



ENDURING COLONIZATION

How France's Ongoing Control
of French Polynesian Resources
Violates the International Law
of Self-Determination

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EXECUTIVE SUMMARY

This report examines France's ongoing control over the resources of French Polynesia, the official designation of a group of Polynesian islands in the South Pacific Ocean governed by France as an "overseas collectivity." Although its treatment of French Polynesia has evolved over the years from that of a strictly colonial possession and nuclear testing site to that of a dependency with certain autonomous powers, France retains authority over significant areas of local governance.

This report focuses on natural resource development, as well as economic factors more broadly. It finds that France's continued control over and interference with the islands' resources works to disenfranchise the people of French Polynesia, violating

their fundamental right to self-determination, particularly their right to freely determine their own economic, social, and cultural development. Regardless of French Polynesia's precise political status, international law grants peoples under present or former colonial rule permanent sovereignty over their natural resources. Their attendant right not to be alienated from those resources figures as a major part of the fundamental right of self-determination.

In its recent efforts to develop seabed mining programs in the region, France continually asserts sovereignty over French Polynesian waters. At the same time, it has failed to consult with – let alone obtain the consent of – indigenous, coastal, and local

communities within French Polynesia, who are most likely to be affected by this new extractive activity. France also continues to treat French Polynesia as a strategic naval and military outpost which it is loath to relinquish, particularly given shifting dynamics in the Asia-Pacific theater and China's rise in the region.

The failure to clean up or otherwise remedy damage done by France's 30 year nuclear testing program in the islands constitutes another violation of the French Polynesian people's right to benefit from their natural resources and to chart a course of economic development of their own design. Existing military installations and contaminated atolls continue to affect terrestrial and marine resources and contribute to ongoing food insecurity, in addition to debilitating health and environmental impacts.

France's substantial control over many other areas of the French Polynesian economy – including a colonial currency, financial transfers that maintain dependency,

and oversight over certain areas of immigration and the workforce – creates bureaucratic complexities and encourages capital outflows to metropolitan France at the expense of local development. This state of affairs continues to generate high inequality and poverty, particularly among native Polynesians, while also inducing the erosion of traditional knowledge and related sustainable practices.

Self-determination standards oblige a much greater devolution of powers from France to French Polynesia and the strict non-alienation of French Polynesian people from their natural resources. Positive steps in this direction would involve good faith engagement by France with the people of French Polynesia and all of their representatives (not just those desiring a closer political affinity with the metropole) over the disposition of the islands' natural resources. Until then, French policies that entrench French control over such resources will continue to violate international law.

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INTRODUCTION

This report examines the question of French control and exploitation of the economic and natural resources of French Polynesia¹, a group of colonized, Polynesian Pacific islands. In particular, it assesses whether France may be violating French Polynesians' right to economic self-determination – in particular, the ability to enjoy permanent sovereignty over their natural resources – through its assertions of control over various areas of French Polynesian affairs.

French Polynesia (along with New Caledonia, and Wallis and Futuna) was colonized by France in the mid-1800s. Its colonial status evolved over time from 'protectorate' to 'territory' to 'overseas collectivity,' but never back to full sovereignty as the independent island chain it once was. France's colonization of French Polynesia is perhaps most notorious for a long period of nuclear testing which decimated the health and environment of local islanders and continues to affect their well-being today.²

What is less well known is the extent to which ongoing French control of these islands hampers French Polynesians' full self-determination and economic development. France has vociferously opposed efforts by the French Polynesian people and their allies to push for independence,³ and continues an active campaign to remove French Polynesia from the UN List of Non-Self-Governing

Territories (NSGT), where it was re-inscribed in 2013.⁴ French opposition to granting French Polynesia self-determination can be attributed, in part, to the continued value France derives from access to French Polynesia's extensive marine exclusive economic zone (EEZ), which, along with that of its other Pacific territories, allows France to claim the second largest EEZ in the world.⁵

With the shift towards the "blue economy" taking center stage,⁶ France appears unlikely to allow French Polynesia true autonomy over its natural resources – particularly those in the marine space – preferring instead to reserve the right to exploit these resources itself as the need arises.⁷ The rise of China and other geopolitical developments in the Asia-Pacific theater further incentivize France to retain its Pacific holdings, if only for symbolic access.⁸

In addition to effectively retaining control over French Polynesia's natural resources, France's continued administrative and political oversight often hampers French Polynesia's ability to exert true sovereignty over its natural resources and pursue locally-driven economic growth. From crippling the islands' economy through nuclear testing and militarization, to modern-day dependencies on foreign imports and the administrative state,⁹ France continues to prevent full French Polynesian economic self-determination in violation of

its obligations to its administered territory under international law.

The following discussion explores specific areas in which France violates French Polynesia's economic self-determination, looking at issues of the marine space, seabed minerals, geopolitical access, currency and financial transfers, fisheries, and human capital. It demonstrates that despite semblances of autonomy in

some of these areas, there has not been a true devolution of power designed to enable local communities to harness their own resources for equitable, sustainable development. The report provides an overview of relevant law, highlighting areas in which France is remiss, and concludes with suggestions to advance the self-determination of the French Polynesian people in line with France's obligations under international law.

FRANCE'S ECONOMIC CONTROL OF FRENCH POLYNESIA



Map of the Pacific

HISTORICAL BACKGROUND

Located in the middle of the Pacific Ocean halfway between the United States (US) and Australia, modern-day French Polynesia consists of 118 islands making up 6 different archipelagos. The islands themselves total only 3,827 square kilometers in land area, but extend over 2,000 kilometers of the Pacific, with an exclusive economic zone of approximately 5 million square kilometers.¹⁰

The first islands of French Polynesia were settled as part of the Great Polynesian Migration sometime between 500 to 200 BC, and the other islands over the next several centuries.¹¹ French Polynesia lies in the middle of the Polynesian triangle, and shares a common language group, cultural traditions, and navigational prowess with other Polynesian peoples (including the Maori in New Zealand and Kanaka Maoli or Native Hawaiians).¹²

The first European contact occurred in 1521 with Ferdinand Magellan, and was

followed by Spanish, British, French, and Dutch expeditions in the 1760s-1770s.¹³ Christian missionaries arrived not long after, and the dissolution of the islands' political structures began around the same time, culminating in France's declaration of a protectorate over Tahiti in the 1840s, and the total annexation and colonization of the rest of French Polynesia in the 1880s.¹⁴

In 1946, French Polynesia was designated a French territory by the UN and listed on the UN list of non-self-governing territories.¹⁵ In 1947, however, France unilaterally removed French Polynesia from the list and ceased reporting on its status to the UN.¹⁶ In 2003, France changed French Polynesia's status again to that of an "overseas collectivity."¹⁷ It strenuously opposed French Polynesia's successful campaign to be placed back onto the UN list of non-self-governing territories in 2013.¹⁸

From 1984 onwards, France has implemented a series of "autonomy statutes" laying out the division of powers between France and French Polynesia. While these have given French Polynesia supposed power over certain aspects of local government, France has retained strategic control in key areas including foreign affairs, defense, education, and the legal and financial systems.¹⁹ Unlike New Caledonia's 1998 Noumea Accord, French



Map of the Polynesian Triangle

Polynesia's autonomy statutes guarantee neither an eventual self-determination referendum nor the "irreversibility" of transfers of legal and administrative powers from Paris to Pape'ete.²⁰ Frequent amendments to these statutes have further complicated the system by which France asserts continued control over French Polynesian affairs.²¹

From 1966 to 1996, France carried out 193 atmospheric and underground nuclear weapons tests in French Polynesia, on and around the atolls of Moruroa and Fangataufa.²² As in other parts of the Pacific, these nuclear tests caused inordinate damage to the natural environment and to the health, culture, and way of life of French Polynesians.²³ They experience high rates of cancers (in some cases, the highest in the world)²⁴ strongly associated with radiation exposure, birth defects, and intergenerational harm.²⁵

The nuclear program was equally destructive to French Polynesia's sustainable agricultural economy, replacing it with one built around servicing nuclear tests.²⁶ After testing ended, France replaced the nuclear economy with limited financial transfers to French Polynesia's annual budget.²⁷ Highly processed, imported food has replaced self-sufficient local food systems, dramatically increasing the cost of living and food insecurity. Likewise, many traditional skills and knowledge related to farming and fishing have been lost, leaving French Polynesia highly dependent on the system of financial transfers.²⁸ Fisheries, pearl farming, aquaculture, agriculture, and tourism have been reduced to fledgling industries that would need significant changes to become self-sustaining.²⁹

Moreover, control of lucrative industries and real estate generally rests with ethnic French, "Demis" (those of mixed European and Polynesian descent), or Chinese, as well



Licorne test 1971, Moruroa Atoll, French Polynesia. Cr: [CTBTO](#), unmodified

as foreign nationals, while many indigenous Maohi or Polynesians suffer high inequality and poverty rates.³⁰ The unemployment rate is over 20% and nearly doubled from 2007 to 2012.³¹ By some accounts, more than 50% of the population of French Polynesia now lives in poverty.³² Income inequality is very high, with the highest-earning 20% of households receiving half of total territorial income, whereas the lowest-earning 20% receive only 6%.³³ As a result of growing welfare demand, the local Red Cross has expanded in recent years, and “more and more minors are living on the streets.”³⁴



Local produce stand on the island of Mo'orea



Street art in Pape'ete, Tahiti, February 2019

The discussion for how to stage an economic recovery from the long decades of colonization is overdue. It can hardly begin, however, without an end to France's continued exploitation of French Polynesia. The following sections detail how France's ongoing involvement in particular areas of French Polynesian affairs denies sovereign control over natural resources to the people of French Polynesia, impeding their prospects of healthy economic development.



Territorial waters map of the Pacific

MARINE MINERALS AND RESOURCE EXPLOITATION

France's persistent interest in retaining French Polynesia appears largely due to the value of the islands' marine space.³⁵ French Polynesia's EEZ alone is approximately the same size as Europe, and comprises nearly half of France's total EEZ.³⁶ It is the largest of any French administrative division, dwarfing that of Metropolitan France.³⁷ It also contains numerous marine resources, including fisheries, pearls, coral reefs, and minerals.³⁸ As a recent French Senate report notes, "11 million km² of EEZ and their potential resources pose an opportunity both for France and for Europe in the economic competition on the international stage."³⁹ Indeed, France is intent on being at the forefront of the "blue economy."⁴⁰ With respect to the cost of maintaining overseas territories, a French senate report notes:

This is an investment for the future, an historic opportunity for growth and expansion. France, with its overseas territories on the front rank, must seize this opportunity and bet on the blue economy.⁴¹

Seabed minerals are of particular interest to the French state. As a major mineral producer and processor,⁴² France has been deemed a pioneer in seabed exploration.⁴³ It has been heavily involved in the global "gold rush" to secure licenses to exploit new deposits of valuable seabed minerals, holding contracts with the International Seabed Authority to explore the Clarion-Clipperton Fracture Zone (a high seas area in the Pacific Ocean) for polymetallic nodules and the mid-Atlantic ridge for polymetallic sulphides.⁴⁴ France played a role in shaping both the EU Raw Materials Initiative,⁴⁵

designed to reduce Europe's dependence on China and other countries for supply of rare earths and other material, and the Secretariat of the Pacific Community (SPC) - EU Deep Sea Minerals Project, which fast-tracked regulatory frameworks for seabed mining in the Pacific region.⁴⁶

In 2010, France implemented a "Strategic Metals Plan," designed to facilitate access to critical materials, in part through exploration campaigns in France's EEZ, beginning in Wallis and Futuna.⁴⁷ France also provides "extensive funding" to the *Comité pour les Métaux Stratégiques* (Committee on Seabed and Strategic Minerals), the French Research Institute for Ocean Exploitation (Ifremer), the Mining Research Institute, and other initiatives that investigate seabed resources in its Pacific territories.

France sees French Polynesia's extensive EEZ as an integral part of its seabed mining ambitions. To that end, France has authorized and carried out multiple surveys to assess the location and concentration of mineral deposits in French Polynesian waters. Studies from the 1970s and 1980s yielded the discovery of "polymetallic crusts which are exceptionally rich in cobalt and observed on seamounts on the Tuamotu Plateau, mainly at depths of 800 to 2,500 m."⁴⁸ These crusts are reported to have some of the highest concentrations of cobalt ever found on the ocean floor, in addition to other minerals such as platinum, iron, and manganese.⁴⁹ Expeditions in the 1990s further revealed the presence of manganese oxide enriched in platinum and cobalt in

differing concentrations between the Society Islands, western Tuamotu, and the Austral Islands, as well as platinum in the Southern and West Zone Islands (Tarava Mountains).⁵⁰ More recently, a 2011 Japanese minerals exploration expedition found deep sea mud containing high concentrations of rare earth elements and yttrium east of Tahiti.⁵¹ These include heavier rare earths such as gadolinium, lutetium, terbium and dysprosium, used to manufacture flat-screen TVs, LED valves, and hybrid cars.⁵²



Rare earth elements yttrium and gadolinium. Cr: [Hi-Res Images of Chemical Elements](http://images-of-chemical-elements.com/gadolinium.php) and <http://images-of-chemical-elements.com/gadolinium.php>

While French Polynesia's waters have perhaps not been explored as extensively as other areas in the Pacific, its resources remain of interest to major players, not least France itself. French officials and agencies have made numerous statements to that effect, continuing to assert sovereignty over French Polynesia's waters,⁵³ assiduously bidding to extend French Polynesia's continental shelf as an "asset for France,"⁵⁴ and developing numerous private-public partnerships to foster seabed mining projects in France's overseas territories.⁵⁵

Given the level of France's involvement in laying the groundwork for the seabed mining industry in French Polynesia, it may come as a surprise that, since the 2004 autonomy statute, the right to explore and exploit the natural resources of its EEZ has rested with French Polynesia.⁵⁶ However, as former French Polynesian president Gaston Flosse points out, this is more of a symbolic devolution of power rather than an actual one.⁵⁷ According to Flosse, "France knows that French Polynesia does not possess the boats or the manpower to explore and exploit the EEZ or engage in seabed mining; France is

the one that does all the studies."⁵⁸

Moreover, France has reserved unto itself a crucial exception, giving French authorities competence over so-called "strategic" raw materials.⁵⁹ This mirrors the broader provision in Article 47 of the autonomy statute, which makes French Polynesia's right to control marine and terrestrial resources subject to the overriding power of necessity of France regarding any such materials.⁶⁰

In 2011, France established the *Comité pour les Métaux Stratégiques* following the global rare earth supply crisis.⁶¹ Debate subsequently followed in French Polynesia over whether rare earth and other seabed minerals would fall into the strategic raw material exception.⁶² A letter sent by the Overseas Minister in 2015 claimed that strategic raw materials at the time only extended to ores or products useful for research or achievements applicable to atomic energy, and liquid and gaseous hydrocarbons – leaving rare earths and seabed minerals under French Polynesian control.⁶³



Island of Mo'orea

However, there is nothing to prevent France from changing its mind at any time and deeming seabed minerals strategic.⁶⁴ As journalist Nic Maclellan points out, “French Polynesia’s autonomy statutes are not irreversible, and powers transferred to Pape’ete from Paris under an autonomy statute can be taken back by future governments (this has happened already since the 2004 statute was introduced, during a debate over control of territorial waters).”⁶⁵ If a crisis, such as a war or a recession, were to occur, France could easily alter its position with respect to French Polynesia’s mineral and seabed resources – and French ministry officials have stated as much.⁶⁶

These types of reservations and loopholes – and the ultimate power of France – prevent French Polynesia from exercising true sovereignty over its marine resources, “strategic” or otherwise. Were exploitation of seabed minerals to occur, it is unlikely under the current regime that French Polynesians would retain or be given the control or oversight necessary to accrue significant financial benefits. Similarly, given the lack of communication regarding surveys and discussions of seabed minerals between Paris and Pape’ete,⁶⁷ there will likely be a lack of consultation with local communities about whether they want mineral exploitation to occur in their waters in the first place. This is critical, given the projected adverse impacts of seabed mining – including coral reef acidification, species extinction, pollution of fisheries, biodiversity and climate effects, and damage to human health and food security.⁶⁸ These potential

impacts – many of which are irreversible⁶⁹ – necessitate obtaining the free, prior, and informed consent of local communities, and particularly indigenous and coastal ones;⁷⁰ yet, to date, there is no indication that France would make any attempt to involve local communities in decisions to mine their waters. This would leave French Polynesians with all of the harm and little of the benefit – much like in the case of nuclear testing and past resource exploitation.⁷¹

MILITARIZATION AND THE LEGACY OF NUCLEAR TESTING

France derives significant geopolitical value from its status as a Pacific power, even short of material benefits like access to marine resources.⁷² Although France’s physical military presence may have decreased following the end of the nuclear test program, it is clear from statements made by its agencies and government representatives that France is intent on remaining a force in the Pacific.⁷³ Moreover, under the autonomy statute, France retains competence over defense and security in French Polynesia.⁷⁴ It maintains a military base on the island of Tahiti, and has strengthened strategic military agreements with New Zealand and Australia,⁷⁵ including a 2016 contract to build the next generation of submarines for the Royal Australian Navy.⁷⁶ It also deploys some surveillance vessels in French Polynesian waters, designed to monitor and protect French interests in the EEZ.⁷⁷ France is further establishing scientific and

technological programs as a “soft power lever” to further project French authority in the region,⁷⁸ and participating in and influencing regional institutions.⁷⁹

France’s ongoing presence in the region is justified in part through reference to China’s rise in the Pacific, increasingly worrisome to western powers and the primary motivator behind the US’s “pivot to the Pacific” under the Obama administration.⁸⁰ As a counterweight to China’s growing power, current French President Emmanuel Macron and former Defense Minister Jean-Yves Le Drian have emphasized the need for an “Indo-Pacific” axis stretching to French Polynesia.⁸¹ As part of this axis, France granted the Indian navy access to French military bases in the region, including in French Polynesia.⁸²

Militarization in the Pacific region has long led to the divestment of natural resources from the region’s indigenous islanders. In French Polynesia this is most aptly demonstrated through the destruction of the environment as a result of nuclear testing, and today, through this diminution of local sovereignty over marine spaces.

France has made few efforts to remediate the damage its military policies have caused to the people of its “overseas possessions,” failing to effectively clean up contaminated atolls and lagoons and to open up these areas for independent inspection.⁸³ The buildup of radionuclides, plutonium, and toxins in marine water, lagoon sediment, fish, and other parts of the food chain continue to impact French Polynesia’s

ability to utilize its own natural resources.⁸⁴ In addition, France has ignored requests from Polynesian civil society groups for approximately US\$1 billion in compensation for environmental damage, health impacts, and the continued occupation of Moruroa and Fangataufa.⁸⁵ Instead, France retains control over infrastructure on the islands of Moruroa and Hao, including landing strips, potentially for use in its and other countries’ space programs.⁸⁶ Only 20 people have received compensation from France under the 2010 Morin law for health problems associated with nuclear testing due to heavy burdens of proof and other overly restrictive requirements.⁸⁷

France’s failure to adequately address the devastating effects of its nuclear program continues to prevent the full usage of local natural resources, in both marine and terrestrial areas, and to impact the French Polynesian economy. Given that France was the cause of environmental destruction in French Polynesia, it is responsible for making the islands whole again, and restoring local resources.⁸⁸ Unfortunately, France appears more intent on fulfilling its own military objectives through the continued use of French Polynesia as a strategic outpost.⁸⁹

FINANCIAL AND LABOR DEPENDENCIES

France’s operative control also diminishes French Polynesia’s sovereignty over its resources in ways that are subtler but no less damaging to French Polynesia’s economic development. France maintains

that its system of financial transfers⁹⁰ to French Polynesia both constitutes compensation for nuclear testing and is essential for developing the French Polynesian economy. However, the financial transfers – which are by no means guaranteed – have created a destructive dependence on France which has significantly increased the cost of living⁹¹ and diminished self-sufficiency.⁹² Moreover, the transfers are hardly charity; in addition to acting as a safeguard against the independence movement,⁹³ a significant proportion goes to pay wages and pensions of French officials working in French Polynesia as well as to carry out other French administrative functions.⁹⁴

Apart from the financial transfers themselves, most of French Polynesia's major tourism projects are owned by French or foreign actors, while utilities and energy interests are almost exclusively controlled by French multinational companies, with tax and dividend revenue from these entities diverted to France instead of to local communities.⁹⁵ With respect to foreign investment, France's control over certain areas of immigration allows it to restrict and encumber certain projects (e.g. offers of Chinese investment in airports and hotels), thereby further constraining the French Polynesian economy.⁹⁶

Meanwhile, French Polynesia acts as a convenient sink for French surplus labor, with a large number of jobs, particularly in the education and judiciary sectors, going to immigrants from France (many of whom then become residents).⁹⁷ This allocation of

jobs away from native-born French Polynesians contributes to high unemployment and emigration rates among locals, with significant impacts for French Polynesian capacity and human capital.⁹⁸ Observing these realities, the Independence Party and others have long argued that France receives much more in value than it pays out in transfers to French Polynesia.⁹⁹

Additionally, France maintains a colonial currency in French Polynesia, the *Change Franc Pacifique* (CFP), controlled exclusively by the Institut d'émission d'Outre Mer (IOEM), a French national bank headquartered in Paris.¹⁰⁰ Much like its colonial currency in former African colonies (the CFA franc),¹⁰¹ the CFP restricts French Polynesians' ability to engage freely in trade or foreign investment, as they could with an independent currency, or with the euro.¹⁰² Because of the fixed rate of exchange between these colonial currencies and the euro, the monetary and exchange rate policies of the territories are dictated by the European Central Bank, which holds an anti-inflation bias detrimental to growth.¹⁰³

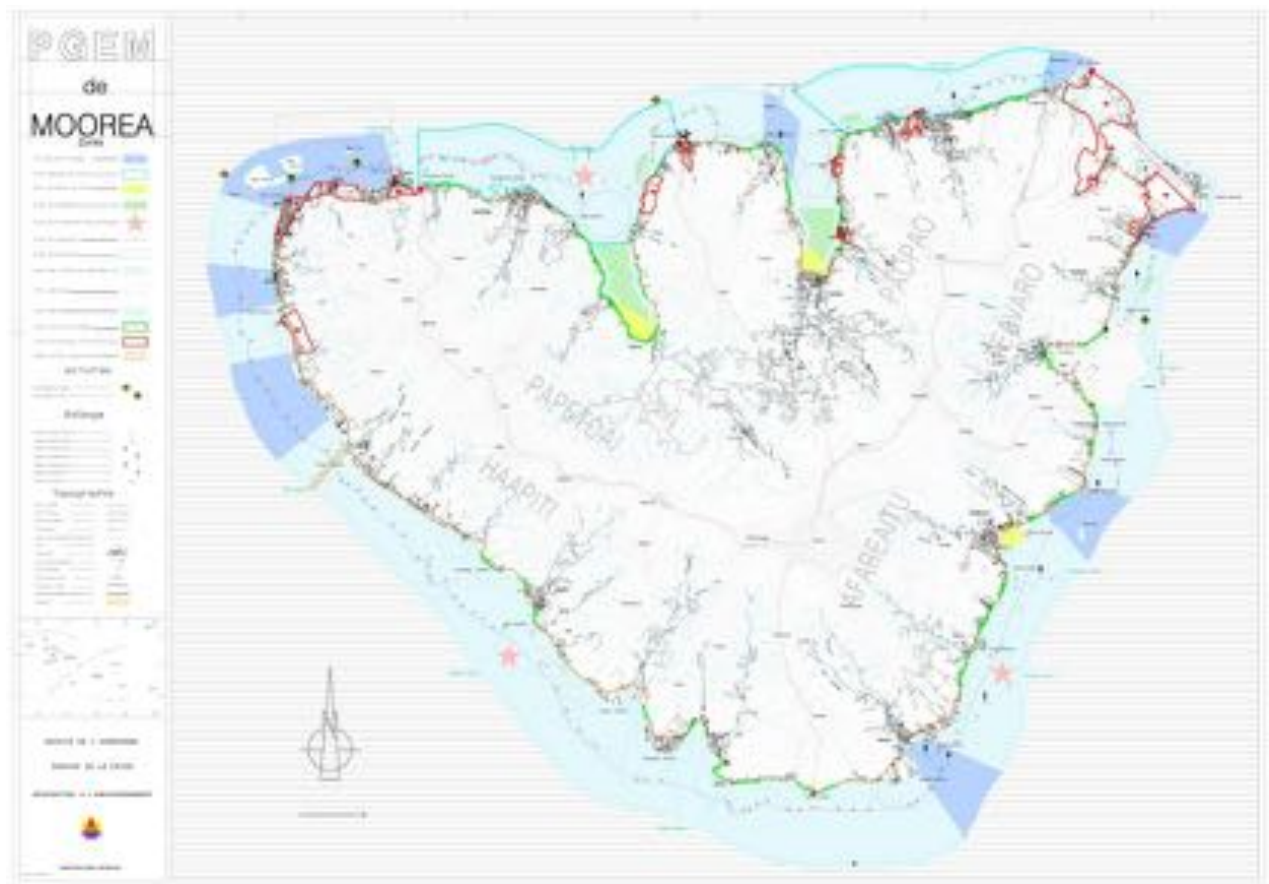
Other aspects of French control impede French Polynesia's ability to adequately protect its own natural resources.¹⁰⁴ As a non-self-governing territory, French Polynesia lacks standing to participate in international relations. Thus, French Polynesia – an island state especially vulnerable to climate change¹⁰⁵ – cannot become a signatory to the United Nations Framework Convention on Climate Change or to the Paris Agreement on Climate Change.¹⁰⁶ This means that French

Polynesia cannot apply in its own right to international development banks, such as the Green Climate Fund, to support climate adaptation projects.¹⁰⁷ Meanwhile, France's position on climate often clashes with that of small island states.¹⁰⁸ The ability for French Polynesians to choose how to respond to climate change today could have significant consequences for the continued territorial integrity and habitability of the islands, and by implication both natural resources and the possibility of independent statehood in the future.¹⁰⁹

THE "PGEM": MARINE MANAGEMENT CASE STUDY

The complexity of French administration often has other serious implications for French Polynesian control and management of natural resources. An example of this is Mo'orea's Plan de Gestion de l'Espace Maritime (PGEM - Maritime Space Management Plan).

By all accounts, and according to the autonomy statute itself, French Polynesia retains jurisdiction over fisheries, as well as



DIREN French Polynesia, "Management Plan of the Maritime Area (PGEM) of Moorea (French Polynesia)," *Ifrecor Documentation*, accessed March 5, 2019, <http://ifrecor-doc.fr/items/show/1084>.

related marine and coastal management and conservation with the exception of the monitoring of maritime fishing.¹¹⁰ Despite this delegation of authority, French agencies are still intimately involved in both funding and oversight of various initiatives in this space, including the creation of marine protected areas (MPAs).¹¹¹ Being involved in these initiatives in its territories allows France to meet various international commitments to biodiversity, and appear a leader in reaching international conservation objectives such as those of the Aichi Targets and the Sustainable Development Goals¹¹² – all while retaining marine territories for potential resource exploitation and greater strategic ambitions.



View of Tahiti from the island of Mo'orea,

The PGEM is a case in point. Although mandated by Mo'orea's Municipal Council and Territorial Assembly in conjunction with the French Polynesian government, the project was funded with a French development contract totaling 15 million French francs (approximately US \$2 million).¹¹³ The PGEM was controversial

from the start, perceived by many locals as a top-down initiative more concerned with protecting tourism interests than local fishermen and communities reliant on Mo'orea's reefs and lagoons for food security.¹¹⁴ After a lengthy and contentious process with limited community consultation,¹¹⁵ the PGEM restricted fishing and other activities in eight MPA zones around Mo'orea in 2004.¹¹⁶ Various reports have documented the conflicts and problems produced by the PGEM since its inception, including the alleged failure to achieve its primary goal of improving biodiversity and fish populations.¹¹⁷

Members of civil society groups in Mo'orea have expressed their frustration with the PGEM, which they see as violating the traditional Polynesian custom of resource stewardship (known as "*rāhui*").¹¹⁸ The hierarchical governmental approach, through layers of administration ranging from France to the local mayor in Mo'orea, failed to effectively engage local fishermen, instead punishing them through local police (trained under French law and under French jurisdiction as part of its justice and security mandate).¹¹⁹ One civil society group notes the predicament of a local fisherman who was caught fishing in a no-catch zone; his catch was confiscated and he was fined 80,000 CFP, despite the fact that he was unaware of the MPA and had gone fishing to earn money to take his sick child to the local hospital.¹²⁰ Similar incidents abound, resulting in the feeling, shared by many in Mo'orea, that "France benefits from saying it has MPAs and appropriating our *rāhui* language, while local fishermen are treated

as predators and our youth lose their traditional knowledge.”¹²¹

The above overview demonstrates ways in which France’s continued control over French Polynesia translates into violations of self-determination and local sovereignty over natural resources – both directly in the case of control over and disposition of underwater minerals, and

indirectly in the case of financial resources and local coastal and fisheries management. The following section explains how international law applies to this state of affairs.

LEGAL ANALYSIS

SELF-DETERMINATION AND PERMANENT SOVEREIGNTY OVER NATURAL RESOURCES

International law guarantees to all peoples the inalienable right to self-determination: the right to make free and genuine choices about their own status and future.¹²² A collective right, self-determination is largely regarded as a “precondition for the enjoyment of all other human rights.”¹²³ Self-determination is also considered a *jus cogens* norm of international law, making it one of a few sanctified international law principles—along with prohibitions on torture, genocide, and slavery—that are legally binding on all states and from which no derogations are permitted.¹²⁴

The right to self-determination was formally enshrined in international law in the context of decolonization. With the establishment of the United Nations and promulgation of the UN Charter in 1945, decolonization became a priority of the international legal system.¹²⁵ The Charter, through Chapters XI, XII, and XIII, established a two-tracked system for the decolonization of the world’s colonies—“trust territories” on the one hand, and “non-self-governing territories” on the other. While the former category has effectively closed, with all eleven trust territories having become independent or having entered into some form of voluntary association with countries, the latter

category remains open, as 17 non-self-governing territories remain on the UN list of non-self-governing territories, formally slated for an act of decolonization. French Polynesia is one such territory.¹²⁶

While self-determination is recognized as a fundamental right vesting in all peoples, the right continues to carry special force in the context of non-self-governing territories¹²⁷ like French Polynesia, in recognition of the fact that colonization categorically impairs the exercise of the right.¹²⁸ Not only does self-determination have singular import with respect to decolonizing peoples, colonial powers hold special duties to protect and ensure the right. The international decolonization regime vests administering powers with “sacred trust” obligations to facilitate the decolonization of their territories by ensuring “political, economic, social, and educational advancement,” aiding territories in “develop[ing] self-government, taking due account of the political aspirations of the peoples” and “assist[ing] them in the progressive development of their free political institutions.”¹²⁹ In other words, colonial powers, like France, have fiduciary obligations to ensure the self-determination of their colonies, like French Polynesia.¹³⁰ Moreover, in some cases, colonial powers are not necessarily divested of these duties even after their territories have gained formal independence.¹³¹ Despite these extensions, both the rights and duties flowing from self-determination are at their zenith with

regards to non-self-governing territories like French Polynesia, which remain on the UN list of non-self-governing territories.

A basic constituent of the right to self-determination is the right to permanent sovereignty over natural resources (PSNR). PSNR guarantees all peoples the right “for their own ends, to freely dispose of the [] natural wealth and resources” within their territory.¹³² Well-established in international law, PSNR operationalizes the economic aspects of self-determination—the right to freely pursue economic, social, and cultural development.¹³³ PSNR, just like the broader right to self-determination, arose in the context of decolonization and continues to carry special force with respect to colonized peoples, such as French Polynesians.¹³⁴ Likewise, the administering powers of non-self-governing territories have special duties to protect and promote the PSNR of the peoples within their territory.¹³⁵

Much like the norm of self-determination, PSNR has been broadened and concretized outside the strictly colonial context. The fundamental motivation of the principle, however, remains to promote the economic self-determination of colonized, decolonizing, and “post-colonial” states.¹³⁶ PSNR thus seeks to correct colonial power dynamics by returning sovereignty and autonomy to colonized peoples.¹³⁷ Anchored across a body of international law, PSNR vests in both colonized peoples and decolonizing states and the right must be exercised in the interest of the national development and well-being of the peoples concerned.¹³⁸ Thus, regardless of who makes

decisions, international law requires that resources and profits from the exploitation of resources be utilized consistently in the interests of the people.

THE LEGAL STATUS OF PERMANENT SOVEREIGNTY OVER NATURAL RESOURCES

As discussed above, France has particular duties to safeguard the self-determination and PSNR of French Polynesia by virtue of its position as administering power. In addition, the principle of PSNR is binding on France through multiple treaties to which France is a party, as well as through its status as a binding norm of customary international law. The most prominent expressions of this principle are found in the two fundamental, and legally binding, human rights conventions: the International Covenant on Civil and Political Rights (ICCPR)¹³⁹ and the International Covenant on Economic, Social, and Cultural Rights (ICESCR).¹⁴⁰ Article 1(2), common to both of these documents states:

All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.¹⁴¹

In other words, the Covenants provide that peoples have the right to exercise

sovereignty over the natural resources of the territories in which they live.¹⁴² A limitation, either by law or by practice, which unreasonably prevents a people from freely disposing of those natural resources, is a violation of the Covenants.¹⁴³ Article 25 of the ICESCR and Article 47 of the ICCPR, both later additions, emphasize a people's unrestricted and absolute right to their resources.¹⁴⁴ The UN Human Rights Committee has endorsed this view, finding that the right to self-determination confers natural resource rights, and a corresponding set of duties on states to respect these rights.¹⁴⁵ France, as a party to both the ICCPR and the ICESCR,¹⁴⁶ has a duty to respect in good faith the right of peoples to self-determination and their corresponding right to dispose of their natural resources.

The UN General Assembly has issued a series of resolutions¹⁴⁷ explicitly mentioning the principle of PSNR, which lend further support to its customary status, particularly with respect to colonized peoples. Resolution 1314 established a UN Commission on Permanent Sovereignty over Natural Resources, which was tasked with conducting a survey of the status of "this basic constituent of the right to self-determination."¹⁴⁸ The result of this investigation was Resolution 1803, the UN Declaration on Permanent Sovereignty Over Natural Resources. The Declaration articulates the status of PSNR under international law and reiterates its importance in the context of decolonization.¹⁴⁹ In particular, the early decolonization process emphasized the concept of "peoples" in contrast to the

primacy of state sovereignty, which was seen as enabling the continuation of colonial policies over colonial territories.¹⁵⁰ Thus, throughout the 1970s and 80s, the right to PSNR, as recognized by the United Nations, vested only in peoples whose territories were under foreign occupation.¹⁵¹ Following this period of decolonization, the language of permanent sovereignty over natural resources shifted back to refer more to states.¹⁵² That the right to PSNR may be recognized as vesting in states is not a result of a shift in the content of the law's subjects, but rather a consequence of the fact that, once independence has been achieved, peoples and states are ostensibly equivalent.¹⁵³ If the state is the people, it is the right of the state to exercise PSNR.¹⁵⁴ If the peoples are unable to exercise that sovereignty because they do not exist as a self-governing or independent state—as in the case of French Polynesia—their right to PSNR is per se being violated. This principle has been recognized since the first articulation of PSNR in the UN Charter in 1945. To deny this right is to deny the entire normative architecture of PSNR in international law.¹⁵⁵

The International Court of Justice (ICJ) has also affirmed the legal weight of PSNR, both in the particular context of decolonization and more broadly as an established tenet of customary international law. First, in the case of *Certain Phosphate Lands in Nauru (Nauru v. Australia)*, the ICJ held that Australia had violated Nauruans' right to PSNR by engaging in extensive phosphate mining on Nauru while administering Nauru as an NSGT under the UN Trusteeship System.¹⁵⁶ Nauru brought

the case in 1990, 21 years after attaining formal independence from Australia, arguing that the phosphate mining—which rendered one-third of the island uninhabitable—had deprived Nauru of PSNR in violation of Australia’s obligations as administering power.¹⁵⁷ Australia attempted to have the case dismissed, arguing that any claims stemming from the colonial period had been extinguished when Nauru attained independence and that the claims were, in any event, time-barred.¹⁵⁸ Disagreeing, the Court held that the “nature of the relations between Australia and Nauru”—meaning the colonial relationship—kept the claim live by virtue of Australia’s duty to protect and ensure Nauru’s PSNR.¹⁵⁹ Next, Australia argued the claims were in bad faith because Nauru had not independently taken steps to rehabilitate the island prior to filing suit. The Court rejected this argument summarily, holding that Nauru need not have remediated the island and again stressing Australia’s affirmative duty to safeguard Nauruan self-determination.¹⁶⁰ Its objections overruled, Australia ultimately settled before the case went to the merits, acknowledging that the payment was meant to compensate Nauru for the fact that “phosphate on Nauru is nearly mined out and Nauru now has to adjust to a post-phosphate future”;¹⁶¹ in other words, for the loss of PSNR. Although the merits were not reached, the court’s willingness to allow the claim to go forward strongly suggests that colonial exploitation of natural resources in NSGTs violates the right to PSNR of the peoples therein.¹⁶²

The ICJ also affirmed the legal sanctity of PSNR more broadly in the *Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Uganda)*.¹⁶³ Approving the conclusion pressed in the dissenting opinions of Judges Weeramantry and Skubiszewski in a case decided a decade earlier, namely *Case Concerning East Timor (Portugal v Australia)*,¹⁶⁴ the Court formally recognized PSNR as a norm of customary international law.¹⁶⁵ Numerous regional (quasi-)judicial bodies and conventions have further reaffirmed the binding legal status of PSNR under international law.¹⁶⁶

RIGHTS AND RESPONSIBILITIES UNDER PERMANENT SOVEREIGNTY OVER NATURAL RESOURCES

The substantive content of PSNR entails both rights and responsibilities. The scope of the right is akin to ownership rights, which comprise two tiers of rights. The first tier contains the right to access, the right to withdrawal, the right to alienation, and the right to derive income from the resource.¹⁶⁷ The second tier covers the management of the first tier and includes the right to exclusion, the right to manage access, the right to regulate alienation, and the right to regulate income.¹⁶⁸

PSNR imposes a responsibility on administering powers to manage these resources to the “maximum benefit of the people.”¹⁶⁹ At a minimum, this requires that governments not use or manage resources in

such a way as to deny the people the benefit of those resources¹⁷⁰ and to refrain from exercising sovereignty in a way that would cause substantial harm to the people.¹⁷¹ It is not that natural resources cannot be exploited and sold; however, in doing so, states must ensure that the benefits are distributed equitably to ensure the welfare of the peoples of the territory.¹⁷² Accordingly, the benefits of the exploitation of natural resources must also go primarily to the peoples within the territory, and should not be exported for the primary benefit of foreign states, corporations, or individuals.¹⁷³

These general legal principles have added weight given French Polynesia's dependent status and its re-inscription onto the UN list of non-self-governing territories in 2013. As discussed above, France's obligations as the administering power includes ensuring, "with due respect for the culture of the peoples concerned, their political, economic, social, and educational advancement" and safeguarding of their right to self-determination, including PSNR.¹⁷⁴ To the extent that sovereignty over French Polynesian resources ultimately rests with France, not with French Polynesia, France's continued colonization of French Polynesia constitutes a *per se* violation of French Polynesians' right to PSNR. In addition, while immediate decolonization may or may not be impractical, as long as France continues as administering power it has the affirmative duty to ensure that the islands' natural resources are managed and utilized in the best interest of French Polynesians both now and in the future.¹⁷⁵ As discussed

herein, many of France's actions appear to violate these "sacred trust" duties.¹⁷⁶

Environmental justice also characterizes the exercise of PSNR.¹⁷⁷ The maximum benefit of the people includes the long-term sustainability of resources such that they can be consistently used in the interest of national economic development.¹⁷⁸ Peoples should not be deprived of their natural resource base, and the means of subsistence which derives from their use.¹⁷⁹ That the benefits of natural resources must be distributed equally is also to say that they must be distributed to future generations, a principle that is articulated in environmental law's concern for generational distributive justice.¹⁸⁰ This limitation includes any environmental damage that might be caused to the ability of a people to use the same or another resource due to resource exploitation.¹⁸¹ Once again, these principles take on particular weight considering the colonial context of French Polynesia. If France exploits French Polynesia's resources now, while French Polynesia remains a NSGT, French Polynesians may not be able to enjoy their right to sovereignty over those resources even were French Polynesia to emerge as a sovereign state in the future. To deplete a natural resource with insufficient consideration of the impact on the present or future use of that resource—particularly in the context of a colonial power depleting a resource within a colony it administers—runs afoul of the right of PSNR.¹⁸²

APPLICATION OF LEGAL PRINCIPLES TO FRENCH POLYNESIAN SELF-DETERMINATION

The right of the people of French Polynesia to self-determination and the associated rights and responsibilities of PSNR are clearly implicated by the scenarios described in this report. To begin, PSNR undoubtedly extends to seabed minerals and other marine resources as well as their exploitation.¹⁸³ The UN has specifically emphasized that “the damaging exploitation and plundering of marine and other natural resources of the Non-Self-Governing Territories” violates the right to self-determination and PSNR in particular because such conduct “is a threat to the integrity and prosperity of those Territories.”¹⁸⁴ Moreover, since relisting French Polynesia as a non-self-governing territory in 2013, the UN General Assembly has consistently reaffirmed “the inalienable rights of the people of French Polynesia to the ownership, control and disposal of their natural resources, including marine resources and undersea minerals”¹⁸⁵ and the obligations of France, as administering authority, to uphold those rights.

By continually claiming French sovereignty over French Polynesia’s EEZ and continental shelf, France is effectively divesting the people of French Polynesia of their right to “freely determine” how those marine resources should be used. Indeed, France describes its claims on French Polynesia’s EEZ and continental shelf as a

“conquest of sovereign rights over natural resources located mainly off the coast of its ultramarine territories.”¹⁸⁶ Aggressive assertions like these belie France’s grant of control over marine resources to the government of French Polynesia in the 2004 autonomy statute. Similarly, although it professes a desire to increase territorial involvement in seabed exploitation,¹⁸⁷ France has moved forward with its seabed mining program without meaningfully consulting – let alone obtaining the consent of – local communities within French Polynesia.

In addition, the prospective exploitation of French Polynesia’s seabed resources by French corporations is arguably not in the best interests of the people of French Polynesia, as required by the latter’s rights to economic self-determination and PSNR and the former’s duties as the territory’s administering power. Under the current system, most of the value extracted from seabed minerals will be off-shored to foreign corporations and will likely register as assets of France’s economy, not that of French Polynesia. Meanwhile, the extraction of seabed minerals is expected to cause serious environmental degradation, both despoiling French Polynesian marine ecosystems (thereby further frustrating the ability of French Polynesians to freely and sustainably use those resources) and obstructing traditional coastal activities such as fishing and sailing. Because seabed minerals are non-renewable resources, facilitating their exploitation today by French corporations imperils the opportunity for French Polynesians to prosper from those resources

in the future—again reminiscent of the principles animating the decision and ultimate settlement of the Nauru phosphate mining case. And indeed, this has already unfolded in French Polynesia in the context of phosphate mining on Makatea Atoll.¹⁸⁸ To let the same pattern unfold in the marine context today, more than 50 years after phosphate mining concluded, would be a plain violation of France’s duty to promote and advance the self-determination of French Polynesia.

France’s ongoing militarization and failure to remediate contamination from past activity in French Polynesia constitutes another violation of PSNR. These actions and omissions undermine the “interest of the national development” of French Polynesia and the “well-being” of French Polynesian people, as required by PSNR. Indeed, by eroding French Polynesian sovereignty over its own territory—including by inviting other sovereigns into French Polynesian waters—French geostrategic goals are moving French Polynesia decisively away from the promise of self-determination.

Other French policies implicate the right of the people of French Polynesia to self-determination by constraining the territory’s ability to “freely determine their own economic, social, and cultural development.” France’s insistence that French Polynesia maintain a colonial currency makes it difficult for the territory to participate in the global economy, while France’s method of and control over financial transfers maintain French Polynesian dependency and impede the development of local industries and a self-sufficient private sector. Meanwhile, French encouragement of foreign industry, be it seabed mining or tourism, off-shores economic value that could otherwise be realized by French Polynesians.

By impeding French Polynesia’s economic development, France is entrenching the territory’s dependency on the metropole, thereby perpetuating its colonial control over the islands. This policy of perpetuating dependency is directly contrary to the goals of the UN, flies in the face of France’s “sacred” duties as administering authority, and violates the inalienable right of French Polynesians to self-determination.



CONCLUSION

Under international law, France is failing in its duty to protect and ensure self-determination for the people of French Polynesia. Its assertions of control – no matter how indirect or paternalistic – have the effect of impeding local economic development to the detriment of many French Polynesians. In particular, France's objectives with respect to French Polynesia's marine resources and strategic positioning in the Pacific undermine efforts to promote self-determination and local control over natural resources.

Given the longstanding situation of colonial dependence, the solution to these

ills may not be as straightforward as immediate independence. Careful evaluation and progressive steps are likely needed to avoid economic shocks and allow for a successful transition to full self-government. Allowing such processes to occur in good faith would bring France more into line with its obligations as an administering authority under international law, and help to redress legacies of nuclear and colonial injustice. Any such process should be led by the French Polynesian people themselves with the aim of achieving a more just and equitable relationship with the administering power, and finally terminating the colonial status of these islands.

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* Opinions expressed in the report are those of the authors and should not be attributed to other parties. The report does not represent the official position of the Allard School of Law or the University of British Columbia. Reporting of events is based on publicly available information and should not be taken as allegations of guilt or legal responsibility against any individual persons or corporate entities. Versions of events in the report are subject to additional facts and verification.

¹ In this report, we use the official UN name for French Polynesia to avoid confusion. However, it is worth noting that the name is not without controversy given its colonial connotations, and that alternative names, including ‘Tahiti Nui,’ ‘Mā’ohi Nui,’ and ‘French-Occupied Polynesia,’ have been proposed, are in use by various groups, and may eventually come to replace ‘French Polynesia.’ We also use French Polynesians or the people of French Polynesia to refer generally to local, community, and indigenous groups as well as the specific group that international law would recognize as the colonized people with the right of self-determination. The modern international indigenous rights regime would require demarcating, among other things, who self-identifies and could be identified as indigenous for certain other rights to apply. However, because this report predominantly focuses on the international law of self-determination as it applies in the context of a non-self-governing territory formally listed by the UN as such, we avoid use of such distinctions where not necessary for purposes of this report.

² See discussion *infra* at 8-10.

³ Nic Maclellan, *France and the Forum*, INSIDE STORY, Oct 13, 2016, <http://insidestory.org.au/france-and-the-forum/> [Maclellan 2016]. Numerous interviewees related French harassment of independence (and even autonomy) candidates, including targeted judicial investigations, particularly after the re-inscription of French Polynesia onto the UN list of non-self-governing territories. Interview with Oscar Temaru, Faa’a, Tahiti (February 15, 2019); interview with Hinano Teavai-Murphy, Atitia Center, & members of the Association Te Pu Atitia in Mo’orea, French Polynesia (Feb 14, 2019). Former French Polynesian president Gaston Flosse related that the judicial harassment was preferable to what would have happened in the past, where “they would have just killed you.” Interview with Gaston Flosse, Pape’ete, Tahiti (February 15, 2019).

⁴ See Self-determination of French Polynesia, G.A. Res. 67/265, U.N. Doc A/RES/67/265 (May 17, 2013) [Resolution 67/265]. Nic Maclellan, *Pacific Diplomacy and Decolonisation in the 21st Century*, in THE NEW PACIFIC DIPLOMACY 267 (Greg Fry & Sandra Tarte eds. 2015); *French Polynesia’s pro-independence unhappy with France at UN*, RADIO NEW ZEALAND, Oct 16, 2017, <https://www.radionz.co.nz/international/pacific-news/341626/french-polynesia-s-pro-independence-unhappy-with-france-at-un>; Temaru interview, *supra* note 3. France continually refuses to cooperate with the UN or fulfill its international legal responsibility to provide the information required under Article 73e of the UN Charter with respect to French Polynesia. Lorenz Gonschor, *Political Reviews: French Polynesia*, 27 THE CONTEMPORARY PACIFIC 257, 261 (2015) [Gonschor 2015].

⁵ See a recent French Senate report, stating “Thanks to its overseas possessions, France is one of the countries affected - indeed the most affected - by this revolution in sharing the oceans. Its EEZ is in fact the second largest behind that of the US and beyond this, the most diverse. Present in both hemispheres and at all points of the compass, the French EEZ is the only one on which the sun never sets.” Rapport d’information Fait au Nom de la Délégation Sénatoriale à l’outre-mer, sur la Zone Économique Exclusive des Outre-mer: Quels Enjeux?, Sénat, n° 430, Session ordinaire 2013-2014, 13 [Senate Report 2014]. Recent rankings appear to place France’s EEZ first globally, surpassing that of the United States: see, e.g., *Countries with the Largest Exclusive Economic Zones*, WORLD ATLAS, June 29, 2018, <https://www.worldatlas.com/articles/countries-with-the-largest-exclusive-economic-zones.html>.

⁶ In a 2014 parliamentary debate, then Overseas Minister George Pau-Langevin stressed: “I’m convinced that France can become a world leader in the global development of sustainable . . . blue growth” - including “traditional economic activities (fishing and aquaculture, maritime transport), marine renewable energies, offshore exploration / exploitation of hydrocarbons, deep mineral and mineral resources, [and] blue biotechnologies taking place in the same territory.” George Pau-Langevin, *Presentation of the report of the ultramarine delegation on the valuation of exclusive economic zones (EEZ)*, French Senate Debate, June 18, 2014, <http://discours.vie-publique.fr/notices/143001363.html>. [Senate Report 2014].

⁷ See discussion *infra* at 11-14.

⁸ Denise Fisher, *One among Many: Changing Geostrategic Interests and Challenges for France in the South Pacific*, 216 LES ETUDES DU CERi 1, 18-22, 29-32 (2015), https://www.sciencespo.fr/ceri/sites/sciencespo.fr/ceri/files/Etude_216.pdf; Carlyle Corbin, *Assessment of Self-Governance Sufficiency in Conformity with Internationally Recognised Standards: French Polynesia*, THE DEPENDENCY STUDIES PROJECT 64 (2013); interview with Moetai Brotherson, Député de Polynésie, Assemblée nationale, Faa'a, Tahiti (Feb 15, 2019).

⁹ See discussion *infra* at 14-17.

¹⁰ French Polynesia, CIA FACTBOOK, Feb 14, 2019, <https://www.cia.gov/library/publications/the-world-factbook/geos/fp.html> [CIA Factbook]; Sénat (2012), *La maritimisation: Rapport d'Information n° 674*, July 17, 2012, 116, <https://www.senat.fr/rap/r11-674/r11-6741.pdf> [Senate Report 2012]; Fisher, *supra* note 8, at 9. French Polynesia's EEZ alone ranks among the top 10 largest EEZs in the world.

¹¹ *French Polynesia, History*, ENCYCLOPAEDIA BRITANNICA, <https://www.britannica.com/place/French-Polynesia/History> (last accessed Mar 12, 2019); Ancient History, Tahiti.com, <https://www.tahiti.com/travel/about-tahiti> (last accessed Mar 12, 2019).

¹² Corbin, *supra* note 8, at 6.

¹³ *Supra* note 12.(10 or 11?)

¹⁴ *Supra* note 12 (10 or 11?); Corbin, *supra* note 8, at 6-7.

¹⁵ United Nations General Assembly resolution 66 (I).

¹⁶ Lorenz Gonschor, *Mai te hau Roma ra te huru: The Illusion of "Autonomy" and the Ongoing Struggle for Decolonization in French Polynesia*, 25 CONTEMPORARY PACIFIC 259, 271 (2013) [Gonschor 2013]; Corbin, *supra* note 8, at 11; see also Jean-Marc Regnault, L'ONU, LA FRANCE ET LES DÉCOLONISATIONS TARDIVES (2013), for a detailed study of France's relationship with the UN decolonization process.

¹⁷ Corbin, *supra* note 8, at 14.

¹⁸ Maclellan 2016, *supra* note 3; see also Maclellan 2015, *supra* note 4.

¹⁹ See Statut d'autonomie de la Polynésie française. Papeete: Secrétariat Général du Gouvernement/Imprimerie Officielle de la Polynésie française (2004), art. 14 <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000435515&dateTexte=20190226> [2004 Autonomy Statute].

²⁰ Nic Maclellan, *France and the Blue Pacific*, 5 ASIA & THE PACIFIC POLICY STUDIES 426, 433 (2018), <https://onlinelibrary.wiley.com/doi/epdf/10.1002/app5.228> [Maclellan 2018].

²¹ Gonschor, *supra* note 16, at 271; Corbin, *supra* note 8, at 38.

²² Bruno Barrillot, LES ESSAIS NUCLÉAIRES FRANÇAIS 1960-1996 (CDRPC, 1996); Angelique Chrisafis, *French nuclear tests 'showered vast area of Polynesia with radioactivity'*, THE GUARDIAN, July 3, 2013, <https://www.theguardian.com/world/2013/jul/03/french-nuclear-tests-polynesia-declassified>.

²³ Assembly of French Polynesia, "Report of the Commission of Inquiry on French aerial testing between 1966 and 1974," 164/10/APF/CP/gd (26 January 2006); MIRIAM KAHN, TAHITI BEYOND THE POSTCARD: POWER, PLACE AND EVERYDAY LIFE 73 (2013).

²⁴ Bernard Rio et al, *Incidence Rates of Leukemia in French Polynesia*, 131 INTERNATIONAL JOURNAL OF CANCER, 2241-2243 (2012); Christine Bouchardy et al, *Incidence Rates of Thyroid Cancer and Myeloid Leukaemia in French Polynesia*, 128 INTERNATIONAL JOURNAL OF CANCER (2011). French Polynesia has the world's highest incidence of acute myeloid leukemia, and women in French Polynesia have the world's highest rate of thyroid cancer.

²⁵ Tilman A. Ruff, *The Human Cost of Nuclear Weapons*, 97 INT'L REV OF THE RED CROSS 775-813 (2015).

²⁶ Corbin, *supra* note 8, at 48; CIA Factbook, *supra* note 10.

²⁷ *Ibid.*

²⁸ Claude Robineau, *The Tahitian Economy and Tourism*, in Ben Finney and Karen Ann Watson, eds, A NEW KIND OF SUGAR: TOURISM IN THE PACIFIC 62 (1977); interview with Rev François Pihaatae, Maohi Presbyterian Church, Pacific Conference of Churches, Pape'ete, Tahiti (Feb 18, 2019); interview with Cédric Ponsonnet, Direction des Ressources Marines et Minières, Pape'ete, Tahiti (Feb 28, 2019). French Polynesia imports the

majority of its food products, costing the territory over 41 billion CFP in imports in 2016 - the single highest value import sector. France is the majority source of these imports, contributing 28% of agricultural imports, with the United States at 19% and New Zealand at 18% of import by value. Institut D'Émission d'Outre-Mer, Polynésie française: Rapport annuel 2016, 60-61 http://www.ieom.fr/IMG/pdf/rapport_annuel_2016_polynesie_francaise.pdf, [IEOM, Annual Report 2016]; see also Jacqui Van Bastolaer, *French-occupied Polynesia*, in WCIP: INDIGENOUS STRUGGLES IN THE PACIFIC 43-44 (1984): "Now in the colonial society...the Polynesian has turned into the throwaway individual of a consumer civilization. In our eyes, the Maohi people's cultural estrangement is one of the most harmful aspects of colonization"

²⁹ Pihaatae interview, *supra* note 28; Ponsonnet interview, *supra* note 28.

³⁰ Robineau, *supra* note 28, at 61-65, 67, 69. There is also an "ethnic and cultural division of labour" in Tahiti, in which, for instance, "only a part of the total amount of the salaries brought in by the tourist industry goes to the Polynesians," who work at the "lowest level at which tourist industry work is carried out." *Id.* at 66-67.

³¹ See IEOM, Annual Report 2016, *supra* note 28. France appears to exacerbate this problem with legal and political decisions that prevent French Polynesian protectionism. See Lorenz Gonschor, *Political Reviews: French Polynesia*, 23 THE CONTEMPORARY PACIFIC 215, 224 (2011) [Gonschor 2011]: "The French State Council declared unconstitutional a local law enacted by the Assembly of French Polynesia that reserved 95 percent of jobs in territorial administration to persons resident for five years or more, because it infringed on equality clauses in the French constitution."

³² 55% de la population vit en dessous du seuil de pauvreté, FRANCE INFO, Oct 25, 2017, <https://la1ere.francetvinfo.fr/polynesie/tahiti/polynesie-francaise/55-population-vivent-dessous-du-seuil-pauvrete-525745.html>.

³³ Study shows widespread poverty in French Polynesia, RADIO NEW ZEALAND, Mar 12, 2010, <https://www.radionz.co.nz/international/pacific-news/189179/study-shows-widespread-poverty-in-french-polynesia>; 55,000 in poverty in French Polynesia, says study, RADIO AUSTRALIA, Jan 3, 2012, <http://www.radioaustralia.net.au/international/2010-03-12/55000-in-poverty-in-french-polynesia-says-study/196188>.

³⁴ 30% des familles polynésiennes en-dessous du seuil de pauvreté, FRANCE INFO, Oct 17, 2017, <https://la1ere.francetvinfo.fr/polynesie/tahiti/30-familles-polynesiennes-dessous-du-seuil-pauvrete-407447.html>.

³⁵ Temaru interview, *supra* note 3; Teavai-Murphy et al interview, *supra* note 3; Flosse interview, *supra* note 3; Brotherson interview, *supra* note 8; Pihaatae interview, *supra* note 28. See statement by former French President François Hollande, reaffirming the importance and French ownership of the Pacific EEZ: "We have to protect the EEZ. We have to ensure our presence so that no one can come to exploit the EEZ without our consent or authorisation. It's our common heritage—it's yours, it's ours and we share it." François Hollande, Press Conference, Tahiti, Feb 22, 2016.

³⁶ Senate Report 2012, *supra* note 10, at 103; Denise Fisher, *One among Many: Changing Geostrategic Interests and Challenges for France in the South Pacific*, 216 Les Etudes du CERI 1, 9 (2015), https://www.sciencespo.fr/ceri/sites/sciencespo.fr/ceri/files/Etude_216.pdf.

³⁷ Compared to French Polynesia's 5 million square km EEZ, Metropolitan France is approximately 15 times smaller, at a mere 334,604 square kilometers. Without its territories in the Pacific, Caribbean, Indian, and Atlantic Oceans, France's EEZ would rank 45th in the world, instead of 2nd. Maclellan 2018, *supra* note 20, at 429. As former French President Jacques Chirac said, "[w]ithout the departments and territories overseas, France would be only a little country." Robert Aldrich and John Connell, FRANCE IN WORLD POLITICS 148 (1989).

³⁸ Jose de Bettencourt & Helena Imminga-Berends, *Overseas Countries and Territories: Environmental Profiles*, EUROPE COMMISSION, EuropeAid/127054/C/SER/multi Request n° 2013/325768, 11, 14, 42, https://ec.europa.eu/europeaid/sites/devco/files/octs-environmental-profiles-pacific-012015_en.pdf.

³⁹ Senate Report 2014, *supra* note 6, at 13.

⁴⁰ Maclellan 2018, *supra* note 20, at 429, 432.

⁴¹ Senate Report 2014, *supra* note 6, at 13.

⁴² See, e.g., Alberto Alexander Perez, *The Mineral Industry of France*, U.S. GEOLOGICAL SURVEY, Dec 2017, <https://minerals.usgs.gov/minerals/pubs/country/2014/myb3-2014-fr.pdf>.

⁴³ France has led in explorations of the seafloor, especially deep basins (nodules) and ocean ridges (hydrothermal), through multi-agency research programs, and in upholding licenses in international waters. Pierre-Yves Le Meur, Pierre Cochonat, Carine David, et al., eds, *DEEP-SEA MINERAL RESOURCES IN FRENCH POLYNESIA* (2016), <https://books.openedition.org/irdeditions/9592?lang=en>; *The opportunities of deep-sea mining for Germany's raw material strategy*, Position Paper, BDI – Fed. of German Industries, Oct 2014, http://www.deepsea-mining-alliance.com/docs/2014/BDI_Position_Paper_Deep-sea_mining_EN_web_141103.pdf; *Towards a French Deep Sea Mining Industry*, Cluster Maritime Français, Plaqueette AsiePacifique 2014 ENBD, Report, FRENCH MINISTRY OF DEFENSE, http://dev.cluster-maritime.fr/sites/default/files/plaqueette_cmf_dsm_2015.pdf [Cluster Maritime Français report].

⁴⁴ Le Meur et al., *supra* note 43; *Deep Seabed Minerals Contractors*, INTERNATIONAL SEABED AUTHORITY (ISA), <https://www.isa.org.jm/deep-seabed-minerals-contractors> (last accessed Mar 12, 2019).

⁴⁵ Johanna Sydow, Lili Fuhr, & Ute Straub, *Analysis of the EU Raw Materials Initiative*, HEINRICH-BÖLL-STIFTUNG - THE GREEN POLITICAL FOUNDATION, Feb 3, 2011, <https://www.boell.de/en/ecology/resource-governance-analysis-of-the-eu-raw-materials-initiative-11124.html>.

⁴⁶ Maclellan 2018, *supra* note 20, at 438; Blue Ocean Law & Pacific Network on Globalisation, Resource Roulette: How Deep Sea Mining and Inadequate Regulatory Frameworks Imperial the Pacific and its Peoples 3 (2016), http://nabf219anw2q7dgn1rt14bu4.wpengengine.netdna-cdn.com/files/2016/06/Resource_Roulette-1.pdf. Both France and French Polynesia are members of the SPC (since 1947 and 1983, respectively). *See* Members, Pacific Community, <https://www.spc.int/our-members/> (last accessed Apr 6, 2019).

⁴⁷ *Les Métaux Stratégiques*, Communication, CONSEIL DES MINISTRES, April 2010, <http://www.mineralinfo.fr/sites/default/files/upload/documents/plan-action-metaux-strategiques-27avril2010.pdf>. In June 2011, the Interdepartmental Committee of the Sea (CIMER) launched “a national strategy for deep-sea mineral resources that will set the guidelines for sustainable exploitation of these resources in waters under national jurisdiction and in international waters.” Le Meur et al., *supra* note 43.

⁴⁸ Le Meur et al., *supra* note 43.

⁴⁹ *See, e.g.*, Cécile Pelaudeix, *Deep Seabed Mining of Critical Metals: Strategic and Governance Challenges*, Édition Énergie, IFRI, Dec 2018, <https://www.ifri.org/en/publications/editoriaux-de-lifri/edito-energie/deep-seabed-mining-critical-metals-strategic-and>; Kathryn A. Miller et al., *An Overview of Seabed Mining Including the Current State of Development, Environmental Impacts, and Knowledge Gaps*, 4 FRONTIERS MARINE SCIENCE, Jan. 2018, at 4, <https://www.frontiersin.org/articles/10.3389/fmars.2017.00418/full>; another report states “[i]t’s in the Pacific and notably in French Polynesia that the sediment has the strongest potential in cobalt and in platinum at a depth located between 1,500 and 2,000 meters. The crusts are especially made up of iron oxides and manganese oxides and are on average three times richer than the cobalt and platinum nodules” Gérard Grignon, *Extension of the Continental shelf beyond 200 nautical miles: an asset for France*, Opinion of the Economic, Social and Environmental Council, OFFICIAL JOURNAL OF THE FRENCH REPUBLIC 27, 142 (2013), <https://www.eesc.europa.eu/ceslink/sites/default/files/toolip-old-resources/docs/13-12-avis-plateau-continental-eng.pdf> [EESC Report].

⁵⁰ Y. Fouquet et al., *Analyse des encroûtements manganésifères de la campagne ZEPOLYF2* (1999), IFREMER, Mar 30, 2001, at 4.

⁵¹ Yasuhiro Kato et al., *Deep-sea mud in the Pacific Ocean as a potential resource for rare-earth elements*, 4 NATURE GEOSCIENCE 535, 535-536 (2011).

⁵² *Huge rare earth deposits found in Pacific: Japan experts*, REUTERS, July 3, 2011, <https://www.reuters.com/article/us-rareearth-japan/huge-rare-earth-deposits-found-in-pacific-japan-experts-idUSTRE76300320110704>. One study relates that among the sites explored in this study, “the French Polynesian EEZ around sites 76 25 and KH71-5-15-2 appears to be the most promising area of the Pacific seabed under national control.” M Bashir et al., *A Concept for Seabed Rare Earth Mining in the Eastern South Pacific*, University of Southampton, 1 THE LRET COLLEGIUM 2012 SERIES, (2012), 24-25, https://www.southampton.ac.uk/assets/imported/transforms/content-block/UsefulDownloads_Download/7C8750BCBBB64FBAAF2A13C4B8A7D1FD/LRET%20Collegium%202012%20Volume%201.pdf.

⁵³ In his speech at Havre, on July 16, 2009, President Nicolas Sarkozy declared, “I came to tell you that France must stop ignoring the formidable maritime fate that could be its own . . . The sea can conceal considerable deposits of raw material that are a wealth that our country cannot neglect in an era of rarity.” EESC Report, *supra* note 49, at 81.

⁵⁴ *Id.*, generally, & at 7: France’s objective in seeking expansion of FP continental shelf is explicitly to “(1) expand its sovereign rights on the natural resources of the seabed and marine subsoil on nearly 2 millions [sic] of supplementary km²; (2) to acquire sovereign rights for the exploration and exploitation of natural resources on these new areas; and (3) to increase France’s geopolitical power.”

⁵⁵ Cluster Maritime Français report, *supra* note 43.

⁵⁶ The 2004 autonomy statute states that “French Polynesia reserves the right to explore and the right to exploit the natural resources, biological and non-biological of the interior waters, in particular in harbours and lagoons, of the soil, sub-soil and adjacent waters of the territorial sea and the exclusive economic zone with respect to international obligations.” 2004 Autonomy Statute, *supra* note 19, art 47.

⁵⁷ Flosse interview, *supra* note 3.

⁵⁸ *Id.*; see also Fouquet et al., *supra* note 50, at 21: “France has the technical means . . . to carry out these investigations.” France is also assisting the French Polynesian government in rewriting its mining code to incorporate a seabed mineral regime. Brotherson interview, *supra* note 8. To be sure, controversy continues to shroud such studies. See *Concerns raised about French Polynesian mining decision*, Radio NZ, May 27, 2019, <https://www.rnz.co.nz/international/pacific-news/390676/concerns-raised-about-french-polynesian-mining-decision>

⁵⁹ 2004 Autonomy Statute, *supra* note 19, art 14; see also Corbin, *supra* note 8, at 36: “The natural resource considerations . . . are specifically qualified by State control over strategic raw materials which can include those within the marine environment.”

⁶⁰ 2004 Autonomy Statute, *supra* note 19, art 47: “The provisions of the preceding paragraph apply subject to the necessary undertakings [rights of way], at the date of publication of this organic law, of the exercise by the State of its powers and as long as this need is justified.”

⁶¹ *Terres rares*, « C’est une discussion qui relève de la Souveraineté », OUTREMERS 360°, Nov 28, 2015, <http://outremers360.com/politique/terres-rares-cest-une-discussion-qui-releve-de-la-souverainete/>. While including industry representatives and ministers from Industry, Research, Environment, and Defense, the committee on seabed and strategic minerals strangely excludes the Overseas minister. Brotherson interview, *supra* note 8.

⁶² René Lataste, *Compétence Terres rares: Wallis après la Polynésie française*, La 1ere, FranceTV, Nov 24, 2015, <https://la1ere.francetvinfo.fr/wallisfutuna/2015/11/24/terres-rares-une-competence-pour-la-polynesie-francaise-308721.html>.

⁶³ Corinne Tehetia, *Terres rares: « La Polynésie est compétente en matière d’exploration et d’exploitation »* (George Pau Langevin), TAHITI INFOS, Nov 20, 2015, https://www.tahiti-infos.com/Terres-rares-La-Polynesie-est-competente-en-matiere-d-exploration-et-d-exploitation-George-Pau-Langevin_a140743.html. The strategic raw materials list specifically included helium, uranium, thorium, beryllium, lithium and their compounds, plutonium, deuterium, tritium, and lithium 6.

⁶⁴ Decolonization expert Carlyle Corbin has documented the many provisions of the 2004 autonomy statute whereby France can override French Polynesia’s autonomy. See generally Corbin, *supra* note 8. Various actors within the French government continue to urge it to secure seabed resources in its overseas territories, and ongoing references to the need for France to pursue “research and exploitation of deep marine resources, particularly in the Asia-Pacific zone” persist. EESC Report, *supra* note 49, at 49-50; *France asked to cede Tahiti exploration rights*, RADIO NZ, Oct 30, 2015, <https://www.radionz.co.nz/international/pacific-news/288392/france-asked-to-cede-tahiti-exploration-rights>; *Rare earths deposits prompt debate in French Polynesia*, RADIO NZ, Nov 24, 2015, <https://www.radionz.co.nz/international/programmes/datelinepacific/audio/201779936/rare-earths-deposits-prompt-debate-in-french-polynesia>.

⁶⁵ Maclellan 2018, *supra* note 20, at 433.

⁶⁶ Interview with Dr. Hervé Raimana Lallemand-Moe, Pape’ete, Tahiti (Feb 18, 2019).

⁶⁷ Data and results from seabed surveys were not widely disseminated to the French Polynesian public; indeed, some commentators suspect that France has been deliberately vague about minerals located in FP's EEZ. Brotherson interview, *supra* note 8; Pihaatae interview, *supra* note 28.

⁶⁸ See Julie Hunter, Pradeep Singh, & Julian Aguon, *Broadening Common Heritage: Addressing Gaps in the Deep Sea Mining Regulatory Regime*, HARV. ENVTL. L. REV. (Apr. 16, 2018), <http://harvardelr.com/2018/04/16/broadening-common-heritage/>.

⁶⁹ Cindy Lee Van Dover et al., *Biodiversity Loss from Deep-sea Mining*. 10 NATURE GEOSCI. 464, 464–65 (2017).

⁷⁰ Julian Aguon & Julie Hunter, *Second Wave Due Diligence: The Case for Incorporating Free, Prior, and Informed Consent into the Deep Sea Mining Regulatory Regime*, 38 Stanford Envtl. L. J. 3-4 (2018), https://www-cdn.law.stanford.edu/wp-content/uploads/2019/02/I_Aguon.pdf.

⁷¹ See, e.g., the case of phosphate extraction on the island of Makatea from 1917 to 1966, which left the island an industrial wasteland replete with open mines and hazardous waste whilst reaping riches for the French corporation, *Compagnie Française des Phosphates de l'Océanie*, which was granted exclusive mining rights by the French government. DAVID STANLEY, *TAHITI: INCLUDING THE COOK ISLANDS* (2003), 264.

⁷² See *supra* note 5; Corbin, *supra* note 8, at 64; Nic Maclellan, *François Hollande says France wants to remain a Pacific power. Is it wishful thinking?*, THE GUARDIAN, Nov 17, 2014, <https://www.theguardian.com/commentisfree/2014/nov/18/francois-hollande-says-france-wants-to-remain-a-pacific-power-is-it-wishful-thinking> [Maclellan 2014]; see also France's inclusion in the elite G-8 "partly because of its overseas interests that encompasses [sic] the thousands of square kilometers of islands and ocean making up French Polynesia." Rachel Reeves & Luke Hunt, *French Polynesia Battles for Independence*, THE DIPLOMAT, Oct 10, 2012, <https://thediplomat.com/2012/10/french-polynesia-last-vestiges-of-frances-empire/>.

⁷³ See, e.g., "[a]lthough France's mainland territory is geographically remote from the Asia-Pacific [region], its territories in New Caledonia, Wallis and Futuna, French Polynesia, and Clipperton Island make it a regional Pacific power . . . France intends to contribute to the regional security, as a power present in the region, faithful to its commitments, committed to the respect of international law and the freedom of navigation, and eager to defend its interests and global responsibilities." *France and security in the Asia-Pacific*, White Paper on Defence and National Security, FRENCH MINISTRY OF DEFENSE, Apr 2013, at 2, 4; see also EESC Report, *supra* note 49, at 9, recommending that France "protect and supervise the concerned [new maritime] areas by strengthening the French navy present on the oceans while providing means for permanent control and observation using new technologies and intensifying the regional cooperation actions."

⁷⁴ 2004 Autonomy Statute, *supra* note 19, art 47.

⁷⁵ See, e.g., the 1992 France-Australia-New Zealand (FRANZ) Agreement on joint maritime surveillance, and the 2009 Australia-France Defence Cooperation Agreement, which provides for "a distinct and broad ranging defencecollaboration between the two countries with specific reference to the centrality of the French dependencies." Corbin, *supra* note 8, at 65.

⁷⁶ Maclellan 2018, *supra* note 20, at 430.

⁷⁷ *French Navy Received the "Bougainville" Second of Four B2M Multi Mission Vessels*, NAVAL FORCES NEWS – FRANCE, Sept 27, 2016, <http://www.navyrecognition.com/index.php/news/defence-news/2016/september-2016-navy-naval-forces-defense-industry-technology-maritime-security-global-news/4386-french-navy-received-the-bougainvilleq-second-of-four-b2m-multi-mission-vessels.html>. These vessels may play an important role protecting FP's EEZ from illegal fishing and other illicit activities, and are not necessarily unwelcome to the population of FP. Teavai-Murphy et al interview, *supra* note 3.

⁷⁸ Maclellan 2018, *supra* note 20, at 431: "Today, many French agencies continue to view the Pacific as a laboratory, for initiatives in energy, climate geo-engineering, pharmaceuticals and acqua-business, with potential benefits for island populations as well as French corporations."; see also, Denise Fisher, *French choreography in the Pacific*, May 7, 2018, THE INTERPRETER, <https://www.lowyinstitute.org/the-interpreter/french-choreography-pacific/>: the Pacific territories are a base not only for French military activities, but for "scientific and technological research, and the European space program." Maclellan 2014, *supra* note 72. France also monitors satellite, internet

and telecommunications from installations in the Pacific, and engages in cyberspace, intelligence and metadata collection.

⁷⁹ Maclellan 2018, *supra* note 20, at 428, 433: in 2016, the Pacific Islands Forum (PIF) agreed to incorporate two NSGTs, New Caledonia and French Polynesia, as full members, raising concerns that this would amplify “the capacity of the French Republic to intervene in debates about the Blue Pacific.” Some Pacific politicians and officials openly wondered “whether France [wa]s now effectively part of the Forum, joining Australia and New Zealand as a big brother in the regional family.” See also Maclellan 2016, *supra* note 3.

⁸⁰ Fisher, *supra* note 8, at 23–24. A recent French military report noted, “[m]aritime areas are at the heart of growing tensions, with their key role in the globalization of all kinds of connections (including digital submarine cables), the resources they contain and the development of far-range naval and air strike capabilities.” The report stated that this situation is especially true of the “China Sea, where tensions have consequences for the Pacific in general.” *Gouvernement de la République Française, Revue Stratégique de défense et de sécurité nationale* (2017) [*Revue Stratégique de défense*], at 43; see also Brendan Nicholson, *France’s Increasing Naval Presence in the Asia-Pacific: ‘We Live in the Region’*, THE STRATEGIST, Oct 19, 2017, https://www.realcleardefense.com/articles/2017/10/19/frances_increasing_naval_presence_in_the_asiapacific_11249_9.html, quoting the chief of the French Navy, Admiral Christophe Prazuck: “China, for example, built in the last four years the equivalent of the entire French Navy. It’s not a threat, but the landscape has changed and it’s changing very fast.”

⁸¹ *France to hold summit with Pacific Island countries in French Polynesia*, RADIO NZ, June 29, 2018, <https://www.radionz.co.nz/international/pacific-news/360719/france-to-hold-summit-with-pacific-island-countries-in-french-polynesia>. See also statements by French Defence Minister Jean-Yves Le Drian: “We need to think of a three-way partnership that includes India if we want security in the Indo-Pacific region. France is a Pacific nation through New Caledonia and French Polynesia. It is also an Indian Ocean nation through the island of La Reunion and our military presence in Djibouti and the United Arab Emirates.” Brendan Nicholson, *French call for defence ties across oceans*, THE AUSTRALIAN, Mar 2, 2016, <https://www.theaustralian.com.au/national-affairs/defence/french-call-for-defence-ties-across-oceans/news-story/d1df97b37a00e44168a892f57b83ef53>.

⁸² Dhairya Maheshwari, *India gets access to French bases in Indian and southern Pacific oceans*, NAT’L HERALD INDIA, Mar 10, 2018, <https://www.nationalheraldindia.com/international/frenc-president-macron-prime-minister-narendra-modi-agreement-india-gets-access-to-french-bases-in-the-indian-ocean-and-western-pacific>.

⁸³ Corbin, *supra* note 8, at 66–67. The French Government has admitted in the past the possibility of the collapse of the Moruroa atoll, yet has failed to do much beyond basic monitoring and possible construction of a bunker. *Effects of nuclear tests in French Polynesia remains a major concern: veterans*, ABC NEWS, Feb 21, 2014, <https://www.abc.net.au/news/2014-02-21/an-french-polynesia-upgrades-former-nuclear-sites/5276042>; *France denies construction at Moruroa nuclear site*, ABC NEWS, Feb 3, 2013, <https://www.abc.net.au/news/2013-02-04/an-france-denies-moruroa-construction/4498774>. France also returned one of its military bases without cleaning up any of the pollution it caused, such as asbestos and spilled fuel, in what amounted to a \$1.2 million cleanup. *No funding for Tahiti army base clean-up*, RADIO NZ, Aug 22, 2017, <https://www.radionz.co.nz/international/pacific-news/337766/no-funding-for-tahiti-army-base-clean-up>; Temaru interview, *supra* note 3; Flosse interview, *supra* note 3; interview with Michel Arakino, nuclear test survivor, Pape’ete, Tahiti (Feb 18, 2019).

⁸⁴ Remus Prăvălie, *Nuclear weapons tests and environmental consequences: a global perspective*, 43 AMBIO. 729, 738 (2014), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4165831/>; France’s Nuclear Testing Programme, Preparatory Commission for the Comprehensive Nuclear Test Ban Treaty Organization, <https://www.ctbto.org/nuclear-testing/the-effects-of-nuclear-testing/frances-nuclear-testing-programme/> (last accessed Mar 12, 2019). Nuclear testing in French Polynesia spread dangerous radioactive elements throughout the surrounding environment. It permanently damaged the food-producing trees and plants of the islands. Declassified documents from the French military show that the main island of Tahiti had been “literally showered with [the radioactive element] plutonium for two days”, and “exposed to 500 times the maximum accepted levels of radiation.” In its findings on the long-term effects of nuclear testing, a 1991 scientific report concluded that “[t]here is evidence that plutonium-239 is accumulating in the food chain [of French Polynesia].” Kahn, *supra* note 23, at 73. Ancillary military activities related to the nuclear testing also caused ciguatera fish poisoning, a disease of the food chain that

interfered with traditional subsistence fishing and increased reliance on imported foods, heightening risk factors for chronic disease. Ruff, *supra* note 25; Chrisafis, *supra* note 22.

⁸⁵ *The battle continues, 50 years after first test at Mururoa*, RADIO NZ, July 4, 2016, <https://www.radionz.co.nz/international/pacific-news/307804/the-battle-continues,-50-years-after-first-test-at-mururoa>; Brotherson interview, *supra* note 8; Arakino interview, *supra* note 83.

⁸⁶ Fisher, *supra* note 8, at 12. France signed an agreement with the United States to use the Hao landing strip for the American space shuttle.

⁸⁷ *France sued for 'crimes' over nuclear tests: Polynesia leader*, France 24, Oct 10, 2018, <https://www.france24.com/en/20181010-france-sued-crimes-over-nuclear-tests-polynesia-leader>. In May 2019, those seeking compensation for nuclear-related illnesses made some headway in the French Parliament. See Henry Samuel, *France acknowledges Polynesian islands 'strong-armed' into dangerous nuclear tests*, The Telegraph, May 24, 2019, <https://www.telegraph.co.uk/news/2019/05/24/france-acknowledges-polynesian-islands-strong-armed-dangerous/>. The true import of this development, however, is uncertain, and it remains an open question whether France will follow through with real reparations.

⁸⁸ See UN Charter, art. 73-76; *Certain Phosphate Mining Lands in Nauru (Nauru v. Australia)*, Judgment, 1992 I.C.J. Rep. 615 (June 26).

⁸⁹ Fisher, *supra* note 8, at 13-14. A similar pattern of colonial contamination and dispossession persists throughout Oceania. See, e.g., SASHA DAVIS, *EMPIRE'S EDGE: MILITARIZATION, RESISTANCE, AND TRANSCENDING HEGEMONY IN THE PACIFIC* 34-52 (2015); Julia B. Edwards, *Phosphate Mining and the Relocation of the Banabans to Northern Fiji in 1945: Lessons for Climate Change-forced Displacement*, 138-39 J. SOC. OCEANISTES 121, 122026 (2014); Nic Maclellan, *The Nuclear Age in the Pacific Islands*, 17 Contemporary Pacific 363, 363-72 (2005); Nic Maclellan, *Grappling with the Bomb: Britain's Nuclear Testing In Kiribati*, PACIFIC ISLANDS REP. (Mar. 7, 2017), <http://www.pireport.org/articles/2017/03/14/grappling-bomb-britain%E2%80%99s-nuclear-testing-kiribati>; see also Ruth Oldenziel, *Islands: The United States as a Networked Empire*, in ENTANGLED GEOGRAPHIES: EMPIRE AND TECHNOLITICS IN THE GLOBAL COLD WAR 23 (Gabrielle Hecht ed., 2011); Peter Harris, *Environmental Protection as International Security: Conserving the Pentagon's Island Bases in the Asia-Pacific*, 69 INT'L J. 377, 389-90 (2014).

⁹⁰ *French Polynesia country brief*, Australian Gov't, Dept of Foreign Affairs and Trade, <http://dfat.gov.au/geo/french-polynesia/Pages/french-polynesia-country-brief.aspx> (last accessed Mar 12, 2019). French financial transfers have traditionally supplied roughly 30% of French Polynesia's GDP, but in recent years, financial transfers have accounted for as much as 60% of French Polynesia's GDP.

⁹¹ *Vivre sa retraite en Polynésie française*, L'OBS, Feb 1, 2017, <https://www.nouvelobs.com/publicite/20170201.OBS4709/vivre-sa-retraite-en-polynesie-francaise.html>. The cost of living in French Polynesia is significantly higher than in metropolitan France.

⁹² Corbin, *supra* note 8, at 48-49; Lorenz Gonschor, *French Polynesia*, 30 CONTEMPORARY PACIFIC 156, 159 (2016).

⁹³ Corbin, *supra* note 8, at 48-49; see also Denise Fisher, *France in the South Pacific: Power and Politics*, ANU PRESS 188 (2013), <http://press-files.anu.edu.au/downloads/press/p241101/pdf/ch059.pdf>.

⁹⁴ Gonschor 2015, *supra* note 4, at 269; Les Dépenses de l'État en Polynésie Française, Haut-Commissariat de la République en Polynésie Française, <http://www.polynesie-francaise.pref.gouv.fr/L-Etat-en-chiffres/Les-depenses-de-l-Etat-en-PF> (last accessed Mar 28, 2019).

⁹⁵ Interview with Dr. Keitapu Maamaatuaiahutapu, University of French Polynesia, Pape'ete, Tahiti (February 15, 2019); Lallemand-Moe interview, *supra* note 68; Pihatae interview, *supra* note 28. Electricité de Tahiti, a subsidiary of the French company ENGIE, maintains a monopoly on the production and distribution of electricity in French Polynesia. *Fourth Committee Hears Petitioners from Non-Self-Governing Territories, Including French Polynesia, New Caledonia, Gibraltar*, UN General Assembly, GA/SPD/608, Oct 4, 2016, <https://www.un.org/press/en/2016/gaspd608.doc.htm>.

⁹⁶ Flosse interview, *supra* note 3; Fisher, *supra* note 8, at 30-31: "In response mainly to China's overtures in the French Pacific territories, President Hollande has indicated that France welcomes such investment, with the caveats

that it should comply with local production controls; that France should be a major capital stakeholder; and that regulations and conditions are respected, particularly regarding the environment.”

⁹⁷ Le système scolaire en Polynésie française et en Nouvelle-Calédonie: un effort de l'État important, une efficience à améliorer, Cour des Comptes Française, Rapport Public Annuel 2016, 283, 294, 301, <https://www.ccomptes.fr/sites/default/files/EzPublish/09-systeme-scolaire-Polynesie-Nlle-Caledonie-RPA2016-Tome-1.pdf>; Pihaatae interview, *supra* note 28; *see also* Gonschor 2011, *supra* note 31, at 224.

⁹⁸ Teavai-Murphy et al interview, *supra* note 3; Lallemand-Moe interview, *supra* note 66; Pihaatae interview, *supra* note 28; Flosse interview, *supra* note 3. The unemployment rate among these “immigrants” is three times lower than residents, as such an immigrant typically arrives in French Polynesia “with his contract in hand, which protects him from the crisis of the labor market. The unemployment rate is thus 7.5% among immigrants against 22.6% in the resident population.” Les Migrations en Polynésie Française entre 2007 et 2012, INSTITUT DE LA STATISTIQUE DE LA POLYNESIE FRANÇAISE, 9, http://www.ispf.pf/docs/default-source/publi-pf-bilans-et-etudes/PF_Etudes_01_2014_RP_migration.pdf?sfvrsn=2 (last accessed Apr 7, 2019).

⁹⁹ Temaru interview, *supra* note 3.

¹⁰⁰ Duties and activities, IEOM, <http://www.ieom.fr/ieom/langues/duties-and-activities/> (last accessed Mar 12, 2019). CFP originally stood for “*Colonies Françaises du Pacifique*” (“French colonies of the Pacific”).

¹⁰¹ Ndongo Samba Sylla, *The CFA Franc: French Monetary Imperialism in Africa*, London School of Economics Blog, July 12, 2017, <http://blogs.lse.ac.uk/africaatlse/2017/07/12/the-cfa-franc-french-monetary-imperialism-in-africa>.

¹⁰² *Franc Pacifique, Monnaie Coloniale*, SURVIE, Nov 20, 2017, <https://survie.org/billets-d-afrique/2017/272-novembre-2017/article/franc-pacifique-monnaie-coloniale>. In both Africa and the Pacific, the colonial currency is pegged to the euro and is not convertible outside its borders, making it difficult for territories to engage in robust trade with neighboring countries.

¹⁰³ Sylla, *supra* note 101. Indeed, nations like Morocco, Tunisia, and Algeria, which withdrew from the franc zone after achieving independence and now mint their own currency, are economically stronger than any user of the CFA franc. Given the close similarities between the CFA franc and the CFP franc (their distinction is almost entirely geographical), criticisms of the CFA also likely apply to the CFP.

¹⁰⁴ *See, e.g.*, the French government’s silence over illegal fishing by Spanish boats in the Pacific. Maclellan 2018, *supra* note 20, at 437.

¹⁰⁵ Intergovernmental Panel on Climate Change, Global Warming at 1.5 Degrees Celsius (2018).

¹⁰⁶ Vienna Convention on the Law of Treaties, May 23, 1969, 1155 UNT.S. 331.

¹⁰⁷ *See, e.g.*, *Project Funding*, GREEN CLIMATE FUND (last accessed March 24, 2019), <https://www.greenclimate.fund/gcf101/funding-projects/project-funding> (describing the fact that funding is available for developing countries).

¹⁰⁸ Maclellan 2018, *supra* note 20, at 437: “Even under Macron’s Socialist Party predecessor, there were clear examples of Paris opposing policies advocated by SIDS. At the December 2016 board meeting of the Green Climate Fund in Apia, France actively opposed the call by SIDS and other developing states to increase funds allocated to the Green Climate Fund’s Readiness and Preparatory Support program, a crucial mechanism that helps smaller nations with the costs of feasibility studies and preparing funding proposals.”

¹⁰⁹ *See, e.g.*, Maxine Burkett, *The Nation Ex-Situ*, 2 CLIMATE L. 345, 349 (2011); Rosemary Rayfuse & Emily Crawford, *Climate Change, Sovereignty and Statehood*, in INTERNATIONAL LAW IN THE ERA OF CLIMATE CHANGE 8-12 (2012). Independent statehood requires a habitable territory. *See* Montevideo Convention on the Rights and Duties of States, art. 1(b), Dec. 26, 1934, 165 L.N.T.S. 19.

¹¹⁰ 2004 Autonomy Statute, *supra* note 19, art 14.

¹¹¹ Integrated Coastal Zone Management (ICZM), AGENCE FRANÇAISE POUR LA BIODIVERSITÉ, <http://www.aires-marines.fr/L-Agence/Organisation/Antennes/Antenne-Polynesie2/La-gestion-integree-des-zones-cotieres> (last accessed March 6, 2019); Antenne Polynésie française, AGENCE FRANÇAISE POUR LA BIODIVERSITÉ, <http://www.aires-marines.fr/L-Agence/Organisation/Antennes/Antenne-Polynesie2> (last accessed March 6, 2019): “Since 2007, the Marine Protected Areas Agency, and since 2017, the French Agency for Biodiversity have been providing technical support to the Government of French Polynesia in the creation and

management of marine protected areas.” *Europe Overseas have bypassed Aichi target with 16% of their marine areas under protection*, IUCN, Sept 10, 2016, <https://www.iucn.org/news/marine-and-polar/201609/europe-overseas-have-bypassed-aichi-target-16-their-marine-areas-under-protection>; “as of 2016, only five EU Overseas entities have protected 10% or more of their marine area by establishing vast MPAs within their waters. These entities contribute to almost 90% of the EU Overseas MPAs.”

¹¹² *Marine protected areas dashboard*, AGENCE FRANÇAISE POUR LA BIODIVERSITÉ, <http://www.aiores-marines.com/Ressources/Marine-protected-areas-dashboard> (last accessed Mar 6, 2019); *EU Overseas – champions in marine and coastal protection*, IUCN, Sept 7, 2017, <https://www.iucn.org/news/marine-and-polar/201709/eu-overseas-champions-marine-and-coastal-protection>; Carole Martinez, Sylvie Rockel, & Caroline Vieux, *European Union Overseas Coastal and Marine Protected Areas: Overview of coastal and marine conservation efforts in the European Union’s Overseas Countries and Territories and Outermost Regions*, IUCN, French Development Agency (AFD) (2017), 11, 94, 99

https://www.iucn.org/sites/dev/files/content/documents/2017/eu_overseas_mpa_report_2017_0.pdf; *French policy on biodiversity*, Ministry for Europe and Foreign Affairs, <https://www.diplomatie.gouv.fr/en/french-foreign-policy/sustainable-development-environment/french-policy-on-biodiversity/> (last accessed Mar 12, 2019).

¹¹³ Barbara Walker, *Mapping Moorea’s Lagoon: Conflicts over Marine Protected Areas in French Polynesia*, Institute for Social, Behavioral, and Economic Research University of California at Santa Barbara, 1, 6 (2001), <http://dlc.dlib.indiana.edu/dlc/bitstream/handle/10535/1734/walker.pdf?sequence=1>.

¹¹⁴ Chelsea Hunter, *Waves of Change: Politics, Ontologies, and the Struggle for Acceptable Marine Management in Moorea, French Polynesia*, PROQUEST 25, 29 (2017), https://lauer.sdsu.edu/docs/Hunter_2017.pdf; Walker, *supra* note 113, at 7.

¹¹⁵ Walker, *supra* note 113, at 7.

¹¹⁶ Barbara Walker, David Lopez-Carr, Cheryl Chen, & Kitty Currier, *Perceptions of environmental change in Moorea, French Polynesia: the importance of temporal, spatial, and scalar contexts*, 79 GEOJOURNAL (2014): 705-719, 708, <https://pdfs.semanticscholar.org/2376/db759bee6631a48d81b5789b29d88f7c57c8.pdf>.

¹¹⁷ Walker, *supra* note 113, at 12-14; Hunter (2017), *supra* note 114, at 26, 68, 80; Walker et al., *supra* note 116, at 713-714.

¹¹⁸ Teavai-Murphy et al interview, *supra* note 3; interview with Heipua Teariki Bordes, in Mo’orea, French Polynesia (Feb 13, 2019).

¹¹⁹ Teavai-Murphy et al interview, *supra* note 3; 2004 Autonomy Statute, *supra* note 19, art. 14:6, 8-9.

¹²⁰ Teavai-Murphy et al interview, *supra* note 3.

¹²¹ Id.

¹²² Western Sahara, Advisory Opinion, 1975 I.C.J. Rep. 414, ¶ 51 (Oct. 16).

¹²³ U.N. GAOR, 68th Sess., 3d Comm, 40th mtg., U.N. Doc. GA/SHC/4085 (Nov. 5, 2013), <https://www.un.org/press/en/2013/gashc4085.doc.htm>.

¹²⁴ Jus Cogens, Report of the Int’l L. Comm., 66th Sess., U.N. Doc. No. A/69/10 (2014) (providing a non-exhaustive list of jus cogens norms “that are clearly accepted and recognized includ[ing] the prohibition of aggression, genocide, slavery, racial discrimination, crimes against humanity and torture, and the right to self-determination”).

¹²⁵ See U.N. Charter, art. 73-76 (1945); U.N. Declaration on the Granting of Independence to Colonized Peoples. G.A. Res. 1514 (XV) (Dec. 14, 1960).

¹²⁶ See Resolution 67/265, *supra* note 4.

¹²⁷ International Covenant on Civil and Political Rights art. 1, Mar. 23, 1976, 999 U.N.T.S. 171 [ICCPR]; International Covenant on Economic, Social, and Cultural Rights art. 1, Jan. 3, 1976, 993 U.N.T.S. 3 [ICESCR].

¹²⁸ E.g., Legality of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. Rep. 883, 49-52 (July 4); Western Sahara, Advisory Opinion, 1975 I.C.J. Rep. 414, 31-36 (Oct. 16); G.A. Res. 65/119, Third International Decade for the Eradication of Colonialism (2011-2021) (Jan. 20, 2011); Special Committee on Decolonization, UNITED NATIONS, <https://www.un.org/en/decolonization/specialcommittee.shtml>

¹²⁹ U.N. Charter, art. 73.

¹³⁰ *Id.* (providing that colonial powers “accept as a sacred trust the obligation to promote to the utmost . . . the well-being of the inhabitants of these territories” by promoting their self-determination); *See* G.A. Res. 1654 (XVI), The Situation Regarding the Implementation of the Declaration on the Granting of Independence to Colonized Peoples, (Nov. 27, 1961) (establishing the Special Committee on Decolonization to oversee all colonial powers in carrying out their trust responsibilities with respect to their non-self-governing territories); *Declaration on the Granting of Independence to Colonial Countries and Peoples*, United Nations General Assembly, *Resolution 1514 (XV)*, Dec 14, 1960 [UNGA Resolution 1514].

¹³¹ Certain Phosphate Lands in Nauru (Nauru v. Australia), Judgement, 1992 I.C.J. Rep. 615 (June 26).

¹³² ICCPR, *supra* note 127, art. 1.2; ICESCR, *supra* note 127, art. 1.2; G.A. Res. 1803 (XVII), Permanent Sovereignty Over Natural Resources (Dec. 14, 1962).

¹³³ UNGA Resolution 1514, *supra* note 130; ICCPR, *supra* note 127; ICESCR, *supra* note 127: Self-determination of peoples is an established collective right in international law. The landmark UN General Assembly Resolution 1514 of 1960, also known as *The Declaration on the Granting of Independence to Colonial Countries and Peoples*, demonstrated a widespread global condemnation of colonialism. Article 1 of both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) states that “All peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.” In its 1971 opinion on the colonial status of Namibia, the International Court of Justice (ICJ) defined the right to self-determination as “one of the essential principles of contemporary international law.” Article 1(4) of the Additional Protocol I to Geneva Conventions of 1949 (1977) expressly affirms the right of self-determination as a “right in international law.” Reports to the Human Rights Committee reveal a general consensus that self-determination is a universal right: Netherlands, CCPR/C/10/Add.3, 11-16 YHRC (1981-2) II, 156; Jordan, CCPR/C/1/Add.55, 11-16 YHRC (1981-2) II, 156; German Federal Republic, CCPR/C/28/Add.6, 23-8 YHRC (1985-6) II, 262; Senegal, 29-30 YHRC (1987) I, SR.722, para 8; Mexico, CCPR/C/46/Add.3, 34-6 HRCOR (1988-9) II, 37; Republic of Korea, CCPR/C/114/Add.1 (1998) 7.

¹³⁴ Nicolaas Schrijver, Self-Determination of Peoples and Sovereignty Over Natural Wealth and Resources, in *REALIZING THE RIGHT TO DEVELOPMENT* 95, 96-97 (2013).

¹³⁵ *Id.*; *see also* U.N. Charter, art. 73-74.

¹³⁶ *Id.* at 96-98.

¹³⁷ Schrijver, *supra* note 134, at 96-98.

¹³⁸ *Id.*

¹³⁹ ICCPR, *supra* note 127.

¹⁴⁰ ICESCR, *supra* note 127.

¹⁴¹ ICCPR, *supra* note 127; ICESCR, *supra* note 127. The last sentence was controversial at the time of drafting. James Summers, *PEOPLES AND INTERNATIONAL LAW: HOW NATIONALISM AND SELF-DETERMINATION SHAPE A CONTEMPORARY LAW OF NATIONS* 182 (2007). Saudi Arabia explained that the sentence “was intended to prevent a weak or penniless government from seriously compromising a country’s future by granting concessions in the economic sphere – a frequent occurrence in the nineteenth century.” Saudi Arabia, Third Committee, 672nd Meeting, 10 GAOR, A/C.3/SR.672 (1955) at para 36. El Salvador cited the example of the Pacific Island of Nauru, as it had lost substantial amounts of its main resource, phosphate, under UN Trusteeship. El Salvador, Third Committee, 674th Meeting, 10 GAOR, A/C.3/SR.674 (1955) at para 8.

¹⁴² Ricardo Pereira & Orla Gough, Permanent Sovereignty over Natural Resources in the 21st Century: Natural Resource Governance and the Right to Self-Determination of Indigenous Peoples under International Law, 14 *MELBOURNE J. OF INT’L LAW* 451, 459 (2013).

¹⁴³ Jeremie Gilbert, *The Right to Freely Dispose of Natural Resources: Utopia or Forgotten Right?*, 31 *NETHERLANDS QUARTERLY OF HUMAN RIGHTS* 314, 323 (2013); ICCPR, *supra* note 127, art 47; ICESCR, *supra* note 127, art 25.

¹⁴⁴ These articles state, in common: “Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.” ICCPR, *supra* note 127; ICESCR, *supra* note 127. Summers, *supra* note 141, at 185.

¹⁴⁵ General Comment 12, Article 1, Human Rights Committee, (Twenty-first session, 1984), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 12 (1994); *see also, e.g., Concluding Observations: Norway*, UN Human Rights Committee, CCPR/C/79/Add.112, (1999).

¹⁴⁶ France ratified both the ICCPR and ICESCR on 4 November 1980: *Chapter IV: International Covenant on Civil and Political Rights*, UN Treaty Collection, https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-4&chapter=4&lang=en (last accessed Mar 12, 2019); *Chapter IV: International Covenant on Economic, Social and Cultural Rights*, UN Treaty Collection, https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-3&chapter=4&clang=en (last accessed Mar 12, 2019).

¹⁴⁷ UNGA Resolution 1803, *supra* note 132, built on the work of numerous other previous UNGA resolutions dealing with issues of sovereignty and economic development, specifically recalling Resolutions 523 and 626. *See Recommendations concerning international respect for the right of peoples and nations to self-determination*, UN General Assembly, Resolution 1314 (XIII), A/AC.42/7 (12 December 1958); *see also UN resolution* of 18 December 2012, reaffirming that “natural resources are the heritage of the peoples of the Non-Self-Governing Territories, including the indigenous populations” calling upon “the administering Powers to ensure that the exploitation of the marine and other natural resources in the Non-Self-Governing Territories under their administration is not in violation of the relevant resolutions of the United Nations, and does not adversely affect the interests of the peoples of those Territories.” *Economic and other activities which affect the interests of the peoples of the Non-Self-Governing Territories*, UNGA resolution 67/126. 18 December 2012.

¹⁴⁸ UNGA Resolution 1314, *supra* note 147, at 1.

¹⁴⁹ UNGA Resolution 1803, *supra* note 132. The resolution passed eighty-seven votes to two. That the principle of PSNR allows peoples and newly decolonized states to claim control over natural resources and to exploit the same meant it was a powerful tool for states newly developing after colonization. Nico Schrijver, SOVEREIGNTY OVER NATURAL RESOURCES: BALANCING RIGHTS AND DUTIES 82 (1997). Thus, following the logic of the anti-colonial historical development of the principle of permanent sovereignty over natural resources, and the binding legal status of the right of peoples to self-determination as articulated in the Covenants, it is reasonable to assume that people should have priority in this claim.

¹⁵⁰ *Id.* at 8.

¹⁵¹ *Id.* at 8-9.

¹⁵² *Id.* at 9.

¹⁵³ *Id.*

¹⁵⁴ *Id.* at 11. “The permanent-sovereignty-related articles of the State-succession treaties of 1978 and 1983 implicitly intend to reserve the benefits of the exploitation of natural resources for the peoples of newly independent States.”

¹⁵⁵ *See* Emeka Duruigbo, Permanent Sovereignty and Peoples’ Ownership of Natural Resources in International Law, 38 THE GEORGE WASHINGTON INT’L LAW REVIEW 33, 48-49 (2006).

¹⁵⁶ Judgement, 1992 I.C.J. Rep. 615 (June 26).

¹⁵⁷ Memorial of Nauru, Case Concerning Phosphate Lands in Nauru (Nauru v. Australia), 1990 I.C.J. Pleadings 20-24, 37-39 (April 1990).

¹⁵⁸ Judgement, 1992 I.C.J. Rep. 615, 14-17 (June 26).

¹⁵⁹ *Id.* at 18-19.

¹⁶⁰ *Id.* at 20-22.

¹⁶¹ Australia-Republic of Nauru: Settlement of the Case in the International Court of Justice Concerning Certain Phosphate Lands in Nauru, 32 I.L.M. 1471, 1471-72 (1993).

¹⁶² Anthony Anghie, *Certain Phosphate Lands in Nauru*, 87 AM. J. INT’L L. 282, 288 (1993).

¹⁶³ Case Concerning Armed Activities on the territory of the Congo (Democratic Republic of the Congo v Uganda), ICJ, Judgment of Dec 19, 2005 [ICJ Congo Case].

¹⁶⁴ Case Concerning East Timor (Portugal v Australia), ICJ, Judgment of June 30, 1995.

¹⁶⁵ ICJ Congo Case, *supra* note 163, para 244.

¹⁶⁶ The Inter-American Court of Human Rights (IACHR) has read the right of peoples to control their natural resources into Article 21 of the *American Convention on Human Rights*, which specifies that “[e]veryone has the right to the use and enjoyment of his property.” Likewise, the African Charter on Human and Peoples’ Rights explicitly recognizes peoples’ natural resource rights, stating in Article 21, “[a]ll peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it.” African Charter of Human and Peoples Rights, Organization of African Unity, CAB/LEG/67/3, Rev 5, June 27, 1981, art 21. The African Commission on Human and Peoples Rights (ACHPR) has relied on this Article to enforce the rights of sub-national peoples’ groups against states’ attempts to exploit natural resources. *See, e.g.,* Centre for Minority Rights Development and Minority Rights Group (on behalf of Endorois Welfare Council v Kenya, ACHPR, Nov 25, 2009, para. 268 (holding that the government owed compensation to the Endorois community, an indigenous people in Kenya, for the government’s displacement of the Endorois from their ancestral lands).

¹⁶⁷ Chris Armstrong, *Against ‘Permanent Sovereignty’ Over Natural Resources*, 14 Politics, Philosophy, & Economics 129, 132 (2015) [Armstrong].

¹⁶⁸ *Id.* at 132-3.

¹⁶⁹ Duruigbo, *supra* note 155, at 65; *see also* Nico J Schrijver, *Fifty Years Permanent Sovereignty over Natural Resources: The 1962 UN Declaration as Opinio Juris Communis*, in Marc Bungenberg & Stephan Hobe, eds, PERMANENT SOVEREIGNTY OVER NATURAL RESOURCES 27 (2005); UNGA Resolution 1803, *supra* note 132.

¹⁷⁰ Duruigbo, *supra* note 154, at 66.

¹⁷¹ *See* Subrata Roy Chowdhury & Paul J.I.M. de Waart, THE RIGHT TO DEVELOPMENT IN INTERNATIONAL LAW (1992); *see also* Ndvia Kofele-Kale, *Patrimonicide: The International Economic Crime of Indigenous Spoliation*, 28 VANDERBILT J. OF TRANSNAT’L LAW 45, 98 (1995).

¹⁷² W Michael Reisman, *Harnessing International Law to Restrain and Recapture Indigenous Spoliations*, 83 THE AMERICAN J. OF INT’L LAW 56, 57 (1989).

¹⁷³ M. Sornarajah, THE INTERNATIONAL LAW ON FOREIGN INVESTMENT 252 (2010). Maohi leaders in French Polynesia have long argued that resource management and control is a crucial development priority for their people. Former senator for French Polynesia Richard Ariihau Tuheiaha has told the UN Special Committee on Decolonisation: “We have continually emphasised the critical nature of the resource question as a core issue for our future development. Whether or not these resources are considered in Paris to be ‘strategic’ is irrelevant to the applicability of international legal decisions, which place the ownership of natural resources with the people of the non-self-governing territories.” *French control of Polynesia mineral resources violates international law*, OVERSEAS TERRITORIES REV, 29 June 2015, www.virginislandnews.com/en/news/french-control-of-polynesia-mineral-resources-violates-international-law.

¹⁷⁴ U.N. Charter, art. 73a. In addition, the General Assembly has explained that “any economic or other activity that has a negative impact on the interests of the peoples of the Non- Self-Governing Territories and on the exercise of their right to self-determination” contravenes the purposes and principles of the Charter. *See* Economic and other activities which affect the interests of the peoples of the Non-Self-Governing Territories, G.A. Res. 52/72, U.N. Doc A/RES/52/72 (Dec. 10, 1997) [Resolution 52/72]. Any such activity likely also violates their right to development, a right that has grown out of, and intersects with, the right to PSNR.

¹⁷⁵ U.N. Charter, art. 73a.

¹⁷⁶ U.N. Charter, art. 73.

¹⁷⁷ Armstrong, *supra* note 167, at 139; Schrijver 1997, *supra* note 149, at 28; Temitope Tunbi Onifade, *Peoples-Based Permanent Sovereignty over Natural Resources: Towards Fundamental Distributive Justice?*, 16 HUMAN RIGHTS REVIEW 343, 348 (2015).

¹⁷⁸ Schrijver 2005, *supra* note 169, at 27-8.

¹⁷⁹ Hans Morten Haugen, *The Right to Self-Determination and Natural Resources: The Case of Western Sahara*, 3 Law, Environmental & Development J. 72-73 (2007).

¹⁸⁰ Onifade, *supra* note 177, at 357.

¹⁸¹ Schrijver 2005, *supra* note 169, at 28.

¹⁸² Onifade, *supra* note 177; other international instruments outline states' right to exploit natural environments but limit the exercise of this right through the principles of sustainability and environmental protection. *See, e.g.*, the Stockholm Declaration, *Declaration of the United Nations Conference on the Human Environment*, United Nations General Assembly, A/Conf.48/14/Rev.1 (1973), princ. 21; Rio Declaration on Environment and Development, UN Doc. A/CONF.151/26 (vol. I) / 31 ILM 874 (1992); *Framework Convention on Climate Change*, UNTS Vol 1771, 107 (21 March 1994); and *Convention on Biological Diversity*, UNTS Vol 1760, 78, Rio de Janeiro, June 5, 1992, art 3.

¹⁸³ The definition of natural resources under the right to PSNR remains broad and has been deemed to include the atmosphere, climate, population, cultural, intellectual, technological and economic resources as well as non-extractive industries, in addition to the more traditional natural occurrences of oil, gas, minerals, fresh water, oceans, seas, air, forests, soils, genetic material and other biotic components of ecosystems with actual or potential use or value for humanity. Jane Hofbauer, *The Principle of Permanent Sovereignty over Natural Resources and Its Modern Implications*, University of Iceland (2009), 11, https://skemman.is/bitstream/1946/4602/1/Jane_Hofbauer.pdf; Sanita van Wyk, *THE IMPACT OF CLIMATE CHANGE LAW ON THE PRINCIPLE OF STATE SOVEREIGNTY OVER NATURAL RESOURCES* 109-110 (2017).

¹⁸⁴ Resolution 52/72, *supra* note 174.

¹⁸⁵ Question of French Polynesia, Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, Draft resolution submitted by the Chair, UNGA, A/AC.109/2018/L.24, June 19, 2018, <https://undocs.org/A/AC.109/2018/L.24>; *see also* Question of French Polynesia, Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, Draft resolution submitted by the Chair, UNGA, A/AC.109/2017/L.24, June 19, 2017, <https://undocs.org/en/A/AC.109/2017/L.24>.

¹⁸⁶ EESC Report, *supra* note 49, at 7. This assertion is especially problematic in light of the fact that a non-self-governing territory “has, under the Charter, a status separate and distinct from the territory of the State administering it; and such separate and distinct status under the Charter shall exist until the people of the colony or Non Self-Governing Territory have exercised their right to self-determination in accordance with the Charter, and particularly its purposes and principles.” Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States, G.A. Res. 2625 (XXV), 25 U.N. GAOR Supp. (No. 28) at 121, U.N. Doc. A/8082 (1970).

¹⁸⁷ *Id.* at 154-158. 4 pages of this 160-page report (excluding appendices) contain a discussion of territorial involvement with French exploitation of seabed resources in French Polynesia. Moreover, this discussion is wedded to France's strategic goals of increasing its naval presence in the Pacific.

¹⁸⁸ *Resumption of Phosphate Mining in French Polynesia Opposed*, PACIFIC ISLANDS REPORT, Oct 24 2016, <http://www.pireport.org/articles/2016/10/24/resumption-phosphate-mining-french-polynesia-opposed>.