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THIRD INTERNATIONAL DECADE FOR THE ERADICATION OF COLONIALISM

**Caribbean regional seminar on the implementation of the Third International Decade
for the Eradication of Colonialism: goals and expected accomplishments**

**Kingstown, Saint Vincent and the Grenadines
31 May to 2 June 2011**

STATEMENT

BY

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Constitutional Advancement and Self-government in Guam 2011

Prepared for the United Nations Seminar on the Implementation of the Third International Decade for the Eradication of Colonialism: Goals and Expected Accomplishments

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Executive Summary: The UN might be able to assist or improve political status efforts by possibly broadening the boundaries that define independence, free association and integration. A fourth option such as sui generis might be considered. Regarding US territories, the United States might be encouraged by all parties to examine and update the Insular Cases to better reflect modern governing and social concepts, such as inclusion and the effort to eliminate racism in the United States. All US territories could benefit from having a voice and presence in the US Senate. In the case of Guam in particular, individual questions related to the political status of the Chamorro people might be addressed at several levels with the assistance of the UN. In public opinion polls on Guam, communications are the key to addressing political and public concerns. The bottom line is that communications are healthy for all parties involved and this might be encouraged. This seminar is an example of improving communications on this important topic.

Guam experienced excellent political progress between 1950 and 1980. Between 1980 and today efforts for political status improvement have been stalled or inactive due to a number of factors. Current interest in political status is driven in part from a planned increase in US military activities on Guam. Important communications gaps developed in this military build up coordination process, particularly since Guam has no voice or presence in the US Senate where many of the coordination discussions take place. Guam may benefit from a pragmatic incrementalist approach to address political status and government improvement. For example, an "off the shelf" constitution opportunity exists for Guam, provided that it does not change Guam's political status.

Introduction: Your Excellency and members of this UN Committee, my name is Ron McNinch-Su and I am a college professor and researcher on the wonderful island of Guam. At the beginning of this presentation, I would like to make clear that I am not here to represent or advocate positions for the government of Guam in this seminar, nor do I represent or advocate positions for the indigenous people of Guam. My role here is technical from the standpoint of research and I strive to be objective on these matters. I was invited by this committee to attend and I was not sent by the Government of Guam or an NGO on Guam. I am pleased to be a part of this seminar and appreciate the invitation.

This brief paper addresses some views that I have as an academic. I believe that academics and universities who study these 16 colonized areas can greatly help with this process and I would like to encourage those involved to work with academic institutions whenever possible on developing research and policy in these important areas. I am from the University of Guam, so I would like to suggest to the Government of Guam to partner with the university on these issues. . My university president, Dr. Robert Underwood, is an advocate of the emerging field of nisseology, or the study of islands. I think there is potential subfield in this discipline for political status.

Many of the 16 colonized areas share a lot of common ground. Fourteen are beautiful islands or insular areas full of beautiful people who have beautiful ideas and unique world views. On our islands, we tend to know many of the people who live there. On islands, we love stability and value families. Islands are different, so perhaps different approaches are needed to help eradicate island colonialism. I believe that this goal can be reached by 2020, but some pragmatic incremental steps might be needed for this success

Suggestions for the United Nations

One solution may be to expand the political status definitions or categories. For example, the “sui generis” category used in New Caledonia. This would allow much more flexibility and allow uniqueness.

Insular Cases: These cases are the interface between the US Constitution and the US island territories. These court cases might be reviewed and updated. This might help improve political status efforts in US territories. Governor Calvo, Guam’s current governor, has spoken publicly about the need to possibly address the insular cases as a means to improve the status of US territories.

Assisting Chamorro Rights goals: The United Nations is highly regarded by indigenous Chamorro groups and perhaps resources might exist with the UN to assist with goals of this group.

Finally, there is a common view on Guam held by many elected leaders and members of the public that the UN has a mentor sort of role in political status change. Perhaps a clarification of the role of the UN in this process might help. For example, if a local Guam constitution is considered a positive step toward progress, the UN might suggest this as an option to Guam’s leaders.

Select Points in the Context of Guam

Guam is an unincorporated, organized island territory of the United States. The land area of Guam is approximately 212 square miles, with a population of approximately 175,000 residents. In terms of

ethnicity, Guam's population is approximately 42% native Chamorro, 27% Filipino, 10% non-Filipino Asians, 10% US Mainlanders, and 10% combined from Pacific Islands in the region. Over 42% of marriages on Guam are interracial and on an adjusted scale, this figure is probably over 70%. Guam's main economic activity centers around tourism, primarily Japanese and Korean tourists and US federal and military activities.

Basic Modern Political Developments on Guam

Between 1898 and the end of the Second World War, Guam was a military protectorate under the control of the United States Navy. The most notable effort made toward improvement during this timeframe was an unsuccessful citizenship lobbying effort made by Francisco Leon Guerrero and Baltazar Bordallo in 1936. In 1950, President Truman signed the Guam Organic Act which established a basic government structure for Guam led by a governor appointed by the president and this act also provided for US citizenship for residents of Guam.

Between 1950 and 1980, Guam enjoyed several pragmatic and incremental political development steps. The Navy security clearance requirement was lifted in 1962, which later led to a strong tourism economy on Guam. In the early 1970s, Guam was allowed to popularly elect its governor and Guam also was allowed a delegate to the US House of Representatives. Following US Public Law 94-584, in 1979 Guam had a failed effort to produce a constitution. Part of this constitution failure was a legitimate and sincere concern that a Guam Constitution might in some way affect Guam's political status or particularly Chamorro self-determination. Following the CNMI Commonwealth Act, Guam decided to pursue a path to develop a commonwealth status. After many years of effort, the Guam Commonwealth concept was finally not accepted by the US Congress in 1998. A key part of this failure was the "all or nothing" approach used by the Guam side. In retrospect, the ability to negotiate individual parts on a Congress-Guam Conference Committee level might have helped Guam gain commonwealth. The lesson learned was that deal-making is a necessary part of the process and no political document is final until it is approved by all parties.

Current Government on Guam

Guam's current government consists of a strong executive model and a fifteen member, unified district, unicameral legislature. The Guam Organic Act provides for up to 21 legislators and the number of senators was reduced to 15 following the 1998 election. This reduction may be one key to understanding why political status efforts have stalled. With 21 senators, marginal candidates with non-centrist views were able to get elected. Following the reduction to 15 senators, the field became more competitive and thus the vast majority of candidates have opted for centrist positions on most matters. This has resulted in a pattern of risk aversion on topics such as political status or constitution building.

Guam Political Status and Public Opinion 1996 to Present

Ultimately, Guam's political status will be resolved by a Chamorro self-determination vote. Public opinion on Guam is complex and driven by public and private conversations. In the area of political status choice, assessing public opinion has been limited due to a number of reasons. For example,

results may be skewed by sampling method. Therefore, real numbers, even though they were widely circulated at the time of polling, are not used in this discussion. In general, all political status assessments have reflected strong interests in the status quo. This has been dominant for many years and after a series of plebiscites on the question, this led to Guam seeking Commonwealth in the 1980s and 1990s. Assuming that the data does hold, the proportion of the Chamorro population preferring status quo is very high at the current estimate. However, a plebiscite process is likely the best means to address this issue.

There are a number of direct and indirect cues to reflect political status choice for Guam reflected in other opinion studies. For example, in 2000, McNinch and Sukola studied trust in government institutions on Guam as part of a national study on the judiciary. In the US mainland around this time, trust in local government and the US federal government both hovered around 30%. On Guam, trust in the local government was also around 30%, but trust in the federal government was over 60%. Using focus groups, this high level of trust in the federal government was explored. The findings were clear and easy to understand. On Guam all "federal" taxes are given back or mirrored to the Government of Guam. A second part that explained this high trust was that federal financial support of Guam was largely one way in areas such as social services support. This is the likely foundation of the strong support for status quo. By coincidence, public opinion toward the federal government hits a high mark in the months following major typhoons and storms when federal assistance is most obvious.

Chamorro Rights Concerns

Native Chamorros on Guam have a number of concerns related to US federal relations and political status development. The first and most dominant concern relates to the issue of land ownership and control. Following WWII, the United States government and the US military seized large land areas and the return or appropriate compensation of these lands is a major political issue. A second concern relates to war reparations for Chamorros living on Guam during the Japanese Occupation during WWII. There has been a strong interest in an indigenous vote on the status issue. One limitation for this concept is a lack of a Chamorro Voting Registry or list. Former Speaker and current Guam Senator Ben Pangelinan has made strong efforts to help develop a Chamorro registry. It is likely that an official roll could be made of Chamorros of Guam descent using available public records from the 1950 era to present day.

Military Concerns

From studies conducted in 2008 and 2010, citizens of Guam believe that the military buildup will strongly improve Guam's economy and bring more jobs to the island. On the negative side, the military is perceived to possibly increase crime, overcrowding and traffic problems. In a 2008 poll, citizens were asked to give advice to the US military and local leaders on the best method for working together. The primary suggestion was that both sides needed to improve communications. Since Guam does not have a voice in the US Senate, where many of these communications take place, this might be a route for improvement. Guam might be able to lobby the federal government to allow our delegate to congress

to also interface and serve a role in the US Senate. While this is not normal, territories themselves by their nature are different. A voice in the senate would not change political status.

Improving Constitutional Advancement and Self Government on Guam

On the internal development side, Guam needs a constitution. If Guam does adopt the "off the shelf" Organic Act local Constitution, it can incrementally improve local government. If approached correctly, federal-Guam relations, would not change. The main obstacle to having this type of constitution is addressing the concern that this internal development would in some way change Guam's political status. For many years, Guam has been provided by the US government the opportunity to write a local constitution. Any political status Guam ends up with will require a constitution. The Guam Organic Act is a ready made constitution and with minor modifications, such as an amendment clause, the US Congress and President would likely pass it.

On the external side, Guam should work with the federal government and gain a voice in the US Senate. This can likely be accomplished through a number of pragmatic means. A second external improvement might be a "Conference Function" on implementing federal laws. Since Guam is a small island, not all federal laws work well. If Guam could petition for administrative exemption related to certain federal laws and mandates, this would be a step forward.

There are at least three main obstacles affect achieving an improved final status for Guam. Indigenous rights concerns, UN definitions, and the Insular Cases. Indigenous rights concerns may be better described by others in this communication process, but it remains a factor in Guam's path to a final status.

As a suggestion, the UN may consider expanding its political status categories. Or it may consider expanding the definitions of these categories. If there were a status potential that allows all the benefits of free association (no federal taxes, more control of policy, etc...) with all the advantages of integration (ie, better representation, tourism advantages, inclusion as a principle in all US systems and maps, etc...), a pragmatic middle ground might exist. The sui generis option might be examined for example.

On a final note, the Insular Cases, the major US Supreme Court cases that are used as the constitutional touchstone to govern the insular territories, should be reviewed and reconsidered by the United States government. The same justices who passed *Plessy v. Ferguson* (1896), the case that set up a "separate but equal" doctrine for race relations in the United States, wrote the concepts in these cases in the early 1900s. To be frank, plain reading of these decisions clearly demonstrate how outdated the reasoning used by this court 110 years ago really is. For example, in *Downes v. Bidwell* (1901), the court's strong racial context and overtones are apparent. Perhaps this reasoning context is flawed and thus these cases are flawed. I hope colleges and universities in the US will go to a plain text reading of these cases. The language is unacceptable, but it is still the lens through which the US Constitution is applied to its territories. Improving and revising these cases is a key step in progress for US territories.

I would like to thank the committee for inviting me to participate in this seminar and I look forward to bringing many ideas home to help build discussions on these critical issues.