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THIRD INTERNATIONAL DECADE FOR THE ERADICATION OF COLONIALISM

Caribbean regional seminar on the implementation of the Third International Decade for the Eradication of Colonialism: the United Nations at 70: taking stock of the decolonization agenda

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DISCUSSION PAPER

PRESENTATION

BY

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Federal-Territorial Impediments to Decolonization in Guam Michael Lujan Bevacqua, Ph.D.

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Executive Summary

One of the most significant impediments to achieving decolonization in Guam is the lack of support of the Administering Power, the United States. This lack of support has manifested most prominently in the Administering Power's insistence that a decolonization plebiscite follow U.S. national law rather than international conventions. This paper will discuss recent developments regarding a lawsuit filed against the Government of Guam challenging the "constitutionality" of a selfdetermination plebiscite and the impact this has had on securing public education funds from the Administering Power.

Statement

Hafa Adai ginen i islan Guahan! Matto yu' sen chago' para bai hu sangani hamyo put i halacha' na fina'pos guihi gi tano'-måmi.

Representatives of Guam have been visiting the United Nations for more than thirty years as a forum for discussing the decolonization of Guam and the right to self-determination for its native inhabitants. Part of the impetus for these journeys has been the difficulty in engaging productively with our Administering Power, the United States, on this issue. Over the past three decades, our Administering Power has moved from being antagonistic to apathetic on the topic of Guam's decolonization. This has hindered and stalled our efforts as our Administering Power continually refuses to acknowledge the international dimensions to the process of decolonization and insists that Guam undergo decolonization in a way that follows only the Administering Power's own narrow national interests.

At the heart of the decolonization process is a political-status plebiscite vote in which those who have been historically denied their right to self-determination will receive the chance to determine the next step in their political evolution. The movement to decolonize has long been overshadowed by the fear that this vote would be attacked as "unconstitutional." As the plebiscite is limited to only those designated as native inhabitants of the island, it is not open to those whose roots in Guam came following the American takeover in 1898.

The Fourteenth Amendment of the U.S. Constitution protects the voting rights of its citizens. U.S. government representatives and local opponents to decolonization have made the argument that as this is a "vote" it should be open to all U.S. citizens who are eligible to vote and cannot be limited to only a select group. Completely lost on these opponents is the fact that this is not a regular, electoral vote. It is part of an internationally recognized process of redress. It is not supposed to be comparable to the election of a legislator or a mayor.

In 2011, an ethnically white long-time resident of Guam, Arnold "Dave" Davis, filed a lawsuit claiming that the proposed decolonization plebiscite would violate his U.S. constitutional rights as he is not allowed to register for it. His lawsuit was dismissed in the courts of Guam on the basis that it was not "ripe," as no plebiscite has been scheduled, although a Decolonization Commission is in place and is tasked with educating the island community and helping guide the plebiscite process. He appealed the decision in the Ninth Circuit District Court, a higher U.S. federal court.

Just last week, the Ninth Circuit Court announced their ruling that Davis' case was indeed ripe and could be heard. The case so far has been, in my eyes, a twisted

deformation of the arc of justice. In order to make his argument, Davis' attorneys used the history of segregation and discrimination in the United States against the rights of the Chamorro people. They argued that Chamorros, in seeking to protect their right to self-determination, were akin to hate groups such as the Ku Klux Klan, which had historically denied certain groups the right to vote through legal or illegal means. This case has become another means of hiding the contemporary realities of U.S. colonization.

The position of Davis is something that has also been mirrored by U.S. representatives, who have also argued that a self-determination vote must follow the U.S. rules. This insistence is not genuine, however. Regardless of how the decolonization vote is set, the Administering Power has long refused to recognize that this vote is binding or that the U.S. has any obligation based upon its outcome. The sympathetic ruling of the Ninth Circuit Court shows a continued commitment on behalf of the Administering Power to ignore international conventions and force this sacred process to conform to the comforts of the colonizer's legal mazes and fictions.

Davis will most likely resume his challenge against the self-determination plebiscite. His case continues to chill discussion, in anticipation of the time when the merits of his case will be heard in court. In truth, the merits of Davis' case shouldn't matter whatsoever. A decolonization process bound to the rules of the colonizer is anathema to the hope of justice and restitution that decolonization is meant to represent. Self-determination is meant to be a sacred right that all peoples possess. Here, we see a dangerous path ahead, where it appears the U.S. is insisting that it be allowed to determine how a colonized people decolonize.

The specter of unconstitutionality has also had a negative impact, rolling back a potential breakthrough in terms of having our Administering Power assist with the decolonization process. The Administering Power has the responsibility of assisting the non-self-governing territory in its process of decolonization and is obligated to assist with the funding of educational campaigns related to this process. For decades, the U.S. refused to acknowledge this obligation, just as it did not support the process in general.

In 2010, a slight shift took place. The U.S. Congress passed a law that authorized the U.S. Department of the Interior to use its technical assistance funding for public education on self-determination in Guam. It did not guarantee money but only authorized that this was a viable expense that the agency could fund.

This represented a breakthrough in terms of at last having the federal government of the U.S. acknowledge the historical and contemporary realities of its territories that are on the United Nations' list of non-self-governing territories. There has been difficulty in actually obtaining this funding, but at least this bill created the possibility.

The Davis case, however, has had a chilling effect and may, in fact, end up closing this minute space that has been created. Recent statements by DOI officials hint at their hesitancy to provide any support for self-determination education, and the Department of Justice may become involved, as such actions are currently being challenged as "unconstitutional."

I encourage the United Nations to engage with the United States, our Administering Power, to help it understand its role in this decolonization process. To help educate and guide the U.S. on ways that it can support the native inhabitants of Guam rather than hinder them. In Guam, this is vital to help realize the larger goal of eradicating colonialism in the world.

Si Yu'us Ma'ase para i tiempon-miyu.