

“Respeta I Taotao Tano”¹:
**The Recognition and Establishment of the Self-Determination and
Sovereign Rights of the Indigenous Chamorros of Guam Under
International, Federal, and Local Law**

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¹ “Chamorros are commonly referred to as ‘taotao tano,’ which literally means ‘people of the land;’ it also indicates that a person is native to those lands.” MICHAEL F. PHILLIPS, LAND, KINALAMTEN PULITIKAT: SINENTEN I CHAMORRO, ISSUES IN GUAM’S POLITICAL DEVELOPMENT: THE CHAMORRO PERSEPECTIVE 3 (1996). “Respeta I TaoTao Tano,” in Chamorro, the indigenous language of Guam and the Commonwealth of the Northern Mariana Islands, means “respecting the people of the land.” CHAMORRO-ENGLISH DICTIONARY 177, 198 (Donald M. Topping et al. eds., 1978).

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I am a Chamorro

I am a warrior

Bold and brave in a world unaccepting and cold

I am a leader

Surrounded by a diminishing following

I am a teacher

Propelling the ideals and values of a dying culture

I am a healer

Nurturing the children who will carry on my traditions

Amidst my new surroundings

In a world that is changing and unnatural to me

I will survive

My legacy will live on

I shall sail my proa through violent waters

My latte will stand unweathered

The beast will fall to my spear

The sound of my kulo' shall have an endless echo

All that I am

All that I was

All that I will be

Will allow me to be free

I AM a Chamorro.²

² Anthony (T.J.) F. Quan, I AM a Chamorro (Feb. 28, 1998) (unpublished poem, on file with author).

I. INTRODUCTION

“I am a leader.”

Although the political status of Guam has changed through two centuries of Western colonialism, the Chamorros, the indigenous inhabitants of Guam, have remained steadfast and managed to survive as a collective, identifiable entity.³ Prior to the arrival and eventual colonization by the Spanish in the sixteenth century, the Chamorros were a sovereign people, and had developed a well-structured society, flourishing with a rich culture of traditions and customs.⁴ These traditions and customs continue to define the very essence of Chamorros, despite challenges and obstacles to the preservation of their own identity due to the changing social, political, and ethnic makeup of Guam.⁵

For the past two decades, the people of Guam have sought to change their political status as an unincorporated territory of the United States.⁶ Seeking more autonomy and self-determination, they have considered various political-status alternatives.⁷ Political self-determination is the collective goal for all citizens of Guam, however, recognition of the indigenous self-determination rights of the Chamorros is frequently lost within this larger goal of political self-determination.⁸ Although the Chamorro culture and spirit is firmly embedded in Guam’s multi-ethnic community, the Chamorro people have never received any formal political or legal recognition, locally, federally, or internationally.⁹

This comment argues that the Chamorro people, as Guam’s original indigenous inhabitants, are a distinct, identifiable, sovereign

³ RESISTANCE IN PARADISE: RETHINKING 100 YEARS OF U.S. INVOLVEMENT IN THE CARIBBEAN AND THE PACIFIC 114 (Deborah Wei & Rachael Kamel eds., 1998) [hereinafter RESISTANCE IN PARADISE] (“Throughout their long history of foreign rule, the Chamorros have proven themselves to be a strong, durable, and flexible people who can survive under even the most difficult conditions.”).

⁴ See *infra* Part II.A.1.

⁵ See *infra* Part II.A.3.

⁶ See *infra* Part II.B.

⁷ See *infra* Part II.B.

⁸ See Jon Van Dyke et al., *Self-Determination for Non-Self Governing Peoples and Indigenous Peoples: The Cases of Guam and Hawai’i*, 18 HAW. L. REV. 623, 625-29 (1996) [hereinafter Van Dyke, *Self-Determination*].

⁹ See *id.* at 627-28.

people deserving of the right to self-determination and self-preservation.¹⁰ The recognition and establishment of a sovereign Chamorro nation will hopefully ensure that the Chamorro people and their culture are preserved and protected, and restore some degree of political and social control to a people who for centuries have been denied the basic human right to define themselves and their destiny.¹¹ Part II provides a historical background of the Chamorro people, illustrating their establishment of an organized society prior to colonial contact, and their subsequent experience and struggle to sustain their culture despite colonization by Spain, Japan, and the United States. Part II also examines the contemporary state of the Chamorro people and their continued struggle to maintain their identity while part of an unincorporated territory of the United States, that has evolved into a modern westernized community with its own social dynamic. Part III analyzes and examines what legal rights to self-determination Chamorros as an indigenous people are entitled to under local, federal, and international law. Part IV provides a summary and conclusion of the comment and reaffirms that developments in federal and international law providing for both the protection and celebration of indigenous communities, create a sound legal and political basis for the Chamorro people to reclaim their sovereignty through self-determination.

II. BACKGROUND

"I am a teacher."

To better understand contemporary legal arguments that the Chamorro people are entitled to recognition and rights as an indigenous people, one must first grasp the evolution of the Chamorro people. Section II (A) provides a historical overview of Chamorro existence starting from pre-colonial periods, continuing through the Spanish colonial period, and ending with the United States' occupation and control. In addition, this section also illustrates the status of Guam in modern times and the current state of contemporary Chamorros. Section II (B) outlines Guam's current political status as an unincorporated territory and its quest

¹⁰ *Id.* at 643. ("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...fundamentally important decisions.").

¹¹ Micheal P. Perez, *The Dialectic of Indigenous Identity in the Wake of Colonialism: The Case of the Chamorros of Guam* 6 (1997) (unpublished manuscript, on file with the author) ("Chamorros of Guam possess the distinction of being the first among Pacific Islander societies to be colonized who have yet to exercise their right of self-determination.").

for political self-determination as a non-self governing entity, and further distinguishes Guam's right to self-determination from the Chamorro indigenous right to self-determination and sovereignty. Lastly, section II (C) briefly discusses both the past and contemporary Chamorro movements for indigenous self-determination.

A. *The History of Guam and the Chamorros*

1. *Arrival of the Ancient Chamorros and Establishment of Culture and Society*

Prior to western contact, the Chamorros occupied Guam, the largest and southernmost island of the Marianas island chain, for almost four thousand years.¹² Based on anthropological evidence, Chamorros are descendants of peoples from the Southeast Asian region who had migrated to the western Pacific.¹³ Evidence also indicates that ancestors of the Chamorro people migrated in small groups, traveling by canoes, to the islands of Micronesia, using expert navigational and fishing knowledge to guide their travels.¹⁴

The Chamorro people, like other indigenous populations throughout the world, formed a structured and organized community rich in oral tradition and custom.¹⁵ Chamorros believed that the islands they occupied were at the center of the universe.¹⁶ Chamorro society recited oral history and legends that connected them to their natural surroundings.¹⁷ One such legend was the creation story of Puntan and Fu'una.¹⁸ Puntan and Fu'una were powerful beings who gave their bodies

¹² *Id.* (citing WILLIAM L. WUERCH & DIRK ANTHONY BALLENDORF, HISTORICAL DICTIONARY OF GUAM AND MICRONESIA (1994)). Chamorros are the indigenous inhabitants of the Mariana Islands, while Guam is the largest and southernmost of the Marianas chain. Chamorros settled about 3,000 to 5,000 years ago. *Id.*

¹³ ROBERT F. ROGERS, DESTINY'S LANDFALL: A HISTORY OF GUAM 22 (1995).

¹⁴ *Id.*

¹⁵ *Id.* at 24-25.

¹⁶ RESISTANCE IN PARADISE, *supra* note 3, at 110.

¹⁷ *See id.*

¹⁸ *Id.*

In the beginning of time, before the creation of the earth and the sky, there lived a powerful being named Puntan. After a long period of time, Puntan felt himself about to die, so he called his sister, Fu'una. Puntan gave her explicit directions as to the disposal of his body. He decreed that upon his death his eyes

for the creation of the sun, moon, and sky, and the island of Guam.¹⁹ The island of Guam in turn gave birth to the first Chamorro people, who were created in the image and likeness of Puntan and Fu'una.²⁰

Chamorro society had a caste system with the *chamorri* as the ruling class and the *manachang* as the lower commoner class.²¹ Every Chamorro village had a *maga'lahi*, or ruling chief.²² Despite being led by a male figure, ancient Chamorro society was matriarchal in many respects.²³ It embodied basic values of respect and togetherness in concepts such as *inafa'maolek*, which stressed the importance of the clan or the family as the center of the community.²⁴ Celebrating knowledge and the sharing of one's lineage and familial background was deemed vital to the Chamorro way of life.²⁵ *Inafa'maolek* also extended to ownership of land and private property of the family was viewed as a way to preserve

should become the sun and moon. Fu'una turned his breast into the sky, and his back into the earth. Puntan's eyebrows formed the rainbow, and the rest of his parts shaped the lesser things of the world.

When Fu'una contemplated the beautiful earth that had been brought into being, she decided that it should be peopled with men and women created in the likeness of her brother and herself. So, to this end, in order to best accomplish her purpose, she turned herself into a large rock, and situated herself in the southern part of Guam. The rock soon split open and out came hundreds of people who looked just like Fu'una and Puntan.

Id.

¹⁹ *Id.*

²⁰ *Id.*

²¹ ROGERS, *supra* note 13, at 36.

²² *See id.*

²³ *See* LAURA T. SOUDER, DAUGHTERS OF THE ISLAND: CONTEMPORARY CHAMORRO WOMEN ORGANIZERS ON GUAM 224 (2nd ed. 1992).

Females--particularly elder women in the clan, who were married and mothers--were powerful in all spheres of ancient Chamorro society. Through a matrilineal kinship system, women exercised control over family life, property, and inheritance. They assumed a central role and possessed strong bargaining powers in their marriages. They were active in commerce and wielded great influence in district governing councils.

Id.; *see also* ROGERS, *supra* note 13, at 34.

²⁴ RESISTANCE IN PARADISE, *supra* note 3, at 111.

²⁵ *Id.*

the family unit; land was to be kept through the generations and not given to strangers or released into the public domain.²⁶

The Chamorros were a multifaceted and complex people, both resourceful and creative.²⁷ They developed a well-organized economy, relying on farming, fishing, and hunting to sustain themselves.²⁸ Trade between the Chamorros of Guam and the inhabitants of other islands took place frequently.²⁹ Chamorro clans shared land, resources, and water rights collectively to ensure that clan members had equal access.³⁰

Chamorros' communal values and culture were reflected in the structures and physical creations erected by skilled Chamorro craftsmen and artisans.³¹ The Chamorro people built large stone structures called *latte* stones,³² which today serve as a symbol of Chamorro strength, perseverance, and identity, as the foundations for their homes.³³ Because Chamorros were sea-faring people, they created sophisticatedly designed canoes called *proas*³⁴ they constructed out of breadfruit tree trunks.³⁵ *Proas* were used primarily for fishing and traveling to other islands in the Marianas where other Chamorro populations lived.³⁶

²⁶ See ROGERS, *supra* note 13, at 36.

²⁷ PEDRO SANCHEZ, *GUAHAN GUAM: A HISTORY OF OUR ISLAND* 13-26 (1985).

²⁸ *Id.* at 13.

²⁹ *Id.*

³⁰ ROGERS, *supra* note 13, at 36.

³¹ See *id.* at 31-34.

³² SANCHEZ, *supra* note 27, at 15-19.

[L]atte stone technology, which are believed to be ancient limestone pillar foundations for prominent Chamorro structures, lasted until the late 1600's. Latte stones can still be found in the Marianas. The significance of the latte is evident within contemporary Chamorro society as the latte remains an emotive symbol of indigenous endurance.

Perez, *supra* note 11, 119-120.

³³ ROGERS, *supra* note 13, at 33-34.

³⁴ SANCHEZ, *supra* note 27, at 20.

³⁵ *Id.*; see also ROGERS, *supra* note 13, at 32.

³⁶ *Proa* sails were made from palm tree mats. *Id.*; see also ROGERS, *supra* note 13, at 32.

2. *The Spanish Conquest and Colonial Period*

After thousands of years existing as a sovereign independent people, Guam and the Chamorro people were “discovered” by the Western world with the arrival of Ferdinand Magellan on the shores of Guam in 1521.³⁷ Sailing under the Spanish flag, Magellan and subsequent explorers declared the islands a possession of Spain, naming them the Marianas Islands as a tribute to the Spanish queen Maria Ana.³⁸ In 1668, Spain established its first colony and immediately attempted to “civilize” the Chamorro people with Christianity and western ways of life.³⁹

Historical records from this period document Chamorro rebellions and revolts against the Spanish colonizers.⁴⁰ Recognizing that the Spanish were attempting to take away their way of life, their land, and essentially, their freedom, Chamorros engaged in island-wide revolts that spanned a period of about thirty years.⁴¹ This period was recognized as the Chamorro-Spanish Wars.⁴²

³⁷ RESISTANCE IN PARADISE, *supra* note 3, at 111.

³⁸ *Id.*

³⁹ *Id.*; see also ROGERS, *supra* note 13, at 41-57 (reciting the story of Father Diego Luis de San Vitores, a Jesuit priest at the forefront of Spanish efforts to “Christianize” Chamorros on Guam in the mid-1600s).

⁴⁰ RESISTANCE IN PARADISE, *supra* note 3, at 111.

⁴¹ *Id.*

⁴² POLITICAL STATUS EDUCATION COORDINATING COMMISSION, HALE’-TA, HINASSO’: TINIGE’ PUT CHAMORRO, INSIGHTS: THE CHAMORRO IDENTITY 13-14 (1st ed. 1993) [hereinafter POLITICAL STATUS EDUCATION COORDINATING COMMISSION] The Chamorro sentiment towards their Spanish colonizers during the Chamorro-Spanish Wars was reflected in a rousing speech by a Chamorro chief before rallying his warriors into battle. *Id.* The Speech of Maga’lahi Hurao, *documented* by Charles Le Gobien in 1700:

The Spanish would have done better to remain in their own country. We have no need of their help to live happily. Satisfied with what our islands furnish us, we desire nothing. The knowledge which [sic] they have given us has only increased our needs and stimulated our desires. They find it evil that we do not dress. If that were necessary, nature would have provided us with clothes. They treat us as gross people and regard us as barbarians. But do we have to believe them? Under the excuse of instructing us, they are corrupting us. They take away from us the primitive simplicity in which we live. They dare to take away our liberty[,] which should be dearer to us than life itself. They try to persuade us that we will be happier, and some of us have been blinded into believing their words. But can we have such sentiments if we reflect that we have been covered with misery and illness ever since these foreigners have come to disturb our peace? Before they arrived on the island, we did not know insects. Did we know rats, flies, mosquitos, and all the other little animals which [sic] constantly torment us? These are the beautiful presents they have made us. And what have

Although the Chamorros struggled to protect and restore their freedom and liberty, Spanish military power and disease reduced the indigenous populations from 50,000 to 3,500 by the early 1700s and eventually caused the revolt to subside.⁴³ Spanish colonialism materially impacted the indigenous Chamorro culture. Spanish customs and traditions fused with much of the indigenous culture, however, many of the “underlying values and social structures” of the Chamorro community remained Chamorro in essence.⁴⁴ Despite the intermarriage of Chamorros with their Spanish colonizers Chamorro lineage survived.⁴⁵ Chamorro survivors of this Spanish colonial period found methods to preserve and pass on their ancestral customs and traditions.⁴⁶ These ancient customs and traditions continue to be ingrained in the hearts and minds of Chamorros today.

their floating machines brought us? Formerly, we did not have rheumatism and inflammations. If we had sickness, we had remedies for them. But they have brought us their diseases and do not teach us the remedies. It is necessary that our desires make us want iron and other trifles which [sic] only render us unhappy? The Spaniards reproach us because of our poverty, ignorance and lack of industry. But if we are poor, as they tell us, then what do they search for? If they didn't have need of us, they would not expose themselves [in our midst]. For what purpose do they teach us except to make us adopt their customs, to subject us to their laws, and to remove the precious liberty left to us by our ancestors? In a word, they try to make us unhappy in the hope of an ephemeral happiness which can be enjoyed only after death. They treat our history as fables and fiction. Haven't we the same right concerning that which they teach us as incontestable truths? They exploit our simplicity and good faith. All their skill is directed towards tricking us; all their knowledge tends only to make us unhappy. If we are ignorant and blind, as they would have us believe, it is because we have learned their evil plan too late and have allowed them to settle here. Let us not lose courage in the presence of our misfortunes. They are only a handful. We can easily defeat them. Even though we don't have their deadly weapons which spread destruction all over, we can overcome them by our larger numbers. We are stronger than we think! We must regain our former freedom!

Id.

⁴³ RESISTANCE IN PARADISE, *supra* note 3, at 111.

⁴⁴ *Id.*

⁴⁵ See ROGERS, *supra* note 13, at 84.

⁴⁶ *Id.* at 2.

3. *The 19th to 20th Centuries: Guam as a U.S. Territory, the Japanese Insurgence, and Its New Social, Political, and Economic Makeup*

After almost 200 years of living under the Spanish flag, Guam and its Chamorro population were subjected to the will of yet another colonial power, falling under the authority and dominion of the United States.⁴⁷ Guam, along with Spain's other possessions in the Pacific and the Caribbean, was forcibly sold to the United States as a result of the Spanish-American War.⁴⁸

In furtherance of its expansionist policies, the U.S. government saw Guam as an ideal strategic location for military purposes and set up its first military outpost in 1899.⁴⁹ For the early period of the United States' occupation, Guam was under the authority of the U.S. Navy.⁵⁰ Because it was regarded as a naval base, Guam was "governed" by naval officials who conducted activities in a very rigid, militaristic fashion.⁵¹ Naval policy during this period towards Guam and its indigenous inhabitants was intended to assimilate and "Americanize" the Chamorros.⁵² The Chamorro people, however, were not regarded as citizens and not allowed to participate in government.⁵³ Laws passed by the naval government

⁴⁷ See SANCHEZ, *supra* note 27, at 75.

⁴⁸ *Id.* Pursuant to the Treaty of Paris of 1898, Spain forcibly sold its possessions in the Pacific and the Caribbean to the United States, including Cuba, Puerto Rico, and Guam. *Id.*

⁴⁹ RESISTANCE IN PARADISE, *supra* note 3, at 112.

⁵⁰ *Id.* at 112-13.

⁵¹ *Id.*

⁵² *Id.* See also, e.g., ROGERS, *supra* note 13, at 159-160.

Use of the Chamorro language in public schools was still forbidden. The 1940 census reported that nearly 75 percent of all persons on Guam over age ten spoke English, yet Chamorro remained the main language in nongovernmental activities despite decades of American efforts to suppress it. The navy interpreted Chamorro insistence on speaking the indigenous language as a cognitive deficiency on the part of the local people. Chamorro children were thus being raised in a kind of schizophrenic half-English, half-Chamorro social environment that denigrated their Chamorro cultural heritage and made them feel inferior to Americans.

Id.

⁵³ RESISTANCE IN PARADISE, *supra* note 3, at 112.

infringed upon their personal and private lives.⁵⁴ Although a Guam Congress was created in 1917, it was only an advisory body whose members were appointed by the naval governor.⁵⁵ Local Chamorros argued that this non-representative form of government was against the ideals of American democracy⁵⁶ and pleaded with Congress to examine and clarify the political status of Guam, and the rights of the Chamorros in relation to the U.S. occupation.⁵⁷

U.S. naval policy denying Chamorros both self-government and basic civil liberties was indirectly reinforced in 1901 by the United States Supreme Court in *Downes v. Bidwell*.⁵⁸ The Court ruled that the U.S. Constitution did not apply in the same fashion to insular territories as it did to states, reaffirming the doctrine of Congress's "plenary power" over the territories under Article IV, section 3, paragraph 2 of the Constitution.⁵⁹ The majority's holding was based primarily on ethnocentric justifications, as the Court found that "Anglo-Saxon principles" of government and justice would be virtually impossible to apply to "alien races" differing in "religion, custom, and modes of thought."⁶⁰ The Court further developed a new territorial doctrine for the United States and its possessions, creating the concept of an "unincorporated territory" which the Court defined as "not an integral part of the United States" and not intended to become a state.⁶¹

As a result of the *Downes* decision, the U.S. Navy continued to exercise absolute control over Guam and the Chamorro people. Because Constitutional protections were not applicable to them, Chamorros were

⁵⁴ *Id.*

⁵⁵ *Id.* at 113.

⁵⁶ See POLITICAL STATUS EDUCATION COORDINATING COMMISSION, *supra* note 42, at 23-24 (citing PETITION RELATING TO PERMANENT GOVERNMENT FOR THE ISLAND OF GUAM, H.R. Doc. No. 419 (1902), *reprinted in* POLITICAL STATUS EDUCATION COORDINATING COMMISSION). The petition was drafted and signed by thirty-two of Guam's prominent local residents and presented to Guam's Naval Governor Seaton Schroeder for clarification of Guam's political status. The petition states that "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." *Id.*

⁵⁷ *Id.* at 24.

⁵⁸ 182 U.S. 244 (1901).

⁵⁹ *Id.* at 269.

⁶⁰ *Id.* at 280-81; *see also* ROGERS, *supra* note 13, at 125.

⁶¹ *Downes*, 182 U.S. at 287; *see also* ROGERS, *supra* note 13, at 125.

denied basic rights under the American legal system including the right to a jury and opportunities to appeal cases to federal courts outside of Guam.⁶² In addition, all local judges and attorneys fell under the authority of the naval governor.⁶³

With the outbreak of World War II, Guam and the Chamorros faced yet another obstacle in the struggle for political self-determination.⁶⁴ In 1941, just one day after the invasion of Pearl Harbor, Japanese forces bombed Guam and were eventually successful in overrunning the existing naval government.⁶⁵ For two and a half years, Guam was controlled by Japanese military forces and during their occupation and imposition of martial law, the Chamorros experienced torture, death, hunger, and forced labor.⁶⁶ During this period, the Japanese imposed strict social standards on the citizens of Guam including the incorporation of the Japanese language into local education, and restrictions of the use of English and Chamorro.⁶⁷ Despite the Japanese occupation, Chamorro resistance to continued colonialism persisted as local citizens aligned secretly with U.S. naval officials still present on the island.⁶⁸

The Chamorro people's hope for an eventual U.S. return to Guam finally materialized on July 21, 1944.⁶⁹ Although the Chamorro community welcomed the arrival of U.S. armed forces and the end of the Japanese rule, this patriotism was short-lived as the reality of a return to U.S. control surfaced.⁷⁰ The aftermath of World War II brought a stronger

⁶² ROGERS, *supra* at note 13, at 158.

⁶³ *Id.*

⁶⁴ See RESISTANCE IN PARADISE, *supra* note 3, at 113.

⁶⁵ SANCHEZ, *supra* note 27, at 175-179.

⁶⁶ See RESISTANCE IN PARADISE, *supra* note 3, at 113.

The two and half year period of Japanese rule was a time of great fear and uncertainty for the Chamorro people. Their lives were disrupted as they were forced to provide food and labor for Japanese military. Many Chamorros today remember that time as a period of torture, death, and hunger.

Id.

⁶⁷ See generally SANCHEZ, *supra* note 27, at 183-208 (explaining the events that took place during the Japanese occupation and how the Chamorro people were adversely affected by the occupation).

⁶⁸ *Id.* at 225-226. Chamorros resisted in other ways to the Japanese occupation, including prayer and the singing of songs calling for the return of American forces. *Id.*

⁶⁹ *Id.* at 232.

⁷⁰ See Perez, *supra* note 11, at 110.

U.S. military and political presence on Guam because of its “geopolitical” and strategic value.⁷¹ Political control of the island was strengthened while concern about Chamorro reparations from the Japanese occupancy went unaddressed.⁷² These new aggressive policy concerns prompted the United States to engage in “land grabbing,” which involved the seizure of valuable pieces of land and the displacement of Chamorros and denial of access to lands that had, for centuries, been in their possession.⁷³ Because Chamorros are connected to their land in very sacred ways, land seizure and community displacement by the federal government was yet another event in the Chamorros’ unfortunate history.⁷⁴

Although U.S. policy towards the Chamorro people neglected local interests with regard to war reparations and land rights, concerns about their political, legal, and social relationship with the federal government were answered to some extent with the passage of the Organic Act of Guam⁷⁵ in 1950.⁷⁶ The act extended U.S. citizenship to both Chamorros

[D]ue to being rescued by the U.S. from suffering under Japanese occupation, as a sign of their appreciation, characteristic of indigenous generosity and reciprocity, the majority of Chamorros became highly patriotic, and hence tolerant and submissive to American rule in the 1940s. But the reality of American “rescue” became painfully obvious with the lack of concern for postwar civilian conditions.

Id.

⁷¹ See ROGERS, *supra* note 13, at 195, 204-207.

⁷² *Id.* at 214.

⁷³ *Id.* at 214-217; see also PEREZ, *supra* note 11, at 112.

The U.S. claimed huge pieces of land with the goal of possessing over half of the island. In turn, the U.S. military tended to acquire not only strategically located lands, but also the most beautiful landscapes and agriculturally rich lands. The freedom of movement among the very people whom the US claimed to be protecting was restricted as Chamorros were not permitted to set foot on significant portions of their island.

Id.; see also RESISTANCE IN PARADISE, *supra* at note 3, at 114, 117-118, 120.

⁷⁴ PEREZ, *supra* note 11, at 111.

Rooted in ancient Chamorro society, land continued to be central to indigenous culture, for at one time Guam was seen as: “a sacred place to the Ancient Chamorros who believed that all life Sprang [sic] from its soil. It was treated as everything but sacred by the long line of visitors who have since alighted on its shores.”

Id., quoting LAURA T. SOUDER, DAUGHTERS OF THE ISLAND: CONTEMPORARY CHAMORRO WOMEN ORGANIZERS OF GUAM 31 (2d ed. 1992).

⁷⁵ The Organic Act of Guam, Ch. 512, 64 Stat. 384 (1950) (codified as amended at 48 U.S.C. §§ 1421-24 (1988)) [hereinafter Organic Act of Guam]. Earlier version

and non-indigenous citizens residing on Guam⁷⁷ and enumerated a bill of rights similar to that of the U.S. Constitution.⁷⁸ A limited system of self-government was also instituted as three branches of government were created and decision-making for the island was placed in the hands of a local legislature composed of civilians.⁷⁹ This ended more than fifty years of Navy administration of Guam's affairs.⁸⁰

reprinted in POLITICAL STATUS EDUCATION COORDINATING COMMISSION, *supra* note 42, at 52-65. See discussion *infra* Parts III.A and III.B.c.

⁷⁶ See ROGERS, *supra* note 13, at 221-223.

⁷⁷ SANCHEZ, *supra* note 27, at 304.

The Organic Act of Guam granted American citizenship to all persons and their children born after April 11, 1899 on Guam who were residing on the date of enactment of the Organic Act on Guam, the States or other territory over which the United States exercised rights of sovereignty. It included those persons who were Spanish subjects or persons of other nationalities who were residing on Guam on April 11, 1899, and who continued to reside on Guam or in the States or any other territory over which the United States exercised sovereignty, and had taken no affirmative steps to preserve or acquire foreign nationality.

The Act also granted citizenship to all persons born on the Island of Guam on or after April 11, 1899, whether before or after the date of enactment of the Organic Act, and were living in a place subject to the sovereign jurisdiction of the United States, provided that, in the case of any person born before the date of enactment of the Organic Act, he had taken no affirmative steps to preserve or acquire foreign nationality.

Id.

⁷⁸ *Id.* at 305.

The Organic Act contained a bill of rights similar to those found in the amendments to the United States Constitution. It guaranteed freedom of religion, speech, press, and declared that no person may be deprived of his life, liberty, or property without the due process of the law. It guaranteed the right to peaceably assemble, to petition the government for a redress of their grievances as well as the right to a speedy and public trial. It did not, however, specifically provide for a trial by jury, leaving this to the Guam Legislature to decide. It forbade discrimination against any person in Guam on account of his race, language, color, or religion and guaranteed equal protection under law to all persons.

Id.

⁷⁹ See *id.* at 308-316.

⁸⁰ See ROGERS, *supra* note 13, at 224.

The Organic Act clarified many concerns about Guam and the Chamorros' relationship with the federal government, however, many of its provisions prompted Chamorros to wonder whether they were in fact "emancipated" and entitled full rights as American citizens.⁸¹ Of particular significance is the fact that although the Organic Act functions as a constitution for Guam, it was ultimately created by the U.S. Congress and not by Guam's citizens.⁸² The Act specifically authorized Congress to exercise its plenary power in amending it or enacting legislation for Guam without the consent of the local citizenry.⁸³ In addition, the Act clearly stated that Guam would remain an unincorporated territory of the United States, meaning that Guam and its people were not considered an "integral part" of the United States.⁸⁴ Furthermore, the Act provided that the Department of Interior would exercise direct control and supervision over the affairs of Guam's local government.⁸⁵ Unlike other U.S. citizens who enjoyed direct Constitutional protections, only certain Constitutional provisions are extended to Chamorros through the Organic Act.⁸⁶ Moreover, opportunities to participate in the national government are non-existent; Chamorros cannot vote for the President⁸⁷ and their Congressional representative does not have the right to vote.⁸⁸ Clearly, the Organic Act did not provide the self-determination that the Chamorro

⁸¹ *See id.* at 225-226.

⁸² *Id.* at 226. The citizens of Guam never had an opportunity to vote on the Organic Act. *Id.*

⁸³ Organic Act of Guam of 1950 § 9 *reprinted in* POLITICAL STATUS COORDINATING COMMISSION, *supra* note 42, at 60 ("All laws enacted by the legislature shall be reported by the Governor to the head of the department or agency designated by the President under section 3 of the Act, and him to the Congress of the United States, which reserves the power and authority to annul the same.").

⁸⁴ *Id.* § 3, *reprinted in* POLITICAL STATUS COORDINATING COMMISSION, *supra* note 42, at 53 ("Guam is hereby declared to be an unincorporated territory of the United States and the capital and seat of government thereof shall be located at the city of Agana, Guam."). *See also* SANCHEZ, *supra* note 27, at 304.

⁸⁵ SANCHEZ, *supra* note 27, at 304.

⁸⁶ *See* Organic Act of Guam of 1950 § 5, *reprinted in* POLITICAL STATUS COORDINATING COMMISSION, *supra* note 42, at 55-56; *see also* SANCHEZ, *supra* note 27, at 307.

⁸⁷ ROGERS, *supra* note 13, at 226.

⁸⁸ *See id.* at 239. Eventually a non-voting delegate to Congress was elected for Guam in 1972, after Congress, in reaction to pressure from the territories, passed the delegate bill, granting Guam and the Virgin Islands each a non-voting delegate in the House of Representatives. *See* SANCHEZ, *supra* note 27, at 419.

people sought. Rather, it was sophisticated colonialism disguised in the form of limited freedom.

Despite its shortcomings, the implementation of the Organic Act brought some social and political stability to the island as local citizens were given opportunities to govern and determine the affairs of Guam. After a string of presidentially-appointed, outside governors had presided over local affairs, a Chamorro, Joseph Flores, was finally appointed to the highest office of the island in 1961.⁸⁹ The creation of a Guam legislature prompted local politicians to organize themselves under various political parties and increased local voter participation.⁹⁰ Additionally, a security clearance that the Navy required for outsiders to enter Guam was finally lifted in 1962 through the political posturing of the local governor at the time, thereby paving the way for Guam to develop its private sector.⁹¹

The period between 1960 and 1980 brought a massive transformation to the social and economic development of Guam. The expansion of international travel, along with newly formed immigration policies, led new immigrant populations to settle on Guam from areas all around Asia, including the Philippines, Southeast Asia, and Japan.⁹² As a result of years of military occupation, the Caucasian population increased.⁹³ Economically, American capitalism gradually made its way into Guam, and the island started to develop a fledgling tourism industry attempting to attract visitors primarily from Japan and other parts of Asia.⁹⁴ Guam's social make-up gradually changed, and the Chamorro people now co-exist with non-indigenous immigrants as citizens of Guam under the control of the U.S. government.⁹⁵

Today, Guam's political status as an unincorporated territory remains the same, despite numerous petitions to Congress.⁹⁶ Guam, however, enjoys a flourishing tourism industry with hundreds of thousands of tourists visiting every year, primarily from Japan.⁹⁷ American capitalist

⁸⁹ SANCHEZ, *supra* note 27, at 332.

⁹⁰ See ROGERS, *supra* note 13, at 234-236.

⁹¹ *Id.* at 237.

⁹² *Id.* at 236, 239, 252.

⁹³ See *id.* at 273.

⁹⁴ See *id.* at 247.

⁹⁵ See *id.* at 273.

⁹⁶ See Van Dyke, *Self-Determination*, *supra* note 8, at 628.

⁹⁷ See ROGERS, *supra* note 13, at 277, 286.

and corporate interests also have a strong presence in the local economy.⁹⁸ Guam's social and ethnic make-up still continues to evolve. Although still the ethnic majority, Chamorros are faced with increasing numbers of immigrants from Asia and the outer regions of the Pacific.⁹⁹ Chamorro out-migration to the U.S. mainland because of economic hardship and dissatisfaction with the inadequacies and corruption of the local government further diminishes the number of Chamorro people on Guam.¹⁰⁰

4. *The Chamorro Community, Culture, Heritage, and Identity in Modern Times*

Despite the change in the construction of Guam's political, economic and social dynamics, modern Chamorros continue to find pride and identity in their indigenous roots.¹⁰¹ Although the modern Chamorro is impacted and influenced by western and, more specifically, American values and ways of life, Chamorro people struggle to stay true to their culture and identity.¹⁰² For example, traditional Chamorro customs such as "reciprocity and offering (*chenchule*'), hospitality, respect for the elderly (*manginge*')," as well as organizing in extended family units are persistent patterns of social organization and central to Chamorro identity.¹⁰³ Like their ancestors, "Chamorros continue to plant, harvest, farm, and raise livestock," both at home and at their ranches.¹⁰⁴ Despite the loss of many

⁹⁸ See *id.* at 286.

⁹⁹ See *id.* at 273, 287.

¹⁰⁰ See Congressman Robert A. Underwood, Annual Address: State of Guam's Agenda in Washington, D.C. (Aug. 9, 2001), at <http://guampdn.com/news/stories/20010809/topstories/854950.html> (last visited Feb. 23, 2001).

¹⁰¹ Perez, *supra* note 11, at 7 ("Chamorros have remained culturally true to their roots and trace their origin to the precontact era.").

¹⁰² *Id.* at 146.

Although one might perceive Chamorro culture as nonexistent in the face of Americanization, as one peels away the layers it becomes evident that indigenous cultural expression continues to challenge American culture. Chamorros have therefore maintained a sense of their indigenous identity manifested in their ongoing cultural endurance, in spite of overwhelming Western hegemony and American acculturation.

Id.

¹⁰³ *Id.* at 146.

¹⁰⁴ *Id.*

portions of their indigenous language, Chamorros “continue to struggle to maintain their language and culture in the home and through the establishment of language and cultural programs.”¹⁰⁵

Chamorros, in modern times, have begun to educate themselves about the realities of their past and their continued subjugation, responding in many cases, through political activism.¹⁰⁶ Modern Chamorros have raised their consciousness about political issues affecting them, and old sentiments of American “patriotism” stemming from post-World War II days are quickly subsiding.¹⁰⁷ Sociologists see the efforts to preserve and protect Chamorro culture as a form of resistance to the larger powers in mainstream society that control Chamorro interests and pose a threat to their identity as a distinct and sovereign people.¹⁰⁸ Chamorro resistance to western influences and American domination is reflected not only in academic and political discourse, but also in contemporary artforms such as song and poetry.¹⁰⁹

Despite its resilience and spirit, the Chamorro community faces the challenge of preserving its indigenous identity in the most adverse of circumstances. One half of Guam’s land is still controlled by the U.S. military, despite the military’s recognition that many of these lands are “excess.”¹¹⁰ Gradually, Chamorros are becoming a minority in their homeland and have the potential to lose both political and social power because of the changes in Guam’s ethnic composition.¹¹¹ In addition,

¹⁰⁵ *Id.* at 146-47.

¹⁰⁶ *Id.* at 147-53.

¹⁰⁷ *See id.* at 17.

¹⁰⁸ *Id.* at 72.

I propose that there is an ongoing *indigenous culture of resistance* to neocolonialism . . . and identity crisis. This resistance has two interdependent faces—*cultural rearticulation* and *political contestation/identity reconstruction*. The *history of indigenous resistance* reveals the unsurmountable resilience and strategic nature of indigenous cultures, despite overwhelming cultural erosion Chamorro culture, in turn, has been shown to persist as well as adapt to new conditions which is manifested within their contemporary expression of ethnicity

Id. (emphasis in original).

¹⁰⁹ RESISTANCE IN PARADISE, *supra* note 3, at 127-128; *see generally* UNFAITHING U.S. COLONIALISM 7-39 (Deborah Lee & Antonio Salas eds., 1999).

¹¹⁰ PEREZ, *supra* note 11, at 132.

¹¹¹ *See* ROGERS, *supra* note 13, at 273.

capitalism and western influences, at their highest levels today on Guam, continue to eat away at the foundation of Chamorro culture and identity.¹¹²

B. *Guam's Quest for Self-Determination as a Non-Self Governing Entity*

One of the primary goals of Guam's local government in the past three decades has been the pursuit of self-determination for itself and its citizens, recognizing that its current political status as an unincorporated territory of the United States infringes upon its autonomy and the opportunity for self-government.¹¹³ Currently, Guam has a limited form of self-government; the U.S. government exercises ultimate authority through the Interior Department and the plenary power of Congress.¹¹⁴ Citizens of Guam are still not able to participate in national presidential elections.¹¹⁵ Guam's congressional delegate still lacks any voting power in Congress.¹¹⁶ The federal government continues to define and control social, economic, and political policies, which Guam's local government should control such as immigration and trade with other nations.¹¹⁷

Local leaders' observations that Guam's political relationship with the United States was not as equitable as once thought, and hence needed to reflect more local self-determination, surfaced in the late 1960s.¹¹⁸ Subsequently, local legislators and politicians pushed for a formal discussion of Guam's political status and politically viable avenues for self-determination.¹¹⁹ Consequently, in 1976, Congress passed legislation

¹¹² PEREZ, *supra* note 11, at 140.

¹¹³ See SANCHEZ, *supra* note 27, at 422.

¹¹⁴ See The Organic Act of Guam of 1950 §§ 3, 19, reprinted in POLITICAL STATUS COORDINATING COMMISSION, *supra* note 42, at 53, 60; see also SANCHEZ, *supra* note 27, at 304.

¹¹⁵ See ROGERS, *supra* note 13, at 226.

¹¹⁶ See *id.* at 239.

¹¹⁷ See *id.* at 272-73. In the early 1980s, the Guam Legislature established a Commission on Self-Determination. *Id.* The Commission drafted a proposal of Commonwealth, which sought to change the federal government's controlling relationship with Guam and its local affairs, essentially giving Guam's local government more political autonomy. *Id.*

¹¹⁸ See SANCHEZ, *supra* note 27, at 422.

¹¹⁹ See *id.* at 424-32. The Twelfth Guam Legislature, in 1973, formed the first of three political status commissions to examine the legal, economic, social, and political aspects of the status question. *Id.* at 424.

that authorized the legislature of Guam to hold a constitutional convention and draft its own constitution.¹²⁰ Pursuant to this legislation, a delegation of thirty-two individuals drafted a constitution and submitted it to the people of Guam for their approval.¹²¹ Political and public opposition to the adoption of a constitution expressed that this was premature and that the people of Guam should determine their own political status; consequently, an overwhelming majority of registered voters voted against it.¹²²

Further efforts to address Guam's political future and its quest resulted in the creation of the Commission on Self-Determination in 1980.¹²³ Composed of eleven local politicians and legislators, its primary task was to investigate alternative political solutions that Guam could pursue to facilitate a referendum regarding what type of political system the people of Guam preferred.¹²⁴ A second Commission on Self-Determination, created in 1984, established Commonwealth status as a primary political goal for Guam to pursue determining that Commonwealth status would allow for more local political authority over the island, including the power to control immigration, as well as freedom from certain federal laws.¹²⁵ In furtherance of this goal, the Draft Commonwealth Act¹²⁶ was created by the Commission in the 1984 and was subsequently submitted for Congressional approval.¹²⁷ From the period of 1988 to 1995, the Act was repeatedly submitted to the House of Representatives as a bill, but was never seriously considered.¹²⁸ Congressional refusal to consider the Commonwealth Act primarily stemmed from concern about the Act's provisions that provided for

¹²⁰ *Id.* at 432.

¹²¹ *See id.* at 432-38.

¹²² *Id.* at 438.

¹²³ *Id.* at 440.

¹²⁴ *Id.*

¹²⁵ *Id.* at 442; *see also* Van Dyke, *Self-Determination*, *supra* note 8, 629. The article outlines that the Chamorros of the Northern Mariana Islands, who enjoy Commonwealth status, have more autonomy and political authority over local affairs. *Id.*

¹²⁶ Guam Commonwealth Act, H.R. 98, 101st Cong. 101 (1989). *See* discussion *infra* part III.A.

¹²⁷ SANCHEZ, *supra* note 27, at 443.

¹²⁸ Van Dyke, *Self-Determination*, *supra* note 8, at 628.

Chamorro self-determination.¹²⁹ In addition, non-indigenous citizens of Guam, including Caucasians and Filipinos, opposed provisions providing for Chamorro self-determination and more stringent immigration policies.¹³⁰ Today, the unresolved question of Guam's pursuit of Commonwealth status has prompted local leaders to examine other strategies for political change.¹³¹

Although the concept of political self-determination has been examined and discussed by leaders on Guam for decades, it is important to distinguish that under international legal principles, Guam, as a non-self governing entity, has a right to self-determination separate from the Chamorro indigenous rights to self-determination that are the focus of this comment.¹³² Originally, the Chamorro right to self-determination was associated interchangeably with Guam's right to self-determination as Guam was predominantly occupied by Chamorro inhabitants who were directly impacted by the island's colonial political status under the Organic Act of 1950.¹³³ However, with the new developing social dynamics on Guam, non-Chamorros have become an integral part of Guam's population, both enjoying the benefits of Guamanian citizenship as well as sharing the burden of being denied the right to self-determination.¹³⁴ Thus, indigenous Chamorro claims to self-determination have become engulfed in, and confused with, a broader political goal for self-determination sought by all citizens residing on Guam.¹³⁵

Legal scholars have examined the differences between these two rights to self-determination under international law, recognizing that the two rights may be in conflict.¹³⁶

These two separate claims to self-determination and self-governance may sometimes come into conflict, or

¹²⁹ ROGERS, *supra* note 13, at 274.

¹³⁰ *Id.*

¹³¹ Van Dyke, *Self-Determination*, *supra* note 8, at 629.

¹³² *See generally id.* (identifying and distinguishing the separate rights to self-determination on Guam: the Chamorro indigenous right to self-determination and the right to self-determination for the citizens of Guam as part of a non-self governing entity).

¹³³ *See* ROGERS, *supra* note 13, at 273.

¹³⁴ *Id.* at 285-86.

¹³⁵ *See* Van Dyke, *Self-Determination*, *supra* note 8, at 623-27.

¹³⁶ *Id.*

appear to do so. The situation in Guam presents a clear example of this apparent conflict because (a) the people of Guam and (b) its indigenous inhabitants[, the Chamorros,] each have separate claims to exercise their rights to self-determination and self-government.¹³⁷

One author argues that, although both movements for self-determination are equally important, there must be a distinction between the two self-determination movements, and he outlines separate avenues under international law to pursue these rights.¹³⁸

C. *The Chamorro Movement for Self-Determination and the Quest for Indigenous Rights*

The first efforts for Chamorro indigenous advocacy were initiated in the early 1970s by a group of Chamorro activists called *Para Pada*.¹³⁹ The group advocated the perpetuation of Chamorro culture and language, a return of federally owned land to the indigenous owners, and Chamorro self-government.¹⁴⁰ *Para Pada* was one of the main groups in opposition to Guam's Draft Constitution, arguing that the constitution was simply an amended Organic Act that did not further Chamorro self-determination.¹⁴¹

As Guam's government sought to investigate other political status options, Chamorro indigenous rights activists continued pushing for Chamorro rights within the larger framework of Guam's pursuit for self-determination.¹⁴² With the creation of the Commission on Self-Determination, indigenous rights advocates argued that only Chamorros should be entitled to vote in any self-determination plebiscite because it was the indigenous Chamorros who had been denied political self-determination since the arrival of the Spanish, and they should therefore have the ultimate say in the political future of their land.¹⁴³ They

¹³⁷ *Id.* at 624.

¹³⁸ *Id.* at 623-24.

¹³⁹ SANCHEZ, *supra* note 27, at 438. *Para Pada* played on Chamorro words: "stop" (*Para*) and "slapping" (*Pada*). *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *See id.* at 440.

¹⁴³ *Id.*

distinguished themselves from ethnic groups who had more recently immigrated to Guam and asserted that those groups should not participate in decisions for Guam's political future.¹⁴⁴ While the Draft Commonwealth Act was in the works, indigenous rights activists continued their efforts to ensure that Chamorro rights were incorporated into the draft's provisions. An organization called the Organization of People for Indigenous Rights ("OPI-R") lobbied and petitioned those involved with the Commonwealth Draft Act, requesting that there be some recognition of indigenous rights to self-determination within the Act's provisions.¹⁴⁵ In addition, they argued that only Chamorros be allowed to vote for the Act.¹⁴⁶ OPI-R efforts to educate and advocate for Chamorro indigenous self-determination were taken to the international arena; they were the first group from Guam to be involved in United Nation forums on indigenous colonized peoples.¹⁴⁷

In the 1990s, Chamorro activism took a more radical and proactive approach with the formation of the Chamoru Nation.¹⁴⁸ Created to appeal to grass-roots Chamorros, the organization wanted to promote Chamorro self-sufficiency and sovereignty.¹⁴⁹ The Chamoru Nation sought to protect its sovereignty and culture through protection of the six traditional elements integral to the Chamorro culture: the land (*tano*), waters (*hanom*), air (*aire*), spirituality (*hinnenghe*), language (*linguahe*), and culture (*kottura*).¹⁵⁰ In addition to declaring itself a sovereign nation, the group engaged in massive protest and civil disobedience.¹⁵¹ Advocating the establishment of native rights to Guam's land and resources, the group was also instrumental in the activation of the Chamorro Land Trust Commission¹⁵² in 1992; the commission was created in 1974 to lease

¹⁴⁴ *Id.*

¹⁴⁵ ROGERS, *supra* note 13, at 273; *see also* CHAMORRO SELF-DETERMINATION 103-124 (Laura Souder-Jaffery & Robert A. Underwood eds., 1987) (explaining the purpose and goals of the Organization of People for Indigenous Rights in attaining Chamorro self-determination).

¹⁴⁶ ROGERS, *supra* note 13, at 273.

¹⁴⁷ PEREZ, *supra* note 11, at 152.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ RESISTANCE IN PARADISE, *supra* note 3, at 121.

¹⁵¹ *Id.*

¹⁵² *See* discussion *infra* Part III.A.

“Chamorro lands” to “native Chamorros.”¹⁵³ Pushing for a concrete definition of “native Chamorro” under the Act, the organization, led by its charismatic leader, Angel Santos, brought the issue before a local court that ruled in its favor and directed the Governor to form the commission and carry out the provisions of the Act.¹⁵⁴

Today, the struggle to preserve Chamorro culture, establish rights to land and resources, and achieve self-determination continues. The Chamoru Nation, along with other indigenous rights organizations, has united to form the Colonized Chamoru Coalition.¹⁵⁵ Affiliating itself with other indigenous groups around the world, the organization has managed to garner overwhelming support for their continued efforts to challenge U.S. control over Guam, as well as for the further protection and preservation of Chamorro indigenous rights to self-government and self-determination.¹⁵⁶ In December 2001, the organization facilitated the *I-Tano’ Ta I Lina’la-Ta* conference on Guam to examine indigenous rights to self-determination for all indigenous peoples around the world and to affirm their solidarity.¹⁵⁷

III. ANALYSIS

“I am a warrior. I am a healer.”

Section III examines and discusses Chamorro indigenous rights to self-determination and sovereignty. First, it argues that local law needs to enumerate explicit native rights because of the responsibility and obligation that the government and citizens of Guam share to ensure that the Chamorro people are protected. The section further argues that the U.S. government should extend its trust relationship to the Chamorro people as indigenous peoples within their territory, and should ultimately

¹⁵³ ROGERS, *supra* note 13, at 249.

¹⁵⁴ PEREZ, *supra* note 11, at 152. Angel Santos is currently a senator in the current Guam legislature. *Id.*

¹⁵⁵ See Letter from Ed Benavente, Maga’lahi, Chamoru Nation, to Micheal O’Neill, President, Pacific Century Financial Corp. (Nov. 13, 2001) (on file with the author).

¹⁵⁶ See COLONIZED CHAMORU COALITION OF GUAHAN, RESOLUTION RELATIVE TO CALLING UPON THE UNITED STATES OF AMERICA TO CEASE THE OPPRESSION OF THE CHAMORRO PEOPLE (Dec. 1, 2001) (on file with the author). In the Chamorro language, *I-Tano’ Ta I Lina’la-Ta* means “Our Land is Our Life.” *Id.*

¹⁵⁷ See COLONIZED CHAMORU COALITION OF GUAHAN, I TANO’TA I LINA’LA-TA: A RESOLUTION TO AFFIRM THE SOLIDARITY OF INDIGENOUS PEOPLES (Dec. 1, 2001) (on file with the author).

afford federal recognition to Chamorros, as Native Americans. Finally, this section outlines the indigenous rights to self-determination and sovereignty that the Chamorro people are entitled to under international law and argues that because international law is part of U.S. law, the United States must comply with international law by recognizing Chamorros as indigenous peoples and affording them rights of self-determination.

A. *Chamorros Have a Right to Recognition as an Indigenous Peoples under Guam Law*

Recognition of Chamorro indigenous rights has remained virtually non-existent throughout the span of Guam's political history. Prior to the 1950s, it seemed unnecessary because Guam was predominantly composed of Chamorro people.¹⁵⁸ Today, however, the need to recognize the rights of Chamorros as original inhabitants of the land has become more urgent for a number of reasons. First, with the influx of non-indigenous immigrants to Guam and the recent affirmation of these people as citizens, Chamorros have become a minority in their own land and are slowly losing their political and social power.¹⁵⁹ Second, Chamorro rights are increasingly undermined, ignored, or challenged because of more "compelling" state interests, including tourism and capitalism.¹⁶⁰ Finally, attempts to introduce Chamorro indigenous rights into Guam's local law have been met with opposition from both non-indigenous citizens of Guam as well as from the federal government.¹⁶¹

¹⁵⁸ See ROGERS, *supra* note 13, at 273.

¹⁵⁹ See *id.* at 236, 239, 247, 252, 273, 287; see also Congressman Robert A. Underwood, Annual Address: State of Guam's Agenda in Washington, D.C. (Aug. 9, 2001), at <http://www.guampdn.com/news/stories/20010809/topstories/854950.html> (last visited Feb. 23, 2001).

¹⁶⁰ See, e.g., Letter from Thomas P. Michels, Chairman, Eloise R. Baza, President, Guam Chamber of Commerce, to U.S. Department of Defense (Aug. 29, 2001) (on file with the author). The letter states the Guam Chamber of Commerce's full support of the Department of Defense's retention of federal lands on Guam to be used for military purposes. *Id.* The Chamber of Commerce maintained that retention of this land "would increase critically needed economic activity." *Id.* These lands earlier had been deemed "in excess" by the federal government, which had discussed returning this land to the original indigenous landowners of Guam. *Id.*; see also Letter from Ed Benavente, *supra* note 155.

¹⁶¹ See, e.g., ROGERS, *supra* note 13, at 274. Guam's first Commonwealth Draft Act included a provision outlining a continued Chamorro indigenous right to self-determination. *Id.* This provision was met with opposition from both Congressional committee and staff members reviewing the act, as well as stateside residents of Guam. *Id.*

The first body of law that might arguably have given the Chamorro people some preferential treatment was the Organic Act of 1950. Section 9(a) of the Act gives the Governor of Guam the discretion to make appointments and promotions to qualified persons, based on “Guamanian ancestry.”¹⁶² In addition, the provision also provides persons of “Guamanian ancestry” opportunities for higher education and to attend in-service training facilities.¹⁶³

Strict textualists argue that the term “Guamanian” used in the Act does not refer to indigenous inhabitants, but rather to any person, including non-Chamorros, residing or with a history of occupying Guam.¹⁶⁴ According to this view, because the term “Chamorro” was never explicitly outlined in the Act, these preferences apply not only to the indigenous inhabitants, but to any permanent legal citizen of Guam.¹⁶⁵ Chamorro rights advocates have challenged these arguments and maintain that Congress intended the terms “ancestry” and “Guamanian” to be synonymous with the term “Chamorro.”¹⁶⁶ Chamorro rights scholars also suggest that U.S. reports to the United Nations on the status of the Chamorros in 1946 further indicate that Chamorro preferences were contemplated when the aforementioned Organic Act provisions were drafted.¹⁶⁷

¹⁶² POLITICAL STATUS COORDINATING COMMISSION, *supra* note 42, at 58 (“In making appointments and promotions, preference shall be given to qualified persons of Guamanian ancestry. With a view to insuring the fullest participation by Guamanians in the government of Guam, opportunities for higher education and in-service training facilities shall be provided to qualified persons of Guamanian ancestry.”).

¹⁶³ *Id.*

¹⁶⁴ PEREZ, *supra* note 11, at 26 (“Making claims to indigenous rights has inevitably led to controversy. In this vein, indigenous Chamorro rights have been challenged by rhetoric regarding the existence of Chamorros by purist arguments, and the issue of inclusiveness versus exclusiveness emanating from the ambiguous meaning of the politically constructed term ‘Guamanian.’”).

¹⁶⁵ *See id.* at 7.

Initially constructed in the mid-1940’s under U.S. Navy rule, the term “Guamanian” took on an increased significance after the signing of the Organic Act of Guam in 1950, which granted American citizenship to the residents of Guam and marked the beginning of the major influx of non-Chamorros. Therefore, “Guamanian” technically came to refer to permanent residents of Guam regardless of race and ethnicity.

Id.

¹⁶⁶ *See* SANCHEZ, *supra* note 27, at 264.

¹⁶⁷ *See* PEREZ, *supra* note 11, at 26.

Nevertheless, Cristobal indicates that in addition to cultural continuity attesting to the existence of the Chamorro people combined with the

In modern times, there are few, special native rights for Chamorros within Guam's legal system. One legal acknowledgement of Chamorro rights was the creation of the Chamorro Land Trust in 1974, which was patterned after the Hawaiian Homes Commission Act.¹⁶⁸ The Chamorro Land Trust Act¹⁶⁹ provides that the Chamorro Land Trust Commission (created by the Act) is to lease Chamorro homelands and lands owned by the government of Guam, to "native Chamorros" for agricultural, grazing, and residential use.¹⁷⁰ It requires that a native Chamorro lessee pay one dollar a year for a term of ninety-nine years.¹⁷¹ Departing from the blood quantum criteria mandated by the Hawaiian Homes Commission Act, the Chamorro Land Trust Act defines "Native Chamorro" as "any person who became a U.S. citizen by virtue of the authority and enactment of the Organic Act of Guam or descendants of such person."¹⁷² The Act also

uncontested historical record regarding the denial of self-governance to Chamorros, acknowledgement of Chamorro existence is clearly articulated with the legalities of political discourse. Referring to the U.S. first annual report to the United Nations in 1946, Cristobal (1993, p.141) notes :

On the basis of this initial report by the U.S. to the United Nations, it is obvious that the people of Guam being discussed for the purpose of fulfilling the obligation under Article 73 are, in fact, the Chamorro people. The term Guamanian, which was invented after World War II, was and is synonymous with the term Chamorro in this context.

Id.

¹⁶⁸ Act of July 9, 1921, ch. 42, 42 Stat. 108. The Hawaiian Homes Commission Act ("HHCA"), was signed into law by Congress in 1921. *See HAWAI'I ADVISORY COMMITTEE TO THE U.S. COMMISSION ON CIVIL RIGHTS, RECONCILIATION AT A CROSSROADS: THE IMPLICATIONS OF THE APOLOGY RESOLUTION AND RICE V. CAYETANO FOR FEDERAL AND STATE PROGRAMS BENEFITING NATIVE HAWAIIANS 7-8 (June 2001).* It was created to address the declining economic and social conditions of Native Hawaiians. *Id.* The federal government set aside 200,000 acres of land in the territory of Hawai'i, later to become the state of Hawai'i, in an effort to establish a "homeland" for Native Hawaiians. *Id.* The Act provided for the leasing of lands for residences, farms, or ranches to Native Hawaiians of fifty percent or more Hawaiian blood, for a dollar a year. *Id.* When Hawai'i became a state, it agreed to act as trustee under the HHCA, in administering lands to Native Hawaiians. *Id.*

¹⁶⁹ 21 GUAM CODE ANN. § 75 (1995).

¹⁷⁰ *Id.* § 75107(a).

¹⁷¹ *Id.* § 75108(b).

¹⁷² *Id.* § 75101(d).

requires that three of the five members of the Chamorro Land Trust Commission be Native Chamorro.¹⁷³

Another attempt to establish Chamorro indigenous rights was the proposed Commonwealth Act.¹⁷⁴ Although the Commonwealth Draft Act submitted by Guam's Committee on Self-Determination was never enacted and is not binding law, its provisions outlining Chamorro rights were, nevertheless, an indication that the local government, while pursuing its own political self-determination, also acknowledged indigenous rights.¹⁷⁵ The proposed Commonwealth Act states:

The US Congress further recognizes that Commonwealth does not limit the pursuit by the Chamorro people of any ultimate status which they may seek in their progress toward fulfillment of their inherent right of self-determination as expressed in Article 73 of the Charter of the United Nations and in the United Nations Resolution 1514.¹⁷⁶

Although this particular provision was well intentioned, it was struck down by local voters when voted on in Guam.¹⁷⁷

The most recent effort by Guam's leaders to address indigenous Chamorro issues was the creation of the Chamorro Registry Act.¹⁷⁸ The purpose of the Registry was to compile and collect data on the registration eligibility of Chamorro families, and residency of all Chamorros on Guam.¹⁷⁹ The Act defines "Chamorro" as

- 1) All inhabitants of the Island of Guam on April 11, 1899, including those temporarily absent from the Island on the date and who were Spanish subjects; and 2) all

¹⁷³ *Id.* § 75102.

¹⁷⁴ Guam Commonwealth Act, H.R. 98, 101st Cong. (1st Sess. 1989).

¹⁷⁵ See ROGERS, *supra* note 13, at 284.

¹⁷⁶ Guam Commonwealth Act, *supra* note 174, art. I, § 103(a).

¹⁷⁷ See ROGERS, *supra* note 13, at 284. Many of the voters who voted against the act were non-indigenous citizens who opposed the pro-Chamorro content of the Act. See *id.* at 274.

¹⁷⁸ 3 GUAM CODE ANN. Ch. 20 (2001).

¹⁷⁹ *Id.* § 20002. The Chamorro Registry was created to gather information on the status of Chamorros on Guam and to ensure Chamorro voter participation. Under the Act, it is a body administered by an advisory board to the Guam Election Commission.

persons born on the Island of Guam prior to 1800, and their descendants, who resided on Guam on April 11, 1899, including those temporarily absent from the Island on that date, and their descendant.¹⁸⁰

The Act also created a Chamorro Registry Advisory Board that required all board members to be Chamorros and have extensive experience in working with Chamorro indigenous issues.¹⁸¹

There are indications that Guam is starting to recognize the Chamorros' special rights as indigenous aboriginal peoples, however, legal challenges could surface in response to acts some may interpret as "race-based preferences,"¹⁸² giving rise to possible equal protection claims under both the Organic Act and the U.S. Constitution.¹⁸³ Because the Chamorro people are not federally recognized as indigenous peoples, some may argue that they do not share a "special relationship"¹⁸⁴ with the U.S. government. Arguably, Chamorro indigenous rights would not trigger a "rational basis" standard of judicial review,¹⁸⁵ but would instead

¹⁸⁰ *Id.* § 20001.

¹⁸¹ *Id.* § 20026.

¹⁸² Under Fourteenth Amendment equal protection analysis, the U.S. Supreme Court has ruled that race-based classifications in both federal and state laws are subject to "strict scrutiny," the highest level of constitutional judicial review. If a statute is found to be race-based, the state must demonstrate that it has a "compelling governmental interest" in upholding the statute, and that it is the "least drastic alternative" in fulfilling the state's purpose. *See, e.g., Adarand Constructors v. Peña*, 515 U.S. 200 (1995); *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989).

¹⁸³ *See Van Dyke, Self-Determination, supra* note 8, at 627 ("Although many people of Guam interpret self-determination as an indigenous only redress for historic wrongs, the United States government, through its task force, has suggested that the Chamorro only self-determination movement is unconstitutional."). The Fourteenth Amendment of the United States Constitution was extended to citizens of Guam through the Organic Act of Guam of 1950 § 5(n), *reprinted in* POLITICAL STATUS COORDINATING COMMISSION, *supra* note 42, at 56 ("No discrimination shall be made in Guam against any person on account of race, language, or religion, nor shall the equal protection of the laws be denied.").

¹⁸⁴ The term "special relationship" signifies that the federal government has recognized that a political relationship exists with indigenous peoples such as Native Americans. A special relationship establishes that the indigenous groups within the United States are semi-autonomous nations and enjoy sovereignty and self-determination through self-government. Along the same lines, the federal government has a trust responsibility to assist in the protection of these indigenous groups through federal aid. *See* discussion *infra* Part III.B.2.

¹⁸⁵ In *Morton v. Mancari*, 417 U.S. 535, the Supreme Court, in determining whether the Bureau of Indian Affairs' hiring preferences for Native Americans was

be considered a racial classification subject to “strict scrutiny.” Because of these possible challenges, it is imperative that the Chamorro people pursue federal recognition to establish a formal trust relationship with the United States.

Courts have, however, upheld the establishment of native rights by state and local governments, even in the absence of federal recognition. Guam’s neighbor to the north, the Commonwealth of the Northern Marianas,¹⁸⁶ has a provision in the Northern Marianas Islands (“NMI”) Constitution¹⁸⁷ that provides land ownership preferences for the natives of the island, Chamorros and Carolinians. Section 805 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States¹⁸⁸ created a political relationship between the Northern Marianas and the United States and provides that the government of the Northern Marianas may restrict the ownership and control of real property to persons of Northern Marianas descent “in view of the importance of the ownership of land for the culture and traditions of the people of the Northern Mariana Islands.”¹⁸⁹ The provision was later incorporated into Article XII of the NMI Constitution.¹⁹⁰ This preference for Northern Marianas natives was challenged under the Fourteenth Amendment in *Wabol v. Villacrusis*,¹⁹¹ and was upheld by the Ninth

unconstitutional under the Fourteenth Amendment, reiterated that the statute was designed to foster the “political relationship” between native peoples, and the federal government and mandated that the state only show a rational basis, the most lenient form of judicial review. *Id.* at 552-54; *see also infra* notes 227-31.

¹⁸⁶ Covenant to Establish a Commonwealth of the Northern Mariana Islands (“NMI”) in Political Union with the United States (set out under 48 U.S.C. § 1681 note (1987)), *reprinted in* 15 I.L.M. 651 (1976); *see also* Larry Wentworth, *The International Status and Personality of Micronesian Political Entities*, 16 ILSA J. INT’L L. 1, 4 (1993). The Commonwealth of the Northern Marianas is part of the Marianas Island chain, which Guam also is part of. *Id.* The NMI has a different political status as compared to Guam; it is a Commonwealth of the United States, which gives it more political autonomy and local control. *Id.*

¹⁸⁷ Wentworth, *supra* note 186, at 4. After the United States entered into a relationship with the NMI through the Covenant to Establish a Commonwealth of the Northern Marianas Islands in Political Union with the United States, a locally written constitution was ratified by ninety-three percent of the vote in 1977. *Id.*

¹⁸⁸ 48 U.S.C. § 1681 (2001).

¹⁸⁹ *See Wabol v. Villacrusis*, 898 F.2d 1381, 1383 n.1. (1990). *See further discussion infra* Part III.B.3.e.

¹⁹⁰ *Id.* at 1383.

¹⁹¹ 898 F.2d 1381.

Circuit Court of Appeals.¹⁹² The Ninth Circuit emphasized the importance of native rights, specifically the importance of the survival of native culture and tradition through ownership and control of land and resources.¹⁹³

Native Hawaiians, despite the absence of formal recognition by the federal government, are also entitled to special rights within Hawai'i state law. The state serves as trustee under the Hawaiian Homes Commission Act,¹⁹⁴ leasing land set aside by the federal government for the benefit of Native Hawaiians.¹⁹⁵ The state also serves as trustee under the Ceded Lands Trust established pursuant to the Admission Act, administering land and revenues from the trust for the "betterment of native Hawaiians."¹⁹⁶

Hawai'i's Constitution also provides special rights and establishes separate and preferential programs for the protection of Native Hawaiians. Article 12 of the Hawai'i Constitution provides that the state "shall protect all rights, customarily and traditionally, exercised for subsistence, cultural and religious purposes" for Native Hawaiians.¹⁹⁷ Amendments to the Constitution have created the Office of Hawaiian Affairs ("OHA"), a state agency designed to ensure that revenues from the Ceded Lands Trust are directed towards the betterment of Native Hawaiians.¹⁹⁸ All nine members of the Board of the Trustees of OHA are required to be of Hawaiian ancestry.¹⁹⁹ In 1980, the Hawai'i Legislature decided that twenty percent

¹⁹² *Id.*

¹⁹³ *Id.* at 1391. See *Craddick v. Territorial Registrar of American Samoa*, AP No. 10-79. Am. Samoa (1980) for an example of how a territorial supreme court has upheld a statutory land alienation provision limited to native peoples. In *Craddick*, the court upheld provision 27 AM. SAMOA CODE ANN. § 204(b), which prohibited the alienation of any lands to "any person who ha[d] less than one-half native blood." *Id.* Establishing that the provision was a "racial classification" subject to strict scrutiny under both the U.S. and Samoan Constitutions, the court found that the Samoan government demonstrated a "compelling state interest" in preserving the lands of American Samoa "for Samoans and in preserving the Fa'a Samoa, or Samoan culture." *Id.*

¹⁹⁴ Act of July 9, 1921, ch. 42, 42 Stat. 108.

¹⁹⁵ See Le'a Malia Kanehe, *The Akaka Bill: The Native Hawaiian's Race for Political Recognition*, 23 U. HAW. L. REV. 857, 869 (2001).

¹⁹⁶ *Id.*

¹⁹⁷ HAW. CONST. art. 12, § 7.

¹⁹⁸ John Van Dyke, *The Political Status of the Native Hawaiian People*, 17 YALE L. & POL'Y REV. 95, 108-09 (1998) [hereinafter Van Dyke, *Political Status*].

¹⁹⁹ *Id.*

of the revenues received from the ceded lands held in trust by the state must go to OHA.²⁰⁰

Recently, these special preferences for Native Hawaiians were challenged and ruled unconstitutional. The first strike to Hawai'i's separate and preferential treatment of Native Hawaiians came from the U.S. Supreme Court's holding in *Rice v. Cayetano*.²⁰¹ The Court rendered unconstitutional OHA's Hawaiian ancestry-only electorate qualification under the Fifteenth Amendment of the U.S. Constitution.²⁰² It rejected arguments asserting that the OHA voting provision was rationally related to furthering native self-government under the standard set by *Morton v. Mancari*, and stated that OHA was not a federally recognized self-governing entity, but a state agency.²⁰³ The majority did not address the status of the Native Hawaiians directly, however, the concurrence argued explicitly that a trust relationship did not exist with Native Hawaiians.²⁰⁴ Further challenges by non-indigenous citizens of Hawai'i ensued, utilizing the *Rice* concurrence as ammunition to directly challenge other state programs directed toward the betterment of Native Hawaiians.²⁰⁵

In response, Hawai'i's leaders in Congress have introduced legislation entitled the "Akaka Bill" to address the relationship that Hawaiians share with the federal government.²⁰⁶ If passed, the Akaka Bill would establish federal recognition for Hawaiians by establishing a Native Hawaiian government.²⁰⁷ It would also further protect other programs directed towards benefiting Hawaiians from constitutional challenges.²⁰⁸

²⁰⁰ *Id.*

²⁰¹ 528 U.S. 495 (2000).

²⁰² *Id.* at 524. The Fifteenth Amendment provides that "the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude." U.S. CONST. amend. XV, § 1.

²⁰³ 528 U.S. at 518-21.

²⁰⁴ *Id.* at 524-25.

²⁰⁵ See Pat Omandam, *Barrett Loses OHA Lawsuit*, HONOLULU STAR-BULLETIN, July 13, 2001 at A1; see also *Carroll v. Nakatani*, CV. NO. 00-00641 (9th Cir. 2001).

²⁰⁶ Kanehe, *supra* note 195, at 873.

²⁰⁷ *Id.* at 876 ("All three drafts of the Akaka Bill express Congress' clear intention to clarify the United States' relationship with Native Hawaiians as one that is based on a "trust" relationship.").

²⁰⁸ *Id.*

Despite the lack of federal recognition, local governments have created laws out of respect and in furtherance of the rights of native peoples. Guam's government should follow the lead of the Northern Marianas and Hawai'i, and provide protections for the spiritual and cultural needs of the Chamorro people. Although Chamorros have not yet received federal recognition, Guam has an obligation and a responsibility to its indigenous peoples to ensure that their rights are protected and preserved. Federal recognition and the formal establishment of a trust relationship with the federal government, however, would provide a stronger legal basis for special native rights to exist within Guam's local laws.

B. *Chamorros Share a Special Trust Relationship with the Federal Government and Have a Right to Federal Recognition as an Indigenous Peoples Within the United States*

This section asserts that, as a native people within the territory of the United States, the Chamorro people share a special trust relationship with the federal government and should thus receive federal recognition similar to that afforded other Native Americans. Affording federal recognition would reinforce the federal government's goals and policies of preserving and protecting indigenous communities who occupy the lands of the United States. In addition, federal recognition of the Chamorro people would protect local legislation enacted for their benefit, as well as enable Chamorros to establish a system of self-government that would more effectively represent Chamorro interests and maintain Chamorro culture.

1. *Historical Framework of the Federal Government's Dealings with Indigenous Peoples*

Historically, the federal government's policy in dealing with indigenous peoples within its borders stems from the Commerce Clause, which specifies that Congress has the authority to "regulate commerce with the Indian tribes."²⁰⁹ When the U.S. Constitution was drafted, "Indian tribes were viewed as separate nations," and the relationship between the federal government and the tribes was viewed as formal in nature.²¹⁰ Because Congress recognized the Indian tribes as sovereign

²⁰⁹ U.S. CONST. art. I, § 8, cl. 3 ("Congress shall have the power "to regulate commerce with foreign nations, and among the several States, and with the Indian tribes.").

²¹⁰ Van Dyke, *Self-Determination*, *supra* note 198, at 112.

entities within the boundaries of the United States, affairs were conducted on a nation-to-nation basis.²¹¹

Although the federal government engaged in treaties and acknowledged the sovereignty of the Native American peoples living in the Americas prior to the arrival of the Europeans, it also established that Congress would ultimately control the affairs of the Indians.²¹² These federal policies dealing with Native Americans were affirmed by the Supreme Court, which acknowledged that federal control of the native populations of the United States stemmed from international principles of discovery and conquest by dominant powers,²¹³ and from domestic principles that give power to the federal government to enforce the laws over “persons and property” within its borders.²¹⁴ Along the same lines, however, the Supreme Court also observed that Congress and the federal government have a trust responsibility towards the indigenous peoples of

²¹¹ See, e.g., *Cherokee Nation v. Georgia*, 30 U.S. 1 (1931). Chief Justice Marshall stated that:

The numerous treaties made with [the Cherokees] by the United States recognize them as people capable of maintaining the relations of peace and war, of being responsible in their political character of any violation of their engagements, or for any aggression committed on the citizens of the United States by any individual of their community. Laws have been enacted in the spirit of these treaties. The acts of our government plainly recognize the Cherokee nation as a state, and the Courts are bound by those acts.

Id.

²¹² STEPHEN L. PEVAR, *THE RIGHTS OF INDIANS AND TRIBES* 48 (1992). Congress has plenary power-full and complete power-over Indian tribes, their government, their members, and their property. As the Supreme Court recently stated, “Congress has plenary authority to legislate for the Indian tribes in all matters, including their form of government. Congress has plenary authority to limit, modify or eliminate the powers of local self-government which the tribes otherwise possess.

Id.

²¹³ In *Tee-Hit-Ton v. U.S.*, 348 U.S. 272, 279 (1955), the Supreme Court (holding that the federal government did not have to compensate Native Alaskans for land taken from them because they lacked recognized title) stated that, according to international legal principles of discovery and conquest by western hegemonic powers, the U.S. government may exercise dominion over conquered peoples, like Indian tribes, within acquired territories. *Id.*

²¹⁴ PEVAR, *THE RIGHTS OF INDIANS AND TRIBES*, *supra* note 212, at 48.

the United States to ensure that they are protected and continue to survive and thrive.²¹⁵

2. *The Federal Government's Trust Responsibility and the "Special" Political Relationship That the Indigenous Peoples of the United States Share with the Federal Government*

One of the fundamental elements of the federal government's dealings with the native communities of the United States is the trust responsibility it must adhere to in protecting its indigenous populations' cultures, traditions, and livelihoods.²¹⁶ Originally, this trust relationship stemmed from Indian tribes engaging in treaties which provided that they would give up their tribal lands in exchange for promises that the federal government would protect them through the creation of permanent reservations.²¹⁷ The United States has since expanded this trust responsibility through: 1) federal statutes, agreements, and executive agreements; 2) implied commitments; and 3) the creation of "an independent obligation upon the federal government to remain loyal to the Indians and to advance their interests, including their interest in self-government."²¹⁸

Many question whether the trust relationship extends to all native populations within the United States.²¹⁹ The Department of the Interior has given the trust responsibility a very narrow interpretation, declaring that it only extends to native communities that are recognized by the

²¹⁵ *Id.* ("The Supreme Court has cited the doctrine of trust responsibility as a source of federal power over Indians. Most Indians treaties contain a guarantee that the federal government will 'protect' the tribe.")

²¹⁶ *Id.* at 26.

²¹⁷ *See id.*

The foundation of this unique relationship is one of trust: the Indians trust the United States to fulfill the promises which were given in exchange for their land. The federal government's obligation to honor this trust relationship and to fulfill its treaty commitments to is known as its *trust responsibility*.

Id. (emphasis in original).

²¹⁸ *See id.* at 26-27, *citing* Choctaw Nation v. Oklahoma, 397 U.S. 620, 630-31 (1971).

²¹⁹ *See generally* Van Dyke, *Self-Determination*, *supra* note 198 (arguing that although Native Hawaiians may not be considered Indian tribes, as a native population they share a special "trust relationship" with the U.S.); *see also* S. Rep. No. 107-66 (2001) (Senate Report on S. 746, Akaka Bill).

federal government.²²⁰ Lower federal courts, however, have determined that the trust relationship may extend to non-recognized tribes for some purposes.²²¹

If a native population is found to share a trust relationship with the federal government, a plethora of benefits are possible. Primarily, federally recognized tribes may participate in federal Indian programs that offer aid for housing, health care, land development, education, and employment.²²² In addition, these tribes receive federal monetary assistance as well as enjoy greater political sovereignty and autonomy protected and enforced by the courts.²²³

Federal recognition may arise from treaty, statute, executive or administrative order, or from a course of dealing with the tribe as a political entity. Any of these events, or a combination of them, then signifies the existence of a special relationship between the federal government and the concerned tribe that may confer such important benefits as immunity of the Indians' lands from state taxation.²²⁴

Native populations within the United States that are federally recognized and that enjoy a trust relationship with the federal government are viewed by the courts as sharing a "special relationship"²²⁵ with the federal government. This relationship triggers a "rational basis" test for programs and policies enacted for the protection and betterment of these native populations, rather than a strict scrutiny judicial analysis normally applied to "racial classifications."²²⁶

²²⁰ PEVAR, *supra* note 212, at 29.

²²¹ *Id.* (citing *U.S. v. Washington*, 384 F. Supp. 312 (W.D. Wash. 1974) (ruling that tribal members could enforce a trust obligation created by a treaty even though the Interior Department did not recognize the tribes' continued existence)).

²²² *See id.* at 31.

²²³ *Id.* at 31-33.

²²⁴ WILLIAM C. CANBY, JR., *AMERICAN INDIAN LAW IN A NUTSHELL* 4 (1998).

²²⁵ The term "special relationship" was outlined in *Morton v. Mancari*, where the Court ruled in favor of government programs that furthered native self-determination. The Court outlined that Native American entities are semi-autonomous nations entitled to trust responsibilities from the federal government. *See infra* notes 227-231.

²²⁶ Van Dyke, *Political Status*, *supra* note 198, at 113-14.

This principle was affirmed by the U.S. Supreme Court in *Morton v. Mancari*,²²⁷ and subsequent Supreme Court cases have reinforced this decision.²²⁸ In *Mancari*, the Supreme Court upheld a statutorily codified hiring preference for members of federally recognized tribes for positions in the Bureau of Indian Affairs (“BIA”), holding that the preference was not “racial” in nature, but rather designed to “further the cause of Indian self-government and make the BIA more responsive to the needs of its constituent groups.”²²⁹ Further, the Court found that the purpose of the statute was to foster the political relationship between the native people and the federal government and that it was “rationally related” to promoting self-governance for the Indian tribe.²³⁰ The *Mancari* analysis affirms the federal government’s trust obligations towards its indigenous native peoples and treats preferences toward federally-recognized indigenous peoples as political in nature, acknowledging to some extent the sovereign and autonomous nature of their existence.²³¹

²²⁷ 417 U.S. 535 (1974).

²²⁸ The following U.S. Supreme Court cases have upheld preferential or separate programs for native peoples under *Mancari*: *Washington v. Washington State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979); *Wilson v. Omaha Indian Tribe*, 442 U.S. 653 (1979); *Washington v. Confederated Bands and Tribes of Yakima Indian Nation*, 439 U.S. 463 (1979); *United States v. Antelope*, 430 U.S. 641 (1977); *Delaware Tribal Business Committee v. Weeks*, 430 U.S. 73 (1977); *Moe v. Confederated Salish and Kootanai Tribes*, 425 U.S. 463 (1976); *Fisher v. District County Court*, 424 U.S. 382 (1976); *Antoine v. Washington*, 420 U.S. 194 (1975). In each of these decisions, the Court ruled unanimously that special treatment for native groups is permitted as long as the legislative program is rationally related to the government’s responsibility to promote or protect the self-governance, self-sufficiency, or culture of the native group concerned.

²²⁹ *Mancari*, 417 U.S. at 554.

²³⁰ *Id.*

²³¹ See S. Rep. No. 107-66, at n.79 (2001).

Although the aboriginal “tribes” or “nations” or “peoples” were defined in part by common ancestry, their constitutional significance lay in their separate existence as “independent political communities.” The “race” of Indian peoples was constitutionally irrelevant. Native peoples were “nations,” and the relationship between the United States and the natives reflected a political settlement between conquered and conquering nations.

Id.

3. *Extension of Federal Recognition and Trust Relationship to Other Indigenous Groups Within the United States*

Traditionally, the federal government's trust responsibility to native peoples was viewed as extending to Indian tribes within the continental United States who were in existence at the time of the drafting of the Constitution.²³² Many argue that the trust relationship applies only to those native groups that have organized themselves in tribal groups.²³³ Moreover, legal scholars have interpreted the federal government's trust responsibility as applying solely to "federally recognized" Indian tribes.²³⁴

Although the federal government originally dealt with and extended its protection towards Native American tribes within the continental United States, subsequent territorial acquisitions by the United States brought additional indigenous populations under the control and oversight of the federal government, thus bringing into question whether its trust relationship should extend to these new indigenous groups.²³⁵ These groups included Native Alaskans, Native Hawaiians, Samoans, and of course, Chamorros. Of the four groups, only the Native Alaskans are recognized by the federal government as Native Americans.²³⁶ Based on federal acts and resolutions aimed at benefitting Hawaiians, some argue that Congress has recognized an implied trust relationship with Native Hawaiians,²³⁷ and as mentioned, legislation establishing federal recognition for Native Hawaiians is currently before Congress.²³⁸

²³² See *id.* at n.39.

²³³ See *id.* at n.36.

²³⁴ See generally Stuart Minor Benjamin, *Equal Protection and the Special Relationship: The Case of the Native Hawaiians*, 106 YALE L.J. 537 (1996) (arguing that native populations within the U.S. which are not Indian tribes, such as Native Hawaiians, do not share a "trust relationship" with the federal government). *But see* Delaware Tribal Business Committee v. Weeks, 430 U.S. 73 (1977); United States v. John, 437 U.S. 634 (1978) (upholding, in both cases, under deferential judicial review, programs that provided benefits to or established separate legal regimes for individual Indians who were not organized into formal tribes).

²³⁵ See S. Rep. No. 107-66, *supra* note 219, at n.39.

²³⁶ See generally FELIX S. COHEN, HANDBOOK ON FEDERAL INDIAN LAW 401-413 (1986) (explaining and outlining how the federal government has recognized Native Alaskans); see also PEVAR, *supra* note 212, at 254-56.

²³⁷ See Van Dyke, *Political Status*, *supra* note 198, at 104.

²³⁸ See generally S. Rep. No. 107-66, *supra* note 219.

Although the federal government has not formally acknowledged a special trust relationship with the Chamorro people through treaties, acts, or resolutions, there is ample evidence to support the assertion that a trust relationship exists and that ultimately, the Chamorro people deserve federal recognition like other indigenous communities in the United States. First, other indigenous groups, not included at the time of the framing of the U.S. Constitution are now protected under the Commerce Clause. Second, federal legislation grouping Chamorros with other native groups, as well as federal cases focusing on and upholding Chamorro rights, provides additional support for asserting that Chamorros deserve similar treatment. Finally, investigations of both the provisions and the legislative intent of the Treaty of Paris and the Organic Act bolster arguments for the existence of a trust relationship with the federal government.

a. *Interpretation of Commerce Clause as Extending to All Native Groups*

Although a plain reading of the Commerce Clause suggests that a federal trust responsibility would only extend to “Indian tribes,”²³⁹ an examination of the legislative history of the Constitution reveals that the framers did not intend to restrict the federal government’s relationship to Native Americans who organized themselves into formal tribal communities.²⁴⁰ Rather, a closer analysis suggests that in defining the term “Indians,”²⁴¹ they intended the Commerce Clause to be expansive,

²³⁹ See U.S. CONST. art. I, § 8, cl. 3.

²⁴⁰ See S. Rep. No. 107-66, *supra* note 219, at n.36, *citing* The Records of the Federal Convention of 1787, Vol. II 321, 367 (Aug. 18, 1787).

[T]he original language proposed for inclusion in the Constitution made no reference to “tribes” but instead proposed that the Congress be vested with the authority to “regulate affairs with the Indians as well within as without the limits of the United States. A further refinement suggested that the language read “and with Indians, within the Limits of any State, not ‘subject to the laws thereof.’”

Id.; see also Van Dyke, *Political Status*, *supra* note 198, at 112-13 (“[T]he framers of the Constitution did recognize that individual Indians should be treated differently from other persons without regard to whether they were in “tribes.”).

²⁴¹ See S. Rep. No. 107-66, *supra* note 231, at n.39, *citing* A DICTIONARY ON THE ENGLISH LANGUAGE (Samuel Johnson ed., 1755) (defining the term “aborigines” as the “earliest inhabitants of a country, those of whom no original is to be traced”) (“During the Founding Era, and during the Constitutional Convention, the terms ‘Indian’ and ‘tribe’ were used to encompass the tremendous diversity of aboriginal peoples of the New World and the wide range of their social and political organizations.”).

applying to other indigenous communities that might fall under the dominion of the United States in later acquisitions.

Whether the reference was to ‘aborigines’ or to ‘Indians’, the Framers of the Constitution did not import a meaning to those terms as a limitation upon the authority of Congress, but as descriptions of the native people who occupied and possessed the lands that were later to become the United States whether those lands lay within the boundaries of the original thirteen colonies, or any subsequently acquired territories.²⁴²

This interpretation of the Commerce Clause supports the federal government’s longstanding affirmation of its trust responsibility to all native groups within its borders, regardless of whether they have formed themselves into tribal groups and were in existence at the time of the Framers. In addition, the federal government, through over 200 federal statutes, has expanded the reach of its trust responsibility, outlined in the Commerce Clause, to indigenous populations not recognized at the time of the Framers, such as Native Alaskans, Native Hawaiians, and other Pacific Islander groups.²⁴³ Moreover, courts have reaffirmed this broad, generic reading of the Commerce Clause as applying to other indigenous groups outside of a tribal setting.²⁴⁴

A strong case exists that the Chamorro people, as native peoples within the United States, should share a special political relationship with the United States. Although Chamorros did not organize themselves into tribal units, they did establish civilized forms of government and society prior to western contact and still form a distinct, identifiable indigenous population in modern times. The Chamorro people, like other Native American communities, are clearly an indigenous community that should fall under the provisions of the Commerce Clause.

b. *Alaska Native and Native Hawaiian Comparisons*

Like Chamorros, Alaska Natives and Native Hawaiians are indigenous groups that were not a part of the United States at the time of

²⁴² *Id.*

²⁴³ See, e.g., Van Dyke, *Political Status*, *supra* note 198, at n.67.

²⁴⁴ *Id.* at 146 (“Courts readily have recognized that the term ‘Indians’ includes all native people in the United States, and the term ‘tribe’ also has a generic meaning referring to any historically and culturally distinct group of native people.”).

the drafting of the Constitution and the Commerce Clause, but have come under the control of the United States through subsequent territorial acquisitions. Additionally, these were native groups that were culturally and ancestrally distinct from Native Americans within the continental United States and who have not historically and traditionally organized themselves into “tribal” groups. Nonetheless, despite these cultural and ancestral differences from Indian tribes historically governed by the federal government, both groups have been recognized by Congress and the federal courts as distinct native populations who share a special relationship with the United States.

The Alaska Native experience is instructive as to how the United States has expanded its trust relationship to indigenous peoples distinctly different in culture, history, and ancestry from American Indians.²⁴⁵ There is no treaty that creates an explicit trust relationship between the Alaska Natives and the federal government.²⁴⁶ However, the federal trust relationship was established when the United States acquired Alaska as a territory and Congress exercised “plenary power” over Alaska and its “native inhabitants.”²⁴⁷ Courts have affirmed the existence of this special relationship, asserting the “common law doctrine,” which provides that “federal government stands in a fiduciary relationship to native Americans” should apply to Native Alaskans.²⁴⁸

Extension of a trust relationship to the Alaskan natives is reflective of the federal government’s expansive policy of protecting other native groups that had fallen under its control.²⁴⁹ Because courts have recognized an implied fiduciary relationship to the Alaskan Natives on the part of the United States, despite the lack of any express trust responsibility enumerated through treaty or Congressional act, Alaskan Natives have enjoyed the benefits of federal recognition.²⁵⁰ Programs and funding directed towards their health, welfare, education, and special native

²⁴⁵ See COHEN, *supra* note 236, at 404.

²⁴⁶ PEVAR, *supra* note 212, at 253.

²⁴⁷ See COHEN, *supra* note 236, at 405.

²⁴⁸ Van Dyke, *Political Status*, *supra* note 198, at 127 (citing *Eric v. Sec’y of the U.S. Dep’t. of Housing & Urban Dev.*, 464 F.Supp. 44, 46-47 (1978); *see also* Alaska Chapter, *Associated Gen. Contractors v. Pierce*, 694 F.2d 1162 (9th Cir. 1982) (holding that the “Alaska Natives” had not historically been organized into reservations or into tribal units, but concluded that they had nonetheless been placed “under the guardianship of the federal government and entitled to the benefits of the special relationship” pursuant to the language of the 1867 treaty purchasing Alaska)).

²⁴⁹ See COHEN, *supra* note 236, at 404-05.

²⁵⁰ See PEVAR, *supra* note 212, at 254-55.

customary rights have been upheld as furthering self-government and preservation, similar to programs created for the betterment of other Native Americans.²⁵¹

The federal government and its courts have also viewed Native Hawaiians as sharing a unique relationship based on their inherent status as native peoples, despite distinct ancestral and cultural differences from other Native American communities that have established formal federal trust relationships.²⁵² The Native Hawaiians' trust status with the United States is somewhat more questionable than the Native Alaskan experience because they have not received formal federal recognition establishing a "political relationship."²⁵³ Congressional acts and resolutions, however, recognize Native Hawaiians as an identifiable indigenous people.²⁵⁴ Federal courts have also held that government programs and funds designed to benefit Native Hawaiians and encourage self-government and self-efficiency are analyzed under a rational basis review.²⁵⁵ In addition, Native Hawaiians are included in numerous Congressional acts providing assistance to native peoples for health, welfare, and education.²⁵⁶ These actions taken by the federal government indicate that an implied trust relationship exists between the Native Hawaiian people and the United States.

The Native Hawaiian and Native Alaskan experiences provide strong precedent for the Chamorro people to establish federal recognition and foster a "special relationship" with the United States. Like Native Hawaiians and Native Alaskans, Chamorros are indigenous peoples of the United States whose circumstances are strikingly similar to other native populations who benefit from federal protections. Like the Native Alaskans, an argument can be made that an implied trust responsibility was created with the Chamorros when the United States acquired Guam and exercised "plenary power" over the territory and its inhabitants. Despite the limited existence of any express federal resolution or act recognizing Chamorros as indigenous peoples, Congress's enactment of

²⁵¹ See *id.* at 255.

²⁵² See Van Dyke, *Political Status*, *supra* note 198, at 104, 120.

²⁵³ But see generally S. Rep. No. 107-66, *supra* note 231.

²⁵⁴ See, e.g., An Act to Provide for the Admission of the State of Hawaii into the Union, Pub. L. No. 86-3, 5(f), 73 Stat. 4, 5-6 (Admission Act); 100th Anniversary of the Overthrow of the Hawaiian Kingdom, Pub. L. No. 103-150, 107 Stat. 1510 (Apology Resolution); Act of July 9, 1921, ch. 42, 42 Stat. 108 (Hawaiian Homelands Act).

²⁵⁵ See Van Dyke, *Political Status*, *supra* note 198, at 120.

²⁵⁶ *Id.* at 106.

statutes aimed at aiding Pacific Islanders suggests that the federal government has taken on a trust responsibility in aiding the self-sufficiency of indigenous Pacific Islanders such as the Chamorros. Further, federal courts have also entertained and affirmed issues of Chamorro indigenous rights, further supporting the contention that an implied trust responsibility has been created for the Chamorro people.²⁵⁷

c. *Federal Legislation Grouping Pacific Islanders and Chamorros with Native Americans*

Another indication that the federal government is expanding its trust responsibility towards indigenous populations outside the continental United States, including Chamorros, is reflected in Congressional appropriations directed towards the betterment of native peoples. Federally funded programs involving welfare, education, health, and preservation of language and culture have included not only Native Americans, but also Native Hawaiians, Native Alaskans, as well as Pacific Islanders.²⁵⁸

Although most pieces of legislation do not mention Chamorros specifically, it is reasonable to assume that Congress's recognition of all Pacific Islanders as entitled to the same special programs and benefits as other native peoples, also includes Chamorros. In many Congressional acts that afford special aid and entitlements to Pacific Islanders, the term

²⁵⁷ See *infra* Part III.B.3.e.

²⁵⁸ See, e.g., Native American Programs Act of 1974, 42 U.S.C. § 2991(b) (1996) (authorizing financial assistance to public and nonprofit agencies of governing bodies serving Native Americans, Native Alaskans, Native Hawaiians and Pacific Islanders (including American Samoan Natives)); 42 U.S.C. § 2991(a) (1996) (“The purpose of this subchapter is to promote the goal of economic and social self-sufficiency for American Indians, Native Hawaiians, other Native American Pacific Islanders (including American Samoan Natives), and Alaskan Natives.”); 20 U.S.C. § 7601 (1994), Strengthening and Improvement of Elementary and Secondary Schools (indicating the need for bilingual education programs that develop the native languages skills of limited English proficient students, or ancestral languages of American Indians, Alaska Native, Native Hawaiians, and native residents); 20 U.S.C. § 7456 (2001) (“The Secretary may provide grants for the development, publication, and dissemination of high-quality instructional materials in Native American and Native Hawaiian languages and the language of Native Pacific Islanders and natives of the outlying areas for which instructional materials are not readily available.”); 42 U.S.C. § 254c-1(a) (2001) (“The Secretary of Health and Human Services shall provide grants to, or enter into contracts with, public or private nonprofit agencies that have demonstrated experience in serving the health needs of Pacific Islanders living in the Territory of American Samoa, the Commonwealth of Northern Mariana Islands, the Territory of Guam, the Republic of the Marshall Islands, the Republic of Palau, and the Federated States of Micronesia.”).

“Native American Pacific Islander” is defined as “an individual who is indigenous to a United States territory or possession located in the Pacific Ocean, and includes such individuals while residing in the United States.”²⁵⁹ Chamorros clearly fall within the entitlement criteria as an indigenous group connected to a land base that is a territory of the United States.

A few acts explicitly mention and recognize Chamorros along the same lines as other native populations. For example, the War in the Pacific National Historical Park Act²⁶⁰ provides for the creation of a park in memoriam to those who sacrificed their lives, both civilians and military, in freeing Guam from Japanese occupation. The Act specifically recognizes that freedom was restored to the “*indigenous Chamorros*” of Guam who “had suffered as a result of the Japanese occupation.”²⁶¹ Although this act does not extend to indigenous Chamorros any direct federal benefits, it is an indication of the federal government’s acknowledgement of Chamorros as indigenous peoples. In 1986, amendments to the Higher Education Act of 1965²⁶² authorized increased expenditures and allotments to institutions of higher education that have enrollment of at least five percent of “Native Hawaiian, Asian American, American Samoan, Micronesian, *Chamorro*, and Northern Marianian” students.²⁶³ Further, the Act provides that the Secretary will “give special consideration to” higher education institutions that “demonstrate a commitment to serving special populations such as women, the handicapped and Black, Mexican American, Puerto Rican, Cuban, other Hispanic, American Indian, Alaska Native, Aleut, Native Hawaiian, American Samoan, Micronesian, Guamanian (*Chamorro*), and Northern Marianian students.”²⁶⁴ The National Science Foundation Academic Research Facilities Modernization Program (“NSF”)²⁶⁵ also recognizes

²⁵⁹ See 42 U.S.C. § 2992c(6) (1996); see also 25 U.S.C.A. § 2902 (4) (2001) (defining Native American Pacific Islander as “any descendent of the aboriginal people of any island in the Pacific Ocean that is a territory or possession of the United States”); Executive Order No. 13,125, 64 C.F.R. 31105 (1999).

²⁶⁰ War in the Pacific National Historical Park Act, Pub. L. No. 103-197, 107 Stat. 2301 (1993).

²⁶¹ *Id.* § 1(3). (emphasis added).

²⁶² Higher Education Act Amendments of 1986, Pub. L. No. 99-498, 100 Stat. 1268 (1986).

²⁶³ *Id.* § 802(d)(2) (emphasis added).

²⁶⁴ *Id.* § 802 (emphasis added).

²⁶⁵ Act of Aug. 23, 1988, Pub L. No. 100-418, §6402, 102 Stat. 1107 (1988).

Chamorros along with other native groups. The purpose of the legislation is to assist in “modernizing and revitalizing the Nation’s research facilities at institutions of higher education, independent non-profit research institutions and research museums through capital investments.”²⁶⁶ The NSF program provides for special reservations of appropriations for institutions of higher education “servicing a substantial percentage of students who are Black Americans, Native Americans, Hispanic Americans, Alaskan Natives (Eskimos or Aleut), Native Hawaiian, American Samoan, Micronesian, Guamanian (*Chamorro*), Northern Marianian, or Palauan.”²⁶⁷ Lastly, the Native American Veterans Housing Loan Program,²⁶⁸ authored by Hawai`i Senator Daniel Akaka, provides direct loans to Native American veterans to purchase, construct or improve homes on trust lands.²⁶⁹ Veterans of Hawaiian, *Chamorro*, and Samoan descent are eligible for the program.²⁷⁰

Although federal legislation specifically mentioning Chamorros does not give Chamorros any direct benefits, by recognizing them along with other native peoples as a group identified in need of educational and social assistance, the federal government acknowledges Chamorros as a political and social indigenous minority within the United States deserving of protection. Federal legislation that makes specific reference to Chamorros, as well as allotments and benefits that group Pacific Islanders with other native peoples, also provides a strong basis for the belief that there exists an implied trust relationship between the federal government and the Chamorro people.

d. *The Treaty of Paris and the Organic Act
Create a Federal Trust Relationship with the
Chamorro People*

An examination of both the Treaty of Paris and the Organic Act further indicates that a federal trust relationship exists with the Chamorros. Guam and its Chamorro inhabitants came under the control of the United States officially with the signing of the Treaty of Paris by Spain and the

²⁶⁶ *Id.* § 6402(a).

²⁶⁷ *Id.* § 6402(g)(2) (emphasis added).

²⁶⁸ 38 U.S.C. §§ 3761-3764 (2001).

²⁶⁹ *VA Team Arriving to Help Vets with Land Trust Home Loans*, at <http://www.house.gov/underwood/news-releases/01/0330010.html> (last visited Feb. 4, 2002).

²⁷⁰ *Id.* (emphasis added).

United States in 1898.²⁷¹ More than fifty years later, after continued pressure from the inhabitants of Guam for clarification of their political status, Congress passed the Organic Act,²⁷² extending U.S. citizenship to Chamorros, giving them a limited form of self-government, and designating Guam as an unincorporated territory.²⁷³

As a result of the United States' victory in the Spanish-American War, through the Treaty of Paris, all territories once controlled by Spain became the possession of the United States. Spain ceded Puerto Rico, the West Indies, the Philippines, as well as Guam.²⁷⁴ The Treaty also recognized the obligations that the United States would have in dealing with the native populations of these territories. Article IX of the Treaty specifically provided that "the civil rights and political status of the native inhabitants of the territories . . . shall be determined by Congress."²⁷⁵ This provision recognized that the indigenous inhabitants of the territories ceded to the United States were entitled to fundamental human and civil rights, including a collective right to self-determination, and that it was the responsibility of the federal government to ensure that those rights were defined, fostered, and protected.²⁷⁶

The passage of the Organic Act reaffirmed the federal government's commitment and obligations outlined in the Treaty of Paris to protect the civil and political rights of Guam's native inhabitants. A few provisions of the Act explicitly mention the status and rights of the native inhabitants. The Act extends U.S. citizenship to all inhabitants "born or on the island of Guam on April 11, 1899."²⁷⁷ Additionally, the Act specifically amends section 303 of the Nationality Act of 1940, by

²⁷¹ See Treaty of Peace, Dec. 10, 1898 U.S.-Spain, 30 Stat. 1754 [hereinafter Treaty of Peace], reprinted in POLITICAL STATUS COORDINATING COMMISSION, *supra* note 42, at 15.

²⁷² See Organic Act of Guam, *supra* note 75, reprinted in POLITICAL STATUS COORDINATING COMMISSION, *supra* note 42, at 52-65.

²⁷³ *Id.* §§ 3, 4, 19.

²⁷⁴ See Treaty of Peace, arts. II, III, *supra* note 271, reprinted in POLITICAL STATUS COORDINATING COMMISSION, *supra* note 42, at 16.

²⁷⁵ *Id.* art. IX, reprinted in POLITICAL STATUS COORDINATING COMMISSION, *supra* note 42, at 19.

²⁷⁶ See Legislative Findings and Intent: Commission on Decolonization for the Implementation and Exercise of Chamorro Self-Determination, GUAM CODE ANN. § 21101 (2001).

²⁷⁷ See Organic Act of Guam, *supra* note 75, § 4(a)(1).

adding “Guamanian persons and persons of Guamanian descent” to a list of ethnicities that are entitled to U.S. citizenship.²⁷⁸

Section 9 of the Act has perhaps the most convincing language that shows federal recognition of the autonomy of Guam’s local government and, more importantly, indigenous rights within Guam’s social and political framework. The provision specifically requires that the Governor of Guam shall “[i]n making appointments and promotions, [give] preference to qualified persons of *Guamanian ancestry*.”²⁷⁹ In order “to ensure the fullest participation by Guamanians in the government of Guam, opportunities for higher education and in-service training facilities shall be provided to qualified persons of *Guamanian ancestry*.”²⁸⁰ This language indicates that Congress, in drafting the Organic Act, felt it necessary that the Chamorro people continue to thrive by maintaining control over the local institutions of government on Guam. Although some might argue that the term “Guamanian” is not synonymous with the term “Chamorro” and could arguably apply to any citizen residing on Guam at the time, there is ample evidence to support the assertion that although the term “Guamanian” was created after World War II by the U.S. government, it was made in reference to the indigenous inhabitants of Guam and their inherent indigenous rights.²⁸¹

Although specific provisions of the Organic Act refer to the indigenous inhabitants of Guam, a closer examination of the legislative history of the Organic Act further supports federal recognition of the Chamorro people and, in turn, an implied trust relationship.²⁸² In outlining the purpose of the bill, the Committee on Interior and Insular Affairs stated that they wanted to afford to “the inhabitants of Guam” a civil government.²⁸³ The Senate Report further proposes to confer American citizenship to the approximately “27,000 *native Guamanians*” who had

²⁷⁸ *Id.* § 4(b)(5), *supra* note 75, reprinted in POLITICAL STATUS COORDINATING COMMISSION, *supra* note 42, at 55.

²⁷⁹ *Id.* § 9(a), *supra* note 75, reprinted in POLITICAL STATUS COORDINATING COMMISSION, *supra* note 42, at 58 (emphasis added).

²⁸⁰ *Id.* (emphasis added).

²⁸¹ See COLONIZED CHAMORU COALITION OF GUAHAN, RESOLUTION RELATIVE TO CALLING UPON THE UNITED STATES OF AMERICA TO CEASE THE OPPRESSION OF THE CHAMORRO PEOPLE (Dec. 1, 2001) (on file with the author); see also COLONIZED CHAMORU COALITION OF GUAHAN, I TANO’TA I LINA’LA-TA: A RESOLUTION TO AFFIRM THE SOLIDARITY OF INDIGENOUS PEOPLES (Dec. 1, 2001) (on file with the author); see also Perez, *supra* note 11, at 26.

²⁸² See S. R. 81-2109 (1950), reprinted in U.S.C.C.A.N 2840-41.

²⁸³ *Id.* at 2840.

exhibited loyalty throughout two world wars.²⁸⁴ In addition, the report reveals that it is the “direct responsibility” of Congress to ensure that the civil and political status of the “native inhabitants” of the Territories is protected pursuant to the Treaty of Paris.²⁸⁵ The report also cites Chapter XI of the United Nations Charter, reiterating that the United States has a responsibility to ensure the “political advancement” and “self-government” of the native peoples of these territories.²⁸⁶ Lastly, the report suggests that enactment of the Organic Act is consistent with the United States’ policy of “extending representative government, justice under law, and fundamental rights and human freedoms” to dependent peoples.²⁸⁷ This language in the legislative history of the Organic Act provides clear evidence of Congress’s recognition of the Chamorro people as Guam’s indigenous inhabitants and the federal government’s direct responsibility in ensuring that inherent Chamorro rights to self-determination and self-preservation under international and federal law are protected.

e. *Federal Cases Outlining Chamorro
Indigenous Rights and Claims*

In addition to federal legislation that recognizes Chamorros as the indigenous peoples of Guam, recent jurisprudence from federal courts recognizing and protecting indigenous Chamorro rights further supports the existence of an implied trust relationship between indigenous Chamorros and the federal government. The strongest example of a federal court’s recognition and upholding of Chamorro rights and interests is *Wabol v. Villacrusis*.²⁸⁸ The Commonwealth of the Northern Marianas Constitution contains a provision that restricts the acquisition of long-term interests in local land to persons of Northern Marianas descent, particularly to Chamorros and Carolinians.²⁸⁹ Wabol brought an action to void his lease agreement with defendant-appellant Villacrusis, who was of Filipino descent, arguing that the lease agreement violated Article XII of

²⁸⁴ *Id.* at 2841 (emphasis added). Prior to 1950, Guam was populated primarily by Chamorros, thus supporting the assertion that the term “Native Guamanians” used in the legislative history of the Organic Act referred to and was synonymous with the indigenous Chamorro people. See ROGERS, *supra* note 13, at 273.

²⁸⁵ S.R. 81-2109, reprinted in U.S.C.C.A.N. 2840, 2841.

²⁸⁶ *Id.*

²⁸⁷ *Id.* at 2842.

²⁸⁸ 898 F.2d 1381 (1990).

²⁸⁹ *Id.* at 1383-84.

the NMI Constitution.²⁹⁰ Villacrusis argued that Article XII violated the equal protection clause of the U.S. Constitution.²⁹¹ Both the trial court and the Commonwealth Appellate Court upheld the NMI constitutional provision.²⁹²

After finding that it had jurisdiction to consider the appeal, the Ninth Circuit affirmed the decisions of the lower courts and upheld the constitutionality of the NMI provision. The court found that the Fourteenth Amendment's equal protection analysis was not applicable with regard to Article VI²⁹³ of the Covenant to Establish a Commonwealth in Political Union with the United States.²⁹⁴ In distinguishing the United States' Fourteenth Amendment from the territorial incorporation in the Covenant, the court stated that the "incorporation analysis thus must be undertaken with an eye toward preserving Congress's ability to accommodate the unique social and cultural conditions and values of the particular territory."²⁹⁵

In upholding the NMI Constitutional provision, the court found that the Fourteenth Amendment constitutional analysis was not applicable to the territory and emphasized key language that stressed the importance of native land ownership for the preservation of indigenous identity and culture.²⁹⁶

²⁹⁰ *Id.* at 1383. "Article XII of the NMI Constitution implements §805 of the Covenant to Establish a Commonwealth in Political Union With the United States of America, *reprinted as amended* in 48 U.S.C.A. §1681." *Id.* "Section 805 provides that notwithstanding federal law, the Commonwealth government shall regulate the alienation of local land to restrict the acquisition of long-term interests to persons of Northern Mariana Islands descent." *Id.*

²⁹¹ *Id.* at 1382.

²⁹² *Id.*

²⁹³ *Id.* at 1389 (stating that Article 6 of the Trusteeship Agreement prohibits discrimination against any inhabitants of the Trust Territory in the exercise of their rights and fundamental freedoms).

²⁹⁴ *Id.* at 1389 (explaining that "the Covenant defines the relationship between the Commonwealth and the United States, sets up a framework and set of mandates for the Commonwealth Constitution, and provides for the eventual termination of the trusteeship").

²⁹⁵ *Id.* at 1391.

²⁹⁶ *Id.* (stating that "there can be no doubt that land in the Commonwealth is a scarce and precious resource. Nor can the vital role native ownership of land plays in the preservation of NMI social and cultural stability be underestimated").

It appears that land is principally important in the Commonwealth not for its economic value but for its stabilizing effect on the natives' social system. The land alienation restrictions are properly viewed as an attempt, . . . to prevent the inhabitants from selling their cultural anchor for short-term economic gain, thereby protecting local culture and values.²⁹⁷

The court also found that the application of the federal equal protection clause to the territory would interfere with the ability of the native peoples to retain their land and resources, stressing the importance of the Constitution's purpose in protecting indigenous minority rights:

It would truly be anomalous to construe the equal protection clause to force the United States to break its pledge to preserve and protect NMI culture and property. The Bill of Rights was not intended to interfere with the performance of our international obligations. Nor was it intended to operate as a genocide pact for diverse native cultures. Its bold purpose was to protect minority rights, not to enforce homogeneity.²⁹⁸

Although the *Wabot* case is not directly applicable to Chamorros of Guam because of the Northern Marianas' slightly different political history, nonetheless, it is instructive as to how federal courts view native rights and the preservation of indigenous culture. The Chamorros of Guam have the same rights to self-determination as the Chamorros of the Northern Mariana Islands. *Wabot* clearly indicates that United States courts are conscious of the protection of native rights and resources.

A case more directly applicable to the Chamorros of Guam came before the Ninth Circuit Court of Appeals in 1999. In *Guam v. United States*,²⁹⁹ Guam argued that it was entitled to own or control 24,000 acres of land owned by the federal government that was declared "in excess" by the Department of the Navy.³⁰⁰ Guam claimed it was entitled to the land

²⁹⁷ *Id.*

²⁹⁸ *Id.* at 1392.

²⁹⁹ 179 F.3d 630 (1999).

³⁰⁰ *Id.* at 632. After the passage of the Organic Act in 1950, the United States gave the newly formed local government of Guam 1,250 acres of land that had been under the control of the Department of the Navy. *Id.* The United States, however, retained 42,000 acres of land for other purposes. *Id.* Between 1950 and the early 1990s,

pursuant to the Organic Act of Guam, the Territorial Submerged Land Act, and the doctrine of aboriginal title.³⁰¹ Regarding the aboriginal claim to the excess federal land, Guam argued that it was acting as a trustee on behalf of the indigenous Chamorros of Guam, and it therefore had a right to control this land for these inhabitants.³⁰²

In reviewing the government's claim of aboriginal title to this excess land, the court ruled that even if the doctrine of aboriginal title were applied to the case, the Government of Guam was neither a tribe nor a tribal member traditionally able to make a claim to aboriginal title.³⁰³ The court held that Guam did not have the power to control land for the indigenous inhabitants as trustee under the doctrine of aboriginal title and that ultimately that power lay in the hands of Congress.³⁰⁴ Although Guam argued that the Organic Act constituted a delegation of Congress's power to the Government of Guam, as trustee over these lands for the aboriginal people of Guam, the court found that the Act did not delegate that authority and that ultimately Guam's aboriginal claim lacked merit.³⁰⁵

While the court held that the territorial government of Guam could not raise an aboriginal title claim for indigenous inhabitants, it did not bar claims by individual indigenous claimants. The court's language strengthens the argument that the federal government became a trustee of Chamorro aboriginal lands upon receiving Guam as a territory of Spain, and that it has a fiduciary duty to the Chamorro people. Consequently, Chamorro people are entitled to federal recognition similar to that of Native Americans.

the United States condemned land at least once (186.87 acres in 1962) and transferred lands declared "in excess" (879 acres in the early 1980s and 3,200 acres in 1994) to the government of Guam. *Id.* In 1992, the United States declared "in excess" 371 acres of land at Ritidian Point, located in northern Guam, and 15,571 acres of submerged lands adjacent to Ritidian Point. *Id.* The Navy then transferred this land to the U.S. Fish and Wildlife service for use as part of a wildlife refuge. *Id.* The Government of Guam challenged this transfer and claimed it was entitled to title or control over the property in dispute. *Id.*

³⁰¹ *Id.* "Aboriginal title refers to the rights of original inhabitants of the United States to use and occupy their aboriginal territory." *Id.* at 640, *citing* Confederated Tribes of Chehalis Indian Reservation v. Washington, 96 F.3d 334, 341 (9th Cir.1996).

³⁰² *Id.* at 639.

³⁰³ *Id.*

³⁰⁴ *Id.*, *citing* Oneida Indian Nation of N.Y. State v. County of Oneida, 414 U.S. 661 (1974).

³⁰⁵ *Id.* at 640.

Like the Native American, the Chamorro does not need to argue the validity of his existence under a new social philosophy. The Chamorro shares with other indigenous peoples the legacy of having come under domination for no other reason than having been born on a valuable piece of real estate. They have the first rights to land, water, and air. Sovereignty inheres in them by their very existence. No additional philosophical position, no matter how righteous or glib need to be attached to their position.³⁰⁶

In addition to arguments for federal recognition of the Chamorro people, the United States should adhere to international legal norms establishing that nations have a responsibility to their indigenous populations.

C. *Chamorros Have a Right to Pursue Self-Determination and Recognition as Indigenous Peoples Under International Law*

This section explores the evolution of international law and the recent development of both international treaty and customary law acknowledging the protection and preservation of indigenous peoples, including Chamorros. It also argues that international law establishing rights for indigenous peoples is part of the law of the United States and that non-recognition of the Chamorro people, as a domestic indigenous community entitled to self-determination rights, is a violation of international law and violates the principles and values established by the international community.

1. *General Overview of International Law and Indigenous Peoples*

International law is established and defined through *treaties*, formal international agreements between states or private entities,³⁰⁷ and through *customary law*, values, and norms created through uniform state practice based on universal legal obligations.³⁰⁸ Traditionally, international law has governed the action of nation-states, but with new

³⁰⁶ PEREZ, *supra* note 11, at 16 (citing KATHERINE AGUON, THE GUAM DILEMMA: THE NEED FOR A PACIFIC ISLAND EDUCATIONAL PERSPECTIVE 100 (1979)).

³⁰⁷ See JORDAN J. PAUST ET AL., INTERNATIONAL LAW AND LITIGATION IN THE U.S. 35-36 (2000) (emphasis added).

³⁰⁸ *Id.*

concepts of human rights being introduced into international legal discourse, international law now has expanded its reach and influence to individuals, as well as private entities and groups, including indigenous communities.³⁰⁹

The discussion of indigenous peoples' rights under international law is not a new phenomenon. Indigenous affairs have been a topic for discussion since the early establishment of international law during colonial times.³¹⁰ Colonizers viewed indigenous peoples as uncivilized and inferior, and created paternalistic systems to assimilate them to western culture.³¹¹ Today, the application of international law to indigenous peoples has changed.³¹² The new international indigenous rights movement has contributed to a new consciousness regarding native peoples as "distinct communities with historically based cultures, political institutions, and entitlements to land," deserving of protection.³¹³

³⁰⁹ See S. JAMES ANAYA, *INDIGENOUS PEOPLES IN INTERNATIONAL LAW* 42 (1996).

³¹⁰ *Id.* at 9-10 ("The advent of European exploration and conquest in the Western Hemisphere following the arrival of Christopher Columbus brought on questions of the first order regarding the relationship between Europeans and the indigenous peoples they encountered.").

³¹¹ *Id.* at 23-26. See also, e.g., SHARON HELEN VENNE, *OUR ELDERS UNDERSTAND OUR RIGHTS: EVOLVING INTERNATIONAL LAW REGARDING INDIGENOUS RIGHTS* 69 (1998) (describing The International Labor Organization ("ILO") Convention 107 concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries, Official Bulletin, Vol. 40, 22 (1957)).

Convention 107 was an international instrument—a multilateral treaty—directed toward the assimilation and integration of Indigenous Peoples into a state as suggested in Article 2 (1): Governments shall have the primary responsibility for developing coordinated and systematic action for the protection of the populations concerned and their progressive integration into the life of their respective countries.

Id.

³¹² ANAYA, *supra* note 309, at 45.

The international system's contemporary treatment of indigenous peoples is the result of activity over the last few decades. This activity has involved, and substantially been driven by, indigenous peoples themselves. Indigenous peoples have ceased to be mere objects of the discussion of their rights and have become real participants in an extensive multilateral dialogue that has engaged states, nongovernmental organizations (NGO's), and independent experts, a dialogue facilitated by human rights organs of international institutions.

Id.

³¹³ *Id.* at 46.

One of the basic precepts of the new international indigenous rights movement is the concept of self-determination. Under international law, self-determination has been accepted as a *jus cogens*³¹⁴ principle, a principle all nations must accept and honor.³¹⁵

[S]elf-determination is identified as a universe of human rights precepts concerned broadly with peoples, including indigenous peoples, and grounded in the idea that all are equally entitled to control their own destinies. Self-determination gives rise to remedies that tear at the legacies of empire, discrimination, suppression of democratic participation, and cultural suffocation.³¹⁶

Self-determination serves as a remedial measure for injustices suffered as a result of colonialism, reviving indigenous culture and identity through protective measures and democratic principles.³¹⁷ Although often misinterpreted as requiring independent statehood, indigenous self-determination does not necessarily entail complete independence and secession, but rather involves taking remedial steps to ensure that indigenous communities are able to sustain and protect themselves while co-existing with larger entities.³¹⁸ Norms that more specifically embody this concept of indigenous self-determination include concepts of non-

³¹⁴ See PAUST ET AL., *supra* note 307, at 49-53.

³¹⁵ ANAYA, *supra* note 309, at 75.

³¹⁶ *Id.*

³¹⁷ *Id.* at 87.

³¹⁸ *Id.* at 80; see also Van Dyke, *Self-Determination*, *supra* note 8, at 635, citing Jose Martinez Cobo, Study of the Problem of Discrimination Against Populations, U.N. Doc. E/CN.4/Sub.1983/21/Add.1, at 2 [hereinafter Cobo Report].

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 Self 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 rights may in fact be expressed in various forms of autonomy within the State.

Id.

discrimination, cultural integrity, ownership and management of lands and resources, social welfare and development, and self-government.³¹⁹

2. *Definition of Indigenous Peoples Under International Law*

Because indigenous peoples throughout the world are so diverse in culture and history, it is a challenging task for the international legal system to create a uniform definition for what is an “indigenous community.”³²⁰ Academics have identified common traits and experiences that all indigenous peoples share which provide a generally acceptable definition. Primarily, indigenous peoples share the common characteristic of having descended from the inhabitants who occupied lands prior to other populations occupying the same lands as settlers.³²¹ Indigenous cultures are both subservient and different from the dominant culture.³²² Additionally, the group should recognize itself as indigenous.³²³ Lastly, indigenous peoples attach themselves significantly, both spiritually and culturally, to the lands on which they originated and lived.³²⁴

Taking these elements into account, Chamorros are clearly indigenous peoples under international law. There is clear evidence of a civilized Chamorro society prior to western contact.³²⁵ Chamorro culture

³¹⁹ See generally, ANAYA, *supra* note 309, ch. 4.

³²⁰ Van Dyke, *Self-Determination*, *supra* note 8, at 632.

³²¹ *Id.* at 633 (“Pre-existence: the population is descended from persons who were in an area prior to the arrival of another population.”); see also ANAYA, *supra* note 309, at 3 (“Today, the term *indigenous* refers broadly to the living descendants of preinvasion inhabitants of lands now dominated by others.”).

³²² Van Dyke, *Self-Determination*, *supra* note 8, at 633.

³²³ *Id.*

³²⁴ See ANAYA, *supra* note 309, at 3.

They are *indigenous* because their ancestral roots are imbedded in the lands in which they live, or would like to live, much more deeply than the roots of more powerful sectors of society living on the same lands or in close proximity. Furthermore, they are *peoples* to the extent they comprise distinct communities with a continuity of existence and identity that links them to the communities, tribes, or nations of their ancestral past.

Id.

³²⁵ See *supra* Part II.A.1 (describing pre-colonial Chamorro society and culture).

is distinct and often times conflicts with the dominant western culture.³²⁶ Despite this struggle, modern Chamorros continue to recognize themselves as a unique and identifiable people.³²⁷ Aside from Chamorros recognizing themselves as indigenous peoples, recognition has also come from the international community, including other indigenous groups and the United Nations.³²⁸

3. *Customary International Law Reflecting Indigenous Rights*

The acknowledgement by the international legal community that the preservation and protection of indigenous peoples is not just a part of treaty law, but also part of customary international law, makes indigenous claims more compelling and powerful. As mentioned, customary international laws are norms established and consented to by the international community through standards of consistent practice and behavior by nations acting collectively from a sense of legal obligation.³²⁹ Customary international law is universally accepted and followed by all nations of the world, regardless of the existence of international treaties or agreements.³³⁰

The development of customary international law with regard to the protection of indigenous rights, is reflected in the consistent, norm-building activities of countries in the international community that seek to address the issues and demands of indigenous peoples.³³¹ The establishment of indigenous rights as an international customary norm has

³²⁶ See *supra* Part II.A (discussing how Chamorro culture has conflicted with western culture).

³²⁷ See *supra* Part II.A.4 (examining the state of contemporary Chamorros and their struggle to maintain their identity).

³²⁸ See *Discrimination Against Indigenous Peoples: Report of the Working Group on Indigenous Populations*, 45th Sess., Agenda Item 14, at 9, U.N. Doc. E/CN.4/Sub.2/1993/29, Commentary, at 4 U.N. ESCOR, Commission on Human Rights, 45th Sess., Annex I, (1999). The Commission consented to Chamorro representatives of the Organization of People for Indigenous Rights to give testimony about indigenous issues on Guam. *Id.*

³²⁹ See PAUST ET AL., *supra* note 307, at 35; see also ANAYA, *supra* note 309, at 50 (“Norms of customary law arise-or to use the now much favored term crystallize-when a preponderance of states and other authoritative actors converge on a common understanding of the norms’ contents and generally expect future behavior in conformity with those norms.”).

³³⁰ See PAUST ET AL., *supra* note 307, at 35.

³³¹ ANAYA, *supra* note 309, at 51.

evolved through the implementation of working groups and studies, the international community's discussion of policies, and examinations of domestic initiatives aimed at aiding the preservation of indigenous groups.³³²

In 1971, the United Nations Sub-Commission on the Prevention of Discrimination and Protection of Minorities spearheaded the effort to develop an international consciousness for indigenous rights by conducting a study, entitled the Cobo Report, on the discrimination faced by indigenous peoples.³³³ Conducted by Jose Martinez Cobo, the Cobo Report was a landmark study addressing the plight and demands of indigenous communities.³³⁴ The report provided instructive language in identifying rights to which indigenous populations were entitled, including the right to define themselves and determine their own membership according to their perceptions, the right to be free of imposed definitions by states who recognize them, rights to historical lands and territories, and their right to be different.³³⁵

The Cobo Report was the catalyst for subsequent international efforts to address indigenous peoples' demands. Based on the findings of the report, two conferences on indigenous peoples in the Americas, organized by non-governmental organizations, were held in Geneva, Switzerland in 1977 and 1981.³³⁶ In response to these conferences, the United Nations Sub-Commission established the Working Group on Indigenous Peoples in 1982.³³⁷ Composed of international human rights experts, the group meets annually in one to two week sessions, reviewing developments concerning indigenous peoples, examining treaties involving indigenous peoples and states, and addressing cultural and intellectual property issues.³³⁸ One of the group's main achievements was the Draft Declaration on the Rights of Indigenous Peoples.³³⁹ The working

³³² *Id.*

³³³ Van Dyke, *Self-Determination*, *supra* note 8, at 635.

³³⁴ ANAYA, *supra* note 309, at 51.

³³⁵ VENNE, *supra* note 311, at 87.

³³⁶ *Id.* at 92.

³³⁷ *Id.*

³³⁸ ANAYA, *supra* note 309, at 51.

³³⁹ See Draft Declaration on the Rights of Indigenous Peoples, U.N. Doc. E/CN.4/ Sub.2/1993/29, Annex I, at 50 (1993) [hereinafter Draft Declaration]; see also VENNE, *supra* note 311, at 93.

group has become one of the primary international forums for the discussion and examination of indigenous issues and rights.³⁴⁰

Aside from the establishment of the Working Group on Indigenous Peoples and the Cobo Report by the United Nations, there are other directives in the international sphere that have contributed to the development of indigenous rights as part of international customary law. International initiatives and resolutions outlining the protection of indigenous peoples and their right to self-determination have been issued by regional committees, the World Bank, and the European Parliament.³⁴¹ Nation-states have illustrated their commitment to the facilitation of indigenous groups within their territories by issuing formal statements explaining how these rights are being developed within their domestic legal systems.³⁴² Countries such as Canada, Australia, and New Zealand have taken significant steps to establish rights for their indigenous populations, affording them autonomy and self-determination in the form of self-government and entitlements to aboriginal lands and resources.³⁴³ Moreover, the International Court of Justice has issued international advisory opinions supporting the right to self-determination for indigenous groups under international law.³⁴⁴

These actions and initiatives taken by the international community and by countries in their individual capacities reflect an overwhelming support for the protection of indigenous groups and their unique cultures. These norms established by the world community are instructive for countries like the United States that are not as progressive in their treatment of indigenous populations, such as Chamorros.

4. *Treaties That Reflect International Law Regarding Indigenous Peoples*

There are a number of international treaties that reflect current trends in the protection of indigenous peoples' rights to self-determination. The United Nations Charter is one of the primary and most respected sources of international treaty law and provides the foundation for

³⁴⁰ ANAYA, *supra* note 309, at 51.

³⁴¹ *Id.* at 54-55.

³⁴² *Id.* at 56-57.

³⁴³ Van Dyke, *Self-Determination*, *supra* note 8, at 639-40.

³⁴⁴ VENNE, *supra* note 311, at 86 ("The International Court of Justice was created with the establishment of the UN. The UN Charter under Chapter XIV, established the ICJ as the principal judicial organ of the United Nations . . ."). *Id.* at 44.

indigenous peoples' rights to self-determination.³⁴⁵ Article 1(2) of the U.N. Charter outlines a general inherent right of self-determination for all peoples.³⁴⁶ Additionally, it states that the United Nation's purpose is to promote equal rights of peoples as well as encourage respect for human rights and fundamental freedoms.³⁴⁷

The 1966 International Covenant on Civil and Political Rights ("ICCPR"),³⁴⁸ a subsequent treaty reaffirming the United Nations commitment to human rights and freedoms, also provides an inherent right to self-determination for all peoples.³⁴⁹ It further establishes that this right to self-determination entails the ability of a people to "freely determine their political status" and "freely pursue their economic, social, and cultural development."³⁵⁰ The United States has affirmed its commitment to the international principle of self-determination of all peoples by ratifying both the U.N. Charter and the ICCPR.³⁵¹

Although both the U.N. Charter and the ICCPR outline general rights to self-determination for all peoples, there are international treaties that are more specific as to what rights indigenous peoples are entitled. The International Labour Organization's Convention No. 169 of 1989 is the most significant international treaty to date, enumerating the rights of indigenous peoples in distinguishing and protecting their cultures and traditional livelihoods.³⁵² The focus of Convention No. 169, illustrated in its preamble, is to recognize "the aspirations of [indigenous] peoples to exercise control over their own institutions, ways of life and economic development and to maintain and develop their identities, languages and religions, within the framework of the States in which they live."³⁵³ The Convention further provides for the advancement of indigenous cultural integrity, land and resource rights, non-discrimination in social welfare

³⁴⁵ See ANAYA, *supra* note 309, at 40-41.

³⁴⁶ U.N. CHARTER art. 1, para. 2.

³⁴⁷ *Id.* art. 1, paras. 2-3.

³⁴⁸ 999 U.N.T.S. 171 (Dec. 9, 1966).

³⁴⁹ *Id.* art. 1, para. 1.

³⁵⁰ *Id.*

³⁵¹ See ANAYA, *supra* note 309, at 86-87.

³⁵² *Id.* at 47.

³⁵³ See Convention (No. 169) Concerning Indigenous and Tribal Peoples in Independent Countries, June 27, 1989, International Labour Conference, 28 I.L.M. 1382 (entered into force Sept. 5, 1991).

programs, and calls upon nation-states to take into account indigenous affairs and aspirations when making decisions affecting those peoples.³⁵⁴ The Convention, although only ratified by ten nations, is nonetheless instructive as a “manifestation of the movement toward responsiveness to indigenous peoples demands through international law.”³⁵⁵

Another international treaty reflecting the rights of indigenous peoples in international law is the Draft Declaration on the Rights of Indigenous Peoples.³⁵⁶ The declaration contains key language outlining what rights indigenous peoples are entitled to under international law, including self-determination,³⁵⁷ protection against assimilation or integration into other cultures,³⁵⁸ establishment and control of their own educational systems,³⁵⁹ and establishment of indigenous decision-making institutions.³⁶⁰ The Declaration also calls for indigenous peoples’ development and maintenance of their own health, housing, economic, and social programs through their own institutions,³⁶¹ and autonomy in internal and local matters, including education, information, media, culture, religion, health, housing, employment, social welfare, land and resource management, and internal taxation.³⁶² Furthermore, the Declaration recognizes indigenous peoples’ relationships to their lands and territories and asserts that they have the right to control, own, and manage those lands and territories.³⁶³

5. *Domestic Incorporation of Indigenous Rights: International Law Is U.S. Law*

International legal principles clearly establish an inherent right to self-determination for indigenous people like the Chamorros. Because of this right to self-determination, they are entitled to define and control their

³⁵⁴ *See id.*

³⁵⁵ ANAYA, *supra* note 309, at 48.

³⁵⁶ Draft Declaration, *supra* note 339.

³⁵⁷ *Id.* art. 3.

³⁵⁸ *Id.* art. 7, para. d.

³⁵⁹ *Id.* art. 15.

³⁶⁰ *Id.* art. 19.

³⁶¹ *Id.* art. 23.

³⁶² *Id.* art. 31.

³⁶³ *Id.* arts. 25-26.

destinies through self-government and to recognition by the nation-state in which they exist. In addition, they are entitled to control and manage the historical lands and territory to which they are attached, both culturally and spiritually.

International law is part of the law of the United States.³⁶⁴ Federal courts must both adhere to international treaties entered into by the United States, as well as customary international law, “unless the norm is explicitly contradicted by a federal statute or unambiguous executive pronouncement.”³⁶⁵ Because the Chamorro people are entitled to international legal rights to self-determination, the United States should recognize and honor those rights by formally acknowledging that a trust responsibility exists with the Chamorro people. The United States’ commitment to the principles of international law concerning indigenous people is evidenced by its numerous ratifications of international treaties and agreements, recognizing and affirming indigenous rights to self-determination.³⁶⁶ Moreover, the United States has specifically recognized the Chamorro people as indigenous peoples by submitting reports to the United Nations on the status of the Chamorros as the indigenous inhabitants of Guam.³⁶⁷

Ultimately, Chamorros are indigenous peoples under international law with an inherent right to reclaim themselves through the internationally accepted and recognized right of self-determination. As the colonizer and dominant entity that currently presides over the affairs of the Chamorros, the United States has a duty under international law to

³⁶⁴ See *Paqueta Habana*, 175 U.S. 677, 700 (1900).

³⁶⁵ Van Dyke, *Political Status*, *supra* note 198, at 139.

³⁶⁶ See ANAYA, *supra* note 309, at 86-87.

³⁶⁷ See CHAMORRO SELF-DETERMINATION, *supra* note 145, at 108.

In the United States’ first annual report to the United Nations in 1946, the report describes the people of Guam in the following manner:

[People]: The natives of Guam are called Chamorros. The origin of the ancient Chamorros is obscure, but it is probable that they were a group that became detached and isolated in the Marianas Islands from the prot-Malays [sic] in their migration eastward from the mainland of Asia.

Later in the report, the U.S. states that the 1901 “Guamanian” population was 9630 and that the 1946 Guamanian population was 22,698. The 1946 report further states that although the Guamanians are conversant in English, “they continue to use the ancient Chamorro tongue.” It also lists the civil status of the “inhabitants of Guam” as nationals of the United States.

protect and preserve Chamorros' indigenous rights. Non-recognition of these rights violates fundamental and inherent principles that the world community has established.

IV. CONCLUSION

"My legacy will live on."

As the Chamorro people make their way into the twenty-first century, they face the arduous task of preserving their identity and culture, while at the same time having to adapt and evolve with modern times in an environment where they are gradually losing grasp of their social, political, and cultural power. Despite this challenge, Chamorros are a resilient and proud people, clinging to their heritage with the same passion and soul that the Chamorro warrior possessed in resisting the Spanish colonizers. Throughout three centuries of colonialism, conquest, and attempts at assimilation, the Chamorros have remained steadfast. There is a question, however, as to how long this spirit may last without some formal recognition from the larger powers that surround them.

With the international community recognizing and celebrating indigenous peoples as distinct special communities entitled to protection and rights of self-determination, Chamorro efforts for recognition are gaining strength. International norms have set the framework for Chamorros to reclaim themselves, not only legally, but also socially, culturally, and spiritually. Moreover, these international norms are consistently followed by nations around the world and should be respected, both by the United States through the process of formal recognition of the Chamorro people, and by Guam's local government through the enumeration of special indigenous rights.

It has been a long time since the Chamorro people were truly free. New developments and principles in both international and domestic law protecting the rights of indigenous peoples are providing opportunities for the Chamorro people to reclaim their land and resources, their sovereignty and self-determination, and ultimately themselves. As the Chamorro peoples' legacy has survived centuries of suppression, the time is ripe for the *kulo*³⁶⁸ to echo freedom once again.

Anthony (T.J.) F. Quan³⁶⁹

³⁶⁸ In the Chamorro language, the word *kulo* means "trumpet shell" or conch. See CHAMORRO-ENGLISH DICTIONARY 312 (Donald M. Topping et al. eds., 1978).

³⁶⁹ Class of 2002, University of Hawai'i at Manoa, William S. Richardson School of Law. I would like to acknowledge the following people for their guidance and assistance with this comment: Professor Jon Van Dyke, Professor Chris Iijima, Professor

Eric Yamamoto, Keith Camacho, Heidi Guth, Shirley Garcia, and members of the Asian-Pacific Law and Policy Journal at the University of Hawai'i at Manoa, William S. Richardson School of Law. This comment is dedicated to my family, friends, and ultimately to the Chamorro people, whose legacy and perseverance has provided me with the passion and inspiration to contribute to movements and efforts to further not only Chamorro self-determination, but self-determination for all indigenous peoples.