The European Court quickly rejected CBS U.K.'s argument that the division of trademark rights violated the anti-trust provisions of the Treaty of Rome. The Court held that since no "legal, economic, financial or technical" [4] links currently exist between the EMI and CBS Groups, any restrictive agreements entered into by their predecessors could not be considered as continuing in force when their only remaining effects were those flowing from the exercise of national trademark rights. Furthermore, stating that no showing of either a dominant position or an abuse of such a position on the part of EMI had been made, the Court held that EMI's exercise of its trademark rights would not violate Community law proscriptions of the abuse of a dominant market position.[5]

The Court went on to hold that the exercise by EMI of its trademark rights to prevent the importation of products bearing the same mark from outside the EEC could not be classified as "a means of arbitrary discrimination or as a disguised restriction on trade between Member States" [6] within the meaning of Community law. The opinion pointed out that although the Treaty of Rome expressly provided that quantitative restrictions and like measures should be prohibited *between member states,* these prohibitions did not apply to the importation of products *from a third country*. Finally, the Court emphasized the fact that, since the COLUMBIA mark is held by EMI in all the member states, the exercise by EMI of its trademark rights does not jeopardize that unity of the Common Market which it was the intention of the Treaty of Rome to ensure. Thus, the principle underlying the decision in the *Hag Case*[7] that "industrial and commercial property rights, and in particular trademark rights, may not be used so as artificially to split up the Common Market" [8] was found to have no bearing on the present case.

UNITED NATIONS TRUSTEESHIP — *Law to Approve the Covenant to Establish a Commonwealth of the Northern Marianas Islands in Political Union with the United States,* Publ. L. No. 94-241 (March 24, 1976).

The United States has provided by law for conferring commonwealth status upon the Northern Mariana Islands, part of the Trust Territory of the Pacific Islands, following the termination of the relationship between the United States and the entire trust territory.

4. Observations Submitted to the Court by the Belgian Government, 2 COMM. MKT. REP. (CCH) ¶8350.

5. Treaty of Rome, *supra* note 1, art. 86.

6. 2 COMM. MKT. REP. (CCH) ¶8350, at 7363.

7. Van Zuylen Freres v. Hag AG, [1974 Transfer Binder] COMM. MKT. REP. (CCH) ¶8230 (Ct. Just. Eur. Comm., 1974). In this case, the rights to a trademark having a common origin had become separated within the Community, one party owning the trademark rights in Belgium and Luxembourg, and the other, in Germany. Thus, both parties were proprietors of the mark within the Community, and the products, the prevention of whose importation was being sought, had been lawfully marketed in another member state. Moreover, since both parties in this case were nationals of member states, it was possible to arrange for reciprocity.

8. 2 COMM. MKT. REP. (CCH) ¶8350, at 7371.

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The Northern Marianas Islands, an archipelago of some 2,100 islands with a population of roughly 15,000, constitute one of the six districts of the Trust Territory of the Pacific Islands, commonly referred to as Micronesia.[1] The territory was assigned to the United States as administering authority in 1947 and is the only trusteeship created by the United Nations which has not yet attained independence or been made part of an independent state. Since Micronesia was designated a strategic area trusteeship by the 1947 agreement between the United Nations Security Council and the United States,[2] any alteration or amendment of the terms of the trusteeship must be approved by the Security Council.[3] By necessary implication, the United States cannot unilaterally terminate the trust relationship established by agreement with the United Nations, either by signing a covenant with the trust territory or by passing a law to that effect. To be valid, termination will need to be approved by the Security Council.

The Covenant to Establish a Commonwealth of the Northern Marianas Islands in Political Union with the United States (the Covenant) resulted from negotiations between Northern Marianas and United States representatives following the rejection by the territory-wide Congress of Micronesia in 1970 of proposed commonwealth status for the entire trust territory. The Covenant, approved by popular referendum in the Northern Marianas Islands and by the United States Congress, was signed into law by President Ford on March 24, 1976.[4] It provides that, following termination of the trust relationship, the Northern Marianas Islands will remain under the sovereignty of the United States as a self-governing commonwealth, a status similar to that of Puerto Rico. The commonwealth will be eligible to receive the full range of federal programs and services available to the other United States territories. In addition, the Covenant provides for guaranteed annual direct grant assistance of $13.9 million per year for an initial seven year period, after which time the same level of payments will be continued until Congress appropriates a different amount. Nationals of the Northern Marianas will be entitled to United States citizenship and to enjoy the right to local self-government in accordance with an internal constitution adopted by them, subject to the approval of the United States Congress. However, the United States constitution will be selectively applied to the Marianan "citizens," [5] and they will not have the right to vote for the United States President nor elect senators and representatives to the United States Congress. The United States will continue to act for the commonwealth in matters relating to foreign relations and defense. In order to effectuate defense of the islands, the Covenant provides for the leasing

1. There is no "Southern" Marianas island group. The designation of the "Northern Marianas Islands" was probably adopted in order to distinguish the group from Guam, which is the southernmost island of the Mariana archipelago.

2. Trusteeship Agreement for the Former Japanese Mandated Islands, Apr. 2, 1947, United Nations — United States, 61 Stat. 3301, T.I.A.S. No. 1665, 8 U.N.T.S. 190.

3. U.N. CHARTER art. 83.

4. Presidential Statement, 12 WEEKLY COMP. OF PRES. DOC. 483 (March 24, 1976).

5. Only the following articles of the United States Constitution will be applied to the Marianas people: art. 1, § 9, cls. 2, 3, 8; art. 1, § 10, cls. 1, 3; art. 4, §§ 1, 2, cls. 1, 2; amends. 1–9, 13; amend. 14, § 1; amends. 15, 19, 26.

of land to the United States for military bases, in return for a lump sum of $19.5 million.

The United States House of Representatives quickly approved the Covenant one month after the favorable Marianan referendum,[6] but the Senate granted approval only after lengthy debate on several domestic and international implications of the Covenant.[7] Senate critics of the Covenant argued that the assumption of military expenditures and heavy welfare burdens that annexation of the Northern Marianas Islands would entail was not justifiable in view of the Pentagon's assessment that the island group has little strategic value other than "strategic denial" to other powers. Supporters of the Covenant stressed the obligations of the United States as trustee to abide by the principle of self-determination and honor the express desire of the Marianans for a close relationship with the United States and argued that continued presence there would demonstrate to Japan and other nations the United States' resolve to maintain its position in the Pacific after Vietnam.

In addition to domestic policy objections, opponents in the Senate anticipated negative international reaction to the Covenant and urged delay in approving it until the political status of the rest of the trust territory had been resolved and the Security Council had been consulted. They raised the possibility of political and legal entanglements with the United Nations over the Covenant in the following respects.

In the first place, termination of a trusteeship as intended by the United Nations Charter must satisfy the principles of self-determination and full equality to the dependent people. Both the Charter and the terms of the 1947 Trusteeship Agreement require the United States to move the islands toward self-government or independence.[8] While the General Assembly's Declaration Regarding Non-Self-Governing Territories passed in 1960 and its subsequent implementation suggest that the United Nations may be unwilling to accept termination of a trusteeship on any terms short of independence,[9] Resolution 1541, passed the following day, provides that self-government of a trust territory may be achieved either by sovereign independence or by free association (with the unilateral right to withdraw from the relationship) or integration with an independent state.[10] Since the Covenant requires that any change in the relationship between the United States and the Mariana Islands must be approved by both parties, commonwealth status is a form of integration. Under Resolution 1541, integration is acceptable only when based on complete equality and equal rights of representa-

6. H.R.J. Res. 549, 94th Cong., 1st Sess., 121 Cong. Rec. H7117 (1975).

7. The covenant was approved by the Senate on Feb. 24, 1976. 122 Cong. Rec. S2256 (1976); for Congressional debates on the Covenant, *see, e.g.*, 121 Cong. Rec. S13209 (1975); 122 Cong. Rec. S1654 (1976); 122 Cong. Rec. S1683 (1976); 122 Cong. Rec. S2211 (1976).

8. U.N. Charter art. 76, para. b; Trusteeship Agreement, *supra* note 2, art. 6.

9. G.A. Res. 1514, 15 U.N. GAOR, Supp. 16, at 66 Annexes, (Agenda Item 87) 7, U.N. Doc. A/4684 (1960).

10. G.A. Res. 1541, 15 U.N. GAOR, Supp. 16, prin. 6, at 29 Annexes, (Agenda Item 38) 9, U.N. Doc. A/4684 (1960).

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11. *Id.* prin. 8.
12. *Id.* prin. 9.
13. 29 U.N. SCOR, Spec. Supp. (
14. G.A. Res. 1514, *supra* note 9.
15. 30 U.N. SCOR, Spec. Supp.
16. Report of the United Nation
Islands, 1976, 43 U.N. TCOR, Supp

tion for the "integrated" peoples.[11] The Covenant clearly denies the Northern Marianas people certain rights enjoyed by other United States citizens, such as certain constitutional guarantees and the rights to representation in Congress and to vote for the President. Moreover, Resolution 1541 specifies that adoption of this alternative of integration must be the result of the freely expressed and fully informed choice of the dependent people, once the integrating territory has achieved "an advanced stage of self-government."[12] Although the Covenant was approved by 78.8% of the Northern Marianas populace voting in a plebiscite held on June 17, 1975, with a United Nations observer present, the referendum was limited to a yes/no vote on the question of commonwealth status and thus presented little choice. Furthermore, the Marianan plebiscite preempted a scheduled Micronesia-wide referendum on July 8, 1975 to determine territorial opinion with regard to a wide range of alternatives of political status which were likely to be available to Micronesia. The separate Marianas vote thus disregarded the recommendations of the United Nations Trusteeship Council, which has carried out supervisory functions on behalf of the Security Council, that "consultations" of the Northern Marianas people on the question of their future status should not exclude any alternative and should be carried out simultaneously with plebiscites in the other districts of Micronesia.[13]

In addition to the questions surrounding the terms of integration of the Northern Marianas islands per se, it is not clear that the United States has the authority to fragment its trust territory in this manner. The General Assembly has asserted that any attempt to disrupt national unity and territorial integrity is incompatible with the purposes and principles of the Charter,[14] and the Trusteeship Council has expressed its dedication to the unity of Micronesia in numerous resolutions. However, recognizing the principle of self-determination and in view of the acceptance of the Covenant by both the Northern Marianans and the Congress of Micronesia, the Council has "taken note" of the provisions of the Covenant, while expressing the hope that close links between all of the districts of Micronesia will be maintained and leaving the possibility of reunification open.[15] The administrative separation of the Northern Marianas islands and the mutual consent requirement for any alteration of the commonwealth relationship in the Covenant seem to preclude any near-term realization of this reunification goal. Moreover, the secession of the Northern Marianas has set a precedent and appears to have encouraged separatist movements in two of the other Micronesian districts, which threaten to disrupt negotiations by the Congress of Micronesia for a status of free association with the United States for the rest of the territory as a whole.[16]

Finally, General Assembly resolutions have also called upon administering

11. *Id.* prin. 8.
12. *Id.* prin. 9.
13. 29 U.N. SCOR, Spec. Supp. (No. 1) para. 335, U.N. Doc. S/11415 (1974).
14. G.A. Res. 1514, *supra* note 9.
15. 30 U.N. SCOR, Spec. Supp. (No. 1) para. 416, U.N. Doc. S/11735 (1975).
16. Report of the United Nations Visiting Mission to Trust Territory of the Pacific Islands, 1976, 43 U.N. TCOR, Supp. (No. 3) ¶¶ 407, 410, U.N. Doc. T/1774 (1976).

powers to withdraw immediately and unconditionally their military bases and installations from dependent territories.[17] Whether or not the United States can circumvent the policy expressed in these resolutions by bringing a part of a trust territory into political union, and thereby acquire the right to build and maintain bases without the inconvenience of United Nations oversight, may be tested in the United Nations.

The United States has indicated its intention to bring the issue of termination of the Pacific Islands Trusteeship before the Security Council in 1980 or 1981, once the political future of the remainder of the territory has been determined. The United States may be challenged at that time for having sought unilaterally to alter the conditions of the strategic trusteeship conveyed by the United Nations, by passing a domestic law providing for fragmentation of the territory, for integration of the dependent Marianans without complete equality and without providing the conditions to ensure the exercise of their self-determination, and for retention of United States military bases on territory of the former trusteeship. In view of the persistent demand in the United Nations for the independence and territorial integrity of formerly dependent peoples, the United States may be hard pressed to defend the legality of the Covenant, which it has already begun to implement, before the Security Council.[18]

17. See, *e.g.*, G.A. Res. 2621, 25 U.N. GAOR, Supp. 25, U.N. Doc. A/8028, at 1 (1970); G.A. Res. 3163, 28 U.N. GAOR, Supp. 30, U.N. Doc. a/9030, at 5 (1973).

18. See, Comment, *The Marianas, The United States and the United Nations: The Uncertain Status of the New American Commonwealth*, 6 CAL. WEST. INT'L L.J. 382 (1976).

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