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CHANGES IN POLITICAL STATUS ACT, AND CONSTITUTIONAL CONVENTION BILL

The Interagency Group has again reviewed the two draft bills previously considered by the Under Secretaries Group and believes that certain additional refinements can usefully be made in them.

A. Changes in both the Political Status Bill and the Constitutional Convention Bill.

1. Nationality and Citizenship. Provision would be made to give the Micronesians the status of U.S. nationals, but to allow any who wished to do so to opt for U.S. citizenship by simple application to the Federal District Court. There is the precedent of American Samoa for such a procedure. (There is little practical difference between national and citizenship status. Nationals are not subject to the selective service laws under present administrative rulings.)

The Interagency Group believes that the status of U.S. nationals will have more appeal to most Micronesians since it appears to provide greater protection for their traditional rights and to recognize their desire to retain a separate identity. Some Micronesians, however, particularly in the Mariana Islands, place a very high value on obtaining U.S. citizenship. Hence, by allowing a choice, we will meet both desires.

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2. Executive Provisions. The executive section would be changed to eliminate the choice of an appointed governor, since recent indications are that the Micronesians definitely wish to elect their own executive.

We would also eliminate the provision for a Presidential representative to advise and in certain cases exercise a check on the elected executive. The Group now believes first that the provision for an advisor is a transparent controlling mechanism which would not only be criticized in the UN, but would also be resented by the Micronesians. More important, the Group believes that the control to be provided by the advisor can be effectively exercised through a combination of the Federal comptroller, the U.S. Attorney for the District Court, and the U.S. Congress with its budgetary control. (We would still offer advisors to the Micronesians and encourage their acceptance, at least for a transitional period.)

B. Changes only in the Constitutional Convention Bill -- Commonwealth.

Micronesia's new status would be labeled "commonwealth" rather than "unincorporated territory". This is not a change in substance, but is expected to have great symbolic significance to Micronesians. They clearly do not want the status of Guam, and unincorporated territory, but find attractive the status of Puerto Rico, a commonwealth.

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Because of its experience with Puerto Rico, the U.S. Congress would probably be wary of using this label. We believe these Congressional reservations can be met by demonstrating that this status specifically maintains federal supremacy and that only at the end was it labeled a commonwealth. The particular question which has arisen with regard to Puerto Rico, as to whether the U.S. Congress abdicated its plenary power under the Constitution to legislate for Puerto Rico similar to a grant of statehood or independence, is clearly avoided in our formulation of the Commonwealth of Micronesia. The relevant clause of the Constitution (Article IV, Section 3 giving the U.S. Congress the power to make all needful rules and regulations respecting the territory of the United States) is made specifically applicable. Moreover, the constitutional convention bill is not described as being "in the nature of a compact" as was the case with Puerto Rico. It is this phrase which has been the main basis of claims that the U.S. Congress had relinquished its power to legislate unilaterally.

The only variation on this theme is the provision in the proposed Constitutional Convention Bill which permits changes in the Micronesian Constitution only in accordance with the procedures developed for the formulation of the Constitution. In short, though they cannot change their Constitution without complying with those procedures, neither can the Congress of the United States.

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SAFEGUARDS ON THE CONSTITUTIONAL CONVENTION APPROACH -- THE DUAL REFERENDA

The Interagency Group has made a basic change in the constitutional convention bill which should provide a large measure of control over the results of the convention, and avoid a public confrontation thereon between the President and the Micronesian leadership.

As originally drafted and submitted to the Secretaries in December, the bill provided the following schedule of events:

(1) preliminary agreement with the Congress of Micronesia;

(2) submittal to the U.S. Congress for enactment;

(3) election of a constitutional convention, and drafting of the constitution;

(4) submission of the draft constitution to the President;

(5) return to the Congress of Micronesia by the President of unacceptable provisions, if any;

(6) approval of the Constitution by the President after any necessary changes;

(7) vote on ratification by people of Micronesia;

(8) President issues proclamation announcing new status.

The Interagency Group now proposes that an additional referendum be inserted in this process, to take place after the passage of the bill by the U.S. Congress (Step 2), but prior to the holding of the constitutional convention (Step 3). The Group believes this new referendum will have the following advantages:

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--It will provide the U.S. with the opportunity, and a legitimate excuse, to conduct a thorough political education campaign to ensure that the people understand the terms and intent of the bill. Obviously, the same purpose will be served with regard to potential delegates to the constitutional convention, whomever they may be.

--In holding a vote early, the chances of outside events interfering with the results will be diminished and the favorable attitudes of the older traditional leaders will be used to our advantage before they are replaced by younger, possibly less sympathetic spokesmen.

--Assuming a favorable vote, the delegates to the convention will know they have a clear mandate. Not only would honest misunderstandings be minimized, but the temptation to seek extreme provisions in order to impress or satisfy their supporters would be lessened.

--Again, if the bill is approved, the Micronesians would have taken the step of giving tentative approval to the type of status envisaged by the U.S. It would not be final (a second referendum with UN observers present would still be held on the constitution itself), but it would be public endorsement not lightly reversed in the second referendum.

--Finally, if despite all these preparations, the Constitution still goes beyond the limits of our bill, the President, in pointing this out, will be able to say that the provisions in question are inconsistent with the publicly expressed wishes of the people of Micronesia, not just the U.S. Congress. This should help to avoid the adverse political consequences of such rejections.

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Although, there may be risks involved in having two referendums, the Interagency Group believes them to be less than under a single referendum procedure. While there is the chance of an adverse vote before the process even gets well along, a vote has to be faced sometime and there will always be the risk of losing. Moreover, an early referendum on the issue raised in this proposal should provide for a vote on what we consider the best issue under the best conditions; we will have a thorough education campaign on a relatively straight-forward proposal; the constituency will be at its best; and people will always know that this is only the first step, and therefore not irreversible.

One could also argue that two votes are more dangerous than one -- that the opportunity for defeat is doubled -- but this is unlikely. Under the two-vote procedure, if the first vote is favorable, (and as indicated above it maximizes the positive conditions), the second vote would tend to be a rather pro forma affair. The likelihood of a U.S. -- Micronesian confrontation over the Constitution would have been minimized, and the Micronesians would only be giving the final seal of approval to a status which they had already tentatively approved.

On the other hand, a single referendum procedure would present a more complicated issue; both the constitution and the terms of the relationship would be considered together and for the first time. A minority of negative votes on either issue considered individually, might thus combine to defeat the referendum on the whole package.

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Furthermore, in the single referendum procedure, if the President had been forced to reject portions of the Constitution, a public confrontation could easily follow, and endanger the result of the vote.

Thus, despite the mathematics of the situation, two votes appear safer than one.

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