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 DEPARTMENT OF STATE
 WASHINGTON, D.C. 20520

November 5, 1976

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TO: Mr. Rutherford M. Poats
 Acting Staff Director
 NSC Under Secretaries Committee

FROM: Lester E. Edmond *LEE*
 Department of State Member
 Interagency Group For Micronesian Status Negotiations

SUBJECT: Micronesian Status Negotiations: LOS and Related
 Foreign Relations Issues

REF: Your Memorandum of June 30, 1976

1. The Micronesian side has asked Ambassador Manhard for a negotiating session during the week of December 12, stipulating that a principal subject should be marine resources. The Department by this memorandum submits its recommendations with regard to a US position on marine resources. We have reviewed the draft marine resources study of June 1976. Although we do not endorse the background or analysis sections of the study, which in our view are inaccurate and biased in critical respects, we recommend that the US negotiators be authorized to make a proposal to the Micronesians aimed toward achievement of a solution based on Options I, II, or III of the draft study (the latter two with important modifications), but not Option IV. A solution based on Option II or Option III should protect US interests by retaining full US responsibility for Micronesian foreign affairs. At the same time, it would address Micronesian concerns by recognizing the right of the people (rather than the Government) of Micronesia to the beneficial interests derived from living and non-living marine resources in zones off the coast of Micronesia recognized by international law.

We would, however, recommend that any utilization of Option 2 or 3 authority be made subject to the following conditions:

-- prior US approval of exploitation arrangements should, in the wording of Option III, be made explicitly contingent on consideration of US defense and foreign policy interests and responsibilities, as well as international law and US commitments;

-- the US negotiators should propose, in both Options II and III, that a joint consultative body be established

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to coordinate the exercise of control over, and to endeavor to resolve questions relating to, marine resources;

-- it should be made clear that the US is not recognizing the archipelago concept; and

-- Option III should be reworded so that the United States would be "responsible for the negotiation" on behalf of Micronesia of all international agreements relating predominantly or exclusively to marine resources and would "consider sympathetically" any requests of the Government of Micronesia for the negotiation of such agreements.

2. An Option IV solution could in our view lead to serious problems. For example, it could:

-- Insure friction between the US and Micronesia. Micronesia could negotiate independently with a foreign nation, taking its own positions, although prior US-Micronesian consultation would be required and conclusion of the agreement would be subject to US concurrence. In case of disagreement, the United States would be placed in a position of either acquiescing to an agreement which ran counter to our own policies, or vetoing (although our power in this regard is not clear in Option IV as worded) the agreement with resulting US-Micronesia friction.

-- Create serious potential problems between the US and foreign governments. If, after the US had signed the LOS treaty on their behalf and thus incurred responsibility, the Micronesians chose to implement the resource aspects of the Treaty in their area, they could establish regulations in an area of approximately three-and-one-half million square miles without US approval, but with the US being responsible and possibly subject to suit by foreign governments for Micronesian action. Even greater problems could be posed should the Micronesians fail to implement the Treaty.

-- Arguably be viewed by Puerto Rico and the US territories as setting a clear example, if not a precedent, for US acquiescence in similar 200-mile extensions of jurisdictional and negotiating rights for them which could be politically difficult to oppose.

-- Possibly prejudice the important US effort to achieve a resolution of the tuna issue with the Latin coastal nations of the Eastern Tropical Pacific.

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-- risk compromising strongly held US views in the LOS Conference, to which Option IV runs counter. Option IV endorses the transitional provision of the Revised Single Negotiating Text. That provision grants resource rights under the LOS Treaty to territories which have not achieved full independence and further states that such rights should be exercised by them for their own benefit. The United States has stated that inclusion of such a provision in the LOS Treaty would call into question whether the United States would ratify such a treaty. Moreover, Option IV implies that Micronesia would have access as a right to the LOS dispute settlement mechanism, an interpretation which we cannot support.

of Option IV

3. EA and S/P might recommend utilization/as a last resort if the marine resources issue were the only important obstacle in the way of a complete Compact of Free Association. At present, however, that is demonstrably not the case:

-- The Micronesian negotiating commission, in the public statement issued at the close of its just-concluded meeting, called into question at least three elements of the Compact which the US side had considered long resolved: the stipulation that unilateral termination of free association would not be permissible for 15 years; the understanding that leases on Kwajalein land should be renegotiated only as they expire, rather than at or before Trusteeship termination; and the vesting of sovereignty in the Micronesian people rather than in the Micronesian government.

-- The Micronesian negotiating commission also declared that at the proposed US-Micronesian December session it would not be prepared to discuss the Compact provision dealing with the internal allocation of US assistance funds (except for marine resources, the only "gap" in the Compact draft initialed last summer), indicating that this problem is considerably more difficult to resolve than may have appeared last summer.

-- Neither the Marshalls nor Palau participated in the Micronesian negotiating commission session, casting serious question on the rump commission's authority or ability to speak for the districts of greatest security interests to the US.

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4. We believe that a modified, and fleshed-out Option III may be negotiable and is consistent with US interests. A proposal structured along these lines should serve adequately to smoke out the Micronesian commission's real intentions with regard to the Compact of Free Association. During the four years of status negotiations with the old Micronesian commission, the completed Compact has repeatedly seemed almost within grasp, requiring agreement only on a single remaining subject -- be it defense land requirements, financial assistance, or marine resources. We do not yet know with much confidence whether the new status commission, with which the December meeting will be the first USG encounter, proposes to play the same game of escalating demands; whether the commission or certain of its members are seeking to scuttle free association in a way which will permit them publicly to place the onus on the US; or whether the commission genuinely seeks agreement on free association along the lines of the initialed Compact.

5. The Department is concerned that in recent months the marine resources question has tended to overshadow other serious problems confronting the status negotiations, and we have renewed an August request to OMSN to convene an interagency meeting or meetings to consider how best to achieve a realistic negotiating strategy. If, as seems to us nearly certain, further elaboration or a reassessment of the total US negotiating position seems in order following the December meeting, we would welcome a full review of the marine resources and other issues by the Interagency Group.

6. The Department in addition wishes to comment that it considers the marine resources study seriously defective in its treatment of the enforcement and surveillance of Micronesian waters. We believe that unless a section on this subject is added, the US negotiators would in all likelihood be forced to return to the President for additional instructions before serious US-Micronesian discussions could be pursued.

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