Giha Mo'na

A Self-Determination Study for Guåhan

COMMISSION ON DECOLONIZATION

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Commission on Decolonization
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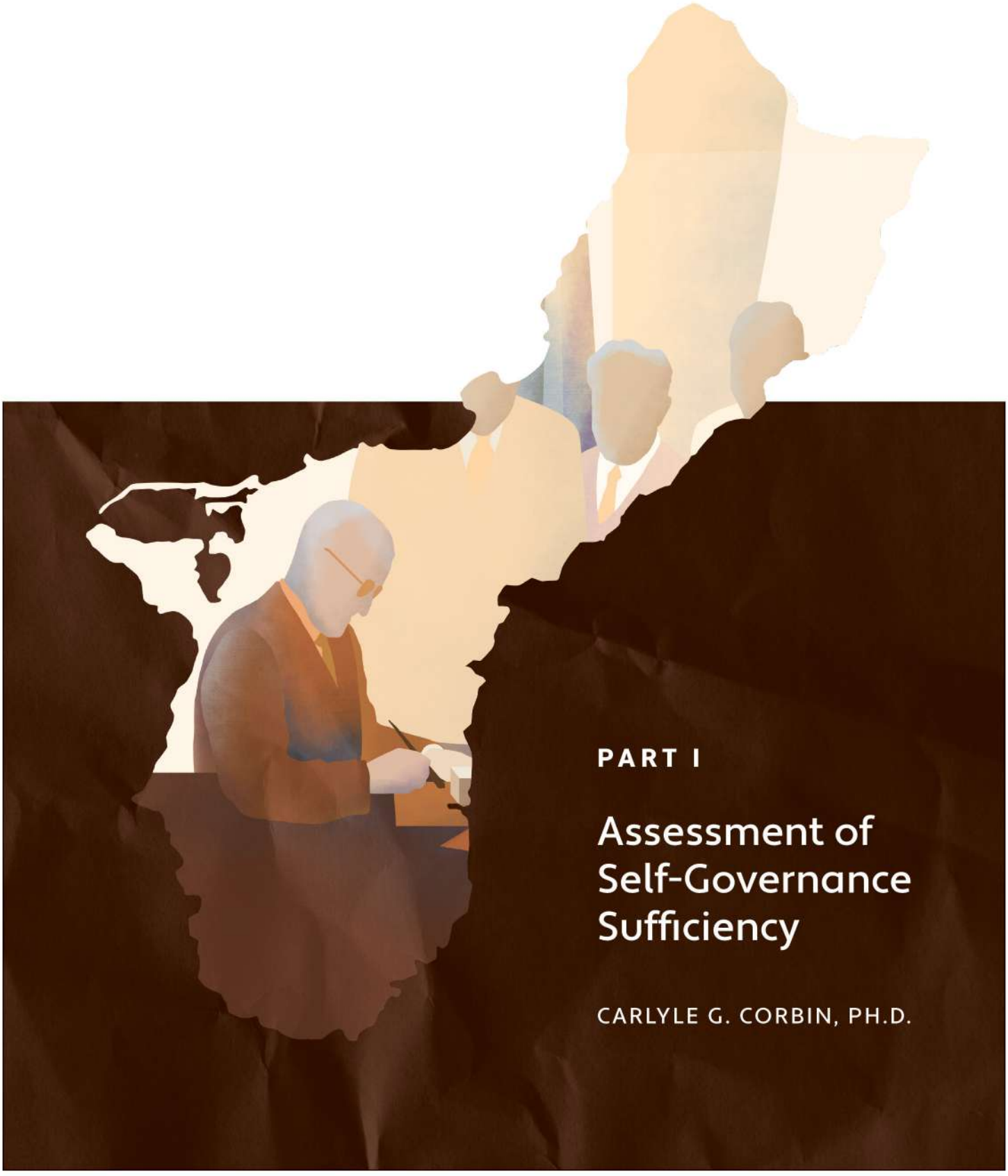


PART I

Assessment of Self-Governance Sufficiency

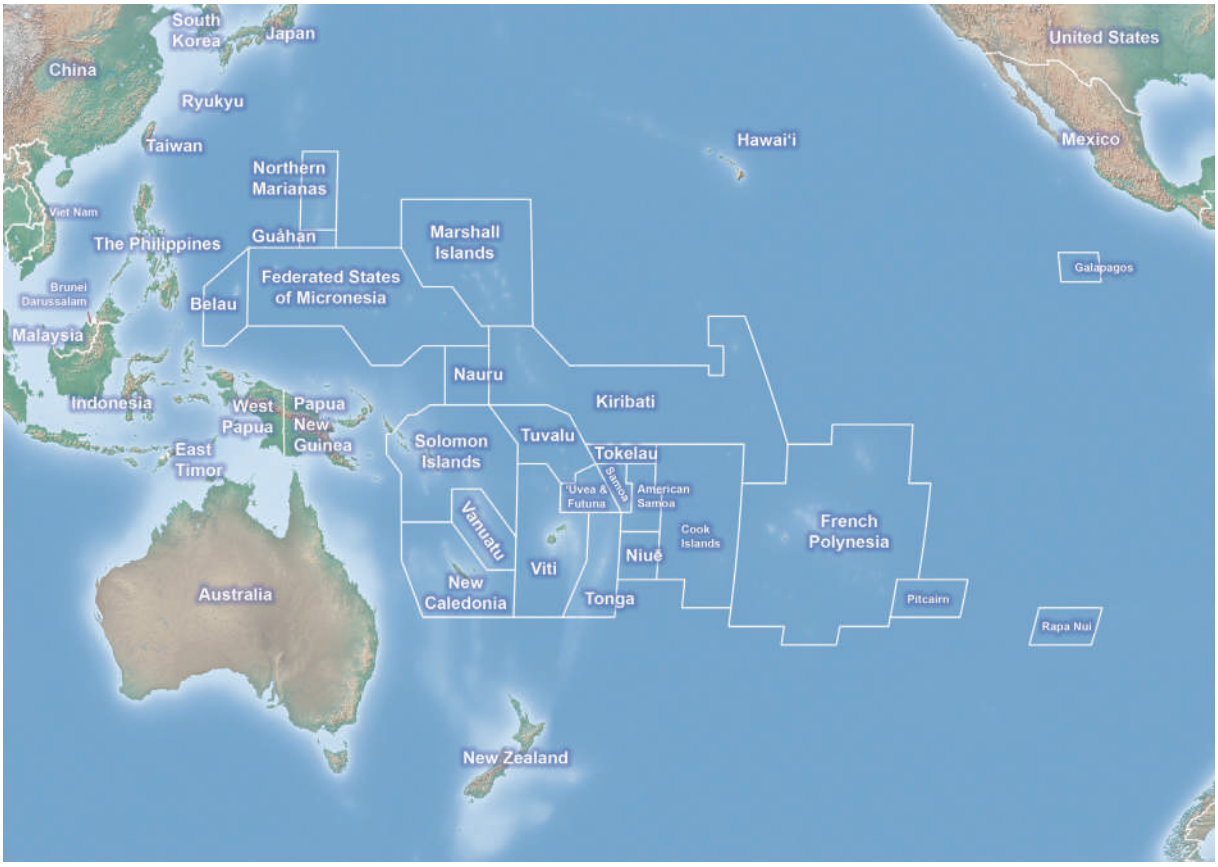
CARLYLE G. CORBIN, PH.D.

Giha Mo'na | A Self-Determination Study for Guåhan

PART I
Assessment of Self-Governance Sufficiency in Conformity with Internationally Recognized Standards

COUNTRY: GUAM/GUÅHAN

Carlyle G. Corbin, Ph.D.
International Advisor on Governance



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Glossary of Acronyms, Abbreviations and Definitions

AC	Autonomous Country
APE	Absolute Political Equality
ADG	Appointed Dependency Governance
APs	Administering Powers
CERD	Convention on the Elimination of Racial Discrimination
CHamoru/Chamorro	Indigenous Peoples of Guam/Guahan; native inhabitants
Cosmopole	A country which administers a territory or territories
CRS	Congressional Research Service
CSD	Commission on Self-Determination
CoD	Commission on Decolonization
DG	Dependency Governance
DOD	Department of Defense
DOI	Department of Interior
ECOSOC	Economic and Social Council
EDG	Elected Dependency Governance
FMSG	Full Measure of Self-Government
GAO	General Accountability Office
GSA	General Services Administration
IACHR	Interamerican Commission for Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
IDEC	International Decade for the Eradication of Colonialism
Indicator	A diagnostic mechanism for providing specific information on the state or condition of something as in measure, gauge, barometer, index, mark, sign, signal, guide to, standard, touchstone, yardstick, benchmark, criterion or point of reference (Oxford Dictionary)

JGO	Japanese Governance under Occupation
MDG	Military Dependency Governance
NMI	Northern Mariana Islands
NIC(s)	Non-Independent Country/Countries
NIJ(s)	Non-Independent Jurisdiction/Jurisdictions
NIPC(s)	Non-Independent Pacific Country/Countries
NSGT(s)	Non Self-Governing Territory/Territories
OTA	Office of Technology Assessment
PCG	Pre-Colonial Governance
PSG	Preparation for Self-Government
PD(s)	Peripheral Dependency/Dependencies
P-EDG	Partial Elected Dependency Governance
PFII	Permanent Forum on Indigenous Issues (PFII)
P-NSGT	Pacific Non Self-Governing Territories
POA	Plan of Action
PSG	Preparation for Self-Government
PSNR	Permanent Sovereignty over Natural Resources
SGA	Self-Governance Assessment
SDG	Spanish Dependency Governance
SGIs	Self-Governance Indicators
SCUA	Source of Cosmopole Unilateral Authority
SDG	Spanish Dependency Governance
State	Independent Country as in U.N. Member State
state	An integrated polity of the United States
TTPI	Trust Territory of the Pacific Islands
U.N.	United Nations
UNDRIP	U.N. Declaration on the Rights of Indigenous Peoples
UNGA	United Nations General Assembly
UNPO	Unrepresented Peoples Organization
U.S.	United States
UTS	Unincorporated Territorial Status

INTRODUCTION

Guam has embarked on an initiative to fundamentally advance its political status through a popular consultation to ascertain the will of its inhabitants on the political status options recognized by international law as providing for the Full Measure of Self-Government (FMSG). This action comes in the wake of activities in other US dependencies, such as American Samoa, which failed in 2010 to gain public approval on amendments to its constitution based on its present political status; and the US Virgin Islands, which in 2010 was unable to complete a territorial constitution on its fifth attempt, decades after its 1993 inconclusive political status referendum. The prevailing authority to conduct Guam's process of political status modernization can be identified in both United States (US) domestic and international policy.

On the domestic side is the 1980 policy on the US territories, announced by President Jimmy Carter, which emerged from a 1979 federal study that endorsed, inter alia, the fundamental principle of self-determination, and which noted that all status options were open to the people of the insular areas (*with certain limitations relating to US national security interests*). This domestic policy was complemented by US treaty obligations under Article 73 (b) of the United Nations Charter to prepare the territories under US administration to attain full self-government, and under Article 73 (e) of the Charter to transmit information on political and economic developments in the territories concerned.

The 1980 federal policy relative to US territories affirmed the relevance of Guam's previous efforts to advance its political status. These early initiatives included the 1973 creation of a territorial political status mechanism, which issued its findings in a 1974 report on economic, social, and constitutional issues affecting the territory. A successor commission followed in 1975, which undertook further research, conducted a program of political education to heighten the awareness of the people of their political options, and recommended holding a plebiscite on status alternatives. The plebiscite was conducted the following year, in 1976, with the results confirming public desire for improvements in the prevailing political arrangement.

Preceding the 1980 presidential policy statement on the broader political status question was federal legislation, coinciding with the 1976 Guam plebiscite, which authorized Guam and the US Virgin Islands to draft a territorial constitution within the existing federal-territorial relationship (*emphasis added*). The

result of this federal law was the establishment of a constitutional convention in Guam, which met in 1977-78, and which prepared a draft territorial constitution. The draft was subsequently defeated during a 1979 referendum, in recognition that the political status of the territory should first be resolved before a meaningful constitution could be drafted. The same year, the US Virgin Islands rejected a proposed constitution on similar grounds. The referendum defeat in both territories confirmed the necessity of President Carter's 1980 policy to address the larger picture of political status modernization.

Accordingly, a number of initiatives were undertaken in Guam, beginning two years later, with a 1982 referendum on political status options. In this case, the voters overwhelmingly opted for an autonomous commonwealth arrangement with the US as an "interim" status. The Commission on Self-Determination (CSD) was subsequently established in 1984 and a draft Commonwealth Act was completed in 1986. The proposed arrangement was approved by referendum in 1987.

A series of discussions on the draft Commonwealth Act between the Guam CSD and the relevant federal executive and Congressional bodies began in 1989 and continued, through 1997, without agreement. The main differences of perspective related to whether Guam's autonomy to be delegated to Guam as delegated in the commonwealth proposal was consistent with the parameters of the prevailing Unincorporated Territorial Status (UTS). After the unsuccessful negotiations, a Guam Commission on Decolonization (CoD) was formed in 1997 to establish, in concert with the Guam Election Commission, a registration process for eligible voters. The mandate of the new CoD also included the conduct of a public education program, as well as an intended referendum on the political status options of full political equality, in accordance with international standards and principles. By the end of 2019, the political status process in Guam was continuing, consistent with this new approach.

In the global context, the year 2020 marked the final year of the Third International Decade for the Eradication of Colonialism (IDEC) so designated by the United Nations (UN) "to intensify their efforts to continue to implement the Plan of Action (POA) for the Second IDEC"[1] Despite the stated effort to foster complete decolonization according to the POAs associated with the first through third IDEC's, there remain some seventeen dependencies formally listed by the UN as Non Self-Governing Territories (NSGTs) which have yet to achieve the Full Measure of Self-Government (FMSG) as mandated in the UN Charter.[2] There are at least an equal number of Peripheral Dependencies (PDs) which do not meet the standards of FMSG, but which were removed from UN review in the first decades following the establishment of the UN in 1945,[3] and prior to the adoption by the UN General Assembly of contemporary

1 See "Third International Decade for the Eradication of Colonialism," United Nations Resolution 65/119 of 10 December 2010, operative paragraph 2.

2 The Charter of the United Nations, Chapter 11, Article 73, refers to "territories whose peoples have not yet attained a full measure of self-government" in relation to the obligations of "Members of the United Nations which have or assume responsibilities for the administration of territories."

3 The Charter of the United Nations was signed on 26 June 1945, in San Francisco, at the conclusion of the United Nations Conference on International Organization, and came into force on 24 October 1945.

global self-governance standards in 1960.[4]

Along with American Samoa and the US Virgin Islands, Guam is among the seventeen remaining dependencies currently on the UN list of NSGTs. All were voluntarily placed on the original UN list in 1946 by the US as the administering power.[5] Meanwhile, Puerto Rico (also initially UN-listed) is categorized as a Peripheral Dependency (PD), having been removed from the roster of NSGTs by UN resolution prior to the adoption of the minimum standards of full self-government in 1960 on the basis of its "autonomous" commonwealth status, which was originally judged as meeting an earlier, rudimentary standard of self-government. Puerto Rico currently remains under self-governance scrutiny by the UN Special Committee on Decolonization,[6] and the political inequality inherent in Puerto Rico's commonwealth arrangement has been challenged in two petitions before the Interamerican Commission on Human Rights (IACHR) in 2006 and 2016, respectively.

The Northern Mariana Islands (NMI), as one of the four components of the former Trust Territory of the Pacific Islands (TTPI) under a U.N. mandate, achieved its own version of commonwealth status. Its actual level of autonomy is under renewed review following a landmark 2009 decision of the US District Court of the District of Columbia (*Commonwealth of the Northern Mariana Islands v United States of America, Civil Action No. 08-1572*), upholding US actions that: removed the authority of the NMI over its immigration policies; and applied US labor laws. This reduced exercise of autonomy resulted in the 2016 adoption of a law by the NMI government "[t]o create the Second Marianas Political Status Commission to examine whether the people desire continuing in a 'Political Union with the United States of America' pursuant to the [Commonwealth] Covenant; to determine if that continuation is in their best interest, or whether some other political status would better enable them to fulfill their aspirations of full and meaningful self-government, and for other purposes" (*Public Law 19-63*).

Stemming from the US inscription of Guam (and the other US territories, *excluding the NMI*) as non-self-governing in 1946, the UN Charter and the relevant self-determination/decolonization resolutions of the UN General Assembly became wholly applicable. Public discourse in the US territories about political and constitutional advancement has invariably led to questions about the relevancy to US territories of decolonization doctrine under international law, the criteria for participation in exercises of self-determination, and the political power balance/imbalance under various political status arrangements, among other issues. The democratic legitimacy of the current Dependency Governance (DG) models, and which future political status options might be considered, are also matters of particular concern, requiring careful and measured assessment to examine the implications of the status quo, as well as the ramifications of political status change.

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4 See UN General Assembly Resolution 1541 of 15 December 1960 entitled *"Principles which should guide members in determining whether or not an obligation exists to transmit the information called for under Article 73e of the Charter"* identified the minimum standards for the political status options of independence, free association and integration providing for the Full Measure of Self-Government (FMSG).

5 United Nations General Assembly Resolution 66-1 of 14 December 1946 entitled *"Transmission of information under Article 73 e of the Charter"* inscribed some 72 territories on the UN list of Non Self-Governing Territories.

6 Puerto Rico was removed from the UN list of NSGTs in 1953 pursuant to Resolution 748 of 27 November 1953 after achieving commonwealth status regarded at the time as providing for self-governance sufficiency.

It is within this context that the existing political status arrangement of Guam is examined in the present Self-Governance Assessment (SGA), with the aim of evaluating: whether the prevailing DG model of Unincorporated Territorial Status (UTS) has successfully prepared the territory for the requisite Full Measure of Self-Government (FMSG) on the basis of recognized international standards; whether adjustments might be considered in reforming the existent political relationship with the US to accelerate the preparatory process; or if a fundamental change in political status is necessary to advance Guam toward full democratic governance through a process of self-determination and consequent decolonization.[7] A description of the methodology utilized in the SGA on Guam follows. The methodology is explained below, while Section II of the current Assessment analyzes the evolution of Guam's right to self-determination under international law.

7 See Carlyle Corbin. Prospectus for Self-Governance Assessment - Territory Of Guam, May 2019.

Methodology

Part I of this analysis uses the Self-Governance Assessment (SGA) methodology, which employs the diagnostic tool of Self-Governance Indicators (SGIs) developed by the global Dependency Studies Project.

The SGA is an evaluative mechanism that examines the extent of Preparation for Self-Government (PSG) of a Non Self-Governing Territory (NSGT) under its existent Dependency Governance (DG) model toward the ultimate ascension to the Full Measure of Self-Government (FMSG). The SGIs were formulated from a synthesis of relevant international human rights instruments, including those with concentration on self-determination, democratic governance, human rights and indigenous rights, along with relevant UN General Assembly and Economic and Social Council (ECOSOC) resolutions on self-determination and its consequent decolonization.

The SGIs were first introduced in 2011 at the University of the West Indies (Jamaica), with specific reference to small island dependencies. Following scholarly review and subsequent revision, the SGIs were published by the Institute of Commonwealth Studies in the edited volume of "The Non-Independent Territories of the Caribbean and Pacific" (London, 2012). The first two SGAs were conducted in 2012 for the "autonomous countries" of Curacao in the Caribbean and French Polynesia in the Pacific. The SGA mechanism was formally recognized by the UN in successive General Assembly resolutions on French Polynesia as the substantive analysis supporting the re-inscription of that territory on the UN List of NSGTs, which contains seventeen mostly small island territories as of 2019.

Alternative versions of the SGIs are utilized, depending on the individual political status model concerned. If a territory is considered autonomous, specific indicators are used to assess the extent to which a particular autonomous dependency model complies with the internationally recognized standards of autonomous governance. Similarly, if a territory is considered politically integrated with another country, the level of compliance with the standards of full integration is measured. The SGA for Guam uses a particular set of SGIs designed for NSGTs. Hence, the present Assessment is undertaken from the perspective that the territory is considered to be in the preparatory phase, leading to the attainment of FMSG pursuant to the international legal obligations of States which administer territories under Article

73(b) of the UN Charter, and relevant self-determination and human rights instruments. Accordingly, the SGA for Guam measures the level of Preparation for Self-Government (PSG) in the exercise of delegated authority from the US Congress under its plenary authority of the "Territory of Other Property" Clause of the US Constitution [Article IV (3)(2)].

The SGIs used in Self-Governance Assessments are not static, but are continually refined and updated to reflect advancements in international self-determination and decolonization doctrine, as well as the increasing complexities of political status arrangements which, over time, have become increasingly complex. The data used in the SGA on Guam has been compiled from official territorial, cosmopole and international sources, and from other publicly available information. The SGA of Guam is not intended as a punitive process but rather seeks to: dispassionately examine the extent of advancement of the existent political status model toward the requisite FMSG on the basis of recognized international standards; and assess whether adjustments in the political relationship would advance the territory to the FMSG. The composite SGIs identified for the assessment of Guam, along with the applicable range of measurements, are contained in Table A below, and are calculated on a scale ranging from 1 to 4, with 1 representing the least level of PSG and 4 representing the greatest level of PSG:

Table A: Indicators of Self-Governance Assessment Country: Guam

SELF-GOVERNANCE INDICATOR	MEASUREMENT
INDICATOR # 1 **Cosmopole compliance with international self-determination obligations**	1. Cosmopole dismisses relevance of collective self-determination and regards political development of the territory as solely a domestic matter governed by cosmopole laws. 2. Cosmopole acknowledges external self-determination process but regards it as subordinate to the domestic laws of the cosmopole. **3. Cosmopole acknowledges relevance of international law and uses it as a guideline for political evolution of the territory**

	4. Cosmopole cooperates with United Nations "case-by-case work program" to develop a genuine process of self-determination for the territory with direct UN participation in the act of self-determination.
INDICATOR # 2 **Degree of awareness of the people of the territory of the legitimate political status options, and of the overall decolonization process**	1. Little or no awareness, with no organized political education process. 2. Some degree of awareness as a result of insufficient political awareness activities. **3. Significant degree of awareness through official political education activities.** 4. High degree of awareness and preparedness to enable the people to decide upon the future destiny of the territory with due knowledge.
INDICATOR # 3 **Unilateral Applicability of Laws and Extent of Mutual Consent**	1. Absolute authority of cosmopole to legislate for the territory. **2. Mutual consultation on applicability of laws, but final determination remains with cosmopole.** 3. Existence of a process to assess impact of laws, regulations, and treaties before application to territory. 4. Mutual consent required before application of laws, regulations and treaties.

INDICATOR # 4 **Extent of evolution of governance capacity through the exercise of delegated internal self-government**	1. Direct rule by cosmopole-appointed official who exercises unilateral authority. 2. Elected legislative with cosmopole-appointed executive with powers to annul decisions of the elected legislative **3. Elected legislative and executive with powers to legislate, but with cosmopole powers to annul decisions of elected bodies.** 4. Decisions to annul decisions of the elected bodies only possible by mutual consent.
INDICATOR # 5 **Extent of evolution of governance capacity through the exercise of external affairs**	1. Limited awareness of eligibility of the territory for participation in regional and international organizations. **2. Substantial awareness of regional and international organization eligibility but limited participation.** 3. Significant participation in regional and international organizations 4. Full participation in programmes of regional and international organizations.

INDICATOR # 6 **Right to determine the internal constitution without outside interference**	1. Dependency constitution must be drafted in conformity with the relevant provisions of the Instrument of Unilateral Authority (IUA) governing the relationship between the dependency and the cosmopole. 2. **Dependency constitution can be independently drafted but consultations must be held with the cosmopole, which can amend the text in advance of it being presented to the people in referendum or other form of popular consultation.** 3. Dependency constitution can be independently drafted and adopted by the people of the territory in advance of its submission to the cosmopole, which would have legal recourse to strike down provisions not in compliance with the IUA. 4. Dependency constitution can be independently drafted and adopted by the people of the territory consistent with UN resolution 1514(XV) on the "transfer of powers" to the dependency, and resolution 1541(XV) permitting the constitution to be enacted without outside interference as a preparatory measure to the future attainment of the full measure of self-government.

INDICATOR # 7 **Level of Participation in the US political system (executive, legislative and judicial) as preparatory to the exercise of self-government**	1. No political participation or representation in political system of cosmopole. **2. Limited participation through cosmopole political institutions** 3. Voting authority in cosmopole political institutions/political parties, with non-voting representation in cosmopole legislative body. 4. Full voting rights in cosmopole elections and equal voting representation in cosmopole legislative body.
INDICATOR # 8 **Degree of Autonomy in Economic Affairs**	1. Territorial economy dependent on direct aid from cosmopole and subject to cosmopole unilateral applicability of laws and regulations which hinder economic growth and sustainability. **2. Territory receives sectoral assistance aid from cosmopole, generates significant revenue from its local economy but is not able to retain the revenue.** 3. Territory generates and keeps most revenue from its economy but receives infrastructural and sectoral assistance. 4. Territory has self-sufficient economy through retention of all revenue generated but may receive infrastructural and sectoral assistance.

INDICATOR # 9 **Degree of Autonomy in Cultural Affairs**	1. Cosmopole prohibits use of indigenous language and customs of the people of the territory for purposes of official school instruction, legal proceedings and commerce. 2. Cosmopole recognizes indigenous cultural heritage and language but considers it subordinate to its own cultural traditions as unilaterally imposed on the territory in official school instruction, legal proceedings and commerce. **3. Territory exercises significant autonomy in the preservation and projection of indigenous customs and language in official school instruction, legal proceedings and commerce.** 4. Territory has full authority in the preservation and projection of indigenous customs and language in official school instruction, legal proceedings and commerce.
INDICATOR # 10 **Extent of ownership and control of natural resources**	1. Cosmopole exercises absolute ownership and control over natural resources of territory with power of eminent domain. **1.5 Absolute ownership and control of the EEZ by the cosmopole with certain territorial in internal jurisdiction in management of resources.**

	2. Some degree of shared ownership/ control of natural resources between territory and cosmopole. 3. High degree of shared ownership and mutual decision-making on natural resource disposition between cosmopole and territory. 4. Natural resources owned and controlled by territory.
INDICATOR # 11 **Control and Administration of military activities**	1. Cosmopole can establish and expand military presence including expropriation of land and degradation of the environment for military purposes without consultation with the territory. **2. Cosmopole consults with the territory before establishment and expansion of military activities.** 3. Cosmopole complies with territorial laws, including environmental laws, in the context of military activities; and accepts UN mandates on military activities in Non Self-Governing Territories. 4. Territory has the authority to determine the extent and nature of military presence of cosmopole, to receive just compensation for the use of its territory for military purposes, compensation for environmental and health consequences, and to demand an end to said activities.

A framework for the political formula for Non Self-Governing Territories (NSGTs) reflects:
1+2+3+4+5+6+7+8+9+10+11 – Preparation for Self-Government (PSG).

INDICATOR	MEASUREMENT
INDICATOR # 1 Cosmopole compliance with international self-determination obligations	3
INDICATOR # 2 Degree of awareness of the people of the territory of the legitimate political status options, and of the overall decolonization process	3
INDICATOR # 3 Unilateral Applicability of Laws and Extent of Mutual Consent	2
INDICATOR # 4 Extent of evolution of governance capacity through the exercise of delegated internal self-government	3
INDICATOR # 5 Extent of evolution of governance capacity through the exercise of external affairs	2
INDICATOR # 6 Right to determine the internal constitution without outside interference	2
INDICATOR # 7 Level of Participation in the US political system (executive, legislative and judicial) as preparatory to the exercise of self-government	2
INDICATOR # 8 Degree of Autonomy in Economic Affairs	2
INDICATOR # 9 Degree of Autonomy in Cultural Affairs	3
INDICATOR # 10 Extent of ownership and control of natural resources	1.5
INDICATOR # 11 Control and Administration of military activities	2
TOTAL	**25.5**

EVOLUTION OF SELF-DETERMINATION UNDER INTERNATIONAL LAW

In order to establish the relevance of international law to the self-determination process of Guam, it is useful to explore the evolution of the doctrine of self-determination and its emerging application to NSGTs. In fact, as early as the 1800s, when the acquisition of territories began to take shape, the countries which acquired territories recognized some degree of obligation to advance their self-determination. This realization emerged from the historical progression of "discovery" and conquest in the Pacific by various European naval powers, dating from at least the 15th Century. In a study on decolonization of the Pacific conducted for the UN Permanent Forum on Indigenous Issues (PFII), Valmaine Toki recalled that such activity had significantly evolved into the 1800s as a "competition among countries to seize Pacific island[s] for political, military and financial interests [with] that problem…[having] lingered until the current day."[8]

The subsequent obligation to foster the development of acquired territories was recognized in some of the earliest bilateral and multilateral treaties. The Treaty of Paris (1898) concluding the Spanish-American War, which transferred Guam, the Philippines, and Puerto Rico from Spain to the US as the spoils of war, provided that, "[the] civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by the Congress." It was considered at this early stage that the disposition of the territories was to serve as preparatory toward the achievement of self-government through a process of self-determination (*in the rudimentary interpretation of the concepts at this historical juncture*). This position began to emerge in the aftermath of the end of World War I with the signing of the 1919 Covenant of the League of Nations which applied to the "colonies and territories" the principle that "the well-being and development of such [colonized] peoples form a sacred trust of civilisation, and that securities for the performance of this trust should be embodied in this Covenant."[9]

8 See Valmaine Toki (2013), *Study on Decolonization of the Pacific region*, Permanent Forum on Indigenous Issues, Twelfth Session, Economic and Social Council, United Nations, UN Doc. E/C.19/2013/12, 20 February. See also Edward John (2014), *Study on the impacts of the Discovery on indigenous peoples, including mechanisms, processes and instruments of redress*, Permanent Forum on Indigenous Issues, Thirteenth Session, Economic and Social Council, United Nations, UN Doc. E/C.19/2014/3, 20 February 2014.

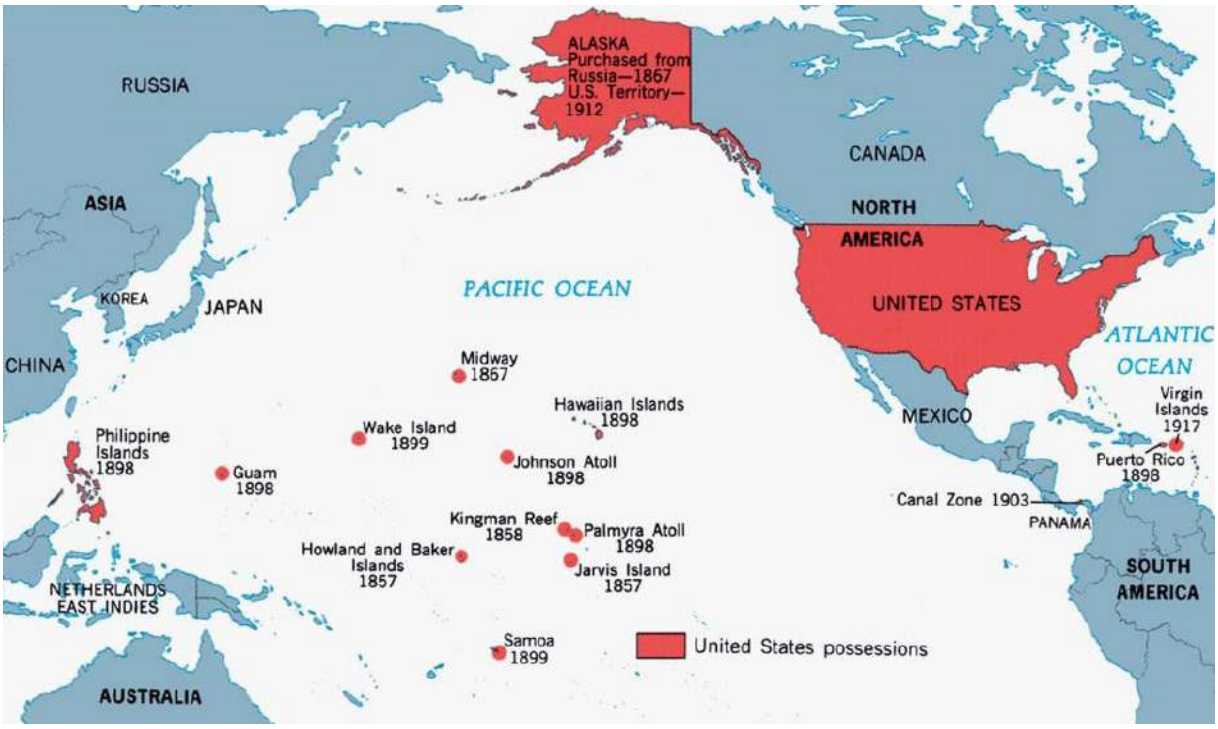
9 Covenant of the League of Nations, article 22 (1919-1924).

Other International Instruments

LEAGUE OF NATIONS

Self-determination was a major focus of the **League of Nations** when it was created in 1919.

Figure 1: Dates of Acquisition of US Territories



Scholars have studied the evolution of the right to self-determination, dating from the post-World War I (WWI) period onward. In an analysis of evolving concepts of self-determination, Valerie Epps of Suffolk University Law School recalled this historical period when, "the victorious powers (in World War I) were busy carving up the rubble of the Austro-Hungarian and Ottoman Empires," and referenced US President Woodrow Wilson's recognition in 1918 that "self-determination is not a mere phrase, [but rather was]...an imperative principle of action which statesmen will henceforth ignore at their peril."[10] In this context, Article 22 of the Covenant of the League of Nations made specific reference to the commitment to promote the development of peoples:

> The best method of giving practical effect to this principle is that the tutelage of such peoples should be entrusted to advanced nations who by reason of their resources, their experience or their geographical position can best undertake this responsibility, and who are willing to accept it, and that this tutelage should be exercised by them as Mandatories on behalf of the League.[11]

Epps recognized "a certain irony" that the principle of self-determination was being recognized at a time when "victorious states expected to, and certainly did, redistribute conquered lands after [WWI] warfare with no regard for the wishes of the residents."[12] In the bilateral Atlantic Charter several decades later, in 1941, United Kingdom (U.K.) Prime Minister Winston S. Churchill and US President Franklin D. Roosevelt alluded to recognition of self-determination in the third commitment of that treatise with respect to, "the right of all peoples to choose the form of government under which they will live" and in their shared, "wish to see sovereign rights and self-government restored to those who have been forcibly deprived of them."[13]

These early expressions were later codified in the Dumbarton Oaks proposals, which served as the forerunner of the UN Charter adopted by the nations of the world in 1945, and which promoted the refinement of an international criteria for the FMSG in the period immediately following World War II. Accordingly, the UN Charter adopted that year contained provisions formally declaring in Article 1 that the principle of "equal rights and self-determination" was one of the "primary purposes of the U.N" to develop friendly relations among nations. Further, Article 55 of the UN Charter recognized that "peaceful and friendly relations among nations [should be] based on respect for the principle of equal rights and self-determination of peoples..."[14]

Article 73 of the UN Charter had direct relevance to Guam and other territories similarly situated,

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10 See Valerie Epps (2008) *Evolving Concepts of Self-Determination and Autonomy in International Law: The Legal Status of Tibet*, Suffolk University Law School, 21 October p. 4.

11 9 *supra note.*

12 10 *supra note.*

13 The Atlantic Charter was a joint declaration by US President Franklin D. Roosevelt and British Prime Minister Winston Churchill on August 14, 1941 following a meeting in Newfoundland providing a broad statement of US and British goals regarding WWII (US State Department, Office of the Historian).

14 United Nations Charter (1945) Article 1(2) and Article 55.

with the formal acceptance by countries which administer territories of their statutory obligations under international law to advance the self-determination and consequent decolonization of territories under their jurisdiction:

Article 73

> Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories, and, to this end:
>
> a. to ensure, with due respect for the culture of the peoples concerned, their political, economic, social, and educational advancement, their just treatment, and their protection against abuses;
>
> b. to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement; [*emphasis added*]
>
> c. to further international peace and security;
>
> d. to promote constructive measures of development, to encourage research, and to co-operate with one another and, when and where appropriate, with specialized international bodies with a view to the practical achievement of the social, economic, and scientific purposes set forth in this Article; and
>
> e. to transmit regularly to the Secretary-General for information purposes, subject to such limitation as security and constitutional considerations may require, statistical and other information of a technical nature relating to economic, social, and educational conditions in the territories for which they are respectively responsible other than those territories to which Chapters XII and XIII apply.

The standard practice is that the UN does not publish the specific information on Guam transmitted by the US to the UN Secretary-General under Article 73(e) of the UN Charter, but indications are that the data is garnered from Guam government reports and US Department of Interior data. The primary consideration here is the adherence to not only the letter of the international obligations under Article 73 of the UN Charter, but also compliance with the spirit of these mandates which have been accepted by the US as Guam's administering power in the signing and ratification of that Charter, and confirmed through the voluntary listing and retention of Guam on the UN roster of NSGTs.

Self-Determination - From 'Principle' to a 'Right'

The evolution of self-determination of peoples from a "principle" to a recognized "right" under international law pre-dated the establishment of the UN and was the subject of considerable debate by the international community. As noted above, specific attention had been paid to self-determination as a "principle" at the time of the earlier League of Nations, and this principle evolved to an acknowledgement of self-determination as a recognized right, or "jus cogens" - a peremptory norm of general international law.[15]

This realization was later reflected in subsequent international instruments, including the landmark 1960 Decolonization Declaration (*"Declaration on the Granting of Independence to Colonial Countries and Peoples"*)—regarded as the 'magna carta' of decolonization—followed by the 1969 "Vienna Convention on the Law of Treaties." [16] The Decolonization Declaration, in particular, was adopted by the General Assembly, "at a time when the decolonization process was already well underway," with the recognition that "a patently anti-colonialist measure would not become politically possible until the General Assembly's transformation from its original very narrow base of representation limited to the States members of the victorious wartime Alliance against Fascism to something more nearly reflective in cultural and ideological terms of the world community at large." [17] Legal scholar Edward McWhinney, in an historical commentary on the Decolonization Declaration, concluded that:

> In the end, the persuasiveness, in both political and legal terms, of resolution 1514 (XV) as Declaration must rest upon its claims to be an authoritative, interpretive gloss upon the Charter of

15 See John B. Henriksen (2001), *Implementation of the Right of Self-Determination of Indigenous Peoples*, Indigenous Affairs. p.7. *Jus cogens* is customary international law through the adoption by states. However, not all customary international laws rise to the level of peremptory norms.

16 See, respectively, operative paragraph 2 of UN Resolution 1514(XV) on the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples (Decolonization Declaration), and Article 53 of the Vienna Convention on the Law of Treaties, Done at Vienna on 23 May 1969 and entering into force on 27 January 1980, United Nations, Treaty Series, vol. 1155, p. 331.

17 See Edward McWhinney, "Declaration of the Granting of Independence to Colonial Countries and Peoples," United Nations Audio-visual Library of International Law, UN website, http://legal.un.org/avl/ha/dicc/dicc.html accessed 24 October 2019.

> the United Nations as originally written, amplifying and extending the Charter's original historical imperatives so as to encompass the new historical reality of the post-World War II international society of the drives for access to full sovereignty and independence of erstwhile subject-peoples, in an emerging new, culturally inclusive, representative, pluralist world community.
>
> In its substantive law stipulations, the Declaration postulates what may be described as ordering principles, intended to guide the progressive development of international law in accordance with the General Assembly's own explicit mandate under...the Charter of the United Nations.[18]

Thus, self-determination as a peremptory norm became increasingly accepted by the international community as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law of the same nature.[19] The norm was also specifically applied to indigenous peoples' right to self-determination as a function of the recognition of the fundamental right to self-determination of all peoples, and as "firmly established in international law, including human rights law, and...must, therefore, be applied equally and universally.[20] The CHamoru peoples, as the first peoples to inhabit the island of Guåhan (Guam) over 4,000 years ago, are recognized as the indigenous, aboriginal peoples of the island, and international law on the rights of indigenous peoples is wholly applicable. A description of the governance of the island society during the pre-colonial 'ancient' period is reflected in Part IV on the "Evolution of Dependency Governance of Guam."

Since the 1960s, the right of peoples to self-determination has been subsequently enshrined "in numerous international agreements including the International Covenants on Human Rights; numerous and repeated resolutions of the UN General Assembly; the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty; the Declaration on the Strengthening of International Security; the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations and the Definition of Aggression; and the resolutions on permanent sovereignty of natural resources," among other UN instruments.[21] These international instruments serve as the basis for the protection of the self-determination rights of peoples under international law, requiring the signatory states to adhere to the precepts contained in these multilateral agreements.

Accordingly, McWhinney highlighted the "prophetic quality of resolution 1514 (XV) in providing an inevitable legal linkage between self-determination and its goal of decolonization, and a postulated new international law-based right of freedom also in economic self-determination."[22]

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18 *id.*, at 1-2.

19 *Self-Determination*, Unrepresented Peoples Organisation (UNPO), 19 July 2006.

20 15 Henrikson *supra note*, at 15.

21 Hector Gross Espiell (1978) Report of the "UN Special Rapporteur with regard to the implementation of United Nations resolutions relating to the right of peoples under colonial and alien domination to self-determination," UN Economic and Social Council, Sub-Commission on Prevention of Discrimination and Protection of Minorities, UN Doc. E/CN.4/Sub.2/405 (Vol. 1) 20 June, p. 27

22 17 McWhinney *supra note*, at 4.

The Right to External Self-Determination of Peoples

The issue of whether the right to self-determination is intended as an individual right internal to a State, or as an external, collective right of peoples to form a separate State, was comprehensively addressed in a seminal 1978 report of the "UN Special Rapporteur with regard to the implementation of United Nations resolutions relating to the right of peoples under colonial and alien domination to self-determination." The report noted that:

> Self-determination is...a right of peoples. The divergence of opinion among lega1 theorists which existed on this point until a few years ago has been overcome: the Declaration adopted in resolution 1514 (XV) and the International Covenants on Human Rights have provided the basis for unquestioned acceptance in international law of the fact that self-determination is a right of peoples under colonial and alien domination. To characterize self-determination as a collective possessed by peoples raised awkward theoretical problems because of the difficulty of defining the concept of a people and drawing a clear distinction between that and other similar concepts. Apart from such difficulties however, it is evident that, both politically and practically, the right of peoples to self-determination is one of the major realities of the present day and that the invocation and recognition of this right have radically changed international society as it existed until a few years ago.[23]

The Committee on the Elimination of Racial Discrimination (CERD), the body of independent experts that monitors implementation of the Convention on the Elimination of All Forms of Racial Discrimination by its State parties, also addressed this question of internal/external self-determination in its 1996 General Recommendation, affirming that:

23 21 *supra note.*

> [T]he right to self-determination of peoples has an internal aspect, i.e. the rights of all peoples to pursue freely their economic, social and cultural development without outside interference. In that respect there exists a link with the right of every citizen to take part in the conduct of public affairs at any level as referred to in article 5 (c) of the International Convention on the Elimination of All Forms of Racial Discrimination...
>
> [Conversely] [t]he external aspect of self-determination implies that all peoples have the right to determine freely their political status and their place in the international community based upon the principle of equal rights and exemplified by the liberation of peoples from colonialism and by the prohibition to subject peoples to alien subjugation, domination, and exploitation.[24]

The CERD General Recommendation also emphasized that the right to collective self-determination does not authorize nor encourage any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent states in accordance with the "Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States."[25] Hence, the right of peoples to self-determination does not recognize "a general right of peoples to unilaterally declare secession from a state," but that "arrangements reached by free agreements of all parties concerned" are not precluded. [26] In this connection, it is to be emphasized that any exercise of self-determination by the peoples of Guam would not constitute a secessionist act since Guam, as an NSGT, is not politically or constitutionally *a part of the US*, but rather, is *administered by the US* under the unilateral applicability of the *"Territory or other Property"* clause of the US Constitution.[27]

Hence, a fundamental distinction must be made between the collective right of "peoples" to self-determination and the acknowledged individual rights of minorities within a state, since it is only "peoples" who possess this collective right. The peoples of Guam, an NSGT under international law, possess the collective right to external self-determination, precisely because they have not exercised their collective right to self-determination and are not politically integrated into the cosmopole, the US Further, Guam has a defined "people" with the historic recognition as the "native inhabitants" in the 1898 Treaty of Paris between Spain and the US In this context, the uniqueness of Guam as an NSGT, distinct from the country administering it (US), was set forth in the 1970 "Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States" (*an often referenced Declaration in US policy statements on decolonization to the UN Fourth Committee*):

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24 Committee on the Elimination of Racial Discrimination, General Recommendation, The right to self-determination (Forty-eighth session, 1996), UN Doc. A/51/18, annex VIII at 125 (1996), reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI\GEN\1\Rev.6 at 209 (2003). General Recommendation XXI(48) adopted at 1147th meeting on 8 March 1996, p. 1-2. The US ratified the Convention on the Elimination of Racial Discrimination on 21 October 1994.

25 *"The Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States."* UN General Assembly Resolution 2625 of 24 October 1970.

26 *id.*

27 See *Constitution of the United States*, Article IV(3)(2) which states that the "Congress has the right to make all needful rules for territory or other property belonging to the United States" (emphasis added).

> The territory of a colony or other Non-Self-Governing Territory has, under the [UN Charter, a status separate and distinct from the territory of the State administering it; and such separate and distinct status under the Charter shall exist until the people of the colony or Non-Self-Governing Territory have exercised their right of self-determination in accordance with the Charter, and particularly its purposes and principles.[28]

The identification of the "peoples" who possess this right to self-determination sheds further light on this uniqueness. Henriksen defines "peoples" as, "a group of individual human beings who enjoy some or all...features [including] a common historical tradition, ethnic identity, cultural homogeneity, linguistic unity, religious or ideological affinity, territorial connection and common economic life possess[ing] the will or consciousness to be a people, and institutions to express the identity of the people."[29]

In this light, legal scholar Milena Sterio observed that "...national peoples, groups with a shared ethnicity, language, culture and religion should be allowed to share their fate - thus to self-determine their affiliation and status on the world scene...and by the 1960s, it became widely accepted that oppressed colonized groups ought to have similar rights to auto-regulate and to choose their political and possibly their sovereign status.[30]

Nevertheless, it was recognized as early as 1981, by UN Special Rapporteur Aurelia Cristescu, that "although the principle of equal rights and self-determination of peoples has been embodied in the [UN] Charter and has been reaffirmed and developed in several fundamental instruments of the United Nations and in other instruments concluded between States, it is continuously being violated in various parts of the world [with] many examples of denial of the right of peoples to self-determination."[31]

The Special Rapporteur concluded by drawing attention to the "fundamental problem... aris[ing] in regard to equal rights and self-determination... of identifying the holder of the rights and the nature of the corresponding duties." It was concluded that "...peoples, whether or not they are constituted as a State, whether or not they have attained nation status, are the holders of equal rights and of the right to self-determination," and that the guarantee of those rights has been dictated by "historical necessity." As the Special Rapporteur indicated:

> "It is also clear from a reading of other legal instruments of the United Nations, and from the Organization's consistent practice, that all peoples possess the right in question. The principle

28 25 *supra note*, at 7.

29 15 Henrikson *supra note*, at 8. Henriksen points to the "well established legal principle contained in the Vienna Convention on the Law of Treaties, that terms in international legal instruments are to be interpreted according to their ordinary meaning (and) that (t)his maxim of international law has also been affirmed by the International Court of Justice: 'if the words in their natural and ordinary meaning make sense, in their context, that's the end of the matter" [*Advisory Opinion, 1950 ICJ 4,8."*].

30 Milena Sterio (2009), *On the Right to External Self-Determination: 'Selfistans,' Secession and the Great Powers' Rule, Cleveland-Marshall College of Law*, Cleveland State University, Research Paper 09-163.

31 *"The Right to Self-Determination-Historical and Current Development on the basis of United Nations Instruments,"* Study prepared by Aureliu Cristescu, Special Rapporteur of the Sub-commission on Prevention of Discrimination and the Protection of Minorities; United Nations, 1981.

> of equal rights and self-determination should be understood in its widest sense. It signifies the inalienable right of all peoples to choose their own political, economic and social system and their own international status. The principle of equal rights and self-determination of peoples thus possesses a universal character, recognised by the Charter, as a right of all peoples whether or not they have attained independence and the status of a State."[32]

The 1981 Special Rapporteur Report identifies "peoples" as "those who are able to exercise their right of self-determination, who occupy a homogenous territory and whose members are related ethnically or in other ways." The Rapporteur's Report affirmed that the right of peoples to choose and develop their internal political system was expressly set forth in the General Assembly "Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States," in accordance with the UN Charter which makes specific reference to, "territories whose peoples [who] have not yet attained a full measure of self-government." A range of relevant resolutions of the General Assembly have further affirmed these conclusions through present day. In this light, the *oeuvre* of research establishes the clear applicability of the right to self-determination for the peoples of Guam.

Consistent with these international law precepts, the Twenty-Third Guam Legislature, on January 5, 1997, adopted, "An act to create the Commission on Decolonization for the implementation and exercise of Chamorro Self- Determination," which, "recognize[d] that all the people of the territory of Guam have democratically expressed their collective will and have recognized and approved the inalienable right of the Chamorro people to self-determination including the right to ultimately decide the future political status of the territory of Guam as expressed in Section 102 (a) of the draft Commonwealth Act, as approved by the people of Guam in a plebiscite held in September 1988." (*See Annex*).

In the Act, the Chamorro people of Guam were defined as "all inhabitants of Guam in 1898 and their descendants who have taken no affirmative steps to preserve or acquire foreign nationality." This definition of native inhabitant was subsequently adjusted in 2000 to reflect "those persons who became US Citizens by virtue of the authority and enactment of the 1950 Organic Act of Guam and descendants of those persons" (*See Annex*). This change reflected the decision by the Guam Legislature to amend the original 1997 law establishing the Commission on Decolonization to clarify the intent that the qualifications for voting in the political status plebiscite were to be based on a clearly defined political class of people resulting from historical acts of political entities in relation to the people of Guam, and not on racial considerations.

The category of native inhabitants as a political class for the purpose of the Guam plebiscite was a primary argument in the 2013 appeal to the Ninth Circuit US Court of Appeals in the Arnold Davis v Guam Election Commission case. In this connection, the intent of the Guam Legislature was cited with respect to the enactment of laws relevant to the plebiscite, clarifying that said "laws shall not be construed nor implemented by the government officials effectuating its provisions to be race based, but founded upon

32 *Id.*

the classification of persons as defined by the US Congress in the 1950 Organic Act of Guam, the United States Immigration and Nationality Act, the UN Charter and several UN resolutions concerning non self-governing territories (NSGTs), and the International Covenant on Civil and Political Rights (ICCPR)".

The US Supreme Court's decision not to hear the case exhausted the "domestic remedy" required as a prerequisite for the issue to be submitted to a respective international tribunal. Thus, it is important to reaffirm that international law clearly recognizes the rights of native inhabitants of Guam, as specifically referenced in the Treaty of Paris. In this vein, the adoption in 1960 of the landmark Decolonization Declaration, directed at Guam and other NSGTs, served as the basis that "[A]ll 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."[33] Over time, the meaning of self-determination has matured in the context of global processes, and has been given further clarity as the principle evolved. A succinct UNPO definition of this right was published in 2006, regarding it as "...the right of a people to determine its own destiny... [and which] allows a people to choose its own political status, and to determine its own form of economic, cultural and social development," (and that) "the exercise of this right can result in a variety of different outcomes ranging from political independence through to full integration within a state."[34]

In the seminal "Emerging Right to Democratic Governance," legal scholar Thomas Franck in 1992 made the organic link between self-determination and democratic governance, indicating that "self-determination postulates the right of a people organized in an established territory to determine its collective political destiny in a democratic fashion and is therefore at the core of the democratic entitlement.[35] "Reference is also made to the confirmation of the self-determination principle in relevant international court decisions where this right has been described as *erga omnes* and an essential principle of international law.[36]

Most recently, the UN International Law Commission's Special Rapporteur on the topic of peremptory norms of general international law Dire Tladi, in his fourth report (2019), asserted that "the right to self-determination is another norm previously identified by the [UN International Law] Commission as a...classical norm of *jus cogens* whose peremptory status is virtually universally accepted."[37] In the report, the Special Rapporteur alluded to the1995 International Court of Justice (ICJ) judgment in the East Timor Case which stated that "the right of peoples to self-determination, as it evolved from the [UN] Charter

33 United Nations *Declaration on the Implementation of the Granting of Independence to Colonial Countries and Peoples*, Resolution 1514 (XV), 14 December (New York: United Nations General Assembly).

34 15 *supra note*. See also *"The Right of People and Nations to Self-Determination,"* Official Records of the UN General Assembly, Tenth Session (Annexes), 28 September - 20 December 1955.

35 See Thomas M. Franck (1992), *The Emerging Right to Democratic Governance*, The American Journal of International Law, Vol. 86, No. 1. January, p. 52.

36 *Erga omnes* in international law refers to specifically determined obligations that states have towards the international community as a whole.

37 See Dire Tladi, *Fourth report on peremptory norms of general international law (jus cogens)*, Special Rapporteur, UN Doc. A/CN.4/727 of 31 January 2019, pp. 48-49.

and from UN practice, has an *erga omnes* character, [and] is irreproachable."[38] The Special Rapporteur made reference to additional ICJ judgments which emphasized the importance of the right to self-determination as one of the essential principles of contemporary international law,[39] and underscored that jus cogens "has always been recognized in the practice of States in the context of multilateral instruments [including] many General Assembly resolutions proclaiming the fundamental character of the right to self-determination."[40]

In a commentary on the 2019 ICJ "Advisory Opinion on the Legal Consequences of the Separation of the Chagos Archipelago from Mauritius In 1965," international law lecturers Craig Eggett and Sahara Thin pointed to the recognition by the ICJ of the "*erga omnes* character of the obligation [*emphasis added*] to respect self-determination, [finding] that there exists an obligation, binding on all States, to cooperate with the UN to complete the decolonisation of Mauritius," and that "while rights and obligations go hand in hand, it is obligations that have erga omnes character...not rights [*emphasis added*]."[41] With this further refinement, it is to be concluded that the obligations of the US, contained in Article 73 of the UN Charter, to bring Guam as a US-administered NSGT to the full measure of self-government, possesses an *erga omnes* character.

Accordingly, for Guam, it is the obligation of the US under international law to facilitate a genuine process of self-determination for the peoples of the territory in order to advance the territory to the FMSG. In this pursuit, measures have been identified for implementation by the US as the administering Power of the territory to fulfill this legally binding commitment. A most relevant action is contained in the mandate of the 1960 Decolonization Declaration (*UN Resolution 1514*) for the US to take [i]mmediate steps… to transfer all powers to the peoples of [Guam]… without any conditions or reservations, in accordance with their freely expressed will and desire…" (*See Annex*).

On the broader point, Franck concluded that "self-determination is legitimated by its long pedigree [and] despite lacunae, it also has a large and precise textual canon, refined by a growing 'jurisprudence' of interpretation...[and] under Article 73 [of the UN Charter] members responsible for administering non self-governing territories pledged to 'develop self-government', to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political

38 *id.*

39 21 *supra note*, at 49. The Special Rapporteur in his report cited ICJ advisory opinions on Namibia and Western Sahara, et al.

40 *id.* The Special Rapporteur report made specific reference to the Decolonization Declaration (resolution 1514(XV) "which provided for a right to self-determination in absolute terms and was referred to by the ICJ in establishing the *erga omnes* nature of the right." Also cited was the 1970 Declaration on Principles of International Concerning Friendly Relations and Cooperation among States in accordance with the Charter of the U.N," and Security Council resolution 384 (1975) which recognized "the inalienable right of the people of East Timor to self-determination, " and which called on all States to respect that right. The Security Council resolution also referred to the consequences associated with serious breaches of *jus cogens*, in particular, the duty of States to cooperate to bring an end to situations created by the breach of the right to self-determination of the people of East Timor.

41 Craig Eggett and Sarah Thin, Clarification and Conflation: Obligations Erga Omnes in the Chagos Opinion, Blog of the European Journal of International Law, 21 May 2019. See the ICJ Advisory Opinion on the Legal Consequences Of The Separation of the Chagos Archipelago From Mauritius In 1965, ICJ website https://www.icj-cij.org/files/case-related/169/169-20190225-01-00-EN.pdf accessed 11 October 2019.

institutions."[42] Franck observed that "these provisions were augmented by additional normative texts among which was UN General Assembly resolution 1541 (XV) of 1960 which "attempt[ed] to stipulate the test for determining whether a territory was non self-governing within the meaning of Article 73(e) of the [UN] Charter."[43]

The standards of validation of self-governance contained in resolution 1541(XV) are specifically reaffirmed by the UN General Assembly in its annual decolonization resolutions on Guam and other NSGTs. In this light, Franck pointed to Principle IV of resolution 1541(XV), and its reference to the existence of non-self-governing status, which exists *prima facie*, "in respect of a territory which is geographically separate and is distinct ethnically and/or culturally from the country administering it," with subsequent reference to a position or status of the NSGT to one of subordination to the administering power.[44] In summary, Franck said of the right to self-determination that "its general normative content already had been spelled out in General Assembly resolutions to which a large majority of the international community has assented, and in widely ratified treaties, beginning with the UN Charter and culminating in the [International] Covenant [on Civil and Political Rights].[45]

Subsequent UN resolutions, multilateral treaties, and other international instruments through present day serve to further clarify the required measure of self-government in determining whether the contemporary threshold of full political equality has been met through legitimate acts of self-determination in the various political status arrangements. The legal and political analyses provided by Franck, et al, leave little doubt regarding the applicability of the international right to external self-determination to Guam and other NSGTs similarly situated, and the obligation of the administering Powers, such as the US, to advance the territory toward the FMSG is without question.

With the confirmation of the applicability to Guam of the right to self-determination and consequent decolonization, consistent with international law, coupled with the recognition of the "peoples" to whom this principle and law apply, the present Assessment proceeds to the matter of defining the mandate within which specific actions have been approved for the decolonization process of Guam to be achieved. Said actions are set forth in UN decolonization resolutions which provide the substantive legislative authority on the question. In this context, a synopsis of relevant UN resolutions directed at the decolonization of Guam is provided in Part III of the present Assessment.

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42 35 Franck *supra note*, at 57.

43 *id.*

44 *id.*

45 International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 UNTS 171 , *reprinted in* 6 ILM 368 (1967) (entered into force Mar. 23, 1976. See also International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 UNTS 3, *reprinted in* 6 ILM 360 (1967) (entered into force Jan. 3, 1976).

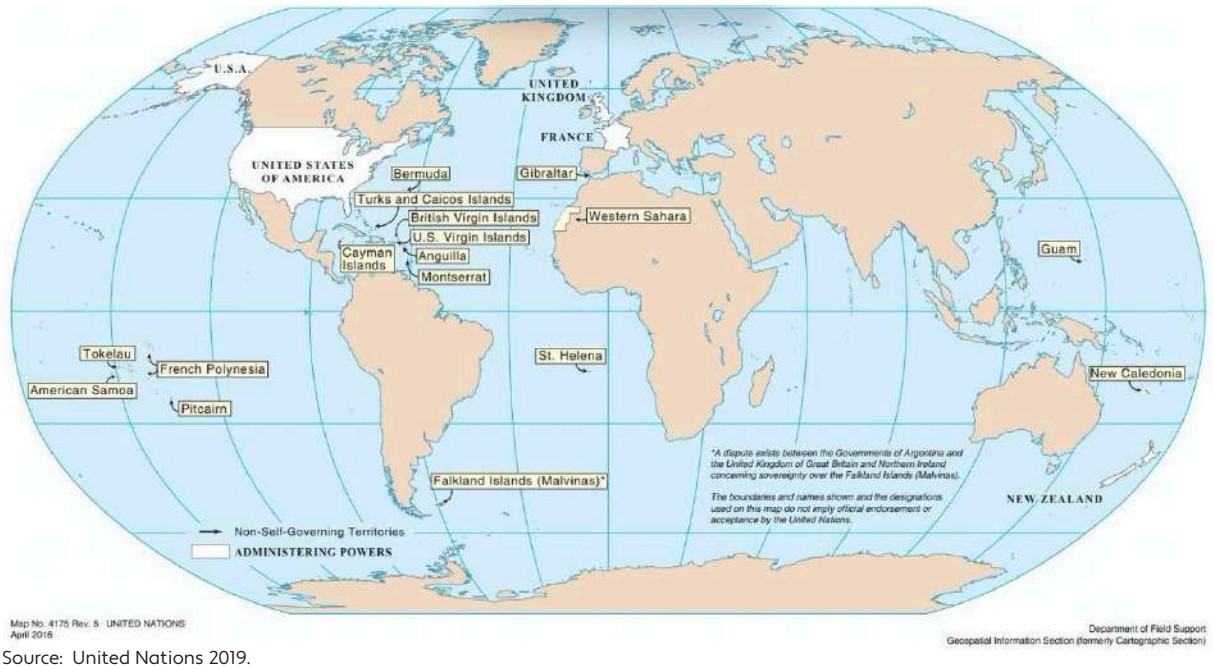
MANDATE FOR SELF-DETERMINATION AND DECOLONIZATION

Franck observed that self-determination was, "both universalized and internationalized, for it could now be said to portend a duty owed by all governments to their peoples and by each government to all members of the international community."[46] In this vein, a widely recognized source of international law is the customary practice of States that is accepted by those States as law (*opinio juris*) over a period of time. The Federal Department of Foreign Affairs of Switzerland regards customary international law as, "one of the two main sources of the rights and obligations of States," and that "for customary law to develop...the systematic recurrence of the same pattern of behavior by States, and the conviction of these States that they are acting in conformity with a rule of international law," is essential.[47]

46 35 Franck *supra note*, at 54.

47 ABC of International Law, Federal Department of Foreign Affairs, Switzerland, https://www.eda.admin.ch/dam/eda/en/documents/publications/Voelkerrecht/ABC-des-Voelkerrechts_en.pdf accessed 19 October 2019.

Figure 2: Non-Self-Governing Territories Under the UN Charter



Source: United Nations 2019.

A review of UN decolonization resolutions with general and specific reference to Guam is instructive in terms of the varied mandated actions called for in relation to Guam's decolonization, and the pattern of US behavior in adhering to these international obligations as the administering Power of Guam under international law. The US approval, in 1946, of UN General Assembly Resolution 66-1 on "Transmission of Information under Article 73(e) of the Charter" (*one year following the adoption of the UN Charter*), with the concomitant voluntary and continual inscription of Guam on the UN List of NSGTs, is particularly instructive. By this act, the US and other administering Powers committed to carrying out their UN Charter obligations under Chapter XI, including the requirement to prepare Guam and other NSGTs to achieve the FMSG.

The initial territorial inscription, in 1946, of NSGTs administered by the US (*in addition to those inscribed by Australia, Belgium, Denmark, France, the Netherlands, New Zealand and the United Kingdom*) began a specific and lengthy international legislative mandate under customary international law to prepare territories for the FMSG, as contained in over seventy years of UN General Assembly resolutions on self-determination and its consequent decolonization.

In this regard, three periods of global engagement with the decolonization mandate can be identified, including: the Initial Decolonization Period, from the 1945 from the adoption of the UN Charter to the approval of the 1960 Decolonization Declaration; the Decolonization Acceleration Period, lasting some thirty years, with active implementation of the provisions of the Declaration for many territories; and the post-Cold War Decolonization Stagnation Period, from the beginning of the 1990s through present day, when a significant implementation deficit emerged.[48]

The territory of Guam has been the subject of often intense UN consideration during all three periods of decolonization, with the aim of identifying ways and means to give substance to the self-determination and decolonization imperatives of the UN Charter.

48 The Decolonization Stagnation period was, paradoxically, divided by three successive International Decades(s) for the Eradication of Colonialism (IDEC) beginning in 1990 with the third IDEC ending in 2020.

Initial Decolonization Period (1946-1959)

Many of the UN resolutions during the initial period of decolonization were adopted along specific thematic lines and were continually updated and refined in later years to integrate new developments and strategies for implementation. This began with resolutions addressing the: "Development of Self-Government in [NSGTs]"[49]; the Participation of the Indigenous Inhabitants of the Trust Territories in the work of the Trusteeship Council;[50] the identification of "Factors that should be taken into account in deciding whether a territory is or is not a territory whose people have not yet attained a full measure of self-government,"[51] ; the call for the end of racial discrimination in NSGTs[52]; and the affirmation of the "voluntary transmission of information on political developments in Non-Self-Governing Territories" with the "establishment of intermediate timetables leading to the attainment of self-government by these territories."[53]

Additional resolutions adopted during initial decolonization period focused on a wide range of areas including: eradication of literacy; the promotion of education, social and economic advancement; development of self-government; human rights, parameters for self-government; and the right of peoples and nations to self-determination. Following the original inscription on the UN List of the NSGTs of Puerto Rico, Alaska, and Hawai'i (1946), these territories were formally de-listed by UN resolution during this Initial Decolonization Period on the basis of a developing interpretation of what constituted

49 *"Development of Self-Government in Non Self-Governing Territories"* Resolution 448 (V), 12 December 1950 (New York: United Nations General Assembly).

50 *Participation of the Indigenous Inhabitants of the Trust Territories in the work of the Trusteeship Council* Resolution 554 (VI), 18 January 1952 (New York: United Nations General Assembly).

51 *"Factors that should be taken into account in deciding whether a territory is or is not a territory whose people have not yet attained a full measure of self-government."* Resolution 742 (VIII), 27 November 1953 (New York: United Nations General Assembly).

52 *Racial Discrimination in Non Self-Governing Territories*, Resolution 1328 (XIII), 12 December 1958 (New York: United Nations General Assembly).

53 *Voluntary Transmission of information on Political Developments in Non Self-Governing Territories*, Resolution 1468 (XIV), 12 December 1959. (New York: United Nations General Assembly). It is to be noted that most decolonization resolutions during the first period were adopted on the basis of "non-recorded votes."

self-government. This happened before the 1960 adoption of the Decolonization Declaration, which provided the updated parameters for the FMSG.[54]

The French-administered NSGT of Kanaky/New Caledonia was also re-inscribed on the UN list during the Initial Decolonization Period, with Ma'ohi Nui/French Polynesia re-listed during the present Decolonization Stagnation Period.[55] Guam, along with American Samoa and the US Virgin Islands, were placed on the UN list of NSGTs during the Initial Decolonization Period and currently remain on the UN list, absent a determinative internal political process resulting in a definitive political status choice reflecting the will of the people from a range of options of full political equality with the resultant implementation of that choice (*See Annex for full listing of NSGTs as of 2019*).

54 Alaska and Hawai'i were removed from the UN in Resolution 1469 (XIV) of 12 December 1959 as a result of a change of status to political integration. On the other hand, the French territories of French Polynesia/Ma'ohi Nui, New Caledonia/Kanaky and Wallis & Futuna in the Pacific were removed unilaterally from the UN list in 1947 by France without a UN resolution.

55 Kanaky/New Caledonia was re-inscribed on the UN list of NSGTs by General Assembly resolution in 1986 while Ma'ohi Nui/French Polynesia was returned to the list by UN resolution in 2013. The third Pacific territory of Wallis and Futuna remains unlisted, and in Peripheral Dependency (PD) status, not having achieved the full measure of self-government but outside of the scope of the UN General Assembly.

Table 1: Non-Independent Pacific (2019)

NON-SELF-GOVERNING	AUTONOMOUS	INTEGRATION
American Samoa a/ Guam a/ New Caledonia b/ Fr. Polynesia b/ Tokelau c/ Pitcairn f/ Wallis and Futuna h/, j/	N. Mariana Islands d/, h/ Cook Islands e/, h/ Niue e/, h Bougainville l/ Norfolk Island (pre 2016)	Hawaii g/, h/ West Papua m/ Norfolk Island i/k/(post 2016) Easter Island k/ Hong Kong n/ Macao k, o/

NOTES
*The color of place names indicates Administering Powers as follows: Black: US Red: France Green: New Zealand Gold: UK Purple: China Pink: Papua New Guinea Gray: Indonesia Blue: Australia Brown: Chile

a/ US -administered dependent territory; listed by the UN as non-self-governing.
b/ French-administered dependent territory; listed by the UN as non self-governing.
c/ NZ-administered dependent territory; listed by the UN as non self-governing.
d/ Semi-autonomous dependency administered by US; self-governance sufficiency under review.
e/ State in free association with NZ with some characteristics of integration. **f/** UK-administered dependent territory; listed by the UN as non self-governing.
g/ Former NSGT in full integration with US
h/ Formerly an NSGT and removed from UN list by General Assembly resolution.
i/ Partially integrated with Australia, democratic governance suspended since 2016.
j/ French-administered dependent territory, not listed by the UN
k/ Never listed by the U,N. as non-self-governing.
l/ Territory administered by Papua New Guinea; political status plebiscite held in 2019 with independence winning with 98.31 % of the vote.
m/ Territory integrated with Indonesia with an autonomy statute.
n/ Territory formerly administered by the United Kingdom under agreement before its return to China in 1997.
o/ Territory formerly administered by Portugal under agreement before its return to China in 1999.

Source: Dependency Studies Project (DSP), St. Croix, Virgin Islands 2019.

Decolonization Acceleration Period (1960-1990)

An independent expert analysis presented to the 2016 UN Pacific Regional Seminar on Decolonization described the Decolonization Acceleration Period:

> Decolonization began to accelerate at the start of the second defined period [1960-1990] with the adoption in 1960 of the "Declaration on the Granting of Independence to Colonial Countries and Peoples" [which] itself evolved from the building blocks of the decolonization resolutions approved in the previous fourteen years since the inscription of the NSGTs on the UN list. Among other purposes, the Declaration served to reaffirm the organic link between self-determination and its goal of decolonization.[56]

The Decolonization Declaration (UN Resolution 1514 XV) contained several fundamental principles which continue to represent contemporary doctrine on the international decolonization process for Guam. Among the principles are key provisions on the right of the peoples of Guam to freely determine their political status, and the mandate for the administering Power to, "take immediate steps to transfer all powers to the peoples of the territories."[57] The "companion resolution" to the Decolonization Declaration [1541 (XV)][58], which provided a standard for the FMSG under the three options of full political equality (independence, free association and integration), served as the basis for the political status options identified in Guam law.[59] As the aforementioned 2016 analysis explained:

56 Carlyle Corbin, *"Decolonization: The Un-finished Agenda of the United Nations,"* an independent expert analysis presented to the Pacific Regional Seminar on the Implementation of the Third International Decade for the Eradication of Colonialism, Managua, Nicaragua, 1st June 2016.

57 33 *supra note.*

58 4 *supra note.*

59 See "Guam Public Law 23-147 of 15 January 1997.

> [Resolution 1541 (XV)] defined the political status options providing for the full measure of self-government. Both resolutions of 1960 served to update the body of work achieved in earlier resolutions between 1946 and 1959 from which a broader definition of full self-government had been progressively refined. Accordingly, the two 1960 instruments served to solidify a standard definition, relevant to present day, by outlining the parameters of minimum standards of self-governance sufficiency for what constitutes the full measure of self-government (FMSG) and the consequent removal of an NSGT from UN review under Article 73(b) of the UN Charter. [60]

At this juncture, where options for political status are recognized as broader than sovereign independence, it is important to note that care must be taken to avoid inadvertent or intentional legitimization of dependency governance (DG) arrangements when they do not meet the international standards of absolute equality, as set forth in the UN Charter and relevant UN General Assembly resolutions 1514 (XV, 1541(XV), and 742(VIII) from which the global Self-Governance Indicators (SGIs) employed in the present Self Governance Assessment of Guam are derived. This is a critical point in view of a contemporary strategy of "dependency legitimization" used by some administering Powers since the end of the Cold War, at the beginning of the third decolonization period (1991-present). The US approach to dependency legitimization is discussed in Section VI of the present Assessment.

In this regard, it is to be recalled that Resolution 2625 (XXV) reaffirmed that independence, integration or free association constituted the achievement of implementing the right to self-determination, while also pointing to the, "the emergence of any other political status freely determined by the people" as a mode of implementing the right to self-determination. Note is taken of the reference to, *"any other political status,"* which might be interpreted as a rationale to legitimize existing models of dependency governance, characterized by political inequality, with concomitant constitutions which organize the internal structure of government, but which do not reflect the FMSG.

In fact, the legislative intent of the reference in the 1970 Declaration was to recognize the emergence of differing and flexible governance political models, with the understanding that the minimum level of political equality and the attainment of the FMSG remain the essential criteria, as consistently articulated in General Assembly resolutions. In other words, the reference to, *"any other status,"* is recognized as constituting a *mode* of implementing the right to self-determination, rather than an indication that self-determination and consequent decolonization has been achieved. Hence, it was never the intention of the General Assembly, by Resolution 2625 (XXV), to legitimize political dependency models which did not provide for the FMSG. Accordingly, the unincorporated territorial status (UTS) of Guam and other dependent territorial models which have not yet achieved the FMSG (*as referred to in the UN Charter*) is recognized as an interim step to the FMSG and is the operative interpretation of the legislative intent of the UN General Assembly. (*See Figure 3*).

Of the resolutions during the second decolonization period, Resolution 1514(XV) and Resolution 1541

60 56 *supra note*, at 7.

(XV) reaffirmed the self-governance requirement of 'absolute equality' earlier emphasized in Resolution 742(VIII) of 1953, and served as the fundamental legislative and political authority creating significant momentum for the attainment of the FMSG of most Pacific island jurisdictions during the Decolonization Acceleration Period. The creation in 1961 of the "Special Committee on the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples," to replace the earlier "Committee on Information from Non Self-Governing Territories," provided a more elaborate organizational mechanism to pursue the UN role in the decolonization process for the listed NSGTs, following the 1960 adoption of the Decolonization Declaration (*See Annex*).

Figure 3: Un-incorporated Territorial Status as Transitional

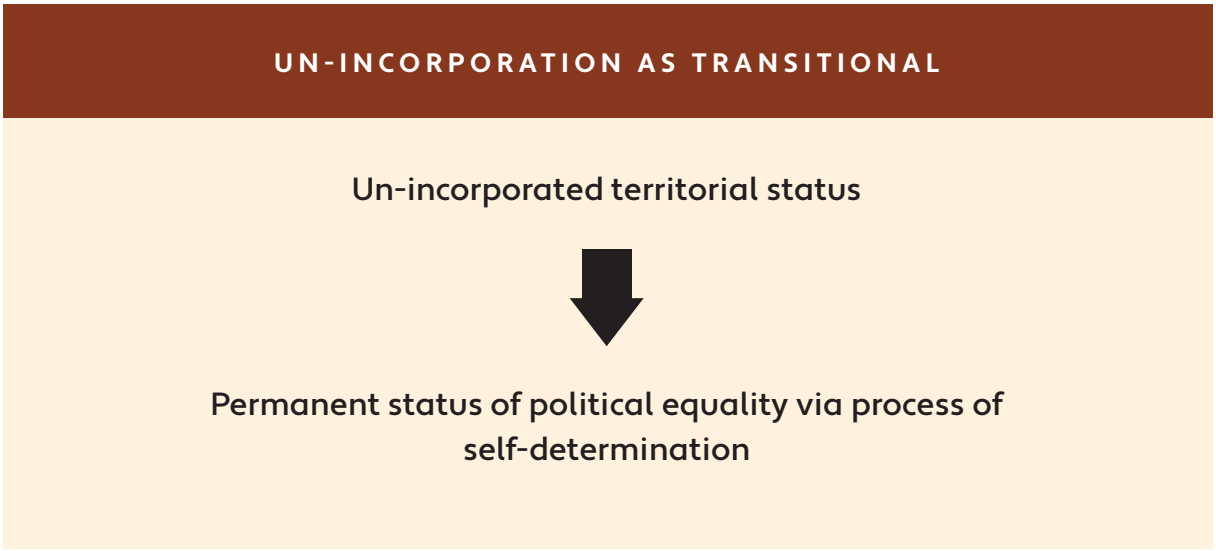


Table 2: Full Self-governement for Pacific Island Jurisdictions

1961-1990		
FORMER TERRITORY	FORMER ADMIN. POWER	DATE OF INDEPENDENCE OR OTHER FORM OF FULL SELF-GOVERNMENT
Fiji	United Kingdom	10 October 1970
Kiribati	United Kingdom	12 July 1979
Marshall Islands	United Nations Trusteeship (administered by US)	1 May 1979 (free association with the US)
Federated States of Micronesia	United Nations Trusteeship (administered by US)	10 May 1979 (free association with the US)
Nauru	United Nations Trusteeship (administered by Australian, U.K. and New Zealand)	31 January 1968
Palau	United Nations Trusteeship (administered by US)	1 January 1981 (free association with the US)
Papua New Guinea	Australia	16 September 1975
Samoa	New Zealand	1 June 1962
Solomon Islands	United Kingdom	7 July 1978
Tonga	United Kingdom	4 July 1970
Tuvalu	United Kingdom	7 February 1979
Vanuatu	France/United Kingdom	30 July 1980
Cook Islands	New Zealand	4 August 1965 (Free association with New Zealand)
Niue	New Zealand	19 October 1974 (Free association with New Zealand)

Source: Pacific Islands Forum and Economic and Social Commission for Asia/Pacific (2019).

During the Decolonization Acceleration Period (1961-1990), the decolonization mandate became more specified, with a series of resolutions on various themes with direct relation to Guam and other NSGTs. Accordingly, resolutions were adopted on: "preparation and training of indigenous civil and technical cadres in NSGTs,"[61]; "[o]ffers by Member States of study and training facilities for inhabitants of the Non-Self-Governing Territories,"; and "economic advancement in Non-Self-Governing Territories."[62] Of particular note was the resolution which addressed the issue of settler influence in NSGTs. The 1965 resolution on the implementation of the Decolonization Declaration called on the administering powers, "to discontinue their policy of violating the rights of colonial peoples through the systematic influx of foreign immigrants and the dislocation, deportation and transfer of the indigenous inhabitants."[63] These themes would be repeated in subsequent UN decolonization resolutions.

The 1965 resolution also introduced a number of themes which would be addressed in subsequent decades, including the call for particular attention on the small territories, appropriate methods for the people to exercise their right to self-determination, and the identification of a deadline for the accession of independence to each territory. This latter point is especially critical in the framework of the post-1960 parameters, consistent with the minimum standards as identified in Resolution 1541(XV), confirming that the achievement of independence could be attained through: 1) sovereign independence; 2) association with an independent State; and 3) integration with an independent State (*emphasis added*). This is in recognition that it is "independence" which can be achieved through three alternatives, with the understanding of full political equality as the essential prerequisite.

Subsequent resolutions during the Decolonization Acceleration Period reaffirmed the actions called for in previous texts with general reference to Guam. These resolutions were aimed at the advancement of the decolonization process. Additional themes introduced during the period included: concerns over activities of foreign and other economic interests which were impeding the implementation of the Decolonization Declaration; recognition of the inalienable right of the peoples of the territories to own and dispose of their natural resources; the importance of UN visiting missions to the territories; and UN assistance to territories in their political status development process, among other areas.

Of specific relevance to Guam was the 1965 resolution, which called for the "dismantling of military bases installed in colonial territories and [for the administering powers] to refrain in establishing new ones."[64] This theme would be repeated in resolutions through the second and third periods of decolonization. The authority of an NSGT to regulate military activities is a key Self-Governance Indicator (SGI), applied to Guam in Section VI of the current Assessment. Table 3 provides a listing of UN resolutions

61 *Preparation and training of indigenous civil and technical cadres in Non-Self-Governing Territories*, Resolution 1697 (XVI), 19 December 1961 (New York: United Nations General Assembly).

62 *Report on economic advancement in Non-Self-Governing Territories*, Resolution 1971 (XVIII), 16 December 1963 (New York: United Nations General Assembly).

63 *Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples*, Resolution 2105 (XX), 20 December 1965 (New York: United Nations General Assembly).

64 *id.*

from 1976-1990 related to advancing the decolonization process of Guam and the US voting record on those resolutions.

Table 3: UN Resolutions on the Question of Guam – 1976–1990

YEAR	RESOLUTION	VOTING
1976	The Question of Guam, res. 31/58 of 01 Dec. 1976	61 yes, 22 no, abstentions 42 *(US voted 'no')*
1977	The Question of Guam, res. 32/28 of 28 Nov. 1977	Adopted without a vote
1978	The Question of Guam, res. 33/33 of 13 Dec. 1978	Adopted without a vote
1979	The Question of Guam, res. 34/39 of 21 Nov. 1979	Adopted without a vote
1980	The Question of Guam, res. 35/22 of 11 Nov. 1980	Adopted without a vote
1981	The Question of Guam, res. 36/63 of 25 Nov. 1981	Non-recorded vote *(based on Draft Resolution II adopted by the Fourth Cmt. (119 yes, none against).*
1982	The Question of Guam, res. 37/21 of 23 Nov. 1982	Adopted without a vote
1983	The Question of Guam, res. 38/42 of 7 Dec. 1983	Adopted without a vote
1984	The Question of Guam, res. 39/32 of 5 Dec. 1984	Adopted without a vote
1985	The Question of Guam, res. 40/42 of 2 Dec. 1985	Adopted without a vote
1986	The Question of Guam, res. 41/25 of 21 Oct. 1986	Adopted without a vote
1987	The Question of Guam, res. 42/87 of 4 Dec. 1987	Adopted without a vote
1988	The Question of Guam, res. 43/42 of 22 Nov. 1988	Adopted without a vote
1989	The Question of Guam, res. 44/98 of 11 Dec. 1989	Adopted without a vote
1990	The Question of Guam, res.45/32 of 20 Nov. 1990	110 yes, 3 no, abstentions 31 *(US voted 'no')*

Source: The Dependency Studies Project; St. Croix, Virgin Islands 2018.

It is to be noted that of the fifteen resolutions concerning Guam adopted between 1976 and 1990, the US voted '*No*' on only two occasions (1976, 1990), and joined in the consensus in the approval of the other thirteen resolutions. This established a pattern of behavior of concurrence with the international decolonization mandates contained therein. The first resolution specific to various groups of island territories, including Guam, was adopted by the UN General Assembly in 1965, and, "called upon the administering powers without delay to implement the relevant [decolonization] resolutions of the General Assembly." The text also, "reaffirm[ed] the inalienable right of these territories to decide their constitutional status in accordance with the Charter of the United Nations and with the provisions of Resolution 1514 (XV) and other relevant resolutions."[65]

In 1975, the General Assembly grouped the US-administered territories of American Samoa, Guam and the US Virgin Islands in a single resolution, repeating earlier calls for the US to accelerate progress to decolonize those territories. The resolution on Guam "strongly deprecate[d] the establishment of military installations on Guam as being incompatible with the purposes and principles of the Charter of the United Nations and of General Assembly resolution 1514(XV)." The first stand-alone resolution on Guam was adopted in 1976,[66] and expanded on previous themes and mechanisms to accelerate decolonization while addressing visiting missions, military installations, natural resources, and economic development.

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65 *Questions of American Samoa, Antigua, Bahamas, Barbados, Bermuda, British Virgin Islands, Cayman Cocos (Keeling), Dominica, Gilbert and Ellice Island, Grenada, Guam, Montserrat, New Hebrides, Niue Papua, Pitcairn, St. Helena, St. Kitts-Nevis-Anguilla, St. Lucia, St. Vincent, Seychelles, Solomon Islands, Tokelau Islands, Turks and Caicos Islands and the United States Virgin Islands*, Resolution 2069 (XX), 16 December 1965 (New York: United Nations General Assembly).

66 *Question of Guam*, Resolution 31/58, 1 December 1976. See also Resolution 32/28 of 28 November 1977 and subsequent resolutions on The Question of Guam."

Decolonization Stagnation Period (1991-2020)

The beginning of the 1990s began the Decolonization Stagnation Period, with the thawing of the Cold War coinciding with the delisting of Namibia (*the penultimate UN-listed African NSGT*) following its independence from the UN list of NSGTs.[67] At that juncture, the majority of the remaining dependencies on the UN list were mostly island jurisdictions in the Caribbean and Pacific under differing political status and constitutional arrangements. However, the changing international political environment brought on by the end of the Cold War saw global support for continued decolonization decrease, even as initiatives to implement the mandate reflected the push for more specific actions to be undertaken within the framework of self-determination and consequent decolonization codified in resolutions related to Guam adopted from the beginning of the 1990s through present-day. Table 4 lists the UN resolutions and US voting record pertaining to Guam between 1991 and 2019.

67 Western Sahara remains the final African NSGT on the UN list in addition to the Diaspora African NSGTs in the Caribbean.

Table 4: UN Resolutions on the Question of Guam – 1991–2019

YEAR	RESOLUTION	VOTING
1991*	The Question of ...Guam..., res. 46/68 of 11 Dec. 91	Adopted without a vote
1992*	The Question of ...Guam..., res. 47/27B of 25 Nov. 92	Adopted without a vote
1993*	The Question of ...Guam..., res. 48/51 of 10 Dec. 93	Adopted without a vote
1994*	The Question of ...Guam..., res. 49/46B of 9 Dec. 94	Adopted without a vote

1995*	The Question of...Guam... res. 50/38B of 6 Dec. 95	146 yes, 4 no, abstentions 3 *US voted 'no'*
1996*	The Question of...Guam... res.51/224 of 27 March 97	Adopted without a vote
1997*	The Question of...Guam... res.52/77 of 10 Dec. 97	Adopted without a vote
1998*	The Question of...Guam... res.53/67 of 3 Dec. 98	Adopted without a vote
1999*	The Question of...Guam... res.54/90 of 6 Dec. 99	Adopted without a vote
2000*	The Question of...Guam... res.55/144 of 8 Dec. 2000	Adopted without a vote
2001*	The Question of...Guam... res.56/72 of 10 Dec. 2001	Adopted without a vote
2002*	The Question of...Guam... res.57/138A of 11 Dec. 2002	Adopted without a vote
2003*	The Question of...Guam... res.58/108AB of 9 Dec. 03	Adopted without a vote
2004*	The Question of ...Guam... res.59/134AB of 10 Dec.04	Adopted without a vote
2005*	The Question of ...Guam... res. 60/117AB of 8 Dec. 05	Adopted without a vote
2006*	The Question of ...Guam... res.61/128AB of 14 Dec.06	173 yes, 0 no, 4 abstentions US abstained
2007*	The Question of ..Guam.. res/62/118AB of 17 Dec.07	Adopted without a vote
2008*	The Question of ..Guam.. res.63/108AB of 5 Dec. 08	Adopted without a vote
2009*	The Question of ..Guam.. res.64/104AB of 10 Dec.09	Adopted without a vote
2010*	The Question of ..Guam.. res.65/115AB of 10 Dec 10	Adopted without a vote
2011*	The Question of ...Guam... res. 67/132 of 18 Dec. 2012	Adopted without a vote
2012*	The Question of ...Guam...res. 67/132 of 18 Dec. 2012	Adopted without a vote
2013*	The Question of ...Guam... res. 68/95AB of 11 Dec. 2013	Adopted without a vote
2014*	The Question of ...Guam... res.69/105 of 5 Dec. 2014	Adopted without a vote

2015*	The Question of ...Guam... res. 70/102 of 9 Dec. 2015	Adopted without a vote
2016	The Question of Guam res.71/113 of 6 Dec. 2016	Adopted without a vote
2017	The Question of Guam res.72/102 OF 7 Dec. 2017	93 yes, 8 no, 65 abstentions *US voted 'no'*
2018	The Question of Guam res.73/113 of 7 Dec 2018	Adopted without a vote
2019	The Question of Guam	Adopted without a vote
2020	*The Question of Guam*	* * * * *

* From 1991 to 2015 the UN resolution on Guam was contained in a separate section of annual omnibus resolutions which included a general section on ten or more territories, and separate sections for the individual territories named in the resolution. Separate resolutions for Guam were adopted from 2016 to present.

Source: The Dependency Studies Project 2019.

It is to be noted that of the twenty-eight resolutions concerning Guam adopted in the period between 1991-2019, the US voted 'No' only twice (1995, 2017), while abstaining from the vote only once, in 2006. This continued the pattern of behavior in concurrence with the international decolonization mandates in those resolutions. Additionally, resolutions on the "Universal realization of the right of peoples to self-determination" are also adopted annually, and give effect to the realization of self-determination as a fundamental human right for the people of Guam. (*See Annex*).

The mandates contained within the resolutions during the Decolonization Stagnation Period can be divided into the four focus areas of: 1. the political and constitutional dimension; 2. the socio-economic dimension; 3. the natural resources and cultural dimension; and 4. the geo-strategic and military dimension.

1. Political and Constitutional Dimension

The issue of fostering an awareness among the people of Guam of the possibilities open to them in the exercise of the right to self-determination has been a consistent theme throughout the present period in the implementation of the decolonization mandate for the territory. It has been continuously reinforced that this right should be exercised by the people, "in conformity with the legitimate political status options clearly defined in General Assembly resolution 1541(XV)" and other relevant resolutions. Here, emphasis is placed on the primacy of resolution 1541(XV), which is reaffirmed annually by the UN General Assembly, since it contains the principles which determine whether a territory has achieved the FMSG and consequently is eligible for removal from the UN List of NSGTs.

Additionally, resolutions on the self-determination process as a fundamental human right have been adopted during the current period, relevant to Guam and other NSGTs. Unlike the decolonization resolutions which originate from the UN Special Committee on Decolonization, passed on to the Fourth Committee, and ultimately decided by the full General Assembly, additional UN resolutions on "The Universal Right to Self-Determination" emanate from the UN Third Committee, which examines human rights questions, and which are similarly confirmed by the General Assembly (*See Annex*).

On the issue of enhancing the understanding of the people of Guam regarding the overall process of political and constitutional development are resolutions on the respective roles for both the US, as the administering Power of Guam, and for the UN, as the guarantor of the international decolonization process. Accordingly, the relevant resolutions requested the US "to assist the territory by facilitating public outreach efforts, consistent with Article 73(b) of the [UN] Charter," and by creating "such conditions to enable the people to exercise freely and without interference their inalienable right to self-determination." Simultaneously, the "appropriate bodies of the U.N" are asked to pursue a public awareness campaign aimed at assisting the people of Guam: in the exercise of their "inalienable right to self-determination; in gaining a better understanding of their options; and in providing relevant assistance to the territory upon request.

In furtherance of the decolonization process, a direct engagement with the UN, in the form of a UN visiting mission has been requested by the Government of Guam at various times since the 1990s consistent with relevant U.N. resolutions. This followed on from the first and only direct UN engagement in the form of the 1979 UN visiting mission to Guam to observe the referendum on the proposed constitution (*81.7 % of the voters voted against the document*).

Accordingly, the Legislature of Guam adopted its June 24, 1994 resolution inviting the UN to send a fact-finding mission to Guam and requesting that the US, as the administering Power of the territory, take all steps necessary to coordinate and implement the action. On October 11, 1994, Guam Delegate to the US House of Representatives, Dr. Robert A. Underwood, in addressing the UN Fourth Committee, indicated that it would be useful for the UN to visit Guam in order to view the conditions firsthand and to hear from the people directly, while drawing the UN's attention to the fact that the last and only mission had not occurred since 1979. By 1996, the 23rd Guam Legislature adopted resolution 464 (on July 16, 1996), which invited the U.N. Special Committee to "send another visiting mission to Guam in the immediate future."

By 1999, Governor Carl T.C. Gutierrez issued a formal invitation to the Chairman of the Special Committee on Decolonization, Peter Dickson Donigi (*supported by the Guam Legislature*), to conduct an annual UN regional seminar on decolonization in Guam. However, the US Representative to the UN Economic and Social Council (ECOSOC), Ambassador Betty King, in a February15, 2000 letter to the committee chair, questioned the authority of a territorial governor to make such a request, citing a primacy of the administering Power in foreign affairs. Quite apart from the peculiarity of an ambassador assigned to economic matters at the UN relaying US policy on a decidedly political matter (decolonization), the authority of a territory to communicate directly with the relevant UN committee assigned to foster its

decolonization was, and remains, an acquired right. However, without the concurrence of the administering Power, the Special Committee declined to accept the governor's invitation.

On the related question of a possible UN mission to Guam, Governor Eddie Calvo, in an August 1, 2017, letter to the Special Committee on Decolonization Chairman, Rafael Dario Ramirez Carreño, expressed concern that the US had yet to facilitate a second mission to Guam. The governor noted that, in light of the legal challenge in the US courts hindering the ability of the native inhabitants of Guam to conduct a plebiscite on the island's political status (*Davis Case*), a visiting mission would enhance UN understanding of the current status of the territory, and could assist in the development of an UN-approved self-determination process. This request came a month after a July 5, 2017, decision by the Guam Commission on Decolonization to create a subcommittee to explore options for Guam to pursue a UN visiting mission.

The request for a UN mission was reiterated in the statement of Governor Calvo, delivered by then-director of the Guam Commission on Decolonization, Amanda Blas, to the UN regional seminar on decolonization, which convened May 2018 in the Caribbean island nation of Grenada. The Calvo administration's position emphasized that a visiting mission would shed new light on the island's pursuit for self-determination in view of the new challenges to the decolonization of the territory. The new government of Guam, elected in 2018, issued its call for a visiting mission in a 2019 statement delivered to the UN Special Political and Decolonization Committee (Fourth Committee) by Lieutenant Governor of Guam, Joshua Tenorio. The new government took the position that, "despite the failure of past efforts, it would continue to engage the administering Power meaningfully, in the hope of [inter alia] gaining approval for a United Nations visiting mission to the Territory and expanding the dialogue on decolonization."[68] This was echoed by Guam Commission on Decolonization Director, Melvin Won Pat, in his 2019 statement to the same Fourth Committee session, in which he invited the UN to send a visiting mission to Guam in the hope that doing so would encourage more dialogue between the Territory, the administering Power and the UN in furtherance of the principles of self-determination and democracy.

Legal scholar, Tom Frank, in his seminal 1992 American Journal of International Law article, entitled "The Emerging Right to Democratic Governance" [Vol. 86, No. 1. pp. 46-91] made the organic link between the two principles:

> Since self-determination is the oldest aspect of the democratic entitlement, its pedigree is the best established. Self-determination postulates the right of a people organized in an established territory to determine its collective political destiny in a democratic fashion and is therefore at the core of the democratic entitlement. Symbolically, it is signified by a long-evolving tradition of maintaining observers, on behalf of international and regional organizations, at elections in colonies and trust territories. Early observer missions developed operational procedures. They sent reports to their sponsoring international agency or committee, which helped the community's

68 See Statement of the Lieutenant Governor Josh Tenorio to the United Nations Special Political and Decolonization Committee Fourth Committee), United Nations, New York, 27th June 2019.

> political organs and individual member governments make deductions about the legitimacy of the decolonization process. Gradually, with many variations, the observer missions' methods became the standard operating procedure for validating an exercise of self-determination…
>
> [T]he growth of [the decolonization process]…was facilitated by UN reporting requirements, the Organization's close scrutiny of the work of colonial administrations and the active involvement of the United Nations in monitoring elections and plebiscites in territories advancing toward independence. Self-determination was seen to require democratic consultation with colonial peoples, legitimated by an international presence at elections immediately preceding the creative moment of independence…[and] the idea of self-determination has evolved into a more general notion of internationally validated political consultation.

It is in the context of the recognition of the importance of this international role that consistent calls were made by successive Guam governments for the approval of a UN visiting mission to the territory. These requests remain wholly consistent with the implementation of decades of UN resolutions on Guam, which have confirmed the important part that the UN could play in Guam's decolonization process, in a similar fashion to assistance provided to previous territories. However, decades of UN resolutions supporting the dispatch of visiting missions to Guam have been met with consistent US resistance even though the US consistently joined in the consensus on General Assembly resolutions on Guam, supporting this approach. (*See Tables III and IV above*).

Other mechanisms of UN engagement have also been approved by the UN General Assembly in an effort to facilitate the self-determination and decolonization processes, in particular the expedited application of an individualized decolonization work program for Guam and the other NSGTs. In this light, yearly resolutions emphasize that any negotiations to determine the status of the territory "must not take place without the active involvement and participation of the people of the territory, under the aegis of the UN on a case-by-case basis." In this regard, the resolutions confirm that the decolonization process of Guam should be compatible with the UN Charter, the Decolonization Declaration, and the Universal Declaration of Human Rights. On this point, it is to be stressed that resolutions have emphasized that, "in the decolonization process, there is no alternative to the principle of self-determination which is a fundamental human right as recognized by the relevant human rights conventions," in particular the International Covenant on Civil and Political Rights (ICCPR) and its review mechanism of the Human Rights Committee.

In 2007, the General Assembly adopted the United Nations Declaration on the Rights of Indigenous Peoples (UN-DRIP), which also recognized that "indigenous peoples have the right to self-determination," and to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nation, the Universal Declaration of Human Rights and

international rights law" (*emphasis added*).[69]

It is observed that the distinction between US concurrence with UN resolutions calling for specific actions to be undertaken in the political/constitutional dimension, and the overt US hesitancy to implement these mandates, is a function of: the inconsistency of US territorial policy; and US resistance to actual oversight of US territorial governance policies by the international community.

2. Socio-Economic Dimension

The issue of promoting the economic and social development of Guam is an important theme of the international mandate on the decolonization of the territory. These obligations, as contained in successive UN resolutions during the period, call for US assistance to promote such development, including through the advancement of growth in the commercial fishing and agricultural sectors. The mandate includes US support to, "strengthen and diversify the economy" of Guam through the establishment of programs intended to promote the sustainable development of economic activities and enterprises by the people of Guam. Further reference is made to the projected role of the UN in initiating a program by UN specialized agencies in order to take all necessary measures to accelerate progress in the economic and social life of Guam.

The role of the UN system and regional institutions in the socio-economic advancement of Guam is consistently highlighted in UN resolutions covering all NSGTs, including Guam. In this light, the 2018 UN General Assembly resolution on assistance to the NSGTs by the UN specialized agencies called for those UN bodies and regional organizations, "to strengthen existing measures of support and formulate appropriate programmes of assistance…, within the framework of their respective mandates, in order to accelerate progress in the economic and social sectors…."[70]

The resolutions "welcome… the participation in the capacity of observers of those (NSGTs) that are associate members of regional commissions in the world conferences in the economic and social spheres, subject to the rules of procedure of the General Assembly and in accordance with relevant resolutions and decisions of the U.N…" In this connection, Guam is an associate member of the UN Economic and Social Commission for Asia and the Pacific (ESCAP) (See Annex), and its role in UN and regional bodies is encouraged as a means to advance capacity-building in furtherance of the self-determination process. Below is an example of the rule of procedure for the participation of associate members (*including Guam*) in the UN 2005 International Meeting on Small Island Developing States. Table 5 provides a comparison of levels of external affairs engagement of Pacific NSGTs. The extent and nature of Guam's participation is one of the key SGIs in the process of Preparation for Self-Government (PSG), and is evaluated in Part VI of the present Assessment.

69 *United Nations Declaration on the Rights of Indigenous Peoples*, UN General Assembly resolution 61/295 0f 13 December 2007.

70 *Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples by the specialized agencies and the international institutions associated with the United Nations* Resolution 73/105 of 7 December 2018.

Table 5: Regional Participation of Selected Pacific Territories – 2019

Rules of Procedure of the International Meeting to Review the Implementation of the Programme of Action for the Sustainable Development of Small Island Developing States

2005

Rule 61: Associate members of regional commissions

Representatives designated by the associate members of regional commissions listed in the footnote /2 may participate as observers, without the right to vote, in the deliberations of the International Meeting, the Main Committee, and, as appropriate, any other committee or working group on questions within the scope of their activities.

/2 *American Samoa, Anguilla, Aruba, British Virgin Islands, Commonwealth of the Northern Mariana Islands, French Polynesia,* ***Guam****, Montserrat, Netherlands Antilles, New Caledonia, Puerto Rico, United States Virgin Islands.*

P-NSGT REGIONAL INTEGRATION

P-NSGT	PIF 1)	PACIFIC COMMUNITY (SPC	PACIFIC ISLANDS DEVELOPMENT FORUM (PIDF)	UN– ESCAP 2/
Am. Samoa	oberver	member	eligible	assoc. member
Guåhan/Guam	observer	member	eligible	assoc. member
Ma'ohi Nui/ Fr. Polynesia	assoc. member (2006)	member	eligible	assoc. member
Kanaky/ New Caledonia	assoc. member (2006)	member	eligible	assoc. member

Pitcairn	–	member	eligible	–
Tokelau	assoc. member (2014)	member	eligible	assoc. member

1) New Caledonia and French Polynesia attained full PIF membership in 2018.

Source: The Dependency Studies Project, St. Croix, Virgin Islands 2018.

It is also to be noted that recent resolutions on Guam, and in particular the 2018 text, called on the US, "to facilitate, when appropriate, the participation of appointed and elected representatives of NSGTs (including Guam) in the relevant meetings and conferences of the specialized agencies and other organizations of the United Nations system, in accordance with relevant (UN) resolutions and decisions…so that the territories may benefit from the related activities of those agencies and organizations." The resolution went on to, "recommend that all Governments [of UN member States] intensify their efforts through the specialized agencies and other organizations of the UN system of which they are members to accord priority to the question of providing assistance to the peoples of the Non-Self-Governing Territories."[71]

Key social issues also figure prominently in the UN resolutions on Guam, most recently in Resolution 75/113 of December 10, 2020, which references the need for the US as the administering Power, "to take all necessary measures to respond to the concerns of the territorial government with regard to the immigration issue, and to recognize that immigration into Guam has resulted in the indigenous Chamorros [CHamoru people] becoming a minority in their homeland," as expressed consistently in these resolutions. From a governance perspective, this stems from the fact that the current Elected Dependency Governance (EDG) status of the territory does not provide for control of its borders. On this point, the impact on the demographic composition of the territory, and the resultant economic impacts from in-migration, was highlighted in a 2017 report of the Office of the Governor of Guam, entitled, "Impact of the Compacts of Free Association on Guam - FY 2004 through FY 2016." The report concluded that, inter alia:

> The un-reimbursed Compact Impact cost for the period FY 1987 to FY 2003 totaled $269 million. The un-reimbursed costs include $178 million for education, $48 million for health, welfare and labor, and $43 million for public safety. Guam's request for $200 million in debt relief was declined.
>
> …
>
> [T]he currently identified locally funded cost incurred for providing educational and social services to citizens of the Freely Associated States was $33.2 million in FY 2004, $33.6 million in FY 2005, $43.3 million in FY 2006, $46.5 million in FY 2007, $56.0 in FY 2008, $64.0 million in FY 2009, $71.8 million in FY 2010, $99.6 million in FY 2011, $99.6 million in FY 2012, $115.5 million in FY 2013, $130 million in FY 2014, $136.8 in FY 2015, and $142.3 million in FY 2016

71 Question of Guam, UN resolution 73/113 of 7 December 2018.

for a total of $1.07 billion [unaudited] for the past thirteen fiscal years.[72]

The US General Accounting Office (GAO) has long recognized the wide discrepancy between the financial impact of the compacts of free association claimed by Guam and the amount provided by the US for compensation. In its 2001 "Report to the Congressional Requesters: Migration from Micronesian Nations has had significant impact on Guam, Hawai'i and the Commonwealth of the Northern Mariana Islands" (GAO-02-40, October 2001), the GAO found that "financial compensation… for Guam and the Commonwealth of the Northern Mariana Islands… [is] much less than the financial impact estimated by the two US island governments." The report noted that, "since the Compact with the FSM and the RMI was enacted…, the US government ha[d] provided…impact compensation to Guam [at] about twenty-three percent of total estimated impact costs."

On May 13, 2019, US Department of Interior Assistant Secretary for Insular and International Affairs Doug Domenech announced the distribution of $34 million in fiscal year (FY) 2019 Compact Impact grant funding for Guam, Hawai'i, the Commonwealth of the Northern Mariana Islands (CNMI), and American Samoa, with Guam's share totaling $16.8 million, "to help defray costs associated with increased demands placed on health, education, and social services, or infrastructure related to such services provided to individuals who have migrated from the freely associated states [FAS] to these US jurisdictions." In the announcement, the assistant secretary acknowledged that "the resources do not meet the needs as outlined by the most impacted jurisdictions…" It was also emphasized in the Interior Department announcement that "[u]nder current law, mandatory Compact Impact funding expires in 2023, while US relationships with the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau under the Compacts of Free Association continue."

The significance of immigration is also considered in the political/constitutional context under the international mandate of decolonization. It emerged as an issue of particular concern to UN member States in the wake of the US Court proceedings with implications for the identification of "the people" for purposes of voter eligibility in Guam's legislated political status referendum. Accordingly, questions were raised at the UN, from an international law perspective, as to whether such a referendum would meet the criteria of a genuine act of self-determination, given the unilateral applicability to Guam of certain US constitutional provisions intended to protect US citizens, including those who had migrated to the territory and who are made eligible to participate in territorial elections after thirty days. This is consistent with the requirement in an integrated US state and indicative of the unilateral applicability of selected US constitutional provisions to Guam. It has been argued that this scenario has the effect of obstructing a genuine act of self-determination for the indigenous peoples as the "native inhabitants" identified in the Treaty of Paris. This political/constitutional dimension is addressed in Part VI of the current Assessment.

72 See *"Impact of the Compacts of Free Association on Guam - FY 2004 through FY 2016*, Office of the governor of Guam, January 2017. An earlier 2011 report of the Office of Governor of Guam entitled *"Impact of the Compacts of Free Association on Guam FY 2004 through FY 2010"* (January 2011) indicated that "[c]ompact immigration provisions authorize unrestricted immigration into the United States, its territories and possessions, enabling citizens of (the freely associated states of the Federation States of Micronesia, Marshall Islands and Palau)...to enter into, lawfully engage in occupations, and establish residence as non-immigrant aliens."

3. Natural Resources and Cultural Dimension

Closely related to the socio-economic dimension is the natural resources and cultural dimension. The issue of ownership and control of natural resources by the people of the territory has been a consistent feature in relevant UN resolutions concerning Guam. As recently as 2018, the General Assembly: has expressed its concern for "the use and exploitation of the natural resources of the Non-Self-Governing Territories by the administering Powers for their benefit"; has called for the US, "to implement its programme of transferring surplus federal land to the Government of Guam"; and has encouraged "reform in the programme of the administering Power with respect to the thorough, unconditional and expeditious transfer of land property to the people of Guam."

On assistance from the U.N. specialized agencies in the area of natural resources, the 2018 resolution requests the UN system to provide information about: environmental problems facing Guam and other NSGTs; the impact of natural disasters… such as beach and coastal erosion and droughts; the "illegal exploitation of the marine and other natural resources… and; "the need to utilize those resources for the benefit of the peoples of the territories."[73]

CHamoru human rights attorney Julian Aguon addressed the issue of natural resources in the context of self-determination:

> A basic constituent of the right to self-determination is the right to permanent sovereignty over natural resources (PSNR). PSNR guarantees all peoples the right 'for their own ends, to freely dispose of the natural wealth and resources' within their territory. Well-established in international law, PSNR operationalizes the economic aspects of self-determination - the right to freely pursue economic, social, and cultural development. PSNR, just like the broader right to self-determination, arose in the context of decolonization and continues to carry special force with respect to colonized peoples…[74]

In this context, Aguon cited the relevant human rights conventions including: the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social and Cultural Rights (ICESCR); and the Decolonization Declaration. In line with these principles, the UN has consistently recognized the importance of ownership, control and disposal of natural resources by the people of the territory. This has been a consistent mandate of the UN throughout the three periods of decolonization in the context of the interrelatedness of culture and land, and UN resolutions on Guam have been clear on the importance of "preserv[ing] the cultural identity of the Chamorro [CHamoru]

73 66 *supra note.*

74 See "Enduring Colonization-How France's Ongoing control of French Polynesia's Resources violates the International Law of Self-Determination, Blue Ocean Law, the Pacific Network on Globalisation, and the International Justice and Human Rights Clinic at Allard Law School, University of British Columbia, 2019.

people, the indigenous inhabitants of Guam."[75]

Of particular focus has been the matter of land ownership and transfer of land expropriated by the administering Power, the efficacy of various programs to return this land to the original landowners of Guam, and the linkage with continued recognition of the political rights, and cultural and ethnic identity of the CHamoru people of Guam. Also referenced is the US legal challenge to the "Chamorro Land Trust" program on similar grounds of that which motivated the voter eligibility lawsuit earlier cited.

4. Geo-Strategic and Military Dimension

The use of the NSGT of Guam by the territory's administering Power for geo-strategic military purposes has been the subject of deep reflection by the international community. Mandated actions have been called for in decades of UN resolutions and declarations concerning military activities in NSGTs, and Guam specifically. A review of relevant UN resolutions, primarily through the UN "Repertory of Practice of United Nations Organs" is instructive. While the present section is concerned with the third decolonization period, beginning in 1991, the review on the geo-strategic and military questions dates farther back, to the second decolonization period, for substantive reasons.

Accordingly, the first recommendations concerning military bases in NSGTs were considered in 1964 in several subcommittees of the UN Special Committee on Decolonization, with particular focus on American Samoa and Guam (*as well as on Mauritius, the Seychelles, St. Helena, Tristan de Cunha and Asencion Island*). In this context, military bases were seen as "not only an impediment to the establishment and strengthening of the independence of developing countries but also a serious obstacle to the liberation of people still under colonial domination and a grave threat to the future development of the territories." Specific concern was also expressed over an inordinate "dependence of the Guamanian economy on the military and other activities of the United States government."[76]

At the 20th session of the UN General Assembly (UNGA) in 1965, a draft consolidated resolution on the NSGTs administered by New Zealand, UK and the US was submitted to the UN Fourth Committee. The draft included provisions asserting that, "the existence or establishment of military bases constituted an obstacle to the freedom and independence of those territories" and requested the relevant administering powers "to dismantle the...bases and to refrain from establishing new ones."[77]

During committee debate, several administering powers claimed a "sovereign right" to maintain such bases, arguing that the UN Charter had been silent on the matter. They also insisted that the bases safeguarded rather than obstructed the territories' "freedom and independence," and stated (rather extraordinarily) that "the existence of a base was a matter for the people of a territory to decide and

75 71 *supra note.*

76 See "Repertory of Practice of United Nations Organs (1959-1966)," Supplement No. 3 at 84.

77 *Id*. At 85.

not for the [UN] Committee."[78] In light of the prevailing Appointed Dependency Governance (ADG) arrangements in play at the time of the 1965 resolution in most of the NSGTs, including Guam, it is unclear as to which authority could be constitutionally exercised at that time (or subsequently) for the people of a NSGT to determine whether a military presence should be permitted on its territory. Due to a UN procedural decision, the UN General Assembly adopted its 1965 resolution without the military provisions, but these would be included in subsequent resolutions.[79]

Accordingly, at the same 20th session in 1965, the UN General Assembly considered a second draft resolution on implementation of the Decolonization Declaration, covering all NSGTs, including Guam, "requesting the colonial Powers to dismantle the military bases installed in colonial territories and to refrain in establishing new ones.[80] This time, the military provisions were included in the full resolution adopted by the General Assembly.[81] The prevailing argument, supported by developing countries which had been former colonies was that "the draft resolution was not concerned with military bases in independent countries but with those which had been installed without consultation and agreement with the people of the territories."[82]

At the 21st session of the UN General Assembly, in 1966, a new argument was introduced by the colonial powers that, "military bases located in the colonial Territories would help them in their overall strategy in the 'East-West confrontation," with the territories openly characterized as, "part and parcel of the global military policy of the colonial Powers." This posture actually served to support the counterargument that, "the continuation of colonialism had resulted in the preservation of military interests all over the world [with] the small territories slowly being turned into fortresses of destruction." It was further cautioned that, "military bases maintained against the will of the colonial peoples formed part of the aggressive arsenal of the imperialist Powers...denying the legitimate right of the colonial peoples to self-determination and independence."[83]

The counter narratives of defense over decolonization continued at the 21st session, with the UN General Assembly ultimately adopting its resolution on the implementation of the Decolonization Declaration, "request[ing] the colonial Powers to dismantle their military bases and installations in colonial Territories and to refrain from establishing new ones, and [to refrain] from using those that still existed to interfere with the liberation of the peoples in colonial territories in the exercise of their legitimate right to freedom and independence."[84]

A study conducted by the Special Committee on Decolonization in 1968 on military activities in

78 *Id.*

79 See UN General Assembly resolution 2069 of 16 December 1965.

80 See Repertory, *supra note* 76 at 85.

81 See UN General Assembly resolution 2105 of 20 December 1965.

82 See Repertory, *supra note* 76 at 86.

83 See Repertory, *supra note* 76 at 174.

84 See *Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples*, UN General Assembly resolution 2189 of 13 December 1966.

selected NSGTs,[85] "condemn[ed] the use of military bases in colonial territories against third parties as contrary to the spirit of the Charter and a threat to international peace and security," and "strongly condemned [these activities] as a crime against humanity," while also making the link between military activities and their effects on territorial economic development.[86] During the committee's consideration of the report, certain administering powers, in their statements to the committee, argued that they were entitled to maintain military bases and installations in territories under their administration, pursuant to the UN Charter and Trusteeship Agreements, "in order to defend the inhabitants of the territories, as well as to maintain peace and security in the region." The counter argument continued that such installations remained an impediment to self-determination. In this connection, the 1968 Report concluded that:

> " ... military activities and arrangements [in NSGTs]...inevitably led to interference with the economic development of the Territories concerned both through the extensive alienation of land for military purposes and by drawing the population away from productive activities, as in the case of Guam and Gibraltar where the bases played a dominant role in the local economy."[87]

The General Assembly, during the third decolonization period, continued to adopt resolutions repeating earlier concerns, and established the mandates for action in regard to the use of NSGTs for military purposes. It recognized that such bases in NSGTs created a threat to international peace and security and impeded the implementation of the Decolonization Declaration. The mandate was also established for member States to, "carry out a sustained and vigorous campaign against all military activities and arrangements by colonial Powers in territories under their administration, as such activities and arrangements constitute an obstacle to the full implementation of Resolution 1514 (XV)".[88]

General Assembly resolutions from the mid-1970s to 1992 addressed various elements of military activities in NSGTs, including calls for the immediate and unconditional withdrawal of the bases. From 1995 to 1998, the Assembly began to acknowledge the decisions of some of the administering Powers to close or downsize them. In 1999, the General Assembly added to the call for termination of military bases the admonition that, "military activities and arrangements by administering Powers in NSGTs under their administration should not run counter to the rights and interests of the peoples of the Territories concerned, especially their right to self-determination, including independence" (UN Resolution 54/91 of December 6, 1999).

The General Assembly in 1976 adopted its first resolution with provisions on military activities in Guam, "deploring the policy of the Administering Power in continuing to maintain military installations

85 The NSGTs covered by the study were Namibia, Gibraltar, Territories under Portuguese administration, Seychelles and St. Helena, Southern Rhodesia, Papua and New Guinea, **Guam**, Bahamas, Bermuda, Turks and Caicos Islands, Antigua, and the United States Virgin Islands.

86 See Study on military activities and arrangements (in selected territories), G.A. (XXIII), Annexes, a.i. 23/Addendum, chap. IV, Annex. (1968).

87 *Id.*

88 See UN General Assembly resolution 2621 (XXV) of 12 October 1970.

on Guam in contravention of the relevant resolutions of the General Assembly."[89] By its resolution in 1977, the Assembly reaffirmed its "strong conviction that the presence of United States bases on Guam should not prevent the people of the territory from freely exercising their right to self-determination ..."[90] By 1978, the Assembly resolution, "recognized that the presence of military bases [in Guam] could constitute a factor impeding the implementation of the Decolonization Declaration, and reaffirmed the strong conviction that the presence of military bases in Guam should not prevent the people of the territory from exercising their inalienable right to self-determination and independence in accordance with the Declaration, and the purposes and principles of the [UN] Charter."[91]

In subsequent resolutions on Guam, the General Assembly regarded the practice of military installations in NSGTs as, "incompatible with the relevant resolutions of the UN" and began to, "call upon the administering Power to take the necessary action to enable the inhabitants of Guam to regain possession of un-utilized land held at present by [US] federal authorities and by the military."[92] The main themes of resolutions focused on, "the presence of military bases [that] could constitute a major obstacle," to decolonization, the responsibility of the US to ensure that military activities do not hinder that right, and for the US, "not to involve the territories in any offensive acts or interference with any other states... relating to military activities and arrangements."[93] In 1987, the resolution also highlighted a US Defense Department statement on a plan, "to release an additional 1,435 hectares to the territorial government in 1986."[94] In 1990, the theme of military ownership of land in the territory was expanded upon in the resolution on Guam:

> "Recalling that the 1977 Guam Land Use Plan recommended the release of 2,100 hectares of surplus federal land to the Government of Guam, and noting that, according to information transmitted to the Special Committee [on Decolonization] in 1990 by the Guam Commission on Self-Determination 190 hectares had been transferred by the [US] Navy to the Government of Guam, a further 462 hectares of the identified land had been released and an additional 175 hectares are in the process of being returned to the Government Guam."[95]

In 1991-1992, the resolutions on Guam made reference to the, "second round of negotiations" between the US and Guam governments," at transferring land and facilities at the Naval Air station, Agana, opened

89 See UN General Assembly resolution 31/58 of 1 December 1976.

90 See UN General Assembly resolution 32/28 of 28 November 1977.

91 See UN General Assembly resolution 33/33 of 13 December 1978.

92 See UN General Assembly resolutions 34/39 of 21 November 1979, 35/22 of 11 November 1980, 36/63 of 25 November 1981, 37/21 of 23 November 1982, 38/42 of 7 December 1983, 39/32 of 5 December 1984 and 40/43 of 2 December 1985, respectively.

93 See UN General Assembly resolutions 41/25 of 31 October 1986, 42/87 of 4 December 1987, 43/42 of 22 November 1988, and 44/98 of 11 December 1989, respectively.

94 See UN General Assembly resolution 42/87 of 4 December 1987.

95 See UN General Assembly resolution 45/32 of 20 November 1990.

in July 1991," noting that, "large tracts of land in the territory continue to be reserved for the use of the [US] Department of Defense."[96] In 1993, the resolution on Guam noted that, "pursuant to the request of the Government of Guam and the recommendation of the [US] independent Base Relocation and Closure Commission..., the administering Power has approved of the closure of aviation activities at the Naval Air Station Agana."[97] In 1994, the resolution on Guam abruptly excluded specific references to the link between military activities and decolonization that had been included in resolutions from 1976, in apparent deference to the administering Power's position that references to military activities in Guam were superfluous in light of the end of the Cold War. Relevant language on military activities was retained in the UN resolution on the implementation of the Decolonization Declaration for all NSGTs until 2002.

From 1994, the focus of attention shifted to related issues, with the inclusion of text in the Guam resolution on the "programme of transferring surplus federal land to the Government of Guam," and on the call "by the people of the territory...for a reform in the programme of the administering power with respect to the thorough and expeditious transfer [return] of property to the people of Guam."[98] The 1997-2002 resolutions on Guam included reference to military activities by taking note of the, "proposed closing and realigning of four United States Navy installations on Guam and the request for the establishment of a transition period to develop some of the closed facilities as commercial enterprises."[99] There were no references to military activities in Guam in resolutions from 2003 through 2006, while reference to issues of land transfer were retained. Resolutions on Guam from 2007 onward expressed awareness of deep concerns expressed by many residents, including civil society and others, regarding, "the potential social [*and subsequently cultural, economic and environmental*] impacts of the impending [*and later planned*] transfer of additional military personnel of the administering Power to the Territory."[100]

In 2016, reference was added in the Guam resolution to, "the statement made by the Speaker of the Thirty-Third Guam Legislature before the Fourth Committee at the seventieth session of the General Assembly that the most acute threat to the legitimate exercise of the decolonization of Guam was the incessant militarization of the island by its administering power, and noting the concern expressed regarding the effect of the escalating United States military activities and installations on Guam."[101] Developments at the UN, beginning in 2017, marked an intensified focus, reflecting the longstanding concerns over the continued use of NSGTs for military strategic purposes after decades of mandates concerning this practice. Accordingly, the General Assembly adopted three resolutions which included reference to military activities in NSGTs. The first text, which was introduced in the Special Committee on Decolonization on June

96 See UN General Assembly resolution 46/68 of 11 December 1991 and 47/27 of 25 November 1992.

97 See UN General Assembly resolution 48/51 of 10 December 1993.

98 See UN General Assembly resolution 49/46 of 9 December 1994.

99 See UN General Assembly resolutions 51/224 of 27 March 1997, 52/77 of 10 December 1997, 53/67 of 3 December 1998, 54/90 of 6 December 1999, 55/144 of 8 December 2000, 56/72 of 10 December 2001, 57/138 of 11 December 2002.

100 See UN General Assembly resolution 62/118 of 17 December 2007, 63/108 of 5 December 2008, 64/104 of 10 December 2009, 65/115 of 10 December 2010, 66/89 of 9 December 2011, 67/132 of 18 December 2012, 68/95 of 11 December 2013, 69/105 of 5 December 2014, 70/102 of 9 December 2015, and 71/113 of 6 December 2016.

101 See UN General Assembly resolution 71/113 of 6 December 2016.

14, in the "Implementation of the Decolonization Declaration," returned to the earlier mandate which:

> "*Call[ed] upon* the administering Powers concerned to terminate military activities and eliminate military bases in the Non-Self-Governing Territories under their administration in compliance with the relevant resolutions of the General Assembly; alternative sources of livelihood for the peoples of those territories should be provided."[102]

An amended version of the resolution was later adopted on June 23 by the Special Committee, which inexplicably eliminated the reference to "alternative sources of livelihood."[103] The amended draft resolution was subsequently adopted by the Fourth Committee on October 10, 2017, and by the General Assembly on December7, 2017, as Resolution A/72/111. The Assembly also adopted its 2017 resolution on, "Economic and other activities which affect the interests of the peoples of the Non-Self-Governing Territories," which included the relevant mandates:

> [To] reaffirm the need to avoid any economic or other activities, including the use of the Non-Self-Governing Territories for military activity, that adversely affect the interests of the peoples of the Non-Self-Governing Territories, and in this regard reminds the administering Powers of their responsibility and accountability vis-à-vis any detriment to the interests of the peoples of those Territories, in accordance with relevant resolutions of the United Nations on decolonization."[104]

A third resolution, on "The Question of Guam," was also adopted on December 7, 2017, as Resolution 72/102, and repeated acknowledgement of, "existing concerns of the Territory regarding the potential social, cultural, economic and environmental impacts of the planned transfer of additional military personnel of the administering Power to the Territory," and references from earlier resolutions to, "the statement made by the Speaker of the Thirty-Third Guam [L]egislature before the Fourth Committee at the seventieth session of the General Assembly that the most acute threat to the legitimate exercise of the decolonization of Guam was the incessant militarization of the island by its administering Power." The resolution went on to note the expressed concern regarding the effect of the escalating military activities and installations of the administering Power on Guam."[105] The Guam resolution also added the agreed language from earlier resolutions regarding the military strategic condition which influenced the territory's development process. Accordingly, the text:

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102 "Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples," Draft resolution submitted by the Chair of the Special Committee on Decolonisation, UN Doc. A/AC.109/2017/L.10, 14 June 2017.

103 "Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples," Draft resolution submitted by the Chair of the Special Committee on Decolonisation, UN Doc. A/AC.109/2017/L.10/ Rev. 1, 20 June 2017.

104 "Economic and other activities which affect the interests of the peoples of the Non-Self-Governing Territories," Draft resolution submitted by the Chair of the Special Committee on Decolonisation, UN Doc. A/AC.109/2017/L.8, 14 June 2017.

105 "Question of Guam," Draft resolution submitted by the Chair, UN Doc. A/AC.109/2017/L.18, 19 June 2017.

> "Recall[ed] also its resolution 57/140 of 11 December 2002, in which it reiterated that military activities and arrangements by administering Powers in the Non-Self-Governing Territories under their administration should not run counter to the rights and interests of the peoples of the Territories concerned, especially their right to self-determination, including independence, and called upon the administering Powers concerned to terminate such activities and to eliminate the remaining military bases in compliance with the relevant resolutions of the General Assembly."

The resolution also called for, "all measures necessary to protect and conserve the environment of the Territory against any degradation and the impact of militarization on the environment, and once again requested the specialized agencies concerned to monitor environmental conditions in the Territory and to provide assistance to the Territory, consistent with their prevailing rules of procedure." The formal/informal dialogue at the 2017-2019 UN decolonization sessions on the use/misuse of military activities in NSGTs generated renewed emphasis on the expressed concerns that militarization in these territories was inconsistent with the decolonization process and could be violative of customary international law.

The historical review of the longstanding self-determination and decolonization mandates, within the framework of the four focus areas outlined above (*political and constitutional; socio-economic; natural resources and cultural; and go-strategic and military*), sets forth the substantive, long-standing mandate under international law for the decolonization of Guam, as contained in resolutions of the UN General Assembly over seventy years ago, when the UN established procedures to review the extent and progress of the self-governance evolution of Guam and other NSGTs. The evolution of dependency governance in Guam, long predating the UN Charter in 1945, is examined chronologically in Part IV of the present Assessment.

EVOLUTION OF DEPENDENCY GOVERNANCE IN GUAM

In an historical narrative for the highly informative 1996 publication, "Issues in Guam's Political Development: The Chamorro Perspective," Guam attorney, Michael Phillips, wrote that the Mariana Islands are the "ancestral homeland" of the CHamoru people, who have lived in the islands for over 4,000 years, "sharing a unique and special relationship with the land and sea," with the people commonly referred to as "*taotao tano*," which literally means people of the land, [and] a way of indicating that a person is a native" of the islands.[106] As he explained:

> The ancient Chamorros, like their ancestors from Southeast Asia, felt that all of Nature had an essence or spirit that Westerners reserve only for humans. Consequently, the native Chamorros — like other native peoples — had a great concern for Nature. They attempted to live in harmony with Nature and to integrate their lives with all that is in Nature. In the ancient Chamorro worldview, humans and nature were interdependent.[107]

106 See Michael F. Phillips, *Land, In Kinalamten Pulitikåt: Siñenten I Chamorro; Issues in Guam's Political Development: The Chamorro Perspective, Hale'-ta, The Quest for Commonwealth*, The Political Status Education Coordinating Commission, Agaña, Guam (1996).

107 *Id.*

Pre-colonial Governance (PCG)

It is within this context that governance during the ancient period of Pre-Colonial Governance (PCG) involved an overarching collective understanding and deep respect for the centrality of nature. Dominica Tolentino's description in Guampedia is instructive:

> Archaeologists refer to the period of initial settlement and the emergence of early CHamoru culture as the Pre-*Latte* Phase or Era, and archeological evidence indicates that the occupants of these early sites shared the same culture. It is likely that ancient Marianas populations were organized loosely as family groups with little or no social stratification—in other words, no distinct social classes, as seen later in *Latte* Era CHamoru society…
>
> Population increases may have also led to a more stratified, though not necessarily rigid, social structure, with the emergence of at least two social castes—the upper caste *chamorri* and the lower caste *mangachang*. The *chamorri* presumably had control over land and other natural resources, and granted limited access to the *mangachang* to areas for farming. A matrilineal kinship system of inheritance organized the population into clans, which became the important economic and social unit of ancient CHamoru society. Living in scattered autonomous villages throughout the islands, these clans vied with each other through ritual warfare and reciprocal gift giving to increase their social status as well as to maintain political alliances…
>
> By the time the explorer Ferdinand Magellan landed in the Marianas in 1521, the CHamorus had already established permanent settlements on almost all of the islands in the archipelago. Some archeologists suggest the dramatic changes in culture and settlement patterns of the ancient CHamorus from the Pre-*Latte* and *Latte* Phases were most likely due to changes in environment, as well as by increasing populations and the need to procure enough food for more people.[108]

108 See Dominica Tolentino, *Ancient CHamoru Settlement Patterns*, in Guampedia https://www.guampedia.com/ancient-chamorro-settlement-patterns/ accessed 22 November 2019.

Regarding the ancient governance structures, CHamoru professor and activist Michael Lujan Bevacqua pointed out:

> The *Matua* controlled the most resources and lands and were the most politically powerful class. Historical accounts give us a clear image of their place in society, but less is known about the other two classes. Politically, the Mariana Islands had no centralized government, whether over the island chain as a whole or over any single island. Instead, politics operated at the level of individual clans and villages. Ancient Chamorro clans were collections of families that traced a similar maternal ancestor. The leader of a clan was the *maga'håga* (first daughter) who was the oldest and highest ranking woman in a clan. Her oldest sibling or son would be the *maga'låhi* (first son). The children and siblings of these leaders were the *manmaga'låhi* and *manmaga'håga* and together they oversaw the affairs of their clan. These positions were not set in stone however, as *maga'låhi* or *maga'håga* who proved themselves to be unfit as clan leaders could easily be replaced by someone else within the clan. A village would be made up of a number of clans and each *maga'låhi* and *maga'håga* would be responsible for the affairs and holdings of their clan alone. It was the task of these leaders to decide where new villages would be started, who would marry whom, and where family members would live.[109]

The pre-colonial governance period underwent a fundamental shift with the arrival of military forces from Spain, which officially claimed Guam (*as part of the Marianas*) as a Spanish possession in 1565 through the "Proclamation of Spanish Sovereignty," documenting Spain's claim over the Mariana Islands:

> I, Miguel Lopez de Legaspi, Governor and Captain-General by his Majesty of the people and armada that goes in His Royal service on discovery of the islands of the Wes, in the name of His Royal Majesty the King, Don Felipe Our Lord, take and apprehend as an actual property and as a Royal Possession, this land and all the lands subject to it (*emphasis added*).[110]

Although this act was said to be mostly symbolic, as the first Spanish settlement was not established until 1668, it established the perspective that the acquisition of Guam and the other islands was primarily an act of acquiring "property" – a perspective which would continue into the US Dependency Governance period of present day, in the framework of the applicability to Guam of the "territorial or other property" clause of the US Constitution.

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109 See Michael Lujan Bevacqua, *Mampolitiku: Politics*. In Guampedia. *https://www.guampedia.com/mampolitiku-politics/* accessed 22 November 2019.

110 See "Proclamation of Spanish Sovereignty," In "Hale-ta: Hinasso': Tinige' Put Chamorro (Insights: The Chamorro Identity)," Volume 1, Political Status and Coordinating Commission, Agaña, Guam, 1993.

Spanish Dependency Governance (SDG)

Former Speaker of the Eighth Guam Legislature Carlos P. Taitano wrote that, in Guam, the Europeans found a "vigorous and highly developed community of people with a territory, economic life, distinctive culture and language in common, (and who were) the first group of Pacific Islanders to receive the full impact of European civilization when the Spanish began the colonization of the Marianas in 1668."[111] Taitano explained that "[a]ccording to international law prevailing at the time [when] the Spanish first came to the Mariana Islands, the discovery of lands that did not belong to a Christian prince constituted sufficient title for their appropriation [with] the Spanish governance of the island established the same year following what Taitano described as a "brutal violation of the sovereignty of the Pacific nation [with] the Chamorros resist[ing] for thirty years, but… finally defeated.[112]

What followed was the advent of the period of Spanish Dependency Governance (SDG) with the loss of CHamoru sovereignty and the subsequent application of Spanish customs and laws under a colonial system run by a Spanish governor under the general government of the Philippines until the end of the Spanish-American War, at the end of the 1800s. As Bevacqua informed:

> "[T]he cultural changes that took place because of the Spanish colonization, were forced upon them. These changes were not natural, which the Chamorros determined for themselves, or chose to make. Instead these changes were violent upheavals of a society, which were resisted and fought against by Chamorros, at times to the death. Of course, this point is undeniable, as Chamorros were indeed forced to take up Catholicism and therefore ripped away from their own religion and culture.[113]

111 See Carlos P. Taitano, Political Development, In *Kinalamten Pulitikåt: Siñenten I Chamorro; Issues in Guam's Political development: The Chamorro Perspective, Hale'-ta, The Quest for Commonwealth*, The Political Status Education Coordinating Commission, Agaña, Guam (1996).

112 *Id.*

113 See Michael Lujan Bevacqua, Transmission of Christianity into Chamorro Culture, in Guampedia https://www.guampedia.com/transmission-of-christianity-into-chamorro-culture/ accessed 22nd November 2019.

In response to CHamoru resistance to the religious conversion and overall Spanish colonialism, Spain dismantled the traditional indigenous governance systems through forced relocation of the population and consolidation of its power. Spanish directives to guide its dependency governance of Guam emphasized the role of religion and the geo-economic importance of the Mariana Islands in regional trade. Particular instructions issued in 1680 by the Governor and Captain-General of the Philippine Islands to the Governor of the Mariana Islands set forth the framework for direct rule under the Spanish-appointed governor, with an emphasis on the establishment of, "pueblos…in the most suitable locations so that [the people] can live together sociably," according to the guidelines of Spanish direct rule.[114]

The 1800s saw rival countries, including Germany and Britain, increasing their quest for power in Micronesia and challenging Spain's hold on the region. This climaxed in the defeat of Spain by the US in the Spanish-American War in 1898, and the sale of its colonies to Germany, with the exception of Guam, which was acquired by the US, and which in turn transformed the territory from Spanish Dependency Governance (SDG) to the unique form of Military Dependency Governance (MDG) which would prevail under the US for a half-century.

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114 110 *Supra Note.*

Military Dependency Governance (MDG)

On the dynamics of the transition of governance from Spain to the United States, Taitano recounted the capture of Guam from Spain in 1898 during the Spanish-American War, the cession of the territory to the US via the Treaty of Paris the same year, and the related sale by Spain of the Northern Marianas to Germany. Taitano observed that:

> Under the Treaty of Paris, the US Congress was obligated to determine the civil rights and political status of the people of Guam. In spite of this treaty obligation, President William McKinley issued a two-sentence executive order placing the governance of Guam completely under the Department of the Navy. The officers appointed as naval governors of Guam exercised all legislative, judicial and executive authority. The entire island was designated a naval station and its harbor was declared a closed port. Each governor held dual appointments-governor and naval station commandant.[115]

Thus, the transfer of Guam as the "spoils of war" ushered in the first of several distinct phases of US dependency governance. The first phase was Military Dependency Governance (MDG). As Taitano recounted:

> From the very beginning, Guam's importance as a strategic military base was recognized. All policies relating to Guam were formulated with its military value as the determining factor; human rights and fundamental freedoms of the native inhabitants were disregarded. Guam was used by the Navy over the years as a vital center for communication and transportation, staging and deployment of troops, and a refueling and repair station. It was an important base for the bombing of Japan during World War II, as well as for bombing and other missions during the

115 See Taitano, *supra note* 110.

Korean War, the Vietnam War and the Gulf War…[116]

It is to be recalled that these actions, "coincided with similar 'orders' for military rule in Puerto Rico [*also acquired by the US from Spain under the Treaty of Paris*], and the later 1917 Treaty of Cession transferring the then-Danish West Indies [*the present US Virgin Islands*] to the US for US$ 25 million for military defence purposes related to WWI."[117] Guam's transition from Spanish to US rule was met with immediate resistance to US-MDG by the Chamorro people. This would later "climax…with a walk-out by the Guam Congress in 1949," and in turn, forc[ing] US Congressional action approving an organic act in 1950.[118] This Act would be adopted in the exercise of the unilateral authority of the US Congress under the so-called "Territory or other Property Clause" of the US Constitution, that was to be made the operative instrument to govern the dependency relationship between Guam and the US from the beginning of the MDG period, through the various civilian dependency governance periods, to present day.[119]

The MDG period following the transfer from Spain to the US officially began with the US military governor's public proclamation of US sovereignty over Guam. In this connection, the, "Proclamation to the Inhabitants of Guam and to Whom it may concern," issued by the Captain of the United States Navy on August 10, 1899, set forth the broad parameters of the emerging US MDG period regarding the, "future control, disposition, and government of the Island of Guam," following its acquisition from Spain. This included the formal statement of "occupation and administration" of Guam…in the fulfillment of the Rights of Sovereignty thus acquired and the responsible obligations of government thus assumed." The Proclamation went further to outline the framework for what would amount to decades of the MDG period:

> That you, the inhabitants of Guam, are hereby informed that in establishing a new Political Power, the authority of the United States will be exerted for the security of the persons and property of the people of the Island and for the confirmation of all your private right and relations.
>
> That, all political rights heretofore exercised by the Clergy in dominating the people of the Island, are hereby abolished, and everyone is guaranteed absolute freedom of worship and full protection in the lawful pursuits of life so long as that protection is deserved by actual submission to and compliance with the requirements of the United States.

116 *Id.*

117 See Carlyle Corbin (2015) *Comparative Political Development in the United States-administered Pacific Dependencies* In Micronesian Educator (Volume 22), University of Guam (p.7).

118 See Ann Perez Hattori (1996) *Righting Civil Wrongs: Guam Congress Walkout of 1949 in Kinalamten Pulitikat: Sinenten I Chamorro/Issues in Guam's Political Development: The Chamorro Perspective* (Hagatna, Guam: Department of Chamorro Affairs).

119 See Corbin, *supra note* 117 at 8. A comparative examination of the broader US territorial context during the period revealed that "a parallel (organic act) had been provided for the US Virgin Islands in 1936 (revised in 1954) after similar expressions of popular discontent. Related federal initiatives in the 1950s to provide an organic act for American Samoa were resisted in the territory in large measure because of the specific deletion of provisions in earlier proposals for a draft Guam Organic Act that would have protected the indigenous population in areas such as land alienation The Samoans concluded that such an (o)rganic (a)ct would have been an unwarranted interference in their traditional system of governance."

> That all public lands and property and all rights and privileges, on shore or in the contiguous waters of the Island, that belonged to Spain at the time of the surrender now belong to the United States, and all persons are warned against attempting to purchase, appropriate (or) dispose of any of the aforesaid properties, rights or privileges without the consent of the United States Government.[120]

Hence, the system and style of government under MDG was established by the US naval governors, in earnest, with the naval governor operating in an autocratic fashion, and "vested with all executive, legislative and judicial power."[121] The unilateral exercise of power included the prohibition of land sales – even between Chamorros - without naval government approval, and strict controls over entry into the territory.[122] Chamorro historian, Ann Perez Hattori, pointed to a 1901 petition from thirty-two Chamorros to the US Congress expressing concern that "fewer guarantees of liberty and property rights" existed under US naval rule than under Spanish colonial governance.[123] The 1901 "Petition Relating to the Permanent Government of Guam" expressed key concerns regarding the prevailing MDG, which was termed a "military government of occupation, under the authority of a naval officer, the commandant of the naval station in the island." The Petition expressed the view that:

> The actual conditions contain grave defects, inherent in the system of government and which can be remedied only by Congressional action. A military government at best is distasteful and highly repugnant to the fundamental principles of civilized government, and peculiarly so to those on which is based the American Government; its only legitimate excuse for existence is military necessity or as a provisional government until the newly acquired territory can be properly brought under the scheme of government of its new sovereign.
>
> The first, or military necessity, can be dismissed without discussion as never having existed on this island since the date of American occupation…The Governor of the island exercises supreme power in the executive, legislative and judicial branches of government with absolutely no limitations to his actions, the people of the island having no voice whatever in the formulation of any law or the naming of a single official.[124]

Hattori also recounted a 1933 petition by 1,965 Chamorros, "reminding the US Congress of its responsibility under the Treaty of Paris to determine the political status of the Chamorro people." Hattori

120 110 *supra note*, at 21-22. There was no move to restore the land to its original ownership that had been expropriated during the Spanish dependency governance period.

121 118 *supra note*, at 58.

122 See Anthony Leon Guerrero (1996) The Economic Development of Guam, In *Kinalamten Pulitikat: Sinenten I Chamorro/Issues in Guam's Political Development: The Chamorro Perspective* (Hagatna, Guam: Department of Chamorro Affairs), at 86.

123 118 *supra note*, at 58.

124 See "Petition Relating to Permanent government for the Island of Guam," In "Hale-ta: Hinasso': Tinige' Put Chamorro (Insights: The Chamorro Identity," Volume 1, Political Status and Coordinating Commission, Agaña, Guam, 1993.

made reference to seven additional petitions, between 1917 and 1950, and noted that the petitions, "were consistently thwarted by US naval opposition to citizenship and civil rights for the Chamorro people."[125]

The evolution of some semblance of representative dependency governance had actually begun to emerge in 1917, with an advisory Guam Congress of thirty-four members appointed by the naval governor. The members lacked the authority to enact laws, but had an opportunity to use the platform to discuss the need for the emergence of democratic governance. Their efforts to lobby the US Congress to advance the territory toward elected dependency governance (EDG), however, were unsuccessful at first, in large measure because of the continued opposition by the US Navy.

125 See Hattori 118 *supra note.*

Governance under Occupation

World War II marked a period of interruption of US MDG, with the occupation of Guam by Japan and the advent of a period of Japanese Governance under Occupation (JGO) at the beginning of World War II in 1941. This resulted in the complete control of the Marianas by Japan which used the islands of Saipan, Rota, Pagan, Agrihan—and finally Guam—as bases for Japanese expansion in the region. In writing on Japan's geo-strategic and geo-economic aspirations, Wakako Higuchi referred to Japan's interest in the establishment of, "the Greater East Asia Co-prosperity Sphere to achieve self-existence and self-prosperity in Asia, [to foster the] reorganization of the political, economic, and social order in Asia [so that] the Asian peoples could be liberated from European colonialism."[126] As Higuchi went on to note:

> The significance of Guam's occupation by Japan was that the island became part of Japan's Micronesia (Saipan, Yap, Palau, Truk [now Chuuk], Ponape [now Pohnpei], and the Marshalls), called the South Sea Islands (Nan'yô Guntô). This huge ocean area was Japan's defence and southward advance base while it was originally a "C" class mandate of the League of Nations and administered by Japan's South Seas Bureau or Nan'yôchô. In fact, the Japanese Navy planned to administratively integrate Guam into the Saipan District Branch [later renamed the Northern District Branch] of the South Seas Bureau when the war situation became settled. After the initial occupation, Guam was placed under control of the Japanese Navy's Fifth Base Force, with its headquarters on Saipan to include Tinian and Rota. Guam, the largest island in Micronesia along with its water sources and large amount of suitable agricultural land, was an indispensable supply base for transiting Japanese military ships. Guam was expected to play a major supply role in the military's self-sufficiency plans along with the other Mariana Islands, although this was not achieved.[127]

126 See Wakako Higuchi, *Japanese Occupation of Guam*, in Guampedia https://www.guampedia.com/japanese-occupation-of-guam/ accessed 22nd November 2019.

127 *Id.*

Governance under occupation during this time came in the form of administration by the Japanese Imperial army and navy, according to the Japanese imperial proclamation, "for the purpose of restoring liberty and rescuing the whole Asiatic people and creating the permanent peace in Asia (with the) intention…to establish the New Order of the World." As the late CHamoru author Tony Paloma described:

> For three months after the Japanese invasion, Guam was a veritable military camp. Soldiers and other military personnel traveled to Guam, coming primarily from Saipan and Palau, both islands occupied by Japan since the end of World War I. Under the Minseisho, the civilian affairs division of the South Seas Detachment, some 14,000 Japanese army and navy forces took over all government buildings and seized many private homes. Troops were stationed in various parts of the island, a dusk-to-dawn curfew initiated; cars, radios, and cameras confiscated…All local residents were required to obtain passes – a piece of cloth with Japanese characters – in order to move about the island. All local officials, including municipal and village commissioners and policemen, were ordered to return to work.[128]

With Guam as a forward operating base, the governance of the island was left to the remaining naval militia (Minseibu). The Japanese Navy attempted to change the culture of the people by the renaming the island to Ômiyajima (Ômiyatô) or "the island of the Imperial Court," with Hagåtña renamed 'Akashi' (the Red City). The Japanese language was also introduced in the newly Japanese-run schools.

With the re-capture of Guam (along with Saipan and Tinian) by the US forces in 1944, the Japanese attempts to change the culture of the people were reversed, with the MDG of Guam resuming under US Naval Administration. The post-occupation period of MDG continued the autocratic governance of the pre-occupation MDG. Taitano recalled that:

> …under American rule, human freedoms, fundamental fairness and equality enjoyed by citizens in the continental United States were not made available to the people of Guam. The basic democratic principles of government to function only by the consent of the governed[,] and the American tradition and history that government shall rest upon law rather than executive decree[,] did not inspire the [US] Congress to apply these principles of democracy to Guam… The Americans generally shared with the Europeans the belief that non-European peoples were inherently inferior…[Accordingly] the Navy consistently opposed any federal legislation granting US citizenship for the Chamorros on the ground that the Chamorros had not reached a state of development that would call for US citizenship.[129]

It was from this perspective that the successive naval governors ruled Guam—before and after

128 See Tony Palomo, WWII – *Rising Sun Dawns on Guam*, In Guampedia https://www.guampedia.com/wwii-rising-sun-dawns-on-guam/ accessed 24th November 2019.

129 See Taitano *supra note* 110.

Japanese occupation—and the US Congress allowed the governance of Guam to be undertaken under what Taitano described as virtual martial law, with gross violation of human rights. The period of MDG could be described as an era whereby the territory was run by a naval governor appointed by the US, with military officers holding all top positions in the governance of the territory. The establishment of the UN in 1945, as a direct result of the search for an institution which would prevent future world wars, also focused heavily on the future disposition of territories which had been acquired—or re-acquired as in the case of Guam—by larger countries. (The preceding Sections II and III of the present Assessment provided background on the role of the UN and international law which was to govern relations among the nations of the world following the end of WWII.) Accordingly, there was specific reference in the UN Charter (*earlier noted*) to the advancement of the future self-determination and decolonization for the people of the NSGTs, who were facing new forms of dependency governance of the period.

After WWII and the resumption of MDG, members of the resumed Guam Congress were elected pursuant to new provisions, with the first election of members held in 1946. The Congress was provided with expanded advisory powers to make proposals to the naval governor for changes in laws and regulations. However, these expanded advisory powers proved inadequate as they did not affect the unilateral authority of the governor to act through executive order. In 1949, the Guam Congress drafted and approved a proposed Organic Act for transmittal to the US Congress, and voted to adjourn until a reply to the proposal was received. The "walkout" of the Guam Congress (*earlier referenced*) brought about the period of Appointed Dependency Governance (ADG), with the transition from MDG under a US-appointed naval governor to a US-appointed civilian governor, pursuant to the passage of an accompanying organic act and the extension of US citizenship.

Appointed Dependency Governance (ADG) to Elected Dependency Governance EDG)

The 1950 Organic Act[130] transitioned Guam from Military Dependency Governance (MDG) to the next distinct phase, of Appointed Dependency Governance (ADG), where the governing leadership was transferred from the US military to an appointed US civilian official. This happened one year before a similar transition in American Samoa. The Organic Act provided for the internal structure of government while not interfering with the unilateral authority of the US over the territory. The newly created Legislature of Guam, thus, was provided with the authority under the Organic Act to adopt legislation constituting Partial Elected Dependency Governance (P-EDG), with the final approval being retained by the US-appointed civilian governor.

Following the signing of the Organic Act by US President Truman in August 1950, the US Navy reinstated its previous security clearance program in December of the same year. The program required any non-resident to have a security clearance to travel to Guam, with exemptions provided for military personnel and naval civilian employees. Meanwhile, US citizen residents required a re-entry permit from the Commander of the Naval Forces Marianas in order to leave Guam temporarily and return. The order was enforced until it was rescinded in 1962 by US President John F. Kennedy, through Executive Order 11045.

After more than a decade of advocacy by Guam political leaders (*coinciding with their counterparts in the US Virgin Islands*), the transition to full Elected Dependency Governance (EDG) was legislated with the US adoption of the Elective Governor's Act of 1968, providing for a governor elected by the people to replace a governor appointed by the US president. The first election for governor was held in 1970, bringing an end to the various phases of Appointed Dependency Governance (ADG) through its intermediary step of Partial Elected Dependency governance (P-EDG) to EDG.[131]

During the period, efforts were also initiated to revisit the Organic Act, and by 1968, the territory's

130 Guam Organic Act of 1950, (48 U.S.C. § 1421 et seq.).

131 See: Public Law 90-497, *An To provide for the popular election of the Governor of Guam, and for other purposes*, 11 September 1968.

first Constitutional Convention examined potential changes to the Act, with subsequent examination of alternative political status options other than the prevailing Unincorporated Territorial Status (UTS). In the 2015 *Micronesian Educator* journal of the University of Guam, a comparative analysis of the political development in US-administered Pacific dependencies was undertaken, with elements of the historical progression chronicled:

> In 1970, a Governor's Advisory Council on Political Status considered new modalities for unification with the Northern Mariana Islands following the referendum in the two territories the previous year which had seen Marianas voters favoring unification and Guam voters rejecting it. The first formal Political Status Commission formed in 1973 reviewed the implications of various options and recommended in its 1974 report a more autonomous commonwealth status bearing in mind the Puerto Rico and the Northern Marianas models, while questioning the 'footprint' of the US military presence. The report concluded that "the Organic Act [did] not permit the people of Guam to manage their own affairs [and] that land ownership should be reviewed.
>
> The second Political Status Commission formed in 1975 identified areas of federal control which were restricting the development process and facilitated a 1976 plebiscite in which the voters indicated their overwhelming desire for measured political change with improvements to the status quo. This had been overwhelmingly selected over the permanent options of US statehood and independence which would have required significant preparation. The plebiscite coincided with the enactment of the 1976 US law authorizing Guam and the US Virgin Islands to draft respective constitutions within the prevailing territorial status.
>
> In 1977, Guam's constitutional convention completed a draft document and forwarded it to the US President and Congress for approval in advance of submission to the territory for consideration in referendum. The US President recommended a number of changes before submitting the text to the US Congress whose Senate Energy and Natural Resources Committee held hearings in 1978. But since the Congress did not act on the amended text within the prescribed 60 pay period, the original text was approved by default. The 1979 referendum outcome, however, reflected strong opposition to its provisions with 81.7 per cent of the voters in opposition (**earlier cited**).[132]

Coinciding with the Guam referendum on a proposed dependency governance constitution was the announcement by US President Jimmy Carter of the 1979 territorial policy review, and the subsequent unveiling in 1980 of an official territorial policy which led to a 1980 US federal position that, "all options for political development should be open to the people of the insular territories," if economically feasible

132 See Carlyle Corbin, *Comparative Political Development in the United States-administered Pacific Dependencies*, In Micronesian Educator, Special Edition, Vol. 22, November 2015, University of Guam.

and consistent with US national security interests (*emphasis added*).[133] In response to the new federal territorial policy, the Guam Commission on Self-Determination (CSD) was formed in 1980. Following several years of research and analysis, a plebiscite was held in 1982 in which the Guam voters chose an autonomous commonwealth status by seventy-three percent.

To implement the results of the referendum, a new commission was formed in 1984 to draft the details of an autonomous commonwealth arrangement, with features such as: "limited applicability of the US constitution, a foreign affairs role, veto power over new US military zones or personnel, consultation rights on proposed military bases, prohibition of the dumping and storage of hazardous materials and nuclear waste, the possibility for unification with the Northern Marianas"; an annual US payment equal to the property taxes which would be due on the one-third of Guam which the US government occupied; continued retention of all customs duties, income taxes and immigration fees; and exclusion from the US customs zone, among other areas. In effect, the commonwealth proposal would have delegated certain Congressional plenary authority to the elected government of Guam, reflecting a significant modernization of the prevailing EDG status.[134] In recalling the US response to the Guam Commonwealth proposal, the Micronesian Educator analysis observed that:

> Many of the provisions of the fourth draft of the Commonwealth Act were considered in a rather chauvinistic Congressional Research Service (CRS) analysis to be "one-sided...without a proper balance, and legally and politically troublesome."[135] The CRS report had taken the unusual step of reviewing a draft which had not yet been finalized. Nevertheless, it dismissed all reference to the applicability of self-determination provisions of the UN Charter and broader international law. The CRS report further rendered inappropriate to Guam any precedent that might have been set by the autonomy contained in the Northern Marianas Commonwealth Covenant as an outcome of a process of negotiation. Given the aversion to international law in the CRS report, it was not surprising that the applicability to Guam set forth in UN Resolution 1514 (XV) on the transfer of powers to the territories to facilitate decolonization negotiations was not considered.
>
> The CRS Report was appropriately rejected by territorial legal authorities as 'rather superficial and uninformed', but its conclusions did influence the subsequent 1986 Congressional committee hearings on the United States-Guam Relationship. In this connection, concerns were reflected at the hearing over the "advisability of many provisions of the draft bill [and] the idea of a

133 See Bette A. Taylor (1988), *Territorial Political Development: An analysis of Puerto Rico, the Northern Mariana Islands, Guam, Virgin Islands and American Samoa, and the Micronesian Compacts of Free Association*, Congressional Research Service, Library of Congress, Washington, D.C.

134 See Corbin 132 *supra note*. Earlier versions of the commonwealth proposal included Guam jurisdiction over its marine resources, the acknowledgement of the indigenous rights of the Chamorro people including land ownership, and control over immigration governing entry to the territory.

135 See Daniel Hill Zafren (1986), "The Draft Commonwealth Act," Congressional Research Service, Library of Congress, Washington D.C.

referendum on it before congressional consideration."[136] The Guam government held firm that its process would be one of "self-determination" rather than "federal determination."[137]

A final amended draft commonwealth act was adopted by the commission in 1986, with certain adjustments, including the removal of the five-year voter eligibility requirement, which was replaced with reference to "reasonable residency requirements." A second modification introduced a potential cost to Guam for the transfer of federally-occupied lands. The subsequent August 1987 referendum, with voters considering each article separately, required a second referendum, in November, to adjust language on Guam immigration control and indigenous rights before ultimate adoption. US efforts to modify the text persisted, even as it represented the will of the people as confirmed in a plebiscite. However, such pressure was resisted, and the draft commonwealth act was forwarded to Washington in 1988 and subsequently introduced in the US Congress in 1989.

The negotiations on the Guam Commonwealth proposal were carried out between the Government of Guam and a US Interagency Task Force (IATF). The Micronesian Educator analysis recounted the difficulties in the negotiations:

A US Inter Agency Task Force (IATF) formed in 1988 to review the commonwealth proposal immediately proceeded to stall consideration of the text until recommended changes were made by Guam which, in turn, chided the IATF for its persistence "in reviewing Guam's future aspirations within the framework of an outmoded colonial philosophy inherent in our current status as an unincorporated possession of the United States."[138] The predictable "paternalistic" IATF report released in 1989 "took a narrow constitutional view... [erroneously] treating...Guam with constitutional standards applicable to [US] states," and reflective of "existing colonial policies."[139]

The 1989 IATF report coupled with the 1986 CRS "analysis" served only to reinforce US dependency governance policies, and ironically preceded the 1990 UN commemoration of the thirtieth anniversary of the UN Decolonization Declaration which fully applied to Guam. US officials repeated their opposition to the Guam commonwealth proposal during a US Congressional hearing held in Hawaii at the end of 1989, in the midst of numerous Guam Government and civil society representatives who supported the proposal.

The 1990 Guam Commission Staff Analysis rendered the IATF report "much too superficial...

136 See Joseph F. Ada (1996), "The Quest for Commonwealth-The Quest for Change," in *Kinalamten Pulitikat: Sinenten I Chamorro/ Issues in Guam's Political Development: The Chamorro Perspective* (Hagatna, Guam: Department of Chamorro Affairs).

137 *Id.*

138 *Id.*

139 *Id.*

to be used as a basis for discussions with Congress...[;] missed the mark in terms of principle, US law, international law, and the historic treatment of the people of Guam[;] and demonstrate[d] a fundamental misinterpretation of the Commonwealth Act, the history of the Territorial Clause, and the Supreme Court's treatment of territories"[140]

As the Micronesian Educator analysis surmised:

> The often-repeated federal position articulated during the period questioning the constitutionality of the commonwealth proposal was further elaborated by US officials who regarded the level of autonomy contained in the document to be more in tune with the free association option rather than of a commonwealth status which, in turn, was considered by federal authorities to be merely an enlightened unincorporated territorial status. As such, the US authorities continued with their default position of applying constitutional standards to the territory as it were an integrated part of the US, and in the process, failed to consider the Guam position that the US Congress' broad powers to delegate authority to the territory under the Territorial Clause could have facilitated the kind of autonomy sought in the proposed Guam arrangement.
>
> Continued US bureaucratic resistance led to ongoing difficulties in territorial-federal interaction on the issue. The failure of US authorities to take into account the applicability of international law led, ironically, to the actual intensification of internationalization of the issue. In this regard, the civil society Organization of People for Indigenous Rights (OPIR) told the UN Decolonization Committee in 1988 that Guam's move "to enhance its relationship with the US through the Guam Commonwealth Act should not be seen as an attainment of self-determination" nor did it represent "an act of self-determination." This internationalist approach consistently repeated in later UN presentations was validated when the federal IATF backtracked on various agreements made on key substantive items of the commonwealth proposal precipitating the subsequent breakdown of the Guam-US negotiations by the end of 1992 ending with the issuance of the IATF 1993 report.
>
> From the very beginning of discussion on the early drafts of the commonwealth proposal, federal officials had called on Guam to eliminate autonomous provisions, and expressed little support for limiting the exercise of US political power over the territory even as the prevailing political status constituted the essence of political and economic inequality, and violated the relevant human rights conventions on political and economic rights. A more flexible approach on mutual consent and related aspects taken by the federal Special Representative for Guam Commonwealth Issues appointed in 1993 was subsequently obstructed by the same federal bureaucrats in place the previous year in spite of the change of government in Washington. This took the form of a

140 See "Staff Report on the Responses of the Federal Interagency Task Force to the Guam Commonwealth Act" Guam Commission on Self-Determination (1990) (Hagatna, Guam).

US Justice Department legal memorandum objecting to mutual consent which was the basis of the commonwealth proposal.

The Special Representative resisted the bureaucratic stumbling blocks and proceeded with a 1994 exchange of Letters of Agreement with the Guam Government to recognize the legitimacy of mutual consent. However, changes in the political line-up in Washington and the resignation of the federal Special Representative caused the process to lose momentum. (Guam legislator) Ben Pangelinan recalled (in 2009) that "with the continued inaction by the United States, the people of Guam and the leaders of Guam turn[ed] to the international basis of the right of the people of Guam to self-determination as embodied by the acceptance of the US of the UN Charter and resolutions which clearly outline the process for the decolonization of a people who remain under the list of non-self-governing territories."[141]

The UN General Assembly, in its 1998 resolution on Guam, recognized, "the continued negotiations between the administering Power and the territorial Government on the draft Guam Commonwealth Act and on the future status of the Territory, with particular emphasis on the question of the evolution of the relationship between the (US) and Guam," and "request[ed] the administering Power to work with Guam's Commission on Decolonization (CD) for the Implementation and Exercise of Chamorro Self-Determination with a view to facilitating Guam's decolonization..."[142] By 2000, the UN had recognized that "negotiations between the administering Power and the territorial Government on the draft Guam Commonwealth Act [were] no longer continuing, and that Guam had established a process for a self-determination vote by the eligible Chamorro voters."[143]

From that point, the UN recognized that Guam had, "pivoted away from the dormant commonwealth negotiations to a concerted focus on a self-determination process, and by 2012 the UN welcomed the convening of the Commission on Decolonization [CoD]…and its work on a self-determination vote," including setting a date for the plebiscite on UN recognized options of political equality, and the establishment of the Decolonization Registry for eligible voters.[144] The 2013 UN resolution went on to reference other aspects of the work of the CoD and the need for adequate resources to implement a political education

141 See Pangelinan, Ben (2009) "Chamorro Self-Determination," (Hagatna, Guam).

142 United Nations (1998) *Questions of American Samoa, Anguilla, Bermuda, the British Virgin Islands, the Cayman Islands, Guam, Montserrat, Pitcairn, Saint Helena, the Turks and Caicos Islands and the United States Virgin Islands*, Resolution 53/67, 3 December (New York: United Nations General Assembly).

143 United Nations (2000) *Questions of American Samoa, Anguilla, Bermuda, the British Virgin Islands, the Cayman Islands, Guam, Montserrat, Pitcairn, Saint Helena, the Turks and Caicos Islands and the United States Virgin Islands*, Resolution 55/144, 8 December (New York: United Nations General Assembly).

144 United Nations (2012) "Questions of American Samoa, Anguilla, Bermuda, the British Virgin Islands, the Cayman Islands, Guam, Montserrat, Pitcairn, Saint Helena, the Turks and Caicos Islands and the United States Virgin Islands," Resolution 67/132, 18 December (New York: United Nations General Assembly).

campaign, "to address the limited and distorted understanding of decolonization."[145] Subsequent resolutions, to the present day, have reflected this posture. It is within the context of the issues examined in parts I through IV that the present Assessment has applied the diagnostic tool of Self-Governance Indicators (SGIs) with regard to Guam in its current unincorporated territorial NSGT status.

145 United Nations (2013a) "Questions of American Samoa, Anguilla, Bermuda, the British Virgin Islands, the Cayman Islands, Guam, Montserrat, Pitcairn, Saint Helena, the Turks and Caicos Islands and the United States Virgin Islands," Resolution 68/95, 11 December (New York: United Nations General Assembly).

EVOLUTION OF SELF-GOVERNANCE INDICATORS (SGIS)

The SGA, as an evaluative mechanism to examine the level of Preparation for Self-Government (PSG) of an NSGT, is outlined in the methodology section of the present Assessment. It is noteworthy that the nature of the various political and constitutional status models in play in NSGTs globally has become increasingly complex over time as the process of self-determination and consequent decolonization is considered. Thus, Guam's current level of self-government is appraised in the present Assessment from the perspective of whether its present UTS represents a sufficient level of advancement to meet minimum international standards of democratic governance, or whether the territory remains in the preparatory phase toward a status of full political equality.

It is from this perspective that the diagnostic tool of Self-Governance Indicators (SGIs) was formulated to provide an instrument for territories, such as Guam and others similarly situated, to assess the compliance of their particular forms of dependency governance with the international standards of FMSG. In this connection, the SGIs are used to determine the nature of the political power relationship between the respective territory and the cosmopole by gauging the balance/imbalance of power between the two polities, and to make relevant observations, as appropriate, for consideration in raising the level of governance toward the requisite Absolute Political Equality (APE).

A description of the prevailing international mandate for self-determination and decolonization, as included in specific international legal instruments and upon which the SGIs are primarily based, is described at length in Chapter III of the present Assessment. The SGIs which emerged from the research of international decolonization doctrine were unveiled in the 2012 edited volume of "The Non-Independent Territories of the Caribbean and Pacific," as earlier noted. In further elaboration:

> "The international norms establishing minimum standards for a full measure of self-governance are derived primarily from international law and principles beginning with the United Nations [UN] Charter, coupled with subsequent international conventions and UN resolutions providing greater specificity. The Covenant of the League of Nations pursuant to Article 23 was the first

international instrument to deal with the evolution of peoples under non self-governing arrangements, with its reference to securing 'just treatment of the 'native inhabitants' of such territories."[146]

In this regard, the issues related to Guam are multilayered, and can be further complicated by the inconsistencies inherent in certain anomalies of US dependency governance, A finding from Congressional Research Service (CRS) analyst Peter B. Sheridan, in a 1979 CRS report on US territories, is illustrative:

> "...Unincorporated territories are those to which the provisions of the United States Constitution have not been expressly and fully extended as a result of various [US] court decisions, i.e. Insular Cases, 1901-1922. [They] may be further defined as organized and unorganized. An organized territory is one for which the Congress has provided an Organic Act [*Guam, USVI*], loosely equivalent to a [US] state constitution, setting up a governmental framework and establishing the powers of that government. Conversely, unorganized territories [American Samoa] are those for which no organic legislation has been enacted."[147]

Writing in the earlier-cited Micronesian Educator, Corbin provided a contemporary context to this realization of policy inconsistency, noting:

> [T]he [US administered dependencies] are continuing to varying degrees in advancing their political status through internal mechanisms, and some including Guam and the CNMI are using the internationally recognized standards of full self-government as the guiding principles. This task remains formidable, however, as there is little evidence of any proactive approach by the administering power to prepare [the US dependencies] for full self-government pursuant to international legal obligations [*emphasis added*]. On the contrary, continued promotion of dependency legitimization preserves the status quo unilateral authority which fits certain geo-strategic and geo-economic interests.

Notwithstanding the propensity toward a perceived comfort of the status quo, the US, in principle, continues to acknowledge the applicability of international law to the decolonization process by fulfilling its obligations under Article 73(e) of the UN Charter to submit annual information to the UN Secretary-General on Guam (*as well as the other UN-listed NSGTs of American Samoa and the US Virgin Islands*). In this context, while Article 73 (e) of the UN Charter on the transmission of information is continually stressed in determining the obligations of a cosmopole/administering power relationship, the international legislative intent is equally reflective of Article 73 (b) of the UN Charter, which requires the administering

146 Corbin, Carlyle, "Applicable International Standards of Political Equality." In The Non-Independent Territories of the Caribbean and Pacific: Continuity or Change?, edited by Peter Clegg and David Killingray , 168-171. London: Institute of Commonwealth Studies, University of London, 2012.

147 Peter B. Sheridan, "Status of American Samoa: Some Political and Historical Aspects," Congressional Research Service, Washington, D.C. 1979.

Powers (APs) to promote genuine self-government in the territories, in compliance with the basic tenets of "absolute political equality."

It is in this light that the key elements of the international self-governance mandate, adopted by the UN General Assembly chronicled above, have been synthesized into specific measurements in key functional areas which serve as indicators of the level and extent of self-governance. This prevailing international mandate for self-government with full political equality constitutes part of the jus gentium of the international rule of law and serves as the basis for assessing the power relationship between a non-independent polity and a cosmopole.

APPLICATION TO GUAM OF SELF-GOVERNANCE INDICATORS (SGIS)

The present Assessment takes into primary account the increasingly intricate dependency governance arrangement, made more complex over time, by the exercise of unilateral authority of the cosmopole to legislate for Guam, without its consent, through the applicability of the "Territory or Other Property" clause of the US Constitution. This unilateral authority is consistent with similar powers exercised by other cosmopoles over territories under their administration. Figure 4 provides a comparison between British and US Instruments of Unilateral Authority (IUA), which identifies its respective sources and the instruments by which this authority is carried out. Figure 5 presents a pattern of IUA within the French DG model, in practice in the Pacific (*and the Caribbean*). The focus of concentration is on whether these current EDG arrangements meet minimum international standards for the FMSG.

Figure 4: Unilateral Authority in British and US Dependencies

INSTRUMENTS OF UNILATERAL AUTHORITY		
COSMOPOLE/NON INDEPENDENT COUNTRY (NIC)	SOURCE OF COSMOPOLE UNILATERAL AUTHORITY	INSTRUMENT OF UNILATERAL AUTHORITY
UK Dependencies Bermuda, Turks & Caicos, Cayman Is, Montserrat, Br. Virgin Islands, Anguilla, Pitcairn	UK Parliamentary Acts, court judgments and conventions	**Constitutional Order** • Governor's reserved powers • Governor's control of major competencies
US Dependencies Amer. Samoa, Guam, N. Marianas, Puerto Rico, U.S. Virgin Islands	U.S. Constitution *"Territory or other property Clause"* (Art. IV (3) (2))	• Organic Act (Guam, USVI) • Constitution (Puerto Rico) • Constitution (Am. Samoa) • Covenant (N. Marianas)

Source: The Dependency Studies Project, St. Croix, Virgin Islands (2019).

Figure 5: Unilateral Authority in French Dependencies

INSTRUMENTS OF UNILATERAL AUTHORITY		
COSMOPOLE/NON INDEPENDENT COUNTRY (NIC)	**SOURCE OF COSMOPOLE UNILATERAL AUTHORITY**	**INSTRUMENT OF UNILATERAL AUTHORITY**
France **Collectives** Saint Martin, Saint-Barthélemy	**French Constitution** Article 73	• General Code of the Territorial Collectives: Part 2 - Sa Saint-Barthélemy Part 3 - Saint Martin
Collectives French Polynesia, New Caledonia, Wallis & Futuna	**French Constitution** Article 73	• Autonomy Law-2004 (Fr. Polynesia) • Noumea Accord-1998 (N. Caledonia) • Autonomy Law-1999 (N. Caledonia) • Overseas Territories Law-1978 (*as amended*) (Wallis & Futuna)

Source: The Dependency Studies Project, St. Croix, Virgin Islands (2019).

Accordingly, the legal principle of *ex injuria jus non oritur* is germane in the context of the self-governance sufficiency of EDG, which functions through delegated authority that has been extended to the territory by the US Congress during various phases of US dependency governance described in Section IV of the present Assessment.[148] The concomitant political inequality characterizing the existing unincorporated territorial status of Guam is fundamentally inconsistency with democratic governance since the delegated power is subject to unilateral reversal by the cosmopole. In other words, delegated power can be "granted," but can also be taken back—a "reverse delegation of power," in the parlance of Dependency Governance Studies.

Accordingly, the present Assessment of Guam applies the interrelated Self-Governance Indicators (SGIs) designed for NSGTs. They are interrelated precisely because the level of self-government in the specific areas is solely dependent on the political power relationship between Guam and the US. It is this unilateral authority, as opposed to mutual consent between the parties—which is the overarching factor in the governance of Guam and other US (*and non-US*) territories.

148 See *"The Principle ex injuria jus non oritur in International Law,"* Ms. Anne Lagerwall, Professor of Public International Law, International Law Centre, Université libre de Bruxelles; Audiovisual Library of International Law, United Nations, New York, http://legal.un.org/avl/ls/Lagerwall_IL.html# accessed 11 November 2019. The principle is that "unjust acts cannot create law."

In this light, the areas of assessment include the political advancement/constitutional dimension, and in particular, the collective right to self-determination. Also examined is the nature and extent of applicability of US laws to Guam and the extent of mutual consent, the extent of internal self-government, and the level of participation in the US political system. In the socio-economic dimension, the areas of examination include the extent of economic autonomy exercised by the territory and the level of economic dependency on the administering Power. The degree of ownership and control of natural resources is also reviewed in the context of the importance of these resources to the culture of the territory. In the area of geo-strategic and military issues, the emphasis is on the extent of authority of the territory to influence US military activities, along with the broader question of geo-strategic considerations in the Pacific "theatre."

Political Advancement and Constitutional Dimension

Indicator # 1 - Collective Right to Self-Determination

The international mandate for the collective right to self-determination has been described in considerable depth in Section III of the present Assessment. In review, this right is generally regarded as, "a fundamental principle of human rights law...[and] an individual and collective right to freely determine... political status and [to] freely pursue...economic, social and cultural development."[149] Decolonization, as the intended outcome of the self-determination process, provides the remedy to the democratic deficit of Dependency Governance (DG).

Yet, there are instances which suggest the condition of "imperfect decolonization," which can include forced [*or involuntary*] annexation; or political amalgamation of states with different ethnicities, religions or cultures.[150] A version of such an "imperfect decolonization" is seen in the methodology of dependency legitimization and the accompanying argument for its acceptance on the grounds that decolonization is an outdated process in contemporary international relations. This immediate post-Cold War dependency legitimization argument saw the larger countries which administered territories becoming reluctant to comply with their international legal obligations under the UN Charter and the relevant decolonization resolutions. The US withdrawal from the proceedings of the UN Decolonization Committee review process in the early 1990s (*the British withdrew in the early 1980s*) signaled an attempt to relegate decolonization to a lesser importance on the UN agenda, and to effectively stymie that process. Paradoxically, this US withdrawal coincided with the accelerated participation of officials from the EDG governments of Guam and the US Virgin Islands in the annual UN Decolonization Committee proceedings in growing recognition of the role of international law in their respective self-determination processes.

As a corollary, the dependency legitimization period progressed to include the further argument that

149 Parker, Karen. "Understanding Self-determination: The Basics." In The Right to Self-Determination Non-Independent Territories of the Caribbean and Pacific: Collected Papers of the first international Conference on the Right to Self-determination and the United Nations Geneva 2000, edited by Y.N. Kly and D. Kly, 63. Atlanta: Clarity Press, 2001.

150 ibid.

the people of the NSGTs were satisfied with the prevailing EDG status—notwithstanding the political inequality and the administering Power's inherent unilateral authority. Thus, even the minimum standards contained in the recognized alternatives to independence—free association and integration—were being projected by the main administering Powers as additional to the status quo dependency arrangements. In effect, the administering Powers were asserting that there existed a new permanence to the status quo EDG arrangements which had been heretofore recognized as transitional and preparatory to full self-government, pursuant to the UN Charter.

Since the placement by the administering Powers[151] of territories on the UN List in 1946, the political relationship between the US territories and the United States has been referred to as, "contradictory and complex."[152] These contradictions and complexities have been seen in the expression of federal policy at the international level, whereby US representatives in some forums confirm the applicability of international law to the decolonization process of US territories, while in other quarters dismiss—or at the least, minimize—its relevance. The evolution of these contradictory expressions can be traced to the early stages of the decolonization legitimization period. As early as 1993, the US submission to the Human Rights Committee formally acknowledged the non-self-governing nature of the three UN listed territories under its administration, indicating that:

> The United States considers Guam, the US Virgin Islands, and American Samoa as still "non-self-governing" for purposes of Article 73 of the Charter of the United Nations. Although these areas are, in fact, self-governing at the local level... they have not yet completed the process of achieving self-determination (*emphasis added*).[153]

Only five years later, in 1998—without any political or constitutional changes in Guam or other US territories to warrant a shift in policy—the US representative reversed course in a statement to the UN Fourth Committee, stating that the majority of the territories on the UN list "should be dis-inscribed." In the process, the representative questioned the right of the UN committee, "to tell the residents of a territory that they must choose one of three changes in their status determined by others if they prefer the current arrangement and freely select that status" [*emphasis added*].[154] The fact remains that it is the UN General Assembly, and not a singular committee, which annually confirms the minimum standards of the three recognized political status options. But this has been strategically dismissed in the dependency

151 Additional administering Powers of Pacific island territories include France (French Polynesia, New Caledonia, Wallis & Futuna) and the United Kingdom (Pitcairn). Australia also governs three 'Peripheral Dependencies; as 'external territories' not formally listed by the UN (Norfolk Island in the Pacific and Cocos Keelings and Christmas Island in the Indian Ocean). New Zealand administers one territory in the Pacific (Tokelau).

152 *Guam and the Case for Federal Deference*, Harvard Law Review, Developments in the Law, Chapter Four, April 10, 2017, p.1.

153 See *Initial reports of States parties due in 1993: United States of America*, Consideration of Reports submitted By States Parties under Article 40 of the International Covenant on Civil and Political Rights (ICCPR),.CCPR/C/81/Add.4. (State Party Report) 24/08/94. The Human Rights Committee reviews compliance of the signatory states with the provisions of the International Covenant on Civil and Political Rights (ICCPR).

154 See Statement of Mark Minton, Minister Counsellor for Political Affairs, to the UN Fourth Committee 9 October 1998.

legitimization argument, which also includes a decided denigration of the statutory role of the UN Decolonization Committee in the process.

Thus, the US position in international circles from that point was that the US dependency model was acceptable if the people of the territory selected it. The argument did not —and does not—elaborate on the political and constitutional subordination of the US territories such as Guam under the "Territory or other Property" clause of the US Constitution. The general reference made to US territories having "representation in Washington," for example, did not refer to the non-voting and incomplete nature of the territorial delegates, and also failed to mention the lack of authority to vote in US presidential elections. These are both democratic deficiencies presently under review by the Inter American Commission for Human Rights regarding Puerto Rico.

Accordingly, the 2003 US statement to the UN— as in the case of the 2002 stated position—continued give the same level of legitimacy to the status quo governance models of political inequality with the three recognized options of political equality contained in Resolution 1541(XV) (*emphasis added*). Yet, the 2003 US statement noted that, "not all territories choose independence however, and we equally support their right to a full measure of self-government, including the right to integration and free association."[155]

By 2005, the US had dropped the reference to the territories as "non-self-governing" in its report to the Human Rights Committee (*earlier included in its 1993 Report to the same Committee*), indicating only that the political status of the US "insular areas remained the same." The implication was that the status quo was an acceptable form of self-government, primarily because the territories conducted their own elections, while the inherent inequality of the unincorporated territorial status was not meaningfully addressed.

Yet, numerous US court rulings confirmed the very inequality of US territories in the US political system that US diplomats in the international arena were seeking to defend as legitimate. Of note was the 1987 ruling of the federal court in "US Virgin Islands Territorial Court v. James Richards, Inspector General, US Department Interior", which confirmed that the elected territorial governments exist only by the "legislative grace of Congress," in reference to the "vertical relationship" between the territory's court and the US Interior Department, where the very existence of the "territorial governments were "to be the product of the will of the [US] Congress." This and subsequent rulings of federal courts make for a sobering realization of the political fragility of territories, and could hardly be seen as a recognition of any semblance of democratic governance.

A most recent example of the dependency legitimization strategy was witnessed in the 2017 Puerto Rico political status referendum process, where the status quo territorial commonwealth option was added to the ballot at the behest of the US Justice Department. The Justice Department insisted that federal funds earlier appropriated for the referendum could not be used for the vote unless the status quo option was added to the referendum ballot. This served to unilaterally reverse the decision of the Puerto Rican electorate, which had rejected the democratic legitimacy of the status quo in its previous referendum of

155 See Statement of Representative Benjamin Al. Gilman, Public Delegate, in Explanation of Vote, on the Resolution on the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, in the General Assembly Plenary Session, 9 December 9, 2003.

2012. Then-Puerto Rico Governor Ricardo Rossello disagreed with the Justice Department, in a 2017 letter preceding his decision to carry out the federal Justice Department directive:

> We disagree with the Department's assertion that it is necessary to include the current territorial status in a plebiscite that according to P.L. 113-76 must be limited to "options that would resolve Puerto Rico's future political status." By definition, the current territorial status always leaves the options of change to statehood or free association/independence as future possibilities, so we firmly believe that its inclusion is inconsistent with the statute's mandate to "resolve" the "future" political status of Puerto Rico. Furthermore, we disagree with the DOJ's dismissal of the freely expressed will of the voters in the November 2012 plebiscite where a clear majority rejected the current territorial status [*emphasis added*].
>
> ...
>
> In terms of the inclusion of the "current political status" as an option on the ballot, we agree with the Department's identification of this status as entirely territorial in nature, and will use this terminology from DOJ. Voters who choose to continue with the current territory option must be clear that it does not, and can never be "enhanced" to resolve the democratic deficit inherent to the territory, that lacks voting representation in the federal government that makes the laws that it lives under. Nor can the territory ever escape the reality that Congress can and does treat Puerto Rico unequally under federal laws [*emphasis added*].[156]

Thus, the deliberate inclusion by Puerto Rico lawmakers of only the permanent options of independence, free association and integration (statehood) was overridden by the threat to withdraw federal funds for the territory's plebiscite if the status quo territorial commonwealth option was not on the referendum ballot, even as it had been formally rejected by the people and regarded a as non-permanent option. A 2007 White House Report on Puerto Rico affirmed that the "commonwealth" status of Puerto Rico:

> "does not… describe a legal status different from Puerto Rico's constitutional status as a "territory" subject to the [US] Congress's plenary authority under the Territory clause "to dispose of and make all needful Rules and Regulations respecting the Territory … belonging to the United States. Congress may continue the current commonwealth system indefinitely, but it necessarily retains the constitutional authority to revise or revoke the powers of self-government currently exercised by the government of Puerto Rico. Thus, while the commonwealth of Puerto Rico enjoys significant political autonomy, it is important to recognize that, as long as Puerto Rico remains a territory, its system is subject to [unilateral] revision by Congress" [*emphasis added*]. [157]

156 See Letter dated 14th April 2017 from Puerto Rico Ricardo Rossello to Dana J. Acting Deputy Attorney General U.S. Department of Justice.

157 See *Report by the President's Task Force on Puerto Rico's Status,* The White House, Washington D.C. December 2007.

The relevance to Guam of the several White House reports on Puerto Rico could not be clearer. The choices being projected for Puerto Rico, Guam and the other US territories are the constitutionally viable permanent non-territorial status options (independence, free association, and integration). But the White House Report also appears to include the alternative to "continue to have its present form of territorial status and relationship with the United States," even though that status is clearly incomplete. According to the White House Report:

> "If voters favor the… [status quo] option, the[re] would be recogni[tion] of the right of the people of Puerto Rico either to conduct an additional plebiscite "to consider a self-determination option with the results presented to [the US] Congress," or to call a constitutional convention for the purpose of proposing a "self-determination option" [*emphasis added*].

Clearly then, the status quo political status was not deemed an option of self-determination in the White House Report. By 2016, the US statement to the UN Fourth Committee repeated its reiterations of full support for the right to self-determination, expressed cautioned for what it continued to (*misleadingly*) argue was an inordinate UN focus by the international community on the one option of independence (*to the exclusion of other options*), and called for, "respect for the right of the territory's people to choose freely their political status in relation to their administering power including when a territory chose to be in free association or to integrate with its administering power."[158] US statements to the Fourth Committee in 2017 - 2019 have followed a similar pattern, particularly with respect to criticism of the resumption of UN consideration of the implications of military activity in Guam (*discussed below*).

It is within this broader context that a political status process, with the aim of a referendum on the three options of political equality, is well underway in Guam. This emerged from an earlier inconclusive engagement with the US Congress in the 1990s on the commonwealth proposal which was reviewed, and subsequently rejected by US inaction with the contention that the powers that were being sought were not possible under a territorial/commonwealth status which would remain under the "Territory or Other Property Clause" of the US Constitution. In selecting the commonwealth option during a 1982 referendum, from a total of six options (*including the status quo*), the people of the Guam soundly rejected the unincorporated territorial status in favor of a significantly more autonomous governance model. Since the US Congress failed to approve the commonwealth proposal, the territory reverted to the status quo—the people of Guam did not vote for it. Thus, the territory of Guam is being governed by a particular form of dependency governance which they have formally rejected, and their autonomous aspirations have shifted to the ongoing referendum process to select one of three permanent options recognized by international law as providing for the FMSG.

There are striking similarities with the 2012 Puerto Rico plebiscite, which had similarly rejected the status quo political status, and which had consciously omitted the rejected status quo from its subsequent

158 See *"Fourth Committee approves text implementing Decolonization Declaration by 130 votes in favour, 2 against and two abstentions,"* United Nations Press Release, 1 November 2016.

2017 referendum ballot (*before federal insistence that it be included*). Such direct federal influence is reflective of the unilateral US authority over Puerto Rico and other territories such as Guam. Former US Congressional Delegate and University of Guam President, Robert A. Underwood, succinctly identified the political inequality inherent in the current status of the territory:

> The people of Guam are US citizens and while they may acquire full political equality as individuals if they move to any of the fifty states, they are in a subservient political condition if they remain on Guam. They are unable to vote for president [and] select members of US Congress with voting power. Congress can overturn any law passed in Guam and can decide which parts of the US Constitution apply to it.[159]

A formal federal insistence on the inclusion of the status quo political status option on the Guam referendum ballot has yet to be reported. But if this strategy is not employed, the unilateral applicability of US law still serves as the basis for influencing the referendum process through a procedure to "nullify components of Guam's [political status referendum] law [P.L. 23-147 of 15 January 1997].[160] This procedure relates to the power of the US Congress to unilaterally extend to Guam "certain constitutional provisions to the insular areas acting pursuant to the Territorial Clause of the Constitution," according to a 1991 federal General Accounting Office report, which also laid out the basis for the exercise of such authority. The report noted that:

> [T]he Constitution does not apply in full to the five insular areas, which are considered "unincorporated." Unincorporated areas are under the sovereignty but not considered an integral part of the United States" [*emphasis added*]. As mentioned earlier, federal laws explicitly extend certain parts of the Constitution to specific insular areas. In addition, the Supreme Court long ago decided that "fundamental" personal rights declared in the Constitution apply to citizens of "US territories." Also, the courts have determined that certain other parts of the Constitution apply to individual insular areas, depending on each area's unique relationship with the United States.[161]

Accordingly, one such US constitutional provision unilaterally applied to Guam is the 15th Amendment, which is designed to protect US citizens from being denied the right to vote on the basis of race, color or previous condition of servitude. Ironically, a constitutional amendment of such laudable intent was used to delay the self-determination process in the territory by way of a lawsuit filed by a non-native resident who contested the "constitutionality" of a political status referendum that was to be limited to "native

159 See Robert A. Underwood, "Guam's Political Status" in Guampedia https://www.guampedia.com/guams-political-status/#Political_Status_Commission accessed 1 December 2019.

160 See Statement of LisaLinda Natividad, Guam Commission on Decolonization, to the United Nations Special Political and Decolonization Committee (Fourth Committee) 3 October 2017.

161 See US Insular areas: Applicability of Relevant Provisions of the US Constitution, Report to the Ranking Minority Member, Committee on Interior and Insular Affairs, House of Representatives, United States General Accounting Office, June 1991.

inhabitants." In addressing the UN Fourth Committee in 2014, Guam Commission on Decolonization member LisaLinda Natividad pointed out that:

> In November 2011…a retired American army officer filed a lawsuit in the US courts on Guam indicating that he attempted to register for the Decolonization Registry, but was denied due to not meeting the criteria of 'native inhabitants of Guam…In the case overview of the US [court] summary judgement, it indicates that the case is a 'civil rights action.' This is a grossly misinformed position [since] the decolonization process is not a matter of civil rights, but rather an exercise of the inalienable human right to self-determination for those who have collectively experienced colonization. The…case is a glaring example of the US's misuse of its domestic legal framework. This ruling clearly indicates that US laws are unilaterally applied to its territories and therefore inhibits the self-determination of the CHamoru people."[162]

In testimony before the UN Special Committee on Decolonization in 2012, Guam human rights attorney Julian Aguon spoke on the theme of voter eligibility in the self-determination process, confirming that:

> [P]eoples for purposes of self-determination have historically been understood as those living under the yoke of alien, colonial and/or racist domination and subjugation. In other words, these peoples were seen as suffering a grievous and unlawful injury inflicted on their collective being by outsiders…[U]nder international law, colonized peoples are not necessarily one and the same. Where, as in Guam and New Caledonia, the colonized population at the onset of colonization also largely features, today, as the relevant colony's indigenous people, it would seem evident that the latter's right to self-determination is weighted with a double *gravitas*, so to speak, inasmuchas redress means the recovery of independence as well as of indigeneity, as spelled out in the UN 'Declaration on the Rights of Indigenous Peoples.'[163]

Aguon continued:

> [F]or purposes of self-determination, "native inhabitants" is a history-based, not race-based, designation. Put another way, international law is not here concerned with blood and ancestry but with providing a people with redress, i.e., a remedy for a historic wrong…[164]

The established fact is that Guam's status as an NSGT, as recognized by the international community, provides the people of the territory with protections under international law, including the right to

162 See Natividad, *supra note* at 160.

163 See Statement of the Guahan Coalition for Peace and Justice to the United Nations Special Committee on Decolonization, (New York) 20 June 2012.

164 *Id.*

collective self-determination. Yet the unilateral applicability of US laws and constitutional provisions under the present UTS severely limits the colonized peoples of Guam from exercising this inalienable right. Combined with the US position of dependency legitimization, which seeks to infuse the status quo model of political inequality with a degree of democratic legitimacy, and the imposed restrictions placed by the US courts in defining the "self" in self-determination, it is the conclusion of the present Assessment that the right of the peoples of Guam to self-determination, while undeniably inalienable, is being frustrated by unilateral federal political and juridical decision-making. Thus, the exercise of unilateral authority in this context appears to be made with some awareness, but with insufficient regard for the relevancy of the rules of international decolonization as set forth in the UN Charter. For those reasons, the SGI on the collective right to self-determination within the framework of the prevailing EDG is judged (*below*) at level 2 on the indicative scale of 4.

SELF-GOVERNANCE INDICATOR # 1	MEASUREMENT
Cosmopole compliance with international self-determination obligations	1. Cosmopole dismisses relevance of collective self-determination and regards political development of the territory as solely a domestic matter governed by cosmopole laws. 2. Cosmopole acknowledges external self-determination process but regards it as subordinate to the domestic laws of the cosmopole. **3. Cosmopole acknowledges relevance of international law and uses it as a guideline for political evolution of the territory** 4. Cosmopole cooperates with United Nations "case-by-case work program" to develop a genuine process of self-determination for the territory with direct UN participation in the act of self-determination.

Indicator # 2 - Degree of awareness of the people of the territory of the legitimate political status options, and of the overall decolonization process

The consistency of intent of the peoples of Guam, through their relevant territorial institutions, to advance the self-determination process is highly commendable, particularly when compared to the inconsistent attention paid to the issue by other US dependencies. This is acknowledged through the maintenance of territorial government institutions (*Commission on Self-Determination and its successor Commission on Decolonization*), which continued the work of public education on the political status options leading to the FMSG.

It is also to be noted that the consistent initiative on the part of Guam's political leadership in engaging the UN in the decolonization of Guam, and the resultant inclusion of language in UN resolutions, calling for administering Powers to support the international territorial process of political education, were important factors in the concurrence of the US Government to provide a degree of financial support for the process of the political evolution of the US territories. Accordingly, it is this consistency of effort by the territorial authorities which has led to a significant degree of awareness of the people of Guam, and the concomitant judgement (*below*) of indicative level 3 on the SGI indicative scale of 4.

SELF-GOVERNANCE INDICATOR # 2	MEASUREMENT
Degree of awareness of the people of the territory of the legitimate political status options, and of the overall decolonization process	1. Little or no awareness with no organized political education process. 2. Some degree of awareness as a result of insufficient political awareness activities. **3. Significant degree of awareness through official political education activities.** 4. High degree of awareness and preparedness to enable the people to decide upon the future destiny of the territory with due knowledge.

Indicator # 3 - Unilateral Applicability of Laws and Extent of Mutual Consent

The overall nature and extent of internal self-government is a critical factor in the relationship between a territory and its administering Power. This is affected significantly by the level of unilateral applicability of federal laws, regulations and treaties, which can have a significant influence in the Preparation for Self-Government (PSG) of the territory. On the point of unilateral federal decision-making, Guam (under its current political status) has a limited capacity to decide what applies to it—and what does not—given the nature of its politically subordinate position, as it is without equal political rights in the US system through voting representation in the US House of Representatives and US Senate, and the inability to vote in US presidential elections. These political powers are only available to politically integrated US states or to unincorporated territories by constitutional amendment.

Thus, while the external decisions affecting the territory can be influenced to varying degrees through differing forms of mutual consultation between the respective federal agencies on the one hand, and the Government of Guam and/or the congressional delegate on the other hand, the final decisions on whether a given measure is applied to Guam or other US-NSGTs lies with the US Congress, the federal executive branch and the federal judiciary. This is often manifested by including the territory in US laws, but excluding it from international negotiations which directly impact Guam. Contemporary examples include the extension of the Earned Income Tax Credit, which amounts to an unfunded mandate impacting the territory's treasury, the extension of the federal law banning cockfighting, and the lack of a meaningful role in negotiations to extend the existing compacts of free association. A role in compact negotiations could provide a forum for Guam to bring to light some of the financial and other implications of certain compact provisions so that Guam's issues might be factored into the new agreements.

In the final analysis, the SGI on the applicability of laws and extent of mutual consent under Guam's unincorporated territorial status reflects a minimum level of the exercise of autonomy by Guam in relation to the unilateral applicability of federal laws and exercise of mutual consent. It is acknowledged that a regular consultation mechanism exists between the elected territorial leadership and federal officials. However, mutual consultation is not mutual consent, and the primary consideration here is the persistent, unilateral lawmaking authority of the US Congress to "…make all needful rules and regulations respecting the territory or other property belonging to the United States." The authority of the federal executive branch to apply laws, treaties, regulations, et al, to Guam is further reflective of the political inequality characteristic of the unincorporated territorial status (UTS), coupled with the confirmation of these unilateral powers by the US courts.

The present Assessment recognizes the value of the consultation process, accompanied by regular communication and lobbying efforts on the part of territorial officials in attempting to influence federal decisions affecting Guam. However, with the final determination remaining solely with the cosmopole, the exercise of the modicum of mutuality in the applicability of federal laws is significantly limited. Accordingly, the level of effective autonomy of power exercised by Guam to affect the unilateral applicability of US

laws and the extent of mutual consent is judged (*below*) at level 2 on the indicative level of 4.

SELF-GOVERNANCE INDICATOR # 3	MEASUREMENT
Unilateral Applicability of Laws and Extent of Mutual Consent	1. Absolute authority of cosmopole to legislate for the territory. **2. Mutual consultation on applicability of laws but final determination remains with cosmopole.** 3. Existence of a process to assess impact of laws, regulations, and treaties before application to territory. 4. Mutual consent required before application of laws, regulations and treaties.

Indicator # 4 - Extent and evolution of governance capacity through the exercise of delegated internal self-government

The present Assessment measures the level of internal self-government exercised by the territory. It is to be noted that UN General Assembly Resolution 742, on the question of "internal self-government," expresses great concern for the nature of control or interference by the cosmopole in respect to the internal government of the territory in the areas of the legislature; executive; judiciary; and economic, social and cultural jurisdiction. In the case of Guam, these structures are determined by the Organic Act of 1950, which is a federal law serving as the primary Instrument of Unilateral Authority (IUA) emanating from the "Territory or Other Property" clause of the US Constitution as the Source of Cosmopole Unilateral Authority (SCUA) (*see Figure 4*).

In this connection, it is to be noted that the position of the US as the administering Power of Guam is generally indirect in terms of a day-to-day role in governmental operations of the territorial government, with notable exceptions, including: periodic oversight of territorial compliance with myriad rules and regulations of specific federal funding programs provided to the territory through federal "monitors"; US

court "consent decrees" which require governmental institutions to comply with US court orders; and the overall role of the US District Court, which determines compliance with US law as it is unilaterally applied to the territory.

However, it is acknowledged that territorial governance, through well-developed governmental institutions created pursuant to a delegation of authority under the Organic Act, facilitates the important function in the implementation of the US international obligation of preparing Guam to achieve the FMSG. From this perspective, the SGI on the extent and evolution of governance capacity through the exercise of delegated internal self-government within the framework of the prevailing EDG is judged (*below*) at level 3 on the indicative scale of 4.

SELF-GOVERNANCE INDICATOR # 4	MEASUREMENT
Extent and evolution of governance capacity through the exercise of delegated internal self-government	1. Direct rule by cosmopole-appointed official who exercises unilateral authority. 2. Elected legislative with cosmopole-appointed executive with powers to annul decisions of the elected legislative. **3. Elected legislative and executive with powers to legislate, but with cosmopole powers to annul decisions of elected bodies.** 4. Decisions to annul decisions of the elected bodies only possible by mutual consent.

Indicator # 5 - Extent of evolution of self-government through exercise of external affairs

The involvement in regional and international organizations of Guam and other NSGTs administered by the US are undertaken within the confines of US policy, which can serve to either facilitate—or deny—the delegation of authority for the territory to join such transnational bodies. Engagement in such

external institutions is generally the result of a request from the territory to the US Department of State, the agency which coordinates US foreign policy.

A similar process of advice and consent applies to potential bilateral engagements with independent states. For Guam, direct engagement with the States in free association with the US has commenced—with US concurrence and support—in the context of Guam's direct participation in the annual Micronesian Islands Forum (MIF) (*formerly the Micronesian Chief Executives Summit*) which groups the six governors and three presidents of Micronesia—Palau, the Commonwealth of the Northern Mariana Islands, Guam, the Marshall Islands, and the Federated States of Micronesia and its states of Chuuk, Kosrae, Pohnpei and Yap, to discuss and establish regional collaboration for the common good on issues of mutual concern to the subregion, including climate change, natural resources, foreign investment et al. The work is undertaken through nine committees:

- Regional Workforce Development Council
- Micronesia Regional Invasive Species Council
- Renewable Energy Committee
- Pacific Island Regional Recycling Initiative Committee
- Regional Transportation Committee
- Regional Health Committee
- Regional Telecommunications Committee
- Micronesia ChallengeRegional Tourism Council

Guam's Governor, Lou Leon Guerrero, attended the 2019 MIF session, which convened in the Commonwealth of the Northern Mariana Islands (CNMI), and was chaired by CNMI Governor, Ralph DLG Torres. The Summit was also attended by other Micronesian leaders, including: Chuuk State Governor, Johnson S. Elimo; Kosrae State Governor, Carson Sigrah; Yap State Governor, Henry Falan; Pohnpei State Governor, Marcelo K. Peterson; Republic of the Marshall Islands' Minister Amenta Mathew (Cultures & Internal Affairs); President of the Republic of Palau, Tommy E. Remengesau Jr.; and President of the Federated States of Micronesia, David W. Panuelo. Of particular note was the participation of the President of Nauru, Baron Waqa, marking a formal collaboration with a Micronesian state not considered a "US affiliated area."

The significance of Guam's direct participation in the broader range of international, multilateral organizations was highlighted in Part III of the present Assessment, with respect to "the role of the UN system and regional institutions in the socio-economic advancement of Guam [as] consistently highlighted in UN resolutions." Table 5 (above) provides a useful comparison of the various membership categories of selected international organizations, of which Pacific territories, including Guam, have availed themselves. In effect, Guam is eligible for membership or associate membership in a broad range of UN specialized agencies, as well, in accordance with the relevant rules of procedure. The work of several of these UN bodies could provide useful technical support in the development process of Guam in the context of an

appropriate membership status for the territory. This would be subject to a request from Guam to the US State Department for the appropriate entrustment to proceed with Guam's membership request. In this connection, a number of UN specialized agencies maintain membership provisions for NSGTs including:

- UN Educational, Scientific and Cultural Organization (UNESCO) —associate membership
- World Meteorological Organization (WMO) —membership
- Food and Agricultural Organization (FAO)—associate membership
- World Health Organization (WHO)—associate membership
- International Telecommunications Union (ITU) *membership open to corporate entities from the ICT industry, international/ regional organizations, associations and academia active within the field of ICTs.*
- International Maritime Organization (IMO)—associate membership
- World Tourism Organization (UNWTO)—associate membership

A further avenue for Guam's external affairs activity has been available since 1992, with the advent of the UN world conferences, summits and special General Assembly sessions, where major development issues and challenges are addressed. As a function of Guam's existing associate membership in the UN Economic and Social Commission for Asia and the Pacific (ESCAP), the territory (*along with American Samoa and CNMI*) has been extended observer status in most of these conferences since the initiation of this process in 1992. Areas of focus of these UN General Assembly sessions include: environment; sustainable development; climate change; population and development; social development; migration; women and development; indigenous peoples; natural disaster reduction; oceans; Small Island Developing States, et al.

As further evidence of the importance of such international engagement, the UN General Assembly, on September 8, 2017, adopted Resolution 71/321 of, "Enhancing the participation of indigenous peoples' representatives and institutions in meetings of relevant United Nations bodies on issues affecting them." The resolution welcomed the constructive and open informal dialogue between Member States and indigenous peoples on the possible measures necessary to enhance the participation of indigenous peoples in programs and activities of the UN system.

The function of international organization engagement is a critical preparatory component to the attainment of the FMSG within the context of the decolonization process, and its facilitation is wholly consistent with the US preparatory obligation under Article 73(b) of the UN Charter. For Guam, the extent of engagement in external affairs activities is judged (*below*) at indicative level 2, reflecting a degree of selected engagement but limited participation and identification of other potential areas of international engagement, particularly in the economic and social sphere.

SELF-GOVERNANCE INDICATOR # 5	MEASUREMENT
Extent of evolution of self-government through exercise of external affairs	1. Limited awareness of eligibility of the territory for participation in regional and international organizations. **2. Substantial awareness of regional and international organization eligibility but limited participation.** 3. Significant participation in regional and international organizations 4. Full participation in programmes of regional and international organizations.

Indicator # 6 - Right to determine the internal constitution without outside interference

Apart from the delegated power offered by the Organic Act, UN resolution 1541(XV) is a key component of the preparatory phase of the decolonization process—the exercise of the territory's, "right to determine its internal constitution without outside interference in accordance with due constitutional processes and the freely expressed wishes of the people." (*See Annex*).

Herein lies a fundamental contradiction in that an unincorporated territorial constitution drafted and approved by the people of Guam would be, in effect, the replacement of one IUA with another. This is determined by the fact that a territorial constitution must conform to the unilateral applicability of US law to the territory, and would require submission to the US Congress, which would scrutinize—and potentially amend—the proposal before it is put to the people in referendum. If the proposal (as amended) is adopted by the people, it is made a federal law by joint Congressional resolution. Thus, the territory's "right to determine its internal constitution without outside interference" could not be honored under these circumstances, as the parameters of Elected Dependency Governance (EDG) status requires the territorial constitution to be subordinate to unilateral federal authority.

The most recent experience of the US Virgin Islands is instructive in the context of its proposed

2009 constitution, mandated to be written, "within the existing territorial-Federal relationship," and subject to US Congressional modification or amendment, "in whole or in part," before it is submitted to the voters, according to US Law 94-584 (90 Stat. 2899) of 1976 authorizing the drafting of constitutions for Guam and the US Virgin Islands. Accordingly, the US Justice Department (US-DOJ) identified some nine areas of objection in the US Virgin Islands proposed constitution, including the absence of an expression of US sovereignty and the supremacy of federal law, reference to the unchanged nature of the political status, the introduction of ancestry and residency requirements for holding certain offices and other features, and territorial control over marine resources, et al. While the US Virgin Islands Fifth Constitutional Convention responded to the US-DOJ concerns, the process did not go forward. It would be a fair assumption that a territorial constitution for Guam with similar autonomous provisions would not go over well with US-DOJ and Congressional interests if the document was not fully subordinate to the US Constitution and not in conformity with its "Territory or Other Property Clause."

In effect, Public Law 94-584, authorizing constitutions for Guam and the US Virgin Islands, was not intended to change the political status of the territories, but rather to modernize the EDG arrangements. This predated the emerging strategy of dependency legitimization, serving as its precursor. Accordingly, the SGI on the "Right to determine the internal constitution without outside interference" is judged (*below*) at level 2 on the indicative scale of 4 reflective of the initial authority of the territorial government to draft and propose a dependency constitution, but conditioned on the unilateral authority of the cosmopole to amend the text before the people of the territory have an opportunity to vote on it in referendum.

In the final analysis, the level of internal self-government under Guam's unincorporated territorial status is indicative of the clear exercise of delegated authority by the elected government under EDG. However, the nature of the elaborate mechanisms of dependency governance and unilateral authority can be activated at any time, for any reason, and certainly could have a dampening effect on the elements which would go into any internal territorial constitution drafted under the parameters of the current political status which is governed / administered under the "territory or other property clause" of the US Constitution.

SELF-GOVERNANCE INDICATOR # 6	MEASUREMENT
Right to determine the internal constitution without outside interference	1. Dependency constitution must be drafted in conformity with the relevant provisions of the Instrument of Unilateral Authority (IUA) governing the relationship between the dependency and the cosmopole.

	2. Dependency constitution can be independently drafted but consultations must be held with the cosmopole which can amend the text in advance of it being presented to the people in referendum or other form of popular consultation. 3. Dependency constitution can be independently drafted and adopted by the people of the territory in advance of its submission to the cosmopole which would have legal recourse to strike down provisions not in compliance with the IUA. 4. Dependency constitution can be independently drafted and adopted by the people of the territory consistent with UN resolution 1514(XV) on the "transfer of powers" to the dependency, and resolution 1541(XV) permitting the constitution to be enacted without outside interference as a preparatory measure to the future attainment of the full measure of self-government.

Indicator # 7 - Level of Participation in the US Political System

The level of participation of Guam in the US political system has been referenced earlier in the present Assessment. In this vein, the people of the territory do not have voting rights in elections for the US president, but participate in the US political party selection process for the respective presidential candidates, and conduct a "straw poll' on their preference for the US president, in lieu of actual constitutional authority to vote in US presidential elections.

As earlier noted regarding participation in the administering Power legislative process, there is a

specific level of representation where Guam and other US territories elect delegates to the US House of Representatives who have limited voting rights, with no representation in the US Senate. In the latter point, Guam's Delegate to the US Congress, Michael San Nicolas, introduced legislation in the US House of Representatives (H.R. 5526) on December 19, 2019 to provide for a non-voting delegate for each of the five US territories to the U.S. Senate.

Any such "enhancements" to the unincorporated territorial status (UTS) would serve to fundamentally change the current political relationship between the territory and the US. Accordingly, the argument has been made by key territorial scholars that such changes should be pursued only as the result of a referendum where the people of the territory signaled a preference for integration with the US, and only after a thorough public education process in which the implications of the "further integration" would be carefully understood. In any event, without full political rights characterized by the presidential vote, and without a vote in both houses of the US Congress, incremental changes in the political relationship toward a "creeping integration" without full political rights would not usher in the FMSG, but would merely amount to a form of "lesser political inequality." In the 2020 analysis "America's Territories: Equality and Autonomy," legal scholar, Howard Hills, confirmed that "the US Constitution itself allows fully equal representation in Congress and the Electoral College only for citizens of a state, making any remedy other than statehood less than equal."

A 2017 Congressional Research Service report further clarified the limitation of the authority of the present territorial House delegates in sobering terms:

> As officers who represent territories and properties possessed or administered by the United States but not admitted to statehood, the five House delegates and the resident commissioner from Puerto Rico do not enjoy all the same parliamentary rights as Members of the House. They may vote and otherwise act similarly to Members in legislative committee [*emphasis added*]. They may not vote on the House floor but may participate in debate and make most motions there. Under the rules of the 115th Congress [2017-2018], the delegates and resident commissioner may not vote in, but are permitted to preside over, the Committee of the Whole.
>
> …
>
> Under Rules III and XVIII, as adopted in both the 110th and 111th Congresses [2007-2010], when the House was sitting as the Committee of the Whole, the delegates and resident commissioner had the same ability to vote as Representatives, subject to immediate reconsideration in the House when their recorded votes had been "decisive" in the committee[165] [*emphasis added*].

165 See "Parliamentary Rights of the Delegates and Resident Commissioner from Puerto Rico, Congressional Research Service, Washington, D.C., 5 January 2017.

Table 6: US Territories Represented in the US Congress

TERRITORY	STATUTE	YEAR
Puerto Rico	31 Stat. 86	1900
Hawai'i *	31 Stat. 141	1900
Philippines **	32 Stat. 694	1902
Alaska *	31 Stat 169	1906
District of Columbia	84 Stat. 848	1970
Guam	86 Stat. 118	1972
Virgin Islands	86 Stat. 118	1972
American Samoa	92 Stat. 2078	1978
Northern Mariana Islands	122 Stat 868	2008

***** Alaska and Hawai'i subsequently were granted the full measure of self-government through full political integration with the US as the 49th and 50th US states.

****** The Philippines achieved the Full Measure of Self-Government through the attainment of independence following a transitional period of 'commonwealth' status.

Source: Congressional Research Service, Washington D.C. (2017)

Hence, the indicator for participation in the federal political system is judged (*below*) at indicative level 2 on a scale of 4 representing an involvement in cosmopole political institutions limited by the US Constitution with a constitutional amendment necessary to provide additional political rights.

SELF-GOVERNANCE INDICATOR # 7	MEASUREMENT
Level of Participation in the US political system (executive, legislative and judicial) as preparatory to the exercise of self-government	1. No political participation or representation in political system of cosmopole.

	2. Limited participation through cosmopole political institutions. 3. Voting authority in cosmopole political institutions/political parties, with non-voting representation in cosmopole legislative body. 4. Full voting rights in cosmopole elections and equal voting representation in cosmopole legislative body.

Economic, Social and Cultural Dimension

Indicator # 8 - Degree of Autonomy in Economic Affairs

The 2019 UN Working Paper on Guam noted that the economy, "continued to be based on two main pillars: tourism and the military, [and that the] territory has been endeavoring to create an environment conducive to the development of other industries, such as financial services, telecommunications and transportation."[166] The 2019 UN Working Paper consistently emphasized importance of autonomy of NSGTs in the handling of their economic affairs, as set forth in UN General Assembly Resolution 748 of 1953 (*as earlier noted*) which referenced the need for, "freedom from economic pressure," exerted on the territorial society. Other relevant resolutions have emphasized the responsibility of the cosmopole to advance the economies of the territories concerned. On December 13, 2019, the UN. General Assembly adopted its annual resolution on "The Question of Guam," which took into account:

> [T]he 2030 Agenda for Sustainable Development, including the Sustainable Development Goals, stresse[d] the importance of fostering the economic and social sustainable development of the Territory by promoting sustained, inclusive and equitable economic growth, creating greater opportunities for all, reducing inequalities, raising basic standards of living, fostering equitable social development and inclusion[,] and promoting the integrated and sustainable management of natural resources and ecosystems that supports, inter alia, economic, social and human

166 See Guam Working Paper prepared by the Secretariat, A/AC.109/2019/9, 12 February 2019.

development, while facilitating ecosystem conservation, regeneration, restoration and resilience in the face of new and emerging challenges[,] and strongly urges the administering Power to refrain from undertaking any kind of illicit, harmful and unproductive activities… that are not aligned with the interests of the people of the Territory.[167]

The dependency mechanisms employed under Guam's current UTS chiefly influences the degree of autonomy in economic affairs through the unilateral extension of U.S mandates, and the treatment of Guam as if it were an integrated part of the US. This practice can deleteriously affect the economic sustainability and future economic advancement of the territory, constituting a "harmful and unproductive activity," as referenced in the aforementioned 2019 UN resolution on Guam.

Among these unilaterally applied US mandates is the functional applicability to Guam of the US Merchant Marine Act of 1920 (Jones Act), which results in a significantly higher cost of living for the people of the territory. The Jones Act, as a US statute, regulates maritime commerce in the US, requiring goods shipped between US ports to be transported on ships that are built, owned, and operated by US citizens or permanent residents. Three US territories are exempt from the Jones Act, in particular, American Samoa, the Northern Mariana Islands, and the US Virgin Islands, while the statute applies to Guam and Puerto Rico, the latter as the only territory within the US customs zone. According to a Cato Institute 2018 analysis *"The Jones Act: A Burden America can no longer bear"* (Colin Grabow, Inu Manak, and Daniel J. Ikenson), "Guam is exempt from the Jones Act's domestic-build requirement but in practice is still subject to this stricture as many of the ships that sail to the island from the continental United States first stop in Hawaii and thus must be fully compliant with the law [Jones Act]. The US Virgin Islands, meanwhile, have [sic] a full Jones Act exemption."

The functional effect of applying the Jones Act to Guam results in artificially inflated shipping costs, owing to the transport of cargo between US and the territorial port of Guam (*and Puerto Rico*); and between the US and the two non-contiguous states of Alaska and Hawai'i, to which the statute also applies. These increased costs flow from higher wages for US cargo ship crews and the applicability of US environmental and safety laws, with the added costs passed on to the territorial consumer.

The Guam Legislature in 2014 advocated to exempt Guam from the Jones Act through the adoption of its resolution 138-32 in 2014. The resolution requested that Guam's Congressional Delegate, Madeleine Z. Bordallo "support modifications to the antiquated and restrictive Merchant Marine Act of 1920… which continues to have an adverse effect on certain noncontiguous domestic jurisdictions of the United States, including Alaska, Hawai'i, Puerto Rico and the Territory of Guam." The resolution pointed out that the, "continued imposition of the Act is unnecessarily restrictive and costly for affected jurisdictions, and Guam is the US insular area for which the Jones Act has the greatest impact because of our small size, and great distance from other US ports." During public hearings on the resolution, a case in point was described by the president of Hardwood Construction Supply [Dededo], Dominique Ong, who stated

167 See UN General Assembly resolution 74/104 on the Question of Guam, adopted by the UN General Assembly on 13 December 2019.

that the cost of a container from the US West Coast to Guam was approximately US$7,500, as compared to the cost from the same origin to Manila, at around US$2,800.

Accordingly, the legislative resolution supported an amendment or exemption for the US insular areas currently covered by the Jones Act, which would lead to increased economic competition and lower consumer prices [*with the likely impact*] of "an expansion of activities and [an] increase i[n] revenues for Guam's Port Authority" through the territory's only seaport."

The unilateral applicability of this Act, despite repeated attempts by successive territorial governments to have it set aside, has had a long-term detrimental effect on the economy of the territory in the form of higher prices for imports, an overall impediment of economic growth, and an artificially higher cost of living. This also hinders international trade with Asian markets which are much closer geographically, serving as a further example of the detrimental impact of the unilateral authority exercised over Guam, which has limited economic autonomy because of its dependency status.

A second, critical element in gauging the level of autonomy in economic affairs is the issue of lost revenue stemming from the significant amount of land held by the US government, including the military, and the resultant inability of the territorial government to collect revenue on the property, which is deemed exempt from territorial taxes and fees. The 2000 "Analysis of the Economic Impact of Guam's Political Status Options," undertaken for the Guam Commission on Decolonization by economist Joseph P. Bradley, estimated that in 1992, the holdings of idle land by the federal government in Guam cost the local government as much as US$69 million annually in foregone government revenues alone. By 2000, the Bradley analysis indicated that "[t]he contribution that excess land held by the US military would make to Guam's Gross Island Product [Gross Domestic Product]…[was)] estimated to be US$1.1 billion annually, if it were available for civilian use, [or]… more than one third of Guam's GIP." The figures increased exponentially over the two decades. The issue of land held by the US military in Guam is further addressed below, under the geo-strategic and military indicator.

The related issue of lost revenue generated by the economy, but diverted to the US treasury, is a key consideration in examining the revenue generated by the economy versus what the territory is permitted to retain under the current EDG status as an unincorporated territory administered by the US Accordingly, various fees that are collected by the US on the basis of the geographic positioning of Guam generate significant revenue to the U.S treasury. Examples of this revenue diversion are covered in the subsequent paragraphs.

Overflight and other transportation fees

US overflight fees are charged for aircraft flights that transit US-controlled airspace, but neither land in, nor depart from, the US The control of air traffic in US dependencies such as Guam is under the Federal Aviation Administration (FAA). Even as US territories are not politically integrated with the US and are outside the US customs area (*except Puerto Rico*), the US exercises sovereignty over the airspace of these territories. Hence, revenue generated from overflight fees charged to airlines flying over Guam is

combined with revenue from overflight fees elsewhere controlled by the US, and is used to defray the cost of services, including air traffic control, navigation, weather services, training, and emergency services that are available to facilitate safe transportation over the US. (*See Annex*). Other nations which administer territories in the Caribbean and Pacific, such as France, the Netherlands, and the United Kingdom, also charge overflight fees for aircraft transiting the airspace of their dependencies. The fees charged vary, depending on the individual country, but are generally based on the distance between the entry point to the exit point of the airspace.

According to the FAA final rule of November 29, 2016, US "overflight fees…are assessed only on aircraft flights that transit US-controlled airspace, but neither land in nor depart from the US." In this connection, "[b]oth foreign and [US] domestic operators are charged in the same manner [and] those aircraft that do not transit US- controlled airspace pay no fee. US-controlled airspace means all airspace over the territory of the US extending twelve nautical miles from the coastline of US territory; or any airspace delegated to the US for US control by other countries, or under a regional air navigation agreement. The US overflight fee schedule is below.

EFFECTIVE DATE	EN-ROUTE	OCEANIC*
1 January 2019	$61.75	$26.51

* Rates expressed per 100 nautical miles (nm), Great Circle Distance (GCD) from point of entry into point of exit from US-controlled airspace.

In the US budget for the FAA, the overflight fees collected by the US as revenue are not disaggregated, and are combined with aviation user fees. The revenue generated from the combined fees collected for 2018 in the US totaled US$134 million, with an estimated US$145 million for 2019. The White House budget proposal for FY 2020 estimated that $151 million in overflight fees would be collected for the US. Figures for the portion collected with respect to the US controlled airspace surrounding Guam were not available. However, the amount of airspace controlled by the U.S in the wider Micronesian area is an indication of the significant amount of revenue the US generates from this source.

The US government imposes other transportation-related fees in Guam, as well, including an "excise" tax of 7.5 percent of the fare on all [US] domestic tickets. The US government charges a departure fee of $14.50 and an arrival fee of $14.50 on international flight tickets, and a fee for returning passengers of $7 for immigration, $5 for customs services, and $5 to fund animal and plant inspections. (*See **Annex** for a full listing of "US Government-imposed taxes on Air Transportation"*). Both sets of fees indicate a significant

generation of revenue emanating from the economy of Guam owing to its geographic position.

Tourism as the major sector of the economy of Guam is also influenced by the limitations on the degree of autonomy which can be exercised in its economic affairs, owing to the fact that Asia represents the largest portion of tourism arrivals to Guam. However, the lack of authority under the UTS to control visa issuance has been proven problematic, both for tourism purposes and for labor needs in the construction sector.

In the final analysis, the authority of Guam as a US dependency to exercise a significant level of autonomy in economic affairs has been judged (*below*) at indicative level 2 on the scale of 4. This is reflective of the direct impact on the cost of living due to the unilateral applicability of such federal laws and regulations, such as the Jones Act, and characteristic of the extent to which the territory can retain potentially substantial revenue generated by its economy that has been historically collected as US revenue. *(While a breakdown of the specific amounts is difficult to determine as Guam figures are not disaggregated, figures show a significant level of revenue-generating economic activity in the Guam tourism and transportation sectors.)*

SELF-GOVERNANCE INDICATOR # 8	MEASUREMENT
Degree of Autonomy in Economic Affairs	1. Territorial economy dependent on direct aid from cosmopole and subject to cosmopole unilateral applicability of laws and regulations which hinder economic growth and sustainability. **2. Territory receives sectoral assistance aid from cosmopole, generates significant revenue from its local economWy but is not able to retain the revenue.** 3. Territory generates and keeps most revenue from its economy but receives infrastructural and sectoral assistance. 4. Territory has self-sufficient economy through retention of all revenue generated but may receive infrastructural and sectoral assistance.

Indicator # 9 Degree of autonomy in Cultural Affairs

Section III of the present Assessment references relevant international instruments on cultural rights, including: the 1945 UN Charter; the 1948 Universal Declaration of Human Rights (UDHR); the 1976 International Covenant on Economic, Social and Cultural Rights (ICESCR); and the 2007 UN Declaration on the Rights of Indigenous Peoples (UNDRIP).

Accordingly, Article 1(3) of the UN Charter speaks to "international co-operation in solving international problems of [a]… cultural or humanitarian character" as one of the key purposes of the UN, while Article 73(a) of Chapter XI of the Declaration Regarding Non Self-Governing Territories refers to the obligation of states which administer territories, "to ensure, with due respect for the culture of the peoples concerned, their political, economic, social, and educational advancement" [*emphasis added*]. The UDHR in Article 2 affirms the maintenance of cultural rights, "with no distinction…made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty" [*emphasis added*].

Further, Article 1 of the ICESCR asserts that "[a]ll peoples have the right of self-determination [and] [b]y virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development" [*emphasis added*]. Article 3 of the ICESCR obligates that nations which have, "the responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the [UN] Charter." Article 25 of the ICESCR denies APs "impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources."

An important thrust interwoven in the UNDRIP is the recognition of cultural rights and resources of indigenous peoples, including the CHamoru peoples of Guam. Specific UNDRIP provisions include Article 5, which recognizes the rights of indigenous peoples, "to maintain and strengthen their distinct political, legal, economic, social and cultural institutions…", and Article 8, which indicates that indigenous peoples… have the right not to be subjected to forced assimilation or destruction of their culture," and that "effective mechanisms" should be provided "for prevention of, and redress for: [a]ny action which has the aim or effect of depriving [indigenous peoples] of their integrity as distinct peoples, or of their cultural values or ethnic identities."

Other relevant UNDRIP provisions of particular significance to Guam are the rights: to practice and revitalize cultural traditions and customs, including archaeological and historical sites; and to establish and control their educational systems and institutions, providing education in indigenous languages.

Further UNDRIP provisions germane to Guam include Article 29, which addresses the right to, "the conservation and protection of the environment," and the requirement that "no storage or disposal of hazardous materials" shall be allowed, "without free, prior and informed consent." As a corollary, the UNDRIP requires "effective measures to ensure…that programmes for monitoring, maintaining and restoring the health of indigenous peoples… affected by such [hazardous] materials, are duly implemented."

In reviewing these international standards governing the degree of autonomy in the exercise of cultural rights in Guam, it is to be recognized that the territorial government has undertaken significant initiatives toward cultural preservation and expression. A case in point is the integration of CHamoru culture into Guam's public school educational curriculum, through educational programs such as the Chamorro Studies Division Content Standards, and Performance Indicators which focus on traditional knowledge through language, art, chants and songs.

In the broader sense, Chamorro culture was defined by Robert Underwood in his 1987 doctoral dissertation at the University of Southern California "as a combination of practices, customs, beliefs and economic patterns associated with the indigenous population of Guam…" which he analyzed for change in terms of the educational and historical experience of the Chamorros at the hands of American institutions." During the pre-World War II [WWII] period under US MDG, Underwood noted that "[i] nstitutional support for Chamorro culture was provided by the Catholic church [with] Spanish priests continu[ing] to minister to the society's religious needs through the language of the people."

Underwood indicated, however, that this was seen as a, "hindering influence on Americanization," and was followed by pressure to transform the society to more reflect an inclination toward Americanization. As he observed, "[e]arly in the contact between Chamorros and Americans, American officials saw themselves as agents of cultural and social transformation." Accordingly, recommendations on the establishment of schools with instruction in the English language, and declarations of English as the official language, were made by US officials of the pre-WWII period. This shifted to Japanese language primacy during the period of Japanese Governance under Occupation (JGO, and returned to English language primacy following the subsequent resumption of US Military Dependency Governance (MDG).

Educator and political leader Pilar C. Lujan recounted that:

> After the American armed forces recaptured Guam from the Japanese in 1944… the use of the Chamorro language diminished. The English-only policy was reinforced not only by the naval government but also by the Catholic Church. By the mid-1940s, the Americans brought in American priests and nuns…, to lead the Church. While the Spanish priests incorporated the Chamorro language into the prayers, hymns and novenas, the American Catholic nuns discouraged use of the Chamorro language.
> Compulsory English and the emulation of American culture facilitated the Americanization of the Chamorro people, which was seen as the way to facilitate America's interests in the region.
>
> The Spanish *mestiza*, the old-time dress of Chamorro women, was abandoned in favor of western style dresses and the Chamorros acquired a taste for American food. Chamorros were encouraged or required by economic necessity to assimilate to the American culture and to speak the English language. They gradually began to view their culture and language as inferior. Perhaps this is the hallmark of the success of colonialism: when indigenous people abandon what is theirs in favor

> of taking on what is foreign. This colonialist mentality came to play a large role in obstructing subsequent attempts to redeem the Chamorro language and culture.[168]

These attempts at cultural transformation continued through the timeframes of MDG and the subsequent Partial Elected Dependency Governance (P-EDG), before the transition to full EDG and the first election of the territory's governor in 1970. Underwood recounted the subsequent enactment of a series of laws at the beginning of full EDG as "recognizing and fostering Chamorro culture and its expression (including) laws establishing bilingual education, the Chamorro Land Trust and Chamorro as an official language." He referred to a "renewed interest in Chamorro language and culture which emerged on Guam in the mid-1970s [and] the program most identified with this revivalist spirit was the Chamorro Language and Culture Program (CLCP). The program was designed for grades four through six, and was installed in sixteen of the twenty-eight elementary schools in 1973 to "revive, maintain and allow students the opportunity to acquire knowledge of the language and culture of the people of Guam and the Mariana Islands."

As Lujan alluded:

> In the 1970s, Guam's legislators encouraged the use and teaching of the Chamorro language. The late Senator Frank G. Lujan sponsored Public Law 12-31, which authorized the Board of Education to initiate and develop a bilingual/bicultural education program emphasizing the language and culture of the Chamorro people. Senator Paul J. Bordallo authored Public Law 12-132, which made both English and Chamorro the official languages of Guam. With this legal framework in place, the Department of Education designed a bilingual/bicultural education program to begin teaching the Chamorro language in Guam's schools.

These actions taken at the beginning of EDG represented the reassertion of the importance of cultural heritage expression following decades of attempts at cultural change and transformation, which began as far back as the US takeover from Spain at the beginning of the 20th century. Lujan described the skillful means by which the Department of Education accessed US funding for "programs using languages of 'minority' students as a means for learning the English language, while also acquiring US assistance, "to promote the heritage of the different ethnicities in the United States."

The Chamorro language and culture programs were subsequently introduced in the secondary schools and the development of relevant books and instructional materials was initiated. The further evolution of Chamorro language and cultural education was underway, with the formulation of the Marianas Orthography Committee in the 1960s, comprised of representatives from Guam and Northern Mariana

168 Lujan, Pilar, "Role of Education in the Preservation of Guam's Indigenous Language" in *Kinalamten Pulitikåt: Siñenten I Chamorro: Issues in Guam's Political Development: The Chamorro Perspective*, by the Political Status Education Coordinating Commission, 1996, pp. 17-25.

Islands, and the later Guam Chamorro Language Commission, which was created "to undertake a formal study of the Chamorro language and to devise an orthography standardizing the written form of the Chamorro language." Underwood indicated that the feeling of cultural revival "also found expression in a wide variety of programs in the Guam Museum, the Historical Preservation Office of the Department of Parks and Recreation, and the Insular Affairs Council as well as laws regarding the Chamorro Language Commission and the Institute for Spanish-Chamorro Culture."

At the university level, the University of Guam (UOG) offers a Chamorro Studies Program with a mission to: "revitalize and sustain a CHamoru-literate community through the development of a steady cohort of proficient CHamoru-speaking and -writing graduates. It shall include in-depth studies of CHamoru language, culture, and CHamoru-based systems of knowledge. Such studies shall be articulated in relation to community engagement," as articulated on the UOG website.

In the final analysis, the overall official focus by the territory on the preservation and assertion of the cultural traditions of Guam has been longstanding, having accelerated significantly at the beginning of the 1970s, with the onset of the current period of full EDG. These official efforts to maintain and advance cultural traditions continue into the 21st Century, reinforced by numerous international instruments on cultural rights, and have judged the territory (*below*) at the indicative level of 3 on the scale of 4. This is reflective of the significant autonomy exercised by the territory in the preservation and projection of indigenous customs and language in official school instruction, legal proceedings and commerce; and the integration of culture in official proceedings and activities.

SELF-GOVERNANCE INDICATOR # 9	MEASUREMENT
Degree of Autonomy in Cultural Affairs	1. Cosmopole prohibits use of indigenous language and customs of the people of the territory for purposes of official school instruction, legal proceedings and commerce. 2. Cosmopole recognizes indigenous cultural heritage and language but considers it subordinate to its own cultural traditions as unilaterally imposed on the territory in official school instruction, legal proceedings and commerce.

	3. **Territory exercises significant autonomy in the preservation and projection of indigenous customs and language in official school instruction, legal proceedings and commerce.** 4. Territory has full authority in the preservation and projection of indigenous customs and language in official school instruction, legal proceedings and commerce.

Indicator # 10 - Extent of ownership and control of natural resources

UN resolutions on the ownership and control of natural resources by the people of Guam and other NSGTs are referenced in Part III of the present Assessment. Of added significance to Guam are key provisions relative to natural resources as outlined in the UNDRIP. In this regard, Article 8 of that Declaration would prevent, "[a]ny action which has the aim or effect of dispossessing [indigenous peoples] of their lands, territories or resources." Article 10 of its provisions would ensure that, "[i]ndigenous peoples shall not be forcibly removed from their lands or territories, [and that] [n]o relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned, and after agreement on just and fair compensation and, where possible, with the option of return."

Franck's 1978 seminal work on, "Control of Sea Resources by Semi-Autonomous States," recognized that, "with only one major and two trivial exceptions, the general rule is that metropolitan powers… either have given the population of the overseas territory full and equal representation in the national parliament and government, or have given the local government of the overseas territory jurisdiction over the mineral resources and fisheries of the exclusive economic zone [EEZ]." He noted that, "the sole exception to this rule," would appear to be the US, which has neither provided for full political rights to the dependencies under its administration, nor delegated to the territory control of the resources within the EEZ. As Franck concluded:

> It is, thus, cause for concern that [this] US practice…is so at odds with that norm. International law is, in large measure, the product of the customary conduct of states. If US conduct diverges significantly from a customary rule to which all other states in comparable circumstances adhere,

that ought to be reason to rethink those of our policy assumptions that give rise to behavior at odds with the norm.[169]

Notwithstanding these international norms, federal policy has consistently been "at odds" with the global practice of providing either full political representation to the territories under their administration, or full control over their natural resources. Accordingly, almost a decade after Franck's observations, the US Office of Technology Assessment (OTA), in 1987, reinforced the US position by stating that:

> The general principle of Federal authority has been that "[i]n [t]erritories of the United States, Congress has the entire dominion and sovereignty, national and local, Federal and State, and has full legislative power over all subjects upon which the legislature of a State might legislate within the State ...This claim of complete power has been modified for some islands by statutes and compacts granting varying degrees of autonomy to the local population.[170]

The rationale for deviating from the customary international practice of either providing political representation to the territories or giving them control over their natural resources, as observed by Franck, was clearly stated in the OTA report, which asserted that American Samoa, Guam and the US Virgin Islands:

> [E]njoy a large measure of self-rule, but under the territorial clause of the Constitution " their governments are, in effect, Federal agencies exercising delegated power [*emphasis added*]. Neither the initial cessions nor any subsequent grant of local power have insulated the islands from highly discretionary Federal authority. The Executive Branch, acting through the Department of the Interior, maintains fiscal and other supervisory powers. Congress retains the right to approve and amend local constitutions or to annul local statutes. It appears that nothing in [US] domestic law would impede the establishment and development of [US] EEZs around these islands [*emphasis added*.]
>
> Under our system, the authority of Congress over the territories is both clear and absolute. This authority originates in the constitutional grant to Congress of the "Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." Any restriction on this power would come from the terms under which a territory was initially acquired by the United States or from a subsequent grant of authority from Congress to the territory. As shown above, the present territories have no explicitly reserved or granted power

169 See Thomas M. Franck, "Control of Sea Resources by Semi-Autonomous States – Prevailing Legal Relationships between Metropolitan Governments and Their Overseas Commonwealths, Associated States, and Self-Governing Dependencies," Carnegie Endowment for International Peace, 1978.

170 See: "Marine Minerals: Exploring Our New Ocean Frontier," US Congress, Office of Technology Assessment, OTA-O-342 (Washington, DC; US Government Printing Office, July 1987).

to manage the EEZ. It has also been shown that Congress may treat the territories differently from the States as long as there is a rational basis for its action [*emphasis added*].[171]

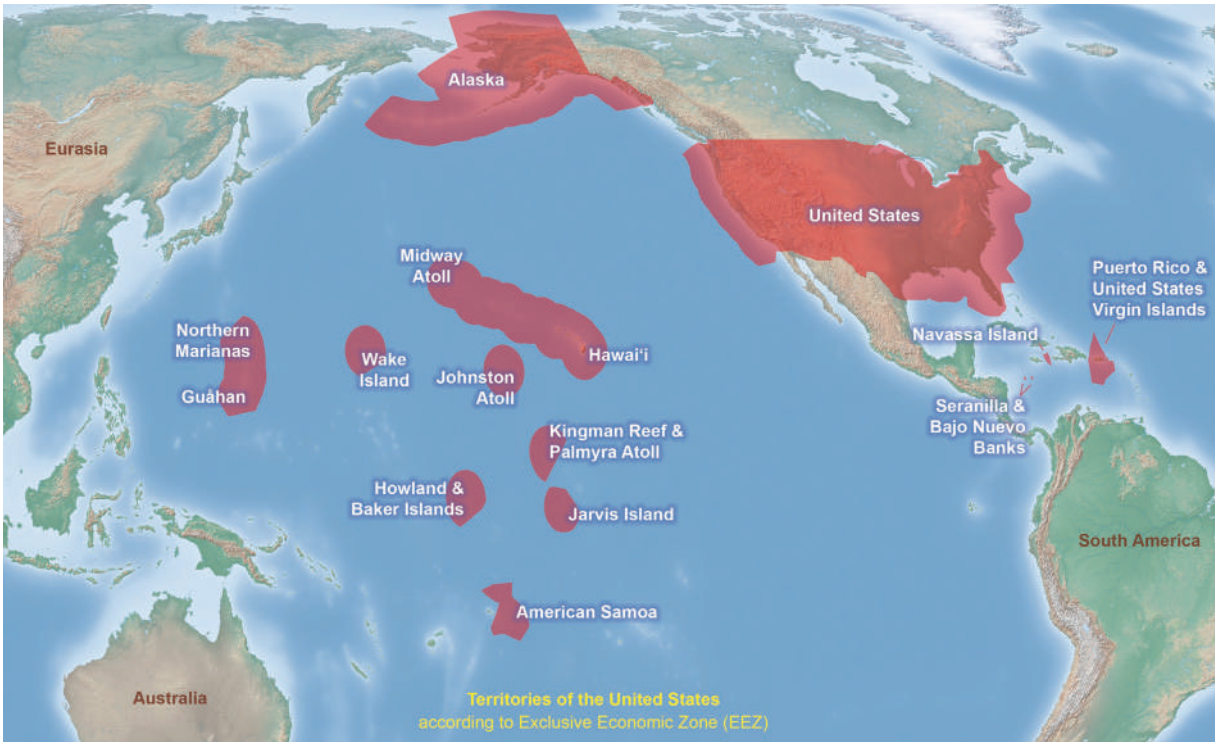
The OTA Report recognized the proactive approach taken by the Government of Guam, by citing decisions of the territorial government in 1980 with respect to the ownership and control of its natural resources, indicating that:

> By a law adopted in 1980, Guam defines its territory as running 200 geographical miles seaward from the low water mark. Within this territory, Guam claims 'exclusive rights to determine the conditions and terms of all scientific research, management, exploration and exploitation of all ocean resources and all sources of energy and prevention of pollution within the economic zone, including pollution from outside the zone which poses a threat within the zone.' In a letter accompanying the bill, the governor stated that, "[a]s a matter of policy, the territory of Guam is claiming exclusive rights to control the utilization of all ocean resources in a 200-mile zone surrounding the island.' Possible conflicts with Federal law were recognized, but the law was approved 'as a declaration of Territorial policies and goals.' Section 1001(b) of the proposed Guam Commonwealth Act includes a similar claim to an EEZ.[172]

171 *Id.*at 295.

172 *Id.* at 298.

Figure 6: US Exclusive Economic Zone (EEZ) including US Dependencies – 2019



Source: mapmakerdavid

Notwithstanding the expressed federal claim to the natural resources of the territories, the UN General Assembly, on December 13, 2019,[173] adopted its most recent resolution (*in a series of texts*) on "Economic and Other Activities which affect the people of the Non Self-Governing Territories, and in the process, reaffirming that:

> [T]he natural resources are the heritage of the peoples of the Non-Self-Governing Territories, including the indigenous populations [and] [t]aking into account…UN resolution 1803 (XVII) of 14 December 1962 regarding the sovereignty of peoples over their natural wealth and resources in accordance with the Charter and the relevant resolutions of the United Nations on decolonization.

The General Assembly, in its resolution, also expressed its concern about, "any activities aimed at exploiting the natural and human resources of the Non-Self-Governing Territories to the detriment of the interests of the inhabitants of those Territories."[174] The Assembly repeated its consistent call for the administering Powers "to take effective measures to safeguard and guarantee the inalienable right of the peoples of the Non-Self-Governing Territories to their natural resources and to establish and maintain control over the future development of those resources, and requests the administering Powers to take all steps necessary to protect the property rights of the peoples of those Territories in accordance with the relevant resolutions of the United Nations on decolonization."[175] The resolution went further, to, "call upon the administering powers to ensure that the exploitation of the marine and other natural resources in the Non-Self-Governing Territories under their administration is not in violation of the relevant resolutions of the United Nations and does not adversely affect the interests of the peoples of those Territories."[176]

Despite decades of international policy on the ownership and control of natural resources, including marine resources, by the people of Guam and the other US dependencies, federal policy has held firm in its insistence of US control of these resources. The National Oceanic and Atmospheric Administration (NOAA) confirms the federal approach, in its online map of the US EEZ, with the commentary asserting, "the US exclusive economic zone [EEZ] of 200 nautical miles offshore spanning over 13,000 miles of coastline and containing 3.4 million square nautical miles of ocean [as the largest in the world] encompassing diverse ecosystems and vast natural resources, such as fisheries and energy and other mineral resources."[177]

On the overall question of ownership, control and disposal of land, the 2019 UN Working Paper on Guam recalled the 1975 creation of the Chamorro Land Trust, "to give Chamorro descendants of

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See Resolution 74/94 on "Economic and other activities which affect the interests of the peoples of the Non-Self-Governing Territories," Report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples for 2019, adopted by the UN General Assembly on 13th December 2019. 173.

174 *Id.*

175 *Id.*

176 *Id.*

177 See website of the National Oceanic and Atmospheric Administration (NOAA), https://www.gc.noaa.gov/documents/2011/012711_gcil_maritime_eez_map.pdf accessed 11 November 2019.

original inhabitants the opportunity to lease property for a nominal sum." It was noted that in 2017 the US Department of Justice filed a lawsuit in the US court against the Government of Guam, the Chamorro Land Trust Commission and the administrative director of the commission, arguing that the Guam law creating the Land Trust "discriminated against non-Chamorros based on race or national origin, in violation of the Fair Housing Act." According to the lawsuit, the commission holds and administers approximately 20,000 acres, or fifteen percent of total land area of Guam, and grants ninety-nine-year-year residential leases for one-acre tracts at a cost of $1 per year to eligible Chamorros. The suit was settled out-of-court, pursuant to an agreement[178] between the Government of Guam and the US Department of Justice, dated June 4, 2020. In this regard, it is to be noted that the UN Declaration on the Rights of Indigenous Peoples (UN-DRIP) recognizes the inherent right of indigenous peoples to self-determination and the related rights over their lands, territories and natural resources.

On the question of the state-of-play with respect to Guam's natural resources, it is concluded that the federal insistence on the ownership and control of the natural resources in the EEZ is in direct conflict with international policy that these resources are to be owned and controlled by the people of Guam. Accordingly, the ownership and control of natural resources exercised by the territory is judged (*below*) at indicative level 1.5 on the scale of 4 reflecting the virtually complete control of the EEZ by the cosmopole, while acknowledging certain internal jurisdiction over the management of resources. (*The issue of ownership, control and disposal of land is primarily related to the inordinate amount of land owned and controlled by the US military in Guam. This is examined below under Indicator # 11 related to the military and strategic dimension*).

178 https://www.justice.gov/opa/press-release/file/1282961/download.

SELF-GOVERNANCE INDICATOR # 10	MEASUREMENT
Extent of ownership and control of natural resources	1. Cosmopole exercises absolute ownership and control over natural resources of territory with power of eminent domain. **1.5 Absolute ownership and control of the EEZ by the cosmopole with certain territorial in internal jurisdiction in management of resources.**

	2. Some degree of shared ownership/ control of natural resources between territory and cosmopole. 3. High degree of shared ownership and mutual decision-making on natural resource disposition between cosmopole and territory. 4. Natural resources owned and controlled by territory.

Geo-Strategic and Military Dimension

Indicator # 11 – Control and Administration of Military Activities

Global concern for the use of Guam as an NSGT for military purposes was discussed in Part III of the present Assessment in relation to the impact on the mandate for self-determination and decolonization, as extensively addressed in UN General Assembly resolutions. Article 30 of the UNDRIP provided definitive clarity on the subject in relation to the rights of indigenous peoples:

> Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned. States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities."

Yet, such practices continue to violate longstanding international mandates on the issue, with territorial and global concerns over the inordinate ownership and control of land by the US military, dating back decades. The unconditional and expeditious return of land previously acquired by the military has long been advocated by successive Guam governments, officials and civil society organizations. In this regard, the UN Working Paper for 2000 identified the two major issues of, "the return of unused or underutilized lands held by the Department of Defense and the return of these lands to the original Chamorro landowners," in reference to the Department of Defense title to one-third of the island, much of which was condemned and acquired from private landowners by the Department of Defense during the years

following WWII. The, "condemnations and confiscations occurred between 1945 and 1950, when Guam was under the administration of the United States military, and before [US] citizenship was granted to the people of Guam," according to the 2000 UN Working Paper.[179]

The issue has been addressed since at least 1980, when the General Accounting Office (GAO), in response to a request for information by Guam Delegate to Congress, Antonio B. Won Pat, reported on the status of the implementation of the US Navy's Guam Land Use Plan (1979), which had been prepared in response to expressions of dissatisfaction throughout the territory with the large military landholdings. The GAO report revealed that:

- The Navy has released only 100 of the 2,517 acres of Navy-occupied land identified in the plan as releasable.
- The Navy has deferred releasing 1,228 acres identified in the plan so that the requirement for this land can be reassessed.
- The Air Force has released 2,127 of the 2,663 releasable acres of Air Force-occupied land for internal Department of Defense (DOD) screening, and it is processing an additional 369 acres for internal screening. In addition, (GAO) comparison of DOD landholdings on Guam with DOD requirements for such land indicates that over 1,000 additional acres may be releasable for civilian use.
- The Navy estimates that the releasable land identified in the plan, except for the 1,228 acres being deferred…will be turned over to the General Services Administration for disposal.[180]

By 1992, it was confirmed that "[a]pproximately thirty percent of the land in Guam [was] reserved for the Department of Defense, [and] one percent [was] used by the federal Government for non-military purposes."[181] By 1995, "the question of transfer of the land used by the federal Government, particularly for military purposes, to the jurisdiction of the Government of Guam has been a matter of contention between the territorial government and the administering Power."[182] This followed the January 1994 Guam Land Conference, with participation by the Government of Guam, the US Department of Interior (DOI), the US Department of Defense (DOD), and the General Services Administration (GSA). The conference dealt with the process of land transfers, in view of planned force reductions of the United States in the territory. Following the Land Conference, the US Department of Defense, on March 31, 1994, released its preliminary plan, identifying excess land parcels to be transferred to the Government of Guam.

The same year, the US Congress passed the Guam Excess Lands Act (Public Law 103-339) aimed at transferring 3,200 acres to the Government of Guam which, in turn, would have six months to develop a

179 See Guam Working Paper prepared by the Secretariat, A/AC.109/2006, 22 May 2000.

180 See Letter to Guam Delegate to the US Congress Antonio B. Won Pat from United States General Accounting Office Director Donald W. Gutmann dated 18 June 1980.

181 See Guam Working Paper prepared by the Secretariat, A/AC.109/111, 22 May 1992.

182 See Guam Working Paper prepared by the Secretariat, A/AC.109/2018, 1 May 1995.

land-use plan to be submitted for US Congressional approval. In 1995, the independent US Base Closure and Realignment Commission (BRAC), "recommended that the US Navy release the excess property listed under its Guam Land Use Plan 1994 and not yet transferred to the Government of Guam."[183] Negotiations between the US Navy and the Government of Guam on the transfer of land by the Navy began in January 1996 on the nature of the territorial utilization of property deemed excess by the US Navy, and the joint use of the inner Apra Harbor.

It was noted that other US agencies were interested in acquiring portions of the land to be transferred for such purposes as an army reserve center, a National Guard bureau and a US Federal Bureau of Investigation (FBI) facility. Guam Delegate to the US Congress Robert Underwood, in a statement to the UN Fourth Committee on October 10, 1997, expressed concern for the process, which permitted US agencies to bid for the excess land ahead of Guam.[184] US Navy. Admiral David L. Brewer, III, in a 1996 communication to the Government of Guam, explained the limitations that might affect the process of land transfers:

> "Typical limitations we considered involved mission essential operational requirements, explosive safety arc encumbrances, areas needed to support our training and mission requirements in the Marianas region and environmentally hazardous areas which cannot be safely released for use" [*emphasis added*].
>
> The UN recognized that:
>
> Land remains central to Chamorro culture and many families expect[ed] to have the land returned to them. Recent military downsizing which made available some excess military lands has led to a renewal of the controversy over the initial condemnations as well as raised hopes for the return of this land.[185]

Relatedly, Guam Delegate Underwood's US Congressional legislation, the Guam Omnibus Opportunities Act, was approved by the US and became US law in November 2000. It was intended to place Guam before federal agencies with regard to bidding for excess lands. It also provides Guam with more flexibility, by requiring the Government of Guam and the federal Fish and Wildlife Service to negotiate on the future management and ownership of lands in the wildlife refuge, giving Guam a greater, but incomplete, measure of control over these lands.

Concerns grew in the territory regarding the sociocultural impact on Guam of a 2005 US decision to realign US Marine Corps capabilities in the Pacific region, and in the process, to transfer approximately

183 See Guam Working Paper prepared by the Secretariat, A/AC.109/2047/Add. 1, 19 June 1996.

184 See UN Special Political and decolonization Committee, Summary record of the 6th Meeting, 10 October 1997.

185 166 *supra note.*

8,000 US military personnel and their dependents to Guam from Okinawa, Japan. A statement by former Guam Senator, Hope Cristobal, to a 2007 meeting between the prominent women's organization Fuetsan Famalao'an and Guam Congressional Delegate Madeleine Bordallo, was summarized by the UN in its 2008 Working Paper on Guam:

> [The US] Congress must responsibly address the cumulative effect of all proposed military projects together with past and current military activity and presence. The effectiveness of past mitigation efforts by the military should be assessed in order to determine the prudence of allowing future mitigation where adverse impact is expected… [T]he people of Guam [must] be fully informed of the results of any environmental studies conducted or being conducted on Guam. [A] cumulative study is particularly important relative to past military use of our landfill and over eighty contaminated dump sites still existing on Guam that have yet to be cleaned up by the military, despite their placement on the US Environmental Protection Agency cleanup lists for many years. In addition[,] there are concerns of the impact on the infrastructure on Guam.[186]

This sentiment was further expressed in a statement to the 2008 UN Special Committee on Decolonization Pacific regional seminar, held in Bandung, Indonesia, in May 2008, where former Senator Cristobal emphasized that a "meaningful and useful" environmental impact statement should address all effects of the military's past, present and future presence with regard to the military's "toxic waste and contaminations." In a 2010 edition of the Asia Pacific Journal, University of Guam professor LisaLinda Natividad and University of Oregon professor Gwyn Kirk recalled the public comment procedure on the environmental, economic and other implications of the military build-up:

> Between 2006 and 2009, while Department of Defense contractors prepared a Draft Environmental Impact Statement as required under the National Environmental Policy Act, speculation was rife among business owners, elected leaders, and community members about the projected population increase, the economic impact of military expansion, and the consequences of the addition of tens of thousands of people on the already fragile and contaminated social and environmental infrastructure. Arguments in favor of the anticipated construction boom emphasized economic growth and the potential for expanded services and amenities. Opponents were skeptical about the much-touted economic advantages. They argued that the island lacks the environmental capacity for a major increase in population; that military-related personnel could outnumber the Chamorro population, currently thirty-seven percent of the total; and that Guam's status as an unincorporated territory and its dependence on the federal government makes it difficult for leaders to take an independent political position. Moreover, opponents criticized inadequate

186 See Guam Working Paper prepared by the Secretariat, A/AC.109/2008/15, 19 March 2008. See also *Defense Infrastructure: Overseas Master Plans Are Improving, but DOD Needs to Provide Congress Additional Information about the Military Buildup on Guam*, Government Accountability Office (GAO), Report to Congressional Committees, September 2007.

opportunities for public meetings and comment.

…

> When the military held Environmental Impact meetings in Guam, Saipan, and Tinian in April of 2007, some 800 people attended and over 900 comments were received. Concerns included social, economic and cultural factors, international safety, law enforcement, transportation and infrastructure issues, marine resources/ecology, air quality, water quality, and overloading limited resources and services. In January 2008, [*Virgin Islands Delegate to the US Congress*]…Donna Christensen…convened US Congressional Hearings on Guam, on an invitation-only basis. Protests resulted in the inclusion of public testimony as an "addendum" to the official proceedings. A year later, the [*US military-contracted*] Joint Guam Program Office [JGPO] held public meetings. Far from responding to the concerns voiced during earlier hearings, the JGPO announced that the military planned to take additional lands, including 950 acres for a live firing range. Although people stated concerns, there were no recording devices to document community sentiment.[187]

As Natividad and Kirk recounted:

> The Draft Environmental Impact Statement (DEIS) regarding the military build-up was released in November 2009, a nine-volume document totaling some 11,000 pages, to be absorbed and evaluated within a ninety-day public comment period. In response, there was an outpouring of community concern expressed in town hall meetings, community events, and letters to the press. Despite its length, the DEIS scarcely addressed questions of social impact, and it contain[ed] significant contradictions and false findings that were exposed in public comments and in the media. Some stated plans contained in the DEIS were outright flawed, as admitted by a DOD consultant.[188]

Concerns expressed during the public comment process on the DEIS included: the impact of up to nearly 80,000 additional people on land, infrastructure and services; the "acquisition" of 2,200 acres for military use; the impact of dredging seventy acres of vibrant coral reef for a nuclear aircraft carrier berth; and the extent to which the much-touted economic growth would benefit local communities.[189] Others matters raised were the impact of population increase, the further acquisition of land, which would bring the percentage owned by the US military on Guam to forty percent, the potential use of eminent domain, and the potential desecration of sacred cultural sites. The implications of increased military activity in

187 Lisa Linda Natividad and Gwyn Kirk, *"Fortress Guam: Resistance to US Military Mega-Buildup,"* The Asia-Pacific Journal, 19-1-10, May 10, 2010.

188 *Id.*

189 *Id.*

Guam were the subject of intense discussion during the 2010 session of the UN Special Political and Decolonization Committee. The 2011 UN Working Paper recounted the intensity of the debate:

> [Eleven] petitioners spoke about the serious implications of a further hypermilitarization of Guam, including its direct impediment to the right of self-determination for the Chamorro people, tremendous taxing of the Territory's socio-economic structure, environment and the sheer livelihood of the indigenous people. Some of the petitioners called upon the United Nations to fund a study on such implications, and denounced the hypermilitarization as being inimical to the inalienable human rights of the Chamorro people ...
>
> In view of major concerns expressed by the Guam officials and members of the Guam community regarding the impact of a military build-up on the Territory, in 2010, the United States Department of Defense carried out a study on the issue. The study indicated that the military expansion would strain the island's limited infrastructure, health care and ecology. In February 2010, the Territory's Environmental Protection Agency stated that a military build-up could trigger island-wide water shortages that would fall disproportionately on a low-income medically underserved population. It also indicated that it would overload sewage treatment systems in a way that might result in significant adverse public health impacts.
>
> Opposition to the military expansion stems mainly from concerns about its sociocultural, economic and environmental impact on the Territory. Anticipated economic benefits associated with the build-up are likely to be offset by higher inflation, increased congestion and greater pressure on outdated infrastructure.[190]

On the matter of land return, it is recalled that, in view of the forthcoming military build-up, the DOD in 2010 expressed interest in acquiring 2,200 acres of land, in addition to the 40,000 acres it already controlled. The matter of the use of ancient Chamorro land at Pagat Village for a military live fire range was also the subject of scrutiny. Subsequently, in 2011, the Government of Guam signed a Programmatic Agreement with the US to: preserve cultural and historical properties in the territory; and facilitate the construction of a cultural repository, a public health laboratory and upgrades to the island's water and wastewater systems. A 2013 GAO report reiterated the agency's earlier concerns that, "the reliability, capacity and age of much of the public infrastructure—especially the island's utilities indicated that additional upgrades were needed to meet current and future demands relating to the realignment."[191]

After further consideration, the US Navy on August 29, 2015, issued its record of decision for relocating

190 See Guam Working Paper prepared by the Secretariat, A/AC.109/2011/15, 11 March 2011.

191 See *Defense Management: Further analysis needed to identify Guam's public infrastructure requirements and costs for the Department of Defense's realignment plan" US General Accountability Office, Report to Congressional Committees*, US General Accountability Office, December 2013.

forces to Guam following the issuance on July 18, 2015, of the final supplemental environmental impact statement for Guam. Also in July 2015, the US Navy published the "Guam Training Ranges Review and Analysis,"[192] in which it presented information on the development of alternatives and the potential adverse effects on historical properties of each alternative that the department analyzed as a potential location for the Marine Corps live-fire training range complex on Guam." These decisions were taken following an extensive review procedure, conducted by the US Congress through its General Accountability Office, and a comment procedure, in which the people of the territory reacted to the proposed further militarization, before the final decisions were made by the US. The US Interagency Coordination Group of Inspectors General for Guam Realignment issued reports on budgetary aspects of the proposed buildup in 2015 and 2020.[193]

On the question of military land use, the 2019 UN Working Paper on Guam recounted the position of the US as Guam's administering Power:

> The Department of the Navy is committed under its "net negative" policy to having a smaller footprint on the islands after the relocation of the marines than it had thereto. In the Congressional report delivered on 28 September 2017 regarding the implementation of that policy, the Department noted that, upon the completion of all transfers identified in the report, land holding by the Department was expected to decrease by 654 acres compared with January 2011.[194]

Consistent with the proposed reduction in military land holdings, Guam Governor, Lourdes A. Leon Guerrero, in an August 8, 2019, letter to US Secretary of the Navy Richard V. Spencer, issued a report entitled, "Potentially Releasable Federal Lands," which provided the territory's recommendations about the parcels of land to be transferred to the Guam government pursuant to the US Guam Omnibus Opportunities Act (P.L. 106-504) of November 13, 2000.

It has been concluded that the essence of the moves toward the repositioning of US military forces to accommodate the geo-strategic interest of the administering Power is to confront the growth of Chinese influence in the Asia-Pacific region (*most recently re-cast as the Indo-Pacific region*). In pursuit of this geo-strategic objective, the administering Power continues to increase its military activities, which are undertaken through unilateral measures, with a modicum of consultation with the Guam community and its leadership, whose concerns are taken into account before final decisions are made. As in the case of the overall federal-territorial dialogue, however, such mutual consultation does not equate to mutual consent. This is the inconvenient reality of the relationship between the unincorporated territory of Guam and its administering Power, the US.

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192 https://www.navfac.navy.mil/navfac_worldwide/pacific/about_us/cultural_resources/guam-training-range-review-and-analysis-draft.html.

193 The "Interagency Coordination Group of Inspectors General for Guam Realignment" was established by Section 2835 of the National Defense Authorization Act for FY 2010 (Public Law 111-84) to," conduct, supervise, and coordinate audits and investigations of the treatment, handling, and expenditure of amounts appropriated or otherwise made available for military construction on Guam…"

194 See Guam Working Paper prepared by the Secretariat, A/AC.109/2011/15, A/AC.109/2019/9, 12 February 2019.

> Notwithstanding, the international community continues to take the principled position in expressing its unease with the ramifications of these activities to the territory. In its 2019 resolution on, "The Question of Guam," the member States of the UN General Assembly reiterated their longstanding concerns in relation to the impacts of militarization on the territory in the context of the use of its geo-strategic positioning and big power rivalries in the Asia-Pacific region [UN Resolution 74/104 of December 13, 2019]

In this connection, the 2019 resolution on the "Implementation of the Decolonization Declaration" repeated earlier calls to the administering Powers, "to terminate military activities and eliminate military bases in the Non-Self-Governing Territories under their administration in compliance with the relevant resolutions of the General Assembly" [UN Resolution 34/113 of December 13, 2019].

Global concerns have also been expressed in resolutions on Guam regarding, "the potential social, cultural, economic and environmental impacts of the planned transfer of additional military personnel of the administering Power to the Territory" (UN Resolution 34/104 of December 13, 2019). Further emphasis is continually placed on the expression by the former speaker of the Thirty-Third Guam Legislature, made to the UN Fourth Committee, (*earlier referenced*) at the 70th Session of the General Assembly, that, "the most acute threat to the legitimate exercise of the decolonization of Guam was the incessant militarization of the island by its administering Power." The UN General Assembly in 2019 pointedly emphasized that "any economic or other activity, including the use of the Non-Self-Governing Territories for military activity, that has a negative impact on the interests of the peoples of the Non-Self-Governing Territories and on the exercise of their right to self-determination in conformity with the Charter, General Assembly Resolution 1514 (XV) and the other relevant resolutions of the United Nations on decolonization is contrary to the purposes and principles of the Charter" (UN Resolution 74/94 of December 13, 2019).

The 2019 UN Working Paper on Guam reported that, since 2009, the United States has planned to realign the presence of the US Department of Defense in the Asia-Pacific region, and the US Marine Corps has planned to consolidate bases in Okinawa, Japan, by relocating marines to other locations, including…Guam" between 2022 and 2026.[195]

According to the 2019 UN Working Paper:

> On 29 August 2015, the United States Department of the Navy released the record of decision for relocating forces to Guam, following the issuance on 18 July 2015 of the final supplemental environmental impact statement for Guam in which the Department called for a smaller realignment than in the original, 2010 plan, and outlined the decisions necessary for the implementation

195 See "US Military Presence on Okinawa and Realignment to Guam," US Congressional Research Service, 14 June 2017.

> of the realignment actions proposed and the mitigation measures specified. The record of decision is specific to the relocation of marines and their dependents and comprises the decision to construct and operate a main base [cantonment area], a family housing area, a live-fire training range complex and associated infrastructure to support the relocation of a substantially reduced number of marines and their dependents. In addition to the record of decision, the United States Fish and Wildlife Service also issued a biological opinion in 2015 which, according to the administering Power, was amended in 2017 and 2018, on the relocation by the Department of the Marine Corps from Okinawa to Guam and associated activities on Guam. The 2015 biological opinion addressed the effect of the relocation on threatened or endangered species and adverse effects on critical habitat for certain species and outlined the conservation measures required to minimize those negative effects.[196]

Finally, on the issue of the specific impact of militarization on the environment of Guam, the US as Guam's administering Power was strongly urged by the UN General Assembly, "to take all measures necessary to protect and conserve the environment of the territory against any degradation and the impact of militarization on the environment" (UN Resolution 34/104 of December 13, 2019) and mandated the Secretary-General to continue to report on the environmental impact of the military activities of the administering Power in the territory. Examples such as usurpation of land for military purposes; chemical contamination on Cocos Island; potential traces of agent orange in Guam; remnants of nuclear bombs in the Marianas Trench; the destruction of cultural sights for military construction purposes; the long-term downwind effects of the nuclear testing in the Marshall Islands; and more only serve to justify certain anxieties of the people of the territory over the environmental effects of military activities on Guam, with the consistent support of the international community.

The geo-strategic position of Guam was marked by analyst Jeffrey W. Hornung in his 2017 analysis, *"The US Military Laydown on Guam: Progress Amid Challenges,"* for the Sasakawa Peace Foundation USA, in which he discerned from viewing the documentary *"Insular Empire: America in the Mariana Islands"* that:

> Today, Guam is the westernmost US territory. This fact serves as a point of friction among segments of the population who see Guam's relationship with the United States as a colonial power and those among the Chamorro population who are concerned about the ramifications of US military activities on the indigenous culture and people. Seen in this light, the US presence constrains Guam's self-determination and cultural preservation.

As Hornung surmised,

> As seen from a security perspective, Guam is strategically important. Given its proximity to the Asian mainland, it counters the "tyranny of distance" of US forces in Hawaii and on the US

196 166 *supra note*, at 6.

mainland by serving as an important forward base in the northwest Pacific and enabling quick power projection into the region. Due to the Korean War and the early days of the Cold War, the US maintained a military presence on Guam as an active deterrent against possible Soviet aggression. During the 1960s and 1970s, Guam played a strategic role in the Vietnam War that included serving as the forward base for American B-52s. After the Cold War ended, the logic of having a large military presence on Guam weakened. This led to a dramatic drawdown of US forces on Guam.

During the Base Realignment and Closure (BRAC) process, Guam was hit hard. During BRAC Round 3 in 1993, Naval Air Station Agana closed. This was followed by the closure of Apra Harbor Naval Complex and Naval Facilities Guam during BRAC Round 4 in 1995. Before the BRAC, US military personnel and their dependents on Guam stood at 19,610 in 1990, compared with 11,844 in 2015. At its height in 1950, this number stood at 26,617. All of these issues are important to understanding the current discussions on the plans to increase the number of US personnel on Guam. These discussions involve issues of federal and territorial relations, cultural identity, and military necessity and questions of how much is too much for an island the size of Guam.

According to the most recent 2019 US Congressional Research Service report *"US Military Presence on Okinawa and Realignment to Guam,"* [t]he current strategy for moving military personnel to Guam from Okinawa is based on a 2012 revision to the 2006 US- Japan Roadmap for Realignment, and would relocate 5,000 marines and 1,300 dependents to Guam; 2,700 marines and 2,000 dependents to Hawaii; 1,300 marines to Australia [on a rotational basis]; and 800 marines to locations in the continental United States."[197]

Notwithstanding the extensive and lengthy UN mandate for military activities in Guam to cease, for the natural environment to be protected from such activities, and for the lands confiscated in the post WWII period to be returned to the CHamoru people, the UN directives have been systematically set aside by the territory's administering power. The most recent US statement to the Fourth Committee, in 2019, refers to an "outdated [UN] call to terminate all military activities and bases in NSGTs." The US statement further declared that there exists "a sovereign right to carry out [US] military activities in accordance with its national security interests," and regarded as "facile" the "assumption that military presence is necessarily harmful to the rights and interests of the people of the territory, or incompatible with their wishes."[198]

In the final analysis, in the face of the long-standing mandate to discontinue military practices in NSGTs, the administering Power has concluded that its interests outweigh any apprehensions repeatedly expressed by the people of the territories themselves and global expressions contained in decades of UN

197 See "US Military Presence on Okinawa and Realignment to Guam," US Congressional Research Service, 9 April 2019.

198 See Summary Record of the 9th Meeting of the, Special Political and Decolonization Committee (Fourth Committee), 17 October 2019.

resolutions on the matter. The resultant diplomatic stalemate on this question at the international level results in an overt dismissal of global policy on the question by the administering Power and a decided non-compliance with the mandate on geo-strategic considerations related to Guam. Accordingly, Guam's level of control and influence on military activities is judged at indicative level 2 on the scale of 4 (*below*), reflective of the acknowledgement of an elaborate consultative procedure to elicit comment from the people of the territory on potential military strategic initiatives. These procedures have been diminished, however, with the discontinuation of public hearings and only written statements accepted. The indicative level 2 also takes into account that longstanding global policy, advocating for the closure of military activities in Guam due to their inconsistency with the self-determination process, has been effectively dismissed by the administering Power.

SELF-GOVERNANCE INDICATOR # 11	MEASUREMENT
Control and Administration of military activities	1. Cosmopole can establish and expand military presence including expropriation of land and degradation of the environment for military purposes without consultation with the territory. **2. Cosmopole consults with the territory before establishment and expansion of military activities.** 3. Cosmopole complies with territorial laws, including environmental laws, in the context of military activities; and accepts UN mandates on military activities in non self-governing territories.

	4. Territory has the authority to determine the extent and nature of military presence of cosmopole, to receive just compensation for the use of its territory for military purposes, composition for environmental and health consequences, and to demand an end to said activities.

CONCLUDING OBSERVATIONS

The primary purpose of the present Assessment was to examine the level of preparation for the achievement of the Full Measure of Self-Government (FMSG) for Guam under its present Elected Dependency Governance (EDG) arrangement of Unincorporated Territorial Status (UTS) recognized under international law as non-self-governing. Significant attention in the present Assessment has been paid to the elements of the current EDG framework, the relevant instruments governing the power balance/imbalance between the US and Guam, the extent to which the international mandate to bring the territory to the FMSG has been carried out or conversely set aside, and the efforts by the territorial government and civil society to advance Guam's political and socio-economic development within the confines of UTS.

The Assessment paid significant attention to the historical evolution of dependency governance in Guam, from the loss of sovereignty formerly exercised during the 'ancient period' followed by various colonial phases including Spanish and subsequent US Military Dependency Governance (MDG), the challenges of Japanese Governance under Occupation (JGO), and the subsequent US Appointed Dependency Governance (ADG) – all preceding the evolution to partial, and then, to full Elected Dependency Governance (EDG) of present day.

Due regard has been paid in the present Assessment to the current political status process underway in Guam informed by earlier self-determination efforts. Hence, the current referendum process is reflective of the rejection of the UTS status by the people of Guam in its previous referendum in 1982 where they had expressed the preference for the alternative autonomous commonwealth status following on from that which had been earlier granted to Puerto Rico and the Northern Mariana Islands. The subsequent rebuff of Guam's envisaged political arrangement by the US Congress and Administration during the 1990s was evidence of US resistance to a genuine autonomous polity being created under US jurisdiction. The stalemate after years of territorial-federal "negotiations" on the proposed commonwealth arrangement is evidence of the asymmetrical power relationship between Guam and the US under the UTS.

Thus, the reversion to UTS in the wake of the US rejection of the commonwealth proposal did

not reflect the will of the people who had rejected the UTS status in the 1982 plebiscite. However, the continuation of the UTS did serve to reveal its restrictive parameters in terms of the exercise of real autonomy. The attendant argument to revisit the drafting of a constitution to replace the Organic Act may be perceived as an expedient alternative, but is a clearly diversionary suggestion as it would not alter the political inequities inherent in the status quo UTS, and would not address the fundamental issue of decolonization. As it has been said, a constitution merely allows for the 'rearrangement of the political furniture' while the political inequality inherent in the current political status would remain. As such, dependency reform does not equate to decolonization, and at best, it serves as transitional and preparatory to the attainment of full self-government.

Accordingly, Guam's sustained interest in progressing to a permanent political status through one of the three options of full political equality—independence, free association or integration—has been derived from its experience of dependency governance under the status quo UTS and from its sincere efforts to bring about its reform through an autonomous arrangement. This has resulted in the definitive conclusion that the way forward is not colonial reform, but rather genuine political advancement through decolonization. Undoubtedly, Guam has progressed significantly during the course of its historical evolution through the development of extensive capacity to self-govern. The next logical phase of this advancement is the transfer of political power to accelerate the preparatory process for the FMSG. The Caribbean psychiatrist Franz Fanon recognized the importance of this next logical step, observing that the relationship between colonialism and decolonization is "simply a question of relative strength."

Yet, as the application of the relevant Self-Governance Indicators (SGIs) revealed, the current form of EDG in play in Guam cannot escape the objective reality of US unilateral authority which prevails over the political status relationship in virtually all substantive areas of governance. In this regard, the present form of EDG where the decisions of those elected are subject to being overridden by the unilateral applicability of federal laws, regulations and procedures, is not consistent with democratic governance nor was it intended to be so. The actual role for the non self-governing status in the political evolution of Guam was meant as a transition to the FMSG consistent with Article 73(b) of the UN Charter and the "transfer of power" doctrine under the Decolonization Declaration.

Thus, Guam and other US territories similarly situated remain in a rather precarious position of political vulnerability and relative powerlessness subject to the final decision-making authority by a Congress in which the territorial delegates have limited voting rights, and administered by a president for whom the people of the territory cannot vote. Such is the objective reality of UTS which is a clear anachronism some two decades into the 21st century, and is a well-defined indication of the need for modern solutions to the contemporary colonial dynamic.

It is to be recognized that if Guam remains in the status quo UTS, it should be understood that self-government would not have been achieved, but only further deferred. Real political change, in this light, does not mean that the territory would necessarily move 'closer to' the US, or conversely, 'away from' the US, but it does mean that the relationship would be modernized on the basis of an arrangement of absolute political equality (APE) with the FMSG envisaged in international law.

In this vein, a number of the democratic deficiencies of the UTS model in Guam were highlighted in a 2021 communication from three Special Rapporteurs of the UN Human Rights Council to the US as Guam's administering power under international law (*See Annex*). The correspondence, in the form of a joint allegation letter to the US, came in response to submissions to the UN Special Rapporteur on the Rights of Indigenous Peoples by Blue Ocean Law on behalf of the CHamoru people and Prutehi Litekyan: Save Ritidian (PLSR), a community-based organization dedicated to defending sacred sites and protecting Guam's natural and cultural resources; and the Unrepresented Nations and Peoples Organization (UNPO) concerning ongoing human rights violations suffered by the indigenous CHamoru people of Guam at the hands of the United States government and military. In response, the tripartite allegation letter summarized the key issues of concern as:

> …the impacts of the United States of America's increased military presence in Guam and the failure to protect the indigenous Chamorro people from the loss of their traditional lands, territories, and resources; serious adverse environmental impacts; the loss of cultural artifacts and human remains; as well as the denial of the right to free, prior and informed consent and self-determination.[199]

The submissions to the Special Rapporteur were wholly consistent with UN General Assembly resolution 75/113 of 10 December 2020 on the "Question of Guam" which "reaffirm[ed] that, in the process of decolonization of Guam, there is no alternative to the principle of self-determination, which is also a fundamental human right, as recognized under the relevant human rights conventions."

It is in this context that the fundamental question as to whether Guam's status quo UTS meets the standards of democratic legitimacy and adherence to human rights has been thoroughly examined. It is the conclusion of the present Assessment that the fundamental democratic deficit inherent in the model of dependency governance in Guam does not meet the recognized international standards for the FMSG. The current status has the potential of serving its intended purpose of further preparation, in a transitional context, consistent with Article 73(b) of the UN Charter. But caution should be observed that this political status - meant to be preparatory in nature - is not used instead to legitimize this democratically deficient model of Dependency Governance (DG). It is not in the interest of democratic governance for Guam and other NSGTs to remain in a state of 'preparation in perpetuity.'

199 See "Communication to the Government of the United States of America from the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; the special Rapporteur on the rights of indigenous peoples; and the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes," 29 June 2021.

Figure 7: Dependency Status as Preparatory

DEPENDENCY STATUS AS PREPARATORY

Dependency status was meant as a **preparatory phase** *(Article 73(b) of UN Charter)* to **complete decolonisation** with the **Full Measure of Self-Government** with **Absolute Political Equality** to be obtained through a genuine process of **Self-Determination**. Two primary principles of self-governance doctrine apply:

Full Measure of Self-Government (FMSG)
Absolute Political Equality (APE)

ANNEX

Self-Governance Indicators Used in Guam Assessment

Indicator # 1	Cosmopole compliance with international self-determination obligations
Indicator # 2	Degree of awareness of the people of the territory of the legitimate political status options, and of the overall decolonization process
Indicator # 3	Unilateral Applicability of Laws and Extent of Mutual Consent
Indicator # 4	Extent of evolution of governance capacity through the exercise of delegated internal self-government
Indicator # 5	Extent of evolution of self-government through exercise of external affairs
Indicator # 6	Right to determine the internal constitution without outside interference
Indicator # 7	Level of Participation in the US Political System
Indicator # 8	Degree of Autonomy in Economic Affairs
Indicator # 9	Degree of Autonomy In Cultural Affairs
Indicator # 10	Extent of ownership and control of natural resources
Indicator # 11	Control and Administration of Military Activities

List of Non-Self-Governing Territories by Region

TERRITORY	LISTED AS NSGT	ADM. POWER	LAND AREA (SQ. KM.)[1]	POPULATION
AFRICA				
Western Sahara	Since 1963		266,000	567,000
ATLANTIC AND CARIBBEAN				
Anguilla	Since 1946	United Kingdom	96	15,000
Bermuda	Since 1946	United Kingdom	53.35	65,391
British Virgin Islands	Since 1946	United Kingdom	153	28,200
Cayman Islands	Since 1946	United Kingdom	264	63,415
Falkland Islands (Malvinas)[iii]	Since 1946	United Kingdom	12,173	3,200
Montserrat	Since 1946	United Kingdom	103	5,045
Saint Helena	Since 1946	United Kingdom	310	5,527
Turks and Caicos Islands	Since 1946	United Kingdom	948.2	39,788
United States Virgin Islands	Since 1946	United States	352	104,919
EUROPE				
Gibraltar	Since 1946	United Kingdom	5.8	34,003
PACIFIC				
American Samoa	Since 1946	United States	200	60,300
French Polynesia	1946-1947 & since 2013	France	3,600	275,918
Guam	Since 1946	United States	540	163,875
New Caledonia	1946-1947 & since 1986	France	18,575	268,767
Pitcairn	Since 1946	United Kingdom	35.5	48
Tokelau	Since 1946	New Zealand	12.2	1,499

(Last updated: 14 May 2019)

[i] *All data is from United Nations Secretariat 2018 Working Papers on Non-Self-Governing Territories, and for Western Sahara, from UNdata, a database by the United Nations Statistics Division of the Department of Economic and Social Affairs, United Nations.*

Source: Department Political Affairs, United Nations 2019.

TWENTY-THIRD GUAM LEGISLATURE

P.L. 23-147

(Adopted by the Twenty-Third Guam Legislature on January 5, 1997 by override of veto of Governor)

AN ACT TO CREATE THE COMMISSION ON DECOLONIZATION FOR THE IMPLEMENTATION AND EXERCISE OF CHAMORRO SELF- DETERMINATION.

BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

Section 1. Statement of Legislative Findings and Purpose. The Legislature recognizes that all the people of the territory of Guam have democratically expressed their collective will and has recognized and approved the inalienable right of the Chamorro people to self-determination. This includes the right to ultimately decide the future political status of the territory of Guam as expressed in Section 102 (a) of the draft Commonwealth Act, as approved by the people of Guam in a plebiscite held in September 1988. Consistent with this intent, the people of Guam have petitioned the United States Congress to also recognize this inalienable right on behalf of The American people. Noting that it has been almost nine (9) years since the people of Guam have transmitted the draft Commonwealth Act to the federal government and that Section 102 (a) has been significantly changed to warrant rejection of this section of the document, the Legislature, in the interest of the will of the people of Guam, desirous to end colonial discrimination and address long-standing injustice of a people does, hereby, establish the Commission on Decolonization for the Implementation and Exercise of Chamorro Self-Determination.

Section 2. Definitions.

(a) Self-Determination. Freedom of a people to determine the way in which they shall be governed and whether or not they shall be self-governed.
(b) Chamorro people of Guam. All inhabitants of Guam in 1898 and their descendants who have taken no affirmative steps to preserve or acquire foreign nationality.

Section 3. Legal and Moral Basis. The following documents provide and support the moral and legal basis for Chamorro Self-Determination: the 1898 Treaty of Peace between the United States and Spain; Chapter XI of the United Nations Charter; United States yearly reports to the United Nations on the Non Self-Governing Territory of Guam; 1950 Organic Act of Guam; UN Resolution 1541 (XV); UN Resolution 1514 (XV); Sec. 307 (a) of the United States Immigration and Nationality Act; Part I, Article 1, Paragraph(s) 1 and 3 of the International Covenant on Civil and Political Rights.

Section 4. Creation and Membership of Commission. There is established a Commission on Decolonization for the Implementation and Exercise of Chamorro Self-Determination for the people

of Guam which shall be composed of (10) members including the Chairperson. The Governor shall serve as the Chairperson of the Commission. Three (3) members of the Commission shall be appointed by the Governor, of which (2) shall be members of Chamorro rights organizations; three (3) members of the Legislature, of which one (1) shall be a member of and be selected by, the Legislature's minority, one (1) member to be the Chairperson of the Committee on Federal and Foreign Affairs, and one (1) to be appointed by the Speaker, who may appoint self; and one (1) member of the Mayors' Council shall be appointed by the Mayors' Council; one (1) member to represent the judiciary to be appointed by the Presiding Judge; and one (1) member to represent the youth of Guam to be appointed by the Speaker of the Youth Congress from among the qualified members of the Congress or he may appoint self. The Commission shall choose a vice-chairperson from among the members of the Commission. No person shall be eligible to serve as a member of the Commission unless he or she shall be a citizen of the United States qualified to vote on Guam. Members (except for the Chairman) shall serve throughout the life of the Commission and shall elect among themselves a Vice-Chairman who shall serve as Chairman in the absence of the Governor. Vacancies in the membership shall be filled in the same manner as the original appointment.

Section 5. Function. The general purpose of the Commission on Decolonization is to ascertain the desire of the Chamorro people of Guam as to their future political relationship with the United States. Once the desire of the Chamorro people of Guam is ascertained, the Commission shall transmit that desire to the President and Congress of the United States and the Secretary General of the United Nations.

Section 6. Creation of Task Forces. The Commission shall create three (3) Task Forces. Each task force shall be composed of seven (7) members, appointed by the Commission, who are advocates for the status for which they are appointed. The three task forces are: (1) Independence Task Force; (2) Free Association Task Force; and (3) Statehood Task Force.

Section 7. Function of Task Forces. The three task forces shall draw upon the resources of the Commission on Decolonization, and no later than four (4) months from the date of their appointment, after conducting an extensive study, including input from the general public, each task force shall present a position paper to the Commission on its respective political status option for Guam.

Section 8. Office and Employees of the Commission. Considering that the majority of the activities of the Commission on Self-Determination have been fulfilled, the office and employees of the Commission on Self- Determination shall also serve as the office and employees of the Commission on Decolonization.

Section 9. Public Information Program. The Commission, in conjunction with the Commission's task forces shall conduct an extensive public education program, throughout the island, based on the

position papers submitted by each task force.

Section 10. Plebiscite Date and Voting Ballot. At the next Primary election, the Guam Election Commission, or any successors to it, shall conduct a political status plebiscite at which the following question shall be asked of the Chamorro people entitled to vote:

"In recognition of your right to self-determination, which of the following political status options do you favor?" (Mark ONLY ONE):

1. Independence ( )
2. Free Association ( )
3. Statehood ( )

Section 11. Run-off Plebiscite. If one political status does not receive the votes cast in the above plebiscite, a run-off plebiscite shall be held sixty (60) days from the date thereof between the two (2) political status options receiving the highest number of votes.

Section 12. General Powers of the Commission. The Commission on Decolonization shall have, and may exercise, the following general powers in carrying out the activities of the Commission:

(a) To acquire, in any lawful manner, any property real and personal, mixed, tangible or intangible - to hold, maintain, use and operate the same; and to sell, lease or otherwise dispose of the same, whenever any of the foregoing transactions are deemed necessary or appropriate to the conduct of the activities authorized by this Chapter, and on such terms as may be prescribed by the Commission.

(b) To enter and perform such contracts, cooperative agreements or other transactions with any person, firm, association, corporation or any agency and instrumentality of the government of Guam or the United States or any country, state, territory or the United Nations, or any subdivision thereof, as may be deemed necessary or appropriate to the conduct of the activities authorized on this Chapter, and on such terms as may be prescribed by the Commission.

(c) To execute all instruments necessary or appropriate in any of its functions.

(d) To appoint, without regard to the provisions of the Personnel and Compensation Laws, such officers, agents, attorneys, consultants and employees as may be necessary for the conduct of business of the Commission; to delegate to them such powers and to prescribe for them such duties as may be deemed appropriate by the Commission; to fix and pay such compensation

to them for their services as the Commission may determine, without regard to the provisions of the Personnel and Compensation Laws. In the appointment of officials and the selection of employees, agents and consultants for the Commission, no political test or qualification shall be permitted or given consideration, but all such appointments shall be given and made on the basis of merit and knowledge. The Commission shall give due consideration to residents of Guam in the selection of its officials, attorneys, agents, consultants and employees.

(e) To accept gifts or donations of services, or of property - real, personal or mixed, tangible or intangible - in aid of any of the activities authorized by this Chapter.

(f) To adopt rules and regulations governing operations of the Commission and to take such other action as may be necessary or appropriate to carry out the powers and duties herein specified or hereafter granted to or imposed upon it.

Section 13. Commission on Self-Determination. Nothing in this Act shall preclude the activities of the Commission on Self-Determination.

Section 14. Repository for Commission Documents. The Nieves Flores Memorial Library shall be the depository of all public records and materials pertaining to political status of the territory of Guam. The Commission on Decolonization and its Office shall transfer all of its official public documents upon completion of its work to such depository.

Refinement of Voter Eligibility in Guam Political Status Plebiscite Process

Public Law 23/147 5 January 1997 An Act to create the Commission on Decolonization for the Implementation and Exercise of Chamorro Self-Determination	**Section 2. Definitions** b) Chamorro people of Guam. All inhabitants of Guam in 1898 and their descendants who have taken no affirmative steps to preserve or acquire foreign nationality.
Public Law 25-106 24 March 2000 An Act relative to the creation of the Guam Decolonization Registry for native inhabitants of Guam Self-Determination.	(e) 'Native Inhabitants of Guam' shall mean those persons who became US Citizens by virtue of the authority and enactment of the 1950 Organic Act of Guam and descendants of those persons
Public Law 25-106 24 March 2000 Section 5. The title to Public Law Number 23-147 is hereby repealed and reenacted to read as follows: "An Act to create the Commission On Decolonization for the Implementation and Exercise Of Guam Self-Determination."	Section 7. Section 21102(b) of Chapter 21 of Title 1 of the Guam Code Annotated, as enacted by §2(b) of Public Law Number 23-147, is hereby repealed and reenacted to read as follows: "(b) 'Native Inhabitants of Guam' shall mean those persons who became US Citizens by virtue of the authority and enactment of the 1950 Organic Act of Guam and descendants of those persons."

United Nations General Assembly Resolution 1514 (XV)

Declaration on the Granting of Independence to Colonial Countries and Peoples

Adopted by General Assembly on 14 December 1960

The General Assembly,

Mindful of the determination proclaimed by the peoples of the world in the Charter of the United Nations to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small and to promote social progress and better standards of life in larger freedom,

Conscious of the need for the creation of conditions of stability and well-being and peaceful and friendly relations based on respect for the principles of equal rights and self-determination of all peoples, and of universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion,

Recognizing the passionate yearning for freedom in all dependent peoples and the decisive role of such peoples in the attainment of their independence,

A ware of the increasing conflicts resulting from the denial of or impediments in the way of the freedom of such peoples, which constitute a serious threat to world peace,

Considering the important role of the United Nations in assisting the movement for independence in Trust and Non-Self-Governing Territories,

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

Convinced that the continued existence of colonialism prevents the development of international economic co-operation, impedes the social, cultural and economic development of dependent peoples and militates against the United Nations ideal of universal peace,

Affirming that peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law,

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,

Welcoming the emergence in recent years of a large number of dependent territories into freedom and independence, and recognizing the increasingly powerful trends towards freedom in such territories which have not yet attained independence,

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

Solemnly proclaims the necessity of bringing to a speedy and unconditional end colonialism in all its forms and manifestations;

And to this end Declares that:

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 co-operation.

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.

3. Inadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence.

4. All armed action or repressive measures of all kinds directed against dependent peoples shall cease in order to enable them to exercise peacefully and freely their right to complete independence, and the integrity of their national territory shall be respected.

5. Immediate steps shall be taken, in Trust and Non-Self-Governing Territories or all other territories which have not yet attained independence, to transfer all powers to the peoples of those territories, without any conditions or reservations, in accordance with their freely expressed will and desire, without any distinction as to race, creed or colour, in order to enable them to enjoy complete independence and freedom.

6. Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations.

7. All States shall observe faithfully and strictly the provisions of the Charter of the United Nations, the Universal Declaration of Human Rights and the present Declaration on the basis of equality, non-interference in the internal affairs of all States, and respect for the sovereign rights of all peoples and their territorial integrity.

United Nations General Assembly Resolution 1541 (XV)

Adopted by General Assembly on 15 December 1960

[Principles which should guide Members in determining whether or not an obligation exists to transmit the information called for under Article 73 e of the Charter]

The General Assembly,

Considering the objectives set forth in Chapter XI of the Charter of the United Nations,

Bearing in mind the list of factors annexed to General Assembly resolution 742 (VIII) of 27 November 1953,

Having examined the report of the Special Committee of Six on the Transmission of Information under Article 73 e of the Charter,12 appointed under General Assembly resolution 1467 (XIV) of 12 December 1959 to study the principles which should guide Members in determining whether or not an obligation exists to transmit the information called for in Article 73 e of the Charter and to report on the results of its study to the Assembly at its fifteenth session,

1. *Expresses its appreciation* of the work of the Special Committee of Six on the Transmission of Information under Article 73 e of the Charter;

2. *Approves* the principles set out in section V, part B, of the report of the Committee, as amended and as they appear in the annex to the present resolution;

3. *Decides* that these principles should be applied in the light of the facts and the circumstances of each case to determine whether or not an obligation exists to transmit information under Article 73 e of the Charter.

(948th plenary meeting, 15 December 1960)

ANNEX TO RESOLUTION 1541(XV)

PRINCIPLES WHICH SHOULD GUIDE MEMBERS IN DETERMINING WHETHER OR NOT AN OBLIGATION EXISTS TO TRANSMIT THE INFORMATION CALLED FOR IN ARTICLE 73 E OF THE CHARTER OF THE UNITED NATIONS

Principle I

The authors of the Charter of the United Nations had in mind that Chapter XI should be applicable to territories which were then known to be of the colonial type. An obligation exists to transmit information under Article 73 e of the Charter in respect of such territories whose peoples have not yet attained a full measure of self-government.

Principle II

Chapter XI of the Charter embodies the concept of Non-Self-Governing Territories in a dynamic state of evolution and progress towards a "full measure of self-government". As soon as a territory and its peoples attain a full measure of self-government, the obligation ceases. Until this comes about, the obligation to transmit information under Article 73 e continues.

Principle III

The obligation to transmit information under Article 73 e of the Charter constitutes an international obligation and should be carried out with due regard to the fulfilment of international law.

Principle IV

Prima facie there is an obligation to transmit information in respect of a territory which is geographically separate and is distinct ethnically and/or culturally from the country administering it.

Principle V

Once it has been established that such a prima facie case of geographical and ethnical or cultural distinctness of a territory exists, other elements may then be brought into consideration. These additional elements may be, inter alia, of an administrative, political, juridical, economic or historical nature. If they affect the relationship between the metropolitan Slate and the territory concerned in a manner which arbitrarily places the latter in a position or status of subordination, they support the presumption that there is an obligation to transmit information under Article 73 e of the Charter.

Principle VI

A Non-Self-Governing Territory can be said to have reached a full measure of self-government by:

(a) Emergence as a sovereign independent State;

(b) Free association with an independent State; or

(c) Integration with an independent State.

Principle VII

(a) Free association should be the result of a free and voluntary choice by the peoples of the territory concerned expressed through informed and democratic processes. It should be one which respects the individuality and the cultural characteristics of the territory and its peoples, and retains for the peoples of the territory which is associated with an independent State the freedom to modify the status of that territory through the expression of their will by democratic means and through constitutional processes.

(b) The associated territory should have the right to determine its internal constitution without outside interference, in accordance with due constitutional processes and the freely expressed wishes of the people. This does not preclude consultations as appropriate or necessary under the terms of the free association agreed upon.

Principle VIII

Integration with an independent State should be on the basis of complete equality between the peoples of the erstwhile Non-Self-Governing Territory and those of the independent country with which it is integrated. The peoples of both territories should have equal status and rights of citizenship and equal guarantees of fundamental rights and freedoms without any distinction or discrimination; both should have equal rights and opportunities for representation and effective participation at all levels in the executive, legislative and judicial organs of government.

Principle IX

Integration should have come about in the following circumstances :

(a) The integrating territory should have attained an advanced stage of self-government with free political institutions, so that its peoples would have the capacity to make a responsible choice through informed and democratic processes;

(b) The integration should be the result of the freely expressed wishes of the territory's peoples acting with full knowledge of the change in their status, their wishes having been expressed through informed and democratic processes, impartially conducted and based on universal adult suffrage. The United Nations could, when it deems it necessary, supervise these processes.

Principle X

The transmission of information in respect of Non-Self-Governing Territories under Article 73 e of the Charter is subject to such limitation as security and constitutional considerations may require. This means that the extent of the information may be limited in certain circumstances, but the limitation in Article 73 e cannot relieve a Member State of the obligations of Chapter XI. The "limitation" can relate

only to the quantum of information of economic, social and educational nature to be transmitted.

Principle XI

The only constitutional considerations to which Article 73 e of the Charter refers are those arising from constitutional relations of the territory with the Administering Member. They refer to a situation in which the constitution of the territory gives it self-government in economic, social and educational matters through freely elected institutions. Nevertheless, the responsibility for transmitting information under Article 73 e continues, unless these constitutional relations preclude the Government or parliament of the Administering Member from receiving statistical and other information of a technical nature relating to economic, social and educational conditions in the territory.

Principle XII

Security considerations have not been invoked in the past. Only in very exceptional circumstances can information on economic, social and educational conditions have any security aspect. In other circumstances, therefore, there should be no necessity to limit the transmission of Information on security grounds.

The United States Constitution

'Territory or Other Property' Clause
Article IV

Section 3.

New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

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; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State (emphasis added).

UN Resolutions on the Universal Realization of the Right of Peoples to Self-determination 1991-2019

YEAR	RESOLUTION	VOTING
1991*	RES/46/88 of 16 Dec. 1991	Adopted without a vote
1992*	RES 47/83 of 16 Dec.1992	Adopted without a vote
1993*	RES 48/93 of 20 Dec. 1993	Adopted without a vote
1994*	RES 49/148 of 23 Dec. 1994	Adopted without a vote
1995*	RES 50/139 of 21 Dec. 1995	146 yes, 4 no, abstentions 3
1996*	RES 51/84 OF 12 Dec. 1996	Adopted without a vote
1997*	RES 52/113 of 12 Dec. 1997	Adopted without a vote
1998*	RES 53/134 of 9 Dec. 1998	Adopted without a vote
1999*	RES 54/155 of 17 Dec. 1999	Adopted without a vote
2000*	RES 55/85 of 4 Dec. 2000	Adopted without a vote
2001*	RES 56/141 of 19 Dec. 2001	Adopted without a vote
2002*	RES 57/197 of 18 Dec. 2002	Adopted without a vote
2003*	RES 58/161 of 22 Dec. 2003	Adopted without a vote
2004*	RES 59/180 of 20 Dec. 2004	Adopted without a vote
2005*	RES 60/145 of 16 Dec. 2005	Adopted without a vote
2006*	RES 61/150 of 19 Dec. 2006	Adopted without a vote
2007*	RES 62/144 of 18 Dec. 2007	Adopted without a vote
2008*	RES 63/163 of 18 Dec. 2008	Adopted without a vote
2009*	RES 64/ 149 of 18 Dec. 2009	Adopted without a vote
2010*	RES 65/201 f 21 Dec. 2010	146 yes, 4 no, abstentions 3
2011*	RES 66/145 of 19 Dec. 2011	Adopted without a vote
2012*	RES 67/157 of 20 Dec. 2012	Adopted without a vote
2013*	RES 68/ 153 of 18 Dec. 2013	Adopted without a vote
2014*	RES 69/164 of 18 Dec. 2014	Adopted without a vote
2015*	RES 70/143 of 17 Dec. 2015	Adopted without a vote
2016*	RES 71/183 of 19 Dec. 2016	Adopted without a vote
2017*	RES 72/159 of 19 Dec. 2017	93 yes, 8 no, 65 abstentions
2018*	RES 73/160 of 17 Dec. 2018	Adopted without a vote
2019*	RES 74/149 of 18 Dec. 201	Adopted without a vote

Source: The Dependency Studies Project 2019.

Seventy-fifth session
Agenda item 61
Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

Resolution adopted by the General Assembly on 10 December 2020

[on the report of the Special Political and Decolonization Committee (Fourth Committee) (A/75/420, para. 27)]

75/113. Question of Guam

The General Assembly,

Having considered the question of Guam and examined the report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples for 2020,[1]

Taking note of the working paper prepared by the Secretariat on Guam,[2] which contained the information requested by the General Assembly in resolution 74/104 of 13 December 2019, and other relevant information,

Recognizing that all available options for self-determination of the Territory are valid as long as they are in accordance with the freely expressed wishes of the people of Guam and in conformity with the clearly defined principles contained in General Assembly resolutions 1514 (XV) of 14 December 1960, 1541 (XV) of 15 December 1960 and other resolutions of the Assembly,

Expressing concern that 60 years after the adoption of the Declaration on the Granting of Independence to Colonial Countries and Peoples,[3] there still remain 17 Non-Self-Governing Territories, including Guam,

Conscious of the importance of continuing the effective implementation of the Declaration, taking into account the target set by the United Nations

1 *Official Records of the General Assembly, Seventy-fifth Session, Supplement No. 23* (A/75/23).

2 A/AC.109/2020/9.

3 Resolution 1514 (XV).

to eradicate colonialism by 2020 and the plans of action for the Second[4] and Third International Decades for the Eradication of Colonialism,

Recognizing that the specific characteristics and the aspirations of the people of Guam require flexible, practical and innovative approaches to the options for self-determination, without any prejudice to territorial size, geographical location, size of population or natural resources,

Convinced that the wishes and aspirations of the people of the Territory should continue to guide the development of their future political status and that referendums, free and fair elections and other forms of popular consultation play an important role in ascertaining the wishes and aspirations of the people,

Concerned by the use and exploitation of the natural resources of the Non-Self-Governing Territories by the administering Powers for their benefit, by the use of the Territories as international financial centres to the detriment of the world economy and by the consequences of any economic activities of the administering Powers that are contrary to the interests of the people of the Territories, as well as to resolution 1514 (XV),

Convinced that any negotiations to determine the status of the Territory must take place with the active involvement and participation of the people of the Territory, under the auspices of the United Nations, on a case-by-case basis, and that the views of the people of Guam in respect of their right to self-determination should be ascertained,

Noting the continued cooperation of the Non-Self-Governing Territories at the local and regional levels, including participation in the work of regional organizations,

Mindful that, in order for the Special Committee to enhance its understanding of the political status of the people of Guam and to fulfil its mandate effectively, it is important for it to be apprised by the United States of America as the administering Power and to receive information from other appropriate sources, including the representatives of the Territory, concerning the wishes and aspirations of the people of the Territory,

Aware of the importance both to Guam and to the Special Committee of the participation of elected and appointed representatives of Guam in the work of the Committee,

Recognizing the need for the Special Committee to ensure that the appropriate bodies of the United Nations actively pursue a public awareness

4 A/56/61, annex.

campaign aimed at assisting the people of Guam with their inalienable right to self-determination and in gaining a better understanding of the options for self-determination, on a case-by-case basis,

Mindful, in that connection, that the holding of regional seminars in the Caribbean and Pacific regions and at Headquarters, with the active participation of representatives of the Non-Self-Governing Territories, provides a helpful means for the Special Committee to fulfil its mandate and that the regional nature of the seminars, which alternate between the Caribbean and the Pacific, is a crucial element in the context of a United Nations programme for ascertaining the political status of the Territories,

Recalling the Caribbean regional seminar on the theme "Implementation of the Third International Decade for the Eradication of Colonialism: accelerating decolonization through renewed commitment and pragmatic measures", held by the Special Committee in Grand Anse, Grenada, and hosted by the Government of Grenada from 2 to 4 May 2019, as a significant and forward-looking event, which enabled the participants to assess progress made and address challenges faced in the decolonization process, review the existing working methods of the Committee and renew its commitment to implementing its historic task,

Recalling also the importance of the conclusions and recommendations adopted by the seminar, which are annexed to the report of the Special Committee[5] and which outline the findings of the seminar, including, especially, the way forward for the decolonization process within the context of the proclamation by the General Assembly of the period 2011–2020 as the Third International Decade for the Eradication of Colonialism,[6]

Noting with appreciation the contribution to the development of some Territories by the specialized agencies and other organizations of the United Nations system, in particular the Economic Commission for Latin America and the Caribbean, the Economic and Social Commission for Asia and the Pacific, the United Nations Development Programme and the World Food Programme, as well as regional institutions such as the Caribbean Development Bank, the Caribbean Community, the Organisation of Eastern Caribbean States, the Pacific Islands Forum and the agencies of the Council of Regional Organizations in the Pacific,

Noting with concern that a plebiscite on self-determination has been brought

5 *Official Records of the General Assembly, Seventy-fourth Session, Supplement No. 23* (A/74/23).

6 See resolution 65/119.

to a halt, which followed the ruling[7] of a federal court in the United States, the administering Power, holding that the plebiscite could not be limited to native inhabitants,

Recalling, in this regard, the statement made by a representative of the Governor of Guam at the 2019 Caribbean regional seminar concerning the implications of the judicial case in the light of the nature and essence of the Charter of the United Nations and resolution 1514 (XV),[8]

Cognizant of the efforts made by the Guam Commission on Decolonization for the Implementation and Exercise of CHamoru Self-Determination to promote in the Territory the holding of a plebiscite on self-determination and to advance its education campaign on each of the three political status options, and recalling that more than 11,000 native inhabitants have been registered in the Guam decolonization registry to vote in the plebiscite,

Recalling that the administering Power approved a grant to support the self-determination education campaign in the Territory in March 2016,

Recalling also that, in a referendum held in 1987, the registered and eligible voters of Guam endorsed a draft Guam Commonwealth Act that would establish a new framework for relations between the Territory and the administering Power, providing for a greater measure of internal self-government for Guam and recognition of the right of the CHamoru people of Guam to self-determination for the Territory,

Aware that negotiations between the administering Power and the territorial Government on the draft Guam Commonwealth Act ended in 1997 and that Guam has subsequently established a non-binding plebiscite process for a self-determination vote by the eligible CHamoru voters,

Cognizant of the importance of the administering Power implementing its programme of transferring surplus federal land to the Government of Guam,

Noting a call for reform in the programme of the administering Power with respect to the thorough, unconditional and expeditious transfer of land property to the people of Guam,

Aware that the federal lawsuit by the administering Power over the CHamoru Land Trust programme was filed in September 2017, and noting the ruling[9] issued on 21 December 2018,

Recalling the expressed desire of the territorial Government for a visiting

7 District Court of Guam, *Davis v. Guam* et al., decision of 8 March 2017, upheld by the United States Court of Appeals for the Ninth Circuit on 29 July 2019.

8 Available at www.un.org/dppa/decolonization/en/c24/regional-seminars/2019.

9 District Court of Guam, *United States v. Guam et al.*, decision of 21 December 2018.

mission by the Special Committee, as extended during the 2019 session of the Special Committee,

Aware of the existing concerns of the Territory regarding the potential social, cultural, economic and environmental impacts of the planned transfer of additional military personnel of the administering Power to the Territory,

Recalling the concerns expressed by the Territory on this subject before the Special Political and Decolonization Committee (Fourth Committee) at the seventy-second session of the General Assembly,

Recalling also the statement made by the Speaker of the thirty-third Guam legislature before the Fourth Committee at the seventieth session of the General Assembly that the most acute threat to the legitimate exercise of the decolonization of Guam was the incessant militarization of the island by its administering Power, and noting the concern expressed regarding the effect of the escalating military activities and installations of the administering Power on Guam,

Recalling further its resolution 57/140 of 11 December 2002, in which it reiterated that military activities and arrangements by administering Powers in the Non-Self-Governing Territories under their administration should not run counter to the rights and interests of the peoples of the Territories concerned, especially their right to self-determination, including independence, and called upon the administering Powers concerned to terminate such activities and to eliminate the remaining military bases in compliance with the relevant resolutions of the General Assembly,

Recalling its resolution 35/118 of 11 December 1980 and the territorial Government's concern that immigration into Guam has resulted in the indigenous CHamorus becoming a minority in their homeland,

Stressing the importance of regional ties for the development of a small island Territory,

Recalling the elections in the Territory that were held in November 2018,[10]

Recalling also its resolutions 74/270 of 2 April 2020, entitled "Global solidarity to fight the coronavirus disease 2019 (COVID-19)", and 74/274 of 20 April 2020, entitled "International cooperation to ensure global access to medicines, vaccines and medical equipment to face COVID-19",

1. *Reaffirms* the inalienable right of the people of Guam to self-determination, in conformity with the Charter of the United Nations and with General Assembly resolution 1514 (XV), containing the Declaration on the

10 See A/AC.109/2019/9, paras. 2–4.

Granting of Independence to Colonial Countries and Peoples;

2. *Also reaffirms* that, in the process of decolonization of Guam, there is no alternative to the principle of self-determination, which is also a fundamental human right, as recognized under the relevant human rights conventions;

3. *Further reaffirms* that it is ultimately for the people of Guam to determine freely their future political status in accordance with the relevant provisions of the Charter, the Declaration and the relevant resolutions of the General Assembly, and in that connection calls upon the administering Power, in cooperation with the territorial Government and appropriate bodies of the United Nations system, to develop political education programmes for the Territory in order to foster an awareness among the people of their right to self-determination in conformity with the legitimate political status options, based on the principles clearly defined in Assembly resolution 1541 (XV) and other relevant resolutions and decisions;

4. *Welcomes* the ongoing work of the Guam Commission on Decolonization for the Implementation and Exercise of CHamoru Self-Determination on a self-determination vote, as well as its public education efforts;

5. *Stresses* that the decolonization process in Guam should be compatible with the Charter, the Declaration on the Granting of Independence to Colonial Countries and Peoples and the Universal Declaration of Human Rights;[11]

6. *Calls once again upon* the administering Power to take into consideration the expressed will of the CHamoru people as supported by Guam voters in the referendum of 1987 and as subsequently provided for in Guam law regarding CHamoru self-determination efforts, encourages the administering Power and the territorial Government to enter into negotiations on the matter, and stresses the need for continued close monitoring of the overall situation in the Territory;

7. *Requests* the administering Power, in cooperation with the territorial Government, to continue to transfer land to the original landowners of the Territory, to continue to recognize and to respect the political rights and the cultural and ethnic identity of the CHamoru people of Guam and to take all measures necessary to address the concerns of the territorial Government with regard to the question of immigration;

11 Resolution 217 A (III).

8. *Also requests* the administering Power to assist the Territory by facilitating its work concerning public educational outreach efforts, consistent with Article 73 b of the Charter, in that regard calls upon the relevant United Nations organizations to provide assistance to the Territory, if requested, and welcomes the recent outreach work by the territorial Government;

9. *Further requests* the administering Power to cooperate in establishing programmes for the sustainable development of the economic activities and enterprises of the Territory, noting the special role of the CHamoru people in the development of Guam;

10. *Stresses* the importance of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples being apprised of the views and wishes of the people of Guam and enhancing its understanding of their conditions, including the nature and scope of the existing political and constitutional arrangements between Guam and the administering Power;

11. *Calls upon* the administering Power to participate in and cooperate fully with the work of the Special Committee in order to implement the provisions of Article 73 e of the Charter and the Declaration and in order to advise the Committee on the implementation of the provisions under Article 73 b of the Charter on efforts to promote self-government in Guam, and encourages the administering Power to facilitate visiting and special missions to the Territory;

12. *Also calls upon* the administering Power to facilitate a visiting mission to the Territory, and requests the Chair of the Special Committee to take all the steps necessary to that end;

13. *Reaffirms* the responsibility of the administering Power under the Charter to promote the economic and social development and to preserve the cultural identity of the Territory, and requests the administering Power to take steps to enlist and make effective use of all possible assistance, on both a bilateral and a multilateral basis, in the strengthening of the economy of the Territory;

14. *Takes into account* the 2030 Agenda for Sustainable Development,[12] including the Sustainable Development Goals, stresses the importance of fostering the economic and social sustainable development of the Territory by promoting sustained, inclusive and equitable economic growth, creating greater opportunities for all, reducing inequalities, raising basic standards of

12 Resolution 70/1.

living, fostering equitable social development and inclusion and promoting the integrated and sustainable management of natural resources and ecosystems that supports, inter alia, economic, social and human development, while facilitating ecosystem conservation, regeneration, restoration and resilience in the face of new and emerging challenges, and strongly urges the administering Power to refrain from undertaking any kind of illicit, harmful and unproductive activities, including the use of the Territory as an international financial centre, that are not aligned with the interest of the people of the Territory;

15. *Requests* the Territory and the administering Power to take all measures necessary to protect and conserve the environment of the Territory against any degradation and the impact of militarization on the environment, and once again requests the specialized agencies concerned to monitor environmental conditions in the Territory and to provide assistance to the Territory, consistent with their prevailing rules of procedure;

16. *Requests* the Secretary-General to continue to report on the environmental impact of the military activities of the administering Power in the Territory, as relevant information becomes available;

17. *Requests* the Special Committee to continue to examine the question of Guam and to report thereon to the General Assembly at its seventy-sixth session and on the implementation of the present resolution.

41st plenary meeting
10 December 2020

Selected Currencies of Pacific Dependencies

Am. Samoa	US
Guahan/Guam	US
N. Marianas	US
Tokelau	NZ
Cook Islands	NZ
Niue	NZ
Rapa Nui (Easter Island)	Chile
Kanaky (New Caledonia)	France
Maohi Nui (Fr. Polynesia)	France
Pitcairn	UK

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CALCULATION OF OVERSIGHT FEES

§ 187.53 Calculation of overflight fees.

(a) The FAA assesses a total fee that is the sum of the Enroute and Oceanic calculated fees.

(1) Enroute fee. The Enroute fee is calculated by multiplying the Enroute rate in paragraph (c) of this section by the total number of nautical miles flown through each segment of Enroute airspace divided by 100 (because the Enroute rate is expressed per 100 nautical miles).

(2) Oceanic fee. The Oceanic fee is calculated by multiplying the Oceanic rate in paragraph (c) of this section by the total number of nautical miles flown through each segment of Oceanic airspace divided by 100 (because the Oceanic rate is expressed per 100 nautical miles).

(b) Distance flown through each segment of Enroute or Oceanic airspace is based on the great circle distance (GCD) from the point of entry into US-controlled airspace to the point of exit from US-controlled airspace based on FAA flight data. Where actual entry and exit points are not available, the FAA will use the best available flight data to calculate the entry and exit points.

(c) The rate for each 100 nautical miles flown through Enroute or Oceanic airspace is:

TIME PERIOD	ENROUTE RATE	OCEANIC RATE
January 1, 2017 to January 1, 2018	58.45	23.15
January 1,2018 to January 1, 2019	60.07	24.77
January 1, 2019 and Beyond	61.75	26.51

(d) The formula for the total overflight fee is:

Rij = E*DEij/100 + O*DOij/100

Where:

Rij = the total fee charged to aircraft flying between entry point i and exit point j.

DEij = total distance flown through each segment of Enroute airspace between entry point i and exit point j.

DOij = total distance flown through each segment of Oceanic airspace between entry point i and exit point j.

E and O = the Enroute and Oceanic rates, respectively, set forth in paragraph (c) of this section.

(e) The FAA will review the rates described in this section at least once every 2 years and will adjust them to reflect the current costs and volume of the services provided.

[Docket FAA-2015-3597, Amdt. 187-36, 81 FR 85853, Nov. 29, 2016]

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U.S Government-Imposed Taxes on Air Transportation

Special (Commercial/General) Aviation Taxes	1972	1992	2020
AIRPORT & AIRWAY TRUST FUND (FAA)			
Passenger Ticket Tax **1a/** (domestic)	8.00%	10.00%	7.50%
Flight Segment Tax **1a/** (domestic)	–	–	$4.30
Frequent Flyer Tax **2/**	–	–	7.50%
International Departure Tax **3/**	$3.00	$6.00	$18.90
International Arrival Tax **3/**	–	–	$18.90
Cargo Waybill Tax **1b/** (domestic)	5.00%	6.25%	6.25%
Commercial Jet Fuel Tax (domestic flights not continuing ex-USA)	–	–	4.3¢
Noncommercial Jet Fuel Tax (domestic) – n/a to airline ops	7.0¢	17.5¢	21.8¢
Noncommercial AvGas Tax (domestic) – n/a to airline ops	7.0¢	15.0¢	19.3¢
Liquid Fuel used in a Fractional-Ownership Flight – n/a to airlines	–	–	14.1¢
ENVIRONMENTAL PROTECTION AGENCY (EPA)			
LUST Fuel Tax **4/** (domestic)	–	0.1¢	0.1¢
LOCAL AIRPORT PROJECTS			
Passenger Facility Charge	–	Up to $3.00	Up to $4.50
DEPARTMENT OF HOMELAND SECURITY (DHS)			
September 11th Fee **5/**	–	–	$5.60
APHIS Passenger Fee **6/**	–	$2.00	$3.96
APHIS Aircraft Fee **6/**	–	$76.75	$225.00
Customs User Fee **7/**	–	$5.00	$5.89
Immigration User Fee **8/**	–	$5.00	$7.00

U.S Government-Imposed Taxes on Air Transportation Notes

1. (a) Applies only to domestic transport or to journeys to Canada or Mexico within 225 miles of the US border; (b) Applies only to flights within the 50 states. Both a and b are prorated on journeys between the mainland United States and Alaska/Hawaii

2. Applies to the sale, to third parties, of the right to award frequent flyer miles

3. Does not apply to those transiting the United States between two foreign points; $9.50 on flights between the mainland United States and Alaska/Hawaii

4. Congress created the Leaking Underground Storage Tank (LUST) Trust Fund in 1986 to 1) provide money for overseeing and enforcing corrective action taken by a responsible party, who is the owner or operator of the leaking UST and 2) provide money for cleanups at UST sites where the owner or operator is unknown, unwilling, or unable to respond, or which require emergency action

5. Funds TSA at $5.60 per one-way up to $11.20 per round trip (was $2.50 per enplanement up to $5.00 per one-way trip from 2/1/02 through 7/20/14); suspended 6/1/03-9/30/03

6. Since 5/13/91 (passenger fee) and 2/9/92 (aircraft fee), funds agricultural quarantine and inspection services conducted by CBP per 7 CFR 354; APHIS continues to perform certain Agricultural Quarantine Inspection-related functions that are funded by user fee collections

7. Since 7/7/86, funds inspections by US Customs and Border Protection ; passengers arriving from US territories and possessions are exempt; also see CBP cargo security site

8. Since 12/1/86, the majority of the collections fund inspections by US Customs and Border Protection and a smaller portion of the collections fund certain activities performed by US Immigration and Customs Enforcement that are related to air and sea passenger inspections

Associate Membership

Economic and Social Commission for Asia and the Pacific (ESCAP)

ASSOCIATE MEMBER	DATE OF ADMISSION	COMMISSION
American Samoa	28 July 1991	ESCAP
Cook Islands	11 July 1972	ESCAP
French Polynesia	31 July 1992	ESCAP
Guam	**24 July 1981**	**ESCAP**
Hong Kong, China	25 No. 1947	ESCAP
Macao, China	26 July 1991	ESCAP
New Caledonia	31 July 1992	ESCAP
Niue	3 August 1979	ESCAP
Northern Mariana Islands	22 July 1986	ESCAP

Source: UN Economic and social Commission for Asia and the Pacific (ESCAP) 2019

Associate Membership Category for UNESCO – 2019

SPECIALIZED AGENCY	TERRITORIAL MEMBERSHIP PROVISION
UN Educational, Scientific and Cultural Organization (UNESCO) UNESCO is the United Nations Educational, Scientific and Cultural Organization. It seeks to build peace through international cooperation in Education, the Sciences and Culture. UNESCO's programmes contribute to the achievement of the Sustainable Development Goals defined in Agenda 2030, adopted by the UN General Assembly in 2015	**Rules of Procedure** **Rule 96: States not Members of the United Nations and territories or groups of territories** [Const. II.3]2. Application for Associate Membership by territories or groups of territories not responsible for their international relations may be made on their behalf by the Member State or other authority having responsibility for their international relations. The application shall be accompanied by a statement from the Member State or other authority concerned that it accepts responsibility on behalf of the territory or territories concerned for the discharge of the obligations contained in the Constitution and of the financial contributions assessed by the General Conference as payable by the territory or territories concerned. **Current Associate Members** • Anguilla (5 November 2013) • Aruba (20 October 1987) • British Virgin Islands (24 November 1983) • Cayman Islands (30 October 1999) • Curaçao (25 October 2011)[m] • Faroes (12 October 2009) • Macao (25 October 1995)[n] • Montserrat (3 November 2015) • New Caledonia (30 October 2017) • Sint Maarten (25 October 2011)[m] • Tokelau (15 October 2001)

Resolutions of the Economic and Social Council (ECOSOC) and the UN General Assembly on assistance to Non-Self-Governing Territories (NSGTs) by the specialized agencies and international institutions associated with the United Nations (2008-2019)

ECOSOC RESOLUTION	GENERAL ASSEMBLY RESOLUTION
ECOSOC Resolution 2008/15	UNGA Resolution 63/103 (2008)
ECOSOC Resolution 2009/33	UNGA Resolution 64/99 (2009)
ECOSOC Resolution 2010/30	UNGA Resolution 65/110 (2010)
ECOSOC Resolution 2011/40	UNGA Resolution 66/84 (2011)
ECOSOC Resolution 2012/22	UNGA Resolution 67/127 (2012)
ECOSOC Resolution 2013/43	UNGA Resolution 68/89 (2013)
ECOSOC Resolution 2014/25	UNGA Resolution 69/99 (2014)
ECOSOC Resolution 2015/16	UNGA Resolution 70/102 (2015)
ECOSOC Resolution 2016/20	UNGA Resolution 71/104 (2016)
ECOSOC Resolution 2017/31	UNGA Resolution 72/93 (2017)
ECOSOC Resolution 2018/18	UNGA Resolution 73/105 (2018)
ECOSOC Resolution 2019/27	UNGA Resolution 74/95 (2019)

Source: Official Records, UN General Assembly, and Economic and Social Council.

Guam-Eligible UN World Conferences and Special Sessions (1992-2005)

- UN Conference on Environment and Development (1992)
- Global Conference on the Sustainable Development of Small Island Developing States (1994)
- International /Conference on Population and Development (1994)
- World Conference on Natural Disaster Reduction (1994)
- Fourth World Conference on Women (1995)
- World Summit on Social Development (1995)
- Second World Conference on Human Settlements (1996)
- Special Session of the UN General Assembly on Population and Development (1999)
- Special Session of the UN General Assembly on Small Island States (1999)
- World Summit for Social Development (2000)
- Special Session of the UN General Assembly on Human Settlements (2001)
- World Conference Against Racism (2001)
- International Conference on Financing for Development (2002)
- Second World Assembly on Ageing (2002)
- World Summit for Sustainable Development (2002)
- World Summit on the Information Society (2003)
- International Meeting on the Sustainable Development of Small Island States (2005)

Source: Dependency Studies Project (Archives)

Mandates of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; the Special Rapporteur on the rights of indigenous peoples; and the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes REFERENCE: AL USA 7/2021 29 January 2021

PART II

The Political Statuses of Statehood, Free Association, and Independence

KENNETH GOFIGAN KUPER, PH.D.
JOSEPH BRADLEY

Giha Mo'na | A Self-Determination Study for Guåhan

PART II
The Political Statuses of Statehood, Free Association, and Independence

COUNTRY: GUAM/GUÅHAN

Kenneth Gofigan Kuper, Ph.D.
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Statehood for Guam Task Force
Free Association for Guam Task Force
Independence for Guam Task Force

And to all the staff who helped in the preparation of information and coordination of interviews for this part of the study.

Note to Reader

If one were to take a rudimentary glance at the page count of this study, one would see that it is quite lengthy. This may initially deter one from reading the document. This does not have to be the case. ***It does not necessarily have to be read from cover-to-cover.*** If one decides they would like to read this study cover-to-cover, this is definitely welcomed. Yet, this is not required to benefit from this work. One can flip from topic to topic based on their preference and curiosity. However, we highly advise that the **preface** and **introduction** be fully read before exploring the various analyses in the study. Also, it should be noted that other sections may have information that relate to a particular topic, thus perusing other subsections relating to the topic of interest is beneficial. In the introduction, we provide preliminary information on Guam's political status, Guam's role in geopolitics, and a description of the three political statuses: statehood, free association, and independence. Reading through this will help one understand the overall subtopic analyses. Finally, this serves as Part II of a larger Self-Governance Study project. Part I of this study was conducted by Dr. Carlyle Corbin and goes into more detail on Guam's status as an organized, unincorporated territory.

Contents

PREFACE

Giha Mo'na was funded by a grant aimed at political status education, given to the Commission on Decolonization by the US Department of Interior. The authors of this part of the study were contracted by the Research Corporation of the University of Guam to "develop three political status models (Statehood, Free Association, and Independence) following seven academic studies derived from the self-governance assessment for Guam" at the request of the Commission on Decolonization board. The main content areas identified for this study were governance, social impacts, environmental sustainability, economic impacts, land, defense, and external affairs. We primarily focused on the subsections we were contracted to write, with a few changes made regarding the combination of certain subsections as well as moving some subsections to other content areas if they fit more organically with other areas. **That being said, there will undoubtedly be topics we did not cover that others may wish were included.** Not every pertinent topic related to political status and self-governance was included due to the scope of work and time limitations for completion of the study. We stuck to the parameters of the contract, and thus acknowledge the potential absence of certain topics for analysis. We hope this study can be used as a basis for future research endeavors related to self-governance and political status. Furthermore, Part I of this study, conducted by Dr. Carlyle Corbin, provides a detailed discussion of Guam's current status and degree of self-governance. Part II should thus be read as a complement to Part I.

What to Expect

In this part of the study, we examine the political statuses of statehood, free association, and independence, in accordance with Guam law and the options outlined in General Assembly Resolution 1541 of the United Nations. It is important to make clear to the reader that this study does NOT purport to know or predict the exact parameters of the future under each political status. This is not something any academic study can accomplish, and it would be impossible and irresponsible for us to argue that this study predicts or can confidently project the exact future of political status for Guam. This study does not feign to "know" the future, but rather explores how and why the future may be different than the present in the context of statehood, free association, or independence for Guam. As noted by futurist Richard A. K. Lum, "foresight is insight into how the future could be different from today; it is not about the ability to see the future before it happens."[1] Reinforcing this, futurist James Dator writes,

> What responsible futurists do is not try to "predict" "the future" but to "forecast" "alternative futures" for study and evaluation, and then to help individuals, corporations, governments, and other groups to envision and to move towards their preferred futures - the best, possible, "real" world they can imagine - and to do so on a continuing basis, constantly re-envisioning as new information, technologies, challenges, and opportunities, and the desires, hopes and fears of new people, emerge.[2]

In a similar vein, this is our attempt at helping the Commission on Decolonization help eligible voters make an informed choice in the event of a political status plebiscite.

This study serves as an aid for the Commission on Decolonization, established by the 24th Guam Legislature in 1997, in its scope of work to "educate the people of Guam of the various political status options available, should Guam be allowed to pursue a change in its political status and relationship to the United States."[3] In this study, we aim to show the contours of possible futures available to Guam under these various political statuses as a result of the nature of these respective statuses.

This study explains what these three political statuses could bring to the island; however, it is not intended to be an advocacy paper. It is meant to assist the Commission on Decolonization in future educational efforts on the issue, and is not to be read as a compilation of recommendations. This document does not engage in advocacy for statehood, free association, or independence. This choice will ultimately be left to the eligible voters in a political status plebiscite, and **it is not the scope of this study to advocate for any of the statuses over the other.**

Lastly, this study is not an exhaustive blueprint for every sub-topic. This would be an

1 Richard A. K. Lum, *4 Steps to the Future: A Quick and Clean Guide to Creating Foresight* (Honolulu: Futurescribe, 2016), 1.

2 James Dator, "Futures Studies," in William Sims Bainbridge, ed. *Leadership in Science and Technology*, (Thousand Oaks, California: Sage Reference Series, 2011), pg.32.

3 Dominica Tolentino, "Commission on Decolonization," *Guampedia*, accessed at https://www.guampedia.com/commission-on-decolonization/.

impossible task due to the parameters of the contract and time allotted for completion. **Each subsection of the study can encompass an entire study in itself.** We do not craft every detail of the implementation of various futures, as this would be nearly impossible. We also are unable to include every single analysis or piece of information that various stakeholders may prioritize as being most important within the subsections. We provide contours. Also, focusing on one aspect of a sub-topic leads to a multitude of questions. This study does not profess to answer every question but provides some answers AND a platform to ask further questions that would require more detailed focus.

The work of political status education is an ongoing process, and we hope this study contributes to that work. Additionally, in this study we make very few suggestions regarding what Guam should do in the case of statehood, free association, or independence. The few places where we do make suggestions are related to issues such as the observance of human rights, just treatment of the indigenous CHamoru people, and a democratic form of government. For other issues, such as what type of educational system, healthcare system, treaties, or defense arrangements Guam should have in the case of free association or independence, we do not profess to know what is best for the island. It would be unethical for us to purport to know the best path forward. **Our goal is to make various paths forward visible to the reader.** We hope this study is a light illuminating the plausible and possible futures ahead. It is up to the reader and the people of Guam to collectively decide what the best path forward is.

Each section and subsection includes separate analyses for statehood, independence, and free association. These analyses are meant to answer the main question: "What are the parameters of plausible and possible futures under this particular political status?" Most subsections include some introductory text to help guide the reader through the different political status analyses. Then, the different political status analyses are provided for statehood, independence, and free association. The study, in some sections, also includes examples from other countries or US states to help glean possible lessons Guam can learn.

How To Read Status Examples

It is important to note that each of the status examples has differences from Guam and different historical trajectories, thus the examples are not comparative models and should not be interpreted as such. None of the status examples are meant to act as templates for how Guam would be, or as perfect examples for Guam to model. To put it another way, just because "it happened there" does not mean that "it will happen that way" here. In most cases, they serve merely to show what we may want to consider in a certain sub-section but not as a country model overall. Rather, Guam has the advantage of being able to learn from many places in the world that have decolonized/reformed/reimagined/or rebuilt their governments, and the status examples are meant to assist in beginning this endeavor. Lastly, the models are only used in certain cases to emphasize a particular point or illustrate a possibility. Thus, status examples do not appear for every status in every subsection.

Final Thoughts

This document is a resource to help guide the path of decolonization forward, whether it be statehood, free association, or independence. There are some in the community who may argue that this venture is a waste of time. They may say that looking at the futures available under decolonization takes away from the issues right before us. In an illuminating interview with Tyrone Taitano, Director of the Guam Bureau of Statistics and Plans, on comprehensive social and economic planning, he remarked that, "Sometimes you have to invest resources not just in the needs of today, but in the needs of the future."[4] What we hope is realized when reading this study is that the issues of today are often connected to political status. We hope to help people realize that investing time, effort, and resources toward decolonization helps to plan for a better livelihood for future generations. We must handle the issues of the present, but not argue that every attempt to plan for the future detracts from the present. To do so would be to invite an unwanted cycle of problems and cause the atrophy of better futures. To put it another way:

"Colonialism is not just an attack on our past, it is a consistent attack on our futures."

4 Personal Communication with Tyrone Taitano, January 2020.

INTRODUCTION

Guam, known as Guåhan, in the indigenous CHamoru language, **is currently an organized, unincorporated territory of the United States** and is a non-self-governing territory under international law. The island is located in the Micronesia sub-region in the Western Pacific and is approximately 212 square miles. Guam was first inhabited by the indigenous CHamoru people going back roughly 3,500 years and has a long history of colonialism. In 1950, Guam became an organized (meaning that the US Congress authorized the creation of an organized government via an Organic Act), unincorporated territory of the United States of America via the Organic Act of Guam (a piece of federal legislation passed by the US which outlines the parameters of the government of Guam's relationship to the government of the United States). This political status remains to this day.

The island's current political status is not something the people of Guam created or chose. The status of unincorporated territory was created after the US acquired Guam, the Philippines, and Puerto Rico as a result of the Spanish-American War. With the acquisition of these new possessions, the United States debated what to do with these distant lands. The critical question was, "Does the Constitution follow the flag?" Prior to this, it was understood that contiguous US territories would eventually become states and that the Constitution fully applies. However, once Guam, Puerto Rico, and the Philippines were acquired, it set into motion a series of legal cases named the Insular Cases. The status of unincorporated territory was subsequently created, meaning that these newly acquired, non-contiguous far-flung places were not on a path to statehood nor were they an "integral" part of the United States. As an unincorporated territory, Guam is under the Plenary Power of Congress via Article IV, Section III, Clause II of the United States Constitution, also known as the Territorial Clause, which states, "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; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular state."[5] US citizens in Guam do not have voting representation on the floor of the House of Representatives, representation in the Senate, or voting rights in US presidential elections through the Electoral College (which elects the President).

5 Article IV, Section III, Clause II of the US Constitution.

Furthermore, the US Congress, due to its Plenary Power, can make unilateral decisions that affect the territories without meaningful input from the territories themselves. "As an unincorporated territory, Guam, like Puerto Rico and the Virgin Islands, is appurtenant to the United States and belongs to the United States but is not a part of the United States…Unincorporated territories are not integral parts of the United States and no promise of statehood or a status approaching statehood is held out to them."[6] In the *University of Hawai'i Law Review*, Jon Van Dyke argues,

> The United States has always governed its territories and possessions separately from its states. During the past two centuries, the legal regime applicable to the territories has evolved in a patchwork ad hoc fashion, with Congress responding to the unique and individual needs of each territory, sometimes with sensitivity and sometimes with indifference or insensitivity. Each of these island communities have demonstrated the ability to exercise local self-government. They each have a mature and lively political structure in which the basic values of fairness and full opportunities for participants are maintained at the local level. They each have unique cultures that should be allowed to develop in ways that are true to their traditions. In terms of their subservience to the Congress and the federal agencies, however, they are still colonies.[7]

Furthermore, articulating dissatisfaction with the current status, Lieutenant Governor of Guam Joshua Tenorio proclaimed during his testimony to the Fourth Committee to the United Nations in 2019;

> We find ourselves in a unique predicament. The government of our administering power was founded in the belief that its own colonial status was unfair. However, the essence of its very own nationhood as the beacon of independence and democracy is undermined by the reality that it has also become a colonial power. This truth is unavoidable, and its denial has caused inertia and confusion at its highest levels. By its very existence, the United States is not supposed to have colonies – and it has struggled to deal with this reality since.
>
> The status quo is unacceptable, and it has been the policy of our government, over the last forty years, to seek change. A continuation of the status quo means there is no path to full representation in a representative democracy. It means continued disenfranchisement from the political process for those who live on Guam but cannot vote in a national election. It means authority will remain with a distant bureaucracy that imposes policies and regulations unilaterally, while programs and entitlements are inconsistently administered or discriminately withheld. It simply is not fair. It is wrong.[8]

6 H.R. Rep. 1365, 81st Cong. 1st Sess., 8 (1949).

7 Jon M. Van Dyke, "The Evolving Legal Relationships Between the United States and Its Affiliated US-Flag Islands," *University of Hawai'i Law Review,* 14 (1992): 445.

8 Testimony of Lt. Governor of Guam, Joshua F. Tenorio, Fourth Committee, United Nations, October 9, 2019.

He continues,

> We desire to work closely with the federal government to increase fairness and equity for Guam… Nevertheless, we remain committed to meaningfully engaging our administering power and reminding the international community of our continuing quest before the United Nations. As a matter of course, we will continue to encourage the United Nations and our administering power to approve a UN Visiting Mission to Guam in an effort to strengthen our relationships and expand our dialogue on decolonization. I think we can all agree that none of us can afford to wait for the 4th International Decade for the Eradication of Colonialism.[9]

As Guam is an unincorporated territory of the United States and a non-self-governing territory under continuous United Nations review, it must be noted that Guam is still a colony in a world which considers colonialism and empire an outdated and illegitimate form of political organization.

Description of Political Status Options

At stake in this quest for decolonization and the exercise of CHamoru self-determination is Guam being able to reach a full measure of self-government under the UN Charter. The three political status options examined in this study would modernize Guam's relationship with the United States, either as an integral part of the union, in free association with the US, or as an independent country with potentially close political and economic ties to the US. Political advancement through any of the three options would represent a new chapter in Guam's history.

Accordingly, the present study examines the options of statehood, free association, and independence, in accordance with current Guam law.[10] Guam's current status, unincorporated territory status, was assessed by Dr. Carlyle Corbin in Part I of the present study, through the application of the self-governance indicators. It was determined to be a status which does not provide for the full measure of self-government with absolute political equality, consistent with Guam law and the minimum standards of the full measure of self-government under international law.

Statehood

Statehood for Guam would mean complete integration with the United States on the basis of complete equality in status, rights of citizenship, representation, opportunities, responsibilities, and states' rights as a result of the federal system of the United States. Guam would be able to avail of these powers and responsibilities on a constitutional level, and not merely on a statutory level as it would enter the Union

9 Testimony of Lt. Governor of Guam, Joshua F. Tenorio, Fourth Committee, United Nations, October 9, 2019.

10 Although this law needs to be revisited due to the denial of the US Supreme Court to hear the Government of Guam's appeal in Davis v. Guam. The Supreme Court denial does not affect the options but rather the voter eligibility.

on equal footing with the existing states. Furthermore, if Guam is made a state, Guam would be permanently under US sovereignty. If the island were to become a state, the ambiguity of Guam's relationship with the United States would end and US citizens in Guam would become full-fledged American citizens in a State of the Union with full constitutional applicability.

If the option were selected, Guam would possibly test US tolerance of microstates, given its size, distance and population, particularly as it relates to the Electoral College and Senate. Under statehood, the Territorial Clause of the US Constitution will no longer apply. Under this clause, Guam would have state sovereignty and full voting representation in both the US Senate and the House of Representatives, and the island's US citizens would have representation in the Electoral College. The United States would control Guam's Exclusive Economic Zone (EEZ) as well as provide for the defense of the island. With the addition of two senators in the US Senate, voting representation in the House of Representatives, and a vote in the Electoral College, the island would reach a measure of self-government in accordance with international law as a fully integrated polity of the US. However, special arrangements Guam maintains via the Organic Act of Guam, such as the retention of federal income taxes, will no longer be the case. In this study, it is not argued whether statehood would be a net positive economically as this remains uncertain. The larger issue the voters of Guam may take into consideration is whether increased access to federal programs and funding will replace the loss of Section 30 funds and federal income tax revenues.

If Guam were to be made a state of the union, it would possess states' rights as a result of the federal system of the US government. In a country with a federal system, significant government powers are divided between the central government and smaller units, such as states or provinces. In a federal system like the United States, there are certain aspects of society in which the states are supposed to have jurisdiction without federal interference. Neither the central government nor the states are supposed to completely control the other in a federal system. Written into the Constitution of the United States are enumerated powers for the federal government, with the 10th Amendment providing that "powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people"[11] leading to a distribution of power among the federal and state governments. Thus, as a state of the union, the state government of Guam, via the Constitution of the United States, case law, and as an inherent result of its territorial sovereignty, would possess states' rights and legislate (generally) on matters within its territorial jurisdiction. However, it should be noted that the history of federalism in practice in the United States is more complicated than simply looking at the 10th Amendment for the division of power between the federal government and the states.

The Supreme Court has stated that the Constitution "preserves the sovereign status of the states" by "reserving to them a substantial portion of the nation's primary sovereignty, together with the dignity and essential attributes inhering in that status."[12] On a general level, the breakdown of powers in the United States looks like this:

11 10th Amendment of the US Constitution.

12 *Alden v. Maine*, 527 US 706, 714 (1999).

Distribution of Powers in the US Government[13]

13 Graph taken from https://courses.lumenlearning.com/atd-monroecc-americangovernment/chapter/the-division-of-powers/

Federal Government

Enumerated Powers

- Coin Money
- Regulate interstate and foreign commerce
- Conduct foreign affairs
- Establish rules of naturalization
- Punish counterfeiting
- Establish copyright/patent laws
- Regulate postal system
- Establish courts inferior to Supreme Court
- Declare war
- Raise and support armies
- Make all laws "necessary and proper" to carry out responsibilities

Powers Denied

- Tax state exports
- Change state boundaries
- Violate the Bill of Rights

Concurrent Powers

Enumerated Powers

- Levy and collect taxes
- Borrow money
- Make and enforce laws
- Establish courts
- Charter banks and corporations
- Take property for public purpose with just compensation (eminent domain)

State Government

Reserved Powers

- Regulate intrastate commerce
- Conduct elections
- Provide for public health, safety, welfare, and morals
- Establish local governments
- Maintain militia (National Guard)
- Ratify amendments to the Constitution

Powers Denied

- Tax imports and exports
- Coin money
- Enter ino treaties

Thus, if Guam were to become a state of the union, it would have these powers reserved to its government as well as shared powers with the federal government. Thus, it is clear that Guam would reach a measure of self-government greater than its current political status as an unincorporated territory as it would have constitutional guarantees of state powers as opposed to a delegation of authority from Congress due to its plenary power.

Under international law, "statehood" is consistent with "integration with an independent state" under Resolution 1541 of the United Nations which states,

A Non-Self-Governing Territory can be said to have reached a full measure of self-government by:

a. Emergence as a sovereign independent state
b. Free association with an independent state or
c. Integration with an independent state

The United States can satisfy international law requirements of integration by accepting Guam as a stand-alone state or by integrating Guam with an existing state of the union. This means that the United States, via the proper constitutional procedures, could integrate Guam as a separate state of the union. Or it could integrate Guam, via the proper procedural mechanisms, as a district of another state such as

Hawai'i. Both would satisfy international law's requirement of full integration. In either case, Principle VIII of Resolution 1541 is explanatory:

> Integration with an independent state[14] should be on the basis of complete equality between the peoples of the erstwhile Non-Self-Governing Territory and those of the independent country with which it is integrated. The peoples of both territories should have equal status and rights of citizenship and equal guarantees of fundamental rights and freedoms without any distinction or discrimination; both should have equal rights and opportunities for representation and effective participation at all levels in the executive, legislative, and judicial organs of government.[15]

Furthermore, Principle IX of Resolution 1541 outlines the circumstances in which integration is supposed to emerge; (a) The integrating territory should have attained an advanced state of self-government with free political institutions, so that its peoples would have the capacity to make a responsible choice through informed and democratic processes; (b) Integration should be the result of the freely expressed wishes of the territory's peoples acting with full knowledge of the change in their status, their wishes having been expressed through informed and democratic processes, impartially conducted and based on universal adult suffrage.[16]

Integration as a separate US state or as part of an existing US state would meet the requirements above to satisfy the criterion of the territory reaching a "full measure of self-government" under integration. However, if the people of Guam chose statehood, the creation of the state of Guam would be completely contingent on the acceptance of the island's new status by the United States. Statehood could also require a transition period as an incorporated territory that would have to be defined. This would be a highly political process within the US system, and there is no requirement or legal obligation for the United States to integrate Guam. However, if the United States agreed to admit Guam into the union, the constitutional parameters of statehood are clear. This union is permanent, and sovereignty (barring states' rights) will be permanently ceded to the United States. All references to governmental organization, sources of power, funding, and bureaucratic management are defined by the United States and its laws. Furthermore, Guam will receive the full benefits of being a part of the union of the United States of America.

As passionately described by Chairman Eddie Dueñas of the Statehood Task Force,

> We have come a long way since 1898. We have learned well under US tutelage and have molded into our character the heritage of our past and present. We have nourished an appetite to live as free people and enjoy the fruit of our labor as we continue to build Guam into a promising Pacific island community at the gateway to Asia. We hold the self-evident truth that we are endowed

14 By state, as mentioned before, this refers to what is commonly known as a "country."

15 Resolution 1541 of the United Nations General Assembly.

16 Ibid.

by our Creator with certain inalienable rights, among these are life, liberty and the pursuit of happiness. For the past 118 years, we have nurtured our aspiration to be politically mature and treated with dignity and equality. We look forward to the day when we will be fully integrated into the American system of government. The time has arrived for us to rally our people and take that first step to attain statehood for Guam and assume our rightful place as Guamanian-Americans in the 21st century. With unceasing determination and unity in our resolve, Guam will be the 51st state "where America's day begins."[17]

Independence

Choosing independence equates to the desire for Guam to become its own country or sovereign state (to use exact terms in international relations). In international politics, what is commonly referred to as a "country" or "nation," is properly, a sovereign state.[18] Such a state is a unit that is recognized as sovereign over the area comprising the territory within its borders, and within which it organizes power. In this study, we will be referring to an independent state as a "country" (although acknowledging that "state" is the proper and more accurate term, and unless the word appears in direct quotation) in order to avoid confusing the reader (in Guam's context) about the difference between a sovereign independent state and a former territory, which has been integrated into the US as an integrated state (as described above). Also, we will not be using the term "nation" interchangeably with "country." While many countries around the world call themselves "nations," it is important to acknowledge that the "nation" and the "state" are not the same thing, hence the more commonly used term "nation-state." While the state is the sovereign unit that organizes power within a territory, nation refers to a group of people with shared characteristics such as language, history, ethnicity, and customs that see themselves as a coherent unit and who are usually concentrated in a geographical area (typically rooted in a claim to self-determination). There can be nations within a state, such as the multiple Native American tribes; nations spread across states, such as the Kurds who are a nation spread among Iraq, Iran, Syria, and Turkey; and states with weak nations (meaning that the people do not yet feel a sense of nationhood around the state to which they belong). Thus, the words will not be used interchangeably.

Through independence, Guam will possess the utmost degree of authority comprising of all its benefits and obligations. Stewart Patrick argues that traditional notions of sovereignty can be said to have three main components:

1. Sovereignty as Authority (unfettered supremacy of state power)
2. Sovereignty as Autonomy (ability of state power to have independent freedom of action without external interference)

17 "Argument by Chairman Eddie Duenas," Statehood For Guam Task Force, accessed at https://www.statehoodforguam.com/page/page/170540.htm.

18 However, for the sake of clarity, the term "country" is used instead of "state" so as not to confuse statehood and independence.

3. Sovereignty as Influence (ability of a state to shape its own destiny within the international arena)[19]

A country is said to possess sovereignty, in which it is internally supreme and externally equal to other countries. There are multiple useful and important critiques of sovereignty, and it should be made clear that we are not arguing that sovereignty comes without its own set of problems or that possessing sovereignty, especially with smaller states, leads to always being treated as equal to larger states.

On Dec. 26, 1933, several sovereign countries came together for the Seventh International Conference of American States. The conference resulted in the creation of the "Rights and Duties of States" which lays down the most widely accepted formulation of the criteria for (independent) statehood.[20] The Convention itself includes sixteen articles and was signed on December 26, 1934. Following the definition set by the Convention, an independent Guam, in order to meet the conditions for identification as an independent country, should have:

a. A permanent population
b. A defined territory
c. A government and
d. Capacity to enter into relations with other states

Independence will give Guam the power to negotiate with and enter into legal relationships with other countries throughout the world. As described by international law scholar Malcolm Shaw, regarding the capacity to enter into relations with other states, "The essence of such capacity is independence. This is crucial to statehood and amounts to a conclusion of law in the light of particular circumstances. It is a formal statement that the state is subject to no other sovereignty and is unaffected either by factual dependence upon state or by submission to international law."[21]

An independent Guam will have fundamental rights as a country by virtue of the international legal order. As an independent country, Guam will have formal full and exclusive control over its internal and external affairs. It is important to note that independence, in this sense, refers to a legal concept. It is common for some to mention that most of the world is not independent because of power politics or reliance on other countries. However, for the purposes of international law, "Any political or economic dependence that may in reality exist does not affect the legal independence of the state, unless that state is formally compelled to submit to the demands of a superior state, in which case dependent status is

19 Stewart Patrick, *The Sovereignty Wars: Reconciling America with the World* (Washington D.C.: Brookings Institute Press, 2017).

20 While the Montevideo Convention is, indeed, widely cited for its criteria for Statehood, it is not the only available theory. There is also the constitutive theory, in which Statehood is established by virtue of the entity being formally recognized as a State by other States. Some international law scholars argue that recognition must come on top of the existence of the four Montevideo criteria, while other scholars argue that recognition can come (and be sufficient) independent from the existence (if at all) of the Montevideo criteria. There is much uncertainty about the constitutive theory, but it is worthwhile to mention.

21 Malcolm Shaw, I*nternational Law: Eighth Edition* (Cambridge: Cambridge University Press, 2017), 160.

concerned."[22] This is not to discount that an independent Guam will have to deal with the power politics of the geopolitical environment surrounding the island. Rather, it is to clarify our usage of the term "independence."

Another characteristic Guam would have as an independent country is being legally equal to other independent countries and possessing the capacity and authority to negotiate with other countries as equals, as outlined in Article 4 of the Montevideo Convention,

> States are juridically equal, enjoy the same rights, and have equal capacity in their exercise. The rights of each one do not depend upon the power which it possesses to assure its exercise, but upon the simple fact of its existence as a person under international law.

Supplementing this, the 1970 Declaration on Principle of International Law provides that "All states enjoy sovereign equality. They have equal rights and duties and are equal members of the international community, notwithstanding differences of an economic, social, political or other nature."[23] This equality has the following elements:

a. States are juridically equal
b. Each state enjoys the rights inherent in full sovereignty
c. Each state has the duty to respect the personality of other states
d. The territorial integrity and political independence of the state are inviolable
e. Each state has the right freely to choose and develop its political, social, economic, and cultural systems
f. Each state has the duty to comply fully and in good faith with its international obligations and to live in peace with other states[24]

Lastly, the capacity to enter into relations with other countries and the notion of state recognition are important for the success of an independent country. "Limited diplomatic relations, an inherent condition of unrecognized states, undermines the capacity of these entities to enhance their political, security, and trade relations with other recognized states, leading to economic stagnation, poverty, and social isolation."[25] Thus, an independent Guam will need to ensure that it is truly welcomed into the international "community" through participation in the relevant international organizations comprising other independent countries.

Therefore, if independence is chosen as the preferred political status, the newly established country of Guam will have authority over its defined area and within its borders. The independent country of

22 Shaw, "International Law," 166.

23 Declaration of Principles of International Law Concerning Friendly Relations and Cooperation among States, 1970.

24 "Declaration of Principles of International Law."

25 Gezim Visoka, John Doyle, and Edward Newman, *Routledge Handbook of State Recognition* (London and New York: Routledge, 2019), 2.

Guam will have the ability to enter into treaties, alliances, and other such agreements with other countries by virtue of it having an international legal personality as a sovereign country itself. Guam will also have to bear the burdens and handle the responsibilities of being a sovereign country in the international system, including diplomatic relationships, providing for its population, and engaging internationally, which could be a difficult task. Overall, independence comes with the greatest opportunities as well as responsibilities for the island.

As written by the Independence for Guam Task Force,

> Independence as a political status essentially means Guam gains full sovereignty meaning that we would become our own nation, we would become our own country, we would join the United Nations as an independent nation and we would join over 200 other places in the world who are independent – places that are smaller than Guam, the same size as Guam, and much bigger than Guam. What it really means is we make all our own decisions. Sovereignty essentially means we reign. We make all decisions that impact us today and into the future.[26]

Free Association with the United States

The status of free association was outlined in 1960 via UN Resolution 1541 (XV): *Principles which should guide Members in determining whether or not an obligation exists to transmit the information called for under Article 73e of the Charter*. Resolution 1541 (XV) provides a level of minimum standard for a genuine free association in its articulation of this political status option:

a. Free association should be the result of a free and voluntary choice by the peoples of the territory concerned expressed through informed and democratic processes. It should be one which respects the individuality and the cultural characteristics of the territory and its peoples, and retains for the people of the territory which is associated with an independent state the freedom to modify the status of that territory through the expression of their will by democratic means and through constitutional processes.[27]

b. The associated territory should have the right to determine its internal constitution without outside interference, in accordance with due constitutional processes and the freely expressed wishes of the people. This does not preclude consultations as appropriate or necessary under the terms of the free association agreed upon.[28]

26 Clynt Ridgell, "What Would Independence Mean for Guam?" Pacific News Center, May 3, 2018, accessed at https://www.pncguam.com/what-would-independence-mean-for-guam/.

27 Resolution 1541 of the General Assembly of the United Nations.

28 "Resolution 1541."

In examining free association as an option for reaching a "full measure of self-government," the status is akin to that of "associated statehood" or in some instances, "protected statehood." International law scholar Chimene Keitner explains that, "a free association is formed when two states of unequal power form voluntary and durable links. The smaller state, the associate, delegates certain functions to the more powerful state, the principal, while maintaining its own international status."[29] Furthermore, "The associated state should have full self-government, although it may voluntarily delegate certain tasks to the metropolitan state, especially in the fields of foreign affairs and defense; the association should be embraced by the population in an act of free choice observed by the UN."[30] Some smaller political entities acknowledge that it may be in their best interest to achieve their objectives via a closer relationship with a larger state, thus leading to a condition of associated statehood.

There is no set formula for free association in international law, apart from meeting the minimum standards of Resolution 1541 (XV) indicated above. It is up to each polity to negotiate for the configuration that best suits its needs, desires, and interests, ensuring that it lies within the realm of what is feasible given its historical and actual relationship with the principal state. "The concept of associated states in international law came to embrace a broad spectrum of political arrangements between two entities characterized by recognition of the significant subordination of and delegations of competence by one of the parties to the other but maintenance of the continuing international status of statehood."[31] However, while there is no exact blueprint of how free association should look, there are certain guidelines that can be applied to determine the legitimacy of a free association relationship to ensure the relationship does not blatantly represent colonialism in a new form. Associated states cannot surrender so much autonomy as to be indistinguishable from colonies.

One such example is the guidelines put forth by James Crawford providing further elaboration on the standards of Resolution 1541 (XV). In his book, *The Creation of States in International Law*, he argues that the following criteria should be used to determine legitimacy:

1. The association must be freely chosen by the people of the territory
2. The terms of association must be clearly and fully set forth, in a form binding on the parties
3. The associated territory must have substantial powers of self-government
4. The reserved powers of the metropolitan state should not involve substantial discretions to intervene in the internal affairs of the associated state
5. There must be a procedure for termination of the association which should be as accessible to the associated state as to the government of the metropolitan state and which can be viewed as a continued expression of the right of the peoples concerned to self-determination[32]

29 Chimene Keitner, "Associate Statehood: Principles and Prospects," *Faroese Law Review*, 3, no. 1 (2003).

30 Steven Hellebrin, *The Right to Self-Determination and Post-Colonial Governance* (The Hague: T.M.C. Asser Press, 2008), 85-86.

31 Gary Lawson and Robert D. Sloane, "The Constitutionality of Decolonization by Associated Statehood: Puerto Rico's Legal Status Reconsidered," Boston University School of Law Working Paper No. 09-11, August 3, 2009, 16.

32 James R. Crawford, *The Creation of States in International Law* (Oxford: Oxford University Press, 2006).

Thus, characteristics of this associated statehood include internal control, international status, the authority to adopt one's constitution without external interference, and the delegation of certain state functions to a larger state with the right of unilateral withdrawal. Unlike territorial status, powers are shared between the two associates as a result of negotiations (on the basis of mutual agreement). US territories scholar Arnold Leibowitz puts it best, writing, "Instead of the territory gaining authority as a delegation from the federal government, it is the (*former*) federal government's authority which is limited to that set out in the compact (of free association)."[33] The greatest example of this is the power of the associated state to unilaterally withdraw from the agreement as a matter of international law and international legal entitlement.

Free Association in the Pacific: New Zealand vs. United States

Since the passing of Resolution 1541 (XV), there have been five political entities in the Pacific Islands in a relationship of free association with another state. These are:

POLITICAL ENTITY	FREELY ASSOCIATED WITH
Cook Islands	New Zealand
Niue	New Zealand
Federated States of Micronesia	United States of America
Republic of the Marshall Islands	United States of America
Republic of Palau	United States of America

The first place in the Pacific Islands to choose free association was the Cook Islands, which decided to be "self-governing in free association with New Zealand" in 1965 with Niue following in 1974. To end the strategic trusteeship of the Trust Territory of the Pacific Islands (TTPI), the United States entered into Compacts of Free Association with the Republic of the Marshall Islands (RMI) and the Federated States of Micronesia (FSM) in 1986 and the Republic of Palau in 1994. While all five places are in a relationship of free association, there are differences between New Zealand's arrangements with the Cook Islands and Niue and US arrangements with the FSM, Palau, and the Marshall Islands. Understanding these differences could help future voters in Guam's political status plebiscite regarding some of the possibilities under free association.

One of the largest differences between the New Zealand and the US approach to free association is the issue of citizenship. The people of the FSM, Palau, and the Marshall Islands have their own citizenship corresponding to their associated state. They were not US citizens under the UN Trusteeship arrangement when the Compacts of Free Association were negotiated. The inhabitants of the Cook Islands and Niue,

33 Arnold H Leibowitz, *Defining Status: A Comprehensive Analysis of US Territorial Policy* (2014), 65.

on the other hand, are New Zealand citizens and can avail of the benefits and services made available to New Zealanders. Accordingly, the people of the Cook Islands and Niue enjoy genuine self-government through a free association arrangement with New Zealand while maintaining New Zealand citizenship. A similar form of shared citizenship exists between Denmark and the autonomous country of Greenland, which also has voting representation in the Danish Parliament. New Zealand and Denmark have maintained these arrangements of free association with shared citizenship through mutual agreement with the people of Cook Islands, Niue, and Greenland. For the Cook Islands and Niue, "unilateral amendment of citizenship would be a breach of New Zealand's obligations under the terms of free association, unless it signified the irretrievable breakdown of the relationship."[34]

A byproduct of shared citizenship is a significant depopulation of the Cook Islands and Niue, with many of their people relocating to New Zealand to reside and work because of broader economic and educational opportunities. While shared citizenship is not a part of the respective compacts of free association with the US, the agreements provide for special access for citizens of the freely associated states to reside and work in the US and the territories under its administration. This has led to a large diaspora population in places such as Guam and Hawai'i.

Another core difference between the jurisdiction associated with the US and those with New Zealand is UN membership. The Federated States of Micronesia, the Republic of Palau, and the Republic of the Marshall Islands are all member-states of the UN, while New Zealand has objected to Cook Islands and Niue membership in the UN. One explanation is that the Cook Islands and Niue both continue to hold New Zealand citizenship. However, the two associates enjoy considerable foreign affairs powers, including treaty-signing capacity, with the Cook Islands and Niue being signatories to various international conventions on climate change, sustainable development, etc. The Cook Islands also has the authority to enter into bilateral relations with independent countries.

The largest difference between the New Zealand and US model of free association may deal with the geopolitical context of the two countries. After World War II, New Zealand and the United States had different strategic considerations and interests. Their freely associated relationships reflect this difference and should serve as a compass regarding how free association between Guam and the United States could potentially look. The United States emerged from World War II as a superpower and went into Cold War competition with the Soviet Union, while New Zealand did not. This difference in power potential affected their interests and thus the desire to hold on to territory in the Pacific Islands. As explained by John Henderson,

> The historical background explains the different nature of the ongoing relationship between the island states and the US and New Zealand. The primary interests of the US were strategic. It was determined to protect its strategic advantage but was prepared to give considerable economic assistance in return. For New Zealand, the concern was diplomatic, relating primarily to

34 Alison Quentin-Baxter, "Pacific States and Territories: Cook Islands" in Laws of New Zealand (Butterworths, Wellington, 2001), paragraph 26.

> the need to meet UN decolonisation requirements. It did not share the US strategic interests and remained relaxed about a move to greater independence by the Cook Islands and Niue, including full independence if either entity should choose it.[35]

In the case of the Cook Islands and Niue, they could terminate their freely associated relationship with New Zealand by amending their respective constitutions. If this amendment receives the necessary votes needed and is subsequently supported by a referendum, the relationship can be terminated. "The key point is that it is up to the Cook Islands and Niue alone to determine whether they want the free association with New Zealand to continue."[36]

The United States was convinced that holding on to Micronesia following the termination of US administering power authority it exercised under the United Nations Trust Territory of the Pacific Islands (TTPI) was the best tactical move for protecting US strategic interests. Thus, a core component of US agreements with the FSM, Palau, and the Marshall Islands revolves around strategic denial—being able to deny third countries' military from entering the three freely associated states (FAS). The US, via provisions in the Compacts of Free Association (COFA) and subsequent agreements, is also able to reserve land use rights for military purposes. In return, the US provides the FAS with economic assistance (which expires after an allotted amount of time, but is renewable), access to certain federal programs such as the US Postal Service, the US National Weather Service, and other US emergency services, and visa-free travel into and residence in the United States, with the US handling defense of the freely associated states. However, this also had made the FAS more or less reliant on US federal funding as one of the main sources of their economy. Collectively, this was the basic form of free association negotiated between the FAS and the United States. The individual associated states are sovereign and are all members of the United Nations today, with their own international personality and standing. The Compacts of Free Association had to be approved by the governments of the FAS and the US government. "The COFA agreements as originally signed, recognized the new Micronesian states as fully sovereign nations, with the right to conduct their own internal affairs and international relations subject to certain pre-arranged limitations."[37]

Moving Forward for Guam

Although the wording of Resolution 1541 states "Free Association with an independent state," the option for free association in Guam law explicitly states, "Free Association with the United States." Therefore, pending any amendment to Guam law to include another option, if Guam were to choose the option of "free association" and it was successfully negotiated and approved by the US Congress, Guam would become freely associated with the United States. This could result in a similar status for Guam

35 John Henderson, "The Politics of Association: A Comparative Analysis of New Zealand and United States Approaches to Free Association with Pacific Island States," RJP (2002), 80.

36 Henderson, "Politics of Association," 80.

37 Ian Rummel, "Effects of the Compact of Free Association on sovereignty in the Federated States of Micronesia," (Monterey, California: Naval Postgraduate School, 2017), 23.

(but not necessarily completely identical) as that of the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau. All of these island states currently have a Compact of Free Association (COFA) with the United States.

Compacts of this sort are based on the sovereignty of each country, and as a condition of the compact, either can unilaterally terminate the association. However, it should be noted that the respective COFAs, while allowing for unilateral termination, also require that the defense agreements drawn up separately between the US and the respective COFA countries can persist on their own terms, even when the underlying COFAs are terminated. If Guam is a freely associated state, the United States would no longer dictate Guam's governmental policies, but it can provide, among other things, defense as well as financial support for social and economic development. Entering into a relationship of free association with the US can be a gradual process where the people of Guam may see a better quality of life than observed in the status quo. Generally speaking, any form of political change requires a period of adjustment filled with debate on the merits of the change. Ultimately, if Guam chooses free association, the political relationship between Guam and the US government will be controlled by the specific terms and conditions set forth in the negotiations, as opposed to the prevailing unincorporated territorial status where the relationship is determined by the US Congress under its unilateral authority of the territorial clause of the US Constitution.

Free Association is an open-ended arrangement based on agreements. The current Compacts of Free Association are not necessarily temporary agreements and do not expire as a whole. When one hears of "renewing" the compact, they are referring to the extension of the funding/assistance provisions that were set to expire and not the agreement as a whole. Overall, the relationship can be revised, reshaped, or terminated. A termination of the free association by the US would not compromise Guam's sovereignty under free association, but rather it would give the Guam government the freedom to enter into similar arrangements with other countries if it so chooses. However, it would be unlikely that the US would terminate the free association arrangement with Guam given its geo-strategic importance.

Finally, as Guam shares a similar, if not more important geopolitical role than the rest of Micronesia, it is likely that the previous Compacts of Free Association will serve as a basis of negotiation between Guam and the United States. However, it is imperative to mention that in no way is the argument being made that if Guam were successful in negotiating an associated statehood status with the US that it will definitively follow the "UN member state" status or form of the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau. Many of the details of what free association will look like for Guam will be: contingent on the geopolitical context of the time, and contingent on the negotiation process with the United States, thus requiring a sharp and effective negotiation team on behalf of the island. Furthermore, the current military presence in the island and the fact that its people are US citizens are qualitative differences that may affect the form of free association Guam and the US negotiate. There is always the possibility that Guam's geopolitical importance and the ability to learn from the history of the current FAS will provide an opportunity to negotiate a status specific to Guam's interests. Overall, even if the final form of free association (contingent on negotiations) cannot be fully

known, for the free association analyses found throughout this study, the existing US models of FAS are used as a basis for investigating a potentially similar arrangement for Guam.

In advocating for the status, the Free Association for Guam Task Force writes the following,

> The Freely Associated State of Guam shall reflect the free will of the people of Guam to attain full self-government in lasting relationship with the United States of America, and reaffirms the principle that governments derive their just powers only from the consent of the governed. To this end, the Freely Associated State of Guam and the United States of America shall forge a lasting partnership of friendship, justice, and mutual respect that shall be cemented with the sovereignty of the American people and the people of Guam.
>
> As a Freely Associated State, we, the people of Guam, seek to maximize our participation in the decision-making process that fundamentally affects our lives as people of the land. Furthermore, we seek to redefine the political benefits of a sovereign status and the economic framework under full self-governance in free association with the United States of America.[38]

Why Guam?

To help make sense of the analyses in this study, it is helpful to delve into what Guam's and the United States' respective interests are.[39] Guam lies in the expanse of the Western Pacific and is the largest island between Hawai'i and the Philippines with a major harbor. It is the largest island between Japan and Papua New Guinea with the capability for hosting major runways. Former political scientist at the University of Guam, Robert F. Rogers, writes in *Destiny's Landfall*, "Guam, in short, was destined after Magellan to be a pawn in the realpolitik of foreign powers."[40] In one of the first annual reports of the naval governor in Guam, it was written,

> The location of Guam in the center of the Western Pacific, about equally distant from Manila to Yokohama on the direct route from Hawaii to the Philippines and the fact of its possessing a fine harbor make it of great and recognized strategic value to the US, as a point to be occupied and held for naval purposes alone. It has neither present not prospective economic value and should not, then, excite the interest of other than scientific and military men.[41]

Furthermore, to quote Andrew S. Erickson, a founding member of the China Maritime Studies Institute at the Naval War College, and Lt. Justin Mikolay in their book chapter, "Guam and American

38 Free Association For Guam Task Force Position Paper, 2000, 2.

39 Kenneth Gofigan Kuper "Kontra I Peligru, Na'fansåfo' Ham: The Production of Military (In)Security in Guåhan" PhD diss., University of Hawai'i at Manoa, 2019), 69-73.

40 Kuper, "Kontra I Peligru," 69-73.

41 Annual Report of the Governor, 1905.

Security in the Pacific,"

> It is closer by fourteen hours' flight time and five to seven days' sea-transit time to East Asia than is any other US–based facility. It offers the region's only live-fire bombing range; an excellent deep-water port with significant room for wharf expansion; ample facilities for the US Air Force, including its largest aviation fuel storage depots (66 million gallons) and its largest Pacific weaponry storage (100,000 bombs); and a naval magazine capable of holding considerable amounts of conventional and nuclear munitions.[42]

Islands like Guam are essential to global status and the power projection to maintain it. In Alfred Thayer Mahan's *The Influence of Sea Power Upon History*, he argued that if the United States wished to join the scramble for the world's wealth, it would have to build warships and dispatch them to take distant islands, ports, peninsulas, and strong places where a navy can be protected and refurbished.[43] Permanent naval bases and coaling stations helped to safeguard the prosperity and security of the United States and advocated for shaping a "healthy regional balance of power through forward basing, a strong navy and alignment among the maritime powers."[44] Regarding these forward bases, Mahan writes, "Bases of operations; which be their natural advantages, susceptibility of defense, and nearness to the central strategic issue, will enable her fleets to remain as near the scene as any opponent…With such an outpost in her hands, the preponderance of the United States on this field follows, from her geographical position and her power, with mathematical certainty."[45]

Thus, by controlling a network of bases, the United States can help ensure its status in the international system. Vice Admiral Jonathan Greenert, former Commander of the United States Seventh Fleet (part of the United States Pacific Fleet), reiterates the power of Guam's geography, writing, "Guam is a hub, Guam has geography and that will be enduring…it is now becoming very important to us again. Guam will always be strategically important because of its geography alone."[46] Geographical location does not change and as such, it is likely that Guam will be important to US strategy, irrespective of how economic and technological advantages wax and wane.

Guam constitutes the center of the second island chain. In 1951, during his command of UN forces in Korea, Gen. Douglas MacArthur proposed the island chain strategy to fix the vulnerabilities the US faced in the Pacific during World War II. Prior to the war, the US implemented an east-west defense perimeter of territories. They had the Philippines, Guam and Hawai'i to help cement their presence in the Asia-Pacific. However, after World War II, the US shifted to a north-south axis of control with the development of a first and second island chain meant to "completely block any penetration into the Pacific

42 Andrew S. Erickson and Justin D. Mikolay, "Guam and American Security in the Pacific," in Rebalancing US Forces: Basing and Forward Presence in the Asia-Pacific, eds. Carnes Lord and Andrew S. Erickson (Annapolis: Naval Institute Press, 2014), 17.

43 Alfred Thayer Mahan, *The Influence of Sea Power Upon History* 1660-1783 (Boston: Little, Brown, 2004), 23.

44 Mahan, "Influence of Sea Power," 614.

45 Mahan, "Influence of Sea Power," 34.

46 David Scott, "US Strategy in the Pacific-Geopolitical Positioning for the Twenty-First Century." *Geopolitics*, 17 (2012): 620.

by an Asian power (with both China and the Soviet Union being the countries US strategists were most concerned with containing)."[47] The first island chain starts in mainland Japan and moves its way through Okinawa, Taiwan, the Philippines, and Borneo. This island chain is where US strategists imagined any conflict with Asian powers would be localized. The second island chain, going from the Bonin Islands to the CNMI, Guam, Yap, and Palau would be used for US naval movement and lines of communication.

To truly understand how Guam's geography has been utilized for US national security purposes, both location and its "islandness" need to be examined. The islands live in the perpetual shadow of hypermilitarization and laid-back, hospitable native lifestyle stereotypes. Islands are where one escapes or starts a new life. Islands are simultaneously where one goes to get away, isolated from the rest of the world, and where one waits as close to the enemy as possible without yet crossing the red lines of war declarations.[48] Distance, difference, and this feeling of being stuck in place are deemed the island's unique properties, which can subsequently evoke a sense of geographical and political inferiority.

Precisely because of the deep ambivalences between invisibility and hyper-visibility, distance and proximity, islands, peninsulas, and other seemingly small geographic spaces play a vital, even if underappreciated, role in geopolitics.[49] Islands are places that have always been used politically and strategically, while at the same time invisible from mainstream political discourse. Ruth Oldenziel argues in her essay, "Islands: The United States as a Networked Empire," that when it comes to islands, there is no such thing as political obsolescence. She describes the changing logics in the utilization of islands, ranging from coaling stations to lily pads (easy launch points for military missions) to holders of technology. She writes, "Even though in each instance the technical and geographic logics changed, the political rationales for keeping islands within the US orbit remained remarkably stable over the course of a century or so. Technical obsolescence rarely resulted in abandonment or restoration of sovereignty."[50]

The shape-shifting value of islands in geopolitics contributes to the paradox of them being important and disposable all at the same time. In fact, given the practicalities of "tit for tat" escalation strategies that define the complex warfighting scenarios of great powers, in which comparative gains often require significant sacrifices, the locale of Guam's disposability being so far from the territorial heartland of the US is in some sense one of its greatest assets. No matter which status is chosen, Guam's islandness and geographic location need to be taken into account as they reveal how the countries of the world and international institutions may treat the island, whether as a state of the union, freely associated state, or independent country. [51]

The analysis above should cement the fact that Guam has immense value to the United States. Thus, because of this immense value, Guam needs to use it in its future political status toward the island's

47 Sasha Davis, Lexi A. Munger, and Hannah J. Legacy, "Someone else's chain, someone else's road: US military strategy, China's Belt and Road Initiative, and island agency in the Pacific," *Island Studies Journal.*

48 Alison Mountz, Political Geography II: Islands and Archipelagos, Progress in Human Geography 39, no. 5 (2015): 636.

49 Mountz, "Political Geography II," 636.

50 Ruth Oldenziel, "Islands: US as Networked Empire," in Entangled Geographies: Empire and Technopolitics in the Global Cold War, ed. Gabrielle Hecht, 13-42 (Cambridge: the MIT Press, 2011), 31.

51 End of direct quoting from Kenneth Gofigan Kuper "Kontra I Peligru, Na'fansåfo' Ham: The Production of Military (In)Security in Guåhan," Ph.d. Diss, University of Hawai'i at Manoa, 2019.

advantage and benefit. In his book, *Islands and Oceans: Reimagining Sovereignty and Social Change*, geographer Sasha Davis discusses how power and sovereignty run top-down AND bottom-up. He argues that "processes we might perceive as happening at local or global scales are actually more fluid multiscale processes in which the local and global are intertwined."[52] To put it another way, the US does not just control Guam without any agency of the people of the island. The strategic reasons outlined above help to show one crucial point: geography can either be Guam's curse or blessing and political status has a lot to do with whether we use our geography for ourselves or if others use our geography to their advantage. A change in political status and a switch to statehood, free association, or independence would provide for greater control.

Conclusion

Before moving forward to the analyses of the study, it is important to note that this study provides insight into some pivotal questions, particularly those regarding political status options and futures. While we have tried our best to answer many questions, it is up to the future eligible voters of the island to take this initiative in their own hands. The future eligible voters of the political status plebiscite could ask themselves the following questions:

1. What advantages will come from decolonization?
2. What disadvantages may come from the process?
3. What happens if Guam remains an organized, unincorporated territory?
4. How can we best push this issue forward?
5. What are the pros and cons of each status? How feasible is achieving each status?
6. How long will it take to achieve the new political status?
7. What will Guam be like after the transition to the new status?
8. What is the significance of the presence of the US military on self-determination?
9. What are the local, national, and international factors that will affect prospects for decolonization and the three statuses?

Decolonization could be a bumpy road for Guam, but it also presents itself as the ultimate political triumph. For those who think that decolonization is a far-off dream, it is important to remember that "anyone who assumes that the current political statuses and the political map of this island region will stay static has scant historical evidence to support that position."[53]

52 Sasha Davis, *Islands and Oceans: Reimagining Sovereignty and Social Change* (Athens: University of Georgia Press, 2020), Location 282.

53 Davis, "Islands and Oceans," Location 1769.

GOVERNANCE

Citizenship

Citizenship has traditionally referred to "a particular set of political practices involving specific public rights and duties with respect to a given political community."[54] Citizenship involves the relationship between the individual and the state (country), and the concept can differ depending on different political traditions and its contextualized nature. In democratic systems, however, citizenship generally consists of three components: membership in a democratic political community; collective benefits and rights associated with this membership and participation in the community's political, economic, and social processes. Some tasks of citizens in these democratic societies include voting, speaking out on political/social/economic issues, campaigning, protesting, running for office, and holding their elected leaders accountable in various ways. Expanding upon this importance of citizenship, Stephen H. Legomsky argues, "Citizenship has important legal consequences, both in domestic United States law and international law. Apart from its capacity to be transmitted, citizenship can affect one's political rights, one's tax and military obligations, and one's eligibility for certain publicly funded programs, for certain government jobs, and for certain occupations."[55]

Being a citizen of a country allows one access to the political and economic rights and privileges conferred by countries on their nationals. For example, in the United States, citizens are protected via the rights afforded in the Constitution. They also can travel with a US passport, become eligible for federal jobs, participate on a jury, obtain citizenship for minor children born abroad, and become an elected official. It is for this reason that citizenship can be described as the "right to have rights" within a country.

The third component of citizenship, "participation in the community's political, economic, and social processes" is the basis of what has been colloquially discussed as "second-class citizenship." It is this dissonance between historical understandings of citizenship and the denial of voting representation to the people of Guam in relation to the US political family that causes consternation here in Guam. The people of Guam are citizens of the United States in the aspects of holding US passports, being subject to

54 Richard Bellamy, *Citizenship: A Very Short Introduction* (Oxford: Oxford University Press. 2008), 3.

55 Stephen H. Legomsky, *Immigration and Refugee Law and Policy* (Foundation Press, 2015), 3.

the US legal system, having individual rights, and other ways, with the important caveat that they do not participate in the democratic political processes of the country. As described by Leibowitz, in referring to the territories, "But the traditional functions of citizenship, political participation in the ruling government, setting certain boundaries and limitations on US action, establishing a clear role between the federal government and the local one and the federal government and the individual, and sharing fully the economic benefits of the union, was not found here." [56] There are differences between a US citizen residing in one of the 50 states and a US citizen residing in Guam, an unincorporated territory. However, many of these differences may not be apparent in the day-to-day lives of citizens. Rather, the differences only become evident when citizens in Guam are impacted by the lack of rights and benefits afforded to their counterparts in the states. It is then that conflicts arise, discontent emerges, and the realization of "second class" status is felt.

This is important because many of the aspects of meaningful participation that Guam lacks is because it is a territory, and not a state. For example, Article II, Section I of the US Constitution covers the election of the executive: "Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the Congress."[57] Furthermore, regarding voting representation in the United States, Article I, Section II, reads, "The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature."[58] Article I, Section III, reads, "The Senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years; and each senator shall have one vote."[59] While the Seventeenth Amendment would eventually lead to popular vote for the Senate, the crucial point here is that the core functioning of the government of the United States was meant for states to participate in, and not territories.

A Note on US Citizenship for Those Born in Guam

The primary routes to obtaining US citizenship are citizenship at birth and naturalization. Citizenship at birth is based on *jus soli*. Under *jus soli*, in most situations, a child born in the United States becomes a citizen of the United States. A source of this is the Fourteenth Amendment. The first sentence of the first section of the Fourteenth Amendment states, "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside." There is also *jus sanguinis* (right of the blood) meaning that one can become a citizen of the United States if born to parents who are US citizens (although there are a lot of complexities and rules regarding this for US citizenship).

56 Leibowitz, "Defining Status," 622.

57 Article II, Section I of the United States Constitution.

58 Article I, Section II of the United States Constitution.

59 Article I, Section III of the United States Constitution.

Regarding Guam, one question is "Do territories count as the 'United States' for the purposes of the first sentence of the Fourteenth Amendment?" The answer has been heavily debated in legal circles. One interpretation is that, unlike those born in the states, those born in the territories do not have birthright citizenship as a result of the application of the Fourteenth Amendment. Rather, those in the organized, unincorporated territories were granted citizenship at birth via statute of Congress. This means that the US Congress extended citizenship to those born in the organized, unincorporated territories by passing laws such as the Organic Act of 1950 in the case of Guam, for example.

A difference here is that the source of this citizenship at birth for the territories is through federal statute while the source of citizenship in a "state of the union" is the Constitution, leading to what some scholars call statutory citizens vs. constitutional citizens.

> Those who are granted statutory US citizenship outside a state do not acquire the same rights of national citizenship or state citizenship under the US Constitution as citizens born or naturalized in one of the states. That is because the source of citizenship acquired outside a state is not the US Constitution, but federal statutory citizenship law adopted by Congress.
>
> For example, Congress can attach terms and conditions that must be met to acquire and keep statutory US citizenship outside a state. Thus, a person granted US citizenship by federal statute based on birth outside the 50 states of the union to a US citizen parent can be required to reside in the US for a specified period before statutory citizenship granted at birth becomes permanent. Similarly, under the Balzac ruling, US citizenship granted due to birth in Puerto Rico or one of the smaller unincorporated territories does not secure citizenship rights under the Constitution.[60]

As John Vlahoplus argues, "denying birthright constitutional citizenship discriminates against those born in unincorporated territories. It leaves their nationality to the grace of Congress, which can impose conditions precedent and subsequent to their attaining and retaining of US nationality. It extends the racist foundation of the Insular Cases beyond their express holdings."[61] As Lisa Marie Perez argues, the federal government has treated the citizenship status of those in the territories "as a matter of collective privilege rather than individual right."[62] This distinction between constitutional citizenship and statutory citizenship could matter when it comes to the question of whether or not statutory citizens will lose their citizenship if Guam becomes an independent country or a freely associated state (in which citizenship is not kept).

There is no definitive answer as to whether existing US citizens will lose their US citizenship if there is a change to free association or independence, as the issue will be settled legally and politically.

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60 Howard Hills, *Citizens Without A State* (Laguna Beach: Pacific Noir Pulp Press, 2015), 48.

61 John Vlahoplus, "Other Lands and Other Skies: Birthright Citizenship and Self-Government in Unincorporated Territories," Williams & Mary Bill of Rights Journal, 401 (2018): 404.

62 Lisa Marie Perez, "Citizenship Denied: The Insular Cases and the Fourteenth Amendment," *Virginia Law Review,* 94 (2008): 1044.

Collectively revoking US citizenship from statutory citizens in Guam may be easier than if they were constitutional citizens. There have been instances in Puerto Rico which demonstrate the possible fragility of statutory citizenship. In 1998, the United States-Puerto Rico Political Status Act, a bill sponsored by Representative Don Young, of Alaska, was introduced with the intent of resolving Puerto Rico's political status. A caveat to the bill was that Congress would automatically revoke the statutory US citizenship of all Puerto Ricans residing in the island if Puerto Ricans chose independence.[63] The bill ultimately died, but this helps demonstrate that statutory citizenship may rest on a more fragile foundation than that of constitutional citizenship.[64] Furthermore, regarding Puerto Rico, "revocation of citizenship provisions have been incorporated in prior plebiscite bills, and the two congressional committees in charge of Puerto Rican affairs have repeatedly taken the position that Congress is not bound by any significant constitutional constraints in determining the citizenship status of Puerto Ricans."[65]

That does not mean the citizen inhabitants of the unincorporated territories have no legal protections against a unilateral revocation of citizenship in the case of free association or independence. Some legal scholars argue that a Congressional unilateral revocation of citizenship in the territories may violate the Due Process Clause of the US Constitution. Alvarez Gonzalez argues that Congress is only authorized to "impose conditions subsequent for the retention of statutory citizenship at the time that citizenship is granted."[66] As Lisa Maria Perez argues, "an effort to justify the collective denaturalization of Puerto Ricans under the Due Process Clause would face great difficulty in establishing that they had reasonable notice of the fact that their citizenship was conferred subject to an implied condition of continued US sovereignty."[67] In the case of Young's Puerto Rico bill, the revocation of citizenship was used more as a political argument rather than a probable scenario, intended as a disincentive for the electorate to choose independence.

For Guam, the matter of citizenship under free association or independence would be the subject of negotiations. Unlike the FAS model, wherein the people were Trust Territory of the Pacific Islands citizens rather than US citizens at the time of negotiations, a Guam FAS or independence model would be conducted with US citizens. Again, this would be subject to negotiations, and could be influenced by the importance of maintaining US geo-strategic interests.

Statehood

If Guam were to become integrated into the United States, US citizenship would continue for the people of the island. Since Guam would be a state, and no longer an unincorporated territory, there would

63 H.R. 856, 105th Congress, 4(a)(B)(4) (1997).

64 Also, it should be mentioned that in many ways, Don Young, was using fear and intimidation tactics to sway the results of the Puerto Rico referendum.

65 Perez, "Citizenship Denied," 1033-1034.

66 Alvarez Gonzalez, supra note 25, at 314 (citing Cong. Research Serv., Discretion of Congress Respecting Citizenship Status of Puerto Rico (1989).

67 Perez, "Citizenship Denied," 1074.

be no ambiguity regarding constitutional citizenship. As a state, Guam would constitutionally be considered the "United States" for the purposes of the Fourteenth Amendment and subsequently treated as such. Furthermore, as a state, US citizens in Guam will be able to exercise their full democratic participation via voting representation in the US House of Representatives and US Senate as well as have electors in the Electoral College. Overall, maintaining US citizenship is most secure in the case of statehood.

Independence

If independence is the chosen political status of the island, US citizenship of people in the island would be subject to negotiation. This would include negotiations over whether those who are already US citizens would remain US citizens in the new political status. Overall, it is not guaranteed that existing US citizens would either keep or lose their citizenship in the case of independence. However, it is nearly guaranteed that jus soli American citizenship will be discontinued. To put it another way, the country of Guam will no longer be a place to produce new American citizens via birthright citizenship, with things less clear when it comes to jus sanguinis (or the acquisition of one's US citizenship as a result of their parent's US citizenship). This would be a political/legal process that will likely involve policy debates between Guam and the US government (subject to the political environment of the time).

The independent country of Guam will have to develop its own citizenship requirements, laws, passport, and benefits. Some issues that an independent country of Guam would have to address are: methods for citizenship acquisition; rules for the revocation of citizenship; the possibility of dual citizenship; compliance with international law regarding statelessness; and the rights and responsibilities of citizens and the protection of these rights and responsibilities.

Citizenship Acquisition

There are various methods used to acquire citizenship in countries around the world, including:

- Citizenship by birth: Birth in the country automatically confers citizenship, regardless of the parents' citizenship or status. Known as *jus soli*.
- Citizenship by descent: Passed on to a child under the condition that at least one of the child's parents are a citizen of that country, regardless of the child's actual country of birth. Known as *jus sanguinis*.
- Citizenship by naturalization: may include provisions such as a period of residence, renunciation of other citizenship, and/or familiarity with the language and customs of the country.
- Citizenship by marriage: A person can be entitled to become a naturalized citizen without fulfilling other naturalization requirements in their spouse's country.
- Citizenship by registration: May acquire citizenship without meeting all naturalization

requirements, in many instances, this is reserved to those with blood ties to the country.[68]

Status Example: Europe (with a concentration on the European Union)

At birth: The majority of countries in Europe offer the acquisition of citizenship at birth through *jus sanguinis*. Countries in the EU do not offer automatic and *unconditional* citizenship to children born in their territories to foreign citizens. Yet, a few EU countries offer conditional *jus soli* citizenship with the most common condition being that the child's parents should have resided in the country for a certain period of time before the child's birth.[69] Furthermore, seven EU countries allow for children of foreign citizens to acquire citizenship at birth if one of their parents also was born in the country, in what is known as double *jus soli*.

After birth: In addition to naturalization (with a period of residence being the primary ground), some EU countries such as Hungary have simpler naturalization processes for those meeting certain eligibility requirements. In Hungary, there is a process for acquiring citizenship named "simplified naturalization," which is tied to the Hungarian language. One of the requirements for going through the Hungarian simplified naturalization procedure is to "understand and communicate in Hungarian language on a sufficient level, to be able to present the application for naturalization independently without external assistance, and to answer the questions asked by the officer independently, in short sentences."[70] One is only eligible for the simplified naturalization process if their parents and/or other ancestors were Hungarian citizens. One difference between regular naturalization and simplified naturalization in the Hungarian example is that those eligible for simplified naturalization do not have to have sufficient means of subsistence or "place of abode" in Hungary. Guam may consider something similar for a naturalization process.

Status Example: Israel

Considering that there are more indigenous CHamorus living outside of Guam than there are living within, the government of the country of Guam may or may not consider policies that take diaspora into account. While Israel has citizenship acquisition policies based on *jus soli* and *jus sanguinis*, they also have acquisition via the "Law of Return." The Law of Return "grants every Jew, wherever he may be, the right to come to Israel as an oleh (a Jew immigrating to Israel) and become an Israeli citizen."[71] The Israeli Constitution defines a Jew as a person who was born of a Jewish mother or has converted to Judaism and is not a member of another religion. It has also been extended to include the child and grandchild of a

68 "Citizenship Laws of the World," United States Office of Personnel Management, March 2001, 4-5.

69 Maria Margarita Mentzelopoulou and Costica Dumbrava, "Acquisition and loss of citizenship in EU Member States: Key Trends and Issues," European Parliamentary Research Service, July 2018, accessed at https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/625116/EPRS_BRI(2018)625116_EN.pdf.

70 Embassy of Hungary Washington, "Simplified Naturalization", accessed at https://washington.mfa.gov.hu/eng/page/simplified-naturalization.

71 Israel Ministry of Foreign Affairs, "Acquisition of Israeli Nationality," January 2010, accessed at https://www.mfa.gov.il/mfa/aboutisrael/state/pages/acquisition%20of%20israeli%20nationality.aspx.

Jew, the spouse of a child of a Jew and the spouse of the grandchild of a Jew. This was done to ensure unity of families. However, an oleh's certificate can be denied to persons who: engage in activity directed against the Jewish people; may endanger public health or the security of the state; and have a criminal past, likely to endanger public welfare. According to David Ben-Gurion, Israel's first Prime Minister, "The Law of Return is one of the State of Israel's basic laws. It encompasses the central mission of our country[72], the ingathering of exiles. This law determines that it is not the state which accords the Jews of the Diaspora the right to settle here, but that this right belongs to every Jew by virtue of the fact that he is Jewish."[73] As a result of this sentiment, Israel also has citizenship laws when it comes to dual citizenship. "The 1952 citizenship law explicitly permits the possession of more than one citizenship. The toleration of dual citizenship is aimed at encouraging Olim (Jewish immigrants) to become Israeli citizens by allowing them to keep their former nationality."[74]

Some countries have policies that can be either considered creative or controversial, such as using citizenship to attract human capital and financial investment. Examples include achievement-based admissions or granting faster access to citizenship if one is a foreign investor.

Status Example: Austria

Article 10 (6) of the Austrian Citizenship Act reads, "The conditions pursuant to (1) (1) and (7) as well as (3) do not apply if the federal government confirms that the granting of citizenship to the applicant is in the interest of the Republic of Austria due to her/his extraordinary past or prospective achievements." [75] Thus, according to this act, if a person is said to meet the criteria of extraordinary past or prospective achievements, certain conditions for citizenship are waived. The Austrian government has made it clear that it does not grant this type of citizenship as "honorary citizenship," but rather as an investment into the services that are expected of the person in the interest of the Austrian state. The Austrian government mainly considers those in the fields of scientific achievements (such as to be employed in Austrian-based research institutions), economic services, sports performances, and artistic performances. However, this is extremely rare. An independent Guam could look further into this policy if it seeks to attract talent to the island for developing the workforce, knowledge economy, or the standing of the country.

Status Example: Vanuatu

Vanuatu serves as an interesting example of "citizenship by investment." In 2016-2017, the Vanuatu

72 It should be noted that Israel is a controversial country due to the dispossession and displacement of the Palestinian people. Interested readers should research the Zionist movement, the creation of Israel in the late 1940s, and the ongoing conflict between the state of Israel and the Palestinian people.

73 Yossi Harpaz and Ben Herzog, "Report On Citizenship Law: Israel," *European University Institute*, June 2018, 2.

74 Harpaz and Herzog, "Report on Citizenship Law," 9.

75 Article 10 (6) of the Austrian Citizenship Act, accessed at https://www.wien.gv.at/english/administration/civilstatus/citizenship/achievements.html.

government launched citizenship by investment programs such as the Capital Investment Immigration Plan, Vanuatu Contribution Program and the Vanuatu Development Support Program to help support infrastructure and promote economic development. While there are differences among the programs, generally, if one invests, that person could become a citizen of Vanuatu within months. From a business standpoint, there are benefits related to taxation.[76] The program has seen some success. As reported in The Guardian, "Since the beginning of 2018, Vanuatu's citizenship-by-investment programs have generated more than $312M."[77] An independent Guam may or may not want to implement a similar policy. If it does, however, the island's people should also understand the risks. According to a report by the International Monetary Fund, "Ultimately the bestowal of citizenship is a government's sovereign decision. However, the risks of selling citizenship can be high. Abuses are widely documented, including enabling corruption, money laundering, tax evasion, and other crimes. If the risks are not properly managed, countries that offer these programs can suffer reputational damage, affecting their economic and financial stability and worsening inequality."[78] This is a multifaceted issue and would require further research as is the case with each status example in this study.

Loss of Citizenship

In addition to acquisition, an independent or freely associated Guam, with its own citizenship, would need to develop its own criteria for loss of citizenship. Some common grounds for losing nationality and citizenship include:

- Voluntary acquisition of another citizenship
- Permanent residence abroad
- Fraud or non-renunciation of another citizenship
- Voluntary military service and foreign non-military public service
- Seriously prejudicial behavior
- Loss of conditional citizenship
- Voluntary renunciation[79]

In developing its own criteria, an independent Guam would most likely comply with international law and the multiple legal mechanisms dealing with issues of nationality and statelessness. According to international law, the right to a nationality (to acquire, change, and retain nationality) is a human right

76 Citizenship Vanuatu, "Benefits of Vanuatu Citizenship," Global Immigration Consultant, accessed at http://citizenshipvanuatu.com/vanuatu-citizenship-benefits/.

77 Ben Doherty, "Migration firm investigated over ads promising Vanuatu passports," *The Guardian*, February 3, 2021, accessed at https://www.theguardian.com/world/2021/feb/04/migration-firm-investigated-over-ads-promising-vanuatu-passports.

78 Francisca Fernando, Jonathan Pampolina and Robin Sykes, "Citizenship For Sale," *International Monetary Fund*, Summer 2021, accessed at https://www.imf.org/external/pubs/ft/fandd/2021/06/citizenship-for-sale-fernando-pampolina-sykes.htm.

79 Gerard Rene de Groot, Maarten Vink and Iseult Honohan, "Loss of Citizenship," *European Union Democracy Observatory on Citizenship*, 2010, 2-3.

and that the right of countries to decide who their nationals are "is not absolute and, in particular, states must comply with their human rights obligations concerning the granting and loss of nationality."[80] Citizenship policies related to loss of citizenship should be in line with the 1954 Convention relating to the Status of Stateless Persons and of primary importance, the 1961 UN Convention on the Reduction of Statelessness. The 1961 Convention sets rules for the conferral and non-withdrawal of citizenship to prevent cases of statelessness, in line with Article 15 of the Universal Declaration of Human Rights, which recognizes that "everyone has the right to a nationality."[81] One major focus of the Convention is the "prevention of statelessness at birth by requiring States to grant citizenship to children born on their territory, or born to their nationals abroad, who would otherwise be stateless."[82]

Guam may be inclined to ratify the Convention because, as a new country, it should do its best to be in line with international law. These are all aspects an independent Guam should examine when deciding its citizenship policies and the many ways it can craft these policies.

Free Association

Similar to independence, if Guam were to become a freely associated state, it is not absolutely certain that current US citizens in the island would lose US citizenship just by virtue of Guam declaring its intent to become a freely associated state. In the negotiations between Guam and the United States, Guam's negotiators could negotiate for the retention of US citizenship. Once again, this would be dependent on the negotiations that would form the basis of the freely associated relationship between Guam and the United States. Under US citizenship law, there is no explicit prohibition against dual nationality. According to the US Department of State, "US law does not mention dual nationality or require a person to choose one nationality or another. A US citizen may naturalize in a foreign state without any risk to his or her US citizenship."[83] Although the United States does not expressly prohibit dual nationality, it also does not endorse or encourage dual nationality because of the possible conflicts it can cause legally. Guam must have a strong negotiation team during the transition period to help ensure dual citizenship or the retention of US citizenship, if that is something the people of Guam desire.

Of the three models of countries in free association with the United States, only Palau allows for dual citizenship. Neither the Marshall Islands nor the Federated States of Micronesia expressly allow for dual citizenship (with some exceptions). Section 3 of Article III of the Constitution of the Federated States of Micronesia requires that a citizen of the FSM who is also a citizen of another country should "register his intent to remain a citizen" of the FSM and "renounce his citizenship of another nation" within three

80 United Nations Human Rights Office of the High Commissioner, "Right to a Nationality and Statelessness," accessed at https://www.ohchr.org/EN/Issues/Pages/Nationality.aspx.

81 Article 15 of the Universal Declaration of Human Rights, accessed at https://www.un.org/en/universal-declaration-human-rights/.

82 Convention on the Reduction of Statelessness, UNHCR: The UN Refugee Agency, 1961, pg. 3.

83 US Department of State, "Dual Nationality," accessed at https://travel.state.gov/content/travel/en/legal/travel-legal-considerations/Advice-about-Possible-Loss-of-US-Nationality-Dual-Nationality/Dual-Nationality.html.

years of his 18th birthday.[84] Former FSM President John R. Haglelgam provides an argument against dual citizenship. In a letter to the editor of Kaselehlie Press, he writes,

> The development of nationalism in our country is still in its infancy, like a Micronesian baby rolling around in its small baby mat. If we allow dual citizenship, it will be one more barrier to our country's development of full nationalism and the achievement of a strong robust national sovereignty. Our national politicians treat our nation's political development like the weather… This so-called dual citizenship amendment proposal is an example of contradictory political development that would weaken the essence of our country's national sovereignty.[85]

Haglelgam is arguing that opening the doors for dual citizenship will potentially weaken the national pride and sovereignty of the FSM due to the loyalty that will be pledged to another country. Taking into consideration that the FSM is in free association with the United States, the fear of its population prioritizing potential US citizenship over their FSM citizenship can be strong, and this is something the freely associated state of Guam would have to consider. Another concern is that individuals who are citizens of other countries but do not belong to one of the ethnic groups in the FSM may obtain dual citizenship and thus, become entitled to land ownership in the FSM, a right reserved only for FSM citizens. In matters of land tenure, the freely associated state of Guam will need to determine parameters for eligibility.

Under free association (if following existing FAS models) or independence, it is likely the island will no longer be a place for the birth of new US citizens as the island would no longer be under US sovereignty. Guam could enter into free association with the United States while maintaining US citizenship, if this is negotiated. However, this is not currently the case in any of the current freely associated states. But they were not US citizens to begin with, and this is a crucial distinction. Guam's history of being under US sovereignty and having US citizenship may allow for Guam's negotiations of free association to be different than the existing FAS.

Status Example: The Republic of Palau

The Republic of Palau offers an interesting example of citizenship acquisition in the countries of Micronesia, and an independent or a freely associated Guam (if establishing its own citizenship) can learn from this model. According to Article III of the Constitution of Palau, there were originally four paths to obtaining Palauan citizenship (with the Constitution subsequently amended).

> Section 1: A person who is a citizen of the Trust Territory of the Pacific Islands immediately prior to this effective date of this Constitution and who has at least one parent of recognized Palauan

84 Section 3, Article III of the Constitution of the Federated States of Micronesia.

85 John R. Haglelgam, "Letter to the Editor: Former FSM President on Dual Citizenship Act," Kaselehlie Press, February 8, 2017, http://www.kpress.info/index.php?option=com_content&view=article&id=529:letter-to-the-editor-former-fsm-president-on-dual-citizenship-act&catid=10&Itemid=119.

ancestry is a citizen of Palau.

Section 2: A person born of parents, one or both of whom are citizens of Palau is a citizen of Palau by birth, and shall remain a citizen of Palau so long as the person is not or does not become a citizen of any other nation.

Section 3: A citizen of Palau who is a citizen of another nation shall, within three (3) years after his eighteenth (18) birthday, or within three (3) years after the effective date of this Constitution, whichever is later, renounce his citizenship of the other nation and register his intent to remain a citizen of Palau. If he fails to comply with this requirement, he shall be deprived of Palauan citizenship.

Section 4: A person born of parents, one or both whom are recognized Palauan ancestry, shall have the right to enter and reside in Palau and to enjoy other rights and privileges as provided by law, which shall include the right to petition to become a naturalized citizen of Palau; provided, that prior to becoming a naturalized citizen, a person must renounce his citizenship of another nation. There shall be no citizenship by naturalization except pursuant to this section.

The citizenship policies of Palau were subsequently amended via constitutional referendums. For example, Section 4 of Article III, was amended so that any person born of at least one parent who is a citizen of Palau or "of recognized Palauan ancestry" is a citizen of Palau. At the same time, the citizens of Palau repealed Sections 2 and 3 of Article III by permitting dual citizenship, stating, "citizenship of other foreign nations shall not affect a person's Palauan citizenship." Thus, in Palau, holding US citizenship has no effect on Palauan citizenship. Section 4 of the original Constitution of Palau offers some analytical insight for an independent Guam to consider or reject. As outlined in the original constitution, for Palauan citizenship to be granted to a person after birth, that person had to have Palauan ancestry and beyond this, there was no path for naturalization. However, in Palau, only Palauan citizens who are not also citizens of other countries can be eligible to hold the office of president or vice president. Furthermore, to be eligible to hold office in their legislative body, the Olbiil Era Kelulau, one has to be a citizen of Palau *only*.

CITIZENSHIP	
STATUS	**EFFECTS**
Statehood	• Continued US citizenship • Constitutional citizenship for those born in the state of Guam • Reputation of citizenship contingent on world perception of United States
Independence	• Ability to craft own citizenship laws • High probability of discontinued US citizenship for future generations • Possibility of dual citizenship with other countries • Possibility of CHamoru diaspora and older generations who have taken up residence in the continental US to return and hold Guam citizenship (contingent on the laws of an independent Guam) • Revoking citizenship from statutory citizens is uncertain
Free Association	• Ability to craft one's own citizenship laws (if following current FAS models) • Possibility of continued US citizenship dependent on negotiations with the US • Possibility of discontinued US citizenship for future generations

Constitution

A constitution is not always a singular legal and political document. The constitution of a country generally refers to the set of rules by which power is distributed among the members of a country. Although generally this can be found in a constitution, laws or other rules can also be formally found collectively in other statutes and documents. At its core, constitutions outline the powers of a government as well as its limitations. In a more detailed fashion,

> A constitution is the basis for the organization of the state. The state is the mechanism through which a society provides for the exercise of political, administrative, and judicial powers in order to ensure law and order, the protection of the rights of the people, and the promotion and regulation of the economy. As the notion of the sovereignty of people has superseded other beliefs about the source of ultimate authority, the constitution has come to be regarded as a contract among the people on how they would like to be governed.[86]

Issues addressed in a constitution typically include the major functions of politics, how people holding those positions are to be chosen, who is in charge during an emergency, what their powers are, the procedures for amending the constitution, and in a democracy, the rights of individuals and how these rights are protected.

Political Status and Constitutions

Before diving into the possibilities under statehood, free association, or independence, a discussion on constitutions, organic acts, and unincorporated territory status is helpful. There are some in Guam today who argue that the people of the island should get together to form a constitution. This begs the

86 Michelle Brandt, Jill Cottrell, et. al, "Constitution-Making and Reform: Options For The Process," *Interpeace* (2011) 15.

question, "What is the difference between a constitution and an organic act?" One large difference is the degree of involvement of the people. Simply defined, an organic act is an act of the US Congress which confers power of government upon a territory. In Guam's instance, this was provided via the Organic Act of Guam in 1950, which is a piece of federal legislation. While those in Guam advocated for a civilian government, the details of this civilian government as provided by the Organic Act were not created by the people of Guam. Thus, the government of Guam was created via federal legislation and is "an instrumentality of the federal government."[87]

Unlike an organic act, the source of the constitution is supposed to come from the people of that respective political entity. When many think about the US Constitution, they envision the founding fathers eloquently articulating the foundations of the government they wanted to create after being freed from the yoke of British oppression. For many countries, the creation of a constitution saw representatives gather to craft the parameters of their new government. This differs from an organic act, which had no official representatives from Guam involved in the creation of this civilian government.

There have been attempts at crafting a constitution in Guam. In 1968, Senator Richard Taitano introduced what became P.L. 9-244. This legislation created the First Constitutional Convention, which was to examine and propose amendments to the Organic Act of Guam.[88] These recommendations for amendments to the Organic Act were sent to the US Congress, and while there was a response acknowledging receipt of the recommendations, there were no efforts to actually address them. Roughly 10 years later, a second Constitutional Convention was held. Unlike the first ConCon, the second ConCon was sanctioned by federal legislation. Through the work of Delegate Antonio Won Pat and others, a bill calling for a Guam Constitutional Convention was passed and signed. However, there were concerns by officials in the US federal government that the Constitutional Convention would be too far-reaching and thus, Fred Zeder, the director of the Department of the Interior's Office of Territories, recommended amending the bill to protect federal interests in the island. As articulated in the Department of the Interior's objection to the bill's passage in the House of Representatives,

> These bills would set in motion processes which would result in a fundamental reordering of the relations between the federal government and the territories of Guam and the Virgin Islands. We believe that the enactment of these bills would be premature at this time because the administration has not had sufficient time to consider the broad issues surrounding such changes and to develop its position on them.[89]

Thus, the enabling act for the Second Constitutional Convention would not have fundamentally changed the power hierarchy between Guam and the United States. The constitution would have had

87 Sakamoto v. Duty Free Shoppers 764 F.2d 1285 (9th Cir. 1985).

88 Political Status Coordinating Commission, Kinalamten Pulitikat: Sinenten I Chamorro: Issues in Guam's Political Development (Guam, 1996), 133.

89 Letter from Asst. Secy. Of the Interior, Sept. 17, 1975, in H.R. Rep. No. 94-508, 94th Cong. 1st Sess. (1976), 7.

to follow the blueprint of federal-territorial relations. Dr. Robert Underwood summarizes this, writing,

> The enabling act, as amended, clearly limited the subject matter which the convention was to consider. In part, the bill authorized the Guam legislature to call a constitutional convention to draft, within the existing federal-territorial relationship, a constitution which should: first, recognize and be consistent with the sovereignty of the United States over Guam, and the supremacy of the provisions of the Constitution, treaties and laws of the United States applicable to Guam… The Guam Legislature accepted the enabling act as it was, and ordered the establishment of a Constitutional Convention.[90]

Ultimately, the final legislation (P.L. 94-584 as amended by P.L. 96-597) required congressional approval for the constitution, a vote on the constitution, and congressional review of any constitutional clashing with the Organic Act of Guam. Carl Gutierrez, who later became governor of Guam, was elected by the delegates of the ConCon to serve as the president of the convention. Their work convened on July 1st, 1977, with various proposals put on the table for the crafting of this new constitution. The draft constitution was eventually approved by Congress but was ultimately defeated in an election. One reason for the constitution's defeat was that it failed to address the issue of US sovereignty over the island, with one argument being that political status should be resolved first. Other underlying issues that may have also contributed to this defeat include contentment with the status quo as well as a lack of education on the matter.

Many opponents of the drafting of a constitution today argue, like those before, that the issue of Guam's political status should be resolved first before crafting a constitution. There is an argument that creating a constitution within an unincorporated territory that is supposed to adhere to federal-territorial relations is too limiting in scope. As Dr. Laura Souder writes, "The effect of this continuation of federal authority and federal bureaucratic presence is to limit Guam and its local government institutions and prevent them from developing normally and expanding to their fullest."[91] Furthermore, according to former Governor Joseph Ada and Leland Bettis,

> This was the only time the US allowed a UN mission to Guam and is an indication that the US government considered the constitutional process to be the resolution of Guam's political status as a colony. In the US government's view, a non-self-governing territory becomes "self-governing" once it adopts a constitution and therefore should be considered "decolonized…" The invited presence of the UN visiting mission in Guam in 1979 was clearly in line with the US view that

90 Penelope Bordallo Hofschneider, *A Campaign for Political Rights on the Island of Guam 1899-1950* (Saipan: CNMI Division of Historic Preservation, 2001), 177.

91 Laura Torres Souder and Robert A. Underwood, *Chamorro Self-Determination: Right of a People* (Guam: Chamorro Studies Association and Micronesian Area Research Center, 1987), 15.

the adoption of a constitution and political status went hand in hand.[92]

For this reason, some argue that resolving the political status before a constitution is adopted ensures the integrity of both the process and the document itself. Additionally, if the constitution is supposed to outline the distribution of power, how can this be accomplished without first knowing what kind of government is to be established? However, some support adopting a constitution as an unincorporated territory, arguing that the document would be an important step for the island due to beneficial incremental changes. They do not see this as antithetical to political status change.

With this preliminary information on constitutions complete, this section of the study now focuses on the possible content of a Guam constitution for each respective political status. This section will also focus on the potential process of creating a written constitution.

Statehood

The history of constitutions among the 50 states shows commonalities in their creation. To explore this, it is helpful to trace the process of state creation within the United States. Article IV, Section III, Clause I of the US Constitution reads, "New states may be admitted by the Congress into this union; but no new states shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, of parts of states, without the consent of the legislatures of the states concerned as well as of Congress."[93] Put another way, Congress decides whether or not to admit new states into the union, with the president signing the law. The process of becoming a state can be a lengthy process. For unincorporated territories, becoming a state may be even more complicated and is not guaranteed. Unincorporated territories may have to first be incorporated before they can follow the same path as other states. Other barriers are that Guam is also geographically separate as well as historically, ethnically, and culturally distinct.

Regarding constitutions, it must be made clear that in the United States, the states themselves have their own constitutions which exist alongside the US Constitution. This is due to the political character of the US government federal system as opposed to a unitary system of government. A unitary system is a political system in which the central government, and no other political body, has a monopoly over government powers. Federal systems differ in that their constitutions outline the powers of the national government while reserving a number of government powers for state, provincial, or local governments. Some powers may also be shared across political divisions in a federal system.

If Congress decides to act on a petition for statehood, it can pass a law declaring the new state or pass an enabling act authorizing the territory to create a Constitutional Convention for creating a constitution for the proposed state as well as selecting the first state officers and congressional representatives. In this

92 Joseph Ada and Leland Bettis, "The Quest for Commonwealth, the Quest for Change," in *Kinalamten Pulitikåt: Siñenten I Chamorro, Issues in Guam's Political Development* (Hagåtña, Guam: Political Status Education Coordinating Commission, 1996), pg. 150.

93 Article IV, Section III, Clause I of the US Constitution.

enabling act, Congress may outline conditions that it expects the new state to meet. These conditions are expected to be drafted and interwoven into the state's constitution. It is important to remember, however, that Congress will ultimately need to determine whether Guam's current status as an unincorporated territory is an impediment. After the constitution has been drafted, it is sent to Congress, which reviews and decides whether to pass an act or resolution of admission, which then would have to be signed into law by the president of the United States. Of the 37 states admitted after the adoption of the US Constitution, many have had a condition imposed on them upon admittance. "Congress has imposed conditions on the admission of states where it has concerns about whether the citizenry of the new state can be assimilated as a loyal, democratic unit of government within the United States, sometimes because that citizenry has been perceived as fundamentally different from mainstream American politics and society."[94] Examples of these conditions include: restrictions on how the soon-to-be state can use public lands; requiring that a state ban slavery; or prohibiting polygamy, in the case of Utah.

There are frequently required provisions of state constitutions, including, but not limited to:

- An express clause stipulating that a republican form of government be established
- A standard provision stating that the new state constitution must be consistent with the federal constitution
- Specific clauses guaranteeing the fundamental principles of civil and religious liberty
- Provisions requiring the new state constitution to be submitted to the people for ratification or rejection
- A clause specifying that the constitution can make no distinction in civil or political rights based on race or color

State constitutions should not be overlooked, as they are important to understanding domestic US politics. As explained by G.A. Tarr,

> The disdain for state constitutions is unfortunate; for one cannot make sense of American state government or state politics without understanding state constitutions. After all, it is state constitution — and not the federal constitution — that creates the state government, largely determines the scope of its powers, and distributes those powers among the branches of the state government and between state and locality.[95]

At its core, state constitutions should contain a preamble, a bill of rights, articles detailing the separation of powers between the three branches of government, and a framework for setting up local governments. States take responsibility for powers such as: ownership of property; education of inhabitants;

94 Eric Biber, "The Price of Admission: Causes, Effects, and Patterns of Conditions Imposed on States Entering the Union," The American Journal of Legal History, Vol. XLVI, 2004, 120.

95 G.A. Tarr, Understanding State Constitutions (Princeton, NJ: Princeton University Press, 1998), 3.

implementation of welfare and other benefits programs; protecting people from local threats; maintaining a justice system; setting up local governments such as counties and municipalities; maintaining state highways and setting up the means of administrating local roads; regulating industry; and raising funds to support their activities. States and the federal government share the following responsibilities: collecting taxes; borrowing money; establishing courts; making and enforcing laws; chartering banks and corporations; spending money for the general welfare; and taking private property for public purposes. Taking all of this into account, the main purposes of state constitutions (within the limitations placed on states by the US Constitution) are to "establish procedures for policy-making, define the structure of state and local government, set the conditions for inter-state and multi-state compacts, set forth requirements of public office, specify state obligations to citizens, enshrine principles of governance, determine the responsibilities of local governments, establish voting rights and determine how elections are to be conducted, and specify processes for constitutional change."[96]

State constitutions vary in length and scope, and unlike the US Constitution, they are broader in scope and are amended more frequently to fit the unique needs of the state. "While all state governments follow the general pattern established by the original states and the federal government, they vary widely in the details of structure and operation."[97] One example is Alabama, whose constitution is around 340,000 words, as compared to Virginia's constitution, which is only 8,295 words. Each state constitution is longer than the US Constitution. State constitutions can be very different. For example, some states mandate balanced budgets, thirty-eight states have term limits for governors, sixteen states have set terms for any state legislator, and ten states guarantee the right to privacy (financial and medical records for example). The state of Guam would have flexibility under this framework to create a constitution for the state that fits the island's experiences, provided that it operates under US sovereignty and the supremacy of the US Constitution.

Independence

If independence is the chosen status, the people of Guam could engage in a "participatory" constitution-making process. At its core, participatory constitution-making revolves around the principles of public participation, inclusiveness (gender equity), representation, and transparency.[98] In making the process more participatory, the public needs to be informed about the modes of appointment and election of their representatives, the adoption process in the crafting of the constitution, the public's role in the process, and feedback on how public input will be used in the deliberation. Guam could also begin a civic education campaign to accompany the constitution-making process. This educational campaign could address the following: the purpose of constitutions; arguments on what should and what should not go

96 Christopher A. Simon, Brent S. Steel and Nicholas P. Lovrich, "State and Local Government and Politics: Prospects for Sustainability," 1, accessed at https://open.oregonstate.education/government/chapter/chapter-5/#5-2.

97 Gordon Harrison, "Alaska's Constitution: A Citizen's Guide," Alaska Legislative Affairs Agency, 2018, 1, accessed at http://w3.legis.state.ak.us/docs/pdf/citizens_guide.pdf.

98 Brandt and Cottrell, "Constitution-Making and Reform: Options For The Process," 9.

into a constitution; how they are used; defining the language that will be used in the constitution; and the main elements of constitutions. This will be important, considering that many may ask what happened to Guam's previous attempts to craft a constitution or are unaware of these previous attempts.

An independent Guam will need to not only take into account that the constitution sets the "supreme law of the land," but also that the process of crafting a constitution is a pivotal moment in creating either unity or division among the citizenry. As a newly minted country, Guam would be better served with a united citizenry. Constitutions can act as a social contract between the people of the country. Depending on how Guam achieves its independence, this may be important. As a constitution outlines the distribution of power in the new country, notions of who belongs and whose voice counts will be determined in the constitution-making process.

In addition to the participatory aspect of the constitution, there are other important issues and questions to be addressed in the formulation of the constitution in an independent Guam. According to constitutional scholars, the following is a list of things to consider in crafting a constitution:

- Funding: How much will it cost? Where will the money come from and who will be accountable?
- Timing: Will there be a timetable, and if so, will it be rigid or open to change? Will it be tight or allow a lot of time?
- Adoption: How will the new constitution be passed into law? By the body that discusses and decides, by the president who usually signs laws, or by the approval of the people through a referendum? Will there be any prerequisites?
- Technical quality: How is the technical quality of the document to be assured?
- Draft: Who will draft the constitution? One or more political parties, a commission or committee, or from a single expert?[99]

The crafters of the constitution may also want to follow some common elements of a constitution:

- Preamble: Overarching motives and goals of the constitution. Sometimes refers to important historical events, national identity, or values
- Preliminaries: Declaration of sovereignty, national characteristics such as language, religion, and symbols, citizenship, state ideology, value and objectives
- Bill of rights: List of fundamental social and economic rights and their applicability, enforcement, and limitations
- Legislative branch: Structure, membership, terms of office, responsibilities and powers
- Executive branch: Structure, membership, terms of office, responsibilities and powers
- Judicial branch: Court system, appointments, independence, public prosecutors[100]
- Sub-national government: Structure, membership, responsibilities/powers in relation to the

99 Brandt and Cottrell, "Constitution-Making and Reform: Options For The Process," 9.

100 This is predicated upon the country of Guam wanting to adopt a similar 3 branch of government political system.

national government
- Additional institutions: Public service, electoral commission, ombudsman, armed forces, human rights bodies
- Amendment procedures and transitional provisions: Rules and procedures for amending constitutional provisions, procedures for making the constitution effective, and what rules will apply in the interim.[101]

Three perspectives on the country's constitutional design can be helpful if independence or free association is chosen. First, the constitution should not be too specific as to not be useful in unexpected scenarios and events within a country. Secondly, the framers of the Guam constitution may not want to completely break with long-standing traditions of government as this could cause consternation among a country's citizenry. This is not to say that a constitution cannot be completely reimagined, but rather that if it completely breaks from long-standing traditions of governance, it may be difficult (although not impossible) to reorient society to these new principles of governance. Through the development of political culture and various agents of political socialization, any constitution designed in an independent country or freely associated state of Guam would benefit from taking this into account. Thirdly, it is helpful for the document to be amendable, to ensure that it is able to responsibly govern politics in Guam with changing times, situations, and technology.

Overall, independence offers the greatest latitude in crafting a constitution. It requires the crafting of policies and governmental principles most in line with Guam's historical experiences, social fabric, and expressed political desires. Many important decisions will be made during the deliberation process for the constitution, and it must be pointed out that what is considered "constitutional" will have lasting ramifications in the country. The people of Guam in an independent country will receive both the opportunity and the responsibility to determine this and conduct the process for making these decisions.

Status Example: South Africa

South Africa emerged out of a history of apartheid, a policy of segregation in which non-whites were oppressed and discriminated against by white South Africans. The policy of apartheid began in 1948. Non-white South Africans were forced to live in segregated areas away from white South Africans and had to use separate public facilities. Non-whites were required to carry documents in order to pass through certain areas. This also affected access to land, as eighty-seven percent of the land belonged to white South Africans during apartheid, and sixty percent of citizens today continue to have no registered real estate rights. After a long history of resistance, UN pressure, and economic sanctions by the US and UK, a new constitution came into effect in 1997 which ended the apartheid system in South Africa.

During the negotiating process to end apartheid, it was agreed that a new constitution should be

101 Nanako Tamaru and Marie O'Reilly, "A Women's Guide to Constitution Making," *Inclusive Security* (2018): 3.

created. The framers of the new South African constitution crafted the preamble to read,

> We, the people of South Africa, recognise the injustices of our past; honour those who suffered for justice and freedom in our land; respect those who have worked to build and develop our country; and believe that South Africa belongs to all who live in it, united in our diversity. We therefore, through our freely elected representatives, adopt this constitution as the supreme law of the republic as to—heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights; lay the foundations for a democratic and open society in which government is based on the will of the people and every citizen is equally protected by law; improve the quality of life of all citizens and free the potential of each person; and build a united and democratic South Africa able to take its rightful place as a sovereign state in the family of nations.[102]

The preamble clearly demonstrates a desire to start over and shows a citizenry that has learned from its past mistakes and aims to not repeat them. In addition to the preamble, this desire can also be found in various other parts of their constitution. One primary example is Chapter 1, which reads:

> 1. The Republic of South Africa is one, sovereign, democratic state founded on the following values: (a). Human dignity, the achievement of equality and the advancement of human rights and freedoms. (b). Non-racialism and non-sexism. (c). Supremacy of the constitution and the rule of law. (d). Universal adult suffrage, a national common voters' roll, regular elections and a multi-party system of democratic government, to ensure accountability, responsiveness, and openness. [103]

Furthermore, the constitution references the past harms in the section on property, particularly Chapter 2, Section 25, parts 6, 7, and 8:

> (6) A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress.
>
> (7) A person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress.
>
> (8) No provision of this section may impede the state from taking legislative and other measures

102 Preamble of the Constitution of South Africa, accessed at https://www.justice.gov.za/legislation/constitution/SAConstitution-web-eng.pdf.

103 Chapter 1 of the Constitution of South Africa.

to achieve land, water and related reform, in order to redress the results of past racial discrimination, provided that any departure from the provisions of this section is in accordance with the provisions of section 36(1).[104]

These particular sections show how South Africa, in attempting to right the wrongs of the past, understood that righting these wrongs may negatively affect others who benefited from them. However, some South African leaders are pushing for a change in the constitution to make it easier for the government to expropriate land without payment, which will affect white farmers. This issue is still ongoing, but what is important is that despite Guam's best intentions in crafting the constitution, it will require strong constitutional design and political leadership to ensure the spirit of the constitution is upheld with the changing of time and government.

Overall, the South African constitution helps to show that an independent or freely associated Guam could use its constitution to address long-standing issues. This will matter, depending on the manner and process in which Guam achieves its independence. As a constitution refers to the set of rules which order the distribution of power within a country, constitution making is an inherently political process. Thus, the people of Guam, in crafting their constitution for an independent country or freely associated state, should use it to ensure the most equitable and just situation for its citizens.

Looking at these examples, it is advised that the crafters of the new constitution in an independent Guam adequately study constitutions from countries around the world as well as refer to the principles of constitution-making outlined above as best practice.

Free Association

In the case of free association, a similar process will likely be followed as with independence, but certain provisions of the constitution could reflect areas of the free association agreement, particularly related to geo-strategic considerations such as the use of land and sea for US defense interests. On one hand, Guam could ask the US for help and resources in the constitutional crafting process. However, more-than-adequate constitution-drafting capacity exists in Guam to render such assistance potentially unnecessary. In any case, the US may try to influence elements of the crafting of this monumental document. Furthermore, in the existing models of free association with the US, the Compacts of Free Association and the constitutions of these associated states are generally in alignment.

Status Example: Micronesian Constitutional Convention

On July 12, 1975, the Micronesian Constitutional Convention assembled to draft a Micronesian constitution. At the time, most of the Micronesia sub-region, with the exception of Guam, Nauru, and

104 Chapter 2, Section 25 of the Constitution of South Africa.

Kiribati, formed part of the Trust Territory of the Pacific Islands under the UN. The convention received enabling legislation in the US Congress. However, the areas of disagreements between the United States and the representatives of the convention regarding the drafts of the constitution are of core importance to this discussion. When presented with the draft constitution, US negotiators pushed back against provisions prohibiting indefinite land leases as well as the handling of certain hazardous materials (including nuclear weapons and other materials for warfare), regarding those provisions as inconsistent with the defense provisions of the compact.[105]

Status Example: The Republic of Palau (Belau)

Palau's constitutional history serves as a powerful example of how US security interests can potentially impact the content of a constitution. There were two main provisions in Palau's constitution that caused controversy in the approval of the Compact of Free Association with the US: Article II, Section 3 and Article XIII, Section 6. Article II, Section 3 reads,

> Major governmental powers including but not limited to defense, security, or foreign affairs may be delegated by treaty, compact, or other agreement between the sovereign Republic of Palau and another sovereign nation or international organization, provided such treaty, compact or agreement shall be approved by not less than two-thirds of the members of each house of the Olbiil Era Kelulau and by a majority of the votes cast in a nationwide referendum conducted for such purpose, provided, that any such agreement which authorizes use, testing, storage, or disposal of nuclear, toxic chemical, gas or biological weapons intended for in warfare shall require approval of not less than three-fourths of the votes cast in such referendum.[106]

Reinforcing this, Article XIII, Section 6 of Palau's constitution originally read, "Harmful substances such as nuclear, chemical, gas, or biological weapons intended for use in warfare, nuclear power plants, and waste materials therefrom, shall not be used, tested, stored, or disposed of within the territorial jurisdiction of Palau without the express approval of not less than three-fourths (3/4) of the votes cast in a referendum submitted on this specific question."[107] The United States, however, refused to negotiate any change in its relationship with Palau that would restrict the transit of US nuclear-powered vessels. During Palau's constitution drafting, US government officials commented on drafts, arguing against provisions that were against US interests. In response, "The Palau Constitutional Drafting Commission consequently redrafted the Palau Constitution with the 'expressed intent of accommodating US interests'…The revised

105 Norman Meller, Constitutionalism in Micronesia, La'ie: Institute for Polynesian Studies, Brigham Young University, 1985, 319.

106 Article III, Section 3 of the Compact of Free Association between the United States and the Republic of Palau, accessed at https://pw.usembassy.gov/wp-content/uploads/sites/282/2017/05/rop_cofa.pdf.

107 Constitution of the Republic of Palau, accessed at http://www.unesco.org/education/edurights/media/docs/c4679995d1bddd-3ef509ddc66c3cb38e80d492fe.pdf.

constitution, deleted the nuclear prohibition language from article II."[108] Even so, this revised constitution was rejected, and the provisions were restored for a third election, with 79% approving the "nuclear-free" constitution in 1981.

The next step in Palau's political development was in ratifying the Compact of Free Association with the United States. The first plebiscite, in 1983, presented Palauan voters with the questions: 1) Do you approve of free association as set forth in the Compact of Free Association?; 2) Do you approve of the agreement concerning radioactive, chemical, and biological materials concluded pursuant to section 314 of the Compact of Free Association? The results of the vote were 61% for the first question and 51% for the second question. This did not pass the 75% margin required under the approved constitution, which led to a bloody period in Palauan history, including the assassination of a president and a subsequent leader's suicide (although direct connection to the nuclear-free constitution remains open to question). As a result of the violence and political stagnation regarding the compact, voters were asked to vote on a new referendum to amend the constitution to allow for a simple majority approval of the compact. This vote received 73.3% in favor. This also was challenged in Palau's courts, for not meeting the 75% requirement for approving the compact, even though the Palau constitution itself can be amended by a simple majority vote. After internal division on whether to approve the compact, including a lawsuit by prominent Palauan women, President Ngiratkel Etpison made an initiative to amend the Palauan constitution via popular initiative at the Nov. 4, 1992 general election.

As J. Roman Bedor describes in his book, *Palau: From the Colonial Outpost to Independent Nation*, "The popular initiative petition to amend Article II, Section 3 and Article XIII, Section 6 to reduce seventy-five percent (75%) to simple majority was signed by more than 25% of the voters required to place the constitutional amendments in the general election on November 4, 1992."[109] The vote received sixty-two percent approval and thus Article II, Section III, and Article XIII, Section 6 of the constitution were amended from requiring seventy-five percent of the vote to a simple majority vote. Following this constitutional amendment, on November 6, 1993, another referendum was held regarding the Compact of Free Association. This time, it received sixty-two percent approval, and the compact was approved. Altogether, there were thirteen referenda and plebiscites regarding either the constitution or the Compact of Free Association. One can see from Palau's example that Palauans ultimately altered their constitution to be more in line with US geo-strategic and security interests, which was a lengthy and violent process.

If free association is the chosen status, the people of Guam can learn from these two examples regarding negotiations with the US government and the challenges associated with the harmonization of the provisions of the COFA with the internal constitution. It has been demonstrated that compact negotiations have the potential to influence the drafting of the provisions of a country's constitution. As the primary US objective in Micronesia is strategic and geopolitical, it is highly expected that any constitution drafted in a freely associated state of Guam would require a significant degree of consistency with the defense

108 Jon Hinck, "The Republic of Palau and the United States: Self-Determination Becomes the Price of Free Association," *California Law Review*, 78 (1990): 926.

109 J. Roman Bedor, *Palau: From the Colonial Outpost to Independent Nation*, 2015, 299.

provisions of the Compact of Free Association agreement.

None of this means the overall integrity of the constitution in a freely associated Guam will be compromised. Similar attempts at securing US interests could also be seen when creating a constitution under statehood or independence. In the case of free association, the officials of the island must be equipped to strategically negotiate with the US federal government to ensure that the interests of the people of Guam are included in the constitution, which will set the parameters of the future government. Guam would do well to begin a process of training diplomats and negotiators in order to ensure that the capacity is created to negotiate for a modern political status providing for the full measure of self-government.

CONSTITUTION	
STATUS	**EFFECTS**
Statehood	• Protection of liberal values such as freedom of speech and religion aligned with the US Constitution. • All articles and further amendments in state constitution to align with the US Constitution. • Due to states' powers, there is some flexibility in crafting state constitution.
Independence	• Ability to create the law of the land in line with the island's unique history, culture and particularities. • Since no longer under US umbrella, Guam would have to create its own enforcement mechanisms for the constitution, which could be difficult at first. • A botched constitutional-making process may create divisions and cause difficulties in the beginning phases of the new country.

Free Association	• Ability to craft one's own constitution according to the island's particularities, needs, and wants. • Possible assistance from the United States in the constitution-making process, if needed. • Highly expected that any constitution drafted in a freely associated state of Guam would require a significant degree of consistency with the defense provisions of the Compact of Free Association agreement.

Individual Rights

There are two ways to understand what constitutes the rights of citizens. The first approach is to establish individual rights that a community or country feels its "citizens ought to acknowledge if they are to treat each other as free individuals worthy of equal concern and respect."[110] These rights normally address the fundamental freedoms a country considers important for its citizens, such as protection from torture or cruel and unusual punishment. The second approach refers to "identifying the rights that are necessary if citizens are to participate in democratic decision-making on free and equal terms."[111] This includes structuring rights so that all eligible citizens can vote for the legislators and laws or even participate in their governments without feeling influenced to vote or act in certain ways.

For this section, it is helpful to distinguish between collective rights and individual rights. Collective rights are rights held by a group or members who make up that specific group (i.e. ethnic groups, religious groups, etc.). Whereas, individual rights are ones that are given to individual members of a country, community, or society.[112] Additionally, there is a distinction between human rights and individual rights. Human rights are "rights one acquires by being alive."[113] whereas, individual rights, sometimes called civil rights, are "rights one obtains by being a legal member of a certain political state."[114]

Individual rights are usually outlined in a country's constitution. However, they are connected as the individual rights affirmed in many constitutions include recognized human rights, such as the right to education and protection from torture. This section will examine: Under each political status, what individual rights may citizens of Guam have?; What are the possibilities and limitations?; and What is the procedure for establishing individual rights for Guam's residents?

110 Richard Bellamy, Citizenship: A Very Short Introduction, (New York: Oxford University Press, Inc., 2008), 14.

111 Bellamy, "Citizenship," 14.

112 Stanford University Center for the Study of Language and Information, "Group Rights," accessed at https://plato.stanford.edu/entries/rights-group/.

113 Georgetown Law Library, "A Brief History of Civil Rights in the United States," accessed at https://guides.ll.georgetown.edu/civil-rights.

114 Georgetown Law Library, "A Brief History of Civil Rights."

As citizens in the unincorporated territory of Guam, it is important to note that there are differences when it comes to rights applicable to the territories as opposed to states of the union. In *Dorr v. United States*, it was stated that "under the Insular framework, the designation of fundamental extends only to the narrow category of rights and principles which are the basis of all free government."[115] Even the idea of what constitutes fundamental rights is inconsistent across the US territories because the applicability of these rights is "a determination the [US] Court would make on a case-by-case basis."[116]

US citizens in Guam would have to leave Guam and reside in one of the 50 states to have the exact same individual rights as US citizens living in those states. These rulings solidified that, in the case of the US territories, many rights in the US Constitution only apply to residents in these places at the discretion of the US Congress. Examples of rights that have been extended to Guam by federal laws or court cases are: trial by jury in the Sixth and Seventh Amendments; equal protection in the Fourteenth Amendment; and voting rights in the Fifteenth and Nineteenth amendments. These same rights, however, are not applied to all territories equally. For example, the Ninth Circuit Court of Appeals has referenced the Covenant establishing the Commonwealth of the Northern Mariana Islands and the Insular Cases when it comes to scrutinizing aspects of the CNMI such as right to trial by jury or land tenure laws.[117]

Statehood

If Guam were to be integrated into the United States, the full extent of the US Constitution would apply to the island. Thus, all individual rights afforded to US citizens in other states would apply to US citizens in the island.

Rights of American Citizens

According to the US Constitution, the following is a list of rights granted to citizens of the United States, (not inclusive of all):

Amendment I: Freedoms of religion, speech, assembly, and press
Amendment II: Right to bear and keep arms
Amendment IV: Right to be secure against unreasonable searches and seizures
Amendment VI: Right to a speedy and public trial
Amendment VII: Right to trial by jury in civil cases[118]
Amendment VIII: Excessive bail and fines cannot be imposed or cruel and unusual punishments

115 Dorr v. United States, 195 US 138, 147 (1904).

116 Juan Torruella, "Ruling America's Colonies: The Insular Cases," Yale Law & Policy Review, accessed at https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1652&context=ylpr.

117 United States General Accounting Office, "US Insular Areas: Applicability of Relevant Provisions of the US Constitution," 1991, accessed at https://www.gao.gov/assets/220/214357.pdf.

118 This right applies to federal civil cases.

inflicted.

Amendments XV, XIX, and XXVI: Right to vote (amendment XIX gave American women the right to vote)[119]

These rights will be guaranteed if Guam were to be admitted as a state with the full applicability of the Constitution. However, it is important to note that certain rights in the US Constitution are applicable at the federal level but not at the state level unless specifically included by federal law in state constitutions.

The rights outlined in the US Constitution for the most part extend to everyone residing in the United States (citizen or non-citizen). However, there are a few rights that are reserved only for US citizens. The US Citizenship and Immigration Services agency explains that these rights include, the right to vote in elections for public officials, the right to run in elected office, and the right to apply for federal employment requiring US citizenship.[120]

As a US citizen, there are also responsibilities that are expected from every individual. These responsibilities include, but are not limited to:

> Supporting and defending the constitution; participating in the democratic process; respecting and obeying federal, state, and local laws; paying income and other taxes honestly, and on time, to federal, state, and local authorities; serving on a jury when called upon; defending the country if the need should arise.[121]

Individuals are expected to adhere to these responsibilities, otherwise they may face legal penalties in some instances.

Aside from rights given by the federal government, all states have the ability to create a bill of rights in their state constitution for the citizens of the state. Attorney General of Guam Leevin Camacho said states have the power to broaden individual rights beyond what is included in the US Constitution. He stated that:

> States can have a broader, equal protection as an example, interpretation of what their clause does. Whereas Guam can never interpret, religious freedom as an example, more expansively than what the federal courts have done. States can interpret their constitutions more expansively than the US Constitution but we [Guam] cannot do that.[122]

119 Bill of Rights Institute, "The United States Constitution Resource Guide," accessed at https://billofrightsinstitute.org/founding-documents/constitution/.

120 United States Citizenship and Immigration Services, "What are the Benefits and Responsibilities of Citizenship?," accessed at https://www.uscis.gov/sites/default/files/document/guides/chapter2.pdf.

121 United States Citizenship and Immigration Services, "Citizenship Rights and Responsibilities," accessed at https://www.uscis.gov/citizenship-resource-center/learn-about-citizenship/citizenship-and-naturalization/citizenship-rights-and-responsibilities.

122 Personal Communication with the Attorney General of Guam, Leevin Camacho, July 2020.

As a state, Guam will have the power to include more individual rights for residents in the state than what is currently allowed in the US Constitution or under federal law. However, these rights cannot contradict the rights outlined by the Constitution. The state of Guam can use its constitution to incorporate individual rights that are fundamental to the island community.

Status Example: California

The state of California drafted its first constitution on Nov. 13, 1849, prior to it becoming part of the United States in 1850. The first document lasted only 30 years before it was replaced with the current state constitution. Since its creation on May 7, 1879, the second California Constitution has been amended more than 450 times.[123] Written into Article I Declaration of Rights, the state constitution incorporates recognized rights from the US Bill of Rights. However, there are several sections included that detail further rights:

> *Section 2:* A publisher, editor, reporter, or other person connected with or employed upon a newspaper, magazine, or other periodical publication, or by a press association or wire service, or any person who has been so connected or employed, shall not be adjudged in contempt by a judicial, legislative, or administrative body, or any other body having the power to issue subpoenas, for refusing to disclose the source of any information procured while so connected or employed for publication in a newspaper, magazine or other periodical publication
>
> *Section 25:* The people shall have the right to fish upon and from the public lands of the state and in the waters thereof, excepting upon lands set aside for fish hatcheries, and no land owned by the state shall ever be sold or transferred without reserving in the people the absolute right to fish thereupon; and no law shall ever be passed making it a crime for the people to enter upon the public lands within this state for the purpose of fishing in any water containing fish that have been planted therein by the state; provided, that the legislature may by statute, provide for the season when and the conditions under which the different species of fish may be taken.[124]

The state of Guam can use its constitution to incorporate similar rights that are fundamental to the island community.

As a state, the full extent of the US Constitution will be applicable to all US citizens in Guam. This will expand the definition of what fundamental rights are for US citizens in Guam. The state of Guam will have the opportunity to include additional individual rights in its constitution in ways that are specific to the needs of the community. On the other hand, it is important to acknowledge that the US Constitution

123 Georgetown Law Library, "Constitution," accessed at https://guides.ll.georgetown.edu/california-in-depth/constitution.

124 California Legislative Information, "California Constitution Cons," accessed at https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=CONS&division=&title=&part=&chapter=&article=I.

will supersede Guam's state constitution in the same way federal interests may at times supersede state interests. However, states do have room to implement individual rights that are not explicitly stated in the US Constitution.

Independence

Individual rights in the independent country of Guam would be initially outlined in the constitution of the new country. It is anticipated that in an independent Guam, the new country would provide its citizens some rights modeled from the US Constitution, including the right to free speech and the right of assembly. Beyond the US Constitution, the country of Guam can also reaffirm rights for its citizens by referencing the United Nations Universal Declaration of Human Rights (UDHR). The UDHR was created post-World War II as a way for countries to ensure that the atrocities and severe human rights violations committed during WWII would not be repeated.

After two years of intense deliberation, the document was formally adopted on Dec. 10, 1948, when 48 countries voted in favor of the UDHR.[125] The document was created with the intention that it "acts like a global road map for freedom and equality – protecting the rights of every individual, everywhere."[126]Some of the rights enumerated in the declaration include, but are not limited to:

1. The right to life, liberty, and security of person
2. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or Punishment
3. No one shall be subjected to arbitrary arrest, detention or exile
4. Everyone has the right to leave any country, including his own, and to return to his Country
5. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory.[127]

Overall, the UDHR has thirty rights each member state should give to its citizens, outlined in Articles 1-30. The document is recognized as the "common standard of achievements for all peoples and all nations"[128] After the passage of the UDHR, more than 80 former colonies incorporated several rights outlined in the UDHR into the constitutions of their newly independent countries.[129]

125 United Nations, "Drafting of the Universal Declaration of Human Rights," accessed at https://research.un.org/en/undhr/ga/plenary.

126 Amnesty International, "What is the Universal Declaration of Human Rights and why was it created?," accessed at https://www.amnesty.org/en/what-we-do/universal-declaration-of-human-rights/.

127 Amnesty International, "What is the Universal Declaration of Human Rights?"

128 Amnesty International, "What is the Universal Declaration of Human Rights?"

129 United Nations, "List of former Trust and Non-Self-Governing Territories," accessed at https://www.un.org/dppa/decolonization/en/history/former-trust-and-nsgts.

Status Example: Democratic Republic of East Timor[130]

The country of East Timor was a former colony of Portugal from the 16th century until 1975 with the overthrow of the sitting Portuguese government. Recognized as a non-self-governing territory, the United Nations supported East Timor to exercise its right to self-determination.[131] In October 1999, the global community sent peacekeeping troops to East Timor to ensure self-determination was exercised. The UN Security Council created the United Nations Transitional Administration in Timor-Leste (UNTAET) to act as "an integrated, multidimensional peacekeeping operation responsible for the administration of Timor-Leste during its transition to independence."[132] In 1999, over 79% of voters chose independence. After a brief three-year transition aided by the UN, the country gained independence in 2002.[133]

East Timor's constitution incorporates aspects of the UDHR, with a majority of the constitution dedicated to outlining the rights afforded to each Timorese citizen. It also added a few rights that reflect the country's character. Recognizing their nation's tumultuous history, the Timorese people adopted a constitution that reflects their views of individual rights. They included an article that protects individual privacy and one that protects individuals in unique circumstances:

> *Article 38: Protection of Personal Data*
>
> 1. All citizens have the right to access personal data stored in a computer system or entered into mechanical or manual records regarding them, and may require their rectification and actualization, and have the right to know their purpose.
>
> 3. The processing of personal data on private life, political and philosophical convictions, religious faith, party or trade union membership and ethnical origin, without the consent of the interested person, is prohibited.
>
> *Article 39: Family, Marriage, and Maternity*
>
> 4. Maternity is dignified and protected, and special protection shall be guaranteed to all women during pregnancy and after delivery and working women shall have the right to be exempted from the workplace for an adequate period before and after delivery, without loss of remuneration or

130 The country is often also referred to as either Timor Leste, the Democratic Republic of East Timor or its shortened version of East Timor. Different organizations and official documents use any of these three variations. For the purpose of this study, we will refer to the country as East Timor.

131 Government of Timor-Leste, "History," accessed at http://timor-leste.gov.tl/?p=29&lang=en.

132 Ministry of Tourism Timor-Leste, "History," accessed at https://www.timorleste.tl/east-timor/about/history/.

133 Ali MC, "East Timor: Between hope and unease 20 years after referendum," Aljazeera, August 30, 2019, accessed at https://www.aljazeera.com/news/2019/08/timor-leste-hope-unease-20-years-referendum-190829230741706.html.

any other benefits, in accordance with the law.[134]

Initially, it may be challenging for the people of Guam to agree on what individual rights should look like, even if the island has absolute flexibility to protect any rights that it chooses. An independent Guam will have to establish its own law enforcement agencies and structure its legal system so that it can carry out the agreed-upon individual rights. Overall, however, as illustrated with East Timor, an independent Guam would have the opportunity to create individual rights policies that are applicable for the people of Guam.

Free Association

Individual rights in the freely associated state of Guam would likely be outlined in the constitution of the country. It is fully anticipated that the form of government in the freely associated state of Guam would be a republic, with sovereignty ultimately resting with the people of the island. The FAS of Guam may offer its citizens rights such as freedom of speech and freedom of assembly as well as other rights associated with liberal democracies, such as freedom of religion and freedom of expression. If the FAS of Guam is recognized as a sovereign state by the international community, it is anticipated that the FAS would follow the norms of international law, providing for its citizens' basic human rights as outlined in the Universal Declaration of Human Rights and broader international human rights law, especially if it becomes a member of the United Nations.

Status Example: The Republic of Palau

After a three-month long constitutional convention, the final version of the Palauan Constitution was decided on April 2, 1979. Articles IV and V of the constitution address fundamental and traditional rights respectively. In Article IV, the fundamental right of Palauan citizens mirror those of the United States, with the following exceptions:

Section 9. A citizen of Palau may enter and leave Palau and may migrate within Palau.

Section 10. Torture, cruel, inhumane or degrading treatment or punishment, and excessive fines are prohibited.

Section 12. A citizen has the right to examine any government document and to observe the official deliberations of any agency of government.

Section 13. The government shall provide for marital and related parental rights, privileges and

134 Constitution of Timor-Leste, "Timor-Leste's Constitution of 2002," Constitute Project, accessed at https://www.constituteproject.org/constitution/East_Timor_2002.pdf?lang=en.

responsibilities on the basis of equality between men and women, mutual consent and cooperation. Parents and individuals acting in the capacity shall be legally responsible for the support and for the unlawful conduct of their minor children as prescribed by law.[135]

As shown with Palau, a freely associated Guam could adopt individual rights like those in the United States while also establishing other rights that directly benefit its citizens.

135 Article IV of the Constitution of the Republic of Palau, accessed at http://www.unesco.org/education/edurights/media/docs/c4679995d1bddd3ef509ddc66c3cb38e80d492fe.pdf.

INDIVIDUAL RIGHTS	
STATUS	**EFFECTS**
Statehood	• The full extent of the United States Constitution would apply to Guam. • Federal laws and the US Constitution can supersede state interests, unless they are challenged by the state in the US courts. • States can establish laws that expand individual rights given to US citizens by the federal government and the US Constitution as long as they do not conflict with the US Constitution.
Independence	• Guam will have to come to a consensus about the individual rights that should be guaranteed and protected. • The island will have the flexibility and freedom to include and recognize fundamental individual rights that the community wants.

	• Guam will have to establish institutions and agencies to protect individual rights. • Guam can affirm the Universal Declaration of Human Rights and apply its enumerated rights to its citizens.
Free Association	• Guam will have to come to a consensus about the individual rights that should be guaranteed and protected. • The island will have the flexibility and freedom to include and recognize any fundamental human rights that the community decides upon. • Guam may have to restructure its institutions and agencies to protect individual rights. • Guam can affirm the Universal Declaration of Human Rights and apply its enumerated rights to its citizens.

Legal/Judicial Processes

Currently, Guam has a difficult time enacting meaningful legal reform unless it has the explicit support of the US Congress. Despite the signing of the Organic Act of Guam on August 1, 1950, it took decades before Guam's contemporary legal system was established. The Organic Act created the District Court of Guam, which was given original and appellate jurisdiction, meaning that it had the power to hear a case for the first time and can also hear appeals for cases that went through the lower courts.[136] The Guam Legislature also passed the "Judiciary Act" which "gave the Island Court of Guam jurisdiction over misdemeanors and civil cases having a value of less than $2,000, and created a Police Court with jurisdiction over certain misdemeanor crimes."[137] The District Court received jurisdiction for other cases, and could also hear appeals from the Island Court. With this legal system, appeals from the Guam District Court went to the United States' Ninth Circuit Court of Appeals and then, if necessary, to the Supreme Court of the United States.[138]

In 1974, lawmakers in Guam decided to expand the island's court system by creating the Superior Court of Guam, which was given jurisdiction over cases arising out of Guam law. The Island Court and the Police Court were dissolved and absorbed into the newly created Superior Court of Guam. The Court Reorganization act of 1974 also established the Supreme Court of Guam. However, because of Guam's status as an unincorporated territory, the Supreme Court only lasted three short years. In the case of *Territory of Guam v. Olsen*, the US Supreme Court found that "the Organic Act did not authorize the transfer of appellate jurisdiction from the District Court of Guam, and the locally established Supreme Court of Guam was abolished."[139]

136 Guam Supreme Court, "Judiciary History- Historical Review: 'Justicia para todo,'" Guam Supreme Court, accessed at http://www.guamsupremecourt.com/Judicial-History/Judiciary%20History.pdf.

137 Guam Supreme Court, "Judicial History," Guam Supreme Court, accessed at http://www.guamsupremecourt.com/Judicial-History/Judicial-History.html.

138 Guam Supreme Court, "Judicial History," Guam Supreme Court, accessed at http://www.guamsupremecourt.com/Judicial-History/Judicial-History.html.

139 Guam Supreme Court, "Judicial History."

Additionally, the Organic Act supersedes local legislation. Attorney General of Guam Leevin Camacho, pointed out that, "If there is something that is inconsistent with the Organic Act, they call it inorganic."[140] As an example, he cited the predicament with the number of senators in the Guam Legislature who must be present in order to pass a bill. Camacho explained that the Organic Act calls for a "Senate majority to be present" and local law and rules state a specific number is necessary for quorum. The local law required that more senators must vote in favor of a bill for it to pass, whereas the Organic Act called for a smaller number.[141] Since local law contradicted the Organic Act it was deemed inorganic and "unconstitutional."

Before noting some of Guam's critical moments of legal reform, it is significant to note that, even though legal reform can happen on a local or federal level, the US Congress has power over these decisions. As articulated by retired Guam Supreme Court Chief Justice and current Public Auditor of Guam Benjamin "BJ" Cruz, "we are a creature of Congress, so everything has to be amended [for the Organic Act] if we want something." He continues that these amendments are then "contingent on US Congress to not change these. Everything is within their power."[142] Local legislators can introduce bills for legal reform in Guam, but the US Congress has the authority to revoke these laws. The Court Reorganization Act of 1974 was not the end of Guam's path for legal reform. In 1992, the Supreme Court of Guam was re-established by the Guam Legislature, but suffered from local politics, with many powers for the new court being removed. From the 1990s-2000s, former Congressman Robert A. Underwood and former Congresswoman Madeleine Z. Bordallo introduced legislation in the US House of Representatives to amend the Organic Act and enable the authority of the Guam Supreme Court and establish Guam's judiciary as an independent branch of government, separate from the island's executive and legislative branches.[143] On Oct. 30, 2004, the Judiciary of Guam was finally made equal with the other two branches in Guam. According to the Guam Judiciary, "As an independent branch, the Judiciary would be more capable of safeguarding individual rights and liberties, which history instructs must be immune from political instability."[144]

Statehood

As a state, Guam would have the flexibility to determine how to structure its court system, which is outlined in each state's constitution. Article III of the Constitution begins with, "The judicial power of the United States, shall be vested in one supreme court, and in such inferior courts as the Congress may from time to time ordain and establish."[145] Thus, the US Constitution established the judicial branch of the federal government, giving it exclusive jurisdiction only over certain types of cases. Thus, they are

140 Personal Communication with Attorney General Leevin Camacho, August 2020.

141 Personal Communication with Attorney General Leevin Camacho, August 2020.

142 Personal Communication with Public Auditor BJ Cruz, July 2020.

143 Guam Supreme Court, "Judicial History."

144 Guam Supreme Court, "Judicial History," Guam Supreme Court, accessed at http://www.guamsupremecourt.com/Judicial-History/Judicial-History.html.

145 Article III of the US Constitution.

called courts of "limited jurisdiction." States create their own courts with jurisdiction over state laws, and are courts of general jurisdiction, meaning that can try all cases (except those Congress specifically stated should be litigated only in federal courts).[146] In many ways, state courts are the core of the US judicial system, as they handle most crimes/criminal activity as well as civil matters such as personal injury, malpractice, divorce, juvenile, probate, and contract disputes.

If Guam is a state, it no longer will have to appeal to the US Congress to amend the Organic Act to establish legal reform. The state constitution will be the guiding document for the island's legal structure.

Each of the fifty states has a court system that is unique to the respective state. They each have the power to construct a legal system that works for their respective communities. The structures of the state courts vary widely. Some states have simple court systems with only four levels whereas others have more complex systems with more than ten court levels. "No two states are exactly alike when it comes to the organization of courts. Each state is free to adopt any organizational scheme it chooses, create as many courts as it wishes, name those courts whatever it pleases, and establish their jurisdiction as it sees fit. Thus, the organization of state courts does not necessarily resemble the clear-cut, three-tier system found at the federal level."[147] Therefore, the state of Guam could opt to have the system remain the same or the island could decide to restructure it. As stated by Attorney General of Guam Leevin Camacho, "For most purposes, we really are structured like a state when it comes to our legal system. There are not too many differences. The only difference might be is that in some places you might get three layers of review. You might have trial court, intermediary appeals, and then a supreme court. We don't have that middle layer...we just have two levels."[148]

Though there is great variation among the individual states, the US courts noted that all "state courts are the final arbiters of state laws and constitutions. Their interpretation of federal law or the US Constitution may be appealed to the US Supreme Court. The Supreme Court may choose to hear or not to hear such cases."[149] The constitution and laws of each state establish the state courts. A court of last resort, often known as the state's supreme court, is usually the highest court. Therefore, like in current practice, the Supreme Court of Guam will likely remain the final court and its appeals may be given to the US Supreme Court. Some states also have an intermediate court of appeals. Below these appeals courts are the state trial courts. Some are referred to as circuit or district courts.

On the federal side, the state of Guam will remain connected with the US federal court system. The federal court structure will remain intact, where the US Supreme Court will continue to act as the court of last resort. Guam could also have an intermediate court of appeals, of which Guam may remain within the jurisdiction of the Ninth Circuit Court of Appeals, unless otherwise decided by the federal government. On the lowest rung, will be the US District Court (see figure below).

146 United States Courts, "Comparing Federal & State Courts," accessed at https://www.uscourts.gov/about-federal-courts/court-role-and-structure/comparing-federal-state-courts.

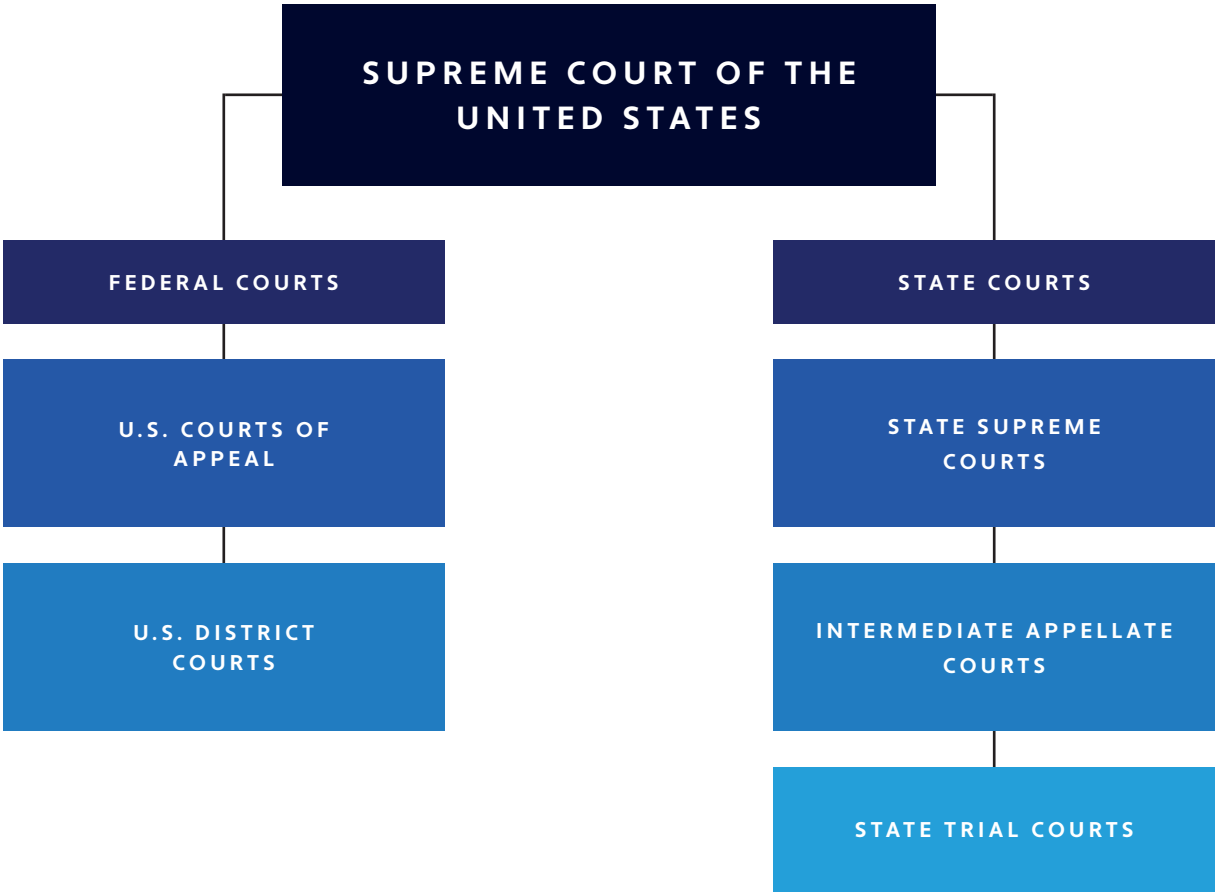
147 Bureau of International Information Programs, "Outline of the US Legal System," *US Department of State*, 2004, pg. 46.

148 Personal Communication with Attorney General Leevin Camacho, August 2020.

149 United States Courts, "Comparing Federal & State Courts," accessed at https://www.uscourts.gov/about-federal-courts/court-role-and-structure/comparing-federal-state-courts.

Relationship between the Federal and State Courts in the United States[150]

150 Terence Lau and Lisa Johnson, "Trial and Appellate Courts," Business and Legal and Ethical Environment (2011): accessed at https://2012books.lardbucket.org/books/business-and-the-legal-and-ethical-environment/s05-03-trial-and-appellate-courts.html



The Guam state courts will use Guam's established constitution or other enabling authority (to be decided by the state of Guam) to provide the framework of laws for cases heard by the state courts. The state of Guam, through its constitution or legislative action, can create specialized courts to handle matters important to the state.

Overall, as a state, Guam will have flexibility in creating its judicial system. The state of Guam may have specialized courts, like adult and juvenile drug courts, and can choose to add others. The state of Guam can also choose to add a third level or intermediary courts, like a court of appeals for criminal and civil cases, to its existing system. Forty-one of fifty states have intermediary courts. Guam's legal institutions are already considered an independent branch of government, there is an established hierarchy within the court structure, and the relationship between the local and federal courts is defined. Additionally, the state of Guam, in its constitution, will need to formally outline the structure of the judicial system and its corresponding functions.

Independence

Many countries tend to structure their legal systems around one of four models: civil law; common law; religious law; and customary law. Below is a brief explanation of the four models. It should also be noted that some countries have mixed legal systems.

Legal Systems[151]

151 University of South Carolina Law Library, "A Quick Primer on the World's Legal Systems," accessed at https://guides.law.sc.edu/c.php?g=315476&p=2108388.

LEGAL SYSTEM MODEL	DESCRIPTION
Civil Law	Legal systems make judicial decisions based on legal statutes and codes that are often updated that specify the matters capable of being brought before a court, the procedure to follow, and the appropriate punishment. Civil law systems rely less on judges and more on legal experts to make legal interpretations. Basic characteristics: • Most of the law is statutory law created by legislatures and not by judges following precedent • Judge actively involved in investigation of facts of case • Juries are rarely used; a judge or panel of judges will decide the facts and the law to be applied • Prosecutors and defense attorney may play a more limited role
Common Law	Legal systems use case law or already established statutes and judicial determinations to make legal decisions. In this model, judges can have great influence on laws. Basic characteristics: • The laws governing a case are based on legal precedent and statutory law • Judge acts as impartial referee between opposing parties • Jury may determine facts, and judge decides which law to apply • Active role for prosecutors and defense attorneys
Religious Law	Legal systems function according to laws that come from religious texts or traditions.
Customary Law	Legal systems use laws based on behavioral patterns which are understood as the "rules of conduct." These laws are often unwritten and transmitted through generations. This system is often mixed with either civil or common law.

Legal systems in some countries mix these various forms. For example, Pakistan's legal system combines common law and Islamic law, Sri Lanka's legal system combines civil law, common law, and customary law, and in some African countries, customary law and local values play a role in the justice system.

In crafting its own legal system, an independent Guam could first decide which model(s) to pattern its legal system around. Many independent countries follow the models established by their former administering power and reform them as needed. As an unincorporated territory of the United States, Guam's legal system is patterned according to a common law legal structure. However, as an independent country, Guam would be free to either keep or reconstruct its current legal system. After this initial decision is made, many other decisions will need to be made, including the makeup of the court system, appellate power, judicial terms, and others. These multiple decisions will help ensure the success of the constitutional system of the independent country of Guam as "a better measure of the success of a constitutional system is the willingness of government to stay within the limits on governmental power set by the constitution, and the ability of courts and the people to keep government within these limits."[152] It is highly recommend that upon transition to independence, Guam's attorneys, judges, and legal scholars be advised and actively involved in the crafting of the new legal system.

Status Example: New Zealand

New Zealand has four levels of courts.[153] Within these four levels, the legal system of New Zealand has specialized courts, which sit below the district court. For example, with a recognized indigenous population, New Zealand has a specialized court for cases regarding Māori land matters. New Zealand was colonized by Great Britain from 1840, with the signing of the Treaty of Waitangi, until 1907, when it was granted its independence. However, even after gaining its independence, the indigenous people of New Zealand, the Māori, still have many issues to resolve with Great Britain. To ensure the integrity of the court, in the Te Ture Whenua Maori Act 1993 (Maori Land Act 1993) under part 1, section 7, 2A, judges can only be appointed to the Māori Land Court if they have a knowledge of Māori language, customs, and the Treaty of Waitangi, the document which sought to establish laws to formalize the relationship between the Māori and the colonial British government.[154]

New Zealand also has a variety of tribunals that oversee conflicts. Each tribunal handles and resolves claims in specific sections of the New Zealand government. For example, the country has a Copyright Tribunal which oversees "copyright licensing agreements under the Copyright Act 1994" and "applications about illegal uploading and downloading of copyrighted work."[155] New Zealand also has a Social Security Appeal Authority which is responsible for hearing appeals against decisions made by the Ministry

152 Michael A. Ntumy, *South Pacific Islands Legal Systems,* (Honolulu: University of Hawaii Press, 1993), pg. xix.

153 University of South Carolina Law Library, "A Quick Primer."

154 New Zealand History, "The Treaty in Brief," accessed at https://nzhistory.govt.nz/politics/treaty/the-treaty-in-brief.

155 Ministry of Justice, "Copyright," accessed at https://www.justice.govt.nz/tribunals/copyright/.

of Social Development and the Secretary for War Pensions regarding individuals' benefits or pensions.[156]

As illustrated with New Zealand, an independent Guam will have the ability to structure its legal system as it sees fit. There is a significant amount of freedom when creating the island's legal infrastructure. For example, Guam could set up legal processes that help rehabilitate those who commit crimes and give victims a chance to more actively participate in the legal process if they wish. Additionally, as an independent country, the island will have the opportunity to follow the legal system model of its choosing.

Free Association

Many freely associated states tend to model their legal systems after their former administering powers because it is the most familiar legal model, and the transition would be relatively simple. For example, in the case of Palau and the Marshall Islands, each country has similar court levels to the US federal structure. Their court systems include a supreme court as the highest court which oversees the lower courts, known by different names in each country. RMI has district and community courts, whereas Palau has the court of common pleas. However, each island country mirrors the creation of specialized courts as done in individual US state court systems. For example, the RMI has a Traditional Rights Court and Palau has a Land Court.

It is important to note that as a freely associated state, Guam would be free to create its judicial system. For example, in the case of the freely associated states throughout Micronesia, their Compacts of Free Association (COFA) with the United States do not have provisions that affect the structure of each country's judiciary. In the original COFA agreement between the Republic of Palau and the United States, in General Legal Provisions, Article VII, Section 174, it states that, outside the exceptions laid out in the compact, "the Government of Palau shall be immune from the jurisdiction of the courts of the United States, and the Government of the United States shall be immune from the jurisdiction of the courts of Palau."[157] Therefore, each judiciary does not interfere or supersede the other. For the most part, they remain independent of each other. There are, however, cases where claims can be made against the other. In one instance, "action is brought, or in a case in which damages are sought for personal injury or death or damage to or loss of property occurring where the action is brought" during commercial activities made by the defendant government.[158] Another example is found in Section 174(c) of the Compact between Palau and the United States, which states that a claim may be referred to a US federal court for issues stemming from the Trust Territory era. Additionally, the Compacts of the FSM and RMI also allow their governments to seek judicial review in US federal courts for actions taken by the US federal government, especially related to the environment.[159]

156 Ministry of Justice, "Tribunals," accessed at https://www.justice.govt.nz/tribunals/.

157 Republic of Palau Compact of Free Association, 1986: 1-33.

158 Republic of Palau Compact of Free Association, 1986: 1-33.

159 See Section 162 of the Compact of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands.

Status Example: The Republic of the Marshall Islands

The Republic of the Marshall Islands (RMI) formally instituted its judiciary branch on March 3, 1982 after outlining its operations and functions in Article VI of its constitution.[160] Prior to the creation of the country's judicial branch, RMI's judicial processes went through courts established for the United Nations Trust Territory of the Pacific Islands. As outlined in RMI's constitution, the judiciary is considered independent of other branches of government.

Currently, the Judiciary of the Republic of the Marshall Islands has four levels of courts. The lowest level court is the Community Court, operating directly under the District Court, this set of courts oversees limited cases. On the second level, one will find the District Court and the Traditional Rights Court. The higher courts, called the High Court and the Supreme Court, are both considered a "superior constitutional court of record."[161]

In RMI, the lower courts play a unique role because of the geographical limitations of the country. Pacific scholar Kristina Stege, in her book chapter, "Marshall Islands," explains that in the RMI constitution, along with a central government, "the people of every inhabited atoll are guaranteed the right to a system of local government. Each district has its own constitution describing the manner in which a council, mayor, officials, and a local police force may be elected or appointed.[162] Therefore, the inhabited atolls are given what Stege refers to as a "de facto independence."[163] Recognizing these unique legal aspects, the higher courts in RMI are there to ensure that the lower courts do not abuse their relatively wide jurisdictions. For the higher courts, the High Court of the Republic of the Marshall Islands has general jurisdiction, meaning that it can hear any case for the first time that is brought to them. The High Court also has appellate jurisdiction and the ability to review the legalities of any decisions made by a RMI government agency.[164] The highest and most powerful court in RMI is the Supreme Court. The Supreme Court has appellate jurisdiction, in that it has final authority in all cases that are brought to it on appeal.[165] All processes of review allow for an intricate system of checks and balances.

Unlike the other courts, the Traditional Rights Court has special jurisdiction. Stege explains that the Traditional Rights Court "is the only court without original jurisdiction, advising on cases involving customary law and practices that are referred to it by other courts."[166] Judges in this court are selected to ensure that "a fair representation of all classes of land rights: Iroijlaplap (high chief); where applicable, Iroijedrik (lower chief); Alap (head of commoner/worker clan); and Dri Jerbal (commoner/worker)."[167]

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160 Pacific Islands Legal Information Institute, "Marshall Islands Courts System Information," accessed at http://www.paclii.org/mh/courts.html.

161 Pacific Islands Legal Information Institute, "Marshall Islands Courts."

162 Kristina Stege, "Marshall Islands," in Pacific Ways: Government and Politics in the Pacific Islands, ed. Stephen Levine (Wellington: Victoria University Press, 2009), 117.

163 Stege, "Marshall Islands," 118.

164 Republic of the Marshall Islands Judiciary, "The Judiciary's Courts and Personnel."

165 Pacific Islands Legal Information Institute, "Marshall Islands."

166 Stege, "Marshall Islands," 117.

167 Republic of the Marshall Islands Judiciary, "The Judiciary's Courts and Personnel."

In an independent Guam, the island would not have to appoint judges in this manner since we do not have an intact chiefly system. However, the Traditional Rights Court could be used for Guam to oversee cases pertaining to rights in various areas such as land, water, or for Guam's indigenous people, especially if programs and policies like the CHamoru Land Trust remain intact.

As a freely associated state, Guam could have the ability to structure its court system in a way that best fits the values of the island's judicial system. Neither the Republic of the Marshall Islands nor the Republic of Palau have judicial systems that are exact duplicates of those of the United States or any other existing country. They are free to keep the aspects of the US judicial system they like and can reshape the pieces that do not fit their countries. Therefore, as a freely associated state, Guam can decide how many court levels will fit its legal needs and how the judicial system will run in relation to other areas of Guam's government. The island will also get to decide how to appoint and retain its legal practitioners and how to go about applying Guam's laws in ways that promote transparency, accuracy, and accountability. Like RMI and Palau, Guam would be able to create more specialized courts to adjudicate over specific types of cases. A freely associated Guam can choose to either consolidate or expand our existing specialized courts (i.e. Adult/Juvenile Drug Courts and the Veterans Treatment Courts).

LEGAL/JUDICIAL PROCESSES	
STATUS	**EFFECTS**
Statehood	• Guam will have the flexibility to create the state legal system. Each individual state determines its court system. • Guam will need to outline its legal structure in the state constitution. • The federal court system would continue to have jurisdiction over the island
Independence	• Guam can create its legal system without interference from other countries. • No country's judiciary can supersede Guam's judiciary. • Establishing rule of law will be incredibly important to domestic functioning of the new country as well as its international reputation and interactions

Free Association	• Guam can create its legal system without interference from other countries. • The United States' judiciary will not supersede Guam's judiciary. • If a compact is established, it might be written that Guam's judiciary cannot interfere with the United States. Special legal exceptions may be made. The compact may determine if and when the jurisdiction of each country overlaps.

SOCIAL IMPACTS

Immigration

As an unincorporated territory, Guam does not control its immigration. This authority rests with the United States federal government. The fifty states and the territories do not control their immigration (unless specifically allowed by the US Congress for the territories, as is the case with American Samoa).[168] The federal government was also given exclusive power over the naturalization of immigrants via the U.S Constitution Article I, Section VIII, Clause IV which states, "Congress shall have power… to establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States."[169] This power is exclusive to Congress, wherein "no state has the independent power to constitute a foreign subject a citizen of the United States."[170]

Immigration

As stated above, immigration into Guam falls under the authority of the United States and the island's immigration policies adhere to those set by the federal government. International visitors must come to Guam with a valid passport from their country of citizenship and a US visa.[171] Visas are not required if nonimmigrant visitors are coming in from one of the following twelve places: Australia, Brunei, Hong Kong, Japan, Malaysia, Nauru, New Zealand, Papua New Guinea, South Korea, Singapore, Taiwan, and the United Kingdom, who participate in the Guam-Commonwealth of the Northern Marianas Islands Visa Waiver Program (Guam-CNMI VWP).[172] When visiting Guam, citizens of these countries need to fill out a Form I-736 and Form I-94, which allows them to stay for up to 45 days, be classifiable as a visitor for business or pleasure, be solely entering and staying on Guam or the CNMI, and be in possession of a round-trip ticket that is nonrefundable and nontransferable, among other requirements. The United

168 Susan Price, "State versus Federal Power to Regulate Immigration," Office of Legislative Research, accessed at https://www.cga.ct.gov/2007/rpt/2007-R-0621.htm#:~:text=The%20Supremacy%20Clause%20of%20the,Supreme%20Court%20has%20held%20that%3A&text=-Davidowitz%2C%20312%20US%2052%20(1941).

169 US Congress, "Constitution of the United States," accessed at https://constitution.congress.gov/constitution/.

170 Cornell Law School, "Naturalization and Citizenship," accessed at https://www.law.cornell.edu/constitution-conan/article-1/section-8/clause-4.

171 Cornell Law School, "Naturalization and Citizenship."

172 ESTA Online Application Center United States Travel Authorization Application, "Is a Visa Needed to Travel to Guam?," accessed at https://esta-center.com/en/guam/index.html#Using_ESTA.

States also has a national visa waiver program that applies in Guam as well. Under this program, there are 36 countries/geographic areas whose citizens can enter the US without a visa for up to 90 days, which requires a competed and signed form I-94 W.[173]

Aside from increasing tourism, countries may also actively pursue immigration when there is a lack of locally skilled workers to fill many positions, from chief executive officers to hospitality, construction, and general labor. Guam in 2018 reported that approximately twenty percent of its labor force were "immigrant aliens."[174] The Guam Department of Labor (DOL) tracks labor trends every March, June, and September of the year, including immigrant aliens.[175] From 2013-2018, immigrant workers comprised nearly twenty-five percent of Guam's workforce.[176]

Many immigrant workers come into Guam as H-2B Temporary Non-Agricultural Workers. Employers seeking to bring in foreign nationals for their labor force must file a Temporary Labor Certification with the governor of Guam through the Guam Department of Labor's Alien Labor Processing & Certification Division (ALPCD). Employers are also required to advertise the job opportunity so that the arrival of foreign workers does not adversely affect the Guam or US job market by excluding US citizens and permanent residents.[177] Once all requirements are met and the ALPCD certifies that workers were appropriately recruited, employers must petition for H-2B workers to enter Guam with the US Citizenship & Immigration Services (USCIS).[178]

The United States sets limits on the total number of foreign workers and has a method for recruiting workers from other countries. These protocols are in place to protect the local job market. For example, for H-2B visas, the US Department of Labor requires that employers must show that, "(1) there are not sufficient US workers who are qualified and who will be available to perform the temporary services or labor for which an employer desires to hire foreign workers; and (2) the employment of H-2B workers will not adversely affect the wages and working conditions of similarly employed US workers."[179] When these criteria are met, then employers can start recruiting and employing foreign workers. Recently, some employers in Guam have experienced hardship and frustration with national immigration policies. For example, in October 2016, the Guam Contractors Association and several businesses sued the federal government because of the denial of petitions for H-2B visas. In addition to the lawsuit, during fiscal year 2017, Guam experienced more red tape because US Homeland Security decided to remove the Philippines from the list of eligible countries for the H-2A and H-2B visas for a year. This ban was set to last until January 2020. The Department of Homeland Security then updated the eligible countries

173 US Department of Homeland Security, "Visa Waiver Program Requirements," accessed at https://www.dhs.gov/visa-waiver-program-requirements.

174 Bureau of Statistics and Plans, "2018 Guam Statistical Yearbook," accessed at https://bsp.guam.gov/guam-statistical-yearbook-2/, 255.

175 Bureau of Statistics and Plans, "2018 Guam Statistical Yearbook," 256.

176 Bureau of Statistics and Plans, "2018 Guam Statistical Yearbook," 256-258.

177 Guam Department of Labor, "The H-2B Process for Guam: The 26 Points from Beginning to End", accessed at https://dol.guam.gov/wp-content/uploads/H-2B-Process-26-Points.pdf, 3.

178 Guam Department of Labor, "The H-2B Process," 5.

179 US Department of Labor [DOL], "H-2B Temporary Non-agricultural Program," accessed at https://www.dol.gov/agencies/eta/foreign-labor/programs/h-2b.

list meaning that as of January 13, 2021, the Philippines was restored to the list.[180] Furthermore, there are current struggles with the US Citizenship and Immigration Services regarding the language of the National Defense Authorization Act and guidance provided by USCIS. As explained by Guam Delegate Michael San Nicolas, "Congressional intent with our H2-B amendment in the 2021 NDAA was clear, our language was sufficient, and we will do the work necessary to bring UCSIC onto the same page in authorizing temporary labor for civilian projects adversely impacted by the military buildup demand on available labor. USCIS as attempting to interpret (the provisions) in a way that…is inconsistent with the statute."[181]

Students who wish to study in Guam can apply for a student visa (either the F or M category) for themselves and eligible family members. To be eligible for the visa, a student must first be accepted by a Student and Exchange Visitor Program (SEVP) certified school. In Guam, the SEVP schools include some of the island's K-12 private schools and its higher education and vocational institutions.[182] Students are allowed to stay as long as they are enrolled full-time in their program. Once their program is completed, students and their dependents on an F category visa must leave within sixty days of the program end date. Students and their dependents on an M category visa must leave within thirty days of the program end date.[183]

Guam is currently a naturalization hub for those from the Asia-Pacific region. Therefore, the island experiences larger numbers of immigrants who move to the island in hopes of seeking US citizenship. Permanent residents who have an Alien Registration card must live in the US for three-to-five years. The three-year residency requirement applies if they are married to a US citizen or their spouse is a US citizen. They must meet the five-year requirement if they do not meet the marriage exemptions.[184] Citizens from our neighboring Pacific Island and Asian countries may decide to live in Guam to meet the above-mentioned residency requirements for naturalization. In a span of five years, from FY2014 to FY2018, the US Department of Homeland Security reported that 3,823 Guam residents became naturalized US citizens, averaging about 765 people a year.[185] A large majority of those naturalized are from nearby Asian countries. Most notably, residents born in the Philippines make up a significant portion of naturalized citizens, at 79.3%.[186] The second largest group comes from South Korea, at 5.6%. Naturalization ceremonies are held at the US District Court of Guam twice a month and residents are assisted by the US Citizen and Immigration Services when they apply for citizenship.

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180 USCIS, "DHS Announces Countries Eligible for H-2A and H-2B Visa Programs," January 12, 2021, accessed at https://www.uscis.gov/news/alerts/dhs-announces-countries-eligible-for-h-2a-and-h-2b-visa-programs.

181 Oyaol Ngirairikl, "USCIS narrows H2-B options," The Guam Daily Post, May 16, 2021, accessed at https://www.postguam.com/news/local/uscis-narrows-h-2b-options/article_ffff9610-b552-11eb-a48a-0b80200ea6f0.html.

182 US Department of Homeland Security, "Study in the States: School Search: Guam," accessed at https://studyinthestates.dhs.gov/school-search?field_school_name_value=&field_location_city_value=&field_location_state_value=25&zip=&field_education_level_value=Al.

183 US Immigration and Customs Enforcement, "Departure," accessed at https://www.ice.gov/sevis/students.

184 USCIS, Naturalization Eligibility Worksheet Instructions, accessed at https://www.uscis.gov/sites/default/files/document/guides/M-480.pdf.

185 US Department of Homeland Security, "Profiles on Naturalized Citizens: Guam (2014, 2015, 2016, 2017, 2018)," accessed at https://www.dhs.gov/profiles-naturalized-citizens.

186 US Department of Homeland Security, Profiles on Naturalized Citizens."

Persons Naturalized in Guam[187]

187 US Department of Homeland Security, "Profiles on Naturalized Citizens: Guam (2014, 2015, 2016, 2017, 2018)," accessed at https://www.dhs.gov/profiles-naturalized-citizens

LEGAL SYSTEM MODEL	DESCRIPTION
FY 2014	702
FY 2015	712
FY 2016	711
FY 2017	842
FY 2018	849
TOTAL	3,823

Persons Naturalized in Guam by Country of Birth (Countries in Asia and Micronesia)[188]

188 Ibid.

COUNTRIES OF BIRTH	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	TOTAL
People's Republic of China	33	29	26	47	33	168
Japan	15	11	13	11	15	65
South Korea	42	56	33	45	39	215
Palau	4	D	5	0	5	14
Philippines	558	542	578	665	690	3,033
Taiwan	7	10	0	7	8	32
Thailand	5	14	3	6	5	33
Vietnam	4	5	5	5	4	23
Federated States of Micronesia	0	0	5	0	D	5

D = Department of Homeland Security withheld the number to avoid disclosing identities.

In addition to being a location to seek US citizenship for people from Asia, Guam experiences a large influx of migrants from the freely associated states of Micronesia (FAS). The Compacts of Free Association (COFA) allow FAS citizens to enter the United States and its territories as nonimmigrants. Section 141 (a) of the Amended COFA with the Federated States of Micronesia states, "In furtherance of the special and unique relationship that exists between the United States and the Federated States of Micronesia, under the Compact, as amended, any person in the following categories may be admitted to, lawfully engage in occupations, and establish residence as a nonimmigrant in the United States and its territories and possessions…"[189] Typically, nonimmigrants are considered "people who enter the US on a temporary basis – whether for tourism, business, temporary work, or study."[190] However, because of the COFA agreement, FAS citizens are able to reside in the United States without a specific timeline.[191] In 2018, the US Census Bureau estimated that 18,874 COFA migrants resided in Guam.[192]

Guam also experiences large number of foreign workers coming into the island due to military activities, especially the recent military build-up. Currently, the island is undergoing substantial changes due to heavy U.S military growth and expansion. In 2004, the US and Japan began establishing a framework for the future reduction of US troops in Okinawa while maintaining a force presence in the Pacific theater by relocating units to Guam. As part of this effort, the original proposal was for 8,600 Marines and 9,000 dependents to move from Okinawa, Japan, to Guam at the earliest possible date. The military was hoping to complete the move by 2014.[193] With significant delays to the build-up, the number of Marines moving to Guam was amended to include 5,000 Marines and about 1,300 dependents.[194]

Along with the Marines and their dependents, the build-up is likely to bring in thousands of temporary foreign workers. In February 2018, the commander of NAVFAC Marianas Navy Captain Stephanie Jones presented to the Guam Rotary Club that "as many as 6,600 foreign workers could be needed that year to supplement Guam's local construction workforce, which typically hovers around 3,600."[195] She continued by saying that "spending and construction activity for the pending military buildup are expected to peak during fiscal 2022, with more than 10,000 construction workers required for nearly $1.4 billion in projects that year."[196] Overall, the island may see a significant population increase at the peak of military-buildup related activities, even if delayed from original projected years.

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189 Section 141 of the Amended Compact of Free Association with the Federated States of Micronesia.

190 University of California Berkeley International Office, "Nonimmigrant vs. Immigrant Status," accessed at https://internationaloffice.berkeley.edu/immigration/nonimmigrantvsimmigrant-status#:~:text=or%20nonimmigrant%20status.-,Nonimmigrant%20status,%2C%20temporary%20work%2C%20or%20study.&text=Some%20people%20may%20have%20more,nonimmigrant%20status%20at%20a%20time.

191 USCIS, "Information for SAVE Users: How to Verify Citizens of Palau, the Federated States of Micronesia and the Republic of the Marshall Islands," accessed at https://www.uscis.gov/sites/default/files/document/fact-sheets/FactSheetVerifyFASCitizens.pdf.

192 United States Census Bureau, "Final Report: 2018 Estimates of Compact of Free Association (COFA) Migrants," accessed at https://bsp.guam.gov/compact-impact/.

193 United States Government Accountability Office, "Military Buildup on Guam: Costs and Challenges in Meeting Construction Timelines," 2011, accessed at https://www.gao.gov/new.items/d11459r.pdf.

194 Department of Defense, Department of the Navy, "Record of Decision for the Final Supplemental Environmental Impact for Guam and Commonwealth Northern Marianas Islands Military Relocation," accessed at http://guammarines.s3.amazonaws.com/static/20150828%20-%20ROD%20with%20Signature%20-%20FINAL.pdf.

195 Steve Limtiaco, "NAVFAC: Building spending, construction, will peak in 2022," Pacific Daily News, February 22, 2018, accessed at https://www.guampdn.com/story/news/2018/02/22/navfac-buildup-spending-construction-peak-2022/362109002/.

196 Limtiaco, "NAVFAC."

Guam has the Customs and Quarantine Agency (CQA) which is responsible for enforcing "hundreds of laws and regulations both local and federal, and is responsible for protecting borders, securing ports of entry, and facilitating trade, commerce, and travel."[197] CQA is funded by the government of Guam General Fund and the Customs, Agriculture, and Quarantine Inspection fund, generated from inspection fees.

For FY2020, CQA's budget was $14,974,987 of which eighty-eight percent came from the special fund and the remaining 11% came from the government of Guam's General Fund.[198] Despite the fees covering a majority of the budget, in 2019, CQA recommended that the agency revisit the inspection fees since they had not been updated in five years and do not "accurately reflect today's operational costs."[199] It noted that a major challenge was the lack of personnel, especially at the airport. At the A.B. Won Pat International Airport (ABWIA), customs officers from CQA are responsible for inspecting all incoming passengers and goods when they arrive in Guam. In CQA's FY2019 report to the Office of Public Accountability, CQA reported that:

> 49 uniformed officers were staffed at the Antonio B. Won Pat International Air Terminal (ABWIAT) to facilitate the entry of over 1.7 million visitors to Guam. According to a rudimentary study conducted a few years ago, successful security of our borders requires 100 officers to be staffed at the ABWIAT per 1.6 million visitors annually.
>
> The current shortage of customs officers affects our ability to effectively protect our island community against: (1) Illegal narcotics and drugs (Methamphetamine, Ecstasy, Cocaine, and Marijuana); (2) Biosecurity threats (i.e.: Influenza, Foot and Mouth Disease); (3) Communicable diseases (i.e.: Ebola, Hepatitis A, Tuberculosis, and Zika); and (4) Invasive species (i.e.: Coconut Rhinoceros Beetle, Greater Banded Hornet, and the Little Fire Ant).[200]

The lack of personnel makes it difficult for CQA to effectively screen incoming visitors and immigrants to the island. Without being able to effectively screen those entering Guam, migrants can transport goods, products, or diseases that will not otherwise be allowed into the island.

Statehood

As a state, Guam would not control immigration and the island's immigration policies would continue to follow federal US immigration laws and protocols. The state of Guam would be a formal part of the United States, where immigrants to the island can establish residency requirements for naturalized US citizenship. States cannot formally restrict immigrants from entering their respective states. However,

197 Customs and Quarantine Agency, "Citizen Centric Report 2018," accessed athttps://www.opaguam.org/sites/default/files/cqa_ccr18.pdf, 1.

198 35th Guam Legislature, "FY Budget Act PL 35-36."

199 Customs and Quarantine Agency, "Citizen Centric Report 2018," 6.

200 Customs and Quarantine Agency, "Citizen Centric Report 2018," 6.

states can create different policies that address immigrants in their states (not regarding their status as immigrants, but for things such as employment and professional licensure agreements). For example, states differ on the work and education requirements for immigrants. In 2018, forty-four states had a collective total of 175 laws regarding immigrants. States have also restructured their work requirements so that foreigners in specialized areas can work in their states. According to the National Conference of State Legislatures, in 2018, states like:

> California prohibited professional licensing boards from requiring individuals to disclose their immigration status. Maryland authorized that immigrant dentists trained in foreign dental programs are qualified to take a state board examination and apply for a general license to practice dentistry. Mississippi allowed provisional licensed professional counselors to be licensed if they meet certain educational and exam requirements if they are US citizens or if they have verified immigration documentation that authorizes work status.[201]

Michele Waslin, at the Institute for Immigration Research, explains the relationship between the federal and state government when it comes to immigration policy. She writes that,

> federal immigration priorities play an important role in expanding who may be considered 'criminal aliens,' and state laws can further broaden the range of crimes for which immigrants will be drawn into the criminal justice system. State laws can even criminalize the day-to-day behavior of certain migrants. For example, states can make unauthorized immigrants ineligible for a driver's license and therefore vulnerable to charges of driving without a license.[202]

Waslin further explains the importance of states when enforcing immigration policies. Some states are more immigrant-friendly and others have policies that make it difficult for immigrants to live there. She also observed that more states lean toward making things easier for immigrants. She notes that,

> the last decade has seen a variety of laws and de facto practices that limit cooperation with federal immigration enforcement and create conditions in which fewer noncitizens are arrested and identified for deportation. Many localities have chosen not to detain immigrants for ICE if they have not been convicted of serious offenses. Several localities have declined to prosecute minor drug possession cases so that legal immigrants would not face the serious immigration-related consequences of the charge.[203]

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201 National Conference of State Legislatures, Report on State Immigration Laws 2018, accessed at http://www.ncsl.org/research/immigration/report-on-state-immigration-laws.aspx.

202 Michele Waslin, "How State and Local Governments Affect Federal Immigration Enforcement," Scholars Strategy Network, accessed at https://scholars.org/contribution/how-state-and-local-governments-affect-federal-immigration-enforcement.

203 Waslin, "Federal Immigration Enforcement."

As a state, Guam will follow federal requirements for entry into the island. However, as evidenced with existing states, the state of Guam will have flexibility when it comes to addressing immigrants within the state.

Under statehood, immigration may see the least change, compared to the other two statuses. However, "as a state, the preference for immigration into Guam could increase because of the improvement of perceived prestige of Guam's political status. Thus, there may be a slight-to-moderate increase in the number of new immigrants entering Guam."[204] Guam may continue to have a steady stream of people coming to the island because it will continue to be a naturalization hub for neighboring Asian countries. The FAS COFA agreements will still apply to the state of Guam. Therefore, Guam may still see an influx of COFA migrants to the island. For short-term visitors, the US Visa Waiver Program and the Guam-CNMI Visa Waiver Program may still apply. Also, Guam would continue to be affected by any military-related issues regarding immigration and labor.

Independence

As an independent country, Guam would have exclusive control over immigration. Countries need to develop immigration policies that will be most beneficial to them. The benefits of immigration include the possibility of economic growth and development. According to the United Nations, "migration can play a critical role in economic growth and development including by helping to fill labor market shortages and by providing jobs and sources of revenue for individual migrants and families."[205] However, others argue that immigration can negatively affect employment for some groups during some periods, including locals with similar skills, experience, and job preferences. Immigration can also reduce old-age dependency ratios. In many countries, immigrants comprise a large proportion of the working-age population. This helps to explain why meeting labor demands is a huge factor in determining a country's immigration policy. As empirical studies have shown,

> Immigration can either cost taxpayers money or deliver fiscal benefits, or lead to either increased or decreased service quality. These varying findings do not reflect confusion or inconsistency. They indicate that answer in different settings can be very different. All these effects are blunted or accentuated by choices. They depend on how policymakers choose to regulate labor markets, benefits systems, and mobility itself. These choices either reap the rewards of immigration or create negative outcomes for the citizens of host countries, migrants, and migrants' home countries. The answer to legitimate questions about the effects of migration is this: migration is what you make it.[206]

204 Joseph Bradley, "An Analysis of the Economic Impact of Guam's Political Status Options," 2000, 161, accessed at http://www.senbenp.com/PDF/Decolonization/JoeBradleyRptPoliticalStatus.pdf.

205 United Nations, Department of Economic and Social Affairs, Population Division, "International Migration Policies: Data Booklet," 2017.

206 Cindy Huang and Jimmy Graham, and Kate Gough, "Migration is What You Make It: Seven Policy Decisions that Turned Challenges into Opportunities," *Center for Global Development*, May 30, 2018.

According to researchers at the Center for Global Development, there are seven guiding principles that can help create successful immigration policies:

1. Policies that allow immigrants to fill labor shortages create jobs, increase labor force participation rates, and increase incomes for natives. When policies restrict immigrants from filling shortages, economic opportunities are lost.

2. Temporary migration programs are an effective means to fill labor shortages. Whether they are accompanied by visa overstays and violations of workers' rights depends on the incentives created by the program.

3. When policymakers create new legal channels for migration, irregular migration can decrease—when other key elements are in place. When these legal channels disappear, irregular migration may reappear.

4. Immigrants can (and often do) contribute more in taxes than they receive in government services over time—especially if policies support and enable their successful integration into labor markets.

5. When policies lower barriers to business ownership, immigrants invest in their host economy, hire natives, and boost economic growth.

6. Skilled emigration creates a range of potential economic benefits for the migrants, the destination country, and the origin country—benefits that can be turned into real harms by policies designed for an immobile world. Skill partnerships between origins and destinations offer one path toward mutual benefit.

7. Immigration can either contribute to or harm service quality. Policy choices, such as creating integrated health systems for refugees and host communities, can determine the impact.[207]

Thus, an independent Guam will have to examine the trends of mobility, global economy, geopolitics, and the domestic attitude of immigration of the time to help guide the development and progression of the country's immigration policies.

In the first few years of independence, it is likely that liberal visa requirements will be established so the island can meet its labor requirements. Guam may allow foreign workers into the island as long as it is not a detriment to Guam's citizens. Controls will likely stay in place, such as how long foreign workers

207 Cindy Huang and Jimmy Graham, and Kate Gough, "Migration is What You Make It: Seven Policy Decisions that Turned Challenges into Opportunities," *Center for Global Development*, May 30, 2018.

may stay in the island and a quota for the number of workers that a company can bring in. The details of these terms may change over time, but an independent Guam will adjust in order to address these issues and determine changes as needed for the protection of Guam's labor force.

With the island's reliance on the tourism industry, it is unlikely that an independent Guam will adopt strict immigration requirements for visitors to the island. As an independent country, Guam will have control over its immigration, which means it can close its borders as it sees fit for a variety of reasons involving health, political relationships, as well as the economy. Therefore, to protect the island's tourism industry and to possibly develop new industries, the island may choose to have a more expansive visa waiver program that will allow citizens from countries to come into Guam as long as they have a valid passport or other appropriate forms of identification.

Immigrants would no longer be able to live in Guam to meet US residency requirements for naturalization. However, like the countries included in the US visa waiver program, an independent Guam may meet the qualifications to be placed on the list. If accepted, Guam citizens may be able to travel into the United States without a visa but must submit the proper documentation.

Regarding immigration, an independent Guam will likely see a decrease in the number of FAS migrants, as COFA agreements for the FAS will likely no longer apply to the island. The COFA countries will have to negotiate a separate agreement with an independent Guam if they would like to establish a visa-waiver program.

An independent Guam will also have to make some policy changes and negotiate with other countries for immigration. For example, regarding short-term visitors, an independent Guam may create visa-waiver programs for neighboring countries in the Pacific Islands and Asia. Guam will also have to negotiate immigration policies with the United States if Guam citizens want to continue to visit or live in the US. Lastly, under independence, Guam will be in charge of and will be responsible for immigration enforcement.

Status Example: United Kingdom (UK)

Before leaving the European Union (EU), the United Kingdom (UK) followed the EU's immigration policies in which the UK accepted all citizens of the EU member states into the country. However, now with Brexit,[208] the UK is reforming its immigration policy since deciding to leave the EU. The UK announced that it would reform its immigration policies to entice a more skilled labor force into the UK. A plan entitled, "The UK's future skills-based immigration program" was presented to Parliament in December 2018 from the Secretary of State for the Home Department by the Command of Her Majesty.

In the plan, visitors to the UK who are citizens of the EU member states will be able to travel visa-free. For tourists and visitors from countries outside of the EU, countries fall into two different categories, visa nationals and non-visa nationals where:

208 The popular term for the UK or Britain's exit from the EU.

> 'Visa nationals' (e.g. Nigerians, Ukrainians or Pakistanis) always require a visa to cross the UK border, even as visitors. 'Non-visa nationals', (e.g. Canadians or Japanese), do not need a visa to come to the UK as visitors. However, they must obtain permission in advance of travel to work or study in the UK.[209]

Overall, visitors are allowed to stay in the UK for up to six months.

The system becomes more complex for workers looking to enter the UK. With the new system, citizens of the EU are able to work in the UK with no restrictions on the incoming worker's salary or skill level. However, there are more restrictions for non-EU citizens coming to work in the UK. These individuals must be considered "highly skilled workers" and they need to be sponsored by their employers.[210] The plan goes on to say that the UK "will not impose a cap on the numbers of skilled workers, to ensure the brightest and best who wish to come to the UK may do so, and employers have access to the skills that add most value to the UK economy."[211]

As the UK example shows, an independent Guam will have the ability and responsibility to establish immigration laws and policies that work best for the country and its workforce. An independent Guam will also have to make some policy changes and negotiate with other countries for immigration. For example, regarding short-term visitors, an independent Guam may need to create visa-waiver programs for neighboring countries in the Pacific Islands and Asia. Guam will also have to negotiate immigration policies with the United States if Guam citizens want to continue to visit or live in the US. Lastly, Guam will also have to negotiate with other countries regarding the entry of Guam citizens into those countries.

Free Association

As a freely associated state, Guam will have control of its immigration policies, subject to specific items negotiated and outlined in Guam's potential Compact of Free Association (COFA) agreement or other legal instrument with the United States. If so, a freely associated Guam may have to decide how to establish its visa programs with different countries, especially regarding tourism, education, work, and visiting relatives. Guam will need to determine how long individuals can stay in the island for those reasons and how often they can apply for and renew each respective visa, just as it would if it were independent.

As a freely associated state, Guam will likely cease to be considered a COFA jurisdiction. Therefore, citizens of the COFA countries will be unable to travel to Guam visa free, unless otherwise agreed upon with Guam or negotiated in a potential agreement between the United States and Guam. If a visa-free status is not established, then FAS citizens will have to follow Guam's established requirements for visas. On the other hand, Guam can potentially negotiate for its citizens to travel visa free into the United States.

209 Secretary of State for the Home Department by Command of Her Majesty, "The UK's future skills-based immigration program," 2018, 23, accessed at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/766465/The-UKs-future-skills-based-immigration-system-print-ready.pdf.

210 Secretary of State for the Home Department by Command of Her Majesty, "The UK's future skills-based immigration program," 15.

211 Secretary of State for the Home Department by Command of Her Majesty, "The UK's future skills-based immigration program," 15.

If this status is given to Guam citizens, the island's citizens will be able to travel to the United States for education, work, and healthcare opportunities for an unspecified amount of time. However, there are certain guidelines as described in Section 141 (f) of the COFA with the FSM. Per Section 141 (f), the guidelines for applicability of the Immigration and Nationality Act are outlined.

The Immigration and Nationality Act (INA), as amended, shall apply to any person admitted or seeking admission to the United States (other than a United States possession or territory where such act does not apply) under the Compact or the Compact, as amended, and nothing in the Compact or the Compact, as amended, shall be construed to limit, preclude, or modify the applicability of, with respect to such person:

> (1) any ground of inadmissibility or deportability under such Act (except sections 212(a)(5) and 212(a)(7)(B)(i)(II) of such Act, as provided in subsection (a) of this section), and any defense thereto, provided that, section 237(a)(5) of such Act shall be construed and applied as if it reads as follows: ''any alien who has been admitted under the Compact, or the Compact, as amended, who cannot show that he or she has sufficient means of support in the United States, is deportable'';
>
> (2) the authority of the Government of the United States under section 214(a)(1) of such Act to provide that admission as a nonimmigrant shall be for such time and under such conditions as the Government of the United States may by regulations prescribe
>
> (3) except for the treatment of certain documentation for purposes of section 274A(b)(1)(B) of such Act as provided by subsection (d) of this section of the Compact, as amended, any requirement under section 274A, including but not limited to section 274A(b)(1)(E)
>
> (4) section 643 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Public Law 104–208, and actions taken pursuant to section 643; and
>
> (5) the authority of the Government of the United States otherwise to administer and enforce the Immigration and Nationality Act, as amended, or other United States law.

In the case of free association with similar negotiated immigration provisions, similar applicability of the INA may be followed.

Should Guam negotiate an agreement with the United States as a freely associated state, it is likely that the U.S will seek provisions that allow exclusive military access to the island. With the continued presence of U.S bases positioning Guam as a theatre for US power projection in the region, the island may continue to support a population of military personnel and their dependents. Negotiations with the US as a freely associated state will afford the island more political agency with which to establish agreements, but the island may have to consider US security, as outlined in the agreement with the United States,

when it comes to immigration policy.

Status Example: The Federated States of Micronesia (FSM)

The Federated States of Micronesia (FSM) comprises four states: Chuuk; Kosrae; Yap; and Pohnpei. Each state has its own airport and local office of the federal customs bureau. To enter any of these states, visitors must present a passport (or documentation equivalent to a passport respective to their country) which must be good for 120 days from the date of entry into FSM. If they do not possess any of those documents, visitors must complete an "FSM Immigration Arrival and Departure Record. Additionally, if their visit exceeds thirty days, visitors may extend their stay by applying for an entry permit.[212]

The FSM Department of Justice's Division of Immigration and Passport Services is responsible for enforcing immigration laws because it must:

> regulate the entry of foreign citizens (legally titled 'aliens'), manage and supervise the Border Management System (this is essentially a database of who comes and goes, including where they're from, what they're doing, how long they're staying, etc.), and to maintain the security and quality of FSM passports, including ways to improve the processing of passport applications.[213]

The FSM also offers passport services at its embassy in Washington, D.C., and its three consulates in: Portland, Oregon; Honolulu, Hawai'i; and Guam.[214]

Regarding emigration, all FSM citizens are able to travel visa-free to the United States, with no restriction on the length of time they can stay in the country. When FSM citizens arrive in the United States at a port of entry, they have to present a valid passport to US Customs and Border Protection (CBP), and an I-94 form is electronically created for them. A paper version of the completed form can be obtained by logging on to CBP's I-94 website. Entrants can also request paper versions when they arrive at a port of entry, if they prefer. This form does not expire, even after one's FSM passport does. However, once an FSM citizen leaves the US, their I-94 form will no longer be valid.[215]

The US is not the only place that the FSM citizens can travel to visa-free. In September 2016, the FSM signed a mutual visa waiver agreement with the European Union (EU). In the agreement, FSM citizens can travel to the twenty-six member states of the EU for up to ninety days. The agreement is valid until

212 Federated States of Micronesia Visitors Board, "Customs Regulations," 2012, accessed at http://www.visit-micronesia.fm/guide/regulation.html.

213 Government of the Federated States of Micronesia Visitors Board, "Press Release: President Panuelo Signs Executive Order to Enhance the Department of Justice's Capacity to Serve the Citizens of the Federated States of Micronesia," accessed at https://gov.fm/index.php/component/content/article/35-pio-articles/news-and-updates/158-president-panuelo-signs-executive-order-to-enhance-the-department-of-justice-s-capacity-to-serve-the-citizens-of-the-federated-states-of-micronesia.

214 Government of the Federated States of Micronesia Visitors Board, "Press Release."

215 United States Citizenship and Immigration Status, 2019, "Status of Citizens of the Freely Associated States of the Federated States of Micronesia and the Republic of the Marshall Islands," accessed at https://www.uscis.gov/sites/default/files/document/fact-sheets/FactSheet-Status_of_Citizens_of_Micronesia_Marshalls_Islands.pdf.

2022. The FSM has a separate visa-waiver agreement with the United Kingdom.[216]

As a freely associated state, Guam will have the ability to classify non-citizens in the island and will be able to create visa requirements for each classification (i.e., students, employees, spouses of citizens, etc.). It is also likely that Guam will continue to bring in private investments which will require the issuance of visas for alien workers of private employers. A freely associated Guam may also be able to establish visa waiver programs with other countries, similar to the agreement made between the FSM and the EU.

216 European Travel Information and Authorization System, "ETIAS Waiver for Micronesians," accessed at https://www.etiasvisa.com/etias-requirements/micronesians.

IMMIGRATION	
STATUS	**EFFECTS**
Statehood	• The US federal government will control immigration. • Immigration policies in Guam will likely stay the same, especially regarding visas. • Guam will remain a COFA jurisdiction where COFA residents can travel to and stay visa-free. • The people of Guam will continue to be citizens of the United States, making it possible for residents to relocate to and seek employment or educational opportunities in the United States. • The island will remain a naturalization hub for US citizenship, wherein foreign nationals may reside in order to meet the requirements for naturalization.
Independence	• Guam will have exclusive control over immigration.

	• The island will need to establish its visa (or visa waiver) programs with different countries, especially regarding tourism, education, work, and visiting relatives. • Immigrants will no longer be able to live in Guam to meet US residency requirements for naturalization. • Guam will no longer be a COFA jurisdiction and the island may see a decrease in migrants from the COFA countries. • The island will likely adopt less strict immigration protocols to expand the tourism market.
Free Association	• Guam may have exclusive control over its immigration policies, apart from potential provisions outlined in the island's potential COFA treaty or other legal document with the United States. • If Guam has exclusive control over its immigration, the island will need to decide how to establish its visa (or visa waiver) programs with different countries, especially regarding tourism, education, work, and visiting relatives. • Immigrants will no longer be able to live in Guam to meet US residency requirements for naturalization.

Healthcare

Currently, Guam's healthcare system is comprised of a network of organizations, institutions, and programs that work collectively to provide the island's residents with their healthcare needs. Prior to colonial rule, the island heavily relied upon the makåhna and kakåhna (suruhånu and suruhåna; yo'åmte) for healing. These individuals were trained traditional healers who often acquired the gift of healing through the family line, from generation to generation. At a young age, an individual was chosen to apprentice with a family member who held the knowledge of medicine-making and healing. These native traditional healers used a variety of plants to produce medicines to treat spiritual and physical ailments. They held spiritual ceremonies and used indigenous chant to aid in healing. Millenia later, the practice of traditional medicine is still maintained, and many in the island seek the services of a suruhånu(a) as well as other healthcare professionals simultaneously, as can be found at Sågan Kotturan CHamoru or the various Guma' Yo'åmte.[217]

The structure and institutionalization of Guam's healthcare happened gradually. The most drastic shifts to the island's contemporary healthcare system occurred after World War II. After returning to Guam, the US military set up both civilian and military hospital wards in a complex of metal buildings in the village of Tamuning. The civilian ward was renamed Guam Memorial Hospital Authority (GMHA) in 1946 in honor of the CHamoru casualties of World War II. The hospital came under civilian administration in 1950 and in 1956 moved into a modern reinforced concrete structure nearby. In 1964, GMHA transitioned from a military-administered hospital to a line agency under the government of Guam. After more than a decade, in 1977, GMHA became a "public corporation and has since been operating as a government, not-for-profit entity."[218] To date, GMHA is the island's only public hospital.

In addition to GMHA, the island also has a military hospital, Naval Hospital Guam, and a private hospital, the Guam Regional Medical City (GRMC). Naval Hospital Guam is available exclusively to

217 Tricia Lizama, "How are Traditional Chamoru Healing Practices Being Perpetuated and Preserved in Modern Guam: A Phenomenological Study" (PhD diss., Capella University, 2011).

218 Connor Murphy, "Guam Memorial Hospital," Guampedia, October 14, 2019, accessed at https://www.guampedia.com/guam-memorial-hospital/.

active military personnel, military dependents, and military retirees. Residents of Guam who do not meet the requirements for entry into Naval Hospital are granted access to the facilities in cases of extreme emergencies. In the event of an emergency, a resident of Guam may be transported to the Naval Hospital if it is the closest facility.

The third and newest of Guam's hospitals is the Guam Regional Medical Center, which opened for operation in 2015. It is the island's only private hospital. GRMC is owned and managed by The Medical City, a company based in the Philippines that oversees a network of hospitals and clinics.[219] Residents of Guam are allowed to utilize GRMC, which accepts payments from Medicaid and Medicare federal insurance programs as well as some private insurance companies. In addition to the hospital itself, GRMC houses specialty clinics for areas such as cardiology, neurology, and oncology to name a few.[220]

Aside from the hospitals, a majority of government funded healthcare services are administered by the Guam Department of Public Health and Social Services (DPHSS). Currently, DPHSS is responsible for maintaining adequate health standards for the community. This is to be accomplished through immunization programs, sanitation inspections of private and public facilities, special programs to control specific contagious diseases, such as tuberculosis, and the provision of public clinics for the prevention and early detection of disease. DPHSS has five major divisions: General Administration (DGA); Public Health (DPH); Environmental Health (DEH); Public Welfare (DPW); and Senior Citizens (DSC).[221] DGA is responsible for supervising all other divisions and controlling the institution's budget and finances. The remaining four divisions coordinate and operate programs specific to their missions. DPW is responsible for overseeing and managing local and federal assistance programs, which include Medicaid, the Medically Indigent Program (MIP), and the Supplemental Nutrition Assistance Program (SNAP).[222]

Guam residents also have access to the Guam Behavioral and Health and Wellness Center (GBHWC) for behavioral and mental health services. Mental health services were provided by GMHA until 1983. With the introduction of Public Law 17-21, GBHWC officially became a Government of Guam line agency.[223] Today, the institution is open to the Guam public and operates with both local and federal funding. GBHWC provides counseling for all age groups, rehabilitative services for drug and alcohol abuse, and outpatient/inpatient treatment and recovery care. It also collaborates with, provides training to, and receives service referrals from GDOE and DPHSS.

Guam's healthcare institutions are funded by local appropriations and federal grants. For FY 2020, the government of Guam allocated more than $115 million to operate its healthcare institutions. In addition to local funds, the institutions also utilize federal grant monies to provide supplemental programs to meet the healthcare needs of Guam's residents. For Guam's healthcare institutions, much of the federal money comes from grants or programs that require the government of Guam to provide these institutions with

219 The Medical City Center, "Our History," accessed at https://www.themedicalcityclinic.com/history/.

220 Guam Regional Medical City, "About Us," accessed at https://www.grmc.gu/about-us/.

221 Guam Department of Public Health and Social Services, "Homepage," accessed at https://dphss.guam.gov/#.

222 Guam Department of Public Health and Social Services, "Homepage."

223 Guam Behavioral Health and Wellness Center, "About GBHWC," accessed at https://gbhwc.guam.gov/department/about-gbhwc.

local funds or other such resources (in-kind contributions) in order to match the amount given by the federal. The percentage of money needed to match federal funding varies, based on the federal grant or program. These grants include, but are not limited to Medicaid, past MIP appropriations, and the Children's Health Insurance Program (CHIP).[224]

Considering the financial needs of Guam's healthcare institutions, it is important to note that a significant number of people in Guam are reliant on public health insurance programs to access healthcare services. On average, around 55,000 people are enrolled in either Medicaid or MIP, which means that a significant amount of Guam's residents are categorized as impoverished by federal standards and entitled to subsidized healthcare programs.

224 35th Guam Legislature, "FY Budget Act PL 35-36."

Number of People Enrolled in Public Healthcare Programs (Medicaid and MIP)[225]

225 Guam Department of Public Health and Social Services Bureau of Health Care Financing Administration, "FY2014, FY2015, FY2016, FY2017, FY2018 Medicaid and MIP Expenditure & Demographic Report- End of 4th Quarter," accessed at http://dphss.guam.gov/resources-bh-cfa/

	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
Medicaid	44,528	44,033	43,673	43,476	43,600
MIP	12,471	12,033	11,757	10,861	10,998
Total	56,999	56,066	55,430	54,337	54,598

The quality of Guam's healthcare system and its ability to respond to the needs of the island community is critical since the island's residents suffer from high rates of chronic disease, including diabetes and kidney disease. DPHSS administrators cited similar challenges across their respective departments: limited/decreased funding and funding sources; outdated operating procedures, policies, and plans; lengthy processes for procurement and retirement; and an aging and unsustainable workforce.[226] Administrators expressed worry that as older workers leave, so will institutional knowledge, as there is a shortage of new employees entering their departments. DPHSS needs time to reform and update many of its processes in order to streamline its services. Such reform may help improve response times and prevent the overextension

226 Documents provided by DPHSS for the Self-Governance Study, January 2020.

of employees. Shorter response times and more sustainable workloads carried by employees could allow for the expansion of services.

The island is experiencing a shortage of medical specialists alongside overextended public health clinicians. Due to the shortage of medical specialists, many of Guam's residents seek healthcare services off-island. Seeking off-island medical care, residents go through the Guam Medical Referral Assistance Office, which falls under the Office of the Governor of Guam. The Guam Medical Referral Assistance Office currently has three locations in: Manila, Philippines; Honolulu, Hawai'i; and Los Angeles, California. The Referral Assistance Office provides caseworkers who assist Guam residents by coordinating with the patient's insurance company, medical providers, and arranging transportation and travel for the patient and their escort.[227] Combining FY2019 and FY2020, the Guam Medical Referral Office sent a total of 1,286 patients off-island for medical care.[228]

In addition to the Guam Medical Referral Assistance Office, residents in Guam may also go through The Medical City's referral office. As mentioned earlier, The Medical City is the parent company that owns and manages GRMC. The Medical City referral office opened in December 2019 to provide "help to those seeking medical care unavailable on Guam and to those seeking treatment outside of the territory."[229] With the assistance of The Medical City referral office, patients gain access to the company's extensive healthcare network, which includes more than five hospitals and fifty clinics in the Philippines. GRMC provides this service to Guam residents recognizing that while "the services offered at the facility [Guam GRMC] are extensive, there are certain procedures that aren't readily available on the island."[230]

In addition to its need for institutional reform, DPHSS faces the challenge of providing services to FAS clients. As a COFA jurisdiction, citizens of freely associated states (FAS) throughout the Micronesian sub-region can come to Guam for healthcare services. Since the signing of the COFA treaties in the 1980s and 1990s, Guam has seen a steady increase of COFA migrants who use health care services in Guam, but there has not been a proportionate increase in COFA impact funding from the US federal government to Guam. It is important to note that the Compact agreement itself does not specifically state that FAS migrants are allowed access to healthcare, this access comes from the policies and laws that govern healthcare in the affected jurisdictions where COFA migrants reside.

Citizens of the FAS can move to the United States and its territories, in many cases to get access to better healthcare. As a result, COFA migrants will often choose to receive healthcare services in either Hawai'i or Guam. In 2018, the Census Bureau reported that most COFA migrants, 49.5% (18,874), resided in Guam.[231] With the island's status as an unincorporated territory, Guam had no say during the negotiations of COFA, but provides healthcare services with little-to-no federal funding. To date, Guam

227 Lannie Walker, "Medical referrals continue during pandemic," The Guam Daily Post, September 7, 2020, accessed at https://www.postguam.com/news/local/medical-referrals-continue-during-pandemic/article_966a08be-ec05-11ea-8a21-13f682b05749.html.

228 Darlean S.N. Salas, Medical Referral Office, data given on September 11, 2020.

229 Lannie Walker, "Medical City open Guam office," The Guam Daily Post, December 9, 2019, accessed at https://www.postguam.com/news/local/medical-city-opens-guam-office/article_27c90008-212c-11ea-bcad-bf7ba3cda634.html.

230 Amanda Dedicatoria, "The Medical City opens new Guam referral office," Pacific News Center, December 17, 2019, accessed at https://www.pncguam.com/grmc-to-open-medical-city-referral-office/.

231 United States Census Bureau, "2018 Estimates of Compact of Free Association (COFA) Migrants."

receives less than twenty percent of the annual reimbursements that the United States owes the government of Guam for resources used by COFA migrants.[232] Before moving forward, it must be made clear that this is not the fault of the citizens of the FAS or the FAS themselves, and this analysis should not be misconstrued as implying such.

In a report written by the Office of the Governor of Guam, it was noted that for FY2017 Guam spent more than $38 million providing healthcare services to COFA migrants. From FY2004 to FY2017[233], Guam's healthcare institutions collectively spent more than $329 million. In the US Government Accountability Office's June 2020 report entitled, "Compacts of Free Association: Populations in US Areas Have Grown, with Varying Reported Effects," it was noted that "Guam reported $1.2 billion in total estimated compact impact costs."[234] However, in the same report, it details that Guam was given only $259.7 million in compact impact grants to "defray costs due to the residence of compact migrants."[235]

Statehood

As a state, the healthcare system will remain intact for the most part. Residents of the state of Guam will likely continue to get access to healthcare through employer-sponsored insurance and/or federally funded healthcare insurance. All public and private clinics, healthcare providers, hospitals, and government programs will likely remain the same, unless otherwise changed as a result of specific provisions of the state of Guam's constitution. One change that may occur is that the state of Guam may have to establish a healthcare insurance exchange program to comply with the 2010 Affordable Care Act (ACA) if still intact at the time.[236]

Regarding federally funded health insurance, Medicaid would remain federally funded and all services available under Medicaid would likely remain the same. With the passage of the Consolidated Appropriations Act, 2021, the US Congress included a provision in Section 208[237] that would give citizens of the FAS access to Medicaid again.[238] Therefore, as of December 2020, US citizens and non-US citizens, including COFA migrants, who meet the poverty guidelines for Medicaid (less than one hundred percent Federal Poverty Line) would be eligible to participate in this program.

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232 Ed Case, "Case calls on Federal Government for full reimbursement of costs of migrants from the Republic of the Marshall Islands, the Republic of Palau, and the Federated States of Micronesia, November 27, 2019, accessed at https://case.house.gov/media/press-releases/case-calls-federal-government-full-reimbursement-costs-migrants-republic.

233 The Office of the Governor of Guam wrote a cumulative report of COFA impact in the island spanning more than a decade. The data is only analyzed up to fiscal year 2017. As of its June 2020 report on COFA impacts, the US Government Accountability Office also reported that it did not receive COFA costs from Guam after FY2017.

234 US Government Accountability Office, "Compact of Free Association: Populations in US Areas Have Grown, with Varying Reported Effects," June 2020, accessed at https://www.gao.gov/assets/710/707555.pdf, pgs. 22-25.

235 US Government Accountability Office, "Compact of Free Association: Populations in US Areas."

236 Henry J. Kaiser Family Foundation, "Focus on Health Reform," 2012, accessed at https://www.kff.org/wp-content/uploads/2013/01/8332.pdf.

237 Manatt Health, Princeton University. "Omnibus Funding Package with COVID-19 Relief, Health Care Extenders, and Surprise Billing Ban," January 2021, accessed at https://www.shvs.org/wp-content/uploads/2021/01/Omnibus-Funding-Package-with-COVID-19-Relief-Health-Care-Extenders-and-Surprise-Billing-Ban-01.13.2021.pdf.

238 US Congress, Senate Rules Committee. "Consolidated Appropriations Act, 2021." 116th Cong. 116-68. accessed at https://rules.house.gov/sites/democrats.rules.house.gov/files/BILLS-116HR133SA-RCP-116-68.pdf.

In the state of Guam, COFA would still apply because Guam would be fully integrated into the United States. Support for federal programs would increase, not only because of Medicaid expansion to COFA migrants, but also because the federal medical assistance percentage (FMAP) is based on each state's per capita income, which usually ranges from fifty percent to eighty-three percent. Historically, Guam's share of Medicaid and other federal programs is determined periodically by Congress. This will no longer be the case under statehood. It will be based on regulations generally applied to all states and this "could help to reduce the local government's expenditures on health care, or improve the level of services available."[239] Guam and the territories have often had a Medicaid cap of fifty-five percent FMAP, in which the federal government caps their funding at fifty-five percent and the local government is responsible for the remaining forty-five percent.[240] The territories continue to petition the federal government for more health care funding and have found some success, such as the Consolidated Appropriations Act of 2020, cosponsored by Guam Delegate Michael San Nicolas.

It should also be noted that as a state, Guam will be required to pay into the federal coffers. Therefore, Guam residents will start to pay federal income tax as well as state taxes. However, most states receive more money from the federal government than they give to it. In January 2020, the SUNY Rockefeller Institute of Government issued a report that:

> found that just eight states gave more to the federal government in 2018 than they received in federal spending: New York, New Jersey, Massachusetts, Connecticut, Colorado, Minnesota, Utah and Nebraska. Over the past four years, New York contributed $116.2 billion more to the federal government than it got back in federal spending. The remaining 42 states received more than they contributed, with Virginia, Maryland, Kentucky, Alabama and Ohio leading.[241]

Most states receive more federal funding than they give for a variety of reasons: the number of federal employees in their states; how many residents receive federal benefits; and how much the state gives to the federal coffers, etc.[242] The federal dollars received will help the state of Guam to fund its healthcare institutions and to expand its services to more of the state's residents.

It should be noted that, due to the federal nature of the United States, states have flexibility in the administration of certain medical programs, which is why there is inequality and variation amongst the states. For example, uninsured rates among non-elderly adults with incomes below 200% of the federal poverty level varied across the states, from seven percent in Massachusetts to forty-three percent in Texas. This can be seen in the case of Medicaid. Medicaid is a health insurance program in which the federal

239 Bradley, "Economic Impact of Guam's Political Status Options," 72.

240 Congressional Research Service, "Medicaid Funding for the Territories," July 2019, accessed at https://fas.org/sgp/crs/misc/IF11012.pdf.

241 Melissa Quinn, "State bailouts and federal spending: Which states give, and which receive?" CBS News, April 30, 2020, accessed at https://www.cbsnews.com/news/state-bailouts-federal-spending-give-receive/.

242 John Tierney, "Which States are Givers and Which are Takers?" The Atlantic, May 5, 2014, accessed at https://www.theatlantic.com/business/archive/2014/05/which-states-are-givers-and-which-are-takers/361668/.

government gives money to state governments to pay for the costs of healthcare for lower-income patients. However, the healthcare itself is provided by private/nonprofit hospitals, clinics, and providers. Thus, the actual administration of the program is dependent on spending decisions of state capitals, health insurance companies, and the state's leverage over financial intermediaries. According to political scientist Donald F. Kettl, "Medicaid thus is a federal program brought to life in the decisions of in the states, a state-managed program with private contractors on the front administrative lines, a program that is different in every state and marked by immense administrative complexity— and a program that, as a result, has bred enormous variation and inequality."[243] In describing the relationship between federalism and healthcare, he expands,

> Over the centuries, the Tenth Amendment had certainly receded in importance, but the states had never forgotten it. Its basic provisions remained clear: if the Constitution did not give the federal government explicit power over a particular policy issue, it could not mandate state action. When it came to expanding federal authority over the states, it was one thing to create inducements, through grant programs, that no state would want to refuse. It was another to coerce them into doing something that no state would want to refuse. It was another to coerce them into doing something that was not otherwise authorized in the Constitution.[244]

Overall, federal statutes have often allocated implementation authority to states. Therefore, Guam, as a state, will have flexibility regarding certain healthcare programs and initiatives.

Status Example: Hawai'i

Hawai'i's Department of Health (HIDOH) oversees three major program areas: Health Resources; Environmental Health; and Behavioral Health. In FY2019, HIDOH had an operating budget of $1.79 billion. Health Resources and Behavioral Health made up 81% of the budget, utilizing more than $1.4 billion. Environmental Health took up the next largest portion, with 18% of the budget ($316 million). The remainder of HIDOH's budget 1% ($24 million) went to social services for the Disability and Communications Board as well as the Executive Office on Aging.[245] The institution has district offices in four of the Hawaiian islands: O'ahu; Hawai'i (Big Island); Kaua'i; and Maui. The Maui District health office is responsible for overseeing the neighboring islands of Lāna'i, Moloka'i, and Kaho'olawe.[246]

In 2019, the Commonwealth Fund conducted a study of all fifty US states, where they ranked each

243 Donald F. Kettl, *The Divided States of America: Why Federalism Doesn't Work,* (Princeton and Oxford: Princeton University Press), 2021, pg. 95.

244 Donald F. Kettl, *The Divided States of America: Why Federalism Doesn't Work*, (Princeton and Oxford: Princeton University Press), 2021, pg. 101.

245 State of Hawaii Department of Budget and Finance, "Department of Health Department Summary," accessed at https://budget.hawaii.gov/wp-content/uploads/2017/12/19.-Department-of-Health-FY-19-SUPP.2eM.pdf.

246 State of Hawaii Department of Health, "Neighbor Island Offices," accessed at https://health.hawaii.gov/maui/; https://health.hawaii.gov/kauai/; https://health.hawaii.gov/big-island/.

state's healthcare system. Hawai'i ranked #1 overall.[247] When comparing the state to the US national average, it was found that "approximately 5.5% of adults in the state are uninsured, well below the national average of 13.8%. Additionally, the obesity rate in the Aloha State, at 23.8%, was below the national average of 31.3%."[248] The state's incredibly low uninsured rate is due in part to actions taken by the Hawai'i Legislature.

The enactment of the Hawai'i Prepaid Health Care Act greatly reduced the amount of healthcare costs for employees in the state. Codified into law in 1974, the act was the "first in the nation to set minimum standards of health care coverage for workers."[249] There was a brief hiatus with the bill, when it was replaced by the Federal Employee Retirement Income Security Act of 1974 (ERISA), but it was brought back on March 1, 1983.[250] The Act mandates "Hawaii employers to provide healthcare coverage for eligible employees to insure protection against the high cost of medical and hospital care for nonwork-related illness or injury."[251] The Act's monthly premium pay structure sets it apart from current plans implemented on Guam that require employers to provide health insurance. Employees in Hawai'i can pay their premium using two formulas: fifty percent of the premium is paid by the employee and the remaining fifty percent is paid by the employer; or the employee contributes no more than 1.5% of their monthly income for their insurance premium. Employees then pay the lesser of the two options. HMSA, one of Hawai'i's health insurance giants, gives an example to explain this payment structure:

> Malia works forty hours a week. Her monthly paycheck is $1,733. Her health insurance costs $300 a month, half which is $150, 1.5% of her net salary is $26. According to the law, Malia pays the lesser of the two amounts—$26. Her employer pays the rest.[252]

The new structure significantly cuts the cost of healthcare insurance for employees, thereby increasing their ability to access quality healthcare services.

As a state, it is expected that only minor changes will have to be made to the current system with the establishment of a healthcare exchange program. Guam will have to connect to the healthcare marketplace managed by the US Department of Health and Human Services (HHS). As a state, Guam would remain a COFA jurisdiction. With its new political status, Guam would have more power to negotiate the terms of healthcare coverage provided to COFA migrants and have more say in how to accomplish

247 The Commonwealth Fund, "2019 Scorecard on State Health System Performance: Hawaii," accessed at https://scorecard.commonwealthfund.org/state/Hawaii.

248 Honolulu Star Advertiser, "Hawaii health care takes No. 1 spot in nationwide survey," May 15, 2019, accessed at https://www.staradvertiser.com/2019/05/15/breaking-news/hawaiis-health-care-takes-top-spot-in-annual-nationwide-survey.

249 State of Hawaii Department of Labor and Industrial Relations Disability Compensation Division, "Highlights of the Hawaii Prepaid Health Care Act," October 2018, accessed at http://labor.hawaii.gov/dcd/files/2013/01/PHC-highlights.pdf.

250 State of Hawaii Department of Labor and Industrial Relations Disability Compensation Division, "Highlights of the Hawaii Prepaid Health Care Act."

251 State of Hawaii Department of Labor and Industrial Relations Disability Compensation Division, "Highlights of the Hawaii Prepaid Health Care Act."

252 HMSA, "Hawaii Prepaid Health Care Act," March 9, 2020, accessed at https://hmsa.com/help-center/hawaii-prepaid-health-care-act/.

this task. It is important to note that because of its responsibility to the United States, the state of Guam cannot opt to completely disregard the provisions of the Compact agreements.

Independence

In an independent Guam, the government and people will have to decide how to best develop or maintain the island's healthcare system. This can open doors to opportunities and best practices by learning from examples around the world. However, it is important to note that, with independence, the creation and structure of the healthcare institutions are dependent on the type of system the island follows and the associated costs for implementing that healthcare model. The island may desire free medical care for all citizens paid for by the government of Guam, or perhaps some other program more comprehensive, more suitable and more affordable than what is currently in place. This would be dependent on the economic feasibility of the development of this system and how the new country will replace the federal funds currently available which assist in the maintenance and operation of the healthcare network of the island. This will be a serious undertaking that will be needed to ensure the legitimacy of the new government. On this note, one of the authors in his 2000 report notes,

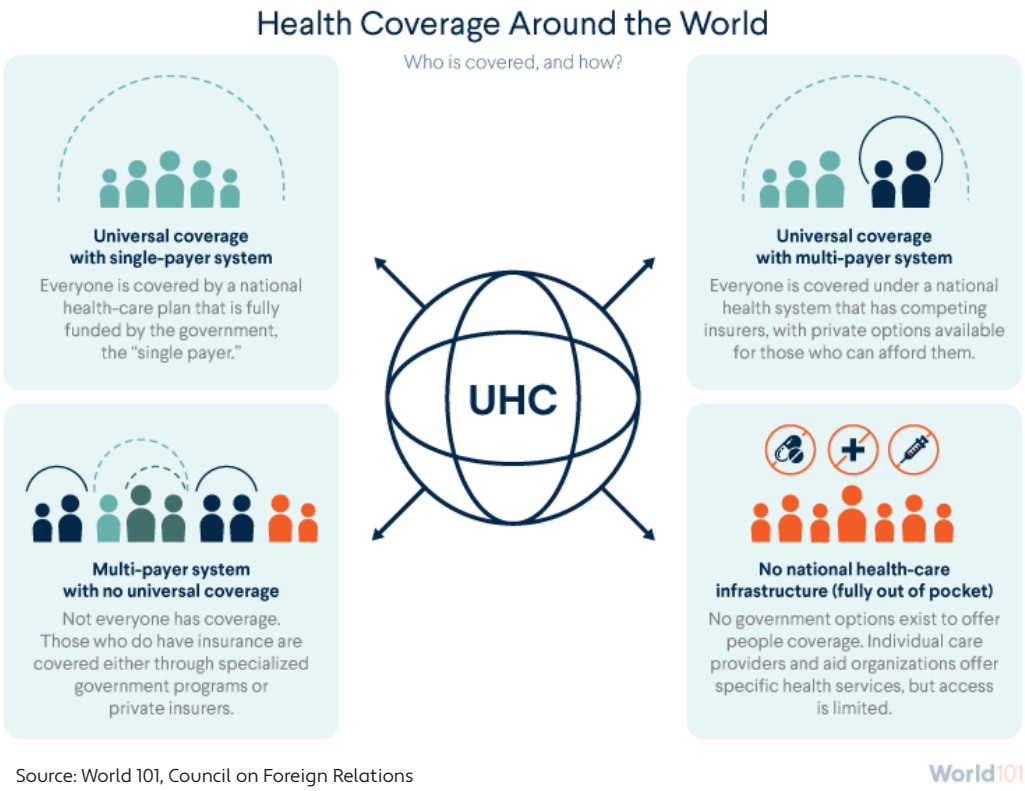
> Because health and healthcare are high US and international priorities, the US government is likely to make substantial efforts to maintain a baseline level of health care services in Guam, despite the transition to independence. However, funding for the attendant programs will change, with a phased discontinuance of formal, direct US health care funding through grants. Support will come in the form of advisory services and technical assistance, as well as through foreign aid, whether directly or through third-party international organizations.[253]

In addition, the development of the island's healthcare will be in the creation of a healthcare system.

There are four main models for healthcare that countries follow: Beveridge Model; Bismarck Model; National Health Insurance Model; and Out-of-pocket Model.[254] Many countries use one of the models as their main foundation and introduce elements of other models within their healthcare infrastructure.

253 Bradley Report, 2000, pg. 103.

254 Mimi Chung, "Health Care Reform: Learning from Other Major Health Care Systems," December 2, 2017, Princeton Public Health, accessed at https://pphr.princeton.edu/2017/12/02/unhealthy-health-care-a-cursory-overview-of-major-health-care-systems/.



The Beveridge Model was developed in the United Kingdom in 1948. This model identifies "health as a human right," where "universal coverage is guaranteed by the government and all citizens have the same access to care."[255] The country's government is responsible for paying for health care in the country, with healthcare being funded by direct income tax deductions and the hospitals being owned and operated by the government, which lowers the cost of healthcare. This makes health services free at the point of use for citizens. However, this model is often criticized for producing long wait times for citizens seeking care, as the model facilitates the overuse of healthcare services. Another problem, particularly in countries with aging populations, is how to generate funding when tax revenues are reduced. Today, the United Kingdom still uses this model, as do countries like Spain, Cuba, and New Zealand.[256]

The next model, the Bismarck Model, is like the Beveridge Model because the government still has control over the price of healthcare. However, citizens get access to healthcare with private insurers who handle the person's "sickness fund" which the individual pays into. Insurers cannot make a profit from healthcare services, so it is unlikely that someone will go into substantial debt because of medical care. Most hospitals and health providers are private, although the funds are considered public. The main critique with the Bismarck Model is that it privileges those who are employed. Therefore, countries who use this model struggle with providing access to healthcare for citizens who are unemployed or when there is a larger number of older, retired residents than there are residents who are actively employed. Germany,

255 Chung, "Health Care Reform."

256 Chung, "Health Care Reform."

France, Belgium, and Japan are some of the countries that structure their healthcare according to the Bismarck Model.[257]

The National Health Insurance Model uses a blend of the Beveridge and Bismarck models. Within this model, the government is the only payer for healthcare services, but all providers are private clinicians. Funds are raised via a country's operated insurance scheme that all citizens pay into. Costs are kept low for residents because it remains government controlled. Healthcare practitioners prefer this model because they can operate independently without having to work in government-run clinics and hospitals. However, many residents complain that like the Beveridge model, waiting lists for medical care can take weeks or sometimes months. Canada and South Korea are some countries that use the National Health Insurance Model.[258]

The last model for healthcare is the Out-of-Pocket Model. Countries who use this model tend to be poor and developing countries who do not have the means to establish a permanent and robust infrastructure for healthcare. They simply cannot afford to maintain healthcare institutions. Therefore, residents must pay for their medical care on their own, which results in wealthy residents having access to the healthcare they need. Poorer residents must save money to afford medical care or forgo medical treatment altogether because there is no clear government healthcare structure in place. Countries that implement the Out-of-Pocket model include rural areas in India and countries in Africa.[259]

Status Example: Luxembourg

Luxembourg has one of the best state-funded healthcare systems in the world. Luxembourg uses a single-payer fund as well as employer-based healthcare plans and uses a combination of the Beveridge and Bismarck models. The country's healthcare system is managed by a single-payer fund, the Caisse iNational de Santé – National Health Insurance (CNS). Funding for healthcare comes from the government at forty percent and the remaining sixty percent is funded through employers and the country's insured. On average, employees give the country about five percent of their gross income to pay for healthcare. Employers then match that contribution. Although ninety-nine percent of the population is covered under the country's insurance, approximately seventy-five percent have additional private insurance to cover medical care that is not considered basic care.[260] Once one receives medical services, one must go through Luxembourg's healthcare reimbursement system. For outpatient services, patients are required to pay the healthcare providers for their services. The patient then goes to CNS to get their money back. Reimbursements for medical services usually fall within a range of sixty percent to one hundred percent.[261]

257 Chung, "Health Care Reform."

258 Chung, "Health Care Reform."

259 Chung, "Health Care Reform."

260 Healthmanagement.org, "Overview of the Healthcare System in Luxembourg," 12, no. 4 (2010): accessed at https://healthmanagement.org/c/hospital/issuearticle/overview-of-the-healthcare-system-in-luxembourg.

261 European Commission, "State of Health in the EU Luxembourg Country Health Profile 2017," 2017, accessed at http://www.euro.who.int/__data/assets/pdf_file/0011/355988/Health-Profile-Luxembourg-Eng.pdf?ua=1.

Within Luxembourg's system, the costs of healthcare services are negotiated with the government. The Union of Sickness Funds is responsible for setting the fixed costs of healthcare services, resources, and medications. Individual hospital boards are also required to work with the Union of Sickness Funds to determine their budgets. Luxembourg has no private hospitals. All hospitals are public, and emergency services are provided to citizens and long-term residents at no cost.[262]

On the other hand, Luxembourg has one of the highest rates for healthcare spending when compared to the rest of the European Union. Therefore, one of the fundamental critiques of Luxembourg's system is that they do not have strong primary care services, which makes it difficult to appropriately manage specialized services and treatments. The citizens are instead free to go directly to specialists, which drives up the cost of healthcare in the country.[263] Primary care physicians will play an integral role in keeping costs down by acting as the gatekeepers before patients are referred to specialists. Luxembourg is a wealthy country whose residents can afford to seek specialty services. Residents of Guam will be less able to afford immediate specialty services, resulting in greater emphasis on primary care and preventative screenings.

An independent Guam would have the opportunity and responsibility to learn from other countries throughout the world and implement a healthcare model suited to its unique needs and economic situation. It is important to note that healthcare will be dependent on the health of Guam's economy and how Guam is able to transition from territory to independent country, particularly regarding the phasing of US healthcare funding (please refer to the independence portion of the Economic Impacts section of this study for a clearer economic picture and how this could affect healthcare). In addition to local funding, as an independent country, Guam could access international assistance and cooperation to help improve its healthcare infrastructure.

Free Association

As a freely associated state, Guam can negotiate to receive money from the United States or international organizations to help develop infrastructure for healthcare in the island. If Guam's potential compact follows a similar pattern to the existing Compact of Free Association (COFA) agreements with the United States, the island could negotiate for visa-free travel without residency limitations for its citizens who travel to the United States to access healthcare services (although care should be taken to avoid being labeled as "public charges" and therefore subject to deportation).

Like other freely associated states in the Micronesia sub-region, a freely associated Guam may also want to consider negotiating with the US to allow for the use of regulatory federal healthcare agencies, such as the Food and Drug Administration (FDA), the US Department of Agriculture (USDA), and the US Department of Health and Human Services, at least temporarily. Guam could also try to negotiate not only for assistance from federal healthcare organizations but from other types of federal agencies as well.

262 Healthmanagement.org, "Overview."

263 Sarita Mantravadi and Dallas Snider, "Comparing Healthcare Systems of Luxembourg and the United States," Journal of Applied Business and Economics, 19, no. 7 (2017): accessed at http://www.na-businesspress.com/JABE/JABE19-7/MantravadiS_19_7_.pdf.

As it would with independence, a freely associated Guam would be able to solicit healthcare providers and services from non-US sources. The island would be able to utilize its neighboring countries in Asia to procure healthcare resources that may be more cost effective. It is likely that Guam can change its licensing requirements for medical practitioners from foreign countries, thereby enticing them to practice in the island.

Status Example: The Republic of Palau

Palau's healthcare system runs on funding from a variety of avenues, such as local appropriations, COFA funds, and outside aid from international organizations and governments. For example, stipulated in Palau's compact with the United States, Palau receives $2 million annually to assist in creating healthcare initiatives and programs as stated in Section 232 which invokes the country's 1996 National Master Development Plan.[264] In addition to compact funds, Palau reported that "seventy-six percent of financing for those activities that constitute the stated health care priorities of the nation – health promotion, prevention, and primary health care – are funded by US federal programs."[265] The Secretariat of the Pacific Regional Environment Programme, headquartered in Samoa, released an update on Palau's National Master Development Plan with a report entitled, "Actions for Palau's Future: The Medium-Term Development Strategy 2009 to 2014." It outlines how US federal grants helped the country move forward with its health initiatives. The report states,

> in FY 2007, the nation spent $15.6M on health... The Ministry of Health generated 90 percent of these expenditures ($14M) while the private sector generated 10 percent ($1.6M). Government funding (Palau Government and donor governments) provided $12.1M of the total while private out-of-pocket expenditures totaled $3.5M.[266]

Regarding individual health insurance, Palau operates under a social health insurance model managed by the Health Care Fund (HCF). Codified into law in 2010, the "National Healthcare Financing Act" created the HCF which runs two financial streams for healthcare: Medical Savings Account (MSA); and National Health Insurance (NIH).[267] Both the MSA and NIH are funded by the employees and employers of Palau. Employees contribute 2.5% of their income every pay period and employers match the contributions. Self-employed individuals are required to contribute five percent.[268] The MSA funds

264 Republic of Palau, Compact of Free Association, 1994, accessed at https://pw.usembassy.gov/wp-content/uploads/sites/282/2017/05/rop_cofa.pdf.

265 Secretariat of the Pacific Regional Environment Programme, Actions for Palau's Future The Medium-Term Development Strategy 2009 to 2014, 62, accessed at https://www.sprep.org/att/IRC/eCOPIES/Countries/Palau/43.pdf.

266 Secretariat of the Pacific Regional Environment Programme, "Actions for Palau's Future."

267 Republic of Palau Social Security Administration, "An Introduction to The Healthcare Fund," 2010, accessed at http://www.ropssa.org/pdf/brochures/hcf/An%20Introduction%20to%20the%20Healthcare%20Fund%20-%20English.pdf.

268 Republic of Palau Social Security Administration, "An Introduction."

medical care for individuals who contribute to the fund. The NIH provides medical care to individuals who are uninsured or who cannot afford medical care. The NIH fund was built with the philosophy of "People coming together to help one another."[269]

A freely associated Guam can consider the country of Palau when formulating its own healthcare system. The Asian Development Bank concludes that Pacific Island countries would need to have the following in order to establish social health insurance: existence of good-quality health services with fairly uniform access; a large share of employment in the formal sector; presence of administrative capacity for operating a social health insurance scheme; and a strong commitment on the part of the population to social solidarity.[270] As a freely associated state, Guam would have the freedom, but also the responsibility, to choose a model that works best for its people.

269 Republic of Palau Social Security Administration, "An Introduction."

270 Asian Development Bank, "Sustainable Health Care Financing in the Republic of Palau," 2011, 24.

HEALTHCARE	
STATUS	**EFFECTS**
Statehood	• The island will likely see an increase in FMAP, supplying Guam with additional money for established federal healthcare programs (i.e., Medicaid). • Guam may have to create a healthcare marketplace program like that of other US states. • Guam will have increased access to federal dollars for the creation of healthcare programs. • Guam will remain a COFA jurisdiction • Guam will not likely be able to receive international aid for healthcare.
Independence	• Guam will have the flexibility and agency to create a healthcare insurance program and infrastructure suited to its unique needs.

	• It may be difficult for Guam to establish a new healthcare system if it is vastly different from its existing one, requiring new institutions, services, and facilities. • Guam will have to replace the federal funding source that currently assists healthcare needs in the island • Guam may have access to international aid to create health programs and improve infrastructure. • Guam will no longer be a COFA jurisdiction and may be able to negotiate access to the island by other residents of Micronesian states with complete agency.
Free Association	• Guam will have the flexibility and agency to create a healthcare insurance program and infrastructure suitable to its unique needs. • Guam's citizens may receive access to the United States visa-free, and access healthcare services as a result. • It may be difficult for Guam to establish a new healthcare system if it is vastly different from its existing one, requiring new institutions, services, and facilities. • Guam may have access to international aid to create health programs and improve infrastructure. • Guam will no longer be a COFA jurisdiction. Access to Guam can be negotiated.

Education

Today, the Guam Department of Education (GDOE) is a centralized school system that oversees grade levels kindergarten through twelfth grade. The public school system has around 30,000 students across 41 schools.[271] The island also has three higher education institutions: Guam Community College, a vocational college that offers Associate Degree programs, professional certificates, and a Bachelor of Science program in Career Technical Education; Pacific Islands University, a private Christian college that offers Associate and Bachelor degrees in Liberal Studies and Bible Studies; and the University of Guam, the region's only public four-year college.

Currently, the Guam Department of Education oversees all public schools and the Archdiocese of Hagåtña manages all private, Catholic schools. Guam charter schools were formally under the supervision of GDOE until July 2019, when the Guam Legislature separated the charter schools' budget from GDOE's. Budgets are now solely approved by the Guam Academy Charter Schools Council and monies are distributed through the government of Guam's Department of Administration (DOA).[272] The Department of Defense Education Activity (DODEA) also runs schools for dependents of applicable members of the US Armed Forces. Most of Guam's students do not have access to DODEA schools.

GDOE is an institution falling under the purview of the Guam Education Board. The Guam Education Board has nine voting members and three non-voting members.[273] The relationship between the board and the superintendent is outlined in the Guam Code Annotated, in 17 GCA. The board is given the responsibility to hire the GDOE superintendent as well as create policies that the superintendent must implement. The board is responsible for creating policies that affect all aspects of GDOE, such as discipline, personnel relations, etc. The superintendent is fully responsible for managing all decisions related

271 Guam Department of Education, 2019, accessed at https://sites.google.com/a/gdoe.net/gdoe/.

272 35th Guam Legislature, Bill 106-35, July 2019, accessed at http://www.guamlegislature.com/Bills_Passed_35th/Bill%20No.%20106-35%20(LS).pdf.

273 17 Guam Code Annotated Education. § 3102.3. "Composition and Terms of Office for Board Members," accessed at http://www.guamcourts.org/CompilerofLaws/GCA/17gca/17gc003.PDF.

to personnel, operations, expenditures, and procurement.[274]

Unfortunately, numerous public educational K-12 facilities in Guam are near the end of their useful lifespan, yet still remain in full use. Some schools are crowded and in need of significant upgrades. In some districts, new facilities are crucial. Upgrading the infrastructure is arguably too costly for the local government to afford. With federal funding, GDOE can use funding from the US Department of Agriculture (USDA) to supplement but not supplant local funding. The USDA will not pay for expenses that it feels should be the responsibility of the state or local government. Buildings fall under that category, so it will not give funding to improve or construct buildings.[275] The US Department of the Interior (USDOI) allocates funding for capital development, but the funding is unsustainable and not always for education purposes. For example, in FY2011, USDOI gave Guam more than $5 million for the Department of Public Health and Social Services and the Nieves M. Flores Public Library.[276] In FY2016, DOI granted Guam over $6 million, of which $1 million went to GDOE to "convert Tiyan educational administration facilities into a central high school to alleviate overcrowded conditions at the John F. Kennedy High School in Tamuning and the George Washington High School in Mangilao."[277]

Since funding is not always guaranteed from federal agencies, Guam uses local funding for long-term capital development projects. If available local funding is limited, the government of Guam can issue bonds to repair facilities and use that funding, which is an avenue it is considering for the construction of Simon Sanchez High School and other public school facilities.[278] For the building of Tiyan High School and the reconstruction of John F. Kennedy High School, the government of Guam entered into lease financing agreements where "a private company leases a property from the Government of Guam—they build the school and they lease the school back to the government."[279]

On an annual basis, the Guam Department of Education requires approximately $300 million for operations, making it the one of most expensive line agencies in the government of Guam. The public school system in Guam is dependent on federal aid from the US Department of Education and other US-based grants to run its supplemental programs (HeadStart, SPED, etc.). In total, GDOE is given approximately $60 million in federal money annually, with a small portion given to the island's private schools. Approximately $40 million a year is given to GDOE from the USDOE in the form of consolidated and competitive discretionary grants.[280] GDOE also receives an additional $20 million a year from several federal agencies to include, but not limited to the USDA, the USDOI and the US Department of Health

274 Personal Communication with GDOE Superintendent, Jon Fernandez, July 2020.

275 Personal Communication with GDOE Superintendent, Jon Fernandez, July 2020.

276 US Department of the Interior, "DOI Awards $5,026,000 for Guam Infrastructure Projects," accessed at https://www.doi.gov/oia/press/2011/Guam-Infrastructure-Projects.

277 US Department of the Interior, "DOI Awards $5,026,000 for Guam Infrastructure Projects," accessed at https://www.doi.gov/oia/press/2011/Guam-Infrastructure-Projects.

278 Lannie Walker, "Phase 1 to rebuild Simon Sanchez High 'starts now," Guam Daily Post, accessed at https://www.postguam.com/news/local/phase-to-rebuild-simon-sanchez-high-starts-now/article_ff9731a4-6709-11e9-aca3-23d3815aa423.html.

279 Krystal Paco, "JFK High to cost $157M in 30 years," KUAM News, accessed at https://www.kuam.com/story/15885720/2011/10/26/jfk-high-to-cost-157m-in-30-years.

280 Haidee Eugenio, "GDOE to get more federal funds 'highly confident' in managing its own money," Pacific Daily News, April 23, 2018, accessed at https://www.guampdn.com/story/news/2018/04/23/gdoe-get-more-federal-funds-highly-confident-managing-its-own-money/541066002/.

and Human Services.[281] Overall, eighty percent of GDOE's annual budget is from local appropriations and twenty percent is a combination of consolidated and discretionary grants.[282]

The eighty percent from local appropriations is used to support core operational costs, such as hiring personnel, general operations, and textbooks. The island uses federal funding to supplement its schools with technology, additional instructional materials, and professional development. With local appropriations, GDOE can only meet the basics. The island can decline federal funding, but with the current system in place, doing so will limit the institution's ability to manage some of its programs.[283] As a result, to keep its federal funding, GDOE mirrors its structures according to US models, which are prevalent in the curricula and standards of Guam public and private schools.

Superintendent Jon Fernandez said, to keep in line with federal education requirements, GDOE has limits with supplies and learning materials. GDOE has fallen into the habit of mirroring the curriculum with state models, which are not framed by the local culture of the island. This practice is unsurprising since Guam's education system was initially formalized during the Naval administration and was later reinforced to model the US system with the signing of the Organic Act of Guam. Today, many of the resources used in Guam's classrooms are produced and published by companies in the United States, and therefore are not written with Guam's students in mind. Additionally, costs increase because these resources need to be shipped. Overall costs related to materials are also high because many of the federal funds for education come with "Made in America" provisions that make it difficult to procure or source supplies from neighboring countries. It is important to note that GDOE is taking small steps to change this practice while still adhering to federal standards. Fernandez said the UOG Press is creating a series of new textbooks tailored to Guam. GDOE still must align its content standards with federal requirements in order to maintain accreditation, but the institution can also design and shape its curricular materials so that they relate more to students' experiences and worldviews.

In combination with the focus of curricular materials and the limited time allotted for instruction of the CHamoru language, Guam also follows content standards set by the United States. In 2010, teacher cohorts met to update the standards across all grade levels and content areas.[284] Most standards were taken from different states throughout the US and guidelines given by various US organizations. The standards were updated using a mixture of "national standards, exemplary state standards, and the 1996 Guam DOE standards."[285] In addition to revising content standards in 2010, GDOE also changed standards in specific content areas to align with federal education standards. In 2012, GDOE adopted Common Core standards for English, language arts, and math. Then recently, in late 2018, the system changed its

281 Guam Department of Education, Citizen Centric Report FY2017 and FY2018.

282 Personal Communication with GDOE Superintendent, Jon Fernandez, July 2020.

283 Personal Communication with GDOE Superintendent, Jon Fernandez, July 2020.

284 Guam Department of Education, "Guam Department of Education K-12 Content Standards and Performance Indicators", 2010, accessed at http://www.arkansased.gov/public/userfiles/Learning_Services/Curriculum%20and%20Instruction/Resource%20Mat/Foreign%20Lang/FW%20Com%20Files/US%20States%20and%20Territories/Guam%20ContentStandardsfinalJune15,2010.pdf.

285 Guam Department of Education, "K-12 Content Standards," iii.

science education standards to reflect the Next Generation Science Standards.[286] Even with this curricular focus, GDOE is taking steps to teach, protect, and preserve the indigenous culture and language. GDOE currently has the CHamoru Studies and Special Projects Division, which ensures the development of a more permanent program structure for CHamoru language and culture within the public school system.

It is significant to note that as a territory, Guam is given more flexibility than the states to use federal funding. GDOE operates under a consolidated grant. The island is smaller in comparison to other states and receives less federal funding. However, having a smaller amount also allows GDOE to have more flexibility with the funding. Unlike states, GDOE's federal funding is put into one pot, while states must distribute money by purpose or program (i.e., Title 1, Professional Development, etc.). Not having to specifically allocate money by category, GDOE has more options to funnel federal funding into areas prioritized by the institution.

Even though GDOE currently can control how federal monies are disseminated, it was cited in 2010 for having a lack of accountability. As a result, GDOE hired a third-party fiduciary to oversee the distribution of the institution's federal funding. It spends between $2 million to $4 million a year for these services. Fernandez explained that, normally in these circumstances, the educational system is given time to prove that it can properly manage its funding. Since Fernandez's hiring in 2012, GDOE has received seven clean audits, which would allow GDOE to become reclassified as a "low-risk" grantee. Fernandez emphasized that GDOE is stuck in this pattern because Guam does not have a voting member in Congress to put a stop to the special conditions placed on GDOE and the mandate for the third-party fiduciary. In other states, their representatives and senators can assist in changing this classification.[287]

Guam is also impacted by the Compacts of Free Association (COFA) that exist between the United States and the Freely Associated States (FAS). The island renders educational services for COFA migrants and waits for the federal government to reimburse it. In a report written by the Office of the Governor of Guam, it was noted that for FY2017 Guam spent more than $72 million providing educational services to COFA migrants. From FY2004 to FY2017[288] Guam's educational institutions collectively expended more than $637 million (see Table below).

286 Guam Department of Education, "Parent Community Information and Policy Input Sessions on Standards-based Grading," March 2020, accessed at http://lbjtames.weebly.com/uploads/1/9/7/6/19765921/3.6.2020_parent_community_information_and_policy_input_sessions_on_standards-based_grading.pdf.

287 Personal Communication with GDOE Superintendent, Jon Fernandez, July 2020.

288 The Office of the Governor of Guam wrote a cumulative report of COFA impact in the island spanning more than a decade. The data is only analyzed up to fiscal year 2017. As of its June 2020 report on COFA impacts, the US Government Accountability Office also reported that it did not receive COFA costs from Guam after FY2017.

COFA-Related Costs for Educational Services[289]

289 Office of the Governor Government of Guam, "Impacts of the Compacts of Free Association on Guam FY2004 to FY2017," January 2018, 10.

INSTITUTION	COST FOR FY 2017	CUMULATIVE COST FY2004-FY2017
GDOE	$66,532,509.00	$574,112,533.00
Guam Community College	$2,397,919.00	$26,620,772.00
University of Guam	$1,927,717.00	$21,650,426.00
Department of Public Works-Bus Operations	$1,728,832.00	$15,407,617.00

In the US Government Accountability Office's June 2020 report entitled, "Compacts of Free Association: Populations in US Areas Have Grown, with Varying Reported Effects," it noted that "Guam reported $1.2 billion in total estimated compact impact costs."[290] However, in the same report, they wrote that Guam was only given $259.7 million in compact impact grants to "defray costs due to the residence of compact migrants"[291] meaning that Guam only received approximately twenty percent of the funds owed to it by the federal government. Of the $637 million spent on education, only a fraction of the reimbursements was given to Guam by the federal government.

Statehood

Throughout the United States, individual states have autonomy over their school systems. "Every state has its own department of education and laws regulating finance, the hiring of school personnel, student attendance, and curriculum."[292] Therefore, as a state, Guam would also have this amount of control over its education system.

Funding for GDOE under the state of Guam is unlikely to change significantly. As a state, Guam may see an increase in federal funds if there is an influx of students attending GDOE schools. The government of Guam will likely continue to provide for eighty percent of the institution's budget with

290 US Government Accountability Office, "Populations in US Areas Have Grown," 22-25.

291 US Government Accountability Office, "Populations in US Areas Have Grown," 22-25.

292 Antonella Corsi-Bunker, "Guide to the Education System of the United States," International Student & Scholar Services, University of Minnesota, accessed at https://isss.umn.edu/publications/USEducation/2.pdf.

local appropriations, and twenty percent from federal funds. Currently, the eighty percent comes from legislative appropriations collected from local taxes. However, the state of Guam will have to start paying into federal coffers, thereby changing Guam's current tax structure, meaning that Guam may need to introduce alternate revenue streams to generate the local funds needed for education, such as increasing property taxes. For a more detailed explanation, refer to Section: "Revenue and Taxation" of this study.

On the other hand, Guam's status as a state may mean that the strings attached to federal funding may become more stringent. Although education is considered a state or local responsibility, historically, the United States uses federal funding as leverage to implement educational reform. Oftentimes, funding gets tied to national policies and their respective goals tend to fluctuate with each administrative change.[293] For example, with former Presidents George W. Bush and Barack Obama, the focus was on standardized testing. Based on the test results, schools were either penalized or given more options. President Obama used the funding to incentivize schools, making it a federal political issue instead of a state-level issue.[294]

Despite federal funding flexibility, one critical issue with Guam as a territory is that it does not have voting representation in the Senate or the House of Representatives. As a state, Guam will have representatives and senators who can advocate for and vote on bills that are in the best interest of the state of Guam. For example, in the case of GDOE, a voting member of Congress could ask that the institution be reclassified as "low-risk" so that it is no longer required to undergo additional audits and special conditions. The United States can exclude territories from grants. An example is the Race to the Top grant, a competitive grant championed by former President Obama, which only allowed states, the District of Columbia, and Puerto Rico to apply for the funding.[295] Under Race to the Top, over $4 billion was distributed among the 19 states that won grants to restructure their school systems.[296] If Guam were to be a state, the island may be eligible for these grants, bills, and programs when they are introduced. Additionally, higher education students will continue to have access to federal student aid in the form of lower interest loans or grants.

Lastly, the state of Guam will still act as a Compact of Free Association (COFA) jurisdiction. Consequently, it may struggle to get federal reimbursements for the use of the island's education resources. It is important to note that even states struggle to get federal reimbursements.

Status Example: Massachusetts

To date, the state of Massachusetts ranks the highest in student achievement when compared to other states. For the last two decades, the state has consistently remained in the nation's top ten. To get its educational institutions to this point, Massachusetts underwent massive educational reform in 1993.

293 Personal Communication with GDOE Superintendent, Jon Fernandez, July 2020.

294 Personal Communication with GDOE Superintendent, Jon Fernandez, July 2020.

295 US Department of Education, "Race to the Top Fund Eligibility," accessed at https://www2.ed.gov/programs/racetothetop/eligibility.html.

296 The White House President Barack Obama, "Race to the Top," accessed at https://obamawhitehouse.archives.gov/issues/education/k-12/race-to-the-top.

Outlined in the Massachusetts Education Reform Act of 1993 (MERA), the state established education standards for core subjects and reallocated funding to lower-performing schools. Following the standards, the Massachusetts school system created curriculum frameworks for mathematics and English language arts. By 2003, nearly a decade after the reform act, the school system began to turn around and was soon considered one of the most successful school systems in the nation.[297]

Nearly twenty years after the overhaul of its school system, other states look to Massachusetts when reforming their institutions. In an interview with *The Seattle Times*, former Massachusetts secretary of education, Paul Reville, opined that the "three strategies — all of them costly and most aimed at low-income schools — are making the difference: beefed-up early education; an expanded school day resulting in significant salary increases; and huge boosts to teacher training."[298] With these three pillars in place, Massachusetts decided to address the significant gaps between the higher income schools and those with a larger portion of students who fell below the poverty line. They found that when measuring achievements "black and Latino students lag behind Asians and whites by more than thirty percentage points."[299]

Noting these disparities, school officials decided that the best way to close the gap would be to extend the school day. The state filtered more money and resources into lower performing schools so they could revamp their curriculum and restructure their school days. In some schools, their budgets went up as much as $5 million a year. In those schools, they updated textbooks and added more advanced mathematics classes.[300] For example, the mayor of Boston decided to extend the school day for grades K-8 by adding forty more minutes.[301] However, schools were not to fill the time by instructing students in traditional subjects like math and English. At Matthew J. Kuss Middle School, a notoriously underperforming school, principal Nancy Mullen along with teachers and staff:

> wove music, theater, martial arts, video production, cooking and other so-called 'enrichment' subjects into morning and midday hours, each taught with an eye toward pointing out academic connections — the fractions necessary for cooking, the writing skills essential in a script.[302]

Teachers in the "traditional" subjects instead used the additional time to prep and meet with other teachers to expand and enrich the curriculum. It resulted in students being more well-rounded and better prepared to apply their skills to the real world.

Educational reform in Massachusetts also encompasses the mental health of students. In some districts,

297 Massachusetts Department of Elementary and Secondary Education, "Building on 20 years of Massachusetts Education Reform," November 2014, accessed at http://www.doe.mass.edu/commissioner/BuildingOnReform.pdf.

298 Claudia Rowe, "Massachusetts is a lot like us, so why are its schools so much better?," *The Seattle Times*, April 27, 2016, accessed at https://www.seattletimes.com/education-lab/massachusetts-is-a-lot-like-us-so-why-are-its-schools-so-much-better/.

299 Claudia Rowe, "A longer school day? In Massachusetts, some schools see big payoff," *The Seattle Times*, April 27, 2016, accessed at https://www.seattletimes.com/education-lab/what-can-a-school-do-with-an-extra-300-hours-in-massachusetts-many-see-big-payoffs/.

300 Kirk Carapezza, "How Massachusetts Schools Went From The Middle of the Pack to First Place," WGBH News, April 5, 2018, accessed at http://blogs.wgbh.org/on-campus/2018/4/5/how-massachusetts-schools-went-middle-pack-first-place/.

301 Rowe, "A longer school day?"

302 Rowe, "A longer school day?"

especially those with higher rates of poverty, they have assistant superintendents for "social-emotional learning and wellness"[303] Following suit with other states, the Massachusetts school system wanted to address childhood trauma and to examine its influence on achievement. One of the districts was awarded $1.6 million in federal monies "to address the early symptoms of trauma in students."[304] Additionally, the Massachusetts' Office of the Attorney General's Trauma-Informed Care for Young Children Grant Program awarded over $500,000 to eight organizations to provide healthcare services and interventions that will:

> assist children who have experienced childhood trauma stemming from violence, from separation from parents and caregivers, and stress due to poverty or related to the opioid crisis. Supporting these providers will result in a higher quality of care for vulnerable children and in more effective classroom environments.[305]

Attorney General Maura Healey went on to add that "young children who have experienced trauma need special support from childcare and early education providers."[306] The state felt it was imperative to address these concerns in order to close the academic gaps throughout its school system. As a state, Guam would have powers similar to what it has today and could learn from other states. One significant difference would be that the state of Guam will have voting representation in the US Congress. These congressional members will have more leverage to advocate for bills to benefit the island's education system and increase the federal funding that Guam receives.

Independence

If Guam were to choose independence, it would have the ability to create an educational system tailored specifically to its needs. It is likely that the system's management structure will remain the same. Guam may choose to keep its system as a unified, centralized educational institution, due to the island's size and existing familiarity with centralized management. Considering the size of Guam's school system, it may be beneficial to continue to have only one superintendent oversee the public school system to ensure consistency.

Additionally, Guam would not have to adhere to US federal education requirements, so it may choose to create standards better suited to the culture of the students who attend Guam's schools and for the industries the island develops. Education may take on a new philosophy. The Catholic school system

303 Alia Wong, "What are Massachusetts Public Schools Doing Right?," *The Atlantic*, May 23, 2016, accessed at https://www.theatlantic.com/education/archive/2016/05/what-are-massachusetts-public-schools-doing-right/483935/.

304 Wong, "Massachusetts Public Schools."

305 Office of the Attorney General Maura Healey, "AG Healey Awards More Than $500,000 in Grants to Improve Care for At-Risk Children," June 19, 2019, accessed at https://www.mass.gov/news/ag-healey-awards-more-than-500000-in-grants-to-improve-care-for-at-risk-children.

306 Office of the Attorney General Maura Healey, "AG Healey Awards More Than $500,000."

would likely stay the same, as a large majority of Guam's population identifies as Roman Catholic and may choose to keep that system intact. Should DODEA schools remain in Guam, they will follow US education standards and all other local schools would follow educational standards set by the country of Guam. As an independent country, Guam will have the ability to work freely with other countries to build its educational infrastructure. For example, in 2019-2020, Australia supported Papua New Guinea (PNG) to secure a $10.3 million grant funded by the Global Partnership for Education. Through the grant, PNG could "provide teacher training on remote lessons, distribute school hygiene kits, install handwashing stations and distribute learning materials for vulnerable children."[307]

Additionally, an independent Guam will no longer have to adhere to American curricula and state models for the purchasing of materials or textbooks, giving the island more opportunities to include learning tools that speak directly to the unique histories and identities of students in the Pacific region. The use of classroom texts and resources more tailored to the island's community will enable students to develop solutions and participate in discussions that address immediate community needs and apply lessons to their lived experiences. Ngugi Wa Thiong'o's groundbreaking book, *Decolonising the Mind: the Politics of Language in African Literature*, addresses the impact of an educational system that is not centered around the students' cultural background through the concept of the *cultural bomb*. Thiong'o posits that colonial education is in effect a cultural bomb designed to defeat a people's languages, their heritage of struggle, their unity, and their capacities to identify in themselves as a people. Through education, the colonized learn of their past as one of non-achievement and easily distance themselves from their culture.[308] The memory of how people perceive themselves and live in their own culture is not taught but erased over time through the controlling nation's educational curriculum, content, and teaching.

The ability to detach from Western models and policies as an independent country may also help to reduce the cost of classroom materials. Without having to abide by federal standards, under independence, GDOE could have greater leverage to build capacity to use these kinds of curricula materials. Being able to create different standards may make it easier to incorporate classroom resources that are manufactured or printed in countries closer to Guam (unless textbooks are printed in the island).

Status Example: Finland

For decades, Finland has ranked as one of the most successful school systems in the world. Journalist Amanda Ripley (2013), in her book, *The Smartest Kids in the World: And How They Got That Way*, explains that "in Finland and all top countries, spending on education was tied to need, which was only logical. The worse off the students, the more money their school got."[309] In addition to the relatively small divide among students on different echelons of the socioeconomic ladder, education scholars continually study

307 Australian Government Department of Foreign Affairs and Trade, "Education Development Cooperation Factsheet: March 2021," accessed at https://www.dfat.gov.au/sites/default/files/development-cooperation-fact-sheet-education.pdf.

308 Ngugi wa Thiong'o, Decolonising the Mind: The Politics of Language in African Literature, (New Hampshire: Heinemann), 1986.

309 Amanda Ripley, The Smartest Kids in the World: And How They Got That Way, (New York: Simon & Schuster), 2013, 140.

the small country because not only do most students perform well, but its methods vastly differ from other education systems. Author and journalist Anu Partanen (2016) in her book, *The Nordic Theory of Everything: In Search of a Better Life*, writes that in Finland, children "get very little homework, their school days are short, and most children attend their neighborhood schools."[310]

Partanen took things a step further by directly comparing the education systems of the Nordic countries with the United States. She concludes that "those whose educational policies and school systems are more like America's are not doing especially well–despite the cultural value they put on education, and despite the same sort of homogeneity Finland has."[311] Unlike the United States, the Finnish school system has a strong national core curriculum that is used across Finnish schools. With oversight over each school, Finland's Ministry of Education and Culture can easily ensure that all educators teach the same content using similar pedagogical methods.

The Ministry is also committed to ensuring that the country's educators are the most-qualified individuals. Among professions, teaching is considered one of the most rigorous and respected jobs in the country. In Finland, pursuing an education degree is comparable to attending medical school in the United States. To teach in Finnish schools, teachers in elementary and secondary schools are required to have a master's degree. Also, if one were to attend a Finnish higher education institution, admission into an education program is highly competitive and all programs require at least 700 hours of practicum hours in classrooms.[312] As more teachers became better trained, Finland decided to relax its grip on the curriculum.

After a few decades of a strict national curriculum, the Ministry of Education and Culture gave more autonomy to municipalities to tailor the curriculum to their distinct communities. The Finnish school system still has a national curriculum which was first implemented in 1985. The curriculum is overseen and updated every ten years by the Finnish National Agency for Education (EDUFI). The last round of updates occurred in 2016, where the EDUFI added transversal competencies and project-based learning.[313] The EDUFI introduced transversal competencies to drive its curricular content. The national curriculum has seven transversal competencies, all centered around the students' "development as a human being and citizen."[314] The competencies are as follows:

1. Thinking and learning to learn
2. Taking care of oneself and others, managing daily activities, safety
3. Cultural competence, interaction and expression
4. Multi-literacy
5. Information and Communication Technologies (ICT) competence
6. Competence for the world of work, entrepreneurship and

310 Anu Partanen, The Nordic Theory of Everything: In Search of a Better Life, (New York: HarperCollins Publishers), 2017, pg. 113.

311 Partanen, "The Nordic Theory," 151.

312 Partanen, "The Nordic Theory," 133-134.

313 Jenna Lähdemäki, "Case Study: The Finnish National Curriculum 2016- A Co-created National Education Policy," in Sustainability, Human Well-Being, and the Future of Education, ed. J.W. Cook (Helsinki, Finland: The Finnish Innovation Fund).

314 Lähdemäki, "The Finnish National Curriculum," 403.

7. Participation and influence, building the sustainable future[315]

The EDUFI incorporates these competencies into all grade levels and across content areas.

In addition to the competencies, the national curriculum focuses on project-based learning. The motivation for project-based learning was to have students solve problems in real-world settings. They created this education model with the foundational belief that:

> studying strictly unattached subjects is artificial and does not prepare children to both face and deal with real-world challenges. This does not have to mean solving highly complex challenges like climate change and poverty, but rather everyday life situations that require an understanding of how different systems relate to each other.[316]

These projects give different municipalities an opportunity to have students apply their skills to problems and issues relevant to their local districts. Schools in Kittilä, Simpele, and places in western Finland had project themes that centered around their districts. For example, at the Raattama school in Lapland in the Kittilä municipality, they had students do projects centered around the statement, "I am a Kittilä resident."[317] Students are encouraged to create projects that center around either their districts, or in the case of the Simpele school in eastern Finland, the entire country. In 2017, the Simpele school made its project-based learning module theme, "Finland 100 years."[318]

As illustrated with Finland, an independent Guam may choose to focus more on teacher training as a way to create a cadre of educators who can critically apply their teaching experience and expertise to their curricular materials and classroom activities. With an emphasis on the educators themselves, an independent Guam may choose to direct funding toward teacher compensation. Teacher recruitment and retention in GDOE is difficult because public school teachers in Guam are paid less in comparison to educators who are employed by the DODEA schools in the island. In 2019, then President of the Guam Federation of Teachers, Sanjay Sharma shared that GDOE has difficulty recruiting licensed educators. He noted that the widening gap in pay was a motivator. Sharma shared that:

> The starting salary of a fully certified teacher with a bachelor's degree is $34,383 … in comparison a (Department of Defense Education Activity) DoDEA teacher starts at $49,842 as their base salary… The salary for teaching positions for GDOE are not competitive. In the early 1990s, GDOE was able to recruit teachers from places like Wisconsin because Guam remained competitive with its teacher pay. However, the stagnant teacher salary made it difficult for GDOE to

315 Lähdemäki, "The Finnish National Curriculum," 403.

316 Lähdemäki, "The Finnish National Curriculum," 405.

317 Lähdemäki, "The Finnish National Curriculum," 406.

318 Lähdemäki, "The Finnish National Curriculum," 406.

recruit stateside teachers and retain existing teachers.[319]

Sharma said these pay disparities make it especially difficult to recruit educators in STEM fields or ones who have higher education degrees because they would get paid more money in the continental US or other countries.

Continuing with the discussion on finances, an independent Guam would no longer be able to depend on US federal money to supplement its educational programs. However, since GDOE receives approximately eighty percent of its annual budget from local appropriations, the government of Guam could afford to keep the public school system in operation (depending on the economic situation of the country). If an independent Guam experiences economic uncertainty, then alternate revenue streams will need to be explored, such as increasing local taxes, creating new industries, or working with private companies to invest in the island's educational institutions to train and prepare the future workforce. In addition to losing federal aid for the island's educational institutions, an independent Guam will have to replace the federal student aid that is currently available to eligible US citizens through the Free Application for Federal Student Aid (FAFSA) process, which determines what types of lower interest loans or grants that students can use to fund their higher education programs.

Free Association

As a freely associated state, Guam may continue to align its education system with US national education standards. An existing familiarity with the U.S framework will improve the likelihood of this happening. However, there is a possibility that a stronger cultural framework could be applied to curricular materials since the island will have the flexibility to tailor classroom materials. For example, Palau allocated $100,000 to its Curriculum and Instruction Office to "increase literacy, numeracy, Palauan knowledge, and essential life skills."[320]

Although the structure of the education system will likely remain the same, the funding sources for GDOE will likely change. Like an independent Guam, GDOE may be able to afford to run its general operations. With current legislative appropriations, the institution may not have difficulty keeping the schools functioning, paying personnel, and running the central office, however this is dependent on the economy. (For a fuller picture, please see the free association portion of the Economic Impacts section of the study.) As a freely associated state, the island may have to restructure or suspend some of its supplemental programs, such as professional development, Head Start, etc. If Guam negotiates an agreement similar to the existing COFA agreements with the United States, then it can negotiate how much the island will receive for education.

319 Guam Daily Post, "GDOE faces teacher shortage," accessed at https://www.postguam.com/news/local/gdoe-faces-teacher-shortage/article_37fae01c-97df-11e9-b964-17ee7fbfb500.html.

320 Ministry of Education, "Education Master Plan 2006-2016 Republic of Palau," October 2006, accessed at http://www.unesco.org/education/edurights/media/docs/e51733290f3523016b8384e8a0ec6da32de9fcff.pdf.

Status Example: The Republic of Palau

The Ministry of Education (MOE) in Palau is responsible for overseeing and managing the country's education system. MOE's structure is managed by a Minister of Education who supervises two bureaus: Curriculum and Instruction and Educational Administration. The Minister of Education is a cabinet level member who is appointed by the president of Palau. All policies enacted by the minister and the directors of the bureaus are made by the president and the Palau Board of Education.[321]

Additionally, the MOE manages the country's primary schools (grades one-eight) and one secondary school (grades nine-twelve). They are also responsible for chartering the six church-owned private schools (two primary and four secondary).[322] In FY2017, the country spent 13.5% of its national budget on education or approximately $11.3 million. Aside from its national budget, the Republic of Palau also receives education grant funding from the United States via its Compact of Free Association (COFA) agreement. In the compact, the United States agreed to give the Republic of Palau $631,000 a year for fifteen years to support a cadre of students pursuing higher education. Stipulated in Section 211, Subsection D, it states that the money is:

> for a scholarship fund to support the post-secondary education of citizens of Palau attending United States accredited, post-secondary institutions in Palau, the United States, its territories and possessions, and states in free association with the United States. The curricular criteria for the award of scholarships shall be designed to advance the purposes of the plan referred to in Section 231.[323]

Any students who received such funding were eligible for the money for only a "maximum of four years."[324] In addition to the scholarship funding, the United States promised to give Palau:

> the sums of $4.3 million, $2.9 million and $1.5 million, respectively, during the first, second and third years after the effective date of this Compact, which sums shall be used by the government of Palau as current account funds to finance programs similar to those programs of the United States that applied to Palau prior to the effective date of this Compact and that provided financial assistance for education to any institution, agency, organization or permanent resident of Palau or to the College of Micronesia.[325]

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321 Ministry of Education, "What We Do," accessed at http://www.palaumoe.net/.

322 Republic of Palau, "Pathway to 2030 1st Voluntary National Review on the SDGs," June 2019, 17, accessed https://sustainabledevelopment.un.org/content/documents/23606VNR_FINAL_21June2019_UN_Version.pdf.

323 Compact of Free Association, Republic of Palau, 1994, https://pw.usembassy.gov/wp-content/uploads/sites/282/2017/05/rop_cofa.pdf.

324 Section 223, Republic of Palau Compact of Free Association.

325 Section 223, Republic of Palau Compact of Free Association.

Stated in Section 221, Subsection B of the compact, the money was an acknowledgement on behalf of the United States of "the special needs of Palau particularly in the fields of education and health care."[326]

Funding from the US also helps Palau with its pre-kindergarten and kindergarten (or pre-primary) programs. For pre-primary grades, the Ministry of Education does not run any preschool or kindergarten programs. Instead, the country's pre-primary programs are managed by the non-governmental Palau Community Action Agency. It runs Head Start centers where children in Palau attend pre-kindergarten classes. These centers are financed by US federal grants. Additionally, the churches provide three private kindergarten programs.

The Ministry of Education (MOE) is working toward running these programs under its institution. It decided to expand the pre-K and kindergarten programs so that they become "free and universal" for all. To accomplish this task, in its Education Master Plan, the MOE recommended that by 2026 it would be "establishing kindergartens in the remote islands of Angaur, Peleliu, and Kayangel, which have previously been excluded from the preprimary network."[327] Beyond pre-primary education, the MOE oversees grades one through twelve. In Palau, the compulsory age for education is six to fourteen years old. The languages of instruction are Palauan and English.

As a freely associated state, if an agreement similar to COFA is established between Guam and the United States, the island can negotiate for a scholarship fund, or grant, to allow students from Guam to seek higher education in the United States, as is done in the compacts with RMI, FSM, and Palau. It is important to note that as noncitizens, COFA citizens are eligible for federal student aid to an extent. For example, Palauan citizens are eligible for "federal pell grants, federal supplemental educational opportunity grants, and federal work-study."[328] Citizens of the Federated States of Micronesia and the Republic of the Marshall Islands are only eligible for federal Pell Grants.[329] Many of Guam's students already attend higher education institutions in the United States. The negotiation of visa-free travel and settlement in the United States will allow citizens of Guam to continue to go to the US for school. However, to entice citizens of Guam to stay in the island, negotiated funding through the compact can be used to improve Guam's existing institutions of higher education.

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326 Section 221, Republic of Palau Compact of Free Association.

327 Section 221, Republic of Palau Compact of Free Association.

328 Federal Student Aid US Department of Education, "Many non-US citizens qualify for federal student aid," accessed at https://studentaid.gov/understand-aid/eligibility/requirements/non-us-citizens.

329 Federal Student Aid US Department of Education, "Many non-US citizens qualify."

EDUCATION	
STATUS	**EFFECTS**
Statehood	• Guam will adhere to federal education laws (i.e, NCLB, ESSA, etc.). The island will have access to grants and funding produced by these policy changes. However, as a state, Guam will have significant control over its education system. • Voting members of the US Congress can advocate for policies that will benefit Guam's educational institutions. • Guam's education standards and curricular materials/content align to federal requirements; little change will be required to meet current guidelines. • Guam will remain a COFA jurisdiction, with limited reimbursement from the federal government for educational services provided to FAS students • Guam could see an increase in federal funding for education, but that funding may come with more restrictions or rewards from the federal government, depending on the performance of the island's schools.
Independence	• The island will have complete autonomy over the education system, structure, budget, licensure requirements, etc.

	• The country could create curricula more fitting to the island and have this be a much more substantial component of children's education in the country than it currently is as an unincorporated territory. • The government of Guam may be able to afford to keep the public-school system in operation. If Guam experiences economic uncertainty then alternate revenue streams will need to be explored, such as increasing local taxes or creating new industries. • Guam may have more funding opportunities through international aid and organizations such as the United Nations.
Free Association	• If a COFA agreement is established, federal dollars for education are contingent on negotiations and concessions made in the document. If compact funding is given, it may be unsustainable since it is likely to run out dependent on durability of relevant economic provisions. • There may be more scholarship opportunities for the citizens of Guam to attend schools in the United States. • Guam may have more funding opportunities provided by other countries and/or international organizations.

CHamoru Culture Preservation/ CHamoru Programs

The CHamoru culture lives today and can be seen in many aspects of life in contemporary Guam. Even as an unincorporated territory with centuries of colonization, the CHamoru people have retained their language, values, and traditions despite challenges facing the island. Despite these waves of colonialism, the CHamoru culture has adapted without losing its core. Many contemporary CHamorus challenge popular discourse asserting the death and continued erosion of "authentic" CHamoru culture. In Guam today, there is a cultural revival by the island's younger generations. They embrace the culture as deeply important to their lives and show that the culture is living, even if there are certain aspects of it that are in need of revitalization. They embrace it despite the presence of certain discourses that are harmful to the flourishing of the CHamoru culture.

Colonialism and Culture

The link between the state of the CHamoru culture and colonialism is clear. International relations scholar Sankaran Krishna defines modern colonialism as "the combination of economic, social, political, cultural and other policies by which an external power dominates and exploits the people, ideas and resources of an area."[330] It is impossible to discuss the social impacts of political status without the understanding that colonialism is not just a political process. As one of the longest running colonies in the modern world, having undergone three different colonial administrations, Guam's colonial history has affected nearly every aspect of life in the island, not just politics. It affects things such as spirituality, social relationships, and culture.

There is an interesting cultural landscape in Guam today. On one hand, there are many in Guam who embrace the CHamoru culture and view it as important to their lives. On the other are those who view the culture as marginal to everyday life in Guam. Even more complex are those who have pride in

330 Sankaran Krishna, "How Does Colonialism Work" in *Global Politics: A New Introduction* (New York: Routledge, 2019), 350.

the culture yet think negatively of CHamoru self-determination or political status change. In many ways, the CHamoru culture is acknowledged and even celebrated (i.e. Mes CHamoru) today, but often is still treated superficially, as a supplementary component, and not as the core of government policy or ethics. CHamoru cultural values have not necessarily become fully incorporated as a foundation of governance in the island.

Despite this, the CHamoru culture lives and in certain sectors of society, even flourishes. Yet, there still exist those who either misuse CHamoru cultural values, only use it on a superficial level, or believe that CHamoru culture is marginal and unimportant. This is why efforts at decolonization and discussions of self-determination should take cultural preservation and cultural programs seriously. Cultural health is related to psychological health, and thus has ramifications for governance. Moves to transform the political status of the island should address psychological and cultural health. Having a positive cultural grounding and a positive perspective of one's people can be critical to the success or failure of any attempt at self-determination.

US Military Activity and Cultural Preservation

One issue facing cultural preservation today is US military activity in the island. There is a significant connection between military activity and threats to historical preservation, and this has been heightened by events surrounding the military buildup in the island.[331] Historical preservation is cultural preservation, as artifacts are cultural resources and embodiments of the past. Clearing land for military projects impacts historic preservation. A recent example is the military's clearing of the ancestral latte site at Mågua'. Located in the northern part of the island, the site was located in the area being cleared for the new Marine Corps base. In October 2018, acting Speaker of the Guam Legislature, Therese Terlaje stated, "Today, the Guam State Historic Preservation Officer confirmed that Mågua', an ancient Chamorro settlement area, had been cleared of latte, artifacts, and other cultural evidence, and then bulldozed."[332] Joint Region Marianas responded, writing, "Out of respect for the cultural significance of the displaced latte stones, the Navy recovered these artifacts and carefully placed them in a secure area pending a joint decision on their future interpretive use."[333] This, and the subsequent disturbance of human remains, has led to community organizing to stop the continued desecration. Legislators have called for further transparency and military accountability. The State Historic Preservation Officer called for a halt to construction. Blue Ocean Law, acting on behalf of activist group Prutehi Litekyan, submitted a report on the buildup to the United Nations Special Rapporteur on the rights of indigenous peoples. It should be noted that, despite these efforts, the military continues to disturb the area and Guam's current political

331 For an overview of current military presence in Guam right now, the history of this military presence, and its relationship to Guam's political status, please read the "Defense-External Affairs Overview" portion of this study.

332 Therese Terlaje, "Statement From Legislative Committee on Culture and Justice on the Bulldozing of Magua', Ancient Chamorro Settlement Area," October 30, 2018, accessed at http://senatorterlaje.com/statement-from-legislative-committee-on-culture-and-justice-on-the-bulldozing-of-magua-ancient-chamorro-settlement-area/.

333 Kevin Kerrigan, "Questions raised over clearing of ancient latte site," Guam Daily Post, October 31, 2018, accessed at https://www.postguam.com/news/local/questions-raised-over-clearing-of-ancient-latte-site/article_1ea7bdec-db56-11e8-9176-c35be3651863.html.

status as an unincorporated territory provides the island with fewer avenues of addressing this than if the island were a state, freely associated or independent.

Another example is Pågat. In 2006, the governments of Japan and the United States discussed relocating 8,000 marines and their dependents from Okinawa to Guam. This plan also included installing anti-missile defense systems, dredging of reef for an aircraft carrier berth, and the taking of the ancestral CHamoru village (Pågat) for a firing range. As described by archaeologist John Craib,

> One of only four recorded latte sites on the northeastern coast of Guam; Pågat (which means to counsel or advise in the CHamoru language) is an important cultural resource for the CHamoru people; the indigenous people of the Mariana Islands. The archeological site contains the remnants of a large latte village that is believed to have been a part of a larger exchange network. The area has been included on the Guam Register of Historic Places as well as the National Register of Historic Places, since 1974. These designations by the Guam Department of Parks and Recreation and the US National Park Service attest to the historic significance of the site. In 2010, the National Trust for Historic Preservation included Pågat on America's eleven Most Endangered Historic Places. Today, local healers continue to visit Pågat to seek advice from the spirits and collect herbs for medicines.[334]

Many in Guam opposed the US military taking this culturally rich site. One of the main actions taken was a lawsuit filed by the National Trust for Historic Preservation, the Guam Preservation Trust, and We Are Guåhan. According to the Guam Preservation Trust's Joe Quinata on the lawsuit, "This action does not challenge the buildup itself, but seeks to compel the Department of Defense to comply with the National Environmental Policy Act and the National Historic Preservation Act by giving adequate consideration to alternative location for the firing ranges, as mandated by law."[335] Multitudes of people organized and showed up to public hearings, thousands of comments were collected by the organization We Are Guåhan, and protests/informational sessions were organized by the community.

Mågua' and Pågat are just two examples of the tension between military projects and historic preservation. The taking of land by the US military after World War II clearly involved the disturbance of artifacts and the severing of family ties to their genealogical land.[336] Thus, political status matters when it comes to how much power Guam has in negotiating with the military on matters such as historic and cultural preservation.[337]

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334 John Craib, "Pågat," Guampedia, accessed at https://www.guampedia.com/pagat/.

335 Mindy Aguon, "Lawsuit filed over Pagat," KUAM News, accessed at https://www.kuam.com/story/13527034/2010/11/Thursday/lawsuit-filed-over-pagat.

336 For more on this, refer to the "Land" subsection of this study.

337 For more information on this, please see the "Bases" and "Defense Treaties/Agreements" subsections of this study.

Current CHamoru Programs and Cultural Preservation Efforts

There is a CHamoru cultural renaissance happening in the island. The island is filled with cultural talent and excellence, including a multitude of dance groups, weavers, musicians, blacksmiths, chanters, storytellers, chefs, carvers, textile creators, fisherfolk, visual artists, and writers. We also see the revival of CHamoru medicinal practices and traditional navigation techniques. Now, there is also University of Guam Press, which publishes culturally relevant books. There is a cultural center named Sågan Kotturan CHamoru, which features the work of respected cultural artisans, and a CHamoru immersion program at P.C. Lujan Elementary School in partnership with Hurao Academy, which has been at the forefront of language revitalization in Guam. In addition to these artists, the government has played an active role in supporting this cultural renaissance. These examples of revival help challenge the narrative that the CHamoru culture is dying. In the face of colonialism and attempts to erase CHamoru culture, the culture has remained and has adapted to a modern context through CHamoru agency and innovation, even if there are still problems to discuss and resolve.

The government of Guam has established agencies which aid CHamoru cultural preservation and perpetuation, recognizing the need to preserve CHamoru language and heritage. The government of Guam continues to engage in discussion and debate to further support and establish cultural agencies and programs. Examples of agencies include: the Department of CHamoru Affairs; i Kumision i Fino' CHamoru yan i Fina'nå'guen I Historia yan i Lina'la' i Taotao Tåno' (Commission on CHamoru Language and the Teaching of the History and Culture of the Indigenous People of Guam); the Guam Preservation Trust; the CHamoru Land Trust Commission; the Ancestral Lands Commission; and the Council on the Arts and Humanities.

The primary body in charge of CHamoru culture program management is the Department of CHamoru Affairs, also known as DCA. It was established by Public Law 25-69 and was tasked with the perpetuation, promotion, and preservation of the CHamoru heritage. Its mission statement is,

> To create, develop, implement and maintain an integrated program for the preservation, promotion, and advancement of the native Chamorro[338] people of Guam. It is intended that the public corporation be the guiding force in all aspects of Chamorro culture, language, preservation, education, arts, humanities, and history, through public advocacy, research, publication, authentication, restoration, presentation, and production, and by providing and overseeing a repository for historical documents, cultural artifacts and documentary and narrative film and video.[339]

Currently, the Department of CHamoru Affairs handles the Guam Museum, CHamoru village, or I Sengsong CHamoru, along with a research/publication/training section.

338 In direct quotes in the study, the spelling of "Chamorro" will not be changed to reflect the official spelling "CHamoru."

339 Department of CHamoru Affairs, A Report To Our Citizens, Fiscal Year 2016, accessed at http://www.opaguam.org/sites/default/files/dca_ccr16.pdf.

The Guam Preservation Trust is another important body for cultural preservation. It was created as a nonprofit public corporation in 1990 via P.L. 20-151 and recodified in P.L. 27-89. The Trust receives most of its revenue from the building permit fees administered by the Guam Department of Public Works, but also gets revenue from various grants and interest income on investments. It has the following duties:

- To acquire title to threatened Guam properties for the preservation of their historical value, whether in fee simple, by leasehold, or by easement, and whether through donation, transfer, dedication or purchase
- To award grants for historic property documentation and historic register nomination
- Architectural and archaeological history and documentation of historic structures and sites
- Protection of historic structures and sites through stabilization, rehabilitation, reconstruction, or restoration, including lighting when appropriate on such sites being utilized for non-profit and non-commercial purposes, such as private homes, schools, churches, public buildings and facilities
- Ethnography and oral history
- Archival and archaeological research and investigations for locating, recording and protecting sites of historic or prehistoric interest and value
- To support other activities directly related to increasing the public appreciation of, and benefit from historic places, including public interpretation and presentation
- To seek outside grants and donations

There is also the Council on the Arts and Humanities Agency, also known as CAHA. CAHA was initially created in 1967 by Dr. Pedro Sanchez of the University of Guam as the Insular Arts Council. Through Executive Order 75-23, then-Governor Ricardo Bordallo re-established the council as part of his executive office. It was then established as Guam's state arts agency by Public Law 16-122. Its mission is "to perpetuate the arts and humanities with programs and initiatives that enhance our quality of life through education, creative expression, and the professional development of our local artists."[340] CAHA has been one of the primary funders of arts projects, many of which are cultural projects. These bodies provide examples of CHamoru cultural preservation in Guam today as an unincorporated territory.

Statehood

CHamoru culture preservation in the state of Guam may face some threats but is not antithetical to becoming a state of the United States. Some argue that becoming a state may lead to a further decline of the island's culture due to continued westernization. There is definitely a sound argument for this, related to control of land and immigration (which are larger issues explored in other sub-sections of this

340 Council on the Arts and Humanities, "Citizens Centric Report," 2018, accessed at https://opaguam.org/sites/default/files/caha_ccr18.pdf.

study). However, the CHamoru culture can be preserved as a state via funding for cultural programs and the power of being a state afforded by the US federal structure.[341, 342] Furthermore, if the United States retains its economic power, Guam's economy may benefit from an increase in funding that would possibly allow for the continuation and expansion of programs that assist CHamoru culture preservation and perpetuation. As a state, US citizens in Guam could have access to the full repertoire of federal programs and grants that help cultural preservation and cultural resource management.

One example is the National Endowment For The Humanities (NEH). NEH is a federal agency created in 1965 which funds humanities programs (cultural projects and programs) in the United States via grants. According to the NEH, the grants "typically go to cultural institutions such as museums, archives, libraries, colleges, universities, public television, and radio stations, and to individual scholars."[343] In 2020, NEH was appropriated a total of $162,250,000 to include grants as well as federal/state partnerships. For FY 2021, NEH received congressional appropriations totaling $167,500,000.

Guam currently has access to funding from NEH via the establishment of Humanities Guåhan, which is part of a network of State Humanities Councils (STC). Many important cultural projects have been funded by Humanities Guåhan, and therefore have been supported by federal funds. Some of these projects and programs include exhibits like "Transitional Table–Guam's shifting food traditions during and after World War II," cultural workshops like "15th Anniversary *Writing the Pacific* with Albert Wendt," and the funding of conferences, such as the Marianas History Conference and the Pacific Literature Conference. If Guam were to become a state, it is highly likely that it would continue to receive funds from NEH through a body such as Humanities Guåhan.

Another funding source for cultural programs in the United States is the Department of Health and Human Services' "Administration for Native Americans," or ANA. Its stated intent is to "promote self-sufficiency for Native Americans by providing discretionary grant funding for community-based projects, and training and technical assistance to eligible tribes and native organizations."[344] ANA's goals are as follows:

- Fostering the development of stable diversified local economic and economic activities to provide jobs, promote community and economic well-being, encourage community partnerships and reduce dependency on public funds and social services;

- Supporting local access to, control of and coordination of services and programs that safeguard the health and well-being of native children and families;

341 For a discussion on the US federal system, please refer to the introduction to the study under the descriptions of the three political statuses.

342 It is important to note that the context of what counts as "culture" or "cultural flourishing" may also contribute to these differences of perspective.

343 National Endowment For The Humanities, "About the National Endowment for the Humanities," accessed at https://www.neh.gov/about.

344 Administration for Native Americans, "What We Do," accessed at https://www.acf.hhs.gov/ana/about/what-we-do.

- Increasing the number of projects involving youth and intergenerational activities in Native American communities.

Funding is available to CHamorus in Guam, as ANA serves what it considers native populations throughout the Pacific Basin, of which CHamorus are included. Many CHamoru cultural programs have been funded. Grant awards for Guam include Para Probechun Taotaota Inc., which received a grant to establish a cultural industry for employing CHamoru youth and young adults who are cultural practitioners. The examples of NEH and ANA show that federal funding has contributed to cultural preservation and cultural programs. It is highly expected that as a state, CHamorus and others in Guam will have continued access to funding for these programs.

Status Example: Hawai'i (with emphasis on O'ahu)

Hawai'i is an appropriate status example for looking at the balance between access to funding and cultural preservation and perpetuation. The government body charged with matters pertaining to Kanaka Maoli (Native Hawaiians) is the Office of Hawaiian Affairs also known as OHA, which began in 1978. The agency was created to improve the well-being of Native Hawaiians. According to OHA, it enhances "well-being by collaborating with various organizations to strengthen our community's resources."[345] To do this, it has given more than $800,000 in scholarship loans and $34 million in loans for Native Hawaiians. It also awarded nearly $16 million to organizations who aid Kanaka Maoli. Hawai'i also has its own Native Hawaiian TV station named 'Oiwi TV, multiple Hawaiian immersion and charter schools, and Hawaiian as an official state language. As a state of the US, Hawai'i gets access to federal funds and grants, which helps fund many cultural programs.

It is important to put this in the context of Hawaiian history. The Kanaka Maoli went from having an independent country, with a royal lineage and monarchy, to being treated as a minority within Hawai'i. Native Hawaiians are often at odds with the state government, and hold little political power within the State of Hawai'i's government or federal representation. For example, neither Hawai'i's governor, lieutenant governor, or two senators in the US Senate, are Kanaka Maoli at the time of writing. Only one of their representatives in the House of Representatives, Kaiali'i Kahele, elected in 2021, is Kanaka Maoli. Furthermore, few Hawaiian cultural practices, besides the commodification of "Aloha," are used as a basis or foundation for the State of Hawai'i's government policy. Although native Hawaiians have access to funding that allows cultural preservation, their political power has been diminished as a result of the overthrow of the Kingdom of Hawai'i.

One possible threat to CHamoru cultural preservation if Guam becomes a state is a shift in demographics. There is the possibility under statehood that, as a state and a more secure part of the United States, many will seek to reside in Guam, seeking the American dream, resulting in a continued decline in the

345 Office of Hawaiian Affairs, "About," accessed at https://www.oha.org/about/.

percentage of CHamorus living in Guam. Many people choose to move to Guam because it is American soil. Statehood provides a more stable foundation for the continuation of Guam being American soil, and therefore may lead to increased immigration and the possibility of the diminution of the indigenous CHamoru culture. It is important to note, however, that it is not the mere presence of diverse cultures that may lead to a decline in CHamoru culture vitality.

Overall, if Guam becomes a state, it is important that island residents consider the degree to which they will be able to incorporate CHamoru beliefs, values, and customs into governance despite increased access to funding and the creation of new programs.

Independence

Independence offers increased opportunities for cultural preservation and the development and maintenance of CHamoru programs. As an independent country, CHamoru cultural values and customs could more easily become the foundation of government structures and policies. As a colony since the 1600s, Guam has never been given the opportunity to develop a system that is most fitting for its geography, cultural practices, social fabric, demography, and way of life. As Guam would be able to craft its own government system and social/economic/land policies, independence offers opportunity for the continued survival and thriving of the CHamoru culture. Under independence, it is possible that CHamoru values such as inafa'maolek (to make good for one another), respetu (respect), chenchule' (reciprocity), and inagofli'e' (friendship) can be guiding principles of policy in the formation of the country's political system. Independence could provide an opportunity for CHamoru ways of being, taking care of the land, and protecting the environment to become legitimately implemented into the policies and laws of the country. To put it another way, an independent Guam allows the island's people to use their historical experiences as legitimate guiding principles in the formulation of the island's political and economic system.

However, the blueprint for policies and political culture under an independent Guam will be determined by the people and shaped by the geopolitical, social, and economic circumstances of the time. There is also a chance that CHamoru culture preservation will not be meaningfully incorporated into the new country's laws, policies, or day-to-day operations. It should not be assumed that CHamoru culture will become the basis for government policy in an independent Guam. This will need to be a deliberate and agreed-upon principle of government design. It is also possible that the CHamoru culture could be pushed to the periphery under independence. However, it is more likely in an independent Guam that cultural revitalization and cultural programs will be taken seriously.

Status Example: Bolivia

In South America, Bolivia is well-known for its large indigenous population and for government policies that often benefit its indigenous peoples. This was most recently demonstrated under the presidency of Evo Morales, an indigenous Bolivian. Most prominently was Morales' drafting of a new constitution for

the country in 2009, which not only addresses indigenous peoples and cultures, but also uses the country's past experiences as a basis for the constitution's formulation. This is something that an independent Guam could do: write a constitution that outlines the new government, learning from history to produce a more-fitting system of government.

Article 2 of the Bolivian constitution directly addresses indigenous peoples, reading, "Given the pre-colonial existence of nations and rural native indigenous peoples and their ancestral control of their territories, their free determination, consisting of the right to autonomy, self-government, their culture, recognition of their institutions, and the consolidation of their territorial entities, is guaranteed within the framework of the unity of the State, in accordance with this Constitution and the law."[346] The Bolivian Constitution acknowledges all the languages of the indigenous people as official languages of the state, and Article 8 uses indigenous values to describe the ethical and moral principles of their plural society. Article 8 adopts and promotes the following: ama qhilla, ama lulla, ama suwa (do not be lazy, do not be a liar of a thief), suma qamaña (live well), ñandereko (live harmoniously), teko kavi (good life), ivi maraei (land without evil), and qhapaj ñan (noble path for life). Guam could do something similar by embedding CHamoru values into a constitution to legitimize the values as a basis of governance.

Chapter IV of the Bolivian constitution is entitled "Rights of the Nations and Rural Native Indigenous Peoples." Part II of Article 30 enumerates eighteen rights specifically for indigenous peoples, such as the right:

- to their cultural identity, religious belief, spiritualities, practices and customs, and their own world view
- that the cultural identity of each member, if he or she so desires, be inscribed together with Bolivian citizenship in his identity card, passport and other identification documents that have legal validity
- to self-determination and territoriality
- that its institutions be part of the general structure of the state
- to the collective ownership of land and territories
- to the protection of their sacred places
- to create and administer their own systems, means and networks of communication
- that their traditional teachings and knowledge, their traditional medicine, languages, rituals, symbols and dress be valued, respected and promoted
- to live in a healthy environment, with appropriate management and exploitation of the ecosystems

An independent Guam can learn from Bolivia's example in determining substantive ways to create and institutionalize CHamoru programs and preserve and perpetuate the CHamoru culture.

346 Article 2 of the Constitution of Bolivia, 2009, accessed at https://www.constituteproject.org/constitution/Bolivia_2009.pdf.

Free Association

Similar to statehood and independence, a freely associated state of Guam will be able to develop programs aimed at cultural preservation and perpetuation. The island's leaders could ensure that this principle of cultural preservation and perpetuation is highlighted foremost in the preamble to the island's Constitution, as will be examined below with Palau and the Federated States of Micronesia. The discussion above on independence, both the positive and negative aspects, is directly applicable to free association, so it does not bear much reiteration. The most substantial differences between free association and independence regarding CHamoru culture preservation and revitalization are: the nearly guaranteed presence of the US military; higher possibility of continued direct American influence from funding especially for education; and the possible long-term out-migration of Guam's people to the United States if a visa-free requirement is negotiated. This latter point leads to a potential loss of qualified and educated local residents, changing the cultural landscape due to the possibility of a more permanent population outside of the military bases.

As will be discussed further in the defense section of this study, American military bases will most likely stay in the case of free association, as defense and security purposes will be the key factor in the US agreeing to enter into a free association relationship with Guam. The presence of the US military in Guam has had negative effects on the CHamoru culture, primarily because of land-taking and land transformation. Indigenous cultures are rooted in and thrive on their connection to land. The dispossession of land has devastating cultural and psychological effects on the island and the CHamoru people. Land is at the heart of indigenous belonging and identity and "land, culture and government are inseparable… each depends on the other and this means that the denial of one aspect recludes recovery as a whole." Guam, when negotiating the freely associated agreement, will have to make tough decisions when it comes to military bases in the country, and will need to balance security needs with the importance of land to CHamoru cultural preservation and perpetuation.

Free association, although putting Guam under the US defense umbrella, does not prevent the island from creating programs aimed at cultural preservation and perpetuation. As explained below, in the Federated States of Micronesia, cultural preservation can occur in an arrangement of free association. The largest difference is that Guam already has a heavy US military presence, unlike the FSM.

Status Example: Federated States of Micronesia

The Federated States of Micronesia serves as a strong example of cultural preservation while being freely associated with the United States. The FSM incorporates culture into its governance. Article V of the Constitution of the Federated States of Micronesia reads,

> Section 1: Nothing in this Constitution takes away a role or function of a traditional leader as recognized by custom and tradition, or prevents a traditional leader from being recognized,

honored, and given formal or functional roles at any level of government as may be prescribed by this Constitution or by statute.

Section 2: The traditions of the people of the Federated States of Micronesia may be protected by statute. If challenged as violative of Article IV, protection of Micronesian tradition shall be considered a compelling social purpose warranting such governmental action.

Section 3: The Congress may establish, when needed, a Chamber of Chiefs consisting of traditional leaders from each state having such leaders, and of elected representatives from states having no traditional leaders. The constitution of a state having traditional leaders may provide for an active, functional role for them.[347]

The FSM clearly incorporates its traditional leadership in the government of its freely associated state.

Status Example: Palau

Palau has also been able to incorporate the Palauan culture into its governance. Article V of the Palauan Constitution, entitled "Traditional Rights," reads:

Section 1: The government shall take no action to prohibit or revoke the role or function of a traditional leader as recognized by custom and tradition which is not inconsistent with this Constitution, nor shall it prevent a traditional leader from being recognized, honored, or given formal or functional roles at any level of government.

Section 2: Statutes and traditional law shall be equally authoritative. In case of conflict between a statute and a traditional law, the statute shall prevail only to the extent it is not in conflict with the underlying principles of the traditional law.

Section 6 of Article VIII establishes a Council of Chiefs. The council, which is comprised of one traditional chief from each state of Palau, advises the president on matters concerning traditional laws, customs and their relationship to the constitution and the laws of Palau. This section states that "no person shall be a member of the Council of Chiefs unless he has been appointed and accepted as a chief in a traditional manner and is recognized as such by the traditional council of chiefs of his state." Beyond the Constitution, Palau has also invoked tradition in government initiatives. Palau is internationally known for its maritime sanctuary initiatives. Palau created a no-take Marine Sanctuary covering roughly 80% of its Exclusive Economic Zone. It was inspired to do this through its 1,000-year-old tradition known as

347 Article V of the Constitution of the Federated States of Micronesia.

bul. Palau's chiefs can declare a bul, making certain reefs off limits, allowing the number of fish to grow and be sufficient for providing for the community later in the year.

It should be noted that in Guam today there is not a clear chiefly system. Traditional leadership is not as emphasized or recognized in Guam as it is in the FSM. One may read the above example and wonder what implications this has for the island. These status examples are not meant to recommend that a traditional leader system will be implemented in Guam under free association. These decisions must be made collectively. However, what is emphasized through this status example is that in a relationship of free association with the United States, Guam could look toward CHamoru culture and local customs as a basis for government policy, just as the Federated States of Micronesia and the Republic of Palau do.

CULTURAL PRESERVATION/CHAMORU PROGRAMS	
STATUS	**EFFECTS**
Statehood	• Continued access to federal funding for cultural programs and projects • Under the federal system of the United States, Guam, as a state, could provide avenues for CHamoru programs in domains which states have primary control over, such as the public school system, although some federal constraints may still exist • Continued Americanization could push (though this is not guaranteed) CHamoru culture to the periphery, along with continued US military activity impacting historical preservation • Difficult to make CHamoru culture and values foundational to governance and policy
Independence	• Provides great latitude for the establishment and continuation of CHamoru programs and cultural preservation

	• Ability to incorporate the CHamoru culture and values into policy, governance, economic development, and political culture • CHamoru culture preservation is not guaranteed and is dependent upon effort and deliberate action of island leaders and community • Cultural programs may be deprioritized in the face of larger challenges encountered by a newly formed independent country (economic problems as an example)
Free Association	• Provides latitude for CHamoru culture to be incorporated into policy, governance, and political culture • Economic assistance from the United States may help stabilize the new FAS of Guam allowing for cultural programs to be established • CHamoru culture preservation is not guaranteed and is dependent upon effort and deliberate action of island leaders and community • Guam will have to take cultural preservation and cultural programs into account during its negotiation with the United States for the development of a Compact of Free Association or other legal instrument as it pertains to military use of land

Fino' CHamoru (CHamoru Language)

Fino' CHamoru is an Austronesian language which shares common words with languages such as Tagalog, Bahasa Indonesia, Hawaiian, and even the Malagasay language of Madagascar. It is the native language of the indigenous CHamoru people of the Mariana Islands. The language today is in a critical state in Guam. According to the 2010 Census[348], only around ~16-17% of the population of Guam reported to have spoken the language. Furthermore, most of the speakers still alive today are over the age of fifty-five. Below is a table and graphic showing the continuous decline of Fino' CHamoru use in Guam.

348 As the 2020 Census results not yet released at the time of writing, the 2010 Census results are used.

Current Data on CHamoru Speakers:

This table provides information on the number of speakers of CHamoru in a 20-year period (1990–2010), in comparison to the total population of Guam. (Guam Bureau of Statistics and Plans, as cited in Teria, 2013)

YEAR	NUMBER OF CHAMORU SPEAKERS	GUAM POPULATION
1990	34,598	133,152
2000	30,708	154,805
2010	25,827	159,358

This decline in the CHamoru language is predicted to continue if no fundamental efforts are made toward comprehensive language revitalization. Most of the current speakers of the language are senior citizens, which represents a fundamental problem for the survival of the language. The United Nations' Educational, Scientific and Cultural Organization's (UNESCO) Ad Hoc Group on Endangered Languages has created a guideline for assessing language vitality or the health of a language.

The nine identified factors are:

Factor 1: Intergenerational language transmission
Factor 2: Absolute number of speakers
Factor 3: Proportion of speakers within the total population
Factor 4: Trends in existing language domains
Factor 5: Response to new domains and media
Factor 6: Materials for language education and literacy
Factor 7: Governmental and institutional language policies, including official status and use
Factor 8: Community member's attitudes toward their own language
Factor 9: Amount and quality of documentation

The CHamoru language in Guam is lacking in many of these factors, with the most urgent being intergenerational language transmission or the process in which speakers of a language pass it down to their children and the next generation. Only when children are learning and using the language does the language have a chance at long-term use. The absolute number of speakers of a language matters, but if that language is not being transmitted to the next generation, the language's chance of surviving is poor. Based on the intergenerational transmission factor alone, the CHamoru language has around ten-to-fifteen years in which a majority of the fluent generation (aged fifty-five and over) will still be alive. Once this generation passes, with the absence of intergenerational transmission or strengthened revitalization programs, it is expected that the number of speakers in the island will drop dramatically to a single digit percentage. This is a critical time for action, and political status has effects on the language's vitality.

Importance of Language

Language is important for a people's culture and worldview. From a language, one can understand and respect the values of a people, their psychology, and epistemology. Kenyan scholar Ngugi Wa Thiong'o articulates this, writing, "The choice of language and the use to which language is put is central to a people's definition of themselves in relation to their natural and social environment, indeed in relation to the entire universe."[349] While the bullet was the means of physical colonization, language erasure became

349 Thiong'o, "Decolonising the Mind," 4.

the means of spiritual subjugation and mental colonization. Language is a powerful tool of colonization because language does not simply include words, but rather has a power beyond the surface meaning of words. When one learns a language, one learns to view the world in that language's particular cultural lens. Language carries with it values which form the basis of a person's identity and thus acts as a memory bank of a peoples' experience.

Some examples of finding the CHamoru worldview in the CHamoru language include the words geftao and chattao. Geftao means generous and chattao means selfish. Gef is an intensifier, equivalent to the word "very" (similar to gof), while chat is a prefix indicating "not quite," while taotao means "person or people." Thus, in the CHamoru worldview, to be selfish or "chattao" means to be not quite human, while to be generous or "geftao," means to be very human. These glimpses of the CHamoru worldview are ubiquitous in Fino' CHamoru. A very common word found in Guam, "Taotaomo'na" also displays much about the CHamoru worldview. Many in Guam know this word as referring to ancestral spirits who live amongst the land. Many ask permission from the taotaomo'na before using the restroom in the jungles. The word taotaomo'na is a combination of the words "taotao" and "mo'na." Taotao means people and mo'na means front or forward. This is a very interesting glimpse into the CHamoru conception of time. In CHamoru epistemology, time is not linear, but rather circular. As described by CHamoru scholar Michael Lujan Bevacqua,

> A circular interpretation, however, sees time and history as never moving forward, but always returning to the same points, always moving in a grand circle. The diverse uses and meanings of the term *mo'na* indicate that the CHamoru worldview was a circular one, or one in which the past, the present and the future were not discrete units or blocks on a straight timeline, but rather points that linked together in a circle.[350]

Another prime example is the word for friendship or inagofli'e'. Breaking this word down grammatically:

Li'e' (to see) + gof (intensifier) + a (reciprocal marker) + in (nominalizer)

Thus, friendship in the CHamoru worldview is the act of seeing one another frequently. This helps to explain why many CHamorus in Guam are very concerned with "showing face" at parties, events, and other social gatherings. It is very common to hear parents telling their children they have to go "show face" even if it is only for thirty minutes or so. Collectively, all of these words show that much of the epistemology and worldview of the CHamoru people can be found in the grammar of the language. The way we put words together and describe emotions and values is incredibly important to understanding how CHamorus think, and therefore is worthy of being revitalized and perpetuated.

350 Michael Lujan Bevacqua, "Mo'na: Circular Concept of History," *Guampedia*, accessed at https://www.guampedia.com/mona-circular-concept-of-history/.

CHamoru Language Colonialism History

Language colonialism can be described as a process through which a colonial language displaces an indigenous language so that the indigenous language is oppressed and seen as inferior. This was a long process which began primarily with American colonialism of the island. The Spanish viewed the CHamoru language as a tool of Catholic conversion and did not insist on its eradication. However, during the Spanish Era, many Spanish words became embedded into Fino' CHamoru. It is important to note that this did not lead to an overhaul of the CHamoru language. As written by linguist Donald Topping, "There was wholesale borrowing of Spanish words and phrases into Chamorro, and there was even some borrowing from the Spanish sound system. But this borrowing was linguistically superficial. The bones of the Chamorro language remained intact; a little Spanish flesh was added through vocabulary borrowing, but Chamorro remained basically Chamorro."[351] While the Spanish Era had deleterious effects for CHamorus in general, the language remained alive during this time.

The American naval era of Guam's history marks the beginning of policies aimed at eradicating Fino' CHamoru. In early 1900, Governor Richard Leary gave orders (General Order No.12) to provide instruction in English for the children of Guam. As stated in the order, it was expected that "the present force of native teachers will cheerfully and harmoniously cooperate with the teachers of English that the greatest benefits may be derived by both scholars and preceptors."[352] In 1917, Naval Government General Order No. 243 banned the speaking of Fino' CHamoru by "designating English as the only official language of Guam and ordered that Chamorro must not be spoken except for official interpreting."[353] In 1920, during the administration of naval Governor Adelbert Althouse, CHamoru-English dictionaries were gathered and then burned. This came out of frustration from the fact that despite these policies, few CHamoru children were speaking English. The irony in this is that the CHamoru-English dictionaries were actually printed by the Navy to help CHamorus learn the meaning of English words.[354] In addition to this burning policy, Althouse demanded that no Fino' CHamoru be spoken in the playground or in the classroom.[355] There was the beginning of various penalty policies that affected CHamoru students in the school system. Eventually, there would also be new policies instituting monetary fines for any student caught speaking Fino' CHamoru during school hours.[356]

It was not just the denigration of CHamoru that was used to spark the language's decline. It was also the idea of "English-as-Progress." According to Dr. Robert Underwood in his article, "Language Survival, The Ideology of English and Education in Guam," the decline of Fino' CHamoru did not just begin

351 Donald M. Topping and Bernadita Dungca, *Chamorro Reference Grammar* (Honolulu: University of Hawaii Press, 1973), 6.

352 Michael Clement, "English and Chamorro Language Policies," *Guampedia*, accessed at http://guampedia.com/us-naval-era-language-policies/.

353 Clement, "English and Chamorro Language Policies."

354 Robert A. Underwood. American Education and the Acculturation of the Chamorros of Guam. (PhD diss., University of Southern California, 1987).

355 Underwood, "American Education."

356 Underwood, "American Education."

due to discriminatory policies towards Fino' CHamoru, but because of the strength of the discourse that knowing English was progress and that English was the language of success. He argues that the downfall of the language came with the decline of the language's use in the homes in favor of English.[357] The four reasons outlined for the success of English and the decline of speaking Fino' CHamoru were that English led to academic success, the development of a modern society, economic success, and American assimilation.[358]

Despite all of this, it is important to understand that CHamorus continued to speak Fino' CHamoru during this period. It was not until the post-war decision of whether to teach the language to the post-war generation that this oppression manifested itself. This was a post-war phenomenon. CHamorus for the most part during the naval period of 1898-1941 primarily spoke Fino' CHamoru in the home, even if the Americans wanted them to make English the language of society, including at home. CHamorus did not give up their mother tongue and returned to speaking it as soon as they went home and were with family and friends. Fino' CHamoru was still the language of their everyday lives.[359] World War II would change this political and psychological landscape.

Language Loss and Colonialism

Colonialism has accelerated the rate of language loss around the world, primarily due to discriminatory educational practices, government bias in language policy, and the soft power of dominant culture. There is a direct connection between language loss and colonial projects of dispossession. This is best captured in these two quotes from respected linguists who study language shift and revitalization. "The loss of language is part of the oppression and disenfranchisement of indigenous peoples, who are losing their land and traditional livelihood involuntarily as the forces of national or world economy impinge upon them. Indigenous efforts toward language maintenance or revitalization are generally part of a larger effort to retain or regain their political autonomy, their land base, or at least their own sense of identity."[360] Furthermore, Lenore Grenoble writes, "In most, if not all cases, language shift is the result of a history of colonization, unequal power relations, and other imbalances. This is the background against which language revitalization takes place, and for an external linguist to ignore this background is not only disrespectful and mindless, it can be very detrimental to the work that both sides want to accomplish."[361] Historically, indigenous language loss is intimately connected to the dispossession of indigenous land, involuntary incorporation of indigenous people into the colonial culture, and the environmental

357 Robert A. Underwood, "Language Survival, The Ideology of English and Education in Guam", Educational Research Quarterly, 20, no. 4 (1984).

358 Underwood, "Language Survival."

359 Kenneth Gofigan Kuper, Na'lå'la' I Fino'ta, Na'matatnga i Taotao-ta: Chamorro Language as Liberation from Colonization," (M.A. thesis, University of Hawai'i at Manoa, 2019), 32.

360 Kuper, "Na'lå'la'," 5.

361 Lenore Grenoble, "Linguistic Cages and the Limits of Linguists," In Indigenous Language Revitalization: Encouragement, Guidance & Lessons Learned, edited by J. Reyhner and L. Lockard, (Flagstaff, AZ: Northern Arizona University, 2009), 62.

destruction of indigenous land, seas, and water. Thus, political status matters in conversations about language perception and language revitalization.

Statehood

If Guam were to become a state, it could implement policies at the state level to help the revitalization and perpetuation of the language. While some argue that statehood would endanger the CHamoru language, this is not a guarantee, and the state of Guam could still make concerted efforts at revitalization and perpetuation. One method of language revitalization available to the state of Guam is the utilization of the Department of Education. Currently, there is a CHamoru immersion program (in which Fino' CHamoru is used as the medium of education in most subject areas including Science and Mathematics) for a Kindergarten, 1st Grade, and 2nd Grade class within the Guam Department of Education. If the government of the state of Guam views language revitalization as a priority, it could explore how to fund and provide resources to continue public immersion programs. Under statehood, there could potentially be more funding and resources available to fund language revitalization programs such as public school immersion.

As a state, Guam could make CHamoru an official language of the state, as it is today in the unincorporated territory of Guam. Hawai'i has made Hawaiian an official language, Alaska has made various Inuit languages official indigenous languages, and South Dakota has made Sioux an official indigenous language of the government.

Status Example: Hawai'i

The Hawaiian language, also known as ʻŌlelo Hawaiʻi, is an example of a language that benefited from successful language revitalization programs and which Guam can look to for guidance. For the purposes of statehood, a well-funded Department of Education in the state of Guam could follow Hawai'i's footsteps through the establishment of public immersion. Currently, there are eighteen public schools throughout the Hawaiian archipelago that offer Hawaiian immersion, with two schools offering this from K-12. As Guam would be a state and have continued or greater access to more federal monies, the prospect of developing and maintaining similar programs exists. One recent example occurred in 2020, when US Senator from Hawai'i Brian Schatz announced that Hawai'i was receiving $26,992,923 in federal funding to support grants under the Native Hawaiian Educational Program. According to Schatz, the funding would be used for "early childhood education, family engagement, Hawaiian language education, creation of STEM pathways, curriculum and professional development, and more."[362] As part of this Hawaiian immersion language nest, Aha Punana Leo received $830,899 for a kindergarten readiness program.

Another possible funding source for the state of Guam could be the National Science Foundation's

362 Brian Schatz, "Schatz Secures $27 million in new federal funding for Native Hawaiian education," 2020, accessed at https://www.schatz.senate.gov/press-releases/schatz-secures-27-million-in-new-federal-funding-for-native-hawaiian-education.

"Documenting Endangered Languages" program, also known as DEL. Per its synopsis,

> This funding partnership between the National Science Foundation (NSF) and the National Endowment for the Humanities (NEH) supports projects to develop and advance knowledge concerning endangered human languages….The program supports projects that contribute to data management and archiving, and to the development of the next generation of researchers. Funding can support fieldwork and other activities relevant to the digital recording, documenting, and archiving of endangered languages, including the preparation of lexicons, grammars, text samples, and databases.[363]

Only institutions of higher education in the US, non-profits in the US, or individuals in the US who are US citizens or foreign nations who have been living in the US for at least three years prior to the proposal deadline are eligible. Lastly, there is also the Administration for Native Americans. Although CHamorus are not federally recognized as a tribe, CHamorus are included under the "Native Pacific Islander" definition, making them eligible for grants. Overall, being a state of the United States leads to a high probability of continued access to multiple funding sources for language revitalization projects and programs.

However, it is important to point out that many of these funding sources are either universities, private organizations or trusts, and very small federal grants. In the United States, "sustainable funding from the state or the federal government is not available, leading to a state of linguistic emergency."[364] A study on indigenous language funding across 10 affluent countries concluded that, "Despite being the largest and by far the most prosperous country in the study, the United States ranks very low in terms of ILR (Indigenous Language Revitalization) funding; its per-capita funding is only 14 cents per year."[365]Within the United States, there are only sixteen states with indigenous language policies. Out of these sixteen states, only Hawai'i, Alaska, and South Dakota have recognized indigenous languages as official languages of the state. Therefore, as a state, Guam should not expect a vast amount of direct federal funding for language revitalization purposes. The state of Guam may have to turn to other sources of funding available for US citizens.

Status Example: Alaska

Alaska has a native population of around 85,000 people and a diversity of twenty native languages. It is an example of a state pursuing language revitalization efforts using the mechanisms of the state. Sustainable funding for language issues is an issue, and thus requires action to be taken to remedy the

363 National Endowment for the Humanities, "Documenting Endangered Languages," accessed at https://www.neh.gov/grants/preservation/documenting-endangered-languages.

364 Heather Bliss, "A Global Perspective on Costing Indigenous Language Revitalization," 3, First Peoples' Cultural Council, September 2018, accessed at http://www.fpcc.ca/files/PDF/Publications/Bliss-Global-ILR.pdf.

365 Bliss, "A Global Perspective," 35.

situation. In March 2018, Representative Dan Ortiz of Alaska called for a "state of emergency" to protect the indigenous languages of Alaska. In his State House resolution, he outlined the urgency of language revitalization, writing, "WHEREAS the state is in critical danger of losing those languages and, according to the Alaska Native Language Preservation and Advisory council, the state may lose the last fluent speakers by the end of the twenty-first century if current rates of language loss continue as they have since the 1970s." At the time of the resolution, funding for native languages was not sufficient. Most funding for Alaska came from the creation of the Alaska Native Language Preservation and Advisory Council, which received very little funding and had only one full-time staff member for a long time. Following Ortiz's call, Governor Bill Walker signed an administrative order declaring a linguistic emergency. He ordered state agencies to work with tribal partners and to start using traditional place names on state signs. The order requires state commissioners to create a plan for better collaboration with Alaskan natives and directs the commissioners of the Department of Education to find ways to promote native languages in the public education system. Although there is clearly more work to be done for Native Alaskan language revitalization, Alaska as a model helps to show the difficulties as well as the political push needed for government action on this issue. Guam is different in that a significant amount of political power in the state of Guam likely may be held by those who realize the importance of Fino' CHamoru, which could enhance language revitalization efforts.

Independence & Free Association

The differences between free association and independence are not vastly significant enough when it comes to the prospect of Fino' CHamoru to warrant two separate analyses for the purposes of this study. The binding thread between the two statuses is that of sovereignty and not being tied to the same legal and constitutional infrastructures and jurisdiction of the United States. Under both statuses, Guam would have to develop its own language policies in relation to education and the government as well as decide whether or not to develop a language commission. In addition, these policies will be dictated by the vitality of the language at the time of entering into this new status. If Fino' CHamoru remains between "disappearing" and "moribund," (per language vitality scales), it is recommended that the government of Guam develop a governmental entity dedicated to the preservation and revitalization of the language. If the language is healthy at the time of transition to a new political status, the government may feel less inclined to implement language preservation and revitalization programs, but rather increase its use in government and public spaces. The vitality of the language at the time of the transition status needs to be situated to develop a plan for the new country.

Language Policy

One policy to be debated is whether to make CHamoru an official language of the country. It is currently an official language of the unincorporated territory of Guam and the new government will decide

whether to continue this or not. It is unknown what the relationship between the CHamoru people and the non-CHamoru residents of the island will be at the time of decolonization. This relationship will be a factor when debating the potential centering of CHamoru culture, language, and rights.

When deciding on an official language for the island, the government of Guam should consider two official languages, and not just one. It is highly expected that English, as a global language and the most widely used language in Guam, will remain a dominant language in the country and should be made an official language. This does not mean that English should be the only official language. Simply declaring CHamoru as an official language does not automatically lead to language revitalization. On the surface, declaring an official language can have little to no consequence, akin to declaring a state flower or state animal. It can simply become enshrined in government documents without implication or enforcement. A language policy only works with enforcement, adequate funding, and government commitment.

Language Revitalization Body

The country would also have to decide whether to establish a language revitalization body or language regulatory body. The role of a language revitalization body would be to guide the government's role in overseeing or supporting language revitalization programs and/or initiatives. The role of a language regulation body is typically to regulate and standardize languages. While many language regulatory bodies are private institutions or bodies, others are governmental bodies or have associations with the government of the country. Depending on the state of the language of the time, the language priorities will be different. If the language still needs drastic revitalization, it is recommended that language revitalization be the focus of the new government, and not orthography enforcement or language regulation.

Example: Kumision i Fino' CHamoru yan I Fina'nå'guen I Historia yan I Lina'la' I Taotao Tåno'

Guam has established a CHamoru language commission. In any of three political status options, there is potential for strengthening this type of commission. The most recent CHamoru language body is the implementation of the Commission on CHamoru Language and the Teaching of the History and Culture of the Indigenous People of Guam. According to the law that created it, it is tasked with the following regarding the language:

a. Continually study and update the orthographic rules of the CHamoru language; and to provide notification to public and private institutions of updates to the CHamoru orthography
b. Consult with government leaders and others in the Commonwealth of the Northern Mariana Islands who are interested in the standardization of the CHamoru language orthography and seek to recognize and establish agreement relevant to the orthography, as well as existing regional differences
c. Advise public and private institutions, broadcast and written media, to include magazines

and individuals, on issues related to the alignment of both spoken and written media, publications, signage and manuscripts with the grammatical and orthographic rules established by the commission

d. Provide requisite updates to the CHamoru-English dictionary
e. Establish a CHamoru translation service for public and private entities and individuals, broadcast and written media, with an appropriate fee structure for such services
f. Conduct research, publish, and produce multi-media and print materials relating to the CHamoru language, history and culture
g. Coordinate with the Department of Education, charter schools and other educational institutions, including private schools and businesses, on Guam to ensure the appropriate use of the adopted standardized CHamoru orthography and grammar
h. Work with I Sagan Plånu Siha yan Emfotmasion (the Bureau of Statistics and Plans) to plan and conduct a survey, which may seek to determine the existing number of CHamoru speakers, and/or the existing number of children learning CHamoru and the occurrence of intergenerational transmission, which may be used to direct CHamoru revitalization programs efforts

The Kumision i Fino' CHamoru, which is active today, serves as an example of what a freely associated or independent Guam could continue and possibly provide more funding for, although a stronger emphasis on revitalization is needed, as opposed to orthography regulations. The infrastructure is already in place and it is highly advised that a freely associated or independent Guam take steps to establish a language regulatory body like the Kumision I Fino' CHamoru.

Status Example: Wales

In 2011, the Welsh Language Measure was passed, which created the body of the Welsh Language Commissioner, whose primary goal is to promote and facilitate the use of Welsh. In carrying out the office, the Language Commissioner has two underlying principles guiding its work. The first is that the Welsh language should be treated no less favorably than English and the second is that people in Wales should be able to live their lives through the medium of Welsh if they choose to do so. This is embodied in the motto of the office, "A Wales where people can use the Welsh language in their everyday lives." The current commissioner, Aled Roberts, works on five primary objectives: influencing the consideration given to the Welsh language in policy developments; ensuring justice for Welsh language users; imposing statutory duties and regulating them; encouraging, promoting, and facilitating the use of the Welsh language on a voluntary basis; and operating and communicating appropriately and effectively. The CHamoru and Welsh example show that language bodies can be useful not only in the standardization of language, but in perpetuating the language.

Overall, a freely associated or independent Guam will have to make important decisions regarding the role of the CHamoru language in the new country, such as official language policy, the establishment of a

language regulatory body, and government support and/or funding for language revitalization programs. If the new country is struggling economically, citizens of the country may disapprove of any funding being directed toward revitalization. However, the new country must also think about the consequences for the CHamoru citizens if the language is not properly revitalized.

Under each status, the CHamoru language can be revitalized and perpetuated if it is made a priority, with resources, government commitment, and a comprehensive plan.

CHAMORU LANGUAGE	
STATUS	**EFFECTS**
Statehood	• High chance of continued funding for language programs from sources available to American citizens • Could still make Fino' CHamoru an official language of the state of Guam • Continued Americanization could exacerbate perception of CHamoru as a "useless" language for the modern world • Unlikely that language will be used beyond a form of communication (not used meaningfully as a basis for policy or governance values)
Independence & Free Association	• Language could be used as more than a form of communication; similar to the CHamoru culture section, the language could become the basis for policy and government ethics • Could create government incentives for speaking the language • Possible lack of funding for CHamoru language revitalization programs or projects • Revitalization is not an automatic priority in free association or independence

CHamoru Indigenous Rights

One issue facing decolonization and self-determination in Guam is differing opinions on the role of CHamorus in the decolonization process, the role of indigeneity, and the treatment of CHamorus in the new chosen political status. Depending on the status chosen, the people of Guam will need to decide whether or not indigenous rights of the CHamoru people will be recognized or written into the new constitution. In Guam today, some programs and statutes dealing with CHamoru issues were challenged in the US legal system. The *Davis v. Guam* case, regarding eligible voters for a political status plebiscite in Guam, and the CHamoru Land Trust are the most prominent and recent examples.

The most common argument from opponents of a native inhabitant vote and the existence of a CHamoru land trust is that they discriminate against non-CHamorus and are racist policies. This discourse has reached the national level as well. For example, the alt-right media outlet, Breitbart News, wrote regarding the Davis v. Guam case, "Many of the territory's elected officials and anti-American activists are starting to resemble the unabashed segregationists of the Old South of the 1950s. Think of it as a Pacific Islander version of Plessy vs. Ferguson."[366] Furthermore, another conservative media outlet, *National Review*, published "To base decisions on your ancestry when parceling out political power is anathema to the 15th Amendment. It is the sort of vile evil that the Voting Rights Act of 1965 rooted out. But it is alive and well on Guam and will continue unless a federal judge finally acts to stop this modern, progressive 'identity politics' version of Jim Crow discrimination."[367] These analyses are dehistoricized and blind to Guam's history. All of these issues have ramifications for indigenous CHamoru rights in the new state, freely associated state, or independent Guam.

366 Hans Von Spakovsky and Roger Clegg, "Guam Is Recreating The Old Segregationist South," *Breitbart*, March 27, 2017, accessed at http://www.breitbart.com/national-security/2017/03/27/guam-recreating-old-segregationistsouth/.

367 Hans Von Spakovsky, "Jim Crow Rears Its Ugly Head in Guam," *National Review*, August 30, 2016, accessed at http://www.nationalreview.com/article/439477/guam-voters-face-race-based-discrimination-reminiscent-jim-crow.

Davis v. Guam

Codified into Guam law under 1 GCA Chapter 21, Public Law 23-147 originally created the Commission on Decolonization. In accordance with its enabling act, the purpose of the Commission on Decolonization is to:

> ascertain the intent of the Native Inhabitants of Guam as to their future political relationship with the United States of America. Once the intent of the Native Inhabitants of Guam is ascertained, the Commission shall promptly transmit that desire to the President and the Congress of the United States of America, and to the Secretary General of the United Nations.[368]

The law defines who in Guam would be considered "Native Inhabitants." In § 2102. "Definitions," Native Inhabitants are considered "persons who became US Citizens by virtue of the authority and enactment of the 1950 Organic Act of Guam and descendants of those persons."[369]

In 2011, the constitutionality of this "native inhabitant-only" vote was called into question when Guam resident Arnold "Dave" Davis sued the Guam Election Commission. Davis tried to register for the Decolonization Registry but was denied registration because he did not meet the criteria of being a "native inhabitant." He filed suit, claiming Guam's "2000 plebiscite law's voting restriction violated the Fourteenth and Fifteenth Amendments, the Voting Rights Act of 1965, and the Organic Act of Guam."[370] The case was brought to the US District Court of Guam. There was a move to dismiss the complaint on the ground that it failed to present a case or controversy. District Court of Guam Chief Judge Frances Tydingco-Gatewood granted the motion to dismiss, stating that the case was not ripe for adjudication. Davis appealed, and on May 8, 2015, the Ninth Circuit Court of Appeals found that Davis had standing and that the claim was ripe. On Oct. 30, 2015, motions for summary judgment were heard. On March 8th, 2017, Tydingco-Gatewood granted Davis' motion for summary judgement and found moot the Election Commission's motion for summary judgment. In her ruling, she wrote that, "Having found that the classification is racial, this court finds that the plebiscite statue impermissibly imposes race-based restrictions on the voting rights of non-Native Inhabitants of Guam, in violation of the Fifteenth Amendment. Further, the court also finds that the plebiscite statute violates the Fourteenth Amendment."[371]

After the ruling, the government of Guam appealed the case, and it was heard in the Ninth Circuit Court of Appeals. Lead attorney representing the government of Guam, Julian Aguon, argued that decolonization was not meant to be applied to all because rights were not taken from everyone. He argued

368 "1 GCA Chapter 21 Commission on Decolonization for the Implementation and Exercise of Chamorro Self Determination," Guam Code Annotated, accessed at http://extwprlegs1.fao.org/docs/pdf/gum68908.pdf.

369 "1 GCA Chapter 21 Commission on Decolonization for the Implementation and Exercise of Chamorro Self Determination," Guam Code Annotated.

370 Harvard Law Review, "Davis v. Guam Ninth Circuit Holds That Guam's Plebiscite Law Violates Fifteenth Amendment," 133 Harv. L. Rev. 683, December 10, 2019, accessed at https://harvardlawreview.org/2019/12/davis-v-guam/.

371 Davis v. Guam, Civil Case No. 11-00035, accessed at https://www.cir-usa.org/legal_docs/davis_v_guam_granting_sj.pdf, pg. 25.

decolonization is instead,

> a remedy to restore a right that was taken away. This cure is meant for a particular harm that was inflicted on a particular group of people. US Congress itself defines this group as those who were made citizens by the enactment of the 1950 Organic Act of Guam and their descendants.[372]

Aguon argued that the definition of native inhabitant did not make the classification race-based, but that it was a political designation.

The Court ruled in favor of Davis. An opinion by Judge Marsha S. Berzon on the case, filed July 29th, 2019, affirmed the District Court of Guam's summary judgment in favor of Davis. Berzon opined, "History and context confirm that the 'Native Inhabitants of Guam' voter eligibility restriction so closely parallels a racial classification as to be a proxy for race. Its use as a voting qualification therefore violates the Fifteenth amendment as extended by Congress to Guam."[373] The Ninth Circuit decided the appeal only on Fifteenth Amendment grounds. The government of Guam petitioned to appeal to the Supreme Court of the United States but was denied. At the time of writing, the government of Guam is planning how to proceed with the issue, from rewriting the law to pushing the issue forward on the international stage.

CHamoru Land Trust

Another challenge was the US Department of Justice's complaint against the CHamoru Land Trust Commission in *United States v. Guam*. The CHamoru Land Trust Act was passed in the Guam Legislature in 1975 to "administer leases for lands that the United States had seized from Guam inhabitants during and after World War II and had later returned to the Guam government."[374] Only those defined as Native Chamorros were permitted to apply for leases. Per the CLTC's 2014 Citizens' Report, "The Chamorro Land Trust Commission (CLTC) was created through Public Law 12-226 to administer Chamorro Homelands. CLTC offers three types of lease programs which are residential, agriculture and commercial."[375]

While the law was meant to reverse a long history of US military taking of CHamoru land, it was still challenged in the US legal system. The catalyst was an African American man who lost the home he built on a CHamoru Land Trust plot after his CHamoru wife, who received the lot from the CLTC, died. The lawsuit asked the court for an order that "declares that the defendants' actions constitute violations of the Fair Housing Act" and enjoins the defendants to "refuse to rent or to negotiate for the renewal of,

372 Samantha Marley Barnett, "Challenge to CHamoru Self-Determination: Davis v. Guam," Guampedia, accessed at https://www.guampedia.com/challenge-to-chamoru-self-determination-davis-v-guam/.

373 Davis V. Guam, Berzon Opinion, July 29, 2019, accessed at https://cdn.ca9.uscourts.gov/datastore/opinions/2019/07/29/17-15719.pdf, pg. 4.

374 Davis V. Guam, Berzon Opinion, 12.

375 CHamoro Land Trust Commission, Citizens' Report 2014, accessed at http://www.opaguam.org/sites/default/files/cltc_ccr14.pdf.

or otherwise make unavailable or deny, a dwelling to any person because of race or national origin"[376] as well as listing four other actions. In December 2018, a US District Court sided with the government of Guam, stating that the US "has failed to demonstrate that the Chamorro Land Trust Act is based on an improper race or national origin classification, as opposed to relying on a political classification" and "fails to meet its burden of demonstrating that it is entitled to judgment as a matter of law."[377]

Based on the premise that the Land Trust is more of a land restoration program, the CLTC and the Department of Justice worked out a settlement and CLTC approved a term sheet outlining the conditions of the settlement in late 2019. As per the settlement, "all references to the terms "Chamorro," "native Chamorro" and "Chamorro homelands" (or any variations thereof) shall be replaced with "beneficiary," "eligible beneficiary," and "Chamorro Land Trust property)" with two exceptions outlined in the subsequent paragraphs of the settlement.[378]

These two examples show that CHamoru rights and programs are being challenged, with the core of the challenge lying in claims of violation of US law. "As with the foregoing cases, a federal court would once again need to examine where the rights of indigenous peoples in the US territories fit within the broader principles of equal protection and individual rights that are guaranteed under federal statutes and the US Constitution."[379] Guam's future political status will determine whether this remains the case.

What Is "Indigenous?"

This begs the question, "What is indigenous?" The most common definition of indigenous people found in international law comes from a 1986 UN study by Special Rapporteur Jose Martinez Cabo. In his study, he defines indigenous peoples as:

> Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.[380]

376 United States of America vs. Government of Guam; Chamorro Land Trust Commission, September 29, 2017, accessed at https://www.justice.gov/crt/case-document/file/999971/download.

377 United States v. Gov't of Guam, Civil Case No. 17-00113, Susan Oki Mollway, December 21, 2018.

378 "Settlement Agreement Between the United States of America and Government of Guam, Chamorro Land Trust Commission & Administrative Director of the Chamorro Land Trust Commission," 6.

379 Rose Cuison Villazor, "Problematizing the Protection of Culture and the Insular Cases," Harvard Law Review, 131 Harv. L. Rev.F. 127, (April 10, 2018): accessed at https://harvardlawreview.org/2018/04/problematizing-the-protection-of-culture-and-the-insular-cases/.

380 Working Group on Indigenous Populations Report, 379, U.N. Doc. E/CN.4/Sub.2/1986/7/Add.4, accessed at http://www.cwis.org/fwdp/International/96-12980.txt.

The crux of defining indigenous appears to be two-pronged: a long-established deep connection to the land (predating historical displacement by other groups) and the existence of an unjust social relationship, usually as a result of colonialism and/or current state repression.

Statehood

CHamoru indigenous rights, distinct from individual rights, will be challenging under statehood without the process of federal recognition. Since Guam would be a state of the union, the US Constitution would fully apply, and Guam would remain under the American legal system. Typical American jurisprudence requires strict scrutiny of any policy or program that uses racial or ethnic classifications. Therefore, programs that benefit indigenous people or promote indigenous culture have and would continue to be open to judicial attack on the premise that they are racist unless they are passed by Congress. Former political science professor at the University of Guam, Robert Statham Jr., writes, "strict indigenous group preservation is irreconcilable with the principle of equality that animates the American polity."[381] Some have argued that CHamorus becoming a federally recognized tribe would grant more legal authority to establish programs and policies intended to benefit or further CHamoru rights. This would likely have to be approved by Congress, and is not explored further in this study.

Independence

An independent Guam allows for the greatest flexibility regarding indigenous rights because the people of Guam would be crafting a new government and political system. This new system could allow for the exercise of indigenous rights. This will be contingent upon the will of the people and their desires at the time. The people of Guam could choose to essentially mimic the governmental style of the United States of America, which they are most accustomed to. Alternatively, they could ensure that indigenous rights are recognized, no matter what government type is chosen.

Independence allows the possibility for the CHamoru and indigenous worldview to be central to governing. Independence offers a chance to use cultural grounding for governance, which indigenous rights will logically flow from, such as the potential designation of rivers, mountains, or the aquifer as legal persons in the legal system of the island.[382] In a government that does this, land reserved for the indigenous inhabitants will not be seen as a violation of civil rights or as a discriminatory practice. Rather, the government and legal system could acknowledge the historical wrong and proactively aim to fix the problem. Independence does not just offer the potential for rights for indigenous peoples, but it can offer rights and policies based on indigenous worldviews. This is a key distinction. The former concedes a space for indigenous peoples in the political entity, while the latter transforms the space meaningfully.

381 Robert Statham Jr., Colonial Constitutionalism: The Tyranny of United States' Offshore Territorial Policy and Relations, (Lanham: Lexington Books, 2001) 79.

382 For an example of this, one should research New Zealand's Whanganui River.

Once again, this is not guaranteed. Depending on the conditions and events prior to Guam achieving independence, it is possible that indigenous rights will not be included in the new government. It is also possible that the push for indigenous CHamoru rights may cause conflict in the formation of the new country. Another possibility is that indigenous rights or protection of land conflict with the new country's desire for economic integration into the world market. This may force the hand of the government to prioritize these over policies and protections which may not help stimulate Guam's economy. These are all currently unknowns and are issues the island would have to consider under independence. If the relationship is contentious, implementing CHamoru indigenous rights may be a more arduous journey as calls of "unfairness" and "racism" may remain at play. However, if the relationship is not contentious during the transition to either free association or independence, indigenous CHamoru rights may be seen as natural for the country to implement, considering CHamorus are the indigenous people of the island and many countries in the Pacific Islands region have similar protections for indigenous land, culture, language, and customs.

Furthermore, an independent Guam would have international laws it can use in the formulation of indigenous CHamoru rights, and US domestic law will no longer be a factor in these decisions. Lastly, on the surface, indigenous CHamoru rights do not mean unfair treatment of non-indigenous citizens of the country. There are countries in which ethnic groups have attempted to take control of the mechanisms of the country, and this has led to ethnic conflict. However, indigenous CHamoru rights do not automatically equate to this, although the government and citizenry of an independent Guam should take every precaution to prevent this from happening because CHamoru domination of the island and CHamoru indigenous rights do not equate to each other, which is a common misconception.

Free Association

A freely associated Guam offers many of the same benefits and responsibilities to the island and its people as independence when it comes to indigenous rights. Guam could also craft a new government system that is cognizant of its histories and particularities (depending on the type of relationship negotiated by Guam and the United States). Furthermore, a freely associated Guam could use international law to legitimately protect indigenous rights.

One note in reference to indigenous rights is the near-guaranteed military presence in the island under free association, which can be at odds with indigenous rights at certain junctures. If Guam became a freely associated state, it would have a history of militarization, and this can either be used advantageously or detrimentally for Guam. Indigenous land protection rights could possibly be pushed aside by the US military's desire for ranges, training areas, and bases. This would have to be negotiated between Guam and the United States, but it is likely that the US will request access to land. This is not an argument of inevitability, but of possibility. To put it another way, it is not guaranteed that military plans are going to overwhelmingly interrupt the prospect of indigenous rights in a freely associated Guam but is something the government of a freely associated state of Guam will have to watch carefully.

CHAMORU INDIGENOUS RIGHTS	
STATUS	**EFFECTS**
Statehood	• Continued federal interference into indigenous affairs • If desired, the possibility of CHamorus being granted tribal status • US Constitution is blind to the historical context of Guam's indigenous struggle and legacy of colonialism
Independence	• Ability to craft policies that protect indigenous rights • Can have a government cognizant of colonial history • The creation and implementation of indigenous rights policies could lead to disagreements with non-indigenous citizens in an independent Guam • Indigenous rights policies could possibly be at odds with Guam's economic development
Free Association	• Ability to craft policies that protect indigenous rights • Can have a government cognizant of colonial history • Military plans could be in direct odds with indigenous rights

ECONOMIC IMPACTS

Economic Impacts Overview

This section describes many of the prospective economic impacts of each of the three political status options. Other, more specialized, sections of this study address specific aspects of the impacts. It is emphasized here that all aspects of economies are interrelated, with none operating entirely separately from the others. Changes in one area of performance or policy will usually have affects on other segments of Guam's economic system.

Individual and organizational preferences related to the desired level of economic development and the tradeoffs between development and other political objectives exist, but those are not addressed in this section. In guiding future policies, those preferences are to be applied by the reader in determining which political status option they choose.

One of the most important concerns in assessing Guam's political status options is the prospective performance of the economy in terms of the potential prosperity of people living here.

This is not easy to address because of three major factors:

1. The terms and conditions of the final agreement implementing the chosen political status:
    a. Statehood would appear to be the best-defined option, since there are already many models available; however, each of the States has its own unique relationship with the federal government that can be traced to the conditions of its admission into the Union, so there is some flexibility in reaching a final status formulation. For example, see the Constitution section of this study, particularly on federalism and the variations in state constitutions which affect the internal operations of the 50 states.
    b. Free Association with the United States would also appear to be relatively well-defined, given the three recent examples of functional agreements (the Federated States of Micronesia, the Republic of the Marshall Islands and the Republic of Palau) of that status in relation to the United States. However, among the three options, the final

agreement defining "free association" is almost purely a negotiated relationship, so has the broadest range of possible terms and conditions

c. Independence is perhaps the best-defined option on the face of it, but because of existing and likely ongoing US strategic interests in Guam and in the Western Pacific (primarily military and commercial), its implementation may be much more complicated than simply severing political ties. Just as in most independent countries in which the United States has established strategic interests, it is likely that there will be a set of arrangements between an independent Guam and the US.

2. The political structure under the selected status, including the rule of law and those laws themselves, the controls designed to limit the exercise of government power, and most especially how that structure supports and impedes economic growth and development:
    a. There is already a well-established framework of laws, rules and regulations administered by the central government under the statehood option. Nonetheless, the States are given wide latitude to augment and supplement federal requirements, ensuring a level of autonomy under more local control, and how that autonomy is exercised will have major impacts on Guam's economic performance in the future.
    b. Although far greater local autonomy would be available under free association than under statehood, there would still be many constraints, if for no other reason than to maintain the United States' position within what has been called the "world order." Under each of the freely associated states' relationships with the US, those countries defer certain administrative controls to the US because the US has committed to defend the FAS militarily against foreign aggression; the islands do not currently have the resources necessary to effectively defend themselves.
    c. With the Independence status, Guam would conceivably have complete control over both domestic and international affairs. As a practical matter, though, it is likely that a set of arrangements (under continuing US hegemony) would be made i) to maintain the United States' strategic interests in Guam and in the region, and ii) to continue military protection under the umbrella already provided by US security. While it is possible that Guam could form military alliances with one or more other countries that may initiate international conflicts that, ultimately, would expand beyond Guam's control.

3. Finally, Guam's post-transition economic performance will depend heavily on the legal and other preparations that are made before the implementation of a new political status. It is important that Guam complete, to the maximum extent possible, every prudent task in advance to minimize the inevitable disruptions that would accompany the change in status. These preparations include a foundational regime of laws, rules and regulations, as well as

the accompanying enforcement mechanisms, but they also include the development of the physical infrastructure to support Guam's economic aspirations.

Addressing the economic concerns surrounding a change in Guam's political status is a lot more complicated than saying, "I want this particular status" or "I support that status." There are an enormous number of community decisions that have to be made, a wide range of preparations that will have to be completed in advance of the status change, and a monumental amount of work to be done ahead of the date of Guam's political status transition.

As in other sections of this study, because Guam has unique characteristics, opportunities and constraints, there are no clear comparisons to any other place. Although it would be possible to assert that, because this is how some particular aspect changed in some other place, the same will happen here, an economy is composed of innumerable factors, a change in any one of which would affect how other elements of the economic system change as well. Because there are no other places that are more than nominally similar to Guam, drawing parallels between Guam's prospects under each of the political status options with those of any other place would be a disservice, giving a dubious impression that all of the interrelated changes that would occur here would somehow be predicted by observing the changes in another, essentially different place. For that reason, examples of the experiences of any other places are not included in this section.

Industry Development

The question of industry development is common when it comes to a change in political status. There are certainly possibilities for industry development in each of the three statuses. In acknowledging possibility, however, it is important to note the constraints and challenges in the expansion and development of new industries. Among the fundamental constraints are: the island's relatively remote geographic location; its limited available land and other natural resources, including clean fresh water; its higher wage rates and standards of living relative to other regional jurisdictions; its small population, which limits the availability of economies of scale that support industrial activity and expansion in larger communities; high transportation costs for imports and exports; its fragile physical environment as a result of factors such as a history of military contamination and fragile coral reefs; and numerous other factors which can make the development of particular industries difficult, if not impossible. For a further description of some of the environmental challenges Guam faces, please refer to the Environmental Sustainability section of this study, particularly the Human Security/Climate Change subsection. These constraints will continue, regardless of Guam's chosen political status, although the gross impact of each will vary moderately depending upon which option is chosen. It is important to note that these are challenges and obstacles, not a resignation to impossibility.

Historically, especially in the late 1960s and the 1970s, Guam tried to develop a variety of domestic-and-export-oriented industries. This led to the development of the Qualifying Certificate (QC) program. Created in 1965 by Guam Public Law 8-80, the QC program establishes several investment incentives designed to stimulate economic development in Guam. At the time, the sole source of exchange to support imports was the federal government; with the QC program meant to attract investment on behalf of the government of Guam.

> By 1965, Guam's leaders had found it evident that the federal government had little interest in the development of the island for other than military purposes, but also recognized that military expenditures were unstable, leaving the welfare of the local population subject to the whims of

> a Capitol Hill that rarely thought about its western-most territory. Guam's leaders, though, were faced with a dilemma: they wanted to stimulate private business, but could not attract US investment to an undeveloped island; they could not develop the island's infrastructure, transportation and communication capacities because of severe funding limitations…[383]

Related to this, several efforts were made to take advantage of General Headnote 3(a) of the US tariff schedules, which accords duty-free entry of *bona fide* products of Guam (defined as thirty percent or more of value added to imported materials processed here for export). One of these efforts was the issuance of the first twelve QCs to manufacturing and materials processing firms. Four of these QCs were for watch assembly operations. However, these efforts repeatedly failed, in large part because the assessment of "value added" in Guam was difficult for the US Customs Service to make. For example, the watch industry in Guam eventually floundered as watches became ineligible for entry into the US under General Headnote 3(a), apparently to protect the jobs of citizens in the fifty states. This also led to the failure of firms in Guam that manufactured watch bands and bracelets.

In another example, four QCs were issued for textiles in 1972. These failed due to obstacles such as the ever-shifting nature of the textile industry. More importantly, as a result of this constant change in the industry, the "manufacturer must seek a new binding determination of enterability from US Customs in Washington or risk having its goods turned back at the port-of-entry because of arbitrary (and usually unfavorable) spot determinations by customs officials."[384] Furthermore, "there were also reported instances wherein customs officials were not qualified to make the necessary determinations, and left garment shipments in bonded warehouses (at the manufactures' expense) for indefinite periods."[385] A year later, three textile firms were issued QCs, as were four textile firms in 1976, with the intent of taking advantage of Headnote 3(a). However, due to the problems outlined above, these firms ceased operations within a few years. This shows how Guam's ability to export goods and potentially build new industries was stifled. The primary point is that the US did not allow manufacturing for export to develop here.

Since then, Guam's export of goods has been quite limited, and the economy has resorted to the export of services to pay for the island's imports. As articulated by former Governor of Guam Joseph Ada during the Guam Commonwealth Act hearings before the US Congress, regarding the garment and watch industries (to be quoted at length);

> On two separate occasions, flourishing manufacturing industries on Guam have been strangled by federal constraints—imposed after these industries became successful—imposed because these industries became successful…The projected loss to our community in these two examples is from $350 million to $800 million in income annually, and between $120 million and $260 million in lost tax revenues.

383 GEDA's Response to the Inspector General's Audit Report on the Qualifying Certificate Program, pg. 4.

384 GEDA's Response to the Inspector General's Audit Report on the Qualifying Certificate Program, pg. 9.

385 GEDA's Response to the Inspector General's Audit Report on the Qualifying Certificate Program, pg. 9.

> Why did this happen? Because American big business lobbies have more clout than American small colonies. And because America sometimes treats us as foreign and sometimes as domestic, always to our disadvantage. Headnote 3(a) benefits are a joke to us. A fake benefit. It looks good on paper but every time we try to implement something, we get nothing for our trouble. We are soon treated as a foreign country with quotas imposed on us.[386]

Powerfully summing this up, Ada said, "We were told year after year that we had to develop our own economy in order to pay our own way. We have tried, and we have succeeded. But federal policies have not helped. They have hindered us. If our economy has only one dimension, tourism, it is not because Guam has not tried to diversify, but because federal regulations and the unlimited power the federal government has to dictate changes in policy that affect us, have made it almost impossible."[387]

As it currently stands, Guam has two primary industries, both of which provide for the export of services: tourism (the principal private sector industry) and military activities. Both could be directly and indirectly affected by political status decisions and, particularly, by the means and mechanisms of implementation of changes in the existing system, such as the provisions of a potential Compact of Free Association with the United States, the investment environment in Guam post-status change, and any potential conditions on military presence and activities in Guam under free association and independence.

There are also several important secondary industries, including: services, in addition to hotels and lodging places; wholesale and retail trade, which includes some tourism- and military-oriented businesses, along with several businesses that derive significant portions of their sales from those two primary industries; and construction, especially building construction, which as of this writing includes substantial military-related projects. Although not technically an "industry," the local government is also a major employer, providing essential public services and generating income and jobs for more than one-sixth of Guam's working population. Transportation and public utilities, finance, insurance and real estate, manufacturing and agriculture, along with federal-civilian employment, round out the secondary industries active in Guam.

Guam's two primary industries are heavily dependent upon external factors that are almost entirely beyond the control of decisions made here (although a greater measure of influence could be exercised under each of the status options than is available under the current status). For example, under statehood, Guam could apply national incentives for international trade and development. The US could apply more international diplomatic pressure in favor of Guam's economic development, as Guam would be a full part of the union. Under free association (barring any negotiated agreements with the US) or independence, Guam could set its own trade laws, tax laws, and other incentives for outside investment into Guam. Tourism is generally considered to be a "luxury good," in that a change in income in a country that is a source of visitors leads to a higher percentage change in the level of tourism services that Guam

386 Guam Commonwealth Hearing, Honolulu, HI, December 11, 1989, pg. 93 accessed at https://books.google.com/books?id=doUlAAAAMAAJ&pg=PA92&lpg=PA92&dq=watch+industry+guam&source=bl&ots=nsuatOJdnD&sig=ACfU3U2wDETFOiZs8mosEHoAYNXxEaTXzA&hl=en&sa=X&ved=2ahUKEwj62ueEsKzwAhWXFogKHb_rDI0Q6AEwC3oECAgQAw#v=onepage&q=watch%20industry%20guam&f=false.

387 Ibid.

exports to that country. Although Guam's export of military services is dependent on several external conditions, the contributions of military spending to Guam's civilian economy are "administered" by the federal government and are not directly driven by ordinary market forces. Activity in Guam's secondary industries is directly and indirectly influenced by spending in its primary industries, as income from those industries circulates throughout the civilian economy, and ultimately "leaks" to the outside to pay for the import of goods and services that the local community requires. In essence, the income and standard of living of Guam's civilian population bear a strong direct correlation to the local receipts generated by the island's exports, which currently derive almost entirely from its two primary industries.

Although Guam is relatively remote for purposes of industry development, it must be emphasized that the island's location is a principal driving factor underlying the success of its two primary industries, tourism and military activities. Guam's strategic location for military purposes could also be strategic for the development of commercial activities other than tourism, although most of the fundamental constraints mentioned previously would still apply. Beyond its current primary industries, Guam has a strong potential to expand its role as a regional and international hub for transportation and telecommunications. Some of the constraints, such as remoteness, are fixed by geography, but frequent and relatively declining air transportation costs, high speed cable, and satellite and internet communications significantly reduce the impact of some of these geographic barriers as the world becomes increasingly interconnected.

In terms of transportation, the island has an excellent deep-water harbor as well as an efficient commercial port, and a modern, well-maintained 12,000-foot runway with a civilian airport facility that it could utilize in any of the three political status choices. The commercial port and the airport could accommodate expanded activities as demand increases, and both are adjacent to relatively large, undeveloped land that could facilitate much higher levels of transportation and storage of goods. Thru-shipping, where cargo vessels from the US offload products in Guam before continuing on to other destinations, does not hold much potential. Break-bulk shipping, where goods destined for several locations are offloaded in Guam for consolidation onto different vessels destined for those locations, and freight consolidation, where goods from several sources are combined into single forward shipments, would be possible. Relief from the cabotage laws, which prohibit the transportation of goods, passengers or baggage between two successive US ports aboard foreign vessels and aircraft, would enable Guam's air and seaports to accommodate East-to-West shipping as well. The development of warehousing facilities and associated infrastructure in the vicinity of either or both ports would be needed to expand break-bulk transfers and freight consolidation but could also significantly increase the availability of higher-wage, skilled jobs for Guam's workforce.

As a telecommunications hub, Guam is already at a nexus of multiple international fiber optic cables, but primarily uses their capacity locally only for telephone and internet services. Most of the on-shore telecommunications activity here is simply devoted to signal enhancement and branching, meaning that international messages may be routed through and amplified in Guam to support delivery to their various final destinations. Although Guam has a handful of small server farms, they are primarily for local use and data archiving. Using Guam as a site for application servers is somewhat impractical because of current technological latency issues that cause a delay in the transmission of information. In addition, although

telecom can be a high-value industry, it creates very few, highly specialized jobs for which Guam does not yet have a substantial resident labor force. Most of those jobs would go to transients, so the benefits to Guam's economy would be nominal at first. However, these skills could be gradually developed among people residing in Guam permanently, potentially increasing the benefits to Guam's economy.

Currently, the development of Guam's secondary industries depends in large part on the success of its primary industries in generating export earnings. There are fluctuations that depend upon other, primarily local, factors such as public policies designed to expand specific activities. Services and trade depend almost entirely upon the direct and indirect income derived from tourism and defense. Presently, transportation is strongly influenced by tourism. Much of the investment underlying Guam's most volatile industry (meaning most subject to large changes in the level of activity and the generation of income within the community), construction, is from external sources, which in turn relies upon the level of tourism and military prospects. Local residential and commercial construction is driven primarily by general levels of income from other economic activities. Finance and real estate activities are relatively cyclical in nature, rising and falling with general levels of income, while the insurance industry is based upon the wealth that accumulates locally from income flows that are not diverted to pay for imported goods and services. Most of Guam's manufacturing is based upon local consumption of food products and other consumer goods, as well as fabrication to support construction activities.

Prior to World War II, Guam had a much smaller population, and much of the economy was based upon agricultural activity and subsistence fishing. After the war, Guam's economy quickly transitioned from agriculture into services, effectively bypassing the usual industrialization phase associated with the production of goods. Much of this was due to the security perimeter that was set up around Guam, in which travel to and from Guam was restricted. In order to arrive in or leave Guam, one needed the permission of the US Navy. Due to strategic reasons, Guam was closed off from the world, and foreign investment was nearly impossible because of President Franklin D. Roosevelt's Executive Order No. 8683, issued Feb. 14, 1941. The production of goods for export immediately following the war was not possible until the Security Clearance Act of 1962, which lifted the security clearance requirement.

Due to periodic policy initiatives and a desire to maintain continuity with the island's past, agriculture deserves special mention in any discussion of industry development. It currently constitutes a tiny fraction of the overall economy, providing less than 0.7% of total payroll employment in any given quarter during the past twenty years. As new technologies are developed in agriculture, including hydroponics and aquaculture, a greater degree of food production would be possible.

With a rising global emphasis on sustainability, a greater focus has been directed to agriculture, especially locally grown food, in order to: enhance the quality and freshness of available produce; minimize the primary costs and secondary effects of food transportation; increase the value of underutilized available land; and generate income locally that would otherwise support outside populations. Several factors inhibit the development of a substantial agricultural sector in Guam. Soil characteristics, combined with land tenure patterns, limit the capacity of the island to entirely produce its own food. The northern half of Guam has the best soil and the most level topography to support crops, but it is also the area with the most

residential and commercial development, and large tracts are owned by the federal government and are thus unavailable for civilian use. It is important to note that portions of that land, primarily in the coastal areas, had previously been devoted to agriculture. With the exception of the valleys and alluvial plains of southern Guam, the soil there is primarily clay and unsuitable for most crops, and the topography is less even and subject to erosion and landslides. Nonetheless, there are small-scale commercial farming operations in the south and some subsistence farming.

Marginal soils in the northern half of Guam require fertilizers to improve their crop productivity, and tropical plant pests often require the use of pesticides to increase yields. The northern half of the island sits over Guam's water lens, the island's principal source of fresh water, which would become less viable with the infiltration of agricultural chemicals. Frequent windstorms and periodic flooding often destroy crops, adding to the usual risks associated with farming, such as price fluctuations and excess or deficient output supporting local markets. That is not to say that agricultural development is infeasible. Despite the development of more modern technologies, such as hydroponics and aquaculture, it will likely never become a substantial export industry for the island. This does not downplay the importance of agricultural development for food security purposes of the island, which is a necessity, no matter what status is chosen.

Overall, the future development of industry in Guam will continue to be constrained by the factors mentioned above, but differences in the structure of government and access to external investment and markets could have a significant impact under each of the three political status options in comparison with the current status of unincorporated territory.

Statehood

The development of Guam's tourism industry should continue, except there is the potential for greater political influence at the federal level, through our Congressional representative and senators, to improve access to the temporary off-island labor needed to expand and add to existing tourism facilities. As a result of the potential for greater political influence, Guam could advocate for itself more effectively, particularly as it relates to recognizing its unique needs and reconciling this with federal legislation that might not otherwise serve the island well. Changes to the tax structure may offset a portion of that effect, as the prospective rates of return on investment in the industry decrease, modestly inhibiting the rate of growth. For more on this, please see the subsequent subsection on Revenue and Taxation.

Although military activity could no longer be considered strictly an export, activity in that sector would likely increase because of the greater interest of the national government in protecting a state as opposed to an unincorporated territory. The effects of that increase would spread throughout the civilian economy, likely raising income and associated standards of living. The impact of higher taxation, as a result of the loss of Section 30 and 31 funds, would attenuate those effects somewhat, but only as a partial offset.

The potential for increased access to labor resources could enhance Guam's civilian construction industry and help to mitigate recent increases in the prices of developed real estate, but that outcome is far from certain and would depend almost entirely upon the influence of increased political power at the

national level. Nonetheless, additional construction activity would substantially improve the prospects for economic growth in the economy, with new commercial facilities expanding job opportunities and greater availability of housing helping to resolve current affordable housing issues. However, the public would have to examine the desirability of this additional construction activity with potential environmental effects, especially for military projects. This will depend in large part on establishing and enforcing regulatory requirements, although military and federal projects may not be subject to the entirety of the state of Guam's regulations.

With the rest of the economy potentially growing at a faster rate than it has over the past two decades, replacing lost tax revenue (as a result of the loss of Section 30 and 31 funds under statehood, with these funds redirected to the US Treasury) for the local government may help to offset the effect of higher taxes being paid into the federal government rather than Guam's treasury under the Internal Revenue Code. It is likely that local taxes would have to be raised to achieve a revenue-neutral transition, where Guam does not lose more revenue under statehood than it would gain. For example, Guam may have to raise its property and business privilege taxes as well as implement a state income tax in order to make up for the loss of Section 30 and 31 funds. There would also be pressure for prices to increase, with the shift to the tariffs and other trade restrictions under US Customs regulations.

Free Association

It would take time to reform Guam's relationships with the world beyond its border, which may have a modest negative effect on visitor arrivals, but this may be attenuated as the local government gains immigration authority. Guam would take on the cost of immigration authority, including staffing and the issuance of visas, but could possibly improve the application of this element of border control, not only to support the flow of tourists, but to actively adjust to the cyclical need for temporary foreign workers. However, caution is advised due to the possibility of inadvertently allowing criminals and other bad actors to enter the community without adequate controls. In addition, it is likely that the development of industry would initially slow due to the uncertainty among domestic and foreign investors and entrepreneurs as internal laws and regulations are adapted and adjusted to conform with the new structure of government. How long it would take for these transitions to occur would depend almost entirely on preparations prior to, and efforts subsequent to, the change in status.

Although Guam would most likely become sovereign in free association with the United States, it would still likely rely on the US to provide defense services. The level of those services is uncertain. Nevertheless, among the conditions of the commitment of the US to continue those services, certain elements of Guam's international relations would remain under the influence and guidance of the US Departments of Defense and of State, as in the recent models of free association as they apply to the Freely Associated States of Micronesia (FAS). The US Department of the Interior and other federal government agencies may also exercise influence, but probably not in the area of defense. It is possible, though, that the return of military-occupied land in Guam would expand and accelerate as the Department of Defense more

efficiently utilizes its remaining holdings.

Under free association, local control over immigration could remove the current restrictions on the temporary importation of labor resources for civilian construction projects and for other purposes. That would likely allow a more rapid expansion of Guam's economy than has been possible in recent years, with new commercial buildings and facilities accommodating the growth of businesses and creating new jobs. The expansion of housing development would help to reduce the current, often prohibitively high cost of residential properties, allowing workers and others to devote a larger portion of their income to other consumption, not only raising standards of living, but also supporting new and expanded business activities. However, with Guam's authority over its labor laws, some health and safety standards might be relaxed if the government of Guam deems it best to relax these laws to provide a friendly and attractive business and investment environment. Market competition from foreign workers may constrain wage rates.

As Guam's legal and regulatory environment stabilizes and the economy expands, higher incomes will directly lead to increased demand for services, wholesale and retail trade, finance, insurance and real estate, and some limited types of manufacturing, creating self-reinforcing opportunities for business and employment. The island's government would have to take over the role of providing many public, non-defense services that are currently administered by the US federal government, including the equivalent of Social Security (although current and eligible participants under the US system would likely retain their benefits), Medicare, the Supplemental Nutrition Assistance Program and many others. This would require additional revenues to cover increased operational costs, as well as additional personnel. The former may reduce the rate of economic growth, while the latter would be complicated due to the limited local labor pool and competition from private sector employers. Current federal civil servants could help to fill the gap, with similar roles in the local government.

Independence

The prospects for industrial development under independence would depend on many decisions made before and during the implementation of independence. It is difficult to assess the potential impacts of independence on industry development, and the economy in general, because so many different factors and their interactions cannot effectively be anticipated. At the top of the list is the form of government that would evolve during the status change, as well as the influence of government in economic affairs. Even with the most rigorous preparations and the best of intentions, initial instability in many sectors within the community and in Guam's relationship with the outside world would likely persist for an extended period. It is important to note that instability in certain sectors would be the case under statehood and free association as well. Independence, as the political status that is most open, would be the most subject to multiple decisions made before, during, and after the transition to the new political status. It will be crucial that a comprehensive set of laws and regulations is ready for implementation immediately upon the date of the transition. As the newly independent Guam continues to establish new relationships with countries, businesses, and international organizations, numerous adjustments, many substantial, could be

made to the benefit of the island.

From an external perspective, Guam would have to develop trust and confidence (including in the rule of law, its enforcement and consistency), which, depending upon initial local actions is very possible but could take an extended period of time. Guam's tourism industry could be affected, especially with the current, cautious principal sources of visitors who may approach the island in the same way that they would any other unknown, unfamiliar country. Historically, the development of Guam's tourism industry has been strengthened by the island's political affiliation with the United States and the expectations that entailed. However, there is also the possibility that relationships built between Guam (through the Guam Visitors Bureau) and tour operators and businesses in Asian countries such as Japan and South Korea could be an ameliorating factor to this, as these relationships will likely continue. Similarly, outside investment in tourism facilities would likely be delayed for a few or several years, particularly if the industry suddenly has extensive excess capacity. Job losses among unskilled and semi-skilled employees in the industry could significantly diminish incomes and reduce standards of living, with all of the attendant social problems that would likely cause. However, in the long-term, there is a possibility that Guam could establish more relationships with other countries to improve the tourism industry, helping to offset the more immediate economic impacts of transitioning to an independent status.

Being independent would not mean that Guam would no longer need military defense; on the contrary, the island would likely have to plan for the contingency of being protected from foreign aggression and criminal intrusion or invasion. That may mean a continuation of protection by US forces or by some other country or coalition of countries, but that protection would come at a cost. If Guam continues to rely upon the US military, which already has substantial, well-developed capacity here, arrangements would have to be made. As an unincorporated territory, Guam does not make arrangements with the United States on a sovereign basis. There is no mutual consent for military activities or projects. If Guam were to become independent, Guam would then enter into negotiations with the United States regarding any defense or military-related issues as a sovereign country, with the full backing of germane international law and the benefits and responsibilities of being a country in the international community. This is a benefit of independence in relation to control of the land and the subsequent effects. This is not possible under unincorporated territory or statehood statuses. While it is possible under free association, independence provides the most opportunity in this regard.

While the island would continue to serve as a buffer against hostile regional forces, retaining its value to the US, military bases would be defended first, with the civilian community probably being something of an afterthought in the absence of a comprehensive defense agreement. In many ways, this is the case now as an unincorporated territory, however, there will be a difference in the US interest in protecting foreign citizens. While Guam would likely be able to extract fees from the military (US or otherwise) for the use of land resources, much of that revenue could be charged back by the military for the protection of civilians and civilian assets. However, this is not to say that there will be no economic benefit from continued US military basing in an independent Guam. For more on this, see the Bases subsection in the External Affairs/Defense section of this study. Although it is probable that the military bases in Guam

provide much greater value to the US (or whatever other country/countries take up the island's defense), the relationship between that value and the value to Guam of the defense of its civilian community is impossible to estimate because there are so many variable factors involved. The net cost of defending the island cannot be determined until the underlying negotiations have been completed.[388] Because of the innumerable uncertainties involved, the prospects for the future development of the military industry in Guam cannot be estimated, either in terms of direction or magnitude.

Should incomes decrease in Guam during the first years of the transition to independence, demand for the products of civilian industries would similarly decrease (although not necessarily in relative proportion), introducing a downward spiral in economic activity that could be more or less severe. Further, as the local government would have to replace several public services, including such social welfare programs as housing, food, medical assistance, infrastructure funding for roadways, utilities, the port and airport, Coast Guard and Federal Aviation Administration support, along with many others that are currently provided by the US government, public sector costs would increase simultaneously with what could be a substantial decrease in local government revenues to cover those costs. Without substantial foreign aid and assistance during the first years of independence, functional standards of living in Guam could fall to the point that there would be an exodus of portions of the population, primarily among today's middle-income households.[389] That, in turn, would strip Guam of the labor resources necessary for the economy to recover, even as the political system stabilizes and outside trust and confidence are restored. Yet, under independence, "it is anticipated that the island will receive substantial economic development funding over a period of fifteen or more years, partly in exchange for US military access rights in Guam. This funding also includes amounts negotiated to remedy infrastructure and environmental issues that were left unresolved prior to the status change."[390]

The paragraphs above focus attention on the first several years after Guam's transition to independence, and do not reflect a long-term prediction. It is important to note that independence would provide Guam with the greatest latitude in shaping its economic destiny over the longer term, redefining internal and external economic interrelationships, as well as structuring a legal system, a tax code and other parameters that are better tailored to the island's political and economic realities than the current systems that are in place.

For example, an independent Guam will be directly involved in relationships on a sovereign-to-sovereign basis. These relationships will allow the formation of new economic and political alliances, which could lead to more economically beneficial ties. As reported, "Guam's new status as a sovereign nation, combined with its evolving relationships with other nations within the Asian-Pacific economic sphere, will lead to opportunities to attract new investment and generate additional sources of economic growth.

388 Note that there would be imbalances between the leverage of the two (or more) respective sides in those negotiations, just as there are currently.

389 There was a substantial exodus of the middle class in the aftermath of Supertyphoon Pongsona, which occurred in December 2002; it has been estimated that the loss of population in 2003 and 2004 was as high as 25,000 (well over 10% of the population). Guam's economy has not fully recovered since then due to that exodus and other adverse factors.

390 Bradley, 2000, pg. 98.

These opportunities will be tied to Guam's ability to discover and expose credible areas of mutual benefit through direct discussions and negotiations with other Asia-Pacific governments and commercial interests."[391] There is room for maneuverability when it comes to Guam independence, to use its status as a sovereign country for the benefit of its economy, including the attractiveness of its investment environment. To create a beneficial investment environment, the country of Guam would have to exhibit a stable legal and judicial system as well as implement a tax code that will be favorable to outside investment.

Although the economic potential of an independent Guam would hinge upon conditions and events that cannot yet even be imagined, let alone anticipated, there is the possibility that future economic conditions and the welfare of Guam's citizens would be far better than they might otherwise be.

391 Bradley, 2000, pg. 97.

INDUSTRY DEVELOPMENT	
STATUS	**EFFECTS**
Statehood	• Availability of labor resources increased through greater influence in US federal government policies. • Changes to the tax structure could inhibit the rate of growth, as federal income taxes and various fees would no longer go to the local government. • The defense industry presence would likely increase due to greater federal interest to provide security for a US state. • Increasing construction would mean a larger supply of commercial facilities and larger supply of affordable housing.

Free Association	• Tourism arrivals could drop modestly as Guam reestablishes relationships with the rest of the world. • Initial investment reduction due to uncertainty with the new structure of government, depending on how long transition period is. • Local control of immigration could provide the labor for expanding construction projects, leading to a more rapid expansion in Guam's economy. • Higher incomes after Guam's legal and regulatory environment stabilizes will lead to economic expansion through increased demand for services such as trade, finance and some light manufacturing.
Independence	• Guam would be free to develop its own economy outside of the constraints of US law and regulation. • The tourism industry could contract temporarily as a newly independent Guam stabilizes its international reputation. • Job displacement among unskilled and semi-skilled employees in the tourism industry could significantly diminish standards of living, leading to social issues.

	• Guam's military industry as a source of revenue would likely become unpredictable, and the economic impact of this industry would be subject to negotiations between the United States and/or other countries and independent Guam. • Independence could possibly cause an increase in the size of government, a decrease in incomes and a potential downward spiral of economic activity that could cause an exodus of portions of the population. • However, independence provides the greatest economic latitude in the long-term, offering opportunities that may not be available under the current or alternative statuses including restructuring our economy and legal system to more appropriately relate to our geographic location, environment, and resources.

Revenue and Taxation

The government of Guam's tax revenue comes from three main sources: local income tax; Section 30 funds; and business privilege taxes. The first is a personal and corporate income tax, which mirrors the Federal Internal Revenue Code under Section 31 of Guam's Organic Act.[392] In order to reduce the need to make annual appropriations to support the government of Guam, the US Congress provided two funding sources based upon the US Internal Revenue Code: Under Section 31 of the Organic Act (the "mirror code"), income taxes levied upon those residing in Guam who are not federal employees are paid directly to the Treasurer of Guam instead of into the US Treasury. This means that none of Guam's federal income taxes get paid to the US Treasury. This also means that when the US Internal Revenue Code changes, Guam's mirror code changes as well, beyond local control.

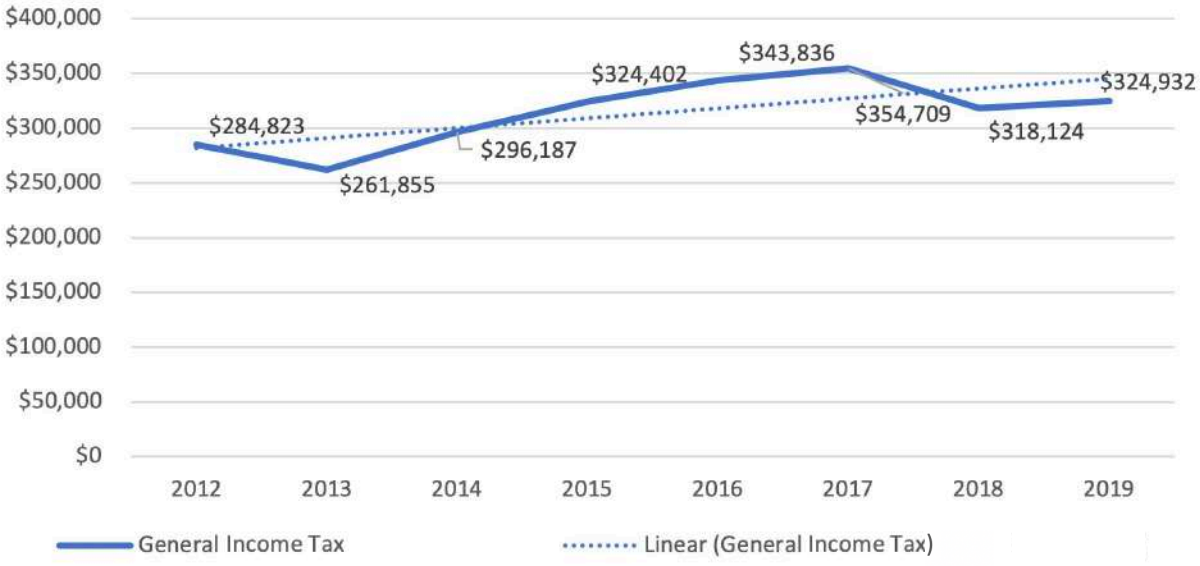
The second source is often referred to as Section 30 funds. Under Section 30 of the Organic Act of Guam, income taxes levied on US government employees (including members of the armed services) who are either residents of or domiciled in Guam are transferred to the government of Guam. Together, these two funding sources provide a substantial portion of the government of Guam's revenues. There is a potential third funding source provided for in the Organic Act, the imposition of import tariffs, but that authority has never been exercised by the government of Guam.

It should be noted that under Guam's Organic Act, the governor of Guam has the authority to assess a ten percent surcharge to income taxes, but this authority has never been exercised. This contrasts Guam's income tax policy to the policy of US states in that Guam only has one income tax whereas in most states people are responsible for paying federal, state and, in some places, even local income taxes. For context, this is an important source of revenue for the government of Guam. For example, in fiscal year 2020, the Government of Guam collected $407,242,318 in income taxes (including Section 30 federal income tax collections).

392 Consolidated Revenue/Expenditure Report (CRER), Bureau of Budget & Management Research, September 2012-2019.

INCOME TAX REVENUE (EXCLUDING SECTION 30 FUNDS)

(Real $000, with Trend)



The other main source of Guam's revenues is the Business Privilege Tax. Guam's business privilege tax has historically been integral in the revenue collections of the Government of Guam, but there are issues with business privilege taxes, also called gross receipts taxes, in general. One issue is that a gross receipts tax lacks transparency because the tax is incorporated into the shelf life of the product and thus becomes invisible to the consumer.

An alternative Guam has explored is implementing a sales tax, which is easier to track and is a more direct way to collect taxes, as opposed to placing the cost on businesses and making it their responsibility to pass on the cost to the consumer. Despite the benefits of a sales tax, businesses in the tourism industry argue that "…Guam's tourism marketing for decades relied on it being a 'duty-free destination,'" meaning that a sales tax could hurt Guam's appeal as a tourism destination.[393] While this may be true, survey data collected by the Guam Visitors Bureau shows that shopping is a minor motivator compared to factors such as visiting friends or relatives or Guam's natural beauty.[394] It also is not one of the top five motivators for the Japanese, Korean or American visitors, who made up about ninety percent of the visitor pool in 2019.[395] It is important for Guam to be tactful about which tax it chooses to implement, as this tax provides a huge portion of revenue for the government and is the primary revenue source that the local

393 Jamie Ward. "DFS: With sales tax, Guam may lose duty-free appeal" (March 2018) *The Guam Daily Post*. https://www.postguam.com/business/dfs-with-sales-tax-guam-may-lose-duty-free-appeal/article_383cd2da-2bf0-11e8-83c2-3793015915b7.html.

394 "Hinanao-Ta- Our Journey: Guam Visitors Bureau 2019 Annual Report" *Guam Visitors Bureau.*

395 Ibid.

government can control under its current territorial status.

There are also several other revenue sources that are separate from Guam's General Fund which support various government services. These revenues come from additional taxes and fees created by local law and are placed into special funds. These special funds are bound by restrictions under law, stating that the revenues can only go toward specific purposes.

Government of Guam
FY 2021 Special Revenue Fund Tracking
For the month ending February 28, 2021
Pursuant to §13109(a)(1) of Title 2 GCA, Chapter 13

Attachment A

		Description/Fund Code					
Month		*Guam Highway* **208**	*Solid Waste Operations* **416**	*Territorial Educational Facilities Fund* **205**	*Tourist Attraction* **206**	*Healthy Futures* **602**	*CQA Inspections Services Fund* **209**
FY 2021 (Oct 20 - Sept 21)							
(A) October	Actual	1,631,553	1,519,934	320,606	1,037,301	2,029,717	49,376
(B) November	Actual	1,724,720	1,431,743	137,590	703,947	4,033,633	47,547
(C) December	Actual	1,384,095	1,559,882	217,749	704,286	2,733,126	62,181
(D) January	Actual	1,267,391	1,477,462	3,483,970	715,026	2,355,831	79,448
(E) February	Actual	1,111,877	1,238,953	18,141,034	997,382	3,556,212	52,720
(F) March	Projected	1,640,501	1,599,184	1,425,043	1,856,255	2,876,000	357,923
(G) April	Projected	1,966,195	1,561,480	8,359,742	1,549,015	3,503,475	240,802
(H) May	Projected	1,749,876	1,611,679	1,067,550	1,261,424	3,877,619	233,242
(I) June	Projected	2,036,524	1,544,007	1,079,370	1,077,886	3,850,197	265,599
(J) July	Projected	1,935,185	1,601,754	580,494	1,163,814	3,842,280	289,255
(K) August	Projected	1,717,676	1,669,004	509,632	1,142,153	3,547,643	429,680
(L) September	Projected	1,816,080	1,619,060	311,531	1,588,687	4,995,076	263,500
(M) **Tracking FY 2021**		**19,981,672**	**18,434,142**	**35,634,312**	**13,797,178**	**41,200,807**	**2,371,272**
(N) **Public Law 35-99**		**22,894,794** 1/	**19,394,267** 1/	**38,072,814**	**18,336,091**	**42,748,091**	**4,105,776**
(O) **Overage/(Shortage)**	(M-N)	**(2,913,122)**	**(960,125)**	**(2,438,502)**	**(4,538,913)**	**(1,547,284)**	**(1,734,504)**

1/ Reflective of the adopted gross revenue level.

Note 1: Data contained herein are subject to change, as additional reconciliations are performed.

Source: Special Revenue Fund Tracking Report. (February 2021) Bureau of Budget & Management Research, Guam

Regardless of the political status option chosen, there are likely to be substantial changes in taxation by the government of Guam.

There are three factors underlying this: the local government will remain obligated to provide a range of public services similar to those it currently offers; in each of the options, the government of Guam will, at a minimum, lose the income tax revenues extracted from US government employees who are either residents of or domiciled in Guam, commonly known as "Section 30" funds; and although US government funding would likely increase under statehood for several existing programs, funding would decrease gradually or immediately under the free association option and likely end suddenly under independence unless there is a transition period. To provide an example, the Department of Administration reported that the total general revenue collected in FY 2020 was $830,465,613. Of this, Section 30 federal income

tax collections amounted to $82,309,451 or around 9.91% of total general revenue. To varying degrees, the government of Guam would likely have to increase local taxes in order to continue offering existing services that are currently subsidized by federal funding and may have to increase taxes in order to sustain programs that could lose federal funding. With the removal of certain mandates under Guam's current unincorporated territory status, several programs could be reduced or eliminated altogether under the free association and independence options, thus relieving the government of Guam from increasing taxes in order to cover those specific costs. The government of Guam also has other, non-tax revenue from fees and other charges, any of which could be retained, modified, discarded or supplemented under each of the three status options.

Statehood

Under the statehood option, all those taxes, including Section 30 and 31 funds, would be retained by or paid directly into the US Treasury, eliminating them as a source of operational funding for Guam's local government. The government of Guam would lose those funds as a source of revenue to pay for the public services it currently provides to the people of Guam. The government of Guam would have to implement new local taxes in order to continue to pay for these public services.

Although US government funding for public services and programs in Guam would be increased under the statehood option (e.g., funding caps on the federal portion of certain mandated social welfare programs that require local matching funds would be eliminated; the current cost of the Earned Income Tax Credit (EITC) would transfer to the federal government), there would still be an increase in the local government's obligations for certain programs that are currently federally subsidized. In addition, local programs that are currently funded, in whole or in part, by Sections 30 and 31 revenues would require alternative sources of funding if they are to be continued. In some programs, increased federal government funding would replace local government obligations, mitigating the need for additional local taxation, but local taxation would have to be increased to offset net taxes diverted to the US Treasury. The increase in local taxes would have to be sufficient to continue funding necessary services provided by the government of Guam that will not be funded by the federal government under statehood. If the government of the state of Guam fails to implement local, state taxes, many of the services provided today may be significantly reduced.

Free Association

Although there are recent models of free association between the US and former Trust Territory of the Pacific Islands ("TTPI") entities,[396] free association is a negotiated status which is subject to a relatively

396 The Freely Associated States of the Federated States of Micronesia, the Republic of the Marshall Islands and the Republic of Palau; the Commonwealth of the Northern Mariana Islands was also a part of the TTPI, but chose a commonwealth relationship with the United States, which has been interpreted by the Courts to be essentially the same as Guam's current unincorporated territory status.

wide array of responsibilities for both partners in the relationship. Although Guam would be released from the US Internal Revenue Code (the IRC) under this status and would lose Section 30 funding, it would be free to implement its own tax structure, which could be tailored to meet the local government's revenue needs and the economic development objectives of the island's people. It is likely that Guam would initially retain many of the features of the IRC for purposes of stability and because of their familiarity, but over time changes would be made as the tax code is modified to more directly address Guam's local circumstances. For example, the current IRC has many specific provisions that are inapplicable to Guam, such as oil depletion allowances and the degree of progressivity in tax rates. It is important to note that Guam has been authorized to "de-link" from the US Internal Revenue Code since the passage of the US Tax Reform Act of 1986 but has chosen to continue operating under the IRC. Guam still has the authority to de-link.

Under free association, it can generally be anticipated that the US government would provide substantial assistance with the status transition, including technical support and some funding.[397] There is also the potential for several US-administered and -funded programs to continue for extended periods (such as a parallel to the US Postal Service, the Federal Aviation Administration and limited programs of the US Department of Homeland Security, such as the Federal Emergency Management Agency (FEMA). Several law-enforcement functions would also likely continue.

Many of the public services that are presently provided or subsidized by the US government would no longer be available unless they are taken over by the government of Guam. Most notable among these are several of the current social welfare programs, such as the Supplemental Nutrition Assistance Program ("Food Stamps"), public housing and housing subsidies, Medicaid (which is already supplemented by Guam's Medically Indigent Program), Aid to Families with Dependent Children, the Women and Infant Care (WIC) program, Old Age Assistance, Aid to the Blind and several others. Social Security and Medicare benefits would probably continue for current participants and may be available for those who have established eligibility as of the date of status transition, but Guam would likely have to implement its own programs for those who would no longer be eligible for US program benefits.

Other areas in which US funding and other support would likely be eliminated or scaled back include several categories of justice assistance (such as the District Court, the Drug Enforcement Administration and the prison), education subsidies, highway funding, agricultural programs (including plant and pest controls), and the Small Business Administration. Several regulatory controls may also no longer be available, such as those overseen by the Food and Drug Administration, the Bureau of Alcohol, Tobacco, Firearms and Explosives, the US Environmental Protection Agency and the Occupational Safety and Health Administration. Regarding disaster assistance, it should be noted that the freely associated states of Micronesia retained eligibility for assistance from the Federal Emergency Management Agency until 2008. In 2008, per the Federal Programs and Services Agreement, the United States Agency for International Development (USAID) became responsible for emergency and disaster relief assistance. Per the agreement,

397 The Freely Associated States continue to receive funding from the US government under their Compacts of Free Association, the first of which were implemented during the 1980s.

> The Federated States of Micronesia may additionally request that the President of the United States make an emergency or major disaster declaration. If the President declares an emergency of major disaster, FEMA and USAID shall jointly (a) assess the damage caused by the emergency or disaster and (b) prepare a reconstruction plan including an estimate of the total amount of Federal resources that are needed for reconstruction.[398]

While the above listing provides a sample of some of the programs and services in Guam that are provided and/or subsidized by the US federal government, there are many others. Some of the programs and services would likely end immediately upon the change in political status, others would be phased out over time and some would continue for indefinite periods. Many would be subject to negotiation.

For example, in the Amended Compacts with the Republic of the Marshall Islands and the Federated States of Micronesia in 2003, the US provided for a total of $3.6 billion in compact sector grants, trust fund contributions, other grants, and access to US programs and services between FY 2003 and FY 2023. Section 221 of the Compact of Free Association with the Federated States of Micronesia states:

> The Government of the United States shall make available to the Federated States of Micronesia, in accordance with and to the extent provided in the Federal Programs and Services Agreement referred to in section 231, the services and related programs of:
>
> (1) the United States Weather Service
> (2) the United States Postal Service
> (3) the United States Federal Aviation Administration
> (4) the United States Department of Transportation
> (5) the Federal Deposit Insurance Corporation (for the benefit only of the Bank of the Federated States of Micronesia); and
> (6) the Department of Homeland Security, and the United States Agency for International Development, Office of Foreign Disaster Assistance.[399]

Under free association, Guam would have to negotiate for: the federal programs to be made available to the island; and the duration of time which these federal programs will be made available to the freely associated state of Guam. For example, pursuant to the first sentence of Section 221, under the separate Federal Programs and Services Agreement in 2004, many of these programs were made available to the FSM for a period of 20 years, meaning that they are set to expire in 2024. Similar negotiations would have to be made between the freely associated state of Guam and the United States.

There would be additional and replacement sources of funding and revenue for the government of

398 10-3 of the Federal Programs and Services Agreement between the Government of the Federated States of Micronesia and the Government of the United States, 2004.

399 Section 221 of the Amended Compact of Free Association between the United States and the Federated States of Micronesia, 2003.

Guam under free association status. Section 30 funding would be lost, but there would likely be funding available for the use of Guam land by the US Department of Defense, although the net amount after Guam pays the US DoD for the defense services that it provides to the civilian community may or may not be sufficient to replace the full amount of Section 30 revenues lost. Guam would also most likely be able to participate in numerous international organizations, such as the United Nations and the Association of South East Asian Nations, and avail some of their lending and grant programs (along with those of the International Monetary Fund and the Asian Development Bank), if eligible. Guam would also be able to solicit and receive grants in aid from other countries that have an interest in the improvement of the island's economy and other objectives. Guam's interactions with other countries, primarily in the realm of defense, could be somewhat affected by its obligations to the United States in exchange for military defense under the political status agreement. However, it is important to note that COFA countries such as the FSM, despite recurrent tensions between the US and China, still receive economic assistance from China. Thus, this issue will be dependent on the geopolitical environment as well as the freely associated state of Guam's relationship with countries like China.

While there would certainly be disruptions in revenue for the government of Guam due to the status change, a return to stability should be achievable within the first few years. Once the island's tax structure has settled, with permanent decisions on the use of public funds and its fiscal policy, one of the major obstacles to outside confidence would be resolved and outside investment should resume, albeit gradually.

Independence

As with so many other aspects of this political status option, there is a great deal of uncertainty regarding taxation and government revenues under independence. The scope of government involvement in the economy will depend almost entirely upon decisions made locally, so for purposes of some semblance of continuity, it will be crucial to carefully prepare in advance for this transition. Those decisions will have to begin with an assessment of exactly what scope of public service is expected and wanted, and then a realistic determination as to how to finance those services. Numerous external factors (i.e., global economic conditions, offshore assessments of investment opportunities in Guam, and Guam's tax and regulatory structure relative to other places) will affect what will be possible, given that initial confidence in the island's new political system will likely be limited until the new government can exhibit stability and continuity in order to gain international confidence in Guam's taxation and fiscal policy parameters. It will be important for Guam to be able to explicitly express its objectives and the path to achieving those ends and to devise a clear fiscal plan designed in support of those objectives.

While on the face of it, Guam would appear to be severing ties with the United States altogether, it is unlikely that the US would suddenly abandon the island and its people. While many elements of the current structure of financial support would end, including the remittance of the current Section 30 funds upon which local government operations have come to depend (as well as other contributions in terms of direct public services and the provision of existing social welfare programs), it can be expected

that technical assistance would be available. However, US federal financial support for Guam's government and the local economy can be expected to diminish rather quickly. Again, providing funding for the operations of Guam's government will likely be challenging, and devising an adequate fiscal plan would require balancing those programs and services that the people of Guam desire with the ability of government to capture sufficient revenues to pay for those programs and services, and to prioritize which of those the people of Guam can afford.

As with the free association option, it is likely that Guam would continue to use the US Internal Revenue Code under independence as its income tax system for a period of time so as to smooth the fiscal transition and provide continuity and reliable expectations for households and businesses. Along with the Business Privilege Tax, income taxes have provided the primary source of local government revenue. However, depending upon the level and type of government services that are desired, rather substantial other sources of local government revenue may be necessary, which would require careful consideration in devising a tax structure that would provide sufficient revenues while not inhibiting commercial activity or household standards of living. This could be extremely complicated, especially because Guam would still have to import most of what is consumed here. The prospect of imposing import tariffs could raise prices in the local market, but the foundations of the economy — tourism and defense — may not otherwise provide the level of export earnings to which the island has become accustomed.

This is not to discount the likelihood of significant opportunities for foreign aid and other international assistance, including from the United States, which may help to offset the reductions in current US federal government funding and the corresponding rising burden of costs to be borne by the local government. However, caution is strongly advised to avoid direct and indirect (potentially long-term) influence in the local government and its programs and public services in exchange for what would likely be temporary external financial assistance. For instance, there are cases in which one national government funds large infrastructure projects for a different national government, with the receiving government surrendering ownership of that infrastructure to the lending government should payments not be made on time. The details of local government finances under independence will require intense examination and planning and should largely be settled before the status transition begins.

REVENUE & TAXATION	
STATUS	**EFFECTS**
Statehood	• Section 30 and Section 31 funding would revert to the federal government, but would be partially offset by federal payment of the Earned Income Tax Credit.

	• There would likely be increases in federal government funding, but local taxation would probably have to be increased to offset current tax revenues being diverted to the US Treasury.
Free Association	• Free to create a tax structure tailored to local government's revenue needs and economic development objectives. • It can be anticipated that the US government would provide substantial assistance with the status transition, including both technical support and some funding. Some current US services may continue. • Guam would have to offset the costs of many of the services that are currently provided by the US, increasing the need for taxation • Would have access to the international community for grants and funding if eligible.
Independence	• Under independence, Guam could seek financial support and in doing so, create a carefully crafted, realistic fiscal plan to present to potential international organizations and countries. • Opportunities for foreign aid and other international assistance, including from the US, if eligible.

Currency

Currency serves as a universal store of value that can be easily used by members of society as a medium of exchange. Typically, in the form of bank notes or government-issued paper money, currency fulfills three primary functions: to account for value; to provide a medium of exchange for goods and services; and to store current economic value for future use. Prior to the abandonment of the gold standard in the 1970s, the US dollar, hereinafter "the dollar," was used in the United States and throughout the world as representative money, meaning each bank note or coin was legally redeemable on demand for a certain amount of physical metal (gold).[400] With the end of the gold standard, the dollar took on the form of fiat money, or money which "holds value simply because people have faith that other parties will accept it." Most major forms of currency today are types of fiat money.[401]

The value of currencies is influenced by a variety of economic factors. It is affected by scarcity and supply and demand because, like goods, currencies are bought and sold throughout the world. Simply put, when a currency is highly sought by many people, it is in high demand, and is therefore valuable, and vice-versa. A country's economic stability and whether investors are attracted to invest in a country also affects a currency's value. When investors have faith in the stability and outlook of a country's economy, they are enticed to invest in that country and must invest with the currency of that country, thereby increasing the value of that country's currency. The value of currency is further affected by inflation, a decline in the purchasing power of a country's currency.

Because Guam's economy is so heavily dependent upon imports from other places and the export of its services, it will continue to be crucial that the island's currency be accepted, at least externally and internationally, as a medium of exchange. The dollar is highly regarded in international financial markets and meets that criterion, and will likely continue to be in use, at least for external trade purposes, for an

400 Daniel Kurt, "How Currency Works," *Investopedia*, August 19, 2020, accessed at https://www.investopedia.com/articles/investing/092413/how-currency-works.asp.

401 Ibid.

extended period of time.[402] The dollar is the world's most commonly used currency, the world's reserve currency, and one of the most currently traded currencies on the foreign exchange market. Although it is possible that Guam could create its own currency for purposes of internal transactions, the complications in establishing a local market for currency exchange, similar to foreign exchange markets in the conversion of one country's currency for that of another, would likely be prohibitive because of low-volume transactions and the resulting high average cost of conducting those transactions. In the alternative, Guam could adopt another country's currency for its own use. However, it is almost certain that Guam would continue to use the dollar as its currency post-transition regardless of which political status is chosen. Some countries in the world today continue to use the US dollar such as all the Freely Associated States of the Micronesian sub-region, Ecuador, East Timor, Zimbabwe, and El Salvador.

Statehood

The likelihood that the United States would permit any individual state to issue or maintain a currency other than the dollar is practically nonexistent. Several states established their own banking systems and currencies during the 1800s, but that system of banking was ultimately determined to be inefficient and effectively unworkable, so a national currency and unified monetary policy was developed and has been in use for well over a century. Thus, the state of Guam, as all the other states of the Union, will use the US dollar as its currency.

Free Association

All of the FAS (Palau, Marshall Islands, Federated States of Micronesia) have retained the dollar as their currency, as have several smaller, long-established foreign countries (such as Ecuador, El Salvador, Timor-Leste and Zimbabwe). As of this writing, the value of the dollar serves as the international standard against which all other currencies are evaluated and is considered to be desirable for its relative stability in currency exchange markets. To put it another way, the US dollar, which is issued by the Federal Reserve, is the counting unit used in most international transactions and it is also the currency in which many of those transactions are negotiated and made. Thus, it is likely that the freely associated state of Guam would use the US dollar as its currency as well.

Independence

Although it would be possible for an independent Guam to issue its own currency, the prospect would simply be impractical, especially in the early years, when confidence in the island's new political

402 Several countries have attempted and generally failed to establish their own cryptocurrencies for internal and sometimes external trade. Other countries have often experienced relatively large variations in the value of their sovereign currencies in international exchange markets.

system would be limited, not only internationally but probably internally as well. It is quite likely that, under independence, Guam would retain the dollar as its currency for the foreseeable future. This would be beneficial for an independent Guam because it is a universally recognized currency which is widely traded and "priced" relative to other sovereign currencies and is used as a unit of account and medium of exchange in the majority of international transactions.

CURRENCY	
STATUS	**EFFECTS**
Statehood	• Unlikely to change during statehood.
Free Association	• All of the three freely associated states (Palau, FSM, and the RMI) use US currency, and this will likely be the same for Guam.
Independence	• Guam would be able to create its own currency, but this would be impractical, especially in the early years when confidence in the political system is limited.

Debt

Debt is money that is borrowed on the credit or collateral of an entity that is required to be paid back, usually with interest. Government debt has many differences from debt held by individuals or private businesses, and different types of governments also have access to different forms of debt. Governments often take a combination of loans and bonds when they accumulate debt. Loans are one form of debt owed by the government of Guam, but these are a small portion of the government's overall debt and are not taken out by the government of Guam as an entity. Rather, these loans are usually taken out by individual agencies and are financed by this agency's autonomous revenue streams, such as tuition with the University of Guam or utility rates with the Guam Power Authority. Private lending institutions as well as federal agencies such as the Small Business Administration and the USDA Rural Development program provide loans that function essentially the same as loans in the private sector. However, a large overall portion of a government's debt comes from bonds, which are forms of debt that come with a commitment to pay both periodic interest and repayment of the original amount of the debt on maturity. Bonds are often used to quickly infuse large amounts of cash to immediately fund projects. Bonds can be issued to corporations, investors, or even individuals, and the government promises to pay these back over time.

Guam's current status as a territory limits the types of bonds that it is able to issue. Unlike independent countries, which have access to sovereign bonds (issued by the national government and sometimes in foreign currencies), Guam borrows by issuing bonds, for all intents and purposes, as a US municipality, and is limited from pursuing some types of bonds. As a territory, Guam is also unable to use central banks to buy bonds back in a process called quantitative easing, a process which creates new electronic money and uses that money to purchase bonds from private investors. Additionally, without a central bank, Guam as a municipality has fewer avenues to quickly rid its government of debt compared to independent countries.[403]

The Guam Economic Development Authority (GEDA) distinguishes between three main types of

403 *Bank of England*, "Inflation and interest rates FAQs," 2021, accessed at https://www.bankofengland.co.uk/faq/inflation-and-interest-rates.; James Chen, "Government Bond," *Investopedia*, November 29, 2020, accessed at https://www.investopedia.com/terms/g/government-bond.asp.

bonds in our current territorial status. Bonds essentially are loan agreements, where a specific sum is borrowed for a specific purpose and then repaid with interest over time. In addition to bank loans and other minor sources, these bonds constitute the debt owed by the government of Guam and its agencies. Under Guam law, ten percent of every new bond issued is reserved for sale to local residents for a period of ten days and then it is available on the open market. They are primarily sold to insurance companies, large banking organizations, and more recently, to hedge funds. However, the data on who exactly owns these bonds is rarely available to the Government of Guam as bonds are primarily sold through third-party brokers and sometimes actively traded between and among investors in financial markets.

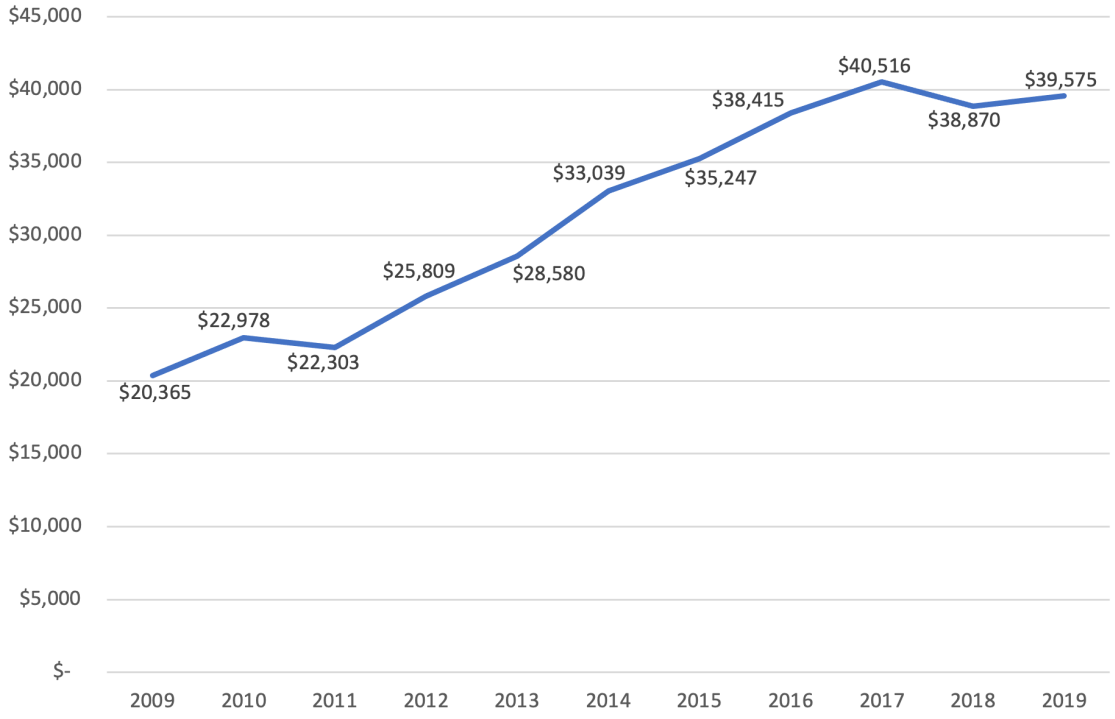
General obligation bonds rely upon the full faith and credit of the government, and a portion of Guam's tax collections are pledged to repay the debt over time. These obligations are paid from the General Fund. The General Fund is the chief operating fund of GovGuam and is required to assume the burden of any shortfalls in most other government funds and activities.[404] It is the primary revenue source from which most government agencies and programs are funded. The General Fund differs from special funds, which are separate and distinct revenue accounts used by GovGuam for the funding of certain agencies and programs.

Repayment of the limited obligation bonds is through specific GovGuam taxes to go towards specific purposes. Limited obligation bonds, also known as revenue bonds, are bonds issued by a state or public agency to build or improve a revenue-producing property like an airport or electric generating plant. They differ from the general obligation bonds described above as limited obligation bonds are payable from specified revenues only. For example, one tax, Guam's Hotel Occupancy Tax (HOT), has a bond pledged in its name. A portion of the funds collected from the HOT goes to repaying this bond in the long term, and the borrowed bond money is dedicated to a variety of purposes, from community sports to providing funding for the Fisherman's Co-op to revitalizing Tumon, Hagåtña and other villages.

404 Guam Office of Public Accountability, "Government of Guam - FY 2019 Financial Highlights," August 28, 2020, accessed at https://www.opaguam.org/sites/default/files/ggw_fy_2019_hl_-_final.pdf.

TOURISM ATTRACTION FUND COLLECTION (REAL DOLLARS)

($000)



Instead of pledging tax collections to repay revenue bonds, the utility agencies and ports pledge cash flow that is not a part of the general fund. Much of this borrowing is by GovGuam's autonomous public agencies. The Guam Power Authority, the Guam Waterworks Authority, the Guam International Airport Authority and the Port Authority of Guam all have issued bonds in the financial markets and pledge a portion of the agency's revenues to fund specific projects that generate revenues to repay those bonds (debts); the remainder is used to fund operations (labor, supplies and materials, and other obligations).

The distinction of autonomous agency revenue bonds versus other government debt is important because autonomous agencies, despite being regulated as part of the government and subject to the scrutiny of public policy makers, are generally responsible for their own expenses and, by extension, their own debt. Because they are still government agencies, any borrowing done is still considered "public debt," but repayment of these funds is not accounted for in the annual budget of the government of Guam (as are the other types of bonds). These bonds do, however, affect our community through increased rates or fees from these agencies.

According to the Office of the Public Auditor, Guam has $2.4 billion in public debt to investors, including the debt of GovGuam autonomous agencies (see table on pg. 190). Excluding the autonomous agency debts, according to the November 2020 Government of Guam Long-Term Debt Abstract, GovGuam has $1.05 billion in general fund debt and a debt ceiling of $1.35 billion (as specified by the Organic Act's limitation of general fund debt to be no more than ten percent of the assessed value of

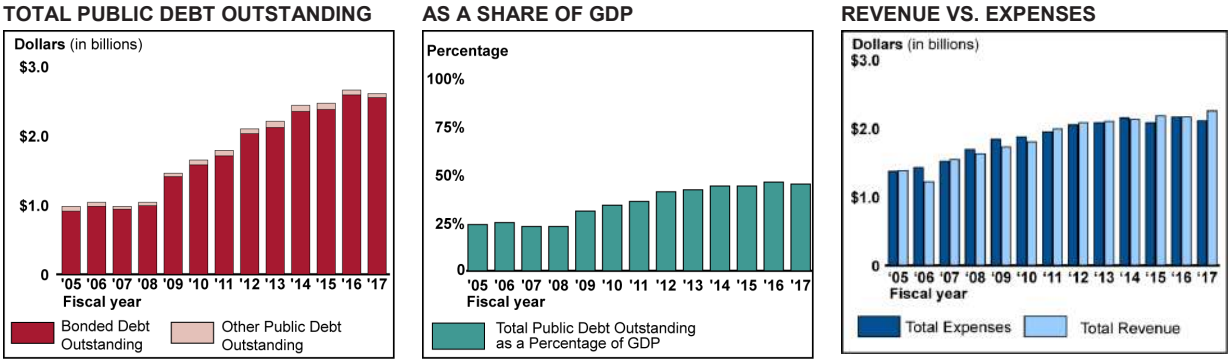
Guam's real property for property tax purposes) Per the Organic Act and codified as 48 USC, § 1423a,

> bonds and other obligations may be issued by the Government of Guam: Provided, however, that no public indebtedness shall be authorized or allowed in excess of 10 per centum of the aggregate tax valuation of the property in Guam. Bonds of other obligations of the government of Guam payable solely from revenues derived from any public improvement or undertaking shall not be considered public indebtedness of Guam within the meaning of this section.[405]

This means that GovGuam is presently only allowed to issue $305 million more in in general fund debt until either the current debt is reduced or the valuation of real property for property tax purposes is increased.

405 48 USC., § 1423a

GUAM PUBLIC DEBT AND REVENUE, FISCAL YEARS 2005-2017



Source: GAO analysis of Guam single audit reports for fiscal years 2005 – 2017. | GAO-19-525
Note: Total public debt outstanding is the sum of bonded debt outstanding and other debt held by the primary government and component units.

GOVERNMENT OF GUAM

Summary of Outstanding General & Limited Obligation Debt as of October 31, 2020

			TOTAL (90% of Appraised Value)
Assessed Value (90% of Taxable Appraised Value) as certified on October 31, 2019 [1]			
		Land	$6,283,128,975
		Improvements	$7,242,272,211
		Total	**$13,525,401,186**
Debt Limit (Ceiling) - 10% of Assessed Value[1]			**$1,352,540,119**

Issue Date	Maturity Date	Description	Total
GENERAL OBLIGATION DEBT			
4/28/2014	8/20/2025	Government of Guam, Guam Legislature Building (P.L. 32-067 & 32-106)	$3,666,507
7/25/2019	11/15/2031	Government of Guam General Obligation Bonds, Series 2019 (P.L. 35-21)	$27,045,000
		TOTAL GENERAL OBLIGATION DEBT	**$30,711,507**
LIMITED OBLIGATION DEBT			
6/12/2003	6/12/2044	University of Guam Rural Development Loan (P.L. 26-48)	10,541,086
4/28/2011	11/1/2040	Hotel Occupancy Tax Revenue Bonds Series 2011A (P.L. 30-228)	$73,020,000
12/1/2011	1/1/2042	Business Privilege Tax Bonds Series 2011A (P.L. 31-76)	$215,575,000
6/6/2012	1/1/2042	Business Privilege Tax Bonds Series 2012B-1 & 2012B-2 (P.L. 31-196)	$99,040,000
9/3/2015	11/15/2039	Business Privilege Tax Bonds Series 2015D (P.L. 33-60)	$400,825,000
8/17/2016	12/1/2046	Government of Guam Limited Obligation (Section 30) Bonds, Series 2016 A (P.L. 33-183)	$217,325,000
		TOTAL LIMITED OBLIGATION DEBT	**$1,016,326,086**
Total GOG Debt Subject to 10% Assessed Value Limitation (Ceiling)			**$1,047,037,593**
Subtotal Amount Available for Future Debt Obligation			**$305,502,526**
LESS: Legislatively Approved Financing w/debt ceiling impact:			
1/8/2009		Department of Land Management Building (P.L. 29-135)	$15,750,000
10/13/2014		Guam Memorial Hospital Authority (Labor and Delivery Ward) P.L. 32-204 & 33-151	$9,200,000
		S. TOTAL	***$24,950,000***
Amount Available for Future Debt Obligation			**$280,552,526**
Legislatively Approved Financing - no debt ceiling impact:			
2/13/2014		Simon Sanchez High School (P.L. 32-120, 34-19,34-101, & 34-117)	$60,000,000
6/6/2011		Department of Education Public Schools Lease (P.L. 31-229, 32-121)	TBD
9/7/2012		Department of Public Works (GARVEE) Bonds (P.L. 31-233)	$75,000,000
		TOTAL	***$135,000,000***
Legislatively Approved Financing (Inactive)			
9/30/2008		GFD Financing P.L. 29-113 *(Funded with Federal grant funds)*	$7,800,000

Notes:

1) Public Law 31-196 Section 1 redefined assessed value from 90% to 100%

*** 9/10/16: P.L. 33-185 (Bill 250-33) Legislative action drops the assessed value from 100% to 90% of Taxable Appraised Value*

2) $21.7 Million University of Guam Endowment Foundation USDA (2016) loan withdrawn in June 2019 due to limitations.

Source: Government of Guam Long-Term Debt Abstract, November 2020

GOVERNMENT OF GUAM
Summary of TOTAL Outstanding Debt as of October 31, 2020

	Aggregate Outstanding Principal Amount	Final Maturity. (Fiscal Year ending September 30)
General Obligation Bonds and Other General Obligations		
Guam Legislature Building, Resolution 174-30, 2 G.C.A.1126 and 21 G.C.A. § 79602, P.L. 32- 106	3,666,507	2025
Guam General Obligation Bonds, Series 2019	27,045,000	2032
Subtotal	$30,711,507	
Limited Obligation Bonds and Other Limited Obligation Indebtedness		
University of Guam Rural Development Loan (2003) (P.L. 26-48) [1]	10,541,086	2044
Hotel Occupany Tax Revenue Bonds, Series 2011A [2]	73,020,000	2040
Business Privilege Tax Bonds, Series 2011A [3]	215,575,000	2042
Business Privilege Tax Bonds, Series 2012B-1 & 2012B-2 [3]	99,040,000	2042
Business Privilege Tax Bonds, Series 2015D [3]	400,825,000	2040
Limited Obligation (Section 30) Bonds, 2016 Series A [4]	217,325,000	2046
Subtotal	$1,016,326,086	
Revenue Bonds and Other Obligations[5]		
Guam Power Authority Revenue Bonds, 2012 Series A	324,735,000	2034
Guam Power Authority Revenue Bonds, 2014 Series A	72,340,000	2044
Guam Power Authority Revenue Refunding Bonds, 2017 Series A	148,355,000	2040
Guam International Airport Authority Loan (2012)	4,693,998	2024
A.B. Wonpat International Airport Authority Guam General Revenue Bonds, Series 2013 A, B & C	180,090,000	2043
A.B. Wonpat International Airport Authority Guam General Revenue Bonds, Series 2019 A & B	37,045,000	2025
Guam Waterworks Authority Water and Wastewater System Revenue Bonds, Series 2013	27,340,000	2028
Guam Waterworks Authority Water and Wastewater System Revenue Refunding Bonds,Series 2014 A & B	65,140,000	2035
Guam Waterworks Authority Water and Wastewater System Revenue Bonds, Series 2016	142,890,000	2035
Guam Waterworks Authority Water and Wastewater System Revenue Refunding Bonds, Series 2017	107,365,000	2040
Guam Waterworks Authority Water and Wastewater System Revenue Bonds, Series 2020 A	134,000,000	2050
Guam Waterworks Authority Water and Wastewater System Revenue Refunding Bonds, Series 2020B (Federally Taxable)	166,075,000	2043
Guam Housing Corporation Mortgage-Backed Revenue Bonds, Series 1998	3,267,272	2031
Guam Economic Development Authority Tobacco Settlement Asset-Backed Bonds, Series 2007A and Series 2007B	40,528,618	2057
Guam Department of Education Certificates of Participation, Series 2013A[7]	16,268,000	2030
The Industrial Development Authority of the City of Phoenix, Arizona (Guam Facilities Foundation, Inc.), Series 2014 [7]	94,890,000	2044
Guam Education Financing Foundation Certificates of Participation, Series 2016 [6]	27,420,000	2026
Guam Community College Foundation USDA Loan (2016) [7]	4,082,476	2056
Port Authority of Guam Port Revenue Bonds, 2018 Series A, B and C	67,745,000	2048
Judicial Building Fund Revenue Note (2020) (P.L. 33-66)	15,000,000	2051
Guam Department of Education Certificates of Participation (JFK, Refunding and Energy Efficient Project), Series 2020A[7]	65,420,000	2040
Subtotal	$1,744,690,364	
Total Indebtedness	$1,775,401,871	

[1] Payable primarily from mass transit automotive surcharges.

[2] Payable primarily from Hotel Occupancy Tax revenues.

[3] Payable primarily from Business Privilege Tax revenues.

[4] Secured by and payable primarily from Section 30 Revenues.

[5] Not treated as "public indebtedness" for purposes of the Organic Act debt limit.

[6] Payable primarily from Compact Impact Funds (funds appropriated by the U.S. government to mitigate the impact on Guam of the Covenants of Free Association of the Republic of the Marshall Islands and the Federated States of Micronesia); lease payments due in 2023-25 relating to $14,015,000 of certificates are payable from the General Fund, subject to annual appropriation by the Government.

[7] Lease payments are subject to annual appropriation by the Government.

Source: Guam Economic Development Authority.

Source: Government of Guam Long-Term Debt Abstract, November 2020

It is likely that, regardless of the political status option selected, the outstanding debt of the government of Guam pre-transition would be carried forward through the conversion to its new political structure. It is effectively inconceivable that the government of Guam could unilaterally cancel or transfer its current outstanding debt. To do so under the statehood option would undoubtedly be unacceptable to the United States, and although it may be possible under the free association and independence options, it would likely create long-term distrust and a perception of financial instability and unreliability that would take an extended period to overcome. Under the latter two status options, it is highly recommended that the government of Guam's debt payments be kept current and without any perceived threat of default.

The issuance of new debt instruments (bonds or other debt financing, such as loans from banks, etc.) under the statehood option would likely be fairly straightforward and would have the benefit of its interest payments being tax exempt at the national level, categorized as "municipal bonds" under the US Internal Revenue Code (except if that debt has certain characteristics, such as arbitrage bonds in which the issuer pays a lower interest rate than it earns from investing those funds on its own behalf, on which the debtholder is liable for taxes on their interest earnings). Under the free association and independence options, the marketability of new debt instruments would depend heavily upon the perceived stability and reliability of the new government. Although the interest income from those debts may be tax-exempt within Guam, it is unlikely that it would be in the United States or other countries, making that debt somewhat less attractive and requiring higher promised pre-tax returns (without a tax exemption on the interest earnings on the debt, the interest rate would have to be increased to provide the same after-tax return as tax-exempt interest on debt of similar risk).

Collateralized public debt, wherein some of the physical assets of the issuer of the debt are pledged to the debtholders as collateral if the debt is not repaid as per the debt agreement, is of particular concern, especially when held by foreign governments. Several countries around the world have been overly optimistic about their future revenues and cash flows, and have committed themselves to high debt payments, especially in foreign financing of large-scale infrastructure projects, using the infrastructure (instead of dedicated revenue sources) itself as collateral. There have been many instances where the borrowing country has defaulted on its debt and the lending country has taken ownership of the collateral physical assets.

Statehood

Although it is possible that the US government would absorb the burden of Guam's current debt in the transition, that is highly unlikely except under the most extreme of circumstances. It is virtually assured that the other states would adamantly protest. As indicated above, it would likely be far easier for the post-transition government of Guam to issue new debt, and at a relatively lower cost, than it would be under the other two status options. Interest paid on debt issued by the government of Guam currently is tax exempt at the territorial and federal levels, but also has tax exemption in the other fifty states. Thus, such debt is characterized as being "triple tax-exempt." If Guam were to become a state, the debt that it issues would still be exempt at the local and federal levels, but the interest paid to debtholders would be

taxed by other states and may require a higher interest rate ("yield") to be paid.

Free Association

Any issuance of new debt would be considered to be "foreign bonds" in most markets, and marketability would depend upon the perceived stability and prospective anticipated cash flows of the new government. The existing Freely Associated States have generally not been able to issue long-term bonds and have had to rely upon bank debt to meet their temporary financial shortfalls (if they are considered commercially creditworthy, which they generally have been). Debt placed with commercial banks may still be available, but at moderately elevated interest rates because Guam would no longer be perceived as a US "protectorate" backed by the full faith and credit of the United States as a possible source of recourse by the debtholder. While it may be possible for the government of a freely associated Guam to declare bankruptcy under its own laws, it would make it difficult to issue additional debt in the future (without a contractual waiver of the government of Guam's right to declare bankruptcy), which would be imprudent and only exercised as a last resort.

Independence

Because of the uncertainty associated with this status, it would likely take several years until new debt would be generally acceptable either in international markets or with commercial banks, except at significantly elevated interest rates because of the heightened perception of repayment risk. Other sources (the International Monetary Fund, the Asian Development Bank, etc.) would likely impose conditions, such as modification of its tax and spending policies, on Guam's government that may affect the availability of local funding for other purposes. Nonetheless, as an independent country, it is likely that Guam would have access to international credit markets, including credits from other governments. This could help stabilize the economy and fund infrastructure projects that are short-term expenditures for long-term benefits in an independent Guam.

DEBT	
STATUS	**EFFECTS**
Statehood	• Would likely be somewhat easier for the post-transition government to issue new debt at a relatively low cost.

	• The interest paid on Guam's debt would no longer be exempt from taxation by other states, but would remain tax-exempt locally and at the federal government level.
Free Association	• Debt would likely be considered foreign bonds, and marketability and cost depend on the perceived stability of local government and its revenues • Borrowing from commercial banks may still be possible, but at moderately elevated rates.
Independence	• Likely would take several years to issue debt in international markets or borrow funds from commercial banks because of the uncertainty of this status, except at significantly higher interest rates. • Guam may have access to credit available from international organizations such as the International Monetary Fund and the Asian Development Bank.

Commerce, Trade, and Customs

Commerce is defined as the exchange of goods or services for something of value, usually (but not necessarily) on a relatively large scale. In that regard, it is essentially the same as trade, and the words are often used interchangeably. In common usage, though, commerce usually refers to exchange within the boundaries of a geopolitical area, whereas trade most often refers to exchange across such boundaries. While the rules and conventions of commerce within boundaries are highly variable and may differ substantially from country to country, state to state and region to region, the rules and conventions of cross-border trade, with some exceptions, have become relatively uniform throughout the world under multilateral trade agreements. The exceptions often arise when one area grants more favorable treatment in trade to another than is available to all areas, or imposes restrictions or prohibitions upon trade, whether by geopolitical area, specific or general product type, or the outputs of particular industries. The exceptions are effected through some sort of border control, whether by tariffs, quotas, nontariff barriers such as agricultural and other product safety or uniformity standards, or outright exclusion, and enforcement of these exceptions generally falls within the definition of "customs."[406]

Within a given area, the rules and conventions of commerce can range from unrestricted capitalism (wherein the government makes no attempt to regulate or control business activity) through mixed capitalism (wherein many of the means of production are privately owned but some are regulated by the government, and the government provides support for some businesses and private individuals) to mixed socialism (wherein many of the means of production are publicly owned but some are privately owned and regulated by the government, and the government provides support for many businesses and private individuals) and more pure forms of socialism (wherein the government owns most of the means of production outside of households and may distribute the products of the economy more or less equally across the entire population).[407] The form that commerce takes typically depends upon one or another

406 The word, "customs," can have any of several meanings, but here it will refer to the enforcement of trade laws, rules and regulations at a geopolitical boundary.

407 These classifications refer to some of the more common forms of the organization of economic systems, and should not be confused with classifications of the organization of political systems such as democracy, communism or authoritarianism.

political ideology that describes the type of economic system that is expected to be most advantageous, whether to a population at large or to one or more subgroups within that population. Guam's three political status options would provide greater (as in the case of independence) or lesser latitude (as in the case of statehood) in determining which economic system is selected to establish the internal norms of commerce.

Over the past several decades, many of the barriers to cross-border trade such as tariffs (which are generally used to generate revenues for the implementing government) or quotas (generally used in support of domestic development for infant industries or maintenance of the capacity to produce goods and materials that are of strategic importance) have been relaxed or eliminated altogether, whether through bilateral, multilateral (such as the North American Free Trade Agreement, "NAFTA") or global agreements (such as the General Agreement on Tariffs and Trade, "GATT," organized under the auspices of the World Trade Organization, the "WTO"). While unrestricted "free trade" is the ideal, extracting the greatest economic efficiencies from available resources, for various reasons there are exceptions to the terms of these agreements, primarily associated with political objectives. These objectives are sometimes advanced through the granting of "most favored nation" status by one country to another.

Much of Guam's commerce today is reliant on imports from other locations. In 2019, Guam exported $32.2 million and imported about $423.1 million, resulting in a negative trade balance of $390.9 million.[408] This huge trade deficit means that Guam's economy is heavily dependent on imports to sustain the standard of living that is expected by Guam's residents.

Statehood

Under this status, Guam would have limited control over the norms for internal commerce in the same way that it does currently, since many of the standards will continue to be set by the US federal government. As a state, Guam would be bound by the terms of trade that are established at the national level and would almost certainly become a part of the customs territory of the United States, subject to the same established tariffs, quotas and exclusions as other states. This would likely increase the costs of Guam's imports from foreign countries, such as gasoline, thus increasing the prices of those products to the final consumers.

Free Association

As a freely associated state, Guam would no longer be subject to all of the commercial standards that are currently required by the United States but may continue to follow those standards for practical purposes or as negotiated in achieving this status. Otherwise, Guam would have the latitude to establish its own internal standards. Under free association, Guam would be eligible to enter into agreements,

408 Guam Bureau of Statistics and Plans. Various import and export statistics publications for 2019. Export statistics are reported quarterly, for each of the four quarters; import statistics are reports for January and November only, and the total is estimated by adding the total imports by air and sea for those two months and multiplying by six.

including trade agreements, with other sovereign countries and participate in international organizations such as the World Trade Organization, binding itself more or less tightly to the global community. It would likely be to Guam's advantage to do so and to comply with those standards in order to maintain beneficial relationships with other countries. Guam would continue to control its own customs territory but would be unlikely to impose tariffs or quotas on imports so as to avoid price increases and/or scarcity. The island would likely continue its exclusion of dangerous substances such as addictive or deleterious drugs, plant and animal pests and diseases, and some nuclear materials. Guam may also be willing to agree to join in the United States' export control regime so that certain regulated products and technologies would remain available here.

Independence

Under independence, Guam would have virtually total control over its choice of economic system and could establish its norms for internal commerce in any way that it chooses. Until that choice is made, there is a great deal of uncertainty regarding internal economic relationships between the public and the private sectors, as well as among those in the private sector. As a consequence, development priorities cannot be anticipated, and the direction of change in the most important measures of economic performance cannot be assessed. Even the difference between choosing mixed capitalism or mixed socialism, including the regulatory regime governing business activities and the distribution of the goods and services produced here, could have substantive impacts on the types and levels of economic activity. In order to maintain continuity and to express greater stability to the outside world, it is likely that mixed capitalism will remain the system under which commerce is conducted in Guam. But even within that system there is a wide spectrum of laws and regulatory controls that could be used to guide the economy.

In terms of cross-border trade, independence as a political status would provide Guam with wide latitude in its relationship with other countries and the global economy in general. However, there are good reasons that trade standards exist among countries, and it is likely that Guam would adhere to most of those standards. A failure to do so would risk isolating the island from much of the rest of the world, which could have enormous adverse effects on the standard of living of people living here. Similar to the current status of unincorporated territory and the free association option, Guam would have substantial control over tariffs and quotas, but similar levels of restraint would be advisable in order to control prices and the availability of products. It is likely that under independence, Guam would continue its exclusion of dangerous substances and that it would adopt US government export controls in order to continue the availability of certain products produced in the United States.

COMMERCE, TRADE & CUSTOMS	
STATUS	**EFFECTS**
Statehood	• Become a part of the Customs Territory of the United States. • Trade barriers with the United States would cease, but US tariffs and quotas would be applied to some foreign goods entering Guam, potentially raising prices. • Limited control over the standards for internal commerce in the same way as it is now.
Free Association	• Eligible to change its commercial standards and enter into trade agreements, but would likely keep international commercial standards. • In control of its own customs territory, but would unlikely place tariffs because of the increased costs that would impose on imports into Guam. • May also agree to join the United States export control regime so certain regulated products and technologies would remain available.
Independence	• Total control over internal commerce, but with substantial uncertainty until decisions on commerce are finalized. • Ability to change its commercial standards and enter into trade agreements which could potentially improve import prices on products coming directly from Asia , but would likely keep international commercial standards.

Tourism

Because Guam is a relatively small remote island with few natural resources, high transportation costs and a fairly fragile ecosystem, many of the industries that develop and grow easily in other places are simply not feasible here on any substantial scale. It is quite fortunate for the civilian population of the island to have a tropical climate, lush vegetation, tranquil bays and wide, sandy beaches. These characteristics have made the island an attractive and even favored tourist destination, especially for people from some of the more affluent, yet colder, countries in our region. Adding to that good fortune is the fact that tourism is a low-impact, high-value industry. As a result, tourism has been Guam's primary civilian industry for nearly fifty years, generating thousands of jobs and hundreds of millions of dollars in income annually for people living here. Tourism has been very, very good for Guam's economy.

Guam's development of tourism was first acknowledged by local government officials in 1952, with the enactment of Public Law 67. The law implemented a plan to establish a travel industry on Guam. The measure was passed by the First Guam Legislature and signed into law by Governor Carlton Skinner. Unfortunately, the territory was blanketed with a security restriction on travel imposed by the formal naval administration. It was not until 1962, when President John F. Kennedy lifted the security restriction, that Guam's tourism development would move closer to realization. In 1963, the government of Guam established the Guam Tourist Commission within the Department of Commerce via Executive Order 63-10, which was issued by Governor Manuel F.L. Guerrero. With an initial budget of $15,000, the Guam Tourist Commission immediately began aggressive travel trade promotions in Japan and Southeast Asia. Additionally, the commission worked diligently on the development of Guam's tourism plan and lobbied air carriers to increase flight service to Guam from potential market areas.

The rewards of the Commission's efforts were reaped four years later, when on May 1, 1967, Pan American World Airways landed on Guam with 109 Japanese tourists. In that first year, Guam recorded 6,600 visitor arrivals. In July 1970, the Guam Tourist Commission was renamed Guam Visitors Bureau. Separated from the Department of Commerce, Executive Order 70-24, formally established the bureau as a nonprofit corporation. In 1983, Public Law 17-32 (The Guam Visitors Bureau Act) was enacted,

reorganizing the bureau as a public, nonprofit, membership corporation. Public Law 17-65 was passed in 1984, which established the Tourist Attraction Fund (TAF). Separate from the General Fund, the TAF is the source for the bureau's budget. Funds in this account are derived from hotel occupancy taxes collected from room nights sold. The occupancy tax is currently assessed at 11 percent. In 1990, Public Law 20-205 was passed and established a research department within the bureau. The department is responsible for the collection, analysis and evaluation of data on the visitor industry. Additionally, the department serves as the industry source for dissemination of data. In 1994, Guam welcomed one million visitors to the island in a year for the first time. In 2019, Guam broke a new record by welcoming 1.63 million visitors in a year.[409]

Even with this success, as with any other industry, tourism has its drawbacks. It is heavily relied upon as one of Guam's two primary sources of the outside income that is necessary to support the importation of things that have raised standards of living for much of the population here. The standard of living in Guam is far above that of our island neighbors in the region. In addition to the trash, waste, and congestion that the industry creates, it burdens the island's land and infrastructure resources, along with its demands for potable water and imported fossil fuels. The industry is inherently an unstable, unreliable source of earnings because tourism is a luxury for most visitors. Further, particularly for Guam's primary visitor markets, global and regional conflicts and epidemics directly affect the comfort that many tourists feel in traveling by air. Guam's periodic windstorms and earthquakes add to the perceived hazards of the island from many tourists' perspective. There were sudden and severe decreases in Guam's visitor arrivals during the first Gulf War in 1991, after the terrorist attacks on the United States on September 11, 2001, and during the second Gulf War, in 2011. Similarly, the outbreaks of Severe Acute Respiratory Syndrome ("SARS") in 2002 and the H1N1 swine flu in 2009 caused precipitous drops in our visitor arrivals. The global contagion of a novel coronavirus ("COVID-19") in 2020 brought Guam's tourism industry to a standstill, with visitor arrivals falling to near zero. Typhoons Omar in 1992 and Paka in 1997 caused immediate drops in the number of tourists coming to Guam, in large part because of damage to hotels and other tourism facilities, and Supertyphoon Pongsona in December 2002 brought monthly arrivals to a 15-year low. The "Great Quake" of August 8, 1993, caused a decrease in arrivals that has only been matched three times since then.

Because tourism is a luxury for most visitors, changes in gross domestic product ("GDP"), in their home countries have an exaggerated effect on their willingness to devote disposable income to travel. As a result, if earnings increase by one percent, say, in Japan, tourist spending by Japanese visitors to Guam increases by more than one percent, which is favorable. However, as earnings decrease, tourism spending will decline by a greater percentage, too. As a consequence, tourist spending in Guam is more volatile than is income in our target markets, creating a degree of instability in the island's export earnings and, by extension, the income of much of Guam's civilian population.

In addition to visitor spending, Guam's tourism industry often brings high levels of outside investment

409 This brief historical overview was directly provided to the authors by the Guam Visitors Bureau and thus is used verbatim.

into the civilian economy as new hotels and other facilities are constructed, and construction spending is the primary driving factor underlying the island's business cycle. As those structures are completed (often relying on temporary foreign labor resources) new businesses are opened and new, permanent jobs are created for the resident workforce. Historically, Guam's economic activity and increases in civilian employment have expanded during and after periods of increased outside investment, followed by new, higher plateaus of payroll employment, incomes and standards of living. This has become characteristic of the island's long-term growth cycle.

Because tourism holds Guam's greatest potential for export earnings in the civilian sector now and in the foreseeable future, it is highly likely that it will remain the island's principal private industry regardless of the political status that is chosen. There may be pronounced differences in the performance of the industry under the different status options, especially during the first years after the implementation of any status change.

Statehood

A transition to statehood would have only two notable effects that might influence Guam's visitor arrivals. First is the transfer of customs operations from local to US federal control, making it subject to federal laws and regulations. This would essentially be transparent to an arriving visitor. The second impact would be even greater confidence in the rule of law as it exists here. Neither of those effects are expected to significantly alter visitor arrivals or spending and will likely continue to make Guam an attractive tourist destination.

Free Association

Although there may be a temporary decrease of confidence by visitors in Guam's level of personal security and the rule of law, that decrease can be expected to be brief and overcome quickly enough that any resulting reduction in tourist arrivals and expenditures should hardly be noticeable. Visitors will likely be unaware of the transfer of immigration authority from the US federal government to the government of Guam, and the difference should not be consequential from a visitor's viewpoint. It may be some time before investor confidence returns to its pre-transition level, but if Guam's government exhibits stability throughout the process, that period should be relatively brief.

Independence

A change in Guam's political status will likely go unnoticed by the typical tourist contemplating a visit to the island as long as local conditions reflect relative stability and personal security during and after the transition. However, any significant disruption in the usual course of events here, especially if it receives negative international attention, may have an adverse impact on arrivals and the local tourism industry

(depending on the type and severity of the disruption). It may, however, require an extended period of time before outside investment in Guam's tourism facilities is restored, which will depend almost entirely on the perceived continuity and stability of the island's legal and business environment and how openly new outside investment is welcomed. Without appropriate caution, changes to the system of taxation could also have a detrimental impact on investment decisions.

Under independence or free association, Guam will have the opportunity and responsibility of being in charge of its tourism industry. As mentioned, under statehood, Guam will continue to be US soil (with corresponding rule of law in the eyes of tourists) and thus, in this regard, tourism will be rather stable. With independence and free association, Guam will no longer be US soil, but will continue to have the appeal of being a beautiful tropical island. Guam will also have the opportunity and responsibility of capitalizing on this appeal (while acknowledging the short-term instability that will affect tourist arrivals upon a shift to either free association or independence). According to studies done by the Guam Visitors Bureau, such as the GVB Travel Motivation by Market FY14-FY19 report, there are clear patterns. Per the report, which covered the travel motivation of visitors from Japan, Korea, Taiwan, China, USA, Philippines, Hong Kong, and Korea, the top motivators were natural beauty, travel time, relaxation, and pleasure.[410] These aspects of Guam's appeal are not destined to change with the attainment of a sovereign political status but will be contingent on a multitude of factors. In addition to factors such as rule of law (which will help the perception of tourists that Guam is a safe place to visit) and the stability of the new political system, other critical factors include environmental laws (which help maintain Guam's beauty), immigration and visa policies (which will help determine tourist satisfaction with the process of entering Guam), and ability to maintain tourism infrastructure. These are decisions that will need to be made by the new government, which will ultimately determine (along with global factors such as the economy) the end state of tourism in the new country.

Under free association or independence, the government of Guam will be able to determine who to open the tourism markets to. Thus, there is the possibility that Guam could open markets again to countries such as China and Russia. This will be contingent on the diplomatic relations Guam has with countries around the world. However, in doing this, Guam, as a new country, will also have to be vigilant in ensuring that Guam does not become a destination for "unruly" visitors or a haven for organized crime. Thus, in controlling its immigration and tourism industry, Guam also needs to develop the infrastructure and capacity for internal order and diligent tracking of who is entering the island.

In creating a country that retains its natural beauty, potential for relaxation/pleasure, and capitalizing on a short travel time for Asian countries, the island would have the opportunity to expand the forms of tourism it offers, such as cultural tourism or eco-tourism. According to the Guam Visitors Bureau, "Culture is ubiquitous with all of GVB's marketing and promotions. Supporting Guam's cultural heritage is paramount to GVB's success in the different source markets."[411] It points to the success of the Guam Chamorro Dance Agency (GDCA) launched in 2009 and piloted in FY 2010 in the Tokyo area

410 Guam Visitors' Bureau, GVB Travel Motivation by Market FY14-FY19.

411 Guam Visitors Bureau Report for Self-Governance Study.

(with seventy people attending each of five two-day workshops.) Due to growing interest, the program expanded, with a third guma' being established. The program also expanded to Taiwan, which helped to foster cultural exchange and promote travel between Guam and Taiwan. According to GVB, "the program was successful in enticing people to learn more about Guam's unique heritage and people."[412] According to the October-December 2019 Japan Visitor Profile, twenty-one percent of respondents pointed to cultural and local attractions like CHamoru cuisine and Two Lovers' Point as the most popular activities.[413] In the October-December 2019 Korea Visitor Profile, fifty-two percent of respondents pointed to local attractions (such as Two Lovers Point) and forty-seven percent said sightseeing (scenic views/natural landmark) were activities they participated in.[414] An independent Guam could emphasize these aspects in the development of its new tourism attraction. An independent Guam could do similar market research to create a multi-faceted tourism industry for the new country.

Under any status, the effect of climate change on Guam's environment and the ramifications for the tourism industry is something that deserves and will continue to deserve significant attention. As GVB notes, "Based on GVB's exit surveys, a few of the primary reasons why visitors come to Guam is because of its natural beauty, sight-seeing and water sports. Climate change will affect all of these outdoor motivations and activities, ultimately affecting visitor arrivals."[415] For more on this, please see the Human Security/Climate Change subsection of this study in Section: "Environmental Sustainability".

412 Guam Visitors Bureau Report for Self-Governance Study.

413 Guam Visitors Bureau, October-December 2019 Japan Visitor Profile, accessed at https://www.guamvisitorsbureau.com/docs/research/studies/exit-surveys/japan-exit-survey/fy2020/1st-quarter-fy2020-jes-report.pdf.

414 Guam Visitors Bureau, October-December 2019 Korea Visitor Profile, accessed at https://www.guamvisitorsbureau.com/docs/research/studies/exit-surveys/korea-exit-survey/fy2020/1st-quarter-fy2020-kes-report.pdf.

415 Guam Visitors Bureau Report for Self-Governance Study.

TOURISM	
STATUS	**EFFECTS**
Statehood	• Transfer of Customs control to the US government and increased confidence in the rule of law. • No expected effect on visitor arrivals or expenditures.

Free Association	• Brief decrease in visitor confidence in security and rule of law, potentially leading to a decrease in the number of arriving visitors. • Brief drop in tourism investor confidence, depending on Guam's stability throughout transition process.
Independence	• The change in political status would likely go unnoticed by Guam's typical visitor demographic as long as local conditions of personal security and the rule of law remain stable. • Tourism investor confidence will depend on stability and how open Guam will be to outside investment, as well as how significant the changes in tax law will be.

Cannabis Industry

On April 4, 2019, Guam passed Public Law 35-05, allowing for the recreational use of cannabis for people twenty-one and older. This legislation followed a 2014 referendum, which legalized the use of medical marijuana in Guam.[416] Considering the potential for a cannabis industry to develop in Guam, this industry was included in the scope of work for this study.

Guam's passage of Public Law 35-05 followed a growing trend throughout the United States of legislation that decriminalizes marijuana. As data and research about the medical benefits of cannabis continues to develop worldwide, acceptance of cannabis use has grown. Studies have validated and confirmed the medical efficacy of cannabis in alleviating seizures, cancer, sleep disorders, depression, nausea, pain management, anorexia, epilepsy, Parkinson's Disease, Huntington disease, dementia, post-traumatic stress syndrome and glaucoma, among other illnesses.[417] Additionally, the social normalization of cannabis has reduced apprehension toward the drug, as evidenced by the increasing passage of legalization in countries worldwide.

The legalization of the cannabis industry may potentially be beneficial for Guam. The *New Hampshire Business Review* spells out three main ways the cannabis industry can positively impact an economy: tax revenue; the real estate industry; and ancillary business opportunities.[418] The first benefit could provide potential increased tax revenue based upon expansion and diversification of the island's industrial base. This tax revenue could provide for improvement in infrastructure and other public purposes. Another potential impact could be the benefits to the commercial real estate industry. Cannabis businesses occupy space, not only in cultivation facilities but also in manufacturing and retail industries. Real estate could be purchased, rented or leased to accommodate the industry, meaning more land could be drawn into economic production. Third, as with most other industries, cannabis requires the support of ancillary

416 "Guam Cannabis Industry Act" Chapter 11, Title 8, Guam Code Annotated. Guam Compiler of Laws. http://www.guamcourts.org/CompilerofLaws/GCA/11gca/11gc008.pdf.

417 Gemma Antonine Wenner. "Marijuana-Tourism: Disruptive Innovation for Small-Island Developing States" (December 2018) University of Maryland University College Dissertation Committee.

418 Bill Flynn. "Legalized Marijuana: an economic panacea?" New Hampshire Business Review.

business activities. The cannabis industry would rely upon other businesses to supply its operations.

However, since the cannabis legislation passed only in 2019 and because the general "liberalization of marijuana laws is a recent phenomenon," the specific economic benefits that can derive from the marijuana industry are not yet measurable and this subsection of this study does not purport to measure them.[419] This portion of the research will be dedicated to the exploration of the marijuana industry under each political status and the potential challenges to Guam's economy. It is highly recommended, however, that readers interested in this industry consult other studies that have been conducted by the Cannabis Control Board and the Guam Visitors Bureau for more information.

Statehood

A cannabis industry in Guam will likely meet the most resistance under statehood. Despite the majority of US states having legalized some form of cannabis usage, it is nonetheless susceptible to reaction from the federal government. This is because the illegality of marijuana at the federal level poses several impediments for the success of this particular industry. One example is the restriction of cannabis on flights to the United States due to the federal law prohibiting importation. Therefore, this industry could have significant hurdles if Guam were to become a state unless cannabis is legalized at the federal level. Intermediaries, potential stakeholders, and other businesses may be "reluctant to provide investment capital, legal advice, or other basic professional services necessary for [the] marijuana business to function."[420]

The marijuana industry is already at a disadvantage because the availability of essential services and partnerships is limited. These connections and services are important to a business's success but will be constrained due to the partial illegality of the industry. Of the many obstacles, the greatest impact to the industry will probably be the inability or unwillingness of banks to engage in transactions with marijuana businesses. There is a hesitance from banks and investors surrounding this industry because marijuana is still classified as a Schedule 1 controlled substance, thereby opening the possibility of repercussions to banking firms such as money laundering charges. Although the regulatory environment is gradually changing, "banks are not legally allowed to provide financial services" to cannabis related industries, leaving few alternatives to these businesses and forcing most of them to operate in cash.[421] In addition to this, marijuana businesses that operate on a cash-only basis are much more difficult to regulate and tax. Lastly, if cannabis businesses operate on a cash basis, from production through processing to distribution, they would potentially retain large sums of cash, making them potential targets for crime.

If Guam were to become a state, the island would be subjected to federal rules and regulations similar to the current status. Specifically, Federal Tax Rule 280E "requires any trade or business operating

419 Gemma Antonine Wenner. "Marijuana-Tourism: Disruptive Innovation for Small-Island Developing States" (December 2018) University of Maryland University College Dissertation Committee.

420 Erwin Chemerinsky et. al. "Cooperative Federalism and Marijuana Regulation" (2015) UCLA Legal Review. https://scholarship.law.uci.edu/faculty_scholarship/369/.

421 Aaron Smith. "IRS collects billions in pot taxes, much of it in cash." (January 18, 2018) CNN Business. https://money.cnn.com/2018/01/18/smallbusiness/marijuana-industry-taxes-irs/index.html.

in violation of federal drug laws - and only federal drug laws - to pay federal income tax and to do so on disadvantageous terms."[422] This means that certain tax incentives available to some businesses are not available to cannabis businesses, creating an intentional barrier to the industry. In addition, a marijuana seller is also "required to pay taxes on its gross receipts" under this federal provision, which prevents sellers from deducting their expenses before calculating their taxable income. All of this points to difficulties that the marijuana industry may face under statehood.

Despite this, states that have legalized and commodified marijuana have gained economic advantage in three ways. The first is by projected revenue from additional taxes and streams of income by selling marijuana legally. The second economic advantage impacts the government with increased "estimated savings from reduced spending on the criminal justice costs of marijuana law enforcement."[423] Lastly, this industry can also be beneficial to the economy in terms of creating new jobs that cater to the marijuana sector.

Independence and Free Association

As an independent country or freely associated state, Guam will have the authority to create all necessary rules for cannabis, hemp and CBD as it sees fit. Therefore, the potential for growing these industries is dependent on relations with foreign countries and the demand for cannabis within the market of Guam residents and visitors. Additionally, Guam's government will be able to control its tax policy to balance the collection of revenue for government services with the need for businesses to have funds available for expansion.

One potential flaw when it comes to cannabis under independence or free association may be the lack of credibility of the industry under that status. Guam would have to establish a level of trust with its consumer base outside of the island by providing a satisfactory, standardized product. This may cause a lag in the expansion of the industry, but this could be minimized by Guam developing a robust food and drug regulatory environment or regime. Not only could there be a lack of confidence from potential tourists, there could also be a lack of confidence from potential investors.

An independent Guam will need to rely on tourism and international marketing in order to sustain a vibrant cannabis industry for both recreational customers and medicinal patients, subject to local demand which is yet to be seen as Guam's cannabis industry has not begun legal sales. Guam would need to develop a healthy relationship with different countries and ensure that whatever marketing it does in foreign countries is acceptable in that location. Guam already has channels of communication, such as "…outsourced marketing representative(s), which is how it operates in other… markets."[424] Understanding the restrictions and how to properly market the industry for tourism would allow Guam to maximize growth for the industry.

422 Erwin Chemerinsky et. al. "Cooperative Federalism and Marijuana Regulation" (2015) UCLA Legal Review. https://scholarship.law.uci.edu/faculty_scholarship/369/.

423 David G. Evans, "The Economic Impacts of Marijuana Legalization." (2013) The Journal of Global Drug Policy and Practice. https://www.dfaf.org/wp-content/uploads/2018/11/Vol-7-Issue-4.pdf.

424 "Guam Visitors Bureau reorganizing its Japan office." (September 2018) Pacific Daily News https://www.guampdn.com/story/money/2018/09/04/guam-visitors-bureau-reorganizing-its-japan-office/1188626002/.

CANNABIS INDUSTRY	
STATUS	**EFFECTS**
Statehood	• Subject to federal restrictions such as the Controlled Substance Act, banking limitations causing a cash-only industry, and higher tax payments for businesses unable to deduct business expenses. • Limited to local cannabis market and visiting tourists due to federal law, no room for export. • Ability to attract American investors due to familiarity with US policies as well as a potentially untapped market from Guam's tourists.
Independence & Free Association	• Allows for control of the industry because of the ability to regulate it freely. • Allows a flexible and independent tax policy that can be adjusted subject to the demands of the market. • Potential to market and expand both the cannabis (THC) industry and the hemp (CBD) industry for export and tourism. • Possibility of a lag in industry development due to evolving credibility of safety and quality controls for potential cannabis consumers.

International Aid

International aid, primarily in the form of financial and technical assistance, is usually offered for either of two reasons: First, for humanitarian purposes, such as food, medicine, building supplies, equipment, and labor in the aftermath of natural or manmade disasters, or to help raise standards of living and to stabilize economic performance in less-developed countries. Second, aid may be offered in order to gain political and/or economic advantage, often as an alternative to similar assistance from some other (usually adversarial) country, such as infrastructure construction or the transfer of technologies (the latter of which have often concentrated on the agricultural capabilities of the recipient country). There is a third reason, military assistance, which would not be provided by any source other than the United States under statehood and would probably only be provided by the United States under a free association arrangement, with the choice left most open under independence. Military assistance could be used as strategic leverage by one or more external governments under the independence option, but that would be more of a political than an economic matter. This section explores Guam's eligibility and possible avenues for international aid in each of the three status options.

International aid usually refers to the transfer of resources between countries which is not predicated on a commercial basis. The type of monetary or material aid that comprise international aid usually falls into three different categories:

> humanitarian assistance for life-saving relief from natural and manmade disasters; development assistance that promotes the economic, social, and political development of countries and communities; and security assistance, which helps strengthen the military and security forces.[425]

This aid can take different forms, such as bilateral economic development programs, cash transfers, equipment, food and supplies, medical assistance, humanitarian aid, infrastructure, activities related to

425 George Ingram, "What every American should know about US international aid," October 15, 2019, *Brookings Institution*, https://www.brookings.edu/policy2020/votervital/what-every-american-should-know-about-us-international-aid/.

peacebuilding, and technical assistance or cooperation (such as training services or education). International aid can be handled on a bilateral basis (from country to country) or through multilateral institutions such as the International Monetary Fund or the World Bank.

International aid can be beneficial for its recipients because it allows countries to implement programs and initiatives that they otherwise would not be able to afford. For example, with humanitarian aid, wealthy countries are known for providing money and resources to poorer countries to improve access to medical care or to allow for the creation of healthcare infrastructure. Globally, these funds contribute to efforts including eradicating diseases and decreasing rates in infant and maternal mortality.

However, aid has the potential to make things more difficult for countries because the expectation of aid can make countries dependent to the point that they cannot develop their own industries and economies. For example, though seen positively, humanitarian aid is sometimes criticized because in some cases the money used to eradicate poverty can fund programs or interventions that negatively affect the local farming industry of that country. In some African countries, local farmers are not able to successfully sell their crops because the aid money coming in renders them obsolete.

Statehood

International financial and technical assistance will not be directly available to Guam under the statehood option, since international relations (especially if they involve potential obligations) are the purview of and will be reserved to the authority of the US federal government. International aid from the United States will not directly come out of the state of Guam's budget because international aid is the responsibility of the federal government. Historically, the United States is one of the largest distributors of international aid and only in times of crisis did other countries offer aid to the US. For example, the United States received aid in the form of monies, supplies, and other resources after 9/11 and Hurricane Katrina. The federal government then took the aid and distributed it to affected areas. The United States was offered or pledged $854 million in cash and oil (to be sold for cash) to help the cleanup.[426] Currently, there is no country which gives international aid to the United States on an annual basis. Therefore, there is no international aid that is allocated directly to the individual states, and thus Guam, as a state (of the US), should not expect to receive any official international aid.[427]

However, it is important to note that the state of Guam will continue to get federal money. All states get funding from the federal government to support their social services programs. In Fiscal Year 2017, Michigan ($22.8M), Montana ($2.8M), and Mississippi ($9.1M) received federal funding that covered more

426 Matt Mayer, James Carafano, et al. "Accepting Disaster Relief from Other Nations: Lessons from Katrina and the Gulf Oil Spill," Heritage Foundation, February 17, 2011;Washington Post, "Only a fraction of international aid after Katrina was used," April 29, 2007, accessed at https://www.latimes.com/archives/la-xpm-2007-apr-29-na-aid29-story.html.

427 Amanda Erickson, "Dozens of countries offered help after Hurricane Katrina. After Harvey, not so much," The Washington Post, September 1, 2017, accessed at https://www.washingtonpost.com/news/worldviews/wp/2017/09/01/dozens-of-countries-offered-help-after-hurricane-katrina-after-harvey-not-so-much/.

than 40% of their states' total expenditures.[428] In that same year, on the lower end, states like Connecticut ($6.1M), Hawai'i ($2.5M), and Ohio ($12.5M) received federal funds that totaled less than twenty percent of their states' total expenditures.[429] As shown, states do not receive the same amount of federal money each fiscal year. The amount they receive is instead contingent on the number of residents in their state who qualify and receive assistance from federally funded programs. Thus, although Guam, as a state, will not receive international aid, it will continue to receive federal funding.

Independence

If Guam were to become an independent country, if needed, it may qualify for international aid from individual countries or international organizations. Under independence, Guam, if eligible, would be able to avail of multilateral aid, in which aid comes from different governments and organizations, often arranged by international organizations.

The United Nations and all its related programs, funds, and specialized agencies may be available to the independent country of Guam once Guam joins the respective UN bodies. The United Nations System has six main organs, which includes: the General Assembly; Security Council; Economic and Social Council (ECOSOC); Secretariat; International Court of Justice; and the Trusteeship Council, which is rather defunct since the dissolution of the Trust Territory of the Pacific Islands.

In September 2015, the General Assembly adopted the 2030 Agenda for Sustainable Development. A primary focus of this resolution is the 17 Sustainable Development Goals (SDGs). These goals and the 2030 Agenda are significant because they commit member states to take actions "that would not only address the root causes of poverty but would also increase economic growth and prosperity and meet people's health, education and social needs, while protecting the environment."[430] The impact to multilateral international aid is that actions by UN entities may be framed to work towards specific goals. This is exemplified with the work of UN Specialized Agencies, which are "international organizations that coordinate their work with the United Nations through negotiated agreements."[431] ECOSOC has established partnerships with 15 international organizations.[432],[433] As an independent country, Guam could join the UN and participate in UN Specialized Agencies as a member-state (country). Guam may be classified as a Small Island Developing State (SIDS), depending on the criteria of the agency concerned. If so, several UN Specialized Agencies have created initiatives to provide assistance to address the special issues that face

428 Center on Budget and Policy Priorities, "Federal Aid to State and Local Governments," accessed at https://www.cbpp.org/research/state-budget-and-tax/federal-aid-to-state-and-local-governments.

429 Ibid.

430 United Nations, "Historic New Sustainable Development Agenda Unanimously Adopted by 193 UN Members," September 25, 2015, accessed at https://www.un.org/sustainabledevelopment/blog/2015/09/historic-new-sustainable-development-agenda-unanimously-adopted-by-193-un-members/.

431 United Nations Library, "What are UN specialized agencies, and how many are there?" accessed at https://ask.un.org/faq/140935

432 Article 63 of the U.N. Charter allows for ECOSOC to "enter into agreements with any of the agencies referred to in Article 57..." (https://legal.un.org/repertory/art63.shtml).

433 Georgetown Law Library, "United Nations Research Guide," accessed at https://guides.ll.georgetown.edu/c.php?g=365747&p=7141851.

SIDS."[434, 435] As an unincorporated territory, Guam is already classified as a SIDS by some international organizations, given its geographic location and the common challenges it shares with other SIDS, such as "long distances from export markets and import resources" and "high costs for energy, infrastructure, transportation, communication and servicing."[436]

The Food and Agriculture Organization of the United Nations (FAO) was established in 1945 and aims to achieve universal food security and access to high-quality food for all.[437] A subsidiary entity of the FAO is the Technical Cooperation Programme (TCP), which provides "access to a wide range of technical expertise related to agriculture, food and nutrition, and plays an important role in knowledge-sharing…"[438] The TCP gives two main types of support: development assistance and emergency assistance.

As a member state of the UN and FAO, Guam could request developmental assistance.[439] This type of aid can be both technical and financial. For example, from October 2017 to December 2019, the TCP provided $499,000 to the countries who are a part of the Micronesian Association for Sustainable Aquaculture (MASA)[440] for a project entitled *Aquaculture Business Investment Planning and Development to Increase Resilience and Improve Food Security*.[441] This project recognized that developing the aquaculture industry in SIDS "requires new streams of technical cooperation and public-private finance" as well as "business planning information and tools" to develop "sustainable aquaculture business development and investment plans."[442] The FAO and its regional partners provided "policy recommendations and technical guidance on sustainable aquaculture."[443] Since Guam is geographically located in Micronesia, there is potential for an independent Guam to join an organization such as MASA and engage with the FAO to develop industries such as aquaculture. In a similar manner to the FAO's project with MASA, the UN Specialized Agency could provide funding and technical assistance in the form of policy recommendations and guidance. This project also indicates that the FAO/TCP has the expertise available within its organization to specifically address the needs of SIDS. In addition to benefiting from services provided by the FAO, Guam would have to contribute to the agency. Funding for FAO projects is derived from assessed and voluntary contributions from UN member-states. If Guam were to be a member of the UN and FAO,

434 Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States, 2, "Small Island Developing States: Small Island Big(ger) Stakes, accessed at http://unohrlls.org/UserFiles/File/UN_SIDS_booklet_5x6-5_062811_web.pdf.

435 Ibid p.2.

436 Ibid, p.3.

437 Food and Agriculture Organization of the United Nations, "About FAO," accessed at http://www.fao.org/about/en/.

438 Food and Agriculture Organization of the United Nations, "Technical Cooperation Programme," http://www.fao.org/technical-cooperation-programme/background-criteria/en/.

439 TCP projects can be given up to USD 500,000 and projects should be completed within 24 months. http://www.fao.org/technical-cooperation-programme/background-criteria/en/.

440 MASA members include the Republic of the Marshall Islands, Federated States of Micronesia, Republic of Palau, and Republic of Nauru.

441 Food and Agriculture Organization of the United Nations, "Technical Cooperation Programme," http://www.fao.org/technical-cooperation-programme/background-criteria/en/.

442 Food and Agriculture Organization of the United Nations, "Aquaculture Business Investment Planning and Development to Increase Resilience and Improve Food Security," May 2020, 2.

443 Ibid, p.2.

the government would also have to contribute assessed[444] and potentially voluntary contributions.[445] The FAO is just one UN Specialized Agency with a history of providing international aid. The International Monetary Fund and World Bank Group are two other UN Specialized Agencies.

The International Monetary Fund (IMF) is an institution known for providing significant amounts of aid and other economic assistance. The IMF was established in 1945 and today has 189 member countries.[446] The mission of the organization is to help its member countries when they are, "hit by crises by providing them financial support to create breathing room as they implement adjustment policies to restore economic stability and growth. It also provides precautionary financing to help prevent and insure against crises."[447] Two key functions of the IMF are to provide "loans to countries experiencing balance-of-payments difficulties, which generally means they are facing problems paying for necessary imports or servicing their debt payments," and providing "technical assistance and training to help member countries strengthen their capacity to design and implement effective policies."[448] If Guam joins the IMF, as a member, it may be eligible for both types of assistance. As a newly independent country, Guam could avail of the expertise and experience from the international organization in developing its economic policies. Unexpected events or crises that impact the island economically, such as a global pandemic, may also lead the island's government to seek temporary financial assistance. Since the start of the COVID-19 global pandemic, "100 countries have sought financial support from the fund."[449] Different types of emergency funding have been made available or more accessible. For example, the IMF has "temporarily doubled access to its emergency facilities" which "[allows] the fund to provide emergency assistance without the need to have a full-fledged program in place."[450] Although the pandemic is a rare occurrence, the response by the IMF highlights the organization's role in stabilizing economies. In the future, if external shocks impact Guam's economy in a similar manner to COVID-19, Guam would be eligible for emergency assistance.

The World Bank is another source of international aid. The World Bank is often confused with the IMF, but it differs because the World Bank is an "investment bank" owned by "the governments of its 180 member nations with equity shares in the bank."[451] It is a multilateral development bank (MDB). These institutions primarily "provide financial assistance to developing countries in order to promote economic and social development."[452] The World Bank:

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444 Assessed contributions from member-states is "determined at the biennial FAO conference" and is a part of the "Member countries' obligatory contributions to the United Nations and its specialized agencies." http://www.fao.org/partnerships/resource-partners/results-partnerships-impact/2019/en/.

445 Ibid.

446 International Monetary Fund, "About the IMF," accessed at https://www.imf.org/en/About.

447 International Monetary Fund, "IMF Lending," accessed at https://www.imf.org/en/About/Factsheets/IMF-Lending.

448 Congressional Research Service, "The International Monetary Fund," og.1, accessed at https://fas.org/sgp/crs/misc/IF10676.pdf.

449 Ibid, pg.2.

450 Ibid, pg. 2.

451 David D. Driscoll, "The IMF and the World Bank: How Do They Differ?" International Monetary Fund, accessed at https://www.imf.org/external/pubs/ft/exrp/differ/differ.htm.

452 Multilateral Development Banks: Overview and Issues for Congress by the Congressional Research Service (Feb. 11, 2020).

> Borrows money by selling bonds and notes directly to governments, their agencies, and central banks. The proceeds of these bond sales are lent in turn to developing countries at affordable rates of interest to help finance projects and policy reform programs that give promise of success.[453]

It then distributes these funds, mostly through the International Bank for Reconstruction and Development (IBRD), which "lends to governments of middle-income and creditworthy low-income and most vulnerable countries"[454] and the International Development Association (IDA), which provides "interest-free loans – called credits – and grants to governments of the world's poorest countries."[455] The International Finance Corporation (IFC) works to "advance economic development by encouraging the growth of private enterprise in developing countries."[456]

One way the World Bank Group has collaborated with small states is the Small States Forum (SSF), a fifty-member group using the platform "for high-level dialogue on how the Bank Group is helping to address Small States' special development needs."[457] The World Bank Group is committed to supporting small state development and in recent years has worked to enhance development finance, develop innovative disaster and climate financing mechanisms, foster private investment and diversification, and strengthen client capacity.[458] An independent Guam may qualify as a small state because it may face similar challenges that make it difficult to "fit the standard development model."[459] Despite heterogeneity in SSF, some common challenges they face that the island of Guam also faces include: a relatively small population; geographic remoteness; and vulnerability to natural disasters and climate change.[460] In 1985, the World Bank Board approved the Small Island Economies Exception, which allows Small Island Economies (SIEs) with "GNI per capita above the IDA operation cut off" to receive concessional resources.[461] The exception allows small states to access resources from the IDA that they may have been ineligible for under the general rules. IDA-only SSF countries may receive grants based on their "debt distress ratings" as determined by the World Bank/IMF Debt Sustainability framework for low-income countries.[462] Over $1.7 billion was available in 2019 for IDA financing to SSF members.[463] If Guam can qualify as an SIE, it may partake in the grants/loans available in order to invest in the island's development. Concessional loans are appealing

453 David D. Driscoll, "The IMF and the World Bank: How Do They Differ?" International Monetary Fund, accessed at https://www.imf.org/external/pubs/ft/exrp/differ/differ.htm.

454 Australian Government Department of International Affairs and Trade, "World Bank Group," accessed at https://www.dfat.gov.au/international-relations/international-organisations/multilateral-development-banks/Pages/world-bank.

455 Ibid.

456 International Finance Corporation, "About IFC," accessed at https://www.ifc.org/wps/wcm/connect/corp_ext_content/ifc_external_corporate_site/about+ifc_new.

457 World Bank Group, "World Bank Group Support to Small States," 4, https://pubdocs.worldbank.org/en/340031539197519098/World-Bank-Support-to-Small-States-booklet.pdf.

458 Ibid, p. 9.

459 The World Bank, "The World Bank in Small States," accessed at https://www.worldbank.org/en/country/smallstates/overview.

460 The World Bank, "The World Bank in Small States," accessed at https://www.worldbank.org/en/country/smallstates/overview.

461 Ibid, p. 12.

462 Ibid, p.13.

463 Ibid, p.13.

because they may have "interest rates below those available on the market" and "long grace periods" for repayment.[464] Longer grace periods and lower interest rates could allow Guam to invest more into developing its industries and having the time to do so, with less pressure to repay the loan quickly.

The World Bank Group also aims to help small states "develop innovative financing mechanisms for climate and disaster response."[465] This is especially relevant to Guam, given its geographic location and vulnerability to the potential impacts of climate change, such as rising sea levels, ocean acidification, and worsening natural disasters. One method for mobilizing climate finance has been the creation of blue and green bonds. The World Bank Treasury and IFC have given technical assistance to small states in structuring these bonds. In 2017, Fiji was the "first emerging market to issue a sovereign green bond" for $50 million. The proceeds from this bond were used to promote "low carbon and climate resilient growth."[466] Guam could potentially tap into the technical assistance from the World Bank's entities for bonds that would help it invest in climate initiatives to improve the island's resilience against the potential impacts of climate change. For example, proceeds from the bonds can be used to invest in the Guam Green Growth Initiative, which works to build "tangible solutions to sustainability challenges" in line with the UN's 17 SDGs.[467]

Overall, financing options are available through the World Bank Group, which makes special exceptions for SSF, SIEs, and SIDS. These are all statuses that the island-state may be classified under, although this is not guaranteed. Loans, grants, and bonds, as well as technical assistance, can be used to improve upon the island's current resources and to strengthen the island against known vulnerabilities. Aside from UN entities, another MDB is the Asian Development Bank.

The Asian Development Bank (ADB) was established in 1966 to "promote regional cooperation."[468] The ADB provides non-concessional and concessional loans, equity investments, and loan guarantees.[469] The ADB Strategy 2030 recognized SIDS "as a group requiring special attention on account of their unique development challenges."[470] For example, revenue generated is "generally insufficient to cover the public spending needs for basic services" which leads to SIDS needing "significant external sources of revenue to finance development" but they "face difficulty in attracting commercial financing from market sources."[471] Guam may face similar challenges in generating revenue and acquiring external sources of funding for development. The ADB has supported SIDS by increasing the amount of financing available. From 2012 to 2018, investments grew from $123 million to $229 million.[472] This indicates that the ADB

464 Organisation for Economic Co-operation and Development, "Exclusive Economic Zone," OECD Glossary of Statistical Terms, accessed at https://stats.oecd.org/glossary/detail.asp?ID=5901#:~:text=Definition%3A,typically%20have%20long%20grace%20periods.

465 World Bank Group, "World Bank Group Support to Small States, pg. 15.

466 Ibid, p.17.

467 University of Guam, "Guam Green Growth," accessed at https://www.uog.edu/center-for-island-sustainability/guam-green-growth.php.

468 Congressional Research Service, "Multilateral Development Banks: Overview and Issues for Congress," (Feb. 11, 2020), 3.

469 Ibid.

470 Asian Development Bank, "A Framework for Addressing the Financing Needs of Small Island Developing States, 1, accessed at https://www.adb.org/sites/default/files/page/561776/framework-financing-needs-sids-discussion-paper.pdf.

471 Ibid, p. 6, 7.

472 Ibid, p.12.

is committed to assisting SIDS in development and has increased financial resources available in order to support projects and programs. One example of how ADB support has led to improvements for SIDS is in education. ADB projects from 2008-2018 led to 50,000 in the Pacific gaining access to better education and training for almost 1,500 teachers.[473] Similar resources may be available for the independent country of Guam to build capacity in areas such as education. The ADB also provides assistance to the private sector.

The ADB has also established the Pacific Business Investment Trust Fund. This is a "multi-donor trust fund aimed at supporting sustainable private sector growth in selected Pacific Island countries."[474] This fund was established because small and medium-sized enterprises (SME) in Pacific Island countries face constraints to private sector growth,[475] especially as commercial finance institutions have been hesitant to lend to SMEs. As an independent country, Guam's financial institutions as well as external sources may have similar hesitations to provide funding to existing or potential SMEs. This may hinder the development of the private sector.[476] In this case, the Trust Fund will be used to finance "business advisory services to SMEs seeking commercial finance" and "concessional loans to a small number of SMEs for investment activities."[477] Technical assistance through business advisory services assigns member countries a business advisor who will, "advise, guide, and review the client's financing needs...support the client in developing a bankable proposal for commercial financiers to consider...refer and link clients with business support programs…" and other types of support.[478]

Multilateral aid pools the resources of several countries to reach common development goals. As exemplified with the above discussion, international bodies are working to support programs that assist in developing countries, especially those in the Pacific who face unique challenges. Some scholars argue that "bilateral aid is found to be less effective than multilateral aid" because "most of the time, bilateral donors provide aid in order to promote their own geo-strategic interests" and not necessarily to promote development.[479] It is reasonable to argue that bilateral aid may come with a more defined political agenda from the donor country which may hinder the effectiveness at promoting development. In addition, it may take away from the autonomy of Guam's government to act in ways contrary to the national interests of the donor country. However, Guam would have the power to either accept or deny international assistance as an independent country, consistent with its own national interests. Under independence, Guam would have full authority to decide international aid partnerships/collaborations with other countries or international organizations that best fit its goals for the island's development. Bilateral aid may be beneficial as it provides a clearer connection between the donor country and Guam. It is still a prominent form of

473 Ibid, p.14.

474 Asian Development Bank, "Pacific Business Investment Trust Fund," accessed at https://www.adb.org/what-we-do/funds/pacific-business-investment-trust-fund.

475 https://www.adb.org/sites/default/files/project-document/82541/47373-001-tar.pdf.

476 Ibid, p.2.

477 Ibid.

478 Asian Development Bank, "Establishment of the Pacific Business Investment Trust Fund and Technical Assistance for the Pacific Business Investment Facility," September 2014, accessed at https://www.adb.org/sites/default/files/project-document/82541/47373-001-tar.pdf, pg. 7.

479 Katherine Vera Bryant, The Benefits of Multilateral Aid: How Agency Motivation, Specialization, and Autonomy Promote Development (December 2015): ii, 16.

international assistance. As discussed above, there are multiple reasons that international aid is offered. Due to Guam's strategic location, it is possible that some of this aid may be connected to geo-strategic purposes. Thus, one possible route is an independent Guam receiving international aid from its former colonizer, the United States.

The United States' process of distributing international aid throughout the world was first outlined in the 1961 International Assistance Act, establishing the United States Agency for International Development (USAID). Outlined in the law, aid was defined as "the unilateral transfers of US resources by the US government to or for the benefit of international entities."[480] Today, the United States allocates international aid to assist other countries in developing and improving various sectors, to include but not limited to: security/defense; health; education; and/or economic development. As described, US reasons for giving aid can be summarized:

> Aid objectives include promoting economic growth and reducing poverty, improving governance, addressing population growth, expanding access to basic education and health care, protecting the environment, promoting stability in conflictive regions, protecting human rights, promoting trade, curbing weapons proliferation, strengthening allies, and addressing drug production and trafficking. The expectation has been that, by meeting these and other aid objectives, the United States will achieve its national security goals as well as ensure a positive global economic environment for American products and demonstrate benevolent and respectable global leadership.[481]

Furthermore, per the International Assistance Act of 1961, aid can be defined as:

> any tangible or intangible item provided by the United States government [including "by means of gift, loan, sale, credit, or guaranty"] to an international country or international organization under this or any other Act, including but not limited to any training, service, or technical advice, any item of real, personal, or mixed property, any agricultural commodity, United States dollars, and any currencies of any international country which are owned by the United States government....[482]

The US typically offers aid in various forms:

1. Cash transfer: Rare, but some countries receive aid from the US in the form of a cash grant to the government.
2. Commodities (food, weapons systems, equipment): to meet humanitarian needs, military

480 Council on International Relations, "How Does the US Spend Its International Aid?" accessed at https://www.cfr.org/backgrounder/how-does-us-spend-its-international-aid.

481 Marian Lawson and Emily Morgenstern, "International Aid: An Introduction to US Programs and Policy," Congressional Research Service, April 16, 2019, pg. 4.

482 Ibid, pg. 1.

assistance needs, or development assistance needs, to meet particular objectives

3. Economic infrastructure: although rare today, aid can also be provided via the construction of infrastructure such as roads, electric power facilities, or irrigation systems
4. Training: transfer of knowledge and skills
5. Expertise: For example, "The Treasury Department, USAID, and US-funded multilateral banks all place specialists in host government ministries to make recommendations on policy reforms in a wide variety of sectors."[483]
6. Small grants: such those provided to microcredit organizations

In October 2011, USAID established an office in Papua New Guinea to better coordinate with its twelve partner nations in the Pacific.[484] As an independent country, Guam may partner with the United States and coordinate through USAID. Having a Pacific office may allow for closer collaboration on projects, with both countries having an equal say about how to provide aid and promote development in the island.

Development programs/projects supported by USAID work address issues such as climate change and environmental degradation, assist political parties in developing their capacity to create issue-based platforms, improve campaign finance transparency, and work on disaster mitigation, relief, and reconstruction.[485] Humanitarian assistance is one specific area where Guam may seek international bilateral aid from USAID. Geographically, the island is more vulnerable to natural disasters such as typhoons, earthquakes, and tsunamis. Neighboring Pacific islands face similar challenges. In December 2020, Tropical Cyclone Yasa was one of the strongest storms to hit the Republic of the Fiji Islands.[486] USAID donated approximately $300,000 to help in recovery efforts. This funding was used to support Fiji's humanitarian partners, the International Federation of Red Cross and Red Crescent Societies (IFRC).[487] Financial aid is not the only form of assistance. USAID has also worked with IFRC to "train volunteers and support community disaster response committees."[488] This has allowed the country to increase its capacity of trained personnel to respond and recover after natural disasters. As an independent country, Guam may benefit from similar types of humanitarian and technical assistance which would help the island better respond and recover from natural disasters. Bilateral international aid for Guam can also come from countries other than the United States.

The government of Australia has been a significant contributor of international aid to countries in the Pacific region as "the Pacific remains Australia's international policy priority."[489] As indicated in the

483 Ibid, pg. 16.

484 USAID, "History," accessed at https://www.usaid.gov/pacific-islands/history.

485 Ibid.

486 USAID, "US Ambassador Announces Additional US$200,000 For TC Yasa Recovery, January 19, 2021, accessed at https://www.usaid.gov/pacific-islands/press-releases/jan-19-2021-us-ambassador-announces-additional-us200000-tc-yasa-recovery.

487 Ibid.

488 Ibid.

489 Parliament of Australia, "Budget Review 2020-2021," October 2020, accessed at https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/BudgetReview202021/AustraliasInternationalAidBudget#:~:text=The%20Pacific%20remains%20Australia's%20international,aid%20spend%20in%20the%20region.

2017 International Policy White Paper, the Australian government committed to "engage with the Pacific with greater intensity and ambition, deliver more integrated and innovative policy and make further, substantial long-term investments in the region's development."[490] In 2019, the Australian government committed to investing $1.44 billion in aid to the Pacific region for 2020-2021.[491] This may imply that bilateral relations with Guam could be established, consistent with Australia's perceived geo-strategic interests in the northern/western part of the Pacific region.

One example of Australia's commitment to the region is the Pacific Step-Up initiative. This program provides development assistance to address challenges for Pacific islands, as identified by Pacific leaders and communities, which includes "strengthening climate and disaster resilience; sustained economic growth; and support to promote healthy, educated, inclusive populations."[492] During the 2019 Pacific Islands Forum (PIF), member countries expressed their desire to address climate change with the *Kuinaki II Declaration for Urgent Climate Action Now*. In response, the Australian government pledged to invest $500 million from 2020-2025 to "strengthen climate change and disaster resilience in the Pacific."[493] This example highlights how the Australian government can collaborate with Pacific Island partners using platforms such as PIF, to understand what Pacific communities need and provides financial and other forms of assistance to support development. Guam could establish a similar relationship. As an independent country, Guam could be eligible to become a member of intergovernmental organizations, including the PIF (barring the current status of Micronesia in the forum), in which Guam already maintains observer status. Guam may use its membership in PIF, the Pacific Community and other international organizations to contribute the Guam perspective on the challenges in the Pacific region.

Free Association

In the case of the freely associated states (FAS), the money that comes from the United States is not "federal aid," which is given to the states and territories of the US, because the FAS are sovereign and not a part of the United States. These financial packages (economic assistance) were negotiated and enshrined in the instrument of the Compact of Free Association (COFA). The monies and access to programs provided by the US are the result of a negotiated agreement, which includes US military access and defense exclusivity over the islands. Based on the provisions of the agreement, COFA countries use compact funds to assist their respective countries "in the form of direct grants in six sectors: education, health

490 Australian Government Department of Foreign Affairs and Trade, "Chapter seven: A shared agenda for security and prosperity." 2017 Foreign Policy White Paper (2017): accessed at https://www.dfat.gov.au/sites/default/files/minisite/static/4ca0813c-585e-4fe1-86eb-de665e65001a/fpwhitepaper/foreign-policy-white-paper/chapter-seven-shared-agenda-security-and-prosperity.html.

491 Funding is a part of the Australian Government's ODA. https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/BudgetReview202021/AustraliasInternationalAidBudget#:~:text=Aid%20Tracker%3A%20Destinations.-,Pacific,aid%20spend%20in%20the%20region.

492 Australian Government Department of Foreign Affairs and Trade, "Fiji - Australia's Commitment to strengthening climate and disaster resilience in the Pacific, accessed at https://www.dfat.gov.au/about-us/publications/Pages/fiji-australias-commitment-to-strengthening-climate-and-disaster-resilience-in-the-pacific.

493 https://www.dfat.gov.au/about-us/publications/Pages/fiji-australias-commitment-to-strengthening-climate-and-disaster-resilience-in-the-pacific.

care, infrastructure, public sector capacity building, private sector development, and environment."[494] If Guam were to become freely associated with the United States, the potential compact or other negotiated instrument could include accessibility to grants and programs to assist the newly created FAS.

The FAS are also eligible and receive international aid from other countries in the form of grants and loans. The Asian Development Bank (ADB) grants monies through its Asian Development Fund (ADF) to "lower-income developing member countries" (DMCs). Presently, eighteen of the DMCs are eligible for grants from the ADF. Of those eighteen, the Republic of the Marshall Islands and the Federated States of Micronesia are eligible to receive funding.[495] In 2019, the ADF granted RMI $6.5 million in grant funding and also gave the FSM $26 million in grants.[496]

In addition to receiving aid from other countries, freely associated states have access to international organizations and institutions. By joining these organizations, a freely associated state has more opportunities to access international development assistance in the form of grants and favorable interest rate loans. Accordingly, the FSM, RMI, and Palau all became members of the IMF in the 1990s.

494 US Department of Interior, "Compacts of Free Association," accessed December 18, 2019, https://www.doi.gov/oia/compacts-of-free-association.

495 Asian Development Bank, "Asian Development Fund," accessed at https://www.adb.org/what-we-do/funds/adf/overview.

496 Asian Development Bank, "Asian Development Bank Member Fact Sheet," May 2020, accessed at https://www.adb.org/sites/default/files/publication/27761/fsm-2019.pdf and https://www.adb.org/sites/default/files/publication/27780/rmi-2019.pdf.

IMF Membership and Quotas[497]

497 International Monetary Fund, "Federated States of Micronesia, "Republic of the Marshall Islands," and "Republic of Palau," accessed at https://www.imf.org/en/Countries/FSM, https://www.imf.org/en/Countries/MHL#ataglance, and https://www.imf.org/en/Countries/PLW.

COUNTRY	DATE OF IMF MEMBERSHIP	QUOTA AS OF 2020
Republic of the Marshall Islands (RMI)	May 21, 1992	$3.5 million
Federated States of Micronesia (FSM)	June 24, 1993	$5.1 million
Republic of Palau	December 16, 1997	$3.1 million

Status Example: The Federated States of Micronesia (FSM)

The Federated States of Micronesia receives a large amount of development assistance from four major countries: the United States; Japan; Australia; and China.[498] The FSM's diplomatic relationship was established with each of these countries in the late 1980s. It also receives small amounts of development assistance from New Zealand, Korea, and the United Arab Emirates.[499]

Of all the countries, the United States provides the most to the FSM, via the economic assistance packages as part of the COFA. As per the Federated States of Micronesia's Compact with the United States, as amended in 2003, the FSM was to receive sector grants for twenty years to be used for assistance in education, healthcare, private sector development, the environment, public sector capacity building, and public infrastructure, or for other sectors (as mutually agreed). However, the top two priorities for these sector grants are education and healthcare. Per the COFA, the division of funds dedicated to the various sectors must be certified by both the government of the FSM and the US government. Section 211 of the compact states, "In such case, the government of the United States shall disburse the agreed upon amounts and monitor the use of such sector grants in accordance with the provisions of this article"[500] as well as a fiscal procedures agreement. Furthermore, Section 213 of the compact established a Joint Economic Management Committee comprised of a US chair, two members from the US government, as well as two members from the FSM government. Per the COFA,

> The Joint Economic Management Committee shall meet at least once each year to review the audits and reports required under this title, evaluate the progress made by the Federated States of Micronesia in meeting the objectives identified in its plan described in subsection (c) of section 211, with particular focus on those parts of the plan dealing with the sectors identified in subsection (a) of section 211, identify problems encountered, and recommend ways to increase the effectiveness of US assistance made available under this title. The establishment and operations of the Joint Economic Management Committee shall be governed by the Fiscal Procedures Agreement.[501]

This direct financial assistance was made available to the FSM, but with the base amounts decreasing through the years. The legislation also provided for partial inflation adjustment of the base amount. As reported by the State Department, the US provides over $110 million in assistance annually, along with a variety of federal grants and services, until fiscal year 2023.[502] Overall, the approved amended COFAS provided for a total of $3.6 billion in compact sector grants, trust fund contributions (discussed in more

498 Wai Yi Ma, "Bilateral Aid to a Small Island Developing State: The Case of the Federated States of Micronesia" Pacific Asia Inquiry 10, no. 1, Fall 2019, pg. 35.

499 Ibid.

500 Section 211 of the Compact of Free Association between the United States and the Federated States of Micronesia.

501 Section 213 of the Compact of Free Association between the United States and the Federated States of Micronesia.

502 United States Department of State, "US Relations With the Federated States of Micronesia: Bilateral Relations Fact Sheet," July 5, 2018, accessed at https://www.state.gov/u-s-relations-with-the-federated-states-of-micronesia/.

detail below), and other grants.[503]

In addition to these sector grants, in accordance with Section 221 of the compact, a handful of federal agencies provide their services to the FSM. These include:

1. the United States Weather Service
2. the United States Postal Service
3. the United States Federal Aviation Administration
4. the United States Department of Transportation
5. the Federal Deposit Insurance Corporation (for the benefit only of the Bank of the Federated States of Micronesia)
6. the Department of Homeland Security, and the United States Agency for…International Development, Office of International Disaster Assistance.[504]

Articulating this in more detail is the Federal Programs and Services Agreement, which was described in Section 231 of the compact:

> The specific nature, extent and contractual arrangements of the services and programs provided for in section 221 of this compact, as amended, as well as the legal status of agencies of the government of the United States, their civilian employees and contractors, and the dependents of such personnel while present in the Federated States of Micronesia, and other arrangements in connection with the assistance, services, or programs furnished by the government of the United States, are set forth in a Federal Programs and Services Agreement which shall come into effect simultaneously with this compact, as amended.[505]

The Federal Programs and Services Agreement is an important document in understanding the operation of various US programs extended to the FSM, as well as the tax situation of US personnel in the FSM. The main programs covered in the agreement are US postal services, weather services, civil aviation, disaster preparedness and response, and telecommunications. It is important to note that, like the compact sector grants, access to these federal programs and services is also set to expire after a period of twenty years. Access to these programs and services is not permanent. In addition to the Federal Programs and Services Agreement, it is important to note that some US grants, programs, and services are made available to the FSM via the amended compacts' implementing legislation as well as other US legislation.[506] For some of these programs, the FSM remains eligible after 2023. Many of these programs

503 David Gootnick, "Trust Funds for Micronesia and the Marshall Islands Are Unlikely to Fully Replace Expiring US Annual Grant Assistance." *Government Accountability Office*, July 23, 2019.

504 Ibid.

505 Section 231 of the Compact of Free Association between the United States and the Federated States of Micronesia.

506 David Gootnick, "Trust Funds for Micronesia and the Marshall Islands Are Unlikely to Fully Replace Expiring US Annual Grant Assistance." Government Accountability Office, July 23, 2019.

may be subject to further extension, depending on future negotiations.

In describing the eligibility of the FSM for US grants and programs beyond 2023, David Gootnick, in his report, "Trust Funds for Micronesia and the Marshall Islands Are Unlikely to Fully Replace Expiring US Annual Grant Assistance," states (to be quoted at length):

- Compact sector grants are scheduled to end in 2023, but the RMI MUORA (Military Use and Operating Rights Agreement) extends the time frame of Kwajalein-related compact grants for as long as the MUORA is in effect.

- The SEG and additional grants identified in the amended compacts' implementing legislation are scheduled to end in 2023. Also, after fiscal year 2023, the FSM and RMI will no longer be eligible for some programs that the SEG replaced, including Head Start (early childhood education, health, and nutrition services for low-income children and their families).

- The compact-related programs and services agreements with each country will end in 2024. However, some US agencies, such as the National Weather Service, Federal Aviation Administration, and US Agency for International Development, may continue to provide programs and services similar to those provided in the agreement under other authorities.

- The FSM and RMI will generally remain eligible for other programs identified in the amended compacts' implementing legislation. These programs include US Department of Agriculture (USDA) Rural Utilities Service grant and loan programs and US Department of Education Pell grants for higher education and grants under Part B of the Individuals with Disabilities Education Act for children with disabilities.

- The FSM and RMI will remain eligible for additional programs we identified that have been provided under other current US laws. Examples of these programs include USDA housing assistance programs and multiple public health, medical, and disease control and prevention grants provided by the US Department of Health and Human Services.[507]

In negotiating a similar agreement with the United States, Guam would likely negotiate a separate Federal Programs and Services Agreement, as in the case of the FSM.

Included in the COFA was the development of a trust fund. This trust fund was established to create an annual source of revenue the FSM can use as an annual source of revenue in the sectors described in Section 211 of the compact or other sectors as mutually agreed after FY2023, when the compact sector grants are scheduled to end. Per Section 215 of the COFA, "The United States shall contribute annually

507 David Gootnick, "Trust Funds for Micronesia and the Marshall Islands Are Unlikely to Fully Replace Expiring US Annual Grant Assistance." Government Accountability Office, July 23, 2019, pg. 16.

for twenty years from the effective date of this compact, as amended, in the amounts set forth in section 216 into a Trust Fund established in accordance with the Agreement Between the Government of the United States of America and the Government of the Federated States of Micronesia Implementing Section 215 and Section 216 of the Compact, as Amended, Regarding a Trust Fund (''Trust Fund Agreement'').''[508] As with federal programs and services, there is a separate, subsidiary agreement, also known as the Trust Fund agreement. Per this agreement, a Joint Trust Fund Committee was established to administer the fund. The agreement gave three voting members to the US government and two voting members appointed by the FSM government.

According to the Government Accountability Office, compact trust funds may not provide the sustainable annual source of revenue after 2023, as was originally intended. It found that "after fiscal year 2023, the funds are unlikely to provide maximum annual disbursements, may provide no disbursements at all in some years, and are unlikely to sustain the funds' fiscal year 2023 value."[509] The FSM responded to this, citing certain problems. To read this response in full, one should read pgs. 107-117 of the GAO report, "Section 231 of the Compact of Free Association between the United States and the Federated States of Micronesia." Overall, if Guam enters into free association with the United States similar to the FSM, a similar trust fund mechanism might be considered to ensure that a FAS of Guam would be able to thrive economically after economic provisions (such as compact sector grants) expire. To not do so may leave a freely associated Guam with an unstable economic foundation.

The Federated States of Micronesia also receives development assistance from other countries. The government of Japan, which is the FSM's second-largest donor, provided over $172 million in grants from 1980-2016. With close to 150 different projects, the money helped to stabilize the island's infrastructure for its roads, ports, and airports. Grant money was allocated to assist with establishing and improving healthcare, education, and green initiatives in the islands.[510] Collectively, the FSM received more than $3 million in aid in FY2016 and more than $14 million in FY2017, from four countries.

508 Section 215 (a) of the Compact of Free Association between the United States and the Federated States of Micronesia.

509 Government Accountability Office, "Compacts of Free Association: Actions Needed to Prepare for the Transition of Micronesia and the Marshall Islands to Trust Fund Income," May 2018, GAO-18-415, pg. 23.

510 Embassy of Japan in the FSM, "Japan's Official Development Assistance to the Federated States of Micronesia," December 2018, accessed at https://www.mofa.go.jp/files/000447552.pdf.

International Aid Given to the FSM by Country[511]

511 OECD, "Geographical Distribution of Financial Flows to Developing Countries 2019: Disbursements, Commitments, Country Indicators," (OECD Publishing: Paris, 2019), accessed at https://read.oecd-ilibrary.org/development/geographical-distribution-of-financial-flows-to-developing-countries-2019_fin_flows_dev-2019-en-fr#page4.

COUNTRY	FY 2016	FY 2017
Australia	$1,200,000	$13,600,000
Korea	$300,000	$700,000
New Zealand	$300,000	$400,000
United Arab Emirates	$1,800,000	$0
Total	**$3,600,000**	**$14,700,000**

Aside from the FSM's two largest donors, a significant country to mention is China. Unlike its freely associated counterparts in the Pacific, the FSM receives aid from China because:

> The FSM is the only freely associated state in the Western Pacific that has diplomatic relations with China. The Republic of Palau and the Republic of the Marshall Islands have diplomatic relations with the Republic of China (ROC) aka Taiwan. Therefore, the FSM is an important strategic partner for China in the Western Pacific.[512]

The amount of money given by China to the FSM is difficult to track, despite efforts made by scholars. In her article, "Bilateral Aid to a Small Island Developing State: The Case of the Federated States of Micronesia" scholar Wai Yi Ma explains that,

> China is not a member of the Organization for Economic Cooperation and Development (OECD) as an aid provider; therefore, it was difficult to track Chinese aid...A team from the research lab of William and Mary College analyzed Chinese aid using a dataset tracking Chinese aid from 2000-2014. However, data on Chinese aid to the FSM is not included.[513]

The motivation for China to provide aid to the FSM is geopolitical because it allows China to have a presence in the Western Pacific.[514] The economic expansion of China dictates that it develop economic relations with its neighbors in the Asia-Pacific region.

The Federated States of Micronesia also receives international aid from international organizations and institutions. These organizations collectively do not give as much aid to the FSM, when compared to the amounts given to it by other countries. For example, the World Bank gave the FSM $8.8 million in FY2016 and $5.2 million in FY2017 through the International Development Association (IDA) in the form of zero-interest loans.[515]

Under free association, the island of Guam can negotiate monetary aid, grants, and access to federal agencies into its compact agreement, if one is established. Additionally, Guam would also be able to enter into diplomatic relationships with other countries for economic and technical cooperation purposes and might also have to make a choice between establishing relations with China or Taiwan. However, as with independence, the same cautions about becoming potentially dependent on international aid apply.

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512 Wai Yi Ma, "Bilateral Aid," pg. 43.

513 Ibid, pg. 42.

514 Ibid, pg. 43.

515 OECD, "Geographical Distributions,"pg. 213.

INTERNATIONAL AID	
STATUS	**EFFECTS**
Statehood	• Individual states cannot receive international aid since they are represented by the United States. • International aid is not too relevant and supplemental state funding can be provided by the US federal government.
Independence	• Guam could receive international aid from other countries. • Guam can receive international aid from international organizations and institutions, or technical assistance. • International aid may have additional provisions, based on the country or organization/institution giving the aid.
Free Association	• Guam can negotiate for access to US federal agencies. • Guam, in the compact, can negotiate an economic assistance package with the United States. • All terms have to be negotiated between both Guam and the United States in their COFA agreement. All terms will not necessarily be accepted. • Guam can receive international aid from other countries. • Guam can receive aid from international organizations and institutions, if eligible, and/or technical assistance.

ENVIRONMENTAL SUSTAINABILITY

Human Security and Climate Change

This section examines "Environmental Sustainability" through a relevant focus on human security. After a short explanation of the concept of human security, it focuses on some primary threats in Guam, along with their subsequent effects, followed by examinations of climate change, food security and agricultural expansion, aquaculture development, water resources, and renewable energy. As this study is primarily focused on the political statuses, we encourage the reader to read an East-West Center report entitled, "Climate Change in Guam: Indicators and Considerations for Key Sectors" for a more detailed scientific discussion of these issues.[516]

Moving forward in this section, one will notice discussions in the status analyses which have economic implications. It is important that the economic implications found throughout this section of the study are not considered in isolation. Each of the economic implications should be understood with "reference to" or "in the context of" the disclaimers and analyses found throughout Section: "Economic Impacts" of this study. This is integral to contextualizing material found within this section of the study. Lastly, it should be noted that for this section on environmental sustainability, there are various technical and detailed solutions and considerations regarding implementation for the issues addressed that cannot be included due to their exhaustive scope.

The Changing Paradigm of Security

The concept of human security has been widely associated with the United Nations' *Human Development Report 1994* that sought to redefine security. Traditionally, "security" has been defined through a focus more on "nation-states than to people"[517] and characterized by military power. In contrast, "human

516 Zena Grenci, W. Miles, R. King, A. Frazier, and V. Keener, *Climate Change in Guam: Indicators and Considerations for Key Sectors. Report for the Pacific Islands Regional Climate Assessment*. Honolulu, HI: East-West Center, 2020 accessed at https:/www.eastwestcenter.org/PIRCA-Guam.

517 United Nations Development Programme, Human Development Report 1994 (Oxford: Oxford University Press, 1994), 22, accessed at http://hdr.undp.org/sites/default/files/reports/255/hdr_1994_en_complete_nostats.pdf.

security" is a broad concept focused on people and is understood as having essential characteristics. First, human security is characterized as "a universal concern,"[518] because the threats that arise pose harm to all people. Second, "the components of human security are interdependent," in both relation to each other and across spaces and borders.[519] Thus, threats to human security have resounding impacts in connection with other communities in the region and around the world. Third, human security is considered "easier to ensure through early prevention than later intervention."[520] It is characterized by proactive, not reactive efforts. This study examines how Guam under the three political status options may handle various threats to human security.

Human security is also generally understood to encompass seven primary categories: economic; food; health; environmental; personal; community; and political security.[521] This study outlines some of these main threats to human security in Guam that encompass multiple categories. For example, Guam's rising temperatures due to climate change could affect agricultural production as changing weather patterns make it difficult to grow certain crops and hinder access to food. In addition, rising temperatures may correlate with a rise in heat-related illnesses. Thus, climate encompasses the health, food, and environmental categories of human security. There is an interdependent characteristic to human security in that these seemingly disparate threats may also work in tandem to exacerbate each other. Thus, it is pertinent to examine various threats and explore potential responses, as one threat may impact numerous aspects of human security. This study addresses the advantages and disadvantages of responses to these threats under each political status option.

Threats in Guam

This section examines four primary threats related to the environment and specifically focuses on the interconnected issues of: climate change and natural disasters; climate change and disease; invasive species; and waste management.

Climate Change and Natural Disasters

A rise in global annual average temperatures has ensuing natural consequences that create hazards and stressors for human security. A major component of anthropogenic climate change (originating in human activity) is a rise in global temperature, which subsequently influences regional climatic conditions. The ability for countries to reduce their greenhouse gas (GHG) emissions is a determining factor in the impact of global warming over the next century. Pacific Island leaders are arguing that the most pressing

518 United Nations Development Programme.

519 United Nations Development Programme, "Human Development Report," 22.

520 United Nations Development Programme, "Human Development Report," 22.

521 United Nations Development Programme, "Human Development Report," 24-25.

security threat in the region is climate change caused by the burning of fossil fuels.[522]

The global conditions of increasing average temperatures and GHG emissions carry implications for Guam.[523] The changing weather patterns that result from rising temperatures may affect the environmental conditions that impact the frequency or intensity of certain natural disasters. For Guam, these environmental threats could take the form of rising sea levels, coastal inundation, tropical cyclones, wildfires and drought, and ocean acidification.

Rising Sea Level and Migration

A rise in sea level is one consequence of climate change impacting the island of Guam. As the findings of the *2019 Hazard Mitigation Plan* reflect, flooding due to sea-level rise will generally impact "the port and marinas" as well as "structures, roads, and other infrastructure."[524] Specifically, the island locations that will be most impacted by sea-level rise will be "the southern part of Merizo, parts of Inarajan and Hagåtña, and a portion of Piti between Naval Base Guam and Cabras power plant."[525] These locations are particularly vulnerable, but on the whole, rising sea level poses a general threat to human security because "anything that makes the ocean waves reach farther inland (such as a high tide, a tsunami, or a large storm) will cause more flooding than when the sea level was lower."[526] Flooding, as well as other climate issues such as heavy rains, and severe winds, are all hazards that can cause human insecurities.

Given Guam's proximity to at-risk low-lying islands and the social networks cultivated by existing migrants from freely associated states, it is likely that people impacted by sea-level rise will continue to migrate and resettle in Guam. Dr. Austin Shelton of the University of Guam Center for Island Sustainability and Sea Grant argues that one projection for Guam is, "more climate change refugees or migrants coming."[527] Climate-induced migration becomes an indirect consequence of climate change. The impacts of climate change, particularly sea-level rise, have the potential to make parts of, or entire, low-lying islands uninhabitable. Resettlement to Guam may lead to a lack of capacity in resources such as food, water, and land to provide a quality standard of living for an exponentially growing migrant or refugee population.

Tropical Cyclones

Another threat to the environment is tropical cyclones (TC), which are powerful, circulating

522 Pacific Islands Forum, Majuro Declaration for Climate Leadership (Majuro: Pacific Islands Forum, 2013), 1, https://d3n8a8pro7vhmx.cloudfront.net/majurodeclaration/pages/25/attachments/original/1378363615/130905_RMI_PIF_Majuro_Declaration___Commitments.pdf?1378363615.

523 Guam Homeland Security/Office of Civil Defense, 2019 Guam Hazard Mitigation Plan (Agana Heights: n.p., 2019), 4-2.

524 Guam Homeland Security/Office of Civil Defense, "2019 Guam Hazard Mitigation Plan," 5-44.

525 Guam Homeland Security/Office of Civil Defense, "2019 Guam Hazard Mitigation Plan," 5-43.

526 Pacific Islands Climate Education Partnership, Climate Change in Guam, 2014, 12.

527 Personal Communication with Center for Island Sustainability and University of Guam Sea Grant Director, Austin Shelton, July 14, 2020.

"low-pressure weather systems that range in size from 120- to- 1,500 miles across."[528] Tropical cyclones encompass different types of weather systems: tropical depressions, tropical storms, and typhoons.[529] These can vary in wind speeds, with strong winds causing destruction that may range from damage to buildings, critical infrastructure, and homes while also spreading debris that poses harm to human life and the overall environment. Climate science links climate change to an increasing intensity of tropical cyclones, yet with an overall decrease in frequency. "The likely overall outlook for Guam is for fewer but stronger storms in the future."[530]

Guam is geographically located in the Western North Pacific Ocean, which experiences the most numerous and strongest tropical cyclones on Earth. This area is commonly referred to as "Typhoon Alley" and is where 33% of the world's tropical cyclones form.[531] In Guam, the peak season for cyclones to occur is between July and November, though these weather systems can form at any time. Throughout the island's history, Guam has experienced many destructive typhoons and super typhoons. For example, in 2002 when Super Typhoon Pongsona hit, it resulted in over $700 million in recovery costs as critical infrastructure, homes, and other structures were severely damaged.[532] Super Typhoon Pongsona hit Guam with wind speeds upwards of 144 mph and wind gusts up to 173 mph.[533]

Drought and Wildfires

The continuity of rising global temperatures can also lead to "drier conditions" that increase the likelihood and intensification of droughts.[534] Especially during the dry season, when "water may be less available," climate change could "further exacerbate drought conditions" for Guam.[535] A 2019 report by the US Geological Survey and US Department of Interior, utilized the RCP 8.5 scenario to analyze Guam's annual rainfall in a future climate. Its findings predict that rainfall will decrease from 2080-2099.[536] Overall, drier conditions affect the "duration and the severity" of wildfires, which threaten human safety.[537] The environmental impacts of drought are expansive and can induce "stress to local crops" with "aggravated

528 Guam Homeland Security/ Office of Civil Defense, "2019 Guam Hazard Mitigation Plan," 5-55.

529 Guam Homeland Security/Office of Civil Defense, "2019 Guam Hazard Mitigation Plan," 5-55.

530 Grecni, et al., "Climate Change in Guam: Indicators and Considerations for Key Sectors. Report for the Pacific Islands Regional Climate Assessment." East-West Center, 2020, 22, accessed at https:/www.eastwestcenter.org/PIRCA-Guam.

531 Guam Homeland Security/ Office of Civil Defense, "2019 Guam Hazard Mitigation Plan," 5-56.

532 Federal Emergency Management Agency and Guam Homeland Security Office of Civil Defense, "2018 Guam Catastrophic Typhoon Plan," B-1, accessed at https://www.ghs.guam.gov/sites/default/files/2018_guam_catplan_final_20180213.pdf.

533 US Department of Commerce, "Super Typhoon Pongsona, December 8, 2002," 2003, 1, accessed at https://www.weather.gov/media/publications/assessments/Pongsona.pdf.

534 Guam Homeland Security/Office of Civil Defense, "2019 Guam Hazard Mitigation Plan," 5-65.

535 United States Environmental Protection Agency, "What Climate Change Means for Guam" (EPA 430-F-16-062, n.p., 2016), 2. https://19january2017snapshot.epa.gov/sites/production/files/2016-09/documents/climate-change-gu.pdf.

536 Stephen Gingerich et. al. "Water Resources on Guam–Potential Impacts of and Adaptive Response to Climate Change: US Geological Survey Scientific Investigations Report 2019–5095," 2019, accessed at https://doi.org/10.3133/sir20195095.

537 Guam Homeland Security/Office of Civil Defense, "2019 Guam Hazard Mitigation Plan," 5-65.

and prolonged" consequences.[538] Researchers John Borja, Jonathan Deenik, Abby Frazier, and Christian Giardina conducted a study, *Drought in the US Affiliated Pacific Islands: Impacts to Agriculture*, which reveals how drought has impacted agricultural growth in Guam, most especially for non-irrigated crops. Their findings indicate that deprivation of water linked with drought and the absence of irrigation leads to "losses in productivity due to water stress."[539] Drought also leads to "an increased incidence of grass fires and wind erosion [that] negatively impacts sensitive areas, including the steep sloping lands of southern Guam."[540]

As drought contributes to a lower level of crop production, the people of Guam will also continue to be dependent upon imports from external sources for essential goods, such as food. According to the *Guam Comprehensive Economic Development Study 2020-2025*, approximately 90% of all goods are imported into the island.[541] There is a need to improve the nutritional quality of imports and to upgrade the food safety system to insure effective protection.[542] Positive perceptions of imported food contribute to reliance upon external food systems, often to the detriment of traditional local foods with higher nutritional value. Experts predict that external challenges, like climate change, will impact the food system and further threaten food security.[543] Current dependency upon food imports reflects how climate change will exacerbate existing agricultural production vulnerabilities for the island. Drought poses particular risks to human security as it can induce wildfire and wind erosion that impacts agricultural and crop production. Considering the evidence that sea level rise threatens ports, marinas, and other critical infrastructure, if Guam's ports were to become compromised it would create shortages and scarcity in food supplies as essential goods became more difficult to access.

Finally, drought implies a lack of fresh water for a variety of everyday needs and demands of humans and vegetation. If there is a high demand for fresh water but low availability due to a lack of precipitation to recharge groundwater and surface water sources, then scarcity will ensue. As the 2019 Guam Hazard Mitigation Plan indicates, "drought can cause a shortage of water for human and industrial consumption, hydroelectric power, recreation, and navigation."[544] Thus, hazards associated with drought can be multi-dimensional and widespread. In recent years, the Weather Forecast Office (WFO) in Guam has recorded 2009, 2010, 2016, and 2019 as drought years—characterized by having four or more consecutive months of less than four inches of rain.[545] Its findings conclude that the entire island of Guam is susceptible to drought, with a high probability of future events. Drought leads to multiple threats to human security

538 Mark Lander, "Meteorological Factors Associated with Drought on Guam," Technical Report No. 75 of the Water and Energy Research Institute of the Western Pacific, 1994, i., accessed at http://www.weriguam.org/docs/reports/75.pdf.

539 John Borja, Jonathan Deenik, Abby Frazier, and Christian Giardina, "Drought in the US Affiliated Pacific Islands: Impacts to Agriculture," (USGS National Climate Adaptation Science Center, 2019), 2, accessed at http://pi-casc.soest.hawaii.edu/report/EcodroughtWorkshops/USAPI%20Drought%20Report_Impacts%20to%20Agriculture_2019.pdf

540 John Borja et al., "Drought in the US Affiliated Pacific," 2.

541 Guam Economic Development Authority, Guam Comprehensive Economic Development Strategy 2020-2025 (Tamuning: US Department of Commerce, 2019), 13. https://www.investguam.com/wp-content/uploads/2019/Guam%20CEDS%202020-2025.pdf.

542 Food Secure Pacific Working Group, "Towards a Food Secure Pacific. Framework for Action on Food Security in the Pacific: 2011-2015, 2010, 9.

543 Food Secure Pacific Working Group, 9.

544 Guam Homeland Security/Office of Civil Defense, 2019 Guam Hazard Mitigation Plan, 5-16.

545 Guam Homeland Security/Office of Civil Defense, 2019 Guam Hazard Mitigation Plan, 5-17.

as a lack of rainfall and drier conditions can increase the likelihood of enduring severe wildfires, create difficulties in agricultural production, and decrease availability of freshwater. Drought conditions also create a greater likelihood of heat-related illnesses among the island's population.

Diseases

As the spread of infectious disease is directly related to increases in temperature and other adverse effects associated with climate change, the susceptibility of Guam's population to disease must be a priority in all political status considerations.[546] Climate change has a widespread, multifaceted impact on how infectious diseases spread and affect populations. As Wu et. al. explain, "the health effects of climate change on human infectious diseases are imposed through impacts on pathogens, hosts/vectors, and disease transmission."[547] Longer term changes in the climate of particular areas will affect "the development, survival, reproduction, and liability of disease pathogens and hosts," while more "sudden and dramatic" changes in weather conditions such as extreme weather will have unpredictable effects on infectious diseases.[548] According to a Guam-centric analysis of indicators and considerations for climate change, conducted as part of the Pacific Islands Regional Climate Assessment, Guam is vulnerable to several disease risks that will be either exacerbated or directly caused by changes in the island's climate. In regard to how disease spreads, the report notes, "globally, future warming and precipitation changes will likely increase the suitable habitat for pathogens and vectors, thereby increasing the risk of outbreaks of dengue fever, malaria, diarrhea, salmonellosis, and other diseases."[549]

As an example, flash floods and heavy rainfall, such as those that occurred in Guam in August of 2018, "are expected to become more frequent, and flooding will intensify in a warmer future climate," thereby contributing to "increased levels of pathogens in drinking water" and increased "waterborne diseases, such as diarrheal illness."[550] As Wu et. al. assert, however, "humans are more than passive recipients of climate change induced health effects" and can play a "significant and active role by adopting proactive adaption measures in order to control and alleviate the negative health impacts of climate change."[551] Therefore, due to the direct link between climate change and disease, the climate change prevention, mitigation, and adaptation measures considered in each of the status options are not only beneficial to Guam's environment and ecosystem, but to the overall physiological health and well-being of Guam's population.

Other than climate-change related risks of diseaes, Guam faces other challenges as it relates to

546 World Health Organization, "Climate Change and Human Health - Risk and Responses," 16-17, https://www.who.int/global-change/climate/en/chapter6.pdf.

547 Xiaoxu Wu, Yongmei Lu, Sen Zhou, Lifan Chen, and Bing Xu, "Impact of climate change on human infectious disease: Empirical evidence and human adaptation," Environment International 86, (January 2016): 20, https://www.sciencedirect.com/science/article/pii/S0160412015300489.

548 Wu, et al., "Impact of climate change."

549 Grecni, et al., "Climate Change in Guam," 32.

550 Grecni, et al., "Climate Change in Guam," 31.

551 Wu, et al., "Impact of climate change," 20.

disease. Illness and disease, whether related to climate-induced drought conditions or induced through other means, are crucial to understand the health category of human security. Both communicable and non-communicable diseases (NCD) pose harm to the health of individuals and larger threats to the community's well-being.

Tourism is a factor related to disease susceptibility for the island. Guam's geographic location has become "an established hub for airline traffic" with a substantial flow of people arriving from "Asia, Micronesia and Oceania, as well as Hawaii and the continental United States."[552] In 2019, the Guam Visitors Bureau reported there were an estimated 1,631,049 tourists arriving on the island, with a majority of these visitors traveling from Japan, South Korea, Taiwan, China, US/ Hawaii, and the Philippines.[553] This global transportation connectivity has impacts at the local level. Guam does not control outside travel, and as a result, the island's residents are potentially exposed to groups that are mobile at international scales. This international mobility increases pathways for transmission and infection as interactions between tourists and residents may lead to the spread and outbreak of disease.

Certain groups within Guam's existing population are also more vulnerable to spreading or acquiring communicable and non-communicable diseases (NCDs). Communicable diseases are considered "illnesses caused by viruses or bacteria that people spread to one another through contact with contaminated surfaces, bodily fluids, blood products, insect bites, or through the air."[554] Many examples exist, with some of the commonly contracted communicable diseases being "HIV, hepatitis A, B and C, measles, salmonella, measles and blood-borne illnesses." According to the World Health Organization (WHO), the main types of NCDs are "cardiovascular diseases (like heart attacks and stroke), cancers, chronic respiratory diseases (such as chronic obstructive pulmonary disease and asthma) and diabetes" these are also known as "chronic diseases" that tend to be the result of "genetic, physiological, environmental and behavioral factors."[555] The socioeconomic impacts and prevention and control of NCDs are related to Guam's political status.

This section has focused on some primary factors that increase the island's susceptibility to disease. However, the health category of human insecurity reveals that "all of Guam and the people residing in Guam are susceptible to diseases."[556] While the entire island is at risk, large disease outbreaks are more likely to occur in Guam's villages with more dense populations as these areas have "some of the highest numbers of cases [of disease]."[557] The island's most densely populated areas "Dededo, Yigo, and Tamuning/Tumon." These villages have also historically been documented as having the most cases of

552 Guam Homeland Security/Office of Civil Defense and the Guam Emergency Operations Center Emergency Support Function Team, "The Territory of Guam Comprehensive Emergency Management Plan Pandemic Response Annex," 2016, 3, https://www.ghs.guam.gov/sites/default/files/h_pandemic_annex_v2_12.13.16.pdf.

553 Guam Visitors Bureau, "Fiscal Year 2019 Summary," 2019, 1, accessed at https://www.guamvisitorsbureau.com/docs/research/statistics/visitor-arrival-statistics/fy-2019/september-2019-arrival-summary.pdf.

554 Peter F. Edemekong and Ben Huang, Epidemiology of Prevention of Communicable Diseases (StatePearls Publishing, 2020), https://www.ncbi.nlm.nih.gov/books/NBK470303/.

555 World Health Organization, "Noncommunicable diseases," World Health Organization, World Health Organization, June 1, 2018, https://www.who.int/news-room/fact-sheets/detail/noncommunicable-diseases.

556 Guam Homeland Security/Office of Civil Defense, "2019 Guam Hazard Mitigation Plan," 5-9.

557 Guam Homeland Security/Office of Civil Defense, "2019 Guam Hazard Mitigation Plan," 5-9.

disease in the island.[558] Population growth resulting from the US military buildup may also increase density throughout the island's villages, adding to the increased likelihood for the spread and outbreak of disease in the future. The US military build-up plans involve relocating 5,000 US Marines and their estimated 1,300 dependents to the island over the next thirteen years.[559] The US military's decision to relocate and the increase in the island's overall population are also attributed to Guam's political status.

The people of Guam have experienced several disease outbreaks and epidemics, or "a disease that affects numerous people, animals, or plants at one time."[560] One of the more recent epidemics experienced in Guam occurred in 2010, with 502 reported cases of mumps.[561] Additionally, the island "encounters imported dengue cases nearly annually because of frequent travel to and from Guam and areas with active DENV transmission."[562] While travel-related disease cases are common, in 2019 the first locally acquired case of dengue fever in 75 years was reported.[563] Reports of locally acquired dengue fever continue, with a total of 13 cases documented from September 9, 2020 to November 25, 2020.[564] This number of dengue fever cases is significant because it indicates the local transmission of the disease. These situations reveal that the island is susceptible to epidemics. However, the most prominent example of a communicable disease outbreak is seen with the coronavirus disease 2019 (COVID-19) global pandemic.

Invasive Species

Guam is vulnerable to invasive species. An invasive species may be defined as "an alien (i.e., nonnative) species whose introduction causes, or is likely to cause, economic or environmental harm or harm to human health."[565] Guam's invasive species are detrimental to the island's ecosystem and natural habitats and lead to "the overall declining health of the natural environment."[566] Invasive species put native/endemic species at risk by disrupting food webs and habitats. For example, the *Boiga irregularis*, also known as the brown tree snake (BTS), was unintentionally introduced to Guam during the post-World War II rebuilding efforts, when a "single pregnant female brown tree snake" stowed away on a "military cargo [ship]."[567] The brown tree snake has thrived in Guam's climate and ultimately caused the "extinction

558 Guam Homeland Security/Office of Civil Defense, "2019 Guam Hazard Mitigation Plan," 5-9.

559 Guam Homeland Security/Office of Civil Defense, "2019 Guam Hazard Mitigation Plan," 4-13.

560 Guam Homeland Security/Office of Civil Defense, "2019 Guam Hazard Mitigation Plan," 5-7.

561 Guam Homeland Security/Office of Civil Defense, "2019 Guam Hazard Mitigation Plan," 5-11.

562 Stephanie Kern-Allely, Ann Pobutsky, and Thane Hancock, "Notes from the Field: First Evidence of Locally Acquired Dengue Since 1944 – Guam, 2019," Centers for Disease Control and Prevention, Centers for Disease Control and Prevention, April 3, 2020, https://www.cdc.gov/mmwr/volumes/69/wr/mm6913a4.htm.

563 Gaynor Daleno, "Guam has 1st local dengue in 75 years," Guam Daily Post, September 13, 2019. https://www.postguam.com/news/local/guam-has-st-local-dengue-in-years/article_7ae90b68-d544-11e9-aeaa-6fff668966e0.html.

564 Stephanie Kern-Allely, Ann Pobutsky, and Thane Hancock.; see also Guam Homeland Security/ Office of Civil Defense, "2019 Guam Hazard Mitigation Plan," 5-11.

565 Guam Homeland Security/Office of Civil Defense, "2019 Guam Hazard Mitigation Plan," 5-8.

566 Guam Invasive Species Council, "2017-2019 Interim Guam Invasive Species Management Plan," 2017, 6. https://www.sprep.org/attachments/VirLib/Guam/nissap-2017-2019.pdf.

567 Guam Invasive Species Council, "Invasive Species Management Plan," 4.

and extirpation of many native and endemic species," most notably native birds.[568] Guam is one of the "most human-altered places on earth, with the invasive brown tree snake having caused the loss of nearly all forest bird species and declines in other vertebrate species."[569] Ecologically, the extinction of native birds also leads to a loss of pollination, which has negative impacts on the regeneration of the forests in Guam. Invasive species and native species extinctions are "considered by scientists and conservationists as two of the most pressing ecological concerns globally. The introduction rate, magnitude, and spread of invasive species in Guam is rampant. According to Dr. Aubrey Moore, "one new species arrives on Guam every few months," which is "10,000 times the natural rate."[570] This is alarming as the introduction of new species not only impacts the natural environment but also has direct and indirect effects on humans.

Securing Guam's ports of entry and exit can help stop the introduction and spread of invasive species. Coupled with international travel from tourism and travel related to the military, there are opportunities for invasive species to enter Guam's borders despite the geographical distance of the island. As the findings of the *2017-2019 Interim Guam Invasive Species Management Plan* indicate, "Guam's borders must be strengthened by improving its capabilities in the prevention of alien invasive species from not only reaching the shores of Guam but entering our neighbors in the region like the Northern Marianas, the rest of Micronesia and Hawaii."[571] Invasive species directly impact Guam's economy and also have broader implications for regional ecosystems, human health, and economies.

Waste Management

Solid waste management is another important aspect of human security. Pacific Islands face considerable challenges of escalating waste and its related pollution. As an island, there are many common difficulties that Guam faces in setting up and operating waste management systems. These "barriers include (1) limited physical space, (2) lack of capital and financing options, (3) vulnerability to weather, water, and extreme events, (4) high operational costs, (5) small market sizes and diseconomies of scale, and (6) changing social norms regarding product reuse, repair, and recycling."[572] While there are many reasons for increased production of waste, economic development, population growth and urbanization are linked to the increase.[573] Improper or insufficient management of waste can subsequently threaten human security.

568 Guam Invasive Species Council, "Invasive Species Management Plan," 4.

569 Dara M. Wald, Kimberly A. Nelson, Ann Marie Gawel, Haldre S. Rogers, "The Role of trust in public attitudes toward invasive species management on Guam: A Case study," *Journal of Environmental Management*, 229 (2019): 141, https://doi.org/10.1016/j.jenvman.2018.06.047.

570 Guam Invasive Species Council, "Invasive Species Management Plan," 5.

571 Guam Invasive Species Council, "Invasive Species Management Plan," 6.

572 Matthew J. Eckelman, Weslynne Ashton, Yuji Arakaki, Keisuke Hanaki, Shunsuke Nagashima, and Lai Choo Malone-Lee (2014). "Island Waste Management Systems," Journal of Industrial Ecology 18, no. 2 (2014): 308, accessed at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2425956.

573 Masaru Tanaka (2014). Sustainable society and municipal solid waste management, in Agamuthu Pariatamby and Masaru Tanaka (eds.), Municipal solid waste management in Asia and the Pacific Islands. Singapore: Springer.

Landfills & Environmental Pollution

Since World War II, the Ordot dump operated as the primary waste facility in Guam. On September 8, 1983, the dump was listed on the "National Priorities List of hazardous waste sites,"[574] and in March 1986 the US Environmental Protection Agency (EPA) determined that the Ordot dump violated the Clean Water Act.[575] These environmental concerns culminated as leachate, a liquid "formed when rain water filters through wastes placed in a landfill,"[576] was being dumped into the Lonfit River that connects to the Sigua River and Pago River and eventually drains into Pago Bay.[577] Longitudinal studies reported that the emission of leachate from the 1980s to 2010s was a significant source of pollution for the Lonfit River and these related bodies of water. For example, a 2008 study found that enterococcus and E. coli "exceeded the Guam recreational water quality standards...by at least three orders of magnitude."[578] This evidence clearly identified the Ordot dump as "a potential source of waterborne diseases in view of the high densities of fecal indicator bacteria encountered."[579] Such disease threats are also concerning because the Lonfit River and its connected bodies of water are used for recreation on the island. Therefore, if people come into contact with the waterborne pollutants, they will be at greater potential risk for contracting illness and disease.

To understand the extent and severity of the leachate generated by the dump, the Guam Solid Waste Authority's (GSWA) Receiver noted that from January 30, 2015 to March 10, 2016, an estimated 8 million gallons of leachate was redirected to avoid contaminating the Lonfit River and instead was sent to a wastewater treatment plant.[580] Despite these efforts to reduce the environmental contamination of the Lonfit River and its connected bodies of water, the dump has been directly linked to other forms of pollution, namely methane, a greenhouse gas that contributes to climate change. From September 14, 2015, through March 9, 2016, the Guam Solid Waste Receivership information center reported that, "12,539 metric tons of methane has been captured and properly disposed."[581] Even with proper disposal, methane is the second most widespread GHG emitted from anthropogenic activity. Relative to carbon dioxide, it is "25 times more effective at trapping atmospheric heat."[582]

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574 Staff Reports, "Guam's solid waste timeline," Pacific Daily News, December 25, 2017. https://www.guampdn.com/story/news/2017/12/25/guams-solid-waste-timeline/933165001/.

575 Staff Reports, "Guam's solid waste timeline."

576 United States Environmental Protection Agency, "Municipal Solid Waste Landfills," Mar. 26, 2020, accessed at https://www.epa.gov/landfills/municipal-solid-waste-landfills#:~:text=Leachate%20%2D%20formed%20when%20rain%20water,or%20constituents%20from%20those%20wastes.

577 Gary Denton, Mohamad Golabi, Harold Wood, C. Iyekar, L.P. Concepcion, and Yuming Wen, "Impact of Ordot Dump on water quality of the Lonfit River basin in central Guam. 2. Aqueous chemical and biological contaminants," Micronesica 40, no.½ (2008): 151. accessed at https://www.academia.edu/21530472/Impact_of_Ordot_Dump_on_water_quality_of_the_Lonfit_River_basin_in_central_Guam_2_Aqueous_chemical_and_biological_contaminants.

578 Denton, et al., "Impact of Ordot Dump on water quality," 156.

579 Denton, et al., "Impact of Ordot Dump on water quality," 156.

580 Gershman, Brickner & Bratton, Inc., "Latest Updates," Guam Solid Waste Receivership Information Center, Apr. 29, 2019, http://www.guamsolidwastereceiver.org/updates-done.shtml.

581 Gershman, Brickner & Bratton, Inc., "Latest Updates."

582 Ginger Birkeland and Robert Christopherson, An Introduction to Physical Geography: Geosystems Ninth Edition (Boston: Pearson, 2015), 310.

In April 1994, Public Law 22-115 mandated that the Ordot dump be closed by April 25, 1997 in order to address the extensive use and contamination through leachate and methane generation.[583] Despite this mandate to close in 1997, the Ordot dump continued to be used until August 31, 2011, when the Layon Landfill was opened.[584] In 2002, the US EPA filed a lawsuit to force Guam to close the Ordot dump.[585] Two years later, in 2004, Guam and the EPA entered into a consent decree, which required Guam to pay a civil penalty and to close and cover the dump. As an unincorporated territory of the United States, Guam is subject to adhere to the US EPA's regulations. Due to lack of progress with the 2004 consent decree, the adoption of a receivership in which control of operations of the Guam Solid Waste Authority was given to the "consulting firm Gershman Brickner & Bratton (GBB)."[586]

The Layon Landfill is located in southern village of Inarajan. It was constructed to be a "high-tech, environmentally sound and highly controlled landfill for non-hazardous municipal solid waste," and was predicted to service Guam for more than 30 years.[587] Past this time frame for Layon's operation, one must consider the future of Guam's waste management and the land that will be available to construct a new landfill. The Layon Landfill is situated in close proximity to fragile ecosystems and human settlements. The placement of island landfills near coastlines risks the "negative impacts of waste on marine and freshwater ecosystems"[588] These impacts are also exacerbated by climate change, which amplifies existing problems of landfills in proximity to human settlements that are exposed to rising sea levels and other weather events.[589]

In 2017, the government of Guam filed a lawsuit against the US Navy to bear some of the financial burden of repairing the environmental damage from the Ordot dump. The lawsuit calls attention to the Navy and US government supervision of the Ordot dump prior to World War II and throughout the early 1970s. This lawsuit is a continuation of some of the 1988 findings from the EPA that determined the Navy was "a responsible party" and thus liable for cleanup of the site.[590] In February 2020, the government of Guam's lawsuit against the military to pay for part of the Ordot closure and cleanup was dismissed. The US District Court of Appeals for the District of Columbia Circuit issued the decision, stating, "Guam cannot now seek recoupment from the United States for the contamination because its

583 Staff Reports, "Guam's solid waste timeline."

584 Staff Reports, "Guam's solid waste timeline."

585 Genevieve Glatsky, "Trouble in paradise: Recycling a tough proposition for US territories," WasteDive, Nov. 19, 2019, https://www.wastedive.com/news/trouble-in-paradise-recycling-a-tough-proposition-for-us-territories/567477/.

586 Glatsky, "Trouble in paradise."

587 Guam Solid Waste Authority, "Layon Landfill," Accessed Aug. 31, 2020, accessed https://guamsolidwasteauthority.com/gswa-layon-landfill.shtml.

588 Wu Yang, Thomas Dietz, Daniel B. Kramer, Xiaodong Chen, and Jianguo Liu. "Going beyond the millennium ecosystem assessment: an index system of human well-being," PLOS ONE 8 no.5 (2013): https://doi.org/10.1371/journal.pone.0064582.

589 Farrelly et al., "Trading in waste," 29. ; N. Mimura, L. Nurse, R.F. McLean et al. (2007) "Small Islands," in M.L. Parry, O.F. Canziani, J.P. Palutikof, J. van der Linden and C.E. Hanson (eds.), Climate Change 2007: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change. Cambridge, UK: Cambridge University Press.

590 Matthew M. Burke, "Guam Lawsuit says Navy should pay its share of dump cleanup," *Stars and Stripes*, March 7, 2017, accessed https://www.stripes.com/news/pacific/guam-lawsuit-says-navy-should-pay-its-share-of-dump-cleanup-1.457398.

cause of action for contribution expired in 2007."[591] The government of Guam appealed and the case was heard in the US Supreme Court in April 2021. In May 2021, an opinion was issued in which Guam could seek compensation under the Superfund Act. JD Supra summarizes the case as follows, "Does a consent decree under the Clean Water Act trigger a three-year limitation period to bring a contribution claim under the Comprehensive Environmental Response, Compensation and Liability Act when the consent decree makes no mention of CERCLA."[592] The unanimous opinion by the US Supreme Court, written by Justice Thomas, states, "The most natural reading of § 113 (f) (3) (B) is that a party may seek contribution under CERCLA only after settling a CERLA-specific liability." Thus, Guam will be able to proceed with its actions (against the Navy) to recover cleanup costs.[593]

This recent lawsuit illustrates some of the potential considerations that Guam will continue to grapple with under any political status option. It must consider the impacts that major industries will have on the existing and future waste management systems.

Illegal Dumping

Illegal dumping threatens the environment and overall human security through improper disposal of solid waste. In a 2019 interview, Nic Lee, the spokesman for Guam EPA, estimated that approximately "12,000 tons" of trash had been illegally dumped in Guam.[594] In an effort to combat this problem, Ch.51 §51207 of the Guam Code Annotated asserts that "littering shall be punishable by a fine of not less than Two Hundred Dollars ($200.00), nor more than One Thousand Dollars ($1,000.00)."[595] However, between the years of 2017 to 2019 Guam EPA only issued "47 littering citations."[596] A lack of enforcement in issuing littering citations weakens this form of deterrent throughout the island. Failure to properly dispose of waste leads to a variety of pollutants and destruction of the environment. The island's disposal fees are also mentioned as a cause of illegal dumping. Some of Guam's residents do not have the means to pay for their trash disposal because they cannot afford the monthly fee. This situation is compounded by the inaccessibility of proper trash disposal locations for many residents.[597] The lack of accessibility and

591 Jasmine Stole Weiss, "GovGuam's lawsuit against Navy for dump closure costs dismissed," *Pacific Daily News*, February 14, 2020, accessed at https://www.usatoday.com/story/news/local/2020/02/14/govguam-lawsuit-case-dismissed-navy-dump-closure-cost/4767117002/.

592 Stoel Rives, "US Supreme Court Decision Revives Guam Suit, Clarifies CERCLA, and Provides Cautionary Tale," JDSupra, June 8, 2021, accessed at https://www.jdsupra.com/legalnews/u-s-supreme-court-decision-revives-guam-7352008/.

593 Stoel Rives, "US Supreme Court Decision Revives Guam Suit, Clarifies CERCLA, and Provides Cautionary Tale," JDSupra, June 8, 2021, accessed at https://www.jdsupra.com/legalnews/u-s-supreme-court-decision-revives-guam-7352008/.

594 Chris Barnett, "Guam EPA prefers dumpers clean up than get fined," KUAM News, Apr. 2, 2019. https://www.kuam.com/story/40234073/guam-epa-prefers-dumpers-clean-up-than-get-fined.

595 An Act to Amend §§51202(a) and 51207 of Article 2, Chapter 51 of Title 10, Guam Code Annotated; and to Amend §3401.1(h)(4) of Title 16 of the Guam Code Annotated, Relative to Doubling the Penalties for Littering for Violators that Discard Cigarettes from Vehicles When the Fire Danger Rating is High, P.L. 30-135, 30th Guam Legislature, 2010.

596 Barnett, "Guam EPA prefers dumpers clean up."

597 Manny Cruz, "Mayors worry illegal dumping will increase," *Pacific Daily News*, September 25, 2018, accessed at https://www.guampdn.com/story/news/2018/09/25/mayors-worry-illegal-dumping-increase/1287640002/ ; Steve Limtiaco, "Virus closures take big bite out of solid waste revenue," Pacific Daily News, April 4, 2020, accessed at https://www.usatoday.com/story/news/local/2020/04/24/coronavirus-guam-solid-waste-authority-revenue-down-amid-closures/5169790002/.

financial security for residents are issues that the island must address under any political status option.

In addition, the growth of tourism and the military can also overload the waste management system, as the generation of waste from these industries could continue to rise to a point where there is a lack of capacity to properly dispose of it. The risks associated with improper or insufficient waste disposal increase the risks of harm to the people of Guam and the environment through pollution. The waste generated by these core industries may potentially be mitigated by recycling and zero waste efforts. With any plan for waste management, the political status context will need to be considered.

Recycling & Zero Waste

The island has limited capacity to dispose of waste due to its geographic characteristics, and it also faces challenges due to its relative lack of recycling capabilities that could otherwise help to alleviate the ongoing waste crisis.[598] Recycling programs are challenging, given the geographic isolation of the island from end markets and a lack of sufficient quantities to support processing investments. Shipping recyclables off-island is expensive and yields relatively low profits, particularly given the limited recycling activity for the island overall. As of 2012, while off-island markets for metal, aluminum beverage containers, cardboard, and computer components were all "revenue-positive," items such as "mixed paper and plastics #1/#2" were "revenue-negative."[599] The *Guam Zero Waste Plan*, published by the Guam Environmental Protection Agency in 2013, notes that port charges for shipping recyclables usually range from "$700 to $800 per load…at both export and import points."[600] The implication is that while some recycled goods generate revenue when shipped, the cost of shipping others is often more than the revenue gained. While recycling helps to reduce the amount of waste created in Guam, it may be costly. Nearly all Pacific Island countries and territories face the irony that "not enough waste is produced to make recycling economically attractive" on the island.[601] Additionally, in the context of international markets, the high cost of shipping make recyclable materials comparatively expensive and burdensome.[602]

Dr. Austin Shelton, director of the University of Guam Sea Grant and Center for Island Sustainability, explains that, as of 2020, it costs approximately "$1,000 per ton to ship off to Indonesia every month."[603] Reducing the amount of waste in Guam through recycling in order to decrease the amount of trash in the Layon Landfill, or illegally dumped, is necessary. However, high costs pose a hindrance to this effort. Transforming Guam's political status will not change the island's geographic location, which plays a role in the high shipping costs. However, opportunities to collaborate with US states and the federal government or

598 Personal Communication with Center for Island Sustainability and University of Guam Sea Grant Director Austin Shelton, July 14, 2020.

599 Guam Environmental Protection Agency, "Guam Zero Waste Plan," 12.

600 Guam Environmental Protection Agency, "Guam Zero Waste Plan," 12.

601 Farrelly, et al., "Trading in Waste," 29.

602 Eckelman, et al. "Island Waste," 310.

603 Personal Communication with Center for Island Sustainability and University of Guam Sea Grant Director Austin Shelton, July 14, 2020.

other countries as an independent or freely associated country may arise. Such opportunities are potential ways to improve the utilization of recycling in Guam now and in the future.

Sustainability & the Circular Economy

Sustainable consumption and production (SCP) is considered to be a comprehensive approach to address threats for environmental change by achieving low-carbon economies and supporting local environments.[604] One potential method to decrease Guam's amount of current and future solid waste production under any political status is by shifting where goods are produced in an effort to establish a more sustainable economy. In the Pacific, the United Nations argues that urgent proactivity is necessary to insure inclusive, environmentally sustainable pathways for the future. The approach the UN promotes is the "circular economy," which shifts from a linear system of production and consumption that generates waste through a "take, make, and dispose" orientation. A circular economy "offers a holistic, cyclical process which turns waste into a resource."[605] As Dr. Shelton explains, "our current economy is linear, which means that you take something from the earth, you extract it and then you make something out of it, you use it then you throw it away and you start all over again."[606] A circular economy would "bend that process into a loop," in which materials are remade into new goods and therefore do not become waste or pollution.[607]

Less waste may be generated by promoting local alternatives to goods that are typically imported. Local companies could also find more ways to use recycled products (such as local bottling) instead of continuing to bring in more. In the field of agriculture, certain crops that are shipped to Guam could instead be replaced with locally farmed produce. There are several organizations within Guam that sell locally produced items. For example, the Farm to Table-Guam Corporation is a non-profit organization whose goal is "to encourage and support existing, new, and potential native Chamorro farmers and small business owners, by providing opportunities to expand the distribution of their agricultural products."[608] One project facilitated by this organization is the Community Supported Agriculture Model Farm (CSA), which combines produce from small farms and distributes the produce to subscribers.[609] The organization and its projects facilitate the process of substituting imported goods with locally produced alternatives that reduce reliance on imported foods and promote greater self-sustainability in Guam. The promotion of a

604 Wei Zhao and Patrick Schroeder, "Sustainable consumption and production: Trends, challenges, and options for the Asia-Pacific region," Natural Resources Forum 34, no. 1 (2010): 4-15. accessed at https://doi.org/10.1111/j.1477-8947.2010.01275.x.

605 Aneta Nikolova and Riccardo Mesiano. "Circular Economy - Making Sustainability Part of the Solution in Asia-Pacific," United Nations Economic and Social Commission for Asia and the Pacific, October 4, 2018, accessed at https://www.unescap.org/blog/circular-economy-making-sustainability-part-the-solution-asia-pacific#.

606 Personal Communication with Center for Island Sustainability and University of Guam Sea Grant Director Austin Shelton, July 14, 2020.

607 Personal Communication with Center for Island Sustainability and University of Guam Sea Grant Director Austin Shelton, July 14, 2020.

608 Farm to Table Guam Corp., Tanom, Fatinas, & Sustansia," 2013, 1, accessed at https://farmtotableguam.org/wp-content/uploads/2013/12/FTT-Trifold-Intro-Brochure-12-13-no-bleed.pdf.

609 Farm to Table Guam Corp., "Tanom, Fatinas, & Sustania, 2.

circular economy and buying local goods aids in mitigating the climate change that threatens human security in the Pacific. These existing efforts toward a sustainable and future for the island would be enhanced by a circular economy framework. Self-governance under any of the political status options should allow the island opportunities to further transition toward sustainable consumption and production practices.

Statehood

Under statehood, Guam will be an integral part of the union that joins all fifty states and the US federal government. Becoming a state implies that Guam will adhere to federal policies but may also create laws within the state to combat human security threats.

In terms of natural disasters, Guam will be aided on both a state and federal level. As a state, Guam would continue to be included in the Emergency Management Assistance Compact (EMAC), which is a "national interstate mutual aid agreement that enables states to share resources during times of disasters."[610] As a state partnering in the program, Guam would be able to seek additional assistance at a state level. If federal assistance is needed, the government of Guam can request aid from the federal government as permitted under the Robert T. Stafford Disaster Relief and Emergency Assistance Act.[611] Aside from preparing and responding to natural calamities, it is also important to continually work on environmental regulations as a pre-emptive measure to mitigate drastic climatic changes, further decreasing the agitation of natural disasters.

As a state, Guam would also be subject to the federal laws in place to regulate the land, water, and air. Some of the most prominent laws include the National Environmental Policy Act (NEPA), Clean Air Act, and Clean Water Act. The island will continue to follow these laws should it become a state. In relation to threats associated with waste management, the allocation of funds from the federal government may be used for programs to enforce environmental regulations that directly or indirectly aid in combating this insecurity.

As a state, Guam would follow federal interpretation. As part of this, the enforcement of laws could change, based on the presidential administration. Notably, in July 2020, President Donald Trump took momentous action when his administration revised the requirements of the National Environmental Policy Act (NEPA). Reasoning that "the increased costs and complexity of NEPA reviews and litigation make it very challenging for businesses and communities to plan, finance, and build projects in the United States," the Trump Administration revised NEPA regulations to take actions such as reducing the time for preparing environmental impact studies (EIS) and environmental assessments (EA) as well as reducing their page limits.[612] Under the Biden administration, this will likely change. This helps to illustrate aspects of potential instability of federal regulations with successive shifts in partisan, political control

610 Federal Emergency Management Agency, "Emergency Management Assistance Compact (EMAC)," accessed at https://www.fema.gov/pdf/emergency/nrf/EMACoverviewForNRF.pdf.

611 Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 USC. 5121 (2019 amended).

612 Executive Office of the President Council on Environmental Quality, "Fact Sheet: Modernizing CEQ's NEPA Regulations," 2, accessed at https://www.whitehouse.gov/wp-content/uploads/2020/01/20200716FinalNEPA-Fact-Sheet.pdf.

of the executive and legislative branches. Overall, as a state, Guam would be required to follow revised federal regulations, like the NEPA requirements. Given the current and projected construction projects connected to the military build-up in Guam, this ruling may allow for projects to proceed without thoroughly examining the environmental impacts to the island's land, water, and air.[613]

For disease resilience and prevention, Guam is afforded aid from agencies such as the Centers for Disease Control and Prevention (CDC) which is the national agency that controls the proliferation of diseases "to improve the health of the people of the United States."[614] More specifically, Guam receives financial support from programs such as the Public Health Emergency Preparedness Cooperative Agreement (PHEP) program, which provides funds for "state, local, and territorial public health departments."[615] As a state, Guam would have continued access to the Strategic National Stockpile (SNS) during public health emergencies. The SNS is comprised of "supplies, medicines, and devices for life-saving care" [616]which is used "to supplement state and local supplies during public health emergencies."[617] Furthermore, in the case of future pandemics, Guam will continue to be eligible for federal assistance similar to that of the CARES Act, where Guam received a substantial amount of assistance.

As a state, the government of Guam would have the authority to legislate waste management policies within the island's borders while also adhering to federal laws and federal mandates. With a transformation in political status, agencies such as GSWA and the GEPA may continue to carry out their responsibilities and roles in solid waste management. As a state, Guam would also have voting representation in both chambers of the US Congress who can contribute to legislation on waste management or the environment. Guam would continue to adhere to federal laws. In addition to complying with federal laws, as a state, Guam could be eligible for federal grants to improve waste infrastructure.

Status Example: Florida

There are many differences between Guam and the state of Florida. Guam is not a land mass connected to the continental US. It has a smaller population and land area, and a higher elevation, with the highest point being 1,332 feet above mean sea level.[618] Despite these differences, both entities face similar threats to human security. With their tropical climates and location near oceans, both Florida and Guam face the environmental impacts and subsequent harms due to climate change such as rising sea level, flooding,

613 Lisa Friedman, "Trump Weakens Major Conservation Law to Speed Construction Permits," *The New York Times*, August 4, 2020, accessed at https://www.nytimes.com/2020/07/15/climate/trump-environment-nepa.html.

614 Centers for Disease Control and Prevention, "Centers for Disease Control and Prevention (C)," accessed December 3, 2020, accessed at https://www.cdc.gov/maso/pdf/cdcmiss.pdf.

615 Centers for Disease Control and Prevention - Center for Preparedness and Response, "Public Health Emergency Preparedness Cooperative Agreement (PHEP) Program - Explanation of Data," CS 299046_D, 2019, 1, accessed at https://www.cdc.gov/cpr/pubs-links/2019/documents/Explanation2019.pdf.

616 US Department of Health & Human Services, "About the Strategic National Stockpile," September 1, 2020, accessed at https://www.phe.gov/about/sns/Pages/about.aspx.

617 US Department of Health & Human Services, "About the Strategic National Stockpile."

618 Dirk Anthony Ballendorf and Sophie Foster, "Guam," Encyclopædia Britannica, September 2, 2020, accessed at https://www.britannica.com/place/Guam.

drought, and extreme weather events. The low elevation of Florida makes the state especially vulnerable to sea-level rise. An examination of how the state has responded to climate change allows one to see the capabilities that a state has to address these insecurities as well as the advantages and disadvantages of statehood as a political status option.

Since the early-2000s, Florida's state and local governments have made efforts to adapt, mitigate, and respond to climate change. Rising sea level, ocean acidification, changes in rainfall, extreme weather events, and rising temperatures due to climate change have exacerbated conditions within the state and created problems that affect the quality of life. Due to the low-lying land, the region of Southeast Florida is at the forefront of experiencing the impacts of sea- level rise. Sea-level rise will then impact the Biscayne Aquifer, which is "the primary source of drinking water for South Florida" because "the aquifer is recharged by surface water in the Everglades, so saltier water in the Everglades would reach the aquifer as well."[619] South Florida relies on a source of water that may be impacted by increasing salinity due to sea-level rise. Recognizing these threats, counties within Southeast Florida have taken action. A brief examination of how the government of Miami-Dade County has responded to climate change in recent years allows Guam to understand some of the opportunities and actions possible under the statehood option.

The Miami-Dade County's local government has invested heavily in adaptive and mitigative measures. Most notably, in 2017, the government obtained a $400 million general obligation (GO) bond, known as the Miami Forever Bond, intended to strengthen the community.[620] There are five categories for the bond projects. In relation to climate change, a budget of $192 million is planned to be invested into Sea-Level Rise Mitigation and Flood Prevention. The objective of this investment is to "minimize flooding" and "protect critical infrastructure and high-use areas."[621] As researchers conclude, Florida must protect its beaches, "which are the lifeblood of Florida's tourism industry." These investments in sea-level rise mitigation may help protect the state's beaches.[622] Like Miami, Guam is a tourist destination with coastal infrastructure that is threatened by flooding and inundation.

As a state, a general obligation bond or a series of fisheries grants may be a method for the island to further invest into new or existing adaptive and mitigative projects. For example, coral reefs are a valuable environmental and economic resource that have faced adverse conditions which have led to declines. Investments into adaptive and mitigative measures help to ensure the continuity of industries such as tourism, and the revenue generated from this industry could be used to pay back loans.

Florida has access to federal resources Guam also would have as a state. For example, Florida's Department of Environmental Protection has partnered with NOAA for the Florida Resilient Coastlines Program. This state-federal partnership works with Florida's coastal communities "to offer technical

619 United States Environmental Protection Agency, "What Climate Change Means for Florida," 2, accessed at https://www.epa.gov/sites/production/files/2016-08/documents/climate-change-fl.pdf.

620 City of Miami, "Miami Forever Bond," accessed August 31, 2020, accessed at https://www.miamigov.com/Government/Departments-Organizations/Office-of-Capital-Improvements/Miami-Forever-Bond.

621 City of Miami, "Miami Forever Bond."

622 Thomas Ruppert and Erin L. Deady, "Climate Change Impacts on Law and Policy in Florida," in Florida's Climate: Changes, Variations, & Impacts, ed. Eric P. Chassignet, James W. Jones, Vasubandhu Misra, & Jayantha Obeysekera (Gainesville: Florida Climate Institute, 2017), 209, accessed at https://doi.org/10.17125/fci2017.ch07.

assistance and funding to coastal communities dealing with increasingly complex flooding, erosion and habitat shifts" in part due to "the effects of climate change."[623] Partnerships are not limited to those within the United States. Miami-Dade County is distinguished, as its mayor, Francis Suarez, was appointed to the Global Commission on Adaptation. This international group was formed in 2018 with the goal of encouraging "the development of measures to manage the effects of climate change through technology, planning and investment."[624] The Global Center on Adaptation, which is part of the Global Center on Adaptation, would provide technical assistance in developing "solutions aimed at improving their resilience to the changing climate, such as the rising sea level and prolonged periods of drought."[625] This example supports the idea that states are not completely prohibited from engaging internationally.

However, these partnerships may be limited. As Dr. Shelton, Director of the University of Guam Center for Island Sustainability and Sea Grant explains, "In some instances we are able to join US-focused partnerships where other independent countries cannot… But in organizations like SPREP and SEC community SPC, another big international organization, Guam is rarely eligible for their funds because it comes from the United Nations or international aid programs."[626] Despite this, collaboration with non-US entities in finding solutions for climate change can be achieved.

Independence

An independent Guam would have jurisdiction over all facets of government. This allows the island's government to make decisions related to human security threats in the best interests of Guam's people, without oversight from a higher level of government. However, independence comes with its own set of risks and responsibilities. In terms of the environmental threats of climate change and natural disasters, invasive species, disease and waste management, Guam would have full control over its land and water resources, and would be the primary party responsible during these adverse events.

As an independent country, the island would have the capacity to use international institutions and organizations. Since many international organizations promote and offer technical assistance for global environmental sustainability, Guam can commit to this goal while concurrently benefitting the island's ecosystem. Furthermore, as an independent country, Guam will have an international platform to advocate for the continual preservation of our global environment, which is primarily at stake by the impending devastation of climate change.

Climate change will continue to impact how Guam experiences natural hazards, as the intensity of natural disasters may increase due to rising global temperatures. Climate change will adversely impact

623 Florida Department of Environmental Protection, "Florida Resilient Coastlines Program," accessed August 31, 2020, accessed at https://floridadep.gov/rcp/florida-resilient-coastlines-program.

624 City of Miami, "What is City of Miami doing about climate change?" accessed August 31, 2020, accessed at https://www.miamigov.com/Government/ClimateChange/Climate-Change-Action#panel-1-1.

625 City of Miami, "Global Center on Adaptation to open First US Office in Miami," accessed at https://www.miamigov.com/Notices/News-Media/Global-Center-on-Adaptation-to-Open-First-US-Office-in-Miami.

626 Personal Communication with Center for Island Sustainability and University of Guam Sea Grant Director Austin Shelton, July 14, 2020.

Pacific Islands such as Guam, therefore, it is important to plan proactive and reactive measures in response to the issue. As an independent country, Guam will not likely have access to the types of domestic assistance programs that are currently available to US states. However, the island's government may be able to seek economic and technical cooperation from international institutions. As an independent country, Guam would be further empowered to adapt local policy and join multilateral agreements on climate change that address the specific needs of the island. In addition, Guam could participate in regional organizations and projects (such as the Micronesia Challenge) as a sovereign country, contributing to the sub-regional agenda.

International institutions grant alternative means of economic and technical cooperation, from agencies such as the International Bank for Reconstruction and Development (IBRD), which provide "loans, guarantees, risk management products, and advisory services to middle-income and creditworthy low-income countries, as well as by coordinating responses to regional and global challenges."[627] As a newly independent country, Guam may be able to qualify for technical and economic assistance. Therefore, Guam can potentially gain international economic and technical cooperation for environmental sustainability efforts.

Under the political status of independence, Guam can actively prevent invasive species by having the ability to monitor all entry points and subsequently enact quarantine regulations. This can be done through the renegotiation of basing agreements with the US government to allow Guam to have greater oversight on the entrance of ships and aircraft at military ports and over any invasive species caught. Currently, the Guam Customs and Quarantine Agency and the Guam Department of Agriculture work to prevent the entry and spread of invasive species. In an independent Guam, dependent on the economy and system of government set up, it is important to note that enforcement will be key to the success of policies in the new country.

As an independent country, current US sources of funding to combat the threat of invasive species will likely no longer be available to Guam. As noted by Chelsa Muña-Brecht, the director of the Department of Agriculture, "biosecurity gets a lot of federal funding...our invasive species coordinator currently has four federal grants right now for the Little Fire Ant and the Coconut Rhinoceros Beetle."[628] Independence will most likely result in the loss of these federal funding sources for biosecurity initiatives. However, if the government and people of Guam choose to keep the US military present in the islands, then agreements between the government of Guam and the US government may include stipulations for funding agencies within Guam that focus on biosecurity.

Lastly, it is essential to mitigate disease epidemics in Guam. Under Guam's current status, the island receives assistance from US agencies, primarily the CDC. Locally, the government of Guam has established plans to address a pandemic, such as the *Guam Comprehensive Emergency Management Plan*, which outlines how Guam would respond to a pandemic. Under the status of independence, the island could retain plans on how to respond to disease as well as the established healthcare infrastructure. For example, many of the

627 The World Bank Group, "Who We Are," accessed Aug. 31, 2020, accessed at https://www.worldbank.org/en/who-we-are/ibrd.

628 Personal Communication with Department of Agriculture Director Chelsa Muña-Brecht.

independent Pacific Island countries have more political power to protect their people from COVID, such as control over borders. Assistance from the United States could come in different forms, especially with continued US military presence and historical ties between Guam and the United States. Additionally, international aid from entities such as the World Health Organization (WHO), which aims to "increase the amount of aid provided by rich countries to poor countries' through donors and partnerships," may assist.[629] As a newly independent country, Guam may benefit from this form of assistance.

Status Example: Fiji

Guam and Fiji face similar natural hazards, with conditions that are exacerbated by climate change. Current climatic predictions assert that tropical cyclones in Fiji will generally maintain their frequency but increase in intensity.[630] More intense tropical cyclones are also predicted for Guam. Flooding and storm surge are hazards related to tropical cyclones due to the "heavy precipitation"[631] generated from those events. In moderate and severe climate change scenarios, it is predicted that flooding will "become more frequent and severe."[632] Climate change will impact important staple crops, such as "rice, taro, sweet potato, and (domesticated) yams."[633] As 90% of Fiji's population resides in coastal areas, environmental hazards which are predicted to increase or intensify, including sea level rise, storm surges, tropical cyclones, and flooding, have implications for human security.[634] Fiji's National Adaptation Plan notes that there is a "Lack of climate-resilient housing across and the country"[635] and that infrastructure, primarily located in coastal and floodplain areas, is also "vulnerable to many hazards" that have been previously mentioned. [636] lack of climate-resilient homes and infrastructure unable to withstand the potential impacts of climate change creates vulnerabilities for Fiji's people.

Fiji's government has composed two notable plans in response to climate change and the impacts of natural disasters. They include the National Adaptation Plan (NAP) and the Fiji National Health Emergencies and Disaster Management Plan (HEADMAP). Fulfilling its responsibility of being party to the United Nations Framework Convention on Climate Change (UNFCCC), the NAP is an assessment of how climate change will impact "key sectors as well as adaptation barriers."[637] This plan includes 160 adaptation measures, divided by 10 "systems and sectoral components," which represent, "the actions

629 World Health Organization, "Aid for health," World Health Organization, accessed Aug. 31, 2020, accessed at https://www.who.int/hdp/aid/en/.

630 Government of the Republic of Fiji, "Republic of Fiji National Adaptation Plan - A pathway towards climate resilience," 2018, 20, accessed at https://www4.unfccc.int/sites/NAPC/Documents/Parties/National%20Adaptation%20Plan_Fiji.pdf.

631 Government of the Republic of Fiji, "National Adaptation Plan," 22.

632 Government of the Republic of Fiji, "National Adaptation Plan," 20.

633 Government of the Republic of Fiji, "National Adaptation Plan," 22.

634 Government of the Republic of Fiji, "National Adaptation Plan," 25.

635 Government of the Republic of Fiji, "National Adaptation Plan," 26.

636 Government of the Republic of Fiji, "National Adaptation Plan," 26.

637 Government of the Republic of Fiji, "National Adaptation Plan," iv, vi.

identified as the most urgent according to stakeholders."[638] The NAP enables Fiji to "anticipate, reduce, and manage environmental and climate risks caused by climate variability and change."[639]

If independence is chosen as the political status, a national adaptation plan specific to Guam's potential hazards due to climate change and actions that can be taken to mitigate them would be beneficial. It likely would be required, should Guam be part of international agreements such as the UNFCCC. Fiji's NAP may be used as an outline for how this plan is structured. In addition, the 10 categorical divisions for areas of action are an example of how Guam may classify where vulnerabilities to climate change exist. Aside from the NAP, Fiji has also published the Fiji National Health Emergencies and Disaster Management Plan (HEADMAP). This document is "a guide for the health sector in the management of public health emergencies and disasters" that is applicable to "all health programmes and activities within the National, Divisional and Sub Divisional Health Services that are related to health Emergencies and Disaster Management."[640] Health and disaster management are intertwined within this document and indicate that they are interrelated areas of action.

International and regional partnerships in relation to climate change are another area where Guam could learn from Fiji. Current territorial status and potential statehood status may restrict membership and representation in certain regional and international organizations and related resources to mitigate, prepare, respond, or recover from the impacts of climate change.[641] As a member of the United Nations, Fiji is also committed to sustainable development goals. This is evidenced in its NAP, which outlines how this plan will aid in fulfilling several goals, such as Goal 11, to "make cities and human settlements inclusive, safe, resilient, and sustainable."[642] If Guam were to choose independence, the island would also have the autonomy to enter agreements and partnerships with foreign entities.

The human insecurity posed by communicable diseases is pertinent to address, given the multiple diseases that Guam and other Pacific islands such as Fiji face, and the 2019-2020 pandemic. To reiterate, as a country, Guam would be able to cooperate with foreign entities and international or regional organizations. As an independent country, Fiji is a member state of the World Health Organization (WHO).[643] Being a member state of this organization would also give Guam access to support for "national health strategies and plans as well as collective commitments by the WHO governing bodies."[644] Guam can model these institutions in its response to communicable diseases.

638 Government of the Republic of Fiji, "National Adaptation Plan," vii.

639 Government of the Republic of Fiji, "National Adaptation Plan," 3.

640 Ministry of Health, "Fiji National Health Emergencies and Disaster Management Plan (HEADMAP)," 2013, 11, accessed at http://www.health.gov.fj/wp-content/uploads/2014/05/5_HEADMAP_Health-Emergencies-and-Disaster-Management-Plan_2013-2017.pdf.

641 US Department of State, "US Relations with Fiji - Bilateral Relations Fact Sheet," January 23, 2020, accessed at https://www.state.gov/u-s-relations-with-fiji/.

642 Government of the Republic of Fiji, "National Adaptation Plan," 15.

643 Ministry of Health and Medical Services, "Communicable Disease Surveillance and Outbreak Response Guidelines," Republic of Fiji, 2016, 38, accessed at http://www.health.gov.fj/wp-content/uploads/2018/08/Fiji-Communicable-Disease-Surveillance-and-Outbreak-Response-Guidelines-2016-1.pdf.

644 Ministry of Health and Medical Services, "Communicable Disease Surveillance," 38.

Free Association

Under the political status of free association, Guam can continue its pursuit to ensure human security. A primary feature of this status is the potential establishment of a Compact of Free Association (COFA) or other legal instrument between the government of Guam and the United States. In relation to human security, an agreement between Guam and the US may include US financial assistance for programs that address threats to human security as well as a continuity in services from sources such as the National Weather Service and the Federal Emergency Management Agency. What Guam may leverage as a partner of the US is the established infrastructure for entities, such as the military, which indicates how much the US government has invested in the island.

It is likely that a potential COFA or other legal instrument would include an agreement to continue US defense presence within the island, which implies giving the US military access to the land, air, and oceans of Guam. The continued US military presence could impose obstacles to human security, such as environmental contamination, dredging of reefs, or the prioritization of US national security objectives over genuine Guam security. This should be recognized and addressed in the agreement. By leveraging existing US investments and continued interest in the island given its geopolitical position, the government of Guam can request assistance and cooperation in combating human security threats. As a freely associated state, some forms of US financial and technical assistance may continue and others may no longer be available, unless negotiated. For example, all three COFA countries are entitled to receive, and have already begun receiving, free COVID-19 vaccines under the US's Operation Warp Speed, with distribution in proportion to the populations of those countries relative to populations in the states and territories of the U.S. COFA countries are also entitled to receive, and have already received, financial assistance from the US under the CARES Act, including pandemic unemployment assistance. In addition to this, they were also able to keep COVID-19 out of their islands, all while using their relationship with the US to assist with vaccinations and to address economic impacts. The government of Guam also can seek to join regional and international organizations as well as strike up bilateral partnerships that may be beneficial for addressing threats to human security, given the services and assistance they may be able to provide.

Climate change is a global threat that impacts all countries and peoples, either directly or indirectly. Recognizing this reality, a future free association agreement should address the socioeconomic effects and how both parties, the government of the United States and the government of Guam, will commit to combatting future impacts. The United States has heavily invested into the island of Guam. The *Guam Comprehensive Economic Development Strategy 2020-2025* discusses investments by the Department of Defense (DoD) through the annual National Defense Authorization Act (NDAA) appropriations tied to the military build-up. In 2019, DoD expended approximately $377,211,000 for several military construction projects.[645] The impacts of climate change, particularly sea-level rise, may damage infrastructure or other entities,

645 Guam Economic Development Authority, "Economic Development Strategy," 61.

like Naval Base Guam, that the US government is heavily invested in.[646] The potential damage to US infrastructure and investments can be argued as reasons the US should provide financial and technical assistance to the government of Guam for adaptation, resilience, and mitigation measures.

Aside from its relationship with the United States, under free association, Guam will have the freedom to make environmental commitments. Outside of their relationship with the United States, if following FAS models in the Micronesian sub-region, Guam would be able to form bilateral or multilateral partnerships. Under both independence and free association, Guam could join the region in exploring unique and relevant approaches to issues that impact our shared environment in ways that we are currently unable to as a result of the island's current status.

Invasive species are another human security threat to Guam. A current issue that may continue if free association is the chosen political status is an inadequate amount of resources to properly monitor ports and prevent the potential entry of invasive species. As a freely associated country, the government of Guam will have the capability to create biosecurity laws without adherence to US federal laws and may then create regulations that represent the island's best interests. If potential compact negotiations between the government of the United States and the government of Guam lead to the continued presence of US military bases, then oversight on military installations to prevent the entrance of invasive species should be collaborated between the two governments.

Status Example: The Republic of Palau

Environmental factors that may hinder human security can be addressed in sections such as Article VI, Environmental Protection, of Palau's compact. It includes a mutual agreement "to promote efforts to prevent or eliminate damage to the environment and biosphere and to enrich understanding of the natural resources of Palau."[647] In the case of free association for Guam, US environmental sustainability measures that lead to a growth in human security could be enacted by both political entities involved in the agreement. Guam can also choose to model federal regulations that are already in effect and that have been beneficial to the environment.

If Guam decides to enter into a relationship of free association, it is necessary to ensure an equal relationship through the agreement. Past COFA agreements have included ambiguous language that Guam could avoid. To illustrate, section E of Article VI of the Compact of Free Association in Palau reads:

> (e) The President of the United States may exempt any of the activities of the Government of the United States under this Compact and its related agreements from any environmental standard or procedure which may be applicable under this Article if the President determines it to be in

646 Three feet of sea level rise by 2100 is the current projection, a ten feet scenario was conducted to take into account "potential inundation caused by increased wave-run-up from a typhoon coupled with a high tide,"; Romina King, Kaylyn Bautista, Marcel Higgs, and Edward Leon-Guerrero, "Vulnerability Assessment of Built Infrastructure near Coastal Bays using three Sea Level Rise Scenarios - Guam," 2019, 24, 30, & 32.

647 Article VI, §161 of the Republic of Palau Compact of Free Association, 1986.

the paramount interest of the Government of the United States to do so, consistent with Title Three of this compact and the obligations of the Government of Palau and the United States under international law.[648]

Using such ambiguous language may give the US government more leeway in taking actions in its interests which may be harmful to Guam's interests, such as the environment. Therefore, Guam needs to be mindful of language from pre-existing compacts in order to limit ambiguous language in any agreement created for free association. As a compromise, provisions should be incorporated for the United States to exempt itself for reasons that should be explicitly enumerated. For example, Guam's potential compact can define conditions for what "paramount interest" should entail.

648 Article VI, §163e of the Republic of Palau Compact of Free Association, 1986.

HUMAN SECURITY	
STATUS	**EFFECTS**
Statehood	• Support before, during, and after natural disasters at the state and federal levels. • Continued federal economic assistance to the island." • Continued guidance and support from the Centers for Disease Control and Prevention (CDC). • Guam would be subject to federal laws, mandates, and executive orders. • Continued presence of US military bases may exacerbate issues pertaining to the environment and invasive species. • Varying stance on climate change by the federal government based on the administration may hinder support for climate change initiatives.

Independence	• Sovereignty and autonomy over Guam's internal and external affairs would allow Guam to combat human insecurities in a manner it desires. • Ability to freely join international and regional organizations. Guam can commit to global climate change agreements and have access to resource support from institutions and individual countries. • The government of Guam would have the power to supervise all entry and exit ports to control the entrance of invasive species, but would have the responsibility of enforcing them. • Island may receive limited financial assistance and/or resources from the US federal government. This assistance may come in other forms.
Free Association	• Guam would have the ability to negotiate an agreement in which it can create stipulations for US aid and support, with infrastructure to address human insecurities. • Ability to join international and regional organizations. Partnerships with other countries may lead to collaboration and sharing of resources. • Likely assistance from the United States. • Potential continuity of US military bases, which may exacerbate existing human security threats such as the introduction of invasive species. • Potential US control over defense and access to Guam's waters may pose obstacles to the island's ability to fully implement plans to address human security threats.

Food Security and Agricultural Expansion

In today's world, the health and well-being of humans is highly dependent on easy, reliable access to safe, healthy, and adequate sources of food. According to the 1996 World Food Summit, food security is achieved when "all people, at all times, have physical and economic access to sufficient, safe, and nutritious food to meet their dietary needs and food preferences for an active and healthy life."[649] Since then, the international community has adopted the term "food and nutrition security" (hereinafter referred to as FNS) to better encompass the nutrition and human health aspect that is inherent in food security.[650] FNS is comprised of four major aspects: food availability; food access; food utilization; and food stability. The Food and Agriculture Organization (FAO) of the United Nations provides the following definitions for these four dimensions:

649 Food and Agriculture Organization of the United Nations, Food Security and the Right to Food, accessed at http://www.fao.org/sustainable-development-goals/overview/fao-and-the-post-2015-development-agenda/food- security-and-the-right-to-food/en/.

650 FAO, IFAD, UNICEF, WFP, and WHO, "The State of Food Security and Nutrition in the World 2019," 2019, accessed at https://www.who.int/nutrition/publications/foodsecurity/state-food-security-nutrition-2019-en.pdf?ua=1.

Dimensions of Food and Nutrition Security.[651]

651 FAO, IFAD, UNICEF, WFP, and WHO, "The State of Food Security."

Physical AVAILABILITY of food	Food availability addresses the "supply side" of food security and is determined by the level of food production, stock levels and net trade.
Economic and physical ACCESS to food	An adequate supply of food at the national or international level does not in itself guarantee household level food security. Concerns about insufficient food access have resulted in a greater policy focus on incomes, expenditure, markets and prices in achieving food security objectives.
Food UTILIZATION	Utilization is commonly understood as the way the body makes the most of various nutrients in the food. Sufficient energy and nutrient intake by individuals is the result of good care and feeding practices, food preparation, diversity of the diet and intra-household distribution of food. Combined with good biological utilization of food consumed, this determines the *nutritional status* of individuals.
STABILITY of the other three dimensions over time	Even if your food intake is adequate today, you are still considered to be food insecure if you have inadequate access to food on a periodic basis, risking a deterioration of your nutritional status. Adverse weather conditions, political instability, or economic factors (unemployment, rising food prices) may have an impact on your food security status.

In order to achieve a successful level of food and nutrition security, all four of these aspects should be met and fulfilled simultaneously.

FNS is not a binary measurement that can be achieved or not achieved. Instead, it exists on a spectrum, varying in intensity. Although extreme hunger and starvation constitute the non-fulfillment of food and nutrition security, dietary intake of insufficient nutritional quality also constitutes food and nutrition insecurity. Thus, FNS is measured on a scale, ranging from intensities of moderate to severe insecurity. FNS is directly related and critical to other areas of societal well-being, to include economic prosperity, community growth, national security, and political stability, among others. FNS has direct impacts on emotional, social, behavioral, and intellectual development, and is considered a social and environmental disruptor. When humans are unable to fulfill their basic health and human needs, communal and societal needs are then put at risk.[652]

Food Security in Guam

The CHamoru people of Guam relied on a combination of fishing, gathering, and subsistence farming to meet their nutritional needs. During ancient times, and continuing up to WWII, CHamorus grew food to sustain their families.[653] The shift from subsistence farming to a reliance on imports occurred after WWII, following the destruction of farmlands and the United States' acquisition of much of the island's arable lands. Today, imported food comprises an alarmingly high portion of Guam's food supply.[654] As mentioned, food security means not only having a sufficient amount of food but having easily accessible, affordable, and nutritious food to support consumer preferences and an active lifestyle.

Several factors contribute to food and nutrition insecurity in Guam, including high prices, limited widespread availability of healthy foods, heavy reliance on food assistance programs, and poor diet and food choices by consumers. Other contributing factors to food insecurity include weather events and the detrimental effects of climate change.[655] The island's food supply is lacking in nutritious products, with many stores lacking an average of five of twelve categories of nutritious foods set by the US Department of Agriculture.[656]

Another compounding factor of food insecurity is the relatively high cost of goods. Although imported goods are cheaper than locally produced goods, locally produced foods are more nutritious than imported goods. Due to these higher prices, many people and households on the island rely on the US federally

652 Alison Decker, "Global Food Security requires a coordinated international response, Aspen Institute, (April 19, 2016): accessed at https://www.aspeninstitute.org/blog-posts/global-food-security-requires-a-coordinated- international-response-on-several-fronts-heres-what-the-experts-say/.

653 Darlene Moore, "Ancient Chamorro Agricultural Practices," *Guampedia*, accessed at https://www.guampedia.com/ancient-chamorro-agricultural-practices/.

654 LisaLinda Natividad and Gwyn Kirk, "Fortress Guam: Resistance to US Mega Military Buildup," Institute for *Policy Studies* (May 12, 2010): accessed at https://ips-dc.org/fortress_guam/.

655 Christie Nicoson, "Positive Peace and Food Security in Guam," November 2016, accessed at http://worldwithoutgenocide.org/wp-content/uploads/2016/09/Food-Security-in-Guam-2016.pdf

656 Nicoson, "Positive Peace."

funded Supplemental Nutritional Assistance Program (SNAP) to provide for their nutritional needs.[657] This inability to purchase food without government assistance is a major factor inhibiting food security.

In regard to agricultural expansion as a means of ensuring FNS, sustainability experts in Guam cite several main inhibiting factors: limited demand for locally grown foods due to limited selection/supply and consumer preferences; limited land suitable for agricultural use; access to labor; and farmer education.[658] Challenges currently faced in Guam are actively being addressed by government agencies such as: the Guam Department of Agriculture; programs out of the University of Guam, such as the College of Natural and Applied Science's Research & Extension program and the Center for Island Sustainability (CIS); and community organizations, such as the Farm to Table Guam Corp and Guåhan Sustainable Culture. By taking advantage of the aspects inherent in Guam's unique environment that promote agricultural expansion, such as adequate available land and favorable climate, several initiatives are being undertaken to address the inhibiting factors.

To address issues related to the limited amount of land available for agricultural use, special agroforestry techniques have been developed that adapt mountainous land in Guam's southern region to be useful for agriculture. In cases where soil lacks the necessary nutrients to support agriculture, methods have also been developed to alter soil composition to be more beneficial to certain crops. Dr. Mohammad H. Golabi, a soil and science professor at the University of Guam, asserts that Guam's lands have potential for agricultural expansion, especially when considering the amount of idle land that is currently unused for any commercial, residential, or public purpose. Dr. Golabi suggests that, through the aforementioned agroforestry and soil re-composition techniques, unused land can be converted into agricultural production land.[659] When asked what steps can be taken to promote Guam's FNS and overall sustainability, Golabi recommended that Guam work toward establishing a slaughterhouse for meat. As Golabi describes, a meat slaughterhouse would promote increased economic activity by allowing island residents and businesses to process locally raised livestock and then sell that meat for local consumption. Golabi further proposes a circular-based economy in which animal feed for locally raised livestock would be provided by locally grown grain and corn products. Waste produced from the slaughterhouse would also be composted and used to support agricultural production. Golabi suggests that there is potential for a local meat industry to export goods off-island for increased economic activity.[660] However, this would require extensive infrastructure development.

In his 2021 Congressional Address to the Guam Legislature, Congressman Michael San Nicolas proposed the establishment of slaughterhouses in Guam to enhance sustainable livestock. He argued that having more slaughterhouses "will help reduce meat prices for consumers and will contribute to

657 Supplemental Nutrition Assistance Program, "State Activity Report: Fiscal Year 2016," 2016, accessed at https://fns- prod.azureedge.net/sites/default/files/snap/FY16-State-Activity-Report.pdf.

658 Personal Communication with Center for Island Sustainability and University of Guam Sea Grant Director Austin Shelton, July 14, 2020.

659 Personal Communication with University of Guam Professor Dr. Mohammad Golabi, July 16, 2020.

660 Personal Communication with University of Guam Professor Dr. Mohammad Golabi, July 16, 2020.

Guam's food security."[661] He said, "In our engagement with the US Department of Agriculture, we found that Guam has nine USDA meat processing facilities on the island, but none of these are actual slaughterhouses. We have no facilities to bring locally raised meats into local supermarkets or onto local restaurant menus."[662] Furthermore, he discussed engaging with the Department of Defense to determine whether DoD land in the island can be used for grazing, which would help provide the inventory for the slaughterhouse at lower costs.

As an existing example of a small-scale circular-based system, the UOG Triton Farm "serves as an integrated farm model that encourages agricultural research and the use of sustainable farming methods" through crop production such as lettuce, grapefruit, lemons, peppers, and other produce, with both aquaponics and hydroponics techniques, and through the raising of animals such as chicken and fish.[663] The farm implements several sustainable practices, including the use of fish waste for fertilizer for plants that are then used to filter fish pond water, and free-range, open pasture chickens, whose manure is used for compost for trees, from which fruits are ground into pellets for chicken feed. The farm then sells the locally produced eggs to the community, along with other fresh produce.[664]

The Need to Address Food Security on Guam

As stated, a community's reliable access to sufficient, affordable, and nutritious foods is essential to its wellbeing. Achieving food and nutrition security enables and promotes the social, economic, and overall growth of the island as a whole. Thus, although Guam, with its current limited agricultural capacity, may not be as greatly affected by disruptions in domestic production, food and nutrition security will undoubtedly be affected by issues in food production in other countries. Guam's current situation requires that the island focus primarily on securing continued and improved access to low-cost, nutritious, imported goods, and secondly, on expanding domestic production, which will have the greatest long-term benefits for the island's FNS. Nevertheless, issues surrounding the uncertainty of global trade and international economic activity require that Guam work toward reducing its level of reliance on food imports. At the same time, the island must take steps toward ensuring access to nutritious food by all people while also promoting positive changes in diet and consumer choice.

While Guam may not see these challenges as pressing issues to address immediately, the negative effects of climate change, which are already being seen throughout the world and especially within the Pacific, will present a complex set of new challenges that will greatly affect both global trade and domestic agriculture. It is therefore in the best interest of the people of Guam to work toward policy and action that

661 Gerry Partido, "Slaughterhouses proposed to reduce meat prices and enhance Guam's food security," Pacific News Center, June 28, 2021, accessed at https://www.pncguam.com/slaughterhouses-proposed-to-reduce-meat-prices-and-enhance-guams-food-security/.

662 Gerry Partido, "Slaughterhouses proposed to reduce meat prices and enhance Guam's food security," Pacific News Center, June 28, 2021, accessed at https://www.pncguam.com/slaughterhouses-proposed-to-reduce-meat-prices-and-enhance-guams-food-security/.

663 Amanda Dedicatoria, "Triton farm promotes natural farming," Triton's Call, April 10, 2017, accessed at https://tritonscall.com/triton-farm-promotes-natural-farming/.

664 Dedicatoria, "Triton farm."

proactively address the challenges discussed, by maximizing the benefits of international trade, expanding domestic agricultural production with sustainable practices, and improving food distribution capacities. This multifaceted synergy of efforts will prove most effective in securing the island's food and nutrition security and overall well-being into the future.

Statehood

Increased Federal Financial/Technical Assistance

As a state, Guam would have an improved, more equitable relationship with the federal government, which would continue or increase the availability of federal programs and financial/technical assistance. Guam receives federal funds from the United States Department of Agriculture (USDA) in support of local agriculture programs such as plant and animal disease, pest control, and animal care, a specialty crop block grant program, and the cooperative forestry assistance program.[665] As a state, there could be a wider range of access to programs that support agricultural expansion. These programs, provided by the USDA, include direct farm ownership loans, which help farmers buy land, equipment, seed, livestock, and other operating necessities, as well as guaranteed farm loans, which assist farmers in purchasing farmland or agricultural equipment. The USDA also has other types of programs which provide protections to farmers, such as price loss coverage, agricultural risk coverage, and marketing assistance loans.[666] This role may become increasingly important as the risks of climate change threaten agricultural production. While some of these programs are available to the territories, there are other programs provided by the USDA that are currently unavailable to the territories, but available to states, programs from which Guam would benefit if it were a state.[667] Ultimately, the USDA's national programs have supported both new and continuing development of agriculture and the expansion of such programs would play a role in Guam's path to agricultural expansion and food security.[668] For Guam, statehood would come with complete inclusion of the island at the federal level, likely in all federal programs.

Being a Part of the United States' Trade Network

The Organic Act of 1950 placed Guam outside of the customs territory of the United States, which is inclusive only of the fifty states, the District of Columbia, and Puerto Rico.[669] Therefore, goods

665 Guam Bureau of Statistics and Plans, "GovGuam Audit," 2018.

666 United States Department of Agriculture, "Farm Programs," Farm Service Agency Hawaii, accessed at https://www.fsa.usda.gov/state-offices/Hawaii/programs/index.

667 National Sustainable Agriculture Coalition, Whole-Farm Revenue Protection for Diversified Farms, accessed at https://sustainableagriculture.net/publications/grassrootsguide/credit-crop-insurance/whole-farm-revenue-protection-for-diversified-farms/#eligible.

668 US Department of Agriculture, "USDA Strategic Plan FY 2018-2022," accessed at https://www.usda.gov/sites/default/files/documents/usda-strategic-plan-2018-2022.pdf.

669 Harmonized Tariff Schedule of the United States, Revision 12, 2020, General Notes, 3, accessed at https://hts.usitc.gov/view/General%20Notes?release=2020HTSARev12.

imported from Guam to the United States are potentially subject to tariffs and quotas.[670]As set forth by the Harmonized Tariff Schedule, goods imported to such areas from Guam are subject to the rates of duty as set forth by the tariff schedule, unless such goods are bona fide products of Guam which do not contain foreign materials valued at more than 70 percent of the total value of goods.[671] Additionally, although bona fide products are not subject to tariffs, they can be subject to federally-set import quotas, which are applied to the quantity rather than value of goods. These special conditions placed on Guam's import and export of goods are exclusive to territories, as trade between states is not subject to bona fide product requirements, and states are not permitted to impose quotas on the products of any other state. It is important to note that being placed outside of the US Customs zone can be beneficial. Guam Senator Pedo Terlaje, writes, "This status has its benefits, including more independent trade with Asia and Australia, by which we have enjoyed the availability of many familiar brands from Asia and Australia in our supermarket and convenience store shelves."[672] Although Guam has the authority to levy tariffs and quotas on imported goods, it has not done so because of the potential impact on prices.

As a state, Guam would be within the customs territory of the United States (which may have repercussions for other economic aspects) and, therefore, would not be subject to the aforementioned conditions. Additionally, as a state of the United States, Guam would be able to take advantage of the mechanisms that promote trade with other states and also foreign countries that are part of the US international trade network.[673]

It must also be noted that agricultural production in the United States is not immune to the challenges faced in agricultural production in other countries, such as fluctuations in production due to climate change, and other factors. Nevertheless, statehood would facilitate the greatest opportunities for trade with other states, therefore enabling Guam to pursue trade that would aid its pursuit of FNS. Under statehood, the Jones Act and its negative effects on the island could remain unresolved until addressed by the federal government.

Specifically, Section 27 of the Merchant Marine Act of 1920, otherwise known as the Jones Act, applies to all US states, Guam, and Puerto Rico.[674] It requires that cargo transported between US ports be carried by ships that are domestically built, domestically flagged, and seventy-five percent owned and crewed by US citizens or permanent residents. Hawai'i and Alaska in particular, due to their greater reliance on maritime transportation when compared to the states of the continental US, have experienced higher transportation costs and inflated prices of imported goods, along with an inability to receive disaster-relief

670 Joseph Bradley, Email, June 9, 2020.

671 Harmonized Tariff Schedule of the United States, Revision 12, 2020, General Notes, 3, accessed at https://hts.usitc.gov/view/General%20Notes?release=2020HTSARev12.

672 https://www.guampdn.com/opinion/letter-allow-guam-to-compete-in-the-world-market/article_55582e31-881b-5a43-af0b-57ab6940781b.html.

673 Sandy Dall'erba, "Why will the coming years see more interest for interstate food supply linkages?," *Policy Matters* (December 8, 2016): accessed at https://policymatters.illinois.edu/why-will-the-coming-years-see-more- interest-for-interstate-food-supply-linkages/.

674 Puerto Rico is subject to the Jones Act due to it being the only territory that is within the US Customs Zone.

aid from foreign ships in the event of natural disaster.[675] Although Guam is exempt from the provision that ships arriving at its port be domestically built, the exemption has provided little relief, as ships coming from the continental US must still pass through Hawai'i, which does not have the same exemption, before heading to Guam. Any ships from the continental US heading to Guam and stopping in Hawai'i must be in full compliance with all provisions of the Jones Act.[676] As stated by the Port Authority of Guam,

> To service Guam, ocean carriers deploy cargo ships between the US or Asia markets and Guam to take advantage of lower operating costs and then use smaller feeder vessels for transporting transshipment cargo between Guam and the Micronesia Islands. Vessels on these trade routes often carry a combination of containers, breakbulk and Roll on/Roll off (Ro/Ro) cargo to reduce service costs and meet the various market demands of the islands.
>
> Carriers with service routes between the US mainland and Guam are exempt from certain US cabotage requirements contained in the Merchant Marine Act of 1920 (P.L. 66-261), also known as the Jones Act. Section 27 of the Jones Act requires that all goods transported by water between US ports be carried on US flag ships, built in US shipyards, owned by US citizens, and crewed by US citizens and US permanent residents.
>
> These carriers are not required to use US built ships (46 USC 12111), effectively allowing the deployment of foreign-owned, foreign-built US flag vessels in the domestic Guam trade. However, the vessels must be US flagged, meaning that the ships must employ a US crew and are subject to US Coast Guard (USCG) inspection. The foreign ownership of a US flag vessel must be arranged through a special purpose US trust.
>
> The historical exemption from the US-build requirement is of limited usefulness to carriers in the domestic Guam trade since the natural westbound trade lane from the West Coast to Guam passes through Hawai'i, which is not exempted from the US build requirement. In the past five years, there have been numerous media reports and a small number of legislative proposals requesting a Jones Act exemption for Hawai'i and other non-contiguous territories. Although a US Territory, CNMI (e.g., Saipan, Tinian, Rota) is exempt from the provisions of the Jones Act due to the international treaty associated with its annexation by the US. Since foreign-flagged vessels are restricted from transferring cargo directly to/from US ports on the mainland and Guam or Hawai'i, these vessels must call a foreign port in between calls to US mainland ports and Guam or Hawai'i.[677]

675 Cecil Bohanon and Nick Curott, "Little-Known Jones Act Is Outdated and Ripe for Repeal," *Indianapolis Business Journal* (March 15, 2019): 30, accessed at https://www.ibj.com/articles/72923-bohanon-curott- little-known-jones-act-is-outdated-and-ripe-for-repeal.

676 Colin Grabow, Inu Manak, and Daniel Ikenson, "The Jones Act: A Burden American can no longer bear," Cato Institute, 2018, accessed at https://www.cato.org/publications/policy-analysis/jones-act-burden-america-can-no-longer-bear.

677 Port Authority of Guam Information for Self-Governance Study, November 2019.

To quantify these effects, a local business owner states that the cost of shipping a container from the West Coast of the United States to Guam costs approximately $7,500, while the cost of shipping the same container from the West Coast of the US to Manila, Philippines, costs about $2,800.[678] With respect to agricultural imports, Guam's government, local companies, and consumers would continue to bear the higher costs of transporting agricultural goods and other associated materials and supplies to Guam. If Guam became a state, the Jones Act would continue to apply, unless the federal government exempted the island partially or entirely from its provisions.

Aside from interstate trade, Guam would also be a part of the US international trade network, which provides advantages and facilitates beneficial trade. With statehood, unlike the situation that exists under the current territorial status, legislative measures from the federal government would no longer be applied selectively to Guam. Guam would instead be subject to laws that apply to the other fifty states.

Limited Land Availability for Agricultural Production

Guam has a limited amount of land currently available for agriculture. The US military occupies approximately twenty-seven percent of the island. Statehood provides the least amount of land return potential, due to the continued and likely expanded military activity that would occur in Guam. Upon becoming a state, Guam could work toward identifying a necessary amount of land to support its domestic FNS and advocate for federal land to be returned to Guam for that purpose. Nevertheless, even without such return, methods of converting land currently unused for agriculture into agriculture-suitable land could enable the state of Guam to have an increased amount of land available for agricultural production. Guam could dedicate local and federal resources toward converting otherwise unused land into land suitable for agricultural production but would need to be cautious about the effects of such conversion on wildlife. A 2020 study found cropland conversion to be of limited gain and disproportionate to the negative effects on wildlife.[679]

Status Example: The State of Hawai'i

Due to Hawai'i's geographic characteristics as an island, it faces challenges similar to Guam. Like Guam, Hawai'i's supply of food and its food and nutrition security are dependent on and vulnerable to factors in the global production and distribution of food, to include: "disruptions in the shipping chain, production fluctuations in the continental United States, severe weather conditions, and sudden spikes in the prices of food products as well as higher prices for fuel, feed, fertilizers, and other agricultural 'inputs'"[680]

678 Public Hearing Testimony, Resolution 138-32, 32nd Guam Legislature, 2014.

679 Tyler Lark, et al., "Cropland expansion in the United States produces marginal yields at high costs to wildlife," Nature Communications 11, (2020), accessed at https://www.nature.com/articles/s41467-020-18045-z.

680 Matthew K. Loke and PingSun Leung, "Hawaii's Food Consumption and Supply Sources: Benchmark Estimates and Measurement Issues," Agricultural and Food Economics 1, no. 10 (August 2013), 2, https://www.researchgate.net/publication/269039132_Hawaii%27s_Food_Consumption_and_Supply_Sources_Benchmark_Estimates_and_Measurement_Issues.

Although Hawai'i was historically self-sufficient in producing some vegetable and fruit crops, along with eggs and milk, as of 2012, it was only self-sufficient in some vegetable and fruit crops. In 2012, the island was also becoming less self-sufficient with egg, milk, livestock, hog, and pig commodities.[681] Hawai'i has found it necessary to increase its food self-sufficiency in order to increase its food and nutrition security. A 2012 report by the Office of Planning in cooperation with Hawai"s state Department of Agriculture outlined the steps to take toward achieving these goals. The report called for "actions to market 'Buy Local/It Matters' and to brand and label local food products,…increasing production by strengthening agricultural infrastructure,…[providing] for food safety, pest prevent and control, workforce training, research and extension services; and policy and organizational support."[682] The report noted that replacing only ten percent of Hawai'i's imported food with locally produced goods would result in a $313 million revenue for the island, which would "generate an economy-wide impact of an additional $188 million in sales, $47 million in earnings, $6 million in state tax revenues, and add more than 2,300 jobs."[683]

In its pursuit of food and nutrition security, Hawai'i's state government has launched the Aloha+ Challenge, a "statewide commitment to achieve Hawai'i's sustainability goals" and a "locally driven framework to implement the United Nations Sustainable Development Goals."[684] The goal of the program is to double the island's local food production by 2030 through an increase in the production, processing, distribution, and consumption of locally produced goods. The Aloha+ challenge makes use of five metrics to gauge local food production and consumption: pounds of food locally produced annually; acres of farmland in use; number of agricultural processing facilities; number of farmers markets statewide; and dollars of agricultural products sold. It remains to be seen, at the time of writing, whether or not Hawai'i is on track to meet each metric's respective targets, as all five metrics were still being measured to establish a baseline.[685] Local food production has taken a downturn in Hawai'i, likely attributed to environmental factors such as "soil conditions, drought, and natural and man-made disasters" or other factors, such as "the availability of farm and labor workers, land for farming, and associated costs of water and electricity." In 2012, Hawai'i experienced its lowest amount of local production in twenty years, however some vegetable and fruit crops have seen an uptick in production in recent years.[686] Hawai'i's precolonial staple crop, kalo (taro), has seen major losses in production over the last century, but there are several community initiatives that seek to restore kalo's important place in Hawaiian culture, agriculture, and food and nutrition security.

Much of Hawai'i's success in building its agricultural capacity and increasing its food and nutrition security can be attributed to its effective synergy of governmental/community/business efforts, as well as funding support from the federal government. In regard to the synergy of governmental/community/

681 Hawaii Department of Business Economic Development & Tourism, "Increased Food Security and Self-Sufficiency Strategy," 2012, ii, accessed at https://files.hawaii.gov/dbedt/op/spb/INCREASED_FOOD_SECURITY_AND_FOOD_SELF_SUFFICIENCY_STRATEGY.pdf.

682 Hawaii Department of Business Economic Development & Tourism, "Increased Food Security," i.

683 Hawaii Department of Business Economic Development & Tourism, "Increased Food Security," ii.

684 Hawaii State Government, "Aloha+ Challenge," accessed at https://aloha-challenge.hawaiigreengrowth.org.

685 Hawaii State Government, "Aloha+ Challenge."

686 Hawaii State Government, "Aloha+ Challenge."

business efforts, several organizations, such as the Kōkua Kalihi Valley Comprehensive Family Services, Sust'āinable Molokai, and MA'O Organic Farms, have successfully connected Hawai'i's indigenous methods of farming with modern day methods of cooking and distribution in order to provide locally produced foods for families. Kōkua Kalihi Valley Comprehensive Family Services, a group that works with eighteen local farms, has undertaken initiatives to increase the number of farmers in Hawai'i, boost the sharing of health knowledge, teach culinary skills to community members, and expand food access. Sust'āinable Molokai has worked to further connect residents and food producers through the creation of a food hub that facilitates the USDA Fresh Fruit and Vegetable Program, as well as a Mobile Market which delivers locally produced goods directly to consumers, who are also able to order food items online.

The USDA Fresh Fruit and Vegetable Program "offers federal reimbursements for local produce served directly to elementary school students, along with a brief lesson on the origin and nutritional value of the food."[687] The Mobile Market also integrates federal funds, as it accepts EBT, allowing consumers to spend their federal nutrition assistance funds on locally produced goods.[688] Another example of this synergy of resources is the Hawaii Food Producers fund, a collaboration between The Kohala Center, The Hawaii Department of Agriculture, County of Hawaii, and Kiva, a peer-to-peer online lending program. The Fund provides zero percent interest business loans, up to $10,000, through crowd funding. Hawai'i farmers and food producers who utilize "at least one Hawaii-grown ingredient is eligible to receive fifty percent of their Kiva loan" from the fund.[689]

Like Guam, funds provided by the US government are crucial to the well-being of residents and the effectiveness of local governments. Many Hawai'i residents rely on the Supplemental Nutritional Assistance Program (SNAP). In FY2019, 157,000 Hawai'i residents, or eleven percent of the state's population received SNAP benefits, with approximately sixty-two percent of residents being families with children. SNAP plays an important role in ensuring food and nutrition security, as eight percent of households reported being "food insecure" or unable to afford a nutritionally adequate diet in FY 2019, and SNAP "kept 65,000 people out of poverty in Hawai'i, including 28,000 children per year between 2013 and 2016, on average.[690] In relation to Hawai'i 's local agricultural industry, in 2016, $1.6 million in SNAP benefits were spent at Hawaii Farmers' Markets, even with only one out of five farmers' markets accepting SNAP as of 2018.[691] The USDA also provides food commodities to Hawai'i residents via USDA's The Emergency Food Assistance Program (TEFAP), which gives surplus food goods to local food banks.[692]

Aside from direct aid to residents, federal funding is also important to local farms, as well as Hawai'i state agencies. In FY2019, the Hawaii Department of Agriculture's operating budget consisted of

687 "Good Food For All: Advancing Health Equity Through Hawaii's Food System," 2018, 13, accessed at http://www.kohalacenter.org/docs/reports/Food_For_All_Book_WEB.pdf.

688 "Good Food For All."

689 The Kohala Center, "Hawaii Food Producers Fund," 2013, accessed at https://hdoa.hawaii.gov/agl/files/2013/02/HFPF-fact-sheet-2017.pdf.

690 Center on Budget and Policy Priorities, "Hawaii Supplemental Nutrition Assistance Program," 1.

691 "Good Food For All," 9.

692 "Good Food For All," 5.

approximately $2.5 million dollars in federal funding, or nearly twenty-one percent of the agency's budget, however information is limited on what programs and initiatives have been supported by this funding.[693] For other community stakeholders, including local farmers, the federal government has provided a significant amount of funding in the form of various grant and loan programs. In 2017, Hawai'i farms received eleven federal grants totaling, $427,000, through the USDA's Specialty Crop Block Grant Program, which supports the competitiveness of specialty crops such as fruits, vegetables, tree nuts, dried fruits, horticulture, and nursery crops. The grants included projects for research, farmer education, agricultural marketing, and increased taro, breadfruit, cacao, mango, cucumber, banana, legumes, Christmas trees, and other specialty crop production.[694]

In 2018, a Hawaiian non-profit, Synergistic Hawaii Agriculture Council (SHAC), received $483,00 in federal funding to help farmers recover from adverse impacts caused by volcanic activity on Hawai'i island.[695] Hawai'i farmers also receive a variety of support, whether in the form of funding or technical assistance, from various federal agencies and programs, to include the USDA's Farm Service Agency, the USDA's Rural Development Agency, the USDA's Cooperative State Research, Education, and Extension Service (CSREES) Grant - Western Region Sustainable Agriculture Research and Education, and the Small Business Innovation Research Program. In addition, the federal government encourages "small businesses to export by offering finance programs through the Export-Import Bank, the Small Business Administration, and the Overseas Private Investment Corp."[696]

Although many of the aforementioned initiatives and opportunities undertaken by Hawai'i can be pursued by Guam in its current territorial status, Guam as a state would benefit from greater integration into the United States system of government by being automatically eligible for all federal programs that are offered to states, thus allowing it greater and easier access to federal funding and programs when compared to the current system, in which programs are selectively made available to Guam. As stated earlier, Guam's current eligibility for federal programs is more of a patchwork of resources, rather than the large, non-discriminatory pool of resources currently offered to states. Statehood would rectify this limited state of eligibility. Again, Guam would therefore be eligible for more technical and financial assistance than it currently receives now.

Programs and funding sources that Guam currently avails of are not guaranteed under continued territorial status and are dependent on decisions made by US federal agencies and the US Congress. If Guam were to become a state, the continuance of these programs and funding assistances would be dependent on nationwide continuance rather than the individual extension of the programs to Guam. In addition, increased representation at the federal level would provide Guam greater political power to

693 Hawaii Department of Agriculture, "Department of Agriculture Factsheet," 2019, 223, accessed at https://budget.hawaii.gov/wp-content/uploads/2016/12/09.-Department-of-Agriculture-FB17-19-PFP.pdf.

694 Hawaii Department of Agriculture, "Hawaii Receives $427,000 in Federal Grants for Agriculture," October 4, 2017, accessed at http://hdoa.hawaii.gov/blog/main/nr17-17scbgpgrants/.

695 Nina Wu, "Nearly $500K in federal funds will help Hawaii farmers rebuild, *Star Advertiser*, October 1, 2018, accessed at https://www.staradvertiser.com/2018/10/01/breaking-news/nearly-500k-in-federal-funds-will-help-hawaii-farmers-rebuild/.

696 State of Hawaii Agricultural Loan Division, "Other Funding Sources," accessed at http://hdoa.hawaii.gov/agl/other-funding-sources/.

advocate for policies that further advance its FNS.

Independence

As an independent country, Guam would have control over the entirety of its affairs, both internal and external. This level of sovereignty and decision-making provides many opportunities, but also comes with the challenge of not being directly affiliated with any country and thus not automatically receiving any assistance. Prior to achieving independence, Guam would need to work toward establishing relationships with regional neighbors within Micronesia, the Pacific, and Asia.

Governmental Policy

As an independent country, Guam's sovereignty would allow the island to implement governmental policies that directly bolster its FNS. The government of Guam could implement comprehensive policy reforms, ranging from land use, to education, to tariffs and duties, etc. In regard to land, the government of Guam could make ownership and/or taxation dependent on how the land is used. With education, an independent Guam could offer, or continue to offer, agricultural courses/programs that teach students sustainable agricultural practices. Lastly, with tariffs and duties, the government of Guam would have the ability to implement and enforce trade policies that either encourage or discourage the import and export of goods, dependent on domestic food availability conditions. While these examples may be possible under the other two status options, independence comes with a minimal level of limitations and potential conflict, as Guam would be able to control the laws within its borders. Overall, independence offers the most free-ranging authority to implement policies that are specially tailored to Guam's unique needs and advantageous to its FNS situation. An independent Guam will have to develop an understanding of the global economic system of agriculture and trade.

Exercise of External Affairs

As is the case with domestic policy, control over an independent Guam's foreign affairs would rest in Guam's hands. Guam would have the range of authority to select which countries it interacts with on the international stage, as well as the terms of those interactions. In specific regard to FNS, Guam would be able to seek involvement in various regional and international organizations as a full-fledged member state (country) if it meets the eligibility requirements. The most notable of such organizations is the United Nations. As an independent country, Guam would be eligible to join the UN as a member state and be able to advocate for its own interests. Moreover, Guam would have the opportunity to negotiate various types of agreements, such as free trade agreements, mutual assistance treaties, etc., with other countries. The independent country of Vanuatu provides several examples of trade agreements that Guam could pursue. In 2012, Vanuatu became a member of the World Trade Organization (WTO), and is currently a

member of the organization's various groups, to include the ACP (African, Caribbean and Pacific countries with preferences in the European Union), G-90 (African group + ACP + least developed countries), and the Least Developed Countries group.[697] Vanuatu is a party to reciprocal and non-reciprocal regional trade agreements. The former are agreements in which Vanuatu receives preferential treatment and provides the same to a partnering country, and the latter are agreements in which Vanuatu is afforded preferential trade treatment without providing the same treatment in return.[698]

As of 2018, Vanuatu is member of three reciprocal regional trade agreements: the Melanesian Spearhead Group Trade Agreement (MSG); the Pacific Island Countries Trade Agreement (PICTA); and the Pacific Agreement on Closer Economic Relations Plus (PACER Plus). PACER Plus has not yet been entered into force, meaning it has not yet been implemented to have legal force and effect.[699] With the MSG Trade Agreement, tariffs are waived on all products originating and exported from other parties, with some exceptions for wine, spirits, and tobacco. Vanuatu's largest trading partners under this specific agreement are Fiji, followed by Papua New Guinea and the Solomon Islands.[700]

Land Use

As discussed, the US federal government currently controls/occupies roughly thirty-one percent of Guam's land area (around twenty-seven percent being DoD). If Guam were to become independent, the return of land to the government of Guam would have to be negotiated. This is especially important, considering that much of Guam's arable land is currently controlled by the federal government. Although highly unlikely, if the entirety of this land were to be returned to Guam, there would be potential for agricultural expansion. Nevertheless, any possible return would still provide opportunities for the expansion of local agricultural production. Upon return of any land, the government of Guam could possibly limit how the land is used, potentially restricting its use to activities that further agricultural or economic development. There is the likelihood that Guam will negotiate a defense agreement with the United States that would result in the continued existence of US military bases. However, in negotiating this defense agreement, Guam could ensure that a set amount of land is reserved for the local government for agricultural purposes.

The Loss of Federal Programs

Many of Guam's residents currently rely on the federally funded nutrition programs to meet their food needs, specifically the Supplemental Nutritional Assistance Program (SNAP). As of 2019, there were

697 World Trade Organization, Trade Policy Review: Report by the Secretariat: Vanuatu, 2018, 21, https://www.wto.org/english/tratop_e/tpr_e/s378_e.pdf.

698 World Trade Organization, "Trade Policy Review: Vanuatu," 22.

699 World Trade Organization, "Trade Policy Review: Vanuatu," 22.

700 World Trade Organization, "Trade Policy Review: Vanuatu," 23.

15,518 households receiving SNAP benefits in Guam.[701] Another program, funded by the USDA, is the Special Supplemental Nutritional Program for Women, Infants, and Children (WIC). The program supports the healthy development of low-income or nutrient-at-risk women, infants, and children up to age five by subsidizing the purchase of certain healthy foods. While some of the administrative costs associated with these programs are locally funded, the actual program costs and benefits provided to recipients are paid for entirely by the USDA. If Guam were to be independent, Guam citizens would not be eligible to receive SNAP and WIC benefits for its citizens in the long run, even if there is some continued funding during a transition. An independent Guam would have to work to ensure that people currently on these programs receive an alternate service or food source that will meet their nutritional needs. Failure to provide a similar, alternative program would have devastating effects on the FNS of thousands of families, as well as the FNS of the island overall. The local government would also have latitude to reform food and housing assistance programs to prioritize the growth and purchase of local foods through these programs, providing demand and leading to more jobs.

As an independent country, Guam would likely be able to avail of some programs from regional and international organizations.[702] The presence of both international/regional technical support could have a positive effect on the island's overall FNS. International/regional technical and financial support could provide direct assistance to agricultural expansion efforts, as discussed in the status example below. Such assistance would be most effective if paired with a comprehensive, multi-sectoral plan, strategic government policy supports, and synergy among local organizations. Such combination of internal capacity-building efforts and external assistance would positively support the development of an agricultural sector that could contribute to domestic FNS.

Treaties and free trade agreements could also have a positive effect on domestic FNS, by enabling Guam to supplement its domestic supply of food with reliable, nutritious, low-cost locally produced and imported goods. Similarly, Guam could import foods that are not grown in Guam, but wanted by consumers, while potentially exporting goods grown in Guam that are wanted by consumers in other countries. Trade can play a role in ensuring a country's FNS.

Status Example: The Kingdom of Tonga

The Kingdom of Tonga, or Tonga, is an independent Pacific Island country that has a population of 106,398 people. Its people are spread out over four island groups with a combined total land area of 288 square miles. Like Guam, Tonga faces similar food security challenges, such as having a high dependence on imported foods and high levels of obesity. Unlike Guam, however, seventy-five percent of Tonga's population lives in rural areas, and the country has one of the highest levels of subsistence food production

701 Oyaol Ngirairikl, "SNAP change affects 2,000," *Guam Daily Post*, September 12, 2019, accessed at https://www.postguam.com/news/local/snap-change-affects/article_de46ee7a-d484-11e9-8c26-abfa3b8f13a8.html.

702 United Nations, "Country Classification: Data sources, country classifications and aggregation methodology," 2014, 150, accessed at https://www.un.org/en/development/desa/policy/wesp/wesp_current/2014wesp_country_classification.pdf.

among Pacific Island countries.[703] Nevertheless, Tonga stands as an example of how an underdeveloped country can make use of policy, technology, and external supports to successfully grow its agricultural production capabilities while effectively combatting the detrimental effects of climate change.

External Supports

Tonga receives a variety of financial and technical assistance support in the agricultural sector from international organizations, regional organizations, and individual countries. Most notably, the International Fund for Agricultural Development (IFAD), a specialized agency of the United Nations, provided a total of $16.74 million in financing costs, which supported five projects and benefited 17,209 households in Tonga. In Tonga, IFAD's focus is primarily centered on helping the rural population produce local food crops. This direct support assisted much of Tonga's rural population who are dependent on agricultural production and fisheries.[704]

An example of a regional organization that aids Tonga is the Asian Development Bank (ADB), with several programs that directly assist Tonga's agricultural development. The most extensive of these is the Outer Islands Agriculture Development Project (OIADP), a $4.6 million project which sought to increase agricultural productivity on the outer islands of Tonga, reduce income disparities between households on the different island groups, and stimulate Tonga's agricultural exports.[705] The ADB also provided two technical assistance grants, for a total of $910,000 in support of the project.

Additionally, Australia, through its AusAid Pacific Horticultural & Agricultural Market Access (PHAMA) project, contributed $8.2 million to support and encourage increased trade between Tonga and other Pacific Island countries. The project was successful, with Tonga's watermelon exports increasing from eighty-six tons in 2010 to 271 tons in 2013, along with the creation of a "Kingdom of Tonga" food label, and the upgrade of a crucial export facility.[706]

Combatting Specific Problems

In 2016, in hopes of addressing the many complexities posed by the effects of climate change on Pacific islands, Tonga developed a four-year Tonga Agriculture Sector Plan. Through its four areas of change: climate resilient environment; enabling environment; sustainable livelihoods and healthy foods; and sustainable growth and foreign exchange earnings, the comprehensive plan provides a multi-faceted approach to sustainably increasing the agricultural capacity of Tonga while growing the agricultural

703 The World Bank, "Tonga Agriculture Sector Plan: 2016-2020, accessed at https://pafpnet.spc.int/attachments/article/574/Tonga%20Agriculture%20Sector%20Plan%202016-2020.pdf.

704 International Fund for Agricultural Development, "Tonga," accessed at https://www.ifad.org/en/web/operations/country/id/tonga.

705 Asian Development Bank Operations Evaluation Department, "Project Performance Evaluation Report for the Outer Islands Agriculture Development Project in the Kingdom of Tonga," Asian Development Bank, July 2006, accessed at https://www.adb.org/sites/default/files/evaluation-document/35122/files/26028-ton-pper.pdf.

706 Pacific Horticultural & Agricultural Market Access Plus Program, "Creating Export Opportunities for Tonga," 2018, accessed at http://phama.com.au/wp-content/uploads/2018/02/PHAMA-in-Tonga.pdf.

sector's contributions to economic development and trade.

For specific challenges, such as addressing labor shortages, the plan calls for the recruitment and training of young farmers through training programs in Tonga's schools that focus on climate-resilient subsistence and commercial farming. The plan also calls for public awareness campaigns that raise community knowledge of specific challenges such as soil fertility and how farmers can better protect Tonga's soil. The plan also seeks to implement local institutional policy, export and import policy, and land and rural finance policy that will work in synergy to bring the greatest level of production, efficiency, and self-sustainability to Tonga.[707]

While most aspects of this plan can be implemented under statehood and free association, independence provides the highest degree of autonomy and decision-making power (but with the highest degree of responsibility and risk) to implement a similar comprehensive plan in Guam. Barring the negotiation of a defense agreement with another independent country, an independent Guam would likely not be limited by any potential conflict with US political/national security interests and would instead have the complete ability to negotiate agreements, both in trade and financial/technical support, with any and all countries, including the United States. This ability includes the possibility of negotiating Free Trade Agreements with regional and international partners that could possibly provide greater benefits than the FTAs of the United States.

Free Association

Duty-Free Trade with the US

As part of the Compact of Free Association, "many categories of US imports from the FAS can enter the United States free of duty. Certain rules of origin apply, and an article, to receive duty-free treatment, must be imported directly from a freely associated state."[708] This helps allow for the export of domestically produced FAS goods to the United States. This ability creates an avenue of trade by encouraging the import of goods from the FAS to the United States due to their potentially cheaper, more competitive prices, when compared with other non-duty-free imports. This trade was comprised of frozen fish meat and other products. If Guam were to expand its agricultural capacity to exportable levels, the implementation of similar provisions in a potential compact or other legal instrument could potentially provide Guam an established, reliable trade partner and provide opportunities for the sale of domestically produced goods.

707 Pacific Agriculture Policy Project, "Tonga Agriculture Sector Plan 2016 - 2020," accessed at https://pafpnet.spc.int/attachments/article/574/Tonga%20Agriculture%20Sector%20Plan%202016-2020.pdf.

708 Office of the United States Trade Representative, "Palau: Duty-Free Treatment under the Compact of Freely Associated States (FAS)," accessed at https://ustr.gov/archive/assets/Trade_Development/Preference_Programs/GSP/GSP_in_Use_Country_Specific_Information/Palau/asset_upload_file641_14837.pdf.

Availability of Land for Agricultural Production

The limited availability of land would be a considerable barrier to the expansion of agricultural production. At thirty-two miles long and twelve miles wide at its widest point, Guam has an area of 212 square miles. As a freely associated state, the potential return of federally held land to the government of Guam would have to be negotiated. However, it is helpful to analyze the land use mechanisms that exist in other freely associated states to determine what may happen in Guam. A freely associated Guam would have to ensure that its agreement with the United States reserves for Guam the appropriate amount of land and the necessary freedom to develop on that land, in order to expand its agricultural capacity.

Status Example: The Republic of Palau

Palau is at the forefront of climate change, as it is highly vulnerable to sea-level rise and the effects of El Niño. In fact, Palau is already seeing a decline in its food production due to the negative effects of climate change, such as increased periods of drought and greater frequency of cyclones.[709]

Regional/International Supports

To counter this and to continue its path toward food security, Palau has benefited from economic and technical cooperation with several regional and international organizations, as well as individual foreign countries, to support the expansion of its agricultural/aquacultural capacity. As an example of international support, the Pacific Adaptation to Climate Change (PACC) Project, which is funded by the Global Environment Facility and the Government of Australia, has provided Palau with financial and technical assistance to implement modern agricultural technology into the traditional farming practices of Palauan culture. Beginning in 2010, the program began testing different types of taro, a Palauan staple crop that is of great cultural significance and a key source of sustenance, to identify which types are best suited to resist the inundation of saltwater that comes with rising sea levels. The project identified three variants that proved highly tolerant to high salinity levels. The variants are now being distributed across Palau and other parts of the Pacific to be grown in places where traditional taro plants have not been surviving.

The program also aided Palau in increasing farming in upland areas of Palau by reclaiming areas that were formerly not farmed due to poor soil quality or a lack of accessibility. With the help of the project, several acres of land not previously used for farming are now being used to grow various crops, to include different varieties of saltwater-tolerant taro, as well as clams and crabs.[710] Aside from the PACC project, Palau has also received a significant amount of assistance from the Food and Agriculture Organization

709 Pacific Adaptation to Climate Change Project, "The Palau PACC Food Security Project: A Benefit Cost Analysis," 2011, accessed at https://www.adaptation-undp.org/sites/default/files/downloads/palau_pacc_cba_final_report.pdf.

710 Secretariat of the Pacific Regional Environmental Programme, "Food, Glorious Food: Climate Change Adaptation Project Enhances Food Security in Palau," July 30, 2014, accessed at https://reliefweb.int/report/palau/food-glorious- food-climate-change-adaptation-project-enhances-food-security-palau.

(FAO) of the United Nations, an organization it has been a part of since 1999. The FAO has aided Palau in the areas of policymaking, food quality/safety, and the production of sustainable agricultural goods. Through other projects, it has also strengthened the cooperation between farmers and the local market, along with the tourism industry.[711] Aside from the United States, Taiwan is Palau's second largest development partner. To support agricultural development, Taiwan maintains a technical mission in Palau which runs a research station and has committed to developing and providing new agricultural technologies to promote the self-sufficiency of Palau while also gaining valuable research information.[712] Under free association with the United States, in addition to direct US financial support, Guam could potentially make use of similar opportunities to join organizations and receive technical and financial assistance in support of the island's agricultural development.

Support from the United States

Through the Compact of Free Association with the United States, the Republic of Palau receives a significant amount of economic assistance to support a variety of development areas in Palau. Palau avails of several federally funded programs, such as the US Forest Service's State Fire Assistance Program, which helps Palau prevent, control, and suppress fires that may be damaging to residents or agricultural crops. Other programs include the USDA's Natural Resource Conservation service, which provided Palau with soil studies and helped create a reforestation plan for Palau. As a freely associated state, Guam may be able to avail of the same programs, and possibly more, if negotiated.

If Guam were to become freely associated with the United States, it could take advantage of the potential financial and technical assistance provided by the US, as well as a greater ability to engage in international affairs. Guam could bolster its agricultural development by receiving funds from the US and seeking supplemental investment opportunities from other countries. By securing domestic FNS, Guam would be better equipped to deal with challenges that would later come as a result of climate change and other uncertainties that would affect agricultural production.

711 Olivia Cyr, "Seven Ways the FAO is Tackling Hunger in Palau," Borgen Project, September 18. 2017, accessed at https://borgenproject.org/tackling-hunger-in-palau/.

712 Food and Agriculture Organization of the United Nations, "Pacific Multi County CPF Document 2013-2017," 2012, accessed at http://www.fao.org/3/a-az134e.pdf.

FOOD AND NUTRITION SECURITY	
STATUS	**EFFECTS**
Statehood	• Potential for increased federal financial/technical assistance. • Access to US trade network with minor barriers to trade among US states and trading partners. • Continued eligibility in federal programs that are currently crucial, such as SNAP. • Complete application of federal law, with potential detrimental effects dealing with costs. • US federal government sets US trade policy.
Independence	• Potential return of arable land which could be used for increasing domestic agricultural capacity. • Greater control over local policies and trade with foreign countries. Guam could negotiate trade deals with its closer neighbors in Asia and the Pacific. • Membership in country-only organizations, to potentially include funding supports and mutually beneficial partnerships.

	• Eventual end to federal funding and support, especially programs that provide assistance to low-income families, such as SNAP.
Free Association	• Possible duty-free trade opportunities with the US if negotiated. • Potential funding and technical assistance from US, other countries, and organizations. Funding from various sources could be combined for maximum benefit to grow Guam's domestic agricultural capacity. • Potential land-use conflict with US interests. With defense agreement and no return of land, Guam would have to adapt current land to be more conducive to agriculture.

Aquaculture Development

According to the Food and Agriculture Organization (FAO) of the United Nations, aquaculture is "the fastest food-producing sector and now accounts for fifty percent of the world's fish that is used for food."[713] The aquaculture industry is rapidly developing, as countries seek alternative options for food production in order to sustain their population growth and to further economic development. In 2019, at the FAO International Symposium on Fisheries Sustainability, the Director General of FAO stated that the "land alone will not feed us."[714]

Aquaculture is defined by the United Nations FAO as, "the farming of aquatic organisms in both coastal and inland areas involving interventions in the rearing process to enhance production."[715] Multiple types of aquaculture exist, such as marine aquaculture and freshwater aquaculture. The National Oceanic and Atmospheric Administration (NOAA) defines marine aquaculture as "the culturing of oceanic species (as opposed to freshwater)," this type of aquaculture includes oysters, clams, mussels, shrimp, salmon, and algae.[716] Aquaculture generally includes the production of aquatic plants and animals such as fish, crustaceans and shellfish, which are among the fastest-growing animal food sector in the world.[717] Indeed, fish is the "primary source of protein for some 950 million people worldwide and represents an important part of the diet of many more."[718] Given the significant need for fish, the aquaculture industry has attempted to fill the gap between supply and demand.[719]

713 Food and Agriculture Organization of the United Nations, "Aquaculture," accessed at http://www.fao.org/aquaculture/en/.

714 Food and Agriculture Organization of the United Nations, "Need for new vision for fisheries amidst growing concerns over state of oceans," November 18, 2019, accessed at http://www.fao.org/news/story/en/item/1251653/icode/.

715 Food and Agriculture Organization of the United Nations, "Aquaculture."

716 National Oceanic and Atmospheric Administration, "What is Aquaculture?" accessed at https://www.noaa.gov/stories/what-is-aquaculture.

717 Michelle Allsopp, David Santillo, and Paul Johnston, "Challenging the Aquaculture Industry on Sustainability: Technical Overview," January 10, 2018, 3, accessed at https://www.oceanfdn.org/sites/default/files/Aquaculture_Report_Technical.pdf.

718 Jangampalli Adi Pradeepkiran, "Aquaculture role in global food security with nutritional value: a review," Translational Animal Science 3, no. 2 (March 2019): 903-910. Accessed at https://doi.org/10.1093/tas/txz012.

719 Christopher L. Delgado, Nikolas Wada, Mark W. Rosegrant, Siet Meijer, and Mahfuzuddin Ahmed, "The Future of Fish: Issues and Trends to 2020," International Food Policy Research Institute, 1.

This subsection of the study addresses the general characteristics of the aquaculture sector by focusing on the role of aquaculture in food security/nutrition; disease risks; climate change and environmental impacts; and technology. This section then more directly addresses the current policy efforts toward developing an aquaculture industry in Guam and examines the possibilities for aquaculture under each of the political status options.

Role of Aquaculture

Fisheries play an important role within the global food economy. They provide a source of employment for about 200 million people who are dependent upon ocean fishing for their livelihoods.[720] The fisheries referenced in this sub-section are farmed, rather than wild-caught-or-captured, seafood resources. Fish production contributes to overall food supply for the general population and is generally considered to make a positive contribution to a society.[721] To consider these potential contributions, one must understand the particular role of aquaculture as a component of food production, access, and development in relation to human and environmental impacts of food.

Although aquaculture is often seen as improving economic efficiency and increasing fish production, aquaculture practices and systems are increasingly raising public concern. Aquaculture systems have been known to cause "negative environmental impacts, pressure on certain resources (e.g. water, land, fish meal, etc.) and increased vulnerability of small farmers."[722] In a variety of countries there have been human rights abuses associated with commercial aquaculture.[723] For example, "the positioning of shrimp farms has often blocked land access to coastal areas that were once common land in use by many people."[724] According to the Environmental Justice Foundation, nonviolent protests against the shrimp industry have often been met with threats, intimidation, and violence by people associated with the industry. Global data reported in 2003 indicates that protesters linked to aquaculture disputes have been arrested on false charges, and eleven countries have reported that protesters have been murdered.[725] With a lack of formalized land rights in these locales, shrimp farm development has led to "large scale displacement of communities, often without financial compensation or alternative land made available on which to live."[726] In 2014, research revealed that the Southeast Asian seafood processing industry, in places like Bangladesh, was criticized for human rights abuses and not complying with labor laws.[727] As of 2019, local governments

720 Gareth, P., Fisheries and the environment. Fisheries subsidies and overfishing: towards a structured discussion." UNEP, 2001.

721 Pradeepkiran, "Aquaculture role in global food security."

722 FAO. 2016. Sustainable intensification of aquaculture in the Asia-Pacific region. Documentation of successful practices. Miao, W. and Lal, K.K. (Ed.), Bangkok, Thailand, xi, accessed at http://www.fao.org/3/a-i5362e.pdf.

723 Allsop, et al., "Challenging the Aquaculture," 3.

724 Allsop, et al., "Challenging the Aquaculture," 8.

725 Environmental Justice Foundation, "Smash & Grab: Conflict, Corruption and Human Rights Abuses in the Shrimp Farming Industry," 2003, accessed at www.ejfoundation.org.

726 Allsop, et al., "Challenging the Aquaculture," 8.

727 M Nuruzzaman, Selim SUM, and Miah MH, "Rights, benefits and social justice: Status of women workers engaged in the shrimp processing industries of Bangladesh." *Asian Fisheries Science* 27S (2014): 151–163.

and export industries have developed efforts to address implementation and assess compliance of labor laws to achieve justice.[728] These examples highlight the importance of governance structures to address challenges that may be associated with aquaculture development. The Second International Conference on Nutrition (ICN2) also noted the "importance of aquaculture while recognizing its many challenges: the impact of climate change and variability, urbanization and related social and economic changes, increasing intra-regional trade and increasing concern over the environment and food safety to the public."[729]

Food Security & Nutrition

According to the United Nations Population Division (UNDP), food security is a pressing global issue as the human population is projected to reach between 7.5 and 10.5 billion by 2050.[730] Capture fisheries have been considered as food production systems that can contribute to food and nutrition security. The 2020 United Nations *System of Environmental-Accounting for Agriculture, Forestry, and Fisheries (SEEA AFF)* explains that "Capture fisheries can be defined as an activity leading to the harvesting of fish in a defined area, a broad concept covering all aspects of human fisheries activity, including economic, managerial, biological, environmental and technological viewpoints."[731] This definition illustrates that capture fisheries can be classified as all kinds of harvesting of naturally occurring living resources within both freshwater and marine environments. A measurement issue with capture fisheries is accounting for fish caught in a country's exclusive economic zone (EEZ) by foreign vessels.[732] Given that capture fisheries are considered to be increasingly unsustainable due to overfishing, aquaculture is often considered as an alternative system to provide an adaptive solution for food security.[733] Declining marine and freshwater fish stocks affect food and nutrition security, therefore aquaculture is considered a potential solution to easily and cheaply provide animal source foods to populations around the world.[734] Aquaculture has already demonstrated its "crucial role in global food security, with its production growing at 7.5 percent per year since 1970."[735]

Recognizing the current capacity and potential of aquaculture for future growth requires considering the challenges that the sector faces as it intensifies production. As research cautions, "aquaculture may

728 Roel H. Bosma, Thi Dien Nguyen, Lorna M. Calumpang, & Sef Alba Carandang, "Gender action plans in the aquaculture value chain: what's missing?" *Reviews in Aquaculture*, 11 2019): 1297-1307. Doi: 10.1111/raq.12293.

729 FAO. 2014. The Second International Conference on Nutrition: Committing to a future free of Malnutrition." accessed at http://www.fao.org/3/a-i4465e.pdf.

730 United Nations Development Programme, "World Population Projections, the 2006 Revision. 2006, accessed at https://www.un.org/development/desa/pd/sites/www.un.org.development.desa.pd/files/files/documents/2020/Jan/un_2006_world_population_prospects-2006_revision_volume-i.pdf.

731 FAO and UN. "System of Environmental-Economic Accounting for Agriculture, Forestry and Fisheries (SEEA AFF)," 2020, 72, accessed at https://doi.org/10.4060/ca7735en.

732 FAO and UN, "Environmental-Economic Accounting."

733 Food and Agriculture Organization of the United Nations, "The State of World Fisheries and Aquaculture,", 2012.

734 Christopher D. Golden, Edward H. Allison, William W. L. Cheung, Madan M. Dey, et al., "Nutrition: Fall in fish catch threatens human health," *Nature News* 534, no. 7607 (2016): 312-320. accessed at https://doi.org/10.1038/534317a;
Mimako Kobayashi, Siwa Msangi, Miroslav Batka, Stefania Vannuccini, Madan M. Dey, and James L. Anderson, "Fish to 2030: the role and opportunity for aquaculture." *Aquaculture Economics & Management* 19 (2015): 282–300, doi: 10.1080/13657305.2015.994240.

735 FAO, "The State of World Fisheries and Aquaculture 2020." Sustainability in action (2020): vi, accessed at https://doi.org/10.4060/ca9229en.

not be a panacea for food security."[736] Considerations of food security explicitly emphasize the need to understand connections between fisheries, diet, and human health.[737] There is a considerable potential for capture fisheries to contribute nutrient-dense food. Seafood resources, fish and shellfish, provide the potential to alleviate global and regional micronutrient deficiencies and thus, play a key role in alleviating food insecurity.[738] Because fish and fisheries products are recognized as some of the least impactful on the natural environment, as well as some of the healthiest foods on the planet, they have to be considered in food security and nutrition strategies.[739] Throughout much of the world, overfishing and the need to restrict fishing levels in order to sustain stocks is a primary factor affecting peoples' access to fish as a nutritious food. It is also important to address accessibility to the populations that need healthy food the most.[740]

Small-scale aquafarms have been promoted as a way to make aquaculture more equitable. However, the concern is that in a market economy, large-scale aquafarmers and industrialists do not coexist well with small-scale productions. Therefore, aquaculture may require strong governance that focuses on people-centered approaches to address regulatory frameworks that are suitable for the regional and local situation in Guam.

Disease Risk & Outbreaks

Infectious disease is a problem for aquaculture because intensification of aquaculture can generate high levels of environmental problems, making fish susceptible to infections and disease. In aquaculture production, diseases caused by bacteria, parasites, or viruses are a key threat, although the underlying global epidemiological patterns are unknown.[741] Infectious diseases can become problematic in aquaculture, even if they may not otherwise affect wild hosts. For example, local *Streptococcus iniae* (bacterial) strains tend to be more pathogenic to imported fish than to local wild fish.[742] Additionally, new aquaculture species may be susceptible to disease over time. One historical example is from the aquaculture development of Japanese yellowtail in 1961. The fish experienced a series of infectious diseases: "vibriosis became a problem in 1963, nocardiosis andichthyphoniasis in 1967, pseudotuberculosis in 1969, streptococcosis

736 Kobayashi, et al., "Fish to 2030."

737 Golden, et al., "Nutrition: Fall in fish cat."

738 John Z. Koehn, "Fishing for nutrition-improving the connection between fisheries, the food system and public health," Doctoral dissertation, University of Washington, 2019. Cited in FAO, "The State of World Fisheries and Aquaculture 2020," *Sustainability in action* (2020): 17, https://doi.org/10.4060/ca9229en.

739 FAO, "The State of World Fisheries and Aquaculture 2020."

740 Christopher D. Golden, Katherine L. Seto, Madan M. Dey, Oai L. Chen, et al., "Does Aquaculture Support the Needs of Nutritionally Vulnerable Nations?" *Frontiers in Marine Science* 4, no. 159 (2017): accessed at https://doi.org/10.3389/fmars.2017.00159.

741 T.L.F. Leung & A.E. Bates, "More rapid and severe disease outbreaks for aquaculture at the tropics: Implications for food security," *Journal of Applied Ecology*, 50, no. 1 (2013): 215–22. Doi: 10.1111/1365-2644.12017.

742 Colorni A, Diamant A, Eldar A, Kvitt H, Zlotkin A. 2002, "Streptococcus iniae infections in Red Sea cage-culturedand wild fishes," *Diseases of Aquatic Organisms* 49:165–70. Kevin D. Lafferty, C. Drew Harvell, Jon M. Conrad, Carolyn S. Friedman, Michael L. Kent, Armand M. Kuris, Eric N. Powell, Daniel Rondeau, and Sonja M. Saksida, "Infectious diseases affect marine fisheries and aquaculture economics," *Annual Review of Marine Science*, 7, no.1, (2015): 476.

in 1974, lymphocystis in1975, and so on."[743] There are many bacterial aquaculture diseases worldwide, with too many to provide in full here, though many are relevant for tropical regions.[744]

Indeed, marine diseases are a natural part of the world's ocean ecosystems, with many having economic consequences for aquaculture systems. Waterborne pathogens have the capacity to spread at faster rates than terrestrial systems. [745]Furthermore, processes of oceanic transport have the potential to transmit diseases over vast geographic regions.[746] The threats of infectious disease are particularly devastating, with disease being the number one killer of farmed fish. Outbreaks are capable of wiping out entire stocks and require costly decontamination.[747] Additionally, given the high densities of fish within fish farming facilities, there is a higher frequency of disease overall. As captive fish often escape into the surrounding environment, these marine animals can spread disease or even prey on wild fish populations.[748] Therefore, ocean aquaculture requires environmental regulation to address threats to marine life, fisheries, and overall ocean health.

Aquaculture in tropical regions has been found to have greater economic loss compared with temperate regions "due to climate change mediated disease mortality" and "increasing frequency of extreme weather events."[749] Tropical countries and locales "suffer proportionally greater losses in aquaculture during disease outbreaks and have less time to mitigate losses."[750] This role of disease in limiting aquaculture-based production of fish/shellfish has been considered in relation to empirical calculations of vulnerability to climate change. Furthermore, because climate change is likely to cause changes in aquatic ecosystems and oceans, these changes may "further exacerbate the susceptibility of aquaculture to disease."[751] In sum, climate change is a primary threat factor for the aquaculture sector.

To address these vulnerabilities, there are a variety of management approaches, including investing in environmental monitoring infrastructure and steering toward sustainable production.[752] Management frameworks will need to consider potential economic losses from diseases.[753] Biosecurity provides a "preventive practice for the exclusion of specific pathogens from cultured aquatic species at various levels

743 Kevin D. Lafferty, C. Drew Harvell, Jon M. Conrad, Carolyn S. Friedman, Michael L. Kent, Armand M. Kuris, Eric N. Powell, Daniel Rondeau, and Sonja M. Saksida, "Infectious diseases affect marine fisheries and aquaculture economics," *Annual Review of Marine Science*, 7, no.1, (2015): 476.

744 FAO & the UN (2017). "Major bacterial diseases affecting aquaculture," Olga Haenen, Aquatic AMR Workshop 1, 10-11 April 2017, accessed at http://www.fao.org/fi/static-media/MeetingDocuments/WorkshopAMR/presentations/07_Haenen.pdf.

745 McCallum, H., Harvell, D. & Dobson, A. "Rates of spread of marine pathogens." *Ecology Letters*, 6, (2003): 1062–1067.

746 Leung, "More rapid and severe disease outbreaks."

747 Pillay, T.V.R. & Kutty, M.N., *Aquaculture: Principles and Practices*, 2nd edition, (Oxford: Wiley-Blackwell, 2005).

748 Oceana: Protecting the World's Oceans, "Aquaculture," accessed at https://eu.oceana.org/en/eu/our-work/more-projects/aquaculture/overview.

749 Leung, "More rapid and severe disease outbreaks," 219. ; N. Handisyde, L. Ross, M.C. Badjeck, & E.H. Allison, "The Effects of Climate Change on World Aquaculture: A Global Perspective," Department for International Development, 2009.

750 Leung, "More rapid and severe disease outbreaks," 219. ; Handisyde, "The Effects of Climate Change."

751 Kobayashi, et al., "Fish to 2030." ; Leung, "More rapid and severe disease outbreaks."

752 S.R. Bush, P.A.M.V Zwieten, L. Visser, H.V. Dijk, R. Bosma, W.F.D. Boer, and M. Verdegem, "Scenarios for resilient shrimp aquaculture in tropical coastal areas," *Ecology and Society* 15, art 15 (2010).

753 Karim, M., R.H. Sarwer, A.C. Brooks, R. Gregory, M.E. Jahan, & B. Belton, "The incidence of suspected white spot syndrome virus in semi-intensive and extensive shrimp farms in Bangladesh: implications for management." *Aquaculture Research* 43 (2012): 1357–1371.

from facility/farm level to regional and country levels."[754] In Guam, however, biosecurity measurements are relatively relaxed and the region lacks in "health monitoring and regulatory control programs."[755] Therefore, an increase in biosecurity measures at the individual farm level as well as system-wide health management will be crucial to protect the region from pathogens.

Climate Change & Environmental Impacts

In terms of general environmental impact, "aquaculture facilities can be significant sources of pollution, including excess feed, fish waste and dead fish."[756] Waste generated by the aquaculture sector can also contribute to excessive algae growth, clouding coastal waters and altering seafloor ecosystems. Furthermore, there is a global concern about the effect climate change will have on aquaculture and fisheries. The maintenance of these systems is made more complex by the impacts of climate change, particularly as the ocean may affect food webs, habitats, and stocks that are the foundation of aquaculture in the region.[757] Fisheries and aquaculture in the Pacific are impacted by climate change in two major ways: global warming; and ocean acidification.

Global Warming

With regard to global warming, the effects of climate change are altering the patterns of fish distribution and production. In terms of production, climate change can be expected to "mediate fish production through the effects on reproductive success, recruitment processes, survival and growth of target species and/or their prey."[758]

Ocean Acidification

Under anticipated conditions in the twenty-first century, ocean acidification will "compromise carbonate accretion, with corals becoming increasingly rare on reef systems."[759] If there are less-diverse reefs, the carbonate reef structures will also be difficult to maintain. Therefore, Pacific locales must consider management intervention and take divisive action on global emissions in order to avoid the loss of coral-dominated ecosystems. Numerous studies have concluded that "coral reefs, mangroves and seagrasses

754 Hui Gong, "Promoting health management of shrimp aquaculture on Guam and Commonwealth of Northern Mariana Islands." *Asian Fisheries Society*, 23 (2010): 447-461.

755 Gong, "Promoting health management of shrimp aquaculture."

756 Oceana: Protecting the World's Oceans, "Aquaculture."

757 Johann D. Bell, et al. "Mixed responses of tropical Pacific fisheries and aquaculture to climate change," *Nature Climate Change* 3, (2013): 591-599.

758 Bell, et al., "Mixed responses," 4.

759 O Hoegh-Buldberg, et al., "Coral Reefs under rapid climate change and ocean acidification," *Science* 318 (2007):1737-42, accessed at https://pubmed.ncbi.nlm.nih.gov/18079392/.

that support coastal fisheries in the tropical Pacific are under threat."[760] This threat manifests in particularly destructive ways, with the threat of ocean acidification, which refers to changing ocean chemistry.[761] Indeed, frequent bleaching events and "reduced ability of coral to calcify are projected to reduce the biological and physical complexity of coral reefs."[762] The impacts of climate change on coral reefs pose serious consequences for reef-associated fisheries, tourism, coastal protection, and people.[763]

Aquaculture Industry in Guam

Guam previously explored aquaculture for the island. In 1986, the Bureau of Planning presented a report entitled "An Introduction to Aquaculture on Guam: Prospects, Permits and Assistance" to the US Department of Commerce. This report examines the possibilities of establishing aquaculture activities in Guam in order to achieve economic self-sufficiency. It also considers assistance in an import substitution method of economic development and evaluates future exports to other islands in the region to assist in their aquaculture industries.[764]

The 1986 document outlined the infrastructure development and aspects that would allow for an aquaculture industry in Guam. One of the most important aspects that the island can depend on is the year-round warm climate that allows for rapid growth of many cultured species. At the time of the publication, land was available for the development of an aquaculture industry. However, to advance these aquaculture plans today would require that Guam identify sufficient land area and a robust water supply in order to develop the industry. Most importantly, the island needs to consider the economic effects that an aquaculture industry may have on creating jobs as well as the ability for the industry to employ and sustain new jobs for the long term.

Guam previously experimented with ponds located in Talo'fo'fo'. Species that were considered during this experiment were the following: Malaysian giant prawn, freshwater eel, Chinese and common carp, milkfish, hybrid tilapia, catfish, mangrove crab, and the Pacific oyster.[765] Not much information is published on the lifespan and success of the hatchery at the time, or why farming of the species seems to have ceased until recently. With many roadblocks in the way for an industry that was considered new on the international scale at the time, it might have been hard to set up and sustain here.

760 Bell, et al. "Mixed responses of tropical Pacific fisheries," 594.

761 Johann Bell, et al. "Preliminary assessment of the effects of climate change on fisheries and aquaculture in the Pacific," 3, https://www.sprep.org/att/irc/ecopies/pacific_region/433.pdf.

762 J. D. Bell, J. E. Johnson, & A. J. Hobday (eds) "Vulnerability of Tropical Pacific Fisheries and Aquaculture to Climate Change (Secretariat of the Pacific Community)," 2011.

763 O Hoegh-Buldberg, et al., "Coral Reefs."

764 William J. Fitzgerald, Jr., "An Introduction to Aquaculture of Guam: Prospects, Permits, and Assistance," Guam Coastal Management Program Bureau of Planning - Government of Guam, 1986, accessed at https://www.govinfo.gov/content/pkg/CZIC-sh133-g8-f58-1986/html/CZIC-sh133-g8-f58-1986.htm.

765 Fitzgerald, "An Introduction to Aquaculture of Guam."

Guam's Aquaculture Development Today

On April 30, 2020, Governor Lou Leon Guerrero signed Executive Order 2019-12, which established the Guam Aquacultural Task Force to lead efforts to plan, develop, and implement a sustainable industry for Guam. This task force is motivated, in part, by the governor's desire to "provide food security, generate revenue, and create local jobs" through aquaculture.[766] While attempts have been made in the past for Guam to develop an aquaculture industry, more data and infrastructure are necessary to build an aquaculture industry that is sustainable and economically feasible.

In July 2020, Governor Leon Guerrero requested federal funding from the US Economic Development Administration for a study on Guam's aquaculture feasibility.[767] The study will look into market demand in the region, growth opportunities, and needed investments for development. The push for the study stems from her concerns about food security and economic security for the island, considering Guam imports approximately $10 million worth of seafood products annually.[768]

The Guam Aquaculture Development and Training Center (GADTC), better known as the Fadian Hatchery, is the "largest and oldest aquaculture center in the Western Pacific."[769] It operates under the University of Guam's College of Natural and Applied Sciences (UOG-CNAS) Research and Extension Branch. In 2018, UOG-CNAS received funding through a long-term public-private partnership to upgrade the Fadian Hatchery and restart research into aquaculture in Guam.[770] The goals of the center are:

- To conduct applied research in aquaculture
- To be the center for public information on the aquaculture industry, its products and its potential
- To serve the needs of farmers regarding technology transfer and extension service including environmentally sound practices
- To produce fish fry and shrimp post-larvae on island to support a growing and promising aquaculture industry, reducing the reliance on imported stocks of animals[771]

In August 2020, the center announced that "locally and sustainably raised seafood is now regularly available for Guam residents and restaurants to purchase, contributing to food security on island as well as the local economy" through a subsidiary, CoreSeed Aquaculture.[772] CoreSeed Aquaculture (Guam)

766 Post Guam Staff, "Task force to help develop aquaculture industry," *Guam Daily Post*, May 2, 2019, accessed at https://www.postguam.com/business/local/task-force-to-help-develop-aquaculture-industry/article_cf9de864-6bdf-11e9-8c82-4364c7ac7039.html.

767 Pacific Daily News, "Governor pushes for study on aquaculture industry on Guam,"*Pacific Daily News*, July 26, 2020, accessed at https://www.guampdn.com/story/news/local/2020/07/25/gov-lou-leon-guerrero-guam-aquaculture-industry-study/5484874002/.

768 Pacific Daily News, "Governor pushes for study on aquaculture industry on Guam."

769 University of Guam College of Natural and Applied Sciences Research and Extension, "Fadian Hatchery," accessed at https://cnas-re.uog.edu/fadian-hatchery.

770 Liza Mayer, "Revamp of Fadian Hatchery gets green light," February 1, 2018, Hatchery International, accessed at https://www.hatcheryinternational.com/revamp-of-fadian-hatchery-gets-green-light-3033/.

771 University of Guam College of Natural and Applied Sciences Research and Extension, "Fadian Hatchery."

772 Bruce Lloyd, "UOG Program provides shrimp, prawns and tilapia to island," *Pacific Daily News*, August 25, 2020, accessed at https://www.guampdn.com/story/life/2020/08/25/uog-program-produces-commercial-seafood/3427747001/.

Corporation is a small business that is classified as a 26203g tax exempt organization with the Department of Revenue and Taxation.[773] According to the University of Guam financial statements and auditors' report, effective January 2020, the Research Corporation of the University of Guam (RCUOG) entered a lease agreement with CoreSeed "for the use of the land and improvements on Lot No. 2517-17/Lot No. 5412—12-1 (the property) commonly known as the Guam Aquaculture Development and Training Center (GADTC)."[774] This lease began on January 1, 2020, and will end at "midnight on the 31st day of December 2049."[775] The GADTC operates under the University of Guam and is providing locally and sustainably raised shrimp and tilapia for Guam residents and restaurants to purchase.[776]

The Center and CoreSeed Aquaculture are now capable of sustainably producing white marine shrimp, prawns, black tilapia and saltwater tolerant red tilapia. These products are available on a wholesale basis through CoreSeed, and retail consumers can purchase jumbo-sized Pacific white shrimp and red tilapia through the Guam Fisherman's Co-operative Association.[777] The retail and wholesale orders total about 400 to 500 pounds of shrimp per month, with the anticipation of increased production to more than 1,000 pounds per month by the end of 2020.[778]

While the Center and CoreSeed Aquaculture are able to produce these products for sale, the Guam Comprehensive Economic Development Strategy 2020-2025 states "the facility is in dire need for significant amounts of renovations and new infrastructure in order to meet the demands of this growing industry."[779]

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773 Department of Revenue and Taxation, "Tax Exempt Organizations," 2020, 14, accessed https://www.guamtax.com/notices/Tax-ExemptListingforpublicationasamended11-11-2020.pdf; see also Guam Economic Development Authority, "Guam Small Business Pandemic Assistance Grant Program 0 Grant application number May 19 2020 – July 8 2020," July 8, 2020, accessed at https://www.investguam.com/wp-content/uploads/GSBPAG/GSBPAG%20Application%20Number_%20May%2019%20-%20July%2008%20Submissions.pdf.

774 University of Guam, "Financial Statements, Additional Information and Independent Auditors' Report Years Ended September 30, 2019 and 2018," 54, accessed https://www.opaguam.org/sites/default/files/uog_fs19.pdf.

775 University of Guam, "Financial Statements."

776 The Guam Daily Post, "'We need to produce food here' UOG, CoreSeed boost local food security by farming shrimp, prawns, saltwater tilapia," August 25, 2020, accessed at https://www.postguam.com/entertainment/food/we-need-to-produce-food-here/article_93dc1f12-e5c8-11ea-aa7d-373d7066972a.html.

777 Jackie Hanson, "UOG, CoreSeed boost local food security by farming shrimp, prawns, and saltwater tilapia," *Stars and Stripes Guam*, August 24 2020, accessed at https://guam.stripes.com/education/uog-coreseed-boost-local-food-security-farming-shrimp-prawns-and-saltwater-tilapia.

778 Hanson, "UOG, CoreSeed boost local food security."

779 Guam Economic Development Authority, "Guam Comprehensive Economic Development Strategy 2020-2025."

TABLE 1.1 : REGULATION FOR AQUACULTURE ACTIVITIES

AQUACULTURE RELATED ACTIVITIES	REGULATORY GOVERNMENT AGENCIES
IMPORT/EXPORT OF LIVE AQUATIC ANIMALS/PLANTS	GUAM DEPARTMENT OF AGRICULTURE
REGISTERED FARM	US WILDLIFE AND FISHERIES SERVICES (FROM/TO NON-US DESTINATIONS)
LAND ZONING	GUAM PUBLIC WORKS
CONSTRUCTION - PONDS (EARTHEN & CONCRETE) - DRAINAGE SYSTEM	GUAM LAND MANAGEMENT
PUMPING WATER FROM WELLS	US ARMY CORPS OF ENGINEER
DISCHARGE OF EFFLUENT THROUGH INJECTION WELL	GUAM ENVIRONMENTAL PROTECTION AGENCY
PUMPING WATER FROM STREAMS OR LAKE OR OCEAN DIRECTLY	GUAM PULIC UTILITY COMMISSION
DISCHARGE OR EFFLUENT TO SURFACE WATER	

Source: Guam FY2019 Comprehensive Economic Development Strategy
from University of Guam; Interview with Dr. Hui Gong on September 17, 2018

A table from Guam's FY2019 Comprehensive Economic Development Report illustrates the relationship between aquaculture-related activities and the regulatory government agencies.[780] As shown in the table, this process includes review by local and federal government agencies.

When discussing the growth of a new industry in Guam, the government will have to consider the amounts of resources that the island has to spread across industries it is considering developing.

Statehood

The United States is the largest importer of seafood products[781], but at the same time "domestic marine aquaculture has increased in volume and value since 2009."[782] Under statehood, Guam has the potential to further increase the industry's value and lessen its own seafood imports by exploring aquaculture development. As previously mentioned, there are two main types of aquaculture: marine and freshwater. Both types of aquaculture present benefits and difficulties for development under statehood.

According to the Food and Agriculture Organization, "the lead agency for freshwater aquaculture in

780 Guam Economic Development Authority, "Guam FY2019 Comprehensive Economic Development Strategy," accessed at https://www.investguam.com/wp-content/uploads/2019/CEDS%20-%20FINAL%20Update%20as%20of%201.4.19%20_%201112pm.pdf.

781 Congressional Research Service, "US Offshore Aquaculture Regulation and Development," October 10, 2019, accessed at https://crsreports.congress.gov/product/pdf/R/R45952.

782 Alexandra Carter and Miriam Goldstein, "American Aquaculture: An Overview of the Current Status, Environmental Impacts, and Legislative Opportunities," *Center for American Progress*, May 13, 2019, accessed at https://www.americanprogress.org/issues/green/reports/2019/05/13/469730/american-aquaculture/.

the United States of America is the Department of Agriculture (USDA). The lead agency for marine aquaculture is the National Marine Fisheries Service (NMFS) which is administratively housed in the National Oceanic and Atmospheric Administration (NOAA) under the Department of Commerce (DOC)."[783] As a state, Guam would have access to the funds and resources from these agencies and regulatory programs that apply to aquatic or marine activities like aquaculture. For example, "USACE for activities in navigable waters, the Environmental Protection Agency (EPA) for protection of environmental quality, and the Food and Drug Administration for regulation of drugs used to treat fish diseases."[784]

The island will also adhere to the National Aquaculture Act of 1980 for its regulations. The Aquaculture Act was partially established to "[encourage] aquaculture activities and programs in both the public and private sectors of the economy."[785] At least six federal agencies currently regulate different aspects of the US aquaculture industry: Food and Drug Administration, National Oceanic and Atmospheric Administration (NOAA), US Army Corps of Engineers, US Department of Agriculture, US Environmental Protection Agency, and US Fish and Wildlife Services.[786] These regulations are designed "to protect the consumer and the environment [with] primary concerns regarding navigation, land and water use, food safety, water quality and effluent discharge, environmental impacts, aquatic animal health, production, and marketing."[787]

With so many different agencies having oversight over aquaculture development, it creates regulatory uncertainty due to overlapping regulations. Regulatory uncertainty creates one of the biggest barriers to entry under statehood, which affects current states as well, and can hurt US growth potential in aquaculture, specifically with developing facilities dedicated to marine aquaculture practices. A Congressional Research Service Report on open-ocean aquaculture states,

> Development of commercial aquaculture facilities in federal waters is hampered by an unclear regulatory process for the EEZ, and technical uncertainties related to working in offshore areas. Regulatory uncertainty has been identified by the administration as the major barrier to developing open ocean aquaculture. Uncertainties often translate into barriers to commercial investment.[788]

The federal government is involved in aquaculture regulations through several different means, such as the US Department of Agriculture and the Department of Interior. The current regulatory framework requires federal permits to conduct aquaculture within federal waters. It also requires a federal consultation and review. Overall, the process of aquaculture development faces a system of federal permits,

783 Food and Agriculture Organization of the United Nations, "National Aquaculture Sector Overview: United States of America," accessed at http://www.fao.org/fishery/countrysector/naso_usa/en#tcN70118.

784 Congressional Research Service, "US Offshore Aquaculture Regulation and Development."

785 "National Aquaculture Act of 1980," September 26, 1980 accessed at https://www.agriculture.senate.gov/imo/media/doc/National%20Aquaculture%20Act%20Of%201980.pdf.

786 Carter and Goldstein, "American Aquaculture."

787 Food and Agriculture Organization of the United Nations, "National Aquaculture Sector Overview: United States of America."

788 Harold F. Upton and Eugene H. Buck, "CRS Report for Congress: Open Ocean Aquaculture," *Congressional Research Service*, June 12, 2008, accessed at https://digital.library.unt.edu/ark:/67531/metadc93997/m1/1/high_res_d/RL32694_2008Jun12.pdf.

consultation, and review requirements.

Other types of assistance would be available to Guam under statehood. The Subcommittee on Aquaculture (SCA), as assigned under the National Aquaculture Act, serves as the interagency coordinating body to "increase the overall effectiveness and productivity of federal aquaculture research, regulation, technology transfer, and assistance programs."[789] It provides a guide to federal aquaculture programs and services and is tasked with cataloging programs and activities that "encourage, support, or assist US aquaculture."[790] These mechanisms are also available to Guam under its current status as an unincorporated territory, although primarily occur in the form of subsidies allocated to US territories. If Guam should be admitted as a state, a benefit may be the added support that aquaculture provides to commercial and recreational fisheries.

As a state, Guam could establish better relationships by having a stronger voice, in the form of representation in voting bodies. The US also supplies a variety of advanced technology, equipment, investment capital, and food around the world. As a state, Guam would have access to the variety of national supplies from the federal government while also enjoying the benefit of establishing laws at the state level that determine how the aquaculture sector may best serve the people. Guam could also develop opportunities to support land-based or marine-based aquaculture projects throughout the island.

Beyond the economic potential of aquaculture, there are also a variety of risks that the sector poses if Guam becomes a state. Federal laws that may make sense for one state with fisheries and aquaculture might not support the needs of Guam under statehood. For example, Alaska has been advocating for a change in an old statute that is hindering the permitting process. The statute is considered vague and open ended and does not reflect the needs of the people since it was signed over sixty years ago.[791] Regulatory uncertainty in the realm of aquaculture development in the US could pose a barrier for Guam under statehood. For example, the US Congress has yet to take action to provide "statutory authority to develop aquaculture in offshore areas."[792]

Independence

When it comes to developing an aquaculture industry in an independent Guam, most regulations will be those selected and crafted by the people and the government in place. There is a possibility some regulations may come from international standards. At present, there are a minimum of thirty certification schemes and eight international agreements that are relevant to aquaculture. These standards and certification schemes also work with at least nine other initiatives that are identified to address sustainability issues

789 Subcommittee on Aquaculture, "Homepage," accessed at https://www.ars.usda.gov/SCA/.

790 Subcommittee on Aquaculture, "Guide to Federal Aquaculture Programs and Services," accessed at https://www.ars.usda.gov/SCA/Documents/Federal_aquaculture_resource_guide_2014.pdf.

791 Lucy Towers, "Alaska Fish Factor: Fishery Advocates call for review of fish habitat law." January 9, 2017, accessed at https://the-fishsite.com/articles/alaska-fish-factor-fishery-advocates-calling-for-review-of-fish-habitat-law.

792 Congressional Research Service, " US Offshore Aquaculture Regulation and Development."

and to consider appropriate frameworks for distinguishing among various sources of aquatic products.[793]

There are also regulations the US federal government established before the change in political status that an independent Guam may want to continue, such as the NOAA's regulatory activities that authorize marine aquaculture and overseas federal regulatory requirements that apply to aquaculture.[794] The National Aquaculture Act of 1980 and the National Aquaculture Improvement Act of 1985 are two public laws that established the authorizing legislation for federal government oversight of this sector. For example, the Subcommittee on Aquaculture (SCA) is a federal interagency that seeks "to increase the overall effectiveness and productivity of federal aquaculture research, regulation, technology transfer, and assistance programs."[795] These examples of federal aquaculture programs and services also reveal the possibilities that Guam would have should it decide to become independent. The island would be able to establish its own working groups, subcommittees, programs, and public laws to make decisions about the aquaculture sector.

With the adoption of international standards, such as the FAO Code of Conduct for Responsible Fisheries (FAO CCRF), the United Nations Convention on the Law of the Sea (UNCLOS), the ASEAN Shrimp Alliance, and the Convention on Biological Diversity (CBD), the independent country of Guam would be able to provide its own government representatives to participate in decision-making about schemes relevant to the aquaculture sector. Under the UNCLOS, Guam would have the authority to join the international community to decide upon "procedures to regulate all aspects of marine resources and ocean uses."[796] As an independent country, the island would stand to gain help from the international community and from organizations that assist countries with their development.

As explained above, the development of an aquaculture industry on island provides the possible benefit of sustaining the population's use and consumption of fish and other marine life. If production, support, and labor grow to a significant extent, the possibility exists that the industry could support the export of aquaculture products. From this potential, Guam would also benefit from international support mechanisms such as the Convention on Biological Diversity, an agreement signed in 1992 by 150 governments that is "dedicated to promoting sustainable development" and addressing "the transboundary movement of aquatic organisms."[797]

One of the most important steps to furthering development of an aquaculture industry is to have an aquaculture development plan. The FAO has helped multiple countries develop a plan. Other regional and international organizations have also offered technical expertise and assistance in the development of an aquaculture plan.

National governments have a range of regulations that could be used to improve water use by

793 Food and Agriculture Organization of the United Nations, "Overview of current aquaculture standards and certification schemes," accessed at http://www.fao.org/3/ai388e/AI388E08.htm.

794 NOAA, "Regulating Aquaculture," accessed at https://www.fisheries.noaa.gov/regulating-aquaculture.

795 United States Department of Agriculture, "The Subcommittee on Aquaculture (SCA)," accessed at https://www.fisheries.noaa.gov/regulating-aquaculture.

796 Food and Agriculture Organization of the United Nations, "International standards and intergovernmental agreements of relevance to aquaculture certification," accessed at http://www.fao.org/3/ai388e/AI388E10.htm.

797 "Convention on Biological Diversity," accessed at https://www.cbd.int/.

aquaculture. For example, countries can introduce legal frameworks, licensing and registration, and pollution controls.[798] Thailand is an independent country that utilized legal framework to designate a department to be in charge of the aquaculture sector, with the 2015 Fisheries Act of Thailand positioning the Department of Fisheries "as the primary agency for aquaculture development and regulation."[799] This department provides substantial technical support that is key to the aquaculture sector, particularly given the way that technology can be enhanced at the international levels through policies and initiatives that support continued global and international cooperation.[800] Another example is Aotearoa/New Zealand, where ministries play key roles in the regulation of fisheries and aquaculture development.[801] These examples highlight how independent countries have the capacity and opportunity to develop and utilize legal frameworks, as well as technological innovations, when it comes to developing aquaculture.

Given the increasing challenges of climate change and increasing demands for water, aquaculture's role in addressing global food security is expected to increase.[802] Indeed, the role of governance is a fundamental consideration when it comes to aquaculture and possibilities for growth in Guam. Responsible aquaculture governance requires consulting citizens and being informed by research and statistics in making policy that may hold actors accountable for implementation. The cases mentioned above can be instructive exemplars of co-management by state agencies with local resources, "adoption of information-communication technologies," and the significance of aquaculture "as a stakeholder in water, coastal zone and marine management."[803] On the whole, country-led regulation provides long-term resources and formal rules about aquaculture development, zoning allocations, information and innovation sharing, and a spectrum of capacities and innovations for proper implementation.

Overall, an independent Guam can structure its government in a way that lays out regulations and permits for the aquaculture industry. This set up would entail appointing at least one agency for all needed permits, to lessen the amount of needed communication and overlap. Creating an easy and straight forward avenue to building an aquaculture business will not only attract local business owners but possibly the interest of foreign investors. However, this requires the government of Guam to plan accordingly and make appropriate business and other international relationships to bring this to fruition. It will require concerted effort and initiative from the new independent country, as well as a further examination of feasibility, for this to succeed.

798 N. Hishamunda, N. Ridler, & E. Martone, (2014). "Policy and governance in aquaculture: Lessons learned and way forward." FAO Fisheries and Aquaculture Technical Paper No. 577.

799 Louis Lebel, Phimphakan Lebel, and Chong Joon Chuah, "Governance of aquaculture water use," *International Journal of Water Resources Development* 35, no. 4 (2019): 659-681, DOI:10.1080/07900627.2018.1457513.

800 Food and Agriculture Organization of the United Nations, "The state of world fisheries and aquaculture."

801 M.V. McGinnis and M. Collins, "A race for marine space: Science values, and aquaculture planning in New Zealand," *Coastal Management* 41, no. 5 (2013): 401-419, doi:10.1080/08920753.2013.822284.

802 P.J.G. Henrikkson, N. Tran, C.V. Mohan, C.Y. Chan, U.P. Rodriguez, S. Suri, ... and M.J. Philips, "Indonesian aquaculture futures - Evaluating environmental and socioeconomic potentials and limitations," *Journal of Cleaner Production* 162 (2017): 1482-1490.

803 Lebel, et al., "Governance of aquaculture," 675.

Free Association

Similar to the model for an independent Guam, aquaculture development as a freely associated state with the United States will also depend on the direction that its government and people want to take. A compact of free association or other legal instrument with the United States may only impact these developments if it is found in the language of the document. Examples of the relationship's impact would be found in aspects such as foreign affairs, but the Compacts of Free Association do not hinder industry development.

The Compacts of Free Association governing the relationships between freely associated states and the US do not specifically mention aquaculture. According to the 2019 Federated States of Micronesia Aquaculture Management and Development Plan, there is a need for aquaculture development, particularly given the timeliness of the forthcoming expiration of core economic provisions of the Compact of Free Association. Under the terms of the compact, financial assistance from the US to the FSM decreases every year. This money goes into a trust fund to help run the country after 2023.[804] The report continues to outline the opportunities and potentials for aquaculture within the FAS, indicating the issues of pristine environment, high biodiversity, large sheltered lagoons, access to technical assistance and technology, market access, etc.[805] The current status of aquaculture in the FSM is instructive here as it highlights the present focus on regional connections with Pohnpei and Kosrae.

In Pohnpei, the COM Land Grant continues to operate the pearl oyster and sea cucumber hatchery at Nett Point. In addition, MERIP is expanding the sponge and marine ornamental aquaculture programs with communities around the island.[806] The aquaculture sector is considered a viable activity to develop the FSM economy. Given the political status of free association, the country must consider the set expiration of the economic assistance components of the Compact of Free Association with the US, in 2023, and the need for an aquaculture development plan. The success of an aquaculture industry does not have to depend on the freely associated relationship with the U.S, but rather it might affect (positively or negatively) its foreign affairs, its funding sources, and its imports and exports of aquaculture products. In Guam's case, military security and other agreements may affect the location of aquaculture facilities, inland and offshore.

804 Federated States of Micronesia National Government Department of Resources and Development & Pacific Community (SPC), "Federated States of Micronesia Aquaculture Management and Development Plan: Federated States of Micronesia" 2019, Accessed at https://www.spc.int/.

805 Federated States of Micronesia National Government Department of Resources and Development & Pacific Community (SPC), "Federated States of Micronesia Aquaculture Management and Development Plan: Federated States of Micronesia," 4.

806 Federated States of Micronesia National Government Department of Resources and Development & Pacific Community (SPC), "Federated States of Micronesia Aquaculture Management and Development Plan: Federated States of Micronesia," 5.

AQUACULTURE DEVELOPMENT	
STATUS	**EFFECTS**
Statehood	• Guidelines to further develop and regulate an aquaculture industry. • Barriers to entry in the form of regulations and permits from different US government agencies, which is a common complaint from sources regarding aquaculture development in the US. • Access to federal programs.
Independence	• Eliminating some difficulties of regulations over industry. • Ability to receive help, if eligible, from international organizations to further develop an aquaculture industry. • Would have to create an inspection service for exports of food products. • Opportunity to operate as a new industry in the global trade market. • Loss of US federal funding for development and research.
Free Association	• Eliminating some difficulties of regulations over industry due to lack of US federal government oversight. • Ability to receive help, if eligible, from international organizations to further develop an aquaculture industry. • Opportunity to operate as a new industry in the global trade market.

Water Resources

Guam obtains its potable water from two major sources: surface water and groundwater. These sources come from two provinces and are separated by the Pago-Adelup Fault. The southern geographic province of the island, which collects surface water, is dominated by volcanic uphills and sloping foothills.[807] Limestone plateaus bordered by steep cliffs[808] collect groundwater in the northern province. Groundwater contributes to eighty percent of the island's drinking water. These plateaus are commonly referred to as Guam's northern aquifer.

One major component to the maintenance of Guam's water supply is the conservation of the island's limestone forests. According to the Food and Agriculture Organization of the United Nations, "the loss of forest cover and conversion to other land uses can adversely affect freshwater supplies."[809] This makes integrated water resources management (IWRM) important, no matter what Guam's political status is. IWRM refers to the "process which promotes the coordinated development and management of water, land and related resources in order to maximise economic and social welfare in an equitable manner without compromising the sustainability of vital ecosystems and the environment."[810]

In July 1996, the oversight of Guam's water resources became the responsibility of the Guam Waterworks Authority after the passage of Public Law 23-119, which designated that the Guam Waterworks Authority would "produce, treat, transmit, store, distribute, and sell water on Guam, and collect, treat and sell or dispose of waste water on Guam."[811] GWA also follows US federal laws, namely the Safe Drinking Water Act (SDWA) 42 USC § 300f et seq. (1974) and the Clean Water Act (CWA) 32 USC § 1251 et seq. (1972). SDWA focuses on all water meant for drinking use. Through the act, the US EPA is authorized "to set minimum standards to protect tap water and requires all owners or operators of public water systems to

807 Gingerich et al., "Water Resources on Guam."

808 Gingerich et al., "Water Resources on Guam."

809 Food and Agriculture Organization of the United Nations, "Loss of forest cover threatens freshwater supplies," 2003, accessed at http://www.fao.org/english/newsroom/news/2003/14880-en.html.

810 Global Water Preservation, "What is IWRM?," accessed at https://www.gwp.org/en/GWP-CEE/about/why/what-is-iwrm/.

811 Guam Public Law 23-119, accessed at http://guamlegislature.com/Public_Laws_23rd/P.L.%2023-119%20(SB%20511(LS).pdf, p.2.

comply with these primary (health-related) standards."[812] Additionally, the CWA "establishes the basic structure for regulating discharges of pollutants into the waters of the United States and regulating quality standards for surface waters,"[813] meaning that the act deals primarily with the island's wastewater system. GWA is also required to comply with Guam EPA regulations, which are closely associated with federal mandates, especially SDWA. GWA's operations are overseen by the Consolidated Commission on Utilities (CCU), a group with five elected, non-partisan members.[814]

To date, GWA services most of the island. According to GWA, "the island has 120 groundwater wells, Ugum Surface Water Treatment Plant (SWTP) and one active spring. The main water supply source is the deep wells, which are in the northern and central portion of the island."[815] GWA outlined that:

> groundwater supplies about eighty percent of the drinking water for Guam's residents and visitors. In northern Guam, water is obtained from wells that tap the upper part of a fresh groundwater lens in an aquifer composed mainly of limestone. In southern Guam, the main source of fresh-water is from surface water that runs off the weathered volcanic rocks that are exposed over much of the area.[816]

To maintain the current water system and to also plan for an anticipated expansion of the US military presence on the island with the construction of a Marine base, GWA "estimates that thirteen new wells need to be constructed between 2020-2037. They also anticipate that current wells will need a significant overhaul every 15-20 years."[817]

Another issue GWA faces is the ownership of the wells. The agency noted that "privately owned wells continue to provide irrigation, industrial, agricultural, and potable supply to southern and central Guam."[818] Therefore, in its Master Plan, GWA indicated the need to "investigate the viability of acquiring any of those sources for public use" since "springs were utilized to supplement supply in southern Guam as recently as 2006."[819] The protection of Guam's water system is critical. In 2015, GWA conducted a vulnerability study of its wells and unfortunately found that "seventy-six wells have a high risk, thirty-nine wells have a moderate risk, and nine wells have a low risk for potential contamination."[820]

There is also the case of the Fena Valley Reservoir (FVR). Guam's surface water resources primarily reside in the southern region of Guam. The FVR, which is owned by the Department of Defense, provides potable water for Naval Base Guam and nearby villages. It is considered the "largest and most reliable

812 Guam Waterworks Authority, "Guam Waterworks Authority's Information- Self-Determination Study," 2019.

813 Guam Waterworks Authority, "Guam Waterworks Authority's Information- Self-Determination Study," 2019.

814 Guam Waterworks Authority, "GWA History," accessed at http://guamwaterworks.org/gwa-history/.

815 Guam Waterworks Authority, "Water Resources Master Plan Update," ES-1.

816 Guam Waterworks Authority, "Water Resources Master Plan Update," 5-1. GWA also cited Gingerich, 2003 in this quote.

817 Guam Waterworks Authority, "Water Resources Master Plan Update," ES-10.

818 Guam Waterworks Authority, "Water Resources Master Plan Update," 5-54.

819 Guam Waterworks Authority, "Water Resources Master Plan Update," 5-54 - 5-55.

820 Guam Waterworks Authority, "Guam Drinking Water Source Assessment and Protection Program and Wellhead Protection Plan," June 2015, 5-3.

water source in Southern Guam."[821] According to the GWA Master Plan,

> While the reservoir and associated treatment facility are controlled by the Navy, supply necessary to support the Defense mission in Guam will always take priority over GWA requirements. Although an annual allotment from the reservoir has been made to GWA, the DoD has, at times, restricted water delivered to GWA. In addition, although the DoD is mandated to run the facilities on a 'break-even' basis, the rate structure of water purchased from the Navy is not sustainable for a public utility—GWA cannot resell the Navy water for as much as it costs to purchase, and the contract has historically not been negotiable.[822]

Because of this financial limitation, it is unlikely use of the Fena Valley Reservoir can increase if the Northern Guam Lens Aquifer (NGLA), Guam's other major freshwater resource, is unable to meet the island's needs. Doing so could potentially be too costly for the government of Guam.

In terms of wastewater, GWA operates seven wastewater treatment plants which provide "service to approximately 30,000 wastewater customers including civilian accounts island-wide and Andersen Air Force Base (AFB) and other military installations in northern Guam."[823] A significant portion of the island's residents have private septic tanks. GWA reported that:

> of the 55,567 housing units tabulated for the 2010 US Census, only 36,624 were indicated as connected to the public sewer. In addition to residential properties, many commercial and industrial operations are also not connected to the GWA collection network. These unsewered properties utilize septic or cesspool systems, and discharge from these systems can percolate down through the limestone of northern Guam towards the water table.[824]

These issues need to be addressed, especially with the anticipated increase in Guam's population due to the US military buildup.

Population Increases

A major upcoming issue that GWA contends with in its Water Resources Master Plan, is addressing the US military buildup. Since the buildup is not yet completed, numbers could change over time. For this section, the projections show the number of people GWA is planning for. In the Master Plan, it reported that it is planning its infrastructure for:

> an additional 5,000 Marines and 1,600 dependents [who] will be transferred to the island from

821 Guam Waterworks Authority, "Water Resources Master Plan Update," 5-54.

822 Guam Waterworks Authority, "Water Resources Master Plan Update," 5-54.

823 Guam Waterworks Authority, "Water Resources Master Plan Update," ES-3.

824 Guam Waterworks Authority, "Water Resources Master Plan Update," 5-21.

> Okinawa, Japan, increasing the military population by nearly fifty percent over 2014 levels. In addition to the increase in active-duty military and dependents, Guam's population is expected to fluctuate due to construction activity related to the military buildup and civilian jobs created by buildup activities.[825]

To address the needed improvements to Guam's water system, in 2010, GWA and the Department of Defense (DoD) signed a Memorandum of Understanding (MOU) to "evaluate opportunities towards integrating military and civilian water systems in Guam. The original intent of the MOU was to address expected water and wastewater needs for the proposed military buildup."[826]

With the updated 2016 MOU, GWA and DoD agreed that they would "facilitate changes to both systems in a manner that is mutually beneficial and maximizes the effectiveness of the overall Department of Defense (DoD) and GWA utility systems as a whole."[827] As part of this integration, it was negotiated that the Tumon-Maui Well, one of the highest capacity wells of NGLA, would be part of a pilot program where GWA would be given a temporary license to operate it. GWA will also be responsible for the maintenance of the surrounding property and security of the well. As stated in the MOU, GWA's operation of the Tumon-Maui well would grant the agency the "opportunity to demonstrate their ability to operate and maintain DoD owned water treatment facilities and provide sustainable, reliable, compliant and secure potable water generation."[828] The agreement also stated that:

> The delivery of the USMC cantonment [one of the sites of the buildup] will be a water for water trade. The amount GWA delivers to the USMC cantonment will be counted as a credit toward purchases made by GWA from the Navy to provide water service to customers at other locations.[829]

Meaning that GWA would have the opportunity to reduce the amount it pays to the Navy for water given to Guam residents from the FVR if it continues to provide water from the Tumon-Maui well to residents of the USMC base. Preparing Guam's water resources for the impending population increase is critical to ensuring that it can provide enough freshwater to the island's residents.

Climate Change and Availability of Future Water Resources

GWA projects are not necessarily done to address climate change, but the improvements they make to the water system will allow the island to be more resilient to the effects of climate change. Currently,

825 Guam Waterworks Authority, "Water Resources Master Plan Update," ES-8.

826 Guam Waterworks Authority, "Water Resources Master Plan Update," 5-58.

827 Guam Consolidated Commission on Utilities, "Resolution No. 04-FY2017: Memorandum of Understanding of the Tumon Maui Well" 6, accessed at http://guamccu.org/wp-content/uploads/2015/12/Resolution-04-FY2017-MOU-Between-GWA-and-DoD.pdf.

828 Guam Consolidated Commission on Utilities, "Resolution No. 04-FY2017: Memorandum of Understanding of the Tumon Maui Well," 3.

829 Guam Consolidated Commission on Utilities, "Resolution No. 04-FY2017: Memorandum of Understanding of the Tumon Maui Well," 4.

GWA is planning additional projects to line and rehabilitate the pipes along the shoreline. Therefore, if ocean levels rise and cause an appreciable difference in storm surge, the island will be protected from the type of storm surge that it sees during typhoons.

The environmental consequences of climate change, including drought and sea level rise, will inevitably impact Guam's water resources in the future. Recognizing the potential adverse effects, the United States Department of the Interior and United States Geological Survey conducted a comprehensive investigation and produced a report entitled *Water Resources on Guam - Potential Impacts of and Adaptive Response to Climate Change*. A summary of this report will aid in understanding how climate change may negatively affect Guam and mitigative action that can be adopted in order to prevent the adverse impacts. This report is the product of a scientific study conducted by experts who used "downscaled regional climate models, informed by a multimodal ensemble of global climate models provided projections of future climate conditions for Guam."[830] Future projections are for the years 2080-2099.[831] Factors included in simulations to test the potential effect of climate change on Guam's ground and water resources included: temperature; amount of rainfall; the presence or absence of a two-year drought; and occurrence or non-occurrence of sea-level rise. The findings from this research can be broken down into two parts, the first discussing the impacts to surface water resources, and the other addressing the effects to groundwater resources.

Regarding FVR, the USGS study found that from 2010 to 2014, the average water supply was about 5.5 Mgal/day.[832] USGS explored the FVR and revealed that climate models predicted a twelve percent to thirty-six percent decrease in streamflow "relative to the streamflow in the historic period."[833] A decrease in water provided to the FVR was based on projections of "decreased future rainfall and increased actual evapotranspiration."[834] Climate models took into consideration an increase in demand for water from the current withdrawal rate of 5.5 Mgal/day to estimated withdrawals up to 11.4 Mgal/day.[835] USGS found that based on the maximum withdrawal rate with a decrease in streamflow due to less rainfall, a consequence of climate change, the FVR "would maintain water levels above the pump intake elevation"[836] which implies that even with withdrawals that double the current rate, the FVR is still able to supply water without irreparably damaging the system.

While running simulations, the survey found FVR's potential limit. In one simulation, the water withdrawal rate being eleven Mgal/ d coupled with a "two-year drought" found that "the reservoir will not recover after the dry season and the water level decreases to the elevation of the pump intake after twenty months in the twenty-four-month period simulated."[837] A situation of maximum withdrawal that is accompanied by a large decrease in streamflow due to drought would be more damaging to Guam.

830 Gingerich et.al., "Water Resources on Guam," pg. 1.

831 Ibid, pg.1.

832 Gingerich et.al., "Water Resources on Guam," pg. 2; Mgal/d means million gallons per day.

833 Ibid, pg. 18.

834 Ibid, pg.18.

835 Ibid.

836 Ibid, pg. 20.

837 Guam Waterworks Authority, "Water Resources Master Plan Update," 21.

The simulation was set for the year 2088.

Aside from drought, another factor to consider for the island's freshwater resources is sedimentation, which decreases streamflow. Streamflow, which refers to the amount of water flowing, is measured to determine how a water system is performing. The study found that "future sediment load discharged into the reservoir will decrease by about thirty-two percent relative to the modeled sediment load for the historic period"[838] which is attributed to "the decrease in streamflow"[839] in part due to less rainfall. Less sediment flowing into the FVR means the reservoir is expected to lose 0.46% of storage capacity, in comparison to the current 0.68% that has been lost annually from 1951 to 2014.[840]

However, the study recognizes that another historical factor in sedimentation has been the occurrence of "intense storms." Due to climate change, the frequency of tropical cyclones is expected to decrease, but the intensity may increase, creating stronger storms which may lead to greater amounts of "sediment load discharged into the FVR."[841] Overall, climate change may lead to decreased rainfall, the occurrence of long-term drought and intense storms which may lead to a decrease in streamflow of water as well as an increase in the sedimentation rates in the FVR, a primary source of potable water for southern Guam.

Simulations for Guam's future groundwater availability took into consideration a 6.6 ft. rise in sea level and found only a "small impact on the chloride concentration of water pumped from the production wells in the NGLA."[842] This means that sea-level rise by itself would have a minor impact on Guam's NGLA. A second model simulation did not include sea-level rise but did take into consideration a decrease in recharge, which is feasible given the projected decrease in rainfall. This simulation found a rise in "composite concentration of 282 mg/ L, which is more than double the composite concentration simulated for 2012 recharge and sea level conditions...and above the 250 mg/ L chloride concentration secondary standard established by the US Environmental Production Agency."[843] The implication is that a decline in rainfall would be impactful because less freshwater would be available to replenish the NGLA and to ensure a lower concentration composite.

Overall, simulations on future surface and groundwater resources for Guam from the 2019 study found that the impacts of climate change will be significant. Additional effects of climate change on Guam's water resources are explained in the table below. The table is from GWA's Master Plan.

838 Guam Waterworks Authority, "Water Resources Master Plan Update," 21.

839 Guam Waterworks Authority, "Water Resources Master Plan Update," 21.

840 Guam Waterworks Authority, "Water Resources Master Plan Update," 21.

841 Guam Waterworks Authority, "Water Resources Master Plan Update," 21.

842 Guam Waterworks Authority, "Water Resources Master Plan Update," 23.

843 Guam Waterworks Authority, "Water Resources Master Plan Update," 23.

Climate-Related Impacts for GWA Source Water[844]

844 Guam Waterworks Authority, "Water Resources Master Plan Update," 5-54.

CLIMATE-RELATED EVENT	RESULT	POTENTIAL IMPACT	SOURCE
Rising sea level	Increase in elevation of the freshwater lens and fresh to salt transition zone	May raise the freshwater lens above well screen and put saltier transition water at the screen elevation, increasing chlorides.	Australian Bureau of Meteorology & CSIRO, 2011
ENSO-related drought	High inter-annual rainfall variability	Prolonged and extended dryness occurring in the year following El Niño.	
Increase in number of heavy and extreme rain days	Larger volume of runoff and/or infiltration over a shorter period	Increased potential for pollutant transport into aquifer with runoff infiltration. Increased sediment transport and resultant turbidity and pollution into surface water.	Australian Bureau of Meteorology & CSIRO, 2011
Increase in evapotranspiration	Less infiltration	Decrease recharge, well water levels drop.	Australian Bureau of Meteorology & CSIRO, 2011
Tidal fluctuations		In wells closest to the coast, water levels fluctuate daily as much as 0.5 feet in response to ocean tides. Wells in the high-hydraulic-conductivity limestone in the island's interior typically show much smaller daily fluctuations.	
Climate change in the South Pacific	Climate-related migration	People displaced by rising sea levels may migrate to Guam, adding to infrastructure requirements.	

Many of the effects mentioned in the GWA report mirror what was concluded in the simulations run by USGS. A lack of water due to a decline in rainfall or drought, rising temperatures and sedimentation rates as well as sea-level rise are all factors that may create vulnerabilities to Guam's water resources. Under the different political status options, the Government of Guam must consider these vulnerabilities and what resources can be obtained and what actions should be taken to mitigate the situation and ensure safe water resources for the island's population.

Statehood

Under statehood, little change may be required regarding Guam's water resources. The island currently follows federal water laws and is structured like some US states. One required change is that the state of Guam will need to establish formal state water laws to address how water is distributed and managed.[845] As it currently does, the state of Guam will still have to adhere to the provisions set in the US federal laws, namely the Safe Drinking Water Act (SDWA) and the Clean Water Act (CWA). State water laws must also acknowledge and respect the federal government's reserved water rights.

Additionally, the state of Guam will continue to have access to federal grants (i.e., Clean Water State Revolving Fund-CWSRF and the Drinking Water State Revolving Fund- DWSRF) for sustainably managing water resources. The DWSRF is a grant that provides low-interest loans to states, territories, and American Indian/Alaskan Native tribes in the United States. In the past, the grant funded projects related to improving drinking water treatment; fixing leaky or old pipes (water distribution;) improving source of water supply; replacing or constructing finished water storage tank; and other infrastructure projects to protect public health.[846] A report written by the Congressional Research Service outlined the complex funding structure of these grants, stating,

> The law directs EPA to allot DWSRF funds among the states based on the results of the most recent quadrennial needs survey, except that each state (including the Commonwealth of Puerto Rico and the District of Columbia) must receive at least 1% of available funds. SDWA authorizes EPA and the states to reserve portions of the available funds for specified purposes.
>
> Before distributing funds among the states, EPA reserves two percent of the appropriated amounts for grants to Indian tribes and Alaska Native villages for water infrastructure projects. For FY2017, Congress authorized EPA to set aside as much as $20.0 million for these grants. The law also directs EPA to allot grants to the US Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, and Guam, using not more than 0.33% of the funds available for grants

845 National Agricultural Law Center, "Water Law: An Overview," accessed at https://nationalaglawcenter.org/overview/water-law/.

846 United States Environmental Protection Agency, "How the Drinking Water State Revolving Fund Works," accessed at https://www.epa.gov/dwsrf/how-drinking-water-state-revolving-fund-works.

to the states. Congress has regularly increased this amount to 1.5% in appropriations acts.[847]

As a state, Guam will get access to federal loan funding, but it will have to provide matching funds to secure certain grants. In FY2017, GWA was given $5 million through CWSRF and $3.5 million through DWSRF.[848] Based on an "in-kind technical services contract," US EPA granted money to GWA to "increase the technical, financial, and managerial capacities."[849] With the five-year grant, it was reported that GWA was able to "improve operations and management of their water and wastewater systems and implement standardized procedures and tracking for a more effective and efficient capital improvement program."[850]

Lastly, as a state, the military presence in Guam will remain and possibly expand. This will require the state government to address the impacts associated with military activity as it relates to population and the possible chemical contamination of the island's water resources. This will also apply to a freely associated Guam or independent Guam if basing agreements are established with the United States.

Independence

As an independent country, Guam would have full autonomy and exclusive control over its water resources. As a result, Guam will no longer have access to federal funding to complete its capital improvement projects. GWA currently relies on the revenue it receives from consumers. An independent Guam may continue to use a similar revenue source when it establishes its water system (contingent on the economic state of the island at the time). An independent Guam will have to look for other sources of funding to make up for the loss in federal funds. Guam can look to other countries or international organizations for assistance or aid, in the form of grants and low-interest loans to fund improvements to the island's water infrastructure. If Guam and the United States negotiate to maintain US military bases in the island, Guam could obtain support and funding for its water system. The government of Guam can then use this money to manage water and other resources.

In terms of control, Guam will need to enforce stricter regulations around water. An independent Guam could also redesign laws that best suit the needs of the island. For example, based on simulations run by USGS, climate change can impact the quality of Guam's freshwater resources. An independent Guam could create robust water laws to address the potential impacts of climate change. The country could also create programs and initiatives that adequately tackle development and address the potential impacts of climate change. This will depend on the strength and cohesion of governance, enforcement mechanisms, economy, and national pride of the time to ensure Guam's water resources are protected.

847 Congressional Research Service, "Drinking Water State Revolving Fund (DWSRF): Overview, Issues, and Legislation," October 2, 2018, accessed at https://fas.org/sgp/crs/misc/R45304.pdf.

848 US Environmental Protection Agency, "Clean Water and Drinking Water Grants to US Territories and Washington, D.C. FY 2017 Annual Report," July 2018, 4, accessed at https://www.epa.gov/sites/production/files/2018-08/documents/cwsrf_dwsrf_territories_and_dc_joint_annual_report_final.pdf.

849 US Environmental Protection Agency, "Clean Water and Drinking Water Grants," 4.

850 US Environmental Protection Agency, "Clean Water and Drinking Water Grants," 4.

These are difficult things to establish, at first, and will take considerable effort. As stated by the Guam Environmental Protection Agency,

> It is likely not feasible for Guam to develop its own drinking water regulations due to the cost and scientific research needed to develop standards such as drinking water maximum contaminant levels (MCLs). In terms of technical effectiveness, the USEPA Safe Drinking Water Act and associated SDWA regulations remain one of (if not the) most comprehensive and effective drinking water regulatory schemes in the world. GEPA would be hard-pressed to come up with a more effective regulatory scheme. However, the federal SDWA has been slow to adapt to emerging contaminants in recent years, due political and funding factors at the national level. Some states have begun to establish maximum contaminant levels on their own as a result. GEPA is in the process of working with the Guam Legislature to amend Guam's SDWA to allow for the establishment of "interim action levels" for unregulated contaminants prior to federal regulation. However, GEPA is recommending only that such standards be adopted on the basis of risk assessments produced by the USEPA or other states. GEPA does not believe Guam has, or will ever have the resources necessary to determine such standards on our own. As an example, the state of California maintains a staff of over fifty toxicologists and an annual budget in excess of $25 million to develop their risk assessments which are used to establish such limits.[851]

An independent Guam would need to find a way to navigate around this obstacle to develop proper water standards for the benefit of the country and its people.

Status Example: Indonesia

Gaining independence in 1945, the Republic of Indonesia currently stands as "the world's third most populous democracy, the world's largest archipelagic state, and the world's largest Muslim-majority nation."[852] As of July 2020 the population was estimated to be 267,026,366.[853]

Economic activity and related urbanization, coupled with a growing population, has placed stress upon the water resources in Indonesia. It is significant to note that the country's water resources are also unevenly distributed throughout the islands. Despite over half the population living in Java, the island has only "4.2% of the country's water resources."[854]

The government of Indonesia deals with the challenge of providing safe freshwater to its citizens. To resolve this issue, Indonesia sought international development assistance to improve its sanitation and

851 Guam Environmental Protection Agency, Water Division, Self-Governance Answers.

852 Central Intelligence Agency, "Indonesia," August 19, 2020, accessed at https://www.cia.gov/library/publications/the-world-factbook/geos/id.html.

853 Central Intelligence Agency, "Indonesia."

854 Association of Southeast Asian Nations, "Overview of IWRM in Indonesia," accessed August 31, 2020, accessed at https://aseani-wrm.water.gov.my/iwrm-in-indonesia/.

freshwater systems. For example, the Indonesian Government's program Penyediaan Air Minum dan Sanitasi Berbasis Masyarakat (PAMSIMAS) is funded by money contributed by the central Indonesian government as well as regional governments for a total of $537.4 million. In addition to domestic funding, between 2006-2018, the program also received $102 million from the Australian government to carry out its initiatives. The Indonesian government was also granted World Bank funding through a $137.5 million International Development Association (IDA) credit and a $399.9 million International Bank for Reconstruction and Development (IBRD) loan.[855] With the millions invested into the program, PAMSIMAS reported that it has already helped "Indonesia's low-income rural and peri-urban population, spread across almost 23,000 villages, by providing improved water supply to 17.2 million people, and access to better sanitation facilities for 15.4 million people."[856]

In addition to securing finances for water resource management, the government of Indonesia also needed to formalize which entity would have the authority to oversee the country's water resources. On Feb. 18, 2015, Indonesia's Constitutional Court revoked Law No. 7/2004 on Water Resources[857] which was the "framework law"[858] for water resources and the basis for further government regulations. To replace this, the government reinstated The Law of the Republic of Indonesia Number 11 of the Year 1974, because the "2004 Law had permitted private sector companies to sell packaged tap water."[859] By reinstating Law No. 11/1974, the government of Indonesia reclaimed control over water resources that may have been lost under the previous law.

Article V of Law No. 11/ 1974 specifies that the "Government shall formulate specific water resources management policies"[860] for activities such as "the determination of the conditions and procedures for general and project planning and for water and water resources utilization, exploitation, policing, and licencing"[861] as well as "the permanent regulation and implementation of water and water resources development as well as of waterworks management…"[862] This indicates that the government of Indonesia has a majority of control over managing freshwater resources.

Like Indonesia's Law No. 11/1974, a framework law can be established to give the government of Guam primary control over managing water resources through activities, such as the creation of regulations and plans, enforcement of regulations, as well as the collection, treatment and distribution of water to the public. Doing so would allow the government to ensure that freshwater resources remain available for the benefit of the people of Guam without having to deal with the potential privatization of the island's

855 The World Bank, "Indonesia: Expanding Access to Clean Water for the Rural Poor," accessed at https://www.worldbank.org/en/results/2019/07/29/indonesia-expanding-access-to-clean-water-for-the-rural-poor.

856 The World Bank, "Indonesia: Expanding Access to Clean Water."

857 John Constance, "Indonesia: Water Law Overturned by Court," The Library of Congress Law Library, March 3, 2015, accessed at https://www.loc.gov/law/foreign-news/article/indonesia-water-law-overturned-by-court/.

858 Asian Development Bank, "Indonesia Country Water Assessment," 2016, 58, https://www.adb.org/sites/default/files/institutional-document/183339/ino-water-assessment.pdf.

859 Constance, "Indonesia: Water Law Overturned by Court."

860 President of the Republic of Indonesia, "The Law of the Republic of Indonesia Number 11 of Year 1974 on Water Resources Development," 9, accessed at http://extwprlegs1.fao.org/docs/pdf/ins1336.pdf.

861 President of the Republic of Indonesia, "The Law of the Republic of Indonesia," 9.

862 President of the Republic of Indonesia, "The Law of the Republic of Indonesia," 9.

water resources. The government of Guam could also consider the same funding streams that Indonesia used, such as negotiating with other countries or pursuing money from international organizations.

Free Association

As a freely associated state (FAS), Guam will have sovereignty over its water resources, meaning that the island will have the authority to enable water laws for the country. A FAS Guam will likely also participate as its own country in regional and international organizations (if following the blueprint of already existing FAS with the US) that address environmental impacts.

The ongoing partnerships the freely associated states of the Micronesia sub-region have with the United States can serve as an example for the kind of assistance a freely associated Guam can receive and allocate toward improving and maintaining its water resources. For example, if a COFA or other agreement is negotiated, Guam could potentially receive financial assistance to strengthen the island's freshwater resources or even ask to use the services of US federal agencies such as the US Environmental Protection Agency (USEPA) or the Federal Emergency Management Agency (FEMA).

Additionally, as part of a potential compact or other legal instrument between Guam and the US, it is virtually guaranteed the United States will want to continue having its military bases in the island to protect US interests. If this occurs, Guam will have to negotiate with the United States over who will be responsible for maintaining and protecting the water resources that sit within the US bases and are used by the US military. Senator Sabina Perez raised this concern when she commented on the infrastructure of Guam's water system. She emphasized that:

> one of the big issues about our municipal water supply is that it was meant to be a residential water supply not an industrial water supply. Meaning that the military counts as part of that because they are a big producer of industrial wastes. Our municipal water supply or water system was not designed for that. We want to strengthen our municipal water system. There must be perhaps in the presence of a military, the US military. There really should be more of a community advocacy presence.[863]

Under the status of free association, Guam may have the opportunity to clearly outline the responsibilities of each respective institution, yet the power difference between Guam and the United States in the negotiations will be a factor in the results.

As indicated in Section 161 of the Compact of Free Association with the Republic of the Marshall Islands and the Federated States of Micronesia, the US is required to "prevent or eliminate damage to the environment and biosphere and to enrich understanding of the natural resources of the Marshall Islands and the Federated States of Micronesia."[864] It is further outlined in subsections A3 and A4 that an

863 Personal Communication with Senator Sabina Perez, May 2021.

864 Republic of the Marshall Islands, "Compact of Free Association Act of 1985", accessed at https://www.doi.gov/oia/about/compact.

Environmental Impact Statement (EIS) must be performed, wherein the US government shows that all of its activities comply with federal environmental laws and that it has mechanisms in place to mitigate any potential environmental damage. The EIS can only be amended if both governments agree. Section 161 Subsection D, states,

> in the event that an Environmental Impact Statement is no longer required under the laws of the United States for major federal actions significantly affecting the quality of the human environment, the regulatory regime…shall continue to apply to such activities of the government of the United States until amended by mutual agreement.[865]

However, it is important to note that there is a clause in which the US government does not to have to adhere to environmental regulations under special circumstances. Section 161, subsection E states,

> the President of the United States may exempt any of the activities of the Government of the United States under this Compact and its related agreements from any environmental standard or procedure which may be applicable under Sections 161(a)(3) and 161(a)(4) if the president determines it to be in the paramount interest of the government of the United States to do so, consistent with Title Three of this Compact and the obligations of the government of the United States under international law.[866]

This means US government activities can be exempt from following federal and local environmental regulations if the President of the United States deems it necessary. This provision is important to consider for a freely associated Guam if US military bases are negotiated into the potential compact. Senator Perez stated there is a, "national security interest, so a lot of policies that the US government puts forth has a heavy weight on national defense. So, when you are talking about environmental laws, national security interest will trump a lot of these environmental laws."[867]

Status Example: Republic of the Marshall Islands

Water security is a concern in the RMI as there are multiple obstacles to ensuring the provision of fresh water to its growing and increasingly urban population. One critical threat to RMI's water resources is climate change, which is projected to lead to a sea level rise of 1.2-6.3 inches by 2030, as well as "increase the impact of storm surges and coastal flooding."[868] In the capital of Majuro, rising sea levels may impact the main sources of capturing freshwater, the airport rainwater catchment and the Laura groundwater

865 Republic of the Marshall Islands, "Compact of Free Association Act of 1985."

866 Republic of the Marshall Islands, "Compact of Free Association Act of 1985."

867 Personal Communication with Senator Sabina Perez, May 2021.

868 Mathew Johnston, "Republic of the Marshall Islands Water & Sanitation Sector Final Report," 11.

lens, as they "can become polluted or structurally damaged by over-wash of saltwater during storms."[869]

In response to these recognized threats, the government of the RMI worked with several countries and international organizations to address water security issues exacerbated by climate change.[870] One example is the Green Climate Fund, an entity of the United Nations Framework Convention on Climate Change that invests in "low-emission and climate-resilient development."[871] It is engaged in a project with the Marshall Islands. This project aims to reduce the vulnerability of the RMI's water sector by helping to improve "household rainwater harvesting systems," improving "community building rainwater harvesting systems," constructing "new storage tanks" and "new community-based roof structures in combination with new storage tanks."[872]

As a freely associated state, the RMI is eligible to receive US federal funding for disaster relief efforts through the US Agency for International Development (USAID) office of US Foreign Disaster Assistance. There were multiple instances in recent history when drought in the RMI has led to Presidential Disaster Declarations and subsequent aid from the US government. For example, from late-2012 to 2013, a severe drought hit the RMI and led to water storage facilities emptying, damages to crops, and a scarcity in food supplies.[873] On April 19, 2013, the government of the RMI "declared a state of emergency for the drought"[874] which led to the US ambassador issuing "a disaster declaration due to humanitarian needs" [875]and an initial $100,000 being provided from USAID and the International Organization for Migration for "emergency relief commodities, such as water containers and hygiene kits, from a USAID-funded warehouse in the RMI capital of Majuro."[876] In total, USAID provided more than $5.5 million for relief efforts and assistance to the country for nine months, which entailed activities such as installing "twenty solar-powered reverse osmosis portable units"[877] and delivering "1.47 million pounds of food to people in thirteen atolls."[878] Assistance from the US helped the country provide essential resources during a time of great scarcity. This example highlights what a future relationship with the US may entail.

Potential agreements between the US and Guam may include stipulations to ensure that the US will provide assistance in the form of federal funds, resources, and technical assistance to Guam during freshwater resource emergencies, such as drought or saltwater intrusion into the Northern Guam Lens Aquifer. Like the amended COFA between the US and RMI governments, Guam's potential COFA

869 Christine Burchette, "The Freshwater Cycle in the Marshall Islands," United States Environmental Protection Agency, 2013, accessed at https://blog.epa.gov/2016/12/01/the-freshwater-cycle-in-the-marshall-islands/.

870 Burchette, "The Freshwater Cycle."

871 Green Climate Fund, "About GCF", August 31, 2020, accessed at https://www.greenclimate.fund/about.

872 Green Climate Fund, "Funding Proposal FP112: Addressing Climate Vulnerability in Water Sector (ACWA) in the Marshall Islands," 24.

873 USAID, "Marshall Islands survives prolonged drought with disaster assistance," January 2015, accessed at https://2012-2017.usaid.gov/results-data/success-stories/usg-provides-drought-relief-republic-marshall-islands.

874 USAID, "Republic of the Marshall Islands- Drought," 1, accessed at https://www.usaid.gov/sites/default/files/documents/1866/05.16.13%20-%20USAID-DCHA%20Republic%20of%20the%20Marshall%20Islands%20Drought%20Fact%20Sheet%20_1.pdf.

875 USAID, "Republic of the Marshall Islands- Drought."

876 USAID, "Republic of the Marshall Islands- Drought."

877 USAID, "Marshall Islands Survives Prolonged Drought."

878 USAID, "Marshall Islands Survives Prolonged Drought."

agreement could include a Disaster Assistance Emergency Fund which the US contributes to annually for an agreed upon amount of time.[879] This type of fund could allow Guam to have financial resources readily available if threats to freshwater resources lead to scarcity. In addition to the United States, a freely associated Guam could establish diplomatic relations with other countries and international organizations.

879 USAID, "Marshall Islands Survives Prolonged Drought."

WATER RESOURCES	
STATUS	**EFFECTS**
Statehood	• Under statehood, little change may be required regarding Guam's water resources. The island currently follows federal water laws and is structured like some US states. • Guam will establish formal state water laws to address how water is distributed and managed. • Guam will continue to have access to federal funding and grants. • Federal funding could increase, to improve the island's water system, with a funding match.
Independence	• Guam will have sovereignty over its water resources, meaning the island will have the authority to enable water laws for the country.

	• Guam will no longer have ready access to US federal funding. • Guam can establish diplomatic relations with other countries and international organizations to find funding for water resource management and development.
Free Association	• Guam will have sovereignty over its water resources, meaning the island will have the authority to enable water laws for the country. • Guam can establish diplomatic relations with other countries and international organizations to find funding for water resource management and development. • Potential compact agreements between the US and Guam may include stipulations to ensure that the US will provide assistance in the form of federal funds, resources, and technical assistance to Guam for its freshwater resources. • If Guam negotiates a Compact of Free Association or other legal instrument with the United States, Guam and the United States will have to negotiate for provisions that ensure the protection and maintenance of Guam's water resources.

Renewable Energy

Electricity in Guam

Electricity generation, transmission, and distribution in Guam (aside from US Department of Defense facilities) is solely provided by the Guam Power Authority, a public corporation overseen by the Consolidated Commission on Utilities (CCU), an elected body which is then regulated by the Guam Public Utilities Commission (PUC).[880] GPA operates and manages the island's electric grid, including several power plants for energy production. GPA also partners with private corporations through Energy Conversion Agreements (ECAs), where GPA provides fuel to Independent Power Producers (IPPs) and purchases the electricity produced.[881] As of April 2021, GPA reported Guam's power system to have 311MW of available capacity for peak demand in a single day. The highest peak demand for a single day in 2021 was 249MW. GPA continues to work to ensure that generation production exceeds demand. Currently, ten percent of Guam's energy production comes from renewable energy sources, primarily from the Dandan solar farm, with the remainder coming from conventional methods of energy production. GPA's baseload generation comes from the combustion of fossil fuels, primarily residual fuel oil (RFO) and ultra-low sulfur diesel (ULSD). Because the island does not have any local fossil fuel resources, fuel used for energy production must be imported.

This makes the island's energy production vulnerable to price and availability fluctuations in the global market, which ultimately affect reliability and contribute to high utility rates. Fuel oil costs total more than half of GPA's budget and are the largest portion of a customer's electricity bill. The high cost of energy is also compounded by Guam's relative remoteness from fuel production and distribution areas. In 2015, 6.1 percent of Guam's GDP was spent on importing fuel for use in energy production. To address this reliance on fossil fuels, the local government has established several initiatives to reduce the use of fossil

880 US Energy Information Administration, "Profile Analysis Guam," last modified October 18, 2018, accessed at https://www.eia.gov/state/analysis.php?sid=GQ#32.

881 Energy Transition Initiative, "Energy Snapshot: Guam," National Renewable Energy Laboratory, 2015, 1.

fuels and increase the use of renewable energy sources. Most recently, with Public Law 34-56, the island's Renewable Portfolio Standards aim to make renewable energy account for fifty percent of total electricity sales by the end of 2035 and one hundred percent of total electricity sales by the end of 2045.[882]

Renewable Energy in Guam

The Guam Power Authority (GPA) currently obtains its renewable energy-produced electricity from two renewable energy production facilities: a solar PV farm owned by a private company, from which GPA purchases electricity; and a wind turbine owned and operated by GPA. The single solar PV farm, classified as a grid-connected, central distribution system, is the Dandan solar farm located in southern Guam. The twenty-five MW farm has proven successful in providing approximately 4,300 MWh of renewable energy each month, which accounted for about three percent of total energy sales in 2019.[883] The single 275KW wind turbine, classified as an onshore wind turbine, was constructed in 2016 through a $2.1M grant from the US Department of the Interior and is currently operated by GPA. The wind turbine produces enough electricity to power approximately fifty homes. This wind turbine has proven successful in providing GPA with technical experience with wind energy that may guide future wind energy projects.[884] Aside from these two facilities, GPA also receives a significant amount of energy production from its net metering program, in which GPA purchases and feeds into the grid excess solar PV energy produced by small-scale solar PV systems installed at residential/business facilities. In March 2021, GPA began operating a twenty-four MW battery storage system at the Hagåtña substation and a sixteen MW battery storage system at the Talo'fo'fo' substation, which will assist in alleviating short outages caused by generator trips, mitigating the intermittency of renewable energy resources generated by existing facilities, and reducing GPA's reliance on expensive, imported diesel fuel.[885] In recent years, GPA and the government of Guam have undertaken several efforts to further incorporate renewables into Guam's energy system. On the policy side, as mentioned above, with the recently passed Public Law 34-56, the island's Renewable Portfolio Standards mandate that energy sales produced from renewable energy account for fifty percent of total electricity sales by the end of 2035, and one hundred percent of total electricity sales by the end of 2045.[886]

GPA is working toward integrating additional renewable energy sources (even in light of the current system's limited capacity for integrating renewables), executing projects to improve renewable integration, and evaluating technology development and costs. Since GPA's initial acquisition of renewable energy contracts, the prices of storage systems have lowered. Within the next five to ten years, GPA expects

882 Pacific Island Times, "Guam eyes 100% renewable energy production by 2045," *Pacific Island Times*, last modified November 1, 2019, accessed at https://www.pacificislandtimes.com/single-post/2019/11/01/Guam-eyes-100-renewable-energy- production-by-2045.

883 Personal Communication with Guam Power Authority (GPA) General Manager John M. Benavente and GPA Assistant General Manager Tricee Limtiaco, Interview, January 21, 2020.

884 Guam Power Authority, "Briefing for Commissioner Limtiaco," 2019, 20.

885 Guam Power Authority, "Monthly Update," 2021, 39-40.

886 Guam Power Authority, "Briefing for Commissioner Limtiaco," 53.

to add over 160MW of installed solar PV capacity to its power production capacity, which will reduce operation costs. The 160MW figure refers to the production capacity at the end of the contract term, as solar PV capacity degrades over time. The initial PV capacity upon first commissioning the PV system will be over 220MW.

Guam Power Authority Primary Generating Units, April 2021

Primary Generating Units					
	Unit	Year Installed	Owner	Operator	Capacity Available (MW)
Baseload	Cabras Unit 1	1974	Authority	TEMES/Authority	55.0
	Cabras Unit 2	1975	Authority	TEMES/Authority	55.0
	MEC - Piti Unit 8 [1]	1999	Authority	MEC	44.2
	MEC - Piti Unit 9 [1]	1999	Authority	MEC	44.2
Intermediate	Macheche - CT	1993	Authority	Authority	20.0
	Yigo – CT	1993	Authority	Authority	20.0
	Piti Unit 7	1997	Authority	Authority	40.0
	Dededo CT Plant	1993	Authority	Authority	**40.0**
	Aggreko [2]	2016	Authority	Authority	**40.0**
Peaking	Diesel Units (10 units)	1993	Authority	Authority	40.0
				Subtotal:	**398.4**
Renewable	Dandan Solar Project	2015	GPS Solar	GPS Solar	25.0
	Wind Turbine	2016	Authority	Authority	0.3
				Total:	**423.7**

1. BOT expired in January 2019; ownership reverted to GPA.
2. Lease expired in 2020; ownership reverted to GPA.

GPA's Phase II Renewables Project includes the nominal sixty MW Mangilao project, expected to come online by Summer 2022, and the nominal sixty MW Malojloj solar project, expected to come online by the end of 2023. In addition, GPA issued a solicitation for a Phase III Renewable Energy contract, which will be a partnership between GPA and the US Navy to develop over forty-one MW of solar PV, including full energy shifting Energy Storage Systems, to be installed on US Navy land leased to GPA. As of April 2021, the award of this contract is pending resolution of a procurement protest.

Renewable energy consists of systems of energy that make use of naturally occurring, locally found sources that are inexhaustible. The major types of renewable energy include solar, hydropower, wind power, ocean energy, geothermal energy, and biomass, among others. These sources have proven to have fewer negative impacts on human life and the environment than traditional sources of energy such as fossil fuels like oil, coal, and natural gas.[887] Within the past two decades, countries throughout the world have taken a significant interest in renewable energy. This shift in energy production is brought on by the desire to move away from fossil fuels due to record-breaking oil and natural gas prices and the projected

887 Alice Meyers, Renewable Energy (Salem Press Academy of Science, 2018), 1.

scarcity of fossil fuels in the near future.[888] Other factors, such as the production of greenhouse gases caused by burning fossil fuels, and major growth and competition in the areas of renewable energy technology and production, have further compelled countries to pursue renewable energy as an alternative source of energy production.[889]

Types of Renewable Energy

This section will primarily focus on the major types of renewable energy as well as their subtypes, to include direct solar, wind power, ocean energy, hydropower, geothermal energy, and bioenergy.

Solar Energy

Direct solar, herein referred to as solar, is a family of technologies, such as solar thermal, photovoltaic (PV) generation, concentrated solar power (CSP) and solar fuels, that collect energy from the sun and use that energy directly or convert it into electricity. Although unevenly distributed throughout the entire globe, solar is the most abundant of all renewable energy sources. Solar energy sources vary in application, with some using the sun's energy to provide natural lighting, heating, and cooling to buildings, and others converting the sun's energy into electricity.[890]

Active systems are also of great utility in reducing a building's energy consumption. Solar heating is one example of an active use of solar energy. A solar heating system consists of a collection element that absorbs the sun's thermal energy and a transfer liquid which is heated up and then stored in a storage tank until needed. Other examples include solar water heating systems, which provide water heated by the sun to buildings, reduce and sometimes eliminate the need for traditional water heating, and greatly reduce the building's energy consumption.[891]

Photovoltaic generation, commonly referred to as solar PV is the most common application of solar energy and involves the direct conversion of sunlight into electricity through the use of photovoltaic cells. Solar PV is then divided into two types: grid-connected solar and off-grid solar. The latter consists of generation systems that are not connected to the greater grid and instead provide electricity directly to un-electrified areas. This specific technology may not be of widespread use in Guam as the island is reported to be one hundred percent electrified, meaning that all areas have access to power utility connections. Nevertheless, off-grid solar may be helpful for certain commercial and residential applications.[892]

888 Volker V. Quaschning, *Renewable Energy and Climate Change*, 2nd ed., (West Sussex: John Wiley & Sons Ltd., 2019), 11.

889 Misty D. Conrad and Sean Esterly, *Guam Strategic Energy Plan* (Golden, CO: National Renewable Energy Laboratory, 2013), 1.

890 Edenhofer, et al., Renewable Energy Sources and Climate Change Mitigation: Special Report of the Intergovernmental Panel on Climate Change (New York: Cambridge University Press, 2011), 337-343.

891 Edenhofer, et al., "Renewable Energy Sources and Climate Change, 337-343.

892 Edenhofer, Renewable Energy Sources," 351-354.

Wind Energy

Wind energy consists of technology in which the kinetic energy of the earth's winds is converted into usable power. The power of the wind is harnessed through the use of wind turbines, which take the energy from the movement of the wind and convert it into mechanical energy, and finally into electrical energy. Wind turbines and wind energy are divided into two categories: onshore and offshore. With onshore wind technology specifically, the average wind turbine size has grown significantly, producing a greater amount of energy, increasing efficiency and cost-effectiveness. Onshore wind turbines have almost reached peak efficiency with the current constraints of a technological and logistical nature, such as manufacturing materials and transporting large components. These onshore wind turbines are most commonly found together in wind power plants, otherwise known as wind projects or wind farms.[893]

Offshore wind turbines are less developed than their onshore counterparts but have potential to provide electricity while also avoiding some of the drawbacks of onshore wind turbines such as environmental noise and clutter. The main function of offshore wind energy is to provide additional areas for wind power generation, especially those in which onshore wind turbines are technically or environmentally limited. Advantages of offshore wind energy also include access to the often more powerful and less intermittent wind resources that are located offshore, along with the ability to use larger wind turbines to create larger wind farms and to provide easier access to energy than that of long-distance onshore wind farms.[894]

The production of wind energy does not emit any greenhouse gases and has very limited negative environmental effects. These negligible effects, however, are site-specific and thus hard to predict with any meaningful precision. The most notable effects are of an ecological nature and include such things as bird and bat collisions, as well as other habitat destruction and species avoidance of certain areas. Because these concerns are highly dependent on the specific site of the wind facility, considerations must also be site-specific and zoning policies must be implemented to prevent any detrimental impact to ecosystems. Offshore wind energy facilities face the same concerns with marine life, which may be impacted by underwater sounds, vibrations, and habitat loss.[895]

Guam currently has a single small-scale 275 kW wind turbine that became operational in March 2016 and was funded by a $2.1 million US Department of the Interior grant. The wind turbine produces enough electricity to power approximately fifty homes.[896] The turbine, located in southern Guam, is primarily used as a pilot program for Guam's potential widespread use of the technology. The wind project has been helpful to the Guam Power Authority in providing valuable experience and lessons that can be applied to potential future wind energy projects. Guam has not explored any offshore wind energy possibilities. However, a 2011 feasibility study found viable but unverified sites for up to twenty MW of wind

893 Edenhofer, "Renewable Energy Sources," 539-549.

894 Edenhofer, "Renewable Energy Sources," 553-554.

895 Edenhofer, "Renewable Energy Sources," 570-576.

896 Guam Power Authority, "Briefing for Commissioner Limtiaco," 2019, 20.

energy, as well as sites for one MW-to- five MW small-scale projects throughout the island.[897] In regard to the potential expansion of the overall wind resource, Guam's unique climate must be considered in the context of wind energy. Of great concern is the survivability and operational capability of wind turbines during extreme weather events such as tropical cyclones. The turbine has been inoperable since June 2020 due to COVID-19 pandemic-related limitations with the contractor operating the turbine. Under normal operations, GPA periodically takes the wind turbine down to protect against damage from high-speed sustained winds associated with tropical cyclones.

Hydropower

Hydropower includes technology in which power is generated from the energy of water moving from higher to lower elevation. Hydropower can be used in both centralized and distributed/isolated applications. The three main types of hydropower technologies are: run-of river-systems—there is no storage element and generation is dependent on the natural cycle and structure of the watershed; storage systems—a storage component is used to contain water and regulate its flow often serving a secondary purpose by acting as a regulator of water for such things as flood control or irrigation; pumped storage systems—water is pumped into a storage reservoir and the water's flow is reversed to create energy; and in-stream systems using existing facilities—turbines can be installed at natural/existing water streams such as weirs, barrages, canals, or falls, to capture energy. Despite hydropower's proven track record and relatively advanced technological status, there still remain areas of improvement, especially in regard to optimization, increased efficiency, and greater cost-effectiveness. Some concerns remain over its potential environmental effects, specifically water quality, biodiversity, the transportation and deposition of sediment, and microlevel ecological impacts.[898]

The negative effects of climate change are expected to have subsequent effects on hydropower sources. These effects come in the form of changes in river flow due to precipitation or temperature, increases in the frequency of extreme weather events, and changes in the composition of sediment in bodies of water. Although these effects may have a limited impact globally, they have the potential for a greater detriment at the regional or local level. The availability of water resources due to climate-change induced increases in water demand of irrigation, household, and industrial users is also a concern.[899]

Ocean Energy

Although there currently exists no application of ocean energy operating in Guam due to the lack of commercial-scale applications, the energy of the Pacific Ocean may potentially be a source for energy

897 Ian Baring-Gould, et al., Guam Initial Technical Assessment Report, 2011, 30, accessed at https://www.nrel.gov/docs/fy11osti/50580.pdf.

898 Edenhofer, et al., "Renewable Energy Resources," 474-476.

899 Edenhofer, "Renewable Energy Sources," 437-496.

production in Guam. Ocean energy refers to energy derived from technologies that either utilize seawater as their main source of power or harness the water's chemical or heat energy. There are six main classes of ocean energy technologies: wave energy; tidal range; tidal currents; ocean currents; ocean thermal energy conversion; and salinity gradients. Regardless of type, wave energy offers significant potential for long-term carbon emissions reduction but has not achieved widespread use due to its various technologies being in the very early stages of development.[900]

Wave energy is a type of ocean energy derived from the transfer of the kinetic energy of wind to the upper surface of the ocean. During this energy exchange, some kinetic energy from the wind is transferred to ocean water, producing waves that carry potential energy. This potential energy is then captured by wave energy technologies, which vary in design, but achieve the same effect of generating energy from the motion of ocean waves.[901]

Tidal range is quite similar to wave energy but instead of capturing energy from the movement of waves, tidal range energy is dependent on changes in the height of the ocean, which are caused by natural gravitational and rotational forces along with other forces. Most tidal range developments are centered around shallow-watered areas such as estuaries or tidal lagoons. As these coastal basins fill and empty, energy is collected from the changing height of the water level. Tidal currents and ocean currents follow very similar concepts, taking advantage of the horizontal movement of water which is itself affected by the tide. Tidal current and ocean current energy differ from wave energy in that the latter captures the energy from the movement of surface water while the former captures energy from any movement of the water, including movement well below the surface. Tidal current energy refers more to the movement of water close to the shore found near coasts or other constrictions, such as islands, while current energy refers to the flow of currents found on the open ocean farther away from the coast.[902]

Unlike the previously mentioned types of wave energy, which focus on the movement of the oceans waters, ocean thermal energy conversion (OTEC) takes advantage of the fifteen percent of total solar output that is retained as heat by the oceans. This heat energy is mostly absorbed by the top layers of the ocean, with less and less heat energy penetrating the ocean as depth increases. Due to the relative newness of wave energy, there are limited studies on both short-term and long-term harmful environmental impacts. Nevertheless, ocean energy development may affect things such as available ocean space for competing users and marine habitats. All of the aforementioned technologies are currently undergoing development to increase their feasibility, efficiency, and cost-effectiveness.[903]

In regard to the potential effects of climate change on ocean energy resources, although studies are limited, it is expected that changes in the temperature and temperature gradient of ocean water, as well as salinity, sea level, and wind patterns will have some effect on the effectiveness and productivity of ocean energy technologies.[904]

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900 Edenhofer, "Renewable Energy Sources," 501-528.

901 Edenhofer, "Renewable Energy Sources," 501-528.

902 Edenhofer, "Renewable Energy Sources," 501-528.

903 Edenhofer, "Renewable Energy Sources," 497-534.

904 Emilio Cerdá and Kerpa Solaun, "Climate change impacts on renewable energy generation. A Review of quantitative projections," Renewable and Sustainable Energy Reviews 116 (2019: 2-16, https://reader.elsevier.com/reader/sd/pii/S1364032119306239?token=53B99597C4D45D3F87527F6843F1DEAF88F5F75ECBCE92FEBE87CCA1707FABE27FB5FEF601EC84FFDEB6244AC100179B.

Geothermal Energy

Geothermal energy consists of thermal energy from within the Earth's interior that is stored in rock and trapped steam or liquid water. Thermal energy is used for either direct heating or electricity generation. Sources used by geothermal energy production are naturally replenished by earth processes. When combined with modern management techniques, this natural replenishment makes geothermal energy a reliable, sustainable, and low-emission renewable resource. Geothermal energy is a very mature and reliable resource, with certain types of technologies having been in use for over a century. In addition, geothermal energy is currently used in twenty-four countries as a baseload electric generation source. There are two main types of geothermal electrical generation technologies, hydrothermal and enhanced geothermal system/engineered geothermal systems (EGS), both of which harness energy by extracting geothermal energy through wells or other means that produce hot fluids. The main difference between hydrothermal and EGS technologies is the method of extracting the energy from the Earth, with the former only making use of areas of naturally occurring near-surface heat with high rock permeability and the latter making use of artificially created pathways that improve the natural permeability of rock by injecting water into the subsurface.[905]

Direct use geothermal energy provides heating and cooling for various applications including buildings, fishponds, greenhouses, bathing and wellness facilities, swimming pools, and industrial facilities. This direct heating is provided through either an open loop system or a closed loop system. With the former, the steam itself is extracted and circulated through radiators. The former uses a heat exchanger to circulate heated freshwater through radiators. Direct use geothermal has wider use throughout the world, with seventy-eight countries using the technology as of 2009. Like all renewable resources, geothermal energy comes with some potential negative environmental impacts, including the possibility of the release of harmful gases from the earth into the atmosphere and surrounding environment, along with local hazards, such as microearthquakes, steam eruptions, and ground subsidence. In addition, emissions of CO2 from geothermal energy come from naturally occurring sources. These potential impacts, however, are manageable and avoidable with good implementation and maintenance practices and are site and technology specific.

There currently exist no applications of geothermal energy technology in Guam. A reconnaissance assessment of Guam's geothermal potential was conducted in 2010 by a team from the National Renewable Energy Laboratory and the US Navy's Geothermal Program Office. The assessment found that although Guam lies on "a regional trend of high heat flow…Guam is not, and has not been [active], for millions of years." Nevertheless, the assessment found evidence that suggests that "geothermal fluids are present in the subsurface in Guam."[906] A further feasibility assessment is required to understand the potential application of geothermal technology.

905 Office of Energy Efficiency & Renewable Energy, "How an Enhanced Geothermal System Works," accessed at https://www.energy.gov/eere/geothermal/how-enhanced-geothermal-system-works.

906 Baring-Gould, et al., "Guam Initial Technical Assessment Report," 38-39.

Bioenergy

Bioenergy consists of the conversion of the organic material from plants and animals into usable energy. Sources of biomass include wood and wood processing wastes, agricultural crops and waste materials, food, yard, and wood waste, and animal manure and human sewage.[907] Biomass energy is divided into three distinct categories, based on energy efficiency and sector of use. First, low-efficiency traditional biomass includes wood, straws, dung and other manures which are used for cooking, lighting, and space heating. This use of bioenergy is mostly found among poorer populations in developing countries and comes with several effects on health due to its use as a combustion material.

The next category of bioenergy is high-efficiency modern energy. This type makes use of more convenient solids, liquids, and gases which are used to generate heat, electricity, combined heat and power (CHP), and transport fuels. Liquid biofuels such as ethanol and biodiesel are utilized in the global transport industry and other industry sectors. Lastly, high energy efficiency biomass conversion is primarily found within the industry sector, specifically the pulp and paper industry, forest products, food, and chemicals. Overall, the deployment of bioenergy is currently limited by various technological and logistical barriers, including the highly varied properties of bioenergy types and the lack of large-scale supply chains.

In regard to the potentially harmful environmental effects of bioenergy, there are some drawbacks that also come with conventional agricultural and forestry systems. Like these traditional systems, bioenergy can increase soil and vegetation degradation due to over intensive crop and forest residue removal and water overuse. The increased output of bioenergy sources can also lead to habitat loss. These harmful effects can be prevented with strong protection policies and effective management techniques, which can then lead to positive benefits such as increased species diversity, greater soil productivity, lessened landslides, flashfloods, wind erosion, and water erosion. Bioenergy can also have negative effects on both air and water quality. However, these vary by differences in technology and bioenergy source, as well as the presence of emission reduction technologies. In addition, bioenergy is not a CO2-free source of renewable energy, as the processes of bioenergy are a part of Earth's carbon cycle. Aside from this, bioenergy consumption also emits CO2 from auxiliary energy use and small-scale bioenergy use.

A 2011 feasibility study found municipal solid waste, landfill gas, anaerobic digestion, and biomass feedstocks to be potential sources of bioenergy for Guam. The feasibility study recommended further exploration of waste-to-energy, biodiesel/vegetable oil, and to a lesser extent, landfill gas, as the most feasible sources of bioenergy for the island.[908]

Challenges of Renewable Energy

Despite its many benefits, the implementation and use of renewable energy has its challenges. These challenges include adapting technology to the unique island environment; transporting the necessary

907 US Energy Information Administration, "Biomass explained," accessed at https://www.eia.gov/energyexplained/biomass/.

908 Baring-Gould, et al., "Guam Initial Technical Assessment Report," 37-46.

resources; and having the technical experience to implement and manage renewable energy systems. Unique conditions such as storms, floods, and salt-heavy winds will require more frequent maintenance and replacement.[909] Currently, research is being conducted by renewable energy companies to find new materials that work best in an island environment. Lastly, the lack of a specialized workforce with the technical knowledge to manage renewable energy systems can also be prohibitive to the greater expansion of renewables.[910]

Guam's geographical location makes the island subject to the many extreme weather phenomena that are found in the region. These include heavy rains, tropical storms, typhoons, El Niño-Southern Oscillation (ENSO), etc. Since 1962, Guam has been hit by seven category four[911] hurricanes, or tropical cyclones commonly referred to as typhoons, and six category-five hurricanes).[912] When combined with Guam's geographic isolation, the need for electrical infrastructure that can withstand the effects of these extreme weather and geological events is foundational for infrastructure sustainability. This infrastructure includes all aspects of the electrical grid, including generation, transmission, and distribution. Any upgrades to Guam's power system must take into account the resiliency needs of the island as well as the numerous efforts by public utilities to strengthen the power system and ensure the delivery of electricity to consumers. In the event of extreme weather events or the harmful effects of climate change, failure to consider resiliency in the implementation of renewable energy systems will prove ultimately detrimental to the island's overall power system and its path toward becoming one hundred percent renewable.[913]

Statehood

If Guam were to be a state, this would mean a closer relationship with the federal government, with continued federal funding and access to federal programs. The federal government offers support for utility-scale electricity production in four different ways: providing funds through grants and incentives; assuming risk by offering direct loans; forgoing revenues through tax deductions and credits; and providing federal assistance in the event of disasters.[914] Reducing developers' costs to build renewable projects has had the effect of lowering utility prices for ratepayers. It is important to note that the beneficial effects were brought on by the use of federal assistance programs in conjunction with state assistance programs.[915] As a state, and in order to achieve the same effects, Guam would have to rely upon ratepayers as an additional funding source that can be used in combination with federal assistance initiatives.

If Guam were to become a state, the potential increase in military activity is another important factor

909 Robert Kay and Charlotte Cherry, Empowering Renewable Energy Development in Pacific Island Countries *Climate Links*, 2018, 1.

910 Kay and Cherry, "Empowering Renewable Energy Development," 1.

911 Hurricanes/tropical cyclones are ratted according to the Saffir-Simpson Hurricane Wind Scale, as follows: Category 1- 74-95 mph; Category 2- 96-110 mph; Category 3- 111-129 mph; Category 4- 130-156 mph; Category 5- 157 mph or higher

912 Guam Power Authority, "Resiliency of Guam's Electric Utility," 2019, 4.

913 Guam Power Authority, "Resiliency of Guam's Electric Utility," 2019, 4.

914 Joy Baudin, "State and Federal Supports for Utility-scale Electricity Generation and Renewable Energy Projects: An Examination," (New York, NY: Nova Science Publishers, 2016), 11.

915 Baudin, State and Federal Supports for Utility-scale Electricity,"11.

to consider, as the island's power system would need to accommodate any increase in the military's energy needs. Currently, the military consumes about twenty percent of the island's energy and is GPA's largest customer.[916] With the planned transfer of five-thousand marines and their families to Guam as part of the US Department of Defense's Military Relocation program, this demand for electricity is expected to increase. The Department of Defense (DoD) anticipates that the island's power system will not require upgrades in order to sustain the increased demand. DoD, in the 2015 Final Supplemental Environmental Impact Statement (SEIS), anticipated that "current generation capacity on Guam would be adequate and no power generation upgrades would be required."[917] This likely remains the case, as Guam's energy production capacity has expanded since the publication of the report.

Although upgrades may not be necessary, "to comply with Marine Corps sustainability goals, a portion of the power demand would be satisfied by power generated from renewable energy sources, to include photovoltaic solar panels on rooftops and approximately twenty acres"[918] within the newly planned facilities. In addition, the military also projects upgrades to transmission infrastructure to ensure compatibility of new generation systems with the existing power system.[919] DoD has also committed to several sustainable practices on the demand side, such as "smart metering and controls, solar street lights and parking/playground lighting, low flow fixtures, and new and retrofitted buildings to LEED Silver design standards."[920] The Department of the Navy plans to construct solar panels in about twenty acres of land in military housing areas, growing the island's renewable portfolio and overall energy production.[921] Although such increases in energy production capacity will likely be exclusively used by the military, the increase may reduce the military's demand for energy supplied by GPA.

By becoming a state, Guam would be grouped with the other states in terms of applicability of federal legislation. The applicability of US laws to Guam is an important aspect to consider, especially in regard to renewable energy, as Guam has unique geographic and natural resource characteristics. Legislation that might be effective in all or most of the states may prove ineffective and detrimental to Guam's unique situation.

916 Deloite & Touche LLP, "Financial Statements, Additional Information, and Independent Auditors' Report," last modified April 16, 2018, 1.

917 Naval Facilities Engineering Command Pacific, "Guam and CNMI Military Relocation: Final Supplemental Environmental Impact Statement," July 2015, accessed at http://guammarines.s3.amazonaws.com/static/SEIS/Download%20Final%20SEIS%20as%20a%20Single%20Document.pdf.

918 Naval Facilities Engineering Command Pacific, "Guam and CNMI Military Relocation: Final Supplemental Environmental Impact Statement," July 2015, accessed at http://guammarines.s3.amazonaws.com/static/SEIS/Download%20Final%20SEIS%20as%20a%20Single%20Document.pdf.

919 Naval Faciliteis Engineering Command Pacific, "Final Supplemental Environmental Impact Statement: Guam and Commonwealth of the Northern Mariana Islands Military Relocation 2012 Roadmap Adjustment," 2015, 2-12, accessed http://guammarines.s3.amazonaws.com/static/seis.html.

920 Naval Facilities Engineering Command Pacific, "Final Supplemental Environmental Impact Statement 2012 Roadmap Adjustment," 8-11.

921 Naval Facilities Engineering Command Pacific, "Final Supplemental Environmental Impact Statement 2012 Roadmap Adjustment," 8-11.

Status Example: Hawai'i

State-level Policies: The state of Hawai'i's implementation of state-level policy highlights the role that government-led policies can play in shaping and effectuating a state's energy goals. Although all of Hawaii's electricity is managed and provided by two private corporations, government policies have played a critical role in Hawai'i's pursuit of renewable energy. For example, in 2006, several legislative and executive policies were implemented to make Hawai'i's state agencies spearhead energy conservation and independent generation efforts. This effort, coined the *Lead by Example* (LBE) initiative, led to a 16.1 percent decrease in electricity purchased by state agencies from 2005 to 2018. This significant drop in energy use directly translates into lessened demand and a greater ability to provide more of Hawai'i's electricity from renewable energy sources. Similar to the LBE program is the 2015 decision by the Hawaii State Building Code Council (SBCC) to adopt the International Energy Conservation Code (IECC) 2015, along with the Tropical Climate Zone Code for residential buildings. These changes, inclusive of Hawai'i-specific amendments, were implemented statewide as of April 1, 2019 and are estimated to have saved 12,962 MWh in 2019.[922] The implementation of an international standard stands as an example of how, even as a state, Guam could adopt international standards locally that would contribute to greater renewable energy growth and energy savings.

Assistance from US Government Agencies: As a state, Hawai'i receives various forms of federal assistance in support of its renewable energy goals. This assistance ranges from simple technical assistance programs to large-scale partnerships, tax credits, rebates, and grant opportunities. The Hawaii Clean Energy Initiative (HCEI) of 2008 is the most notable of federal partnerships. This partnership consists of a long-term memorandum of understanding between the Hawai'i and the US Department of Energy. The HCEI is credited with Hawai'i's significant growth in its renewable energy portfolio levels and future growth standards, along with the major goals of reducing electricity by 4,300 gigawatt-hours by 2030 and reducing overall petroleum use in the transportation sector. In 2014, both parties recommitted to the partnership, expanding the program and set the nation's first-ever goal of one hundred percent renewable energy by 2045.[923]

Like Hawai'i, Guam could be included in programs the federal government provides to all states. Statehood, and the increased representation that comes with it, would have the additional benefit of being eligible for state programs unavailable to territories.

922 Dan Cross-Call, J. Prince, and P. Bronski, "Powering Paradise," 2020, accessed at https://website.kiuc.coop/sites/kiuc/files/documents/rmi_powering_paradise%20%28002%29.pdf.

923 Hawaii State Energy Office, "Transforming Power In Paradise: The Hawaii Clean Energy Initiative." 2017, accessed at http://www.hawaiicleanenergyinitiative.org/wp-content/uploads/2015/02/HCEI_FactSheet_Feb2017.pdf.

Independence

If Guam were to become an independent country, the various factors of renewable energy would be dependent on policies and actions by the government of Guam. Independence would give Guam the greatest control over the entirety of its affairs. This full range of decision-making power would provide opportunities for Guam to take advantage of the many benefits of renewable energy.

Guam, as an independent country, would be able to join international and regional organizations as a sovereign country. Beyond the benefits of international organization participation, an independent Guam would be able to participate with other countries on the international stage. Guam would have a wide-ranging ability to form partnerships with other countries in support of its renewable energy goals. These partnerships would be created and defined based on negotiations between sovereign countries and could come in the form of technical assistance, financial assistance, project collaboration, etc.

An independent Guam would have the ability to reform and restructure existing laws and standards surrounding renewable energy, enabling the island to enact policies that promote renewable energy growth. Although legal reform presents an opportunity for Guam to tailor its legal policy and environmental standards to be considerate of the island's unique circumstances, there also remains the possibility that Guam transitions away from current US-based environmental standards. The application of some US standards, such as the US EPA's RICE-MACT and EGU-MACTT emissions standards, have proven critical in furthering Guam's overall environmental sustainability. Under US EPA standards, GPA accrued approximately $600 million in regulatory penalties due to non-compliance, but negotiated a settlement consisting of a one-time penalty fee of $400,000 and a commitment by GPA to construct a new power plant, decommission several aging existing plants, and construct one hundred MW of solar PV production.[924] These US EPA standards were an important driver in the CCU and GPA's decision to build new, energy-efficient, renewable-friendly generation facilities.[925] An independent Guam could also work toward crafting more stringent standards that are considerate of the island's unique situation.[926]

Status Example: Fiji

As is the case with most other Pacific Islands, Fiji's energy production is heavily dependent on imported fossil fuels, subjecting the island to global hydrocarbons price and supply fluctuations. Fiji, however, has an impressive renewable energy portfolio, with energy being produced by hydro, geothermal, wind, biomass, and solar generation sources. As an independent country, Fiji has authority to implement policies in pursuit of renewable energy. Similarly, in terms of external affairs, Fiji is able to engage with regional organizations, international organizations, and other countries as an equal partner in order to gain support

924 Pacific Daily News, "Guam Power Authority to pay $400K in penalties as part of consent decree," *Pacific Daily News*, February 7, 2020, accessed at https://www.guampdn.com/story/news/local/2020/02/06/gpa-guam-power-authority-epa/4685366002/.

925 Guam Power Authority, "Powering the Future: Guam's Energy 2020," 2020, 2-4.

926 Personal Communication with Guam Power Authority (GPA) General Manager Director John Benavente and GPA Assistant General Manager Tricee Limtiaco, January 2020.

for its renewable energy goals.

The success of the renewable energy sector in Fiji is aided by external financial assistance from international organizations, regional organizations, and individual countries. In terms of international financial support, Fiji recently received approximately $21 million from the World Bank's International Development Association (IDA) to support its developmental goals, one of which is renewable energy. In addition, the IDA and the World Bank have reclassified Fiji as a preferred country for funding eligibility, making available finance terms of zero percent interest, a ten year grace period, and a forty year maturity period.[927] Another World Bank-backed program is the Sustainable Energy Financing Project (SEFP), an initiative that provides incentive packages to Fijian banks to encourage investment in the renewable energy.[928] Regional organizations also play a role in Fiji's renewable energy sector. Most notably, the Asian Development Bank (ADB) has provided over $593 million in loans, grants, and technical assistance programs since it began supporting Fiji in 1970. Of that $593 million, $40 million went toward renewable energy developments through programs such as the Pacific Renewable Energy Program.[929] This financial support has encouraged private investment in Fiji's renewable energy field, which has ultimately led to an increased supply of renewable energy and greater self-sustainability among power utility companies.[930]

If Guam were to become an independent country, there would be few limitations on its exercise of external affairs, which would support renewable energy development.

Challenges in Fiji: Fiji faces the same challenges in renewable energy development as many other Pacific Island countries, including the high cost of transportation of renewable energy project materials. Fiji has its own unique challenges, however. The first of these challenges is the limited amount of private investment in the renewable energy sector. This barrier is mostly brought on by a business climate that is unfriendly to investors and the lack of governmental policy aids. In fact, in 2020, Fiji ranked 163 out of 183 countries in the category of "starting a business" in the World Banks 'Ease of Doing Business' survey, scoring a 73.6 rating and placing it well below the Pacific average of 83.9.[931] As part of its unfriendly business climate, Fijian banks offer a limited amount of loans related to renewable energy due to their lack of familiarity with the financial aspects of renewable energy developments. Due to the uncertainty of Guam's economy following a transition to independence, the island may face challenges similar to Fiji's in getting investors and businesses to finance renewable energy initiatives. Guam would require supportive policies in easing this uncertainty and promoting investment in renewable energy and the overall economy.

927 The World Bank, "Major Boost for Fiji with Additional World Bank Support," April 26, 2019, accessed at https://www.worldbank.org/en/news/press-release/2019/04/26/major-boost-for-fiji-with-additional-world-bank- support.

928 The World Bank Sustainable Energy Financing Program, "Restructuring Paper on a Proposed Project Restructuring of Sustainable Energy Financing Program," June 12, 2007, http://documents.worldbank.org/curated/en/609811534978836010/pdf/Disclosable-Restructuring-Paper-Sustainable-Energy-Financing-Program-P098423.pdf.

929 Asian Development Bank, "Fiji: Member Fact Sheet," July 2019, accessed at https://www.adb.org/sites/default/files/publication/27762/fij-2018.pdf.

930 Asian Development Bank, "Regional: Pacific Renewable Energy Program," accessed at https://www.adb.org/projects/52329-001/main#project-pds.

931 World Bank Group, "Doing Business 2020: Economy Profile - Fiji," 2020, 6, Accessed at https://openknowledge.worldbank.org/bitstream/handle/10986/32981/Doing-Business-2020-Comparing-Business-Regulation-in-190-Economies-Economy-Profile-of-Fiji.pdf?sequence=1&isAllowed=y.

If Guam were to become independent, it will be the responsibility of the government of Guam to proactively address these areas of concern and implement policies that enable, encourage, and facilitate the continued development of renewable energy. There currently exist opportunities for assistance from the international community in support of renewable energy efforts, whether from international organizations such as the United Nations or non-governmental organizations such as the Global Climate Fund, that Guam could pursue as an independent country. These funding and technical assistance resources are further discussed in the free association section.

Free Association

Free association may come with both the positive and negative aspects related to renewable energy growth. The primary benefit of free association with the United States would be the possible economic assistance set forth in an agreement with the United States. During initial negotiations, Guam could benefit from prioritizing renewable energy development as a key negotiating item. If Guam were to secure a set amount of funding from the US in support of renewable energy growth, the island could reap long-term benefits beyond immediate financial assistance. By making use of US funds to transition to renewable energy, Guam could save local money while also furthering its environmental sustainability. This could help ensure that Guam receives adequate funding to maintain its power system, even in the event of an upswing in military activity that would likely increase the island's overall electricity demand.

A lesser, but also important aspect of free association, is the continued political and economic relationship between Guam and the US. As discussed in the independence section, a change in status would result in several economic uncertainties that would affect the willingness of businessowners and investors to do business in Guam. Guam would likely benefit from an increased interest in renewable energy projects, especially when considering an increase in US financial assistance. Like independence, Guam, in free association with the US, would likely have the opportunity to negotiate financial assistance, technical assistance, and trade agreements with other countries as an equal partner. However, although the status of free association with the United States would enable Guam to pursue a wide range of cooperative and economic agreements with other countries, the special political relationship with the US created by an agreement could potentially also restrict Guam from other areas of opportunity, such as partnering on specific projects with countries unfriendly to the United States.

Recently, the United States has recognized that, with economic provisions of its Compacts with the FSM and RMI slated to expire in the next few years unless they are renegotiated and extended, failure of the US to provide adequate financial assistance to the FAS may result in an economic and political vacuum that China is likely to fill.[932] Therefore, the nature of the US-China relationship is likely to directly affect a Guam-China relationship and dictate the level of cooperation and assistance of between Guam and China. Free association therefore comes with a potential limitation on the effectiveness of Guam's

932 Laura Sigelmann, "China's Opening to Influence the Freely Associated States," *American Security Project,* July 30, 2019, accessed athttps://www.americansecurityproject.org/chinas-opening-to-influence-the-freely-associated-states/.

international engagement, which could hinder renewable energy growth. In the event of such limitation, Guam would have to work toward rectifying any conflicts with US interests or limitations on Guam's diplomatic relationships with other countries, or alternatively, work toward receiving increased funding from the United States in support of Guam's renewable energy goals.

To understand the range of Guam's free association options, it is helpful to analyze how free association has been both beneficial and detrimental to the development of renewable energy in the Republic of the Marshall Islands.

Status Example: Republic of the Marshall Islands:

Compact Assistance from the United States: Money the RMI receives as part of its negotiated agreement is distributed to a wide range of developmental areas including renewable energy development. As an example of a specific funding project, the FY2009 Compact Infrastructure Grant provided around $1 million to the Marshalls Energy Company (MEC) for the overhaul of several powerplant generators. Additionally, from 2006 to 2013, around $15.9 million in compact funds was spent on fuel, operations, maintenance, and repair in the island of Ebeye. In addition to compact funding, the RMI can also avail of certain US departmental grants and loans. Recently, as part of renewable energy development, the RMI received a $627,000 grant from the US Department of the Interior and a $12.5 million loan to the MEC from the US Department of Agriculture.[933] While the US provides a majority of the renewable energy sector's funding, there are limitations placed on the use of the funds. As part of the grant process, although the RMI selects which projects to fund, the projects themselves must be reviewed and approved by a joint committee of RMI and US officials in an effort to promote management and accountability. Therefore, while US funding has been beneficial to the development of renewable energy in the RMI, the use of the funds comes with conditions that limit the decision-making power of the government of the RMI. Guam, as a freely associated state, would more than likely receive the same type of funding and may also be limited by the same types of restrictions.

Foreign Affairs and International Aid: The RMI is able to conduct its own foreign affairs and negotiate agreements. For this reason, international funding from countries other than the US has made up a large portion of the RMI's budget. Perhaps the greatest example of the RMI's ability to manage its own external dealings is the relationship between the RMI and Australia. The two countries have developed a formalized partnership to develop the RMI through targeted aid, technical support, and cooperative assistance. This program has been successful, achieving the creation of an RMI energy policy and roadmap and the installation of energy efficient streetlights and over 1,900 cost-saving energy meters. As a freely associated state, Guam could pursue the same type of country-to-country cooperative agreement with Australia or another country. Apart from this agreement, the RMI has received additional economic

933 Misty D. Conrad, Dan Olis, J. Ness, and Sean Esterly, *Republic of the Marshalls Islands: Energy Project Development Options and Technical Assessment*, (Golden, CO: National Renewable Energy Laboratory, 2015), 7, 22.

and technical cooperation from a wide range of regional and international organizations, including the European Union, the United Nations Development Programme, and the Asian Development Bank.

Through the 9th European Development Fund program, five Pacific islands, including the RMI received $13.81 million in aid. For the RMI, this aid went toward the installation of home solar systems ($1.5 million) and off-grid solar PV systems for six primary schools ($890,000), as well as the drafting of a national energy policy and action plan ($110,000). Another international program, the United Nations Development Programme, provided $468,000 in direct aid and assisted the RMI with securing an additional $2.7 million for poverty reduction and millennium development goals such as environmental and sustainable management. As far as regional organizations go, the Asian Development Bank (ADB) provides both direct aid and loans, policy dialogue, technical assistance, and equity investments. Since beginning its partnership with the RMI, the ADV has provided $92.63 million in loans and assisted with forty-eight technical assistance projects.[934]

Despite the many benefits of this aid, the RMI has faced challenges in the areas of communication and coordination between the RMI government, the United States, and the different international donors. Specifically, issues have arisen with how projects are funded and completed. In some cases, the efforts of the different organizations are duplicated or funding for a project is intermittent, leaving the project incomplete. To prevent similar shortfalls, a freely associated Guam would have to implement effective policy mechanisms to coordinate and streamline the use of funds in the completion of projects. Additionally, problems have surfaced in the RMI with retaining a skilled local workforce with the knowledge necessary to properly run the renewable energy systems once the international/regional donors stop providing technical assistance. Again, Guam would have to combat this challenge by implementing policies that emphasize the growth of a local technically trained labor force. This applies to independence as well.

934 Government of the Republic of the Marshall Islands, "Navigating Our Energy Future: Marshall Islands Electricity Roadmap," 2018, https://islands.irena.org/-/media/Files/IRENA/Sids/NavigatingourEnergyFutureMarshallIslandsElectricityRoadmapDecem.ashx.

RENEWABLE ENERGY	
STATUS	**EFFECTS**
Statehood	• Possibility for increased federal financial/technical assistance.

	• Membership in national organizations and greater cooperation and potential for partnership among states, such as through technical or financial assistance. • High probability of continued/increased US military activity and demand. • Complete application of federal law, with potential beneficial and detrimental applications and effects.
Independence	• Possible return of land and water and greater control over usage. Potential for increased use of land for energy production needs. • Increased partnerships with foreign countries and regional/international organizations. • Membership in country-only organizations. Possible eligibility for financial supports available to countries. • Greater control over policies and comprehensive changes. • Need for country-level environmental standards to ensure protection of resources. • Highest degree of economic uncertainty. Investment climate may limit growth of renewable energy sector.

Free Association	• Possible funding from US, other countries, and organizations for renewable energy. Great opportunities for funding from multiple sources (US and international community), that could be combined for maximum benefit and expansion of renewable energy. • Potential land/water use conflict with US interests. Further potential for joint use of land and partnership on development of production and distribution infrastructure. • Economic uncertainty/instability. Investment climate may limit growth of renewable energy sector.

LAND AND NATURAL RESOURCES

Land

> "Guam is not just a piece of real estate to be exploited for its money-making potential. Above all else, Guam is the homeland of the CHamoru people. That is a fundamental, undeniable truth. We are very profoundly "taotao tano'"—people of the land. This land, tiny as it is, belongs to us just as surely, just as inseparably, as we belong to it. No tragedy of history or declaration of conquest, no legalistic double-talk can change that fact. Guam is our legacy. Is it for sale? How can one sell a national birthright?"[935]
>
> **– Governor Ricardo Bordallo**

The words above, from former Governor Ricky Bordallo, show the importance of land to the CHamoru people. Any conversation on decolonization that is not centered on land is not a true conversation on decolonization, but rather reform. Guam's strategic location, intertwined with its current political status, has undeniable ramifications for the current use of Guam's land, particularly its military use. As mentioned by Brigadier John Doucette, "Since Guam is part of the United States, potential operations from here are not subject to foreign government approval or international agreements."[936] Furthermore, US Major General General Dennis Larsen said regarding Guam, "This is American soil in in the midst of the Pacific. Guam is a US territory. We can do what we want here and make huge investments without fear of being thrown out."[937]

Guam's status as an unincorporated territory, without a full measure of self-government, currently makes it easier for the US military to take unilateral action in the island. In Guam, a colony of the US, the military does not have to gain consent from the government of Guam. Thus, the current status situates the

935 Ricardo Bordallo as quoted in Michael Phillips "Land Ownership in Guam," in *Kinalåmten Pulitikåt: Siñenten i Chamorro: Issues in Guam's Political Development* by the Political Status Education Coordinating Comission, 1996, 2.

936 Max Cacas, "Small Island Has a Big Role," *Signal Magazine,* October 2011, https://www.afcea.org/content/small-island-has-big-role.

937 David Vine, "Base Nation," *American Empire Project*, Accessed at 2019, http://americanempireproject.com/base-nation/.

local government, in many ways, as inferior to military plans and actions in the island. To put it another way, one cannot understand Guam's political status or current state without understanding the history of land use. In order to be an effective base, land had to be taken and utilized by the US military. This serves as the foundation for many historical and current grievances.

Thus, decolonization is foundationally about the selection of a political status that applies not just to people in Guam, but also all the land that the island encompasses. As articulated by scholars Tuck and Yang, decolonizing must involve, "the repatriation of land simultaneous to the recognition of how land and relations to land have always been differently understood and enacted."[938] The issue of land and the people of Guam cannot be neatly separated when it comes to Guam's future political status. In making the decision as to which political status best serves the island, considerations of land use and control are necessary to take into account.

The topic of land in Guam is broad, with ramifications (historical, legal, economic, social, cultural, and political) that stretch across generations. The complexities of the issue of land in Guam's colonial periods could comprise a separate study in and of itself. However, in this portion of Part II of *Giha Mo'na*, not all topics can be covered. Acknowledging this, the two primary questions investigated in this section are: How can the land potentially be used under each respective status?; and What possible changes may be made regarding distribution and ownership of land?[939] These questions help provide a launching point for further questions and considerations on what the different political statuses can offer when it comes to land. As will be traced further in the history below, the overarching message is that there is nothing more important to Guam's future economic, social and political development than the manner and extent to which the people of Guam control the land. As best said by former Senator Tom Ada during hearings for the Guam Excess Land Act, "Chamorro landowners are the exclusive source of all lands currently held by the Department of Defense for US bases. Regardless of whether the land takings were conducted with callous intent, or are simply the result of a bureaucratic mind-set, the outcome remains the same; the economic and social displacement of a native people within their own homeland."[940]

There are two simultaneous and interrelated phenomena occurring when it comes to the land issue in Guam today. The first is the issue of land takings as defined by the relationship between a colony and the US government. The second is the issue of the detrimental effects of land dispossession to indigenous peoples. Regarding the latter, the desire for land is often the root of colonialism and dispossessing indigenous peoples of their land has been a ubiquitous occurrence through the history of colonialism and imperialism. Dispossessing people of their land is never just taking "real estate" away. For indigenous peoples, land is a set of relationships. Mohawk scholar Taiaiake Alfred writes, "Land, culture, and government are inseparable in traditional philosophies; each depends on the other, and this means that the

938 Eve Tuck and K. Wayne Yang, "Decolonization is not a metaphor," *Decolonization: Indigeneity, Education & Society* 1, no. 1 (November 2012): 7, accessed at https://clas.osu.edu/sites/clas.osu.edu/files/Tuck%20and%20Yang%202012%20Decolonization%20is%20not%20a%20metaphor.pdf.

939 Neither this section nor this study will discuss/analyze the monetary value of Guam's land resources, as doing so is beyond the scope and capacity of the study.

940 Guam Excess Land Act, "Hearing on H.R. 2144," July 29, 1993, 107.

denial of one aspect precludes recovery as a whole."[941] Furthermore, Kanaka Maoli scholar Haunani-Kay Trask writes, "No one knows how better to care for our island home, than those of us who have lived here for thousands of years…The secrets of the land die with the people of the land. This is the bitter lesson of the modern age…The land cannot live without the people of the land who, in turn, care for their heritage, their mother."[942]

When examining the issue of land takings in Guam, it should be viewed as a disturbance of these sets of CHamoru relationships to the land. The land issue cannot be separated from the effects on the people of the land, and this is fundamental in determining political status futures for the island.

Overview of Land

Land in Guam is divided into three different categories: federally held land; public land (land owned by the government of Guam); and privately owned land. Federally held land comprises approximately thirty percent (thirty-two percent as stated in the Guam Department of Land Management's 2015 Briefing to the 33rd Guam Legislature Committee on Lands provided to the authors), most being for military use. The government of Guam possesses approximately upwards of twenty percent (a legislative resolution mentions 25%) of the land and privately owned land comprises roughly upwards of forty-five percent.

941 Taiaiake Alfred, *Peace, Power, Righteousness: An Indigenous Manifesto* (Oxford: Oxford University Press, 1999), 26-27.

942 Haunani-Kay Trask, *From A Native Daughter: Colonialism and Sovereignty in Hawaii* (Honolulu: University of Hawaii Press, 1999), 80-82.

BREAKDOWN OF LAND IN GUAM[943]

943 Guam Department of Land Management, 33rd Guam Legislature Committee on Lands, Et Al. "Briefing," 2015, 4.

Federal Land	~32%
Public Land/GovGuam Land	~20%
Private Land	~48%

Geology: The island is divided geologically between the north and south. The northern half of the island is a limestone plateau bordered by steep cliffs rising from the shoreline, and the southern half is composed of a dissected volcanic island upland with a discontinuous ridge of mountains paralleling the west coast of the island. It is split in half via a fault zone between Adelup Point and Pago Bay.

According to a geological study regarding the porous composition of the north, "The limestone is so permeable that no permanent streams exist on the plateau, although several small intermittent streams dissect the low limestone land near Agana."[944] This leads to limestone soil in northern Guam and volcanic soil in southern Guam. Relating Guam's geology to potential economic value of the land, there are limitations. As articulated,

> The poor substructure and steep slopes of the southern half of Guam make it less suitable to construction and more prone to landslides than the northern half. Arable land in the south is the richest in Guam, but only in the river valleys and narrow alluvial plains. As a consequence, there is considerably less agricultural development in the southern than in the northern half. Therefore, a much smaller proportion of the south is suitable to the support of economic activity. With the notable exception of Naval Activities Guam (formerly Naval Station, Apra Housing, Naval Magazine and other, smaller facilities, which collectively much of the best land in the west-central part of the island), Guam's South has been left almost entirely to civilian control.[945]

Dr. Mohammad Golabi, a professor of soil science at the University of Guam, describes the island's northern soil as being alkaline, calcareous limestone, that is low in micronutrients such as iron and zinc, while the island's southern soil is volcanic, acidic, high in clay, and found in hilly and slopy terrain. According to Golabi, the respective soils and terrains of both regions are fit for growing different types of crops. Nevertheless, crops typically unfit for growth in either region can be accommodated through unique agroforestry and soil composition amendment techniques developed and tested by various programs at the university.[946] In examining how the geology of the land may relate to its use, the draft North and Central Guam Land Use Plan notes,

> The north/central communities of Barrigada, Dededo, Mangilao, Tamuning, and Yigo are characterized by the large proportion of land owned by the federal government, as well as the presence of a large concentration of residential development. As previously discussed, these communities represent a large portion of the island's population, and the local villages served as bedroom communities for residents who work in Hagåtña, or in the more urban areas of Tamuning. Mangilao is the "education district" and is home to the University of Guam and the Guam Community College.
>
> The southern portion of the island contains large expanses of undeveloped land. Development here experiences challenges from the presence of steep slopes and unstable soils. Most villages occur

944 United States Department of the Interior, "General Geology of Guam," Joshua Tracey, et al. (Washington, D.C.: US Government Printing Office, 1964), A8, Accessed at https://pubs.usgs.gov/pp/0403a/report.pdf.

945 Bradley, "Economic Impact of Guam's Political Status Options," 6.

946 Personal Communication with University of Guam Professor Dr. Mohammad Golabi, July 16, 2020.

along the coast, with little development in the interior. The south holds the largest concentration of agricultural lands on Guam, as well as large areas of designated recreational/open space.[947]

Decolonization will not change Guam's geology. All status options must take into account the geological and geographical factors that influence the economic and other potential uses (or non-use) of the land.

Submerged Lands: The waters surrounding Guam contain submerged lands which are defined as "areas in coastal waters extending from the Guam coastline into the ocean three nautical miles (nm)" and also include "the seabed beneath them."[948] With the enactment of US Public Law 93-435, an Act "to place certain submerged lands within the jurisdiction of the governments of Guam, the Virgin Islands, and American Samoa...," jurisdiction over the majority of the submerged lands surrounding Guam, as well as the other territories, was transferred to the local territorial government. Excepted from this transfer were several areas and resources deemed necessary to remain under US jurisdiction, to include:

1. all deposits of oil, gas, and other minerals, but the term "minerals" shall not include coral, sand, and gravel
2. all submerged lands adjacent to property owned by the United States above the line of mean high tide
3. all submerged lands adjacent to the property above the line of mean high tide acquired by the United States by eminent domain proceedings, purchase, exchange, or gift, after the date of enactment of this Act, as required for completion of the Department of the Navy Land acquisition Project relative to the construction of the Ammunition Pier authorized by the Military Construction Authorization Act, 1971 (…)
4. all submerged lands filled in, built up, or otherwise reclaimed by the United States, before the date of enactment of this Act, for its own use
5. all tracts or parcels of submerged land containing on any part thereof any structures or improvements constructed by the United States
6. all submerged lands that have heretofore been determined by the President or the Congress to be of such scientific, scenic, or historic character as to warrant preservation and administration under the provisions of the Act entitled "An Act to establish a National Park Service, and for other purposes", (…)
7. all submerged lands designated by the President within one hundred and twenty days after the date of enactment of this Act
8. all submerged lands that are within the administrative responsibility of any agency or department of the United States other than the Department of the Interior

947 Guam Bureau of Statistics and Plans, "Guam Land Use Plan," 2-7 & 2-8.

948 Department of the Navy, "Guam and CNMI Military Relocation, Final Environmental Impact Statement," July 2010, Volume 2, 8-1 and 8-5.

9. all submerged lands lawfully acquired by persons other than the United States through purchase, gift, exchange, or otherwise

The Act also contained a provision that allowed the governor of Guam to request and be granted ownership and jurisdiction over the previously listed reserved lands (ii, iii, iv, v, vi, vii, viii) upon receiving approval from the Secretary of the Interior, the US agency holding the land, and without receiving disapproval from the US Congress. Within the act were also several provisions that reasserted the United States' complete sovereignty over the submerged lands, with one reading,

> Nothing in this act shall affect the right of the president to establish naval defensive sea areas and naval airspace reservations around and over the islands of Guam, American Samoa, and the Virgin Islands when deemed necessary for national defense.[949]

As such, the government of Guam owns and holds jurisdiction of large portions of tidal areas surrounding Guam, with the US military reserving areas deemed necessary for defense use.[950]

With the institution of permitting laws, environmental regulations, and mechanisms for government revenue, several submerged lands projects have been completed to accommodate undersea telecommunications cables. Guam is now host to several landing sites of undersea telecommunications cable, with several in the process of being permitted and constructed. Moving forward, this resource provides opportunities for continued advancement, especially as Guam is an alternative to Hong Kong, where there is concern about PRC (People's Republic of China) accessing IT networks. Guam is also an attractive site for regional telecom and IT providers to route traffic through, given concerns about PRC surveillance of and possible restriction of signal traffic.

Guam appears to have a material role as a hub for undersea communication cables. Assistant Professor at Miami University, Nicole Starosielski, provides keen insights into Guam's role in cable infrastructure. In her book *The Undersea Network*, she describes Guam's importance, writing,

> Guam's remote location, its proximity to a huge undersea drop-off (the Mariana Trench), and the relatively little coastal boat traffic naturally protect cables from fishing or anchoring. The systems here do not even need to be buried under the beach. More cables have landed on Guam that at any other American location in the Pacific—including Hawai'i and California, two major hubs for signal exchange— as of the time of writing the island has more capacity for international signal traffic than either of these states.[951]

949 An act to place certain submerged lands within the jurisdiction of the governments of Guam, the Virgin Islands, and American Samoa, and for other purposes, Public Law 93-435. 1210-1211, Accessed at https://www.govinfo.gov/content/pkg/STATUTE-88/pdf/STATUTE-88-Pg1210.pdf.

950 Department of the Navy, " Guam and CNMI Military Relocation, Final Environmental Impact Statement," Volume 2, 8-1 and 8-5.

951 Nicole Starosielski, *The Undersea Network* (Durham and London: Duke University Press, 2015), 175.

Furthermore, she argues that,

> Guam has become a critical node: a place that is not just the sum of individual traffic routes but also a site where companies can benefit from existing structures; where blocked outward transmissions can be rerouted (although inward traffic is less easily diverted); and where economic surpluses are more easily generated. Its power extends beyond the grasp of any individual force such as the military, private investment in trade routes, and the oceanic and atmospheric currents. This concentration of communications resources makes the island of Guam a pressure point in the cable network, where–as at many cable landings–local actions and environmental forces can produce disproportionate effects on its operation.[952]

In whatever political status is ultimately chosen, Guam could find a way to use this to its advantage.

History of Land Use

In this portion, a truncated overview of land in Guam is provided from the CHamoru creation story to current land return negotiations between the government of Guam and the US military. In tracing this history, one sees a story of the importance of land and the interplay between an inferior political status (or complete lack of one) and the usurpation of CHamoru control of the land. In order to fully understand what is possible regarding land under the three different political statuses examined here, it is imperative to first analyze the historical connection between colonial political processes and the way land in Guam has been utilized and controlled. Through this analysis, one can further understand how a change in political status presents new opportunities and obstacles regarding Guam's land.

According to CHamoru epistemology, the island and its people were created by Puntan yan Fu'una (Pontan yan Fo'na), a brother and sister. According to the story, upon his death, Puntan asked his sister Fu'una to use her powers to create the world from his being. Fu'una took her brother's eyes and made one eye the sun and the other eye the moon. She took his back and created the earth. She took his eyebrows and created the rainbow. "She used her energy and spirit to bring to life the parts of her brother's body that now formed the world. With her power, she made the sunshine and the earth blossom."[953] When she was finished, she transformed her body into Fouha Rock and from her, the first CHamorus emerged. CHamorus would make annual pilgrimages to this site of creation, with this tradition being revived today.

In addition to the creation story, there are many everyday family stories of land. In Guam, it is common to hear elders tracing their lineage and telling stories of the land they grew up in. People in Guam routinely share stories of a hard day's work on their family ranch or playing in the trees of their backyards. "From a CHamoru epistemological perspective, the land is imbued with spiritual qualities that has survived despite

952 Starosielski, "The Undersea Network," 180.

953 Anne Perez Hattori, "Folktale: Puntan and Fu'una: Gods of Creation," *Guampedia*, accessed at https://www.guampedia.com/puntan-and-fuuna-gods-of-creation/.

heavy Catholicization. Many CHamorus still ask permission from the ancestral spirits before entering the jungle. This shows the persistence of a metaphysical, spiritual nature to the land in Guåhan."[954]

This is because land is one of the most important aspects of life for the CHamoru people (and indigenous people in general). Reverend Joaquin Flores Sablan stated, "Land ownership was the greatest security, particularly inherited property which they treated as a sacred trust from their parents. To part with the land was the same as committing suicide."[955] This is why no matter what status is chosen, the issue of how to value the land needs to be considered. One can view land as merely real estate, while others can trace land as a part of their family genealogy. In certain instances, these conceptions of land may conflict with one another. Furthermore, the issue of developing the land versus preserving it and making it sustainable may also come to the forefront of land debates in Guam.

The CHamoru people heavily value the land and ocean as the source of their livelihood and land is important in multiple ways. As CHamorus followed a clan system, much of the land in the island was divided according to extended families in clans, which were led by male and female chiefs named maga'låhi and maga'håga. The concept of private property would not be introduced until the period of Spanish colonialism. As articulated by Guam attorney Michael Phillips regarding land in the Spanish colonial period, "Although the Spanish imposed a system of real estate taxes based on the amount of money earned from use of the property, these revenues were never enough to fund their administration of Guam."[956] As part of this change in treatment of land, the Spaniards also changed the traditional matrilineal system of the island in which land and clan were passed down through one's mother. With Spanish colonialism, the Spanish "male primogeniture inheritance superseded the traditional Chamorro matrilineal system."[957] This would be a key moment in Guam's history as it disenfranchised CHamoru women as formal landowners. Many titles had to be filed in a male's name, even if they were not considered by the family to be the relative responsible for the dispersal and holding of land. This would have intergenerational effects and serve as one reason for land disputes among family members today. In this first colonial wave, one already sees the effect of foreign rule and governance on certain aspects of the land. The US Naval era would represent another chapter in the usurpation of CHamoru control of the land.

Pre-WWII Naval Government[958]

The effects of US Naval rule were made apparent within the first few years of US colonization of the island. The first US Naval governor, Richard Leary, instituted a new tax system that changed the old Spanish land taxation method of taxing money earned from the use of property to a system based on the size and geological type of the land owned. CHamorus began to understate the size of their land to avoid

954 Kuper, "The Production of Military (In)security in Guåhan," 124.

955 Robert F. Rogers, *Destiny's Landfall: A History of Guam* (Honolulu, HI: University of Hawai'i Press, 1995).

956 Phillips, "Land," 5.

957 Rogers, "Destiny's Landfall," 69-70.

958 Taken from pgs. 120-121 of Dr. Kuper's dissertation (citations within the document also cited in this text).

having to pay a larger tax and lose their land. Leary also passed General Order No. 15, which gave the CHamoru people a few months to register their land or else their ownership of that land would not be recognized.[959] The Naval government told CHamorus that any land that was not registered by this date would be considered Spanish Crown land. The Naval government, upon assuming control of the island, claimed all "Spanish Crown lands" to use for its purposes.[960] This was the conundrum for CHamorus at the time: pay the tax or lose their land. This system was set up for many CHamorus to lose their land and subsequently, their livelihoods and subsistence. "General Order No. 15 forced the Chamorros to make a choice: either register their properties accurately and lose them because they could not pay the taxes, or not register their lands and lose them because they were not properly registered."[961] This helped to serve as another step in the dispossession of the CHamoru people of their land.

World War II Land-Taking and Organic Act Transfers

The post-war transformation of Guam into a forward operating base saw the largest land-taking by the US military in Guam. CHamoru historian Antonio Palomo, in *An Island in Agony*, describes this transformation. He writes, "Farmlands were converted into airfields and villages which had escaped destruction during the actual fighting were moved elsewhere…And with the massive military buildup, thoughts of reverting Guam to its prewar agricultural economy were wishful thinking."[962] In the two largest villages before the war, Hagåtña and Sumay, 11,000 of the island's 20,000 inhabitants were displaced as a result of the war and the American transformative war effort. By 1947, a total of 1,350 families had lost their land and homes due to military actions.[963] While many CHamorus of this time understood temporary land taking to help the Americans finish the war, they did not expect permanent dispossession of their land. This would lead to CHamoru attempts to get their land back, such as the formation of the Guam Landowners' Association and Nåsion CHamoru. It must be made clear that, throughout Guam's history and present, CHamorus have consistently fought to get their land back.

During this immediate post-war period, the military controlled close to sixty percent of the island. To handle the newly landless CHamoru population, the military began to construct "small dwellings and tent-frame structures" in the new villages of Dededo, Barrigada, Sinajana, Yona, Asan, Santa Rita, and Agat. By mid-1945, it was estimated that nearly five thousand CHamorus remained homeless in these refugee camps because they were not yet allowed to return to the villages of Hagåtña and Sumay. Many CHamorus despised being kept in refugee camps, and in late August 1944, a group of CHamorus led by Simon A. Sanchez and others decided to leave the camp to settle on land in Dededo. Another confusing aspect of this temporary refugee housing situation was that "in almost every case, the land on which the

959 Guampedia, "Richard P. Leary General Order Nos. 1-21," accessed at https://www.guampedia.com/leary-general-orders/.

960 Phillips, "Land," 5.

961 Phillips, "Land," 5.

962 Anthony Palomo, *An Island in Agony* (Self-Published, 1984), 248-249.

963 Timothy P. Maga, Defending Paradise: The United States and Guam: 1898-1950 (New York: Garland, 1988), 197.

houses stood were privately owned. Thus, in effect, the displaced persons were trespassing on private property with the government's permission."[964]

Analyzing the two most populous villages in Guam before the war, Agaña and Sumay, where people were denied returning at the time, one can see how transformation in the name of US national security was detrimental to the CHamoru people. After the war, the US took the village of Sumay and transformed it into what is now known as Naval Base Guam. Taotao Sumay, or people from Sumay, were now scattered throughout other parts of the island. While many CHamorus from Sumay were waiting to return to their homes and living in these refugee camps, they were called to a meeting in April 1945 by the military government, where they were told they would never be able to return to Sumay. They were given the option of relocating to the village of Agat or moving to another developed site. When people refused to move to Agat, the military created a newly developed village on the slopes of Mount Alifan, which was named Santa Rita.

The CHamoru people became resistant to land-takings when the military began taking land almost exclusively for recreational purposes. "In Agaña, roughly five hundred people were displaced when eighty-two lots were condemned for a park, and in Tamuning, sixty hectares of Tumon Beach were condemned for a military recreational center."[965] In the southern villages, the Navy erected fences around certain beaches and prohibited anyone from swimming or entering the beach area unless they were officers, enlisted men, or their dependents. To defend the military's stance of acquiring private CHamoru land for these recreational centers, Governor Charles Pownall argued that, "to provide adequate athletic facilities for the personnel of the Armed Forces of Guam is of direct concern to the local government in effecting law and order, harmony, and morale."[966] Critique within the military came from General LeMay who wrote,

> They had built tennis courts for the island commander; they had built fleet recreation centers, a Marine rehabilitation center, dockage facilities for inter-island surface craft, and every other damn thing in the world except subscribing to the original purpose in the occupation of those islands.[967]

It is important to note, however, that LeMay's critique was not a statement of sympathy for the CHamoru people or a critique of the recreation areas, per se. Rather, his critique was that the Navy was using limited capital resources and materials to build recreational areas when the Army Air Force wanted those resources applied to building runways for the production line of B-29s that were coming to the Marianas to bomb Japan.[968]

This land taking was made "legal" under US law by Public Law 594, also known as the Guam Acquisition of Lands Act passed by the 79th US Congress in 1946. The legislation reads,

964 Hofschneider, "A Campaign for Political Rights," 134.

965 Guam Echo, "Condemnation," *Guam Echo*, August 31, 1948, 3.

966 Charles A. Pownall, Memorandum to the Guam Congress (Subject: Status of Tumon Bay Area)," April 26, 1948.

967 Rogers, "Destiny's Landfall," 184.

968 Ian Toll, *Twilight of the Gods: War in the Western Pacific* (New York, NY: W. W. Norton & Company, 2020).

> The Secretary of the Navy is hereby authorized to acquire in the name, and for the use, of the United States, by purchase or otherwise, land and rights pertaining thereto situated on or within the island of Quam (sic), including interests in fee, leasehold interests with or without option to purchase interests in fee, and rights-of-way and easements both temporary and perpetual for highways, drainage systems, water supply and communication distribution facilities, upon conveyance of title acceptable to him or to such other officer as he may designate.[969]

The phrasing in this legislation of "by purchase or otherwise" would have lasting ramifications as "it would not be long before otherwise would translate to an outright taking of land in the name of military interests."[970]

The next pivotal event in this history was the Organic Act of Guam, signed in 1950. Per the Organic Act, many in Guam were given US citizenship. This is often seen as the culmination of a long CHamoru struggle for citizenship. While the CHamoru struggle for civil rights was enduring, this is not the complete story. It has also been argued that the granting of US citizenship to the people of Guam helped to essentially sanitize the post-war land takings. For example,

> The injustice of actions by the US Navy (which were sanctioned by the US Congress and supported by Presidential Executive Order) in acquiring Guam property was further distorted by the Guam Organic Act's extension of US citizenship. The US government's ability to claim that its new citizens in Guam were treated in the same way other citizens were treated with respect to acquisition of property provided support for future US responses to the land-taking concerns and continuing support for the US government's process for the "return" (and nonreturn) of property that is not required for any readily apparent purpose.[971]

Evidence of this can be found in the Hopkins Report. The Hopkins Report, written in 1947, was named after Dr. Ernest Hopkins, who was commissioned by the Navy to head a committee on post-war Guam. The committee was tasked with inspecting the island and recommending any changes in government. Hopkins and the committee heavily recommended citizenship and an Organic Act to help facilitate American control over the island in a time of increasing decolonization post-World War II. Per Hopkins,

> Fundamental changes of paramount importance are, of course, the previous two basic conclusions and recommendations; namely citizenship and Organic Acts. With the granting of citizenship and enactment of Organic Acts such as we propose, no one can fairly characterize the government, even if still retained under the general jurisdiction of the Navy Department, as "military

969 United States Code Congressional Service, "Laws of the 79th Congress," 1946, 768-769.

970 Viernes, James Perez, "Fanhasso i Taotao Sumay: displacement, dispossession, and survival in Guam" (M.A. thesis, University of Hawaii, Manoa, 2008), 64, accessed at http://hdl.handle.net/10125/20821.

971 Team Guam, "The Next Liberation: The Return of Guam's Land," January 1994, 36.

> government." It is civil government...such government does not cease to be "civil government" in the true sense of the term merely because the executive head and some of his assistants may sometimes wear a military uniform and be responsible to a department of the executive branch of our National Government which is primarily concerned with our national security and defense.[972]

Some may argue that the relationship between citizenship and the legality of land-takings formed a colonial symbiosis, in which land takings under the US legal system from US citizens holds more legal weight and is more defensible than taking land from aliens or nationals, as was the case after the war until 1950. Being further subsumed under the US political family has the potential for legitimization of land takings. For example, as one of the authors describes of statehood in his 2000 political status report, "However, it is possible that the transition of Guam to a self-governing status would allow the US government to prolong the delays in releasing lands scheduled for disposition because of a reduction or removal of associated international pressures to do so."[973] Thus, one needs to examine the multiple implications not only of political status change, but the advent of the Organic Act. As historian Robert Rogers writes, "Overall, then, Navy and Air Force officers had little to be unhappy about with the Organic Act. On Guam, the military still retained a massive presence and broad authority to accomplish its mission."[974]

Furthermore, the Organic Act of Guam also outlines what would happen to land controlled by the Department of the Navy, which governed the island. Section 28 of the Organic Act of Guam reads:

> (a) The title to all property, real and personal, owned by the United States and employed by the naval government of Guam in the administration of the civil affairs of the inhabitants of Guam, including automotive and other equipment, tools and machinery, water and sewerage facilities, bus lines and other utilities, hospitals, schools, and other buildings, shall be transferred to the government of Guam within ninety days after *the date of enactment of this Act*.
>
> (b) All other property, real and personal, owned by the United States in Guam, not reserved by the President of the United States within ninety days after *the date of enactment of this Act*, is hereby placed under the control of the government of Guam, to be administered for the benefit of the people of Guam, and the legislature shall have authority, subject to such limitations as may be imposed upon its acts by this Act or subsequent Act of the Congress, to legislate with respect to such property, real and personal, in such manner as it may deem desirable.
>
> (c) All property owned by the United States in Guam, the title to which is not transferred to the government of Guam by subsection (a) hereof, or which is not placed under the control of the

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972 Martin E. Hopkins, "Hopkins Committee report for the Secretary on the civil government of Guam and American Samoa," United States, Navy Department, 1947, 6, accessed at https://hdl.handle.net/2027/umn.31951002668985h.

973 Bradley, "Economic Impact of Guam's Political Status Options," 64.

974 Rogers, "Destiny's Landfall," 230.

government of Guam by subsection (b) hereof, is transferred to the administrative supervision of *the head of the department or agency designated by the President under section 3 of this Act,* except as the President may from time to time otherwise pre-scribe: *Provided*, That *the head of such department or agency* shall be authorized to lease or to sell, on such terms as he may deem in the public interest, any property, real and personal, of the United States under his administrative supervision in Guam not needed for public purposes.[975]

Two months after the Organic Act was passed, President Harry Truman issued Executive Order 10178 on October 30, 1950. Pursuant to Section 28(b) of the Organic Act, Truman reserved to the US more than 42,000 acres of land for use by military branches. "The following described real and personal property of the United States in Guam is hereby reserved to the United States and placed under the control and jurisdiction of the Secretary of the Navy…"

(a) All of that real property in Guam situated within the perimeter areas defined in the following-designated condemnation proceedings in the Superior Court of Guam, being the same property quitclaimed by the Naval Government of Guam to the United States of America by deed dated July 31, 1950 and filed for record with the Land Registrar of Guam on August 4, 1950.

975 Section 28 of the Organic Act of Guam.

TABLE OF LANDS

CIVIL NO. FACILITY	NAME	AREA IN ACRES
2-48	North Field	4,566.757
5-48	Mt. Santa Rosa Water Reservoir and Supply Lines	9.372
6-48	Mt. Santa Rose-Marbo Water Lines	5.990
7-48	Tumon Maui Well Site	5.990
2-49	Naval Ammunition Depot	4,803.000
3-49	Primary Transmission Line	44.651
4-49	Mt. Santa Rosa-Marbo Water Line Easement	12.169
5-49	Apra Harbor Reservation	6,332.000
2-50	Acecorp Tunnel	6.450
3-50	Camp Dealy	35.391
4-50	Tumon Bay Rec. Area Utility Lines	0.637
5-50	Agana Springs	24.914

6-50	Asan Point Tank Farm	41.300
7-50	Asan Point Housing	85.032
8-50	Medical Center	137.393
9-50	Agafa Gumas	45.630
10-50	Naval Communications Stations	4,798.682
11-50	Nimitz Beach	11.726
12-60	Command Center	800.443
13-50	Tarague Natural Wells	4,901.100
14-50	Agana Diesel Elec. Generating Plant	5.945
15-50	Mt. Santa Rosa Haul Road, Water Reservoir and Supply Lines, VHF Relay Station, Mt. Santa Rosa Marine Water Line	23.708
16-50	Northwest Air Force Base	4,562.107
18-50	Marbo Base Command Area-Sewage Disposal	60.480
19-50	Loran Station Cocos Island	21.695
20-50	Av-Gas Tank Farm #12	15.322
21-50	Proposed Boundary of NAS Agana, Housing Area #7	1,820.148
22-50	C.A.A. [FAA] Site (Area #90)	37.519
23-50	Tumon Mau Well (Water Tunnel)	3.575
24-50	Tumon Bay Rec. Area (Road & AV-gas Fuel Line Parcel #1)	49.277
25-50	Utility easement from Rt. #1 to Rt. #6 (Coontz Junction)	0.208
26-50	Tumon Bay Rec. Area (Area #78)	65.300
27-50	Marbo base Command	2,497.400
28-50	Mt. Tenjo VHF Station Site	0.918
29-50	Sasa Valley Tank Farm (Area #26)	285.237
30-50	Sub Transmission System Piti Steam Plant to Command Center	17.793
31-50	Route #1 (Marine Drive) (Portion)	28.888
32-50	Sub Transmission System (34 KV Line), Piti Steam Plant to Agana, Diesel Plant and POL System Sasa, Valley Tank Farm to NAS Agana	94.400
33-50	Harmon Air Force Base	953.000
34-50	Radio Barrigada	2,922.000
35-50	AACS Radio Range (Area #30)	25.000
36-50	Water Line Apra Heights Reservoir to Fena Pump Stations & AV-Gas Fuel	37.000
37-50	Fena River Reservoir	2,185.00

(b) The road system and utilities systems described in the said deed between the Naval Government of Guam and the United states of America dated July 31, 1950.

(c) The following described areas: Mount Lam Lam Light; Rear Range Light; Mount Alutom Light; Area Number 35 culverts; Mount Santa Rosa Light; 36 acres of Camp Witek; Adelup Reservoir; Tripartite Seismograph Station Site, Land Unite M. Section 2, Land Square 20; the Power sub-station located on Lot 266, Municipality of Agat, adjacent to Erskine Drive, City of Agat.

(d) Lots 2285-5 and 2206-1 in Barrigada.

(e) All personal property relating to or used in connection with any of the above-described real property[976]

Section 33 of the Organic Act of Guam also gave the President of the United States the continued authority to designate parts of the island as naval or military reservations and to treat Guam as a closed port to vessels and aircraft of foreign countries. In explaining the origin of Truman's Executive Order in relation to the Organic Act of Guam's land provisions, Guam historian Robert F. Rogers, writes, "The Navy and Air Force feared that transfer of all the island's utilities to local control, particularly the generation of electric power, could jeopardize military operations. The Navy, backed by the Department of the Interior, persuaded President Truman to use Section 33 to make a major exception to the Organic Act and retain in military hands the property of installations earmarked for construction."[977]

As a result, many families had their land taken from them.[978] Beginning in 1947, three years after the war's end, the Naval government created the Land and Claims Commission (which was just a Navy tribunal and not originally overseen by US courts) to determine a "fair" price for the land. According to Penelope Bordallo Hofschneider on the unfair nature of this process,

> These Americans determined the value of each parcel of land and then apprised the owner of the government's offer. If the offer was accepted, a purchase was made on the spot. If not, the land was taken by the Government anyway, by condemnation, and the case was referred to the Superior Court. Here, a single judge, an American and employee of the Naval government, decided whether or not the government's offer was fair compensation. The only appeal available to a native landowner was located 10,000 miles away, in Washington, D.C., in the office of the Secretary of the Navy.[979]

CHamoru congressman Joaquin Perez commented on this process, writing, "The Secretary of the

976 "Executive Order no. 10178," October 30, 1950.

977 Rogers, "Destiny's Landfall," 212.

978 The remaining text of this subsection is lifted directly from Kuper's dissertation pgs. 184-187.

979 Hofschneider, "A Campaign for Political Rights," 130.

Navy maintains his office, shall we say, nine thousand miles away, and it is very obvious that a party desiring to appeal cannot economically be present at a hearing…A man is entitled to present his case in the best possible manner. A man is entitled to present his case face-to-face. Robbing a man of that privilege is certainly robbing him of a portion of the justice due him."[980] Many CHamorus rejected the offer, and the prices being offered were also economically manipulative. The Navy decided that the price of all the land in the compensation process was to be set at their 1941 values, despite CHamoru rebuttals that the value of the land had increased during the Japanese occupation as it was brought into more large-scale cultivation.

However, the Naval government refused to acknowledge this and kept prices to the 1941 values. When asked about the value of land in Guam, Commander L.J. Watson of the Navy said, "astonishingly low." He reasons, "It has never been freely sold, and an analysis of recorded instruments show that practically all exchanges of land or sales of land have been between relatives and so on."[981] For example, for the 15-acre site of the current officers' housing in Guam, Libugon, which was renamed Nimitz Hill, the Naval government offered $14.10 total. In Tumon, the military offered a CHamoru landowner $34.00 for thirty-two months of rent, and one Guam congressman at the time mentioned that a sixty-hectare piece of prime farmland which could yield $1,000 a month, would only be worth $3,000 according to the 1941 prices being utilized by the Navy.[982] CHamorus understood that they were not being treated fairly, in many respects, and that their land was worth exponentially more than what was being offered by the Navy. B.J. Bordallo wrote, "We had an artificially depressed land market resulting from the military's deliberate policy of isolating Guam from the rest of the world… Since this artificial depression was caused by the Navy's deliberate closed-door policy, is it fair that just compensation be measured by 1941 Guam values?"[983]

It was not just the price devaluations that were problematic for CHamorus, it was also the nature of the process. Because the Naval government did not receive the $1,630,000 appropriated by the US Congress until three years after the war, the process of compensation took a while to commence. However, during this time, the military took the land and did not return it to the original landowners. Essentially, for three years, CHamorus were confused as to what was going on with their land, and much of this land was productive. At the Public Lands Committee Hearings, many raged against the fact that the military condemned, "half or more of the most arable land on the island of Guam, suitable for agriculture and the raising of livestock."[984] Hofschneider argues,

> Consequently, the future economic recovery of the island, which was basically self-sufficient in

980 Anne Perez Hattori, Guardians of Our Soil: Indigenous Responses to Post-World War II Military Land Appropriation on Guam (Chicago: Imprint Publications, 2001), 195.

981 Phillips, "Land," 9.

982 Hofschneider, "A Campaign for Political Rights," 131.

983 Phillips, "Land," 10.

984 United States Congress, House, Committee on Public Lands, Hearings on H.R. 4499: bills to provide a civil government for Guam, 81st Congress, 1st Session, 21-23 November 1949, 151.

> production of food before the war, was seriously threatened. In the opinion of various witnesses, the Navy's current policy of leasing idle government property to farmers for a maximum period of twelve months was stifling the island economy. No reasonably intelligent farmer was willing to invest in and cultivate a piece of property that might be taken away from him the next year.[985]

The ramifications of these land-takings are still widely felt in Guam today.

Return of Lands and BRAC

The return of land from the US government to the government of Guam (and subsequently to the original landowners) has been one of the most pivotal issues defining US-Guam relations post World War II. US-Guam relations are predicated on land use and the American military. This issue remains controversial.

Over the years, parcels of land have been returned by the federal government. At one point, it held on to more than half of the island. The Department of Defense holds roughly twenty-seven percent of the island today, with other land held by other federal agencies. However, it is important to note that this return of land does not sanitize the historical injustices involved in the land takings in Guam, and this brief history of land return should not be read in that manner. As noted, "In general, the manner in which federally-held property is returned to Guam is inherently problematic: all existing processes present the government and people of Guam with a choice of no choices."[986] Furthermore, "the processes of land return with respect to Guam fail to recognize the historical injustices involved in land takings in Guam and the importance of property to a small island community."[987]

It is important to note that the process of land return was not a benevolent transfer of land, and the role of CHamoru resistance cannot be ignored. CHamorus were not simply complacent with the taking of their land. As Robert Underwood exclaims, "land is the one issue that can turn any Chamorro into an activist."[988] There was a substantial amount of action and activism surrounding the land issue, particularly as it related to the land condemnations. Based on the activism and lobbying efforts of the Guam Landowners Association in 1976[989], in 1977, the Omnibus Territories Act was passed, which amended the Organic Act to allow the US District Court to review compensation claims for private property condemned by the navy after World War II. In 1980, there were roughly six-hundred land claims before the court. At the time, Antonio Won Pat estimated that compensation for land claims could reach around $500 million. After the Ninth Circuit Court reversed the dismissal of the first case, many more land

985 Hofschneider, "A Campaign for Political Rights," 154.

986 Team Guam, "The Next Liberation," 24.

987 Team Guam, "The Next Liberation," 24.

988 Underwood, "Afterword," in *A Campaign for Political Rights on the Island of Guam* 1899-1950 by Penelope Bordallo Hofschneider, 211.

989 Souder, Laura Torres, *Daughters of the Island,* 1987, 110-111.

claims cases came before the court, with a resulting 1,377 claims for 3,525 parcels of condemned land.[990] This would all merge into a class-action lawsuit, with John Bohn as chief counsel. Despite the potential $500 million, in 1983, the Department of Justice offered to settle all claims for $39.5 million, which the Guam Landowners Association (the organizations of the claimants) found unacceptable. Bohn, however, accepted the offer without consulting the association, which further outraged its members. In explaining his decision to accept the settlement, he said,

> Such an offer was the most that he could possibly obtain from the United States Department of Justice, and therefore decided to settle the case. Any attempts to get more money from the United States Department of Justice would have required the involvement of Congress and the President, which would have delayed the settlement for many, many more years. Meanwhile, the original landowners were slowly dying and would never see any of the money.[991]

Rogers notes, "A majority of the claimants then accepted the settlement, and money was eventually prorated among the 5,200 former owners and heirs on the basis of ex post facto evaluations of their former properties as of the 1940s. Some two-hundred disgruntled claimants, mostly those with the largest claims, refused the settlement; they or their heirs continued legal action."[992] This would not end the issue, as other organizations and notable individuals, such as Nasion CHamoru, led by Angel Santos and Eddie Benavente, continued the struggle.

With respect to the process of the US government "returning" federally held land to Guam, the US began identifying "excess land" in 1974[993] but picked up the pace as the land claims activism of the Guam Landowner's Association accelerated. It is significant to note that not all of the more than five-thousand acres identified in 1977 was transferred back to Guam through this process in the subsequent four decades. Additionally, competing federal agency claims (e.g. the US Fish and Wildlife Service) and other restrictions on land use (e.g. safety zones) have blunted a process of greater land use for Guam.

Historically, there were three processes that were used for the return of Guam property. One was the transfer of excess property through a process overseen by the General Services Administration, named the Federal Property and Administrative Services Act. The second process has been through a special Congressional disposal process. The third process is the base closure process, overseen by the Base Relocation and Closure Commission.

Regarding the first process (the GSA process), when a federal holding agency identifies property as being releasable, it submits documents to the Congressional Armed Forces Committee. Pending the committee's approval, it is deemed excess and reported to GSA, which then conducts a federal screening process. The federal government in returning land has priorities when a federal agency deems land excess. The first is

990 Rogers, "Destiny's Landfall."

991 Torres v. United States, Civil Case No. 81-0112, John Bohn's Application for Attorney's Fees, Costs, and Expenses, 10.

992 Rogers, "Destiny's Landfall," 265.

993 US General Accounting Office, "Letter (Restricted) to Congressional Delegate A.B. Won Pat," June 24, 1980, accessed at https://www.gao.gov/assets/lcd-80-73.pdf.

to offer the land to another federal agency. If no federal agency files a request for the property, it is then declared surplus and available for disposal to the public. To remedy this in Guam, then-Delegate Robert Underwood was able to push for the passage of P.L. 106-504, which gave the government of Guam the right of first refusal for excess lands being returned. In business terms, the right of first refusal refers to the contractual right to enter into a business transaction with a person or company before anyone else. If the party with the right of first refusal declines, then other offers can be entertained. A right of first refusal is "a mechanism that gives to a specific party the right to be the first allowed to purchase a particular property if it's offered for sale. The holder has the right to refuse to buy the property."[994] As articulated in P.L. 105-504, "If the government of Guam, within 180 days after receiving notification under paragraph (1), notifies the administrator that the government of Guam intends to acquire the property under this section, the administrator shall transfer such property in accordance with subsection (b). Otherwise, the property shall be screened for further federal use and then, if there is no other federal use, shall be disposed of in accordance with the Property Act."[995]

Return of land has been decreased and delayed due to national security reasons, particular "contingency" purposes. For example, in 1977 the Navy released the Guam Land Use Plan. Included in the Guam Land Use Plan was the identification of 5,180 acres that were no longer needed for military operations. However, "this plan provided that the 5,180 acres would be utilized as trading stock for private and GovGuam properties needed by the military."[996] However, two years later, through the "Implementation Plan for the Guam Land Use Plan," the policy of using releasable lands as trading stock was changed. In 1986, the Secretary of Defense commissioned L. Wayne Arny III, who then served as the Principal Deputy Assistant Secretary of the Navy for Shipbuilding and Logistics, to investigate releasable lands in Guam. Per Arny's report, he recommended a phased, conditional release of 3,548 acres, with the retention of 501 acres. As noted, "no serious efforts were devoted to obtaining the phased release of properties through the General Services Administration and instead, Guam opted to pursue lands through the Congressional route."[997]

This second route, known as the Congressional route, involves approaching Congress to dispose of properties on the basis of Congressional powers under the Territorial Clause. The pattern of this route was the introduction, review, and approval of a bill that becomes law after passing both chambers of the US Congress and being approved by the president. One significant moment for the return of federal lands back to the government of Guam was H.R. 2144, referred to as the Guam Excess Lands Act. H.R. 2144 was introduced by Delegate Robert Underwood and became Public Law No. 103-339 on October 6, 1994. The law transfers all right, title, and interest of the United States in and to the parcels of land described to the government of Guam public benefit use, by quitclaim deed and without reimbursement.

994 "What is a Right of First Refusal, and How Does it Work?" Landthink, accessed July 28, 2020, accessed at https://www.landthink.com/what-is-a-right-of-first-refusal-and-how-does-it-work/.

995 Public Law 106-504: An Act To amend the Organic Act of Guam, and for other purposes, (114 Stat. 2309; 13 November 2020) accessed at https://www.congress.gov/106/plaws/publ504/PLAW-106publ504.pdf.

996 Team Guam, "The Next Liberation," 26.

997 Team Guam, "The Next Liberation," 26.

TABLE OF LANDS[998]

998 P.L. 103-339: Guam Excess Lands Act, (108 Stat. 3116: 6 October 1994) accessed at https://www.govinfo.gov/content/pkg/STATUTE-108/pdf/STATUTE-108-Pg3116.pdf.

NAME	AREA IN ACRES
NAVY PARCELS	
South Finegayan	445.000
Nimitz Hill Parcels 1 and 2B	208.000
NAVMAG Parcel 1	144.000
Apra Harbor Parcel 7	73.000
Apra Harbor Parcel 8	6.000
Apra Harbor Parcel 6	47.000
Apra Harbor Parcel 9	41.000
Apra Harbor Parcel 2	30.000
Apra Harbor Parcel 1	6.000
Asan Annex	17.000
NAVCAMS Beach	14.000
ACEORP Maui Tunnel	4.000
Agat Parcel 3	5.000
AIR FORCE PARCELS	
Andersen South (portion of Andersen Admin. Annex)	395.000
Camp Edusa (Family Housing Annex 1)	103.000
Harmon Communication Annex No. 1	862.000
Harmon Housing Annex No. 4	396.000
Harmon POL Storage Annex No. 2	35.000
Harmon VOR Annex	308.000
Harmon POL Storage Annex No. 1	14.000
Andersen Radio Beacon Annex	23.000
FEDERAL AVIATION ADMINISTRATION PARCEL	
Talofofo "HH" Homer Facility	37.000

In addition, land was also returned to the government of Guam via the Base Realignment and Closure (BRAC) processes of 1993 and 1995. The Base Realignment and Closure Commission was established so that the Department of Defense could close bases with as little congressional or executive interference in the process. The Base Realignment and Closure Commission was established in 1988 to achieve this, and the main impetus for closing bases were "cost savings" and "military value."

This unique process, designed to save the US government money, was seized on by Guam as a way to effect land return. While most US jurisdictions protested the proposed closure of bases recommended by the Department of Defense, Guam (Team Guam) requested the closure of Naval Air Station (NAS), Agana (Tiyan). Although the BRAC did not include NAS Agana in its 1991 base closure recommendations, Guam again called for its closure in 1993 and the BRAC included the base in its closure recommendations, over the objection of the Navy. There was a local push for local control of Naval Air Station so the land could be productive for the local government and economy. One document that outlines the request for the return of Tiyan is "Na'na'lo i Lugat Tiyan: A call for the Consolidation of the Naval Air Station Agana with Andersen Air Force Base" in April 1993. In this call for this consolidation, the reason is emphasized:

> Moreover, the civilian community of Guam seeks the closure of the base facility at NAS Agana in order to expand the essential civil aviation facilities that are the lifeblood of Guam's economy. Extensive plans for the civilian development of NAS Agana (including ground traffic access through property presently held by the Navy), have been drawn up, but are impeded by continued NAS operations. The implementation of these plans would greatly enhance economic growth while maintaining a state-of-the-art aviation facility available (free of maintenance and operations costs) to the Department of Defense (DOD) in times of national emergency. Continuation of NAS Agana' s operations, at its current site, imposes immediate economic costs for the civilian community and is an impediment to future growth.[999]

In further making the case for why NAS should be consolidated with AAFB, the authors defend Guam by pointing out that inter-branch rivalries within the military (between the US Air Force and the US Navy) should not hinder Guam's growth. The 1993 BRAC process helps to further show that local desires and actions helped to spur the return of land, essentially overcoming the objections of the Navy when it came to NAS. This should not be an overlooked component of the overall history of land return. Overall, with this process intact, the 1993 and 1995 BRAC rounds affected Guam the most. The 1993 BRAC process resulted in the closure of Naval Air Station in March 1995 and the 1995 BRAC process resulted in the closure of the Ship Repair Facility in September 1997. It is important to note that although the Guam Naval Ship Repair Facility was closed, it is still owned by the Navy today. According to Guam Shipyard President and CEO Mathews Pothen, "Guam's Ship Repair facility is unique because it is the only closed Navy shipyard or repair facility in the nation not administered by a government." Pothen added, "The Navy was supposed to transfer the facility to GovGuam within 10 years of closing it, after cleaning up any environmental issues. In 1999, they decided, strategically … not to transfer the facility. They basically reneged."[1000]

999 "Na'na'lo i Lugat Tiyan: A Call for the Consolidation of Naval Air Station Agana with Andersen Air Force Base," April 1993, 1.

1000 Steve Limtiaco, "Military work is driving the ship repair industry," *Pacific Daily News*, July 3, 2021, accessed at https://www.guampdn.com/news/military-work-is-driving-the-ship-repair-industry/article_0854ca52-dbcc-11eb-8561-e7e1ac7715fd.html.

Recent Land Return

In October 2005, the United States and Japan finalized plans to relocate Marines stationed in Okinawa to Guam. The jointly funded plan sought to relocate up to 30,190 people to Guam and to support the construction of military training and personnel support facilities, to include: live munition firing ranges; non-fire maneuver ranges; expanded airfield operations; headquarters and administrative support; bachelor housing; family housing; supply; maintenance; open storage; and community support facilities.[1001] Following the completion of the Draft Environmental Impact Statement (Draft EIS) and the Record of Decision (ROD) by the Department of the Navy (DoN) in 2010, the Guam Legislature, in Resolution 275-30, expressed community concerns and called for the following in relation to the proposed buildup,

> the buildup shall be limited to the existing footprint of federal land holdings. *No* forced land acquisitions will be permitted; and should there be an unavoidable need to acquire more land, such acquisitions *shall only* be achieved through mutually beneficial negotiations with the landowner; eminent domain/condemnation *shall not* be used to effect such acquisition. As previously stated, this "no condemnation" position was originally presented to the people of Guam by JGPO. To remain with their footprint, the DoD should:
>
> 1. pursue joint usage of existing military facilities for operations and training
> 2. maximize the use of vertical regimes for military facilities and housing in *Finegayan* and elsewhere and
> 3. place the Marine aviation component at Andersen Air Force Base, which would decrease the impact of the Marine relocation to *Finegayan*;[1002]

Stemming from these widespread community concerns and legislative discontent, along with an unfavorable rating of the Draft EIS by the US Environmental Protection Agency and a lawsuit by local organizations, the DoD worked with the government of Guam to develop a set of priorities for Guam, known as the Four Pillars. Most notable of these priorities to the discussion of land takings, is a commitment by DoD to reduce the military's footprint in Guam, even after the completion of the buildup, as explained below in a 2011 letter from the Under Secretary of the Navy to the governor of Guam:

> "…we will pursue a "Net Negative" strategy for DoD-owned land on Guam. The Department is committed to having a smaller DoD footprint on Guam after the military build-up than we currently hold. We will better utilize lands we currently have and return underutilized land to

1001 Jeffrey W. Hornung, The US Military Laydown on Guam: Progress Amid Challenges (Washington D.C.: Sasakawa Peace Foundation USA, 2017), 6-11, accessed at https://spfusa.org/wp-content/uploads/2017/04/The-US-Military-Laydown-On-Guam.pdf.

1002 30th Guam Legislature, "Resolution No. 275-30," February 12, 2010, accessed at http://www.guamlegislature.com/COR_Res_30th/Adopted/Res.%20No.%20R275-30%20%28LS%29.pdf.

the Government on Guam."[1003]

In August 2019, Governor Lou Leon Guerrero sent a formal letter, requesting the return of additional lands in order to benefit the people of Guam through "return to the original landowners" and "cultivation and agriculture, cultural and environmental preservation, economic development, affordable housing, and education."[1004] In this letter, the governor requested that a total of 2,869 acres of land and 17,031 acres of submerged land be returned to GovGuam, based on findings from the Guam Economic Development Authority's Potentially Releasable Federal Lands Report.[1005] In a July 2020 response to the governor's request, the Department of the Navy indicated that thirteen of the thirty-four requested parcels were either already transferred or in progress of transfer, and an additional nine parcels were identified for return to GovGuam. The Navy indicated that, when transferred, the parcels in question would bring the total acreage of returned lands to 807 acres since the DoD's commencement of the net-negative policy, as well as 6,225 acres in returned submerged lands. The Navy declined to return nineteen parcels, mainly for security or conservation reasons. For example, the return of two parcels (one parcel west of Route 3A and the former Nimitz Golf Course) were denied, citing necessary retention due to "safety concerns and continued mission sustainment and readiness requirements" and "critical support for aviation training and telecommunication requirements."[1006] In August 2020, Lou Leon Guerrero met with US Secretary of Defense Mark Esper, and among other topics, the governor reiterated her request for the return of unused land for the purpose of constructing a modern medical complex, including a new hospital and public health laboratory in Guam.[1007] The land identified as the desired site of a new healthcare complex illustrates other land return issues. It demonstrates that the process of land return in itself can also be subject to tensions between the Government of Guam and those in Guam who are original landowners.

Overall, with Guam's current use by the US military, it is clear that further return of land will be predicated on US national security reasons. Furthermore, the invocation of reserving land for contingency purposes will likely remain if not directly used. This is the reality of a strategically located unincorporated territory, with little political power internationally and within the government of its colonizing power. However, as stated by Team Guam,

> We must define reasonable contingency requirements and ensure that contingency needs are not simply a catch-all used to justify the possession of all unutilized federally held property. We must look at nonmilitary federal uses of property in Guam and determine whether such uses are truly

1003 Joint Region Marianas, "Public Notification on 'Net Negative' Inventory of Land Parcels on Guam." 2019, 5, accessed at https://www.ready.navy.mil/content/dam/cnic/jrm/pdfs/Marine_Base/PUBLIC%20NOTIFICATION_NET%20NEGATIVE%202019.pdf.

1004 Daily Post Staff, "Governor asks Navy to return excess lands," *The Guam Daily Post*, August 15, 2019, accessed at https://www.postguam.com/news/local/governor-asks-navy-to-return-excess-lands/article_0bb8492c-bcfb-11e9-b172-df615a401ef3.html.

1005 Guam Economic Development Authority, "Potentially Releasable Federal Lands," June 2019, 6, 31, accessed https://assets.documentcloud.org/documents/6266352/2019-Potentially-Releasable-Federal-Lands.pdf.

1006 Kenneth J. Braithwaite to Governor Lou Leon Guerrero, letter, July 2, 2020, accessed at https://www.cnic.navy.mil/content/dam/cnic/jrm/pdfs/net-negative/SECNAV%20Letter%20to%20Governor%20of%20Guam%20on%20Excess%20Lands_2JUL2020.pdf.

1007 Radio New Zealand, "Guam Presses US for health investment amid covid crisis," *Radio New Zealand,* August 31, 2020, accessed at https://www.rnz.co.nz/international/pacific-news/424843/guam-presses-us-for-health-investment-amid-covid-crisis.

consistent with the needs and goals of US policy as it affects the territory and people of Guam.[1008]

Furthermore, summing up much of the government of Guam's attitude toward the problems of land return, Lieutenant Governor Joshua F. Tenorio stated in front of the United Nations Special Committee on Decolonization in 2019, (to quote at length):

> Indeed, lands that have been slated for return since 1977, property associated with its utility system when closed in the 1980s, have still not been returned to Guam. And true to the nature of the colonial relationship, lands which the administering Power at various times has declared excess to its needs have been clawed back and even transferred internally between military and non-military (federal) agencies.
>
> It is instructive to note how some of the land identified as excess has in fact not been returned to Guam. Additionally, it is important to deconflict the administering Power's claims of "net negative" land use in Guam as a result of the planned movement of military bases from Japan to Guam. In this later case, the administering Power correctly claims it will not initiate any new takings and that some land identified as excess thirty and forty years ago will be released. Ironically, in this process, the administering Power is also clawing back lands which it had earlier said would be released to Guam.
>
> This process of holding forth and then pulling back from the return of Guam lands is clearly evident where lands were transferred between agencies of the administering Power rather than being returned to Guam. Specifically, over 1,217 acres at Puntan Litekyan was slated to be returned to Guam but was instead claimed by another US entity to create a National Wildlife Refuge. Instead of land being returned to the original landowner families or even the Government of Guam, the administering Power transferred the property internally to another agency on the primacy (under the administering Power's laws) of environmental preservation.[1009]

Finally, in relating this history to present military build-up projects, he stated, "It is also as testament of the active way in which these authorities obstruct constructive local decision-making while selectively 'protecting' and destroying natural and cultural resources to ends that best suit the administering power. It is as though we are not able to make decisions about our own resources, but the administering power is free to destroy the same if it advances their interests."[1010]

1008 Team Guam, "The Next Liberation," 5.

1009 Joshua F. Tenorio, "Testimony to the United Nations Special Committee on Decolonization," 2019.

1010 Tenorio, "Testimony to the United Nations."

Pertinent Guam Laws

Guam's laws regarding land ownership are some of the most non-restrictive in the Pacific Islands region, with land alienation directly tied to past and present colonial laws. In other Pacific Islands, land ownership restrictions are often tied to ancestry, such as in the Commonwealth of the Northern Mariana Islands and Palau. According to 21 GCA CH. 1 § 1203, "Any person, except an alien, may take, hold, and dispose of real property within Guam, and any person, whether an alien or not, may take, hold, and dispose of personal property within Guam."[1011] § 1267 also states, "The sale, gift, or devise to aliens of lands in Guam is prohibited, except as provided in § 1204 of this Title."[1012] Furthermore, § 1204 states,

> (a) No alien or person who is not a citizen of the United States, or who has not declared his intention to become a citizen of the United States in the manner provided by law shall acquire title to or own any land in Guam except as hereinafter provided. The prohibition shall not apply to cases in which the right to hold or dispose of lands in Guam is secured by existing treaties to citizens or subjects of foreign countries, which rights so far as they exist by force of any such treaty, shall continue to exist so long as such treaties are in force, and no longer. The prohibition shall not apply to ownership or lease of single family, residential, apartment, or condominium type housing (one unit per alien family) and the land on which such housing is located plus any interest in common elements including land associated with such housing, as delineated in '45106 of this Title. As used in this sub-paragraph "family" shall mean a husband, a wife and dependent children, if any, or a widow or widower and dependent children, if any, or any unmarried alien occupying his or her own dwelling.[1013]

Thus, as it currently stands in Guam law, there are few restrictions regarding who can own land in the island.

CHamoru Land Trust Commission and Guam Ancestral Lands Commission

Both of these commissions are important in Guam today. They were intended to help remedy historical injustices of land dispossession and are crucial parts of the island's discussions on political status, as each status will have a profound ability to remedy or further dispossess the indigenous people of Guam in relation to their homeland.

The CHamoru Land Trust Act was introduced by Senator Paul Bordallo and passed in the Guam

1011 Radio New Zealand, "Guam Presses US for health investment amid covid crisis," *Radio New Zealand*, August 31, 2020, accessed https://www.rnz.co.nz/international/pacific-news/424843/guam-presses-us-for-health-investment-amid-covid-crisis.

1012 Radio New Zealand, "Guam Presses US for health investment."

1013 Radio New Zealand, "Guam Presses US for health investment."

Legislature in 1975, to administer leases for land that the United States had seized from Guam inhabitants during and after World War II and had later returned to the Guam government.[1014]

> The Chamorro Land Trust Commission (CLTC) was created through Public Law 12-226 to administer Chamorro Homelands. CLTC offers three types of lease programs which are residential, agriculture and commercial. Applicants of the residential and agriculture programs pay a $50 one-time non-refundable processing application fee. Whereas commercial applicants have to submit a letter of interest to the Director which would be presented to the board for their approval or disapproval. Lease rates for residential and agriculture leases are a $1 a year for a term of 99 years. Commercial leases/licenses do not have a set rate; commercial rates are determined based on property appraisals. CLTC's land inventory accounts for 33% of Government of Guam property throughout the island of Guam.

Despite the history of land-takings and the original purpose of the CLTC, its constitutionality was still challenged in the US legal system. For more on this, please refer to the "Indigenous Rights" subsection of this study under the larger "Social Impacts" section.

The Guam Ancestral Lands Commission (GALC) was created by Guam Public Law 25-45 in 1999. The GALC is tasked with "the responsibility to convey title of federal excess lands to original land owners once return to the Government of Guam."[1015] According to GALC, its mission is to "Administer the Guam Ancestral Lands Act in order that ancestral landowners, their heirs and descendants may expeditiously exercise all the fundamental civil rights in the property they own; establish a land bank to provide just compensation for dispossessed ancestral landowners; and when appropriate, assume the role of claims facilitator to assist ancestral landowners in pursuit of just remedies."[1016] Both of these commissions are important in Guam today as they help to remedy historical injustices of land dispossession. They are important for political status discussions because each status will have to deal with this history of dispossession in its own way. It must be emphasized that the creation of both the CHamoru Land Trust and the Guam Ancestral Lands Commission are directly related to the history outlined above.

Statehood

Land Distribution

Transitioning to statehood is expected to involve the least amount of negotiation regarding land ownership, as Guam will become permanently within the US legal and political system. However, the

1014 Davis v. Guam, United States Court of Appeals for the Ninth Circuit, No. 17-15719, 12, accessed July 28, 2020. https://cdn.ca9.uscourts.gov/datastore/opinions/2019/07/29/17-15719.pdf.

1015 Guam Ancestral Lands Commission, "A Report to the Citizens of Guam," 2014, accessed at https://www.opaguam.org/sites/default/files/galc_ccr14.pdf.

1016 Guam Ancestral Lands Commission, "A Report to the Citizens of Guam."

transition to statehood from territorial status may still include a discussion of land ownership, particularly between the state government and the federal government. This analysis, although articulated further in a subsequent section, addresses the fact that the US military currently controls military bases in the island.

To begin, an overview of federal land ownership in the entire United States is required. Currently, the federal government owns around 28% of all land in the United States. A majority of the 640 millions of acres held by the federal government is administered by five agencies: the Bureau of Land Management (BLM), Fish and Wildlife Service (FWS), and National Park Service (NPS), which are all found in the Department of the Interior; the Forest Service (FS) in the Department of Agriculture; and the Department of Defense, for military bases and training ranges.[1017]

Except for the land held by DoD, federal land is primarily related to recreation, preservation, and the development of natural resources. Thus, the types of federally held land can be categorized as:

a. Public domain lands ceded to the US by treaty, purchase, or conquest
b. Acquired lands purchased by, given to, exchanged with, or transferred through condemnation proceedings to the federal government
c. Military acquired lands purchased by the federal government under military acquisition laws
d. Outer Continental Shelf submerged lands located farther than three miles off a state's coastline, or three marine leagues into the Gulf of Mexico off of Texas and Western Florida

As articulated in a Congressional Research Service report,

> The BLM manages 244.4 million acres and the FS manages 192.9 million acres under similar multiple-use, sustained-yield mandates that support a variety of activities and programs. The FWS manages 89.2 million acres of the US total, primarily to conserve and protect animals and plants. In FY2018, the NPS managed 79.9 million acres in 417 diverse units to conserve lands and resources and make them available for public use. The 8.8 million acres of DOD lands are managed primarily for military training and testing.[1018]

Federal ownership of land varies greatly within the states. For example, the federal government only owns 0.3% of the land in Connecticut, while owning 80.1% of the land in Nevada. 60.9% of federally owned land is in Alaska, 45.9% is in the Western states, and only 4.1% of all federal land is located in the other states.

1017 Congressional Research Service, "Federal Land Ownership: Overview and Data." February 21, 2020, accessed at https://fas.org/sgp/crs/misc/R42346.pdf.

1018 Congressional Research Service, "Federal Land Ownership."

FEDERAL LANDS AMONG STATES[1019]

1019 This table excludes any land managed by the five agencies in the territories, DOD-managed acreage overseas, submerged lands in the outer continental shelf, and an estimated 662 million acres managed by FWS within the US Minor Outlying Islands, primarily marine areas in the Pacific Ocean.

STATE	TOTAL FEDERAL ACREAGE	FEDERAL ACREAGE %
Alaska	222,666,580	**60.9%**
Arizona	28,077,992	**38.6%**
California	45,493,133	**45.4%**
Connecticut	9,110	**0.3%**
Georgia	1,946,492	**5.2%**
Idaho	32,789,648	**61.9%**
Kansas	253,919	**0.5%**
Massachusetts	62,680	**1.2%**
Nevada	56,262,610	**80.1%**
Utah	33,267,621	**63.1%**

In the case of Guam, it is expected that in the transition to becoming a state, federal ownership of land in the island will remain the same, at approximately thirty percent. There may be further negotiations for return of excess land, but it is highly unlikely that land needed for US military purposes will be returned in the case of statehood. Thus, it is expected that federal acreage in the island remains roughly the same. However, in the case of increased geopolitical tensions, it is possible that more land will be asked from the state of Guam for national security and military purposes.

Land Ownership

If Guam becomes a state of the union, it is highly likely that current laws regarding who in the state can own real property (commonly referred to as "fee simple" ownership) will not change. Also, as a state, the federal government will still be able to invoke eminent domain. However, it is important to note the state of Guam can also invoke eminent domain, if deemed necessary, as state governments can. Also, the state of Guam, as articulated in the indigenous rights portion of the study, may or may not continue with the CHamoru Land Trust and Guam Ancestral Lands Commission. Since a settlement was reached for

the lawsuit, and with the CHamoru Land Trust Commission implementing the provisions of the settlement, it is possible that this program could continue to exist in the state of Guam.

Lastly, if the state of Guam is accompanied with an increase in military personnel stationed in the island or attracts US citizens from the states to settle in Guam, it could have a negative effect on the local population's ability to become landowners. As a state, Guam's land ownership laws would be open to US citizens. This could lead to the local population having to compete with military personnel (with military housing allowances) and others who move to the state of Guam for housing and land. As a state, Guam's elected senators and representatives in the US Congress would have to find ways to address or mitigate this through legislation.

Land Use

It is highly expected that federally held land used for military purposes will continue. Guam would have to ensure that any land laws made at the state level are in accordance with federal law. The one factor that the people of Guam must examine is whether the right of first refusal established, by P.L. 106-504, will remain. If the government of Guam loses the right to first refusal upon becoming a state, this means excess real property will first be examined for another federal agency's use, then to private interests, before the possibility of acquisition by the state government. Another possibility under statehood could be the expansion of land used for national security and military purposes in the case of increased geopolitical tensions. In this case, however, the effect of having two senators in the US Senate may also serve as an impediment to military land use expansion if it is too disruptive to civilian use.

Independence

Overall, independence, by nature of the political status, provides for the widest latitude of control over the land and decisions on how to treat the land. Control of one's territory is a characteristic of a country, and under independence, Guam would have this control. This is different from the history outlined above, in which control and use of Guam's land was always usurped by a colonial power. Under independence, by nature of the political status itself, the United States will no longer have sovereignty and Guam will no longer be "US soil." This does not mean Guam and the US will not have a relationship, but rather that the source of this relationship changes.

As will be discussed further, the core difference, even if Guam chooses to have US bases, is that it will no longer be a federal-territorial relationship. Rather, under independence, US claims to land in Guam would be null and void, as it would no longer be the sovereign over Guam. Unless some agreement is made in the granting of independence, the US will return federally held land to the government of an independent Guam for its use, as it would likely no longer have any claim to land in the island. Any further US land use would be as a result of diplomatic relationships, negotiations, and agreements between two sovereign countries rather than the current operational unilateralism by the US military in Guam today.

Essentially, use of Guam's land by the US under independence would be due to explicit permission by the independent country of Guam. Power politics will definitely come into play in these negotiations, with the US being able to hold many "carrots and sticks" to influence any decision regarding basing. However, if correct decisions are made, the government of an independent Guam would have opportunity to use the land beneficially.

Land Ownership

Guam, as an independent country, would possess sovereignty to craft its own land tenure laws. The government of an independent Guam would have a range of options regarding land alienation in both residential and commercial development that it would have to decide and the tying of land ownership to citizens of the country.

Land Distribution and Use

Independence offers the most flexibility when it comes to land distribution and use. As a sovereign country, Guam would craft its own laws and policies related to land. However, this maximum degree of flexibility requires significant attention and effort. Perhaps the most significant decision is related to existing US military bases in the island. One option would be to negotiate with the US to maintain the military bases in exchange for protection or other sources of aid. This is possible if independence is achieved within a geopolitical environment in which it is in the US national interest to keep bases open in Guam. If this is the case, it should be noted again that any "sovereign" claim the US would have in Guam would be supplanted by Guam's sovereignty. Negotiations regarding land use in an independent Guam would be between a sovereign Guam and the United States, and not the United States and a territory. This is an important distinction between independence and the current unincorporated territorial status.

If the US and Guam enter into arrangements to maintain bases, but reduce the military footprint, this land could go to the government of Guam for public use or private interests. In addition, if the independent country of Guam ended the military footprint in the island, the entirety of that land could be used for other purposes. The economics of closing bases and converting the land to other uses would require planning. Guam would want to mitigate the temporary loss of jobs that will need to be recovered via the development of new industries in the island. Thus, it is helpful to look at examples of former military sites that have been repurposed, even if these sites are located in the United States. The US Department of Housing and Urban Development created the "Guidebook on Military Base Reuse and Homeless Assistance" to assist communities in planning how to reuse the military installations closed in their jurisdictions due to BRAC. It reports that many communities have successfully converted these former installations to civilian uses such as parks, business centers, and market-rate & affordable housing."[1020]

1020 US Department of Housing and Urban Development, "Guidebook on Military Base Reuse and Homeless Assistance," 2006, 1, accessed at https://files.hudexchange.info/resources/documents/MilitaryBaseReuse.pdf.

Furthermore, "former military bases offer communities a distinct set of redevelopment opportunities due to their existing infrastructure, such as airstrips, roads, water, electric service, and so on, stemming from their former military functions."[1021] Repurposing the land will present challenges, but redevelopment options with significant economic effects are possible. Another document, produced by the Environmental Protection Agency, titled, "Turning Bases Into Great Places: New Life for Closed Military Facilities" describes this further. It states,

> A completely or partially closed base may offer a community a large parcel of land for redevelopment–and the enticing potential for a new and enduring neighborhood that brings jobs, residents, visitors, and tax revenue. By accommodating growth on previously used land, the property allows the community to add new businesses and residents without having to build on undeveloped land elsewhere in the area.[1022]

The authors of the report go on to list a few important traits that led to successful base redevelopment. These include early planning for redevelopment; listening to the community's desires and ideas; ensuring public involvement in redevelopment; balancing the needs of jobs and homes; and using the location and infrastructure of the site to the best advantage. Similarly, in another report titled, "Organizing Your Planning Effort: The First Steps in Installation Redevelopment," the authors discuss the development of a reuse plan. It states the following steps should be taken:

- Inventory the site and physical resources (facilities/land use, utilities, surrounding area, transportation, environmental constraints)
- Assess market forces and economic conditions (regional and local demographic and economic data, demand for various land uses and a competitiveness analysis)
- Develop a community vision for the site that focuses on community needs
- Develop reuse alternatives (land use, users, circulation, open space, education)
- Match redevelopment alternatives with property disposal methods
- Select and refine an alternative
- Develop a plan of action[1023]

It is also important to note that developing a land use plan for the repurposing of land the US military currently holds is contingent on the exact parcels of land and facilities to be given back to the country of Guam, and in what condition. For example, the return of a naval facility versus the return of the airstrip

1021 Amanda Johnson Ashley and Michael Touchton, "Reconceiving Military Base Redevelopment: Land Use on Mothballed US Bases," *Urban Affairs Review* (May 2015): 3, accessed at http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.1022.5112&rep=rep1&type=pdf.

1022 United States Environmental Protection Agency, "Turning Bases Into Great Places: New Life for Closed Military Facilities," 2006, 2, accessed at https://www.epa.gov/sites/production/files/2014-07/documents/bases_into_places.pdf.

1023 Yvonne Dawson, "Organizing Your Planning Effort: The First Steps in Installation Redevelopment," *NAID, An Association of Defense* Communities (May 2005): 12, accessed at https://knowledge-online-defense-communities.knowledgeowl.com/help/organizing-your-planning-effort-the-first-steps-in-installation-redevelopment.

in Andersen Air Force Base will have varying potential uses. Another factor is how much cooperation occurs between the US federal government and the government of the country of Guam. Thus, any final determinations must be made when the sites to be returned are ultimately identified.

Lastly, it should be mentioned that the northern half of the island, where Andersen Air Force Base sits, is economically valuable land that the government of Guam does not get to capitalize on currently as an unincorporated territory.

> The "best" land in Guam for development purposes is in the northern half of the island, but a substantial portion of this land is held by the US federal government, and therefore unavailable for civilian economic use. Further, much of the land owned by the US Air Force in the northern half of the island is left idle. The sprawling air base also covers much of the northern aquifer, and groundwater pollution from military activities there have forced the closing of several wells in recent years. In this regard, a substantial portion of Guam's most economically valuable land goes unused because of land tenure restrictions. It was estimated in 1992 that the holdings of idle land by the federal government in Guam cost the local government as much as $69 million annually in foregone government revenues alone.[1024]

Overall, as an independent country, Guam would have the sovereignty to control and the ability to negotiate which land is used and how. However, negotiations with the United States must still be considered. Furthermore, whether bases remain or not, Guam should have a plan for the land's use.

Free Association

Land Ownership

Like the previous section on independence, as a freely associated state, Guam would have the ability to craft its own laws regarding real property/land ownership. If the island has its own citizenship and is no longer sovereign American soil, the country may craft laws restricting land ownership to citizens of the freely associated state of Guam. This should not be misconstrued to read that, "US citizenship will bar one from owning land," as there is the possibility of dual citizenship or the chance that the freely associated state of Guam places few restrictions on land ownership.

Through an examination of the other three freely associated states, one can see that land ownership is tied to citizenship in each. For example, Article XIII, Section 8 of the Palauan constitution reads, "Only citizens of Palau and corporations wholly owned by citizens of Palau and may acquire title to land or waters in Palau."[1025] The constitution of the Federated States of Micronesia has a similar provision: "A noncitizen, or a corporation not wholly owned by citizens, may not acquire title to land or waters

1024 Bradley, "Economic Impact of Guam's Political Status Options," 5-6.

1025 Article XIII, Section VIII of the Constitution of the Republic of Palau, accessed at http://www.paclii.org/pw/constitution.pdf.

in Micronesia."[1026] Lastly, Article X, Section 1 of the Constitution of the Marshall Islands reads, "Title to land or any land right in the Republic of the Marshall Islands may be held only by a citizen of the Republic, a corporation wholly owned by citizens of the Republic, the Government of the Republic or a local government, or a public corporation or other statutory authority constituted under the law of the Republic."[1027] Thus, Guam could enact similar land alienation laws with respect to ownership for citizens or corporations of the country.

Land Use and Distribution

In the case of free association, it is highly expected that current military bases would remain in the island. The exact ramifications of the land to be used will most likely be spelled out during the negotiation period between Guam and the United States. Land use and distribution in a freely associated Guam further requires an analysis of the Compacts of Free Association between the United States and the current freely associated states, which Guam's potential compact or any other legal instrument may resemble. It should be noted that with free association, lands that the US government uses, based on a negotiated agreement, would be used as an extension of the freely associated state of Guam's sovereignty. The manner in which Guam provides for US land use would be a decision by the freely associated state of Guam. The manner that this is executed, whether it be sale, lease, etc., would be contingent on a Guam-US agreement.

In regard to land use as it relates to the defense aspects of the agreement, the Federated States of Micronesia's Compact reads:

> If, in the exercise of its authority and responsibility under this Title, the Government of the United States requires the use of areas within the Federated States of Micronesia Islands in addition to those for which specific arrangements are concluded pursuant to section 321(a), it may request the Government of the Federated States of Micronesia to satisfy those requirements through leases or other arrangements. The Government of the Federated States of Micronesia shall sympathetically consider any such request and shall establish suitable procedures to discuss it with and provide a prompt response to the Government of the United States.[1028]

The government of the Federated States of Micronesia is not required to grant the request, although it must at the very least "sympathetically consider" it, among other procedural steps. Also, of note, is that the use of land in the FAS, as negotiated in the COFA, is tied to economic assistance packages, and Guam could negotiate for similar economic benefits with military land use.

Immediately following this clause is a provision recognizing the importance of land in the FSM and

1026 Article XIII, Section IV of the Constitution of the Federated States of Micronesia, accessed at http://www.fsmlaw.org/fsm/constitution/article13.htm.

1027 Article X, Section 1 of the Constitution of the Republic of the Marshall Islands, accessed at https://www.constituteproject.org/constitution/Marshall_Islands_1995.pdf?lang=en.

1028 Federated States of Micronesia, Compact of Free Association, 29.

mandating the US to request the minimum land area required for fulfillment of this defense purpose. The provision reads,

> The Government of the United States recognizes and respects the scarcity and special importance of land in the Federated States of Micronesia. In making any requests pursuant to section 321(b), the Government of the United States shall follow the policy of requesting the minimum area necessary to accomplish the required security and defense purpose, of requesting only the minimum interest in real property necessary to support such purpose, and of requesting first to satisfy its requirement through public real property, where available, rather than through private real property.[1029]

In negotiating an agreement with the United States, Guam could ensure the presence of similar provisions to provide for US-Guam defense interests while ensuring control and limited use of the island's vital land resources. Guam could pursue provisions that are more restrictive than those of the FSM and the RMI's compacts, to limit the United States' use of additional land resources. However, the existing presence of US military bases in the island may present a negotiating obstacle to the return of Guam property by the US government.

1029 Federated States of Micronesia, Compact of Free Association, 30.

LAND	
STATUS	**EFFECTS**
Statehood	• No foreseeable change in land ownership laws or land distribution. • Potential for improved land use, protection, and management policies. • Likely loss of right of first refusal with returned federal lands. • Potential for continued existence of CHamoru Land Trust Commission due to recent settlement of lawsuit.

Independence	• Greatest potential for land return, likely with short-term negative economic effects, but with subsequent economic opportunities. • Great potential for land ownership reform and improved use, protection, and management policies. • Potential for defense agreement with the US. In the event of defense agreement. Land controlled by the US would be negotiated. With land return/base closure, environmental cleanup may be necessary for new development.
Free Association	• Great potential for land ownership reform and improved use, protection, and management policies. • Highly likely defense agreement with US, but with limited-to-no land return expected. With land return/base closure, environmental cleanup would be necessary for new development. • Potential land use conflict with US defense interests. Likely implementation of zoned land use systems with exclusive and joint-use areas.

Natural Resources and Ocean Resources

Natural resources are defined by the Organisation for Economic Co-operation and Development (OPED) as, "natural assets (raw materials) occurring in nature that can be used for economic production or consumption."[1030] Natural resources can also be considered to be "stocks of material that exist in the natural environment that are both scarce and economically [and culturally] useful in production or consumption, either in their raw state or after a minimal amount of processing."[1031] When considered together, these definitions reflect how natural resources are conceptualized to comprise part of a place's natural capital. They are the resources that hold the ability to contribute to the sustenance of a population and as well as contribute toward economic growth. This section operates from the understanding that in the region of Oceania, natural resources must also account for the ocean. The definitions of natural resources provided above can encompass the ocean, since it is generally considered to be a "natural resource" within environmental research. However, given the significance of the ocean—as a host to huge reservoirs of biodiversity, a crucial source for global food and human health, a connector between land environments and marine environments—this section considers the ocean as a distinct resource that warrants additional examination alongside other "natural resources."[1032] The United Nations also uses a particular classification of "oceans, seas and marine resources" that focuses on integrated and essential elements of the Earth's ecosystems.[1033] Therefore, this broader definition from the UN includes the economic and intrinsic values of resources found on both land and in the ocean.

Despite the limitations of extant data on the economics, in this section, a focus on natural and ocean resources provides a more expansive understanding of how political status could affect the ownership,

1030 Organisation for Economic Co-Operation and Development, "Natural Resources," Glossary of Statistical Terms, 2001, accessed at https://stats.oecd.org/glossary/detail.asp?ID=1740#:~:text=Natural%20resources%20are%20natural%20assets,Context%3A&text=They%20are%20subdivided%20into%20four,water%20resources%20and%20biological%20resources.

1031 World Trade Organization, "World Trade Report," 2010, 46, accessed at https://www.wto.org/english/res_e/booksp_e/anrep_e/world_trade_report10_e.pdf.

1032 United Nations Sustainable Development Goals, "Oceans & Seas," accessed at https://sustainabledevelopment.un.org/topics/oceanandseas.

1033 United Nations Sustainable Development Goals, "Oceans & Seas."

usability, environmental impact, governance, and conservation of resources for Guam. The issues of land holding, lack of sustainable land use management on US federally held properties, and US federal immigration policies are three key issues that also impact resource management for the island.

Land and Ocean Boundaries

Political boundaries bring different areas of concern for islands versus landlocked countries. One of the key considerations is maritime boundaries, which can raise questions about how to distinguish jurisdiction and responsibility for maintaining natural resources between islands with different political statuses. According to the US Department of State, maritime boundaries are considered vital for maintaining peaceful borders and clearly delimiting "rights and interests with respect to fishing and marine living resources, mineral and hydrocarbon resources, freedom of navigation, maritime domain awareness and security, and other uses of the sea."[1034]

The US has established maritime boundary treaties and other international agreements in the Micronesia sub-region to understand and delimit boundary differences in the subregion. For example, in 2014, the US signed a treaty with the Federated States of Micronesia with the purpose of establishing maritime boundaries between the two countries and identified "the relevant United States territory as Guam" to further delimit a maritime boundary.[1035] The US–FSM treaty titled "Treaty Between the Government of the Federated States of Micronesia and the Government of the United States of America on the Delimitation of a Maritime Boundary," was signed at the 45th meeting of the Pacific Islands Forum. This "Micronesia Maritime Boundary Treaty establishes a single maritime boundary in the Pacific Ocean with respect to the exclusive economic zone (EEZ) and continental shelf between Guam and several Federated States of Micronesia (FSM) islands."[1036] Yet, Guam was not part of this treaty signing at the forum, nor was Guam fully consulted on the matter.

This international treaty agreement serves the national interests of each country and strengthens their cooperation in the Pacific. The treaty also set limits "in a manner that closely follows limit lines long asserted by the United States for our exclusive economic zone" and involved the US achieving "a small gain in maritime area" with ratification.[1037] Of concern was that this treaty was executed without the meaningful consent of the people of Guam, which meant keeping the island out of the engagement over one of its own maritime boundary delimitations.[1038]

In his "Analysis of US-FSM Maritime Boundary Agreement," Julian Aguon argued that the US had

1034 US Department of State, "US Maritime Boundaries: Agreements and Treaties," August 5, 2014, accessed at https://www.state.gov/u-s-maritime-boundaries-agreements-and-treaties/.

1035 United States Congress, "Treaty between the Government of the United States of America and the Government of the Federated States of Micronesia on the Delimitation of a Maritime Boundary, signed at Koror on August 1, 2014," Senate Executive Report 115-2, 2, accessed at https://www.congress.gov/115/crpt/erpt2/CRPT-115erpt2.pdf.

1036 United States Congress, "Treaty on the Delimitation of a Maritime Boundary," 2.

1037 United States Congress, "Treaty on the Delimitation of a Maritime Boundary," 4.

1038 Louella Losinio, "Guam not consulted by US over FSM Maritime Boundary Treaty," October 10, 2014, accessed at http://www.pireport.org/articles/2014/10/10/guam-not-consulted-us-over-fsm-maritime-boundary-treaty.

"a duty to consult the people of Guam before formally executing a maritime boundary delimitation that potentially divests them of inestimable marine resources… This duty results from the status of Guam as a US-administered non-self-governing territory, whose people are duly seized of both the right of self-determination and the right to hold the United States accountable to its duty to honor the primacy of their interest including the interest of retaining their rightful natural resources."[1039] Aguon's analysis notes how international law has dealt with the number of overlapping boundaries and how political status plays a role in governance of natural and ocean resources. Aguon focused on the importance that the United Nations General Assembly (GA) has placed on the retention of natural resources and the duty of administering powers to ensure their non-self-governing territories, including Guam, are protected in the integrity of their natural resources. These elements of international law, self-determination, and governance of resources are addressed in the subsequent sections on the international regulations and on the Mariana Trench.

Currently, the US restricts Guam from fully controlling its natural resources, in contravention of international norms with respect to the peoples of a non-self-governing territory.[1040] The US has even determined Guam's political and physical boundaries in relation with other Pacific Island Countries (PICs) in the region. Although it is a violation of international law for a governing power to determine these boundary and border issues, under the current status, the US asserts its sovereignty to make these decisions for Guam. The US government forges political agreements, enters into treaties, and makes decisions about the island's maritime boundaries and limits. The maritime boundary treaty between the US and the Federated States of Micronesia (FSM) established a boundary that may facilitate understanding between the countries of the US and the FSM, though it raises questions about Guam's ability to benefit from, protect, use, and maintain the natural resources within political boundaries of both land and ocean[1041] With issues as important as understanding the boundaries of Guam, any future political relationship moving forward should anticipate Guam being an active participant in making decisions available under the political status options.

International Law/Preservation

To address the issues of ownership and control when it comes to natural resources for Guam, it is important to consider the role of international law. International law privileges a country's sovereign rights over how it uses or exploits its own natural resources.[1042] International law can consider natural

1039 Attorney Julian Aguon to Honorable Judith T. Won Pat, Memorandum on Analysis of US-FSM Maritime Boundary Agreement, 27 September 2014, Law Office of Julian Aguon, Accessed at http://www.guamlegislature.com/Mess_Comms_32nd/Doc%2032GL-14-2107.pdf.

1040 See discussion in this study at "ASSESSMENT OF SELF-GOVERNANCE SUFFICIENCY IN CONFORMITY WITH INTERNATIONALLY-RECOGNIZED STANDARDS" by Carlyle Corbin.

1041 "Senate Consideration of Treaty Document 114-13(A)," accessed at https://www.congress.gov/treaty-document/114th-congress/13?s=1&r=7. This arrangement looks particularly suspect since the US has exercised rights related to Guam outside ot the international norm, with FAS entities over whom it has foreign affairs primacy.

1042 United Nations General Assembly, "Resolution 1314 (XIII)," 1963, accessed at https://brill.com/view/journals/ajls/6/1/article-p69_4.xml?language=en.

resources through some key frames about policies and problems. As Richard Bilder, Professor of Law at the University of Wisconsin-Madison, explains, international law addresses:

1. the ways in which differing legal concepts of national property rights affect the structure of international resource arrangements
2. the ways in which disputes about international law reveal underlying differences in views of equity or fairness in international natural resource arrangements
3. the ways in which international law can help countries reach cooperative arrangements for dealing with natural resource problems.[1043]

It is important to consider the flexibility and possibility that international law offers to address natural resource governance, including the issues of conservation or preservation and land use and management. Given how the US exerts its sovereign power over Guam, albeit inconsistent with international law, the island is currently limited in its capacity for self-governance of these issues under the current status.

Therefore, when considering any of the different political status options, international law can help Guam in the consideration of innovative uses of its natural resources and how it might address its ocean resources. Overall, ocean resources are vast. Therefore, Guam will need to seriously consider the regulatory issues, management and conservation opportunities.

Ocean Resources

Jurisdiction over the Exclusive Economic Zone (EEZ) generated by Guam

The existence of, and access to, Guam's natural and ocean resources is currently influenced by US jurisdiction over the exclusive economic zone generated by Guam. Exclusive economic zones are generally defined as follows:

> Under the United Nations Convention on the Law of the sea, an exclusive economic zone (EEZ) is a sea zone over which a state has special rights over the exploration and use of marine resources. It stretches from the seaward edge of the state's territorial sea out to 200 nautical miles from its coast.[1044]

This definition connects international law with the consideration of maritime boundaries and economic realms. From this general definition and its entanglement with international law, consider that the EEZ

1043 Richard Bilder, "International Law and Natural Resources," Natural Resources Journal 20, no. 451 (1980):available at https://digitalrepository.unm.edu/nrj/vol20/iss3/3

1044 United Nations Office for the Coordination of Humanitarian Affairs, "Asia-Pacific: Pacific Island Countries and Territories and Exclusive Economic Zones," June 2015, accessed at https://reliefweb.int/sites/reliefweb.int/files/resources/OCHA_ROAP_Pacific_v7_110215.pdf.

refers to the "zone where the US and other coastal nations exercise jurisdiction over natural resources."[1045]

From the US perspective, the EEZ around the island functions over natural resources and ocean resources. The EEZ rights specifically provides:

- Sovereign rights for the purpose of exploring, exploiting, conserving and managing natural resources, whether living and nonliving, of the seabed and subsoil and the superjacent waters and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds;
- Jurisdiction as provided for in international and domestic laws with regard to the establishment and use of artificial islands, installations, and structures, marine scientific research, and the protection and preservation of the marine environment; and
- Other rights and duties provided for under international and domestic laws.[1046]

These US claims to Guam's EEZ are exclusively tied to US sovereignty, notwithstanding the inconsistency with international law mandating the ownership and control of natural resources by the non-self-governing territories. However, if Guam was an independent country, it would have sovereign rights to the resources in the EEZ and jurisdiction for the activities within the area. One example for Guam's natural and ocean resources relates to the possibility of future exploration and mineral resources within the EEZ. These can have an impact on the economy. This subsection outlines some of Guam's attempts to lay claim and rights to its surrounding waters and, by extension, the ocean resources within those waters.

As an independent country or freely associated state, Guam would be affected by international law pertaining to EEZs, especially as reflected in UNCLOS (even if not becoming a state party to UNCLOS). For example, Guam will not be able to unilaterally determine its own maritime boundaries. If Guam's maritime zones overlap those of an adjacent country, then Guam and that country will be expected to agree on common boundaries between them. Similarly, there are strict rules under international law pertaining to the activities in the EEZ that the relevant country has jurisdiction over and exercises sovereign rights thereof. Even an independent Guam could not establish its own laws regarding the EEZ absent those considerations. For example, Guam's exploitation of fish stocks in its EEZ must, in accordance with UNCLOS and customary international law, take into consideration the interests of other countries in also exploiting those fish stocks, especially if Guam is unable to fully exploit those fish stocks to a sustainable level on its own.

1045 National Oceanic and Atmospheric Administration, "What is the EEZ?" November 13, 2019, accessed at https://oceanservice.noaa.gov/facts/eez.html.

1046 National Oceanic and Atmospheric Administration, "What is the EEZ?"

United Nations Convention of the Law of the Sea (UNCLOS)/ General Assembly Resolutions

The Law of the Sea Convention states the following regarding non-self-governing territories (NSGTs):

> In the case of a territory whose people have not attained full independence or other self-governing status recognized by the United Nations, or a territory under colonial domination, provisions concerning rights and interests under the Convention shall be implemented for the benefit of the people of the territory with a view to promoting their well-being and development.[1047]

This statement from the UNCLOS is supplemented by various General Assembly Resolutions regarding natural resources and non-self governing territories. To this day, the United Nations General Assembly continues to affirm that an administering power does not have the right to exploit the natural resources of NSGTs. Indeed, a claim from a colonial power to have sovereignty over its colony's resources is an anathema to the very concept of decolonization. For example, on Dec. 10, 2020, the General Assembly adopted the resolution "Economic and other activities which affect the interests of the peoples of the Non-Self-Governing Territories." In this resolution, the General Assembly reaffirmed that "the natural resources are the heritage of the peoples of the Non-Self-Governing Territories, including the indigenous populations."[1048] Action items of the resolution include:

- *Reaffirms* the right of the peoples of the non-self-governing territories to self-determination in conformity with the Charter of the United Nations and with General Assembly resolution 1514 (XV), containing the Declaration on the Granting of Independence to Colonial Countries and Peoples, and with other relevant resolutions of the United Nations, as well as their right to the enjoyment of their natural resources and their right to dispose of those resources in their best interest
- *Reaffirms* the responsibility of the administering powers under the charter to promote the political, economic, social and educational advancement of the non-self-governing territories, and also reaffirms the legitimate rights of their peoples over their natural resources
- *Reaffirms its concern* about any activities aimed at the exploitation of the natural resources that are the heritage of the peoples of the non-self-governing territories, including the indigenous populations, in the Caribbean, the Pacific and other regions, and of their human resources, to the detriment of their interests, and in such a way as to deprive them of their right to dispose of those resources
- *Once again urges* the administering powers concerned to take effective measures to safeguard

1047 United Nations General Assembly, "Convention on the Law of the Sea," Final Act of the UNCLOS, Annex I, Resolution III, 1(a), December 10, 1982, accessed at https://www.un.org/depts/los/convention_agreements/texts/final_act_eng.pdf.

1048 United Nations General Assembly, "Economic and other activities which affect the interests of the peoples of the Non-Self-Governing Territories," Resolution, A/Res/75/103, 2 & 4.

> and guarantee the inalienable right of the peoples of the non-self-governing Territories to their natural resources and to establish and maintain control over the future development of those resources, and requests the administering powers to take all steps necessary to protect the property rights of the peoples of those territories in accordance with the relevant resolutions of the United Nations on decolonization;[1049]

Blue Ocean Law, headed by Guam attorney Julian Aguon, emphasized the importance of natural resources and self-determination. In their report, "Enduring Colonization: How France's Ongoing Control of French Polynesian Resources Violates the International Law of Self-Determination," they write,

> A basic constituent of the right of self-determination is the right to permanent sovereignty over natural resources (PSNR). PSNR guarantees all people the right "for their own ends, to freely dispose of the natural wealth and resources" within their territories. Well-established in international law, PSNR operationalizes the economic aspects of self-determination—the right to freely pursue economic, social, and cultural development…Likewise, the administering powers of non-self-governing territories have special duties to protect and promote the PSNR of the peoples within their territory.[1050]

Guam is recognized by the UN as one of the world's non-self-governing territories and therefore this language is applicable to Guam.

Regarding UNCLOS, the US would presumably follow the UNCLOS by ensuring that the "rights and interests" of the convention would be implemented in a way that benefits the "well-being and development" of the people of Guam. However, the US signed, but did not ratify, the treaty and as such is not considered a party to the UNCLOS. Despite the lack of ratification, the US takes the view that "with limited exceptions the convention reflects the rules of customary international law…The US actively seeks the observance of those rules by all states."[1051] Without privileging the power of UNCLOS to hold the US accountable, the treaty situation raises consideration for Guam's approach to a political status option that would account for international law and legal frameworks in the future.

A key element of the UNCLOS is the basis that it provides for conducting rules of natural resource jurisdiction within the sea, which is distinct from issues concerning freedom of navigation. The UNCLOS allows "the US to conserve, regulate, and exploit the resources of our neighboring waters and continental shelf for the benefit of the environment and economy. America's commercial and military position in the world is preserved by the rule of law at sea."[1052] Guam's current political status means that it is unable to

1049 United Nations General Assembly "Economic and other activities," 2-3, 4.

1050 Blue Ocean Law, "Enduring Colonization: How France's Ongoing Control of French Polynesian Resources Violates the International Law of Self-Determination," July 2019, 21.

1051 John Burgess, Lucia Foulkes, Philip Jones, Matt Merighi, Stephen Murray, Jack Whitacre (eds.), "Law of the Sea: A Policy Primer," Fletcher School of Law and Diplomacy, Tufts University, 2017, 2, accessed at https://sites.tufts.edu/lawofthesea/table-of-contents/.

1052 Burgess, et al., "Law of the Sea," 2.

directly sign or ratify the UNCLOS. The island is directly impacted by how the US engages with other countries that are a part of the treaty agreement.

Under the UNCLOS, military activities in the EEZ or high seas are not explicitly regulated. Additionally, although contested by some, the US asserts the right to conduct military activities within the EEZs of other States.[1053] Importantly, the UN does not consider a NSGT to be part of a state's (country) sovereign natural resource jurisdiction or EEZ. Internationally lawful military activities can include the establishment of Air Defense Identification Zones (ADIZ), surveillance and intelligence activities, and military marine data collection.[1054] While these military activities are considered to be lawful, they have also been a source of contention and concern among countries when conducted within another country's EEZ. Indeed, military activities in EEZs are considered to be "of paramount importance to the US and is a source of continuing friction with coastal states that seek to expand their authority in their EEZs."[1055] For example, the US has conducted "sensitive reconnaissance operations (SRO)" within the EEZ of China. These operations have been challenged and intercepted by foreign military aircraft, often involving dangerous incidents that illustrate how countries may attempt to deter US aircraft from engaging in SRO.[1056]

Overall, options for Guam's political status are essential to address sovereign rights over natural resources. Political status options also provide potential for Guam to access international legal provisions that regulate the environment, economy, and military issues at sea.

Mariana Trench

The Mariana Trench can play an important part of Guam's ocean resources under any political status. "The Mariana Trench is located approximately six miles below the ocean surface in the subduction boundary east of Guam."[1057] The trench is a crescent shaped arc in the Earth's crust that measures more than 1,500 miles (2,550 kilometers) long and forty-three miles (sixty-nine kilometers) wide on average.[1058] The distance between the trench's deepest point and the surface of the ocean has been measured at nearly seven miles (eleven kilometers) deep.[1059]

Known as "Challenger Deep," this "deepest part of the Mariana Trench and the greater ocean," is "about 7,000 feet deeper than Mount Everest is tall."[1060] In 2010, during a NOAA survey, the Challenger Deep was pegged at 36,070 feet (10,994 m), as measured with sounds pulses sent through the ocean.[1061]

1053 Burgess, et al., "Law of the Sea," 31.

1054 Burgess, et al., "Law of the Sea," 31.

1055 Burgess, et al., "Law of the Sea," 31.

1056 Burgess, et al., "Law of the Sea," 34.

1057 US Department of the Navy, "Mariana Islands Range Complex Environmental Impact Statement/Overseas Environmental Impact Statement," vol 1, January 2009, 3.1-9, 3.6-11, accessed at https://www.sprep.org/attachments/NMarianas_13.pdf.

1058 "The Mariana Trench," accessed at http://www.deepseachallenge.com/the-expedition/mariana-trench/.

1059 "The Mariana Trench."

1060 NOAA Fisheries, "Mariana Trench Marine National Monument," accessed at https://www.fisheries.noaa.gov/pacific-islands/habitat-conservation/marianas-trench-marine-national-monument.

1061 Becky Oskin, "Mariana Trench: The Deepest Depths," December 6, 2017, accessed at https://www.livescience.com/23387-mariana-trench.html.

These statistics about the known, measured depth highlight the significance of this location as the deepest place on Earth. The Challenger Deep is also surrounded by debate, as the topic of how much of the Mariana Trench lies within the EEZ generated by Guam has been contested over time, perhaps indicative of some of the limits of creating political borders in oceans.

In Guam, the Challenger Deep has long been considered to be situated in the EEZ generated by Guam. Both topographically and textually, a US Geological Survey in 2005 concluded that it falls within Guam's maritime boundary.[1062] Yet, in 2014, when the "Treaty Between the Government of the Federated States of Micronesia and the Government of the United States of America on the Delimitation of a Maritime Boundary" was signed, it redefined the boundary delimitation between Guam and the FSM in a way that called into question whether Challenger Deep fell within the EEZ generated by Guam.[1063] This treaty itself is complicated due to the current US foreign affairs rights over the Freely Associated States (FAS). In this case, it is a situation of the US entering into a treaty with the FSM whereby their bilateral agreement asserts control over the ocean resources of Guam (as a NSGT). Given the political status situations of the parties involved, the US-FSM treaty example also reflects unilateral federal action on the part of the US government, which lacked meaningful consultation with the people of Guam prior to executing a treaty that divests the island of significant natural resources.[1064] Understanding the maritime boundaries that situate Challenger Deep within the Pacific is important, as it may determine who holds the rights to the resources that lie there.

The boundaries are relevant as "Challenger Deep may well contain mineral resources of inestimable value, which a future self-governing Guam may wish to exploit.[1065] The US entered into a bilateral treaty agreement without providing a mechanism for consultation of the people of Guam "prior to executing a treaty that potentially divests them of no insignificant part of their natural resources inventory."[1066] Due to Guam's political status as a NSGT, the US has an obligation, under international law, to consult Guam on matters impacting development on issues that affect the island's natural resources.[1067] As a result of the absence of prior consultation with Guam, the US-FSM treaty could be considered null and void if Guam were to exercise sovereignty under the political status option of independence (and possibly free association). Because the natural extent of the trench extends between the FSM's EEZ as well as the EEZs generated by both the CNMI and Guam, the monument is within the latter two EEZs. Because of the immense size of the trench, as well as overlapping political boundaries with the FSM, it is definitely an

1062 James R. Hein, Brandie R. McIntyre, and David Z. Piper, "Marine Mineral Resources Of Pacific Islands–A Review Of The Exclusive Economic Zones Of Islands Of US Affiliation, Excluding The State Of Hawaii," US. Department of the Interior, US Geological Survey, 2005, accessed at https://pubs.usgs.gov/circ/2005/1286/.

1063 Judith T. Won Pat, "Re: Analysis of the US-FSM Maritime Boundary Agreement," October 8, 2014, Office of the Speaker, 32nd Guam Legislature.

1064 Michael Lujan Bevacqua and Victoria Lola Leon Guerrero, "New Perspectives on Chamorro Self-Determination," *Micronesian Educator* 22 (2015) vi. Accessed at https://www.uog.edu/_resources/files/schools-and-colleges/school-of-education/micronesian-educator/Micronesian_Educator_Vol_22_Special_Edition.pdf.

1065 Attorney Julian Aguon to Honorable Judith T. Won Pat, "Memorandum on Analysis of US-FSM Maritime Boundary Agreement," letter, September 27, 2014, 6.

1066 Won Pat, "Re: Analysis of the US-FSM Maritime Boundary Agreement."

1067 Louella Losinio, "Guam's natural resources 'Usurped' again by unilateral federal action," *Marianas Variety News*, October 16, 2014, accessed http://overseasreview.blogspot.com/2014_10_16_archive.html.

area of potential and concern.

Ultimately, the situation with Challenger Deep reflects the limitations of the status quo for Guam's political status.

In a 2005 US Geological Survey (USGS) report, the extensive ocean resources for the EEZ generated by Guam were found to include mineral deposits within the environment represent near- to long-term potential mineral resources that likely include:

- Cobalt-rich iron-manganese crusts on Cretaceous seamounts
- Iron-manganese nodules on abyssal plains
- Phosphorite deposits on Cretaceous seamounts
- Epithermal gold deposits on the active volcanic arc
- Hydrothermal manganese- and iron-oxide deposits on the active arc and back-arc
- Hydrothermal polymetallic sulfide/sulfate deposits on the active arc and back-arc
- Sand and gravel (aggregate) in nearshore environments
- Precious coral on the flanks of Guam and flanks and summit of seamounts.[1068]

This list indicates that Guam's surrounding waters have an indeterminate amount of possibly valuable mineral deposits and other marine resources.[1069] The existence of hydrothermal vents and other geological features in the area also implies the possibility of future endeavors of seabed mining, which is building a global economic interest.[1070] Unsurprisingly, many PICs are exploring the potential mineral resources within their EEZs.

Deep-sea mining of the oceans for rare earth elements and metals is understood to be useful for clean energy futures, since renewable energy technology requires rare earth minerals. Yet, this situation may pose a trade-off of deep-sea mining for resources necessary to fulfill a transition to renewable energy. As the Blue Ocean Law 2016 report argues, in the Pacific there is also a risk of "creating a deep-sea miners 'rush' as DSM operators flock to the region and push to gain licenses in order secure competitive advantages before any protective legal and regulatory frameworks have been implemented."[1071] Countries and major corporations may look to mine the "mineral-rich deposits in hydrothermal vents in the deep seas and on the ocean floor."[1072]

While the exact value of these deep-sea deposits is impossible to calculate with certainty, a leading UN official has recently described the scale of these resources as "staggering" with 'several hundred years'

1068 Hein, et al., "Marine Mineral Resources Of Pacific Islands."

1069 US Department of the Navy, Mariana Islands Range Complex Environmental Impact Statement/Overseas Environmental Impact Statement," 3.1-9, 3.6-11.

1070 Santillo, et al., "An Overview of Seabed Mining," 4.

1071 Blue Ocean Law, "An Assessment of the SPC Regional Legislative and Regulatory Framework (RLRF) for Deep Sea Minerals Exploration and Exploitation," March 17, 2016, 17, accessed at https://ramumine.files.wordpress.com/2016/03/an-assessment-of-the-spc-regional-legislative-and-regulatory-framework-rlrf-for-deep-sea-minerals-exploration-and-exploitation-final-report.pdf.

1072 Aguon to Honorable Judith T. Won Pat, "Memorandum on Analysis of US-FSM Maritime Boundary Agreement," 6.

worth' of, among others, gold, silver, cobalt, nickel, and other rare-earth minerals."[1073] Political status is crucial to shaping how these resources will or will not be exploited.

Mariana Trench Marine National Monument

On January 6, 2009, US President George W. Bush designated various parts of the Mariana Trench to create the Mariana Trench Marine National Monument. The monument encompasses 204,530 square kilometers, with 49,336 square kilometers within Guam's marine area.[1074] The establishment of the monument also created a protected marine reserve for the approximately 195,000 square miles (506,000 square km) of seafloor and waters surrounding the islands. This reserve includes "most of the Mariana Trench, twenty-one underwater volcanoes and areas around three islands."[1075]

The monument is considered part of a large marine protected area (LMPAs), defined as "marine protected areas (MPAs) that are greater than 100,000 km2 "[1076] LMPAs are "sections of the ocean set aside where human activities such as fishing are restricted" and have emerged as a prominent trend in marine conservation.[1077] In particular, LMPAs are considered to help meet global targets for ocean protection. Because only "3.4% of the world's oceans are designated as protected,"[1078] and the efforts to protect marine biodiversity cannot be achieved without careful consideration of management and design beyond just targeting one area alone.[1079]

These monuments are supposed to protect and conserve ocean ecosystems.[1080] Additionally, when it comes to governance over LMPAs, the tendency is to establish an LMPA through top-down processes, such as the executive order that created the Mariana Trench Marine National Monument. Unfortunately, that means that there is little room for informed consent or even public awareness of the process, format, and general ownership considerations of the LMPA. Indeed, scholars have found there is "little empirical research thus far" that seeks to assess public awareness and perceptions of the process through which a specific LMPA has been formed.[1081]

For Guam, the establishment of the monument did not include an opportunity to assess attitudes about

1073 BBC News, "UK Seabed Resources joins deep-ocean mineral-mining rush," *BBC News*, April 27, 2014, accessed at https://ramumine.wordpress.com/2014/04/27/uk-seabed-resources-joins-deep-ocean-mineral-mining-rush-2/.

1074 Marine Conservation Institute, "Mariana Trench," accessed at https://mpatlas.org/zones/8783/.

1075 Oskin, "Mariana Trench."

1076 Leenhardt, P., B. Cazalet, B. Salvat, J. Claudet, and F. Feral, "The rise of large-scale marine protected areas: Conservation or geopolitics?" *Ocean & Coastal Management* 85 (2013):112–118.

1077 Laurie Richmond and Dawn Kotowicz, "Equity and access in marine protected areas: The history and future of 'traditional indigenous fishing' in the Mariana Trench Marine National Monument," *Applied Geography* 59 (May 2015): 117-124, accessed at https://doi.org/10.1016/j.apgeog.2014.11.007 ; Dawn M. Kotowicz, Laurie Richmond, & Justin Hospital, "Exploring Public Knowledge, Attitudes, and Perceptions of the Mariana Trench Marine National Monument," Coastal Management, 45, 6 (2017): 452-469.

1078 G. J. Edgar, R. D. Stuart-Smith, T. J. Willis, S. Kininmonth, S. C. Baker, S. Banks, N. S. Barrett, et al. "Global conservation outcomes depend on marine protected areas with five key features." *Nature* 506 (2014): 216–220.

1079 Kotowicz, et al., "Exploring Public Knowledge of the Mariana Trench." ; D. Juffe-Bignoli, N. D. Burgess, H. Bingham, E. M. S. Belle, M. G. de Lima, M. Deguignet, B. Bertzky, et al., *Protected planet report 2014*. (Cambridge, UK: UNEP-WCMC, 2014).

1080 Kotowicz, et al., "Exploring Public Knowledge of the Mariana Trench." ; Juffe-Bignoli, et al., "Protected planet report."

1081 Kotowicz, et al., "Exploring Public Knowledge of the Mariana Trench."

the LMPA or the types of activities that should be permitted or restricted therein. The top-down approach is also reflected in the way the monument is governed, where the natural resources are being regulated by US federal entities: "NOAA Fisheries and the US Fish and Wildlife Service are working with the CNMI Government, Department of Defense, Department of State, US Coast Guard, and others to develop a monument management plan and are collaborating for the long-term protection of the Marianas."[1082] With the US functioning as the primary actor in domestic and foreign affairs under the current status, the decisions these agencies make with regard to the monument will have an effect on its people, way of life, and economic opportunities and growth.

Coral Reefs

Guam's coral reefs are a part of the ocean resources that maintain well-being of the marine environment and contribute to the island in a variety of ways. Guam is "largely surrounded by a fringing reef, but at the southern tip of Guam, a barrier reef and Cocos Island enclose Cocos Lagoon."[1083] Coral reefs have extensive environmental significance, and also present opportunities to support the island's economy.

On November 25, 2020, the US National Oceanic and Atmospheric Administration (NOAA) announced a proposed Pacific rule to protect 230 square miles of marine habitat around American Samoa, Guam, the Northern Mariana Islands, and Pacific remote islands.[1084] Specifically, the US National Marine Fisheries Service (NMFS) proposed this rule that stands to designate a critical habitat for marine waters in Guam, and the NMFS subsequently informed the island's Coastal Management Program of this proposal.[1085] The US government agency's unilateral proposal to declare coral reefs around Guam a critical habitat highlights some of the limitations for the island under the current status. In this case, the people of Guam did not experience prior or informed consent about the proposal, nor have public hearings been held on the island.

The proposal of a coral critical habitat includes protections for Pacific reef coral species that have been listed under the Endangered Species Act (ESA).[1086] According to the NMFS proposal, three of these corals occur in Guam (*Acropora globiceps, Acropora retusa*, and *Seriatopora aculeata*).[1087] However, according to Guam's Bureau of Statistics & Plans (BSP) the presence of these three coral species in Guam is in question

1082 National Oceanic and Atmospheric Administration, "Mariana Trench Marine National Monument."

1083 Hein, et al., "Marine Mineral Resources Of Pacific Islands," 19.

1084 Center for Biological Diversity, "Feds Propose More than 6,000 Square Miles of Coral Habitat Protections in Florida, Caribbean, Pacific. Lawsuit Prompted Rule that Recognizes Climate Change Threats," November 25, 2020, accessed at https://biologicaldiversity.org/w/news/press-releases/.

1085 US Department of Commerce, National Oceanic & Atmospheric Administration, National Marine Fisheries Service. "Letter to Mr. Tyrone Taitano, Director, Guam Coastal Management Program," November 27, 2020, accessed at https://bsp.guam.gov/wp-bsp-content/uploads/2021/02/PIR-Proposed-Coral-CH-CZMA-letter-Guam-11-27-20.pdf.

1086 National Oceanic and Atmospheric Administration Fisheries, "Proposed Rule to Designate a Critical Habitat for the Threatened Indo-Pacific Corals," November 27, 2020, accessed at https://www.fisheries.noaa.gov/action/proposed-rule-designate-critical-habitat-threatened-indo-pacific-corals.

1087 National Marine Fisheries Service, Pacific Islands Regional Office, "Endangered Species Act Critical Habitat Information Report: Basis and Impact Considerations of Critical Habitat Designations for Threatened Indo-Pacific Corals," October 2019, 12, accessed at https://bsp.guam.gov/wp-bsp-content/uploads/2021/02/PIR-Info-Rpt-9-25-20-inc-508.pdf.

as the NMFS proposal cites personal communications as its primary and sole sources that were used to determine if the listed corals are located in Guam's waters. Furthermore, the BSP review of the proposal cites its coordination with the Guam Department of Agriculture (DoAg), whose review notes that the US:

> federal agency has not conducted any recent mapping or surveying to determine if the identified coral species exist or where colonies may be located. DoAg has further stated that it is necessary to test the DNA of coral to differentiate among the nearly 400 species present in Guam's waters and that such tests have not been conducted. DoAg indicated that its federally funded coral monitoring project informed NOAA several years ago that it is not clear that two of the three species indicated exist in Guam as reporting biologists had seen two colonies in the last sixteen years but are no longer able to locate the two colonies. DoAg proposes that the presence of the three species should be confirmed with new, quantitative surveys before any critical habitat is designated.[1088]

This part of the review highlights concerns about insufficient scientific evidence to confirm the presence of these coral resources in Guam.

Critical habitat designation would establish a requirement of consultation for federal government activities whereby federal agencies consider the effects of any action they permit, fund, or carry out and "to ensure those actions are not likely to destroy or adversely modify the value of the critical habitat for the conservation of the listed corals."[1089] Additionally, critical habitat designations have benefits of "improving water quality throughout the coastal zone, limits on overfishing, protections for spawning grounds, reduced impacts from development and dredging, and reduced human pressure on hundreds of thousands of reef-associated species."[1090] While there are potential benefits to critical habitat designation, this proposal comes from the US federal government and is an example of how Guam's current political status can be an impediment to the island's sovereign control over its own natural and ocean resources, like coral reefs.

The proposal addresses consultation for US federal activities that will occur in the coral critical habitat area, yet it removes the US military and exempts DOD from these requirements for its activities. Specifically, the NMFS proposes "to exclude" the US "Navy's Ritidian Point Surface Danger Zone complex" site from consideration for coral critical habitat designation and states:

> For the Navy's Ritidian Point Surface Danger Zone complex, we conclude that the impacts to national security of including this area within critical habitat outweigh the conservation benefits of designation…

1088 Bureau of Statistics & Plans, "Letter to Michael D. Tosatto, Re: Coastal Zone Management Act (CZMA) Federal Consistency Review for National Marine Fisheries Service's proposed Critical Habitat for the Threatened Indo-Pacific Corals (Docket No. 200918-0249) (GCMP FC 2021-0003)," March 26, 2021, 3.

1089 National Oceanic and Atmospheric Administration, "Proposed Critical Habitat in American Samoa, Guam, CNMI, & PRIA for 7 Reef Corals Listed Under the Endangered Species Act," December 2020, https://media.fisheries.noaa.gov/2020-12/general-information-on-proposed-coral-critical-habitat-12-23-2020.pdf?null=.

1090 Center for Biological Diversity, "Feds Propose More than 6,000 Square Miles of Coral Habitat."

> The most important factors supporting this exclusion are that this area is a unique and important place for DoD activities, and the consultation requirements for critical habitat would place new demands on DoD both in terms of the consultation process as well as potential modifications to the DoD activities...
>
> …the exclusion of this area means DoD will not be required to consult to insure that its activities are not likely to adversely modify habitat or essential features within this area.[1091]

These excerpts signal that the US federal agency is asserting its national security priorities at the expense of conservation and protection of Guam's corals. This example illustrates another way that the island is precluded, by virtue of its current political status as an unincorporated territory, from conserving and protecting its own ocean resources from the environmental impacts of US military activities. Doubtless, coral conservation and protecting threatened corals is important. However, this proposed rule and its exclusion of US military areas from the critical habitat designations reflect the inconsistent (and contradictory) manner in which environmental matters are managed by the US government under Guam's current political status.

In its review of the proposed rule's exclusion of the Surface Danger Zones off of Ritidian Point, the Guam Waterworks Authority (GWA) indicates that a map

> provided as Figure 5 of paragraph (f) in the proposed Rule does not accurately reflect all of the proposed exclusions to the critical habitat. In fact, the map contradicts the exclusion of non-DoD areas. GWA has stated that updated detailed maps that clearly indicate the location of essential features within the critical habitat are requested. The maps provided show that critical habitat surrounds most of the entire island.[1092]

This comment supports the overall concern that the latest and highest quality scientific evidence was not used in delineating the proposed critical habitat boundary for Guam. Furthermore, the distinct situation of Guam's territorial status requires consideration of how the US federal government currently exercises control over the island's natural resources on land and in ocean waters. The BSP and Guam Coastal Management Program indicates in its review of the NMFS proposal that:

> Understanding that NMFS has an obligation to ensure the continued existence of the species, DoAg submits that a critical habitat designation is not the best way to safeguard against the extinction of these coral species. The proposed rule notes that "only" activities that are federally authorized, funded, or carried out will be impacted by the designation. On Guam, the percentage

1091 National Oceanic and Atmospheric Administration, "Endangered and Threatened Species; Critical Habitat for the Threatened Indo-Pac Corals," *Federal Register* 85, no. 229, November 27, 2020, accessed at https://www.federalregister.gov/documents/2020/11/27/2020-21226/endangered-and-threatened-species-critical-habitat-for-the-threatened-indo-pacific-corals.

1092 Bureau of Statistics & Plans, "Letter to Michael D. Tosatto," 5.

> of activities funded, authorized or carried out by the federal government is substantially higher than most states. The federal government controls almost a third of the terrestrial land mass and a large portion of the nearshore waters.[1093]

This finding reiterates how a significant portion of Guam's natural resources are currently held in control by the US federal government, even though the US, as administering power, should not exercise its sovereign authority over the island's environmental resources. Importantly, the manner in which the US is exerting its control should be subject to scrutiny, given Guam's NSGT classification as recognized by the United Nations. Furthermore, the current political status highlights significant impediments to Guam's capacity for natural resource development and promoting well-being through the protection of threatened species.

Another concern relates to the impact that NOAA's proposal and consultation requirements pose for the island's residents and the economy:

> The impact on these smaller parcels could be tremendous in terms of time and cost, and NOAA's economic analysis does not appear to consider the way that its cost estimates would unfairly target small local landowners. This situation is already playing out with the presence of threatened and endangered snail species on small land holdings, and we can presume a critical habitat designation associated with nearshore waters would only increase cost and time associated with any development over an acre. Large projects, including federal funded actions or military activities, may be able to handle the added cost and time, but smaller projects might well be forced to delay or cancel activities because of the increased burden. Given the state of the economy during the pandemic, this burden seems especially cruel and ill-timed.[1094]

Precious coral "is found at shallow to intermediate water depths at many places around Guam. Surveys for black and red/pink coral were carried out in 1975, but no commercial grade deposits were indicated on the basis of the few samples collected" from that time.[1095] By the publication of this study, surveys had not yet been performed in Guam's deeper water areas (>400 m) or seamounts east of the Mariana Trench, although both areas were determined to have promising targets.[1096] Given the immediate economic market of precious coral, regulations have been established to address potential exploitation of the resource.

A 2007 report, "The Economic Value of Guam's Coral Reefs," evaluated five main uses of coral reefs to estimate a value: "(1) extractive uses (e.g. fisheries) (2) non-extractive (e.g. recreation/tourism), (3)

1093 Bureau of Statistics & Plans, "Letter to Michael D. Tosatto," 6.

1094 Bureau of Statistics & Plans, "Letter to Michael D. Tosatto," 6-7.

1095 Hein, et al., "Marine Mineral Resources Of Pacific Islands," 19.

1096 Hein, et al., "Marine Mineral Resources Of Pacific Islands," 19.

cultural/traditional uses, (4) education and research, (5) shoreline and infrastructure protection."[1097] The findings of this research concluded that the value of associated goods and services from Guam's coral reefs nets an aggregated economic value of $127 million. This estimated total value comes from: seventy-four percent for tourist industry use, eight percent amenity use, seven percent coastal protection, and seven percent watersports segments." Given that there was little-to-no development of extractive industries such as fisheries at the time of the report, this use was not a significant portion of the calculation. Ultimately, as a natural and ocean resource, coral reefs represent a key area of resource management, use, and protection. Reefs also may fulfill a primary function in the island's development and economy focused on sustainability.

Coral reefs are unique and important resources, but without proper management and protection there is a threat of ruining these resources. Destruction of coral reefs can come in the form of overfishing, coastal pollution, habitat destruction, ocean warming, and ocean acidification.[1098] As other sections of this report detail, the threats of climate change and other factors of human security can put the ocean resources at risk. Additional threats to the ocean environment come from current US military activities and operations that are being conducted in Guam's territorial waters. With these effects on the ocean, it will be hard to collect, use, and sustain the amount of ocean resources that Guam may have access to.

Under the current status, development and population increases have had an impact on Guam's reefs and nearshore natural resources.[1099] Guam's geography positions it as an island with plenty of possibilities for development of its natural and ocean resources, though the question of governance and jurisdiction over these resources continues to be complicated by the territorial status. Indeed, there are tradeoffs between various types of development possibilities and natural resource sustainability. The issue of sustainable development of natural resources is, in many ways a neutral consideration given that under any political status there would be decisions that Guam would need to make regarding future development options.[1100] Thus, the different political status options of statehood, independence, and free association for Guam will need to consider these issues for the island's governance of natural resources and ocean resources.

Statehood

As a state, there may be changes regarding the control, exploitation and preservation of natural and

1097 Pieter van Beukering, Wolfgang Haider, Margo Longland, Herman Cesar, Joel Sablan, Sonia Shjegstad, Ben Beardmore, Yi Liu, and Grace Omega Garces, "The economic value of Guam's coral reefs," University of Guam Marine Laboratory Technical Report No. 16, March 2007, accessed at https://www.researchgate.net/profile/Ben_Beardmore/publication/258438780_The_economic_value_of_Guam's_coral_reefs/links/00b7d5283ac7d903af000000.pdf.

1098 Greg Stone, "The Five Biggest Threats to Our Oceans," June 5, 2014, accessed at https://www.huffpost.com/entry/the-five-biggest-threats-_b_5453534.

1099 Nancy G. Prouty, et al., "Historic Impact of Watershed Change and Sedimentation to Reefs Along West-Central Guam," *Coral Reefs* 33 (2014): 733-749, DOI 10.1007/s00338-014-1166-x ; Jamey E. Redding, et al., "Link between sewage-derived nitrogen pollution and coral disease severity in Guam," *Marine Pollution Bulleti*n, 73, no. 1 (2013): 57-63, https://doi.org/10.1016/j.marpolbul.2013.06.002 ; Shanna Grafeld, et al., "Divers' willingness to pay for improved coral reef conditions in Guam: An untapped source of funding for management and conservation?," *Ecological Economics* 128 (2016): 202-213, accessed at https://doi.org/10.1016/j.ecolecon.2016.05.005.

1100 Of course, statehood as a political status may entail the prescription or negation of particular development options for Guam per state vis-à-vis national government.

ocean resources for Guam. One of the main concerns the island will need to consider is ownership of the land. As a territory, Guam has a claim to protect the EEZ the island generates from natural resource exploitation. As a state of the US, any residual claims of land ownership and natural resource jurisdiction would be expunged.

Although speculative, increased political power and voting representation with statehood could influence Guam's efforts to govern its natural resources. Representation for Guam in the US Congress would mean voting rights within the legislative branch of the federal government, which may be able to translate into changes to land management for Guam at the national and new "state" local level. Indeed, leveraging state power can have specific local effects vis-à-vis the US military, a case in point is the example of Hawai'i.

Natural resources, in general, belong to the state or the federal government unless found on private property or the rights to them have been obtained from the government. States retain primary authority over natural resources within their borders, although federal statutes also apply to many resources, especially those found on federal land.[1101] Thus, if Guam were to adopt statehood, governance over the island's natural resources would be considered to be primarily located within Guam's physical boundaries. Guam must consider its land mass and the current amount of land used by the US federal government to address the impact that statehood would have on the island's natural resource management.

In 1960, Congress enacted the Sikes Act (16 USC. 670a- 670o), which mandated a level of accountability that natural resources are properly maintained and cared for by states. Under statehood, Guam would be responsible for adhering to the statutes established by the Sikes Act. Even with the statehood option, the issue of DOD controlled/military-held lands are important to consider. Regarding Guam's arable land, or land usable for other development purposes that extend into DOD-held property, national security may take precedence over the island's ability to develop the land for economic and sustainability use.

Another issue to consider with the statehood option is what is referred to as split estate, "the party that owns the land's surface has surface rights, while the party that owns the natural resources in the ground has subsurface rights."[1102] For oil, gas, coal and other minerals, it is most likely that the federal government holds the subsurface rights while another party could hold the surface rights.[1103] These rights would be considered if Guam is a state and would be key for any development of natural or ocean resources that are below the surface and capable of being mined. While this scenario of a split estate might not be possible at this point, it is an aspect of land and ocean resource ownership that Guam may be subject to under the statehood option.

Regarding the EEZ, territorial status means Guam has legal claims to rights to explore and use natural and marine resources, and to protect the EEZ it generates from natural resource exploitation, even as the US appears not to recognize such claims. If Guam were a state, the island would have no ownership or primary governance over the EEZ. As with other US coastal states, such as Florida and California,

1101 Environmental Law Institute, "Natural Resources," accessed at https://www.eli.org/keywords/natural-resources.

1102 US Department of Interior, "Natural Resources Revenue Data: Ownership," accessed at https://revenuedata.doi.gov/how-it-works/ownership/#natural-resource-ownership.

1103 US Department of Interior, "Natural Resources Revenue Data."

those states hold "authority and natural resource ownership in the three-mile area extending outward from their coasts."[1104]

Thus, the US federal government would hold jurisdiction over the rest of the two-hundred-nautical miles that make up the EEZ generated by Guam. While Guam may possibly lose ownership over some parts of land and its surrounding waters, the tradeoff may be more access to other resources and funding from the US federal government. As a state, Guam could take additional measures to invest in the environment and other state-level initiatives to benefit land preservation and sustainability. Along with defining boundaries on land and in the water, there is also Guam's approach to governance of ocean resources and the environment to consider.

Independence

As an independent country, Guam will have the authority and responsibility over decisions regarding its environment and it could control its governance over natural and ocean resources. Guam would be able to enter into treaties and partnerships and utilize international and regional partnerships. These opportunities may aid Guam with funding and research in relation to its natural resources. Under its current status, Guam does not have meaningful options or full access to direct assistance from the international community because Guam is precluded from becoming a member of international organizations which only recognize independent, sovereign countries. While there is the possibility of outside pressure from the international community, Guam's approach under independence will be led by what its people want for the use and conservation of natural and ocean resources. In this section, Singapore will be used as an example of how an independent country has developed with regard to governance over its natural resources.

As an independent country, Guam would have jurisdiction over the EEZ the island generates and would need to consider protecting its natural and ocean resources. The island will also have to address threats to its maritime borders and other problems that may impact the land. For example, Guam would need to address issues such as illegal fishing, smuggling, and illegal dumping of waste within its waters and on land. The security of ocean resources would also be under the purview of Guam, and it would need to decide how to secure its EEZ and to ensure compliance with international law. Although Guam will control its EEZ under independence, enforcing its EEZ is another matter entirely, and can pose a security risk to the country of Guam. The Republic of Palau can be instructive in this regard. Palau has created national divisions, such as the Palau Division of Marine Law Enforcement, and implemented policies like satellite tracking that help address issues such as illegal fishing within the country's EEZ. Even with limited marine enforcement vessels at its disposal, Palau's political status facilitates its efforts to ensure Pacific fish stocks within their EEZ remain viable sources of nutrition and revenue for generations to come. As an independent country, Guam could develop a clear and capable plan of action and procure adequate resources to protect its EEZ and manage the natural resources within.

1104 US Department of Interior, "Natural Resources Revenue Data."

Essentially, security for Guam's maritime borders would require stern consideration of law enforcement at sea. Policing the EEZ is a resource-intensive effort that many governments simply cannot afford. Governments that have law enforcement institutions with adequate capacity not only protect their maritime borders and fisheries, but also gain a source of revenue from imposing fines on violators.[1105] Though Guam does not have a large commercial fisheries industry, it will need to consider its policies and potential international partnerships that can assist in securing the waters surrounding Guam. If Guam fails to do this, maritime security threats may run rampant, opening Guam up to being exploited by others. Other avenues, such as treaties with other countries, may be taken into consideration for issues such as security of ocean resources and the EEZ. With regard to the development of ocean resources, such as deep-sea exploration and mining, Guam would be able to choose to pursue these options in accordance with customary international law regulations (ex: UNCLOS) and existing regulatory frameworks.

As an independent country, Guam would also be able to make decisions about its defense. Guam's orientation to the protection of its natural and ocean resources needs to include the ability to be able to protect these environmental resources and to invest in sustainable options for defending against climate change and other issues that may threaten the livelihood and health of the island's people.

Status Example: Singapore

On August 5, 1965, Singapore separated from Malaysia to become an independent country.[1106] It is made up of Singapore Island and over sixty smaller islands. The population is an estimated 5.7 million people, and is projected to grow to 6.5-6.9 million people by 2030.[1107] According to a 2013 government White Paper on population issues, the key considerations for Singapore's population policies are focused on expanding sustainable development to improve the national economy and to maintain a high-quality living environment.[1108] As an independent country, Singapore exercises sovereignty over its natural resources, with a deep focus on conservation and green initiatives that contribute to its sustainable development.

Singapore has few natural resources, with no natural forests on the island, and only a tiny fraction of its land area is classified as agricultural. Conventional farming accounts for only one percent of Singapore's land use. Thus, the agricultural production that does occur comprises a negligible contribution to the overall economy. In 2012, only seven percent of the country's food was grown locally.[1109] Agricultural production primarily consists of intensive cultivation of fruits, vegetables, and poultry raised for local consumption.[1110]

1105 Paul Shemella, *Global Responses to Maritime Violence: Cooperation and Collective Action* (Stanford, CA: Stanford University Press, 2016), 93.

1106 C.M. Turnbull. *A History of Modern Singapore*, 1819–2005. (Singapore: National University of Singapore Press, 2009), 289–291.

1107 Singapore Department of Statistics, National Population and Talent Division, "Population in Brief 2020," September 2020, accessed at https://www.strategygroup.gov.sg/media-centre/population-white-paper-a-sustainable-population-for-a-dynamic-singapore.

1108 "A Sustainable Population for a Dynamic Singapore: Population White Paper," January 9, 2013, accessed at https://www.strategygroup.gov.sg/media-centre/population-white-paper-a-sustainable-population-for-a-dynamic-singapore.

1109 Kalinga Seneviratne, "Farming in the Sky in Singapore," Our World, December 12, 2012, accessed at https://ourworld.unu.edu/en/farming-in-the-sky-in-singapore.

1110 Kennard, Annajane, "Singapore," *Encyclopaedia Britannica,* April 17, 2021, accessed at https://www.britannica.com/place/Singapore.

In 2021, Goh Wee Hou, the director of the Food Supply Strategies Department at the Singapore Food Agency (SFA) stated, "local food production currently accounts for less than ten percent of our nutritional needs."[1111] To address the current issue of ninety percent of Singapore's food coming from abroad, in 2019 the country announced its "30 by 30" goal of producing thirty percent of its own food by 2030.[1112] This ambitious target considers available land for agri-food production and places emphasis on citizens to grow wherever they can. Since 2017, the government has leased land in two districts for large-scale commercial farm projects. In addition to these farms, the government is implementing measures for growing food in urban spaces, such as parking structure roofs, office buildings, and schoolyards, etc.

As an independent country, Singapore's government is providing grants to those who can use technology and innovation to support greater agricultural yield amounts. In March 2021, the Singapore Food Agency announced it was establishing a $60 million-dollar Agri-Food Cluster Transformation Act (ACT) Fund to assist applicants with start-up costs catering to large-scale commercial farms and the growth of agritech businesses.[1113] This government fund combines with the "30 by 30" plan to help the country optimize farms and produce maximum agricultural capacity at the local level in spite of having limited land resources. Like Guam, Singapore lacks an abundance of economically valuable natural resources within its land boundaries. Yet, Singapore demonstrates innovative policies and development, without predominant reliance on land use from its agricultural sector, due to its minimal available arable lands. Comparable to Guam, Singapore has also had to import food to sustain its population. As this case shows, the political status option of independence has provided Singapore with the sovereign rights and access to innovative solutions to address its food insecurities and to develop high-tech solutions that consider overreliance upon external and unsustainable food sources.

These efforts at the national level have also contributed to building a strong economy that works to protect Singapore's ocean resources of its fish stocks.[1114] Similar to current efforts at promoting local agriculture production, the Singapore government focused on developing its aquaculture industry. Since 2003, the country, to better understand aquaculture options, has funded extensive research on hatchery technologies, marker-assisted and genomic selection.[1115] Foodfish production is an important element for food security in Singapore, with major local foodfish production coming from "marine aquaculture in floating net cages along the northern coast."[1116] The local fishing industry supplies only a portion of the total fresh fish requirement; most of the catch comes from offshore fishing vessels. There also is a small

1111 Clarisa Diaz, "3 Ways Singapore's Urban Farms are Improving Food Security," *World Economic Forum*, April 7, 2021, accessed at https://www.weforum.org/agenda/2021/04/singapore-urban-farms-food-security-2030.

1112 AlphaBeta, "What Singapore's '30 by 30' Food Security Goal Means for Businesses," January 2020, https://alphabeta.com/wp-content/uploads/2020/02/what-singapores-30-by-30-food-security-goal-means-for-businesses_jan2020.pdf.

1113 Singapore Food Agency, "Media Release: New $60 Million fund to support transformation and growth of local agri-food sector," March 4, 2021, accessed at https://www.sfa.gov.sg/docs/default-source/default-document-library/sfa-media-release---new-60-million-fund-to-support-transformation-and-growth-of-local-agri-food-sector.pdf.

1114 Benjamin Elisha Sawe,"What Are the Major Natural Resources of Singapore?" WorldAtlas, accessed at https://www.worldatlas.com/articles/what-are-the-major-natural-resources-of-singapore.html.

1115 Yubang Shen, Keyi Ma, and Gen Hua Yea, "Status, challenges, and trends of aquaculture in Singapore," *Aquaculture* 533 (2021): accessed at https://doi.org/10.1016/j.aquaculture.2020.736210.

1116 Shen, et al., "Status, challenges, and trends of aquaculture in Singapore."

aquaculture industry that raises groupers, sea bass, and prawns.[1117]

The Singapore government has provided strong support for aquaculture in coastal waters, "more and more farms are now upgrading their culture systems and enlarging their productivity by adopting and using novel cage culture systems."[1118] Cage culture and containment aquaculture systems in the sea highlight how the political status of independence provides possibilities for Singapore to continue developing systems of sustainable foodfish and its sovereign rights to expand technological innovations in offshore aquaculture that may address food security for the future population.[1119] Since the 1980s, Singapore has also remained the world's top exporter of ornamental fish.[1120] Given its climate, temperature and rainfall, the island is ideal for rearing tropical fish. According to a 2005 report, Singapore has established "well-developed distribution systems for ornamental fish, comprising farmers, wholesalers and exporters."[1121] The UN Comtrade statistics released by the Agri-Food and Veterinary Authority show that Singaporean firms had exported about $56 million worth of ornamental fish in 2013.[1122] In 2016, exports of ornamental fish represented 14.1%of the global market.[1123] While there have been dips in the market over time, the global ornamental fish market was valued at $6.8 billion in 2019. According to a January 2021 report, in spite of the Covid-19 pandemic impacts, this market is projected to reach $11.3 billion by the end of 2025.[1124]

This aquarium fish industry is another example of how, as an independent country, Singapore exercises its sovereign rights for natural and ocean resource development. Under the political status option of independence for Guam, the island would also be positioned to establish and develop various market sectors related to its natural and ocean resources. Similar to Singapore in terms of climate, Guam could consider raising fish and/or developing other fishing industries to contribute to the island's portfolio of environmental resources.

In order to foster national economic growth, Singapore has used its independent country status to account for its lack of natural resources through the government's pursuit of development beyond the region. For example, Singapore has bypassed its often-hostile regional environment and transformed itself into a country that partners economically and wields influence in places as distant as Russia. Since the

1117 Kennard, "Singapore."

1118 Shen, et al., "Status, challenges, and trends of aquaculture in Singapore."

1119 Neo Chai Chin, "Fish Farms Turn to AI, Recirculating Systems to Scale Up Sustainable Aquaculture," Eco-Business, Feburary 19, 2020, accessed at https://www.eco-business.com/news/fish-farms-turn-to-ai-recirculating-systems-to-scale-up-sustainable-aquaculture/ ; *The Straits Times*, "President Witnesses First Harvest of Offshore Fish Farm," The Straits Times, February 28, 2020, accessed at https://www.straitstimes.com/singapore/president-witnesses-first-harvest-of-offshore-fish-farm.

1120 Gen Hua Yue, et al., "Current Knowledge of the Biology and Aquaculture of the Endangered Asian Arowana," *Reviews in Fisheries Science & Aquaculture*, 28, no. 2 (2020): 193-210, accessed at https://doi-org.colorado.idm.oclc.org/10.1080/23308249.2019.1697641.

1121 Ling KH & Lim LY, "The status of ornamental fish industry in Singapore," *Singapore Journal of Primary Industries* 32. (2005): 59–69.

1122 Jessica Lim, "Top 5 Fish Exports from Singapore, the World's Largest Exporter of Ornamental Fish," The Straits Times, May 29, 2015, accessed https://www.straitstimes.com/singapore/top-5-fish-exports-from-singapore-the-worlds-largest-exporter-of-ornamental-fish.

1123 Sulaiman Daud, "Singapore Remains the World's no.1 Exporter of Ornamental Fish," *Mothership,* December 7, 2017, accessed https://mothership.sg/2017/12/singapore-remains-the-worlds-no-1-exporter-of-ornamental-fish/.

1124 Market Report, "Global Ornamental Fish Market By Type, By Application, By Point of Sale, By Region, Forecast & Opportunities, 2025," accessed at https://www.reportlinker.com/p05917026/Global-Ornamental-Fish-Market-By-Type-By-Application-By-Point-of-Sale-By-Region-Forecast-Opportunities.html?utm_source=GNW.

late 2000s, the government has deliberately involved itself in Arctic affairs.[1125] In 2012, the Singaporean government became an observer to the Arctic Council, the region's leading intergovernmental organization. "Singaporean officials also reached out to the Arctic Council's Permanent Participants, the six of which represent indigenous peoples' organizations. This can be viewed as part of the government's broader effort to jump scales in Arctic development by cooperating with non-state actors that have risen to prominent roles in Arctic governance and development."[1126] Specifically, the Singaporean government engages with indigenous actors through three ways: visits; training; and infrastructure investment. These efforts include collaborations with indigenous peoples in Canada, Norway, Russia, and the US state of Alaska. This focus includes the Singaporean government extending invitations to Arctic indigenous peoples for funded study visits to the country.[1127] As an independent country, Guam would be able utilize national government power to establish training programs and partnerships that could facilitate its sovereign efforts of natural resource development.

Furthermore, Singapore's maritime industry has established strong credentials in offshore engineering as well as shipbuilding and repair. This sector development provides additional opportunities for economic growth and potential in and beyond the Arctic region.[1128] These kinds of efforts reflect opportunities under the political status option of independence, whereby a sovereign country can pursue development of natural resources beyond its region and in cooperation with other countries (and non-state actors) in order to contribute to the sustenance of its own domestic population and economic growth.

Singapore's capacity for Arctic pursuits also highlights its strategy of presenting the country as a place with a planetary perspective. In "claiming to be an Arctic stakeholder, underscoring national interests in climate change, maritime issues, and global governance" Singapore demonstrates how the independence affords options to address pressing challenges like global warming.[1129] Given the severe impacts of climate change in the Arctic region, which will have implications for Singapore through sea-level rise, the country is preparing for the challenges and opportunities to mitigate these impacts on natural and ocean resources.[1130] Singapore has strategically sought to position itself as a key national player in the region that is increasingly recognized as being globally important due to both climatic and economic imperatives.[1131]

Free Association

Much of the discussion about independence above will apply in the case of a freely associated state of

1125 Ian Storey, "The Arctic Novice: Singapore and the High North," *Asia Policy* 18, no.1 (2014): 66-72, accessed at https://www.jstor.org/stable/24905278.

1126 Mia M. Bennett (2018). "Singapore: The "Global City" in a Globalizing Arctic," Journal of Borderlands Studies, vol. 33, no.2, pp.290, DOI: 10.1080/08865655.2017.1367708.

1127 Bennett, "Singapore: The "Global City,'" 302-305.

1128 Viji Menon, "Climate Change and Global Warming: Singapore and the Arctic," RSIS Commentary, no. 205, 1-3, October 16, 2019, accessed at https://www.rsis.edu.sg/wp-content/uploads/2019/10/CO19205.pdf.

1129 Bennett, "Singapore: The 'Global City,'" 290.

1130 Menon, "Singapore and the Arctic," 1-3.

1131 Bennett, "Singapore: The 'Global City,'" 306.

Guam if existing FAS models are followed. Guam will be able to establish control over natural resources and its exclusive economic zone (EEZ). As a freely associated state (FAS), Guam could develop its governance approach over natural and ocean resources to a far greater extent than it can currently as an unincorporated territory. The Republic of Palau is used as an example.

Status Example: Republic of Palau

Palau's natural resources include marine products, mineral resources, forestry-related resources, and arable land. Palau's compact with the United States addresses natural resources by emphasizing the importance of Palau's resources and maintaining the island's sovereign authority over their use and governance. Section 161 of Article VI of the Compact states:

> The government of the United States and the government of Palau declare that it is their policy to promote efforts to prevent or eliminate damage to the environment and biosphere and to enrich understanding of the natural resources of Palau.[1132]

As for its control over its EEZ, Palau controls its surrounding waters. The compact addresses this in Section 462 of Article VI: "(j) Agreement Regarding the Jurisdiction and Sovereignty of the Republic of Palau over its territory and the Living and Nonliving Resources of the Sea."[1133] Other sections of the compact also provide jurisdiction and sovereignty to Palau over other resource matters, as recognized under international law. Both of these conditions of the compact reflect the understanding that Palau does not work against the defense and security interest of the United States. Additionally, as a part of its governance over natural resources, Palau has created a ministry to oversee its actions.

The 2019 *State of the Environment Report*, "conveys trends of key natural resources and environment programs and analyzes their most recent conditions and grades in relation to local and global goals and standards."[1134] This focus on global standards also aligns with the country's work to connect with international organizations that provide support for environmental development and natural resources. Specifically targeting its agricultural sector, conservation, and development, Palau worked with the following organizations: Secretariat of the Pacific Community (SPC); the Food and Agriculture Organization (FAO); US Agency for International Development (US AID); the US Forest Service; The Nature Conservancy; the Taiwanese Mission; Natural Resources Conservation Services; Global Environment Facility; and the Secretariat of the Pacific Regional Environmental Programme (SPREP).[1135] Notably, many of these

1132 Public Law 99-658: Compact of Free Association between the United Sates and the Government of Palau.

1133 Public Law 99-658: Compact of Free Association between the United Sates and the Government of Palau.

1134 National Environmental Protection Council, "2019 State of the Environment Report Republic of Palau," May 2019, accessed at https://palau-data.sprep.org/system/files/2019%20SOE%20Palau.pdf.

1135 "Republic of Palau Second National Communication of the United Nations Framework Convention on Climate Change," September 2013, accessed at https://www4.unfccc.int/sites/SubmissionsStaging/NationalReports/Documents/45823961_Palau-NC2-1-Final_Palau%20National%20Communication.pdf.

organizations have been, or currently are involved, with Guam and provide resources to the island as an unincorporated territory. Several of these examples highlight how Palau's status as a FAS allows it to work with a variety of international organizations to support and protect its natural resources. As a freely associated state, Guam would have similar opportunities and would not be as strictly limited to groups such as USAID and FAO, for example.

Palau also created a Bureau of Marine Resources to oversee its ocean resources. Specifically, this bureau is responsible for divisions regarding oceanic fisheries, marine resources development, and informational and data management.[1136] With a portion of its economy and community being supported by marine resources, Palau has taken the initiative to protect and preserve the waters surrounding its islands. In 2015, the Palau Congress passed the Palau National Marine Sanctuary Act, which established one of the world's largest marine protected areas in the Pacific Ocean. This regulation started in 2015, with a timeframe of five years, and is considered a no-take area in 2020. Within the five-year time period, "the number of licenses sold to foreign commercial vessels will be decreased annually."[1137] As of January 1, 2020, eighty percent of its exclusive economic zone (EEZ), which spans 230,000 square miles around its islands, became part of the protected area where no extractive activities will be allowed. The remaining twenty percent of its EEZ, "will become a domestic fishing zone reserved for local fishermen and small-scale commercial fisheries with limited exports."[1138] This example highlights how FAS status provides an opportunity for Palau to establish some regulatory frameworks for its ocean resources that also contribute to the country's economy.

Palau had to consider the protection of its waters since it might face the possibility of illegal fishing and other activities that may interfere with its natural resources. As a freely associated state, Palau implemented its own rules on illegal poaching, and in 2015 it responded to poaching issues by setting the boats of Vietnamese poachers on fire.[1139] Palau's Division of Marine Law Enforcement was created under its Ministry of Justice in order to: provide patrol and surveillance of its waters; address illegal fishing activities; enforce national laws and international treaties between member states; conduct search and rescue missions; provide medical evacuations from the southwest islands; and assist other government agencies to southwest islands.[1140]

Palau has relied on its free association with the US in order to help secure the island's surrounding waters. For example, because defense issues are generally controlled by the US, Palau reportedly has only one boat to patrol its jurisdiction of 230,000 square miles. Due to the importance of protecting its surrounding waters, Palau utilized its status as an FAS and also turned toward help from other countries. For example, in 2018, Palau received training from Japan and the United States to "better crack down

1136 PalauGov News, "Ministry of Natural Resources, Environment & Tourism," *PalauGov News*, accessed at https://www.palaugov.pw/executive-branch/ministries/natural-resources/.

1137 Atlas of Marine Protection, "Palau National Marine Sanctuary," accessed at http://www.mpatlas.org/mpa/sites/68807606/.

1138 Atlas of Marine Protection, "Palau National Marine Sanctuary."

1139 Elaine Kurtenbach. "Palau burns Vietnamese boats caught fishing illegally." *AP News*, June 12, 2015. Accessed on https://apnews.com/3f6a26d1f5cf40a19c4996753c9d615f/palau-burns-vietnamese-boats-caught-fishing-illegally.

1140 PalauGov News, "Division of Marine Law Enforcement," *PalauGov News*, accessed at https://www.palaugov.pw/executive-branch/ministries/justice/division-of-marine-law-enforcement/.

on illegal fishing within their exclusive economic zones."[1141]

In early September 2020, Palau invited the US military to build a base on its land.[1142] At the time of this report, it remains to be seen what will come of Palau's invitation. However, as research above indicates for Guam, should the military build a base, there will be particular implications for Palau's natural resources and its relationship with other countries in the Indo-Pacific region. These examples highlight some of the elements that Guam will also have to consider: its maritime boundaries and EEZ; securing and protecting its natural and ocean resources; tourism; and a potential increase in military presence.

If Guam were to have an FAS agreement similar to Palau's, it would be able to make environmental laws to protect its environment and use of its resources. The example of Palau illustrates how prioritizing cultural and environmental issues through policy and government funds can create sustainable opportunities for protection and conservation of resources. Guam may decide that, as a freely associated state, it would create bureaus or agencies like those discussed in the Palau model, to provide governance over particular natural or ocean resources. Alternatively, Guam could consider existing agencies that would have the capacity to address governance and adhere to domestic and international law requirements for the island's resources.

A freely associated state has opportunities to establish relationships with other countries in the international community, thus Guam could have control over its foreign affairs. Ultimately, as this section has indicated, the FAS political status option for Guam will require the island to decide if or how it can use its natural resources and ocean resources in a sustainable way.

1141 The Japan Times, "In training program, Japan, US to help pacific island nations counter illegal fishing," *The Japan Times*, November 18, 2018, accessed at https://www.japantimes.co.jp/news/2018/11/11/national/training-program-japan-u-s-help-pacific-island-nations-counter-illegal-fishing/#.xfvix-gzy2x.

1142 Bernadette Carreon & Ben Doherty, "Pacific Nation of Palau invites US to build a military base to counter China," *The Guardian*, September 4, 2020, accessed at https://www.theguardian.com/world/2020/sep/04/pacific-nation-of-palau-invites-us-to-build-a-military-base-to-counter-china.

NATURAL RESOURCES AND OCEAN RESOURCES	
STATUS	**EFFECTS**
Statehood	• Following set regulations from US federal government for natural resources and ocean resources • Lack of jurisdiction over EEZ generated by Guam. However, Guam may get title to the submerged lands, waters, and natural resources located within three nautical miles of the coastline. • Possible loss of more land to the federal government for preservation purposes. That comes with the benefit of additional environmental protection from overexploitation of resources • More access to help for preservation, funding, and extraction in relation to natural resources and ocean resources
Independence	• Maintain jurisdiction of EEZ • Maintain jurisdiction over lands and surrounding waters and seabed that may have natural resources • Possible overlap of Guam's EEZ with surrounding islands which will need negotiations on an international level about where the maritime boundaries will lie for surrounding countries and Guam

	• Ability to receive help from international organizations in regard to natural resources and ocean resources, such as guides to preservation, and training for use and development of natural resources • The need for protection and enforcement of natural resource laws and regulations inland and within the surrounding waters to ensure maritime security of the country
Free Association	• Maintain jurisdiction of EEZ • Security of EEZ could be aided by the United States • Ability to make its own decisions regarding natural resources, depending on terms of potential agreement between Guam and the US • May still have to work within the interests of the US when dealing internationally in regard to use of natural resources • Ability to receive aid and other assistance from international organizations in regard to natural resources and ocean resources, such as guides to preservation, and training for use and development of natural resources

EXTERNAL AFFAIRS & DEFENSE

Overview of External Affairs and Defense

This serves as a contextual overview of the next section of the study. The first section of this overview outlines the international system, focusing on China and the United States. The second section then outlines the geopolitical future(s) scenarios that are used throughout the External Affairs and Defense section of the study.

China and the United States: Great-Power Politics[1143]

> *"One of the most important tasks of American statecraft over the next decade will therefore be to lock in a substantially increased investment — diplomatic, economic, strategic, and otherwise — in the Asia-Pacific region."*[1144]

The quote above was taken from Hillary Clinton's pivotal 2011 piece in *Foreign Policy*, "America's Pacific Century," where she argues that the core of American foreign policy moving forward should be the Asia-Pacific region, (although the Trump Administration used Indo-Pacific). She justifies this shift in the geopolitical pendulum of power swinging toward the region, writing that, "The Asia-Pacific has become a key driver of global politics." Clinton argues that the US needs to continue "leaning forward"[1145] in world affairs and maintain its role as a leader. Countering calls for retrenchment, Clinton writes, "From opening new markets for American businesses to curbing nuclear proliferation to keeping the sea lanes free for commerce and navigation, our work abroad holds the key to our prosperity and security at home."[1146] Yet, foreign policy does not hinge on declaratory policy alone. A course of action must be designed. She argues for the continuation of "forward-deployed diplomacy," a network of strengthened security alliances, relationships with emerging powers (China), engagement with multilateral institutions, the expansion

1143 The following section is an updated and edited version of pgs. 99-107 of Dr. Kuper's dissertation.

1144 Hillary Clinton, "America's Pacific Century," Foreign Policy, October 11, 2011.

1145 Stephen Brooks, G. John Ikenberry, and William Wohlforth, "Lean Forward: In Defense of American Engagement," *Foreign Policy* (January/February 2013).

1146 Clinton, "Pacific Century."

of trade and investment, advancement of democracy, and lastly, the forging of a broad-based military presence. One sees similarities with the Biden Administration. As noted by Anthony Blinken during his first trip to Asia as Secretary of State, "We're united in the vision of a free and open Indo-Pacific region, where countries follow the rules, cooperate whenever they can, and resolve their differences peacefully. And in particular, we will push back if necessary when China uses coercion or aggression to get its way."[1147]

To examine the root of this shift to the region, two factors are examined: the growth of Chinese hard power and deterrence capabilities; and China's economy and soft power growth.

China's hard power and military capabilities have grown immensely in the past thirty years. Barry Posen writes that the United States has long enjoyed a "command of the commons," meaning, "worldwide freedom and movement on and under the seas and in the air above 15,000 feet with the ability to deny this same freedom to enemies."[1148] Yet, in the past decade or so, China has developed military technology that challenges this command of the commons and has adopted the A2/AD strategy. A2/AD stands for "Area Access/Area Denial" and is aimed at "restricting enemy access to a certain strategic location, while it exerts forceful control over a territorial asset like Taiwan or a disputed maritime claim"[1149] as can be seen in the conflicts surrounding the islands in the South China Sea. At its core, the strategy is aimed at the three Ds: deterring, dissuading, or defeating the involvement of a third power in any confrontation or conflict China may have regarding its territorial assets or maritime claims. A report to the US Congress from the Office of the Secretary of Defense stated that a Chinese A2/AD capability reaching anywhere near the "Second Island Chain," which connects Guam, Japan, and Papua New Guinea, would pose major challenges to US security policy.[1150]

China's military strategy is based on the concept of active defense, which adopts principles of strategic defense with offensive action operationally and tactically. It is "rooted in the principle of avoiding initiating armed conflict but responding forcefully if challenged."[1151] The tenets of active defense are adhering to a position of self-defense; combining strategic defense with operational and tactical offense; taking the operational initiative; striving for the best possibilities; having the dialectical unity of restraining war and winning war; and lastly, that soldiers and the people are the source of victory. According to the US Department of Defense, the PLA's missions and tasks include: "safeguarding China's territorial sovereignty and maritime rights and interests; maintaining combat readiness; conducting military training under real combat conditions; safeguarding China's nuclear weapons and its interests in the space and cyber domains; countering terrorism and maintaining stability; protecting the PRC's overseas interests;

1147 Amanda Macias, "China not to use 'coercion and aggression' to get its way" *CNBC*, March 16, 2021, accessed at https://www.cnbc.com/2021/03/16/blinken-warns-china-to-not-use-coercion-and-aggression-to-get-its-way.html.

1148 Stephen Biddle and Ivan Oelrich, "Future Warfare in the Western Pacific: Chinese Antiaccess/Area Denial, US AirSea Battle, and Command of the Commons in East Asia," *International Security* 41, no. 1 (Summer 2016): 7.

1149 Anthony Cordesman and Joseph Kendall, "How China Plans to Utilize Space for A2/AD in the Pacific," *The National Interest: The Buzz*, August 17, 2016, accessed at http://nationalinterest.org/blog/the-buzz/how-china-plans-utilize-space-a2-ad-the-pacific-17383.

1150 Biddle and Oelrich, "Future Warfare in the Western Pacific," 7.

1151 Office of the Secretary of Defense, "Military and Security Developments Involving the People's Republic of China 2020: Annual Report to Congress," 2020, 27.

and participating in emergency response and disaster relief."[1152]

Modernization of its armed forces is therefore imperative. This modernization and technological development of China's military began in the late 1980s, when China started designing a new ship class, and this development has continued to the present. The PLAN currently operates six nuclear-powered ballistic missile submarines, six nuclear-powered attack submarines, and 46 diesel-powered attack submarines.

China's anti-ship ballistic missiles, primarily the DF-21D missiles, can, when combined with targeting systems and maritime surveillance, give China the ability to attack aircraft carriers or other foreign navy ships. Andrew S. Erickson writes, "The US Navy has not previously faced a threat from highly accurate ballistic missiles capable of hitting moving ships at sea. For this reason, some observers have referred to ASBMs as a 'game-changing' weapon."[1153] It is also important to point out that the DF-26, an intermediate-range ballistic missile may also be capable of anti-ship capability, and closer to home, this missile has been dubbed the "Guam Killer."[1154] "The DF-26 IRBM has a maximum range of 4,000 km and is capable of precision strikes against ground and ship targets, potentially threatening US land and sea-based forces as far away as Guam."[1155] Another part of the Chinese arsenal is anti-ship cruise missiles. These include those obtained from Russia, such as the SS-N-22 and SS-N-27b SIZZLER, which is carried on ships China obtained from Russia. Perhaps the most widespread of the ASCMs are the YJ-83 series, which China carries on most of its ships and even in some of its aircraft. These technological and weapon advancements show that the People's Liberation Army Navy (PLAN) is increasing its potential for anti-surface warfare.

The Chinese military has made modernization progress in the past twenty years. According to the

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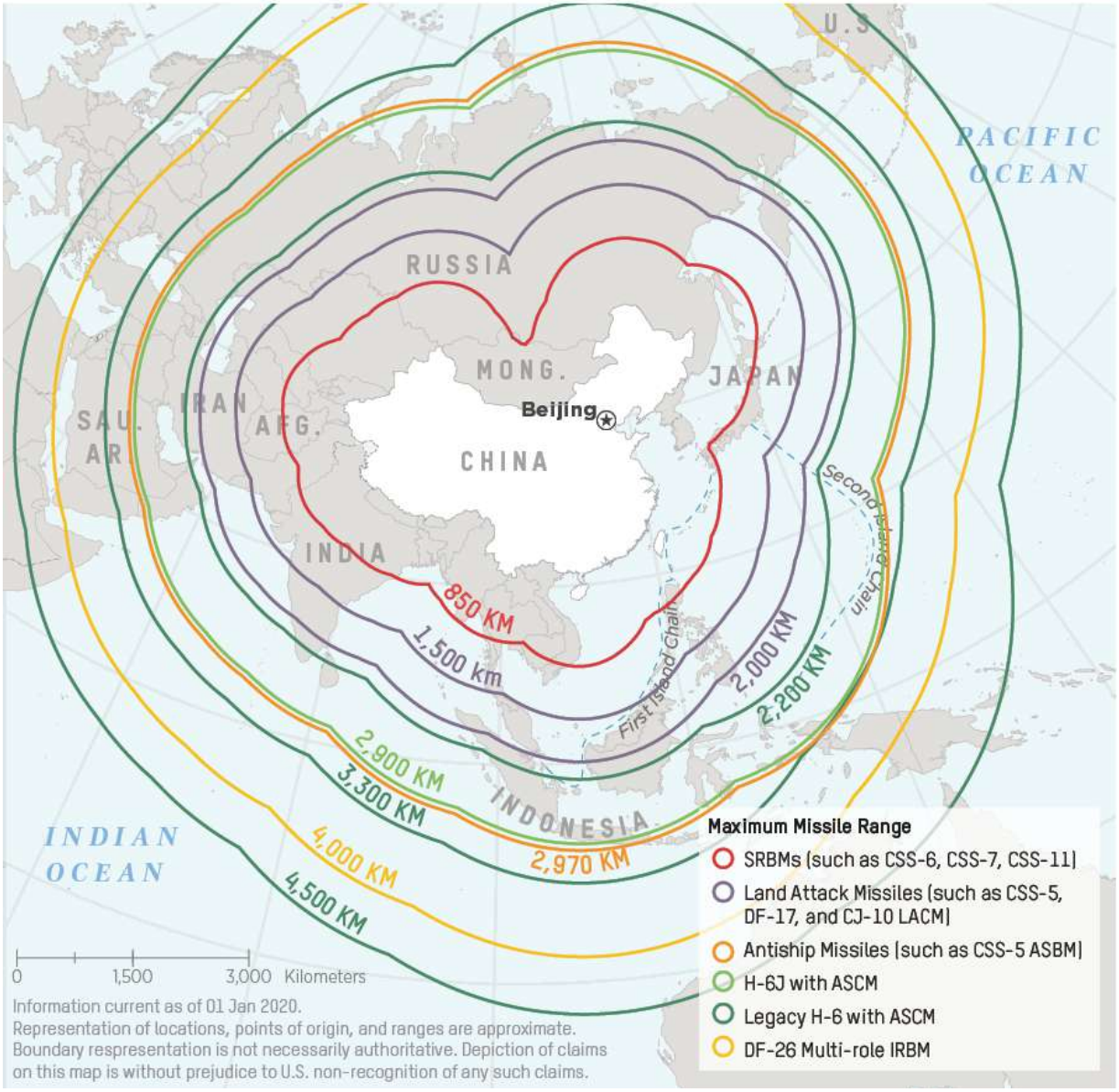
1152 Office of the Secretary of Defense, "Military and Security Developments," 28.

1153 Andrew Erickson, "Raining Down: Assessing the Emergent ASBM Threat," *Jane's Navy International*, March 16, 2016, accessed at https://my.ihs.com/Janes?th=janes&callingurl=http%3A%2F%2Fjanes.ihs.com%2FJanes%2FDisplay%2F1765057#A2/AD%20capability.

1154 Brad Lendon, "US must beware China's 'Guam Killer' missile," *CNN*, May 15, 2016, accessed at https://edition.cnn.com/2016/05/12/politics/china-guam-killer-missile/index.html.

1155 Office of the Secretary of Defense, "Military and Security Developments," 81.

CONVENTIONAL STRIKE CAPABILITIES



Source: Military and Security Developments Involving the People's Republic of China 2020: Annual Report to Congress, pg. 57

2020 China Military Power Report produced by the US Department of Defense, China is already ahead of the United States in certain areas such as:

- Shipbuilding: The PRC has the largest navy in the world, with an overall battle force of approximately 350 ships and submarines including over 130 major surface combatants. In comparison, the US Navy's battle force is approximately 293 ships as of early 2020.
- Land-based conventional ballistic and cruise missiles: The PRC has more than 1,250

MAJOR NAVAL UNITS

Source: Military and Security Developments Involving the People's Republic of China 2020: Annual Report to Congress, pg. 49.

ground-launched ballistic missiles (GLBMs) and ground-launched cruise missiles (GLCMs) with rangers between 500 and 5,500 kilometers. The United States currently fields one type of conventional GLBM with a range of 70 to 300 kilometers and no GLCMs.

- Integrated air defense systems: The PRC has one of the world's largest forces of advanced long-range surface-to-air systems–including Russian-built S-400s, S-300s, and domestically produces systems–that constitute part of its robust and redundant integrated air defense system architecture.[1156]

1156 Office of the Secretary of Defense, "Military and Security Developments," ii.

According to the report regarding the Chinese military:

- The PRC's strategy includes advancing a comprehensive military modernization program that aims to basically complete military modernization by 2035 and transform the PLA into a world class military by the end of 2049.
- The PLA's evolving capabilities and concepts continue to strengthen the PRC's ability to counter an intervention by an adversary in the Indo-Pacific region and project power globally.[1157]

While this is in no way a comprehensive examination of PLA's modernization, the point is that US strategists and military analysts are taking notice and debating what actions to take regarding this modernization and growing arsenal, especially with the current escalating tensions in the South China Sea. Some examples of military responses to China's military modernization include the Defense Innovation Initiative; the Long-Range Research and Development Plan; and most recently, the proposed Pacific Deterrence Initiative (PDI) including the Aegis Ashore system as part of the proposed PDI.[1158] This increasing capability of China is occurring in an environment of the decline of US primacy in the region. China's military growth, modernization, and diversification is something that will inevitably affect Guam as the island is an important power projection hub for the United States in the region, especially in the second island chain. This is encapsulated in the 2020 China Military Power Report, "The PLA is developing the capabilities and operational concepts to conduct offensive operations within the Second Island Chain, in the Pacific and Indian Oceans, and in some cases, globally."[1159]

China's military modernization is not the only factor in China's growth. Another primary factor is the expansion of China's economic and soft power as well as its more active foreign policy. From 1981-2011, China's economy grew 10% per year, overtaking Germany and Japan's economy rather swiftly. China is now the second largest economy, the world's largest exporter, second largest importer, and is also now the world's largest trading nation.[1160] Its economic rise has resulted in policies and actions that strategists deem to be against the US national interest as long as freedom of navigation and global power projection are core components of the US national interest. One prime example is its creation of alternatives to the economic development institutions created after Bretton-Woods, like the International Monetary Fund and the World Bank. Many countries in Oceania and Africa, such as Fiji, are turning to China for financial assistance since China does not attach the same neoliberal conditions in the acceptance of a loan. This was made clear by African Trade Minister Rob Davies in 2010, when he said, "China's expanding presence in Africa can only be a good thing because it means that we don't have to sign on the dotted line

1157 Office of the Secretary of Defense, "Military and Security Developments," ii.

1158 Cheryl Pellerin, "Hagel Announces New Defense Innovation, Reform Efforts," DOD News, November 15, 2014, accessed at https://www.defense.gov/News/Article/Article/603658/; Joseph Trevithick, "This is The Pentagon's $27 Billion Master Plan To Deter China In The Pacific," *The Drive*, March 5, 2021, accessed at https://www.thedrive.com/the-war-zone/39610/this-is-the-pentagons-27-billion-master-plan-to-deter-china-in-the-pacific;.

1159 Office of the Secretary of Defense, "Military and Security Developments," ix.

1160 Jude Woodward, *The US vs China: Asia's new Cold War?* (Manchester: Manchester University Press, 2017).

whatever is shoved under our noses any longer. We now have alternatives and that's to our benefit."[1161]

Another example is the establishment of the Asian Infrastructure Investment Bank (AIIB), which was created in 2015 and was an initiative aimed at boosting the region's economy with Beijing as the center of development. This was seen as a diplomatic victory for China because despite the United States' objection, US allies, such as the United Kingdom and Australia, signed the articles of association for the AIIB.[1162] China Finance Minister, Lou Jiwei, said the establishment of AIIB was a "first step in an epic journey meant to deepen regional cooperation, boost Asia's infrastructure and support the global economic recovery."[1163] Due to the United States' resistance to increasing the resources of the International Monetary Fund, giving emerging market nations a greater share in the decision-making of the institution, China created the AIIB.[1164]

Another initiative sought by China in further Asian, and even European, integration is its "One Belt, One Road Initiative." This initiative by President Xi Jingping is aimed at creating an "economic belt," which would link China with Mongolia, Russia, Iran, Turkey, the Balkans, and central and Eastern Europe. His maritime silk road component is aimed at linking southeast China with Southeast Asia, Bangladesh, India, and the Mediterranean. The core of this project would be to invest in infrastructure, such as transcontinental railway routes, highways, port facilities, and energy pipelines. The economic cost of this initiative is quite large, and China has invested nearly $1 trillion. This initiative has geopolitical implications that may challenge U.S national interests, and not just in the Indo-Pacific region.[1165]

In Oceania, some of the most visible signs of Chinese influence can be found in the financial aid it is providing Pacific Island countries, such as the Federated States of Micronesia. One root of Chinese aid to Pacific Island countries has been the battle for diplomatic recognition, where China (PRC) and Taiwan (ROC) both sought various Pacific Islands to recognize their respective governments. The result of this has been the opening of the region to Chinese (PRC) investment. According to Dean Cheng, who runs the Asian Studies Center at the Heritage Foundation, "Chinese trade with Pacific Island countries rose by 60 percent between 2014 and 2015, reaching $8.1 billion."[1166] A clear example of this is found in the Federated States of Micronesia. Former president of the FSM, Peter Christian, had an official visit to China in early 2017, greeted with a military review by Chinese President Xi Jingping, marking the FSM's involvement with China's Belt and Road Initiative. This meeting helped to strengthen ties between the FSM and China. As reported in a study by RAND, "On the subject of tourism, for instance, it was noted that China has endorsed the FSM as an officially sanctioned tourist destination and was willing to

1161 Jude Woodward, *The US vs China: Asia's new Cold War?* (Manchester: Manchester University Press, 2017), 17.

1162 Simon Denyer, "China launches development bank for Asia, calls it first step in 'epic journey'," *The Washington Post*, June 29, 2015, https://www.washingtonpost.com/world/china-launches-infrastructure-bank-first-step-in-an-epic-journey/2015/06/29/e7d8bd7a-ca11-46fa-9bad-15ba856f958c_story.html?utm_term=.4becafbe9b68.

1163 Denyer, "China Launches Development Bank."

1164 Denyer, "China Launches Development Bank."

1165 Peter Ferdinand, "Westward ho- the China dream and 'one belt, one road': Chinese foreign policy under Xi Jinping," *International Affairs* 92, no. 4 (July 2016): accessed at https://www.chathamhouse.org/publication/ia/westward-ho-china-dream-and-one-belt-one-road-chinese-foreign-policy-under-xi-jinping.

1166 Dean Cheng, "Countering Chinese Inroads into Micronesia," *The Heritage Foundation*, October 27, 2016, accessed at https://www.heritage.org/asia/report/countering-chinese-inroads-micronesia.

support a range of infrastructure projects related to growing the FSM's fledgling tourism industry. The visit included the announcement of block grants for the four states of the FSM, as well as the gifting of a new inter-island aircraft."[1167] What is even more important from the US perspective is China's courting of the FSM regarding the Compact of Free Association with the United States, with US grant funding set to expire in 2023. China has offered to financially help the country after this funding expires.[1168] The provisions for US funding are currently being renegotiated by the FSM and the US and may extend beyond 2023 in some form, in no small part because of this courting by China.

Another action taken by some Pacific Island countries is the recognition of China over Taiwan. Taiwan is only recognized by fifteen countries, with four of them being in the Pacific Islands (Palau, the Marshall Islands, Nauru, and Tuvalu). This China-Taiwan competition for recognition from countries is global and was evident in the Caribbean in the 1990s, moving to larger South and Central American countries, and now taking center stage in Oceania. In late 2019, two Pacific Island countries, Kiribati and the Solomon Islands, cut diplomatic ties with Taiwan and began to recognize and establish diplomatic ties with the People's Republic of China instead. Soon afterward, Prime Minister Manasseh Sogavere of the Solomon Islands went to China to sign five memoranda of understanding which included the Solomon Islands' involvement in China's Belt and Road Initiative as well as a Chinese promise to build a multi-million-dollar stadium. In return, Chinese companies were "granted the right to build infrastructure, roads, bridges, and power in order to revive Gold Ridge, once Solomon Islands' most lucrative goldmine; and a Chinese company attempted to lease the entire Solomons' island of Tulagi." [1169]Similarly, Kiribati switched allegiance, from Taiwan to China. Kiribati President Taneti Mamau said at the United Nations, "I do believe that there is much to learn and gain from the People's Republic of China and the reestablishment of our diplomatic relations is just the beginning."[1170] [1171]

These factors collectively demonstrate how US power and influence is being challenged, especially in the region.

Models Moving Forward

In their book, *Decolonization: A Short History*, Jan C. Jansen and Jurgen Osterhammel describe five models of decolonization or of how colonial rule came to an end: the transfer of power model; the national liberation model; the neocolonialism model; the unburdening model; and the world politics model—each detailing different reasons for decolonization:

1167 Derek Grossman, et al., "America's Pacific Islands Allies: The Freely Associated States and Chinese Influence," *RAND Corporation*, 2019, 33.

1168 Direct quotation ends.

1169 Edward Cavanough, "When China came calling: inside the Solomon Islands switch," *The Guardian*, December 8, 2019, accessed at https://www.theguardian.com/world/2019/dec/08/when-china-came-calling-inside-the-solomon-islands-switch.

1170 DW, "Kiribati and China Restore Diplomatic Relations," *DW,* https://www.dw.com/en/kiribati-and-china-restore-diplomatic-relations/a-50618545.

1171 Direct quotation begins in the next paragraph.

1. *Transfer of Power model:* According to this model, decolonization is the "purposeful fulfillment, rationally implemented by European administrators in cooperation with moderate indigenous politicians of a reforming tendency already inherent in colonialism, namely, to send non-European people who came of age thanks to their colonial education on their way into modernity based on self-determination. This model thus puts emphasis on metropolitan decisions and plans at the motor of change."[1172] To put it another way, in this model, the colonizer is made to look like a benevolent parent who feels his child is ready for graduation and/or the next chapters in their life, thus they peacefully pass down power to the colony.

2. *National liberation model:* In this model, decolonization is spurred by the "toppling of alien rule based on violence by native liberation movements aiming to unite their nation and availing themselves of a broad spectrum of means, from peaceful negotiation to boycott to armed struggle."[1173] This model of decolonization is directly opposed to the transfer of power model of decolonization because in this view, power was never transferred, rather it was taken via liberation movements. In the national liberation model, it is unlikely that colonizers ever freely give up power based off of the colonized "reaching a state of development" commiserate to being deemed as equal. This model of decolonization has seen lives lost and bloodshed in history.

3. *Neocolonialism model:* According to the neocolonialism model of decolonization, the process is as follows: "the colonial power's voluntary renunciation of coercive colonial structures that have become obsolete once they realize, in the age of powerful multinational corporations, that they can achieve their goal of economic exploitation just as well and more cheaply without direct domination of a state."[1174] Under this model, a powerful country could continue to rule even if not "officially" colonizing or annexing territory. They can do this through multinational corporations.

4. *Unburdening model:* This models views decolonization as "a deliberately planned effort at modernization by abandoning overseas positions whose military and strategic value has become increasingly doubtful, fiscally costly, politically risky, and damaging to the colonizer's international reputation, and that are also less and less supported by the public at home – in other words, an attempt at unburdening usually linked to a shift in global priorities."[1175] Thus, decolonization occurs because it is not in the best interest of the colonizer to hold on to that colony any longer. "Following such cost-benefit calculations, clinging to the burdensome and

1172 Jan C. Jansen and Jurgen Osterhammel, *Decolonization: A Short History* (Princeton: Princeton University Press, 2017), 29.

1173 Jansen and Osterhammel, "Decolonization: A Short History," 29.

1174 Jansen and Osterhammel, "Decolonization: A Short History," 30.

1175 Jansen and Osterhammel, "Decolonization: A Short History," 30.

loss-making enterprise of maintaining colonial rule seemed increasingly irrational."[1176]

5. *World Politics model:* The final model describes decolonization as "the inevitable consequence of the newly emerged bipolarity between the post-1945 nuclear superpowers, which no longer leaves any room for the old European strategies of securing power by colonial control over the widest possible expanse of territories and devalues the possession of conventional colonial empires as a guarantee of top billing on the world political stage."[1177] It calls on us to look at international politics and the geopolitical conditions of the times in identifying the possible conditions for decolonization. This model can also reflect the United States' post-World War II strategy of the basing network. After World War II, with the creation of the United Nations and liberal international ordering, the US could not engage in old processes of colonialism such as direct annexation. However, to maintain its influence in the world, it established a forward presence military basing strategy as opposed to "colonizing" and annexing new territories in the world.

Each of these models provide different reasons for decolonization and more importantly, identify different agents of change in the decolonization process, ranging from the colonial elite, to a mass movement of the colonized, to the structure of the international system. Furthermore, in many decolonization movements in history, one sees that the models can be mixed. Understanding these different models of decolonization is helpful for the purposes of this study because it broadens the scope of understanding regarding a change in political status.

To put it another way, whenever decolonization does occur, and if it does occur via a plebiscite, voters should pay close attention to world events and what is happening in the region. One must pay attention to the geopolitical environment. One thing that tends to be taken for granted is that the US's #1 superpower status will remain in perpetuity. Now, this may make sense to many because Guam was statutorily declared an unincorporated territory of the US after World War II, parallel to the US becoming a global superpower. Many in Guam have lived through this period in which the US won the Cold War and had no real competitors in the international system. However, this unipolar moment is a blink in history. With the increase in power of countries like China or the decrease of American influence around the world, the world looks different than it did 70 years ago when decolonization was at a real peak. This should be acknowledged. If the US remains the most powerful country in the world, this makes a more stable argument for statehood. If US global power is in decline, with other powers rising in the region, this makes a more powerful argument for independence or free association. The point is that US primacy is not permanent, even if one desires it to be so, and one should consider that in calculations about the future.

Conversations about future political status options for Guam tend to revolve around Guam's relationship with the United States. However, particularly, for the areas of external affairs and defense, it is the

1176 Jansen and Osterhammel, "Decolonization: A Short History," 31.

1177 Jansen and Osterhammel, "Decolonization: A Short History," 31.

opinion of the authors that it would be incomplete to not to include possible futures in which the United States diminishes in power, with a return to a more restrained bend towards foreign policy. In this study, the permanence of the United States as the only world superpower is not taken for granted. It must be made clear that, in engaging in an analysis of this possible future, it must not be equated to the authors desiring this result. It simply would be intellectually dishonest not to take these scenarios into account. Thus, the geopolitical power shifts in the Indo-Pacific region, impacts of climate change, and the different models of decolonization throughout history will all affect the various futures of political status for Guam.

Synthesizing the information provided in this overview, any analysis of possible future(s) for external affairs and defense for Guam needs to consider various futures, and not a single future. The following section of the study engages in a future(s) scenario exercise in the independence portions that is not often thought about, particularly in the context of discussions on political status options. The following scenarios are primarily deployed in the independence portions of the study because the structural relationship with the United States (particularly regarding security) will be generally similar under the following scenarios. The five scenarios utilized are:

Scenario #1: Chinese Primacy/Chinese Expansion Towards Military Primacy, Significant US Decline

This first model focuses on the scenario that the US declines and China flourishes and establishes primacy in the region. To be clear, primacy refers to "a country's disproportionate (and measurable) share of all three kinds of power resources: military, economic, and soft."[1178] In this case, it may not even be that China actively interferes with US military goals in Micronesia, but rather that the regional arrangements shift (China gaining the support of all surrounding Pacific Island countries) or that US power looks different in the region (restraint and less basing). Furthermore, in this scenario, it could also be the case that China ends up as the regional hegemon (writing the rules of interaction in the region through the development of new alliances, regional institutions, or maritime treaties).

Scenario #2: Decline of China and the United States, Emergence of Alternative Regionalism or Middle-Power Engagement

In this model, both the United States and China are weakened and neither serves as the pre-eminent power in the Indo-Pacific region. It is speculated that in the case of US and China no longer serving as the center of geopolitical gravity in the region, there are multitudes of futures for how the region may look. This can range from middle-powers such as Australia or Japan trying to exert more influence, Pacific Island countries serving a major role, or the solidification of regional organizations as the primary driver of regional politics, such as ASEAN, the Pacific Islands Forum, or further subregional organizations. To

1178 Joseph S. Nye, Jr. "American Hegemony or American Primacy," *Project Syndicate*, March 9, 2015, accessed at https://www.project-syndicate.org/commentary/american-hegemony-military-superiority-by-joseph-s--nye-2015-03?barrier=accesspaylog.

put it another way, in this scenario, it would not be great powers such as China and the United States organizing the region.

Scenario #3: Continued competition

This model examines the possibilities if Guam were to transition into a different political status in the environment of increasing disruptive competition between the great powers in the region. This is not an argument akin to, "Which side must Guam choose?" Rather, the geopolitical environment at the time of decolonization will affect the reality and options available to Guam. Things to be considered in this model of continued competition are military strength, grand strategy, economic influence, and international standing.

Scenario #4: US Reassertion in the Indo-Pacific, Chinese Decline

This model examines the possibilities of Guam transitioning to different political statuses in the environment of the US maintaining or expanding its power and influence in the region, with a corresponding decline in China's power and competitive advantage. In this scenario, the United States reasserts itself as the primary power in the region via the reassertion of the freedom of navigation, renewed US economic presence displacing nascent efforts of China to establish competitive financial institutions, and a growth in military power and deterrent capability.

Scenario #5: US Legitimacy crisis on the World Stage Due to Climate Change

In Futures Studies, "drivers" refer to the factors causing change, affecting or shaping futures. Drivers could be direct or underlying. With the four scenarios outlined above, the main drivers being considered are great powers, military capabilities, and shifting geopolitics of the region. In these scenarios, an examination of how amendable each political status is with the geopolitical situation is analyzed. In this final scenario, military power or security is not the driving force of a push for status change. Rather, this scenario represents a change in the incentive for self-determination from considerations of traditional "security" to other aspects of security, such as human security, environmental security, and adaptation to climate change.

In this fifth scenario, the United States suffers from a legitimacy crisis on the world stage due to a climate-changed world. In this scenario, the US decreases its assistance and aid to the region after natural disasters or disease outbreaks and has pulled back from world affairs. Thus, a country like China could step in and potentially fill this pivotal role. An example of this is the US offering money after a natural disaster for basic relief efforts, while China offers to help rebuild and fund longer-term infrastructure that is more in line with climate resiliency. Furthermore, climate change poses an existential threat to Pacific Island communities, and even if a country has a healthy distrust of a larger power, it may be inclined to

be engaged with the large power able to offer it more. In this scenario, climate change has made human security and environmental security issues come to the forefront of the self-determination movement in Guam. In this scenario, the people of Guam are still concerned with traditional military security concerns, but climate change-related security issues are more pressing. As President Kabua of the Marshall Islands said at a recent meeting of the UN Climate Security Project for the Pacific Region, "This is about our survival, safety and security. Military might doesn't bring peace and security. Peace depends on water, food, land, safety and community."[1179]

Overall, the possibilities available to Guam may look different depending on these various geopolitical or climate future(s). However, other factors, such as the state of the decolonization movement in Guam, Guam's connection to the federal bureaucracy, other effects of climate change, the composition of the legislative and executive branches of the United States at the time, and the domestic political environment in the United States will all be factors conjoining the geopolitical environment and must also be taken into consideration.

1179 "UN Climate Change Security Project for the Pacific Region Meeting," September 7th, 2020.

Potential Political Reunification with The Marianas

The political separation of Guam from the rest of the Mariana Islands—collectively known as the Commonwealth of the Northern Mariana Islands (CNMI)—has notably affected relations between the people of Guam and the people of the CNMI. This has occurred in a relatively short amount of historical time.

We were contracted to include this topic in the study, but we urge the government of Guam to conduct another independent study on reunification. To be treated properly from an analytical perspective, a report on reunification should be lengthier than what we are able to provide here. With this caveat, we still provide some insight and analysis into the issue. It must be emphasized that it is not the intent of this study to assert whether or not to politically reunify with the CNMI. Several factors make reunification an option to consider. Both Guam and the CNMI are geographically situated in the same archipelago, share similar geography, and share an indigenous population with many shared aspects of culture.

The topic of political reunification brings many questions and additional factors to consider, as well as providing additional ways to envision our future. This section does not attempt to predict exactly what each political status would look like in a unified Mariana Islands. Rather, the information and analyses presented here detail some historical context that shaped Guam and the CNMI's current status, as well as legal aspects to consider in the case of reunification. Being part of an archipelago with an appealing strategic location is important to explore when looking at political status options. These include, but are not limited to, issues such as: how a shared general location could affect future geopolitical endeavors if the two political units remain politically separated; relationships with other countries; ecological concerns, as well as expanding the possibilities of our responses to environmental changes; natural disasters, etc. It is not necessary to be a single political entity to address these kinds of issues, but it can be fruitful to imagine how a unified Marianas archipelago (under the different political statuses) could address these various issues. In addition, this study does not assume the political will of the people of the Commonwealth of the Northern Mariana Islands. Pursuing political reunification, ideally, must be contingent on both the people of Guam and the CNMI collaborating on and envisioning the mutually agreeable political relationship.

In line with the rest of the study, however, this section is written specifically for what the people of Guam can consider for the political status options.

It is important to note that in this study we concentrate on methods of reunification and refrain from engaging in arguments or discussions of the feasibility or probability of reunification under the three statuses. There are far too many factors that need to be taken into account to provide an analysis of the feasibility or probability of reunification. Lastly, there are some in Guam who prefer to resolve the issue of reunification before proceeding with the resolution of Guam's decolonization. While the cause of reunification is a worthy one, it should not serve as a precondition for progress or resolution of Guam's quests for decolonization. Guam's decolonization and switch to a new political status should not hinge upon successful reunification with the Commonwealth of the Northern Mariana Islands.

Terms and Political Designations

When analyzing the potential for reunification and examining the three status options, one must assess if there are significant differences in achieving any particular political status with Guam as a single entity or as a unified Mariana Islands. Guam and the CNMI are both "insular areas,"[1180] of the United States. The generic term of an insular area of the United States refers to, "a jurisdiction that is neither a part of one of the several states nor a federal district."[1181] Guam became a possession of the US in 1898, but the status of organized, unincorporated territory came several decades later, following US military rule, Japanese occupation, and US reoccupation. Guam's status as an organized, unincorporated territory was not fully enacted until 1950. The CNMI, on the other hand, has commonwealth status. In insular area terms, a commonwealth is, "an organized United States insular area, which has established with the federal government, a more highly developed relationship, usually embodied in a written mutual agreement."[1182] The mutual agreement between the United States and the CNMI is the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (referred to as the Covenant for the remainder of this section).

Historical Context

The political division of the Mariana Islands is not unique, as these types of divisions exist among other colonies and former colonies. Spain lost the archipelago following the Spanish-American War in 1898. The partition of the Mariana Islands was a result of the negotiations and decisions by Spain, the United States, and Germany. President McKinley, against the advice given to him by his naval officers to take all of the Mariana Islands as well as the Caroline Islands, decided to acquire only Guam. The

1180 Please note that "territory" and "insular area" will be used interchangeably in this section unless given a specific context.

1181 US Department of the Interior, "Definitions of Insular Area Political Organizations." October 22, 2019, accessed at https://www.doi.gov/oia/islands/politicatypes.

1182 US Department of the Interior, "Definitions of Insular Area Political Organizations."

Northern Mariana Islands and Caroline Islands were sold to Germany. Japan then gained control of the NMI through a League of Nations mandate following World War I. During this time, Japan developed intelligence on the area, implemented its own governance system, and developed a relationship with the people. Some CHamorus from Guam even moved to the NMI during this time because there was not enough economic development opportunity for them under the US.[1183]

Because of the political separation of the archipelago, the people of Guam and the people of the Northern Marianas experienced WWII differently. The memories of war and political development during this time persist until today.[1184] Although the Japanese occupation resulted in some negative perceptions between the two entities, many CHamoru families still had strong ties to their families on the different islands. This, however, was not enough to gain significant support for a reunified Marianas in the years following the war.

Following WWII, all of the former Japanese Mandate Islands became part of the Trust Territory of the Pacific Islands (TTPI) under the administration of the United States, including the NMI. The US recognized the people of the NMI's inherent right to sovereignty under the trusteeship agreement and guaranteed their right to form the government they wanted. This meant that since the US already had Guam as a possession, its presence in the region was now greatly expanded. Over the next two decades, the islands in the region saw significant political change. The US Congress passed the 1950 Organic Act of Guam, which officially made Guam an unincorporated territory of the US and gave the island a measure of local self-government. Saipan officials studied the Guam Congress, which helped them create the Saipan Congress. Guam would later use the NMI's commonwealth status as a model for its quest for commonwealth. Legacies of WWII permeated all aspects of rebuilding after WWII, and the relationship with the NMI was no different.

In 1957, an unofficial poll on the question of reunification was held in both Guam and the NMI. "The people of Saipan voted 63.8 percent in favor of reunification. The Guam Legislature then adopted Resolution No. 367, requesting the US Congress to incorporate the Northern Marianas within the governmental framework of the territory of Guam."[1185] The Saipan Congress drafted a similar resolution. Although officials in Washington, D.C., and the appointed governor of Guam supported an eventual reunification, members of a visiting UN mission to the NMI did not because of its political affiliation with TTPI. The NMI was instead advised to work with the other members of the Trust Territory to resolve its status.[1186] Several referendums followed in the NMI which continued to show support for reunification. Each time, efforts were blocked by both Washington, D.C., and the United Nations. The people of Guam, in 1969, voted in a special election. In this election, the majority of voters rejected reintegration. This is attributed to low voter turnout, lack of education, inadequate economic resources, and the sentiments

1183 Farrell, Don A. "A History of Marianas Reunification Efforts." In 2nd Marianas History Conference, (One Archipelago, Many Stories: Integrating Our Narratives). (Mangilao, Guam: Guampedia), 2013.

1184 Rogers, "Destiny's Landfall."

1185 Farrell, "Efforts to Reunify the Mariana Islands."

1186 Farrell, "Efforts to Reunify the Mariana Islands."

surrounding WWII.[1187] The following year, Guam elected its first elected governor.

The Congress of Micronesia created a political status commission and began conversation to resolve political status in the Trust Territory. While the rest of the TTPI wanted a more autonomous status and relationship with the US, the people of the NMI desired a closer political relationship and opted for separate negotiations on status. This eventually led to commonwealth status for the NMI. The following section explains how some of the persisting realities and issues from these political histories have and will continue to impact future political status decisions.

The Covenant and Constitution of the CNMI

Although commonwealth status is not an option in current Guam law or considered within the scope of this study, a look at the political development of the CNMI and several aspects of the CNMI's commonwealth status can provide additional context to the question of reunification.

The Covenant governs the relationship between the CNMI and the US. The people of the NMI began negotiations with the United States in 1972. The Covenant was approved in a plebiscite on June 17, 1975 and signed by President Gerald Ford on March 24,1976.[1188] The people of the NMI opted for commonwealth status because of the perceived measure of self-governance it provided while still maintaining the applicability of certain aspects of the US Constitution. It should be noted that the specific language of the ballot was controversial and may have been a determining factor in the status chosen. Opponents of the Covenant believed that the ballot favored the Covenant because a "no" vote included language that indicated the NMI would remain part of the Trust Territory, to negotiate a status agreement as a single Micronesian entity, if Commonwealth was rejected. This meant they would remain tied to the Trust Territory if they voted no. Opponents also believed that it left no option to renegotiate the Covenant for a "better deal" for the NMI. In the end, approving the Covenant did not come easily. There were challenges from different peoples of the NMI (both in favor and against the Covenant). Consideration had to be made for the limitations of what was allowed of a US insular territory, given its legal designations. US negotiators also made a case for ensuring that whatever decision is made would be an acceptable measure of self-determination in the eyes of the UN.[1189] In the negotiations, the US and NMI agreed on the issues of mutual consent, a local constitution, and local self-government. These were political functions not found in Guam's Organic Act and were an impetus for Guam's eventual efforts toward commonwealth status.[1190] "The United States, however, likened the Marianas to a territory, permitting the exercise of federal authority, and believed that the term commonwealth was important in name and form only. In addition, the United States Delegation urged uniform treatment, whenever possible with Guam. Their reasons for this position were Guam's territorial status and Congress' hope that these Chamarro [sic]

1187 Farrell, "Efforts to Reunify the Mariana Islands."

1188 Leibowitz, Arnold H. "The Marianas Covenant Negotiations." *Fordham International Law Journal*, 22 (1980): 21-22.

1189 For more information see: H. Willens and D. Siemer, *An Honorable Accord: The Covenant between the Northern Mariana Islands and the United States*. (Honolulu: University of Hawai'i Press, 2002).

1190 Rogers, Robert F, "Guam's Commonwealth Effort 1987-1988," *University of Guam Micronesian Area Research Center*, July 1988.

peopled islands would eventually be united."[1191] These aspects of the negotiations highlight several crucial distinctions for those in Guam to consider, especially given that the theoretical, versus practical, exercise of self-government in the NMI exemplifies Congress's plenary power regardless of political distinctions.

Commonwealth status has afforded the CNMI opportunities to create laws that may otherwise be considered contrary to federal statute. One example is land tenure. Article XI, Section 4 of the CNMI's Constitution defines A person of Northern Marianas descent as,

> A person of Northern Marianas descent is a person who is a citizen or national of the United States and who has at least some degree of Northern Marianas Chamorro or Northern Marianas Carolinian blood or a combination thereof. For purposes of determining Northern Marianas descent by adoption, a child without any degree of Northern Marianas descent when adopted while under the age of eighteen by a person of Northern Marianas descent shall not acquire any degree of Northern Marianas descent. For purposes of determining Northern Marianas descent, a person shall be considered to be a full-blooded Northern Marianas Chamorro or Northern Marianas Carolinian if that person was born or domiciled in the Northern Mariana Islands by 1950 and was a citizen of the Trust Territory of the Pacific Islands before the termination of the Trusteeship with respect to the Commonwealth.[1192]

Article XII, Section 1 of the CNMI Constitution limits long-term interest in real property to those of Northern Marianas descent. Unlike the CNMI, ethnic and/or historical distinctions among people have been challenged in Guam. Any efforts toward reunification will have to consider and possibly reconcile these legal distinctions when establishing a government for the archipelago.

Continued Reunification Efforts[1193]

The reunification efforts that began in the 1950s-1960s lost some momentum after the 1969 election in Guam, but additional efforts toward reunification have happened since. A 1994 bill in the Guam Legislature to set up a commission to explore reunification resulted in no action. Although there has not been the same kind of political push from either entity in recent years, efforts to collaborate with members throughout both communities on shared issues, such as economic development, federal funding, and immigration have been made. With the ongoing military buildup, there may be reason to revisit the issue. The 2016 assembly of the Association of Mariana Islands' Mayors, Vice Mayors and Elected Municipal Council Members wrote several resolutions advocating for more efforts to be made to engage in more

1191 Leibowitz, "Marianas Covenant Negotiations," 25.

1192 Article XI, Section 4 of the CNMI Constitution. Accessed on http://cnmilaw.org/cons.php#gsc.tab=0.

1193 This brief overview of the efforts does not incorporate many of the different factors influencing the individual efforts and sentiments of the people of Guam and the NMI. This section also does not address US interests and dealings in other colonies and territories which also affected what happened in the Marianas. For example, Cold War US defense interests affected political status efforts within the Marianas because of the location of the islands.

partnerships between Guam and the CNMI. Most notably, the council expressed interest in developing a referendum on reunification. The council adopted Resolution No. 2016-23-03, requesting the executive branches of both Guam and the CNMI to schedule a nonbinding referendum on political reunification.[1194]

The governments of Guam and the CNMI through the Marianas Working Group (MARWork), led to the One Marianas Summit, where different people with different ideas and skills could collaborate with the other islands. The summit also developed a regional maritime training center for training for port operations and maritime operations. A 2020 interview with former Senator Wil Castro discussed some of the work he has been part of to build Guam's relationship with the CNMI. Efforts, such as Castro's One Marianas initiative, are meant to encourage further collaboration between the Guam and the CNMI governments. In the interview, Castro also described legislation that allowed CNMI residents to more easily acquire a driver's license in Guam. Castro notes how seemingly simple changes like this could potentially impact other aspects of our relationships. Although this section does not address other efforts outside of the executive and legislative branches of government (such as advocates for education about reunification and other types of collaborations outside of the government), it is imperative to note that community efforts exist and are important work.

Potential for Reunification

Any effort toward reunification should begin with an assessment of the desires of the people of both Guam and the NMI. Yet, it must also be acknowledged that the United States exercises utmost power in bringing these desires to fruition. As Don Farrell notes,

> Regardless of emotional arguments for or against reunification, it seems the time for a comprehensive, scientific study of the economic and legal pros and cons of reunification is long overdue. What are the differences and similarities between the laws of Guam and the Northern Marianas and the economic impacts of both on our people? Should our two legislatures battle over competitive tax rates for investors? Should our two port authorities be charging each other for landing fees and counter space for the same airlines, and increasing the cost of inter-island transportation? Should there be separate border control stations, two separate US District Courts, two separate offices for all federal agencies in our two territories?[1195]

Regardless of what political status is chosen for Guam, reunification with the Northern Mariana Islands will be contingent on multiple factors. The processes will have to include discussions, negotiations, and proceedings on reunification and will be contingent on existing laws and processes between the United States and the territories of Guam and the Northern Mariana Islands. The models here focus on the potential

1194 Association of Mariana Islands Mayors, Vice Mayors, and Elected Municipal Council Members, "Resolution No. 2016-23-03," accessed on http://guamlegislature.com/Mess_Comms_33rd/Doc%20No.%2033GL-16-2222.pdf.

1195 Farrell, "Efforts to Reunify the Mariana Islands."

for reunification in each political status option. It is important to note, however, that exploring any sort of status change between the two entities must include a reconciliation of their existing relationships with the United States. There is no definitive answer as to whether or not a political status change for one or both will or must precede reunification or whether reunification can come before a final status for the newly unified islands. Additionally, further research is needed to have a more comprehensive understanding of the possibilities for developing strategies and agreements on the transferring and management of areas such as: governance including representation; potentially contradictory laws; finances and debt; etc. To engage in all these issues is beyond the scope of the study. Once again, a separate study purely centered on reunification is required to provide the level of analysis many readers may seek.

Political Status Options

For the purpose of this section, two assumptions must be made: the people of both Guam and the CNMI want to politically unify; and Congress does not exert any power to block this effort. Questions that will shape this analysis are: Can political reunification be achieved under Guam and the CNMI's existing status?; If Guam pursued a political status change on its own, will it be able to later consider political reunification with the CNMI under its current status or would the CNMI also have to change its political status?; and Is reunification possible under all of the three status options or will any of the status options potentially eliminate the possibility of reunification?

Statehood

When exploring the option of statehood, three scenarios are possible:

1. Guam and the CNMI can reunify as one political entity and then be admitted as a state.
2. Guam can achieve statehood and then later reunify with the CNMI provided that the CNMI is still a commonwealth of the US, or the CNMI can achieve statehood and later reunify with the territory of Guam.
3. If Guam and the CNMI each became a state separately, they would have to seek the approval of Congress for reunification.

Political unification of the islands would increase the total population to almost 220,000 people. As a new state, this is still smaller than the smallest US state's population of about 577,737, in Wyoming.[1196] Given the historical parameters surrounding admission as a state and the hurdles of a politically unified entity having a small population, the perceived benefits of incorporating the Mariana Islands would likely have to outweigh the costs of admission. For example, the archipelago's location in proximity to the

1196 US Department of Commerce, "US Census Bureau QuickFacts: Wyoming," accessed December 15, 2019. accessed at https://www.census.gov/quickfacts/WY.

continental US on the East, and other countries in Asia on the West, makes it unique compared to states of the United States. The non-contiguous states of Alaska and Hawai`i can serve as models to frame certain issues regarding location, but Guam's location near Asia means that additional considerations will need to be made regarding issues such as immigration, military, and other geopolitical factors.

Developing a unified statehood model for the Mariana Islands archipelago requires that assessment of elements presented in this study (for Guam) also be completed for the NMI. This will help determine the impact of a status change on the political and legal structures, the financial and physical resources, as well as social problems, economic possibilities and limitations in addition to issues of defense for the CNMI. Considerations will need to be made for the land and water resources of the archipelago as well as the combined population of the entire area. With this comes additional financial needs, to address areas such as education, health, public safety, and social ills. In the end, one unified political entity could have less of a financial impact on the United States compared to "the partition costs [to] American taxpayers, in both the Marianas and the mainland, millions of dollars annually to maintain two separate territorial governments for essentially one people—not to mention the price of aggravations created over inter-island commerce and taxation."[1197] Statehood will include complete constitutional rights for the people, at least one voting member in the House of Representatives and two voting members in the Senate, and electors who will vote for the president of the United States. Statehood will also mean applied federal laws and potential access to increased resources.

Independence

Independence provides potential for reunification with the Northern Marianas. This status, however, is contingent on the statuses of both Guam and the NMI at the time that reunification is sought. Reunification is possible if:

1. Guam and the CNMI both achieve independence separately. As independent countries, they can later unify to form one country and seek international recognition as one independent political entity.
2. Guam and the CNMI unify as territories of the United States and together pursue their independence from the United States.

This is not the case under a third scenario. If only one entity achieves independence, the potential for reunification is unlikely. As long as either Guam or the CNMI remains a possession of the United States, the territory will not have the ability to seek political unification with an independent country unless their law states it is an option and the United States recognizes it as an option for a status change.

A model for an independent, unified Mariana Islands archipelago must include an assessment of the

1197 Farrell, "Efforts to Reunify the Mariana Islands."

various aspects of the political and legal structures, financial and physical resources, social and cultural factors, economic possibilities and limitations and issues of defense and other external affairs in the CNMI. Coupled with the information presented in this study, a thorough analysis can be made of the potential benefits and downfalls of reunification, with an end state of independence. As is the case for any of the three status options, land and water resources are increased with a unified archipelago. In an independent, unified archipelago, an expanded EEZ comes with economic advantages, but these advantages are met with additional concerns of effective administration and enforcement. A combined population presents, on the one hand, new opportunities for industry development and, on the other, increased challenges for limited financial and physical resources. To address this, an independent, unified archipelago can seek financial assistance from international resources to aid in development.

Free Association

This section presents two scenarios for free association within the parameters of the existing Guam law that outlines the status options.[1198] Other possibilities, however, are available under international law, which does not limit the options for a free association.[1199] UN Resolution 1541 states that "a non-self governing territory can be said to have reached a full measure of self-government by…free association with an independent state" without stipulating any constraints for choosing what state to freely associate with. For example, under international law, Guam and the CNMI, as separate independent countries, may opt to enter into a free association agreement with each other. Guam and the CNMI, as one independent country, may also opt to enter into a free association agreement with another Pacific Island country or any other existing independent country.

As is the case with independence, reunification is unlikely while one entity remains a territory of the United States. As long as either Guam or the CNMI remains a possession of the United States, the territory will not have the ability to seek political unification with a freely associated state of the United States unless the law states that it is an option, and the United States recognizes it as an option for a status change.

As a freely associated state, the unified archipelago would have to make the same considerations as an independent, unified entity in all matters concerning governance, resources and people. These considerations would all be subject to the terms of a compact. For example, land and water resources (although expanded to include both Guam and the NMI) may have conditions for use within its compact of free association. Additionally, financial resources may be impacted by the terms of the compact, which will likely include provisions for economic assistance from the US based on the collective population. This added financial aid could be used to meet some of the challenges that come with the increased population as well as the change in status. Finally, as a freely associated state, the unified archipelago would have to make some concession in its laws to align with the terms of the negotiated relationship. These can be

1198 The law establishing the Commission on Decolonization states that the ballot option for free associations will read: "Free Association with the United States." 1GCA Chapter 21 § 2110.

1199 United Nations General Assembly, "Resolution 1541."

negotiated with the United States to ensure that both parties benefit from this relationship.

The limitations of this section are first and foremost the lack of insight about the political will of the people of Guam and the CNMI regarding political reunification. Second is a lack of models to provide a framework for how reunification can be achieved. If it is the political will of the people of both to push a reunification effort, it is recommended that an assessment of self-governance be completed in the CNMI to determine the compatibility of the two territories. Regardless of the potential difficulties that may come with any reunification effort, the people of Guam and the CNMI can pursue continued collaboration in both political and economic development that is beneficial to both in their shared geography.

POTENTIAL REUNIFICATION OF THE MARIANAS	
STATUS	**EFFECTS**
Statehood	• Political reunification is not likely to negatively impact efforts to become a state, regardless of whether the status is achieved by both entities at the same time or at different times. • As a state, a unified archipelago will encompass all the land and water resources of the entire area, to include increased population. • As a state, additional financial resources are needed to address areas such as education, health, public safety, and social ills. • As a state, complete constitutional rights, applied federal laws, access to increased resources, at least one voting member in the House of Representatives and two voting members in the Senate, and the ability to choose electorates who will vote for the president of the United States will apply.

Independence	• Political reunification is possible before or after Guam and the CNMI achieve independence. Political reunification, however, is unlikely if one entity is independent and the other remains a territory of the United States. • Land and water resources are increased with a unified archipelago. • Increased population presents opportunities for industry development and increased challenges for limited financial resources. • A constitution will need to be drafted, establishing a new government structure, the distribution of political power and representation.
Free Association	• Political reunification is possible before or after Guam and the CNMI enter into a free association with the United States. Political reunification, however, is unlikely if one entity is freely associated and the other remains a territory. • Land and water resources will increase but may have conditions for use by the US. • Financial resources may be impacted by the terms of the compact, which will likely include provisions for federal aid from the US that can be used to meet some of the challenges that come with the increased population as well as the change in status. • Some concession in laws is likely to align with the terms of the compact or other legal instrument.

Treaties

In international law, a treaty is an "international agreement concluded between states in written form and governed by international law, whether embodied in a single instrument, in two or more related instruments and whatever its particular designation."[1200] According to the Vienna Conventions on the Law of Treaties (1969, 1986), a treaty is: a binding instrument, which means that the contracting parties intended to create legal rights and duties; concluded by states or international organizations with treaty-making power; governed by international law; and be in writing. It must also be noted that the intricacies of treaties and international law are fundamentally more complex than is provided above.

Treaties vary in scope and content, ranging from defense to economy. A bilateral treaty is a treaty between two countries while a multilateral treaty necessitates the involvement of three or more countries/international organizations. Multilateral treaties are often crafted to cover particular areas such as human rights, international humanitarian law, arms control, trade/commercial relations, international criminal law, and the environment. Furthermore, treaties can also be consummated between international organizations. Lastly, treaties should be entered into with the intent to create obligations under international law.

This subsection of the study explores the context of treaties, diplomatic relations, and international involvement under statehood, free association, and independence. In this section, international and regional organizations will also be discussed. Intergovernmental organizations, also known as IGOs, are organizations that include at least three states as members, that have activities in several states, and that are created through a formal inter-governmental agreement such as treaties or charters.[1201] IGOs can also be more regionally focused, such as the Pacific Islands Forum or ASEAN. With this context now set, this subsection of the study explores the possibilities for Guam's creation of treaties, diplomatic relations, and international involvement under statehood, free association, and independence.

1200 Vienna Convention on the Law of Treaties, May 1980, 333, accessed at https://treaties.un.org/doc/Publication/UNTS/Volume%20 1155/volume-1155-I-18232-English.pdf.

1201 Margaret P. Karns, Karen A. Mingst, and Kendall W. Stiles, *International Organizations: The Politics & Processes of Global Governance*, (Boulder: Lynne Rienner Publishers, 2015) 12.

Statehood

The US federal government explicitly has authority over "treaties." Treaties, due to the Supremacy Clause of the Constitution, are a source of the "supreme law of the land." However, it is important to distinguish the US domestic understanding of treaty versus the international understanding of treaty. In the international realm, as defined in the preceding paragraph, treaties can refer to most binding agreements. Under US domestic law, however, a treaty "narrowly refers to a particular subcategory of binding international agreements that receives the Senate's advice and consent."[1202] US domestic law differentiates between this definition of "treaty" and other international agreements or executive agreements. Executive agreements do not receive the advice and consent of the Senate.

According to Article II, Section 2, Clause 2 of the US Constitution, the president "shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur."[1203] The framers did this to "give the benefit of the Senate's advice and counsel, check presidential power, and safeguard the sovereignty of the state by giving each state an equal vote in the treaty-making process."[1204] It is important to note that many US agreements with other states have been in the form of executive agreements rather than as treaties as defined by the Constitution.

Due to the separation of powers and nature of federalism, which forms the foundation of the US government, the state of Guam would not be able to enter into treaties with other countries. Since a treaty is between the United States and another sovereign country, states of the union themselves cannot enter into treaties with other countries as this is a function of the federal government, not the individual state governments. This is outlined particularly in Article I, Section 10, Clause I, "No State shall enter into any Treaty, Alliance, or Confederation."[1205]

> In the case of the United States, responsibility for the conduct of foreign relations rests exclusively with the federal government, although American states have entered into certain compacts with foreign states or component units (such as Manitoba and Quebec, provinces of Canada) dealing with the construction and maintenance of highways and international bridges, following upon consultations with the foreign state conducted by the federal authorities.[1206]

This does not mean, however, that the state of Guam would have absolutely no role in foreign affairs on a state level. According to Article I, Section 10, Clause III, "No state shall, without the consent of Congress…enter into any agreement of compact with another state, or with a foreign power." "Whereas

1202 Stephen P. Mulligan, "International Law and Agreements: Their Effect upon US Law," *Congressional Research Service*, September 19, 2018, 2, accessed at https://fas.org/sgp/crs/misc/RL32528.pdf.

1203 Article 2, Section 2 of the United States Constitution.

1204 United States Senate, "Treaties: A historical Overview," accessed at https://www.senate.gov/artandhistory/history/common/briefing/Treaties.htm.

1205 Article 1, Section 10 of the United States Constitution.

1206 Shaw, "International Law," 173.

Clause 1 appears to create an unqualified prohibition on any 'treaty, alliance, or confederation,' the Compact clause conditionally allows states to make 'agreements or compacts' with foreign nations, provided they receive congressional consent."[1207] Furthermore, according to a Congressional Research Service legal sidebar,

> The US Department of State— which advises US states and their foreign counterparts on the requirements of Article I, Section 10—has interpreted these constitutional restrictions to only apply to legally binding pacts. Legal research suggests that most states' pacts with foreign nations—including past declarations and MOUs related to climate change—are not legally binding, and, therefore, not submitted to Congress for approval. The same result will likely occur for certain post-Paris Agreement state activity. For example, the recent California-China MOU expressly states that its provisions are not legally binding, making it unlikely that this MOU would trigger the restrictions of Article I, Section 10.[1208]

As Fry writes, "Combining information from the State International Development Organizations' SIDO 2015 survey and other data, we find that 36 states have 212 offices of representatives in 30 different countries and territories in 2015. Over half of the state governors also lead missions abroad on at least an annual basis."[1209] In addition, states can also adopt international standards, have state representatives to foreign countries, have state incentives to attract foreign business, and establish sister-city relationships which commonly involve cultural and educational agreements. Overall, while Guam could engage like this as a state, it would not be able to enter into legally binding treaties with foreign countries. In addition, the Supreme Court has identified restrictions on states' power regarding state legislation that interferes with the federal government's ability in conducting foreign affairs.[1210]

However, as a state, Guam's elected senators in the US Senate could play a role in the treaty process or, on the rare chance, future generations born in the state of Guam as natural-born citizens can even be eligible for the Presidency of the United States. Furthermore, if Guam were to become a state, and the United States remained a respected superpower, it is expected that this will increase Guam's prestige in the region and could lead to elected officials from Guam in the House of Representatives and in the Senate potentially having more impact on US foreign policy. If Guam were to become a state and the US became more instable, Guam's utility in the region would still exist, but geopolitical tensions could increase the potential of Guam being affected by tensions and conflict. Even in this scenario, Guam's elected leaders in the US Congress could use their power to try and influence national security decisions.

If Guam became a state, the elected leaders could try to serve on the House Committee on Foreign

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1207 CRS Reports & Analysis, "Constitutional Limits on States' Efforts to 'Uphold' the Paris Agreement," June 27th, 2017, accessed at https://fas.org/sgp/crs/misc/uphold.pdf.

1208 CRS Reports and Analysis, "Constitutional Limits on States' Efforts to 'Uphold' the Paris Agreement."

1209 Earl H. Fry, "The Role of US State Governments in International Relations, 1980-2015," *International Negotiation,* 22 (2017): 205-238, 214.

1210 Fry, "The Role of US State Governments in International Relations."

Affairs and in the Senate Committee on Foreign Relations. The House Committee on Foreign Affairs is responsible for:

- oversight and legislation relating to foreign assistance
- national security developments affecting foreign policy
- strategic planning and agreements; war powers, treaties, executive agreements, and the deployment and use of United States Armed Forces
- peacekeeping, peace enforcement and enforcement of United Nations or other international sanctions; arms control and disarmament issues; among many others

At the Senate level,

> The Senate Foreign Relations Committee was established in 1816 as one of the original ten standing committees of the Senate. Throughout its history, the committee has been instrumental in developing and influencing United States foreign policy, at different times supporting and opposing the policies of presidents and secretaries of state….It also holds jurisdiction over all diplomatic nominations. Through these powers, the committee has helped shape foreign policy of broad significance, in matters of war and peace and international relations. Members of the committee have assisted in the negotiation of treaties, and at times have helped to defeat treaties they felt were not in the national interest.[1211]

Guam's senators could seek to serve on the committee to work with Guam's representative in steering foreign policy in both chambers of the US Congress. As a state, Guam could have a stronger role in US foreign policy formulation and execution than it currently has as an unincorporated territory. However, it is not guaranteed that Guam's unique concerns would receive more concern or validation in these discussions.

Beyond elected federal officials, US citizens in the state of Guam would have access to one of the world's most developed and respected diplomatic machineries. At the time of writing, the United States, under the Department of State, has 273 diplomatic posts, which includes embassies, consulates, and permanent missions to international organizations. Only China has more diplomatic posts, with 276. To distinguish, an embassy is the primary diplomatic presence of one country in another country, which is usually located in the capital of the country. Consulates act as branch offices of the embassy, spread throughout the country, with many located in major cities. As US citizens, those in Guam, could work for the United States Foreign Service and become foreign service officers, conducting US diplomacy in embassies and consulates throughout the world.[1212]

1211 United States Senate Committee on Foreign Relations, "History of the Committee Room," accessed at https://www.foreign.senate.gov/about/history/.

1212 United States Department of State, "Foreign Service Officer," accessed at https://careers.state.gov/work/foreign-service/officer/.

Overall, as a state, Guam could have a larger role in US diplomacy in the region. Guam's elected representatives in the federal government and possible employees in the State Department and Foreign Service could have a role in foreign policy. Despite this, as a state, Guam will not be able to control its foreign affairs to its fullest extent, and this could be problematic as Guam is not contiguous with the continental United States. First, Guam would be the geographically smallest state. This in itself can present problems when it comes to the amount of political power and amount of the federal budget to be given to the state of Guam. Lastly, as a state, Guam may be affected (negatively and positively) by treaties (or other international agreements) entered between the United States and another country or international organization. For the most part, and unless there is a different intention within the treaty, a treaty is binding upon each party in respect of its entire territory. Statehood allows for more involvement in the diplomatic machinery and governance processes of the US, but Guam's distance, size, and strategic location may lead to a different set of concerns and interests in the island.

Independence[1213]

As Guam would be a sovereign country, the government of Guam would have the ability to enter into relevant treaties and agreements with other countries in the interest of its people. This would heighten the international personality of the newly independent country. Guam is not able to engage fully on an international scale as an unincorporated territory whose international relations are controlled by the United States. Accordingly, the United States must concur with Guam's participation in those regional organizations identified by the territory. Meanwhile, the ability to enter into treaties is a facet of sovereignty that could be beneficial to Guam. Due to the island's proximity to Asia and strategic location, entering into treaties and engaging internationally according to its own interests would be a benefit to social and economic development.

The country of Guam could potentially have robust diplomatic relations and a strategic navigation of the geopolitical environment surrounding the island. Guam has a valuable strategic location that it could utilize to the country's advantage. However, if Guam fails to successfully negotiate agreements or if it enters into agreements that are ultimately against its national interest, there could be highly damaging effects that may replicate neocolonialism. Being in charge of its own foreign affairs is a huge responsibility, and the country of Guam would have to be very aware of its geopolitical importance and the geopolitical interests of its neighbors and the wider region. If the country fails to do this, it could leave the country ripe for exploitation by others.

Overall, however, sovereignty in itself can be seen as one of its most valuable resources. It allows for the country to engage with the international community and collaborate with other countries to address issues that affect not only the country itself but the region and world as a whole (e.g. climate change). With the ability to engage with other countries, Guam would be able to build diplomatic relations using

1213 Just to clarify, the term "state" will be used throughout this Independence section. As outlined in the introduction to the study, the term "state" is the actual term for what we refer to as a "country" in international law and politics.

its unique geographical location in the region. The ability to negotiate with the other countries, as a sovereign, on equal footing, could prove to be invaluable. This could help to ensure the preservation of the country from military incursions, shifts in the world economy, and environmental impacts. Yet, failing to carry out its foreign affairs strategically will be of intense negative consequence to the new country.

Push for Effectiveness and Recognition

An important aspect that an independent Guam will have to consider is meeting the criteria for being a sovereign state in the international system and the issue of recognition by other countries. The Montevideo Convention of 1933 on the Rights and Duties of States sets out several criteria for the identification of statehood (as used in international law): a permanent population; a defined territory; government; and the capacity to enter into relations with other states.[1214] Regarding territory and a permanent population, there has not been a set minimum for either. Regarding government, "a territorial entity must possess a government or system of government in general control of its territory, to the exclusion of other entities not claiming through or under it"[1215] and it must actually exercise authority over that territory and its people. Lastly, the "capacity to enter into relations with other states" may be confusing. What this criterion means is that the government of that territory is independent, and that no other entity carries out the responsibility of international relations for it. In essence, the new government cannot simply be the puppet of another state. This does not mean that it would be free from pressure by other countries, because if this was the criterion, very few countries in the international system today would meet it.

Additionally, in today's world, one of the largest obstacles facing sovereign independent states is the capacity to maximize engagement with other independent states through bilateral relations and through participation in international organizations. This begins with the act of mutual recognition between two countries through the formal establishment of diplomatic relations. Within the academic literature regarding state recognition, there are two primary theories: declarative theory and constitutive theory. According to declarative theory, a political entity becomes a state by meeting the concise criteria of statehood, and not through recognition. To put it another way, "a new state will acquire capacity in international law not by virtue of the consent of others but by virtue of a particular factual situation."[1216] Returning to the 1933 Montevideo Convention, Article 3 states, "The political existence of a state is independent of recognition by other states. Even before recognition, the state has the right to defend its integrity and independence, to provide for its conservation and prosperity, and consequently to organize itself as it sees fit."[1217] Thus, according to declarative theory, an entity becomes an independent state without the requirement of recognition and can exercise the rights and responsibilities of being a state because it has effectively met the characteristics of statehood.

1214 Montevideo Convention on the Rights and Duties of States, "Convention on Rights and Duties of States, Article 1", 1933, accessed at https://www.ilsa.org/Jessup/Jessup15/Montevideo%20Convention.pdf.

1215 Visoka, et al., "Routledge Handbook of State Recognition," 50.

1216 Shaw, "International Law," 330.

1217 Montevideo Convention on the Rights and Duties of States, "Convention on Rights and Duties of States, Article 3."

Constitutive theories, however, argue that a state only becomes a state upon the political act of recognition by other states. Although political entities can meet the criteria of statehood, they may not be recognized as a state, because recognition is key. A middle ground between the two theories appears to be the norm. For an independent Guam, it is best that both the criteria and recognition be taken into account considering the establishment of the new independent country.

The overall picture is that recognition will be fundamentally important for an independent Guam. Even if one held to declaratory theory and argued that statehood can exist independently of recognition, it must be acknowledged that the modern international system creates difficulties without recognition. According to the *Routledge Handbook of State Recognition*,

> It [state recognition] has become a core criterion for determining matters concerning statehood, sovereignty, subjectivity in international law, and membership in multilateral bodies. International recognition plays a vital role in the political, security, legal, economic, and sociocultural development of states. It enables states protection under international law, access to multilateral bodies, and the possibility to develop diplomatic and trade relations with other states. It enhances human mobility, cultural exchange, and social development. Most importantly, it nourishes state identity, self-regard, and ontological security, which are crucial for the normal functioning of society.[1218]

> Recognition opens the way for the conduct of diplomatic relations, recognition of passports, recognition of a nation's consular protection of its citizens, trading in a national currency, trading in state assets and debts, acceptance of state guarantees, the possibility of concluding binding inter-state agreements, the possibility of becoming party to inter-state conventions, of taking a seat in the United Nations, and of acceding to other inter-state organizations.[1219]

Furthermore, the risks associated with not being a recognized state make the vitality of a state quite difficult.

> While international recognition might not guarantee successful statehood, its absence certainly poses many challenges for surviving an inhospitable international environment. States which lack full international recognition are more likely to become the subject of foreign military occupation and hybrid wars. Limited diplomatic relations – an inherent condition of unrecognised states – undermines the capacity of these entities to enhance their political, security, and trade relations with other recognised states, leading to economic stagnation, poverty, and social isolation. Limited recognition obstructs democratic development, the consolidation of human rights and freedoms, and the legitimate control of national resources, because these states are often beyond the reach

1218 Visoka, "Routledge Handbook of State Recognition," 2.

1219 Visoka, "Routledge Handbook of State Recognition," 48.

of contemporary international norms and regulatory networks.[1220]

Thus, a Guam progression to independence will not only need a strong negotiation team to negotiate the transition from the United States as administering power. A sovereign Guam will need statespersons well-versed in the art and practice of diplomacy. Recognition is a highly political act, as no country can exist in a vacuum, and thus will require Guam to be equipped with numerous competent negotiators and diplomats. The dilemma is that as long as the island remains an unincorporated territory, there is not a great need for training the people of Guam in diplomacy. Despite this, it would be wise for Guam, in the preparation for either statehood (voting representatives and senators) or free association and independence (diplomats well-versed in international relations) to develop programs in the realm of statecraft and diplomacy. This is a key recommendation for the government of Guam to implement and provide resources for.

Clarification on Secession and Self-Determination: Looking at Catalonia and Recognition

Some may read the former section on recognition and point to separatist and secessionist movements, such as Catalonia in Spain, the Basque in France/Spain, Quebec in Canada, or even Scotland in the United Kingdom. One may be tempted to compare their independence movements to that of Guam's in the aspiration to become an independent country. For example, Catalonia is a province of Spain that has its own distinct culture and language. It has a strong independence movement and has made recent efforts to separate from Spain. On Oct. 27, 2017, the Parliament of Catalonia passed a resolution, declaring independence from Spain and the establishment of the Catalan Republic. Immediately after, the prime minister of Spain dismissed the Parliament of Catalonia and subsequently called for a new round of elections. Despite this, the international community did not recognize Catalonia's unilateral declaration of independence, and thus no action was taken to move Catalonia closer to the dream of being an independent republic. During deliberations within Catalonia, there were concerns about this potential lack of international recognition. For example, Catalan President Carles Puigdemont said, "I do not want to be the President of Freedonia. I refuse to walk around the world, handing out business cards of a republic that does not exist."[1221]

Multiple world leaders expressed their refusal to support Catalonia's declaration. For example, the US State Department, wrote, "Catalonia is an integral part of Spain, and the United States supports the Spanish government's constitutional measures to keep Spain strong and united."[1222] A statement by China's Foreign Ministry reads, "China's stance on this issue is consistent and clear. China regards it as a domestic affair of Spain and understands and supports the Spanish government's effort to maintain national

1220 Visoka, "Routledge Handbook of State Recognition," 2.

1221 L. Garcia, *El naufragio: La deconstrucción del sueño independentista* (Barcelona: Ediciones Península, 2018), 216.

1222 United States Department of State, "On US support for Spanish unity," 2017, accessed at https://www.state.gov/r/pa/prs/ps/2017/10/275136.htm>.

unity, ethnic solidarity, and territorial integrity."[1223] Also, European Parliament President Antonio Tajani defended Spain, stating, "The declaration of independence voted on today in the Catalan Parliament is a breach of the rule of law, the Spanish constitution and the Statute of Autonomy of Catalonia, which are part of the EU's legal framework. No one in the European Union will recognize this declaration. More than ever, it is necessary to re-establish legality as a basis for dialogue."[1224] There have been some improvements since this initial reaction to the Catalan declaration of independence, but for the purposes of this study, the core is the ardent lack of international support for Catalan. This makes complete sense, as this is not a unique international response. In 1983, the northern part of Cyprus declared independence as the "Turkish Republic of Northern Cyprus." In response, the United Nations Security Council asked countries not to recognize any Cypriot State other than the Republic of Cyprus.

Recognizing separatist movements, which are unilateral and do not have the support of the country the separatist movement is located in, is akin to a stack of dominos. In recognizing one separatist movement as a new country, a pandora's box of independence movements will want their desired political entity to have the legal international personality of being a sovereign state in its own right. Separatist movements pragmatically only succeed regarding international support if supported by the country where the movement is located. "For new states, the easiest route to obtaining international recognition is to secede with the permission of the former metropole or central government. Once the former host state recognises the new state, the rest of the international community usually follows rather quickly."[1225] However, there is not a secessionist movement in Guam, as seen here. In any event, Guam could not secede as it is not formally an integral part of the US, but rather "belongs to" the US (Territorial Clause). It is therefore not possible to technically "secede" from a country which one is not a part of to begin with.

There are substantial differences between a place like Catalonia and Guam. Through a long precedent and genealogy of international law and norms, Guam selection of independence would not be seen by the international community as a separatist or secessionist movement. Rather, Guam is still classified under international law as a non-self-governing territory with the right of self-determination not yet exercised. Even under US law, "unincorporated territory" is deemed a possession of, but not a part of the United States. This is quite different from a separatist movement, and this should quell fears or concerns that the island would be treated in the exact same way as Catalonia. Guam would be decolonizing, while a place like Catalonia would be seceding. Politically and legally speaking, these are not the same phenomena. As articulated in the UN 1970 Declaration on the Principles of International Law "the territory of a colony or other non-self-governing territory has under the Charter a status separate and distinct from the territory of the state administering it"[1226] and that this status was to exist until the people of that territory exercise

1223 Lu Hui, "China supports Spanish unity amid Catalan independence declaration," *Xinhua*, October 30, 2017, accessed at http://www.xinhuanet.com//english/2017-10/30/c_136715310.htm.

1224 A. Tajani, "European Parliament President statement on the situation in Catalonia," European Parliament, 2017, accessed at http://www.europarl.europa.eu/the-president/en/newsroom/european-parliament-president-statement-on-the-situation-in-catalonia.

1225 Diego Muro, Guillem Vidal, and Martijn C. Vlaskamp. "Does international recognition matter? Support for unilateral secession in Catalonia and Scotland," *Nations and Nationalism* 26 (2020): 178.

1226 Declaration on the Principles of International Law Concerning Friendly Relations and Cooperation among States, 1970.

their right to self-determination.

The era of decolonization post World War II and the creation of the United Nations saw swift recognition of former colonies becoming independent. "During the apex of the decolonization movement the self-determination units seeking independence were recognized almost immediately. The requirements of stability and permanence that were emphasized in nineteenth-century international practice did not necessarily apply."[1227] Even though the apex of decolonization has passed—there are only seventeen non-self-governing territories on the UN list—this does not mean that the decolonization era has ended.

The largest obstacle in this process, however, would be the political push for the United States to recognize the results of a political status plebiscite in the island, as it is nonbinding. Although it is acknowledged that Guam will have the mechanisms of international law to utilize regarding self-determination and decolonization, this does not completely eliminate the reality of strategic interests of countries which administer territories, as well as the interests of other large powers. Great power politics matters greatly for international issues and for recognition, as it is a highly political issue. "Powerful states often choose to legitimize a group seeking (independent) statehood by bestowing upon it official recognition if this advances the powerful state's own geopolitical interest, or the interests of one of its closest allies."[1228] There is a chance that the United States, if powerful at the time, may use this power and ignore calls for a change in Guam's political status, and to advocate for the retention of the unincorporated territorial status which has been determined to be a status of classic political inequality that is inconsistent with democratic governance.

The extent to which the US cooperates with a process of transition, in the event that Guam selects independence in a referendum, would likely be motivated by US geopolitical interests. The ultimate transition to independence and international recognition of an independent Guam would be determined by the recognition of the wider global community of the new sovereign country. International support for a genuine exercise of self-determination can be critical to the attainment of a genuine status including independence.

Establishing Diplomatic Relations

An independent Guam, in order to survive in the international system, would have to establish diplomatic relationships with other countries. At its core, diplomacy can be described as "the activity and set of professional skills serving a national power centre's relationships with other power centres. It involves representation, communication and representation of messages, information gathering and analysis, negotiation, and the exercising of influence on external decisions and developments."[1229] Thus, it is advised that Guam seek to establish these diplomatic relations and send diplomatic missions to other countries.

1227 Visoka, "Routledge Handbook of State Recognition," 64.

1228 Visoka, "Routledge Handbook of State Recognition," 82.

1229 Jeremy Greenstock, "The Bureaucracy: Ministry of Foreign Affairs, Foreign Service, and Other Government Departments," in The Oxford Handbook of Modern Diplomacy edited by Andrew F. Cooper, Jorge Heine, and Ramesh Thakur, 2013, 1.

Furthermore, the country could establish embassies and consulates in other countries and allow other countries to establish embassies and consulates in the country of Guam. This would allow the government of Guam to have official representation in other countries and give other countries official lines of communication with Guam through ambassadorial representation. In doing this, Guam would follow international law, particularly, the 1961 Vienna Convention on Diplomatic Relations, which establishes a framework for diplomatic relations between countries. This provides the international legal basis for diplomacy. The politics of diplomacy is a separate endeavor, and it must be made clear that legality does not equate to execution, as the political process is inherently at work when discussing international politics. The following articles from the Convention outline a few functions and guidelines for diplomatic relations:

> Article 2: The establishment of diplomatic relations between States, and of permanent diplomatic missions, takes place by mutual consent.
>
> Article 3: The functions of a diplomatic mission consist inter alia in:
> (a). representing the sending State in the receiving State
> (b). protecting in the receiving State the interests of the sending State and of its nationals, within the limits permitted by international law
> (c). negotiating with the Government of the receiving state
> (d). ascertaining by all lawful means conditions and developments in the receiving State, and reporting thereon to the Government of the sending State
> (e). promoting friendly relations between the sending State and the receiving State, and developing their economic, cultural and scientific relations
>
> Article 12: The sending State may not, without the prior express consent of the receiving State, establish offices forming part of the mission in localities other than those in which the mission itself is established.

These articles of the convention outline the basic functions and guidelines for diplomatic relations.

It is highly advised that an independent or freely associated Guam follow these legal guidelines of diplomacy and the treatment of diplomats and become well-versed in these legalities to ensure that Guam's diplomats and foreign diplomats in Guam are treated accordingly.

Process of Joining International Organizations

It is in the best interest of an independent or freely associated Guam to engage in strong and effective multilateralism and strong international cooperation. This is because the nature of diplomacy has changed with the advent of globalization and thus Guam, upon becoming sovereign, should seek to take advantage of this global engagement. The newly independent country could seek membership in relevant

international institutions, which would advance the social and economic interests of Guam.

Currently, although Guam is an unincorporated territory of the United States, it has full membership in organizations such as the South Pacific Commission/The Pacific Community (as well as observer status in other organizations, such as the Alliance of Small Island States (AOSIS) and the Pacific Islands Forum (PIF). It also has status within the United Nations Regional Councils (e.g. the Economic and Social Commission for Asia and the Pacific) and Environmental Programmes. The difference between full membership and observer status is that full membership within an inter-governmental organization is usually granted to sovereign states, which affords them the ability to vote on issues brought to the floor of the organization. On the other hand, observer status provided by some organizations to non-independent territories gives them an ability to participate in the organization's activities. Observer status is often granted by inter-governmental organizations to territories which have expressed an interest in participating in the organization's activities. In this case, observers participate without the right to vote.

Depending on what Guam's immediate and long-term interests are in the event Guam becomes independent, regional and international inter-governmental organizations will serve as important pipelines to funding, technical assistance, and offer meaningful channels in terms of trade and economic development.

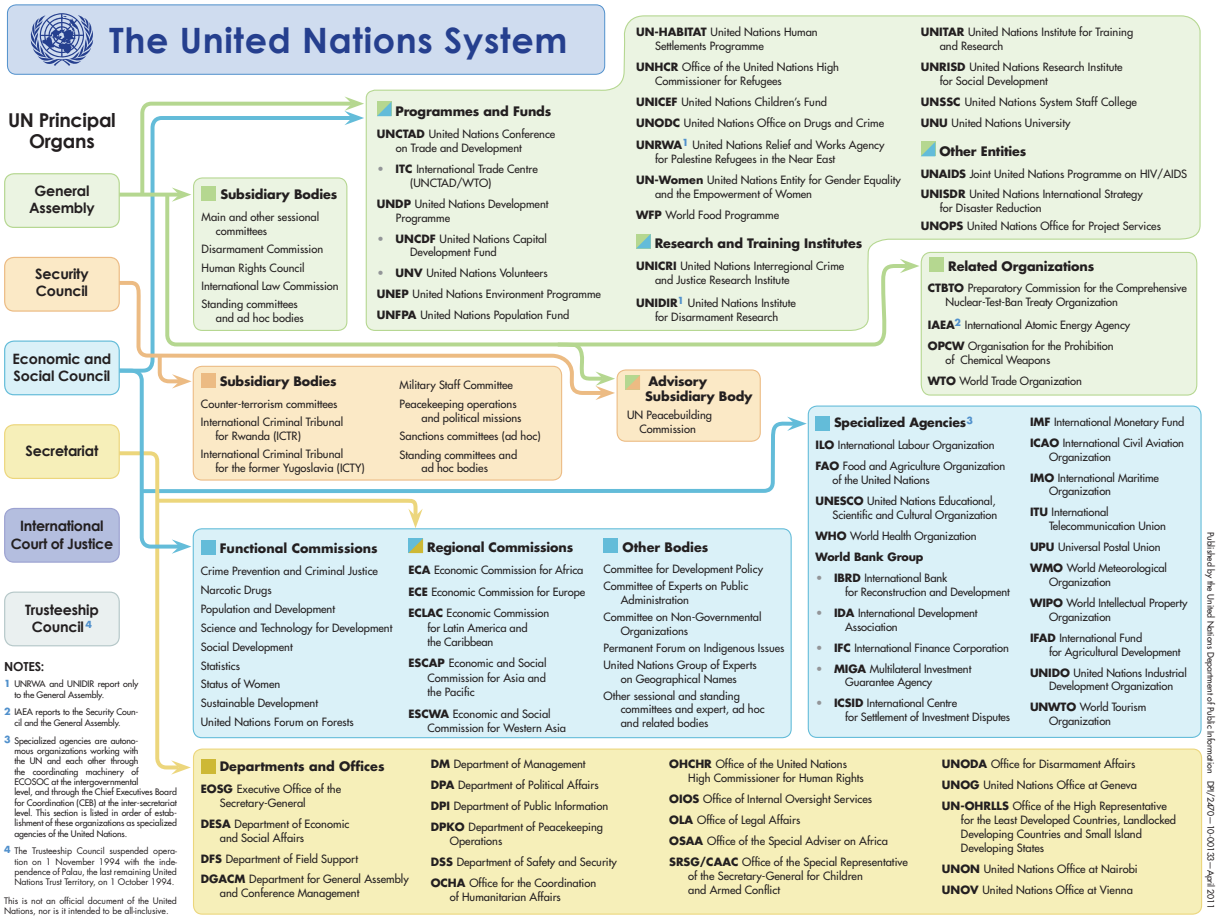
Overall, independence offers maximum latitude when it comes to creating diplomatic relationships, economic agreements, security arrangements, and membership in international and regional organizations. This could build the new country's international profile and be beneficial to the island through effective diplomacy and bilateralism/multilateralism. However, this requires that the people of Guam are trained in diplomacy, understand the international system, and can properly identify what is in the country of Guam's true national interest. The following is a brief survey of some international organizations the island can consider:

The United Nations

The primary IGO an independent Guam could seek full membership in is the United Nations, which is currently one of the most important and prolific inter-governmental organizations. The United Nations has been called the centerpiece of global governance as it is the central site for multilateral diplomacy, particularly the Security Council and the General Assembly. The UN, as it is called in shorthand, has helped to craft an international order, advocating for multilateralism and international law. The agencies within the organization cover aspects of ensuring peace, security, and quality of life for the people of the world. The United Nations structure consists of: the General Assembly, which constitutes the main body of the organization represented by all member-states; the Security Council, which is made up of five permanent members as well as ten non-permanent members elected by the General Assembly at regular intervals (this organ is charged with threat assessments and conflict resolutions); the Economic and Social Council, which coordinates economic policy and heads the implementation of international development goals; the Trusteeship Council, which oversaw the Trust Territories; the International Court of Justice, located in the Hague, Netherlands, which is the international court of the United Nations; and

the Office of the Secretariat, which consists of the Secretary General of the United Nations, who is the head of the organization.

Outside of the main organs, the United Nations has under its umbrella (either under the General Assembly or the Economic and Social Council), various programs or certain specialized agencies. These range from trade, healthcare, and historic preservation. Some of these include: United Nations Environment Program (UNEP), United Nations Population Fund (UNPFA), United Nations Human Settlements Program (UN-Habitat), UNICEF, World Food Program (WFP), Food and Agriculture Organization (FAO),



Source: UN Department of Public Information

International Civil Aviation Organization (ICAO), International Fund for Agricultural Development (IFAD), International Labor Organization (ILO), International Monetary Fund (IMF), International Maritime Organization (IMO), United Nations Educational, Scientific, and Cultural Organization (UNESCO), United Nations Industrial Development Organization (UNIDO), World Tourism Organization (UNWTO), Universal Postal Union (UPU), and the World Health Organization (WHO).

According to the United Nations, membership is "open to all peace-loving States that accept the

obligations contained in the United Nations Charter and, in the judgement of the Organization, are able to carry out these obligations."[1230] The Security Council, made up of the permanent five members (Russia, China, France, the United Kingdom, and the United States who have veto power) and the ten non-permanent members, recommend the state for membership and the decision is made by the General Assembly, in which all member states have one vote. More particularly, the process is as follows:

a. The State submits an application to the Secretary-General and a letter formally stating that it accepts the obligations under the Charter.

b. The Security Council considers the application. Any recommendation for admission must receive the affirmative votes of 9 of the 15 members of the Council, provided that none of its five permanent members — China, France, the Russian Federation, the United Kingdom of Great Britain and Northern Ireland and the United States of America — have voted against the application.

c. If the Council recommends admission, the recommendation is presented to the General Assembly for consideration. A two-thirds majority vote is necessary in the Assembly for admission of a new State.

d. Membership becomes effective the date the resolution for admission is adopted.[1231]

Within the United Nations, the General Assembly is the formal body that admits a state to membership, but this vote needs to be taken only with the recommendation by a member of the UN Security Council that this potential state be admitted as a member. If not able to become a member of the United Nations, "acceding to membership of various international or regional organizations is usually actively sought as stepping stones towards achieving these objectives, as is participation in international cultural and sporting activities by such institutions within that state."[1232] For example, Kosovo has not received membership to the United Nations, but is a member of the International Monetary Fund, the World Bank, the European Bank for Reconstruction and Development, the Federation of International Basketball Associations, and Federation of International Football Associations (FIFA).

1230 United Nations, "About UN Membership," accessed at https://www.un.org/en/sections/member-states/about-un-membership/index.html.

1231 United Nations, "Rules of Procedure XIV: Admission of New Members to the United Nations," accessed at https://www.un.org/Depts/DGACM/Uploaded%20docs/rules%20of%20procedure%20of%20ga.pdf.

1232 Andrew F. Oxford, Jorge Heine, and Ramesh Thakur (eds.). *The Oxford Handbook of Modern Diplomacy.* (Oxford: Oxford University Press), 56.

Pacific Islands Regionalism

Guam could also become involved in Pacific Islands regionalism. Currently, the most notable regional inter-governmental organizations in Oceania fall under an over-arching body called the Council of Regional Organizations of the Pacific, or CROP. The body was created in 1998 to improve cooperation and collaboration between various Pacific Islands regional organizations, with the common goal of "promoting sustainable development that combines economic, social and cultural development in ways that improve livelihoods and well-being and use the environment sustainably."[1233] The Council of Regional Organizations of the Pacific consists of executives of the following organizations: the Secretariat of the Pacific Community (SPC), Pacific Islands Forum Fisheries Agency (FFA), Pacific Islands Development Programme (PIDP), Pacific Power Association (PPA), Pacific Aviation Safety Office (PASO), South Pacific Tourism Organization (SPTO), the University of the South Pacific (USP), Secretariat of the Pacific Regional Environment Programme (SPREP), and the Pacific Islands Forum Secretariat (PIFS), who sits as the CROP chairperson. CROP provides "1). High-level policy advice to Leaders and Members to facilitate policy formulation at national, regional and international levels and 2). Acts as a mechanism between the Executives of Pacific regional organizations to coordinate action and review progress of their agencies' implementation of the Pacific Plan and other regional frameworks."[1234]

The Oceania community has come together to implement various plans, one of which is the Framework for Pacific Regionalism. According to the Pacific Islands Forum Secretariat, the Framework for Pacific Regionalism can be described as, "The expression of a common sense of identity and purpose, leading progressively to the sharing of institutions, resources, and markets, with the purpose of complementing national efforts, overcoming common constraints, and enhancing sustainable and inclusive development within Pacific countries and territories and for the Pacific region as a whole."[1235] Under this shared mandate, Pacific Island countries regional organizations, private businesses, and other stakeholders from the Oceanic region are asked to cooperate to achieve these goals. Through this Framework of Pacific Regionalism, members have security in cooperation, using the framework as the foundation for shared prosperity.

The framework is based on shared values, which see the protection of the sea as crucial to the prosperity of the region. The framework touches on its vast natural resources and the importance of sustainable practices, particularly in the fishing sector, while creating an economic environment where food security is at the forefront of importance in shared economic development. Being a diverse region, the CROP organizations seek to ensure that traditional and cultural practices are fostered and developed to adapt to everchanging times. These values culminate into four principles which guide the members of CROP organizations moving forward on their shared journey of regional capacity building. The principles are as follows:

1233 Council of Regional Organisations of the Pacific, "Charter 2018," February 2019, 1, accessed at https://www.forumsec.org/wp-content/uploads/2019/02/crop-charter-v9.pdf.

1234 Council of Regional Organisations of the Pacific, "Charter 2018."

1235 Pacific Islands Forum, "Framework for Pacific Regionalism," 2014, accessed at https://www.forumsec.org/wp-content/uploads/2017/09/Framework-for-Pacific-Regionalism.pdf, 1.

1. Sustainable development that combines economic social, and cultural development in ways that improve livelihoods and well-being and use the environment sustainably
2. Economic growth that is inclusive and equitable
3. Strengthened governance, legal, financial, and administrative systems
4. Security that ensures stable and safe human, environmental and political conditions for all.[1236]

Guam could greatly benefit by engaging in plans and visions, such as the Framework for Pacific Regionalism or subsequent plans/visions such as the 2050 Strategy for the Blue Pacific Continent, as it will face many of the issues that already-independent Pacific Island countries are experiencing, such as climate change.

Overall, this is not a comprehensive list of every international or regional organization Guam could potentially become a member of. However, what should be emphasized is that independence offers maximum latitude when it comes to creating diplomatic relationships, economic agreements, security arrangements, and membership into international and regional organizations.

Free Association

As a freely associated state, if following the models of the three countries in the Micronesia sub-region, Guam could have the ability to enter into treaties/agreements which the government sees fit. However, this sovereign ability could be qualified by the allowance of certain considerations to the United States related to security and defense, as is anticipated to be outlined in a possible Compact of Free Association or other legal instrument negotiated with the United States. The Compact of Free Association between the United States and the Federated States of Micronesia, for example, specifically states, in the following provisions:

> Section 121:
>
> (a) The Government of the Federated States of Micronesia has the capacity to conduct foreign affairs and shall do so in its own name and right, except as otherwise provided in this Compact, as amended.
>
> (b) The foreign affairs capacity of the Government of the Federated States of Micronesia includes:
>
> (1) the conduct of foreign affairs relating to law of the sea and marine resources matters, including the harvesting, conservation, exploration or exploitation of living and non-living resources form the sea, seabed or subsoil to the full extent recognized under international law.

1236 Pacific Islands Forum, "Framework for Pacific Regionalism," 3.

(2) the conduct of its commercial, diplomatic, consular, economic, trade, banking, postal, civil aviation, communications, and cultural relations, including negotiations for the receipt of developmental loans and grants and the conclusion of arrangements with other government and international and intergovernmental organizations, including any matters specially benefiting its individual citizens.

(c) The Government of the United States recognizes that the Government of the Federated States of Micronesia has the capacity to enter into, in its own name and right, treaties and other international agreements with governments and regional and international organizations.

(d) In the conduct of its foreign affairs, the Government of the Federated States of Micronesia confirms that it shall act in accordance with principles of international law and shall settle its international disputes by peaceful means.[1237]

This provision establishes a clear line regarding the power for the freely associated states to engage in their own foreign affairs. However, Section 123 expands on this and describes a consultation role for the United States.

Section 123:

(a) In recognition of the authority and responsibility of the Government of the United States under Title Three, the Government of the Federated States of Micronesia shall consult, in the conduct of its foreign affairs, with the Government of the United States.

(b) In recognition of the foreign affairs capacity of the Government of the Federated States of Micronesia, the Government of the United States, in the conduct of its foreign affairs, shall consult with the Government of the Federated States of Micronesia on matters that the Government of the United States regard as relating to or affecting the Government of the Federated States of Micronesia.

Despite this consultation role, the three freely associated states have engaged in diplomatic relationships with other countries and have been involved in international institutions. The consultation role of the United States has not prohibited them from engaging with the world. Section 122 of both the Compact of Free Association with the Federated States of Micronesia and the Compact of Free Association with the Republic of the Marshall Islands states that the Government of the United States shall support application of these respective freely associated states for membership or other participation in regional

1237 Article II, Section 121 of the Compact of Free Association with the Federated States of Micronesia, accessed at https://www.state.gov/wp-content/uploads/2019/02/04-625-Micronesia-Compact-Amendment.pdf.

or international organizations as may be mutually agreed. Palau's Compact of Free Association goes one step further, stating, "The government of the United States agrees to accept citizens of Palau for training and instruction at the United States Foreign Service Institute."[1238] Today, all three of the freely associated states belong to international organizations, including the United Nations, and have diplomatically engaged with the world, and have acted as world leaders for certain issues such as climate change. This shows how a relationship of free association is not contrary to a desire to engage on an international level. It is worth pointing out that, even if Guam and the United States enter into an association which resembles New Zealand's relationship with Cook Islands and Niue, this would not prohibit Guam from engaging with the world.[1239] As articulated by Aust,

> Both are considered by New Zealand, and the UN Secretary-General in his capacity as a depository of treaties, as having treaty-making capacity, and this has been accepted, expressly or tacitly, by many states. In the last twenty years, the Cook Islands (and to a lesser extent Niue) have becomes parties to many multilateral treaties under their 'all' states clauses and full members of some UN specialized agencies (but not the United Nations, to which neither has applied for membership). Although they have not yet been recognized generally as sovereign states, the Cook Islands have established diplomatic relations with over twenty states (including Australia, France, Germany and New Zealand) and international organizations.[1240]

Even if the association with the United States looks more like the New Zealand model, the negotiation team for Guam should ensure that involvement in international affairs is included in the agreement.

One potential caution of free association is the degree to which the freely associated state of Guam may feel compelled to ensure symmetry/agreement with the United States on certain international issues. This can be seen as a byproduct of having such a close relationship with the United States. For example, the US State Department produces annual reports of voting practices in the United Nations. In a 2010 report, which tracked UN voting patterns of eighty-seven Plenary votes at the 65th session of the UN General Assembly, particularly how other countries' votes aligned with the United States, the three FAS rank high in similar voting with the US. According to the report, the voting coincidence percentage for the FSM was 94.0%, the Marshall Islands at 81.0%, and Palau at 96.5%. In contrast, South Korea was 57.4%, Singapore was 34.8%, Israel was 91.8% and the United Kingdom was 74.2%.[1241]

Per the 2019 report, Micronesia and Marshall Islands were number two and number five, respectively, among countries with the highest voting coincidence with the US (Palau did not make the top ten).

1238 Section 11, Compact of Free Association with the Republic of Palau, accessed at https://pw.usembassy.gov/wp-content/uploads/sites/282/2017/05/rop_cofa.pdf.

1239 For a breakdown of how free association between New Zealand with the Cook Islands and Niue operates, please refer to the introduction of this study.

1240 Anthony Aust, *Modern Treaty Law and Practice: Third Edition* (Cambridge: Cambridge University Press, 2013), 56-57.

1241 Jewish Virtual Library, "Voting Coincidence with the United States," 2010, accessed at https://www.jewishvirtuallibrary.org/jsource/UN/UN_votes_2010.pdf.

When it came to contested resolutions, which are defined as the thirty "important" final plenary votes, Micronesia voted with the US eighty-five percent of the time, the Marshall Islands (seventy-nine percent) and Palau (only forty-eight percent). The FAS, particularly the Marshall Islands and the Federated States of Micronesia are also consistently voting with the US on issues such as Israel. For example, in 2019, there was a UN resolution titled "The right of the Palestinian people to self-determination." Of the member-states of the UN,165 voted in favor, nine countries abstained, and five voted against. These five were the US, Israel, Nauru, the Federated States of Micronesia, and the Marshall Islands. In a piece in *The Atlantic*, it was noted how seven countries voted with the US and Israel over the status of Jerusalem in 2017, including the Marshall Islands, Palau, and the Federated States of Micronesia. In describing their votes, the author argues that it should not be surprising:

> Three of the Pacific island states almost certainly would have been invited to the friendship party in any case. The Marshall Islands, Micronesia, and Palau have historic relationships with the US dating back to the period after World War II, when they were under formal American control. They are now sovereign countries, but they have kept up close ties with the US under "Free Association" agreements with Washington. Those countries get US aid and other benefits, and in exchange, they vote in near lock step with Washington at the UN. Those agreements have been in place for decades and, for the most part, still have years to run. In other words, it would have been remarkable had any of those three countries not voted with the US.[1242]

Thus, in the case of free association, Guam may feel pressured (explicitly or implicitly) to take stances on international issues that are congruent with the US stance. However, this does not have to necessarily be the case.

Status Example: The Republic of the Marshall Islands

The Republic of the Marshall Islands has used its status as a United Nations member to take the lead on the world stage on issues such as climate change and nuclear testing. The RMI has diplomatic relations with over one hundred other countries and has embassies in the US, Fiji, South Korea, Japan, and Taiwan as well as consulates in Honolulu and Arkansas. Most recently, in September 2019, the RMI established diplomatic relations with countries such as Hungary, Paraguay, Lebanon, Algeria, and Timor-Leste. This shows that it is continually creating more international connections, subsequently increasing the country's international presence. One of its most recent achievements was the country's election to the United Nations Human Rights Council. The Human Rights Council, or HRC, is a UN body made up of forty-seven states "responsible for the promotion and protection of all human rights around the globe. It has the ability to discuss all thematic human rights issues and situations that require its attention

1242 Matt Peterson, "Nikki Haley's New Best Friends at the UN," The Atlantic, December 23, 2017, accessed at https://www.theatlantic.com/international/archive/2017/12/un-vote-jerusalem-allied-nations/549119/.

throughout the year."[1243] It is the body that reviews human rights globally, produces reports, and appoints special rapporteurs. Upon election into the Human Rights Council, then-President Hilda Heine, tweeted, "Today, the Marshall Islands became one of the smallest countries ever elected to the Human Rights Council. We emphasize the role of small states as bridge builders and ensure the human rights impacts of climate change and the legacy of nuclear testing are addressed."[1244]

As President Heine mentioned, the Marshall Islands has also taken a leadership role in tackling climate change. To do this, the government of the Marshall Islands has adopted a Climate Diplomacy approach. In 2014, at the 3rd UN Conference on Small Island Developing States in Samoa, well-respected foreign minister of the Marshall Islands, Tony de Brum, outlined his country's diplomatic approach toward bringing climate change to the forefront. He articulated this climate diplomacy as a three-pronged approach. The first was working through the Alliance of Small Island States to enhance progress in the United Nations Framework on Climate Change Convention negotiations at the time. De Brum mentioned that this would allow the Marshall Islands more access to discussions that are crucial for climate negotiations. The second prong is enhancing its international profile via engagement with the most important forums, such as the United Nations Security Council. The third approach is, "ensuring that climate change is a central message of every one of the Marshall Islands' diplomatic encounters, whether bilateral, regional or multilateral. The aim is to build political momentum and catalyze domestic action in other countries to accelerate the global response. This means that climate diplomacy is also about economic diplomacy and energy diplomacy, and when times are tough, aid diplomacy."[1245]

It showed this leadership when it hosted the 44th Pacific Islands Forum summit in 2013 and helped to craft the Majuro Declaration for Climate Leadership, which set out to form a new wave of international climate leadership. In the declaration, they outlined measures each country would take to demonstrate climate leadership. For example, the Federated States of Micronesia targeted to have a net gain of area and health status of coral reefs before 2020. The Solomon Islands targeted replacing its current use of imported fossil fuel by one hundred percent by 2030. The Pacific Islands Forum used this document to demonstrate to the world that it would not be silent with this issue. As the declaration states, "The responsibility of all to act falls to every government, every company, every organization and every person with the capacity to do so, both individually and collectively."[1246]

In addition to the Majuro Declaration, the Marshall Islands was also the first country to submit binding climate targets to the United Nations as part of the Paris agreement, in which each country was supposed to submit national targets.[1247] The Marshall Islands has even resorted to declaring a national

1243 United Nations Human Rights Council, "About," accessed at https://www.ohchr.org/en/hrbodies/hrc/pages/home.aspx.

1244 Radio New Zealand, "Marshalls elected to UN Human Rights Council," *Radio New Zealand,* October 18, 2019, accessed at https://www.rnz.co.nz/international/pacific-news/401283/marshalls-elected-to-un-human-rights-council.

1245 Tony de Brum, "Climate Diplomacy–a perspective from the Marshall Islands," *Climate Diplomacy*, September 29, 2014, accessed at https://www.climate-diplomacy.org/news/climate-diplomacy---perspective-marshall-islands.

1246 Pacific Islands Forum, "Majuro Declaration For Climate Leadership," 2013, accessed at http://www.daghammarskjold.se/wp-content/uploads/2014/12/44th-PIFS-Majuro-Outcome.pdf.

1247 Nina Chestney, "Marshall Islands first nation to submit new, binding climate targets," *Reuters*, November 21, 2018, accessed at https://www.reuters.com/article/us-climate-change-accord-targets/marshall-islands-first-nation-to-submit-new-binding-climate-targets-idUSKCN1NQ0LW.

crisis over the effects of climate change, in Resolution 83 of the 40th Constitutional Regular Session of its legislative body. Per the resolution, it ensures that future governments in the Marshall Islands make climate change the top priority. However, what is most important is how it used this national declaration to critique international action. It used it to highlight the inadequate global response to the climate crisis and calls for the international community to consider other ways to respond to the crisis and the vulnerabilities of low-lying coral atoll countries like the Marshall Islands.

The other issue the Marshall Islands has been vocal about on the international stage is nuclear testing, largely due to its experience with the US atomic bomb testing in the islands between 1946-1958. However, there has been more ambiguity when it comes to being as proactive as it is with climate change. This is due to its Compact of Free Association with the United States and its taking into account of US military and strategic needs. The most visible aspect of this ambiguity is the Marshall Islands not yet signing or ratifying the Treaty on the Prohibition on Nuclear Weapons.

The Marshall Islands actively helped in the treaty's negotiations but did not sign or ratify the treaty itself. The country's permanent representative to the United Nations at the time, Ambassador Amatlain Elizabeth Kabua, wrote that part of the hesitation was in the country taking into concern the defense and security provisions of the Compact of Free Association.[1248] In the Marshall Islands, the US military tests nuclear-capable missiles near Kwajalein, thus leading the Marshall Islands to be hesitant about becoming a state party to the treaty. However, at a high-level meeting at the United Nations on October 2, 2020, President David Kabua provided another reason for the Marshall Islands not signing on to the treaty. According to Kabua, "We remain deeply concerned regarding provisions in the treaty which wrongfully place the heavy burden of victim assistance and remediation only upon the nations which are affected by tests, and which risks appearing to absolve those states which conducted such testing, particularly when they are non-parties."[1249] This is not to say that the COFA has made the Marshall Islands impotent on nuclear issues. For example, in 2016, it was a co-sponsor for a General Assembly resolution that established "the formal mandate for states to commence the negotiations in 2017 on a legally binding instrument to prohibit nuclear weapons, leading towards their total elimination."[1250]

However, the ambiguity and hesitation surrounding the ratification of the treaty is something for a freely associated Guam to consider during negotiations for a free association relationship. Published in June 2018, Harvard University's International Human Rights Clinic, released a report arguing that a close analysis of the nuclear weapons treaty and the COFA reveals that, legally, the two instruments can be compatible. It reasons,

> Activities involving nuclear weapons should not be viewed as "necessary" for the US to exercise the three prongs of its authority and responsibility. Section 312 permits the US to conduct

1248 Alicia Sanders-Zakre, "States Hesitate to Sign Nuclear Ban Treaty," *Arms Control Today*, September 2017, accessed at https://www.armscontrol.org/act/2017-09/news/states-hesitate-sign-nuclear-ban-treaty.

1249 https://estatements.unmeetings.org/estatements/10.0010/20201002/NCk2aVqo8uJs/bWUFOaloFfHd_en.pdf.

1250 International Campaign to Abolish Nuclear Weapons, "Marshall Islands," accessed at https://www.icanw.org/marshall_islands.

> "activities and operations necessary for the exercise of its" security and defense authority in the "lands, waters, and airspace" of the RMI. Given the US's other military capabilities, it should be able to defend the RMI without engaging in activities involving nuclear weapons. The US should similarly be able to foreclose access to third parties without nuclear weapons. Finally, exercising the option to establish and use military bases on the RMI does not necessitate activities related to nuclear weapons. Therefore, in accepting the TPNW's prohibition on assisting with prohibited acts, the RMI would not undermine US authority.[1251]

Palau, which also has a Compact of Free Association with the United States, has both signed and ratified the Treaty on the Prohibition of Nuclear Weapons. It was one of the first ten countries in the world to sign the treaty. When asked whether there would be any problems, considering Palau's COFA with the United States, then-President of Palau, Tommy Remengesau Jr. responded, "What is sensitive is that the US is obligated to defend Palau on threats of aggression or in times of war. And we know that the military uses nuclear weapons and nuclear-powered vessels, so based on the compact agreement, the US will defend us but is not obligated to confirm the presence of nuclear devices in their war equipment."[1252] Conversely, the Federated States of Micronesia has shown the most resistance to nuclear weapons disarmament treaties. For the TPNW, it did not participate in the negotiations and voted against a General Assembly resolution that welcomed the adoption of the treaty. In another example, the Federated States of Micronesia was one of three countries (the others being the United States and Israel) to vote against the approval of a UN conference to make progress on the creation of a zone free of weapons of mass destruction in the Middle East.[1253]

This example of the Marshall Islands and the contrast with the Republic of Palau and the Federated States of Micronesia helps demonstrate that Guam, in a relationship of free association, would have ample opportunity to build an international profile, even with the constraints of a potential compact or other legal instrument. These examples also serve as examples of potential limits on the foreign affairs authority of the freely associated state of Guam, as a result of potential pressure (self-imposed or not) to be more congruent with the US.

1251 International Human Rights Clinic: Human Rights Program at Harvard Law School, "The Treaty on the Prohibition of Nuclear Weapons and the Compact of Free Association Between the Republic of the Marshall Islands and the United States," June 2018, 3, accessed at http://hrp.law.harvard.edu/wp-content/uploads/2018/06/TPNW_Compact_Marshall_Islands_US.pdf.

1252 Ongerung Kambes Kesolei, "Palau Signs Nuke Ban Treaty, but US Nuclear Devices Allowed," *Pacific Note*, November 12, 2017, accessed at https://www.pacificnote.com/single-post/2017/11/12/Palau-Signs-Nuke-Ban-Treaty-but-US-Nuclear-Devices-Allowed.

1253 Alicia Sanders-Zakre, "Deep Divisions Challenge NPT Meeting," *Arms Control Today*, April 2019, accessed at https://www.armscontrol.org/act/2019-04/news/deep-divisions-challenge-npt-meeting.

TREATIES	
STATUS	**EFFECTS**
Statehood	• Complicated foreign issues handled by the federal government. • Those from Guam could become part of existing US diplomatic infrastructure. • Guam would get two senators and a voting representative to help better represent the island in Washington, D.C. • Generally, foreign affairs will continue to be dictated by the United States federal government. Guam could not enter treaties with other countries. • Can restrict the island's international involvement if not supported by Washington, D.C. • May lose observer status in existing regional organizations such as the Pacific Islands Forum.
Independence	• Can substantially engage with the world through the creation of treaties and the joining of international and regional organizations. • Can determine and subsequently implement its foreign affairs agenda. • Can potentially, as a Pacific Island country, be a lead on world issues such as climate change or security of Micronesia.

	• Can substantially engage on a regional level. • Status with the most potential for building an international character. • Without tact and savvy diplomacy, larger powers may seek to take advantage of the island country. • Recognition of Guam may be contingent on a multitude of factors. • Requires the most effort to establish the island internationally
Free Association	• Can substantially engage with the world through the creation of treaties and the joining of international and regional organizations. • Can engage with the world while having its defense and military provided for by the United States. • Can engage regionally and still build an international character. • Any treaty must take into account the defense and military aspects of a potential Compact of Free Association with the United States or other negotiated agreement. This may be limiting and interfere with the desires of the government of Guam. • May feel pressured to take the same stance as the United States in global issues.

Relationship with the United States

As reiterated throughout this study, Guam's current political status is an organized, unincorporated territory of the United States. This political status dictates what Guam's relationship is with the United States: "foreign in a domestic sense" and not an integral part of the union. A change in political status for the island would inherently mean a change in Guam's relationship with the United States, and a modernization of that relationship. This short section of the study outlines what possible relationships Guam could have with the United States if statehood, free association, or independence are implemented. It is imperative to emphasize that there is no clear answer regarding every aspect of a respective status and the subsequent relationship.

Statehood

Examining Guam's relationship with the United States is easiest when looking at the case of statehood, since Guam would be a "state of the union." As an integral part of the union and as a state, Guam would have the full applicability of the US Constitution. This includes voting representation in the House of Representatives, the Senate, and votes in the Electoral College. Guam would no longer be under the plenary power of the US Congress, subject to the Territorial Clause. Instead, Guam would have constitutional protections as a state. Furthermore, Guam would get full access to the same federal programs and benefits as other states. There also would be a responsibility to pay taxes to the US Treasury. For more on this, refer to the taxation/revenue subsection of the Economics portion of this study. This means that as US citizens of a state of the union, the people of Guam would inseparably belong to the US political family and be able to exercise all rights and privileges attendant to the US political system.

Notably, Guam would be a noncontiguous, geographically small state. This could lead to challenges for Guam's influence in federal decision-making. Despite this, Guam, because of its military importance, could potentially use this to accumulate political power and legislative deals for more funding for the island.

Becoming a state, however, is not guaranteed. The US government would have to agree to admit Guam

into the union. In the introduction to this study, it was made clear that the focal point of this study is on statehood in accordance with the options in Guam law. Yet, international law only calls for integration into an existing country to meet a full measure of self-governance. Thus, Guam could be integrated into the United States as its own state or as part of an existing state such as Hawai'i or Alaska. If the latter is chosen, Guam would still have ample constitutional protections, but with significantly less ability to advocate for the island's interests, as it would be subsumed into a larger state.

Overall, statehood (or integration) is the only status of the three examined in this study that guarantees a permanent, secure, and equitable relationship with the United States. If the US remains a superpower, this could be beneficial for the island. Being a state and becoming an integral part of the union, Guam could serve an important role in US military and diplomatic involvement in the Indo-Pacific. Furthermore, being a state and being US citizens means that the people of Guam could get more involved with the political, diplomatic, and governance machinery of the US. Becoming a state would create an equitable relationship between Guam and the United States and make the population of the island true "American" citizens without any reservation.

Some may ask how the geopolitical scenarios presented in the introduction to External Affairs and Defense may affect statehood. That analysis is provided below. It must be made clear that the likelihood analyses given below only speak to the influence of the geopolitical environment on the statuses. Other factors, such as the state of the decolonization movement in Guam, Guam's connection to the federal bureaucracy, other effects of climate change, the composition of the legislative and executive branches of the United States at the time, and the domestic political environment in the United States will all be factors conjoining the geopolitical environment.

Scenario #1: Chinese Primacy/Chinese Expansion Towards Military Primacy, Significant US Decline

Statehood

On one hand, one can argue that statehood is least likely in a scenario of significant US decline, as a push for statehood could likely be met with domestic opposition. Making Guam a state would force the federal government to treat Guam equally and give it more of a piece of the federal budget. If domestic conditions in the United States are declining, the US Congress may not pass an enabling or admissions act for Guam's petition for statehood.

On the other hand, Guam could be granted statehood in this scenario as a last-ditch effort by the US to lock in its capabilities in the region and maintain power, especially if it is losing hard and soft power in the region. Making Guam a state would formalize the presence of the US in the island and use international law to compensate for its lack of military capability in the region. For example, any Chinese encroachment into the region that remotely threatens Guam could be cited as a violation of international law and an encroachment on the sovereignty of the United States proper (as Guam would then be an

integral and unequivocal part of the United States).

Scenario #2: Decline of China and the United States, Emergence of Alternative Regionalism or Middle-Power Engagement

Statehood

Similar to the scenario above, there are two arguments that can be made regarding the possibility of statehood. One argument is that the United States will make Guam a state in a last-ditch effort to maintain a more permanent presence in the region than it has now. Making Guam a state, if done in accordance with international law, would resolve the issue of decolonization of the island and remove Guam from the UN list of non-self-governing territories.

The other argument to be made stems from a core difference between this scenario and the former scenario. In the former scenario, China becomes the primary power in the region. In this scenario, neither China nor the United States gain primacy in the region. This would decrease the internal and external balancing pressures on the United States with China and decrease the national interest for maintaining power by creating a new state of the union. This could lead to a retreat and shrinking of the US footprint, and Guam could be a part of that, making the probability of statehood less likely.

Scenario #3: Continued competition and bi/multipolarity

Statehood

The likelihood of Guam being made a state in this geopolitical scenario is contingent on the momentum of the decolonization movement in Guam and whether the US is weaker or stronger during this period of continued competition. If the decolonization movement is strong, to avoid a nonviolent variation of the national liberation model, it is possible that the US makes Guam a state. Although there may be domestic factors, such as Guam's size and population, in a scenario of a strong decolonization movement in Guam there is a chance the US grants the island statehood in order to avoid domestic Guam troubles and to keep Guam as "American Soil" and the "Tip of the Spear." If the US begins to decline, it is also possible, in conjunction with a strong decolonization movement, that the US finds that it may be more beneficial to make Guam a state than to lose Guam or have domestic interruptions to its military installations in the island. Lastly, from a geopolitical perspective, making Guam a state and an integral part of the union, as opposed to a mere territory, could serve as a geometrical red line for what would constitute a full-scale attack on US soil. The act of making Guam a state of the union could strengthen the reach of the deterrent effect.

Scenario #4: US Reassertion in the Indo-Pacific, Chinese Decline

Statehood

Increased US power in the region, with Chinese decline, makes statehood unlikely as statehood would be best achieved if the United States believed it to be in its national interest. If the US were to make further gains, appeasing a strong decolonization movement in Guam may not be strong enough of a reason to offer the island full integration or statehood. From a purely political perspective, there would be little to no pressure for the US to change Guam's political status, and especially not to further integrate the island.

However, one could also argue that, in this period of US reassertion in the region, making Guam a state would solidify this reassertion. It would be akin to locking in the relative gains it would have made against China. If the United States saw this as in its national interest, then the chances of statehood increase, especially if this interest is reflected domestically in the US Congress. This will primarily be determined by the domestic politics of the time in the United States. Furthermore, statehood in this scenario would be desirable by the people of Guam as it would mean continued affiliation with the power which has achieved primacy in the region.

Scenario #5: US Legitimacy Crisis on the World Stage Due to Climate Change

Statehood

In this scenario, statehood could be the least desired option. In the scenario of the people of Guam prioritizing other aspects of security over traditional "but who will protect us" aspects, statehood may not be desirable without an assurance that the federal government will allocate significant resources to climate-change adaptation and mitigation efforts at the state and federal level. There is also the argument to be made that the people of Guam could push for statehood only to influence the federal budget to take climate change adaptation for Guam more seriously. For example, federal support for more robust mitigation efforts, such as broader renewable energy uptake and stronger tailpipe emission standards, could be mitigation efforts of interest for Guam here.

Independence

Guam, as an independent country, would be able to choose and formulate its own relationship with the United States, barring the power politics of asymmetry that the US will most likely exercise over Guam as it transitions to independence. It would have sovereignty and the ability to choose its own interdependencies, which could either be a good or bad thing, depending on what decisions are made by the government of Guam. The scenarios from the introduction are used here.

Scenario #1: Chinese Primacy/Chinese Expansion Towards Military Primacy, Significant US Decline

If Guam became independent during a geopolitical environment of US decline, Guam could still establish diplomatic relationships with the US, as the country's decline may still leave the US a powerful state in the international system. An independent Guam's relationship with the United States will depend on domestic conditions in the US, the US's international standing at the time, the domestic politics in Guam, and how close of a relationship Guam has with China. The government of Guam in this situation would also have to decide how closely to have a relationship with China if it achieves primacy in the region.

Scenario #2: Decline of China and the United States, Emergence of Alternative Regionalism or Middle-Power engagement

If Guam became independent in this geopolitical environment, its relationship with the United States would not be the central question preoccupying the government of the new country. Rather, the emergence of a middle power or the growing strength of a regional organization would compel Guam to secure the proper diplomatic relations so that the island's interests are addressed and protected. As the US and China would no longer be the most powerful actors in the region in this scenario, Guam would get the opportunity to be more creative about its possible alliances, partnerships, economic relationships, or regional relationships. This is not to say that Guam cannot have a good relationship with the US in this environment, but rather that this may not be the top priority for the new country (or the US.)

Scenario #3: Continued competition and bi/multipolarity

If Guam were to become independent in this geopolitical environment, it would be well served to maintain good relationships with all actors in the region. Thus, maintaining a strong relationship with the United States would be important. This relationship does not have to take the form of basing agreements. It could be diplomatic ties or non-basing military agreements. However, much of this will be dictated by what the United States and an independent Guam decide to do with the existing US military base infrastructure in the island. It is anticipated that the US would not want Guam to have a closer relationship with China in the scenario of continued competition.

Scenario #4: US Reassertion in the Indo-Pacific, Chinese Decline

If the United States remains a superpower as it is today and reasserts its power in the Indo-Pacific, it is highly speculated that the government of an independent Guam would seek to maintain close relationships with the US. Under this scenario, the US would be an important partner in getting the newly independent country situated militarily, diplomatically, economically, and politically. In many ways, Guam

being an independent country and ally of the United States could augment US reputation and power on an international scale. If Guam decided to have a strong relationship with the United States, formal diplomatic procedures and infrastructures would be put into place.

Scenario #5: US Legitimacy Crisis on the World Stage Due to Climate Change

In this scenario, an independent Guam could still have a relationship with the United States because of traditional security and economic concerns. However, with climate-change related security issues at the forefront, it is expected that Guam would prioritize international relationships with countries and international organizations that can best help its fight for continued survival.

Free Association

For Guam, being in free association with the United States would ensure that there is a strong relationship with the US, particularly in the areas of defense and security. In choosing free association, the desire to have a relationship with the US, in which the latter will most likely handle defense responsibilities for Guam, would appear to be clear. The models of the Republic of Palau, the Republic of the Marshall Islands, and the Federated States of Micronesia are a framework for an arrangement which Guam and the United States would reach based on clear US preferences. In reaching an agreement, one of the primary determining factors will be the geopolitical environment of the time and the negotiation teams representing Guam and the United States.

The authors of this study do not argue that free association automatically equates to a formulaic application of the blueprint of the Compacts of Free Association established with the three Micronesian countries. Rather, it is acknowledged that Guam could get a better or worse deal than the existing freely associated states. However, the existing bases in Guam could be used as leverage in the government's negotiations with the US federal government for a potential Compact of Free Association or other legal instrument. To put it another way, the existence of US military bases in Guam today will likely be a significant bargaining chip in free association negotiations.

To bring the geopolitical scenario analysis of free association, the following scenarios are examined:

Scenario #1: Chinese Primacy/Chinese Expansion Towards Military Primacy, Significant US Decline

Free Association with the United States is unlikely in the model of Chinese primacy and US decline, with the driving agent being Guam and its interests. Decolonization during this period may not result in free association with the United States because it would not be in Guam's best interest. A weakened United States may want to establish bases in Guam (if it decides it the best strategy, even during a period

of decline), but Guam may not want to be one of the few US bases in the Pacific in an era of possible US military withdrawal from the region. This would put Guam into a precariously dangerous position, thus making free association with the United States more complex. However, as a caveat, the US, after a moment of decline, may view free association with Guam as an option to simultaneously let go of colonial responsibilities while also maintaining its influence in the region via Guam. Thus, if Guam decided this would still be the best option, it is possible in this geopolitical scenario for Guam to enter into a freely associated relationship with the United States.

Scenario #2: Decline of China and the United States, Emergence of Alternative Regionalism or Middle-Power Engagement

In this scenario, free association with the United States is unlikely and not that desirable of an option for the same reasons outlined in the former scenario. However, one possibility that could be explored in this geopolitical scenario, if the eligible voters of Guam desire, is seeking a free association relationship with another country. International law does not require that non-self-governing territories who favor free association have to create this freely associated relationship with their administering power. Rather, if it is decided that free association is the preferred status due to reasons of economic assistance or security matters, an exploration of free association with other countries could commence. This may present challenges and may be undesirable by the people of Guam, who have had a long history of entanglement with the United States, but nonetheless, it is something that could be explored.

Scenario #3: Continued competition and bi/multipolarity

In an era of continued competition, free association is the most likely option of the three. It would simultaneously avoid the domestic troubles of making a small island a fellow state of the union and in ensuring military use of the bases. Free association would most likely create a Guam that would serve, at least for a substantial period of time, as a guaranteed power projection hub for the US. However, it is expected that a Compact of Free Association or other arrangement will be more robust in its security and foreign affairs dimensions than the current compacts, as the US will probably negotiate for provisions that prevent Chinese power penetration into Guam. In many ways, the US could satisfy the needs of decolonization and still use neocolonial tactics of control to secure its interests in the island, if necessary, thus making free association a good potential option.

Scenario #4: US Reassertion in the Indo-Pacific, Chinese Decline

It is expected that any change in political status during a period of reasserted US power in the region is unlikely without an extremely strong negotiation and lobbying team that can apply pressure domestically onto the United States. Free association, despite securing continuous US military interests in the island, is

unlikely as it would possibly make Guam a sovereign state (particularly if following existing FAS models), diminishing US control over the island. Free association for the island, even with security guarantees, could be seen as losing a degree of control over a key asset such as Guam for US power projection.

Scenario #5: US Legitimacy Crisis on the World Stage Due to Climate Change

It is likely that free association would be the preferred choice of the people of Guam, not with the United States, but with another state the people of Guam feel can best help guarantee Guam's environmental, human, and health security. The people of Guam may view free association with another country as the best option to make important local decisions, while still relying on the resources and assistance of a greater power in the realm of climate change adaptation and mitigation, development of long-term infrastructure, and food.

RELATIONSHIP WITH THE US	
STATUS	**EFFECTS**
Statehood	• Strongest relationship with the United States as it will become a part of the union. • Full representation and rights in the US system due to the status of being a state. • If US remains powerful, Guam would be a state of one of the most powerful countries, which will benefit the island. • As the state of Guam would be a noncontiguous physically small and demographically small state, it may find itself challenged regarding political power.
Independence	• Can choose whether or not a close relationship with the United States is in Guam's national interest.

	• Guam could still have a relationship with the United States. • Relationship with the United States will be contingent on how independence was achieved and the geopolitical environment of the time. • The US is not obligated to make agreements with an independent Guam, which may or may not be detrimental to the thriving of the new island country.
Free Association	• The US will most likely handle defense of the country. • It is expected that the US would be more cooperative with transitioning to this option than to full independence. • There are no guarantees that free association for Guam will be equivalent to the COFAs of the Palau, Marshall Islands, of the Federated States of Micronesia (could be worse or better). • If following other FAS, funding provisions may not last as long as defense provisions and may cause dissatisfaction in the relationship.

Relationship With the US Military

Guam's primary value to the United States lies in its strategic location and subsequent military use. Thus, no matter what political status Guam ends up choosing and transitioning into, as long as the US has the capability and power, it will likely try to maintain a relationship with the island to secure access to Guam's land, air, and sea for military use. In the case of continued US power, and even in a situation of continued decline, it is expected that the United States would see it in its national interest to maintain a relationship with Guam. This is best summed up in Lieutenant Colonel of the Army National Guard, Robert Crisostomo's, research project for the US Army War College, in which he argues, that "to maintain its presence and interests in the Asia-Pacific region, the US should seek to keep Guam as its possession, as either a state or a territory."[1254] Yet, most pertinent to this section is his assertion that, "If the US considers Guam's strategic location as a valuable national security asset, it must persuade Guam, through its pursuit of self-determination, to remain a valued member of the American family and a beacon of US strategic strength in the Asia-Pacific region."[1255]

It could be in Guam's best interest to have a relationship with the US military, although not to the degree of institutional powerlessness and militarization that currently exists. It must also be made clear that a relationship with the US military is not guaranteed, and as explained in the preceding overview, there are geopolitical future(s) in which a relationship to the US military may either be undesirable or possibly unattainable. If the geopolitical environment is suiting however, it is expected that Guam and the United States will remain close, no matter what status is chosen. Also, it is expected in the geopolitical environment in which the US is engaged in great-power interactions with China, that the US will desire further military operations in the island, and that Guam may desire protection by the US military from outside forces.

1254 Robert A. Crisostomo, "Strategic Guam: Past, Present, and Future," US Army War College, 2013, 15.

1255 Crisostomo, "Strategic Guam," 17.

Statehood

As Guam would be a state, the relationship with the US military will remain strong, Guam would be an integral part of the United States with full applicability of the Constitution and a full role in the governance of the United States. While people may argue that Guam's relationship with the military in the case of statehood would be the same as its current relationship as an unincorporated territory, this is not necessarily the case. From a primarily political perspective, Guam receiving one voting representative in the House of Representatives, two senators in the Senate, and votes in the Electoral College will imbue the island with political power within the American political system that it currently does not have. This was most recently seen in former Joint Region Marianas Commander Rear Admiral Shoshanna Chatfield's denial of Governor Lou Leon Guerrero's request to pause military construction near the Serianthes Nelsonii tree. In Chatfield's denial, she stated, "Let me assure that our mutual goal for protecting this tree, its saplings and the (US Fish and Wildlife Service) approved forest buffer has already been met by permanently distancing the multi-purpose machine gun range sufficiently away."[1256] While some may argue that this is a multi-layered issue, the reality of Guam's current status as an unincorporated territory played a role in the denial of the governor's request. Guam is equipped with few tools to halt military action. By arguing this, this study does not take the position that Guam can do nothing in its current status, rather that it becomes easier to have a say if the island is no longer a colony of the United States. As a state, the island government would have more power and clout over the operations of the US military in the island than it does now due to increased access to political capital in Washington, D.C.

Some of the ways the state of Guam could have more of a role in military affairs in the island deal with the operations of the federal government itself. If Guam became a state and had voting representation in both the House of Representatives and the Senate, these representatives could potentially help drive domestic and foreign policies, subsequently dealing with military issues. One goal of Guam's senators (in the case of the US Senate) could be to serve on the United States Senate Committee on Armed Services, considering that the orbit of American activity in the state of Guam will still be the US military. The Committee on Armed Services, as outlined in Rule XXV 1 (c) (1) of the Standing Rules of the Senate, has the following jurisdiction: 1). Aeronautical and space activities peculiar to or primarily associated with the development of weapons systems or military operations, 2). Common defense, 3). Department of Defense, the Department of the Army, the Department of the Navy, and the Department of the Air Force, generally, 4). Maintenance and operation of the Panama Canal, including administration, sanitation, and government of the Canal Zone, 5). Military research and development, 6). National security aspects of nuclear energy, 7). Naval petroleum reserves, except those in Alaska, 8). Pay, promotion, retirement, and other benefits and privileges of members of the Armed Forces, including overseas education of civilian and military dependents, 9). Selective Service System, and 10). Strategic and critical materials necessary for the common defense. Lastly, "the Senate has also given the committee the authority to study and

1256 Anumita Kaur, "Request to halt military construction around endangered trees denied," *Pacific Daily News*, July 8, 2019, accessed at https://www.guampdn.com/story/news/2019/07/07/governor-request-stop-military-construction-endangered-tree-denied/1670563001/.

review, on a comprehensive basis, matters relating to the common defense policy of the United States, and report thereon from time to time."[1257] Guam's senators serving on this committee could be impactful in getting the best deal for the state of Guam in its relationship to the US military.

Furthermore, Guam's House Representative could seek to serve on the House Armed Services Committee, which has the following jurisdiction:

- Defense policy generally
- Ongoing military operations
- The organization and reform of the Department of Defense and the Department of Energy
- Counter-drug programs
- Security cooperation and humanitarian assistance activities (except special operations-related activities) of the Department of Defense
- Acquisition and industrial base policy
- Technology transfer and export controls
- Joint interoperability
- Detainee affairs and policy
- Force protection policy
- Inter-agency reform as it pertains to the Department of Defense and nuclear weapons programs of the Department of Energy.[1258]

Guam's non-voting delegates to the US House of Representatives, including former delegates A.B. Won Pat, Vicente (Ben) Blaz, Dr. Robert Underwood, and Madeleine Bordallo have served on the House Armed Services Committee. As a state, the power of our representative will be enhanced with voting privileges on the floor. As Guam would have this voting representation in both the House of Representatives and in the Senate, there will presumably be more pressure on the United States for more resources and more projects for Guam, if this is what Guam needed or desired. Conversely, Guam's federal representatives may choose to use their voting power to fight against a proposed military project they view detrimental to the island.

Another benefit Guam will receive from becoming a state in its relationship to the US military is that Guam will become an "integral" part of the United States. As an unincorporated territory, Guam "belongs to" but is not an integral "part of" the United States. As a state of the union, this would no longer be the case, and Guam could no longer be just a bargaining chip of the US military. In many ways, Guam's status as a territory means that, while the US military gets to use Guam strategically, it can use Guam as a bargaining chip in its geopolitical quest for primacy in the region without meaningful political resistance from the island. One of the foremost scholars on the US territories, Arnold Liebowitz, illustrates this, writing,

1257 United States Senate Committee on Armed Services. "History," accessed at https://www.armed-services.senate.gov/about/history.

1258 House Armed Services Committee, "Committee Rules," accessed at https://armedservices.house.gov/committee-rules.

> There is almost always perceived military purpose in the island territories, which broadens federal authority, permitting the president to combine the foreign affairs powers with the military powers of the Commander in Chief. The judiciary, normally zealous in protecting individual rights against governmental action, has been unwilling to question executive or legislative action even where the rights of an entire island's inhabitants are concerned once the question appears to be linked, however marginally, to national security.[1259]

As a state and being an integral part of the United States, Guam would have a more equal relationship with the US federal government and the military, which could be beneficial for the island in comparison to an unincorporated territory.

Independence

Guam's relationship with the US military is least clear when considering independence for the island, as independence provides the most unknowns. In a general sense, independence is the one status where US military protection is not guaranteed. Independence does not mean that the US military will automatically leave the island or that continued US military presence will not exist in the independent country of Guam. However, the withdrawal of the military from the island is possible if the two governments do not agree. Overall, the relationship of Guam to the US military under independence will be contingent on factors such as the geopolitical environment of the time and United States and Guam domestic politics.

Scenario #1: Chinese Primacy/Chinese Expansion Towards Military Primacy, Significant US Decline

In this scenario, continuing a relationship with the US military could prove risky to the independent country of Guam. If China were to achieve primacy in the region it may be against Guam's national interest to maintain a close relationship with the US military as this would be in direct opposition to China. This does not mean that Guam needs to have a close relationship with the Chinese military either, although if Guam were to be independent, it is expected that China will attempt to gain influence in the country via soft power and money. Rather, it may be best in this instance for Guam to have neither Chinese nor US military bases and essentially act as a buffer zone. The feasibility of this however, will be dependent on how well Guam is able to negotiate its international relationships.

1259 Liebowitz, "Defining Status," 16.

Scenario #2: Decline of China and the United States, Emergence of Alternative Regionalism or Middle-Power engagement

In this scenario, the relationship with the US military is not clear. If Guam, out of its own self-interest, decided to continue to have a close relationship with the US, Guam could fight for a more equitable and economically profitable situation. However, this will depend on US power, national interest, and grand strategy at that time. The people of Guam, in this scenario, would have to debate whether having a relationship with the US military would be beneficial to the country.

Scenario # 3: Continued competition and bi/multipolarity

In this scenario, it is expected that the United States would want to continue a close relationship with the island, even if independent, with a particular emphasis on continued basing rights in the island to maintain its power and balance against China's continued push for influence in the Pacific. Even if Guam were to be independent, the US would not want Guam to open up its land, sea, and airspace to the Chinese or any other military as this would undermine its power in the region. Beyond basing, if the US switched to an offshore balancing strategy and draws down or closes its bases, the US will still want to maintain a relationship with Guam to act as a potential client state, making arrangements for weapons storage or refueling, similar to Taiwan's current relationship with the United States, to help balance against China.

Scenario #4: US Reassertion in the Indo-Pacific, Chinese Decline

If the US achieves primacy through reassertion in the Indo-Pacific, the government of Guam may find it beneficial to continue a relationship with the US military. This would be easy, considering the close connection between the United States and Guam today. Similar to the United Kingdom, there are multiple examples of colonizers and former colonies having a close relationship with one another. This would allow the country of Guam to have a close relationship with the most powerful country on earth in this scenario.

Scenario #5: US Legitimacy Crisis on the World Stage Due to Climate Change

Similar to the second scenario, a relationship with the US military is unclear. If an independent Guam viewed the US military as beneficial to assisting with environmental, health, and climate change related security issues, it may enter into agreements of this sort. If the government of an independent Guam decided that US bases in the island would overall be beneficial to the island country, then it may support this endeavor.

Overall, an independent Guam's relationship with the US military will be in the form of negotiations and subsequent agreements between two sovereign countries. Guam's sovereignty, under this status, will

allow the island access to international institutions and the benefit of being a country in its negotiations with the US military. However, there will always be the issues of power politics, particularly for a strategically located island like Guam.

Free Association

The Compacts of Free Association the United States has with the Micronesian countries of the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands are centered around the issues of defense and national security. The models of free association that the United States has entered have all resulted in the form of special provisions of policy handled by the United States, primarily defense. The COFA countries retain agency for external/foreign affairs, notwithstanding provisions for consulting with the United States on foreign affairs matters. Citizens of COFA countries are also able to join the US military. If Guam chose free association, it is reasonable to assume that a similar arrangement would be made between Guam and the United States. The US would provide military defense of the country, and in turn, Guam would ensure strategic denial as well as grant the US possible access to the land and ocean in Guam's sovereign territory. It is also likely that citizens in the freely associated state of Guam (if having its own citizenship) would be able to enlist in the US military. It is also likely that if Guam were to be freely associated, a continuation of US military basing would be negotiated. Overall, it is highly expected that there would be a close relationship (due to the nature of the status as currently practiced in the FAS) between Guam and the United States in the case of a negotiated Compact of Free Association or similar legal instrument. This would come with all the benefits and limitations.

However, as can be seen in the case of the renegotiations of certain provisions of the Compact of Free Association between the United States and the Federated States of Micronesia, there may be disagreements and points of contention in the freely associated state of Guam's relationship with the US military. It should also be emphasized that if Guam follows the existing FAS, a freely associated Guam would be able to negotiate with the United States on a country-to-country basis, even if there are certain allowances granted to the US per the negotiations.

RELATIONSHIP WITH THE US MILITARY	
STATUS	**EFFECTS**
Statehood	• Access to political capital and influence on US domestic and foreign affairs.

	• As a smaller state, there is the possibility that Guam will have influence, but not enough influence to effectuate change for the island. • Guam could continue to still be used primarily as a base.
Independence	• Guam could choose how much of a relationship it wants to have with the US military. • The US military would have to interact with Guam as a sovereign country, and not as a territory. • The decision of how close of a relationship to have with the US military may be controversial. • This will be heavily influenced by the geopolitical environment. • Power politics will still have a role in this decision
Free Association	• Strong relationship with the US military, as it is expected that basing would continue. • The US military, barring the agreement in a possible COFA or similar agreement, would have to interact with Guam as a freely associated state, and no longer an unincorporated territory . • Due to politics and historical ties, it is possible that US military may still hold power in the country.

	• The issue of whether the US would want to enter into a Compact of Free Association or other agreement with Guam will be influenced by the geo-political environment. • Guam having a COFA with the United States may cause tension with near-peer competitors like China.

Bases

This section addresses the potential future of US military bases in Guam in the respective cases of statehood, independence, and free association. Two analyses are conducted here. The first is what the status itself has to offer regarding the potential future of the bases and the second takes into account the potential geopolitical environments at the time of the implementation of the new status, whichever it may be. These two factors should both be considered, especially when discussing basing in Guam.

Statehood

It is highly expected that the bases in Guam would remain if the island became a state, particularly in the geopolitical scenario of continued competition with China and other countries or in the scenario of US reassertion in the Indo-Pacific region. In the geopolitical scenario of Guam being a state and the United States declining in power, the government of the United States could possibly consider closing or partially closing bases in Guam to save money or in accordance with a different military strategy. However, it is more likely that the US continues to prioritize maintaining its bases in Guam as a continued line of defense against countries like China and will do whatever possible, even during economic decline or a shift in political party in power, to keep the bases operational. In this geopolitical scenario, Guam being a state (far from other US sovereign soil) may make it more vulnerable and will have fewer options to pivot the island's international engagement in the context of US decline.

Overall, in any geopolitical scenario, it is expected that if the US has the resources and national interest, the permanence of US military bases in the state of Guam is likely, because continued basing will likely be the United States' motivation to make Guam a state in the first place. As mentioned in the overview of this study, there are factors such as size and population that will play a role in the politics of Guam's quest for statehood. However, Guam's current geostrategic role and importance for US power projection in the Indo-Pacific may help to counterbalance these obstacles, which will be dependent on the US Congress. The granting of statehood may also provide Guam a larger say in basing arrangements

through adequate representation in the US government.

As a territory, a primary pillar of Guam's economy is federal spending, revolving around the military. In the state of Guam, this is not expected to change except that the island would now be paying taxes into the US Treasury that support the bases. For more on this, see the Revenue/Taxation portion of this study. Guam would join existing states whose economies revolve heavily around domestic military bases. As proponents of basing economies argue, "Defense spending helps sustain local communities by creating employment opportunities across a wide range of sectors both directly and indirectly. Active duty and civilian employees spend their military wages on goods and services produced locally, while pensions and other benefits provide retirees and dependents a reliable source of income."[1260] However, it should be noted that Guam currently receives Section 30 monies and is thus slightly out of sync with states. This should also be taken into consideration.

Status Example: North Carolina

North Carolina not only has one of the largest military bases in the world, Fort Bragg, but it is also the host state of Camp Lejeune Marine Corps Base, Cherry Point Marine Corps Air Station and Naval Air Depot, New River Marine Corps Air Station, Seymour Johnson Air Force Base, Sunny Point Military Ocean Terminal, and US Coast Guard Base Elizabeth City. In 2015, the North Carolina Department of Commerce and the North Carolina Military Affairs Commission put out a report, "The Economic Impact of the Military on North Carolina." According to this report,

- The military supports 578,000 jobs with nearly $34 billion in state personal income and $66 billion in gross state product.
- 386,000 of the total military-supported jobs occur in the private sector.
- Professional, Scientific, and Technical Services, Administrative and Waste Management Services, and Construction are the top three military-supported private industry sectors.
- More than 20,000 civilian contractors are employed by the Department of Defense and the North Carolina National Guard in North Carolina.
- Department of Defense prime contracting in FY 2014 totaled $2.5 billion, with 81 percent of that being performed in the South Central and Southeast prosperity zones.
- North Carolina's active military personnel have in-demand occupational skills which could contribute to private industries in the state as personnel separate from the military in the future[1261]

Furthermore, the report articulates that,

1260 National Conference of State Legislatures, "Preparing for Duty: State Policy Options to Sustain Military Installations," December 2016, 2.

1261 North Carolina Department of Commerce and the North Carolina Military Affairs Commission, "The Economic Impact of the Military on North Carolina," 2015, 1.

> First, military bases enrich the regional economy because they provide a source of income to military personnel who, in turn, demand goods (i.e., groceries and clothes) and services (i.e., dining out and dry cleaning), spending a portion of their incomes regionally. Military pensions from the federal government also provide income to individuals who will then purchase goods and services in the regional economy. Another area yielding significant economic impacts is military contracting. Each year, the military purchases billions of dollars of goods and services from defense contractors in North Carolina in sectors such as Manufacturing, Construction, and Aerospace.
>
> In order to meet the military's demand for goods and services, defense contractors require intermediate inputs for their own production processes. Demand for intermediate inputs translates into demand for suppliers and service providers further "upstream" in the value chain. This economic process continues through the value chain, in effect, amplifying the initial dollar value of military contracts. Finally, labor is required by virtually all companies in military-supported value chains to differing degrees based on each company's production technology. Increased employment and increased wages throughout military-supported value chains result in greater levels of household consumption in North Carolina since households have more income to spend. Higher levels of consumption increase demand for other value chains as well, creating a virtuous spending cycle.[1262]

Per the report, the military has been beneficial to North Carolina's economy.

However, there are those who disagree with this assessment. For example, Catherine Lutz, in her book *Homefront: A Military City and the American 20th Century*, discusses the economic effects of the military on Fayetteville, North Carolina, where the Army base Fort Bragg is located. In describing this economy, she argues,

> For, while Fayetteville's military dependency has made fortunes for some as the post continued to grow through the 1970s and 1980s, its economy was increasingly based on selling goods and services to soldiers, creating retail jobs that pay less than any other category of work. Despite the egalitarian pay and strong benefits packages military work brings to town, overall the installation established a low-wage economy, a vulnerable labor force of dependent women and teens, the high crime rates that come with poverty, and a weak democratic culture and public sphere.[1263]

Thus, there is disagreement as to the type and degree of economic productivity the military bases in North Carolina bring to the state, as there may be in the case of the state of Guam.

US military basing in Guam and its subsequent economic, social, cultural, and environmental effects is likely to continue in the state of Guam. As a state, Guam could potentially be more involved in the

1262 North Carolina Department of Commerce and the North Carolina Military Affairs Commission, "Economic Impact of the Military on North Carolina," 10.

1263 Catherine Lutz, Homefront: A Military City and the American 20th Century (Boston: Beacon Press, 2001), 213.

decision-making surrounding this. Many states become engaged in the basing process through active engagement in their state legislatures. As reported, "an increasing number of state legislatures have recognized the importance of protecting test, training and operational mission viability by preventing encroachment and incompatible land uses around installations."[1264] Guam has a few options when it comes to being more involved in military spending and decision-making in the island. The first is the continuation of a military advisory body, similar to the existing oversight chair on the military buildup that Guam currently has or in the Guam Buildup Office, now called the Community Defense Liaison Office. This can be important and have a few roles including: being a liaison between the legislature, military installations and surrounding communities; reviewing current policies; assisting defense communities with programs that strengthen their relationship with nearby installations; conducting studies to support military activities; and disbursing public funds for projects related to the preservation of military installations.[1265] In these ways, the government and state legislature of Guam could become more involved in military basing in Guam.

Overall, if the geopolitical environment is right, bases are expected to continue in the state of Guam. Furthermore, as a state, Guam could become more heavily involved in the basing decisions surrounding the island.

Independence

As an independent country, the government of Guam should, in theory, have full control over the basing allowed in Guam's sovereign soil and waters, and thus can determine what bases, if any, it will allow within its territory. This is a multi-layered process. Guam, as a sovereign country would also possess control over any defense treaties, negotiations over possible leasing of land, access rights (even if bases are not established, access and travel rights of foreign militaries will be another thing to consider), what the foreign military is able and not able to do, and the establishment of jurisdiction. One common question asked regarding independence is, "What will happen to the existing American bases in the island?" or "Would the United States want to have US bases in an independent Guam?" As the Philippines is the only former US territory to become independent, an examination of its post-independence US military presence may be useful for an independent Guam.

Status Example: The Philippines

The US initially gained bases in the Philippines after defeating the Spanish in the Spanish-American War. As a result of the war, the US gained control of Spanish military posts, most especially Subic Bay. Decades later, the Philippines became an independent country in 1946, after being a US territory for nearly fifty years. During its transition to independence, the continuity of military bases was a key

1264 Lutz, "Homefront," 8.

1265 Lutz, "Homefront," 11.

concern for the United States. This led to the 1947 Republic of the Philippines–United States Military Bases Agreement, also known as MBA, which gave the US "certain lands of the public domain" for a period of ninety-nine years rent-free. President Dwight Eisenhower advocated for the withdrawal of US forces from the Philippines but was dissuaded by infamous US diplomat George Kennan. In discussing US presence in the Philippines during a Cold War geopolitical environment, Kennan said, "We should cease to talk about vague and—for the Far East—unreal objectives such as human rights, the raising of living standards, and democratization. The day is not far off when we are going to have to deal in straight power concepts. The less we are hampered by idealistic slogans, the better."[1266] This quote from Kennan demonstrates the US national interest in having the Philippines continue to serve US security interests, even at the expense of potential Filipino development. To accomplish this, the United States used domestic conflict as leverage against a hesitant Philippine government.

In the Philippines, there was a communist guerilla movement named Hukbalahap, or the Huks, that originally formed to fight the Japanese occupation, but would rebel against the Philippines government a few years later. Using this as a fulcrum for convincing the Philippines government, President Truman threatened to withdraw all US military forces, knowing that the Philippines government needed the US help to defeat the Huks. "Knowing that US military aid was essential if he [President Roxas] were to crush the Huks, who were fast on their way to becoming a major headache, and were US troops to be pulled out, other forms of aid would lessen if not disappear altogether, Roxas reassured the US of his government's commitment to keeping US bases."[1267]

Thus, the aforementioned agreement was signed and led to US control over twenty-three bases, sixteen of which would be active, and the remainder held in reserve in case they were ever needed, with the largest bases being Subic Bay Naval Base and Clark Air Force Base. The MBA stipulated that the Philippines could not grant any other country military basing rights and that the Philippines could not place any restrictions on how the US bases could be used or what weapons could be stored there. Supplementing the MBA was the Military Assistance Agreement (MAA), also signed in 1947. Per this agreement, the Joint US Military Advisory Group was established to help train the Philippine Armed Forces.

It is highly expected that if the United States is still competing with China for primacy in the region it will attempt to craft an agreement similar to the MBA in an independent Guam. It is also important to note that, even though the Philippines eventually voted to close key US bases in its country, it has made many concessions over the years in granting the US military access to Philippine bases, due to China's actions in the South China Sea. Similar to the Philippines, an independent Guam would have to consider whether it is in the country's best interest to negotiate an agreement of this sort.

This leads to the major question, "Would the United States want to have US bases in an independent Guam?" The Defense and External Affairs overview is useful in exploring this fundamental question.

1266 US Department of State, "Report by the Policy Planning Staff (PPS/23)", February 24, 1948, accessed at https://history.state.gov/historicaldocuments/frus1948v01p2/d4.

1267 Luis H. Francia, *A History of the Philippines: From Indios Bravos to Filipinos*. (New York: Overlook Press, 2014), 198.

Scenario #1: Chinese Primacy/Chinese Expansion Towards Military Primacy, Significant US Decline

In a region with Chinese primacy, the US may want to establish bases in an independent Guam as a way to balance against China. However, if US power diminishes, there may be either: domestic disputes regarding the overseas basing network; not enough money or political capital to establish and support these bases; or the presence of US bases in Guam would escalate a geopolitical situation the United States does not want to engage in. This is why in all the geopolitical future(s) scenarios discussed, when it comes to independence, one also needs to take into consideration the method in which Guam became decolonized as it will have ramifications for Guam's relationship with the United States and the region.

Scenario #2: Decline of China and the United States, Emergence of Alternative Regionalism or Middle-Power engagement

Similar to the scenario above, there may be little domestic support or not enough resources for the United States to continue basing operations in an independent Guam in this geopolitical environment. In this scenario, Guam could either forgo having any military bases or it could make agreements with other countries to set up military bases in the island. Furthermore, in this geopolitical environment, it would be up to Guam and how the region is structured at the time of independence.

Scenario #3: Continued competition and bi/multipolarity

In this geopolitical scenario, it is highly expected that the United States would want to establish bases in an independent Guam, because losing Guam as a territory would affect US power projection in the region. US officials have recognized the importance of Guam's territorial status and of keeping Guam as sovereign soil. For example, Colonel Jerry Rivera argues, regarding shifting geopolitics in the region,

> Withdrawing to the Marianas is not abandoning our friends and allies in the region. They will know that we are nearby on US soil, where the US has an inherent right to be, keeping an eye out for them just several hours away by air and several days be sea. As part of that strategy, US military forces will constantly be flying and sailing from Guam and visiting all our Asian friends and allies, just to let them know we are in the neighborhood.[1268]

Lastly, two strategists wrote, "Guam has the advantage of being American territory, reducing the political difficulty of building and operating assets there."[1269] This all reinforces the point that losing Guam as an unincorporated territory will force the United States to make adjustments in the region, it

1268 Jerry Rivera, *Guam USA: America's Forward Fortress in Asia-Pacific* (Pickle Partners Publishing, 2014), Loc 526, Kindle.

1269 Erickson and Mikolay, "Guam and American Security" 22.

will most likely still want to keep its bases in an independent Guam in the name of regional stability in its competition with China, a rogue North Korea, and a possibly disruptive Russia. However, this argument is premised on there not being a reorientation of current US foreign policy that views bases in Guam or presence in the Indo-Pacific as being in the US national interest.

Scenario #4: US Reassertion in the Indo-Pacific, Chinese Decline

It is speculated that continued or expanded US primacy in the region, with Chinese decline, will lead to US desire to maintain bases in an independent Guam. In the event of Chinese decline or even a plateauing of Chinese power at level less than the United States, it may be in the US national interest during this period of continued power to have military bases in Guam. Although the US would lose operational unilateralism with Guam as a sovereign country, an independent Guam may be either pressured by the United States (via its power) to put bases in the island, or Guam, as a smaller state, would feel the need to make arrangements with the US to best protect its security interests.

Non-US Basing

What distinguishes independence from both statehood and free association is the possibility of having bases not associated with the United States. Under statehood and free association, foreign militaries would not be allowed to establish bases in Guam without US approval. Independence is the one option in which non-US military basing is a possibility. Before making decisions regarding basing and foreign militaries, it is imperative that the government of Guam critically analyze the future(s) within the geopolitical environment of the time and do what is best for the security of the country. In the section below, an examination of non-exclusive US basing is provided, although the authors understand that this is currently far from what the people of Guam desire. First, it should be acknowledged that non-exclusive US basing does not mean two countries setting up bases in the island. It is highly unlikely that Guam will be a "host nation" for more than one country's bases (as Djibouti currently is), as the island is too geographically small, and this may exacerbate potential conflict.

Scenario #1: Chinese Primacy/Chinese Expansion Towards Military Primacy, Significant US Decline

An Indo-Pacific region with Chinese primacy makes the option of hosting US bases at best, indifferent, and at worst, harmful to an independent Guam's security interests. This does not automatically lead to a suggestion that Guam should host Chinese military bases, as this would be contingent on China's base network development and what the people of Guam desire. At the time of this writing, China has only one overseas base (Djibouti) with a possible future base in Pakistan. The decision to host Chinese military bases in an independent Guam is contingent on whether the Chinese military develops a forward presence

basing network, whether the government of Guam seeks to establish basing rights with China, whether or not the people of Guam will ultimately accept this, and whether and to what extent China and Guam see the establishment of bases as being in their mutual national interests.

Scenario #2: Decline of China and the United States, Emergence of Alternative Regionalism or Middle-Power engagement

In this scenario, the possibility, if Guam desires, for military bases that are not US bases is higher than in scenario #3 or #4. Depending on the region's geopolitical environment at the time, Guam could offer military basing access to other countries if it was decided by the government of Guam. Alternatively, it could also decide to not house any military bases if the region, through Pacific Islands regionalism, creates something akin to a demilitarized zone to prevent the intrusion of great-power politics or to have its own bases (with a possible Pacific Islands coalition) if the island states chose to do so. In this scenario, Guam would be the least restricted due to the decline in great power politics which historically surround the region.

Scenario #3: Continued competition and bi/multipolarity

In this futures scenario, Guam could offer either the United States or another country basing agreements. However, Guam's relatively small land mass makes it nearly impossible to host multiple countries' military bases. Having bases so physically close together could trigger a microcosm of a security dilemma, especially if the two countries end up having conflict, animosity, and enmity. This could put Guam in a horrible position, as it has a history of being caught between the conflicts of larger powers. Ultimately though, an independent Guam in this scenario is more likely to give United States basing rights, over any other country such as China, due to a long history of entanglement.

Scenario #4: US Reassertion in the Indo-Pacific, Chinese Decline

In a geopolitical order of United States reassertion and primacy, corresponding with Chinese decline, it may not be in Guam's best interest to make basing arrangements with any other country besides the United States. Guam's long, entangled history with the United States makes an exclusive basing arrangement with the United States the more likely and more beneficial option. Subsequently in this future(s) scenario of continued US primacy in the region, it would be beneficial for the US to set up bases in the country of Guam, as it could be pivotal for its power projection in the region aimed at maintaining this primacy.

Scenario #5: US Legitimacy Crisis on the World Stage Due to Climate Change

In this scenario, it is likely that the government of an independent Guam would not want any military bases in the island as it would want to use the land for aspects of food security or other strategies of

climate change adaptation. This is unless the government of Guam believes that a foreign military base would bring substantial resources to the island to help in its fight against climate change.

With this analyses and scenarios provided, the most likely option for basing in an independent Guam is still US bases.

No Foreign Bases

Lastly, the government of an independent Guam could choose not to have any foreign military bases. There are multiple reasons why civilians organize into social movements to oppose foreign military bases, and there is a long history of protest against bases, most especially in countries with large US military footprints, such as Japan and South Korea. It is important to note that this study does not advocate whether an independent Guam should make basing arrangements or not. This decision will have immense ramifications and is outside the scope of this study to make any definitive recommendations of this nature. Rather, the possibilities are explored and in the case of independence, it will be up to the government and the citizens of the country to make these critical decisions.

The largest question an independent Guam would have to ask itself is, "Does this foreign base contribute to or negatively affect the island's security?" The most common assumption is that military presence automatically leads to security enhancement for the host country, particularly if there is a mutual defense treaty and if the other actor is the United States. As described,

> While the US and host governments envision security with military bases, the host states' public continues to debate whether the US military presence contributes to security. Some citizens believe that military bases threaten the security of their communities, countries, and regions. These citizens, especially those living near military bases, often conceive of security in terms of 'human security' or safety in their daily lives. From this perspective, they express strong concern about various problems that the military presence including soil and noise pollution, and the criminal conduct of US military personnel. They also believe that the presence of US forces in their countries creates tension in the region by unnecessarily provoking other countries, and they worry that bases might become targets of external attack. For these reasons, they imagine security without military bases.[1270]

Opposing this perspective are those who argue that foreign basing with a mutual defense agreement is the only way a small island country (which Guam would be) can survive, and that the country's security is best served by making basing arrangements.

It is highly advised that an independent Guam take these two perspectives on foreign basing's contribution to national security, and then go one step further. An independent Guam should not make a

1270 Erickson and Mikolay, "Guam and American Security" 22.

decision regarding basing on the basis of ideology, but on pragmatism and what will help to ensure the survival, thriving, and security of the country. To do this, an independent Guam would need to look out for various aspects of security. Security is traditionally defined as "the identification of threats to a particular referent object and the formulation of policy responses to these threats."[1271] The threats are military; the referent object is the country; and the policy responses are also military and strategic policies. This is what most refer to when they discuss "national security."

However, this is only one concept of security, and increasingly, more countries and international organizations around the world are broadening and deepening the scope of security to reflect more of the threats a country and/or a people may face in today's world. It is advised that an independent Guam broaden its scope of security, not making military threats the only threats to Guam's security, and seriously consider factors such as environmental security, economic security, human security, food security, and political security when deciding whether foreign basing agreements are in the country's best interest. Only when a cost-benefit analysis is conducted with an all-encompassing treatment of security can the decision of foreign bases be truly rooted in Guam's security interests. This responsibility will be in an independent Guam's hands.

Free Association

The question of US military base presence in Guam under free association will primarily be determined by the negotiations made between the government of Guam and the United States. Each Compact of Free Association the United States has with the freely associated states of Micronesia includes provisions regarding US access to their respective land, sea, and airspace. Due to Guam's strategic location, it is highly expected that under free association, US basing would continue.

Status Example: Republic of Palau

Section 321 and Section 322 of the Compact of Free Association with Palau lays out the parameters of US utilization of Palauan territory.

> Section 321:
>
> The Government of the United States may establish and use defense sites in Palau and may designate for this purpose land and water areas and improvements in accordance with the provisions of a separate agreement which shall come into force simultaneously with this Compact.
>
> Section 322:

1271 Myriam Dunn Cavelty and Victor Mauer, *The Routledge Handbook of Security Studies*, (New York: Routledge, 2011), Location 1940, Kindle.

(a) When the Government of the United States desires to establish or use such a defense site specifically identified in the separate agreement referred to in Section 321, it shall so inform the Government of Palau which shall make the designated site available to the Government of the United States for the duration and level of use specified.

(b) With respect to any site not specifically identified in the separate agreement referred to in Section 321, the Government of the United States shall inform the Government of Palau, which shall make the designated site available to the Government of the United States for the duration and level of use specified, or shall make available one alternative site acceptable to the Government of the United States. If such alternative site is unacceptable to the Government of the United States, the site first designated shall be made available after such determination.[1272]

(c) Compensation in full for designation, establishment or use of defense sites is provided in Title Two of this Compact.[1273]

In subsidiary agreements made between the United States and Palau, there are stipulations set out regarding the use of sites within Palau. Per these agreements, when identifying a defense site in Palau, this shall include all the necessary land and use rights for such sites, rights of access thereto, and road, pipeline and other easements as may be required. The government of Palau has to make the site, or an agreed upon alternative site, available to the United States within sixty days. Additionally, any rent or use charges due to people with interest in the land shall be provided by the government of Palau, and not the United States. The subsidiary agreements also outline the potential desired use of the land by the United States. They are broken down into three categories:

1. Exclusive-use areas (areas which are reserved exclusively for use by the Government of the United States, subject to the limitations set forth in the agreement)

2. Joint-use areas (areas which may be used jointly by the Government of Palau and the Government of the United States, subject to the limitations set forth in this agreement)

3. Non-exclusive-use areas (areas for intermittent use by the Government of the United States, subject to the limitations set forth in this Agreement)

Regarding the exclusive-use areas of (a) approximately sixty-five acres adjoining Airai airfield, (b) forty acres of submerged and adjacent fast land in Malakal harbor, and (c) an area or areas for such purposes as base and logistic support activities

1272 Article III, Section I of the Republic of Palau-Compact of Free Association Subsidiary Agreement.

1273 Sections 321 and 322 of the Compact of Free Association between the Republic of Palau and the United States.

> The Government of the United States has access to and unrestricted control of the exclusive use areas including the right to control entry to and exit from any or all exclusive-use areas and the right to take reasonable and necessary measures for their establishment, use and operation. The Government of the United States may take, within the exclusive-use areas and within the seabeds, water areas and air space adjacent to or in the vicinity of the exclusive-use areas, reasonable and necessary measures for their use, security and defense.[1274]

When it comes to joint areas, the United States and Palau both have access. Article 6-1 reads,

> The Government of the United States shall have access to and use of joint-use areas, including the right to take reasonable and necessary measures for their establishment, operation and maintenance. After consultation with the Government of Palau, the Government of the United States may take, within these areas and within the seabeds, water areas and air space adjacent to or in the vicinity of these areas reasonable and necessary measures for their use, security and defense, including the measures specified in subparagraphs (a) through (e) of paragraph 1 of Article V of this Agreement.[1275]

Yet, unlike exclusive-use areas, Palau may also use the areas. Article 6-2 states,

> The Government of Palau may use any joint-use area, including making such area available to persons or entities authorized by the Government of Palau, in any manner compatible with the rights of the Government of the United States set forth in this Agreement. The Government of Palau shall notify the Government of the United States of any intended use of such area and the Government of the United States shall not interfere with such use unless it is incompatible with the ability of the Government of the United States to carry out its military mission.[1276]

Lastly, and important to acknowledge, is the agreement regarding non-exclusive-use areas. Article VII, Section I, states, "The government of the United States shall notify the government of Palau, as far in advance of the tentative date of planned use as is practically possible, but not less than 90 days, except in an emergency or as mutually agreed, of its intention to use any area designated for non-exclusive-use."[1277] Section (b) of Article VII, Section I reads, "The government of Palau may, within 30 days after receipt of the notification, seek clarification or express reservation concerning the planned activity and the parties shall consult as necessary to resolve any differences. The government of the United States will make every reasonable effort to adjust the planned use to take into consideration the reservations expressed by the

1274 Article V, Section I of the Republic of Palau-Compact of Free Association Subsidiary Agreement.

1275 Article VI, Section I of the Republic of Palau-Compact of Free Association Subsidiary Agreement.

1276 Article VI, Section II of the Republic of Palau-Compact of Free Association Subsidiary Agreement.

1277 Article VII, Section I of the Republic of Palau-Compact of Free Association Subsidiary Agreement.

Government of Palau."[1278] This particular language regarding land use is ubiquitous in the subsidiary agreements between the US and the Republic of Palau.

Examining the details of these agreements helps show that Guam's negotiation team in the case of free association should hire a legal team to assist in language of the potential Compact of Free Association or other legal instrument and any or all subsidiary agreements made between the US and Guam. For example, in Palau's Compact of Free Association, pursuant to Section 453, even if the Compact of Free Association is terminated, subsidiary agreements shall still remain in effect in accordance with its terms.[1279] Guam's negotiation team would need careful legal assessments of the compact or other legal instruments to assure Guam's best interests. Lastly, the negotiation team for a freely associated Guam could use existing arrangements in the three COFA states to determine what to emulate and what to change in their agreements with the United States.

However, one critical difference between Palau and a freely associated Guam is that the US military already controls twenty-seven percent of Guam. Thus, the negotiations between Guam and the United States may be qualitatively different than the negotiations with Palau, and Guam could use this fact in its negotiations with the United States to negotiate a more beneficial freely associated arrangement. It is highly expected that no arrangement between Guam and the United States will be approved without an explicit continued basing agreement. Guam is and will likely continue to be at the center of power politics in the Indo-Pacific region, and it is unlikely, that the United States will give up important bases, even if Guam becomes a freely associated state. Thus, in the case of free association, it is likely that basing will continue in Guam and the US will carry the responsibility of defending the new freely associated state.

1278 Article VII, Section I of the Republic of Palau-Compact of Free Association Subsidiary Agreement.

1279 Section 453 of the Compact of Free Association of the Republic of Palau.

BASES	
STATUS	**EFFECTS**
Statehood	• Near guaranteed continuation of US military bases in Guam. • Guam will have more political power to influence military base projects. • US in charge of defense of the island.

	• Basing budget affected by US domestic politics. • Guam would continue to be an integral part of US security policy in the Indo-Pacific region.
Independence	• Greatest latitude regarding basing arrangements. • Possibility of continued US military bases. • Possibility of no military bases in Guam. • Riskiest option regarding security and defense of the island. • Basing decisions to be heavily influenced by geopolitical environment of the time.
Free Association	• Near guarantee of continuation of US military bases in Guam. • Land in Guam most likely to be reserved for military purposes. • As US will probably have bases in the island, no other military will be allowed into the island without US permission (strategic denial). • Economic assistance given to Guam in exchange for basing rights. • Guam may be tied to the United States in potential conflicts in the Indo-Pacific region.

Defense Treaties/Agreements

This subsection of the study focuses on treaties or agreements relating directly to defense. The questions explored in this subsection are: Under each political status, what is the possibility of entering into a defense treaty?; What treaties or agreements could be made regarding defense?; and What is important for Guam to consider in the case of defense treaties and agreements?

Statehood

Returning to Article I, Section 10 of the US Constitution, regarding issues of defense; "No state shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded or in such imminent danger as will not admit of delay."[1280] This is under the realm of the US federal government. Thus, if Guam were a state, it would similarly be prohibited from entering into treaties with other countries for defense purposes. However, Guam's elected leaders in the Senate would, by nature of the separation of powers, be able to have influence on foreign policy, including defense treaties.

Other than Guam's leaders in the federal government, the state government will not have the power to enter into defense treaties with foreign governments. This will be left to the US federal government. This has both a disadvantage and an advantage. The potential disadvantage is that Guam, as a state, would be subject to US foreign policy decisions. However, the potential advantage is that negotiating defense and foreign policy can be daunting and the state of Guam would not necessarily have to make these decisions.

Independence

The most latitude and subsequent responsibility regarding defense treaties/agreements comes under

1280 Article 1, Section 10 of the United States Constitution, accessed at https://www.usconstitution.net/xconst_A1Sec10.html.

independence. In its simplest form, the government of the independent country of Guam should have full control over treaties and agreements in the area of national defense. As discussed in the "Bases" subsection, an independent Guam could have basing or defense arrangements with the United States. Many geographically small countries have agreements with larger countries for defense purposes. A quick look at Oceania reveals the extent to which the independent countries in the region turn to larger states to cover the realm of defense. Out of all the independent Pacific Island countries, only Fiji, Papua New Guinea, and Tonga have standing militaries. The rest of the Pacific Islands' defense is handled by larger countries. As established in the Compact of Free Association, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau's defense is handled by the United States. Tuvalu, Nauru, Kiribati, and Samoa have all made arrangements (many informal) for their national defense to be handled by either Australia or New Zealand. The US has bilateral defense treaties with countries in the region: South Korea; Japan; and the Philippines. Similar language appears throughout descriptions of these three bilateral treaties, taking a form of the following: "A treaty signed, whereby, each party recognizes that an armed attack in the Pacific area on either of the Parties would be dangerous to its own peace and safety and that each Party would act to meet the common danger in accordance with its constitutional processes."[1281] An independent Guam could learn from an examination of existing treaty language.

Status Example: South Korea

In October 1953, in an attempt to ensure South Korea's protection as a result of the Korean War, the US and South Korea signed the US–Republic of Korea Mutual Defense Treaty. Per this treaty, "the countries agree to attempt to settle international disputes peacefully, consult whenever the political independence or security of either party is threatened by external armed attack, and that either party would act to meet the common danger in accordance with their respective constitutional processes."[1282] This initially disappointed South Korea, as the wording of Article II is that of consultation and not an ironclad security guarantee. Article IV grants the US "the right to dispose United States land, air, and sea forces in and about the territory of the Republic of Korea as determined by mutual agreement." [1283] Satisfying South Korea at the time was Article VI of the treaty, which states that the treaty shall remain in force indefinitely.

To this day, the United States maintains a significant base and military personnel presence in South Korea. The most updated information reports that the ROK hosts roughly 28,500 US service members and their families. South Korea hosts: two fighter wings of the A-10 and F-16 aircraft; a major US Army prepositioned stockpile; a combat aviation brigade; a field artillery brigade; advanced ISR (intelligence, surveillance, and reconnaissance) units; and a US Army Corps of Engineers headquarters. In a volatile

1281 US Department of State, "US Collective Defense Arrangements". Accessed at https://2009-2017.state.gov/s/l/treaty/collectivedefense//index.htm.

1282 5 UST. 2368; T.I.A.S. 3097; 238 U.N.T.S. 199. Signed at Washington October 1, 1953. Entered into force November 17, 1954.

1283 "Mutual Defense Treaty Between the United States and the Republic of Korea", October 1, 1953, accessed at https://avalon.law.yale.edu/20th_century/kor001.asp.

region with China and North Korea, the United States has traditionally viewed the security of South Korea as serving US interests. According to the Department of Defense's 2019 Indo-Pacific Strategy Report, "The United States remains steadfast in its commitment to the defense of the Republic of Korea (ROK). The US-ROK Alliance is the linchpin of peace and prosperity in Northeast Asia, as well as the Korean Peninsula."[1284]

The economics of the mutual defense treaty is another factor an independent Guam could learn from South Korea. The continued presence of the US military in an independent Guam is a divisive topic with some arguing that it would perpetuate neocolonialism and others supporting it as Guam's best line of defense. In South Korea's example, it is clear that the US invests substantial resources and money into the alliance. While South Korea's economy struggled after the war, the US provided nearly $5.8 billion to South Korea between 1955 and 1967. In the 1970s, the US helped South Korea via the Military Assistance Program and Foreign Military Sales, both aimed at helping to modernize South Korea's armed forces through the purchase of US military equipment. From 1970 to 1986, the US gave South Korea another $2.4 billion in loan guarantees and direct credits to acquire military equipment.

South Korea has also monetarily contributed to the presence of US bases and military personnel in its territory.

> In 1991 South Korea paid approximately $150 million to support the US presence, and by 2004 the amount had grown to $623 million, a significant increase but less than the US contribution to South Korea's defense. Seoul's direct contribution in 2007 was $770 million, approximately 41 percent of the total by US calculations. In 2008 the total cost of the American presence for nonpersonnel stationing expenses in South Korea was just over $2 billion, and South Korea covered approximately $810 million of that amount.[1285]

The US has tried to get South Korea to contribute more (South Korea pays nearly $1 billion a year now), but South Korean officials argue that besides their monetary contribution, they provide many other contributions. "South Korean officials disagree with the American calculation of burden sharing, noting that programs such as the Korean Augmentation Troops to the US army are not included in ROK contributions and that South Korea provides at no cost land for firing range and bases. In addition, Seoul exempts US forces in Korea from taxes and reduces their electricity and telephone fees."[1286] These cumulatively, according to South Korean officials, contribute to the burden sharing of the mutual defense treaty.

In the case of a US basing agreement in an independent Guam, economic benefits for the island could occur, even if not in the form of "rent" payments. A report by the RAND Corporation defined "US Payments" as "direct payments to host-nation governments made explicitly for the purpose of supporting

1284 Department of Defense, "Indo-Pacific Strategy Report: Preparedness, Partnerships, And Promoting A Networked Region," June 1, 2019, 24.

1285 Terence Roehrig, "South Korea: An Alliance in Transition," in Rebalancing US Forces: Basing and Forward Presence in the Asia-Pacific by Carnes Lord and Andrew S. Erickson (eds.), (Annapolis: Naval Institute Press, 2014), 81.

1286 Roehrig, "South Korea: An Alliance in Transition," 81.

the US overseas posture in accordance with the NDAA's states focus on direct payments for use of facilities, ranges, and lands."[1287] The data on these types of payments is rare, with Djibouti being the primary example. However, it is what the RAND corporation does not include its scope of "direct payments" that shows the potential economic benefit Guam could receive from basing agreements. It states, "We do not consider US funding for security assistance (e.g., International Military Education and Training and Foreign Military Financing), development assistance (e.g., Overseas Development Assistance,) or US payments to other entities (e.g., employees and contractors) for goods or services that might affect the host-nation economy but are not paid to the host-nation government."[1288] This shows the possible types of assistance Guam could receive if it enters into defense agreements with the United States.

Guam's chances of receiving assistance and other benefits from the United States in the case of independence are heightened if Guam fulfills the potential US need for basing rights. Put differently, "That is, absent the bases, would the United States still provide aid to these countries at similar levels? It is clear that most base-rights aid is for use of the bases."[1289] The work of Kent Calder from Johns Hopkins University can help this analysis, through his book, *Embattled Garrisons: Comparative Base Politics and American Globalism*. As a disclaimer, Calder articulates that, "The overall packages that host nations receive, and their relationship to the details of basing arrangements themselves, generally remain both classified and largely insulated from public scrutiny."[1290] From the available data, however, Calder devises four generalizations related to military bases and payment. These four generalizations are:

1. The United States generally pays a lot of money for its foreign bases.
2. Former host nations that have rejected military bases receive either no aid or measurably less then when they were hosting US bases.
3. New host nations are typically rewarded generously.
4. American base-related payments increase when host-nation regime changes occur and the US bases survive.

Furthermore, James Blaker, former deputy assistant secretary of defense, estimated that "around 18 percent of total foreign military and economic aid–subtracting Agency for International Development (USAID) funding–goes to buying base access. Given $31.5 billion in aid in 2012, this adds around $5.7 billion to total overseas costs."[1291] Employment opportunities, local procurement for base goods and services, and spending by those stationed on the base are other economic factors associated with basing. While there are many factors to consider, Calder's work shows that there will be economic incentives for

1287 Michael J. Lostumbo, Michael J. McNerney, et.al, "Overseas Basing of US Military Forces: An Assessment of Relative Costs and Strategic Benefits," *RAND Corporation*, 2013, 136.

1288 Lostumbo, et al., "Overseas Basing of US Military Forces: An Assessment of Relative Costs and Strategic," 136.

1289 Duncan Clarke and Daniel O'Connor, "US base-rights payments after the cold war," Orbus, 37, no. 3 (Summer 1993): 441.

1290 Kent Calder, "Embattled Garrisons: Comparative Base Politics and American Globalism," *International Relations of the Asia-Pacific* 9, no. 1 (2009): 200.

1291 US Department of State, "Executive Budget Summary: Function 150 and Other International Programs Fiscal Year 2014," April 10, 2013, 1-4.

basing rights in Guam.

If the US provides protection in an independent Guam, Guam may also contribute to the maintenance of US military bases, also known as burden sharing, with host nation support as a possible example of this. The Department of Defense dictionary of military terminology defines host nation support as "civil and/or military assistance rendered by a nation to foreign forces within its territory during peacetime, crises or emergencies, or war based on agreements mutually concluded between nations."[1292] This tends to take the form of cash (such as compensation for local national employees, supplies and services of DOD) or in-kind (direct provision of labor, structures, land, and infrastructure; construction or payments for damage claims, forgone rent or lease payments).[1293]

Status of Forces Agreement

As an independent country, if Guam decided to make arrangements for US basing, as discussed in the previous subsection, Guam would most likely negotiate a Status of Forces Agreement, also known as a SOFA, with the United States. A Status of Forces Agreement generally establishes the framework for legal protection and rights of the US Armed Forces while stationed. SOFAs typically cover the rights and privileges of those individuals while in a foreign jurisdiction and address how the domestic laws of that jurisdiction apply to US personnel. They can also address criminal and civil jurisdiction, the wearing of uniforms, taxes and fees, carrying of weapons, license requirements, customs regulations, and use of radio frequencies. SOFAs "share the sovereign prerogative between the receiving and sending state, striking a balance between the rights and obligation of both parties" and "to apply military discipline which takes into account status, customs, and military needs."[1294] It is also important to describe what a Status of Forces Agreement is not (on its own). A Status of Forces Agreement,

> is not a mutual defense agreement or a security agreement, and generally does not authorize specific exercises, activities, or missions. SOFAs are peacetime documents and therefore do not address the rules of war, the Laws of Armed Conflict, or the Laws of the Sea. The existence of a SOFA does not affect or diminish the parties' inherent right of self-defense under the law of war. In the event of armed conflict between parties to a SOFA, the terms of the agreement would no longer be applicable.[1295]

The United States, due to its expansive and unprecedented post-World War II basing network, has around one hundred Status of Forces Agreements with other countries.

1292 Department of Defense Dictionary of Military Terminology, "Joint Publication 1-02," 2012, 143.

1293 Lostumbo, et al., "Overseas Basing of US Military Forces," 135.

1294 Richard Erickson, "Status of Forces Agreements: A Sharing of Sovereign Prerogative," *Air Force Law Review* 37, 40.

1295 Congressional Research Service, "Status of Forces Agreement: What Is It, and How Has It Been Utilized?," *Every CRS Report*, March 15, 2012, accessed at https://www.everycrsreport.com/reports/RL34531.html.

The most important aspect of a SOFA for an independent Guam's purpose would be in negotiating the legal protection from prosecution that could be afforded to US personnel while in Guam, assuming that Guam and the US come to a basing or other military agreement. Particularly, whether exclusive jurisdiction or shared jurisdiction will be exercised needs to be discussed by the two governments. Exclusive jurisdiction refers to when the US, "retains the right to exercise all criminal and disciplinary jurisdiction for violations of the laws of the foreign nation while the individual is present in that country,"[1296] while shared jurisdiction refers to when "each party to the agreement retains exclusive jurisdiction over certain offenses, but also allows the United States to request that the host country waive jurisdiction in favor of the United States exercising criminal and disciplinary jurisdiction."[1297]

A prime example of exclusive jurisdiction is the Agreement on Military Exchanges and Visits Between the Government of the United States of America and the Government of Mongolia. The agreement states,

> United States military authorities shall have the right to exercise within Mongolia all criminal and disciplinary jurisdiction over United States personnel conferred on them by the military laws of the United States. Any criminal offenses against the laws of Mongolia committed by a member of the US forces shall be referred to appropriate United States authorities for investigation and disposition.[1298]

The government of Mongolia can request the United States to waive its jurisdiction in cases of criminal behavior by US military personnel while not on duty. However, the US is not required to do so, and only needs to give this request "sympathetic consideration." Shared jurisdiction is more common in Status of Forces Agreements, with one example being the SOFA between the US and Japan. Under this agreement, both the US and Japan have jurisdiction over the criminal prosecution of US military personnel, but this is dependent on the crime committed and its legality under both US and Japanese law. Article XVII of the SOFA between Japan and the United States reads,

> (1a) the military authority of the United States shall have the right to exercise within Japan all criminal and disciplinary jurisdiction conferred on them by the law of the United States over all persons subject to the military law of the United States
>
> (1b) the authorities of Japan shall have jurisdiction over the members of the United States armed forces, the civilian component, and their dependents with respect to offenses committed within the territory of Japan and punishable by the law of Japan.

1296 Congressional Research Service, "Status of Forces Agreement: What Is It, and How Has It Been Utilized?"

1297 Congressional Research Service, "Status of Forces Agreement: What Is It, and How Has It Been Utilized?"

1298 T.I.A.S., "Agreement on Military Exchanges and Visits Between the Government of the United States of America and the Government of Mongolia," June 26, 1996.

> (2a) the military authorities of the United States shall have the right to exercise exclusive jurisdiction over persons subject to the military law of the United States with respect to offenses, including offenses relating to its security, punishable by the law of the United States, but not by the law of Japan.[1299]

When it comes to cases in which both countries can exercise jurisdiction, there is another particular set of rules outlined in Number 3 of Article XVII. Part 3 states,

In cases where the right to exercise jurisdiction is concurrent the following rules shall apply:

> (a) The military authorities of the United States shall have the primary right to exercise jurisdiction over members of the United States armed forces of the civilian component in relation to i. offenses solely against the property or security of the United States or offenses solely against the person or property of another member of the United States armed forces or the civilian component or of a dependent; ii. Offenses arising out of any act or omission done in the performance of official duty,
>
> (b) In the case of any other offense the authorities of Japan shall have the primary right to exercise jurisdiction.[1300]

An independent or freely associated Guam which makes basing arrangements with the United States or any other country needs to remain vigilant about ensuring that the country's jurisdiction is maintained. As a newly independent country, Guam would need to set up as many safeguards against being exploited as possible, and if the government decides to allow foreign bases and troops in its territory, a SOFA agreement would be beneficial. As explained regarding US SOFA practices throughout the world,

> This asymmetrical record is made even more troublesome by the fact that after jurisdiction is obtained, US military authorities often fail to impose adequate disciplinary measures under the Uniform Code of Military Justice to deter US personnel from committing crimes overseas. Under the UCMJ, US personnel who are found guilty generally only receive non-judicial punishments or court martials. A clear preference of US military authorities is to pursue nonjudicial remedies, which give commanding officers the discretion to impose a lesser punishment, accept an administrative discharge in lieu of a court-martial conviction, or even dismiss the charges.[1301]

Reinforcing this is the case of South Korea, in which it was reported that, between 2004 and 2006, South Korea investigated more than 700 incidents involving US military personnel. Yet only six servicemen

1299 Part 3 of Article XVII of the Treaty of Mutual Cooperation and Security Between Japan and the United States, 1960, accessed at https://www.mofa.go.jp/mofaj/area/usa/sfa/pdfs/fulltext.pdf.

1300 Part 3 of Article XVII of the Treaty of Mutual Cooperation and Security Between Japan and the United States.

1301 Rijie Ernie Gao, "Between a Rock and a Hard Place: Tensions Between the US-ROK Status of Forces Agreement and the Duty to Ensure Individual Rights Under the ICCCPR," *Fordham International Law Journa*l 33, no. 2 (2009): 600.

were serving sentences in Korean prisons as of April 2007. "Even when Korean authorities exercise jurisdiction over the offending US soldier, the punishment often amounts to no more than a slap on the wrist."[1302] Guam does not want to put itself into a position where it is nominally independent, but de facto dependent, on a foreign country, and this power discrepancy could be made apparent in an abuse of criminal jurisdiction practice outlined in a Status of Forces Agreement with a foreign country.

However, there is also the possibility, in general, that defense agreements and SOFA agreements with the United States can over time create a better deal for the host country. "Sovereignty rights outlined in basing agreements tend to shift in favor of host nations over time…By using their residual rights of control and bargaining leverage gained from hosting specific assets, host countries were able to extract important concessions from the United States and whittle down US use rights to the minimum required by the United States to conduct its military operations."[1303] An independent Guam could take this into consideration.

Transition Period

In the case of Singapore, which was a former British colony, the British military involvement with its transition is an interesting model that Guam could negotiate for. After Singapore's independence, British bases remained in the island for roughly six years, even though they initially communicated with Singapore that British troops would stay longer. In 1964, Britain's Labour Party gained power and began to reduce the country's defense budget, as the British economy weakened severely post-World War II. To do this, it announced it would exponentially decrease its economic and defense commitments in Singapore by 1971, with complete withdrawal of troops by 1975. The Singaporeans knew they had to develop their own defenses, but also acknowledged that the temporary British stationing of troops was important for it to metaphorically get on its feet as a new country. As Singapore Minister of Defence Goh Keng Swee said in December 1965, "it is no use pretending that without the British military forces in Singapore today, the island cannot be easily overrun within a matter of hours."[1304] In a similar fashion, although dependent on the geopolitical environment of the time, the negotiating team for an independent Guam with the United States could negotiate to ensure temporary stationing of US military bases in the island as Guam transitions from territory to independence, even if no defense agreement is necessarily in the works. To do otherwise may be too risky while getting the new country on its feet. However, this will also be heavily contingent on which method of decolonization is followed. For example, if the US loses power and wants to remove all personnel from Guam, the island will not get a choice regarding the temporary hosting of bases for a transition.

1302 Gao, "Between a Rock and a Hard Place: Tensions Between the US-ROK Status of Forces Agreement and the Duty to Ensure Individual Rights Under the ICCCPR," *Fordham International Law Journal* 33, no. 2 (2009): 600.

1303 Alexander Cooley and Hendrik Spruyt, *Contracting States: Sovereign Transfers in International Relations* (Princeton: Princeton University Press, 2009), 111.

1304 "Perspectives on Security - Sigops.org." Accessed at http://sigops.org/s/conferences/sosp/2015/history/02-lampson-slides.pdf.

The Not Choosing Model

Another possibility for the island would be that of "not choosing" which superpower to have primary relations with. The father of Singapore, Lee Kuan Yew, referred to Singapore as "the small fish eternally caught between the medium and the big fish," and that the best course of action was "to be friends with both the medium and the big fish."[1305] Furthermore, he exclaimed he did not want to have to choose between China and the US. As detailed in the section overview, continued American-Sino competition is highly expected and the independent country of Guam may feel a need to side with one superpower or another (speaking to scenario #3 of continued competition). One option that the government of an independent Guam could take is not choosing between the two, but rather establishing good relationships with both. Due to the dominant representation of the islands in the Pacific as small and vulnerable, it is common to hear that Guam would have to make an agreement with a larger power for defense and security. However, the Pacific Islands may be able to leverage their strategic location, and glimpses of this can be seen today.

China's push into the Pacific, as described in the overview, presents an opportunity to not choose. It is possible that an independent Guam, in the scenario of continued competition and bi/multipolarity in the surrounding region, could utilize this desire for primacy among great powers for Guam's national interest. Frequently, this region of the world, because of its depiction as small and isolated, is said to be heavily influenced by great powers. An independent Guam may not have to necessarily choose. Rather, it could form diplomatic and/or military-related agreements and relationships with multiple countries if it chose to do so, and not just with the United States or China. As asked by geographer Sasha Davis,

> What if Papua New Guinea builds a dock with Chinese money, but keeps tight political relationships with Australia? What if Niue builds a highway as part of the BRI [Belt and Road Initiative], but keeps its free association agreement with New Zealand? What if French political sway continues in French Polynesia as Chinese investment also grows? What if Chinese tourists become the economic lifeblood of Saipan while it remains a commonwealth of the US?[1306]

Furthermore, Davis questions why islands are seemingly forced to choose between China and the United States when these two countries have relationships with each other. "After all, even in the current context of trade wars and heated political rhetoric, the US and China themselves have incredibly extensive economic interactions with each other. Why should US-based analysts insist that the US itself can have extensive economic relationships with China, but that islands that sit between the US and China could not?"[1307] Similarly, the government of an independent Guam may be able to, through skilled diplomacy and geopolitical insight, have multiple relations with countries around the world, even those in a

1305 Cheng Guan Ang, *Lee Kuan Yew's Strategic Thought* (Routledge, 2013), 25.

1306 Davis, et al., "US military strategy, China's Belt and Road Initiative, and island agency in the Pacific."

1307 Davis, et al., "US military strategy, China's Belt and Road Initiative, and island agency in the Pacific."

competition for primacy in the region.

Free Association

Per the models that currently exist with the Republic of Palau, the Republic of the Marshall Islands, and the Federated States of Micronesia, it is highly expected that the primary agreement covering defense will be the Compact of Free Association or other legal instrument between Guam and the United States. However, it is highly likely there will be subsidiary agreements as well. Below are the provisions in their respective Compacts of Free Association that Guam could look toward, as Guam's negotiation team may or may not model the language of these respective provisions or engage in a freely associated relationship akin to the existing FAS.

Status Example: Federated States of Micronesia and the Republic of the Marshall Islands

When it comes to defense in the Federated States of Micronesia and the Republic of the Marshall Islands, there are three main provisions outlined in the original Compact of Free Association:

> Section 311:
>
> (a): The Government of the United States has full authority and responsibility for security and defense matters in or relating to the Marshall Islands and the Federated States of Micronesia.
>
> (b): This authority and responsibility includes:
>
> 1. The obligation to defend the Marshall Islands and the Federated States of Micronesia and their peoples from attack or threats thereof as the United States and its citizens are defended
>
> 2. The option to foreclose access to or use of the Marshall Islands and the Federated States of Micronesia by military personnel or for the military purposes of any third country.[1308]
>
> Section 313:
>
> The Governments of the Marshall Islands and the Federated States of Micronesia shall refrain from actions which the Government of the United States determines, after appropriate consultation with those Governments, to be incompatible with its authority and responsibility for security and defense matters in or relating to the Marshall Islands and the Federated States of Micronesia.[1309]

1308 Compact of Free Association Act of 1985, accessed at https://www.doi.gov/oia/about/compact.

1309 Section 313 of the Compact of Free Association Act of 1985, accessed at https://www.doi.gov/oia/about/compact.

Section 315:

The Government of the United States may invite members of the armed forces of other countries to use military areas and facilities in the Marshall Islands of the Federated States of Micronesia, in conjunction with and under the control of United States Armed Forces. Use by units of the armed forces of other countries of such military areas and facilities, other than for transit and overflight purposes, shall be subject to consultation with and, in the case of major units, approval by the Government of the Marshall Islands and the Federated States of Micronesia.

Section 331:

Subject to the terms of this Compact and its related agreements, the Government of the United States, exclusively, shall assume and enjoy, as to the Marshall Islands and the Federated States of Micronesia, all obligations, responsibilities, rights and benefits of:

(a) Any defense treaty of other international security agreement applied by the Government of the United States as Administering Authority of the Trust Territory of the Pacific Islands as of the day preceding the effective date of the Compact; and

(b) Any defense treaty or other international security agreement to which the Government of the United States is or may become a party which it determines to be applicable in the Marshall Islands and the Federated States of Micronesia. Such a determination by the Government of the United States shall be preceded by appropriate consultation with the Government of the Marshall Islands or the Federated States of Micronesia.

Status Example: Palau

The Compact of Free Association between the United States and Palau has very similar language, with the most pertinent being Section 3, Article I on Authority and Responsibility and Section 3, Article III on Defense Treaties and International Security Arrangements.

Article I: Authority and Responsibility

Section 311:

The territorial jurisdiction of the Republic of Palau shall be completely foreclosed to the military forces and personnel or for the military purposes of any nation except the United States of America, and as provided for in Section 312.

Section 312 (section of):

The Government of the United States has full authority and responsibility for security and defense matters in or relating to Palau.

Section 313:

The Government of Palau shall refrain from actions which the Government of the United States determines, after consultation with that Government, to be incompatible with its authority and responsibility for security and defense matters in or relating to Palau.[1310]

Article III: Defense Treaties and International Security Arrangements

Section 331:

Subject to the terms of this Compact and its related agreements, the Government of the United States, exclusively, shall assume and enjoy, as to Palau, all obligations, responsibilities, rights and benefits of:

(a) Any defense treaty or other international security agreement applied by the Government of the United States as administering authority of the Trust Territory of the Pacific Islands as of the day preceding the effective date of this Compact; and

(b) Any defense treaty or other international security agreement to which the Government of the United States is or may become a party which it determines to be applicable in Palau. Such a determination by the Government of the United States shall be preceded by appropriate consultation with the Government of Palau.[1311]

It is important to note that when the Compacts of Free Association were agreed upon, there were also provisions which outlined that, if the Compact was terminated, which can be done mutually or unilaterally by either signatory, certain provisions related to defense will still apply. The Compact of Free Association, as amended in 2003, with the Federated States of Micronesia, Title IV, Article V outlines what happens in the case of each method of termination. Per Article V, Section 452 (a)

Should termination occur pursuant to section 442 prior to the twentieth anniversary of the effective

1310 Section 3 of the Compact of Free Association with the Republic of Palau, accessed at https://pw.usembassy.gov/wp-content/uploads/sites/282/2017/05/rop_cofa.pdf.

1311 Article II of the Compact of Free Association with the Republic of Palau, accessed at https://pw.usembassy.gov/wp-content/uploads/sites/282/2017/05/rop_cofa.pdf.

> date of this Compact, as amended, the following provisions of this Compact, as amended, shall remain in full force and effect until the twentieth anniversary of the effective date of this Compact, as amended, and thereafter as mutually agreed:
>
> (1) Article VI and sections 172, 173, 176 and 177 of Title One;
> (2) Sections 232 and 234 of Title Two;
> (3) Title Three; and
> (4) Articles II, III, V and VI of Title Four.

Section 453 (a) also outlines what provisions will stand in the case of termination prior to the twentieth anniversary.

> (a) Should termination occur pursuant to section 443 prior to the twentieth anniversary of the effective date of this Compact, as amended, the following provisions of this Compact, as amended, shall remain in full force and effect until the twentieth anniversary of the effective date of this Compact, as amended, and thereafter as mutually agreed:
>
> (1) Article VI and sections 172, 173, 176 and 177 of Title One;
> (2) Sections 232 and 234 of Title Two;
> (3) Title Three; and
> (4) Articles II, III, V and VI of Title Four.

Most important to this section is that Title Three, which outlines security and defense relations between the Federated States of Micronesia and the US, would still remain if the Compact was terminated prior to the twentieth anniversary of the effective date of the Compact. Similar provisions may apply to Guam if negotiated.

Beyond the Compacts of Free Association, there are other subsidiary agreements that provide a clearer understanding of the relationship between the FAS and the United States. While the Compact of Free Association is a primary document, these subsidiary agreements are important.

Status Example: Federated States of Micronesia

As strategic denial is the primary reason the US entered into these agreements with the FAS, there are subsidiary agreements between the two countries dealing with security. One of these is the "Agreement between The Government of the United States and The Government of the Federated States of Micronesia Regarding Friendship, Cooperation and Mutual Security Concluded Pursuant to Sections 321 and 323 of The Compact of Free Association." The agreement was meant to reaffirm the "purposes and principles of the Compact of Free Association which contributes to regional peace and mutual security by providing

United States undertakings for the defense of the Federated States of Micronesia and assistance toward its economic advancement and self-sufficiency."[1312] Per the agreement,

> Article III:
>
> The Signatory Governments recognize that, in view of the special relationship between their peoples, any attack on the Federated States of Micronesia would constitute a threat to the peace and security of the Pacific area and a danger to the United States. In the event of such an attack or the threat thereof, the Government of the United States would take action to meet the danger to the United States and the Federated States of Micronesia.
>
> Article IV:
>
> 1. The Signatory Governments, in recognition of the obligations undertaken by the Government of the United States in this Article and in Article III of this Agreement, shall inform one another promptly and shall consult in the event either of them has reason to believe that a third country seeks access to or use of the Federated States of Micronesia by military personnel or for military purposes.
>
> 2. If the Government of the United States determines that any third country seeks access to or use of the Federated States of Micronesia by military personnel or for military purposes, the Government of the United States has the authority and responsibility to foreclose such access or use, except in instances where the two Governments otherwise agree.
>
> 3. The Government of the United States shall exercise its authority and responsibility under this Article with due respect to the authority and responsibility of the Government of the Federated States of Micronesia for its internal and external affairs, including the responsibility to assure the well-being of its people.
>
> 4. The Government of the Federated States of Micronesia shall render appropriate support and assistance to the Government of the United States in meeting its responsibilities under this Article. Such assistance may include the removal from the Federated States of Micronesia, at the request of the Government of the United States, of individuals whose presence constitutes third country access to or use of the Federated States of Micronesia by military personnel or for military purposes.

1312 Preamble to the Agreement between The Government of the United States and The Government of the Federated States of Micronesia Regarding Friendship, Cooperation and Mutual Security Concluded Pursuant to Sections 321 and 323 of The Compact of Free Association, accessed at https://jcrp.gov.fm/friendship-cooperation-and-mutual-security-agreement/.

This separate agreement came into effect simultaneously with the Compact of Free Association. To better understand the distinct nature of this agreement, it is useful to look at the Compact of Free Association as amended in 2003.

The Compact of Free Association between the US and the FSM, Section 354 (b) states,

> The Government of the United States recognizes, in view of the special relationship between the Government of the United States and the Government of the Federated States of Micronesia, and in view of the existence of the separate agreement regarding mutual security concluded with the Government of the Federated States of Micronesia pursuant to sections 321 and 323, that, even if this Title should terminate, any attack on the Federated States of Micronesia during the period in which such separate agreement is in effect, would constitute a threat to the peace and security of the entire region and a danger to the United States. In the event of such an attack, the Government of the United States would take action to meet the danger to the United States and to the Federated States of Micronesia in accordance with its constitutional processes.

This shows that defense and security measures exist beyond the Compact of Free Association. In a July 2003 hearing before the US Congress, Deputy Assistant Secretary of Defense for Asian and Pacific Affairs Richard Lawless emphasized this, testifying: "In the absence of the Compact or, more specifically, the Security and Defense Relations Title of the Compact, the Mutual Security Agreement (MSA) still provides for the US defense obligations, US military access, and the denial of military access by third countries. The MSA is indefinite in duration and remains in force until terminated or amended by mutual agreement."[1313] Beyond this agreement, the US and the FAS have other subsidiary agreements, such as a Status of Forces Agreement and others dealing with military operations and facility use.

Thus, Guam can learn from these defense provisions in the Compact of Free Association and subsidiary defense agreements and use the fact that there are already military bases present in the island to negotiate a potentially better deal.

1313 Testimony of Richard Lawless, "To Receive Testimony Regarding the Compact of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands," Hearing before the US Congress, July 15, 2003.

DEFENSE TREATIES/AGREEMENTS	
STATUS	**EFFECTS**
Statehood	No need for defense treaties or agreements as Guam would be an integral part of the United States.

	• If US remains powerful, Guam would be saved from having to navigate a possibly turbulent geopolitical environment. • Cannot enter into defense or security treaties as this would be a function of the US federal government. • Being a part of a weakened United States may put Guam more in harm's way.
Independence	• Greatest latitude when it comes to negotiating security arrangements. • Could best choose security agreements based on geopolitics of the time. • Could implement a Status of Forces Agreement to control military presence. • As a new strategically located country, Guam will have to prioritize security concerns, but creation of defense treaties or agreements will be contingent on negotiations and geopolitical environment. • If negotiations go badly, Guam could be manipulated in the creation of a security treaty. • Status with the greatest responsibility in ensuring security
Free Association	• If other FAS models are followed, clear defense provisions with the United States will be established. • Highly expected that US will be responsible for defense of the island.

	• The presence of the agreement means the US will be more accountable to Guam than it currently is with Guam as an unincorporated territory. • Possibility of subsidiary agreements beyond the Compact of Free Association dealing with security. • Due to Guam's existing military presence, it is likely that the United States may request for Guam to enter into a COFA in which US operations are not hindered or negatively affected.

Military/Militia

Statehood

In the case of Guam being a state, the people of Guam will continue to be able to serve in the US Armed Forces as enlisted personnel and as officers and have access to the government benefits received as part of their military service today. Subsequently, if Guam were a state, the Guam National Guard would remain. Regarding a military and militia, statehood offers the most predictable and stable option and the least amount of change from the status quo. The one positive change that could come regarding military service if Guam became a state is the possible increase in Veterans' Affairs funding, since Guam would be much more involved in the political machinery of the United States and in the making of these policies. Overall, statehood is the most clear and stable when it comes to envisioning the future of military/militia service in Guam.

Independence

An independent Guam has many factors and subsequent options to consider when deliberating the formation of a militia or armed service. As previously discussed, Guam, if independent, would be a country with a small geographical size and a relatively small population. This has to be taken into consideration by the government of an independent Guam. To be clear, this analysis does not argue whether Guam should or should not create its own military force, but rather, that the government of Guam should analyze the importance of having its own military force as opposed to having defense handled by another country. It also needs to consider the feasibility or effectiveness of having its own independent armed forces, due to the population and size of the island. One thing to note if an independent Guam decided to create its own armed forces is that it would have experienced individuals capable of leading Guam's military. Guam has one of the highest military enlistment rates per capita, and it is rare for a CHamoru family not to have members who are either serving or are veterans of the US military. One of every eight people in Guam

is said to have served in the US Armed Forces.[1314] This could be valuable experience for the leadership of Guam's military or local defense force if one is developed. However, it is unclear as to whether these veterans would want to serve in the armed services of the new country.

If Guam decides to develop its own military, it will likely make this decision based on it being in its national interest at the time. Yet, this would not be the only factor. An independent Guam would also have to possess the resources or investment to spend money to develop armed forces. To begin an analysis of this issue, Singapore, a geographically small, strategically located city-state could be useful.

Status Example: Singapore

While other facets of Singapore's history and policy development are relevant and can be learning material for an independent Guam, its security and defense policy is particularly rife for analysis. Singapore was born out of being expelled from Malaysia and many assumed that Singapore was doomed to fail as its own country. It was because of its size and subsequent vulnerability that Singapore engaged in a dual pronged approach of expansive diplomacy and deterrent military capabilities. Singapore was born with the unfriendly neighbors of Malaysia and Indonesia surrounding them, whose Muslim-majority populations believed that Singapore's heavily Chinese population could be a breeding ground for communism in the region. Thus, it was in Singapore's national interest, due to its geographical size, to supplement its diplomacy with military capabilities aimed at deterrence. As the Minister of Defence of Singapore, Dr. Goh Keng Swee, said in 1965 regarding the temporary British bases in Singapore at the time:

> British military protection today had made quite a number of our citizens complacent about the need to conduct our own defence preparations. These people assume that this protection will be permanent. I regard it as the height of folly to plan our future on this assumption. And if there is any basis on which we, as an independent country can plan our future, it will be on the opposite assumption, that is, the removal of the British military presence at some time in the future. Nobody — neither we nor the British — can say when this will be. It may be 5, 10 or 15 years — maybe longer, maybe shorter. Whatever the time may be, it will be useless then to think of building up our defence forces. The time to do so is now.[1315]

Singapore's military is the Singapore Armed Forces, also known as the SAF, established in 1966, shortly after Singapore's independence. Its main components are the Army, Air Force, and Navy, with the SAF being headed by the Chief of Defense Force. Most impressive of Singapore's military arms is its Air Force, which boasts a fleet of: 40 F-15SG Eagles; forty F-16Ds; 20 F-16Cs; 30 F-5s Tiger II; a few

1314 Josh Hicks, "Guam: A high concentration of veterans, but rock-bottom funding VA funding," *The Washington Post*, October 29, 2014, accessed at https://www.washingtonpost.com/news/federal-eye/wp/2014/10/29/guam-a-high-concentration-of-veterans-with-little-va-funding/?noredirect=on&utm_term=.4b56815eb5b9.

1315 Swee, Dr. Goh Keng, "Speech by the Minister of Defence at the Commissioning Ceremony of the 10th Batch of Infantry Officer Cadets, SAFTI, at the Istana," July 19, 1972.

A-4 Skyhawks; and 20 AH-64D Apache Longbow helicopters. The development of Singapore's military had humble beginnings. It began with Britain building up Singapore's military infrastructure, with an emphasis on naval bases and coastal defenses. After independence, Britain helped Singapore develop its military forces.

Newly independent, Singapore's government originally intended only to "develop a small well-equipped, highly trained and mobile defence force comprising a small nucleus of regulars backed by a large part-time volunteer citizen force."[1316] To accomplish this, in October 1965, it put out a call for volunteers for this part-time force and in the next year, it launched Operation Boxer and Boxer II, both drives to recruit for the armed forces. By the end of 1966, it recruited 1,100 regular soldiers. To build its military, the government wanted to ask for foreign military advice and refused to ask Britain, its former colonizer, because it believed it would lead to pure dependence on the British for Singapore's national security. It originally asked Switzerland but was denied, and finally was able to land the assistance of Israel, which sent a team from 1965-1974 to help train Singapore's military, and helped to eventually transform Singapore's Armed Force into a mass citizen force based on conscription and long-term reservist service.

Key to Singapore's success as a country and the development of its deterrent capability is its leaders' staunch insistence on a multi-pronged approach to defense. This is encompassed in its primary deterrence strategy, Total Defence (TD). The core of Total Defence is uniting all sectors of Singaporean society, including the government, the business sector, and the citizenry itself, in the defense of Singapore. Total Defence has six main components: military defense; psychological defense; social defense; economic defense; civil defense; and digital defense.

1. *Psychological Defense:* It was developed out of Singapore's fear that the citizenry's commitment to the country would be too weak. Thus, it uses education, a common tool of nation-building, to strengthen national identity, for it understands that getting a citizenry to defend its country is made exponentially more difficult without a sense of nationalism and patriotism. Singapore enacts its psychological defense through the National Education Programme with five primary messages: 1). "Singapore is our homeland. This is where we belong." 2). "Singapore is worth defending. We want to keep our heritage and our way of life." 3). "Singapore can be defended. United, determined and well-prepared we shall fight for the safety of our homes and the future of our families and children." 4). "We must ourselves defend Singapore. No one else is responsible for our security.", and 5). "We can deter others from attacking us. With Total Defence, we can live in peace."

2. *Social Defense:* This is similar to psychological defense and is primarily aimed at social cohesion due to its multiethnic and multilingual society.

3. *Economic Defense:* The core of economic defense is to "ensure that Singapore's economy will

1316 Ministry of Defence, "One Of A Kind (2nd Edition) - Ministry of Defence," 1969, 21, accessed at https://www.mindef.gov.sg/oms/saf-ti/one-of-kind-2nd-ed2015/chp/027_references.pdf.

not collapse during war or under the cloud of war."[1317] To ensure this, Singapore has created contingency plans to enable factories and offices to continue functioning when manpower and equipment are mobilized for war.[1318] Furthermore, the Ministry of Defence describes economic defense; "Economic Defence is also about keeping our economy strong and resilient, enabling it to carry on and recover quickly should we be confronted by any challenge or crisis in the future, such as a global downturn or economic strangulation that could shake investor confidence in Singapore."[1319] In action, this has taken the form of government agencies and businesses stockpiling what are deemed essential items.

4. *Civil Defense:* The civilian defense objective is to: protect civilian lives; lower the casualty rate; minimize damage to property; and pave the way for a return to normalcy in the event of war. Singapore's small size, the high density of its population and the close proximity of civilian residential areas to military installations render its civilian population highly vulnerable, and Civil Defense aims to give citizens the confidence, capability, and readiness to meet any emergency. Civil Defense is also intended to reassure citizen soldiers fighting at the frontline that every effort has been made to protect their families and homes.[1320]

5. *Military Defense:* The most traditional defense policy taken is obviously Singapore's emphasis on military defense. The core tenets of this policy are high defense spending, universal military service, operational readiness, the maintenance of technological superiority, integrated forces, and defense diplomacy.

6. *Digital Defense:* Digital defense is the newest pillar of Singapore's Total Defense strategy and shows that Singapore is realizing the shifting domains of conflict. While traditionally, the domains of land, air, and sea were the most focused upon, the trends of warfare show that countries also need to develop capabilities in the realms of space and cyber. As described on the Ministry of Defence's website:

   As Singapore works towards being a Smart Nation, digital technology will pervade all aspects of how we live, work, and play. Singapore will be one of the most technologically advanced, open and connected nations in the world. While the digital revolution presents opportunities for Singapore, it also makes us vulnerable to threats from the digital domain. These threats will disrupt our way of life and can also undermine our social cohesion and strike at the confidence and psychological resilience of our people. We therefore need to be able to respond to cyberattacks that target our

1317 Tim Huxley, *Defending the Lion City: The Armed Forces of Singapore* (Singapore: Talisman Pub., 2004), 26.

1318 Huxley, "The Armed Forces of Singapore," 26.

1319 Total Defence, "What is Total Defence? Accessed at https://www.mindef.gov.sg/oms/imindef/mindef_websites/topics/totaldefence/index.html

1320 Huxley, "The Armed Forces of Singapore."

> networks and infrastructure, as well as threats that can be perpetrated through the digital domain such as fake news and deliberate online falsehoods. Singaporeans must recognise that every individual is the first line of defence against threats from the digital domain, so we can defend ourselves against such threats. We must build robust defences and have effective recovery plans to remain resilient even when things go wrong. This is what a strong Digital Defence means.[1321]

These six pillars form the core of Singapore's Total Defense strategy, with the pillars cumulatively helping to ensure the national security of Singapore in its various dimensions.

Analyzing Total Defense, this study takes the position that an independent Guam, to survive as a small state, would have to develop multiple strategies to protect itself from various threats. Even if the government of an independent Guam decided to form its own military force, it would not be sufficient to become the crux of an independent Guam's defense policy or strategy. A realistic account of Guam's size and population needs to be considered. Defending the island requires the government to move beyond the traditional "military" emphasis on defense and instead broaden the sectors of society that need to be secured. A Guam military can, at best, serve as a defense piece, but it may be unwise to make it stand alone or to metaphorically put "all of Guam's defense eggs into the formation of a military basket," especially as Guam will most likely continue to be strategically important.

The "No Military" Option

An overview of countries reveals that there are more than thirty that do not have any standing militaries, including Andorra, Aruba, Costa Rica, Grenada, Iceland, Kiribati, Liechtenstein, Nauru, St. Vincent and the Grenadines, and Dominica. The reasons for these countries' lack of armed forces range from protection from other states (similar to the freely associated states) to the abolishment of their armed forces after violent events to them having too small of a population. The crux of this subsection regarding independence has been describing how armed forces could look if Guam decided to develop its own. There is strong reason to believe that an independent Guam may decide not to establish a military force, but it must be pointed out that complete dependence on another country for defense presents an opportunity for exploitation. Also, Guam still exists within a violent geographical region, and it will be unwise for an independent Guam to make the decision not to develop a military based on decisions of countries with drastically different histories and geopolitical contexts. Despite this, an independent Guam will have to decide if it would be pragmatic for the country to have its own military force.

National security and defense will have to be a key concern for an independent Guam's survival as a strategically located small state, and it is not an easy task, no matter which geopolitical scenario Guam may see in the times ahead.

1321 Total Defence, "What is Total Defence?"

Free Association

The freely associated state of Guam, depending on negotiations, may follow the defense provisions of the freely associated states of the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands. If Guam follows this model, then it is not expected that Guam will have a standing military of its own, as the United States would be responsible for defense of the island, thus alleviating this responsibility. Although, it should be acknowledged that this protection could be potentially severed in the future for a multitude of reasons, such as a change in US grand strategy, a changing domestic politics, or cataclysmic world events. This could be positive or negative. Despite this, not having to worry about the formation of a military could allow the freely associated state of Guam to focus its resources and time on other aspects of the country.

In the negotiations between Guam and the United States, Guam's negotiating team could make an arrangement for the citizens of Guam to be able to enlist in the US Armed Forces. This is the case in all three of the freely associated states, as can be seen below.

> Section 341:
>
> Any person entitled to the privileges set forth in Section 141 shall be eligible to volunteer for service in the Armed Forces of the United States but shall not be subject to involuntary induction into military service of the United States so long as such person does not establish habitual residence in the United States, its territories or possessions.
>
> Section 342:
>
> The Government of the United States shall have enrolled, at any one time, at least two qualified students, one each from the Marshall Islands and the Federated States of Micronesia, as may be nominated by their respective Governments, in each of:
>
> (a) The United States Coast Guard Academy pursuant to 14 USC. 195; and
>
> (b) The United States Merchant Marine Academy pursuant to 46 USC. 1295b(b)(6). 1295b(6)(C) shall not apply to the enrollment of students pursuant to Section 342(b) of this Compact.

For reference, 46 USC. 1295b(b)(6) reads, "The Secretary of Transportation shall ensure that the country from which an individual comes under this subsection will reimburse the Secretary for the cost (as determined by the Secretary) of the instruction and allowances received by the individual."[1322] This

1322 Section 342 of the Compact of Free Association.

could provide possible economic and other types of opportunities for citizens of a freely associated Guam if they were to enlist into the US military.

Non-citizens in the US Armed Forces

The United States allows for non-citizens to enter the Armed Forces as enlisted service members. However, they cannot become officers because US law requires one to be a citizen to become a commissioned officer. In order for non-citizens to serve in the military, they need to have permission to work in the United States, possess an I-551 (known as a Permanent Residence Card), have already obtained a high school diploma, and be able to speak English. It is expected that, because of a history of military service in the US Armed Forces, citizens of the country of Guam in free association with the United States may continue to view US military service as a career option if available. However, if continued military service is desired by the citizens of the freely associated State of Guam, it should ensure that this is explicitly negotiated so that they can continue to serve (if US citizenship is not retained).

MILITARY/MILITIA	
STATUS	**EFFECTS**
Statehood	• Continued ability to join the US military, with no expected disturbance or obstacle to military service. • Possible increase in Veterans' Affairs funding. • Most predictable and stable option regarding US military service. • No foreseeable cons regarding US military service in the case of statehood.
Independence	• Ability to develop its own military force. • As an independent country, Guam could craft its own military strategy that is not tied to US strategy.

	• Unlikely that Guam will have a strong military of its own and the country will have to decide if it would be pragmatic to develop its own military force.
Free Association	• May still be able to join the US military. • With US protection, no real need to develop one's own military. • If economically challenged, citizens may see joining US military as best career path leading to a possible exodus of Guam citizens.

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10 Guam Code Annotated Health and Safety Medical Practices. § 12204 "Examinations." Accessed at http://www.guamcourts.org/CompilerofLaws/GCA/10gca/10gc012.PDF

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It is not in the interest of democratic governance for Guam and other NSGTs to remain in a state of ‘preparation in perpetuity.’

PART I
Assessment of Self-Governance Sufficiency in Conformity with Internationally Recognized Standards
(page 135)

What we hope is realized when reading this study is that the issues of today are often connected to political status. We hope to help people realize that investing time, effort, and resources toward decolonization helps to plan for a better livelihood for future generations. We must handle the issues of the present, but not argue that every attempt to plan for the future detracts from the present. To do so would be to invite an unwanted cycle of problems and cause the atrophy of better futures.

PART II
The Political Statuses of Statehood, Free Association, and Independence
(page 4)

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