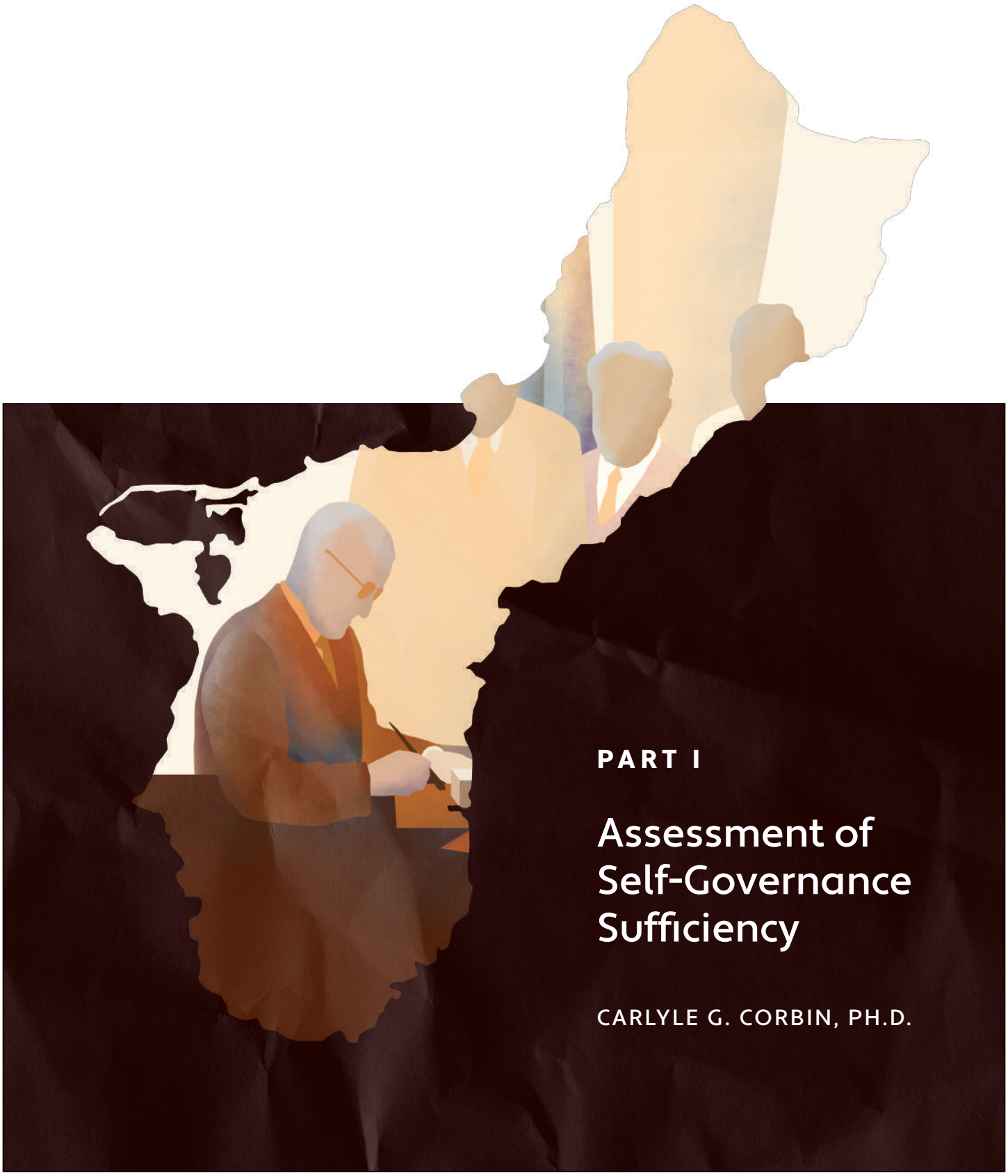


PART I

Assessment of Self-Governance Sufficiency

CARLYLE G. CORBIN, PH.D.

GIHA MO'NA

A Self-Determination Study for Guåhan

COMMISSION ON DECOLONIZATION

Commission on Decolonization
Ufisinan I Maga'hågan Guåhan (Office of the Governor of Guam)
Ricardo J. Bordallo Governor's Complex
Adelup, Hagåtña, Guam 96932
(671) 475-9545

www.decol.guam.gov

Published by University of Guam Press
Richard F. Taitano Micronesian Area Research Center (MARC)
303 University Drive, UOG Station
Mangilao, Guam 96923
(671) 735-2153/4

www.uogpress.com

Library of Congress Control Number: 2021922745

Publication design, layout, and cover art by Ralph Eurich Patacsil.

This publication was made possible by a Technical Assistance Program grant from the U.S. Department of the Interior and a partnership between the Government of Guam's Commission on Decolonization and the University of Guam's Regional Center for Public Policy in the School of Business and Public Administration.

Grant Title: Technical Assistance Program
Project Title: Guam Self-Determination Community Education Outreach Program
Federal Award Identification Number: D16AP00021

UNIVERSITY OF GUAM
REGIONAL
CENTER
FOR
PUBLIC POLICY

Contributors

Authors

Carlyle G. Corbin, Ph.D., *Lead Author*
Assessment of Self-Governance Sufficiency in Conformity with Internationally Recognized Standards (Part I)

Kenneth Gofigan Kuper, Ph.D., *Lead Author*
The Political Statuses of Statehood, Free Association, and Independence (Part II)

Joseph Bradley, *Co-Lead Author*
The Political Statuses of Statehood, Free Association, and Independence (Part II)

Assisting Authors (Part II)

Francine Naputi, Ph.D.
Tiara Naputi, Ph.D.
LeeAna Acfalle
Nolan Flores
Prairie Garrido
Luisa Tenorio
Hannah Villagomez Sablan
Robert Koss
Harmony Palaganas
Javan Santos

Editors

Victoria-Lola Leon Guerrero, *Managing Editor*
Desiree Taimanglo-Ventura, *Editor*
Leland Bettis, *Editor*
Steven Limtiaco, *Copy Editor*
Clement Yow Mulalap, *Subject-Area Editor (Regional Representation & Free-Association Models)*
Gary Hiles, *Subject-Area Editor (Economic Impacts)*
Sasha Davis, *Subject-Area Editor (Environmental Sustainability & Defense)*
Ralph Eurich Patacsil, *Visual Editor*

Acknowledgements

The Commission on Decolonization is grateful for the contributions of knowledge, expertise, and historical perspectives that made this study possible. We humbly extend our gratitude to our mañaina and those who came before us, who have worked tirelessly and selflessly to bring justice and recognition to our people. Additionally, the Commission on Decolonization would like to recognize the contributions of the following Commission board members, directors, and staff and our partners at the University of Guam's Regional Center for Public Policy:

COMMISSION ON DECOLONIZATION

Current Board Members

Honorable Lou Leon Guerrero, *Maga'hågan Guåhan, Chairwoman*
Honorable Therese M. Terlaje, *Speaker 36th Guam Legislature*
Honorable Telena Cruz Nelson, *36th Guam Legislature, Vice-Chairwoman*
Honorable Christopher M. Duenas, *36th Guam Legislature*
Honorable Jesse L.G. Alig, *Mayor, Municipality of Piti*
Chauntae Quichocho, *Representative, 33rd Guam Youth Congress*
Mary Therese F. Cruz, Ph.D., *Member at Large*
Kenneth Gofigan Kuper, Ph.D., *Member at Large*
Michael Lujan Bevacqua, Ph.D., *Independence Task Force Co-Chair*
Victoria-Lola Leon Guerrero, M.F.A., *Independence Task Force Co-Chair*
Honorable Eddie Dueñas, *Former Senator, Statehood Task Force Chair*
Adrian P. Cruz, *Free Association Task Force Chair*
Dewey Huffer, *Statehood Task Force Member*

Former Board Members

Honorable Eddie Baza Calvo, *Former Maga'låhen Guåhan, Former Chairman*
Honorable Kelly Marsh (Taitano), Ph.D., *Former Senator, 35th Guam Legislature*
Honorable Régine Biscoe Lee, *Former Senator, 35th Guam Legislature*
Honorable William M. Castro, *Former Senator, 35th Guam Legislature*
Honorable Benjamin J. F. Cruz, *Former Speaker, 34th Guam Legislature*
Honorable Fernando Barcinas Esteves, *Former Senator, 34th Guam Legislature*
Honorable Judith T. Won Pat, Ed.D., *Former Speaker, 33rd Guam Legislature*
Honorable Rory J. Respicio, *Former Senator, 33rd Guam Legislature*
Honorable Robert RDC Hofmann, *Mayor, Municipality of Sinajana*

Honorable Jesse Blas, *Former Mayor, Municipality of Yo'ña*
John F. Reyes Jr., *Former Member at Large*
Lisalinda Natividad, Ph.D., *Former Member at Large*
Lisa Baza, Ph.D, *Former Member at Large*
Jose Garrido, *Former Free Association Task Force Chair*
Tristan Quintanilla, *Former Representative, 32nd Guam Youth Congress*

Executive Director

Melvin Won Pat-Borja

Staff

Joshua J. Aguon, *Staff Assistant*
Natasha Lujan Suba, *Program Coordinator*
Nolan Flores, *Research Assistant*

Former Executive Directors

Amanda Francel Blas, *Former Executive Director*
Ed Alvarez, *Former Executive Director*

Former Staff

Mariana Pangelinan

UOG REGIONAL CENTER FOR PUBLIC POLICY

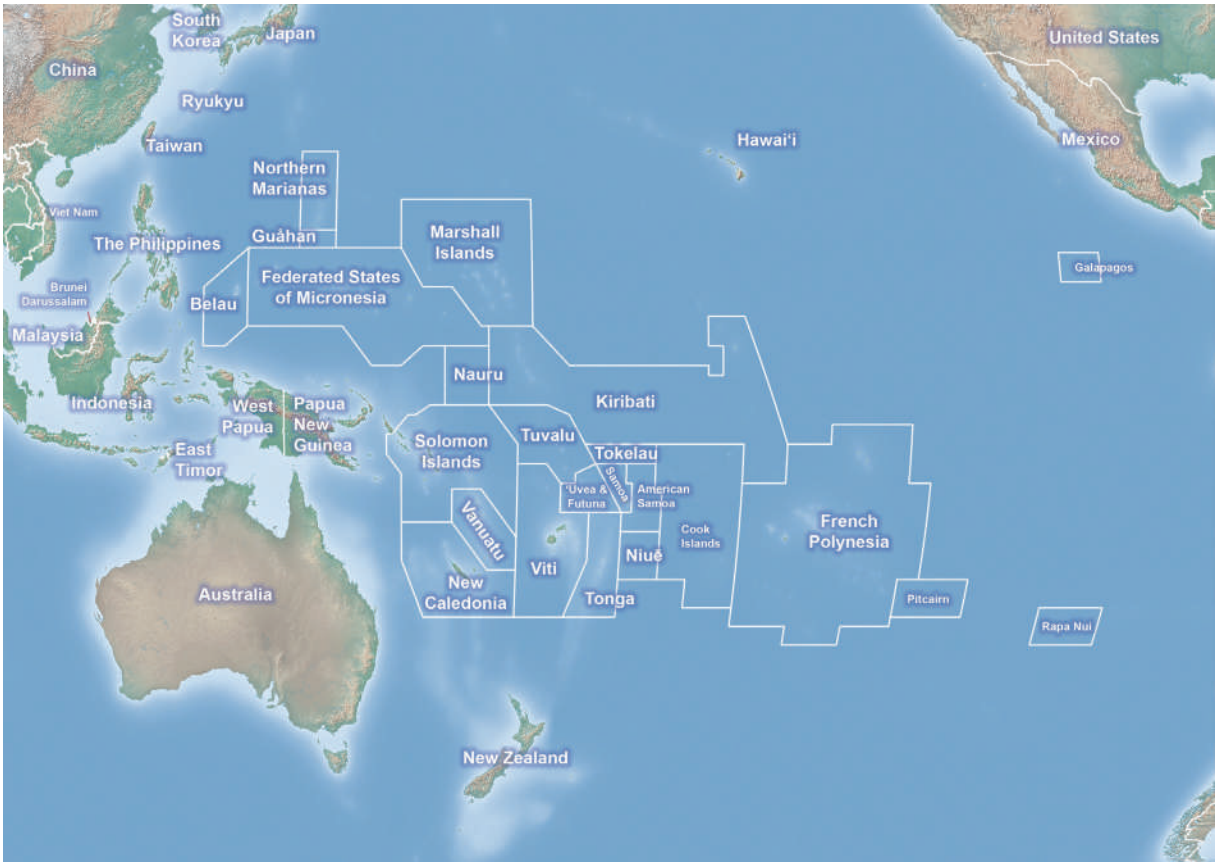
Annette Taijeron Santos, D.B.A., *Dean, UOG School of Business and Public Administration*
John J. Rivera, Ph.D., *Director, UOG Regional Center for Public Policy*
Jesse J. Quenga, M.P.A.,*Former Assistant Director, UOG Regional Center for Public Policy*
Forrest Chargualaf, M.P.A.,*Research Associate, UOG Regional Center for Public Policy*
Cathleen Moore-Linn, M.B.A., M.F.A., *Executive Director, Research Corporation of the University of Guam*
Katrina T. Perez, *Executive Director, UOG Endowment Foundation*

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



Source: mapmakerdavid

Map No. 2974 Rev. 2 UNITED NATIONS
June 2016

Department of Field Support
Geospatial Information Section (formerly Cartographic Section)

Contents

Figures

Tables

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.

---

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.

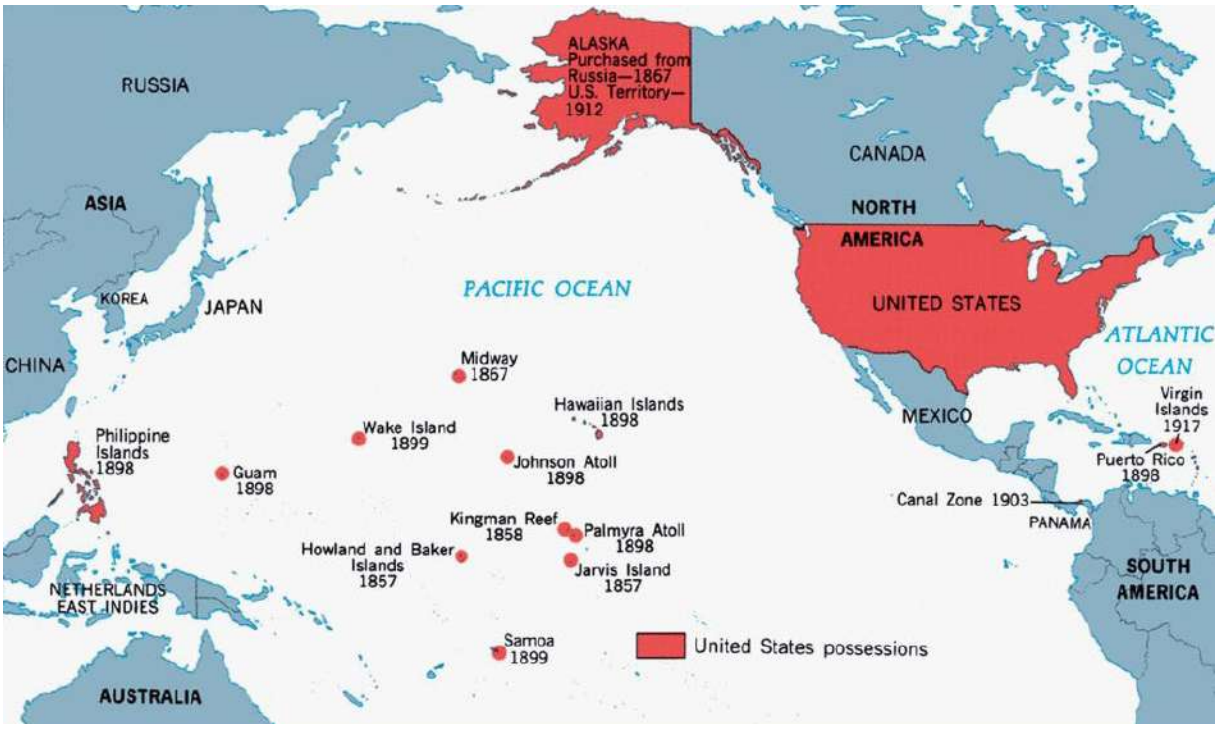
9 Covenant of the League of Nations, article 22 (1919-1924).

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,

---

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]

---

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*):

---

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.

---

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).

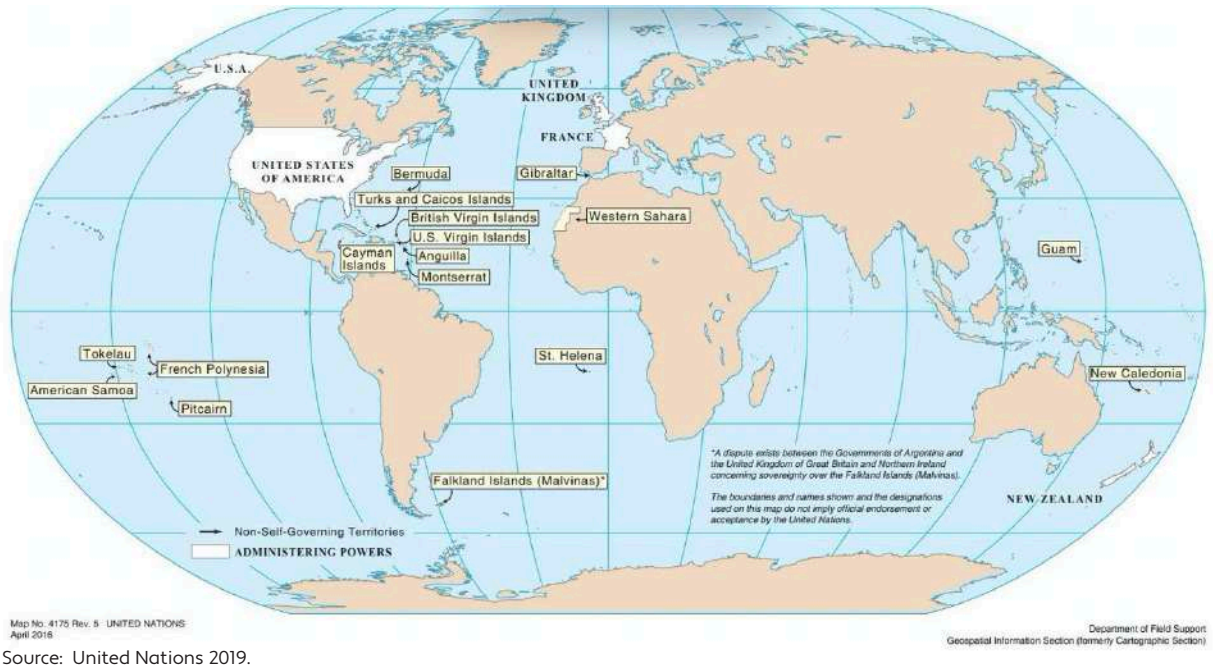
MANDATE FOR SELF-DETERMINATION AND DECOLONIZATION

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

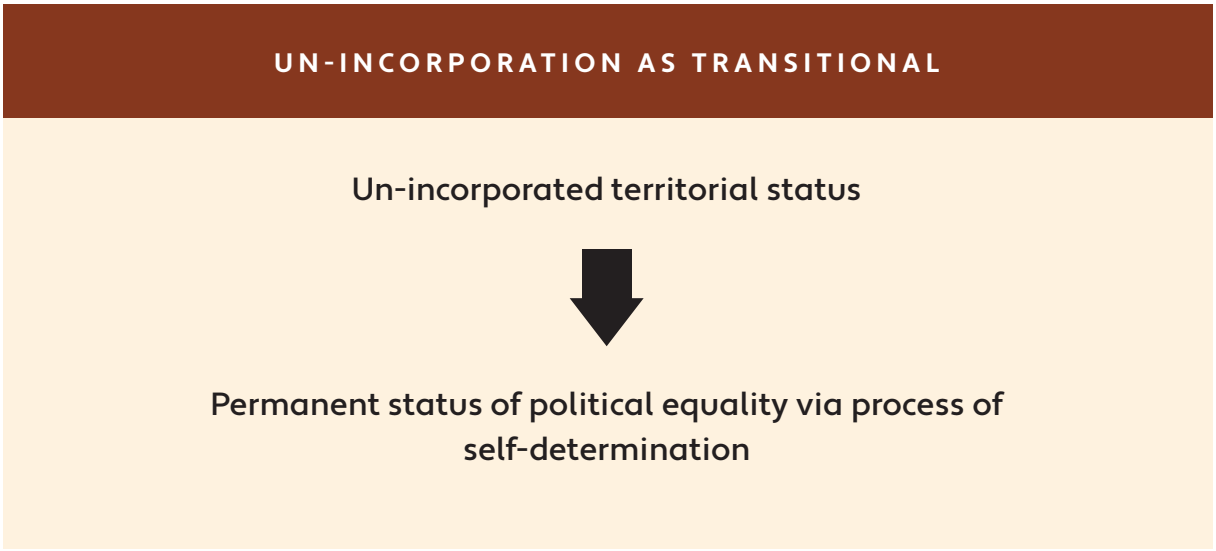


Table 2: Full Self-governement for Pacific Island Jurisdictions

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.

---

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:

---

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.

---

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.

---

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]

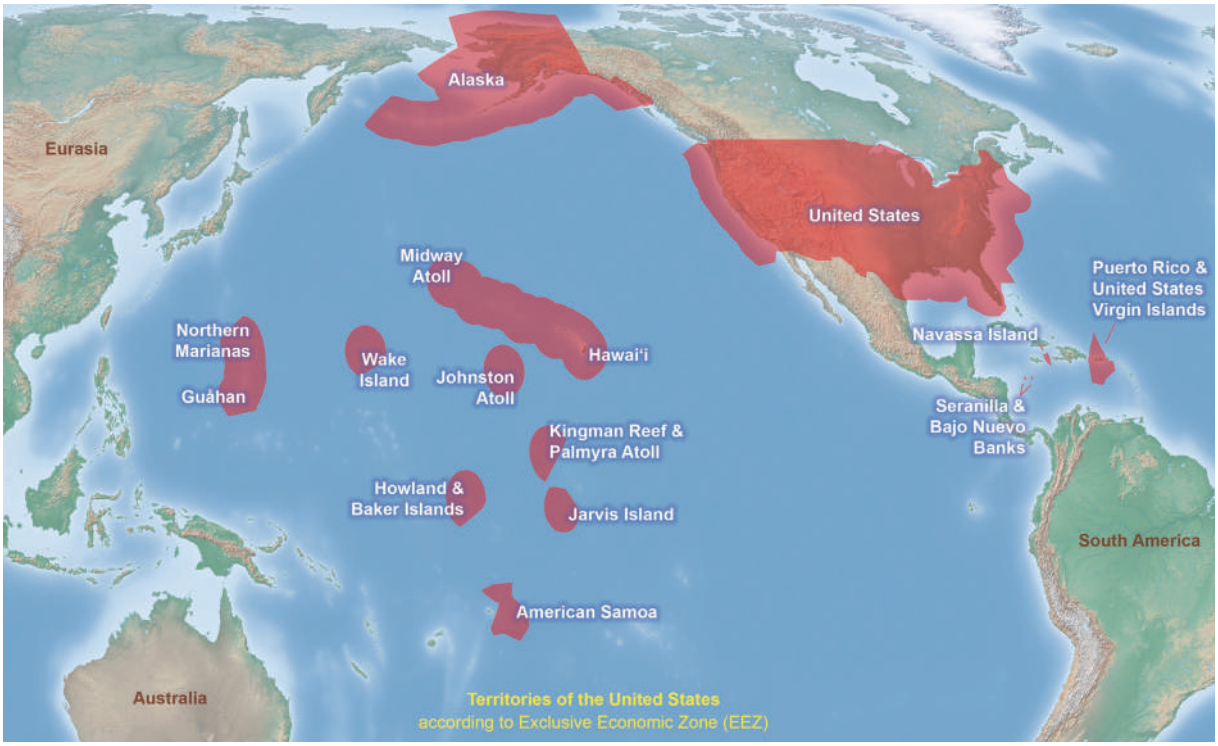
The OTA Report recognized the proactive approach taken by the Government of Guam, by citing decisions of the territorial government in 1980 with respect to the ownership and control of its natural resources, indicating that:

> 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

---

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.

---

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

CORNELL LAW SCHOOL

LEGAL INFORMATION INSTITUTE

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]

Airlines for America®
We Connect the World

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

“

It is not in the interest of democratic governance for Guam and other NSGTs to remain in a state of ‘preparation in perpetuity.’

GIHA MO’NA
A Self-Determination Study for Guåhan

PART I
Assessment of Self-Governance Sufficiency in Conformity with Internationally Recognized Standards
(page 135)

COMMISSION ON DECOLONIZATION

UNIVERSITY OF GUAM
REGIONAL CENTER FOR PUBLIC POLICY

UNIVERSITY OF GUAM
PRESS