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ANNEX I

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NOTE WITH REGARD TO TRUSTEESHIP AGREEMENT:

The Trusteeship Agreement authorizes the US "full powers of administration, legislation, and jurisdiction over the territory," subject to the provisions of the Agreement. The US may also apply its own laws to the Trust Territory (T.A. Art. 3).

For the maintenance of international peace and security, the United States is entitled: "1. to establish naval, military and air bases and to erect fortifications in the trust territory; 2. to station and employ armed forces in the territory; and 3. to make use of volunteer forces, facilities and assistance from the trust territory . . ." (T.A. Art. 5).

This authority to establish and maintain bases does not, however, itself provide a means of acquiring land for base facilities; this has been done in the past under local condemnation procedures, which under Option I would be subject to repeal or modification by the Government of Micronesia. It, therefore, will be necessary to make Federal condemnation procedures directly applicable to Micronesia, as well as to provide for Federal court jurisdiction. This is our prerogative under Article 3 of the Trusteeship Agreement. Further, Article 6 of the Agreement obliges the US to "protect the inhabitants against the loss of their land and resources." However, the applying of US eminent domain procedures would "protect the inhabitants against the loss of their lands and resources" by compensating them in full for any taking.

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ANNEX II

Modifications in Commonwealth Proposal to Obtain
Compromise Agreement

The three principal objections of the Congress of Micronesia to our commonwealth proposal relate to termination of the relationship, eminent domain, and Federal Supremacy. It is possible 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 US Delegation stated during the May 1970 discussions that the US would agree to a bilateral review of status at any time at the request of either party, but that termination would require the consent of both parties. The Status Delegation's Report to the Congress of Micronesia, however, 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 might 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 cited in the Delegation's report to the Congress and 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

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of the relationship for at least the given period; however, 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.

2. Eminent Domain: This problem has been basic since the beginning of our discussions with the Micronesians. While assuring us that US needs can be satisfied, they have insisted that ultimate control over Micronesian lands 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) Forego the exercise of eminent domain, subject to satisfaction of our anticipated land needs (e.g., Marianas, Palau, Kwajalein, and possibly Eniwetok) and negotiation of outright purchase or long-term lease arrangements with options for renewal. Such arrangements would be designed to survive a termination of the commonwealth relationship.

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

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US sovereignty, however, the United States would have to insist that certain minimal Constitutional guarantees apply in Micronesia. We might be able to modify our current commonwealth proposal by means such as the following:

- a) agree to explore with them the authority of Federal agencies and the applicability of Federal laws with respect to a Commonwealth of Micronesia and to write into the enabling legislation a specific provision that only those laws and agencies specifically enumerated by the United States or subsequently requested by the Micronesians could operate in Micronesia; or
- b) agree that the United States will exercise Federal powers only in the fields of foreign relations and defense, except when a national emergency requires exercise of other Federal powers; or
- c) agree not to apply Federal law to Micronesia (except as provided in b above) without the request or consent of the Congress of Micronesia.

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