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(attached to doc 29/a)

ANNEX I

Modifications in Commonwealth Proposal to Obtain Compromise Agreement

The three principle objections of the Congress of Micronesia to our commonwealth proposal relate to termination of the relationship, eminent domain, and federal supremacy. The Interagency Group believes that some modifications can be made in our present proposal without substantially compromising our strategic interests. Examples of modifications which might be considered are set forth below.

1. Termination: The Status Delegation's Report to the Congress of Micronesia stated that "the single most objectionable feature of the US proposal is that commonwealth status would be permanent and irrevocable." While US interests clearly preclude an arrangement permitting termination of the association at the whim of the Micronesians, adequate safeguards can be provided. Possibilities include:

a) Agree to follow the model of the United Kingdom's association with the West Indies Associated States. (This arrangement was alluded to in the Delegation's report to the Congress and therefore would probably be acceptable to them.) Under the terms of that relationship, ninety days must elapse between the introduction of a bill to terminate the status and its enactment by the legislature. The bill must then pass (both houses of) the legislature by a two-thirds vote. It is then submitted to a referendum and, if approved by a two-thirds majority, is submitted to the Executive for signature. If the bill dies because the two houses of the legislature cannot agree, six-months must elapse before the matter is reopened. (We would add a provision to permit individual districts to remain in association with the US.)

b) Agree to a periodic review of the status. Under this arrangement, there would be no possibility for unilateral termination except at a specifically predetermined time, for example, after 20 years. Such an arrangement would ensure the stability of the relationship for at least the given period; however,

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it would allow separatist sentiment to coalesce as the time for review approached. Such a time period nevertheless would allow for sufficient integration into the US economy and culture that there would probably be little Micronesian inclination to terminate.

c) Agree to some combination of a) and b) which would allow unilateral termination at a specified time with procedural safeguards.

d) Agree to a bilateral review of status at any time at the request of either party. Termination would require the consent of both parties.

2. Eminent Domain: This question has been one of the root problems since the beginning of our discussions with the Micronesians. While assuring us that US needs can be satisfied, they insist that ultimate control over Micronesian lands must be in Micronesian hands. Although we have been willing to modify substantially the normal procedures for condemning land, and to allow the Micronesians a voice, we have not been prepared to surrender the ultimate power of eminent domain.

Some possible compromises might be:

a) Limit maximum interest acquired under eminent domain to a 50 year renewable lease. This would provide sufficient tenure to justify major construction

b) Limit the exercise of eminent domain to national emergencies proclaimed by the President. The Micronesian Status Delegation earlier had shown some lack of enthusiasm for this approach.

c) Limit the exercise of eminent domain to the Marianas. It could lead the Marianas to have "second thoughts;" acceptability to Congress of Micronesia uncertain.

d) Forego the exercise of eminent domain, subject to satisfaction of our foreseen land needs (e.g., Marianas, Kwajalein, and possibly Eniwetok) and negotiation of outright purchase or long-term lease arrangements with options for renewal.

3. Federal Supremacy: The Micronesian Delegation so far has insisted that their constitutional convention be free from all outside restrictions and that their constitution and laws need "not be consistent" with the US Constitution and laws. In any commonwealth or other arrangement involving US sovereignty, however, the United States would have to insist that, to the extent the US Constitution applies outside the fifty states to territories of the United States and their peoples, it would apply in Micronesia. This includes the federal supremacy clause. Nevertheless, we might be able to compromise along the following lines:

a) agree to explore with them the authority of the Federal regulatory agencies with respect to a Commonwealth of Micronesia and to write into the enabling legislation a specific provision that only those agencies specifically enumerated or subsequently requested by the Micronesians would exercise such authority.

b) agree that, except in a national emergency, the United States will exercise other federal powers only in the fields of foreign policy and defense; and

c) agree to accept a parliamentary form of government for the commonwealth and if they desired, some form of plural executive. This could have definite advantages given the lack of unity in the Territory and the jealousies and rivalries existing among the various districts.

4. Summary: US sovereignty in such a modified commonwealth relationship would be maintained, with Federal rights unimpaired and only the exercise of those rights circumscribed. From a point of view of US law, any of the above agreements could be subsequently overridden by a future act of the US Congress. Politically, however, such arrangements would be virtually ironclad.