

U.S. Claims to Central Pacific Ocean Flout International Law

There is no legal basis for the United States to control the large oceanic area that includes the compact states.

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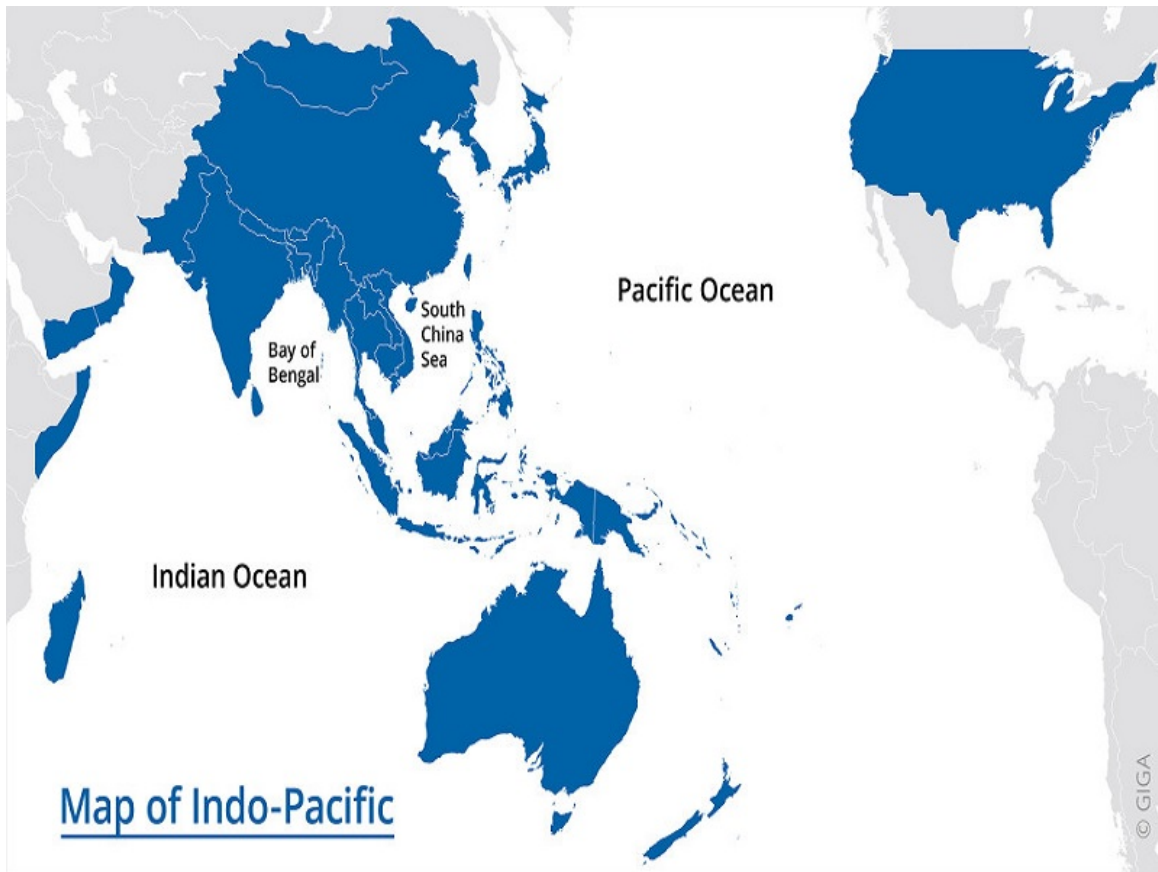
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In defiance of international norms and rules, U.S. officials are laying claim to the large oceanic area in the central Pacific Ocean that is home to the compact states.

Now that they are [renewing](#) the economic provisions of the compacts of free association with Palau, the Marshall Islands, and the Federated States of Micronesia, U.S. officials are insisting that the compacts provide the United States with exclusive control over an area of the central Pacific Ocean that is comparable in size to the United States.

“We control essentially the northern half of the Pacific between Hawaii and Philippines,” U.S. special envoy Joseph Yun [told](#) Congress in July.

For decades, the United States has overseen [compacts of free association](#) with Palau, the Marshall Islands, and the Federated States of Micronesia. Under the compacts, the United States provides the three countries with economic assistance while it maintains powerful military controls over the islands and their waters.



One of these military controls, “the defense veto,” enables the United States to prevent the compact states from forging international agreements that could impede U.S. military priorities. Consequently, the compact states have never joined the [Treaty of Rarotonga](#), which established a nuclear free zone in the region.

Another U.S. military control is “the right of strategic denial” by which U.S. officials assert that they can prevent other countries from accessing the compact states’ lands, waters, and airspace.

“The compacts do give us full defense authority and responsibility in those countries and provide our ability to strategically deny third country military access,” U.S. diplomat Jane Bocklage [told](#) Congress earlier this year.

Although the [compacts](#) include language that permits the United States to foreclose access to the islands by third-party military forces, U.S. officials have broadly interpreted this language to mean that they can exclude third parties from the compact states’ exclusive economic zones (EEZs), which extend up to 200 miles around each island’s coastlines.

At a congressional hearing in July, Senator John Barrasso (R-WY) asserted that strategic denial authority “allows us to deny access to any potential adversary in an area of the Pacific comparable in size to the continental United States.” An associate presented a [map](#) that portrayed the EEZs as one contiguous area under U.S. control. “It’s nearly as large as the continental United States,” Barrasso remarked.

Defense Department official Siddharth Mohandas agreed with the senator’s interpretation. He claimed that the United States maintains unfettered and exclusive access to the area.

“We have the ability to deny foreign militaries access and the ability to operate in the exclusive economic zones of the Freely Associated States,” Mohandas said, referring to the compact states.

This interpretation of strategic denial is inconsistent with international law. Under the [UN Convention on the Law of the Sea](#), all countries have the rights of navigation and overflight in the exclusive economic zones of other countries, as stipulated by Articles 58 and 87.

Most countries, including the compact states, are parties to the convention. The United States has never ratified the convention, but high-level U.S. officials have [expressed](#) their support for it.

“Although not yet a party to the treaty, the U.S. nevertheless observes the UN LOSC as reflective of customary international law and practice,” the National Oceanic and Atmospheric Administration [explains](#), referring to the Convention on the Law of the Sea.

When U.S. officials say that they have a right to exclude third-party actors from the compact states’ exclusive economic zones, they are making claims that are inconsistent with the UN Convention. There is no legal basis for the United States to prevent ships from other countries from peacefully traversing the compact states’ exclusive economic zones.

More than two decades ago, the U.S. General Accounting Office (GAO) acknowledged in a [major report](#) that strategic denial does not extend to the compact states’ exclusive economic zones. According to the GAO report, strategic denial is limited to the 12-mile territorial waters that surround each island. Even within these smaller zones, the GAO noted, military vessels from other countries maintain the right of “innocent passage.”

“Statements by policymakers that indicate the United States has a right to deny military access to the islands and a vast area of the Pacific Ocean—a widely cited U.S. interest—overstate the breadth of this right, which only covers the individual islands and their 12-mile territorial waters,” the GAO explained.

A [map](#) included in the GAO report shows that strategic denial applies to small isolated areas rather than the much larger expanse of the Pacific Ocean that is often claimed by U.S. officials. A key implication of the GAO’s map is that the United States cannot legally exclude third parties from the vast oceanic area that surrounds the compact states.

In fact, U.S. officials have long taken the position that exclusive economic zones must remain open to navigation. Across the world, they have promoted “[freedom of navigation](#),” which they have presented as the freedom of ships to sail the world’s oceans and waterways wherever the law allows, including in the exclusive economic zones of other countries.

When U.S. officials have sent warships through some of the world’s most contested waterways, such as the [South and East China Seas](#), they have said that they are defending “freedom of navigation.” The presence of U.S. military forces has often created tensions, possibly even violating Article 88 of the U.N. Convention, which requires ships to have peaceful purposes, but U.S. officials have always insisted that these operations are consistent with international law.

“We’re committed to ensuring that every country can fly, sail, and operate wherever international law allows,” Secretary of Defense Lloyd Austin [said](#) in a speech in June. “Every

country, large and small, must remain free to conduct lawful maritime activities.”

The U.S. mass media has often sided with the U.S. government’s position on freedom of navigation, especially as it concerns U.S. military operations in the exclusive economic zones of rival countries. In a July 2023 [report](#) about North Korean criticisms of U.S. military activities in North Korea’s exclusive economic zone, *The New York Times* indicated that North Korea has no legal basis for excluding U.S. military forces from the area.

“A country can claim the right to exploit marine resources in its so-called exclusive economic zone, which extends 200 nautical miles from its 12 nautical-mile territorial waters,” *The New York Times* reported. “But it does not hold sovereignty over the zone’s surface and the airspace above it.”

When countries such as China and North Korea claim that they have the right to regulate foreign military activities in their exclusive economic zones, U.S. officials always disagree, insisting that these areas must remain open to freedom of navigation, particularly for U.S. warships.

Regarding coastal states such as China and North Korea, the U.S. position is that they “do not have the right to regulate foreign military activities in their EEZs,” according to a [report](#) by the Congressional Research Service. “The United States will continue to operate its military ships in the EEZs of other countries.”

By claiming to have a right of strategic denial over the compact states’ exclusive economic zones, however, U.S. officials are taking a position that is inconsistent with international law and their own practices in many parts of the world, including the Indo-Pacific. If they were to use force to prevent a third party from accessing the vast expanse of waters around the compact states, then they would be violating the law and the very principles that they apply to other countries.

In short, U.S. officials have no legal basis for their claims to control the vast oceanic area that is home to the compact states, just as the GAO confirmed in its landmark report more than two decades ago.

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