

## **The disease dilemma: Neoclassical realism and Palau's border policy governance challenges during the COVID-19 pandemic.**

*Andrew Halliday*  
*Institute of Island Studies*  
*University of Prince Edward Island*  
*Charlottetown PE*  
*Canada*  
[ahalliday@upei.ca](mailto:ahalliday@upei.ca)

**ABSTRACT:** With the ratification of the United Nations Convention on the Law of the Sea (UNCLOS) in 1994, small island developing states are challenged to combat external threats in the marine environment, such as illegal, unreported and unregulated fishing (IUU). Meanwhile, the COVID-19 pandemic has seen states across the world enact strong policies, including selective travel bans and border closures, as policy responses to limit virus transmission. Pacific island states enacted some of the most stringent border measures and were largely successful in stopping the import of COVID-19 into their jurisdictions. This paper examines one particular incident that occurred in December 2020 where the state of Palau, supported by the United States, acted to apprehend a Chinese illegal foreign fishing vessel and its crew, in spite of the state's self-enforced border closure to protect their population from the coronavirus. A neoclassical realism lens is employed to analyze the circumstances and influences which shaped this policy action. This analysis highlights the challenges facing island states in marine governance and enforcement amplified by COVID-19 policy considerations. In examining this case, potential policy drivers are identified, while the impact of this particular case in the context of Palau foreign policy and larger US-China relations is also discussed.

**Keywords:** border policies, Compact of Free Association, COVID-19, crisis governance, maritime governance, Palau, public administration, small states

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### **Introduction**

Large ocean states in the Pacific Ocean, also termed Pacific Small Island Developing States (or PSIDS), have led in advocating for a blue economy paradigm in the international system, which resulted in the emergence of the 'Blue Economy' concept at the Rio+20 Conference in 2012. These states have quite large areas of maritime jurisdiction central to their societies and their economies. While suffering from loose definitions and interpretations, the blue economy places the marine environment at the core of coastal (and especially small island) societies and economies. As remarked by Seychelles Ambassador to the United Nations, Ronny Jumeau (2013) during the post Rio+20 process:

We are the ocean people, so to speak: we live off and by the oceans and to varying degrees on and for them as well. The oceans define who we are and the coastal and marine environment is an integral part of our island lifestyle. ... There certainly is no lack of international instruments in fisheries: they cover straddling and highly migratory fish stocks, responsible fisheries and IUU fishing. What has been lacking is the political will to effectively implement and enforce them.

These remarks encapsulate the challenges facing all small island states, including the Republic of Palau, as they relate to maritime governance and enforcement. Small island states have been pressuring the international community to assist in building further capacity which will strengthen the ability for these states to be better and more active participants in ensuring the implementation and enforcement of national, regional and international governance instruments. As recent history has shown, despite the ratification of the United Nations Convention on the Law of the Sea (UNCLOS) in 1994, small island states continue to combat external threats to their marine environments such as illegal, unreported and unregulated fishing (IUU). Indeed, small island states are facing many challenges as they relate to their maritime territory; capacity issues (Jumeau, 2013), access to capital (Halliday, 2023), and UNCLOS governance regimes (Baldacchino, 2022), including for mid-ocean archipelagic states (Halliday, 2013), are amongst the most prevalent. As observed by Ambassador Jumeau, instruments such as UNCLOS require adherence and enforcement by the larger international community, while the small island states need time and assistance to build up their monitoring and surveillance infrastructure.

The onset of the COVID-19 pandemic in 2020 led to a significant hardening of international borders as many states chose to impose travel restrictions to mitigate the risk of the importation of the virus. There is a significant gap in the literature on how small island states have balanced responses to the COVID-19 pandemic through border measures while also asserting their jurisdiction and sovereignty over their marine space. This policy dilemma concerns the public health policy priority of restricting non-resident entry into the jurisdiction, in concert with the marine enforcement policy priority of apprehending and detaining of foreign fish poachers. Such a policy dilemma presents itself to these small island states who must weigh up a harden border regime for public health purposes alongside the ongoing need to exercise jurisdiction over the vast marine spaces under the state's authority. Borders have both terrestrial and marine dimensions for island and archipelagic states. What is being protected and from what threat?

Utilizing a neoclassical realist lens, this paper seeks to contribute to the literature and broader knowledge in this area through an examination of crisis governance in the Republic of Palau in late 2020 from a small state perspective. The main question addressed by this paper is: how do small maritime states address the policy dilemma of responding to the COVID-19 pandemic and also asserting jurisdiction and sovereignty over their maritime space?

This paper seeks to better understand the factors influencing the policy determination made by the Republic of Palau in apprehending and detaining the Chinese fishing vessel *Zhang* off the Helen Reef on December 10, 2020, during the COVID-19 pandemic, while the state had a strict border policy in place. This particular case provided an illustrative example which will allow to investigate this policy dilemma in greater detail. This paper argues that the COVID-19 pandemic has brought significant challenges to small island states in the duality of border policies centered on international travel restrictions to avoid the importation of the virus, while also enforcing the maritime border of the state. In the case of Palau, this disease dilemma is shadowed by the role and relationship of the country with the former colonial power (the United States), which remains its guarantor power.

The circumstances, dynamics and influences which shaped this policy action highlight the challenges, amplified in COVID-19 times, small island states face in marine governance and enforcement. In examining this case, policy action factors and influences are identified and discussed. These factors assist in explaining the forces at work in the crisis governance policy

actions taken by the Republic of Palau. These factors include the status of COVID-19 in the Pacific, the arrival of new enforcement vessels, the dynamics of politics and kinship, the marine enforcement capacity of Palau, and the geo-political relations of Palau.

### **Small states and vulnerability**

Comparative political research into small states has long been excluded from the mainstream research agenda (Veenendaal & Corbett, 2015). The study of small states and territories has of late gained momentum, seeking to better understand how small size and scale provide both challenges and opportunities (Baker, 1992; Baldacchino, 2018; Corbett & Veenendaal, 2019). This is focused upon “their behaviour, in their social, economic and political character, in their development trajectories, in their relations with other powers and amongst themselves” (Baldacchino, 2018, p. 4).

Existing literature looking broadly into the vulnerability of small states has focused around economic (Briguglio, 1995; Guillaumont, 2013), environmental (SOPAC, 1999) considerations and more recently on the issue of climate change (Kelman, 2006, 2014, 2016). Earlier small state literature coming in the midst of the Cold War period focused primarily on security concerns (Thorhallson, 2018). Looking specifically at the Pacific Island States, recent scholarship has considered climate change (Barnett & Waters, 2016) as well as the employment of sovereignty “in various ways to guard against vulnerability” (Hawksley & Georgeou, 2023, p. 139).

### **Methodology and theoretical approach**

As noted above, this paper is employing a neoclassical realist lens. In the inaugural issue of *Small States & Territories*, Thorhallsson (2018, p. 24) reminds us that neoclassical realism “posits that states seek to defend their long-term security interests but that the pursuit of security interests will be distorted in the short-term by miscalculations by leaders and domestic politics.” Neoclassical realism “stresses the role played by both independent and intervening variables” and utilizes “theoretically informed narratives” to “trace the ways different factors combine to yield particular foreign policies” (Rose, 1998, p. 153). Further, independent variables (structural level) and intervening variables (domestic level) are the key aspect of neoclassical realism approaches (Rose, 1998). Neoclassical realism is a core international relations theory, which employs both the international and national or domestic level to explain primary foreign policy actions by governments. The utility of such a theoretical approach is in explaining “variation in the foreign policies of the same state over time or across different states facing similar external constraints” (Taliaferro et al., 2014, p. 254). Employing such a lens in this paper allows to identify such variables in the context of crisis governance in small states utilizing a case study from the Republic of Palau. This study draws upon primary government policy documents, news articles and secondary sources in laying out the timing and sequence of the particular policy actions and decisions in the chosen case. The factors and influences (variables) surrounding these decisions and the rationale behind the policy actions are presented in the next section and cover both international and national level variables.

### **Republic of Palau policy action factors and influences**

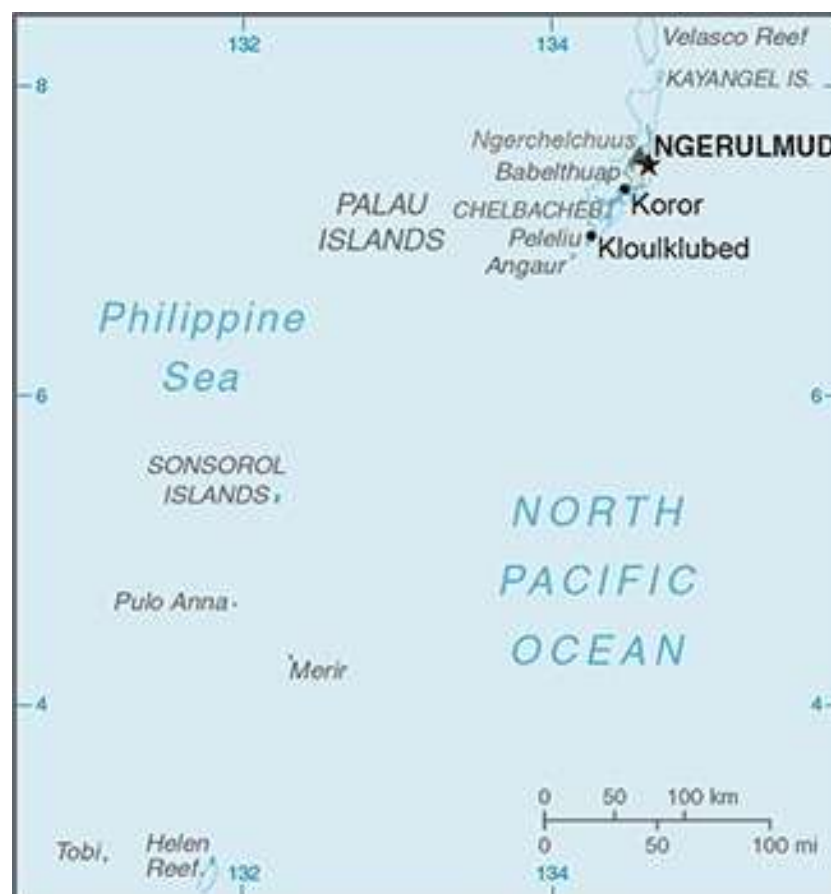
#### *The Republic of Palau*

The Palau archipelago emerged from the Second World War as part of the larger UN mandated Trust Territory of the Pacific Islands (TTPI), alongside the present-day Republic of the Marshall Islands, Federated States of Micronesia and the territory of the Northern Marianas, all being formerly administrated by Japan as a single unit, with Koror, Palau as the capital

(Fischer, 2002). Japan had taken over these former German colonial possessions at the outbreak of World War One (1914) and administered them from 1921 onward under a League of Nations mandate (Aldrich & Connell, 2006). The US government, initially through the US Navy and then the Department of the Interior, was then granted administrative custody via the UN which, in the case of Palau, ran from 1947 until independence in 1994 (Aldrich & Connell, 2006). This Trust arrangement was unique in the fact that the US was granted “a strategic trust” by the UN, a first under this international system, and the ability to establish new military bases within the area in the immediate post Second World War period (Fischer, 2002, p. 224).

The Republic of Palau contains over 340 islands with a land area of 189 square miles ( $\approx 490 \text{ km}^2$ ) and an exclusive economic zone (EEZ) of 237,850 square miles ( $\approx 616,000 \text{ km}^2$ ) (Palau Government, n.d. -b) (see [Figure 1](#)). The country is a federalist Presidential system, with a bicameral legislative branch, based upon the American system, and is the only independent Pacific Island state utilizing this structure (Levine & Roberts, 2005). Nationally, there is also a Council of Chiefs which is “comprised of the highest traditional chiefs from each state, and acts in an advisory capacity to the President on traditional laws and customs” (Palau Government, n.d. -a). Also of note is that Palau functions with the absence of any political parties, while relying heavily on the aforementioned non-elected leadership (Veenendaal, 2016). It has been stated that Palau “aped the American Constitution” which has allowed for a federal system allowing “regional balance while retaining links to the past and maintaining a cultural identity” (Anckar, 2003, p. 119). It is one of the smallest federations in the world from a population perspective and is the third smallest UN Member State (Veenendaal, 2015).

**Figure 1: Map of Palau.**



Source: The World Factbook (2024).

### *Compact of Free Association*

Coinciding with independence on October 1, 1994, the new state of Palau entered into a fifty-year Compact of Free Association with the United States of America, under which the US committed “economic and financial assistance, defend[ing] Palau’s territorial integrity, and allows uninhibited access by Palauan citizens to the United States in return for exclusive and unlimited access to Palau’s land and waterways for strategic purposes” (PalauGov.pw, n.d.; US Department of Interior, n.d.). As enshrined in US Public Law 99-658, the terms of the agreement are to be formally reviewed by both governments thirtieth anniversary in 2024 (Public Law 99-658, 1986), and the re-upped agreement was signed into law by President Biden on March 9, 2024 (Palau Government, 2024). This agreement also contained a declaratory section on environmental protection, establishing a joint policy “to promote efforts to prevent or eliminate damage to the environment and biosphere and to enrich understanding of the natural resources of Palau” (Compact of Free Association Agreement, 1986).

Palau, the Marshall Islands and Federated States of Micronesia (FSM) are the three countries which have emerged as ‘Compact states’ freely associated with the US; thus being described as “hybrid jurisdictions” (Levine & Roberts, 2005, p. 279), since US aid and funding are intertwined with military access and foreign policy alignment (Berg & Vits, 2020). Such an arrangement is “a relationship of dependence” with the guarantor power, yet with UN membership these small states are “considered special beneficiaries of joining international organizations, as they supposedly lock states into specific sets of rules, thereby increasing the predictability of world politics” (Berg & Vits, 2020, p. 391). With respect to agreeing their respective Compact Agreements, Palau was the last of the three to ratify and implement, after over a decade of negotiating and debate, including eight separate referendums (Shuster, 1994).

More recently, it has been noted that US funding to the compact countries is diminishing, which is causing fiscal pressures as it “underwrite[s] their national budgets and enable[s] their viability” (Corbett & Connell, 2020, p. 349). All these dynamics and pressures play onto our case, as outlined below.

### *COVID-19 restrictions and capacity challenges*

It is important to note that at the time of this incident, Palau was in the enviable position of being one of just a few countries worldwide having zero known active COVID-19 cases within their state (Amos, 2020; Baldacchino, 2020). The Minister of Health issued a number of ninety day rolling Ministerial Directives entitled ‘Authorizing Isolation and Quarantine Measures to Control Coronavirus Disease 2019 (COVID-19)’ outlining the containment regime which included a 14-day mandatory quarantine and a subsequent seven-day self-monitoring, self-quarantine period (Ministry of Health Directive No. 200-20, 2020). Regarding rules which would pertain to the *Zhang*, the Directive in force at the time of the incident states (Ministry of Health Directive No. 200-20, 2020):

Any crew member of any air or water vessel that disembarks into the Republic of Palau shall be subject to these regulations and shall undergo mandatory quarantine, except in cases wherein an air or water vessel breaks down unexpectedly within the territory of the Republic. In such cases, any crew member disembarking such vessel shall be quarantined for an appropriate period or until the vessel is repaired and ready to depart Palau, at which time quarantined crew members may be permitted to re-board their vessels. Crew members of such disabled vessels shall be securely transported to and from official quarantine facilities, and at no time shall any crew member be permitted to contact the general population without completing the appropriate period of mandatory quarantine.

The Global Health Security (GHS) Index ranked Palau 179<sup>th</sup> out of 195 countries in 2019 (Nuclear Threat Initiative, John Hopkins Center for Health Security, & The Economist Intelligence Unit, 2019). With capacity challenges for island states in relation to larger jurisdictions, such a ranking only serves to underline the concern and care that island states placed on managing and avoiding COVID-19. The impact of capacity as a factor in pandemic responses has been highlighted and debated during the COVID-19 response (Capano et al, 2020; Jugl, 2022; Toshkov et al, 2022). In particular, looking at the European context, it is argued that “less effective governments in relatively poorer countries were aware of their limited capabilities” perceiving a higher risk and leading to stronger and quicker government intervention (Toshkov et al, 2022, p. 1024). In contrast, Jugl (2022) in her wide-reaching study into the influences of administrative factors found that government structures and the impact of having separate health ministries more telling.

It is for these reasons that the Pacific Island countries were very diligent in containment measures in the opening months of the pandemic. These states could not afford the risk of importing the virus into their respective populations and utilized their island insularity as a means of protection. The recognition of this risk, with many Pacific Island states ranking near the bottom of this index, and the successful mitigation efforts undertaken meant that most of these states were those to have their jurisdictions unblighted by COVID-19 for many months initially. Indeed, this recognition is what makes the *Zhang* case so compelling.

Notwithstanding the caution of the Government of Palau in managing risks, the access to COVID-19 vaccines, as with many states in the global South, remained a substantial challenge. It took until early 2021 for vaccines to reach Palau. The government informed the public via press release on January 2, 2021 (Ministry of Health, 2021), of the receipt of the first batch of 2,800 vaccine doses arriving via the United States Operation Warp Speed initiative.

Given that the initial batch of vaccines arrived in January 2021, it would seem that not a single individual in Palau would have been vaccinated at the time of the *Zhang* incident.

#### *Marine governance and enforcement*

The Republic of Palau in 2015 enacted via legislation the largest protected marine area of any country by percentage, with an 80% threshold in the Palau National Marine Sanctuary Act (National Geographic, n.d.).

In the executive summary to their 2020 Transition Report, the Bureau of Maritime Security and Fish & Wildlife Protection reported:

The Bureau of Maritime Security and Fish & Wildlife Protection of the Ministry of Justice continues to strengthen its mission readiness and core business competencies focusing primarily in surveillance and law enforcement in waters subject to Palau’s sovereignty as well as by sovereign rights. *With the advent of the Palau National Marine Sanctuary Act that has amplified the IUU threat to the sustainability of marine resources, we embarked on renewed capacity building regime and surveillance initiatives to counter this and other emerging threats to maritime security* [emphasis added]. ...

January 2020 marked the full implementation of the Palau National Marine Sanctuary Act and a more robust legal support in addition to monitoring and surveillance initiatives to protect Palauan marine resources. That said, the number of DMLE [Division of Marine Law Enforcement] patrol days at sea dropped sharply between 2017 and 2019 with 122 days in 2017 to 50 days in 2019. *For much of this year, 2020,*



*the ability to patrol was halted. This drop in mission readiness was due to maintenance issues and vessel replacement. While we continued to monitor our waters remotely, additional impediments have been raised due to the COVID-19 pandemic and we've had very limited real-time surveillance with other surface and aerial platforms from partners and service providers [emphasis added].* (Ministry of Justice, 2020).

This report, prepared for the transition of administrations, highlights the frustrations and concerns felt by the marine enforcement agency in Palau. The clear documenting of a lack of enforcement capacity for the majority of the 2020 calendar year prior to the onset of the pandemic, is a prime example of the capacity challenges discussed above. Such challenges, coupled with the recent legislatively mandated marine reserve, would have surely increased the desires of the state to actively exercise the enforcement of this new mandate.

### *Arrival of the Remeliik II*

**Figure 2:** PSS Remeliik II, Guardian class patrol boat, at Austal shipyards in Henderson, Western Australia, March 4, 2020.



Source: Calistemon (2020). CC BY-SA 4.0.

Palau took delivery of a new thirty-nine-and-a-half-meter Guardian-class patrol vessel the *Remeliik II* (see Figure 2) donated by the Australian Government, in September 2020 with an official handover ceremony occurring in Palau on December 4, 2020 (Somers, 2020a). This date is significant as it is only three days prior to the PAN Rangers on Helen Reef reporting the presence of the *Zhang* to Marine Enforcement. In the media coverage of the new vessel, the incoming (Somers, 2020b) commanding officer noted a yearly patrol schedule “which includes patrols once a month and three times a month” and who also “expressed the hope that the new patrol boat will be able to begin its regular rounds in the near future” (Somers, 2020a). This desire of the commanding officer would seem to echo the previously discussed frustrations of the Bureau of Maritime Security and Fish & Wildlife Protection in their 2020 Transition Report issued in the same time period.

According to this December 1, 2020 media article (Somers, 2020a):

However, right now the pandemic has caused a halt in the yearly patrol rounds, with the risk that foreign vessels could be carriers of the virus. “*We don’t want to do boardings out there on vessels that could be carrying COVID* [emphasis added],” said [the commanding officer].

An additional media report of the apprehension attribute comments to the Commanding Officer that the crew “is restricted from boarding vessels which could be carrying COVID” (Island Times, 2020).

These statements are even more jarring given the *Zhang* was boarded only nine days later directly contradicting these comments. It would also seem that such comments would appear reflective of government policy at the time, which again speaks to the significance of understanding what led this policy to be reversed.

This media coverage also noted that the *Remeliik II* was the only active vessel at the time, as the Republic’s other enforcement vessel - the *PSS Kedam* - was inoperative with a defective gearbox needing parts or engineers from Japan, a situation complicated by the existing border restrictions (Somers, 2020a).

#### *Arrival of the USCGC Myrtle Hazard*

In late September 2020, the United States Coast Guard at Santa Rita, Guam, received the first of three new cutters in the form of the USCGC *Myrtle Hazard* (Olson, 2020). This class of fast-response cutters provides a greater range and better speeds than the prior vessels utilized (United States Coast Guard, 2020a; Olson, 2020; Hooper, 2023). A United States Coast Guard news release on the *Zhang* incident in late December 2020 had the USCG Sector Guam Commander highlighting the “recent addition” of the fast cutters as a pivotal component of their operational capacity (United States Coast Guard, 2020a). More recently, the employment of these Guam based cutters has provided “newfound geopolitical relevance” with them active in a number of Oceania countries including Palau, the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, Papua New Guinea, Nauru and Australia alongside patrols off the Solomons Islands and Kiribati (Hooper, 2023). The *Zhang* incident provided an ample opportunity to showcase this new and upgraded patrol capacity.

#### *The 2020 Presidential elections (Palau and United States)*

Palau went to the polls in late 2020 to elect a new president, as outgoing President Tommy Remengesau ended his two-term limit (Carreon, 2020b). The presidential election is a two-step process, with the primary occurring on September 22, 2020, and the top two candidates proceeding to a general election on November 3, 2020 (Carreon, 2020a). These two candidates were sitting Vice-President and Minister of Justice Raynold Oilouch and 2016 runner-up Surangel Whipps Jr. respectively, with the Palau Election Commission certifying Whipps Jr. as the winner on November 20, 2020 (Carreon, 2020c). This was also a period of great disruption in the United States political system, with the 2020 presidential election process coming to a close in November and December 2020, with President-elect Joe Biden being inaugurated on January 20, 2021. In Palau, the inauguration of Whipps Jr. occurred the following day, on January 21, 2021.

That this incident took place amid the transitions of both the Palau and American administrations cannot be discounted. It is interesting that both the official handover of the *Remeliik II* patrol vessel and the decision to dispatch it to apprehend the *Zhang* took place only



days after the Palau Presidential Election results were certified and more than one month before Whipps Jr. was inaugurated.

During such transitory periods between administrations, the machinery of government is usually quite risk adverse and limit any significant policy actions until such time as the new administration is sworn in. However, it can also be said that outgoing politicians are more empowered to act to take less favourable decisions as they on their way out of office and no longer need to face the electorate. This factor might have weighed in both Washington DC and Ngerulmud, the capital of Palau. The decision to dispatch USCG resources from two stations on either side of the Pacific Ocean while routine, would have had to been taken at a regional level to ensure such coordination, amid the most volatile transition of administrations in recent US history. From a Palau perspective, the incumbent President and his incumbent Justice Minister (who had just been defeated in his bid for President) were a couple of weeks from leaving public office. For such a significant domestic policy decision to have occurred during the transition seems out-of-place.

### *Institutional and family ties*

Given these timelines, the decision to authorize the patrol boat to both apprehend and board this foreign vessel in the midst of a global pandemic was a significant decision to take in such a situation. Further complicating this policy formulation and decision is the fact that the presidential candidate defeated in the second-round run-off, Raynold Oilouch, was the incumbent Vice-President and Minister of Justice (Carreon, 2021). As the Minister of Justice, Oilouch possessed the ministerial authority for the Bureau of Maritime Security and Fish & Wildlife Protection. It is difficult to determine how directly involved Oilouch was in this incident, as it occurred just over two weeks after the certification of his presidential campaign defeat to the President-elect Whipps. Jr.. This would be the period of the transition between the two administrations, but Oilouch was present and spoke as the Minister responsible at the handover ceremony for the *Remeliik II* on December 4 (Somers, 2020b). This would seemingly indicate that he was still active in his ministerial role during the transition period.

Further complexities in the decision-making process as previously mentioned is that the Director of Marine Enforcement Victor Remengesau is the brother of the incumbent President Tommy Remengesau. Yet one more layer to these family linkages is that President-elect Surangel Whipps Jr. is the brother-in-law of the Remengesaus (Carreon, 2021). Such family ties are commonplace in the Pacific, as Corbett (2015) notes: “[i]t is virtually impossible to talk about any aspect of political life in the Pacific Islands without returning, in one way or another, to the importance of families and kin.” A further direct example noted by Corbett (2015, p. 7) relays the following comment from a Palauan politician:

Basically politics, your family members have to be a part of it ... Without your family members, especially in a small community like this, if you don't have family support, then basically you don't have a chance of running ... everybody knows everybody and there is that power struggle between families ... So, that is why you need your elders and family members to run side by side on your way of politics.

The interrelated nature of many of the key decision makers in regard to this incident makes it more difficult to understand the exact involvements and the level of dialogue and cooperation between the outgoing and incoming administrations. As of late March 2021, Victor Remengesau was still being quoted in local media in his position, so evidentially the new administration (led by his brother-in-law) was comfortable with him remaining in his role regardless of the *Zhang* incident. In fact, as discussed below, President Whipps Jr. has been very public and vocal in his support for this policy action, and the efforts to enforce and secure

the maritime borders of the Republic of Palau. As Corbett (2015, p. 4) concludes, “smallness can be both a burden and an advantage to Pacific Islanders and their leaders.”

### The Zhang case

#### *Apprehension of fishing vessel Zhang*

It was reported on Tuesday, December 15, 2020 that a Chinese fishing vessel, the *Zhang*, with a crew of 28, was intercepted on Thursday, December 10, 2020 off Helen Reef and escorted back to anchor just off the Marine Law Dock in Malakal Island, Koror (Somers, 2020c). Helen Reef (see [Figure 3](#)) is an atoll island and one of the two islands which comprise Hatohobei State (the other is Tobi island), at the southern tip of the Palau archipelago, some 360 nautical miles (667 km) away from the largest island of Babeldaob, and 340 nautical miles (630 km) from Koror (Dewitt, 2020) (see [Figure 1](#)). Helen Reef is noted as “one of the Pacific most outstanding atolls in terms of its area, ecological integrity, biomass and biodiversity with over 500 species of fish, 282 species of hard corals and 43 species of soft coral” (Palau Protected Areas Network Fund, n.d.).

**Figure 3: Drone shot of Helen Reef**



Source: Guillaume Bourdin/Fondation Tara Océan (n.d.).

Media reports (Somers, 2020c; Island Times, 2020) identified this operation as the first patrol for the *Remeliik II*, and outlined the apprehension in the following terms (paraphrased from Somers, 2020c):

The 80-foot Chinese vessel was spotted by Protected Areas Network (PAN) Rangers in Hatohobei State on the morning of Monday, December 7. The fishing vessel was allegedly outside of Helen Reef, a protected area, but some of the crew were inside the lagoon aboard six smaller boats, harvesting sea cucumber. The PAN Rangers reported the illegal poaching to Marine Law Enforcement, and Palau’s new Guardian-class patrol boat, *PSS Remeliik II*, set sail from Malakal at 9am on Wednesday morning and intercepted the vessel around 5am the following day.

The fishers allegedly attempted, and failed to bribe, the Rangers in order to keep them from making a report.

According to representatives from Marine Law, the crew of the *Remeliik II* evacuated the Chinese fishers from their fishing vessel onto the smaller boats before boarding and conducting a safety inspection of the ship. The *Remeliik II* crew reportedly wore PPEs while conducting their inspection, and gave a mask to the captain of the Chinese vessel while communication was ongoing.

While US aerial support was initially preparing to help locate the vessel, Marine Law says that the *Remeliik II* intercepted and arrested the vessel before the US plane could arrive. The *Remeliik II* escorted the Chinese ship back to Koror, arriving at around 7am on Saturday.

### *Aftermath of apprehension*

Amongst the initial media coverage of the incident, Victor Remengesau, the Director of the Bureau of Maritime Security and Fish & Wildlife Protection for the Government of Palau addressed the policy dilemma at the heart of this case from his perspective:

Remengesau said Palau had to balance its concerns over the crew bringing COVID into the archipelago, while defending the country's territorial waters from incursion. "It's unlawful entry. We may care about Covid and the spread of Covid, but we can't just let people do whatever they want, and disguise [alleged illegal activity]" (Carreon, 2020d).

Two days later, on December 17, 2020, President Tommy Remengesau was quoted by Radio New Zealand (Carreon, 2020e) as stating in response to the *Zhang* operation, "Whether there is COVID or not, it is Palau's responsibility to catch the vessel." In speaking with the *Island Times* the following day (Somers, 2020d), the President repeated this message. He also revealed that an initial investigation indicated the Chinese crew had attempted to bribe the PAN Rangers after being spotted (Somers, 2020d; Carreon, 2020e).

On December 18, 2020, it was reported that after being escorted into custody off Malakal, the twenty-eight-member crew of the *Zhang* were confined to their vessel anchored offshore for a mandatory fourteen-day quarantine period (Somers, 2020d). A Palau Ministry of Health official was quoted in media coverage discussing the risk mitigation efforts in relation to this offshore quarantine:

At this time we don't anticipate the need to test [the Chinese fishers] before the fourteen days. All the precautionary measures are being implemented to make sure that we minimize unnecessary exposure to the potential threat (Somers, 2020d).

The media also reported that nineteen crew of the *Remeliik II* "who made the arrests and initially boarded the fishing vessel" were undertaking a fourteen-day quarantine onboard the patrol boat which was also anchored off Marine Law Dock (Somers, 2020d). The *Remeliik II* crew members completed their quarantine period and were allowed on shore following a negative COVID test, while the *Zhang* crew were made to remain on their vessel until the resolution of the incident which took an additional week, for a total of three weeks (Somers, 2020d; 2021) (see [Figure 4](#)).

**Figure 4: Fishing vessel *Zhang* anchored after detainment.**



Source: Carreon (2020e).

The first public comments from the U.S. were via a United States Coast Guard (USCG) news release issued on December 22, 2020, which outlined coordination between the USCG and the U.S. Global Defense Reform Program contractor assigned to Palau's Maritime Law Center in dispatching the *Remeliik II* for the mission (United States Coast Guard, 2020b). This release also stated that the USCG Cutter *Myrtle Hazard* “joined *Remeliik II* and conducted a vessel boarding in accordance with bilateral agreements in place between Palau and the US” (United States Coast Guard, 2020b).

On December 29, 2020, further details around the incident including United States involvement were first confirmed in the local Palau media by Victor Remengesau, the Director of the Bureau of Maritime Security and Fish & Wildlife Protection (Somers, 2020e):

Director Remengesau confirmed reports that, during the *Remeliik II*'s interception and arrest on December 10 of the 80-foot Chinese vessel at Helen Reef, it was joined by USCG Cutter *Myrtle Hazard*, which had been dispatched out of Guam to help in the arrest, and had conducted boarding of the vessel. The USCG also dispatched an HC-130 Hercules search plane out of Hawaii to help in the location of the vessel, but the interception and arrest was made prior to the plane's arrival.

Local media coverage of the incident contained further quotes from Director Remengesau in relation to the ongoing COVID-19 pandemic:

Director Victor Remengesau of the Bureau of Maritime Security & Fish and Wildlife Protection says that, while the MOJ [Ministry of Justice] does not want the Chinese crew to come ashore and is working to escort the foreign crew out of Palau as soon as possible, it is important that Palau protects its territory against “unlawful entry”. “We may care about COVID, but we can't let people do what they want [regardless of the law],” Director Remengesau said (Somers, 2020e).

It is perhaps not surprising that remarks from the Director responsible for marine enforcement support the rationale behind the decision to apprehend and detain the *Zhang*. It is of interest to note the Director Victor Remengesau is the brother of the then President, Tommy Remengesau as previously discussed (Carreon, 2020d; Taipei Times, 2020). In building their

case against the *Zhang* and her crew, the Palau government conducted a search of the vessel in late December finding an “estimated 500 pounds of illegally-caught sea cucumber” along with a quantity of liquor and tobacco and the equivalent of US\$20,000 cash (Somers, 2020f). It was reported that the twenty-eight Chinese fishermen were assigned an attorney by the Office of the Public Defender (Somers, 2020e). On January 5, the *Island Times* (Somers, 2021) reported that they chose not to charge the fishermen, but rather were offered a settlement agreement which was signed by the Captain of the *Zhang*. The rationale for not charging the poachers was “*mainly in response to concerns over the risks of COVID transmission [emphasis added] and the high costs of detaining the nationals for a longer period of time*” (Somers, 2021). All twenty-eight crew were photographed by Palau officials, the *Zhang* was stripped of her six small boats and fishing gear and escorted beyond Palau’s Economic Exclusive Zone on December 31, 2020 (Somers, 2021).

### *Chinese relations and the Chinese response*

The Republic of Palau is a significant U.S. client state in Oceania, and the current tensions in US-China relations are very much evident. In this context, the incident of the *Zhang* takes on a deeper importance than a routine enforcement exercise. The reaction from the Chinese state was slow to emerge and muted. Media reports indicated a lack of a formal response (Taipei Times, 2020; McGarry & Doherty, 2021). The President of Palau told media that Palauan officials “had repeatedly telephoned Chinese government officials but had been ignored” (McGarry & Doherty, 2021). On December 22 a statement attributed to the spokesperson of the Chinese embassy in the Federated States of Micronesia (FSM) located in Pohnpei was issued entitled, “Chinese Embassy Spokesperson’s Remarks on the Recently Detained Chinese Fishing Vessel in Palau” which stated (Chinese Embassy in FSM, 2020):

The Chinese government opposes all forms of illegal fishing and requires Chinese fishing companies to conduct business in accordance with local laws and regulations and protect marine environment. The Chinese government believes that the Palauan government will deal with this case according to law and protect lawful rights of the Chinese citizens involved. We hope some other countries can look at these individual cases in an objective and rational manner.

Owing to Pohnpei and Hawaii being located on opposite sides of the International Date Line the statements from the Chinese Embassy in FSM and the USCG in Hawaii were issued on the same date, but in reality, were over thirty-four hours apart, with the Chinese statement issued first. The Chinese statement does not reference the US nor the role it played in the detainment of the *Zhang*, and distances the state from the actions of their citizenry.

### *A(nother) shift in policy?*

In early January 2021, local Palau media reported on the resolution of the *Zhang* incident as outlined above. In this media article (Somers, 2021a), remarks attributed to Director Victor Remengesau indicated the *Remeliik II* would continue their patrol schedule but, “*the crew may not be conducting ship boardings and may rely more on aerial surveillance as the risk of COVID transmission remains a threat [emphasis added]*.” This statement would seem to illustrate another policy shift by the Government of Palau, upon the conclusion of the *Zhang* incident. Interestingly, again these remarks were made during the transition window between administrations.

This policy shift was confirmed by another incident which occurred weeks later in March 2021, this time with a Filipino fishing vessel apprehended by the *Remeliik II* (Somers, 2021b). As reported once again in the *Island Times* (Somers, 2021b):

According to members of the Remeliik's crew, *although the vessel was not boarded due to COVID concerns*, the purse seine net was reeled in and the winch was disabled, while other fishing gear was seized by the Remeliik crew, before the fishing vessel was released ... The Director [Remengesau] went on to say *that rules are changing as more people are being vaccinated. The crew of the Remeliik has already been vaccinated, and is just waiting on the Ministry of Health to determine that it is safe to conduct ship-boardings again* as well as arrests and prosecutions (emphasis added).

This last passage is very illuminating as the Director responsible for Marine Law Enforcement confirms that after the *Zhang* incident the Ministry of Health now seemingly held the decision-making authority in relation to ship-boarding activities by the enforcement personnel. Such an admission would also seem to indicate some disagreement or discomfort by the Ministry of Health in relation to the *Zhang* incident and the decision taken to apprehend, board and detain the vessel. Moreover, the statement by the *Remeliik II* commanding officer on December 1, 2020, that it was not desired to conduct ship boardings on vessels potentially carrying COVID-19, would again seem to indicate that the *Zhang* incident was a deliberate decision that ran contrary to these views. The policy dilemma of balancing public health concerns and hardened borders alongside the need for exercising jurisdiction and enforcement of marine areas certainly challenged the Republic of Palau in the opening weeks of the onset of the COVID-19 pandemic.

## Discussion

The *Zhang* incident and the factors which influenced the policy actions undertaken by the Republic of Palau in attempting to balance their policy dilemma centered on border policies dealing with COVID-19 as well as marine enforcement is an illustrative case for crisis governance in small states. It is apparent that there were conflicting policy goals in place amongst the different institutional actors in the Republic of Palau.

In analyzing the available information, it would seem that the Ministry of Health in leading the state's response to the pandemic, had instituted strict border measures regarding isolation and quarantine via Ministerial Order. This tightening of the border and enactment of mandatory quarantine were designed to limit the risk of virus importation. While the author has been unable to ascertain the level of dialogue between Marine Law Enforcement and the Ministry of Health in relation to the *Zhang* incident, the policy actions taken by the respective ministries were not aligned.

Given the policy direction taken regarding border tightening and travel restrictions, this again calls into question the policy determination made in relation to the *Zhang*, as the two policy actions are seemingly diametrically opposed. This initial shipment of vaccines was still weeks away from arriving in country, when the decision to undertake the apprehension and boarding of the *Zhang* was made, thus greatly increasing the risk to the jurisdiction and the population.

One of the most effective risk mitigation efforts during the pandemic has been the vaccination of the local population; and, as previously discussed, Palau had no access to any vaccines until after the *Zhang* incident.

The evidence suggests that the Republic of Palau underwent a major policy shift in the early days of December 2020. As previously noted, within the span of approximately a week, two diametrically opposite policy positions were taken by the government: firstly, public comments in the local media from the commander of the patrol vessel indicating that no vessel



boarding would be occurring due to COVID-19; and then, almost immediately, the apprehension and boarding of the *Zhang* by Marine Enforcement personnel. Further, this incident unfolded while the entire country was in a tightened border regime, as encouraged by the WHO and the US Centers for Disease Control & Prevention, and facing confirmed cases in every single jurisdiction with direct air or sea transportation links (Ministry of Health, 2020).

However, once the situation was unfolding, the state did undertake additional risk mitigation efforts, including the usage of personal protective equipment (PPE), the isolation of the Chinese crew during the boarding, and the onboard quarantine periods which both the *Remeliik II* and *Zhang* crews undertook. Palauan officials would appear to have made every effort to limit the contact with the *Zhang* crew in an absolute effort to mitigate the potential for virus importation. These efforts were validated as no cases were reported associated with this incident, as the first transmissible COVID-19 cases did not appear in Palau until August 2021, seven months hence (AFP, 2021).

The U.S. is an active partner in Palau's marine enforcement via the Compact of Free Association Agreement. As discussed above, the Palau Director of Marine Enforcement confirmed to local media that the USCG deployed a cutter out of Guam as well as a Hercules aircraft out of Hawaii to assist in locating and apprehending the *Zhang*. The reports place the *USCG Myrtle Hazard* at the scene at the time of the apprehension. It is conceivable that with the recent receipt of the *Remeliik II* patrol vessel, that encouragement may have been provided from enforcement partners such as the United States to undertake the apprehension of the *Zhang*, a Chinese flagged fishing vessel, as a show of force or an illustration of the restoration and enhancement of the enforcement capacity of the state of Palau. As noted in the Palau Marine Enforcement transitional report (Ministry of Justice, 2020): "Maritime Security Cooperation and engagement with external partners and other agencies internally is key to our success."

The relationship between Palau and the United States has continued to strengthen in marine enforcement in the aftermath of these incidents. In June 2023, Palauan President Whipps Jr. revealed to international media his requests for increased US marine patrols and military presence in-country "after several incursions by Chinese vessels" into Palau's exclusive economic zone (EEZ) (Murakami & Geddie, 2023). This culminated in the August 2023 signing of an expanded bilateral law enforcement agreement which "enables the USCG to enforce regulations at sea in Palau's EEZ on behalf of Palau without a Palauan officer present" (United States Coast Guard, 2023).

Moreover, the arrival of new marine patrol assets for both the Republic of Palau and the United States Coast Guard based in Guam, provided the impetus to exercise jurisdiction and demonstrate the increased range and capacity of these vessels at the earliest opportunity. The window of this incident taking place during the transitory periods for new, incoming administrations in both Washington and Ngerulmud should also not be discounted, especially given the fractious nature of this exercise in the United States for the departing Trump and incoming Biden administrations. Given the very close ties between the US and Palau in the area of marine enforcement under the terms of the Compact of Free Association, there was undoubtedly a momentum which built in influencing the decision to apprehend the *Zhang*, in spite of the existing public health border measures in place by Palau's Ministry of Health.

The most damning evidence to this policy dilemma is the many contradictory public statements which took place in the run up to and the immediate aftermath of the *Zhang* incident as to the intention of the Palauan enforcement officials and adherence to established COVID-19 protocols. Lastly, the remarks by Director Remengesau after the second incident involving



the Filipino vessel, confirmed that the Ministry of Justice and its' offices including marine enforcement, were requiring clearance from the Ministry of Health to conduct any ship-boardings.

Employing a neoclassical realism lens, this paper highlights power balance between the states of Palau, the United States and China. This distribution of power is embodied in the Compact of Free Association between the United States and Palau. Further, the projection of power by the United States in the Pacific region in countering actions by China and the foreign policy actions by Palau influencing the case noted in this paper. There are several domestic variables captured by neoclassical realism which also apply in this particular case. The covid pandemic laid bare the crisis governance priorities of the Republic of Palau around their border regime, both public health and marine enforcement, and the influences of institutions and elites in chartering the course of action. The employment of neoclassical realism highlights that the Republic of Palau is rather beholden to the United States in foreign policy and security owing to the Compact of Free Association. The context of the *Zhang* case is the most important aspect of understanding the causal links as to the chosen policy path in this crisis governance moment.

## Conclusion

This paper has set out to examine the dynamics and factors driving the decision-making process in the Republic of Palau as an illustrative case of crisis governance in small states.

This is about securing our borders, and other countries that don't respect other countries' borders are not acceptable. Stealing and offering bribes, that's just got to stop, illegal fishing has to stop. As countries, we should also be responsible to our people and tell them not to go to other countries and do these kinds of things – President Whipps Jr. (Carreon, 2021).

This illustrative case has outlined the dilemma faced by small island states in asserting sovereignty and enforcing maritime governance regimes, amplified by the outbreak of a global health pandemic. Certainly, the decision to apprehend, board and detain the *Zhang* must have been carefully weighed against the risks of potentially introducing COVID-19 into the archipelagic population. In outlining this incident, this paper has identified and discussed a number of potential variables which may have influenced the policy formulation and decision taken by the Government of Palau. In analyzing these variables, it is not for the author to pass judgment on the actions taken by the state, but rather to attempt to better understand how such a decision occurred. This incident would seem to expose two different approaches by two different government entities while attempting to fulfil their respective mandates.

Given that the Filipino incident in mid-March 2021 occurred months after receipt and rollout of the initial batch of vaccines to key Palauan personnel, including marine enforcement, and the publicly acknowledged policy change to stop ship-boarding, the *Zhang* incident stands out. Under the Ministry of Health Ministerial Directive, all travelers were required to self-quarantine for ten days prior to travel as well as provide two negative Polymerase Chain Reaction (PCR) test results from this period, one no older than 72 hours prior to departure. It is clear that the *Zhang* incident breached these established protocols. Coupled together with the public comments both made just prior to the *Zhang* incident and following the Filipino incident, as discussed above, the peculiarity of the *Zhang* incident is unmistakable.

As this article has shown, this decision was inevitably influenced by several dynamics and factors. Island states must remain vigilant in the face of emergencies, in this case the global proliferation and possible infiltration of the coronavirus into their small community. Armed with a limited health care capacity and absent of any vaccines within the jurisdiction (at the

time of the *Zhang* incident) the Government of Palau still chose to actively assert the state's maritime jurisdiction. This push and this case illustrate the dilemma faced by many island states amid the COVID-19 pandemic in attempting to secure their shores from the waves of COVID-19 while at the same time actively enforcing their maritime jurisdiction against illegal resource extraction and exploitation.

This paper advances crisis research and the public administration literature in small state contexts. It examines the area of marine governance which is central to small island states worldwide. This case deals with crisis governance and management during a political transition period happening simultaneously in both the small state of Palau and its hegemonic guarantor power of the US. This incident is a compelling example of the value and importance which Palau places on its' maritime space – preserving, governing and enforcing jurisdiction – despite the COVID-19 pandemic; a stance undoubtedly fortified by the U.S.

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