

# Unincorporated Territory

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Article IV, Section 3 of the US Constitution states that the Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States. Indeed, numerous Supreme Court decisions have held that the Constitution confers absolutely on the government of the Union, the powers of making war, and of making treaties; consequently, that government possesses the power of acquiring territory, either by conquest or by treaty.

(1) The United States has a long history of administrative authority over territories.

A very early example is the situation of the "Northwest Territory," which dates back to 1787. (The Northwest Territory was later divided into the states of Ohio, Indiana, Illinois, Michigan, Wisconsin, and eastern Minnesota.)

(2) So-called "unincorporated territory," however, is an area over which the Constitution has not been expressly and fully extended by the Congress within the meaning of Article IV, Section 3. The recognition of the existence of "unincorporated territory" was determined by the US Supreme Court after the Spanish American War.

(3) As the name indicates, unincorporated territory is an overseas territorial status.

In *Dorr v. United States*, 195 U.S. 138 (1904), the Supreme Court held that: "The limitations which are to be applied in any given case involving territorial government must depend upon the relation of the particular territory to the United States, concerning which Congress is exercising the power conferred by the Constitution. That the United States may have territory, which is not incorporated into the United States as a body politic, we think was recognized by the framers of the Constitution in enacting the article already considered, giving power over the territories, and is sanctioned by the opinions of the justices concurring in the judgment in *Downes v. Bidwell*, 182 U.S. 244, 21 S.Ct. 770, 45 L.Ed. 1088 (1901)."

In *Balzac v. Porto Rico*, 258 U.S. 298 (1922), the Supreme Court delineated what should and should not be considered in determining whether a territory is "incorporated" into the Union. Simply put, the Court resolved that "incorporation is not to be assumed without express declaration, or an implication so strong as to exclude any other view."

Unincorporated territories are also called insular areas. The pre-existing five major

Insular Areas and their approximate population figures are given as follows – American Samoa: 68,700; Northern Mariana Islands: 77,300; Guam: 163, 940; US Virgin Islands: 123,500; Puerto Rico: 3,863,150.

### *Background to US Insular Area Studies*

The larger insular areas originally came under the sovereignty of the United States in various ways. The following is a brief introduction to major US Insular Areas, which are also called “unincorporated territories.”

TYPE 1: Insular Areas Acquired by Conquest -- In a treaty signed at the end of the Spanish-American War in 1898, Spain ceded Puerto Rico, Guam, and the Philippines to the United States. In the same treaty, Spain’s sovereignty over Cuba was relinquished, but no recipient was designated. The categorization of this type of Insular Area requires three criteria: (1) conquest by US military forces, (2) the US as “the (principal) occupying power,” and (3) territorial cession in the peace treaty.

TYPE 2: Insular Areas Acquired by Purchase -- The United States purchased the Virgin Islands from Denmark in 1917.

TYPE 3: Insular Areas Acquired by Agreement -- Great Britain and Germany renounced their claims over Samoa in February 1900. The island group was then formally ceded to the United States by the Samoan chiefs, with ratification by the US Congress in 1929.

TYPE 4: Insular Areas Acquired after United Nations Trusteeship, as a Commonwealth of the United States -- The United States was responsible for administering the Northern Mariana Islands after World War II as a United Nations trusteeship. In 1976 Congress approved the mutually negotiated “Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States.” The commonwealth government adopted its own constitution in 1977, and the constitutional government took office in Jan. 1978. The Covenant was fully implemented on Nov. 3, 1986, pursuant to Presidential Proclamation No. 5564.

(TYPE 5: An additional type of Insular Area would be those countries which have achieved independence but are now in “Free Association with the United States.” However, these are not an “unincorporated territories” and hence are not considered here. )