

Out-Competing China: A View of the COFAs from Washington

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Since March 2022, the considerable efforts of the United States to invigorate and reshape its approach to the Pacific Islands have not dislodged the Compacts of Free Association (COFA) agreements between the U.S. and Republic of Palau, the Federated States of Micronesia (FSM) and the Republic of the Marshall Islands (RMI). The COFAs remain the lynchpin in Pacific engagement for the U.S. It has been over one year since the announcement of the Biden Administration's Indo-Pacific Strategy of February 2022, and China continues to loom large over the multiple efforts of the U.S. in the Pacific, including renegotiation of the COFAs.¹

The initial framing document of the Indo-Pacific Strategy barely mentioned China by name. However, officials made no secret that the strategy was all about combating China as well as other motivations stemming from regional needs and priorities. One year into the Indo-Pacific Strategy, there has been a marked change in how the role of China is being framed. It is blatantly stated in the State Department Budget Justification released on March 9, 2023 that the ambitious international efforts of the administration are a mission to “out-compete China.”² It is in this context that the COFAs are being renegotiated. The purpose of this language is about sending a message to China, and also to decision-makers in America's deeply fractured political landscape. This language intends to unify Congress behind the Biden Administration's plans that will be critical to the passage of the COFAs.

Over the past year, the U.S. government has been building out and on the COFA arrangements that have commanded the lion's share of resources in U.S.-Pacific engagement for over four decades. The COFA agreements will continue to occupy this pre-eminent place. The State Department's Budget Justification, where all of these efforts will be concentrated—as opposed to being disbursed across multiple agencies—

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¹ See THE WHITE HOUSE, INDO-PACIFIC STRATEGY OF THE UNITED STATES (Feb. 2022), <https://www.whitehouse.gov/wp-content/uploads/2022/02/U.S.-Indo-Pacific-Strategy.pdf>.

² U.S. DEP'T OF STATE, FISCAL YEAR 2024 CONGRESSIONAL BUDGET JUSTIFICATION FOR THE DEPARTMENT OF STATE, FOREIGN OPERATIONS, AND RELATED PROGRAMS 178 (2023) [hereinafter BUDGET JUSTIFICATION], https://www.usaid.gov/sites/default/files/2023-03/FY%202024%20CBJ%20FINAL_3.9.23_0.pdf.

puts the COFAs in context within the overall strategy. It states that “we are significantly expanding the U.S. presence and programs in the Pacific Islands, including the renewal of our Compacts of Free Association and a generational commitment to provide economic assistance and federal programs and services to the Marshall Islands, Micronesia, and Palau.”³ The budget numbers and these introductory words preface this change. The document outlines “discretionary and mandatory resources” for an array of regional programs with the “extension and amendment” of the three compacts at the center of all these efforts.⁴

As of writing, the third iteration of the COFA agreements is entering the final stages of their labyrinthine negotiations that recommenced in March 2022. They were kick-started by the appointment of a Presidential envoy, Ambassador Joseph Yun, to lead these complex efforts.⁵ After a year, the U.S. and the three COFA nations signed memorandums of understanding (MOUs).⁶ According to Ambassador Yun, who spoke to me recently about the status of negotiations, these MOUs are agreements on the “topline numbers.”⁷ The top line number amounts to “\$6.5 billion in economic assistance and \$634 million for continued U.S. Postal Service (USPS) services to the FAS for over \$7.1 billion over the 20-year period.”⁸ Although little is simple about the COFAs, this figure means at least an additional \$125 million per annum once you dig into the details. However, Washington-based experts like Yun caution that it is very “hard to compare” the previous COFAs with what is being proposed now because of where the money goes, either in grant assistance or trust funds. Yun noted it was a “significant increase.” That significant increase came after the Freely Associated States united in September 2022 ahead of the U.S.-Pacific Islands Summit to push the financial commitments of the U.S. higher, capitalizing on the looming presence of China to their advantage in this instance.

Now that the MOUs are signed, Yun is anticipating the next phase of negotiations to be successfully completed over the next six months. The next step entails hammering out details of the fiscal procedure agreements

³ *Id.*

⁴ *Id.*

⁵ See Press Release, Antony J. Blinken, Secretary of State, U.S. Department of State, Announcing the Special Presidential Envoy for Compact Negotiations (Mar. 22, 2022), <https://www.state.gov/announcing-the-special-presidential-envoy-for-compact-negotiations/>.

⁶ *Palau Inks Compact deal, Marshall Islands to Follow*, RADIO NEW ZEALAND, (Jan. 13, 2023, 4:26 PM), <https://www.rnz.co.nz/international/pacific-news/482300/palau-inks-compact-deal-marshall-islands-to-follow>.

⁷ Interview with Joseph Yun, Special Presidential Envoy for Compact Negotiations, March 10, 2023.

⁸ BUDGET JUSTIFICATION, *supra* note 2, at 178-79.

and of how the trust fund agreements will be managed. Also, each of the three Freely Associated States must sign nine separate agreements with the agencies and departments party to the COFAs. In total, twenty-seven agreements still need to be settled on and signed. Yun is anticipating this phase will be completed by the end of the fiscal year and is not expecting this phase of the negotiations to produce any surprises. It is in the final quarter of 2023 that things might get interesting. This is when the COFAs will head to Congress, where they need to be passed quickly before the RMI and FSM agreements expire in 2024.

Given the composition and culture of the 118th Congress, there is trepidation about how the COFAs will fare. There is the acrimonious issue of the debt ceiling, and now bank failures create an even more tenuous fiscal setting. Additionally, there are also concerns that language about climate action will meet resistance. Therefore, it is reasonable to expect that the COFAs will be worded in ways not to unsettle Republicans. The oversight provisions will be another concern. The COFAs have repeatedly cited the onerous burdens of meeting these requirements, so it will be interesting to see how the competing concerns will be balanced in the final documents. When asked about potential challenges, Ambassador Yun noted that the budget request for the COFAs is small in relation to the proposed \$6.9 trillion total federal budget. He also stated the COFAs encompass many bipartisan issues, from defense to constituent support, that will override the divisions or concerns about funding levels or any adjustments to oversight.

I spoke to Ambassador Yun just after the release of FSM President David Panuelo's explosive letter of March 7, 2023, detailing China's domestic interference and his intention to explore establishing diplomatic relations with Taiwan.⁹ All that President Panuelo outlined was about China's attempts to erode FSM's ties to the U.S. and, most alarmingly, this specter of conflict, will underscore the importance to Congress of dealing quickly with the COFA legislation. It goes without saying that Washington would welcome the FSM switching its allegiance to Taiwan. The question remains whether President Panuelo can effect this change with the time he has left in his term. It also goes without saying that Washington will closely watch Micronesia's political machinations after Panuelo's defeat in the March 7 elections. It is interesting to note that negotiating an upscaled COFA deal did not provide President Panuelo with the political capital that he needed to retain office. Thus, it remains to be seen whether China will be a wedge in this COFA relationship between the FSM and the U.S., or the means to bring the nations closer together. One way Washington could tip the scale in their favor would be for President Biden to accept the invitation extended by Micronesian President's Summit in February 2023 to visit.

⁹ Cleo Paskal, *Micronesia's President Writes Bombshell Letter on China's 'Political Warfare'*, THE DIPLOMAT (Mar. 10, 2023), <https://thediplomat.com/2023/03/micronesias-president-writes-bombshell-letter-on-chinas-political-warfare/>.

What are the global challenges seen from Washington that intersect with the COFAs? The answer depends on political affiliations. For Democrats, climate and sea level rise are the leading concerns; as is the case for all Pacific nations, especially the Freely Associated States. For the GOP, China is a concern that also preoccupies Democrats. But within the bipartisan concern about China, the GOP sees this issue predominantly through military and defense lenses. The GOP first sees island chains and strategic considerations. The COFAs factor heavily in this worldview as the agreements are a bulwark against creating a constellation of Chinese air bases and ports throughout the region, as happened during World War II. Democrats are also acutely attuned to these concerns. They also emphasize the health and human development, and climate security aspects of the deals. There is genuine contrition and remorse from many in Washington about the U.S. nuclear legacy in the RMI, and Ambassador Yun said that the COFA with RMI will address this in ways “consistent” with Section 177 of the first COFA agreement.¹⁰ Democrats also articulate the U.S. struggle against China, as well as Russia, as one against democracy and authoritarian regimes, and the COFAs are a means to maintain a liberal rules-based order in the Indo-Pacific. The fates of Ukraine and Taiwan are critical to all of these layered and intersecting concerns, and President Xi’s late March 2023 visit to Moscow brings these two fronts together.¹¹ Russian activity in the Pacific Ocean was a catalyst for the advent of the COFAs in the mid-1980s.¹² Now forty years later, Russia’s apparent cooperation with China casts a looming shadow over the current COFA negotiations, as it does for virtually every other component of the global security landscape.

¹⁰ See U.S. DEP’T OF INTERIOR, AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES AND THE GOVERNMENT OF THE MARSHALL ISLANDS FOR THE IMPLEMENTATION OF SECTION 177 OF THE COMPACT OF FREE ASSOCIATION, <https://www.doi.gov/sites/doi.gov/files/section-177-agreement.pdf>.

¹¹ See Nectar Gan & Anna Chernova, *China’s Xi to Meet Putin Next Week in First Visit to Russia Since Invasion of Ukraine*, CNN (Mar. 20, 2023, 4:21 AM), <https://www.cnn.com/2023/03/17/china/china-xi-jinping-visits-russia-intl-hnk/index.html>.

¹² See Patricia O’Brien, *U.S.-Japan Cooperation in the Pacific: 75 Years After the End of the Pacific War*, SASAKAWA PEACE FOUND. USA, <https://spfusa.org/publications/u-s-japan-cooperation-in-the-pacific75-years-after-the-end-of-the-pacific-war/>.