

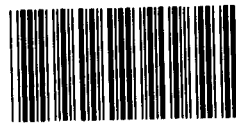
GAO

Report to the Ranking Minority
Member, Committee on Interior and
Insular Affairs, House of
Representatives

June 1991

U.S. INSULAR
AREAS

Applicability of
Relevant Provisions of
the U.S. Constitution



144197



United States
General Accounting Office
Washington, D.C. 20548

Human Resources Division

B-217276

June 20, 1991

The Honorable Don Young
Ranking Minority Member
Committee on Interior and
Insular Affairs
House of Representatives

Dear Congressman Young:

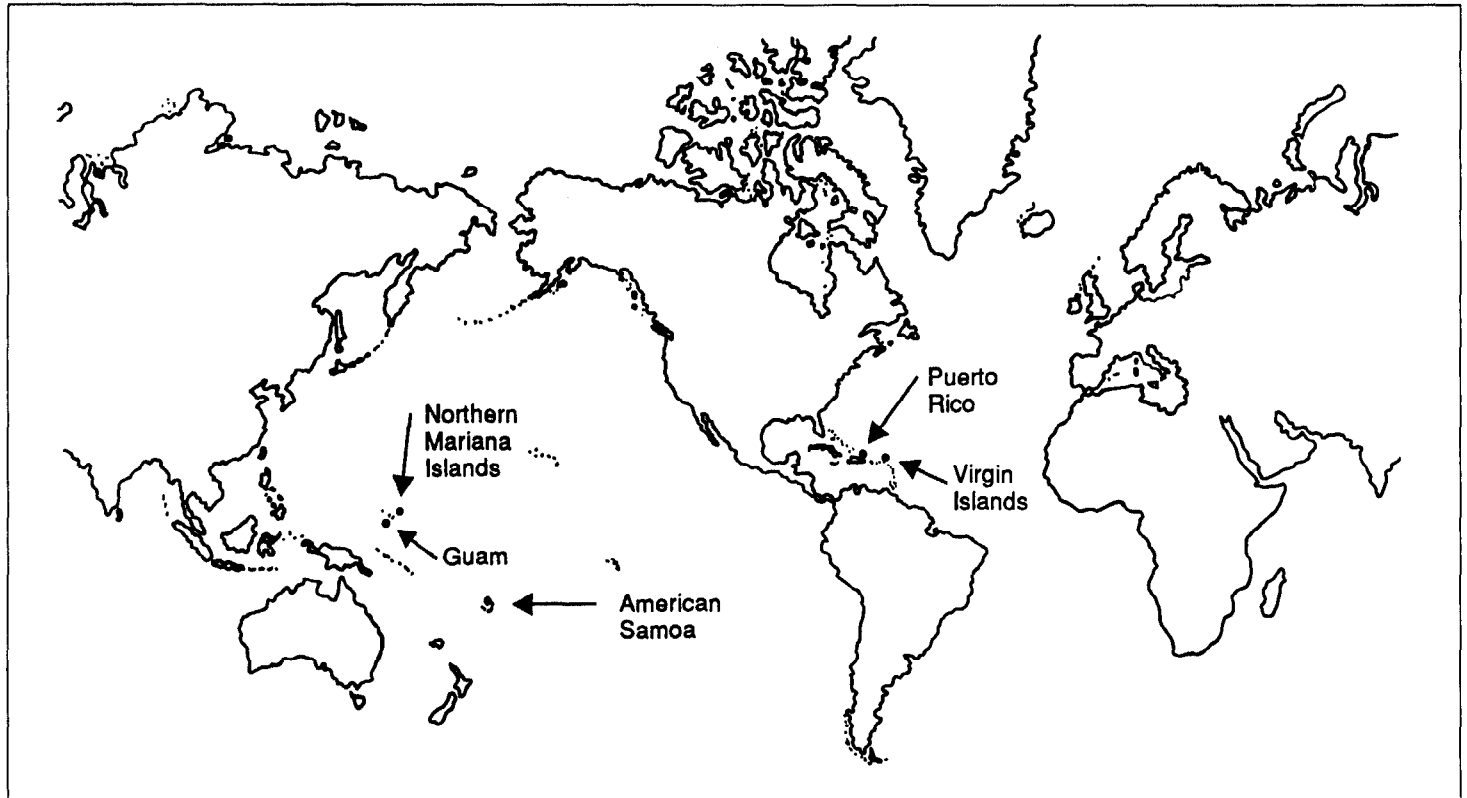
This report responds to your request for information on the treatment, under the U.S. Constitution, of five U.S. insular areas—Puerto Rico, the U.S. Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands (see fig. 1). We have included information on which provisions of the Constitution have been extended by federal laws to these areas and those the courts have determined apply to these five insular areas.¹

The Congress has extended certain constitutional provisions to the insular areas acting pursuant to the Territorial Clause of the Constitution.² The Territorial Clause authorizes the Congress to “make all needful Rules and Regulations respecting the Territory or other Property” of the United States. The courts determine the applicability of constitutional provisions by interpreting laws as well as the Constitution.

¹We use the term “federal laws” broadly. In addition to organic acts, our use of the term includes a covenant and a military decree. Organic acts are laws that confer powers of government upon a territory. The covenant is the Northern Mariana Islands Covenant. It is approved by the Congress and signed by the President, but differs from other federal laws in that it embodies a bilateral agreement and recognizes that certain unilateral changes to it would be a violation of that agreement. The military decree is the Naval Governor’s military decree for American Samoa. This executive action was taken pursuant to a delegation of authority from the Congress in 1929. It is not clear whether the decree continued to be in force after 1951 when the President transferred administration of American Samoa from a naval governor to the Secretary of the Interior. However, the naval governor’s Bill of Rights has become part of the local code of American Samoa.

²U.S. Const. art. IV, sec. 3, cl. 2.

Figure 1: Location of U.S. Insular Areas



Scope and Methodology

We researched relevant federal laws and court decisions to determine the applicability of specific provisions in the Constitution (see app. I) to the five insular areas.³ We also consulted with legal experts on relations with these insular areas. At your request, we focused on seven selected provisions or subjects:

- congressional representation,
- the Uniformity Clause,
- the Commerce Clause,
- presidential election,
- trial by jury,

³There are nine other U.S. insular areas that we do not address in this report. The areas are: Navassa Island in the Caribbean, and Baker Island, Howard Island, Kingman Reef, Jarvis Island, Johnson Atoll, Midway Island, Palmyra Island, and Wake Island in the Pacific. Most of these islands are wildlife refuges and uninhabited; however, Johnson Atoll and Midway and Wake Islands support a few U.S. military personnel.

-
- the Equal Protection Clause, and
 - voting rights.

We also agreed to review an eighth subject, income taxation in the insular areas, which does not involve a question of the applicability of the Constitution. In this section, we describe the extent to which federal income tax laws are followed in the insular areas.

The local constitutions or laws of insular areas often grant rights equivalent to rights granted by the U.S. Constitution, not explicitly extended by federal laws nor held applicable by federal courts. Therefore, for each of the eight subjects discussed in this report, we also summarized the comparable rights and provisions of local constitutions and laws governing the citizens of the insular areas.

We conducted our review between July and October 1990.

Limitations of Our Review

We use the phrase “insular area” in this report. This was done to avoid any implication about the political relationship of these areas with the United States. Each of the five areas has a unique historical and legal relationship with the United States and each considers the terminology used to describe that relationship to be a sensitive issue (see apps. V-IX).

There are numerous blank spaces next to the constitutional provisions in appendix I, which details the federal court cases and statutes that extend or exclude relevant provisions to the five insular areas. These blanks exist for two reasons. First, many constitutional provisions are not relevant to the states or insular areas. For example, provisions establishing and granting powers to the legislative, executive, and judicial branches of government do not directly affect states or insular areas. And second, we did not independently determine the applicability of those provisions that may be relevant, but only whether there was a federal court case or statute explicitly addressing them.

Background

The Constitution does not apply in full to the five insular areas, which are considered “unincorporated.”⁴ Unincorporated areas are under the sovereignty but not considered an integral part of the United States.⁵ As mentioned earlier, federal laws explicitly extend certain parts of the Constitution to specific insular areas. In addition, the Supreme Court long ago decided that “fundamental” personal rights declared in the Constitution apply to citizens of “U.S. territories.”⁶ Also, the courts have determined that certain other parts of the Constitution apply to individual insular areas, depending on each area’s unique relationship with the United States.

The Department of the Interior has primary federal responsibility for all insular areas except Puerto Rico. All departments, agencies, and officials of the executive branch deal directly with Puerto Rico; any matters concerning the fundamentals of the U.S.-Puerto Rican relationship are referred to the Office of the President.⁷ Interior’s role in administering the insular areas is primarily limited to providing technical assistance, representing insular area views to the federal government, and overseeing federal government expenditures and operations.

Since the United States established sovereignty over the five insular areas, each has pursued greater self-government. Originally, military governors administered the areas. Eventually, the governors were replaced by appointed civilian administrators. In subsequent years, the areas were authorized to adopt their own constitutions and elect their own governors. Puerto Rico, American Samoa, and the Northern Marianas have adopted constitutions; the Virgin Islands and Guam have not. All of the areas have elected governors (see app. II for more information on the relationships between the areas and the United States).

⁴The Supreme Court has held that the Constitution does not apply in full to unincorporated areas. *Balzac v. People of Porto Rico*, 258 U.S. 298 (1922); *Dorr v. United States*, 195 U.S. 138 (1904); and *Downes v. Bidwell*, 182 U.S. 244 (1901). See also *JDS Realty Corporation v. Government of the Virgin Islands*, 824 F.2d 256, 259 (3d Cir. 1987).

⁵In contrast, Alaska and Hawaii were incorporated into the United States before they became states. The Congress explicitly extended all provisions of the Constitution many years before granting statehood. The Congress extended the entire Constitution to Hawaii in 1900 and Alaska in 1912. See Act of April 30, 1900, sec. 5, 31 Stat. 141; and Act of August 24, 1912, sec. 3, 37 Stat. 512. Alaska and Hawaii were admitted to the Union as states in 1959.

⁶*Reid v. Covert*, 354 U.S. 1, 13 (1957); *Dorr v. United States*, 195 U.S. 138, 146-148 (1904); and *Downes v. Bidwell*, 182 U.S. 244, 290-291 (1901). Although the Court has not precisely defined which parts of the Constitution are fundamental, it has found, on a case-by-case basis, various parts to be fundamental. See, for example, *Balzac v. People of Porto Rico*, 258 U.S. 298, 312-313 (1922), in which the Supreme Court said that the right to due process of law is fundamental.

⁷Memorandum of the President, 26 Fed. Reg. 6695 (1961).

Residents of four of the insular areas are American citizens; American Samoans residing in the islands are for the most part American nationals, who may or may not be citizens.⁸ The residents of all five areas enjoy many of the same rights as U.S. citizens in the states. But some rights have not been granted to citizens of the insular areas.

Applicability of the Constitution to the U.S. Insular Areas

Federal law extends many provisions of the Constitution to one or more of the five insular areas. Although not all constitutional rights have been explicitly extended to the insular areas, their local constitutions and laws grant many of these same rights. Still, some constitutional rights cannot be granted by the constitutions and laws of the areas. For example, the residents of areas cannot vote in national elections, nor do they have voting representation in the Congress.⁹

A complete table of the constitutional provisions that federal laws explicitly extend and those the courts have determined apply appears in appendix I. The following is a summary of seven selected provisions or subjects in the Constitution as they relate to the areas.

Congressional Representation

The Constitution establishes the U.S. House of Representatives and Senate, to be composed of representatives elected by the citizens in each state.¹⁰ Not being states, the insular areas cannot elect representatives or senators. By statute, however, the Congress has created a form of representation. Four of the insular areas elect nonvoting members to the U.S. House of Representatives. Puerto Rico elects a resident commissioner for a 4-year term; the Virgin Islands, Guam, and American Samoa elect delegates for 2-year terms. These officials have similar staffing, mailing, and office space privileges as Members of the House and can vote in committee. They do not, however, vote on the House floor. The Northern Marianas has an elected resident representative who serves as liaison with the federal government. This representative does not enjoy the same privileges as the elected officials from the other insular areas.

⁸A national of the United States is a person who, either a citizen or noncitizen, owes permanent allegiance to the United States. 8 U.S.C. 1101(a)(22). Some federal laws are extended only to U.S. citizens and would exclude American nationals who are not citizens. For example, only U.S. citizens are eligible to receive commissions in the armed forces. 10 U.S.C. 532(a)(1).

⁹To extend such constitutional rights, which apply only to residents of states, to the insular areas, would require admission to the Union or amending the Constitution.

¹⁰U.S. Const. art. I, secs. 2 and 3.

Uniformity Clause

The Uniformity Clause requires that certain taxes (“Duties, Imposts and Excises”) imposed by the Congress be uniform throughout the “United States.”¹¹ In 1901, the Supreme Court held that the Uniformity Clause did not apply to Puerto Rico because the island did not fit within the meaning of “United States,” as that term is used in the Uniformity Clause.¹² The courts have not addressed the applicability of the Uniformity Clause to any of the other four areas. But if the Supreme Court’s rationale was applied to them, the result would most likely be the same.

Commerce Clause

The Commerce Clause gives the Congress the power to regulate commerce both between the United States and foreign nations and among the states.¹³ Court decisions on the applicability of this clause to the areas have not been consistent. A 1980 federal district court compared Puerto Rico’s relationship to the United States with that of a state and held that the Commerce Clause applies to Puerto Rico.¹⁴ In 1985, the Ninth Circuit Court of Appeals held that the clause does not apply to Guam.¹⁵ The court, pointing out that the 1980 case involving Puerto Rico was decided after Puerto Rico had become a commonwealth, based its decision regarding Guam largely on the island’s unincorporated status. In 1987, the Third Circuit Court of Appeals reached a different conclusion and held that the Commerce Clause does apply to the Virgin Islands.¹⁶ The court concluded that the status of the Virgin Islands as an unincorporated territory was of no consequence in determining the applicability of the Commerce Clause. The Supreme Court set aside this decision for other reasons, however, and the issue remains unresolved.¹⁷ The courts have not addressed the applicability of the Commerce Clause to the Northern Marianas or American Samoa.

¹¹U.S. Const. art. I, sec. 8, cl. 1.

¹²Downes v. Bidwell, 182 U.S. 244 (1901).

¹³U.S. Const. art. I, sec. 8, cl. 2.

¹⁴Sea-Land Services, Inc. v. Municipality of San Juan, 505 F.Supp. 533 (D.P.R. 1980).

¹⁵Sakamoto v. Duty Free Shoppers, Ltd., 764 F.2d 1285 (9th Cir. 1985). But see Duty Free Shoppers, Ltd. v. Tax Commissioner, 464 F.Supp. 730 (D. Guam 1979), which found that the Commerce Clause did apply to Guam.

¹⁶JDS Realty Corporation v. Government of the Virgin Islands, 824 F.2d 256 (3d Cir. 1987).

¹⁷484 U.S. 999 (1988).

Presidential Election

The Constitution provides for the election of the President by the states.¹⁸ Residents of the areas cannot vote in presidential elections, but four of the five participate in the nomination process, which is a mechanism not governed by the Constitution. Puerto Rico holds primary elections to nominate presidential candidates and sends delegates to the Republican and Democratic National Conventions. Guam, the Virgin Islands, and American Samoa also send delegates to the Republican and Democratic National Conventions. The Northern Marianas does not participate in the nomination process, although it sent an observer delegation to the 1988 Republican National Convention.

Trial by Jury

The Sixth and Seventh Amendments address the right to trial by jury. The Supreme Court has held that the right to a jury trial is not one of those fundamental rights under the Constitution that the Supreme Court has said applies to unincorporated areas.¹⁹ The courts have reached different conclusions on the applicability of these two amendments to the insular areas.

The Sixth Amendment guarantees the right to a jury trial in a criminal case.²⁰ Federal laws extend the Sixth Amendment to Guam and the Virgin Islands,²¹ and a federal district court has held that the Sixth Amendment applies to American Samoa.²² On the other hand, a 1922 Supreme Court decision held that the Sixth Amendment right to a jury trial does not apply to Puerto Rico.²³ The Puerto Rican constitution includes the right to a jury trial, however, in a criminal case.²⁴ The Covenant of the Northern Mariana Islands provides that trial by jury is not required in "any civil action or criminal prosecution based on local law,

¹⁸U.S. Const. art. II, sec. 1, cl. 3.

¹⁹*Dorr v. United States*, 195 U.S. 138, 148-149 (1904).

²⁰U.S. Const. art. III, sec. 2, cl. 3, also guarantees the right to a jury trial in criminal cases.

²¹P.L. 90-497, sec. 10, 82 Stat 847 (1968) (Guam) and P.L. 90-496, sec. 11, 82 Stat. 841 (1968) (Virgin Islands).

²²*King v. Andrus*, 452 F.Supp. 11, 17 (D.D.C. 1977).

²³*Balzac v. People of Porto Rico*, 258 U.S. 298 (1922).

²⁴P.R. Const. art. II, sec. 11.

except where required by local law."²⁵ The Ninth Circuit Court of Appeals upheld the constitutionality of this exception in 1984.²⁶

The Seventh Amendment guarantees the right to a jury trial in a civil case. Federal laws extend this amendment to Guam and the Virgin Islands.²⁷ In 1922, the Supreme Court held that it does not apply to Puerto Rico,²⁸ which does not require a jury in a civil case.²⁹ As discussed above, the Marianas Covenant does not require a jury trial in a civil case based on local law, except where required by local law.³⁰ The applicability of the amendment to American Samoa has been raised, but is unresolved.³¹

Equal Protection Clause

The Equal Protection Clause requires that people under like circumstances be given the same protection of the law in the enjoyment of personal rights, liberties, and property.³² The Supreme Court has held that this clause applies to Puerto Rico.³³ Furthermore, the American Samoa High Court (the highest court in American Samoa) has stated that the Equal Protection Clause applies in American Samoa.³⁴ Federal laws specifically extend the Equal Protection Clause to Guam, the Virgin Islands, and the Northern Marianas.³⁵

²⁵A Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (hereafter referred to as the Marianas Covenant) sec. 501(a); found at P.L. 94-241, 90 Stat. 267 (1976).

²⁶Commonwealth of the Northern Mariana Islands v. Atalig, 723 F.2d 682 (9th Cir. 1984), cert. denied, 467 U.S. 1244 (1984).

²⁷P.L. 90-497, sec. 10, 82 Stat. 847 (1968) (Guam) and P.L. 90-496, sec. 11, 82 Stat. 841 (1968) (Virgin Islands).

²⁸Balzac v. People of Porto Rico, 258 U.S. 298 (1922).

²⁹Marshall v. Arzuaga, 828 F.2d 845, 849 (1st Cir. 1987).

³⁰Marianas Covenant, sec. 501(a).

³¹See Meaamaile v. American Samoa, 550 F.Supp. 1227, 1233-1234 (D.Haw. 1982).

³²U.S. Const. amend. XIV, sec. 1, sent. 2.

³³Examining Board v. Flores de Otero, 426 U.S. 572, 600 (1976).

³⁴Craddick v. Territorial Registrar, Ap. No. 10-79 (H.Ct. App.Div. Apr. 23, 1980).

³⁵P.L. 90-497, sec. 10, 82 Stat. 847 (1968) (Guam); P.L. 90-496, sec. 11, 82 Stat. 841 (1968) (Virgin Islands); and the Marianas Covenant, sec. 501(a).

To preserve local culture in American Samoa and the Northern Marianas, land ownership is restricted, by the local constitutions (as well as the Marianas Covenant), to people of Samoan or Northern Marianas descent, respectively—raising a question of a possible violation of the Equal Protection Clause. The American Samoa High Court has held that the land ownership restriction does not violate the Equal Protection Clause.³⁶ With regard to the Northern Marianas, the Ninth Circuit Court of Appeals held that the land ownership restriction was not subject to the Equal Protection Clause. The court's decision upheld a covenant provision that exempts the land ownership restriction from constitutional challenge.³⁷

Voting Rights

Three constitutional amendments (Fifteenth, Nineteenth, and Twenty-Sixth Amendments) guarantee U.S. citizens the right to vote in elections on an equal basis. In 1982, the Supreme Court held that the voting rights of Puerto Rican citizens are constitutionally protected to the same extent as those of all other U.S. citizens,³⁸ thereby providing Puerto Ricans the protections of these three amendments in local elections.³⁹

The Fifteenth Amendment prohibits denying U.S. citizens the right to vote on the basis of race, color, or "previous condition of servitude." Federal laws extend the Fifteenth Amendment to Guam, the Virgin Islands, and the Northern Marianas.⁴⁰ The applicability of the amendment to American Samoa has not been addressed by the Congress or the courts. The American Samoa Constitution implicitly provides for Fifteenth Amendment protection by granting the right to vote to "every person" who is 18 years old or older.⁴¹

The Nineteenth Amendment prohibits denying U.S. citizens the right to vote on the basis of sex. Federal laws extend the amendment to Guam,

³⁶*Craddick v. Territorial Registrar*, Ap. No. 10-79 (H.Ct. App.Div. Apr. 23, 1980).

³⁷*Wabol v. Villacrusis*, 908 F.2d 411, 421 (9th Cir. 1990).

³⁸*Rodriguez v. Popular Democratic Party*, 457 U.S. 1, 7-8 (1982).

³⁹Puerto Rico lowered its voting age from 21 to 18 in 1970, a year before the Twenty-Sixth Amendment prohibited states from denying the right to vote to people over 18 years of age.

⁴⁰P.L. 90-497, sec. 10, 82 Stat. 847 (1968) (Guam); P.L. 90-496, sec. 11, 82 Stat. 841 (1968) (Virgin Islands); and Marianas Covenant, sec. 501(a).

⁴¹Am. Sam. Revised Const., art. II, sec. 7.

the Virgin Islands, and the Northern Marianas.⁴² The applicability of the amendment to American Samoa has not been addressed by the Congress or the courts. The American Samoa Constitution implicitly provides for Nineteenth Amendment protection, as noted earlier.⁴³

The Twenty-Sixth Amendment prohibits denying U.S. citizens 18 years of age or older the right to vote on the basis of age. Federal law extends the amendment to the Northern Marianas.⁴⁴ In 1954, before the ratification of the Twenty-Sixth Amendment, Guam lowered its voting age to 18.⁴⁵ The Virgin Islands, in 1970, held a referendum that approved lowering the voting age to 18.⁴⁶ The American Samoa Constitution includes the right for those 18 years of age and older to vote.⁴⁷

Taxation in the Insular Areas

Federal income taxes are not imposed as such in the insular areas. Residents of the areas pay local taxes collected by their respective governments. Puerto Rico was authorized to create its own income tax system in 1919,⁴⁸ which it has done. Until recently, federal and local laws required the other four areas to follow the U.S. Internal Revenue Code when collecting their own local income taxes. The Tax Reform Act of 1986 authorized Guam, American Samoa, and the Northern Marianas to enact their own income tax laws.⁴⁹ Only American Samoa has done so.⁵⁰ The Northern Marianas has chosen to continue to follow the Internal Revenue Code. Only the Virgin Islands is still required by federal law to follow the code.⁵¹

⁴²P.L. 90-497, sec. 10, 82 Stat. 847 (1968) (Guam); P.L. 90-496, sec. 11, 82 Stat. 841 (1968) (Virgin Islands); and Marianas Covenant, sec. 501(a).

⁴³Am. Sam. Revised Const. art. II, sec. 7.

⁴⁴Marianas Covenant, sec. 501(a).

⁴⁵Guam P.L. 112 (1954), Guam Gov't Code, sec. 2050.

⁴⁶The referendum was authorized by P.L. 91-460, 84 Stat. 978 (1970).

⁴⁷Am. Sam. Revised Const. art. II, sec. 7.

⁴⁸P.L. 65-254, sec. 261, 40 Stat. 1087 (1919).

⁴⁹P.L. 99-514, sec. 1271, 100 Stat. 2591 (1986). Since 1963, American Samoa, on its own initiative, has used a modified version of the federal income tax system to collect local income taxes. Am. Sam. Code Ann., title 34, sec. 203 (1963).

⁵⁰Am. Sam. Code Ann., title 11 (1988). Guam is in the process of developing its own system.

⁵¹48 U.S.C. 1397 (1988).

Comments on This Report

Comments from the legal experts we consulted are reflected throughout the report. The Department of the Interior, the Department of Justice, as well as the attorney general for each insular area, provided written comments on a draft of this report. We incorporated these comments where appropriate and included the written responses in appendixes III to IX.

The comments from the Commonwealth of the Northern Mariana Islands asked that we reflect the islands' view that it is not subject to the Territorial Clause of the U.S. Constitution, which authorizes the Congress to *make rules for territories and other properties of the United States*. This, however, is not the view of the U.S. government.⁵² We do not agree that the Marianas Covenant in general—or more specifically, that the omission of the Territorial Clause from the list in section 501(a) of the Covenant—clearly settles the issue in favor of the view taken by the Northern Marianas. Therefore we did not incorporate all the changes suggested. We do, however, note where there are differences of opinion between the Northern Marianas and the United States.

⁵²The Northern Marianas has raised this issue in a pending case, currently on appeal to the Ninth Circuit Court of Appeals. The brief for the United States vigorously rejects the position taken by the Northern Marianas on the applicability of the Territorial Clause. United States v. Sablan, appeal docketed, No. 89-16404 (9th Cir., Nov. 13, 1989).

We are sending copies of this report to other interested congressional committees and members; the Secretary of the Interior, the Attorney General, the resident commissioner, Puerto Rico; the House delegates from the Virgin Islands, Guam, and American Samoa; and the resident representative from the Northern Mariana Islands. Copies also will be made available to other interested parties on request.

If you or your staff have any questions about this report, please call me at (202) 275-1655 or Associate General Counsel Barry Bedrick at (202) 275-5881. Other major contributors to this report are listed in appendix X.

Sincerely yours,

A handwritten signature in black ink that reads "Linda G. Morra". The signature is written in a cursive style with a long, sweeping tail on the "a".

Linda G. Morra
Director, Human Services Policy
and Management Issues

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Federal Court Cases and Statutes That Apply the U.S. Constitution to Five Insular Areas

	Puerto Rico	U.S. Virgin Islands	American Samoa	Guam	Northern Mariana Islands
ARTICLE I					
Section 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.					
<p>Section 2. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.</p> <p>No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.</p> <p>Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumerations shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.</p> <p>When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.</p> <p>The House of Representatives shall choose their speaker and other Officers; and shall have the sole Power of Impeachment.</p>					

Note 1: A blank space beside a particular provision indicates either that the provision is not relevant to the insular areas (or the states) or the provision has not been specifically extended or excluded by statute or the courts.

Note 2: The symbol "●" rarely appears in the column for Puerto Rico because the federal statute extending various provisions of the U.S. Constitution to Puerto Rico was repealed in 1952 when Puerto Rico's commonwealth constitution was approved. However, federal courts have held that various provisions of the U.S. Constitution apply to Puerto Rico.

Legend:

● = Federal statute, covenant, or military decree make the provision applicable (either by specific reference to the provision or by using substantially similar language).

■ = Federal court decision determines the provision to be applicable.

★ = Federal court decision determines the provision to be inapplicable.

**Appendix I
Federal Court Cases and Statutes That Apply
the U.S. Constitution to Five Insular Areas**

	Puerto Rico	U.S. Virgin Islands	American Samoa	Guam	Northern Mariana Islands
<p>Section 3. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.</p> <p>Immediately after they shall be assembled in Consequence of the first Election, they shall be divided equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one third may be chosen every second Year; and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.</p> <p>No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.</p> <p>The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.</p> <p>The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.</p> <p>The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the concurrence of two thirds of the Members present. Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to law.</p>					
<p>Section 4. The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.</p> <p>The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.</p>					
<p>Section 5. Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.</p> <p>Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behavior, and, with the Concurrence of two thirds, expel a Member.</p>					

**Appendix I
Federal Court Cases and Statutes That Apply
the U.S. Constitution to Five Insular Areas**

	Puerto Rico	U.S. Virgin Islands	American Samoa	Guam	Northern Mariana Islands
<p>Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgement require Secrecy; and the yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.</p> <p>Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.</p> <p>Section 6. The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.</p> <p>No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been increased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.</p> <p>Section 7. All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.</p> <p>Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.</p>					

Legend:

●=Federal statute, covenant, or military decree make the provision applicable (either by specific reference to the provision or by using substantially similar language).

■=Federal court decision determines the provision to be applicable.

*=Federal court decision determines the provision to be inapplicable.

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	Puerto Rico	U.S. Virgin Islands	American Samoa	Guam	Northern Mariana Islands
Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.					
Section 8. The Congress shall have Power to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;	*a	b	b	b	b
To borrow Money on the Credit of the United States;					
To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;	■c	d		*e	
To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;					
To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;					
To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;					
To establish Post Offices and post Roads;					
To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors exclusive Right to their respective Writings and Discoveries;					

^aA Supreme Court decision has held that the part of the clause that follows the semicolon, which is referred to as the Uniformity Clause, does not apply. Downes v. Bidwell, 182 U.S. 244 (1901).

^bFederal law places this insular area outside the customs territory of the United States. This may be an indication that the Congress does not consider the Uniformity Clause as applying to it. See 19 U.S.C. 1202 Headnote (2), which defines the customs territory as including "only the States, the District of Columbia, and Puerto Rico."

^cSea-Land Services, Inc. v. Municipality of San Juan, 505 F. Supp. 533 (D.P.R. 1980).

^dThis issue has been litigated in the Third Circuit which held that the Commerce Clause applied to the Virgin Islands. However, on appeal the Supreme Court set aside the judgment on other grounds. JDS Realty Corporation v. Government of the Virgin Islands, 824 F.2d 256 (3d Cir. 1987); vacated on other grounds, 484 U.S. 999 (1988).

^eSakamoto v. Duty Free Shoppers, Ltd., 764 F.2d 1285 (9th Cir. 1985). But see Duty Free Shoppers, Ltd. v. Tax Commissioner, 464 F.Supp. 730 (D.Guam 1979), which found that the Commerce Clause applied.

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<p>To constitute Tribunals inferior to the supreme Court;</p> <p>To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;</p> <p>To declare War, grant Letters of Marque and Reprisal, and make rules concerning Captures on Land and Water;</p> <p>To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;</p> <p>To provide and maintain a Navy;</p> <p>To make rules for the Government and Regulation of the land and naval Forces;</p> <p>To provide for calling forth the Militia to execute the Laws of the Union, suppress insurrections and repel Invasions;</p> <p>To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;</p> <p>To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square), as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;— And</p> <p>To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.</p>					

Legend:

● = Federal statute, covenant, or military decree make the provision applicable (either by specific reference to the provision or by using substantially similar language).

■ = Federal court decision determines the provision to be applicable.

* = Federal court decision determines the provision to be inapplicable.

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	Puerto Rico	U.S. Virgin Islands	American Samoa	Guam	Northern Mariana Islands
<p>Section 9. The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.</p> <p>The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.</p> <p>No Bill of Attainder or ex post facto Law shall be passed.</p> <p>No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.</p> <p>No tax or Duty shall be laid on Articles exported from any State.</p> <p>No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.</p> <p>No money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.</p> <p>No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.</p>		<p>^f</p> <p>•</p>	<p>^g</p> <p>•</p>	<p>^h</p> <p>•</p>	<p>ⁱ</p> <p>•</p>

^f48 U.S.C. 1561 (1988).

^gNaval Decree, sec. 30, found at American Samoa: Information on American Samoa Transmitted by the United States to the Secretary-General of the United Nations Pursuant to Article 73(e) of the Charter, U.S. Navy Department, OpNav. P22-100D (Washington, D.C., June 1948) pp. 7-8.

^h48 U.S.C. 1421b(u) (1988).

ⁱA Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (hereafter cited as Marianas Covenant), sec. 501(a), found at P.L. 94-241, 90 Stat. 267 (1976).

^jMarianas Covenant, sec. 501(a).

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<p>Section 10. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit-Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.</p> <p>No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Control of the Congress.</p> <p>No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.</p>	★ ⁿ	● ^k	● ^l	● ^m ■ ^o	● ^j ● ^j
<p>ARTICLE II</p> <p>Section 1. The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same term, be elected, as follows</p> <p>Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed as Elector.</p>	p	p	p	★p	p

ⁱMarianas Covenant, sec. 501(a).

^k48 U.S.C. 1561 (1988); makes applicable only that part of the clause that prohibits bills of attainder, ex post facto laws, and laws impairing contracts.

^lNaval Decree, sec. 30 (1988); makes applicable only that part of the clause that prohibits bills of attainder, ex post facto laws, and laws impairing contracts.

^m48 U.S.C. 1421b(j) (1988); makes applicable only that part of the clause that prohibits bills of attainder, ex post facto laws, and laws impairing contracts.

ⁿBuscaglia v. Ballester, 162 F.2d 805 (1st Cir. 1947), cert. denied, 336 U.S. 816 (1947).

^oDuty Free Shoppers Ltd. v. Tax Commissioner, 464 F.Supp. 730 (D. Guam 1979).

^pAttorney General of Guam v. United States, 738 F.2d 1017, 1019 (9th Cir. 1984), holds that this clause does not apply to Guam because Guam is not a state. The same reasoning could apply to the other insular areas.

Legend:

●=Federal statute, covenant, or military decree make the provision applicable (either by specific reference to the provision or by using substantially similar language).

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★=Federal court decision determines the provision to be inapplicable.

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<p>The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President: and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State have one Vote; A quorum for this Purpose shall consist of a Member or Members from two thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President.</p> <p>The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.</p> <p>No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.</p> <p>In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.</p> <p>The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be increased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.</p> <p>Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."</p>					

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	Puerto Rico	U.S. Virgin Islands	American Samoa	Guam	Northern Mariana Islands
Section 2. The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.					
He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.					
The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.					
Section 3. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.					
Section 4. The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other High Crimes and Misdemeanors.					
ARTICLE III					
Section 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.					

Legend:
 ●=Federal statute, covenant, or military decree make the provision applicable (either by specific reference to the provision or by using substantially similar language).
 ■=Federal court decision determines the provision to be applicable.
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	Puerto Rico	U.S. Virgin Islands	American Samoa	Guam	Northern Mariana Islands
<p>Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States; between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.</p> <p>In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.</p> <p>The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.</p>					
<p>Section 3. Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.</p> <p>The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.</p>	* ^q	^q	^q	^q	^q
			● ^f	● ^s	

^qThe Supreme Court has held that the right to a jury trial did not apply to Puerto Rico because it was unincorporated. Balzac v. People of Porto Rico, 258 U.S. 298, 304-305 (1922). This reasoning could apply to the other insular areas as well.

^fNaval Decree, sec. 31; refers only to the second sentence.

^s48 U.S.C. 1421b(o) (1988); refers only to the second sentence.

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ARTICLE IV					
Section 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.	■ ^l	● ^u	● ^v	● ^w	● ^x
Section 2. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States. A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime. No person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.	● ^y	● ^z	● ^{aa}	● ^{bb}	● ^{cc} ● ^{cc}
Section 3. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.					

^lAmericana of Puerto Rico v. Kaplus, 368 F.2d 431 (3d Cir. 1966). See also 28 U.S.C. 1738 (1988).

^u48 U.S.C. 1561 (1988). See also 28 U.S.C. 1738 (1988).

^v28 U.S.C. 1738 (1988).

^w48 U.S.C. 1421b(u) (1988). See also 28 U.S.C. 1738 (1988).

^xMarianas Covenant, sec. 501(a). See also 28 U.S.C. 1738 (1988).

^y48 U.S.C. 737 (1988).

^z48 U.S.C. 1561 (1988).

^{aa}Naval Decree, sec. 32.

^{bb}48 U.S.C. 1421b(u) (1988).

^{cc}Marianas Covenant, sec. 501(a).

Legend:

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The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.	■ ^{dd}	■ ^{ee}	■ ^{ff}	■ ^{gg}	■ ^{hh}
Section 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.					

^{dd}Downes v. Bidwell, 182 U.S. 244 (1901); Americana of Puerto Rico, Inc. v. Kaplus, 368 F.2d 431, 436 (3d Cir. 1966), cert. denied, 386 U.S. 943 (1967); and Sea-Land Services, Inc. v. Municipality of San Juan, 505 F. Supp. 533, 545 (D.P.R. 1980). In comments on this report, Puerto Rican officials rely on language in United States v. Quinones, 758 F.2d 40, 42 (1st Cir. 1985), a case in the Court of Appeals for the First Circuit, to support their position that the Clause does not apply. (See app. V.) However, the comment they rely on in Quinones is not necessary to that decision, and, therefore, is not a binding legal precedent.

^{ee}Government of the Virgin Islands v. Dowling, 866 F.2d 610, 615-16 (3d Cir. 1989), and Territorial Court of the Virgin Islands v. Richards, 847 F.2d 108-112 (3d Cir. 1988), suggests that the Territorial Clause applies to the Virgin Islands.

^{ff}Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Hodel, 830 F.2d 374, 376 (D.C. Cir. 1987).

^{gg}Duty Free Shoppers, Ltd. v. Tax Commissioner, 464 F. Supp. 730, 733-34 (D. Guam 1979).

^{hh}Wabot v. Villacrusis, 908 F.2d 411 (9th Cir. 1990), and Micronesian Telecommunications Corp. v. NLRB, 820 F.2d 1097, 1100 n.2 (9th Cir. 1987) suggest that the Clause applies to the Northern Marianas. The Marianas Covenant also suggests that the Clause applies to the Northern Marianas. It declares that the Northern Marianas are "under the sovereignty" of the United States. It authorizes the United States to enact laws applicable to the Northern Marianas, a power that seems in essence the same as that provided by the Territorial Clause. Finally, it acknowledges that certain provisions of the Constitution "apply of their own force" to the Northern Marianas. Officials of the Northern Marianas argue that the Territorial Clause is inapplicable based on their reading of the covenant. (See app. IX.) They also point to several court decisions in support of their position. We found that those decisions were not as broad as the officials suggested and that they did not resolve the issue.

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ARTICLE V					
The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.					
ARTICLE VI					
All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.					
This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.					
The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.		● ⁱⁱ		● ⁱⁱ	
ARTICLE VII					
The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.					

ⁱⁱIncludes only the part of the clause following the last semicolon. This applies to insular representatives elected or appointed to federal and local posts. 48 U.S.C. 1421b(s) (1988) and 48 U.S.C. 1561 (1988), respectively.

Legend:

● = Federal statute, covenant, or military decree make the provision applicable (either by specific reference to the provision or by using substantially similar language).

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AMENDMENT 1					
Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.	■ ^{jj}	● ^{kk}	● ^{ll}	● ^{mm}	● ⁿⁿ
AMENDMENT 2					
A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.		● ^{kk}		● ^{mm}	● ⁿⁿ
AMENDMENT 3					
No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.		● ^{kk}		● ^{mm}	● ⁿⁿ
AMENDMENT 4					
The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.	■ ^{oo}	● ^{kk}	● ^{pp}	● ^{mm}	● ⁿⁿ

^{jj}Balzac v. People of Porto Rico, 258 U.S. 298, 314 (1922), implies that the First Amendment applies to Puerto Rico.

^{kk}48 U.S.C. 1561 (1988).

^{ll}Naval Decree, sec. 26.

^{mm}48 U.S.C. 1421b(c), (u) (1988).

ⁿⁿMarianas Covenant, sec. 501(a).

^{oo}Torres v. Puerto Rico, 442 U.S. 465 (1979).

^{pp}Naval Decree, sec. 27.

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Federal Court Cases and Statutes That Apply
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	Puerto Rico	U.S. Virgin Islands	American Samoa	Guam	Northern Mariana Islands
AMENDMENT 5					
No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.	qq	●rr	●ss	●tt	●rr

^{qq}Although no court case directly addressed the applicability of the Fifth or entire Sixth Amendments to Puerto Rico, several are worthy of discussion. In Wong Wing v. United States, 163 U.S. 228, 238 (1896), the Supreme Court said that "all persons within the territory of the United States are entitled to the protection guaranteed by those [the Fifth and Sixth] amendments." However, the Supreme Court also has held that the right to a trial by jury does not apply to Puerto Rico. Balzac v. People of Porto Rico, 258 U.S. 298, 304-305 (1922), and see footnote ss regarding the right to a grand jury. The Supreme Court has not made a determination as to the source of due process rights for citizens of Puerto Rico (i.e., whether it stems from the Fifth or Fourteenth Amendments). Examining Board v. Flores de Otero, 426 U.S. 572, 599-601 (1976). Regarding the prohibition against double jeopardy, see Puerto Rico v. Shell Co., 302 U.S. 253, 264 (1937), which assumes that the double jeopardy clause applies to Puerto Rico.

^{rr}Does not include the right to a Grand Jury for local prosecutions, unless required by local law. 48 U.S.C. 1561 and Marianas Covenant, sec. 501(a), respectively.

^{ss}Naval Decree, sec. 28; refers to the portion of the Amendment that follows the first semi-colon, which does not include the right to a Grand Jury. Case law indicates that the right to a Grand Jury is not a fundamental right that applies to unincorporated territories. See Ocampo v. United States, 234 U.S. 91, 98 (1914); and Dowdell v. United States, 221 U.S. 325, 332 (1911).

^{tt}48 U.S.C. 1421b (e),(f),(u) (1988). The extension of the Fifth Amendment to Guam did not deprive the Guam legislature of its power to determine whether offenses should be prosecuted by Grand Jury indictment or by information. Guam v. Inglett, 417 F.2d 123, 124 (9th Cir. 1969).

Legend:

● = Federal statute, covenant, or military decree make the provision applicable (either by specific reference to the provision or by using substantially similar language).

■ = Federal court decision determines the provision to be applicable.

★ = Federal court decision determines the provision to be inapplicable.

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	Puerto Rico	U.S. Virgin Islands	American Samoa	Guam	Northern Mariana Islands
AMENDMENT 6					
In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.	qq	●uu	■vv	●ww	●xx

^{qq}Although no court case directly addressed the applicability of the Fifth or entire Sixth Amendments to Puerto Rico, several are worthy of discussion. In Wong Wing v. United States, 163 U.S. 228, 238 (1896), the Supreme Court said that "all persons within the territory of the United States are entitled to the protection guaranteed by those [the Fifth and Sixth] amendments." However, the Supreme Court also has held that the right to a trial by jury does not apply to Puerto Rico. Balzac v. People of Porto Rico, 258 U.S. 298, 304-305 (1922), and see footnote ss regarding the right to a grand jury. The Supreme Court has not made a determination as to the source of due process rights for citizens of Puerto Rico (i.e., whether it stems from the Fifth or Fourteenth Amendments). Examining Board v. Flores de Otero, 426 U.S. 572, 599-601 (1976). Regarding the prohibition against double jeopardy, see Puerto Rico v. Shell Co., 302 U.S. 253, 264 (1937), which assumes that the double jeopardy clause applies to Puerto Rico.

^{rr}Does not include the right to a Grand Jury for local prosecutions, unless required by local law. 48 U.S.C. 1561 and Marianas Covenant, sec. 501(a), respectively.

^{ss}Naval Decree, sec. 28; refers to the portion of the Amendment that follows the first semi-colon, which does not include the right to a grand jury. Case law indicates that the right to a Grand Jury is not a fundamental right that applies to unincorporated territories. See Ocampo v. United States, 234 U.S. 91, 98 (1914); and Dowdell v. United States, 221 U.S. 325, 332 (1911).

^{tt}48 U.S.C. 1421b (e),(f),(u) (1988). The extension of the Fifth Amendment to Guam did not deprive the Guam legislature of its power to determine whether offenses should be prosecuted by indictment or information. Guam v. Inglett, 417 F.2d 123, 124 (9th Cir. 1969).

^{uu}48 U.S.C. 1561, 1616 (1988).

^{vv}King v. Andrus, 452 F.Supp. 11, 17 (D.D.C. 1977).

^{ww}48 U.S.C. 1421b(g),(u) (1988).

^{xx}Marianas Covenant, sec. 501(a); does not include the right to a jury trial in local cases, unless required by local law.

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	Puerto Rico	U.S. Virgin Islands	American Samoa	Guam	Northern Mariana Islands
AMENDMENT 7					
In Suits at common law, where the value in controversy; shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.	★yy	●zz		●aaa	●bbb
AMENDMENT 8					
Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.	■ccc	●zz	●ddd	●aaa	●eee
AMENDMENT 9					
The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.		●zz		●aaa	●eee
AMENDMENT 10					
The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.					
AMENDMENT 11					
The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.	■fff				★999

yy Balzac v. People of Porto Rico, 258 U.S. 298, 304-305 (1922).

zz 48 U.S.C. 1561 (1988).

aaa 48 U.S.C. 1421b(u) (1988).

bbb Marianas Covenant, sec. 501(a); does not include the right to a jury trial in local cases, unless required by local law.

ccc Feliciano v. Barcelo, 497 F.Supp. 14, 33 (D.P.R. 1979), held that certain treatment of prisoners in Puerto Rico violated the Eighth Amendment. This implies that the Eighth Amendment applies to Puerto Rico.

ddd Naval Decree, sec. 33.

eee Marianas Covenant, sec. 501(a).

fff Fernandez v. Chardon, 681 F.2d 42 (1st Cir. 1982).

999 Fleming v. Department of Public Safety of the Commonwealth of the Northern Mariana Islands, 837 F.2d 401, 405 (9th Cir. 1988).

Legend:

● = Federal statute, covenant, or military decree make the provision applicable (either by specific reference to the provision or by using substantially similar language).

■ = Federal court decision determines the provision to be applicable.

★ = Federal court decision determines the provision to be inapplicable.

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	Puerto Rico	U.S. Virgin Islands	American Samoa	Guam	Northern Mariana Islands
AMENDMENT 12					
<p>The Electors shall meet in their respective states, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;—The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;—The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President.—The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if not person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.</p>					

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	Puerto Rico	U.S. Virgin Islands	American Samoa	Guam	Northern Mariana Islands
AMENDMENT 13					
Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.					
Section 2. Congress shall have power to enforce this article by appropriate legislation.		● ^{hhh}	● ⁱⁱⁱ	● ^{jjj}	● ^{kkk}
AMENDMENT 14					
Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.	■ ^{lll}	● ^{mmm}		● ⁿⁿⁿ	● ^{kkk}

^{hhh}48 U.S.C. 1561 (1988).

ⁱⁱⁱNaval Decree, sec. 29.

^{lll}48 U.S.C. 1421b(i) (1988).

^{kkk}Marianas Covenant, sec. 501(a).

^{lll}In Examining Board v. Flores de Otero, 426 U.S. 572, 599-601 (1976), the Supreme Court held that residents of Puerto Rico are accorded the protections of the due process clause of the Fifth Amendment or the due process and equal protection clauses of the Fourteenth Amendment. See also Rodriguez v. Popular Democratic Party, 457 U.S. 1, 7 (1982).

^{mmm}48 U.S.C. 1561 (1988) makes only the second sentence applicable.

ⁿⁿⁿ48 U.S.C. 1421b(e),(u) (1988) makes only the second sentence applicable.

Legend:

●=Federal statute, covenant, or military decree make the provision applicable (either by specific reference to the provision or by using substantially similar language).

■=Federal court decision determines the provision to be applicable.

★=Federal court decision determines the provision to be inapplicable.

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	Puerto Rico	U.S. Virgin Islands	American Samoa	Guam	Northern Mariana Islands
Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.					
Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two thirds of each House, remove such disability.					
Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.					
Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.					
AMENDMENT 15					
Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.	■ ^{ooo}	● ^{ppp}		● ^{qqq}	● ^{rrr}
Section 2. The Congress shall have power to enforce this article by appropriate legislation.					
AMENDMENT 16					
The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.					

^{ooo}The Supreme Court has held that the local voting rights of Puerto Rican citizens are constitutionally protected to the same extent as those of all other U.S. citizens. Rodriguez v. Popular Democratic Party, 457 U.S. 1, 7-8 (1982).

^{ppp}48 U.S.C. 1561 (1988).

^{qqq}48 U.S.C. 1421b(u) (1988).

^{rrr}Marianas Covenant, sec. 501(a).

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	Puerto Rico	U.S. Virgin Islands	American Samoa	Guam	Northern Mariana Islands
AMENDMENT 17					
The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.					
When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: Provided, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.					
This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.					
AMENDMENT 18					
Section 1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.	SSS	SSS	SSS	SSS	SSS
Section 2. The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.	SSS	SSS	SSS	SSS	SSS
Section 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.	SSS	SSS	SSS	SSS	SSS

^{SSS}This amendment was repealed by the Twenty-First Amendment. Before it was repealed, the Court of Appeals for the First Circuit held it applied to Puerto Rico. Ramos v. United States, 127 F.2d 761, 762 (1st Cir. 1926).

Legend:

● = Federal statute, covenant, or military decree make the provision applicable (either by specific reference to the provision or by using substantially similar language).

■ = Federal court decision determines the provision to be applicable.

★ = Federal court decision determines the provision to be inapplicable.

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	Puerto Rico	U.S. Virgin Islands	American Samoa	Guam	Northern Mariana Islands
AMENDMENT 19					
The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.					
Congress shall have power to enforce this article by appropriate legislation.	■ ^{ttt}	● ^{uuu}		● ^{vvv}	● ^{www}
AMENDMENT 20					
Section 1. The terms of the President and Vice President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3rd day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.					
Section 2. The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3d day of January, unless they shall by law appoint a different day.					
Section 3. If, at the time fixed for the beginning of the term of the President, the President elect shall have died, the Vice President elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President elect shall have failed to qualify, then the Vice President elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President elect nor a Vice President elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified.					
Section 4. The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice President whenever the right of choice shall have devolved upon them.					
Section 5. Sections 1 and 2 shall take effect on the 15th day of October following the ratification of this article.					
Section 6. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission.					

^{ttt}The Supreme Court held that the local voting rights of Puerto Rican citizens are constitutionally protected to the same extent as those of all other U.S. citizens. Rodriguez v. Popular Democratic Party, 457 U.S. 1, 7-8 (1982).

^{uuu}48 U.S.C. 1561 (1988).

^{vvv}48 U.S.C. 1421b(u) (1988).

^{www}Marianas Covenant, sec. 501(a).

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	Puerto Rico	U.S. Virgin Islands	American Samoa	Guam	Northern Mariana Islands
AMENDMENT 21					
Section 1. The eighteenth article of amendment to the Constitution of the United States is hereby repealed.	xxx				
Section 2. The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.	xxx				
Section 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.					
AMENDMENT 22					
Section 1. No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of the President more than once. But this Article shall not apply to any person holding the office of President when this Article was proposed by the Congress, and shall not prevent any person who may be holding the office of President, or acting as President, during the term within which this Article becomes operative from holding the office of President or acting as President during the remainder of such term.					
Section 2. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress.					
AMENDMENT 23					
Section 1. The District constituting the seat of Government of the United States shall appoint in such manner as the Congress may direct: A number of electors of President and Vice President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a State, but in no event more than the least populous State; they shall be in addition to those appointed by the States, but they shall be considered, for the purposes of the election of President and Vice President, to be electors appointed by a State; and they shall meet in the District and perform such duties as provided by the twelfth article of amendment.					
Section 2. The Congress shall have power to enforce this article by appropriate legislation.					

xxxThe First Circuit held that the Eighteenth Amendment applied to Puerto Rico. Ramos v. United States, 127 F.2d 761, 762 (1st Cir. 1926). Since the Twenty-First Amendment repealed the Eighteenth Amendment, it would apply to Puerto Rico by implication.

Legend:

●=Federal statute, covenant, or military decree make the provision applicable (either by specific reference to the provision or by using substantially similar language).

■=Federal court decision determines the provision to be applicable.

*=Federal court decision determines the provision to be inapplicable.

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	Puerto Rico	U.S. Virgin Islands	American Samoa	Guam	Northern Mariana Islands
AMENDMENT 24					
Section 1. The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax.					
Section 2. The Congress shall have power to enforce this article by appropriate legislation.					
AMENDMENT 25					
Section 1. In case of the removal of the President from office or of his death or resignation, the Vice President shall become President.					
Section 2. Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress.					
Section 3. Whenever the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as Acting President.					
Section 4. Whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President. Thereafter, when the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Vice President and a majority of either the principal officers of the executive department or of such other body as Congress may by law provide, transmit within four days to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the Congress, within twenty-one days after receipt of the latter written declaration, or, if Congress is not in session, within twenty-one days after Congress is required to assemble, determines by two-thirds vote of both Houses that the President is unable to discharge the powers and duties of his office, the Vice President shall continue to discharge the same as Acting President; otherwise, the President shall resume the powers and duties of his office.					

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	Puerto Rico	U.S. Virgin Islands	American Samoa	Guam	Northern Mariana Islands
AMENDMENT 26					
Section 1. The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.	■ ^{yyy}				■ ^{zzz}
Section 2. The Congress shall have the power to enforce this article by appropriate legislation.					

^{yyy}The Supreme Court has held that the local voting rights of Puerto Rican citizens are constitutionally protected to the same extent as those of all other U.S. citizens. Rodriguez v. Popular Democratic Party, 457 U.S. 1, 7-8 (1982).

^{zzz}Marianas Covenant, sec. 501(a).

Legend:

●=Federal statute, covenant, or military decree make the provision applicable (either by specific reference to the provision or by using substantially similar language).

■=Federal court decision determines the provision to be applicable.

★=Federal court decision determines the provision to be inapplicable.

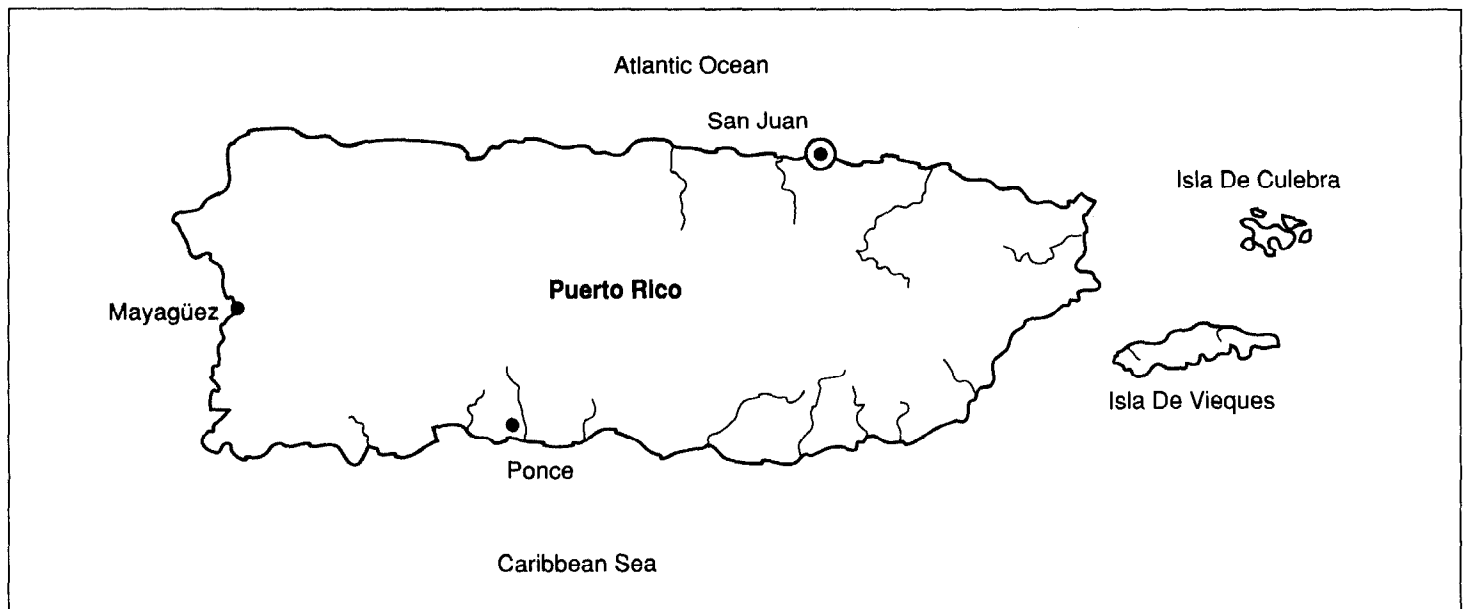
Relationship of the Five Insular Areas With the United States

Each of the five U.S. insular areas has pursued greater self-government over the past decades. The way in which each insular area has achieved this self-government helps explain, in part, its relationship with the United States. For each insular area, geographic location, size, population, and a brief history are given.¹

Puerto Rico

Puerto Rico is the largest insular area and has the greatest population. Located about 1,032 miles southeast of Florida, Puerto Rico consists of six islands in the Caribbean. It has a land area of about 3,421 square miles and a population of about 3.6 million residents (see fig. II.1).²

Figure II.1: Map of Puerto Rico



In 1898, the Treaty of Paris ceded Puerto Rico, a Spanish possession at the time, to the United States. The treaty provided that the civil rights and political status of the residents would be determined by the Congress.³ On April 12, 1900, the Congress passed Puerto Rico's first Organic Act, terminating the military administration and establishing a civil government with executive, legislative, and judicial branches,

¹The history is taken from Arnold H. Leibowitz, *Defining Status: A Comprehensive Analysis of United States Territorial Relations* (Dordrecht: Martinus Nijhoff Publishers, 1989).

²Based on the 1990 U.S. Census. The combined population for the other four insular areas is about 314,000.

³Treaty of Paris, art. IX, 30 Stat. 1754, 1759 (1899).

effective May 1, 1900.⁴ The first Organic Act, known as the Foraker Act, vested executive authority in a governor and an 11-member executive council, both appointed by the President, with at least 5 Puerto Rican members. The council also was given legislative duties.

The Organic Act also established certain political and financial ties with the federal government. The act made all U.S. laws, except for the internal revenue laws and laws specified as locally inapplicable, applicable to Puerto Rico. The act clarified that island residents were to be considered as citizens of Puerto Rico under U.S. protection. U.S. currency was to be official legal currency and a resident commissioner was designated to serve as Puerto Rico's nonvoting representative in the U.S. House of Representatives.

The Congress revised the Organic Act in 1917.⁵ Known as the Jones Act, the revision granted U.S. citizenship and authorized a popularly elected legislature with a 19-member senate and a 39-member house. The executive council lost its legislative role, and most of its members were to be appointed by the governor rather than the President. Puerto Rican supreme court justices, the governor, and several council members were to continue, however, to be appointed by the President. In 1947, the revised Organic Act was amended to permit Puerto Rico to elect its own governor.⁶

Legislation enacted in 1950 authorized Puerto Rico to call a convention to draft its own constitution.⁷ The legislation provided for the repeal of a large part of the revised Organic Act when a constitution took effect. The convention drafted a constitution, which was ratified by the Puerto Rican people in a March 1952 referendum. The Congress approved it in July 1952 with minor changes.⁸ This ended direct U.S. administration of local affairs in Puerto Rico and granted full local executive, legislative, and judicial authority to Puerto Rico.

U.S. Virgin Islands

The U.S. Virgin Islands is composed of three main islands—St. Thomas, St. John, and St. Croix—as well as approximately 50 islets and cays.

⁴Act of April 12, 1900, ch. 191, 31 Stat. 77 (1900).

⁵Act of March 2, 1917, P.L. 64-368, 39 Stat. 951 (1917).

⁶P.L. 80-362, 61 Stat. 770 (1947) popularly known as the Puerto Rico Elective Governor Act.

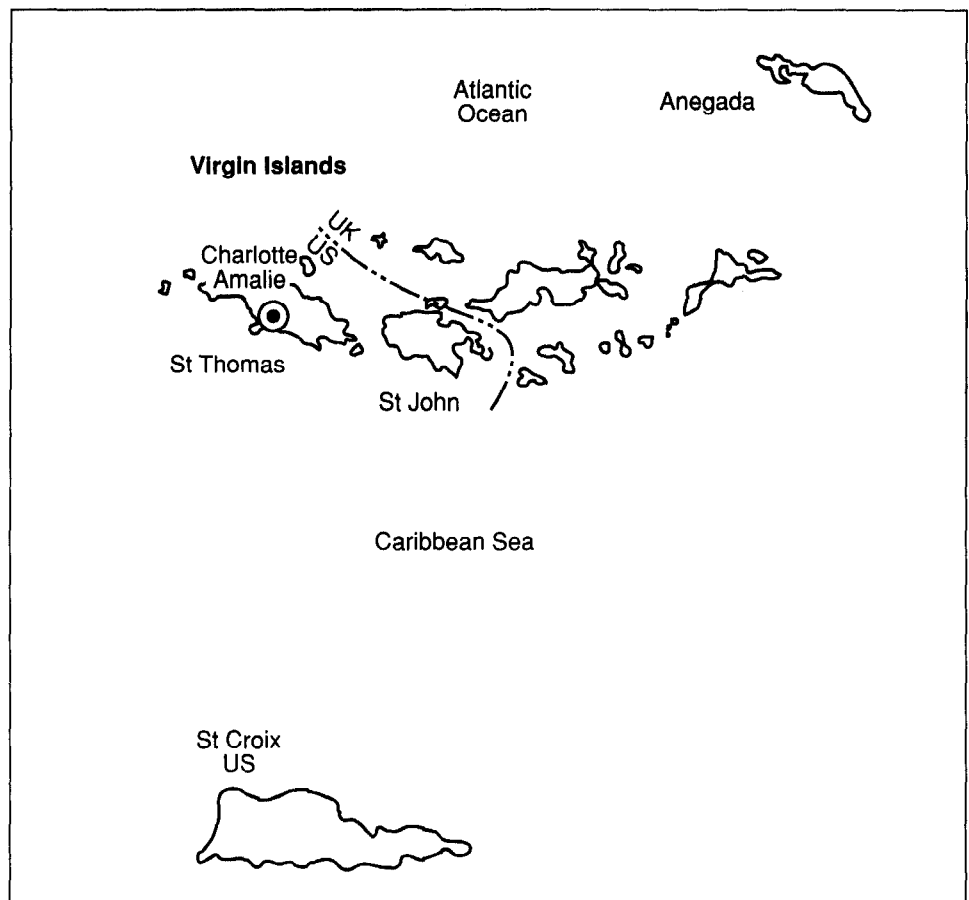
⁷P.L. 81-600, 64 Stat. 319 (1950), popularly known as the Puerto Rican Federal Relations Act.

⁸P.L. 82-447, 66 Stat. 327 (1952).

Appendix II
Relationship of the Five Insular Areas With
the United States

Located in the Caribbean, about 1,200 miles southeast of Florida and 40 miles east of Puerto Rico, the Virgin Islands has a combined land area of 132 square miles and a population of 96,947 (see fig. II.2).

Figure II.2: Map of the Virgin Islands



The United States purchased the islands from Denmark in 1917. The transfer was popular with the island residents, who hoped for U.S. citizenship and more attention from the government than they had received under Danish rule. In 1917, the Congress set up a temporary government with three branches, similar to that of other insular areas, but retained parts of the Danish government structure.⁹

Two legislatures—one for St. Thomas and St. John, one for St. Croix—were retained. Local courts were retained and appeals previously

⁹ Act of March 3, 1917, P.L. 64-389, 39 Stat. 1132 (1917).

reviewed by Danish courts were to be reviewed by U.S. courts. The President was authorized to appoint an Army or Navy officer as governor to head the executive branch, and he appointed a Navy officer.

A naval governor ruled the islands from 1917 until 1931. In 1931, jurisdiction over the islands was transferred to the Department of the Interior, and a civilian governor was appointed by the President.¹⁰ Island residents were granted U.S. citizenship in 1927.¹¹

In 1936, the Congress passed an Organic Act, establishing a civil government, providing for universal suffrage, and extending most of the protections of the U.S. Bill of Rights to island residents.¹² The act also established a single elected legislature composed of the two municipal councils—one sitting in St. Thomas and the other in St. Croix. Each had authority to pass laws affecting only their local jurisdictions. In addition, the act granted the Virgin Islands (then headed by a governor appointed by the President) the right to alter, amend, or repeal federal legislation affecting only the islands.

In 1954, the Revised Organic Act of the Virgin Islands was passed.¹³ This act stated formally that the islands are an unincorporated territory and included a bill of rights similar to the bill of rights in the 1936 Organic Act. It vested all legislative authority in a single, one-house legislature. The governor continued to be appointed by the President; the Secretary of the Interior continued to be responsible for carrying out administrative functions for the islands. The act also required the U.S. Treasury to pay to the Virgin Islands federal taxes and duties collected on items produced in the Virgin Islands and shipped to the United States. The amount of the payment could not exceed the total local revenues collected by the Virgin Islands government for the fiscal year.

In 1968, the Virgin Islands Elective Governor Act amended the 1954 law to provide for the popular election of the governor.¹⁴ The act eliminated some administrative functions of the Department of the Interior and the right of the President to veto local legislation.

¹⁰Exec. Order No. 5566 (1931).

¹¹Act of February 25, 1927, P.L. 69-640, 44 Stat. 1234 (1927).

¹²Organic Act of the Virgin Islands, P.L. 74-749, 49 Stat. 1807 (1936).

¹³P.L. 83-517, 68 Stat. 497 (1954).

¹⁴P.L. 90-496, 82 Stat. 837 (1968).

In 1972, the Congress granted the Virgin Islands the right to elect a non-voting delegate to the U.S. House of Representatives.¹⁵

American Samoa

American Samoa (formerly the islands of eastern Samoa) is a group of seven islands in the Pacific Ocean, about 4,100 miles from the U.S. mainland. It has a combined land area of 77 square miles and a population of 46,329 (see fig. II.3).

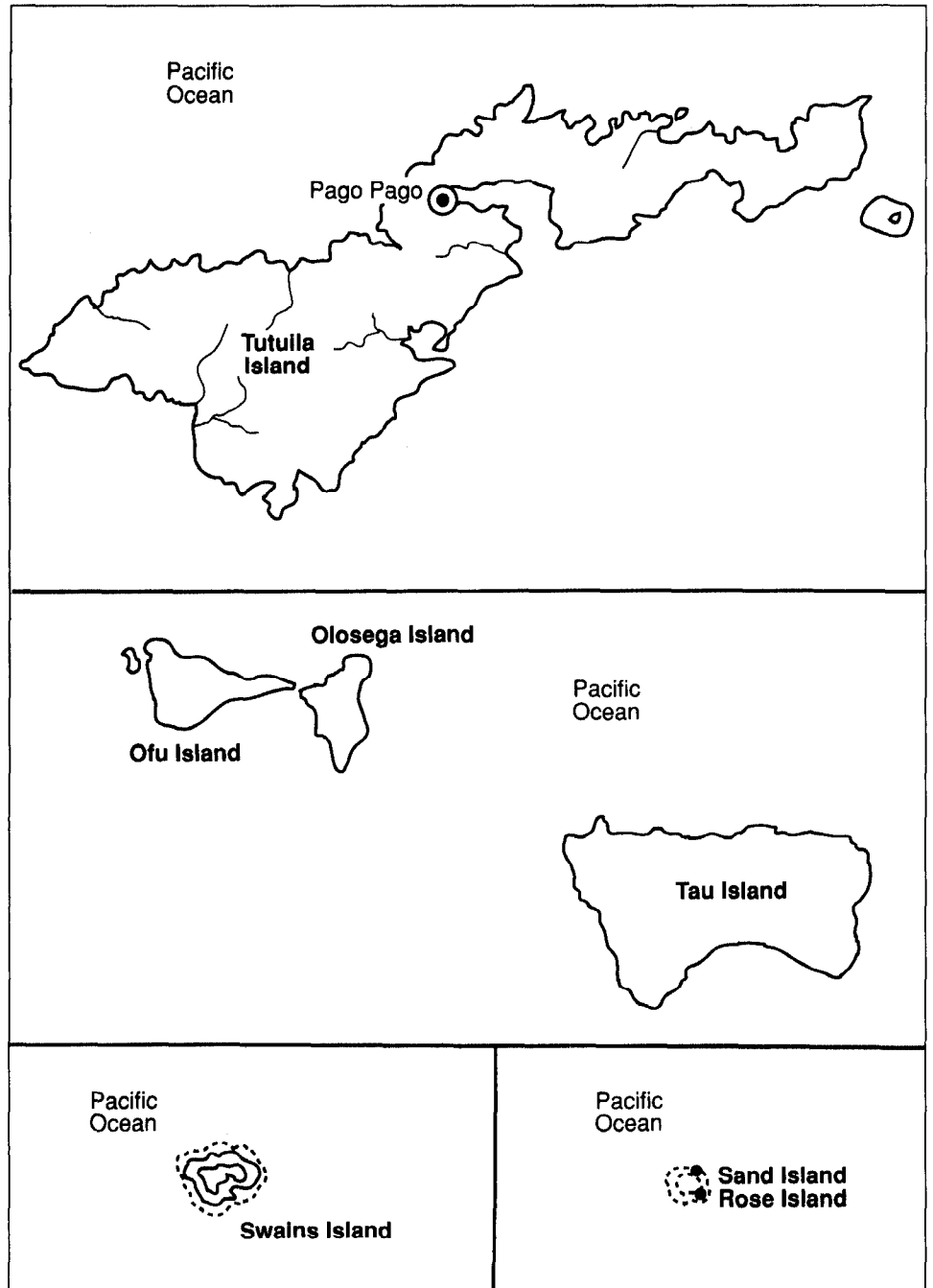
The islands of eastern Samoa became a U.S. insular area in 1900, after Germany and Great Britain renounced any claim to them. At that time, the Samoan chiefs formally ceded two of the islands to the United States; in 1904, the chiefs ceded four other islands to the United States. In 1925, the seventh island was made part of the American Samoa by a joint congressional resolution. Finally, in 1929, the Congress ratified treaties ceding the Samoan Islands to the United States. The Congress provided that until it established a governmental structure for American Samoa "All civil, judicial and military powers shall be vested in such person or persons and shall be exercised in such manner as the President of the United States shall direct."¹⁶ To date, no organic act has been enacted.

¹⁵Act of April 10, 1972, P.L. 92-271, 86 Stat. 118 (1972).

¹⁶Pub. Res. 89, 70th Cong.; 45 Stat. 1253 (1929).

Appendix II
Relationship of the Five Insular Areas With
the United States

Figure II.3: Map of the Islands of
American Samoa



Initially, the President assigned the Department of the Navy the responsibility for carrying out administrative functions for American Samoa.¹⁷ The Secretary of the Navy, through a naval governor, determined which constitutional protections would apply to the islands.¹⁸ In 1951, the President transferred administration of the islands to the Secretary of the Interior.¹⁹ The Secretary continues to be the senior federal official with direct authority over the islands. He exercised this authority in 1960 by approving the first constitution, locally drafted and approved, for American Samoa. This constitution also establishes a local legislature, but recognizes the oversight authority of the Secretary of the Interior. In 1977, the constitution was amended, with the Secretary's approval, to provide for a popularly elected governor.²⁰ A 1983 federal law added the requirement that amendments of, or modification to, the American Samoa constitution be made only by an act of Congress.²¹

In 1978, the Congress granted American Samoa the right to elect a non-voting delegate to the U.S. House of Representatives.²²

Guam

Guam is the largest island in the Northwestern Pacific and has long been considered of military importance. The island lies about 6,000 miles from the U.S. mainland. It has a land area of about 209 square miles and a population of 127,245 (see fig. II.4).

¹⁷Exec. Order No. 125-A, Feb. 19, 1900.

¹⁸American Samoa: Information on American Samoa Transmitted by the United States to the Secretary-General of the United Nations Pursuant to Article 73(e) of the Charter, U.S. Navy Department, OpNav. P22-100 (Washington, D.C., June 1948), pp. 7-8.

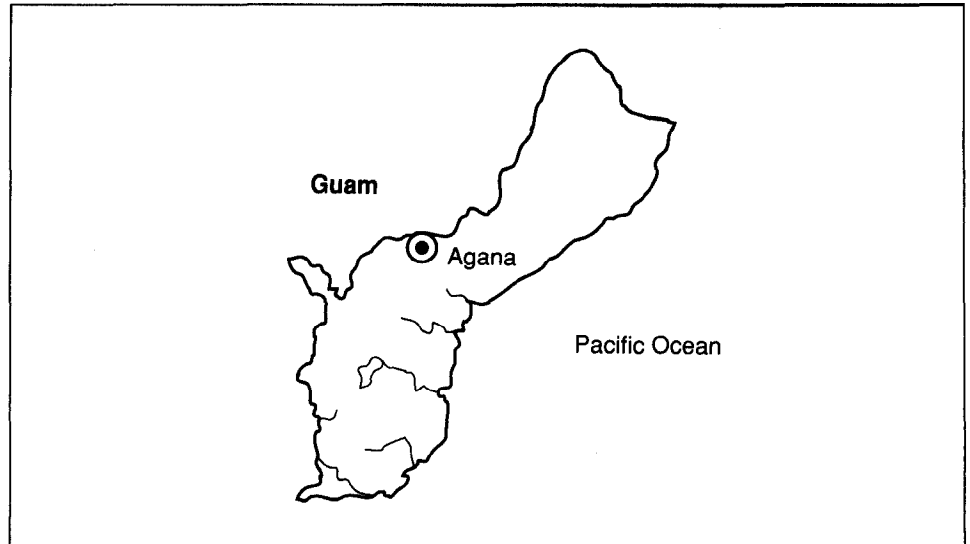
¹⁹Exec. Order No. 10264 (1951).

²⁰Am. Sam. Revised Const., art. IV, sec. 2.

²¹Act of December 8, 1983, P.L. 98-213, sec. 12, 97 Stat. 1462 (1983).

²²Act of October 31, 1978, P.L. 95-556, 92 Stat. 2078 (1978).

Figure II.4: Map of Guam



Guam became a U.S. territory in 1899, in accordance with the Treaty of Paris.²³ The military governed the island until 1950, when the Congress passed the Organic Act of Guam.²⁴ The Organic Act granted Guamanians U.S. citizenship, established a bill of rights, set up a three-branch government, defined the island as an unincorporated territory, and vested executive authority in a governor to be appointed by the President.

In 1968, the Guam Elective Governor Act amended the Organic Act of Guam to provide for the popular election of the governor.²⁵

In 1972, the Congress granted Guam the right to elect a nonvoting delegate to the U.S. House of Representatives.²⁶

Northern Mariana Islands

The Commonwealth of the Northern Mariana Islands is geographically a part of Micronesia; it consists of a chain of 12 groups of small volcanic islands in the Northern Pacific, about 6,000 miles from the U.S. mainland. The Northern Marianas has a combined land area of about 184 square miles and a population of 43,555 (see fig. II.5).

²³Treaty of Paris, art. II, 30 Stat. 1754, 1755 (1899).

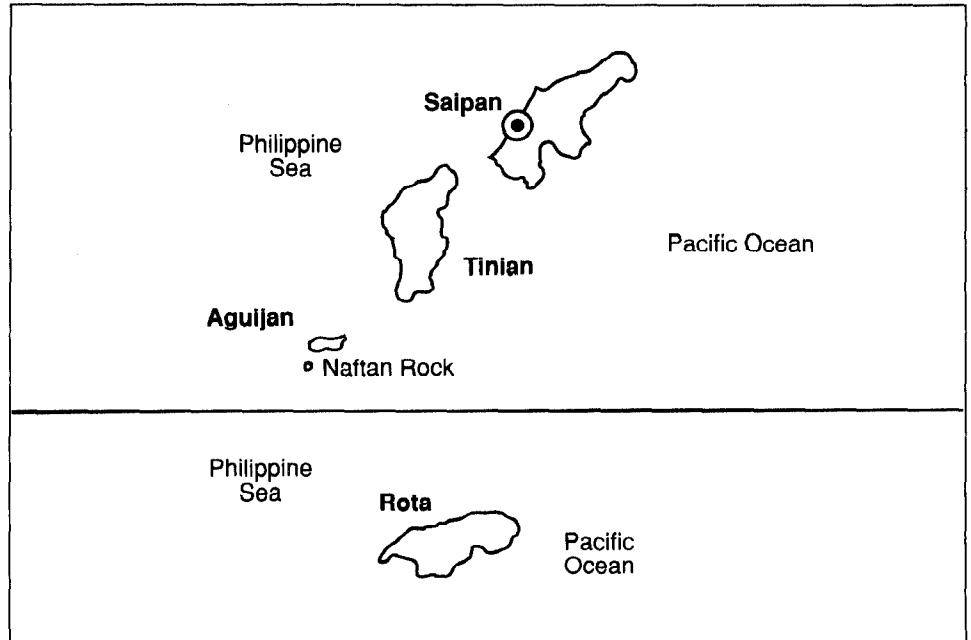
²⁴P.L. 81-630, 64 Stat. 384 (1950).

²⁵P.L. 90-497, 82 Stat. 842 (1968).

²⁶Act of April 10, 1972, P.L. 92-271, 86 Stat. 118 (1972).

**Appendix II
Relationship of the Five Insular Areas With
the United States**

Figure II.5: Map of the Northern Mariana Islands



The United States became responsible for administering the Northern Marianas in 1947, following World War II, under a United Nations Trusteeship Agreement. The Northern Marianas sought political association with the United States after only 3 years under the trusteeship. In 1976, after a long period of negotiations and after a favorable plebiscite in the Marianas Islands, the Congress approved, and the President signed, a joint resolution approving the covenant to establish the Commonwealth of the Northern Mariana Islands under the sovereignty of the United States.²⁷

In accordance with the covenant, a constitution was drafted and a governor was elected. The constitution took effect and the governor took office in 1978.²⁸ It was not until 1986, however, upon the recommendation of the Trusteeship Council of the United Nations and the declaration of the President, that certain key provisions of the covenant took effect.²⁹ Among the provisions taking effect in 1986 was the section declaring the Northern Marianas to be a "self-governing commonwealth . . . in political union with and under the sovereignty of the United

²⁷P.L. 94-241, 90 Stat. 263 (1976).

²⁸Pres. Proclamation No. 4534 (1977).

²⁹Pres. Proclamation No. 5564 (1986).

States of America” and the section granting U.S. citizenship.³⁰ In 1990, the United Nations officially terminated the trusteeship agreement with regard to the Northern Marianas. No changes in certain specified fundamental provisions of the covenant may be made without the mutual consent of the Congress and the government of the Northern Mariana Islands.³¹

The Northern Marianas has a resident representative who serves as a liaison to the federal government, but is not represented in the Congress.

³⁰Marianas Covenant, sec. 101, and sec. 301, respectively.

³¹Marianas Covenant, sec. 105.

Comments From the Assistant Secretary for Territorial and International Affairs, U.S. Department of the Interior



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240



DEC 18 1990

Ms. Linda G. Morra
Director, Human Services Policy
and Management Issues
Human Resources Division
United States General Accounting Office
Washington, D.C. 20548

Dear Ms. Morra:

We appreciate your affording us the opportunity to comment on the GAO draft report entitled "U.S. POSSESSIONS, Applicability of Relevant Provisions of the U.S. Constitution". The subject is one of importance and complexity, and we believe your report will be of value to those concerned with aspects of the subject, both in the insular areas and in Washington.

Attached is a list of suggested changes to particular parts of the draft report, together with our reasons for offering them. I should like in this letter to offer three more general suggestions.

Done throughout report.

First, we recommend that you use a term other than "possessions" to refer to the five areas with which the report deals: Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands. Either the phrase "insular areas", or the phrase "territories and commonwealths", would be preferable. Although the term "possessions" has been much used in U.S. law, it has in recent decades fallen from favor. The term continues of course to appear in Federal statutes, but the Congress too has displayed an ever-increasing tendency to choose synonyms that carry a less demeaning connotation. Puerto Rico and the Northern Marianas each have "commonwealth" status, and many in each of these areas would contend that they are no longer "possessions", or even "territories", of the United States. Guam is currently seeking commonwealth status, but is unarguably now a "territory", as are the Virgin Islands and American Samoa. Whether any of the five areas is now a "possession" as a matter of law probably need not be resolved for purposes of the instant report. We suggest that you avoid the question and use instead terminology that will be inoffensive to the people of the five areas involved, and that will not give rise to argument.

Appendix III
Comments From the Assistant Secretary for
Territorial and International Affairs, U.S.
Department of the Interior

Deleted from appendix I.

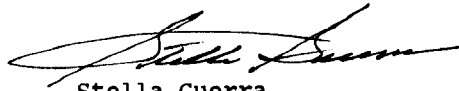
Second, we are troubled by the use of the designation "R" in Appendix I, pages 20 through 44. We understand that the designation is intended to indicate that the provision in the Constitution "is not relevant to the states or possessions" (page 20), but the rationale for actually applying the "R" is not clear to us. In some instances it seems to us that there should be an "R" but there is not; in others, we think the "R" is incorrect. For example, some of the Congress' powers on page 25 have the "R" designation, while others do not, yet all of the listed powers seem to us of equal relevance -- and not irrelevance -- to both states and insular areas. In some cases the designation seems to us misplaced, as in the case of Article I, Section 5, pertaining to contested elections (page 22), which gives each House authority to judge disputed elections. The House of Representatives has in fact entertained a complaint concerning the election of a territorial delegate. We will not burden this letter with further examples. Our point is simply that we would differ from your judgment as to when an "R" is appropriate. But more important, the "R" designation seems to us to add nothing to the value of the report. The designation seems to raise questions but to provide no answers. In our view a blank would be preferable.

Added throughout
appendix I.

Third, we believe that the value of the report would be greatly increased if the other designations in Appendix I, to Federal laws and Federal court decisions, were uniformly footnoted as to source. This is sometimes done, but not consistently. The reader could be significantly aided if citations were in all cases provided.

We hope these comments, and those in the attachment, will be helpful to you. We look forward to receiving the final report.

Sincerely,



Stella Guerra
Assistant Secretary
Territorial and International Affairs

Attachment

**Appendix III
Comments From the Assistant Secretary for
Territorial and International Affairs, U.S.
Department of the Interior**

**Recommended changes by the Department of the Interior
in the GAO draft report on "U.S. POSSESSIONS, Applicability
of Relevant Provisions of the U.S. Constitution".**

In addition to the changes recommended in our covering letter, we offer the following:

Now on page 4.

Page 4, 2d paragraph: The Department of the Interior does not directly "administer" any of the insular areas in question. By statute the Secretary has, in the case of the Virgin Islands and Guam, "general administrative supervision" of the territory's "relations with the Federal Government in all matters not the program responsibility of another Federal department or agency" (48 U.S.C. 1421a (Guam); to the same effect is 48 U.S.C. 1541(c) (Virgin Islands)). The Secretary has the same authority in the case of the Northern Marianas pursuant to Executive Order No. 12572 of November 3, 1986 (51 Fed. Reg. 40401). Although the Secretary's authority in the case of American Samoa is broader, pursuant to 48 U.S.C. 1661(c) and Executive Order No. 10264 of June 29, 1951 (16 Fed. Reg. 6419), the Secretary's approval of the Constitution of American Samoa in 1960 in effect delegates "administration" of the territory to the Government of American Samoa as therein constituted. Accordingly, the sentence might better commence: "The Department of the Interior is the primary federal agency responsible for the insular areas, except Puerto Rico"..."

Now on page 4.

Page 5, first full paragraph, last sentence: The Congress has not directly "authorized" Samoa to adopt its own constitution, although it has recognized the existence of that constitution (48 U.S.C. 1662a). It was the Secretary of the Interior who in effect authorized the drafting of a constitution in American Samoa, and who approved the document, on April 27, 1960, pursuant to the authority cited above. In the circumstances, you may wish to change the sentence to commence: "In subsequent years, the United States Government authorized..."

Now on page 5.

Page 5, last full sentence: There are many "residents" of American Samoa who, being Western Samoans, are not "American nationals", while many American Samoan residents of American Samoa are U.S. citizens as well as U.S. nationals. the latter is a consequence of their parentage (8 U.S.C. 1401 (e)), or of naturalization (8 U.S.C. 1421 et seq.). Accordingly, that sentence might better read: "American Samoans resident in the territory are for the most part American nationals, although some are U.S. citizens as a consequence of parentage or naturalization."

Appendix III
Comments From the Assistant Secretary for
Territorial and International Affairs, U.S.
Department of the Interior

Now on page 10.

Page 13, second full sentence: The statement that the Congress "has not imposed federal income taxes" in the territories may be subject to misinterpretation. The Federal income tax laws do not apply in the territories as they apply in the States, but individuals in the territories may be subject to them (if, for example, they have U.S. source income). More important, the Congress has imposed the "income-tax laws in force in the United States" in the Virgin Islands, Guam, and the Northern Marianas (48 U.S.C. 1397, 1421i(a), sec. 601 of the Covenant, respectively). The laws imposing that tax have been construed over the years as imposing a territorial income tax, to be collected by officers of the territorial government, with the proceeds covered into the pertinent territorial treasury. The sentence, and the one following, might better read: "The Congress, however, has not imposed the federal income tax as such in the territories, but it has, in the case of the Virgin Islands, Guam, and the Northern Mariana Islands, imposed the Federal income tax as a local, territorial income tax, to be collected by territorial officers, with the proceeds to be covered into territorial treasuries. Residents of the territories also pay local taxes, imposed by their respective legislatures."

Now on page 10.

Page 13, last two full sentences and sentence beginning at the end of that page: On its own initiative, the Government of American Samoa adopted the Federal income tax as a territorial income tax for Samoa, effective January 1, 1963. Although Guam and the Northern Marianas have been authorized to enact their own income tax laws by the 1986 Tax Reform Act, and thus to "de-link" from the Federal income tax, neither has yet done so. These three sentences might be modified to read: "American Samoa, on its own initiative, by local law adopted the Federal income tax law as its own local income tax law, with some modifications, commencing January 1, 1963. Under the Tax Reform Act of 1986, Guam and the Northern Marianas are also authorized to enact their own income tax laws, subject to requirements specified in the 1986 Act, but neither has yet done so. The 1986 law also stated Samoa's authority to enact its own income tax law, and it contained other technical provisions of benefit to all three areas."

Now on page 44.

Page 47, first full paragraph, first sentence: Because the Bill of Rights that was contained in section 2 of the Puerto Rican Organic Act of 1917 was almost entirely repealed in 1950, in connection with the beginning of the commonwealth process (48 U.S.C. 737), the portion of the sentence that precedes the semi-colon could be misleading. That Federal provision was replaced by Article II of the Constitution of the Commonwealth, which was approved by the Congress, with modifications, in Public Law 447 of the 82d Congress (1952). The first part of the sentence might therefore state: "The Organic Act of 1917 contained an extensive Bill of Rights, most of which were patterned after the first nine amendments of the Federal Constitution, but that provision was largely repealed in 1950, to be replaced by an even more extensive Bill of Rights in the Constitution of Puerto Rico;"

Appendix III
Comments From the Assistant Secretary for
Territorial and International Affairs, U.S.
Department of the Interior

Now on page 44.

Page 47, first full paragraph: It would be appropriate here to refer to the Puerto Rican Elective Governor Act, Public Law 362, 80th Congress, inasmuch as it was the first Federal law providing for the popular election of a territorial governor.

Now on page 45.

Page 48, second paragraph: Because the legislative body that met in St. Thomas had responsibility for St. John as well, you may wish to change the words following the hyphen to read: "one for St. Thomas and St. John, and one for St. Croix".

Now on page 46.

Page 49, last two sentences: The revenue arrangement might be made clearer if these two sentences were joined since they are pieces of the same whole, perhaps to read approximately as follows: "Additionally, for items produced in the Virgin Islands and shipped to the United States, the act required the U.S. Treasury to pay over federal tax collections on such items to the territorial government, to the extent that such federal collections were matched by local revenues collected by the territorial government during the fiscal year."

Now on page 47.

Page 51, final incomplete paragraph: Because the Act of Congress that accepted American Samoa as an area under U.S. sovereignty makes reference to the instruments of cession by the Samoan chiefs, and not to the international treaties that preceded them (48 U.S.C. 1661(a)), it is customary to date Samoa's cession from those instruments. Additionally, while the chiefs in question were probably "high chiefs", the instruments refer to them simply as "chiefs". Accordingly, the first three sentences of this paragraph might better read: "The two principal islands of American Samoa became a U.S. possession in 1900, when the chiefs of such islands executed an instrument of cession to the United States Government. There followed in 1904 a further instrument of cession, executed by the King and the chiefs of the four Manu'a Islands."

Now on page 49.

Page 52: You could appropriately add at the end of the text on this page the following: "He exercised that authority in 1960 by approving the first Constitution of American Samoa, which had been locally drafted and locally approved. Article I of the Constitution contains a Bill of Rights, much of which is patterned after the Bill of Rights in the U.S. Constitution."

Now on page 49.

Page 53, second and third sentences: So far as we can establish, there were no amendments to the Samoan constitution in 1969, and none to date that limit the authority of the Secretary of the Interior. We thus suggest the deletion of the second sentence. The footnote to the third sentence correctly cites the Federal law that requires that amendments to the Samoan constitution be approved by the Congress, but the third sentence itself is misleading in its implication that the Samoan constitution contains the same requirement. That sentence might better read: "In 1983 the Congress provided that amendments of or modifications to the constitution of American Samoa may be made only by Act of Congress."

Appendix III
Comments From the Assistant Secretary for
Territorial and International Affairs, U.S.
Department of the Interior

Now on page 51.

Page 54, first line: The word "acquired" seems inappropriate, inasmuch as the political relationship between the Northern Marianas and the United States is a product of lengthy bilateral negotiations and defined processes in each government. The point could be met if the sentence were to say: "But it was not until 1976 that negotiations were completed and necessary governmental processes accomplished so as to permit the Northern Marianas to become a part of the United States."

Now on page 52.

Page 54, second to last sentence: Because the matter of mutual consent is contentious, we suggest that this sentence follow closely the language of section 105 of the Covenant. It might read: "No change in certain fundamental provisions of the Covenant, specified therein, may be made without the mutual consent of the Government of the United States and the Government of the Northern Mariana Islands."

Comments From the Assistant Attorney General for Administration, U.S. Department of Justice



U.S. Department of Justice

Washington, D.C. 20530

APR 12 1991

Ms. Linda G. Morra
Director, Human Services Policy
and Management Issues
U.S. General Accounting Office
Washington, D.C. 20548

Dear Ms. Morra:

Thank you for the opportunity to comment on the GAO draft report entitled: "U.S. Possessions, Applicability of Relevant Provisions of the U.S. Constitution." We appreciate this opportunity all the more because the question of whether a provision of the Constitution applies to the territories and Commonwealths of the United States is, like any other constitutional issue, of great concern to the Department of Justice. Moreover, the litigation conducted by the Department of Justice, pursuant to 28 U.S.C. § 516 for the various Departments, includes lawsuits that involve the status of the territories and Commonwealths and the application to them of the Constitution and of other provisions of federal law. Indeed, we are currently engaged in such litigation.

In addition, the Department of Justice performs many law enforcement functions for, and provides much law enforcement assistance to, the U.S. territories and Commonwealths, including prosecutions by U.S. Attorneys Offices and investigations by the Federal Bureau of Investigation and the Drug Enforcement Administration. The U.S. territories and Commonwealths, except American Samoa, are included in the 95 federal judicial districts. These districts have U.S. Attorneys and Marshals responsible for the enforcement of federal laws. Given the Department's presence in the territories and Commonwealth and its responsibilities for law enforcement in those areas, it is evident that the Department of Justice has a crucial interest in the question of the applicability of the Constitution of the United States to those areas.

I.

In compliance with your request we shall focus first on the applicability of the Territory Clause of the Constitution (art.

IV, § 3, cl. 2)¹ to the Commonwealths of Puerto Rico and the Northern Mariana Islands and the territories of Guam, American Samoa, and the Virgin Islands. Those five areas are under the sovereignty of the United States,² but not States or included in States. National Bank v. County of Yankton, 101 U.S. 129, 133 (1880) has established that "[a]ll territory within the jurisdiction of the United States not included in any State must necessarily be governed by or under the authority of Congress" under the Territory Clause.

Various factions within the Commonwealths of Puerto Rico and the Northern Mariana Islands have argued that the Territory Clause does not apply there.³ The United States has sovereignty in these Commonwealths, however, and under the Constitution and applicable law, the source of constitutional authority for exercise of federal authority in all areas under the sovereignty of the United States is the Territory Clause. The argument that the Territory Clause does not apply is tantamount to a claim that there is no constitutional source for federal lawmaking in Puerto Rico and the Northern Marianas, and that these entities are basically independent sovereigns. Not surprisingly, every court to consider the Territory Clause issue has reaffirmed that the Territory Clause provides the fundamental constitutional source of authority governing the relationship between the U.S. and the Commonwealths.

A. Puerto Rico.

In Harris v. Rosario, 446 U.S. 651 (1980), the Supreme Court unanimously stated that the Territory Clause governs the

¹ The Territory Clause provides in pertinent part:

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States.

² The United States acquired sovereignty over those five areas as follows: Puerto Rico and Guam, Article II of the Treaty of Paris of December 10, 1898, 30 Stat. 1754, 1755; American Samoa, cessions of April 10, 1900 and July 16, 1904, accepted, ratified, and confirmed by the Act of February 20, 1929, 48 U.S.C. § 1661; Virgin Islands, Convention with Denmark of August 4, 1916, Art. I, 39 Stat. (Pt. II) 1706; Northern Mariana Islands Covenant, Section 101, 90 Stat. 263, 264 (1976), 48 U.S.C. § 1681 note.

³ The applicability of the Territory Clause to American Samoa, Guam and the Virgin Islands has not been questioned, to our knowledge; therefore, we do not refer to those territories.

Appendix IV
Comments From the Assistant Attorney General
for Administration, U.S. Department of Justice

relationship between the United States and Puerto Rico. While one Justice dissented, he did not take issue with the basic proposition that the Territory Clause governs the relationship. No court has ever held that the Territory Clause does not apply to this relationship, and several cases from the First Circuit after Harris have reaffirmed that the clause applies. United States v. Torres, 826 F.2d 151, 154 (1st Cir. 1987); Perez de la Cruz v. Crowley Towing and Transportation Co., 807 F.2d 1084, 1088 (1st Cir. 1986). See also the concurring opinion of Judge Torruella in U.S. v. Lopez Andino, 831 F.2d 1164, 1173 (1st Cir. 1987) (footnote, emphasis omitted):

Although some events subsequent to the passage of P.L. 600 have tended to overlook and obscure the facts, the legislative history of that Act [the Puerto Rico - Federal Relations Act of July 3, 1950, 64 Stat. 369] leaves no doubt that even though its passage signaled the grant of internal self-government to Puerto Rico, no change was intended by Congress or Puerto Rico authorities in the territory's constitutional status or in Congress' continuing plenary power over Puerto Rico pursuant to the Territory Clause of the Constitution.

Puerto Rico has in the past relied on a dictum in United States v. Quinones, 758 F.2d 40, 42 (1st Cir. 1985), stating that in 1952 Puerto Rico ceased "being a territory of the United States subject to the plenary powers of Congress as provided in the Federal Constitution." The Court did not state that the Territory Clause does not govern the relationship between the Federal Government and the Commonwealth of Puerto Rico. Had it done so it would have been overruled by the later First Circuit cases of Torres and De La Cruz, *supra*. The result of Quinones confirms that the Territory Clause continues to apply to the underlying relationship because it holds that Congress could render the wiretap provisions of the Omnibus Crime Control Act of 1968 applicable to Puerto Rico and thereby overcome the prohibition against wiretaps contained in the Constitution of Puerto Rico. The authority of Congress to make the Crime Control Act applicable to Puerto Rico is necessarily derived from the Territory Clause. Considering that a 1980 Supreme Court decision as well as two Court of Appeals decisions, dated 1986 and 1987, all specifically hold that the Territory Clause applies to Puerto Rico, there cannot be, as far as any branch or agency of the Federal Government is concerned, any doubt as to the applicability of the Territory Clause to Puerto Rico.

B. The Commonwealth of the Northern Mariana Islands

The Northern Mariana Islands came under the sovereignty of the United States as the result of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of American, Pub. L. No. 94-241, 90 Stat. 263; 48 U.S.C. § 1681 note, which has the status of a law (Covenant § 1001(b)).

In the case of the Commonwealth of the Northern Mariana Islands, two Ninth Circuit decisions have held that the Territory Clause governs the relationship between the United States and the Commonwealth, and no decision has ever held to the contrary. In Wabot v. Villacrusis, 908 F.2d 411, 421 & n.17 (9th Cir. 1990), the Court of Appeals had to decide whether Congress could make certain U.S. constitutional provisions inapplicable to the Northern Marianas. The Court held that Congress had that power under the Territory Clause, which governs the relationship between the United States and the Commonwealth.

In Micronesian Telecommunications Corp. v. NLRB, 820 F.2d 1097, 1100 n.2 (9th Cir. 1987), the Court of Appeals had to decide whether the federal National Labor Relations Act applies to the Commonwealth. The Court found decisive the fact that the Act states that it applies to "territories." The Court quoted with approval from the pertinent Senate Report:

"Although described as a commonwealth, the relationship [between the United States and the CNMI] is territorial in nature with final sovereignty invested in the United States and plenary legislative authority vested in the United States Congress."

Citing S. Rep. No. 596, 94th Cong., 2d Sess. 2 (1976), reprinted in 1976 U.S. Code Cong. & Ad. News 448, 449.

The cited statement from the Senate Report is consistent with every piece of legislative and negotiating history surrounding the Covenant and the U.S.-Commonwealth relationship, all of which show both that the Territory Clause applies to that relationship and that the negotiations for the Northern Mariana Islands themselves stated that it applies.

1. The authoritative Report of the Joint Drafting Committee -- a Report issued on the day the Covenant was signed, approved by both the United States and CNMI delegations, incorporated into the official record of the negotiations⁴ and

⁴ S. Rep. No. 433, 94th Cong., 1st Sess. 403 (1975).

designed to record the intent of the parties concerning certain provisions of the Covenant -- explicitly states that "it is understood that the authority of the United States" [to enact legislation applicable to the Northern Mariana Islands] will be exercised in the Commonwealth through, "among other provisions of the United States Constitution, Article IV, Section 3, Clause 2," i.e., the Territory Clause.⁵

2. The Section-by-Section Analysis of the Covenant⁶ prepared by the Marianas Political Status Commission, which represented the Northern Mariana Islands during the status negotiations -- a report that, like the Joint Drafting Committee report, was issued on the date the Covenant was signed⁷ -- refers at least five times to the Territory Clause as the source of the authority of Congress to legislate for the CNMI. The analysis explicitly states that:

From the point of view of the United States, the existence of the power under Article IV, Section 3, Clause 2, is a fundamental part of a close and permanent relationship with any political entity which is not a state of the union.

⁵ S. Rep. No. 433, *supra*, at 403, 404; Hearing Before the Senate Comm. on Interior and Insular Affairs on S.J. Res. 107, Joint Resolution to Approve the "Covenant to Establish A Commonwealth of the Northern Mariana Islands in Political Union with the United States of America," and for Other Purposes, 94th Cong., 1st Sess. 786 (1975) (hereinafter "Senate Hearing").

⁶ Section-by-Section Analysis of the Covenant (Feb. 15, 1975), *reprinted in* Senate Hearing, at 356-496 (1975); Hearing Before the House Subcomm. on Territorial and Insular Affairs, Committee on Interior and Insular Affairs on H.J. Res. 549, H.J. Res. 550, and H.J. Res. 547 to Approve the "Convenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America," 94th Cong., 1st Sess. 626-65 (1975) (hereinafter "MPSC Analysis").

⁷ This section-by-section analysis was widely distributed within the Northern Marianas in three different languages prior to the plebiscite voting overwhelmingly in favor of union with the United States. Senate Hearing at 55, 99, 248, 261, 263. The analysis was presented to Congress and reproduced in the legislative history. Its contents were represented to be the views of the Commonwealth negotiators as well as to reflect most accurately the aspirations and concerns of the people of the Northern Marianas at the time they negotiated and approved the Covenant. Senate Hearing at 54-55, 254; House Hearing at 626.

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The report goes on to explain

Article IV, Section 3, clause 2 [the Territory Clause] will continue to be the mechanism through which Congress will legislate with respect to the Northern Marianas.⁸

3. This very question was raised in Congress at the time that the Covenant was before the Senate Interior Committee for approval. Senator J. Bennett Johnston asked both the President's representative to the Covenant negotiations and the CNMI's chief negotiator whether the parties to the Covenant agreed on the issue of the source of Congress' authority to legislate in the Commonwealth. The response from Ambassador Williams, the United States' representative at the Covenant negotiations, was as follows:

[T]he authority of the United States to legislate for the Northern Marianas includes article IV, section 3, clause 2 of the U.S. Constitution, pursuant to which the Congress has a legislative power over the territories far broader than it enjoys over the States.

Senate Hearing at 213. Following this response, Senator Johnston noted for the record that, in view of the importance attributed by him to this issue, he had submitted a copy of his question in advance to Senator Edward DLG Pangelinan, the Chairman of the Marianas Political Status Commission, the chief negotiator for the Northern Mariana Islands and head of the delegation from the CNMI. The Senator asked Mr. Pangelinan on the record whether he concurred with Ambassador Williams' response. Mr. Pangelinan responded,

Yes. The delegation [from the CNMI⁹] does concur with what the Ambassador has said, Mr. Chairman.

Id.

In sum, the executive, legislative, and judicial branches of the United States government, as well as the duly authorized

⁸ MPSC Analysis, at 13-14, reprinted in Senate Hearing at 371-72; House Hearing at 630.

⁹ The delegation from the CNMI included the counsel of the Marianas Political Status Commission as well as representatives of the political parties, legislative bodies, executive authority, and of all the islands Senate Hearing at 246-247.

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representatives of the Northern Marianas at the time the Covenant was signed, all agree that the Territory Clause applies to the Northern Mariana Islands. The current assertions made by the Commonwealth that the Territory Clause does not apply to the Commonwealth referred to in your letter of March 11, 1991, thus disavow the solemn assurances previously given by the representatives of the Northern Mariana Islands to Congress.

The Commonwealth's change of position is based on a palpable misinterpretation of the Covenant. The Commonwealth now asserts that the Territory Clause does not apply to it, because that Clause is not specifically enumerated in Section 501(a) of the Covenant.¹⁰ Section 501(a), however, recognizes in so many words that certain provisions of the Constitution apply to the Northern Mariana Islands by their own force, hence, that the Section does not purport to contain an exclusive listing of all of the provisions of the Constitution that are applicable to the Commonwealth. The purpose of Section 501(a), rather, is to enumerate and make applicable to the Commonwealth, as if it were one of the several States, certain provisions of the Constitution that normally would not apply to it of their own force, especially certain constitutional provisions that in terms are

¹⁰ Section 501(a) provides, in pertinent part:

To the extent that they are not applicable of their own force, the following provisions of the Constitution of the United States will be applicable within the Northern Mariana Islands as if the Northern Mariana Islands were one of the several States: Article I, Section 9, Clauses 2, 3, and 8; Article I, Section 10, Clauses 1 and 3; Article IV, Section 1 and Section 2, Clauses 1 and 2; Amendments 1 through 9, inclusive; Amendment 13; Amendment 14, Section 1; Amendment 15; Amendment 19; and Amendment 26.

48 U.S.C. § 1681 note. The Commonwealth's argument that the Territory Clause does not apply to it seeks comfort to some extent in dicta in two decisions that note that the Territory Clause is not listed in section 501 of the Covenant but do not purport to draw any legal consequences from this exclusion. Fleming v. Dept of Public Safety, 837 F.2d 401 (9th Cir. 1988), cert. denied, 488 U.S. 889 (1988); Hillblom v. United States, 896 F.2d 426 (9th Cir. 1990). In Fleming the United States was not a party to the proceedings and did not participate in them. In Hillblom the Government did not brief the issue of the applicability of the Territory Clause because it was not necessary for the decision. In neither case did the court hold that the Territory Clause did not apply to the Commonwealth.

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applicable only to States. Section 501(a) thus is not a catalog determining which provision of the Constitution shall apply to the Commonwealth. It rather extends to the Commonwealth certain provisions of the Constitution that apply only to States, in particular those granting the basic rights of United States citizenship.¹¹

The Report of the Joint Drafting Committee, setting forth the intent of both parties to the Covenant, fully supports this reading of section 501(a). The Report states as follows:

Subsection 501(a). This Subsection is intended, among other things, to extend to the people of the Northern Mariana Islands the basic rights of United States citizenship and to make applicable to them certain of the constitutional provisions governing the relationship between the federal government and the States, as if the Northern Mariana Islands were a State. As reflected in this Subsection the parties recognize that certain provisions of the Constitution of the United States will apply to the Northern Mariana Islands of their own force by virtue of Article I of this Covenant.¹²

¹¹ Accordingly, Fleming, supra, at 405, held that the Eleventh Amendment which deals with immunity of States from suit does not apply to the Commonwealth because it is not included in Section 501(a). Fleming probably has been overruled in Ngiraingas v. Sanchez, __ U.S. __, 110 S. Ct. 1137 (1990).

¹² Similarly, the Section-by-Section Analysis of the Covenant prepared by the Marianas Political Status Commission explains section 501(a) as follows:

Section 501. Section 501 deals with the application of the United States Constitution to the Northern Mariana Islands. The purpose of the Section is to extend to the people of the Northern Marianas the basic rights of United States citizenship, just as those rights are enjoyed by the people in the states. The Section is also intended to make applicable to the Northern Marianas, as if it were a state, certain of the Constitutional provisions governing the relationship between the federal government and the states.

Senate Hearing at 397.

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S. Rep. No. 433, supra, at 405.

Because the Territory Clause does not deal with the basic rights of citizenship or with federal-state relations, it was neither necessary nor appropriate to include it among the Constitutional provisions listed in section 501(a) of the Covenant. As set forth in detail above, Article I provides that the Northern Marianas is under the sovereignty of the United States and under County of Yankton, supra, the Territory Clause is necessarily the medium through which Congress exercises its authority in the Commonwealth. The Territory Clause thus applies to the Commonwealth by its own force. See also Harris v. Rosario, supra.

See page 29.

Based on the language of the Covenant, its negotiating and legislative histories, and the relevant judicial decisions, there is no bona fide dispute that the Territory Clause applies to the Commonwealth of the Northern Mariana Islands.

II.

The remainder of your draft report covers a wide range of topics, many of which are extremely complex. In view of the short period of time given for our review, we cannot give your draft report the thorough review which we would give to it under normal circumstances. Our comments, therefore, are necessarily selective and our silence does not necessarily mean we agree with your conclusions.

As a general observation, we would avoid the use of the term "possession" when referring to the territories of American Samoa, Guam and the Virgin Islands, and the Commonwealth of the Northern Mariana Islands and Puerto Rico. The term appears to be offensive to the people living in those areas, and has the connotations of an area that has neither an organic act nor a constitution. In our view, the term "an unincorporated area under the sovereignty of the United States that is not a State or included in a State" technically would be more accurate. Given that this definition is rather unwieldy, we have used your term "insular area", with the understanding that it does not include States that are islands, such as Hawaii. We would rewrite the paragraph entitled "Background" on page 5 as follows:

Background

According to the Insular Cases and their progeny¹³ areas under the sovereignty of the United States that are not States

¹³ Downes v. Bidwell, 182 U.S. 244 (1901); Hawaii v. Mankichi, 190 U.S. 197 (1903); Dorr v. United States, 195 U.S. 138 (1904); Balzac v. Porto Rico, 258 U.S. 298 (1922).

Now on page 4.

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fall into two categories: incorporated and unincorporated. The first group comprises those that are destined to become States; to those the Constitution of the United States applies in full. Included in the other group are those areas that are not intended for statehood; to those only fundamental parts of the Constitution apply of their own force. Downes v. Bidwell, 182 U.S. 244, 290-91 (1901). Although the Court has not precisely defined which parts of the Constitution are fundamental, it has held various parts to be fundamental. See, Balzac v. Porto Rico, 258 U.S. 298, 312-13 (1922) (due process); Examining Board v. Flores de Otero, 426 U.S. 572, 599-601 (1976) (Equal Protection Clause of the Fourteenth Amendment or the Equal Protection Element of the Due Process Clause of the Fifth Amendment);¹⁴ Torres v. Puerto Rico, 442 U.S. 465, 468-71 (1979) (prohibition against unreasonable search and seizure either of the Fourth Amendment directly or by operation of the Fourteenth Amendment).

On the other hand, the right to a jury trial has not been held fundamental, Balzac, *supra*; see also, Commonwealth of the Northern Mariana Islands v. Atalig, 723 F.2d 682 (9th Cir 1984), *cert. denied*, 467 U.S. 1244 (1984).

Apart from those provisions that apply to the insular areas of their own force, Congress has introduced other parts of the Constitution into them by legislation. Here again a distinction must be made. Sometimes those provisions have been made applicable only as a protection against the local government. See *e.g.*, the Bill of Rights in the Organic Acts of Guam and the Virgin Islands, 48 U.S.C. §§ 1421b (a)-(t); 1561 (except the last two paragraphs). On the other hand, some constitutional provisions have been introduced into those areas so as to be effective against the federal government. See *e.g.*, 48 U.S.C. § 1421b(u) (Guam); the Covenant with the Northern Mariana Islands, 48 U.S.C. § 1681 note, § 501; 48 U.S.C. § 1561, penultimate paragraph (Virgin Islands). [With respect to American Samoa, we have no information concerning the Bill of Rights contained in a military order issued by the Governor. On the other hand, the Constitution of American Samoa, adopted by a Constitutional Convention and approved by the Secretary of the Interior, contains a Bill of Rights.]

We would rewrite the paragraph dealing with the Uniformity Clause, n.8, including in it the topic dealing with taxation, as follows:

¹⁴ The Court felt it unnecessary to resolve the question whether the constitutional protection of the residents of the Commonwealth of Puerto Rico is based in the Fifth or the Fourteenth Amendment.

Now on page 6.

The Uniformity Clause of art. I, § 8, cl. 1 of the Constitution provides that all duties, imports, and excises shall be uniform throughout the United States. In 1901 the Supreme Court held in Downes v. Bidwell, supra, one of the Insular Cases, and involving custom duties, that this clause did not apply to special customs duties imposed on imports from Puerto Rico to the United States, because Puerto Rico, as an unincorporated territory, was not a part of the United States within the meaning of the Uniformity Clause. In spite of that decision, Puerto Rico is now a part of the customs territory of the United States. 19 U.S.C. § 1401(h). The other four insular areas, however, are not. Id. Covenant with the Northern Mariana Islands, Section 603.

Similarly, because the insular areas are exempt from the uniformity requirement with respect to taxation, the federal income tax is not required to apply to income from sources within an insular area earned by a resident of that area. 26 U.S.C. §§ 931, 932, 936. The Internal Revenue laws of the United States do not apply to Puerto Rico which has its own income tax laws, derived from the Internal Revenue Code of 1939, 48 U.S.C. § 734. Until 1988 American Samoa, Guam, and the Northern Mariana Islands were required by statute to have a local income tax that was a mirror system of the Federal Income Tax. (American Samoa Code, title 11, Chapter 04; 48 U.S.C. 1421i(e) (Guam); Covenant with the Northern Mariana Islands, Section 601. Pursuant to Section 1271 of the Tax Reform Act of 1986, Pub. L. No. 99-514, 100 Stat. 2085, 2591, those three insular areas are now authorized to enact their own income tax laws in lieu of the mirror system, provided, they enter into an implementing agreement with the United States. Up to now, only American Samoa has done so. American Samoa Code Ann., title 11 (1988). Guam plans to enact its own system. Tax Implementation Agreement of United States - Guam of April 3-5, 1989. The Virgin Islands continue to be required by statute to implement a local tax that is a mirror of the federal tax law. 48 U.S.C. §§ 1397, 1642. Changes were made to that law by the Tax Reform Act of 1986 that are too complex to be discussed here.

The Constitution contains another uniformity requirement. art. I, § 8, cl. 4, relating to rules of naturalization and bankruptcy laws. Statutes have been enacted on the theory that these two uniformity requirements do not extend to the insular areas. Thus there are some variations between the application of the naturalization and bankruptcy laws to the States and some of the insular areas. For instance, the Immigration and Naturalization Act does not apply to American Samoa and the Northern Mariana Islands (Immigration and Naturalization Act, § 101(a)(38), 8 U.S.C. § 1101(a)(38)), and the provision relating to the establishment of bankruptcy courts as units of the district courts (28 U.S.C. §§ 151, 152) does not apply to any insular area other than the Commonwealth of Puerto Rico. In Guam, the Virgin Islands and the Northern Mariana Islands, the

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District Court itself has been given the jurisdiction of a bankruptcy court. 48 U.S.C. §§ 1424(b), 1612, 1694(a).

Now on page 5.

Page 5, last line and n.8. Since the term "national" refers to all persons who owe permanent allegiance to the United States, whether citizens or not, we suggest that, the report refer to the residents of American Samoa who owe permanent allegiance to the United States but are not United States citizens, as "non-citizen nationals," in accord with the 1986 amendment to § 341 of the Immigration and Nationality Act, 8 U.S.C. § 1452(b).

Now on page 5.

Page 6, line 11. Add footnote after the word "rights." There is, however, a difference between the direct application of a Constitutional provision to an insular area either by its own force or by federal statute and the situation where the protection is contained only in the local Bill of Rights. In the former case, the Constitutional protection can be vindicated in the federal courts, in the latter situation, the only local courts would have jurisdiction over the controversy. This difference was discussed in Mora v. Meijas, 206 F.2d 377 (1st Cir. 1953).

See page 6.

The Commerce Clause

The Commerce Clause (art. I, § 8, cl. 3 of the Constitution) confers upon Congress the power "To regulate Commerce with Foreign Nations, and among the several States, and with the Indian tribes." There are two aspects to the Commerce Clause; first, the power of Congress to enact legislation; and second, the clause's negative implication that prohibits the States from burdening interstate or foreign commerce, frequently called the Dormant Commerce Clause. The question is whether those two aspects of the Commerce Clause also apply to the unincorporated insular areas.

The judicial decisions in this area have not been consistent.

First Circuit

In 1947, - i.e. before the Puerto Rican Federal Relations Act became effective, - the Court of Appeals for the First Circuit ruled in Buscaglia v. Ballester, 162 F.2d 805, 807 (1st Cir.), cert. denied, 332 U.S. 816 (1947), that the two aspects of the Commerce Clause did not apply to Puerto Rico, because:

it adds nothing to the comprehensive power given to Congress by the Constitution, Art. IV, Section 3, Cl. 2, to legislate with respect to national territory, and it can have no consequential effect of limiting territorial action since Congress already has the power under Art. IV, Section 3, Cl. 2, supra, to limit such action to any extent it

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chooses, even to the extent of annulling local legislation. See § 34 of the Organic Act. 39 Stat. 951, 961, 48 U.S.C.A. § 822 et seq.

It should be noted that the specific authority to annul local Puerto Rican legislation was repealed in the Puerto Rico-Federal Relations Act; similarly the Covenant with the Northern Marianas Islands does not contain that authority. Congress, however, continues to reserve the power and authority to annul the laws of the legislatures of Guam and the Virgin Islands. 48 U.S.C. § 1423i (Guam); § 1574(c) (Virgin Islands).¹⁵ In Caribtow Corp. v. Occupational Safety and Health Review Comm'n, 493 F.2d 1064, 1068 n.11 (1st Cir. 1974) which involved the application of the Occupational Health and Safety Act to Puerto Rico, the Court observed that it saw no occasion to reconsider Buscaglia because it was clear that Congress had the authority to apply that Act to Puerto Rico either under the Commerce or under the Territory Clause. It will be noted that under Buscaglia, relief from the action of a insular area that imposes a burden on interstate or foreign commerce would require specific Congressional legislation under the Territory Clause, and could not be obtained by litigation based on the Dormant Commerce Clause.

Sea-Land Service, Inc. v. Municipality of San Juan, 505 F. Supp. 533, 539-45 (D.P.R. 1980), coalesced the Dormant Commerce and Territory Clauses by concluding,

We thus hold that, in the absence of clear congressional acquiescence to the contrary, Puerto Rico is constrained by the prohibitory implications of the Commerce Clause as construed by the Supreme Court of the United States. This, however, does not mean that the Commerce Clause applies to Puerto Rico ex proprio vigore, but that its prohibitive effect is binding on the Commonwealth through the Territorial Clause, Art. IV, § 3, Cl. 2 as an implied corollary of congressional commerce powers thereunder.

Id. at 545 (Footnotes omitted).

We read this opinion to the effect that the prohibitions of the Dormant Commerce Clause constitute a self executing element of the Territory Clause.

¹⁵ It appears, however, that for more than a century Congress has not exercised its annulment authority, a standard feature of the territorial organic acts.

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Under this ruling an action of the government of an insular area that imposes a burden on interstate or foreign commerce may be challenged in court; Congressional action is no longer the only way to review it. Several decisions of the United States District Court for the District of Puerto Rico have interpreted Sea-Land Services to the effect that the Dormant Commerce Clause applies to Puerto Rico. See Seatec Int'l Ltd. v. Secretary of the Treasury, 525 F. Supp. 980, 982 (D.P.R. 1981); Pan American Computer Corp. v. Data General Corp., 562 F. Supp. 693, 701 (D.P.R. 1983), Garcia v. Bauza Salas, 686 F. Supp. 965, 972 (D.P.R. 1988), reversed on other grounds, 862 F.2d 905 (1st Cir. 1988); Trailer Marine Transport Corp. v. Ortiz, 733 F. Supp. 490, 495 (D.P.R. 1990).

Third Circuit

Southerland v. St. Croix Taxicab Ass'n, 315 F.2d 364, 368-69 (3rd Cir. 1963) concluded that a taxicab regulation imposed by the Government of the Virgin Islands constituted an unreasonable burden on interstate commerce and thus violated the Dormant Commerce Clause of the Constitution. JDS Realty Corp. v. Government of the Virgin Islands, 824 F.2d 256, 259-60 (3d Cir. 1987) opined:

The Virgin Islands urges us to follow Buscaglia v. Ballester, 162 F.2d 805 (1st Cir. 1947), in which the court found that the commerce clause did not apply to Puerto Rico. The court reasoned that because Congress has the comprehensive power to regulate territories under the territorial clause, Art. IV, § 3, cl. 2, the powers granted to Congress by the commerce clause are unnecessary when dealing with a territory.

We do not find the Buscaglia court's reasoning persuasive. It does not follow from the fact Congress has the power to regulate the territories that the powers conferred on Congress by the commerce clause are not applicable to unincorporated territories. Moreover, it is worth noting that the effect of countenancing the Virgin Islands' argument is that an unincorporated territory would have more power over commerce than the states possess.

We conclude that the powers granted to Congress by the commerce clause are implicit in the territorial clause. See Sea-Land Services, supra, 505 F.Supp. at 545. We hold, therefore, that the commerce clause

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applies to the Virgin Islands, absent an express statement to the contrary from Congress.

The Supreme Court vacated that judgement and remanded the case to the Court of Appeals to consider the question of mootness. 484 U.S. 999 (1988). Upon remand the Court of Appeals found that controversy had become moot and ordered the action to be dismissed. 852 F.2d 66 (3d Cir. 1988).

Fifth Circuit

United States v. Husband R. (Roach), 453 F.2d 1054, 1059 (5th Cir. 1971) cert. denied 406 U.S. 935 (1972), held that because the Governor of the Canal Zone was a federal officer, the limitations placed by the Commerce Clause on state legislative bodies did not apply to the Government of the Canal Zone.

Ninth Circuit

Anderson v. Mullaney, 191 F.2d 123, 128 (9th Cir. 1951) involving the imposition by the territorial legislature of discriminatory license fees on non-residents of the then incorporated territory of Alaska, held that the Commerce Clause did not by its own force operate as a constitutional limitation in the territorial government. On the other hand, the court could not conceive:

that in granting legislative power to the Territorial Legislature it was intended that the power should exceed that possessed by the legislature of a State in dealing with commerce. The words "all rightful subjects of legislation" describing the extent to which the legislative power of the Territory should extend, 48 U.S.C.A. § 77, do not include the imposition upon commerce such as that here involved of burdens which a State might not create under like circumstances.

Id.

The Supreme Court affirmed the principle that a territory can have no greater power vis-a-vis federal legislative than a State, Mullaney v. Anderson, 342 U.S. 415 (1952), but grounded the decision not on the Commerce Clause but in the Privileges and Immunities Clause of Article IV, Section 2.

Three decisions of the Court of Appeals for the Ninth Circuit, rendered between 1964 and 1970, assumed without discussion that the Commerce Clause precluded Guam from collecting taxes that burdened interstate commerce. See Manila

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Trading & Supply Co. (Guam) v. Maddox, 335 F.2d 150, 51 (9th Cir. 1964); Asiatic Trans-Pacific, Ins. v. Maddox, 371 F.2d 132 (9th Cir. 1967); Pacific Broadcasting Corp. v. Riddell, 427 F.2d 519 (9th Cir. 1970).

In 1985, the Ninth Circuit held in a case involving monopolistic practices authorized by the local legislature that the negative implications of the Commerce Clause do not apply to Guam. Sakamoto v. Duty Free Shoppers, Ltd., 764 F.2d 1285, 1286-88 (9th Cir. 1985) cert. denied, 475 U.S. 1081 (1986). The opinion described Guam as an unincorporated territory enjoying only such powers as have been delegated to it by the Congress in the Organic Act of Guam, its government being in essence an instrumentality of the federal government; the plenary control by Congress on the Guam government being illustrated by the provision that Congress may annul any act of the Guam legislature. From this the opinion inferred that, because it is the function of the Dormant Commerce Clause to preserve Congressional authority, the Clause does not apply to a creature of Congress such as the government of Guam.¹⁶

When Sakamoto was before the Supreme Court on petition for certiorari, the Solicitor General of the United States at the request of the Court submitted a brief as amicus curiae in which he took the position that the Court of Appeals was in error in ruling that the negative implications of the Commerce Clause do not apply to Guam; he felt, however, that the burden on interstate commerce complained of was too insubstantial to warrant Supreme Court review. The Solicitor General questioned the argument of the 9th Circuit that Guam was merely an agency of the federal government. While he took the position that the Dormant Commerce Clause would not apply to Guam by its own force, he concluded that by statute Congress had made clear its intent that the clause should apply. The Supreme Court's denial of certiorari may have been prompted by the insubstantiality of the alleged burden on commerce.

Intra-Insular Area Transactions

The Commerce Clause authorizes Congress to regulate commerce among the States. There are, however, a number of statutes regulating activities within a territory or within the District

¹⁶ The court distinguished Anderson v. Mullaney, supra, on the ground that, when that case was decided, Alaska was an incorporated territory to which all provisions of the Constitution applied. 764 F.2d at 1287. The court also opined that the three cases, decided between 1964 and 1970, supra, were not controlling precedent because the issue of the applicability of the Dormant Commerce Clause to Guam was never raised or discussed in them. 764 F.2d at 1288.

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of Columbia, including the Sherman Act, 15 U.S.C. § 3, which declares illegal:

Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, is declared illegal.

The Supreme Court has held that, as to transactions wholly within the District of Columbia, the constitutional source of authority for this part of the Sherman Act cannot be the Commerce Clause, since the restraint of trade is purely local in character. The Court concluded that Congress' plenary power to legislate for the District of Columbia, under Art. I, sec. 8, cl. 17 of the Constitution provided authority for the statute. Atlantic Cleaners & Dyers, Inc. v. United States, 286 U.S. 427 (1932).

The same problem arose in connection with Puerto Rico in Puerto Rico v. Shell Co., 302 U.S. 253 (1937) and while the Court did not identify the constitutional basis for application of the Sherman Act to Puerto Rico, its reference to Atlantic Cleaners in Shell indicates that that source is necessarily the Territory Clause, and so the Court of Appeals for the First Circuit interpreted the Shell case in Caribtow v. Occupational Safety and Health Commission, supra 493 F.2d at 1068 n.11.¹⁷

¹⁷ The Court in Caribtow said in that footnote:

Although this court said in Buscaglia v. Ballester, 162 F.2d 805 (1st Cir.), cert. denied, 332 U.S. 816, 68 S. Ct. 154, 92 L.Ed. 393 (1947) that the Interstate Commerce Clause does not apply to Puerto Rico, we have no occasion here to reconsider that opinion in the light of intervening events. Under either that clause, or the Territorial Clause, Art. IV, § 3, cl.2, see Puerto Rico v. The Shell Co., 302 U.S. 253, 58 S. Ct. 167, 82 L.Ed. 235 (1937), it is clear that Congress has the power to apply the Occupational Safety and Health Act to Puerto Rico.

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Now on page 7.

Relying on Puerto Rico v. Shell, the Supreme Court held in a per curiam opinion that Section 3 of the Sherman Act applies to intra-territorial transactions in Samoa again not specifically identifying the constitutional source of the legislation. United States v. Standard Oil Co. of California, 404 U.S. 558 (1972).

Jury Trials

We would reorganize the discussion on jury trials on pp. 11-13 as follows:

Trial by Jury

The Sixth and Seventh Amendments address the right to trial by jury in criminal prosecutions and civil cases, respectively. The Supreme Court has held that the right to a trial by jury is not a fundamental right that applies to the unincorporated territories by its own force. Dorr v. United States, 195 U.S. 138, 148 (1904) (Philippine Islands); Balzac v. Porto Rico, 258 U.S. 298, 304-14 (1922) (Puerto Rico); see also Commonwealth of the Northern Mariana Islands v. Atalig, 723 F.2d 682, 688-91 (9th Cir.) cert. denied 467 U.S. 1244 (1984) (Northern Mariana Islands).¹⁸ By statute, the Elective Governor Acts of 1968, the Sixth and Seventh Amendments have been extended to Guam (48 U.S.C. 1421b(u)), and to the Virgin Islands, 48 U.S.C. 1561, penultimate paragraph. Section 501(a) of the Covenant with the Northern Mariana Islands makes the Sixth and Seventh Amendments applicable to the Northern Mariana Islands with the proviso that trial by jury shall not be required in any civil action or criminal prosecution based on local law, except where required by local law. The constitutionality of the provision was upheld in Commonwealth of Northern Mariana Islands v. Atalig, supra.

[We note that Balzac v. Porto Rico was a criminal, not a civil case]. We would not include in this report the extent to which jury trials are available under the local laws of the insular areas.

As has been pointed out above, the Supreme Court held in Examining Board v. Flores de Otero, 426 U.S. 572, 599-601 (1976), that the Equal Protection Clause of the Fourteenth Amendment or the Equal Protection Element of the Fifth Amendment is one of the fundamental parts of the Constitution that applies to Puerto Rico, an unincorporated insular area, by its own force. There is

¹⁸ King v. Morton, 520 F.2d 1140, 1147 (D.C. Cir. 1975) held that the right of jury trial extends to America Samoa, unless circumstances prevailing there are such that such trial would be "impractical and anomalous." On remand the district court found in King v. Andrus, 452 F.Supp. 11, 17 (D.D.C. 1977) that a jury trial in America Samoa would not be "impractical and anomalous."

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little doubt that this ruling applies also to the other unincorporated insular areas.¹⁹

In addition, Congress has extended by statute the Due Process Clause of the Fifth Amendment and the Due Process and Equal Protection Clauses of the Fourteenth Amendment to Guam (48 U.S.C. § 1421b(u)); to the Commonwealth of the Northern Mariana Islands (Covenant Section 501(a)); and the Virgin Islands (48 U.S.C. § 1561, penultimate paragraph). The Equal Protection Clause normally permits distinctions or classifications that are based rationally related to legitimate governmental objectives. G. D. Searle v. Cohn, 455 U.S. 404, 408 (1982). A stricter standard of review, however, prevails where the classification interferes with the exercise of a fundamental right (Shapiro v. Thompson, 394 U.S. 618, 638 (1969)), or where it applies a "suspect" test, such as race, religion or national origin. (Graham v. Richardson, 403 U.S. 365, 371-72 (1971)). In those cases the local statute can be upheld only if it can be shown that the classification is based on a "compelling governmental interest." See, e.g., Shapiro v. Thompson, 394 U.S. at 634 (emphasis in original).

In American Samoa and the Northern Mariana Islands, land is scarce and local culture is based to a great extent on the ownership of land. The Constitution of American Samoa (Art. I, § 3) and, as required by the Marianas Covenant §§ 501(b), 805, Article XII of the Constitution of the Northern Mariana (Art. XII) have imposed limitations on the sale of land to persons not of Samoan ancestry or of Northern Mariana descent, respectively. These restrictions were upheld in Craddick v. Territorial Registrar, *supra*; and Wabot v. Villacrusis, 898 F.2d 1381, 1390-92 (9th Cir. 1990) (Northern Mariana Islands.) Wabot based this result on the power of Congress under the Territory Clause to except the right to equal access to the ownership of real estate from the operation of the Equal Protection Clause.

Voting Rights

We would add the following:

p. 17. In Puerto Rico, an amendment to Article VI, Section 4 of the Constitution, adopted in 1970, lowered the voting age from 21 to 18 years.

Footnote 53. Add at end of footnote See Virgin Islands Code, Title 18, Sec. 261.

¹⁹ In Craddick v. Territorial Registrar, Ap. No. 10-79 (H.C. Am. Sam. Apr. 23, 1980) the High Court of American Samoa ruled that the Equal Protection guaranty constitutes a fundamental right applicable to American Samoa.

Now on page 9.

Appendix IV
Comments From the Assistant Attorney General
for Administration, U.S. Department of Justice

The principle of one man-one vote as an incident of equal protection established in Baker v. Carr, 369 U.S. 186, 208-37 (1962) was applied in Puerto Rico in Rodriguez v. Popular Democratic Party, 457 U.S. 1, 7-8 (1982). The decision, however gave Puerto Rico considerable leeway in determining the manner in which to fill interim vacancies without the necessity of a full scale special election id. at pp. 5, 12-14.

The Covenant with the Northern Mariana Islands, provides in section 203(c) that the Constitution of the Northern Mariana Islands will provide for equal representation for each of its three major islands in one house of a bicameral legislature in spite of the large disparity in the number of inhabitants in the islands. Section 501(b) of the Covenant provides in effect that the application of the Constitution of the United States to the Northern Mariana Islands shall be without prejudice to the validity of section 203. While the constitutionality of this provision is by no means free of doubt, the court's reasoning in Wabot v. Villacruis, supra, - that the Territory Clause provides Congress with the authority to override otherwise applicable constitutional guaranties - may also be applicable to this provision of the Covenant.

We have cursorily examined Appendix I of your report and have the following initial observations which, in view of the complexity of the subject matter, cannot be considered complete.

1. Art. I, § 7, cls. 2 and 3, the Presentation Clauses, are fundamental parts of the Constitution going to the heart of the separation of powers. They therefore necessarily govern Congressional legislation applicable to the insular areas.
2. Art. I, § 8, cl. 1. The uniformity clause of this provision does not apply by its own force to the unincorporated insular areas. Downes v. Bidwell, 182 U.S. 244 (1901). Puerto Rico, however, has been placed by statute within the customs territory of the United States. 19 U.S.C. 1401(h).
3. Art. I, § 8, cl. 3. The complexities of the applicability of the Commerce Clause to the insular areas have been discussed above.
4. Art. I, § 8, cl. 4. Bankruptcy and Naturalization. It will be noted that this clause also contains a uniformity provision. See discussion above.
5. Most of the following structural clauses (cl. 5-9 and 11-16), especially the military ones, probably also apply to the insular areas, either directly or as the result of the plenary power of Congress under the Territory Clause.

**Appendix IV
Comments From the Assistant Attorney General
for Administration, U.S. Department of Justice**

6. Art. II, § 2, cl. 1. The provisions of this clause relating to the President's authority as Commander-in-Chief and the pardon power apply to the insular areas.

7. Art. II, § 2, cl. 2, relating to the President's treaty making and appointments powers, is a fundamental part of the Constitution, going like the Presentation Clause to the heart of the separations of powers. This clause, therefore, applies necessarily the making of international agreements applicable to the insular areas, and to the appointment of federal officers in the insular areas. The question of the applicability of the Appointments Clause to the insular areas is not academic. It surfaced recently in connection with the Guam Commonwealth Bill, the Puerto Rico Status Referendum bill, and the Insular Policy Report.

8. The same considerations set out in para. 7 apply to Art. II, § 2, cl. 3, the Recess Appointment Power.

9. Art. IV, § 3. The Take Care and Commissioning Clauses apply to the insular areas.

10. Art. III, § 2. This provision is relevant to the four insular areas that have district courts (Puerto Rico, Guam, the Northern Mariana Islands, and the Virgin Islands) because these district courts have the jurisdiction of federal district courts established under Article III of the Constitution. (Puerto Rico: 28 U.S.C. §§ 119, 451; Guam: 48 U.S.C. § 1424(b); Northern Mariana Islands, Covenant Section 402(a), 48 U.S.C. § 1694(a); Virgin Islands: 48 U.S.C. § 1612.) For the purposes of the diversity jurisdiction, citizens of an insular area are considered to be citizens of a State, 28 U.S.C. § 1332(d).

11. Art. IV, § 1. The Full Faith and Credit Clause to an insular area has been extended to the insular areas. 28 U.S.C. § 1738.

12. Art. VI, § 2, the Supremacy Clause. The Supremacy Clause as one of the structural provisions of the Constitution necessarily applies to the insular areas, with the caveat that only those provisions of the Constitution, laws and treaties applicable to the specific insular area are the supreme laws therein. Section 102 of the Covenant with the Northern Mariana Islands has been drafted specifically to take that consideration into account.

13. First Amendment. Balzac v. Porto Rico, 258 U.S. 298, 314 (1922) indicates by implication that the First Amendment applies to Puerto Rico.

14. Fifth Amendment. (a) Requirement of indictment by Grand Jury. This requirement does not apply to local prosecutions. Northern Mariana Islands: Indictment by a grand jury shall not be

Appendix IV
Comments From the Assistant Attorney General
for Administration, U.S. Department of Justice

required in a criminal prosecution based on local law, except where required by local law. Covenant Section 501(a); Virgin Islands: Offenses against local law shall continue to be prosecuted by information, except where local law requires prosecution by indictment. 48 U.S.C. § 1561, penultimate paragraph. See also 48 U.S.C. § 1424(c) relating to Guam.

(b) Due Process. See discussion, supra.

(c) Double Jeopardy. For purposes of double jeopardy the Federal and insular governments are considered to emanate from the same sovereignty. Hence, successive prosecutions in federal and insular area courts for the same offense are not permissible. Puerto Rico v. Shell Co., 302 U.S. 253, 264-66 (1937); United States v. Wheeler, 435 U.S. 313, 318-22 (1978), citing with approval Puerto Rico v. Shell, supra.²⁰

15. Fourteenth Amendment(a): First sentence, citizenship. This sentence does not apply to insular areas by its own force. Downes v. Bidwell, 182 U.S. 244, 306-15 (1901). It has been extended by statute to the Northern Mariana Islands as if they were part of the several States: Covenant, Section 501(a); for statutory provisions governing United States citizenship relating to Puerto Rico, the Virgin Islands and Guam: See 8 U.S.C. §§ 1402, 1406, 1407. Persons born in American Samoa are non-citizen nationals, 8 U.S.C. §§ 1408, 1101(a)(29), unless their parents were citizens or they themselves have become citizens by way of naturalization.

(b) Due Process and Equal Protection. See discussion, supra.

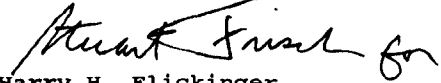
16. Twenty Sixth Amendment. See discussion under Voting Rights.

²⁰ In United States v. Lopez Andino, 831 F.2d 1164, 1167-68 (1st Cir. 1987) the prevailing opinion took the position that the United States and Puerto Rico were separate sovereignties for double jeopardy purposes. As the concurring opinion points out, however, that part of the opinion was a gratuitous dictum because the federal and local offenses charged were separate crimes. Therefore separate prosecutions would be permissible, even if the federal government and Puerto Rico are considered a single sovereignty. The majority opinion also disregarded the reaffirmance of Shell in Wheeler, see in particular 435 U.S. 319-20, n.13.

**Appendix IV
Comments From the Assistant Attorney General
for Administration, U.S. Department of Justice**

In view of the time limitations imposed on us, we have not been able to comment on Appendix II of your report.

Sincerely,



Harry H. Flickinger
Assistant Attorney General
for Administration

Comments From the Secretary of Justice, Commonwealth of Puerto Rico



Commonwealth of Puerto Rico
Department of Justice
San Juan, Puerto Rico

Hector Rivera Cruz, Esq.
ATTORNEY GENERAL

January 14, 1991

Ms. Linda G. Morra, Director
Human Services Policy
and Management Issues
United States
General Accounting Office
Washington, D.C. 20548

Dear Ms. Morra:

This is in response to your letter of November 15, 1990, requesting written comments from the Department of Justice of the Commonwealth of Puerto Rico regarding your final report on the subject of "U.S. possessions: Applicability of relevant provisions of the U.S. Constitutions".

This most important comment regarding your draft on the subject aforementioned is the treatment and characterization of the Commonwealth of Puerto Rico as a United States possession. We object this characterization because since Commonwealth status was adopted in 1952, Puerto Rico ceased to be a territory or possession of the United States and entered into a "unique relationship" with the United States. The Supreme Court of the United States and the Federal Court of Appeals for the First Circuit have long recognized the significance of the Constitutional Process which took place in 1952 and which culminated in the adoption by the people of Puerto Rico of Commonwealth Status. In enacting Public Law 600, 64 Stat. 319, Congress "offered the people of Puerto Rico a compact whereby they may establish a government under their own Constitution". Calero Toledo v. Pierson Jack Leasing Company, 416 U.S. 663, 671, (1974). Puerto Rico accepted the compact and on July 3, 1952, Congress approved with few amendments a Constitution adopted by the Puerto Rico people. 66 Stat. 327. These were "significant changes in Puerto Rico's governmental structure", *Id.*, at 672 and required the new Commonwealth be considered "sovereign over matters not

P.O. Box 192, San Juan, Puerto Rico 00902

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Comments From the Secretary of Justice,
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Revised throughout report.

ruled by the Constitution" and thus, is a "state" under the policy of the Three Judge Court Act, 29 U.S.C. 2281. Id at 673. See also Examining Board v. Flores de Otero, 426 U.S. 572 (1976).

In Califano v. Torres, 435 U.S. 1 at 3 (1978) the Supreme Court referred to the relationship between Puerto Rico and United States as one that has "no parallel in our history". Similarly in Rodriguez v. Popular Democratic Part, 457 U.S. 1 at 2 (1982) the Supreme Court declared that Puerto Rico "like a state, is an autonomous political entity, sovereign over matters not ruled by the Constitution". C.F. Harris vs. Rosario, 446 U.S. 651, (1980). In view of the United States Supreme Court expressions describing the relationship between Puerto Rico and United States as unique, the sovereignty of the Commonwealth over matters not ruled by the Constitution, its autonomous character and its similarity to a state, it is incorrect to refer to the Commonwealth of Puerto Rico as a possession of the United States.

The Federal Court of Appeals for the First Circuit has repeatedly recognized the special nature of the relationship between Puerto Rico and United States and has recently stated that the relationship is governed, not by the Territorial Clause of the Federal Constitution, but by the compact between Puerto Rico and United States. In United States v. Quiñones, 758 F. 2d 40, (1st Cir. 1985), the First Circuit Court of Appeal stated the following:

Puerto Rico was ceded to the United States by the Treaty of Paris, 30 Stat. 1754 (1899), and the island became a territory or colony governed by the United States under a system of delegated powers granted by article IV of the United States Constitution. Between 1899 and 1950, Congress approved two organic Acts to provide for the internal government of Puerto Rico. In 1950, Congress enacted Public Law 600 of the 81st Congress, 64 Stat. 319, 48, U.S.C. § 731b-731e, whose stated purpose was to provide "for the organization of a constitutional government by the people of Puerto Rico". Congress adopted Public Law 600 "in the nature of a compact"; the people of Puerto Rico could vote for the acceptance or rejection of the terms of the compact. 48 U.S.C. § 731b. Upon approval by a majority of the voters, the Legislature of Puerto Rico was authorized to call a constitutional convention to draft a constitution for the island. 48 U.S.C. § 731c. The only requirement as to the content of the constitution was that it

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provide a republican form of government and include a bill of rights. Id. Upon adoption of a constitution by the people of Puerto Rico, the President was authorized to transmit it to Congress if he found that it conformed to the applicable provisions of Public Law 600. 48 U.S.C. § 731d. In 1952, upon approval by Congress, the Puerto Rico Constitution became effective in accordance with its terms. Concurrently, Public Law 600 provided for the automatic repeal of a large number of sections of the preexisting Organic Act of 1917, as amended, sections pertaining in general to matters of purely local concern, including the structure of the insular government. The remaining sections of the Organic Act continued in effect as the Puerto Rican Federal Relations Act, 48 U.S.C. § 731e, which governs relations between Puerto Rico and United States. The Puerto Rico Constitution is not a part of the Federal Relations Act.

Thus, in 1952, Puerto Rico ceased being a territory of the United States subject to the plenary powers of Congress as provided in the Federal Constitution. The authority exercised by the federal government emanated thereafter from the compact itself. Under the compact between the people of Puerto Rico and the United States, Congress cannot amend the Puerto Rico Constitution unilaterally, and the government of Puerto Rico is no longer a federal government agency exercising delegated power. See *Mora v. Mejias*, 206 F.2d 377, 386-88 (1st. Cir. 1953). (Our emphasis)

See also, *Figueroa v. People of Puerto Rico*, 232 F.2d 615 (1st Cir. 1956); *Córdova v. Chase Manhattan Bank*, 649 F.2d 36 (1st Cir. 1981). Thus, it is incorrect to refer to the Commonwealth of Puerto Rico as a possession of the United States governed by the Territorial Clause of the Federal Constitution.

In sum, it is important that your report recognize the nature of the unique relationship between United States and Puerto Rico and the fact that relationship is no longer governed by the Territorial Clause of the Federal Constitution, but as explained by the First Circuit Court of Appeals, by the terms of the compact itself. With that recognition the differences between Puerto Rico and possessions or territories of the United States, described in

See page 29.

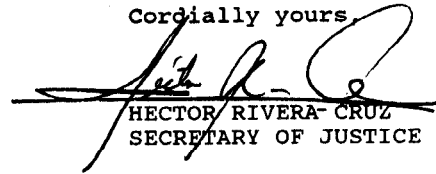
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your report, may be better understood.

I hope that these comments are helpful.

Cordially yours,



HECTOR RIVERA CRUZ
SECRETARY OF JUSTICE

Comments From the Acting Attorney General, U.S. Virgin Islands



**DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL**

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Rosalie Simmonds Ballentine
Acting Attorney General

December 14, 1990

Ms. Linda G. Morra
Director
Human Services Policy and Management Issues
United States General Accounting Office
Washington, D. C. 20548

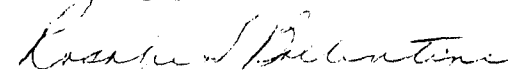
Dear Ms. Morra:

The draft report on the applicability of relevant U.S. constitutional provision to five of the U.S. possessions, has been reviewed by my staff. In accordance with my instructions, the review was primarily limited to confirmation of the validity of the various authorities cited in the report for the propositions stated therein. No inconsistencies were discovered by my staff.

With respect to the general discussion contained in Appendix II, particularly as it applies to the courts of the Virgin Islands, you may wish to consider expanding on the information provided. Specifically, the Police Courts referred to have evolved into the present day Territorial Court of the Virgin Islands. Pursuant to local laws implemented in 1990, the Territorial Court has assumed unprecedented levels of jurisdiction in civil and criminal matters, and is legislatively mandated to assume full jurisdiction over all local criminal matters in October of 1991.

Should you or your staff have any questions concerning the Territorial Court's jurisdiction, or on any other item contained in your report, you may contact my Counsel, Paul L. Gimenez, at the address and telephone number above.

Very truly yours,


ROSALIE SIMMONDS BALLENTINE
Acting Attorney General

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Comments From the Attorney General, American Samoa Government



AMERICAN SAMOA GOVERNMENT
PAGO PAGO, AMERICAN SAMOA 96799
OFFICE OF THE ATTORNEY GENERAL

In reply refer to

Serial: 004

January 2, 1991

Ms. Linda G. Morra, Director
Human Services Policy & Management Issues
Human Resources Division
U.S. General Accounting Office
Washington, D.C. 20548

Dear Ms. Morra:

Thank you for the opportunity granted to review and render comments on GAO's report on the applicability of relevant provisions of the U.S. Constitution to the five U.S. Possessions, particularly American Samoa.

In general, the report appears to be quite representative of the present status of the eight (8) issues or areas of the Constitution that have been ruled or made applicable to the five (5) U.S. possessions by virtue of either congressional acts or federal court rulings, except in two or three instances applicable to the case of American Samoa which must be addressed. The first, even though stated in the appendixes, is with regard to the two Treaties of Cession signed by the various chiefs of the Island of Tutuila in 1900, and the other signed by King Tuimanu'a and Chiefs of the Islands of Manu'a in 1904. These two treaties which were later approved by the President of the United States and consented and concurred to by the U.S. Senate are the connecting bonds between American Samoa and the United States Government. The same were being approved by Congress when it enacted into law Section 1661 of Title 48 of the United States Code (48 USC 1667) which provide among other things, that the President of the United States shall have power to administer American Samoa until Congress shall provide. The President has originally delegated this authority to the Secretary of the Navy Department, and in 1950 transferred said authority to the Secretary of Interior who is presently administering our islands.

Appendix VII
Comments From the Attorney General,
American Samoa Government

Ms. Linda G. Morra

- 2 -

January 2, 1991

See page 47.

It is important to state in the report as to how American Samoa originally came under the administration of the U.S. Government, as such two treaties were entered into, accepted and approved by the President, and later concurred and ratified to by the U.S. Congress pursuant to provisions of the U.S. Constitution (Section 2 of Article II of the U.S. Constitution).

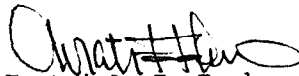
American Samoa has been experiencing and going through many changes since 1900, including but not limited to economic, political, and social changes. Yet, the people remain so conscious and seriously minded of the importance of our land system to our local customs and traditions. The lands and protection thereof from being alienated to non-Samoans, were so paramount in their minds when the chiefs ceded these islands to the protection and administration of the U.S. Government. Recent court decisions as cited by the report upheld this land policy.

See page 6.

The second item I would like to call to your attention in the area of the Commerce Clause is Federal District Court decision in the case of United States vs. Standard Oil Company, 404 U.S. 558, 30 L.ed.2d 713, 92 S.Ct. 661, reh. den. 405 U.S. 969, 31 L.ED.2d 244, 92 S. Ct. 1166. This is an antitrust case wherein the Court held that American Samoa is a Territory within the meaning of the Sherman Antitrust Act (15 USCS Section 3), declaring illegal every contract, combination in the form of a trust or otherwise, or conspiracy, in restraint of trade or commerce to any territory of the United States and includes both organized and unorganized territories. As the Sherman Antitrust Act is a constitutional exercise of congressional power to regulate commerce, it appears that the Standard Oil and Duty Free Shoppers, Ltd. cases have been handled differently noting the latter as an appellate court decision. It is my opinion that the Duty Free Shoppers, Ltd. is a better decision.

Lastly, I would like to state that the Republican Party of American Samoa will send delegates to the 1992 National Republican Convention.

Sincerely yours,


Tautai A. F. Faalevao
Attorney General

TAFF:ls

cc: Governor Peter T. Coleman

Comments From the Assistant Attorney General, Territory of Guam



**Office of the Attorney General
Territory of Guam**

Elizabeth Barrett-Anderson
Attorney General

Donald L. Paillette
Chief Deputy Attorney General

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December 12, 1990


Linda G. Morra
Director, Human Services Policy
and Management Issues
United States General Accounting Office
Washington, D.C. 20548

Ref: AG 90-1727

Dear Ms. Morra:

You have asked for our review and comment on the applicability of relevant provisions of the U.S. Constitution to five U.S. possessions. In your draft report you have reserved space for comments by our office. In conformity with your format, our comments shall begin on the next page.

Sincerely yours,


JOSEPH A. GUTHRIE
Assistant Attorney General

Enclosure

COMMONWEALTH NOW!
238 Archbishop F.C. Flores Street, Suite 701 Agana, Guam USA 96910

COMMENTS FROM THE ATTORNEY GENERAL
GUAM

You have solicited our reaction to your draft report on the applicability of certain provisions of the U.S. Constitution to five U.S. possessions.

This office has no particular comment on the report, which is not to say it concurs with any particular interpretations made in it. This office would note, however, litigation is pending in Guam which has a bearing on the subject treated by the report.

As the report pointed out, U.S. Constitution provisions become applicable to possessions in several ways: one way is for Congress, through legislation, to explicitly extend certain parts of the Constitution to certain possessions. Such legislation was enacted for Guam in 1968 by adding section 5(u) to Guam's Organic Act. (Title 48 U.S.C. §1421, et seq.). This legislation was contained in the Guam Elective Governor Act, Pub.L. 90-497, §10, 82 Stat. 842 (1968), and reads:

(u) The following provision of and amendments to the Constitution of the United States are hereby extended to Guam to the extent that they have not been previously extended to that territory and shall have the same force and effect there as in the United States; Article I, Section 9, clauses 2 and 3, Article IV, Section 1 and 2, clause 1; the first to ninth amendments inclusive, the thirteenth amendment; the second sentence of Section 1 of the fourteenth amendment; and the fifteenth and nineteenth amendments.

Appendix VIII
Comments From the Assistant Attorney
General, Territory of Guam

All laws enacted by Congress with respect to Guam and all laws enacted by the territorial legislature of Guam which are inconsistent are repealed to the extent of such inconsistency.

Section 5(u) extends the enumerated U.S. Constitutional provisions to Guam. In Guam Society of Obstetricians and Gynecologists, et al v. Joseph F. Ada, No. 90-00013, slip op (D.Guam August 23, 1990), the court considered whether §5(u) extended to Guam court interpretations of those constitutional provisions, made subsequent to the enactment of §5(u). The question in the case was whether the penumbral right to an abortion recognized by Roe v. Wade, 410 U.S., 155, 93 S.Ct. 705, reh. denied, 410 U.S. 959, 93 S.Ct. 1409 (1973) were extended to Guam by §5(u), in light of the fact that the right to an abortion had not been established when 5(u) was enacted in 1968. Although this case involved the applicability of future interpretations of the second sentence of section 1 of the fourteenth amendment, the principles established in the case would be applicable to all extensions of Constitutional provision by Congressional enactment.

The Governor of Guam argued that post-1968 United States Supreme Court decisions in the area of substantive due process and equal protection have no force and effect in the Territory of Guam. The Governor contended that since the United States Congress, when it amended the Organic Act in 1968, could not have foreseen the 1973 Supreme Court decision in Roe v. Wade, Congress would not have intended it to apply to the Territory of Guam. To quote from defendant Governor's memorandum of July 13, 1990:

**Appendix VIII
Comments From the Assistant Attorney
General, Territory of Guam**

"Under Ngiraingas v. Sanchez, [110 S.Ct. 1737, 1990], in determining whether Congress extended the privacy abortion right under the First, Third, Fourth, Fifth, Ninth or Fourteenth Amendments, this court must seek indicia of Congressional intent at the time 48 U.S.C. section 1431 b(u) was enacted in 1968. There is, however, no clear signal given from the legislative history of section 1421 b(u) that Congress intended to extend the privacy/abortion right to Guam. As a matter of law, therefore, the First, Third, Fourth, Fifth, and Ninth and Fourteenth Amendments, to the extent that they encompass a privacy/abortion right, do not have the same effect and application that they have in the States. Roe v. Wade ... does not apply to Guam and Guam may regulate abortion as in Public Law 20-134.

The District Court of Guam did not accept the Governor's arguments, distinguishing Ngiraingas. The court held that Congress intended that the people of the Territory of Guam would from 1968 onward be afforded the full extent of the constitutional protections extended, as those rights are found in the United States Constitution and as they are construed and articulated by the United States Supreme Court. Hence, Roe v. Wade, was applicable and Guam abortion law unconstitutional.

The case has been appealed to the Ninth Circuit Court of Appeals. In the event the appellate court adopts the arguments advanced by the Governor, it would substantially impact the effect of Congressional enactments extending Constitutional provisions to the possessions.

jaq/022/lz1

Comments From the Deputy Attorney General, Commonwealth of the Northern Mariana Islands



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
OFFICE OF THE ATTORNEY GENERAL
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January 30, 1991

Ms. Linda G. Morra
Director, Human Services Policy
and Management Issues
United States General Accounting Office
Washington, D.C. 20548

Dear Ms. Morra:

We have reviewed the Draft Report on the Applicability of Relevant Provisions of the U.S. Constitution to five U. S. insular areas. Before we comment on specific points, we think an understanding of the Covenant to Establish a Commonwealth of the Northern Marianas in Political Union with the United States of America, P.L. 94-241, 90 Stat. 263 (1976), ("Covenant") is essential. The Covenant is the basic framework, the structure, for the unique relationship between the United States and the people of the Northern Mariana Islands. It delineates the specific and limited areas where the United States governmental structure and institutions have application in the CNMI, and grants the CNMI authority over the other areas in the exercise of its acknowledged right to local self-government.

At the outset, we want to point out that the relationship between the U.S. and the CNMI is not cast in stone. Like the U.S. Constitution, the Covenant is a living, breathing document, providing a mechanism for the two governmental entities to resolve disagreements and conflicts. Covenant Section 902 provides for regular consultations between the two governments; already there have been nine formal rounds of discussion covering a wide variety of issues which affect the relationship. In addition, Covenant Section 903 provides a forum for litigating disputes which can not

**Appendix IX
Comments From the Deputy Attorney
General, Commonwealth of the Northern
Mariana Islands**

Ms. Linda G. Morra
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be successfully negotiated or compromised. At present, the United States Court of Appeals for the Ninth Circuit has before it a case where the issue of federal authority in the CNMI is directly at issue.

Because the entire relationship between the two governments depends totally upon the Covenant, some historical background that we feel is relevant to several of the positions embraced by the GAO Draft Report may be useful in order to better understand this crucial document.

I. Historical background regarding the Covenant.

To appreciate the unique political relationship between the Northern Mariana Islands and the United States it is important to consider the context in which this relationship has evolved.

After their discovery in 1521, the Northern Marianas were subject to Spanish and then German rule. They remained under German rule until seized by Japan in 1914. In 1920, Japan's occupation was legitimized by a League of Nations Mandate. Japan then controlled the Northern Mariana Islands until the end of World War II when they were liberated in 1944 after some of the bloodiest fighting of the war in the Pacific.

When the United Nations was formed, the U.N. assumed responsibility for the Northern Mariana Islands. Consistent with the United States' policy that it sought no lands by conquest as a result of WW II and that it also sought the end of former colonial empires, the United States accepted responsibility from the UN as administering authority for the former Japanese Mandated Islands, to be known as the Trust Territory of the Pacific Islands ("TTPI"). The TTPI consisted of several island groups including the Northern Marianas.

The United Nations Charter provisions governing U.S. responsibility toward the TTPI include the following:

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Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories, and, to this end: . . .

[t]o develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement;. . .

Article 73, United Nations Charter, 59 Stat. 1031, 1048, T.S. No. 993 (1945), reprinted at I Commonwealth Code p. A-101 (emphasis added).

Consistent with the nature of the relationship and the trust accepted by the U.S., it has always been true that:

[T]he Trust Territory [including the Northern Mariana Islands] is not a territory or possession, because technically the United States is a trustee rather than a sovereign.

People of Saipan v. United States Department of Interior, 502 F.2d 90, 95 (9th Cir. 1974), cert. denied, 420 U.S. 1003 (1975) (emphasis added).

It was under this framework established by the United Nations that the people of the Northern Mariana Islands began to negotiate a status with the United States that eventually evolved into the treaty like document -- The Covenant. The inherent sovereignty and right to self-government of the people of the Northern Mariana Islands, subjugated to the rule of Spain, Germany, and Japan, was

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recognized and nurtured by the United States as trustee, awaiting full re-emergence with adoption of the Covenant. Under the terms of the Covenant, the Northern Mariana Islands never became a U.S. possession. The inconsistency between the CNMI's right to self-government, and the power of Congress to legislate in the CNMI becomes apparent in the light of the self-government guarantees the U.S. made to the people of the Northern Mariana Islands.

II. The Covenant is the fundamental document outlining the present relationship between the United States and the Commonwealth.

To fulfill its obligations under the U.N. trust, the United States entered into negotiations with the people of the Northern Marianas regarding their future political status. The result was the formation of a political union, all the terms of which were set forth in the Covenant.

The Marianas District Legislature sanctioned the Covenant, and then the eligible voters of the Northern Mariana Islands approved it by a 78.8 per cent favorable vote. Subsequently, as provided by the Covenant, the U.S. Congress approved the Covenant by joint resolution. P.L. 94-241 (90 Stat. 263), 94th Congress Joint Resolution No. 549. Accordingly, the Covenant is not a federal law subject to modification by subsequent Congresses, but is a mutually binding agreement between the U.S. Government and the people of the Northern Mariana Islands.

The Covenant represents a reaffirmation and re-emergence of the Northern Marianas' sovereignty. The CNMI is not and never has been a U.S. territory. Unlike, for example, Guam, its existence and political sovereignty are not creatures of the United States. See Ngiraingas v. Sanchez, 858 F.2d 1368, 1371, fn.1 (9th Cir. 1988), aff'd ___ U.S. ___, 110 S.Ct. 1737 (1990) for a good summary of this distinction. The Covenant is the fulfillment of the "sacred trust" accepted under the U.N. Charter by the United States and represents the unique understanding of two sovereigns. Indeed, the Preamble to the Covenant itself states:

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This Covenant will be mutually binding when it is approved by the United States, by the Mariana Islands District Legislature and by the people of the Northern Mariana Islands in a plebiscite, constituting on their part a sovereign act of self-determination.

Covenant, Preamble (emphasis added).

The Covenant is the fundamental document governing the relationship between the people of the Northern Mariana Islands and the United States and the starting point for determining the extent of whatever U.S. authority exists with respect to the CNMI.

III. As a mutually binding agreement, the Covenant is the supreme document governing the relationship between the United States and the CNMI, and the U.S. cannot unilaterally enact laws inconsistent with the Covenant.

As the fundamental document governing the relationship between the U.S. and the CNMI, the Covenant is the source and limitation of the United States' authority in the CNMI. Covenant § 102 provides:

The relations between the Northern Mariana Islands and the United States will be governed by this Covenant which, together with those provisions of the Constitution, treaties and laws of the United States applicable to the Northern Mariana Islands, will be the supreme law of the Northern Mariana Islands.

Section 102 of the Covenant, as a part of Article I, may not be modified without the consent of the CNMI Government, pursuant to § 105 of the Covenant:

In order to respect the right of self-government guaranteed by this Covenant the United States agrees to limit the exercise of that (legislative) authority so that the fundamental provisions of this Covenant, namely Articles I, II and III and Sections 501 and 805, may be modified only with the consent of the Government of the United States and the Government of the Northern Mariana Islands (emphasis added).

Significantly, provisions of the Covenant shall not be superseded by "the Constitution, treaties and laws of the United States applicable to the Northern Mariana Islands." Section 102

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of the Covenant stands in marked contrast to the Supremacy Clause of the United States Constitution, which provides that "[t]his Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land" U.S. Const. Art. VI, § 2.

The negotiating history of § 102 makes clear that this section was intended to replace the Supremacy Clause in governing relations between the United States and the Commonwealth. The Covenant to Establish a Commonwealth of the Northern Mariana Islands, Senate Report 94-433, at 65-66 (Committee on Interior & Insular Affairs 1975); Approving the "Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America," House Report 94-364 (Committee on Interior & Insular Affairs 1975); Marianas Political Status Commission, Section-by-Section Analysis of the Covenant (1975) ("Section-by-Section Analysis"); U.S. Department of Justice, Explanation of the Covenant (1975), reprinted in H.J. Res. 549 et al. to approve "The Covenant to Establish a Commonwealth of the Northern Mariana Islands: Hearing before the Subcommittee on Territorial & Insular Affairs of the House Committee on Interior & Insular Affairs, 94th Cong., 1st Sess. 384 (1975). As the Section-by-Section Analysis acknowledges:

It should be emphasized that the Constitution, treaties and laws of the United States will not override the Covenant, since all are supreme.

Section-by-Section Analysis, supra. at pg. 10 (emphasis added).

Thus, clearly the parties intended that the Covenant would be as "supreme" as any federal law, and on an equal footing.

Also, the Supremacy Clause is not one of the enumerated provisions made applicable to the Northern Mariana Islands by § 501(a) of the Covenant. If the Supremacy Clause applied to the relationship, and gave precedence to the Constitution and laws of the United States over provisions in the Covenant, the Covenant would not be mutually binding. Rather, it would be an illusory agreement, since one party -- the United States -- would have the power to alter its provisions at will. Such a result not only would be inconsistent with the plain language of the Covenant, it also would be inconsistent with the obligations of the United States under the U.N. Charter and the Trusteeship Agreement to provide the people of the Northern Mariana Islands with "self-government or independence" on termination of the trusteeship.

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U.N. Charter, Art. 76(b); Trusteeship Agreement for the Former Japanese Mandated Islands, July 18, 1947, art. 6(1), 61 Stat. 3301 ("Trusteeship Agreement").

Any attempt by the federal government to enact legislation inconsistent with the provisions of the Covenant is void. As noted in the Covenant Analysis when discussing the mutual consent provisions contained in § 105:

Thus any attempt by the United States or the Northern Marianas to circumvent the fundamental aspects of the Covenant would be void and of no effect.

Section-by-Section Analysis, supra. pg. 19 (emphasis added).

IV. The Covenant guarantees that the people of the Northern Marianas will have the right to self-government and this right cannot be modified without mutual consent.

Section 103 is a key provision of the Covenant and is the fulfillment of the U.S. obligation under the Trusteeship Agreement to provide self-government for the people of the Northern Mariana Islands. Section 103 provides:

The people of the Northern Mariana Islands will have the right of local self-government and will govern themselves with respect to internal affairs in accordance with a Constitution of their own adoption (emphasis added).

The Section-by-Section Analysis noted that the U.S. has made no similar guarantee of internal self-government "to territories such as Guam and the Virgin Islands." Section-by-Section Analysis, supra. at pg. 10-11 (emphasis added). See also Ngiraingas, 858 F.2d at 1371 n.1. The Marianas Political Status Commission also stated:

Under a territorial relationship, the people do not have their own constitution and any right of self-government is dependent upon an organic act, which can be amended unilaterally by Congress. Under the commonwealth relationship embodied in the Covenant, on the other hand, the people have the right of self-government explicitly, which under Section 105 cannot be altered without mutual consent. . . .

The fact that the people of the Northern Marianas

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will have the right of local self-government and will govern themselves under their own constitution means that the Northern Mariana Islands will not be an agency or instrumentality of the United States Government. A territory is merely part of the United States Government and is subject to the direction of the Congress and Executive Branch of the government. The Northern Mariana Islands government will be an independent government, like that of the states.

Section-by-Section Analysis, supra. pg. 11 (emphasis added).

As a prominent scholar has noted, "[t]he Covenant's limitation on the sovereign authority of the United States is evident in the provisions of Section 103 and Article II [of the Covenant]." A. Leibowitz, The Marianas Covenant Negotiations, 4 Fordham Int'l L.J. 19, 29 (1981).

The U.S. Court of Appeals for the First Circuit recently discussed the Commonwealth status of Puerto Rico in language that is also applicable to the CNMI:

[I]n 1952, Puerto Rico ceased being a territory of the United States subject to the plenary powers of Congress as provided in the Federal Constitution. The authority exercised by the federal government emanated thereafter from the compact itself. Under the compact between the people of Puerto Rico and the United States, Congress cannot amend the Puerto Rico Constitution unilaterally, and the government of Puerto Rico is no longer a federal government agency exercising delegated power. . . .

Under its Commonwealth status, "Puerto Rico, like a state, is an autonomous political entity, 'sovereign over matters not ruled by the Constitution.'" While the creation of the Commonwealth granted Puerto Rico authority over its own local affairs, Congress maintains similar powers over Puerto Rico as it possesses over the federal states.

United States v. Quinones, 758 F.2d 40, 42-43 (1st Cir. 1985).

The Northern Mariana Islands, of course, has a political status distinct from that of Puerto Rico. That difference favors an even stronger right to local self-government in the CNMI than

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the Quinones court found to exist in Puerto Rico. As the U.S. Court of Appeals for the Ninth Circuit has stated:

As a commonwealth, the [Northern Mariana Islands] will enjoy a right to self-government guaranteed by the mutual consent provisions of the Covenant. No similar guarantees have been made to Puerto Rico or any other territory.

Commonwealth of the Northern Mariana Islands v. Atalig,
723 F.2d 682, 691 n. 28 (9th Cir. 1984), cert. denied,
467 U.S. 1244 (1984).

Section 105 of the Covenant, which gives the United States authority to enact legislation in the CNMI, also contains a specific restriction on this power. The U.S. expressly agreed that the self-government guarantee contained in § 103 of Article I could not be modified by such legislation without the CNMI specifically consenting. This constitutes an important and significant restriction on the power of Congress to enact legislation affecting the Commonwealth.

Having provided a historical context to understand the relationship between the CNMI and the United States, we now turn our attention to specific points in the Draft Report. Our comments follow the narrative of the Report.

COVER PAGE

The CNMI is wrongly included in the term "possessions". The Random House College Dictionary, Revised Edition (1980) contains several relevant definitions of "possession". One definition is "ownership". The CNMI has never been owned by the United States. The United States was a trustee only pursuant to an agreement with the United Nations under which it was to foster and promote independence or self-government for the CNMI:

In discharging its obligations under 76(b) of the Charter, the Administering Authority [here, the United States] shall:

1. . . . promote the development of the inhabitants of the Trust Territory toward self-government or independence Article 6, Trusteeship Agreement for the Former Japanese Mandated Islands, reprinted in I Commonwealth Code p. A-201 (emphasis added).

This trustee status is recognized later in the Report in the

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Now on page 51.

last full paragraph on Page 53.

Another listed definition is "actual holding or occupancy, either with or without rights of ownership". The U.S. does not hold or occupy the CNMI. The relationship of the two entities is governed by The Covenant. By agreement embodied in the Covenant, the U.S. acts on behalf of the CNMI in the areas of foreign affairs and defense, but it does not hold or occupy the CNMI.

Still another definition is "a thing possessed or owned". As stated above, the U.S. neither possesses nor owns the CNMI.

[T]he Trust Territory [including the Northern Mariana Islands] is not a territory or possession, because technically the United States is a trustee rather than a sovereign. People of Saipan v. U.S. Dept. of Interior, 502 F. 2d 90, 95 (9th Cir. 1974), cert. denied, 420 U.S. 1003 (1975) (emphasis added).

And as stated above, the subsequent Covenant agreement reflected the inherent sovereignty and right to self-government of the people of the Northern Mariana Islands.

The final pertinent dictionary definition is "a territorial dominion of a state or nation". As a self-governing entity, the CNMI is not subject to the territorial dominion of the U.S.

PAGE 1, LINE 3

The same objection applies to use of the word "possessions" here and throughout the rest of the body of the text.

PAGE 1, LINES 9-10

Now on page 29.

The applicability of U.S. constitutional provisions to the CNMI does not derive from the Territorial Clause. The Territorial Clause was specifically omitted from Covenant Section 501(a) which lists provisions of the U.S. Constitution which are applicable to the CNMI.

The list of provisions includes the Fifth Amendment and the due process and equal protection clauses of the Fourteenth Amendment, but does not include the commerce clause,, Art. I, Sec. 8, cl. 3, the territorial clause, Art. IV, Sec. 3, cl.2, or the supremacy clause, Art. VI, cl. 2.... It should be noted that section 501 of the Covenant explicitly enumerates the parts of the U.S. Constitution which apply to

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the CNMI, and despite the concerns of the Task Force, the territorial clause is not included in the list. Hillblom v. United States, 896 F.2d 426, 428-9 (9th Cir. 1990) (emphasis added).

The list of U.S. constitutional provisions contained in Covenant Section 501(a) which apply to the CNMI is exclusive. Fleming v. Dept. of Public Safety, 837 F.2d 401, 405 (9th Cir. 1988), cert. denied, Dept. of Public Safety v. Fleming, 109 S.Ct. 222, 102 L.Ed.2d 212 (1988).

Now on page 2.

PAGE 3

The map is inaccurate, showing the CNMI to be northwest rather than northeast of Guam. While this error may seem insignificant, it raises concern over the U.S.' general level of knowledge about the CNMI, as reflected by other inaccuracies in the Report.

PAGE 4, Fn. 5

Now on page 4.

The year of the Balzac decision is incorrectly stated as 1901; the correct year is 1922.

PAGE 5, LINE 9

Now on page 4.

The United States never "acquired" the CNMI. See our comments to the cover page, above.

PAGE 5, LINES 13-15

Now on page 4.

Authorization for the CNMI to adopt its constitution did not come from Congress but from Covenant Section 201:

[T]he authority of the United States towards the CNMI arises solely under the Covenant. Hillblom v. United States. 896 F.2d at 428-9 (emphasis added).

PAGE 8

Now on page 6.

We agree that the Uniformity Clause does not apply to the CNMI, and Article VI of the Covenant makes this explicit by authorizing a rebate of income taxes derived from income sourced in the CNMI.

PAGE 9

Now on page 6.

We agree that the Commerce Clause does not apply to the CNMI because it is not contained in Covenant Section 501(a):

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The list of provisions includes the Fifth Amendment and the due process and equal protection clauses of the Fourteenth Amendment, but does not include the commerce clause, Art. I, Sec. 8, cl. 3. . . Hillblom v. United States, 896 F. 2d at 428.

Now on page 10.

PAGE 13, LINES 4-6

The Territorial Clause does not authorize Congress to levy taxes within the CNMI. See our comments to page 1, lines 9-10, above.

Now on page 8.

PAGE 15, LINES 1-2

The Equal Protection is applicable not by virtue of "federal laws" but through the Covenant, as is acknowledged in footnote 45.

Now on page 9.

PAGE 16, LINES 7-8, 13-14 and PAGE 17, LINE 3

The 15th, 19th and 26th Amendments are applicable to the CNMI not through "federal law" but by virtue of the Covenant, as is acknowledged in footnotes 49, 50 and 51.

Now on page 29.

PAGE 32

The Territorial Clause does not apply to the CNMI because it is not included in Covenant Section 501(a), which lists the applicable provisions of the U.S. Constitution. See our comments on page 1, lines 9-10, above.

Now on page 51.

PAGE 54, LINE 1

The CNMI was never "formally acquired by the United States". See our comments to page 5, line 9, above.

Now on page 51.

PAGE 54, LINES 2-3

The Covenant was negotiated between the Northern Marianas Political Status Commission and a specially appointed U.S. negotiator. Only after agreement was reached and the document signed was the Covenant approved by a plebiscite in the Northern Mariana Islands and by a joint resolution of Congress.

The fundamental relationship between the United States and the CNMI is unique, because the document from which that relationship derives --The Covenant -- is itself unique. No other insular area

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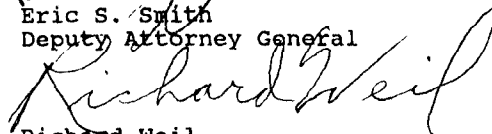
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has a similar document or a similar relationship with the United States. We therefore ask that you seriously consider our comments, and that you make appropriate changes based on these comments in the Final Report.

Sincerely,



Eric S. Smith
Deputy Attorney General



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