# Termination of the U.S. Pacific Islands Trusteeship*

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## I. INTRODUCTION

On March 15, 1973, during a House Subcommittee on Territorial and Insular Affairs hearing on executive negotiations to end America's United Nations trusteeship over certain former Japanese Pacific islands, committee member Rep. Jonathan B. Bingham disclosed that there existed "a very strong general feeling among the members of the United Nations in opposition to any sort of breakup of a trust territory."[1] During World War II, American forces seized the islands which had been mandated to Japan twenty years earlier by the League of Nations,[2] and subjected them to occupation.[3] In 1947, Congress authorized[4] presidential approval[5] of a trusteeship agreement[6] for the war-devastated Mariana, Carolina, and Marshall Island chains in the western Pacific, collectively known as Micronesia. Fifteen years of indifferent military and civilian administration[7] was followed by the Kennedy Administration's concern for the impoverished region. The desire for political self-determination in the area led to a series of trusteeship-termination discussions in 1969, threatening the area's fragile political unity.

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* This article is the second of two parts of Micronesia, the United States and the United Nations by Mr. Green. The first part appeared in the previous issue.

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1. Progress Report on Negotiations Concerning the Future Status of the Trust Territory of the Pacific Islands, *Hearings Before a Subcomm. of the House Committee on Interior and Insular Affairs*, 93d Cong., 1st Sess., ser. 94, pt. 3, at 21 (1973).

2. On December 17, 1920, Japan acquired a League of Nations Class "C" mandate over the three island groups with administrative responsibility to the League's Permanent Mandates Commission. *Annual Report to the League of Nations on the Admin. of South Sea Islands Under Japanese Mandate*, at 9 (1930). In 1951, Japan renounced its claim to the islands. Treaty with Japan, September 8, 1951, 3 U.S.T. 3169, T.I.A.S. 2490, 136 U.N.T.S. 45 (1952).

3. *See* Hague Regulations, Sec. III, Arts. 42 to 56 (1907). Other guidelines are scarce. M. GREENSPAN, MODERN LAW OF LAND WARFARE 209 (1959).

4. H.R.J. Res. 233, passed on July 18, 1947 as Public Law 204, 80th Cong., 1st Sess. (1947).

5. Exec. Order No. 9,875, 3 C.F.R. 658 (1947).

6. Trusteeship Agreement for the Former Japanese Mandated Islands, July 18, 1947, 61 Stat. 3301, T.I.A.S. 1605, 8 U.N.T.S. 189 (1947), hereinafter cited as the "1947 Agreement."

7. Green, *America's Strategic Trusteeship Dilemma and Its Humanitarian Obligations*, 9 TEXAS INT'L L.J. 19, at 22-30 (1974).

## II. THE CONGRESS OF MICRONESIA

The Congress of Micronesia, established as a law-making body with restricted powers,[8] held its first session in July, 1965.[9] Disregarding President Johnson's plans for the Trust Territory's political destiny,[10] the new legislature established a Future Political Status Commission.[11] The United States Senate approved President Johnson's proposal for a Presidential Status Commission,[12] but the House withheld its support.[13] The Micronesian group also undertook to resolve the issue of political status.[14]

In July, 1969, the Commission's final report recommended "that the Trust Territory be constituted as a self-governing state and that this Micronesian state—internally self-governing and with Micronesian control of all its branches including the executive—negotiate entry into free association with the United States."[15] Any arrangement other than free association would bear the stigma of quasi-colonialism, and as a result "prove degrading to Micronesia and unworthy of America."[16] If the islanders were unable to acquire free association, the alternate status of independence was also available.[17] Thus, the Commission rejected any form of integration with the United States, including an American offer of commonwealth, modeled upon the status of Puerto Rico, which would preserve United States hegemony over Micronesia's highly-valued lands. The leaders of the Micronesian Political Status Delegation[18] distilled their central objective of free association into four basic principles and legal rights:

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8. Department of the Interior Order No. 2882 (1964). The Administration subsequently widened its authority to include the power of appropriation over locally-generated incomes. Department of the Interior Order No. 2918 (1968). It has since acquired advisory discretion over preparation of the entire annual trust-territorial budget.

9. For an authoritative account of its creation, *see* N. MELLER, CONGRESS OF MICRONESIA, chs. 3 to 9 inclusive (1969), and Robbins, *Be It Enacted: The New Legislative Branch*, 13 MICRONESIAN REP. 19 (1969).

10. In 1967, President Johnson proposed establishment of a commission to recommend the best means of allowing the territory's peoples to determine their own future, including a plebiscite no later than June 30, 1972. Lane, *Micronesia and Self-Determination*, in NATIONAL SECURITY AND INTERNATIONAL TRUSTEESHIP IN THE PACIFIC, at 72. 73 (W. Louis ed. 1972). Micronesian leaders expected the commission to consult with their constituents and determine the political alternatives suitable for the territory. H.R.J. Res. 47, 1st Cong. Micron., 2d Reg. Sess. (1966).

11. S.J. Res. 25, 1st Cong. Micron., 3d Reg. Sess. (1967).

12. S.J. Res. 106, 90th Cong., 1st Sess. (1967), introduced by Sen. Henry Jackson (D. Wash.).

13. Mink, *Micronesia: Our Bungled Trust*, 6 TEXAS INT'L L.F. 181, 199 (1971).

14. Commission on Future Political Status, Congress of Micronesia, Interim Report (1968). This included committee scrutiny of various associated statuses, among them those of the Cook Islands to New Zealand, and Puerto Rico to the United States.

15. Report of the Commission on Future Political Status, 3d Cong. Micron., 2d Sess., at 5 (1969).

16. *Id.* at 8.

17. *Id.* at 17.

18. Established by Pub. Law 3C-15, 3d Cong. Micron., 2d Reg. Sess. (1969).

(1) that sovereignty in Micronesia resides with its people and their duly-constituted government;

(2) that the people of Micronesia possess the right of self-determination and may therefore choose independence or self-government in free association with any nation or organization of nations;

(3) that they possess the right to adopt their own constitution or governmental plan at any time, and;

(4) that free association should assume the form of a revocable compact, terminable unilaterally by either party.[19]

These principles attained priority as "essential and non-negotiable" components of any freely-associated relationship the Micronesians might enter into with the United States.[20] Despite their endorsement of "an essentially American" system of government, the delegation now sought to replace the tripartite republican form with an executive-council structure[21] similar to British parliamentary models.

Three years of United States—Micronesian public debate over the termination of the 1947 agreement culminated in a Draft Compact of Association in 1972. According to a book authored by former Interior Department Secretary Walter J. Hickel, President Nixon's National Security Advisor, Henry A. Kissinger, argued for the retention of eminent domain against a pledge to the Micronesians of full compensation for land taken from them after World War II, since "there are only ninety thousand people out there."[22] The embarrassed Americans yeilded the eminent domain power to the Micronesians together with control over internal affairs, but held out on foreign relations and defense responsibilities.[23] Micronesians could govern themselves internally only in fulfillment of the Compact, a limitation on the still-unwritten constitution itself. Although American control of foreign relations and defense implied restrictions compromising *ipso facto* the principle of sovereignty,[24] the territorial delegation accepted this infringement as a voluntary but sovereign decision. A compact of free association, rather than the United States Constitution, became the model with which Micronesia's founding instrument would share legal consistency.[25]

The Micronesian negotiating delegation held fast to its unilateral termination principle,[26] engendering an American observation that "the executive

19. Report of the Political Status Delegation, 3d Cong. Micron., 3d Reg. Sess. at 11 (1970).

20. *Id.*

21. Report of the Political Status Delegation, *supra* note 19, at 49.

22. W. HICKEL, WHO OWNS AMERICA? 208 (1971). Kissinger became Secretary of State on September 22, 1973.

23. Draft Report of the Joint Committee on Future Political Status, 3d Round Negotiations in Hana, Maui, to the Congress of Micronesia, 4th Cong. Micron., 2d Reg. Sess., at 17 (1971).

24. *Id.* at 18.

25. *Id.* at 20; *also*, Report of the Commission on Future Political Status, *supra* note 15, at 41, 44.

26. Report of the Political Status Delegation, *supra* note 19, and accompanying discussion at para. (4) *et seq.*

branch of the United States government may not be able to persuade the United States Congress to appropriate money for an area where there is no assurance of the length or period of time that the United States will be in that area."[27] It relented partially on this issue during subsequent conversations, however. The Compact of Association could now be voided mutually before an initial period of five years had elapsed "to insure that the relation of free association is given a fair test." For their part, United States negotiators proposed a bilateral termination phrase of fifteen years' duration. Upon its liquidation, a prenegotiated security treaty would enter into force, specifying terms of a continuing American military presence.[28]

In July, 1972, delegations from both sides formed a Joint Drafting Committee in Washington to draw up a tentaive compact reflecting their previous agreement on Micronesian internal-affairs, together with virtually unhampered American foreign affairs and defense control.[29] Draft compact provisions at present form a preamble, twelve titles, and three annexes.[30] The first authorizes the Compact's approval by the Micronesian people as their sovereign right to self-determination,[31] thereby creating an instrument[32] determinative of the respective rights and responsibilities of the governments of Micronesia and the United States. Title I, International Affairs, sets out the Micronesians' right to adopt their own constitution and form of government and to amend and change these at any time, but only if the constitution and laws of Micronesia remain consistent with the Compact, guaranteeing fundamental human rights and an administrative structure consistent

27. Draft Report, *supra* note 23, at 21.

28. Report of the Joint Committee on Future Political Status, 4th Round Negotiations in Koror, Palau, to the Congress of Micronesia, 4th Cong. Micron., 2d Spec. Sess., at 16 (1972).

29. Final Joint Communique, Washington Talks, August 1, 1972, in Department of the Interior, Future Political Status of T.T.P.I.: 5th Round of Micronesian Status Talks in Washington, D.C., July 12 to August 1, at 20, 21 (1972).

30. *Id.* at 22-35, and Department of the Interior, Future Political Status of T.T.P.I.: 7th Round of Micronesian Status Talks in Washington, D.C., Nov. 14-21, Appendix B, at 37-51 (1973).

31. According to Dobbs, Micronesia should be considered sovereign either under the Compact or through some other freely-associated relationship. Dobbs, *A Macrostudy of Micronesia: The Ending of a Trusteeship*, 18 N.Y.L.F. 139, 205 (1972). However, any provision in the Compact of Association requiring termination by mutual consent would appear to compromise the traditional definition of sovereignty by circumscribing Micronesia's ability to enter into relations with other states. Nevertheless, its unique status may assume a form of differential personality, where "personality" in a shorthand phrase for the sum of faculties possessed by a legal actor ranging according to acts performable. A scale of legal competence then emerges, in which the independent, fully-sovereign state occupies the top while other entities (such as freely-associated Micronesia) claim intermediate positions, each determined by political fact. If in certain respects a territory claims a separate political identity, international law endows it with those faculties of legal action necessary to effect this political reality. Broderick, *Associated Statehood—A New Form of Decolonization*, 17 INT'L & COMP. L.Q. 396 (1968).

32. The Compact may not take the legal form of a treaty, but requires House approval nevertheless.

with democratic principles.[33] Although full Micronesian responsibility for and authority over internal affairs are recognized by the draft compact,[34] a salient feature of its foreign affairs and defense provisions is the degree of authority and responsibility delegated to the United States within these traditionally sovereign areas of concern.[35] In regard to the latter, United States responsibility will include

> (1) the defense of Micronesia, its people and territory from attack or threats of attack;
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> (2) the United States right to prevent third parties from using Micronesian territory for military purposes;
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> (3) usage of military bases established in Micronesia for American security and the support of its responsibilities for the maintenance of international peace and security.[36]

The draft Compact of Association remains tentative. Its drafters failed to anticipate the difficulties which arose after only eight days of negotiations.[37] Several members of the Micronesian Congress challenged the nature and extent of foreign affairs and defense control accorded the United States, directing their Joint Committee to negotiate with the Americans for the establishment of the new polity as an independent, sovereign state, and to continue negotiations for free association.[38] As an apparent gesture of conciliation, however, it endorsed the progress achieved to date.[39] The United States delegation noted that the American Congress could delay any endorsement of the Compact until a clear referendum from the people of Micronesia had been taken,[40] and in a departing rejoinder, requested a pause in the talks.[41] At the United Nations Trusteeship Council's Fortieth Session in New York the following spring, a dissenting Micronesian legislator asserted that the United States had "refused" to explore the independence issue.[42] The Interior Department's Assistant Secretary for Public Land Management, under whose aegis trust-territorial matters reside, insisted before United Nations Pacific Islands Visiting Mission officials that independence would be one of the options of a future plebescite.[43] The draft Compact sustained a further blow during a November 1973 round of talks in

33. Agreed Draft, in 5th Round Proceedings, *supra* note 30, Title I, Sec. 101.
34. *Id.*, Title I, Sec. 102.
35. *Id.*, Titles II, III, Secs. 201, 301.
36. S.J. Res. 91, 4th Cong. Micron., 2d Spec. Sess. (1972).
37. As a conciliatory gesture, the United States transferred title to trust territorial public lands in November 1973 to those districts requesting such action. HIGHLIGHTS, November 15, 1973, at 3.
38. S.J. Res. 117, 4th Cong. Micron., 2d Spec. Sess. (1972).
39. Report of the Joint Committee on Future Political Status, 6th Round Negotiations in Barbers Pt., Oahu, Hawaii, to the Congress of Micronesia, 4th Cong. Micron., 2d Spec. Sess., at 6 (1972).
40. *Id.* at 28.
41. *Id.*
42. U.N. Doc. T/Pv. 1413, at 36, 37 (1973).
43. *Report of the United Nations Visiting Mission to the Trust Territory of the Pacific Islands*, U.N. Doc. T/1620, at 156 (1964).

Washington, when Micronesian participants conditioned further discussion of the proposed document upon settlement of wide differences over post-trusteeship financial aid. "Honest conceptual differences" and disappointed expectations with regard to this issue[44] have left the subsequent course of these conversations in question, despite Micronesian expressions of optimism over resumption of the talks.[45]

## III. MARIANAS LOCALISM: THE ISLANDS AS UNITED STATES COMMONWEALTH

The emergence throughout Micronesia of competing post-trusteeship political status movements[46] has further complicated the issue of political status. Moreover, the ethnic and administrative boundaries coincide wholly with those of the six districts. The northern portion of the Marianas trusteeship, for example, occupies the vanguard of the region's pro-association forces. The two Mariana Islands representatives to the Micronesian legislature submitted a separate petition for "membership in the United States political family." The dissenting members of the Joint Committee requested the United States to open separate discussions with representatives of their district.[47] Senator Edward Pangelinan, emergent leader of that faction, further stated that the Marianas leadership had initiated discussions for a separate post-trusteeship political settlement;[48] a fact which Ambassador Williams acknowledged.[49] This action characterizes a culture considerably more westernized than its ethnic counterparts to the southwest and southeast.[50] Navy administration apart from the territory's mainstream between 1953 and 1962 had weakened the Marianas' awareness of common territorial identity.[51] Three separate referenda conducted throughout the district in 1961, 1963, and 1969 to assess collective sentiment on the status-resolution issue

44. Statement of Ambassador F. H. Williams, Chairman of the U.S. Political Status Delegation at Closing Plenary Session, November 21, 1973, in 7th Round Proceedings, *supra* note 30, at 10.

45. Pacific Daily News, Dec. 22, 1973.

46. Deadlock in Micronesian Talks, 3 FRIENDS OF MICRONESIA 8 (1973).

47. Statement of Position, Mariana Islands District Representatives to the Joint Committee on Future Status, in Department of the Interior, Future Political Status of T.T.P.I.: Fourth Round of Micronesian Status Talks in Koror, Palau, April 20-23, at 61 (1972). The entire Marianas delegation to the Congress of Micronesia, but for a senior member, momentarily boycotted a special session called by the territory's High Commissioner, to support their District Legislature's announced intention to seek association with the United States. HIGHLIGHTS, May 15, 1971, at 1-3.

48. Senate Journal, 5th Cong. Micron., 1st Reg. Sess., entry for February 17, 1973.

49. Reply of Ambassador Williams, Chairman of the U.S. Delegation, to Letter and Position Statement of Marianas Representatives on the Future Political Status of the Mariana Islands District in Executive Session, April 12, 1972, Koror, Palau, in Fourth Round Proceedings, *supra* note 47, at 63 (1972).

50. N. Bowers, *Problems of Resettlement on Saipan, Tinian, and Rota*, 31 COORDINATED INVESTIGATION OF MICRONESIAN ANTHROPOLGY 90 (1950), and N. MELLER, CONGRESS OF MICRONESIA, *supra* note 9, at 321.

51. Report of the U.N. Visiting Mission, U.N. Doc. T/1582, at 3 (1961).

revealed strong desires for a "close" political relationship with the United States.[52]

Soon after the Marianas Congressional Delegation placed its initiative on record, the United States approved its request for separate talks[53] and the district's legislature shortly thereafter created an autonomous Future Political Status Commission empowered to conduct negotiations with its American counterpart.[54] Despite a Micronesian congressional demurrer that it was the only body legally entrusted with negotiations on behalf of all or part of the Territory,[55] the newly-created commission optimistically launched its first plenary round with the American delegation on Saipan in December, 1972. The negotiators raised the issues of eminent domain, military installations, public lands, economic development and financial support, without, however, recommending any specific political resolution of its district-level trusteeship status.[56]

In 1973, lengthy and detailed communiques on the second and third round of political status debates at Saipan evidenced the crystallizing of a post-trusteeship, United States—northern Marianas relationship, with a "commonwealth arrangement" defined by formal agreement vesting sovereignty in the United States.[57] The fundamental provisions of this commonwealth arrangement may be varied only by mutual consent,[58] since Congress lacks plenary authority in this regard.[59]

The United States Congress' constitutional power to dispose of and make all needful rules and regulations respecting the territory and property of the United States[60] applies to the future relationship

> subject to the two delegations arriving at an acceptable arrangement under which modification of fundamental provisions of the formal agreement establishing the commonwealth relationship is made only by mutual consent and subject further to the reservation of the Marianas Political Status Commission that it will explore means to reconcile the plenary powers of Congress under Article IV, Section 3, Clause 2 [of the Constitution] with the exercise by the Commonwealth of the Marianas of maximum self-

52. Remarks of Senator Olympio T. Borja before the 39th Session of the U.N. Trusteeship Council, U.N. Doc. T/Pv. 1391, at 57 (1972).

53. *Id.* at 47 (Remarks of Senator Pangelinan).

54. Dist. Law 3-124, 3d Mar. Is. Dist. Leg., Spec. Sess. (1972).

55. S.J. Res. 38, 5th Cong. Micron., 1st Reg. Sess. (1973). The Mariana Islands District delegation did not participate in the dissent.

56. Mariana Islands Political Status Committee's Report on the 1st Session of Status Negotiations in Saipan, Mariana Islands, to the Mariana Islands District Legislature, 4th Mar. Is. Dist. Leg., 1st Reg. Sess. (1972).

57. Joint Communique of June 4, 1973, in Mariana Islands Political Status Negotiations, 2d Session, in Saipan, May 15 to June 4, para. 2, at 8 (1973).

58. *Id.*

59. Joint Communique of December 19, 1973, in Mariana Islands Political Status Negotiations, 3d Session, in Saipan, Dec. 6 to 19, 1973, at 7 (1974).

60. U.S. CONST. art. IV, § 3.

government with respect to internal affairs.[61]

A constitution would establish the authority of the future Marianas government, amendments to which would not require United States approval. The federal courts, however, would enjoy competence to pass on their consistency with relevant provisions of the American constitution and federal laws.[62] Additionally, the United States would retain responsibility for and complete authority over defense and foreign affairs[63] on a footing similar to that established by the United States—Micronesian draft Compact of Association.[64] Operation of the Commonwealth's local courts would comport with the federal court system on the mainland and maintain consistency with applicable federal laws. United States district court jurisdiction in the Marianas would be "at least the same" as in a state of the Union.[65]

The American delegation also agreed to support a Marianas request for a non-voting delegate in Congress.[66] The constitutional "privileges and immunities" clause[67] would apply to the Marianas—subject, however, to unspecified but appropriate limitations in the formal status agreement, which would maintain the future commonwealth government's power to keep its lands in the possession of Marianas citizens.[68] The constitutional requirements of indictment by grand jury[69] and trial by jury in civil cases were deemed inapplicable.[70] Marianas residents would have the opportunity to become either United States citizens or nationals.[71] The Marianas Political Status Commission disclosed its readiness to negotiate United States military land-usage requirements on the island of Tinian,[72] attempting to regulate social and economic development in a manner compatible with the interests of both civilian and military communities.[73] As of December 1973, the United States upheld its intention to acquire approximately two-thirds of Tinian's land area for military activities.[74]

The specificity of the joint communique betrays a marked degree of as-

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61. Joint Communique, *supra* note 57, para. 3, at 8.
62. *Id.*, para. 4, at 8.
63. *Id.*, para. 5, at 8.
64. Agreed Draft, *supra* note 29, Title II, Sec. 201, and Title III, Sec. 301.
65. Joint Communique, *supra* note 57, para. 6, at 8.
66. *Id.*, para. 7, at 8. Puerto Rico currently elects a Resident Commissioner to Congress. The unincorporated, organized territories of Guam and the Virgin Islands each elect, for two-year terms, delegates to Congress who possess committee, but no floor vote.
67. U.S. CONST. art. IV, § 2.
68. Joint Communique, *supra* note 57, para. 8, at 8.
69. U.S. CONST. art. V.
70. U.S. CONST. art. VII.
71. Joint Communique, *supra* note 57, at 3.
72. Agreed Draft, *supra* note 29, Annex B, and Orr Kelly, in an interview with Ambassador Williams, in *Washington Close-Up: Military Plans for Micronesia*, Washington Evening Star and Daily News, June 12, 1973, at A14, col. 3.
73. Joint Communique, *supra* note 57, para. 6, at 10.
74. Joint Communique, *supra* note 59, at 13.

sured expectation regarding the talks' eventual outcome.[75] This is not to imply that termination of one of the United Nations' most disputable trusteeships[76] will turn exclusivley on the efforts of the various delegations responsible for its resolution. Congress—and most significantly the United Nations itself—will play crucial but as yet unspecified roles in bringing American responsibilities to an end. The relatively advanced state of these conversations, plans for maintaining military stability throughout the Pacific basin, and the Marianas' desire for a separate political settlement render the immediate consultation and participation of both the United States Congress and the United Nations essential. Political dilemmas spawned by the present configuration of circumstances demand the cooperation and good will of each party concerned with the trusteeship's political resolution, at the territorial, national, and international levels.

## IV. THE EXECUTIVE—CONGRESSIONAL—U.N. NEXUS

Complex political and procedural difficulties block the road to an equitable termination of the 1947 Agreement. While United Nations acceptance of an abridged Micronesia's free political association with the United States as an answer to the dilemma of self-determination is probable,[77] no precedent exists for an arrangement of this kind in United States territorial history, which has traditionally favored statehood as the goal of gradual incorporation.[78] Most significantly, arguments for the trust's various status transformations founded upon international law must bow to certain pragmatic considerations of a political nature. It is useful to recall, for example, that the expansionist post-war Soviet Union approved the draft United States strategic agreement for the vanquished Japanese mandate.[79]

Acquisition by Micronesia of control over its internal affairs[80] will devalue the tutorial experience of at least two existing American dependencies, Guam and the Virgin Islands—both of which have acknowledged congressional fiat over their domestic affairs for decades.[81] Micronesia would

75. *See* Report, *supra* note 19, at 5-7. Dobbs characterized the earlier United States commonwealth proposal to the Micronesian leadership as only a "glorified, unincorporated territory." Dobbs, *Macrostudy, supra* note 31, at 194.

76. The Pacific Islands Trust Territory may become the first of its kind to undergo even partial absorption into its parent country.

77. Declaration on the Granting of Independence to Colonial Countries and Peoples, G.A. Res. 1514, 15 U.N. GAOR Supp. 16, at 66; U.N. Doc. A/4684 (1960); "Special Committee on the Situation in Regard to the Granting of Independence to Colonial Countries and Peoples," 16 U.N. GAOR, Supp. 16, at 65, U.N. Doc. A/5100 (1961). *See also* 65 AM. J. INT'L L. 243 (1971).

78. N. MELLER, *supra* note 9, at 392.

79. Green, *supra* note 7, at nn. 14 to 16.

80. Agreed Draft, *supra* note 30, Title 1, Sec. 102.

81. The United States acquired Guam by virtue of the *Treaty of Peace with the Kingdom of Spain*, December 10, 1898, 30 Stat. 1754, T.S. 343 (1899). An executive order issued by President William McKinley on December 23, 1898 placed the island under Naval control. Exec. Order No. 108-A (December 23, 1898), in U.S. Code

emerge as the "favored child" of United States territorial tutelage.[82] Moreover, congressional ambivalence towards the commonwealth status of Puerto Rico between 1950 and 1952 reflected that island's partial emancipation from legislative control under the Constitution's territorial clause.[83] Congress may withhold financial relief in the face of demands for autonomy from this dependent ward. "Free association" together with a Marianas Commonwealth may thus unduly strain congressional good will.

### *A. Free Association's Forerunners: A Warning*

The uncertain prospects for congressional approval of the Micronesian free-association aspirations encourages a further enquiry into its record elsewhere. Since 1964, the Commonwealth of New Zealand has enjoyed a largely tranquil relationship with its former dependency, the Cook Islands.[84] However, a less tranquil experiment in free association characterizes the relationship between Great Britain and the States in Association with Great Britain, a grouping of the former British insular territories within the Caribbean Windward Islands chain.[85]

Although the Cooks are self-governing, New Zealand discharges foreign affairs and defense responsibilities related to its dependency.[86] Residents

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Cong. & Admin. News, vol. II, 81st Cong., 2d Sess., at 2856 (1950). President Truman subsequently transferred administration of Guam from the Department of the Navy to Interior effective July 1, 1950. Exec. Order No. 10,077, 3 C.F.R. 279 (1949), as amended by Exec. Order No. 10,137, 3 C.F.R. 320 (1950).

Upon cession of the Danish West Indies from Denmark to the United States by the Convention Between the United States of America and His Majesty the King of Denmark, August 4, 1916, ratified by the Senate on Sept. 7, 1916, 39 Stat. 1706 (1916), the United States acquired the islands by proclamation on Jan. 25, 1917.

82. Under the Constitution—as previously drafted—the northern Marianas would in effect "leapfrog" the relative statuses of Guam, the Virgin Islands, and Puerto Rico.

83. U.S. CONST. art. IV, § 3.

84. Cook Islands Constitution Act of 1964, 13 Eliz. II, No. 69, at 457 (N.Z. 1964). In a resolution subsequent to its celebrated Declaration, *supra* note 77, the U.N. General Assembly sought to define "free association," the second of three forms of self-determination, as one which

> respects the individuality and the cultural characteristics of the territory which is associated with an independent [state's] freedom to modify the status of that territory through the expression of [its] will by democratic means and through constitutional processes.

G.A. Res. 1541, 15 U.N. GAOR, Supp. 16 at 29, U.N. Doc. A/4684 (1960), Annex, Principle VII. The Cook Islands "can best be described as a self-governing state in association with New Zealand." It was the first, moreover, to occupy this new category of international person. New Zealand Official Yearbook 1108 (1968).

85. West Indies Act, 1967, Great Britain, House of Commons Debates, 711 Weekly Hansard, col. 335 *et seq.* (January 27/February 2, 1967).

86. Cook Islands Constitution Act of 1964, *supra* note 84, § 5. This section reflects one of the "inherent" characteristics of free association; as long as it chooses not to be internationally responsible for its own affairs, it recognizes New Zealand's continuing responsibility for Section 5 matters. Remark of F.H. Corner, Permanent Representative of New Zealand Before the U.N. Committee of Twenty-Four, in 15 EXTERNAL AFFAIRS REVIEW 33, 36 (1965).

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there retain New Zealand citizenship.[87] One measure of confidence vested by both sides in this arrangement is the parent country's renouncement of the power to countermaind any termination by the Cooks of their relationship with the larger country.[88] The Commonwealth Parliament may not legislate for the Cooks except upon request,[89] although insular High Court decisions may proceed upon appeal to the New Zealand Supreme Court.[90] Generally, Cook Islanders exercise their right to self-government, but not as members of a separate and independent state,[91] as they have maintained their various links with New Zealand through voluntary limits on their full sovereignty.[92]

The United Kingdom, conversely, enjoys no responsibility for the government of any Caribbean associated state, except for defense, foreign affairs, nationality, and citizenship.[93] The extent to which Parliament can override an associated state's constitution by an enactment affecting defense and foreign affairs is not clear, however.[94] An agreement concluded early in 1967 between Great Britain and its former colonial possessions during their various constitutional conferences provides that United Kingdom forces may be introduced into the territory of an associated state for other than defense purposes only upon the request of the government concerned.[95] In August 1967, Robert Bradshaw, Prime Minister of the Associated State of St. Christopher-Nevis-Anguilla, pressed for a British restoration of the status quo in Anguilla, which had announced its cession from the capital state as an independent republic.[96] In march of the following year, some three hundred British paratroopers and an advance guard of forty policemen landed on Anguilla to restore the status quo.[97] The associated state's relationship with Great Britain, however, remains otherwise intact.[98]

It was evident at the outset that only "good will and understanding of the delicate fabric of the special relationship between Britain and these islands" would prevent it from being torn asunder.[99] Will congressional ap-

87. Cook Islands Constitution Act of 1964, *supra* note 84, sec. 6.
88. *Id.*, sec. 41.
89. *Id.*, sec. 46.
90. *Id.*, sec. 61.
91. Corner remarks, *supra* note 86, at 35.
92. *Id.*
93. West Indies Act 1967, *supra* note 85, § 2(1).
94. Broderick, *supra* note 31, at 374.
95. Heads of Agreement on Defense and External Affairs 1967, para. 6, cited in Broderick, *supra* note 31, at 384.
96. The Times (London), August 21, 1967, at 4, col. 8.
97. *Commonwealth and Dependent Territories—Anguilla*, in Public Law 1969, at 254. Michael Steward, British Foreign Secretary, explained to the House of Commons a year later that the strict legal basis for the action rested in an Order of Council issued under sec. 7(1) of the West Indies Act 1967.
98. The future status of Anguilla is to be determined by a referendum held within five years of the enactment of Parliamentary legislation to restore British control over the island. The Europa Yearbook: 1973, A World Survey, at 1749 (1973).
99. Broderick, *supra* note 31, at 371.

proval of a third-world experiment in free-association imply a relationship necessarily as tranquil as its most optimal predecessor, the Cook Islands-New Zealand arrangement? The answer will depend as much on the cohesiveness between Micronesia's districts as the relationship of the various Caribbean Associated States does with Great Britain. The internal St. Christopher-Nevis-Anguilla dispute centered around allegedly neglectful economic policies towards the latter on the part of the other two of that state's three constituencies. Dissatisfaction had arisen there with St. Kitts' central administration as well as with delays in the implementation of certain provisions for local government and the establishment of an Anguillan local council. Anguilla, administered jointly with the Associated State's other two constituents as a single unit by Great Britain since 1882, lies some seventy miles from the other islands. Communication between them has been described as "poor."[100] Micronesia's districts, structured as they are for the most part along ethnic boundaries,[101] share difficulties otherwise peculiar to the troubled Associated State—namely, isolation of populated islands and atolls from district centers[102] and a poorly developed sense of territorial identity. This similarity is so marked that separation of the Marianas from the Territory upon termination of the 1947 agreement has encouraged district leaders to seek their own political settlements elsewhere.[103] Official United Nations discouragement of such endeavors (despite emergence of the so-called microstates) may alleviate the problem, given the world body's receptivity to a separate Marianas political solution.

### *B. Micronesian Proposals Before Congress: Incompatible Precedents*

Realization by Micronesia of its variously constituted political goals would instantly discredit more than fifty years of territorial apprenticeship of the United States Virgin Islands and Guam. Pureto Rico's status as a United States commonwealth is at best a weak precedent.

100. *Commonwealth and Dependent Territories—Anguilla,* in Public Law 1971, at 313.

101. No single district boundary cuts across ethnic lines excepting, of course, that of the Mariana Islands District. This may well complicate prospects for a separate Marianas political settlement.

102. In the two most decentralized districts, district center populations accounted for 35% or less of the total for each district. As of June 30, 1972, 7,965 persons resided at the Marshall Islands district center of Darrit-Uliga-Dalap (DUD), or approximately 33% of a total district population of 24,248. In Truk District, the trust's most populous, 6,580 persons lived at Moen, or barely 20% of its total recorded population of 32,732 persons. Ponape, Palau, Yap, and the Mariana Islands district were characterized by more centralized populations on larger islands or less scattered island-areas. 25th Annual Report to the U.N. on the Administration of T.T.P.I. for Fiscal Year 1972, at 212-16 (1973). Anguilla's 1960 population of 5,508 persons, even if doubled, would account for less than 25% of the total for St. Kitts-Nevis-Anguilla. Corresponding 1970 figures for St. Kitts are 34,227, and for Nevis, 11,230. Europa Year Book 1973, *supra* note 98, at 1748.

103. Remarks of Senator Andon Amaraich (Congress of Micronesia) before the 40th Session, U.N. Trusteeship Council, U.N. Doc. T/Pv. 1412, at 57 (1973).

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### (1) Territorial Leapfrog

Acquired in 1898 by the United States from Spain as a war prize,[104] Guam has become an organized, unincorporated territory[105] over which Congress holds plenary powers of legislation.[106] The United States purchased the islands of St. Thomas, St. Croix, and St. John in the Virgins group from Denmark almost twenty years later as insurance against a threatened German advance towards the strategic Panama Canal.[107] The Caribbean islands and Guam share the status of organized, unincorporated territories.[108] Residents of such territories are entitled to the safeguards of the Bill of Rights and any other constitutional rights which are "natural or fundamental."[109] Foremost among those not so regarded is the right to a trial by jury in civil cases under the seventh amendment to the Constitution.[110] Presumably, the future Marianas constitution will preserve provisions for jury trial in such cases within its Bill of Rights. Since United States Authority in the Marianas would not be plenary,[111] acquisition of commonwealth status by those islands would "leapfrog" the status of the Virgin Islands and Guam. Micronesia proper would, of course, become even more autonomous with respect to Congress.

### (2) Commonwealth: In the Nature of a Compact

The Caribbean island of Puerto Rico[112] possesses commonwealth status,[113] which is without precedent in United States territorial history,[114] and as a legal concept, difficult to grasp.[115] Leaders of the island's Popular Demo-

104. *Treaty of Peace, supra* note 81.
105. *Id.*
106. Congress enjoys plenary power " . . . to dispose of and make all needful Rules and Regulations respecting the territory or other property belonging to the United States . . ." U.S. CONST. art. IV, § III.
107. Convention, *supra* note 81.
108. *Id.*
109. Hawaii v. Mankichi, 190 U.S. 197, 218 (1903); Downes v. Bidwell, 182 U.S. 244, 282-83 (1901); and ANTIEAU, 2 MODERN CONSTITUTIONAL LAW: THE STATES AND THE FEDERAL GOVERNMENT 350 (1969); Balzac v. Porto Rico, 258 U.S. 298 (1922).
110. ANTIEAU, *supra* note 109.
111. Joint Communique, *supra* note 59, at 2.
112. The United States also acquired sovereignty over this island upon its cession by the Kingdom of Spain according to treaty in 1898. *Supra* note 81.
113. The island-commonwealth's legal status is set out in: (1) the Constitution of Puerto Rico; (2) Act of July 3, 1950, ch. 446, 64 Stat. 319; and (3) the Puerto Rico Federal Relations Act, 48 U.S.C. § 731(e) (1970), derived from provisions carried over from the original Organic (Jones) Act of 1947. The United States House of Representatives approved the Constitution of Puerto Rico as a "compact" in 1952. H.R.J. Res. 430, July 3, 1952, 66 Stat. 327 (1952).
114. R. Emerson, *Puerto Rico and American Policy Towards Dependent Areas*, 285 ANNUALS 9 (January 1953).
115. Von Munch, *Protokoll*, in Strupp & Schlochauer, 2 WORTERBUCH DES VOLKERRECHTS 813 (1961). "Das rechtliche Verhaltnis Puerto Ricos zu den Vereinigten Staaten ist schwer zu erfassen." Commonwealth status is open-ended and is neither

cratic Party (PDP) and other supporters of *el Status de Libre Associado*[116] contend that commonwealth status has placed Puerto Rico into voluntary association with its senior partner based on common citizenship and a mutually binding compact.[117] It is, moreover, a "vested" right.[118] Framers of Puerto Rico's constitution undertook during its preparation to define "commonwealth" as

> the body politic created under the terms of the compact existing between the people of Puerto Rico and the United States, i.e.: that of a State which is free of superior authority in the management of its local affairs, but which is linked to the United States of America and hence is a part of its political system in a manner compatible with its federal structure.[119]

Their resolution also addressed the subject in general terms:

> The word "commonwealth" in contemporary English usage means a politically organized community . . . a state (using the word in the generic sense) in which political power resides ultimately in the people, hence a free state, but one which is at the same time linked to a broader political system in a federal or other type of association and therefore does not have an independent and separate existence.[120]

The Constitution reinforces the Compact's mutually binding character,[121] providing that the Commonwealth's political power "[e]manates from the people and should be exercised in accordance with their will, within the terms of the Compact agreed upon between the people of Puerto Rico and the United States of America."[122]

In constitutional theory, Puerto Rico remains generically an unincorporated territory despite its commonwealth label,[123] as Congress continues to

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static nor perfect. Remarks of Jaime Benitez, Resident Commissioner of Puerto Rico, before the 67th Annual Meeting, American Society of International Law, in Washington, D.C., April 12, 1973.

116. In English, "freely-associated state."

117. Magruder, *The Commonwealth Status of Puerto Rico*, 15 U. PITT. L. REV. 1, 5 (1953).

118. *See* 48 U.S.C. § 731(e) (1970), and Puerto Rico Const. art. I, § 1. *Also*, H.R.J. Res. 430, July 3, 1952, 66 Stat. 327 (1952); Joint Communique, *supra* note 57, para. 3, at 8, para. 9, at 9.

119. Constitutional Convention of Puerto Rico, Resolution 22 (1952), in Commonwealth of Puerto Rico, Documents on the Constitutional History of Puerto Rico.

120. *Id.*

121. A treaty can usually be denounced by either side, whereas a compact cannot be so voided by one party unless the other has given its consent. Consequently, Puerto Rico represents, in the most profoundly domestic sense of the word, a free people voluntarily associated with the United States. *Puerto Rico's New Political Status*, 29 DEP'T STATE BULL. 392, 395 (1953). Since the Puerto Rican Federal Relations Act forms part of the over-all Compact, it cannot be amended except by mutual agreement between the people of Puerto Rico and the United States. *The Nature of the United States-Puerto Rican Relations*, 29 DEP'T STATE BULL. 798 (1953).

122. Puerto Rico Const. art. I, § 1 (emphasis added).

123. Persons residing within incorporated territories enjoy all the safeguards of the United States Constitution, including its Bill of Rights provisions. Foremost among

possess plenary but unexercised authority over Puerto Rico. Although it certainly delegated a portion of legislative power to the island's people, the compact between itself and the Commonwealth is not commercially a contract, expressing only a method Congress chose to use in place of direct legislation.[124] An understanding exists on this account between Puerto Rico and the United States: if the former respects its home-rule limits, Congress' plenary power to intervene in internal affairs is likely to remain unexercised.[125] Therefore, the United States means to "honor the obvious moral commitment of its compact with the people of Puerto Rico . . . ."[126]

### (3) Ambivalent Congressional Reception

How graciously will Congress accept a formal political relationship with the northern Marianas embodying the principle of mutual consent? Clues to congressional receptivity exist in the records of its hearings on the Compact's formulation prior to enactment of P.L. 600,[127] the history of which has long since become a "drama of shifting meanings."[128] Governor Luis Munoz-Marin, leading witness during 1949 House Public Lands Committee hearings on status legislation,[129] indicated that the concept of self-government outflanked existing law, but that this gap would be closed, to the credit of the United States.[130] It was suggested the following year that Congress alter the proposed law if it found anything amiss.[131] Subsequently, Puerto Rican Supreme Court Justice A. Cecil Snyder declared that the new legislation would initiate no change of sovereignty and preserve intact the Puerto Rico-United States economic and legal relationship.[132] Both the House and

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these is the right to a trial by jury in civil cases under the seventh amendment to the Constitution. Congress must respect such constitutional rights as legislator for the incorporated territories. C. ANTIEAU, *supra* note 109, at 350.

In *Balzac v. Porto Rico*, *supra* note 109, Chief Justice Taft established his incorporation doctrine, asking if Congress intended

> to incorporate Porto Rico into the Union by this act, which would *ex proprio vigore* make inapplicable the whole Bill of Rights of the Constitution to the island, why was it thought necessary to create for it a Bill of Rights and carefully exclude trial by jury? In the very forefront of the . . . [island's first organic act] . . . is this substitute for incorporation and application of the Bill of Rights of the Constitution. . . . Incorporation has always been a step, and an important one, leading to a statehood . . . . [It] is reasonable to assume that when such a step is taken, it will be begun and taken by Congress deliberately and with a clear declaration of purpose, and not left a mere inference or construction.

124. Helfeld, *Congressional Intent and Attitude Towards Public Law 600 and the Constitution of Puerto Rico*, 21 REV. JUR. U.P.R. 307 (1952).
125. *Id.*, at 314.
126. Magruder, *supra* note 117, at 16.
127. *Supra* note 113.
128. Helfeld, *supra* note 124, at 313.
129. *Hearings on H.R. 7674 and S. 3336 Before the House Comm. on Public Lands*, 81st Cong., 2d Sess., ser. 35, at 1-4 (1950).
130. *Id.*
131. *Id.* at 33.
132. *Id.* at 54.

Senate shared this attitude.[133]

House debates in 1950 were concerned with the controversial question of how much sovereign power Congress would retain over a Puerto Rican Commonwealth. Honorable E. L. Bartlett concurred with Honorable Jacob Javits' assertion that Puerto Rico would remain both organized and unincorporated, reassuring his colleagues that "Congress retains all essential powers set forth under our constitutional system, and it will be Congress and Congress alone which ultimately will determine the changes, if any, in the political status of the island."[134] With that understanding, Congress immediately enacted the legislation as Public Law 600.[135]

During Senate Interior and Insular Affairs hearings in 1952, on the new constitution authorized by Public Law 600,[136] the chief counsel for the Interior Department's Office of Territories replied that the Compact "would be in the nature of contractual obligations . . . [n]evertheless the basic power inherent in the Congress of the United States, which no one can take away, is . . . as provided for in Article IV, Section 3 of the Constitution of the United States."[137] Committee chairman, Senator Joseph C. O'Mahoney, lent his support to this statement.[138] Acceptance by the Puerto Rican electorate of two congressionally-proposed constitutional amendments[139] assured Congress' approval of the document in July,[140] and that same month the Governor proclaimed the establishment of his island as a commonwealth.[141]

According to Helfeld, both amendments were

> grounded on an assumption of a plenary reviewing authority to approve, reject, or modify . . . . Under such an interpretation, one would have to assume that the people of Puerto Rico consented to an unlimited Congressional review of their character of government. While this is the least palatable meaning of the compact from the Puerto Rican perspective, it apparently represents the understanding of both Committees in the 82nd Congress.[142]

Elimination of these rights "showed that . . . Congress, like the Hebraic Jehova, is a jealous ruler and does not readily relinquish any part of its sover-

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133. *Id.* at 161-63.
134. 96 Cong. Rec. 9595 (1950).
135. 96 Cong. Rec. 9602 (1950); *also supra* note 113.
136. The enabling legislation authorized the people of Puerto Rico to adopt their own constitution. 61 Stat. 319, §§ 2, 3 (1950).
137. U.S. Congress, Senate Committee on Interior and Insular Affairs, Approving Puerto Rican Constitution, *Hearings on S.J. Res. 151, Joint Resolution Approving the Constitution of the Commonwealth of Puerto Rico*, April 29, and May 1, 1952, at 43, 44 (1952).
138. *Id.* at 45.
139. S. Rep. No. 1720, 82d Cong., 2d Sess. (1952).
140. 66 Stat. 327 (1952).
141. Administrative Bulletin No. 188, July 25, 1952, in Documents on the Constitutional History of Puerto Rico, *supra* note 119, at 198.
142. Helfeld, *supra* note 124, at 288.

eignty."[143] Senator Olin D. Johnston succinctly underscored prevailing opinion: "We are, under the Constitution of the United States, retaining our rights in Puerto Rico . . . [which] . . . will still be under the control of Congress."[144]

### (4) Commonwealth at the Bar: Judicial Limitation

The Supreme Court has not heard any cases arising in Puerto Rico since the establishment of commonwealth,[145] and thus has not availed itself of an opportunity to confront either its status or the concept of a compact.[146] Lower-court decisions have emphasized Congress' ambivalence towards recognition of the Puerto Rico-United States relationship as a compact.[147] In a case arising before the United States Court of Appeals, Seventh Circuit shortly after proclamation of commonwealth, Swaim, C.J. held for the tribunal that the legislative history of this new relationship "shows very definitely that those members of Congress most responsible for its enactment thought that the Act would not change Puerto Rico to some political entity other than a territory."[148] However, a recent decision, on appeal before the United States District Court for the District of Puerto Rico, San Juan Division, held a provision of the Firearms Act,[149] defining interstate and foreign commerce within any territory or possession of the United States,[150] locally inapplicable to the Commonwealth of Puerto Rico.[151]

On appeal from the Supreme Court of Puerto Rico, the United States Court of Appeals, First Circuit, held that congressional action resulting in the island's commonwealth standing failed to incorporate the territory.[152] This lack of a fixed, technical meaning for "territories" in all circumstances,

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143. Lewis, *Puerto Rico: A New Constitution in American Government*, 15 JOURNAL OF POLITICS 44 (1953).

144. Helfeld, *supra* note 124, at 300.

145. The last such case arising in Puerto Rico was Secretary of Agriculture v. Central Roig Refrigerator Co., 338 U.S. 604 (1950).

146. Dobbs, *supra* note 31, at 189.

147. Hunter, *Historical Survey of the Puerto Rico Status Question, 1895-1965*, in UNITED STATES-PUERTO RICO COMMISSION ON THE STATUS OF PUERTO RICO, SELECTED BACKGROUND STUDIES, at 50 *et seq.* (1966).

148. Detres v. Lions Bldg. Corp., 234 F.2d 596, 599 (7th Cir. 1956). The Court held Puerto Rico to be a territory of the United States within the meaning of the diversity section of the Federal Code of Civil Procedure, 28 U.S.C. §§ 731, *et seq.*, 771 *et seq.* (1970).

149. Federal Firearms Act, 15 U.S.C. §§ 901(2) (1970).

150. The territories and states of the Union were deemed equivalent, but only for the ad hoc purpose of this act.

151. United States v. Rios, 140 F. Supp. 376 (D.P.R. 1956). The government based its argument on section 9 of the Federal Relations Act, 48 U.S.C. § 734 (1970), which states that "[t]he statutory laws of the United States not locally inapplicable . . . shall have the same force and effect in Puerto Rico as in the United States . . . ," continuing in effect the contested portion of section 901(2) of Title 15, together with its judicial interpretation in Cases v. United States, 131 F.2d 916 (1st Cir. 1942).

152. Fournier v. Gonzales, 269 F.2d 26 (1st Cir. 1959).

resulted in a United States Court of Appeals, Third Circuit, ruling[153] that Puerto Rico was a "territory" within the purview of the Constitution's territorial clause.[154] In a subsequent decision,[155] the United States District Court for the District of Puerto Rico once again reasoned that only essential provisions of the Federal Relations Act enjoyed immunity from unilateral revocability.[156]

### (5) Marianas Commonwealth: The Impending Struggle

Judicial interpretation of the Puerto Rican-United States Compact has consistently mirrored Congress reluctance to submit its plenary legislative power to contractual modification. Attempts of the Marianas Political Status Commission to erect a similar contractual relationship disallowing United States approval of constitutional amendments must account for congressional antipathy towards the proposal.[157] The United States executive delegation to the over-all status talks has ignored "the broad perspective of the Congress"[158] and may adopt final language "substantially more beneficial to the Marianas than those currently possessed by Guam or American Samoa."[159] Another indication of Congress' attitude towards the Puerto Rican Federal Relations Act was the passage of legislation repealing two of its provisions.[160]

The future course of the United States-Marianas political status negotiations must be evaluated within the context of visible congressional antipathy towards a territorial extension of commonwealth rights and privileges, and the United States executive delegates' disinclination to consider congres-

153. Americana of Puerto Rico v. Kaplus, 368 F.2d 431 (3d Cir. 1966).

154. U.S. CONST. art. IV, § 3. Congressional extension of full faith and credit to include judgments of courts of territories and possessions of the United States is permissible under a constitutional provision empowering Congress to constitute tribunals inferior to the Supreme Court, and make all needful rules and regulations respecting the territory or other property of the United States. *See* 28 U.S.C. § 1738 (1970). Moreover, legal conclusions respecting commonwealth have varied from one extreme to another. Moss v. Mejias, 206 F.2d 377 (1st Cir. 1953). Congress provided in the 1954 Internal Revenue Code, ch. 79 (Definitions) a separate section for Puerto Rico, effecting its inclusion within the term "possessions" when compatible with the terms of the Act. 26 U.S.C. § 7701(c) (1970).

155. United States v. Valentine, 288 F. Supp. 957 (D.P.R. 1968).

156. Repeal by Congress of the Federal Relations Act, Section 44, in favor of uniform rules for jury selection throughout the federal judicial system did not effect inviolability of the compact between the United States and Puerto Rico. *See* 48 U.S.C. § 687 (1970).

157. Sen. Henry Jackson, Chairman of the Senate Interior and Insular Affairs Committee, prescribed a conservative view of mutual consent as a principle liable to the congressional right of legislation in the best interests of all citizens concerned. United States—Puerto Rico Commission on the Status of Puerto Rico (1967).

158. Interview by the author with Thomas S. Dunmire, Minority Staff Consultant, House Committee on Interior and Insular Affairs, in Washington, D.C., August 3, 1973.

159. *Id.*

160. Act of March 2, 1917, 48 U.S.C. §§ 863, 867 (1970).

sional attitudes as an independent variable crucial to the Pacific Island trust's political resolution.[161] The psychological commitment of the negotiating parties to the Marianas commonwealth objective will unfortunately guarantee adoption of alternate status goals; a difficult undertaking should Congress force the issue. Published conversations and public statements evidence little recognition of Congress' historical resort to, and reliance on, the Constitution's territorial clause; neither will Congress bargain harshly on the grounds of its territorial powers alone. The effect on the unincorporated, organized territories of Guam and the Virgin Islands has been previously documented and discussed.[162] Efforts on their part to achieve a political relationship more comprehensive than mere unincorporated, organized status will politically destabilize the trusteeship termination efforts. Specifically, the pro-commonwealth yearnings of Guam's homegrown Political Status Commission[163] will weaken its poorer relations' case for a similar but separate status before Congress by directing the focus of its divided attention away from this politically controversial undertaking and towards their larger and stronger cousin. The Virgin Islands are seeking to change their status with a legislative proposal to enact a constitution and federal relations act.[164] A second influence potentially disruptive to the northern Marianas' steady progress has emerged in the form of two Guam legislative unification resolutions.[165] Conceivably, their common "parent"/benefactor may find two of its adjacent jurisdictions clamoring for a commonwealth status more comprehensive than Puerto Rico's. Guam's territorial leadership carried its offensive to the House of Representatives, where its newly-elected delegate introduced a measure calling for congressional abdication of its responsibilities to the island.[166] Congress' treatment of this measure will certainly indicate its future receptivity to the northern Marianas' commonwealth goal. In the meantime, the Guam Legislature's recently-established Political Status Commission is spearheading the island-territory's efforts to keep abreast of the insular status issue.

These measures reflect historical precedents, as well as long-standing but officially unrecognized sentiment existing throughout the northern islands. Both Saipanese and Guamanians have long gone on record through resolutions of their respective legislatures in support of their reintegration.[167]

161. Ambassador Williams' last public congressional briefing occupied the morning of March 15, 1973, *supra* note 1.

162. *Supra* notes 104-08.

163. Established by P.L. 12-17, 12th Guam Leg., 1st Reg. Sess. (1973).

164. P.L. 9-2923, 9th V.I. Leg., 1st Reg. Sess. (1971); Const. Conv. V.I., Const. of the Terr. of the V.I. (no date), and 2d Const. Conv. V.I., Proposed V.I. Federal Relations Act (1972); Draft Const. art. II, §§ 4(d), 6.

165. Res. 12-112, 12th Guam Leg., 1st Reg. Sess. (introduced June 14, 1973), and Res. 12-129, 12th Guam Leg., 1st Reg. Sess. (introduced July 10, 1973).

166. H.R. Res. 296, 93d Cong., 1st Sess. (1973).

167. MELLER, *supra* note 9, at 390. Approximately three-quarters of those residing in the Mariana Islands district are Saipanese, constituting 10,745 persons of a total population of 13,381. 25th Annual Report, *supra* note 102, at 212.

Moreover, the Micronesian legislature's Political Status Commission determined at the very outset that any proposal of an altered political status for United States-administered Micronesia must assess Guamanian reintegration with the Mariana Islands District in such a settlement.[168] However, the people of that Chamorro-speaking district fear alienation of their land by highly-capitalized American entrepreneurship. The Saipanese do not wish a smaller voice as only one segment of a political union dominated by Guam. Furthermore, imposition of mainland labor standards upon the islands would dislocate many skilled workers.[169] These misgivings have possibly accounted for the absence of reunification proposals from the joint United States-Marianas communique on the two delegations' latest talks, despite the favorable outcomes of several plebiscites conducted throughout the Marianas trusteeship.[170] Much of the integrationist drive can be traced to Popular Party initiatives; the competing Territorial Party has advocated postponement of this issue.[171]

The Territorialists share common ground with United States sentiment on the separatist movement. The fact that the various parties to the future status negotiations have proceeded to a markedly comprehensive stage of agreement with no more than passive spectatorship on the part of the United Nations will bode ill for these efforts when the agreement emerging therefrom undergoes scrutiny by that organization. The United States Congress will almost certainly spurn any hoped-for settlement that denies it legislative autonomy sufficient to vitiate the Marianas commonwealth ideal, shrinking it to a "glorified unincorpoarted territory."[172]

Traditional congressional recourse to the plenary legislative power and even a diluted Marianas "commonwealth" may incur United Nations displeasure,[173] a sentiment in which the two communist Security Council permanent members can be expected to concur. The timing of the Trust Territory's poltical disposition will hinge directly on that of the Marianas, as the United States has pledged to terminate all surrogate responsibilities simultaneously in all of its six districts.[174] It is certain that the Pacific Islands Trusteeship will outlive its Australian counterpart,[175] and any delay in the

168. Report of the Commission on Future Political Status, *supra* note 15, at 35.
169. *Id.* at 35, 36.
170. During the first tour of a United Nations visiting mission to the Pacific Islands in 1950, Mariana residents informed the group of their desire to become United States citizens. Further plebiscites and surveys favored unification with United States sovereignty by 1971.
171. MELLER, *supra* note 9, at 391.
172. *See* Dobbs, *supra* note 31.
173. In 1960, the Fifteenth General Assembly approved the Colonial Independence Declaration, G.A. Res. 1514, 15 U.N. GAOR Supp. 16, at 66, 67, U.N. Doc. A/4684 (1960).
174. U.N. Doc. T/Pv. 1412, at 6 (1973).
175. The Australian Trust Territory of New Guinea, together with its own jurisdiction of Papua, became self-governing on December 1, 1973. Circular No. 184/73,

final United States-United Nations settlement will simply prolong America's unasked-for and unappreciated role as lone trust proprietor.

### C. *Micronesia's Future and the United Nations: Political Convenience*

The Mariana Islands District appears determined to exclude itself from any collective Micronesian post-trusteeship settlement;[176] even members of the Territorial Congress sense the inevitability of post-trusteeship partition.[177] However, the 1973 United Nations trust-territorial visiting mission suggested postponement of future status conversations until the United States and the Micronesian legislature further define their respective positions on the issue.[178] The United Nations mission's Soviet member dissented from its political recommendations—including those for the Marianas[179]—observing that the Administering Authority had delayed settlement of the future status question to preserve its military and strategic interests.[180] Despite his characterization of partition as an act incompatible with the United Nations Charter, a case for the Marianas' political program rests on two grounds:

> (1) an examination of relevant language in the Charter and 1947 Agreement; and
>
> (2) the history of two previously administered trust territories, one of which had indeed resolved its political transition in more than one direction.[181]

Despite Soviet objections, both the Charter and 1947 Agreement either directly or indirectly incorporated provisions for partition. Initially, the Marianas leadership initiated the request for separate conversations.[182] The district's boundaries embrace all of the Charmorro-speaking residents of the Territory who constituted in 1970 a decisive majority of those residing in that district as its original inhabitants.[183] In regard to the Territory itself, the Charter applies basic Article 76[184] objectives to the people of each strategic area; indeed, the entire Pacific Islands trust territory is strategic.[185] One such objective for trust territories is to promote a

> progressive development towards self-government or independence as may be appropriate to the particular circumstances of each ter-

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Embassy of Australia, Washington, D.C. (August 23, 1973). No definite date has been scheduled for independence. 7 PAPUA—NEW GUINEA NEWSLETTER 1 (June 28, 1973).

176. Senate Journal, 4th Cong. Micron., 2d Sp. Sess., at 59 to 76 (1972), and U.N. Doc. T/1741, at 129 (1973).

177. U.N. Doc. T/1741, at 127 (1973).

178. Id. at 129.

179. U.N. Doc. T/Pv. 1416, at 41, 46 (1973).

180. U.N. Doc. T/Pv. 1412, at 13-15 (1973).

181. British Togoland in 1956, and the British Cameroons in 1961.

182. U.N. Doc. T/Pv. 1391, at 47 (1972).

183. DeSmith mentions a figure of 70%. *See* S. DESMITH, MICROSTATES AND MICRONESIA 159 (1970).

184. 25th Ann. Rep., *supra* note 102, at 3.

185. U.N. CHARTER art. 83, para. 2.

> ritory and its peoples and the freely expressed wishes of the peoples concerned, and as may be provided by the terms of each trusteeship agreement . . . .[186]

The Charter further authorizes Security Council exercise of all United Nations functions relating to strategic areas, including approval, alteration, and amendment of trust agreement terms.[187] In turn, the 1947 Agreement echoes the present Charter by authorizing the Administering Authority, in discharging Article 76(b) obligations, to

> foster the development of the inhabitants of the trust territory toward self-government or independence as may be appropriate to the particular circumstances of the trust territory and its peoples and the freely expressed wishes of the peoples concerned . . . .[188]

Legally, the United States could apply this provision separately to each of the trust territory's six districts, notwithstanding a resulting administrative fragmentation. Having recognized the Marianas' separatist thrust, however, it must convince the remaining districts that any political fragmentation beyond a loose confederation would further impoverish each economically, and raise the spectre of internal political disorder.

### (1) The Togoland Precedent

A United Nations Visiting Mission to British Togoland[189] recommended after its 1955 tour that to determine the area's future political identity, a plebiscite be administered separately in each of four areas, recognizing and accepting thereby the region's "potent diversity."[190] The British Togolese trust territory's Ho and Kpandu Districts, considered one of the four plebiscite units in the Mission's proposal, were virtually coterminous with the Ewe tribal settlement, which existed nowhere else.[191] Ewe unification with similarly-populated lands in the neighboring French Togolese trust area had strongly influenced events in this region for many years prior to the trusteeship's disposition.[192]

The plan's Togolese defenders reminded the Tenth United Nations General Assembly in 1955 and that

> (1) the British had never administered the territory as a single unit;
>
> (2) Article 76(b) of the Charter recognized the freely-ex-

186. *Id.*, art. 76, para. (b).
187. *Id.*, art. 83, para. 1.
188. 1947 Agreement, Art. 6, Sec. 1.
189. Previously under League of Nations mandate, the territory of British Togoland became a trusteeship soon after war's end. Trusteeship Agreement for the Territory of Togoland Under British Administration, Approved by the General Assembly on 13 December 1946, 8 U.N.T.S. 151 (1946).
190. U.N. Doc. T/1206, at 51 (1955).
191. Coleman, *Togoland*, 509 INT'L CONCILIATION 12, 73 (1956).
192. U.N. Doc. T/1206, *supra* note 190, at 45, 46.

pressed wishes for self-government of the "peoples" concerned.[193] Opposed to this group were others who believed, like India's Trusteeship Council delegate, that Article 76(b) did not grant the right of self-determination either to sub-groups of one and the same people or to collectivities of tribes.[194] Indeed, nothing in the Agreement yielded this particular right directly; section 6 thereof directed the Administering Authority to take only those measures not specifically detailed in accordance with Article 76(b) of the Charter.[195] Because the United Nation's founding document authorizes the creation of individual trusteeship agreements,[196] the identity of "peoples" in Article 76 thereof became in each case a matter of interpretation.

After General Assembly rejection of the four-unit formula, the Trusteeship Council accepted a British argument that the plan would pose formidable administrative problems both for the parent country and the new state of Ghana.[197] It accepted an Indian recommendation that the whole of Togoland be united with Ghana when the latter achieved its independ ence.[198] In 1954. a United Nations Plebiscite Commissioner tabulated results indicating a collective preference of seventy percent for territorial separation, and an expected future union with Ewe-dominated lands in the eastward French Togolese trust territory.[199]

British incorporation of the trust area into its Gold Coast Colony for administrative purposes[200] calls to mind the temporary but separate United States Naval administration of the northern Mariana Islands.[201] Indeed, territory of the latter is geographically discrete and identical to existing district boundaries.[202] Throughout Africa in general and the Togolands in particular, "emerging political systems [have tended] to be coterminous with the arbitrary boundaries carved off by the colonial powers. As a result the new states [have been] constructed at right angles to the major cultural zones."[203] Negative General Assembly and Trusteeship Council action in this case directly affected the demise of Togoland's unification move-

193. 10 U.N. GAOR 333-476 (1955).
194. Id. at 240 (1955).
195. British Togoland Trusteeship Agreement, *supra* note 189, art. 6.
196. U.N. CHARTER, art. 75.
197. U.N. Doc. T/1258, at 13 (1956).
198. U.N. Trusteeship Res. 1496, 18 U.N. Trusteeship, Supp. 1, at 2, U.N. Doc. T/1276 (1956).
199. Questions posed presented a choice of unification with an independent Gold Coast, or separation and continuation under trusteeship. Of Togoland's recorded population, 46% registered to vote. Of these, 82% participated, representing 35% of the recorded population. In the separationist Ewe-dominated Kpandu and Ho districts, the representative Togoland Congress championed separation and continuing trusteeship, hoping to integrate with the territory of French Togoland; 70% of those voting chose this option. U.N. Doc. T/1258, *supra* note 197, at 184-88.
200. British Togoland Trusteeship Agreement, *supra* note 189, art. 5(b).
201. Green, *supra* note 7.
202. 25th Annual Report, *supra* note 102, end-leaf map.
203. Coleman, *supra* note 191, at 28ff.

ment,[204] fixing forever the incorporate but truncated British Togolese identity.

### (2) The Cameroons Precedent

The sub-territorial political status movements prevailed when the physically divided British Cameroons dependency[205] resolved its trusteeship status in separate political directions.[206] The so-called Southern Cameroons formed the easternmost flank of the adjacent British colonial Federation of Nigeria's Eastern Region; a predominant reason for the emerging political elite's espousal of unification with France's Cameroons trust territory on the west.[207] The Northern Cameroons, "physically one of the most isolated sections of West Africa,"[208] had become administratively inseparable from the colonial Nigerian Federation's Northern Region.[209]

Imigration of French speaking settlers from the east into the Southern Cameroons after World War II[210] resulted in a growing distrust of Nigeria[211] by Southern Cameroonians, who eventually favored a "Pan-Kamerun" drive for unification,[212] spearheaded after the general elections of 1957 and 1959 by the Kamerun National Democratic Party (KNDP).[213] The Northern Cameroons characterized a low and largely localized political consciousness within a framework of non-cohesive institutions,[214] acquiescing even in its administrative union with the pre-independent Nigerian Federation's Northern Region.[215] The Northern People's Congress (NPC) was the only party to emerge before 1959, and southern politicians did not extend their activities northward.[216]

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204. *Conflict over Self-Determination in Togoland*, in WELCH, DREAM OF UNITY: PAN AFRICANISM AND POLITICAL UNIFICATION IN WEST AFRICA 116 (1966).

205. The British Cameroons became a trusteeship again after World War II. Trusteeship Agreement for the Territory of the Cameroons Under British Administration, Approved by the General Assembly on 13 December 1946, 8 U.N.T.S. 119 (1946).

206. The U.N. General Assembly voted to terminate Great Britain's trusteeship for the Cameroons in 1961. G.A. Res. 1608, 15 U.N. GAOR, U.N. Doc. A/4354 (1961). Later that year, the northern portion of the British Cameroons merged into the territory of Nigeria. Its southern counterpart became part of the Republic of Cameroon. Marston, *Termination of Trusteeship*, 18 INT'L & COMP. L.Q. 1, 40 (1969).

207. *Kamerun Idea*, in WELCH, *supra* note 204, at 167, 168.

208. *Toward Federal Union in the Cameroons*, *id.* at 216.

209. Art. 5(b) of the British Cameroons trusteeship agreement authorized Great Britain to constitute the territory into an administrative union with adjacent territories. Eventually, it tied the Southern and Northern Cameroons into various administrative unions with the pre-independent Federation of Nigeria.

210. W. JOHNSON, THE CAMEROON FEDERATION: POLITICAL INTEGRATION IN A FRAGMENTARY SOCIETY 120 (1970).

211. *Kamerun Idea*, in WELCH, *supra* note 204, at 218.

212. *Id.* at 148-88.

213. *Toward Federal Union*, *id.* at 192.

214. U.N. Doc. T/1556, at 122 (1961).

215. *Toward Federal Union*, in WELCH, *supra* note 204, at 218.

216. *Id.*

The 1958 United Nations Visiting Mission, as had its predecessor, recommended that the wishes of the trust's northern and southern populations be determined separately, citing "professed differences" both in administrative systems and in political attitudes and beliefs.[217] A 1961 plebiscite[218] in both the south and north posed two compromise choices: independence upon joining a sovereign Federation of Nigeria, or an emergent Republic of the Cameroons.[219] The South favored its Cameroonian alternative by a plurality of seventy percent;[220] its northern counterpart chose absorption into the Nigerian Federation by a ten percent margin.[221]

The now-independent Cameroonian government cited irregularities in the tally of northern votes, questioning whether the British government had obeyed an earlier General Assembly recommendation that the merger between its trust territory and the neighboring Nigerian federated dependency be broken.[222] Both the General Assembly and the International Court of Justice rejected the allegations; the latter contended that no conflict of legal interests existed at the time of adjudication.[223]

### (3) A Pacific Islands Plebiscite

A Mariana Islands legislator's remark before the Trusteeship Council's Fortieth Session in New York that "division of trust territories to reflect freely expressed wishes coincides with self-determination" drew upon the Cameroons precedent for ending the "historical accident" of the 1898 Paris treaty, which awarded only Guam to the United States.[224] No credible United Nations espousel of territorial integrity should preserve boundaries "drawn for administrative convenience and not with regard to the differing conditions or wishes of the inhabitants."[225] Whether the territory of Guam and its neighboring islands will agree to merge into an ethno-political totality is conjectural. It appears, however, that a post-trusteeship partition without prospect of a pan-Mariana union may well raise accusations of insincerity, especially from the United Nation's anti-colonial quarter.

A territorial plebiscite will eventually decide this issue according to the tradition of international practice; here, its implementation will turn on pan-territorial opinion at district levels. Presumably, choices posed would be two-fold: independence or free association. There is also the third Marianas

217. U.N. Doc. T/1440, at 29 (1959).
218. G.A. Res. 1350, 13 U.N. GAOR, U.N. Doc. A/4090, Add. 1 (1959).
219. G.A. Res. 1352, 14 U.N. GAOR 26, U.N. Doc. A/4354 (1959).
220. U.N. Doc. A/4727, at 50 (1961).
221. *Id.* at 86.
222. U.N. Doc. T/1530 (1960).
223. The General Assembly disfavored these charges by a 64-23-13 vote. *Toward Federal Union*, in WELCH, *supra* note 204, at 242. For the I.C.J. decision, *see* [1963] I.C.J. 33, 34.
224. U.N. Doc. T/Pv. 1415, at 22 (1973).
225. *Id.* at 23.

alternative.[226] This would dictate inclusion of a Commonwealth option among the available choices. A theoretical allocation of choices would imply extension of some or all to:

(1) the trust territory as a single plebiscitary unit;

(2) the Marianas separately and the remaining trust area as a single plebiscitary unit; (commonwealth would win the field throughout the northern Mariana Islands)

(3) each of the six districts separately;

(4) pre-determined combinations of districts.

Political attitudes throughout the Pacific Islands imply a selection-out of one or more allocation-models. It is further acknowledged that the northern Marianas will insist on a singular consultation. Thus, choice (1) above is rendered academic. The United States will likely attempt to forge unity among the remaining five districts; an effort inconsistent with choices (3) and (4).[227] Its failure to do so will fragment the trust territory beyond any prospect of economic viability, and subject its Administering Authority to international condemnation. Choice (1) appears most feasible, but which alternatives will be expostulated in the plebiscite itself remains to be considered. Although the Marianas have specified only commonwealth to date, the alternatives of continued incorporation with the rest of Micronesia and independence (as well as commonwealth) would coincide with United Nations practice. In turn, the other five districts have jointly specified no status preference other than free association; their collective choice as a united Micronesia would include only free association or a more autonomous status; *e.g.*, unfettered independence. Logically, the Marianas could not make a choice until assessing the Micronesians' own status preference. The Mariana Islands district could freely select the choice due them in a second popular consultation. The United States and United Nations can then move to terminate the 1947 Agreement at this point.[228] An arrangement most feasible for status determination in the Trust Territory of the Pacific Islands then appears to lie in a two-fold consultation:

(1) the two choices of free association and independence for Micronesia excluding the northern Marianas;

(2) three alternatives for the trusteed Marianas: commonwealth, continuing incorporation with the other five districts in their new collective status, or separate independence.

The Marianas under trusteeship will undoubtedly reject continuing incorporation. Identity of the political status commonly shared by the post-trusteeship Micronesian districts may range from federation to a Canadian-

226. *Supra* note 176.

227. A Mariana Islands District Legislature resolution suggested consultation at the district level, citing cultural differences. Res. 13-1970, 3d Mariana Is. Dist. Leg., 4th Reg. Sess. (1970).

228. The United States pledged to terminate the trusteeship simultaneously in all of its six districts. U.N. Doc. T/Pv. 1412, at 6 (1973).

style confederation, all in free association with the United States, their former administering authority. Each would then share the benefits of one mutually binding compact of association with the United States.[229]

However, the Trusteeship and Security Councils will likely favor a political solution over legal remedies to the trusteeship's liquidation.[230] It is assumed, however, that the British Togoland and Cameroons trust agreements will impart consistency to their disposition of the 1947 Agreement, whatever factors may compete for influence. Whether the non-Marianas residents of the Pacific Islands trust territory will eventually approve a Marianas partition remains an open question, rendered uncertain by inclusion of both the Soviet Union and the Peoples Republic of China as permanent veto-empowered members of the United Nations Security Council.[231] Nevertheless, the Marianas' initiative of requesting separate negotiations is a political act, undertaken by one of the "peoples" of the trust.[232]

Should the spirit of detente between the United States on one hand and the Soviet Union and the Peoples Republic of China deepen by the time the Security Council acts upon the Pacific Islands trusteeship's termination,[233] their trilateral harmony may augment the likelihood of the Mariana Island district's political status aspirations. Even so, the consequent relationship will have to receive United States congressional approval.

## V. TRIPARTITE CONSULTATIONS: UNITED STATES AND CONGRESSIONAL LIAISON PARTICIPATION

The Marianas, key to America's trusteeship dilemma, must overcome congressional conservatism and a somewhat more doctrinaire international liberalism at the United Nations. While Congress has fashioned its cautious stance from the doctrine of territorial succession (usually towards statehood),[234] the United Nations Trusteeship Council[235] has fallen back on broad ethical principles rooted in the mandate philosophy of its defunct predecessor, the League of Nations' Permanent Mandates Commission.[236]

229. Conclusion of separate compacts of association between the United States and each of the five districts would create short-run political fragmentation and chaos if these instruments incorporated unilateral termination provisions.

230. Memorandum by the author of conversation with the Secretary of the U.N. Trusteeship Council (Felipe A. Pradas-Hernando), July 30, 1973, dated August 15, 1973.

231. U.N. CHARTER, art. 27, para. 3.

232. *See* 1947 Agreement, art. 6(1).

233. This problem intertwines domestic and international processes.

234. MŒLLER, *supra* note 9, at 392.

235. UNITED NATIONS, THE UNITED NATIONS AND DECOLONIZATION 7 (1964).

236. For a comparison of the trusteeship and mandate systems, *see* R. CHOWDHURI, INTERNATIONAL MANDATES AND TRUSTEESHIP SYSTEMS: A COMPARATIVE STUDY (1955), and H. HALL, MANDATES, DEPENDENCIES, AND TRUSTEESHIP (1948). A classical analysis of the mandates' humanitarian aspects may be found in Q. WRIGHT, MANDATES UNDER THE LEAGUE OF NATIONS (1930).

Favorable to the specific goals of the northern Marianas leadership is a growing Trusteeship Council resignation to the territory's impending political split. A series of informal plebiscites on the issue throughout the Marianas chain[237] initially attracted its attention. The 1973 Pacific Islands Visiting Mission's report acknowledged that the separtist movement there had "gone a long way," and that there was a need "to be realistic."[238] During the Trusteeship Council's fortieth session in June, 1973, the British and Australian representatives concurred,[239] the latter holding out a hope that such developments would not lead other districts into separation.[240] Acknowledging Marianas sentiment, the French delegate nevertheless left ajar the door to future reunification.[241] An examination of the Soviet delegate's contribution to the fortieth convocation, predictably labels the administering authority as a villain.[242] His contentions nevertheless underscore his country's formidable political clout.[243] The Trusteeship Council as a whole adopted an open-ended stance on eventual reunification "if the secession of the Mariana Islands cannot be avoided for the moment."[244]

Although the Soviets endorsed the Pacific Islands strategic trusteeship upon their acquisition of the northern Japanese Kurile Island,[245] the spectre of its veto in the Council, along with that of the Chinese Peoples Republic, is inextricably bound with the 1947 Agreement's procedural termination. The U.S.S.R., however, faces an increasingly bitter Chinese adversary across an extensive common frontier. For their part, the Chinese may conceivably view continued United States military hegemony over Micronesia and other Pacific basin localities essential to geopolitical stability there. Indeed, the Kuriles tradeoff[246] came at a time when post-war United States-Soviet relations had already begun to deteriorate. The overall situation relates moreover to the era of tripartite Big Power diplomacy into which international relations seems to be entering, in which future United Nations mediation will be crucial.

At the present time, the United Nations has yet to define a role for itself which accords it continuing access to information on the increasingly

237. In 1950, residents of the Marianas informed touring U.N. officials of their desire to become United States nationals. Between 1961 and 1968, several plebiscites disclosed their wish to unite with Guam. Again, in 1971, a survey conducted by elected representatives revealed a continuing predominant desire for political union with the United States. U.N. Doc. T/1741, *supra* note 176, at 124. Also, *supra* note 51.

238. U.N. Doc. 1741, *supra* note 176, at 129.

239. U.N. Doc. T/Pv. 1416, at 12 (1973).

240. *Id.* at 48.

241. *Id.* at 23.

242. *Id.* at 46.

243. The Peoples Republic of China inherited both the Republic of China's (Taiwan) Trusteeship and Security Council seats in 1971. The basis of its veto power lies in U.N. CHARTER, arts. 22(1) and 22(3).

244. 28 U.N. SCOR, Spec. Supp. No. 1, at 76, 77, U.N. Doc. S/10976 (1973).

245. *See* Green, *supra* note 7.

246. *Id.*

complex termination negotiations between the United States and strategic trust territory representatives. The United States Congress should effect similar action through its House and Senate Committees and Subcommittees. The Trusteeship Council's annual reviews and periodic *in situ* scrutiny are no longer adequate sources of information. Congressional hearings are similarly insufficient. A need has arisen for the creation of liaison channels through which this information can be transmitted, especially between the United States government and the United Nations, as co-equal parties to the 1947 Agreement. This problem assumed importance at the 1973 Trusteeship Council session, when several members, together with an influential trust-territorial legislator, criticized the lack of United States-United Nations information channels.[247] Typical of these remarks was an allegation that annual travel allotments for the United Nations' Washington, D.C., Information Center did not exceed $500.00.[248]

Little has been done in the past twenty-seven years to prepare the trust territory's people for the plebiscite stipulated by the 1947 Agreement.[249] Political passions and independence movements have emerged, vying with those favoring closer ties with the United States.[250] An understanding of issues related to future political status is lacking.[251] When asked about their political future, many Micronesians replied that they understood only poorly the significance of the status negotiations. They had also not been accorded any intelligible explanation of differences between independence and free association.[252] Political parties which might otherwise clarify such issues seem to have done so only in Marianas.[253] Moreover, Micronesian legislation to remedy this deficiency has proved abortive.[254]

Territorially, this inadequacy is notable inasmuch as political education is primarily a lesson in social values.[255] An authoritative determination of the entire area's post-trusteeship future can be based only upon a popular consensus rooted in politically articulated civic sentiment. A grass roots Micronesian desire for more direct contact with legislators on the issue of status negotiations[256] is an encouraging measure of existing potentialities for consensus-building. Micronesian congressmen should urge their constituents to favor a unitary Micronesian identity at the expense of divisive district-level aspirations.

247. U.N. Doc. T/Pv. 1418, at 13-15 (1973).
248. U.N. Doc. T/Pv. 1420, at 4, 5, 7, 12 (1973).
249. 1947 Agreement, art. 6, sec. 1.
250. Guttmann, *Micronesia, Politics, and Education*, 49 VA. Q. REV. 29, 35 (1973).
251. U.N. Doc. T/L. 1178 (1973).
252. U.N. Doc. T/Pv. 1416, *supra* note 239, at 21.
253. U.N. Doc. S/10976, *supra* note 244, at 24.
254. P.L. 4C-96, 4th Cong. Micron., 2d Spec. Sess., § 3 (1972). Congress failed to extend the life of a joint political education commission established for this purpose. House Bill 112, 5th Cong. Micron., 1st Reg. Sess. (1973), and Status Table, 5th Cong. Micron., 1st Reg. Sess., at 12 (1973).
255. *Supra* note 224.
256. U.N. Doc. S/10976, *supra* note 244, at 25.

A status-preference widely articulated at the grass roots will probably reconcile congressional and Security Council attitudes regarding a post-trusteeship plurality better than their advocacy by the leadership alone. Moreover, a forced dismemberment of the Pacific Islands trust without strong popular sanction will diminish the credibility of its administering authority as a proprietary champion of international law.

## VI. CONCLUSION

The United States must reconcile its undiminished military hegemony in the western Pacific with the international community's anti-colonial bias. Any solution to this "Gordian Knot" must draw upon the resourcefulness of America's resolve to synthesize the diverse positions taken by itself, the United Nations, and the plural constituencies within the Micronesian trusteeship, thereby reaffirming its commitment to responsible political self-determination and geopolitical stability.