IN THE DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

KRIM M. BALLENTINE,	)	
	)	CIVIL NO. 1999-130
Plaintiff,	)	
	)	
v.	)	
	)	
UNITED STATES OF AMERICA	)	
	)	
Defendant.	)	
	)	

BRIEF OF AMICUS CURIAE

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I. INTEREST OF THE AMICUS CURIAE

The Allard K. Lowenstein International Human Rights Law Clinic (the "Clinic") is a Yale Law School program that gives students first-hand experience in human rights advocacy under the supervision of international human rights lawyers. The Clinic undertakes litigation and research projects on behalf of human rights organizations and individual victims of human rights abuses. The Clinic has acted as counsel for victims from a number of countries seeking to hold perpetrators of human rights abuses liable in United States courts. The Clinic has also prepared legal briefs and other documents for submission to regional and international human rights organizations, including the Inter-American Commission on Human Rights, the African Commission on Human and Peoples' Rights, and various bodies of the United Nations. It has also assisted non-governmental organizations in preparing reports, legal memoranda, and briefs about human rights violations in the Americas and other regions of the world. The questions presented here, regarding the obligation of the United States to promote self-determination for its Non-Self-Governing Territories, concern fundamental principles of international law and are of great interest to the Clinic, its students, and its faculty.

II. INTRODUCTION AND SUMMARY STATEMENT

Over the past sixty years, the United States has willingly bound itself to a body of international law that is profoundly relevant for the U.S. relationship with the people of the Virgin Islands. As a member of the United Nations and a State Party to the International Covenant on Civil and Political Rights, the United States has an affirmative obligation to promote the self-determination of the people of the Virgin Islands and to afford them the rights granted to other U.S. citizens. That the United States continues to administer the Virgin Islands

as a Non-Self-Governing Territory, granting neither full political nor civil rights, constitutes a violation of its obligations under contemporary international law.

The principle of self-determination lies at the center of the contemporary United Nations system. It imposes binding duties upon all States. The U.N. Charter requires administering States of Non-Self-Governing Territories to promote, and ultimately to achieve, self-government. U.N. resolutions and declarations, as well as the binding treaty obligations of the International Covenant on Civil and Political Rights ("ICCPR"), affirm the duty of States Parties to promote the realization of the right to self-determination.

The United States assumed additional obligations toward the people of the Virgin Islands when it became a party to the ICCPR in 1992. Although the United States ratified the ICCPR with a declaration that it is non-self-executing, it nevertheless establishes binding obligations from which the United States may not derogate. As a State Party to the ICCPR, the United States must ensure that the rights guaranteed by the Covenant, as well as by domestic legislation, are applied without discrimination. It must also guarantee rights of political participation to all citizens, including the right to vote and to join in the conduct of public affairs.

The United States has failed to satisfy its international legal obligations toward the people of the Virgin Islands. The Virgin Islands remains in a state of colonialism. The United States' efforts to promote the realization of self-determination have fallen far short of the requirements set forth in international law. Further, the United States' failure to extend full political rights to the people of the Virgin Islands violates the international obligations that the United States purposefully assumed.

The United States can find no exemption from its international law obligations in an outmoded and thoroughly discredited series of cases. In light of international and domestic legal

developments, it would be improper for this Court to rely upon the authority of the Insular Cases. The Insular Cases held only that colonialism was not barred by the Constitution. The United States, through its international treaty commitments, has itself disavowed the continuation of a colonial relationship with the Virgin Islands.

III. INTERNATIONAL LAW ESTABLISHES OBLIGATIONS FOR ALL STATES, INCLUDING THE UNITED STATES, TO PROMOTE THE SELF-DETERMINATION OF ITS NON-SELF-GOVERNING TERRITORIES.

A. The United Nations Charter requires the United States as the administering State of the Virgin Islands to promote decolonization.

Political self-determination is the central value upon which the United Nations was founded. When the United Nations was established in 1945, colonial powers controlled almost one-third of the world's population in Non-Self-Governing Territories. The modern history of international law is the account of decolonization. This process has largely succeeded. Today, only 17 Non-Self-Governing Territories remain in the world. With respect to those that remain, including the Virgin Islands, the decolonization principles of Articles 73 and 74 of the United Nations Charter continue to bind administering States. Member States of the United Nations "accept as a sacred trust the obligation to promote to the utmost . . . the well-being of the inhabitants of these [Non-Self-Governing] Territories." U.N. Charter art. 73. Administering States are obligated "to develop self-government [within the Territories], to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions." Id. art. 73(b). The fundamental importance of self-determination to the United Nations system is underscored by Articles 1(2) and 55, which assert States' obligations to

promote self-determination,[1] as well as by the reporting requirements of Article 73(e), which requires States administering Non-Self-Governing Territories to submit annual reports to the Secretary-General detailing the political, social, and economic status of the Territories' inhabitants.[2]

United Nations resolutions have consistently reaffirmed the principles of self-determination enshrined in the U.N. Charter. Indeed, the U.N. General Assembly has twice declared an "International Decade for the Eradication of Colonialism," seeking to complete the process of decolonization. U.N. GAOR, 43rd Sess., U.N. Doc. A/Res/43/47 (1988); U.N. GAOR, 55th Sess., U.N. Doc. A/Res/55/146 (2001).[3] The first Declaration "aimed at ushering in the twenty-first century a world free from colonialism." U.N. Doc A/Res/43/47 ¶ 2. The second Declaration asked member States to "redouble their efforts" to carry through the plan of action described in the first Declaration. U.N. Doc. A/Res/55/146 ¶ 2.

In 1960, the U.N. General Assembly issued Resolution 1514 (XV), which sought to interpret the principles of self-determination established by the U.N. Charter. The resolution, known as the Declaration on the Granting of Independence to Colonial Countries and Peoples ("Decolonization Declaration"), stressed that independence was the primary means through which self-determination should be implemented. G.A. Res. 1514 GAOR, 15th Sess., Supp. No. 16, U.N. Doc. A/4884 (1960). Paragraph 5 of the Decolonization Declaration re-committed the United Nations to promoting self-determination worldwide:

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[1] Article 1(2) of the U.N. Charter states that one of its aims is to "develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples . . . ." Article 55 has a similar injunction to promote respect for "the principle of equal rights and self-determination of peoples."

[2] While the United States has followed 73(e)'s mandate to submit status reports to the Secretary General, it has, along with the United Kingdom, consistently voted against yearly General Assembly resolutions that reaffirm the administering States' commitment to decolonization. In December 2001, for example, 147 countries voted to adopt such a resolution, and only the United States and the United Kingdom voted against it. G.A. Res. A/Res/56/65, U.N. GAOR, 56th Sess. (Dec. 10, 2001).

> Immediate steps shall be taken, in Trust and Non-Self-Governing Territories or all other territories which have not yet attained independence, to transfer all powers to the peoples of those territories, without any conditions or reservations.

Id. ¶ 5.

Paragraph 2 of the Declaration explicitly states: "All peoples have a right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development." Id. ¶ 2. The Decolonization Declaration is considered to be an "article of faith for many States and is often treated as second only to the [U.N.] Charter in importance." Patrick Thornberry, The Principle of Self-Determination: Essays in Memory of Michael Akehurst, in The United Nations and the Principles of International Law 179 (Vaughan Lowe & Colin Warbrick eds., 1994).

A second resolution, also adopted in 1960, elaborated on the requirements of the U.N. Charter as interpreted by the Decolonization Declaration. G.A. Res. 1541 (XV), U.N. GAOR, 15th Sess., Supp. 16, at 29, U.N. Doc. A/4684 (1960). Principle VI of Resolution 1541 set forth three "status options" that would indicate when a Non-Self-Governing Territory had "reached a full measure of self-government":

> (a) Emergence as a sovereign independent State;
> (b) Free association with an independent State; or
> (c) Integration with an independent State.

Id. at principle VI.

According to the Resolution, "free association should be the result of a free and voluntary choice by the peoples of the territory concerned expressed through *informed and democratic processes*." Id. at principle VII(a) (emphasis added). A freely associated territory "should have the right to determine its internal constitution without outside interference, in accordance . . .

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[3] The 1988 Resolution passed with 159 votes in favor and the United States in lone opposition, and the 2001

with the freely expressed wishes of the people." Id. at principle VII(b). Free association is not inconsistent with democratic self-determination, but is a choice that a State governed by "democratic means and through constitutional processes" can make. Id. at principle VII(a). For option (c), integration with an independent State, the Resolution requires that inhabitants of both the independent State and the Territory enjoy equal citizenship rights based on "complete equality." Id. at principle VIII. This provision provides:

> The peoples of both territories should have equal status and rights of citizenship and equal guarantees of fundamental rights and freedoms without any distinction or discrimination; both should have equal rights and opportunities for representation and effective participation at all levels in the executive, legislative and judicial organs of government.

Id. Resolutions 1514 and 1541, as well as the resolutions establishing decades for the eradication of colonialism, were adopted with almost universal consensus.[4]

A decade later, the General Assembly adopted another key resolution, the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, again reaffirming U.N. member States' consensus on the meaning of the self-determination principles of the U.N. Charter. G.A. Res. 2625 (XXV), U.N. GAOR, 25th Sess., Supp. No. 18, at 121, U.N. Doc. A/8018 (1970). The 1970 Declaration re-asserted the three status options attached to the right of self-determination: a) the establishment of a sovereign and independent State; b) free association or integration with an independent State; or c) the emergence into any other political status freely determined by a people. Id. at 124. While the last option contemplated innovative forms of relationships with

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Resolution was opposed only by the United States and the United Kingdom.

[4] Resolution 1541 was adopted by a vote of 89 to 0. Nine countries, including the United States, abstained. Patrick Thornberry, The Democratic or Internal Aspect of Self-Determination With Some Remarks on Federalism, in Modern Law of Self-Determination (Christian Tomuschat, ed. 1993), 109, n.31. While these resolutions do not

other States, it in no way altered the requirements of free self-determination that must characterize the process of decolonization. It speaks to the choices that may be made by a people; it does not mitigate the obligations of the administering State.

During the last two decades, the U.N. General Assembly has passed resolutions at least once a year calling for the implementation of the Decolonization Declaration. These resolutions, generally worded, "Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples," have regularly been adopted by an overwhelming majority. See, e.g., U.N. GAOR 55th Sess., U.N. Doc. A/Res/55/139 (2000); U.N. GAOR, 45th Sess., U.N. Doc. A/Res/45/34 (1990); U.N. GAOR, 40th Sess., U.N. Doc. A/Res/40/53 (1985). Most recently, this implementation resolution passed by a recorded vote of 132 votes in favor to 2 against, with 0 abstentions.[5] U.N. GAOR, 56th Sess., U.N. Doc. A/Res/56/74 (Dec. 10, 2001).

The United Nations has continued to affirm the vitality of Resolutions 1514 and 1541.[6] Earlier this year, the Special Committee on Decolonization—which the General Assembly established more than four decades ago in an effort to encourage States to implement the Decolonization Declaration—affirmed that, "in the decolonization process there is no alternative to the principle of self-determination as enunciated by the General Assembly in its resolutions 1514 (XV) and 1541 (XV) and other resolutions." Report of the Special Committee on the

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serve as independent sources of law, they provide the most authoritative interpretation of the U.N. Charter's binding obligations on all member States.

[5] As it does every year, the text reaffirmed that the existence of any form or manifestation of colonialism is incompatible with the U.N. Charter, the Decolonization Declaration and the Universal Declaration of Human Rights. The Resolution affirmed once again its support for the peoples under colonial rule to exercise their right to self-determination, including independence.

[6] See, e.g., The Declaration on the Establishment of a New International Economic Order, G.A. Res. 3201 (S-VI), U.N. GAOR, 6th Special Sess., at 4, U.N. Doc.A/Res/3201 (1974) (maintaining that "sovereign equality of States [and] self-determination of all peoples" should be part of the "new international economic order"); the Charter of Economic Rights and Duties of States, G.A. Res. 3281 (XXIX) U.N. GAOR., 29th Sess., Supp. No. 91, at 52; 14 I.L.M. 251 (1975) ("Every State has the sovereign and inalienable right to choose its economic system as well as its political, social and cultural systems in accordance with the will of its people."); and the Declaration of the Right to Development, G.A. Res. 41/128, U.N. GAOR, 41st Sess., U.N. Doc. A/Res/41/128 (1986) ("recalling the right of peoples to self-determination, by virtue of which they have the right to freely determine their political status.").

Situation with Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples on its work during 2001, July 18, 2001, U.N. Doc. A/56/23 (Part III). The Committee noted that "all available options for self-determination of the Territories are valid as long as they are in accordance with the freely expressed wishes of the peoples concerned and in conformity with the clearly defined principles contained in resolutions 1514 and 1541 and other resolutions of the General Assembly."[7] Id.

B. The International Covenant on Civil and Political Rights obliges States Parties to promote the realization of the right to self-determination.

In 1992, the United States ratified the International Covenant on Civil and Political Rights ["ICCPR" or "the Covenant"]. ICCPR, adopted Dec. 16, 1966, S. Treaty Doc. 95-2, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976, entered into force for the United States Sept. 8, 1992). The ICCPR affirms the right to self-determination found in the U.N. Charter and subsequent resolutions and declarations. Article 1 asserts the inalienable and collective right of all peoples to self-determination, by virtue of which they "freely determine their political status and freely pursue their economic, social, and cultural development." ICCPR, art. 1(1). Using language more explicit than that contained in the U.N. Charter, the ICCPR emphasizes the affirmative obligations of States Parties. Article 1(3) provides:

> All States Parties to the present Covenant, *including those having responsibility for the administration of Non-Self-Governing and Trust Territories*, shall promote the realization of the right to self-determination, and shall respect that right, in conformity with the provisions of the United Nations Charter.

[7] Similarly, Fayssal Mekdad, the Rapporteur of the Report of the Special Committee on the Situation with Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples on its Work during 1999, stated, "While the international community must remain flexible in its approach to assisting the Non-Self-Governing Territories in their constitutional advancement, efforts should be made to guarantee their advancement in conformity with the acceptable choices contained in G.A. Resolution 1541 (XV)." U.N. GAOR, 54th Sess., U.N. Doc. A/54/23, Part I, at 37 (1999).

ICCPR, art. 1(3) (emphasis added). The Human Rights Committee, established by the ICCPR to ensure that States Parties comply with their obligations under the treaty, has issued a General Comment on Article 1, explaining that the realization of the right to self-determination "is an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights." U.N. Doc. CCPR/C/21/Add.3, reprinted in U.N.GAOR, 39th session, Supp. 40, annex VI, General Comment 12 ¶ 1 (1984). As the Committee noted, Article 1 is common to both the ICCPR and the International Covenant on Economic, Social and Cultural Rights (to which the United States is not a party) and is "placed apart from and before all of the other rights in the two Covenants," highlighting its importance for the achievement of all other rights. Id.

While the obligation to promote self-determination falls upon all States Parties to the ICCPR, Article 1(3) makes particular reference to the duties of administering States of Non-Self-Governing and Trust Territories. This reflects the view among the Covenant's drafters that the most pressing and urgent problem with respect to self-determination was the achievement of independence by the peoples of Non-Self-Governing and Trust Territories. See Marc J. Bossuyt, Guide to the "Travaux Preparatoires" of the International Covenant on Civil and Political Rights 44-45 (1987).

C. The International Court of Justice and international jurists have reaffirmed the binding international obligation on States to promote the self-determination of the Non-Self-Governing Territories.

1. The International Court of Justice has affirmed the right of inhabitants of Non-Self-Governing Territories to freely determine their desired form of governance.

The International Court of Justice (I.C.J.) has emphasized that the administering States of Non-Self-Governing Territories have an obligation under the U.N. Charter to take affirmative and immediate action to set in motion the process of decolonization. The Court held:

> Immediate steps shall be taken, in Trust and Non-Self-Governing Territories or all other territories which have not yet attained independence, to transfer all powers to the peoples of those territories, without any conditions or reservations, in accordance with their freely expressed will and desire, without any distinction as to race, creed, or colour, in order to enable them to enjoy complete independence and freedom . . . .

Western Sahara, 1975 I.C.J.R., at 31 (Oct.16). According to the I.C.J., administering powers must take "immediate" steps to dispense with the yoke of colonialism. Id. Thus, the right of self-determination requires the "free and genuine expression of the will of the people" in order to realize "complete independence and freedom." Id. at 37, 31.

The I.C.J. has further found that self-determination is an essential principle of customary international law. In the Case Concerning East Timor (Portugal v. Australia), 1995 I.C.J. 90, at 102, the Court held:

> Portugal's assertion that the right of peoples to self-determination, as it evolved from the Charter and from United Nations practice, has an *erga omnes* character, is irreproachable. The principle of self-determination of peoples has been recognized by the United Nations Charter and in the jurisprudence of the Court.[8]

[8] The East Timor case quoted an advisory opinion of the I.C.J. entitled Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970), 1971 I.C.J. 16, at 31-32 (Jun. 12), in which the Court affirmed the principles outlined in the Declaration on the Granting of Independence to Colonial Countries and Peoples.

2. International legal scholars consider self-determination a *jus cogens* principle, satisfied only when citizens freely determine their status

International legal scholars have identified the principle of self-determination as a "peremptory norm of international law." See, e.g. Michla Pomerance, Self-Determination in Law and Practice 1 (1982). Héctor Gros Espiell argued in the late 1970s that "no one can challenge the fact that, in the light of contemporary international realities, the principle of self-determination necessarily possesses the character of *jus cogens*." Héctor Gros Espiell, Self-Determination and Jus Cogens in U.N. Law in Fundamental Rights: Two Topics in International Law 168 (Antonio Cassese ed., 1979). Jon Van Dyke has applied these international law principles to "the types of controls the federal government imposes on the U.S.-flag islands." Jon M. Van Dyke, The Evolving Relationship Between the United States and Its Affiliated U.S.-Flag Islands, 14 Haw. L. Rev. 445, 503 (1992). He notes that, although the United States considers the inhabitants of the Northern Mariana Islands, which have commonwealth status, see infra note 12, to have achieved self-determination, the U.N. Charter and Resolution 1541

> would not be complied with . . . unless the status adopted by the people of the Northern Marianas allows them to participate in the political life of the nation in a nondiscriminatory basis. The residents of the Northern Marianas do not now vote for the President nor do they have a voting representative in Congress. Congress can pass laws binding on them without their consent. They are not therefore truly self-governing. Even if it could be established that the residents of the Marianas knowingly sought this subservient status, it would not comply with the requirements of international law, just as a contract in which a person agrees to become a slave of another would not be enforced in a domestic court. Only if a people truly have the right to enact the laws that apply to them can it be said that they are self-governing.

Id. at 503-504.

Scholars insist that the *jus cogens* principle ordinarily requires free elections. Lung-Chu Chen, for example, recognizes that independence is not the only means by which colonized

people may achieve self-determination. Yet, he insists that all such arrangements must reflect the "will of the people . . . expressed in free and genuine elections." Lung-Chu Chen, Self-Determination and World Public Order, 66 Notre Dame L. Rev. 1287, 1290-91 (1991). "Arrangements other than independence, when freely chosen by the people concerned, are also acceptable." Id. at 1291. Referring to what he calls the United Nations' realistic "flexibility," Chen holds that "the fundamental requirement inherent in self-determination is a procedure, not a preset outcome; the fulfillment of a people's genuine desires is more important than achievement of the label 'independence.'" Id.

D. As a member of the United Nations and an administering power of a Non-Self-Governing Territory, the United States has an affirmative obligation to enable the people of the Virgin Islands to exercise their right to self-determination.

More than fifty years after the adoption of the U.N. Charter, the Territory of the Virgin Islands remains in a state of political stagnation. The present governmental structure of the Virgin Islands was established by the U.S. Congress, without the consent or the meaningful participation of the residents of the Virgin Islands. At no point have the people of the Virgin Islands been able independently and effectively to exercise their right of self-determination. For this reason, the Virgin Islands is among seventeen territories remaining in the world that are the object of a continuing campaign to eradicate colonialism as a matter of international law. See Information from Non-Self-Governing Territories Transmitted under Article 73(e) of the Charter of the United Nations: Report of the Secretary-General, U.N. GAOR, 56th Sess., U.N. Doc. A/56/67 (2001); G.A. Res. 146, U.N. GAOR, 55th Sess., Supp. No. 23, U.N. Doc. A/Res/55/146 (2001) (announcing the Second International Decade Dedicated to the Eradication of Colonialism).

As an administering power of a Non-Self-Governing Territory, the United States has the responsibility to enable the people of the Virgin Islands to exercise their right to determine for themselves their relationship to the United States. To date, the United States has not met these obligations. The U.S. Government clearly has not "transfer[red] all powers to the peoples [of the Virgin Islands], in accordance with their freely expressed will and desire . . . in order to enable them to enjoy complete independence and freedom," as set forth in the Decolonization Declaration. G.A. Res. 1514, U.N. Doc. A/4884 (1960). The Virgin Islands has not achieved any of the three forms of self-governance—independence, free association, or integration—considered acceptable under the Charter.

In its administration of the Virgin Islands, the United States has not met even the minimal requirements for freely associated status set forth in Resolution 1541. First, Virgin Islands residents have no right to "modify the status of [their] territory through the expression of their will by democratic means and through constitutional processes." G.A. Res. 1241, at principle VII(a). Congress retains unilateral power over the Virgin Islands under the 1936 Organic Act, and has the power to annul any laws enacted by the Virgin Islands legislature. Revised Organic Act § 1574(c) (1954) (codified as amended at 48 U.S.C. 1574 § (1994)) ("[T]he Virgin Islands legislature shall have the power . . . to amend, alter, modify, or repeal any local law or ordinance . . . and to enact new laws . . . *subject to the power of Congress to annul any such Act of the legislature.*") (emphasis added). This Act may be amended or repealed only by the U.S. Congress, in which the people of the Virgin Islands have no representation. Virgin Islands residents therefore have no ability independently to determine the political status of their territory.

Nor have the people of the Virgin Islands been able to exercise their right to "determine [an] internal constitution without outside interference in accordance with due constitutional processes and the freely expressed wishes of the people." G.A. Res. 1541 (XV), at principle VI(b). Congress first enacted legislation authorizing a constitutional convention for the Virgin Islands in 1976. Pub. L. 94-584, 90 Stat. 2809 (1976) (amended 1980, current version at 48 U.S.C. note preceding § 1541). Subsequent to the enactment of Public Law 94-584, the Virgin Islands held constitutional conventions in 1979 and 1981 and produced draft constitutions, but these were rejected at the polls. See Hearing on H.R. 3999, To Clarify the Process for the Adoption of Local Constitutional Self-Government For the United States Virgin Islands and Guam, 106th Cong. (2d Sess. 2000) (statement of Charles W. Turnbull, Governor of the U.S. Virgin Islands, St. Thomas). Defeat at the polls, however, is not a justification for continued colonial status. The United States has an affirmative obligation to enable the people of the Virgin Islands "to develop self-government." U.N. Charter, Art. 73(e). To that end, it must "transfer all powers" to the people of the Virgin Islands. See G.A. Res. 1214 (XV), U.N. Doc. A/4884 (1960), at pt. 2. If the existing process authorized by Public Law 94-584 has failed to realize the decolonization of the Virgin Islands, this process must be revised.

Because the Virgin Islands is not in free association with the United States and has not achieved independence or integration, it cannot be considered to have attained a "full measure of self-government." See G.A. Res. 1241, U.N. Doc. A/4684 (1960). The territory, therefore, remains on the United Nations' list of Non-Self-Governing Territories and continues to be subject to the decolonization efforts of the Special Committee on the Situation with Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples (the "Special Committee of 24 on Decolonization" or "Special Committee"). As the

administering power, the United States remains obliged under Article 73(e) of the U.N. Charter to transmit information about the Virgin Islands to the U.N. Secretary General. The United States recognizes and consistently complies with this obligation. See Information from Non-Self-Governing Territories Transmitted Under Article 73(e) of the Charter of the United Nations, U.N. GAOR, 56th Sess., Annex, U.N. Doc. A/56/67/Annexes (May 8, 2001). But, under Article 73, its obligation is not just to report, but to promote, and ultimately achieve, self-government in the Virgin Islands.

Reinforcing the United States' obligations under Article 73 of the U.N. Charter, Article 1 of the ICCPR requires the United States to "promote the realization of the right of self-determination" by the people of the Virgin Islands. ICCPR, art. 1(3). This obligation is particularly urgent for States like the United States that have responsibility for the administration of Non-Self-Governing Territories. Id. The United States' efforts to date have failed to satisfy Article 1. While a referendum on proposed political status options was held in 1993, pursuant to the Virgin Islands Organic Act, 48 U.S.C. § 1593(b) (providing for the right of initiative), less than one-third of the eligible voters participated. The referendum failed to meet the threshold requirement established by local law for further action. See Hearing on H.R. 3999. Even had this referendum been valid, the government of the Virgin Islands would not have had the authority unilaterally to implement its results, but would have remained dependent upon the will of the U.S. Congress. See Revised Organic Act § 1574(c).

Additionally, Public Law 94-584, which authorizes a constitutional convention, does not satisfy the obligation of the United States under Article 2 of the ICCPR to take "the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislation or other measures as may be necessary to give effect

to the rights recognized in the present Covenant." ICCPR, art. 2(2). All attempts to draft a constitution under the processes set forth in Public Law 94-584, however, have failed. More important, U.S. law requires that all draft constitutions "recognize, and be consistent with, the sovereignty of the United States over the Virgin Islands . . . , and the supremacy of the provisions of the Constitution, treaties, and laws of the United States applicable to the Virgin Islands . . . " Pub. L. 94-584 § 2(b)(1). The United States has authorized a process by which Virgin Islands residents can adopt a constitution and establish internal self-government only under conditions of continued colonial domination.

To fulfill its international law obligations, the United States cannot merely encourage the territory to hold another referendum that asks uninformed voters to choose whether or not to alter the current colonial status. First, the United States must not impose any external conditions on the forms of self-determination that the people of the Virgin Islands might choose. Second, it must establish a process of constitutional self-determination that encourages free participation by all the people of the Virgin Islands. Finally, it must distribute accurate information on the political status options open to Virgin Islands residents under international law. That the failure of the United States to meet its educational responsibilities has been a problem was recently made clear at the May 2001 Caribbean Regional Seminar. Caribbean Regional Seminar to Review the Political, Economic, and Social Conditions in the Small Island Non-Self-Governing Territories, held at Havana, Cuba, from 23 to 25 May 2001, Annex, U.N. Doc. A/56/23 (Part I) (2001). A representative of a non-governmental organization from the U.S. Virgin Islands stated that the greatest obstacle to the decolonization of the Virgin Islands was "the lack of understanding within the population of the fact that the Territory has a status in international law

and that the United Nations has a recognized role to play with regard to the status of the Territory." Id. ¶ 43.[9]

E. The process by which the United States has met its international obligations to promote self-determination for its Pacific Trust Territories provides a model for what is required with respect to the Virgin Islands.

The United States has already confronted, acknowledged and met its international legal obligation to realize self-determination in a Non-Self-Governing Territory for which it was the administering power. Its relationship to Micronesian self-determination provides a model for what is required of it with respect to the Virgin Islands.[10]

1. The United States met its international legal obligations in its promotion of self-determination and self-governance in Micronesia.

The Micronesian Islands were Trust Territories of the United States, not Non-Self-Governing Territories, but exactly the same principles of decolonization apply to the two types of territories under the U.N. Charter. Article 76 states that one of the basic objectives of the trusteeship system shall be to "promote the political, economic, social, and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory." U.N. Charter, art. 76(b). Article 73 provides similarly for Non-Self-Governing Territories, stating that administering powers have an obligation to "develop self-government,"

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[9] He continued: "As less than 28 percent of the electorate participated in the referendum, there was no binding or valid result, and the population has turned from the issue of political status as too complex and divisive. Because of the wide dissemination of the disinformation, the United States Virgin Islands was no further from [sic] understanding its right to self-determination and the legitimate options open to it than had been true in 1990." Id.

[10] For a more thorough history of the United States–Micronesia relationship, see, e.g., Peter Ruffatto, Comment, U.S. Action in Micronesia as a Norm of Customary International Law: The Effectuation of the Right to Self-Determination for Guam and Other Non-Self-Governing Territories, 2 Pac. Rim L. & Pol'y J. 377 (1993); Larry Wentworth, The International Status and Personality of Micronesian Political Entities, 16 ILSA J. Int'l L. 1 (1993); Arthur John Armstrong & Howard Loomis Hills, Current Development: The Negotiations For The Future Political Status Of Micronesia (1980-1984), 78 Am. J. Int'l L. 484 (1984).

to "take due account of the political aspirations of the peoples," and to "assist them in the progressive development of their free political institutions." U.N. Charter, art. 73(b). The U.N. resolutions on decolonization apply the same standards to all Non-Self-Governing Territories, whether or not they are Trust Territories. For example, Resolution 1514 states: "Immediate steps shall be taken, in Trust and Non-Self-Governing Territories, or all other territories which have not yet attained independence, to transfer all powers to the peoples of those territories, without any conditions or reservations, in accordance with their freely expressed will and desire." G.A. Res. 1514, U.N. Doc. A/4684 (1960), ¶ 5. Moreover, Trust Territories and Non-Self-Governing Territories have been administered under one unified system: the Special Committee on Decolonization. The Situation With Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, G.A. Res. 1654, U.N. GAOR, 16th Sess., at 65, U.N. Doc. A/Res/1654 (1962) (creating the Special Committee on Decolonization to coordinate the work of the Trusteeship Council and the Committee on Information from Non-Self-Governing Territories).

After World War II, the United States became the U.N.-designated, administering power over Japan's Pacific colonies, which included the Northern Mariana Islands, Micronesia, the Marshall Islands and Palau.[11] See U.N. Charter, art. 75-85 (establishing the U.N. trusteeship system to administer territories "detached from enemy states as a result of the Second World War" and other non-governing territories); Trusteeship Agreement for the Former Japanese Mandated Islands, Apr. 2, 1947, art. 1-3, 61 Stat. 3301, 8 U.N.T.S. 18 (placing the Pacific islands formerly owned by Japan under the U.N. trusteeship system and designating the United States as

[11] In 1945, under Chapter XII of the Charter, the United Nations established the International Trusteeship System for the supervision of Trust Territories placed under it by individual agreements with the States administering them. The Security Council in 1994 terminated the U.N. Trusteeship Agreement for the last territory—the Trust Territory

their administering authority). The United States and Micronesia began formal negotiations on the future political status of Micronesia in 1969. See, e.g., Naomi Hirayasu, The Process of Self-determination and Micronesia's Future Political Status under International Law, 9 Haw. L. Rev. 487, 497 (1987). By the third round of negotiations in 1971, it had become clear that most of the Micronesian islands favored a free association status for Micronesia.[12] In 1975, the territory-wide legislature, the Congress of Micronesia, submitted a proposed constitution to public referendum under the oversight of a U.N. observer team.[13] In 1978, four island groups ratified the constitution by plebiscite, while two others, Palau and the Marshall Islands, defeated it. The four ratifying island groups joined together to become the Federated States of Micronesia (FSM), while Palau and the Marshall Islands each adopted their own constitutions and continued to negotiate separately with the United States.

The negotiators from FSM and Palau signed a Compact of Free Association with the United States in 1982, which the Marshall Islands also signed in 1983. The signing was followed by U.N.-observed plebiscites in each of the three islands. In order to educate the people of the Trust Territories on all options concerning their future political status, the governments of Palau, the FSM and the Marshall Islands conducted a U.S.-funded plebiscite

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of the Pacific Islands (Palau)—and, thus, the Trusteeship system came to an end. See International Trusteeship System, at http://www.un.org/Depts/dpi/decolonization/trust.htm (last visited Dec. 19, 2001).

[12] The citizens of the Northern Mariana Islands (NMI) preferred a closer association with the United States. In 1972, the NMI declared its intent to secede from Micronesia and to pursue separate negotiations with the U.S. to determine its future status. Jennifer C. Davis, Beneath the American Flag: United States Law and International Principles Governing the Covenant Between the United States and Commonwealth of the Northern Mariana Islands, 13 Transnat'l Law. 135, 142 & n.41 (2000). The negotiations produced the "Covenant to Establish a Commonwealth of the Northern Mariana Islands," in 1975, which was then approved by more than 75 percent of the citizens in a plebiscite. Id. at 136 & n.7; "Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America," Pub. L. No. 94-241, 90 Stat. 263 (1976). The United States Congress approved the Covenant establishing the Commonwealth in 1976. Pub. L. No. 94-241, 90 Stat. 263 (1976).

[13] The Congress of Micronesia was created by the U.S. Secretary of the Interior in 1964. See Dept. of Interior Order 2882, 29 Fed. Reg. 13,613 (Sept. 28, 1964).

education program.[14] See Arthur John Armstrong & Howard Loomis Hills, Current Development: The Negotiations For The Future Political Status Of Micronesia (1980-1984), 78 Am. J. Int'l L. 485, 495 (1984). The Compact was approved by a vote of 79 percent in the FSM and by 58 percent in the Marshall Islands, but failed in Palau. See Hirayasu, at 508-10. After U.S. Congressional approval, President Reagan signed the Compacts in 1986. See Compact of Free Association, Pub. L. No. 99-239, 99 Stat. 1770 (1986) (codified at 48 U.S.C. § 1681 (1998) [hereinafter "Compact"]; Proclamation No. 5564, 51 Fed. Reg. 40,399 (Nov. 3, 1986). On May 28, 1986, the Trusteeship Council of the United Nations concluded that the Government of the United States had satisfactorily discharged its obligations as the administering authority under the terms of the Trusteeship Agreement, and that the people of the Northern Mariana Islands, the FSM, and the Republic of the Marshall Islands had freely exercised their right to self-determination. T.C. Res. 2183 (LIII), 53 U.N. TCOR Supp. No. 3, at 14-15, U.N. Doc. T/1901 (1986).[15] Palau later concluded a Compact of Free Association with the United States that similarly gained U.S. approval. See Pub. L. No. 99-658, 100 Stat. 3672 (1986); Pub. L. No. 101-219, 103 Stat. 1870 (1989); Proclamation No. 6726, 59 Fed. Reg. 49,777 (Sept. 27, 1994).[16]

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[14] The U.N. Trusteeship Council overseeing this process wanted the plebiscite to afford the people an opportunity freely to express their views on the three political forms authorized under international law: integration, independence, or a political status such as free association. They wanted the plebiscite ballot to include these three options. See Arthur John Armstrong & Howard Loomis Hills, Current Development: The Negotiations for the Future Political Status of Micronesia (1980-1984), 78 Am .J. Int'l L. 484, 495 (1984). The United States did not object to the appearance of other options on the ballot, as long as the ballot presented free association, as defined in the Compact, as a separate question so that all voters could approve or disapprove the Compact as it was written. Id. The final ballot was composed of one question presenting the issue of Compact approval, and a second question, which allowed voters to express a preference as to independence or integration should the Compact be rejected. Id.

[15] In 1990, the U.N. Security Council also endorsed the Compact as fulfilling the United States' obligation to promote Micronesia's self-determination. U.N. SCOR, 45th Sess., 2972nd mtg. at 29, U.N. Doc. S/INF/46 (1990).

[16] In Palau, the Compact was approved through a constitutional process and by a U.N.-observed plebiscite on November 9, 1993. See Proclamation No. 6726, 59 Fed. Reg. 49,777 (Sept. 27, 1994). On May 25, 1994, the Trusteeship Council of the United Nations found that the United States had satisfactorily discharged its obligations under the Trusteeship Agreement and that the people of Palau had freely exercised their right to self-determination and terminated the Trusteeship Agreement. Id.

2. The process by which the Pacific Trust Territories determined their political status and their current status of free association meet U.N. standards for decolonization and serve as a model of United States practice towards the Virgin Islands.

The process through which the FSM and the Marshall Islands reached their current status met the international standards for decolonization as required by the U.N. General Assembly Resolutions 1514 and 1541. See G.A. Res. 1514 (XV), U.N. Doc. A/4884 (1960); G.A. Res. 1541 (XV), U.N. Doc. A/4684 (1960). It can, therefore, serve as a model for what is required of the United States in its relationship to the Virgin Islands. The Micronesian Islands determined their internal constitution unilaterally though the Congress of Micronesia and ratified it through a U.N.-observed plebiscite without outside interference. The people of the Micronesian Islands freely and voluntarily chose free association status through an informed democratic process. The United States took affirmative steps to create the democratic institutions necessary for such a process and to provide voters with the information necessary to exercise their choice.

The Compact of Free Association currently governing relations between the United States and the FSM and the Marshall Islands conforms to international standards for decolonization. First, the FSM and Marshall Islands enjoy substantial autonomy. The preamble of the Compact states that the peoples of Micronesia have and retain their sovereignty and their sovereign right to self-determination. See Compact, pmbl. U.S. law no longer applies to the FSM and the Marshall Islands except where the Compact specifically allocates to the United States authority for the islands' security and defense. See id. at tit. III, art. I, §§ 311-16 & tit. I, art. VII, § 171. The Compact also provides that the FSM and the Marshall Islands govern themselves under their own constitutions. See id. at tit. I, art. I, § 111 ("The peoples of the Marshall Islands and the Federated States of Micronesia acting through the Governments established under their own Constitutions, are self-governing."). Therefore, the FSM and Marshall Islands determined

their internal constitutions and are able to modify them through democratic processes as required by U.N. resolutions on free association. Id., pmbl. ("Recognizing that the peoples of the Trust Territory of the Pacific Islands have . . . the inherent right to adopt and amend their own Constitution and forms of government . . . ."). Finally, the Compact allows the FSM and Marshall Islands unilaterally to terminate their relationship with the United States subject to notice requirements. Id. at tit. IV, art. IV, § 443. The Compact ensures that the people of the Micronesian states are "free to modify the status of their territory through the expression of their will by democratic means," as required by Resolution 1541. G.A. Res. 1541, U.N. Doc. A/4684 (1960), at principle 7(a).

Not only does the process of self-determination in Micronesia offer a model for the Virgin Islands, but the United States recognized that the process it followed there was required under international law. In a joint resolution approving the Compact, the U.S. Congress stated:

> [T]he United States, in accordance with the Trusteeship Agreement, the Charter of the United Nations and the objectives of the [I]nternational [T]rusteeship [S]ystem, has promoted the development of the peoples of the Trust Territory toward self-government or independence . . . and *in consideration of its own obligations under the Trusteeship Agreement to promote self-determination*, entered into political status negotiations with representatives of the peoples of the Federated States of Micronesia, and the Marshall Islands. . . .

Joint Resolution to Approve the Compact of Free Association, Pub. L. No. 99-239, 99 Stat. 1770 (1986) (emphasis added). The legislative history of the resolutions and statutes approving the new status of the former Trust Territories further reflects Congressional acceptance of the international norm of self-determination. See, e.g., H.R.Rep. No. 99-188(II), at 8 (1985), reprinted in 1985 U.S.C.C.A.N. 2826, 2833 ("Under the Trusteeship Agreement, the United

States was obligated to foster Micronesian development towards self-government or independence in accordance with the freely expressed will of the people concerned.").

The United States has exactly the same obligations toward the Virgin Islands to establish a process of constitutional self-government, supported by political education of the voters, leading to a freely determined political form. The United States has already taken steps to initiate such a process, for example, through the enactment of Public Law 545-584, which authorized the creation of a constitutional convention, Pub. L. No. 94-584, 90 Stat. 2899 (1976), and consideration last year of H.R. 3999, which sought to clarify the provisions of that Act. H.R. 3999, 106th Cong. (2000). These provisions, while a start, are hardly the end-point of the decolonization process that the United States must achieve.

IV. IN RATIFYING THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, THE UNITED STATES ASSUMED ADDITIONAL OBLIGATIONS TOWARD RESIDENTS OF THE VIRGIN ISLANDS

In September 1992, the United States voluntarily assumed additional obligations toward the people of the Virgin Islands when it ratified the ICCPR. In addition to affirming the right to self-determination, the ICCPR guarantees a range of rights that includes the right to nondiscrimination and the right of political participation. ICCPR, art. 1, ¶¶ 1 & 3.

A. The ICCPR guarantees a number of rights applicable to the people of the Virgin Islands, including rights to nondiscrimination and political participation.

1. The ICCPR prohibits discrimination on the basis of race, color, sex, language, political or other opinion, national or social origin, property, birth, or other status in the exercise of the Covenant's enumerated rights and in the application of State laws.

The ICCPR, in Articles 2(1) and 26, contains wide-reaching prohibitions against discrimination. These guarantees are reinforced by various other provisions in the Covenant that require nondiscrimination in relation to particular rights. See ICCPR, arts. 3, 23, 24, 25. Indeed, "equality and nondiscrimination constitute the dominant single theme of the Covenant." B.G. Ramcharan, "Equality and Nondiscrimination," in The International Bill of Rights: The Covenant on Civil and Political Rights 246 (Louis Henkin ed., 1981). Like the right of self-determination found in Article 1, nondiscrimination is fundamental because it is critical to the realization of other human rights. This is evidenced by Article 2(1), which provides:

> Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

ICCPR, art. 2(1). Article 2(1) therefore prohibits discrimination on certain grounds in the exercise of the rights enumerated by the Covenant in Articles 6 through 27.

Article 26 extends the scope of the prohibition against discrimination even further. It provides: "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination [on any of the grounds identified in Article 2]." The Human Rights Committee has noted that Article 26 does

not merely duplicate the protections of Article 2, but "prohibits discrimination in law or in fact in any field regulated and protected by public authorities. Article 26 is therefore concerned with the obligations imposed on States Parties in regard to their legislation and the application thereof." Human Rights Committee, General Comment 18, Non-Discrimination (1989), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, Hum. Rts. Comm., 37th Sess., at 26, U.N. Doc HRI/Gen/1/Rev.1 (1994); see also Broeks v. Netherlands (172/84) ¶ 12(3) (holding that the provision in Dutch legislation denying unemployment benefits to married women—a right not guaranteed by the ICCPR—constituted impermissible discrimination on the basis of sex and status and violated Article 26 of the ICCPR). Although Article 26 does not oblige States Parties to enact legislation concerning rights not guaranteed by the ICCPR, once such legislation is enacted, neither the law nor its application may discriminate on the basis of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. The ICCPR guarantees citizens the right to political participation without distinction on the basis of race, color, sex, language, political or other opinion, national or social origin, property, birth or other status.

In addition to guaranteeing the right to self-determination and to nondiscrimination, the ICCPR also guarantees citizens' rights of political participation. Article 25 of the Covenant obligates all States Parties to afford all their citizens, without discrimination, the right to participate in the conduct of public affairs; to vote and be elected; and to have access to public service on general terms of equality.[17] Article 25(a) of the ICCPR provides that all citizens have

[17] ICCPR, Article 25 provides:
Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions:
(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

the right "[t]o take part in the conduct of public affairs, directly or through freely chosen representatives," without impermissible distinctions based on their status. ICCPR, art. 25(a). The Human Rights Committee has further elucidated this provision, affirming that where representation is indirect, representatives must "in fact exercise governmental power" and remain "accountable through the electoral process for their exercise of that power." Human Rights Committee, General Comment 25, General Comments Under Article 40, Paragraph 4, of the International Covenant on Civil and Political Rights, U.N. GAOR Hum. Rts. Comm., 57th Sess., ¶ 7, U.N. Doc. CCPR/C/21/Rev.1/Add.7 (1996).[18] The conduct of public affairs, as referred to in Article 25(a) includes all aspects of the exercise of political power "at the international, national, regional, and local levels." Id. ¶ 5.

In addition to having the right to take part in the conduct of public affairs, which contains an implicit right of suffrage, citizens of States Parties to the Convention have an express right to vote and to be elected. Article 25(b) guarantees all citizens the right "[t]o vote and be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors." According to the Human Rights Committee, the right to vote provided in Article 25(b) "may be subject only to reasonable restrictions, such as setting a minimum age limit for the right to vote." General Comment 25, Hum. Rts. Comm. ¶ 10 (1996).

A citizen of a State Party to the ICCPR also has the right to "have access, on general terms of equality, to public service in his country." ICCPR, art. 25 (c). According to the Human

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(c) To have access, on general terms of equality, to public service in his country.

[18] The full text of Comment 25, ¶ 7 provides: "Where citizens participate in the conduct of public affairs through freely chosen representatives, it is implicit in Article 25 that those representatives do in fact exercise governmental power and that they are accountable through the electoral process for their exercise of that power. It is also implicit that the representatives exercise only those powers which are allocated to them in accordance with constitutional provisions. Participation through freely chosen representatives is exercised through voting processes which must be established by laws which are in accordance with paragraph (b)."

Rights Committee, in order to meet this obligation, States Parties must ensure that "the criteria and processes for appointment, promotion, suspension, and dismissal . . . be objective and reasonable." General Comment 25, Hum. Rts. Comm. ¶ 23 (1996). Further, "it is of particular importance to ensure that persons do not suffer discrimination in the exercise of their rights under Article 25, subparagraph (c), on any of the grounds set out in Article 2, paragraph 1." Id. ¶ 24. Public service logically includes "all positions within the executive, judiciary, legislature, and other areas of State administration." Sarah Joseph et al., The International Covenant on Civil and Political Rights 511 (2000).

B. The United States has not met its obligation under the ICCPR to enable the people of the Virgin Islands to realize their rights to nondiscrimination and political participation.

1. The United States has impermissibly discriminated against residents of the Virgin Islands on the basis of their status as residents of a Non-Self-Governing Territory.

The ICCPR prohibits discrimination on the basis of "other status." ICCPR, art. 2(1). "Other status" may include place of residence.[19] Under the nondiscrimination provisions of the ICCPR, differentiation in the application of Covenant rights or in the equal protection of the law is permissible only if the criteria for differentiation are reasonable and objective and in pursuit of a legitimate aim. See Human Rights Committee, General Comment 18, Hum. Rts. Comm. (1994) (noting that "not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Convention"); see also General Comment 25, ¶ 4, Hum. Rts. Comm. (1996) ("Any conditions which apply to the exercise of the rights protected by

[19] The Human Rights Committee has found place of residence to constitute "other status" for the purpose of admissibility of a complaint in violation of the Covenant's nondiscrimination provisions. Sweden, Comm. No. 298/1998, Hum. Rts. Comm., 40th Sess., U.N. Doc. CCPR/C/40/D/298/1988 (1990).

article 25 should be based on objective and reasonable criteria . . . . The exercise of these rights by citizens may not be suspended or excluded except on grounds which are established by law and which are objective and reasonable."). Thus, the principle of nondiscrimination, as applied by the ICCPR, prohibits any distinction that is not reasonable or objective.[20]

Distinguishing between U.S. citizens living in the Virgin Islands and those living in the states of the United States, for the purposes of determining their right to vote, eligibility for certain kinds of public service, or access to rights accorded by law, is neither reasonable nor objective. The exclusion of a citizen from the rights that are enjoyed by other citizens because he or she is a resident of a territory rather than the state proper, or is a "statutory" rather than a "constitutional" citizen, has no legitimizing rationale and clearly violates Articles 2, 25, and 26 of the Covenant. The ICCPR requires States Parties to ensure that all guaranteed rights are applied with equal force "to all individuals within its territories," ICCPR, art. 2, or, in the case of certain rights, to all citizens. See ICCPR, art. 25. Reflecting the anti-colonialist origins of the ICCPR, the territorial clause of Article 2 suggests a first principle of nondiscrimination on territorial grounds. It proscribes discrimination in the application of Convention rights on the basis of residency in a Non-Self-Governing Territory and codifies the notion that there can be no second-class territories in a post-colonial, rights-affirming world.

[20] The European Court of Human Rights has interpreted the principles of equality and nondiscrimination found in the European Convention on Human Rights to have a similar meaning. See Case Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium (Merits) (Belgian Linguistics Case), Series A, No. 6, 1 Eur. H.R.Rep. 252 (1968) (stating that "the principle of equality is violated if the difference in treatment is not justified on objective and reasonable grounds, or if the means employed do not stand in reasonable proportion to the end pursued.").

2. The United States has not met its obligation under Article 25 of the ICCPR to afford United States citizens residing in the Virgin Islands the right to full political participation as granted to other United States citizens.

As a State Party to the ICCPR, the United States has an obligation to afford U.S. citizens in the Virgin Islands the right to political participation without distinction based on their status as residents of a Non-Self-Governing Territory. This includes all aspects of political participation, as defined by the Convention.

Under Article 25(a), U.S. citizens resident in the Virgin Islands have the right to participate in the public affairs of the United States at the national level in the same manner as other citizens. Yet, the regime of governance established by the Organic Act does not permit the realization of this right. The Virgin Islands' representative to Congress does not have the power to vote on the final passage of a bill or resolution and therefore does not, as required by Article 25(a), in fact exercise governmental power. This is doubly disempowering, since only Congress can consider enacting legislation in order to afford Virgin Islands residents the political rights guaranteed by the ICCPR.

Under Article 25(b), citizens have a right to vote without distinction based on their status as residents of a Non-Self-Governing Territory. But Virgin Islands residents are not permitted to participate in presidential elections and, therefore, do not participate in public affairs through the executive branch of the federal government. Virgin Islands residents are also precluded from standing for election to become a voting member of Congress (unless they give up their status as Virgin Islands residents), in violation of Article 25(b). Without effective representation in Congress or through the presidency, the views of Virgin Island residents are not represented in the foreign policy decisions of the United States government, limiting their exercise of political power at the international level as well.

The Human Rights Committee has expressed concern about the United States' failure to comply with Article 25(b) in a similar context. In considering the United States' 1995 report on its compliance with the ICCPR, a member of the Committee suggested that the United States' failure to accord residents of the District of Columbia the right to vote called into question its compliance with Article 25 of the ICCPR. CCPR, Summary Record of the 1402nd Meeting, Hum. Rts. Comm., 53rd Sess., 10 at ¶ 46, U.N. Doc. CCPR/C/Sr.1402 (1995) (asking the U.S. delegates to explain "in relation to Article 25 of the Covenant, whether it was true that the inhabitants of Washington, D.C. were denied certain political rights such as the right to vote, and if so, why") (statement of Mrs. Medina Quiroga).[21] It is at least possible to articulate a reasonable and objective rationale for denying residents of the District of Columbia the right to vote, based upon the disproportionate influence that they might exercise over the federal government. By contrast, denying this right to residents of the Virgin Islands has no justification in anything but discredited colonial rationales.

Finally, under Article 25(c) of the ICCPR, the United States is obliged to ensure that all citizens "have access, on general terms of equality" to positions within all branches of the federal government. The United States has not afforded residents of the Virgin Islands this right. In particular, a U.S. citizen who resides in the Virgin Islands may not become a life-tenured, Article III judge. Under current U.S. law, Virgin Islands residents may overcome this limitation and others that abrogate their rights under Article 25 of the ICCPR only by moving to one of the fifty states, thus abandoning their status as residents of the Virgin Islands.

[21] See Timothy Cooper, D.C. Residents Are Being Denied Internationally Recognized Human Rights, Legal Times, May 26, 1997, at 30 (arguing that the United States' failure to extend full voting rights to the residents of the District of Columbia violates their rights under the ICCPR).

3. The United States has not met its obligation under Article 26 of the ICCPR to afford all persons the equal protection of the law.

Under Article 26 of the ICCPR, the United States has an obligation to guarantee to all those under its jurisdiction, including residents of unincorporated territories, the equal protection of the laws. As the Human Rights Committee has noted, this provision requires that when a State Party adopts legislation, its content must not be discriminatory. General Comment 18, Hum. Rts. Comm. ¶ 12 (1994).

While the rights to a grand or petit jury are not expressly guaranteed by the ICCPR, their discriminatory extension to some citizens and not others clearly violates Article 26's guarantee of nondiscrimination in relation to all rights conferred by law. Moreover, the Article 26 "equality before the law" provision guarantees equality with regard to the enforcement of the law, thereby obligating judges and other legal administrators to apply legislation in a non-discriminatory manner. See Sarah Joseph et al., International Covenant on Civil and Political Rights 525 (2000). Judges, therefore, have an obligation to interpret the law, to the degree that they can, in a way that is consistent with the principle of nondiscrimination. See also Joycelyn Hewlett, The Virgin Islands: Grand Jury Denied, 35 How. L.J. 263, 282-83 (1992) (stating that "the outmoded notion that extending the full protection of the Constitution to the territories would hinder the United States from acquiring more colonies should not stand in the way of the rights of Virgin Islands residents to a grand jury." Hewlett asserts that "it is an injustice upon the people of the Virgin Islands for Congress to leave something as dear as a person's liberty to the whims of one person—a United States prosecutor.").

We believe it entirely clear that the United States is in derogation of its obligations under contemporary international law, and that the United States cannot continue to administer the Virgin Islands as a Non-Self-Governing Territory with neither full political rights nor even full

civil rights. In response to these claims, the United States can point only to the Insular Cases as the justification for an exemption from contemporary international-law standards. These cases, however, do not provide a legitimate basis for U.S. failure to comply with its international-law obligations.

V. IN LIGHT OF DOMESTIC AND INTERNATIONAL LEGAL DEVELOPMENTS, THE INSULAR CASES DO NOT REQUIRE THE UNITED STATES TO VIOLATE INTERNATIONAL LAW OBLIGATIONS TO WHICH IT HAS COMMITTED ITSELF AND MADE THE LAW OF THE LAND.

Defendant maintains that the Insular Cases[22] conclusively authorize the current system by which the United States governs the Virgin Islands and other unincorporated territories. See, e.g., Dorr v. United States, 195 U.S. 138 (1904), Downes v. Bidwell, 182 U.S. 244 (1901). While we believe the Insular Cases are no longer good law, it is not necessary for the Court to reach this issue. At most, the Insular Cases hold that the Constitution does not *prohibit* congressional governance of unincorporated territories. They do not *require* such governance; and other sources of law, including international treaties that the United States has ratified, prohibit the current relationship between the United States and its territories.

A. The Supreme Court has repudiated the racist foundation of the Insular Cases.

The Insular Cases were based explicitly on notions of the racial inferiority of the inhabitants of the unincorporated territories and their inability to adapt to Anglo-Saxon legal

[22] The Insular Cases, also known as the Insular Tariff Cases, were a series of Supreme Court decisions between 1901 and 1922. The core cases were DeLima v. Bidwell, 182 U.S. 1 (1901); Goetze v United States, 182 U.S. 221 (1901); Crossman v. United States, 182 U.S. 221 (1902); Dooley v. United States, 182 U.S. 222 (1901) (Dooley I); Armstrong v. United States, 182 U.S. 243 (1901); Downes v. Bidwell, 182 U.S. 244 (1901); Huus v. New York & Porto Rico Steamship Co., 182 U.S. 392 (1901); Dooley v. United States, 183 U.S. 151 (1901) (Dooley II); and Fourteen Diamond Rings v. United States, 183 U.S. 176 (1901). The last case of the series was Balzac v. Porto Rico, 258 U.S. 298 (1922).

traditions. A few decades before the United States acquired the Virgin Islands, the Supreme Court used now infamous racist reasoning to find that members of the "unhappy black race" were not considered "people" when the Constitution was written. Dred Scott v. Sanford, 60 U.S. 393, 408-12 (1856). The Dred Scott Court found that the Constitution had drawn a "line of division . . . between the citizen race, who formed and held the Government, and the African race, which they held in subjection and slavery, and governed at their own pleasure." Id. at 420. Despite the Civil War Amendments, racism continued to inform Supreme Court decisions. Just five years before the first of the Insular Cases, the Court upheld State-enforced racial apartheid. Plessy v. Ferguson, 163 U.S. 537 (1896). Echoing the racist reasoning of Dred Scott and Plessy, the Insular Cases held that Congress has the power to acquire territory and govern the people of the territories without recognizing their constitutional rights. See e.g., Dorr, 195 U.S. 138; Downes, 182 U.S. 244 (1901). The Court found it unthinkable that the people of U.S. colonies, "whether savages or civilized," would be entitled to citizenship and "all the rights, privileges and immunities of citizens." Downes, 182 U.S. at 279. It concluded, "If those possessions are inhabited by alien races . . . the administration of government and justice, according to Anglo-Saxon principles, may for a time be impossible." Id. at 287. These "alien races" were not entitled to equal rights, but only "certain natural rights," excluding rights "peculiar to Anglo-Saxon jurisprudence," such as citizenship and suffrage. Id. at 282-83. Dorr held that when Congress acquires "territory peopled by savages," "Congress has unquestionably full power to govern it, and the people." Id. at 148. The people of such territories, like the entire black race in Dred Scott, were in no way entitled to participate in the government, but were in a position of "pupilage and dependence" Id.[23]

[23] On the role of racism in the Insular Cases, see, e.g., Jonathan C. Drimmer, The Nephews of Uncle Sam: The History, Evolution, and Application of Birthright Citizenship in the United States, 9 Geo. Immigr. L.J. 667 (1995);

Such racism has no place within the current color-blind constitutional framework. See e.g., Rice v. Cayetano, 528 U.S. 495 (2000); Loving v. Virginia, 388 U.S. 1 (1967); Adarand Constructors, Inc. v. Pena, 515 U.S. 200 (1995). Not surprisingly, the Supreme Court itself has criticized the Insular Cases, stating that "neither the cases nor their reasoning should be given any further expansion. The concept that the Bill of Rights and other constitutional protections against arbitrary government are inoperative when they become inconvenient or when expediency dictates otherwise is a very dangerous doctrine. . . ." Reid v. Covert, 354 U.S. 1, 14 (1957). Although the Supreme Court has relied on the Insular Cases, it has not done so since the ICCPR was ratified; nor has it replicated the reasoning of the cases. Perhaps ironically, more recent Supreme Court cases invoking the Insular Cases have expanded or recognized the right to self-determination and individual rights of residents of the unincorporated territories. See, e.g., Posadas de Puerto Rico Assocs. v. Tourism Co., 478 U.S. 328 (1986) (analyzing a Puerto Rican law regulating casino advertising under the First Amendment, Due Process, and Equal Protection); Torres v. Puerto Rico, 442 U.S. 465 (1979) (Fourth Amendment applies in Puerto Rico); Fornaris v. Ridge Tool Co., 400 U.S. 41 (1970) (a federal Court of Appeals may not hold a Puerto Rican statute unconstitutional until the Puerto Rican Supreme Court has authoritatively construed the statute).[24]

Circuit Courts, too, have occasionally joined in the criticism. For example, the First Circuit found, without citing the Insular Cases, that Puerto Ricans do not have the right to vote

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Efren Rivera Ramos, The Legal Construction Of American Colonialism: The Insular Cases, 65 Revista Juridica Universidad de Puerto Rico 225 (1996); Carlos R. Soltero, The Supreme Court Should Overrule the Territorial Incorporation Doctrine and End One Hundred Years of Judicially Condoned Colonialism, 22 Chicano-Latino L. Rev. 1 (2001).

[24] However, the Court has balked at extending rights when it would result in large income transfers to unincorporated territories, which do not pay federal taxes. Califano v. Torres, 435 U.S. 1 (1978) (holding that excluding residents of Puerto Rico from Social Security does not violate the constitutional right to travel freely); Harris v. Rosario, 446 U.S. 651 (1980) (denying federal welfare benefits to Puerto Ricans does not violate equal protection).

for president on the narrow ground that Puerto Rico is not a state. De La Rosa v. United States, 229 F.3d 80 (1st Cir. 2000). Judge Torruella issued a ringing condemnation of the Insular Cases in his concurrence:

> Although this is not the case, nor perhaps the time, for a federal court to take remedial action to correct what is a patently intolerable situation, it is time to serve notice upon the political branches of government that it is incumbent upon them, in the first instance, to take appropriate steps to correct what amounts to an outrageous disregard for the rights of a substantial segment of its citizenry.

De La Rosa v. United States, 229 F.3d at 90 (Torruella, concurring). The Second Circuit found that the Constitution permits the United States to allow U.S. citizens living abroad, but not citizens who are permanent residents of U.S. territories, to vote in presidential elections. It noted, however:

> The exclusion of U.S. citizens residing in the territories from participating in the vote for the President of the United States is the cause of immense resentment in those territories. . . . In addition, this exclusion fuels annual attacks on the United States in hearings in the United Nations, at which the United States is described as hypocritically preaching democracy to the world while practicing nineteenth-century colonialism at home.

Romeu v. Cohen, 265 F.3d 118, 127-28 (2d Cir. 2001).

The Supreme Court in the Insular Cases also operated on a premise of international law that is no longer correct. The Court assumed the legitimacy of conquering territory through war or buying it from governing nations without the people's consent. See, e.g., Dorr at 46. From this archaic custom, the Supreme Court derived the notion of a right to govern the people of a territory, without their consent or participation:

> The cases cited have *firmly established the power of the United States, like other sovereign nations, to acquire . . . additional territory* . . . . [W]hether the jurisdiction over the district has been acquired by grant from the states, or by treaty with a foreign

> power, *Congress has unquestionably full power to govern it; and the people*, except as Congress shall provide for, *are not of right entitled to participate* in political authority until the territory becomes a state.

Dorr 195 U.S. at 146-47 (emphasis added). See also De Lima v. Bidwell, 182 U.S. 1, 195-96 (1901); Downes 182 U.S. at 254. As discussed in Sections III and IV, above, the foundation of modern international law is the right of self-determination. Sovereign nations, including the United States, no longer have a power unilaterally "to acquire ... additional territory." Thus, both the factual and legal circumstances justifying the Insular Cases have changed dramatically in the last hundred years.

B. It is not necessary to reach the constitutional status of the Insular Cases, because later international obligations independently prohibit the United States from keeping territories in permanent political dependence.

Even assuming, *arguendo*, that the Insular Cases remain good law, they hold only that it is constitutionally permissible for Congress to govern unincorporated territories. At most, they establish that the Virgin Islands' status is constitutionally *permissible*; by no means do they hold or even suggest that this status is constitutionally *required*. Government action that is constitutionally permissible may be prohibited by another source of law.

Many treaties to which the United States is a party limit government action that is constitutionally permissible. For example, the Constitution authorizes the federal government to refuse to extradite criminal suspects to foreign countries. Factor v. Laubenheimer, 290 U.S. 276, 287 (1933). However, extradition treaties "exist so as to impose mutual obligations to surrender individuals in certain defined sets of circumstances." United States v. Alvarez-Machain, 504 U.S. 655, 664 (1992). Similarly, it is constitutionally permissible for the United States to deport refugees to countries where their life or freedom would be threatened. But, in order to comply

with its obligations under the Convention Relating to the Status of Refugees ("Refugee Convention"), to which it is a party, the United States has bound itself not to deport refugees under certain conditions. See I.N.S. v. Cardoza-Fonseca, 480 U.S. 421, 429 (1987); Marincas v. Lewis, 92 F.3d 195, 197-98 (3d. Cir. 1996).

In United States v. Verdugo-Urquidez, 494 U.S. 259 (1990), the Court, citing the Insular Cases, found that the Fourth Amendment does not bar the warrantless search by American authorities of a Mexican citizen and resident's house in Mexico. The search, however, could be barred if "restrictions on searches and seizures [abroad were] imposed by the political branches through diplomatic understanding, treaty, or legislation." Id. at 275. In Sale v. Haitian Centers Council, Inc., the Supreme Court examined whether the Refugee Convention imposed restrictions on U.S. interdiction at sea of refugees fleeing Haiti, even though the Constitution and other U.S. law did not. 509 U.S. 155 (1993). The Court reasoned that "the Convention might have established an extraterritorial obligation which the [Immigration and Nationality Act] does not; under the Supremacy Clause, that broader treaty obligation might then provide the controlling rule of law." Id. at 178. In Sale, the Court found that the Refugee Convention was not intended to have extraterritorial effect, but this principle based on the Supremacy Clause applies here. As established in Section III and IV above, by ratifying the U.N. Charter and the ICCPR, the United States has obligated itself to recognize a basic right to self-determination and to promote the realization of that right in the Virgin Islands. Current U.S. practice toward the Virgin Islands is in violation of these international legal obligations freely assumed by the United States.

Although Congress may, in the exercise of its constitutional authority, legitimately abrogate or modify a treaty by passing an act, its intention to do so must be clear and explicit.

See Trans World Airlines, Inc. v. Franklin Mint Corp., 466 U.S. 243, 252 (1984); Cook v. United States, 288 U.S. 102, 120 (1933); Fong Yue Ting, 149 U.S. 698, 720 (1893). "[T]he intention to abrogate or modify a treaty is not to be lightly imputed to the Congress." Menominee Tribe of Indians v. United States, 391 U.S. 404, 413 (1968). In this case, Congress has not expressed a clear intent to contravene the United States' relevant obligations under the U.N. Charter and the ICCPR. Therefore, the United States government is bound by these obligations, regardless of whether the Insular Cases purport to give constitutional permission to act otherwise.

C. The U.S. declaration that the ICCPR is non-self-executing, does not excuse the United States from meeting its international legal obligations to promote self-determination in the Virgin Islands.

Although Congress and the Executive are bound by the ICCPR, the Senate attached a declaration to the Covenant, stating that it was to be non-self-executing. See Sen. Comm. on Foreign Relations, Report on the Int'l Covenant on Civil and Political Rights, S. Exec. Rep. No. 102-23, at 19 (1992) ("The intent [of the declaration that the ICCPR is not self-executing] is to clarify that the Covenant will not create a private cause of action in U.S. courts."); David Sloss, Ex Parte Young and Federal Remedies for Human Rights Treaty Violations, 75 Wash. L. Rev. 1103, 1120-31 (2000). Although some commentators have questioned the Senate's ability to declare the treaty non-self-executing with binding effect on the courts, see, e.g., John Quigley, The International Covenant on Civil and Political Rights and the Supremacy Clause, 42 DePaul L. Rev. 1287 (1993), courts have generally found the ICCPR to be non-self-executing. See, e.g., De La Rosa v. United States, 32 F.3d 8 (1st Cir. 1994) ("Covenant [is] not self-executing, and could not therefore give rise to privately enforceable rights under United States law." (internal citation omitted)); Ralk v. Lincoln County, Ga., 81 F.Supp.2d 1372, 1380 (S.D.Ga. 2000)

("[B]ecause the ICCPR is not self-executing, Ralk can advance no private right of action under that document."); White v. Paulsen, 997 F. Supp. 1380, 1386 (E.D. Wash. 1998) ("[A]lthough Article 2 of the ICCPR expressly addresses the duty of party-states to enforce the rights described in the ICCPR, it does not purport to expressly or implicitly create a private right of action for violations of those rights.").

A few courts have held that courts can give no effect whatsoever to non-self-executing treaties. Beazley v. Johnson, 242 F.3d 248, 267 (5th Cir. 2001) ("'[N]on-self executing' means that, absent any further actions by the Congress to incorporate them into domestic law, the courts may not enforce them."); United States v. Bridgewater, 2001 WL 1579999 (D. P.R.) ("Defendant may not rely upon the provisions of the ICCPR in the courts of the United States."). This conclusion, however, is clearly wrong. In this instance, the Senate report itself clarifies exactly what the Senate intended: "the Covenant will not create a private cause of action in U.S. courts." Sen. Comm. on Foreign Relations, Report on the International Covenant on Civil and Political Rights, S. Exec. Rep. No. 102-23, at 19 (1992).

The ICCPR has already been used by many courts to interpret existing U.S. law or to determine legal rights when the plaintiff has an independent cause of action. See, e.g., David Sloss, The Domestication of International Human Rights: Non-Self-Executing Declarations and Human Rights Treaties, 24 Yale J. Int'l L. 129 (1999); Kristin D.A. Carpenter, The International Covenant on Civil and Political Rights: A Toothless Tiger?, 26 N.C. J. Int'l Law & Com. Reg. 1, 48 (2000). For example, plaintiffs may bring claims of ICCPR violations under the Alien Tort Claims Act, which provides a private right of action for aliens alleging violations of international law. See 28 U.S.C.A. §1350 (West 1993); see also Alvarez-Machain v. United States, 266 F.3d 1045 (9th Cir. 2001); Abebe-Jira v. Negewo, 72 F.3d 844, 848 (11th Cir. 1996); Estate of

Cabello v. Fernandez-Larios, 157 F.Supp.2d 1345 (S.D.Fla. 2001). Similarly, claims based on ICCPR violations may be brought under the Federal Tort Claims Act. See Alvarez-Machain, 266 F.3d at 1054. Additionally, the ICCPR can form the basis of an application for a writ of habeas corpus. See Maria v. McElroy, 68 F. Supp.2d 206, 231-32 (E.D.N.Y.1999) ("Retroactive application of AEDPA section 440(d) to Mr. Maria would conflict with provisions of the ICCPR that protect his rights to be free of arbitrary interference with his family life and to present reasons why he should not be deported. Although the ICCPR is not self-executing, it is an international obligation of the United States and constitutes a law of the land."). In all of these cases, the courts relied on the ICCPR as a part of domestic law to determine the duties of individuals with respect to the enforcement of rights. In the absence of explicit congressional action directing violation of the ICCPR, its norms are part of U.S. law and are fully applicable to issues that arise with respect to the political status of the Virgin Islands and their residents.

VI. CONCLUSION

Two things are entirely clear. First, to maintain the status quo in the Virgin Islands is to perpetuate a remnant of colonialism that violates the contemporary international law obligations of the United States. Second, neither the Insular Cases nor the non-self-executing character of the ICCPR are barriers to this Court's acting to remedy the violation. While *amicus* is not in a position to comment on the standing of the present plaintiff before the Court, we can suggest the form of relief that could be provided in an appropriate case.

The Court need not construct the process of self-determination to which the Virgin Islands is entitled from an abstract, theoretical model. While the process for self-determination could take many forms, the appropriate and logical starting point is with the Act to Provide for

the Establishment of Constitutions for the Virgin Islands and Guam, Pub. L. 94-584. This congressional act of 1976 authorized "the peoples of the Virgin Islands ... to organize governments pursuant to constitutions of their own adoption." The Act provides a process for the drafting and adoption of a constitution by the people of the Virgin Islands. However, certain provisions of the Act are inconsistent with the ICCPR and were superceded by its ratification. In the appropriate case, this Court should grant declaratory relief suspending those aspects of the Law that are not consistent with the obligations that the United States assumed by ratifying the ICCPR. See Whitney v. Robertson, 124 U.S. 190, 194 (1888) ("By the Constitution a treaty is placed on the same footing, and made of like obligation, with an act of legislation. Both are declared by that instrument to be the supreme law of the land, and no superior efficacy is given to either over the other. . . . If the two are inconsistent, the one last in date will control the other . . ."); see also Breard v. Greene, 523 U.S. 371, 376 (1998); Reid v. Covert, 354 U.S. 1, 18 (1957).

In particular, the process of self-determination in the Virgin Islands can no longer be conditioned by a requirement that the Virgin Islands' constitution "recognize, and be consistent with, the sovereignty of the United States over the Virgin Islands" and with the supremacy of the U.S. Constitution and laws. Pub. L. 94-584, § 2(b)(1). These are fundamental issues that the people of the Virgin Islands have a right to determine for themselves. By making clear that such relief could be granted in an appropriate case, this Court would be effectively signaling to Congress that it is time for them to reconsider the process they have put in place to promote democratic self-government in the Virgin Islands. Ideally, Congress will fulfill their responsibility to rectify this situation without direct intervention from the courts.[25]

[25] See Tabor v. Maine, 67 F.3d 1029, 1039 (1995) ("It may occasionally be desirable for courts to invite legislatures to reconsider outdated statutes so that, unless the legislatures make clear their continued preference for disparate

Someday, our nation will look back on its treatment of the Virgin Islands and other non-self-governing territories with the shame with which we now look at slavery and segregation. When the United States purchased the Virgin Islands, colonialism was expected of world powers, racist ideology was accepted as scientific truth, and racial apartheid was common. The world has changed: the right of all people to self-determination became a core value of post-World War II international law. By ratifying the U.N. Charter and the International Covenant on Civil and Political Rights, the United States made a commitment to the rest of the world and to its citizens – *all* of its citizens – to guarantee the rights of self-determination and political participation without discrimination.

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treatment, like cases may be treated alike.") Elsewhere, Judge Calabresi has suggested that courts should occasionally seek a position between inertia and statutory invalidation by "demand[ing] a present and positive acknowledgment of the values that the legislators wish to further through the legislation in issue." Quill v. Vacco, 80 F.3d 716, 735 (1996).