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State of Chuuk, State of Kosrae, State of Pohnpei, and State of Yap v. Secretary of the Department of Finance, FSM, and the National Government of the Federated States of Micronesia, Civil No. 1995-085.

Goal of the Lawsuit--to transfer funds received by the National Government from fishing licenses to the States.

Legal Theories--

(1) The States are the underlying owners of the resources of the ocean areas according to Micronesian tradition, custom, and concepts of ownership.

(a) The territory of each State extends to the "marine boundary" established by the "principle of equidistance" as stated in Article I, Section 2 of the FSM Constitution. In other words, an equidistance line is drawn between the islands of the states to determine their boundaries, and all the waters in the FSM belong to one of the four states.

(b) This result is supported by the language of Article I, Section 1, of the FSM Constitution, which refers to the waters connecting the islands as "internal waters regardless of dimensions."

(c) Micronesian custom and traditional practice confirms that the adjacent island community owns the offshore fishing resources.

(d) Although Article IX, Section 2(m) of the FSM Constitution grants to the FSM Congress the power "to regulate the ownership, exploration, and exploitation of natural resources within the marine space...beyond 12 miles from island baselines," this provision grants only regulatory power and the states remain the underlying owner of the resources.

(e) The ownership rights of the States are confirmed in Title 24, Section 510 of the FSM Code which allocates 50% of the fines and forfeitures collected by the National Government for illegal fishing "to the States affected."

(2) The revenues received by the National Government from the fishing licenses are "taxes," and Article IX, Section 5 of the FSM Constitution requires the National Government to distribute at least 50 percent of these revenues to the four States.

(a) Taxes are funds collected through a procedure designed to raise revenue.

(b) License fees are determined based on a set formula based on a percentage (5%) of the landed catch.

Remedy Sought--

- (1) Declaratory Judgment recognizing the rights of the States.
- (2) Injunction requiring license fees to be distributed according to the requirements of the FSM Constitution.
- (3) Damages equivalent to the amount of revenues the States should have received in previous years, plus interest.

Procedural Issues Raised by the National Government--

- (1) Is this a proper case for a Declaratory Judgment?
- (2) Do the Defendants have sovereign immunity from this kind of a suit?
  - (a) The States argue that FSM Constitution is in the nature of a contract among autonomous States, and thus a claim of immunity is inappropriate.
    - (i) The four States had separate internationally-recognized rights to self-determination (as illustrated by the actions of the United Nations allowing the Northern Marianas, the Marshall Islands, and Palau to pursue separate status options).
    - (ii) The States would not be autonomous unless they can protect their interests in court.
  - (b) The States also argue that sovereign immunity has been waived in 6 FSM Code section 702.
    - (i) Illegal tax.
    - (ii) Improper administration of FSM law.
    - (iii) Claim based on contract.
    - (iv) Wrongful act taken within scope of office.
    - (v) Injury resulting from deprivation of property.
- (3) Does this case present a nonjusticiable political question?
- (4) Do the Plaintiffs have standing to bring this case?