

Self-determination and indigenous rights on Guam:
International and domestic law

by

Introduction.

The people who inhabit the island of Guam are not fully self-governing, yet have a right to self-determination and self-governance under international law ("Declaration on the granting," Dec. 14, 1960; "Declaration on...", 1960; Van Dyke, 1992). In addition, the indigenous people of Guam have rights under international (and domestic law) that are separate and distinct from the rights of nonself-governing peoples generally, and these rights of indigenous peoples also include rights of self-determination and self-governance (e.g. Bennett, 1978; Barsh, 1986; Hannum, 1990; Van Dyke, 1985).

These two separate claims to self-determination and self-governance may sometimes come into conflict, or appear to do so. The situation in Guam presents a clear example of this apparent conflict because the people of Guam and its indigenous inhabitants, the Chamorro people who currently make up about 45 percent of Guam's population, each have separate claims to exercise their rights to self-determination and self-government.

This article presents the governing international law principles regarding self-determination of nonself-governing peoples and compares these principles with the principles governing the rights of indigenous peoples. Examples from the laws of the United States and other nations with indigenous populations will also be discussed to prevent an overview of these issues.

Colonial Historical Background.

The 1668 arrival of Father Diego Luis de San Vitores and 32 escort Spanish soldiers marked the beginning of a 230 year long Spanish occupation. Some historical claims that the islanders' readily accepted the Europeans' presence and religion, contrast nearly 30 years of indigenous rebellions (Sanchez, n.d.); 17 years of which are commonly labeled the Spanish-Chamorro Wars (Hezel, 1989). One of the first censuses, conducted in 1710, enumerated 3,678 Chamorros surviving in the Mariana Islands (Underwood, 1973, p. 20-21). This contrasts greatly with estimates of an approximated 30,000-40,000 pre-subjugation Chamorro population (in Farrell, 1991, p. 178; Underwood, 1973, p. 14).

Spain ceded Guam to the United States in the 1898 Treaty of Paris as a result of the Spanish-American War. In December of that year, President McKinley placed Guam under the control of the US Department of the Navy and labeled the entire island as a naval station. United States' action supplanted local self-government attempts. A naval officer, with virtually absolute power, was appointed as Guam's governor -- controlling all local, military, executive, and judicial matters (Sanchez, n.d.).¹ Throughout this naval era, the Chamorro people made several requests for US citizenship.² After a 3-year Japanese occupation of Guam during World War II and the island's recapture by American military forces, the Guam Congress (an advisory body to the governor) led the Islanders' continuing quest for US citizenship. Chamorro desires at this time broadened to include demands for civil government (Rogers, 1984; Sanchez, n.d.; Thompson, 1969).

Local dissatisfaction climaxed with confrontations between the Guam Congress and the island governor in 1949. These events received wide publicity in the US mainland, leading President Truman to take matters into his own hands. As a result, an Organic Act for Guam came into effect on August 1, 1950. This Organic Act provided US citizenship for the Chamorro people, transferred the administration of Guam to the Department of the Interior, and appointed the island's first civilian governor, a nonlocal. Guam was allowed to elect its own legislature, establish its

own court system, and was also provided a Bill of Rights, which initiated the extension of the Constitutional guarantees and safeguards for individuals resident on the island. However, the federal government retained large blocks of autonomy over the island. Department of Interior-appointed governors held the right to veto legislation. If this veto was overridden, the governor could appeal to the Department of the Interior, which invariably supported their appointee. In addition, Congress retained plenary power over the territory and the right to abrogate local legislation. The Organic Act also reaffirmed the island's unincorporated status and limited participation in the American political system (Liebowitz, 1989).

While these events occurred, Guam was being transformed into a major military base, the motive behind the island's 1898 acquisition. The military acquired approximately one third of the island by means that continue to be the subject of litigation, removing the land from the economic and political control of the local government. Large numbers of military personnel, their dependents, and foreign laborers were brought to Guam to construct, operate, and maintain these new military installations. This influx of outsiders changed the island's demographics as well as the island's cultural and socioeconomic systems. The US military declared Guam a closed area and required all non-Chamorros to obtain a security clearance before entering the island. Much of the island's infrastructure, such as the power, water, telephone, and inland road systems, remained under military control (Liebowitz, 1984; Sanchez, n.d.).

Though amendments to the Organic Act eventually allowed Guam an elected governorship in 1970 and an elected representative, with limited voting rights, to the US Congress in 1972, the people of Guam became frustrated with amending the Organic Act on such a piecemeal basis. This, combined with Congress' unwillingness to deal with the question of Guam's relationship to the United States, led the government of Guam to establish the island's first political status commission in 1973. This commission and its successors, in 1975 and 1980, examined the US military presence on the island; the relationship between the United States and Guam based on the

principle of self-determination; changes brought about by immigration to Guam; and Guam's right to be allowed to join regional bodies (Liebowitz, 1984; Rogers, 1984, 1988). Discussions were opened with the executive branch of the government on September 4, 1976, and an informal plebiscite was conducted at the same time as the island's primary election. The "improved status quo" option gained 51 percent of the votes (in Rogers, 1988, p. 8); while statehood, attained the second highest votes.³

In May 1980, the Guam legislature created the Commission on Self-Determination, with the governor as its chairperson. This commission was given the tasks of providing position papers on the various status options open to Guam and drafting a Federal Territorial Relations Act. They were also to hold a plebiscite on the act and on the various status options prior to the end of 1981 (which was rescheduled to January 1982). After some debate on restricting the franchise in this plebiscite to Chamorros, the legislature allowed all registered US citizens resident on Guam to vote. This time commonwealth, not an option in the prior informal plebiscite, gained 49 percent of the votes (in Rogers, 1988, p. 8), while statehood again came in second. Because no option received a majority in the first plebiscite on the draft Federal Territorial Relations Act, a second plebiscite was held on September 4, 1982, once again in conjunction with the island's primary elections. The choices this time were limited to commonwealth and statehood. Commonwealth was selected as the status option choice by 73 percent of the voters (Rogers, 1988, p. 8).

During the next 2 years, the new Democratic administration on Guam investigated various routes toward achieving commonwealth status. Initially, approaches were made to the executive and legislative branches of the federal government for the appointment of an executive branch commission with authority to negotiate a Commonwealth Covenant with Guam. This approach received almost no support from the Reagan Administration and was allowed to fail in Congress (Rogers, 1984). Initiated in 1983 by Morris Udall, Chairman of the House Interior and Insular Affairs Committee, Guam's strategy changed to seeking a legislative solution to the island's status

dilemma (Rogers, 1984; Sanchez, n.d.).

The following year, the former status commission was reorganized by public law into a formal Commission of Self-Determination, once again delegated to create a Federal Territorial Relations Act to create commonwealth status for the island which would supplant Guam's 1950 Organic Act. All three government branches and both political parties were represented in this revived commission. Four versions of the Guam Commonwealth Act were written in 1986, the last of which, Working Draft Number 4, was a synthesis of views on the major issues (Rogers, 1988).

Objections to the first three drafts of the act included the following: Congress' ability to amend any local act submitted to it without consulting the people of Guam; lack of self-determination issues; preference for the covenant approach; local partisan politics; and disapproval of certain sections of the act by various federal government officials. After much debate and revision, the Guam Commonwealth Act was found acceptable by the Commission of Self-Determination in 1986. Spurred by islandwide campaigns, media coverage, and public hearings, the Commonwealth Act's 12 articles were finally approved during a second referendum in November 1987 (Fernandez, 1994). Washington officials informally endorsed the act, barring a few major issues that they felt would likely encounter Congressional repudiation. The Bush Administration, in general, did not endorse the act (Rogers 1988; Wyttenbach-Santos, October 7, 1994, Ed.D., Captain U.S. Navy (retired), Personal Communication).

Chamorro consciousness revived during these years of political status activity as controversial issues served to guide and refine the indigenous cause. A small Chamorro activist group petitioned the United Nations in the 1970s, advocating Guam's right to self-determination. These activists generally perceived the quest for commonwealth as a means to realize Chamorro rights and establish a less oppressive relationship for Guam with the United States, preferring independence or free association for the island. Eventually, efforts such as these caused Working Draft Number 4 to

be revised with a "strong Chamorro imprint" (Rogers, 1988, p.12).

Guam's congressional representatives have submitted several bills H.R.#4100 in 1988, H.R.#98 in 1991, and H.R.#1521 in 1993, to Congress, attempting to establish the Guam Commonwealth Act. A Federal Interagency Task Force (FITF) was established in 1988 to examine and evaluate the Guam Commonwealth Act. FITF analysis reports in 1989 and 1993 discussed issues considered controversial and advised for further revision of the Act. On the last day of the Bush Administration -- inaugural morning, January 20, 1993 -- the FITF issued its final report which withdrew previously agreed concessions that would have given an unprecedented degree of authority to be allocated from Congress to Guam. An example of this withdrawal is the federal government's position of mutual consent. A 1977 document, formerly confidential, guaranteed Guam its commonwealth agreement that would be "no less favorable than that concluded with the Northern Marianas" (Wytenbach-Santos, 1994, p. 162) which was allowed limited mutual consent. However, in the 1993 FITF report on H.R.#98, due to disagreement on the Act's language concerning mutual consent, the FITF stated, "in these circumstances, the Executive Branch considers itself relieved from its prior commitment...The Federal Task Force therefore objects to section 103 and any other type of mutual consent provision" (p.).

Controversial issues noted by the FITF in their 1993 report include the phrase "full self-determination" (p.) by the people of Guam, which concerned the FITF expressed because of this term's ambiguity and possible inconsistency with US sovereignty. Also addressed by the FITF is the constitutionality of the "self-determination by the Chamorro people of Guam," (p.) which excludes other US citizen Guam residents, and clauses concerning mutual consent between the federal government and Guam, application of federal laws, and restricted federal action (Sections 103, 202&302 of the Commonwealth Act) (Fernandez, 1994; Rogers, 1988). Other unresolved issues concern immigration as well as the transfer of certain federal and military lands to Guam's government and indigenous people (Sections 203, 1002&1004 of the Commonwealth Act)

(Rogers, 1988).

The Commission on Self-Determination and others who were dissatisfied with the progress on commonwealth status sought a presidential appointed representative with whom to continue negotiations. On November 3, 1993, President Clinton appointed I. Michael Heyman as the US negotiator to the Guam Commonwealth Act. Heyman states that for the first time, authority has been given from the administration to negotiate mutual consent. However, as previously noted, mutual consent negotiations have already occurred with the Bush Administration. This leaves Guam to question then, the full impact of Heyman's authority and the possible results to be achieved therein (Wytenbach-Santos, October 7, 1994, Ed.D., Captain US Navy (retired), Personal Communication).

On June 24, 1994, the 22nd Guam legislature adopted a strong resolution, Number 299. The resolution was introduced by 21 senators formally voicing Guam's dissatisfaction with the federal government's action, or lack of action, with language such as: "not making good faith negotiations toward returning lands" (p. 1), failure to meet certain responsibilities agreed to under the United Nations Charter and its amendments, as well as lack of expedient action by the federal government towards Guam's Commonwealth request and the Chamorro's right to self-determination guaranteed "under various United Nations Resolutions" (p. 2). Heyman has thus far been empathetic to Guam's cause, but it still remains to be resolved whether he can sway the Washington bureaucracy. Negotiations and refinement continue (Wytenbach-Santos, October 7, 1994, Ed.D., Captain US Navy (retired), Personal Communication).

The International Law Principles Governing the Rights of Colonized Peoples to Self-Determination and Self Governance.

The UN General Assembly adopted two resolutions in 1960 ("Declaration on the granting," 1960 and "Declaration on...," 1960) that recognize in no uncertain terms the right of all

nonself-governing peoples to be free of "alien subjugation, domination and exploitation" and to exercise "the right to self-determination" ("Declaration on the granting," 1960, p. 2). This right to self-determination includes the right to "freely determine their political status and freely pursue their economic, social and cultural development" ("Declaration on the granting," 1960, p. 2). The second of these resolutions states (a) that "self-determination" must be accomplished through "free-expression," i.e., a "free and voluntary choice by the peoples of the territory concerned," ("Declaration on...", 1960, p.) and (b) that "self-government" must result in one of three possible political statuses: independence, free association, or integration with the mother country ("Declaration on...", 1960, p. ; see generally Bergsman, 1976).

Both the 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples and the 1970 Declaration on Principles of International Law Concerning Friendly Relations and Co-Operation Among States in Accordance with the Charter of the United Nations state that the right to self-determination is not necessarily a right to secede and that countries cannot be dismembered if they are allowing all their citizens to participate equally in governmental affairs. The key is whether the country allows the "peoples" seeking self-determination to participate in the political life of the nation in a nondiscriminatory basis ("The principles of", 1970).⁴ Because the people of Guam do not have voting rights in the US Congress and do not vote for the US President, they do not meet this criterion and thus have the right to self-determination (Van Dyke, 1992).

For the people of Guam, their right to self-determination is clear. However, they have yet to be granted this right. As noted previously, the people of Guam have indicated support for a commonwealth-type status, defined in their own specific way (Van Dyke, 1992), but the United States has thus far been unresponsive.

The International Law Principles Governing the Rights of Indigenous Peoples to

Self-Determination and Self-Governance.

Defining "Indigenous People." Indigenous people are found in many countries and have diverse cultures and historical situations ("Indigenous peoples," 1987),⁵ making it difficult and inappropriate to adopt a rigid or uniform approach to dealing with all such people. The situation of indigenous communities that have long maintained contact with the dominant society but are nevertheless concerned with the right of self-determination cannot easily be compared with that of threatened forest-dwelling groups in remote areas of the world who are only now coming into contact with nonindigenous people (Cobo, 1982, 1983).

In one important sense, however, most indigenous peoples throughout the world do share a common experience. Most have suffered the imposition of, and abuse from, dominant societies, which in dealing with them have generally shown scant respect for their traditional cultures, lifestyles, land relationships, and social systems. In many instances, this imposition by dominant societies continues to occur today (Bennett, 1978; Cobo 1982, 1983).

Although agreement has not yet been reached on a universal definition of indigenous peoples, certain elements of such a definition appear to be acceptable to most people ("Indigenous peoples," 1987, p.):

1. Preexistence--the population is descended from persons who were in an area prior to the arrival of another population.
2. Nondominance--their culture style does not dominate.
3. Cultural difference--their culture is different from the dominant culture.
4. Self-identification as indigenous--the people identify themselves and the group as indigenous.⁶

A composite definition incorporating these elements has been used by the United Nations Commission on Human Rights, the Special Rapporteur (Jose Martinez Cobo) on the "Problem of

Discrimination Against Indigenous Populations" for the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities, and the United Nations Working Group on Indigenous Populations peoples (WGIP):⁷

Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples in accordance with their own cultural patterns, social institutions and legal systems (WGIP report, UN doc. E/CN.4/Sub.2/1986/7, p.).

Under this definition, the Chamorro people of Guam⁸ would all be classified as indigenous people. By contrast, the residents of Puerto Rico and the Virgin Islands would not be viewed as indigenous people, because they are not linked with the "pre-invasion and pre-colonial societies that developed in their territories" (p.) even though they have experienced domination and do have distinct cultures which they wish to protect and preserve.

The Rights of Indigenous Peoples. Indigenous peoples are entitled to all the fundamental freedoms and human rights that are recognized and embodied in existing international instruments, which apply universally to all persons. These existing international human rights instruments do not, however, adequately respond to and protect the specific concerns of indigenous peoples (WGIP report, UN doc. E/CN.4/Sub.2/1985/22).

In 1971, the United Nations' Sub-Commission on the Prevention of Discrimination and Protection of Minorities appointed Jose Martinez Cobo as Special Rapporteur to study

"discrimination against indigenous populations" (p.). The Martinez Cobo Study, with its conclusions and recommendations, was released in several stages until its completion in 1983, and it is now considered to be an accepted authority on the problems of indigenous populations (E.I.A., Daes, Professor of Law, University of Florence, Italy in Honolulu, July 1987, Personal Communication).⁹

The conclusion of this study is that present international instruments are not "wholly adequate for the recognition and promotion of the specific rights of indigenous populations as such within the overall societies of the countries in which they now live" (Cobo, 1982, 1983, p.). The study also concluded that existing human rights standards are insufficient and not adequate because they are not fully applied to indigenous peoples (Cobo, 1982, 1983). This report gives particular attention to the right of indigenous peoples to "self-determination":

Self-determination, in its many forms, must be recognized as a basic precondition for the enjoyment by indigenous peoples of their fundamental rights and the determination of their own future...[S]elf-determination constitutes the exercise of free choice by indigenous peoples, who must to a large extent create the specific content of this principle, in both its internal and external expressions, which do not necessarily include the right to secede from the State in which they may live and to set themselves up as sovereign entities. The right may in fact be expressed in various forms of autonomy within the State (Cobo, 1982, 1983, p.).

Regarding the definition of the concept "indigenous," the study concludes that the indigenous people themselves must be consulted about criteria such as ancestry, culture, and language that they consider valid, because it is their right to determine who is indigenous and who is not (Cobo, 1982, 1983). The study also identified special areas for urgent action, such as health; housing; education; language; culture; cultural, social, and legal institutions; employment; land; political

rights; religious rights and practices; equality in administration of justice; and legal assistance (Cobo, 1982, 1983).

ILO Convention 169. In 1989, the International Labor Organization (ILO) adopted the Convention Concerning Indigenous and Tribal Peoples in Independent Countries, which has already been ratified by several countries. This treaty does not explicitly use the term "self-determination," but it includes many provisions that recognize the separate and distinct rights of indigenous peoples. Among these provisions are the following:

**Article 6(a) requires governments to consult with indigenous peoples "whenever consideration is being given to legislative or administrative measures which may affect them directly" (p.).

**Article 6(c) requires governments to "establish means for the full development of these peoples' own institutions and initiatives, and in appropriate cases provide the resources necessary for this purpose" (p.).

**Article 7(1) recognizes the rights of indigenous peoples to decide their own destinies:

The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly (p.).

**Article 8(2) recognizes the right of indigenous peoples "to retain their own customs and institutions" (p.), so long as they are not incompatible with "internally recognised human rights" (p.).

**Articles 13-19 cover the rights of indigenous peoples to land and resources. Article 14(1)

recognizes the "rights of ownership and possession" (p.) of indigenous peoples "over the lands which they traditionally occupy" (p.), and Article 14(2) requires governments "to guarantee effective protection of their rights of ownership and possession" (p.). Similarly, Article 15(1) requires governments to safeguard the rights of indigenous peoples "to the natural resources pertaining to their lands" (p.).

The Declaration on the Rights of Indigenous Peoples. While the International Labor Organization was sponsoring the drafting of this new treaty, the UN Economic and Social Council decided in 1982 to establish a Working Group on Indigenous Populations, which in recent years has devoted its annual summer meetings to the drafting of a document for adoption by the General Assembly, that has been given the working title, "Draft Declaration on the Rights of Indigenous Peoples." The draft of this document provides more detail than the ILO Convention regarding the rights to self-determination and autonomy of indigenous peoples. The working draft (U.N. doc. E/CN.4/Sub.2/1993/29, 1993) that is being considered contains the following rights:

***"Indigenous peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development." (Article 3, p.) (The US observer to the 1993 meeting, Kathryn Skipper, sought to make clear that this right does not necessarily include the right to secede from a nation by saying that self-determination can be achieved "through arrangements other than independence. The United States could not accept this inclusion of self-determination as applying specifically to indigenous groups if it implies or permits full independence generally recognized under international law" ("US concerns," Sept. 1, 1993, p.))¹⁰

***"Indigenous peoples have the collective right to exist in peace and security as distinct peoples and to be protected against genocide..." (emphasis added) (p.). Indigenous peoples have the right to be protected against "any form of forced assimilation or integration..." (p.).

**Indigenous peoples have "the collective and individual right to maintain and develop their

distinct characteristics and identities, including the right to identify themselves as indigenous and to be recognized as such" (p.).

**Indigenous Peoples have "the right to establish and control their own education systems and institutions" (p.).

**Indigenous peoples have the right to participate in all levels of decision-making on matters affecting them through representatives they choose in accordance with their own procedures, "as well as to maintain and develop their own indigenous decision-making institutions" (Article 20, p.).

**Indigenous peoples have the right to develop and maintain their own health, housing, and other economic and social programs through their own institutions.

**Indigenous peoples have the right to recognition of their distinctive spiritual and material relationship with their lands and territories and with the total environment associated with their lands and territories. They also have the right to control, own, and manage their lands and territories.

**Indigenous peoples have the right to autonomy in internal and local matters such as education, information, media, culture, religion, health, housing, employment, social welfare, land and resource management, and internal taxation.

Domestic Initiatives. While these international developments have been underway, several nations have taken dramatic steps to recognize and protect the rights of indigenous peoples. In northern Canada, a land area the size of Texas has been recognized as being under the autonomous governance of the indigenous peoples of that region. In Australia, the Mabo court decision ("Australian law," 1992; Bergin 1993) has recognized the preexisting rights of the aboriginal peoples and has required the government to come up with a comprehensive approach toward the protection of these rights. In New Zealand, the Waitangi Tribunal has been adjudicating cases and returning lands and resources to the Maori people. In the United States, several tribal settlements returned lands to Native Americans. And on November 23, 1993, the United States Congress

formally apologized to the Native Hawaiian people for the "participation of agents and citizens of the United States" (Joint Resolution, Nov. 23, 1993, p.) in the "overthrow of the Kingdom of Hawaii on January 17, 1893" ("Joint Resolution," Nov. 23, 1993, p.) and the resulting "deprivation of the rights of Native Hawaiians to self-determination" ("Joint Resolution," Nov. 23, 1993, p.).

How Do These Principles Apply?

The Guam Draft Commonwealth Act,¹¹ if approved by Congress, would be an act of self-determination by the people of Guam, and Section 102(b) recognizes that all qualified residents of Guam have the right to participate in any referendum to be held on Guam's status. At the same time, Section 102(a) of this Draft Act contains the following provision recognizing the separate right to self-determination of the Chamorro people:

The Congress recognizes the inalienable right of self-determination of the indigenous Chamorro people of Guam, defined as all those born on Guam before August 1, 1950, and their descendants. The exercise of such right of self-determination shall be provided for in a Constitution of the Commonwealth of Guam (p. 2).

Section 102(f) authorizes the establishment of a "Chamorro Land Trust," composed of lands now held by the federal government, which is designed to be for the benefit of "the indigenous Chamorro people of Guam" (p. 3).

This Draft Act thus recognizes the separate claims of the people of Guam and the Chamorro people. These claims need not be in conflict, although the Chamorro people could seek an autonomous sovereign status that would give them authority over their own resources and activities. Whether they would be free from regulation by the government of Guam would depend on the nature of their autonomy as recognized by the United States Congress.

Conclusion.

The right to self-determination is a powerful right that reflects the indwelling yearning of all peoples for recognition of their unique heritage and values. All peoples have the right to govern themselves, and all indigenous peoples also have this right. Although indigenous peoples do not necessarily have the right to secede and become fully independent, they do have the right to enough autonomy and sovereignty to ensure that they are able to preserve themselves as a distinct cultural community and to make the fundamentally important decisions for themselves. By vigorously protecting this right, we can ensure that the diversity of the world's populations will continue to enrich the lives of all peoples.

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END NOTES

1. The primary precedent for dealing with territories was the Northwest Ordinance of 1787. This Ordinance, which preceded the Constitution, provided for the organization of the mainland territories and established a developmental sequence which led from Congressional administration to statehood. This Congressional power, granted by the US Constitution, included abolishing and creating all regulations for a territory or property belonging to the United States. (Liebowitz, 1989).

Neither the Congress nor the other branches of government intended for these off shore territories to become a permanent part of the Union. As a consequence, Congress, aided and abetted by the Supreme Court, developed the Doctrine of Incorporation to differentiate the off shore territories from those on the US mainland.

2. These requests were made as early as 1902. The most significant attempt was initiated on July 11, 1936, when both houses of Guam Congress met in joint sessions and unanimously passed a resolution petitioning the United States to grant American citizenship to the people of Guam. The Guam Congress, after the naval Governor denied appropriation for this cause, conducted a series of fund raisers. Two delegates were sent to present this petition in Washington and lobby Congress and the Executive branch, F.B. Leon Guerrero and B.J. Bordallo. Citizenship bills resulting from these efforts, were blocked in Washington by the Navy Department and its lobby (Rogers, 1984; Sanchez, n.d.; Thompson, 1969).

3. These results may have reflected local concerns toward the termination of the Trust Territory of the Pacific Islands which was taking place at that time (Liebowitz, 1984; Rogers, 1984; Sanchez, n.d.).

4. The key last paragraph in the section of this declaration entitled "The principle of equal rights and self-determination of peoples" gives the following formula:

Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed, or colour (p.).

5. The number of indigenous people varies greatly depending on the definition one adopts. It is frequently estimated that there are 200 million indigenous people in the world totalling approximately four percent of the global population. They live in all continents, in capitalist and socialist countries, and in rich and poor countries. They cut across ideological and regional frontiers.

6. See UN doc. E/CN.4/Sub.2/1986/7. Even these elements may not always apply; the native Fijians do, for instance, dominate in many senses over the Fiji Indians and other ethnic groups in Fiji, even though they are a numerical minority.

7. The Commission on human rights is an intergovernmental body based on Article 68 of the UN Charter, which serves as the central policy organ in the field of human rights. Much of the Commission's activity is initiated by working groups or other arrangements. The Commission annually establishes a working group to consider situations of alleged gross violations of human rights referred to it by its Sub-commission under the Resolution 1503 procedure.

The Sub-commission on Prevention of Discrimination and Protection of Minorities was established by the Commission on human rights pursuant to Resolution 9 (II) of the Economic and Social Council with powers inherently deriving from the UN Charter and is composed of people serving in their individual capacity. The Sub-commission has established relevant working groups on communications, slavery, and indigenous populations with powers in the nature of investigation and recommendation.

The creation of the Working Group on Indigenous Populations/Peoples (WGIP) was proposed by the Sub-commission on the Prevention of Discrimination and Protection of Minorities in its Resolution 2 (XXXIV) of September 8, 1981. This Resolution was endorsed by the Commission on human rights in its Resolution 1982/19, March 10, 1982, and authorized by ECOSOC in its Resolution 1982/34 of May 7, 1982.

The WGIP was established in 1982 and meets yearly to evaluate existing worldwide situations concerning indigenous populations. Since 1985, the WGIP has met for the additional purpose of formulating an indigenous rights declaration which will ultimately lead to a United Nations convention. See *infra* notes 71-74 and accompanying text.

8. Section 102 of the Guam draft commonwealth act, H.R.#98, 102nd Cong., 1st sess. (1991), defines "the indigenous Chamorro people of Guam" as those who are "born on Guam before August 1, 1950, and their descendants" (p. 3). This definition is thus not literally a racial classification, but rather a political classification, referring to those individuals who historically are linked to the pre-colonial Chamorro islanders and who lived on Guam during the period of total US control, and their descendants.

9. Law professor Erica Irene A. Daes, from the University of Florence, has been the Chairperson of the United Nations Working group on indigenous populations and the Sub-commission for the

prevention of discrimination and the protection of minorities.

10. Other governments also voiced concern with the phrasing and intent of the provision recognizing the right of indigenous peoples to self-determination. During the 1992 session, for instance, Canada's representative stated that Canada could support the inclusion of the right to self-determination "provided that it be understood that the right of self-determination is exercised a) within the framework of existing nation-states, and b) in a manner which recognized an interrelationship between the jurisdiction of the existing State and that of indigenous communities, where the parameters of jurisdiction were mutually agreed upon" (UN doc. E/CN.4/Sub.2/1992/33, August 20, 1992, p.). The delegate stated that governments wanted to avoid wording the draft declaration that might be misconstrued "as protecting the right of indigenous peoples to independence as a separate State." (UN doc. E/CN.4/Sub.2/1992/33, August 20, 1992, p.).

Australia's representative supported the inclusion of a reference to the right to self-determination, because the recognition of such a right would assist indigenous peoples "to overcome the barriers to full democratic participation in the political process by which they are governed," and also noting that the notion of sovereignty had evolved in such a way that the world "had witnessed the emergence of the view that there might be ways in which the right of self-determination could be legitimately exercised short of the choice of separate status as an independent sovereign state" (UN doc. E/CN.4/Sub.2/1992/33, August 20, 1992, p.).

Erica Daes, Chairperson of the Working Group on Indigenous Peoples, summarized the discussions by saying that the term "self-determination" was used in the Draft declaration "in its internal character, that is short of any implication which might encourage the formation of independent states" (UN doc. E/CN.4/Sub.2/1992/33, August 20, 1992, p.). See generally Betz, June 7-10, 1993.

11. House of Representatives#98, 102nd Congress, 1st. sess., 1991. The commonwealth created by this Draft act would be one in which the United States authority could be exercised only with the "mutual consent" of the Guam government, secs. 103 and 202 (p. 3&4). The relationship thus created is closer to one of free association than the commonwealth relationships now found in Puerto Rico and the Northern Marianas. See Van Dyke, J.M. (1992), p. 488-491.

REFERENCES CITED

Apple, R.A. (1980). Guam: Two invasions and three military occupations. Micronesian area research center, Mangilao, Guam.

Australian Law Journal Report. 66. (1992).

Barsh, R. L. (1986). Indigenous peoples: An emerging object of international law. American Journal of International Law, 80.

Bennett, G. (1978). Aboriginal rights in international law. Royal anthropological institute [for] survival international, London.

Bergin, A. (1993). A rising tide of aboriginal sea claims: Implications of the Mabo case in Australia. International Journal of Marine and Coastal Law, 8.

Bergsman, P. (1976). The Marianas, the United States, and the United Nations: The uncertain status of the New American Commonwealth. California Western International Law Journal, 6.

Betz, D. (June 7-10, 1993). The past is prologue: Indigenous peoples take international center state in 1993. Sovereignty symposium VI. Tulsa, Oklahoma.

Cobo, J.M. (1982, 1983). Study of the problems of discrimination against indigenous populations. United Nations document E/CN.4/sub. 2/1983/21. (This study was conducted between 1971 and 1982 and was published in 1982 and 1983.)

Convention Concerning Indigenous and Tribal Peoples in Independent Countries, International Labor Organization Convention 169. (June 27, 1989). 28 International League Materials 1382.

Declaration on the Granting of Independence to Colonial Countries and Peoples. (Dec. 14, 1960). United Nations General Assembly Resolution 1514 (XV), 15 United Nations General Assembly Official Record, 15th session, supplement number 16, United Nations Document A/4684.

Declaration.....(1960). United Nations General Assembly Resolution 1541 (XV), 15 United Nations General Assembly Official Record, 15th session, supplement number 16, United Nations Document A/4684.

Declaration on Principles of International Law Concerning Friendly Relations and Co-Operation Among States in Accordance with the Charter of the United Nations. (1970). United General Assembly Resolution, .. United Nations General Assembly Official Record, .. Session, supplement number .., United Nations Document.....

Farrell, D. (1991). History of the Northern Mariana Islands. 1st ed. Commonwealth of the Northern Mariana Islands (CNMI) public school system, CNMI.

Fernandez, C. (1994). The evolution and status of HR#1521: The Commonwealth Act. Micronesia area research center, Mangilao, Guam.

Federal Interagency Task Force. (August 1, 1989). Federal Interagency Task Force Report on H.R.#98. Washington D.C.

Federal Interagency Task Force. (January, 1993). Second Federal Inter-Agency Task Force report on H.R.#98, the Guam commonwealth bill. Washington D.C.

Guam Commonwealth Act, H.R.#4100, 100th Congress, 2nd session. (March 8, 1988).

Guam Commonwealth Act, H.R.#98, 102nd Congress, 1st session. (January 3, 1991).

Guam Commonwealth Act, H.R.#1521, 103 Congress, 1st session. (March 30, 1993).

Hannum, H. (1990). Autonomy, sovereignty, and self-determination (pp. 74-103). University of Pennsylvania press, Philadelphia.

Hezel, F. X. S.J. (1989). From conquest to colonization: Spain in the Mariana Islands: 1690 to 1740. Division of historic preservation, Saipan.

Independent commission on international humanitarian issues. (1987). Indigenous peoples: A global quest for justice.

Joint Resolution, 100th Anniversary of the Overthrow of the Hawaiian Kingdom. (November 23, 1993). Public Law, 103-150. Honolulu.

Ke Kia'i, Native Hawaiian Advisory Council. (Sept. 1, 1993). US concerns about the draft declaration. Honolulu.

Liebowitz, A.H. (1989). Defining status: A comprehensive analysis of United States territorial relations. Martinus Hijoff publishers, Dordrecht.

Resolution number 299 (COR, meaning final version), Twenty Second Guam Legislature, second regular session. (1994).

Rogers, R.F. (1984). Guam's search for commonwealth status. Micronesian area research center, Mangilao, Guam.

(1988). Guam's commonwealth effort: 1987-1988. Micronesian area research center, Mangilao, Guam.

Sanchez, P.C. (n.d.). Guahan: Guam: The history of our island. Sanchez publishing house, Agana, Guam.

The Organic Act of Guam, 64 Statute 384. (August 1, 1950).

The principle of equal rights and self-determination of peoples. (1970). United Nations General Assembly Official Record, 25th session, supplement no. 28, at 121. United Nations Document 1/8028.

Thompson, L.M. (1969). Guam and its people. Greenwood press, Westport Connecticut.

Underwood, J. (1973). Population history of Guam: Context of microevolution. Micronesica. 2, 417-430.

United Nations Commission on Human Rights, Resolution 1982/19. (March 10, 1982).

United Nations Document E/CN.4/Sub.2/1985/22. (1985).

United Nations Document E/CN.4/Sub.2/1986/7. (1986).

United Nations Document E/CN.4/Sub.2/1992/33. (August 20, 1992).

United Nations Document E/CN.4/Sub.2/1993/29. (August 21, 1993).

United Nations ECOSOC, Resolution 1982/34. (May 7, 1982).

United Nations Sub-commission on the Prevention of Discrimination and Protection of Minorities, Resolution 2 (XXXIV). (September 8, 1981).

Wytenbach-Santos, R.H.J. (1994). Guam's past, present, and future: Time is on who's side? In J. Guthertz & D. Singh (Ed.), The 14th island conference on public administration: Liberation '44: Guam 50 years later (pp. 153-171). University of Guam college of business and public administration, Mangilao, Guam.

Van Dyke, J. M. (1985). The constitutionality of the office of Hawaiian Affairs. University of Hawaii Law Review, 7.

(1992). The evolving legal relationships between the United States and its affiliated US flag islands. University of Hawaii Law Review, 14.