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AdeGraffenried:7-2-74:kkc

POSITION PAPER
JCFS COMPACT - TITLE X

1. Summary

The JCFS has proposed deletion of the "arbitration" clauses to the dispute settlement provisions. The change reestablishes the preferred U.S. concept that all disputes would be settled by negotiation.

2. Issue

Is the JCFS change satisfactory to meet U.S. interests?

3. Background

The JCFS draft compact of 1971 originally introduced the arbitration concept to resolve disputes arising under the Compact. That JCFS provision would have required final arbitration by a panel composed of one U.S. member, one Micronesian member and one U.N. member. The U.S. draft compact of 1974, forwarded during the Seventh Round, adopted the concept that all disputes should be negotiated between the parties without outside, foreign influences being interjected into the disputed issues. A fall-off position on arbitration was prepared. At Carmel, the JCFS again insisted that an arbitration clause be adopted. The U.S. agreed. Warnke suggested the particular language now being dropped by the JCFS.

4. Options

a. Accept

PRO

(1) Retains original U.S. concept that outside parties not be interjected into the dispute.

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(2) Permits U.S. to postpone resolution of dispute until timely or until interests of U.S. permit.

(3) Permits U.S. flexibility to resolve disputed issues by corrective action favorable to promote U.S. interests while still negotiating with the GOM.

(4) Represents DOD preferred position.

CON

(1) There is no provisions for resolution of the dispute or for the consequences of non-agreement by negotiation.

(2) GOM giving up a strong political lever which they may not recognize now.

(3) Without provision for resolution of the dispute, the GOM could interpret the failure of the U.S. to resolve a dispute as a material breach of the status agreement and declare their independence.

(4) The U.S. Congress may also interpose objections for what they may consider to be a "loop-hole" to permit GOM to go independent notwithstanding termination provisions.

b. Accept with modifications. The U.S. would insist on some mechanism to be triggered in the event the dispute is not resolves so as to insure that some independent third party (favorable to U.S. interests) would intervene and impose an early resolution. U.S. would point out that U.S. interprets this provision as requiring some resolution to the dispute, and failure to agree by negotiation would not be grounds to breach the agreement.

PRO

(1) Would plug a "loop-hole" in the dispute section so as to protect U.S. interests in keeping the GOM from using the failure to resolve a dispute as a material breach of the status agreement and then declaring its independence.

(2) Would permit U.S. to look to a third, disinterested party and would serve to allay GOM fears that U.S. would unilaterally impose a settlement.

(3) Would receive favorable acceptance by the U.N. and the U.S. Congress.

CON

(1) Would alert GOM to possibility of declaring a material breach and thereupon declaring independence.

(2) Would require further negotiation on how to draft the "trigger mechanism" and the "arbitration" provision.

c. Reject

PRO

(1) Would retain semblance of disinterested resolution of U.S.-GOM disputes.

(2) Would still permit U.S. to control panel selection.

(3) Would permit U.S. to retain controls over resolution or non-resolution of disputes.

CON

(1) Would permit GOM to block dispute settlement until it obtained favorable leverage and press support.

(2) Would still not resolve disputes.

5. Recommendation

a. Accept

(1) New position reflects original U.S. position.

(2) JCFS rejecting its own proposal.

(3) Permits U.S. to prevent interjection of outside interests into the dispute.

(4) Retains maximum flexibility and leverage with USG over dispute settlement.