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SECOND INTERNATIONAL DECADE FOR THE ERADICATION OF COLONIALISM

Pacific regional seminar on the implementation of the Second International Decade for the Eradication of Colonialism: assessment of decolonization process in today's world

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STATEMENT

BY

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Dr. Corbin presently serves as international advisor to the *U.S. Virgin Islands Fifth Constitutional Convention*, and was a member of the *U.S. Virgin Islands Political Status Commission* which conducted the only political status referendum in the history of the territory.

He twice served as chairman of the 23-member country *Caribbean Development and Cooperation Committee*, a permanent subsidiary body of the of the United Nations *Economic Commission for Latin America and the Caribbean (ECLAC)*. He was also the founding chairman of the Commission's *Working Group of Non-Independent Caribbean Countries*.

Dr. Corbin has presented scholarly papers on governance and political development at *Bermuda College, the University of the South Pacific, the University of Copenhagen, the University of Puerto Rico, George Washington University, the University of the West Indies* and the *University of the Virgin Islands* where he is on the faculty of the *Institute for Future Global Leaders*.

He is the author of two United Nations studies on the participation of non-independent countries in the United Nations system, four books, two book chapters and numerous scholarly articles on political and constitutional advancement.

Introduction

Non-independent countries of the Caribbean region exist under a wide range of dependency and autonomous models of governance including British and United States-administered non self-governing territories, Dutch autonomous countries (Netherlands Antilles, Aruba, Sint Maarten Saba and St. Eustatius), and French integrated departments (Martinique, Guadeloupe and French Guiana). Of course, there are also the independent states of the region which were all formerly colonies of extra-regional powers.

The political status of the two territories under United States administration in the Caribbean, namely Puerto Rico and the US Virgin Islands, is reflective of fundamental distinctions among the various dependency and autonomous models of governance in the Caribbean.

At the same time, the governance models of these two US-administered territories in the Caribbean have striking similarities to the structure of government in the dependency models under US administration in the Pacific region, namely Guam, the Northern Mariana Islands, and American Samoa. Useful comparisons can be made in relation to the challenges to attaining a full measure of self-government faced by the five territories under US administration.

Background

In this light, the dependency model in the US Virgin Islands is almost identical to that of the territory of Guam in the Pacific region, whilst the model of Puerto Rico as a US-administered commonwealth served as an original guide for the development of the Commonwealth of the Northern Mariana Islands as it emerged out of the Trust Territory of the Pacific Islands. Adding American Samoa to the list, all five of the Caribbean and Pacific territories are governed by what is referred to as the "Territorial Clause" of the US Constitution which gives the US Congress the authority "*to make all needful rules for territory or other property of the United States.*"¹ Equating the territories to "*other property*" has always served as a point of sensitivity, especially for the Caribbean territories who are the descendants of the survivors of the Trans Atlantic slave trade.

Constitutionally, all five territories are not incorporated as parts of the United States, and their political dependency arrangements are clearly within the purview of the international decolonisation process. Yet, only three are formally listed by the United Nations as non self-governing – American Samoa, Guam and the US Virgin Islands, whilst the annual United Nations review of Puerto Rico is - thus far - limited to the Special Committee which has, in recent years, repeatedly called for the General Assembly to take up the decolonisation of that territory. However, no formal proposal for the General Assembly to consider Puerto Rico has been made to date even as all three political parties in the territory have called for this approach during their statements to the Special Committee.

¹ Article IV, Section III (2) of the Constitution of the United States of America.

All of the US-administered territories have undertaken various actions over the last two decades with the aim of political status development – in the cases of American Samoa, Guam, Puerto Rico - or at the very least, internal constitutional evolution, in the case of the Virgin Islands. Of these, the Northern Mariana Islands is actually experiencing a reduction of autonomous powers in a reversal of what was originally intended (and which was accepted by the General Assembly without substantial review) as an autonomous political status arrangement. This determination was made at the point of dissolution of the Trust Territory of the Pacific Islands (TTPI) with Micronesia, Marshall Islands, and later Palau, achieving sovereign free association through a compact with the United Nations.

The Northern Marianas, meanwhile, chose a covenant of what was to be substantial autonomy under a commonwealth status with the US, and that was projected as sufficiently self-governing to be removed from the purview of the Special Committee on Decolonisation. This will remain the case unless the Committee takes a decision (as it does each year in the case of Puerto Rico) to review the status of the Northern Marianas at the committee level. Of course, such an action would require a critical mass of support among the member states of the Special Committee which is hard pressed to deal with territories formally listed, let alone additional territories which might be considered for re-listing.

Suffice to say that the UN should develop a means to review those territories which were formerly de-listed – short of independence - but which may have experienced a reversal of autonomy through the unilateral applicability of administer power laws. Such is the case in Northern Mariana Islands and other “autonomous” countries where what was considered to be constitutional devolution of authority has been transformed into a reverse delegation of power. It is within this context that developments in the US-administered territories in the Caribbean can be assessed.

U.S. – Administered Territories - Puerto Rico

As in the case of the United Kingdom - administered territories in the Caribbean, *Puerto Rico* and the *US Virgin Islands* has made moves towards advancing their political development, and as the other territories, no substantive changes have been concluded.

Puerto Rico was originally conceived as a self-governing model of free association as a result of constitutional changes in 1952, and was removed from the U.N. roster of NSGTs in 1953. As with the *Netherlands Antilles* and *Greenland*, the ‘graduation’ of Puerto Rico to self-governing status prior to U.N. adoption of the definition of free association in 1960 was achieved in the absence of a mechanism to review the constitutional arrangement after it had been removed from U.N. jurisdiction.

With far less autonomy than the original Dutch or Danish autonomous models, Puerto Rico remains a de-facto non self-governing territory. United States Justice Department opinions written for the White House in 2005 and 2007, respectively, have served to provide legal confirmation of their non self-governing status. Thus, Puerto Rico

remains only under the review of the *Special Committee on Decolonisation* which adopts an annual resolution on Puerto Rico, but which is not transmitted to the General Assembly as is done in the cases of resolutions on the UN-rostered territories.

The public debate on political development in Puerto Rico is shared by the three main political parties which, in turn, support the present commonwealth status in the political center, and independence or integration on either end of the political spectrum. Because of continual erosion of the limited Puerto Rican autonomy under the present dependency status, the centrist position has divided into a faction which argues for expanded powers under the present dependency arrangement, and a second faction which seeks to upgrade the present arrangement into a form of recognised autonomy through sovereign free association, consistent with international principles, in particular Resolution 1541(XV).

Proposals from the elected leadership of the territory to update Puerto Rico's political status were introduced in 1958 and 1959, but were not enacted by the U.S. Congress. The status quo arrangement was selected in a 1967 plebiscite by 60.4 per cent, but lost ground to 48.4 per cent in the subsequent 1993 poll. Increased attention was then paid to whether a more autonomous status quo proposed by the pro-commonwealth party was acceptable under the unilateral applicability of U.S. law to the territory.

Subsequent 1998 legislation introduced in Congress to bind the US to the results of a referendum on political options was adopted by one vote in the U.S. House of Representatives, but not taken up in the U.S. Senate. Thus, Puerto Rico conducted its own local plebiscite in 1998 with separate options of a 'territorial' commonwealth and one of free association - to the chagrin of the pro-commonwealth party which subsequently supported the option of 'none of the above,' which garnered 50.4 per cent.²

A President's Task Force was created by then-US President Bill Clinton, and was carried forth by his successor George W. Bush. Emerging from this mechanism were 2005 and 2007 White House reports referenced above which reaffirmed the non self-governing nature of the political status, and recommended a U.S.-sanctioned plebiscite on the three options of political equality, with the alternative to remain in the existing dependency status.

Accordingly, if the electorate chose to remain in the status quo, the White House Report required that periodic plebiscites would be held until a permanent option was chosen. U.S. Congressional hearings were held on the White House Report, with a number of competing legislative proposals emerging, but none have become law.

Amid the absence of concrete action by the administering power towards the completion of the process of self-determination for Puerto Rico, the U.N. Special Committee on Decolonisation adopted its 2009 resolution which "request(ed) the U.N.

² U.N. Special Committee Decision of June 12, 2006 concerning Puerto Rico: Report prepared by the Rapporteur of the Special Committee. U.N. Document A/AC.109/2007/L.3. April 5, 2007. p. 3-4.

General Assembly to consider the question of Puerto Rico comprehensively in all its aspects.”³ It is expected that the 2010 resolution would make a similar call.

The request for United Nations involvement in solving the political status dilemma in Puerto Rico has been supported by the three main Puerto Rican political parties, but the US has historically opposed U.N. monitoring of US - administered territories – even those which are formally listed. This would make it a difficult – but perhaps not insurmountable - for the General Assembly to take up the issue of Puerto Rico over the opposition of a permanent member of the U.N. Security Council. It remains to be seen whether the Obama Administration maintains the inconsistency of the predecessor Bush Administration which confirmed that Puerto Rico was a non self-governing territory, but yet, somehow, out of political reach of international scrutiny. Perhaps the Obama Administration is more willing to take an internationalist approach to these matters.

Following the 2008 elections which brought the pro-integrationist political party to power, the territory's new Resident Commission to the U.S. House of Representatives submitted legislation for a referendum based on the definitions of the political status options, and the two-step procedure recommended in the two White House Reports where the people would first decide on whether or not to maintain the status quo political arrangement, and if so, would be required to vote again in eight years time. If, on the other hand, the Puerto Rico people choose to change the status, then they would have the option of selecting from the three options of political equality that are consistent with international law, namely integration (U.S. statehood), free association and integration. However, the placement of free association in the category of separate sovereignty along with independence is interpreted as a way of influencing the decision in favour of political integration.

In any case, the process emerging from the legal interpretations of the Bush Justice Departments has resulted in a fundamental narrowing of perception of autonomy that can be exercised under the present status of Puerto Rico. Thus, the commonwealth status, originally projected as sufficiently autonomous, has been effectively been re-defined as an unincorporated territory similar in scope to the other US-administered territories of American Samoa, Guam and the commonwealth of the Northern Mariana Islands in the Pacific, and the neighboring US Virgin Islands. The Obama White House Task Force on Puerto Rico, which had its first meeting in March 2010, has appeared to de-emphasize the Bush Administration emphasis on addressing the political status question in favour of expanding the discussion to economic development issues. The inevitable connections between economic advancement and the level of political development do not appear to be part of the discussions at this stage.

In May 2010, legislation was adopted by the US House of Representatives authorizing a two-phase referendum process for Puerto Rico. In the original legislation, the first phase would provide the choice of retaining the non self-governing

³ Report of the Special Committee on Decolonisation. U.N. Document A/64/23. 2009. p. 7-9.

commonwealth temporarily, or selecting one of the legitimate self-governing options of independence, free association and integration. If self-government was chosen then the second phase of the referendum would be on the choice of one of the three legitimate options. However, the advocates for the continuation of the dependency status in the Congress successfully added a rather confusing amendment to allow for the non self-governing commonwealth to be included in the second phase of the referendum – even if it were rejected in the first phase.

The head of North American Affairs of the Puerto Rico Independence Party described the amendment as “*legislative irrationality*” and commented that the US “*Congress has absolutely no intention of relinquishing its role as a colonizing power.*” He noted that the integrationist advocates had lost out on its plan “*to eliminate commonwealth from the picture,*” while the advocates of the non self-governing commonwealth were left with “*no possibility of arguing that commonwealth is anything less than the status quo*” in reference to their interest in an enhanced status quo with powers which have been almost universally rejected as unconstitutional based on what the US Justice has determined was allowable for a US territory.

The US Senate Committee on Natural Resources will take up the measure on 19th May 2010, but if there is no action taken by that legislative body, the Puerto Rican Government has indicated that it would consider holding a local referendum – as it had done in 1998 after the failure of the same US Senate to act on the referendum legislation adopted by the US. House that year. If the Senate does not act in 2010, the situation reverts to where it was in 1999.

U.S. – Administered Territories US Virgin Islands

The *U.S. Virgin Islands* held its local political status process from 1988 culminating in a referendum in 1993 with an excessive number of seven alternatives – the three consistent with international principles of political equality and four offering varying degrees of continued dependency. The proliferation of options ensured a lack of clarity among the electorate. Influenced by organised boycotts of the vote by special interest groups, resulted in the legally-required 50 per cent threshold of the registered voters not being met. It was recalled by the President of the U.N. Association of the Virgin Islands in 2006 that “*in 88 years, the Afro-Caribbean people of the U.S. Virgin Islands have traveled a road from an undefined status in a territory under the sovereignty of the USA to citizenship in a country which maintains that territory in a condition of uncertainty and instability.*”⁴

Some thirteen years following the political status referendum, the US Virgin Islands retreated to a narrower focus on drafting a local constitution based on the present

⁴ Presentation of Attorney Judith L. Bourne, President of the United Nations Association of the Virgin Islands (UNAVI), to a forum on “The Ambiguity of our U.S. Citizenship (in the U.S.- administered territories),” St. John, Virgin Islands, September 24, 2005.

dependency status. This constitutional exercise was authorised by US Congressional legislation, but was not designed to address the colonial status, nor to provide any serious devolution of authority. Instead, it is intended to leave intact the mechanism for the administering power to extend laws to the territory without its consent, and even over its objection. A constitutional convention(the fifth in the territory's history) was comprised of thirty members elected in 2007 to draft a constitution. The Convention adopted a proposed constitution in May, 2009. The document has been submitted to the administering power which can amend the text as it sees fit, consistent with the unilateral authority exercised by the administering power over the territory.

The elected territorial governor, however, declined to transmit the draft constitution to Washington citing what he viewed as 'unconstitutional' provisions contained therein. The provisions in question were designed to safeguard certain political and natural resource interests of the native population in a similar fashion to provisions in other US territorial constitutions. A case was subsequently filed in the territorial court in May, 2009 by the Convention leadership for a *writ of mandamus* to mandate the governor to pass the document to the U.S. Government for review. The court decided in December, 2009 to direct the Governor to forward the document, and the Governor so complied, transmitting the document with his objections attached.

By March 2010, a review of the proposed constitution was being undertaken by the US Administration and Congress where amendments could be made before it being returned to the territory for a referendum. Within the limited context of the mandate to retain the status quo, the *Virgin Islands Fifth Constitutional Convention* had adopted a proposed constitution which would effectively expand the parameters of the present status with respect to more territorial control of areas such as natural resources, and the recognition of a certain primacy of the native population. Opposition to a number of the provisions was articulated by the elected territorial governor in testimony before the US Congress in March, 2010, following a detailed presentation by members of the Convention providing their rationale for retaining the provisions.

The US Justice Department also expressed its reservations on the 'questionable' provisions, and the Convention responded with its own legal analysis. On 19th May, the U.S. Senate Natural Resources Committee will conduct a hearing on the proposed constitution of the US Virgin Islands on 19th May.

Other Legislative Proposals Affecting the US territories

A number of legislative proposals have been submitted to the US Congress for its consideration which could affect the political status of the five US-administered territories collectively. These proposals were discussed in two forums convened by the United Nations Association of the Virgin Islands (UNAVI) in early 2010. An analysis of these proposals was published in an *Overseas Territories Review (OTR)* last March. Portions of the *OTR* assessment follow: ⁵

⁵ "Legislation in US Congress Could Move Political Status of US Territories," In *Overseas Territories Review* <http://overseasreview.blogspot.com/> , 26th March 2010.

These measures include a bill to fund educational programs on political status options in American Samoa, Guam and the US Virgin Islands. This proposal has already been adopted by the US House of Representatives and has been submitted to the US Senate for consideration.

A companion measure aimed specifically at Puerto Rico is set for a vote in the U.S. House of Representatives. This legislation would authorise a federally-sanctioned self-determination process for the people of Puerto Rico leading to a referendum on temporarily retaining the status quo, or selecting one of the permanent status options of independence, free association or integration.

Another proposal, which has routinely been introduced in various forms over the last three decades would extend the vote for the US president to the territories. The latest proposal would take the form of a constitutional amendment similar to that previously extended to the District of Columbia. Legislation to examine potential modalities for greater territorial representation in the U.S. House of Representatives has also been introduced.

Major principles of the measures are as follows:

The Guam/American Samoa/US Virgin Islands bill, as amended, would provide for public education programmes on political status options in the three territories. The options would *"include but not (be) limited to internationally-recognised options of independence, integration and free association."* It also implies that other options – undefined in the bill – would also be the subject of the educational programme (*which could impact the effectiveness of the political education*).

The bill confirms the statutory responsibility of the US Department of Interior to assist the territories in public education, but does not make reference to any referendum (*this could come later under the 1979 Carter Adm. mandate to deal with political status that is still in effect*).

By contrast, the Puerto Rico legislation creates a two-step referendum process. The first step would have people vote in favour or against retaining the status quo. If the people choose to remain the same, then they would have to be consulted again in about eight years since the status is not considered as permanent. Under the bill, if the people of Puerto Rico choose to change the status in the first round of voting, then they vote again shortly thereafter with the choices being the three internationally-recognised options (*integration, free association and independence*).

Neither proposed measures provide for new budget authority. For the legislation aimed at the three territories of American Samoa, Guam and the US Virgin Islands, the US *Congressional Budget Office* estimated the cost at about \$2 million during the period 2010-2014 (*presumably from the existing Interior Dept. budget*).

On the other hand, the Puerto Rico bill makes it clear that the referendum activities would be funded from Puerto Rico Government resources. The Puerto Rico bill does not address educational costs. In Puerto Rico, political education is usually carried out by the respective political parties. None of the other three territories have such experience of political party advocacy for a political status preference.

The three - territories bill was originally introduced by the Delegate of Guam for Guam-only, and was later amended to include American Samoa and the US Virgin Islands. The House Report on the measure (111-357), in the section on "*Background and Need for Legislation,*" makes specific reference to the relevancy of international law including the United Nations Charter as the basis for the self-determination process. The House Report also makes reference to the "*limited form of self-government in the territories under the Territorial Clause.*"

The Guam Delegate to Congress made reference in her formal statement to the House Natural Resources Committee hearings to the international obligation under the United Nations Charter "*to develop self-government*" in the territories, and acknowledged that the three territories are on the UN list of NSGTs.

In a similar way, the Puerto Rico measure also refers to the limits of Puerto Rico authority under the Territorial Clause. In the "*Background and Need*" Section of the House Report on the Puerto Rico legislation the issue of voter eligibility is addressed by explaining that the legislation can permit Puerto Ricans born in Puerto Rico but residing outside of Puerto Rico to participate in the referendum.

The two measures appear to be moving along separately, and appear to be regarded as entirely separate matters, even as they go through the same committees, albeit at different times. It will ultimately be up to the Senate as to whether either or both of the bills will pass.

Several other measures have been introduced in the House which would have the effect of modifying the political status of a number of the US - administered territories. These bills are essentially focused on achieving more political involvement in the US political system under the present status. One would be achieved by amending the US Code so as to enable presidential voting rights for territories, whilst the second bill

would study the possibilities of greater representation in the House for the non-voting delegates to Congress from these territories.

The presidential vote measure has been introduced in various forms dating back to the tenure of Virgin Islands Delegate to Congress Ron de Lugo. More recently, various strategies have been employed to gain a vote for the territorial delegates in the House (*Guam Legislature in 2009 passed a resolution requesting a vote on matters strictly related to the militarisation of the territory*).

The OTR assessment raised a number of fundamental questions as to the impact of the legislative proposals on the political evolution of the territories:

Fundamental Questions

On the bills aimed at a self-determination process, the Puerto Rico measure "cuts to the chase" and provides for a referendum on the clear options recognised by international law, whilst also providing a temporary alternative to remain in the dependency status.

Meanwhile, the measure for American Samoa, Guam and the US Virgin Islands has no referendum component, and is also not as specific on the definitions of the options. The measure could be improved by borrowing from the Puerto Rico measure, and would also be consistent with the draft US Virgin Islands proposed constitution which contains a section on a political status mechanism on the three permanent options.

The measures aimed at more political participation of the territories in the US system also raise some issues:

Could more territorial participation in the US political system affect the financial relationship, specifically the balance of taxation and representation? In other words, could a vote in the U.S. House reduce the ability of the territory to retain excise and income taxes?

Also, would this increased participation in the US political system constitute a fundamental change in the political status of the territory, moving towards a form of 'partial integration.'? If so, should the people be given the opportunity to decide on this in a referendum knowing the implications of such changes?

And finally, what would be the impact of a move toward a 'partial integration' before the people determine their political future. If they chose an autonomous status, would the increased participation be reversed?

As the proposals introduced in 2009 wind their way through the US Congress in 2010, it is hoped that further clarity would be forthcoming.

Conclusion ⁶

In the case of the US-administered territories... continued reluctance by the U.S. Congress to accept Puerto Rico as the 51st integrated state could wear thin with pro-integrationist advocates in the territory. If U.S. statehood is ultimately rejected – and the U.S. Congress has been adept thus far in avoiding the final answer to that question - a grand, anti-colonial coalition could emerge to include the pro-statehood and pro-independence parties which adamantly reject the status quo, along with the substantial free association wing of the ruling pro-commonwealth party, forming a significant majority coalescing around some form of sovereign association. The administering power of the territory may yet see the wisdom of this approach as the economic challenges of the territory continue to deepen.

The US Virgin Islands, meanwhile, is significantly less politically developed on these questions, and would have to develop a modality to define itself as a society, and as a political entity, given that the erosion of the legitimacy of territorial status could cause its further political isolation without a plan to address the fundamental question of the dependency status – even as this erosion of legitimacy is not yet widely recognised in the territory. Organised discussion surrounding the proposed constitution in 2010 would be essential to countering prevailing mis-information about the sustainability of dependency status arrangements.

The continuation of a “political drift” of the US Virgin Islands towards some form of partial integration with the US, deficient of anything approaching full rights in the US political system, is the most likely projection in the short term. U.S. congressional legislation on self-determination spearheaded by the non-voting Delegate to the U.S. House of Representatives from the U.S. administered territory of Guam might open a broader dialogue if the measure is adopted.

Otherwise, the U.S. Virgin Islands could remain in an increasingly isolating dependency status unless new or existing institutions develop programs to accelerate the political education process, bringing together the diverse community of varying interests and national origins, and addressing increasing economic inequalities internally.

⁶ Corbin, Carlyle. *Dependency Governance, Constitutional Reform and Democratic Deficit in the Non-Independent Caribbean*; A paper presented to the Eleventh Annual Conference of the Sir Arthur Lewis Institute of Social and Economic Studies (SALISES), University of the West Indies; 24th March 2010.