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TO : Members, Micronesian Independence Coalition  
FROM : F. T. Uludong  
SUBJECT: Analysis of the DRAFT COMPACT OF FREE ASSOCIATION

The Micronesian Independence Coalition last February officially stated that it would support and recommend free association to the chiefs and people of Micronesia, provided, however,

1. That the association be free and consistent with the four basic principles and legal rights of Micronesia as established by the Third Congress of Micronesia;
2. That the compact or treaty or association must provide for a plebescite after the compact or treaty comes into force; and
3. That the compact or treaty of association must provide for cessation of all military activities in Micronesia ten years after the assumption of association.

The detailed explanation of the Coalition's position on national sovereignty, self-determination, constitution, termination, eminent domain, foreign affairs and defence matters was also presented February 26, 1972 and can be found in the Journal of the HOUse of Representatives, Fourth Congress of Micronesia, Second Regular Session, 1972 in pages 363 to 367 and in the Senate Journal of the same session in pages 309 to 313. It is suggested that the members reread the position paper.

With the above as background, the following is offered as an analysis of the current congressional discussion on the future political status vis-a-vis the proposed partial compact of free association.

This session the Congress has before it the proposed compact of free association with the United States that has been four years in the making. A great deal of discussion is needed regarding the proposed, partial compact of free association between Micronesia and the United States.

TITLE I - INTERNAL AFFAIRS

Section 101 provides the people of Micronesia the right to adopt their own constitution and form of government but insists that such constitution and government shall be consistent with the Compact.

Section 102 states that the Government of Micronesia shall full responsibility for and authority over the internal affairs of Micronesia but, as we shall see later, the Government of Micronesia will not enjoy

"full" responsibility and authority over Micronesia's internal affairs.

Section 103 provides for procedures in the event of termination but procedures are not cited as the title dealing with this question is not in the report. The present position of the Coalition is that of unilateral termination which is only possible with two-third vote by the Congress and another two-third vote by a popular referendum. This arrangement exists with respect to the association between the Cook Islands and New Zealand.

AS POINTED OUT IN THE COALITION'S POSITION PAPER, SUCH AN ARRANGEMENT MAKES THE COMPACT, RATHER THAN THE CONSTITUTION, SUPREME LAW IN MICRONESIA, THUS, OUR OWN CONSTITUTION BECOMES SUBSERVIENT TO THE COMPACT. If this provision is accepted by the Congress and ratified by the people of Micronesia, Micronesia will enjoy only limited internal sovereignty. Genuine self-government, therefore, is non-existent in both theory and practice as the United States, who has the authority and power, can always nullify any law, policy, program, or action that it deems inconsistent with the other provisions of the compact. So far the proposed partial compact is silent as to any machinery which will deal with any "inconsistency" problem that might arise in the future.

#### TITLE II - FOREIGN AFFAIRS

Section 201 (a) gives the United States "full responsibility for and authority over all matters" in Micronesian foreign affairs. Section 201 (b) states that the U. S. will accommodate the "expressed" wishes but only "to the extent feasible without prejudice to the fulfillment of its over-all foreign affairs responsibilities." Section 201 (c), while saying that the United States would avoid to "the greatest extent possible" any interference in internal affairs of Micronesia, implies that the U. S. will interfere in Micronesian internal affairs if its foreign policies call for it--another limitation on already limited internal sovereignty. Section 202 gives the United States the right to initiative of applying to Micronesia international treaties and for those which relate "exclusively or predominantly" to Micronesia, Micronesia's own consent is only then required. Section 203 (c) provides for some delegation by the United States of some

Micronesia's own foreign affairs responsibility to Micronesia, an elaboration of which is found in Annex A. (See discussion on Annex A).

Section 204 (a) clarifies that even in its exercise of the already limited responsibility over its own foreign affairs, as provided under Section 203 (c) and in Annex A, Micronesia is further restricted because it has to carry out its limited responsibility "in accordance with terms of that Annex," that is Annex A.

In Section 204 (b), as if the restrictions already placed in the preceding provisions is not enough, the policies and activities of the Government of Micronesia under Section 204 (a) are placed under another restrictions in that they "they shall not be in conflict with U. S. foreign policy and security interests." To make sure they shall not conflict, paragraphs II, III, and IV of Annex A, to be discussed later, establish an elaborate complex and a-block-at-every-turn procedure.

The position of the Coalition, as expressed in Palau, is clear on foreign affairs. It states that as sovereign, the Micronesian State will have full responsibility and authority over its foreign affairs; however, in a free association with another country, it will delegate control over specific areas of responsibilities to another country. This position would allow Micronesia to exercise responsibilities in areas not delegated to the United States. Micronesia should do the delegation of responsibility and not the United States.

#### TITLE III - DEFENCE

Section 301 gives the United States "full responsibility and authority over all matters" relating to defence matters of the United States. Section 302 (a) defines such responsibility and authority to include defence of Micronesia, the right of the U. S. to prevent other powers from using Micronesia and the use of the Micronesian lands for U. S. bases. Section 302 (b) allows the U. S. to conduct "all activities and operations on the lands and waters" in Micronesia. As self-evident, these two sections literally place Micronesia in a position similar to any state or territory of the United States in terms of the U. S. power to conduct military activities and operations during emergencies or

under Marshall law.

Section 303 (a) defines such responsibility and authority to include "exclusive right to establish, maintain and use military areas and facilities in Micronesia, the unencumbered right to protect all United States military installations in Micronesia, and full freedom of use and access to all facilities and areas used for the conduct of military activities." (Emphasis mine) As this subsection is worded, there is just no way Micronesia can control U. S. military activities and Micronesia, for example, cannot legally stop the U. S. from installing nuclear or other highly dangerous weapons in Micronesia.

Section 303 (b) assures the United States rights and uses of lands and waters specified in Annex B (which shall be discussed later). Under this Section the people of Micronesia or the specific district named in Annex B will have no way of objecting to such rights and uses.

Section 303 (c) assures the U. S. that all its requests for rights and uses of additional lands and waters will always be met. No provision gives the people of Micronesia or a particular area in which such land and water needs are located the legal right to deny the U. S. requests. This could mean the U. S. can ask to use Truk Lagoon or the entire Babeldaob and the people of Micronesia and these two districts have no legal basis to deny the U. S. requests. The section does not provide environmental protection to our lands and waters in the event they are used.

Section 303 (d) again stipulates that agreements in Annex B shall not contain any limitations on the U. S. rights and uses of lands and waters for military purposes. This is another statement designed to protect the U. S. defence interests.

Section 303 (e) provides that the use of lands and waters is solely at the "option of the United States" and Micronesia will have no say as to when, where, how such land and waters will be used.

Section 304 (a), (b) and (c) restate the U. S. rights to use of land and waters in Micronesia and specifically in subsection (b) states that the U. S. can invite military U. S. or other countries to use the lands and waters already accorded by Micronesia to the U. S. Section 304

(b) was never mentioned by the U. S. at either Hanoi or Peking negotiations and could possibly mean another CIA operation like the CIA operation in Saipan which was used to train other nationals.

Section 305 deals with the status of military and civilians connected with U. S. military activities but says that agreement on their status will come into force with the Compact. The U. S. has yet to present such an agreement. The Section says nothing about the status of non-U. S. military and civilian personnel who might be brought into Micronesia.

Section 306 permits Micronesians to volunteer in U. S. armed forces and subject them to induction if they become permanent residents of the United States. What the U. S. military does all over the world is a matter of personal opinion but it is suggested that since Micronesia has no enemies, its people should take no part in the armed forces that commit wars of aggression in the guise of "freedom and democracy" against many poor people in other parts of the world, people who are and live just like Micronesians.

Section 307 contains an appeasement provision that states that the U. S. shall accommodate the expressed wishes of Micronesia but only "to the extent possible without prejudice to the fulfillment of its defense responsibilities."

The stated position of the Coalition is that: "The Coalition maintains that survival of Micronesia as a people and a nation is only guaranteed by absence of war on its shores in the future. The Coalition is constantly reminded of the sufferings the people of Micronesia were subjected to during World War Two and strongly feels that steps should be taken to insure that no Micronesian be caught in another foreign war against his will. Accordingly, the Coalition proposes that ten years after the compact comes into force, Micronesia be declared a neutral zone by the United States and other nations and that the U. S. will cease all its military activities within Micronesia at the same time. With respect to specific military activities, the Coalition will not allow in Micronesia production, storage, transportation or use of nuclear weapons, poisonous

gas and other agents of biological warfare. Such controls will have to be imposed on foreign soldiers and their activities in order to insure that the people of Micronesia and their cultures will not suffer harmful effects of their presence in Micronesia."

ANNEX A - Delegation of Foreign Affairs Authority to Micronesia.

This annex specifies the foreign affairs responsibilities which are delegated to Micronesia and establishes the procedures whereby the Government of Micronesia can exercise them.

Paragraph I (a) states that Micronesia may seek membership in regional organizations, UN agencies and subsidiaries in which the U. S. is a member, and in organizations in which the U. S. is not a member, it will give "sympathetic consideration" to application for membership by Micronesia. The U. S. offers to assist training Micronesians to participate in these organizations. Paragraph I (b) permits Micronesia to conclude cultural, educational, financial, scientific or technical in nature with international organizations in which Micronesia is a member. Paragraph I (c) allows Micronesia to establish temporary or permanent commercial representation in foreign countries or accepts such representation from other countries. Paragraph (d) allows to Micronesia, upon request by Micronesia and approval by the United States, to conclude with foreign countries agreements involving commercial, cultural, educational, financial, scientific or technical matters.

Paragraphs II, III and IV set up and explain the procedures by which Micronesia can exercise this delegated authority in foreign affairs. First, Micronesia must inform the United States of its intentions or proposed action and later keep the United States "fully" informed of the progress of such activities. Second, the United States will "promptly" notify Micronesia if the proposed activity "appears" or "is likely" to be in conflict with the U. S. international commitments, responsibilities or policies. The United States will consult Micronesia, if requested, before issuing the notification. Finally, upon such notification, Micronesia will refrain from or terminate such activities.

The "sympathetic consideration" which the U. S. is required to give to Micronesian requests for membership in organizations in which the U. S. is a member is far from a guarantee that the U. S. will approve or ever seriously consider the matter, although there should not be any reason for the U. S. to deny Micronesia's request if the U. S. is a member of these organizations. Micronesia is not permitted to make agreements with organizations in which it is not a member and will not make agreements with other countries unless the U. S. approves. Regarding procedures, the U. S. is required to "promptly" notify Micronesia if there is any conflict between its requests and U. S. commitments, responsibilities and policies but "promptly" is not defined and may mean a month to several years. And it is very easy for the U. S. to conjure up a "conflict" as the U. S. has untold number of commitments, responsibilities and policies. Micronesia has no other recourse and will have to terminate or refrain from pursuing its own interests if the U. S. says there is a "conflict" between Micronesian request and the U. S. commitments, responsibilities and policies.

While most of Micronesia's foreign affairs interests needs appear to be met in this section, U. S. must give its prior approval to any Micronesian-initiated activity in foreign affairs. Moreover the procedure, which looks in paper to be simple, is actually long-drawn out process. So where in theory, Micronesia appears to have some say in its foreign affairs, in reality Micronesia will be in a worse state of affairs in free association than presently under the Trusteeship Agreement.

#### ANNEX B - U. S. MILITARY REQUIREMENTS

This annex specifies the U. S. military land requirements in Micronesia, namely in Palau and the Marshalls. These stated U. S. requirements leave many questions unanswered at this time when a status of forces agreement still has to be negotiated and lease guidelines to be drawn up. However, more importantly is the question as to whether the people of these two districts will go along with these agreements.

The rights accorded the U. S. to use all harbors, waters and air-fields throughout Micronesia is a blank check, unheard of anywhere in

the world in a relationship between two countries. The one place where such rights are exercised by a country is within its borders. The rights to use Coast Guard facilities should be defined to exclude expansion of present sites and other uses of such facilities.

TITLE IV - FINANCE  
(U.S. Proposal)

Section 401 states that the U. S. agrees to provide monies, as yet an unspecified maximum amount, annually to Micronesia. The monies will be made in three different forms - a) monies for unrestricted use by the Central and district governments b) funds for U. S. Federal programs extended to Micronesia and c) funds in payment for agreements concerning Micronesian lands and waters. In Section 402 the U. S. states that it will contribute on a matching fund basis as yet an unspecified amount of money to District Economic Development Fund. Section 403 says that the U. S. will extend services of the U. S. Weather Service, U. S. Postal Service and U. S. Federal Aviation Administration. In Section 404 the U. S. proposes that provisions of Sections 401 and 402 will be subject to review and amendment every five years. There are several obvious questions: 1) What is the maximum ceilings for monies provided for under Section 401 and 402? What are the guarantees that they will not be changed or cuts by the U. S. Congress as they will be appropriated annually? Are the U. S. Federal programs, requested by Micronesia, going to be controlled in Washington?

TITLE VI - TRADE AND COMMERCE  
(U. S. Proposal)

Section 601 gives Micronesia the power to control its own import duties and regulations but subject only to compatibility with relevant U. S. international obligations. As Micronesia is expected to do a lot of trading an explanation of "compatibility" should be made. Who is going to define "compatibility" and what happens if Micronesian laws and regulations are not compatible with the U. S. international obligations?



Section 602 (a) says that the U. S. will apply appropriate international treaties and agreements in Micronesia regarding air and maritime commerce. Who is going to define "appropriate" treaties and agreements?

Section 602 (b) states that the U. S. agrees to obtain consent of Micronesia before granting authority to any U. S. or foreign air carrier to and from Micronesia. What about international shipping lines? Will U. S. agree to those air and maritime carriers which Micronesia want to operate to and from Micronesia?

In Section 602 (c) and (d) needs not be mentioned. Of course, Micronesia will be responsible for its own affairs.

TITLE VIII - IMMIGRATION AND TRAVEL  
(U. S. Proposal)

In Section 801 Micronesia may establish, amend or revoke regulations and laws concerning immigration and entry of non-Micronesians into Micronesia but they will have to be consistent with U. S. foreign affairs and defence responsibilities. American citizens will enjoy the same rights of entry, residence and exit in and from Micronesia as Micronesians who have become American nationals have in the U. S.

Section 802 states that Micronesians who have become American nationals are free to enter, reside in or leave the United States while Micronesian citizens will be treated like other aliens.

The big question here is that why American citizens are free to enter, reside in or leave Micronesia while Micronesian citizens are not accorded the same rights in the United States.

CONCLUSION

One thing that is clear in the proposed, partial Compact of Free Association, as submitted by the Joint Committee on Future Status, is that the SOVEREIGNTY of Micronesia, as a political state, is not recognized by the United States. Of course, the people of Micronesia will exercise the right of self-determination at the plebescite on the compact and, if it can be agreed on, at the termination of the association, but during the period of association, Micronesia is virtually a member of the United States political family. Even though the Compact states that the Government of Micronesia "shall have full responsibility for an authority

over the internal affairs of Micronesia", such internal sovereignty is circumscribed in almost every area. Circumscription of the internal sovereignty is made or is allowed by the following provisions:

1. "Provided that the constitution and laws of Micronesia shall remain consistent with the provisions of this compact" (Title I, Section 101)
2. "The United States will avoid to the greatest extent possible any interference in those internal affairs pursuant to its foreign affairs authority. (Title II, Section 201 (c))
3. "The Government of Micronesia will have the authority to establish, change or eliminate import duties and other regulations including charges, laws and conditions governing the importation of and commerce in goods from outside of Micronesia, subject to compatibility with relevant United States international obligations. (Title VI, Section 601 - U. S. Proposal on Trade and Commerce).
4. "The Government of Micronesia may establish, amend or revoke laws and regulations concerning immigration or entry of non-Micronesians into Micronesia, consisting with the foreign affairs and defense responsibilities of the United States (Title VIII, Section 801 (a))

Because internal sovereignty is not an isolated thing, the fact that the United States is given "full responsibility for and authority over" both the foreign affairs and defense of Micronesia is in itself a limitation on the internal sovereignty of Micronesia. Moreover, the annual funding to be provided to Micronesia will to a large extent restrict Micronesia's internal sovereignty.

External sovereignty is clearly non-existent as the United States will have "full responsibility and authority" over Micronesia's foreign affairs and defense. Free association, by its very nature, limits external sovereignty but this should only be done through delegation of these responsibilities and authority, and not by establishment of such rights as made in Title II of Foreign Affairs and Title III on Defense.

The proposed compact denies Micronesia its sovereignty in foreign affairs and places constraints on it in internal affairs. In other words, Micronesia has no external sovereignty and enjoys limited but not full internal sovereignty.

As far as defense is concerned, the proposed partial compact grants the United States unlimited power, right and freedom to use Micronesia

for its military purposes. This is an intolerable position. In free association, Micronesia does not become part of the United States and therefore is not required to be in such a position.

As presented to the Congress, it is not only incomplete, as the Joint Committee admits it, but it is also replete with ambiguities and vague wording and as such it precludes full and sensible consideration by the Congress of Micronesia.

In the final analysis, the proposed Compact in these two areas, foreign affairs and defense, is worse than the Trusteeship Agreement.

Date:

Aug 25, 1972

Submitted by:

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