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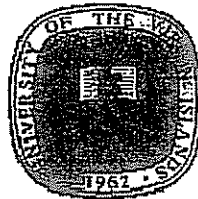
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**A Constitution for the United States Virgin Islands:
The Role of the University of the Virgin Islands and Other
Supporting Entities**

DISCUSSION PAPER

By

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A CONSTITUTION FOR THE UNITED STATES VIRGIN ISLANDS: THE ROLE OF THE UNIVERSITY OF THE VIRGIN ISLANDS AND OTHER SUPPORTING ENTITIES

Presented before the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

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OVERVIEW

On June 12, 2007, approximately 21 percent of the registered voters in the United States Virgin Islands went to polls throughout the Territory to select 30 delegates to form the Fifth Constitutional Convention. The winning candidates were then set to be certified by the Virgin Islands Joint Boards of Elections. But almost immediately thereafter, there were verbal challenges being made about the construction of the ballot and whether in its final form it met the legal requirements of the authorizing statute.

These verbal challenges eventually matured into a lawsuit before the Superior Court of the Virgin Islands styled as: *Harry Daniel vs. Virgin Islands Joint Boards of Elections, et. al.* In this lawsuit, Harry Daniel, a candidate who ran from the District of St. Thomas-St. John, sought to block the certification of the winning candidates as announced by the Board of Elections until it could be determined judicially that the election complied with local law setting out the election guidelines as well as other rules governing the Convention. Daniel maintained that as per the terms of the authorizing statute, he should be certified as a successful candidate. The suit was decided in Daniel's favor. The legal contest did not end here, however, as the Elections Board voted to appeal the decision of the Superior Court to the Supreme Court of the Virgin Islands.

This was a momentous occasion for the Supreme Court, which had recently come into existence, years after the enactment of the legislation which created the Court. After a daylong hearing, the Supreme Court issued its written opinion denying Daniel's claims and ordering the Board of Elections to certify the candidates who had initially been declared victorious following the June 12, 2007 election.

The results were certified by the Board of Elections, and the thirty (30) delegates took the oath of office as administered by The Honorable Audrey L. Thomas, Judge of the Superior Court of the Virgin Islands on October 29, 2007. Within moments of their swearing in, members of the Convention voted to organize the body, electing its President, Vice President, and other officers and forming several committees designed to address the critical work before the body.

THE FRAMEWORK OF THE CONSTITUTION ADOPTION PROCESS

The Convention is authorized by federal Public Law 94-584 and by local law Act 6688 as amended, including its most recent amendment, Act 6969, which gives the Fifth Virgin Islands Constitutional Convention until October 1, 2008 to adopt a proposed Constitution.

The federal public law states clearly that a Constitution for the Virgin Islands will be developed within the existing federal-territorial relationship and is not intended as a measure to determine the status of the Virgin Islands *vis a vis* the United States.

The federal law places additional requirements on the Virgin Islands Constitutional process by requiring that a document drafted by the residents of the Virgin Islands must recognize and be consistent with the sovereignty of the United States over the Virgin Islands and, further, must

recognize the supremacy of the provisions of the Constitution, treaties and laws of the United States applicable to the Virgin Islands.

The Congress of the United States has created a constitutional adoption procedure which will require the submission to the President of the United States and the Congress of the United States any draft Constitution before it is presented to the qualified voters of the Territory. The local statute mimics this scheme as well.

The Congress of the United States pursuant to the Territorial Clause of the United States Constitution reserves the authority to amend the document submitted by the Virgin Islands Constitutional Convention before such a document is presented to the voters of the Virgin Islands for their consideration.

Thus, it is clear that while the United States has acceded to the wishes of Virgin Islanders for a locally drafted Constitution, the process will not make the Virgin Islands fully self governing as envisioned by provisions of the United Nations regarding territories which have not attained a full measure of self government.

In Resolution 1541 Principle VI, this body has provided that a Non-Self-Governing Territory can be said to have reached a full measure of self-government by:

- (a) Emergence as a sovereign, independent State;
- (b) Free Association with an Independent State; or
- (c) Integration with an Independent State.

The Constitutional process in which the United States Virgin Islands is involved will not yield any of these outcomes, though it is clear that the process of writing a constitution will not prevent the residents of the Territory from one day making a determination with regard to its ultimate political status.

In the Virgin Islands and Guam Constitutional Self-Government Act of 2000, the following clarifying statement is made by the United States Congress:

“Establishment of local constitutional self-government pursuant to this Act shall not preclude or prejudice the further exercise in the future by the people of Guam or the Virgin Islands of the right of self-determination regarding the ultimate political status of either such territory.”

While some of this procedural information was provided to this Committee when it met in Grenada in May 2007, the information bears repeating as the debate continues in the Virgin Islands on the question of political status and whether the adoption of a Constitution before a vote on the status of the Virgin Islands with regard to the United States is putting the proverbial “cart before the horse”. Those advocates who cry “Status, First,” continue to wonder out loud as to whether the adoption of a constitution as an unincorporated territory of the United States seals the fate of the Virgin Islands as such a territory.

THE UNIVERSITY OF THE VIRGIN ISLANDS

The University of the Virgin Islands was chartered on May 16, 1962 as the College of the Virgin Islands, the first institution of higher learning in the Territory. In 1986, the College of the Virgin Islands became the University of the Virgin Islands, as a reflection of the growth and diversification of its academic curricula, community and regional services and research programs. The institution continues to grow and remains committed to serving its students and its extended family to include faculty and staff. As the only institution of higher learning in the U.S. Virgin Islands, the University is, as well, steadfast in its desire to serve the entire Virgin Islands Community. Consistent with these goals, the University has adopted the following mission:

"The University of the Virgin Islands is a learner-centered institution dedicated to the success of its students and committed to enhancing the lives of the people of the U.S. Virgin Islands and the wider Caribbean through excellent teaching, innovative research, and responsive community service."

In the previous report to this committee given in Grenada, the University of the Virgin Islands, through President LaVerne E. Ragster, Ph.D. informed this body in great detail of the public education project undertaken by the University in support of the Constitutional Convention, as mandated by the Legislature of the Virgin Islands. As the Coordinator of that public education project, I will provide you with a concise and relevant update of our project since that time.

In the public education project we endeavored to integrate both technology and the traditional public forums which mark a strongly oral culture. The legislation authorizing the convention, Act 6688, provided that prospective delegates file their petition with the Board of Elections by May 16, 2007 in order to appear on the Constitutional Convention ballot. Thus there was a very short window between this date and the date of the election for voters to get a real sense of the candidates before them and their position on this critical document for the Territory.

It is important to note that the University considered that the education project could not be completed without some attention to the preparation of the pool of those persons who envisioned themselves as delegates to the Constitutional Convention. Thus, the project hosted two daylong seminars in each political district, completely dedicated to delegate preparation.

These preparatory seminars covered a variety of topics, to include Political Status, the Previous Virgin Islands Constitutional Conventions, Judicial Reform, Local Government and Native Rights. These workshops also offered keynote presentations from representatives of the Center for the Study of State Constitutions at Rutgers University. These discussed the forms of state constitutions and resources that could be made available to Virgin Islands delegates undertaking this historic and monumental task.

Following the announcement of the listing of eligible delegates, the University organized several public forums by which the candidates were able to bring their ideas to the public and influence voters to their favor. These candidate forums provided an opportunity for delegate candidates to discuss issues ranging from their individual preparation for the task before them, their ideas as to the items that a constitution should contain and the important question which has dogged this process, as to whether the territory should address its status in regard to the United States before proceeding

with a convention. These forums were conducted in both political districts—the District of St. Croix, and the District of St. Thomas-St. John. The media outlets in the territory also are to be commended because they provided voter questionnaires that were published in the local paper, and several radio stations offered candidates free air time to bring their views to the public.

These forums were conducted concurrently with a media campaign, also a part of this project which created radio, television and newspaper advertising to be aired at high media traffic periods and to reach a racially and culturally diverse community. Our project website www.itsourfuture.vi continued to receive regular contact and has recorded some 116,871 visits to date.

The University also distributed in excess of 60,000 informational brochures directly to registered voters in the Territory, utilizing voter listings provided by the Virgin Islands Joint Boards of Elections.

By the end of the elections, the University had spent approximately \$250,000 of the \$500,000 initially allocated to it by the Legislature for a public information project in support of the Constitutional Convention. Much of the financial resources were allocated to media costs which reflect the high cost of air and studio recording time, the actual production of commercials for radio and television and the airing of these commercials during major sporting and other events in order to maximize visibility locally. Of course, print advertising production and placement costs were significant as well.

Just as it had made its efforts to engage and inform the delegate pool in the educational sessions in preceding the June elections, the University turned its attention again to delegate preparation when it advertised its course offerings in the summer of 2007. In its course listings, the University offered classes in US Virgin Islands Government and Politics and in American Government. Both political science courses offered exposure to local government structures and to issues which affect federal-territorial relations. The latter course included a study of the development of the Constitution of the United States and provided detailed exposure to the nature and function of the branches of government within a republican framework.

For these efforts and for the quality of its media products, the University, and in conjunction with the Austin Advertising agency with which it contracted locally, won a special advertising award which recognized both the quality of the work done, the role of the University and the incredible public significance of the overall project.

The University has received its share of criticism as well, from those who argue that the project and the resources utilized by it did not generate a sufficiently large public participation at the polls. Such a concern may have been the basis for local legislation which reprogrammed unspent monies from the University's project to be used directly by the Constitutional Convention.

What we continue to see throughout the community, however, is a larger public disinterest in change, or even perceived change in our relationship to the United States. This is a challenging issue for the convention, and a challenging one for a place with any inclination to political change.

The University, recognizing the need for continuing public education, has offered to collaborate with the Convention on specific projects that would engage the community throughout the life of the proceedings.

THE WORK BEFORE THE CONVENTION

The Fifth Virgin Islands Constitutional Convention is preceded in its work by four other similar bodies. Each previous convention presented fully drafted proposed Constitutions, although none has been widely accepted by the residents of the Territory.

However, the work of the Fourth Constitutional Convention was singled out in the present local law which authorizes the new body to "review and adopt provisions of the Constitution of the Virgin Islands, previously approved by the Fourth Constitutional Convention which are considered by the Convention to be standard and of a non-controversial nature".

Thus, Committees of the Fifth Convention have been engaged in detailed reviews of the provisions of this document while they have been also coordinating a series of public meetings and discussions to gauge public sentiments on particular provisions as well as new ideas and issues which did not confront the framers of the last document proposed almost 27 years ago.

In this regard, the University has consulted with the Convention, specifically with regard to the critically important provisions regarding education rights for the residents of this Territory. The President of the University has proposed a comprehensive policy on Education and a drastic departure from current education entitlements only to persons between the ages of 5 and 16, to free college education to students graduating from local high schools and meeting the eligibility criteria of any local, public institution of higher learning.

Some proposals have been controversial including the need for increased municipal government between the major islands of the Territory, and the local tax structure which many believe is implicated in the loss of land formerly held by local persons, particularly those who identify themselves as native to the Territory.

But perhaps the most controversial of issues lies in defining the people of this Territory for whom this document is being written.

The debate rages on, with proponents of various positions often inundating the airwaves and the print media as well with various viewpoints on the issue which has confronted previous conventions as well. It is interspersed with the viewpoints of natives who believe that they have been dispossessed of their homeland by the great number of persons from other countries who have settled in the small territory.

This position is summarized in the sentiments of one local person who testified recently that Native Virgin Islanders are entitled to special recognition in a Constitution "because they represent the ones who were colonized, that did not have the opportunity to define and determine their destiny as a people and as a self-governed entity".

But the opinion is not shared by all in the Virgin Islands community. In fact, many have taken to the airwaves and the newspapers to warn that the selecting out of any group for special treatment will signal the death knell for any document containing preferential provisions when it comes before the voters in a referendum.

The sentiment is aired by large numbers of migrants from the Eastern Caribbean who believe that living and raising families in the Territory for the previous four or five decades or more entitle them to play a part in the political fate of the Territory—from a voice in a local constitution to one in a determination of political status.

It is echoed as well by large numbers of United States citizens who have moved to the Territory from the continental United States and who trumpet their rights under the United States Constitution and the federal law which controls this entire process. They announce that there can be no special treatment for any segment of the population which can survive the mandated reviews by both the President of the United States and the Congress of the United States, which has the authority to amend any document proposed by the Virgin Islands.

Despite the opposition to the idea of special treatment for the group which defines itself as the Native Virgin Islanders, it is an important issue which demonstrates the questions of identity which confront a place as it wrestles both with the idea of self determination and self government. A place like the Virgin Islands which has witnessed tremendous demographic and political changes dating largely to the decades beginning with the 1950s.

In fact, the latest census report available, that of the year 2000, clearly shows the diversity of the current population. It shows that the people who now make up the Virgin Islands are native born by about 67 percent and that the remaining 33 percent represent almost any ethnicity imaginable. These include many of the Eastern Caribbean islands, and the Greater Antillean islands, several of the countries of South and North America, several European countries, several nations of the Middle East, Israel, African nations, and others.

The convention will have to bridge many racial and ethnic barriers when it brings the document to public vote. In recognition of the awesome task of writing this document and having it be acceptable to the community herein described, the Convention just recently voted (May 6, 2008) to request that the Legislature award it more time—until March 31, 2009 – to complete the document.

After a recent working retreat, the Delegates decided that each committee will have a draft of a section to comprise a proposed constitution for the body's next plenary session in July 2008. It is expected that at this time the Virgin Islands community will see for the first time a complete draft of a proposed Constitution for the Territory for the fifth time.

THE LESSONS LEARNED

There is no mistaking that the adoption of a local Constitution would be a milestone development for the United States Virgin Islands. But the process is also plagued with great expectations on which this document might not be able to deliver. Many look around at the neighboring nation

states which control their borders, regulating who may come and who may settle, states whose people are experiencing self government on a level on which Virgin Islanders can only dream. This is particularly perplexing and troubling since we have shared the same colonial history with these now independent countries which we see from our shores, a colonial history replete with the horrors of African slavery and the ensuing slave-like plantation economies based on sugar and cotton and other commodities. Virgin Islanders clamor to make the same rules and regulations concerning the lands which we love. This is the context within which the following suggestions regarding constitutional development are made and in consideration of their applicability to other non-self governing territories which may undertake this process.

1. Funding

In the case of the United States Virgin Islands, the local government has borne the total cost of both public education and the expenses associated with having a Constitutional Convention as well. In the initial authorizing legislation, the Legislature of the Virgin Islands appropriated \$100,000 for the work of the Convention. That initial appropriation was later supplemented by \$118,000 which would have continued the public education program at the University of the Virgin Islands, but which was reprogrammed to support the work of the Convention.

Shortly after they were sworn into office, the delegates to the Fifth Virgin Islands Constitutional Convention created a budget and submitted it to the Legislature of the Virgin Islands. In its budget, the Convention called for a sum of \$3.2 million, which would allow the Convention to identify office spaces, hire staff and consultants, travel between islands, and meet related costs and expenses. To date, the Convention has received only the \$218,000 with another appropriation of \$200,000 approved recently by both the Virgin Islands Legislature and Governor of the Virgin Islands but to date has not been provided to the convention. All of the funding supporting this important political change has been provided from the General Fund of the local government.

We suggest that cost of this process should not be shouldered by the Territory of the Virgin Islands and that the work of the Convention can be supported in many ways by the considered resources of the administering power, the United States of America. This should apply to other non-self governing territories as well. If such support is not forthcoming, then the United Nations should support this endeavor either financially or by the provision of services in kind.

2. Public Education on Self Government and Status

Through the public education project the University of the Virgin Islands gained first-hand exposure to the incredible challenge of informing citizens on a wide scale of the importance of an undertaking to provide a body of principles on which to rest a government. This Constitutional Convention follows the last such endeavor by 27 years. An entire generation of new voters was being exposed to this idea for the first time, and to another generation of older Virgin Islanders, these conversations were at best remote and confusing. Thus the project started with a population essentially at ground zero with regard to the essential information on constitutional development. This makes the point for ongoing dialogues on status and on constitutional change. It is essentially

that public education on these critical issues be ongoing and not reserved for the critical time when change is looming directly ahead.

3. Defining the People

The population of the Virgin Islands is incredibly diverse, perhaps not more diverse than any region in which the United Nations is involved, but certainly incredibly diverse for its small land area. There are many United States citizens who hail as natives of the continental United States of those who have migrated to the Territory but who are now naturalized United States citizens who have made a clear choice to maintain a national link with the United States. Against this mass are the Virgin Islanders who in many ways stand in the shoes of those persons who date back to Danish times and who made no such clear choice. Thus, the question continues to raise its head as to exactly who defines the class of persons for whom this document is being written and who will take responsibility for its effects as it passes through generations.

4. Engaging Higher Education Institutions

Institutions of higher education are by their nature, repositories of vast resources. This is clearly the case with the University of the Virgin Islands. These resources should be engaged in constitutional processes because of their potential and invaluable impact on the larger community which these institutions serve.

THE ROLE OF THE UNITED NATIONS

I would first like to commend your committee for its continuing interest in the Territories, and in particular, the Special Committee's continued monitoring of this constitutional process in the United States Virgin Islands. You have requested specifically, however, that we discuss the role that the United Nations might play in these historical activities. It is in this vein and not one of criticism in which the following suggestions are offered.

1. Clarify and Publicize the United Nations definition of what constitutes self-government for a Territory.

For some at this table for whom this is clear, this suggestion might seem superfluous or unnecessary. However, for persons who reside in the non-self governing territories, it is anything but clear. Obviously a vote to continue the status quo does not satisfy the definition that has been publicized in your publications and referenced above. But in our case, the average person who believes that we in the Virgin Islands enjoy a benevolent relationship with the United States might question why he or she does not have the option to retain the Territorial status as is. This is further complicated by the fact that the United States has provided in federal law that a Constitution for the Virgin Islands must recognize the sovereignty of the United States Constitution.

2. The United Nations Must Have More Direct Contact With the Territories

The United Nations is an entity of mythic proportions, proportions poignantly suggested by its massive buildings which anchor the colorful displays of the flags of most if not all of the world's countries. To the ordinary citizen, your impact on individual lives is rarely appreciated. Thus, conversations about self-government and self-determination, as envisioned by the United Nations, take on an air of intellectual curiosity, not one which requires their active engagement. So, just as you send peacekeeping missions into troubled areas, or election observers when the specter of unfair elections is raised, perhaps self-government missions might also be in order. The presence of the United Nations would add a sense of importance and even urgency to what are often informal and poorly managed discussions regarding the very critical issues of status, self-determination and self government.

3. In Processes Which Include Constitutional Development and Status, the United Nations should provide Technical Expertise

“People shouting one another down. People interrupting others to go on offensive tirades. Propositions with the words ‘deal with them’ as punitive measures. A series of motions put into place without benefit of words like ‘motion carried’.

Sounds like chaos? Welcome to the plenary session of the Fifth Constitutional Convention.”

These are the first two introductory paragraphs to an editorial appearing in The Avis, a daily Virgin Islands newspaper in its May 8, 2008 issue following the most recent plenary session of the Fifth Constitutional Convention on Tuesday, May 6, 2008. The paper's Publisher/Editor is a Convention delegate from the District of St. Croix.

The editorial clearly makes the case for the parliamentary process in the affairs of what should be an august body. We believe that the United Nations is rich in such expertise and can assist developing areas particularly those undergoing constitutional change with the structures that would provide sound support to complex proceedings.

Despite challenges, the University continues to see itself as an important partner in ensuring that there is full engagement of the community in the constitutional process. This concludes the report of the University of the Virgin Islands. I thank you for the historic opportunity to speak before this important committee which is dedicated to the task of decolonization. I stand ready to respond to your questions.