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MONTEREY, CALIFORNIA

## THESIS

**EFFECTS OF THE COMPACT OF FREE ASSOCIATION  
ON SOVEREIGNTY IN THE FEDERATED STATES OF  
MICRONESIA**

by

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June 2017

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IN THE FEDERATED STATES OF MICRONESIA**

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## **ABSTRACT**

The Compact of Free Association (COFA), a 1986 treaty between the United States and the Federated States of Micronesia (FSM), formalizes a specific type of shared sovereignty: free association between politically independent nations. The COFA intentionally compromises some aspects of Micronesian sovereignty by ceding limited authority to the United States, backed by the FSM's international legal standing. In return, the FSM should gain the political and economic capacity to be more effectively sovereign than it could be without external assistance. Whether free association remains the best avenue for the FSM to pursue its national goals depends on how sovereign authority is maintained. Does the COFA undermine the FSM's political authority in order to support U.S. strategic interests, or does it properly leverage the FSM's international legal standing and greater U.S. capacity in support of mutual interests? A critical look at international legal norms and shared sovereignty regimes, followed by a qualitative cost-benefit analysis with respect to sovereignty, might best answer that question. The results suggest necessary modifications to the U.S.-FSM COFA, as well as a revised understanding of free association and its potential effects on sovereignty.

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## **LIST OF ACRONYMS AND ABBREVIATIONS**

COFA	Compact of Free Association
EEZ	Exclusive Economic Zone
FAS	Freely Associated States
FSM	Federated States of Micronesia
JEMCO	Joint Economic Management Committee
MIRAB	Migration, Remittances, Aid, and Bureaucracy
NORMA	National Oceanic Resources Management Authority
OIA	Office of Insular Affairs
RMI	Republic of the Marshall Islands
ROP	Republic of Palau
TTPI	Trust Territory of the Pacific Islands
UNCLOS	United Nations Convention on the Law of the Sea

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# I. INTRODUCTION

## A. MAJOR RESEARCH QUESTION

This thesis explores the relationship between free association agreements and sovereignty, using the Federated States of Micronesia (FSM) as a single case study. Along with the Republic of Palau (ROP) and the Republic of the Marshall Islands (RMI), the FSM is one of three sovereign Pacific states in a Compact of Free Association (COFA) with the United States.<sup>1</sup> Under the terms of the COFA, the United States maintains the responsibility and authority for the islands' security, in exchange for Micronesian rights to settle in the United States and its territories, along with direct financial aid and government services.<sup>2</sup> The FSM is a developing nation, with an economic model known as MIRAB—in which growth is based on migration, remittances, aid, and bureaucracy.<sup>3</sup> This arrangement is by definition not self-sufficient, though it might be sustainable despite the low levels of economic growth observed in the islands. The COFA reinforces the MIRAB structure—providing a form of economic sovereignty—and allows the FSM to pursue public sector-led development while maintaining a level of services, such as security, transportation, communication, and education, normally associated with a larger export-driven economy.

The COFA fills a gap in the FSM's capacity to participate in the global economy, but it is more than just a partnership of convenience. Like the other former colonies in greater Micronesia, the FSM—with a land area smaller than the island of Oahu but possessing the world's 18<sup>th</sup> largest Exclusive Economic Zone—has drawn the attention of

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<sup>1</sup> On naming conventions: just as “Americans” refers to the people of the United States within the greater region of the Americas, this thesis will use “Micronesians” only when referring to citizens of the Federated States of Micronesia. Other peoples from the region of Micronesia will be referred to according to either indigenous nationality (e.g., Chamorro) or to the specific island or group of their origin. (e.g., Marshallese, Marianas Islanders, or Palauans). The Federated States of Micronesia (FSM), Republic of Palau (ROP), and Republic of the Marshall Islands (RMI) make up the Freely Associated States (FAS) and will be distinguished from “Micronesia” in the text.

<sup>2</sup> Compact of Free Association: Agreement Between the United States of America and Micronesia, May 14, 2003, *TIAS* 04-625.

<sup>3</sup> I.G. Bertram and R. F. Watters, “The MIRAB Economy in South Pacific Microstates,” *Pacific Viewpoint* 26, no. 3 (1985): 497.

large nations other than the United States, prompting concern that local economic interests might be subordinated to global strategic interests.<sup>4</sup> The United States benefits from the exclusion of other militaries from FSM territory provided in the COFA, but does the reciprocal benefit to the FSM provide fair value? Though the FSM maintains its *de jure* sovereignty, whether the relationship with the United States represents balanced interdependence is continually debated at the highest levels of both governments.<sup>5</sup> The FSM is not a colony, nor is it a territory or commonwealth—but there is a fine line in this case between mutual assistance and dependency.

The current political and economic situation in the FSM underscores the major research question explored in this thesis: **How can a freely associated state—a smaller entity seeking the economic benefits of political interdependence with a larger one—maintain its sovereignty?** To answer this main question, three lines of inquiry are necessary. First, what internal and external factors cause a country like the FSM to seek political and economic symbiosis with another? Second, which structural elements in the Compact of Free Association between the FSM and the United States reinforce sovereignty, and which elements undermine it? Finally, what structural adjustments can be made to the existing treaty—up to and including termination—to reinforce FSM sovereignty while serving the interests of both parties? The answers to these lines of inquiry will directly address the pros and cons of free association as a political strategy for small island nations, and identify the conditions that lead to sustainable political and economic development while minimizing a loss of sovereignty for the freely associated state.

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<sup>4</sup> Thomas R. Matelski, “America’s Micronesia Problem,” *The Diplomat*, February 19, 2016, <http://thediplomat.com/2016/02/americas-micronesia-problem>; Adam Thompson, “Tourism in Yap and Micronesia: Will China Run the Show?,” *Asia Pacific Bulletin* 1, no. 199 (2013): 1.

<sup>5</sup> FSM Congress, *C.R. No. 19–155: Resolution Requesting Termination of the Amended Compact of Free Association with the United States*, Nineteenth Congress of the Federated States of Micronesia, Third Special Session (Palikir, 19 November 2015).

## **B. SOVEREIGNTY AS A FUNCTION OF AUTHORITY AND CAPACITY**

Why is sovereignty important? According its most basic definition, sovereignty is “a country’s independent authority and the right to govern itself.”<sup>6</sup> This concept forms the basis for a country to participate in the international system, as well as the recognized right to be supreme in its own territory. In theory, sovereignty still has meaning regardless of a country’s capacity to enforce it; in practice, it is frequently compromised by the unequal distribution of economic and military power. The participation of small island nations in the global economy as legally sovereign states presents a paradox. The increased capacity required to maintain diplomatic relations, provide networks for disaster relief, defend territory, and benefit from an Exclusive Economic Zone may be beyond the reach of a small island economy. Small islands may pursue governance delegation agreements with larger nations in order to protect their interests; depending on how they are managed, these agreements may not only favor the larger partner, but may erode rather than protect the smaller partner’s sovereignty.<sup>7</sup> This thesis defines the COFA as an attempt to rectify what Stephen Krasner calls the “organized hypocrisy” of sovereignty.<sup>8</sup> The resulting relationship is best explained as a formal compromise of some aspects of sovereignty with the aim of strengthening others. Has free association succeeded in this aim?

Unlike other forms of governance delegation, the COFA treaties between the United States and the ROP, FSM, and RMI are specifically designed to preserve local sovereignty, emphasizing the islands’ right to withdraw from free association should the relationship prove no longer beneficial. This opt-out clause is formalized in U.S. Code as well as in the COFA itself. Unlike Niue and the Cook Islands in the South Pacific, “freely associated” states which are officially part of the Realm of New Zealand, the three COFA nations in the North Pacific are effectively not under any U.S. authority except that which

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<sup>6</sup> *Merriam-Webster Online*, s.v. “Sovereignty,” <http://merriam-webster.com>.

<sup>7</sup> Aila M. Matanock, “Governance Delegation Agreements: Shared Sovereignty as a Substitute for Limited Statehood,” *Governance* 27, no. 4 (2014): 589.

<sup>8</sup> Stephen Krasner, *Sovereignty: Organized Hypocrisy* (Princeton: Princeton University Press, 1999), 42.

they have requested—a voluntary, though asymmetric, interdependent relationship formalized in a renewable contract.

### **C. THE FSM’S ECONOMIC AND POLITICAL CHALLENGES**

Of the Micronesian freely associated states (FAS), the FSM presents a unique problem set. The four federated states of Yap, Chuuk, Pohnpei, and Kosrae, a mix of high islands and low coral atolls, are geographically dispersed and lack infrastructure. As such, they are not as ideally suited for tourism as are the close-grouped rock islands of Palau. There are no permanent U.S. bases, like Kwajalein’s Reagan Test Site in the Marshalls—nor, perhaps more cynically, does the FSM have the potential to receive reparations for U.S. atomic bomb testing, as the RMI does for the destruction of Bikini, Enewetak, and Rongelap Atolls and the forced relocation of their inhabitants. The remaining option for economic growth is fishing, which has so far not benefited the FSM aside from a limited source of rents. The COFA was originally designed to shelter a naturally-grown Micronesian economy by providing public services until such time as the FSM government could build its own capacity. More than thirty years after its inception, the COFA has arguably failed to truly strengthen the FSM economy, regardless of the increase in GDP actually provided.

Today, the FSM’s government is large in proportion to its workforce; furthermore, approximately half of government spending is supported by Compact aid.<sup>9</sup> Direct economic aid provisions in the COFA expire in 2023, when proceeds from a trust fund established in a 2003 revision are expected to partially replace U.S. grants. Despite the good health of the FSM trust fund relative to that of its neighbors, GDP growth has been slow or negative; the country is approaching a “fiscal cliff” in which the government will not be able to meet its projected obligations.<sup>10</sup>

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<sup>9</sup> “The World Factbook: Federated States of Micronesia,” Central Intelligence Agency, accessed August 2, 2016, <https://www.cia.gov/library/publications/the-world-factbook/geos/fm.html>.

<sup>10</sup> Government of the Federated States of Micronesia, “FSM 2023 Action Plan,” Asian Development Bank release (Palikir, FSM, 2015), 8. <https://www.adb.org/sites/default/files/linked-documents/cobp-fsm-2016-2018-ld-02>.

This apparent structural weakness might be a natural result of the FSM's small land area and dispersed population, but the United States' role should not be overlooked. The relationship between the governments is intended to be symbiotic, but some Micronesian legislators have recently proposed an early termination date for the Compact, citing among other things an imbalance of power in the U.S.–FSM Joint Economic Management Committee (JEMCO) and a perception that the relationship has not been mutually beneficial.<sup>11</sup> Was this a purely a political statement, or is there truth to the notion that administration of the COFA has undermined Micronesian sovereignty, and prevented true economic and political self-determination? Regardless of its true motivation, the anti-COFA movement marks a change in political posture, and should not be ignored. The strategic value of COFA Title III, which forecloses FSM territory to any but U.S. military forces, should be apparent considering the lessons of World War II in the Pacific.

While the congressional resolution to end the FSM COFA in 2018 did not pass—the FSM must hold a plebiscite to unilaterally terminate the agreement—it is apparent that many economic issues faced by Micronesians are tied to the Compact relationship.<sup>12</sup> An influx of politicized “strategic” aid designed to offset American contributions has subordinated island interests to a larger power struggle between donor states, while the uneven distribution of aid monies has caused a political crisis in Chuuk and Yap states.<sup>13</sup> Furthermore, the pressing requirements of participation in the international system, brought on by the FSM's international legal status as a sovereign state, may be expanding the federal government's mandate beyond its capacity.

The colonial history of Micronesia as a whole complicates the situation, as some citizens view the Compact as a neocolonial push by the United States to secure its

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<sup>11</sup> FSM Congress, *C.R. No. 19–155*.

<sup>12</sup> U.S.–FSM Compact of Free Association, Title IV, Art. IV, Sec. 443.

<sup>13</sup> Matelski, “America's Micronesia Problem”; John Connell, “The New Micronesia: Pitfalls and Problems of Dependent Development,” *Pacific Studies* 14, no. 2 (1991): 112. <http://search.proquest.com/docview/1311896973>.

interests at the expense of a disadvantaged local population.<sup>14</sup> While the April 2016 bill terminating the COFA was a political gesture and did not pass, other efforts may have a visible effect. Another measure, which created a study concerning leasing the entire FSM EEZ to one nation—“possibly the People’s Republic of China”<sup>15</sup>—was adopted. The FSM’s alignment with the United States and its interests is not guaranteed, especially as power is transferred to a generation of Micronesian leaders born after World War II. Title IV of the Compact provides for unilateral severance through a Micronesian plebiscite; the president cannot personally terminate the agreement, but 75 percent of FSM citizens could. It is clear that perception matters when it comes to sovereignty.

What is the desired end state? If the FSM terminates the Compact, it would theoretically lose not only U.S. protection—whether or not it needs it—but each of the COFA legal provisions that sustain true interdependence between governments. U.S. official language regarding the COFA frequently mentions self-sufficiency as a goal for 2023, as if FSM sovereignty is contingent on an independent economy. Decades of colonialism and war, however, have disrupted many of the informal networks that would permit some degree of self-sufficiency or self-reliance. The post-World War II period of progressive decolonization saw many imperfect solutions for restoring economic growth and trade, such as the U.S.-administered Trust Territory of the Pacific Islands (TTPI). Consequently, the options for a future relationship between the United States and the FSM are not presented in terms of a restoration of symbiosis and interdependence, but in terms of a return to paternalism and dependency.

The political situation between the FSM and the United States is fraught with misunderstanding, even at the highest levels. As a result, the most effective parts of the COFA—those that lead to true economic development and might insulate the FSM from economic shocks—have been set aside or deemphasized. Following the analysis, this thesis will attempt to show that not only can the United States safely discontinue Compact direct aid in 2023 without giving up its strategic interest, but that Micronesian

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<sup>14</sup> Francis J. Hezel, S.J., “Yesterday’s Myths, Today’s Realities,” *Micronesian Seminar* online, accessed May 8, 2017, <http://www.micsem.org/pubs/articles/economic/frames/yestmythfr.htm>.

<sup>15</sup> FSM Congress, *C.R. No. 16–89: Resolution Urging Restricted Access to the EEZ*, Sixteenth Congress of the Federated States of Micronesia, Fourth Regular Session (Palikir, 25 May 2010).



interests will be served as well. Namely, the FSM can keep its remittance economy, relieve population pressures, avoid the need to field and fund a military, and preserve the many aspects of its sovereignty. It can also accept needed economic aid and disaster relief assistance from all countries—including the United States—without expectations of reciprocity, and without becoming a pawn in a larger strategic game. Furthermore, if the FSM or any of the FAS should choose a different partner nation for mutual economic and security benefits, the results of this research could offer a set of best practices to ensure that interdependence does not erode sovereignty.

#### **D. POTENTIAL EXPLANATIONS AND HYPOTHESES**

A complete evaluation of the U.S.–FSM Compact of Free Association must first address the reasons for free association as a political strategy, then examine how it has been applied in greater Micronesia and what changes might specifically benefit the FSM.

##### **1. Explanations for the Perceived Value of Free Association**

The general hypothesis examined in Chapter 3 concerns the reason that small island nations with structural constraints similar to those in the FSM choose to remain in free association. Political free association provides a kind of metastable equilibrium, a state (as in physics) in which small disturbances do not bring the system crashing down.<sup>16</sup> The resulting conditions allow for modest growth through interdependence in an otherwise unsustainable MIRAB economic model, while preserving the necessary aspects of sovereignty for participation in the international system. In the context of international relations theory, both realism and liberalism presume that autonomous states are the principal actors.<sup>17</sup> Though the anarchic nature of the international system might recommend independence and alliances to neorealists, or institutionalized interdependence to neoliberals, state sovereignty is a prerequisite for both. Formalized interdependence agreements like the COFA provide an avenue for both approaches. Free

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<sup>16</sup> *Oxford English Dictionary*, s.v. “Metastable.” Here used to indicate that small economic shocks are not likely to affect the overall positive growth trajectory subsidized by association with a larger state.

<sup>17</sup> Stephen M. Walt, “International Relations: One World, Many Theories,” *Foreign Policy* 110 (Spring 1998): 31–32.

association satisfies a realist's need for outside support to ensure survival if self-reliance is not possible, and a liberal's desire for small states and large states to have equal standing in international law.

## **2. Factors that Reinforce FSM Sovereignty**

Compact Title I provides for full Micronesian sovereignty and authority in internal and international affairs, as well as free migration by citizens of the FSM to the United States and its territories without any reciprocal right for U.S. citizens. This provision allows a relief of population pressure on the FSM infrastructure and ecosystem, while allowing a large stream of taxable remittances to family members at home. Title I supports two of the elements of the MIRAB economy,<sup>18</sup> in which Migration, Remittances, Aid, and Bureaucracy define the principal factors of economic activity.<sup>19</sup> Compact migrants have the right to join the U.S. military and become U.S. citizens, though the FSM does not recognize dual U.S.–FSM citizenship. The U.S. federal government compensates states and territories that provide subsidies to Compact migrants, effectively shouldering nearly the full burden of treaty externalities with no compensation expected or requested from the FSM.

Compact Title IV also reinforces sovereignty by allowing either party individually, or both parties jointly to terminate the Compact. Despite the clear U.S. interest in maintaining exclusive military use of FSM territory, the FSM has legal and enforceable (through the Compact's inclusion in U.S. law) means to opt out of the entire agreement through a plebiscite.<sup>20</sup>

## **3. Factors that Undermine FSM Sovereignty**

Title II aid requires extensive government oversight, leading to a de facto loss of economic sovereignty from the FSM government to JEMCO, the Joint Economic Management Committee of three U.S. officials and two FSM officials. Furthermore, the

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<sup>18</sup> Bertram and Watters, "MIRAB Economy in South Pacific Microstates," 497.

<sup>19</sup> Ibid.

<sup>20</sup> U.S.–FSM Compact of Free Association, Title IV, Art. IV, Sec. 443.

perception of a loss of sovereignty to the United States as a consequence of receiving Title II assistance has caused popular resentment and government initiatives to dissolve the Compact.<sup>21</sup>

Title II also appears to drive “strategic aid,” a concept similar to the “checkbook diplomacy” allegedly pursued by some East Asian powers.<sup>22</sup> Strategic aid is organized for the benefit of the donor, not the recipient, due to concerns regarding visibility and frequency. FSM government officials have little choice but to seek and accept this type of aid and accept the implications for reciprocity. Strategic aid is relatively uncoordinated, compared to international disaster relief aid; as a result, development occurs unevenly if at all, and the sustained economic impact of such projects may require further maintenance or investment by the FSM that it cannot support.

#### **4. Provisions that Could Reinforce FSM Sovereignty if Modified**

The 1982 UN Convention on the Law of the Sea granted each coastal nation an Exclusive Economic Zone extending 200 nautical miles from its territorial waters. As a result of UNCLOS, the Micronesian nations have gained huge EEZs to potentially enforce for economic benefit. The FSM EEZ, 18<sup>th</sup> largest in the world, has potential for natural resource development (e.g., as a migratory tuna fishery); however, successful integration of the EEZ for economic growth depends on enforcement capacity, which the FSM currently does not have and is not likely to have without a huge financial burden. Properly delivered assistance could support FSM sovereignty.

#### **E. RESEARCH DESIGN**

A thorough answer to the larger question should include a theoretical approach: an investigation into the concept of sovereignty, and its relationship to self-sufficiency and self-determination. In the first part of the thesis, scholarly interpretations of sovereignty will be assessed alongside United Nations literature regarding self-determination, in particular against the backdrop of Pacific decolonization. This section

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<sup>21</sup> FSM Congress, *C.R. No. 19–155*; *C.R. No. 16–89*.

<sup>22</sup> Andre Vltchek, “Wooing the Islands,” *Foreign Policy in Focus* (January 15, 2008), <http://www.ips-dc.org>.

of the research will also identify the political and economic capacity gaps faced by the Micronesian government and the reasons for the FSM's continued affiliation with the U.S. Analysis of the potential benefits of continued free association will provide the background for the second part, which explores what the FSM might have to give up in pursuit of these benefits.

To be of use in policy-making and planning, a discussion of theory should be followed with a practical analysis: in this case, a qualitative cost-benefit analysis of the U.S.–FSM COFA with regard to sovereignty.

Both of these methodologies aim to provide the groundwork for future Compact adjustments, with the goal of preserving FSM sovereignty, fostering sustainable economic development, and maintaining the security interests of both parties as independent or interdependent nations. The third part will examine how the FSM and the United States could balance the existing free association treaty for mutual benefit. This analysis will use the theoretical goals of free association from the first part and the qualitative metrics from the second to propose structural changes that could positively affect Micronesian sovereignty. These proposed changes will also be assessed in terms of stated U.S. interests, as the relationship is intended to be mutually beneficial.

## **F. THESIS OVERVIEW AND CHAPTER OUTLINE**

Chapter I, the introduction, explains the current U.S.–FSM relationship under the Compact of Free Association, and provides the research question and its significance.

Chapter II provides historical perspectives on the Trust Territory and decolonization efforts, summarizes the concept of sovereignty, and explores the implications of free association as an internationally recognized status. This chapter examines shared governance agreements and provides an assessment of common misunderstandings concerning free association, with the aim of establishing the FSM as a sovereign, independent state in practice as well as in theory.

Chapter III examines the U.S.–FSM COFA relationship in terms of modern requirements for viable statehood, as opposed to the original exigencies of post-Cold War

power politics. In particular, the research identifies the internal demands of the island economy as well as the external demands of the international economy—including participation in the UN system—that the FSM is currently unable to meet on its own.

Chapter IV consists of a qualitative cost-benefit analysis of COFA provisions with regard to the different dimensions of sovereignty.

Chapter V identifies structural changes to the COFA that could better preserve FSM sovereignty and economic interests alongside U.S. involvement in the region.

Chapter VI concludes with a revised understanding of free association, based on the results of this research, as a model for preservation of sovereignty by small states wishing to join a political symbiosis.

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## **II. IS FREE ASSOCIATION COMPATIBLE WITH SOVEREIGNTY?**

The research question asks how a freely associated state can maintain its sovereignty. Before answering that question—how—the underlying assumption must be addressed. Is free association a sharing of sovereign authority and capacity with the aim of strengthening a state, or is it a *de facto* and potentially irreversible relinquishment of sovereign status?

This chapter first briefly describes the FSM's political trajectory in the post-World War II era, with focus on the preconditions that led to the acceptance of associated statehood—generally understood as a compromise between independence and integration. Next, this chapter examines the concept of sovereignty and whether it is an absolute attribute or one that may itself involve compromise. Last, a review of the common arguments surrounding sovereign status shows that certain states, including the FSM, may suspend the exercise of their sovereignty so long as they possess the international legal standing to do so in a temporary manner.

### **A. FROM TRUST TERRITORY TO ASSOCIATED STATE**

Analysis of sovereignty in the FSM is complicated somewhat by the fact that the islands have been politically entangled with the United States since the end of World War II, when American forces liberated the Caroline Islands from Japan—itsself an administrator of a previous League of Nations mandate in Micronesia. After the war, the Carolines—along with the Marshalls and the Marianas—became part of the U.S.-administered UN Trust Territory of the Pacific Islands, a political construct with the mission of progressively reducing their dependence on former colonial powers.<sup>23</sup> This section examines some of the literature concerning postwar economic and security conditions and how these affected the political decisions of the Micronesian people and their leaders.

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<sup>23</sup> Edward C. Camacho, “Emerging Micronesian Island Nations: Challenges for United States Policy” (master’s thesis, Naval Postgraduate School, 1995), <http://handle.dtic.mil/100.2/ADA302960.69>.

## **1. Cultural and Historical Background**

A thorough and perceptive review of greater Micronesian history and culture is provided in Edward C. Camacho's Naval Postgraduate School thesis, "Emerging Micronesian Island Nations: Challenges for United States Policy." The personal perspective of a Micronesian native and U.S. Army officer contributes to this comprehensive review of the political and cultural forces that have shaped modern Micronesia. Camacho's 1995 work suggests that the region remains strategically important to the United States even after the end of the Cold War, and that further U.S. financial aid is warranted lest East Asian powers draw the islands into their orbit.<sup>24</sup> Though the cultural context provided by Camacho's thesis is valuable in defining the problem set, his conclusions promote fear of an "Asian-controlled Micronesia,"<sup>25</sup> a meme that is repeated throughout the post-Cold War literature and tends to obscure correct understanding of the COFA. Additionally, he suggests the precedence of U.S. constitutional norms over the Constitutions of the ROP, the RMI, and the FSM despite the fact that the COFA itself is a treaty between recognized sovereign states in addition to being integrated into U.S. Code.

An equally exhaustive and no less critical approach is found in Gonzaga Puas's doctoral dissertation for the Australian National University. Puas, a native of Lekiniach atoll in Chuuk state, examines the history of Micronesian agency under a succession of colonial and semi-colonial regimes. His detailed narrative describes how Micronesians have adapted to declared colonization under Spain and Germany, Japanese administration of the League of Nations mandate, and U.S. administration of the Trust Territory. In examining the interplay between traditional and modern economic activity, Puas identifies a "new global model of the extended family system"<sup>26</sup> that has allowed Micronesians to maintain their cultural identity while traveling to and benefiting from

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<sup>24</sup> Camacho, "Emerging Micronesian Island Nations," 158.

<sup>25</sup> Ibid., 147.

<sup>26</sup> Gonzaga Puas, "The Federated States of Micronesia's Engagement with the Outside World: Control, Self-Preservation, and Continuity," (doctoral dissertation, Australian National University, 2016), 248.



more developed nations. This model resembles the MIRAB (Migration, Remittances, Aid, and Bureaucracy) economic pattern, which will be discussed in Chapter III.

Arguably the best social and cultural context for the issues raised in this research comes from a Jesuit priest, not a native-born Micronesian. Francis X. Hezel, SJ has published *Micronesian Seminar*, a perspective on Micronesian affairs spanning the last fifty years; though he arrived in Micronesia in 1963 as an outsider, his articles concerning social, political, and economic development consistently put local interests first while advocating for a constructive interaction with foreign powers. Hezel's analysis of the health of the COFA relationship since its inception shows a paradoxical improvement in many official measures of development, along with a decline in prospects for self-sufficiency.<sup>27</sup> He also believes the MIRAB economy is misunderstood as a failure of economic growth, rather than posed as the most sustainable pattern under the current conditions. He asks the important question: "What if, in fact, the islands simply cannot be self-sufficient unless they revert back to pre-contact ways?"<sup>28</sup> The logical conclusion, if Hezel's hypothesis is correct, is that Micronesia's future must be an interdependent one. Nonetheless, stabilizing this interdependence through free association is just one option available to the FSM.

## **2. United Nations Decolonization Efforts**

The United Nations has long been a driving force for decolonization and subsequent restoration of political autonomy. According to General Assembly Resolution 1514 (1960); "inadequacy of political, economic, social, or educational preparedness should never serve as a pretext for delaying independence."<sup>29</sup> From the perspective of former colonies, a rapid move toward independence could be problematic, especially if the colonial period degraded or destroyed traditional economic patterns that supported self-sufficiency. These countries must assess the benefits of self-government along with

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<sup>27</sup> Francis X. Hezel, "Is That the Best You Can Do? A Tale of Two Micronesian Economies," *Micronesia Seminar* online, 2006, accessed 8 May, 2017, [www.micsem.org](http://www.micsem.org).

<sup>28</sup> Ibid.

<sup>29</sup> UN General Assembly, *Resolution 1514 (XV), Declaration on the Granting of Independence to Colonial Countries and Peoples*, 14 December, 1960, [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/1514\(XV\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/1514(XV)).

the long-term costs of maintaining full political independence, since an unsustainable plan may lead back into dependency and a loss of autonomy. UN General Assembly Resolution 1541 provides at least three possible options for a people to exercise their right of self-determination: “emergence as a sovereign independent state, free association with an independent state, or integration with an independent state.”<sup>30</sup> Independence is therefore understood to be one option among many—the preferred option for advocates of rapid decolonization, but perhaps not an immediately sustainable one for peoples emerging from a more exploitative colonialism.

The UN Trust Territory of the Pacific Islands, which lasted from 1947 until 1986, was only the latest political construct in which Micronesians were not entitled to self-government. Armstrong and Hills’s 1984 review of Micronesian legal issues notes that “from the beginning, the Trust Territory also enjoyed a unique status because its sovereignty was reserved in political trust while the foundation for development was laid.”<sup>31</sup> To responsibly administer the Trust Territory and meet its obligations under international law to build Micronesian capacity for governance, the United States had to ensure the islands would not fall under foreign occupation upon declared independence, as they lacked military forces of their own. The post-World War II situation in the Pacific led to the TTPI becoming a “strategic trust,” and paradoxically slowed Micronesia’s movement toward self-determination.<sup>32</sup> The emergence of free association as a political strategy finally provided a way for Micronesian islands to participate as sovereign states in the international system without the need to be fully self-sufficient.

### **3. Origin of the Compacts of Free Association**

Negotiations concerning the political status of the Trust Territory proto-states set Micronesian sovereignty interests against U.S. strategic interests. In 1970, more than a decade before the COFA, leaders across greater Micronesia insisted on recognized legal sovereignty even as they acknowledged the need and desire to remain in close association

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<sup>30</sup> UN General Assembly, *Resolution 1514 (XV)*.

<sup>31</sup> Arthur John Armstrong and Howard Loomis Hills. “The Negotiations for the Future Status of Micronesia,” *The American Journal of International Law* 78, no. 2 (1984): 497.

<sup>32</sup> Camacho, “Emerging Micronesian Island Nations,” 54.

with the United States. Donald F. McHenry's book "Micronesia: Trust Betrayed" chronicles the evolution of free association and provides a critical look at U.S. attempts to retain as much control as possible in the Pacific due to perceived Cold War threats. The greatest sticking point for the Micronesian side was the issue of termination; the exercise of sovereignty would have limited meaning if it was to be constrained by a U.S. veto over Micronesian interests.<sup>33</sup> Despite legal language asserting rights to unilateral termination, the idea of a *de facto* U.S. veto in the FSM's affairs remains at the heart of a small but vocal anti-free association movement today.

When the TTPI finally split into independent, sovereign nations in 1979, the United States designed a system for what would become the Freely Associated States to maintain political and economic ties with their former trustee state. The resulting Compact of Free Association, signed in 1986, was designed to bolster American as well as Micronesian interests. Specifically, the COFA gave the U.S. military the exclusive right to operate in the territory of the ROP, FSM, and RMI; in return the United States would provide defense, financial aid, government services, and unrestricted migration for Micronesians. Though both parties signed a "Compact II" in 2003, this was substantially similar to the 1986 agreement; Chapter IV examines Compact II in detail.

## **B. SOVEREIGNTY IN THEORY AND IN PRACTICE**

Understanding how the COFA relationship affects Micronesian sovereignty first requires a thorough definition of sovereignty itself. The concept of sovereignty comprises a basic definition, two recognized theoretical forms or regimes, and at least four functional types or areas in which sovereignty may be exercised.

### **1. Definition of Sovereignty**

What is sovereignty, and why does it matter? As it is defined in the Oxford English Dictionary—"the authority of a state to govern itself or another state"<sup>34</sup> sovereignty describes an authority without necessarily the capacity or competence for

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<sup>33</sup> Donald F. McHenry, *Micronesia: Trust Betrayed* (New York: Carnegie Endowment for International Peace, 1975), 98.

<sup>34</sup> *Oxford English Dictionary*, s.v. "Sovereignty."

governance. Who should recognize that authority, and what form should governance take? Furthermore, what capacity must an authority maintain in order to be recognized? James Crawford's book *The Creation of States in International Law* furthers the understanding of sovereignty as a functional attribute rather than a legal status. He writes:

In its most common modern usage, sovereignty is the term for the 'totality of international rights and duties recognized by international law' as residing in an independent territorial unit—the state. It is not itself a right, nor is it a criterion for statehood. It is a somewhat unhelpful, but firmly established, description of statehood; a brief term for the state's attribute of more-or-less plenary competence.<sup>35</sup>

This necessarily complex definition underlies all further discussions of sovereignty in this thesis: from Robert Jackson's negative and positive sovereignty regimes, to Stephen Krasner's sub-types of sovereignty, to the very reasons why the assertion of sovereignty in associated states does not always bear out in practice. Sovereignty encompasses rights as well as duties, authority as well as capacity—and a myriad of other concepts including self-governance, self-determination, and independence. A further examination of these concepts will help answer the research question in terms of what attributes of sovereignty a freely associated state should be able to maintain, irrespective of its status under international law.

## **2. Recognized Forms of Sovereignty**

Robert H. Jackson's book *Quasi-states: Sovereignty, International Relations, and the Third World* is an extensive overview of how the concepts of negative and positive sovereignty have shaped states emerging from colonialism. Jackson links these forms of sovereignty to the similar concepts of negative and positive liberty: that which governments protect, and that which governments provide.<sup>36</sup> While the newly created states in greater Micronesia possessed legal sovereignty, they did not have pre-existing political structures with the capacity to unify each island chain. Once recognized by other

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<sup>35</sup> James Crawford, *The Creation of States in International Law* (Oxford: Clarendon Press, 1979), 26–27.

<sup>36</sup> Robert H. Jackson, *Quasi-states: Sovereignty, International Relations, and the Third World* (Cambridge: Cambridge University Press, 1990), 26–27.

nations, they achieved negative sovereignty (authority) well before realizing the positive sovereignty (capacity) that often preceded recognition in Europe and Asia. This idea of possible contrasts between authority and capacity is a consistent theme in the literature, especially with regard to recently decolonized states and peoples. As James Crawford says of these new states in his article “Islands as Sovereign Nations,” “the reality of their situation has to be set against their formal status and rights.”<sup>37</sup> Further analysis by political scientists has sought to define what these rights are, and what types of capacity ought to accompany them if a state is to be considered fully sovereign.

### **3. Functional Types of Sovereignty**

In his book *Sovereignty: Organized Hypocrisy*, Stephen Krasner identifies four discrete types of sovereignty: domestic, interdependence, international legal, and Westphalian.<sup>38</sup> Domestic sovereignty concerns the internal exercise of political authority,<sup>39</sup> while Westphalian sovereignty is based on “territoriality and the exclusion of external actors.”<sup>40</sup> Interdependence sovereignty is most related to effective participation in the international economy,<sup>41</sup> and international legal sovereignty involves recognition by the international community.<sup>42</sup> Krasner’s typology will form the basis for assessment of the COFA with respect to sovereignty. In its political relationship with the United States, the FSM must occasionally yield specific aspects of its sovereignty, while gaining others that it might not otherwise have; the cost-benefit analysis will attempt to identify successful trade-offs and point out aspects of sovereignty that are being needlessly compromised.

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<sup>37</sup> James Crawford, “Islands as Sovereign Nations,” *The International and Comparative Law Quarterly* 38, no. 2 (1989): 298.

<sup>38</sup> Krasner, *Sovereignty*, 40.

<sup>39</sup> *Ibid.*, 11.

<sup>40</sup> *Ibid.*, 20.

<sup>41</sup> *Ibid.*, 12.

<sup>42</sup> *Ibid.*, 14.

### C. CAN FREE ASSOCIATION PRESERVE SOVEREIGNTY?

Before analyzing the COFA with respect to sovereignty, it would be prudent to determine if sovereignty is possible at all under a free association treaty, let alone if it is something that can be preserved or maintained. Is sovereignty a binary attribute? If so, the government of the FSM and likewise its neighbor states need not be concerned as to the wording of the COFAs, as the international community has already recognized their sovereign status. Furthermore, neither a lack of state capacity nor a treaty permitting significant U.S. intrusion could reverse the achievement of this status. Yet legal status alone does not even approach Crawford's notion of a state's "plenary competence."<sup>43</sup> Sovereign authority without sovereign capacity may become problematic for a state, especially if such lack of capacity means allowing a "partner" state to pursue its interests within one's own territory.

Upon its independence from trusteeship in 1986, the Federated States of Micronesia formalized two types of sovereignty best understood through Krasner's framework—Westphalian and international legal—in the face of significant gaps in state capacity caused by geographic isolation, colonialism, and war. On the same date, the FSM government also relinquished a significant portion of its newly acquired Westphalian sovereignty to the United States, through entry into force of the Compact of Free Association. The only aspect of the FSM's sovereignty that has remained intact is international legal sovereignty, which in Krasner's definition is "the necessary condition for rulers to compromise voluntarily aspects of their Westphalian sovereignty."<sup>44</sup> The key word here is voluntarily; in terms of entry into and exit from treaties, it turns out that international legal sovereignty matters a great deal.

Free association, as understood in the UN resolutions concerning decolonization, represents a significant decrease in sovereign authority compared with independent statehood. The FSM is not a true associated state by the UN definition, which includes the Cook Islands, Niue, and the former status of both the Philippines and Puerto Rico.

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<sup>43</sup> Crawford, *Creation of States in International Law*, 26–27.

<sup>44</sup> Krasner, *Sovereignty*, 19.

Rather, the FSM is an independent, sovereign state under a free association treaty, which limits Micronesian sovereignty in much the same way that any treaty between unequal powers might limit the lesser power.

The distinction is critical because the FSM's international legal standing ensures that termination is not only possible under the self-determination pathways endorsed by the UN, but a legally enforceable way to withdraw from a treaty—in this case the COFA—should it cease to benefit Micronesian interests. Furthermore, the FSM has several options short of termination in case of U.S. non-performance of treaty obligations. These are options that it would never realistically have under a regime similar to that in the Cook Islands or Niue, also termed “free association.” A correct understanding of the FSM's international legal status, though no longer under formal dispute, is a prerequisite for any U.S. or Micronesian efforts to change the COFA or the way it is administered.

## **1. Overview of Shared Governance Regimes**

Governance delegation and other forms of shared sovereignty take a wide variety of political forms. Among these are federalism, territory or commonwealth status, suzerainty, several regimes of formal protection, and free association. Only one form outside of full integration or independence—free association—meets UN criteria for self-determination, as it recognizes a nation's legal capacity to enter into and withdraw from associated statehood. The FSM shares a very specific form of formalized interdependence with the United States—one that most accurately fits the definition of free association as spelled out in UNGA Resolution 1541, but paradoxically also respects its full sovereign independence. Though the options recognized by the UN may be inadequate in explaining the FSM's current status, they are worth reviewing.

## **2. Three Options for Self-determination**

The UN proposes three pathways for “non-self-governing territories” in General Assembly Resolution 1541:

## Principle VI

A Non-Self-Governing Territory can be said to have reached a full measure of self-government by:

- (a) Emergence as a sovereign independent State;
- (b) Free association with an independent State; or
- (c) Integration with an independent State

## Principle VII

(a) 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 peoples of the territory which is associated with an independent State the freedom to modify the status of that territory through the expression of their will by democratic means and through constitutional processes.

(b) The associated territory should have the right to determine its internal constitution without outside interference, in accordance with due constitutional process 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.<sup>45</sup>

Principle VI(b) appears to differentiate between sovereignty and independence, and deserves further scrutiny. There are essentially two ways to interpret the language. In one understanding, though free association is contrasted with full sovereignty, the expectation today is that most forms of sovereignty can be maintained in free association except those particular elements delegated to a partner state; there is a distinction without much of a difference. Alternatively, associated statehood is intended to be something short of full sovereignty—a way to make suzerain states, protectorates, and dependencies feel better about their status without altering the fact of control by a larger state.

If the latter is the understanding adopted by future generations of Micronesians, the citizens of the FSM may elect to terminate such a relationship irrespective of empirical evidence concerning its benefits. Some clarity regarding the alternatives might

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<sup>45</sup> UN General Assembly, *Resolution 1514 (XV)*.



help satisfy concerns that the COFA allows sovereignty in name only. A closer examination of the five state relationships termed “free association” reveals small differences in the way this association is implemented that make a great deal of difference as to their international legal status.

### **3. Contemporary States in Free Association**

#### ***a. The FSM, RMI, and ROP***

Though the other Freely Associated States of Palau and the Marshall Islands also lacked sovereignty under the Trust Territory administration and made similar treaties, the FSM adopted its Constitution as well as the COFA first, under a process that was not complicated by either nuclear materials exclusion laws (as in Palau) or reparations for nuclear test damage (as in the Marshalls). Even this relatively straightforward adoption of a new form of shared sovereignty was significantly contested in the international community, primarily due to disagreement over the U.S.’s obligations concerning the disestablishment of the UN Trust Territory.

The theory and concept of free association was first defined in the Hilo Principles of 1978, while the COFA itself detailed the practical application of these principles.<sup>46</sup> The COFA treaties as originally signed recognized the new Micronesian states as fully sovereign nations, with the right to conduct their own internal affairs and international relations subject to certain pre-arranged limitations. This recognition of sovereignty, especially with regard to international relations, distinguishes the U.S.–FSM relationship from suzerainty, in which a more powerful state recognizes a vassal state’s internal authority but manages its foreign affairs and defense.<sup>47</sup>

#### ***b. The Cook Islands and Niue***

Though the Cook Islands and Niue have a relationship with New Zealand that is termed “free association,” New Zealand maintains responsibility for foreign affairs at the request of its partner states—a sort of voluntary suzerainty, with no provision for

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<sup>46</sup> Armstrong and Hills, “Negotiations for the Future Status of Micronesia,” 485.

<sup>47</sup> Merriam-Webster Online, s.v. “Suzerainty,” <http://merriam-webster.com>.

unilateral termination by the junior partner.<sup>48</sup> In these islands, which share a head of state (the Queen of England) with their larger partner, the constitutional change required to assert full sovereignty would also free New Zealand from its obligations to maintain support. The smaller states remain free to exercise their right to self-determination, but that is an ideational goal and not a formal legal process; the difference may mean years of negotiations with New Zealand even if popular support is high. Furthermore, Niueans and Cook Islanders hold New Zealand citizenship—arguably a higher incentive for the islands to remain in free association than development aid or defense.<sup>49</sup>

#### **4. Arguments Concerning Sovereign Status**

The Micronesian Constitution affirms the nation's "inherent sovereignty," and President Reagan confirmed it as the United States' official position.<sup>50</sup> Yet the early years after formal independence saw some disagreement as to whether these statements were meaningful in the context of the COFA. Though the FSM's exercise of some degree of self-government is not in dispute, not all scholars agree that such a declaration by itself determines sovereignty.<sup>51</sup> Stewart Firth of the Australian National University views free association as "semi-autonomy"<sup>52</sup> regardless of the positions of both partner governments; he believes the United States' role in designing the FSM Constitution makes true sovereignty impossible under the current laws.<sup>53</sup>

Opposing this view, Edward Michal at the University of Hawaii asserts that the signing of the FSM's constitution before any formal treaty agreement with the U.S. removes the claim of constitutional interference suggested by Firth and earlier by

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<sup>48</sup> Stewart Firth, "Political Status and Development: The Implications for Australian Foreign Policy Towards the Pacific Islands," (ANU College of Asia & the Pacific, School of International, Political and Strategic Studies; State, Society and Governance in Melanesia Program, 2013), 5.

<sup>49</sup> Firth, "Australian Foreign Policy Towards the Pacific Islands," 5.

<sup>50</sup> Preamble, Constitution of the Federated States of Micronesia; Stewart Firth, "Sovereignty and Independence in the Contemporary Pacific," *The Contemporary Pacific* 1, no. 1–2 (1989): 80.

<sup>51</sup> Firth, "Sovereignty and Independence," 80.

<sup>52</sup> *Ibid.*, 75.

<sup>53</sup> *Ibid.*

international relations scholar Alan James.<sup>54</sup> The COFA does not establish self-government in the FSM as a result of self-determination; it merely recognizes it as a prerequisite condition for the validity of the treaty.<sup>55</sup> Michal's argument for Micronesian sovereignty is powerful in that he correctly identifies the COFA as a treaty, rather than as a constitutional establishment of joint governance as in New Zealand's associated states; though a treaty may functionally limit the exercise of sovereignty, it would do so for large nations as well as small ones. Michal concludes: "The inability to terminate treaties unilaterally thereby would deprive all parties to such agreements of sovereignty—a *reductio ad absurdum* demonstrating the argument's fallacy."<sup>56</sup> Though Michal also observes that the former Trust Territory states are independent, like any other state they must still observe the treaty obligations unless exercising a specific right to terminate the relationship.<sup>57</sup>

Regardless of this difference of opinion, which began even before entry into force of the COFA in 1986, the international community has recognized the FSM and its neighbors as sovereign, independent states. Over thirty years and a 2003 revision to the COFA have reinforced the compatibility of free association by treaty and international legal sovereignty. This norm has been reinforced not just by international law but by domestic U.S. law, which now recognizes

that the people of the Federated States of Micronesia have and retain their sovereignty and their sovereign right to self-determination and the inherent right to adopt and amend their own Constitution and form of government and that the approval of the entry of the Government of the Federated States of Micronesia into the Compact by the people of the Federated States of Micronesia constituted an exercise of their sovereign right to self-determination.<sup>58</sup>

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<sup>54</sup> Edward J. Michal, "Protected States: The Political Status of the Federated States of Micronesia and the Republic of the Marshall Islands," *The Contemporary Pacific* 5, no. 2 (Fall 1993), 312–313.

<sup>55</sup> Michal, "Protected States," 317.

<sup>56</sup> *Ibid.*, 314.

<sup>57</sup> *Ibid.*, 305.

<sup>58</sup> U.S.–FSM Compact of Free Association, Preamble.

This recognition by the more powerful partner state provides the only protection that the FSM needs to essentially outsource its sovereign duties. When the direct economic aid provisions of the COFA expire in 2023, the FSM will still be responsible for its treaty obligations—just as the United States maintained its defense responsibility after the end of the Cold War.

## **5. A Revised Definition and its Implications**

Of all the definitions put forth by scholars and UN officials, Hurst Hannum's definition of a protected independent state most closely approximates the political status of the FSM. Such a state "has delegated certain of its powers by treaty to a protecting or guardian state, but it retains full domestic autonomy and its general right of control over foreign relations, except insofar as that control has been delegated by specific treaty provisions."<sup>59</sup> Three specific implications arise from the above analysis and this updated definition:

1. Free association as delineated in the COFA is a descriptor and not a qualifier of sovereign status. Michal's argument is the most compelling: due to the chronological precedence of the FSM Constitution, coupled with the recognized authority of the FSM government to conduct foreign relations, the governance structure of the FSM and its neighbors does not resemble that of the Cook Islands and Niue.<sup>60</sup>
2. International recognition and UN membership of the FSM and the other former Trust Territory states indicates that they are now fully sovereign, regardless of historical dispute concerning the origins of their constitutions and free association treaties. The COFA formally recognizes this status even as its provisions may intrude on the functional aspects of Micronesian sovereignty.
3. Acquisition of international legal sovereignty by the FSM is irrevocable so long as it maintains the attributes of statehood; as a result, though Micronesians retain the right to self-determination and may choose to integrate with another independent state, no functional concession of sovereignty through the existing COFA can limit the FSM's international legal standing.

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<sup>59</sup> Hurst Hannum, *Autonomy, Sovereignty, and Self-Determination* (Philadelphia: University of Pennsylvania Press, 2011), 16.

<sup>60</sup> Michal, "Protected States," 312–313.

Because the COFA is understood as a treaty, it represents the exercise of Micronesian sovereignty and is at most a temporary concession of sovereign rights, if at all. Hurst Hannum points out that “adherence to a treaty is not a limitation on sovereignty; it is rather one of the ultimate sovereign acts.”<sup>61</sup> What can this sovereign act do for the FSM? Stephen Krasner offers this summary: “By facilitating accords, international legal sovereignty offers the possibility for rulers to secure external resources that can enhance their ability to stay in power and to promote the security, economic, and ideational interests of their constituents.”<sup>62</sup> The next chapter will examine what these interests might be for the FSM in 2017, and what political and economic resources are currently lacking that the United States might provide.

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<sup>61</sup> Hannum, *Autonomy, Sovereignty, and Self-Determination*, 22.

<sup>62</sup> Krasner, *Sovereignty*, 17.

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### **III. POTENTIAL BENEFITS OF MICRONESIAN FREE ASSOCIATION**

The reasons for U.S. support and FSM acceptance of the initial Compact of Free Association are well-documented, and it seems that by 1986 the U.S. had successfully placed its strategic interests above the idea of unfettered Micronesian independence. Yet the security situation has since changed significantly since the start of COFA negotiations in 1981. The Cold War is over, and the FSM's international legal standing is unchallenged—it arguably no longer needs the United States as a sponsor or as a protector. Furthermore, the UN Convention on the Law of the Sea provided the new nation with formal rights to territory and resources far beyond those available to Caroline Islanders in precolonial times. Considering the FSM's evolving position, the signing of a revised “COFA II” in 2003 seems to be an unnecessary return to an unequal partnership.

Still, even an unequal partnership may have benefits that outweigh the costs, as will be assessed in Chapter IV. This chapter identifies some of these potential benefits, and attempts to show that while COFA II may have been the result of political pressure, it was also based in a careful consideration of national interests and economic strategy. Discussion of benefits and costs first requires a desired end-state. What kind of nation does the FSM want to be, and is complete independence sufficient to serve this goal? Or is formal interdependence—protected statehood—required to support a modern economy dispersed across hundreds of miles of ocean? The answer requires an honest evaluation of the FSM's ability to use its sovereign authority in support of its sovereign capacity: the ability to attain desired political and economic outcomes, whether on its own or in some form of free association.

#### **A. THE DEVELOPMENT ENVIRONMENT IN MICRONESIA**

The last chapter examined the most accurate definition of the FSM's status: the protected state. A protected state does not give up its formal independence—Chapter II established the FSM's international legal sovereignty and standing to compromise other

aspects of its sovereignty, with the aim of building a viable state.<sup>63</sup> While this political status is not unique to islands, islands have certain limitations that may prevent effective local exercise of sovereign power. In considering political and economic strategy, leaders of island states must consider their governments' functional capacity as well as their recognized authority, and may elect to join protective treaties that will shore up, rather than erode, their legitimacy.

Challenges to viability and development faced by the former Trust Territory states fall generally into two categories: those resulting from the colonial legacy or the international system itself, and those that might be faced by any small islands. Many of these difficulties are common to most western Pacific island groups: wide geographic dispersal, a history of exploitation by colonial and semi-colonial powers, and traditions of subsistence agriculture and mariculture. Other conditions are specific to one state or another, such as environmental destruction from U.S. nuclear tests, which has specifically affected the low atolls of the Marshall Islands group and rendered some (e.g., Bikini, Enewetak) uninhabitable. For this analysis, the modern-day challenges faced by the FSM and its neighbors can most usefully be grouped into those particular to islands and those particular to small independent states.

## **B. CHALLENGES PARTICULAR TO ISLANDS**

This section will examine the FSM's particular problem set as a chain of small islands. Archipelagos present certain challenges to state development irrespective of political status. Their governments must overcome the limitations of dispersed geography and small populations in order to participate, let alone thrive, in the world economy and to ensure the welfare of their citizens. This requires a proactive and pragmatic approach, often including formalized interdependent relationships or sharing of sovereignty, as sufficient local resources may simply not be available. The principal areas in which islands may fall short are in domestic governance and economic development.

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<sup>63</sup> Krasner, *Sovereignty*, 19.



## **1. Domestic Governance**

The entanglement with the United States as Trust Territory administrator had the most problematic effect on governance in the FSM. The formation and 1979 independence of the Federated States out of the island groups of the central Caroline Islands—Yap, Chuuk, Pohnpei, and Kosrae—resulted directly from the difficulty of governing dispersed islands from a single location. The U.S. Navy and later the U.S. federal government administered the entire Trust Territory from Saipan, but had no expectation that policies would be tailored to the individual cultural communities—Chamorro, Yapese, etc.<sup>64</sup> The existing institutions were those of a U.S. territorial government; as Howard Loomis Hills points out, this was not out of a desire to own or to rule Micronesia, but out of necessity to fulfill UN requirements for effective administration.<sup>65</sup> Compounding the problem for Micronesians is the fact that, as John Connell asserts, U.S. administration—with the efficiency of its World War II-era supply system—“effectively destroyed” the subsistence economy and replaced it with a local bureaucracy dedicated to distributing aid.<sup>66</sup> Thus the government and the economy are closely linked: the FSM’s greatest barrier to economic development—the bureaucracy—is also a major part of its survival strategy.

## **2. Economic Development**

The Micronesian population has not fared well under recent attempts to replace the post-colonial structure with a market economy. The U.S. Comptroller General delivered a 1983 report to Congress concerning economic development in greater Micronesia, which contains this assessment of economic challenges in the Caroline Islands:

The economy is dependent upon the transfer of U.S. funds. Geographic, social, and public policy constraints—including the remoteness from world markets—limited domestic markets, the inadequate channeling of

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<sup>64</sup> Puas, “Micronesia’s Engagement with the Outside World,” 126.

<sup>65</sup> Howard Loomis Hills, “Compact of Free Association for Micronesia: Constitutional and International Law Issues,” *The International Lawyer* 18 (Summer 1984), 8.

<sup>66</sup> Connell, “The New Micronesia: Pitfalls and Problems,” 88.

savings into investments, complex land-tenure systems and other factors—have and continue to limit the growth of the private-sector economy. As such, government budgets exceed the capabilities of the economies to support them and remain dependent on U.S. funds.<sup>67</sup>

While the obvious solution to this problem from an outsider’s perspective would be to reduce U.S. funding and force the FSM government to live within its means, the reality is not so simple. Bertram (1986) points out that in some Pacific states, government spending directly supports the modern way of life as well as economic activity in the private sector—which is especially true considering the FSM’s large proportion of government employees relative to the population.<sup>68</sup> The government is the “middle man” in aid distribution, but cutting out the middle man would also cut out the heart of the FSM economy. It seems that two solutions remain available: the near-overnight creation of a market economy based on exports, or the streamlining of government services so that aid efforts are not needlessly duplicated. Both of these solutions are unlikely without certain changes to the COFA that Chapter V will propose.

### **C. CHALLENGES PARTICULAR TO SMALL, INDEPENDENT STATES**

The FSM, RMI, and ROP share these conditions, but so do Pacific dependent territories such as American Samoa and French Polynesia. A thorough assessment of the FSM’s position requires an analysis of challenges specific to small independent states, in addition to those faced by islands. A political and economic capacity gap exists in which small nations must generate capabilities out of proportion to their organic resources in order to thrive. The worldwide recognition of three of the former Trust Territory states, the end of the Cold War, and the adaptation of the UN Convention on the Law of the Sea have widened this gap, and these factors are discussed in detail below.

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<sup>67</sup> U.S. Comptroller General, *The Challenge of Enhancing Micronesian Self-Sufficiency* (Washington, D.C.: U.S. General Accounting Office, January 25, 1983): i–ii.

<sup>68</sup> Geoff Bertram, “‘Sustainable development’ in Pacific Micro-economies,” *World Development* 14, no. 7 (1986): 812.

## 1. The Financial Impact of Independence

In theory, international legal sovereignty—once attained—should cost nothing, as it is the result of adherence to an international norm. In practice, sovereign status may come with significant costs in addition to those that support a viable economy and government. The institutions and relationships that newer and especially smaller states used to gain internal legitimacy and external recognition must be maintained as well.

According to the 1936 Montevideo Convention on the Rights and Duties of States, in addition to population, territory, and government, a state must maintain the “capacity to enter into relations with the other States.”<sup>69</sup> A system of embassies and consulates, along with participation in UN institutions, is not legally mandatory but may be a practical imperative, especially if a state relies on foreign aid. With no numerical limit (besides “a permanent population”<sup>70</sup>) on the minimum size of states, the proportion of a state’s resources needed to support international relations can be very large; diplomatic capacity is not scalable below a certain level.

Integration with a larger political entity benefits the entire bureaucracy, not just the diplomatic arm. As Geoff Bertram puts it, “non-sovereign jurisdictions are able to ‘travel light’ in terms of the resources that have to be allocated to operating the public sector.”<sup>71</sup> When deciding whether to pursue independence, even with the consent of the metropole, such non-sovereign jurisdictions need to consider the possible increase in financial overhead that they would soon face. Indeed, this decision must be primarily up to the smaller state, especially in an era when the larger power might fully support independence as an option. Former colonies should weigh all options carefully, lest they fall into a cycle of dependency. Help from abroad may be necessary, but could come from a different partner nation—an idea further explored in the concluding chapters.

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<sup>69</sup> Conference of American States, *Convention on Rights and Duties of States, Article I* (Montevideo, Conference of American States, 1933), 25. <https://treaties.un.org/pages/lononline.aspx>

<sup>70</sup> *Convention on Rights and Duties of States, Article I*, 25.

<sup>71</sup> Geoff Bertram, “Sovereignty and Material Welfare in Small Island Jurisdictions,” in Andreas Holtz, Matthias Kowasch, and Oliver Hasenkamp, eds. *A Region in Transition: Politics and Power in the Pacific Island Countries* (Saarbrücken: Saarland University Press, 2016), 397.

Geoff Bertram concludes that sovereignty “operates as a tax on material welfare,” and island territories contemplating independence should take note of his explanation:

Non-sovereign political status confers advantages in political economy terms because by being integrated with a larger, usually richer, economy, a small island community can secure more favorable treatment in terms of financial aid, migration access, other market access, and ability to leverage off some functions of large-country government services such as education and health.<sup>72</sup>

Besides a lack of sovereignty, the above condition would be desirable; if free association could preserve sovereignty in the long term while ceding certain elements of sovereign authority in the short term, small island nations could enjoy the benefits Bertram lists without feeling the weight of a colonial regime.

## **2. UNCLOS and the Exclusive Economic Zone**

Ronni Alexander’s historical analysis of the development environment finds that “while certainly colonization and economic enterprise did take place, particularly in the smaller islands it was more for the purpose of staking a claim to the ocean than for the sake of possession of the islands themselves.”<sup>73</sup> This pattern persists across contemporary Micronesia, owing to developments in international law. The FSM has the unique distinction in the former Trust Territory of having become constitutionally independent before the signing of the UN Convention on the Law of the Sea. Not only did the extent of its territorial sea grow from 3 to 12 nautical miles, baselined to each separate atoll or high island, but it suddenly gained control of a huge Exclusive Economic Zone—the 18<sup>th</sup> largest in the world. This newly recognized right has led the FSM’s allies to refer to it as a “large ocean nation”<sup>74</sup> rather than a small island nation. The recognition of an EEZ does not confer absolute territorial control, but does imply a significant boost to available marine resources and to the potential for economic growth.

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<sup>72</sup> Bertram, “Sovereignty and Material Welfare,” 397–398.

<sup>73</sup> Ronni Alexander, “Guns, Butter, and Tuna: Alternative Security in the Pacific Island States” (Kobe University Departmental Bulletin Paper, 1994), 118.

<sup>74</sup> Danny Russel, “The Freely Associated States: A U.S. Commitment to Strengthened Ties,” *State* magazine (U.S. State Department, April 2016) [state.gov/statemag](http://state.gov/statemag)

While this large swath of ocean could produce huge resource revenues for the FSM—especially in migratory tuna—development of an indigenous fishing industry beyond nearshore waters never took off.<sup>75</sup> Instead, the FSM sells fishing permits to a large fleet of East Asian long-liners. These are managed through NORMA, the National Ocean Resources Management Authority, which has enforcement authority but comparatively little organic enforcement capability; most enforcement is done by other states.<sup>76</sup> Sovereign control of the EEZ also implies the right to not only regulate, but close the fisheries entirely in order to let stocks replenish. Neighboring Palau has opted to close a huge portion of its fishery in 2020, but has little prospect for effective enforcement, with a single large patrol boat assigned to the entire EEZ.

James Crawford’s 1989 essay “Islands as Sovereign Nations” anticipated the difficulties small islands often face in benefiting from UNCLOS. He noted: “There are frequent stories of distant-water fishing fleets ignoring jurisdictional and resource boundaries in their search for fish. These enforcement problems can be severe even for developed and comparatively wealthy states: they may be wholly intractable for small developing island states.”<sup>77</sup> Though the FSM has faced such difficulties since before independence and free association, the COFA itself may contain a solution: the United States’ treaty responsibility to defend the islands, broadly interpreted to include economic defense. This idea is further developed in Chapter V.

### **3. Strategic Leverage and the End of the Cold War**

It should be apparent from the FSM’s geography that in addition to its potential for ocean resource development, the territorial sea and EEZ have strategic value as operating zones or areas of influence for foreign powers. Certainly the negotiations concerning the end of Trust Territory administration saw Micronesian interests often

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<sup>75</sup> Connell, “The New Micronesia: Pitfalls and Problems,” 93.

<sup>76</sup> UN FAO, *Report of the FAO/FFA Regional Workshop to Promote the Full and Effective Implementation of Port State Measures to Combat Illegal, Unreported, and Unregulated Fishing* (Nadi, Fiji: UN FAO, 2006), 133.

<sup>77</sup> Crawford, “Islands as Sovereign Nations,” 298.

subordinated to the political struggle between the United States and the Soviet Union, as briefly described in Chapter II.

Perhaps out of necessity, some Pacific islanders used this struggle to build a survival strategy when they had nothing else to sell. Geoff Bertram states this rather cynically but correctly in his 1986 work on “‘Sustainable Development’ in Pacific Micro-economies”: “Island governments need only mount occasional well-publicized flirtations with the USSR in order to reproduce their rent entitlement from period to period.”<sup>78</sup> Bertram’s skepticism of “Sustainable Development” (his own quotation marks) concerns some islands’ status as “rentier societies”<sup>79</sup> centered on the interests of larger states seeking influence. His thesis resembles studies of the “resource curse” that occurs in countries with large reserves of natural resources. As in these other works, Bertram maintains that “it is not productive activity, but rent entitlements, which must be sustained and reproduced over time.”<sup>80</sup>

The end of the Cold War might have ended this pattern, but Ronni Alexander’s 1994 work on island development makes the following observation: “As long as there were two powers competing in the Pacific for influence...the Pacific Islands could play one side against the other, essentially commodifying that perception of their strategic importance.”<sup>81</sup> Alexander is correct about strategic value as a commodity, though China has replaced the former Soviet Union as a principal buyer. The apparent Micronesian dissatisfaction with the current Compact of Free Association worries U.S. leaders, who readily react to diplomatic pressure suggesting that China is making a strategic move for influence in the Western Pacific. Though one common narrative concerns Micronesia’s strategic position in the “second island chain,”<sup>82</sup> this is a U.S. description of a perceived PRC defensive perimeter, rather than a PRC description of a perceived U.S. offensive encirclement. Still, the huge swath of the North Pacific formally under Micronesian

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<sup>78</sup> Bertram, “‘Sustainable development’ in Pacific Micro-economies,” 821.

<sup>79</sup> Ibid., 809.

<sup>80</sup> Ibid.

<sup>81</sup> Alexander, “Alternative Security in the Pacific Island States,” 129.

<sup>82</sup> Matelski, “America’s Micronesia Problem.”

control provides more than a valuable military operating area; food security for East Asia is increased by vast purse seine and long-line fleets fishing for migratory tuna in Micronesian waters.

The norm of international legal sovereignty sustains the modern strategic influence game. No matter how small an island nation's land area, each sovereign state has a vote at the United Nations, and the three Compact states have retained full autonomy in international relations. The PRC has frequently engaged in "checkbook diplomacy" with Pacific island nations, specifically by trading valuable economic assistance for recognition of its "One China" policy at the UN.<sup>83</sup> Taiwan has done the same; official recognition for the Republic of China keeps a tenuous balance between island and mainland. So far, the Republic of Palau and the Republic of the Marshall Islands have recognized the ROC, while the Federated States of Micronesia—a previous ROC supporter—has switched its recognition to the PRC side. While this formality may not matter to most citizens of the FSM, the islanders run the risk of being caught in the middle of a competition for influence that does not respect their own interests. In particular, strategic foreign aid is by nature donor-driven and tends to prioritize visibility over effectiveness.

It would be accurate to claim that PRC economic aid does much more than buy votes—it helps enormously with disaster relief, provides infrastructure to poor areas, and helps the FSM government pay its bills as it attempts to foster development. Still, not all infrastructure projects provide equal value; some Chinese aid is delivered along with Chinese or other guest workers, so Micronesians do not always gain employment opportunities. Furthermore, recent lease negotiations between the PRC's Exhibition and Travel Group and the government of Yap State have highlighted a structural disadvantage for Micronesians; the pressure to lease land for high-dollar tourism is great, but Micronesian property laws are rooted in tribal custom, and do not guarantee democratic outcomes or even distribution of profits among traditional land users.<sup>84</sup> Many of the issues surrounding tourism and land leases are not restricted to PRC public-private

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<sup>83</sup> Vltchek, "Wooing the Islands."

<sup>84</sup> Thompson, "Tourism in Yap and Micronesia," 1.

ventures, but are inherent problems in any situation in which a larger and more populous country takes an interest in a smaller and less-developed one.

#### **D. MICRONESIAN STRATEGIES**

The FSM's problems today center on a misunderstanding of "sustainability" in political economy. In much of the literature, sustainability is a goal understood to be the result of independent development, while the Micronesian economy has always been characterized by some degree of interdependence. Caroline Islanders were originally voyagers, like their distant neighbors in Polynesia, and inter-island relationships have supplemented subsistence patterns and sustained the culture since before the colonial period.<sup>85</sup> The new ways are significantly less sustainable. Geoff Bertram summarizes the problem thus: "The colonial administrations long ago raised living standards in these micro-economies above the level which could be 'sustained' on the basis of local subsistence-sector production."<sup>86</sup> Perhaps the biggest challenge beyond that of pure survival is sustaining the Micronesian culture in the face of these modern economic pressures. The current strategy for the FSM is participation in formalized interdependence through the COFA. What might they gain from the relationship that sustains cultural values rather than supplanting them? The "extended family system"<sup>87</sup> may yet play a role here, albeit one that not all Micronesians believe to be beneficial in the long term.

##### **1. The MIRAB Economy: A Possible Long-term Solution?**

Bertram and Watters (1985) proposed a model of economic structure called MIRAB, consisting of Migration/Remittances, Aid, and Bureaucracy.<sup>88</sup> MIRAB economies gain revenue through remittances from a large diaspora, while population pressures are relieved through migration. Foreign aid props up the remaining public sector-intensive economy. As a result of incoming aid, distributive bureaucracy draws a

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<sup>85</sup> Puas, "Micronesia's Engagement with the Outside World," 137.

<sup>86</sup> Bertram, "'Sustainable development' in Pacific Micro-economies," 809.

<sup>87</sup> Puas, "Micronesia's Engagement with the Outside World," 248.

<sup>88</sup> Bertram and Watters, "MIRAB Economy in South Pacific Microstates," 497.



large portion of the workforce into the well-paying public sector; this dynamic is well-established throughout the former Trust Territory states. Though Gonzaga Puas actually argues that “the Compact does not fit the MIRAB model,”<sup>89</sup> it is clear that he attaches a negative connotation to MIRAB, while other researchers recognize it as merely one of many different strategies for economic success given the structural limitations of dispersed island states.

Bernard Poirine’s 1998 article “Should We Hate or Love MIRAB?” provides essential context and balanced analysis to the MIRAB model, suggesting that “by exporting labor and ‘geo-strategic services,’ small Pacific islands make the best use of the only comparative advantage they may have that allows them to gain from international trade.”<sup>90</sup> Poirine’s approach to the MIRAB economy is a realistic appraisal of the potential for islands to join the greater international economy; in light of his work, this analysis will stop short of describing the FSM’s MIRAB economy as an evolutionary step, and evaluate sustainability based on a continuation of the existing model.

## **2. Problems with a Reliance on the COFA**

In addition to foreign aid for strategic, disaster relief, or purely humanitarian purposes, the FSM receives funding from the United States as part of a treaty obligation. Direct U.S. aid in the Compact of Free Association is delivered through Title II allocations, while Title I provides U.S. government services through a short list of federal agencies, such as the FAA. The FSM has local offices to provide the same services, but these usually represent points of contact for funding rather than a true organic capability. The problem is one of incentives, and the principal incentive for fiscally responsible FSM government is the Compact Trust Fund. This is a fund designed to provide annual increases in revenue to supplement a proportional annual Title II aid decrease until 2023, at which point the government is on its own. While the intent of the Trust Fund has been clear since 2003, it is unclear what or who could motivate the government to accept limits

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<sup>89</sup> Puas, “Micronesia’s Engagement with the Outside World,” 250.

<sup>90</sup> Bernard Poirine, “Should We Hate or Love MIRAB?,” *The Contemporary Pacific* 10: no. 1 (1998): 65.

on its growth rather than attempt to secure additional funding from outside. It is critical for U.S. policymakers to understand that this is not necessarily the result of greed or incompetence, but might simply be a recognition of the current best prospect for survival. Francis X. Hezel argues that “Micronesia’s meal ticket is its rights, not its resources, and economic development has lately become a superfluity rather than the imperative it was always thought to be.”<sup>91</sup> The FSM government’s incentive to continue to trade these rights for U.S. support is obvious. Breaking this cycle or making it more beneficial will fall to U.S. government policymakers in concert with the Micronesian people themselves, who will have the final say on whether the COFA continues in a third iteration.

Before deciding on its future relationship with the U.S. or other partner nations, the FSM must first realistically address its own capacity to perform the duties of statehood that accompany its sovereign rights. The COFA was designed to ease the FSM and its neighbors out of dependence, but the bureaucracy—as the distributor of not only direct aid but also of lucrative government jobs—maintains an inertia of its own. In order for the FSM to be truly sovereign to the degree that it can choose its own course, it must come up with a system for delivering political goods to its citizens approximately equal to what the COFA currently provides. If this is not possible, free association or protected statehood may be the answer for the long term.

#### **E. SUSTAINING THE MICRONESIAN “MICROSTATE”<sup>92</sup>**

With its network of dispersed islands, small population, and special political relationship, the FSM can best be understood as a “microstate.”<sup>93</sup> Zbigniew Dumieński offers the following definition of microstates: “Microstates are modern protected states, i.e. sovereign states that have been able to unilaterally depute certain attributes of sovereignty to larger powers in exchange for benign protection of their political and

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<sup>91</sup> Francis X. Hezel, “The New Formula for Self-Reliance,” *Micronesian Seminar* online, accessed 8 May 2017, <http://www.micsem.org/pubs/articles/economic/frames/newformfr.htm>.

<sup>92</sup> Zbigniew Dumieński, “Microstates as Modern Protected States: Towards a New Definition of Micro-Statehood,” Institute of International Affairs occasional paper (2014), 2.

<sup>93</sup> *Ibid.*, 2.

economic viability against their geographic or demographic constraints.”<sup>94</sup> This chapter has examined some of these constraints, as a basis for the idea that free association can allow more effective exercise of an island state’s sovereign authority in certain areas while limiting its formal authority in others. Such a trade-off is consistent with Krasner’s notion of “organized hypocrisy,” in which the authority of a sovereign state may exceed its capacity for governance.<sup>95</sup> Bridging this gap may require formal concessions of sovereignty, but the potential benefits to economy, government, and society may outweigh the costs.

The Micronesian state requires capacity to match its authority. Recognition and legal standing is necessary, but not sufficient, for viable statehood, and a responsible approach to state-building means considering practical realities as well as long-term ideological and cultural goals. The FSM has been irreversibly affected by colonialism and trusteeship on top of the islands’ preexisting geographic and demographic challenges. Protected statehood has its costs, but also enables a unique set of survival strategies for sustaining the economy, government, and society. Having laid out some of the FSM’s strategic problems, this paper will shift focus to current efforts to solve them through policy, namely the 2003 COFA II treaty. The next chapter will examine the current COFA in detail and attempt to identify the costs and benefits of each part.

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<sup>94</sup> Dumieński, “Microstates as Modern Protected States,” 22.

<sup>95</sup> Krasner, *Sovereignty*, 25.

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## **IV. QUALITATIVE COST-BENEFIT ANALYSIS OF THE COFA**

This chapter will begin with a brief discussion of theory, describe the methodology for the cost-benefit analysis, and provide a chart and relevant commentary analyzing each of the four COFA titles. The results will support Chapter V's recommendations to the citizens of the FSM.

### **A. THEORETICAL BACKGROUND**

#### **1. Revisiting Four Types of Sovereignty**

As explained in Chapter II, Stephen Krasner has categorized four discrete understandings of sovereignty: domestic, interdependence, international legal, and Westphalian. Domestic sovereignty concerns the internal exercise of political authority, and defines a political body's capacity for governance.<sup>96</sup> Interdependence sovereignty describes the conditions required for a state to benefit from the international economy, including the control of trade across borders.<sup>97</sup> International legal sovereignty is the recognition of authority by the international community, and the reciprocal participation in the international system of laws and norms, to include institutions such as the United Nations.<sup>98</sup> Westphalian sovereignty, closely related to domestic sovereignty, is based on "territoriality and the exclusion of external actors"; it represents that which sets one state apart from another.<sup>99</sup>

This typology is useful in understanding the pressures felt by states in the international system. A state's very existence may depend on determining the right mix of the various forms of sovereignty in order to advance its economic and social interests while maintaining security and stability. The pursuit of increased sovereignty may have adverse consequences, especially if the nation has a limited material capacity for governance. As Krasner puts it, "the exercise of one kind of sovereignty—for instance,

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<sup>96</sup> Krasner, *Sovereignty*, 11.

<sup>97</sup> *Ibid.*, 12.

<sup>98</sup> *Ibid.*, 14.

<sup>99</sup> *Ibid.*, 20.

international legal sovereignty—can undermine another kind of sovereignty, such as Westphalian sovereignty, if the rulers of a state enter into an agreement that recognizes external authority structures.”<sup>100</sup> Not all sovereignty concessions require formal agreements; for example, an increase in interdependence sovereignty through the pursuit of global trade relationships may erode Westphalian sovereignty if economic pursuits require the admission of powerful external actors, such as international corporations backed by foreign governments.

Unlike international legal sovereignty and Westphalian sovereignty, which largely define a state’s authority, domestic sovereignty and interdependence sovereignty are linked to state capacity and control.<sup>101</sup> A state must have effective control over its territory, and it must be able to benefit from economic activity that extends across its borders.<sup>102</sup> Legal authority without sufficient capacity is especially problematic for dispersed island nations, and the parties to COFA II understood this well. While domestic and interdependence sovereignty may decrease due to a lack of government resources or an increase in uncontrolled economic flows, respectively, the COFA is generally designed to support these types of sovereignty. The operative question is whether their increase is offset by a loss of other attributes, such as Westphalian norms of non-intervention. Do the sovereignty “costs” in one area outweigh the benefits in another? If so, a change in how the COFA is implemented may be necessary.

## **2. Goal of the Analysis**

Though this research could assess the economic impacts of the COFA and attempt to quantify the effects of reduced sovereignty, this would provide an incomplete picture. Political and social impacts are not simply externalities, but factor directly into decisions about the FSM’s future. Even if the COFA is assessed to be financially profitable, a thorough analysis should also consider what else is gained or lost by allowing another state to intervene in Micronesian internal affairs. Most importantly, the research method

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<sup>100</sup> Krasner, *Sovereignty*, 4.

<sup>101</sup> *Ibid.*

<sup>102</sup> *Ibid.*

used here will lead to an effectively unbiased assessment of the Compact; should the FSM opt out of the agreement, its leaders can use the lessons of the U.S. COFA to inform their decisions with regard to independence or entry into a more beneficial relationship.

## B. METHODOLOGY

Because this is a qualitative cost-benefit analysis, the methodology will be fairly simple. For each article of the COFA analyzed, three main questions will be addressed:

- First, what benefit does the FSM ostensibly receive through the COFA?
- Second, what is the cost to Micronesian sovereignty of receiving the benefit?
- Third, does the sovereignty cost outweigh the material benefit by restricting the FSM's ability to direct its future?

The charts below show each **article** of the COFA along with its **intent**. They list the assessed economic, political, or social **benefit to the FSM**, along with a description of the **cost to sovereignty**. It is also possible that the effect of an article on sovereignty itself is positive. Accordingly, the analysis will describe the anticipated effects of each title on each of Krasner's types of sovereignty: international legal, Westphalian, interdependence, and domestic. While the type with arguably the most staying power—international legal sovereignty—is not likely to disappear in the FSM, this chapter will assume that it can be strengthened by the recognition of other states or eroded over time if a state fails to perform its responsibilities.

Because this chapter involves the intentional compromise of sovereign attributes, some additional value judgements are necessary. The COFA is a legal contract as well as a bilateral treaty, and requires some attention to the fine print. For both levels of analysis—individual articles and entire titles—there are caveats or mitigating factors that may flip the cost-benefit calculus:

- If the stated benefit to the FSM is **redundant**—an element of authority or capacity that it already possesses—the analysis may rest entirely on the sovereignty impact. For example, if U.S. recognition of Micronesian self-government in Article I required the FSM to vote with the United States at the UN, the sovereignty impact would be entirely negative. Because it does not, Article I actually upholds the norm of international legal

sovereignty, and establishes that the larger state has an obligation to respect its smaller partner's standing.

- If the sovereignty cost of a specific article directly supports another part of the treaty, it may be **justified** by the benefit provided by that other part. For example, Article II recognizes the FSM's authority and capacity to conduct foreign affairs, but requires consultation between governments in areas which impact the U.S. responsibility for defense. This sovereignty compromise is justified due to its limited scope: it directly supports Title III's delegation of defense authority to the United States.

The net assessment of the above factors is represented by an arrow: ↑ for a justifiable exchange of authority for capacity, → for no significant value gained or lost by the exchange, and ↓ for a reduction in sovereignty without added utility. An accounting of the positive or negative impacts to Krasner's four types of sovereignty will follow each chart, followed by a summary of results.

## **C. QUALITATIVE COSTS AND BENEFITS**

### **1. Title I**

Title I of the COFA, concerning governmental relations, is assessed in Table 1.



Table 1. Cost-Benefit Analysis of COFA Title I

Article	Intent	Benefit to the FSM	Redundant?	Sovereignty cost	Justified?	Net assessment
Article I: Self-government	Establishes bilateral nature of COFA, disestablishment of UN Trust Territory	Formalizes U.S. recognition of FSM agency	Yes	None	N/A	↑
Article II: Foreign Affairs	Recognizes FSM foreign affairs authority and capacity	Establishes legitimacy of COFA as a formal treaty Requires U.S. to support FSM membership in international organizations	No	Consultation with U.S. on foreign affairs required in light of Title III	Yes	↑
Article III: Communications	U.S. authority to operate telecommunications in order to fulfill COFA obligations	None; currently a function of FSM government	Yes	None	N/A	→
Article IV: Immigration	Allows open FSM migration to U.S. and acceptance of employment without a visa	Provides potential relief from overpopulation; allows migration and overseas labor to support home economy through remittances	No	FSM must accept U.S. immigration and labor under no less favorable terms	Yes	↑
Article V: Representation	Establishes that relations will be based on Vienna Convention on Diplomatic Relations	Describes legal basis for diplomatic immunity of FSM government officials	Yes	None	N/A	→

Article	Intent	Benefit to the FSM	Redundant?	Sovereignty cost	Justified?	Net assessment
Article VI: Environmental Protection	Establishes mutual environmental protection policy	Limits U.S. environmental impacts from COFA-related projects; provides legal remedy for U.S. actions	No	Requires the FSM to establish and enforce similar environmental protection standards	Yes	↑
Article VII: General Legal Provisions	Reinforces FSM citizen rights in U.S, mutual recognition of sovereign immunity	Establishes process for tort claim settlement by U.S. agencies providing services in the FSM	Yes	Exempts U.S. government from FSM criminal jurisdiction when acting in official capacity	Yes	→

**a. Title I: International Legal Sovereignty**

Title I represents a net benefit to international legal sovereignty. While it could be argued that Micronesia is already legally sovereign and needs no further support, three articles in particular—I, II, and VII—enhance the FSM’s ability to conduct foreign relations.

Article I and Article II together constitute the United States’ formal recognition of Micronesian self-government and sovereign authority. Article I recognizes the Micronesian constitution’s precedence over the COFA and permanently enshrines this recognition in U.S. Code. Article II requires the United States to support Micronesian membership in organizations such as the United Nations, but does not require the FSM to vote along with its treaty partner.

Article VII recognizes the sovereign immunity of each nation, ensuring that the close relationship does not compromise the rights of politicians and officials working between the two nations. The language of Article VII concerning criminal jurisdiction has some implications for domestic sovereignty (see the following sections).

**b. Title I: Westphalian Sovereignty**

Title I limits Westphalian sovereignty in Article II, which requires the FSM to consult with the United States on foreign affairs if policy decisions might affect the U.S. defense authority and responsibility. Article II technically violates the concept of “exclusion of external actors”<sup>103</sup> inherent in Westphalian sovereignty, so this compromise should be monitored carefully to ensure that it only serves Title III’s narrow aims concerning defense. In a way, the required consultation is designed to maintain the exclusion of all other actors. Despite the power imbalance inherent in protected statehood, Micronesian interests must be the primary focus, with “strategic denial”<sup>104</sup> as more of a positive externality for the United States.

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<sup>103</sup> Krasner, *Sovereignty*, 20.

<sup>104</sup> U.S. Government Accountability Office, *GAO-02-110: Kwajalein Atoll Is the Key U.S. Defense Interest in Two Micronesian Nations* (Washington, DC, 2002), 8, <http://www.gao.gov/products/GAO-02-110>.

*c. Title I: Domestic Sovereignty*

Under Article VII, any persons “acting on behalf of the Government of the United States”<sup>105</sup> may be exempted from Micronesian criminal jurisdiction upon U.S. notification. This provision reduces domestic sovereignty a step further than those limits imposed by sovereign immunity. So far no evidence exists that this provision has been abused, and an incident concerning misconduct by foreign contractors would be a public relations disaster for the United States. Still, the limitation on domestic sovereignty is worth noting. As a small state, the FSM is more vulnerable to damage to its infrastructure and finances and must still properly vet those designated to provide assistance.

*d. Title I: Interdependence Sovereignty*

Under Article IV, Micronesian citizens are permitted to live and work in the United States indefinitely without a visa.<sup>106</sup> Article IV also requires “no less favorable”<sup>107</sup> terms regarding U.S. citizens desiring to live and work in the FSM. This represents a loss of interdependence sovereignty for the Micronesian government, but one proportional to the economic opportunity provided to its citizens through migration. What keeps Article IV from harming Micronesian interests is that foreign visitors may not own land, whereas Micronesian citizens in the United States are not so restricted.<sup>108</sup>

Despite being a net benefit today, with a mostly theoretical loss of sovereign control, Article IV still has the potential to severely degrade interdependence sovereignty. If the Micronesian economy were to fail completely, whether due to the end of Title II grants or to mismanagement by the public sector, there is little the national government could do to prevent a mass exodus of population. Compounding this potential problem is the fact that some U.S. states and territories provide public support to COFA migrants that may exceed what they could earn in the private sector, whether at home or abroad.

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<sup>105</sup> U.S.–FSM Compact of Free Association, Title I, Art. VII.

<sup>106</sup> *Ibid.*, Title I, Art. IV.

<sup>107</sup> *Ibid.*

<sup>108</sup> U.S. Department of State, *2013 Investment Climate Statement—Micronesia* (Washington, D.C.: U.S. DOS, 2013), <https://www.state.gov/e/eb/rls/othr/ics/2013/204694.htm>.

Chapter V discusses ways to adjust the incentives provided by Title I rights, in particular with regard to the privileges and obligations of Micronesian citizenship.

*e. Title I: Results*

Overall, Title I strengthens the FSM's position with minimal cost to sovereignty. The free migration provisions in Article IV are currently essential to the economy, and reciprocal permission for U.S. visitors does not negate the benefit of reduced population and resource pressure in the home islands. Title I also directly supports international legal sovereignty by recognizing the FSM's legal standing. The COFA then becomes a contract between equals regardless of differences in national power, backed by the international community and by the inclusion of Micronesian sovereign rights in U.S. law.

**2. Title II**

Title II of the COFA, concerning economic relations, is assessed in Table 2.

Table 2. Cost-Benefit Analysis of COFA Title II

Article	Intent	Benefit to the FSM	Redundant?	Sovereignty cost	Justified?	Net assessment
Article I: Grant Assistance	Creates 20-year sector grant program	Finances the FSM government with sector grants and a Compact Trust Fund designed to replace grants in 2023	No	Establishes JEMCO oversight; constrains economic development to public-sector led pattern	No	↓
Article II: Services and Program Assistance	Extends U.S. government programs to the FSM	Provides USWS, USPS, FAA, DOT, FDIC, FEMA, and USAID services to the FSM	No	Requires FSM to provide land at no cost to support operation of U.S. services	Yes	↑
Article III: Administrative Provisions	Confirms U.S. funding pledge; creates audit procedures	Provides legal requirement for U.S. to provide funding upon COFA approval	No	Requires FSM participation in grant assistance program audits	Yes	↑
Article IV: Trade	Defines customs and tariff requirements	Extends most-favored nation trade status to FSM	No	Requires some FSM consultation with U.S. concerning free trade agreements with other governments	Yes	↑
Article V: Finance and Taxation	Makes the U.S. Dollar the official legal tender; establishes taxation protocols	Exempts FSM citizens from certain U.S. taxes	No	None	N/A	→

**a. Title II: International Legal Sovereignty**

Title II neither supports nor undermines the FSM's international legal sovereignty, but Micronesians may justifiably feel obliged to maintain their own bureaucracy alongside the U.S. agencies that provide services. So long as a designated Micronesian representative is present to essentially subcontract these services to the United States, the FSM government is performing the obligations of statehood; however, this representation should be kept as lean as possible unless the aim is to replace U.S. assistance with an organic capability.

**b. Title II: Westphalian Sovereignty**

Title II's negative impact to Westphalian sovereignty comes from the large network of economic relationships required to administer grant assistance provided by Article I. Most intrusive among these is JEMCO, the Joint Economic Management Committee, to oversee the distribution of Compact funding. This committee is made up of two Micronesian and three U.S. representatives, one of which is the U.S. Assistant Secretary for Insular Affairs.<sup>109</sup> The U.S. majority on JEMCO is already a violation of sovereignty, both in the international legal and Westphalian areas. The fact that this system is managed through the U.S. Department of the Interior (which oversees the Office of Insular Affairs) rather than the Department of State does not remedy the perception that trusteeship ended in name only.

In addition to being a public relations liability, Title II's violation of Westphalian sovereignty through Article I has the potential to split the interests of the Micronesian people and their state governments from those of the national government. Because the national government is the distributor of sector grant funds as well as the primary contractor for U.S. federal services, it has a survival interest in maintaining these benefits regardless of whether they are used effectively. Even if the current effect on socioeconomic outcomes is positive, an external actor still directs the FSM's course with the consent of its top leaders. By contrast, services provided under Article II preserve

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<sup>109</sup> U.S. Government Accountability Office, *GAO-08-859T: Micronesia Faces Challenges to Achieving Compact Goals* (Washington, DC, 2008), 1, <http://www.gao.gov/products/GAO-08-859T>.

Micronesian authority despite the use of American capacity, ensuring that local interests are served. Both articles are compromises of Westphalian sovereignty, but only the latter reinforces another aspect—domestic sovereignty—in a lasting way.

*c. Title II: Domestic Sovereignty*

Domestic sovereignty is initially improved by Title II, in the sense that the key elements of modern society that governments facilitate—transportation, communications, health, etc.—are supported primarily by the United States through the FSM government. Services and program assistance through Article II, which do not have an expiration date, are far less problematic than grant assistance through Article I.

COFA II created the Compact Trust Fund in order to eventually replace U.S. funding of the national government and that of the four states: Yap, Chuuk, Pohnpei, and Kosrae. Despite annual decreases in U.S. investment, the FSM government has not responded to this incentive, and may not be able to replace the domestic capacity that Title II supports in time for the conclusion of sector grants.<sup>110</sup> The 2008 GAO report concludes that “despite the budgetary impact of declining annual grant assistance, the FSM has made little progress in implementing key reforms needed to improve tax income or increase private sector investment opportunities.”<sup>111</sup> Though Article II services will continue, the fiscal gap remains in areas not directly supported by U.S. agencies.

Despite continued U.S. support of some services, primary fiscal reliance on the Compact Trust Fund after 2023 may severely limit the national government’s ability to pay those responsible for domestic control. Foreign investment and aid intended to replace Compact grants may undermine federal authority. States that do not agree with austerity measures may even break away; Chuuk State has already examined the possibility of secession as a precursor to solving its fiscal problems.<sup>112</sup> Title II is

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<sup>110</sup> U.S. GAO, *Challenges to Achieving Compact Goals*, 3–4.

<sup>111</sup> *Ibid.*, 14.

<sup>112</sup> “Chuuk’s Breakaway Talk Resonates Across the Pacific,” *Nikkei Asian Review* April 15, 2015, <http://asia.nikkei.com/Politics-Economy/International-Relations/Chuuk-s-breakaway-talk-resonates-across-Pacific?page=1>.



therefore supportive of domestic sovereignty in the short term, but potentially damaging to it in the long term.

**d. Title II: Interdependence Sovereignty**

Title II has no direct effect on interdependence sovereignty. The end of Title II sector grants may drive other Micronesian strategies that allow more domestic authority over incoming funds, but prevent effective control; the strategic foreign aid discussed in Chapter III is an example of economic activity that may challenge the national government's regulatory capability.

**e. Title II: Results**

Title II trades a great deal of the FSM's Westphalian sovereignty for domestic sovereignty, in the sense that the national government retains its leadership but has outsourced most key functions of government power and capacity to the United States. Title II was initially meant to be a temporary shift towards domestic sovereignty with U.S. help until other capabilities could be brought online. What if these capabilities are never realized? The U.S. State Department today recognizes that "the FSM's national government plays a central role in the economy as the recipient and distributor of Compact funds to the states."<sup>113</sup> This is not a sustainable pattern. The alternative is for the FSM government to live within its means, but its current role as the distributor of funds and employer of over half the working population makes this problematic.<sup>114</sup>

**3. Title III**

Title III of the COFA, concerning security and defense relations, is assessed in Table 3

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<sup>113</sup> U.S. Department of State, *U.S. Relations With the Federated States of Micronesia* (Washington, D.C.: U.S. DOS, 2016), <https://www.state.gov/r/pa/ei/bgn/1839.htm>.

<sup>114</sup> CIA, "The World Factbook: Federated States of Micronesia."

Table 3. Cost-Benefit Analysis of COFA Title III

Article	Intent	Benefit to the FSM	Redundant?	Sovereignty cost	Justified?	Net assessment
Article I: Authority and Responsibility	Establishes U.S. authority and responsibility for defense of the FSM	Provides for national defense without an organic FSM military	No	Permits U.S. military presence in territory, prevents FSM from taking actions “incompatible” with U.S. authority	Yes	↑
Article II: Defense Facilities and Operating Rights	Refers to subsidiary agreements/SOFA procedures for establishing defense facilities as needed	Requires U.S. compensation for land use; limits land use to minimum required; provides aids to navigation	No	This and subsidiary agreements permit U.S. to determine what constitutes “authority and responsibility”	Yes	↑
Article III: Defense Treaties and International Security Agreements	Extends other U.S. treaties to FSM territory	None	No	May subordinate FSM interests to U.S. interests if third party is involved	N/A	→
Article IV: Service in Armed Forces of the United States	Permits FSM citizens to volunteer for U.S. military service and attend USCGA/USMMA	Provides opportunity for employment in U.S. military and FSM stake in joint defense	No	None	N/A	↑
Article V: General Provisions	Creates Joint Committee to oversee defense matters; requires FSM consent to be included in declaration of war	Requires U.S. to come to FSM aid in the event of attack	No	Consultation with U.S. required on defense matters even after Title III expires, IAW subsidiary agreements	Yes*	→

***a. Title III: International Legal Sovereignty***

Title III has no significant effect on international legal sovereignty, though it does assert that the U.S. government will “act in accordance with the principles of international law and the Charter of the United Nations in the exercise of [defense] authority and responsibility.”<sup>115</sup> At the very least, this statement describes the norms the United States will uphold and provides Micronesians with an avenue for conflict resolution should direct negotiations fail.

***b. Title III: Westphalian Sovereignty***

The U.S. military’s right of exclusive access in FSM territory is the greatest violation of Westphalian sovereignty in the COFA, but it is one that appears to be completely justified. Title III limits the Micronesian government and grants the U.S. military significant access rights. On paper and in practice, U.S. defense authority is limited by several factors: international norms, cultural sensitivity, and a narrow understanding of the scope and object of the U.S. presence. Empirical evidence of adverse effects from this sovereignty compromise is sparse. The United States has no permanent bases, and military presence usually supports humanitarian assistance. This is in contrast to the situation in the Republic of the Marshall Islands, where effects from nuclear testing and the base at Kwajalein still dominate the post-independence relationship. The legal language of Title III and the accompanying Status of Forces Agreement provides a credible constraint to U.S. presence, along with a process for dispute resolution that respects both parties equally.

***c. Title III: Domestic Sovereignty***

Two approaches are possible to assessing the domestic sovereignty impact of Title III. At first glance, the FSM government appears to have ceded veto power over activities within its territory to the United States military. One key factor changes this narrative: international legal sovereignty. While control of the U.S. defense relationship

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<sup>115</sup> U.S.–FSM Compact of Free Association, Title III, Art. I, Sec. 311(c).

is a political process and subject to error, the United States is bound by international law to respect the goals and wishes of Micronesians. Adverse outcomes from U.S. presence are possible, but if Micronesian authorities do not hold the United States to its COFA commitments, the fault also lies with them. It is not easy, politically or diplomatically, for a small nation to stand up to a larger one—yet much of the current international legal regime is based around the legitimacy of such a challenge.

***d. Title III: Interdependence Sovereignty***

As written, Title III does not significantly impact interdependence sovereignty, because the meaning of “defense” in the COFA is still tied to a Cold War idea of strategic area denial. Though the old enemy was supposed to be the Soviet Union, the new one is not necessarily China or even a particular state. The real threat to the FSM’s borders—both territorial and EEZ—is from unregulated economic activity, including trade and fishing. Krasner views this type of activity as a threat to sovereignty based on a lack of capability: “The right of states to manage their borders is not challenged, but globalization...has eroded their ability to actually do so.”<sup>116</sup> Even with some law enforcement assistance, such as that provided by the recent ship-rider agreements with the U.S. Coast Guard, the FSM still lacks interdependence sovereignty.<sup>117</sup> Illegal fishing is still viewed as criminal activity rather than as a national security threat specifically subject to military assistance. The implications of redefining the threat and possibly leveraging Title III to counter it are examined in Chapter V.

***e. Title III: Results***

Title III provides what appear to be benefits from U.S. protection, considering that the FSM’s economy does not currently support the military capability required for effective defense. It is unclear if the FSM was ever under threat of invasion after World War II, though certainly the United States wishes to maintain dominance in the Pacific

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<sup>116</sup> Stephen D. Krasner, “Abiding Sovereignty,” *International Political Science Review* 22, no. 3 (2001): 231. <http://www.jstor.org/stable/1601484>

<sup>117</sup> U.S. Department of State, “U.S.–FSM Shiprider Agreement Becomes Permanent,” press release, May 29, 2008, <https://kolonia.usembassy.gov/2008-13.html>.

without having to coerce smaller nations. Title III's sovereignty cost is appropriate to the benefits, as it is limited to those measures which allow the United States to perform its defense responsibility. Micronesians might get more out of this exchange if they redefine the external threats actually faced by the FSM, rather than playing along with the notion of U.S. and Chinese spheres of influence.

#### **4. Title IV**

Title IV of the COFA, concerning general provisions, is assessed in Table 4.

Table 4. Cost-Benefit Analysis of COFA Title IV

Article	Intent	Benefit to the FSM	Redundant?	Sovereignty cost	Justified?	Net assessment
Article I: Approval and Effective Date	Approval contingent on both parties' constitutional processes	None	No	None	N/A	→
Article II: Conference and Dispute Resolution	Establishes arbitration board to hear Title I, II, and IV disputes	FSM accorded protection of international law; Article 38 of the Statute of the International Court of Justice applies	No	None	N/A	→
Article III: Amendment	Allows amendment by mutual agreement	New treaty not required if both parties agree to changes	No	None	N/A	↑
Article IV: Termination	Provides for termination by either party or by both parties	Unilateral FSM termination possible through 75% vote in plebiscite	No	Survivability clause may limit utility of FSM termination (see below)	Yes	↑

Article	Intent	Benefit to the FSM	Redundant?	Sovereignty cost	Justified?	Net assessment
Article V: Survivability	Provides continuity of Title III (Defense) and Trust Fund in case of termination	Allows Micronesia to terminate COFA while keeping U.S. defense and some economic assistance	No	No immediate cost, but subsidiary agreements mean U.S. defense authority continues indefinitely	Yes	→
Article VI: Definition of Terms	Defines terms in the COFA and lists subsidiary agreements	None	No	None	N/A	→
Article VII: Concluding Provisions	Calls for each party to align its laws and procedures to the COFA	None except reinforces equal legal status between U.S. and FSM	Yes	None	N/A	↑

**a. Title IV: International Legal Sovereignty**

Title IV allows mutually agreed amendments without the ratification of a new treaty in Article III, and provides a process for termination of the COFA in Article IV. Both of these articles support the FSM's international legal sovereignty.

**b. Title IV: Westphalian Sovereignty**

While other sections of this thesis argue that intentional compromise of Westphalian sovereignty should be limited to the accomplishment of specific objectives, the survivability clause of Title IV is an exception. What if the Micronesians decide unilaterally that the COFA no longer serves their interests? Article V states that if the FSM alone exercises its option to terminate the COFA, the U.S. defense authority and responsibility under Title III will continue until 20 years after the effective date, or 2023.<sup>118</sup> The article then calls upon the two governments to “promptly consult with regard to their future relationship.”<sup>119</sup>

An enduring defense commitment is an arguably fair and up-front provision for security during the transition to independence or other political affiliation. Other interpretations of the legal language are possible that suggest an indefinite U.S. presence, which is problematic for Westphalian sovereignty. Stewart Firth's argument against the fact of Micronesian sovereignty, mentioned in Chapter II, references subsidiary agreements that create “a right of permanent strategic denial in the area by the United States armed forces.”<sup>120</sup> Firth is referring to the original agreements concerning defense and status of forces, which have since been rewritten, and to one agreement that continues in force concerning “Friendship, Cooperation, and Mutual Security.”<sup>121</sup> The major flaw in Firth's argument is that it relies too heavily on legal interpretation of a rule that cannot practically be upheld. Specifically, the United States' legal recourse if the FSM admits other military powers is to withhold Compact assistance—which would

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<sup>118</sup> U.S.–FSM Compact of Free Association Title IV, Art. V, Sec. 453(a).

<sup>119</sup> Ibid., Section 453(b).

<sup>120</sup> Firth, “Sovereignty and Independence,” 79.

<sup>121</sup> U.S. GAO, *U.S. Defense Interest in Two Micronesian Nations*, 7.



already have been discontinued after a Micronesian assertion of Westphalian sovereignty. Furthermore, it is hard to imagine a U.S. military force refusing to leave FSM territory upon request of the national government. Still, this is a good thought experiment for any smaller nation considering allowing more powerful forces to operate in its territory, as empirical evidence of a larger nation's respect for international norms must be weighed against a strictly realist calculus.

*c. Title IV: Domestic Sovereignty*

If domestic sovereignty is indeed reinforced by Title II grants and services, as proposed above, then Title IV provides additional support to Title II by ensuring that some assistance will continue by mutual agreement following termination.

*d. Title IV: Interdependence Sovereignty*

Title IV does not significantly impact interdependence sovereignty.

*e. Title IV: Results*

Article IV recognizes the FSM's right to leave the treaty if it no longer serves Micronesian interests. As such, it is the most important part of the COFA with regard to international legal sovereignty, albeit one that will only be exercised as a last resort.

**D. SUMMARY OF RESULTS**

A short assessment of the impacts of each title on the FSM's sovereignty is as follows:

- Title I: Provides some essential elements of the FSM's current economic strategy. It upholds international legal sovereignty, with a small concession to Westphalian sovereignty.
- Title II: Funds the FSM national and state governments, and subcontracts some services to the United States. Sustains current levels of economic activity. On balance, this is detrimental to Westphalian sovereignty, with potential negative impacts to domestic and interdependence sovereignty.
- Title III: Authorizes and requires the United States to defend the FSM. These provisions collectively have a negative impact on Westphalian

sovereignty, justified by limited scope and object and lack of organic FSM forces.

- Title IV: Enables termination of the COFA by either party or mutual agreement. These provisions enhance international legal sovereignty by requiring Micronesian consent.

Not all economic or political benefits provided through the COFA come with corresponding sovereignty costs. Title I should be the least controversial, as it formally recognizes critical elements of the FSM's international legal sovereignty without any real concession to foreign interests. Title I's migration provisions, in particular, do not require the FSM to support its overseas citizens or to lobby the United States for continued access. In fact, the U.S. government compensates the states and territories for "Compact Impact," thus indirectly sustaining even those Micronesian migrants who have not yet found work.<sup>122</sup>

While Title II provides a significant boost to the FSM's capacity for governance, it does so in part by reinforcing the public sector-led model that has characterized the FSM since its independence. Added capacity through sector grants has led to reduced authority—not just in the sense of statutory authority given up to JEMCO, but also in the sense that Micronesian economic development is subordinated to the COFA's economic incentives. By contrast, government services also provided in Title II are subject to the direction of Micronesian officials, who may exercise their authority and increased capacity in the pursuit of a variety of political, economic, and social goals.

Title III also provides the FSM more authority and capacity than it would otherwise have. The U.S. military remains legally committed to defend the islands, and the Micronesian government can invest its tax revenue more freely without funding a military. This arrangement is similar to the situation in post-World War II Japan, South Korea, and Taiwan—countries which used an evolving U.S. strategic partnership to their economic advantage, despite frequent violations of Westphalian sovereignty.

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<sup>122</sup> U.S. Government Accountability Office, *GAO-13-773T: Guidelines Needed to Support Reliable Estimates of Cost Impacts of Growing Migration* (Washington, DC, 2013), 2, <http://www.gao.gov/assets/660/655829.pdf>.

Finally, Title IV allows the FSM and the United States to change the relationship by mutual agreement, or to withdraw unilaterally. The FSM's international legal sovereignty, just as in the other titles, permits its citizens to retain authority—and veto power—over the increased political and economic capacity they gain through the COFA.

## **E. IMPLICATIONS OF THE ANALYSIS**

With regard to the research question, “how can a freely associated state maintain its sovereignty,” this chapter supports one possible answer. A state like the FSM can do so by ensuring that the benefits it seeks from protected statehood are otherwise unattainable, and that the necessary sovereignty costs do not undermine its legal standing. The FSM has optimized these trade-offs in Titles I and IV, and made excessive compromises in Title II. Title III is not widely detrimental to sovereignty, but currently provides more benefit to the United States than to the FSM.

What can be done with these results? Though early termination of the COFA remains a legal option for the FSM, the conditions identified in Chapter III suggest that the impact on the FSM economy and society would be catastrophic. Perhaps a reinterpretation of the COFA can provide a set of solutions. If the COFA is already understood as a trade of sovereign authority in some areas for enhanced sovereign capacity in others, it may be possible to optimize the relationship.

Joel P. Trachtman's work on the economic aspects of sovereignty proposes a “law of conservation of sovereignty,” in which sovereignty “is never lost, but only reallocated.”<sup>123</sup> This idea is a useful complement to Krasner's four types of sovereignty. Based on a state's existing resources, it may have a certain “natural” allocation of sovereignty which constrains independent development efforts. In terms of authority and capacity, a useful example would be that of a landowner with authority over mineral resources, but lacking the capacity to extract them; a reallocation through leasing access to these resources would trade authority for capacity, with the aim of benefiting from mineral wealth while retaining veto power over the extraction activity. The challenge of

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<sup>123</sup> Joel P. Trachtman, “Reflections on the Nature of the State: Sovereignty, Power, and Responsibility,” *Canada-United States Law Journal* 20, no. 39 (1994): 400.

Micronesian sovereignty is that the initial allocation of sovereignty attributes was artificial, and derived from the U.S.-administered Trust Territory system. Micronesian leaders must now make educated guesses as to the most beneficial allocation of sovereignty, and for the time being must do so in partnership with the United States.

A successful reallocation of sovereignty through changes to the COFA might allow growth and development that would be otherwise unsustainable, provided that the United States remains committed legally and ideologically to Micronesian goals. The next chapter will propose changes to the U.S.–FSM relationship, working within the boundaries of the COFA, that might restore Micronesian sovereignty to an optimal mix of attributes.

## **V. PROPOSED CHANGES TO REINFORCE FSM SOVEREIGNTY**

This chapter will consider the results of the cost-benefit analysis in developing a set of recommendations for each of the four COFA titles. The United States and the FSM have procedures in place to modify the COFA or its administration bilaterally, and Title IV provides for unilateral or bilateral termination. Unilateral termination by the FSM is encumbered somewhat by Compact subsidiary agreements and by the difficulties inherent in calling for a national plebiscite, but remains a realistic avenue due to the FSM's international legal standing.

Short of termination, several modifications are recommended below within the existing COFA framework. This would require the parties to move past a Cold War-era interpretation of security, as well as an overly simplistic understanding of the post-colonial relationship. If the desired end-state is still some form of free association or protected statehood, a rebalancing of sovereignty, security, and economic interest is necessary. For those elements of the COFA that do not require modification, the findings in Chapter III and IV should provide a clearer picture of what the current provisions actually do for the FSM. Correct understanding of the treaty by Micronesians and Americans alike is essential to maintaining a healthy relationship between the two countries.

### **A. ALLOW DUAL CITIZENSHIP TO REINFORCE TITLE I BENEFITS**

While this thesis asserts that it is in the Micronesian interest to send some of the population abroad, especially considering the persistence of family ties that help preserve the culture, there is a point of diminishing returns. Title I might hold the greatest benefit if overseas workers eventually migrate home, investing their savings and skills from overseas labor into Micronesian society and government. Recent work by the International Organization for Migration suggests that most do not.<sup>124</sup> How could the

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<sup>124</sup> International Organization for Migration, *Migration in the Federated States of Micronesia: A Country Profile, 2015* (Geneva: International Organization for Migration, 2016), 71, [https://publications.iom.int/system/files/pdf/mp\\_micronesia.pdf](https://publications.iom.int/system/files/pdf/mp_micronesia.pdf).

FSM incentivize its most successful citizens in the United States to return? This is especially difficult considering that COFA migrants who have become U.S. citizens—including those serving in the U.S. military, which remains the most direct path to naturalization—must renounce their Micronesian citizenship, thus losing the right to own land and participate in the political process at home. Title I's migration provision helps Micronesians, but it might not always help the Federated States of Micronesia. The recommendation concerning Title I is to permit dual citizenship. The FSM is currently holding on too tight to its citizens, and releasing this grip could actually give emigrants the freedom to bring their overseas success back home.

Title I provides economic opportunity to Micronesian citizens, but at the cost to the government of some interdependence sovereignty. Chapter III showed how emigration could reduce ecological impacts and resource pressure in islands, while allowing the relatively free flow of money and people between two states in free association. Yet some measure of interdependence sovereignty is necessary with respect to the movement of people. Chapter IV notes the potential for a mass exodus from the FSM if conditions become significantly better overseas. This could occur due to a natural disaster in the home islands, large minimum wage increases in the United States, or the inability of the FSM government to pay its workers following the expiration of Title II sector grants.

Even if it can retain a critical mass of citizens, the FSM government's job gets harder with a smaller tax base, as those remaining on the islands may consume more in services than they produce in the small local economy. There is also the potential for an influx of foreign labor to replace COFA migrants. Regardless of their work ethic and contribution to diversity, these workers will have an impact on the ecology and infrastructure without being required to assimilate into the Micronesian culture and value system. Nor will they be permitted to, as FSM citizenship—with its land ownership rights—is difficult to obtain.

Dual citizenship is currently misunderstood and therefore has not been politically viable. A constitutional amendment proposed to permit dual citizenship failed to pass in early 2017. In a letter to Pohnpei's *Kaselehlie Press*, former FSM president John

Haglelgam writes, in opposition to the measure: “Citizens with divided loyalty are not compatible to a strong and robust national sovereignty...this proposed dual citizenship amendment...would be harmful to our national sovereignty and it is an impediment to the development of nationalism in our country.”<sup>125</sup> Haglelgam’s viewpoint is understandable, and though the United States does not expressly prohibit dual citizenship, its naturalization oath includes renunciation of “allegiance and fidelity to any foreign prince, potentate, state, or sovereignty.”<sup>126</sup> There is, however, a provision for modifying this oath under certain circumstances; the United States need only add to the list a statement to the effect that during the period of U.S.–FSM free association, dual citizenship and dual allegiance is consistent with the unique relationship between the two countries.

Former President Haglelgam’s concern about an impediment to nationalism is valid, but a policy that handicaps emigrants’ ability to participate fully in their adopted country runs the risk of alienating them in both countries. Just as in the other freely associated states, emigrants are not leaving out of dislike for their culture, but for economic necessity. How would U.S. citizenship improve the lot of COFA migrants? Specifically, it would provide privileges appropriate to the responsibilities already performed by Micronesians in the United States. These invited guests pay taxes, serve in the U.S. military, and participate in civic organizations. In return, they could receive U.S. consular protections abroad, be eligible to vote and hold public office, and transfer U.S. citizenship to their children without putting their family’s connection to the FSM at risk. With these greater protections, U.S.–FSM dual citizens would be more free to prosper and build up the resources to help their country of origin, whether by investing from abroad or by returning home to own land and participate in Micronesian civil society.

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<sup>125</sup> “Letter to the Editor: Former FSM President on Dual Citizenship Act,” *Kaselehlle Press*, February 8, 2017.

<sup>126</sup> Naturalization Oath of Allegiance to the United States of America. <https://www.uscis.gov/us-citizenship/naturalization-test/naturalization-oath-allegiance-united-states-america>.

## **B. ALLOW TITLE II SECTOR GRANTS TO EXPIRE ON SCHEDULE**

Title II's grants and services create an exchange of Westphalian sovereignty for increased domestic sovereignty. They allow the United States authority over some internal affairs, while giving the Micronesian government greater capacity to govern. There is also a point of diminishing returns when it comes to this sovereignty exchange, at which the FSM government has reached an unsustainable level of economic importance. In American terms, it is now "too big to fail." While the FSM needs resources for governance, it needs a better mix—funding and services that leverage Micronesian sovereign authority to achieve beneficial outcomes, not ones that grow the size of government and lead to dependency. The recommendation for Title II will be the most controversial. Through the forbearance of their elected officials and directly through a plebiscite if it occurs, citizens of the FSM should allow Title II sector grants to expire.

The FSM stands to lose an additional measure of domestic sovereignty in 2023, when Title II sector grants expire and the government must subsist on Compact Trust Fund proceeds. These funds are projected to be inadequate. One solution would be to simply renew Title II support through the implementation of a "Compact III" ("Compact II" being the 2003 agreement), but this would still not address the root cause of poor incentives for real growth. Furthermore, it would tie future generations to an additional 20 years of compromised sovereignty in order to sustain what by then would be an inefficient bureaucracy. The FSM faces a "fiscal cliff," to be sure; forecasts for the Compact Trust Fund suggest that approximately \$40m/year will remain unfunded after trust fund proceeds are applied.<sup>127</sup> What if the economic aid provisions do terminate in 2023, as scheduled? The FSM might then be tempted to sign on to an agreement with any country that can fund its government.

The best way to escape dependency is to let Article I sector grants expire on schedule, and rely on a mix of Article II services and non-reciprocal foreign assistance to protect the local economy. The Micronesian people should also consider the negative effect on Westphalian sovereignty caused by the Joint Economic Management

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<sup>127</sup> *FSM 2023 Action Plan*, 8.



Committee. They should also be aware of the destabilizing effects of uncoordinated and strategically-motivated foreign aid flowing in to offset the close U.S.–FSM relationship.

Such a decision would be alarming to some American officials. U.S. policymakers who benefit from the COFA are counting on Title II aid to tie Micronesians to the other three titles in perpetuity, allowing a greater compromise of Micronesian sovereignty in return for the interests of foreigners. For the citizens of the FSM, the primary economic security relationship, consisting of Title I migration and Title II services, has been subordinated to the tangible and visible economic assistance provided by sector grants. Allowing these to expire would run counter to the interests of the national government and perhaps some of the states. Nevertheless, by Micronesian law, the decision is not up to them except as individual voters in a plebiscite.

There is still a role for the United States in providing aid to the FSM. U.S. federal programs provided under Title II such as the FAA and FDIC would remain active. Money flowing through the Department of the Interior’s Office of Insular Affairs would stop, but U.S. foreign aid through USAID and disaster relief through OFDA would continue and probably even increase. In addition to sustaining the unique relationships provided by Title I’s free migration and Title III’s unilateral U.S. defense responsibility, the United States would supply any emergency aid through the same channels as the rest of the international community.

### **C. PUT TITLE III TO WORK IN SUPPORT OF EEZ ENFORCEMENT**

Chapter IV’s analysis suggests that Title III supports the FSM’s domestic sovereignty at the cost of some Westphalian sovereignty. In the exercise of its defense responsibility, the United States has the right to restrict access to any other military forces within Micronesian territory. This includes land and territorial waters, but not the Exclusive Economic Zone. Naval forces are theoretically free to operate throughout the FSM’s vast ocean jurisdiction. Citing common misunderstandings of the extent of U.S. defense authority, the GAO produced a 2002 study which argued that “from a broader regional security perspective, the FSM and the RMI are not currently strategically important to the United States. In addition, other defense and security interests cited by

U.S. officials...have been overstated.”<sup>128</sup> For Micronesians, too, the benefit of U.S. military presence might be outweighed by the cost to sovereignty, both real and perceived.

The history of nuclear testing in the Marshall Islands, also a part of greater Micronesia, and the presence of a large U.S. base on Kwajalein highlights a general trend in the compromise of Micronesian sovereignty, with disproportionate benefit to the United States and often terrible consequences to islanders. Unlike the Marshall Islands, however, the present-day FSM has no U.S. bases. Though the idea that the U.S. government might take control of an airfield or a port during wartime might be offensive to Micronesian nationalists, the exercise of this COFA option would be of most use in a war that also threatened Micronesians. The cost to Micronesian sovereignty is theoretically great but practically small. How could the benefit to the FSM be increased? The answer may be a new interpretation of defense: protection against economic degradation by external actors.

In the United States, maritime law enforcement outside local jurisdictions is performed almost exclusively by the Coast Guard, though the Navy may operate with USCG Law Enforcement Detachments (LEDETs).<sup>129</sup> In his 2012 Naval Postgraduate School thesis on maritime law enforcement, Dirk Sonnenberg points out that “the United States is unique in the separation of law enforcement functions and military functions in the maritime service.”<sup>130</sup> The *Posse Comitatus* Act (PCA) of 1878 and a related Department of Defense directive prevent the Army or Air Force from being used for domestic law enforcement, and the Navy has generally been included in this prohibition subject to a Secretary of Defense waiver.<sup>131</sup> Law enforcement activities outside United States jurisdiction are not subject to *Posse Comitatus*, so U.S. law does not prevent the

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<sup>128</sup> U.S. GAO, *Key U.S. Defense Interest in Two Micronesian Nations*, 17.

<sup>129</sup> Dirk C. Sonnenberg, “Maritime Law Enforcement: A Critical Capability for the Navy?” (master’s thesis, Naval Postgraduate School, 2012), 5.

<sup>130</sup> *Ibid.*, 4.

<sup>131</sup> *Ibid.*, 38.

Navy from assisting its allies in their home territory. The absence of PCA restrictions together with COFA Title III presents an opportunity to redefine the defense relationship.

The U.S. Coast Guard is currently the lead agency for law enforcement assistance in the Freely Associated States. In 2008, the first permanent Cooperative Shiprider Agreement between the United States and the FSM entered into force.<sup>132</sup> This agreement and its later iterations gave the FSM National Police a legal framework for embarking on U.S. Coast Guard ships and aircraft. This is a system analogous to that of Coast Guard Law Enforcement Detachments (LEDETs) on U.S. Navy ships, with USCG cutters from District 14 in Guam providing logistical support and armed backup to local authorities conducting boardings and direct enforcement activities.

The Coast Guard's support of cooperative law enforcement in the Freely Associated States is commendable, but is not necessarily the most efficient way for the United States to provide support. The recommendations for COFA Title II are based on the idea that the FSM should limit the duplication of government activities that the United States must already provide subject to Micronesian direction. Investment in long-range patrol boats is not necessary for the FSM, as it already has access to ships by treaty. The FSM should instead continue to train and equip its law enforcement teams, which are relatively inexpensive, and leverage the United States Navy's superior capabilities to allow Micronesian LEDETs complete coverage of the EEZ. The resulting relationship will provide benefits to both countries. The United States would have a greater measure of maritime domain awareness, as well as an excellent exercise area for its new patrol assets, such as the Littoral Combat Ship and the P-8A. The FSM would gain a consistent capability to enforce its fishery regulations and derive necessary income from licensing, and would attain the level of interdependence sovereignty that it needs for greater involvement in the global economy.

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<sup>132</sup> U.S. Department of State, "U.S.-FSM Shiprider Agreement Becomes Permanent."

#### **D. CALL FOR A RECURRING PLEBISCITE FOR THE COFA**

Because it was accepted by plebiscite in the FSM and by Congress in the United States, the COFA is a personal contract between the United States government and the people of Micronesia. The newly-established Micronesian government was the signing authority in this contract, but the continuing relationship does not depend on its approval; the actual sovereignty in terms of the COFA lies with the people. Still, sovereignty without the opportunity to exercise it—authority without capacity—is not really sovereignty at all. What adjustment to policy could be made in light of Title IV’s modification and termination provisions? The recommendation here is to make the necessary plebiscite for COFA termination into a recurring event, whether on a five or ten-year schedule. Rather than make unilateral Micronesian termination more likely, this would restore the perception of popular sovereignty that is often obscured by high-level negotiations between governments. For the FSM national government, a recurring plebiscite would reduce the chance that peaks in public discontent with the U.S. relationship would coincide with congressional support for a prompt national vote.

#### **E. MICRONESIA’S WINDOW OF OPPORTUNITY**

The recommendations proposed in this chapter may seem rather drastic considering the relative stability of current economic patterns. That being said, 2023—the end of sector grant funding and U.S. contributions to the Compact Trust Fund—is less than seven years away, which means that preparations to negotiate a COFA III are imminent. To this end, the FSM government has contracted with U.S. lobbying firm Arnold & Porter to help reach its “legal and public policy goals in relation to the Compact of Free Association as amended in 2003, positioning the FSM for future negotiations, with the U.S. government, and assisting the FSM in other international efforts.”<sup>133</sup> This \$500,000/year arrangement may be directed toward securing a U.S. guarantee of additional grant money, but foreign aid and the potential for strategic relationships with other global powers will no doubt be discussed as well.

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<sup>133</sup> “FSM Hires Capitol Hill Powerhouse Arnold & Porter,” *Kaselehlle Press*, November 18, 2016. [http://www.kpress.info/index.php?option=com\\_content&view=article&id=445:fsm-hires-capitol-hill-powerhouse-arnold-and-porter&catid=8:news&Itemid=103](http://www.kpress.info/index.php?option=com_content&view=article&id=445:fsm-hires-capitol-hill-powerhouse-arnold-and-porter&catid=8:news&Itemid=103).

It is vital that the Micronesian people understand what is being done in their name, regardless of how they vote when they are given the opportunity. The options available to the FSM are often presented as stark choices between autarky and dependency, or between full political independence and neocolonialism in fact. The recommendations in this chapter provide a middle ground between two political extremes: termination of the COFA and acquiescence to a political and economic relationship that does not serve the best interests of either party. The concluding chapter will examine four possible futures for the Federated States of Micronesia, suggest steps that the United States could take to facilitate necessary changes, and propose a revised understanding of the relationship known as free association.

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## **VI. CONCLUSION**

The research question asked how a freely associated state—a smaller entity seeking the economic benefits of political interdependence with a larger one—could maintain its sovereignty. Chapters II–IV examined whether sovereignty was still possible, proposed reasons why its compromise might be desirable, and examined the effects of the Compact of Free Association on Micronesian sovereignty. Chapter V proposed adjustments to the existing relationship in the name of increased sovereignty; specifically, of the types that the FSM needs to pursue its goals. These recommendations are not the only changes possible, but taken together they represent one course of action available to Micronesian and American policy-makers in the near term. The fact of Micronesian sovereignty means that a number of political and economic trajectories are possible, all of which are contingent in some way on the future of the COFA.

### **A. FOUR POSSIBLE MICRONESIAN FUTURES**

The status quo is not sustainable. The FSM's current trajectory will result in a huge budgetary shortfall after 2023, and the close connection between the national government and economic activity means that this shortfall will have a real effect on the population that foreign aid may not be able to offset. The following are four possible futures for the FSM in light of the expiration of COFA Title II grants.

#### **1. Apply Changes to COFA Implementation**

If the changes in Chapter V are applied, the FSM's economy may still not improve overnight, but key obstacles to the effective exercise of Micronesian sovereignty will be removed.

Dual citizenship will allow Micronesian citizens the safety net that their own country is unable to provide, while giving migrants the incentive to remain connected to their home and culture. Title I will no longer support a one-way export of population, but a two-way exchange in which returning Micronesians can reinvest in their land using skills, knowledge, and funding acquired abroad.

The most difficult policy for Micronesian leaders to stomach—allowing the expiration of sector grant funding—need not represent a cut to the government’s capability, but a reallocation of effort towards those programs and services already provided by U.S. agencies in Title II. This should be done well before 2023; the problem with Title II sector grants is not the total amount provided by the United States, which is comparatively tiny, but in how the funding reaches the Micronesian people. Increased U.S. agency support can still provide local jobs without growing the size of the bureaucracy.

A new approach to defense through maritime law enforcement, supported by the U.S. Navy, will change the U.S. military’s image from that of a potential occupation force to that of a treaty partner supporting real Micronesian interests. Compromised Westphalian sovereignty will appear correctly to be shared sovereignty; the United States’ superior capability harnessed to Micronesian legal authority, in the interests of both.

Finally, even if it is the only recommendation adopted, a regularly scheduled plebiscite should be established well before 2023—in particular before the plebiscite necessary to adopt a new COFA, with further economic support provisions. This is critical to assessing the extent to which the people agree with their elected government concerning the benefits of free association.

## **2. Extend Economic Provisions in COFA III**

In light of the impending fiscal cliff, the most likely course of action for the FSM national government is to draw up a “COFA III” with the United States. This would be undesirable, not because the funding is unnecessary, but because the manner in which it is to be delivered grows the size of government and reduces Micronesian sovereignty—or the perception thereof, which is also important. Any new proposal would be delivered to the Micronesian people just as huge cuts to government funding became imminent. Failure of the Compact Trust Fund to support current levels of expenditure would correctly be seen as a result of mismanagement, and the likely result would be more U.S. control. This was also the outcome of the 2002 negotiations to extend and modify U.S.



financial support. Francis X. Hezel said of Compact II in 2003: “No multi-national donor nor international organization, even the most heavy-handed, has yet demanded such broad financial control as to give them veto power over every dollar spent.”<sup>134</sup> This time, it would be the FSM national government insisting on increased U.S. control, in an attempt to ensure the survival of the bureaucracy. Though public sector-led development is possible, a COFA III would hinder a proper assessment of what parts of the FSM government are working for the people and what parts no longer pull their weight.

### **3. Pursue Free Association with Alternate States**

If Micronesian citizens consider the relationship with the United States to be too closely linked with postwar trusteeship and dependency, the FSM could enter into a COFA with any number of other partner nations. While ideological alignment with the United States and its allies is not necessary, a new COFA must still adhere to similar precepts: free migration, credible defense capability, and increased political and economic capacity. In keeping with its recognition of “One China,” the FSM may favor the PRC as a future benefactor, but the Chinese mainland is unlikely to accept and provide for COFA migrants with its already huge population. Furthermore, the close relationship between PRC state and business interests has the potential to make the FSM into a reservation for indigenous peoples like Tibet has become—an outcome the United States has generally tried to avoid in the Pacific, however imperfectly.<sup>135</sup>

New Zealand is a more realistic candidate for an alternate COFA. First, it has a long history of shared sovereignty with the Māori people, in a disputed but still relevant relationship established in the 1840 Treaty of Waitangi. Despite violations of the Treaty, mostly by non-Māori, the government established a tribunal in 1975 to address claims and attempt to balance the relationship.<sup>136</sup> In light of their renewed commitment to maintaining Māori autonomy within national borders, New Zealanders on the whole are

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<sup>134</sup> Francis X. Hezel, “Power or partnership? Making Compact II Work,” *Micronesian Seminar* online accessed May 8, 2017, <http://www.micsem.org/pubs/counselor/frames/powpartfr.htm>.

<sup>135</sup> Peter Hessler, “Tibet Through Chinese Eyes,” *The Atlantic*, February 1999. <https://www.theatlantic.com/magazine/archive/1999/02/tibet-through-chinese-eyes/306395/>

<sup>136</sup> Claudia Orange, “Treaty of Waitangi,” *Te Ara – the Encyclopedia of New Zealand*, accessed 23 May 2017, <http://www.teara.govt.nz/en/treaty-of-waitangi>.

likely to respect the sovereignty of smaller partner nations. The country has a relatively low population density, and a military that is already engaged in maritime surveillance and law enforcement efforts in the Cook Islands and in Samoa.<sup>137</sup> New Zealand's current relations with the Cooks and Niue provide a precedent for free association, but future partners need not offer to remain subordinate to the British Crown—instead, the protected statehood model might serve as a better example for maintaining the sovereignty of any of these South Pacific states as well.

#### **4. Seek Complete Political Independence**

Economic assessments aside, full and unimpeded sovereign rights may be more important to the Micronesian people than what free association may provide. Title IV permits termination of the COFA, and before pursuing any number of alternate paths, the FSM may decide to assert its full independence.

This would be a risky move, and one that most concerns the current opponents of a national plebiscite. The recent “Brexit,” the United Kingdom's departure from the European Union, shows the hazard of putting sovereignty to a vote during a period of economic distress. The people may vote to leave an association based on the perception of a loss of sovereignty, and the long-term loss of the capacity provided by the association could outweigh the benefit of unencumbered sovereign authority. The recurring plebiscite proposed above might well result in a “remain” vote, and move concerns over sovereignty to the more useful forums provided within the COFA.

#### **B. THE ROLE OF THE UNITED STATES**

This thesis has focused almost exclusively on the FSM's status and available courses of action, but the United States could take some simple steps to assist the FSM in developing its future plans. The following two suggested improvements to U.S. administration are politically uncontroversial, legally possible without an act of Congress, and in the spirit of upholding Micronesian sovereign authority.

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<sup>137</sup> Forum Fisheries Agency, “Surveillance Operation TUI MOANA Shows Continuing Determination by FFA Members to Deter Illegal Fishing,” press release, June 8, 2010, <http://www.ffa.int/node/362>.

First, the Department of the Interior is the wrong department for the administration of Title II sector grants, currently provided under the Office of Insular Affairs. Not only is the word “interior” suggestive of a territorial status for the FSM and its FAS neighbors, but the OIA’s mission statement includes “providing technical and financial assistance to all the Insular Areas”<sup>138</sup>—effectively placing these sovereign countries in the same perceived status as U.S. territories and commonwealths. It is true that Guam and the Commonwealth of the Northern Mariana Islands share a common Micronesian heritage with the FSM, in particular with regard to colonialism and trusteeship. While it might be easy for U.S. officials to conflate their histories, the Mariana and the Caroline Islands have distinct cultures, and furthermore have chosen different paths with regard to sovereignty. The most appropriate department for relations with the FSM, RMI, and ROP is the State Department, which already has embassies across the FAS and is tasked with conducting relations with sovereign states, not territories. Through a formal and timely transfer of responsibility from Interior, the State Department could more easily identify COFA grant requirements in concert with its existing efforts to channel aid to the islands through partner agencies such as USAID.

Second, and closely related to the first recommendation, the United States Government should come up with a revised interagency plan for post-2023 assistance (COFA-related or otherwise) to the FSM. Specifically, such a plan should expand the role of agencies that already provide Title II services, in order to address any immediate impacts on the population from insufficient Compact Trust Fund revenues. The U.S. annual obligation to the FSM is on the order of magnitude of its voluntary contributions to Zimbabwe, a country currently under U.S. economic sanctions.<sup>139</sup> The amount of money involved is not damaging to U.S. interests, but altering the path by which it reaches the Micronesian people might better serve their interests.

A U.S. post-2023 plan should also assert the U.S. commitment to Title I and III of the COFA, and should be published for the benefit of all U.S. and FSM citizens.

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<sup>138</sup> Office of Insular Affairs, “Who We Are: Our Mission,” last modified May 24, 2016, <https://www.doi.gov/oia/who-we-are/>.

<sup>139</sup> “The World Factbook: Zimbabwe,” Central Intelligence Agency, accessed May 22, 2017, <https://www.cia.gov/library/publications/the-world-factbook/geos/zi.html>.

Currently, the relationship is misunderstood, and the migration and defense provisions might be enough to sustain support for the COFA through any necessary realignment of economic assistance.

### **C. A REVISED UNDERSTANDING OF FREE ASSOCIATION**

The concept of political free association has evolved from its original form under the UN guidelines for self-determination. For the Cook Islands and Niue in the South Pacific, free association is a voluntary political subordination in return for local autonomy. For the Federated States of Micronesia and its North Pacific neighbors, the protected statehood model supports the functional exercise of sovereignty: shared authority in return for increased capacity. The distinction is small but significant, as the restrictions placed upon a protected state are finite in duration. The relationship is a very specific kind of treaty, with obligations on both parties. The COFA is intended to create formalized interdependence rather than compromised independence, and requires careful management to ensure mutual benefits.

As the Federated States of Micronesia has maintained the most critical elements of its sovereignty—its international legal standing and ability to conduct foreign affairs—the important question is no longer whether the FSM is sovereign, but how it should exercise its rights. The concepts explored in this thesis may help frame the challenges faced by the FSM, with the understanding that sovereignty implies the right to choose a course of action that does not support the interests of current or prospective partner nations. Micronesians share an ocean and a significant history with the United States, but the decision to change course or to continue on the current one must be theirs alone.

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