April 1, 1985

MEMORANDUM
OVERVIEW

If enacted, the Compact of Free Association would be a historic decision, capping America's accomplishments in the Central Pacific since the Japanese attack on Pearl Harbor.

When enacted, the compact must be meritorious since the Congress will relinquish authority to effect future change as federal law would no longer apply in Micronesia.

After fifteen years of negotiations with the fledgling Micronesian states, the Compact of Free Association would establish new international relationships; that is, the quasi-independent status of free association. This new political order would grant a multitude of rights, privileges, federal funds and services -- about $2 billion for 110,000 people over the first fifteen years -- as well as placing the Marshall Islands and the Federated States of Micronesia (FSM) under the national security umbrella of the United States. In turn, the compact portends to provide the U.S. with certain advantages in the fields of national security and foreign affairs and continues military base rights at Kwajalein.

Although offered $1 billion in U.S. assistance, Palau -- the third Micronesian state -- has yet to bring its constitution in line with the nuclear provisions of the compact. Accordingly, separate Congressional consideration of Palau's political status may be required at some later date. The situation raises the likelihood of a different compact for Palau, which would further complicate the problems identified below, as well as add to the difficulties that the U.S. must overcome in securing U.N. acquiescence in the piecemeal termination of the Trusteeship.

With such a generous package, it is not surprising that in the 1983 U.N.-observed plebiscites, a majority of Micronesians voted in favor of the compact.

Under all four administrations, the driving forces behind U.S. negotiators over the past fifteen years were: (1) the Department of Defense's objectives of maintaining Kwajalein base rights and denying the area to foreign military forces; and (2) the Department of State's goal of terminating the the last remaining U.N. Trusteeship. However, the principles underlying the international and security provisions of the compact are dated, having been devised in 1978 under the Carter

administration. Accordingly, they do not account for the increasing Soviet challenge to American naval superiority in the Pacific; the rise of China as an international contender; civil unrest in the Philippines; the growing trade imbalance with Japan; and the soaring national deficit.

In combining the prerogatives of independence with the benefits usually limited to territories of the United States, this unusual political relationship -- i.e., free association -- would create a more profitable arrangement for these non-U.S. islands than provided to any U.S. territory. This unprecedented political relationship would exacerbate existing federal-territorial relationships. In short, the combination may just not make sense. **Micronesia should either be outside or inside the U.S. federal family -- not "out" so that sovereign powers may be exercised and "in" so that domestic benefits may be received.**

The following conclusions assume that the compact will not be amended and focus upon the implications of enactment upon: (1) the U.S. insular areas; (2) U.S. national security interests in the Pacific; and (3) America's obligations under the U.N. Trusteeship Agreements.

THE U.S. INSULAR AREAS

o **The compact would create new and substantially more advantageous U.S. relationships with the freely associated states (FAS) than those currently existing between the federal government and the U.S. territories**

Implicitly, enactment of the compact would either promise similar, if not better, treatment for the U.S. territories; or conversely, the compact would stimulate militancy on the part of the U.S. insular areas to seek similar political relationships as the FAS. In either event, issues would arise, **affecting over 4.5 million people and involving at least $110 billion in additional federal expenditures.**

Already Guam -- which is of major strategic significance to the U.S. -- is anxious to become a commonwealth with prerogatives and benefits similar to those proposed for the FAS. Puerto Rico's commonwealth leaders hope for success of the compact because it would strengthen their hand in dealing with statehood advocates locally and with the U.S. when they seek similar powers and benefits. Compact terms would also appear attractive to some in the U.S. Virgin Islands and American Samoa.

Denying similar treatment to U.S territories after approving the compact would be unfair. This concern was heightened when the administration recently expressed opposition to granting the U.S. territories similar economic benefits as the FAS -- a misgiving also highlighted in a recent GAO report.

- **The FAS would offer better business tax breaks than the territories.**

U.S. companies investing in the FAS would enjoy the tax credit which was once, but is no longer, available on income from the territories. Limitations on the credit imposed in 1982 would only affect investments in the territories. This is a big issue ($1.4 billion in FY 1985) to the U.S. territories because this credit has encouraged investment and economic growth. Under present Department of Treasury proposals, it would be phased out in the territories but would remain available in the FAS.

- **The FAS would get territorial trade preferences but not have comparable costs of doing business.**

FAS products would enter the U.S. duty-free on the same terms as territorial products. Yet, FAS manufacturers would not have to meet the wage or environmental requirements with which the territories must comply. Moreover, U.S. immigration and foreign investment restrictions would not apply. The combination could give the FAS, for example, a significant advantage as a location for tuna canning over American Samoa -- an industry which now employs 30 percent of the Samoan workforce.

- **The FAS would get increased federal assistance, whereas federal aid for the territories has been severely cut.**

Approximately 80 percent of the $2 billion in federal aid would be guaranteed to the FAS through 15-year entitlements, at levels indexed for inflation from 1981. On the other hand, the peoples of the U.S. territories are experiencing reductions in federal assistance and are expected to share with their fellow Americans the effects of the national deficit. Further, the FAS would get assistance for some purposes, such as converting from imported oil to alternative fuels, for which territorial requests have been consistently denied.

- **FAS citizens, including those originating in other countries, could migrate to the United States.**

FAS citizens, including naturalized immigrants, would be entitled to enter, reside, work and receive governmental services in the U.S. and its territories. They would not be subject to the immigration restrictions applied to citizens of other foreign nations. Immigrants to the FAS could be naturalized after just five years, and the U.S. would not oversee the naturalization process. Thus, persons emigrating from other countries who otherwise might not legally enter the U.S., could now enter without restriction. Accordingly, Guam and Hawaii should expect large migrations of FAS citizens with corresponding demands upon public services.

o **The FAS could issue bonds not permitted in the states or territories.**

Development bonds issued by the FAS would be exempt from U.S. tax as are state and territorial bonds. However, they would not be subject to Treasury Department restrictions imposed on state and territorial bonds in 1984.

o **FAS could get aid from other nations but the U.S. territories cannot.**

The FAS could receive economic assistance, such as capital improvements grants, and enter into economic agreements, such as fisheries agreements with other nations, as well as join international financial organizations. U.S. territories and states cannot.

o **The FAS would provide a tax-haven for U.S. citizens.**

U.S. citizens, residing in a FAS for 183 days each year, would be exempt from U.S. and territorial taxes and would only be liable for much lower FAS taxes (although Americans residing in foreign nations are generally taxed by the U.S.). As the administration's analysis of the compact states: "Persons who reside in the FAS will not have to pay any otherwise applicable United States tax on income which is taxed by the FAS, even where such income is derived from sources outside the FAS." [p. 104, H.Doc. 98-102]. Furthermore, the U.S. would have no way of reviewing compliance with this minimal residency requirement and the likely result would be that the U.S. and its territories could lose substantial revenues to the FAS from individuals who establish residence in the FAS primarily to avoid taxation.

o **The FAS would gain exclusively control of the 200-mile economic zone which the U.S. denies to states and territories**

This provision of the compact would primarily affect the U.S. tuna industry; but in the future, U.S exploitation of deep-seabed mineral resources could also be severely curtailed. U.S. long-standing policy only recognizes a twelve-mile limit in a nation's control of migratory fishing enterprises. In contradiction to this policy, however, the compact would award 200-mile control to the FAS, even providing moneys to help in the surveillance effort. Thus, the compact would authorize and subsidize the FAS to seize American ships and fine American fishermen who have historically fished the area.

o **U.S. dollars and postal service to be used in the FAS without controls.**

U.S. currency would be the legal tender and the U.S. Postal Service would operate in the FAS. However, no provisions are made for U.S. law enforcement regarding counterfeiting or illicit mail shipments.

o **"Buy America" does not apply in the FAS.**

The FAS would not be required to contract with U.S. companies when spending U.S. aid, including the $439 million, indexed from 1981, for capital improvements as well as for much of the other U.S. assistance under the compact. Construction companies, particularly in Guam and Hawaii, would not be able to compete with foreign contractors. Some U.S. construction companies have already lost out on bids for major projects to firms owned by the mainland Chinese, for example.

NATIONAL SECURITY

o **The compact would not be compatible with America's long-range strategic and international policy in the Pacific.**

For at least the past decade, U.S. policy toward the Pacific basin has been to encourage regional cooperation. Essentially, the approach has stressed U.S. financial assistance through regional organizations such as the South Pacific Commission, utilizing the good offices of the State of Hawaii and the U.S. Pacific territories to foster U.S. policy objectives. The compact, however, would fly in the face of regionalism, creating two additional sovereign states as targets for international subversion.

The FAS would become susceptible to the influence of other nations, such as the Soviet Union, which is currently improving regional ties in the neighboring oceanic states of Kiribati and Tuvalu or Cuba and Vietnam, which presently have a joint mission in Vanuatu. [Map attached].

Other factors, such as almost total dependency upon foreign financial assistance, make the FAS prone to "economic blackmail" by powers inimical to the United States. Already, the Marshalls and Palau are extremely vulnerable because of their $74 million combined foreign debt. In the meanwhile, the Soviets, Chinese and Japanese are actively strengthening regional economic ties.

Like Palau and New Zealand, the FAS could become mesmerized by the concept of a "nuclear free Pacific" with the attendant restrictions on U.S. military activities in the Pacific.

Even today, the FSM is participating as an observer in meetings of the South Pacific Forum, which is preparing a draft South Pacific Nuclear Free Zone Treaty for presentation next summer.

o **To create two politically immature, virtually bankrupt states with untested and uncertain security safeguards would detract from the strategic posture of the United States, especially in regard to the mainte- of air and sea lanes to Asian and Pacific allies.**

U.S. national security would not be enhanced by enactment of the compact. Although the compact would pledge strategic denial of Micronesia to military activities of third party nations, the mechanism of enforcement -- namely a veto over FAS activities contrary to U.S. national security interests -- has been neither developed nor tested. In short, the U.S. veto may prove to be ineffective because the FAS may take actions before the U.S. has an opportunity to exercise its veto or because international politics may preclude its use.

Even under the Trusteeship, the U.S. has failed to exercise a veto over Micronesian decisions, which have proved contrary to U.S. national security interests. For example, Palau was permitted to adopt a constitution whose anti-nuclear provisions could hamper U.S. military operations in the Western Pacific. Moreover, both Palau and the Marshalls were allowed to negotiate foreign loans, which are economically destablilizing. During the first 5-years of the compact, the Marshalls government projects that servicing of current foreign debts alone will amount to over $52 million. And the Palau government must renegotiate its loan in April 1985 or run the risk of default.

Today, the same British power company (i.e., IPSECO), that plunged the Marshalls and Palau into such deep debt, is actively promoting a $25 million power plant in Truk state of the FSM. The Department of Interior opposes the loan on the grounds that the proposal is "non-income-producing" and would lead to financial difficulty; nevertheless, the Department declines to intervene.

Accordingly, if the U.S. will not intervene in Micronesian affairs under the Trusteeship, then it is unlikely that a U.S. veto would be exercised under free association.

o **At best, strategic denial of Micronesia would be based upon a legal concept and not upon moral or political commitments.**

The compact is not a mutual security agreement. It does not prescribe common security goals, international economic objectives or even a commitment to maintain the region free from communist influence and subversion.

Under Section 442, the compact may be terminated unilaterally within six months following notice of intent. Section 452, prescribes that in the event of unilateral termination, the security and defense provisions of the compact will continue in force until amended by mutual agreement. Additionally, the U.S. would continue the supply of compact funds, guaranteed under "full faith and credit of the United States" or its equivalent until the fifteenth anniversary of the compact.

Unilateral termination of the compact by a Micronesian state is a distinct possibility. Presumably disgruntled with the slowness of status negotiations, the Foreign Minister of the Marshalls, Mr. Tony DeBrum, announced in 1982 his desire **to seek an independence option.** Subsequent statements by the Foreign Minister continue to demonstrate dissatisfaction with the United States and free association, emphasizing his point of view that the Marshalls Islands are already independent.

On March 14, 1985, the Chief Secretary of the Marshall Islands, Mr. Oscar DeBrum expressed before the House Interior Committee his **reservations on the security provisions of the compact** as follows:

> **"I note that although the United States will have broad authority for security and defense matters, it is intended that such authority will only be exercised in good faith.... It is not intended that this authority could be exercised in an arbitrary or capricious fashion."**

In the event of disagreement between a FAS and the U.S. involving the interpretation of national security authority -- especially, in regard to unilateral compact termination -- the dispute settlement provisions (Title III of the compact) would apply. Under Section 313, consultation would be conducted "at senior levels of the Governments concerned and a FAS would be "afforded...an opportunity to raise its concerns with the United States Secretary of State personally and the United States Secretary of Defense personally...."

Obviously, such a legalistic method of dispute resolution is not responsive to U.S. national security responsibilities. The delay in the process and the potentially adverse publicity surrounding such proceedings, could restrain the U.S. from acting in its own best interests.

o **Insurgency is the greatest threat to the security of the Marshalls and FSM. Under terms of the compact, however, the U.S. may be precluded from a unilateral response.**

Since World War II, the most common threat to U.S. national security interests has been that of insurgency. In respect of the U.N. Charter, the U.S. has been hampered in countering insurgency because it did not wish to be accused of involvement in the internal affairs of a sovereign nation. Section 311(c) of the compact reaffirms this restriction; that is: "The Government of the United States confirms that it shall act in accordance with the principles of international law and the Charter of the United Nations in the exercise of this authority and responsibility."

The pattern of insurgency is clear. Dissident groups at odds with a ruling regime are encouraged and clandestinely aided by the Soviets or their surrogates to wage guerrilla war. Islands are even more susceptible to insurgency due to problems of logistics. Accordingly, with no security forces and many internecine island rivalries, the FAS would be especially vulnerable.

Factionalism, which prevented the formation of a united Micronesia in 1978, continues today. In the FSM, Ponape voted against the compact. In the Marshalls, the people of Kwajalein overwhelmingly voted against the compact as did those peoples adversely affected by U.S. nuclear testing. The atolls of the southern Marshalls have also threatened to secede, seeking unification with Ponape. And in the lesser developed islands of Truk Lagoon (know as Faichuk and whose people boycotted the plebiscite), one of their legislators recently sent invitations to both the U.S.S.R. and the U.S.A. to build a military base -- first come first served -- in his district so as to relieve the poverty of his constituents.

o **Kwajalein may be leased but might not be secure.**

The Kwajalein Missile Range (KMR) represents a $2 billion investment vital to research and development for our intercontinental ballistic and anti-ballistic missile systems. The current land use agreement for KMR is due to expire this fiscal year. A primary reason that the Department of the Defense (DOD) wants quick approval of the compact is that it provides for the lease of KMR on terms similar to those currently in effect. If the compact is not approved before FY 1986, DOD fears costly renegotiations for KMR.

Most of the 8,000 Marshallese residing in Kwajalein Atoll live on the islet of Ebeye (75 acres), three miles from KMR. For the most part, they are represented by the Kwajalein Atoll Corporation (KAC), whose leaders are

political opponents of the Marshallese government regime and pose a threat to traditional authority throughout the archipelago. Distrustful of the ruling regime under **President Amata Kabua**, the KAC believes that the United States should guarantee direct payment to those who must experience daily the brunt of America's missile testing program. With submission of the Marshalls' 5-year economic plan under the compact, the suspicions of the landowners have been even more aroused. Chief Secretary Oscar DeBrum testified before the House Interior Committee on March 14, 1985 as follows:

> **"[T]he total demand [of the plan] comes to $336.9 million. The total funds estimated as available from all sources is only $215.4 million. There is therefore a shortfall of $121.5 million. Out of this shortfall, $86.5 million is due to KADA [Kwajalein Atoll Development Authority] projects. If KADA is able to find this money, the government will be left with a shortfall of only $35.0 million to be financed from sources other than Compact funds.**

In spite of such disregard for the people of Kwajalein and the demonstrated ability of the Kwajalein land owners to disrupt base operations through "sail-ins," U.S. negotiators refused to deal officially with the KAC during compact negotiations. In the conduct of "government-to-government" negotiations, the U.S dealt with the Kabua Regime to arrive at a KMR land use payment schedule of $9 million per year plus $2-3 million collected annually on taxes levied on KMR operations.

The Kwajalein landowners would probably be reasonable if the U.S. were willing to deal with them directly. Until such time, however, a political solution does not seem possible. The plebiscite on free association was held in the Marshall Islands on September 7, 1983. Although 58 percent of the Marshallese voted for free association, the inhabitants of Kwajalein disapproved the compact by 68 percent. Moreover, the legislature of the Marshall Islands (Nitijela) is composed of 33 members whose districts, according to critics, were gerrymandered in such a manner so as to insure the continuance of the Kabua Regime and its allies in perpetuity. Kwajalein Atoll, for example, which accounts for about 25 percent of the population in the Marshalls, only has three senators or a nine percent representation in the Nitijela.

The people of Kwajalein fear with good cause that once the compact is enacted, benefits derived for the use of KMR will be denied them by their own government. Since the Government of the Marshalls has little capability to contain insurgency and the people of Kwajalein have demonstrated such inclinations, enactment of the compact would most likely exacerbate the situation, resulting in disruptions of KMR operations, necessitating the U.S. to protect its own security interests -- perhaps, by force.

U.S. TRUSTEESHIP RESPONSIBILITIES

Under the U.N. Trusteeship agreement, America is committed in Micronesia to:

> **1. Foster the development of such political institutions as are suited to the TTPI.**
> **2. Promote the economic advancement and self-sufficiency of the inhabitants.**
> **3. Promote the social advancement of the inhabitants.**
> **4. Promote the educational advancement of the inhabitants.**
> **5. Promote development toward self-government or independence in accordance with the wishes of the peoples of the TTPI.**

o **The compact would not guarantee that the governments of the FAS would be either democratic in form or would respect basic human rights.**

The preamble of the compact addresses these subjects as follows: "Affirming that their Governments and their relationships as Governments are founded upon respect for human rights and fundamental freedoms for all, and that the peoples of the Trust Territory of the Pacific Islands have the right to enjoy self-government...."

At best, the current government of the Marshall Islands could be described as a traditional oligarchy, operating under the façade of constitutionality.

Within the Marshalls, minority groups, such as the peoples of Kwajalein, Bikini or the southern atolls, were not represented in compact negotiations. Today, they are underrepresented in government. And tomorrow under the compact, their influence will probably lessen. Unfortunately, the traditional caste system that dominates the Marshallese government encourages violent reaction. In the attached letter to the House Interior Committee, Senator Chuji G. Chutaro of Milli Atoll states:

> **"The Compact of Free Association in the eyes of international politics may be a noble one, but may not guarantee a democratic government, especially when its citizens are not educated enough and/or ignorant of their rights."**

Additionally, those Marshallese adversely affected by U.S. nuclear testing will long remember that it was their current President, Amata Kabua, that opposed the radiation cleanup of Enewetak and offered Bikini to the Japanese as a nuclear waste dump.

Considering the example of the Philippines, which was also under American tutelage, it would appear reasonable that the compact should provide future guarantees that the FAS maintain democratic forms of government and demonstrate respect for basic human rights.

o **Under the nuclear claims settlement agreement (Section 177), the compact would award more to the Government of the Marshalls for the espousal of all claims against the U.S than it would award to all the legitimate claimants combined.**

The Government of the Marshalls contends that its entire population was affected by U.S. nuclear testing; therefore, all should share in claims paid by the U.S. Presumably, it was on this political ground that the Section 177 Nuclear Claims Settlement Agreement was included within the compact and made subject to the general vote in the plebiscite.

On the other hand, the U.S. has only identified the atolls of Bikini, Enewetak, Rongelap and Utrik as being affected. Needless to say, those Marshalls with legitimate claims are very distrustful of the manner in which their Government might disburse Section 177 funds under its control.

The Section 177 agreement would establish $150 million in trust funds, proceeds of which are estimated over the first fifteen years to amount to $270 million ($18 million/year) and would be disbursed as follows:

CLAIMANTS	
Bikini	$ 75.00 million
Enewetak	48.75
Rongelap	37.50
Utrik	22.50
Subtotal	183.75

GOVERNMENT OF THE MARSHALLS	
Health, food, agriculture	30.00
Radiological monitoring	3.00
Claims Tribunal	45.75
Tribunal operations	7.50
Subtotal	86.25
GRAND TOTAL	$ 270.00 million

At the end of fifteen years, the Government of the Marshalls would gain complete control of the $150-million Trust, the proceeds of which "shall be made part of the fund or used by the Government of the Marshall Islands for other programs and services for the people of the Marshall Islands as their unique needs and circumstances resulting from the Nuclear Testing Programs may require...."

o **Under the compact, health care delivery systems and education in the FAS would mostly likely degenerate.**

Although federal subsidies to the FAS under the compact will be significantly increased [see attached schedule], most federal programs will cease. Micronesian health care practitioners and educators have expressed concern before the House Interior Committee that because of FAS political priorities, health and education programs would be reduced under the compact from present levels. They implore that U.S. federal health and education programs continue in the post-Trusteeship in order to provide funding that cannot be diverted by local political exigencies. In light of the recent cholera epidemic in Truk and the current epidemic of Hansen's disease (leprosy) in the FSM, such concerns appear legitimate.

o **War claims would not be honored by the compact.**

Public Law 95-134 authorized that there be appropriated to the Secretary of the Interior "such sums as may be necessary to satisfy all adjudicated claims and final awards made by the Micronesian Claims Commission to date under Title I and Title II" of the 1971 Micronesian Claims Act. All Title II claims have been paid; however, there are still outstanding claims of $24 million due under Title I. Public Law 95-134 also stipulated that before payment could take place, Japan must make contributions in either goods or services to the Micronesian governments equivalent to $12 million. Although it is likely that Japan has met this requirement, the compact is silent concerning this U.S. obligation.

The U.S. is also committed to providing financial support to assist the FAS in capitol construction. This obligation is also not addressed in the compact.

o **The compact would provide insufficent controls to supervise the expenditures of compact funds.**

Since about 80 percent of compact funding would be provided under the "full faith and credit of the United States," the Congress would excuse the FAS from the necessity of justifying future expenditures before the Appropriation Committees. Although the compact would provide procedures for the conduct of U.S. audits and would require the submission of annual reports on past expenditures, the Congress would be powerless to stop most funding even if major discrepancies in FAS governmental operations were observed.

SENATE AMENDMENTS

After only one hearing on the compact during the 94th Congress, the Committee on Energy and Natural Resources, U.S. Senate reported out the compact in mid-March with the following amendments:

1. The compact cannot be terminated or amended by mutual agreement except by act of Congress.
2. The determination of funds in the compact, not guaranteed by the full faith and credit of the United States, shall be provided in appropriations acts.
3. The TTPI authorization act shall remain in effect for a limited time following Trusteeship termination for the purposes of funding transitional items, infrastructure development, technical assistance and ex gratia payments for those affected by U.S. nuclear testing.
4. Authority for the continuance of services in the Micronesia by the Farmers' Home Administration, Legal Services Corporation and the Public Health Service.
5. Upon request of the Micronesian states, the President may continue any federal program currently operative in Micronesia for a period of three years.
6. Appropriations made pursuant to the compact and the federal programs and services rendered to the Micronesian states will fall under the supervision of the Secretary of the Interior.

OPTIONS FOR THE CONCERNED HOUSE COMMITTEES

1. Amend the compact, as did the Senate, in such a manner that additional plebiscites in Micronesia will not be necessary. Assure the U.S. insular areas that the adverse impacts of the compact will be mitigated in subsequent legislation.

2. Amend the compact substantively requiring the Micronesians to vote on the Congressional decision. These amendments could either: (1) move the FAS toward independence, providing protection from Micronesian incursions on the benefits afforded the U.S. insular areas; or (2) move the FAS closer to U.S. territorial status, maintaining them within the federal family.

3. Table the compact within the committees, relay House objections on the present document to the administration and request that the compact be renegotiated.

4. Defeat the compact on the floor of the House.