

#### IV. Foreign Affairs

##### Introduction

Sections 121-28 of the Compacts recognize the free associated states' rights to conduct foreign affairs including the right to enter into treaties and international agreements relating to the law of the sea and marine matters as well as the harvesting of living resources from the sea, seabed, and subsoil to the full extent recognized under international law. The foreign affairs capacity of the associated states is not, however, absolute.

Recognizing that the United States has full defense and security responsibilities under Title III, the governments of the free associated states each agreed to consult with the United States when conducting its foreign affairs. Section 123 of both Compacts stipulates that each of the governments of the free associated states "shall consult" with the United States in the conduct of their foreign affairs. The United States in that same section agreed to reciprocate when dealing with matters affecting each of the governments. Primary channels for the consultation will be the respective offices established by the free associated states in Washington, D.C., and in each of the capitals of the free associated states pursuant to Title 1, Article V of the Compacts.

In hearings held on July 26, 1984, the United States Subcommittee on Public Lands and National Parks posed a series of questions to the United States Department of State relating to the foreign policy implications of various Compact provisions.

Hearing on Foreign Policy Implications of the Proposed Compact of Free Association Before the Subcomm. on Public Lands and National Parks of House Interior and Insular Affairs Committee, 98th Cong., 2nd Sess. 98-56 (26 July 1984) (statement of Howard Hill, Legal Counsel and Department of Defense Advisor, Office of the Micronesian Status Negotiations). In response to a question as to the meaning of the word "consult" in Section 123, the State Department stated that:

The understanding of the parties to the negotiations...is that the freely associated states will have undertaken a continuing obligation of prior consultation with the United States Government with respect to their conduct of foreign affairs. We [U.S.] fully expect that the freely associated states will also seek and receive the advice of the United States on matters covered by the consultations.

As to the effect of the United States' advice on other than security and defense matters, the State Department noted that the "good faith" nature of Section 123 consultations was such that the freely associated states would consider procedural and substantive advice offered by the United States on general foreign affairs issues not involving security and defense matters. Further, the State Department admitted that because the free associated states are responsible for the conduct of foreign affairs, they will not be obliged to follow the United States' advice and concern outside the purview of its Title III obligations. In the event that the free associated states move ahead on some matters without

consulting the United States and the United States government is not satisfied with the foreign affairs process, the State Department pointed out that the United States may avail itself of the dispute resolution procedures under Title IV, Article II of the Compact.

Concerned about the negative impact that the State Department interpretations of Section 123 might have on the United States ocean policy, the United States Congress clarified its interpretation of Section 121(b)(1) in Title 1, Section 104(f) of the Joint Resolution to Approve the Compact of Free Association, reprinted above.

Officials from the free associated states have emphasized that the success of the foreign affairs process outlined in the Compact would depend largely on the "good faith" efforts of the parties concerned. They interpret the Section 123 consultation provision as simply a means of informing each party as to what the other is doing in the foreign affairs area. The potential for conflict in this area seems to be in the interpretation of whether what the other party is doing is inconsistent with the Compact. Recognizing that the United States has a reputation for acting in its own interest (regardless of the equity of the situation), the Micronesian negotiators to the Compact spelled out in the negotiation records their concerns and re-emphasized the need for both parties to act in good faith. The associated states' foreign affairs activities will be geared to promote economic development

in the area and as a matter of policy they intend to work with nations that are friendly with the United States. If the United States acts unreasonably, the associated states can resort to the dispute resolution procedures in Article IV.

Security and Defense

Section 311 of the Federated States and Marshall Island Compact and Section 312 of the Palau Compact grant to the United States full authority and responsibility on security and defense matters in and relating to the islands concerned. In the conduct of its security and defense responsibilities, the United States government, under Section 352 of both Compacts, is required to accord "due respect" to each of the governments of the associated states in order to assure the well-being of the peoples concerned. Further, the governments of each of the associated states, pursuant to Section 313(a) of the Marshall Islands and Federated States Compact and Section 313 of the Palau Compact are required to refrain from actions that the United States government determines, after consultation with the appropriate government, to be incompatible with its defense and security responsibilities.

In the July 26, 1984 hearings, the State Department explained that the "due respect" provision in Section 352 of the Compact was a commitment of the United States to take the self-governing status of the free associated states into account in carrying out its responsibilities under the Compact. Further, the State

Department stated that it was the "express intention of United States in the free association relationship to exercise its full powers in the defense and security area in the manner sensitive to and, as much as possible, complementary to the legitimate constitutional roles of the freely associated state governments" (page 93).

Of particular concern is the question of what happens if one of the associated state governments does not adhere to Section 313. The Compacts require, under Section 351(a), the establishment of joint committees empowered to consider disputes arising under Title III and its related agreements.

According to Section 351(b), membership of each of the joint committees will be comprised of senior officials of each of the two participating governments. The senior United States Military Commander of the Pacific area will be the United States senior official (Section 351(d)). Unresolved issues will be referred to the governments concerned for resolution. The aggrieved government will then be afforded an opportunity to raise its concerns to the United States Secretary of Defense personally regarding any unresolved issue that threatens its continued association with the United States government.

To clarify the understanding of Section 313, the United States Congress included Section 105(g)(2) in the Joint Resolution to Approve the Compact. This section states that Congress expects that the governments of the Marshall Islands and the Federated

States will not act in a manner incompatible with the authority and responsibility of the United States for security and defense matters in and related to the Marshall Islands and Federated States areas. Further, Congress expressed its intention that an act on the part of either the Marshall Islands government or the Federated States government that is incompatible with the United States Title III obligations will be viewed as a material breach of the Compact. Section 105(g)(2) also states that the United States reserves the right in the event of a material breach to take action including (but not limited to) suspension in whole or in part of the obligations of the United States to the breaching government. Whether Section 105(g)(2) of the Joint Resolution applies to the Palau Compact has not been confirmed, but it probably will.

Questions

1. The Compact appears to give the United States the authority to determine what is within the purview of the United States defense concerns. What remedies are available to the associated states if the United States stretches its definition of defense and security interests under the Compact? Is United States' concern about its international reputation sufficient to curb and deter the United States from overreaching?
2. Are there any limits on the authority of the United States to use marine areas for military maneuvers?
3. What would be examples of situations under which the United States could determine that a "material breach" had occurred under Section 105(g)(2) of the Joint Resolution to Approve the Compact? What would the consequences of such a determination be?