# Appendix B

# The Exclusive Economic Zone and U.S. Insular Territories

### *U.S. Territorial Law*

In addition to the waters off the 50 States, the Exclusive Economic Zone (EEZ) includes the waters contiguous to the insular territories and possessions of the United States.[2] This inclusion is significant in that the islands include only 1.5 percent of the population and 0.13 percent of the land area of the United States*, but 30 percent of the area of the EEZ.[3] This appendix discusses the legal relationship between the United States and these islands, with attention to the power of the U.S. to proclaim and manage the EEZ around them.

The general principle of Federal authority has been that, "In the Territories of the United States, Congress has the entire dominion and sovereignty, national and local, Federal and State, and has full legislative power over all subjects upon which the legislature of a State might legislate within the State . . "[4] This claim of complete power has been modified for some islands by statutes and compacts granting varying degrees of autonomy to the local population. The discussion below classifies the islands into three categories distinguished by the degree of Federal control and local self-government. The first group (A) includes eight small islands, originally uninhabited, which are under the direct management jurisdiction of Federal agencies. The second group (B) includes American Samoa, Guam, and the Virgin Islands. These islands are largely self-governing but subject to supervision by the Department of the Interior. The third group (C) includes Puerto Rico and the Northern Marianas whose commonwealth status gives them the full measure of internal self-rule where Federal supervisory power is greatly reduced.

Group A

Palmyra Atoll.—Claimed by both Hawaii and the United States early in the 19th century, Palmyra was annexed to the U.S. with Hawaii in 1898. The Hawaii Statehood Bill excluded Palmyra (as well as Midway, Johnston Island, and Kingman Reef) from the territory of the new State.[5] The island is privately owned and uninhabited. By executive order it is under the Department of the Interior's jurisdiction.[6]

Johnston Island.—Claimed by the United States and Hawaii in 1858, Johnston Island was annexed to the U.S. in 1898. In the late 1950s and early 1960s the island was the launch site for atmospheric nuclear tests. A caretaker force maintains the site and operations center for the Defense Nuclear Agency (DNA), which is responsible for the island. About 500 U.S. Army personnel are on Johnston, preparing a disposal system for obsolete chemical weapons stored there. Entry is controlled by DNA.[7]

Kingman Reef.—This island was annexed by the United States in 1922. Most of it is awash during high water. The island is under the U.S. Navy's jurisdiction,[8] but no personnel or facilities are maintained on it.

Midway Islands.—Annexed in 1867, Midway has been managed by the U.S. Navy since 1903.[9] The Midway Naval Station was closed in 1981, leaving a naval air facility as the only active military installation.

Wake Island.—Wake has been claimed by the United States since 1899. Initially assigned to the U.S. Navy, Wake was transferred to the Department of the Interior (DOI) in 1962[10] and is now administered by the Air Force under special agreement with DOI.[11]

Howland, Baker, and Jarvis Islands.—Originally claimed under the Guano Act of 1856,[12] these islands were formally annexed by the United States in 1934. They were assigned to DOI 2 years later.[13] Briefly colonized during the 1930s by settlers from Hawaii, the islands have been uninhabited since World War II.

Comment.–Johnston, Midway, and Wake Islands and Kingman Reef have been declared Naval defense areas and Naval airspace reservations. They are subject to special access restrictions, some of which are suspended but which may be reinstated without notice.

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[2] Proclamation No. 5030, 3 C. F.R. 22 ( 1984), *reprinted* in 16 U. S.C. A. 1453 (1985). /

[3] U. S. Bureau of the Census, Statistical *Abstract of the United* States: 1986, 6 (1985).

[4] C. Ehler and D. Basta, "Strategic Assessment of Multiple Resource-Use Conflicts in the U.S. Exclusive Economic Zone," *OCEANS '84 Conference Proceeding,* 2 (NOAA Reprint, 1984).

[5] *Simms v. Simms*, *175* U.S. 162, 168 ( 1899).

[5] Public Law 86-3 $2, 73 Stat. 4 ( 1959).

[6] Executive Order No, 10967, 26 Fed. Reg. 9667 (1961).

[7] 32 C.F. R. 761 .4(c)(1985).

[8] Executive Order No. 6935, Dec. 29, 1934,

[9] Executive Order No. 11048, 27 Fed, Reg. 8851 ( 1962), *superseding* Executive Order No. 199-4, Jan. 20, 1903.

[10] Executive Order No. 11048, 27 Fed. Reg 8851 ( 1962).

[11] 37 Fed. Reg. 12255 (1972).

[12] 48 U.S.C. 1411 to 1419 (1982).

[13] Executive Order No. 7368, 1 Fed. Reg. 405 (1936).

[14] 32 C.F.R. 761 (1985).

The Federal District Court of Hawaii has jurisdiction over civil and criminal matters arising on the eight islands in this group. [15]

Group B

American Samoa.—U. S. interest in the islands of American Samoa dates back to the middle of the 19th century, and for a time there were conflicting claims with the United Kingdom and Germany. These claims were settled by a treaty in which Germany and the U.K. renounced all of their rights and claims to the islands east of 171 degrees west longitude in favor of the United States. 'G On April 17, 1900, sovereignty over Tutuila, Aunu'u, and their dependent islands was ceded to the U.S. by their chiefs. The Manu'a islands were similarly ceded on July 14, 1904.17 The cessions were formally accepted by Congress in 1929.18 The United States extended sovereignty over Swains Island (originally claimed under the Guano Act) and added it to American Samoa in 1925.19

The act accepting sovereignty over Samoa states that until Congress provides otherwise, "all civil, judicial, and military powers shall be vested in such person or persons and shall be exercised in such manner as the President of the United States shall direct. '[20] The U.S. Navy administered American Samoa[21] until authority was transferred to DOI in 1951.[22] The islands are largely self-governing under a constitution adopted in 1966, with DOI exercising only general supervision. The constitution is subject to amendment by Congress .23 While the cessions, constitution, and statutes of Samoa protect traditional local government and land tenure, all are silent as to any use of the sea beyond the 3-mile territorial limit (tidal and submerged lands have been transferred to the territorial government[24]). The cessions required respect for local property rights and recognition of the traditional authority of the chiefs over their towns, while "all sovereign rights thereunto belonging' were granted to the United States. Article 1, Section 3 of the American Samoa constitution declares it to be the policy of the government "to protect persons of Samoan ancestry against alienation of their lands and the destruction of the Samoan way of life and language . . " The American Samoa code implements this policy, preserving "customs not in conflict with the laws of American Samoa and of the United States . . "[25]

Guam.— Spain took possession of Guam along with the other Mariana Islands in the 16th century. The treaty ending the Spanish-American war ceded Guam to the United States. [26] Article VIII of the treaty ceded crown lands to the U.S. Government and guaranteed protection of existing municipal, church, and private property rights. The U.S. Navy administered the island until 1949 when DOI took over.[27] Since then, Guam has been governed under the Organic Act of 1950, as amended. [28]

The governor and legislature are locally elected and are responsible for most matters of internal governance. DOI's role is to provide "general administrative supervision. " The Department is most active in the areas of budget, capital improvements, and technical advice. Congress reserves the power to annul local legislation. A proposed constitution failed to win popular approval in 1979. Since that time, efforts have been redirected toward settling the island's status before another constitutional convention is called. Guam residents strongly favored commonwealth status in a 1982 referendum and a proposed commonwealth act will be presented to the voters in Guam on August 8, 1987.[29]

Virgin Islands.—The U.S. Virgin Islands were ceded to the United States by Denmark in 1916.[30] The rights to crown property were transferred to the U.S. Government, while municipal, church, and private property rights were preserved. Other than a few exceptions named in the treaty, Denmark guaranteed the cession to be "free and unencumbered by any reservations, privileges, franchises, [or] grants . . "

The U.S. Virgin Islands are self-governing under the Organic Act of 1936[31] and the Revised Organic Act of 1954, as amended.[32] The popularly elected legislature and governor have authority over local matters but Congress retains the power to annul insular legislation .33 Matters of Federal concern are ' 'under the general administrative supervision of the Secretary of the Interior. DOI's role is mainly administration and auditing of Federal funds appropriated for the islands.

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[15] 48 US C 644a (1982).

[1] Convention for [he Adjustment of Questions Relating to Samoa, Dec. 2, 1899, United States—Germany—Great Britain, 31 Stat. 1878

[17] The cessions are reproduced in the historical documents section of the American Samoa Code Annotated.

1845 Stat1253, 48 U .S. C 1661 ( 1982).

1943 Stat $357, 48 U .S.C 1662 ( 1982).

[20] 48 U.S C. 1661(c) ( 1982)

21 Executive Order No. 125-4, Feb 19, 1900.

[22] Executive Order No. 10,264, 16 Fed. Reg 6419.

[23] 48U S C 1662a ( 1982).

[24] 48 US C.1705 ( 1982)

[25] Am. Samoa Code Ann, $1.0202 ( 1983).

[26] Treaty of Peace, Dec. 10, 1898, United States-Spare, 30 Stat 1754

[27] Executive Order no. 10077, 14 Fed. Reg 5523 ( 1949)

[28] Codified at 48 USC. 1421 *et seq (* 1982)

[29] Guam Commission on Sel f. Determinat ion, ' 'The Draft Guam Commonwealth Act" (June 11, *1986)*

[30] Convention for Cession of the Danish West Indies, Aug. 4,1916, United States—Denmark, 39 Stat. 1706.

[31] 48 U.S. C. 1391 *et seq* (1982)

[32] 48 U.S. C. 1541 *et seq. (* 1982)

[33] 48 U S.C 1574(c) ( 1982)

Like Guam, the U.S. Virgin Islands are authorized to draft their own constitution .34 The most recent of several proposed constitutions was turned down by voters in 1981. At the present time, the issues of a constitution and status are in abeyance.

Comment.— All three of these territories enjoy a large measure of self-rule, but under the territorial clause of the Constitution[35] their governments are, in effect, Federal agencies exercising delegated power. Neither the initial cessions nor any subsequent grant of local power have insulated the islands from highly discretionary Federal authority.

The Executive Branch, acting through the Department of the Interior, maintains fiscal and other supervisory powers. Congress retains the right to approve and amend local constitutions or to annul local statutes. It appears that nothing in domestic law would impede the establishment and development of EEZs around these islands.

### *Group C*

Puerto Rico.—Spain ruled Puerto Rico from 1508 until 1898. The island was ceded to the United States by the Treaty of Paris under the same terms and conditions as Guam.[36] After nearly 2 years of military rule, the island was administered under Organic Acts passed in 190037 and 1917.38 In 1950 Congress passed the Puerto Rican Federal Relations Act "in the nature of a compact so that the people of Puerto Rico may organize a government pursuant to a constitution of their own adoption. '[39] This Act provided for the automatic repeal of those sections of the 1917 Act pertaining to local concerns and the structure of the island's government. The repeal was effective upon adoption and proclamation of the constitution in 1952, and Puerto Rico then "ceased to be a territory of the United States subject to the plenary powers of Congress . . "[40] The government of Puerto Rico no longer exercises delegated power, and its constitution and laws may not be amended by Congress.

The Puerto Rico constitution establishes the commonwealth and declares that "political power emanates from the people, to be exercised according to their will within the terms of the compact between them and the United States. "[41] "Commonwealth" is an undefined term and, as noted above, the "compact' is not a comprehensive agreement but the residue of the 1917 Organic Act from which the irrelevant provisions have been stripped. It has remained for the courts to struggle toward clarification of this status.

Puerto Rico is subject to the U.S. Constitution but "like a state, is an autonomous political entity, 'sovereign over matters not ruled by the Constitution."[42] Federal laws "not locally inapplicable" have the same force and effect in Puerto Rico as in the States.[43] Federal statutes may exempt Puerto Rico or may include it on terms different from the States .[44] Relations between the courts of Puerto Rico and the Federal courts are the same as those for State courts .[45] The principles of deference and comity apply to Federal court review of Puerto Rico's legislative, executive, and judicial acts.[46]

For all of its State-like attributes, commonwealth status is inherently ambiguous. Congressional power to treat the island differently leaves Puerto Rico uncertain as to its participation in important Federal programs. Court cases resolving specific issues do not provide a coherent, overall definition of the scope of local authority. What President Johnson called a "creative and flexible' relationship[47] has come to be viewed as an unsatisfactory, interim arrangement. While disagreeing on the form of the ultimate relationship, all of Puerto Rico's political parties agree that a clear outline of the island's powers vis-à-vis the Federal Government is essential .48 There are no legal obstacles to such a change. On the island's side, "the Constitution of the Commonwealth of Puerto Rico does not close the door to any change of status that the people of Puerto Rico desire . . "[49] On the Federal side, there have been repeated executive[50] and congressiona1[51] declarations that the choice of status remains with the people of Puerto Rico.

Statehood would give Puerto Rico equal standing with the other States in whatever management regime Congress establishes for the EEZ. Independence would

[34] Public Law 94-584, 90 Stat. 2899 ( 1976), as amended by Public Law 96-597, 94 Stat. 3479 (1980).
[35] U. s, Const. art. IV, §3.
[36] See note 26, above.
[37] The Foraker Act, ch. 191, 31 Stat. 77 (1900).
[38] The Jones Act, ch. 145, 39 Stat. 951(1917).
[39] Ch. 446, 64 Stat. 319 (1950).
[40] *"United States v. Quinones, 758* F.2d 40, 42 (1985).
[41] P.R.Const. art. I, §1.
[42] *Rodriguez v. Popular Democratic Party, 457* U.S. 1, 8 ( 1982) (quoting *Mora v. Mejias*, 115 F. Supp 610, 612 [D. P.R. 1953]).
[43] 48 U.S. C. 734 (1982).
[44] *Harris v. Rosario*, 446 U.S. 651 (1980) (per curiam) (overturning a ruling that lower A.F.D.C. payments in Puerto Rico violate the equal protection guarantees of the Fifth Amendment under the territorial clause. ' 'Congress may treat Puerto Rico differently from States so long as there is a rational basis for its actions.
[45] 48 U.S. C, 864 (1982).
[46] *Rodriguez v. Popular Democratic Party*, supra, at 8; *Hernandez-Agosto v. Romero-Barcelo*, *748* F.2d 1, 5 (1st Cir. 1984).
[47] Statement i. Response to the Report of the United States—Puerto Rico Status Commission, 2 Weekly Comp. Pres. Dec. 1034 (Aug. 5, 1966),
[48] P. Falk, ed., *The Political Status of Puerto Rico* (Lexington, MA: Lexington Books, 1986); *Puerto Rico's Political Future: A Divisive Issue with Many Dimensions* (GAO Report GGD-81-48, Mar. 2, 1981).
[49] *Puerto Rico Socialist Party v. Commonwealth*, *107* P. R. Dec. 590, 606 *(1978)*.
[50] 2 Weekly Comp. Pres. Doc. 1034 (Aug. 5, 1966) (Johnson); 12 Weekly Comp. Pres. Dec. 1225 (July 7, 1976) (Ford); 13 Weekly Comp. Pres. Doc. 1374 (Sept. 17, 1977) (Carter); 18 Weekly Comp. Pres. Dec. 19 (Jan. 12, 1982) (Reagan).
[51] S. Con. Res. 35, 93 Stat. 1420 ( 1979).

give the island full control and sovereignty. Under the present system, the island's local power does not include rights in the EEZ. The Popular Democratic Party's proposed modifications to the compact include local authority over the use of natural resources and the sea.[52]

The Northern Mariana Islands.—These islands were colonized by Spain in the 16th century and transferred to Germany in 1899. Japan seized Germany's Pacific possessions in 1914 and was given a mandate over them by the League of Nations in 1920. The Marianas were taken by the United States during World War II. In 1947, the United States was granted a trusteeship over the former Japanese mandated islands .[53] As permitted by the charter of the United Nations, the Trusteeship Agreement recognized both the strategic interests of the United States and the political, economic, and social advancement of the inhabitants .[54] Status negotiations with the Northern Marianas resulted in the establishment of a commonwealth "in political union with the United States. "[55] The other three island groups of the Trust Territory became free associated states. [56] When the U.S. EEZ was proclaimed, the Marianas were included in the zone ' 'to the extent consistent with the Covenant and the United Nations Trusteeship Agreement. '[57] Article 6(2) of the Trusteeship Agreement requires the United States to "promote the economic advancement and self-sufficiency of the inhabitants" by regulating the use of natural resources, encouraging the development of fisheries, agriculture, and industries, and protecting the inhabitants against the loss of their lands and resources. The Covenant is silent as to management of ocean resources but provides for a constitution to be adopted by the people of the Northern Mariana Islands and submitted to the United States for approval on the basis of consistency with the Covenant, the U.S. Constitution, and applicable laws and treaties. [58] The constitution was adopted ***locally on*** March 6, 1977, and proclaimed effective on January 9, 1978 by President Carter. [59] Unlike the Covenant, the constitution contains two provisions relevant to the EEZ. Article XI (Public Lands) declares submerged lands off the coast to which the Commonwealth may claim title under U.S. law to be public lands to be managed and disposed of as provided by law. Article XIV (Natural Resources) provides, in Section 1, that "[t]he marine resources in waters off the coast of the Commonwealth over which the Commonwealth now or hereafter may have jurisdiction under United States law shall be managed, controlled, protected and preserved by the legislature for the benefit of the people.

U.S. interest in the Northern Marianas under the Trusteeship Agreement was administrative, not sovereign. The change to U.S. sovereignty required United Nations approval to be implemented. On May 28, 1986, the United Nations Trusteeship Council concluded that U.S. obligations had been satisfactorily discharged, that the people of the Northern Marianas had freely exercised their right to self-determination, and that it was appropriate for the Trusteeship Agreement to be terminated. [60] On November 3, 1986, President Reagan issued a proclamation ending the trusteeship, fully establishing the Commonwealth, and granting American citizenship to its residents. [61] As a U.S. territory, the Northern Marianas are now subject to U.S. law in the manner and to the extent provided by the Convenant.

## The Exclusive Economic Zone and U.S. Territorial Law

Under our system, the authority of Congress over the territories is both clear and absolute. This authority originates in the constitutional grant to Congress of the "Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States. " Any restriction on this power would come from the terms under which a territory was initially acquired by the United States or from a subsequent grant of authority from Congress to the territory. As shown above, the present territories have no explicitly reserved or granted power to manage the EEZ. It has also been shown that Congress may treat the territories differently from the States as long as there is a rational basis for its action.

The territorial clause has two purposes: to bring civil authority to undeveloped frontier areas and to promote their political and economic development. Its goal is the achievement, through statehood or some other arrangement, of a clear and stable relationship between the ter-

[52] *Puerto Rico's Political Future,* supra n 48, 45

[53] "trusteeship Agreement for the Former Japanese Mandated Islands, July 18, 1947, 61 Stat. 3301, T. I A S, No 1665 [hereinafter ' 'Trusteeship Agreement

[54] U. N. Charter, chapter XII, Trusteeshi, Agreement, arts. 1, 5, 6.

[55] Convenant to Establish a Commonwealth of the Northern Mariana Islands m Po] it ical Union with the United States, Feb. 15, 1975, 90 Stat. 263 [hereinafter "Covenant"]

[56] As such, they are Independent countries in which U. S interest is mostly limited to security matters The Compacts provide that the states conduct foreign affairs in their own names, including ' 'the conduct of foreign affairs relating to law of the sea and marine resource matters, including the harvesting, conservation, exploration or exploitation of living and non-11 ving resources from the sea, seabed, or sub-soil to the full extent recognized under international law. " Compact of Free Association Federated States of Micronesia and Republic of the Marshall Islands and Palau, Jan. 14, 1986, 99 Stat, 1770, art. II, §121 [hereinafter ' 'Compact' This provision puts the three states outside the scope of the U. S Exclusive Economic Zone Proclamation No 5564, note 60, below, effectuated the Compact with the Federated States of Micronesia and with the Republic of the Marshall Islands. The Compact with The Republic of Palau is undergoing the local rat ification process

[57] Proclamation No. 5030, supra note 1.

[58] Covenant, art. 1 I.

[59] Proclamation No 4534, 42 Fed. Reg. 56593 ( 1977).

W T. C. Res. 2183 (LIII)( 1986)

[61] proclamation No 5564, 51 Fed. Reg 40399 ( 1986)

ritory and the rest of the Union. In the past, Federal control over territorial affairs was tolerable because eventual statehood would bring equality of treatment and constitutional limitations on Federal power. There are grounds for suggesting that the present territories do not fit the pattern of earlier ones and that they are "poorly served by a constitutional approach based on evolutionary progress toward statehood. "[62] Rather than being frontier areas settled by Americans who later petitioned their government for statehood, the present territories joined the U.S. with developed cultures of their own and may wish to preserve their uniqueness by remaining apart from the Union of States. Proposals to develop the EEZ, like other Congressional action under the territorial clause, should recognize their special position.

## *International Law Considerations*

The EEZ is based on international law's recognition of a coastal state's right to manage resources beyond the Territorial Sea. President Reagan based the proclamation on this international principle and stated that the ' 'United States will exercise these sovereign rights and jurisdiction in accordance with the rules of international law. "[63] This section examines how international law may bear on the EEZ around U.S. territories.

The primary sources of international law are treaties and international custom. [64] The former is explicit and documented while the latter is deduced from actual practice. This review will focus on three areas relevant to territories: the United Nations Charter and resolutions pertaining to non-self-governing territories, the United Nations Convention on the Law of the Sea, and the practice of other countries with respect to their overseas territories.

### The United Nations Charter and Resolutions

Article 73 of the United Nations Charter calls on member states to recognize that the interests of the inhabitants of non-self-governing territories are paramount. Members are to ensure the political, economic, social, and educational advancement of the territories and to promote constructive measures for their development. In addition, members accept a responsibility "to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement. "[65]

Two General Assembly resolutions amplify the United Nations' view of territories. Resolution 1514 calls for immediate steps to transfer all powers to the people of trust and non-self-governing territories "in accordance with their freely expressed will and desire. "[66] Resolution 1541, passed a day later, establishes principles for determining when a territory reaches "a full measure of self government. "[67] Three options are recognized: independence, free association with an independent state, and integration with an independent state. The United Nations has formally recognized the free association status of Puerto Rico[68] and of the Northern Marianas.[69] The United States provides annual reports to the United Nations concerning American Samoa, Guam, and the U.S. Virgin Islands, and they have been the subject of occasional visiting missions from the United Nations. Their status, along with other non-self-governing territories has been reviewed annually by the General Assembly. The most recent resolutions are typical in calling on the United States and the territories to safeguard the right of the territorial people to the enjoyment of their natural resources and to develop those resources under local control.[70] Significantly, the resolution concerning Guam urges the United States "to safeguard and guarantee the right of the people of Guam to the natural resources of the Territory, including marine resources within its exclusive economic zone . . "

These documents do not, of their own force, require action on the part of the United States. The Charter and the resolutions provide the international norms under which the United States and the territories may mutually decide the terms of their relationship. There is an obligation on the part of the United States to promote the development of the territories while protecting their free choice of political status. This obligation is not inconsistent with the view of the territorial clause as promoting the political and economic development of the territories.

### The United Nations Convention on the Law of the Sea

The United States has not signed the United Nations Convention on the Law of the Sea because of objections to its deep seabed mining provisions. Nevertheless, the

[62] Leibowitz, *United States Federalism: The States and the Territories, 28* Am. U.L.Rev. 449, 451 (1979),

[63] Proclamation No, 5030, supra n. 1.

s+ Restatement (revised) of Foreign Relations Law of the United States 102 (Tent. Draft No. 6, 1985).

[65] U.N. Charter, art. 73(b).

[66] G. A, Res 1514, 15 U.N. GAOR Supp. 16, at 66 (1960).

[67] G.A. Res. 1541, 15 U.N. GAOR Supp. 16, at 29 (1960).

[68] G. A, Res. 748 (VIII)( 1953).

[69] T.C. Res. 2183 (LIII)(1986).

70G .A.Res. 41/23 (Questio of American Samoa), G.A. Res. 41/24 (Question of the United States Virgin Islands), G.A.Res41/25 (Question of Guam), 41 GAOR Supp. 53 (1986).

United States "will continue to exercise its rights and fulfill its duties in a manner consistent with international law, including those aspects of the Convention which either codify customary international law or refine and elaborate concepts which represent an accommodation of the interests of all States and form a part of international law. The presidential statement accompanying the EEZ proclamation contains similar language. 72 The body of the Convention contains only one reference to territories. Article 305(1) provides that self-governing associated states and internally self-governing territories ' 'which have competence over the matters governed by this Convention including the competence to enter treaties in respect of those matters' may sign the convention. Accompanying Resolution III declares that in the case of territories that have not achieved a self-governing status recognized by the United Nations, the Convention's provisions "shall be implemented for the benefit of the people of the territory with a view to promoting their well-being and development. The former provision recognizes that territories may achieve a degree of autonomy allowing them to participate in international matters. The Cook Islands and Niue, states associated with New Zealand, have signed the Law of the Sea Treaty under Article 305( 1).[73] Resolution III restates the commitments of Article 73 of the Charter and of Resolutions 1514 and 1541. Article 305(1) and Resolution III both reiterate international norms compatible with U.S. territorial management.

### Practices of Other Countries

Where there is no treaty or other explicit source, international law may be ascertained from "the customs and usages of civilized nations. "[74] A 1978 study reviewed the law and practice of six nations with respect to their overseas territories.[75] The study found as a general rule that metropolitan powers with overseas territories or associated states: 1) have either given the population of the overseas territory full and equal representation in the national parliament and government or 2) have given the local government of the overseas territory jurisdiction over the resources of the EEZ. The first category includes Denmark (Faroe Islands and Greenland), France (overseas departments and territories), and Spain (Canary Islands). The second category includes the United Kingdom (Caribbean Associated States), New Zealand (Cook Islands and Niue), and the Netherlands (Netherlands Antilles). While small, this study includes all instances of overseas territories having no, or token, representation in the metropolitan government. The study concludes that the United States represents the sole significant exception to the rule. American territories have neither full representation nor local control of the EEZ.

While some information in the 1978 study is no longer current (for example, the Caribbean Associated States are now fully independent nations), its conclusion still seems correct. British practice, as exemplified by the recent declaration of an exclusive fisheries zone around the Falkland Islands, is for the national government to establish policy and for the territorial government to implement it. Thus, the Falkland's government will decide on the optimum level of fishing, issue licenses, and establish and collect fees and taxes. London will provide advice and technical assistance. [76]

The practice of the Netherlands is similar. Matters of broad policy are decided in the Hague, with consideration given to the preference of the Antilles. Exploration and management are in the hands of the Antilles, and the benefits from production would go to the islands. 77

### The Territories Under International Law

Though relatively recent, the EEZ is a generally accepted concept of international law. The United States based its proclamation on international law and declared its intent to follow that law in managing the zone. The declarations of the United Nations, the Law of the Sea Convention, and the practice of other nations are not, of themselves, mandatory upon the United States. Taken as a whole, however, they outline international norms for the treatment of territories. These norms suggest that if territories are not fully integrated (and represented) in the national government, their natural resources should be managed for the benefit of the local population.

## *Territorial Laws Affecting the EEZ*

Geography, history, and culture bind the territories to the sea. All of them have adopted laws pertaining to activities in the ocean. These range from coastal zone management and water quality laws akin to those adopted by the States to broad claims of jurisdiction amounting to local EEZs.

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[71] Declarations Made upon Signature of the Final Act at Montego Bay, Jamaica, on Dec. 10, 1982–United States of America. (Quoted in Theutenberg, *The Evolution of the Law of the Sea, 223* [Dublin: Tycooly International Publishing, 1984]).

[72] *Statement on United States Oceans Policy, 19* Weekly Comp. Pres. Doc 383 (1983).

[73] Status Report, UN convention on the Law of the Sea, ST/LEG/SER E 14 at 701 (1985).

[74] *The Paquete Habana*, *175* U S 677, 700 (1900),

[75] T Franck, *Control of Sea Resources by Semi-Autonomous States (Washington,* DC Carnegie Endowment for International Peace, 1978)

[76] Conversation with Robert Embleton, Second Secretary, British Embassy, Washington, D C , Dec. 10, 1986

[77] Conversation with Harold Henriquez, Netherlands Antilles Attache, Embassy of the Netherlands, Washington, D C., Dec. 10, 1986

American Samoa's water quality standards provide for protection of bays and open coastal waters to the 100 fathom depth contour. A permit is required for any activity affecting water quality in these areas. 78

The U.S. Virgin Islands coastal zone management program extends "to the outer limit of the Territorial Sea" (3 nautical miles). Its environmental policies call for accommodating "offshore sand and gravel mining needs in areas and in ways that will not adversely affect marine resources and navigation. '[79] A permit to remove material is required and may not be granted unless such material is not otherwise available at reasonable cost. Removal may not significantly alter the physical characteristics of the area on an immediate or long-term basis. The Virgin Islands government collects a permit fee and a royalty on material sold.

The U.S. Virgin Islands and American Samoa do not assert their jurisdiction beyond the 3 nautical miles of Territorial Sea granted to them .[80] The other three self-governing territories have taken steps to assure themselves greater control of their marine resources.

By a law adopted in 1980, Guam defines its territory as running 200 geographical miles seaward from the low water mark. Within this territory, Guam claims ' 'exclusive rights to determine the conditions and terms of all scientific research, management, exploration and exploitation of all ocean resources and all sources of energy and prevention of pollution within the economic zone, including pollution from outside the zone which poses a threat within the zone. "[81] In a letter accompanying the bill, the governor stated that, "[a]s a matter of policy, the territory of Guam is claiming exclusive rights to control the utilization of all ocean resources in a 200-mile zone surrounding the island. "[82] Possible conflicts with Federal law were recognized, but the law was approved "as a declaration of Territorial policies and goals. Section 1001(b) of the proposed Guam Commonwealth Act includes a similar claim to an EEZ.[83]

Puerto Rico claims "[o]wnership of the commercial minerals found in the soil and subsoil of Puerto Rico, its adjacent islands and in surrounding waters and submerged lands next to their coasts up to where the depth of the waters allows their exploitation and utilization, in an extension of not less than 3 marine leagues . . "[84] This continental shelf claim extends beyond Puerto Rico's Territorial Sea. It combines the principles of adjacency and exploitability codified in the 1958 Convention on the Continental Shelf.[85] A statement of motives accompanying the 1979 amendments to Puerto Rico's mining law explains the Roman and Spanish law antecedents for government trusteeship of minerals. It also points out that Section 8 of the Organic Act of 1917 placed submerged lands under the control of the government of Puerto Rico and gave the island's legislature the authority to make needed laws in this field "as it deems convenient. The legislature concluded that "after 1917, the Federal Government has no title or jurisdiction over the submerged lands of Puerto Rico. The title is vested fully in Puerto Rico. It is up to the Legislature to determine the extent of said jurisdiction. "[86]

The most comprehensive territorial management program is that of the Northern Mariana Islands. The Commonwealth's Marine Sovereignty Act of 1980 establishes archipelagic baselines, claims a 12-mile Territorial Sea, and declares a 200-mile EEZ.[87] The Submerged Lands Act applies from the line of ordinary high tide to the outer limit line of the EEZ. It requires licenses and leases for the exploration, development, and extraction of petroleum and all other minerals in submerged lands.[88] The latter statute has been implemented by detailed rules and regulations.

These claims are based on the statutory law of the Trust Territory of the Pacific Islands which confirmed the earlier Japanese law "that all marine areas below the ordinary high watermark belong to the government."[89] A subsequent order of the Department of the Interior transferred public lands, among them submerged lands, to the constituent districts of the Trust Territory, including the Northern Mariana Islands. [90] In addition, Section 801 of the Covenant provides for transfer of the Trust Territory's real property interests to the Northern Marianas no later than the termination of the trusteeship.

There is some question as to whether the conditional inclusion of the Northern Marianas in the U.S. EEZ Proclamation ("to the extent consistent with the Covenant and the United Nations Trusteeship Agreement' implies recognition of local claims. There is also a question as to whether U.S. territorial law would permit this local claim to survive the transition to U.S. sovereignty. The Supreme Court has held that ownership of submerged lands is vested in the Federal Government as "a function of national external sovereignty, essential to national defense and foreign affairs. [91] When the trusteeship over the Northern Marianas ended, the United States extended its sovereignty over the islands

[78] Am. Samoa Admin. Code $$24.0201 to 24.0208 ( 1984).
[79] V.I, Code Ann. tit. 12, $906(b)(7) (1982).
[80] See note 24, above.
[81] Guam Code Ann. §402 ( 1980).
[82] *Id.*, Compiler's Comment.
[83] See note 29, above.
[84] P. R. Laws Ann. tit. 28, §111 ( 1985).
[85] 15 U, S. T, 471, T. I.A. S, No. 5578, 499 U. N.T. S. 311.
[86] 1979 P.R. Laws 279, 281.
[87] Commonwealth of the Marianas Code, tit. 2, $1101-1143 ( 1984).
[88] Commonwealth of the Marianas Code, tit. 2, $1211-1231 (1984).
[89] Trust Territory Code, tit. 67, §2(1970).
[90] Department of th Interior Order 2969 (Dec. 28, 1974).
[91] United *States* v. *California, 332* U.S. 19, 34 (1947).

and became responsible for their foreign affairs and defense. The situation of the Northern Mariana Islands may be comparable to that of Texas, which was admitted to the Union after having been an independent country. When it joined the United States, Texas relinquished its sovereignty and, with it, her proprietary claims to submerged lands in the Gulf of Mexico. [92]

In 1985, the Northern Mariana Islands Commission on Federal Laws suggested that Congress convey to the Marianas submerged lands to an extent of 3 nautical miles "without prejudice to any claims the Northern Mariana Islands may have to submerged lands seaward of those conveyed by the legislation. "[93] The Commission recognized that there are strong arguments for and against the Northern Marianas' continued ownership of submerged lands after termination of the trusteeship, but it pointed out that it "makes little sense" for the United States to transfer title to the islands, only to have that title revert to the United States under the doctrine of *United States v. Texas .94* The Commonwealth is still negotiating with the Executive Branch over the acceptance or modification of its marine claims.

[92] *United States v. Texas*, 339 U.S. 707 (1950).

[93] Second Interim Report to the Congress of the United States, 172. The Commission is appointed by the President under Section 504 of the Covenant to make recommendations to Congress as to which laws of the United States should apply to the Commonwealth and which should not,

### Territorial Ocean Laws

The history and culture of the territories are intertwined with the ocean. Some of them have acted to assert their own claims to manage ocean resources beyond the territorial sea, although their authority to do so is uncertain under U.S. territorial law. The present situation is one of latent conflict which could become active when marine prospecting or development is proposed. Should the United States decide that Federal jurisdiction is exclusive, an explorer or miner may be greatly delayed while Federal and territorial authorities argue their positions in court. A Congressional resolution of this conflict would require action using the plenary powers of the Constitution's territorial clause, tempered by the goals of American and international territorial law, and the political and economic development of the territories and their people.

[94] *Id.*, 178, 179.