



# Our Quest For Commonwealth

A Quarterly Newsletter of the Guam Commission on Self-Determination

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## COMMONWEALTH: WHERE WE STAND

Since the end of the Spanish-Chamoru Wars in the late 1600s, the people of Guam have lived under the rule of other nations. Throughout this history, there are many significant events that mark our struggle to restore our self-government.

In 1884, a group of 40 Chamorus conspired to assassinate the Spanish Governor because they tired of dictatorial rule. The Spanish response was to allow the Chamoru people to elect their village mayors.

In 1899, Don Joaquin Perez attempted to establish an independent republic to show the Americans that Guam could govern itself. This democratic experiment was brushed aside by what the historian Timothy Maga calls the occupation troops of Captain Leary in late 1899.

Through the early 1900s and up until the 1930s, Chamoru leaders gained a reputation in certain circles in the U.S. as "radicals" as they pushed for civil rights through citizenship. Civil rights and citizenship, however, were not to come until after Guam was occupied by Japanese Imperial forces in 1941 and the return of American rule in 1944.

The Organic Act of 1950, which brought citizenship to those who traced their ancestry in Guam to 1899, was rushed along by the walk-out of the Legislature in 1949. Following the passage of the Organic Act, Guam leaders pushed for an elected Governor and sent a non-voting delegate to Washington, D.C., almost 10 years before U.S. law provided for a Congressman from Guam. Guam leaders also conducted a Constitutional Convention in 1969, seven years before Congress authorized such activities.

Through the 1970s and into the 1980s, Guam's quest for a new relationship with the U.S. emerged. In 1982, the people of Guam selected the status of "commonwealth," and in 1987 approved of a

**Commonwealth is a balance of our requirement for complete internal self-government and U.S. defense interests.**

Commonwealth Act to be submitted to the federal government. In 1988, the President and the leaders of the U.S. Congress were given this document expressing Guam's aspirations. In December of 1989, the first Congressional hearing on Guam's status was held in Hawaii.

For the past two years, the Commission on Self-Determination has been engaged in discussions with the Bush Administration Task Force. These discussions were directed by the Congress so that we could try to narrow the differences between our Commonwealth proposal and the Bush Task Force report on our Commonwealth Act that was completed in late 1989.

This process has resulted in some progress and some disappointments, and

cause we are committed to creating a new relationship with the United States. We have committed ourselves to seeing that the people of Guam's mandate in the Guam Commonwealth Act is fully presented to federal officials and we have not backed away from making sure that the people of Guam have true internal self-government.

It is important to keep in mind that Commonwealth is a proposal by the people of Guam. Our history has shown us that, when changes are needed in our relationship with the U.S., it has always been up to us to push the changes along. Just as B.J. Bordallo and F.B. Leon Guerrero travelled to Washington in 1937 to meet with the President and the Congress, we have been required to meet with federal officials at home and in the States to push our cause.

**We have learned a lot about our rights as a people in this process of discussions. We have gained strength from a greater appreciation that our human rights can not be ignored or violated by any nation.**

has involved a lot of work that has often been tiring and frustrating. We have dealt with 26 federal agencies with massive resources and expertise compared to our relatively small staff and few professional consultants. But we have not despaired nor caved in to what at times have appeared to be overwhelming odds. We have continued this process - through the ups and downs - be-

Just as the Guam Assembly, led by Carlos Taitano, "revolted" against the Navy governor in 1949, we have had to take some hard stands to make sure that our position and bottom line are clearly understood.

We are attempting to change a 94-year-old relationship that has been one-sided in almost all respects. In these 94

years, the federal government has had the power to do with Guam as its wanted. In this relationship, we have never had the opportunity to agree or disagree with what the federal government took from us or gave to us.

It is only natural, given the way things are now, that the federal government is not as interested as we are in entering into a partnership through Commonwealth. For the federal government, our Commonwealth proposal means giving up some of their powers and sharing power with Guam. However, we have not just given up on the things we need the first - or even the second and third time - the U.S. administration has not agreed with us. We have learned a lot about our rights as a people in this process of discussions. We have gained strength from a greater appreciation that our human rights can not be ignored or violated by any nation.

Despite the hardships involved and the burden of proof being on us to make Guam's case, despite having to travel away from Guam on many occasions, and despite what may appear to be obstacles in our way, we have never become discouraged. We believe that America's values of democracy and freedom for all people will ultimately triumph over the first objections that were raised. We believe that America is too great a country not to give the loyal people of Guam the right to continue a relationship that is based on a partnership of Guam-U.S. interests. We believe that America is too great a country to keep the people of Guam as possessions forever, or to ignore our rights to consent, self-government and self-determination.

### Our Strategy

Our strategy in discussions with the Bush Administration Task Force has been rather simple. First, we have intended to make sure that "Commonwealth" creates a partnership between our in-

Commonwealth Pa'go!



Commonwealth Now!

### SPECIAL EDITION

This Special Edition lays out the strategy and the progress of the Guam Commission on Self-Determination in its discussions over the past two years with the Federal Interagency Task force on the Guam Commonwealth Act.

Newsletter Committee:

Attorney Peter Perez - Senator Marilyn Manibusan - Mayor Francisco Lizama



terests and U.S. interests that is fairly balanced. Our main interest has been to see that Guam achieves full internal self-government and recognition of our rights so that we can continue to see our island move forward economically, culturally, socially and politically.

We are very much aware that the main U.S. interest in Guam is strategic defense. We believe that, with some adjustments in the way the military deals with Guam (for example, land use, land return and consultations), the main U.S. interest and our interest in self-government can be balanced. However, for the Commonwealth partnership to work, the federal government must also recognize our interest.

It is only natural that, in the process of discussions with the federal government, Guam's requirement for self-government and the federal government's interest in Guam for strategic military reasons have become the most important cards on the table. Unfortunately, the federal government has not, as yet, lived up to its own democratic principles of self-government. In response to this, we have not been as accommodating as the Task Force wants us to be on military-related issues. We simply can not allow ourselves to agree to a status which only recognizes federal interests and fails to recognize Guam's requirement for self-government.

What follows is the basis of the approach the Commission has taken on the issues and principles that define our Commonwealth proposal.

### Self-Government Under Commonwealth

"Because Guam is an unincorporated territory...the government of Guam is, in essence, an instrumentality of the federal government...Except as Congress may determine, Guam has no inherent right to govern itself."

Sakamoto v. Duty Free Shoppers (Ninth Circuit Court of Appeals, 1985)

"Self-government" was the reason that an American nation was established. It was Great Britain's denial of self-government for the American colonies that led to the Declaration of Independence in 1776. In 1901, though, the U.S. Supreme Court created a status called "unincorporated territory" for those islands that were taken during the Spanish American War. "Unincorporated territory" status gave Congress the right of government in the islands. One commentator noted that "the Supreme Court of 1901 would have decided in favor of King George III" if the American colonies had taken their case against Great Britain to court.

Today, Guam still lives under the status of "unincorporated territory." This means that Guam is owned by the United States, but not actually a part of the United States. Although we elect our Governor and Legislators, we have no right to approve of the laws made by the federal government that affect us. The powers of government we have are only given to Guam by the federal government, and could just as easily be taken away. Technically, under our status, we have no inherent right to self-government. We only have those rights



Outside the Department of Interior after a meeting: CSD Members (l-r) the late Tun Pete Perez, Senator Pilar Lujan, Senator Marilyn Manibusan and Mayor Francisco Lizama.

that the federal government wants to give to us. Even in 1901, when the Supreme court created this status of "unincorporated territory," four of the nine Justices of the Supreme Court did not agree to this status. They called it "colonial," and said it would lead to "legislative absolutism."

Under Commonwealth, and consistent with the principles of democracy, we must be given a right to say how laws will affect us. As one of the delegates to a convention discussing the U.S. Constitution noted in 1787:

"It (is)...the fundamental principle of a free government, that the people should make the laws by which they (are) governed. He who is controlled by another is a slave; and that government which is directed by the will of any one, or a few, or any number less than is the will of the community, is a government for slaves."

We want a government that reflects the will of a free people. We want to have a self-governing community, in partnership with the United States, that respects our will and considers our unique circumstances.

The Commonwealth Act's proposal for Guam to achieve full internal self-government is in three parts:

1. requiring Guam's consent to the applicability of federal laws, rules and regulations (202), and requiring both Guam and the U.S. to agree to any change in the terms of the Commonwealth Act itself (103);
2. creating Guam's internal governing mechanisms through the adoption of a Constitution of Guam (Section 101); and,
3. changing existing federal laws and policies (such as trade, immigration and shipping laws and policies that apply without our agreement) to meet our unique needs and self-governing status.

### Representation through Consent

Since the U.S. Constitution allows only States to have voting representation in the Congress and to participate in selection of the President, it is undemocratic for laws, rules and regulations to apply to Guam without any evidence of Guam's consent. Therefore, the Commonwealth Act proposes that any future federal standards that apply to Guam receive the approval of Guam. This proposal amounts to "representation through consent."

Most federal laws that apply to Guam were made without any consideration of Guam's unique needs and situation. Sometimes these laws are good, but often they are not helpful; indeed, sometimes they harm Guam. Too often, federal standards are made to apply to Guam but are harmful. No matter what

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the intent of federal law, rules and regulations, Guam must be a part of the decision, or such laws are undemocratic.

Let's look at a recent federal law that was good in its intentions in the United States, but is harmful when applied to Guam. In 1990, the federal government approved an immigration law that limited the number of H-2 visas (non-immigrant laborers) into the U.S. This law was intended to keep aliens out of jobs that U.S. citizens could fill. This makes sense, given the high unemployment rate in the U.S. mainland. However, this law would make Guam eligible for only about 60 H-2 workers, when we presently have several thousand supporting construction

development in Guam. Additionally, Guam has almost no unemployment; in fact, the construction projects that are supported by temporary alien labor means additional jobs for Guamanians. Why should this law apply to Guam when we are not a part of the process of decision-making? Why should this law apply to Guam when it is harmful to our continued development and growth?

The bottom line is that, without Guam's representation and consent to the federal standards that affect us, we are subject to an undemocratic system and our unique needs are not adequately addressed. We can not expect the representatives of the people of California or New York to consider our needs when they are elected based on the needs of the people of their home States. What is required -- for the sake of democratic principles and for the good of our community -- is that we have representation through consent when it comes to federal standards being applied in Guam.

Just as we must be involved in the decisions about new federal laws, rules and regulations, Guam must also be a part of any decision to change the terms of the Commonwealth Act. The Commonwealth Act is a contract between Guam and the federal government, and it is not fair for only one side to change the terms of the relationship. If one party can change the terms of the agreement, then we will have uncertainty and instability. For this reason, the Commonwealth Act requires "mutual consent" to any changes in the Commonwealth Act itself.

### Internal Self-Government through a Constitution

Only after Guam is free from the external decision-making powers of the federal government does it make sense for Guam to establish an internal self-governing system. This internal self-governing system is known as a constitution.

The Commonwealth Act lays out the guidelines for the Guam Constitution. It will establish a republican form of government, with three branches, contain a bill of rights, and exist under the sovereignty of the U.S. Constitution. Since the Commonwealth Act establishes these guidelines, the Act calls for the people of Guam to approve the Constitution before it would go into effect. The Federal Government, however, has always required some kind of federal approval of locally adopted constitutions. Therefore, the federal government may attempt to require federal approval of the Guam Constitution before it goes into effect.

### Changing Existing Federal Laws

There is not one federal law that now applies to Guam that has been approved or consented to by the people of Guam. Therefore, it should not be surprising that, in the process of establishing self-government for Guam, many of these federal standards need to be changed.

The Commonwealth Act would change many federal laws to suit Guam's needs and to make the goals of the new standards fit Guam's status as a self-governing Commonwealth. Existing federal laws in the areas of immigration, trade, judicial relationship, maritime shipping,



the 200 mile Exclusive Economic Zone, land return procedures and many other issues are to be changed. New laws are required to meet special needs in Guam, such as the establishment of Chamoru self-determination under U.S. law, authorization for Chamoru preference programs in training and education, and a Land Trust. These many changes and improvements in federal law are woven throughout the Commonwealth Act.

The Commonwealth Act then would make these changes in the application of federal laws permanent through the provision on Mutual Consent in 103.

#### Self-Government – The Task Force View

The Bush Administration Task Force view of "self-government" is limited, and does not meet the Commonwealth Act's requirement for representation through consent to changes in federal laws to meet Guam's unique needs. The Task Force proclaims that it supports "self-government" for Guam, but it wants to continue to make laws for Guam's internal affairs without any representation or approval from Guam. The U.S. position seems to be one that supports "self-government" in name, but not self-government in practice.

A standard administration view is that, once Guam has adopted a constitution, Guam is self-governing. It is important to note that, in 1979, Guam voters overwhelmingly voted against a federally-authorized constitution because Guam's self-government would not be addressed by a constitution alone. Indeed, the failure of the Guam Constitution led to the establishment of the political status movement.

The Task Force also objects to many of the proposed changes in federal law that would give Guam the necessary level of authority to deal with important issues. Although early in the process of discussions the Task Force was agreeable to some changes in the way federal laws apply to Guam, their position has recently been that most exist-

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ing laws are fine and should continue in force. What this means is that the Task Force supports the concept of the federal government keeping the power to change laws as it wants to, rather than establishing a new legal framework for Guam's relationship with the U.S.

This view ignores the fact that these federal laws have been made to apply in Guam even though the people of Guam never agreed to them, and they apply to Guam without an appreciation of Guam's unique needs. Most importantly, this Task Force view ignores the fact that the people of Guam have democratically approved a recommendation for these many federal laws to be replaced by ones that better suit our needs



Signing of Agreements, August 1991, San Francisco. and conditions.

Finally, the Federal Task Force does not agree that changes to the Commonwealth Act itself must be approved by both Guam and the U.S. The Task Force view is that only issues involving U.S. sovereignty, U.S. defense authority and the applicability of the Constitution should be subject to "mutual consent." All other parts of the Common-

wealth Act, the Task Force believes, could be changed by the U.S. alone whenever it wishes.

then, is the exercise of a right that all others except the Chamorus have already exercised.

**Even the Task Force recognizes that the Chamoru people of Guam are the only people in Guam who have never exercised self-determination.**

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This view fails to recognize Guam's interest in stability in the new relationship. Without mutual consent, how can we establish a firm trading relationship? Without permanent controls on immigration, what guarantee do we have that Guam will not be overpopulated and its resources used up? Without mutual consent covering our authority over the 200 mile EEZ and the other issues of the Commonwealth Act, how can we be sure our interests in our resources will be protected? The Commonwealth Act position is to make both Guam and U.S. interests a fundamental part of Guam's new status. The Commonwealth partnership seeks to make both Guam and U.S. interests "fundamental" in the new relationship between Guam and the U.S.

#### Chamoru Self-Determination

Chamoru self-determination is an issue which goes to the heart of Guam's future political status. The Task Force Report, in discussing this issue notes that the Chamoru people of Guam are the only Guam residents who have not exercised self-determination, and that all others in Guam have already exercised self-determination. Self-determination for the Chamoru people of Guam,

citizenship to persons in Guam who traced their ancestry to April 11, 1899 (the date the U.S. Senate ratified the Treaty of Paris). This 1899 date was used by the U.S. because the Treaty of Paris (Treaty of Peace between the Empire of Spain and the Government of the United States, December 10, 1898) had provided for the Congress of the United States to:

"determine the civil rights and political status of the native inhabitants..." of the islands ceded under Article IX of the Treaty.

#### International Law

Chamoru self-determination can be exercised consistent with international principles in relation to the U.N.'s self-determination policy and Guam's history as a colonial territory. The issue of self-determination can not be examined without reference to the problems created by colonialism that the U.N.'s principles on decolonization address.

The U.N. Charter's "Declaration Regarding Non-Self-Governing Territories" (Guam was inscribed on the list of territories by the U.S. in 1946 – U.N. G.A. Resolution 66-1 – and remains one of the few listed in 1991) provides a basis for limiting the exercise of self-government to those inhabitants of Guam at the time of the adoption of the Char-

ter. Article 73 affirmed that:

"Members of the United Nations which assume responsibilities for the administration of territories whose people have not yet attained a full measure of self-government recognize [...] the principle that the interests of the inhabitants of these territories are paramount..."

The Article's reference to the "inhabitants of these territories" should be strictly construed to correspond to the definition of the Chamoru people in the Commonwealth Act because of the remedial nature of the article. To allow other inhabitants who have moved to Guam since 1950 to participate would dilute the Chamoru people's exercise of self-determination.

A 1981 study prepared for the U.N. supports this limited definition of the group that is entitled to exercise this remedial right to self-determination. The Special Rapporteur of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities suggested that, for the purpose of self-determination, the term "people" should apply to:

"peoples occupying a geographical area which, in the absence of foreign domination, would have formed an independent state."

In 1980, the General Assembly adopted language regarding immigration which also points to an indigenous unit as the one qualified to decide the self-determination issue. The General Assembly noted:

"Member States shall adopt the necessary measures to discourage or prevent the systematic influx of outside immigrants and settlers into Territories under colonial domination, which disrupts the demographic composition of those Territories and may constitute a major obstacle to the genuine exercise of the right to self-determination and independence by the people of those Territories."

The Chamoru people's drive for self-determination and their qualification as the self-determining unit in Guam are consistent with the view of international le-

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gal theorists that colonial occupation of territories disrupts the normal unity of indigenous peoples. One authority maintains that:

"colonial conquest destroys the possibility of relying, for a true account on the identity of the popu-



lation, on either the legal sovereign or the positive facts — including, at times, the empirical consciousness of the people ... Colonialism inaugurates a hiatus, a disruption of national history; the law of self-determination intervenes to restore the situation to a point at which an authentic history can again be possible."

Thus, the exercise of self-determination by the Chamorro people is not only legitimate, it is also necessary under international law to remove the confusion left by Guam's colonial history.

#### U.S. Law

International law leaves no doubt about who the "self" is in self-determination for Guam: even the Federal Task Force acknowledges this. The next test however, is whether Chamoru self-determination can be exercised under U.S. law and the U.S. Constitution. The answer to this is "yes."

There are several issues to look at when considering Chamoru self-determination under U.S. law. First, the Treaty of Paris approved by the U.S. Senate in 1899 gave Congress power over the political status of the "native inhabitants" of Guam. Additionally the U.N. Charter was approved by the U.S. Senate as a treaty. Under the U.S. Constitution (Article VI, Clause 2), treaties are the "supreme Law of the Land." Treaties are so powerful that U.S. Court rulings have even held that U.S. Treaties of Friendship Commerce and Navigation with Japan allow Japanese companies to ignore the Equal Employment Opportunity provisions of the 1964 Civil Rights Act when bringing company employees into the United States (Spiess v. Itoh, 5th Circuit (1981)).

In addition to the power under the Treaty which the U.S. has to address Chamoru self-determination, the Territorial Clause and the 14th and 15th Amendments of the U.S. Constitution give the Congress great power to:

1. restructure the political relationship between the U.S. and its territories; and,
2. take action that might otherwise be discriminatory in order to remedy past discrimination.

Clearly, the federal government has the power to allow the Chamoru people to exercise self-determination. It is not, then, a question of the legal right, but rather the will of the federal government provide for Chamoru self-determination.

The Task Force has tried to assert that Chamoru self-determination is unconstitutional, but they have yet to offer a legal response to the Commission's Constitutional position. When one looks closely at the policy of the present federal Administration — that opposes the rights of groups and stresses the rights of individuals — it is clear that Chamoru self-determination presents a policy problem for the Task Force, rather than a Constitutional problem. As the Commission has said and demonstrated, many of the so-called "constitutional issues" raised by the Task Force are really policy positions that the Task Force tries to hide behind a Constitutional disguise.



Presiding Judge Lamorena and Senator Manibusan during a break. The late Tun Pete Perez discusses a technical point with legal counsel Charles Troutman. (San Francisco, August 1991)

### The Commonwealth Act Can Become Law

The Commonwealth Act is a proposal for Guam and the U.S. to enter into a closer relationship through partnership. It is difficult to imagine Guam and the U.S. having a close relationship with the U.S. continuing to have absolute control over Guam.

Because the Commonwealth relationship

the earlier commonwealths have weathered. This does not make the proposed Guam Commonwealth any less a Commonwealth; rather, it makes it a stronger proposal. If any evidence is required to make this case, both Puerto Rico and the CNMI — as a result of U.S. court rulings on their status — are seeking many of the same kind of arrangements that the Guam Commonwealth Act proposes.

When trying to find fault with the Guam

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requires approval by the U.S. government, it is important that the Commonwealth Act be acceptable as U.S. law. Although the Guam Commonwealth Act sets several new standards in U.S. law, it passes Constitutional tests.

Because the Guam Commonwealth Act has received the benefit of the experience of the Commonwealth of Puerto Rico and the Commonwealth of the Northern Mariana Islands, it avoids some of the pitfalls in federal authority that

Commonwealth Act, federal officials have tried to hide behind two assertions:

1. That Guam's Commonwealth Act contains many unconstitutional provisions; and,
2. That the Commonwealth Act seeks something more independent than "commonwealth" — that it seeks free association.

Guam's Commonwealth is neither un-

constitutional, nor does it seek free association. The Guam Commonwealth Act can become law if federal officials make the effort to understand Guam's needs.

The Commonwealth Act is Constitutional  
Guam's constitutional status has been different than that of the States and incorporated territories since the Supreme Court's 1901 creation of the status of "unincorporated territory." Under U.S. law, unless Guam becomes a part of the Union, then its constitutional status will continue to be different.

The federal government has used its Territorial Clause powers under this different constitutional status to do the things that it desired in Guam. Now, through the Commonwealth Act, the federal government is asked to use this different constitutional status to grant Guam the things that are required to meet Guam's unique cultural and political status desires. This does not make the Commonwealth Act unconstitutional; rather, it simply asks Congress to use its powers for our benefit, to meet our needs.

An example of the unusual constitutional status of areas not "in" the Union of States is the issue of citizenship. According to a Congressional Research Service opinion of December 1991, constitutional protection of citizenship is not guaranteed to those areas not "in" the Union; that is, citizenship could possibly be taken back by the federal government. Is this unconstitutional? According to the Organic Act of Guam and legal experts in the federal government, the possible taking back of citizenship is perfectly constitutional. Although the Commonwealth Act would make citizenship in Guam a true citizenship, the fact that, under our current status, citizenship could be taken back clearly shows the unusual Constitutional status of Guam.

If it is "constitutional" for something as basic as U.S. citizenship to be taken away from people in Guam, then how can the federal government claim that parts of the Commonwealth Act are unconstitutional? Clearly, there is a double standard.

For the past 94 years, the federal government has used its powers under the Territorial Clause of the Constitution to treat Guam in all kinds of unusual ways — including the withholding of a right to self-government. Under Commonwealth, we ask the federal government to use these special powers under the Territorial Clause to meet our unique needs, and then to limit the future use of these powers.

Through the process of discussions, we have shown that many of the Constitutional objections raised by the Task Force in their 1989 report are not constitutional issues at all. In other areas, the Commission has given the Task Force legal analyses of how the Commonwealth Act is constitutional, but the Task Force has never responded with its own analysis refuting our case.

The Commonwealth Act is not an Independent Status  
When the federal representatives have

**These are not issues of "independence." Rather, they are Guam's proposals to make the relationship with the federal government more sensitive to Guam's needs. The federal government has the power to make these things happen if it desires to do so. As the U.S. courts have said over and over again, the federal government may treat the territories and Commonwealths "differently from States so long as there is a rational basis for its actions."**



failed to prove that there are constitutional problems with the Commonwealth Act, they have fallen back on the excuse that we are seeking a status that is independent from the U.S. This is simply not true.

Although many of the issues raised by the Guam Commonwealth Act call on the U.S. to make new policies that would apply to Guam, this does not mean that the Act would result in independence. The policy changes we seek are:

1. legal under U.S. law; and,
2. should already apply to Guam according to international law.

Three of the issues that federal officials regularly cite as examples of how the Guam Commonwealth Act would create something like an independent status are:

1. identifying and pushing the return of federally-held property;
2. Guam's control over its 200-mile ocean Exclusive Economic Zone; and,
3. Guam's right to consent to federal laws.

These are not issues of "independence." Rather, they are Guam's proposals to make the relationship with the federal government more sensitive to Guam's needs. The federal government has the power to make these things happen if it desires to do so. As the U.S. courts have said over and over again, the federal government may treat the territories and Commonwealths "differently from States so long as there is a rational basis for its actions." (Harris v. Rosario, Califo v. Torres)

There is a reason for the federal government to treat Guam differently from the States when it comes to returning lands, since the federal government's



During a working session, the CSD discusses trade issues with Special Trade Counsel John Rehm. (D.C., September 1991)

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history of land use in Guam is unique to Guam. Moreover, the federal government has not been returning much of the land it is not using.

There is a reason for Guam to have control over its EEZ in a way that is dif-

ferent from the States. Based on traditional rights and international law, Guam is very different from the States when it comes to control of our ocean resources.

Guam is already being treated differently

**Tokleau is a territory of New Zealand. The U.S. by treaty recognizes Tokleau's sovereign claim to its EEZ. We believe that the U.S. should also recognize Guam's EEZ rights.**

from the States when it comes to congressional representation and voting for the President. What we ask for in the Commonwealth Act is the right -- for the first time -- to have representation through consent to federal standards that apply to us. The very basic reason for this treatment that we seek is to make sure that we have self-government.

Under international law, the issue is even more clear. As a non-self-governing Territory under the definition used by the United Nations, Guam should already be treated in the ways that we are asking for through Commonwealth. When you look around the world at other non-self-governing territories, you see that the rights of the people of Guam are treated with less respect by the U.S. For example, the government of New Zealand gives the people of Tokelau (a non-self-governing territory like Guam) the right to consent to New Zealand law before it applies to their islands. New Zealand has also given the people of Tokelau control over their EEZ. In the case of the EEZ, the U.S. government has even signed a 1983 treaty with New Zealand and Tokelau separating the U.S. and Tokelau EEZ. In that treaty, the U.S. "recognizes that sovereignty over Tokelau is vested with the people of Tokelau."

There is not one government in the world that says Tokelau has a free association status just because they have some of their rights recognized. The fact that the U.S. recognizes the sovereignty of the Tokelau EEZ, and on the other hand says that our request for EEZ rights in Commonwealth is like an independent status is proof that the U.S. is showing two faces on this issue.

There are not any legal problems with the Guam Commonwealth Act becoming law. It is only a matter of Guam making sure that our voice is heard amongst all the other people around the world who are calling for fairness and equality in the treatment of all peoples.

## TALKS BETWEEN THE COMMISSION AND TASK FORCE: AGREEMENT, DISAGREEMENT AND QUALIFIED AGREEMENT

The Product of our Meetings The Commission, in January of 1990, took a position that it would agree to changes in the Commonwealth Act so long as the principles and intent of the people of Guam's Commonwealth proposal was not changed.

The discussions have resulted in some agreements, some disagreements and both agreement and disagreements have been wrapped into "qualified agreements." The qualified agreements reflect the position of the Commission and Task Force in trying to reach as much agreement as possible, but they also contain areas of disagreement. It should be noted that the Commission and Task Force, in formal meetings and in informal staff sessions, have raised all elements of the Commonwealth Act.

In the process of meetings over the past 2 years the Commission has agreed to changes which made the intent clearer or enhanced the Commonwealth Act. This has resulted in the expansion of some of the language of the Commonwealth Act and in some cases sections of the Commonwealth Act have been moved around. For example, the provision on Guam's 200 mile ocean Exclusive Economic Zone (EEZ) has

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been expanded by the Commission from three lines to several sections. This enhanced language also resulted in the EEZ provision being moved from 1001 to a new 1005. Another example is the way the idea of "consultations" with the military (302) has changed from being a word, to an expanded statement of how consultations will actually take place. Yet another example is the way that the Commonwealth Act's proposal for Guam to enter into international agreements has been expanded to include specific reference to a Constitutional process for Guam to enter into such agreements.

Between the time that the Commonwealth act was

drafted and these consultations there have been changes in federal law that have required a new approach to a couple of provisions of the Commonwealth Act. The provision on telecommunications, for example, originally called on Guam to be "domestic." However, recent U.S. rate deregulation in the telecommunications industry would mean that Guam's telephone users would have to pay up to 300% more for their home and business phones if Guam were now to be considered domestic. The Commission dealt with this issue by simply calling for a Guam rate regulation authority to be allowed to set and monitor rates. This would mean that Guam would provide a balance between local and long-distance rates under Common-



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wealth rather than rates being set for standards that apply to mainland conditions. Another example is "essential air service." Since the Commonwealth Act was written, mail and cargo have been included under essential air service. Therefore, specific mention of these items in the Commission/Task Force Qualified Agreement was not necessary.

Another area where changes have occurred is where the Federal Task Force has been willing to make a major shift in current policy. Control of immigration and joint consultations are the two foremost examples.

On the issue of immigration control, the Commonwealth Act had two basic principles: limiting alien naturalization in Guam to promote environmental, cultural and political stability; and, to provide Guam with the flexibility needed to bring in alien labor on a non-permanent basis to meet employment demands. The Task Force agreed to allowing these controls in return for the administration of immigration into Guam to be over-

seen by the U.S. The Commission was satisfied that the intent of immigration control was recognized by this Task Force offer and given the major shift in position thought it was not important who was in charge of administering the program and stamping passports.

On Joint Consultations, the Task Force proposed two major changes in existing policy which the Commission felt were substantive. Although the Joint Commission (203) originally called for a Guam majority to make decisions in federal law, technical obstacles would not allow the Task Force to agree. The Commission and Task Force agreed that there would be an established process for regular consultations between a Guam Commission and a Federal Commission to deal with all aspects of the relationship between Guam and the U.S. Additionally, the Commission thought that the inclusion of a Task Force proposal on "fast-track" federal legislation would give Guam additional influence over proposing changes to existing federal laws. The "fast-track" proposal would allow Guam to intro-

duce federal legislation that would have to be dealt with quickly by the Congress.

Discussions with the Task Force have involved highly technical and detailed discussions. Over the course of the meetings, literally hours have been spent over debating the meaning of single words such as "full," "complete," "shall" and "may." Many thousands of hours of research, analysis and informal discussion have been involved in this process.

The product of these many meetings reflects the Commission's position in pushing the principles and intent of the Commonwealth Act and reaching agreement with the Bush Administration Task Force where possible. Disagreement has occurred where the goals of the Commonwealth Act have not been agreeable to the Task Force and where no common ground with the Task Force appears to be reachable.

## ARTICLE 1: POLITICAL RELATIONSHIP

Issues	Principles	Agreement	Disagreement
Self-Government (§101)	Complete internal self-government for Guam	Commonwealth status under U.S. sovereignty; subject to applicable provisions of U.S. Constitution; Commonwealth has sovereign immunity.	"Full" self-government for Guam; preemption of federal law; Guam retaining all powers not specifically given to the federal government (TF)
Chamoru Self-Determination and Chamoru Programs	1. Constitution of Guam to provide for exercise of Chamoru self-determination 2. Federal and Commonwealth programs to support Chamoru cultural and preference programs	That federal monies and programs can support Chamoru cultural and preference programs.	Exercise of Chamoru self-determination (TF) That the Commonwealth of Guam can adopt programs and spend monies for Chamoru cultural and preference programs
Mutual Consent (§103)	That any changes in the language of the Commonwealth must be agreed to by Guam and the U.S.		On entire provision (TF)

## ARTICLE 2: APPLICABILITY OF FEDERAL LAW

Issues	Principles	Agreement	Disagreement
Apply additional provisions of the U.S. Constitution (§201)	Apply provisions of Constitution not now in effect and assure that special programs are constitutionally safe.	Agreement on 6 additional Constitutional provisions.	Application of Constitution "except as otherwise provided by Congress." (TF)
Guam's consent to new federal laws, rules and regulations (§202)	Guam would have representation through consent to new federal standards.		On entire provision. (TF)
Joint Consultative and Fast-Track Congressional Review Process (§203)	1. To establish a mechanism to deal with Guam-U.S. consultations under Commonwealth. 2. Guam to introduce legislation in Congress that must be responded to quickly.	1. On most of the consultation process. 2. On most of the issues in fast-track process.	1. Review of excess lands; annual reports to Congress; required starting date. (TF) 2. No fast-track on land related issues. (TF)
Delegation of Authority (§204)	To authorize the President to delegate federal authority to the Governor of Guam.	On entire provision.	

## ARTICLE 3: DEFENSE AND FOREIGN AFFAIRS AUTHORITY

Issues	Principles	Agreement	Disagreement
U.S. Defense and Foreign Affairs Authority. (§301)	Subject to consultations, & consent provisions, U.S. has authority.	On general authority.	Task Force wants U.S. authority to be "complete." CSD disagrees based on conditions and failure of TF to recognize Guam's "complete" internal self-government. (No QA)
Consultations and consent on defense related issues. (§302)	1. Consultations (subject to national security) with Guam when there are new bases, or increases or decreases in defense activity. 2. Except in times of war, Guam must consent to the island being a security zone and if foreign troops are stationed.	1. On principles of consultations.	1. On definition of "national security"; Guam's ability to call consultation meetings. 2. On consent issue. (No QA)
Consular assistance and Guam's role in regional and international agreements and organizations (§303)	1. The U.S. is to assist in establishing Guam economic and cultural offices in foreign countries. 2. Guam can enter into agreements with countries and organizations in the areas of financial and technical assistance and membership in organizations.	1. Support for establishing economic and cultural offices for Guam in foreign countries.	On language granting Guam the authority to enter into international agreements under Article I, Section 10 of the Constitution; on language allowing Guam to join organizations on its own. (No QA)

## ARTICLE 4: COURTS

Issues	Principles	Agreement	Disagreement
The relationship between Guam and U.S. courts.	The Guam's courts should receive the same treatment under U.S. law as courts in the States.	General agreement on most issues.	CSD disagrees with Task Force proposal to: 1. require a 15 year transition period of review of Guam's Supreme Court decisions by 9th Circuit Court. 2. allow Congress to establish a U.S. courts with special jurisdiction over Guam; that is not applied to States.



## ARTICLE 5: TRADE

Issues	Principles	Agreement	Disagreement
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A "product of Guam" for export to the U.S. will be easily definable; "rules of origin" for Guam product tied to international agreements	To create a stable definition of Guam products for export to encourage industry development.	<div> <p>"The Commission and Task Force have discussed the trade issue throughout the two years of meetings. The CSD's special counsel for trade matters has been working closely with the Office of the U.S. Trade Representative in formulating a plan to implement Guam's goals of free trade and permanence in the trade status for Guam. A final decision on this issue is expected in the next meeting."</p> </div>	
Duty-free & quota free market access between Guam and U.S.	Free trade between Guam and U.S.		
Existing watch and garment manufacturing retain existing export rules.	Existing industries continue to do business as they now do.		
Expedient treatment for Guam products through U.S. Customs zone.	Guam products are not held up by U.S. Customs and reach the U.S. market quickly.		

## ARTICLE 6: TAXATION

Issues	Principles	Agreement	Disagreement
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Guam to develop its own tax system.	Create a tax system that meets Guam's unique needs.	<div> <p>"The Commission has formally presented the issue of Taxation on two occasions and is also working with the Guam Tax Code Commission to establish the principles of Guam's taxation system. A final decision on this issue are expected in the next meeting."</p> </div>	
Tax filing coordination with federal government.	Single tax filing for Guam taxpayers who must also file federal tax returns.		
Bond issuing authority for Guam that includes sale of bonds in international market.	Guam should be allowed to tap lower interest rates of Asian financial institutions in bonds for Guam development.		
Numerous technical amendments to federal tax laws to strengthen Guam's base for tax benefits, enforcement and administration.	Guam should have the authority to work with federal and develop local tax benefit programs, administer and enforce tax system.		

## ARTICLE 7: IMMIGRATION

Issues	Principles	Agreement	Disagreement
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Guam would no longer be a port of entry for naturalization of aliens; spouses and children of U.S. citizens can be naturalized.	Guam's small size and limited resources require control of permanent immigration.	On limiting naturalization.	
Governor's authority to certify need for alien temporary alien labor.	The flexibility for Guam's labor needs to be met by temporary laborers.	Laborers could come to Guam for up to six years.	On the authority of the Governor to certify need. (TF)
Investor visa program for Guam.	A Guam-only investor visa program that allows Guam to define qualified investments under a development master plan.		With a specific program outside of the existing limited incentives. (No QA)
Guam assumes all immigration administration if U.S. laws reduce controls on immigration.	Immigration controls must continue and can not be reduced by future U.S. action.		On entire provision. (TF)

## ARTICLE 8: LABOR

Issues	Principles	Agreement	Disagreement
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Federal civil service hiring preference for local residents. (§801)	Guam residents should be given hiring preference in local federal civil service employment.	On entire provision. (TF)	
Guam can adopt its own labor laws; U.S. Secretary of Labor has a 180 day period to respond before effective. (§802)	Guam needs the flexibility to implement labor laws and standards that may be different than federal law.	On entire provisions. (TF)	

## ARTICLE 9: TRANSPORTATION AND TELECOMMUNICATIONS

Issues	Principles	Agreement	Disagreement
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Maritime shipping. (§901)	Lifting of U.S. coastwise law restrictions on shipping.		
Airlines: 1. Guam sponsors foreign carriers; 2. Guam involved in process of approval of foreign air carrier service to Guam; 3. Guam has official observer status during bi-lateral negotiations. (§902(a))	1. Guam should be able to invite and sponsor airlines' applications to U.S. Transportation Department; 2. Guam should be a party to all discussions and procedures concerning any air service application for Guam; 3. Representatives of Guam should be able to observe negotiations of Guam routes.	2. On Guam being a part of the process of discussions and proceedings on foreign air carrier applications to service Guam.	1. On Guam's inviting and sponsoring foreign air carriers applications. TF wants Guam to limited to waiting until after application before entering the process. 3. On Guam having observers at the table during bi-lateral negotiations. TF wants Interior to represent Guam. (No QA)
Essential Air Service (§902(b))	U.S. guarantees that Guam will have air service for passenger, mail and essential cargo.	On entire provision.	
Telecommunications (§903)	Guam should be given the authority to regulate the rate-setting process.		On granting legal authority for Guam to regulate phone rates. (No QA)

## ARTICLE 10: LAND AND NATURAL RESOURCES

Issues	Principles	Agreement	Disagreement
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Guam's power of eminent domain does not extend to federal property. (§1001(a))	Guam has power of eminent domain but federal properties cannot be condemned by this process.	On entire provision.	
Limitation on future U.S. land takings, except in time of war. (§1001(c)(d))	The U.S. should not take any Guam land by eminent domain except in time of war; any land that is acquired must be voluntarily sold.	On acquiring property in times of peace; acquiring only the minimum property necessary to accomplish purpose.	On limiting federal power of eminent domain. (No QA)



# ARTICLE 10: LAND AND NATURAL RESOURCES (continued)

Issues	Principles	Agreement	Disagreement
Return of excess federally-held property cost-free/restriction free; release of restrictions on property previously returned. (§1001(d)(e)).	U.S. land return process must be changed so that property coming back to Guam can be used without restrictions by federal government; Guam should not pay for land taken by the federal government.		On making the cost-free/restriction-free property return a legal requirement; on lifting restrictions on all property previously returned to Guam. (No QA)
Return of all federally-held property that is not used for present operations. (§1002(a))	Federal government should not be allowed to hold property that it is not using.		On entire concept. (No QA)
Chamoru Land Trust (§1002(-)).	Lands returned to Guam by the U.S. government and any other government land may be used for Chamoru Land Trust.	On entire provision. (TF)	
Access to and through federally-held property. (§1003)	Military should provide access, where possible, to recreational & historical sites on military property; private land owners must be given access to their landlocked property.	On entire provision. (TF)	
Transfer of U.S. held utilities. (§1004)	U.S. government should be a customer of Guam's utility system.	On entire provision. (TF)	
Exclusive Economic Zone (EEZ) (§1005)	Guam to have control over all exploration, exploitation, and enforcement in Guam's 200 mile ocean EEZ.		On entire provision. (TF)
Hazardous Waste	1. Clean up of all past waste sites; 2. Denial of creating any future waste dump site and dumping hazardous or nuclear waste in the EEZ; 3. U.S. must be fully responsible for damages to persons and clean up of any future hazardous materials accidents or dumping.		<div> <p>"The Commission has presented comprehensive language on this issue but has not yet received a response from the Task Force. A final decision on this issue is expected in the next meeting."</p> </div>

# ARTICLE 11: FINANCIAL ASSISTANCE

Issues	Principles	Agreement	Disagreement
Return of taxes and fees. (§1101)	U.S. returns to Guam all taxes and fees it collects in Guam.	On entire provision. (TF)	
Equal treatment for Guam in federally-funded programs. (§1102)	For Guam citizens to get equal treatment under federal programs; Guam should not subsidize federal programs that U.S. pays for in States.		<div> <p>"No final federal position."</p> </div>
Federal Payment (§1104)	Federal government must pay Guam for lost economic opportunity as a result of the land it uses.		<div> <p>"On entire provision. (TF)"</p> </div>
Transition Assistance (§1105)	Federal government to assist Guam in capital improvement projects and funding Development Authority in transition to Commonwealth.		

# ARTICLE 12: TECHNICAL AMENDMENTS

Issues	Principles	Agreement	Disagreement
Interpretation	The Commonwealth Act nor the Constitution of Guam shall be interpreted as the final act of self-determination.		<div> <p>"The issues in these provisions have been worked on by commission Counsel at the direction of the Commission and are to be decided on in the final meeting."</p> </div>
Establishment of a Covenant	To guarantee that the Commonwealth Act and provision on mutual consent are locked into an unchangeable framework.		
Definition of Guam.	Defines Guam as the land, people waters and Exclusive Economic Zone.		
Ratification of the Commonwealth Act and Constitution.	Sets up process of approval of Commonwealth and the Constitution, with final vote by the voters of Guam.		
Effective Dates.	Staggers the implementation of the Commonwealth Act and the Constitution of Guam in relation to provisions of the Organic Act.		

## MEMBERS OF THE COMMISSION ON SELF-DETERMINATION



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Chairman



Senator Francisco R. Santos  
21st Guam Legislature  
Vice-Chairman



Alberto C. Lamorena, III  
Presiding Judge  
Superior Court of Guam



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