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SESSION ON PUERTO RICO

Barcelona, 27 - 29 January 1989

Edited version

Members of the Permanent Peoples' Tribunal

Richard Falk, Professor of International Law, USA
President of this Session of the Tribunal

Victoria Abellan Honrubia, Professor of International Law, Spain

Richard Baumlin, Professor of Constitutional Law, member of Parliament,
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Amar Bentoumi, Secretary General of the International Association of
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Giulio Girardi, Philosopher and Theologian, Italy

Leo Matarasso, Lawyer, Honorary President, International League for the
Rights and Liberation of Peoples, France

George Wald, Nobel Prize Winner for Biology, USA

Gianni Tognoni, Secretary General, Italy

The Permanent People's Tribunal convened in Barcelona January 27-29, 1989. Taking into consideration:

Having heard on January 27, 1989 the reports that are listed as follows:

- the opening speech, given by Richard Falk, President of this Session of the Tribunal,
- information provided by Gianni Tognoni, Secretary General of the Permanent People's Tribunal,
- the introduction of the case given by Luis Nieves Falcon, President of the Puerto Rico National Chapter of the International League for the Rights and Liberation of Peoples,
- the report, "The constitution of the US absolutely prohibits colonialism," given by Artur Kinoy, Center for Constitutional Rights, New York,
- the report, "The creation of the free Associated State of Puerto Rico," given by Michael E. Deutsch, Puerto Rico Subcommittee National Lawyers, Guild, Chicago,
- the report, "Breve historial de las resoluciones del Colegio de Abogados de Puerto Rico sobre la descolonizacion," given by Emilio Soler Mari,
- the report, "Puerto Rico y las Naciones Unidas," given by Juan Mari Bras.

- the report, "El control economico de Puerto Rico," given by Francisco Catala,
- the report, "El imperialismo cultural," given by Aida Negron Montilla,
- the report, "Los recursos naturales, el medio ambiente y la salud," given by Pablo Segarra,
- the report, "Militarismo y descolonizacion," given by Jorge Rodriguez Bereff,
- the report, "El impacto del desplazamiento masivo de los puertorriquenos," given by Julio Rosado.

- the testimony of Rita Zengotita
- the testimony of David Noriega
- the testimony of Daniel Nina on behalf of Filiberto Ojeda Rios
- the testimony of William Morale

Having considered the following documentation:

Dossier prepared for the Tribunal:

Gautier Mayoral, Carmen.- Treinta y cinco años del caso de Puerto Rico en la ONU.

García Martínez, Alfonso y Delgado Cintrón, Carmelo.- La Corte de Estados Unidos en Puerto Rico.

Comite Unitario Contra la Represion.- La violacion de los derechos humanos y la criminalizacion de los combatientes anticoloniales por el regimen norteamericano en Puerto Rico.

Ojeda Rios, Filiberto.- Legal Memorandum

Puerto Rico vs. United States.- Statement submitted by Mr. Wilhelm Joseph, National Director, on behalf of the National Conference of Black Lawyers.

Amicus Curiae.- Brief on behalf of the International Association of Democratic Lawyers.

Report to the United Nations Human Rights Commission.- Human Rights violations in US prisons and jails, 1987.

Dossier prepared by the Partido Nacionalista de Puerto Rico, enero 1989.

Testimonios de Mujeres de Vieques, 1986.

"Paper presented by Edgardo Ortiz, Scientific Coordinator of Mision Industrial de Puerto Rico, Inc., at the Ecology and Development in Puerto Rico and the Third World Symposium, Brooklyn College, the City University of New York; April 1, 1982"

"Ponencia de Mision Industrial de Puerto Rico, Inc., ante el Comite de Descolonizacion de la Organizacion de las Naciones Unidas - Agosto 1982"

"Report of the Special Commission on Nuclear Weapons and the Treaty for the Prohibition of Nuclear Weapons in Latin America"

Agency for the Prohibition of Nuclear Weapons in Latin America:

Conference general noveno periodo ordinario de sesiones, Mexico, D.F., 7-9 de mayo de 1985"

Documentos secretos FBI: Cointelpro en Puerto Rico (1960-71)"

Having taken into consideration the following texts of international law:

- Declaracion Universal de los Derechos de los Pueblos. Argel 4.7.1976.
- Carta de las NU: Art. 1, 2, 55, ap. XI.
- Res. 742 (VII) de la Asamblea General de las NU.
- Res. 1514 (XV) AG. Declaracion sobre concesion de independenciam a los paises y pueblos coloniales.
- Res. 1541 (XV) AG. sobre los principios que deben servir de guia a los Estados miembros para determinar si existe o no la obligacion de transmitir informacion segun el art. 73, e de la Carta.
- Res. 2625 (XXV) AG. Declaracion sobre los principios de derecho internacional referentes a las relaciones de amistad y cooperacion entre los Estados de conformidad con la Carta de las NU.
- Pacto Internacional de Derechos civiles y politicos (Aprobado por la Res. 2200 (XXI) de la AG.) Art. 1.
- Pacto Internacional de Derechos Economicos, Sociales y Culturales (aprobado por Res. 2200 (XXI) de la AG.) Art. 1.
- Res. 748 (VIII) AG.: "reconociendo a Puerto Rico como pais autonomo no dependiente, con gobierno propio, asociado a los EE.UU. y con Status internacional."
- Resoluciones del Comite Especial de la Asamblea General de las NU para la aplicacion de la declaracion sobre la concesion de independenciam de los paises y pueblos coloniales, de 28 Agosto 1972 (sobre Puerto Rico).
- Resolucion Comite Especial... 30 Agosto 1973 (sobre Puerto Rico).
- Resolucion Comite Especial... 12 Septiembre 1978 (sobre Puerto Rico).
- Resolucion Comite Especial... 15 Agosto 1979 (sobre Puerto Rico).
- Resolucion Comite Especial... 18 Agosto 1980 (sobre Puerto Rico).
- Resolucion Comite Especial... 20 Agosto 1981 (sobre Puerto Rico).

- Resolucion Comite Especial... 4 Agosto 1982 (sobre Puerto Rico).
- Resolucion Comite Especial... 24 Agosto 1983 (sobre Puerto Rico).
- Resolucion Comite Especial... 24 Agosto 1984 (sobre Puerto Rico).
- Resolucion Comite Especial... 14 Agosto 1985 (sobre Puerto Rico).
- Resolucion Comite Especial... 14 Agosto 1986 (sobre Puerto Rico).
- Resolucion Comite Especial... 11 Agosto 1987 (sobre Puerto Rico).
- Resolucion Comite Especial... 15 Agosto 1988 (sobre Puerto Rico).

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- Convencion de Viena sobre Derecho de los Tratados 1969.
 - Dictamen del T.I.J. sobre Namibia 1971.
 - Dictamen del T.I.J. sobre el Sahara 1971.

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- Tratado de Paris de 1898 (Tratado de Paz Espana-EE-UU.)
 - Carta autonoma de Puerto Rico 1897.
 - Tratado para la prescripcion de las Armas Nucleares en America Latina (Ilatelalco 1975)

Having considered also the following documents:

- Balzac vs Porto (sic) Rico 258 U.S. 238 (1922);
- Harris vs Rosado 446 U.S. 651/1980;
- Statement by Jeanne Kirkpatrick, U.S. Representative at U.N., to Special Committee on Decolonization;
- U.S. Dept. of Commerce, Economic Study of Puerto Rico, Government Printing Office, December 1979;
- General Accounting Office Reports on the economic and political situation of Puerto Rico, 1978, 1980, 1981, 1985.

OVERVIEW

The grievances of the people of Puerto Rico against the Government of the United States pose fundamental issues of international law and morality, and raise questions that directly concern the application of the United Nations Charter.

This Tribunal gives special emphasis to the Universal Declaration of the Rights of People ("Algiers Declaration"). It is of symbolic significance that the Algiers Declaration was adopted on the two hundredth anniversary of the United States Declaration of Independence, the first modern repudiation of colonial rule and the first claim by any people of their sacred rights of resistance on behalf of the reality of national self-determination. These early American patriots set forth a vision in 1776 that continues to inspire and validate the struggles of all oppressed peoples.

The Permanent People's Tribunal has convened its session on Puerto Rico in the city of Barcelona, Spain, on January 27, 1989. For two days those who presented evidence on behalf of the Puerto Rican people relied upon the authority of international law and the United Nations, as well as upon the Algiers Declaration and the United States Constitution. The evidence presented revealed almost 90 years of systematic and severe violation of the most basic rights of the Puerto Rican people in the course of United States rulership.

The Tribunal also invited and was prepared to listen carefully to evidence on behalf of the US Government, but received no formal response to its invitation. As a consequence, it has taken account of official US positions and arguments by relying on documentary evidence, including decisions by the United States Supreme Court and formal presentations by representatives of the US Government to the Decolonization Committee of the United Nations.

The underlying commitment to the rights of people is expressed in the Preamble and the articles of the Algiers Declaration. The Preamble affirms that the peoples of the world "have an equal right to liberty, the right to free themselves from any foreign interference and to choose their own government, the right, if they are under subjection, to fight for their liberation and the right to benefit from other peoples' assistance on their struggle." This assurance is specified in Article 1: "Every people has the right to existence," and Article 6: "Every people has the right to break free from any colonial or foreign domination, whether direct or indirect, and from any racist regime."

The oppressed circumstance of the Puerto Rican people has often been hidden from normal forms of international scrutiny in the epoch of decolonization. The United States Government has never openly acknowledged its colonial control of Puerto Rico, but on the contrary, has taken elaborate steps to confuse world public opinion, as to the character of its political, economic, social, and cultural rule over the island.

As will be discussed in the judgement, the basic situation of the Puerto Rican people is flagrantly inconsistent with the basic norms of international law as accepted by all states including the United States and with the most authoritative policies and practices of the United Nations. The Permanent Peoples' Tribunal takes note of these factors and seeks to add the weight of its judgement to these widely accepted sources of normative authority in international life, but it seeks to provide its own independent and necessary support for the struggle of the people of Puerto Rico to recover their most fundamental rights.

To have international law and the policies of the United Nations on one's side is always useful, but it is rarely enough to resolve a struggle between an oppressed people and an oppressive, militarily powerful government. We who compose the jury of the Permanent Peoples' Tribunal in this session were especially mindful of this dimension of political reality while listening to the evidence of witnesses on the situation in Puerto Rico. The US Government has effectively used its influence to keep the issue of Puerto Rico largely off the global agenda, while relying on a variety of techniques to thwart and confuse the Puerto Rican people on their many attempts to exercise their sovereign rights as a people. In this circumstance the Permanent Peoples' Tribunal has a particular responsibility to depict and clarify the oppressive reality, to rally public opinion throughout the world, and to place pressure on established international institutions and procedures to live up to their own commitments to safeguard basic human rights.

By pronouncing on the rights of the Puerto Rican people this Tribunal is, also, calling on the United States Government to respect those international legal standards that are binding on all sovereign states. The problem is this: a special effort is needed to change the climate of understanding. Puerto Rico has known almost five centuries of colonial governance, an incredible period of dominance and distortion. The Spanish colonial system, initially directed at the Arawak people, the indigenous inhabitants of Puerto Rico, but extended to the Spanish settler population, lasted from 1493 until 1898. After the Spanish American War the island of Puerto Rico, among other Spanish colonial possessions was ceded by treaty to the United States, and US control has endured ever since.

It is high time that world public opinion gave priority to the situation in Puerto Rico. This session of the Permanent Peoples' Tribunal is intended as a step in this direction.

2.- THE FACTS

2.1 HISTORICAL FRAMEWORK

From 1507 until 1898, Puerto Rico was a colony of the Spanish Empire. During the Nineteenth Century, as Spanish world dominance began to

disintegrate, the Puerto Rican economy and population expanded rapidly, and early popular movements arose in opposition to slavery and the harsh Spanish colonial rule. Led by Mariana Bracetti and Ramon Emeterio Betances, clandestine military-political units staged an armed uprising at Lares, September 23, 1868, and proclaimed the first Republic of Puerto Rico. Although the revolutionary insurrection of Lares was savagely suppressed by Spanish troops, many insurgents escaped into the central mountains and continued to wage guerrilla actions and build the movement against Spanish rule. El Grito de Lares (The Cry of Lares) remains a powerful symbol of the continuing struggle for national liberation.

After Lares, armed guerrilla bands ranged up and down the Cordillera Central of Puerto Rico. The insurgents controlled the countryside around Lares, Jayuya, Villalba, Ciales and other towns, where they constantly attacked and harassed the Spanish troops. The pressure of their operations helped compel Spain to end slavery on the island in 1873.

Spain was finally forced to grant autonomy to Puerto Rico in 1897. The Charter of Autonomy was won by the Puerto Rican people as a consequence of the revolutionary armed movement led by Bracetti and Betances, which received significant support inside the mother country, supplying a main motive for the assassination of the Spanish Prime Minister by a Catalan anarchist. The Charter, a binding international covenant formally negotiated between representatives of the Puerto Rican people and the Spanish Crown, granted a series of important rights and powers to the insular government of Puerto Rico, including the authority to establish its own currency, to enter into commercial treaties, and to possess the authority to approve or reject treaties or agreements made by Spain which would affect the economic interests of Puerto Rico. Most significantly, Article 44 provided that the Charter could not be amended except upon the request and approval of the Puerto Rican Parliament.

The United States, which since the early Nineteenth Century had come to look upon the Caribbean as a natural arena for its continuing territorial expansion, saw in Spain's weakened position an opportunity to establish hegemony over Cuba and Puerto Rico, along with the Philippines. The US declared war on Spain on April 23, 1898, and for the next three months concentrated its military efforts on crushing the last enclaves of Spanish resistance in Cuba. On July 25, 1898, US forces invaded Puerto Rico, under the command of General Nelson A. Miles, who had earlier gained reknown for leading US Army troops in a cruel manner against the American Indians.

The people resisted throughout the island, often with only machetes as weapons, and on August 13, 1898 Puerto Rican patriots proclaimed the Second Republic of Puerto Rico in Ciales. Although the US rapidly secured military control of Puerto Rico, it could not end the popular resistance to colonial rule. Bands of armed guerrillas roamed the countryside raiding US businesses and banks for years afterwards.

The United States conquerors informed the people of Puerto Rico that they had come "to bestow upon you the immunities and blessings of the

liberal institutions of our government..." A military regime was established and the existing Puerto Rican government was ignored. United States Senator Henry Cabot Lodge crowned this imperialist endeavor with this benediction:

With its population and advantageous strategic position, the island of Puerto Rico, the eastern-most and most beautiful of the Antilles, had constantly been on the minds of the Army and Navy from the very moment the war had begun; and this war was to constitute the last step in an inexorable movement begun by the United States a century ago to expel Spain from the Antilles.

Spain formally ceded Puerto Rico to the United States on December 10, 1898, in the Treaty of Paris, which provided that "the civil rights and political condition of the territories here ceded to the United States will be determined by (the US) Congress." Even though the Charter of Autonomy had provided by its own terms that it could be amended only upon the request and approval of the Puerto Rican Parliament, the United States and Spain negotiated an agreement which extinguished the fundamental sovereign rights of the Puerto Rican nation, without any representatives of Puerto Rico present and participating.

In 1900, by the Foraker Act, the US Congress replaced direct military rule with a civilian colonial administration, keeping all power in the hands of officials appointed by the US Government. The Act made Puerto Rico and its people subject to all US laws, and required that any additional law passed by the Puerto Rican legislature be submitted to the US Congress for approval. It placed stringent restrictions on who could vote, and prohibited Puerto Rico from making treaties with other nations or setting its own tariffs. The new colonial administration quickly mounted a frontal assault on the traditional culture and national identity of the Puerto Rican people.

English was made the only language of instruction in public schools. The courts set up to enforce US laws in Puerto Rico conducted their proceedings only in English, and the people were denied the right to fly the Puerto Rican flag.

On the eve of World War I, the United States further consolidated the colonial status of Puerto Rico through the Jones Act, which imposed US citizenship on all Puerto Ricans, en masse, against the express will of the legislative representatives of the Puerto Rican people, and thereby permitted wholesale conscription of Puerto Rican men to fight in the US Army. The second-class nature of this involuntary citizenship became clear in 1922, when the US Supreme Court ruled that Puerto Rico belongs to, but is not part of the United States, so that protections provided by the US Constitution did not apply to Puerto Ricans even if for other purposes they were U.S. citizens. Balzac v. People of Puerto Rico, 258 US 298 (1922). The Foraker and Jones Acts, known as the Organic Acts provided a "legal" framework for the development of a dependent colonial economy.

In 1918, pressured by the militant demand for independence led by the Nationalist Party of Puerto Rico and the action of the newly formed United Nations placing Puerto Rico on a list of non-self-governing territories, the US began to make some gestures in the direction of decolonization, while keeping the substance of its dominance unchanged. For the first time the US agreed to allow the people of Puerto Rico to elect a governor to administer the island under US authority.

Two years later the US Congress passed Public Law 600 which allowed Puerto Rico to draft its own constitution concerning purely local matters. The constitution was subject to the approval of the US Congress that eliminated the most progressive democratic rights drafted by Puerto Rican representatives attending a so-called constituent assembly. As part of Public Law 600, the US Congress passed the Federal Relations Act under which the US Congress retained authority over all important aspects of Puerto Rico life including citizenship, foreign relations, defense, immigration, foreign commerce, postal, currency, etc.

Despite, the retention of US sovereignty, the US claimed that the creation of a local constitution was a sufficient exercise of self-determination, calling Puerto Rico a free associated state or commonwealth. The following year the US brought this claim of decolonization to the UN and through economic coercion and diplomatic pressure obtained the removal of Puerto Rico from the list of the non-self-governing territories.

In 1973, fueled by the reemergence of the independence movement the Special Committee of the United Nations on Decolonization decided to again take up the colonial case of Puerto Rico.

2.2 THE ECONOMIC CONTROL OF PUERTO RICO BY THE UNITED STATES OF AMERICA

The colonial economy of Puerto Rico is basically a function of two sources of funds: 1) the payments for external factors of production and 2) the unilateral payments from the US Government.

The first one consists of profits, interests, dividends and royalties extracted from the Puerto Rican economy or the so-called returns on investments. These returns are mainly non-distributed profits of US corporations. During the fiscal year 1988 this flow consisted of \$8,934 million, being equivalent to 35 per cent of Puerto Rico's gross domestic product.

Puerto Rico has experienced extraordinary exploitation all along, as measured by salary differentials, tax exemptions, low costs for pollution control or no cost at all, and high labor productivity at relatively low wages.

Today US capital controls over 80% of Puerto Rico's manufacturing, 60% of its banking, and 90% of its industrial imports. Puerto Rico is the fifth largest customer (excluding armaments purchasers) world-wide for

goods made in the US, and the largest in Latin America; 41% of US investments in Latin America are located in Puerto Rico and the profits returns of such investment equals 34% of all of Latin America.

The unilateral payments from the US Government represents an indirect subsidy of capital and a rationalization for a system that does not work. During the fiscal year 1988 these unilateral payments amounted to \$3.5 billion.

This dependent economic system of colonialism and its psychological oppression has produced high unemployment (an official rate of 15-18%) and extreme social problems including among the highest rates of suicide, drug addiction, mental illness and violent crime anywhere in the world.

2.3 MIGRATION

The U.S. policy of coercing migration from Puerto Rico began immediately after the invasion in 1898. The policy was intended to divide and conquer the nation as a form of control. Puerto Ricans were regarded from the outset as a source of cheap labor for the metropolis. In 1901, for example, 5,000 Puerto Ricans were shipped to Hawaii to work in sugar cane fields. Many died in transit. Between 1900 to 1944, 90,000 Puerto Ricans left the island, generally to become cheap labor in North America. Even in the midst of what has been described as Puerto Rico's economic boom, when U.S. corporations, aided by massive tax incentives, invested and built factories in Puerto Rico (1947-1963), over 750,000 Puerto Ricans migrated to North America. In fact, this migration was part of "Operation Bootstrap," a master plan to shape the Puerto Rican economy to the advantage of U.S. capital.

Today, the population of the island of Puerto Rico is just over 3 million, while another 2.5 million Puerto Ricans live in North America. The standard of living for those Puerto Ricans living in the metropolis is 4 times lower than non-hispanics and still lower than other non-Puerto Rican Hispanics in the United States. Over 37.9% of the Puerto Rican families living in North America exist below minimum poverty level standards.

2.4 ENVIRONMENT

Puerto Rico has been a "sanctuary" for US multinationals, not only for profits, but also being virtually exempt from environmental protection, regulation and control. The Federal Environmental Protection Agency has a double standard, and allows US companies to dump waste and pollute the island of Puerto Rico to an extent impermissible in the United States. The government on the island has been unable to protect the environmental quality, a valuable resource belonging to the people of Puerto Rico. The government of the US has even used Puerto Rico's national treasure, the rainforest El Yunque, to test a chemical

defoliant, Agent Orange, which was later heavily used in the Viet Nam war.

From 1975, petrochemical, electronic and pharmaceutical industries have done great damage to the soil, air and water of Puerto Rico. Several underground water estuaries have been contaminated by petrochemical wastes. The incidence of respiratory illness, skin disease, allergies and cancer associated with pollution and toxic wastes have reached epidemic proportions in Puerto Rico.

Vieques, a small island off the coast that is treated as part of Puerto Rico, is used by the US Marines (who control 3/4 of that island) for training. During training exercises the US Marines bombard the offshore waters with live ammunition. These waters were formerly used by the Vieques fisherman--whose livelihood and traditional way of life has been impaired by those US bombs.

US Government and companies have experimented on the land and people of Puerto Rico with chemical weapons and drugs (see the e.g. the dramatic "classical" experimentation of contraceptive pills and devices).

Another index of the poor state of health of the population is the infant mortality rate. It was 17.8 per thousand (as compared to 12.5 in the US) in 1980.

2.5 MILITARIZATION OF PUERTO RICO

Over 13% of the most arable land of Puerto Rico is occupied by US military bases. Roosevelt Roads, the largest military base outside the continental territory is located in the South West region of Puerto Rico. From this naval base, the US controls the South Atlantic--from the Panama Canal to South Africa. Roosevelt Roads' naval operations encompass activities on Vieques. The militarization of this relatively small island, inhabited by 8,000 people, began in the 1940's. The US navy has appropriated for itself 2/3 of the 26 thousand acres of Vieques. US military activities in the Caribbean and Latin America is often initiated from the Roosevelt Roads base. For example, the US invasions of Dominican Republic in 1965 and Grenada in 1983 were launched from Roosevelt Roads.

Despite the fact that the US is a signatory to the Treaty Tlatloco (in 1977), a treaty which provides for a nuclear-free zone in Latin America, available evidence suggesting that the US has violated this treaty. According to the 1984 Puerto Rico Bar Association fact finding committee, Puerto Rico is nuclear-ready: (i) circumstantial evidence suggest that nuclear submarines frequently pass through the Roosevelt Roads base; (ii) a nuclear-military infrastructure exists in Puerto Rico. Sophisticated military hardware, equipment, and personnel exist in Puerto Rico, and there is a contingency plan to receive and store nuclear weapons at Roosevelt Roads. Puerto Rico is also a command control for 30 nuclear submarines. Thus, whether or not there are

nuclear weapons stored on Puerto Rican soil, Puerto Rico is a major target for retaliation in the event of nuclear war.

Additional US military installations on Puerto Rican soil include: Fort Buchanan, the Administrative US Naval Security Group in Sabana Seca (an electronic intelligence unit), and the Defense Communication System, with units in Cerro de Punte, Monte Jayuya, Cerro de la Santa, and el Yuque. Ramey Airforce base in the North-West of Puerto Rico was reportedly used to store nuclear weapons until 1973. It continues to have the capacity to store nuclear bombers, and under the Reagan administration the base has been reactivated for other uses.

The US has now 3,600 troops in Puerto Rico as part of the Rapid Deployment Force. As happened in the invasion of Grenada, this force could be used as shock troops in an invasion in Central America.

The US trains military personnel and tests new weapons in Puerto Rico. The US launches "war games" from Vieques island, for example, 1983 and 1988 "Ocean Venture." The 1983 "war game" was the dry run for the subsequent invasion of Grenada.

Thousands of Puerto Ricans have been drafted to participate in US wars from World War I to Viet Nam. Over 200,000 people from the island have been in active service in the US armed forces. In Viet Nam, Puerto Ricans lost more people, per capita, than any single state in the US. Out of a population of just over 3 million, Puerto Rico has a military force of 13,000 persons. This does not include the 12,400 in the Puerto Rican National Guard which has been increasingly used for action in Latin American countries such as Panama and Honduras. With an understated official unemployment rate of around 18% the military offers a major source of employment for young Puerto Ricans.

2.5 CULTURAL ASSIMILATION

The public school system became, since 1898 a principal avenue for Americanizing the Puerto Rican population. The expressed goal was that "...if its schools are Americanized and teachers and students are inspired with the American spirit, their sympathy, points of view, and attitudes towards life and government will essentially be American."

In view of this objective, the materials and curriculum, organization, evaluation, methodology, school texts and school calendar were a mere transplant of those prevailing in the United States. Students were subjected to compulsory patriotic exercises in order "to foster patriotism, devotion and an enthusiasm for the United States unparalleled in the main land." The express idea was to submerge the students in American ways and ideas so that they "would never think of separation" in the full sense of political independence.

The policy of acculturation affected Puerto Rico teachers as well. They were forced to attend English classes under the threat of losing their job. Knowledge of the English language was required for licensing as

well as for tenure and a massive importation of North American teachers was arranged with the objective of displacing Spanish-speaking Puerto Ricans.

No doubt, one obvious goal of Americanization was to discourage use of and reliance on the Spanish language. In 1905 a law was passed by the American controlled legislature making English and Spanish the official languages of the country. In the public school system English was made the exclusive language of instruction. This situation prevailed until 1948, until by an administrative memorandum Spanish was again established as the language of instruction in the public school. The private schools exempted from this administrative norm, still continued to teach principally in English.

The extension of the English language elsewhere in Puerto Rican society was also attempted. These efforts have failed to be acceptable by the people of Puerto Rico. All procedures in the Federal US court in Puerto Rico are conducted in English despite the fact that most jurors, prosecutors and judges, are Spanish-speakers.

The efforts to promote Americanization are strongly reinforced by United States licensing and control of television and radio stations. Furthermore, most newspapers are controlled by either North American interests or local intermediaries favorable to assimilation.

In addition to the control of educational institutions and media outlets, Catholic and Protestant religious institutions have been successfully appropriated as instruments of assimilation. In fact, most private schools are parochial schools openly advocating North American values and ideas in opposition to Puerto Rican traditions and culture. This Americanizing atmosphere is further augmented by capital controls in the economic sectors, particularly banking. It is our view that native language and culture of Puerto Rico are under a constant siege, limiting their potential for healthy and autonomous development.

2.6 REPRESSION AND CRIMINALIZATION

Since its invasion and occupation by the US military, the pro-independence movement has endured a systematic program of repression and criminalization.

This pattern of repression intensified in the 1930's. It was particularly directed against the Nationalist Party of Puerto Rico which asserted the right of unconditional independence of Puerto Rico and the right to carry on this sacred struggle by all means including force of arms. In this period, leaders of the Nationalist Party were assassinated (for instance, at the Rio Piedras massacre 1935) and imprisoned for sedition against the US government. In 1937 over 20 unarmed peaceful demonstrators were killed and many more wounded by National Guard units acting under orders of the US colonial Governor Winship. The demonstrators were protesting against the imprisonment of

Nationalist leaders and commemorating the abolition of slavery (the Ponce massacre).

In 1950, in order to stop the Nationalist Party opposition to Public Law 600 as a charade of decolonization, the US Government gave orders to eliminate the Nationalist Party. As a result of this order and Nationalist resistance, several hundred Nationalists were killed and hundreds were imprisoned.

In the 1960's, the US FBI implemented a counter-intelligence program (COINTELPRO) to disrupt and neutralize the movement for independence. Deliberate confusion and disruption was planned by undercover agents who penetrated these Puerto Rican political groups.

Over a period, a more violent and pervasive strategy of counter-insurgency, to criminalize and physically eliminate independence activists, is being employed. Expanded police and judicial powers are being used to spy upon, criminalize and imprison militant supporters of independence. Today, 15 Puerto Rican men and women, anti-colonial combatants, who have been convicted of opposing the US authority over Puerto Rico, have asserted their right to POW status under international law. These individuals are serving draconian prison sentences of between 35-90 years, and have been subjected to particularly inhumane conditions of isolation and selective punishment. 15 other independentistas face long prison sentences. They are currently awaiting criminal trials in the US before non-Puerto Rican juries, in Hartford, Conn., hundreds of miles from their homelands. One of these activists, Filiberto Ojeda Rios, has been interred over 37 months without trial, despite the absence of any prior convictions or any charges of violence or injury in the robbery itself. The arrest of these independence supporters was carried out as an operation of over 200 heavily armed US FBI agents, and included wholesale search and seizure of more than 35 homes and work places. It resembled a paramilitary undertaking more than a civil arrest.

Also as part of this heightened repression, the US Government has relied upon the US Federal Grand Jury, which can function as a secret inquisitorial body, to imprison without specific criminal charges many independentistas who refuse to submit to compulsory interrogations about their political work and the independence movement.

3.- FUNDAMENTOS DE DERECHO

3.1.- Derecho de Autodeterminacion de Puerto Rico

3.1.1.- El principio de libre determinacion de los pueblos consagrado en la Carta de las NU (art. 1.2) y concretado en la Res. 1514 (XV) y 2675 (XXV) de la AG, y reconocido como derecho humano fundamental en el art. 1 de los Pactos Internacionales de Derechos Civiles y Politicos y Derechos Economicos, Sociales y Culturales, establece que:

"Todos los pueblos tienen el derecho a determinar libremente, sin ingerencia externa, su condicion politica y de proseguir su desarrollo economico, social y cultural."

Conforme al Derecho Internacional vigente hay consenso general de los Estados sobre que la titularidad de este Derecho corresponde a los paises y pueblos coloniales; asi como sobre los principios que identifican a un pueblo como "colonial." Estos principios, segun la Res. 1541 (XV), son los siguientes:

- que se trate de territorios que estan separados geograficamente del pais que los administra y sean distintos de este en sus aspectos etnicos o culturales.
- que existan factores de caracter administrativo, politico, juridico, economico, o historico, que influyan en las relaciones entre el Estado metropolitano y el territorio, de tal manera que este se encuentre colocado arbitrariamente en una situacion o estado de subordinacion.

3.1.2.- En Puerto Rico, y de conformidad con los hechos probados en los puntos....de esta sentencia, confluyen las condiciones objetivas indicadas en tales principios, de modo que podria caracterizarse conforme al Derecho Internacional como "pais o pueblo colonial":

- a) esta separado geograficamente de EE.UU, y su poblacion es etnica y culturalmente diferenciada de la de EE.UU.
- b) la organizacion administrativa y politico-juridica de Puerto Rico lo coloca en una situacion arbitraria de subordinacion respecto a EE.UU. Especialmente (segun los datos aportados) por la practica a que conduce la organizacion del poder judicial, la aplicacion de la Ley del Gran Jurado Federal, asi como por la limitacion de poderes de la Camara de Representantes en la adopcion de decisiones que conciernen al pueblo de Puerto Rico.
- c) la militarizacion de la poblacion y el territorio de Puerto Rico, excede los limites de la exigencia de la defensa civil y la seguridad nacional, sirviendo intereses geo-estrategicos de EE.UU. (reconocido

expresamente por parte del Representante de EE.UU. en el Comite de los 24).

d) el modelo de desarrollo economico basado en los pagos a factores externos (exportacion de capital a EE.UU.) y en las transferencias unilaterales netas de EE.UU. a Puerto Rico, configuran la situacion economica-social de Puerto Rico como un factor arbitrario de subordinacion y dependencia de EE.UU.

e) finalmente, desde el punto de vista historico, Puerto Rico en tanto que era colonia espanola fue cedida a EE.UU. por el Tratado de Paris de 1898; cesion que coloca al pueblo portorriqueno bajo dependencia de EE.UU., estableciendo expresamente en el art. IX de dicho Tratado que "los derechos civiles y la condicion politica de lost habitantes de los territorios aqui cedidos a los EE.UU., se determinara por el Congreso.

3.1.3.- La conjuncion de los factores indicada en Puerto Rico, hace que conforme a la Res. 2625 (XXV) NU, Puerto Rico, en tanto que "territorio de una colonia u otro territorio no autonomo" "tiene, en virtud de la Carta de las NU, una condicion juridica distinta y separada" de EE.UU., condicion que "existira hasta que haya ejercido su derecho de libre determinacion, de conformidad con la Carta de las NU, y con sus propositos y principios."

No puede considerarse, conforme a los propositos y principios de la Carta de las NU, que la constitucion del Estado Libre Asociado de Puerto Rico sea una forma de ejercicio del Derecho de autodeterminacion del pueblo de Puerto Rico, por cuanto no cumple las garantias exigidas para el mismo por las Resoluciones y la practica de las NU.

3.2.- Obligacion de Estados Unidos de respetar la Autodeterminacion de Puerto Rico.

3.2.1.- El Derecho Internacional Convencional Multilateral.

Segun la Constitucion de los U.S.A., en la interpretacion en el caso Foster vs. Nielson (27 U.S. (2 Pt.) 253, 314 (1829), las obligaciones de los Tratados son self-executing en Estados Unidos y por tanto se imponen directamente a los actos del gobierno federal.

Como U.S.A. ha firmado y ratificado la Carta de las NU. conforme a sus procedimientos constitucionales, segun el art. 110 de tal Carta, esta obligado a cumplir sus articulos, tanto el preambulo, en que se menciona la igualdad de lost derechos de las naciones grandes y pequenas como el art. 1, en el 2o. Proposito: respeto al principio de la igualdad de derechos y al de la libre determinacion de los pueblos, como el art. 73:

Los Miembros de las N.U. que tengan o asuman la responsabilidad de administrar territorios cuyos pueblos no hayan alcanzado todavia la plenitud del gobierno propio....se obligan:

a) a desarrollar el gobierno propio... y el desenvolvimiento progresivo de sus libres instituciones políticas.

b) a transmitir regularmente...la informacion estadística y de cualquier otra naturaleza técnica...

Los límites exactos de tales obligaciones han sido desarrollados en la interpretación de las propias N.U. tanto en sucesivas resoluciones como en la práctica de la organización, a través de la actividad del Comité de Descolonización, conocido como Comité de los 24, que se analizara posteriormente.

Cabe destacar que en el proceso de formulación jurídico-internacional del principio de libre determinación, se ha efectuado en diferentes etapas, la 1ª se cierra en 1960, con la Res. 1514 (XV); la segunda con la Res. 2625 (XXV) y la tercera se abre con la conexión y práctica equivalencia de las obligaciones de los Estados que aun administran territorios no autónomos con las de los Estados a los que se les encomiendan territorios bajo el régimen internacional de administración fiduciaria, tal conexión la efectuó el T.I.J. en el dictamen sobre Namibia en 1974.

Por otra parte, el alcance del principio se limita a las situaciones estrictamente coloniales, ya que no puede quebrantarse según la Res. 1514 la unidad nacional y la integridad territorial de un país; se aplica por tanto a territorios separados geográficamente del país que los administra y distintos a este en sus aspectos étnicos, culturales, etc., existiendo un estado o situación de subordinación (Res. 1541 (XV)).

3.2.2.- El Derecho Internacional General

Las normas consuetudinarias de derecho internacional obligan al gobierno estadounidense, como ha sido puesto de manifiesto por la jurisprudencia de este país (Caso del Paquete Habana 175 U.S. 677,700 (1900) y el reciente *Filartega vs Pena Trate* 630 72d 876).

La práctica totalidad de la doctrina y la jurisprudencia internacional (dictamen sobre el Sahara occidental, en especial y en menor medida el efectuado sobre Namibia de 1971), han concluido que el principio de la autodeterminación de los pueblos es un principio consuetudinario. Asimismo amplios sectores doctrinales y el Ante-Proyecto de la Comisión de Derecho Internacional sobre responsabilidad internacional, consideran que se trata de una norma de ius cogens, anulando por tanto todo Tratado en contrario, según el articulado de la Convención de Viena de 1969 sobre Tratados.

Por tanto existe una doble obligación, de origen tanto consuetudinario como convencional, para los U.S.A. de respetar el principio de la libre determinación de los pueblos. El alcance exacto de su aplicación al caso de Puerto Rico debe dilucidarse teniendo en cuenta tanto la interpretación de tal principio por la propia organización, como la

subsuncion del caso puertorriqueno en las resoluciones concretas
elaboradas por las N.U. respecto a la isla.

4. THE JUDGEMENT

The jury, having heard the oral testimony and consulted the written submissions, has determined that four clusters of issues were presented to the Permanent Peoples' Tribunal for assessment and judgement.:

1. Whether Puerto Rico should be conceived in fact and law as being a colonial possession of the United States of America and if so, whether this colonial status has legal implications under international law and under domestic United States law;
2. Whether Puerto Rico has been exploited in a manner that violates international law and the Algiers Declaration by being partially appropriated for military purposes by the US Government;
3. Whether those who have militantly joined in the struggle to liberate Puerto Rico from colonial rule have been treated by the US Government, as administering authority, in conformity with international law;
4. Whether in light of the overall situation of Puerto Rico a valid basis exists for the people of Puerto Rico to exercise their right of self-determination, and if so, whether there exist moral, legal, and prudential arrangements that might rapidly ensure a constructive transition from colonial status to some condition determined by the Puerto Rican people to satisfy best their right of self-determination.

4.1 THE QUESTION OF COLONIAL STATUS

From the outset of the United States' possession of Puerto Rico it seemed to have an unambiguously colonial status. The United States obtained some sort of legal title from Spain in 1898 in the aftermath of the Spanish American War, at the same time that Puerto Rico was ceded to the United States in the Treaty of Paris, so were ceded the Philippines, Guam and Cuba. Puerto Rico had been a Spanish colony for centuries, in fact since 1508, furthermore, Puerto Rico was not contiguous with continental United States, but was a geographically distinct island territory. In all respects, Puerto Rico's history is one of separate development. It relies upon Spanish as its primary language. Its cultural heritage is Caribbean and Spanish. Its sense of political and cultural identity is definitely Latin in character.

Despite a variety of intense efforts to promote the Americanization of Puerto Rico over the period since 1898, the island retains its distinct character.

What is more, from the outset the colonial status of Puerto Rico seems clear beyond reasonable doubt. The United States acquired only those legal rights that Spain possessed in the Treaty of Paris. Such legal

rights, to the extent that existed at all, were colonial in character. At the time of cession, colonial possessions were generally treated as valid under international law. Puerto Rico was given by Spain to the United States as spoils of war in 1898, then, and subsequently, these arrangements of territorial transfer that followed from the Spanish-American War were openly defended and criticized as if the United States had decided to expand by way of becoming an imperial power through the acquisition of colonies. Standard American history textbooks continue to refer to the period 1898-1901 as "the Age of Empire." A domestic opposition to these developments reached up to elite circles and led to the establishment of The American Anti-imperialist League (with 10,000 members at its height) which was avowedly anti-colonial. The League was composed of diverse strands of opinion, including those who feared an influx into continental United States of "uncivilized colored people," with economic and political threats to white dominance. But the colonialists won out, and domestic opposition to United States colonial administration died out after 1901. The majority opinions of the US Supreme Court in the Insular cases confirmed both United States governance of Puerto Rico and the effective sovereignty over the island being exclusively a matter of Congressional will, not subject to Constitutional restraint.

The validity of colonial possessions became a matter for international law only gradually. To be sure, the morality of colonialism was often debated, and the US/Latin success in rejecting European colonial rule was a matter of political pride and world history. As well, some form of question about colonialism was raised on an international level by President Woodrow Wilson's apparent attacks on the colonial system after World War I, and the establishment of the Mandates System within the framework of the League of Nations to put the colonies on the losing side in the war on a path toward eventual self-determination. The validity of the colonial regimes maintained by the winners in World War I was never drawn into question.

Even after World War II, the colonial system associated with the victorious powers was not formally challenged, yet an anticolonial momentum gained force. Article 55 of the United Nations Charter affirms that desirable forms of international relations should be "based on respect for the principle of equal rights and self-determination of peoples." Even the Universal Declaration of Human Rights (1948), with its highly individualistic conception of rights, makes no reference to colonialism as a form of denial of human rights, nor does it explicitly endorse the right of self-determination.

International law, as so often, followed upon evolving patterns of political practice. The decisive development was, of course, the successful anti-colonial movement that swept across Africa and Asia in the late 1940s and 1950s, moving steadily forward in the 1960s, 1970s and even the 1980s.

The decisive legal moment came with the adoption by the UN General Assembly of the Declaration on the Granting of Independence to Colonial Countries and Peoples on December, 14, 1960, famous G.A. Res. 1514 (XV). This resolution linked colonial status to the denial of collective

rights under international law, and its preamble contained the following language:

Recognizing that the peoples of the world ardently desire the end of colonialism in all its manifestations;

And further:

Believing that the process of liberation is irresistible and irreversible and that, in order to avoid serious crises, an end must be put to colonialism and all practices of segregation and discrimination associated therewith....

Convinced that all peoples have an inalienable right to complete freedom, the exercise of their sovereignty and the integrity of their territory.

In the operative portion of Resolution 1514 the following provisions are especially relevant:

1. The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and cooperation.

2. All peoples have the right to self-determination, by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

By the mid-1960s there was no longer any serious doubt that the maintenance of colonial status for a people living within a distinct territory was a violation of customary international law.

The application of these legal conceptions to the status and circumstance of Puerto Rico is illuminating. The United States Government instituted a series of maneuvers designed to retain the substance of colonial administration while manipulating the outward forms to take account of the shifting international, legal, moral and political climate. Indeed, the United States had always been opportunistic in its modification of colonial forms for the sake of promoting their policy goals. To provide a basis for the inscription of Puerto Rican youth into the Armed Forces in World War I (and thereafter), US citizenship was imposed on Puerto Ricans by the Jones Act in 1917. Note that this citizenship did not include representation in Congress or even eligibility to vote in Presidential elections.

A more calculated evasion of colonial status was the reclassification of Puerto Rico as the Free Associate State or Commonwealth (Estado Libre

Asociado, ELA) in 1951 by passage in the US Congress of Law 600, which replaced earlier legal arrangements. The people of Puerto Rico were given only the option of adopting a domestic consultation within this ELA framework, and even here the character of this Puerto Rican consultation was subjugated to wide peremptory powers exclusively retained by the US Government, including complete control over foreign policy and natural defense. When the drafters of the Puerto Rican consultational Constitution sought to include welfare provisions relating to guarantees of basic human needs pertaining to health, housing, education, works, they were stricken from the document as "socialistic," and incompatible with the dominant legal instrument--namely, the US Constitution.

It has been aptly described as a "constitutional charade" to contend that ELA somehow terminated or transformed Puerto Rico's colonial status. Evidence received by the Tribunal confirmed the conclusion that under ELA Puerto Rico had less independent authority that it had enjoyed in the final phases of Spanish colonial rule where under the Charter of Autonomy (1897) Puerto Rico had significant direct representation in the Spanish Parliament (Cortes) and a higher measure of control over domestic economic policy and practice.

ELA was a cynical tactic devised in Washington and carried out with the blessing of Puerto Rican collaborators to circumvent the pressures of the anti-colonial movement, especially in relation to United Nations drive to hasten decolonization. In fact, given US influence in the United Nations, the maneuver succeeded in having Puerto Rico removed for a time from the list of non-self-determinating territories currently being denied rights of self-determination. Subsequent tactics were of a similar evasive character. The plebiscite of 1967 in which commonwealth status was upheld cannot be considered a valid expression of popular will in Puerto Rico. It was held under the auspices of a colonial administration; pro-independence forces were widely suppressed and harassed, no transfer of power preceded the plebiscite, the US Congress never indicated a willingness to accept a pro-independence or even a pro-statehood outcome, and there was no opportunity to vote against the plebiscite. By now, leaders of all political parties in Puerto Rico agree that the Puerto Rican people have never been genuinely consulted in their preferred status, a circumstance now even being conceded by the US Government.

The tactic to hide Puerto Rico's colonial status did not long succeed on an international level. From 1973 onward, annually from 1976 through 1988, the UN Special Committee on Decolonization has called upon the United States to transfer sovereign powers to the people of Puerto Rico and affirming "the inalienable right of Puerto Rico to self-determination and independence in accordance with Resolution 1514 (XV)."

The Tribunal also was presented a comprehensive analysis of why retention of colonial rule over Puerto Rico violates, as well, the US Constitution, including the XIIIth Amendment prohibiting all forms of enslavement. This analysis, invoking Mr. Justice Harlan's dissenting opinions in the US Supreme Court "Insular Cases" arguing that the

Government lacks authority in the Constitution to acquire and govern colonial possessions.

In conclusion, then, Puerto Rico has been and remains a colonial possession of the US Government. This colonial status violates customary international law and entails the denial of the rights of self-determination to the people of Puerto Rico. As well, it violates the explicit findings of the most competent United Nations organ and contradicts the spirit and letter of the Algiers Declaration. To maintain Puerto Rico as a colony has always involved immoral and exploitative practices and policies that have produced severe suffering for the people of Puerto Rico.

The legalistic efforts by the US Government to obscure the colonial character of the relationship are without substance or sincerity, and do not overcome the legal objections to Puerto Rico's colonial status.

4.2 MILITARIZATION OF PUERTO RICO AS AN AGGRAVATED FORM OF COLONIAL STATUS

The Judgement has demonstrated the existence and persistence of Puerto Rico's colonial status ever since the United States acquired control on 1898. This colonial relationship has involved a number of forms of exploitation in the economic, social, cultural and political spheres. The Tribunal also received and examined extensive evidence on a pattern of practice that arose out of the colonial relationship, but aggravates its unacceptable character--namely, the use of Puerto Rico, its resources and people, for a variety of military purposes that have nothing to do with either the internal security or external defense of the island. Puerto Rico has been blatantly converted into a geostrategic center of US military operation with regional and global scope. The militarization of a colonized people has the special effect of turning their territory into a base for imperial operations against other colonized or semi-colonized peoples, contributing thereby to additional illegal interferences with the exercise of rights of self-determination.

The militarization of Puerto Rico by the US Government has had these adverse impacts on movements for democracy and self-determination in the Caribbean region and in Central America.

Overall, there are several dimensions of Puerto Rican militarization that the Tribunal notes:

4.2.1. The establishment of a huge naval base of 37,000 acres at Roosevelt Roads in North-eastern Puerto Rico and on 2/3s of the Puerto Rican island of Vieques. Such a massive expropriation of land for non-productive purposes is itself a form of intervention in Puerto Rican internal affairs. The impact of the naval base on the economic and social life of Vieques has been disastrous. More flagrant violations of international law have been generated by US activities connected with

Roosevelt Roads. The Airport and other facilities were used as a major staging area for the United States invasion of Grenada, itself widely condemned as a violation of international law being a unilateral use of force for purposes other than self-defense. Further, nuclear submarines and other nuclear ships frequently visit Roosevelt Roads, thereby violating obligations arising from the United States signature of the Treaty of Tlateloc.

4.2.2. In addition, the United States has established a network of military bases and communication installations throughout the island out of all proportions to Puerto Rico's security needs.

4.2.3. The United States Government has subjected the people of Puerto Rico to the menace of nuclearization without any process of consent, or even consultation.

4.2.4. More than 200,000 Puerto Ricans have been drafted and induced to enlist in the US armed forces in the period between World War I and the Viet Nam War. High unemployment rates in Puerto Rico make the military option--that is, serving the colonial army--one of the few escapes from a life of unemployment or subsistence living for many young Puerto Ricans.

The Tribunal is convinced that the militarization of Puerto Rico makes it more difficult for the people of the country to recover their effective sovereignty and creates further resistance on the part of the US Government to any process that might lead to the relinquishment of colonial control. As such, militarization of a colonial territory and prospects for self-determination, as well as compliance with international law, are directly antagonistic with one another.

4.3. CRIMINALIZING AND PERSECUTING OPPONENTS OF COLONIAL STATUS FOR PUERTO RICO.

Since 1898 the United States has pursued a cruel and incoherent policy toward Puerto Rican opponents of colonial rule. It has developed a paramilitary approach to police activities which largely removes programs of intimidation and suppression from legal controls and accountability. The pattern is consistent, but a full narration of the practices cannot be attempted in this Judgment. A few highlights will be mentioned.

In 1937 the Ponce massacre occurred in which US-directed Puerto Rican police opened fire on an unarmed Nationalist Party demonstration, killing 21 and wounding 150. The American Civil Liberties Union condemned this incident as "a massacre"; it resembles in many respects the Sharpeville Massacre in South Africa (1963), which has been condemned throughout the world as a crime against humanity.

After World War II, new activism by Puerto Rican nationalists favoring independence, resulted in cruel repressive policies. Pedro Albizu Campos and many of his prominent followers were jailed and mistreated for their forceful advocacy of Puerto Rican nationalist goals. For much of its history, anti-colonial activism in Puerto Rico was non-violent, but the persistence of repressive tactics by the United States led Puerto Rican nationalists to form clandestine groups that believe that armed forms of struggle are the only effective means to challenge colonial rule and that armed struggle is a right of an oppressed people, indeed a right that has been claimed and celebrated by the United States in relation to the American Revolution.

In a series of prosecutions and investigations, the US has used a variety of dubious tactics to attack the activities of Puerto Rican activists, including conspiracy charges, wide-ranging Grand Jury investigations, paramilitary arrest procedures, assassinations by "death squads," and repeated police brutality. Puerto Ricans are, however, treated as common criminals, not as political prisoners. A case that exhibits this colonial pattern of enforcement is connected with the Hartford robbery. Conspiracy charges and indictments have been used to intimidate the whole nationalist community.

This Tribunal is convinced that Puerto Rican nationalists deserve to be treated as political prisoners and given protection as "prisoners of war" in accordance with the Geneva Conventions of 1949 and the Geneva Protocols of 1977. As such, all Puerto Rican political figures, currently in custody, should be released forthwith or, at minimum, should be sent into exile in a country whose government is prepared to grant asylum. This disposition is especially apt in the Puerto Rican case, as the groups active in Puerto Rico in recent years have renounced violence against civilians and have confined their military undertakings to targets that in some way are directly associated with maintaining or exemplifying the colonial status of Puerto Rico--for instance, attacking bases or military equipment on bases.

4.4. THE RIGHT OF SELF-DETERMINATION OF PEOPLES AS APPLIED TO THE SITUATION OF PUERTO RICO.

A principal achievement of international law in the era of decolonization is to place the right of self-determination of peoples on firm legal foundation. This right has been confirmed in widely endorsed General Assembly Resolutions 1514 (XV) and 2625 (XXV). Res. 2625 adopted by consensus, after much deliberation, in 1970 is especially authoritative as to the character and importance of the right to self-determination.

In the Preamble of Res. 2625 it is affirmed that "the principle of equal rights and self-determination of peoples constitutes a significant contribution to contemporary law, and its effective application is of paramount importance for the promotion of friendly relations among States.." The Declaration on Principles of International Law Concerning Friendly Relations (i.e. Res. 2625) spells out the content of

self-determination in authoritative manner. Every state has a duty to promote the principle of self-determination and to assist the United Nations in its realization so as to improve relations among states and "to bring a speedy end to colonialism, having due regard to the freely expressed will of the peoples concerned." This understanding of self-determination has been confirmed by the International Court of Justice in its Advisory Opinion on Namibia and in its decision in the Western Sahara case. The International Law Commission, the highest expert body on international law in the UN system has in its draft code on State Responsibility adopted the view that the principle of self-determination is in a special category of international law, jus cogens, that cannot be abridged or superceded by any act of sovereign will, including a treaty. Finally the two international covenants on human rights (International Covenant on Economic, Social, and Cultural Rights and International Covenant on Civil and Political Rights, both opened for signature Dec. 19th, 1966, entered into force in 1976) are initiated by a common Article 1 (1), indicating a place of primacy for self-determination:

Art. 1 (1) All peoples have the right of self-determination. By virtue of that they freely determine their political status and freely pursue their economic, social and cultural development.

The Tribunal believes that it is established beyond any doubt that Puerto Rico as a colonial possession of the US is subject to the exercise of the right of self-determination by the Puerto Rican people. As demonstrated in earlier sections, the US Government has failed to alter this colonial status despite pretending to do so and that it has also withheld the condition necessary for the Puerto Rican people to exercise the right of self-determination.

In this circumstance the Puerto Rican people are entitled to demand assistance from the UN and other international bodies, including the Permanent Peoples' Tribunal. The facts and analysis also clearly establish a long struggle by the Puerto Rican people to control their destiny by peaceful political means. These efforts have been repeatedly crushed by repressive violence, by counter-intelligence operations designed to destroy independence groups, and by a variety of ruses and deceptions. Puerto Rico remains isolated as virtually the only colonial possession in the world today.

The US Government continues to defy international law with respect to ending the colonial status of Puerto Rico and gives no indication that it will voluntarily change its position. In these circumstances the Puerto Rican people are entitled to have recourse to armed struggle as a means to promote their realization of self-determination and participants in such struggle are legally entitled to be treated as prisoners of war and to be confronted within the framework of the law of war. Such a liberation movement is itself restricted by standards of conduct set forth in the laws of war, especially the inviolable duty to respect the innocence of civilian life.

This Tribunal takes no firm position on the mode by which the right of self-determination should be exercised or the substantive direction of what the Puerto Rican people might choose. Res. 2625 expresses the discretion available to the Puerto Rican people in the following language:

The establishment of a sovereign and independent state, the free association or integration with an independent state or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people.

The Tribunal does believe that two conditions must be fully satisfied so as to enable the Puerto Rican people to choose freely:

First, termination of the structure and elements of colonial domination in a non-punitive manner;

Secondly, withdrawal of military presence beyond the reasonable security needs of Puerto Rico itself.

One reasonable mechanism for such a devolution of sovereignty to the people of Puerto Rico is House Joint Resolution 232 introduced into the US Congress each year for several years by congressman Ronald Dellums and others. It would be proper for the competent organs of the United Nations, perhaps with the guidance of the Secretary General to approve and validate whatever means of self-determination is proposed. Many other mechanisms could be devised if the political and moral will exists in Washington, by which to transfer effective sovereignty to the Puerto Rican people to enable their free choice in the manner required by the legal duty to end a colonial relationship and to fulfill the right of self-determination.

VERDICT

In light of the aforementioned findings of fact and conclusions of law, the Permanent Peoples' Tribunal

DECLARES

1. That Puerto Rico has the right to freely determine its political, economic, social and cultural status in accordance with the Algiers Declaration and the principles of International Law.
2. That the Constitution of the Commonwealth of Puerto Rico was not an exercise of the People of Puerto Rico's right to self-determination, insofar as it confirms that Puerto Rico's institutions are dependent on the United States federal constitution and insofar as the procedural guarantees required by the United Nations resolutions and practice regarding referendums were not complied with when these were held.
3. That the United States has the international duty to respect Puerto Rico's right to self-determination, in compliance with obligations it has freely and repeatedly assumed.
4. That the current United States military policy in Puerto Rico constitutes an obstacle to its self-determination and hampers the possibilities for peace and security in the zone.

Therefore, the Permanent Peoples' Tribunal

Urges the United States government

1. To sponsor, by all political, economic and administrative means available, the development of conditions for the full exercise of self-determination, and specially
 - a. to acknowledge that Puerto Ricans jailed for acts in support of independence have the status of political prisoners and to grant a general amnesty to all Puerto Ricans currently jailed for fighting colonialism,
 - b. to waive all claims the United States Congress has to amend and approve decisions by Puerto Rican representative governmental bodies and the government of Puerto Rico,
 - c. to transfer all powers the United States Congress or government may have over Puerto Rico to a constituent deliberative body composed by representatives of all Puerto Rican political and social forces,
 - d. to negotiate measures such as the temporary status of Puerto

Rico's legal political status until the right of self-determination is exercised as a matter of fact,

- e. to guarantee that United States military forces in Puerto Rico will not interfere, directly or indirectly, with the process of self-determination,
2. To accept that the conditions and process of Puerto Rico's self-determination be verified and controlled by the United Nations,
 3. To substantially modify its military policy in Puerto Rico and specifically
 - a. to terminate the transit and storage of nuclear weapons through or in Puerto Rico so that it may be included as a denuclearized zone within the framework of the Treaty of Tlatelolco,
 - b. to demilitarize the territory of Puerto Rico in order that it may be included in regional negotiations for the maintenance of peace,
 4. Regardless of the legal status that may result from the People of Puerto Rico's right to self-determination, the United States should fully guarantee that Puerto Rico may unconditionally be a party to any treaty or take part in any regional arrangement regarding denuclearization and demilitarization of the territory.