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AGENDA FOR DISCUSSION

[DATE: 5/21/74]

I. REPRESENTATION OF MICRONESIA AT LAW OF THE SEA CONFERENCE IN CARACAS, VENEZUELA, JUNE 20 - AUGUST 29, 1974.

A. Capacity of Micronesian Representatives at Conference to Ensure Effective Presentation of Micronesian Views to the Conference

1. Advisers to U.S. Delegation; discharge of U.S. obligations as Trustee

2. Attendance at Working Sessions (Subcommittees, Working Groups, Task Forces, etc.) of vital interest to Micronesian interests, to ensure effective representation of Micronesian views

3. Attendance at other sessions; time schedule of Micronesian legislators and formal presentation to Conference

4. Communication of Micronesian views to all interested delegations, distribution of Micronesian papers

5. Relations with Conference Secretariat

B. Relations with the United States Delegation

1. Consultations with U.S. Delegation chairman and members, and negotiations of Micronesia/U.S. positions on issues of vital Concern to Micronesia (e.g. Resource Rights, Economic Zones, Territorial Seas, Archipelago Concept of Internal Waters, Fisheries Control)

2. Cooperation on substantive positions where U.S. and Micronesia may reach agreement. Representation on behalf of Micronesia by U.S. Delegation of any agreed positions (e.g., possibly, territorial sea, compulsory settlement of disputes, investment protection, navigation and transit rights, pollution control, research, coastal state duties regarding resources in the Economic Zone, international regime for seabed).

3. Accommodations and Logistics

a. Housing--access toU.S. facilities
b. Secretarial support
c. Other support & office space

II. PRELIMINARY SUBSTANTIVE POSITIONS FOR CONFERENCE -- SUBJECT TO EVOLUTION IN LIGHT OF CONFERENCE SITUATION AND VIEWS OF OTHER DELEGATIONS

A. Areas of Current Disagreement

1. The Micronesian archipelago as an Ocean State: Base lines and Inland Waters.

2. Economic Zone of 200 miles

   a. Living resources
   b. All other resources

3. Classification of tuna caught in Micronesian waters

   a. Possible modification of U.S. "Species" approach to safeguard Micronesian resource interests; if not possible, then;
   b. Micronesian position on "Species" approach

B. Areas of Possible or Potential Agreement

1. Territorial sea

2. Compulsory arbitration and settlement of disputes

3. Conservation of theliving resources - methods and authorities

4. Investment protection

5. Navigation and transit rights

6. Coastal states duties regarding resources in the Economic Zone

7. International regime in the seabed

8. Maximum utilization of resource

9. Research

10. Pollution control

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Aide-Memoire May 21, 1974

From the Micronesian Representation to the United Nations Law of the Sea Conference of 1974 (the Joint Committee on the Law of the Sea of the Congress of Micronesia),

to the U.S. Delegation to the Conference:

I. INTRODUCTION

The representation of Micronesian interests by the U.S. in the Law of the Sea Conference will be a test case for the capacity and will of the U.S. to represent the vital interests of Micronesia and to respect these interests and its own obligations to Micronesia in the conduct of U.S. foreign policy. Both the future political status negotiations and the general U.S./Micronesian relationship are bound to be profoundly affected by the results of this test. These considerations, and the not wholly satisfactory course of consultations preceding the preparatory talks of May 21, 1974 in Saipan make it desirable to present to the U.S. Delegation this aide-memoire, setting out the basic Micronesian assumptions, premises, and views.

A frank exchange is essential to achieving constructive and mutually useful cooperation both in our preparatory talks, and in our continuing relationship in the context of the Conference and its possible future continuations.

The Micronesian Representation fully expects that such cooperation will be achieved.

II. BASIC PREMISES AS TO RELATIONSHIPS OF THE U.S. AND MICRONESIA

A. The U.S. is a Trustee of Micronesian Interests, with all the Moral and Legal Consequences of that Status.

The U.S. is a member of the UN, with responsibility for the administration of Micronesia. Under the UN Charter, Chapter XI, therefore, the U.S.

> "recognize[s] the principle that the interests of the inhabitants of these territories are paramount, and accept[s] as a sacred trust the obligation to promote to the utmost. . .the well-being of the inhabitants of these territories, and to this end:
>
> a. to ensure, with due respect to the culture of the peoples concerned, their political, economic, social, and educational advancement, their just treatment, and their protection against abuses; . . .
>
> d. . . .to cooperate with one another, and, when and where appropriate, with specialized international bodies with a view to the practical achievement of the . . .purposes set forth in this Article; . . ." (Emphasis supplied)

These are Charter obligations of the U.S., binding on it as the "supreme Law of the Land" under the U.S. Constitution.

In the Trusteeship Agreement itself, which is an international obligation of the U.S. entitled to the same strength as a treaty obligation, the U.S. in addition to reaffirming its Charter obligations, is committed under Article 6 to

> ". . .give due recognition to the customs of the inhabitants in providing a system of law for the territory. . .
>
> 2. promote the economic advancement and self-sufficiency of the inhabitants, and to this end shall regulate the use of natural resources; encourage the development of fisheries, agriculture, and industries; protect the inhabitants against the loss of their lands and resources; and improve the means of transportation and communication;" (Emphasis supplied)

These are obligations of the U.S. binding on it as the "supreme Law

of the Land."

Further evidence of the special care which the U.S. is committed to exercise in dealing with the interests of Micronesia is contained in Articles 8(4) and 14 of the Trusteeship Agreement, restricting and qualifying the treaties that may be negotiated and the international conventions that may be applied in the Trust Territory so as to give effect to the obligations of the U.S. as Trustee, and to secure for the inhabitants of the territories in effect a "most favored" treatment by foreign nations.

The fundamental point is that the U.S. has obligations as a trustee toward the inhabitants of Micronesia and toward Micronesia that derive from its own fundamental law, and from its own treaty obligations.

Whatever may be the fine points of distinction between a trustee's obligations towards his ward or cestui que trust in private U.S. law, and the obligations of the U.S. as a trustee of Micronesian interests under the above sources of legal obligations, there can be no doubt that the fundamental essence of fiduciary obligation, the fundamental duties of trusteeship, apply to the U.S. in its dealings with Micronesian interests in the Law of the Sea Conference. The U.S. is under the highest duty of care and responsibility known to the law of man and nations with regard to Micronesian interests. It follows that the U.S. would be responsible for damage to these interests occasioned, sanctioned, or approved by the U.S.

The courts of the Trust Territory have recognized the special duties of the United States as a trustee. While an international trusteeship system is not in all respects analagous to a legal trust,

the administering authority of a trust territory is expected to act to some extent like a trustee. See Ngodrii v. Trust Territory, 2 T.T.R. 142 (1960). No doubt U.S. courts would take the same view.

It is desirable to call to the attention of the United States Delegation the above considerations. They bear on Micronesian expectations of United States' modifications in its own positions to take into account Micronesian interests as solemnly declared by the Congress of Micronesia. The Congress of Micronesia has articulated these interests in the "Preliminary Micronesian Position on the Law of the Sea," and has authorized the Joint Committee on the Law of the Sea to modify them in the light of events and circumstances during the progress of the Conference in Caracas.

In this connection, the Micronesian Representation recalls with regret that the Chairman of the Joint Committee on the Law of the Sea had occasion to report to the UN Trusteeship Council at its last session not only that the position of the United States on the Law of the Sea did not protect Micronesian resources, but also that "it became evident to the Committee during the course of its meetings [with the United States Interagency Task Force on the Law of the Sea] that protection of Micronesia was not even considered by the U.S. Government and would not have been considered had the Committee not met with the United States. This raised serious doubts in our minds concerning the observance by the United States of its trusteeship responsibility to protect Micronesian interests in the field of foreign affairs."

Fails to mention US response

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The Chairman of the Joint Committee closed his presentation with the hope "that this Council will utilize its influence with the Administering Authority to assure that Micronesia is allowed to present its position at the Conference so that we may protect our present rights and our economic future from the exploitation of other nations."

The United States Special Representative at that session undertook to the UN Trusteeship Council that Micronesian views would be presented to the Conference. The UN Trusteeship Council in its 1973 report to the Security Council taking note of Senator Amaraich's presentation and the statements of the U.S. representation, recommended as follows:

> "Because of the importance to Micronesia of marine resources, it is important that those resources in areas of Micronesian sovereignty be protected, and the Council wishes to emphasize the responsibility which the Administering Authority has for this protection.
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> "The Council notes the views expressed by Senator Amaraich, Special Adviser, about the law of the sea and the need for a Micronesian position on that subject to be presented to the forthcoming United Nations Conference, particularly if it is different from that of the United States. The Council also notes the position stated by the representative of the United States that, if Micronesian views on this matter could not be harmonized with those of the United States, ways would be found to ensure that Micronesian views were properly presented to the Conference."

Since the early stages of the preparations by the United States for the Conference on the Law of the Sea of which Senator Amaraich spoke in the statement above quoted, cooperation between the United States and the Joint Committee has improved. The Micronesian Representation hopes for continuing improvement in the methods of consultation and cooperation to which the Joint Committee believes it is entitled and

to which the United States is committed morally and legally. The Joint Committee has every expectation that the United States will take the same view and will insure effective presentation of Micronesian views to the world community.

In this connection the Joint Committee is bound to state that it does not consider that the act of the U.S. delegation in forwarding the "Preliminary Micronesian Position" to 11 countries only (and these 11 not including the South American and African states whose position with respect to several issues in the Law of the Sea Conference is parallel to that of Micronesia) constitutes adequate communication of Micronesia's position to the participants in the Law of the Sea Conference.

The Joint Committee would expect that the current Micronesian position and future positions will be made known to all participants in the Conference.

B. Micronesian Interests and Views Must for Practical Purposes Be Treated as Those of a Sovereign Member of the World Community

It is inherent in the status of a UN trusteeship territory that such a status is a temporary condition, leading sooner or later to complete independence and international sovereignty. In the last 30 years such transition from trusteeship status to full independence has been sooner, rather than later. Of the 11 UN trusteeships in existence shortly after World War II, only two remain in that status today, one of them Micronesia. The others are for the most part sovereign members of the world community and represented in their own right at the Law of the Sea Conference. Other former dependencies, such as the Philippines,

are also among the archepelagic sovereign states represented at the Conference.

All of the legal foundations of the United States' status as Administering Authority of Micronesia; all of the discussions and draft agreements between the United States and the representatives of Micronesia with regard to the future political status of Micronesia; and all of the political realities, including the expectations of the Micronesian people, are premised upon the clear right of Micronesia to become fully sovereign if that is the wish of its people when the preconditions of that status have in the eyes of the United Nations been fulfilled.

Judging by those trusteeship areas that have in the last 30 years become independent, there is every prospect that the preconditions that would be required by the United Nations have been fulfilled, or will soon be fulfilled, by Micronesia. The latest form of draft agreement as to the future political status of Micronesia expressly recognizes the unilateral right of the Micronesian people to declare full sovereignty and independence, and even provides detailed provisions for the method thereof. The rights and issues under consideration by the Law of the Sea Conference are not for today, or for five or ten years, but for generations to come. They will govern resource rights into the future long beyond any period of time when Micronesia might become fully sovereign.

It follows therefore that for all practical and political purposes the Congress of Micronesia, its representatives, and the trustee of Micronesia's future, are bound to consider Micronesian interests in

their natural resources, the future possibilities for the exploitation of these resources, and the potential future impact upon the Micronesia of the rules of international laws that may be adopted at the Law of the Sea Conference, from the point of view of a sovereign Micronesian area, and in the light of Micronesia's own cultural, political, and economic traditions and circumstances, and from no other. These considerations, which relate to the future of Micronesia measured in hundreds of years, far outweigh any current and entirely temporary considerations of the legal status of Micronesia as a trusteeship. In the opinion of the Joint Committee, the above considerations should weigh as heavily with the United States Delegation as they do with the representatives of the Congress of Micronesia. The sacred trust of Micronesia's representatives is the preservation of Micronesia's present and future resources. That obligation should be matched by the "sacred trust" to preserve those same resources solemnly and specifically accepted by the United States under the Charter of the United Nations.

The Joint Committee feels it appropriate to make these observations to the United States Delegation so as to explain the approach the Joint Committee is bound to take under its mandate from the Congress of Micronesia towards issues of the preservation and protection of resources in the areas of "Micronesian sovereignty," in the words of the UN Trusteeship Council.

The Congress of Micronesia is the self-governing body of Micronesia. On the attainment of total independence it would be the supreme legislative body of the sovereign area of Micronesia. It is freely elected. Its voice is that of the Micronesian people. It is the expression of

those institutions and programs of self-government which the United States is pledged to further and support, and has furthered and supported, in Micronesia. The Congress has declared the Micronesian position with respect to its character as an ocean state, as an archipelago claiming sovereignty over the internal waters as defined by the Congress of Micronesia. The Congress has declared the claims of Micronesia vis a vis the international community on issues before the Law of the Sea Conference. The 200-mile exclusive resource control zone extending outward from the territorial sea of 12 miles seaward from the base lines of the archipelago is the Micronesian position. That position is substantially shared by a number of members of the international community, some of whom have for many years enforced that position, against the United States as well as other nations, by fines and other means of enforcement. Such nations are all far less dependent upon the resources of the sea than is Micronesia. Indeed, Micronesia of all the members of the international community is the most dependent upon the resources of the sea and could have been expected to take positions making substantially greater claims upon the resources of the sea than does any other nation. The Congress of Micronesia has chosen not to do so.

The U.S. does not share some of these positions. But as between the Congress of Micronesia, as the embodiment of Micronesian self-government, and any other source of articulation of what the Micronesian position on the law of the sea is or should be, it must be the case that the Congress of Micronesia is the more valid, the more important, and the more appropriate source. It follows from what has been said about the

duty of the United States as a trustee of the future of Micronesian interests and resources, and from the appropriate source of articulation of what those interests are, that the United States has an obligation as trustee to sponsor and advance to its best ability the positions on the law of the sea -- with respect to Micronesia -- as articulated by the Congress of Micronesia.

The Joint Committee proceeds from the premise therefore that the United States will exert itself, in the words of the UN Charter, "to the utmost," to advance the Micronesian position as it affects Micronesia. The method of giving practical expression to such efforts, in this case through having the Micronesian Representation communicate with the Law of the Sea Conference in behalf of the Micronesian position, may be the only available course for the United States to fulfill its sacred trust and its high obligations as a trustee to Micronesia, while having different interests and views of its own. It follows that that course must be given the fullest and most unstinting support by the United States, if it is to fulfill its own trust obligations.

III. THE MEANS WHEREBY THE UNITED STATES CAN MEET ITS OBLIGATIONS TO MICRONESIA IN THE LAW OF THE SEA CONFERENCE

If the U.S. has the obligations discussed above to advance the Micronesian interests and positions as declared by the Congress of Micronesia, it is confronted with a conflict of its interests and its obligations. From the Micronesian perspective, the preferred solution would be for the U.S. to modify its positions on the law of the sea so as to take into account the disastrous effects upon Micronesian interests of the current U.S. positions. It may be possible to devise suitable exceptions and modifications to the U.S. positions. The U.S. may find it possible to put forward such modified positions so as to meet Micronesian objectives and serve Micronesian interests. The Micronesian Representation will be glad to consider such modified U.S. positions with the U.S. Delegation both before and during the Conference.

Under the current U.S. positions, however, it is clear that the vital Micronesian positions and interests are denied and rejected, and that the respective Micronesian and U.S. views cannot be harmonized.

The next best solution under current circumstances, therefore, is for the trustee, the U.S., to "ensure" that Micronesian views are properly presented to the Conference. "Proper" presentation must mean full and adequate presentation. Such presentation must enjoy in every way the same opportunity for effective consideration by the Conference as the presentation of U.S. positions. The trustee's duty to the ward could envision nothing less. Full and effective participation by the

Micronesian Representation in all substantive activities and work of the Conference on all issues of vital importance to Micronesia is therefore, in the considered opinion of the Micronesian Representation, the minimum that is required of U.S. trust obligations, and of U.S. honor.

No technical obstacles appear to exist that cannot be surmounted. Indeed, a highly relevant precedent exists: in the latest session of the Law of the Sea Conference in Geneva (the Seabed Conference), the other remaining UN trusteeship territory, Papua New Guinea, and its trustee, Australia, sat and worked side by side as fully equal members of the Australian delegation. That precedent suggests an honorable and workable compromise of the dilemma of U.S. obligations to Micronesia and differing interests and views of its own.

The Micronesian Representation welcomes the assurances of the U.S. to the Trusteeship Council that proper presentation of Micronesian views to the Conference would be accomplished, and is prepared to discuss the detailed implementation and methods of that presentation at the Preparatory Talks of May 21 and May 22, 1974 in Saipan.