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LAW OF THE SEA TALKING POINTS

Issues

- JCFS has made LOS a key issue in status negotiations.
- Micronesia perceives it can attain economic self-sufficiency only by ownership and control over living and non-living marine resources in Micronesian waters.
- COM has set forth seven basic non-negotiable principles on these resources.
- Micronesians view LOS as an internal matter.
- U.S. has already granted Government of Micronesia full internal authority under Free Association.
- JCFS request for Title I changes only clarifies the specifics of their internal authority.
- Government of Micronesia internal authority over LOS would be exercised consistent with international law and applicable treaties (UNTA and LOS Convention) thereby providing added protection to U.S. interests.
- Issue is extent of Government of Micronesia foreign affairs authority - especially rights to implement their internal LOS policy.
- Under present Compact, U.S. would retain full foreign affairs authority.
- U.S. has, under Annex A, re delegated some foreign affairs authority to the Government of Micronesia.
- JCFS proposal would be a specific addition, limited to LOS under the re delegation of Foreign affairs by the U.S.

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- U.S. would still retain full foreign affairs authority under Paragraph 4 of Annex A by retaining veto power over Micronesian LOS activities in conflict with basic U.S. security interests or international obligations.

Background

- TTPI is now a member of several UN organizations and other regional organizations.
- This authority is continued under Annex A.
- Micronesia is now an "official observer" to the UN LOS Conference.
 - State/LOS confirms there is a basic conflict of interest between US/COM LOS positions so that U.S. cannot represent COM positions.
 - This has led COM to formally request UN for signatory status to the LOS Convention.
 - COM has obtained support for becoming a full signatory to the LOS Convention by other non-self-governing areas such as Cook Islands, Niue, British West Indies and their administering authorities - Australia, New Zealand, and Great Britain.
 - U.S. could successfully propose legal obstacles to Micronesia.
 - U.S. legal objections would have adverse political result in Micronesia, e.g., rejecting a close political association with U.S. and possibly forcing Micronesian independence without assurances U.S. security interests would be respected by Micronesia.
- LOS Conference (dominated by developing countries) will grant Micronesia the right to become a signatory notwithstanding U.S. objections.

- LOS Convention will grant Micronesia the specific LOS rights they seek even if Government of Micronesia does not become a signatory or U.S. does not approve LOS Convention; Article 136 specifically vests trust territories with LOS Convention rights and the authority to exercise these rights.

Comments

- Would therefore seem inevitable that Micronesia will obtain some LOS rights.
- U.S. has stated it has not economic interest in Micronesia; new IAG study specifically notes this.
- If U.S. and Micronesia sign LOS Convention, both would share same LOS interests and rights.
- U.S. should attempt to recognize inevitability that Micronesia will have LOS rights.
- U.S. should attempt to channel the exercise of these rights in a manner that protects U.S. foreign affairs and defense interests in the Western Pacific and within concepts of Free Association.
- U.S. should therefore permit Micronesia broader foreign affairs authority under Free Association and limit this authority to LOS matters and subject it to a U.S. veto if it conflicts with U.S. interests.
- Micronesian demands would be met and U.S. interests secured.
- Oxman changes would obtain these results.

Adverse consequences

- If U.S. is not flexible in this matter, will be last opportunity for U.S. to obtain a free association relationship with a united Micronesia.
- If U.S. does not permit wider latitude in LOS matters, U.S. would become fully responsible for enforcing and protecting Micronesian LOS rights interests.
 - This is financially prohibitive (is in excess of \$60 million annually).
 - Would lead to inevitable policy conflicts with Government of Micronesia and would strain U.S. relations with Government of Micronesia to the detriment of U.S. interests.
- If U.S. does not grant Micronesia some LOS authority, and Micronesia reacts by demanding independence, U.S. interests would be jeopardized by a hostile Micronesia
- If Micronesia opts for independence, it will then be able to hold and exercise LOS rights and foreign affairs rights whether or not consistent with U.S. obligations, interests or policy.