

Compact of Free Association Negotiations: Fulfilling the Promise

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Introduction

This year marks the 58th year of United States presence in the territory of what are now called the Freely Associated States (FAS). The U.S. took possession of many of the islands comprising the modern FAS during World War II and has exercised various forms of political oversight since that time. On July 18 1947, the US Government began to administer the Marshall Islands, the Carolines, Palau and the Northern Mariana Islands as a United Nations Mandated Strategic Trust known as the United Nations Trust Territory of the Pacific Islands. The charge to the United States from the United Nations in the Trusteeship Agreement went well beyond merely administering the Trust Territory (Article Two). Article Six of the Trusteeship Agreement added four specific tasks to the U.S. Mission: "[...] The administering authority shall promote (1) [...] the development toward self-government or independence [...] (2) the economic advancement and self-sufficiency [...] (3) [...] the social advancement [...] and (4) [...] the educational advancement of the inhabitants."

The UN Trust Territory (excluding Guam which had been a U.S. Territory since 1898) was comprised of some 2,000 islands spread over 3 million square miles of ocean geographically known as Micronesia. This vast area was subdivided into seven administrative districts: the Northern Mariana Islands, the Marshall Islands, Kosrae, Pohnpei, Chuuk, Yap and Palau. When discussions began between Micronesia and the U.S. in the late 1960s on the islands' political future, the U.S. offered commonwealth status to all of the Trust Territory. Continuing into the early 1970s, these "Micronesian Status Negotiations" over future political status resulted in fragmentation of the Trust Territory. The Northern Mariana Islands group found the offer of commonwealth status with the U.S. appealing and became the Commonwealth of the Northern Mariana Islands (CNMI). The Marshallese, culturally distinct from the Carolinians, and Palau chose to become republics, establishing the Republic of the Marshall Islands (RMI) and the

Republic of Palau respectively. The remaining island states within the Caroline Group (Kosrae, Pohnpei, Chuuk and Yap) chose to federate and became the Federated States of Micronesia (FSM).

Palau, the FSM and the RMI favored national sovereignty rather than commonwealth status, but sought to maintain a special relationship with the U.S. Following more than a decade of discussions and negotiations, in 1986 the FSM and the RMI, and later Palau in 1995, entered into a unique political relationship known as "Free Association" by the entry into force of agreements with the United States called "Compacts of Free Association."

Free Association - A Unique Concept

The concept of free association defined in the "Hilo Principles" agreed by the U.S. and Micronesia in 1978, was in essence a bargain through which a degree of external sovereignty was freely exchanged in return for a defense commitment and the promise of significant economic assistance. Through "Compacts of Free Association," the Freely Associated States (FAS) of the FSM, the RMI and Palau achieved internal self-government while the U.S. maintains full authority and responsibility for defense and security matters. Furthermore, the Micronesians agreed to take no action that the U.S. considers to be in conflict with its defense responsibilities and authority. Similarly, the FAS have full authority and responsibility for foreign affairs, but they agreed to consult with the U.S. and, again, to refrain from taking any action in the area of foreign affairs which conflicts with U.S. defense responsibilities and authority.

Thus, the FAS gained several important things from the Compacts. They secured exercise of their sovereignty over their domestic and foreign affairs, except as limited to allow the U.S. to exercise its defense responsibilities. They received a commitment from the U.S. for defense against external aggression as if they were a part of the U.S.-- a commitment stronger than the U.S. made to its NATO Allies. The FAS became eligible for membership in international organizations such as the UN and for foreign aid from international organizations such as the Asian Development Bank. Of significant importance, they were guaranteed a set level of economic assistance from the U.S. for, in the case of the FSM and the RMI, a period of 15 years extending to late 2001.

The value of these Compacts to the U.S. was significant at the time of entry into force in 1986 and continues to the present. The Compacts give the U.S. the right to deny potential adversaries access to the territory, airspace and territorial waters of the FSM, RMI and Palau. The Compact with the RMI guarantees the U.S. access for thirty years to the important missile testing and space operations range on Kwajalein Atoll. Additionally, the Compact with the RMI provided for a full and final settlement of all nuclear claims resulting from U.S. nuclear weapons testing carried out in the 1940's and 50's.

What's Being Negotiated?

The Compact with the FSM and the RMI entered into force in late 1986 following ratification of the agreement in both countries and passage of an act of Congress (The Compact Act). Although some provisions of the Compact expire after 15 years (fall of 2001) unless they are renegotiated, there is a provision for a two-year extension to funding authority through fiscal year 2003 if the parties are negotiating in good faith. But it is important to note that neither the entire Compact,

nor the relationship of Free Association is up for renegotiation. The political relationship between the United States and the FAS defined by the Compact continues as long as the parties consider it to be in their mutual interests.

Only Title Two (Economic Relations) that provides for U.S. economic and program assistance and Title Three (Defense Relations) will expire if they are not renegotiated. However, two very important defense provisions, the United States' right of "strategic denial" and the agreement to use defense sites on Kwajalein Atoll in the RMI, are not among the expiring provisions. Even if Title Three were not renegotiated, both these important provisions would continue pursuant to agreements subsidiary to the Compact. If Title Three were not renewed, a Mutual Security Agreement would automatically enter into effect that continues to guarantee the right of strategic denial to the U.S. In September of 1999, the U.S. Government notified the Government of the RMI via a diplomatic note of its intention to exercise its right, under the Military Use and Operating Rights Agreement, a second key agreement subsidiary to the Compact, to extend its use of the Kwajalein defense sites for another 15 years through 2016, at previously agreed levels of compensation.

Finally, the U.S. has notified both governments of its intent to review and possibly to amend the migration provisions of the Compact during negotiations even though they are not among the expiring provisions.

The Compact's Successes

The Compact has met its primary goal of providing for a stable transition from United Nations Trusteeship status to sovereign self-government while, at the same time, protecting U.S. security and political interests. The Compact has also been a success in transforming the relationship between these islands and the U.S. from one of trust administrator and ward to being among the United States' closest bilateral relationships.

It needs to be understood that the Compact was negotiated and enacted during the Cold War when the Soviet Union had a growing presence in the Pacific and our relations with the islands were strained. Political and security objectives were a more immediate priority for the United States and U.S. negotiators acceded to Micronesian preferences for less U.S. control over economic assistance in order to secure basing rights and the right of strategic denial.

The Cold War continued into the 1990s, and the United States continued to need the active support of the Micronesians to secure United Nations Security Council approval to terminate the Trusteeship. (Actual termination did not occur until December 1990--four years after the Compact went into effect.) Beginning in 1993, a higher priority was accorded to advancing the economic self-sufficiency of the FAS. This new emphasis resulted in the establishment of new multilateral partnerships with these countries coordinated through the Asian Development Bank, the development and initiation of economic structural reform programs, and the holding of annual bi-lateral economic meetings with each of the countries.

U.S. Interests in the Freely Associated States

The United States has strong and continuing interests in the FAS that justify continued economic assistance.

- The most significant U.S. interest at the time the Compact was negotiated was the value placed on the right to exercise strategic denial of over half a million square miles of the Pacific between Hawaii and Guam to the military forces of other nations. While the Cold War is over, no one can foresee what specific threats may have to be addressed in the future. The Bush Administration's security policy includes a strong focus on the Pacific Region. Strategic denial, therefore, remains a prudent "insurance policy" for U.S. security in the Pacific.
- Sustaining political stability helps to assure stable and friendly relations with the FAS. Political stability provides a positive context for exercising U.S. defense rights, and it provides the benefits derived from close allies such as support in international and regional organizations for U.S. policy positions.
- The U.S. made a commitment under the Trusteeship, which was renewed under the Compact, to assist the FAS' efforts toward economic self-sufficiency. The FSM and the RMI have developed economic structural reform programs with the support of a consultative group led by the Asian Development Bank. The success of these programs depends on continued U.S. support.
- Assisting the FAS to maintain economic stability is also key to reducing some of the negative impacts of migration of FAS citizens to U.S. states and territories. Migration, already a problem in some localities, could become much worse if the FAS experiences significant economic disruption.
- Further, fulfilling the responsibility not just to make the FAS fully self-governing and democratic, but economically viable members of the international community as well, demonstrates our will to meet regional commitments and reinforces U.S. leadership in the region.
- The United States Army installation on Kwajalein Atoll in the RMI has long been used for missile tracking, testing and U.S. space operations. It remains a significant, continuing valuable resource to the U.S., particularly in the area of missile defense testing and development.

The U.S. Approach to Negotiations

During the original Compact negotiations, U.S. national priorities were to secure defense interests in the Central Pacific and completing the de-colonization mandate from the United Nations. However, the context for the current effort to renegotiate the expiring economic provisions of the Compact demands that the Administration pursue new priorities. Refocusing efforts from effecting the political transition from Trust Territory administration to stable, self-governing democracies in close association with the U.S., to completing a similar economic transition toward increased economic self-reliance, is now a high priority.

As the General Accounting Office has documented in six reports over the past two years, the 15 year history during which U.S. economic assistance was not used effectively to achieve specific objectives, or accounted for properly, mandates that a principal task in these negotiations is to improve the effectiveness of, and accountability for U.S. assistance. Developing a strategy for ending, eventually, mandatory annual payments by the United States to these countries, is also a

priority for the U.S.

To meet these priorities, the approach the United States is pursuing in the current Compact Negotiations has four principal elements: continued financial assistance through targeted grants; continued program assistance; a trust fund as a mechanism to provide for the eventual end of U.S. mandatory annual financial assistance; and modifications to the current migration provisions.

Financial Assistance: There must be more effective accountability with respect to any future U.S. economic assistance to the FSM and the RMI. It is time to cease transfer funding in favor of assistance through grants with well-defined accountability procedures. Currently, financial assistance is made available through transfers that co-mingle U.S. funds with local funds, thereby rendering it difficult to track and monitor their use and effectiveness. Instead, future funding should be provided through a limited number of targeted grants, each with clearly defined scope and objectives. The U.S. has proposed to the FSM and the RMI that future financial assistance be focused through grants in six primary sectors: Health, Education, Infrastructure and Maintenance, Private Sector Development, Capacity Building and the Environment. Built into each grant, in addition to specific objectives, will be regular planning, monitoring and reporting requirements.

Program and Services Assistance: For the same reasons that some level of direct financial assistance should continue until the end of the next Compact term, some U.S. Federal program and services assistance should continue as well. Generally, these programs and services are targeted to priority objectives such as rural development, supporting the postal system, and assuring safe air transportation. Nevertheless, in order to move toward our goal of greater self-sufficiency, the establishment of a policy that no new Federal program should be extended to the FAS unless it directly advances the goal of economic self-reliance is being considered. To the same end, a policy whereby the Administration would report annually to Congress, with recommendations on actions that could be taken to increase the effectiveness of U.S. program assistance, including consideration of grant consolidation among federal programs, is under review. Such grant consolidation authority is currently authorized for federal programs operating in the U.S. territories.

Finally, federal program coordination under the existing Compact is ineffective, in part, because the Compact did not give the Department of the Interior sufficient authority to require other departments to cooperate with Interior's monitoring and coordinating responsibilities. Consideration is being given to how these important functions could best be carried out as well as to developing more effective measures to ensure coordination of program and services assistance during the next term of Compact assistance.

Trust Fund: A primary goal of any new Compact agreement should be the eventual termination of annual U.S. mandatory payments to the FSM and the RMI. In its initial proposal to the U.S., the FSM anticipated the U.S. interest in the eventual termination of mandatory annual financial assistance by proposing that the U.S. capitalize a trust fund over the next term of Compact assistance. The FSM proposed that U.S. mandatory annual financial assistance should terminate at such time as the trust fund generates sufficient revenue to replace the mandatory annual assistance.

Like the FSM, the U.S. is interested in the concept of using a trust fund as a means to achieve the objective of ending mandatory annual financial assistance.

Migration: Section 141 of the Compact currently provides that citizens of the RMI and the FSM "may enter into, lawfully engage in occupations, and establish residence as a nonimmigrant in the

United States." Section 104(e) of the Compact Act (Public Law 99-239) requires the President to report annually to Congress on the impact of the Compact. These annual reports as well as a GAO report on migration impact have documented the substantial impact of FAS migration on the adjacent jurisdictions of the State of Hawaii, Guam and the Commonwealth of the Northern Mariana Islands. Of particular concern, are migrants who have communicable diseases, criminal records, or are likely to become a public charge as a result of chronic health or other problems. These conditions are currently all grounds for inadmissibility to the United States under the Immigration and Nationality Act.

There are direct and indirect ways to reduce the impact of migration under the Compact. Improving the general health and education of citizens of the FSM and the RMI through more effective use of economic assistance will lessen some of the impact. Improving the overall quality of life in the FAS will, over time, lessen incentives for many FAS citizens to migrate. However, these indirect ways are both long term and insufficient to deal with what is becoming an increasing problem for Hawaii, Guam and the CNMI.

A more direct approach may be necessary to introduce mechanisms for determining that migrants from the FSM and the RMI meet basic admissibility requirements under existing immigration law. Because section 141 of the Compact currently exempts citizens of the FSM and the RMI from the normal pre-admission documentation requirements applicable to most non-U.S. citizens seeking to travel to the U.S., there has been no effective mechanism for determining admissibility before FSM and RMI migrants reach U.S. soil. Among other things, the possibility of restoring the requirement, which existed prior to 1986, that citizens of the FSM and the RMI be in possession of a valid passport is under consideration. Other mechanisms for ensuring admissibility to the United States are under review. While any such mechanisms would impose some limited new burdens on FSM and RMI citizens, the intent of such changes is merely to enforce existing U.S. law, not to change fundamentally FAS immigration privileges.

Update on the Negotiations

The United States began discussions in the fall of 1999 with the FSM and the RMI on provisions of the Compact that are expiring. Negotiations are proceeding separately and at a different pace with the two countries. There have been four negotiating sessions with the FSM beginning with the first held in November of 1999. Since that initial session, both governments have made substantive proposals and, although significant work remains to be accomplished, agreement has been reached on several important points. Both parties have agreed that they are jointly committed to continued security and defense relations as set forth in Title Three of the Compact. Therefore, in the U.S. view, Title Three will not need to be renegotiated and will be renewed in the next Compact period.

The U.S. side has expressed general support for the FSM's proposal to use a trust fund as a means of achieving the parties' mutual objective of terminating mandatory annual financial assistance to the FSM. However, details of annual contributions to a trust fund and the length of time before U.S. assistance is ended remain to be agreed upon.

General agreement has also been reached on the sectors to be targeted as sector grants to structure future financial assistance. Both sides have also committed to the principles of (1) continued public sector reform, and (2) an economic development strategy based on promoting policies that advance development of the private sector. At the Fourth Round of Negotiations in December

2001, the FSM provided detailed briefings on its economic performance over the past 15 years and the fundamental elements of the FSM's economic proposal were discussed by the negotiators. The U.S. delegation presented five draft subsidiary agreements for consideration and the two sides initialed the texts of the Civil Aviation Programs and Services Agreement of the Federal Aviation Administration and the Postal Programs and Services Agreement of the United States Postal Service, although two issues remain to be resolved concerning future postal services. The U.S. declared its intention to present a draft Compact text to the FSM during the next round planned for February 2002.

After an inaugural session in October 1999, formal talks with the RMI have been delayed by a change in government. The United States is pleased by the democratic transition in early 2000 to a new President and government in the RMI and by statements the President and his cabinet have made regarding the RMI government's commitment to reform, transparency and accountability. This new government has required time to consolidate its position domestically, to formulate an economic development strategy and to orchestrate a national economic and social strategy based on a national consensus that will guide the use of future Compact assistance. At the Second Round of Negotiations in July 2001 and the Third Round held in December, significant progress was made to advance and quicken the pace of these negotiations. In July the RMI and the FSM agreed to a list of general principles that will guide future negotiating sessions. During the December Round, the RMI Government presented its Compact proposal to the U.S. for consideration. The RMI proposal was substantive and well articulated and the U.S. agreed to consider it carefully when preparing a draft text of the Compact to be tabled at the next session in February. The U.S. provided draft texts of key subsidiary agreements for programs and services of the Federal Aviation Administration, the U.S. Postal Service and the Department of Transportation, and a briefing on a proposed humanitarian assistance program of the Department of Defense for consideration by the RMI Government.

Although negotiations on the expiring provisions of the Compact were not concluded by the end of 2001, the Compact provides a formula for continued economic assistance beyond October and November of 2001 for both countries for up to two additional years, if required to conclude negotiations.

U.S. Financial Proposal

The U.S. Administration proposes to extend Title Two economic assistance annually to the FSM and RMI for a period of twenty years, commencing with \$76 million for the FSM and \$35.8 million for the RMI in U.S. FY-2004 (beginning on October 1, 2003) and providing declining annual assistance from these amounts through FY-2023. The annual decrements to annual assistance will be paid into the trust funds described below to foster prudent financial management and to safeguard the viability of the trust funds.

The annual grants to the FSM and RMI will be targeted to sectors most in need of assistance: (a) education, (b) health, and (c) infrastructure. Other areas of special need include capacity building, the environment, and private sector development. The U.S. also proposes to provide an additional \$4.1 million per year to the RMI for the special needs of Ebeye (the main island community housing the U.S. defense sites' Marshallese work force) and other Kwajalein atoll communities.

The U.S. proposed to extend specific Federal services and programs to the FSM and RMI, with certain modifications, through fiscal year 2023. It should be noted that this assistance, currently totaling approximately \$35 million per annum, might be discontinued or amended at the discretion of the U.S. Congress.

RMI assistance includes certain funds already agreed to under the U.S. Military Use and Operating Rights Agreement in connection with U.S. Defense Department use of defense sites at Kwajalein Atoll through FY-2016. We are discussing with the RMI a possible extension to the Military Use and Operating Rights Agreement.

Trust Fund

We propose to establish general trust funds for the FSM and RMI. The trust fund is designed partially to offset the loss of direct U.S. financial assistance after FY-2023.

The trust fund will receive a U.S. contribution of \$16 million for the FSM and \$7 million for the RMI in FY-2004 and increasing U.S. annual contributions from this amount through FY-2023. The U.S. offer on trust funding is conditioned on contributions of at least \$30 million from each FAS. In addition, additional FAS and third-party contributions to the funds are anticipated.

Management and Oversight

To bolster accountability, transparency, and oversight of U.S. Compact funding, the U.S. Administration has proposed a mechanism to review the use of Compact funds, including the trust funds, to ensure that they go to those areas of the economy where the greatest need exists and are used most effectively. Payment and reporting procedures are being clearly defined in a subsidiary agreement to be submitted to the U.S. Congress with the amended Compact language. To the extent applicable, these procedures will be based on the U.S. Federal Grants Management Common Rule.

The U.S. Administration has proposed to create joint management committees for the FSM and RMI, each consisting of three U.S. members, including the Chair, and two FAS members. The Committees will assess the performance of the FSM and RMI governments using mutually agreed macroeconomic performance standards. The Committees will meet, as needed, each year to:

- review the single audits and annual report;
- evaluate progress made for each grant;
- discuss the coming fiscal year's grant;
- discuss any management problems associated with each grant; and
- discuss ways to respond to these problems and otherwise to increase the effectiveness of future U.S. assistance.

The Government of the United States, after consultations with the FSM and RMI, will attach grant terms and conditions to ensure that reasonable progress is being made toward established objectives. The Government of the United States may withhold funds for violation of grant terms and conditions. Both FAS will also be subject to the *Single Audit Act*.

In addition to periodic reporting, the FSM and RMI will submit annual reports on the use of U.S. financial assistance during the previous fiscal year and on the proposed use of U.S. financial assistance for the coming fiscal year. The report will include additional information needed to assess the performance of the economy and the effectiveness of U.S. assistance.

Additional Amendments to Title Two

The U.S. Administration proposes to amend section 236 (the full faith and credit provision) of the Compact. The amendment will ensure a multi-year mandatory appropriation for Compact funding

but not extend the ability to pledge or assign future Compact funding as a source for repaying debt, without specific prior approval of the U.S.

The Administration also propose to extend the inflation indexation adjustment adopted in the previous Compact period (capped at 5 percent per annum) to the annual payments for the base grant and trust funds in the new twenty-year period. This indexation strikes the right balance to promote prudent financial management by the FSM and RMI while facilitating the transition to the termination of mandatory U.S. financial assistance in FY-2024.

Subsidiary Agreements

The U.S. Government has tabled subsidiary agreements on specific services and programs involving:

- U.S. Postal Service (USPS)
- U.S. Federal Aviation Administration (FAA)
- Department of Transportation (DOT)
- Department of Defense Humanitarian Assistance Projects (CHAP)
- Telecommunications Services
- Federal Deposit Insurance Corporation (FSM only)
- Foreign Disaster Assistance
- Trust Fund

In addition, the U.S. Government is considering amending the subsidiary agreements involving:

- National Weather Service
- Mutual Assistance in Law Enforcement Matters
- Status of Forces Agreement
- Fiscal Procedures Agreement

Migration Impact

The past fifteen years have ushered in an era of increased impact on the health, education, and welfare programs of U.S. jurisdictions in the Pacific because some migrants from the FSM and RMI have come with low work skills, poor health, and dependent children. The Administration will address the need to reimburse U.S. jurisdictions for the added costs they bear in honoring our commitment on migration to the FSM and RMI peoples. Every new arrival in our country imposes costs on our communities by drawing on social services. But, most arrivals also add to our economy and pay taxes that support those public services. Many FSM and RMI arrivals to the U.S. come with job skills, work hard like any American, spend money here, and pay U.S. taxes. Their contribution should not be ignored or forgotten in reaching an understanding of the impact of migration on U.S. jurisdictions.

Just as importantly, these migratory flows follow established trade and business routes. U.S. business looms large in the trade and commerce of the FSM and RMI, earns money for many U.S. companies, and reinforces our special relationship.

Section 104(e) of The Compact Act requires the President to report annually to Congress on the impact of the Compact. The annual reports and a recent GAO study document the substantial impact of FSM and RMI migration to the State of Hawaii, Guam, and the Commonwealth of the Northern Mariana Islands (CNMI). One way to address the issue of Compact impact on Hawaii, Guam, and the CNMI is to increase the compensation to those jurisdictions for the negative

impacts of migration, as authorized by section 104 of the Compact Act. This solution, while helpful, would not decrease the adverse impact of migration from the FSM and RMI. It would, instead, shift the cost burden to the U.S. Government.

In the wake of the September 11th attacks, the U.S. has proposed an amended section 141 of the Compact. This section provides that citizens of the RMI and FSM "may enter into, lawfully engage in occupations, and establish residence as a nonimmigrant in the United States." We intend to establish that Micronesian entrants to the U.S. will have an FSM or RMI passport in an effort to halt the entry of inadmissible people who might seek to exploit this route of entry into the U.S. This and other immigration-related issues are the subject of ongoing talks with the FAS representatives.

In conclusion, the Administration is considering three new responses to the migration issue.

- First, we are looking at ways to provide compensation to Hawaii, Guam, and the CNMI for the negative impacts of migration, as authorized by section 104 of the Compact Act.
- Second, we have proposed various mechanisms for improving our ability to ensure on a timely basis that RMI and FSM migrants to the United States are eligible for admission.
- Third, we are committing a substantial portion of U.S. assistance during the second Compact term to improve the health and education of potential migrants from the FSM and RMI in order to reduce significantly Compact impact.

Conclusion

The Compact of Free Association has succeeded in meeting two out of the three original U.S. objectives in the relationship with the FAS. U.S. defense interests in the region have been secured. The Compact guided and supported the transition of the FSM and the RMI from Trust Territory status to full self-government. Both are now well-established, vibrant democracies that play an active role in the Pacific Forum, the United Nations and other international organizations. The United States values them as close allies.

The Administration has proposed to close soon on the Compact language and funding levels with the FSM and the RMI negotiating teams. We also hope to wrap up, ad referendum, several key subsidiary agreements including the trust fund agreement. In general, talks with both FAS are progressing well. We have had five negotiating sessions with the FSM, and three with the RMI. Upcoming rounds to conclude Compact funding and language issues should occur this August.

The United States Congress has requested six studies by the General Accounting Office to investigate various aspects of the Compact relationships. During hearings held by the House International Relations Committee in June of 2000 and the Committee on Energy and Natural Resources in December 2001, concerns about the effective use and accountability for U.S. funds and the impacts of FAS migration were clearly expressed. Through these hearings and other actions over the past two years, Congress, which will ultimately have to approve any agreement on future economic assistance, has made it clear that decreased levels of annual assistance, provisions for more effective oversight and accountability of U.S. assistance, and action to address FAS migration impact are expected results of these negotiations.