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The panel convened at 10:30 a.m., April 12, 1973, under the chairmanship of Sir James Plimsoll, Australian Ambassador to the United States.

THE EVOLUTION OF THE "AMERICAN EMPIRE"

*by José A. Cabranes**

Today, the anniversary of the death of Franklin Roosevelt, is especially appropriate for a discussion of the political evolution of two territories whose development, before and after his death, was shaped by Roosevelt's enlightened vision of world public order. The Trust Territory of the Pacific Islands (TTPI) was an inheritance of a war waged by the United States in affirmation of "the right of all peoples to choose the form of government under which they live." Puerto Rico's progressive dismantlement of colonial government had its origins in the New Deal. It was furthered by Roosevelt's support of Puerto Rico's Popular Democratic Party and a policy favoring self-determination and decolonization entrusted by Roosevelt to a succession of sympathetic and imaginative administrators. Both territories emerged in the postwar period as natural objects of the concern of the world community which Roosevelt helped to organize.

Following the war in which they played such a prominent role, the small islands of Micronesia moved from the status of a class "C" mandate of the League of Nations under Japanese administration to that of a "strategic trusteeship" of the United Nations under U.S. administration. The Charter, like the Covenant of the League of Nations, adopted the principle of international accountability by administering powers for the well-being and development of peoples which the Covenant had quaintly described as "not yet able to stand by themselves under the strenuous conditions of the modern world." Chapters XII and XIII of the Charter entrusted the development of the peoples of the TTPI to the administering power under the supervisory machinery of the Trusteeship Council and the Security Council of the world organization.

With respect to dependent territories other than those falling within the International Trusteeship System—such as Puerto Rico—Chapter XI of the Charter (the Declaration Regarding Non-Self-Governing Territories) imposed upon member states, "as a sacred trust," the obligation

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to promote to the utmost the well-being of colonial peoples. To this end, members of the United Nations were obligated to develop self-government in non-self-governing territories "according to the particular circumstances of each territory and its peoples and their varying stages of development."

What, if anything, do these disparate territories have in common? What, if anything, can each learn from the other's experience as an area under American administration?

The singular contribution of Puerto Rico to the developing international law of self-determination is the principle of "free association." This idea is reflected in the Spanish version of Puerto Rico's constitutional name: *el Estado Libre Asociado de Puerto Rico* (the Free Associated State of Puerto Rico.) The English-language version—the *Commonwealth* of Puerto Rico—is more confusing. "Free Associated State" is a preferable term, in both Spanish and English, because it is less ambiguous than the word "Commonwealth" and properly suggests the essential attributes of Puerto Rico's current political status: a state which is associated with—connected to—the United States but is not a part of the United States; and a state whose association is based upon the basic principle of consent by the Puerto Rican people.

The Free Associated State of Puerto Rico was proclaimed on July 25, 1952. After the organization of a government pursuant to a constitution of their own choosing, the people of Puerto Rico have remained connected to the American political system by applicable provisions of the U.S. Constitution and by a congressional statute known as the Puerto Rican Federal Relations Act. This connection or relationship is said to have been created "in the nature of a compact" between Puerto Rico and the United States embodied in the Federal Act. That compact, in turn, specifically provides that all statutory laws of the United States shall have "the same force and effect in Puerto Rico as in the United States," unless deemed inapplicable to Puerto Rico. Therefore, for Puerto Rico, whether a particular congressional enactment will or will not be applicable to it remains a constant source of preoccupation. This unusual arrangement between a dependent people and a wealthy and powerful metropolitan state has been repeatedly endorsed by the people of Puerto Rico in general elections and in a special plebiscite on political status held in 1967.

According to a monograph by the United Nations Institute for Training and Research (UNITAR), the idea of "free association" has been adopted by no less than nine small territories and is now under active consideration in the TTPI. By 1960 "free association" as an intermediate status between national independence and full and equal integration had found its way into the lexicon of UN practice. In that year, the General Assembly revised its statement of principles or "factors" indicative of whether or not a given territory has attained "a full measure of self-government" (Resolution 1541 (XV), December 15, 1960). Under these new guidelines, "free association with an independent State" requires a "free and

voluntary choice" by the people of the territory "expressed through informed and democratic processes." Furthermore, the people of the territory must reserve the "freedom to modify the status of that territory through the expression of their will by democratic means and through constitutional processes."

The establishment of the Free Associated State in 1952 was hailed by its architects as the end of Puerto Rico's colonial relationship to the United States. This view was confirmed by the UN General Assembly in 1953, when it accepted the position of the U.S. delegation that Puerto Rico's status of free association constituted the attainment of what the Charter calls "a full measure of self-government." As a result of that action, the United States discontinued submission of reports on Puerto Rico as required of states which administer "non-self-governing" territories. Nevertheless, advocates of Puerto Rico's integration into the American Union and proponents of national independence have continued to argue that the Free Associated State is merely a camouflage for the island's "colonial" status. Pro-independence groups repeatedly have petitioned diverse organs of the United Nations, most notably the General Assembly's Special Committee on Colonialism—(the "Committee of 24") for a review of the case of Puerto Rico and its restoration to the list of territories covered by Chapter XI of the Charter and the 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples (Resolution 1514 (XV), December 14, 1960). On August 28, 1972, the Committee of 24 adopted a resolution recognizing "the inalienable right of the people of Puerto Rico to self-determination and independence," and instructed a working group to report on the procedure which the Committee should follow with respect to Puerto Rico in the implementation of the 1960 Declaration.

One territory in which Puerto Rico's idea of "free association" has had considerable importance and influence between 1952 and the present is the TTPI. In 1966, the Congress of Micronesia asked the President of the United States to appoint a commission to study "the political alternatives open to Micronesia." The President turned the request over to Congress, which took no action on the matter. In 1967, Micronesia established its own commission, the Future Political Status Commission of the TTPI. Significantly, when two leaders of the TTPI Commission travelled to the United States at the outset of their status negotiations, they visited not only the United Nations (which supervises the U.S. administration of the TTPI), but also the Free Associated State of Puerto Rico and the American territory of the Virgin Islands.

In 1969, the TTPI Commission recommended that the TTPI should be "a self-governing state" with "Micronesian control of all its branches" and should "negotiate entry into free association with the United States." If this proposal proved impossible to implement, the Commission concluded that complete independence would be the only viable alternative. Following this report six rounds of discussions were held on the future political status of the TTPI between the TTPI Political Status Delegation

and a U.S. delegation headed by a special presidential envoy. These talks have included diverse initiatives in the direction of a "compact of free association" and, most recently, independence.

The compact of free association, currently under discussion between the United States and the TTPI, has some elements in common with Puerto Rico's compact. Both envisage a relationship based upon mutual consent. Both contemplate the right of the affected peoples to adopt and alter their own constitution and full U.S. responsibility and authority over matters relating to foreign affairs and national defense. Some differences between the two are notable. First of all, unlike the Puerto Rican compact, the TTPI compact will be, in every sense of the term, an *international* agreement. If adopted by the TTPI and the U.S. Government, the compact will become effective only after approval by the UN Trusteeship Council and the Security Council. Future problems of construction and interpretation presumably will be resolved not in the U.S. domestic arena, but in appropriate international forums. Moreover, the people of the TTPI already are the objects of concern of a substantial international apparatus and may directly appear before the Trusteeship Council. Under the Trusteeship Agreement, the Trust Territory Government may accept membership in international organizations and engage in forms of international cooperation. It has actively undertaken such roles in a number of regional international organizations. The degree of "international personality" possessed today by the TTPI is already immeasurably greater than that possessed by Puerto Rico, which has been classified by Professor Charles G. Fenwick among the territories "possessing so intangible a degree of international personality as to reach almost a vanishing point." In contrast to the case of the TTPI, where the UN jurisdiction is clear and undisputed, the jurisdiction of the United Nations over Puerto Rico is very much in dispute. The United States has never recognized the jurisdiction of the General Assembly or its subsidiary committees to pass upon the value or lawfulness of Puerto Rico's political status. In the U.S. view, questions concerning this status may be discussed and resolved only within political and judicial systems of the United States. With minor and inconsequential exceptions, Puerto Rico has not participated in international organizations. In comparison with the easy access of the 100,000 people of Micronesia to UN organs, the Government of the Free Associated State of Puerto Rico, representing three million people in a rapidly developing and highly sophisticated society, has no institutionalized means through which to defend itself from attack in the international arena, lacking even a representative or designee on the U.S. delegation to the United Nations. Indeed, it has less effective access to international organizations than those dissident groups within Puerto Rico who instigate attacks at the United Nations upon the Free Associated State.

The draft TTPI compact suggests possible areas for the growth and development of Puerto Rico's form of free association:

(1.) Under free association, the Government of Micronesia may seek associate or other membership for which it may be eligible in regional

international organizations and UN Specialized Agencies or subsidiary bodies of which the United States is a member. The U.S. Government would "give sympathetic consideration" to requests from the Government of Micronesia to apply for membership in other organizations of which the United States is not a member.

(2.) The Government of Micronesia may in its own name negotiate and conclude with international organizations of which it may be a member agreements of a cultural, educational, financial, scientific, or technical nature that apply only to Micronesia.

(3.) The Government of Micronesia may establish temporary or permanent representation of trade or other commercial interests in foreign countries and accept such representation in Micronesia.

These possibilities for autonomous action by Micronesia in the international community contemplate consultation between it and the U.S. with respect to all matters of mutual concern. The United States retains an effective veto power over any activity of the government of Micronesia which might conflict with the international commitments, responsibilities, or policies of the United States.

These proposals, fully endorsed by the U.S. Government, underscore the genuine commitment of the people and Government of the United States to the development of a compact of association which adequately protects the interests of the people of the TTPI without jeopardizing the international position of the United States.

For Puerto Rico, which now seeks to develop its own political status consistent with its form of association with the United States, the above indicates practical possibilities available to a people with the willingness to assert its legitimate political interests. By analogy with the proposed TTPI compact of association, various alternatives are already open to the Governments of the Free Associated State of Puerto Rico and the United States which require no substantial or prolonged constitutional or legislative action.

(1.) Puerto Rico's participation in the foreign relations of the United States, especially in areas vitally affecting Puerto Rican interests, might be institutionalized by executive or administrative regulations requiring that, in appropriate cases, a designee of the Government of the Free Association State be named to U.S. delegations to international organizations and specialized conferences. Is it not absurd that there exists no formal, institutional mechanism whereby the Free Associated State through a designee sitting on the U.S. delegation may properly defend itself from attack in the United Nations? Is it not clear that the United States and Puerto Rico have a common interest in defense of their compact of association? Moreover, delegations to specialized conferences, for example, on the law of the sea or on international trade and investment questions, invariably include representatives of *private* special interest groups in the United States. They should certainly be able to accomodate a representative of the *public* interests of the three million U.S. citizens of Puerto Rico. This is true of other areas of international concern in

which the Free Associated State has a special interest, including oil, petrochemical, and energy questions; the economic development of the Caribbean region; and technical assistance programs in the developing states.

(2.) The Free Associated State might become a member or an observer at UN Specialized Agencies (such as WHO, FAO, and ILO). It might also become a Permanent Observer at the Organization of American States. As in the case of Micronesia's draft Compact of Association, such arrangements might include the retention by the U.S. Government of an effective veto power over any activity by the Government of the Free Associated State which is likely to conflict with the international commitments, responsibilities, or policies of the United States.

Permanent Observer status at the OAS offers unusual opportunities for Puerto Rico's direct collaboration in matters not affecting U.S. foreign and defense policies. In April 1971, the General Assembly of the OAS established by resolution the status of Permanent Observer in order "to promote cooperative relations" with American states that are not members of the OAS (such as Canada and Guyana) and non-American states that participate in programs of the Organization. Puerto Rico's role as a Permanent Observer would be less consequential than the outright membership in such regional arrangements envisaged by the TTPI compact. Observer status in international organizations is not, of course, synonymous or comparable with the membership possibilities afforded by the draft TTPI compact. Observer status does, however, afford "mini-states" and associated states an opportunity to play a limited role in the world community without incurring the burdens and obligations of membership, without affecting the tone and structure of the international organizations concerned, and without impairing the predominant role of a member state in the direction of the foreign and defense policies of an associated state.

Seven non-American states now enjoy Permanent Observer status at the OAS (Belgium, France, Germany, Holland, Israel, Italy, and Spain). Even Japan is considering applying for Observer status. If these distant states have enough interest in the affairs of the Western Hemisphere to merit the status of Permanent Observers to the OAS, certainly Puerto Rico should enjoy a comparable status. Indeed, if Monaco has a sufficient interest in the world community to maintain an Observer Mission at the United Nations, certainly a Free Associated State which is the subject of considerable debate and attention at the United Nations should at least have access to the Organization's sessions, corridors, and lounges. The Secretary-General of the United Nations has suggested that Observer status may be a solution to the so-called "mini-state" question. Might it not also be a vehicle for the participation in world affairs of a technologically advanced associated state of three million people?

In conclusion, Puerto Rico and the TTPI possess the political resources and the creative statesmanship to develop a special form of self-government. In turn, the United States has demonstrated its good will

and genuine interest in the fulfillment of the expectations of peoples for whom it has assumed a "sacred trust." It is important that the people of the TTPI and Puerto Rico recognize the U.S. commitment to the principles of the UN Charter and, in particular, to the principle of self-determination. But self-determination, in the last analysis, requires a clear definition of *self*. It requires that a people know and identify their own interests. It further requires that a people be prepared to assert their claims forcefully.

Since the Roosevelt era, the United States has never attempted to frustrate the freely expressed wishes of the dependent peoples under its flag. Only a failure of will or a loss of nerve can prevent the peoples of these two territories from developing their respective compacts of free association in a manner fully consistent with the aspirations of their peoples.

Self-Determination in Puerto Rico

*By Jaime Benítez**

As a form of government the *Estado Libre Asociado*, or to use the English title the Commonwealth of Puerto Rico, reflects a cultural, economic, social, political process of long duration. It also embodies an explicit program of political pioneering initiated after the end of World War II.

Historically, the quest for an autonomous polity, united to a much larger metropolitan power to which the Puerto Rican community relates affectionately, as well as in common interests, citizenship, vicinity and joint achievements, goes back to the foundation of the Autonomist Party in 1887. In 1948 the Popular Democratic Party (then as now the majority party in Puerto Rico), searching for a way out of the two dead-end alternatives of integration or separation, proposed building a new political reality: a lasting association with the United States to be established along mutually acceptable lines.

The 1948 date is highly significant. The Popular Democratic Party, founded in 1938 by a great charismatic leader, Luis Muñoz Marín, had formulated an all-encompassing program of social reform. It promised to tackle the problems of destitution, unemployment, ignorance, and human injustices besetting "the real human being of flesh and bones who lives and dies in Puerto Rico" and to use the electoral process to that purpose. To sidestep the divisive issue of political status, the PDP pledged a moratorium on ultimate political goals. In the 1940 elections the PDP scored an unexpected but indecisive victory. After a highly successful if controversial administration that victory was rendered complete in the elections of 1944.

In cooperation with the last American Governor, the brilliant New

* Resident Commissioner of Puerto Rico.

Deal planner, Rexford G. Tugwell (1941–1946), with the full support of Presidents Franklin D. Roosevelt and Harry S. Truman, and with the enthusiastic backing of the Puerto Rican electorate, Muñoz Marín and his followers as well as an extraordinary team of competent and devoted administrators initiated a broad social, industrial, educational, and governmental reconstruction. It was pursued unflinchingly and progressively. The war itself permitted the accumulation of capital as well as emergency measures which in turn facilitated new departures from traditional patterns.

The 1948 general elections were the first to be held after the war and the pledge concerning ultimate political goals was no longer tenable. The colonial system was in process of liquidation everywhere.

Puerto Rico found itself in a paradoxical situation, in many ways in the exact opposite condition of communities in the Near East, the Far East, and Africa which were emerging from a colonial status. It also differed from the large majority of the communities in Latin America. In standards of living, trained manpower, human opportunities, social, cultural, educational, and economic development, and democratic procedures, Puerto Rico found itself much ahead and in fact at a completely different level from all the societies that later were to be identified as the Third World.

Furthermore, within a structure which technically and juridically could be called colonial, Puerto Rico had in fact achieved a higher stage of social development than that prevailing in many of the so-called independent nations. It was engaged in a process of internal decolonization normally regarded by colonies as a goal to be pursued after separation from the metropolis. What economic analysts were to call the *take off period* had already taken place in Puerto Rico. The upward spiral in Puerto Rico's economy was feasible basically because of our exceptional relationship with the United States. The task ahead for Puerto Rico was to retain, safeguard, and enhance those exceptional conditions and at the same time achieve political autonomy. What are those exceptional conditions?

(1.) The basic social, civic, economic, and educational rights of American citizenship as they are backed-up by federal resources, federal legislation, and federal courts.

(2.) The rights and duties of common defense with the stability and the solidarities inherent in such common responsibility.

(3.) The free access of Puerto Ricans to mainland job opportunities and the free access of Puerto Rican goods to mainland marketing opportunities.

(4.) A federal tax free zone, created by the Jones Act of 1917, which excluded Puerto Rico from direct federal taxation and facilitated necessary industrial development in Puerto Rico.

(5.) Provision, also in the Jones Act, that "all taxes collected under the internal-revenue laws of the United States on articles produced in

Puerto Rico and transported to the United States, or consumed in the island shall be covered into the treasury of Puerto Rico."

(6.) Refunding provisions concerning income derived from tariff duties on articles imported into Puerto Rico.

All of these conditions were highly favorable to Puerto Rico and had become inextricably interwoven in the fabric of Puerto Rican life. Under statehood some would be lost; under independence others would be lost. It was essential for Puerto Rico to retain them all for they were indispensable for Puerto Rico's continued growth and development and for the furtherance of its own cultural and political autonomy. Obviously a perfect symbiosis could not be achieved, but basic directives towards these objectives could be formulated. The PDP took such a program directly to the electorate.

Following an overwhelming victory at the polls, Governor Luis Muñoz Marín and Resident Commissioner Antonio Fernós Isern, as principal leaders of the Popular Party, took their proposals to President Truman and to the leaders of the U.S. Congress. Approval of the basic ideas was finally enacted "in the nature of a compact" in Public Law 600, signed by the President on July 3, 1950.

Public Law 600 required previous approval by the people of Puerto Rico in a referendum which was held June 4, 1951. The law was accepted by a vote of 387,016 for to 119,169 against. Subsequently delegates to a Constitutional Convention were elected in August 1951. The Convention recessed after approving the Constitution of Puerto Rico in February 1952, which was further approved by the electorate in a referendum held March 3, 1952 by a vote of 374,649 to 82,923. The U.S. Congress accepted the Constitution through a second public law involving an inconsequential modification, which the Constitutional Convention accepted. On July 25, 1952 Governor Muñoz Marín proclaimed the Constitution:

> . . . which a democratic and great-hearted people have forged for themselves and by which they have attained their political majority in the form of the Commonwealth of Puerto Rico.

The opportunity for self-determination for and against Commonwealth is built into the Commonwealth system. Puerto Rico has repeatedly asserted its self-determination in favor of Commonwealth status. Two referenda and a Constitutional Convention were preconditions to its establishment. After Commonwealth, all the general elections (6) which have been conducted regularly every four years have reaffirmed the validity of the basic principles of Commonwealth.

The results of the latest general election are particularly significant. On November 7, 1972 the electorate, including for the first time all persons 18 years old and over, returned the PDP to office by a decisive majority. In 1968 the New Progressive or Statehood Party had won the governorship, the House of Representatives, and the Resident Com-

missioner by a plurality of votes after pledging themselves to pursue a program of administrative and economic reforms and to respect Commonwealth. In the 1972 elections the PDP claimed that the Statehood or New Progressive Party had violated its pledge. The defense of the Commonwealth status and its advancement was one of the main issues put forward by the PDP. The Independence Party called for an all out participation. There were no abstentions or boycotts; 85% of the electorate participated. On the straight party ticket vote the returns were as follows:

PDP (Pro Commonwealth)	609,670
PNP (Pro Statehood)	524,039
PIP (Pro Independence)	52,070
All other parties	4,940
Total	1,190,719

Aside from the "daily plebiscite" of living together in peace, progress, and social solidarity, (which Ernest Renan describes as the ultimate test of the collective will) and in addition to the electoral evidence already mentioned, self-determination was also directly and specifically exercised on July 23, 1967 when Puerto Rico held a plebiscite on the precise issue of Commonwealth, Statehood, or Independence. Over 60% of the voters cast their ballots in favor of the Commonwealth. The Plebiscite Act and the ballot provided that a vote for Commonwealth involved:

> The reaffirmation of the Commonwealth . . . as an autonomous community permanently associated with the United States and for the development of Commonwealth to a maximum of self-government compatible with a common defense, a common market, a common currency and the indissoluble link of the citizenship of the United States.

Commonwealth status is open ended; it is neither static nor perfect but a continuing process. It provides the people of Puerto Rico with a flexible political structure within which their spiritual, social, economic, and personal life may continue to advance in civilized, livable, worthwhile, and meaningful ways. The great majority holds that these objectives can be achieved best in Puerto Rico and for Puerto Ricans with an autonomous society united in free, voluntary, fruitful, and permanent association with the United States.

The ultimate validation of Commonwealth is that it safeguards and advances the fulfillment of human rights, the full exercise of political freedoms, the public responsibility for economic development, the commitment to social justice, and the orderly change of laws, institutions, and structures through effective use of the democratic process; through that democratic process Puerto Rico has created and established its own chosen and preferred form of government. It is a form of government that maintains the frontier personality, avoids the pitfalls of nationalism,

keeps options of improvement open, and facilitates the living together of persons with diverging political aspirations.

Are the people of Puerto Rico to be told that what they have proudly endorsed as "Puerto Rico's own contribution to the struggle of man to achieve freedom, dignity and self-fulfillment in the Caribbean, based on the principles of autonomy, social interdependence and self-determination" is to be dismissed as being below standards and achievements supposedly prevailing in one hundred and thirty other communities? If so, on what evidence?

Political relationships and structures are unsatisfactory the world over. Many, if not all, of them rest upon assumptions and premises that have been rendered grossly defective by science, technology, and interlocking economies as well as overflowing populations and shifting values. A sadder, and not particularly wiser, mankind approaches the end of the 20th century without adequate political instruments through which to channel, foster, and protect the values of human solidarity, tolerance of differences, and political responsibility in a shrinking world.

Perhaps the greatest theoretical merit of the architects of Commonwealth lies in their valiant effort to work out a political status which would fit the needs and aspirations of the people of Puerto Rico rather than have such needs and aspirations forced into preordained forms of political status which for Puerto Rico would be crippling and unacceptable.

Those of us who represent Commonwealth are fully aware of its shortcomings. We are committed to a program that would extend its range of responsibilities and would effect a more perfect union with the United States. We are committed further to accomplish these additional goals during the term of our responsibility in the same spirit of mutual understanding and trust that has distinguished our previous achievements. Therefore we are glad to discuss the values and limitations of Commonwealth at any and all academic, international, cultural or professional levels. At the same time there is only one political forum authorized to make changes and to pass judgment upon Commonwealth. That forum which has heretofore expressed its full endorsement of the principles of Commonwealth is constituted by the people of Puerto Rico.

Self-Determination and Independence: The Case of Puerto Rico

*by Ruben Berrios Martinez**

One of the fundamental objectives that has guided international society during the last twenty to twenty-five years has been the quest for self-determination for all peoples. For many former colonies, the principle of self-determination has already been fulfilled through the acquisition

* Senator, and President of the Puerto Rican Independence Party.

of national independence. For others, self-determination has been delayed, due in large part, to the balance of conflicting forces that have prevailed within international society during this same period of time. But the present interaction of these political and economic forces and their juridical effects at the international level have brought to the surface new expectations for those who still struggle to free themselves from colonialism.

As regards self-determination, the task of the international jurist is much simpler than that of the liberation forces. Were it not for the fact that the influence of this Society extends far beyond the juridical sphere and very deep into the political realm, I would not be here in Washington speaking to you. Dissertations are not enough to bring colonialism to an end. If the realm of law is anywhere close to the realm of justice, I know some of you will help in the just cause of Puerto Rican independence.

The juridical contradiction: In 1953, the UN General Assembly, then controlled by the colonial powers, approved a series of resolutions by virtue of which the United Nations relieved the United States from the obligation of submitting information under Article 73(e) of the Charter regarding the territory of Puerto Rico. It was supposedly determined at that time that through the establishment of the "Commonwealth" of Puerto Rico in 1952, our nation had ceased to be a colony of the United States. But twenty years later in 1972, the General Assembly approved a report of its Special Committee on Decolonization under which the Committee, recognizing the colonial condition of Puerto Rico, ordered a report on the procedure to be followed on the implementation of the Declaration on the Granting of Independence to Colonial Countries.

Undoubtedly, only a profound change in the political composition and expectations of the United Nations during these twenty years can explain this apparent contradiction. It is only through a full understanding of the nature of this contradiction and from a clear comprehension of the Puerto Rican reality that we can draw some conclusions regarding the principle of self-determination as exemplified in the case of Puerto Rico.

The Puerto Rican reality: Puerto Rico has been a possession of the United States since July 25, 1898, when it became part of the American empire as a prize of war obtained from Spain at the end of the Spanish-American War. Ever since that date, the United States has exercised economic, political, military, and juridical control over the occupied territory of Puerto Rico.

The metropolitan power has, for example, exclusive jurisdiction over such matters as citizenship, foreign relations, defense, immigration and emigration, foreign commerce, currency, maritime and air transportation, postal service, radio, and television. Furthermore, the United States exercises total or partial control over wages, labor-management relations, housing, environmental contamination and pollution, internal transportation, public health, quality standards for foods and pharmaceutical

products, bankruptcy, eminent domain over land and other properties, banking and loan organizations. Moreover, the decisions of the Supreme Court of Puerto Rico can be revised by U.S. federal courts by virtue of the primacy of the Federal Constitution over the Constitution of the Commonwealth of Puerto Rico.

The Congress of the United States has exercised control over these areas from 1898 to 1952 under the Federal Organic Acts of 1901 and 1917, and since 1952 by virtue of Public Law 600 and the Federal Relations Act, both enacted by the U.S. Congress. The so-called Constitution of the Commonwealth of Puerto Rico of 1952 is merely a municipal charter which permits Puerto Rico to exercise a limited degree of local autonomy no larger for all practical purposes than that exercised by the Puerto Rican Government before 1952.

The United Nations and Puerto Rico: As has already been mentioned, in 1953 through Resolution 748(VIII) the United Nations exempted the United States from its obligation of submitting information on the territory of Puerto Rico. Through this resolution, the General Assembly expressed the view that Puerto Rico had exercised self-determination and acquired self-government.

The criteria then utilized by the United Nations in making these determinations are contained in Resolution 742(VIII); similar criteria are contained in Resolution 1541(XV), approved on December 15, 1960. But it is important to note that neither in the debates in the Fourth Commission at that time, nor in the plenary sessions of the General Assembly, was there any analysis of how the criteria for self-government were or were not applicable to the case of Puerto Rico. The delegates' expositions were limited to affirming that the situation of Puerto Rico, upon approval of the 1952 Constitution, was equivalent to a measure of self-government sufficient to permit the discontinuance of the transmittal of information under Article 73(e) of the UN Charter. Moreover, a careful analysis of the criteria contained in the pertinent UN resolutions shows, beyond a shadow of a doubt, that Resolution 748(VIII) was in error. The status of "Commonwealth" did not then, nor does it at present, comply with the requisites for self-government set down by the General Assembly itself.

According to the United Nations a nonautonomous territory is considered to have achieved full self-government, for the purposes of Article 73(e), when it becomes an independent and sovereign state; when it enters into a free association with an independent state; or when it becomes an integral part of an independent state. Clearly, Puerto Rico has not become an independent nation and clearly, it is not a state of the North American Union. Consequently, the United Nations must have assumed for its 1953 decision that Puerto Rico had entered into an association with the United States compatible with Resolution 742(VIII) which lists the factors or applicable criteria. Among these factors, the most important are: (a) those referring to voluntary limitation of sovereignty and the power of the territory to modify its status; (b) those referring to the international personality of the territory; and (c)

those referring to the existence of different alternatives of self-government. Let us examine the applicability of these factors to the case of Puerto Rico.

Puerto Rico lacks the juridical power to modify the basic statutes which regulate its relations with the metropolitan power. This is true not only in theory, but in practice, for in the last 20 years the U.S. Congress has repeatedly refused to effectuate changes proposed by the Commonwealth Government. Neither can Puerto Rico freely make important amendments to its own limited internal Constitution as required by United Nations law since most important aspects of internal affairs, as has already been mentioned, fall within the control of the U.S. Government. Such modifications are always subject to the will of Congress which by disposition of the territorial clause in the U.S. Constitution has the power to regulate the territories belonging to that country. In fact, the measure of internal autonomy which Puerto Rico had in 1953 has actually decreased, for the U.S. Federal Government has further preempted such areas as wages, labor relations, health measures, oil imports, pollution, transportation, and the like. The limited jurisdiction that Puerto Rico at one time exercised over these areas has been decreasing.

With regard to the factors relating to international political status, it is evident that Puerto Rico does not fulfill the necessary requirements. Puerto Rico cannot enter into direct relations of any kind with other governments nor with international institutions. Neither can it freely negotiate, sign, or ratify international instruments. Puerto Rico clearly lacks the power to request admission to the United Nations, a prerogative that belongs in the American juridical sphere to the Federal Government. Puerto Rico is not a member of the United Nations, nor of any other international organization, simply because it lacks the pertinent legal capacity, another one of the factors which United Nations law requires be taken into consideration when analyzing whether a territory has or has not achieved a full measure of self-government.

As regards the criteria of choosing among different alternatives to self-government, Puerto Rico has never had the opportunity of freely selecting its desired political status. Upon approval of the so-called "Commonwealth" status of 1952, Puerto Ricans were merely given the opportunity, in a yes or no referendum, of choosing between the old Jones Act of 1916, as amended, and the new Jones Act under the name of the Federal Relations Act, together with a new municipal charter, which is called "Constitution" in Puerto Rico. Needless to say, we had an almost identical municipal charter before the approval of the so-called Commonwealth Constitution, the only difference being that it was not called "Constitution." This farcical exercise on self-determination was in reality justified upon the premise of colonialism by consent.

The 1967 plebiscite: It is necessary to analyze the 1967 plebiscite which posed the alternatives of independence, statehood, and commonwealth. It was held with the sole intention of validating a posteriori

the great deception by which the United Nations was induced to approve Resolution 748(VIII) of 1953.

This plebiscite was not valid in light of the objectives and procedures established both in the rules and the practices of the United Nations:

First, the U.S. Congress did not pledge itself beforehand to accept the majority will in the plebiscite. The Federal Relations Act was in full force during the plebiscite; there was not the slightest indication that a vote for independence or statehood by the Puerto Rican people would have been respected by the United States.

Second, there was no definition of the alleged broadening of the Commonwealth status so as to make it consonant with UN requirements of self-determination.

Third, the United Nations did not authorize or supervise the plebiscite; it was supervised by the colonial party in power.

Fourth, actual participation was in reality limited to the defenders of two political formulas, the so-called association (Commonwealth) and integration. The colonial government included the independence formula against the will of the Puerto Rican independence forces who believed no fair plebiscite could be held under existing conditions of colonial domination; the voters had no opportunity to vote against the plebiscite as there was no way to do so on the ballot.

Fifth, the plebiscite was held in a territory occupied by U.S. naval, air, and submarine bases and in which such repressive agencies as the FBI and the CIA were actively functioning.

Sixth, the defenders of the colonial status had at their disposal unlimited economic resources and the control of the mass communication media.

It is clear from the preceding analysis that the so-called Commonwealth status did not in 1953, nor does it in 1973, comply with the requirements for self-government established by the UN General Assembly in Resolutions 742(VIII) and 1541(XV). It is also clear, from the point of view of international law, that Resolution 742(VIII) which determined that Puerto Rico had exercised self-determination is not *res judicata* and is, therefore, subject to reversal by the General Assembly. But fortunately, the law of the United Nations in the decolonization field has moved at such a fast pace during the last twenty years that such reversal of a previous declaration of the Assembly has for all practical purposes been obtained sub silentio through a new legal structure created by the United Nations in 1960.

Independence—the only alternative: In Resolution 1514(XV) the UN General Assembly "solemnly proclaims the necessity of putting a rapid and unconditional end to colonialism *in all its forms and manifestations*, and this is based on the conviction that "all peoples have *an inalienable right to absolute freedom*, to the exercise of their sovereignty and to the integrity of their national territory." The resolution goes on to say that "in *all those remaining territories which have not yet attained their independence*, measures should immediately be taken to transfer

all powers to the people of those territories, without conditions or reservations, in conformity with their will and freely expressed rights and without distinction as to race, creed, or color, in order that they may enjoy *absolute freedom and independence*." In order to implement this resolution the General Assembly then created the Special Committee on Decolonization.

Resolution 1514(XV) clearly contemplates the achievement of independence as the only form of exercising self-determination and terminating colonialism. It is not incompatible with Resolutions 742(VIII) and 1541(XV), which established "association" and integration, together with independence as relations which justify the cessation of reports under Article 73(e) of the Charter. Both resolutions are in harmony. In the case of association, a country may reach a level of self-government which would justify the cessation of reports. The colonial power would be exempted from that obligation, but it would still be bound and obliged to take measures aimed toward granting independence to the concerned territory. In the case of integration, freely chosen by countries with similar cultural heritage, Resolution 1514(XV) would not apply, since the integrated territory would cease to exist as a separate political entity.

The 1972 resolution: Only by fully comprehending the aforementioned juridical reality can we understand the decision of the Special Committee on Decolonization of August 28, 1972, which reads as follows:

> The Special Committee on the Situation With Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples,
>
> Having considered the question of the list of territories to which the Declaration is applicable,
>
> Recognizing the inalienable right of the people of Puerto Rico to self-determination and independence, in accordance with General Assembly Resolution 1514(XV) of 14 December, 1960,
>
> Instructs its working group to submit to it a report, at a date early in 1973, relating specifically to the procedure to be followed by the Special Committee for the Implementation of General Assembly Resolution 1514(XV) with respect to Puerto Rico.

The 27th General Assembly approved the Committee's work program for 1973, which includes the report required by this resolution, thus recognizing, in effect, the colonial condition of Puerto Rico.

As a consequence of this decision, the United States is not under a strict juridical obligation to submit information under Article 73(e), but it is definitely under the obligation to grant independence to the people of Puerto Rico. It is also under the obligation to refrain from acts which will impede the process of decolonization of Puerto Rico; to the contrary it must take affirmative steps to achieve an immediate transfer of all authority and sovereignity to the people of Puerto Rico.

We must conclude, therefore, that under modern international law self-determination and independence are synonymous. In the case of Puerto Rico, this means that it cannot achieve self-determination until

it attains independence. Self-determination is a continuous exercise of power. It is contradictory to argue that nations can self-determine themselves out of self-determination. This is what colonialists try to sustain.

Self-determination has been delayed in respect to Puerto Rico because of the direct interference of the most powerful empire of all times. But the profound liberation forces that have developed in Puerto Rico, in the United States, and in international spheres during the past decades will, in the outcome, crystallize within the Puerto Rican society and we shall have freedom.

The Trust Territory of the Pacific Islands: Some Perspectives

*by Roger Clark**

I shall examine the Trust Territory from four overlapping perspectives: as part of the Pacific; in light of the concept of self-determination; in light of American "security interests"; and a final one I shall call epistemology. This last has to do with what the people want and how we know.

(1.) *The Trust Territory as part of the Pacific*: The colonial powers that have dominated the Pacific (and the inhabitants of the Trust Territory have now lived under four of them—Spain, Germany, Japan, and the United States) showed great ingenuity in the constitutional arrangements they devised for governing scattered, sparsely populated islands that are on the whole economically poor for all except a moderate subsistence existence. There have been colonies and protectorates, a condominium, mandates, and trust territories. The process of decolonization has demonstrated similar ingenuity; the emergence, for example, of the Independent Republic of Western Samoa (pop. 130,000); the Republic of Nauru (6,000); the Kingdom of Tonga (90,000); and the Cook Islands (21,000), a self-governing state in free association with New Zealand; Fiji (500,000), which like its big Commonwealth brothers Australia and New Zealand shares the Queen of Great Britain; Hawaii, a full-fledged state of the union; and Guam, an unincorporated territory, its inhabitants apparently proud of their American citizenship and looking forward to even closer ties. The Trust Territory is not unique in most of its problems. Of the two most likely courses for the Territory, the Cook Islands provides the free association model; Nauru and Western Samoa are models on the independence side. The Gilbert and Ellice Islands to the South, feeling some of the same disintegrating forces as the Trust Territory, are following fairly well-worn British paths to complete self-government and probable independence. Occasional suggestions for a great Pacific federation founder rapidly on insularity and coral reefs

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but the South Pacific Commission is promoting some common interests and a sense of identity.

Most of the islands I have mentioned are undercapitalized and lacking in natural resources. In the short, and perhaps even the long run, if they are to have a 20th century economy, they will need capital and perhaps subsidies from the former governing power or from other international sources. A subsidy of some sort may be necessary even to maintain the functions of government.

(2.) *Self-determination*: The negotiators in the Future Status Commission are at this point eager to keep open the option of independence as one form of self-determination. The provisions of Article 82 of the Charter relating to the notion of a strategic trust were tailormade to fit the former Japanese mandated territories which had been used in such manner as part of the Japanese war effort. Nevertheless, security interests as interpreted in Washington were not contemplated as eternally paramount by the founding fathers at San Francisco. Even a strategic trust is subject to the "basic objectives" of the system set out in Article 76 of the Charter which include the promotion of "the political, economic, social, and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the peoples concerned." (The draft Trusteeship Agreement as presented by the United States to the United Nations omitted the key words "or independence" but in response to prodding by the Soviet Union they appeared in the final version.) Another basic objective of the system is "to further international peace and security" but it is hardly overriding in a clash with the principle of self-determination. The United Nations is unlikely to take the position that a people's freely expressed wish for independence should give way to a U.S. claim that it is holding on in the interests of peace and security as it sees it.

Independence, in terms of the Charter and the Trust Agreement (to say nothing of the customary norm crystallized by, or at least developed under the aegis of, the 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples) is clearly an option which is lawfully open to the people or peoples of the area. On reading the UN documentation on the Territory, especially the Reports of the Trusteeship Council and its Visiting Missions, I found interesting the extent to which the option of free association is also regarded as perfectly valid. There was of course a certain skepticism in the General Assembly about the genuineness of the desire of the Cook Islanders to remain associated with New Zealand and even more in the case of the British Associated States in the Caribbean. But the documents make no serious criticism of the possibility of free association for the Trust Territory, so long as it really is free. Statements to this effect are underscored in the Trusteeship Council by regular references to the often ignored General Assembly Resolution 1541(XV) of December 15, 1960 with its list of moderate principles which should guide members in determining whether or not

an obligation exists to transmit information under Article 73(e) of the Charter. No doubt this has occurred in part because of the composition of the Trusteeship Council where the moderating hands of Britain, Australia, and France have penned most of the Reports, in contrast to the General Assembly and its Committee of 24. (The Visiting Mission which has recently returned from the Territory is in fact the first to contain a Soviet representative.) Whether the same plain sailing would occur should the issue of terminating the Trusteeship on terms short of independence come before the Security Council is another matter.

A discussion of self-determination must inevitably raise the question of which "self." Does the Territory constitute one people by definition, or do we bow to the reality of nine language groups and a diversity of cultures and take the Territory apart? Should the 1,000 Polynesians in the Southern Carolines be allowed to go it alone? In UN practice it is considered taboo to consider dismembering a dependency or former dependency despite its crazy-quilt colonial boundaries. After all, self-determination is aimed at removing the colonial powers, not at Balkanization. Viewed from this perspective it is easy to see the United States talks with the Marianas (whose population in 1971 constituted 13,000 of the total of 107,000 in the Trust Territory) as just another divide and rule ploy by the colonial masters. The 1970 UN Visiting Mission recorded its view that "like its predecessors, [it] naturally considers that there could be no question of the Mariana Islands being separated from the rest of the Trust Territory while the Trusteeship Agreement is still in force." Even so, the Mission conceded that there was some force to local demands for treating the Marianas separately. The hope expressed in last year's Trusteeship Council Report "that a course of separation would not be considered until all possibilities for partnership had been explored" seems doomed at this point in time.

Another facet of the independence option is what has been called the "mini-state dilemma." The thought of a large influx of tiny states into the UN, each with its one vote, must be a reason to pause but in itself it should not be a reason for denying legitimate aspirations to go it alone. Membership in the international community is not necessarily the same as being entitled to UN membership. Small Pacific states have already solved the size problem creatively. Western Samoa did not apply for UN membership but entered into a Treaty of Friendship with New Zealand after independence under which New Zealand's diplomatic advice and services are available to the Republic. Nauru has obtained a type of associate membership in the British Commonwealth. Fiji has carefully limited its diplomatic outposts. Independence, even in the post-colonial era, is a relative concept and dignified arrangements can be worked out with common sense and good will.

The same comments seem applicable to the question of the Territory's lack of economic viability. The time is long past when independence can be denied on this ground. Indeed one can perhaps see developing (under the umbrella of the human rights principles contained in the Charter) a norm that small ex-dependencies are *entitled* to continued

assistance from the former metropolitan power or from the international community.

(3.) *American security interests:* It is hard to escape the feeling that one option the United States does not contemplate with equanimity is that of complete independence without guarantees for American military installations. Fears of Japanese military resurgence underlay the inauguration of the trust. Doubts about the adequacy of Guam as a last bastion against other potential attackers and the need for some place not too close to home to test fancy hardware underlie the wish to stay. In the course of the fifth round of status talks last April, Ambassador Williams restated the American position that defense authority was required in three categories:

(a) The responsibility for the defense of Micronesia.
(b) The ability to prevent third parties from using Micronesia for military-related purposes; and
(c) The right to use U.S. military bases which might be established in Micronesia to support U.S. security responsibilities in the Pacific Ocean area.

In his review of what that means in detail, the Ambassador said that the United States did not need any land for military use in the districts of Yap, Ponape, or Truk. There was a continuing need for missile research facilities in the Marshalls and, in the near future, a need for military-use land in the Marianas, particularly in Tinian. In Palau the United States seeks only options to lease land and "arrangements that assure future maneuver rights."

There have been few public statements of outright opposition to the American military presence. But in November last and again in December the traditional elected leaders in Palau unanimously made just such a statement. The preambular paragraphs contain the thought that the presence of U.S. installations would make them a prime target in the event of conflict. They prefer the target to be somewhere else. This interesting thought has engendered some similar public sentiment in Australia and New Zealand, the Territory's more sophisticated neighbors to the south.

I have already expressed my opinion that the Charter and the Trust Agreement do not give the American military rights in perpetuity over the area. The time is at hand when the inhabitants are entitled to a free choice on whether they want the presence to continue.

(4.) *Epistemology:* At some stage, as in other Trust Territories, there will probably be a UN-supervised plebiscite. How will we know if the people of the Territory have expressed their views freely and genuinely? Chairman Ed. Pangelinan, at the opening of the Marianas Status Talks last December, stated that: "More than any nation with which we have had contact, the United States has brought to our people the values which we cherish and the economic goals which we desire. Continued affiliation with the United States offers the promise of the preservation of these values and the implementation of these goals." I fear that for "economic goals" you must read "canned fish" and the

other goodies of industrialism. Are these Marcusean false needs? Is this statement something of an epitaph for a society whose true values have been destroyed by its putative trustees? It seems to me that, deliberately or by accident, the wants of the people of the Territory have been manipulated in the direction of American capitalist values. If the Micronesians become sufficiently dependent upon the U.S. economy, they may be unable to opt out. This could well be what has been happening in the Marianas. But the situation in the rest of the territory is more complex. The setting up of the Congress of Micronesia has apparently added another force pulling in the opposite direction, as its members and their electors take their powers seriously. Self-determination amounting to independence—the grasp backwards to hold tight to what remains of old values, or even an attempt to have it all ways—may yet carry the day.

The Applicability of the Principle of Self-Determination to the Trust Territory of the Pacific Islands

*by James M. Wilson, Jr.**

There can be no doubt that the principle of self-determination is applicable to the Trust Territory of the Pacific Islands.[1] The UN Charter applies it. The United States as administering authority under its 1947 trusteeship agreement with the Security Council has explicitly and repeatedly recognized its applicability. The real question is precisely what elements of the principle are applicable, how they are to be applied, and within what framework.

Given the history of debates in this learned society on the topic of "Self-Determination," it would be clearly presumptuous on my part to enter into an academic argument about how that term is to be defined. I doubt, however, if we need to go quite as far as Professor Emerson in pointing out that "self-determination has from time to time been referred to as the right of a winner in a Darwinian conflict for survival."[2]

Matters have by no means reached that state in Micronesia. For the sake of brevity let me confine myself to the easy definition of Harold Johnson, who says simply that "self-determination is the process by which a people determine their own sovereign status."[3] That is really what our current discussion with the Micronesians regarding their future

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[1] Throughout this presentation the terms "Trust Territory of the Pacific Islands" and "Micronesia" will be used interchangeably, although it is recognized that the latter term is sometimes considered broader in scope and lacks the precision of the former.

[2] R. Emerson, *Self-Determination* 65 AJIL 474 (1971).

[3] H. S. Johnson, Self-Determination within the Community of Nations 200 (1967).

political status is all about.[4] Indeed the situation in Micronesia is not nearly as complex in many respects as in other areas where the principle has been tested. The issues in Micronesia are reasonably straightforward, although a few of the answers may still be somewhat obscure.

Obligations of the U.S. Government as Administering Authority: The obligations are clearly set forth in the 1947 Trusteeship Agreement, which is explicitly made subject to the provisions of the UN Charter regarding self-determination.[5] Of special relevance to today's discussion is that section of the Trusteeship Agreement which obligates the United States as administering authority to "promote the development of the inhabitants of the Trust Territory toward self-government or independence, as may be appropriate to the particular circumstances of the Trust Territory and its peoples and the freely expressed wishes of the peoples concerned."[6] This language parallels exactly the language of Article 76 of the Charter.

Also relevant are several resolutions of the General Assembly which though declaratory in nature represent at least a consensus so far as principles are concerned, in particular Resolution 1514(XV) on the granting of independence to colonial countries and peoples, which declares that all people have the right to self-determination and Resolution 1541(XV) regarding the principles to be applied in determining whether or not a non-self-governing territory has reached its full measure of self-government. (Although abstaining in the vote on these resolutions, the United States nevertheless agreed that their essential elements were applicable to the Trust Territory.[7]) Also relevant are the provisions on equal rights and self-determination in the 1970 UN Declaration of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations.[8]

Negotiations to end the Trusteeship: Since 1969 representatives of the U.S. Government and Micronesia have been engaged in negotiations to determine the future political status of the islands and terminate the trusteeship. The Congress of Micronesia in 1969, after examining various alternatives, expressed a clear preference for "a self-governing Micronesian state in free association with the United States."[9] Last fall they also asked for negotiations on "the establishment of Micronesia

[4] Nor is it profitable for present purposes to engage in a long exposition of the differences between the "right" and the "principle" of self-determination. Emerson, Higgins, Gross, and others have worked this over well, with essentially inconclusive results. We are dealing wisely here with only the lesser of these and it is unnecessary to decide now whether there is also a legal "right." (See Emerson, *supra* note 2, at 460–61).

[5] Article 76 specifically makes reference to the Purposes of the United Nations, including *inter alia* the "principle of equal rights and self-determination of peoples," in establishing the objectives of the Trusteeship System.

[6] TIAS 1665, 61 Stat. 3302–03. (1947).

[7] See statement of U.S. Representative to the Trusteeship Council, June 13, 1961. UN Doc. T/PV 1147, at 7.

[8] *See* General Assembly Res. 2625(XXV), Oct. 24, 1970.

[9] Report—The Future Political Status Commission, 17, Congress of Micronesia, 3d. Cong., 2d. Sess., Saipan, TTPI, July 1969.

as an independent nation, while continuing negotiations toward Free Association."[10]

Following the rejection by the Micronesian Congress of earlier U.S. offers of unincorporated territorial status and a modified commonwealth status, agreement was finally reached last year on the idea of a "Compact of Free Association" under which Micronesia would have its own constitution and full responsibility for its own internal affairs. The United States would be responsible for external affairs and defense, and for the latter purpose limited amounts of land would be made available for U.S. military facilities for an agreed term of years.[11]

Still to be negotiated are specifics regarding financial arrangements, nationality, transition, and termination. As for the latter, it has been agreed in principle that for a period of years the association would be terminable only by mutual consent but could be terminated thereafter unilaterally. When completed the compact is to be given to the Micronesian and American Congresses for approval and thereafter put to the people of Micronesia in a plebiscite representing a sovereign act of self-determination.

Is this the wording we like?

As early as 1950 the Marianas had publicly shown their dissatisfaction with the "accident of history" which had lumped the rest of the Marianas with the Carolines and Marshalls after the U.S. acquisition of Guam at the end of the Spanish–American War. The people of the Northern Marianas by history, tradition, language, and ethnic and family ties had been linked with Guam from time immemorial and not with the rest of Micronesia. Their desire for a closer relationship had been expressed in a long series of votes and petitions to the United States and the United Nations. The Marianas, nevertheless, had gone along with the other districts of Micronesia during the early stages of negotiations with the U.S. Government. However, in late 1971 when it became clear that the rest of the Micronesian delegation wanted a looser association than previously contemplated, the Marianas asked for separate negotiation of a much closer relationship between themselves and the United States. The United States finally agreed in the spring of 1972 and separate talks were initiated in Saipan last December.

The Congress of Micronesia in its 1969 Report on Future Status had recognized this desire of the Marianas for closer association and had stated it had no objection so long as this would not result in intolerable harm to minorities in the Marianas or to Micronesia as a whole. Micronesian negotiators also interposed no objection when representatives of the Marianas on their delegation formally broke step. However, at the end of February of this year, a badly divided Micronesian Congress passed a "sense of the Congress" resolution declaring that it considered its negotiating committee to be the *sole* body authorized to negotiate

[10] Future Political Status of the TTPI Micronesia, at 13, Proc. of the Sixth Round of Negotiations, Barbers Point, Hawaii, Sept 28-Oct 6, 1972.

[11] Text of incomplete tentative draft Compact is appended to Final Joint Communique issued in Wash., D. C. Aug. 1972. Proc. of Fifth Round, Micronesian Status Negotiations, Wash., D. C., July 12-August 11, 1972, at 20-35.

with the United States on behalf of *all* parts of the Trust Territory. The United States for its part was already on record in the UN Trusteeship Council to the effect that, while the Trusteeship Agreement can be terminated only for all districts at once, there is no legal obstacle to a negotiation with one part of the Trust Territory which would lead to its separate status after the Trusteeship ends.[12]

Self-Determination issues: At least two issues have been raised thus far regarding the application of the principle of self-determination to these Micronesian status negotiations. The first is by now almost a classic argument: can the result of the exercise of self-determination be anything less than full independence; that is, will the principle of self-determination be fulfilled if the people of Micronesia of their own free will choose a status of free association with the United States rather than full independence?

The U.S. Government has been consistent in its position on this score since the earliest days of debate on the UN Charter. Then the United States set forth an objective of self-government, which by definition could include independence for those who aspired to it and were capable of assuming the responsibilities involved but did not make independence mandatory. As Ralph Bunche explained it, "The issue as it affected the trusteeship system was finally resolved by providing alternative goals of self-government or independence in accordance with the particular circumstances of each territory and its peoples and their freely expressed wishes."[13] Moreover, the obligation of the administering authority under the Trusteeship Agreement is also expressed in the alternative: self-government *or* independence--meaning, of course, "self-government and independence or self-government alone."[14]

The U.S. position is also perfectly compatible with the declaratory resolutions of the General Assembly. While Resolution 1514 speaks of the granting of independence to non-self-governing peoples, it points out that the exercise of self-determination involves a free determination of their political status; and this is what the U.S. and Micronesian delegations have agreed to do. In addition both Resolution 1541, adopted almost contemporaneously, and the 1970 Declaration on equal rights and self-determination recognize that a legitimate outcome of the exercise of self-determination may be not only independence but also association or integration with an independent state. Ample precedent exists for an arrangement of free association between dependent areas and independent states, possibly the closest example being the case of the Cook Islands whose desire for continued ties with New Zealand was accepted even by the Committee of 24.

The second issue concerns the right of the Marianas District to pursue separate negotiations with the United States. The argument here is also familiar. Self-determination is held by some to apply only in exter-

[12] UN Doc. T/PV 1389 at 11 (1972).

[13] *See* R. Bunche, *Trusteeship and Non-Self-Governing Territories in the Charter of the United Nations*, 13 DEPT. STATE BULL. 1037, 1038-1040. (1945).

[14] *See* E. Toussaint, THE TRUSTEESHIP SYSTEM OF THE UNITED NATIONS, 58 ff. (1956).

nal relations, when it is directed against a foreign power, and not internally, when it might apply to minorities within the dependent unit. The question here is the unit to which the principle of self-determination is to be applied.

Before 1947 the several districts of the Trust Territory were never united politically except under very loose colonial administration. The Northern Marianas was separately administered for years even under the Trusteeship. Also, as one of the current leaders of Micronesia has said, "Today there is no Micronesia—if there is to be one tomorrow we will have to create it."[15]

Since the start of the Trusteeship, U.S. policy has been to promote the unity of the Territory and avoid further fragmentation if at all possible. In finally agreeing to separate negotiations with the Marianas, however, the U.S. Government was strongly influenced by the unique history of the Marianas and their repeatedly expressed desire for a separate, close relationship. As stated by the U.S. Representative to the UN Trusteeship Council: "Had the United States responded other than positively to the Marianas initiative, that could have lead ultimately to an imposition upon the people of the district of a political status they had made abundantly clear they did not want."[16] Or as was observed in the formal U.S. response to the Marianas request, a negative reply "would deny them their right of self-determination."[17] There is precedent again for separation in UN practice, found in the case of the termination of the British Trusteeship in the Cameroons. The contrary argument, however, goes back to the early discussions of the Charter itself where it was stated that the principle of self-determination "conformed to the purposes of the Charter only insofar as it implied the right of self-government of peoples and not the right of secession."[18] On the other hand, as I explained to the latest U.N. Trusteeship Council Visiting Mission before it visited the territory in February of this year, the Marianas did not regard this as a case of secession but rather a request for a divorce after a shot-gun marriage.

Possibly these issues will never be solved to the full satisfaction of all the scholars and all the countries of the world. The important thing in the Micronesian situation today, however, seems to be not the legal argument but a very pragmatic political consideration—how to assure the realization of the freely expressed will of the peoples concerned. In this regard there is much to be said for the views advanced in this forum five years ago by Professor Fisher when he made his plea for flexibility in the application of the principle of self-determination to micro-states and said, "Self-determination is not a single choice to be

[15] Quoted by Amb. F. Haydn Williams in *Hearings before the Sub-Comm. on Territories and Insular Affairs, House Comm. on Interior and Insular Affairs*, March 15, 1973 (not yet published).

[16] UN Doc. T/PV 1389, at 11 (1972).

[17] "The Future Political Status of the TTPI," at 68, Offi. Rec. of the Fourth Round of Micronesia Future Political Status Talks, April 2–13, 1972.

[18] 6 UNCIO 295 (1945).

made in a single day. It is the right of a group to adopt their political position to a complicated world to reflect changing capabilities and changing opportunities."[19]

The CHAIRMAN, inviting discussion, said that several legal questions had emerged. First, could the exercise of self-determination for a territory be completed at a stage short of full independence? It was clear that independence could be achieved by merger with another state; for example, British Togoland had become part of Ghana and the British Cameroons was another example. It was also clear that independence did not require membership in the United Nations; Nauru, Tonga, and Western Samoa had not applied for membership. But could self-determination be completed with some form of political status other than full independence, for example, some constitutional association with another country? Senator Berrios had argued that self-determination, as provided for in the UN Charter, was not finished until there was full independence. Other speakers had taken a different view.

Secondly, could self-determination result in the division of a territory or did the territory have to remain intact? SIR JAMES was of the view that this point had been decided by the United Nations having agreed to the division of the British Cameroons, when as a result of plebiscites the southern half of that Trust Territory had become part of Cameroon and the northern half had become part of Nigeria. But some related questions deserved consideration. What processes should be followed in deciding whether a territory should be divided? Did the people of the whole territory have to consent to the territory being divided, or would it be sufficient that those in a distinctive area of the territory held a strong view for a separate entity?

Thirdly, was the act of self-determination a once and for all, irrevocable act? Could the people of a territory have second thoughts? Could they, having agreed to one political status, subsequently in the name of self-determination seek something different? It might be said that, if the right of self-determination had been exercised, any subsequent change was a matter of domestic policy to be decided by the play of political forces in the territory. But there was a related question. Could the international community, as represented by the United Nations, divest itself permanently of the right to concern itself with the status of a territory so long as that territory had not achieved full independence? Could the people of a territory, not fully independent, remove from the United Nations that right? Senator Berrios would argue that the United Nations retained such a right until full independence had been achieved. Some other speakers would take a different view.

The CHAIRMAN concluded with a final question, namely, how were the present status of, and the current developments in relation to, Puerto Rico and the Trust Territory of the Pacific Islands related to the foregoing questions? He then opened the session for comments and questions.

[19] R. Fisher, *The Participation of Micro-States in International Affairs*, [1968] PROC. AMER. SOC. OF INT. LAW, 166.

With reference to the role of the United Nations in the process of self-determination, Senator Berrios was asked whether he thought the United Nations could impose self-determination on Gibraltar, and whether the act of self-determination is consummated with the attainment of independence. If so, are there any options open to parts of the new state to express their self-determination? Senator BERRIOS replied that self-determination constitutes a continuing exercise of power, independence being the first necessary step in the process. An act of liberty cannot be exercised in slavery; therefore self-determination cannot take place under colonial conditions. As regards free association, a nation must first be free, *i.e.*, independent, before entering into an association with another nation.

The question was raised whether in the event of Puerto Rican independence the emerging structures might not reflect the preindependence situation as a result of the lasting effects of American imperialist manipulation of Puerto Rican public opinion. Senator BERRIOS wholeheartedly agreed with this possibility. As he pointed out during his presentation, the United States exercises extensive controls over important sectors of Puerto Rican life, among them the political and economic spheres and the mass media. The Senator added that the question of Puerto Rican self-determination cannot be dealt with solely in terms of juridicial issues; socio-economic considerations must also be taken into account.

Asked whether the termination of the Pacific Islands trusteeship and the conditions thereof would be guaranteed by the United Nations, Mr. WILSON responded affirmatively, indicating that, this being a strategic trusteeship, appropriate termination conditions would be guaranteed ultimately by the Security Council.

At this point the Chairman introduced Mr. ANTONIO B. WON PAT, Delegate of Guam to the U.S. Congress, who had previously requested an opportunity to address the meeting. Mr. WON PAT referred to Guam's own struggle for self-determination and the accomplishments of the people of Guam in this endeavor under the enlightened guidance of the United States. He noted the importance of economic factors in the self-determination process, stressing the fact that without adequate economic provisions self-determination is meaningless.

With respect to Commissioner Benitez's point that today there are no really independent states, including great powers like the United States, the panelists were asked whether they would subscribe to the Orwellian paraphrase that some nations are more independent than others. All countries are dependent, or better, interdependent, some more so than others, Mr. BENITEZ responded. He added that, if self-determination has to culminate in independence as the only possible outcome, it would not be self-determination but compulsion and imposition in the name of theory, a theory that reality has invalidated. With respect to the relationship between reality and law, Commissioner BENITEZ noted that Senator Berrios had taken flight from reality with the consequent misconception of Puerto Rico as a nation in bondage

under the constraints of American military occupation. This view, he added, is shared by some members of the United Nations, among them Cuba, the USSR, China, Bulgaria, and Tanzania, which try to impose independence on Puerto Rico in contradiction of the express desires of the Puerto Rican people. These countries and the Puerto Rican independence forces resort to "juridical hocus pocus" to transpose actual Puerto Rican reality into theoretical bondage. In response to Mr. Benitez's remarks, Senator BERRIOS affirmed that the Puerto Ricans will free themselves notwithstanding the so-called "juridical hocus pocus."

Mr. CABRANES pointed out that the quality of debate on the issues of decolonization and self-determination invariably suffers as a result of the debasement of language and rhetoric. Colonialism and imperialism, for example, are now commonly employed as terms of abuse. Couched in Marxist vocabulary they connote to the leftist mind "the wickedness and decay of capitalism."

He expressed his agreement with Professor Julius W. Pratt in the sense that the American experiment with colonialism has been motivated by a variety of considerations, among them strategic, economic, and benevolent. Although he did not wish to appear particularly defensive of U.S. policy in Puerto Rico, Mr. CABRANES felt that the United States would respond favorably to the aspirations of the Puerto Rican people by supporting whatever political status they desire. Puerto Rico has chosen free association as a form of legitimate self-determination recognized by UN General Assembly Resolution 1541(XV) of December, 1960. Contrary to the wishes of Mr. Berrios and his colleagues, it is the people of Puerto Rico themselves and not any other group or institution who will make the ultimate decision regarding their self-determination and political status.

ANGEL CALDERÓN-CRUZ
JOHN TARKONG
Reporters

TOWARDS SALT II: INTERPRETATION AND POLICY IMPLICATIONS OF THE SALT AGREEMENTS

The panel convened at 2:30 p.m., April 12, 1973, Mason Willrich* presiding.

The CHAIRMAN remarked that the topic under discussion was the second session of the strategic arms limitation talks, or SALT II, the implications of these talks, and the available options for the future. Discussion of these issues, he observed, is very important since avoiding nuclear war has become the major preoccupation of our nuclear age. The idea of arms control is becoming legitimized as part of our national security

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