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DELOSPAN

May 15, 1974

MEMORANDUM

TO: Members of the LOS Executive Group

FROM: Howard W. Pollock, Chairman
Law of the Sea Working Group
on Micronesia

SUBJECT: Instructions for Bilateral Consultations
with Micronesia, May 21-23, 1974

DEPARTMENT OF STATE A/ODC/MR

REVIEWED BY B.H. BAAS DATE 8/19/86

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TS AUTH. SJ BARRE REASON(S) CDC MEMO 5/13/83

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I. The Setting of the Consultations

The next round of US-Micronesian LOS consultations is now scheduled for May 21-23 in Saipan. Howard Pollock, Chairman of the LOS Working Group on Micronesia, Bernard Oxman (L/OES-D/LOS), Myron Nordquist (D/LOS), Morris Busby (S/FW-COA) and Cmdr. Paul Ake (DOD/JCS) will represent the U.S. side.

There are several purposes for the May visit. One is to meet a long overdue commitment to respond to substantive Micronesian LOS concerns, which seem to center on two areas -- the archipelago and tuna. We are committed to seek accommodation of our LOS interests prior to the Caracas session and should be prepared to engage in serious discussions of substance at the upcoming meeting. At the same time we should recognize the possibility that such an accommodation will not prove possible and therefore we should also seek to avoid an impasse which might preclude agreement between our two sides later in the negotiations.

In view of the high probability of failing to reach an accommodation with the Micronesian side in May, we should be prepared to finally resolve the issue of Micronesian representation on the U.S. delegation to the LOS Conference and specific means through which we would permit presentation of Micronesian views to the Conference. The most recent exchange of correspondence with the Micronesian side on this matter indicates a significant difference between Micronesian expectations and our position on representation.

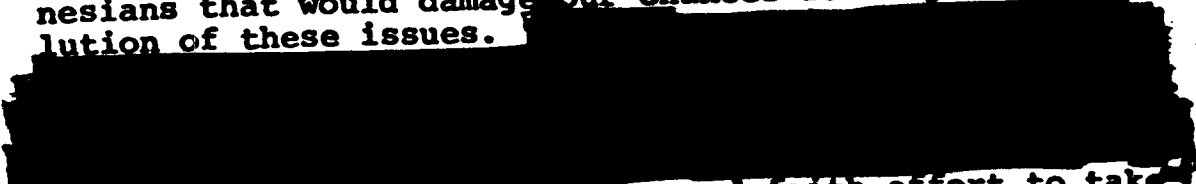
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Returning to the substantive questions, the archipelago and tuna issues are two of the most delicate issues at the LOS Conference and it is clear that the U.S. must seek any possible accommodation on these questions with the principal countries concerned with those subjects within the context of the overall negotiations. Consequently, we cannot make concessions to the Micronesians that would damage our chances for a global resolution of these issues.



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It is important that we make a good faith effort to take their views into account to demonstrate our ability to represent their foreign affairs interests.

II. The Archipelago Issue

Disagreement between the U.S. and Micronesian LOS positions has centered upon the archipelago concept. The Congress of Micronesia has adopted an extreme archipelago claim based upon connecting the outer-most islands of the entire Trust Territory with straight baselines. Some of these lines are hundreds of miles in length and their position is clearly unacceptable to the U.S.

The U.S. has publicly opposed any archipelago concept, but we would be willing to accept a reasonably defined archipelago concept if necessary to conclude a satisfactory and comprehensive LOS Treaty. In fact, we are now engaged in sensitive and potentially very important consultations on the issues with Indonesia which has been the leading archipelago advocate in the negotiations.

The definitional criteria for archipelagos we discussed with Indonesia included application of archipelagic construction lines of up to 80 miles in length and a water-to-land ratio of no greater than 5:1 (counting lagoons, historic bays, estuaries, etc., as land area for this computation). We also proposed a new regime of archipelagic passage in the normal mode through and over the archipelago under defined conditions, while stressing that support for the U.S. straits position was integral to an archipelago accommodation. Under the criteria we proposed, Indonesia, the Philippines and Fiji would all qualify as archipelagos. The Trust Territory could not.

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The most effective direct pressure against the extreme archipelago claim put forward by Micronesia may in fact come from advocates of the archipelago concept themselves -- Indonesia, Philippines, and Fiji. This pressure, however, would emerge only during the Conference itself. For our part, during the May consultations, we should reiterate our firm position that the archipelago concept adopted by the Congress of Micronesia is completely unreasonable and unacceptable.

The U.S. may initiate discussion of what would constitute a reasonably defined archipelago concept. We should describe in general terms the type of archipelago concept which might emerge at the LOS Conference, without, however, relating this description in any way to our talks with Indonesia.

Further, if the Micronesians raise the idea of the "cluster" concept -- delineation of several archipelagos meeting reasonable criteria within the Trust Territory, but not including the territory as a whole -- we should agree to consider the idea without commitment. FYI The archipelago concept we envisage at present is limited to independent island nations. Thus the Trust Territory would not qualify even on a "cluster" basis. At some point later in the negotiations we might consider modifying this limitation -- if for instance a successful accommodation with Indonesia, the Philippines and Fiji were worked out and this modification would not affect it. However, we should not discuss this limitation during the May consultations END FYI.

Our general approach should be to seek an accommodation not of Micronesia's archipelago claim but of the interest which seems to be behind that claim -- specifically, jurisdiction over fisheries in the waters adjacent to the TTPI's islands and within its lagoons (to the extent not covered under existing international law). In the May consultations, we should explore how far the Micronesian side is prepared to move toward renunciation of the archipelago claim in exchange for satisfaction of its desire for jurisdiction over fisheries.

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III. Fisheries

Our approach in the May consultations, therefore, must concentrate upon fisheries jurisdiction. The points listed below -- incorporating this approach -- should be presented as part of our attempt to achieve a substantive accommodation that will permit Micronesian representatives and the U.S. to support the same position at the Conference. Should the Micronesians reject such an accommodation, and insist on making a statement that we cannot support, these points would entail no commitment on our part.

a. We will assure the Micronesians that coastal species on banks, and the seabed resources of those banks, in the vicinity (i.e., 200 miles) of Micronesian Islands will be subject to coastal state jurisdiction as will all seabed resources and coastal stocks within the Islands (since these areas all lie within 200 miles of one of more of the Trust Territory islands).

b. We will take such steps as are necessary to defeat proposals that would limit the resource jurisdiction attributable to Micronesian Islands as compared with comparable land areas.

c. Our position on the limitation of areas of economic jurisdiction with neighboring states will reflect Micronesian interest.

d. We will provide the Micronesians with available information regarding the spawning and migratory characteristics of tuna in the vicinity of Micronesia.

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g. We will agree to explore preferential trade status for Micronesia consistent with the future political status agreement. We will seek legislation to lift the 35 per cent ad valorem tax on the importation of canned tuna from Micronesia provided that the processing company is owned by U.S. or Micronesian citizens (i.e., no other foreign investment.) This step is designed to stimulate the American tuna industry to develop a Micronesian-based tuna fishery. We will solicit other suggestions in this regard from the Micronesian side.

IV. The Representation Issue

The U.S. has indicated its willingness to accredit a Micronesian member on the U.S. delegation to the LOS Conference. There is however disagreement over the terms of this representation, as indicated in the recent exchange of correspondence (attached) with Andon Amaraich, Chairman of the Congress of Micronesia's Joint Committee on Law of the Sea.

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The U.S. position on the representation issue is set forth in some detail in the April 24 telegraphic letter to Amaraich. We will attempt to resolve the representation question prior to the May 21-23 consultations. The telegraphic letter will remain the basis of our position if the question remains unresolved at that time. Several additional issues may also need to be addressed at that time:

a. **Separate Observer Status:** The Joint Committee on the Law of the Sea of the Congress of Micronesia, in forwarding its LOS Report to the parent body, raised the possibility of seeking separate observer status at the LOS Conference. It is not clear whether the Micronesian side will press for this result in view of our offer to accredit a Micronesian representative on the U.S. delegation, but such a move cannot be excluded.

Separate Observer status for the Trust Territory at the LOS Conference is unacceptable to us primarily due to U.S. obligations under the Trusteeship Agreement.

[REDACTED]

Therefore, we should seek to discourage any Micronesian effort to gain such observer status and offer no assistance to its realization.

b. **Number of Micronesians Accredited:** The Micronesian side may seek accreditation of more than one representative on the U.S. delegation. We would strongly prefer to limit such accreditation to one. Those responsible for the status negotiations also strongly prefer to limit Micronesian participation to Amaraich.

FYI [REDACTED]

[REDACTED] It would be highly embarrassing if a representative from the Mariana's were advocating a position at the LOS Conference that was unacceptable to the U.S. End FYI. Moreover, from the LOS point of view, there

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is a general need to keep the size of the delegation within manageable limits. In view of the large number of diverse interests seeking representation on the delegation, it is reasonable to limit the Trust Territory to one accredited delegation member.

c. Presentation of Micronesian Views: The specific purpose of Micronesian representation is for making a direct presentation of the views of the Congress of Micronesia. We envisage submission of a paper or delivery of a speech to the Conference, or both. The Micronesian representative will probably wish to address the Conference in person. Final decision of the timing of such a statement would rest with the Chairman of the U.S. delegation. (Conference participants who were not members of the Seabed Committee will likely deliver general statements of their LOS position in the early stage of the Caracas session. This would be a logical time for the direct presentation of the Micronesian views as well).

However, it should be made clear to the Micronesians that we would explicitly disassociate ourselves from their statement of any views in conflict with our substantive positions. We would also stress our responsibilities as Trusteeship power as the basis for permitting Micronesian expression of views opposed to those held by the U.S. delegation.

d. Financial Arrangements: We are prepared to pay the expenses of the Micronesian member actually accredited on the U.S. delegation. This would include round-trip airfare to Caracas and standard per diem for living expenses there. We should not indicate our willingness to absorb these costs unless it is clear that the Congress of Micronesia expects us to do so. We would not provide any expenses, however, for Micronesians not accredited on the delegation or staff personnel accompanying the group from the Trust Territory.

In the event that we use our authority to pay for the expenses to the accredited Micronesian member, these costs would be borne by the Office of International Conferences, Department of State (as is the case with Trust Territory representatives to the UN Trusteeship Council).

While the U.S. side will not raise the issue, the Micronesians may again ask about additional fisheries enforcement assistance from the U.S. The Chairman of the U.S. team will avoid making any commitments in this regard. However, he may state that it is his understanding that this question will receive closer attention once there is more specific agreement between the two sides. Similarly, if the Micronesians raise the issue of sovereignty over atoll waters, the Chairman of the U.S. team may state that this matter will be presented to the Executive Group of the LOS Task Force in Washington for consideration.

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