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DELEGATION OF MICRONESIA

(TRUST TERRITORY OF THE PACIFIC ISLANDS)

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May 5, 1975

Mr. Bernard H. Oxman
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President for the Law of the Sea Conf.
Third Conference, UNLOS
Geneva, Switzerland

Dear Mr. Oxman:

Pursuant to our conversation with respect to readily available legal references bearing on the April 23, 1975 letter to Ambassador Stevenson, a copy of which is attached hereto, the following points are submitted. The legal references available to you will be more complete than those in this short letter, but the following considerations appear to us to dispose of some of the objections we have heard raised to the Micronesian position, based on Micronesia's current status as a trust territory.

1. "Sovereignty" as such is, in our view, not an obstacle to the Micronesian position that Micronesia should represent its own property interests in the sea resources of Micronesia. Indeed, we do not consider that "sovereignty" as a legal principle is involved. But even if "sovereignty" were relevant, it is not involved in these particular circumstances. The United States does not have "sovereignty" over Micronesia. See letter dated December 16, 1947 to the United States Attorney General from the Legal Advisor of the Department of State, quoted in the case of Brunnel v. United States, 77 F. Supp. 68, holding that the Federal Tort Claims Act does not apply to Micronesia because of its character as a "foreign country" within the meaning of the act. (The letter states, in relevant part: "The United States does not have sovereignty over Saipan by virtue of this (Trusteeship) Agreement".)

   In addition, neither the United Nations Charter nor the Trusteeship Agreement gives any basis for concluding that sovereignty has been transferred from the people of Micronesia to the administering authority. Indeed, the assumption on which the trusteeship system is based is that the trustee or administering authority governments are administering the trusteeships until such time as the inhabitants are able to assume the burden in their own right. The United States has also itself most recently reaffirmed these views in the Draft Compact of Free Association, negotiated between the United States and Micronesia. The Preamble of that document refers to the "sovereign right of self-determination" of the people of Micronesia.

2. The concept of "foreign relations", likewise, does not appear to us to be an obstacle to the Micronesian position. Less than fully self-governing or fully independent states have frequently become members of international bodies, adhered to international treaties, or otherwise engaged in what could be termed "foreign relations" or "international relations." Not least relevant as precedent is the case of the Philippines, which signed the United Nations Charter and became a member of the United Nations while not independent. The same is true for India. President Amerasinghe informs us that Sri Lanka (Ceylon) likewise signed treaties though not fully independent. The Ukraine and Byelorussia enjoy signatory status and full membership in the U.N. and elsewhere, including law of the sea conventions, without necessarily enjoying more independence than does Micronesia.

Many international organizations were, and are, open to membership by entities not fully independent states: the League of Nations, the United Nations, the Permanent Court of International Justice (which permitted membership by League of Nations members), the Universal Postal Union, the International Trade Organization, and the World Health Organization, to name a few.

The United States itself has, with respect to law of the seas conventions, invited and treated as signatories and parties to a law of the seas convention entities that were not fully self-governing, as for example Newfoundland, in the 1949 Convention leading to ICNAF.

We thus see no very new legal element here. Micronesia conducts now and has conducted for some time a considerable amount of what may be considered "foreign relations." It is a member of, or participates in, a variety of international organizations, including the Economic Commission for Asia and the Far East, the United Nations Development Program, and the South Pacific Commission. It is in the process of becoming a member of the South Pacific Forum. It sends delegations to many countries to participate in meetings and conferences on a variety of subjects of "foreign relations." It participates in the U.N. Law of the Sea Conference independently.

Department of Interior Order 2918, as amended, grants general legislative authority to the Congress of Micronesia. That authority includes the right to regulate with respect to Micronesian resources. Resource rights conferred by a law of the sea convention will therefore be subject to regulation by the Congress. Thus, much of the position stated in the April 23 letter to Ambassador Stevenson is already within the authority of the Congress of Micronesia. The letter seeks clarification and confirmation of that authority, and agreement as to the specific effective means for carrying out that authority, while avoiding irreconcilable conflicts of interests by agents of the Micronesian interests.

3. We note also that the Micronesian position appears to enjoy the support of the world community. Both the "Exclusive Economic Zone" and "Regime of Islands" provisions of the Main Trends paper contain provisions confirming to the inhabitants of territories less than fully independent the rights to the resources in their economic zones, and the authority to exercise those rights. These provisions seem to be among the least controversial in the Conference, and therefore we believe it is reasonable to assume that the convention will contain some such provision. New provisions introduced at the Geneva session explicitly include U.N. trust territories in these provisions. The representatives of the United Kingdom at the LOS Conference in Geneva appear to have accepted these points, even for territories having far less self-government than Micronesia and having no special U.N. trust status to protect their "sovereign right to self-determination."

The Convention can be expected itself to confirm to "the inhabitants" of Micronesia the resource rights created or confirmed by the Convention. In the face of the irreconcilable conflict of interest with the administering authority, there should be little doubt that these rights must be exercised by the freely elected representatives of the inhabitants, the Congress of Micronesia.

Thus, in our view, here again the letter to Ambassador Stevenson does not refer so much to the conferring of new rights and powers as to confirmation and clarification with respect to existing law, and with respect to the effective powers related to law of the sea matters and sea resources, as between Micronesia and the U.S. Government.

4. However, if and to the extent that it may be considered that the 23 April letter to Ambassador Stevenson does request the transfer of new authority to Micronesia, such transfer would appear to be required by the obligation of the U.S. under the terms of the United Nations Charter and Trusteeship Agreement. Article 76 (b) of the U.N. Charter identifies as one of the "basic objectives" of the trusteeship system:

"b. to promote the...progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the peoples concerned..." Article 6 (1) of the Trusteeship Agreement contains similar language.

The trusteeship system was designed to deal with the problem of territories with insufficiently developed political institutions to govern themselves at the end of World War II. The trustees assumed responsibility for administration of the territories until such time as the local inhabitants were prepared to handle their own affairs. In so doing, the trustees assumed the obligation of gradual or progressive development of local political institutions toward the goal of self-government or independence in accordance with the wishes of the

local inhabitants. In our view, the U.N. Charter and Trusteeship Agreement impose upon the administering authority a continuing obligation to transfer to Micronesia progressively increasing responsibility for the conduct of its own governmental affairs. The guideline for determining when such transfer of authority should occur should of course be the capacity of the Micronesians to handle the particular authority in question. Thus, to the extent that any of the positions set out in the April 23 letter to Ambassador Stevenson might be considered requests for new authority, we would regard them as appropriate further steps in this transfer of authority.

5. Finally, a word on the need for a timely response to the April 23 letter. The plebiscite in the Mariana Islands is scheduled for June 17 of this year. The advisory referendum throughout Micronesia will follow shortly thereafter. In order for the people of Micronesia to make an informed judgment on either the Draft Compact or the Covenant, they must know the United States view regarding the effect of both those documents on the sea resource rights which may be confirmed or created by a law of the sea convention.

It goes without saying that the April 23 letter in no way obligates the Congress of Micronesia to ratify or adhere to any future convention on the law of the sea which does not in the view of Micronesia adequately safeguard Micronesian interests and the Micronesian position on the law of the sea.

Yours very truly,

Fredrick L. Ramp
Counsel

Frederick S. Wyle
Special Counsel

cc: Robert Craft, Esq.
John R. Stevenson, Esq.