

PACIFIC ISLANDS POLICY 5

U.S. Territorial Policy Trends and Current Challenges



ALLEN P. STAYMAN



EAST-WEST CENTER

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U.S. Territorial Policy

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Executive Summary

As a large continental power the United States has embraced a pragmatic and flexible approach to building stable relations with remote Island jurisdictions—each with its own unique history, culture, and economic potential. In light of their distinctive needs, the United States has extended special trade, tax, wage, financial assistance, and other privileges to support the growth of the Islands' less-competitive market economies.

In this landmark paper, Allen P. Stayman breaks new ground with his analysis of how, from legal and policy perspectives, the U.S. territorial system evolved. He identifies three distinct phases:

- **Incorporated territories.** Immediately following U.S. independence, the continental lands beyond the original 13 colonies were organized as incorporated territories before being admitted as states of the union.
- **Unincorporated territories.** Establishing remote islands as unincorporated territories gave the United States a legal means of governing such islands for which there was no expectation of statehood.
- **UN Trust Territory of the Pacific Islands.** Under U.S. administration, the Trust Territory districts determined their future political status consistent with the decolonization policies of the United Nations.

The author also analyzes how, since the 1980s, trade globalization and changing U.S. tax, trade, and economic policies have undermined many of the traditional, targeted economic supports for the Islands. As a consequence, he argues, some Islands, particularly American Samoa and the Commonwealth of the Northern Marianas, are facing dramatic economic declines. Concurrently, with the exception of Guam, the global recession is leading to a general weakening of Islands' market economies, with the United States and Island governments urgently seeking to address major new challenges to economic stability. Will policymakers be successful at revitalizing those Island communities that have historic ties to the United States, or will the

economies continue to weaken and Islanders seek better opportunities by increasingly migrating to Hawaii and the continental United States?

U.S. Territorial Policy

Accountability and Anticorruption

A story about the Pacific Islands that is shared among U.S. government officials involved in the region is that during the nineteenth century, as European powers and the United States were competing for access to strategic ports and commercial opportunities in the Pacific, Island leaders sought to negotiate the best arrangements they could with potential allies. It is said that a representative of the British Empire was having difficulty impressing upon an Island king the advantages of an alliance with the British. In his frustration, the official produced a map of the world and pointed out the dimensions of the Empire—from Canada, through Middle America, Africa, India, China, to Australia and New Zealand. Then, his finger came to rest on a tiny dot in the Pacific. “And this,” he said, “is your island.” The king considered the statement for a moment and then asked, “Who made this map?”

The tale makes light of the challenges of building relations between large, industrialized nations and small, isolated islands. There are not only vast oceans to bridge, but vast differences in history, culture, and economic potential.

Introduction

The U.S. territorial system has evolved through three phases over a span of 230 years, in part to accommodate the challenge of building relations between the United States—a continental power—and small Island jurisdictions. The first phase of this system, beginning in 1787, was that of the “incorporated territory,” under which U.S. land beyond the 13 original states was organized into federally governed territories, with the expectation that they would eventually be admitted to the union as states. The second phase, beginning in 1898, was that of the “unincorporated territory,” under which recently acquired Pacific and Caribbean Islands were organized as federally governed territories, but there was no expectation of eventual statehood. Finally, in 1947, the third phase in U.S. territorial policy emerged: the “trust territory,” under which those

Islands of Micronesia captured from the Japanese Empire were given the opportunity to exercise self-determination regarding their future political status pursuant to the decolonization policies of the United Nations.

This paper summarizes the evolution of U.S. territorial policy through these three phases, and then reviews how the United States has sought to accommodate the special circumstances of these insular areas—particularly their inherent economic disadvantages—by extending tax, trade, and other program privileges. Finally, this paper examines several challenges the United States and the Islands face as they seek to strengthen the Islands’ economies and respond to national political trends.

U.S. Territorial Policies

Today, the United States no longer has incorporated territories or a trust territory, but there are five unincorporated territories: Puerto Rico and the U.S. Virgin Islands in the Caribbean and American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands (CNMI) in the Pacific. (The Philippines is a former unincorporated territory that achieved independence in 1946.) Also closely affiliated are three states that are now in “free association” with the United States: the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau. These three sovereign nations evolved from districts of the former Trust Territory of the Pacific Islands (TTPI), which was established by the United Nations at the conclu-

U.S. interests initially were driven by the activities of Yankee traders, but it often turned out that national interests, and ultimately sovereignty, followed business interests.

sion of World War II. The United States was charged with administering the TTPI and, following the establishment of sovereign self-government under their respective Compacts of Free Association with the United States and termination of the Trusteeship by the United Nations,

continues to provide economic assistance and for mutual defense for these former TTPI entities. The Northern Marianas Islands was also a district of the former UN Trust Territory, but it separated from the TTPI in 1976 to become an unincorporated U.S. territory.

The extension of U.S. sovereignty to the CNMI is the most recent significant development in a long history of United States–Pacific Island relations. Yankee traders have been traversing the Pacific since before the American Revolution. Initially, U.S. national interests were driven by the commercial activities of these traders, but, in many cases, it turned out that national interests, and ultimately sovereignty, followed business interests. For example, the

Guano Acts of 1856 authorized U.S. protection for American citizens who discovered and exploited guano, an organic fertilizer found on remote islands.¹ This legislation later gave the U.S. president the discretion to extend U.S. sovereignty over such islands. Beginning with Baker Island, claimed in 1859, the United States acquired dozens of small, uninhabited islands. Many of these remain U.S. possessions, generally under the jurisdiction of the Department of the Interior, which manages them as bird sanctuaries.

The United States developed a deeper strategic interest in certain larger, inhabited islands because of expanding commercial interests and because many Americans believed that it was the destiny of the young nation to expand and become a global power. In accord with this vision, naval strategists such as Alfred Mahan promoted the establishment of a system of U.S. naval bases to support and protect expanding naval and commercial activities. Eighteen ninety-eight was a defining year for U.S. territorial expansion with the annexation of Hawaii and the acquisition of the Philippines, Guam, and Puerto Rico as a consequence of the Spanish-American War. Shortly thereafter, in 1900 and 1905, U.S. sovereignty was also extended over the Islands of Eastern Samoa, now called American Samoa, following negotiations with Great Britain, Germany, and the chiefs of the Islands. However, the acquisition of these Islands and the subsequent debate over their political status and the status of the inhabitants would challenge the United States' traditional territorial system and its basic values.

The acquisition of offshore territory polarized the national body politic between expansionists and isolationists. Expansionists, such as U.S. President Theodore Roosevelt, saw sovereignty over the Islands as a part of the nation's manifest destiny to become a global power: "The guns of our warships have awakened us to new duties," he said. "We are face to face with our destiny, and we must meet it...."² By contrast, Senator George Hoar, of Massachusetts, felt that the acquisition of overseas territory would turn the United States into "a vulgar, commonplace empire founded upon physical force."³

The acquisition of offshore territory polarized the national body politic between expansionists and isolationists.

Phase One: Beyond the 13 Colonies

The nation's initial territorial policy was written in the wake of its anti-colonial revolution and even before the U.S. Constitution was adopted. The union of former colonies that had freed itself from British control never contemplated an overseas empire. The confederation of former colonies formed a narrow coastal strip, vulnerable to seaboard attack, as well as inland incursions, from the British and Spanish.

In the earliest years of independence, westward settlement was seen not only as a way to provide greater economic opportunity for Americans, but also as a means to defend against European encroachment. To address this strategic concern, the Congress enacted the Northwest Ordinance of 1787, perhaps the most important law passed by the pre-constitutional legislative assembly.⁴

The Ordinance guaranteed that nonindigenous inhabitants of the lands west of the Allegheny Mountains and northwest of the Ohio River would have the same rights and privileges as U.S. citizens in the original states. It also established

The Northwest Ordinance provided a vision of equality for new territories as states.

the policy that statehood was the expectation for all territories and it set forth a process for Congress to create states out of the territories and incorporate them into the union. New territories were initially

governed by a federally appointed governor, but as their populations and economies grew, Congress provided for the election of local legislatures and for eventual entry into the union on an equal footing with the existing states.

When the U.S. Constitution was adopted two months later, key elements of the Ordinance were included, such as the affirmation that Congress had plenary power, and thus broad flexibility, to “make all needful Rules and Regulations respecting the Territory or other property belonging to the United States.”⁵

Congressional power and flexibility, when guided by the Northwest Ordinance and its vision of equality for new territories as states, established a successful policy that endured for most of 175 years. Over that course of time, it promoted the orderly expansion of the nation from 13 to 50 states—from the Atlantic coast to the Pacific, and farther on to the noncontiguous territories, and ultimately states, of Alaska and Hawaii.

Phase Two: Unincorporated Territories

At the close of the nineteenth century, as a consequence of the Spanish-American War, the United States acquired Puerto Rico, the Philippines, and Guam. Two years later, in 1900, through negotiations, U.S. sovereignty was extended to Eastern Samoa, now American Samoa. Finally, during World War I, the nation purchased the Virgin Islands from Denmark in the belief that Germany had designs on acquiring them. Only after acquisition did American leaders begin to consider the difficulties of applying the nation’s traditional territorial policy of evolution to statehood to these remote islands. Unlike the continental territories that were largely inhabited by settlers from the eastern states who generally shared a common citizenship, language, and culture, the new territories were already inhabited with people of distinctly different backgrounds

and values, and who were not U.S. citizens. The dilemma launched the second chapter of the nation's territorial policy.

From the U.S. perspective, the interests that bound these Islands to the nation were essentially strategic. Acquisition was motivated by a desire to support U.S. military and commercial expansion, not to satisfy the aspirations of the inhabitants to exercise their political and legal rights as U.S. citizens. Congress, in whose hands the issue squarely rested, was deeply divided between those who supported expansionism and those who saw the acquisition of offshore lands as colonialism, and incompatible with America's anti-colonial past. With no political solution to this political dilemma, the issue of the new territories' status was decided in a series of Supreme Court cases, known as the Insular Cases, which first arose over the question of whether duty was to be paid on oranges imported from Puerto Rico to New York.⁶ More fundamentally, the issue was: Could the United States acquire territory if Congress did not extend all the benefits of the U.S. Constitution and the long-standing policy of incorporation?

The Supreme Court, by the narrowest of margins, created a new political status: the "unincorporated territory."⁷ It found that the nation could acquire lands and decide, selectively by statute, whether to apply the provisions of the U.S. Constitution. While the Court further found that the fundamental individual rights of the inhabitants of such unincorporated territories were protected by the Constitution, it deemed that Congress need not extend citizenship nor extend a promise of eventual statehood. Instead, the Court found that Congress had the discretion to extend federal laws and constitutional rights it deemed reasonable. Today, residents of the unincorporated territories are U.S. citizens, or in the case of American Samoa, U.S. nationals. Generally, they enjoy most of the constitutional and legal rights of citizens of the United States, but they do not vote for president, are not represented in the U.S. Senate, and have nonvoting delegates in the House of Representatives. On closer examination, it is seen that the inhabitants of many of

Each territory has evolved a distinct political and legal relationship with the United States.

these Islands hold distinctive cultural norms regarding land, property, and judicial process. As Congress and U.S.-appointed governors sought to promote local self-government consistent with U.S. political and economic principles, they faced the challenge of accommodating these cultural norms. Accordingly, Congress used its discretion under this new territorial policy to extend, withhold, or modify the applicability of federal laws to each of the territories as Congress thought appropriate. As a result, each has evolved a distinct political and legal relationship with the United States. This lack of uniformity in U.S.

territorial relations makes federal policy decision making complex and challenging. Before examining some of these challenges in relations with the Pacific territories, it is useful to quickly describe the third phase of U.S. territorial policy—the evolution of several of the districts of the former UN Trust Territory of the Pacific Islands into freely associated states.

Phase Three: UN Trust Territory

The Allied victory in World War II set the stage for the third phase in U.S. territorial policy. The nineteenth-century policy of territorial expansionism gave way to a twentieth-century policy that rejected the acquisition of territory through war. Instead, U.S. strategic interests were to be addressed increasingly through international mechanisms.

With the formation of the United Nations and the creation of the organization's Trusteeship and Security Councils, the Islands of Micronesia north of the Equator (except Guam, which was already a U.S. territory) were placed under the Security Council's jurisdiction as a Trust Territory to be administered by the United States on behalf of the international community. In discharging its obligations, under United Nations' oversight, the United States was to foster the development of political institutions and promote economic, social and educational advancement.⁸ However, during the initial period of U.S. administration of these Islands little was done to promote development. Beginning in the 1960s, at the height of the Cold War, the United States significantly

All but one of the former UN Trust Territory districts of the Pacific achieved sovereignty in free association with the United States.

increased economic assistance, motivated in part by a concern about the United Nation's oversight and a fear that a lack of commitment might jeopardize the United States' long-term security interests in the Islands. Washington provided

several hundred million dollars in development assistance in the 1960s and 1970s. This dramatic turnaround impressed Micronesians and the United States offered them U.S. citizenship and entry into the American political family, with their Islands as unincorporated territories. The offer was accepted by the people of the District of the Northern Mariana Islands in 1976, and Congress soon ratified the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States.⁹

The other districts of the Trust Territory, however, were concerned that the extension of U.S. sovereignty was incompatible with their culture and their aspirations for national sovereignty and full self-government. They proposed a third alternative—free association—a form of independence based on an agreement with the United States that would continue U.S. assistance and

provide for mutual defense. In order to meet the international test for being of non-colonial status, these agreements must provide for unilateral termination of the agreement by either party. After the separation of the Northern Mariana Islands from the Trust Territory, the remaining Micronesian Islands ultimately separated into three political entities: the Marshall Islands, Federated States of Micronesia, and Palau—and they eventually entered into Compacts of Free Association with the United States following UN-observed plebiscites.¹⁰ These relationships have been quite successful. In the case of the Marshall Islands and Micronesia, the assistance provisions of the Compacts were renegotiated and extended for an additional 20 years, until 2023.¹¹ U.S. assistance under the Compact with Palau expires at the end of fiscal year 2009. The Compact is currently under joint review and President Barack Obama's administration is expected to send recommendations on future assistance to Congress by the end of 2009.

The Unresolved Future Political Status of Unincorporated Territories

Looking back, we can see that the continental territories that developed under the guidance of the Northwest Ordinance attained statehood and resolved their political relationships with the United States. Similarly, except for the Northern Mariana Islands, the Trust Territory districts achieved sovereignty in free association with the United States.

By contrast, the unincorporated territories of Guam, American Samoa, the Northern Mariana Islands, the Virgin Islands, and Puerto Rico continue to have unresolved political status. In the case of Guam, American Samoa, and Puerto Rico,

The unincorporated territories of Guam, American Samoa, the Northern Mariana Islands, the Virgin Islands, and Puerto Rico continue to have unresolved political status.

this condition has lasted for over a century. All of these territories are under U.S. sovereignty and today the inhabitants have U.S. citizenship or nationality, but there is no policy goal as to their ultimate political status. Will it be statehood, independence, or free association?

Puerto Rico, which has four million people and is about as populous as the median population of the 50 states, has a sizable and active statehood movement. The other unincorporated territories, each of which has fewer than 150,000 people, are generally regarded in Congress as being too small in population for consideration as states of the union. Alternatively, independence would mean the loss of U.S. citizenship (or nationality, in the case of American Samoans), which, after generations, has become a vital part of the

identity of most Islanders. Many members of these Island communities have, at some point, lived in the United States—perhaps attending school or college, or living with relatives. Any status proposal that could result in the loss of U.S. citizenship seems unworthy of the United States and is probably not politically viable.

Wide Legal Flexibility for Establishing Unincorporated Territorial Policies

Many regard the subordinate political status of the unincorporated territories under the Territorial Clause as a lesser political status. Nevertheless, it comes with significant economic and political advantages. The Territorial Clause

Each territory's economy has evolved in response to its unique geographic, social, and legal circumstances, including its unique treatment under federal laws.

grants Congress wide flexibility to extend, withhold, or modify the applicability of U.S. laws to the Islands. This is particularly valuable with respect to tax and trade laws, which would otherwise be subject to the so-called “uniformity clause” of the Constitution, requiring

that “all Duties, Imposts and Excises shall be uniform throughout the United States.”¹² Generally, this flexibility has been used by Congress to enact special tax and trade privileges to bolster the Islands’ inherently limited economic potential because they are small, remote, and resource-poor.

How federal laws are modified to apply in each of the Islands is understood by few federal or local officials, and their complex interaction and impacts within each of these communities is often less understood. These challenges are exacerbated when changes to national laws have unintended consequences in the territories. For example, the earned income tax credit, enacted in 1975, requires the federal government to make payments to certain qualifying low-income wage earners. In the territories, where average incomes are much lower than in the states, this policy has created substantial financial liabilities for the territorial governments, which have to assume the duties of the federal government with respect to collections and payments under the federal income tax program. In addition, efforts to enact specific modifications to national laws to accommodate special circumstances in the Islands may be distorted, or blocked entirely, due to political resistance to such “special treatment” within the U.S. Congress. A recent example of this, discussed later in this paper, is the 1938 law that established the nation’s minimum wage. The 110th Congress increased that minimum wage level and there was controversy as to whether to allow the CNMI and American Samoa to continue to receive special treatment. In the

case of the CNMI, that meant being allowed to set its own minimum wage, and, in American Samoa, having special industry committees recommend the rate of increase in the minimum wage to the U.S. Secretary of Labor.

Developing and enacting new or modified laws to compensate for the erosion in the effectiveness of older laws that were enacted to promote economic development is one of the biggest challenges currently facing U.S.-territorial relations. Beginning with the Foraker Act of 1900¹³ (which established the “coverover” policy of transferring federal collections derived from the territories into the local treasuries), the Tariff Act of 1909¹⁴ (which first placed territories outside of U.S. customs jurisdiction), and the Revenue Act of 1921¹⁵ (which first established the possessions tax credit), Congress has used the flexibility granted by the Territorial Clause to enhance the Islands’ economic competitiveness. Over the decades, each territory’s economy has evolved in response to its unique geographic, social, and legal circumstances, including its unique treatment under federal laws. Now, trends in global free trade and domestic tax simplification have eroded the value of some of these laws. An overview of the territories reveals specific examples of laws that were enacted to provide economic advantage and how those laws, and their effectiveness, are changing.

Economic Enhancement Laws and Their Erosion

Taxes, trade, and wages are three important areas where Congress has used its flexibility to enact such territory-specific policies to promote economic development. A fourth area that has inadvertently become important is local immigration control. “Inadvertently” is an appropriate term because Congress delegated immigration control to American Samoa and the CNMI not to confer an economic advantage, but as a social policy to protect those communities from the impact of non-indigenous migrants. The U.S. relationship with these two territories, as established in the Treaties of Session with American Samoa and in the Covenant with the CNMI, restrict land ownership to indigenous persons with the intent of

The U.S. relationship with American Samoa and the CNMI restricts land ownership to indigenous persons with the intent of preventing alienation from their land.

preventing alienation from their land. Local control of immigration was intended to further this same policy objective because small Island communities could be overwhelmed by immigrants under the relatively unrestrictive U.S. immigration law. Ironically, both the CNMI and American Samoa have instead used this privilege to establish large guest worker programs. In

Samoa, guest workers constitute about 20 percent of the total workforce, while in the CNMI during the early 1990s, aliens comprised over half of the total workforce.¹⁶

Five Key Territorial Economic Enhancement Policies

There are numerous federal policies that include general, or territory-specific modifications designed to respond to the unique circumstances of the Islands. These range from narrow examples of special treatment, such as minimum allocations for territories under federal grant programs, to broad exemptions from federal law such as the being placed outside of the customs or immigration territory of the United States. Five of the most significant such policies, chosen because of their overall impact on Island economies, are summarized below.

I. Customs, Duty, and Quota Treatment of Territorial Products

Currently, the Tariff Schedules of the United States provide that, except for Puerto Rico, the U.S. territories and possessions are outside of the customs territory of the United States. The Tariff Act of 1909 first explicitly placed Guam, American Samoa, and the Philippines outside of U.S. customs jurisdiction regarding tariffs.¹⁷ The Covenant that established the CNMI in political union with the United States specifically placed those Islands outside of U.S. customs jurisdiction regarding tariffs.¹⁸ Without special treatment, U.S. tariffs would apply to any products shipped from the territories into the United States just as they would apply to products shipped from foreign nations. However, the tariff schedules further provide, under General Note 3(a)(iv),¹⁹ that U.S. tariffs do not apply to imports from the territories as long as a certain percentage of the product's value is attributed to the territory.

This special treatment for products shipped from the territories was initiated in the U.S. Virgin Islands in 1917²⁰ and required that no more than 20 percent of the value of a product be "foreign content" to be imported into the United States duty-free. In 1950, the Organic Act of Guam²¹ provided for an exemption for shipments from the Island with no foreign content limitation. The Customs Simplification Act of 1954²² consolidated these policies and extended them to American Samoa by providing that U.S. duties would apply to all products shipped from the territories (not including Puerto Rico), except for those with 50 percent or less foreign content. In 1962, the policy was codified as General Note 3(a)(iv) of the Harmonized Tariff Schedule.²³

The Caribbean Basin Economic Recovery Act of 1984²⁴ increased the foreign content allowance for duty-free treatment from 50 percent to 70 percent, except for tuna, watches, petroleum, and certain textiles. Section 603 of the

Covenant provides that goods from the CNMI get the same treatment as those from Guam.²⁵

The opportunity to export products duty-free to the United States has been a powerful incentive for investment and economic development in the territories, particularly for the tuna canning industry in American Samoa and the garment industry of the CNMI. However, the value of duty-free treatment has been eroding since the United States began entering into free-trade agreements, starting with the North American Free Trade Agreement²⁶ in 1994, and with the implementation of World Trade Organization (WTO) agreements to phase out worldwide garment quotas by 2005.

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The phase-out of global quotas on garments has undermined garment manufacturing in the CNMI because quota-free access to the U.S. market was a major incentive to investment. While U.S. import quotas were in place, People's Republic of China manufacturers and others with excess capacity, found it profitable to relocate their plants to the CNMI in order to take advantage of quota-free exports to United States. The CNMI had two other potential advantages as well: Depending on the value of local content, its exports may also qualify for duty-free treatment, and manufacturers there can choose to use "Made in the U.S.A." labels. Without the quota system, however, garments can now be exported directly to the United States from foreign manufacturing centers and the CNMI has lost a critically important competitive advantage. The CNMI garment industry has been contracting since the end of 2005, and the last factories closed in early 2009.

The tuna canning industry in American Samoa is similarly supported by quota-free and duty-free access to the U.S. market, and it is also vulnerable to bilateral and regional free-trade agreements that may provide foreign producers with quota-free and duty-free access to the U.S. market. If such agreements are approved by Congress, the two manufacturers in American Samoa will consider relocating their operations to nations such as Thailand and Ecuador that have fish processing capability, are located near fishing resources, and have lower wage levels than in American Samoa.

II. Tax Benefits for Territorial Corporations

The first of the territorial tax benefit laws, designed primarily for the Philippines, was section 262 of the Revenue Act of 1921,²⁷ which exempted certain qualified U.S. corporations from taxes on income earned in the territory. This

policy remained essentially unchanged until the exemption was replaced with an equivalent tax credit, the so-called “Possessions Tax Credit” under the Tax Reform Act of 1976.²⁸ Subsequent changes to the credit were made in an effort to reduce abuse by corporations that were assigning intangible income

The first of the territorial tax benefit laws, under the 1921 Revenue Act, exempted qualified U.S. corporations from taxes on income earned in the territory.

to their territorial operations, thereby increasing the amount of their tax credit without actually increasing the level of economic activity. The U.S. Treasury Department saw these corporations as abusing the credit, so it promoted revisions to the law that more directly tied

the credit to actual economic activity by linking the credit to a corporation’s actual, and verifiable, payroll and capital investment in the Islands. This reform trend culminated in 1996 when Congress enacted a complete phase-out of the credit by the end of 2005.

Section 936 was used primarily by manufacturers in Puerto Rico, but it was also important to the tuna canneries of American Samoa. The 1996 repeal language provided for a 10-percent annual reduction in the credit during a ten-year transition to a wage and investment credit in Puerto Rico. But for American Samoa, the law allowed for 100 percent of the credit to be used for the entire ten-year period, with a complete termination at the end of 2005. The canning industry is vital to the American Samoa economy, accounting for an estimated 90 percent of economic activity.²⁹ Since 2006, Congress has been extending the credit for the two manufacturers in American Samoa on an annual basis, and the credit’s future is uncertain.

III. Coverover of Federal Collections to the Territories

Residents and corporations in the territories do not generally pay duties or taxes to the federal government. This policy is consistent with the U.S. political principle of “no taxation without representation,” and provides a basis for federal support of the territorial economies through the “coverover,” or transfer, of federal collections from the U.S. Treasury to the local Island governments. For example, beginning in 1950, Section 30 of the Organic Act of Guam provided that the U.S. Treasury transfer to Guam, “All customs duties and federal income taxes derived from Guam....”³⁰ In 1972, this policy was expanded to provide for the transfer of any federal taxes withheld from military personnel or other federal employees who are legally stationed on Guam. Finally, in 1984, the Organic Act was amended to provide that the United States also transfer any federal taxes withheld from military personnel domiciled on Guam but serving *outside* of Guam.³¹ In recent years, this transfer has been about \$55 million annually, or

about 11 percent of the local government's total revenue.³² With the planned military expansion on Guam, annual Section 30 revenues are expected to double.

Similarly, section 703(b) of the Covenant between the United States and the CNMI provides that there will be paid into the Treasury of the CNMI "all customs duties and federal income taxes derived from the Northern Mariana Islands...."³³ The Tax Reform Act of 1986³⁴ added American Samoa to those territories eligible for this coverover, but because there are few federal employees in the CNMI and American Samoa, this has not been a significant source of revenue for those governments. With the recent extension of U.S. immigration laws to the CNMI, the coverover will increase with the increase in the number of border control and other immigration personnel.

'No taxation without representation' provides a basis for federal support of the territorial economies through the transfer of federal collections to local Island governments.

IV. Minimum Wage Treatment in the Territories.

The Fair Labor Standards Act (FLSA) of 1938³⁵ established wages and work hours for U.S. workers throughout the 50 states and territories. In 1940, in recognition of special circumstances in the Islands, the law provided for the establishment of Special Industry Committees to recommend wage levels below the national minimum wage in the territories, except Guam, on an industry-by-industry basis. The objective of the Special Committees was "to reach [the national statutory minimum wage] as rapidly as is economically feasible without substantially curtailing employment...."³⁶ The Virgin Islands and Puerto Rico became subject to the Special Committees in 1940, but in 1977 Congress enacted automatic step increases to bring them up to the national wage level so that they are now up to the national level and are fully covered by the FLSA's national wage provisions. The Special Committee process was applied to American Samoa in 1956 and it continued until the Committees were abolished with the enactment of Public Law 110-28³⁷ in 2007. This law increased the national minimum wage and replaced the Special Committee system with a requirement that the American Samoa minimum wage be increased by fifty cents annually until it reaches the new national minimum wage level of \$7.15 an hour.

The minimum wage in Guam has never been subject to the Special Committees because the FLSA was extended in full to Guam in 1957. The CNMI had neither the FLSA national minimum wage level nor the Special Industry Committees because Section 503(c) of the Covenant provides that "the

minimum wage provisions of the FLSA...will not apply to the CNMI unless Congress decides otherwise following trusteeship termination.”³⁸ In 2006, the local CNMI minimum wage was about 60 percent of the national minimum wage—\$3.05 per hour compared with \$5.15. However, P.L. 110-28 brought the CNMI under the FLSA and provided that the CNMI’s minimum wage, as with the minimum wage in American Samoa, would be increased by 50 cents annually until reaching the national minimum wage level of \$7.15 an hour.

V. Immigration Treatment for the Territories

The Immigration and Nationality Act defines its scope of applicability as the 50 states, District of Columbia, Puerto Rico, and the U.S. Virgin Islands. As noted earlier, federal immigration control was not extended to American Samoa and the CNMI in order to allow the local government to limit the influx of immigrants and reduce their impact on the indigenous community. In both cases, however, the privilege has been used to establish a system to admit guest workers and foreign investors. Title 41, the section of the American Samoa Code regarding immigration, provides that the law is to be applied to limit entry into American Samoa to persons of American Samoan ancestry, their spouses, and their children. Section 503(a) of the Covenant with the CNMI provides that the immigration and naturalization laws of the United States are among those laws not applicable unless Congress decides otherwise following termination of the UN Trusteeship, which occurred in 1986. The legislative history stated that “the reason this provision is included is to cope with the problems which unrestricted immigration may impose upon small island communities.”³⁹

Local control of immigration, combined with local control of minimum wage, has allowed both governments to establish large guest worker programs that provide a substantial portion of the private sector workforce. It is unlikely that either the American Samoa tuna canning industry or the CNMI garment industries could survive without these workers.

On the other hand, there are impacts from local immigration control that are less easily quantified. For example, guest workers and their families are contributing to high population growth rates that stress public services and infrastructure. (Of note is the fact that guest workers’ children who are born in the territories are U.S. citizens, or nationals in the case of those born in American Samoa.) The population of the CNMI grew from 16,780 in 1980⁴⁰ to 82,459 in 2008,⁴¹ but it is now declining due to the departure of the garment industry. In American Samoa, the population has grown from 32,297 in 1980⁴² to 57,794 in 2006.⁴³ Because guest workers are low-wage workers, their relative contribution to government revenues is low and may not be

sufficient to offset their overall impact on the community. This poor cost-benefit ratio may be compounded by the fact that many guest workers send a portion of their wages to family outside of the territory, and thus out of the local economy. For example, an estimate of remittances from the CNMI in 2005 was a surprising \$114 million⁴⁴—more than 10 percent of the Commonwealth’s gross island product. The social impact of guest workers is limited in American Samoa because they are nearly all recruited from the independent nation of Samoa and share the language and culture of American Samoa. However, the social impact of guest workers is far greater in the CNMI because the workers come primarily from China and the Philippines and do not share a common language and culture with the local inhabitants.

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Congressional Actions and Responses

In some cases, federal legislation has been enacted in response to developments in the U.S. territories in the Pacific Islands. For example, legislation to extend U.S. immigration laws to the CNMI has been driven by federal concerns over the local immigration and labor policies, particularly the failure of the CNMI to properly control the size of its guest worker program, to protect alien workers from mistreatment, and to assure proper border control in the post–September 11 security environment. In other cases, legislation affecting the territories has been enacted as an element of broad national legislation. Following the 2006 elections, in which the Democratic Party gained majorities in both houses of Congress, Democrats acted swiftly to fulfill their campaign pledge to increase the national minimum wage. Prior to the election, little consideration was being given to changing federal minimum wage policy with respect to the Islands. Yet, as lawmakers crafted legislation to increase the federal minimum wage, they added provisions to gradually raise the minimum wage in both American Samoa and the CNMI to the national level.

The following brief discussions highlight congressional action with respect to these five key territorial economic enhancement policies as they apply to the U.S. territories in the Pacific.

American Samoa

It is estimated that 90 percent of the economy of American Samoa is tied to its two canneries. An economic crisis is at hand because of the recent phase-out of

the Possessions Tax Credit, changes in the federal minimum wage policy, and globalization of trade.

Congress repealed the Possessions Tax Credit effective at the end of 2005, but since then has enacted short-term extensions to encourage the canneries to continue operating. Starting in 2006, Congress has passed modified two-year extensions tied specifically to wages and capital investment in the two existing canneries. These modified credits are less susceptible to abuse than the income tax credit used in the past, but their short duration and narrow availability to only the canneries leaves American Samoa with no federal tax credit with which to recruit new investors.

As described earlier, since 1956 Special Industry Committees have set the minimum wage levels in American Samoa on an industry-by-industry basis. But new legislation that went into effect in 2007 stipulates that the minimum wage is to be increased by 50 cents every May 25 for all industries until it

reaches the national level of \$7.15. In 2006, soon after enactment of the new national minimum wage law, the U.S. congressional delegate and governor from American Samoa first expressed concern that these automatic increases

Amendments to the new minimum wage law that would provide for any delay in the increases have, so far, been unsuccessful.

in the minimum wage were too inflexible to guard against damage to the local economy and they sought changes to the law. They called for the scheduled increases to occur every two years, instead of annually, and asked for a stipulation that any of the increases could be postponed if the U.S. Secretary of Labor found, based on a report of the Bureau of Labor Statistics, that the scheduled increase would significantly curtail employment in the territory.

Despite support for these changes among key members of the House and Senate committees with jurisdiction for insular affairs,⁴⁵ amendments to the law that would provide for any delay in the increases have, so far, been unsuccessful. Opposition to changes has been concentrated in the House and Senate committees responsible for wage legislation. Committee staff argue that the case has not been made that the automatic increases will cause unacceptable damage to the economy of American Samoa. The realities of the national minimum wage debate, including demands for special treatment from many distressed communities and business sectors, appear to make it politically unrealistic to enact special treatment for the territories.

In addition to petitioning Congress and the executive branch of the federal government for broader tax credits and to delay application of the full national minimum wage, the Government of American Samoa has upgraded its communications infrastructure to include a fiberoptic link to the global fiberoptic cable

system. Such improvements are needed for the Islands to remain competitive, diversify their economy, and reduce their heavy reliance on the fish processing industry. Inexpensive, high-speed communications could allow American Samoa to become a call-center location because most Samoans speak English well. Other development opportunities, such as tourism, appear limited because of the remoteness of American Samoa, the high cost of air transportation, and the difficulty of acquiring land for tourist hotels and attractions in a community where nearly all land is communally owned.

As of this writing, the failure to reach agreement in Congress on a mechanism to delay or mitigate minimum wage increases has apparently contributed substantially to the announcement by one of the two canneries, Chicken of the Sea, that it will be ending cannery operations in September 2009. This decision will likely result in the loss of over 40 percent of the total cannery workforce, and, given the multiplier effect of the canning industry, it will probably result in a similar percentage loss to the overall economy. The other cannery, StarKist, was sold to a South Korean multinational corporation in 2008—an indication that the operation was struggling. If Congress does not take immediate action to defer minimum wage increases, it is likely that StarKist will also close and American Samoa will be facing a severe economic crisis. The result will be a significant depopulation of the territory as the largely foreign cannery workforce will return to independent Samoa and U.S. nationals will migrate to the 50 states seeking better services and job opportunities.

Commonwealth of the Northern Mariana Islands

Although the tourism industry is currently suffering a temporary slowdown, the CNMI's proximity to the large population centers of East Asia, appears to assure that it will always have significant tourism potential. By contrast, garment manufacturing, the other main element of the CNMI economy, is in permanent decline. The phase-out of textile quotas as of January 1, 2005—as agreed to by the World Trade Organization in 1995—has resulted in a substantial and continuing contraction of the CNMI garment industry. The United States availed itself of safeguard action—the temporary extension of quotas—under China's WTO accession protocol, but these safeguards are no longer available. The garment industry, which accounted for roughly 40 percent of the CNMI economy just a few years ago, is now gone.

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The reasons for the decline in the CNMI tourist industry are less clear, but the downslide certainly started with the economic recessions in Japan and

Korea, was intensified by damage caused by Super Typhoon Pongsona that hit the Islands in 2002, and now has been hit by the global economic recession. Private corporate decisions within the regional airline industry also appear to have contributed to the decline. One reason given for the tourism slowdown is that the CNMI is a relatively low-cost, low-profit market in a competitive region, so it is one of the first destinations to be curtailed by airlines as they seek to improve efficiency and earnings. In addition, as in American Samoa, the Covenant provides that non-indigenous persons cannot own land, but may only lease real property from indigenous owners. Because many tourist facilities are on leases which have used up much of their lease term, the economics of further investment in the properties is less favorable than in other nearby tourist markets, such as Guam, where investors can purchase land outright. Another factor identified as contributing to the decline is the deterioration in the CNMI's tourist "product" because of the huge population increase associated with local labor and immigration policies. Along with the fivefold increase in population from 1976 to 2006, water, power, wastewater, and other infrastructure and services have deteriorated. Finally, it is likely that increased crime—including drug trafficking, illegal gambling and prostitution—associated with poor border screening make the Islands less attractive to many investors and visitors.

The CNMI's immigration and labor policies promoted the widespread use of alien guest workers and resulted in a two-tiered economy—with U.S. citizens employed in the relatively high-wage public sector and the private sector relying heavily on the low-paid, alien labor force. This economic model has

The CNMI policy of using temporary workers for permanent jobs is inconsistent with current U.S. national immigration and labor policy.

drastically reduced the number of private-sector job opportunities for U.S. citizens, increased unemployment and welfare costs, and resulted in a significant portion of the community's wealth being lost through remittances by the alien workers.

Most significantly, the CNMI policy of using temporary workers for permanent jobs is inconsistent with current U.S. national immigration and labor policy which provides that alien workers employed in temporary jobs are given temporary immigration status, while alien workers employed in permanent jobs, are given a path to permanent residency and citizenship. The intent is that workers who are filling permanent jobs should be fully enfranchised in the community.

The response from Washington to these local policies was the enactment of immigration and labor reform legislation in early 2008.⁴⁶ The federal government first expressed concern about immigration and labor in a letter to the

governor in 1986, stating that “reports on the tremendous growth in alien labor in the Northern Mariana Islands are extremely disturbing.”⁴⁷ Congress initially attempted to address the concerns in 1994 by establishing a federal-CNMI Labor, Immigration, and Law Enforcement Initiative. Unfortunately, the CNMI government withdrew from this joint effort in 1997 and undertook a program to block any federal reform legislation. While reform legislation passed the U.S. Senate unanimously in 2000, no action was taken by the House of Representatives. It is generally accepted that the reason the House of Representatives did not act on this reform legislation was a result of the influence of Jack Abramoff, a lobbyist with close ties to House Majority Leader Tom Delay. Jack Abramoff had been hired by the CNMI government and garment industry to block federal reform legislation. In 2006, he pled guilty to fraud and has since become the center of a wide-ranging federal corruption investigation that has, so far, yielded more than a dozen additional guilty pleas and convictions.

It was not until after the conviction of Jack Abramoff and the retirement of House Majority Leader Tom Delay that the reform legislation was enacted. Subtitle A, Title VII, of the 2008 law⁴⁸ extended federal immigration laws to the CNMI with special provisions to minimize impacts on the local economy. These included: a transitional CNMI-only guest worker program to assure access to an adequate workforce; a CNMI-only investor program to allow existing foreign investors to remain in the CNMI; and a Guam/CNMI-only visa waiver program to continue and encourage travel to the Islands—particularly by visitors from countries such as China and Russia that are already vital to the CNMI’s tourism industry. Subtitle B, Title VII, of the new law also authorized the CNMI to elect a non-voting delegate to Congress, starting in 2009, to represent the territory on an equal footing with the other four U.S. territories. This provision may not be considered an economic initiative, but as a practical matter, having a representative in the U.S. Congress substantially strengthens the partnership between the federal and CNMI governments. A delegate enhances the ability of the CNMI to make its case for appropriate treatment under federal laws and to obtain a larger share of federal resources. The first CNMI delegate, Gregorio “Kilili” Sablan, was seated in the 111th Congress in January 2009.

The 2008 law extended federal immigration laws to the CNMI with special provisions to minimize impacts on the local economy.

The national minimum wage legislation enacted by Congress in 2007 extended the national minimum wage to the CNMI for the first time.⁴⁹ The law mandates annual increases of 50 cents until the national level is reached, as the

law also requires for American Samoa. A higher minimum wage will reduce the wage gap between alien and U.S. citizen workers, and it is expected to reduce the demand for alien workers, increase job opportunities for U.S. citizens, reduce the loss of wealth from the local economy through remittances, and move the CNMI economy away from its current two-tiered model. Nevertheless, the CNMI continues to face major challenges. There is growing concern that its weakening economy is less able to absorb the impact of the transition to federal immigration laws and of the annual minimum wage increases. Another challenge is that the CNMI government continues to resist immigration and labor reforms and is pursuing a lawsuit challenging Congress's authority to control the CNMI's guest worker program. This confrontational posture undermines the federal-CNMI dialogue and will almost certainly result in greater disruption to the economy than if there were cooperative engagement.

Guam

Of the Pacific territories, Guam relies least on the five key economic enhancement policies. It does not rely significantly on the Possessions Tax Credit, duty free treatment of exports to the United States, or on local control of immigration and wages to allow for a guest worker program. Nevertheless, Guam has a

Guam has a strong economy because of its position as the hub of the Micronesian regional economy and the sizable U.S. military presence.

relatively strong economy because of its position as the hub of the Micronesian regional economy and because it is the home of a sizable U.S. military presence. Unlike American Samoa and the CNMI, the economic outlook for Guam is good.

In addition, a planned increase in the U.S. military presence will boost the economy through increased federal spending for building, upgrading, and maintaining facilities, and for the support and supply of military personnel and their families. When the current build-up is complete, the population of Guam may have increased by as much as 40,000, or 30 percent.⁵⁰

Two provisions in the 2008 reform law that extended U.S. immigration laws to the CNMI with special provisions⁵¹ were included for the benefit of Guam and will help assure its future economic growth. First, section 702(a), which adds a new section 6(b) to the Covenant between United States and the CNMI, would exempt Guam from the national cap on the number of visas allowed for temporary workers to enter into the United States. This provision is essential if Guam is to obtain the workers it needs for construction related to the military buildup. Second, section 702(b)—as mentioned before with respect to the CNMI—authorizes a Guam-CNMI visa waiver program to facilitate travel to the Islands from certain Asian countries by eliminating the need for visitors to

obtain a visa—a time consuming requirement that frustrates efforts to promote tourism. At this time, regulations for this new program do not allow visitors from Russia and the People’s Republic of China to enter the territories because of concerns about border security. Hopefully, the visa waiver will be made available to visitors from these nations after additional security systems, such as equipment to gather biometric information on visitors, becomes operational.

While the military buildup offers obvious economic benefits to Guam, it also presents substantial planning, management, financial, and social challenges. It is important that the federal and local governments work together closely to properly plan and manage the buildup to avoid overwhelming existing infrastructure, or creating avoidable tensions between the military and civilian communities. The House Committee on Natural Resources and the Senate Committee on Energy and Natural Resources, which have jurisdiction for matters relating to the territories including Guam, held hearings in 2008 regarding the buildup, and the Government Accountability Office has been tasked to do several reports on aspects of the buildup. This issue will remain high on the legislative agenda during the 111th Congress.

Conclusion

For more than two centuries, United States territorial policy has evolved to accommodate the challenges of establishing political and economic growth and stability in the remote territories. In the former continental territories, Alaska, Hawaii, and the Philippines, and in the former jurisdictions of the Trust Territory, these objectives were successfully met by implementing policies that were guided by each territory’s political status goal: statehood, free association, or independence. In the case of the unincorporated territories, however, there is no political status goal, and therefore no policy-guiding principle. These Islands remain in status limbo, neither fully domestic nor foreign—a condition that complicates the development of solutions.

Trends in tax, trade, and wage policies since 1980 all create greater challenges for economic development in the Islands than existed before that time.

Trends in national tax, trade, and wage policies since 1980 all create greater challenges for economic development in the Islands than existed before that time. In American Samoa and the CNMI these challenges are maturing into crises with the CNMI likely to lose at least half of its 2005 economy by 2010, and American Samoa at serious risk of losing as much as 90 percent of its economy over the next five years.

Unincorporated territorial status has the advantage of allowing Congress the flexibility to tailor federal laws to each Island's special conditions and needs. However, in addition to the lack of policy-guiding principles, the Islands' small size and relative lack of political influence make it difficult for Island officials to persuade policymakers in Washington to consider and accept often unorthodox solutions to the territories' problems. As was the case during consideration of national minimum wage legislation in 2008, the Islands may be swept up into the national debate and a national policy will be applied without an adequate understanding of its local impact.

Unless Island leaders can join with the Obama administration to develop targeted economic revitalization plans for these jurisdictions and obtain the

The Islands' relative lack of political influence make it difficult for Island officials to persuade Washington to consider and accept often unorthodox solutions.

needed congressional support for implementation, there will probably be significant economic contraction in the CNMI and American Samoa that will result in depopulation as Islanders seek better opportunities in Hawaii and on the U.S. mainland. The challenge in Guam is not

depopulation, but properly managing growth to ensure that the military expansion is properly managed and the civilian community is not neglected while the needs of the military community are met.

Under normal economic conditions, I would be confident that federal and Island policymakers, even without policy-guiding principles, would develop effective policies and muddle through. However, during this global economic crisis, I am more concerned that federal officials may be unable either to find the necessary financial resources or focus their scarce time on creatively responding to the challenges facing these territories.

Notes

- ¹ *The Guano Act(s)*, 34th Congress, 1st sess. (August 18, 1856).
- ² Stanley Karnow, *In Our Image* (New York: Ballantine Books, 1989), 136.
- ³ *Ibid.*
- ⁴ *The Ordinance of 1787* (July 13, 1787), Papers of the Continental Congress, no. 50.
- ⁵ U.S. Constitution, art. 4, sec. 3, cl. 2.
- ⁶ *Downes v. Bidwell*, 182 U.S. 244 (1901).
- ⁷ *Ibid.*
- ⁸ *Trusteeship Agreement for the Former Japanese Mandated Islands*, Art. 6 (July 18, 1947), United States Statutes at Large 61:3301, T.I.A.S. No. 1665, 8 U.N.T.S. 189.
- ⁹ *Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America*, Public Law 94-241 (March 24, 1976), United States Statutes at Large 90 (1976): 263.
- ¹⁰ *Compact of Free Association Act of 1985*, Public Law 99-239 (January 14, 1986), United States Statutes at Large 99 (1986): 1770; Palau, Public Law 101-219 (December 12, 1989), United States Statutes at Large 103 (1989): 1870.
- ¹¹ *Compact of Free Association Amendments Act of 2003*, Public Law 108-188 (December 17, 2003), United States Statutes at Large 117 (2003): 2720.
- ¹² U.S. Constitution, art. 1, sec. 8.
- ¹³ *Foraker Act*, ch. 191 (April 12, 1900), United States Statutes at Large 31 (1900): 77.
- ¹⁴ *Tariff Act of 1909*, Public Law 61-5 (August 5, 1909), United States Statutes at Large 36 (1909): 11.
- ¹⁵ *Revenue Act of 1921*, Public Law 68-98 (April 17, 1924), United States Statutes at Large 43 (1924): 103.

¹⁶ Wali Osman, chief economist, U.S. Department of the Interior, Office of Insular Affairs, in a conversation with the author.

¹⁷ *Tariff Act of 1909*, Public Law 61-5 (April 17, 1924), United States Statutes at Large 43 (1924): 103.

¹⁸ *Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America* (March 24, 1976), United States Statutes at Large 90 (1976): 263.

¹⁹ Harmonized Tariff Schedule of the United States, GN p. 3, hotdocs.usitc.gov/docs/tata/hts/bychapter/0901gn.pdf#page=3.

²⁰ *Virgin Islands Organic Act*, Public Law 64-389 (March 3, 1917) United States Statutes at Large 39 (1917): 1132.

²¹ *Organic Act of Guam*, Public Law 81-630 (August 1, 1950) United States Statutes at Large 64 (1950): 384.

²² *Customs Act of 1954*, Public Law 83-768 (September 1, 1954) United States Statutes at Large 68 (1954): 1136.

²³ Harmonized Tariff Schedule of the United States.

²⁴ *Caribbean Basin Recovery Act*, Public Law 98-67 (August 5, 1983), United States Statutes at Large 97 (1983): 369.

²⁵ *Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America*, Public Law 94-241 (March 24, 1976), United States Statutes at Large 90 (1976): 263.

²⁶ *North American Free Trade Agreement Implementation Act*, Public Law 103-182 (December 8, 1993), United States Statutes at Large 107 (1993): 2057.

²⁷ *Revenue Act of 1921*, Public Law 68-98 (April 17, 1924) United States Statutes at Large 43 (1924): 103.

²⁸ *The Tax Reform Act of 1976*, Public Law 94-455 (October 4, 1976), United States Statutes at Large 90 (1976): 1520.

²⁹ Testimony of Togiola T. A. Tulafono, governor of American Samoa, March 1, 2006, S. Hrg. 109-417, 2.

³⁰ *Organic Act of Guam*, Public Law 81-630 (August 1, 1950), United States Statutes at Large 64 (1950): 384.

³¹ *Amendments to Guam Organic Act*, Public Law 98-454 (October 5, 1984), United States Statutes at Large 98 (1984): 1732.

³² U.S. Department of the Interior, Office of Insular Affairs, *Budget Justifications and Performance Information, Fiscal Year 2009* (Washington, DC: U.S. Department of the Interior, Office of Insular Affairs), 95.

³³ *Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America*, Public Law 94-241 (March 24, 1976), United States Statutes at Large 90 (1976): 263, Section 703.

³⁴ *The Tax Reform Act of 1986*, Public Law 99-514 (October 22, 1986), United States Statutes at Large 100 (1986): 2085.

³⁵ *Fair Labor Standards Act*, Public Law 75-718 (June 25, 1938), United States Statutes at Large 52 (1938): 1060.

³⁶ Ibid.

³⁷ *U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act*, Public Law 110-28 (May 25, 2007), United States Statutes at Large 121 (2007): 112.

³⁸ *Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America*, Public Law 94-241 (March 24, 1976), United States Statutes at Large 90 (1976): 263, Section 503(c).

³⁹ Senate Committee on Interior and Insular Affairs, *Report on the Covenant to Establish a Commonwealth of the Northern Mariana Islands*, 94th Cong., 1st sess., 1975, S. Rep. 94-433, 15.

⁴⁰ CNMI population in 1980, pacificweb.org/DOCS/cnmi/pdf/sexageprofile.pdf.

⁴¹ CNMI population in 2008, pacificweb.org/categories/Summary_Statistics/CNMI_ss.html.

⁴² American Samoa population in 2006, pacificweb.org/categories/Summary_Statistics/AmericanSamoa_ss.html.

⁴³ American Samoa population in 1980, pacificweb.org/DOCS/amsamoa/pdf/sexageprofile.pdf.

⁴⁴ Liberty Dones, "05 remittances at \$114.5M," *Saipan Tribune*, March 10, 2006, 1.

⁴⁵ Two letters signed by legislators with a long-standing interest in the Pacific Islands: dated May 18, 2007, to the House-Senate Conference on the Emergency Supplemental Appropriations bill from Senators Daniel K. Inouye, Daniel Akaka, Jeff Bingaman, and Delegates Eni F. H. Faleomavaega and Donna Christensen; and dated March 14, 2008, to the Senate Appropriations Committee from Senators Inouye, Akaka, Bingaman, and Delegate Faleomavaega.

⁴⁶ *Consolidated Natural Resources Act of 2008*, Public Law 110-229 (May 8, 2008), United States Statutes at Large 122 (2008): 754.

⁴⁷ Letter to Governor Froilan Tenorio from Assistant Secretary of the Interior for Territorial and International Affairs Richard Montoya, May 7, 1986.

⁴⁸ *Consolidated Natural Resources Act of 2008*, Public Law 110-229 (May 8, 2008), United States Statutes at Large 122 (2008): 754.

⁴⁹ *U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act*, Public Law 110-28 (May 25, 2007), United States Statutes at Large 121 (2007): 112.

⁵⁰ Testimony of Felix P. Camacho, governor of Guam, May, 1, 2008, S. Hrg. 110-510, 8.

⁵¹ *Consolidated Natural Resources Act of 2008*, Public Law 110-229 (May 8, 2008), United States Statutes at Large 122 (2008): 754.

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The Author

Allen P. Stayman was born in Philadelphia, Pennsylvania, and earned B.A. and M.S. degrees from the University of Washington, in Seattle. Stayman began his career in insular affairs in 1984 as a professional staff member for the U.S. Senate Committee on Energy and Natural Resources. His responsibilities included all matters related to the U.S.-affiliated insular areas: Puerto Rico, U.S. Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands (CNMI), Republic of the Marshall Islands (RMI), Federated States of Micronesia (FSM), and the Republic of Palau.

From 1993 to 1999, Stayman served as the deputy assistant secretary of the Interior for Territorial and International Affairs, a senior political position with responsibility for day-to-day operations of the Office of Insular Affairs, U.S. Department of the Interior. In early 1999, he was appointed director and special negotiator for the U.S. Department of State, Office of Compact Negotiations—the office tasked with negotiating extension of the provisions of the Compacts between the United States and the FSM and RMI that had several provisions due to expire in 2003.

Since rejoining the Senate Committee staff in 2003, Stayman has supported consideration of legislation to extend the Compacts and legislation to extend U.S. immigration laws to the CNMI. His current focus is on oversight of implementation of these two laws and on other developing issues such as the extension of U.S. assistance to the Republic of Palau under the U.S.-Palau Compact of Free Association, responding to the economic challenges facing the Islands, and the future political status of Puerto Rico.

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Submissions to Pacific Islands Policy may take the form of a proposal or completed manuscript (7,000–11,000 words).

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A curriculum vitae indicating relevant qualifications and publications should accompany submissions.

Submissions must be original and not published elsewhere. The author will be asked to assign copyright to the East-West Center.

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ABOUT THIS ISSUE

As a large continental power the United States has embraced a pragmatic and flexible approach to building stable relations with remote Island jurisdictions—each with its own unique history, culture, and economic potential. In light of their distinctive needs, the United States has extended special trade, tax, wage, financial assistance, and other privileges to support the growth of the Islands' less-competitive market economies.

In this landmark paper, Allen P. Stayman breaks new ground with his analysis of how, from legal and policy perspectives, the U.S. territorial system evolved. He identifies three distinct phases: incorporated territories, unincorporated territories, and the UN Trust Territory of the Pacific Islands.

The author also analyzes how, since the 1980s, trade globalization and changing U.S. tax, trade, and economic policies have undermined many of the traditional, targeted economic supports for the Islands. As a consequence, he argues, some Islands, particularly American Samoa and the Commonwealth of the Northern Marianas, are facing dramatic economic declines. Concurrently, with the exception of Guam, the global recession is leading to a general weakening of Islands' market economies, with the United States and Island governments urgently seeking to address major new challenges to economic stability. Will policymakers be successful at revitalizing those Island communities that have historic ties to the United States, or will the economies continue to weaken and Islanders seek better opportunities by increasingly migrating to Hawaii and the continental United States?

ABOUT THE AUTHOR

Allen P. Stayman is an official with 22 years of service to the U.S. Senate and the Departments of the Interior and State on matters relating to the U.S. territories and freely associated states.

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