

United Nations  Nations Unies

HEADQUARTERS • SIEGE NEW YORK, NY 10017

TEL.: 1 (212) 963.1234 • FAX: 1 (212) 963.4879

Distr. RESTRICTED  
CRS/2009/DP.5

ORIGINAL: ENGLISH

SECOND INTERNATIONAL DECADE FOR THE ERADICATION OF COLONIALISM

Caribbean regional seminar on the implementation of the Second International Decade  
for the Eradication of Colonialism: challenges and opportunities in the process of  
decolonization in today's world

Frigate Bay, Saint Kitts and Nevis  
12 to 14 May 2009

DISCUSSION PAPER

PRESENTATION

BY

MR. TREGENZA A. ROACH, ESQ.

Presentation by Tregenza A. Roach, Esq., Adjunct Instructor, University of the Virgin Islands and Independent Consultant on Public Education Project Fifth Virgin Islands Constitutional Convention

A pleasant good morning Mr. Chairman, delegates to the Special Committee, ladies and gentlemen. As many who have preceded me in this seminar, I also wish to thank you for the opportunity to present the following observations pertaining to the decolonization process and to do so in Saint Kitts and Nevis, the place of my birth. Though I do not consider myself an expert in the affairs of American Samoa, I offer these remarks which are grounded in the wealth of my experience gained from my lead involvement in the public education project in support of the Fifth Virgin Islands Constitutional Convention with the hope that some of what I share now might be considered relevant to constitutional work planned for our sister territory in the Pacific.

The United States Virgin Islands as one of the 16 remaining Non-Self Governing Territories is presently undertaking the writing of a local constitution which will replace in large part, though not totally, the U.S. Congressional Act, the Revised Organic Act of 1954 and its amendments which presently structure the internal government of the Territory. This Organic Act is the latest in a series of such acts which date back to 1917 by which the government of the Territory was organized following its purchase from the Kingdom of Denmark by the United States.

The drafting of a local constitution is intended to provide the Territory with increased self government though it 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:

- (1) Emergence as a sovereign independent State;
- (2) Free Association with an Independent State; or
- (3) Integration with an independent State.

As the person primarily responsible for the public education project undertaken by the University of the Virgin Islands in support of the Virgin Islands Fifth Constitutional Convention, I have been asked to make some observations that might apply to American Samoa, a United States Pacific territory also identified as non-self governing and which is poised to undertake additional constitutional reform.

In terms of a political description, the United States Virgin Islands differs from the Territory of American Samoa in that the former is distinguishable as an organized unincorporated territory of the United States while the latter is an unorganized unincorporated territory of the United States. The difference is said to be that in the case of American Samoa, there is no Organic Act passed by the U.S. Congress which formally sets forth a system of government. Though in the case of American Samoa there is already a local Constitution which satisfies this purpose and provides a certain measure of self government.

At present, the political leadership of American Samoa has spoken of the need for constitutional reform, and the public dialogue has already begun to connect the issues of constitutional reform and those of status which reflects the reality that these are inseparable issues. This also has been the case in the U.S. Virgin Islands which is attempting to adopt a local constitution, with the aim of increasing local self-government though not sufficient self government to make it self governing.

The federal law which authorizes the constitution for the Virgin Islands stresses that the constitution is to be written in the framework which continues its identity as an unincorporated territory of the United States. In the Virgin Islands, many have argued that a determination of the Territory's status vis a vis the United States should be determined prior to the writing and adoption of a Constitution. These advocates argue that to write a local constitution as an unincorporated U.S. Territory is a tacit acceptance of this status for the foreseeable future, a choice unacceptable as it leaves the fate of such a territory to the whims of Congress and continues the legal and political infirmities of such a status which precludes any meaningful measure of independence with regard to local affairs and precludes as well full participation in the body politic of the United States.

Thus, the Virgin Islands is on the same course as American Samoa, which has found that a locally adopted constitution developed within the existing territorial status still leaves the territory in limbo—neither self-governing nor fully integrated with all the rights and privileges of citizens of the administering power.

### **The Requirement of Public Education**

In preparation for the Fifth Virgin Islands Constitutional Convention, the University of the Virgin Islands, the only public institution of higher learning in the Territory, undertook a public education project to inform residents about the Convention and the possible outcomes of its work. The project was reported on at this Committee's previous meeting in Bandung, Indonesia and its recommendations which might be of value to other territories contemplating or engaging in constitutional reform have been incorporated in various ways in the reports of this Committee. One such recommendation which bears repeating here is that administering powers such as the United States should support financially each endeavor which is intended to bring additional self-government to the Territories. This definitely has not been the reality in the case of the Virgin Islands, whose local government has to date borne all the costs related to the educational program undertaken by the University of the Virgin Islands as well as all those connected to the work of the constitutional convention. And with no expectation of U.S. financial support of the project, the Territory will more than likely bear all other costs, including that of the referendum, the mechanism by which any draft document will be brought to our electorate for its consideration. From all indications, the same will be the case for American Samoa as it prepares to amend its constitution and to revive the public dialogue about a permanent status with regard to its relationship with the United States.

A similar observation about the passage of time could be made regarding the processes in American Samoa and in the Virgin Islands. The Samoan constitution was approved in 1967 with a provision for a five-year review. Though there have been attempts to review the document, no review has been successful over this 42- year period. The Virgin Islands had its last Constitutional Convention in 1980, with virtually no public dialogue on the issue after the defeat of the last proposed constitution, 27 years passing between that convention and the formal convening of the present body. In the case of each Territory at least one generation of its citizens has come of age without any rigorous public discussion on the subjects of either constitutional reform or political status. And it is also appearing that both of these territories have embarked on these present undertakings not as a result of any surge of interest on the part of either public, but as a result of political decisions of the executive or legislative bodies. In the case of American Samoa, an apparent executive decision on the part of its Governor, and in the case of the Virgin Islands, the passage of a legislative bill and its subsequent enactment into law. It is fair then for this committee to ask, as it has, about the need for and a method of gauging public sentiment as it applies to either constitutional development or political status in order to ascertain the level of public support for either prospect.

The public education project sponsored by the University of the Virgin Islands rested on several components. It utilized traditional forms of oral delivery to take place in community forums in community centers, schools, utilized traditional media such as radio and television and print formats in the form of dual language pamphlets and leaflets, but relied as well on substantial information delivery by way of the virtual information marketplace, the Internet.

It was clear from the very beginning of our project that there was no widespread interest in a local constitution and just as clear that we were beginning virtually at ground zero with regard to public awareness of political realities. Whatever headway had been made 27 years earlier, clearly had been eroded.

When our project was completed, only 21 percent of our eligible electorate voted in the election for delegates to the Convention. The convention has been in existence now since October 29, 2007 when its members were sworn. Now it faces a number of obstacles, not the least of which include internal struggles with the actual provisions of such a document, and the challenge of public education which must first combat the very real apathy that appears across the wide body of the electorate. American Samoa would do well to consider the level of public interest in the constitutional review process and the readiness of its people to participate in this process at this time. This readiness certainly would include a knowledge base of what the constitutional review process involves and the manner in which provisions would significantly impact the lives of its citizens. The legislation which provides for the adoption of a Virgin Islands constitution does not require that any percentage of the electorate participate in a vote to adopt the constitution. The law permits the adoption of a local constitution on a simple majority of those who vote when it is presented for public consideration. In reality, a very small percentage of our population can adopt a local constitution, a document which would have untold consequences for the foreseeable future. Public awareness and public education are critical items to be addressed. American Samoa must offer an intense program of public

information if it is to be successful in gaining public appreciation, support, and participation in the constitutional review process.

### **Opinion Polls and Knowledge Assessments**

It was an immense challenge to formulate the public education project for the Virgin Islands in light of the very real absence of this or any related issue from the public dialogue for about 27 years. There was the very real question of whether the general public had any interest in this project or whether there was public support to committing significant public funding to both the public education project and to the work of the convention itself. The decision was made to create an advisory committee which drew membership from individuals which represented the diverse segments of our population and to forge collaborations and partnerships with varied community groups and organizations. We faced the question of whether there was a way to assess the population as to the understanding of issues related either to constitutional development or to status. Were we to ask, for instance, of a cross-section of our population, what is an unincorporated territory. Would most persons understand the constitutional implications of living in a place designated as such, beyond the fact that we do not vote for the president of the United States, a fact which most persons readily identify as the most significant characteristic of life in the Virgin Islands versus the United States mainland? Would they know that an even more significant reality of such a status is that the provisions of the United States Constitution as glorious and democratic as they may first appear are not automatically applicable to such insular areas and are extended to the residents of such a place only by the act of the United States Congress?

And what would they understand to be appropriate subjects of a constitution which would be reviewed first and possibly amended by the United States Congress before being submitted to them for their consideration? If we could determine the scope of the void, then we could tailor a program of education directed at that void. But we also struggled with the difficulties which are addressed to polls such as the adequacy of population sampling and other statistical concerns and whether we might set ourselves up as easy targets for critics eager to use these statistics to demonstrate the inadequacy of our efforts. In the end, we determined that a group so constituted as our advisory committee could successfully describe the basic items of information which could benefit the population at large without prior assessment. Describing in information sheets and on websites items which ranged from the very basic—what is a constitution, to the intricate, what is an unincorporated territory and what are the possible subjects to be addressed in a constitution. Though we did not conduct polling to assess the importance which our public placed on the drafting of a local constitution or the preparedness of citizens to participate meaningfully in such an undertaking, this was not a rejection of the usefulness of such techniques and instruments. I would suggest that with some time still on its side before the convening of a constitutional review body, American Samoa might attempt some polling of its population with regard to both interest and readiness to travel this road. At the very least, inquiring into the population's interest and readiness might send

out an important signal that the powers that be are genuinely interested in the public posture.

### **Intertwining the Language of Constitutional Change and Status**

Throughout the course of both the public education project and the Fifth Virgin Islands Constitutional Convention the question has been asked whether the territory is putting the proverbial cart before the horse. Should the question of status be addressed first?

In his address to the Samoan people on Saturday April 18, 2009 Samoan Governor Togiola Tulafono spoke of the need to review the constitution of American Samoa in a convention to be called in November 2009. But in the same conversation he also raised the issue of status, indicating that the issue of a permanent political status for American Samoa remains unsettled.

Tulafono's remarks are a reminder that while people in the American territories, the U.S. Virgin Islands, Guam and American Samoa are in varied stages of work with regard to constitutional adoption or reform, these processes do not address the still vexing issue of status as continues to be the case even with Puerto Rico, which looks much more like an unincorporated territory than it does a commonwealth.

In many instances we skirt the issue of status because it will require that we make difficult choices. Both the Virgin Islands and American Samoa have become increasingly reliant on the various types of federal financial assistance provided by the Government of the United States. In his Flag Day remarks, Governor Tulafono even raises the question of whether his territory can survive without the significant amounts of financial assistance presently provided by the United States. The same sentiment is expressed constantly with regard to the Virgin Islands. Thus, it seems unlikely that within any of the territories there exists any substantial sentiment favoring political independence from the United States. Although we have to ask the question whether the political leadership in our home territories have done sufficient to make our public aware of how deeply these issues affect their lives and what may be required of us on the path to political maturity. Another question altogether is the expectation of equality of bargaining power with regard to either of these territories whose economies are intricately connected with that of the United States in terms of a fairly negotiated political relationship? Finally, is the United States amenable to or prepared to accept a vote by these territories for full integration?

Although the United Nations advances self-determination and decolonization as processes that should reflect primarily the will of the people living in areas administered by its member states, it appears that in the case of the Virgin Islands and American Samoa that these questions will ultimately reflect the interests, internal and otherwise, of the United States.

The proof is in the case of the Northern Marianas. While the Northern Marianas is not on the Special Committee's list of non-self-governing territories, its political situation bears mention. The Northern Marianas chose to negotiate a political status of commonwealth with the United States which was intended to be a permanent status, and which includes

the grant of American citizenship to qualifying residents. At present however, the Commonwealth is suing the United States of America and specifically including its Department of Homeland Security and its Department of Labor. The suit which has been filed in the United States District Court for the District of Columbia the Commonwealth seeks a declaration that a recently enacted federal law “is fundamentally at odds with the principles of autonomy and self-governance legally guaranteed to the Commonwealth and its people when they chose a unique, voluntary affiliation with the United States.” The case demonstrates that the discussion of status with the United States will be an uphill battle for both the people of the Virgin Islands and American Samoa.

## **Conclusion**

I have been privileged to be a part of your conversations about the process of decolonization in two preceding seminars, St. Georges, Grenada, 2007 and Bandung, Indonesia, 2008. I commend you for the work you have done, as I have witnessed the very real difficulties which have been brought to your doorstep by the territories. I have been tight lipped as I have listened to the territories complain about oppressive actions and practices on the part of the administering powers. For it has been in some cases discomfiting to hear presenters in both the Caribbean and Pacific come as if they are complaining their parents and expecting you to cause the administering power to do this thing or that. Yet at the same time some territories really want to have their cake and eat it too. If you look closely and read between the lines, you will see this in Samoan Governor Tulafono’s description of the ideal political status which should be the objective of his people, “a permanent political status—one where we may continue to exercise freedom to the fullest, enjoy all human rights, and which will allow the preservation of our culture and traditions, and all the continued pursuit of freedom on our own terms”. It is not difficult to understand why territories which in some cases have been exploited by an administering power for centuries might want to hold on indefinitely to whatever benefits might inure from a connection to the colonial power, but we must realize that sometimes we hold on at our peril and that in holding on we also perpetuate the circumstances which deny us the right to fully govern ourselves. There is still much work to do, critical and complicated work addressed to both the administering powers and the territories and which might not fit conveniently into any one decade or two. This committee might well be required to have perpetual life.