesia was rejected in one or more districts of the Trust Territory, it would be necessary for those districts to draft an alternative constitution, which in due course would require ratification by the citizens of the districts concerned. 11/

10/ Official Records of the Trusteeship Council, Forty-fifth Session, Sessional Fascicle, annexes, document T/1789.

11/ See Official Records of the Security Council, Thirty-third Year, Special Supplement No. 1 (S/12971), para. 466.

52. The referendum on the draft constitution of the Federated States of Micronesia was held on 12 July 1978. Of the 6,500 registered voters in Palau, a total of 6,059 participated. Of the actual votes cast, 3,339 (55.1 per cent) were against the constitution and 2,720 (44.9 per cent) were in favour of it. 12/ Thus Palau, having rejected the draft constitution of the Federated States of Micronesia, proceeded with the drafting of its own constitution.

12/ For the report of the United Nations Visiting Mission to observe the referendum in the Trust Territory of the Pacific Islands, 1978, see Official Records of the Trusteeship Council, Forty-sixth Session, Supplement No. 2 (T/1795).

CHAPTER IV

DRAFT CONSTITUTION OF PALAU

A. Constitutional Convention, 1979

53. Following the results of the referendum on the draft constitution of the Federated States of Micronesia, the sixth Palau Legislature, at its fifth special session in August 1978, passed an act calling for a constitutional convention for Palau, prescribing its powers, duties and functions. This act was signed into law (Public Law 6-5S-1) by the District Administrator of Palau on 26 September 1978. The Convention consisted of 38 delegates, comprising 9 from the municipality of Koror; 3 each from the municipalities of Airai, Ngaraard, Ngarchelong and Peleliu; 2 each from Aimeliik, Angaur, Melekeok, Ngaremlengui; Ngchesar and Ngiwal; and 1 each from Kayangel, Ngardmau, Ngatpang, Tobi and Sonsorol. All the delegates to the Convention were elected directly by popular vote on 28 November 1978 in accordance with section 2 of Public Law 6-5S-1.

54. Public Law 6-5S-1 also provided that the Constitutional Convention should draft a constitution for the future Government of the sovereign State of Palau that should make allowance for the establishment of free association with the United States. The constitution should incorporate the basic principles of democracy which might, in the judgement of the Convention, be qualified by the cultural and traditional values and mores of Palau and should guarantee to its citizens basic human rights. The Convention should draft the constitution in English and Palauan and should determine which language should prevail in case of ambiguity or conflict.

55. The Constitutional Convention began its work on 28 January 1979. At the various stages of the drafting of the constitution of Palau, which took place from 28 January to 2 April 1979, delegates to the Convention held meetings in the various municipalities to explain the provisions of the constitution. In the course of the discussions in the villages and hamlets, clarifications were sought concerning articles of the constitution dealing with traditional rights, citizenship, type of government envisaged, land ownership, eminent domain, finance and taxation. The compatibility of the constitution with a compact of free association with the United States was another topic often raised by participants at those meetings.

56. A cross-section of the population, including chiefs, religious officials, legislators and councilmen, attended the public meetings conducted by the delegates to the Constitutional Convention. The Mission was informed that the views expressed at those meetings were taken into full account by the drafters of the constitution. The Convention concluded its task on 2 April 1979 with the signing (by 35 of the 38 delegates) of a draft constitution for Palau.

B. Provisions of the draft constitution

57. The following is a brief summary of the main provisions of the draft constitution:

58. Territory: Palau would have jurisdiction and sovereignty over its territory, consisting of all the islands of the Palauan archipelago, the internal waters, the territorial waters, extending to 200 nautical miles from a straight archipelagic baseline, the sea-bed, subsoil, water column, insular shelves and air space over land and water unless otherwise limited by international treaty obligations assumed by Palau. Each state would have exclusive ownership of all living and non-living resources, except highly migratory fish, from the land to 12 nautical miles seaward from the traditional baselines. The national Government would have the power to add territory and extend jurisdiction.

59. Sovereignty and supremacy: Any law, governmental act or agreement to which a Government of Palau was a party would be invalid to the extent that it conflicted with the constitution. Major governmental powers could be delegated by treaty, compact or other agreement between the sovereign republic of Palau and another sovereign nation or international organization if approved by not less than two thirds of the members of each house of the Olbiil Era Kelulau (Legislature) and by a majority of the votes cast in a nationwide referendum, provided, however, that the votes would have to be not less than three fourths if the agreements authorized the use, testing, storage or disposal of nuclear, toxic chemical, gas or biological weapons intended for use in warfare.

60. Citizenship: A citizen of the Trust Territory of the Pacific Islands immediately prior to the effective date of the constitution who had at least one parent of recognized Palauan ancestry would be a citizen of Palau. A person born of parents, one or both of whom were citizens of Palau, would be a citizen of Palau by birth. A person born of parents, one or both of whom were of recognized Palauan ancestry, would have the right to enter and reside in Palau and to enjoy other rights and privileges as provided by law. A citizen of Palau who was a citizen of another nation would, within three years after his eighteenth birthday, or within three years after the effective date of the constitution, whichever was later, renounce his citizenship of the other nation and register his intent to remain a citizen of Palau.

61. Fundamental rights: The Government would take no action to deny or impair the freedom of conscience or of philosophical or religious belief of any person. It would not recognize or establish a national religion. The Government would take no action to deny or impair the freedom of expression or press. It would take no action to deny or impair the right of any person peacefully to assemble and petition the Government for redress of grievances. Every person would be equal under the law and would be entitled to equal protection. The Government would take no action to deprive any person of life, liberty or property without due process of law, nor would private property be taken except for a recognized public use and for just compensation in money or in kind.

62. Traditional rights: The Government would take no action to prohibit the role or function of a traditional leader as recognized by custom and tradition which was not inconsistent with the constitution, nor would it prevent a traditional leader from being recognized, honoured or given a role at any level of government.

63. Statutes and traditional law would be equally authoritative. In case of conflict between the two, the former would prevail to the extent it was not in conflict with the underlying principles of the traditional law.

64. Suffrage: A citizen of Palau 18 years of age or older might vote in national

and state elections. The Olbiil Era Kelulau and the states would prescribe a minimum period of residence and provide for voter registration for national and state elections respectively.

65. Executive power: Executive power would be vested in a President, elected in nation-wide elections, together with a Vice-President, for a term of four years and not more than two consecutive terms. The Vice-President would serve ex officio as a member of the cabinet, and would succeed the President if his office became vacant. The members of the cabinet would be appointed by the President with the advice and consent of the Senate. A council of chiefs would advise the President on matters concerning traditional laws and customs. The President or Vice-President could be impeached and removed from office for serious crimes by a vote of not less than two thirds of the members of each house of the Olbiil Era Kelulau. The President or Vice-President could be removed from office by a recall, if it was so decided by a recall referendum held pursuant to a resolution to that effect adopted by not less than two thirds of the members of the state legislatures in not less than three fourths of the states. In the event of war, external aggression, civil rebellion or natural catastrophe, the President could, with the concurrence of the Olbiil Era Kelulau, declare a state of emergency, thereby assuming the legislative powers necessary to cope with the emergency.

66. Legislative power: Legislative power would be vested in the Olbiil Era Kelulau, consisting of a House of Delegates and a Senate, the members of which would be elected for a term of four years. One delegate would be elected from each state and the delegation so elected would compose the House of Delegates. The Senate would be composed of the number of senators prescribed from time to time by a reapportionment commission as provided by law. The constitution would enumerate the powers of the Olbiil Era Kelulau, which would include, in particular, authority to levy and collect taxes, to borrow money, to regulate foreign and interstate commerce, as well as immigration, to provide a monetary and banking system, national defence, peace and security, to ratify treaties, and to enact the laws necessary to exercise its powers. The enactment of laws would require adoption of bills by each house. The President would be empowered to veto a bill, but the veto could be overridden if the vetoed bill were subsequently approved by a two-thirds majority of each house.

67. Judiciary: Judicial power would be vested in a supreme court, a national court and such inferior courts of limited jurisdiction as might be established by law. The supreme court would be a court of record and would consist of a chief justice and not less than three, but not more than six, associate justices. The supreme court would have general appellate jurisdiction and original jurisdiction in respect of certain matters, such as those involving the Government and state governments.

68. State governments: The structure and organization of state governments would follow democratic principles and the traditions of Palau, and would not be inconsistent with the constitution. All governmental powers neither expressly delegated by the constitution to the states nor denied to the national Government would be vested in the latter. The national Government might delegate powers by law to the state governments. State legislatures would be empowered to tax and to borrow money.

69. Finance: There would be a national treasury and a state treasury for each state. A public auditor would be appointed by the President subject to confirmation

by the Olbiil Era Kelulau. The President would submit an annual unified national budget to the Olbiil Era Kelulau for its approval. Each state would be entitled to the revenues derived from the exploitation of resources, except highly migratory fish, within the marine area extending 12 nautical miles seaward from the traditional baselines. All "block grants" would be shared by the national Government and all the states in an equitable manner, unless a particular distribution were required by the terms of the assistance and foreign aid. All revenues derived from licensing foreign vessels to fish for highly migratory fish within the jurisdictional waters of Palau would be divided equitably between the national Government and the state governments as determined by the Olbiil Era Kelulau.

70. General provisions: Except for laws concerning financial appropriations, citizens would be entitled to enact or repeal laws by initiative. Initiative petitions would have to be signed by 10 per cent of the registered voters. They would take effect as laws if approved at the next general election by a majority vote. An area that had been historically or geographically part of Palau could be admitted as a new state upon the approval of the Olbiil Era Kelulau and not less than three fourths of the states. Harmful substances such as nuclear, chemical, gas or biological weapons intended for use in warfare, nuclear power plants and waste materials therefrom, could not be used, tested, stored, or disposed of within the territorial jurisdiction of Palau without the express approval of three fourths of the votes cast in a referendum. National and state governments would be empowered to take private property for public use upon payment of just compensation, but with the provision that that power not be used for the benefit of a foreign entity. Only citizens of Palau and corporations wholly owned by them might acquire title to land or waters in Palau; no tax would be imposed on land; within five years of the effective date of the constitution, the national Government would return to the original owners or their heirs any land that had become public as a result of its acquisition by prior occupying Powers or their nationals through force, coercion, fraud or without just compensation; and the national Government would have the exclusive power to regulate the importation of firearms and ammunition.

71. Amendments: Amendments to the constitution would be proposed by a constitutional convention, popular initiative, or by the Olbiil Era Kelulau. A proposed amendment to the constitution would come into force when approved in the next regular general election by a majority of the votes cast and in not less than three fourths of the states.

72. Transition: The constitution would take effect on 1 January 1980 unless otherwise provided therein. All existing laws would, subject to the provisions of the constitution, remain in force until repealed. On or after the effective date of the constitution, but not later than the termination of the Trusteeship Agreement, the national Government would succeed to any right or interest acquired by the Administering Authority, the Trust Territory of the Pacific Islands, and the government of Palau District. Until the judicial system provided for in the constitution was organized, which was to be within one year following the effective date of the constitution, the existing judicial system would continue to function unless otherwise provided by law. Any provision of the constitution or a law enacted thereunder which conflicted with the Trusteeship Agreement would not become effective until the date of termination of that Agreement. Any amendment to the constitution intended to avoid any inconsistency with the compact of free association would require approval by a majority of the votes cast thereon and in not less than three fourths of the states. A post-convention committee would promote orderly transition.

CHAPTER V

PROGRAMME OF POLITICAL EDUCATION

A. Programmes of political education in preparation for earlier elections and referendums

73. Programmes of political education in Micronesia have been conducted by the Trust Territory and district governments for some time. In 1972, the central Government instituted a series of weekly meetings with the staff of the Congress of Micronesia which resulted in increased understanding and improved liaison work with the Congress. Legislative workshops, leadership conferences, publications and radio programmes were initiated, with indications that considerable interest was being generated among the people about the issue of future political status.

74. Subsequently, co-operative efforts in the field of political education were intensified with a view to engendering amongst the people a sense of political awareness of the choices open to them in the process of self-determination. In January 1974, a programme of Education for Self-Government (ESG) was officially launched and task forces were established to implement the programme at the territorial and local levels. The task forces published and disseminated a substantial volume of material about the political status options and the work of the Congress of Micronesia and the district legislatures.

75. In Palau, the District Legislature adopted several resolutions and laws which provided for the development and implementation of political education programmes for the district. Thus, by resolution No. 73(2)-3 of 11 October 1973 (see T/COM.10/L.118), the Legislature directed its Select Committee on Development to conduct a political education campaign on the future political status of Micronesia. The programme was further intensified following the establishment by the Legislature of the Palau Political Status Commission which it entrusted with the task of conducting political education.

76. Subsequently, following completion of the drafting of the Micronesian constitution in November 1975, the Congress of Micronesia and the Trust Territory Administration launched extensive political education programmes in all districts to ensure the widespread understanding by the people of the constitution. In Palau, the supporters and opponents of the draft constitution pursued active political campaigns, particularly in the days preceding referendum day.

77. In the last four years, Palauans have gone to the polls several times: in an advisory referendum in July 1975, an unofficial referendum in September 1976, and finally in the referendum on the Micronesian draft constitution in July 1978 (see paras. 42-45 and 51-52 above).

B. Creation of the Post-Convention Committee

78. Public Law 6-5S-1 of 26 September 1978 provided for the establishment of a Post-Convention Committee consisting of nine members who would be elected by the

delegates to the Constitutional Convention from among themselves. The Post-Convention Committee would be responsible for the education of the people of Palau in respect of the constitution.

79. The Post-Convention Committee created sub-committees for media and publication, which were entrusted with the publication and distribution of educational material and the preparation and dissemination of information on the constitution through radio and television.

80. The draft constitution was translated into the Palauan language, and both the English and Palauan versions were widely distributed within the district. The Mission was informed that sufficient copies had been sent to Palauans abroad.

81. The Post-Convention Committee itself split into groups and, with the assistance of former delegates to the Constitutional Convention, visited the various municipalities in the district to conduct political education. It sent representatives to Guam, Saipan, Honolulu and to other parts of the Trust Territory to explain the provisions of the constitution objectively and without in any way involving themselves in the political campaign.

82. Representatives of the Post-Convention Committee submitted periodic reports containing the comments and observations made at meetings held both within and outside the district.

CHAPTER VI

PREPARATIONS FOR THE REFERENDUM

A. Proclamation calling for the referendum

83. Public Law 6-5S-1 of 26 September 1978 provided that the referendum for the ratification of the draft constitution would be held on the date of the full moon in July 1979, during such hours as might be prescribed by the Post-Convention Committee or the Election Commissioner pursuant to law. According to the same law, the provisions of Title 43 of the Trust Territory Code would apply to the referendum except as otherwise provided in section 13 of Public Law 6-5S-1 or by the Post-Convention Committee. 13/

84. Public Law 6-5S-1 provided that the ballot for the referendum would appear substantially as follows:

Do you approve of the constitution of Palau, as adopted by the Palau Constitutional Convention?

Yes _____ No _____

85. According to the same law, a simple majority of the votes cast in the referendum would be required to approve the constitution. The results of the referendum would be certified and transmitted to the Palau Legislature by the Election Commissioner. Further, the law provided that the Legislature would be "the sole judge of the referendum and the results thereof".

B. Arrangements for the conduct of the referendum

86. Public Law 6-5S-1 provided that the Post-Convention Committee would be entrusted with the preparations for the referendum on the draft constitution, including the promulgations of referendum rules and regulations. It would also be responsible for the supervision and administration of the referendum.

87. On 15 April 1979, the Post-Convention Committee adopted regulations for the conduct of the referendum on the proposed constitution of Palau, by which it, inter alia, set 9 July 1979 as the date for the referendum to be held simultaneously on all islands.

Election Commissioner

88. The regulations of the Post-Convention Committee provided that the Election Commissioner would be the District Administrator of Palau, who would be responsible

13/ See paras. 78-82 above for the composition and terms of reference of the Post-Convention Committee.

for the over-all supervision and administration of the referendum in the district. His duties would include the following:

(a) To implement the rules, regulations and instructions for the conduct of the referendum which would be promulgated or issued by the Post-Convention Committee;

(b) To obtain from the District Election Board such reports as he might deem necessary;

(c) To establish appropriate polling places as recommended by the Post-Convention Committee;

(d) To register the voters;

(e) To prepare a register of voters for each voting precinct.

89. On 3 July 1979, the High Commissioner gave his consent to the appointment of the District Administrator as Election Commissioner.

Election Board

90. The members of the Election Board were required to be citizens of Palau who were registered to vote. Their number was to be such that at least two Board members would be present at each polling place.

91. The members of the Election Board were required, inter alia, to determine the residence and other required qualifications of voters; to supervise and manage the polling places; to receive and maintain ballot boxes; to give instructions for the orderly conduct of the referendum; to provide for the issuance of all notices and publications concerning the referendum; to receive, investigate and decide on any complaints concerning irregularities; and to perform such other duties as assigned by the Post-Convention Committee or the Election Commissioner.

Voter qualifications

92. A citizen of Palau was qualified to vote if he or she met the following requirements:

(a) Was 18 years of age or older;

(b) Fulfilled the residence requirements for registration;

(c) Was not under a judgement of mental incompetency or insanity;

(d) Was not currently under parole, probation or sentence for any felony of which he or she had been convicted;

(e) Was registered to vote or was otherwise qualified to vote under the regulations of the Post-Convention Committee.

Voter registration

93. The Election Commisisoner would be responsible for the registration of all

voters in the district. The register would be open to public inspection at all times during business hours and should be a public record. The general district register maintained according to Title 43 of the Trust Territory Code would constitute the district register for the purpose of the referendum, with any additions or deletions of names as might be deemed necessary.

94. The Election Commissioner was to examine information about the death, insanity or feeble-mindedness, loss of citizenship or other disqualification to vote of any registered voter.

95. Every citizen of Palau who had reached the age of 18 years by the date of the referendum, who had resided in the Trust Territory for nine months and in Palau District for three months preceding the date of registration and who was otherwise entitled to vote, was eligible to register to vote.

96. The Election Commissioner was to designate places within the district wherein residents could register. No person was permitted to register to vote in any election district other than that in which he or she resided, and if any person resided in more than one precinct, he or she had to decide in which election district to register.

Affidavit

97. Any person qualified to register as a voter could do so by swearing an affidavit on application for registration. Every affidavit had to be submitted to those authorized to examine the qualification of electors on or before 9 June 1979, unless another date was prescribed by the Post-Convention Committee. Any voter who changed his or her residence from one voting precinct to another, or who changed his or her name, after registration in any district referendum register, had to register again, on or before 9 June 1979, in the proper election district or under the proper name. Registration in person would not be required of a legal resident who was outside his or her own district, or of a full-time student at any educational institution. Affidavits and ballots for legal residents who were outside their own districts or were full-time students would be made available in Saipan, Guam, Honolulu and all district centres.

Voting arrangements and procedures

98. The Election Commissioner would be responsible for the printing of the ballots and for delivering an adequate number of ballots, in sealed packages, to the members of the District Election Board. The ballots could not be opened until the opening of the polls.

99. Any registered voter qualified to vote in the referendum on 9 July 1979 was entitled to vote by absentee ballot: (a) if he or she was confined to home or hospital by reason of such illness or physical disability as would prevent him or her from attending the polls; or (b) if he or she was prevented from voting by reason of being at sea or absent from the district.

100. Any voter, except the registered voters of Koror remaining in Koror municipality on the day of the referendum, had the right to vote at a polling place other than the one at which he or she was registered to vote provided he or she: (a) was present within the district on polling day; (b) was lawfully registered

to vote in his or her election district; and (c) had submitted a request to the Commissioner in writing prior to or on the day of the referendum.

101. An unregistered voter or a voter whose name did not appear on the referendum register who was otherwise qualified to vote might vote in the referendum, provided that he or she completed an affidavit at the polling place on referendum day. The signatures of two registered voters on the affidavit would be required to verify the signing by the applicant.

102. The regulations provided, inter alia, that no campaigning would be conducted within 300 feet of a ballot box on referendum day, and there would be no campaigns on any district radio or television on that day.

103. At the close of the polls, all ballot boxes were to be delivered unopened to the Election Commissioner, who would publicly open them and in turn deliver them to a Counting and Tabulating Committee established by the Post-Convention Committee and consisting of not less than five members. The Counting and Tabulating Committee would then begin counting the ballots and would continue to do so until all ballots had been counted. The tabulation and counting of ballots was to be open to the public.

104. Ballots which had been declared invalid due to defacement or other irregularities were to be separated and marked as rejected ballots. Upon completion of the counting of the ballots, both the rejected and the valid ballots were to be placed in the ballot box and forwarded to the Election Commissioner.

Complaint procedure

105. Any registered voter could file with a member of the District Election Board an oral or written complaint regarding any person's eligibility to register or to vote, or regarding any referendum irregularity. The members of the Board were to give the individual against whom the complaint had been made time to present witnesses and an explanation. The complainant could appeal a decision by the members of the Board to the Election Commissioner or his designated representative.

106. The Election Commissioner would examine the finding of the members of the Election Board and hear witnesses, if he deemed it necessary, and would reach a decision before the closing of the polls. The complainant could appeal that decision to the Post-Convention Committee. A decision of the Committee in favour of the petitioner would have the effect of disallowing the challenged votes but would not halt or delay voting or counting and tabulating.

C. Move to repeal Public Law 6-5S-1

107. According to the Administering Authority, when the drafting of the constitution was in progress, it had (in response to a request made by the Palau Political Status Commission) transmitted its comments concerning the compatibility of the draft with a compact of free association. Subsequently, the Administering Authority stated that, as a result, certain problems had been eliminated by changes in the draft constitution, although other problems had still remained which made it doubtful whether that draft could be a satisfactory basis for a relationship of free association.

108. On 30 April 1979, Mr. Peter Rosenblatt, the President's Personal Representative for Micronesian Status Negotiations, made a statement in Koror declaring that the draft constitution raised a number of problems which would render free association impossible should the draft constitution be adopted in that form.

109. On 4 May, the Palau Legislature adopted resolution No. 1015 by which it created a special task force to review the draft constitution and to submit to the Legislature its recommendations. In its report of 10 May, the Task Force recommended that the Legislature declare that the Palau Constitutional Convention had violated its enabling Act by drafting a constitution which did not make allowance for the establishment of free association with the United States and that it declare the draft constitution void. It further recommended that the Legislature provide for the drafting of a new constitution which would allow for free association. The Task Force also recommended that a new constitutional convention or a constitutional drafting commission should prepare a new draft constitution.

110. In May 1979, following a boycott by 10 of its members (supporters of the draft constitution), the Legislature took the position that it was entitled to take decisions by simple majority, as stipulated in the rules of the former Congress of Micronesia, rather than by a two thirds majority as laid down in the Palau Charter. The claim was based on Secretarial Order No. 3027 of 29 September 1978, issued by the Administering Authority, giving the Legislature the powers of the former Congress.

111. On 21 June, a number of Palauans asked the High Court of the Trust Territory for a declaratory judgement to the effect that: (a) the regular session of the Palau Legislature that had begun in April 1979 had expired; (b) all actions of that Legislature occurring more than 30 days after that regular session were void; and (c) all actions taken by the Legislature without three fourths of the members of each House being present were void.

112. However, on 25 June, the Legislature adopted by a simple majority (see para. 119 below) Bill No. 1140, by which it would repeal Public Law 6-5S-1, which would, in effect, declare the draft constitution null and void. The bill was submitted to the High Commissioner for action.

113. By Bill No. 1142 adopted on 27 June, the Palau Legislature formally created a constitutional drafting commission to revise the draft constitution with a view of ensuring its compatibility with the political status of free association.

114. On 29 June, the Legislature adopted resolution No. 1029 proclaiming that there would be no constitutional referendum on 9 July, but that it would be conducted as soon as practicable. The Legislature passed a further resolution, No. 1033 of 5 July (see T/COM.10/L.258), expressing its sense that the date of the referendum should be postponed from 9 July to a further date to be determined by law.

115. Nevertheless, on 8 July 1979, the Election Commissioner issued a statement informing the people that the referendum to ratify or reject the draft constitution was scheduled to be held on 9 July. The Election Commissioner stated

that, because of the pending court action on the question of the ability of the Palau Legislature to meet with a simple majority, the High Commissioner had decided not to take action on Bill No. 1140, which purported to repeal the enabling legislation for the referendum. The Palau Legislature, he said, had taken the position that that bill had become law on 8 July 1979 and that the referendum was therefore cancelled. The High Commissioner did not, he continued, recognize the validity of Bill No. 1140, and therefore took the position that the referendum would be held on 9 July as scheduled.

116. The Election Commissioner requested that all persons refrain from committing any acts which would constitute a violation of the Trust Territory laws. He stated that those people who opposed the referendum or the constitution had the option of abstaining from voting or voting no. Any actions to disrupt or halt the referendum were inappropriate and would subject the person or persons to criminal prosecution.

CHAPTER VII

POLITICAL CAMPAIGN

117. The Mission arrived in Palau less than a week before the date of the referendum and had only a limited opportunity to observe the political campaign at first hand. During the period in which members of the Mission were in Palau, the campaign was peaceful and in a low key.

118. The campaign preceding the 1978 referendum had been energetic, hard-fought and controversial. There were well-defined "sides" - those opposed to the draft constitution of the Federated States of Micronesia, who favoured Micronesian unity, and those opposed to the draft constitution, who favoured Palauan separatism. Both sides mounted a sophisticated campaign in 1978, and the result was a close one (55 per cent against to 45 per cent in favour). The draft constitution for Palau, on the other hand, did not engender such controversy, at least in the early stages of its drafting. Elections for the Constitutional Convention took place in November 1978, and drafting took place between January and April 1979. While the constitution was being drafted, there appears to have been little controversy. As stated in paragraphs 79-82 above, the Convention delegates reported frequently and fully to their municipalities. All except three delegates to the Constitutional Convention signed the final draft, and this suggests a measure of agreement and a lack of controversy, in sharp contrast with the often acrimonious events preceding and following the 1978 referendum.

119. However, once the comments of Ambassador Rosenblatt were made known, this situation changed. Opposition coalesced around the view, expressed by Ambassador Rosenblatt, that the constitution, as drafted, was not compatible with the status of free association. The opposition to the draft constitution was manifested particularly in the Palau Legislature, where the majority of the members declined to appropriate funds for the purpose of political education and for the conducting of the referendum. Ten of the members who supported the draft constitution boycotted the proceedings of the Legislature in an attempt to nullify its proceedings by rendering it inquorate. The Legislature, during the period of this boycott, passed Bill No. 1140 (by a simple majority instead of two-thirds as required by the Palau Charter) to repeal Public Law 6-5S-1 which had created the Constitutional Convention (see paras. 107-116 above). At the time of the Mission's visit to Palau the bill was still before the High Commissioner, who had not acted on it pending legal action to determine whether the Legislature was quorate when it adopted Bill No. 1140. The Mission had to assume, therefore, that Bill No. 1140 was not law.

120. The Legislature, all of whose debates were broadcast, was thus in the forefront of the campaign. The members of the Legislature stressed, however, that they were not opposed to the constitution even though some favoured a presidential rather than a parliamentary system. They were opposed to the holding of the referendum on 9 July, given that the United States Government had made clear its opinion that the draft constitution was incompatible in a number of respects with the status of free association, and that the Constitutional Convention had therefore failed to fulfil its mandate. They therefore took the view that the referendum was badly timed and, after they had passed Bill No. 1140, illegal. Non-participation was therefore the course they advocated to Palauan voters. The Legislature did not, however, try to prevent the campaign in favour of the constitution.

121. The campaign in favour of ratification of the constitution was led by a group calling itself the People's Committee for the Constitution. In a letter dated 12 July 1979, the Committee informed the Mission that for the period 19 May-11 July 1979, it had raised a total of \$US 20,328.17 through contributions; expenditure for the same period amounted to \$18,802.07. The group used radio and television in their campaign, held public meetings throughout the district and distributed posters urging voters to support the constitution.

122. There were no posters advocating a negative vote. As far as the Mission could judge, there was very little public debate, especially in the days immediately before the referendum, on the merits and demerits of the constitution. The Mission formed the clear impression that Palauans were well aware of the issues at stake and had already made up their minds about them.

CHAPTER VIII

ACTIVITIES OF THE VISITING MISSION

123. The Mission left New York for the Territory on 29 June and stopped en route in Guam, where it held preliminary discussions with senior officials of the Trust Territory Government about the referendum in Palau.

124. The Mission arrived in Koror, the district centre of Palau, on 3 July, and held discussions with the Election Commissioner and his staff the same day. During the discussions, the Mission was provided with useful background information on the events leading to the referendum, the programme in preparation for the referendum and the voting arrangements, including those for registration and for the counting of ballots.

125. The Mission had only a short time available for a full observation of the preparations for the constitutional referendum in the various municipalities in Palau. Nevertheless, it held meetings with community leaders and the general public in Koror, Babelthuap, Angaur and Peleliu, which together account for well over 90 per cent of the district's population.

126. On 3 July, the Chairman of the Mission issued a statement at Koror explaining the programme and functions of the Mission (see annex II to the present report). The statement was broadcast on the district radio station in both the English and Palauan languages.

127. On 4 July, the Mission met with members of the People's Committee for the Constitution (see para. 121 above). On 5 July, it met with members of the Palau District Legislature. In the course of the discussion concerning the referendum, the Legislature submitted to the Mission a copy of resolution No. 1033, which expressed the wish of the Legislature to postpone the referendum date from 9 July 1979 to a future date to be determined by law, and apprised the Administering Authority and the Trusteeship Council of its position (see T/COM.10/L.258).

128. On 6 July, the Mission flew to Angaur and Peleliu where it met with members of the community and its leaders. The Mission explained its programme and functions during the referendum and heard the views of the people concerning the draft constitution.

129. On 7 July, the Mission formed two groups in order to visit as many municipalities in the island of Babelthuap as possible. Mr. Brochenin (France), Chairman of the Mission, accompanied by two staff members of the United Nations Secretariat, visited the municipalities of Ngarchelong, Ngaremlengui and Aimeliik, in western Babelthuap; Mr. Woods (United Kingdom), also accompanied by two staff members of the United Nations Secretariat, visited the municipalities of Melekeok and Ngchesar, in eastern Babelthuap.

130. On 8 July, the Mission observed the transfer of ballot boxes from the Department of Public Safety to the election headquarters. It also attended a briefing session of members of the election boards and officers of the Department of Public Safety, and met with members of the Post-Convention Committee.

131. On 9 July, referendum day, the members of the Mission formed two teams in order to observe the arrangements made and the procedures followed during the casting of votes in as many polling places as possible. The Mission also followed closely the subsequent counting of ballots and tabulation of votes.

132. On 11 July, the Mission held meetings with the District Planner and Acting Development Officer; the Director of Health Services and Acting Director of Education; members of the Post-Convention Committee; and the Speaker of the Palau Legislature.

133. The Mission departed for Saipan on 12 July, for discussions with the High Commissioner of the Trust Territory and his senior staff. The Mission returned to New York on 13 July.

CHAPTER IX

THE POLL

A. Conduct of the poll

134. As noted in chapter VI above, the constitutional referendum in the Palau Islands was conducted in accordance with Title 43 of the Trust Territory Code, Public Law 6-5S-1 and the decisions of the Post-Convention Committee.

135. The District Administrator, who was appointed Election Commissioner on 3 July and was therefore required to organize the poll (see para. 88 above), entrusted the Bureau of Public Affairs with the practical preparations. On 8 July, the head of the Bureau called together the responsible local officials - members of the election boards and the police force - to give them the necessary instructions for the conduct of the voting operations.

136. The ballot boxes and registers of voters, which were kept at the district prison, were sent to polling places in Koror, Babelthuap, Peleliu and Angaur on the day before the referendum, except for those dispatched earlier to the southernmost islands of the district and to Kayangel Atoll.

137. The polling places, 41 in all, were open from 7 a.m. to 7 p.m. on 9 July. Two members of the Election Board were at each of them, while a police officer provided security.

138. A voter had to identify himself or herself to the members of the Election Board who, after checking off the name on the register of voters, gave the voter a ballot from a pack of 50, the numbered counterfoils of which permitted easy monitoring of the number of voters. The voter then entered a booth to mark the box corresponding to his or her choice and returned to deposit it, folded, in the ballot box. Special provisions were made for people who, for one reason or another, could not carry out the procedure by themselves.

139. A polling place was set up at the Koror Hospital, thus permitting people unable to travel to fulfil their electoral responsibilities.

140. A special polling place was opened in Koror for people in the district centre who were registered in other precincts, and who therefore used an affidavit to vote.

141. After the polls had closed, the members of the election boards replaced the unused ballot papers, together with the registers of voters, in the ballot boxes, in a separate compartment from the ballots placed there by the voters. The ballot boxes were then padlocked and the keys, of which the Chairman of the Counting and Tabulating Committee had copies, were deposited in the boxes.

B. Counting of votes

142. The ballots were examined and counted publicly in the Koror school building.

The operations began on 9 July at 9 p.m. with the opening of the ballot boxes which had been brought under close guard from the Koror polling places. The ballot boxes from Babelthuap, Peleliu, Angaur and Kayangel were brought the following day by boat or plane, depending upon the circumstances, under the supervision of the Election Board members. The ballot boxes from Sonsorol, Pulo Anna and Tobi and those from Guam and Yap did not arrive in Koror until after the Mission had left.

143. The Counting and Tabulating Committee was extremely conscientious and meticulous and took particular care to solve the few problems created by a few minor errors made by the Election Board members at the polling places.

144. When the "Yes" ballots and the "No" ballots from each ballot box had been counted, the Chairman of the Counting and Tabulating Committee announced the results.

145. The ballots from the ballot box set aside in Koror for persons who had used an affidavit were distributed and counted in the municipalities in which those persons lived.

C. Activities of the Visiting Mission

146. In order to be able to observe as many polling places as possible, it had been decided that each member of the Mission, including Secretariat members, would be assigned a sector to supervise. Accordingly, one member flew to Peleliu and Angaur. Another went by boat to the municipalities on the west coast of Babelthuap while a third visited those on the east coast. The Chairman of the Mission remained in Koror with the Principal Secretary of the Secretariat team. As vehicles were kindly placed at their disposal, they were able to go from one polling place to another throughout the day.

147. All the ballots (except those from Sonsorol, Pulo Anna, Tobi, Guam and Yap, which arrived after the Mission had left) were examined in the presence of a member of the Mission.

CHAPTER X

RESULTS OF THE REFERENDUM

A. Unofficial results of the votes

148. The unofficial and incomplete results of the poll show that out of a total of 6,995 registered voters, 4,372 (62.5 per cent) cast their votes.

Municipality	Number of registered voters	Number of "Yes" votes	Number of "No" votes	Percentage of "Yes" votes
Aimeliik	195	111	12	90.2
Airai	396	89	18	83.2
Angaur	114	92	4	95.8
Kayangel	97	75	3	96.2
Koror	3,653	1,878	192	90.7
Melekeok	225	128	15	89.5
Ngaraard	409	252	14	94.7
Ngaremlengui	226	171	8	95.5
Ngarchelong	432	261	8	97.0
Ngardmau	182	128	6	95.5
Ngatpang	116	59	3	95.2
Ngchesar	206	132	9	93.6
Ngiwal	199	93	15	86.1
Peleliu	402	269	14	95.1
Pulo Anna	16	13	-	100.0
Sonsorol	64	44	-	100.0
Tobi	63	48	1	98.0
Yap	-	80	5	94.1
Guam	-	100	22	82.0
Northern Mariana Islands <u>a/</u>	-	-	-	-
Hawaii <u>a/</u>	-	-	-	-
United States <u>a/</u>	-	-	-	-
	<u>6,995</u>	<u>4,023</u>	<u>349</u>	<u>92.0</u>

a/ The results of the votes have not yet been received from the Administering Authority.

149. Thus, of the 4,372 votes cast, 4,023 (92.0 per cent) were in favour of the draft constitution.

B. Preliminary reactions to the results of the referendum

150. After the referendum, the Mission spent only three days in Palau, during which time it heard the views of the members of the Post-Convention Committee and the Speaker of the Legislature.

151. On 11 July, the Chairman and the members of the Post-Convention Committee informed the Mission that they believed that they had carried out their tasks pursuant to Public Law 6-5S-1. They expressed the hope that the people of Palau were satisfied with the performance of the Post-Convention Committee.

152. The leaders of the campaign in favour of the constitution took the position that the results of the referendum had given a clear mandate for the installation in January 1980 of a Government under the new constitution. They maintained that the voter turn-out had compared favourably with those of earlier referendums and elections and that the results had shown the expressed wishes of the people in exercise of their right to self-determination.

153. Also on 11 July, the Mission called on Mr. Sadang Silmai, Speaker of the Palau Legislature, to exchange views concerning the referendum and the results thereof. The Speaker pointed out that the Legislature had not campaigned against the draft constitution or the referendum. It had taken no action to stop the people from participating in the referendum. He stressed, however, that the Administering Authority had clearly stated its intention not to conclude a compact of free association with Palau if the draft constitution was adopted in its present form. The Speaker said that the Legislature had acted legally when it repealed the enabling act for the Constitutional Convention, since the delegates to the Convention had failed to comply with their mandate to "draft a constitution for the future government of Palau which shall make allowance for the establishment of free association with the United States".

154. The Speaker expressed his disappointment at the policy adopted by the Administering Authority. He thought that lack of a firm stand by the United States had led to the constitutional crisis and confusion. At any rate, the Speaker maintained that Bill No. 1140, which repealed Public Law 6-5S-1 creating the Constitutional Convention, had become effective because the High Commissioner had taken no action in respect of that bill within the 10-day period allowed under Secretarial Order No. 2918.

CHAPTER XI

OBSERVATIONS AND CONCLUSIONS CONCERNING THE REFERENDUM

A. Introductory remarks

155. The Mission to observe the referendum carried out its task in special circumstances.

156. Shortly before its departure, the Mission learned that the legality of the referendum was being contested by a majority of members of the Palau District Legislature. In view of that situation, the Administering Authority, citing the independence of the judiciary which was dealing with the matter and stating that the problem essentially concerned the inhabitants of Palau, had adopted a "wait-and-see" attitude. Accordingly, there was some doubt as to whether the referendum would, in fact, take place.

157. Upon its arrival in Guam on 2 July, the Mission held talks with representatives of the High Commissioner. The Mission stressed that it intended to observe what happened in Palau District on 9 July, in accordance with the terms of reference given it by the Trusteeship Council.

158. On 3 July, the High Commissioner, deeming that the funds still available to the Post-Convention Committee were sufficient to cover the polling operations, appointed the District Administrator as Election Commissioner, in accordance with the law.

159. The Mission later realized that the population of Palau had not been informed of its arrival until the last minute. During its meeting with the members of the Legislature, the Mission heard the unpleasant news that its presence was unwelcome. Having said that, the persons responsible for organizing the referendum did everything to see that the Mission was able to carry out its task under the best conditions. Wherever it went, it received a courteous and often a warm welcome.

B. Organization of the referendum

160. Despite the obstacles raised by the Legislature, the referendum was finally organized in a satisfactory manner.

161. The Post-Convention Committee made good use of the experience acquired during the referendum of 12 July 1978 on the draft constitution of the Federated States of Micronesia.

162. In particular, the register of voters had been updated. Numerous errors were avoided by opening a polling place in Koror, the district centre, for voters who lived far away from the voting precinct in which they were registered and who therefore needed an affidavit. The Mission received no complaint in that regard.

163. Finally, attention should be drawn to the devotion and competence of the members of the Post-Convention Committee and of the election boards, who worked hard and long to ensure that the polling operations were a success.

C. Political campaign

Role of the Administration

164. The remarks made in Koror on 30 April by Mr. Rosenblatt (see para. 108 above) were interpreted by many Palauans as unacceptable interference by the Administering Authority in their internal affairs.

165. The Mission, for its part, feels that Mr. Rosenblatt was speaking in his capacity as a negotiator in the discussions concerning the compact of free association. As such, he may be considered to be entitled to draw the attention of the people of Palau to those aspects of the draft constitution which might jeopardize the success of the negotiations.

166. The attitude of the High Commissioner, who left it to the judiciary to determine whether the Legislature was empowered to take decisions by a simple majority, was interpreted by some as favouring the opponents of the draft constitution. In fact, the Mission never heard of the High Commissioner or any other member of the Administration having said anything which might lead the Mission to believe that the Administration favoured either side.

167. During its stay in the Territory, the Mission was able to note that the administrative services were doing all they could, with the utmost impartiality, to ensure that the referendum took place under the best conditions.

Legality of the referendum

168. As indicated in chapter VII above, the principle of holding a referendum was contested more than the constitution itself.

169. The Mission felt that it was not competent to pass judgement on the legal arguments put forward by the majority of the legislators in an attempt to have the referendum cancelled.

170. However regrettable the conflict between the majority in the Legislature and the Post-Convention Committee may have been, it brought to the attention of the population the importance of the vote.

171. Despite the marked tension between the two factions, there was no significant incident either in the days immediately preceding the vote or during the referendum itself. A shot fired during the evening of 8 July at the police station where the ballot boxes were being stored was an isolated incident whose only result was to leave a small hole in a wall.

D. The poll and the results

172. In view of the special circumstances surrounding the referendum, particularly the Legislature's decision on 8 July to cancel the referendum, the participation rate was considered high. It was undoubtedly a great success for the Post-Convention Committee. The Mission received no complaint which might lead it to believe that the voters were subjected to undue pressure of any kind. A large majority of those who did not participate in the voting did so in full knowledge of the facts in order to express their opposition to the constitution and their loyalty to their representatives in the Legislature.

E. Understanding of the issues to be decided

173. In view of the manner in which the draft constitution was drawn up and the publicity given to Mr. Rosenblatt's remarks, it can be said that the people of Palau took their decision with full knowledge of the facts.

174. The Mission felt that, in supporting the draft constitution, the majority of the inhabitants of Palau were both expressing their distrust of certain representatives who had been in charge too long and affirming their nationalism.

F. Conclusions

175. At the invitation of the Administering Authority, the Trusteeship Council entrusted the Mission with the task of observing the referendum on the draft constitution held on 9 July in Palau District.

176. On that day, the Mission noted that the majority of voters came out in favour of the draft constitution, in accordance with regular procedures, in an atmosphere of calm and freedom and with full knowledge of the facts.

177. The Mission hopes that the people of Palau will overcome their differences within the framework of the institutions they have chosen and will seek henceforth to promote the development of their islands in co-operation with all their neighbours, particularly those of the Trust Territory.

CHAPTER XII

ACKNOWLEDGEMENTS

178. The members of the Mission wish to express their gratitude to all those who assisted them in carrying out their task. They wish to express their sincere thanks to the High Commissioner and Deputy High Commissioner of the Trust Territory of the Pacific Islands, the Attorney General and the Administrator of Administrative Services of the Territory, the District Administrator/Election Commissioner and his staff, the District Attorney and the Chairman and members of the Post-Convention Committee, who helped and welcomed the Mission in Palau. The Mission wishes to express its appreciation for the courtesy and co-operation extended to it by the Legislature and particularly by its Speaker.

179. Above all, the members of the Mission sincerely appreciate the friendship and kindness of the people of Palau, who showed great patience and understanding during the Mission's visit to their islands. The members of the Mission owe special thanks to Mr. Daniel Strasser, the escort officer, for all he did to help them.

180. The Mission would like to take this opportunity to wish the people of Palau a peaceful and prosperous future.

Annex I

ITINERARY OF THE VISITING MISSION

<u>Date</u>	<u>Place</u>	<u>Remarks</u>
29 June	Honolulu	Arrived from New York
1 July		Departed by air for Guam; crossed International Date Line
2 July	Guam	Arrived from Honolulu; met with representatives of Trust Territory Government
3 July		Met with representatives of Trust Territory Government
3 July	Palau, Koror	Arrived from Guam; met with Election Commissioner and staff
4 July	Koror	Met with members of People's Committee for the Constitution
5 July	Koror	Met with Election Commissioner and staff
		Met with members of the Palau Legislature
6 July	Koror	Departed by air for Angaur
	Angaur	Met with community leaders and general public
		Departed by air for Peleliu
	Peleliu	Met with community leaders and general public
		Departed by air for Koror
7 July	Koror	Mission formed two teams: teams A and B
		<u>Team A</u>
		Departed by boat for western Babelthuap

<u>Date</u>	<u>Place</u>	<u>Remarks</u>
	Western Babelthuap	
	Ngarchelong	Met with community leaders and general public
	Ngaremlengui	Met with community leaders and general public
	Aimeliik	Met with community leaders and general public
		Departed for Koror by boat
7 July		<u>Team B</u>
		Departed by boat for eastern Babelthuap
	Eastern Babelthuap	
	Melekeok	Met with community leaders and general public
	Ngchesar	Met with community leaders and general public
		Departed for Koror by boat
8 July	Koror	Observed transfer of ballot boxes from District Department of Public Safety to Election Headquarters
		Attended briefing session of members of election boards and officers of Department of Public Safety
		Met with members of Post-Convention Committee
9 July	Palau District	Observed polling places in various municipalities throughout district
9-11 July	Koror	Observed counting and tabulation of votes
11 July	Koror	Met with District Planner and Acting Development Officer
		Met with Director of Health Services and Acting Director of Education

<u>Date</u>	<u>Place</u>	<u>Remarks</u>
		Met with members of Post-Convention Committee
		Met with Speaker of the Palau Legislature
12 July	Koror	Departed by air for Saipan
	Saipan	Arrived from Koror
13 July	Saipan	Met with High Commissioner and senior staff
		Returned to New York

Annex II

STATEMENT BY MR. JEAN-CLAUDE BROCHENIN,
CHAIRMAN OF THE VISITING MISSION, ON
3 JULY 1979

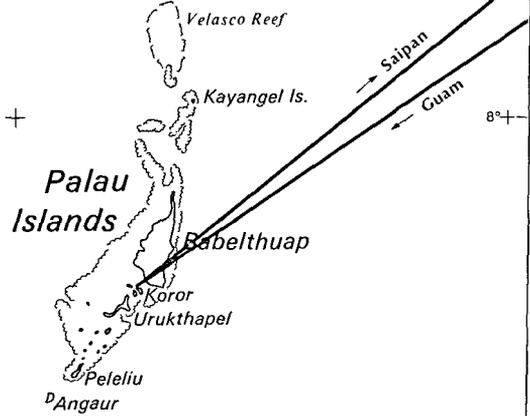
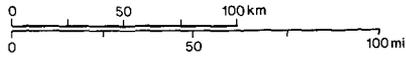
1. I should like to begin by explaining to you, the people of Palau, why a visiting mission has come here and what we hope to do while we are in Palau.
2. The Trusteeship Council was informed, in a letter from a representative of the United States Mission to the United Nations dated 16 May, that the Palau Constitutional Convention had requested, in a resolution of 9 March, that the Trusteeship Council should send representatives to observe the referendum on the proposed constitution, to be held on 9 July. In the letter, the United States representative expressed the pleasure of his Government in endorsing that request. The United States reiterated that invitation at the recent annual session of the Trusteeship Council and none of the Palauans present voiced an objection.
3. As I think many of you know, the basic objective of the United Nations Trusteeship system is to promote the advancement of the inhabitants of Trust Territories towards self-government.
4. In consequence, in the same way that the Trusteeship Council accepted invitations to observe the referendum held in July 1978 in the six districts of the Caroline and Marshall Islands, and in March 1979 in the Marshall Islands, the Council has been pleased to accept the invitations to observe the forthcoming referendum here in Palau.
5. Therefore, the Trusteeship Council decided at its recent session to send the present Visiting Mission composed of one representative from the United Kingdom, Mr. Ian Woods, and one representative from France, myself, Jean-Claude Brochenin. We are accompanied by four staff members of the United Nations Secretariat. Our terms of reference as regards the referendum are "to observe the referendum, including the campaign and polling arrangements, the casting of votes, the closure of voting, the counting of ballots and the declaration of results".
6. As was the case in last July's referendum, the task of the Visiting Mission is not to organize the referendum; this is the task of the Palau Post-Convention Committee with the assistance of the District Administrator, who will act as the Election Commissioner. Our task is to see how it is conducted and to report back to the Trusteeship Council. In particular, we shall want to satisfy ourselves and tell the Trusteeship Council about the fairness of the referendum. We shall be looking to see that all sides have an opportunity to make their views clear, whether they are in favour of the constitution or against it; that the people are not subjected to unfair pressures to vote in a particular way, or not to vote at all; and that the ballot is secret, so that no one can know how an individual voted. We hope that, by being here, we can help ensure these things.
7. In order to carry out our mission, we want to meet as many of the people of Palau as possible and to hear your views. We shall hope to attend political

meetings and we shall also be available to meet any groups and individuals who wish to see us. We will announce in advance the places in Palau District we hope to visit. On polling day we will visit as many polling stations as possible to see how the voting is conducted, and later we will watch the counting of the ballots.

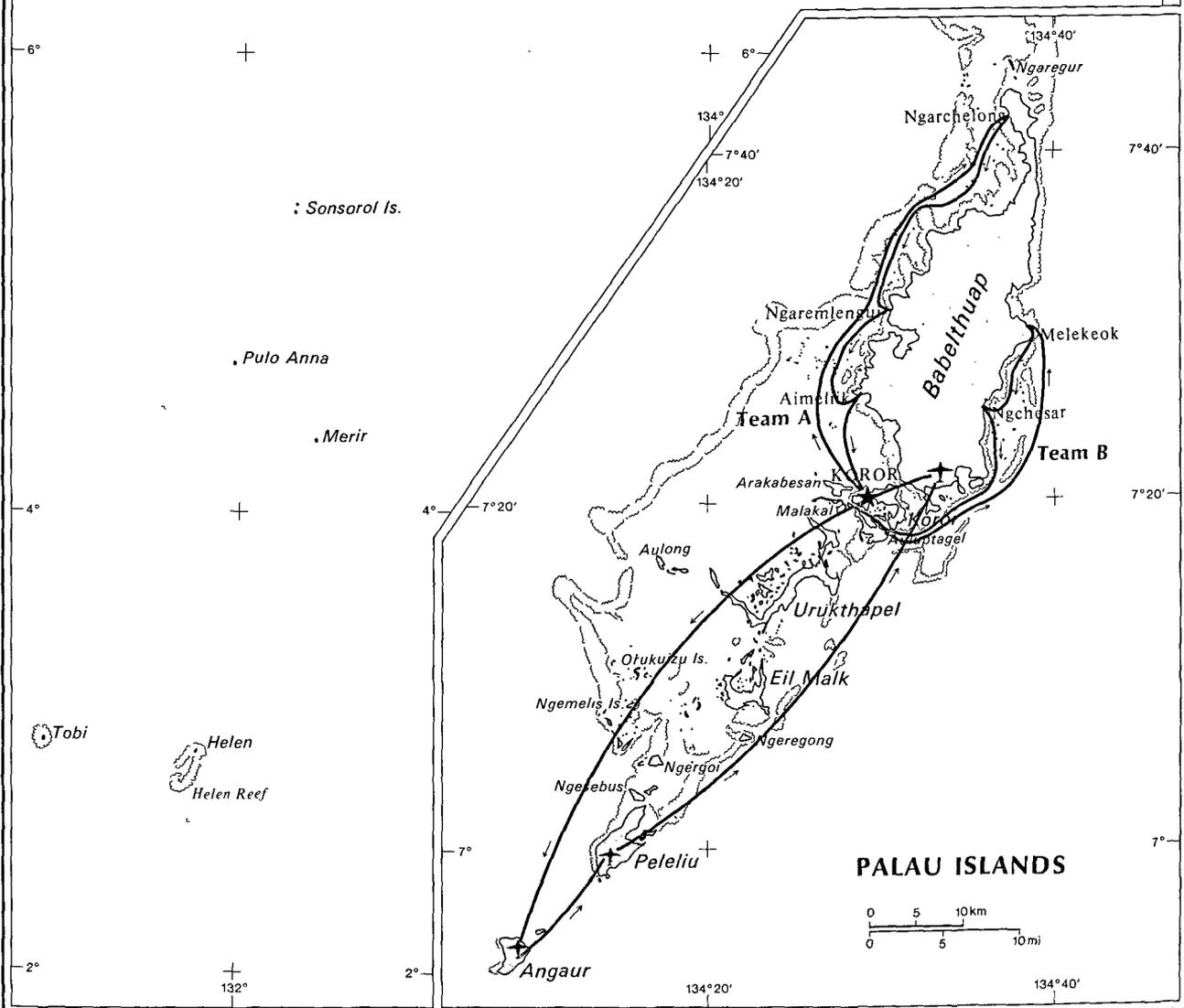
8. The decision you will take in the referendum is of course very important and should be considered very carefully since it will decide the way in which you will govern yourselves. We hope that you will express your views in the way you consider most appropriate.

9. Before concluding this message, I would like to thank you on behalf of the Mission for the warm welcome we have received. We are all very happy to be here, myself, as this is my first visit to Palau, and my colleague, Ian Woods, because he was here exactly one year ago and made many friends in Palau.

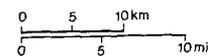
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 TO
PALAU
 TRUST TERRITORY OF THE PACIFIC ISLANDS
 1979



NORTH PACIFIC OCEAN

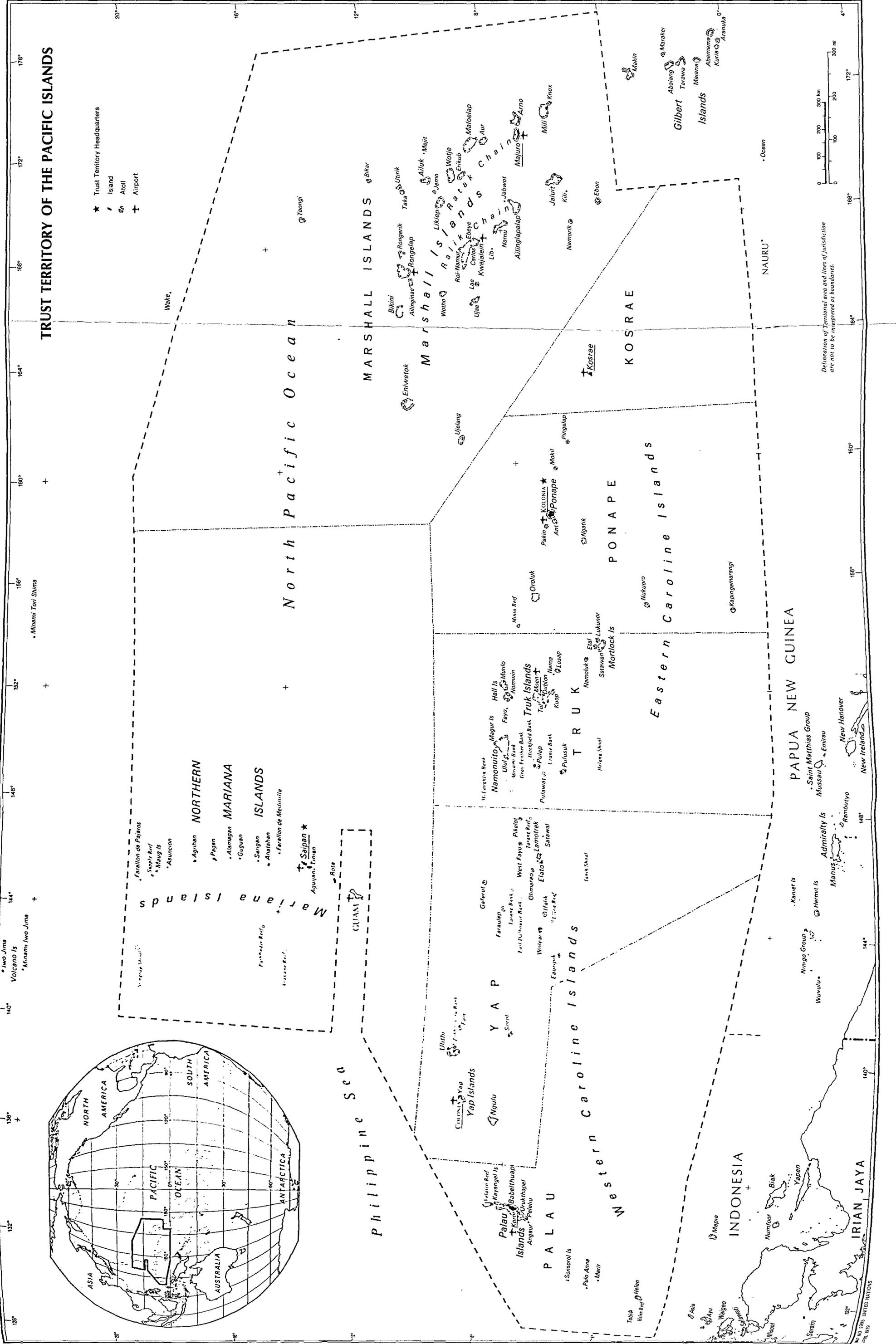


PALAU ISLANDS



TRUST TERRITORY OF THE PACIFIC ISLANDS

- ★ Trust Territory Headquarters
- Island
- ⊕ Atoll
- ✈ Airport



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