



Final
Report

Micronesian
Claims
Commission

1972-1976



OFFICE
OF THE CHAIRMAN

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

LETTER OF TRANSMITTAL

To the President of the Senate, the Speaker of the House of Representatives of the 95th Congress.

I am pleased to submit this final report of the Micronesian Claims Commission which was created by Public Law 92-39 on July 1, 1971.

I do so pursuant to the provisions of the Micronesian Claims Act which provided for the direction and control of that agency by the Chairman of the Foreign Claims Settlement Commission.

The Commission began its program in 1972 and completed its mission on July 30, 1976, nearly three months earlier than required by the statute.

The report that follows provides a comprehensive narrative, together with essential statistical data, on how the Micronesian Claims Commission handled and resolved more than 11,000 claims, twice as many as originally envisioned.

This report attempts to describe in detail the barriers, difficulties and imponderables inherent in this unique undertaking involving the inhabitants of an area stretching over a vast area of the Pacific, as well as the specifics of a program designed to compensate the inhabitants of that area for losses suffered from the hostilities of World War II.

The total amount awarded and certified by the Commission was \$34,349,509 under Title I, and \$32,634,403 under Title II of the Act. Responsibility for the payment of such awards rests with the Secretary of the Interior whose office continues to implement payment procedures in accordance with the requirements of the Act.

It is our hope that not only will this document fully comply with the provisions of the Micronesian Claims Act of 1971, but that it will serve as testimony to the good will of our Government, and to the diligence and capabilities of those who were charged with fulfilling this specialized responsibility.

J. Raymond Bell
Chairman
Foreign Claims Settlement
Commission

18-415552

TABLE OF CONTENTS

Introduction 1

SECTION I

A. Background of the Claims Program 5

B. History of the Commission 8

 1. Setting up the Commission 8

 2. The Filing Period 10

 3. Investigation of Claims 11

 4. Delivery of Decisions and Objections . . . 13

C. Computation of Awards 14

 1. Title I--"War Damage" 14

 2. Title II--"United States Usage" 16

SECTION II

A. Geography and Logistics 21

B. The Challenge of a Personalized
Claims Program 25

C. A Bi-national Commission at Work 27

D. A Program to Pay Non-Americans 30

E. A Look at a Bygone Era 31

F. The Determination of Heirs 33

G. Local Customs and Traditions 35

H. Publicizing a Program to Avoid Late Claims . . 39

I. A Unique Claims Fund 43

SECTION III

A. The Amount Claimed - A Meaningless Figure . . 47

B. Awards Made by the Commission 49

C. The Cost of Implementing the Program 51

Introduction

Ten thousand miles across the Pacific Ocean, in July 1976, the Micronesian Claims Commission completed its final adjudication of claims filed pursuant to the Micronesian Claims Act, and thus completed its task as set forth by that Act. Having heeded the direction given it to wind up its affairs as expeditiously as possible, the Commission had completed its task three months ahead of the final date allowed by the statute, despite the fact that nearly twice as many claims had been filed as had been anticipated.

The final adjudication brought to a close a unique claims program to assess losses of Micronesians directly caused by the hostilities of World War II. A program which provided the challenge of resurrecting a bygone era in an attempt to partially rectify the inequities caused by war and its aftermath to a distant people who had since come under the trusteeship protection of the United States. The proud tales of the saga of American victory in the Pacific - the remembered battles of Kwajalein, Eniwetok, Saipan, the Palaus - had been viewed from the different perspective of the global conflict upon the lives and fortunes of an unsuspecting people, who had been caught in the maelstrom of world events.

Coupled with this program to assess war damages, had been a separate claims program, set forth as Title II of the Micronesian Claims Act, to determine and award fair compensation to individual Micronesians who had had land taken, used and damaged by the United States between the end of hostilities and July 1, 1951. Prior to the Micronesian Claims Program, these claims along with a few claims for injury and death, had been unresolved for upwards of a quarter of a century due to the lack of a comprehensive program.

International claims programs of various types are not new. However, a combination of factors surrounded the Micronesian Claims Program and made it unique, providing unexplored territory, legal and factual, for those given the task of implementing it.

Although under the supervision and control of the Chairman of the Foreign Claims Settlement Commission, the basic implementation of the program was given to an independent bi-national Commission, which in turn was headquartered ten thousand miles from Washington, D. C.; its operation covered vast distances and was set against a background of differing foreign customs, traditions and languages. It was

a program which awarded compensation to non-United States citizens and combined two separate claims programs based on events occurring at different periods of time and the assertions of different legal responsibilities. This combination of factors created a singularly different claims program.

It therefore seems appropriate in this final report to the Congress, to provide not only final statistical information and a general review of the operation of the program, but to describe some of the challenges created by the peculiar components which combined to make this program unique and to set forth the way in which the Commission met these challenges.

SECTION I: PROGRAM BACKGROUND AND ESTABLISHMENT

A. Background of the Claims Program

The Micronesian Claims Program had its antecedents in the Treaty of Peace between the United States and Japan which came into being in 1952. Article 4(a) of that Treaty contained a statement that claims of Micronesians along with certain other matters would be subject to "special arrangements" between Japan and the United States.

Negotiations between Japan and the United States, acting on behalf of the Micronesian people, started soon after the signing of the Peace Treaty. While not denying the existence of legitimate claims by the people of Micronesia, Japan took the position that they were more than offset by losses of Japanese property abandoned in Micronesia at the time of the repatriation of Japanese nationals to Japan shortly after the war and by certain other claims Japan asserted against the United States. The discussions thus reached apparent deadlock until 1966 when, at the urging of the United Nations, intensive negotiations were undertaken which finally came to fruition in 1969. By executive agreement reached in that year, the United States agreed to

contribute \$5,000,000 into a Micronesian Claims Fund, while Japan would waive its asserted claims and would contribute the equivalent of 1,800,000 Yen having a value at the time of the agreement of \$5,000,000. The agreement called for the Japanese contribution to be in goods and services which through a highly complicated process, would be converted into an equivalent dollar contribution by the Trust Territory Government into the Micronesian Claims Fund. The agreement contemplated that the United States would administer this Fund to see that it was distributed to meritorius Micronesian claimants.

As part of this agreement, the United States discharged Japan from any further claim by Micronesians arising either from the period of the war or from the period under the mandate prior to the war. This executive agreement was implemented by Title I of the Micronesian Claims Act which provided for consideration of claims "directly resulting from hostilities" and arising "between December 7, 1941, and the dates of securing the various islands." International law, with certain exceptions, imposes no legal liability upon any belligerent for damages caused directly by hostilities. Due to this principle, the payment of claims was termed ex gratia in the Act. No provision was made for compensating Micronesians for pre-December 7, 1941, claims.

The Micronesian Claims Act then proceeded to make provision for a second separate claims program. Title II of the Act provided for the consideration of claims against the United States arising from incidents occurring after the dates of securing the various islands by United States Armed Forces and prior to July 1, 1951, the date that administration of the Trust Territory was transferred to the Department of the Interior.

Claims against the United States arose principally, though not exclusively, from the taking, use and damage of private property by various agencies of the United States Government. Some of the land taken was eventually returned to the owners, and some was and still is retained by the United States.

The sum of \$20,000,000 was authorized in the Act to be used toward payment of these claims. As in the case of Title I, responsibility for the investigation and adjudication of these claims was given to the Micronesian Claims Commission, and responsibility for payment of the Commission's awards was assigned to the Secretary of the Interior.

The Act authorized the establishment of a Micronesian Claims Commission and gave it limited authority to ". . . receive, examine, adjudicate, determine and render final decisions . . . with respect to claims. . ."

The Commission was composed of five Commissioners, two of whom were Micronesians appointed from a list nominated by the Congress of Micronesia. Thus a substantial Micronesian viewpoint was introduced into the adjudication process.

B. History of the Commission

1. Setting up the Commission.

With the passage of the Micronesian Claims Act in July, 1971, efforts were undertaken to create a Commission, secure necessary staff, and provide quarters, office space and equipment. In Washington, this responsibility fell on the Foreign Claims Settlement Commission, which sent staff to Micronesia within weeks of the passage of the Act to make a preliminary survey of what needed to be accomplished to implement the program.

The requirement of the selection of two Micronesian Commissioners called for action first by the Congress of Micronesia to submit a list of nominees, and then by the Chairman of the Foreign Claims Settlement Commission, with the concurrence of the Secretary of the Interior, to select two candidates from the list presented.

The Congress of Micronesia agreed upon its nominees the last day of February, 1972. After due consideration, Mr. Jose C. Cabrera of Saipan, and Mr. John B. Rulmal of Yap were approved as the Micronesian Commissioners. After winding up their personal affairs, they were sworn in on August 21, 1972.

Staff members assigned from the Foreign Claims Settlement Commission began arriving on July 1, 1972, being housed in whatever temporary housing could be found.

Immediate work was begun to prepare detailed regulations to implement the Act and govern the operations of the program. These were then translated into the eleven principal languages of Micronesia.

A field staff of nineteen Micronesians was selected, and a training program instituted to prepare them to assist in the massive responsibility of the Commission to seek out and register all claims.

When all was in readiness for the start of this effort, field offices were opened in each of the district centers, and October 16, 1972, was designated as the first day for filing claims.

2. The Filing Period--October 16, 1972, to October 16, 1973.

Two major efforts were required for the Commission to fulfill its statutory responsibility of assisting Micronesians to file claims. First, a mass publicity program was undertaken and continued throughout the year allowed for filing claims. This effort entailed an education program using radio, newspapers, continued communication with local officials and traditional leaders, and visits by Commissioners and staff to communities throughout Micronesia. Where the Commission was aware of names of persons who had filed under previous claims registrations, they were reminded of the requirement of refiling under the present program. The one-year time for filing was repeatedly stressed.

The second effort required was to provide representatives on the scene to advise and assist the actual filling out of claim forms. To accomplish this, the Commission provided Micronesian field representatives to work throughout Micronesia. This effort was supplemented by the staff of four attorneys and the Commissioners themselves. Offices had been set up in each of the district centers. Additionally, representatives were stationed at such places as Ebeye, Kusaie and

Ulithi. In addition to the permanently established centers for claim assistance, Commissioners, attorneys, and field representatives traveled throughout the atolls of Micronesia, attempting to cover all of them to explain the program, to deliver claim forms and to collect completed claims.

3. Investigation of Claims.

A cursory review of the claim forms made it apparent that in most instances insufficient detailed information was included to allow adjudication without individual investigation including an interview with the claimant. The investigation of these claims took the bulk of the man-hours required to complete the program. Local claimants were called into the field offices in the district centers to give detailed information concerning their claims. Simultaneously, staff from the Commission and the Commissioners themselves went throughout the islands to remote villages to meet personally with claimants to discuss their claims and secure necessary information.

In addition to detailed investigation of individual claims, the Commission undertook in-depth studies of both conditions and values in particular areas of Micronesia for

the period of 1941-1945. Military reports, aerial photographs, Japanese and American economic surveys, and diaries of the war years were scoured and digested. This effort was supplemented with long discussions with village elders throughout the islands about local conditions during the war, land holding patterns in the area, and the cost and availability of various property, as well as wage scales.

From all this data, the Commission was able to re-create a general profile of economic conditions and events in a particular area. Statements of individual claimants were then measured against this profile, and where they seemed reasonable and appeared to fit the known pattern, the statements were accepted. Where such statements appeared to conflict with the general information the Commission had obtained concerning the area, the claimant was requested to provide more persuasive supporting evidence. If none was produced, the Commission had to weigh the individual's statements against its knowledge of events and values to determine the degree of validity it could give to the unsupported statement of the claimant.

After investigation of a claim was complete, all evidence concerning the claim and a recommended decision was presented to the Commission for review and determination.

4. Delivery of Decisions and Objections.

As decisions were issued by the Commission, a further timeconsuming task was required by the statute. Each decision had to be delivered personally to the individual claimant, along with a written explanation and a copy of the Commission's regulations in the local language of the claimant. This required a retracing of steps to the remote atolls previously visited. After receiving his decision, the claimant was given thirty days, a period extended where remote locations hampered communication, to notify the Commission of any objection to the decision of the Commission. In the event of an objection, the claimant was entitled to submit any further written evidence or statement in support of his objection, or, if the claimant requested, the Commission set an oral hearing at a location and time for the claimant's convenience. At such a hearing, a Commissioner, or an attorney assigned by the Commission, appeared to take any further oral or written evidence or argument the claimant wished to present. The record of this hearing, along with any proffered documents, was then resubmitted to the Commission for reconsideration of the initial decision for a final decision.

Only after this opportunity to have the Commission's initial action reconsidered, was the award certified for payment to the local designee of the Secretary of the Interior, thus completing the Commission's responsibility under the Act.

C. Computation of Awards

1. Title I--"War Damage."

The first order of business in determining compensation for Title I claims was to assess values during the period of the war. To establish these values, the Commission spent substantial time and effort gathering all relevant information which was available. From this information emerged some generally accepted values, which the Commission used, absent any specific evidence provided by the claimant concerning the uniqueness of his loss. The following are listed as illustrative of the values used by the Commission:

Buildings: "Japanese" style house, hardwood construction, glass windows, wood floor, metal roof: 83¢ per square foot; "Native" style house, wood construction, thatch roof: 34¢ per square foot; Cook house: 20¢ per square foot.

Trees and Crops: Coconut trees, \$4 each for first ten, \$3 for next 140, \$2 for next 350, \$1 each for any additional;

Breadfruit trees, \$7 each for first ten, \$2 each for all additional; Banana trees, 55¢ each; Taro (tubor staple of Micronesian diet) 20¢ per tsubo (36 square feet).

Personal Property: Sailing canoe (ocean-going outrigger) to 14 feet, \$50; to 18 feet, \$75; to 23 feet, \$100; Chair, \$1; Ukulele, \$5; Chest, \$5; Dresser, \$15; Phonograph, \$12.

Uncompensated labor: If usual occupation and living at home, \$10 per month; if separated from family and kept under guard, \$15 per month.

Death: Depending on age of decedent, \$500 to \$5000.

Use of Real Property: \$50 per acre per year (including loss due to dislocation).

The above examples are illustrative of the values used by the Commission in determining awards under Title I. While the Commission believes they do approximate values in Micronesia in the early 1940's, it is obvious that they do not approach present-day replacement costs. As interest was not added in computing the ex gratia awards under Title I, it is apparent that the total Title I awards represent a minimum assessment of the tangible losses suffered by Micronesians as a result of the Second World War.

The awards of the Commission under Title I of the Act totaled \$34,349,509. A breakdown of awards by category of claim and by geographical district is included as Appendix No. I.

2. Title II--"United States Usage."

Title II awards represent almost entirely (97%) compensation for taking, use and damage to privately owned real property. In determining a basis for these awards, the Commission spent close to a year in researching material and discussing alternative theories of compensation.

The interrelationship of cultural and physical factors gives the Micronesian a unique view of land and its values. Culturally, land is seen as an extension of self and of family to a point that it is people who "belong" to land rather than the other way around. In some cultural contexts, land appears clearly more important than people. The commonly heard expression "land is more precious than life" articulates the deep emotional feeling of the Micronesian for his land. Much of this outlook stems from physical realities. There is limited land. The alternative of "moving on" to unused land is, in most cases, not available to the residents of small islands or atolls in the limitless ocean. Land, often

in small plots, is the indefinite producer of family sustenance for generations. For these reasons land, basically, was not and is not bought and sold, making the concept of "fair market value" a meaningless phrase.

The adjudication of Title II claims presented the Commission with some new challenges. The approach taken by the Commission required the individual assessment of the extent of damage to each piece of property involved. Study of reports of U.S. activities in certain areas, supplemented with maps of the times indicating the location of particular facilities, were a start. But in the final analysis, personal inspection of each piece of property was almost always required. Fortitude and a sharp machete were twin needs to get to many locations to inspect property. Once upon the land in question, the Commissioners and staff had to rely upon skills gathered from experience to reconstruct, from the clues presently observable, the effects to the land of its use by the United States.

Determining the rightful claimants and avoiding duplication in awards presented a second major challenge. The Commission's attorneys, schooled in the precision of American land title registration, were in for a rueful shock when confronted with the situation in Micronesia. On Saipan, an

area of major U.S. use of land, the Trust Territory had attempted to sort out title to privately owned land in the early 1950's. However, at that time title was often determined to be in the heirs of a deceased forebearer and was awarded to a land trustee on behalf of these heirs. The Commission, coming upon the scene twenty years thereafter, often found the trustee had died, and the attempt to sort out those presently entitled to recovery involved the tracing of large and widely-separated families. Inter-marriage of families, a Chamorro system of customary land development, and a tradition of "Partido" (designation of who should take property after death while the testator was still alive) added to the confusion. Sharp disagreements among family members, once money was at stake, added to the difficulty of ascertaining true facts.

Yet this challenge had to be met so that the Commission could sort out proper claimants and eliminate substantial duplication of claims. This duplication of claims was in the main not intentional, but resulted from confusion among the interrelated members of families. Extensive family trees were drawn by the Commission, and a sophisticated system of cross-checking to eliminate duplication of awards was established. While the Commission is certain that

duplication in awards was eliminated, this occurred only through painstaking and time-consuming procedures.

The awards under Title II totaled \$32,634,403. Of this total, approximately 40% represents the assessment of the loss at the time of loss, and 60% represents interest added to compensate for the delay of up to thirty-two years in awarding compensation.

SECTION II: MEETING THE CHALLENGES OF A UNIQUE PROGRAM

The Micronesian Claims Program combined a number of factors which made the program unique as compared to previous claims programs in which the United States has been involved. Each of these factors presented a challenge to the Commission entrusted with the task of implementing the program. The effectiveness of the Commission's work and the results obtained can only be judged against the challenges presented.

A. Geography and Logistics.

The logistics involved in implementing the program presented the Commission with a major challenge. The logistical problems confronting the Commission can perhaps best be illustrated in the following way.

The area of Micronesia approximates that of the United States. The program would be similar to a program in the United States with eleven thousand potential claimants residing in villages scattered throughout the length and breadth of the country.

It would be similar, that is, if certain assumptions were imagined such as: that most of the claimants spoke one

of eleven different languages, none of them being English, and had no radios, television sets, telephones or postal addresses; that the only airports in the entire country were located at Seattle, Los Angeles, Denver, Chicago, Atlanta and New York and the only transportation from the air fields to the villages was the equivalent of a slow train which traveled infrequently and irregularly and never over 10 miles per hour. To get the full flavor of the nature of the Commission's task, one would also have to assume that the "trains" were not air conditioned, served only rice and fish and often ran out of fresh water and that the villages visited had no restaurants, motels or stores.

Unfortunately, the events which gave rise to claims were not fashioned with an aim toward choosing locations which would facilitate ease of investigation by a Claims Commission thirty years later. Micronesia is made up of six districts each with a district center serviced by air. In the Marshalls there are two islands, Majaro and Kwajalein, which can be reached by air. While claimants residing in the immediate area of the district center presented less of a problem to contact, even for them the absence in most cases of a postal box or telephone required use of local radio announcements requesting them to come to the local Commission office.

However, with the exception of Saipan, most of the claims in a district were filed by individuals who did not live near the district center. The reason for this lies in the fact that of the six present district centers, only Saipan was the scene of a major battle. In the Marshall Islands, for example, the major Japanese bases were located on such atolls as Mili, Wotje, Maloelop and Eniwetok, which can presently be reached only by infrequent and irregular ship visits. Yet because of the Japanese use and heavy U.S. bombing, these atolls gave rise to many individual claims. On Kwajelain where there was major damage during the war, few claims were filed because one very large claim was filed by the local traditional leader on behalf of all the inhabitants for the damage to all of the many islands in the atoll. The Commission found that the Japanese use and the effects of the war were so extensive that there were few of the vast number of inhabited islands in Micronesia which had not been touched by the conflict which gave rise to some loss directly caused by the war.

From a viewpoint of logistic problems, claimants resided in three classes of locations. First were those living on the island which constituted a district center, who could be contacted with relative ease. Second were claimants who lived on islands near enough to the district center that

they could be reached by small boat during certain seasons, and depending upon the weather conditions on any given day. Finally, there were those who lived on outer islands who could be reached only by a field trip vessel on its scheduled run. This latter category of claimants provided the most difficult logistic problems. The field trip vessels of the Trust Territory are ancient, frequently are out of commission and often break down at sea, causing scheduled trips to be aborted. This results in the fact that actual schedules may vary by months from proposed schedules. Some island groups are scheduled for but two trips per year.

The solution to these logistic problems lay in extensive planning and organization. Claims were grouped on a geographical basis so that when a trip was made to a remote island all claims from that island could be developed or delivered or appeals held on that visit. It was accomplished by the willingness of staff attorneys to spend two to four weeks in the arduous confines of a small field trip ship to complete one scheduled run.

The claims in the second category which provided the largest percent of claims required Commission attorneys to face often hazardous trips by small boat, and upon arrival to spend weeks on an island sleeping on the floor of a hut without amenities to complete investigation of claims from that island.

B. The Challenge of a "Personalized" Claims Program.

The Micronesian Claims Act directed an individualized approach to the handling of the war claims problem. The Commission was directed to assist claimants in filing their claims, to adjudicate the claims, to personally deliver initial decisions to claimants, and, if requested, to hold hearings on objections.

The direction to "adjudicate" required a gathering and evaluation of evidence surrounding each claim, and a personalized determination based upon the best facts available of the propriety and amount of each individual award. To accomplish such an individual treatment of each of the 11,000 claims filed required extensive travel to the far flung reaches of Micronesia, initially to assist individuals to prepare claim forms, subsequently, to interview claimants and witnesses, thereafter to personally deliver each decision, and, if requested, to hear objections. There was no alternative course for the Commission, if the express mandate of the statute were to be carried out.

Conceivably there were alternative ways for the Congress to have dealt with the problem. A lump sum grant could have been given to the Congress of Micronesia or the District legislatures to be used for public purposes, or the statute

could have directed individual awards based upon some arbitrary formula unrelated to the amount of loss an individual had suffered.

These methods were rejected by the Congress when it spelled out the individual approach to claim adjudication and built in the requirements of personal delivery of decisions, and the opportunity for appeal hearings.

The approach chosen required more time and effort than would have been required by some other method of dealing with the problem. In retrospect, the approach chosen by the Congress was a wise one. Micronesians saw their losses and suffering caused by the war as a very personalized loss to them and their immediate families. Nothing less than a personalized approach to attempt to evaluate such loss would have in any way begun to satisfy their concerns. The response of most Micronesians to a program where a government representative actually came to their island or village and listened to their concerns, and recognized and evaluated their personal losses was highly positive and appreciated. It served a very positive purpose in shaping the attitudes of Micronesians toward the United States.

Fortunately, despite the expense of transporting and supporting an American staff 10,000 miles from Washington, D.C., and the costs required to overcome the logistic

problems involved, and even in the face of four years of inflationary spiral, the Commission was able to keep its costs of implementing the program well within and even below that experienced in previous international claims programs.

C. A Bi-national Commission at Work.

The Commission set up to implement the program, was itself unique. It was composed of five members, two of whom were Micronesians appointed from a list nominated by the Congress of Micronesia. The Commission, therefore, was not only bi-national, but forty percent of the Commission was initiated by the political processes of Micronesia.

The position offered the Micronesian Commissioners appeared on the surface to create a possible conflict of roles. As nominated representatives of the people of Micronesia who were to be the recipients of the awards, they were potentially cast in a role of advocate for those interests; yet as set forth in the statute and defined in their oaths of office, they were required to be impartial judges.

This apparent conflict between the role of advocate and judge, was seen as much less of a conflict by the Micronesian Commissioners. They defined the program goal as seeking

Justice for Micronesians and Honor for the United States and felt that there was little conflict in meshing these two concepts.

The success of this approach is witnessed by a review of the Commission's work. The vast majority of the decisions of the Commission had the concurrence of all the Commissioners. A few decisions found one Commissioner disagreeing and on very rare occasions the Commission split 3-2. However, in the few occasions where unanimity was not present, the split in the Commission generally did not follow a Micronesian vs American division.

The degree of unanimity is the more surprising for the composition of the Commission presented three Americans who were lawyers, and two Micronesians who were not. In part this was an advantage, for in the process of presenting legal issues to the lay Commissioners, the legal staff of the Commission was required to abandon legal jargon, explain basic legal premises, and provide clear understandable legal analysis, all of which forced a high quality to both legal research and articulation. The Micronesian Commissioners on their part made a serious effort to delve into and comprehend pertinent areas of the law. Although starting as laymen, by the completion of the program, both Micronesian Commissioners had become quite well versed on the law of international claims.

The Commission operated on the basis of total involvement of the Micronesian Commissioners. All proposed decisions as well as all legal memorandum, comments and correspondence were circulated to each Commissioner. Comments, criticisms and questions were encouraged, and when ever raised were met by open and candid discussion. The process worked and generally produced consensus due in large part to the willingness of all Commissioners to frankly express their views, while being willing to listen to and consider contrary views.

The Micronesian Commissioners realized that they would be called upon to explain the work of the Commission. It therefore became important to them that all matters were thoroughly explored so that they had a full understanding of all issues involved.

The functioning of the Commission showed that such a bi-national commission can work as a unified body. The creation of a commission of mixed nationality had many advantages. The Micronesian Commissioners not only brought to the Commission a wealth of knowledge concerning such matters as local custom, and values of property and labor of an earlier period, but their agreement, as part of the Commission, to the conclusions the Commission reached, added a validity and integrity to the Commission's decisions in

the eyes of Micronesian claimants which could never have been achieved as a result of the efforts of a solely American commission.

D. A Program to Pay Non-Americans.

The Micronesian Claims Program was the reverse of a line of claims programs conducted since the end of World War II. Most previous programs had made payments to United States nationals from funds provided by foreign governments to reimburse losses suffered at the hands of those governments. The Micronesian Claims Program, for the most part, made awards to non-United States citizens to be paid from sums appropriated by the United States.

While it is true that approximately half of the fund for payment of Title I war claims was derived from goods and services supplied by Japan, and while a small percent of the recipients of awards were, through subsequent naturalization, American citizens at the time of payment, still the vast majority of funds paid were appropriated funds of the United States paid to non-Americans. Title II of the Act involved claims solely against the United States.

The very nature of such a program assessing claims of Micronesians to be paid principally by the United States

brought with it a number of concerns from different quarters. Micronesians waited to see if the United States could be fair in assessing claims against itself; various Americans wondered if the Commission would honestly evaluate claims, or superficially treat the program as some sort of government giveaway program. No matter what result came from the Commission's efforts, the stage was set for potential criticism due to the very nature of the program.

The Commission realized that the only way to proceed was to literally follow the direction of the Act to "adjudicate" and to individually assess each claim on the merits of the evidence presented in light of legal precedents of international and Trust Territory law to which the Commission was directed by the Act.

While proceeding in this manner did not forestall all criticism of the work of the Commission, it did produce decisions and claim files which amply justified the Commission's results in each of its awards.

E. A Look at a Bygone Era.

The Micronesian Claims Program required an assessment of events which occurred as much as 35 years prior to the adjudication of a claim. While many claims programs have

required a backward look in time, the extent of the period coupled with the destruction of records during the War, provided an obvious challenge to the Commission in seeking to accurately assess claims arising during the period of the war.

To meet this challenge, the Commission staff set out initially to seek sources which would allow the Commission to reconstruct a picture of prewar life in each of the many regions involved, and to ascertain the nature of the wartime activities which affected each area. A prewar picture was necessary to provide background concerning how land was held, and by whom; the type of structures used in particular areas by particular people; the prices, values and the nature of income; and the particular customs and traditions, all of which information varied to different degrees among the six districts, and among areas within each district.

The sources available consisted of pre and post war economic studies, anthropological studies, church records, diaries and family photographs. Events of the war were contained in strategic bombing surveys, official military accounts of Pacific Operations, and, on occasion, aerial photographs. Such documents laid out a general background, but a source equally valuable was numerous interviews with the older members of communities who reconstructed the

details of life and the effect of the war in their particular locations.

From this information, the Commission could create a general profile of circumstances and events for each particular area. These background profiles provided the basic criteria against which to judge information provided by an individual claimant from such area. Specific information concerning a particular claim which was consistent with the general information the Commission had for a particular region was readily accepted. That which was inconsistent required further proof by the claimant to establish why his or her situation varied from the normal, and if such proof was not forthcoming, the claimant's assertions were modified by the Commission in reaching its final determination.

F. The Determination of Heirs.

The passage of time caused other difficulties. It was a common occurrence that the owner of property at the time it was damaged or taken was no longer alive. The Commission was thus faced with the problem of determining how the award should now be made.

The Commission had the alternatives of seeking to determine the identity of the heirs of the decedent and

dividing the award in set amounts among them, or of making the award to the heir who filed the claim making him a trustee for the purpose of dividing the award among the heirs in appropriate amounts. The Commission adopted the latter practice. Unfortunately, this led, in some cases, to disputes among a family over the distribution of the funds. Undoubtedly, some of these disputes will be left for the Trust Territory courts to decide.

The Commission would have liked to have avoided such a situation, but found no practical alternative to the course it followed.

It is not common practice in Micronesia to seek a judicial determination of heirship upon death, either by probating wills or determination of intestacy. Rather, property passes according to traditional custom or methods such as Pardito, which is a declaration, often oral, made prior to death, distributing property among a family.

The Commission lacked the judicial powers of subpoena, substituted notice, and the power to cite for contempt or punish for perjury, and thus had neither the facilities nor the jurisdiction to make binding determinations of heirship.

Even if it had the power to determine heirship, there were practical reasons not to become involved in mandating how an award should be distributed among surviving heirs.

Often local custom or the particular history of support within a family, facts known only within the family, would decree a different distribution than would be made by an outside commission. Perhaps more important was the fact that if the Commission named who it believed to be the heirs, and was in error, there would be no recourse to any heirs inadvertently omitted. By giving the award to an heir as trustee to divide among all the heirs, any heir was provided with the protection of requiring proper distribution through the courts of the Trust Territory.

In most cases an equitable distribution was worked out amicably within the family. Generally, Micronesians preferred the manner in which the Commission made the awards, and as the trustee named by the Commission was always the heir or heirs who had filed the claim, other heirs who had not themselves filed had little rational ground to complain.

G. Local Customs and Traditions.

While the Commission allowed claimants where possible to work out their own interpretations of local custom and family tradition in the distribution of awards, in many claims the Commission could not avoid involvement in interpretation of local custom and tradition.

In the Marshall Islands, by way of example, land is not generally held by individuals. Rather, rights in land are governed by a system of co-existing interests held by Iroj, Alab and DriJermal, somewhat analagous to the Feudal rights of King, noble and serf. Each has a defined interest in the land and income produced therefrom, with concomitant responsibilities of support.

The Commission made its awards in conformity with this system, compensating for each right. At times the Commission faced conflicts, however, related to the proper succession of Iroj or Alab rights.

While this interesting system of land tenure was not recognized outside the Marshalls District, other problems concerning land holdings were present in other districts. In Palau, the Commission was often faced with having to determine whether land had been held by an individual or by a Clan or Lineage. Japanese land records often showed the ownership of land at the time of loss as resting in an individual, who also held an official position within a Clan. The question then had to be answered as to the capacity in which the individual held the land. The individual's heirs would claim the land belonged to him outright, while present members of the Clan would argue with equal vehemence that the individual held the land only as trustee

for the Clan and any award should be made on behalf of the entire Clan. Extensive investigation by the Commission and testimony particularly from elder inhabitants not connected with the individual or the Clan would generally clarify the issue, but never to the satisfaction of the losing party.

Where the Commission was faced with making awards for death, often among conflicting claimants, it was required to establish priorities among classes of beneficiaries. Preference was given first to surviving husband or wife and children, second to parents, then brothers and sisters, and on down through a descending order of more distant relatives. The process of determining these surviving beneficiaries involved the Commission in the local traditions of adoptions, and the role of the widow.

Strictly speaking, there was no custom governing the award of an ex gratia payment for a death, for there never had been such payments. Custom concerning inheritance was often cited on behalf of one set of potential beneficiaries against another set. Custom differed depending upon whether real property or personal property was involved, or whether property was matrilineal or patrilineal, and to add to the confusion, custom was said to differ, not only in different districts, but within a district. Often it was asserted that the widow, but not the widower, should be totally

excluded, for under custom in some areas of Micronesia, a widow is totally excluded from the family after the death of her husband, at least if there are no children. In each case of dispute, however, the Commission was generally presented with the arguments from several sides, each demanding that the Commission recognize custom, but each citing a different interpretation of applicable custom. Often the Commission felt it was being offered what became known as an "instant" custom to justify an award to one group of beneficiaries.

The Commission did recognize the role of adoption in determination of the members of a class of beneficiaries. Adoptions form a very important part of the social fabric of Micronesian Culture. Unfortunately for a Commission attempting to make its awards in accord with local custom, adoptions in Micronesia are of many different types and have varying ramifications. In some areas adoptions result in an individual not only being adopted "into" a new family, but simultaneously being adopted "out" of his old family. In other areas, however, adoption results in an individual acquiring a second family without relinquishing rights in his original family. Further confusing the issue is the fact that, although none of the adoptions are formalized by legal procedure, they vary according to what declarations

are made. The adoption may or may not include the right to inheritance as contrasted to only the right to receive support.

While sorting out the existence and nature of an adoption of fairly recent vintage presented a challenge, it was minor when compared to the difficulties presented when an adoption or non-adoption several generations prior became relevant. In most cases the best guide to truth in such situations was extensive questioning of people from the local community from which generally consensus arose as to the understanding accepted within the community.

H. Publicizing a Program to Avoid Late Claims.

As has occurred in all claims programs, the Commission was faced with the problem of claimants who did not file claims within the statutory period. While the problem itself was not unique, the challenge facing the Commission initially to reduce what was potentially a major problem was unique. The Commission faced three major hurdles to overcome at the start of the program. First was the geography of the widely spaced islands of Micronesia and the lack of ready communication. Second was the basic temperament of many Micronesians accustomed to a slow paced existence where

deadlines are meaningless, and third was the psychological problem brought about by a number of previous abortive attempts to register claims which created an attitude that questioned whether yet another filing would produce any more positive results than previous attempts to assert claims.

To meet this challenge, the Commission carried out a massive education program using all available media and supplemented this with visits by Commissioners and Staff to every inhabited atoll to further publicize the program, and to assist in the filing of claims.

The result was an unqualified success as shown by the fact that some 11,000 claims were filed.* When compared to the population of Micronesia during the war, and in light of the fact that most claims filed were on behalf of families, clans or at times the population of whole islands, it is apparent that statistically, between one and two claims were filed for every family which survived the war. The number of claims filed far exceeded the number anticipated from earlier studies.

* As of December 31, 1973, 11,104 claim forms were received. This total was subsequently adjusted by consolidation of duplicate filing and addition of claim forms subsequently received. By the end of the program the Commission had acted on 10,976 claims.

To further ameliorate a potential problem, the Commission followed three policies. Initially wide latitude was given to the date of receipt of claims from remote islands, in full recognition of irregular field trip schedules. Any claim sent on the next available field trip ship after the filing deadline was accepted, even though it did not reach the Commission for months after the deadline. The Commission is aware of no claim having been rejected where it was physically impossible to get a claim to the Commission on time. Further, the Commission allowed any claim where the Commission found that the claimant had contacted a Commission representative before the filing deadline, although the written claim was not formalized until a later date. Finally, wherever a late filed claim was presented, the Commission investigated to determine if a claim had been filed on behalf of the claimant's family by another relative, and if such a family claim were found, the "late filed" claim was allowed as an amendment to the timely filed family claim.

The net result of these policies and the extensive program to publicize the program was that the Commission denied or rejected only 214 claims as late filed. Of these, approximately 25% came from the Island of Kusaie. There appeared little excuse for these claimants to have filed late claims for the Commission had maintained a Kusaian

Representative on the island for the entire year of the filing period. Additionally, when examined, it appeared that this batch of late filed claims were of dubious validity.

With the exception of Kusaie, late filed claims were scattered throughout the districts as follows:

DISTRICT	TOTAL CLAIMS FILED	LATE FILED CLAIMS
Marshalls	1688	12
Palau	1829	7
Marianas (including Guam)	1254	25
Yap	1128	26
Ponape	1406	17
Truk	3671	82

The Commission is aware that there may be individuals who did not file a claim on time and did not for three years thereafter come forward to the Commission during its existence. However, even taking this possibility into consideration,

the Commission believes that the problem of "late filed" claims is not a significant problem.

I. A Unique Claims Fund.

Although not the responsibility of the Commission, per se, the manner of the creation of the Micronesian Claims Fund for payment of Title I was also unique. By the terms of the executive agreement between the United States and Japan, and as set forth in the Act, the fund for payment of war claims was created by a joint contribution of the United States and Japan.

The contribution from the United States was \$5,000,000, matched by goods and services valued at 1,800,000 yen contributed by the Japanese. At the time of the executive agreement the Japanese contribution in yen was the equivalent of \$5,000,000. Over the period of time it took to implement the process of converting goods and services to dollars, however, the yen had increased in value as compared to the dollar. This coupled with interest accrued on yen accounts resulted in the fact that eventually the 1.8 billion yen's worth of goods and services provided a contribution of the equivalent of \$6,762,000. Thus the United States ended up contributing 42% of the fund while the Japanese contribution rose to 58%.

Beyond this anomaly of shifting exchange rates, the procedure by which goods and services were transferred into the fund was both unique and complicated. Avoiding details, essentially the Trust Territory government from their operating budget, selected and ordered goods from Japanese companies after having gained approval of the Japanese Government. Instead of paying the Japanese companies, however, the Trust Territory would deposit what they would otherwise have paid into the claims fund.

The whole process of converting Japanese goods and services into dollar contributions to the claims fund, as well as the entire responsibility for payment of the awards of the Commission, rested with the Department of the Interior and the Trust Territory Government. A final status report issued by the Trust Territory, however, confirmed that the herculean task of budget management and the placing of orders had been completed on schedule.

Over 250 orders were filled by some 22 Japanese corporations. Major purchases of ships and vehicles needed by the Trust Territory for operation and development purposes accounted for a substantial part of the total purchases. The list of items purchased to complete the project, however, includes such less glamorous, but needed, items as snail poison, nails, vegetable seeds, paint and Sony cassettes.

The process whereby goods and services were furnished for the Trust Territory, thus creating a fund for payment of individual claimants was often misunderstood. It was not uncommon for claimants who had heard that the Japanese were paying in "goods and services" to suggest that they would like a Japanese cook for a period of years, or a Honda motor scooter in settlement of their claim.

SECTION III: THE RESULTS AND THE COST

A. The Amount Claimed - A Meaningless Figure.

The Commission found the amount claimed in the claim form to be of little, if any, relevance. Many claimants included no amount in their claim form, others listed but a token figure. In contrast, three claims from the Marshalls listed in excess of \$11 billion as the amount sought.

An analysis of Title I claims shows that the amount sought per claim filed by the Trukese was 3900% larger than that sought by the Yapese, and 2400% larger than the average from all other districts. After investigation of all claims the Commission found the average Trukese Title I claim to be worth but 31% more than the average Yapese claim. Such wild distortions in the amounts claimed eliminated this figure as any kind of a valid index of the actual value of a claim.

For the sake of completeness of the record, the amounts claimed in the claim forms is set forth as follows:

Amounts claimed per district (rounded to nearest thousand dollar).

	Title I	Title II
Marianas	31,210,000	41,824,000
Truk	2,355,601,000	3,150,000
Palau	47,673,000	52,038,000
Yap	18,822,000	797,000
Ponape	15,950,000	89,000
Marshalls	83,299,000	11,050,584,000
Other	<u>658,000</u>	<u>486,000</u>
	\$2,553,213,000	\$11,148,968,000

B. Awards Made by the Commission.

The following figures show the amount of awards issued by the Commission, by district and by category.

District	Title I	Title II
Marianas	\$ 3,865,885	\$ 19,195,130
Marshalls	6,147,416	6,024,398
Palau	5,756,346	4,851,800
Ponape	1,699,973	68,280
Truk	13,547,810	395,659
Yap	<u>3,332,179</u>	<u>2,099,136</u>
Total	\$34,349,509	\$ 32,634,403

Awards by Category

	<u>Title I</u>
Land	\$ 8,141,881
Trees and Crops	6,993,073
Buildings	5,089,364
Personal Property	2,138,329
Death	8,767,869
Personal Injury	769,020
Forced Labor	2,427,500
Cash	22,299
Other	<u>174</u>
Total	\$34,349,509

	<u>Title II</u>
Land, Trees & Crops	\$ 31,400,741
Buildings	983,331
Personal Property	95,629
Death	64,100
Personal Injury	35,680
Uncompensated Labor	4,222
Cash	4,879
Postal Savings	45,790
Other	<u>31</u>
Total	\$ 32,634,403

C. The Cost of Implementing the Program.

The nature of the Micronesian Claims Program was such that there were many reasons why it might be expected to have been an expensive program to implement.

A five man, rather than a three man Commission was prescribed by the Act. The cost of transporting and maintaining American personnel overseas exceeds that required to support personnel in the United States. The program operated over a four year period of high inflation.

The main challenge to implementing the program, however, lay in the vastness of the task prescribed by the Act. The requirement to notify all potential claimants and assist them in filing claims had to be carried out against the realities of the difficulty of communication in Micronesia. To notify and assist claimants required time, effort and personal travel throughout the remote areas of the Trust Territory, even before the principal job of adjudication could begin.

The Commission initially sought a method of adjudicating claims which would not require extensive investigation of individual claims. As previously set forth, the Commission became immediately aware that the amount claimed in a form had no rational relationship to the amount of an appropriate award. An initial screening of claims was accomplished to

determine claim forms which appeared to be complete enough to allow immediate adjudication without further information. Approximately ten percent of the claims fell into this category and they were immediately adjudicated. As to the rest, to follow the mandate of the Act to "adjudicate" claims on an individual basis required interviews with claimants both to clarify what was in the claim forms, and to allow the claimant to present any amendment to the claim to eliminate subsequent objection to the decision.

Even when adjudication was completed, the Act required the personal delivery of the decision to the claimant, and the reconsideration of any decision to which the claimant objected. Only the most efficient use of manpower, and intensive scheduling of claim development by geographic location allowed the Commission and staff to carry out the legislative mandate within the time prescribed.

The Commission takes pride in the fact that it completed its job almost three months earlier than the deadline set by the Act. This was possible in part because the Commission was a working Commission. In addition to the statutory job of approving decisions in 11,000 claims, the individual Commissioners rotated out into the field to investigate claims, interview claimants and hear objections.

Through the efforts of the individual Commissioners, and a dedicated staff who paid little attention to the constraints of a forty hour week, the overhead cost of implementing the program was kept within a reasonable limit. The total amount spent was \$2.5 million, some 12% less than appropriated. As compared with the funds presently available for distribution, the program was administered with a 7.9% overhead cost. In the event of full payment of United States obligations under Title II, the overhead figure would be reduced to 5.6%. The overhead cost per claim amounted to \$230.

An average of 7.2 staff attorneys were employed by the Commission during the period of adjudication of claims. The average amount of attorney's time expended per claim (including all time spent on field trip ships, interviewing claimants, doing legal research, assisting in delivery of decisions, conducting hearings on appeals, as well as reviewing and evaluating the individual claim and writing up a proposed decision) totaled 4 hours and 35 minutes.

The Commissioners and the staff were all aware that their employment would terminate with the completion of the program. The harder they worked, the sooner they would find themselves unemployed. Despite this knowledge, the staff of

- 54 -

the Commission extended themselves throughout, allowing early completion of the program. The Commission owes a debt of gratitude to this dedicated group of employees.

18- 415604