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IN CONTEMPLATION OF MICRONESIA:
THE PROSPECTS FOR THE
DECOLONIZATION OF PUERTO RICO
UNDER INTERNATIONAL LAW*
MANUEL RODRÍGUEZ-ORELLANA**

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This article is an analysis of Puerto Rico's colonial status under the United States, and the prospects afforded by International Law for its decolonization. There is a consensus in Puerto Rico, despite a divided electorate, that none of the traditional options of independence, statehood, or the status quo, commands overwhelming majority support. There is also a growing consensus that the status quo is no longer satisfactory. The U.S. government, meanwhile, continues to support the status quo through its declared policy of self-determination for Puerto Rico. Thus, in effect, the United States declares that it supports the Puerto Rican absence of consensus to end what a growing consensus thinks is inadequate. In the words of Robert Pastor, a former senior staff member in charge of Latin American and Caribbean affairs on the National Security Council from 1977 to 1981, “Washington remains insensitive to the level of frustration, bordering in some cases on desperation, which many Puerto Rican leaders feel, simply because the federal government does not view Puerto Rico as a colony.” Pastor proposes a procedure for mutual determination as a method of ending a status which, in his view, permits “institutionalized inferiority under the democratic roof of the United States.”

This enlightened view by a former U.S. policy-maker, leaving aside the merits of his specific proposal, appears closer to prevalent notions in the international community. Colonialism in practice entails the making of fundamental decisions which affect another people's destiny and life as a people. It involves such fundamental decisions as the determination of their citizenship and nationality, their ability to relate to the rest of the world, and their legal and constitutional structures and traditions. This decision-making power rests, at least in part, upon the immoral assumption of the colonizer's superiority over the colonized. Thus, to sustain or support a colonial status is to negate democratic notions of equality. Colonialism therefore poses a constant threat to world peace and stability, which are premised on the legal notion of sovereign equality. On this basis, international law has outlawed colonialism.

Since the end of World War II, most of humanity has escaped from the subjugation and constraints of colonialism, and has

2. Id. at 65.
sought to organize itself legally and politically into independent sovereign nation-states. The U.N. General Assembly has declared that "The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation." In this 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples, the United Nations further declared that "All peoples have the right to self-determination," [and that] [i]nadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence." It mandated that, in non-self-governing and Trust Territories or all other territories which had not yet attained independence, immediate steps be taken to effectuate a transfer of all powers so that they would freely enjoy independence.

In April 1985, Juan Manuel Garcia-Passalacqua, a distinguished scholar, lawyer and journalist published a newspaper column in Puerto Rico entitled, The Republic in 1992. In this and subsequent columns, Garcia-Passalacqua forecast a compact to establish an "Associated Republic" status for Puerto Rico by 1992. This suggestion came as quite a surprise to those who had campaigned and been elected to the government in the 1984 elections on Governor Hernández Colón's not-so-novel theme that Puerto Rico's status was not, and should not be, at issue. The electorate was likewise surprised.

Garcia-Passalacqua's important contribution has been to make everyone else aware of some basic tenets which should not be forgotten. First, colonial powers maintain colonies in the manner most beneficial to them. Colonies are customarily cast aside when they become too burdensome, costly or embarrassing. Second, colonial powers will attempt to transform colonial possessions into

4. Id. at para. 2.
5. Id. at para. 3.
6. Id. at para. 5.
8. But see Rivera Lacourt, El status está en issue, El Reportero, July 17, 1986, at 19. In this brief newspaper column, attorney Rivera Lacourt, a long-time independence advocate, concisely chronicles the salient historical reasons which underscore the senselessness of denying the status question a central role in Puerto Rico's political development. As evidence of how alive the status question remains, see Skelly, Dimes y diretes por el "status," El Nuevo Día, July 18, 1986, at 8, cols. 1-3.
close allies until, in the course of human events, they are integrated or rendered independent to various degrees along a power spectrum. Third, the central government will, in any case, seek to maintain close ties and an indispensable role for itself as a peacekeeping, ordering benefactor. Of crucial importance, García-Passalacqua’s columns have helped to awaken some people to a simple fact. Since a compact of the kind to which he referred was becoming a reality between the United States and some of the governments of the Trust Territories of the Pacific region historically known as Micronesia, it could, therefore, sooner or later, happen to Puerto Rico.

An extensive, in-depth analysis of the Compact of Free Association enacted by the U.S. Congress on January 14, 1986, is not within the scope of this article. A few key provisions, however, will be examined here, bearing in mind the central question for our purposes: Would such an arrangement serve to satisfy the decolonization mandate of international law in the case of Puerto Rico?

II. THE STATUS QUO

The ultimate decision-making power over Puerto Rico resides in the government of the United States. The preemptive nature of federal authority over Puerto Rico under the Constitutional system
of the United States cannot be denied. U.S. control and preemptive authority over Puerto Rico could be rationalized as non-colonial under a democratic and egalitarian interpretation of Constitutional Law only if Puerto Rico were considered a territory under the Territorial Clause of the U.S. Constitution. However, for the occupation of Puerto Rico by the United States to be clearly non-colonial, this territory would have to have been considered, under current international legal precepts, terra nulius, or no one's land, at the time. Some of the westward expansion of the original states of the union may have proceeded on the basis of the occupation of uninhabited territories, but U.S. rule over Puerto Rico since the military conquest on July 25, 1898, cannot be justified on this basis. Nor can this invasion be used to justify the unchanged economic and political structures of Puerto Rico's continuing colonial status. Puerto Rico is, and at the time of the U.S. invasion already was, an emerging nation. As any student of, or visitor to Puerto Rico would realize, Puerto Rico is a Latin American nation of the Caribbean region, with all of the sociological, historical, and cultural attributes which this entails.

In 1953, the United States notified the United Nations that Puerto Rico had achieved self-government under the commonwealth status enacted by the U.S. Congress through legislation in 1950 and 1952. The United States would therefore, and thereaf-

11. For an interesting discussion of the intellectual and political debates which enshrined today's constitutional law notions regarding territories, see J. Torruella, The Supreme Court and Puerto Rico: The Doctrine of Separate and Unequal (1985). A central point which Torruella, an advocate of statehood for Puerto Rico, stresses is that the sensible, non-colonial meaning of territory refers to the stage of incorporation into the U.S. Constitutional system preceding statehood. Torruella is a Puerto Rican appointed to the U.S. Court of Appeals for the First Circuit.
13. The history of native Americans, however, may serve to cast a different light on the theory of this westward expansion across the North American continent.
14. This is, however, the net import of a long line of judicial decisions by the Supreme Court of the United States from the early line of cases known as the "Insular Cases," down to Harris v. Rosario, 446 U.S. 651 (1980), in which the Supreme Court ratified the power of the U.S. Congress under the Territorial Clause, to "treat Puerto Rico differently from States so long as there is a rational basis for its actions." Id. at 651-52. See also García-Passalacqua, supra note 10, at 43-55; Torruella, supra note 11, at 40-115, 159, and 267-68.
15. See generally F. Pico, Historia general de Puerto Rico (1986). Regarding the sociological struggles and cultural challenges which still confront the Puerto Rican nationality, see J.L. González, El país de cuatro pisos y otros ensayos (1980).
inter did, cease transmitting information to the U.N. under Article 73e of the Charter. The United Nations narrowly accepted this decision in General Assembly Resolution 748, through a questionable process which, given U.S. hegemony in this international forum at the time, denied the political opposition in Puerto Rico (including the Puerto Rican Independence Party, then the largest minority party) the right to be heard.17

In spite of the reorganization of the colonial administration of Puerto Rico which took place under the pretense of a new constitutional status between 1950-1952, the political and economic structure of Puerto Rico has remained unchanged since the U.S. military invasion and acquisition of Puerto Rico in 1898.18 If the U.N. Special Committee on the Situation with Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples (the Decolonization Committee created under the aegis of Resolution 1514 of 1960) had been in existence seven years earlier, the 1953 action by the General Assembly may not have taken place. This is less in the realm of speculation than one might suppose. The unlikelihood of the United Nations' recognizing the current status of Puerto Rico as a decolonizing formula today, seems clear. As Hurst Hannum has pointed out, Puerto Rico's "lack of any foreign relations capacity and its apparent inability to unilaterally alter its status militate against its possessing self-government as that term would now be defined by the United Nations."19

The fact that colonialism is alive and well in Puerto Rico is by now an open secret. José A. Cabranes, a former functionary of the Puerto Rican government and currently a federal judge on the U.S. District Court for the District of Connecticut has aptly phrased it: "The problem of Puerto Rico is colonialism, and decolonization stands at the front and center of the island's politics and its rela-

17. See Clark, Self-Determination, supra note 9, at 41-42.
19. Hannum, The Theory and Practice of Governmental Autonomy: Final Report for the Department of State Vol. I, THE PROCEDURAL ASPECTS OF INTERNATIONAL LAW INSTITUTE 204-205 (1980) [hereinafter PAIL REPORT]. See also Clark, Self-Determination, supra note 9, at 46. Note: U.N. General Assembly resolutions do not carry the force of precedent associated with the common law notion of stare decisis, but acquire the force of law only when, as in the case of Res. 1514, they are generally regarded as a norm of international law. This, besides the continuing existence of Puerto Rican nationalism, explains in part why the case of Puerto Rico is not moot.
DECOLONIZATION OF PUERTO RICO

The ever-increasing deterioration of social and economic conditions in Puerto Rico makes a change of the present constitutional, legal and political situation not only desirable, but necessary. U.N. Resolution 1514 of 1960, and the Advisory Opinions of the International Court of Justice in the cases of Namibia and Western Sahara concluding that the principles of Resolution 1514 have become a norm of international law, make a juridical change of Puerto Rico's status mandatory. One must therefore look to international law for guidance in exploring avenues which are realistically open in the process of re-defining Puerto Rico's relationship with the United States and the rest of the international community.

III. ALTERNATIVES FOR DECOLONIZATION UNDER INTERNATIONAL LAW

Resolution 1514 of the U.N. General Assembly has come to embody a substantive norm of international law requiring an end to colonialism in all of its manifestations. The Resolution itself declares this objective. The International Court of Justice (I.C.J.) has recognized this resolution as the impetus for the process of decolonization which has resulted in the creation of many nation-states which have become members of the international community since 1960. The I.C.J. has also recognized that this substantive norm which has come to enrich the corpus iuris gentium "is complemented in certain of its aspects by General Assembly Resolution 1541." In this latter resolution, the U.N. General Assembly established the principles which should guide the international community in determining whether or not the substantive requirements for decolonization, as mandated by Resolution 1514, have been met. It specifically states that "[a]s soon as a territory and its peoples attain a full measure of self-government," the obligation of a colonizing power to transmit information to the United Na-

23. Western Sahara, supra note 22.
25. Western Sahara, supra note 22.
tions under Article 73e of the U.N. Charter shall cease.

As stated above, Puerto Rico has not achieved a full measure of self-government, and exemption of the United States from transmitting the required information is the result of a procedural maneuver that has since been repeatedly questioned in a variety of international settings. The issue is, therefore, how will Puerto Rico be decolonized? Resolution 1541 contemplates three procedural avenues for a non-self-governing territory to achieve decolonization: "(a) Emergence as a sovereign independent State; (b) Free association with an independent State; or (c) Integration with an independent State." Although the first possibility is clearly the simplest and clearest alternative to conceptualize, in the case of Puerto Rico an analysis of each of these should be made in light of the explicit decision of the General Assembly in approving this resolution: "[T]hat these principles should be ap-

A. Integration with an Independent State: Statehood

In the case of Puerto Rico, integration means federated statehood. Whatever the merits of such a juridical formula, the obvious differences between Puerto Rico and the territories which have become federated states of the United States need not be belabored. Any attempt on the part of a sovereign nation, like the United States, to swallow a culturally and sociologically distinct nation, would be a provocation against peace and stability which could not meet with the approval of the international community. The substantive requirement "to end colonialism in all its manifesta-

27. See Clark, supra note 9, at 41-46.
28. Among these are: the Conference of Non-Aligned Countries, the Permanent Conference of Latin American Political Parties, the Socialist International, and the United Nations' own Decolonization Committee. For an account of the events surrounding the 1978 Resolution of the U.N. Decolonization Committee in which pro-statehood and pro-commonwealth advocates also criticized Puerto Rico's colonial status, see Cabranes, supra note 20, at 68-71.
30. Id. at para. 3 (emphasis added). For the sake of conceptual clarity in this article, I have chosen to analyze these in reverse order.
The serious problems which such an attempt would involve have been amply documented elsewhere. Furthermore, U.S. policy makers do not appear to contemplate statehood in a serious manner. Some aspects of the problem, however, should be noted. The economic impact of a Spanish-speaking state far poorer than the poorest state of the union, with a larger congressional representation than twenty-five of such states has yet to be realized and analyzed by the congressional delegations that are bound to be affected.

Political dissonance would also be a considerable problem. At a time when the political attractiveness of legal action to establish English as the official language of the United States has developed some support, the idea of Puerto Rican integration is bound to encounter serious obstacles. The contrary proposition, that Spanish is the official language of Puerto Rico, is also considered by lawmakers in Puerto Rico from time to time. This can logically raise questions as to Puerto Rico's desire or collective ability to actually integrate. The steady refusal of Puerto Rico, during the first forty years in this century, to adapt to the attempted imposition of the English language as the language of instruction in its public schools, or, in 1965, to submit to anything but the Spanish language as the language to be used in its court system, supports this proposition.

Furthermore, the type of integration contemplated by Resolution 1541 calls for the integrating territory to have attained an advanced stage of self-government. The fact that Puerto Rico does

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32. See Serrano Geyls and Gorrín Peralta, Puerto Rico y la estadidad, 40 REV. COL. AB. P.R. 5 (1979); 41 REV. COL. AB. P.R. 1 (1980); 42 REV. COL. AB. P.R. 1 (1981); see also Negrol Rivera, Beyond Section 936: A Suggested Departure from Tax-Sheltered Stagnation in Puerto Rico, 47 REV. COL. AB. P.R. 143 (1986).

33. See Pastor, supra note 1, at 59; see also Garcia-Passalacqua, Intertwined Futures: Puerto Rico, the United States, the Caribbean Basin, and Central America, 9 FLETCHER FORUM 269, 271-276 (1985).


35. See Pueblo v. Tribunal Superior, 92 D.P.R. 596 (1965); see also Vientos Gastón, El Tribunal Supremo de Puerto Rico y el problema de la lengua, in LIBERTAD Y CRÍTICA EN EL ENSAYO POLÍTICO PUERTORRIQUEÑO 397-412 (Zavala and Rodríguez eds. 1973). The author of this essay is a noted lawyer and intellectual who prevailed in this 1965 Supreme Court case. She has a long and distinguished history on behalf of the vernacular in Puerto Rico. Most recently, in June 1986, she was awarded a degree honoris causa by the University of Puerto Rico, in recognition of her contributions to legal and literary culture on the island.

not now enjoy, nor has ever enjoyed, the required self-government, underscores the weakness of the legal grounds which federated statehood could have as a viable alternative for Puerto Rican decolonization. Therefore, federated statehood could not comply with the international legal mandate to end colonialism in all of its manifestations in Puerto Rico.

B. Free Association with an Independent State

In international law, free association has to be more than a term. The current official status of Puerto Rico is Estado Libre Asociado, which would literally translate into English as Associated Free State. The association of ideas which arises from Puerto Rico's official name in Spanish and the legal term employed for a decolonizing status in international law is, however, misleading. Although in English the term commonwealth is officially employed, this does not alleviate the confusion. Massachusetts is one of several states of the union that are known as commonwealths. Canada, as part of the British Commonwealth, has long possessed a greater degree of self-government than Puerto Rico has ever had under U.S. rule. The relationship between New Zealand and the Cook Islands, Niue, and Tokelau has been labeled as one of associated states. Finally, the recent arrangement between the United States, the Marshall Islands and the Federated States of Micronesia has been officially labeled Free Association.

If free association is to have meaning as a decolonizing formula in the case of Puerto Rico, its meaning has to be clearly ascertainable as reflecting established international legal standards that would put an end to colonialism in Puerto Rico, "in all its manifestations."37

As mentioned above, Resolution 1541 provides a set of principles to guide the international community in determining whether the required degree of self-government has been achieved in the form of free association, under the mandate for decolonization of Resolution 1514. It establishes that free association should be the result of a free and voluntary choice by the peoples of the territory. Such consent must be "expressed through informed and democratic processes."38 It calls for a choice which respects the individ-

37. G.A. Res. 1514, supra note 3.
38. G.A. Res. 1541, Principle VII(a), supra note 26 (emphasis added).
uality and cultural characteristics of the territory and its peoples, and which "retains for the peoples of the territory... the freedom to modify the status of that territory..." in a democratic manner.

1. The Status Quo Revisited

Puerto Rico’s executive, legislative, and judicial institutions are clearly subject to the ultimate decision-making power of the U.S. government. The political powerlessness of Puerto Rico’s government throughout U.S. colonial rule has been impeccably documented, even by founders and advocates of Puerto Rico’s commonwealth status. It is clear, then, that the present status of Puerto Rico would not, as previously noted, satisfy international norms.

Resolution 1541 calls for the right of the people of the associated territory to freely determine their internal constitution “without outside interference.” However, the constitutional history of Puerto Rico makes clear that the present status does not conform to this minimum procedural requirement. For example, through Public Law No. 447 of 1952, the U.S. Congress rejected Section 20 of the document which purports to be the Constitution of Puerto Rico. This section contained social, economic, and cultural rights which the participating Puerto Rican electorate desired to elevate to the rank of constitutional guarantees. These rights were not unlike those underlying the United Nations’ holistic conception of human rights. Other constitutional provisions were also altered, or their reach limited, by this unilateral act of Congress. Supporters of the current status were thus faced with a mutilated document as a take-it-or-leave-it proposition.

39. Id.
41. PAIL REPORT, supra note 19; Clark, Self-Determination, supra note 9.
43. Supra note 16.
44. One of the governments of the Micronesian region, that of the Northern Marianas, was placed in a similar dilemma more recently. See infra note 129. At least in that case, it could be argued that the people of the Marianas were exercising their sovereignty, in that the U.S. claims not to have ever exercised juridical sovereignty over the Trust Territories of Micronesia. This argument may be flawed in light of the fragmentation of sovereignty which the U.S. appears to have perpetrated in that region. See infra notes 127-130, and accompanying text. Puerto Rico’s sovereignty, however, has at all times since 1898 been recognized as vested in the U.S. Congress, and Puerto Rico cannot conceivably be said to have negoti-
It is evident that Puerto Rico's current status does not realistically fall within the category of free association contemplated by Resolution 1514. A question remains, however, which deserves further consideration. Is there a model which would constitute a decolonizing mode of free association in the case of Puerto Rico? In the context of imagination and good faith, the sky is always the limit; but recent congressional action regarding the U.S. Trust Territories of the Northern Pacific has caught the attention of some in Puerto Rico. This Compact of Free Association between the United States, on the one hand, and the Marshall Islands and the Federated States of Micronesia, on the other, however, deserves deeper analysis of some of its outstanding features.

2. The Micronesian Experience at a Glance

The area historically known as Micronesia includes the Trust Territory of the Pacific which consists of 2,125 islands. This area totals 1,300 square kilometers of land and spreads over 7.5 million
square kilometers of the Pacific Ocean, north of the Equator. Japan occupied the islands at the beginning of World War I, after which it was granted a Class "C" mandate in accordance with article 22 of the Covenant of the League of Nations. During World War II, the United States occupied the area and, after the War, the United States secured formal international recognition of its strategic interests in the region through a special strategic trusteeship agreement with the United Nations. This special trusteeship required United States consent for its termination. The three major island chains involved in this region include: the Mariana Islands, the Caroline Islands, and the Marshall Islands. These major island chains at present constitute four separate governments representing approximately 136,000 people, which is a tiny fraction of the more than three million inhabitants of Puerto Rico. Unlike Puerto Rico which involves a fairly homogeneous population (culturally and linguistically), these islands include six separate cultural groups that speak nine distinct languages.

The main focus of this analysis is the Compact of Free Associ-


47. A special category of trusteeship for areas designated strategic was authorized by art. 82 of the U.N. Charter. The Strategic Trusteeship Agreement here in question was approved by the U.N. Security Council on Apr. 2, 1947, effective July 18, 1947 (61 Stat. 330 (1947)). The distinction between strategic and non-strategic is unclear, except for two things. First, this is the only Strategic Trusteeship Agreement, and except for its approval in 1947, the Security Council has not been actively involved. See Hambro & Simons, Charter of the United Nations 525 (3d ed. 1969). Secondly, under its agreed terms, termination of the trusteeship can occur only with U.S. consent (61 Stat. 330 (1947), art. 15). This latter point, along with U.S. veto power in the Security Council, ensures near absolute control for the United States over affairs in the region. Unlike non-strategic trusteeships over which the General Assembly exercises ultimate responsibility, and notwithstanding the contrary position announced by President Reagan in Nov. 1986, the Security Council has the ultimate responsibility for the only strategic trusteeship in U.N. history. For a brilliant analysis of the inconsistent position most recently assumed by the United States, see Clark, Written Petition of the International League for Human Rights to the United Nations Trusteeship Council on the Proclamation of 3 November 1986 by the President of the United States Concerning the Trust Territory of the Pacific Islands (Int'l League for Human Rights, N.Y., Apr. 2, 1987) (obtained by courtesy of Prof. Clark to this author).

48. The currently designated Commonwealth of the Northern Mariana Islands includes all of the Marianas except Guam, which remains an unincorporated territory of the United States.

49. These include the currently designated Republic of Palau and the Federated States of Micronesia.

50. These are known today as the Republic of the Marshall Islands.

51. See supra notes 46, 49 and 50.


ation between the United States and two of the governments: the Republic of the Marshall Islands (MI), with its 31,041 inhabitants, and the Federated States of Micronesia (FSM) with its population of 73,755.\textsuperscript{54}

It should be noted that the "United Nations 'practice' with regard to free association arrangements is inconsistent, and that no clear norm has emerged which can be applied to the case of Micronesia."\textsuperscript{55} Furthermore, the application of this model to Puerto Rico might raise unrealistic expectations of economic assistance.\textsuperscript{56} Regardless of the amount, however, the Micronesian model must be analyzed to explore what features, if any, would constitute Puerto Rican decolonization.\textsuperscript{57}

(a) International Status and Internal Self-Government: Factors in the Equation. The notion of free association under Resolution 1541, in light of which the Micronesian model must be considered, also has to be viewed in the context of Resolution 742, which was approved by the U.N. General Assembly in 1953.\textsuperscript{58} This Resolution states that the manner in which non-self-governing territo-

\textsuperscript{54} Europa Yearbook, supra note 46. Frequent reference will be made to both of these governments as Micronesian.

\textsuperscript{55} Clark, Self-Determination, supra note 9, at 65-66.

\textsuperscript{56} See Legislative History, Authorization Tables, Pub. L. No. 99-239, reprinted in 1985 U.S. Code Cong. & Admin. News 2756-2757. The approximately $3.2 billion estimated in Jan. 1986 in U.S. economic assistance over a fifteen-year period for the combined MI and FSM population of approximately 105,000, would translate into the astronomic per capita figure of more than $30,000. Over a similar period of time, the total disbursement in comparable economic assistance to Puerto Rico would be over $97 billion. I am, of course, sympathetic to the notion that a former colony should be so indemnified after decades of economic exploitation. The United States, however, is living through a period of bloated federal deficits making such a large economic commitment to Puerto Rico appear doubtful.

\textsuperscript{57} See Alejandro, Cuál república? El Nuevo Día, July 11, 1986, at 51. This is one of the few thoughtful critical assessments published in Puerto Rico regarding the nature of the Micronesian arrangement and its possible application to Puerto Rico. See also Rechani Agrait, Puerto Rico: imperio, El Nuevo Día, July 2, 1986, at 45. A distinguished pro-statehood advocate, Rechani Agrait argues that the preliminary moves towards so-called expansion of the present model which calls for a "twin-plants" economic program consonant with the Reagan administration's Caribbean Basin development policies are a way of taking hold of the sweat of others for our benefit. A means of exploitation. A way of profiting from the misery which others endure. And since this, before God, is unjust, it cannot have permanence. It will end because of persuasion, because of evolution or by force, and our economy will be forced to admit that 'the model is exhausted' once again.

\textsuperscript{58} This Resolution sets out the factors which should be taken into account in deciding whether a territory is, or is not, a territory whose people have not yet attained a full measure of self-government.
ries can subsequently be deemed "fully self-governing [is] primarily through the attainment of independence . . . ," although the General Assembly recognized that such self-government "can also be achieved by association with another State or group of States if this is done freely and on the basis of absolute equality." The annex to this Resolution is a List of Factors indicative of the attainment of independence or of other systems of self-government. The factors indicative of the notion of free association relevant here are divided into three categories: (a) general, (b) international status, and (c) internal self-government.

The general factors require considering the opinion of the population, freedom of choice, voluntary limitation of sovereignty, geographical considerations, and the political advancement of the population. Serious problems would remain if the Micronesian model were applied to Puerto Rico, even if proper compliance with all of the general factors were assumed.

Legal problems arise when the relative control of the parties to the Compact is analyzed in the context of the interaction of provisions bearing on the Micronesian governments' international status and internal self-government. In this context, one must keep in


60. Among these other systems of self-government, the notion of what Res. 1541 calls integration appears as "the free association of a territory on an equal basis with the Metropolitan or other country as an integral part of that country." See id. at Annex, Third Part.


62. Id. at A.1.
63. Id. at A.2.
64. Id. at A.3.
65. Id. at A.4.
66. Id. at A.5.
67. Id. at A.6.
68. The opinion of the population, its perception as to what it is free to decide and its voluntary limitation of sovereignty are factors which are extremely susceptible to manipulation in the rhetorical excesses of political propagandizing. How reliable, for instance, is an expression of public opinion based on the premise that a people will be penalized if a choice for independence is made? How free is that choice when the independence option is tied to hunger or starvation by public officials who administer the Metropolitan Power's transferred welfare funds? How voluntary can any limitation of sovereignty be when the Metropolitan Power exercising the colony's sovereignty is always silent regarding what a period of economic transition to independence would entail? These threshold questions point to the obscurity which an in-depth analysis of these factors in the case of Puerto Rico would reveal.

69. The factors indicative of international status in the text are: (1) general international relations, (2) change of political status and (3) eligibility for membership in the
mind that the Compact itself is merely part of the Compact of Free Association Act of 1985. The Act comes as a Joint Resolution to approve the Compact, and for other purposes. This requires the consideration of some of the Compact provisions in the Titles of the Act which regulate governmental relations (Title One), economic relations (Title Two), and security and defense relations (Title Three), as well as the legal provisions regulating other purposes in this Act of the U.S. Congress.

(i) Control Under the Micronesian Model. The beginning of the analysis of the Micronesian model must begin with one central question about control: Who exercises it; and how much?

At the outset, the Compact establishes that “The peoples of the Marshall Islands and the Federated States of Micronesia, acting through the Governments established under their respective Constitutions, are self-governing.” This presumably allows these governments “the capacity to conduct foreign affairs . . . in their own name and right, except as otherwise provided . . . .” This document also states, however, that “The Government of the United States has full authority and responsibility for security and defense matters in or relating to the Marshall Islands and the Federated States of Micronesia.” In this context, it provides that the MI and the FSM “shall consult, in the conduct of their foreign

United Nations. G.A. Res. 742, supra note 59, at Annex, Second Part, B.1-3. The internal self-government factors are: (1) territorial government (its nature and measure of control or interference, if any, by the government of another), (2) the effective participation of the population and (3) the degree of autonomy in respect of economic, social and cultural affairs, as illustrated by the degree of freedom from economic pressure exercised by a foreign power. Id. at C.1-3.

70. The Compact of Free Association between the government of the United States, and the governments of the MI and the FSM consists of four parts. Title One deals with Governmental Relations; Title Two outlines Economic Relations; Title Three establishes Security and Defense Relations; and Title Four contains General Provisions. In addition, there are a number of separate agreements arrived at by the governments in question based on the provisions of the Compact. See Armstrong and Hills, The Negotiations for the Future Political Status of Micronesia (1980-1984), 78 Am. J. Intl. L. 484-497 (1984).


73. See supra note 71, at § 111.

74. Id. at § 121 (emphasis added).

75. Id. at § 311(a).
affairs, with the Government of the United States." This obligation to consult is not established under parallel principles of mutuality because the government of the United States, in the conduct of its foreign affairs, will consult with the Micronesian governments only "on matters which the Government of the United States regards as relating to or affecting any such Government." This contradiction naturally leads to the question of how self-governing the Micronesian governments really are in the conduct of their foreign affairs; and how controlling are U.S. foreign affairs' determinations over the internal decisions of the Micronesian governments. Given other compact provisions which result in even greater U.S. influence over Micronesian policies, it is unlikely that these governments can be said to exercise the full degree of self-government compatible with international legal precepts for decolonization. For example, the United States alone, under its authority and responsibility for security and defense relations under the Compact, will determine which of its defense treaties or security agreements will be applicable in the MI and the FSM. It is "the Government of the United States, exclusively, [which] shall assume and enjoy, as to the Marshall Islands and the Federated States of Micronesia, all obligations, responsibilities, rights and benefits" of such agreements. This is one instance in which, under the terms of the Compact, the United States could effectively determine whether the Micronesians could establish trade or cultural relations with particular countries. Although "appropriate consultations" are envisioned, it would be hard to conceive the United States as not having the final word.

The consultation mechanisms established under the Title on Security and Defense Relations may not provide an adequate offset for the truncated powers of the Micronesian governments. Under the terms of the Compact, such consultations are supposed to be conducted "expeditiously at senior levels of the Governments concerned." The subsequent determination by the Government of the United States referred to in this section shall be made only at senior interagency levels of the Government of the United

76. Id. at § 123(a) (emphasis added).
77. Id. at § 123(b) (emphasis added).
78. Id. at § 331(b).
79. Id. at § 331 (emphasis added).
80. Id. at § 331(b).
81. Id. at 1822.
82. Id. at § 331(b).
States." If a Micronesian government is unhappy with any such determination made subsequent to the mentioned consultations, it will then presumably be afforded, "on an expeditious basis, an opportunity to raise its concerns with the United States Secretary of State personally and the United States Secretary of Defense personally . . . ." Arguably, this grants the Micronesian governments a preferred status in their dealings with the U.S. government, as opposed to other foreign governments which must deal through their embassies. This view, however, does not properly take into account the nature of bureaucracies in the decision-making process of the federal government. Assuming the availability of high-level officers of the U.S. government for such Micronesian expressions of unhappiness, it is highly unlikely that they would be caught by surprise regarding the prior determinations made "only at senior interagency levels" of their government. It is also unlikely that these high-level functionaries would overrule the bureaucratic decision-making process at this point.

There is another context in which the lop-sided control exercised by the United States under this Compact can be illustrated. The Compact allows for the storage of U.S. radioactive, toxic, chemical or biological materials in Micronesia that are intended for weapons use, for transit and over-flight purposes, and for times of a national emergency declared by the President of the United States. Given the practical flexibility of a President of the United States in declaring a national emergency based on the U.S. perception of its national and security interests, this could include any future invasion of a Central American or Caribbean country. Furthermore, radioactive, toxic, chemical or biological materials "not intended for weapons use" face no storage restriction, other than being limited to amounts and manner "which would not be hazardous to public health and safety." What will be an amount or manner hazardous to public health or safety shall be determined by the U.S. government. Neither the objections raised in any con-

83. Id.
84. Id. at § 313(c) (emphasis added).
85. Id. at § 313(b).
86. Id. at § 314(b).
87. President Ronald Reagan was asked whether dispatching U.S. helicopters to Bolivia was in the national interest of the United States. He replied: "Anything we do is in our national security interest." Robinson, Oliphant and Robinson, The Catch-All Definition, The Boston Globe, July 17, 1986, at 3.
88. Supra note 71, at § 314(a),(d).
89. Id. at § 314(d).
sultations procedure, nor the laws or public policy of any Microne-
sian associated state can serve as limitations on U.S. decisions in
this regard. The only limitations are mutual agreements, the laws
and implementing regulations of the United States, and those "in-
ternational guidelines accepted by the Government of the United
States."90 In the Compact, the United States "confirms that it
shall act in accordance with the principles of international law and
the Charter of the United Nations" in the exercise of its security
and defense powers.91 If the Compact were applied "as is" to Pu-
erto Rico, it could be at odds with the prohibitions regarding nu-
clear weapons provided under the Treaty of Tlatelolco.92 This
treaty contains wide-ranging prohibitions against the use or stor-
age of nuclear weapons in Latin America, including Puerto Rico. If
the United States does not accept the provisions of a Treaty such
as Tlatelolco, the associated state's international and internal gov-
ernment capacity is correspondingly curtailed.

The Micronesian Compact further limits the internal self-gov-
ernment powers of the associated states by "the activities and op-
erations necessary for the exercise" of U.S. authority for security
and defense relations "within the lands, waters and airspace" of
the MI and FSM.93 If the U.S. government requires the use of ar-
 eas "in addition to those for which specific arrangements are con-
cluded,"94 it may request them. This raises an issue as to whether
the concerned governments may deny such requests. The language
of the Compact mandates that they "shall sympathetically con-
sider any such request and shall establish suitable procedures to
discuss it . . . ." 95 Does this language mean that the United
States retains powers of eminent domain under this compact? The
United States "recognizes and respects the scarcity and special im-

90. Id.
91. Id. at § 311(c).
92. Treaty for the Prohibition of Nuclear Weapons in Latin America (with annexed
Additional Protocols I and II), Feb. 14, 1967, 634 U.N.T.S. 281. The Treaty is the only one
of its kind, providing for a totally nuclear-free zone in Latin America. The United States
became a signatory nation to Protocol I of this Treaty (and ratified it on Nov. 23, 1981),
which undoubtedly includes Puerto Rico. This Protocol prohibits nuclear powers from man-
ufacturing, producing, acquiring or using, receiving, storing, deploying or possessing nuclear
weapons, in any way, shape or form, in territories that are, de jure or de facto under such
powers' control or jurisdiction. See Colegio de Abogados de Puerto Rico, Informe de Comis-
ión Especial sobre armamentos nucleares y el Tratado para la Proscripción de las Armas
93. Supra note 71, at § 312.
94. Id. at § 321(b).
95. Id.
portance of land" in the Micronesian states, and undertakes to limit its requests accordingly. Therefore, the requests which the associated states are to consider sympathetically will be for "the minimum area necessary to accomplish the required security and defense purpose," [and] the minimum interest in real property necessary to support such purpose." The United States will seek "first to satisfy its requirement through public real property, where available, rather than through private real property." Thus, the issue of whether the United States exercises powers of eminent domain appears to be merely one of semantics; since the United States has "full authority and responsibility for security and defense matters" since the U.S. government can request the real property interest that it deems necessary to support its exercise of full authority and responsibility for security and defense matters; and since the associated states must entertain any such requests sympathetically. It has been pointed out that a failure by one of these Micronesian governments "to refrain from activities 'incompatible' with United States authority" could be construed as a breach of the Micronesian side of the Compact. Similarly, a failure to comply with a request for land, sea or airspace in furtherance of U.S. authority could be so construed, allowing the United States the freedom to pursue some form of self-help. The most likely form that this self-help would take would be to cut off the funds promised under the Economic Relations Title of the Compact.

It is possible that, under the Micronesian model, the price of less than full internal self-government compatible with decolonization requirements is satisfied by the amount of economic aid specified in the Compact, particularly in the Title on Economic Relations. One would assume, however, that enough freedom would

96. Id. at § 321(c).
97. Id.
98. Id. (emphasis added).
99. Id. The very distinction between public and private involves complex issues of public policy, the implementation of which, in the Micronesian context, may not escape the dominant role of U.S. authority and responsibility for security and defense matters.
100. Id. at § 311(a).
101. Clark, Self-Determination, supra note 9, at 27.
102. Id.
103. Id. at 29. This is the remedy which Prof. Clark suggests would most likely be employed by the U.S. government. It is therefore surprising that he so narrowly interprets the question of whether the U.S. retains powers of eminent domain, even under the 1980 version of the Compact.
104. Supra note 71, at § 211 et. seq.
be protected to exercise whatever degree of self-government re-
mains after the purchase price. A quick overview of the economic
provisions, however, proves disappointing.

The Grant Assistance provisions establish separate systems of
grant monies for each of the Micronesian governments encompassed
by this Compact. Determinate amounts of aid are set as well as timetables for the provision of such funds and their re-
stricted uses. Each of the governments is provided specific
amounts on a decreasing basis for the first, second, and third five-
year periods of the fifteen-year term of the Compact. These gov-
ernments are then required to dedicate a minimum percentage of
these amounts to a capital account in accordance with an economic
development plan in which the U.S. government must have con-
curred prior to the effective date of the Compact. All grants and
other assistance are subject to continuous supervision, through
yearly audits during the first five years, and periodic audits there-
after. It is established that these audits will be at the expense of
the United States.107

The implications of these audits will become apparent. First,
it should be noted that this raises legal and Constitutional ques-
tions regarding: (1) the capacity to prospectively bind the U.S.
Congress to long-term disbursements, (2) the determination of
which of the inconsistent congressional enactments is to prevail
and (3) the determination of whether domestic or international
norms will prevail. Under the terms of the Compact, however, it
is unclear "whether and to what extent Congress retains discretion
to withhold or modify annually the amounts granted to the Micro-
nesian governments while the Compact is in force."109

Furthermore, the Compact stipulates that the grants and
achievement of goals under such grants "depends on the availabil-
ity of adequate internal revenue as well as economic assistance
from sources outside" the Micronesian states, all of which may "be
affected by the impact of exceptionally adverse economic circum-
stances."110 The document further provides that "Each of the Gov-

105. Id. at § 211(b).
106. Id. at § 233.
107. Id.
108. For further discussion of these questions, see Clark, Self-Determination, supra
note 9, at 22-23.
109. Id. at 21.
110. Supra note 71, at § 211(c).
ernments of the Marshall Islands and the Federated States of Micronesia shall therefore report annually to the President of the United States and to the Congress of the United States on the implementation of the plans and on their use of the funds specified."111 There is, however, no provision for reciprocal reports by the U.S. government to Micronesian authorities to justify a change in the appropriations allotted under the provisions of the Compact.

Since the Compact is but part of a congressional enactment, these provisions must be viewed in the context of the other purposes encompassed by the Compact of Free Association Act of 1985.112 Existing statutory provisions call for an Economic Development Plans Review Process for the FSM and MI.113 These provisions state that the United States will not concur with the economic development plans of these governments until the President of the United States has conducted a review and reported to the Congress, and the Congress has had at least thirty working days to review the President's findings. The report must include the views of the Secretary of the Interior, the Administrator of the Agency for International Development "and the heads of such other Executive departments as the President may decide to include in the report."114 It is here that the implications of the required audits become important.

As previously noted, the Compact requires an agreement on the audits to be conducted.115 Statutory provisions under the Compact of Free Association Act previously cited mandates that the "Agreement Concerning Procedures for the Implementation of United States Economic Assistance, Programs, and Services Provided in the Compact of Free Association" shall establish the general authority of the Comptroller General of the United States (the General Accounting Office [G.A.O.]) to audit, as well as the G.A.O.'s "access to the personnel and to records, documents, working papers, automated data and files, and other information relevant to such audits (without cost)."116

Another statutory provision contained in this controlling part of the statute, which impacts the degree of self-government the

111. Id. (emphasis added).
112. Supra note 71.
113. Id. at §§ 102(b), 103(b).
114. Id.
115. See id. at § 233.
116. Id. at §§ 102(b), 103(m).
Micronesian states will possess under the Compact, establishes that the Comptroller General and his duly authorized representatives of the G.A.O. "shall be accorded the status set forth" in the Compact relative to diplomatic representation. The premises of such representative offices and their archives are subject to diplomatic immunity and privileges. "The property and assets of such representative offices shall be immune from search, requisition, attachment and any form of seizure unless such immunity is expressly waived." Official communications between or among G.A.O. officers on the islands (even if in transit) like any other diplomatic correspondence, "shall be inviolable and accorded the freedom and protections accorded by recognized principles of international law to official communications of a diplomatic mission."

This provision is highly significant. In addition to the U.S. Embassy, and to the diplomatic personnel with whom the Micronesian governments may be allowed "to conduct foreign affairs . . . in their own name and right," in a manner deemed by the United States not to contravene U.S. authority over security and defense, the G.A.O. becomes a diplomatic mission, in effect an untouchable watch-dog agency that can unilaterally inspect, copy, gather, interpret, and analyze the Micronesian governments' finances.

(ii) Delegation of Sovereignty Under the Micronesian Model. The preceding review of a few key Compact provisions clearly indicates the decisive control which the United States will continue to exercise over the Marshall Islands and the Federated States of Micronesia. There are some provisions which, in form, resemble an associated state's decolonized capacity for international status and internal self-government. The termination provisions likewise

117. Id.
118. Id. at § 152(a).
119. Id.
120. Id. at § 121(a).
121. Id. at § 311 et. seq.
122. Id. at §§ 111-127. While the Compact refers to the Micronesian states' attributes of self-government (§ 111) and foreign relations capacity (§ 121), all of these forms are diluted in their substance. Thus, while the United States pledges to support Micronesian applications for membership to international or regional organizations (§ 122), this international capacity which self-government presupposes is tempered by the requirement that any such application requires mutual agreement for U.S. support. The other requirement of harmony with U.S. authority for security and defense relations has already been discussed above. Other areas of internal autonomy are similarly curtailed. See, e.g., id. at § 131 which gives the Micronesian Governments "full authority and responsibility to regulate their re-
adopt forms similar to those required under decolonization precepts. Nevertheless, the pervasiveness of U.S. institutions and their control on Micronesian soil, as well as the highly regulated and massive infusion of grants under the terms of the Compact, raise questions as to whether the Micronesian governments will be able to develop a self-sustained interdependent economy, or whether these mechanisms will perpetuate a continued unbalanced dependency.

Another related issue is whether the legal capacity of the Micronesian governments to unilaterally terminate this free association might be more theoretical than real. The U.S. government can readily exercise its power and influence over the Micronesian governments' foreign relations. It also appears that neither of the Micronesian governments concerned would attempt to exercise its sovereign will contrary to that of the United States due to the potential economic disruption which the U.S. government could legally inflict upon these countries under the terms of the Compact. This economic control is the best insurance of Micronesian faithful compliance.

spective foreign and domestic communications." But see, id. at § 132, which requires that they permit the U.S. government to operate telecommunications "to the extent necessary" to fulfill other U.S. government obligations under the Compact and the terms of separate agreements which simultaneously come into effect. Similarly, in the area of immigration controls, see id. at §§ 141, 142, which exemplify the unbalanced mutuality of powers. Also, in the area of environmental protection, powers are equally slanted in favor of U.S. authority over security and defense matters in §§ 161-163. Finally, the amounts in damages provided for victims of nuclear tests conducted in the islands of Bikini, Enewetak, Rongelap and Utrik of the Marshall Islands, and the settlement of claims provisions under §§ 103(f) and (g), as well as under the § 177 agreements in "full and final settlements of all claims," deserve separate treatment and an analysis of what those claims would have been worth under generally applicable principles of tort law.

123. Id. at §§ 441-454.

124. Prof. Clark has noted the mounting difficulty with which the Micronesian governments could opt entirely out of this free association arrangement through the Compact's 1980, 1982, 1984 and 1986 versions. These difficulties evidently have significant implications so far as the U.N. norms on decolonization are concerned. He recalls that the U.N. Commission which examined the possibilities of a free association status in the matter of Togoland in the late 1950's for the General Assembly expressed the view that this French-administered entity should have full powers to terminate the arrangement unilaterally. Accordingly, we do not believe that the free association arrangements satisfy U.N. norms for a proper exercise of self-determination.

Clark, Petition, supra note 9, at 7.
The actions which the MI and the FSM can take in the area of international commercial relations under the Compact may not be much different from those that Puerto Rico can take under its present colonial status. In the case of the Micronesian governments, the outer limits appear to always require consonance with U.S. authority over security and defense, for which prior consultations are required. The recent U.S. official position regarding Puerto Rico has been that Puerto Rico may also engage in commercial relations with other countries after prior consultations with the United States.\textsuperscript{125}

An argument has been made that the Compact provides an approximately balanced spectrum of the quantum of discretion and powers between the parties. Even with the 1980 version of the Compact, such balancing, in this author's view, drastically tips the scales of control in favor of the metropolitan power.\textsuperscript{126}

A final argument that could be made in favor of this Compact's fulfillment of international legal decolonization requirements is its valid delegation of sovereign powers. This argument is supported by the fact that, even at the time that this unique security trusteeship was being negotiated (immediately after World War II), the United States expressly acknowledged that making this trusteeship an integral part of the United States did not imply

\textsuperscript{125} According to an Associated Press report, the White House submitted a report by Michael G. Kozak of the U.S. Dep't of State to the House of Representatives Committee on the Interior and Insular Affairs. The Kozak Report indicates that Puerto Rico is in the same position as the Virgin Islands, Guam, Samoa, and the Northern Marianas in this regard. A distinction is reportedly made vis-a-vis the MI and FSM because of their different political organization which allows them to autonomously conduct their own foreign relations. In the case of Puerto Rico, the purpose of a wide-ranging and conscious coordination with the U.S. government is to insure that there be no conflict between Puerto Rican and U.S. interests. \textit{Puerto Rico puede pactar, pero después de consultar}, El Reportero, July 19, 1986, at 3, cols. 1-4. Any real differences between the substantive regulation which the Compact with the Micronesian governments entails, and this articulation regarding other territories are hard to see. What is not difficult to see is how readily the U.S. government is bound to determine the existence of conflicts between Puerto Rico and U.S. interests. In Dec. 1986, U.S. Secretary of State, George Shultz, denied permission to the government of Puerto Rico to enter into commercial agreements with Japan, which could have presumably helped Puerto Rico's ailing economy. The agreement would have given Japanese manufacturers tax breaks similar to those enjoyed by U.S. firms which repatriate their profits under § 936 of the U.S. Internal Revenue Code. Secretary Shultz disallowed Puerto Rico's commercial agreement with Japan because it conflicted with U.S. policy, which does not view tax-sparing treaties with other countries favorably. See Caribbean Update, Feb. 1987, at 15, col. 2.

\textsuperscript{126} See Clark, \textit{Self-Determination}, supra note 9, where Prof. Clark makes this same argument. In hindsight, one can surmise that his view undoubtedly arises from the fact that at the time of publication of his otherwise fine article in 1980, Congress had not yet legislated the final version of the Compact.
U.S. sovereignty over the territory then known as Micronesia.127

The problem with this argument is that the trust territory as a whole encompassed more than just the presently constituted governments of the Marshall Islands and the Federated States of Micronesia. Thus, this fragmentation of the trust territory as a path to decolonization may not be authorized by the Charter of the United Nations, for it would involve a fragmentation of sovereignty.128 It has also been pointed out that the United States actively and wrongly encouraged separatist sentiments in the Marianas and ignored the preference of the rest of Micronesia to maintain the integrity of the entire trust territory.129 The Congress of Micronesia had also raised such objections in a harshly worded 1973 resolution.130

It is evident, therefore, that the very notion of delegated sovereignty in the case of the Marshall Islands and the Federated States of Micronesia may have been flawed from the start. In any event, such an arrangement would be of no help in decolonizing Puerto Rico. As previously noted, the United States, in the exercise of its trusteeship powers over Micronesia, allegedly did not intend to exercise Micronesian sovereignty. The power which the United States exercised over the trust territories ostensibly eminates from the President's authority over foreign affairs, which in turn is derived from the President's treaty-making power under the U.S. Constitution.131 The power of the United States over territories is the power of sovereignty vested in the U.S. Congress by the territorial clause of the U.S. Constitution.132 It appears, then, that "[M]any of the provisions of the Compact relating to the exer-

128. See S. REP. No. 596, 94th Cong., 2d Sess. 1, reprinted in U.S. Code & Admin. News 448. "[T]he people of the Northern Marianas constitute less than 13 percent of the Trust Territory and cannot be said to have the 'right' of self-determination separate and apart from the other peoples of the Trust Territory." Id.
129. Id. at 464.
131. U.S. Const. art. II., § 2, cl. 2.
132. U.S. Const. art. IV., § 3, cl. 2.
cise of freely associated state sovereignty are inherently inconsis-
tent with and inapplicable to the status of the territories,"133 in-
cluding, of course, Puerto Rico.134 Before Puerto Rico could validly
delegate its sovereignty in a free association arrangement, it must
first be vested with sovereignty. This means that Puerto Rico’s
decolonization can only be achieved through independence.

(b) International Status and Internal Self-Government: Con-
cluding the Equation of Factors. In light of the preceding analysis
of Compact provisions, it is apparent that the “[d]egree or extent
to which the Territory exercises the power to enter freely into di-
rect relations of every kind with other governments and with inter-
national institutions and to negotiate, sign and ratify international
instruments freely”135 is greatly curtailed by the required interpre-
tations of consonance with U.S. authority over security and de-
fense. Furthermore, it clearly appears that, in any consultation
process, the ultimate decision regarding such consonance is in the
hands of the metropolitan country, namely the United States. The
“[d]egree or extent to which the metropolitan country is bound,
through constitutional provisions or legislative means, by the freely
expressed wishes of the Territory in negotiating, signing and rati-
fying international conventions which may influence conditions in
the Territory”136 is at best nebulous.

The Compact gives the United States a strategic right to close
the territories to the military forces of any other nation, under sep-
erate agreements established concurrently with the Compact.

Under those separate agreements, the military use and operating
rights of the United States (except those with the FSM), as well
as U.S. authority to deny third country military access, have a
duration which exceeds the initial term of the compact . . . and
the defense guarantee by the United States set forth [under Sec-
tion 354(b)] will continue, consequently, for those longer
periods.137

In the Federated States of Micronesia, the status of forces and the
military use and operating rights of the United States remain in
force for fifteen years from the effective date of the Compact, and

133. Hills, supra note 127, at 607.
134. See Harris v. Rosario, 446 U.S. 651 (1980), which asserts congressional power over
Puerto Rico under the territorial clause.
136. Id.
137. Legislative History, supra note 55, at 2744.
in the Marshall Islands, the term is thirty years. In both, however, mutual security agreements are to remain in force until terminated or otherwise amended by mutual agreement. In the case of the United States, this means only by the enactment of legislation (in other words, as quickly or as slowly as U.S. interests may require). This lack of ability to unilaterally terminate the arrangement raises questions as to the real power of the free associated states to exercise self-determination.

Thus the internal self-government capacity of the Micronesian states suffers as a consequence of these military arrangements. The "[d]egree of autonomy in respect of economic, social and cultural affairs" varies inversely with the threat of withdrawal of economic grants and assistance in cases of Micronesian discrepancies with U.S. foreign policy. The "nature and measure of control or interference..." of the United States with respect to the internal self-government of the Micronesian governments are not merely disproportionate, but constant for fifteen years or longer.

The international status and internal self-government which this association arrangement grants to the Marshall Islands and the Federated States of Micronesia appear to fall considerably short of the standards which international law mandates for decolonization. They most certainly would not be satisfactory in the case of a country which, like Puerto Rico, has been deprived of even nominal sovereignty under its current status as an unincorporated territory.

An analogous form of free association could represent a viable alternative for a small state like Puerto Rico on its way out of colonialism, if its transitory nature towards independence is clearly recognized. But as a permanent solution, an equation for the decolonization of Puerto Rico under the Micronesian model simply will not work. A Micronesian-type arrangement for Puerto Rico, whatever its name, would clearly exhibit the kind of control which is normally associated with colonial domination as it does in the Micronesian model.

138. Id. at 2776.
139. Supra note 59, at annexed List of Factors, C.3.
140. Id. at C.1.
C. Emergence as a Sovereign Independent State: Independence

Independence is by itself the clearest means through which nations move towards decolonization under international law. This is not to deny that the world has become interdependent to a very large degree. However, the technological advances in rapid travel, satellite communications, and growing networks of commerce, can not turn the interdependence of nations into a smokescreen to mask the need for independent juridical sovereignty and self-determination of countries and peoples for the achievement of world peace, security and stability. "The 'age of interdependence' is here, but there have surely been other ages of interdependence, such as the interdependence of colonies and mother countries and that between hegemonic powers and client states. The existence of interdependence does not justify the terms . . . ." 141

The international status of an independent country is easily ascertained by its unqualified juridical power, full international responsibility for acts inherent in the exercise of its external sovereignty, and corresponding acts in the administration of its internal affairs. 142 Its eligibility for membership in the United Nations, its power to enter into direct relations of all kinds with governments and international institutions, as well as its power to negotiate, sign and ratify all sorts of international instruments symbolize this status. 143 A similar example is a nation's sovereign right to provide for its national defense as it deems appropriate in consonance with principles of international law. 144

An independent country's juridical powers of internal self-government allow it complete freedom to choose the form of government which its people desire 145 and to freely protect itself from control or interference by another country in its selection and establishment of a particular form of internal government. 146 Its complete autonomy over economic, social and cultural affairs 147 is beyond dispute.

143. Id. at A.2 & A.3.
144. Id. at A.4.
145. Id. at B.1.
146. Id. at B.2.
147. Id. at B.3.
The liberation of former colonial countries and peoples began to gather impetus after World War II. The creation of the United Nations reflected the awareness, on the part of the international community, of the need to accommodate the new international configuration. The U.N. Charter welcomed the emergence of new nations in its Declaration regarding non-self-governing territories in Chapter XI. The General Assembly immediately began to deal substantively and procedurally with the emerging international norm against colonialism. Resolutions 648 and 742 of the U.N. General Assembly set the stage for the controlling mandate of Resolution 1514 of 1960.

While the United Nations added new legal impetus to the processes of decolonization throughout the world, a counter-current of discontent with the proliferation of new nations began to emerge. It would not have been good politics, nor consonant with the spirit of the U.N. Charter to vote against such international declarations as the 1960 Resolution; therefore, some major powers, including the United States abstained. Gradually, grumblings gave way to rumblings, until a theory could be advanced to justify curtailing the expanding role of Third World nations in the law-making powers which the U.N. General Assembly began to develop. Finally, a theory was advanced voicing concern for the proliferation of mini or microstates.

The concern regarding ministates, which were remote, isolated and poor was initially voiced by spokespersons of macrostates who had traditionally failed to mention why the new nations were deemed remote and isolated. There was no recognition of why remote and isolated ministates were poor and less developed economically. Also absent was any mention of how former metropolitan powers had often drawn a former colony's boundaries in such a way that caused regions inhabited by indigenous peoples to be fragmented and fused with other distinct groups on either side of the contiguous boundaries of new nations. What ostensibly worried the wealthier and economically developed macrostates was that "the price of freedom [for ministates] should not be too high." Could ministates "grasp the intricate international ma-

148. Eritrea within Ethiopia, the Punjab between India and Pakistan, and the Miskito region between Honduras and Nicaragua illustrate this practice. This and other historical reasons have led some small states to echo this concern in part.

chinery and the complex activities of the family of international organizations?" Could they "afford to open an adequately staffed observer's office in New York or Geneva?" Could they contribute "a fair share to meeting the costs of the organization?" Would admission to the United Nations of states "that clearly do not have the resources [to pay] undermine both the prestige and usefulness of the organization?" If once admitted, would they have "an equal voice with members who [could] contribute?"

These considerations form part of a long list of very real problems facing ministates. Nevertheless, some small states have played very important roles in the history of international relations. Exponents of this concern theory readily admit that the Republic of Venice was a world power in the 15th century with a population of less than 150,000. They will not contest that it was quite normal for small and insignificant states to participate in world conferences, such as the Congress of Vienna of 1814-1815.

It should be noted that Japan, a nation not much larger than the United Kingdom, is today a major economic power in the world in spite of Hiroshima and Nagasaki. We should not forget that England (which is part of a small island north of France), France (which is far smaller than its former colony, Algeria) and the even smaller Federal Republic of Germany (which came into existence after World War II) are all relatively small but prosperous nations.

Several small Third World nations have achieved respectable growth rates in their GNPs. Barbados and Uruguay in the Western Hemisphere, Tunisia in Africa, Jordan and Syria in the Middle East, and Singapore and Malaysia in the Far East have all fared better than Puerto Rico's per capita GNP growth in recent years.

The ministate problem conceptualized by former colonial pow-

150. Rapoport, Panel, supra note 149, at 159.
151. Id.
152. Brown, Panel, supra note 149, at 180 (speaking for the U.S. Dep't of State).
153. Id.
154. Rapoport, Panel, supra note 150, at 155.
155. Id.
ers involves former colonies. These colonies existed primarily for the economic benefit of certain sectors of the metropolitan states. Now that these former colonies seek their place as sovereign equals in the community of nations, the former colonial powers are concerned.

As Jacques G. Rapoport has recognized, "[T]he ministate . . . wants to belong to the world community." It wants to be able to present its case to the world community if its special interests are at stake, or whenever it has a contribution to make . . . to benefit from international cooperation . . . ; [to seek] advice or assistance about possible changes in its status or in its international relations . . . ; [or to obtain] some form of moral or material support in cases where the emergent ministate is reluctant to rely too heavily on the former colonial power.

In the case of a small country like Puerto Rico, independence would provide the most flexibility in attaining the international status and full internal self-government necessary for successful decolonization. Independence for Puerto Rico would allow for the creative development of economic policies tailored to Puerto Rico's domestic requirements. Finally, independence would allow for the imaginative construction of new international, institutional arrangements through peaceful and friendly relations with other nations, including the United States.

IV. CONCLUSION

In 1974, the United Nations adopted by consensus the Declaration on the Establishment of a New Economic Order, in which it declared that "The greatest and most significant achievement during the last decades has been the independence from colonial and alien domination of a large number of peoples and nations which has enabled them to become members of the community of free peoples." It further proclaims that "[T]he remaining vestiges of alien and colonial domination, foreign occupation, racial discrimination, apartheid and neo-colonialism in all its

157. Rapoport, Panel, supra note 150, at 155.
158. Id.
159. See R. Weisskoff, Factories and Foodstamps: The Puerto Rico Model of Development (1985); see also Negrón Rivera, supra note 32, at 171-182.
161. Id. at para. a.1.
forms [continue to impede] the full emancipation and progress” of developing countries.162 It points to the ever-widening gap between developed and developing countries as a serious threat to progress,163 and calls for “[i]nternational co-operation for development [as the] shared goal and common duty of all countries . . . .”164 It proclaims that the new international economic order should be founded upon the full respect for many of the principles which have become part of international law. Among these principles are the “sovereign equality of states, self-determination of all peoples, inadmissibility of the acquisition of territories by force, territorial integrity and non-interference in the internal affairs of other States,”165 and “the right of developing countries and the peoples and territories which are under colonial and racial domination and foreign occupation to achieve their liberation and to regain effective control over their natural resources and economic activities.”166

Some small but significant steps have already been taken towards new international institutional arrangements that constitute a foundation for a more equitable distribution of wealth, power and opportunities in the international arena. The European Communities which have grown out of the Treaty of Rome since 1957 are a case in point. The two Yaounde Conventions and the Arusha Agreement which preceded the first Lomé Convention of 1975, as well as the subsequent Lomé Conventions of 1980 and 1985 can be useful guides in charting new ways for former colonies to relate to their former colonial rulers without retreating to a neocolonial womb.167 In addition to re-fashioning the Caribbean Basin Initiative to open up more possibilities for multilateral economic agreements,168 there is plenty of room to explore new international insti-

162. Id.
163. Id.
164. Id. at para. a.3.
165. Id. at para. a.4(a).
166. Id. at para. a.4(h).
167. See Rodriguez-Orellana, supra note 18, at 63-70. Although the high expectations created by the Lomé Conventions have not materialized, particularly among Caribbean signatory countries, this is at least partly due to “the fact that Caribbean countries on the whole export relatively little to the EEC compared to the USA.” See Gandia, Lomé and the Caribbean 14 (1986) (unpublished paper prepared for the Caribbean Studies Association Conference, Caracas, Venezuela).
168. Contrast the current approach which calls for lopsided, top-heavy bilateral executive agreements between the United States and individual countries in the Caribbean Region. See Rodriguez-Orellana, supra note 18, at 72-78.
tutional arrangements with Central America,169 South America,170 and the Caribbean.171

The chisel with which to sculpt the fine features on these and other possible international institutional arrangements is the juridical independence of sovereign nation-states. The Micronesian model of free association is seriously flawed. In the case of Puerto Rico, it does not represent a viable decolonizing alternative. Independence, however, contains the necessary flexibility to make new solutions possible. It is the ethical, democratic, international imperative which presupposes an end to colonialism in all its manifestations. In the case of Puerto Rico, it requires us to look beyond colonialism's cloaked and continuing attempts to rename Puerto Rico's colonial problem as its solution.

169. The possibility of reviving the Central American Court of Justice, which existed for a decade at the beginning of the 20th century, should be explored. See Scott, The Central American Peace Conference of 1907, 2 AM. J. INT'L L. 121 (1908); Anderson, The Peace Conference of Central America, 2 AM. J. INT'L L. 144 (1908); Official Documents, Convention for the Establishment of a Central American Court of Justice, 2 AM. J. INT'L L. 231 (1908).

170. See Brazil, Argentina Agree to Integrate Economies, The Boston Globe, July 15, 1986, at 27, cols. 4-5.

171. CARICOM is not yet dead in the Caribbean. See Caribbean Update, July 1986, at 3, col. 1.