RECONCILING INDEPENDENCE AND SECURITY: THE LONG TERM STATUS OF THE TRUST TERRITORY OF THE PACIFIC ISLANDS

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The United States administers the Trust Territory of the Pacific Islands, the last remaining United Nations Trusteeship, under a 1947 Agreement with the United Nations Security Council.[1] As Trusteeship Administering Authority, the United States acts in an agency-like relationship with the United Nations by carrying out its duties to the inhabitants of the territory in accordance with the terms of the United Nations Charter and the 1947 Trusteeship Agreement with the Security Council.[2] Since 1969, the United

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1. Trusteeship for Former Japanese Mandated Islands, Apr.2-July 18, 1947, United States-U.N. Security Council, 61 Stat. 3301, T.I.A.S. No. 1665 [hereinafter cited as Trusteeship Agreement].

2. Bunche, *Trusteeship and Non-Self-Governing Territories in the Charter of the United Nations*, 13 DEP'T STATE BULL. 1037, 1042-43 (1945). With regard to agency status, Bunche stated the following:

> A territory having been placed under trusteeship, thenceforth becomes an international responsibility. The Organization will have become the trustee on behalf of the international community of the United Nations and of the inhabitants of the territory. The administering authority is the agent of the trustee and is responsible to the Organization for the conduct of its administration of the territory.

Bunche, *supra*, at 1042. Addressing the Administering Authority's duties as agent, Bunche further stated that:

> [T]he administering authority would have as much control over a strategic area as it would find necessary to preserve the essential function of the area. The administering authority would be bound, however, to protect and promote the well-being of the civilian inhabitants of the area in conformance with the basic objectives of the trusteeship system.

Bunche, *supra*, at 1043.

States and representatives of the Territories' inhabitants have conducted negotiations to define the Islands' future status and to provide a basis for terminating the trusteeship.[3] During these negotiations popular support for the creation of four distinct national entities emerged. One such entity, the Commonwealth of the Northern Marianas, integrated with the United States by entering into a Covenant of Union.[4] The other three, the Republic of the Marshall Islands, the Federated States of Micronesia and the Republic of Palau, sought an intermediate status option designed to preserve their sovereignty, to allow future independence if desired and to continue American economic benefits and military support in the near term.[5] International law refers to this intermediate status as Free Association.[6] In an attempt to establish such a relationship, the United States and the emerging nations have negotiated and executed a Compact of Free Association, including Mutual Security agreements, together with several ancillary agreements.[7]

The inhabitants' ability to unilaterally modify their political status constitutes, *inter alia*, a Free Association characteristic defined by the United Nations.[8] Previous activity by the United Na-

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3. Armstrong, *The Emergence of the Micronesians into the International Community: A Study of the Creation of a New Entity*, 5 BROOKLYN J. INT'L L. 207, 215 (1979).

4. *Id.* at 216-217. *See* Covenant to Establish a Commonwealth of the Northern Marina Islands in Political Union With the United States of America, 48 U.S.C. § 1681 (1976).

5. Armstrong, *supra* note 3, at 217-227.

6. The Trusteeship Agreement requires the United States to foster the development of political institutions with the goal of self-government or independence. *See* Trusteeship Agreement, *supra* note 1, at art. 6. The concept of free association as an internationally acceptable form of self-government for a former trust territory derives from the "Principles Which Should Guide Members In Determining Whether or Not an Obligation Exists to Transmit the Information Called For in Article 73e of the Charter of the United Nations." G.A. Res. 1541, U.N. GAOR Supp. (No. 16) at 29, U.N. Doc. A/4684 (1960) [hereinafter cited as G.A. Res. 1541]. Although this resolution does not apply to Trust Territories specifically, the models and criteria it sets out are recognized as definitive with regard to Trusteeship future status options. *See* Armstrong, *supra* note 2, at 231-233; Report of Trusteeship Council, *infra* note 68.

7. For the text of the Compact of Free Association, see H.R. REP. NO. 188, 99th Cong., 1st Sess. 78-116 [hereinafter cited as Compact or Compact of Free Association]. *See also* Compact of Free Association Act of 1985, Pub. L. No. 99-239, 99 Stat. 1770 (1986) (enabling act for implementation of Compact of Free Association with respect to the Federated States of Micronesia and the Republic of the Marshall Islands). For the text of the ancillary agreements to the Compact which were executed by the United States, the Marshall Islands and the Federated States of Micronesia, see H.R. REP. NO. 188, 99th Cong., 1st Sess. 149-380 (1985).

8. *See* G.A. Res. 1541, *supra* note 6. Principle VII of the resolution states the criteria of a legitimate free association relationship as follows:

> Free association should be the result of a free and voluntary choice by the peoples of the territory concerned expressed through informed and democratic processes. It should be one which respects the individuality and the cultural characteristics of the territory and its peoples, and retains for the people of the territory which is associated with an independent State the freedom to modify the status of that territory through the

tions in this area indicates its preference that the inhabitants retain the capacity to seek independence.[9] The United States accepts a responsibility toward the territory's inhabitants to negotiate a future status consistent with the status options contemplated by the trustee United Nations Organization.[10] To fulfill the 1947 agreement's

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> expression of their will by democratic means and through constitutional processes.
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> The associated territory should have the right to determine its internal constitution without outside interference, in accordance with due constitutional processes and the freely expressed wishes of the people. This does not preclude consultations as appropriate or necessary under the terms of the free association agreed upon.

9. The U.N. General Assembly has responsibility for all non-strategic trusteeships and for non-self-governing territories. By approving the termination of the information reports on the Cook Islands (filed by New Zealand) and on Puerto Rico (filed by the United States), which are required by art. 73e of the Charter, the United Nations clearly established a preference for independence.

With reference to the Cook Islands, the General Assembly took note of the fact that their Constitution expressly reserved the right of the people to move to a status of complete independence and reaffirmed the responsibility of the United Nations to assist the people of the Cook Islands in the eventual achievement of full independence. *See* G.A. Res. 2064, 20 U.N. GAOR Supp. (No. 14) at 56-57, U.N. Doc. A/6014 (1965).

In the case of Puerto Rico, no express provision was made for any future change of status. Rather, the American Ambassador to the United Nations gave separate assurances that the United States would respect the wishes of Puerto Rico to seek a new status in the future. *See* W. REISMAN, PUERTO RICO AND THE INTERNATIONAL PROCESSES 42-44 (1975).

Without an express commitment to full independence, the General Assembly acted reluctantly. *See* G.A. Res. 748, 8 U.N. GAOR Supp. (No. 17) at 25, U.N. Doc. A/2630 (1953) (stated coldly that "due to these circumstances, the Declaration regarding Non-Self-Governing Territories and the provisions established under it in Chapter XI of the Charter can no longer be applied to the Commonwealth of Puerto Rico"). The General Assembly further implicitly stated that its action was predicated upon the assurances given by the United States, emphasizing the importance of:

> [United States assurances] that, in accordance with the spirit of the present resolution, the ideals embodied in the Charter of the United Nations, the traditions of the people of Puerto Rico, due regard will be paid to the will of both the Puerto Rican and American peoples in the conduct of their relations under their present legal statute, and also in the eventuality that either of the parties to the mutually agreed association may desire any change in the terms of this association.

The continuing concern of the United Nations for maintenance of an independence option for Puerto Rico was clearly expressed in 1973 by the Special Committee on the Situation with Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples. In its resolution of August 30, 1973, U.N. Doc. A/AC.109/438 (1973), the Special Committee stated that it:

> 1. Reaffirms the inalienable right of the people of Puerto Rico to self-determination and independence in accordance with General Assembly resolution 1514 (XV) of 14 December 1960;
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> 2. Requests the Government of the United States of America to refrain from taking any measures which might obstruct the full and free exercise by the people of their inalienable right to self-determination and independence, as well as of their economic, social and other rights, and in particular to prevent any violation of these rights by bodies corporate under its jurisdiction.

10. The specific terms of the Trusteeship Agreement and Article 76 of the Charter

terms, the United States will have to demonstrate that the territorial entities' long term future status under the Compact and Security Agreements meets the independence option requirement.[11]

If the long term relationship fails to satisfy this requirement, the Compact will not meet the United Nation's technical legal standards for a Free Association relationship.[12] The United States therefore risks losing considerable prestige in the diplomatic community and, potentially, significant influence in the Micronesian states upon their eventual independence if the standards of Free Association are not satisfied.[13]

The Compact and accompanying Mutual Security Agreements provide that the United States will have the right, so long as it

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of the United Nations indicate the scope of the duty involved. *See* Trusteeship Agreement, *supra* note 1; U.N. CHARTER ch. XII.

11. Unlike the Puerto Rican Covenant, which is silent on future status options *see* W. REISMAN, *supra* note 10, at 35, the Mutual Security Agreements establish a regime which will bind the Micronesians regardless of the actions taken by them to modify their status while freely associated. *See* text accompanying notes 91-95, *infra*. Because the contours of the long-term relationship are already defined, they are subject to current scrutiny. The Security Council, as a representative of the United Nations Organization, is charged with approving any alteration of amendment, presumably including termination of the Trust Agreement. *See* U.N. CHARTER, arts. 79, 83.

In 1947, the United States acknowledged that the Security Council would be responsible for assuring that the goals of the trusteeship, self-determination or independence, are fulfilled in accord with established criteria. It further acknowledged that the Security Council would have to approve any termination of the Agreement prior to its taking effect. *See* Clark, *Self-Determination and Free Association—Should the United Nations Terminate the Pacific Islands Trust?*, 21 HARV. INT'L L.J. 1, 86 (1980). The current position of the United States on the role of the Security Council in termination reflects both the absence of precedent concerning strategic trusteeships and accumulated experience concerning the General Assembly's willingness to ratify legally conforming arrangements between the parties. *See Hearings on the Foreign Policy Implications of the Proposed Compact of Free Association Before The Subcomm. on Public Lands and National Parks of the House Comm. on Interior and Insular Affairs*, 98th Cong., 2d Sess. 112-113 (1984); *see also* note 117, *infra*.

12. *See* note 7, *supra*.

13. The Micronesians have consistently stressed their desire for a relationship which preserves their right to unilaterally seek independence.

> In April 1969, the Political Status Commission proposed that the United States and Micronesia enter into a free association relationship based on the following principles:
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> 1. That sovereignty in Micronesia resides in the people of Micronesia and their duly constituted government.
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> 2. That the people of Micronesia possess the right of self-determination and may, therefore, choose independence of self-government in free association with any nation or organization of nations.
>
> 3. That the people of Micronesia have the right to adopt their own constitution and to amend, change or revoke any constitution or government plan at any time; and
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> 4. That free association should be in the form of a revocable compact, terminable unilaterally by either party.

Armstrong, *supra* note 2, at 215. If the Compact fails, it is reasonable to assume that they will require explicit authority to achieve completely non-aligned independent status if they so desire it.

desires, to unilaterally deny third countries military access to the territory of the Freely Associated States.[14] Compact Title III establishes this denial authority during Free Association.[15] The Mutual Security Agreements will continue the denial authority in force following the Compact's termination or expiration.[16] These "follow on" Agreements will themselves remain in force until otherwise mutually agreed by the United States and the Micronesian states.[17] The relationship's pre-negotiated perpetual denial component seems to be consistent with independence, satisfying the technical legal requirements for establishing a Free Association relationship under international law.[18]

The long term international status question has apparently not received any meaningful review either among international legal commentators or in recent hearings before Congress.[19] This com-

14. The United States captured the three archipelagos, the Northern Marianas, the Caroline Islands and the Marshall Islands during some of the heaviest fighting of World War II. In 1947, having recently emerged from that experience, it would only accept a regime which preserved its plenary defense rights in the region. *See* Trusteeship Agreement, *supra* note 1, art. 5. Strategic access to the region remains a central component of United States Policy concerning trust termination. *Cf. National Security Implications of the Compact of Free Association: Hearings Before the Subcomm. on Public Lands and National Parks of the House Comm. on Interior and Insular Affairs*, 98th Cong., 2d Sess. (1984).

15. Title III of the Compact sets out the authority and responsibility of the United States for the defense and security of the Freely Associated States. The operative sections of the Title are reviewed below. *See* text accompanying notes 81-90, *infra*.

16. *See* Agreement Between the Government of the United States and the Government of the Marshall Islands Regarding Mutual Security Concluded Pursuant to Sections 321 and 323 of the Compact of Free Association, art. VII, *reprinted in* H.R. REP. NO. 188, 99th Cong., 1st Sess. 337-339, and *reproduced in* Appendix, *infra* [hereinafter cited as the Marshall Islands Agreement]; Agreement Between the Government of the United States and the Government of the Federated States of Micronesia Regarding Friendship, Cooperation and Mutual Security Concluded Pursuant to Sections 321 and 323 of the Compact of Free Association, art. IX, *reprinted in* H.R. REP. NO. 188, 99th Cong., 1st Sess. 371-375, and *reproduced in* Appendix, *infra* [hereinafter cited as Federated States Agreement]. *See also* text accompanying notes 91-94, *infra*. The Marshall Islands Agreement and the Federated States Agreement [hereinafter referred to collectively as the Mutual Security Agreements] are reproduced in the Appendix and are analyzed in depth in this comment.

17. Marshall Islands Agreement, art. VIII, Appendix, *infra*; Federated States Agreement, art. X, Appendix, *infra*. Since all treaties may be terminated by the mutual consent of the parties regardless of their terms, treaties which provide only for termination upon mutual consent are considered to be perpetual. *See Second Report on the Law of Treaties*, 1963 Y.B. INT'L L. COMM'N 63.

18. *See infra* text accompanying notes 14-16.

19. The entire question of the Trust Territory's future status has received surprisingly little attention in academic publications. The vast majority of the writing has been done by two men, Armstrong and Hills. Both of these individuals were, at the time they wrote, officers of the United States Navy Judge Advocate General Corps. In addition, both were assigned to serve as legal advisor for the Office of Micronesian status Negotiations, the United States Government Agency charged with negotiating the Compact. Beyond the work of these two men, Professors Clark and MacDonald have written one article each, in 1980 and 1981, respectively. *See* Hills, *Compact of Free Association for*

ment, therefore, will attempt to shed light on the question's probable resolution. Following a short historical background, the territorial governments' international legal capacity to conclude these executory treaties will be reviewed.[20] If the entities do appear to have the requisite legal capacity, the long term relationship's specific nature will be identified and contrasted with Free Association's terms. Finally, the long term Mutual Security relationship will be analyzed to determine its compatibility with independent status.[21]

Micronesia: Constitutional and International Law Issues, 18 INT'L LAW. 583 (1984); Armstrong and Hills, *The Negotiations for Future Political Status of Micronesia* (1980-1984), 78 AM. J. INT'L L. 484 (1984); Armstrong, *Strategic Underpinnings of the Legal Regime of Free Association: The Negotiations for the Future Political Status of Micronesia*, 7 BROOKLYN J. INT'L L. 179 (1981) [hereinafter cited as *Strategic Underpinnings*]; Macdonald, *Termination of the Strategic Trusteeship: Free Association, the United Nations and International Law*, 7 BROOKLYN J. INT'L L. 235 (1981); Clark, *supra* note 11; Armstrong, *supra* note 2.

For an excellent, in depth review of the strategic trusteeship's position in international law, see MCNEILL, THE STRATEGIC TRUST TERRITORY IN INTERNATIONAL LAW (1974) (Ph.D. Thesis, London School of Economics and Political Science).

For Congressional coverage of the question, see the Hearings cited in notes 11 and 14, *supra*. *See also Hearing on S.J. Res. 286 Before the Senate Comm. on Energy and Natural Resources*, 98th Cong., 2d Sess. (1984); *Hearings on the Micronesia Compact of Free Association: A Review of H.J. Res. 620 Before the House Comm. on Foreign Affairs*, 98th Cong., 2d Sess. (1984).

20. Capacity is an important threshold question because the United States refuses to give up the strategic defense advantages of the current regime without prior assurances of continued access. The need for such access becomes plain if one views a map of the Pacific, as these archipelagos represent the only potential fall back position between the Philippines and Hawaii. *Cf.* Armstrong, *Strategic Underpinnings*, *supra* note 19, at 192. If the current Mutual Security Agreements have been concluded with a legally incompetent entity, the succeeding states will be under no obligation to honor them. *See* Macdonald, *supra* note 19, at 252.

21. In 1981, Armstrong assumed that the denial agreements would create what he termed "international servitudes;" this occurred, of course, before the actual Mutual Security Agreements had been completed and executed.

> Agreements of this type, which restrict the territory of one State for the benefit of another, are "territorial treaties" or "international servitudes." While recognized in international law, such agreements have been controversial. There is a fairly general recognition that such agreements survive changes in the sovereignty of the territory concerned. This, of course, is the purpose of the denial provision—to assure that denial will continue in the event of further change of status from free association to independence.

Armstrong, *Strategic Underpinings*, *supra* note 19, at 226.

True international servitudes generally concern themselves with material territorial questions such as boundary location, navigation and transit rights and free trade zones. Such agreements create property rights which run with the land and will survive transfer of the territory to a third sovereign state. *See* A. MCNAIR, LAW OF TREATIES 655-644 (1961). The Mutual Security Agreements do not involve servitudes on land as such. Rather, they are derogations of the entities' autonomy in the conduct of defense policy and a limitation on their ability to establish military alliances with other states. *See* text accompanying notes 142-144, *infra*.

In adopting the characterization of "servitudes," it appears that Armstrong has confused questions of state succession with question of territorial transfers from one sovereign to another.

I. HISTORICAL BACKGROUND

The United Nations Charter established the system under which the United States now administers the Trust Territory of the Pacific Islands.[22] The Charter drafters designed the Trusteeship System to replace and improve upon the League of Nations Mandate System[23] by bringing under United Nations administration and supervision the territories previously administered under a League Mandate, territories detached from the defeated powers of World War II and any other non-self-governing territory voluntarily placed thereunder.[24]

Under this system, the international community recognizes and accepts a common responsibility to foster the development of modern economic and political institutions in the subject territories.[25] The Charter authorizes the United Nations Organization to take on this responsibility, as a trustee, on the international community's behalf.[26] The United Nations expressly recognizes its duty to each territory's inhabitants to foster economic development and to establish political institutions, with self-governance or complete independence the eventual goal for each.[27]

Pursuant to its Trusteeship Agreement, each Administering Authority, in turn, exercises the Trust Territory's sovereign powers on the United Nations Organization's behalf.[28] In doing so, ad-

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22. *See* Bunche, *supra* note 7, at 1037.

23. *Id.* at 1037-1041.

24. U.N. CHARTER, art. 77.

25. Sayre, *Legal Problems Arising from the United Nations Trusteeship System*, 42 AM. J. INT'L L. 263, 263-268 (1948); *see also* Bunche, *supra* note 7, at 1042-1043.

26. U.N. CHARTER, art. 75; *see also* L. OPPENHEIM, INTERNATIONAL LAW 233 (8th Ed. 1955).

27. U.N. CHARTER, art. 76, reads as follows:

> The basic objectives of the trusteeship system, in accordance with the Purposes of the United Nations laid down in Article 1 of the present Charter, shall be:
>
> a. to further international peace and security;
>
> b. to promote the political, economic, social, and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the peoples concerned, and as may be provided by the terms of each trusteeship agreement;
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> c. to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion, and to encourage recognition of the interdependence of the peoples of the world; and
>
> d. to ensure equal treatment in social, economic, and commercial matters for all Members of the United Nations and their nationals, and also equal treatment for the latter in the administration of justice, without prejudice to the attainment of the foregoing objectives and subject to the provisions of Article 80.

28. *See* note 7, *supra*. The United States specifically recognized this in its statement to the Security Council upon the submission of the Draft Trusteeship Agreement.

ministering states recognize their responsibility both to the United Nations as trustee and each territory's inhabitants as Trust beneficiaries. The Charter and each individual Trust Agreement set out this responsibility in detail.[29]

The region claims a checkered history. For several hundred years, Spain controlled the territory as a part of its colonial empire. Following its defeat by the United States in 1898, Spain transferred its rights to Germany. Germany lost its rights to the territory following its defeat in World War I. Japan administered the territory thereafter under League of Nations authority as a "C" mandate.[30] At the conclusion of World War II, the United States, having liberated the former Japanese Mandate, continued its presence in the territory.[31]

During the drafting of the United Nations Charter, the United States, concerned about the disposition of the Islands, sought and secured a provision allowing the United Nations to designate a Trust Territory as strategic.[32] So designated, responsibility within the United Nations for supervising a Strategic Trust shifts from the

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See Statement by the United States Representative, 16 DEP'T STATE BULL. 416, 418 (1947). *See generally* 1 M. WHITEMAN, DIGEST OF INTERNATIONAL LAW 733-734 (1963).

29. *See* note 8, *supra*. Art. 76 is set out in note 27, *supra*; art. 6 of the Trusteeship Agreement, *supra* note 1, is set out below:

> In discharging its obligations under article 76(b) of the Charter, the administering authority shall:
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> 1. foster the development of such political institutions as are suited to the trust territory and shall promote 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; shall develop their participation in government; shall give due recognition to the customs of the inhabitants in providing a system of law for the territory; shall take other appropriate measures toward these ends;
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> 2. promote the economic advancement and self-sufficiency of the inhabitants, and to this end shall regulate the use of natural resources; encourage the development of fisheries, agriculture, and industries; protect the inhabitants against the loss of their lands and resources; and improve the means of transportation and communication;
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> 3. promote the social advancement of the inhabitants, and to this end shall protect the rights and fundamental freedoms of all elements of the population without discrimination; protect the health of the inhabitants; control the traffic in arms and ammunition, opium and other dangerous drugs, and alcohol and other spiritual beverages; and institute such other regulations as may be necessary to protect the inhabitants against social abuses; and
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> 4. promote the educational advancement of the inhabitants, and to this end shall take steps toward the establishment of a general system of elementary education; facilitate the vocational and cultural advancement of the population; and shall encourage qualified students to pursue higher education, including training on the professional level.

30. Armstrong, *supra* note 2, at 211 n.13.

31. Statement by the United States Representative, *supra* note 28, at 216-217.

32. Armstrong, *supra* note 2, at 211-212; *see also* 1 M. WHITEMAN, *supra* note 28.

General Assembly to the Security Council.[33] However, both bodies' duties to beneficiary inhabitants remain the same.[34] After Congress indicated that it would accept trust status only if the territory were designated a Strategic Trust,[35] the United Nations agreed and, in 1947, the United States and the Security Council entered into an agreement authorizing the United States to administer the territory as a Strategic Trust.[36]

In 1969, the United States and a Micronesian Status Commission composed of territorial representatives began exploring available options for self government.[37] Early in the negotiating process, it became evident that the Trust Territory's various districts held such diverse political aspirations that a unitary approach would not succeed.[38] As a result, the United States agreed to negotiate with each natural interest group on an individual basis.[39]

The Northern Marianas Islands, seeking a closer relationship with the United States than the other districts,[40] entered into separate negotiations toward their eventual integration into the United States. Soon thereafter, the parties executed a Covenant creating in that territory a self-governing commonwealth in union with the United States.[41] The remaining districts sought other political status options appropriate to their individual societies. Toward this end, the Districts called constitutional conventions which drafted and submitted to the district legislatures and inhabitants, for popular approval, documents establishing three distinct national entities: the Republic of the Marshall Islands, the Federated States of Mi-

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33. U.N. CHARTER, art. 83 reads as follows:

> 1. All functions of the United Nations relating to strategic areas, including the approval of the terms of the trusteeship agreements and of their alteration or amendment, shall be exercised by the Security Council.
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> 2. The basic objectives set forth in Article 76 shall be applicable to the people of each strategic area.
>
> 3. The Security Council shall, subject to the provisions of the trusteeship agreements and without prejudice to security considerations, avail itself of the assistance of the Trusteeship Council to perform those functions of the United Nations under the trusteeship system relating to political, economic, social, and educational matters in the strategic areas.

34. *Id.* para. 2.

35. H.R. REP. No. 889, 80th Cong., 1st Sess., *reprinted in* 1947 U.S. CONG. SERV. 1317. *See also* 1 M. WHITEMAN, *supra* note 28, at 770-773.

36. 12 BEVINS, TREATIES AND OTHER INTERNATIONAL AGREEMENTS OF THE UNITED STATES OF AMERICA 1776-1949, 951 (1974).

37. Armstrong, *supra* note 2, at 213-217.

38. *Id.* at 216.

39. *Id.* at 217-221.

40. *Id.* at 216.

41. *See* note 3, *supra. See generally* Comment, *The Marianas, the United States, and the United Nations: The Uncertain Status of the New American Commonwealth.* 6 CAL. W. INT'L L.J. 382, 396-398 (1976).

cronesia and the Republic of Palau.[42]

The United States, believing that continued access to the territory was necessary for strategic purposes, entered into negotiations with these new entities to create a Free Association relationship satisfactory to all parties.[43] These negotiations culminated in the parties signing the Compact of Free Association, and its ancillary agreements, in 1982.[44] In 1983, comfortable majorities approved the Compact in United Nations plebecites held by the Federated States and the Marshall Islands.[45] Palau requires a 75% electoral majority to approve the Compact and continues to consider the question.[46]

II. THE TREATY-MAKING CAPACITY OF THE TRUST TERRITORY GOVERNMENTS

As previously indicated, the Mutual Security Agreements' drafters intended to bind the emerging independent states following the Free Association relationship's termination.[47] Toward this end, the Agreements recite that they are treaty obligations of the signatories, entered into as an "exercise of their respective capacities for the conduct of foreign affairs."[48] This poses the first question; do the Trust Territory governments presently possess sufficient international capacity to conclude binding executory Mutual Security Agreements?

The current United Nations Trusteeship status itself presents the major difficulty in determining the territory's treaty making capacity. Professor Lissitzyn, in a course given before the Hague Academy of International Law, reviews the various types of dependent states' treaty making capacity, concluding that most do have some such capacity.[49] Lissitzyn treats protectorates, federated

42. Armstrong, *supra* note 2, at 221-228; *Hearing on S.J. Res. 286*, *supra* note 19, at 102, 122-124.

43. *Hearing on S.J. Res. 286*, *supra* note 19, at 118-122, 135-139. The testimony of Ambassador Fred Zeder, the President's Personal Representative for Micronesian Status Negotiations, provides a wide ranging United States government overview of the history of Compact negotiations.

44. *Id.* at 125.

45. *Id.* at 1082-1132, 1149-1335. The Hearing record reproduces the report of the United Nations Visiting Mission to Observe the Plebisite in the Marshall Islands. It further reproduces, at 1149-1335, a private study addressing all of the plebisite votes which was produced by Ranney and Penniman for the America Enterprise Institute.

46. *Hearings on Foreign Policy Implications*, *supra* note 11, at 12-14.

47. *See* text accompanying note 16, *supra*.

48. The quoted material appears in the preamble of the Mutual Security Agreements. *See* Appendix, *infra*.

49. Lissitzyn, *Territorial Entities Other Than Independent States in the Law of Treaties*, in 125 COLLECTED COURSES OF THE HAGUE ACADEMY OF INTERNATIONAL LAW 5, 87 (1968).

states and other such entities' respective capacities in depth.[50] Concerning the Trust Territories, however, Lissitzyn merely notes that, while not under the Administering Authority's sovereignty, the Territories did not, as of 1968, appear as separate parties to treaties.[51] Lissitzyn does not discuss whether the Trust Territories possess any unexercised treaty-making capacity. This issue will be addressed below.

An international trusteeship may be seen as conceptually parsing the inhabitants' inherent, or residual, territorial sovereignty from their capacity to exercise such sovereignty's attributes.[52] The trusteeship clearly vests the Administering Authority, through the United Nations, with legal power to act. However, the Charter is silent on situs of title to the territory's inherent sovereignty. Lauterpacht goes so far as to state that the Trust Territories' residual sovereignty resides with the United Nations.[53] However this view clashes with modern concepts of human rights and self-determination, and it unrealistically reflects the United Nations Organization's relative position in modern world affairs.

One may argue instead that, while the United Nations, as trustee, may exercise sovereign prerogatives on the territorial inhabitants' behalf, the residual sovereignty remains with the people. This alternative view accords with the United States' position on the question at the time of the Charter's drafting,[54] and is further reflected in the Compact's preamble.[55]

The residual sovereignty's locus defines the extent to which the territorial governments may possess de facto international capacity. If the sovereignty resides wholly with the United Nations, no valid international agreements could be made without United Nations participation. Of course, neither the Charter nor the Trust Agreement reflect any such requirement. However, the Trusteeship does restrict the inhabitants' exercise of their sovereignty by requiring the Administrating Authority to accept, or specifically renounce, responsibility for all diplomatic intercourse between the territorial

50. *Id.* at 51-64.

51. *Id.* at 58.

52. I. BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW 103-104 (1966); L. OPPENHEIM, *supra* note 26, at 236. The right of a state to exercise its sovereign powers is often limited or controlled by another proxy state under a treaty agreement. Generally, such a limitation or grant of proxy is not permanent, the transfering state merely delegates its authority to act, the fundamental power to do so is retained.

53. L. OPPENHEIM, *supra* note 26, at 236.

54. 1 M. WHITEMAN, *supra* note 28, at 738. Whiteman reproduces a partial transcript of Secretary of State Stettinius' radio speech of May 27, 1945.

55. Compact of Free Association, *supra* note 6, at 8. The sixth paragraph of the preamble recites that the peoples of the Trust Territory have and retain their sovereignty and their sovereign right to self-determination.

governments and third countries.[56]

No such restrictions apply, however, when the Administering Authority itself enters into a bilateral agreement with a territorial government. In that case, the approval and responsibility issue becomes moot. Thus, in the instant case, only the territorial government's de facto capacity to enter into a binding executory Mutual Security Agreement with the United States remains a concern. This issue, divorced from the trusteeship context, may be evaluated under general principles of international law.

The potential Freely Associated States have each drafted and enacted Constitutions[57] establishing a representative government,[58] a judicial system[59] and minimum standards, protected as inviolate, for civil and human rights.[60] The Constitutions all recognize that the governments thereby created remain subordinate to the United States' final authority under the Trust regime.[61] In addition, the Marshall Islands and Palau Constitutions contain provisions acknowledging that the Compact of Free Association preempts in any conflict between those document's terms.[62] The territorial govern-

56. Trusteeship Agreement, *supra* note 1, arts. 11, 14; *Hearings on Foreign Policy Implications*, *supra* note 11, at 85. Beyond de facto capacity to enter into international agreements, a state's accountability for its undertaking is a central component of true independence. The contrast between the trusteeship and free association is clear on this point. *See* text accompanying notes 86-90.

57. The Constitution of the Federated States of Micronesia was initially proposed as a vehicle for unifying the territorial districts into a federal state. Each of the districts which ratified the Constitution became subordinate states of the Federation. Those districts in which the constitution was defeated remained autonomous districts of the trust. In order for the Constitution to come into effect, ratification by at least four of the six districts was required. Yap, Ponape, True, and Kosrae, the minimum necessary, each approved ratification. Palau and the Marshall Islands both rejected the proposed Constitution. *See* Armstrong, *supra* note 2, 226-227.

Both Palau and the Marshall Islands subsequently held their own Constitutional Conventions, drafting and submitting for ratification constitutions which suited their individual political and cultural traditions. These constitutions were ratified in referenda held in 1979. *See* Armstrong, *supra* note 2, at 227. The three constitutions are reproduced in the TRUST TERRITORY CODE, vol. 2, parts 3, 4, 5 (1980 ed.).

The United States, pursuant to its authority as Administrator, approved the constitutions' entry into force and the autonomous exercise of internal government authority by the new territorial entities. *See* Secretarial Order, No. 3039, Department of the Interior, *reproduced in* TRUST TERRITORY CODE, vol. 1, part 1, at 47 (1980 ed.).

58. FEDERATED STATES CONST. art. IX; MARSHALL ISLANDS CONST. art. III; PALAU CONST. art. IX.

59. FEDERATED STATES CONST. art. XI; MARSHALL ISLANDS CONST. art VI; PALAU CONST. art. X.

60. FEDERATED STATES CONST. art. IV; MARSHALL ISLANDS CONST. art. II; PALAU CONST. art. IV.

61. FEDERATED STATES CONST. art. XVI; MARSHALL ISLANDS CONST. art. XII, § 4; PALAU CONST. art. XV, § 10.

62. MARSHALL ISLANDS CONST. art. XIII, § 6; PALAU CONST. art. XV, § 11. Unlike the above, the Federated States Constitution does not contain an express accommodation to conflicting compact terms. However, delegates to the Constitutional Convention responded by assuring the United States that a Compact ratified under the

ments' current subordinate position reflects the United States' undertakings to help develop the political institutions necessary for self-government, while remaining responsible for the governments' international acts.[63]

Customary international law generally recognizes that dependent entities possess international personality equal to their actual capacity for self-government. International law commentators argue that, in the foreign relations area, dependent entities developing toward self-government may currently exercise their de facto capacity in their own name and right. Professor Crawford strongly supports acknowledging, and legally respecting, such de facto capacity in his work concerning the creation of states.[64] The United States' own long history of direct diplomatic intercourse with legally dependent states, based upon the latter's de facto capacity, supports this view.[65]

As stated, the Trusteeship controls the Territory's relations with third states. However, no international agreement limits the ability of the United States to acknowledge and respect the Trust Territory's current level of self-government and to conclude binding international obligations with those governments on that basis.[66] The entities may rightfully exercise their acknowledged sovereign capacity to its full extent when they are legally free of the Trustee-

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terms of the Constitution would be binding upon the Federated States concerning their external policy and capacity. *See* Armstrong, *supra* note 2, at 221.

63. *See* note 29, *supra*. The terms of Article 6(1) of the Trusteeship Agreement, *supra* note 1, expressly authorize the Administering Authority to foster operating governmental institutions toward the end of promoting self-government or independence in accordance with the freely expressed wishes of the inhabitants. The Secretarial Order, *supra* note 57, reflects the intent of the United States to do so.

> SECRETARIAL ORDER NO. 3039
>
> Recognition of Governmental Entities under Locally-Ratified Constitutions in the Trust Territory of the Pacific Islands
>
> Section 1. Purpose. The purpose of this Order is to provide the maximum permissible amount of self-government, consistent with the responsibilities of the Secretary under Executive Order 11021, for the Federated State of Micronesia, the Marshall Islands, and Palau, pursuant to their respective constitutions as and when framed, adopted, and ratified, pending termination of the 1947 Trusteeship Agreement under which the United States of American understood to act as Administering Authority for the Trust Territory of the Pacific Islands.

The extent to which the micronesian states have already entered into the international arena is set out in DEP'T STATE, ANNUAL REPORT TO THE UNITED NATIONS ON THE TRUST TERRITORY OF THE PACIFIC ISLANDS 254 (1984).

64. *Cf.* J. CRAWFORD, THE CREATION OF STATES IN INTERNATIONAL LAW 214-246 (1979). Devolution occurs when the legal relationship between the metropolitan state and the dependent state is not expressly agreed and the dependent entity is making steady, recognizable headway toward self-government.

65. 2 C. HYDE, INTERNATIONAL LAW CHIEFLY AS INTERPRETED AND APPLIED BY THE UNITED STATES 1377-1378 (2d rev. ed. 1947); 5 G. HACKWORTH, DIGEST OF INT'L LAW § 485 (1943).

66. Trusteeship Agreement, *supra* note 1, art. 4.

ship. Further, the United States has never asserted sovereignty over the territory.[67] With respect to the Strategic Trust, then, Crawford's comments favoring de facto capacity may be accorded great weight. The international community will not deny an emerging entity's self-governing capacity, having monitored and promoted its political development.[68]

A territorial government's de facto capacity to participate in international intercourse, within the status change context, remains generally unchallenged.[69] This follows from the requirement that any such status change include the territorial inhabitants' direct participation.[70] Negotiating, entering into, and submitting to the inhabitants for approval the change's final terms demonstrates the territorial government's de facto capacity prior to its achieving formal international recognition under the new status.[71]

Other international law commentators support this emphasis on de facto capacity. Professor Macdonald ably supports the theory that trust governments may bind themselves to a future status prior to the trust regime's termination.[72] Macdonald, like Crawford, focuses on de facto capacity for self government in arguing on behalf of Compact approval prior to termination.[73] Brownlie recognizes

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67. Crawford's example is the increasing de facto capacity which the dominions of the British empire without regard for the fact that legal sovereignty remained with the United Kingdom. *See* J. CRAWFORD, *supra* note 64, at 238-246. The United States does not assert sovereignty over the territorial entities and therefore deals at arms length with them in face-to-face negotiations.

68. The United Nations Trusteeship Council has monitored the political evolution at every stage. In addition to hearing reports of the Administrative Authority and other witnesses, the Council has dispatched observer teams to assess the fairness and honesty of the constitutional referenda, the Covenant plebisite and the Compact plebisite. Neither the Trusteeship Council nor the Security Council have objected to the pre-termination planning for future status, as a general principle. *See* Report of the Trusteeship Council, T/L.1243/Rev. 1, *reprinted in Hearing on S.J. Res. 286, supra* note 19, at 1134.

69. *See* G.A. Res. 2064, *supra* note 9; G.A. Res. 748, *supra* note 10; Cessation of the Transmission of Information Under Article 73e of the Charter in respect of Greenland, G.A. Res. 849, 9 U.N. GAOR Supp. (No. 21) at 27 (1954).

70. *See* note 5, *supra*; note 9, *supra*.

71. *See* note 63, *supra*. The self-determination requirement necessitates pre-termination exercise of binding sovereign power.

72. Macdonald, *supra* note 19, at 249-253.

73. Macdonald states that:

> [It is possible to] view the internal drafting and acceptance of a constitution by the people of the territory, the creation of a status commission, the drafting and execution of a Status Agreement *de facto* self-government and the termination of the trusteeship as points on a continuum toward self-government. While R.N. Chowdhuri is probably correct in saying that full self-government or independence occurs only upon termination of the trusteeship, there is no inconsistency between that view and the one holding that some measure of self-government and international personality accrue throughout the process toward self-government. . . .

Id. at 251.

and accepts the international reality that emerging states enter into agreements prior to their achieving formal independence.[74] In accord with Macdonald's views, Brownlie recognizes the de facto capacity of states "in statu Nascendi" to conclude international agreements.[75]

Regarding the proposed mutual security relationship, Macdonald recognizes that their pre-negotiated character renders them subject to legal challenge by parties ignoring the territories' present capacity.[76] However, Macdonald notes that a territorial government's acknowledged capacity to exercise self-determination on future status questions generally minimizes the actual likelihood of a successful challenge.[77] The following facts mitigate the risk of such an occurrence. Each territorial government, as required, individually approved the agreements under its constitutional processes.[78] In addition, following legislative ratification, large scale education programs preceded United Nations plebecites on the general question.[79] Finally, the agreements use unambiguous language and the inhabitants already know the proposed relationship's impact on everyday life.

Macdonald's insightful reasoning and caution must, therefore, be evaluated with the knowledge that he wrote his argument prior to its implicit validation by United Nations observation of the 1983 plebecites.[80] It thus appears that recognition of the territorial governments' de facto capacity to pre-negotiate the Mutual Security Agreements would not seriously stretch the Trust Territory's already recognized capacity to conclude binding future status agreements directly with the United States while the trust regime continues.

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74. *See* I. BROWNLIE, *supra* note 52, at 73-74.

75. *Id.* at 74. Brownlie's use of this status is directed toward insurgent states which have not yet normalized their government operations. However, where, as in this case, the territories have been lucky enough to evolve without the need for armed conflict, the theory should be equally applicable in recognition of the peacefully evolved state's birth pangs.

76. Macdonald, *supra* note 19, at 252. Subsequent to the Compact's entry into force, the United Nations would be estopped from protesting any agreement already approved by it. However, because the proposed territorial governments would function as democracies, there is always a risk that anti-American politicians could come to power and begin a search for excuses to denounce the agreements.

77. *Id.* at 252 n.90. Barring the existence of a defect under recognized treaty law, such excuses would fall on deaf ears. The Vienna Convention on the Law of Treaties preserves all of the defense rights which have vested in the United States at the time such a breach occurs. *See* Vienna Convention on the Law of Treaties, arts. 60, 70, *reprinted in* T.O. ELIAS, THE MODERN LAW OF TREATIES 227, 245, 249 (1974).

78. Marshall Islands Agreement, Appendix, *infra*, art. VI; Federated States Agreement, Appendix, *infra*, art. VIII.

79. *See generally Hearing on S.J. Res. 286*, *supra* note 19, at 125 (statement of Ambassador Zeder), 1149-1335 (report of American Enterprise Institute).

80. *Id.* at 1082-1132 (report of the U.N. Visiting Mission).

III. COMPARISON OF FREE ASSOCIATION AND THE RELATIONSHIP UNDER THE MUTUAL SECURITY AGREEMENTS

Under the proposed Compact, the Associated States will enjoy limited foreign affairs capacity. The United States will retain full authority and responsibility for security and defense matters in or concerning the Associated States.[81] In connection with this obligation, the United States will have the option to foreclose military access to, or the use of, an Associated State by any third country, as well as the option to itself establish and use military facilities in the Associated States' territories.[82] The Associated States, in return, agree to refrain from any foreign policy actions which the United States determines, after consultations, will be incompatible with its defense and security authority.[83] Finally, the Compact authorizes the United States to exercise any "obligations, responsibilities, rights and benefits" flowing from its other defense or international security treaties in the Associated States' territory.[84]

Beyond the plenary authority granted to the United States in the defense area, the Compact recognizes the Associated States' capacity to conduct foreign relations in their own name and right.[85] In addition, the Compact explicitly recognizes the Associated States' independent treaty-making capacity in all non-defense fields.[86] The Compact's prior consultation requirement for all for-

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81. Compact of Free Association, *supra* note 6, tit. III, art. I, § 311(a).

82. *Id.* § 311(b)(2)-(3) state as follows:

> (b) This authority and responsibility includes:
>
> (2) the option to foreclose access to or use of the Marshall Islands and the Federated States of Micronesia by military personnel or for the military purposes of any third country; and
>
> (3) the option to establish and use military areas and facilities in the Marshall Islands and the Federated States of Micronesia, subject to the terms of the separate agreements referred to in Sections 321 and 232.

83. *Id.* § 313(a) states:

> The Governments of the Marshall Islands and the Federated States of Micronesia shall refrain from actions which the Government of the United States determines, after appropriate consultation with those Governments, to be incompatible with its authority and responsibility for security and defense matters in or relating to the Marshall Islands and the Federated States of Micronesia.

84. *Id.* art. III, § 331.

85. *Id.* tit. I, art. II, § 121(a) states:

> The Governments of the Marshall Islands and the Federated States of Micronesia have the capacity to conduct foreign affairs and shall do so in their own name and right, except as otherwise provided in this Compact.

86. *Id.* § 121(c) states:

> The Government of the United States recognizes that the Governments of the Marshall Islands and the Federated States of Micronesia have the capacity to enter into, in their own name and right, treaties and other international agreements with governments and regional and international organizations.

eign affairs initiatives,[87] an obligation reciprocated by the United States, constitutes the sole general limitation on this capacity.[88] Once having fulfilled their duty to consult, the Associated States may freely ignore the United States in formulating their own policy on any non-defense foreign affairs question.[89] The Compact recognizes the Associated States' freedom to unilaterally incur international obligations, and declares that the United States will not be responsible for the acts or obligations of the Associated States unless it so expressly agrees.[90]

The defense authority and responsibility outlined above will remain in effect for a minimum of fifteen years from the date the Compact enters into force. Although the Associated States will retain the ability to unilaterally terminate the Free Association relationship at any time, the defense components will continue in force until the fifteenth anniversary of the Compact's entry into force regardless of whether the relationship has been terminated.[91]

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87. *Id.* § 123(a) states:

> In recognition of the authority and responsibility of the Government of the United States under Title Three, the Governments of the Marshall Islands and the Federal States of Micronesia shall consult, in the conduct of their foreign affairs, with the Government of the United States.

88. *Id.* § 123(b).

89. *Hearing on Foreign Policy Implications*, *supra* note 11, at 85-87 (answers to written questions from the Subcommittee to the Department of State).

> *QUESTION*: As regards the conduct of foreign policy in Micronesia, how would the "self-governing" status referred to in Section 111 change the conduct of foreign policy in Micronesia from the way it's currently conducted? What would be the difference?
>
> *ANSWER*: Presently, the governments of the Marshall Islands and the Federated States of Micronesia participate in a variety of international fora and have concluded several government-to-government agreements on matters such as economic and project assistance. During the pendency of the Trusteeship Agreement, which vests responsibility for the foreign affairs of the Trust Territory in the United States, the component units of the Trust Territory must seek and receive, on a case-by-case basis, the approval of the United States for their foreign affairs activities. Under the Compact, the freely associated states will be able to formulate and implement their own foreign policies, free of direction or control by the United States except in instances where the authority and responsibility of the United States for the defense and security of the area is affected. . .
>
> *QUESTION*: If the U.S. government gives advice to the Marshalls or the FSM on other than security or defense matters, what obligations exist for these governments to follow such advice?
>
> *ANSWER*: The good faith nature of the Compact Section 123 consultations is such that the freely associated states would consider procedural or substantive advice offered by the United States on general foreign affairs issues not involving security and defense matters. Because the freely associated states are responsible for the conduct of their own foreign affairs, they will not be obliged to follow such advice. . . .

90. Compact of Free Association, *supra* note 6, tit. I, art. II, § 125.

91. If the Compact is not earlier terminated, it will officially expire upon its fifteenth anniversary. It will continue in operation for two years thereafter during a mandatory negotiating period before completely ceasing in control U.S.-Micronesian

When the Title III defense provisions do expire, the pre-negotiated Mutual Security Agreements will enter into operation immediately.[92] The Marshall Islands and the Federated States Agreements are substantially similar.[93] Under these "follow on" Agreements, the United States will continue its obligation to meet any actual or threatened attack on the other parties.[94] In return, the United States retains the authority and responsibility to unilaterally foreclose third countries' access to the states for military purposes.[95] Finally, the parties agree to consult in the event that a third country threatens or requests such military access.[96]

Significant differences exist between the relationship created by the Mutual Security Agreements and Free Association. The long term relationship denies the United States the influence it previously enjoyed under the Compact's consultation requirement on non-defense related foreign policy questions.[97] In addition, the United States' defense and international security agreements will no longer apply to the states' territory.[98] Finally, unlike the Compact, the long term relationship places no duty upon the states to refrain from acting unilaterally, after undertaking the required consulta-

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relations. In the event of earlier termination by any of the parties unilaterally, the Title III defense provisions will continue in force until the fifteenth anniversary of the Compact's entry into operation. *See id.* tit. IV, art. IV, § 443; art. V, § 453.

92. *See* note 16 *supra*.

93. *See Hearings on the National Security Implications of the Compact*, *supra* note 14, at 202, in which the Department of Defense responded to written questions from the Subcommittee concerning the material effects of the variances in wording:

> *QUESTION*:
>
> Why is there a difference in the wording of the articles in the mutual security agreements regarding the foreclosing of the freely associated states for third country military purposes and for the removal of third country military personnel? Under the terms of the mutual security arrangements, does the United States have less authority to remove third country military personnel from the Marshalls than it does from the FSM?
>
> *ANSWER*: There are differences in wording but not in substance or intent between the two agreements because they were negotiated with two different governments and at different times. The United States will have precisely the same authority with respect to foreclosure under the two agreements. . . .

See also text accompanying notes 120-121.

94. Marshall Islands Agreement, Appendix, *infra*, art. III; Federated States Agreement, Appendix, *infra*, art. III.

95. Marshall Islands Agreement, Appendix, *infra*, art. IV; Federated States Agreement, Appendix, *infra*, art. IV.

96. Marshall Islands Agreement, Appendix, *infra*, art. II; Federated States Agreement, Appendix, *infra*, art. II.

97. *See* note 87, *supra*. There are apparently no other agreements between the parties, beyond standard status of forces and military use and operating rights, which will govern the post free association relationship of the parties.

98. Compact of Free Association, *supra* note 6, tit. III, art. V, § 354(a). The provisions of Title III, including the defense veto and the extension of defense treaties, will expire in accordance with § 231 of the compact. *See* note 91, *supra*.

tion, on a military access or use-related issue.[99] Lacking the so-called "defense veto" established under Title III, the United States' only long term enforcement mechanism, available in the face of an attempted entry, will be actual foreclosure.[100]

The Mutual Security Agreements also contain noteworthy termination provisions. Unlike the Compact defense provisions, the Agreements contain no definite termination date and expressly provide that they may be terminated only by mutual consent.[101] International law defines as perpetual a treaty that terminates only by mutual consent.[102] Significantly, the United States indicates that it expects the relationship to continue so long as it desires.[103] The Micronesian states' ultimate status may well pivot on this fact's legal impact.

IV. LEGAL CHARACTERISTICS OF INDEPENDENCE

It appears from the Mutual Security Agreements' language that the United States and the Micronesian States see no inconsistency between their relationship and independent status.[104] However, as indicated above, considerable authority and responsibility remains with the United States. Whether the long term relationship precludes independence under international law constitutes the second question to be examined below.[105]

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99. *See* text accompanying note 83, *supra*. There is no basis for interpreting the consultation requirement of the Mutual Security Agreements differently from that of the Compact. *See* note 89, *supra*. In view of the fact that the compact defense veto will expire automatically, continuation would require explicit positive agreement in the Mutual Security Agreements.

100. In view of the above, a decision to admit third country military assets against the wishes of the United States would not breach the letter of agreement. In order for the United States to institute any economic sanctions, the economic aid agreements would have to independently provide for such linkage.

101. *See* note 17, *supra*.

102. *Id.*

103. *See Hearings on the Micronesia Compact of Free Association*, *supra* note 19, at 82, in which the Department of Defense responded to written questions submitted to the Committee:

> 3. Does the Compact or its subsidiary agreements enable the U.S. to prevent military activities *indefinitely* by hostile foreign powers in the FSM or the Marshalls? If so, where is this provision found?
>
> A. Mutual security agreements with the Marshall Islands and the Federated States of Micronesia each provide that the U.S. may foreclose access to their territory by any third country for military purposes or use. These agreements will remain in effect until terminated or otherwise amended by mutual consent. Since the U.S. must agree to any termination or amendment, these mutual security agreements can be continued in force so long as we need them.

104. Both Mutual Security Agreements, in art. II, refer to the "political independence" of the parties. *See* Appendix, *infra*.

105. J. CRAWFORD, *supra* note 64, at 56-57. *Cf.* L. OPPENHEIM, *supra* note 26, at 289, 882.

The international law attributes of formal independence include a self-governing population within defined borders and freedom from any legal authority or control beyond that of international law.[106] Cogently defined, "a state is independent when it derives its reason of validity directly from international law, and not from the legal order of any other state, that is to say, when it possesses a basic norm of its own which is neither derived from, nor shared with, any other state."[107] A state can lose its independent status by legally consenting to discretionary intervention in its domestic affairs.[108] Mere partial sovereignty presents itself when a state lacks either territory, population or internal self-government, or if it possesses these attributes but remains legally subordinate to an independently recognized state. When a state exercises internal autonomy it may enjoy independence while burdened with significant derogations on its external capacity.[109]

The Micronesian states appear to satisfy these objective criteria. Their boundaries will be precisely defined.[110] Each enjoys a permanently settled population sharing common cultural identities. Constitutional representative government exists and appears to provide all necessary leadership. Further, the emerging nations' legal order exists independently from that of any other state.

The Trust Territory's devolution toward independence, through a legally established regime of Free Association, constitutes a "reason of validity [derived] directly from international law."[111] International law requires that Free Association relationships provide a mechanism allowing political status modifications through an act of self-determination.[112] An Associated State's self-determined move to independence constitutes an act authorized directly under international law done without regard to any other state's legal order.[113] Absent any other derogation of sovereignty, it seems that the post-Free Association states may achieve formal independence if they so desire. Whether the Mutual Security Agreements preserve the required opportunity constitutes the third question. The

106. J. CRAWFORD, *supra* note 64, at 51-52.

107. K. MAREK, IDENTITY AND CONTINUITY OF STATES IN PUBLIC INTERNATIONAL LAW 168 (2nd ed. 1968).

108. J. CRAWFORD, *supra* note 64, at 56.

109. *Id.* at 188-189.

110. The Constitutions of each entity specifies its boundaries. *See* note 57, *supra*.

111. Report of the Trusteeship Council, *supra* note 68, at 1137, states:

> The Trusteeship Council reaffirms the inalienable rights of the people of Micronesia to self-determination, including the right to independence, in accordance with the Charter of the United Nations and the Trusteeship Agreement. It reiterates that free association is an option that is not incompatible with the Trusteeship Agreement, provided that the populations concerned have freely accepted it.

112. *See* note 9, *supra*.

113. *See* text accompanying note 107, *supra*.

derogations to external sovereign capacity contained in the Agreements will be reviewed to determine their compatibility with both formal and actual independence.

V. THE RESULTING INTERNATIONAL STATUS

International law places an emphasis on formal, rather than actual, independence in assessing the status of international entities.[114] The capacity to enter into treaties with other independent states on a co-equal basis constitutes one of the primary external indicies of independence.[115] Once entered into, all international agreements constitute some restriction on the parties' freedom of action.[116] States may sign agreements seriously limiting their capacity to legally exercise external sovereign rights, without jeopardizing independent status, when the language purports to preserve the parties' independence.[117] Thus, formal independence will only be challenged when the following occur: no effective local consent to the treaty; the treaty provisions delegate extensive internal control powers; or a party retains no meaningful capacity to conduct foreign affairs.[118] Termination capability within the treaty's terms must also be considered.[119]

The United States considers the Agreements entered into with the Marshall Islands and the Federated States to be operationally equivalent, even though some differences in wording exist.[120] The Federated States' Agreement, while using roughly identical language to express key defense rights and obligations, contains specific references to the Federated States' retained capacity nominally absent from the Marshall Islands Agreement.[121] For this reason, the Federated States' Agreement text will be analyzed and the analysis applied to both entities' status.

To be consistent with formal independence, the Agreement must contract for the rights conferred, rather than declare a United

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114. J. CRAWFORD, *supra* note 64, at 69-70, 189.

115. L. OPPENHEIM, *supra* note 26, at 259.

116. *Id.* at 289; A. MCNAIR, *supra* note 21, at 757-762; J. CRAWFORD, *supra* note 64, at 53-54; K. MAREK, *supra* note 107, at 180 no. 3.

117. L. OPPENHEIM, *supra* note 26, at 289-290.

118. J. CRAWFORD, *supra* note 64, at 189, states:

> As a general rule it may be said that the exercise of delegated powers pursuant to protectorate arrangements is not inconsistent with statehood if the derogations from independence are based on local consent, did not involve extensive powers of internal control, and do not leave the local entity without some degree of influence over the exercise of foreign affairs.

119. *Cf.* K. MAREK, *supra* note 107, at 180 n.3.

120. *See* note 93, *supra*.

121. Federated States Agreement, Appendix, *infra*, arts. IV, V. *See also* text accompanying notes 124-127, *infra*.

States special claim of right.[122] Additionally, the Agreement, even if contractual, must not grant to the United States excessive discretion to interfere in the Micronesian states' internal affairs.[123] The Agreement arguably meets these criteria. In form, the Agreement is contractual; it recites the capacity of both parties, it provides that the parties "agree," and it recognizes that the Federated States must ratify the Agreement prior to its coming into effect.

In further support of a claim of formal independence, the Agreement expressly reaffirms the Federated States' capacity to conduct diplomatic relations "without interference or intervention."[124] The requirement for consultation, upon receipt of any threat to a party's "political independence" or security,[125] lends weight to a claim that this Agreement merely exercises the Federated States' right to provide for its self-defense collectively.[126]

The question of excessive discretion also seems to favor formal independence. The Agreement does not contain any express authority for the United States to intervene in the Micronesian states' internal affairs for any reason. While the practical impact for the foreclosure authority could be construed to provide an avenue for domestic intervention, the Agreement addresses this concern specifically. If the United States determines that a specific person constitutes an unacceptable military presence, the Federated State agrees to remove such persons from its territory, relieving difficulties posed by the United States taking such action directly.[127] Finally, the Agreement affirmatively obligates the United States to carry out its foreclosure powers with "due respect" for the Federated States' internal affairs.[128]

These factors must be weighed, however, against the Agreement's perpetual nature. Treaties containing a variety of terms, including both perpetual and limited duration life spans, have been discovered. By reviewing prior international practice concerning politico-military alliances, the third question, the mutual consent requirement's impact upon actual independence, will hopefully be resolved.

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122. J. CRAWFORD, *supra* note 64, at 55.

123. *See supra* note 108 and accompanying text. It is possible for a sovereign state, or a state in *statue nascendi*, to bargain away complete sovereignty in return for security guarantees.

124. Federated States Agreement, Appendix, *infra*, art. V(1). Although the Marshall Islands Agreement is silent on these points, it will, presumably, enjoy equivalent privileges and responsibilities in the absence of their express derogation.

125. *Id.* art. II.

126. J. CRAWFORD, *supra* note 64, at 54. For the international law basis of the principle of collective security see U.N. CHARTER art. 51; 5 M. WHITEMAN, *supra* note 28, at 1049.

127. Federated States Agreement, Appendix, *infra*, art. IV(4).

128. *Id.* art. IV(3).

The 1930 Treaty of Alliance concluded between the United Kingdom and Iraq provided Britain's basis for terminating its League Mandate over that desert state.[129] The agreement expressly asserts that it binds two "independent sovereigns" on the basis of "complete freedom, equality and independence."[130] It provides for cooperation to assure consistent positions in foreign policy,[131] mutual defense,[132] and British military access to protect "essential lines of communication."[133] The agreement also affirms the internal autonomy of Iraq and its right to a military force.[134] Finally, the agreement carries a definite 25 year term.[135] The League of Nations recognized this agreement as a valid basis for terminating the mandate, thereafter admitting Iraq as a member.[136]

The U.K.-Iraq agreement exemplifies political alliances which restrict the parties' capacity to enter into other alliances, or to individually take policy positions in conflict with their common interests. Examples of treaties with such limitations include the North Atlantic Treaty[137] and the "Warsaw Pact."[138] A second type of

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129. Treaty of Alliance, June 30, 1930, United Kingdom-Iraq, Treaty Series No. 15 (1931) (Cmd. 3797), *reprinted in* 132 BRIT. FOREIGN ST. PAPERS 280 (1930).

130. *Id.* preamble.

131. *Id.* art. I states:

> Each of the high contracting parties undertakes not to adopt in foreign countries undertakes not to adopt in foreign countries an attitude which is inconsistent with the alliance or might create difficulties for the other party thereto.

132. *Id.* art. 4 states in part:

> In the event of an imminent menace of war the high contracting parties will immediately concert together the necessary measures of defence. The aid of His Majesty the King of Iraq in the event of war or the imminent menace of war will consist in furnishing to His Britannic Majesty on Iraq territory all facilities and assistance in his power, including the use of railways, rivers, ports, aerodromes and means of communication.

133. *Id.* art. 5.

134. *Id.*

135. *Id.* art. 11.

136. J. CRAWFORD, *supra* note 64, at 57 n.132, states in part:

> The Permanent Mandates Commission, while expressing certain reservations, nevertheless concluded that 'although certain of the provisions of the Treaty . . . were somewhat unusual in treaties of this kind, the obligations entered into by Iraq towards Great Britain did not explicitly infringe the independence of the new state.'

137. North Atlantic Treaty, April 4, 1949, 63 Stat. 2241, T.I.A.S. No. 1964, 34 U.N.T.S. 243. Article 8 of the Treaty states:

> Each party declares that none of the international engagements now in force between it and any other of the parties or any third state is in conflict with the provisions of this Treaty, and undertakes not to enter into any international engagement in conflict with this Treaty.

138. Warsaw Pact, May 14, 1955, 219 U.N.T.S. 3. Article 7 of the Treaty uses language which is almost identical to that of the NATO Treaty, *supra* note 137 as follows:

> The contracting parties undertake not to participate in any coalitions and alliances, and not to conclude any agreements, the purposes of which would be at variance with those of the present treaty. They declare that

Mutual Defense treaty combines an obligation to defend with the right to introduce military forces in and around the protected state. The United States has concluded agreements of this nature with the Republic of China,[139] the Republic of Korea,[140] and Japan.[141]

In operation, both types of agreement will effectively prevent unwelcome military use by third countries. Similarly, in the instant Agreement, the United States will control third country access by blocking activities which "conflict" with the Agreement and by its own preemptive military presence in the Micronesian states. The foreclosure option's presence does not, in and of itself, impinge upon sovereignty. It merely reflects the difficulties in self-policing which the Micronesian states would otherwise experience due to their archipelagic nature. The United States, however, has the capacity to perform this task on their behalf.[142]

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their obligations under existing international treaties are not at variance with the provisions of the present treaty.

139. Mutual Defense Treaty, Dec. 2, 1954, United States-Republic of China, 6 U.S.T. 434, T.I.A.S. No. 3178. Articles V and VII state in part:

ARTICLE V

Each Party recognizes that an armed attack in the West Pacific Area directed against the territories of either of the Parties would be dangerous to its own peace and safety and declares that it would act to meet the common danger in accordance with its constitutional process . . . .

ARTICLE VII

The Government of the Republic of China grants, and the Government of the United States of America accepts, the right to dispose such United States land, air and sea forces in and about Taiwan and the Pescadores as may be required for their defense, as determined by mutual agreement.

140. Mutual Defense Treaty, Oct. 1, 1953, United States-Republic of Korea, 5 U.S.T. 2370, T.I.A.S. No. 3097. Article III states:

ARTICLE III

Each party recognizes that an armed attack in the Pacific area on either of the Parties in territories now under their respective administrative control, or hereafter recognized by one of the Parties as lawfully brought under the administrative control of the other, would be dangerous to its own peace and safety and declared that it would act to meet the common danger in accordance with its constitutional processes.

141. Treaty of Mutual Cooperation and Security, Jan. 19, 1960, United States-Japan, 11 U.S.T. 1633, T.I.A.S. No. 4509. Articles V and VI state in part:

ARTICLE V

Each Party recognizes that an armed attack against either Party in the territories under the administration of Japan would be dangerous to its own peace and safety and declares that it would act to meet the common danger in accordance with its constitutional provisions and processes.

ARTICLE VI

For the purpose of contributing to the security of Japan and the maintenance of international peace and security in the Far East, the United States of America is granted the use by its land, air and naval forces of facilities and areas in Japan . . . .

142. The geographic area of the Trust Territory is approximately equal to that of the continental United States. Given their far-flung placement and low populations, the entities will find it very difficult to prevent unauthorized entry into their territory by

The examination cannot end here, however, because the treaties mentioned all terminate upon notice to the other party or parties.[143] This important difference preserves each party's capacity to alter its alliances without suffering a treaty breach's stigma. Although all sovereigns, like all persons, have the power to breach their agreements, international law limits their right to do so. The presence of a mutual consent requirement forces a state to risk censure as an outlaw in order to effect a political realignment against the prior ally's desire.[144] This difference, though technical, distinguishes the Mutual Security Agreements at issue here from the treaties reviewed above.

The distinction's impact on actual independence appears minimal, however, because several alliance treaties exist which also terminate only upon mutual consent. Fundamentally, the Treaty of Friendship between India and Bhutan guarantees Bhutan's internal autonomy in exchange for an agreement to be guided by India's advice in its foreign affairs.[145] The treaty specifically provides for Bhutan's right to an independent self-defense capacity and does not grant any military concessions to India.[146] Though "guided" by India, Bhutan remains solely responsible for its foreign affairs. Thus, it retains all of the basic attributes of an independent state in political alliance with India.[147]

A similar treaty existed between the Soviet Union and Persia (later Iran) between 1921 and its denunciation by the Islamic Republic of Iran in 1979.[148] In that treaty, the Soviet Union agreed to

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military units of third countries. The United States, with its electronic surveillance and naval capacity, will be able to provide such services to the entities. *See generally* Harlow, *The Law of Neutrality at Sea for the 80's and Beyond*, 3 U.C.L.A. PAC. BASIN L.J. 42, 47-48, 52-53 (1984) (Harlow discusses the problems of archipelagic states in maintaining their security within the context of neutrality. His discussion of the use of a second state's forces to secure the archipelago is applicable here).

143. United Kingdom-Iraq, *supra* note 129, art. 11; North Atlantic Treaty, *supra* note 137, art. 13; Warsaw Treaty, *supra* note 138, art. 11 (one of original Warsaw Pace signatories, Albania, withdrew in 1968); U.S.-Taiwan, *supra* note 139, art. X; U.S.-Korea, *supra* note 140, art. VI; U.S.-Japan, *supra* note 141, art. X.

144. Reisman, *Termination of the U.S.S.R.'s Treaty Right of Intervention in Iran*, 74 AM. J. INT'L L. 144 (1980). The efforts which Reisman must go through to justify Iran's action illustrates that the Islands will be hard-pressed to defend a denunciation based upon a mere political realignment.

145. Treaty of Friendship, August 8, 1949, India-Bhutan, *reprinted in* 157 BRIT. FOREIGN ST. PAPERS 214. Article 2 states:

> ARTICLE 2
>
> The Government of India undertakes to exercise no interference in the internal administration of Bhutan. On its part the Government of Bhutan agrees to be guided by the advance of the Government of India in regard to its external relations.

146. *Id.* art. 6.

147. J. CRAWFORD, *supra* note 64, at 189. Apparently, Crawford's determination is based upon reliance on the formal terms of the relationship under the Treaty.

148. Treaty of Friendship, Feb. 26, 1921, U.S.S.R.-Persia, 9 L.N.T.S. 384.

certain territorial concessions in return for the right to foreclose use of Persian territory by military forces hostile to the Soviet's revolutionary government.[149] One commentator's efforts to establish international law justifications for the Treaty's denunciation illustrate the difficulty which a state would experience upon doing such an act.[150]

The United States and Japan entered into an earlier security treaty, perpetual in nature, upon the signing by the allied powers of the 1951 Treaty of Peace with Japan.[151] In the 1951 Security Treaty, the United States agreed to defend Japan in return for the right to station American military forces in and around its territory[152] and to block third country military forces' introduction into Japanese territory.[153] Japan joined the United Nations, while a party to this treaty, in 1956.

The protected party in each of these agreements is generally recognized to have retained its independence while so encumbered. While none provides clear precedent upon which to base a status determination for the Micronesian Agreements here at issue, they provide positive guidance.

VI. CONCLUSION

The Mutual Security Agreements are clearly consistent with independence. The inclusion of a mutual consent requirement,

149. *Id.* art. 6 states:

> ARTICLE 6
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> If a third Party should attempt to carry out a policy of usurpation by means of armed intervention in Persia, or if such Power should desire to use Persian territory as a base of operations against Russia, or if a Foreign Power should threaten the frontiers of Federal Russia or those of its allies, and if the Persian Government should not be able to put a stop to such a meance after having been once called upon to do so by Russia, Russia shall have the right to advance her troops into the Persian interior for the purpose of carrying out the military operations necessary for the defence. Russia undertakes, however, to withdraw her troops from Persian territory as soon as the danger has been removed.

150. *See supra* note 144; Briggs, *Unilateral Denunciation of Treaties: The Vienna Convention and the International Court of Justice*, 68 AM. J. INT'L L. 51, 63-68 (1974).

151. Security Treaty, Sept. 8, 1951, United States-Japan, 3 U.S.T. 3331, T.I.A.S. No. 2491.

152. *Id.* art. IX.

153. Security Treaty, *supra* note 151, art. I states:

> ARTICLE I
>
> Japan grants, and the United States of America accepts, the right, upon the coming into force of the Treaty of Peace and of this Treaty, to dispose United States land, air and sea forces in and about Japan. Such forces may be utilized to contribute to the maintenance of international peace and security in the Far East and to the security of Japan against armed attack from without, including assistance given at the express request of the Japanese Government to put down large-scale internal riots and disturbances in Japan, caused through instigation or intervention by an outside power or powers.

while consistent with independence, must be carefully explained due to the lack of precedent for these specific facts. The United States will have the opportunity to resolve this doubt, once and for all, following termination of the Strategic Trust, the last remaining trusteeship of the post-war period. The discussion promises to be interesting.

APPENDIX

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES AND THE GOVERNMENT OF THE MARSHALL ISLANDS REGARDING MUTUAL SECURITY CONCLUDED PURSUANT TO SECTIONS 321 AND 323 OF THE COMPACT OF FREE ASSOCIATION

PREAMBLE

The Government of the United States and the Government of the Marshall Islands:

Reaffirming their desire to live in peace with all peoples and all governments and their desire to strengthen and support the cause of peace in the Pacific area;

Desiring to declare publicly and formally their common purpose, so that no potential aggressor can assume that either of them stands alone in the Pacific area;

Mindful that the Government of the United States and the Government of the Marshall Islands, in the exercise of their respective capacities for the conduct of foreign affairs, have entered and do enter into agreements which are implemented in accordance with their respective constitutional processes; and

Reaffirming the purposes and principles of the Compact of Free Association;

NOW THEREFORE AGREE:

ARTICLE I

The Government of the United States and the Government of the Marshall Islands rededicate themselves to the principle that any international disputes in which they may be involved shall be settled by peaceful means and in such a manner that international peace, security and justice are not endangered.

ARTICLE II

The Government of the United States and the Government of the Marshall Islands shall consult at the request of either Government, whenever the political independence of either of them or their mutual security is threatened in the Pacific.

ARTICLE III

The government of the United States and the Government of the Marshall Islands recognize that, in view of the special relationship between their peoples, any attack on the Marshall Islands would constitute a threat to the peace and security of the Pacific area and a danger to the United States. In the event of such an attack or the threat thereof, the Government of the United States would take action to meet the danger to the United States and the Marshall Islands in accordance with its constitutional processes.

ARTICLE IV

a. If the Government of the United States determines that any third country seeks access to or use of the Marshall Islands by military personnel or for military purposes, the Government of the United States has the authority and responsibility to foreclose such access or use, except in instances where, following the consultations referred to in paragraph b. of this Article, the two governments otherwise agree. The Government of the United States shall exercise such authority and responsibility in accordance with its constitutional processes.

b. The Government of the Marshall Islands, in recognition of the obligations undertaken by the Government of the United States in this Article and in Article III of this Agreement, shall consult with the Government of the United States in the event a third country seeks such access or use.

ARTICLE V

The Government of the United States and the Government of the Marshall Islands recognize that sustained economic advancement is a necessary contributing element to the attainment of the mutual security goals expressed in this Agreement. The Government of the United States reaffirms its continuing interest in promoting the long-term economic advancement and self-sufficiency of the people of the Marshall Islands.

ARTICLE VI

In order to give effect to their undertakings in this Agreement entered into pursuant to Sections 321, 323 and 454 of the Compact of Free Association:

a. The Government of the Marshall Islands recognizes that this Agreement contains international treaty obligations which shall be implemented in a manner consistent with the Constitution of the Marshall Islands; and

b. The Government of the United States recognizes that this

Agreement is an Executive Agreement of the United States and shall execute it in accordance with its constitutional processes.

ARTICLE VII

This Agreement shall come into effect upon the expiration or termination of Title Three of the Compact of Free Association.

ARTICLE VIII

This Agreement shall remain in full force and effect until terminated or otherwise amended by mutual consent.

ARTICLE IX

The Definition of Terms set forth in Article VI of Title Four of the Compact are incorporated in this Agreement.

IN WITNESS WHEREOF, the undersigned, duly authorized for the purpose, having signed the present agreement.

DONE at Washington, D.C., in duplicate, this 24th, day of May, nineteen hundred and eight-two.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

/s/

FOR THE GOVERNMENT OF THE MARSHALL ISLANDS:

/s/

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES AND THE GOVERNMENT OF THE FEDERATED STATES OF MICRONESIA REGARDING FRIENDSHIP, COOPERATION AND MUTUAL SECURITY CONCLUDED PURSUANT TO SECTIONS 321 AND 323 OF THE COMPACT OF FREE ASSOCIATION

PREAMBLE

The Government of the United States and the Government of the Federated State of Micronesia:

Reaffirming their desire to live in peace with all peoples and all governments and their desire to strengthen and support the cause of peace in the Pacific area;

Desiring to declare publicly and formally their sense of unity, so that no potential aggressor could be under the illusion that either of them stands alone in the Pacific area;

Mindful that the Government of the United States and the Government of the Federated States of Micronesia, in the exercise of their respective capacities for the conduct of foreign affairs, have entered and do enter into agreements which are implemented in accordance with their respective constitutional processes; and

Reaffirming the purposes and principles of the Compact of Free Association which contributes to regional peace and mutual security by *providing* United States undertakings for the defense of the Federated States of Micronesia and assistance toward its economic advancement and self-sufficiency;

NOW THEREFORE AGREE:

ARTICLE I

The Signatory Governments rededicate themselves to the principle that any international disputes in which they may be involved shall be settled by peaceful means and in such a manner that international peace, security and justice are not endangered.

ARTICLE II

The Signatory Governments shall consult at the request of either Government, whenever the political independence of either of them or their mutual security is threatened in the Pacific.

ARTICLE III

The Signatory Governments recognize that, in view of the special relationship between their peoples, any attack on the Federated

States of Micronesia would constitute a threat to the peace and security of the Pacific area and a danger to the United States. In the event of such an attack or the threat thereof, the Government of the United States would take action to meet the danger to the United States and the Federated States of Micronesia.

ARTICLE IV

1. The Signatory Governments, in recognition of the obligations undertaken by the Government of the United States in this Article and in Article III of this Agreement, shall inform one another promptly and shall consult in the event either of them has reason to believe that a third country seeks access to or use of the Federated States of Micronesia by military personnel or for military purposes.
2. If the Government of the United States determines that any third country seeks access to or use of the Federated States of Micronesia by military personnel or for military purposes, the Government of the United States has the authority and responsibility to foreclose such access or use, except in instances where the two Governments otherwise agree.
3. The Government of the United States shall exercise its authority and responsibility under this Article with due respect to the authority and responsibility of the Government of the Federated States of Micronesia for its internal and external affairs, including the responsibility to assure the well-being of its people.
4. The Government of the Federated States of Micronesia shall render appropriate support and assistance to the Government of the United States in meeting its responsibilities under this Article. Such assistance may include the removal from the Federated States of Micronesia, at the request of the Government of the United States, of individuals whose presence constitutes third country access to or use of the Federated States of Micronesia by military personnel or for military purposes.

ARTICLE V

The Signatory Governments recognize that the sustained political development and economic advancement of the Federated States of Micronesia are necessary contributing elements to the attainment of the mutual security goals expressed in this Agreement. The Government of the United States reaffirms its continuing interest in promoting the long-term economic advancement and self-sufficiency of the people of the Federated States of Micronesia. To those ends, should the terms of Articles I through VII of this Agreement become applicable pursuant to Article VIII, in light of the continuing special relationship between the Signatory Governments and subject to the provisions of this Agreement:

1. The Government of the United States reaffirms that the Federated States of Micronesia is self-governing and that the Government of the Federated States of Micronesia, acting in accordance with the Constitution of the Federated States of Micronesia, has the capacity to maintain and conduct diplomatic, trade and commercial relations without interference or intervention.
2. The Signatory Governments shall consult at the time the terms of this Agreement become applicable, and periodically thereafter, to examine the economic advancement of the Federated States of Micronesia, taking into account the internal and external revenues available to the Federated States of Micronesia and the relationship of its need for external economic assistance to its most recent levels of United States assistance. Based on such consultations, the Signatory Governments shall enter into appropriate arrangements as mutually agreed.

ARTICLE VI

The Signatory Governments shall consult at the time the terms of this Agreement become applicable, and periodically thereafter, to examine the needs, if any, of the Government of the United States for defense facilities and operating rights in the Federated States of Micronesia. Based on such consultations, the Signatory Governments shall enter into appropriate arrangements as mutually agreed.

ARTICLE VII

The Signatory Governments shall establish a Council, consisting of the United States Secretary of State and the Federated States of Micronesia Secretary of External Affairs or their designees, to carry out consultations as provided in this Agreement. The Council shall be so organized as to be able to meet at any time. Designees of the respective Secretaries shal be senior officials of their Governments, unless otherwise mutually agreed.

ARTICLE VIII

In order to give effect to their undertakings in this Agreement:
1. The Signatory Governments shall exercise their authority and responsibility under this Agreement in accordance with their respective constitutional processes.
2. The Government of the Federated States of Micronesia recognizes that this Agreement contains international obligations and shall submit this Agreement for approval as a treaty pursuant to Article IX, Section 4 of the Constitution of the Federated States of Micronesia.
3. The Government of the United States recognizes that this

Agreement is an Executive Agreement of the United States containing international obligations and shall execute it in accordance with its constitutional processes.

ARTICLE IX

This Agreement shall come into effect simultaneously with the Compact of Free Association. The terms of Articles I through VII of this Agreement shall become applicable upon expiration or termination of Title Three of the Compact of Free Association.

ARTICLE X

This Agreement shall remain in full force and effect until terminated or otherwise amended by mutual agreement. The Signatory Governments shall consult whenever either of them desires to discuss this Agreement with the other or to propose any amendment.

ARTICLE XI

The Definition of Terms set forth in Article VI of Title Four of the Compact of Free Association is incorporated in this Agreement.

IN WITNESS WHEREOF, the undesigned, duly authorized for the purpose, have signed the present agreement.

DONE at Honolulu, Hawaii, in duplicate, this 1st, day of October, nineteen hundred and eight-two.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

/s/

FOR THE GOVERNMENT OF THE FEDERATED STATES OF MICRONESIA

/s/