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Report to Sen. Henry M. Jackson, Chairman, Senate Committee on Energy and Natural Resources; by Elmer B. Staats, Comptroller General.

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Authority: Ralpho v. Bell, 75-2088 (D.C. Cir. 1977). Micronesian Claims Act of 1971. P.L. 95-134.

The people of Micronesia were awarded $67 million for losses incurred during World War II. The United States was responsible for half the war-related awards of $34 million and for all postwar damages valued at over $32 million. Originally, the United States contributed $25 million to pay these awards. In October 1977, the Congress authorized an additional $24 million to pay the U.S. share in full. Findings/Conclusions: Although the Micronesian Claims Commission attempted to adjudicate submitted claims in accordance with international and Trust Territory law, its awards have been criticized as both too lenient and too conservative. Criticism has centered around the Commission's decision to deny interest on war-related title I awards while allowing it on postwar title II awards. The Commission was criticized in the courts for ignoring available guidelines to measure death awards; had such guidelines been used, awards would probably have been lower. The Commission was not to decide how awards were to be split among the heirs of deceased claimants. However, it may not have considered all legitimate claims due to late filing by some claimants. Payments were made in accordance with the Micronesian Claims Act of 1971, but controls were not sufficient to assure that payments were actually received by designated payees. Recommendations: The Secretary of the Interior should: strengthen procedures of notification and delivery of checks to designated payees; make data on checks issued available to payees so they can determine for themselves if they have received payment; and verify, on a test basis, that payments were received by correct recipients and provide followup as necessary. (RRS)

REPORT TO THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

BY THE COMPTROLLER GENERAL OF THE UNITED STATES

Compensating Micronesian World War II Claims: Controversial Awards Of Claims And Difficulties Distributing Payments

Micronesians have been awarded $67 million by the Micronesian Claims Commission for World War II losses. About half of the approximately $49 million determined to be owed by the United States has been paid.

The Congress has authorized additional funds to complete payment of these awards. In doing so, it ratified controversial Commission decisions resulting in postwar awards--borne entirely by the U.S.--four times greater than similar types of war-related awards shared with Japan.

There is little assurance that the proper payees received their checks during the first round of payments. Payment procedures should be improved before additional funds are released.

ID-77-62

MARCH 7, 1978

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-186184

The Honorable Henry M. Jackson, Chairman
Committee on Energy and Natural Resources
United States Senate

Dear Mr. Chairman:

This report discusses how Micronesian war claims arising out of World War II and its aftermath were settled and are being paid.

We made the review at your request to determine the substance, if any, of alleged irregularities in the payment of these claims. Because of the disparity in the size of awards for similar war-related and postwar damage claims, we expanded our review to include an inquiry into the basis used by the Micronesian Claims Commission to make these awards.

Our report discusses the controversial Commission decisions regarding valuation of land and death claims, and the inclusion of interest in postwar awards. It lends support to the Committee's concerns expressed in its report on the omnibus Territories bill in which it acted to delete additional authorizations for Micronesian war claims. Although the authorizations were later restored, we believe the circumstances surrounding how the Commission's decisions were reached would be of interest to you and other appropriate committees.

Copies of this report are being sent to the Acting Director, Office of Management and Budget; the General Counsel, Foreign Claims Settlement Commission; the Secretary of the Interior; other interested congressional committees; and other parties who request them.

Sincerely yours,

Elmer B. Staats

Comptroller General
of the United States

COMPTROLLER GENERAL'S REPORT TO THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

COMPENSATING MICRONESIAN WORLD WAR II CLAIMS: CONTROVERSIAL AWARDS OF CLAIMS AND DIFFICULTIES DISTRIBUTING PAYMENTS

D I G E S T

The people of Micronesia were awarded $67 million for losses incurred during World War II and its aftermath. The United States was responsible for half the war-related awards of $34 million and all postwar damage valued at over $32 million.

Originally, the United States contributed $25 million and Japan $5 million to pay these awards, authorized by the Micronesian Claims Act of 1971. In October 1977, the Congress authorized additional funds estimated at $24 million to pay the U.S. share in full.

GAO finds problems in how the Micronesian Claims Commission made the awards and in how initial payments were distributed under the 1971 act and recommends improvements be made before additional funds are released.

The Micronesian Claims Commission assessed damage or destruction to land, trees, and crops at $46.5 million, including interest. In making the awards, the Commission followed its interpretation of international and Trust Territory law in awarding interest and assigned its own estimated values for land and death claims.

Because the money available under the 1971 act was insufficient to pay the awards in full, pro rata payments were made. Nearly all of the money has been disbursed to the payees or their attorneys. Claimants with awards valued at $18.7 million in the Northern Marianas and Palau were represented by one attorney.

PROBLEMS IN MAKING AWARDS

The Commission:

--Placed a higher valuation on postwar damaged land, with interest added, resulting

in these individual awards being four times greater than similar types of losses considered to be directly war-related.

--Was not supported either by the Foreign Claims Settlement Commission or the Interior Department in its interpretation that interest be included in postwar damage awards, a decision which raised the U.S. funded awards by about $20 million.

--Was criticized in the courts for ignoring available guidelines to measure death awards; had such guidelines been used, the awards probably would have been lower.

--Was not to decide how awards were to be split among heirs of deceased claimants, possibly resulting in increased family disputes and costly litigation attendant to the payments.

--May not have considered all legitimate claims due to late filing by some claimants.

PROBLEMS IN CARRYING OUT PAYMENTS

Payments were made in accordance with the 1971 act and the Commission's decisions. However, controls were not sufficient to assure that the payments were actually received by the designated payees. Furthermore, payees often had no convenient way of determining and following up on suspected missing checks. Claimants in the Northern Marianas and Palau frequently paid expenses in addition to the 1-percent statutory fee for attorney services on their claims.

RECOMMENDATIONS

Before additional funds are released to pay awards, the Secretary of the Interior should:

--Strengthen procedures of notification and delivery of checks to designated payees.

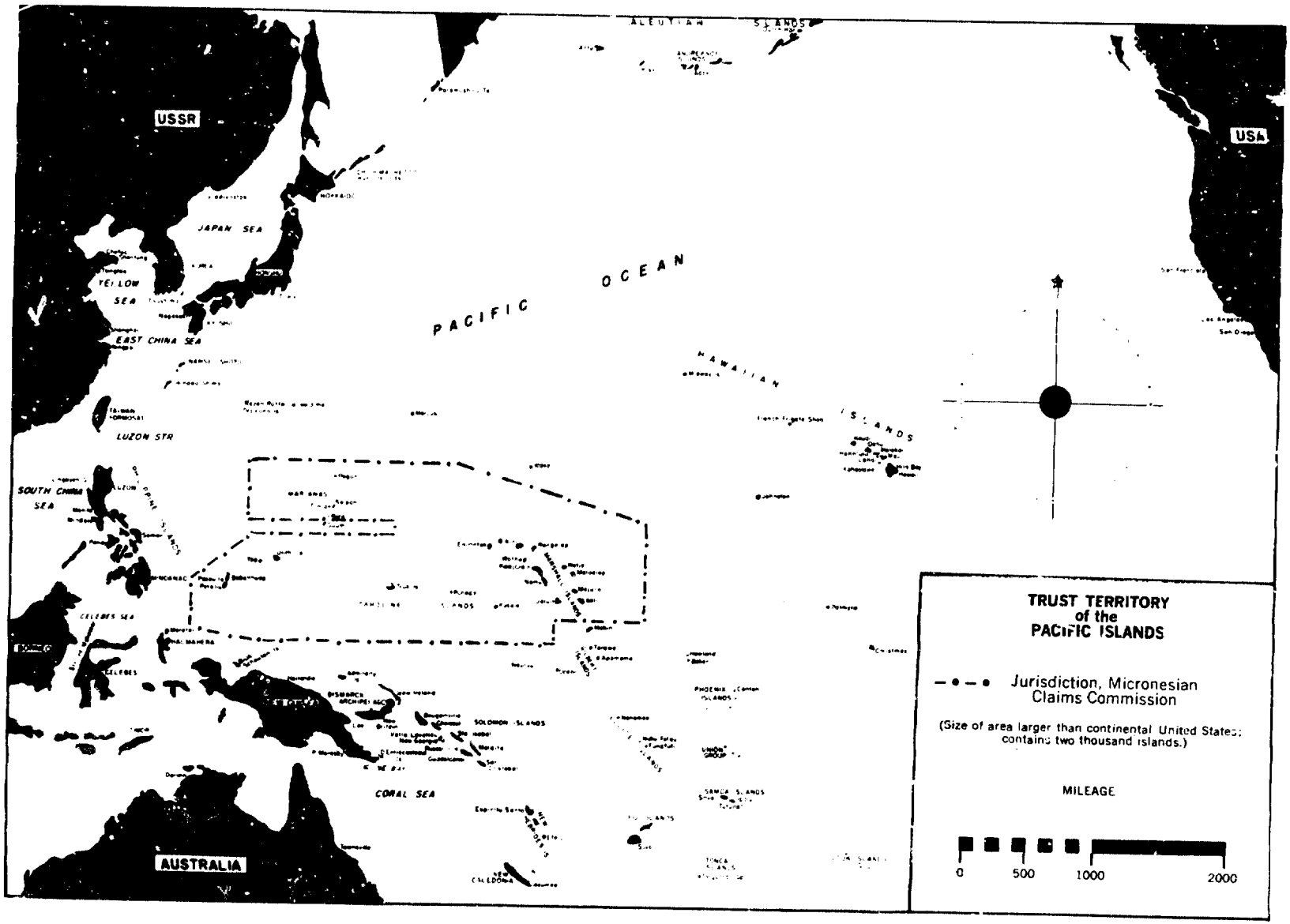
--Make data on checks issued available to payees so that they can determine

for themselves if they have received checks sent to them.

--Verify, on a test basis, that payments were received by the correct recipients and provide followup as necessary.

Interior officials agree with the recommendations and state they will follow them when the additional funds become available to pay the uncompensated portion of the awards.

Contents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SOLOMON ISLANDS
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PHOENIX ISLANDS
SAMOA ISLANDS
TONGA ISLANDS
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Jurisdiction, Micronesian Claims Commission
(Size of area larger than continental United States; contains two thousand islands.)
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CHAPTER 1

INTRODUCTION

We reviewed the Micronesian war claims program at the request of the Chairman, former Senate Committee on Interior and Insular Affairs (now Committee on Energy and Natural Resources), because of certain alleged irregularities in payment of the claims that had been brought to the Committee's attention.

Micronesian inhabitants of the Trust Territory of the Pacific Islands suffered loss of life, physical injury, and extensive property damage or destruction as a result of World War II and its aftermath. After years of negotiations with the Japanese Government regarding financial responsibility for these losses, an agreement was reached in 1969 whereby the United States and Japan agreed to contribute $5 million each to a Micronesian Claim Fund. Under the agreement, the United States would administer and distribute the fund to deserving Micronesian claimants and would discharge Japan from any further claim by Micronesians arising from the period of the war or preceding it.

The Micronesian Claims Act of 1971 implemented this executive agreement. The act (1) established a Micronesian Claims Commission to adjudicate the claims, (2) authorized additional funds toward payment or claims arising after hostilities ended, and (3) directed the Secretary of the Interior to pay the awards determined by the Commission. Therefore, under title I of the act, $10 million was provided to cover Micronesian claims directly resulting from hostilities between December 7, 1941, and the dates that the various islands were secured. Under title II, $20 million was appropriated to cover claims against the United States for Government agencies' takeover, use, and damage of private property from the end of hostilities and before July 1, 1951, the date the Interior Department assumed administration of the islands.

In October 1977, the Congress authorized such additional funds to be appropriated as may be necessary to to make full payment on awards by the Micronesian Claims Commission. Based on awards made to date by the Commission, this authorization increases the U.S. share of title I funding by $11.3 million and title II by $12.6 million. As provided by the act (Public Law 95-134), no title I funds authorized may be paid until the Japanese Government

makes an equivalent contribution and no funds may be paid under either title until the Secretary of the Interior reviews the awards and determines that no unauthorized interest is included in them.

MICRONESIAN CLAIMS COMMISSION

The Micronesian Claims Commission was authorized to receive, examine, adjudicate, and render final decisions on claims of Micronesian inhabitants. The Commission consisted of five members, including two Micronesian citizens, and support staff serving under the control and direction of the Chairman, Foreign Claims Settlement Commission. Final adjudication of a claim required the approval of at least three Commission members, and settlements were to be final and not subject to any review.

The 1971 act required the Commission to finish its affairs not later than 3 years after expiration of the time for filing claims. Commission headquarters were established on Saipan, and district field offices were set up throughout Micronesia. The Commission began to receive claims in October 1972, and a 1-year filing period was held, closing on October 15, 1973. All claims were adjudicated by July 30, 1976, 2-1/2 months ahead of the statutory deadline, despite formidable geographic and communication barriers.

In the Commission's final report, the Chairman stated that more than 11,000 claims were processed, twice as many as originally envisioned, resulting in 10,480 awards. Most claims were individually investigated, often at remote locations and with communication difficulties, and measured against profiles of area economic conditions and events at the time of loss. Program costs amounted to approximately $2.5 million, mainly for salaries and benefits, some 12 percent less than was appropriated for the costs. The overhead cost amounted to $230 a claim.

Total awards certified by the Commission amounted to $34.4 million under title I and $32.6 million under title II of the act.

--Title I war-damage benefits were mainly for deaths ($8.8 million), land ($8.1 million), trees and crops ($7.0 million), and buildings ($5.1 million). Since international law imposes no legal liability on belligerents for damage

caused directly by hostilities, such awards are voluntary and no interest was computed in title I awards.

--Title II awards represent almost entirely (97 percent) compensation for the takeover, use, and damage of privately owned real property after the islands were secured by U.S. Forces. Approximately 40 percent of the title II awards represents the Commission's assessment of the value of the losses, and 60 percent represents interest added to compensate claimants for the delay of over 30 years in awarding loss compensation.

There was little, if any, relationship between amounts claimed and awards made by the Commission. Many claimants specified no amounts or only token amounts in their applications; others sought astronomical sums. Also, the Commission made awards in instances of known property damage or losses even though no claims were submitted.

DEPARTMENT OF THE INTERIOR

The 1971 act directed the Secretary of the Interior or his designee to pay Micronesian claimants such amounts as finally certified by the Commission. Title I death awards, up to $1,000, were to be paid immediately upon adjudication; remaining awards were to be paid when all claims had been certified for payment. In the event that allowable claims exceeded the funds authorized, pro rata payments were to be made. To expedite the payment process, the act was amended in 1973 to give the Secretary discretion to make payment on claims before they were all adjudicated and certified. The act stipulated that no payment could be made until a full release of liability was signed by the claimant.

The Secretary assigned the payment function to the Trust Territory Director of Finance, located on Saipan. The Japanese contributed $5 million in yen equivalent in goods and services, which increased in value so that $6.8 million actually was deposited to the claims fund. Counting the U.S. cash contribution, the claims fund amounted to $11.8 million for title I awards and $20 million for title II awards. The Saipan office began paying the certified awards in 1973, and as of March 31, 1977, 96 percent of title I funds and 91 percent of title II funds has been disbursed as shown below.

	Title I	Title II	Total
Value of awards	$34,345,991	$32,634,403	$66,980,394
Amount paid on awards	11,283,992	18,158,789	29,442,781
Awards not paid	23,061,999	14,475,614	37,537,613
Undisbursed funds	478,692	1,841,210	2,319,902
Unfunded awards	$22,583,307	$12,634,404	$35,217,711
Percent of awards not funded	64	39	53
Percent of awards paid to claimants	a/26.7	61	-

a/ Payment on death awards in full up to $1,000 reduced the percentage share paid to claimants from 36 to 26.7 percent.

ADDITIONAL CLAIMS AND DISPUTED AWARDS

The cost of the claims program could be affected by ongoing (1) lobbying to consider claims alleged as not being previously filed or claims rejected for late filing and (2) litigation involving Commission decisions successfully appealed in the District of Columbia U.S. Circuit Court of Appeals. In June 1977 testimony before the United Nations and the Senate Committee on Energy and Natural Resources, Micronesian legislators contended that hundreds of valid unfiled claims had not been acted on by the Commission. Care was taken to absolve the Commission from any negligence in not considering these claims.

If upheld, two decisions on Micronesian war claims cases rendered by the D.C. Appeals Court in March 1977 could have a major impact on the Micronesian and other claims programs. The decisions are Ralpho v. Bell, No. 75-2088 (D.C. Cir. Mar. 29, 1977), and Minniah Melong, et al. v. Micronesian Claims Commission, No. 76-1201 (D.C. Cir. Mar. 29, 1977). In effect, the decisions questioned the Commission's authority to make final award determinations and held that termination of the claims program did not hinder the review of the Commission's decisions. The Department of Justice, on behalf of the Foreign Claims Settlement Commission (acting for the Micronesian Claims Commission) has requested a rehearing of the cases, and this request is now being considered.

The Micronesians have expressed dissatisfaction with the way the claims payments have been made. Much

of their dissatisfaction stems from the long delay in obtaining compensation and the considerable difference between the value of awards made by the Micronesian Claims Commission and the funds available to pay them. However, they were also disturbed by the statutory requirement that a claimant must sign a full release of liability before receiving any part of the payment. According to one of their spokesmen, this has precluded them from seeking further remedies through other channels. Nevertheless, the Micronesians have appealed to the United Nations for its support to induce Japan to contribute additional funds to cover that portion of title I awards not authorized for funding under Public Law 95-134.

SCOPE OF REVIEW

We reviewed program claims folders, reports, and related correspondence at the Foreign Claims Settlement Commission and the Department of the Interior. From this data and interviews with the agency officials, we selected a number of awardees to talk with to determine whether the requirements of the Micronesian Claims Act were being met.

We interviewed approximately 34 claimants in the Northern Marianas and Palau districts of Micronesia who had been awarded $2.7 million and examined the processed checks issued to them. We also met with various Trust Territory officials, Micronesian legislators, judges, and attorneys.

CHAPTER 2

HOW AWARDS WERE DETERMINED

The 1971 act directed the Commission to adjudicate submitted claims in accordance with international and Trust Territory law. While the Commission clearly attempted to do so and worked diligently to achieve the act's objectives, its awards have been criticized by various parties as being either too lenient or too conservative. Mainly, the criticism has centered around the Commission's decision to deny interest on war-related title I awards, while allowing it on postwar title II awards. In addition, the Commission departed from the more usual standards of valuation to arrive at what it considered to be fair compensation for damage to land and wrongful deaths. These actions by the Commission generated considerable controversy and may have contributed to some of the confusion and turmoil which have plagued the program in the payment phase. (See ch. 3.) Principally, we found that:

--The Commission's decision to place a substantially higher valuation on the land destroyed or damaged by U.S. Forces after the war (title II), and adding interest thereon, resulted in a discriminatory treatment of claimants perhaps not intended by the act.

--The soundness of the Commission's basis for including interest in its title II awards was challenged by both the Foreign Claims Settlement Commission and an Interior official.

--The Commission's formula for determining Micronesian death benefits was harshly criticized by the U. S. Circuit Appeals Court in setting aside a Commission decision.

--The Commission was not required to decide how awards were to be split among the heirs of deceased claimants, resulting in many family disputes and costly litigation over distribution of the payments.

--The Micronesians are attempting to gain recognition for hundreds of late-filed claims not considered by the Commission.

PROCEDURE FOR DETERMINING AWARDS

The Micronesian Claims Act of 1971 directed the Commission to publicize the program extensively in Micronesia, advise individual claimants of the entitlements, and assist them in preparing and filing their claims. To carry out these functions, the Commission was to prescribe such rules and regulations as it considered necessary, subject to the approval of the Chairman, Foreign Claims Settlement Commission.

A mass publicity campaign to inform claimants of the program was undertaken, and the Commission provided local representatives throughout the islands to assist people in filing their claims. Despite some inevitable late-filed claims which were not considered by the Commission, Micronesian officials involved in the program have generally praised the Commission's efforts in seeking out and adjudicating all legitimate claims.

Standard procedures for filing and settling claims were developed. Commission staff assisted claimants to prepare their claims without charge. After weighing the evidence and reaching a verdict, Commission representatives delivered the decision personally to the individual claimant together with a written explanation and a copy of the Commission's regulations in the local language of the claimant. When the claimant was represented by a private attorney, the decision was delivered by certified mail to the attorney.

After receiving the decision, the claimant was given 30 days in which to appeal it, and this was extended where remote locations hampered communications. When an objection was filed, a further hearing was held to reconsider the decision. After lapse of the appeal period or after reconsideration of the decision, the award would be certified to the Trust Territory Director of Finance--the local designee of the Secretary of the Interior--for payment.

VALUATION OF AWARDS

The Micronesian Claims Commission was directed to determine awards in accordance with the laws of the Trust Territory of the Pacific Islands and international law. The Commission appears to have followed these sources of law and developed tables of standard values which it applied to various loss categories, except where it obtained specific evidence from the claimant that the loss was unique.

The values assigned to the various types of claims, except for land and deaths, approximated those found in Micronesia during the early 1940s. For land and death claims, the Commission found the traditional legal concepts of valuation to be inappropriate and established its own compensation criteria.

In addition, the Commission included interest in the awards on losses occurring after--but not before--the securing of lands by U.S. Forces based on its interpretation of established practice under international and Trust Territory law. Because of the lapse of up to 30 years between the dates the losses occurred and the dates the awards were made, the difference in the amount of awards for nearly similar land losses before and after the hostilities ended became greatly magnified. Concern has been expressed by some officials that the Commission's valuation of land (including interest) and death claims may be excessive or contrary to the congressional intent. Nevertheless, the Congress, in authorizing additional money to permit full payment on the Commission's awards, has, in effect, ratified the Commission's determinations.

Land

The Commission set separate values for land and crop damage before (title I) and after (title II) the land was secured by U.S. Forces. For awards under title II, the majority of commissioners established a uniform rate of $1,500 an acre plus 6 percent simple interest from the date of loss to the date the decision was issued as the compensation for total damage to land, trees, and crops. Of this amount, $987 was for physical damage to the land and $513 was the maximum loss for trees and crops. These amounts compare with $500 an acre plus $410 for full crop damage under title I, no interest being allowed.

According to the Commission Chairman, the land valuations were arrived at only after exhaustively weighing alternative theories of compensation and considering traditional Micronesian views of land and its value. Although loss is normally measured by the difference in fair market value before and after the damage, this valuation approach (yielding an estimated $100 an acre) was considered suspect because of the absence of a free competitive market and the depressive effects of the Japanese occupation. Furthermore, the Commission held that land values rose sharply after the war. At the other extreme, costs to restore the coralized agricultural land to its former condition with the use of

modern equipment, chemical softeners, and imported topsoil ranged to $9,000 an acre. The figures finally adopted by the Commission were a compromise based in large part on its estimate of the land's optimum economic value at the time of loss.

One commissioner, who disagreed with the title II land valuation, held that there was little evidence of land values changing materially between 1944 and 1951, the period covered by title II, creating a situation difficult to explain to the Micronesian filing a title I claim. He said that similar damage occurring weeks or a few months apart could, and did, have a profound effect on the amounts awarded to a claimant. Not only was the maximum principal award 65 percent greater under title II ($1,500 an acre) than title I ($910 an acre), the effect of including interest in the former award caused each award on the average, to be four times as large as those granted under the title I authority.

Trust Territory land officials, who told us the Commission did not consult with them before establishing award values for land, also expressed strong reservations regarding the award values. The officials gave us information, which was also considered by the Commission, showing that the market value of Saipan land at the time of the U.S. invasion in 1944 averaged about $100 an acre.

The land values established by the Commission were ceiling amounts for an acre of reasonably good agricultural land, but these values were not necessarily awarded to claimants upon their submission of proof of ownership to the land area. For example, coralized urban lots, those located on steep hillsides, or suburban lots used only partially for agriculture were given percentage or no damage awards.

Also, it was not always clear whether the damage to land, structures, trees, and crops were damaged during the fighting or were destroyed later by U.S. military forces. In assessing whether to apply title I or title II values in these situations, the Commission was guided by the prevailing activity in each area at the time of the loss.

Interest

The Commission included interest in title II awards because it found that this was the customary practice followed under international and Trust Territory law where

legal liability is deemed to exist. Conversely, the Commission determined that title I awards were voluntary (ex gratia) and thus not entitled to compensatory interest. This determination had a tremendous influence not only on comparisons of individuals' awards but on total awards as well. According to the Commission's estimate, interest awarded on title II claims amounted to approximately $20 million, or 60 percent of the total awards.

The Commission's inclusion of interest in title II awards has generated considerable controversy. This controversy appears to stem from 1971 testimony presented by a Department of the Interior official regarding the estimated value of outstanding claims and from a Senate committee report statement. In January 1971, the Under Secretary of the Interior informed the Senate that the Interior Department had determined from a survey that there were approximately 1,232 title II claims outstanding with an estimated dollar value of $18.4 million. Furthermore, he estimated that the amount proposed to be authorized for such claims ($20,000,000) was sufficient to cover the known, as well as any unknown, claims. The Senate Committee on Interior and Insular Affairs, in reporting favorably on a bill leading to creation of the 1971 act, commented in Senate Report 92-76 that:

> "The committee has been advised by the Interior Department that the amount set forth in Chapter 2 of this title are believed adequate to adjust known claims outstanding. Further, the committee wishes to make clear that the Special Commission shall only consider the valuation placed on these claims as the value of the property at the time of its loss or destruction. The payment of interest on awards is not authorized." (Underscoring supplied.)

In awarding interest, the Commission contends it gave full weight to the Senate committee report and followed its directions by denying claimants interest on their awards. The majority of the commissioners drew a distinction between interest paid as a measure of damages included in the award (compensatory) and interest paid on the award after issuing the decision but before paying the award (moratory). They compensated the former as part of the award but denied interest accruing from the date of the award. According to the Commission's Chairman, Trust Territory and international law "require" including interest when a government takes and uses private property.

One of the commissioners objected to including interest in the title II awards based on his conclusion that a proper interpretation of the 1971 act showed the Congress did not intend that interest be paid as a part of the award or on the award. His conclusion was supported in November 1974 (before issuance of the precedent-setting decision) by the Foreign Claims Settlement Commission and by an Interior official.

The General Counsel, Foreign Claims Settlement Commission, in commenting on the proposed decision to award title II interest, said the decision was not well founded in international law and unfair in light of the whole act. Furthermore, he said that the Commission's members felt that such an award would not conform to the intent of the Congress at the time the legislation passed. As reasons, he said that (1) claimants who suffered identical losses would be treated in a discriminatory manner, (2) many claimants did not know the exact date or circumstances regarding their losses, making such determinations arbitrary, and (3) the resulting disparity in awards would bring on a serious threat of requests for reopenings seeking redress.

The opinion of the Foreign Claims Settlement Commission headquarters staff that it would be improper to award interest on any claims allowed under the 1971 act, was agreed on informally by Interior's Assistant Solicitor. He expressed the view that the Congress could not have intended the gross inequities which would result from a different treatment of interest on title I and title II claims.

Nevertheless, the Micronesian Claims Commission proceeded to include interest in the title II awards. The interest, computed at the generally accepted rate of 6 percent, was applied from the year the particular obligation arose to the year the award was made. Because of the lapse of time since the losses occurred, the interest usually exceeded the principal amount of each title II award. According to the Commission, approximately 60 percent of the $32.6 million awarded under title II represents interest.

We brought the Micronesian Claims Commission's interpretation on interest awards to the attention of the Senate Committee on Energy and Natural Resources, the former Interior and Insular Affairs Committee, in late June 1977 when it was considering the omnibus Territories bill (H.R. 6550). Following this, the Committee amended the bill by deleting any further authorization to pay awards made in connection with the 1971 act. In explaining its action

regarding title II awards, the Committee stated in the report accompanying the bill (S. Rept. 95-332, July 6, 1977) that:

> "The committee, and the Congress, were assured during consideration of the original act that the $20 million authorized would be sufficient to cover all awards. * * *"
>
> * * * * *
>
> "The Commission incorporated interest into its valuation procedure thereby awarding interest as a part of the award rather than on the award fulfilling the letter of the law. The committee is not inclined to at this time award interest. The committee is satisfied that the pro-rata distribution will result in full payment of the value of the original claim without interest."

The amended bill passed the Senate. However, the deleted authorizations were restored by amendments in the House and agreed to by the Senate. Thus, the Congress passed a measure (Public Law 95-134, Oct. 15, 1977) authorizing sufficient amounts to be appropriated to satisfy all titles I and II awards. This measure will result in an additional expenditure, for title II awards, of $12.6 million. A provision in the law states that, before making such payments, the Secretary of the Interior must review the awards and exclude from payment any amount determined to be unauthorized interest.

In commenting on this matter, the former Micronesian Claims Commission Chairman quotes the Honorable Donald M. Fraser, floor manager in the House of the Micronesian Claims Act, as stating during the recent deliberations on H.R. 6550 (Congressional Record of Sept. 30, 1977, p. 410408) that:

> "* * * it is clear that the Commission followed the law to which it was directed by including interest in its determination of the amounts of its awards; and it followed the direction of the Senate report [92-76] in denying payment of interest on awards."

Further, he quotes the Honorable Phillip Burton, sponsor of the recent legislation, who states that the Commission properly followed the law in determining awards under the 1971 act and that there is no rational basis to conclude otherwise.

Deaths

The Commission did not determine death awards in strict compliance with either international or Trust Territory law. International law assesses no liability for deaths from lawfully conducted war. Trust Territory law values compensation for wrongful deaths, not necessarily war related, at the reasonable pecuniary loss of earnings or support suffered by the decedent's survivors. In view of the voluntary nature of the awards and the subsistence economy of Micronesia, the Commission adopted a sliding scale based on age ranging from $500 for the very young and reaching a peak of $5,000 for decedents aged 21.

The Commission's solution was strongly opposed by the D.C. Appeals Court in overturning one of the Commission's decisions in March 1977. The judge, in the case of Minniah Melong et al. v. Micronesian Claims Commission, No. 76-1201 (D.C. Cir. Mar. 29, 1977) which criticized the Commission's failure to use indexes to award damages available in international and Trust Territory law, stated, at page 12 of the decision, that:

> "* * * Congress obviously intended that the Commission get guidance where guidance was to be gotten, and this the Commission plainly has not done. Instead, it has asserted license completely to disregard every measure of death-damages enshrined in either of these vital sources of law."

A Commission official has acknowledged that, had the Commission followed the rules of the Trust Territory in compensating for death actions, the amount of such awards would probably have been greatly reduced. However, it was not necessarily the Court's intention to reduce the amounts of these awards.

DETERMINATION OF HEIRS

Because of the time lapse, the owners of some of the property taken or damaged were no longer alive; thus, the Commission adopted the practice of making the awards to the heirs who filed the claims as trustees to divide the awards among the heirs in appropriate amounts.

Although the Commission was aware that this method of handling such claims could lead to family disputes (though perhaps not realizing the magnitude), its Chairman

contends that there was no practical alternative. According to him, the Commission, lacking judicial powers, had neither the facilities nor the jurisdiction to make binding determinations of heirship. Even if it had such power, he said there were practical reasons for not mandating how such awards should be distributed. Heirs inadvertently omitted through lack of knowledge or error on the Commission's part would have no recourse through the Trust Territory courts. Thus, in not dividing awards between heirs, the Commission placed greater importance on safeguarding the heirs' right to a judicial determination of how an award should be split than on the cost and anger that ensuing litigation might bring.

The Commission's decision not to determine heirship did give rise to numerous lawsuits--channeling a significant measure of the claims payments to attorneys in fees. According to one Northern Marianas legislator, 97 cases valued at about $12.5 million involving war claims disputes were filed in the Trust Territory High Court between July 1976 and May 1977. We were told that many of these cases stemmed from the trusteeship arrangement and that attorney fees ranged to 20 percent on collections. Although some of the litigation may have been unavoidable, a local judge remarked in one of his decisions that the conflict created among Micronesian families would never have occurred had the Commission determined the actual recipients of the money at full hearings with the surviving heirs.

Although it could be argued that the broad range of resources available to the Commission allowed it to make determinations of heirship, we cannot disagree with the Commission's position that it lacked jurisdiction to make such determinations.

ALLEGATIONS OF DISCRIMINATION

A resolution passed by the Fourth Northern Marianas Legislature in September 1976 alleged that the Micronesian Claims Commission was slow in processing claims and inconsistent in its award valuations, adversely affecting the people of the Northern Marianas; the Legislature asked the Congress to investigate.

The allegations appear to have little, if any, merit. The Commission was slower in adjudicating Northern Marianas claims, but the claims were also more complicated, requiring four times as many staff hours a claim as all others. Overall, the Commission completed its adjudication task within the

time frame set by the Congress. A cursory review of the decisions indicates that the Commission was consistent in its award valuations. Although Northern Mariana claimants filed only 11 percent of the total claims, they received 34 percent of all awards. Also, because they received a major portion of the higher funded title II awards, they were entitled to [illegible]ercent of the money currently authorized for p[illegible]t of awards.

ACKNOWLEDGMENT OF DECISIONS

Most, but not all, of the claimants we interviewed on Saipan and in the Palau District acknowledged receiving copies of the Commission's decisions on their claims. The claimants on Saipan who did not receive copies were represented by one attorney to whom the Commission sent the decisions by certified mail. The affected claimants did, however, receive payments related to the decision.

Micronesians interviewed consider the Commission's decisions reasonable and satisfactory on the whole, especially the title II awards. However, they were concerned about late-filed claims and the possibility that additional funds might not be authorized to permit full payment on awards. Some felt that claimants residing in remote areas should have been reimbursed for expenses connected with filing and collecting their claims.

LATE-FILED CLAIMS

Micronesian authorities are making a concerted effort to have a number of late-filed claims and claims not yet submitted for consideration recognized. In testimony before the United Nations and the Congress, they cited time constraints and communication barriers as precluding the Commission from receiving and adjudicating all legitimate damage claims. They requested that the Commission be revived for a short period to consider late-filed claims acknowledged by the Commission and to consider several hundred claims which have been identified but not yet presented for review.

Because of a liberal filing deadline and the extensive publicity accompanying its program, the Commission denied or rejected only 214 claims as late filed, which represented 65 percent of all claims denied by the Commission. The Commission considers the validity of the late-filed claims to be dubious.

CHAPTER 3

HOW AWARDS HAVE BEEN PAID

The amount of awards certified by the Micronesian Claims Commission exceeded funds available under the 1971 act, resulting in pro rata payments being made to the claimants. Separate payments were made for awards under each title and, since claimants often received more than one award, the payee frequently was sent many checks. Furthermore, geographical considerations and poor communications hampered direct delivery of the checks and related information to payees.

This situation has led to some uncertainty among the claimants as to whether or not they have received all the compensation to which they may be entitled. We believe that procedures for notifying, delivering, and verifying payments should be improved before further payments are distributed.

Claimants represented by private attorneys were required to pay no more than 1 percent of the amount awarded for services rendered in their behalf. However, we found that one attorney, representing over 1,000 claimants with awards valued at more than $18 million, received war claims expenses in addition to this 1-percent limit.

DETERMINING AMOUNT OF PAYMENTS

The 1971 act gave the Secretary of the Interior certain discretion over how the amounts awarded could be made. Title I death awards, up to $1,000, were to be paid immediately upon adjudication. In the event awards exceeded the amount in the fund, pro rata payments were to be made as soon as possible following Commission certifications. However, no provision was made for how title II payments should be computed if awards exceeded the funds available. Also, no payments were to be sent out until the claimant first executed a full release of liability for damages against the United States and Japan arising before the islands were secured by the U.S. Armed Forces.

Interior's Director of Territorial Affairs told the Trust Territory Director of Finance how payments were to be made. Title I payments, except for death claims of up to $1,000, were made on a straight percentage basis of the award. An initial payment of 16 percent of unpaid awards was authorized in May 1974; a further partial payment of 10.66 percent was later approved to fully use the

claims fund once the total magnitude of title I awards became known.

Title II payments were made essentially on a pro rata basis. However, to reduce the administrative cost of processing small check payments, a formula was used providing for full payment of minor awards. Partial payments up to $100 plus 50 percent of the balance of each award was authorized in March 1976; a further partial payment of 11.02 percent was authorized when all title II claims had been adjudicated. With the passage of Public Law 95-134, the way has been cleared for full payment on the Commission awards, provided the Japanese Government makes an equivalent title I contribution and the Secretary of the Interior finds no unauthorized interest in the awards.

PROCESSING AND DELIVERY OF PAYMENTS

Upon receiving the awards certified for payment, the Finance Director on Saipan sent the required releases and explanatory letters to the claimants to sign; upon their return, he issued checks drawn on the U.S. Treasury. The authenticity of the payee's signature on the release forms was not verified before making payment, and unless otherwise instructed, the checks were mailed directly to the payee or attorney named in the Commission decision if the address appeared valid.

Checks not mailed directly to claimants or their attorneys were normally sent to the district finance office for distribution. Delivery of the checks was accomplished in a variety of ways, including direct pickup by payees or their designated representatives, by bank employees or special messengers on field trips, and by the courts to payees or third parties. In Palau, we found that the finance office released and the bank released and cashed checks for persons other than the payees without valid court orders.

Although payments began to be made as early as July 1973, only 3.5 percent of the awards certified for payment were reported to have been paid as of September 1975, chiefly because of delays in issuing the release forms and in determining the formulas for effecting the partial payments. The Commission completed its adjudication work in July 1976. Meanwhile, the payment process gained momentum and, by March 31, 1977, 96 percent of the funds available to pay title I awards and 91 percent of funds available for title II awards had been disbursed. Remaining unpaid claims could not be paid until signed releases were received from the claimants.

CONTROLLING CHECK PAYMENTS

Keeping track of checks posed a problem in some instances, especially when the Commission made multiple or split awards. Multiple awards occurred when one person filed claims both individually and as a trustee for others. Also, an award could be split among a number of beneficiaries. As a result, many checks, although small in amount, were issued to the same payee.

This problem was particularly acute with title I awards. As of March 1977, approximately 28,900 checks were used to disburse $11.3 million of title I funds, while less than 5,000 checks were used to pay $18.2 million of title II funds. For example, one Commission decision which combined awards for two claims resulted in 31 individual check payments to only two payees through mid-May 1977. The payments ranged from $1 to $8,265--8 were for $3 or less and 18 were for under $100.

Explanatory letters sent to claimants with the release forms ordinarily informed claimants of the amount of the checks due them, but there was no adequate verification that the intended payees received them. Also, no release forms identifying the amount of the second title I partial payment were sent out. The checks did not show claim number, title, series of partial payment, or, until recently, the related Commission decision number. Therefore, in those instances where the claimant did not have specific notification or explanation of the payment, it was difficult for the person to understand the purpose of each check. Of greater concern, claimants may have had no way to know whether they had received all checks mailed to them or whether additional amounts were due.

VERIFYING CHECK DELIVERIES

Some of the claimants we interviewed could not recall receiving certain checks. We obtained the cancelled checks from the Department of the Treasury and reviewed the endorsements. It was not obvious whether the endorsements were those of the payees or whether they had been cashed by others with or without the payees' knowledge and consent. However, our analysis did disclose that some checks were held a long time before being cashed. Checks mailed to attorneys usually took longer to be cashed, often months from the date of issuance.

A number of the claimants interviewed were uncertain regarding the way payments were made. Payees in Palau,

in particular, did not have a clear idea of the number or amount of checks they were supposed to receive. A major contributing cause may have been the lack of a systematic approach to keep payees currently informed of all checks issued to them.

A check distribution summary, listing all payments in decision number sequence, was prepared by machine and updated periodically for use by the Saipan finance office. The summary was not distributed in whole or part to the other district finance centers. Thus, field finance officers and others concerned with proper distribution of the checks had no convenient way of assisting claimants to resolve inquiries on specific check payments.

FEES PAID BY CLAIMANTS

The 1971 act limits fees for legal services to 1 percent of the amount paid on claims and cites penalities for violations. This limitation applies to sums "received" as well as "demanded" for such services.

One attorney, representing more than a thousand claimants in the Northern Marianas and Palau with awards of approximately $18.7 million, received legal fees and expenses ranging from 1 to 1.5 percent. Often, the fees and expenses amounted to 1.25 percent of the payment, and the procedure for collecting them varied. In Palau, they were deducted from each check payment, and the payee was given the balance by separate bank check prepared in advance on the attorney's instructions. On Saipan, the claimants paid the fees and expenses in cash after receiving the Treasury checks based on predated receipts issued by the attorney. Separate receipts were given; one for the 1-percent fee and another for the additional amount designated as "war claims expenses."

The attorney explained that he solicited voluntary contributions from claimants toward expenses to be incurred in seeking settlement of the remaining payments due on awards. Several claimants we interviewed acknowledged having made such contributions to the attorney, including one man who said he gave the 1-percent fee plus a contribution of $5,000 upon receiving, as trustee, a check for about $56,000.

The attorney's large clientele appears to have resulted from his collection of numerous claim affidavits while he was employed by the Mariana Islands and Palau district legislatures. His contract with the Palau legislature

identified him as its sole representative in the compilation, explanation, and settlement of all claims in the district.

Also, as previously pointed out, the act directed the Commission to assist claimants to prepare and file their claims without charge. The Commission, in publicizing and carrying out these functions, in no way intended to deny any claimant his right to be represented by private counsel. This was a matter to be decided by the claimant. However, some of the claimants we interviewed said that they were not aware they had the choice of not being represented by private counsel in the adjudication of their claims.

CONCLUSIONS

The pro rata method used to distribute award payments, except for title I death awards, is in keeping with the expressed intent of the law. Although the number of checks issued may have been reduced had recipients of small title I awards been paid in full (such as under title II) rather than in across-the-board percentage payments, we believe no advantages would be gained at this time by changing the basis for paying title I awards.

However, claimants need to be better informed concerning the payments being made to them. Micronesia's vast geographical area and poor communications hampered direct delivery of checks to payees. Improvements are needed in (1) identifying the purpose of the checks more clearly and (2) assisting claimants to resolve questions on specific check payments more easily.

Claimants in the Northern Marianas and Palau represented by one particular attorney paid war claims expenses in addition to the statutory fee. Some of the attorney's clients were evidently not aware that they could have avoided these costs by filing their claims directly with the Commission.

RECOMMENDATIONS

We recommend that the Secretary of the Interior through his designee for claims payments, the Trust Territory Director of Finance:

1. Strengthen procedures for notification and delivery of checks and related payment data to better assure their receipt by the intended payees.

2. Distribute to the district finance offices, war claims committees, and others concerned with rightful disposition of the checks, copies of current listings showing all checks issued by decision number or name sequence. The availability of this information to payees should be adequately publicized and followup assistance should be provided as appropriate in each circumstance.

3. Verify, on a selective basis, that the payments were received by the intended recipients.

AGENCY COMMENTS

Interior Department officials stated (see app. II) that our recommendations are valid and appropriate. They propose to follow them if or when additional funds are made available to compensate the unpaid portion of awards.

APPENDIX I

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

J. K. Fasick, Director
International Division
United States General Accounting Office
Washington, DC 20548

Dear Mr. Fasick:

In the absence of a Chairman of the Foreign Claims Settlement Commisison, I am forwarding the enclosed comments concerning the Draft of a Proposed Report on the Micronesian Claims Commission. The comments were prepared in part by an employee of the Commission who was for two years the Chairman of the Micronesian Claims Commission.

It would appear that with the signing into law of H. R. 6550, much of the recommendation of the report is now moot.

It would also appear that with House and Senate passage of H. R. 6550, the GAO conclusions concerning inclusion of interest in awards, and criteria used by the Commission have been repudiated by both the House and the Senate.

We have no comment on such part of the report as concerns distribution of funds as this function was outside the Commission's responsibilities.

Very truly yours,

Wayland D. McClellan
General Counsel

Enclosure

APPENDIX I

Summary of Comments

The report acknowledges the extent of the challenge faced by the Commission, compliments the Commission's implementation of the program and exonerates it from the charges of discrimination in making awards which charges were the reason for the investigation.

However, the report does contain some conclusions which, in our opinion, are not supported by the report itself, the facts, or the law.

I

The report concludes that the Commission failed to follow what is termed a specific direction of the Congress. No such direction is cited nor does any such direction exist.

II

The report concludes that the Commission used "questionable" criteria in determining Title II values, yet neither the report nor the investigators cited, inquired into or sought to examine the criteria used by the Commission, a technique which raises serious questions concerning the validity and veracity of the report and the investigation.

(See GAO note p. 29.)

I

In five separate places the proposed report a statement is made that the Co... sion included interest in award despite "specific Congressional direction" to the contrary.

No such direction, specific or otherwise, was ever given to the Commission.

The Commission was directed by the Act to adjudicate claims "in accordance with the laws of the Trust Territory of the Pacific Islands and international law." Both of these bodies of law require the inclusion of interest to determine the amount of just compensation for the taking of private property by government.

The repeated reference in the GAO report is a misquotation of a statement contained in S.R. 92-76. The Senate report contained the statement "Payment of interest on awards is not authorized." The Commission in its leading decision quoted correctly this exact language and based upon it, denied interest on its awards.

The Honorable Donald M. Frazer, floor manager in the House for the Micronesian Claims Act and, as Chairman of the Foreign Affairs Subcommittee on International Organizations and Movements is an acknowledged expert in the field of international law, by letter (Cong. Record of 9/30/77, page H10408), concludes unequivocally:

> "Therefore, it is clear that the C... n followed the law to which it was ...v including interest in its determination ...ue amounts of its awards; and it followed the direction of the Senate report in denying payment of interest on awards."

Congressman Frazer's letter in its entirety is attached hereto, however, attention is called to the following quote from such letter specifically referring to S.R. 92-76.

> "Neither the Act itself nor the House report made reference to whether the Secretary of the Interior should compute and pay interest on the awards issued by the Commission from the date the award was issued until payment was finally completed. Under 28 U.S.C.A. 2411 such interest does run on

APPENDIX I

judgements against the United States. In Senate report 92-76 a recommendation was included that 'Payment of interest on awards is not authorized.' The Commission quoted this statement and based on this language determined that interest would not be paid on the awards, and, in fact, no interest has been paid on any award issued by the Commission.

As pointed out clearly by the authorities on international law, interest included in an award to fix just compensation is very different from interest paid on an award, and these two matters have consistently been differentiated and treated differently."

A full discussion and evaluation of the method of determining awards by the Commission was set forth in the Congressional Record by the Honorable Phillip Burton. (Cong. Record of 9/30/77, pgs. H10407, 10408). Attention of the GAO is specifically directed to the following quotation from that statement:

"The final sentence in the Senate report to which reference has been made reads:

'Payment of interest on awards is not authorized.' (Emphasis added.)

This sentence refers to the duty of the Secretary of the Interior, whose role was defined throughout the act, as being responsible for the payment of the awards determined by the Commission.

The respective roles of the Commission and the Secretary were clearly and consistently defined in the act. The Commission was given authority to determine the amount of awards in accord with trust territory and international law, and was given no authority over the payment of its awards. The Secretary was given the duty and authority to pay the awards of the Commission and was given no authority to interfere or be involved in the determination of the awards.

This last sentence in the Senate report referring to payment in no way can be construed to affect the authority given in the statute to the Commission to adjudicate and determine the awards.

Furthermore, and extremely important to the issue, are the precise words used by the Senate which specifically refer to interest "on awards." No reference is made to the inclusion of interest in determining just compensation in an award. Yet this is a distinction universally recognized in the law.

Use of interest from the date of taking or loss to the date of award is termed "compensatory interest" and its inclusion is required to determine just compensation.

Interest running on an award from the date the award is issued until the date of payment is termed "moratory" interest. The leading authority on the international law of claims makes this unequivocal statement:

'It is necessary to differentiate between interest as a part of an award and interest on an award. The cases show a marked difference in the handling of these situations. III Whiteman, Damages in International Law, pp. 1913.'

The same authority has pointed out that even where a treaty expressly states that interest shall not be payable on awards, this does not preclude the allowance of interest to affix just compensation as a part of the award.

The Commission followed this rule of international law and properly differentiated the two classes of interest. The Commission in its leading decision on the issue quoted the language in the Senate report verbatim, and on the basis of that language ruled that interest was not to be paid on its awards.

* * *

There is no rational basis to conclude otherwise."

We are in full agreement with Congressman Burton that there is no rational basis to conclude otherwise.

Page 13 of the proposed report contains the following statement: "In Senate report 332 of July 6, 1977, to amend the 1971 Act, the Committee affirmed its intent that interest not be included in such awards, stating in part that:" (Underlining added.) There has been no such attempt to amend the 1971 Act! The referenced quotation is part of a Senate

report on H.R. 6550, a Bill to authorize, among other things, funds to make further payments on the awards of the Commission. The Senate Committee after stating that the Commission fulfilled the letter of the law, expressed its view it was not its intent "at this time" to authorize full payment of just compensation which under law must include interest. This, of course, is the Senate's prerogative but this does not change the law as to what is required to determine just compensation.

Furthermore, with the passage of H.R. 6550, the full Senate has agreed to authorize full payment of all awards including interest authorized by the Act.

Thus, Senate report 332 of July 6, 1977, is mischaracterized in the proposed report. Additionally, Senate report 92-76 is not correctly quoted.

II

A serious criticism of the GAO report, lies in the characterization of the sources used to value Title II losses as "questionable" when no attempt was made to identify, or evaluate the sources which were used by the Commission. **(See GAO note p. 29.)**

An objective appraisal of the sources used by the Commission as cited in its leading decision brought a totally contrary conclusion from the Honorable Phillip Burton as appearing in the Congressional Record as follows:

> "The Commission in determining the amount of its awards in those claims for the taking, use, and damage to privately owned land by the United States, exhaustively reviewed and weighed a multitude of evidence, records, appraisals, and reports to determine the value of the loss as of the date that the loss occurred. It rejected use of present day values which would have been much higher. . .
>
> * * *
>
> Its leading decision shows that the Commission painstakingly sought out evidence of the value of property at the time of its loss or destruction. It rejected contentions made to it that present day replacement costs should have been used as a basis for its awards."

The Commission spent many months studying the question of valuations to use in adjudicating Title II claims. It is true as the report states that the Commission did give ear,

APPENDIX I

although far from total acceptance of the unique Micronesian viewpoint concerning value of land. To criticize the Commission for so doing, brands as hypocritical the Congressional action in requiring that 40 percent of the Commission be made up of Micronesians nominated by the political processes of Micronesia. The Commission refused to so characterize the Congressional intent.

The following sources among others were studied, evaluated and relied upon to varying degrees in the determination that the maximum damage award for an acre of land totally damaged by coralization would be $1500.

The Hambleton Report, commissioned by the United States Navy, contained a detailed and exhaustive discussion of the method of evaluating land values in Micronesia in the absence of a free market and record of sales, basing valuation on such factors as increase in the cost of living, the amount of land used by Government, location of land near a district center, and changes in population. The report supports the Commission's approach to valuation.

Japanese records of annual income from sugar cane production on Saipan prior to the war. Capitalization of such income, a totally acceptable method to value agricultural land, indicated a value of $3,900 per acre. The Commission accepted a maximum damage figure of but 38% of this figure.

United States Navy records of 1947 valued land absent its trees and crops which land had already been totally coralized at $750 per acre in 1947.

Appraisal by expert appraisers hired by the Trust Territory to appraise land by Kolber Field on Saipan. This evaluation concluded that the trees alone on an acre of land were worth over $1,000.

Restoration costs to return the land to the condition in which it was before the United States took it indicated costs up to $9,000, a figure accepted by the Congress for restoration of coralization on Eniwetok. The Commission's figure was but 16% of this cost.

Price Index of crude materials which include the food and fiber produced by such land. This index rose 74 percent between 1944 and 1951. When the products of agricultural land increase 74 percent in value, the land which produces this food and fiber, of necessity, increases in value.

Records of pre-war sales cited but not examined by the GAO although exhaustively reviewed by the Commission. These records are subject to wide interpretation based upon such things as reports studied by the Commission, of market basket surveys comparing yen versus dollar in the 1930's which indicate that land was selling at the equivalent of $400 to $500 an acre in 1932. In considering these records of sales by Micronesians to Japanese the Commission also took into consideration testimony presented by individuals who had agreed to this price only after having been beaten over the head by a baseball bat.

The report refers to these sources as "questionable" and "too liberal" apparently without being aware of what these sources were. Rather, the conclusions seem to be based on the criticism of several Trust Territory employees. The fact that this may be a questionable source of criticism is underscored in the Act itself with its reference to the "inadequate payments" made in the past by the predecessors of these employees.

Their suggested figure of $100 per acre without interest would have assessed total damage at 4% of the Department of Interior estimate of $18,500,000 for Title II damage which estimate itself grossly underestimated the number of claims. The report appears to espouse the position that because the United States took and held all the private property, thus forbidding sales, there was no market value, thus the United States owes nothing for having taken the private property. Such a position is indefensable! It was not accepted by the one Commissioner, himself a former Trust Territory employee, who disagreed with the majority acceptance of $1500 as a maximum damage figure believing a better figure lay between $910 and $1500 per acre.

We, therefore, consider it a matter of grave concern that GAO has chosen to characterize factual evidence as "questionable" and too liberal" without inquiring as to the existence of the factual evidence, citing criticism by Trust Territory employees, but without citing criticisms of others who felt the Commission figure as too low! **(See GAO note below.)**

III

As the Ralpho and Melong cases are still under consideration for further appeal, comment on the merits is inappropriate. However, the implication in the report that the court criticized the Commission for making awards too high is totally incorrect. The court set aside the Commission's award of $4,200 for a death and remanded for consideration of the $60,000 claimed, and may have implied that interest should have been included in Title I awards.

GAC note: Following receipt of this comment, we examined the additional information provided by the Commission and revised the report in consideration of this material.

APPENDIX II

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

DEC 1977

Mr. Henry Eschwege, Director
Community and Economic
Development Division
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Eschwege:

Enclosed are the comments of the Department of the Interior on the draft General Accounting Office Report entitled "Micronesian War Claims---Questionable Awards Criteria and Payment Procedures Should be Resolved before Additional Funds are Provided."

The adjudication and award of claims was handled by the Micronesian War Claims Commission authorized by Public Law 92-39 whereas payment of the awards was assigned by the statute to the Secretary of the Interior. Our comments are confined to the payment aspect of the Report and its recommendations to the Secretary of the Interior, with which we agree, in the event additional funds are made available for payment of awards.

Sincerely yours,

Assistant Secretary -
Policy, Budget and Administration

Enclosure

APPENDIX II

COMMENTS ON DRAFT GENERAL ACCOUNTING OFFICE REPORT "MICRONESIAN WAR CLAIMS--QUESTIONABLE AWARDS CRITERIA AND PAYMENT PROCEDURES SHOULD BE RESOLVED BEFORE ADDITIONAL FUNDS ARE PROVIDED"

Public Law 92-39 authorized the establishment of a Micronesian War Claims Commission to hear and adjudicate claims for damages suffered by Micronesians during the course of World War II and, under Title II of the Public Law, for damages sustained by reason of actions of the United States following the military "securing" of the islands of Micronesia. The Secretary of the Interior was assigned the responsibility of paying beneficiaries the amounts awarded, either in full or on a pro rata basis.

The draft General Accounting Office Report indicates the several problems which were encountered in the payment of the awards to Micronesian beneficiaries. Specifically, the Report recommends (page iii) that:

If additional funds are made available to pay awards, the Secretary of the Interior should:

1. Strengthen notification and delivery procedures of checks to better assure their receipt by the intended payees.
2. Make listings of issued check data available to payees so that they can determine for themselves if they have received all checks sent to them.
3. Verify, on a test basis, that payments were received by the intended recipients and follow-up as necessary.

APPENDIX II

The recommendations of the General Accounting Office on this score are valid and appropriate and we propose to follow them in the event additional payments are authorized and funds are made available for them.

The High Commissioner of the Trust Territory of the Pacific Islands was requested to review the draft report. He has had the Micronesian Bureau of Investigation examine allegations surrounding the payment of the awards and the Chief of the Bureau has commented as follows:

"The recommendations made by the GAO Report, Pages 30 and 31, are valid. There was abuse in check disbursements ranging from straight theft and forgery of indorsement to the problem of a family dividing the value of the award equitably when the payment came to only one individual within the family and the case of the Iroij in the Marshall Islands who received the entire award in the name of his people and failed to share the award. In Truk, the disbursements made through the District Finance Office are highly suspect. One case of forgery of indorsement and several instances of the payee being forced to cash the award check with a specific business enterprise, whereupon the businessman first collected the payee's "indebtedness" with that enterprise, have been reported to the bureau. The payee was then given what was left. In some instances, this was alleged to be nothing. No information of probative value is on file.

"The GAO Report adequately covers the allegations regarding the activities of certain attorneys in the application/processing phase. No information of probative value is on file.

APPENDIX II

"A comprehensive investigation of those facets of the War Claims Act other than the award/decision making process would be tedious, expensive, and time consuming. At the moment it would be a "fishing expedition" as no official complaints of criminal/civil culpability are known to exist. This excludes the alleged forgery case in Truk which is currently under investigation. The government would be faced with either conducting a review to pinpoint culpable acts or soliciting complaints from Trust Territory citizens."

In the event continuing investigation develops actionable evidence, appropriate action will be taken.

APPENDIX III

United States Senate
COMMITTEE ON
INTERIOR AND INSULAR AFFAIRS
WASHINGTON, D.C. 20510

September 30, 1976

The Honorable Elmer B. Staats
Comptroller General
General Accounting Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Staats:

The Committee has recently had brought to its attention charges of certain irregularities in the payment of war claims of Micronesians. In light of these allegations, it appears necessary that there be an audit of the war claims program focusing on the disbursement of sums from the U.S. Treasury and the amounts paid for legal fees in both Palau and the Marianas.

The Committee would appreciate the assistance of the General Accounting Office in conducting this audit. I have asked James Beirne, counsel to the Committee, to work with your staff on this project.

Sincerely,

Henry M. Jackson
Chairman

HMJ:ggd

PRINCIPAL OFFICIALS RESPONSIBLE FOR ADMINISTERING ACTIVITIES DISCUSSED IN THIS REPORT

	Tenure of office From	To
DEPARTMENT OF THE INTERIOR		
SECRETARY OF THE INTERIOR:		
Cecil D. Andrus	Jan. 1977	Present
Thomas S. Kleppe	Oct. 1975	Jan. 1977
Kent Frizzell (acting)	July 1975	Oct. 1975
Stanley J. Hathaway (acting)	June 1975	July 1975
Kent Frizzell (acting)	May 1975	June 1975
Rogers C. B. Morton	Jan. 1971	May 1975
DIRECTOR OF TERRITORIAL AFFAIRS:		
Ruth Van Cleve	Apr. 1977	Present
Emmett Rice (acting)	Feb. 1977	Apr. 1977
Fred Zeder	June 1975	Feb. 1977
Emmett Rice (acting)	Jan. 1975	June 1975
Stanley Carpenter	Jan. 1972	Jan. 1975
HIGH COMMISSIONER OF THE TRUST TERRITORY OF THE PACIFIC ISLANDS:		
Adrian P. Winkel	May 1977	Present
Peter Coleman (acting)	July 1976	May 1977
Edward E. Johnston	May 1969	July 1976
FOREIGN CLAIMS SETTLEMENT COMMISSION		
CHAIRMAN:		
Vacant	Oct. 1977	Present
J. Raymond Bell	Nov. 1973	Oct. 1977
Lyle S. Garlock	Feb. 1970	Nov. 1973
MICRONESIAN CLAIMS COMMISSION		
CHAIRMAN:		
David H. Rogers	Oct. 1974	July 1976
Wallace Witkowski (acting)	July 1974	Oct. 1974
Ben M. Greer	June 1972	July 1974