

PUERTO RICO SELF-DETERMINATION PART II

HEARING BEFORE THE SUBCOMMITTEE ON INSULAR AND INTERNATIONAL AFFAIRS COMMITTEE ON NATURAL RESOURCES HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRD CONGRESS

FIRST SESSION

ON

H. Con. Res. 94

**EXPRESSING THE SENSE OF THE CONGRESS REGARDING THE EXPRES-
SION OF SELF-DETERMINATION BY THE PEOPLE OF PUERTO RICO**

HEARING HELD IN WASHINGTON, DC, AUGUST 3, 1993

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H. CON. RES. 94: EXPRESSING THE SENSE OF THE CONGRESS REGARDING THE EXPRESSION OF SELF-DETERMINATION BY THE PEOPLE OF PUERTO RICO

TUESDAY, AUGUST 3, 1993

HOUSE OF REPRESENTATIVES,
COMMITTEE ON NATURAL RESOURCES,
SUBCOMMITTEE ON INSULAR AND INTERNATIONAL AFFAIRS,
Washington, DC.

The subcommittee met, pursuant to call, at 10:15 a.m. in room 1324, Longworth House Office Building, Hon. Ron de Lugo (chairman of the subcommittee) presiding.

STATEMENT OF HON. RON de LUGO

Mr. DE LUGO. The Subcommittee on Insular and International Affairs hearing on H. Con. Res. 94 is convened.

This is the second hearing of the Subcommittee on Insular and International Affairs on the resolution sponsored by our colleague Jose Serrano to declare that the people of Puerto Rico have the right to determine the island's future political status.

We held the first hearing on July 13 when we heard from three Members of Congress in addition to Representative Serrano. We also heard from representatives of Puerto Rico's Governor and three major status-based political parties, including other leaders on the status issue in that commonwealth, and Puerto Ricans from the States as well.

The Office of the President is responsible for Puerto Rican status matters within the Executive Branch, and we will hold a third hearing after its proposed witness on the resolution—the Assistant Attorney General for the Office of Legal Counsel—takes office.

The White House had hoped that Walter Dellinger, who will fill that position, would be confirmed in time for this hearing; but, although his approval by the Senate appears imminent—in fact, it could happen today—it has not happened as of this moment to the best of our knowledge.

The Serrano Resolution is especially important because the people of Puerto Rico are to vote November 14 on whether the island should become a state, an independent country, or be further developed as a commonwealth.

[Text of H. Con. Res. 94 follows:]

103D CONGRESS
1ST SESSION

H. CON. RES. 94

Expressing the sense of the Congress regarding the expression of self-determination by the people of Puerto Rico.

IN THE HOUSE OF REPRESENTATIVES

MAY 5, 1993

Mr. SERRANO submitted the following concurrent resolution; which was referred jointly to the Committees on Foreign Affairs and Natural Resources

CONCURRENT RESOLUTION

Expressing the sense of the Congress regarding the expression of self-determination by the people of Puerto Rico.

Whereas the people of Puerto Rico are natural-born citizens of the United States but do not enjoy all of the individual rights and liberties accorded to other American citizens under the United States Constitution;

Whereas the future status of Puerto Rico remains under discussion among residents of the Island of Puerto Rico and among Puerto Ricans residing in the 50 States of the United States; and

Whereas the Charter of the United Nations, a treaty to which the United States is a signatory, expresses the right of self-determination, that is the right of a people to decide for themselves the political status under which they live: Now, therefore, be it

1 *Resolved by the House of Representatives (the Senate*
2 *concurring)*, That the Congress—

3 (1) reaffirms the commitment of the people of
4 the United States to the principle of self-determina-
5 tion;

6 (2) reasserts the principle, first articulated by
7 the Congress in its ratification of the Charter of the
8 United Nations, that with respect to territories
9 whose peoples have not yet attained a full measure
10 of self-government, the interests of the inhabitants
11 of such territories are paramount; and

12 (3) endorses the right of the people of Puerto
13 Rico to political self-determination.

○

Mr. DE LUGO. Although H. Con. Res. 94 is intended to state policy concerning the political status of Puerto Rico, it would also state a general commitment to self-determination and that the interests of the inhabitants are the primary consideration in matters concerning non-self-governing territories.

The self-determination commitment is written as one that can be applied to all peoples. And this, obviously, includes the peoples of the insular areas other than those of Puerto Rico for which the United States is responsible—American Samoa, Guam, Palau, and my home, the United States Virgin Islands.

These islands are the 4 areas under U.S. responsibility among the 18 on the United Nations' list of non-self-governing territories.

Because of this, it is essential that we give leaders of these areas an opportunity to comment on the resolution, and, thus, our hearing today.

While political status developments in these areas have not attracted the national attention that developments in Puerto Rico have, there are important status developments in at least 3 of the 4 areas.

As a representative of one of them, I feel as then-President-elect Clinton said when he was discussing the District of Columbia's statehood petition, "I would be in a state of permanent outrage if I thought that I represented people who would be sent to fight and die for their country, who had no full citizenship."

Well, I have been in that state of outrage from the moment that I understood the undemocratic nature of the situation of my islands. I have, as much as anything else, dedicated my career of public service to obtaining greater powers of self-government for all of the territories.

Yet, I never truly felt our lack of full powers as acutely as I did when I was in the situation President Clinton described; representing the people of the Virgin Islands on the Floor of the House without a vote when the decision was made to send some of them to fight in the Gulf War—in which some who died were my constituents, Virgin Islanders.

I have discussed this with the President in seeking his leadership to obtain the power to vote for President for the people of my territory and other territories. The President hasn't focused on the constitutional amendment that we need, but he has pledged to support a status decision made by Puerto Ricans. Last year, his campaign committed that he would also respect the right of the peoples of the smaller insular areas to decide their future status.

This gives us some hope that he will, at some point, provide the executive leadership that has been lacking on insular status issues in the past.

It also brings me to one of the points that I want to make this morning: the status options and development of the smaller insular areas are inextricably linked to the case of Puerto Rico.

In none of the smaller areas are the options of statehood or independence at all as viable as they may be in Puerto Rico. The option of the smaller islands are really within the middle course: to remain territories or to try to work out relationships that provide for government by consent, participation in decision-making, or auton-

omy under the United States flag, if we can find a constitutional means of bringing that about.

These options raise issues of constitutionality, sovereignty, and citizenship, as well as acceptability to the States.

They will, at a minimum, be extremely difficult to work out so long as Puerto Rico's status is unresolved. Any arrangement worked out with one area inevitably creates precedents for all of the others.

So it is not inappropriate to consider the other insular areas in context with a resolution regarding Puerto Rico.

Another point that I want to make is that the right to choose a future status, at least for all statuses other than independence, is not a unilateral one. Although the interests of the inhabitants of territories may be paramount in considerations, they are not exclusively so.

The right of self-determination is—as a statement I will include in the record by the co-chair of the Virgin Islands Commission on Status and Federal Relations says—"accepted as the law of gravity."

But even though our government has led the international drive for self-determination, it has had a hard time applying this principle to the territories for which it is responsible.

Obviously, the commitment to insular self-determination was never meant to limit the right of the United States to determine its political future. Logic dictates that both parties have to have a say in determining any fair and free relationship.

And no policy determination by a Congress could legally bind a subsequent Congress to actions that it would be unwilling to take.

And that is the real problem.

So, what is most critical to resolving the status problems faced in this country and the territories which it ultimately controls is developing possibilities of, and a process for, mutual determination.

As I have noted before, this will require presidential leadership, similar to that which we have only seen in the past in the case of the strategic Micronesian Territory that the United States has administered for the U.N. That was true leadership. But it was a category of leadership that we have not seen for the U.S. territories. I assume the driving inspiration for that leadership was national security.

President Clinton has given us the hope that we will see it in this administration by the statements I noted earlier as well as by his pledge to try to have differences between the Executive Branch and Guam on a commonwealth bill worked out by a personal representative.

The need for such a representative was made clear by the results of the last administration's efforts on the matter. A tremendous amount of work went into that. Negotiations led by the Interior Department's territories office failed, however, to resolve many issues.

Many of the agreements that they supposedly reached on behalf of the administration after months and months of meetings were overturned at the eleventh hour due to the influence of other agencies.

In other words, what happened was agencies were involved in the negotiations, and agreement was reached. Then agencies that

were at the table, but were not satisfied with the outcome of the agreement, went outside of the process, but inside the administration, and were able to defeat those provisions that they didn't like.

While the proposal of funds for a Guam commonwealth representative within the territories office raises a question, I hope that we get the type of presidential representative that Delegate Underwood discussed, in my presence, with President Clinton.

What, of course, is needed is leadership that is more effective than we have had in the past as well as more sensitive to the issues of the American territories.

We do not want to see the Interior Department continue the efforts that it made as recently as two years ago to have American Samoa, Guam, and the Virgin Islands taken off the U.N. list of non-self-governing territories with misleading arguments that these areas are self-governing.

Now, you and I know the Cold War is over, so we can face up to the reality of the fact that these areas are not self-governing. That is why we have the hearings here today. They are subject to the territorial clause of the Constitution, and their political statuses simply haven't been worked out.

The fact is that the peoples of these areas—and I am one of them—did not determine the status under which they live and do not fully participate in the making of the decisions that affect them.

This may have been difficult for our country to admit during the Cold War, but there is no reason for it not to face up to it now.

At this time, normally I would recognize the senior Democrat, Congressman Faleomavaega, of American Samoa; however, as a courtesy and as an agreement with Congressman Faleomavaega, I would like to recognize Congressman Underwood for any opening statement, since he has a rather large and important delegation before us today.

STATEMENT OF HON. ROBERT A. UNDERWOOD

Mr. UNDERWOOD. Thank you Mr. Chairman.

Thank you, both of you, for the courtesy you have extended me. I want to thank you, first, for holding this hearing today to allow the representatives of the insular territories to present testimony to House Concurrent Resolution 94.

As you know, the people of Guam have a strong interest in any expression of this Congress regarding the inherent right to self-determination of the Chamorro people. And I want to thank you, Mr. Chairman, for your continuing leadership on these issues. And for bringing attention to the need for decision and dialogue on these issues which are of paramount importance, to the territories. I think the paramount issue in the minds of the inhabitants of the territories is self-determination.

This Subcommittee witnessed last week a stark contrast between how the issue of self-governance is viewed by the bureaucrats in Washington and by the people of Guam. In a hearing held in this room on July 29 on H.R. 2144, the Guam Excess Lands Act, an act which would return 3,200 acres back to the people of Guam, a proposal which has been here for a number of years, the Office of Ter-

ritorial and International Affairs submitted written testimony concerning the issue of the military excess lands on Guam.

In an eleventh hour policy shift OTIA proposed to take Guam back 50 years to a time when there was no civil government, to a time when Guam was ruled first by a military government and then by an Interior appointed government.

But, Mr. Chairman, this is not 1945, and we refuse and we will not go back. The land issue has served to raise the consciousness of the political leadership on Guam and more importantly of the people of Guam that, the issue of self-governance and self-determination are very real issues; and that for the survival of the Chamorro people, the stakes are, indeed, very high. It has served to alert us to the fact that we must fight a bureaucratic mentality that may never, ever, see us fit to make our own decisions to govern ourselves and to determine our own destiny as a people. And, significantly, OTIA has chosen to raise these issues over land.

Amazingly, they still do not see that land, which was unjustly taken to begin with, has become a metaphor for our struggle for self-government. And this eleventh hour shift, this proposal that came out of OTIA, has done more to galvanize support and bring attention, again, to the issues of self-government and self-determination than those who argue for these things consistently could not do on their own on Guam. So in a sense, we can thank OTIA for that.

We have been waiting since 1977 for the return of this small portion of 3,200 acres from a military presence that spans over 45,000 acres, or one-third of our island; and just when we thought there can be some movement on this issue, we find that the fingers of the bureaucracy reaching 8,000 miles to our island to tell us what to do; we find the bureaucracy telling us that they will hold the land for us until we decide that our priorities for using the land are to their satisfaction.

Mr. Chairman, we are tired of waiting for our land to be returned. But we did not wait this long and come this far only to see our land transferred from one Federal landlord to another.

Mr. Chairman, as you well know, we believe the injustices that accompanied the massive land takings on Guam and the paltry sums that were paid for that land could not have occurred had the most basic rights of the people of Guam been protected by a civil government, not by civilian goodwill in Washington, but by rights guaranteed through a civil government.

You have heard the testimony of lands being condemned by military officers and adjudicated in hearings before military judges under a military governor. For Guam, the price of being a non-self governing territory, the price of military rule was tragically the loss of one-third of our island. So now OTIA wants to be the arbiter of how we use this land and what priorities need to be satisfied, no doubt including their own priorities.

I have heard the rationale that OTIA is trying to do United States a favor, that they can expedite the process of returning our land because they can deal with other Federal agencies that are pressuring them for some of this military land before it is returned to Guam. The military stated here that they did not receive and have not received any requests for this land in 16 years.

And I have to wonder, just who are these Federal agencies that want our land? Is it the Department of Labor? Is it the Department of Agriculture? Maybe Justice or the U.S. Mint? Or is it the National Park Service and the U.S. Fish and Wild Life Service, agencies of the Department of the Interior? And Interior wants to be the arbiter of our land. They want to be able to decide, amongst themselves, who gets what before it is returned to it's rightful owners, the people of Guam.

Ironically, Mr. Chairman, OTIA feels totally justified in making these decisions for the people of Guam, but are noticeably conspicuous by their absence here today. They are not here because they are not the administration's representative on self-determination. They can interfere with our government, but they cannot speak on self-governance. They have all the answers to our problems, but they are mute on our most fundamental problem. They are experts on all the issues, but they have no opinion on the most basic issue.

This zig-zag approach to policy-making does not work. It hinders our desire for fundamental changes in our relationship with the Federal Government. The end result from this bureaucratic mindset has its latest manifestation in the OTIA proposals which typifies the problems Guam faces in seeking self-governance and self-determination.

Mr. Chairman, the people of Guam will be heard and will some day prevail, not just in getting our land back but in achieving full self-governance. We know what we want, and now the Federal Government must decide if it knows what it wants from us. The real question for us is: Will the Federal Government be a partner in this process or not; will they help us achieve self-determination or not?

Thank you, Mr. Chairman.

Mr. DE LUGO. I thank the gentleman from Guam for that opening statement.

The Chair is advised by the very capable consultant for the Republican side, Mr. Manase, that Congressman Gallegly is tied up in the Judiciary Committee, not literally tied up, now. There is a markup going on over there.

In addition, Mrs. Vucanovich, who is also a very valued member of this Committee on the Republican side, is a conferee on the House/Senate Agricultural Appropriations bill.

Resident Commissioner Romero was here just a little while ago, and I assume that he will return shortly.

At this time, let me recognize a very patient, valued Member from American Samoa, Mr. Faleomavaega, for any opening statement.

Mr. FALEOMAVAEGA. Thank you, Mr. Chairman. I do have an opening statement, and I would like to submit it for the record.

Mr. DE LUGO. Without objection.

Mr. FALEOMAVAEGA. I am just going to give a summary of the statement, Mr. Chairman. And then I would like to proceed at this time.

STATEMENT OF HON. ENI F.H. FALEOMAVAEGA

Mr. FALEOMAVAEGA. Mr. Chairman, the issue of the future political status of the territories is an important one. Given Puerto

Rico's size and population, it gets the most attention and with good reason.

The issue of 3.6 million U.S. citizens who cannot vote for the President of the United States needs to be addressed. And I want to commend Congressman Serrano for his leadership in introducing H. Concurrent Resolution 94.

Because of the differences between the rights and obligations of U.S. citizens residing in the territories and those residing in one of the 50 states, as I had mentioned 3.6 million citizens in Puerto Rico, cannot vote for President or Vice President of the United States.

Initially, they have no voting representation in the legislative branch of the Federal Government, and they can be conscripted into Federal military service. Because of these policies which have been in existence for decades, some call Puerto Rico a colony and the United States a colonial power. But I submit that those who make such claims are only looking at one side of the ledger.

Consider the following: The residents of the territories pay no taxes to the Federal Government on their income from the territories; they enjoy the protection of the armed forces of the United States; they are eligible for and travel with U.S. passports, including unlimited access to the United States; companies located in the territories receive preferential treatment; and there are selected welfare programs to assist those in need.

I emphasize these points to point out the complexity of the problem. While Puerto Rico may be subject to the laws of this country, so too are the 50 States and the District of Columbia. From my perspective, the only rational policy towards Puerto Rico, or any other territory for that matter, is to let the people of the various territories determine their own future.

While there is a need for the United States to provide for the education and health for the inhabitants of Puerto Rico and other territories, each territory should and must determine its own future.

Puerto Rico is currently going through a difficult period. Not long ago, Puerto Rico had a plurality of the people that wanted commonwealth status. Today it appears that the plurality is for statehood. What about tomorrow? Will it be independence? Or some other status?

If there are five political parties in Puerto Rico and the largest garners 40 percent of the vote, should the United States move towards that status despite the other desires of the 60 percent of the population? I think not. And I would tend to support Congress' traditional view that a clear majority of the people of a territory must want statehood before Congress must then consider their admission for statehood.

The question of who should vote in any election sponsored or authorized by the United States Government is another important issue. Some say that Puerto Rico and U.S. citizens domiciled in the 50 States and the District of Columbia should be entitled to vote in Puerto Rico if they are of Puerto Rican ancestry.

This issue becomes complicated if the local citizens of Puerto Rico disagree. Especially considering that those residing outside the territory will determine the future status.

Inherent in our national scheme is the underlying principle of one person, one vote.

For those of you presenting testimony, I look forward to your testimony regarding why someone residing and living in the United States should be permitted to vote in Puerto Rico's election also.

The interconnection between statehood and self-determination is also worthy of mentioning in this context. Nowhere in the United Nations charter does it say that the people of Puerto Rico or any group have a right to become a State of the United States. Statehood is a privilege, not a right. Self-determination does include the right to be free from the United States.

I think this is a crucial point—once a people accept a relationship with the United States other than statehood, Congress has the plenary authority over the land and individuals. Whether the status is called possession, territory or commonwealth, it falls under the territorial clause of the U.S. Constitution. And fundamental constitutional rights and certain Federal laws will apply.

I support the principles underlying the provisions of House Concurrent Resolution 94, and I look forward to hearing the testimony from our witnesses this morning.

And, Mr. Chairman, I offer my personal welcome to our distinguished guests and visitors here with us this morning from Guam. I am sure that my good friend from Guam will introduce them personally later in the hearing.

Mr. DE LUGO. I thank the gentleman from American Samoa.

And I now recognize the gentleman from Puerto Rico, Governor Romero.

Mr. ROMERO-BARCELO. Thank you, Mr. Chairman.

It is, indeed, a pleasure to be here to listen to the people of the territories talk about what they would like to see happen in each one of their own territories.

I think this is what we are concerned about here. This is a resolution on self-determination. This is a resolution to make sure that the will, as expressed by the people of the U.S. citizens in the territories, is recognized by the United States Government and by the Nation.

I must take exception with my colleague Eni Faleomavaega to say that the people of a territory who vote for statehood, that that is not an inherent right. I think that we must look at statehood from the point of view of the citizen and not from the point of view of the territories. Statehood is a civil rights issue.

What is the difference between being a territory in the case of Puerto Rico, for instance, and being a State? The difference is that we do not pay Federal income taxes for the income earned within the territory. We do pay Federal income taxes for income earned outside the territory. And we do pay other taxes.

The other difference is that we do not have a right to vote for the President of the Nation that we are citizens of, nor do we have a right for vote in representation. Once a citizenship is granted to the citizens of any territory, there is an implied commitment from the Congress and the Nation to guarantee those citizens and provide those citizens with the opportunity of having full citizenship. And full citizenship means the right to vote and the right to participate in the decisions that affect them.

That is what is extremely important. In Puerto Rico, like in Guam and Samoa and the Virgin Islands, the Congress sits down and determines what is going to be the environmental laws applicable in the Nation, including those territories. And we have no vote and no participation in those decisions, yet we are held accountable to and we must obey those laws.

We have to abide by the Federal laws of labor management relations. They may be the best laws in the world, but we have no participation in the decision of how those laws are enacted and what the final decisions are.

We are subjected to minimum wage laws. They might be the best thing—and they are; I believe very much in minimum wages—but we have to abide by them whether we like it or not. And we have no participation in the decision of approving and making those laws.

We are subject to bankruptcy laws, banking laws, fair trade practices laws, and all kinds of laws that affect our behavior, including penal laws. And when we violate a law and it has a criminal sanction, a U.S. District Attorney who is appointed by a person whom we didn't vote for and confirmed by a Senate where we have no representation, will bring the charges and have anyone arrested and then brought up before a U.S. District Court Judge who was appointed by a President for whom we did not vote and confirmed by a Senate where we have no representation.

Now, do those relationships fall within the meaning of what Democracy is and what we stand for as a Nation?

Is that what the United States wants to see continue for years to come and for always? I must take exception with my colleague, Mr. Faleomavaega, to say that we are not entitled as a matter of right. There might be some other criteria, as has been put forward throughout the years; and we should take a look and question those criteria. But, for instance in the case of Puerto Rico, the criteria of territory, we are larger than two States, Delaware or Rhode Island. And the criteria of population, we have 3,600,000 U.S. citizens; we have more population than 26 of the 50 States. The criteria of a republic form of government; we have a locally elected governor with a locally elected bicameral legislature, a Republican form of government.

There is not a single criteria that has been used historically that Puerto Rico doesn't qualify. And to say that we do not have a right to equality and political equality and economic equality is to go against what the Nation represents and what democracy means.

What is the difference between the civil rights for blacks and the civil rights for Puerto Ricans? Why is it all right to say that blacks have the right to vote and representation but not Puerto Ricans and others in the territories?

I think it is an issue that we must look at from the proper perspective. But it is not in the best interest of the Nation if Puerto Rico were to vote a majority—what is a clear majority? It can only be 50 plus one. That is a majority. If the decision of a majority is not validated, then the decision of the minority is validated.

There are not five political parties in Puerto Rico; there are only three. And the one that advocated independence hasn't received

more than 5 percent in the last 20 or 30 years. So there is obviously no movement towards independence.

We have two status options really: statehood and commonwealth. Commonwealth is a word for territory because we are nothing more than a territory. We are subject—and this I agree with my colleague Mr. Faleomavaega—we are subject to the territorial laws. Yes, Congress has authority over Puerto Rico. And that has been clearly established and clearly established recently where the Puerto Rican delegates have continuously, in Congress, stated that we have historical autonomy.

Well, just in the past few days, in the conference committee, Congress has decided to tax companies in Puerto Rico, the subsidiaries of mainland corporations, so-called 936 cooperations. I don't think they taxed them enough. But there is no fiscal autonomy. That is something that has been talked about and been wielded as a great thing that the commonwealth had, but there is no fiscal autonomy.

So that, I must underscore. What we are looking at is precisely that we must validate the concept of self-determination. If we, as a Nation, are telling Castro in Cuba, you must hold a plebiscite there and let the people speak for themselves; if we are going throughout the world saying, you must hold elections and let the people speak for themselves, then how can Congress say, of Puerto Rico or any territory to hold a plebiscite and expresses their wish from a majority; say, oh, that, is your wish, but we don't like it.

I don't know how many of you that are here were here the other day when we had the hearings about some land transfer in Guam and had the representative of the Department of Defense sit there at the witness table and say that these lands should have been transferred back to Guam, and they were going to be transferred back to Guam; but that they must require that some kind of overseeing and monitoring group be established for the Department of Defense to have effective participation because they must make sure that when these lands were transferred to Guam that Guam put it to the best use of Guam.

I got insulted by that because he was a representative of the Department of Defense speaking—that the Department of Defense knew better than Guam what was good for Guam what was the very best use for those lands. This is the result of the colonial mentality that arises from the relationship which the Nation has with its territories because we call them territories from a legal and constitutional point of view, but they are colonies in the eyes of the world. We are colonies.

We are U.S. citizens, different from the relationship many of the other colonies have had. And once we move to the main land and live here, then we have the same rights, political rights and economic rights, as the citizens here have. But in our materialities, we do not have the same rights. And we are subject to the will of Congress.

And that is not a type of relationship that is either valid in this day and age, nor is it desirable; nor is it the type of relationship that is viewed as proper within a democratic form of government.

So I hope that today we get an opportunity to examine and to hear from people of the other territories as to what they will express. And I, for one, have given my commitment that I will not

only support but will struggle together with each and every one of the people of those territories to make sure that what they feel is the best solution for them is what they will get.

Mr. FALCOMAVEGA. Will the gentleman yield?

Mr. DE LUGO. I will recognize you in a moment.

I thank the gentleman from Puerto Rico.

I recognize the gentleman from American Samoa but for just one minute.

Mr. FALCOMAVEGA. Just one minute. I have a point of clarification for my good friend from Puerto Rico. I don't believe he caught the other substance of my statement that I made earlier. But I want to clarify for the record that my point of saying that statehood is a privilege, not a right, extends only from my readings and understanding historically.

Two classic examples of statehood admissions were the problems with Hawaii and Alaska. Hawaii especially. They petitioned, how many times for statehood? Congress kept denying them. And the reason, the rationale, I think this is a matter of privilege because I think the Constitution is clear on that. Congress and the President has that responsibility to the Constitution.

And it is those two branches that make that determination whether or not to admit a territory for statehood, despite the fact that the territorial people may want or desire or seek statehood. It is still a privilege—a matter of discretion—of both the Congress and the President whether or not to grant statehood.

I wanted to clarify that, and I want to say that I absolutely support any basis of the people of Puerto Rico and their desire for whatever they want to determine for their future. I support that.

Thank you, Mr. Chairman.

Mr. DE LUGO. I thank the gentleman from American Samoa.

I was around—yesterday was my birthday, I am getting older—I was around at the time Hawaii and Alaska were fighting and trying to become States; and it did go on for many, many years. There is no question that during that time race was a big issue. But, it was not only race, it was political as well.

The experts, quote, unquote, thought at that time that Hawaii was going to come in and Hawaii was going to be a Republican State. They were going to send Republicans forever because at that time the Republicans were in control of Hawaii, and the big planters and so forth and so on.

Alaska was supposed to be a Democratic state. Then they decided the way to solve this is we will bring them both in at the same time. And of course, the experts, they were totally wrong: Hawaii is as Democratic as Alaska is Republican.

But, it just shows how we in the political process struggle. We think we have all the answers with these issues, and we can be so wrong. You think about what the world was like just five years ago and what it is like today, and how the whole world is changing for the future.

So we are here as men and women of goodwill struggling with a very difficult issue. An issue that involves the Constitution; it involves a matter of conscience of a Nation. Can this great Nation find the time with all of its other concerns to pay a little attention

to all of us, we citizens in the territories? Can it find the time to address these problems?

Yes, we know they want to help us. They will tell you that if you can get their attention, they will say, yes, I want to help you on this. But, when they find out that the issues that we're involved in, because we are small, are not simple issues. We are small, but the issues are very complex; and they cannot resolve these issues easily like that. Then you lose their attention, and the political will to change it.

We have to find a way through these hearings and through the dialogue to get the attention of the powers that be in Washington to hold it and win a commitment that they will address the issue of de-colonizing these areas that are pro-American that love this country but that are not fully a member of the American family and want their rights.

That is what this hearing is about. I want to thank you for coming here today.

PANEL CONSISTING OF HON. PILAR C. LUJAN, SENATOR, LEGISLATURE OF GUAM; HON. MARILYN MANIBUSAN, SENATOR, LEGISLATURE OF GUAM; AND RONALD RIVERA, CHAIRPERSON, ORGANIZATION OF PEOPLE FOR INDIGENOUS RIGHTS [OPIR]

Mr. DE LUGO. The first panel consists of the Honorable Pilar Lujan and the Honorable Marilyn Manibusan. They are Senators from the legislature of Guam. They are veteran Senators and friends of this Committee who have been very helpful in the past.

We have a member of Guam's Commission on Self-Determination.

We also have Ronald Rivera, Chairperson of the Organization of People for Indigenous Rights.

We want to especially welcome Senator Lujan to testify before the Subcommittee today. Senator Lujan is a Member, as I said, of the Commission on Self-Determination and the Senator originally asked to appear to testify at the original hearing on July 13. But at that time, unfortunately, we had so many witnesses from Puerto Rico that we decided to break it up into two hearings.

I want to thank you, Senator, first of all, for your interest in appearing before us and, secondly, for your understanding of the situation and for your being here today; we welcome you.

STATEMENT OF PILAR C. LUJAN

Ms. LUJAN. Thank you. Thank you very much, Mr. Chairman.

Hafa Adai. And good morning. Members of the Subcommittee, I am Pilar Cruz Lujan. I am a member of the Guam Commission on Self-Determination and a member of the twenty-second Guam legislature. My colleague Senator Manibusan and I are presenting testimony today on behalf of the commission and the legislature.

This demonstrates that, as explained in my prepared statement, the people of Guam are unified in the aspirations which we will convey to you today.

I want to express great appreciation for the opportunity to testify on House Concurrent Resolution 94.

It may be routine to say something flattering about the leadership you have shown in conducting this hearing, but in a very sincere and not routine way, we want to express our gratitude that someone in the Federal Government finally is taking a direct approach and facing up to the issue of self-determination for the insular areas.

The adoption of this resolution will establish clearly that the Congress recognizes that the principle of self-determination applies to the non-self-governing peoples under United States administration just as it does for the rest of the world.

The international obligations assumed by the United States under the United Nations charter are as an administering power over a non-self-governing people, nothing less than the honor of our Nation is at stake in the manner in which the United States acquires itself of the duties it has assumed in the international decolonization process.

For Guam, nothing less than our liberty and sense of dignity as a people are at stake in assuring that we achieve self-determination through a process which ends our second-class political status.

We know that stakes are high, and we take seriously the opportunity you have provided for us to clarify the goals and beliefs that motivate us in seeking self-determination for the native people of Guam as part of the decolonization process.

Mr. Chairman, I have a prepared statement which has attached to it a legal background paper, both of which I would like to have included in the record of this hearing. With your permission, I will summarize the principal points we make in that statement.

Mr. DE LUGO. All right. Without objection, your entire statement and the attachments will be made a part of the record at this point.

Ms. LUJAN. Thank you very much. We support adoption of House Concurrent Resolution 94 in a form which confirmed existing United States legal political and moral obligations arising under provisions of the United Nations charter as applicable to the unique circumstances of Guam or any of the other United States insular areas.

We applaud reassertion of the principles of the charter as a complementary force to the moral obligations of the Federal Government under domestic law to encourage full self-determination for the insular areas.

As my prepared statement and Senator Manibusan's statement indicate, we believe the plenary State powers of the Federal Government or its insular areas under the territorial clause of the Constitution, as interpreted by the Supreme Court, enable the U.S. Government to be innovative and bold in providing for self-determination for the native people of Guam as part of the decolonization process.

We recognize and concur with your position that the Congress must promote the overall national interest and protect United States self-determination as well. We will not expect otherwise.

But we are in a new era of change. And it is in the best interest of both Guam and the Federal Government to institute change so that decolonization can be achieved.

The 103rd Congress and the Clinton administration do not need to become captive to the policies that prevailed during the Cold

War era. It is time to stop this squabbling and open our minds to new possibilities. The United States must tell us plainly and honestly what its interests are in Guam, and we will work together with the Federal Government to accommodate those interests in our self-determination process. We know it must be a two-way street.

However, Mr. Chairman, the political management in the Clinton administration needs to take charge of the policy-making process in the Executive Branch and make positive changes happen in the relationship between Guam and the Federal Government.

There is no better illustration of why this must happen than the debacle of last week's written testimony by the Department of the Interior on the land transfer issue. The proposals made by the Department of the Interior blind-sided United States, and both the process and substance of this action were insensitive.

The Interior proposals demonstrate that we cannot rationally govern ourselves when the actions of the Federal Government are so unpredictable.

For example, we cannot encourage private sector growth and job creation when we cannot anticipate the policy initiatives from Washington that impose disincentives to economic development.

Some here in Washington seem to think we should be so grateful for the economic development we have experienced that we should be more accepting of the status quo. That is not the way the American dream works. And we will not accept the status quo when we know we can do better economically and politically.

Our land is the foundation of our culture. And restoration of our land and culture in a just and reasonable manner must not be viewed as a threat to the Federal Government's legitimate interests in Guam.

We are eager to work with the Federal Government to make certain its legitimate interests are preserved. But our legitimate interests must be preserved as well.

Assistant Secretary Turner's trial balloon on the land issue is among the best evidence to date on why the status quo is unacceptable. But the evidence is historical as well as a matter of current affairs.

For example, I want to call the Subcommittee's attention to the dramatic information presented in the attachment to my testimony today demonstrating that the United States has implemented immigration policies during the period between 1960 and the present which represent a trend which makes preservation of the Chamorro people's right to self-determination imperative.

Ms. LUJAN. We will not allow our rights to be extinguished for many reasons, but primarily, because it is wrong. And the United States knows it is wrong, because the United States opposes policies in other countries that deprive native peoples elsewhere of their right to self-determination. Both my formal prepared statement and the attached background paper discuss the issue in more detail, and I respectfully request that each member of the Subcommittee personally examine this question in order to understand why it is not radical or unreasonable of us to be raising these issues.

Mr. Chairman, we admit to being tenacious in our quest for a new relationship with the United States and our call for recognition of the right of the Chamorro people to exercise self-determination. However, we are committed to dialogue leading to positive support for the changes we seek.

We understand that both the plenary power of the United States under the territorial clause and the internationally recognized rights for our people must be recognized as we seek a path to resolution of outstanding issues.

Guam has been a member of the American political family since 1898. Although we have never been satisfied that the principles of American democracy we have embraced have been practiced fully by the United States in administering power, we believe that the United States is a moral Nation and that our rights as a people would not be overlooked forever.

The basis for the right of the Chamorro people to determine the status of their homeland comes not only from their internationally-recognized right of self-determination, but it also derives from the United States' commitments made at the time Guam was ceded by Spain. The Treaty of Paris explicitly requires the Congress to address the status of the native inhabitants of Guam and that obligation has not been fulfilled in a manner which satisfies the standards for self-determination to which this Nation adheres.

Thus, in many respects, the international obligations for the United States to provide for an exercise of self-determination aren't preceded by an explicit U.S. recognition of its responsibility with respect to the political status of the Chamorro people. This underscores that while the international obligations serve to clarify and reinforce the right of the Chamorro people to self-determination, no matter how prosperous or otherwise well-off they may be, in colonial status for people who live under the American flag is indefensible and does not square with the most fundamental notions of American democracy and fair play.

Mr. Chairman, the Commission on Self-determination supports the principles espoused in House Concurrent Resolution 94. We request, however, that it be revised to include Guam by name, along with other non-self-governing territories.

Thank you, again, for your invitation to appear here today. With the support of the 103rd Congress and the Clinton administration, we look forward to lifting the burden of colonial status and making Guam a shining example of freedom.

America is big enough and has the strength to move past the rhetoric and make change happen for Guam. Our Nation's devotion to human liberty for all people can make the quest of our people for self-determination a reality. Si Yu'os ma'ase, Mr. Chairman and members of the Subcommittee.

[Prepared statement of Ms. Lujan follows:]

**STATEMENT OF
THE HONORABLE PILAR C. LUJAN
MEMBER OF THE GUAM COMMISSION ON
SELF-DETERMINATION
&
THE 22ND GUAM LEGISLATURE
Before
THE SUBCOMMITTEE ON INSULAR
AND
INTERNATIONAL AFFAIRS
COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES**

Regarding

HOUSE CONCURRENT RESOLUTION 94

August 3, 1993

INTRODUCTION

Hafa Adai, Mr. Chairman and Members of the Subcommittee. I am Pilar Cruz Lujan. I serve as a Member of the 22nd Guam Legislature and Guam's Commission of Self-Determination. The people of Guam and their leaders welcome this long overdue series of hearings to determine the manner in which U.N. Charter provisions on self-determination are to be implemented in the context of U.S. law and policy towards Guam and other insular areas.

Too few Americans understand that the native people of Guam never have been afforded an opportunity to engage in an act of self-determination which meets basic international standards currently applicable to Guam. Nor do many of our fellow Americans know that there exist no mechanisms under current U.S. policy for the native people of Guam to exercise the inherent right of self-determination which the U.S. has agreed to respect in accordance with those international standards.

Put simply, under international law and the unambiguous requirements of treaties to which the U.S. is a party, Guam has yet to be decolonized. Respecting the right of self-determination is the only means by which Guam ultimately can be decolonized, it is the only way the U.S. can fulfill its treaty obligations, and ensuring the right of self-determination is the single most critical step required in order for Guam to move from a colonial status to being truly self-governing.

As discussed below and in the companion statement by my colleague Senator Manibusan, the requirement that Guam's self-determination process be one which respects the rights of the native people of our island is not something we invented. It is embodied in both U.S. and international law. I am submitting with this statement a legal analysis which the Commission has had prepared to support our views in this regard, and I request that it be made a part of the record of this hearing along with this statement.

Senator Manibusan and I come here today representing a Guam that is unified in its aspirations. Our primary purpose here today is to persuade the U.S. Congress and the Clinton Administration that it is in the best interests of the United States to take the steps necessary to enable the Chamorro people to engage in a free and fully informed act of self-determination. This will bring an end to the era of U.S. colonialism in Guam, and enable us to begin the new century on the basis of a relationship with the U.S. which does not require in perpetuity U.N. oversight pursuant to Article 73 of the Charter.

These are not rhetorical points. Inability to exercise the right available to us under U.S. and international law is a reality with which we must live each day. Rights which can not be exercised are an affront to the values which bind this nation together. As Americans we cannot rest until our dignity as a people and America's promise of democracy for all its citizens both have been redeemed.

Finally, by way of introduction, through our political status initiative, which is based upon the proposed Guam Commonwealth Act, the people of Guam also seek to institute a more democratic form of self-government. The process for doing so must enable us, for the first time, to give consent to the laws and the form of government under which we live. This is the first and most fundamental principle upon which our nation was founded. Of critical importance to us in this context is the requirement that our political and legal relations with the federal government be created through mutual consent, and that changes in the relationship be made by mutual consent.

WHY CAN'T GUAM AND THE FEDERAL GOVERNMENT BECOME PARTNERS IN THE DECOLONIZATION PROCESS?

Although the question of self-determination for Guam's native people is distinct from that of greater self-government, approval of the Guam Commonwealth Act will create the framework for both of these fundamental issues to be addressed and for Guam to be decolonized. The outcome of the process will be a political status for Guam which preserves the rights of the Chamorro people to engage ultimately in a legitimate act of self-determination, and begins by establishing a self-governing Guam which has a political relationship with the U.S. based upon mutual agreement. The result which this process will produce is decolonization.

We have always believed that resolving these fundamental issues is in the best interest of both the United States and Guam. In the closing days of the last Administration, however, we sensed impatience on the part of the federal government with the self-determination process.

Believe me, Mr. Chairman, our people understand how frustrating the lack of progress has become. We realize that just as we find it increasingly frustrating, this era of change creates stress within the federal government as well. By seeking to ensure that resolution of Guam's status issue is included in the agenda of the Clinton Administration and the 103rd Congress for change, we know that we are continuing to challenge the status quo at a time when events in Puerto Rico, the CNMI and Palau also are demanding attention and action by the federal government.

We make no apologies for being resolute and determined, and we are committed to seeing the process through to completion. The requirement for self-determination will not just go away, and neither will we. While that may present challenges to the federal government, it also creates opportunities, and in the end we have a common goal of resolving the self-determination and political status issues and achieving decolonization of Guam. We all need to stop and remind ourselves of the important objectives we share at the same time we seek to end disagreement on how to achieve them.

THE SELF-DETERMINATION AND DECOLONIZATION PROCESS GUAM HAS PROPOSED IS IN THE NATIONAL INTEREST OF THE UNITED STATES

Change is painful, but it also is liberating. If we can break the impasse on a few fundamental issues we all will be emancipated from the worn out political ideas and legal doctrines devised to maintain the vestiges of a colonial regime the administration of which the U.S. was never morally or historically well-suited to undertake.

During a century that saw most other anachronisms of the colonial era swept away, the U.S. territorial "empire" has withered but not been allowed to die. Attempts to rely on existing insular policy as we enter the next century will produce only more contradictions between American values and actual practices of our government.

During the Cold War the people of Guam were able to endure the lack of a definitive self-determination process as one part of the important role we played in support of America in the struggle against international communism. Now, in the post-Cold War era, we want to provide leadership among the U.S. insular areas by working with the federal government to find a way out of the awkward position of leading the global movement to promote democratic reform while resisting democratic reforms for its own insular areas.

In this sense, Mr. Chairman, your remarks of June 13 were especially profound. Too few federal officials recognize that it is in the best interests of the United States to deliver, as a matter of honor and simple fairness, on the promise of self-determination. It also is in the U.S. national interest for the federal government to join us in pioneering new political, legal and economic relationships between the federal government and the insular areas. Instead of debating about who is to blame for those aspects of the status quo with which none of us are satisfied, we need to work together to create a new paradigm for U.S. relations with its territories which accommodates self-determination while sustaining our mutual interests as we approach the turn of the century and beyond.

Guam does not seek confrontation with federal authorities, but rather seeks to evoke the genius of the American political system — not merely to grudgingly accommodate but to encourage self-determination for our people and the evolution of our island into a self-governing, decolonized polity.

The people of Guam and their elected leaders have not proposed that self-determination be achieved, or that fundamental legal and political reforms be undertaken, out of defiance or ingratitude, but because we believe existing legal and political doctrines applicable to Guam need to be reformed to allow positive change. We now are at a crossroads, and it is imperative that we begin a new dialogue about Guam's proposal for an unprecedented but promising new framework for self-

determination and political relations between the federal government and a self-governing Guam.

That is why we are encouraged by the decision of the Secretary of Interior to support designation of a negotiator who can speak authoritatively for the federal government on these issues. The stage is now set for discussions in which both governments are prepared to talk openly and honestly about the real choices, without feeling threatened by the need to predicate those discussion on, among other things, U.S. international obligations toward Guam arising from its treaty obligations and U.S. law.

GIVEN THE HISTORY OF OUR RELATIONSHIP, THE U.S. SHOULD BE THE CHAMPION OF SELF-DETERMINATION AND DECOLONIZATION FOR GUAM

The treaty-based legal obligations of the U.S. relating to Guam arise from the Treaty of Paris, in which the U.S. agreed that "[the] civil status of native inhabitants of the territories hereby ceded to the United States shall be determined by Congress." Exercising its discretion under the Territorial Clause, the Congress has passed numerous measures relating to the political, economic and social status of the native people (the Chamorro people), including the grant of U.S. citizenship, and enactment of the Organic Act for Guam in 1950.

However, one of the most definitive measures Congress has taken with respect to the civil status of the native inhabitants of Guam was approval of the U.N. Charter. Under the U.N. Charter the U.S. undertook as a "sacred trust the obligation...to develop self-government, to take due account of the political aspirations of the peoples..." in the territories. In this manner, then, has the United States defined the commitment it made to the native inhabitants of Guam under the Treaty of Paris.

While Congress has discretion over the U.S. insular areas under the Territorial Clause, it must exercise that discretion pursuant to the Treaty of Paris and the U.N. Charter in a manner which protects the rights of the native peoples of Guam and encourages self-determination. As we have said, Guam will not be considered decolonized until the rights of the native people to self-determination are provided for and respected.

As the attached legal analysis explains, the international practice of nations with respect to decolonization has developed within a political framework grounded in treaties and U.N. resolutions which include Article 73 of the U.N. Charter, General Assembly Resolution 1541, the 1970 Declaration on Friendly Relations, the International Covenant on Civil and Political Rights, and the Plan of Action for the Full Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples.

The U.S. record for complying with the clear standards by which its performance as Administering Power for Guam will be judged by the community of nations is not without serious flaws — especially with respect to taking measures to ensure that immigration, military land and other matters are managed in a manner which protects the right of the native people to self-determination. Understanding these standards and this history provides important insights into the reasonable and positive proposals Guam has made for managing the self-determination process from this point forward.

While the steps required to decolonize Guam are fairly clear under U.S. and international law, too often in the past attempts by Guam to introduce international standards in our dialogue with the federal government were viewed as somehow inappropriate or even impertinent. I want to associate myself with the remarks of Senator Manibusan welcoming the finding of the Congressional Research Service in a recent memorandum of law that the U.S. does have obligations under Article 73 of the U.N. Charter toward those U.S. territories which remain on the U.N. list of non-self governing areas.

We also are pleased to report that recent discussions between OTIA, the State Department and Guam have produced better understanding of the relevance of Guam's status as a non-self-governing area on the question of self-determination and U.S. policy toward Guam generally. This includes establishing that Guam's participation in U.N. decolonization proceedings is not inconsistent with U.S. law and policy, as some had suggested in the past.

We now expect continued progress in reducing the perceived tension between the goals of domestic policy with which Interior — as the lead federal agency on insular matters — is familiar, and the international policy matters which arise under applicable law, and which also are a logical part of OTIA's mandate, in cooperation with the State Department and other agencies having international policy responsibilities.

Thus, this hearing is extremely timely for us. In order for us to assist the Subcommittee in its work and take full advantage of this opportunity to create a record in support of our aspirations, please allow me to submit the following specific information relating to H. Con. Res. 94 and its implications for Guam.

COMMENTS ON THE PROPOSED RESOLUTION

Although the original version of the resolution introduced by Representative Serrano relates to Puerto Rico, we hope this Subcommittee will report to the full Committee, and that the full Committee will report to the House, a version which will address the right of self-determination as it relates to the people of each of the

U.S. territories. In Guam's case this is critical because we have not yet achieved self-determination in a manner which satisfies the obligations of the U.S. to the native peoples of Guam under the Treaty of Paris and the U.N. Charter.

Again, Guam remains on the U.N. list of non-self governing areas which have not yet been decolonized, as that term is used and understood in the context of international law and standards recognized by both the U.S. and the United Nations. But decolonization can be achieved in a manner consistent with the U.S. Constitution if the latitude the Supreme Court has given to the political branches of the government under the Territorial Clause in the Insular Cases is used to recognize and implement a form of self-determination and self-government that is consistent with the freely expressed wishes of the native people of Guam, taking into account the unique conditions in each territory.

THE PARTICULAR REQUIREMENTS FOR SELF-DETERMINATION IN GUAM

More so than in any other U.S. insular area, in Guam it is not easy to identify who the "self" is in self-determination. Frankly, we have not been as successful as we had hoped to be generating an understanding here in Washington of the advantages to Guam and the U.S. of a self-determination process through which the rights of Guam's indigenous people are respected.

We need to do a better job of explaining that the need to afford Guam's native population an opportunity to give consent to the political status results we are pursuing is not an infringement on the rights of other U.S. citizens. It is a right of indigenous people protected by U.S. law and policy, and by international law. Again, I am attaching to my testimony the Commission's legal analysis which supports this view.

The requirement for a self-determination process which respects the rights of the native people of Guam should not be controversial. It is a matter of simple fairness as well as a practice that has become universal among countries which observe the standards which civilized countries have adopted since the Atlantic Charter first renounced territorial aggrandizement inconsistent with freely expressed wishes of the people concerned.

Without casting blame or ignoring the historical circumstances which produced the status quo, the fact is that the United States has not yet taken the steps necessary to protect the rights that the Chamorro people have under U.S. and international law. This was acknowledged in the First Report of the Federal Task Force on Guam, which stated that

"...others among Guam's current residents have had a choice [of self-determination]: Statesiders, Asians, Micronesians from the former Trust Territory.

and other residents have acted voluntarily to come to Guam knowing of Guam's status. Guam's neighbors in the Pacific — the people of the Freely Associated States, and the people of the Northern Marianas — were afforded a chance to vote on whether they approve the terms of their relationship with the United States. But the Chamorro people of Guam have been given no such opportunity — not in 1899, when Guam was ceded to the United States by Spain, not in 1950 when the Organic Act was passed and the people of Guam became citizens of the United States, nor at any other time."

We intend to strengthen the multicultural alliance in support of the rights of indigenous people in Guam. We know there is strong support for this element of Guam's self-determination process among all ethnic and social groups in Guam who have come to understand the issue. We want military families in Guam on a temporary basis and long-time residents from all over the world alike to recognize that their own interests will be served by ensuring that the rights of our Chamorro people are not swept aside.

Respecting the rights of indigenous people does not need to diminish the rights of others, and vindicating those rights in the long run is a vindication of the rights of every American.

SELF-DETERMINATION FOR THE PEOPLE OF GUAM

A LEGAL ANALYSIS

GUAM COMMONWEALTH

PRESENTED IN CONJUNCTION WITH THE STATEMENT OF
THE HONORABLE PILAR C. LUJAN
MEMBER OF
THE 22ND GUAM LEGISLATURE

&

THE TERRITORY OF GUAM'S
COMMISSION ON SELF-DETERMINATION

Before

THE SUBCOMMITTEE ON INSULAR
AND
INTERNATIONAL AFFAIRS
COMMITTEE OF NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

Regarding

HOUSE CONCURRENT RESOLUTION 94

August 3, 1993

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I. INTRODUCTION

This paper discusses existing United States policy towards the territories in general and the native people of Guam in particular. To date, United States policy has refused to accept the possibility that the native people of Guam could be the beneficiaries of rights uniquely applied to them. In both its first and second reports, the interagency Task Force on Guam Commonwealth took the position that any provision of the draft Commonwealth Act which singles out native people for unique rights and privileges must be rejected as an infringement upon one or more of the Fifth, Fourteenth or Fifteenth Amendments.

The Task Force's constitutional analysis may have appeal on the surface, but it fails to take into account an uncontradicted series of Supreme Court and Courts of Appeals decisions concerning the Congress' power over the unincorporated territories. Most critically of all, the Task Force's approach gratuitously restricts the policy options of the political leadership in the Executive Branch and Congress, and seeks primarily to justify the status quo at the expense of constructive change and reform.^{1/}

The policy positions expressed in the two Task Force reports have been driven primarily by opposition of the Justice Department in the past toward the concept of group rights and affirmative action programs which depend, in part, upon the recognition of group rights. We disagree fundamentally with the basic proposition that the rights of racially or culturally diverse groups cannot be specially recognized, particularly in unincorporated territories, and in the context of measures which will

^{1/} The doctrine of unincorporated versus incorporated territories was established in the early 1900s in a line of cases now referred to as the Insular Cases. Downes v. Bidwell, 182 U.S. 244 (1901); Armstrong v. United States, 182 U.S. 243 (1901); Dooley v. United States, 182 U.S. 222 (1901); DeLima v. Bidwell, 182 U.S. 1 (1901). This doctrine was developed judicially to deal specifically with the territories taken by the United States from Spain after the Spanish-American War. Those territories were the Philippines, Puerto Rico, the Virgin Islands and Guam. In the absence of executive or legislative policy dispositive of their political status, the unincorporated territory doctrine was created judicially to deal with these territories, which were not viewed as automatically destined for Statehood as were the territories in the western half of the North American continent. The ethnic composition and cultural heritage of the territorial inhabitants made settlement and incorporation of these areas in the same manner as the continental territories impractical and politically awkward. Since the "Manifest Destiny" model of territorial incorporation, involving removal of the native peoples to reservations to make way for Euro-American settlement, apparently was not deemed politically correct at the turn of the century, the Court simply created a legal "reservation" for the territories by inventing the doctrine of unincorporated territories. While we no longer may be motivated by the same cultural views of native peoples, the Insular Cases remain good law today, Torres v. Puerto Rico, 442 U.S. 465 (1979), and we need to recognize that this constitutional doctrine which has survived into our times provides flexibility to institute positive political change.

resolve Guam's political status and ultimately end Guam's status as a non-self-governing territory under U.S. administration. Moreover, we believe that the analytical approach reflected in the Task Force reports is one which is applicable to States or municipalities when acting on their own initiative and has nothing whatsoever to do with congressional action in the unincorporated territories. Again, this is particularly true in the context of Guam's political status process.

We are convinced that fundamental change in United States policy toward its territories is impossible without first reassessing the powers, rights and obligations of the United States toward the unincorporated territories. The Constitution and applicable treaty obligations have been interpreted in the past to inhibit a greater voice by the people of the territories in their own self-government. Meaningful self-government is an illusion if existing policies do not change.

We believe that the policy of the United States regarding its powers, rights and obligations in the territories has become internally inconsistent. The basis for United States administration of all its territory (whether a national park in California or the island of Guam) is the Territorial Clause (also called the Territories Clause) found in Article IV, Section 3, Clause 2 of the United States Constitution. Under Clause 2, "[t]he Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." Application of the Territorial Clause to the territories has, again and again, been defended and justified as providing the constitutional basis for the unique treatment given to the territories in many respects. At the same time, however, it is argued that the discretion Congress has under the Territorial Clause is of no avail in overcoming constitutional questions which have been raised relating to the unique treatment Guam seeks in its Commonwealth proposal.

The Issue analyzed in the paper is whether United States law (including the Constitution, laws and treaty obligations) permits Congress to treat the people of the unincorporated territories specially, both in the context of their unique political status as defined by the Insular Cases, and in light of U.S. obligations with respect to its non-self-governing areas. While this question can be raised in connection with virtually every section of the draft Commonwealth Act, we intend to focus the discussion on the heart of the Commonwealth proposal, Chamorro Self-Determination, set forth in Title I, Section 102 of the draft Act, and Mutual Consent set forth in Title I, Section 103.

II. CONGRESS' POWER OVER THE TERRITORIES

The analysis begins with reference to a well-established constitutional legal principle -- Congress has extraordinary powers to deal with the territories. The Supreme Court has consistently interpreted Congress' power under the Territorial Clause broadly and long ago concluded that "Congress, in the government of the Territories . . . has plenary power, save as controlled by the provisions of the Constitution." Binns v. United States, 194 U.S. 486, 491 (1904). Justice White, in Downes v. Bidwell, 182 U.S. 244 (1901) (generally viewed as the seminal opinion on the status of territories) described the breadth of Congress' power over unincorporated territories:

The Constitution has undoubtedly conferred on Congress the right to create such municipal organizations as it may deem best for all the territories of the United States . . . and to change such local governments at its discretion.

Downes, 182 U.S. at 289-290.

The Supreme Court explained further its view that Congress has the broadest possible authority over the territories in Dorr v. United States, 195 U.S. 138 (1904):

Congress has unquestionably full power to govern it [the territories], . . . and while Congress will be expected to recognize the principle of self-government to such extent as may seem wise, its discretion alone can constitute the measure by which the participation of the people can be determined.

Dorr, 195 U.S. at 148 (emphasis added).

The Courts, therefore, have been exceedingly hesitant to interfere with Congress' power over the territories. As the Ninth Circuit has said, courts "must be cautious in restricting Congress' power" in the territories. Wabot v. Villacrusis, 958 F.2d 1450, 1460 (9th Cir. 1992).^{2/}

^{2/} The Congressional Research Service agrees that Congress has broad powers toward the territories, limited only by those constitutional restrictions which are applicable to it. In an opinion prepared at the request of former Congressman, the Honorable Robert Lagomarsino, dated December 4, 1991, concerning Puerto Rico's political status, CRS concluded that in the political status area "Congress has discretion to act. It may, subject only to constitutional constraints that may inhibit its actions, choose to accord recognition to a wide variety of rights that Puerto Rico or others may seek. It may creatively provide for new and different relationships between the United States and any territory. And it may treat bilaterally with the Government or the people of Puerto Rico in the establishment of governmental institutions and forms."

The starkest description of the scope of Congress' authority over the unincorporated territories is found in three separate rulings by the United States Court of Appeals for the Ninth Circuit addressing the political status of Guam. Beginning in 1982, the Ninth Circuit stated in People v. Okada, 694 F.2d 565 (9th Cir. 1982) that

Congress has the power to legislate directly for Guam, or to establish a government for Guam subject to congressional control. Except as Congress may determine, Guam has no inherent right to govern itself.

Okada, 694 F.2d at 568 (emphasis added.)

Three years later, the Ninth Circuit expanded on this theme in Sakamoto v. Duty Free Shoppers, Ltd., 764 F.2d 1285, 1286 (9th Cir. 1985), holding that Guam "enjoy[s] only such powers as may be delegated to it by Congress." As such, "the government of Guam is an instrumentality of the federal government over which the federal government exercises plenary control." Id. at 1289.

The Ninth Circuit's most recent and clearest declaration on this theme came in Ngiraingas v. Sanchez, 858 F.2d 1368, 1370-71 (9th Cir. 1988) when Guam was analogized to a Federal agency:

Admittedly the analogy between Guam and an administrative agency such as the Federal Trade Commission is counter intuitive. Guam seems more like a state or municipality than a run-of-the-mill federal agency. After all, Guam elects government officials, its citizens participate politically. . . . But there are also very significant differences, differences we deem conclusive. . . . Guam marches squarely to the beat of the federal drummer: the federal government bestows on Guam its powers and, unlike the states, which retain their sovereignty by virtue of the Constitution, Guam's sovereignty is entirely a creation of federal statute.

Ngiraingas, 858 F.2d at 1370-71 (emphasis added).

The threshold question quite obviously is, what limitations exist on Congress' power? As the Court stated in Binns, 194 U.S. at 491, the Congress has "plenary power, save as controlled by the provisions of the Constitution" (emphasis added). What are these limitations? The Territorial Clause gives to Congress discretionary power to provide to the people of an unincorporated territory or Commonwealth whatever individual rights or degree of self-government Congress determines appropriate. If Congress determines that the native people of Guam are entitled to extraordinary rights or that the Commonwealth Government is to have broad, internal self-governing powers, the Territorial Clause permits this. As set forth below, the only certain limitations on Congress are those prohibitions set forth in the Constitution which specifically limit Congress' power, such as the bar against ex post facto laws and bills of attainder.

III. SELF-DETERMINATION FOR THE NATIVE PEOPLE OF GUAM

Section 102(a) of the draft Commonwealth Act provides the mechanism for the people of Guam to exercise their inherent right of self-determination. As set forth in a bracketed agreement signed on October 2, 1991, the Congress directs that the Commonwealth Constitution shall establish a procedure for a plebiscite on future political status. Those who will be eligible to vote are those who Congress decided were eligible for citizenship in 1950 -- those who were born on Guam prior to the granting of citizenship and their descendants.^{2/}

Section 102(c) provides for a recognition by the United States that the Chamorro culture is endangered as a result of the 500-year history of colonialism in Guam and the unfettered immigration permitted over the last 30 years. In recognition, the Congress directs the adoption of programs (1) to revitalize the Chamorro culture and (2) enhance the economic, social, educational and job opportunities of the Chamorro people. In addition, it authorizes Guam to implement similar programs. This provision recognizes Congress' budget limitations and transfers some of the burden to Guam to assist in remedying past discriminatory practices.

A. UNITED STATES HISTORICAL AND INTERNATIONAL TREATY OBLIGATIONS TOWARD THE NATIVE PEOPLE OF GUAM

A compelling historical basis exists for this right to exercise self-determination. In its First Report on H.R. 98 released in August of 1989, the Task Force recognized that

others among Guam's current residents have had a choice [of self-determination]: Statesiders, Asians, Micronesians from the former Trust Territory, and other residents have acted voluntarily to come to Guam knowing of Guam's status. Guam's neighbors in the Pacific -- the people of the Freely Associated States, and the people of the Northern Marianas -- were afforded a chance to vote on whether they approve the terms of their relationship with the United States. But the Chamorro people of Guam have been given no such opportunity -- not in 1899 when Guam was ceded to the United States by Spain, not in 1950 when the Organic

^{2/} 8 U.S.C. 1407(a). This self-determination vote by the Native People of Guam should not be confused with the ratification process planned for Commonwealth or for the Commonwealth Constitution. Under procedures proposed in Title XII, all eligible voters on Guam will be entitled to vote to approve or disapprove the Commonwealth Act as passed by Congress. Thereafter all these same eligible voters will be entitled to vote for electors to a constitutional convention. They will also be entitled to vote for the Constitution which may contain a procedure for the vote.

Act was passed and the people of Guam became citizens of the United States, nor at any other time.

First Report at 9 (emphasis added).

With this compelling statement, the Task Force sounded a clarion call for self-determination, recognizing that the native people of Guam have had no meaningful role in their own governance since they were colonized in the 1500s. First, they lived under three centuries of Spanish rule, during which time their population was reduced from 100,000 to 5,000 by the turn of the 18th century. In 1898, Spain ceded the island of Guam to the United States in the Treaty of Paris, which ended the Spanish-American War. With the island came responsibility for the native people of Guam. As a part of its obligations under the Treaty of Paris, the United States agreed that "[t]he civil and political status of native inhabitants of the territories hereby ceded to the United States shall be determined by the Congress." 30 Stat. 1759.^{4/} The United States, therefore, undertook as a treaty obligation responsibility for the political status of the native people of Guam, the Chamorros.

After 1898, Guam was ruled by a military Governor and largely left alone, giving the native population the opportunity to reestablish itself. By 1940, the Chamorro population had risen to approximately 20,000, out of a total island population of 22,290, or over 90% of the local population. The other 9% was made up of Statesiders (referred to as "whites" in census documents) (3.5%), Filipinos (2.6%), and others (3.4%).

In 1941, Guam was attacked by Japan and occupied by yet another colonial power, until liberated by American forces in July 1944.

After the cessation of hostilities, the people of Guam -- while liberated from Japanese tyranny -- remained under what was recognized by international law as a colonial arrangement. Thus, when the U.N. Charter was implemented in the post-war era, the U.S. accepted inclusion of Guam on the U.N. list of non-self-governing areas. Although the Congress adopted an Organic Act for Guam which served in place of a local constitution, 48 U.S.C.A. §§1421 et seq., the native Guamanians (then numbering approximately 27,000, see, note following 48 U.S.C.A. §1421) were offered no meaningful role in their political affairs.^{5/} The Organic Act did provide for a locally

^{4/} See Examining Board v. Flores de Otero, 426 U.S. 572, 586 n. 16 (noting the "broad" powers vested in Congress by the Territorial Clause, and pointing specifically to the authority granted Congress by the Treaty of Paris).

^{5/} At the same time, Congress also granted citizenship to the residents of Guam. 8 U.S.C. 1407 (a). This citizenship, however, was limited to a class of residents which generally were those persons and their descendants who were inhabitants of Guam on April 11, 1899 -- in other words, the Chamorro people. This is essentially the same
(continued...)

elected legislature and local court system, but the Executive was a governor appointed by the United States, and Congress reserved the power to override any legislation adopted by the locally elected legislature. 48 U.S.C.A. §1423i. Furthermore, the United States District Court for Guam served as an appellate court for appeals from the local court system.

Perhaps the most onerous example of the ongoing colonial regime was a restriction on travel to and from Guam. The United States established a military security zone encompassing the entirety of Guam. No person, whether Chamorro or non-Chamorro, was permitted to enter or exit Guam without military approval. Families were divided and the people of Guam became prisoners on their own island, or exiles from it -- if circumstances found them elsewhere. Importantly, however, these travel restrictions did provide some limitation on immigration into Guam, except for temporary military, United States Government personnel, and contract laborers. The local Chamorro population was not diluted significantly during this period. These restrictions were finally lifted by President Kennedy in 1962 as part of a review of United States policy toward Guam and the Trust Territories of the Pacific Islands.

At the time of liberation, the vast majority of Guam's permanent population was native Guamanian. By 1946 the Navy reported a native population of 22,689, with a total island population of 23,136, excluding military. By 1950, however, the total population of Guam was permitted to expand to 59,498, with 27,124 Chamorros (45.6%), 7,258 Filipinos (12.2%) and 22,290 "whites" (38.5%). It is believed that the vast majority of Filipinos and Statesiders on the island during the late 1940s and 1950s were brought there by the United States Government as a part of Guam's development as a military facility.^{2/} This population was transient and offered no immediate threat to the native population's ultimate ability to control internal island affairs.

By the mid-1960s, however, a new kind of immigration pattern was beginning to emerge.^{3/} After travel restrictions were lifted by the military and especially after the

^{2/}(...continued)

class of persons named in Section 102(a) of the draft Act as those who would be eligible to participate in a future and final act of self-determination.

^{3/} 84.2% of those immigrating to Guam between reoccupation (1944) and 1950 were males who came either for military assignments or as part of the imported labor force.

^{4/} In 1952, the Immigration and Nationality Act designated Guam as a part of the United States for Immigration purposes. Immigration and Nationality Act of 1952, sec. 403, 66 Stat. 280. In addition, the U.S. Board of Immigration Appeals held that certain nonimmigrant alien workers admitted prior to December, 1952, were entitled to permanent U.S. residency under the 1917 Immigration Act. As a result, by February, (continued...)

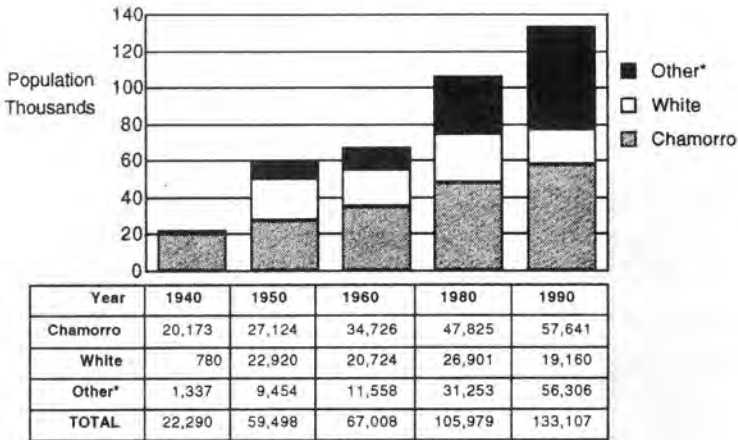
end of the Vietnam war, United States law and policy encouraged massive immigration, principally from Southeast Asia. As United States law on immigration changed to a country-quota system, Asians had unprecedented access to the United States. Because Congress had designated Guam as a part of the United States for permanent residency purposes, Guam, with its close proximity to Asia, became a magnet for immigrants, especially from the troubled Philippines. These immigrants are far less transient than their U.S. mainland predecessors, as the following Table demonstrates.

^{2/}(...continued)

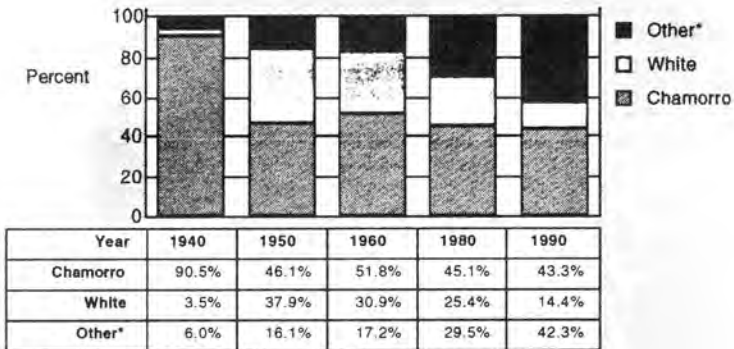
1962, 1,700 Filipino workers were able to obtain permanent residency on Guam. Another 200 nonresident aliens were also admitted by 1962 and an additional 1,458 aliens were admitted by 1967, all of whom had entered Guam with military permission.

Guam Population Ethnicity Mix 1940-1990 ‡

Numerical Distribution



Percentage Distribution



Source: U.S. Bureau of Census Decennial Reports, 1990.
 *Filipino and other immigrants primarily from Asia.

This Table shows conclusively that the transient population from the mainland United States decreased in real numbers during this period, and more importantly, as a total percentage of the population. But the Filipino and "Other" populations grew from 15.9% of the population in 1950 to 42.3% of the population by the 1990 census, or only 1% less than the native population -- which had been diluted a further 2.3% in this same period.

The policy which permitted this significant influx of immigrants is directly responsible for the Chamorro self-determination proposal. If the United States had not treated Guam as a destination at which U.S. citizenship could be attained by aliens, the proposal would be unnecessary. Because we cannot roll back this history, the United States has an obligation to provide the native people of Guam with an opportunity to exercise self-determination, undiluted by the voice of those who have been permitted to immigrate.

B. The International Legal Framework

This responsibility to allow for true self-determination stems from the ratification of the Treaty of Paris, whereby Congress accepted responsibility for the political rights of the native inhabitants of Guam. This responsibility was later amplified in the ratification of the United Nations Charter.^{3/} Specifically, Article 73 of the Charter states:

Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost . . . the well-being of the inhabitants of these territories, and, to this end . . . to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory

^{3/} The political branches of the U.S. Government exercised their plenary authority under the treaty making power by entering into the United Nations Charter in 1945. It is important to keep in mind that the Charter is a treaty obligation, and thus has the force of Federal law under the Constitution. In this context, the political branches decided to make international standards applicable to the territories, including Guam. That exercise of authority now constitutes part of the framework, under the Insular Cases, within which the U.S. administers Guam, and is perfectly consistent with the Territorial Clause. Thus, the U.N. Charter and the Insular Cases can be seen, not at odds with one another, but as fully consistent within overall constitutional and statutory framework.

U.N. Charter, Article 73 (emphasis added).

Guam is included on the United Nation's list of non-self-governing territories. By accepting Guam's inclusion on the United Nations list of non-self-governing territories, and by reporting annually to the United Nations under Article 73(e) of the U.N. Charter, the United States accepts that it considers Guam to be a non-self-governing territory, thus recognizing its obligations under the Charter.^{9/}

To whom does self-determination apply? The first serious effort to enunciate the applicable principles was undertaken by the fifteenth General Assembly in Resolution 1514 and its Annex (Resolution 1541), both adopted on December 14, 1960. Together they attempt to set forth the test for determining whether a territory is non-self-governing within the meaning of Article 73(e) of the Charter. Under Principle IV of the Annex, non-self-governing status exists *prima facie* "in respect of a territory which is geographically separate and is distinct ethnically and/or culturally from the country administering it." Once that test has been met, Principle V states, "other elements may then be brought into consideration," including those "of an administrative, political, juridical, economic or historical nature. If they affect the relationship between the metropolitan State and the territory concerned in a manner which arbitrarily places the latter in a position or status of subordination, they support the presumption" that the territory is non-self-governing.^{10/} Resolution 1514 declares that all Members should take immediate steps "to transfer all powers to the peoples of those territories, without any conditions or reservations, in accordance with their freely expressed will and desire"^{11/}

The 1970 Declaration on Friendly Relations elaborated the Charter's "principle of equal rights and self-determination of people" by reiterating the duty to end colonialism and to permit each colonial territory to assume a "political status freely determined by" the inhabitants. More broadly, the declaration attributes to "all peoples" -- not merely the inhabitants of colonies -- "the right freely to determine, without external interference, their political status."^{12/}

^{9/} Article 73(e) states, in pertinent part, that Nations administering non-self-governing territories must "transmit regularly to the Secretary-General for information purposes . . . statistical and other information . . . relating to the . . . conditions in the territories for which they are responsible."

^{10/} G.A. Res. 1541, 15 U.N. GAOR Supp. (No. 16), U.N. Doc. A/4684 (1960), at 29.

^{11/} G.A. Res. 1514 (XV), para. 5, U.N. GAOR Supp. (No. 16) at 66, U.N. Doc. A/4684 (1960).

^{12/} G.A. Res. 2625, 25 U.N. GAOR Supp. (No. 28), Annex, principle 4.

The broad concept of a universal right to self-determination is further enunciated in Article I of the International Covenant on Civil and Political Rights.^{13/} This treaty, ratified or acceded to by 113 states as of November 1991, and approved by the United States Senate on April 2, 1992, states categorically: "All people have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."

To implement further the decolonization process, in 1980, the General Assembly adopted a resolution entitled "Plan of Action for the Full Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples." U.N.G.A. Res. 35/118 (1980). This resolution was overwhelmingly approved by a vote of 120-6, with 20 abstentions. As a part of this plan, colonial powers were directed to

adopt the necessary measures to discourage or prevent the systematic influx of outside immigrants and settlers into Territories under colonial domination, which disrupts the demographic composition of those Territories and may constitute a major obstacle to the genuine exercise of the right to self-determination . . . by the people of those Territories.

Id., Annex, para. 8.

The United States never implemented measures designed to prevent the dilution of the native Guamanian population through immigration. In fact the opposite happened, and United States immigration policies applicable to the mainland were extended to Guam, permitting the massive influx of new Guam residents. This immigration policy is inconsistent with the United States' obligations to a non-self-governing unincorporated territory, and provides all the basis Congress needs under every relevant decision to establish a rational basis for the authorization of self-determination for the native people of Guam.^{14/}

^{13/} International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 UNITS 171, reprinted in 6 ILM 368 (1967) (entered into force Mar. 23, 1976) [hereinafter ICCPR]. The same principle is stated in Article 1 of the International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 UNITS 3, reprinted in 6 ILM 360 (1967) (entered into force Jan. 3, 1976).

^{14/} Califano v. Torres, 435 U.S. 1 (1978), and Harris v. Rosario, 446 U.S. 651 (1980), support the proposition that Congress need only demonstrate a rational basis for its actions affecting an unincorporated territory: "Congress . . . may treat [an unincorporated territory] differently from States so long as there is a rational basis for its actions." Rosario at 651, 652.

IV. THE CONSTITUTIONALITY OF THE DRAFT COMMONWEALTH ACT

A. HISTORY OF PAST POLITICAL/LEGAL ANALYSES

For the last 500 years, decisions such as those which permitted massive immigration into Guam, diluting the native Guamanian population, have been made for the people of Guam by colonial administrators whose decisions were directed from distant capitals. More often than not these were political decisions made for the good of the colonial power, with only nominal reference to the political rights of the native people. Significantly, no Chamorro, while resident on Guam, has ever cast a vote for any of these decision-makers, for the persons who appoint them, or for those who approve their appointments.

The draft Commonwealth Act seeks to remedy the harmful effects of massive immigration through a variety of Congressional mandates directing that the native people of Guam be provided with a series of self-determination choices, as though their population had never been diluted.

The Task Force responded, not by assessing what powers the courts have said Congress has, nor by analyzing the United States' international treaty obligations toward Guam, but by characterizing Guam's proposal as a racially discriminatory voting scheme which violates the Fourteenth and Fifteenth Amendments to the Constitution. According to the Task Force, the limitation on voter eligibility to those born prior to August 1, 1950, and their descendants is merely a code word for a racial class because, although those eligible to vote could include some "born on Guam before August 1, 1950, who are not of Chamorro descent . . . their numbers, if any, would be so few as to be de minimis."^{15/}

The Task Force's analysis is overly simplistic. The focus should not be on the racial classification, which in any event clearly is not invidious race-based discrimination. Rather, the focus should be on the positive, restorative function of the classification, and democratic reform in U.S. Insular policy pursuant to the Territorial Clause. In addition, the Task Force has ignored the actual origin of this classification (Congress itself), and its purpose -- to give meaning to the obligations Congress accepted in the Treaty of Paris and the United Nations Charter.

^{15/} Significantly, the Task Force is unable to offer any evidence that the voter qualification provision would in fact result in an exclusively Chamorro vote. It is described as "Chamorro Self-Determination" for ease of reference. In fact, the Task Force does not deny that non-Chamorros might qualify under the provision. Quite clearly non-Chamorros would qualify, thereby undermining the argument that this is solely a race-based classification.

Most importantly, the Task Force's constitutional analysis demonstrates a fundamental misunderstanding of the draft Act, Congress' power over the unincorporated territories derived from the Territorial Clause, and the Supreme Court's deference to the Congress when it exercises its Territorial Clause authority. The Task Force's analytical problem originates with its treatment of Section 102(a) as if it were an action being taken by a State to deprive one of its citizens a right or a vote based solely on racial considerations. If adopted, however, the section would be a directive by the Congress pursuant to the Territorial Clause made in the context of Guam's political status process. It would not be racially based. It would be based on the United States' commitment in the Treaty of Paris and the United Nations Charter to the native inhabitants of an unincorporated territory. It is also based on Congress' own action in 1950, defining who would be qualified for citizenship. No court has ever ruled that an act of Congress is barred either by the Fourteenth or Fifteenth Amendments when the Congress is acting pursuant to its Territorial Clause authority to determine the political rights of the native inhabitants of a territory.^{16/}

In substantial part, the Task Force's objection to Chamorro self-determination is based on its view that a Chamorro-only vote constitutes a per se violation of the Fifteenth Amendment.^{17/} According to the Task Force, "the Fifteenth Amendment specifically and absolutely prohibits limitations on the right to vote based on race or color." Second Report at 13. First, as explained below, this is the wrong threshold

^{16/} In fact, the Supreme Court has been totally consistent in this regard. In both Rosario and Torres (note 10, supra) the Court upheld Congressional action despite clear equal protection issues, based on the broad authority given Congress under the Territorial Clause.

^{17/} The Supreme Court has not rejected all voting criteria involving racial considerations:

In addition, many of our voting rights cases operate on the assumption that minorities have particular viewpoints and interests worthy of protection. We have held, for example, that in safeguarding the "effective exercise of the electoral franchise" by racial minorities, "[t]he permissible use of racial criteria is not confined to eliminating the effects of past discriminatory districting or apportionment." Rather, a State . . . may "deliberately creat[e] or preserv[e] black majorities in particular districts in order to ensure that its reapportionment plan complies with §5"; "neither the Fourteenth nor the Fifteenth Amendment mandates any per se rule against using racial factors in districting and apportionment."

Metro Broadcasting v. FCC, 497 U.S. 547, 583-84 (1990)(citations omitted).

issue. When the constitutionality of an Act of Congress is in question, whether in connection with the territories or anything else, the threshold question is always, does Congress have the power to take the action and, if so, is there a compelling state interest involved or does a rational basis exist for the decision?

The Task Force's restrictive analysis, which raises only the possibility that the provisions suffer from constitutional infirmities, is, in our view, erroneous. The Guam Commission on Self-Determination ("CSD") proposed that Congress explicitly authorize the Commonwealth to adopt these programs because the Supreme Court in Richmond v. Croson Co., 488 U.S. 469 (1989), has concluded that a political entity such as the city of Richmond could not employ racially-based, remedial programs, unless that entity had itself participated in the racial discrimination to be remedied. In the CSD's view, however, the Supreme Court has made it clear beyond debate that Congress itself could authorize a State or territory to undertake remedial action programs.

According to the Task Force, the Supreme Court has only authorized Congress itself "to enact tailored programs that use racially or ethnically discriminatory tests for remedial purposes" and only to direct "Federal agencies to adopt such programs." Second Report at 15. As a result, the Task Force concludes that these rulings do "not necessarily mean that the Congress may authorize any other entity to adopt such programs or that such programs would not be subject to the strict scrutiny review generally applicable to programs that use racial tests." Id.

B. THE APPROPRIATE CONSTITUTIONAL ANALYSIS

The constitutional analyses offered by the Task Force throughout its First and Second Reports generally suffer from a common analytical problem. In order to justify its reluctance to accept Guam's proposal for self-determination for the native people of Guam, the Task Force employs an analysis which must result in a finding of unconstitutionality. Whenever the Task Force finds that a proposal possibly discriminates between Chamorros and non-Chamorros, it looks solely to the Fourteenth or Fifteenth Amendments and concludes that if Guam were to take this action an equal protection or voting rights problem would arise.

In essence, what the Task Force does is apply an analysis that is used in connection with determining whether state-originated actions are constitutional. The Supreme Court has greatly restricted the ability of states to remedy past acts of discrimination. But the Court has been extremely reluctant to restrict Congress' authority, and it is for this reason that the CSD seeks language under which Congress authorizes the Commonwealth Government to take the remedial action.

The analytical approach the Supreme Court applies when assessing whether remedial measures adopted by the Congress are constitutionally acceptable is significantly different from that used by the Task Force. The Court does not employ a simplistic analysis of whether the Fourteenth or Fifteenth Amendments on their face prohibit the questioned action, but first asks, "are the objectives of the legislation within

the power of Congress?" and second, whether "the limited use of racial and ethnic criteria [is] a permissible means for Congress to carry out its objectives within the constraints of the Due Process Clause." Croson, 488 U.S. at 487; see also Wabot v. Villacrusis, 958 F.2d 1450 (9th Cir. 1992), cert. denied, 1992 U.S. LEXIS 7798 (1992).^{18/}

On March 16, 1992, ten months prior to the release of the Second Report, the Ninth Circuit employed exactly this analysis in Wabot v. Villacrusis, supra, 958 F.2d 1450. The Supreme Court denied a writ of certiorari on December 7, 1992. In Wabot, the Court was examining land ownership restrictions mandated by Congress in another unincorporated territory pursuant to the Covenant to Establish the Commonwealth of the Northern Mariana Islands (CNMI) in Political Union With the United States. Congress' directive, limiting the right to own property to native people, was implemented in the CNMI's Constitution. Section 805 of the CNMI Covenant directed the CNMI to impose restrictions limiting land ownership to "persons of Northern Marianas descent." Article XII, Section 4 of the CNMI Constitution defined "a person of Northern Marianas descent" as one

who is a citizen or national of the United States and who is of at least one-quarter Northern Marianas Chamorro or Northern Mariana Carolinian blood or combined thereof . . . For purposes of determining Northern Marianas descent, a person shall be considered to be a full-blooded Northern Marianas Chamorro or Northern Marianas Carolinian if that person was born or domiciled in the Northern Mariana Islands by 1950 . . .

To determine whether this obviously racially-based classification violated the Constitution, the Ninth Circuit adopted the same analysis employed by the Supreme Court in Fullilove, Croson and Metro Broadcasting. The threshold inquiry was whether Congress had the power to exclude particular provisions of the Constitution from application in the territories. To answer this question, the Ninth Circuit looked to Congress' Territorial Clause authority, and followed the Supreme Court's mandate that "the entire Constitution applies to a United States territory ex proprio vigore -- of its own force -- only if that territory is incorporated. Elsewhere, absent congressional

^{18/} The court applies exactly this same kind of analysis when dealing with Congress' power over the territories. In cases involving the territories, the courts look first at the Territorial Clause to determine whether Congress has the power it seeks to exercise, and then conducts an Insular Cases analysis to determine whether the territory is incorporated or unincorporated, since, if a territory is unincorporated the Constitution does not automatically apply. See Wabot, 958 F.2d at 1460 ("[W]e must be cautious in restricting Congress' power" in the territories.).

extension, only 'fundamental' constitutional rights apply in the territory." 958 F.2d at 1459.^{19/}

According to the Ninth Circuit, the question further reduces to this: Is the right of equal access to long-term interests in Commonwealth real estate, resident in the equal protection clause, a fundamental one which is beyond Congress' power to exclude from operation in the territory under Article IV, section 3?

Id. at 1460.

The Ninth Circuit then reiterated its view that rights incorporated within the Fourteenth Amendment and applicable to the States were not necessarily incorporated into the Territorial Clause for application in the territories:

What is fundamental for purposes of Fourteenth Amendment incorporation is that which "is necessary to an Anglo-American regime of ordered liberty." In contrast, "fundamental" within the territory clause are "those . . . limitations in favor of personal rights' which are 'the basis of all free government.'"

* * *

In Atalig, we distinguished Fourteenth Amendment and territorial incorporation by reference to their distinct purposes. Whereas the former "serves to fix our basic federal structure[,] the latter is designed to limit the power of Congress to administer territories under Article IV of the Constitution." The incorporation analysis thus must be undertaken with an eye toward preserving Congress' ability to accommodate the unique social and cultural conditions and values of the particular territory. Moreover, we must be cautious in restricting Congress' power in this area.

Id. (Citations omitted, emphasis added).

The Ninth Circuit then reaffirmed its previous adoption of the standard used by Justice Harlan in his concurring opinion in Reid v. Covert, 354 U.S. 1, 75 (1955), "whether in [the territory] circumstances are such that [application of the constitutional provision] would be impractical and anomalous."

After finding that land is a scarce and precious resource and essential to the culture through its role in "creating family identity and contributing to the economic well-being of family members," 958 F.2d at 1461, the Ninth Circuit concluded that

^{19/} At times the Task Force seems to be arguing that once a provision of the Constitution is applied to Guam it cannot be withdrawn by Congress. There is no legal foundation for any such assertion.

application of equal protection principles would indeed be impractical and anomalous. The factual predicate for this conclusion was that the provision was essential to the political status agreement between the United States and the CNMI, and its application would undermine the cultural and social identity of the people which the U.S. had agreed to protect under the U.N. Charter. The Ninth Circuit concluded, therefore, that "[t]he Bill of Rights was not intended to interfere with the performance of our international obligations. Nor was it intended to operate as a genocide pact for diverse native cultures. Its bold purpose was to protect minority rights, not to enforce homogeneity. Where land is so scarce, so precious, and so vulnerable to economic predation, it is understandable that the islanders' vision does not precisely coincide with mainland attitudes toward property and our commitment to the ideal of equal opportunity in its acquisition. We cannot say that this particular aspect of equality is fundamental in the international sense. It therefore does not apply *ex proprio vigore*."

Id. at 1462 (citation omitted).

The Task Force apparently did not assess whether Congress has the power Section 102(a) of the draft Commonwealth Act seeks to extend to it, or whether application of either the Fourteenth or Fifteenth Amendments would be "impractical or anomalous." What could be more anomalous than to use either of these two Amendments to take away for all time the native people's rights to self-determination, simply because United States' policy has permitted unfettered immigration into Guam, thereby diluting its native population? Rather, the Task Force simply assumes that Congress does not have this power, or perhaps chooses to ignore Congress' powers under the Territorial Clause. If the Task Force had simply read the two decisions upon which it relies,^{20/} and also read the Croson decision, it would have concluded, as has the CSD, that the Supreme Court, indeed, has explicitly authorized Congress to mandate states and municipalities to take racially or ethnically-based remedial actions.

In Croson, the Supreme Court, relying on its decision in Fullilove, stated unequivocally that "Congress could mandate state and local government compliance with the set-aside program under its §5 power to enforce the Fourteenth Amendment." 488 U.S. at 487.^{21/}

Indeed, in Fullilove, the Court examined the breadth of Congress' powers and found explicitly that

^{20/} Fullilove v. Klutznick, 448 U.S. 448 (1980), and Metro Broadcasting, 497 U.S. 547.

^{21/} The Court even cited with favor to a law journal article which concluded that "Congress may authorize, pursuant to section 5, state action that would be foreclosed to the states acting alone." Croson, 488 U.S. at 491.

[i]t is fundamental that in no organ of government, state or federal, does there repose a more comprehensive remedial power than in the Congress, expressly charged by the Constitution with competence and authority to enforce equal protection guarantees.

Fullilove, 448 U.S. at 483.

The Court expanded on this theme in Croson:

Congress, unlike any State or political subdivision, has a specific constitutional mandate to enforce the dictates of the Fourteenth Amendment. The power to "enforce" may at times also include the power to define situations which Congress determines threaten principles of equality and to adopt prophylactic rules to deal with those situations.

Croson, 488 U.S. at 490.^{22/}

Finally, the Court's decision in Metro Broadcasting gives utterly no support for the Task Force's reasoning that somehow the Court limited its decision to Congress authorizing only federal agencies. The Court's language is bold and direct. In assessing whether a remedial program employed by the FCC was constitutional, the Court stated flatly that "[i]t is of overriding significance in these cases that the FCC's minority ownership programs have been specifically approved -- indeed, mandated -- by Congress." Metro Broadcasting, 497 U.S. at 563. The Court went on to analyze its Fullilove and Croson decisions and nowhere indicated that its rule would have any less validity when it is Congress directing the states rather than the agencies.^{23/}

V. CONGRESS HAS UNIQUELY BROAD POWERS TO DETERMINE THE POLITICAL RIGHTS OF THE PEOPLE RESIDING IN THE TERRITORIES

The Supreme Court has repeatedly held that determinations on the political rights of territorial inhabitants are within the absolute discretion of the Congress, including the right to vote. According to the Court, "it is clear that the Constitution was held not to extend ex proprio vigore to the inhabitants of [unincorporated territories]." Examining Board v. Flores, 426 U.S. 572, 600 n.30 (1975). Rather, only "fundamental" constitutional rights are guaranteed. The decision on which rights are

^{22/} Interestingly, the Court followed this statement with a reference to South Carolina v. Katzenbach, 383 U.S. 301, 326 (1966), a case in which the Court had applied a similar interpretation of congressional power under the Fifteenth Amendment.

^{23/} Even if this were not the case, the Ninth Circuit has essentially labeled Guam "an administrative agency," Ngiraingas, 858 F.2d at 1370, and thus Congress' power to authorize Guam to conduct a Chamorro-only vote cannot be seriously questioned.

fundamental has been made on a case by case basis, and the Supreme Court has been hesitant to list those rights which must be considered fundamental.^{24/}

Moreover, the Court appears to have established a separate standard for those fundamental rights which limit Congress' powers and those rights which apply to the people of a territory for all other purposes. Justice White in Downes v. Bidwell made this distinction on fundamental rights when he referred in his opinion to a dissenting opinion in the Dred Scott case:

To this [what is fundamental] I answer that, in common with all the other legislative powers of Congress, it finds limits in the express prohibitions on Congress not to do certain things; that, in the exercise of the legislative power, Congress cannot pass an ex post facto law or bill of attainder; and so in respect to each of the other prohibitions in the Constitution.

Downes, 182 U.S. at 292.

The fundamental rights he was referring to were those direct limits on Congress explicitly set forth in the Constitution. When the Supreme Court's decisions on how and when the Constitution applies in the territories are reviewed carefully, the Supreme Court has applied no per se standard and, instead, has adopted what is essentially a situational test:

[T]he Insular Cases do stand for an important proposition, one which seems to me a wise and necessary gloss on our Constitution. The proposition is . . . not that the Constitution "does not apply" overseas, but that there are provisions in the Constitution which do not necessarily apply in all circumstances in every foreign place. . . . [T]here is no rigid and abstract rule that Congress, as a condition precedent to exercising power over Americans overseas, must exercise it subject to all the guarantees of the Constitution, no matter what the conditions and considerations are that would make adherence to a specific guarantee altogether impracticable and anomalous.

Reid, 354 U.S. at 74 (Harlan, J., concurring)(emphasis added).

Returning again to Justice White in Downes v. Bidwell,

^{24/} While it often surprises many, voting is not a fundamental right in our political system. It did not exist for much of the population prior to the Fifteenth, Nineteenth, Twenty-Fourth and Twenty-Sixth Amendments. As recently as 1982, the Supreme Court reaffirmed that voting per se is not a fundamental right in our system. Rivera-Rodriguez v. Popular Democratic Party, 457 U.S. 1, 9 (1982).

[i]n the case of the territories . . . when a provision of the Constitution is invoked, the question which arises is, not whether the Constitution is operative, but whether the provision relied on is applicable . . . And the determination of what particular provision of the Constitution is applicable, generally speaking, in all cases, involves an inquiry into the situation of the territory and its relations to the United States.

Downes, 182 U.S. at 293 (emphasis added).

Most importantly, the Supreme Court has repeatedly deferred to Congress' special powers in regard to the political and voting rights of the people in the territories. Justice White concluded that

[t]he Constitution has undoubtedly conferred on Congress the right to create such municipal organizations as it may deem best for all the territories of the United States . . . to give to the inhabitants as respects the local governments such degree of representation as may be conducive to the public well-being, to deprive such territory of representative government if it is considered just to do so, and to change such local governments at its discretion.

* * *

There can also be no controversy as to the right of Congress to locally govern the island . . . and in so doing to accord only such degree of representative government as may be determined by that body.

Downes, 182 U.S. at 289-91, 298-99 (emphasis added).

The Supreme Court explained further its views on Congress' power to limit the political rights of the people of a territory in Dorr v. United States, 195 U.S. 138:

Congress has unquestionably full power to govern [the territories], and the people, except as Congress shall provide for, are not of right entitled to participate in political authority, until the Territory becomes a State. Meantime they are in a condition of temporary pupilage and dependence; and while Congress will be expected to recognize the principle of self-government to such extent as may seem wise, its discretion alone can constitute the measure by which the participation of the people can be determined.

Dorr, 195 U.S. at 148 (emphasis added).^{25/}

^{25/} The Supreme Court's view that Congress can forge unique relationships with its
(continued...)

The Supreme Court's most compelling discussion of the power of Congress vis-à-vis the political rights of the inhabitants of a territory is found in Murphy v. Ramsey, 114 U.S. 15 (1885). In that decision, the Court reviewed an Act of Congress which withdrew the right to vote in the territory of Utah from those who practiced polygamy. A challenge was made to the constitutional power of Congress to abridge the right of a class of voters. According to the Court,

that question is, we think, no longer open to discussion. It has passed beyond the stage of controversy into final judgment [I]n ordaining government for the Territories, and the people who inhabit them, all the discretion which belongs to legislative power is vested in Congress; and that extends, beyond all controversy, to determining by law, from time to time, the form of the local government in a particular Territory, and the qualification of those who shall administer it. It rests with Congress to say whether, in a given case, any of the people, resident in the Territory, shall participate in the election of its officers or the making of its laws; and it may, therefore, take from them any right of suffrage it may previously have conferred, or at any time modify or abridge it, as it may deem expedient. . . . [The] political rights [of the people] are franchises which they hold as privileges in the legislative discretion of the Congress of the United States.

Murphy, 114 U.S. at 44-45 (emphasis added).^{25/}

^{25/} (...continued)

territories has not changed since the Insular Cases. In Examining Board v. Flores de Otero, 426 U.S. 572, 596 (1978), the Supreme Court, commenting on the nature of Puerto Rico's political status after its Commonwealth relationship was established, referred to the relationship between Puerto Rico and the United States as one that has "no parallel in our history." Similarly in Rodriguez v. Popular Democratic Party, 457 U.S. 1, 8 (1982), the Supreme Court declared that Puerto Rico, "like a state, is an autonomous political entity, 'sovereign over matters not ruled by the Constitution.'"

^{26/} This case was decided 17 years after the Fourteenth and Fifteenth Amendments were adopted. During discussions with the Justice Department representatives to the Task Force, the Ramsey decision was criticized as somehow no longer being valid. It remains good law, however, and has been cited by the Supreme Court, without criticism, as recently as 1977 in United States v. Wheeler, 435 U.S. 313, 319 (1977) ("It is true that Territories are subject to the ultimate control of Congress"). Moreover, the United States District Court for the District of Columbia in its opinion in Michel v. Anderson, 817 F.Supp. 126 (D.D.C. 1993), the case dealing with the challenge to the territories' delegates vote in the Committee of the Whole, cited to a portion of this same quotation from Ramsey as demonstrative of the scope of the Congress' power over the territories.

Moreover, in Downes, the Court specifically distinguished the voting right from other fundamental rights:

We suggest, without intending to decide, that there may be a distinction between certain natural rights, enforced in the Constitution by prohibitions against interference with them, and what may be termed artificial or remedial rights which are peculiar to our own system of jurisprudence. Of the former class are the rights to one's own religious opinions and to a public expression of them . . . the right to personal liberty and to individual property; to freedom of speech and of the press; to free access to courts of justice, to due process of law and to an equal protection of the laws; to immunities from unreasonable searches and seizures, as well as cruel and unusual punishments; and to such other immunities as are indispensable to a free government. Of the latter class are the rights to citizenship, to suffrage . . . and to the particular methods of procedure pointed out in the Constitution, which are peculiar to Anglo-Saxon jurisprudence.

Downes, 182 U.S. at 282-83 (emphasis added).

Sound legal and political reasons exist for the Court's giving the Congress this broad authority. If this kind of flexibility were not to exist, Congress would never be able to make political status changes in the territories. If for instance, a territory were to seek independence, as did the Philippines, and Congress could not limit application of the Constitution, American citizens living in that territory would be able to block any change in government which impacted their rights under the United States Constitution.^{27/} As the Court stated in Torres, 442 U.S. at 470,

^{27/} The Task Force's view of the limitations on Congress power to effect political status changes is also inconsistent with what some in the Senate itself believe. In 1990, the Senate Energy and Natural Resources Committee reported out S. 712, dealing with future political status for Puerto Rico. Under this bill, if an island-wide plebiscite had resulted in a preference for independence Puerto Rico was directed to organize a constitutional convention. The constitution which would result from this convention was required in the bill to preserve fundamental rights such as equal protection and due process. The bill also, however, restricted the vote on the convention delegates and actual constitution to a defined class of persons. They were: (1) persons born and residing in Puerto Rico; (2) all persons residing in Puerto Rico and one of whose parents was born in Puerto Rico; (3) all persons who at the time of the adoption of the Act had resided in Puerto Rico for a period of twenty years or more; (4) all persons who established their residence in Puerto Rico prior to attaining voting age and still reside in Puerto Rico; and (5) spouses of (1)-(4).

because the limitation on the application of the Constitution in unincorporated territories is based in part on the need to preserve Congress' ability to govern such possessions, and may be overruled by Congress, a legislative determination . . . is entitled to great weight.

VI. CONCLUSION

Congress accepted an obligation in the Treaty of Paris, and later the United Nations Charter, to protect the political rights of the native inhabitants of Guam. The Task Force in its First Report found that the Chamorro people, unlike all others on Guam, had been given no opportunity to exercise self-determination. The Chamorro population has been greatly diluted by the immigration policies of the United States, inconsistent with the United Nations policy relating to decolonization. The Chamorro people as a group are clearly disadvantaged on Guam and have had their social, political, educational and economic interests subordinated to those of others with greater political and financial influence. One-third of their land has been taken from them for military purposes. They do not vote for those in Washington making decisions on their behalf. They are United States citizens but do not have the same political rights as do other United States citizens. In fact, they are not even eligible for the same level of benefits under a variety of federal programs as are citizen-residents of the States. The list goes on.

The self-determination rights set forth in §102 are justified and Congress has the power not only to adopt remedial measures, but also to authorize the Commonwealth of Guam to do so in its place as part of a federal remedial program. The provision of these rights by the Congress is not barred by the Constitution. As the Ninth Circuit Court of Appeals stated in 1992, "the equal protection clause . . . was [not] intended to operate as a genocide pact for diverse cultures." Waboll, 958 F.2d at 1462.

Mr. DE LUGO. Thank you, Senator Lujan, for a very fine statement. We appreciate that.

Now, another good friend of this Committee, we have been working together for many, many years, a fine representative of the people of Guam, Senator Marilyn Manibusan.

STATEMENT OF HON. MARILYN MANIBUSAN

Ms. MANIBUSAN. From the people of Guam that we are very proud to represent and dearly represent, to you, the Honorable Chairman de Lugo, and the distinguished members of the Committee, a warm hafa adai from the people of Guam.

I am Marilyn Manibusan, a member of the twenty-second Guam legislature and the government of Guam's Commission on Self-determination. On behalf of the Speaker and Senator Pilar Lujan, who is our Secretary, and members of the Guam legislature, allow me to express our appreciation for the Subcommittee's foresight in holding hearings on the House Concurrent Resolution 94 and the self-determination for the insular areas. We commend the Subcommittee for examining the issue of self-determination within the context of both United States and international legal standards, an examination which is long overdue.

Guam is one of the seventeen remaining non-self-governing territories originally inscribed on the United Nations's list with the concurrence of the United States Government in 1946. Pursuant to that charter of the United Nations, the United States Government assumed the responsibility to, quote:

"Recognize that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote * * * their just treatment and protection against abuses * * * and to develop self-government, to take due account of the aspirations of the peoples * * *", end quote.

These obligations are undertaken pursuant to the treaty-making power and implemented by Congress under the territorial clause of the Constitution using its plenary power over "unincorporated territories" as defined by the U.S. Supreme Court in the decisions that are known as The Insular Cases.

Although, over the years, the international principles of decolonization have been something of an enigma when applied to the United States territories, one thing is patently clear to the people of Guam: whether you examine Guam's status under international law or the court made unincorporated territory doctrine which governs United States law, Guam's relationship with the United States is colonial. This status is unacceptable in today's world.

Before I venture further, Mr. Chairman, allow me to note that the use of the word "colonial" to describe Guam's status should in no way be interpreted as provocative or controversial. Guam has not been decolonized under the principles of international law which the United States recognizes itself and expects other nations to observe. It is a simple statement of fact, Mr. Chairman, and members of this Committee, therefore, that Guam remains a colony.

In Guam, the American principles of democracy are held in the highest regard, and we do not accept suggestions that our quest for

self-determination is un-American, or that we are ungrateful for the liberties and prosperity we enjoy, simply because we now seek to complete the decolonization process. Nor do we welcome suggestions that we are tarnishing the image of the United States in the world by seeking to achieve decolonization.

Indeed, it has been the inability of the Federal Government to respond to Guam's call for decolonization with more positive ideas or proposals that has created the perception that the United States is not committed to decolonization of Guam in accordance with the standards of self-determination which the United States historically has endorsed around the world.

The Federal Government's failure to protect and promote the rights of Guam's native peoples in keeping with its obligations is particularly troublesome, given this Nation's current commitments to human rights and self-determination for peoples in other countries all over the world.

You, Mr. Chairman, and your Subcommittee are providing this long overdue leadership, as you mentioned in your testimony earlier, by opening up this hearing to assess both the international obligations to which the United States Government has committed itself, as well as exploring the manner in which the right of self-determination is to be exercised in the context of United States domestic law and policy applicable to the insular areas.

In this regard, we note with interest that the American Law Division of the Congressional Research Service, in a memorandum to the Subcommittee dated July 7, 1993, confirms that the United States recognizes the right of self-determination for the peoples of non-self-governing territories, and that the United States has "Article 73 obligations" with respect to its territories which have not yet achieved decolonization through a process which includes a legitimate act of self-determination.

Again, Guam remains on the United Nations' list of colonial areas and it is consistent with U.S. treaty commitments to recognize that Guam is a non-self-governing territory which, in the words of the CRS report, is, quote, "within the scope of the United States' Article 73 obligations", end quote.

The CRS report states with respect to decolonization that quote, "the established norm in this arena is that colonial peoples have a right to self-determination. The United States recognizes that right", end quote. The question becomes, then, what is the Federal Government doing to live up to its Article 73 obligations relating to Guam?

While the politics of the Cold War, as you said, Mr. Chairman, often obfuscated the international principles of decolonization and self-determination as they apply to non-self-governing territories, today we have the opportunity to look at these principles for what they are, and what they mean to the peoples of the United States' insular areas. The Cold War is over, indeed, and no further need exists for a siege mentality.

Often, in the past, international politics caused the United States to distance itself from the U.N. decolonization process. For example, in 1992 the United States made a decision to suspend cooperation with the U.N. Special Committee on Decolonization based on the U.S. view that the Special Committee was not conducting its

business in a responsible manner or in a manner faithful to its mandate.

The world is now moving rapidly toward self-determination and democracy for all peoples, and it is our hope that the U.N. decolonization process will become less controversial so that the objectives of the charter can be realized for Guam and all other non-self-governing areas. The principles relating to self-determination adopted by the United Nations, which once were led by the United States, serve as guideposts for this moment. In Guam, we see no reason for tension between the international obligations of the United States Government vis-a-vis its possessions and the constitutional powers of the United States Government over its "unincorporated territories." Our experience as an unincorporated territory has taught us many lessons in how far the United States Government can go to create unique conditions in Guam; from the adoption of the Organic Act to limitations on the travel to Guam, as well as the exceptions from various Federal laws and regulations, we have seen that the Constitution permits Congress great flexibility to determine the political, economic and social rights of the peoples in the territories.

At the time the Treaty of Paris was signed, the primary focus was on the largest territory ceded, the Philippine Islands. Guam was relatively small, both in area and population. Because it was recognized that dealing with the native people required more thought than had historically been given to the status of native populations, the United States Government explicitly agreed that Congress would decide the native people's future civil and political rights.

Certainly, this history demonstrates that today the Congress, acting pursuant to currently applicable U.S. treaty obligations and in accordance with its plenary powers under the territory clause, has the responsibility and authority to provide for the self-determination rights of the native people of our island.

The U.N. charter, which references the rights of the inhabitants and peoples of the territories, has consistently, Mr. Chairman, been interpreted as referring to the peoples occupying an area, first, at the time of the charter's implementation, or two, in the absence of colonial administration. Thus, the instrument by which Guam was ceded to the United States in 1898, through the Treaty of Paris as a spoil of war and the United States obligation under the Charter of the United Nations support our democratically-expressed view that the native people of Guam should be enabled by the Congress to exercise the right of self-determination for their homeland.

The process through which this exercise of self-determination by Guam's native people best can be managed, consistent with the United States Constitution and international procedure, has been carefully defined by the Guam Commission on Self-determination.

In that context, Mr. Chairman, it is important to note that the Guam Commonwealth Act now before the Congress, H.R. 1521, provides the framework for the self-determination process, and that process also involves the steps through which Guam will achieve self-government based upon mutual consent as a precursor to the act of self-determination. My purpose today is not to discuss the self-government aspects of the commonwealth proposal, but the

mutual consent element of it does relate to why self-determination is so important to us.

With your permission, Mr. Chairman, I would like to introduce for the record an analysis prepared by the Commission on Self-determination which makes clear why the mutual consent provision is important to the process through which procedures will be established for our native people finally to have the opportunity to exercise their right of self-determination.

I raise this point, Mr. Chairman, in response to your astute comments at the July 13 hearing on this measure, in which you yourself recognized that any process which includes an act of self-determination on the part of the insular areas and which calls for a political relationship with the United States also requires an act of self-determination on the part of the United States.

This is the necessary approach. Mr. Chairman and Members, before the self-determination choice by the peoples of the insular areas can be reconciled with self-determination by the United States, the people of the insular area must be allowed to establish their right of self-determination and to define how it will be exercised.

The need to be able to make these decisions for ourselves is brought home to us day-after-day. Last week, Mr. Chairman, I also appeared before the Natural Resources Committee testifying under Congressman Underwood's land transfer bill. I discussed how the people of Guam have already spoken on that land use issue in Article 10 of the draft Commonwealth Act which establishes the process for the return of Federal land.

During discussions on this title of the last three years, I felt we had made some progress in gaining acceptance for the process approved by our people. I guess I was wrong.

Assistant Secretary Turner recently visited Guam and spent hours touring Guam and listening to presentations on the need to return land directly and quickly to our people. She also told us that she had reviewed our commonwealth proposal and was rapidly becoming familiar with many of the issues presented therein.

Just before her departure she promised a new era in Federal-Guam relations and encouraged all of us to judge her on future actions. We were very encouraged by what we heard.

Unfortunately, Mr. Chairman, in a statement she sent to the Committee on the bill, the Assistant Secretary already seems to have lost sight of the meaning of self-determination. Instead of supporting the freely expressed will of our people, she proposed that a new process be established which returns the land first to Interior, which they will negotiate with Guam to ensure that the land is used in a way acceptable to the United States.

Not only does her proposal completely ignore Title X, but she put forth this plan without any consultation whatsoever with anyone in Guam. This is not self-determination. This is a continuation of colonialism.

In closing, Mr. Chairman and Members, I would like to note that the resolution, as drafted, addresses generally the self-determination request in connection with all of the peoples of the insular areas, but Puerto Rico is the only entity specifically referenced. For purposes of clarity, I request that Guam and other non-self-govern-

ing territories administered by the United States be added by name to the resolution when it is marked up to be reported to the Full Committee.

I thank you, Mr. Chairman, and members of this distinguished Committee, for extending me an opportunity to present the views of the people of Guam and my statement on H.R. 94. Dangkolun na Si Yu'os ma'ase.

[Prepared statement of Ms. Manibusan follows:]

TESTIMONY OF
THE HONORABLE MARILYN MANIBUSAN
MEMBER OF
THE GUAM
COMMISSION ON SELF-DETERMINATION

&

THE 22ND GUAM LEGISLATURE

on behalf of the Speaker of
the 22nd Guam Legislature

Before

THE SUBCOMMITTEE ON INSULAR
AND
INTERNATIONAL AFFAIRS
COMMITTEE OF NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

Regarding

HOUSE CONCURRENT RESOLUTION 94

August 3, 1993

MR. CHAIRMAN, AND MEMBERS OF THE COMMITTEE, I AM MARILYN MANIBUSAN, A MEMBER OF THE 22ND GUAM LEGISLATURE AND THE GOVERNMENT OF GUAM'S COMMISSION ON SELF-DETERMINATION. ON BEHALF OF THE SPEAKER OF THE GUAM LEGISLATURE, ALLOW ME TO EXPRESS OUR APPRECIATION FOR THE SUBCOMMITTEE'S FORESIGHT IN HOLDING HEARINGS ON H. CON. RES. 94 AND SELF-DETERMINATION FOR THE INSULAR AREAS. WE COMMEND THE SUBCOMMITTEE FOR EXAMINING THE ISSUE OF SELF-DETERMINATION WITHIN THE CONTEXT OF BOTH UNITED STATES AND INTERNATIONAL LEGAL STANDARDS -- AN EXAMINATION WHICH IS LONG OVERDUE.

GUAM IS ONE OF THE SEVENTEEN REMAINING NON-SELF-GOVERNING TERRITORIES ORIGINALLY INSCRIBED ON THE UNITED NATION'S LIST WITH THE CONCURRENCE OF THE UNITED STATES GOVERNMENT IN 1946.^{1/} PURSUANT TO THE CHARTER OF THE UNITED NATIONS, THE UNITED STATES GOVERNMENT ASSUMED THE RESPONSIBILITY TO:

"RECOGNIZE THAT THE INTERESTS OF THE INHABITANTS OF THESE TERRITORIES ARE PARAMOUNT, AND ACCEPT AS A SACRED TRUST THE OBLIGATION TO PROMOTE...THEIR JUST TREATMENT AND PROTECTION AGAINST ABUSES...[AND] TO DEVELOP SELF-GOVERNMENT, TO TAKE DUE ACCOUNT OF THE ASPIRATIONS OF THE PEOPLES..." (CHAPTER XI, ARTICLE 73, A., B.)

THESE OBLIGATIONS ARE UNDERTAKEN PURSUANT TO THE TREATY-MAKING POWER AND IMPLEMENTED BY CONGRESS UNDER THE TERRITORIAL CLAUSE OF THE CONSTITUTION USING ITS PLENARY POWER OVER "UNINCORPORATED TERRITORIES" AS DEFINED BY THE U.S. SUPREME COURT IN THE DECISIONS KNOWN AS THE INSULAR CASES.

ALTHOUGH, OVER THE YEARS, THE INTERNATIONAL PRINCIPLES OF DECOLONIZATION HAVE BEEN SOMETHING OF AN ENIGMA WHEN APPLIED TO UNITED STATES TERRITORIES, ONE THING IS PATENTLY CLEAR TO THE PEOPLE OF GUAM: WHETHER YOU EXAMINE GUAM'S STATUS UNDER INTERNATIONAL LAW OR THE COURT MADE UNINCORPORATED TERRITORY DOCTRINE WHICH GOVERNS UNITED STATES LAW, GUAM'S RELATIONSHIP WITH THE UNITED STATES IS COLONIAL. THIS STATUS IS UNACCEPTABLE IN TODAY'S WORLD.

BEFORE I VENTURE FURTHER, MR. CHAIRMAN, ALLOW ME TO NOTE THAT USE OF THE WORD "COLONIAL" TO DESCRIBE GUAM'S STATUS SHOULD IN NO WAY BE INTERPRETED AS PROVOCATIVE OR CONTROVERSIAL. GUAM HAS NOT BEEN DECOLONIZED UNDER THE PRINCIPLES OF INTERNATIONAL LAW WHICH THE UNITED STATES RECOGNIZES ITSELF AND EXPECTS OTHER

^{1/} UNITED NATIONS GENERAL ASSEMBLY RESOLUTION 66-1.

NATIONS TO OBSERVE. IT IS A SIMPLE STATEMENT OF FACT, THEREFORE, THAT GUAM REMAINS A COLONY.

IN GUAM, THE AMERICAN PRINCIPLES OF DEMOCRACY ARE HELD IN THE HIGHEST REGARD, AND WE DO NOT APPRECIATE SUGGESTIONS THAT OUR QUEST FOR SELF-DETERMINATION IS "UNAMERICAN" OR THAT WE ARE UNGRATEFUL FOR THE LIBERTIES AND PROSPERITY WE ENJOY, SIMPLY BECAUSE WE NOW SEEK TO COMPLETE THE DECOLONIZATION PROCESS. NOR DO WE WELCOME SUGGESTIONS THAT WE ARE TARNISHING THE IMAGE OF THE UNITED STATES IN THE WORLD BY SEEKING TO ACHIEVE DECOLONIZATION. INDEED, IT HAS BEEN THE INABILITY OF THE FEDERAL GOVERNMENT TO RESPOND TO GUAM'S CALL FOR DECOLONIZATION WITH MORE POSITIVE IDEAS OR PROPOSALS THAT HAS CREATED THE PERCEPTION THAT THE U.S. IS NOT COMMITTED TO DECOLONIZATION OF GUAM IN ACCORDANCE WITH THE STANDARDS OF SELF-DETERMINATION WHICH THE U.S. HISTORICALLY HAS ENDORSED AROUND THE WORLD.

THE FEDERAL GOVERNMENT'S FAILURE TO PROTECT AND PROMOTE THE RIGHTS OF GUAM'S NATIVE PEOPLES IN KEEPING WITH ITS OBLIGATIONS IS PARTICULARLY TROUBLESOME GIVEN THIS NATION'S CURRENT COMMITMENTS TO HUMAN RIGHTS AND SELF-DETERMINATION FOR PEOPLES IN OTHER COUNTRIES.

YOU, MR. CHAIRMAN, AND YOUR SUBCOMMITTEE ARE PROVIDING LONG OVERDUE LEADERSHIP BY OPENING UP THIS HEARING TO ASSESS BOTH THE INTERNATIONAL OBLIGATIONS TO WHICH THE UNITED STATES GOVERNMENT HAS COMMITTED ITSELF, AS WELL AS EXPLORING THE MANNER IN WHICH THE RIGHT OF SELF-DETERMINATION IS TO BE EXERCISED IN THE CONTEXT OF UNITED STATES DOMESTIC LAW AND POLICY APPLICABLE TO THE INSULAR AREAS.

IN THIS REGARD, WE NOTE WITH INTEREST THAT THE AMERICAN LAW DIVISION OF THE CONGRESSIONAL RESEARCH SERVICE, IN A MEMORANDUM TO THE SUBCOMMITTEE DATED JULY 7, 1993, CONFIRMS THAT THE UNITED STATES RECOGNIZES THE RIGHT OF SELF-DETERMINATION FOR THE PEOPLES OF NON-SELF GOVERNING TERRITORIES, AND THAT THE U.S. HAS "ARTICLE 73 OBLIGATIONS" WITH RESPECT TO ITS TERRITORIES WHICH HAVE NOT YET ACHIEVED DECOLONIZATION THROUGH A PROCESS WHICH INCLUDES A LEGITIMATE ACT OF SELF-DETERMINATION. AGAIN, GUAM REMAINS ON THE U.N. LIST OF COLONIAL AREAS AND IT IS CONSISTENT WITH U.S. TREATY COMMITMENTS TO RECOGNIZE THAT GUAM IS A NON-SELF GOVERNING TERRITORY WHICH, IN THE WORDS OF THE CRS REPORT, IS "WITHIN THE SCOPE OF THE UNITED STATES' ARTICLE 73 OBLIGATIONS."

THE CRS REPORT STATES WITH RESPECT TO DECOLONIZATION THAT "THE ESTABLISHED NORM IN THIS ARENA IS THAT COLONIAL PEOPLES HAVE A RIGHT TO SELF-DETERMINATION. THE UNITED STATES RECOGNIZES THAT RIGHT." THE QUESTION BECOMES, THEN, WHAT IS THE FEDERAL GOVERNMENT DOING TO LIVE UP TO ITS "ARTICLE 73 OBLIGATIONS" RELATING TO GUAM?

WHILE THE POLITICS OF THE COLD WAR OFTEN OBFUSCATED THE INTERNATIONAL PRINCIPLES OF DECOLONIZATION AND SELF-DETERMINATION AS THEY APPLY TO NON-SELF-GOVERNING TERRITORIES, TODAY WE HAVE THE OPPORTUNITY TO LOOK AT THESE PRINCIPLES FOR WHAT THEY ARE, AND WHAT THEY MEAN TO THE PEOPLES OF THE UNITED STATES INSULAR AREAS. THE COLD WAR IS OVER AND NO FURTHER NEED EXISTS FOR A SIEGE MENTALITY.

OFTEN, IN THE PAST, INTERNATIONAL POLITICS CAUSED THE UNITED STATES TO DISTANCE ITSELF FROM THE U.N. DECOLONIZATION PROCESS. FOR EXAMPLE, IN 1992 THE UNITED STATES MADE A DECISION TO SUSPEND COOPERATION WITH THE U.N. SPECIAL COMMITTEE ON DECOLONIZATION BASED ON THE U.S. VIEW THAT THE SPECIAL COMMITTEE WAS NOT CONDUCTING ITS BUSINESS IN A RESPONSIBLE MANNER OR IN A MANNER FAITHFUL TO ITS MANDATE.

THE WORLD IS NOW MOVING RAPIDLY TOWARD SELF-DETERMINATION AND DEMOCRACY FOR ALL PEOPLES, AND IT IS OUR HOPE THAT THE U.N. DECOLONIZATION PROCESS WILL BECOME LESS CONTROVERSIAL SO THAT THE OBJECTIVES OF THE CHARTER CAN BE REALIZED FOR GUAM AND ALL OTHER NON-SELF GOVERNING AREAS. THE PRINCIPLES RELATING TO SELF-DETERMINATION ADOPTED BY THE UNITED NATIONS, WHICH ONCE WERE LED BY THE UNITED STATES, SERVE AS GUIDE-POSTS FOR THIS MOVEMENT. WE ARE NOW WORKING WITH THE STATE AND INTERIOR DEPARTMENTS TO FIND NEW AND POLITICALLY ACCEPTABLE WAYS FOR GUAM TO ENCOURAGE AND SUPPORT THE HISTORICAL U.S. COMMITMENT TO THE U.N. DECOLONIZATION PROCESS.

IN GUAM, WE SEE NO REASON FOR TENSION BETWEEN THE INTERNATIONAL OBLIGATIONS OF THE UNITED STATES GOVERNMENT VIS-A-VIS ITS POSSESSIONS AND THE CONSTITUTIONAL POWERS OF THE UNITED STATES GOVERNMENT OVER ITS "UNINCORPORATED TERRITORIES." OUR EXPERIENCE AS AN UNINCORPORATED TERRITORY HAS TAUGHT US MANY LESSONS IN HOW FAR THE UNITED STATES GOVERNMENT CAN GO TO CREATE "UNIQUE" CONDITIONS IN GUAM; FROM THE ADOPTION OF THE ORGANIC ACT TO LIMITATIONS ON THE TRAVEL TO GUAM (WHICH EXISTED UP UNTIL 1962), AS WELL AS THE EXEMPTIONS FROM VARIOUS FEDERAL LAWS AND REGULATIONS, WE HAVE SEEN THAT THE CONSTITUTION PERMITS CONGRESS GREAT FLEXIBILITY TO DETERMINE THE POLITICAL, ECONOMIC AND SOCIAL RIGHTS OF THE PEOPLE IN THE TERRITORIES.

THE ROOTS FOR SELF-DETERMINATION IN GUAM, MR. CHAIRMAN AND MEMBERS, PREDATE THE UNITED STATES OBLIGATIONS UNDER THE CHARTER OF THE UNITED NATIONS. THE TREATY OF PEACE BETWEEN THE UNITED STATES GOVERNMENT AND THE EMPIRE OF SPAIN KNOWN AS THE TREATY OF PARIS, 1898, EXPRESSLY STATES THAT THE "CIVIL RIGHTS AND POLITICAL STATUS OF THE NATIVE INHABITANTS" OF GUAM ARE TO BE PROVIDED FOR AS DETERMINED BY THE CONGRESS.

AT THE TIME THE TREATY OF PARIS WAS SIGNED THE PRIMARY FOCUS WAS ON THE LARGEST TERRITORY CEDED, THE PHILIPPINE ISLANDS. GUAM WAS RELATIVELY SMALL, BOTH IN AREA AND POPULATION. BECAUSE IT

WAS RECOGNIZED THAT DEALING WITH THE NATIVE PEOPLE REQUIRED MORE THOUGHT THAN HAD HISTORICALLY BEEN GIVEN TO THE STATUS OF NATIVE POPULATIONS, THE UNITED STATES GOVERNMENT EXPLICITLY AGREED THAT THE CONGRESS WOULD DECIDE THE NATIVE PEOPLE'S FUTURE CIVIL AND POLITICAL RIGHTS. CERTAINLY, THIS HISTORY DEMONSTRATES THAT TODAY THE CONGRESS, ACTING PURSUANT TO CURRENTLY APPLICABLE U.S. TREATY OBLIGATIONS AND IN ACCORDANCE WITH ITS PLENARY POWERS UNDER THE TERRITORIAL CLAUSE, HAS THE RESPONSIBILITY AND AUTHORITY TO PROVIDE FOR THE SELF-DETERMINATION RIGHTS OF THE NATIVE PEOPLE OF OUR ISLAND.

THE U.N. CHARTER, WHICH REFERENCES THE RIGHTS OF THE "INHABITANTS" AND "PEOPLES" OF THE TERRITORIES, HAS CONSISTENTLY BEEN INTERPRETED AS REFERRING TO THE PEOPLES OCCUPYING AN AREA (1) AT THE TIME OF THE CHARTER'S IMPLEMENTATION, OR (2) IN THE ABSENCE OF COLONIAL ADMINISTRATION.^{2/} THUS, THE INSTRUMENT BY WHICH GUAM WAS CEDED TO THE UNITED STATES IN 1898 (THROUGH THE TREATY OF PARIS) AS A SPOIL OF WAR AND THE UNITED STATES OBLIGATION UNDER THE CHARTER OF THE UNITED NATIONS SUPPORT OUR DEMOCRATICALLY EXPRESSED VIEW THAT THE NATIVE PEOPLE OF GUAM SHOULD BE ENABLED BY THE CONGRESS TO EXERCISE THE RIGHT OF SELF-DETERMINATION FOR THEIR HOMELAND.^{2/} THE PROCESS THROUGH WHICH THIS EXERCISE OF SELF-DETERMINATION BY GUAM'S NATIVE PEOPLE BEST CAN BE MANAGED -- CONSISTENT WITH THE UNITED STATES CONSTITUTION AND INTERNATIONAL PROCEDURE -- HAS BEEN CAREFULLY DEFINED BY THE GUAM COMMISSION ON SELF-DETERMINATION.

IN THAT CONTEXT, MR. CHAIRMAN, IT IS IMPORTANT TO NOTE THAT THE GUAM COMMONWEALTH ACT NOW BEFORE THE CONGRESS (H.R. 1521) PROVIDES THE FRAMEWORK FOR THE SELF-DETERMINATION PROCESS, AND THAT PROCESS ALSO INVOLVES THE STEPS THROUGH WHICH GUAM WILL ACHIEVE SELF-GOVERNMENT BASED UPON MUTUAL CONSENT AS A PRECURSOR TO THE ACT OF SELF DETERMINATION. MY PURPOSE TODAY IS NOT TO DISCUSS THE SELF-GOVERNMENT ASPECTS OF THE COMMONWEALTH PROPOSAL, BUT THE MUTUAL CONSENT ELEMENT OF IT DOES RELATE TO WHY SELF-DETERMINATION IS SO IMPORTANT TO US. WITH YOUR PERMISSION, MR. CHAIRMAN, I WOULD LIKE TO INTRODUCE FOR THE RECORD AN ANALYSIS PREPARED BY THE COMMISSION ON SELF-DETERMINATION WHICH MAKES CLEAR WHY MUTUAL CONSENT IS IMPORTANT TO THE PROCESS THROUGH WHICH PROCEDURES WILL BE ESTABLISHED FOR OUR NATIVE PEOPLE FINALLY TO HAVE THE OPPORTUNITY TO EXERCISE THEIR RIGHT OF SELF-DETERMINATION.

^{2/} SEE NATHENIAL BERMAN, SOVEREIGNTY IN ABEYANCE: SELF-DETERMINATION AND INTERNATIONAL LAW, 7 WISCONSIN INTERNATIONAL LAW JOURNAL 51 (1988).

^{2/} SECTION 102(A) OF THE GUAM COMMONWEALTH ACT PROVIDES: "THE CONGRESS OF THE UNITED STATES RECOGNIZES THE INALIENABLE RIGHT OF THE SELF-DETERMINATION OF THE INDIGENOUS CHAMORRO PEOPLE OF GUAM..."

I RAISE THIS POINT, MR. CHAIRMAN, IN RESPONSE TO YOUR ASTUTE COMMENTS AT THE JULY 13TH HEARING ON THIS MEASURE, IN WHICH YOU RECOGNIZED THAT ANY PROCESS WHICH INCLUDES AN ACT OF SELF-DETERMINATION ON THE PART OF THE INSULAR AREAS AND WHICH CALLS FOR A POLITICAL RELATIONSHIP WITH THE U.S. ALSO REQUIRES AN ACT OF SELF-DETERMINATION ON THE PART OF THE UNITED STATES. BY THIS, MR. CHAIRMAN, WE UNDERSTAND YOU TO MEAN THAT THE U.S. ALSO HAS INTERESTS WHICH MUST BE TAKEN INTO ACCOUNT WHEN THE PEOPLE OF GUAM OR ANY OTHER TERRITORY EXERCISE THEIR INHERENT SELF-DETERMINATION RIGHTS.

EVERYONE IN GUAM UNDERSTANDS THAT THE U.S. HAS CRITICAL INTERESTS IN GUAM ARISING OUT OF IMPORTANT NATIONAL SECURITY REQUIREMENTS. THESE ARE NOT THREATENED BY SELF-DETERMINATION FOR OUR PEOPLE. WHAT WE ASK IS THAT THE UNITED STATES DEFINE ITS LEGITIMATE INTERESTS SO THAT WE CAN TOGETHER SEEK TO RECONCILE THEM WITH THE SELF-DETERMINATION PROCESS.

THIS IS THE NECESSARY APPROACH BECAUSE, MR. CHAIRMAN AND MEMBERS, BEFORE THE SELF-DETERMINATION CHOICE BY THE PEOPLES OF THE INSULAR AREAS CAN BE RECONCILED WITH SELF-DETERMINATION BY THE UNITED STATES THE PEOPLE OF THE INSULAR AREA MUST BE ALLOWED TO ESTABLISH THEIR RIGHT OF SELF-DETERMINATION AND TO DEFINE HOW IT WILL BE EXERCISED.

IN OTHER WORDS, IN ORDER FOR THE U.S. TO EXERCISE ITS SELF-DETERMINATION RIGHTS IT MUST DEFINE ITS INTERESTS AND SEEK TO ENSURE THAT THESE INTERESTS CAN BE PROTECTED. THE SAME IS TRUE FOR GUAM, BUT GUAM IS NOT YET ABLE TO DEFINE AND SEEK TO PROTECT ITS INTERESTS BECAUSE THE U.S. HAS NOT YET MET ITS OBLIGATION TO ENABLE GUAM TO EXERCISE SELF-DETERMINATION. THE PROCESS WHICH WOULD BE CREATED BY H.R. 1521 IS THE MOST COHERENT AND COMPLETE ONE FOR MEETING THESE REQUIREMENTS.

THE ISSUE OF SELF-DETERMINATION IN THE PROCESS OF DECOLONIZATION IS NOT AN ACADEMIC EXERCISE THAT IS DEPENDENT UPON EITHER AN INTERNATIONAL OR UNITED STATES LEGAL FRAMEWORK. FOR THE CHAMORRO PEOPLE OF GUAM, SELF-DETERMINATION MEANS A RECOGNITION OF OUR INHERENT RIGHT TO MAKE THE DECISION ABOUT THE POLITICAL STATUS OF OUR HOMELAND. GIVEN UNITED STATES OBLIGATIONS TO THE NATIVE PEOPLE OF GUAM UNDER BOTH THE TREATY OF PARIS AND THE U.N. CHARTER, THE DAY HAS COME FOR THE UNITED STATES GOVERNMENT TO COMMIT ITSELF TO A SELF-DETERMINATION PROCESS FOR GUAM.

IN CLOSING, MR. CHAIRMAN AND MEMBERS, I WOULD LIKE TO NOTE THAT THE RESOLUTION, AS DRAFTED, ADDRESSES GENERALLY THE SELF-DETERMINATION QUESTION IN CONNECTION WITH ALL OF THE PEOPLES OF THE INSULAR AREAS, BUT PUERTO RICO IS THE ONLY ENTITY SPECIFICALLY REFERENCED. FOR PURPOSES OF CLARITY, I REQUEST THAT GUAM AND OTHER NON-SELF-GOVERNING TERRITORIES ADMINISTERED BY THE

UNITED STATES BE ADDED BY NAME TO THE RESOLUTION WHEN IT IS MARKED-UP TO BE REPORTED TO THE FULL COMMITTEE.

THANK YOU MR. CHAIRMAN AND MEMBERS FOR EXTENDING TO ME AN OPPORTUNITY TO PRESENT THIS STATEMENT ON H.R. 94.

ON MUTUAL CONSENT

GUAM COMMONWEALTH

PRESENTED IN CONJUNCTION WITH THE STATEMENT OF
THE HONORABLE MARILYN MANIBUSAN

MEMBER OF
THE 22ND GUAM LEGISLATURE

&

THE TERRITORY OF GUAM'S
COMMISSION ON SELF-DETERMINATION

Before

THE SUBCOMMITTEE ON INSULAR
AND
INTERNATIONAL AFFAIRS
COMMITTEE OF NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

Regarding

HOUSE CONCURRENT RESOLUTION 94

August 3, 1993

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I. INTRODUCTION TO MUTUAL CONSENT

The citizens of Guam and the other territories are unable to participate in the national government -- not through voting representation in Congress, nor in presidential elections, nor in Constitutional Conventions. The U.S. citizens of the territories and Commonwealths are, therefore, "American citizen-subjects," just as the British colonials were "subjects" of the Crown in 1775.

A. A GOVERNMENT ACTING WITHOUT THE CONSENT OF THE GOVERNED IS INCONSISTENT WITH AMERICA'S FOUNDING PRINCIPLES

A founding principle of this country was the rejection of government acting without the consent of the governed. The United States came into existence because our Founding Fathers rose up against colonial rulers who, while exercising control from a distant land, refused the people in the colonies the role in the governance process that they demanded. The failure to provide for meaningful participation in the process of government ultimately weighed so heavily on the people of the colonies that they were forced to cast it off through armed rebellion. As Thomas Jefferson wrote in the Declaration of Independence:

Governments are instituted among Men, deriving their just Powers from the Consent of the Governed, that whenever any Form of Government becomes destructive of these Ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its Foundation on such Principles.

Nevertheless, the early American democracy was an imperfect model, with much of the population excluded from the democratic process. Americans with vision and a commitment to democratic principles have struggled for the last two hundred years toward involving more American citizens in the political process. The Constitution, for instance, has been amended three times to ensure that more of our citizens could vote.^{1/} Even these Amendments were not enough. Congress has found it necessary to adopt innumerable pieces of legislation to promote and protect the civil rights of those against whom discrimination has been practiced, all with the overriding goal of enabling all the people to participate in the democratic process. While for many progress has been painfully slow, nevertheless we have moved inexorably toward the Founding Fathers' original goal of establishing a truly representative government which exists with the consent of those it governs.

^{1/} The Fifteenth Amendment eliminated voting restrictions based on race; the Nineteenth Amendment eliminated restrictions based on sex; and the Twenty-Third Amendment gave the people of the District of Columbia a presidential vote.

B. VOTING FOR MEMBERS OF THE HOUSE AND SENATE AND FOR THE PRESIDENT PROVIDES THE PEOPLE OF THE STATES WITH FULL PARTICIPATION IN THE DEMOCRATIC PROCESS

Having the consent of the people, of course, does not mean that all of the people must agree with each action of government. Rather, ours is a republican form of government in which the people elect their representatives who sit in the House of Representatives, the Senate, and the White House and act on their behalf. The American people participate in democracy through these representatives who are directly answerable to them in regular elections. As last November's elections demonstrated so clearly, when our representatives become too distant from the interests of the people whom they represent, they are replaced. In the American system, therefore, truly meaningful participation in the democratic process means that we are able to vote for these representatives who adopt legislation and oversee its implementation on our behalf.

If this fundamental right to elect representatives did not exist, we would be forced to rely upon the largess of leaders who others select on our behalf, or who select themselves (as in a dictatorship), and over whom we have no control. Such a system, however, would be anathema to us. It directly contradicts the intentions of our Founding Fathers and is utterly inconsistent with the principles of democracy. In fact, the United States has throughout its history lead the fight against just this sort of tyranny, most recently in the Soviet Union and Eastern Europe, and, as a result, we have all witnessed in awe the destruction of the Soviet dictatorship.

C. TODAY THE UNITED STATES ACTIVELY SUPPORTS THESE DEMOCRATIC PRINCIPLES THROUGHOUT THE WORLD -- BUT INCONSISTENTLY IN THE TERRITORIES

During the 1980s, promotion of democratic principles increasingly became a theme of U.S. foreign policy. Ultimately, it became a campaign issue. During his campaign, President Clinton focused on it as a fundamental tenet of his foreign policy. At the same time, he committed himself to self-government for the people of Guam.^{3/}

^{3/} In a letter addressed to the Guam delegation to the Democratic National Convention in New York, then-candidate Clinton wrote:

As President, I will fulfill the commitment contained in our party's platform to support the territory's right to decide its future status by working with Guam's leaders and the U.S. Congress to enact mutually-acceptable commonwealth legislation.

(continued...)

Nevertheless, America today remains a colonial power with distant possessions. Inhabitants of these possessions, many of whom are citizens of the United States, do not have the same rights to participate in the representative democracy enjoyed by the citizens of the several States.^{2/} If the citizens of the territories maintain their residence in the territories, they elect voting members of neither the House nor the Senate, nor can they vote in presidential elections. They are effectively excluded from the most fundamental aspect of our democratic system. As a result, laws are adopted and implemented for them by persons appointed and consented to by a President and Congress to whom they did not consent.

The circumstances of the people of Guam today are the direct consequence of almost 100 years of colonialism, supported by court precedent which holds that Guam is subject to the unfettered will of a government in which it does not participate. The fundamental question which the people of Guam and, indeed, all territories must ask today is similar to that question asked by the leaders of the Civil Rights movement in the 1960s -- can a nation, founded on the principle that all its people are created equal, continue to deny basic human rights to some of its citizens solely because they live in the territories?

II. THE PEOPLE OF THE TERRITORIES ARE EXCLUDED FROM THE DEMOCRATIC PROCESS AT THE NATIONAL LEVEL BY THE CONSTITUTION

A. THE BEGINNING OF GUAM'S QUEST FOR SELF-DETERMINATION

Set against this background of exclusion from, rather than inclusion in, the democratic process, the people of Guam now seek to restructure their relationship with the United States. In 1987, the people of Guam, in two plebiscites, approved a draft Commonwealth Act designed to begin the self-determination process. A fundamental objective of the quest for Commonwealth is and has been to extricate Guam from a system under which those whom the people of Guam do not elect act on their behalf.

^{2/} (...continued)

Together, we can finally improve the territory's status by establishing the Commonwealth of Guam!

Clinton letter dated July 15, 1992.

^{2/} The principal territories of the United States include American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the Virgin Islands. Qualifying residents of each of these territories (with the exception of American Samoa) hold U.S. citizenship. American Samoans are nationals of the United States.

Ironically, it is the United States Constitution itself which has been used to bar the people of Guam and of all the territories from full participation in the democratic process, and has been used to lock them in a dependency on those they do not elect. In fact, absent the agreement of Congress, the people of the territories have no right to participate in the political process at all. The source of the dilemma is Congress' power under Article IV, Section 3, Clause 2 of the Constitution, the Territorial Clause, which states that "[t]he Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States."

B. THE SUPREME COURT HAS BROADLY INTERPRETED THE CONSTITUTION AS GIVING THE CONGRESS PLENARY CONTROL OVER THE TERRITORIES

The Supreme Court has consistently interpreted Congress' power under the Territorial Clause broadly and long ago concluded that "Congress, in the government of the Territories . . . has plenary power, save as controlled by the provisions of the Constitution." Binns v. United States, 194 U.S. 486, 491 (1904). Justice White in his opinion in Downes v. Bidwell, 182 U.S. 244 (1901) (generally viewed as the seminal opinion on the status of territories), described the breadth of Congress' power over the territories under the Territorial Clause:

The Constitution has undoubtedly conferred on Congress the right to create such municipal organizations as it may deem best for all the territories of the United States . . . to give to the inhabitants as respects the local governments such degree of representation as may be conducive to the public well-being, to deprive such territory of representative government if it is considered just to do so and to change such local governments at its discretion.

Downes, 182 U.S. at 289-290.

The Supreme Court explained further its view that Congress has the broadest possible authority over the territories in Dorr v. United States, 195 U.S. 138 (1904):

Congress has unquestionably full power to govern [the territories], and the people, except as Congress shall provide for, are not of right entitled to participate in political authority, until the Territory becomes a State. Meantime they are in a condition of temporary pupillage and dependence; and while Congress will be expected to recognize the principle of self-government to such extent as may seem wise, its discretion alone can constitute the

measure by which the participation of the people can be determined.

Dorr, 195 U.S. at 148.

C. "GUAM MARCHES SQUARELY TO THE BEAT OF THE FEDERAL DRUMMER"

Perhaps no expression describes more starkly the plight of the American territories than that given by the United States Court of Appeals for the Ninth Circuit in three separate rulings dealing with the political status of Guam. Beginning in 1982, the Ninth Circuit stated in People v. Okada, 694 F.2d 565 (9th Cir. 1982), that

Congress has the power to legislate directly for Guam, or to establish a government for Guam subject to congressional control. Except as Congress may determine, Guam has no inherent right to govern itself.

Okada, 694 F.2d at 568 (emphasis added.)

Three years later, the Ninth Circuit expanded on this theme in Sakamoto v. Duty Free Shoppers, Ltd., 764 F.2d 1285, 1286 (9th Cir. 1985), holding that Guam "enjoy[s] only such powers as may be delegated to it by Congress." As such, "the government of Guam is an instrumentality of the federal government over which the federal government exercises plenary control." Sakamoto, 764 F.2d at 1289.

The Ninth Circuit's most recent declaration on this theme came in Ngiraingas v. Sanchez, 858 F.2d 1368, 1370-71 (9th Cir. 1988), when Guam was analogized to a Federal agency:

Admittedly the analogy between Guam and an administrative agency such as the Federal Trade Commission is counterintuitive. Guam seems more like a state or municipality than a run-of-the-mill federal agency. After all, Guam elects government officials, its citizens participate politically. . . . But there are also very significant differences, differences we deem conclusive. . . . Guam marches squarely to the beat of the federal drummer; the federal government bestows on Guam its powers and, unlike the states, which retain their sovereignty by virtue of the Constitution, Guam's sovereignty is entirely a creation of federal statute.

Ngiraingas, 858 F.2d at 1370-71 (emphasis added).

D. THE PEOPLE OF GUAM DO NOT PARTICIPATE EQUALLY WITH THE PEOPLE OF THE STATES IN CONGRESSIONAL DECISION-MAKING

The impediment to self-government, of course, is that the people of the territories do not participate as equal players in the Congress which has this plenary power. While several of the territories have representation in the House of Representatives -- Puerto Rico through its locally elected Resident Commissioner and Guam, American Samoa and the Virgin Islands through their delegates -- they are barred from full voting participation in Congress. As a result, the citizens of the territories, unlike all others in the States, do not participate in the democratic process in the way that our system has determined most meaningful -- by electing their own voting representatives to the House and Senate and voting for the President.

Through the draft Act, the people of Guam seek for the first time to overcome their constitutional disability which bars direct participation in the democratic process. The people of Guam wish to take control of their own affairs through a partnership with the United States which recognizes a local government established pursuant to a local constitution. Within a Commonwealth relationship, Guam seeks to move forward under a government which rules with the consent of the governed, rather than at the will of those whom the people of Guam did not elect, who govern from a distance and who are not accountable to them.

E. THE TERRITORIES' LIMITED ROLE IN THE HOUSE OF REPRESENTATIVES

In early January, the importance of a vote in Congress was brought home all too clearly when we witnessed an epic confrontation in the House of Representatives over the role of the territorial delegates. This debate highlighted the extent to which the people of the territories are excluded from effective participation in the decision-making process. In December of 1992, the House Democratic Caucus proposed to amend Rule XII of the House to permit the Resident Commissioner of Puerto Rico and the Delegates from Guam, the Virgin Islands and American Samoa to vote in the Committee of the Whole. The idea was to bring the territories a small step closer to actual participation in the legislative process.

F. THE HOUSE TAKES A STEP FORWARD

On January 5, 1993, the House of Representatives attempted to take this step toward bringing the territories closer to the democratic process when it adopted a rule change giving the Resident Commissioner and Delegates a vote in the Committee of the

Whole.^{2/} The resolution, however, had one significant difference from the proposal originally recommended by the Democratic Caucus. While the Resident Commissioner and Delegates could vote in the Committee of the Whole, if theirs were the deciding votes, the entire House would vote again -- this time without the delegates' vote.

Practically, this vote moves the people of the territories only inches closer to full participation in the system. Symbolically, however, the territories moved miles. While effectively they remain without the same fundamental powers available to those in the States, the fact that large numbers of American citizens have no meaningful participation in the democratic process was brought squarely before the Congress and the American people, and it must now be addressed.^{3/}

G. THE TERRITORIES ARE EXCLUDED FROM THE SENATE ENTIRELY

The territories have no role whatsoever in the Senate. It is in the Senate where the small States were given their ultimate protection against the will of the majority. Two Senators from each State provide the small States with an enormous equalizer and bring the people of these States directly into the political process. With a majority of only 51, the importance of having two Senators is obvious. For instance, the Senate recognizes a Senator's privilege to delay or block consideration of Legislation or nominations by placing a "hold" on the matter.^{4/}

The privilege to place a hold on a bill is not provided for in the Senate's rules but is an informal product of custom and courtesy. Essentially, a senator "asks" the leadership of his party to put a hold on a bill, in other words, to object to consideration of it until the Senator's concerns are addressed. See Bach, *supra* at 6, n.8. In practice Senators often place holds on bills for reasons that have nothing to do with the bills themselves. Senators may be seeking concessions on other bills or they may object to a particular appointment.

^{4/} D.C. Delegate Eleanor Holmes Norton, anticipating the challenge to the vote, wrote in defense that "[t]he Republican leadership and some Democrats who resolutely insist on democracy abroad are a lot more resistant to small doses of it here at home." See E. Norton, Law, Politics, and Voting By Delegates, Legal Times, January 4, 1993, at 22.

^{5/} When he introduced his proposed Insular Areas Policy Act, H.R. 6117, Delegate DeLugo's accompanying Statement of October 4, 1992, justified the proposed reorganization in part on the grounds that while the territories must relate to the Federal government as do the States, they "lack the States' power in Federal decision-making processes."

^{6/} See Stanley Back, Congressional Research Serv., The Legislative Process on the Senate Floor: An Introduction, at 6 (Mar. 31, 1986, revised July 1, 1991).

This privilege is recognized because, under Senate rules, any Senator may object on the floor to consideration of a bill or nomination, thereby requiring a vote of the full Senate to bring the bill up for consideration. *Id.* To avoid the necessity of a vote, the Majority Leader customarily asks for unanimous consent.²⁷ If there is even one objection the bill may not be considered under this procedure. If the Majority Leader cannot secure unanimous consent, he must call for a vote on the motion to proceed to consider the bill. A simple majority may approve the motion, but debate on the motion is unlimited. This is the point at which a filibuster is possible. *Id.* Because Senate rules permit senators to retain the floor for as long as they have anything to say and are present to say it, Senators may engage in an endless filibuster to prevent a vote on the motion to proceed. The Senate may only close debate (cloture) with the support of three-fifths of the Senators, or 60 votes.

The hold serves as a behind-the-scenes mechanism for working out objections before a bill comes to the floor. *Id.* The holding privilege does not mean every Senator has an absolute veto over all legislation or nominations, but it does mean each Senator has some bargaining leverage before the legislation or nomination is brought to the floor. See Tiefer, *supra* note 9, at 563.²⁸

III. THE POLITICAL DILEMMA FACING THE TERRITORIES

Clearly, the people of the territories are substantially disadvantaged by their exclusion from the political system. Without effective participation in the political process, can the people of Guam, or any other territory seeking a change in political status (short of Statehood or independence), ensure that the relationship they ultimately agree to will be honored by the United States? The Commonwealth of the Northern Mariana Islands (CNMI) and the United States have been locked in battle for several years now over exactly this issue. The CNMI believes it established certain

²⁷ According to a Congressional Research Service study, 98% of the matters laid before the Senate proceed for consideration by unanimous consent. This fact suggests that the Majority Leader probably honors almost all holds. See Charles Tiefer, *Congressional Practice and Procedure: A Reference, Research and Legislative Guide*, at 562-63 (1989).

²⁸ Another opportunity for delay is the "layover rule." Tiefer, *supra*, at 566. When a Committee approves legislation or a nomination for floor consideration, the bill is accompanied by a Committee Report. *Id.* at 550. Under Senate rules, all reports "shall lie over one day for consideration," unless the Senate waives the requirement by mutual consent. In addition, there is a layover requirement of three calendar days to give Senators time to review reports. *Id.* at 566. Both layover rules can only be waived with unanimous consent and offer a Senator another procedural opportunity to attack legislation.

principles of self-government which were unalterable. The United States disagrees and cites to the plenary power of the Territorial Clause and 90 years of court precedent holding that there are few inhibitions on Congress' discretion toward the territories.

The dilemma facing Guam and the other territories seeking political status changes short of Statehood or independence is how to prevent the legislation which authorizes the status change from being treated as simply another Organic Act, subject to the unfettered discretion of a Congress in which they do not vote or to unintended interpretation by an Executive Branch over which they have no real political influence. In Guam's case, its transition to Commonwealth will result from legislation adopted by Congress and approved by the people of Guam. The problem, of course, is that, under generally accepted legislative and legal principles, legislation is binding only on the Congress which adopts it. If, then, the people of Guam agree to a Commonwealth relationship based on an Act of Congress, can they be sure that a future Congress, reacting perhaps to the politics of the moment or new domestic or international political pressures, would not reach into the legislation and alter it unilaterally?

Over the last two and a half years, Guam's Commission on Self-Determination, at the request of Congress, engaged in negotiations with the Bush Administration on the terms of the draft Commonwealth Act. During these negotiations, the Commission's Chairman, Governor Joseph Ada, repeatedly raised his concern that the rules frequently seem to change toward Guam and that Guam had little leverage to stop a change once proposed. He explained how Guam, in the past, has had the rules applicable to it unilaterally altered to suit the political and economic interests of others with greater influence in the Congress or the Executive Branch. He argued, therefore, for a form of guarantee which would protect whatever agreement is ultimately reached. To this end, he asked that there be no changes in the partnership without the mutual consent of the people of Guam. He explained that this was the only workable option for a people who had heretofore been denied full political participation.

The Bush Administration resisted this proposal. The Governor was told to trust and have faith in the Government, and that once agreements were reached significant changes would be difficult to get through the political process. In essence the Bush Administration was reassuring the Commission that Guam would not again be subject to the politics of the moment.

IV. MUTUAL CONSENT IS THE ONLY REASONABLE ALTERNATIVE FOR THE PEOPLE OF GUAM WHO ARE BARRED FROM THE DECISION-MAKING PROCESS

A. CHANGES TO THE TERMS OF COMMONWEALTH REQUIRE MUTUAL CONSENT

Borrowing from precedent established in the CNMI's Covenant,^{2/} the draft Guam Commonwealth Act seeks agreement from the United States Congress that the terms of the Act will not be altered without the mutual consent of Guam. Section 103 of the Act reads as follows:

in order to respect the self-government granted to the Commonwealth of Guam under this Act, the United States agrees to limit the exercise of its authority so that the provisions of this Act may be modified only with the mutual consent of the government of the United States and the government of the Commonwealth of Guam.

The Mutual Consent provision of the draft Commonwealth Act is essential to Guam's self-government goals, and without it, the draft Act would be little more than another Organic Act. The draft Act is intended to redefine completely the political relationship between Guam and the United States. It is not an extension or continuation of the past Federal/territorial relationship. In order to redefine the relationship and meet the self-government objective, the fundamental legal and political framework must also be completely redefined.

B. THE BUSH ADMINISTRATION OFFERED LIMITED MUTUAL CONSENT AND THEN SNATCHED IT AWAY

In response to Guam's proposal, the Bush Administration's Task Force organized to work with the Commission on Self-Determination initially argued that "the mutual consent provision . . . should, however, be confined to its [the draft Act's] 'fundamental

^{2/} Section 105 of the Covenant to Establish Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, Pub. L. 94-241, Mar. 24, 1976, provides only for a limited application of mutual consent. It states, "[i]n order to respect the right of self-government guaranteed by this Covenant the United States agrees to limit the exercise of that authority so that the fundamental provisions of this Covenant, namely Articles I, II and III and Sections 501 and 805, may be modified only with the consent of the Government of the United States and the Government of the Northern Mariana Islands."

provisions.¹⁰ The only provisions which the Task Force believed should be covered by mutual consent were Section 101 (the creation of the Commonwealth itself and establishment of the supremacy of the U.S. Constitution), Section 103 (the Mutual Consent provision itself), section 201 (applicability of the U.S. Constitution), and section 301 (U.S. authority over defense and foreign affairs). Not surprisingly, each was a provision which ensured continuation of the United States' unilateral control over Guam.

Guam, however, seeks certainty of treatment in all fundamental provisions of the relationship. The draft Act contains 12 Titles, each of which deals with a fundamental element of the past, present and future relationship with the United States. Each of these Titles is interrelated and each is equally critical to the Commonwealth relationship. Each is designed to give the same measure of certainty to Guam that the Task Force initially sought for the United States when it proposed that only a few sections be subject to mutual consent. Certainty on immigration, trade, taxation, land and natural resources, Chamorro rights and the scope of self-government are as critical to Guam as the applicability of the Constitution and continued authority over defense and foreign affairs are to the United States.

The Mutual Consent provision seeks Congress' agreement that the relationship established through this Act can be altered only with the mutual consent of the people of Guam. While the principle is a simple one, it is a cornerstone of Commonwealth. It is the only "equalizer," and the only aspect of the draft Act which ensures a true partnership. Because the people of Guam cannot participate in the political process in the same way available to others, to deny mutual consent is to deny self-government to the people of Guam and subjects them for the future to potentially arbitrary decisions made by those over whom Guam has no control.¹¹

¹⁰ The Task Force released its first report on the Commonwealth proposal to Congress on August 1, 1989. It recommended consent essentially on the same provisions the United States had accepted in the Mariana's Covenant.

¹¹ Guam's concerns were not speculative or fantasy. During its discussions with the Task Force on the trade relationship between Guam and the United States, the Commission on Self-Determination argued for a new approach to the traditional trading relationship the United States has maintained with its territories. The essence of the proposal was to achieve a level of certainty for Guam-based manufacturers within a framework of free trade by locking in rules of origin which would not be subject to change after a manufacturer began to operate on Guam. Under § 603(c) of the Northern Mariana Islands' Covenant with the United States, any rules applied by the United States to Guam would also apply to the CNMI. The Task Force apparently did not believe it was bound by § 603(c) and insisted upon adding a provision to the draft (continued...)

As long as Guam remains subject to the discretion of a Congress in which it does not have full voting representation in both the House and Senate, it has no meaningful political power to protect itself against detrimental changes in the relationship. Without equal rights in the political process, Guam's only protection is a "contract," the terms of which are protected, like all contracts, by mutual consent. The twelve Titles of the draft Commonwealth Act constitute this contract.

C. THE TASK FORCE MAKES THE CASE FOR MUTUAL CONSENT

After the Task Force released its initial report on the draft Act in 1988, Guam's Commission on Self-Determination commenced negotiations with the Task Force on the draft Act's terms. These negotiations lead to the Chairperson of the Task Force, Assistant Secretary Stella Guerra and the Chairman of the Commission, Governor Joseph Ada, signing a series of qualified agreements on language which each found acceptable. These negotiations concluded on August 13, 1992, with the signing of a document listing those provisions of the draft Act on which the Task Force and Commission on Self-Determination were unable to agree. After that date there were no further meetings between the Task Force and Commission concerning the provisions of the draft Act. Rather, the Task Force undertook to draft its report on the negotiations for submission to Congress. As the Guam Commission understood it, this report set forth the areas of agreement, and explained the disagreements.

The Task Force apparently saw it differently and forgot its admonition to the Commission to "trust" it. On January 19, 1993, just hours before departing Washington, the Bush Administration released a report which unilaterally altered its prior agreement to many critical provisions of the draft Act. Without consulting with Guam or giving any warning whatsoever, the Bush Administration reneged on many of its commitments or recommended to Congress alterations to agreed language. These included the following agreements:

1. Section 102(f), signed December 12, 1991 as § 1002 (Chamorro Land Trust).
2. Section 102(g), signed October 2, 1991 (altering language relating to residency requirements).
3. Section 202-A, signed December 12, 1991 (establishing a fast track legislative review process for legislation that Guam determines is being inappropriately applied to it).

11/ (...continued)

Commonwealth Act which would result in the new Guam rules not applying to the CNMI.

4. Section 202-B, signed December 12, 1991 (agreement to disagree on proposal to deal with applicability of rules and regulations to Guam).
5. Section 203, signed December 12, 1991 (establishing a Joint Consultative Group to work on problems in the relationship).
6. Section 701, signed March 25, 1992 (establishing a restrictive immigration system for Guam).

Furthermore, the Task Force backed away from its 1989 offer in the initial report to apply mutual consent at least to those provisions of the draft Act which it considered essential. According to the January 19th report, "the Task Force cannot agree to a proposal that the modification of every part of the Commonwealth Act would require the consent of the people of Guam." January 19, 1993, Second Federal Inter-Agency Task Force Report on H.R. 98, the Guam Commonwealth Bill, at 97. "The Task Force, therefore, objects to Section 103 and any other type of mutual consent provision." Id. at 24.

These statements are remarkably revealing. The Task Force concluded that the people of Guam ultimately are to have no voice in their political future. Their consent is not required. The United States will make the decisions unilaterally. This is not government with the consent of the governed and is impossible to reconcile with the world-wide self-determination movement.

This change in the Task Force's mutual consent position is not surprising. While the Task Force Report attempts to lay blame for its changed position at Guam's doorstep because of a Commission proposal to guarantee the viability of its mutual consent proposal, the Task Force obviously abandoned mutual consent because it wanted to maintain the flexibility to do what it did after the completion of negotiations with Guam -- **change positions unilaterally**. As Governor Ada concluded after the report's release, clearly, a mutual consent provision is Guam's only alternative, if Commonwealth is to have any meaning.

D. CONGRESS CAN BIND FUTURE CONGRESSES THROUGH MUTUAL CONSENT

The concept of a binding agreement which establishes the boundaries of the relationship between the Congress and Guam fits well within the United States' legal and political system. Although the Mutual Consent provision is designed to accommodate Guam's desire for self-government, it also recognizes and accepts Congress' continuing and unique powers under the Territorial Clause and applies these powers to establish the mutual consent obligation. To reconcile mutual consent with Congress' broad powers under the Territories Clause, the Commission on Self-Determination has proposed that a new provision be added to the draft Act setting forth

explicitly the Congress' obligations under the Mutual Consent provision. The proposed provision which would be added to Title Twelve reads as follows:

Section 1202. Establishment of Covenant and Granting of Fifth Amendment Property Rights

The Congress, acting pursuant to its powers under Article IV, Section 3, Clause 2, by adopting this Act establishes a covenant between the people of Guam and the United States Congress for internal self-government by the people of Guam, the terms of which shall not be altered without the mutual consent of the people of Guam. To give effect to this covenant, the Congress of the United States hereby agrees that none of the terms of this Act shall be altered by this or any future Congress without the agreement of the people of Guam and that this right to mutual consent shall be deemed as giving the people of Guam and the Government of the Commonwealth of Guam a constitutionally protected property right in self-government under the Fifth Amendment of the Constitution of the United States which is enforceable in the courts of the United States.

The essence of the proposal is that the people of Guam and the Congress are agreeing to enter into a binding contract, a covenant, with the Congress explicitly agreeing that the rights being afforded to the people of Guam are in the nature of property rights protected by the Due Process Clause of the Constitution.

This proposal was so threatening to the Task Force that, in an extraordinary departure from the procedure which had been agreed to for the negotiations on virtually every other proposal, its members were directed not even to discuss it. Although there were no discussions, the Task Force did comment on the proposal in the January 19th Report. According to the Task Force, only contract rights or property rights give rise to Fifth Amendment protections, not regulatory programs, "or as in Guam's proposal, essentially political rights that cannot be reduced to money judgments." Second Task Force Report at 97. The Report relies on Bowen v. Agencies Opposed to Social Security Entrapment, 477 U.S. 40 (1986).

The Task Force apparently viewed the proposal as a threat to the United States' sovereignty in Guam. In fact, the government's entering into a binding agreement has nothing whatsoever to do with sovereignty. If sovereignty were construed to mean that the Federal Government could never enter into any kind of binding agreement, then no treaty could be valid, no government bond could be redeemed and no contract enforced. Similarly, the Federal Government's sovereignty over the States is limited by the Tenth

Amendment to the Constitution,^{12/} resulting in what is often referred to as "dual sovereignty." There is no inconsistency between the Federal Government's sovereignty and the concept of the Federal Government limiting its own authority voluntarily.

Ultimately, the question is whether Congress can irrevocably limit its broad Territorial Clause authority. There is no direct Supreme Court precedent which answers the question. The Task Force's reliance on Bowen, however, is clearly misplaced. The law in question in Bowen contained a provision expressly reserving to Congress itself "[t]he right to alter, amend or repeal any provision" of the Act. Bowen, 477 U.S. at 50. The decision merely reiterated a 110 year old rule that whenever Congress reserves unto itself the right to amend legislation it may do so. The Court stated:

[W]e have emphasized that "[w]ithout regard to its source, sovereign power, even when unexercised, is an enduring presence that governs all contracts subject to the sovereign's jurisdiction, and will remain intact unless surrendered in unmistakable terms."

Bowen, 477 U.S. at 54 (emphasis added).

Guam's proposal sets forth in "unmistakable terms" the limits Congress is accepting. In fact, the Supreme Court has repeatedly upheld agreements which bind the government:

[T]he right to make binding obligations is a competence attaching to sovereignty. . . . The Congress cannot invoke the sovereign power of the people to override their will as thus declared. The powers conferred upon the Congress are harmonious. . . . Having this power to authorize the issue of definite obligations for the payment of money borrowed, the Congress has not been vested with authority to alter or destroy those obligations.

Perry v. United States, 294 U.S. 330 (1935).^{13/}

^{12/} The Tenth Amendment provides: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

^{13/} See also United States v. Bekins, 304 U.S. 27 (1938):

It is of the essence of sovereignty to be able to make contracts and give consents bearing upon the exertion of governmental power. This is constantly illustrated in treaties and conventions in

(continued...)

While a distinction obviously exists between the Government's rights to abrogate property rights and the issue of its authority to exercise political power in the territories, the Supreme Court's frequent statements that the Government can bind itself do not appear to be limited to commercial-type contracts. The Court has, for instance, upheld limitations on federal political powers in areas ceded to the federal government by the states pursuant to the Territorial Clause. In Fort Leavenworth R.R. v. Lowe, 114 U.S. 525 (1885), the Court upheld an agreement between the Federal Government and Kansas dividing taxing authority.¹² The Court stated:

Though the jurisdiction and authority of the general government are essentially different from those of a State, they are not those of a different country; and the two, the State and the general government, may deal with each other in any way they may deem best to carry out the purposes of the Constitution.

Fort Leavenworth, 114 U.S. at 541.

The Congress clearly also has authority to dispose of property under the Territorial Clause. This power includes both the absolute right to dispose of property in its entirety or to dispose of part of the governments rights in property.¹³

^{13/} (...continued)

the international field by which governments yield their freedom of action in particular matters in order to gain the benefits which accrue from international accord.

^{14/} Similarly, in Collins v. Yosemite Park & Curry Co., 304 U.S. 518 (1938), the Court upheld an agreement between California and the Federal Government which reserved certain rights to California when it ceded Yosemite Park. The Court concluded that the Federal Government and the states could enter into agreements concerning jurisdiction over property within their borders, and the courts should "recognize and respect" the agreements. 304 U.S. at 527-30.

^{15/} For instance, the Supreme Court has approved of the Government's right to lease mineral rights. See United States v. Gratiot, 39 U.S. (14 Pet.) 526, 536 (1840) ("it lies in the discretion of Congress, acting in the public interest to determine of how much of the property it shall dispose."). In Ashwander v. T.V.A., 297 U.S. 288 (1936), the Court approved a contract for the sale of electricity, rejecting an argument that the Government lacked constitutional authority to dispose partially of its property by contract and relying on Congress' authority under the Territorial Clause. Id. at 330-36. The Court has also found that in the context of Congress' powers, "the greater includes the less." The Late Corporation of Church of Jesus Christ of Latter Day Saints v. United States, 136 U.S. 1, 45 (1890).

Of course, a significant difference may exist between the disposition of property and the disposition of sovereign authority. Nevertheless, the conclusion that Congress can partially dispose of matters over which it has the power of total disposition has considerable logical appeal. If Congress could totally dispose of its power over the Philippines by granting them independence, it seems logical that it could also partially dispose of its powers by granting them something less than complete independence. Whether Congress could later change its mind as to the partial disposition is not clear, but some kinds of dispositions are by nature final. For example, if Congress disposes of its powers over territory by admitting it as a state, that would seem a final disposition of its territorial powers; Congress cannot change later the status of a state. Similarly, when Congress granted independence to the Philippines, it disposed of its territorial power over them for all time.

Inventive Statesmanship vs. The Territorial Clause: The Constitutionality of Agreements Limiting Territorial Powers, 60 Va. L. Rev. 1041, 1060-61 (1974).

V. CONCLUSION

Under the Territorial Clause, the Congress has broad authority to carve out a unique relationship with the people of Guam. The Supreme Court has traditionally given Congress broad latitude to deal with the political rights of the people of the Territories. It is also apparent that the Court is prepared to find that the Congress can enter into binding agreements dealing with property and certain political rights. While the issue now being presented by Guam has never been directly confronted by any court, the courts have traditionally been quite solicitous of congressional action in the territories. As the Ninth Circuit recently stated, "we must be cautious in restricting Congress' power" in the territories. Wabot v. Villacrusis, 958 F.2d 1450, 1460 (9th Cir. 1992).

In the end, the decision whether to agree to a mutual consent provision should be viewed as a policy decision, not a legal one. Is the United States prepared to recognize that because it has no present intention of granting Statehood to Guam, basic requirements of fairness and democracy require that an alternative be found to the state of pupillage in which the people of Guam now find themselves? Mutual consent is that alternative.

Mr. DE LUGO. Thank you very much, Senator Manibusan. Excellent statement.

Before I recognize the next witness, Mr. Rivera, let me address your statements regarding what occurred at the last hearing, specifically the proposal that came out of the blue from Interior. There can be no question that that was a horrendous mistake by the Interior Department. I was stunned when I read the statement. The sense I got, in my meetings with the Assistant Secretary, is that she is a good person and is sympathetic to the concerns of the territories. But, this was the type of mistake that is made with consultation whatsoever.

If the Secretary had simply picked up the phone, said a word to me, or to any of the other members of this Committee, she would have been warned off and told that this is terrible. The problem is that if you haven't lived through it, you cannot truly appreciate the magnitude of these types of mistakes.

It is, as Congressman Romero said, it is offensive. I mean it just—you sense it immediately. But, another person who has not lived through it perhaps doesn't see it. She sees it in legal terms, sees it as a Federal officer protecting the Federal interests or something like that.

I thought that I was back in the 1950s when I originally came into politics to change all of this, when we were run by that little office down in Interior, when our governors were handed to us from God knows where, we didn't even know them and they didn't know us.

That was the kind of a statement that was put in here. I hope that it was well-meaning and it was just a terrible mistake. This administration has such an opportunity here. It was all begun with such goodwill.

You will have to understand the long history that we are dealing with here. I might say that that statement, through the whole hearings, it ruined everything. It put us way back.

I think that you know, my hearing, or my sense of the hearing was that the military had some positive positions. Number one, the military was fully supportive of turning over the 3,200 acres to Guam.

You know, that it was supposed to be turned over to Interior from them, and we didn't hear them saying that it was supposed to be swapped for park land. And further, the military that testified here said that they were willing to reassess the need of the other land that they own on Guam, and to participate fully in a positive way in the land summit that has been proposed by Congressman Underwood.

So, I think that there was only one major mistake that was made. It was horrendous. I hope that it—somehow, can be corrected. The only way you can correct that is by showing a tremendous amount of goodwill and trying to understand why so many people are so upset. But, I can assure the Department that there is very good reason why they are upset.

I just wanted to mention that, and at this time I will recognize Mr. Ronald F. Rivera. I want to thank you, Mr. Rivera, for coming

all of this way across the dateline. Mr. Rivera is the chairperson of the Organization of People for Indigenous Rights.

Mr. Rivera.

STATEMENT OF RONALD RIVERA

Mr. RIVERA. Thank you, Mr. Chairman. Si Yu'os ma'ase for this opportunity to appear before your Subcommittee today and to present our organization's views with respect to House Concurrent Resolution 94.

Mr. Chairman, allow me on a personal note to convey to everyone here today the deep sense of pride that I have in appearing before the Subcommittee, especially with regard to the membership of my good friend and Chamorro brother and cofounder of our organization, Congressman Underwood.

I am especially pleased to appear here along with our island's political leaders as represented by Senator Lujan and Senator Manibusan.

Hafa adai, todos hamyo. Guahu si Ron Rivera yan para bai hu presenta giya hamyo i pusision i OPIR put este na asunto i direchon i Man Chamorro para u ma detitmina i estao pulitikat para Guahan.

Mr. Chairman, I am here to present the position of the Organization of People for Indigenous Rights, a Guam organization devoted to the protection and eventual exercise of the Chamorro people's right to self-determination. In preparing for this hearing, we were reminded of the last opportunity that we had to present our views before this Subcommittee with regard to political status change processes in Guam and in particular, Chamorro self-determination. This last opportunity was during the Subcommittee hearings on the Guam Commonwealth Draft Act in Honolulu in December of 1989.

In recalling this event we have come face-to-face with our stark and sad reality. That is that to date, little, if any, has occurred in the advancement and realization of Chamorro self-determination. Chamorro self-determination, the cornerstone of political status change in Guam remains unaddressed in any satisfactory degree. In light of this reality, our expressions today will vary little from those which were expressed during the hearings in Hawaii.

Our organization is dedicated to the principles of Chamorro self-determination. That is our right as a people to determine the way in which we shall be governed, whether we shall be self-governed or governed by another power. We firmly believe that only the Chamorro people, the native people of Guam, have the right to alter Guam's status from a non-self-governing entity to one considered as having a full measure of self-government.

Mr. Chairman, we wish to state our general support of H. Con. Res. 94 insofar as it addresses the right of the people of self-determination as articulated in the charter of the United Nations.

However, amendments to H. Con. Res. 94, which we will outline, will draw necessary and specific relevance to the situation of the Chamorro people of Guam. In order to gain a broader level of understanding of the principle of self-determination as it relates to the Chamorro people, we must undertake an examination of this right within the context of the Chamorro colonial experience.

We want you to understand the characteristics of Chamorro self-determination so that it is not misunderstood, misrepresented or misinterpreted by the Congress of the United States.

The principle of Chamorro self-determination is a simple one. It holds that the political status of Guam is in the hands of the Chamorro people. It maintains that the discussion of Guam's political status is in reality a discussion of sovereignty.

It firmly believes that the right to exercise self-determination and the sovereignty it implies is an historical right borne of the direct denial of Chamorro control of their homeland caused by the exchange of colonial systems between Spain and the United States in 1898. All that has occurred since then has not confronted squarely the issue of Chamorro self-determination. At certain times since the advent of American rule, the United States has behaved irresponsibly, responsibly, generously and capriciously. But the ultimate question before us is not to assess the good and bad points of America as a colonial power.

The question is how do we decolonize Guam and resolve the political status issue. We believe, as do an increasing number of people on Guam, that we need to confront the issue of sovereignty and the relationship of the Chamorro people to their homeland in this question. To not confront and resolve this issue now is to avoid the fundamental issue underlying the debate that we are all bearing witness to. To undermine Chamorro self-determination is to give life to imperialism at a time when we are celebrating its demise in other parts of the world.

We have been under colonial domination for over 300 years. We have been the unfortunate distinction of being the first group of Pacific islanders to be colonized by the West. The Chamorro people have been subject to other nations without their consent.

These nations have occupied Guam to further their own interests and pursue the extension of their political and their economic power. Spain, Japan, and the United States have all used Guam to further their own objectives. Without exception, none has demonstrated serious regard for the right of the Chamorro people to engage in self-determination.

Instead, there has been a process which has reduced the social and political power of the Chamorro people through in-migration. The Chamorro people today comprise approximately 43.3 percent of the total population of Guam. Through U.S. policy and laws which control Guam, the demographic characteristics of Guam have shifted significantly.

Tragically, under the same policies and laws, nearly all have been allowed to participate in Guam elections on political status. It is a miscarriage of justice to allow military personnel and new residents to participate in the political status process which was intended only for the Chamorro people.

The relationship of the Chamorro people with the United States began with the Spanish-American War near the turn of the century. As a result of that war, the Chamorro people of the Mariana Islands were divided. In the Treaty of Paris in 1898, Spain ceded Guam to the United States and sold the remainder of the island chain to Germany.

It is instructive to note that the Treaty of Paris contained the provision, quote, "the civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by the Congress", end of quote.

Germany subsequently lost the Northern Marianas to Japan which obtained the islands as a League of Nations mandate as a result of being on the side of the allies in World War I.

Following World War II, as a possession of the United States, Guam was voluntarily placed by the United States under the declaration regarding non-self-governing territories created in Chapter XI of the U.N. charters.

In 1960, the United Nations adopted the Declaration on Decolonization. In 1961, it created the Special Committee on Decolonization to provide a mechanism for annual review of political, economic, social, educational and constitutional progress in non-self-governing territories.

United Nations Resolution 1514 provided for "immediate steps to be taken, in trust and non-self-governing territories * * * to transfer all powers to the peoples of these territories, without any conditions or reservations, in accordance with their freely expressed will and desire * * * in order to enable them to enjoy complete independence and freedom."

United Nations Resolution 1541 provided for a set of 12 "principles which should guide members whether or not an obligation exists to transmit the information called for under Article 73(e) of the United Nations charter." This latter resolution provided that a non-self-governing territory can be said to have reached a full measure of solve government by:

One, emergence as a sovereign independent state; or free association with an independent state; and lastly, through integration with an independent state.

In 1980, on the twentieth anniversary of the Declaration on Decolonization, the United Nations adopted an "Implementation Plan" for fulfilling the decolonization process. Ironically, the few remaining colonial powers included the United States and Great Britain, the two countries who adopted the principle of self-determination during World War II, and who were founding members of the United Nations which had overseen the decolonization of over 80 non-self-governing territories.

In adopting the Decolonization Implementation Plan in General Assembly Resolution 35/118, the Assembly said it was "deeply conscious" of the fact that 20 years after the Declaration on Decolonization, the system of colonialism continued to exist in several areas of the world. It reaffirmed the inalienable right of all peoples under colonial domination to self-determination.

To date, despite the Treaty of Paris, the democratic traditions of the United States and the United Nations Charter, the Chamorro people remain in political limbo. However, the U.S. continues to report annually to the United Nations in response to its responsibilities. The early reports clearly indicate that the people being discussed for political status changes were the Chamorro people. This has been clouded by the thousands of non-Chamorros who have migrated to Guam under U.S. laws and policies. The new residents, while fine and upstanding citizens, were never promised a right to

self-determination, a process which belongs to people whose status is in question.

This right is inalienable and should not be transferred or given away to others. Self-determination is not a right of American citizenship. If it were, we would have periodic political plebiscites in the 50 States. It is the right of a people to whom history has not been kind.

If there were no Chamorros, no native inhabitants on Guam, there would be no serious discussion of self-determination. As a point of comparison, it would be ludicrous to presume that Wake Island has an inherent right to self-determination. The only persons that are there now are those brought in by the United States. They have no right to self-determination, because they had no prior existence as political, social or cultural beings and no commitment has been made to them.

While our organization maintains that only the indigenous people have the right to change Guam's ultimate political status, we are not opposed to an interim Federal-territorial relations act as outlined by the proposed Guam Commonwealth Act. We are not opposed because it increases the political and economic autonomy of Guam while it recognizes Chamorro self-determination. H. Con. Res. 94 can serve as a significant prelude to the recognition and eventual exercise of Chamorro self-determination.

We hope that you will support and endorse Chamorro self-determination. This will guarantee a future with dignity for Guam and its people. We know that the vast majority of Chamorros support our position and that an increasing number of non-Chamorros support our position as well. We are fearful that opponents of Chamorro self-determination may wish to delay matters in the hope that continued in-migration will eventually silence the legitimate aspirations of the Chamorro people.

To delay the resolution of Guam's political status while the demographics of Guam change is to complicate the exercise of Chamorro self-determination. To delay legislation while keeping the legislative process open will only serve to dissipate the collective energy which has been demonstrated to you today. In short, the delaying of legislation and in particular Chamorro self-determination will become a conscious strategy to frustrate the entire movement of Guam towards more autonomy.

Mr. Chairman, we also know that the congressional process is by nature a lengthy one. But most importantly, we know that we have waited too long for Chamorro self-determination and barring some unforeseen development, it appears that we will be asked to wait a few more years. Members of the Committee, justice delayed is justice denied, and our organization feels that we can no longer be reasonably expected to await the completion of a lengthy process.

We offer for consideration the following: We request that H. Con. Res. 94 be amended by adding a new Section 4 to the Resolve Clause on page 2 to read:

"In accordance with the United States treaty commitment under Chapter XI, Article 73, of the Charter of the United Nations, and relevant United Nations Resolutions 1514 and 1541, recognizes and endorses the inalienable right of the Chamorro people of Guam to political self-determination."

The congressional process should and will have the opportunity to work. But it cannot be used in a way that will deny us our rights. It is important to remember that we are not petitioners in a system that we are fully a part of. To expect us to be patient while the system we are not part of is given a chance to work may be appropriate for any jurisdiction within the United States. Besides, we have been patient long enough.

Prutehi i direcho-ta kumu taotao guahan hit; protect our rights as the people of Guam.

We present this statement with respect, with dignity and with the firm conviction that we are right. Biba Guam, Biba Chamorro, Si Yu'os ma'ase.

Thank you, Mr. Chairman.

[Prepared statement of Mr. Rivera follows:]

STATEMENT OF
ORGANIZATION OF PEOPLE FOR INDIGENOUS RIGHTS
OPI-R

by

Ronald Rivera
Chairperson

on

House Concurrent Resolution 94

August 2, 1993

Introduction

Hafa adai, todos hamyo. Guahu si Ron Rivera yan para bai hu presenta giya hamyo i pusision i OPIR put este na asunto i direchon i Man Chamorro para u ma detitmina i estao pulitikat para Guahan.

I am Ron Rivera and I an here to present to you the position of the Organization Of People for Indigenous Rights, a Guam organization devoted to the protection and eventual exercise of the Chamorro people's right to self-determination.

The Organization Of People For Indigenous Rights (OPI-R) is a community based, grass-roots organization dedicated to the principle of Chamorro Self-Determination, that is our right as a people to determine the way in which we shall be governed and whether we shall be self-governed or governed by another power. We firmly believe that only the Chamorro people, the native people of Guam, have the right to alter Guam's status from a non self-governing entity to one considered as having a full measure of self-government.

Since the inception of our organization in 1981, we have had the opportunity to present our position in a variety of forums, including the United Nations, government bodies on Guam and, on occasion, in front of United States agencies and instrumentalities.

Mr. Chairman, we wish to state our general support of H.R.94 in so far as it addresses the right of a people to self-determination as articulated in the Charter of the United Nations. However, amendments to H.R. 94, which we will outline will draw necessary and specific relevance to the situation of the Chamorro people of Guam. In order to gain a broader level of understanding of the principle of self-determination as it relates to the Chamorro people, we must undertake an examination of this right within the context of the Chamorro colonial experience.

We want you to understand the characteristics of Chamorro self-determination so that it is not misunderstood, misrepresented or misinterpreted by the Congress of the United States.

The principle of Chamorro self-determination is a simple one. It holds that the political status of Guam is in the hands of the Chamorro people. It maintains that the discussion of Guam's political status is in reality a discussion of sovereignty. It firmly believes that the right to exercise self-determination and the sovereignty it implies is a historical right borne of the direct denial of Chamorro control of their homeland caused by the exchange of colonial systems between Spain and the United States in 1898. All that has occurred since then has not confronted squarely the issue of Chamorro self-determination. At certain times since the advent of American rule, the United States has behaved irresponsibly, responsibly, generously and capriciously. But the ultimate question before us is not to assess the good and bad points of America as a colonial power.

The question is how do we decolonize Guam and resolve the political status issue, OPI-R believes, as do an increasing number of people on Guam, that we need to confront the issue of sovereignty and the relationship of the Chamorro people to their homeland in this question. To not confront and resolve this issue now is to avoid the fundamental issue underlying the debate that we are all bearing witness to. To undermine Chamorro self-determination, is to give life to imperialism at a time when we are celebrating its demise in other parts of the world.

Over 4,000 years ago, the Mariana Islands were settled by a group of people who came to be known as the Chamorros. Their existence was "discovered" by Europeans in 1521 and they were colonized by Spain in 1668. The Chamorro people have the unfortunate distinction of being the first group of Pacific Islanders to be colonized by the West.

In the ensuing three hundred years, the Chamorro people have been subject to other nations without their consent. These nations have occupied Guam to further their own interests and pursue the extension of their political and/or economic power. Spain, Japan and the United States have all used Guam to further their own objectives. Without exception, none has demonstrated serious regard for the right of the Chamorro people to engage in self-determination. Instead, there has been a process which has reduced the social and political power of the Chamorro people through immigration. The Chamorro people today comprise approximately 43.3% of the total population of Guam. Through U.S. policy and laws which control Guam, the demographic characteristics of Guam have shifted significantly. Tragically, under the same policies and laws, nearly all have been allowed to participate in Guam elections on political status. It is a miscarriage of justice to allow military personnel and new residents to participate in a political status process which was intended only for the Chamorro people.

The relationship of the Chamorro people with the United States began with the Spanish-American War near the turn of the century. As a result of that war, the Chamorro people of the Mariana Islands were divided. In the Treaty of Paris of 1898, Spain ceded Guam to the United States and sold the remainder of the island chain to Germany. It is instructive to note that the Treaty of Paris contained the provision, "The civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by Congress." Germany subsequently lost the Northern Marianas to Japan which obtained the islands as a League of Nations mandate as a result of being on the side of the Allies in World War I.

Following World War II, the Northern Marianas was placed under the International Trusteeship System created by Chapter XII and XIII of the United Nations Charter. This system was to cover territories detached from enemy states as a result of World War II, territories held under mandate and territories voluntarily placed

under the system by states responsible for their administration. On the other hand, as a possession of the United States, Guam was voluntarily placed by the United States under the Declaration Regarding Non Self-Governing Territories created by Chapter XI of the U.N. Charter.

In 1960, the United Nations adopted the Declaration on Decolonization. In 1961, it created the Special Committee on Decolonization to provide a mechanism for annual review of political, economic, social, educational, and constitutional progress in non-self-governing territories.

United Nations Resolution 1514 (1960) provided for "immediate steps to be taken, in Trust and Non-Self-Governing Territories...to transfer all powers to the peoples of those territories, without any conditions or reservations, in accordance with their freely expressed will and desire...in order to enable them to enjoy complete independence and freedom."

United Nations Resolution 1541 (1960) provided for a set of twelve (12) "PRINCIPLES WHICH SHOULD GUIDE MEMBERS WHETHER OR NOT AN OBLIGATION EXISTS TO TRANSMIT THE INFORMATION CALLED FOR UNDER ARTICLE 73(e) OF THE CHARTER." This latter resolution provided that a "Non-Self-Governing Territory can be said to have reached a full measure of self-government by:

- a. Emergence as a sovereign independent State;
- b. Free Association with an independent State; or
- c. Integration with an independent State."

In 1980, on the 20th anniversary of the Declaration on Decolonization, the United Nations adopted an "Implementation Plan" for fulfilling the decolonization process. Ironically, the few remaining colonial powers included the United States and Great Britain: the two countries who adopted the principle of self-determination during WWII, and who were founding members of the United Nations which had overseen the decolonization of over eighty

(80+) non-self-governing territories.

In adopting the Decolonization Implementation Plan in General Assembly Resolution 35/118, the Assembly said it was "deeply conscious" of the fact that twenty years after the Declaration on Decolonization, the system of colonialism continued to exist in several areas of the world. It reaffirmed the inalienable right of all peoples under colonial domination to self-determination.

In a United Nations publication entitled The New Nations, the non self-governing system is described in the following. "As a counterpoint of the trusteeship system, the Charter in Chapter XI embodied a commitment by the Members controlling non self-governing territories to 'accept as a sacred trust the obligation to promote to the utmost' . . . the well-being of the inhabitants of these territories." Further, to achieve this goal these members agreed "to develop self-government, to assist in the progressive development of free political institutions, and to transmit regularly to the Secretary General information on the economic, social and educational conditions in these territories." As a signatory to the United Nations Charter, the responsibilities of the U.S. are legally binding. Article VI (cl. 2) of the U.S. Constitution makes it clear that all treaties are to be treated as the law of the land. The United Nations Charter is a treaty of nations.

To date, despite the Treaty of Paris, the democratic traditions of the United States and the U.N. Charter, the Chamorro people remain in political limbo. However, the U.S. continues to report annually to the U.N in response to its responsibilities. The early reports clearly indicate that the people being discussed for political status changes were the Chamorro people. This has been clouded by the thousands of non-Chamorros who have migrated to Guam under U.S. laws and policies. The new residents, while fine and upstanding citizens, were never promised a right to self-

determination - a process which belongs to people whose status is in question. This right is inalienable and should not be transferred or given away to others. Self-determination is not a right of American citizenship. If it were, we would have periodic political plebiscites in the fifty states. It is the right of a people to whom history has not been kind.

If there were no Chamorros, no native inhabitants on Guam, there would be no serious discussion of self-determination. As a point of comparison, it would be ludicrous to presume that Wake Island has an inherent right to self-determination. The only persons that are there now are those brought in by the United States. They have no right to self-determination, because they had no prior existence as political, social or cultural beings and no commitment had been made to them.

While OPI-R maintains that only the indigenous people have the right to change Guam's ultimate political status, we are not opposed to an interim federal-territorial relations act as outlined by the proposed Guam Commonwealth Act (H.R. 1521). We are not opposed because it increases the political and economic autonomy of Guam while it recognizes Chamorro self-determination. H.R. 94 can serve as a significant prelude to the recognition and eventual exercise of Chamorro self-determination.

We hope that you will support and endorse Chamorro self-determination. This will guarantee a future with dignity for Guam and its people. We know that the vast majority of Chamorros support our position and that an increasing number of non-Chamorros support our position as well. We are fearful that opponents of Chamorro self-determination may wish to delay matters in the hope that continued in-migration will eventually silence the legitimate aspirations of the Chamorro people.

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the legislative process open will only serve to dissipate the collective energy which has been demonstrated to you today. In short the delaying of legislation and, in particular Chamorro self-determination could become a conscious strategy to frustrate the entire movement of Guam towards more autonomy.

We also know that the Congressional process is by nature a lengthy one. But most importantly, we know that we have waited too damn long for Chamorro self-determination and barring some unforeseen development, it appears that we will be asked to wait a few more years. Members of the Committee, justice delayed is justice denied and OPI-R feels that we can no longer be reasonably expected to await the completion of a lengthy process.

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The Congressional process should and will have the opportunity to work. But it cannot be used in a way that will deny us our rights. It is important to remember that we are not petitioners in a system that we are fully part of. To expect us to be patient while the system we are not part of is given a chance to work may be appropriate for any jurisdiction within the United States. Besides, we have been patient long enough.

**PRUTEHI I DIRECHO-TA KUMU TAOTAO GUAHAN HIT
PROTECT OUR RIGHTS AS THE PEOPLE OF GUAM**

We present this statement with respect, with dignity and with the firm conviction that we are right. Biba Guam, Biba Chamorro. Si Yu'os ma'ase."

Mr. DE LUGO. Thank you, Mr. Rivera, for an excellent statement. It was very interesting with the history of the Chamorro people, and a very provocative statement. Provocative in that it is thoughtful, it makes one think and realize the power of your arguments.

I want to thank all of you. I want to say here, I will advise the Members how the Chair will proceed. We will recognize the Members in order, and there will be as many rounds of questions as is necessary. All of us have many opinions on this issue and many questions that I am sure we want to ask.

If I cut off a Member, it does not mean that that is the end of the questioning; there will be another round and Members will be recognized for a second round or a third round. But, we will each take maybe about five minutes for our initial round of questions, and then I will advise a Member that his time is up, and we will move on.

Let me again thank Senators Lujan and Manibusan for your reactions to the statements that I made during our first hearing on the Serrano resolution, and I also want to sincerely return the compliment because both of you today have made excellent points during your statements.

Further, I want to say that I look forward to reading the legal opinions that you have both submitted. They were prepared by very capable attorneys who are well-known to the Chair and we have worked with over the years in various capacities. Your legal advice is of Barry Israel, and Howard Hills is one of our favorites. We have tussled with him, and it has always been stimulating and interesting.

Senator Lujan, will you explain Guam's government by consent proposal?

Ms. LUJAN. Government?

Mr. DE LUGO. By consent.

Ms. LUJAN. By consent proposal.

Mr. DE LUGO. Exactly.

Ms. LUJAN. Well, we have the situation right now where all the elected leaders in Washington are elected by the people of the continental United States citizens and not that of the citizens of the territory of Guam. Although we are American citizens, we do not really exercise that right to vote in the national election, and also, that laws, Federal laws that are applied to Guam are not those laws that had our consent, the citizens of the people of the Guam. So you know, we are really lacking the fundamental principle of being governed through the consent of the people that are being governed.

Mr. DE LUGO. Thank you.

You know, I liked your suggestion that Guam and the Federal Government, quote, become partners in the decolonization process. I have to say that I have always wondered why, and particularly at this time in history, why the Executive Branch has not been more forthright in this. Because that is where the lead has to come from. Even if we introduce legislation and we push here in Congress, it always goes back to the administration. The leadership has to come from there.

I really have wondered why that leadership has been lacking when it comes to the American territories, to the flag territories.

As I said earlier, it was provided when we were dealing with Micronesia.

Senator, you note the view of Chamorro self-determination in the context of the proposal for commonwealth. The commonwealth bill would authorize a subsequent act of Chamorro self-determination. Well, if we need to provide for Chamorro self-determination, why should this issue be resolved after commonwealth?

Why shouldn't it be resolved first?

Ms. LUJAN. We need to experience the kind of status where we can really proceed. It is a step towards the ultimate goal that we want to have, and unless we experience and know more definitely what we want and what we do not wish to have in the future, we can't really set forth or come to that ultimate end. As an unincorporated territory, we know that there are some undesirable things that are applied to the territory which are not relevant.

So it is a matter of trying to get more autonomy, more self-governing under the commonwealth that we are seeking, and that we are also going to be more diligent in aspiring for better things yet to come. So really, because of our experience of having some of the Federal laws applied to us that are not pertinent or, for that matter, relevant and sensitive to our needs, we want to have our own self-government in terms of the commonwealth proposal, so that we can better improve ourselves politically, economically, socially and all other improvements that we can make in the territory of Guam.

In that respect, Mr. Chairman, we always have in mind and recognize the sovereignty of the United States, and the interests of the United States, so that we can work hand-in-hand. This is not to say that when we achieve commonwealth or for that matter later on the self-determination, the ultimate goal, that we want to break away from the American family. So really, commonwealth is the step and direction to achieve better self-autonomy, or more political self-governance.

Mr. DE LUGO. Under the American flag, in the American family?

Ms. LUJAN. Yes, definitely.

Mr. DE LUGO. Let me ask a final question here and then we will move along. Any one of the three of you, feel free to answer this, because it is a tough one.

All three of you have spoken very passionately and very movingly about Chamorro rights. It is very persuasive. But we face the problem, and I would like to know how you suggest we deal with this.

How would you deal with the constitutional rights of those persons on Guam who are not Chamorros, specifically their right to vote? How do you propose that that be dealt with? Because we have a constitutional problem here. And quite frankly, I don't know how to deal with it, and I would like some advice on that.

Ms. MANIBUSAN. Well, that is a tough question, and of course I think we are continually in a position that we recognize an inherent right, a right that we have not executed, awkward as it may be. We also recognize that that right, the inherent right was never executed.

The United States Constitution came after the right that was extended to us under the United Nations Charter to decolonize. And

that process has never been executed, that right has never been exercised or fulfilled by the native people, the Chamorros.

And so we feel that there is a legal obligation and a moral obligation that has not been executed long before the United States Constitution applies, and we recognize that principle, and that is why we find it to be within the legal regime, and also under the broad powers of the territorial clause, that Congress can.

And also, in answer to an earlier question about this mutual consent, we recognize that as citizens we do not exercise the full privileges of any other American citizen, because of our political status and our relationship with the United States. And of course, the mutual consent provision is crafted to recognize that lack of full participation with the plenary power of Congress. We offer mutual consent to be one to reconcile mutual consent with Congress's broad powers under the territorial clause. The condition of self-determination has proposed a new provision, Mr. Chairman, that we have actually advanced to the task force, and that was to provide a provision to add to Title XII of the Commonwealth Act, the establishing of a covenant and granting a Fifth Amendment property right.

The essence of that proposal is that the people of Guam and Congress are agreeing to enter into a binding contract, a covenant of the Congress explicitly being afforded the rights of the people of Guam and their nature, property rights being protected by the due process clause of the Constitution. And as far as, again, how to reconcile in the minds of the Federal Government about the so-called unconstitutionality of the Chamorro rights, we want to maintain that that right existed before the United States Constitution applied.

Ms. LUJAN. I would like to add, Mr. Chairman, to Senator Manibusan's comments, that this is where we look at the provisions of the territorial clause. This is where we look at the plenary powers of the Congress and also the discretionary power of Congress.

It rests with Congress to say whether in a given case any of the people resident in the territory shall participate in the election of its officers or the making of its laws, and it may therefore take from them any right of suffrage it may previously have conferred or at any time modified or abridged as it may deem expedient. This political right of the people are franchises which, I think, hold as privileges in the legislative discretion of the Congress of the United States.

I might add, Mr. Chairman and members of the Committee, that the Supreme Court permits Congress to limit voting rights in a territory. We have Supreme Court discussion on this matter in *Murphy v. Ramsey*, and that is page 22 of the legal analysis.

So we pretty much look at the discretionary power of Congress, and that it may be permitted with the other ethnic groups. I know that we are gaining more alliances with those other people who had chosen to become residents of Guam, and live there permanently, and they seem to have some understanding that the native inhabitants of Guam, the indigenous Chamorros, never really had a chance to vote for self-determination as they had done themselves in their respective countries from which they came.

So, Mr. Chairman, I think that it can be worked out. It can be designed and structured so that the native inhabitants can be allowed to vote on the self-determination without any objections from the other multinational groups that we have on the territory of Guam.

MR. DE LUGO. Well, let me just say, and then we will move along, because these questions are very complex, and we could discuss this and the territorial clause all day. There are two killer questions for us in the territories in trying to resolve these things.

One is native rights, Chamorro rights, you know, once you are under the Constitution, and the other is the territorial clause. Now, the problem is that as mistakes are made and the Federal Government puts certain acts in concrete, then it closes certain doors.

For instance, Mr. Rivera pointed out that the Chamorro people are not indigenous just to Guam; they are also indigenous to the Mariana Islands. That raises the question, when we talk about Chamorro rights, what happens to the Chamorro people in the Northern Marianas? They have already gone through the process of a political status and where does that leave them?

Perhaps the Federal Government has resolved the issues with those areas that were trust territories, or those areas that were not under the American flag, because perhaps it was a little easier to do it, because the Constitution didn't apply. But when the Constitution applies, then we have some horrendous problems that seem to lock us in.

Let me recognize the gentleman from American Samoa.

MR. FALEOMAVAEGA. Thank you, Mr. Chairman. Just a couple of questions.

I think it was Senator Manibusan who raised the issue of being an unincorporated territory. One of the ironies that we have in the process of history, as you well know, that by judicial legislation, the U.S. Supreme Court ruled that certain territories are somewhat classified; those who are unincorporated territories will never see the day of becoming a State. That basically is my understanding of the ensuing cases.

The irony of this is that Puerto Rico is an unincorporated territory, and yet currently it is seeking, perhaps as one of its options in the future status, and I am curious how this is going to come about, given the fact that by judicial legislation, the Supreme Court has given an indication to that issue.

The last two incorporated territories that have now become States, obviously, are Alaska and Hawaii. So do you think that in your opinion, I will ask the members of the panel, that as an unincorporated territory that Guam has somewhat a further distance from the togetherness of the American family? Does that give you a better option to truly come under the provisions of the Charter of the United Nations as a non-self-governing territory, unlike the territories of Hawaii and Alaska, which are now States of the Union?

MS. MANIBUSAN. Well, that, since I made that initial statement, I guess it deals with attitudes. The politics of the moment, I have been in office for 12 years, and the politics of that moment, when I was testifying on the self-determination issue and talking to people, when you are an unincorporated territory, depending on the

side of the coin your attitudes fall and your philosophy falls within, an unincorporated territory for some people, and even under the Supreme Court ruling, is just nothing but having to go to the beat of the drum, and that is a possession, you are owned.

So within that context you are very much a part, because if we are deemed to be the product or a commodity or the property of someone, then I am very much owned by that particular entity. On the other spectrum, being unincorporated gives me a lot of latitude if you are of a different thinking and a different latitude, that because I am not yet part of that family, because I am not incorporated, I have an opportunity to craft something you need with the mother country, and in the framework of where I come from and my philosophy is that I believe that that inherent right lies with me, because I am not yet part, and you have not chosen me to be part of you, because you have not opted to have me become incorporated.

An incorporated territory gives me at least the decency that you want me to be part of you, and unincorporated doesn't tell me anything. In the first instance, in the first interpretation you own me and you can dispose of me as property, and in the second instance, you tell me that—so I am either fish or fowl.

You tell me that I have that latitude and that flexibility to craft something very unique, because of the broad powers that you have, and because I am not yet part of you, and you have consented me to be part of you by not giving me the status as an incorporated territory with a, sort of a promise, promise that one day you will recognize that we may become a member of the union. We are not even that.

So because I am not yet part of the union and being unincorporated, my interpretation is that I choose to defy that my destiny, and the Chamorros chose to recognize the United States' interests. Not only do we recognize it, but we chose to maintain the United States' interests. Because we have not chosen independence to free ourselves and to not be called United States citizens.

So it is the different interpretations, the attitudinal problems that come with the politics of the moment, the politics of the past, the negotiations with the task force, with actually the sincere effort and the sacredness of the time and energy and effort and the monies expended, and the criticisms at home.

The sacredness of when two people come together at a table to discuss what is meaningful, what is supposed to be the sincere effort of people to finally be decolonized and not be any longer subjugated to powers that they have no part of, and then at the last minute to take that sacredness and absolutely insult us by considering that none of those two-year efforts are nothing, meaningless.

So as far as the issue of incorporated and unincorporated, we enjoy now because of the framework, the political framework and what we are continuing to argue, that as an unincorporated territory, we are not yet a member, and there we have all the latitude to craft that relationship under our own terms and try to define our destiny.

Mr. DE LUGO. If the gentleman will yield at this point.

Senator, your statement is very moving. But, as an unincorporated territory—and my area is an unincorporated territory—the

Constitution does apply. There are provisions that don't apply, and we are getting those. I am going to read them into the record today. But, we are not quite as free as you are trying to craft this.

We do have limitations that have been placed on us by the Constitution. The Constitution does apply to the unincorporated territories in most part. And with the arguments that were made regarding *Murphy v. Ramsey*, and they are excellent arguments, you know, on the limitation of the vote, that would have to be weighed in the context of the 15th amendment, which does apply to the territories. That prohibits discrimination based on race, ethnicity, et cetera.

So these are the headaches that we face. Quite frankly, if the law that we write and were successful in getting it passed contains provisions that are believed to be unconstitutional, we will be hauled before the courts very quickly; and then the courts will have to decide that.

The gentleman from American Samoa.

Mr. FALEOMAVAEGA. Thank you, Mr. Chairman.

You know, the point I wanted to—maybe I need to clarify my question with the members of the panel.

As I said earlier, as an unincorporated territory, which I think all of us are—and I say simply as a matter of policy and for myself—we will never see the day that any of us will become States in the future.

That, to me, seems to be a very plausible thinking in the process, with the exception though, ironically, of the largest of all the territories, Puerto Rico. Given the fact that it is an unincorporated territory, Puerto Rico was also given the option to determine or to consider if they also would like to be independent from the United States.

That option was never given to the territories of Alaska or Hawaii. It was only as a matter of time as Congress would then determine that these two territories, Hawaii and Alaska, would eventually become a part of the union as they are now States of the United States.

So the point I want to make is that for all of us here, as unincorporated territories, there is some latitude that is offered here in the process where we aren't given those options? Obviously statehood is not one of them—with the exception again of Puerto Rico—does not allow us then another possible relationship with the U.S. other than commonwealth or even for the fact that we have a covenant with the Northern Marianas and the United States?

Are you following my question here? I mean, do you feel comfortable with this option that you can become independent tomorrow if you want to as an unincorporated territory?

Ms. MANIBUSAN. Well under the United Nations charter, we recognize that either you want to completely integrate with another country in the form of a relationship where you would label yourself—whatever—have a free associational relationship with that mother country or complete severance.

And we feel, as a colony, that these options are still available to us. We feel, as a colony, still as a non-self-governing territory that these options are available, that they are not closed.

I also want to say that if we are looking for some legal regime here, the *Wabot* case tells us over 1992 that the equal protection clause was not intended to operate as a genocide pact for diverse cultures. It should not be looked at as restrictive and limiting and, like I said, the genocidal attitude for these diverse cultures.

But I feel that, as a non-self-governing territory, and under the Article 73 obligations, that the United States does—and that people of Guam or the Chamorros still have options to either completely integrate, separate, or have some kind of an association.

Mr. FALEOMAVAEGA. Let me go on. I have one more question. I know my friend, Mr. Underwood, has questions as well.

As difficult as it may be right now for Guam, do you feel that the process of self-determination is being implemented?

I mean, it is ongoing despite the difficulties that Guam has taken for the past several years in negotiating your desire for commonwealth, which by definition, as we have discussed earlier, is nothing like the commonwealth status for Puerto Rico or even the Northern Marianas.

I mean, would agree that you are, in a way—this is part of the self-determination process is the fact that you made—you have expressed your will, you want commonwealth status despite the difficulties that you are having. But this is part of the process. As bad as it is in your best judgment, but this is part of the process of self-determination.

Ms. LUJAN. This is part of the process. And it is a big step forward. And we are seeking for such a status because we are not satisfied with the political relationship—and there are some—we are not satisfied with the applicability of some Federal laws, and some aspects of the foreign affairs. And all—you know, the gentleman from Puerto Rico, Honorable Romero, really articulated some of those very concerns that we have.

And, you know, looking at Guam as an unincorporated territory, there is that kind of uncertainty in that there is no predestined status that we are going to attain, unless we fight for it; and we have been fighting so long that I must say, Mr. Chairman and members of the Committee, that my generation and my predecessors were very patient. They were very understanding to go the diplomatic way, to go sweet talking to the powers in Washington.

But the younger generation, as I say, even with the land issue that came about last week, it has really stirred emotions so passionate that I must say that to say they are restless is mild. But to say, too, that they are disturbed is still mild. They are very indignant, you know, with the situation right now. They want to proceed, and they looked to us—or they perceive to us that we are not moving more aggressively and radically.

They really want—they feel it is so imperative now that we act and that the United States recognize our desire. I mean, we have gone through so many emotions: educating the people. The people are also listening and reading all about what they could have, a better situation for Guam.

But they have demonstrated all the things that they have learned from the United States after graduating from college and from having served in the military. They come home, and they

show that they want to protest strongly for not having gotten what their ancestors and we have been asking for the people of Guam.

And, you know, we may sound very emotional Mr. Chairman. This is so real. It is a kind of feeling that is being so demonstrated and evidence of the restlessness of practically, you know, the entire population of Guam. So whether we are going to define and look at the difference between incorporated and unincorporated territory, Congress, I believe very strongly, can structure our political status that won't be compatible, that will be reasonable, that will also make the United States fulfill that obligation to the United Nations when they included Guam in the United Nations charter; and also that, by the United States' own admission of having us to be categorized as the native inhabitants and also defining what native inhabitants are in the territory of Guam.

The Chamorros are those who were born before 1950 and their descendants. So we can debate all the issues here on the unincorporated versus the incorporated territory and we may not reach any agreement. But I am appealing to this Subcommittee that, in your wisdom, you would pass on the great desire of the people of Guam to the key players who will participate in the decision-making and that we will just be given this fair and reasonable quest that we are seeking.

Mr. DE LUGO. Thank you, Senator.

We are going to have to move on, because it is 20 after 12:00 now, and Congressman Underwood has been very patient. I want to recognize him. Everybody wants to speak on this issue. The Chair fully recognizes how emotional and how frustrating it is.

Before I recognize Congressman Underwood, let me say that when you say that Congress could craft political status, it would respond that that is exactly the question. And I believe that the political reality is that Congress cannot craft a political status that will fully respond to the desires of the people in these American territories without the full support of the administration and the leadership of the administration. It has to be done together. We all have to work together because this is one tough issue.

Now let me recognize the very patient and very able gentleman from Guam.

Mr. UNDERWOOD. Thank you, Mr. Chairman.

And I would like to commend the representatives from Guam for their eloquent and spirited testimonies this morning.

It seems that, as in the case of the Lieutenant Governor's testimony last week, and in Mr. Rivera's opening remarks, my radical past will not be left behind—my "alleged" radical past; It is also important to point out that in the Lieutenant Governor's remarks, indeed, some of the spirit that energized the movement has borne fruit in a number of senators, including Senator Manibusan and others who are very much interested in pursuing this to its end.

Yesterday we had a conversation during your birthday party. And for the record, I would like to say that you look younger than your years.

Mr. DE LUGO. You mean, 103.

Mr. UNDERWOOD. We discussed the idea that you were pointing out that they are now giving fishing subsidies to fishermen in Greenland not to fish along—with the idea that there are farming

subsidies for people not to farm. That, maybe, we could give a legislative subsidy for people not to legislate.

But based on all the reactions that have been forthcoming since last Thursday, maybe we could give a departmental subsidy to the Interior not to come up with any proposals. This really seems to be a sore point.

The issue that we are confronted with is a very thorny one. And, indeed, the point made by our good friend from American Samoa regarding the possibility of statehood for the territories seems highly remote.

And, of course, unincorporated status, as it is currently defined and in practice, is clearly unacceptable. And that is really the horns of the dilemma that we are at. And I believe that now is a critical point in time to craft that new kind of arrangement.

I remember in the discussion of the delegate vote in the Committee of the Whole, one Congressman from Oklahoma—a new Congressman from Oklahoma, who is on the other side of the aisle—and I had a series of discussions, and we had talked to each other and introduced our families to each other and he pointed out that we should just wait our turn like they did in Oklahoma.

But the point is that we could wait all we want, we are never going to, in all likelihood, become like Oklahoma. And that is the point of the dilemma, we have to find some kind of new arrangement.

I am very interested in Senator Lujan's point. You made a point in reference to the demographics. And so has Mr. Rivera.

But perhaps, Senator Lujan, you would like to speak to the issue of what is the reaction of the non-Chamorros in regards to this and the reaction of younger people and how do they relate to this issue of Chamorro self-determination?

Ms. LUJAN. Congressman Underwood, I believe that you were on Guam when there was a Filipino gathering where a professor of the University of the Philippines had conducted a seminar particularly on the Commonwealth Act of Guam. And at that time, most of the attendees were Filipinos, and they were very receptive to the interpretation of the professor who had indicated that the Chamorros should be really given the opportunity to vote for self-determination in that all other ethnic groups who have adopted Guam as their home have been given that opportunity.

And the Chamorro people, although the Treaty of Paris gave them that right—or the United States has the obligation to allow us the opportunity for self-determination—it has not come to reality. And we are still waiting for that.

So as far as I see from the other ethnic groups as they become more enlightened, more informed, I believe, Congressman Underwood, that we won't have too much of a problem of their vehemently objecting to the Chamorro people having the right to vote for self-determination, even if they do not participate.

I know that we shall continue to educate and enlighten the others who have not had the opportunity as the Filipinos have had. But I don't know—but I have a gut feeling—that those people accept—as a matter of fact, you know, they chose to come to Guam, although they already knew our status.

Mr. UNDERWOOD. Is it not true that in the process that has been identified in the Commonwealth Draft Act—and I know in the discussion in the Commission on Self-Determination they refer to a constitutional process—it is determined by a constitutional convention on Guam.

So the process by which this would be implemented would be participated in by everybody who is on Guam.

Is that not the case?

Ms. LUJAN. They will definitely participate if the Commonwealth Act is passed or approved. It will give them the opportunity to participate. Even for the constitutional convention, they would elect the officials for that body.

So we are not—we didn't design the commonwealth to discriminate or exclude the participation of those other ethnic groups. But, indeed, they are to participate every inch of the way. And that, you know, in the constitution, if we draft a constitution, there may be a procedure there where it may disallow them to vote for self-determination.

But they would have had the participation in electing the representatives to the constitutional convention.

Mr. UNDERWOOD. Did you have a comment on that Senator Manibusan?

Ms. MANIBUSAN. Yes. I think for the record, more importantly, to recognize if you are looking at the participation of the non-Chamorros and the issues of self-determination lies within Article I of our Commonwealth Act. Article 102(a) talks about self-determination. It talks about U.S. citizenship rights and that the people who voted, the voters of Guam, including non-Chamorros, voted to accept that commonwealth, is the process that would lead to self-determination.

So there seems to be the desire and the willingness to accept that, through the constitutional convention, the rights of the Chamorros would be recognized in that self-determination issue.

Mr. UNDERWOOD. Okay. On the issue—Mr. Rivera, you brought up a number of issues concerning Chamorro self-determination. And one of the recurring themes here, certainly, and from the previous hearing—and something that the Chairman earlier alluded to but that did not come out as strongly as in the first hearing—is the relationship of Chamorro self-determination to Chamorros who don't currently reside on Guam.

And this is, of course, a major issue in terms of Puerto Rico, because we are talking about millions of people who no longer live in Puerto Rico.

And what is the relationship of those Puerto Ricans who live in the U.S. now in terms of Puerto Rican political status, elections, and their participation?

Does your organization have a position on the participation of Chamorros who don't live on Guam?

Mr. RIVERA. In terms of organization and specific position on those Chamorros who may not be residing at the time that the particular act of self-determination occurs, our organization didn't have a particular position.

I think that that discussion and that debate has yet to be realized. And while the Commonwealth Act provides specific definition

as to who is qualified to participate in the act of Chamorro self-determination, it leaves the process of that act of self-determination to the constitutional convention. And I believe that is where it might be appropriately addressed.

Mr. UNDERWOOD. Would you be willing to venture a guess as to popular opinion on Guam regarding that?

Mr. RIVERA. I am not sure I am willing to venture a guess. But both sides of the issue as to those who wish to include all Chamorros, no matter where they are at in the world, I seem to hear strong opinions on both sides.

And the other side being that only those who currently reside at the time, that the particular vote of political status occurs should be allowed to participate. I think there is strong positions on both sides.

But as I indicated, that debate and that question is yet to be really determined.

Mr. UNDERWOOD. In terms of the self-determination process, would you describe as desirable from OPIR's point of view, what is the process of self-determination in terms of, is this a continuing process? Is this a one-time shot?

I mean, do you visualize that there will be a one-time election? Are we talking about a continuing process?

What is the kind of general forward-looking view? I know that the testimony always refers to the denial of a right that was previously recognized.

How do you see that being fulfilled? Do we have an election and that is it?

Mr. RIVERA. Well, I think we have to consider self-determination as a fundamental principle, first of all.

And then from there relate the principle of self-determination to a particular case. In the case of Guam, the process of self-determination at this point is being designed as a means through which decolonization actually occurs.

In the decolonization process, there are specific outcomes that are guided by international convention in terms of the appropriate or acceptable political status that would be viewed as being self-governing.

Now in the decolonization process, the act of self-determination could be a one-time process depending on what the status is chosen, or it could be a continuing one. As an example, if in the case of Guam, Guam chose to integrate with the United States as a State, the obligations and commitments as citizens of a State of the Union, therefore prescribes that that decision, if consummated, then becomes a one-time act.

However, if Guam were to become independent, as with any other member of the international community, that process of self-determination is ongoing.

It may not result in major changes, for example, in political status; but every independent Nation in the international community continues to exercise that right by way of reforms, reaffirmations, or certain adjustments in their particular form of government.

So I think in terms of self-determination, as we are concerned with in the territories, we must first and foremost consider such in the context of decolonization.

I think this is related to not only your question, but the questions that have been raised earlier. And that is: By what guidelines do we operate? By what guidelines should the United States Government be guided by? In dealing with the territories, is the question one of constitutionality; or is the question guided by international convention to which the United States Government and the rest of the international community is a party to?

In international convention, the process of decolonization and the act of self-determination, if they were to be guided by international convention, no limits can be placed on the options available to people in these territories. Those limits could be interpreted as a constitution of the administering power.

The administering power's constitution, by international convention, cannot be used to limit the options open to a people.

I make that reference to a people, because it is people who are colonized; not places. If it were places that we were talking about, it would simply be a struggle for those places. But we are talking about people who are colonized, and that is who was colonized; not places. And it is clear in the Chamorro history that it is the Chamorro people who have been colonized. And it is they that must be allowed to decolonize.

Mr. UNDERWOOD. I take it then that you concede that statehood is a final option?

Mr. RIVERA. Yes. Or if integration into another union—whether it be the United States or not, if entry into the union does not allow further determination of political status, then obviously it is a terminal kind of a decision.

Mr. UNDERWOOD. Senator Manibusan, you made reference in your presentation to various obligations of the United States with respect to the U.N. charter and U.N. activities. And maybe you could explain to us what U.N. activities have occurred on Guam, if any; and, also, what the U.S. role has been in the U.N. process.

Ms. MANIBUSAN. Well, I think I am proud to associate our actions in the constitutional convention issue; and there was an enabling legislation—U.S. enabling legislation that allowed Guam to write its constitution.

There was a vote that was needed to be made by the people to ratify that constitution. And it was at that time when the United States had actually asked the U.N. decolonization committee to observe Guam and only because they thought that the constitution was going to pass and only because they thought that that would be the final act of self-determination if the constitution were to pass.

Fortunately for Guam, you and I were successful in our efforts, Congressman Underwood. And I am very proud to associate myself with your endeavors and all your hard work in trying to realize that the issue of decolonization has not yet been fulfilled. And the people of Guam still have that inherent right to self-determination to be exercised. And so that was the only time that I know that the United Nations did come to Guam and observe Guam during this process.

Mr. UNDERWOOD. That is very revealing I think. I don't know what the current Federal Government position is relative to the territories in the U.N. process.

Ms. MANIBUSAN. They continue to report on us, and we continue to be under the non-self-governing territory category. Although, you know we find exceptions to some of their reports.

Mr. UNDERWOOD. And I think that is important that people from Guam make corrections to those as they see fit. At the same time, it is important to note that spinning off that remark, it is clear that the Federal position has to be made clear.

I mean, it has to be a willing partner in the process of self-determination. And to some extent, what Guam has engaged in is a unilateral process. It has declared a process to exist. It has enacted laws. It has appropriated money, and now we find ourselves at this—at the same time. I think Chairman de Lugo's comments—at least in the first days of the hearings, he made reference to it. Today is the process that there is—there must be mutuality in this process. In a sense—although I don't know whether mutual self-determination is a kind of an oxymoron, but there has to be mutuality in the process of self-determination.

In the commonwealth process that has been engaged in by Guam, do you think sufficient attention has been given to accommodating what might be Federal interests in the process?

Ms. MANIBUSAN. I am glad that you asked that question. I was trying to just make two points of Congressman Faleomavaega's comment on whether we have been participating in self-determination. I would like to say for the record that Guam has been the initiator of every initiative with regards to the political relationship with the United States.

And in the Albuquerque meeting, Guam was told to, hey, tell us everything you want. Let us know your desires. Throw in your interests. Let us find out how you feel with immigration. Tell us about labor. Tell us about why SSI benefits were unilaterally and arbitrarily not applied to Guam but yet the Chamorros right across from you have SSI benefits. Tell us about the Jones Act. Tell us how you feel about certain maritime laws; about the FCC regulations?

So we sat down and we thought, gee, why don't we get our act together? Well, our act is together here. And if you are talking about the other side of the coin, we want to know, also, in the self-determination process, the United States' interests. We recognize Guam as part of the national security. We recognize how important Guam is. But we also want to know what other interests the United States wants from Guam. I mean, how much land do you want for your environmental concerns? How much do you want? I mean if you haven't addressed it for the last 40 years, why would you want it now. Return it to Guam.

How do you feel about our shipping laws? Do you want to have foreign bottom or American bottom ships coming through? I mean, we want to know the Federal interests in Guam.

And I also think that in order for us to have a real and sensitive—as Congressman de Lugo, the good Chairman says—new leadership to be effective and to be sensitive. How are we going to be effective? We cannot go with the politics of the moment. We have to understand that when Guam people, the Virgin Islands people, the Puerto Rican people, the people of the insular areas, the American Samoan people, come and face-to-face—whatever you call

it, whether you call it discussions or talks—with leaders to a task force, to our congressional leaders, that the talks and the discussions are real, and that they are carried forth, and they are not just politics for the moment and attitudes change. And, gee, I am sorry, Guam, but we just changed our mind; we don't want to return the land anymore; we want to keep it; we want to call it something else.

So I feel that all the peoples of the insular areas have to now hear from you, their leaders, a real and a true sense of wanting to address these issues.

And it is no longer just politics for the moment because you are dealing with living and destinies, not only with our generations but what kind of leadership do we leave behind for our generations to come?

MR. UNDERWOOD. Thank you very much for your responses, all of you. And I appreciate the fact that, as the Chairman has pointed out, you have come this far to make your points, and also to submit additional documents to the record to help us forge a kind of new vision for the insular areas.

I think that there are—as the Chairman pointed out—there are really a lot of things going on here. There are certain political realities that we need to confront. At the same time, it is important to understand exactly the aspirations of the territories and more importantly the legal arguments so that we can deal with the political realities in a more effective way than we have in the past.

Thank you very much for your presentation.

MR. DE LUGO. I have one or two additional questions here. I have one for Mr. Rivera.

The question of self-determination, what would happen if the Chamorro people choose a status afterwards other than commonwealth, other than the status that has been chosen by the majority? How would that be resolved?

MR. RIVERA. I think, Mr. Chairman, if we consider how the Commonwealth Act developed in the first place, we can then begin to understand why it is crafted in that way.

In that the political status that was chosen during the plebiscite in the early 1980s as being commonwealth, all U.S. citizens participated in that process. All the while, our organization's position was that the political status question for Guam was not a question of U.S. citizenship rights but one that was related to our colonial history. And, as such, being the people under colonial domination, we are the people that have a right to change the political status as related to Guam in that Guam is our homeland.

Now, if the Chamorro people choose another status other than commonwealth, it is only because the act of self-determination by international convention prescribes certain types of statuses. The same—the question of, if the Chamorro people were to choose statehood, and that choice is consummated, then there are attendant processes and obligations with respect to that choice.

The same can be said about independence. If Chamorros decide to be independent, then the right of self-determination, we feel, then, addresses, as we indicated, the commonwealth is an interim status.

Our organization's position is that commonwealth is an interim status, and the permanent status can only be decided through Chamorro self-determination in consideration of all the available options.

Mr. DE LUGO. I see. So the position of your organization is that commonwealth is an interim status, and final determination on the political status of Guam will be made by the Chamorro people?

Mr. RIVERA. Yes.

Ms. MANIBUSAN. That is right.

Mr. DE LUGO. Thank you.

Well, Senator Manibusan, the budget put the Guam commonwealth representative under the Office of Territories, OTIA. Does this concern you?

Ms. MANIBUSAN. OTIA concerns me a lot, whether it is under the budget process or any other process.

And so I can tell you my perpetual frustration, and I would like to—probably better delineate them.

But of course, just lately we have been self-sufficient in a lot of ways. I remember in my early days how we would always wait for our budget appropriations to enable Guam to economically suffice.

And in our recent—in our own entrepreneurial spirit of the government, we try to be less reliant on the Federal budget.

Although, as I said, the—a lot of things concern me with the office of OTIA. And I would like to refrain myself from even talking more about that issue.

Mr. DE LUGO. Let me ask you all something, and this is not the subject of today's hearing, but it is very much on my mind because of what has transpired before this Committee.

I am sure you all have heard that a number of us have been concerned that the administration, whether the previous administration or the present administration, that they be more responsive, that they be in a position to respond to the needs of the territories. It is for that reason, there was legislation introduced by myself in the House, and there was legislation also, I believe, introduced on the Senate side.

It was discussed by the Secretary of Interior when he appeared before the Full Committee. At that time, the Secretary had said that he would work with us in creating, within the administration, a process or a structure that would respond. But, it was never the intention of this Member that this would be turned into a super-Interior Department for the territories. Far from it. It was the intention that the territories would still be able to go directly to the dept. For example if you have a problem with education, you would be able to go directly to Education, as we can now. Or, if it is with housing, you would go directly to HUD. But that there would be, within the administration, a structure that could win battles for us, that when you negotiate matters such as the negotiations on commonwealth, that there would be enough muscle there to get the other departments in line.

That was the intent. And that is still our intent. But, our concern is that that is not what is being put together. At the present time, there is no consultation with the administration and Congress on the reorganization. There is a concern that this is being crafted to put all the power back in Interior.

What would be your reaction? What is your reaction to what I have just said? I would like to hear from all three of you.

Ms. LUJAN. Mr. Chairman, we are very much with you in the idea of having an administration representative that has clout to inform the President of our concerns.

We feel very frustrated with the the Department of the Interior in that we feel sometimes that some of our concerns are not being transmitted to the appropriate officials. And we want that representative now. We want to have that representative in place so we can get on with our discussions. As we have had the task force before, it really didn't seem to have worked out. So we are very much in agreement with you, Mr. Chairman; and we would like to see that come to a reality.

Ms. MANIBUSAN. Mr. Chairman, I would just like to echo the remarks of Senator Lujan. We are in favor of your desire and your intent to elevate the territories to a position that gets the President's approval, endorsement, concurrence, whatever you want to say; and also for that particular position to be not within the Office of Territorial Affairs. I don't see that. I mean, we—it doesn't make sense to have that power be widened, if not broadened, because that is the same power that frustrates us.

So we recognize your sincere desire, Mr. Chairman. I think we recognize the frustrations also to elevate, once and for all, the insular areas, the people of these authorities, to elevate them to what you are trying to achieve. And we support you in any way that you want us; we will give you that support.

Mr. DE LUGO. Thank you very much.

Mr. Rivera.

Mr. RIVERA. Mr. Chairman, without the intimate knowledge of the types of reorganization and reforms that you might be referring to, let me just respond by saying that I think your concerns about responsiveness on the part of the administration is shared by people in Guam. I think our perceptions of how we relate with the institutions, the Federal institutions of the United States Government, is always of concern.

And the extent to which we view them is measured by just how responsive these institutions happen to be on our needs. So in terms of the specific reforms and reorganizations that might be suggested, people in Guam generally view this situation largely on the basis of, is the Federal Government responsive in this relationship to mutual needs and concerns?

Mr. DE LUGO. Well, I think the Federal Government has got to get in the big leagues when it deals with the territories. It is very bush league at the present time, and the performance at the last hearing and the statement that was presented to this Committee from Interior was an example that they are still playing down in the minors. It is time to move up into the majors.

We originally saw this being placed over in the White House, because we wanted to give it that type of importance. But we have an outstanding Secretary of the Interior. He is a man of great sensitivity. He is a real leader. And he is someone who has the President's full confidence.

So the Secretary of the Interior said that he would like to be the Chairman of this Insular Policy Council. We saw it as an insular

policy council, and this policy council would set policy in close coordination with the dialogue with the elected leaders of these territories. They would also start resolving some of these problems which we are not in a position to resolve right now because there has been this lack of leadership within previous administrations, both Democrat and Republican.

We have agreed that the Secretary would make a fine chairman. But in agreeing to that, we are not agreeing to putting this under Interior. We are not interested in empire building. We are interested in creating a situation which will provide some leadership and some responsiveness for the United States territories. You cannot resolve your problem of commonwealth without this type of leadership. And we, as a Nation, cannot resolve the problem of colonialism without this type of leadership from the administration. If we do not have this type of structure, it will not be resolved peacefully.

So I urge the administration to respond to this concern in the Congress and to respond to an historic opportunity. The people of Guam are crying out for a resolution to their political status.

The people of Puerto Rico, 3½ million United States citizens, are crying out for the resolution of their political status.

My territory, the United States Virgin Islands, will be going to the polls this year to deal with political status. And none of us have the answers because of these constitutional questions that are thrown forward as road blocks to resolving these issues.

We need the best minds in the administration coming together with the Congress to work to resolve these issues. I hope that the response will be sensitive, patriotic, and fully grasp this opportunity. Without it, we are not going to go anywhere.

If we only are interested in empire building within the administration, we will lose a great opportunity. Too much of what we heard in recent days seemed to us, who have lived through it, like we were back in the 1950s. This is not what the American people expect of this administration, and I am sure that this is not what either President Clinton or Secretary Babbitt will have of this administration.

I want to thank you all—

Ms. LUJAN. Mr. Chairman. May I just say one thing before you excuse us?

Mr. DE LUGO. Yes, Senator Lujan.

Ms. LUJAN. I would like to thank you very much on behalf of Governor Joseph Ada who has dedicated me to represent the commission in this hearing. And I want to also convey his best regards, very much on behalf of speaker San Augustin, who also could not make it here but who delegated Senator Manibusan and me to be at this hearing. Thank you very much.

Mr. DE LUGO. I want to thank all of you for being here and for being so helpful to us today. Thank you very much.

The Chair has a letter that was written by Congressman ad—I am sorry, Governor Ada, and it is addressed to Admiral Kristensen and deals with last week's hearing. There are also some attachments from the Pacific Daily News, articles dealing with the subject.

If there are no objections?

Without objection, the correspondence and the attachments will be placed in the record at this point.

[The information follows:]



*Smiling of Guam
Ferdinand Marcos*

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RADM Edward K. Kristensen
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FPO AP 96536-0051

Dear Admiral Kristensen:

In the time you have been COMNAVMAR, we have done some good work together and I have always considered you a thoughtful and decent man, which is why I am so pained by your thoughtless, insensitive and downright insulting comments made during the hearing in Washington, D.C. on our Congressman's bill, H.R. 2144, to transfer 3,200 acres of eternally underutilized property held by the federal government in Guam.

For you to say that you believe that if we are given our own land back we will "hurt ourselves" is one of the most blatantly paternalistic, imperialist, condescending, arrogant, colonialist, and insulting statements I have ever heard of since the days long past when President McKinley was quoted as saying it was the White Man's right to rule over the brown people of this earth in order to raise them from their slovenly condition and give them the benefits of civilization. Admiral, knowing you as I do, I don't know how you could say these things.

If you hadn't said those things in front of a Congressional Committee, in public and in full media view, and before representatives of our own Government, I would never have believed such words could have escaped from your mouth.

Admiral Kristensen, for better or worse, this is our island. I don't care how many guns, tanks, missiles, ships or troops you have, it is still our island. I don't care how few we are, or how many you are, you still cannot change the simple truth: It is our island.

You have no right to tell us what to do with our island, any more than we have a right to go tell people in the United States or anywhere else what to do with their own land.

And do you really expect us to pay the federal government \$900 million for this land? You have got to be kidding!

Admiral face the facts. Spain stole this island from our people. Then the federal government accepted the stolen property from Spain in the Treaty of Paris, making promises in the course of that Treaty that have never been kept. Then to add insult to injury, the military occupied some 60% of our island after World War II, restricted our own people from setting foot on their property.



Commonwealth No.

Page Two

restricted travel to and from our entire island, willfully prevented the establishment of a decent private economy, and have kept one third of our island from us for more than forty years, even though you barely use a good part of that or don't even use it at all.

The land condemned by the military after World War II was condemned against our people who were not even citizens of the United States at the time, who had no voice, no representation, no participation, no part at all in the running of the Government of The United States. We still don't. The military had no authority granted to them to exercise eminent domain powers over us. Due process was not followed, as no appeals were allowed, except to the military itself which was the taker. Our people were paid pennies per square meter for their land. They were exploited and intimidated - after all - the military had bombed this island to smithereens just a few years before.

In the late seventies and early eighties, Congress put a cap on what we could expect as compensation for these illegal takings. The cap was \$39 million, less legal fees, FOR THE ENTIRE ONE THIRD OF THE ISLAND THE MILITARY TOOK. That's more than 40,000 acres. Now you suggest the people of Guam pay \$900 million for a mere 3,200 acres that was essentially stolen from them? This is crazy.

I cannot help but wonder if some of this stems from a smoldering resentment over the fact that NAS Agana has been closed by the Base Realignment and Closure Commission. BRAC has determined that the military does not require in Guam this active military base. BRAC has determined that it is surplus to your needs. If an active military base in Guam is surplus, then the thousands upon thousands of acres you folks have held, without any use of the property, for more than forty years is clearly surplus. And here's the biggest irony of all: Because BRAC is closing NAS, we will probably get it back for free. If we're going to get back one of your bases for free, isn't it ridiculous to think we would ever pay one red cent for land taken from us that you don't even use at all?

Admiral face the facts. You guys have way too much land here in Guam. You have more than you needed even during the Viet Nam War. You have more than you have ever needed, and in this age of shrinking military spending, more than you ever will need.

You've got to give it back. That's all there is to it. You have no moral right to this land, none at all. It belongs to Guam. You may be mighty, but if we have learned anything from all those years of American education, it's that in the USA, might is not supposed to make right.

Admiral, it's not too late to redeem yourself with our people, who you have so grievously insulted. I ask you to initiate a new land study, on your own. You know that you can excess thousands of acres beyond the 3,200 acres in this bill. Do it. Forget about trying to take money from us. You're not in the real estate

Page Three

business, and there is no way that our people, and I mean all our people, regardless of ethnic background, will allow you to bankrupt this island and this community. Give it all back Admiral.

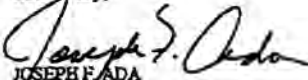
When our people had those papers pushed under their noses forty years ago by military representatives, they were told that their land was needed for national defense. They were grateful for the war ending. They were intimidated by your awesome might. They believed.

Forty years later, we know that some of that national defense justification was a lie. Too many properties became recreational beaches and golf courses - beaches and golf courses our own people were restricted from.

And tragically, so much of it was never used at all.

Give it back Admiral. In your heart, you know its the right thing to do. In my heart, I know that despite what has transpired, you are an honorable man.

Sincerely,


JOSEPH F. ADA
Governor

Joe Murphy

Clinton gang

That World War II song, *Uncle Sam, please come home to Guam*, doesn't have the same ring to it anymore. Me? I'm a loyal, patriotic American, but not an American who subscribes to the philosophy, "my country, right or wrong, my country!" I think the events of last century did more to erode the same feelings the Guamanians have for the United States than anything since the Japanese virtually abandoned us in 1941.

I've never seen our leaders as upset with Washington, and it is just plain frustrating to watch when such alleged decisions are being made.

Years ago, the people of Guam were happy and proud to be called Americans. They kept sending back delegations to Washington to seek out that designation. It was a joyous occasion when President Truman signed the Organic Act, making all Guamanians Americans.

I can't understand why opponents of the U.S. government are so determined to make this at least a partial decision. It would be desirable just to let them be sensitive, or ignorant of conditions on Guam.

Don't they realize that this could hurt our country in the long run? We've already lost our bases in the Philippines, at least partly due to the same lack of sensitivity, treating them like our "little brown brothers."

Having Guam, as an American bastion, an economic dynamo, a democratic beacon on the edge of Asia should be a welcome plus. Instead of taking advantage of this long established good will, and this little permanent air-craft center, a few knowledgeable chameleons are driving the people of Guam to the edge of despair.

The best thing that will happen is that Guam, instead of pursuing a "close relationship" with the U.S. through the Commonwealth Act, will be increasingly strident in demands for total independence.

I can't add anything to what our island leaders have already said. Their objectives, their investive seem sufficient. Guam is making an effort to secure the return of up to 30,000 acres of surplus military land, land taken from the people of Guam under the most questionable circumstances.

hasn't done its homework

NAS Agaña, because it makes no sense to have two military airfields within a few miles of each other. But the sec no sense in allowing the military to have huge scrapyard sitting idle, while they fight for affordable homes

Let's be reasonable. Adm. Kristensen may be talking to the wrong people on Guam. He doesn't seem to be in tune with the realities of today's Guam. He should have let some Pentagon official make those proposals. Now his effectiveness on Guam may be in jeopardy.

As for the land issue, Kristensen is on several levels. He's a former military officer, and he's a former legislator. She doesn't receive her marching orders from the top. She doesn't represent the islands, only Interior. We should understand that both Kristensen and Turner have to follow orders.

One federal official told me yesterday that perhaps the media is playing this story badly. He says that both Kristensen and Turner really believe that the surplus lands should be returned to Guam.

Perhaps, but their presentations seem to indicate otherwise. The whole uproar may be a good thing in the long run, because it gets all this out in the open.

Maybe Guam's leaders need to try a different tack. They should attempt to explain the island's situation to the people of America, where they might get a more realistic hearing.

On the other hand, they might consider emulating Alaska Governor Walter Hickel. He filed a \$20 billion lawsuit over the federal government's withdrawal of federal land from potential commercial development by the state. The lawsuit alleges violations of Alaska's Stacked Compact of 1959, when the state promised Alaska the opportunity to collect up to 90 percent of the tax revenue generated by the development of 103 million acres of federal lands.

At the last resort we can offer to buy back all the land taken by the military—for the price they paid for it, roughly \$1 million.

Joe Murphy is editor emeritus of the PDN

NAVYMAN



JOE MURPHY
Pipe Dreams

Suddenly, like a bombshell landed against Agaña during the liberation, the federal government wants to sell the land to Go-Guam at fair market value. The

island's military and its economy. Adm. Kristensen said he would sell \$200 million or \$700 million, 900 percent more than the Navy's estimate when it claimed the land after World War II.

The Department of Interior's Louis Turner suggests that the surplus land be transferred to the Department of Interior until a land-use plan is approved by the Secretary of the Interior. How paternalistic that sounds.

■ Rear Adm. Kristensen proposed that before any transfer of excess land to Go-Guam takes place, Go-Guam must agree to pay the clean-up costs of any toxic waste left behind by the military.

These three demands, or suggestions, are totally ludicrous on their face.

Such ridiculous proposals simply indicate a new administration, one that isn't doing its homework. They certainly haven't studied the history of Guam, and the importance of land. Besides, please, that at the time of liberation, some 22,000 people lived on the island. It was an offense against an island people to take more than a third of the island's land at the time. Today, Guam's population approaches 160,000, an eight-fold increase. Unlike in the U.S. mainland, land is the most critical resource facing the island.

Most Guamanians have always felt that the U.S. military should retain its bases here, the exception being

24
PACIFIC DAILY NEWS, Tuesday, August 3, 1993

OPINION

Land-issue needs focus on future, too

It is clear the federal government had no right to publicly humiliate island leaders on Friday with the condescending statements of Rear Adm. Edward K. Kristensen and Interior Assistant Secretary Leslie Turner.

The federal government has no moral authority to dictate how Guam residents should use Guam land. But within their inflammatory comments, there was a kernel of truth.

What GovGuam should do is come up with a plan so solid that there will be no question of federal oversight.

If the government of Guam receives title to the 3,200 acres, a few land-use suggestions to avoid include:

■ Building a corruption-ridden municipal golf course that is as expensive

as tourist-targeted resort greens and threatens to contaminate the aquifer.

■ Offering it to a private telecommunications company without a valid lease and for ridiculously low rent.

■ Allowing corrupt officials, some of whom later will be convicted of bribery and money laundering, to administer it.

What GovGuam should do is come up with a plan so solid that there will be no question of the need for federal oversight. This could be done through public hearings, using results of the governor's land-use survey, following the guidelines of I Tano'ta, the islandwide land plan, and re-examining government agency land needs.

The Office of Territorial and International Affairs has an equally abysmal record on land management. So the residents of Guam should take action to keep the acreage out of their hands as well.

The only solution is to come up with a popularly supported land plan that makes sense and focuses on the community's long-term good.

We should start working on it now, not when the land transfer bill is approved by Congress.

Pacific Daily News

AUG 9 3 1992

Air Force supports land transfer

By DONOVAN BROOKS

Daily News Staff

Guam's senior Air Force officer told Congress July 29 the Air Force supports an equitable transfer of land owned by them to the Guam government.

Thirteenth Air Force commander Major General H. Hale Burr, Jr. presented testimony on behalf of the Air Force during a

hearing on Del. Robert Underwood's bill, H.R. 2144.

Underwood's bill was blasted at the hearing by Guam's top Navy official, Rear Adm. Edward Kristensen, and Interior assistant secretary Leslie Turner.

Kristensen said Guam should pay to clean up toxic waste sites the Navy leaves behind on excess land, or agree to pay

\$251,000 an acre.

Turner said Guam should submit for Interior approval a public-benefit land-use plan before any of the excess land is transferred.

Burr said the Air Force's position that it had properly obtained title to land it owns on Guam has been upheld in Guam court as recently as June 10.

3 PACIFIC SUNDAY NEWS, August 1, 1993

ISLANDS

Turner disappoints Guam officials

By MARSHALL SANTOS

Pacific Sunday News

The waters had not calmed yet the morning after Guam's day in Washington was squelched by the federal government.

Guam's political leaders wrote letters to and talked with federal officials yesterday, trying to find out why the Clinton administration is not favoring a direct transfer of 3,200 acres of unused federal land to the government of Guam.

After a meeting yesterday with Assistant Secretary of the Interior Leslie Turner, Speaker Joe T. San Agustin said the self-proclaimed "advocate for the people of Guam" is turning out to be the opposite.

On Friday (Guam time), Turn-

"Her rationale was that she was doing it as a favor to the people of Guam," San Agustin, D-Dededo, said during a telephone interview from Washington. "This was basically a system to help ensure that the government of Guam get the land by getting the property to the Interior (Department) on a temporary basis."

San Agustin said the existing federal law states that all land eligible to be transferred back to the local government must first be made available to other federal agencies.

But the House bill introduced by Del. Robert Underwood would eliminate the existing federal regulations and allow the excess land to be transferred directly to GovGuam.



SAN AGUSTIN TURNER

er told a congressional subcommittee that before the land is transferred to GovGuam, a land-use plan must first be approved by the Interior Department so that it meets public benefit guidelines. Turner also recommended that GovGuam pay fair market value for any properties not used according to the agreed-upon plan.

San Agustin said the bill heard before the Subcommittee on Territorial and International Affairs Friday was similar to a bill that was supported by the Bush Administration. That bill, which was introduced by Del. Ben Blaz, failed because it included controversial land transfers in the U.S. Virgin Islands.

"I told Miss Turner that she indicated she wanted to be an advocate for the people of Guam, and instead she's become an obstructionist," San Agustin said. "She said she was sorry, but it was her duty to see that the public benefit was achieved."

San Agustin said Turner was concerned the land would end up for sale and in the hands of foreign nationals, a notion he called

"ridiculous."

San Agustin also said the Interior Department should not have participated in the hearing because the excess land bill doesn't affect land administered by the department.

He asked Turner why she didn't tell Guam officials the gist of what her testimony would be after agreeing to keep an open dialogue with them. "She said she was not in a position to reveal her position because she didn't get the clearance," San Agustin said.

"I don't think the people of Guam will take this lying down. There's still a push to get this bill passed, but it's going to be difficult with all these monkey wrenches being thrown in."

Pacific Daily News

Back to the future with Ed, Leslie & Co.

AUG 2 1991

Her answers seemed to have a familiar ring when Assistant Secretary of the Interior Leslie Turner talked about why she said what she said.

Once again, we have a federal standard bearer who came to Guam, smiling amid our island hospitality and promising to be our advocate in Washington, D.C.

We've seen it before. We've certainly heard it before. And each time, it's raised our hopes that someone in the nation's capital would really advance our cause and protect our interests.

But noooo.

Sarcasm aside, Guam leaders and residents were surprised to see Turner and Rear Adm. Edward K. Kristensen double-team to pigeonhole the island in terms that Gov. Joseph F. Ada described as "most blatantly paternalistic, imperialistic, condescending, arrogant, colonialist and insulting."

She said she was not in a position to reveal her position because she didn't get the clearance.

Turner, with the governor. In fact, it's hard to say that Turner and Kristensen double-team to pigeonhole the island in terms that Gov. Joseph F. Ada described as "most blatantly paternalistic, imperialistic, condescending, arrogant, colonialist and insulting."

We hope the admiral seriously thinks about Ada's advice that he position himself by supporting the declaration of thousands of acres on Guam now held by the military as excess.

And we're disappointed at Turner's poor showing her first time up to bat for Guam in her new role. Here's Speaker Joe T. San Agustin's summary:

■ "Her rationale was that she was doing it as a favor to the people of Guam."

■ "She said she was sorry, but it was her duty to see that the public benefit was achieved."

■ "She said she was not in a position to reveal her position because she didn't get the clearance."

Sounds like a pew singer is singing the same old song. Sounds like the federal choir is still out of tune.

Sounds like bureaucracy to us.

New Interior official's 'shocking suggestions'

By PAM RUNQUIST

Day News Staff

When newly appointed Assistant Secretary of the Interior Leslie Turner visited Guam in July, she promised a new era of relations between the federal and local government.

"Just watch us," Turner challenged the Guam community, "Judge us by what we do."

Yesterday, Turner took her first action with respect to Guam's land issues since making that statement — and Guam officials definitely didn't like what they heard.

Although she did not appear in person, Turner submitted written testimony for yesterday's congressional hearing in Washington, D.C., on a bill to return 3,200 acres of federal es-

tates land to Guam.

In that testimony, Turner said the Department of Interior is in support of the land return.

However, she also recommended that the land temporarily be transferred to the Interior Department until Guam comes up with a use plan for the properties.

In addition, she recommended that that plan be approved by the Secretary of the Interior before lands are returned to insure that the transfer public benefit guidelines.

"It was shocking that she would come up with such a suggestion," said Speaker Joe T. San Agustín, who testified at the hearing.

"It's like going back to the pre-Organic days when we were

subject to the scrutiny of a bureaucratic chief."

"So much for the honeymoon," commented Lt. Gov. Frank P. Blas, comparing Turner's criticism of Guam to her written statements, which he described as an insult to the people of Guam. "It was definitely short-lived."

Turner also recommended that GovGuam be required to pay fair market value for any properties not used according to the development plan. She explained such a clause would "insure that the transfer is for public benefit use and to guard against turn-around sales to foreign interests."

Finally, Turner suggested that some of the excess lands be used to acquire, through land

acquisitions, privately owned lands within the War in the Pacific National Historical Park.

"It would be imprudent of the Federal government, in these times of severely lightened budgets, to release valuable lands without compensation, only to turn around and appropriate now funds to pay for the purchase of all private inholdings in the park," Turner wrote.

Guam Del. Robert Underwood said he wasn't exactly sure what message Turner intended to convey with her testimony since she wasn't at the hearing to explain herself.

However, regardless of intent, Underwood said Turner's ideas were unacceptable. "There obviously has to be a lot of education," said Underwood.

Land plan frustrates officials

By PAM RUNQUIST

Day News Staff

Guam officials yesterday said they were extremely frustrated with testimony on the excess lands bill that federal officials delivered at a congressional hearing in Washington, D.C.

Island officials also said they were worried that the testimony — which recommended that the federal government have more control but less financial responsibility for the return of the lands to Guam — would delay the bill's approval.

"It's the same old thing. Just as we are getting close to getting something, they throw in a some wrench and we get screwed."

— GOV. JOSEPH F. ADA
on land return

However, Guam Del. Robert Underwood, the bill's author, said he was still confident that the U.S. Congress would ultimately give the bill a positive vote — especially since the federal government declared the property to be excess more than 15 years ago.

"I don't think it (the testimony) will hurt our case," said Underwood, who was one of several Guam officials who testified on the bill before the Subcommittee on Insular and International Affairs. The committee members "expressed strong support for the legislation as it is."

Among the testimony of the hearing, according to Guam officials, was Navy Rear Adm. Edward H. Kristensen's suggestion that the government of Guam either pay for the cost of transferring the property or buy the land.

According to Kristensen, fair market value of the 3,200 acres is \$900 million, or about \$280,000 per acre.

"That's ridiculous," said Gov. Joseph F. Ada, who did not attend the hearing but received

copies of the testimony. "We want the NAS base elements at the coast and that's an active military facility. Now they want us to pay \$900 million for land that has been underutilized for years."

Although he did not appear in person at the hearing, Assistant Interior Secretary Leslie Turner's written testimony added fuel to Guam's fire. Turner recommended that the lands be transferred to the Department of the Interior until a land use plan for the property is approved by the secretary of the Interior.

"It's bothersome that some people in Washington, D.C. still consider Guam too immature to decide themselves what to do with the land," said Lt. Gov. Frank Blas, who testified at the hearing. "It's also a delay tactic."

Other officials — in particular the governor — said the government was placing obstacles in the path of the land return. "It's the same old thing," said Ada. "Just as we are getting close to getting something, they throw in a some wrench and we get screwed."

PACIFIC DAILY NEWS, Sunday, July 31, 1993

\$223 million payoff
UOC professors infame 22 defendants Page 3

Pacific Daily News

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 VOL. 24 NO. 166 AGANA, GUAM, JULY 31, 1983 **A Guaman Newspaper**



UNDERWOOD

I want to know who your broker is and where I can get in on some of that action.

— GUAM DEL. ROBERT UNDERWOOD
 Fleeing to the \$200,000 per acre assessed by Kristensen's staff



Romero-Barcelon: "Are you saying they will use it (land) in ways harmful to themselves?"

Kristensen: "Yes sir, you could read it that way, I guess."

Puerto Rico Delegate Carlos Romero-Barcelon questions Rear Adm. Edward Kristensen at hearings in Washington



KRISTENSEN

FEDERAL EXCESS LAND RETURN: BIDS RAISED

Admiral's tenor irks delegates

FEDERAL EXCESS LAND RETURN: BIDS RAISED

Admiral's tenor irks delegates

Navy sets transfer terms for surplus land on Guam

By DAVID JUDSON

General News Service
WASHINGTON — Rear Adm. 3d class Robert K. Kristensen, commander U.S. Naval Forces Guam, set the opening bid Thursday that Guam will face in its efforts to secure return of up to 20,000 acres of surplus military land.

Guam should pay the cost of clearing up to 10,000 acres of surplus land, Kristensen said, and the federal government should pay the cost of clearing the remaining 10,000 acres. Kristensen said the federal government should pay the cost of clearing the remaining 10,000 acres.

If those transfer terms don't appeal, a straight sale is an option — at

\$281,000 an acre. Sen. on Guam might take offense at these terms, Puerto Rico delegate to Congress, Democrat Carlos Romerosa, said, and told the general so at a press conference after the return of military-held lands on the island.

What moral authority is there on the part of the federal government to tell Guam how to use its own land? asked Romerosa-Barcelo, upstaging the tense but polite terms that marked opening changes at the lands hearing of the House Subcommittee on Territorial and Insular Affairs.

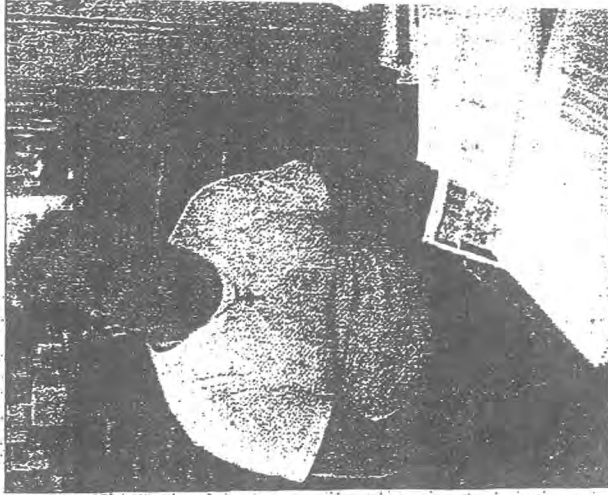
The hearing, officially to talk about a 200-acre declared surplus more than a decade ago, publicly suggested the outline of the broader issues Guam will face at a sweeping lands conference set for November, when the agenda will be 10 times the acreage.

In his testimony, Kristensen told panel members, including Rep. Robert Upton, D-Guam, that the military declared the surplus land in 1964, 3,200 acres. But it was the volume of written remarks, submitted for the record, that irked Romerosa-Barcelo.

The best approach, wrote Kristensen, "is to require the government of Guam to identify up front its intended use for the land, so that the federal government can determine that the proposed use actually serves the public benefit."

The assumption is that Guam could not determine its intended use for land, Romerosa-Barcelo said, asking the panel to be required to have its land-use decisions supervised by the federal government. "Are you saying they will use it in ways harmful to themselves?"

"Yes sir," replied Kristensen. "You could read it that way, I guess." The tenor of Kristensen's grow no warmer when Kristensen added the



Antonio Edeves shows the 40-year-old documents that uphold his claim his family's land, which is included in the 3,200 acres declared surplus military land 10 years ago. Family says military report is wrong

INSIDE

- U.S. wants to take Guam's land this plan. Page 4
- What's next in the return of land? Page 4
- Residents don't want it's sale. Page 4
- Guam's leaders don't want it. Page 4
- How much is the deal worth? Page 4

Land: One idea 'like robbing Peter, and robbing Paul'

□ Continued from Page 1

reasoning for federal oversight in a land transfer being accomplished by legislation.

A legislative transfer means the land is "free" to Guam, suggesting a federal right to supervise, and a right to impose "transfer costs" like environmental cleanup, according to the admiral. The alternative — with no strings attached — would be an administrative transfer, he explained, and that would require the government of Guam to pay fair market value.

Based on assessments of Guam land value that Kristenson said were prepared by his staff, the initial 3,200 acres are worth \$800 million (about \$281,000 an acre), the admiral said.

"I want to know who your brother is and where I can get in on some of that action," snapped Underwood, noting the military tribunal that took a third of the island after World War II put the worth of all its holdings at slightly more than \$1 million.

But more awe was in store when the Interior Department's Office of Territorial and Inter-

national Affairs offered its ideas — written and sent to the committee, not delivered in person.

The office offered to step in to a stewardship role should the military step out. The office's idea is to hold the land, and work with Guam's government to ensure plans "meet public benefit use guidelines."

The office envisions another federal agency, the General Services Administration, becoming "the transferring agency" with the costs of its new duties paid for by Guam.

The office also asked for a

clause that would require that if any returned land is sold to private interests by Guam in the future, the island government would be required to pay the federal government the market value of the land at that time.

A final thought from the office was that perhaps none of the initial 3,200 acres be returned to Guam at all, but rather be sold or swapped by the federal government to private interests.

The goal would be to sell or swap the excess land to acquire any private land that may be needed to complete the planned year.

War in the Pacific National Historic Park.

That idea, said Guam Democratic Sen. Tom Ada, who attended the hearing, "is like robbing Peter, and robbing Paul. The initial lands measure is faces several hurdles. It is likely to have a subcommittee vote before September.

Underwood said he is hopeful a vote by the full House Natural Resources Committee and ultimately the full House and Senate will occur before the end of the year.

PDN
7/31/93

Navy's land price stings GovGuam's pocket book

By JONKE SCAMMAN

Daily News Staff

Rear Adm. Edward K. Kristensen told the House Subcommittee on Territorial and International Affairs that the government of Guam should pay fair market value for roughly control of 3,200 acres of excess lands.

But what is the fair market value of the 3,200 acres in question?

The admiral proposes the land

is worth \$900 million, or \$70 per square meter, 900 percent more than the Navy's estimates when it claimed the land after World War II. The largest parcel of land is 445 acres along Route 3A in South Finagayan, Dededo.

Wallace Roberto, president of Promiere Properties, noted that any responsible estimate of land values takes numerous factors into account. This includes location, improvements and accessi-

bility for utility services.

To compare the land in question with acreage recently sold, Roberto said Yigo property recently sells for between \$20 and \$35 per square meter. The Navy's asking price of \$70 per square meter is two-to-two-and-a-half times above the selling price of the Yigo land. Roberto said he didn't think there would be much interest in the land at that price on the open market.

Mr. UNDERWOOD. If I could make a brief comment on that.

Mr. DE LUGO. Yes.

Mr. UNDERWOOD. Yes. I was going to make the request myself, but since you have, I would like to point out for the record that the comments made in particular not only by the Governor but by the Pacific Daily News columnist Joe Murphy in the editorial, the nature of the comments that were made are uncharacteristic of how the press has been treating this issue in the past.

And to point out, again, that the fact that the proposals that were advanced by DOD but most importantly DOI last week were the galvanizing force for this.

And you will find almost near unanimity on Guam in terms of outrage and the feeling that this only points up the importance of political status process.

Mr. DE LUGO. Yes. In Joe Murphy's column—I happen to know Mr. Murphy, having had the opportunity to visit with him a few times when I have been out there in Guam, and he is a long time resident of Guam. And he is a continental. We refer to him as a "continental" in my part of the world.

Mr. UNDERWOOD. He is from Europe.

Mr. DE LUGO. He is from the mainland, right?

Mr. UNDERWOOD. Yes.

Mr. DE LUGO. And a long-time resident of Guam.

And he says, I have never seen our leaders so upset with Washington. That was unfortunate because that was not the mood just a few weeks ago. A few weeks ago, it was one of hope and great expectations.

So let's hope that we can correct some of this.

Thank you very, very much.

Mr. UNDERWOOD. Without objection, I would like, Mr. Chairman, to insert my letter to Assistant Secretary Turner for the record, and a joint letter to Secretary Babbitt by myself, the Governor, and the Speaker on this matter.

Mr. DE LUGO. Without objection, so ordered.

[The information follows:]

ROBERT A. UNDERWOOD

Guam

Committees

ARMED SERVICES

Subcommittee on Readiness
Subcommittee on Logistics
Subcommittee on Readiness

NATURAL RESOURCES

Subcommittee on Conservation
Subcommittee on Policy Development

Congress of the United States

House of Representatives

Washington, DC 20515-5301

August 2, 1993

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GUAM OFFICE

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Honorable Bruce Babbitt
Office of the Secretary
Department of the Interior
1849 C Street, NW
Washington, D.C. 20240

Dear Mr. Secretary,

At the hearing on July 29 on H.R. 2144, the Guam Excess Lands Act, Assistant Secretary Leslie M. Turner, Office of Territorial and International Affairs (OTIA), submitted written testimony for the record that we find objectionable. In response to questions from the Members of the House Subcommittee on Insular and International Affairs, the Guam delegation responded to Ms. Turner's proposals in several areas. We are in agreement with the Guam delegation's responses. We are writing this joint letter to voice our vigorous opposition to several proposals in Ms. Turner's testimony, and to unequivocally state our support for the following positions:

We oppose transferring the excess lands listed in H.R. 2144 to the Department of the Interior. We do not find this procedure to be helpful in any way. We do not believe this will expedite the land transfers, and we do not believe that DOI can represent the best interests of the Territory of Guam.

We oppose any attempt to sell these lands back to Guam in any form. You cannot separate the "cost" issue from the historical injustices that occurred in the takings of this land. Guam has paid a price in the adverse economic impact of losing one-third of its land to the military and in the military security-clearance procedures imposed on the island from 1945 to 1963. If the military does not need the land, then it must be returned to the people of Guam. We view the costs of conveyance, environmental cleanup costs, and other such provisions with suspicion as ways to indirectly bill Guam for these lands, which are rightfully ours to begin with.

We oppose Department of the Interior approval of the land use plan. Congress, not DOI, has oversight responsibility over the territories. The Government of Guam will formulate a plan that

Letter to Secretary Babbitt
August 2, 1993
Page 3

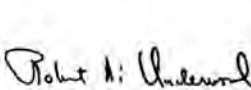
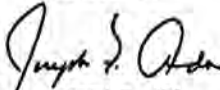
the face of decades of progress in securing the rights of our people within the American system. The resolution of land issues is an integral part of the Guam Commonwealth Act in order that our people may be empowered to truly shape the destiny of their own community. The recognition of the rights of the people of Guam must include the recognition of our ancient culture and our ancient homeland.

We hope that Assistant Secretary Turner's written testimony on H.R. 2144 does not suggest a fundamental shift in the administration's policy concerning self-governance and self-determination in the territories. While we question and vigorously oppose the OTIA proposals, we remain confident that the commitment of the Clinton administration on the issue of Guam's quest for self-determination, as expressed in meetings with you, will be honored.

Your continuing support for the process of the land conference to address a comprehensive solution to these land issues is now more critical than ever. We hope that you will prevail on OTIA to recognize this process and to amend their positions regarding H.R. 2144.

Si Yu'os Ma'asa.

Sincerely,

		
ROBERT A. UNDERWOOD Member of Congress	JOSEPH F. ADA Governor of Guam	JOE T. SAN AGUSTIN Speaker, 22nd Guam Legislature

ROBERT A. UNDERWOOD

Chair

COMMITTEES

ARMED SERVICES
Military Operations Subcommittee
Military Personnel Subcommittee
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NATURAL RESOURCES

Insular Affairs Subcommittee
National Parks Subcommittee

Congress of the United States

House of Representatives

Washington, DC 20515-5301

July 30, 1993

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Honorable Leslie M. Turner
Assistant Secretary, Office of Territorial and
International Affairs
Department of the Interior
1849 C Street, NW
Washington, D.C. 20240

Dear Ms. Turner,

Your testimony on H.R. 2144, the Guam Excess Lands Act, was submitted by Chairman De Lugo for the record at the hearing yesterday held by the Subcommittee on Insular and International Affairs. I am writing to convey my response to the positions articulated in your testimony.

I would also like you to know that my response is in complete harmony with the Guam delegation that attended the hearing: Lieutenant Governor Frank F. Blas (representing the Ada administration), Speaker Joe T. San Agustin, Senator Thomas C. Ada, Senator Marilyn Manibusan, and Senator Edward D. Reyes. The subcommittee asked the Guam delegation to respond to your proposals, and their unanimous opposition is a matter of record. For us, this is not a matter of "politics" or "federal bashing"--rather, it is a matter of how we view interference by the Office of Territorial and International Affairs (OTIA) and your eleventh hour policy shift on the most volatile issue on Guam, land.

I will summarize the positions articulated by the Guam delegation, which I fully and unequivocally support. I will also work relentlessly to advocate these positions in the Congress:

We oppose transferring the excess lands listed in H.R. 2144 to the Department of the Interior. We do not find this procedure to be helpful in any way. We do not believe this will expedite the land transfers, and we do not believe that DOI can represent the best interests of the Territory of Guam.

We oppose any attempt to sell these lands back to Guam in any form. You cannot separate the "cost" issue from the historical injustices that occurred in the takings of this land. Guam has paid a price in the adverse economic impact of losing one-third of its land to the military and in the military security-clearance

Letter to Assistant Secretary Turner
 July 30, 1993
 Page 2

procedures imposed on the island from 1945 to 1963. If the military does not need the land, it must be returned to the people of Guam. We view the costs of conveyance, environmental cleanup costs, and other such provisions with suspicion as ways to indirectly bill Guam for these lands, which are rightfully ours to begin with.

We oppose Department of Interior approval on the land use plan. Congress, not DOI, has oversight responsibility over the Territories. The Government of Guam will formulate a plan that uses the land for the best public benefit to the people of Guam. DOI cannot even begin to define for us the best uses of this land for the people of Guam. Especially onerous is the stipulation that if Guam deviates from DOI's interpretation of a land use plan, then Guam must pay fair market value for the land. We refuse to turn the clock back fifty years and become wards of DOI. The Government of Guam shall be responsible to the people of Guam, not DOI, in fulfilling its mandates.

We oppose delaying the transfer of the 3200 acres of excess lands in order to accommodate the environmental issues raised about the critical habitat and the wildlife refuge. These issues should be discussed and dealt with in the comprehensive context of the land conference. The 3200 acres must not be held hostage to the broader issues. These lands were declared excess in a process dating back to 1977, and listed in the Army report of 1986. Let's get on with it.

We oppose delaying the transfer of the 3200 acres of excess lands in order to accommodate the exchange of land with private inholdings at the War in the Pacific National Historical Park. This problem should also be addressed in the land conference on Guam. We also raise the point that any such exchanges be accommodated from other federal excess lands, and that the War in the Pacific Park must review its land requirements. We find that a downsizing of the Park from its intended 1978 borders may be necessary and desirable, given the land issues facing Guam.

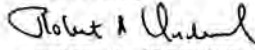
I want you to know that the positions put forth by OTIA are troubling because, once again, OTIA just does not seem to get it. H.R. 2144 is a vehicle to get these lands transferred as a first step in a comprehensive process to solve the long-standing land issues. This last minute attempt by OTIA to change the process is outrageous.

Letter to Assistant Secretary Turner
July 30, 1993
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Enough is enough! Let's simply get the land transferred. Let's agree to meet on Guam, with the Government of Guam, the former landowners, the National Park Service, the Fish and Wildlife Service, the Air Force, the Navy, and anyone else who has an interest in solving these land problems.

This is not just about land, it is about people. It is about a people who have been told what to do for a hundred years. It is about a people who were exploited and taken advantage of. And it is now time for the people of Guam to be listened to, to govern themselves, and to determine their own destiny.

Sincerely,



ROBERT A. UNDERWOOD
Member of Congress

Mr. DE LUGO. Our next witness is a distinguished educator and expert on territorial affairs, Dr. Paul Leary. He is Director of the Bureau of Public Administration University of the Virgin Islands.

Paul, welcome.

Dr. LEARY. Thank you, Mr. Chairman.

Mr. DE LUGO. Before we introduce Dr. Leary, I want to place in the record a statement from Governor Alexander Farrelly, dated August 3.

I will read the cover letter:

Dear Mr. Chairman:

Thank you for your invitation to address the subcommittee on House Concurrent Resolution 94.

Due to the press of obligations here in the Territory, I am unable to be personally present to present my remarks. I respectfully request that my statement that I enclose be made a part of the record.

It is a statement of the Governor of the Virgin Islands in support of the Serrano Resolution.

[The information follows:]



THE UNITED STATES VIRGIN ISLANDS

OFFICE OF THE GOVERNOR
GOVERNMENT HOUSE

Charlotte Amalie, V.I. 00802
809-774-0001

August 3, 1993

Honorable Ron de Lugo
Chairman
Subcommittee on Insular
and International Affairs
2238 Rayburn House Office Building
Washington, D.C. 20515-5501

Dear Mr. Chairman:

Thank you for your invitation to address the Subcommittee on House Concurrent Resolution 94.

Due to the press of obligations here in the Territory, I am unable to be personally present to present my remarks. I respectfully request that my statement, which I enclose, be made a part of the Record.

Best personal regards.

Cordially,

Alexander A. Farrelly
Alexander A. Farrelly
Governor

Enclosure

STATEMENT
of the
HONORABLE ALEXANDER A. FARRELY
GOVERNOR
UNITED STATES VIRGIN ISLANDS

before the

SUBCOMMITTEE ON INSULAR AND INTERNATIONAL AFFAIRS
COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES
Washington, D.C.

August 3, 1993

Mr. Chairman and distinguished members of the Subcommittee.

I want to thank you for your generous invitation to participate in this discussion of House Concurrent Resolution 94. It is sponsored by Representative Jose Serrano of New York and is intended to express the sense of the Congress regarding the expression of self-determination by the people of Puerto Rico. The Title, the Whereas Clauses, and the specific wording of paragraph 3 tells me this Resolution is about Puerto Rico. Yet the broad language of paragraphs 1 and 2 embraces the principle of self-determination for the people of all territories. It is this general inclusion of other territories that I am sure has caused you to invite me here, Mr. Chairman, even though there is no mention in the Resolution of the United States Virgin Islands or its own on-going process for determining political status.

STATEMENT of the
HONORABLE ALEXANDER A. FARRELLY
August 3, 1993
Page 2

I have no criticism of our friend Congressman Serrano and his focus on our close neighbor to the west, the Commonwealth of Puerto Rico. The debate over the political options available to Puerto Rico is well known to us. But the issues there, and the issues in my own Territory are not the same. Puerto Rico may very well have a real chance to become a State if its people elect that option. We do not believe that the Virgin Islands, with less than 110,000 people, can reasonably expect to become a State.

The Virgin Islands will go to the polls this fall to select from among seven political status options. While they range from independence to statehood, we are under no illusion that our elected choice will be endorsed in advance by the Congress. Nor do we see Resolution 94 as affecting our referendum. Our path toward achieving a full measure of self-government is not identical to that of Puerto Rico.

The language of Concurrent Resolution 94 seems to invite a discussion of a number of legal questions: Is the Congress bound to accept Puerto Rico's choice? Are Puerto Ricans residing in the 50 States eligible to participate in self-determination? Is the Congress declaring Puerto Rico a non-self governing territory pursuant to Article 73 of the U.N. Charter in conflict with current United States policy?

STATEMENT of the
HONORABLE ALEXANDER A. FARRELLY
August 3, 1993
Page 3

It seems to me that these questions are unique to Puerto Rico's journey toward self-determination. Their resolution is between the Congress and the people of Puerto Rico. While I wholeheartedly endorse the general principles of self-determination for the territories, I respectfully suggest that the narrower application of these principles to the situation in Puerto Rico does not and should not include the Virgin Islands.

We care very much about the people of Puerto Rico and their right to decide their own future. But we do not wish to tie our fate to theirs nor theirs to ours. That separation lies at the very core of the meaning of self-determination.

For these reasons, Mr. Chairman, I respectfully recommend that House Concurrent Resolution 94 be narrowed to make clear that it is addressing the questions of self-determination unique to Puerto Rico and not those of all other territories. I trust that is the true intention of its sponsor. We know in the Virgin Islands that the journey along the path of self-determination will bring us to our own negotiations with the Congress. At that time, the focus will be on the Virgin Islands. We will be prepared to present our case and our own unique issues.

Our relationship with the United States has been long and valuable to us. We appreciate the general consistent commitment of the Congress and the American people to the principle of self-determination.

* * * *

Mr. DE LUGO. We have received a statement from Senator Lorraine Berry.

What other statements do we have?

All right. I want to place in the record here a statement from Senator Lorraine Berry, who is co-chairman of the United States Virgin Islands Commission on STATUS, along with a letter from Dr. Marilyn F. Krigger, of the University of the Virgin Islands who is the other Chairman. They are co-chairmen. They are individual statements.

Let me just read quickly Dr. Krigger's statement:

Dear Congressman de Lugo:

I regret my inability to attend the hearing on August 3, 1993, relative to the rights of our Nation's non-self-governing peoples to determine their political status. I submit this letter as a short personal statement.

We now live at a time when the right of political self-determination is as accepted as the law of gravity. It poses the problem, however, that small societies, such as our beloved U.S. Virgin Islands, are often unable to provide without substantial assistance, the economic and technical buttresses for the desired maintenance of their determined status positions.

It seems, at least for the foreseeable future, that the most effective and proper philosophy would be continued national commitment to both the right of self-determination and the need for national assistance in political, economic, and moral spheres in the realization of chosen goals. The national assistance must truly be conducive to bringing about the legitimate aspirations of the smaller societies.

The challenge, therefore, which faces our nation is the evolving of more flexible relationships with places that desire to remain within the fold of our great American family or somehow connected thereto, which meet the needs of both societies without doing harm to either. The smaller and weaker structure of the non-self-governing societies makes them, of course, the entities that are most liable to harm and even destruction if special consideration is not given to their special needs.

Mr. Congressman, I urge you and your colleagues to act in keeping with that knowledge and to do all within your powers of education, persuasion and legislation, to make the right of self-determination more than just a high-sounding phrase. Please transform it into an actual, progressive and edifying way of life for our territorial peoples.

Best personal regards.

Very sincerely yours.

Marilyn F. Krigger.

Co-chairperson.

Dr. Kriggers' statement is in the record.

[The information follows:]



U.S.V.I. COMMISSION ON
STATUS
& FEDERAL RELATIONS

JOSEPH L. BERRY
Chairman

DR. MABLETT F. KINGSLEY
Co-Chairman

JUDGE VERN A. HOOGE
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MR. CLARENCE BOWEN
ATTY. FRED VALET, JR.

GERALD M. DANIEL
Executive Director

CARIN HOOGE
Assistant Director
Public Education

MAURITSEU
Assistant Director
Public Education

July 30, 1993

The Honorable Ron de Lugo
Chairman
Subcommittee on Insular and
International Affairs
Committee on Natural Resources
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman de Lugo:

I regret my inability to attend the hearing on August 3, 1993, relative to the rights of our nation's non-self-governing peoples to determine their political status. I submit this letter as a short personal statement.

We now live at a time when the right of political self-determination is as accepted as the law of gravity. It poses the problem, however, that small societies, such as our beloved U.S. Virgin Islands, are often unable to provide, without substantial assistance, the economic and technical buttresses for the desired maintenance of their determined status positions.

It seems, at least for the foreseeable future, that the most effective and proper philosophy would be continued national commitment to both the right of self-determination and the need for national assistance, in political, economic and moral spheres, in the realization of chosen goals. The national assistance must truly be conducive to bringing about the legitimate aspirations of the smaller societies.

The challenge, therefore, which faces our nation is the evolving of more flexible relationships, with places that desire to remain within the fold of our great American family or somehow connected thereto, which meet the needs of both societies without doing harm to either. The smaller and weaker stature of the non-self-governing societies make them, of course, the entities that are most liable to harm and even destruction if special consideration is not given to their special needs.

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76-007 208

KRIGGER
STATUS COMMISSION
07/30/93
PAGE 2

Mr. Congressman, I urge you and your colleagues to act in keeping with that knowledge and to do all within your powers of education, persuasion and legislation to make the right of self-determination more than just a high-sounding phrase. Please transform it into an actual, progressive and edifying way of life for our territorial peoples.

Best personal regards.

Very sincerely yours,

Marilyn F. Krigger

Marilyn F. Krigger
Co-Chairperson

Mr. DE LUGO. I have a long statement that has been submitted by Senator Lorraine Berry, who is one of the leaders on the issue of political status. As usual, Senator Berry, who is a very strong political leader, doesn't beat around the bush. She states her position clearly and without any equivocation. I am going to place Senator Berry's statement in the record. I may come back to that a little later.

I have made some notes on my own copy that I carried over, and right now it is buried under a lot of other questions and documents.

[The information follows:]

NAME LORRAINE L. BERRY

TITLE SENATOR, VIRGIN ISLANDS LEGISLATURE

ADDRESS CAPITOL BUILDING
CHARLOTTE AMALIE
ST. THOMAS, V.I. 00804

TELEPHONES (809)-774-2696/(809)-774-0880

SUMMARY Supports resolves 1 and 2 of H. Con. Res. 94.

Understands that except for Articles 1(2) and 55, respectively, there's no reference in U.N. Charter that speaks to right of self-determination for dependent peoples.

General Assembly Resolution 1514 (XV says right of self-determination extends to all peoples. Yet some people argue self-determination may be limited to "indigenous" or "native born" peoples.

No international law may be made applicable to U.S. jurisdiction absent act of Congress or adoption of appropriate constitutional amendment.

Restriction on voting in referendum or election of any kind on basis of race, ethnicity, place of birth or durational residence violates U.S. Constitution.

Unfortunately, people in responsible positions continue to misrepresent facts.

Federal Interagency Task Force rejects Guam's bid to restrict self-determination vote to indigenous people as offensive to U.S. Constitution.

Assistant to V.I. Governor asserts that under international law, relationship between United States and Virgin Islands is regulated by U.N. Charter, not domestic law of U.S. (i.e. Territorial Clause); U.N. limits status choices to statehood, free association and independence; applicability of international law to status process never revealed to the people of the Virgin Islands.

Puerto Rico, Northern Marianas and Guam under U.S. sovereignty and as such subject to Territorial Clause. Puerto Rico has celebrated three-option referendum which does not fit U.N. requirement, and will do so again. Guam has celebrated seven-option referendum which does not fit U.N. requirement.

All non-state entities, by whatever name, under U.S. sovereignty or jurisdiction must necessarily be governed by or under authority of Congress pursuant to Territorial Clause, according to Supreme Court ruling.

STATEMENT BY HONORABLE LORRAINE L. BERRY
 SENATOR, VIRGIN ISLANDS LEGISLATURE
 TO THE
 SUBCOMMITTEE ON INSULAR & INTERNATIONAL AFFAIRS
 U.S. HOUSE OF REPRESENTATIVES
 WASHINGTON, D.C.
 August 3, 1993

Mr. Chairman and members of the Subcommittee:

I am pleased to have this opportunity to state my views with respect to House Concurrent Resolution No. 94 to the extent that it Resolves that Congress:

1. reaffirms the commitment of the people of the United States to the principle of self-determination; and
2. reasserts the principle, first articulated by Congress in its ratification of the Charter of the United Nations, that with respect to territories whose peoples have not yet attained a full measure of self-government, the interests of the inhabitants of such territories are paramount.

The record would show that I was a prime sponsor of Resolution No. 1132, February 7, 1984, Fifteenth Legislature of the Virgin Islands, which, among other things, concluded that, "The United States, as a charter member of the United Nations, is required to foster greater self-government and self-determination for the people of the Virgin Islands." Accordingly, I have no hesitation in endorsing the principles stated in House Concurrent Resolution No. 94 quoted above. But I confess there seems to be some confusion regarding who constitutes the "self" when reference is made to "self-determination" and "self-government."

As I understand it, Article 1(2) of the U.N. Charter which deals with the purposes of the world body, asserts that one aim is "to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples and to take other appropriate measures to strengthen universal peace."

Further, I understand that Article 55 of the U.N. Charter states: "With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote higher standards of living, full employment, and conditions of economic and social progress and development."

Let me suggest that, except for the two articles cited herein, there's no reference in the U.N. Charter that speaks to right of self-determination for dependent peoples.

Significantly, General Assembly Resolution 1514 (XV) makes clear that the right of self-determination belongs to "all peoples." Yet there are those who argue that the right of self-determination may be exercised only by "indigenous" people or "native born" people. Consequently, notwithstanding any domestic law to the contrary, participation in status referendums which constitute acts of self-determination, may be restricted to "indigenous" or "native born" peoples. I disagree.

It is my position that no international law of any kind may be made applicable--or enforced--in the Virgin Islands or anywhere subject to the jurisdiction of the United States, unless such international law is made domestic law of the United States by act of Congress; and no international law of any kind which violates the U.S. Constitution may be made domestic law of the United States absent adoption of an appropriate constitutional amendment. Accordingly, it is obvious that the persons who are eligible to exercise the right of self-determination by participating in any status referendums are the same persons who are eligible to vote in Virgin Islands general elections.

I have always maintained that, affording to one group of voters, defined by race, ethnicity, place of birth or durational residence the right to participate in a referendum or election of any kind, where all other qualified voters are excluded, would constitute invidious discrimination in violation of the Due Process and Equal Protection Clauses of the 14th Amendment and the voting rights provisions of the 15th Amendment to the U.S. Constitution.

It is unfortunate, however, that some people in responsible positions, continue to misrepresent the facts. For example, Dr. Carlyle Corbin, self-styled "Representative for External Affairs, Government of the Virgin Islands," (whose official title is "Special Assistant to the Governor"), was quoted in the June 7, 1993, edition of The Daily News of the Virgin Islands, as having said, "Earlier status votes in other dependent territories--Guam, the Northern Marianas and Puerto Rico--did not change eligibility requirements. However, a planned referendum in Guam would limit the vote to those indigenous people who could trace their heritage back to a certain year."

It is true, of course, that the proposed Guam Commonwealth Act provides in Section 102(a) for recognition of a right of self-determination of persons "born on Guam before August 1, 1950, and their descendants," with such right to be provided for in the Constitution of Guam. But Dr. Corbin neglected to mention that this provision of the Guam Commonwealth Act was emphatically rejected by the Federal Interagency Task Force because it offends against applicable provisions of the U.S. Constitution. In point of fact, in official reports issued August 1, 1989 and January 15, 1993, respectively, the Task Force concluded:

That the deprivation of a right to vote that is based on racial or ethnic lines violates the 15th Amendment to the Constitution which prohibits the denial of the right to vote on account of race by the United States or any state. The United States, therefore, cannot direct or authorize the limitation of the right to vote on the question of self-determination to the indigenous people of Guam. Neither can Guam include these limitations on the right to vote in its constitution because the 15th Amendment has been made applicable to Guam as if it were a State.

That the provisions of the U.S. Constitution protecting voting rights are among the fundamental provisions that apply to unincorporated territories of their own force.

That since the 15th Amendment specifically and absolutely prohibits limitations on the right to vote based on race or color, it was not necessary to go into the question of whether Section 102(a) also constitutes a limitation on the right to vote based on the length of residence prohibited by the Equal Protection Element of the Due Process Clause of the 5th Amendment or the Equal Protection Clause of the 14th Amendment.

Dr. Corbin's general position as outlined in a formal statement to a Special Committee on Decolonization of the United Nations at Barbados, West Indies, June 19, 1990, and articulated in many forums during the past three years is as follows:

First, international law holds that the relationship between the Virgin Islands and the United States is a function of

the U.N. Charter, not the domestic law of the United States. Accordingly, the mandate of General Assembly Resolution 1541, not the Territorial Clause of the U.S. Constitution, is applicable.

Second, General Assembly Resolution 1541 provides that the only acceptable options under international law are (a) integration with an independent state (i.e. statehood); (b) free association with an independent state; and (c) independence. Accordingly, it is questionable whether any referendum with other dependency "options" would constitute a legitimate act of self-determination as guaranteed by the U.S. Charter.

Third, the applicability of international law to the status process has never been systematically revealed to the people of the Virgin Islands and previous resolutions calling for a political education program to foster an awareness of the legitimate political options available to them have never been implemented.

Let me say that on more than one occasion I wrote to Governor Alexander A. Farrelly to ascertain whether Dr. Corbin's stated positions reflect his own thinking or that of the Governor himself. But I have not yet been favored with a reply.

Nonetheless, I believe it is simply absurd to suggest that applicable provisions of the Constitution and laws of the United States have been repealed or suspended by either articles of the U.N. Charter or Resolutions of the General Assembly. Let us look at the record.

PUERTO RICO

Puerto Rico came under U.S. sovereignty by virtue of Article II of the Treaty of Paris, December 10, 1898. The congressional reports that accompanied P.L. 81-600, July 3, 1950, which authorized the people of Puerto Rico to adopt their own constitution for local self-government, the basis of their "commonwealth," emphasized the legislation would in no way change Puerto Rico's fundamental political, social and economic relationship to the United States; that it would be a fundamental contribution to the art and practice of the government and administration of territories under the sovereignty of the United States, [U.S. Senate Report No. 1779, June 6, 1950, U.S. House of Representatives Report No. 2275, June 19, 1950].

In Harris v. Rosario, 446, U.S. 651 (1980), the Supreme Court held that the Territorial Clause governs the

relationship between the United States and Puerto Rico.

Similarly, in United States v. Torres, 826 F. 2d 151, 154 (1st Circuit, 1987) and in Perez de la Cruz vs. Crowley Towing and Transportation Co., 8 F. 2d 1084, 1088 (1st Circuit, 1986), it was reaffirmed that the Territorial Clause applies to Puerto Rico.

Moreover, in a concurring opinion in U.S. v. Lopez Andino, 831, F. 2d 1164, 1173 (1st circuit, 1987), Judge Juan Torruella, a native Puerto Rican, commented as follows: "Although some events subsequent to the passage of P.L. 600 have tended to overlook and obscure the facts, the legislative history of that act leaves no doubt that even though its passage signaled the grant of internal self-government to Puerto Rico, no change was intended by Congress or Puerto Rico authorities in the territory's constitutional status or in Congress' continuing plenary power over Puerto Rico pursuant to the Territory Clause of the Constitution.

Significantly, no court has ever ruled that the Territorial Clause is inapplicable to the relationship between the United States and Puerto Rico.

Further, on July 11, 1989, Acting U.S. Deputy Attorney General Edward Dennis, in testimony before the Senate Energy Committee, stated that a proposal to "enhance" Puerto Rico's commonwealth status that would give the islands' governor the "truly extraordinary power" to certify that a federal law or regulation is inapplicable to Puerto Rico "would render the island virtually independent of U.S. authority." Dennis also said: "So long as Puerto Rico remains under the sovereignty of the United States, it is essential that this fact be made clear. Congress retains authority [pursuant to the Territorial Clause] to legislate for Puerto Rico and federal laws may not be nullified by the local government.

In 1967 Puerto Rico celebrated a status referendum with the options of statehood, commonwealth and independence. Further, on July 4, 1993, the Governor of Puerto Rico signed into law legislation which provides for another referendum November 14, 1993, with the same three options.

NORTHERN MARIANAS

The Northern Marianas came under the sovereignty of the United States by virtue of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political

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Union with the United States of America, [P.L. 94-41, March 24, 1976]. Shortly after the Covenant was signed by representatives of the Northern Marianas and the United States, but before it was approved by Congress, the sum of \$1.5 million was appropriated by Congress to aid in the transition of the Northern Marianas "to a new commonwealth status as a territory of the United States," [P.L. 94-27, May 28, 1975].

Further, in Micronesian Telecommunications Corp. v. NLRB, 820 F. 2d 1097, 1100 n.2 (9th Circuit, 1987), the Court of Appeals found that the National Labor Relations Act applies to the Northern Marianas because the Act says that it applies to territories. The Court cited with approval the Senate Report: "Although described as a commonwealth, the relationship is territorial in nature with full sovereignty invested in the United States Congress," (U.S. Senate Report No. 94-596, January 27, 1976).

Similarly, in Wabot v. Villacrusis, 908 Fed. 411, 421 & n.17 (9th Circuit, 1990) the Court of Appeals held that Congress had the power to make certain nonfundamental provisions of the Constitution inapplicable to the Northern Marianas under the Territorial Clause which governs the relationship between the United States and the Northern Marianas.

Moreover, the Report of the Joint Drafting Committee, issued on the day the Covenant was signed, and approved by both the Northern Marianas and United States delegations, states in unambiguous language that "it is understood that the authority of the United States will exercised through among other provisions of the United States Constitution, Article IV, Section 3, Clause 2," the Territorial Clause.

GUAM

As in the case of Puerto Rico, Guam came under the sovereignty of the United States by virtue of Article II of the Treaty of Paris. In 1982 Guam celebrated a referendum with seven options: commonwealth, statehood, status quo, incorporated territory, free association independence and "other."

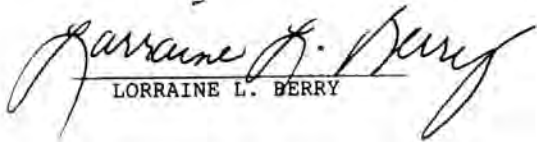
In National Bank v. County of Yankton, 101 U.S. 129, 133 (1880), the Supreme Court held that "[a]ll territory within the jurisdiction of the United States not included in any

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state must necessarily be governed by or under the authority of Congress" pursuant to the Territorial Clause of the Constitution. Accordingly, there are only two ways the Territorial Clause could be withdrawn or made inapplicable to an entity under the jurisdiction of the United States: (1) to be admitted to the Union as a state; and (2) to be granted independence or free association status, a form on independence, and both of which entails the withdrawal of U.S. sovereignty.

In light of the foregoing, the conclusion is inescapable that any suggestion that a non-state entity, by whatever name, can maintain U.S. sovereignty while the Territorial Clause is rendered "inapplicable" is simply preposterous and inadmissible.

Moreover, General Assembly Resolution 2625 (XXV) states that "the establishment of a sovereign and independent State, the free association or integration with another State or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people. Accordingly, it appears that even by U.N. standards, dependent peoples are not limited to the three options of statehood, free association and independence in exercising their right to self-determination.



LORRAINE L. BERRY

Mr. DE LUGO. Dr. Leary, welcome. That was an excellent conference that you held here in Washington. It was an outstanding conference. You said at that time you planned to hold another one. When will that be?

Dr. LEARY. We are planning, Mr. Chairman, to organize another conference for June 1994. And we seem to be getting some very encouraging support and participation.

Once again, I am glad to say that our fellow Territory of Guam is taking the lead with us. The University of Guam has been extremely cooperative with the University of the Virgin Islands.

I hope I am not revealing any secrets by saying that I have an encouraging statement from the representative of the Department of the Interior. I think they are going to be much more cooperative in participation and supporting the conference next year. I am hoping that we will have a very good conference and hopefully a conference with more Federal participation to encourage a dialogue not only between the people in the insular areas themselves but between the insular areas and the Federal Government.

Mr. DE LUGO. Good. That sounds encouraging.

Dr. Leary, without objection your entire statement is placed in the record, and we would like to hear from you.

STATEMENT OF PAUL M. LEARY, DIRECTOR, BUREAU OF PUBLIC ADMINISTRATION, UNIVERSITY OF THE VIRGIN ISLANDS

Dr. LEARY. Thank you, Mr. Chairman. And thank you for inviting me to provide this testimony. I'd like to begin by saying good afternoon to you and Delegate Underwood who I consider a great friend of the Virgin Islands; and I am glad that he was patient enough to wait for my testimony. There is a saying that the hungry man is an angry man. I am hungry too, so my statement is relatively short.

My name is Paul Leary, and I am professor of political science as well as director of the Bureau of Public Administration at the University of the Virgin Islands where I have served on the faculty for the last 25 years.

I have conducted research and published extensively on the issue of political status of the United States insular areas of American Samoa, Guam, the Northern Marianas, Puerto Rico, and the United States Virgin Islands.

I have served as a consultant to the two status commissions established in the Virgin Islands, including the present one. Most recently, I coordinated the organization of the first national conference entitled "A Time of Change," that dealt with the entire range of issues involved in the Federal insular areas relations. It was held at George Washington University here in the Nation's capitol. And I am happy to say it was attended by more than 350 people including such distinguished representatives from the insular areas themselves as the Chair of this Subcommittee, the Honorable Ron de Lugo, and the Honorable Mr. Underwood.

I submit this testimony not as a representative of any group or institution. It represents my own reflections based on both my scholarly work and the practical experience derived from living in a U.S. territory and working actively on its political problems.

I will confine most of my remarks to the U.S. Virgin Islands, although they have implications for the other smaller insular areas as well.

In my judgment, the U.S. Virgin Islands is faced with a difficult dilemma as it prepares for its first status plebiscite vote on September 7, 1998. The present political status of unincorporated territory violates both basic democratic principles and international norms of self-determination.

At the same time, most residents do not aspire to any form of separation from the United States sovereignty, whether it be independence or free association. And the prospect of integration on equal political terms through statehood is unrealistic at this time and for the foreseeable future.

The only way to provide a meaningful choice of status that both meets democratic requirements and conforms to international precepts is through an active United States policy that would present the alternatives of integration through constitutional amendment or a form of free association based on the special historical experience of the U.S. Virgin Islands.

I will expand on each of these points.

The present status of unincorporated territory places the United States Virgin Islands under the plenary authority of the U.S. Congress through the broad powers provided by Article IV, section 3, clause 1 of the U.S. Constitution.

At the same time residents of the territory who have been entitled to U.S. citizenship since 1927, cannot participate in the selection of either the Members of Congress or the President who's decisions shape their political lives.

It does not take a sophisticated course in political philosophy to understand that this violates the spirit and principles of democratic government. Yet, it has been the basis for the governance of the U.S. Virgin Islands for over 75 years, including 14 years when administration of our internal affairs was in the hands of the U.S. military.

It can be argued that the exercise of this authority, particularly in the last 25 years, has been generous and benevolent; but there have been benevolent monarchs, too; and their kindness has not made their government democratic.

Internationally, United Nations Resolutions 1514 and 1541 passed by the General Assembly in 1961, are the most widely accepted statements of what constitutes acceptable forms of self-determination. They are integration on equal political terms—or statehood in the United States context—free association—as in the case of the Federated States of Micronesia and the Republic of the Marshall Islands—or independence—as granted to the former United States territory the Philippines in 1946.

Because the United States Virgin Islands' present status does not satisfy any of these requirements, the territory continues to be classified as a non-self-governing or a colony by the United Nations. It is a considerable irony that the first Nation borne out of an anti-colonial revolt in 1776 remains one of the few countries that continues to administer colonies at this point in the 20th century.

Independence, the most readily acceptable and common form of decolonization, is not desired by most of the people of the Virgin Islands. The psychological ties and obvious advantages conferred by U.S. citizenship are valued by them.

In addition, a complex network of economic exceptions and advantages such as the retention of Federal income taxes and participation in Federal grant and entitlement programs, reinforces the connection to the United States as well as underpinning the present standard of living which is one of the highest in the Caribbean.

The small but vocal minority that argues for independence charges that this attitude is the result of years of indoctrination that have produced a false consciousness among the population. It could also be argued, however, that it represents both a prudent assessment of the advantages of U.S. citizenship and sovereignty in a very poor region of the world, as well as a genuine pride in identification with one of the world's leading nations. Whatever the merits of the arguments regarding the reasons for the present attachment to the U.S. relationship, the political fact is that it exists and there has been no indication of a major shift of identity.

The natural expression of that identity would be to move toward statehood. This is not a realistic option, however for a small island group with a population of approximately 100,000 without the land area that would permit any substantial future increase in numbers.

Furthermore, the economy of the islands is so dependent on the connection with the United States and so intertwined with the special exemptions and exceptions made possible by the unincorporated territorial status that it is unlikely that there could be a self-sustaining economy under statehood.

Finally, it is hard to conceive of such large states as Texas, California, and New York, not to mention the medium and smaller states, admitting to the union a territory with a population of one of their less populous towns or counties but with two votes in the U.S. Senate.

As a result of this dilemma, the residents of the Virgin Islands are likely to select either the status quo of unincorporated territory or some variation upon it—such as compact of commonwealth—if the present status process is culminated. The issues of democratic principle and international legitimacy will remain unresolved.

There is a way to end this stalemate. The U.S. Government could begin by conducting a serious and comprehensive examination of the political status of the unincorporated territories and make recommendations that would provide status choices that are economically realistic, democratic, and meet international standards. Those two choices are integration through a constitutional amendment and free association sensitive to the special needs of areas such as the U.S. Virgin Islands.

Under the present Federal structure, the vote for President and full representation in Congress can only be granted through statehood or a constitutional amendment. The smaller unincorporated territories should be provided the possibility of a form of integration that would provide a level of representation appropriate to the size of their populations—say one electoral vote for President and one full Member of the House of Representatives—some mecha-

nism to ensure that their special interests are at least considered by the legislative and executive branches when they act; the retention of the economic regulations that sustain their present living standards; the ability to protect their fragile cultural and physical environments; and some authority to participate effectively in the affairs of their regions.

Making such a choice available does not mean that it need be selected. The alternative of free association could also be made available.

A precedent for free association with the United States has already been set by the arrangements with the Marshall Islands and the Federated States of Micronesia.

In the case of United States Virgin Islands, however, the population has been under U.S. sovereignty since 1917 and has possessed U.S. citizenship since 1927. The free association offered the islands should provide for the retention of U.S. citizenship, be of sufficient duration to ensure that there would be no abrupt termination on the part of the United States, and reassure the residents that all provisions will be fully explained and will require popular approval in order to be implemented.

After a period of experience with free association, the residents would then be able to choose among independence, maintenance of the association, or an option of integration through the constitutional amendment.

In short, the free association option should present an attractive alternative to integration, so the choice between them will be a real one.

I realize that my recommendations would require a level of political will on the part of the U.S. Congress and the country that presently does not exist.

In fact, I am reminded in this context of a Broadway play which was called "Beyond the Fringe." I sometimes think that the concerns of Congress and the government with respect to the insular areas are not just on the fringes; we are beyond the fringe. We are even in the awareness of these actors.

The territories are small, distant, and not necessarily strategically important. Guam may be different in this context from the Virgin Islands and Samoa. The level of awareness of their situation and their status is minimal. I am talking about on the part of the U.S. Government.

Constitutional amendments are very difficult to achieve, particularly when the issues involved do not enjoy broad support. But there is a Chinese quotation favored by President Kennedy which states the journey of a thousand miles begins with one step. Let us take that step and begin the journey to apply democratic standards and international norms to the U.S. Virgin Islands and the other unincorporated territories.

Thank you, Mr. Chairman, for the opportunity to make this statement.

[Prepared statement of Mr. Leary follows:]

Supplemental Sheet

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Summary of Recommendations

The United States government should undertake a comprehensive examination of the political status options available to the U.S. Virgin Islands and other small unincorporated territories and determine what choices exist that are economically realistic, democratic, and meet international standards. This policy review should consider the desirability of a form of political integration other than statehood, which would require a constitutional amendment. It should also consider a form of free association based on the historical experience and present attitudes of the territories' residents. Finally, the residents of the territories should choose between integration through the constitutional amendment or free association. If free association is chosen, a future vote could be taken to provide a choice among integration, continuation of free association, or independence.

*Statement Submitted to the Subcommittee on
Insular and International Affairs of the
Committee on Natural Resources
at Hearings Held on H. Con. Res. 94
on August 3, 1993*

*Paul M. Leary, Ph.D., Director
Bureau of Public Administration
University of the Virgin Islands
Charlotte Amalie, U.S. Virgin Islands*

Statement

My name is Paul M. Leary, and I am a professor of political science as well as director of the Bureau of Public Administration at the University of the Virgin Islands, where I have served on the faculty for the last twenty five years. I have conducted research and published extensively on the issue of the political status on the United States Insular Areas of American Samoa, Guam, the Northern Marianas, Puerto Rico and the U.S. Virgin Islands. I have also served as a consultant to the two status commissions established in the Virgin Islands, including the present one. Most recently, I coordinated the organization of the first national conference, entitled "**A Time of Change**", that dealt with the entire range of issues involved in federal - Insular Areas relations. It was held at George Washington University here in the nation's capitol, and I am happy to say it was attended by more than three hundred and fifty people, including such distinguished representatives from the Insular Areas themselves as the chair of this subcommittee, the Honorable Ron de Lugo.

I submit this testimony not as a representative of any group or institution. It represents my own reflections, based on both my scholarly work and the practical experience derived from living in a U.S. territory and working actively on its political problems. I will confine most of my remarks to the U.S. Virgin Islands, although they have implications for the other smaller Insular Areas as well.

In my judgment the U.S. Virgin Islands is faced with a difficult dilemma as it prepares for its first status plebiscite vote on September 7, 1993. The present political status of unincorporated territory violates both basic democratic principles and international norms of self-determination. At the same time, most residents do not aspire to any form of separation from United States sovereignty, whether it be independence or free association. And the prospect of integration on equal political terms through statehood is unrealistic at this time and for the foreseeable future. The only way to provide a meaningful choice of status that both meets democratic requirements and conforms to international precepts is through an active United States policy that will present the alternatives of integration through constitutional amendment or a form of free association based on the special historical experience of the U.S. Virgin Islands. I will expand on each of these points.

The present status of unincorporated territory places the U.S. Virgin Islands under the plenary authority of the U.S. Congress through the broad powers provided by Article IV, section 3, clause 1 of the U.S. Constitution. At the same time, residents of the territory, who have been entitled to U.S. citizenship since 1927, cannot participate in the selection of either the members of Congress or the President whose decisions shape their political lives. It does not take a sophisticated course in political philosophy to understand that this violates the spirit and principles of democratic government. Yet it has been the basis for governance of the U.S. Virgin Islands for over seventy five years, including fourteen years when administration of our internal affairs was in the hands of the U.S. military. It can be argued that the exercise of this

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authority, particularly in the last twenty five years, has been generous and benevolent. But there have been benevolent monarchs too, and their kindness has not made their government democratic.

Internationally, United Nations resolutions 1514 and 1541, passed by the General Assembly in 1961, are the most widely accepted statements of what constitutes acceptable forms of self-determination. They are integration on equal political terms (or statehood in the United States context), free association (as in the case of the Federated States of Micronesia and the Republic of the Marshall Islands), or independence (as granted to the former U.S. territory, the Philippines, in 1946). Because the U.S. Virgin Islands present status does not satisfy any of these requirements, the territory continues to be classified as "non-self-governing", or a colony, by the United Nations. It is a considerable irony that the first nation born out of an anti-colonial revolt in 1776 remains one of the few countries that continues to administer colonies at this point in the Twentieth Century.

Independence, the most readily acceptable and common form of decolonization, is not desired by most of the people of the Virgin Islands. The psychological ties and obvious advantages conferred by U.S. citizenship are valued by them. In addition, a complex network of economic exceptions and advantages, such as the retention of federal income taxes and participation in federal grant and entitlement programs, reinforces the connection to the United States, as well as underpinning the present standard of living, which is one of the highest in the Caribbean. The small but vocal minority that argues for independence charges that this attitude is the result of years of indoctrination that have produced a "false consciousness" among the population. It could also be argued, however, that it represents both a prudent assessment of the advantages of U.S. citizenship and sovereignty in a very poor region of the world, as well as a genuine pride in identification with one of the world's leading nations. Whatever the merits of the arguments regarding the reasons for the present attachment to the U.S. relationship, the political fact is that it exists and there has been no indication of a major shift of identity.

The natural expression of that identity would be to move toward statehood. This is not a realistic option, however, for a small island group of approximately 100,000 population, without the land area that would permit any substantial future increase in numbers. Furthermore, the economy of the Islands is so dependent on the connection with the United States, and so intertwined with special exemptions and exceptions made possible by the unincorporated territorial status, that it is unlikely there could be a self-sustaining economy under statehood. Finally, it is hard to conceive of such large states as Texas, California and New York, not to mention the medium and smaller states, admitting to the Union a territory with a population of one of their less populous towns or counties, but with two votes in the U.S. Senate.

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As a result of this dilemma, the residents of the Virgin Islands are likely to select either the status quo of unincorporated territory or some variation upon it, such as compact or commonwealth, if the present status process is culminated. The issues of democratic principle and international legitimacy will remain unresolved.

There is a way to end this stalemate. The U.S. government could begin by conducting a serious and comprehensive examination of the political status of the unincorporated territories, and make recommendations that would provide status choices that are economically realistic, democratic, and meet international standards. Those two choices are integration through a constitutional amendment and free association sensitive to the special needs of areas such as the U.S. Virgin Islands.

Under the present federal structure, the vote for President and full representation in Congress can only be granted through statehood or a constitutional amendment. The smaller unincorporated territories should be provided the possibility of a form of integration that would provide a level of representation appropriate to the size of their populations (say one electoral vote for President and one full member of the House of Representatives); some mechanism to insure that their special interests are at least considered by the legislative and executive branches when they act; the retention of the economic regulations that sustain their present living standards; the ability to protect their fragile cultural and physical environments; and some authority to participate effectively in the affairs of their regions. Making such a choice available does not mean that it need be selected. The alternative of free association could also be made available.

A precedent for free association with the United States has already been set by the arrangements with the Marshall Islands and the Federated States of Micronesia. In the case of the U.S. Virgin Islands, however, the population has been under U.S. sovereignty since 1917 and has possessed U.S. citizenship since 1927. The free association offered the Islands should provide for the retention of U.S. citizenship, be of sufficient duration to insure that there would be no abrupt termination on the part of the United States, and reassure the residents that all provisions will be fully explained and will require popular approval in order to be implemented. After a period of experience with free association, the residents would then be able to choose among independence, maintenance of the association, or the option of integration through the constitutional amendment. In short, the free association option should present an attractive alternative to integration, so the choice between them will be a real one.

I realize that my recommendations would require a level of political will on the part of the U.S. Congress and country that presently does not exist. The territories are small, distant, and not necessarily strategically important. The level of awareness of their situation and their status is minimal. Constitutional amendments are very difficult to achieve, particularly when the issues involved do not enjoy broad support. But, as

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the Chinese quotation favored by President Kennedy states, the journey of a thousand miles begins with one step. Let us take that step, and begin the journey to apply democratic standards and international norms to the U.S. Virgin Islands and the other unincorporated territories.

Mr. DE LUGO. Thank you very much, Dr. Leary, for a very interesting statement. Obviously a tremendous amount of thought went into it. Not long, but with a lot of meat on the bones here.

In your statement—I take it, you are addressing what appears to be the biggest problem that the insular areas face in trying to resolve their political status but with something short of statehood or independence, which are clearly understood by all. You propose another status where a compact of agreements could be worked out between the insular areas and the Federal Government where there would be mutual consent.

How do you get mutual consent with the territorial clause?

Can the Congress, Federal Government, negotiate with an American territory, a political status within the American family at the present time, and there would be mutual consent?

That means whatever was negotiated could not be changed without the mutual consent of both parties.

Could this be done when one Congress can't bind another?

Dr. LEARY. Yes. I think that is one of the issues involved. I think the other is that, even if you had mutual consent, such as you had, say, in the Northern Marianas covenant and even in subsequent Congresses, don't act to change it; it still doesn't resolve the issues of the accords with democratic principle in that there is no representation in the Congress but still continues under the territorial clause to enjoy ultimate authority, nor participation to vote for the President. And the President can make decisions that affect the very lives of the inhabitants of these areas.

Even if you put aside the issue of whether one Congress can bind a subsequent Congress, it doesn't resolve the issues of the democratic norms that apply. And those are the norms that our country is founded on.

And, secondly, I don't think that mutual consent would necessarily meet the international forms of self-determination which are most widely recognized.

I realize there are some complications in the case of Northern Marianas because the Security Council did act to accept that as a legitimate determination of trusteeship.

But there is some doubt in my mind as to whether or not the Marianas covenant does meet the standards that are represented by the standards of free association. There is no right under the covenant to unilaterally terminate the agreement with the United States. And U.S. sovereignty seems to be stated more clearly in the underpinning of that agreement.

So mutual consent will not resolve the problems that I point out in my paper.

Mr. DE LUGO. Well, Dr. Leary, you are suggesting that the United States Government should undertake a comprehensive examination of the political status options available to the U.S. Virgin Islands and the other small unincorporated territories and determine what choices exist that are economically realistic, democratic, and meet international standards.

This policy review should consider the desirability of a form of political integration other than statehood, which would require a constitutional amendment.

It should also consider a form of free association based on the historical experience and present attitudes of the territories' residents.

Finally, the residents of the territories should choose between integration through the constitutional amendment or free association.

If free association is chosen, a future vote could be taken to provide a choice among integration, continuation of free association, or independence.

Now, 20 years ago, if you had said to a Member of Congress that you should consider free association, they would say that that political status doesn't exist under the American system. It didn't exist some 20 years ago until we created the Free Associated States in Micronesia.

If you were to talk to Members of Congress today and say to most political leaders, would you support free association for the insular areas, whichever insular area, the response that you would probably get—the response that I have gotten from most Members that I have spoken to has been, yes, I would; but not citizenship.

If you want to be freely associated with the United States, you can have it; but you can't have citizenship.

That is an informal poll. Congress itself has not spoken formally on that issue. But, in the political situation at the present time, there does not seem to be political support for free association with citizenship.

You suggest a political status of full integration into the American family short of statehood, because the areas are too small for statehood. And that this would provide, I take it, some form of voting representation, meaningful, full voting representation within the Congress for the insular area. And that, of course, would take a constitutional amendment.

How do we get there when we cannot even get these people to pay attention to us on the most, you know, mundane of issues? How do we get there? How do we create the political awareness and will to respond to a real meaningful resolution to America's colonial problems?

Dr. LEARY. Well let me answer the first question with respect to U.S. citizenship. I am optimistic enough, because of my career as an educator, to believe that people can learn. And I would assume it would include Members of Congress. And I think there is an example of a free association agreement in the Pacific in which the citizens of the Cook Islands are also citizens of New Zealand and enjoy a free association with New Zealand. And there are forms of association with the French in which there is mutual citizenship.

So I think if the Congress were serious about this and they and their staff began to look at other models of free association and you are dealing with a long history of U.S. sovereignty and citizenship and if you are offering free association without citizenship, you are not offering a free deal.

I would hope that the Congress would accept the fact that is a very flexible form of agreement that can be molded to meet different circumstances. And we have to be fair to the people who have been U.S. citizens for so many years and have no desire to surrender that status. But let's be realistic about it.

I agree that integration is a hard road because of the lack of interest in broad terms in Congress with respect to insular areas. But I would hope that when Puerto Rico comes before Congress in its usual fashion articulate, vociferous, well-organized, and raises the issue of the future of Puerto Rico and the significance of statehood to the United States and what all the issues are, that it might be an opportunity within that context to also do some consciousness raising about the other insular areas and about the dilemma that they share with Puerto Rico, which is that they have a status now which does not meet democratic standards in the international community.

Mr. DE LUGO. Let me interrupt you. We are talking about a political change. You realize, of course, that if you put forward a proposal like this, that there will be those in Puerto Rico—as you mentioned Puerto Rico—there will be those in Puerto Rico who would oppose any consideration of a proposal like this because they would see it as draining away support from their particular political status.

In this case I would say they are pushing very seriously for statehood. We will see what the outcome of the plebiscite is. But, I would expect that those who are supporting statehood would not want to look at other possibilities because they would feel that it would simply bring up an opportunity to drain away support for statehood.

Dr. LEARY. I could see how one could have that concern. But I was careful in my statement to say that my proposal is based on the small size of the unincorporated territories and the fact that they do not have the opportunity as Puerto Rico does to realistically become a State.

What we need really, I would assume that the people in the statehood movement in Puerto Rico would see this as a form of the integration that would provide an opportunity for the smaller territories that the statehood movement proposed for the State of Puerto Rico. And they are supportive of the efforts on the part of smaller territories, given their own circumstances and situations to come up with solutions appropriate to their needs. So I don't see any conflict.

The amendment would be crafted in such a way as to clearly exclude Puerto Rico so they would not be involved. So I think they should be put in a different category because statehood is a realistic possibility for them. It is not for us.

Mr. DE LUGO. Thank you, Dr. Leary.

Congressman Underwood.

Mr. UNDERWOOD. Thank you, Mr. Chairman.

And I thank you for your presentation, Dr. Leary. And I would also like to commend you once more for your work in the earlier conference this year and look forward to the conference next year. I too, appreciate your remarks that as an educator, you hope that Congress can be taught or at least learn something new. I gave that kind of analogy a couple of times earlier; and given my own background as an educator—but one of the great learning impediments we have in education is a problem called attention deficit. And sometimes, at least on the issues pertaining to territories, there is a lot of attention deficit going on.

During one of my return visits home, someone asked me what is the mood of Congress with respect to Guam? I said, the good news is that there is no bad mood. And the bad news is that there is no good mood. And the reality is that there is no mood at all. And that is what we are confronted with.

Your work in terms of trying to understand or trying to make some suggestions regarding proposed constitutional amendments to allow a form of closer integration with fuller measure of participation of the territories here in Washington versus a kind of utilization of a sensible separation, a wall of separation, not complete separation, but a wall of separation that works to the advantage of the territories in question through free association assumes that these cannot occur under the territorial clause.

Would you like to speak as to why these kinds of options cannot occur under the territorial clause?

Dr. LEARY. I know I am getting into deep waters, and I will be careful. But I know that much of the discussion revolves around analyses about what the territorial clause means.

I know that there is a certain interpretation of territorial clause described to argue that just as in the past when it was used to put certain restrictions on U.S. citizens in the territories that that same clause, given the broadness of its wording and the broad authority given to Congress can also be used to expand it.

A lot of discussion goes on with respect to legal and constitutional arguments. I am not enough of a legal scholar to say who is correct. I would say that ultimately it may come before the courts to decide. But the dominant interpretation to the present has been pretty much descendant of the insular cases. The territorial clause has been used in a restrictive and not an expansive way.

I think this would be a unique and novel way to use the territorial clause to support the underpinning of the present territorial claim for Guam. I hope you are successful.

But it doesn't address the lack of representation of U.S. citizens living in outlying areas. And I think the constitutional route could take into account a number of things. One of your Senators said that we should not issue a pact for cultural genocide. I think there should be some protection of the fragile cultures of the islands peoples.

You can integrate, but that doesn't mean that you have to destroy your special identity. I think we need to begin with a self-conscious examination of these issues. People used to quote Yogi Berra, the opera isn't over until the fat lady sings. But the fat lady, the United States, doesn't seem to be thinking about what the song is.

We think we have to get to the point where we focus the attention to what the options and alternatives are.

So perhaps in terms of discussion of the Guam Commonwealth bill this will also raise discussions about the complex issues and how do we provide equity for people who, for a long time, have been U.S. citizens but have not yet shared fully in the democratic society but at the same time protect them from consequences that would be deleterious in terms of their way of life.

Mr. UNDERWOOD. So what do you think about the additional point in terms of territorial clause? I guess you don't subscribe to the idea, that, at one point in time, it could be used for negative or limiting—it limiting the rights of citizens or people in territories cannot be used in an expansive way, one used it from the point of view of the territories and now positively used in a positive way for good?

What about the point relative to the fact that the one Congress can't bind another Congress?

Dr. LEARY. That is, as I understand the basic legal and constitutional principle—Congress, simply by the fact that there is a new Congress elected by a new majority with a new mandate—if it is an act of Congress, it is just a mandate.

With respect to the territorial clause, and the unincorporated territorial directive, while certainly it has antecedent in history, it is long overdue that we dispense with it. It is analogous—I was sympathetic with the Puerto Rican judge who said that given the origin of this clause, it is analogous to *Plessy v. Ferguson* in terms of race relations.

The time has come to put the status with the territories on a new standard and the territorial clause may not be the best basis on which to make that effort. So I am not myself very enthusiastic about using the territorial clause as the basis for these relationships.

Mr. UNDERWOOD. In the statement of Governor Farrelly he made reference to the fact that while he wholeheartedly endorses the principles of self-determination for territories, he respectfully suggests that the narrower application of these principles to the situation in Puerto Rico does not and shouldn't include the Virgin Islands. And there has been a couple of items and points that have come up in the discussion, one relative to the participation of Puerto Ricans who live in the mainland. And also, in the case of Guam, talking about the right of the indigenous people versus the right of people who live on the island now but are not indigenous. How do these two issues play in your mind?

Dr. LEARY. I think we get to the obvious point that any situation has to be analyzed on its own terms. We do not have in the Virgin Islands a population equivalent to the Chamorro population of Guam. We have a different population base and a different history.

I think that insular areas must seek, within a general context of sharing certain common problems and concerns, must seek its own resolution and what is good for Puerto Rico is not necessarily good for the Virgin Islands. And perhaps what is good for the Virgin Islands is not necessarily good for Guam. I don't know. I try to confine most of my remarks to the Virgin Islands, although they may have implications for the other areas. I am speaking of my experience in the Virgin Islands and the nature of that society.

As for example, when the Chairman indicated that people in Puerto Rico may be concerned that the constitutional amendment be used as a loophole through which statehood could be denied, I would have no intention whatsoever of applying that to Puerto Rico because it is a different situation. So in that sense, I think the governor is quite right.

You have to analyze each insular area in terms of special history and experience and the nature of its society. And I think that there is significant differences say between Guam and the Virgin Islands, even though we share the same juridical status.

Mr. UNDERWOOD. You know, I want to associate myself with the Chairman's remarks regarding statehood, because at the same time that it doesn't look realistic from this point of view, lots of things didn't look realistic 20 years ago. There is always the possibility of things occurring that will change our focus. But ultimately those depend on what is going on in the territories. And it seems that certainly in the case of Guam, the Virgin Islands, and Puerto Rico, clearly the kind of leadership and the kind of perspectives that have emerged are really home grown, locally grown. And I am very much—I am appreciative of that fact and encourage that development.

At the same time, your proposed amendments do suggest that there is—if there is not a problem with false consciousness in the territories—perhaps there is a problem with false consciousness in terms of states here in Washington. And that is ultimately the only potential route to resolution seems to be phrased in terms of statehood, in terms of seeing—becoming a state as the apex, as the end-all of territorial status and that everything is framed in that debate.

And framed in that discussion is that states have certain rights and privileges and territories can have rights and privileges which are less than those, but never exceeds those. And it is never quite clear what that means. And by the same token, we are not likely to become states. So that is a double bind from which we have a difficult time emerging. And it seems that we do need more discussion and we do need the kind of energy and spirit and ideas which were generated in our conference in collaboration with Guam.

And I look forward much to extending the debate and extending the bounds of that discussion in the coming months. Thank you very much.

Dr. LEARY. Thank you.

Mr. DE LUGO. Dr. Leary, you have rendered a great service with your conference and also with your proposal here today. I want to very quickly ask you a number of questions, and then we are going to wrap it up because it is getting late.

In discussing the status process in the Virgin Islands, you phrased the quote, "For the present, status process is culminated and a plebiscite is scheduled for September 7."

Do you have any doubt that it will be held and the process it is a part of will be culminated?

Dr. LEARY. Yes, Mr. Chairman, I do. And the reason is because it was an opinion given to the Virgin Islands Commission on Status and Federal relations by the Attorney General of the Virgin Islands, indicating that in her opinion any referendum of any legal significance in the Virgin Islands would have to have the participation of 50 percent plus one of the registered voters of the Virgin Islands.

At the present point, that doesn't seem to be a realistic possibility. I understand that the Virgin Islands legislature this week is conducting hearings and there is a possibility there may be some

movement made to introduce a proposal to postpone the referendum to coincide with the general elections in 1994. I am not sure that will happen, but I do think there is a significant obstacle now with respect to the realization of the September 1993 date because of this requirement of 50 percent plus one turnout.

So it is, in my mind, entirely possible that we will see a postponement of the referendum until 1994, although I am just speaking for myself here, not representing anyone.

Mr. DE LUGO. This would not be the first postponement for this.

Dr. LEARY. The last time I think there was a very good excuse called Hurricane Hugo.

Mr. DE LUGO. That was three years ago, though.

Dr. LEARY. Yes. But they took some time, I think, to reorganize the Commission and to begin the public education campaign and to set the new dates and redefine the legislation, so I think that in my mind it was justifiable, given the damage that Hugo caused, and in the confusion it took some time to get this process reestablished.

Mr. DE LUGO. How many times have the Virgin Islands tried to write a constitution?

Dr. LEARY. Well, under the 1976 authorization there were two efforts that failed. Prior to that, there were two other efforts that were not officially endorsed or authorized by Congress, but the second constitution also I think passed, but by a very, very slim turnout and didn't have much of a mandate. So we haven't really been successful since the first convention, official convention in 1965, in passing the constitution.

Mr. DE LUGO. Four times?

Dr. LEARY. Four times.

Mr. DE LUGO. Four times, and after the failure on four occasions to write the constitution, there was a plebiscite—I am sorry, a referendum asking the voters, should they move away from the question of the constitution and make the resolution of the political status the priority; is that correct?

Dr. LEARY. That is right. 1982, I believe.

Mr. DE LUGO. 1982, went out—this is more than a decade later. And do you know how much money has been spent on the process this time?

Dr. LEARY. Well, Mr. Chairman, as you know, I am a passionate advocate of the need to address and resolve status issues in the Virgin Islands. I think if you look at, for example Guam, I think their first referendum on this issue goes back to 1978 and we are now 15 years later and they are still in the midst of their process. I think these things take time and—

Mr. DE LUGO. But in the case of Guam, Guam has clearly said what they want to do. I mean, Guam has gone to the polls and clearly registered by significant majority their desire to become a commonwealth.

Here in the Virgin Islands, you know, this comes as a bit of a surprise to me that the islands would be talking about postponing again this—the plebiscite when there has been so much effort put into this latest undertaking.

Dr. LEARY. Well, Mr. Chairman, I think that given an issue of this type, it is very difficult in an off-year election to get 50 percent

plus one of the registered voters to come out and vote. I am not absolutely positive about my facts, but I think if we looked at the votes that took place on the Guam commonwealth in this, the early votes, I wonder if in those cases 50 percent plus one of the registered electorate participated in that referendum, if they were considered binding at the time. I think that is part of the problem.

I am not here to say whether the status referendum should be postponed or should be kept. But I am just here to indicate that there is a possibility that the process may be delayed for a year. But that is my own musings. It is not based on any special information.

Mr. DE LUGO. Well, that is disappointing to hear. Has there been adequate education?

Dr. LEARY. I think a considerable effort has been made, a sincere effort has been made to distribute material; but part of the difficulty, I think, in terms of political status education in the Virgin Islands, as compared to say Puerto Rico, is that first of all it is a new issue for us, relatively new issue. The terminology is often strange to people.

Secondly, it is an issue that seems academic and abstract to people. They can't connect it with the concerns of their daily life, the kinds of immediate problems facing the territory such as crime and infrastructure maintenance and so forth.

And thirdly, unlike Puerto Rico where you have major political parties organized historically around the issue of status, who make a major effort to mobilize their followers and disseminate information with respect to their views, that is not the case in the Virgin Islands.

Given all those factors, it is not a surprise that it is difficult even with the best of efforts to really reach and mobilize people on this issue, but I think you have to begin somewhere, and I would hope that at least one result of this whole process has been the beginning of a familiarization of our people in the Virgin Islands with the terms of the debate.

And there have been a considerable number of programs, a lot of information disseminated, et cetera. How many people are watching, how many people are reading, how many people are really interested, I have no scientific information on that issue.

Mr. DE LUGO. Well, I want to thank you very much, Dr. Leary, for your being here today, coming here, taking the time to be present and to give us the benefit of your years of work in this field; and you are highly respected by people of both the Caribbean and the Pacific and I hope that you will continue the good work that you have done all these years.

And I want to commend you again on your conference this year. It was historic. That is not rhetoric. That is a matter of history. It was the best conference I have ever attended, and I hope that the next one that you are going to have next year will be as good. It only has to be as good because that was a great conference. I know you want to make it better.

Dr. LEARY. Thank you, Mr. Chairman.

Mr. DE LUGO. If it is as good, it will be great.

Dr. LEARY. Thank you very much for those kind remarks. I thank you for all of your support for the conference and for other projects. I appreciate it.

Mr. DE LUGO. Thank you, Dr. Leary.

One of the insular areas that will be covered by the language of this resolution is the last remaining part of the trust territory. That is Palau. President Clinton's National Security Council has been helpful in working out what I hope will be a resolution of the status impasse with Palau. In response to Palau and to us, the administration has worked out effective understandings with Palau's leaders that may result in a compact free association that will finally be approved by Palau. The administration should make this clear shortly by letting the Palau law go into effect, calling another plebiscite on the compact, in spite of the concerns of some bureaucrats with that law.

What a resolution of the impasse took was a willingness to try to work things out with Palau that we didn't have in the past. We have gotten it from this President.

At this point, I would like to include a statement from the joint leadership of Palau and I think that it explains the process that Palau has undergone. It is a statement from the President and the Senate President as well as the President of Palau and the House Speaker.

[The information follows:]

Joint Statement of

**The Honorable Kuniwo Nakamura
President of the Republic of Palau**

and

**The Honorable Peter L. Sugiyama
President of the Senate
Fourth Olbiil Era Kelulau**

and

**The Honorable Surangel Whipps
Speaker of the House of Delegates
Fourth Olbiil Era Kelulau**

**Regarding
Self-Determination
of Political Status**

Republic of Palau

July 27, 1993

On behalf of the Republic of Palau, we would like to first thank the Chairman of the Subcommittee on Insular and International Affairs, the Honorable Ron de Lugo. We offer this thanks not just for the kind invitation to testify here today but also for his consistent and steadfast support and friendship to the people of Palau. We would also like to extend our greetings to all the Members of the Subcommittee on Insular and International Affairs as well as to the other distinguished guests here today.

Before us is H. Con. Res. 94 which declares that the people of Puerto Rico have the right to decide Puerto Rico's political status. H. Con. Res. 94 also states that peoples generally have the right to determine their own political status.

The Republic of Palau respects the rights of all peoples to be responsible for their own destiny. We in Palau have spent many long years on the voyage to self-determination of our political status. Palau's search for a viable political status, like the rest of its neighboring Micronesian islands (with the exception of Guam), began with the establishment in 1966 of the Future Political Status Commission by the Congress of Micronesia. Under the chairmanship of the late President of Palau, the Honorable Lazarus E. Salil, the Commission commenced future status negotiations with the United States on behalf of the Trust Territory of the Pacific Islands (the "TTPI") as a single unit. The TTPI consisted of the former administrative districts of (1) the Northern Marianas; (2) Palau; (3) Yap; (4) Truk (Chuuk); (5) Pohnpei (Pohnpei); (6) Kosrae (Kosrae); and (7) the Marshall Islands.

The Commission ultimately issued its final report which established four basic principles of FREE ASSOCIATION which were to guide future status negotiations with the United States: (1) Sovereignty should rest in the Micronesian people and their duly constituted government or governments; (2) Micronesians have the right of self-determination and may, therefore, choose independence or self-government in FREE ASSOCIATION with any nation or organization of nations; (3) Micronesians have the right to adopt their own constitution and amend, change, or revoke any constitution at any time; and (4) FREE ASSOCIATION should take the form of a revocable COMPACT, unilaterally terminable by either party. We believe that these guidelines (at least the first three) are, in general terms, principles which should apply to all peoples.

In 1975 a Micronesian Constitutional Convention consisting of delegates from all seven Micronesian island groups assembled and drafted a constitution calling for a unified Federation of Micronesian states. A Micronesian-wide referendum was conducted on July 12, 1978, which resulted in negative votes both in Palau and the Marshall Islands. The majority of voters in Yap, Chuuk, Pohnpei and Kosrae on the other hand ratified the Constitution which laid down the cornerstone for the

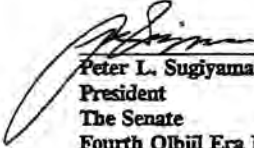
Government of the Federated States of Micronesia. (The Northern Marianas had opted to become U.S. Commonwealth and, although it participated in the Micronesian Constitutional Convention, did not vote in the referendum). Palau, the Republic of the Marshall Islands and the Federated States of Micronesia, thereafter became separate entities. However, the three governments nonetheless continued their status negotiations with the United States in pursuit of a relationship of free association.

A total of seven plebiscites on the Compact of Free Association between Palau and the United States have been conducted in Palau in the past decade. All the plebiscites were duly observed by U.N. Observer Missions. None of the plebiscites have reached the 75% voter approval required by Palau's anti-nuclear constitutional provision. However, in each plebiscite the approval rate has never been below 60%. The Palauan people, therefore, have, in exercising their inalienable right of self-determination, repeatedly expressed their choice for free association relationship with the United States over any other political status option.

In May of 1991, a dialogue was commenced between Palau and the U.S. for possible Compact modifications. Palau created a small working group that met twice with former U.S. Ambassador to the U.N. Trusteeship Council James Wilkinson and proposed certain modifications to the Compact of Free Association. During this period, a sufficient number of signatures were gathered in a Citizen's Petition calling for a Constitutional Amendment Referendum. The Constitutional Amendment was approved by a 62% vote overall and later by the Palau Supreme Court. The Third Palau National Congress, therefore, enacted Republic of Palau Public Law No. 3-76 pursuant to which the vote on the Constitutional Amendment would be held simultaneously with the November general elections. RPPL No. 3-76 also authorized the vote on the eighth Compact Plebiscite but only on the condition that the Republic of Palau receive a "favorable response" from the United States with regards to the Compact modifications which had been proposed.

Subsequent to discussions in Washington, D.C., Palau received, on May 6th, a "Letter of Assurances" from U.S. Secretary of State Warren Christopher. The Letter of Assurances does constitute a favorable response from the United States to the request for Compact modifications. Accordingly, pursuant to Republic of Palau Public Law No. 4-9, the eighth, and hopefully final, vote by Palau on a relationship of Free Association with the United States will be held later this year. In accordance with Department of Interior Order No. 3142, RPPL No. 4-9 is, at this very moment, under review by the Department of Interior. We anticipate the Department's decision within the next week.

We trust that you will join us in hoping that Palau can at last resolve its political status. We will then be able to enter into the relationship with the United States which our people have for so long desired - a relationship of free association between free peoples freely chosen.



Peter L. Sugiyama
President
The Senate
Fourth Olbiil Era Kelulau



Strangel Whipps
Speaker
House of Delegates
Fourth Olbiil Era Kelulau



Kuniwo Nakamura
President
Republic of Palau

Mr. DE LUGO. There appears to be less activity on status change in one of the four territories that are the subject of today's hearing, and that is American Samoa. This is indicated in a joint statement that I will include in the record from the President of the Senate Letuli and House Speaker Talavou. Their statement will appear after one by the Governor of American Samoa, A.P. Lutali.

The lack of interest in status change does not, however, mean a disinterest in the island's relationship with the United States whatsoever. Delegate Faleomavaega sponsored legislation to establish a joint Federal territory commission to study Samoa's status and relationship to the United States, and his bill has been endorsed by Governor Lutali. We will have a hearing on it on September 14.

The language of the Serrano resolution does not apply at all to one of the five U.S. insular areas, and that is the Northern Mariana Islands. It exercised self-determination in reaching agreement on the establishment of a commonwealth in political union with the United States. This is explained in a letter that I sent to Governor Guerrero in response to his inquiry, and I will also include this letter in the record.

[The information follows:]

U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515-6201

July 14, 1993

The Honorable Lorenzo I. De Leon Guerrero
Governor of the Northern Mariana Islands
Saipan, MP 96950

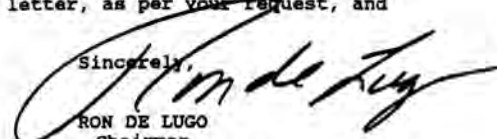
My dear Governor Guerrero:

This is in response to your letter of today's date regarding the Subcommittee's August 3rd hearing on H. Con. Res. 94, Representative Serrano's resolution that would declare that the people of Puerto Rico have the right to decide the islands' future political status and make other statements regarding self-determination and the non-self-governing territories.

While I am always willing to have officials of the Northern Mariana Islands testify at hearings on matters relating to the commonwealth, they have not been invited to appear at the August 3rd hearing because your islands are no longer considered a non-self-governing territory by the United Nations. (They were taken off the list of non-self-governing territories because of the approval of the Covenant that established the commonwealth in political union with the United States and the Security Council action on it. The U.N. currently identifies 18 areas as non-self-governing territories. The four which the United States is responsible are American Samoa, Guam, Palau, and the U.S. Virgin Islands. The resolution refers, as I noted, to Puerto Rico and the non-self-governing territories.)

In closing, let me note that I have included a copy of the Serrano resolution with this letter, as per your request, and extend my best regards.

Sincerely,



RON DE LUGO
Chairman,
Subcommittee on Insular
and International Affairs

Enclosure

Mr. DE LUGO. Finally, I will include two memoranda done for the Subcommittee by the American Law Division of the Congressional Research Service, and I would like those placed in the record at this point. They were written by two of the top experts in the field of constitutional law and international law respectively, who have been very helpful to the Subcommittee; they are Johnny Killian and Dan Zafren.

[The information follows.]



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July 7, 1993

TO : House Subcommittee on Insular and International Affairs
Attention: Brian Modeste

FROM : American Law Division

SUBJECT : Self-Determination by the People of Puerto Rico
(H. Con. Res. 94, 103d Cong.)

At your request, this memorandum presents a legal discussion of the Resolution.

Charter of the United Nations

It should be noted at the outset that the reference to the Charter of the United Nations as being a treaty for the United States is only partially accurate. It is not a self-executing treaty.¹ Therefore, it is not the supreme law of the land. Only a self-executing treaty directly accords enforceable rights to persons without the benefit of Congressional implementation.² Thus, the "commitment" to the principle of self-determination as set forth in the Charter of the United Nations is not a legal commitment.

The principle of self-determination is only briefly mentioned in the Charter of the United Nations.³ The passage of a concurrent resolution cannot have the legal effect of making a non-self-executing provision of a treaty enforceable as law in the United States since such result can only occur by a duly enacted statute signed by the President. However, it would seem possible to argue that passage of the Resolution in its present form, i.e., reading the last recital in the Preamble along with the first provision of the body of the Resolution, could be interpreted as an initial step and/or an indicia of United States intent to give legally enforceable effect to the principle of self-determination provisions of the Charter. Even as a strict policy pronouncement, however, such might have effects more far-reaching than contemplated by the Resolution in its reference to the people of Puerto Rico. Arguably, other territories and, perhaps, even

¹ "[T]he Charter of the United Nations, although adopted by the United States, is not a self-executing international obligation." *Spies v. Rich & Co. (America), Inc.*, 643 F.2d 353, 363 (5th Cir. 1981). Also, see, *Manybears v. United States*, 730 F. Supp. 1515, 1521 (D. Ariz. 1989).

² *Haitian Refugee Center, Inc. v. Baker*, 949 F.2d 1109, 1110 (11th Cir. 1991), *reh. den.*, 954 F.2d 731 (1992), *cert. den.*, 112 S. Ct. 1245 (1992).

³ Arts. 1(2) and 55.

General Assembly.⁸ Puerto Rico has not been brought back within the scope of the United States' Article 73 obligations.⁹

The Commitment by the Congress

While the gist of the Resolution seems to concentrate on the support of the people of Puerto Rico to exercise a right to choose the political relationship, if any, with the United States that they might favor, it appears likely that more can be read into it than may be intended. Arguably, the Congress is stating that it would go along with the choice made. It would seem inappropriate for the Congress to give any impression that it is binding itself to any outcome, and, in fact, might even be prejudicial in the context of any "free" choice to be made by the people of Puerto Rico if the Resolution is interpreted by the local community as a promise by the Congress that the act of determination would effectuate any necessary Congressional action to bring it to fruition. Thus, whatever determination is made by the people of Puerto Rico, some might challenge the result as being an improper exercise of a right of self-determination. In that context, charges might even be hurled against the Congress that it was exerting its influence for a preference in such a determination.



Daniel Hill Zafren
Specialist in American
Public Law

⁸ G.A. Res. 3163 (XXVIII).

⁹ Oppenheim's International Law (9th ed. 1992), at 280, ft. nt. 21.



Congressional Research Service • The Library of Congress • Washington, D.C. 20540

TO: Honorable Ron De Lugo
ATTN: Brian Modesta

FROM: American Law Division

SUBJECT: Puerto Rico

In response to your request, we are forwarding excerpts from a previously prepared memorandum, dealing with the issue of Congress' ability to relinquish completely its power under the territories clause in respect of Puerto Rico.

I

The Territorial Clause. • Congress derives its plenary power to legislate for the territories from two sources.

The power of governing and of legislating for a territory is the inevitable consequence of the right to acquire and to hold territory. Could this position be contested, the constitution of the United States declares that "congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States." *Sere v. Pitot*, 6 Cr. (10 U.S.) 332, 336 (1810). See also, e.g., *American Insurance Co. v. Canter*, 1 Pet. (26 U.S.) 511, 542 (1828); *First National Bank v. County of Yankton*, 101 U.S. 129, 132 (1879); *Shively v. Bowlby*, 152 U.S. 1, 48 (1894).

The Court is, of course, quoting Article IV, § 3, cl. 2.

In the Territories of the United States, Congress has the entire dominion and sovereignty, national and local, Federal and state, and has full legislative power over all subjects upon which the legislature of a State might legislate within the State; and may, at its discretion, intrust that power to the legislative assembly of a Territory. *Simms v. Simms*, 175 U.S. 162, 168 (1899).

Congress has wide discretion with respect to its manner of governing territories.

It must be remembered that Congress, in the government of the Territories as well as of the District of Columbia, has plenary power, save as controlled by the provisions of the Constitution, that the form of government it shall establish is not prescribed, and may not necessarily be the same in all the Territories. We are accustomed to that generally adopted for the Territories, of a quasi state government, with executive, legislative, and judicial officers, and a legislature endowed with the power of local taxation and local expenditures, but Congress is not limited to this form. . . . It may legislate directly in respect to the local affairs of a Territory or transfer the power of such legislation to a legislature elected by the citizens of the Territory. *Binns v. United States*, 194 U.S. 486, 491 (1904).

However, delegation of local self-government to a territory does not end or curtail Congress' continuing power to act in that territory. In *National Bank v. County of Yankton*, supra, the territorial legislature had authorized counties to issue bonds to encourage railroad construction; Congress thereafter enacted a law annulling the territorial act but preserving the effect of any action taken while the local law was in effect. Upholding Congress' power, the Court said:

All territory within the jurisdiction of the United States not included in any State must necessarily be governed by or under the authority of Congress. The territories are but political subdivisions of the outlying dominion of the United States. . . . The organic law of a Territory takes the place of a constitution as the fundamental law of the local government. It is obligatory on and binds the territorial authorities; but Congress is supreme, and for the purposes of this department of its governmental authority has all the powers of the people of the United States, except such as have been expressly or by implication reserved in the prohibitions of the Constitution.

In the organic act of Dakota there was not an express reservation of power in Congress to amend the acts of the territorial legislature, nor was it necessary. Such a power is an incident of sovereignty, and continues until granted away. Congress may not only abrogate laws of the

territorial legislatures, but it may itself legislate directly for the local government. It may make a void act of the territorial legislature valid, and a valid act void. In other words, it has full and complete legislative authority over the people of the Territories and all the departments of the territorial governments. *Id.*, 133.

In *Church of Jesus Christ of the Latter-Day Saints v. United States*, 136 U.S. 1 (1889), the Court sustained an act of Congress repealing the territorial legislature's law of incorporation of the Mormon Church, because of Congress' concerns about the practice of polygamy. Although the Utah organic act contained a provision requiring the submission to Congress for its approval or disapproval of acts of the territorial legislature, it was silent with respect to Congress' power to move subsequently to alter or repeal territorial laws, but this absence was of no concern to the Court.

But it is too plain for argument that this charter [of incorporation], or enactment, was subject to revocation and repeal by Congress whenever it should see fit to exercise its power for that purpose. Like any other act of the territorial legislature, it was subject to this condition. Not only so, but the power of Congress could be exercised in modifying or limiting the powers and privileges granted by such charter; for if it could repeal, it could modify; the greater includes the lesser. *Id.*, 46.

The case law, thus, identifies the territorial clause as the source of the plenary governing power of Congress with respect to the territories, supplemented by some general power of governing what it has acquired. Moreover, the decisions plainly seem to distinguish only two forms of local government under the Constitution: States, which form the Union, select electors who elect the President, select voting Members of the Senate and House of Representatives, and pass on amendments proposed to the Constitution, and territories, which share none of the political powers listed and which are subject to the plenary power of Congress. And some of the cases suggest that Congress may not divest itself of its plenary power.¹

II

¹ To be sure, this reading would constitute an expansive construction of the ambiguous fact that in both *Yankton* and *Latter-Day Saints* Congress had not reserved the power to act to alter or repeal territorial acts, not that Congress had expressly purported to divest itself of the power, but the Court's language seems not unreasonably to convey the expansive reading. Note, however, the reference in *Yankton* to "grants away" of the congressional power.

In this part of the memorandum, we return to two critical issues that were presented by our responses to the three specific questions in your inquiry. That is, may Congress by legislation bind itself so that in the future it *could not* legislate with regard to Puerto Rico under the territorial clause, and, if it may not, is it precluded from enacting legislation that devolves upon Puerto Rico a considerable measure of self-government, including almost complete sovereignty of action in local matters, that requires it to stay its hand in the future, so that it *would not* legislate about certain matters, even though it may not be bound not to act. The answers, we believe, while they require close analysis, are not difficult.

Congress' Power to Bind Future Congresses. - Generally, a legislative enactment cannot bind a future Congress or state legislature in the sense that the legislative enactment cannot be repealed or altered.³ That is, a legislative body cannot entrench a legislative action by providing that it may not be repealed or altered. "The principle asserted is, that one legislature is competent to repeal any act which a former legislature was competent to pass; and that one legislature cannot abridge the powers of a succeeding legislature. The correctness of this principle, so far as respects general legislation, can never be controverted." *Fletcher v. Peck*, 6 Cr. (10 U.S.) 87, 135 (1810)(Chief Justice Marshall).

Commentators have essayed many various answers with respect to the inability of Congress to "entrench" a legislative enactment. All eventually devolve into some variation of the legislature as agent of the people, a recipient of delegated powers conveyed by the Constitution, which was adopted by the people. See *THE FEDERALIST*, No. 76 (C. Rossiter ed. 1961), 487 (Hamilton)("no position which depends on clearer principles, than that every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void."). See also *id.*, No. 46, 294 (Madison)(governments are agents and trustees of the people). The Constitution itself is not ambiguous in terms of defining the priorities of authority. The supremacy clause, Article VI, cl. 2, makes the Constitution the supreme law of the land, as well as laws made in pursuance of the Constitution and treaties made under the authority of the United States. Thus, the Constitution is not alterable by ordinary legislative act. *Marbury v. Madison*, 1 Cr. (5 U.S.) 137, 177 (1803). But with respect to statutes and treaties, which have equal status subordinate to the Constitution, a court called upon to apply and enforce two inconsistent provisions will always apply and enforce the later in time, the subsequent law, giving force to the power of the legislative body to alter or repeal its enactments. This state of affairs is most noteworthy in the instance of conflicts between statutes and treaties, for, despite the different ways they become the law of the land - statutes being passed bicamerally and presented to the President, treaties being negotiated by the President, with the Senate advising and consenting -- a later statute may repeal an earlier treaty, *The Chinese Exclusion Case*, 190 U.S. 581, 600 (1889); *Whitney v. Robertson*, 124 U.S. 190, 194 (1888); *Head Money Cases*, 112 U.S. 580, 599

³ For extensive treatment, see Eule, *Temporal Limits on the Legislative Mandate: Entrenchment and Retroactivity*, 1987 AM. B. FOUND. RES. J. 379.

(1884), and a later treaty may repeal an earlier statute. *Cook v. United States*, 288 U.S. 102 (1933).

Recourse to the instance of treaties reveals what is at the foundation of the power of a government to alter or revoke the commitments it may have made: that government which is sovereign, which answers to no higher authority, may have the discretion to act that other governments lack. The United States may disavow its treaty obligations, and in so doing it may place itself in violation of the treaty, but in the international arena there is no juridical body to which one may repair for a remedy. The States within the federal system do not have that discretion. Under the supremacy clause, the Constitution, federal law, and treaties supersede inconsistent state laws and actions, and the Supreme Court is available to establish that supremacy as a result of judicial recourse. And, to note the obvious point, Congress, as well as the entire federal establishment, is subject to the Constitution's denial of certain powers to them, denials which, again, are enforceable through recourse to the courts. But, in the absence of a limitation, Congress has discretion to act on its own conceptions of policy. And, just as constitutional statutes and treaties under the supremacy clause supersede otherwise valid state laws, constitutional statutes and treaties, as a matter of principle under the supremacy clause and under the territorial clause, as well as under Article I § 8, cl. 17, with regard to the District of Columbia and certain areas acquired by purchase, supersede the enactments of those entities which do not have coordinate status with the United States. But, in the absence of federal constitutional constraint or federal statutory or treaty law, state legislatures, the legislature of Puerto Rico, and the legislatures of other jurisdictions bound to the United States in some way may alter or amend their laws previously enacted.

To be sure, some congressional enactments, by their nature, are irrevocable. If Congress should admit Puerto Rico as a State, it could not subsequently repeal the law and make Puerto Rico something else. If Congress should grant Puerto Rico independence, it could not subsequently repeal the statute and make Puerto Rico a possession or something else, without Puerto Rico's consent, at least in the absence of something more forceful than enactment of a law.

One other general exception relates to the protection accorded contracts. Under the contracts clause, Article I, § 10, cl. 1, no State may impair the obligations of contracts. Although it seems clear that the clause was intended originally only as a rule against legislative interference with private contracts, the Marshall Court early established its application to public contracts, such as charters and licenses. *Fletcher v. Peck*, 6 Cr. (10 U.S.) 87 (1810); *Trustees of Dartmouth College v. Woodward*, 4 Wheat. (17 U.S.) 518 (1819). Interstate compacts, entered into between or among the States and consented to by Congress under Article I, § 10, cl. 3, are contracts to which the contracts clause applies. *Green v. Biddle*, 8 Wheat. (21 U.S.) 1, 92 (1823); *West Virginia ex rel. Dyer v. Sims*, 341 U.S. 22, 33 (1951) (Justice Reed concurring); *id.*, 35 (Justice Jackson concurring); *Petty v. Tennessee-Missouri Bridge Comm.*, 359 U.S. 275,

285 (1959)(Justice Frankfurter dissenting).⁸ Therefore, legislation which constitutes a contract or which results in one becomes vested in the sense that a subsequent legislature cannot repeal it. *Fletcher v. Peck*, supra, 135 ("When, then, a law is in its nature a contract, when absolute rights have vested under that contract, a repeal of the law cannot divest those rights.")

The contracts clause itself inhibits only the actions of the States. With respect to the Federal Government's contracts, it is the "less searching standards" of the due process clause that governs. *PBGC v. R. A. Gray & Co.*, 467 U.S. 717, 732-733 (1984). Even so, federal efforts to avoid liabilities arising out of its own contracts have been found to deny due process. *Perry v. United States*, 294 U.S. 330 (1935); *Lynch v. United States*, 292 U.S. 571 (1934). And see *Sinking Fund Cases*, 99 U.S. 700 (1879). But these cases exemplify the kinds of contracts which fall within the paradigm: financial obligation cases. Even under the contracts clause itself, the Court has long since departed from the confining standards of the early cases, holding that governments may not be deemed to have given up their essential attributes of sovereignty, such as the police power authority to legislate for the public welfare. *United States Trust Co. v. New Jersey*, 431 U.S. 1, 23 (1977). See esp. *Stone v. Mississippi*, 101 U.S. 814 (1880). More forcefully, outside the financial obligation area, the Court has iterated the principle in the context of the Federal Government that "contractual arrangements, including those to which a sovereign itself is party, remain subject to subsequent legislation by the sovereign." *Bowen v. Public Agencies Opposed to Social Security Entrapment*, 477 U.S. 41, 52 (1986)(internal quotation marks omitted). See also *Manigault v. Springs*, 199 U.S. 473, 487 (1905).

Therefore, it seems evident that, absent the kind of promise which is the essence of the contracts covered by the clause, say, a guarantee of the "full faith and credit" of the United States in backing bonds, a statute, which in fact constitutes a promise of future inaction or forbearance by Congress in devolving "home rule" on a territory or conferring some powers presumably in perpetuity, would not be held to constitute a contract enforceable by the courts.

We may conclude, then, that Congress may not commit future Congresses to the observance of the arrangements it concludes for the government of the entities over which it has ultimate authority.

Congress' Power to Promise Future Deference. - If the conclusion be accepted that Congress cannot legally bind a future Congress to respect the degree of autonomy that it has so far conferred and may confer in the course of an enhancement of Commonwealth status, must one conclude that Congress may not enter into any agreement with Puerto Rico, respecting self-government

⁸ To the extent that Congress may legislate with respect to the subject matter of an interstate compact, because, typically the compact concerns a matter of federal interest or Congress would not have been called upon to consent to it, Congress is not bound by the compact. It may legislate to effectuate federal interests at its discretion.

and local autonomy? It is not at all evident why there should be an affirmative answer to this question. An affirmative answer would make voidable the Commonwealth arrangement entered into in 1950-1952. It would make voidable the arrangements entered into with several territories. It might make voidable the District of Columbia "home rule" arrangement entered into in 1985. After all, in terms of Congress' promise, the only difference between Puerto Rico and the District of Columbia is that with respect to the latter Congress reserved to itself the authority to veto enactments by the D. C. City Council before they go into effect. As we saw in regard to the territories involved in *First National Bank v. County of Yankton*, 101 U.S. 129 (1879), and *Church of Jesus Christ of the Latter-Day Saints v. United States*, 136 U.S. 1 (1889), the absence of a reservation to alter or amend territorial law was irrelevant. In view of Congress' continuing authority to legislate, should there be some talismanic significance to the presence or absence of a reservation?

What Congress did in 1950-1952 in conjunction with Puerto Rico, we have concluded, was to agree that Puerto Rico was to have almost complete autonomy in local government and that Congress would not interfere. That agreement has been maintained, although there have been a number of congressional actions which, arguably, may have departed from the agreement, depending upon how one defines all the elements of the agreement.⁴ Because, if the conclusions expressed herein are correct, Puerto Rico remains subject to Congress' legislative jurisdiction under the territorial clause and because Congress may legislate about anything in Puerto Rico, where is the constitutional problem?

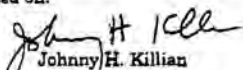
Now, if Congress were to state expressly that it was giving up territorial jurisdiction, that henceforth no change in law within Puerto Rico would occur without the mutual consent of the United States and Puerto Rico, that Puerto Rico could determine which federal laws were to apply within Puerto Rico, and, perhaps, much more, what constitutional provision would be violated? To be sure, Congress could not give up its power under the territorial clause, and a declaratory statement to that effect might be erroneous and ineffectual, and thus perhaps unwise as a policy matter, but hardly unconstitutional. And why may not Congress agree that only through mutual consent would changes be effectuated in Puerto Rico? It could certainly honor that commitment, even though in the background would be the constitutional power to disregard it. Congress could agree on a procedure under which Puerto Rico could deem inapplicable to Puerto Rico a federal law; Congress could establish a procedure under which a State could do the same thing, and it has occasionally done so. Ultimately, of course, Congress might legislatively override a state or Puerto

⁴ Helfeld, *op. cit.*, n. 14, 110 F.R.D., 465-466. That is, Professor Helfeld contends the agreement, the compact, includes the terms of the Puerto Rican Constitution and the provisions of P. L. 600 and P. L. 447, which relate to the internal affairs of the Island. The Federal Relations Act, in his opinion, is not part of the compact, and thus several unilateral changes by Congress did not violate the agreement. One change in the Federal Relations Act, having to do with a rebate to Puerto Rico of the duty on rum, he thinks, presents a closer question.

Rican determination, but if Congress observed the agreement, where is the constitutional problem?

In his prepared statement before the Senate Committee on Energy and Commerce, presented February 7, 1991, then-Attorney General Thornburgh appears to conflate constitutional arguments with contentions founded on the inability of Congress to transfer away its constitutional powers and on the policy implications of embodying misleading commentary in legislation. For example, referring to proposed language that would interpose Tenth Amendment principles between Congress and Puerto Rico, he asserts that "[t]hese declarations are totally inconsistent with the Constitution." (p. 10). He also states: "We also doubt that Congress may effectively limit, by a statutory mutual consent requirement, its constitutional power under the Territory Clause to alter Puerto Rico's commonwealth status in some respect in the future." (pp. 10-11) (emphasis in original). While not free of doubt, his statement, we think, goes no further than our conclusions herein; that is, Congress may not finally divest itself of its delegated powers, but its entry into arrangements which require forbearance does not itself violate any constitutional command. Congress may, as it has done many times in responding creatively to governance problems, empower territories and other entities outside the States to engage in a large measure of self-government.

What is at the foundation of the issue appears to be the insistence of Puerto Rico that it be in fact not subordinate to the plenary power of Congress under the territorial clause. We have argued that Congress may enter into an arrangement under which Puerto Rico would have full local autonomy regarding everything in its Constitution and in the pertinent laws of Congress relating to local government. That system has endured since 1952, and Congress has adhered to it. We have argued that Congress may, if it chooses, enter into an arrangement under which Puerto Rico would have more authority for self-government. The sticking point seems to be the wish to have Congress' territorial powers renounced. Under the Constitution, as we have noted, there appears to be two kinds of political entities within the United States: the States and other entities subject to congressional legislation. We do not see how Puerto Rico would not ultimately remain subject to the exercise of Congress' legislative powers, but it seems easy to see how, subject to the nonexercise of those powers, Puerto Rico would in fact enjoy full and complete self-government within the framework of an agreement mutually agreed on.


Johnny H. Killian
Senior Specialist
American Constitutional Law

Mr. DE LUGO. Mr. Zafren prepared a legal analysis of the resolution. Mr. Killian has discussed Congress' ability to relinquish its territorial clause powers that we made reference to several times during this hearing today.

Finally, the Chair would like to thank the very able staff of this Subcommittee for preparing these hearings, both the hearings we had last week and today's hearing. They worked hard, diligently, and have done a fine job: Daisy Minter, David Stillwell, Brian Modeste, and Jeffrey Farrow.

And Manase Mansur. Thank you very much, Manase. The Majority didn't put your name down here, but the Chair is with you.

I would like to say that we will have one more hearing on this matter, and at that hearing, sometime in the near future—I hope that will be shortly after we return in September—we will be hearing from the administration, with the administration's witness. We hope that he will be confirmed by that time, and in fact I hope that he gets confirmed today. And with that, we thank you all. We stand in adjournment.

[Whereupon, at 2:03 p.m., the Subcommittee was adjourned.]

APPENDIX

AUGUST 3, 1993

ADDITIONAL MATERIAL SUBMITTED FOR THE HEARING RECORD



OFFICE OF THE GOVERNOR
American Samoa Government
Pago Pago, American Samoa 96799

A.P. Lutali, Governor
Taisasa P. Sunia, Lt. Governor

August 2, 1993

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SERIAL: 1032

Honorable Ron De Lago
Chairman
Subcommittee on Insular and International Affairs
Committee on Natural Resources
U.S. House of Representatives
Washington, D.C. 20515-6201

Dear Chairman De Lago:

I would like to thank you for the invitation to testify at the August 3, 1993 hearing on House Concurrent Resolution 94, sponsored by Representative Jose Serrano (D-NY). I appreciate the opportunity to provide, by copy of this letter, a statement for the record.

On behalf of the people of American Samoa, I would like to offer support for this resolution. We in American Samoa are proud of our relationship with the United States. We are also proud of the fact that this relationship was one freely chosen by our forefathers.

The people of Puerto Rico have the same right to choose their relationship with the United States. The proposed resolution expressing the sense of the Congress regarding the expression of self-determination by the people of Puerto Rico reaffirms the commitment of the people of the United States to this principle. The people of American Samoa share that commitment.

Further, we are in full support of the principle that in non-self-governing territories such as American Samoa, Guam, the Republic of Palau and the U.S. Virgin Islands the interests of the inhabitants are paramount. We support the inclusion of that principle in the proposed resolution.

Finally, the resolution as a whole reaffirms principles which we in American Samoa share with all Americans. These principles are fundamental to democracy, and they are as real and as precious in these times as they were in the times of our forefathers.

Honorable Ron De Lugo
August 2, 1993
page two

We support the reaffirmation of these principles which is contained in House Concurrent Resolution 94. We urge the Congress to pass the resolution as an expression of its sense regarding the expression of self-determination by the people of Puerto Rico.

Thank you for the opportunity to offer comment on this matter.

Sincerely,


A. P. LUJAN
Governor

cc: Congressman Eni F.H. Faleomavaega

**TESTIMONY ON HCR 94
BEFORE THE
COMMITTEE ON NATURAL RESOURCES**

AUGUST 3, 1993

BY

**HON. LETULI TOLOA
PRESIDENT OF THE SENATE**

AND

**HON. TALAVOU S. ALE
SPEAKER OF THE HOUSE**

**LEGISLATURE OF AMERICAN SAMOA
PAGO PAGO, AMERICAN SAMOA**

Honorable Chairman and Members:

Thank you for the opportunity to appear before you today and give testimony on HCR 94, a resolution by Congressman Serrano of New York, seeking to reaffirm the right of the people of Puerto Rico to political self-determination.

While the resolution is addressed specifically to the interests of Puerto Rico, you have decided to seek our views because of the general application of the questions to all the American territories. We appreciate sincerely your concern and consideration.

The right of the people of Puerto Rico to self-determination should be reaffirmed. The same treatment should apply to all of us in the territories. We make that statement in support of the resolution. But in point of fact, Mr. Chairman, we believe that right is inherent in our being Americans. Time and again, the Congress and officials of the past administrations have confirmed that to us. But it is reassuring to know that Congress is considering a specific resolution on the point.

Politically, American Samoa has developed in a manner quite to our liking. We dare say that only a handful of minorities in the world today, can make that boast. We have reached a status almost like that of a state, without suffering the pain and turmoil experienced elsewhere. American Samoa is well aware of the limitations of its present status. But at the same time, we value the right and the opportunity to do things the "Samoan way". Our present status has allowed us that.

We do not lack the ambition to be like a state in all the sensible meaning of the word. The question for us has always been the price we must pay, and whether such would involve compromising our culture, customs and traditions. To us, Mr. Chairman, the practical aspects of our development have been of greater concern. The fact that our people have not raised the issue for decades is a clear indication of their preference for the status quo.

Our last complete and indepth study on the issue of political status was conducted and reported in 1969. Since then, our

people have not even felt the need to conduct another reassessment. They feel it is more beneficial to the people to direct our resources to the problems of improving the daily standard of living.

The leadership of our territory is aware of efforts emanating from this body to study and review our political status. We believe in your wisdom Mr. Chairman and members. We know that you will allow nothing to happen which would in any way affect our status, without our full awareness and participation. In point of fact, gentlemen, we believe this resolution is an address directed at that very point - that the people of Puerto Rico have the full and final say with regards to their own political status - as Americans.

While confident in our possession of the right of self-determination, let me be very, very clear that our people have no intention of entertaining thereby the notion of independence. The people of American Samoa consider themselves "Americans" and any suggestion of going independent is "unAmerican".

In fact, Mr. Chairman, many of us leaders do not even think it is beneficial to conduct studies into these questions at this time. There have been suggestions that we rethink and perhaps even renegotiate our basic relationship with the United States. While there is possibility of gains, we do not relish the thought of negotiating with our own government.

Why do we make these expressions, Mr. Chairman? Because we feel you need to know how secure we are in our minds of the rights we possess and the status we enjoy. American Samoa knows that if ever there is a time when it would need to consider a change in political status, it will be free to do as it wishes, and with the full protection of the U.S. Congress, for it has said often that it is the interests of the inhabitants of the territories that is paramount in questions of this nature.

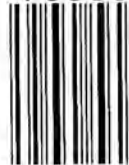
Through you, Mr. Chairman, may we express to the people of Puerto Rico our support as they seek to find a status that fits them best.

In conclusion, may we repeat our earlier remarks of appreciation at the invitation, and for your vigilance in the protection of our interests.

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