

## USINDOPACOM J06/SJA TACAID SERIES

# TOPIC: DEFENSE OF GUAM AND THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS (CNMI)

## BLUF

- USINDOPACOM's priority mission is to defend the U.S. homeland.
- The U.S. Territories of Guam and CNMI are part of the U.S. homeland and indistinguishable from the fifty states for purposes of defense under international and domestic law.
- The U.N. Charter's prohibition on the threat or use of force against the territorial integrity or political independence of any state applies with respect to all U.S. territory including Guam and CNMI.
- As such, the United States has an inherent right under international law to exercise self-defense if Guam or CNMI is subject to an actual or imminent armed attack. The United States may also take necessary and proportionate countermeasures against internationally unlawful actions directed against Guam or CNMI.
- USINDOPACOM has an enduring obligation to defend the U.S. homeland – this TACAID addresses the legal foundation that underpins that defense obligation with respect to the territory and people of Guam and CNMI.

## WHY THIS MATTERS

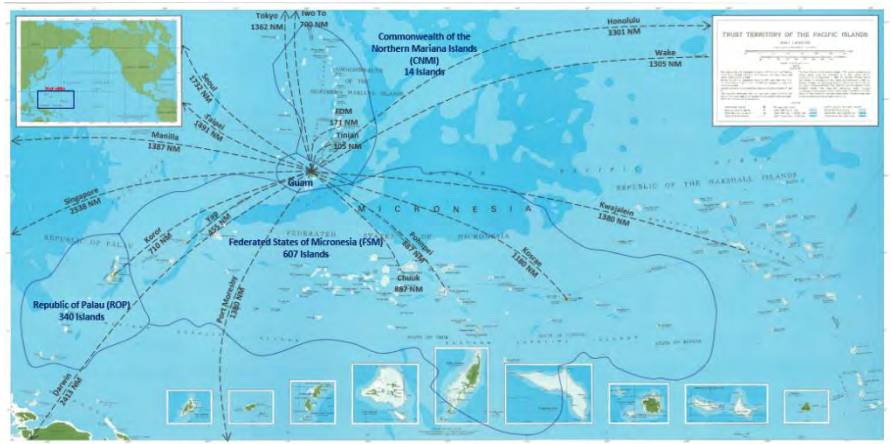
- As the most forward U.S. territories in the Pacific, Guam and CNMI are critical to U.S. defense and power projection.<sup>i</sup> The Guam Defense System is COMUSINDOPACOM's top homeland defense priority.<sup>ii</sup>
- USINDOPACOM's initiative to stand-up Joint Task Force (JTF) Micronesia – forward-stationed in Guam – reflects Guam's importance as a command and control node for operations and activities across the Guam cluster (Guam, CNMI, Wake Island, and Midway Island and the Freely Associated States).<sup>iii</sup>
- Guam and CNMI are home to over 200,000 U.S. citizens; vibrant cultures; international tourism and investment; and vast areas of U.S. territorial sea (TTS) and exclusive economic zone (EEZ) with rich biodiversity and resources.
- Inspiring and advancing broad understanding of Guam and CNMI's status as U.S. homeland contributes to deterrence against a range of potential threats.

## DETAILED DISCUSSION

### 1. History & Legal Status of Guam

- Spain ceded Guam to the United States after the Spanish American War in the Treaty of Peace Between the United States and The Kingdom of Spain (Treaty of Paris), signed December 10, 1898.<sup>1</sup>
- The Guam Organic Act of 1950<sup>iv</sup> designated Guam as an unincorporated territory<sup>v</sup> of the United States; established executive, legislative, and judicial branches of Government; transferred federal jurisdiction from the U.S. Navy to the U.S. Department of the Interior; and granted U.S. citizenship to all persons residing in Guam at the time of its enactment and to their children born after April 11, 1899.
- Persons born in Guam on or after December 24, 1952, acquire U.S. citizenship at birth.<sup>vi</sup>

- Unlike CNMI, Guam is considered a Non-Self-Governing Territory by the United Nations – i.e. it is among 17 territories whose people have not yet attained a full measure of self-government following the colonial period. U.N. Member States responsible for the administration of such Territories are called Administering Powers. The United States recognizes its obligation as an Administering Power under U.N. Charter Article 73(e) to promote self-determination for the people of Guam.<sup>vii</sup>
- Although Guam remains a Non-Self-Governing Territory, federal and local laws establishing democratic political institutions and strong private sector led economies enable locally elected leaders to govern Territorial affairs, thereby mirroring self-governing principles. Freely elected leaders establish local priorities, decide resource distribution, and determine ways to honor their respective cultural identities.<sup>viii</sup>
- Guam is listed as part of the definition of the “United States” in section 1011(a)(38) of the Immigration and Nationality Act (INA).<sup>ix</sup>
- As of the 2020 U.S. Census, Guam’s population is 153,836.<sup>x</sup>



## 2. History & Legal Status of CNMI

- CNMI is an unincorporated territory and commonwealth of the United States consisting of 14 of the 15 Mariana Islands in the northwest Pacific Ocean (note: Guam, the southernmost Mariana Island, is not part of the CNMI).
- In 1521 Ferdinand Magellan landed in the Marianas and claimed the archipelago for Spain. Following its loss during the Spanish–American War of 1898, Spain ceded Guam to the United States and sold the remainder of the Marianas (i.e., the Northern Marianas) to Germany under the German–Spanish Treaty of 1899.<sup>xi</sup>
- Early in World War I, Japan declared war on Germany and invaded the Northern Marianas. In 1919, the League of Nations awarded all of Germany’s islands in the Pacific located north of the equator, including the Northern Marianas, under mandate to Japan.<sup>xii</sup>
- The Trust Territory of the Pacific Islands (TTPI) was established in 1947 following Japan’s surrender in World War II. The TTPI included areas which are now CNMI, the Republic of the Marshall Islands (RMI), the Federated States of Micronesia (FSM), and the Republic of Palau. The United Nations oversaw the TTPI such that each entity could choose its own political arrangement.<sup>xiii</sup> CNMI became an unincorporated U.S. territory via a 1976 resolution titled “The Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (The Covenant).”<sup>xiv</sup>



- Article III of The Covenant (Citizenship and Nationality), which entered into force in November 1986, declared residents of the CNMI to be citizens of the United States.<sup>xv</sup> Section 303 of the Covenant also declared all persons born in CNMI on or after the effective date of this Section to be citizens of the United States at birth.<sup>xvi</sup>
- In addition, U.S. federal law (Consolidated Natural Resources Act of 2008) extended most provisions of U.S. immigration law to CNMI. In particular, the definition of “United States” in the INA includes CNMI.<sup>xvii</sup>
- As of the 2020 U.S. Census, CNMI has a population of 47,329.<sup>xviii</sup>

### 3. The Significance of Guam and CNMI to Homeland Defense

- As the most forward U.S. territories in the Pacific, Guam and CNMI are critical to U.S. defense and power projection across the region.<sup>xix</sup> The Guam Defense System is COMUSINDOPACOM’s top homeland defense priority, and is central to enabling robust theater logistics.<sup>xx</sup>
- Guam is DoD’s largest refueling and armament station in the first and second island chains.<sup>xxi</sup> Sea Ports in Guam and CNMI are a three day sail from Taiwan, South Korea, and Japan, and a seven day sail from Hawaii.<sup>xxii</sup> Airports in Guam, Saipan, and Tinian enable direct flights to/from U.S. A&P in the first and second island chains.<sup>xxiii</sup>
- USINDOPACOM’s stand-up of JTF Micronesia in Guam reflects the importance of Guam as a command and control node for operations and activities across the Guam cluster (Guam, CNI, Wake Island, and Midway Island and the Freely Associated States).<sup>xxiv</sup>
- Several posture projects in Guam and CNMI require historic levels of military construction. Of note, the United States and the Government of Japan committed more than \$7 billion for military construction and family housing projects on Guam in FY22-FY28.
- USINDOPACOM’s commitment to homeland defense of U.S. territories is reflected in the \$1.4 billion authorized in NDAA FY’23 for DoD projects in Guam, the \$1.5 billion for the missile defense in the President’s FY’24 Budget, and the establishment of Marine Corps Base Camp Blaz, the first new U.S. Marine Corps Base in 72 years.
- This commitment is also reflected in the \$161.8 million expansion to the Tinian Airport in CNMI that will enhance turnaround times, maintenance support, and provide an additional divert airfield for DoD Aircraft in the region.<sup>xxv</sup>
- U.S. A&P are also invested in the region, as evidenced by a Memorandum of Understanding between the United States and Singapore for Singapore armed forces to establish a permanent fighter detachment on Guam.<sup>xxvi</sup>
- According to Singapore’s Ministry of Defense, “the vast training airspace in Guam will allow the Republic of Singapore Air Force to conduct realistic training, to hone their capabilities and readiness.”<sup>xxvii</sup>
- U.S. allies including Japan and Australia also train in Guam. For example, forces from Australia, Japan, and the United States established a multinational task force in Guam for exercise Cope North in February 2023.<sup>xxviii</sup>
- The U.S. military routinely operates in designated land, air, and sea areas of the Mariana Islands to safely train military service members in equipment use, tactics, joint operations, and humanitarian aid missions. These training and testing areas are collectively known as the Mariana Islands Range Complex (MIRC).



The Port of Guam is seen in June 2021. (U.S. Coast Guard)

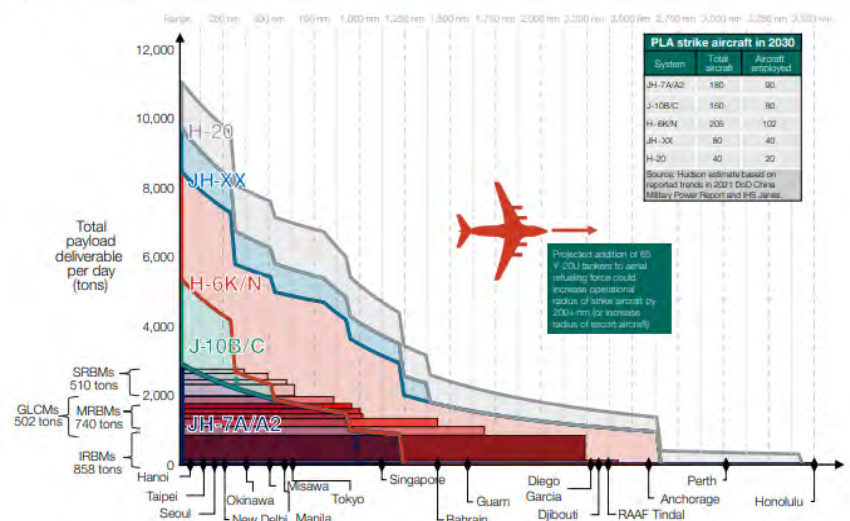


- As described by Lt Gen Stephen Sklenka, USINDOPACOM Deputy Commander, “Guam is a place where our combat power will aggregate and congregate and from which it will emanate...from there we send a powerful strategic message to our allies and our adversaries that the United States has invested in this region.”<sup>xxxix</sup>
- Beyond their significance to military strategy, Guam and CNMI are home to over 200,000 U.S. citizens.
- The cultures of Guam and CNMI are vibrant, historic, and enduring. Archaeological evidence suggest that Austronesian voyagers reached the Marianas 6500 years ago.<sup>xxx</sup>
- These inhabitants and their descendants became the Chamorro people who formed a strong society and thriving culture that continues today.<sup>xxxi</sup>
- As U.S. territories, under international law reflected in the U.N. Convention on the Law of the Sea, both Guam and CNMI generate U.S. TTS (12-nm sovereign waters) and vast Exclusive Economic Zones (EEZs) (200-nm) with rich biodiversity and natural resources subject to U.S. sovereign rights.<sup>xxxii</sup>
- Tourism, especially from South Korea, Japan, and the United States, accounts for 75% of CNMI’s economy.<sup>xxxiii</sup> From 2019-2022 tourism accounted for \$3.5 billion of Guam’s total economy (60% of Guam’s revenues).<sup>xxxiv</sup>
- USINDOPACOM has an enduring responsibility to ensure the defense of Guam and to CNMI as part of the U.S. homeland, and to inform understanding regarding the legal foundation for that defense obligation.

#### 4. Conventional Threats to Guam and CNMI

- The conventional threats that face Guam and CNMI today are numerous. These include threats from intermediate and medium range ballistic missiles, such as the DF-26 and DF-21, to H-6K/J/N bombers carrying DH-10 LACM cruise missiles and YJ-12 anti-ship missiles.<sup>xxxv</sup>
- Specifically, both Guam and CNMI are within the 2500-mile firing range of the DF-26 intermediate ballistic missile dubbed the “Guam Killer” in Chinese media outlets.<sup>xxxvi</sup> The DF-26 can fire conventional and nuclear payloads at targets across the Marianas.<sup>xxxvii</sup>
- The People’s Liberation Army (PLA) has recently simulated military strikes against Guam using H-6K “Badger” Bombers.<sup>xxxviii</sup>
- In 2022, the PLA participated in VOSTOK 22, a Russia-led exercise that included multiple combined naval and strategic bomber patrols. Some of those events occurred in the air and sea spaces around Japan and near Alaska and Guam.<sup>xxxix</sup>
- PRC propaganda has implied Guam’s distance from the continental United States and proximity to China make it a viable target at which the PRC can strike if provoked.<sup>xl</sup> Such propaganda denigrates and ignores Guam’s (and by extension CNMI’s) status as U.S. homeland indistinguishable as a matter of law from all U.S. territory for defense purposes.
- The Democratic Peoples Republic of Korea (DPRK) has also threatened to strike Guam with its medium to long-range rockets as recently as 2017.<sup>xli</sup>

Figure 8: Projected 2030 PLA Strike Capacity vs. Range



Source: Bryan Clark and Timothy A. Walton, *Regaining the High Ground Against China: A Plan to Achieve US Naval Aviation Superiority This Decade* (Washington, DC: Hudson Institute, 2022), 8.

## 5. Cyber Threats to Guam and CNMI

- In addition to conventional threats, the U.S. National Security Agency (NSA) and international cybersecurity authorities from the Five Eyes (FVEY) partners<sup>xliii</sup> issued a combined Cybersecurity Advisory (CSA) spotlighting activity associated with a PRC state-sponsored cyber actor known as Volt Typhoon.<sup>xliii</sup>
- The CSA cites to a report from Microsoft, which says that Volt Typhoon has been active since mid-2021—targeting infrastructure in Guam and elsewhere in the U.S. that span sectors such as communications, manufacturing, utility, transportation, construction, maritime, government, information technology, and education.
- The authoring agencies of the CSA assessed that Volt typhoon could apply the same techniques against these and other sectors worldwide. Volt Typhoon’s techniques reportedly involve infiltrating corporate systems and stealing user credentials while avoiding detection for as long as possible.
- According to the Commander of USINDOPACOM, Admiral Aquilino, the PRC’s “cyber efforts remain focused on developing capabilities to enable warfare activities targeting US and partner critical civilian electric, energy, and water infrastructure to generate chaos and disrupt military operations.”<sup>xliv</sup>
- Jen Easterly, the Director of the US Cybersecurity and Infrastructure Security Agency stated that PRC aggression against Taiwan is likely to be accompanied by “the explosion of multiple gas pipelines, the pollution of our water systems, the hijacking of our telecommunication systems, the crippling of our transportation nodes.” She noted that these are activities “all designed to incite chaos and panic across our country and deter our ability to marshal military might and citizen will.”<sup>xlv</sup> The U.S. State Department issued similar warnings that the PRC is capable of launching cyber-attacks against critical infrastructure, including oil and gas pipelines and rail systems.<sup>xlvi</sup>
- A spokesperson for the PRC’s ministry of foreign affairs characterized the CSA as a “collective disinformation campaign launched by the US through the Five Eyes to serve its geopolitical agenda.”<sup>xlvii</sup>

## 6. Legal Authority to Defend Guam and CNMI

- Under international law codified in Article 2(4) of the U.N. Charter, states are generally prohibited from using force against the territorial integrity or political independence of other states.
- The U.N. Charter details two relevant exceptions, or circumstances, when a use of force is justified.
- The first circumstance occurs when the U.N. Security Council determines “the existence of any threat to the peace, breach of the peace, or act of aggression” and authorizes under Article 42 “such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security.”<sup>xlviii</sup>
- The second circumstance authorizes “individual or collective self-defense” under Article 51 “if an armed attack occurs against a Member.”<sup>xlix</sup> Customary international law also affords states the right to take measures in response to imminent attacks.<sup>l</sup>
- In his volume, *Striking First*, Doyle characterizes self-defense as “[t]he first and clearest case of just war. . . . The country that is attacked and others may join in the defensive war in order to repel, and perhaps also to punish, an unjust attacker.”<sup>li</sup> This response need not await Security Council authorization, though states must apprise the Security Council of the exercise of the inherent right of self-



A Terminal High Altitude Area Defense (THAAD) missile defense system in Deddo, Guam (Nov. 11, 2022) | Image: U.S. Air Force photo by Staff Sgt. Hannah Malone

defense. The Council may then take “such action as it deems necessary in order to maintain or restore international peace and security.”<sup>lii</sup>

- The United States has consistently recognized that armed attacks on U.S. Territories, just like other U.S. soil, are armed attacks on the United States justifying the use of force in self-defense. For example:
  - In May 1846, the Republic of Mexico attacked U.S. Army units in the U.S. territory of Texas.
  - On December 7/8, 1941, the Empire of Japan bombed the U.S. Territories of Hawai’i, Philippines, and Guam.
- In each case the U.S. declared war upon and ultimately defeated the attacker.<sup>liii</sup>
- U.S. officials have “very clearly stated an attack on Guam [or CNMI] is, in fact, an attack on the U.S. homeland in case there had been any misunderstanding about that by the adversary.”<sup>liv</sup>
- In cyberspace, a state’s inherent right of self-defense may be triggered by cyber operations that amount to an armed attack or imminent threat thereof.<sup>lv</sup> As a matter of policy, the United States has expressed the view that when warranted, it will respond to hostile acts in cyberspace as it would to any other threat to the country.<sup>lvi</sup>
- There is no legal requirement that the response in self-defense to an armed attack in cyberspace take the form of a cyber action, as long as the response meets the requirements of necessity and proportionality.<sup>lvii</sup>
- A state’s right to take necessary and proportionate action in self-defense in response to an armed attack (including an armed attack in cyberspace) applies whether the attack is attributed to another state or to a non-state actor.<sup>lviii</sup>
- Although cyber operations that do not constitute uses of force would not permit injured states to use force in self-defense, those injured states may be justified in taking actions in response that do not constitute a use of force,<sup>lix</sup> such as diplomatic protest, an economic embargo, or other acts of retorsion.<sup>lx</sup>
- Under international law, states have a right to take countermeasures in response to an internationally wrongful act by another state. Countermeasures may not be a use of force and must be necessary and proportionate.<sup>lxi</sup>
- Finally, as U.S. territories, Guam and CNMI’s TTS are sovereign U.S. waters, entry and passage through which must comport with international law.<sup>lxii</sup> The United States may take steps to prevent entry or passage through TTS that is contrary to international law and implementing domestic legislation.<sup>lxiii</sup>

## PROPOSED COUNTER-LAWFARE APPROACH

**\*\*This section offers proposed language for incorporation into communication strategies\*\***

- Guam and the CNMI are sovereign U.S. soil and part of the U.S. homeland. They are indistinguishable from the fifty states for purposes of defense under international and domestic law.
- USINDOPACOM’s priority mission is to defend the U.S. homeland – that priority mission is based in the inherent right of all states to defend their territory and their people from an actual or imminent armed attack.
- The U.N. Charter’s prohibition on the threat or use of force against the territorial integrity or political independence of any state applies with respect to all U.S. territories including Guam and CNMI.
- As the most forward U.S. territories in the Pacific, Guam and CNMI are critical to U.S. defense and power projection. The Guam Defense System is COMUSINDOPACOM’s top homeland defense priority.
- USINDOPACOM has an enduring obligation to prioritize the defense of Guam and CNMI because of the persistent and significant threats they face from potential adversaries.
- U.S. allies and partners are invested in the Marianas. Singapore armed forces intend to establish a permanent fighter detachment on Guam to conduct realistic training and to hone capabilities and readiness. In Feb 2023 Australian, Japanese, and U.S. forces established a multinational task force in Guam for exercise Cope North.

<sup>i</sup> 48 U.S.C. § 1421 et seq.

<sup>ii</sup> *Id.* The Guam Defense System has been described as an architecture extending to the sea and to other islands within the Mariana Island chain that provides 360-degree coverage and depth to address threats that originate from air, sea, and land and come from all directions. *See e.g.* Lopez, “Time for Guam Missile Defense Build-Up Is Now” <https://www.defense.gov/News/News-Stories/Article/Article/2866855/time-for-guam-missile-defense-build-up-is-now/>.

<sup>iii</sup> *Id.*

<sup>iv</sup> 48 U.S.C. § 1421 et seq.

<sup>v</sup> Article IV, Section 3 of the US Constitution states that the Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States. So-called “unincorporated territory,” however, is an area over which the Constitution has not been expressly and fully extended by the Congress within the meaning of Article IV, Section 3. The recognition of the existence of “unincorporated territory” was determined by the US Supreme Court after the Spanish American War. *See* Definitions of Insular Area Political Organizations, U.S. Department of the Interior.

<sup>vi</sup> 8 U.S.C. § 1401(a). Section 301(a) INA provides that a person born in and subject to the jurisdiction of the U.S. shall be a U.S. citizen. 8 U.S.C. § 1407(b) INA conferred U.S. citizenship upon anyone born in Guam after April 1899.

<sup>vii</sup> Department of State, “Charter of the United Nations” Article 73.

<sup>viii</sup> Ambassador Jeffrey DeLaurentis, “Remarks at the United Nations General Assembly Fourth Committee Joint General Debate on Decolonization Items” New York, New York, October 2022.

<sup>ix</sup> 8 U.S.C. § 1101.

<sup>x</sup> U.S. Census Bureau, 2020 Census of Guam, <https://www.census.gov/newsroom/press-kits/2021/2020-island-area-census-press-kit.html>.

<sup>xi</sup> *See* Guampedia, Partition of the Marianas, March 2023, <https://www.guampedia.com/partition-of-the-marianas/>.

<sup>xii</sup> *See* Williams, “Japan’s Mandate in the Pacific” *The American Journal of International Law* Vol. 27, No. 3. Page 428 (1933).

<sup>xiii</sup> *See* Kiste, “Trust Territory of the Pacific Islands” April 2023, <https://www.britannica.com/place/Trust-Territory-of-the-Pacific-Islands>.

<sup>xiv</sup> 48 U.S.C. §§1801.

<sup>xv</sup> *Id.*

<sup>xvi</sup> *Id.*

<sup>xvii</sup> Public Law 110–229, Consolidated Natural Resources Act of 2008, Title VII.

<sup>xviii</sup> U.S. Census Bureau, 2020 Census of the Commonwealth of the Northern Marianas Islands.

<sup>xix</sup> Statement of John C. Aquilino, USINDOPACOM Posture, 18 April 2023.

<sup>xx</sup> *Id.* *See also* Lopez, “Time for Guam Missile Defense Build-up is Now” *DoD NEWS*, December 2021, <https://www.defense.gov/News/News-Stories/Article/Article/2866855/time-for-guam-missile-defense-build-up-is-now> (quoting Lt. Gen. Stephen D. Sklenka, USMC).

<sup>xxi</sup> *See* Mahshie, “Pacific Refueling” August 2022, <https://www.airandspaceforces.com/article/pacific-refueling/>.

<sup>xxii</sup> *See* Kan and Nisch, “Guam: U.S. Defense Deployments” May 2009, <https://safe.menlosecurity.com/doc/docview/viewer/docNDD58864BE92E4dd5009d3c3ba5d82d2b10fcbc7e764347aa49261b781137ddd29c1622cfb55f>.

<sup>xxiii</sup> *Id.*

<sup>xxiv</sup> *See supra* note 1.

<sup>xxv</sup> Honrada, “U.S. steps up airfield construction on Tinian” June 2022, <https://asiatimes.com/2022/06/us-steps-up-airfield-construction-on-tinian/>.

<sup>xxvi</sup> This MOU lays out the framework for Singapore’s detachment in Guam, covering the deployment of various airframes and other supporting assets for training.

<sup>xxvii</sup> *See* “Fact Sheet: Establishment of a Fighter Training Detachment in Guam” December 2019, [https://www.mindef.gov.sg/web/portal/mindef/news-and-events/latest-releases/article-detail/2019/December/07dec19\\_fs](https://www.mindef.gov.sg/web/portal/mindef/news-and-events/latest-releases/article-detail/2019/December/07dec19_fs).

<sup>xxviii</sup> *See* Pacific Air Forces, “Australia, Japan, U.S. stand up multinational task force for Cope North 23” January 2023, <https://www.pacaf.af.mil/News/Article-Display/Article/3281228/australia-japan-us-stand-up-multinational-task-force-for-cope-north-23/>.

<sup>xxix</sup> *See supra* note 21.

<sup>xxx</sup> Athens & Ward, “Austronesian Colonisation of the Mariana Islands: The Palaeoenvironmental Evidence” *Indo-Pacific Prehistory Association Bulletin*, 21-30, January 2004, Vol. 24 *The Taipei Papers*, Volume 2.

<sup>xxxi</sup> Cunningham, *Ancient Chamorro Society*, 83-96, Bess Press, 1992.

<sup>xxxii</sup> *See* U.N. Convention on the Law of the Sea, Arts. 3 & 57, December 1982, 1833 U.N.T.S. 397 (entered into force Nov. 16, 1994); *see also* Proclamation 5030 by the President of the United States of America on the Exclusive Economic Zone of the United States of America, 48 Fed. Reg. 50379, March 1983.



xxxiii Commonwealth of Northern Marianas Islands Office of Governor, “Proclamation-Marianas Tourism Month” May 2023, <https://governor.gov.mp/news/proclamation-marianas-tourism-month-may-2023/>.

xxxiv Guam Visitors Bureau, “Over 216K recorded in visitor arrivals for FY 2022” October 2022, <https://www.guamvisitorsbureau.com/over-216k-recorded-visitor-arrivals-fy2022>.

xxxv See Zach, “Defending Guam Against the Pacing Threats Of The Pacific” July 2021, <https://www.overtdefense.com/2021/07/16/defending-guam-against-the-pacing-threats-of-the-pacific/>.

xxxvi See Wilson, “China’s Expanding Ability to Conduct Conventional Missile Strikes on Guam” August 2016, <https://cimsec.org/chinas-expanding-ability-conduct-conventional-missile-strikes-guam/>; see also Lei, China Daily “PLA deploys latest ballistic missile to west brigade” April 2018, [www.chinadaily.com.cn/a/201804/18/WS5ad67c0ca3105cdcf6518e29.html](http://www.chinadaily.com.cn/a/201804/18/WS5ad67c0ca3105cdcf6518e29.html).

xxxvii Dangwal, “China’s ‘Guam Killer’ DF-26 Missile ‘Greatest Risk’ For US in Asia-Pacific’ Marine Corps Base Reactivated on Island After 68 Years” The EurAsian Times, January 2022, <https://eurasianimes.com/chinas-guam-killer-df-26-missile-greatest-risk-for-us-in-asia-pacific/>.

xxxviii See *supra* note 1. See also Copp, “China has practiced bombing runs targeting Guam, US says” Defense News, October 2017, <https://www.defensenews.com/flashpoints/2017/10/31/china-has-practiced-bombing-runs-against-guam-us-says/>.

xxxix See *supra* note 1.

xl Global Times, “Guam is not Pearl Harbor, and China is not Japan” August 2022, <https://www.globaltimes.cn/page/202208/1273806.shtml>.

xli BBC, North Korea “Considering missile strike on US Guam base” August 2017, <https://www.bbc.com/news/world-asia-40871416>.

xlii This advisory from the United States National Security Agency (NSA), the U.S. Cybersecurity and Infrastructure Security Agency (CISA), the U.S. Federal Bureau of Investigation (FBI), the Australian Signals Directorate’s Australian Cyber Security Centre (ACSC), the Communications Security Establishment’s Canadian Centre for Cyber Security (CCCS), the New Zealand National Cyber Security Centre (NCSC-NZ), and the United Kingdom National Cyber Security Centre (NCSC-UK) (hereafter referred to as the “authoring agencies”).

xliii Cybersecurity Advisory “NSA and Partners Identify China State-Sponsored Cyber Actor Using Built-in Network Tools When Targeting U.S. Critical Infrastructure Sectors” May 2023, <https://www.nsa.gov/Press-Room/Press-Releases-Statements/Press-Release-View/Article/3406058/nsa-and-partners-identify-china-state-sponsored-cyber-actor-using-built-in-netw/>.

xliv U.S. Military Posture and National Security Challenges in the Indo-Pacific Region, Full Committee Hearing, April 2023, <https://armedservices.house.gov/hearings/full-committee-hearing-us-military-posture-and-national-security-challenges-indo-pacific>.

xlvi Seldin, VOA News, “US Warns of Massive Chinese Cyberattacks in Taiwan Scenario” <https://www.voanews.com/a/us-warns-of-massive-chinese-cyberattacks-in-taiwan-scenario-/6981396.html>.

xlvii Satter, Siddiqui, and Pearson, “U.S. warns China could hack infrastructure including pipelines, rail systems” May 2023, <https://www.reuters.com/world/china/china-rejects-claim-it-is-spying-western-critical-infrastructure-2023-05-25/>.

xlviii Ministry of Foreign Affairs of the People’s Republic of China, Foreign Ministry Spokesperson Mao Ning’s Regular Press Conference, May 2023, [https://www.fmprc.gov.cn/eng/xwfw\\_665399/s2510\\_665401/2511\\_665403/202305/t20230525\\_11083609.html](https://www.fmprc.gov.cn/eng/xwfw_665399/s2510_665401/2511_665403/202305/t20230525_11083609.html).

xlviii Department of State, “Charter of the United Nations,” Article 42.

xlvi Ibid., Article 52.

<sup>1</sup> Lord Peter Henry Goldsmith, Oral Answers to Questions, April 2004, Hansard 660 House of Commons Debates §§ 370-71 (“It is argued by some that the language of Article 51 provides for a right of self-defense only in response to an actual armed attack. However, it has been the consistent position of successive United Kingdom Governments over many years that the right of self-defense under international law includes the right to use force where an armed attack is imminent.”).

<sup>li</sup> Doyle, “Striking First: Preemption and Prevention in International Conflict” Princeton University Press, 2008.

<sup>lii</sup> Department of State, “Charter of the United Nations,” Article 51.

<sup>liii</sup> An Act providing for the Prosecution of the existing War between the United States and the Republic of Mexico, 9 Stat. 9, (1846); and Joint Resolution Declaring that a state of war exists between the Imperial Government of Japan and the Government of the people of the United States and making provision to prosecute the same, Pub. L. 77-238 (1941).

<sup>liv</sup> Gordon, “Missile Defense of Guam is ‘Big Issue,’ DoD Official Says” Air and Space Forces Magazine, November 2022 <https://www.airandspaceforces.com/missile-defense-of-guam-is-big-issue-dod-official-says/> (quoting John Plumb, Assistant Secretary of Defense for Space Policy).

<sup>lv</sup> Koh, “International Law in Cyberspace: Remarks as Prepared for Delivery to the USCYBERCOM Inter-Agency Legal Conference” September 2012, reprinted in 54 Harvard International Law Journal Online, (“Question 4: May a state ever respond to a computer network attack by exercising a right of national self-defense? Answer 4: Yes. A state’s national right of self-defense, recognized in Article 51 of the UN Charter, may be triggered by computer network activities that amount to an armed attack or imminent threat thereof.”); Obama, International Strategy for Cyberspace: Prosperity, Security, and Openness in a Networked World, 10 (May 2011)



(“Right of Self-Defense: Consistent with the United Nations Charter, states have an inherent right to self-defense that may be triggered by certain aggressive acts in cyberspace.”).

<sup>lvi</sup> Obama, International Strategy for Cyberspace: Prosperity, Security, and Openness in a Networked World, 14, May 2011 (“When warranted, the United States will respond to hostile acts in cyberspace as we would to any other threat to our country. All states possess an inherent right to self-defense, and we recognize that certain hostile acts conducted through cyberspace could compel actions under the commitments we have with our military treaty partners. We reserve the right to use all necessary means—diplomatic, informational, military, and economic—as appropriate and consistent with applicable international law, in order to defend our Nation, our allies, our partners, and our interests. In so doing, we will exhaust all options before military force whenever we can; will carefully weigh the costs and risks of action against the costs of inaction; and will act in a way that reflects our values and strengthens our legitimacy, seeking broad international support whenever possible.”).

<sup>lvii</sup> Koh, “International Law in Cyberspace: Remarks as Prepared for Delivery to the USCYBERCOM Inter-Agency Legal Conference” September 2012, reprinted in 54 Harvard International Law Journal Online, 4, December 2012, (“There is no legal requirement that the response to a cyber armed attack take the form of a cyber action, as long as the response meets the requirements of necessity and proportionality.”).

<sup>lviii</sup> United States Submission to the U.N. Group of Governmental Experts on Developments in the Field of Information and Telecommunications in the Context of International Security 2012-2013, 2 (“As the United States noted in its 2010 submission to the GGE, the following established principles would apply in the context of an armed attack, whether it originated through cyberspace or not: The right of self-defense against an imminent or actual armed attack applies whether the attacker is a State actor or a non-State actor.”).

<sup>lix</sup> Department of Defense, Office of the General Counsel, An Assessment of International Legal Issues in Information Operations (2nd ed., Nov. 1999), reprinted in 76 U.S. Naval War College International Law Studies, 459, 482 (2002). (“There is also a general recognition of the right of a nation whose rights under international law have been violated to take countermeasures against the offending state, in circumstances where neither the provocation nor the response involves the use of armed force. For example, an arbitral tribunal in 1978 ruled that the United States was entitled to suspend French commercial air flights into Los Angeles after the French had suspended U.S. commercial air flights into Paris. Discussions of the doctrine of countermeasures generally distinguish between countermeasures that would otherwise be violations of treaty obligations or of general principles of international law (in effect, reprisals not involving the use of armed force) and retorsions – actions that may be unfriendly or even damaging, but which do not violate any international legal obligation. The use of countermeasures is subject to the same requirements of necessity and proportionality as apply to self-defense.”).

<sup>lx</sup> See DoD Law of War Manual 16.3.3.3.

<sup>lxi</sup> See *supra* note 60. (“There is also a general recognition of the right of a nation whose rights under international law have been violated to take countermeasures against the offending state, in circumstances where neither the provocation nor the response involves the use of armed force. For example, an arbitral tribunal in 1978 ruled that the United States was entitled to suspend French commercial air flights into Los Angeles after the French had suspended U.S. commercial air flights into Paris. Discussions of the doctrine of countermeasures generally distinguish between countermeasures that would otherwise be violations of treaty obligations or of general principles of international law (in effect, reprisals not involving the use of armed force) and retorsions – actions that may be unfriendly or even damaging, but which do not violate any international legal obligation. The use of countermeasures is subject to the same requirements of necessity and proportionality as apply to self-defense.”).

<sup>lxii</sup> See UNCLOS Article 45. For example, states enjoy a right of innocent passage through a coastal state’s TTS.

<sup>lxiii</sup> See, e.g., The Commander’s Handbook on the Law of Naval Operations, NWP 1-14M/MCTP 11-10B/COMDT PUB P5800.7A (2022 ed.), ¶2.5.2.1 (“[A] coastal State make take affirmative action in and over its territorial sea to prevent passage that is not innocent, including, where necessary, the use of force.”).