A BILL FOR AN ACT

To amend title 11 of the Code of the Federated States of Micronesia, as amended, by enacting a new chapter 13 to establish an Anti-Terrorism Law for the Federated States of Micronesia, and for other purposes.

BE IT ENACTED BY THE CONGRESS OF THE FEDERATED STATES OF MICRONESIA:

Section 1. Title 11 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by enacting a new chapter 13.

Section 2. Title 11 of the Code of the Federated States of Micronesia is hereby amended by adding a new subchapter I of chapter 13 entitled "General Provisions".

Section 3. Title 11 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by adding a new section 1301 to read as follows:

"Section 1301. Short title. This chapter is known and may be cited as the "Federated States of Micronesia Anti-Terrorism Act."

Section 4. Title 11 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by adding a new section 1302 to read as follows:

"Section 1302. Purpose. The purpose of this chapter is to implement in the Federated States of Micronesia a comprehensive legal framework criminalizing all forms of terrorism and the financing of terrorism, whether domestic or international in nature, consistent with
this nation’s commitments under the international terrorism conventions to which it is a party."

Section 5. Title 11 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by adding a new section 1303 to read as follows:

"Section 1303. Definitions. The following terms shall have the following meanings for the purposes of this chapter:

(1) 'Alleged offender' means a person as to whom there is sufficient evidence to determine prima facie that such person has engaged, or has attempted to engage, in terrorism.

(2) 'Biological agent' means any micro-organism, virus, infectious substance or biological product that may be engineered as a result of biotechnology, or any naturally occurring or bio engineered component of any such micro-organism, virus, infectious substance or biological product, capable of causing:

   (a) death, disease or other biological malfunction in a human, an animal, a plant or another living organism;

   (b) deterioration of food, water, equipment, supplies or material of any kind; or

   (c) deleterious alteration of the environment.

(3) 'Destructive device' means any explosive, incendiary, poison gas or projectile-expelling weapon
capable of causing serious bodily injury or death, that
has been developed, produced, transferred, acquired,
retained or possessed for use as a weapon, or any
combination of parts or pieces thereof which would be
used or converted for such purposes.

(4) 'Engages in' with respect to terrorist acts,
terrorism offenses and terrorism, means, in an
individual capacity or as a member of an organization,
to:

(a) perpetrate, commit or carry out, or incite to
commit or carry out;

(b) threaten, attempt, solicit or conspire to
carry out or commit;

(c) prepare or plan;

(d) supervise, direct or organize others;

(e) aid, abet or assist;

(f) gather information on potential targets for;

(g) solicit, collect or provide funds or other
things of value, with the knowledge or intent that the
funds or other things of value will be used for
terrorism or by a terrorist organization;

(h) solicit, recruit or train any person to
engage in terrorism or for membership in a terrorist
organization; or

(i) commit or carry out an act that the person
knows, or reasonably should know, affords material
support, including a safe house, transportation, communications funds, transfer of funds or other material benefit, false documentation or identification, weapons, explosives or training for terrorism or a terrorist organization, or to any individual who the person knows, or reasonably should know, engages in terrorism.

(5) 'Foreign national' means a natural person who is neither a citizen nor national of the Federated States of Micronesia.

(6) 'Foreign state' means any country other than the Federated States of Micronesia, and every constituent part of such country, including a territory, dependency or protectorate.

(7) 'Funds' means assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travelers checks, bank checks, money orders, shares, securities, bonds, drafts and letters of credit.

(8) 'International terrorism conventions' means:

(a) the 1971 Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation;

(b) the 1973 Convention on the Prevention and
Punishment of Crimes Against Internationally Protected Persons;

(c) the 1979 Convention Against the Taking of Hostages;

(d) the 1988 Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances;

(e) the 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation;

(f) the 1988 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation;

(g) the 1998 Convention for the Suppression of Terrorist Bombings;

(h) the 1999 Convention for the Suppression of the Financing of Terrorism;

(i) the 2000 Convention Against Transnational Organized Crime; and

(j) any other international conventions to which the Federated States of Micronesia is, or becomes, a party.

(9) 'person' means any natural or legal person including a group, association or body of persons, whether it has legal personality or not, and shall include any foreign state, or any agency or instrumentality or political subdivision of that state.

(10) 'Proceeds' means any property derived from or
obtained, directly or indirectly, through or from terrorism, a terrorism offense or a terrorist act. 

(11) 'Property' means currency and all other real or personal property of any kind, whether corporeal or incorporeal, moveable or immovable, tangible or intangible, and legal documents or instruments in any form including electronic or digital, evidencing title to, or interest in, such property, whether situated in Federated States of Micronesia or elsewhere and includes any legal or equitable interest in any such property.

(12) 'Secretary' means the Secretary of the Department of Justice for the Federated States of Micronesia, or his or her designee.

(13) 'Serious bodily injury' means physical pain, illness or any impairment of physical condition that creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any body part or organ.

(14) 'Serious offense' means a violation of:

(a) any law of Federated States of Micronesia or any of its States or political subdivisions, which is a criminal offense punishable by imprisonment for a term of more than one year or a fine of more than $10,000; or

(b) a law of a foreign State, in relation to acts or omissions, which, had they occurred in Federated States of Micronesia or any of its States or political subdivisions,
subdivisions, would have constituted a criminal offense punishable by imprisonment for a term of more than one year or a fine of more than $10,000.

(15) 'Ship' means a vessel of any type whatsoever not permanently attached to the seabed, including dynamically supported vessel, submersibles, or an other floating vessel.

(16) 'Substantial property damage' means property damage in an amount exceeding $10,000.

(17) 'Supreme Court' means the Supreme Court of the Federated States of Micronesia, and all its divisions, wherever or whenever constituted.

(18) 'Terrorism' means terrorism offenses and terrorist acts.

(19) 'Terrorism offense' means:

(a) any crime established by this chapter;

(b) any crime established by the laws of the Federated States of Micronesia and declared to be a terrorism offense;

(c) any crime established by an international terrorism convention;

(d) any crime recognized under international humanitarian law as a terrorism offense; and

(e) any crime established under the law of a foreign state, where such crime, if committed in the Federated States of Micronesia, would constitute a
terrorism offense.

(20) 'Terrorist' means:

(a) a person that has knowingly:

(i) committed;

(ii) attempted to commit;

(iii) participated in committing; or

(iv) facilitated the commission of

a terrorist act, or

(b) a person that is knowingly acting:

(i) on behalf of;

(ii) at the direction of; or

(iii) in association with

a person referred to in subsection (20)(a) of this subsection.

(21) 'Terrorist act' means an act or threat of action in or outside Federated States of Micronesia which constitutes a terrorism offense, or:

(a)

(i) involves serious bodily harm to a

person;

(ii) involves serious damage to property;

(iii) endangers a person’s life;

(iv) involves the seizing and detaining of a

person;

(v) involves the hijacking, seizing or

sabotaging of any conveyance, including an aircraft,
vessel, ship, vehicle or fixed platform attached to the continental shelf;

(vi) involves the threat to kill, seriously injure or detain another person;
(vii) creates a serious risk to the health or safety of the public or a section of the public;
(viii) involves the use of a destructive device;
(ix) involves releasing into the environment or any part thereof or distributing or exposing the public or any part thereof to any dangerous, hazardous, radioactive or harmful substance, any toxic chemical, or any microbial or other biological agent or toxin;
(x) is designed or intended to disrupt any computer or electronic system, or the provision of services directly related to communications infrastructure, banking or financial services, utilities, transportation or other essential infrastructure;
(xi) is designed or intended to disrupt the provision of essential emergency services such as police, civil defense or medical services; or
(xii) endangers the national security, national defense or public safety of any country; and
(b) is intended, or by its nature and context, may reasonably be regarded as being intended to:
(i) intimidate the public or a section of the public;

(ii) compel a government or an international organization to do, or refrain from doing, any act; or

(iii) is made for the purpose of advancing a political, ideological, or religious cause, or seriously destabilizing or destroying the fundamental political, constitutional, economic or social structures of a country or an international organization.

(22) 'Terrorist organization' means a group composed of two or more persons, whether organized or not, that engages in terrorism.

(23) 'Toxic chemical' means any chemical which through its chemical action on life processes can cause death, temporary incapacitation or permanent harm to humans or animals, and includes all such chemicals, regardless of their origin or of their method of production, and regardless of whether they are produced in facilities, in munitions or elsewhere.

(24) 'The Federated States of Micronesia' means the territory of the Federated States of Micronesia, including all land masses and marine space, the airspace above the territorial seas of the Federated States of Micronesia, and any diplomatic or consular premises of the Federated States of Micronesia, and also includes all governments of the Federated States of Micronesia.
(25) 'Toxin' means the toxic material of plants, animals, micro-organisms, viruses, fungi or infectious substances, or a recombinant molecule, whatever its origin or method of production, including:

(a) any poisonous isomer or biological product, homology, or derivative of such a substance."

Section 6. Title 11 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by adding a new section 1304 to read as follows:

"Section 1304. Jurisdiction.

(1) The Secretary shall have primary enforcement authority for this chapter.

(2) The Federated States of Micronesia shall have jurisdiction over and prosecute any crime established under this chapter when the offense is committed:

(a) in the Federated States of Micronesia;

(b) by a citizen or national of the Federated States of Micronesia; or

(c) on board an aircraft or ship that is:

(i) registered under the laws of the Federated States of Micronesia at the time the offense was committed; or

(ii) operating under or flying the flag of the Federated States of Micronesia.

(3) The Federated States of Micronesia shall also have, and may take jurisdiction over and prosecute any
crime established by this chapter when the offense:

(a) was directed towards or resulted in the
carrying out of a crime against a citizen or national of
the Federated States of Micronesia, or during its
commission a citizen or national of the Federated States
of Micronesia is seized, threatened, injured or killed;

(b) was directed towards or resulted in the
carrying out of a crime against the government or
government facility, including diplomatic or consular
premises, of the Federated States of Micronesia;

(c) was directed towards or resulted in a crime
committed in an attempt to compel the Federated States
of Micronesia to do or abstain from doing any act; or

(d) was committed by a stateless person who has
his or her habitual residence in the Federated States of
Micronesia.

(4) Notwithstanding any other provision of law, there
shall be no limitation of time on when a prosecution for
a crime established under this chapter may be brought.

(5) Where a foreign state alleges that an alleged
offender has engaged in terrorism or a terrorist act
against that foreign state, and the alleged offender is
present in the territory of the Federated States of
Micronesia, in all cases where the Federated States of
Micronesia has jurisdiction, and the alleged offender is
not extradited to a foreign state that has established
jurisdiction over the alleged offender, the Secretary shall prosecute the case without exception whatsoever and whether or not the offense was committed in the territory of the Federated States of Micronesia through proceedings in accordance with the law of the Federated States of Micronesia."

Section 7. Title 11 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by adding a new section 1305 to read as follows:

"Section 1305. Terrorist acts not expressly criminalized in a subchapter of this chapter. It shall be a crime, punishable by the penalties established by section 1306 of this chapter, for any person to knowingly, by any means, directly or indirectly, engage in a terrorist act."

Section 8. Title 11 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by adding a new section 1306 to read as follows:

"Section 1306. Criminal Penalties.

(1) A person convicted of a crime under this chapter shall be punishable:

(a) in the case of a natural person, by a minimum term of imprisonment of 10 years and a maximum term of imprisonment of life, and unless otherwise expressly provided, a maximum fine of $1,000,000; or

(b) in the case of a legal person that is not a
natural person by a maximum fine of $10,000,000 unless otherwise expressly provided.

(2) A court shall not suspend any portion of the sentence of, or grant parole to, a person convicted of a crime under this chapter.

(3) In lieu of the amount of the fine established under subsection (1) of this section, and in addition to any term of imprisonment, a person may be fined not more that twice the gross profits or other proceeds he or she derived from a crime established by this chapter.

(4) The Supreme Court shall order any person convicted of a crime established by this chapter to reimburse the Federated States of Micronesia for any expenses incurred by the Federated States of Micronesia incident to the investigation and prosecution of the crime, including but not limited to, the seizure, storage, handling, transportation and destruction or other disposition of any property that was seized in connection with an investigation of the commission of the crime by that person."

Section 9. Title 11 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by adding a new section 1307 to read as follows:

"Section 1307. Civil Penalties.

(1) The Secretary may bring a civil action in the Supreme Court against any person who commits a crime
established by this chapter, and upon proof by a 
preponderance of the evidence that such person committed 
the offense, the person shall be subject to pay a civil 
penalty not to exceed $20,000,000 for each offense, in 
addition to court costs and reasonable attorney’s fees 
incurred by the Federated States of Micronesia in 
bringing the action.

(2) The imposition of a civil penalty under subsection 
(1) of this section does not preclude any other criminal 
or civil statutory, common law or administrative 
remedies, which are available by law to the Federated 
States of Micronesia or any person.

Section 10. Title 11 of the Code of the Federated States of 
Micronesia, as amended, is hereby further amended by adding a new 
section 1308 to read as follows:

"Section 1308. Private causes of action.

(1) Any citizen or national of the Federated States of 
Micronesia, or his or her estate, survivors or heirs, 
who is injured in his or her person, property or 
business by reason of a terrorist act or terrorist 
offense may sue therefore in the Supreme Court and shall 
recover treble damages he or she sustained as a result 
of the terrorist act or terrorist offense, and shall 
also recover all court costs and reasonable attorney’s 
fees incurred by the person in bringing the action.

(2) No action shall be maintained under subsection (1)
of this section against the Federated States of Micronesia, an agency of the Federated States of Micronesia, or an officer or employee of the Federated States of Micronesia acting in his or her official capacity or under color of legal authority. The government of the Federated States of Micronesia shall bear no liability for costs or recovery as a result of an action brought pursuant to subsection (1) of this section.

(3) No action shall be maintained under subsection (1) of this section for injury or loss by reason of an act of war."

Section 11. Title 11 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by adding a new section 1309 to read as follows:

"Section 1309. Liability of corporations and other legal persons.

(1) Where in proceedings for a violation of this chapter it is necessary to establish the state of mind of a corporation or other legal person, it is sufficient to show that a director, officer or agent of the corporation or other legal person who engaged in the conduct within the scope of his or her actual or apparent authority had that requisite state of mind.

(2) Any conduct engaged in –

(a) by a director, officer or agent of a
corporation or other person within the scope of his or her actual or apparent authority; or

(b) any other person at the direction or with the consent or agreement, whether expressed or implied, of a director, officer or agent of the corporation or legal person, where the giving of such direction, consent or agreement is within the scope of the actual or apparent authority of the director, officer or agent; shall be deemed, for the purposes of this chapter, to have also been engaged in by the corporation or legal person."

Section 12. Title 11 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by adding a new section 1310 to read as follows:

"Section 1310. Detention prior to filing of charges.

(1) In situations of urgency, where there is probable cause to believe that detention of any person is necessary to prevent a terrorist act or terrorist offense from occurring, or to prevent any person from interfering with an investigation relating to suspected terrorism, the Secretary may petition the Supreme Court for authority to detain such person for a period of 72 hours for purposes of investigation without filing criminal charges against the person.

(2) The Supreme Court may extend the period of detention for an additional 7 days without the filing of
criminal charges against the person if the Court finds
that the continued detention is necessary to prevent a
terrorist act or a terrorist offense from occurring, or
to prevent any person from interfering with an
investigation relating to suspected terrorism."

Section 13. Title 11 of the Code of the Federated States of
Micronesia, as amended, is hereby further amended by adding a new
section 1311 to read as follows:

"Section 1311. Regulations. The Secretary may
prescribe such rules and regulations as the Secretary
deems necessary to implement to provisions of this
chapter."

Section 14. Title 11 of the Code of the Federated States of
Micronesia is hereby amended by adding a new subchapter II of
chapter 13 entitled "Suppression of Financing of Terrorism".

Section 15. Title 11 of the Code of the Federated States of
Micronesia, as amended, is hereby further amended by adding a new
section 1312 to read as follows:

"Section 1312. Purpose. The purpose of this subchapter
is to create offenses relating to the financing of
terrorism and to give effect to the International
Convention for the Suppression of the Financing of
Terrorism, to which the Federated States of Micronesia
became party by accession in 2001."

Section 16. Title 11 of the Code of the Federated States of
Micronesia, as amended, is hereby further amended by adding a new
section 1313 to read as follows:

"Section 1313. Financing of Terrorism Prohibited.

(1) Any person who by any means, directly or indirectly, provides, solicits, collects or makes available funds knowing that the funds are to be used, in full or part:

(a) for a terrorist act or a terrorist offense;

(b) for the benefit of persons who engage in a terrorist act or a terrorist offense, or for the benefit of entities owned or controlled, directly or indirectly, by persons who engage in terrorism; or

(c) for the benefit of persons or entities acting on behalf of or at the direction of any person referred to in subsection (1)(b) of this section;

commit a crime punishable by the penalties established by section 1306 of this chapter.

(2) For an act to constitute an offense under this section, it shall not be necessary that the property was actually used to finance a terrorist act or a terrorist offense."

Section 17. This act shall become law upon approval by the President of the Federated States of Micronesia or upon its becoming law without such approval.

Date: 9/14/06

Introduced by: /s/ Simiram Sipenuk

Simiram Sipenuk
(by request)