

JMW:m1:11/4/74

November 1974

MAJOR ISSUES IN MARIANAS DRAFT AGREEMENT IN WHICH U.S.
HAS NO FLEXIBILITY.

October 26, 1974

1. Section 105: Mutual Consent

- May 1973 understanding.
 - No limitations on U.S. Sovereignty.
 - No limitations on U.S. plenary powers except to ex. U.S. agrees voluntarily not to exercise them in cases of fundamental importance, where mutual consent for change would be required.
 - This limited to things really basic to relationship, like no forced union with Guam.

- MPSC position would put general limitations on plenary powers not agreed to in May 1973, viz: need to name Marianas specifically and requirement for special finding of national interest before laws can be applied to Marianas which are not otherwise of general application to states and territories. No other territory has it.

- MPSC position also goes well beyond acceptable limits in attempting to list mutual consent provisions not fundamental to basic relationship; e.g., Phase II funding applicable laws other than U.S. Constitution.
- U.S. cannot go any further than list indicated in draft.

2. Section 504: Privilege of U.S. Nationals In Maritime and Shipping Matters.

- MPSC has asked for same treatment as U.S. citizens.

- Basic principle involved here on which U.S. unwilling to budge. No one else in U.S. family has this exception.
3. Section 601 - Application of Internal Revenue Code.
 - MPSC counsel has put forward individual suggestion, subject to MPSC concurrence, making IRC applicable as internal tax on termination of Trusteeship on same basis as Guam; but would also give Marianas legislature power to amend it thereafter, which Guam does not have.
 - We would be prepared to go along on condition U.S. Congress could change system if it did not approve, but Burton may not be.
 - MPSC Counsel, however, has this on its "mutual consent" list, and we cannot buy this nor could we have any hope to selling it to Burton on this basis.
 4. Section 605 - Awaiting new MPSC proposal on Social Security Law.
 5. Section 702ff - Multi year appropriations
 - MPSC wants to use agreement as vehicle for Congressional appropriation of Lands for each of seven years in Phase II.
 - Congress won't buy it and neither can we.
 - Item here that needs to be taken on faith. Congressional approval of Phase II funding consists of authorization and commits Congress to appropriate later. It is unreasonable to ask for more. Marianas can also take it to court under Article IX if worst happens.



6. Section 803 - Restraints on Eminent Domain
 - MPSC wants Congress to exercise special checks on executive exercise of eminent domain over and beyond those applying to states and toher territories.
 - We can agree to give special attention to safeguards already attached to exercise of eminent domain powers under existing laws and regulations and due process restraints, but cannot agree to limit exercise of eminent domain beyond this in any way not applying to states and other territories since inconsistent with fundamental U.S. sovereignty.
7. Section 804 - Land Alienation
 - MPSC version makes enactment of legislation to guard against alienation of land to non-Marianas types permissive rather than madatory.
 - Burton adamant on making this mandatory and we agree in view of Guam experience.
8. Section 901 - Non-voting Delegate
 - MPSC version still asking for this.
 - We supported this earlier as promised, but Burton said flatly "no". We can go no further than resident commissioner as a result.