

and;

- (b) To bring a speedy end to colonialism, having due regard to the freely expressed will of the peoples concerned;

and bearing in mind that subjection of peoples to alien subjugation, domination and exploitation constitutes a violation of the principle, as well as a denial of fundamental human rights, and is contrary to the Charter.

Every State has the duty to promote through joint and separate action universal respect for an observance of human rights and fundamental freedoms in accordance with the Charter.

The establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people.

Every State has the duty to refrain from any forcible action which deprives peoples referred to above in the elaboration of the present principle of their right to self-determination and freedom and independence. In their actions against, and resistance to, such forcible action in pursuit of the exercise of their right to self-determination, such peoples are entitled to seek and to receive support in accordance with the purposes and principles of the Charter.

The territory of a colony or other 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 of self-determination in accordance with the Charter, and particularly its purposes and principles.

Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour.

Every State shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other State or country.

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THE ALASKA NATIVE CLAIMS SETTLEMENT OF 1971

On November 1, 1971 the United States Senate proceeded to consider Senate Bill 35. Senate Bill (S. 35) to provide for the settlement of certain land claims of Alaska Natives and for other purposes. Senator Henry M. Jackson of the State of Washington articulated the background for the bill. "The legal history of the Alaska Native land claims is one of inaction and postponement. In part, this history of delay results from the absence of treaties between Alaska Natives and the Federal Government. In larger measure, however, the delay has been due to the complex social, legal, and institutional problems which are involved in a settlement of this magnitude."

"The essential points in the history are as follows:"

"First, since the acquisition of Alaska from Russia in 1867, the Federal Government has consistently recognized that the Alaska Natives should not be disturbed in the possession of lands actually being used by them, and that Congress has reserved to itself the determination of their title."

"Second, the Alaska Native people have no clear legal remedy or recourse to advance their claims except as is specifically provided by Congress."

"Following the passage of the Alaska Statehood Act, the State of Alaska began to select land from the generous 103-million-acre land grant that had been accorded by the Congress. These State land selections together with private development under the public land laws brought increased pressures on the Native people. Beginning in 1961, a series of Native protests based upon the doctrine of aboriginal rights were filed with the Bureau of Land Management protesting the granting away of lands claimed by Native groups to the State and to others. In November of 1966 the Secretary of the Interior announced that no further mineral leases would be issued or lands granted until the Native protests were resolved. By April of 1968, 296 million acres were subject to Native protest."

"Following a period of time during which the Department of the Interior imposed an administrative land freeze, on January 17, 1969, the land freeze was formalized with the issuance of Public Land Order No. 4582. This order, amended and extended to the end of the first session of the 92d Congress, withdraws all unreserved public lands in Alaska until the Native land claims are resolved." (From Senator Jackson on November 1, 1971, Senate Floor Debate)

Senator Gravel, Senator of Alaska, opened his remarks:

"Mr. President, in 1884, the Congress of the United States made a solemn promise to the Native people of Alaska."

"It said that the Native people would not be disturbed in the possession of lands they used and occupied. It said further, that some future Congress would determine the means by which the native people of Alaska would gain title to their lands."

"That was a pledge of Congress. That pledge has gone unredeemed as yet. For the 104 years Alaska has flown the American flag, its original inhabitants have neither had their rights to land confirmed or been compensated for the land that was taken."

"Eighty-seven years have passed since Congress made its pledge to frame a just settlement."

"For the past 13 years, since passage of the Alaska Statehood Act, doubt and uncertainty have attached to most Alaska land transactions."

"The native people have watched increased activity and economic development on land they always considered theirs, without having part of it." (From Senator Gravel November 1, 1971, Senate Floor Debate)

The most profound observation of Senator Gravel affirmed the basis of international law for full self-determination for the Inupiat, Athabaskan, Aleut, Tlingit, Haida, Yupik, and Eyak as he stated that: "Alaska's Natives were never 'conquered,' in the sense that other aboriginal Americans were 'conquered.' No peace treaties were ever signed. No settlements ever were made."

Prior to the death of Democratic Senator E.L. (Bob) Bartlett, Ted Stevens was a practicing attorney representing the big oil interests in Alaska. Governor Hickel appointed Ted Stevens over any Democrats to become the senior senator from Alaska. The Republican administration supported Senator Stevens's antagonistic stance regarding the rights of the indigenous Peoples. Stevens continued the Jacksonian mentality of removal and extinguishment of original and indigenous title. The language of the Extinguishment Clause of the Alaska Native Claims Settlement Act (ANCSA) was sponsored by Alaska Senator Ted Stevens and Senator Henry Jackson and authored by Thomas Pickering, lobbyist for Western Oil and Gas Association.

The influence of Senator Ted Stevens has continued through his appointment of federal judges; one of whom was his former law partner, Russell Holland, who had represented the oil and gas interests of the United States against the Inupiat in Edwardsen vs. Morton; later known as United States vs. Arco. United States vs. Arco, ANCSA, and the 1867 Treaty of Cession Article III all reflect the barbarism of the American administration towards the indigenous Peoples.

Section 4 of the Alaska Native Claims Settlement Act is the most pathological statute passed by Congress. This clause is an obvious self-indictment to the crime of genocide and must be examined in the light of the Genocide Treaty and considered as a cause of action for the Alaska Native People against the United States. This is Section 4 of ANSCA:

Sec.4. (a) All prior conveyances of public land and water areas in Alaska, or any interest therein, pursuant to Federal law, and all tentative approvals pursuant to section 6 (g) of the Alaska Statehood Act, shall be regarded as an extinguishment of the aboriginal title thereto, if any.

(b) All aboriginal titles, if any, and claims of aboriginal title in Alaska based on use and occupancy, including submerged land underneath all water areas, both inland and offshore, and including any aboriginal hunting or fishing rights that may exist, are hereby extinguished.

(c) All claims against the United States, the State, and all other persons that are based on claims of aboriginal right, title, use, or occupancy of land or water areas in Alaska, or that are based on any statute or treaty of the United States relating to Native use and occupancy, or that are based on the laws of any other nation, including any such claims that are pending before any Federal or state court or the Indian Claims Commission, are hereby extinguished. (P.L. 92-203)

The Alaska Native Claims Settlement Act (ANCSA) is not a jurisdictional act. As stated by Senator Ted Stevens: "There is no mention of sovereignty anywhere in the Act." And, there is another common misunderstanding surrounding ANCSA. ANCSA resolved the color of title for the oil industry and the State of Alaska. However, there is a greater problem in that the government is advancing the doctrine of fraudulent concealment. This concealment and governmental corruption has hovered around attempts for the extinguishment of original title held by the Inupiat, Athabaskan, Aleut, Tlingit, Haida, Yupik, and Eyak Peoples without the rightful consent of themselves, the indigenous owners. The setting for the crime and the characters in the plot played out in the fraudulent acquisition of Alaska. The present extinguishment clause in ANCSA and Section 7 of the Federal Land Management Policy Act of 1976 have now

exposed the United States government to committing crimes of genocide upon the Inupiat, Athabaskan, Aleut, Tlingit, Haida, Yupik, and Eyak Peoples. ANCSA fraudulently provided title from the United States to forty million acres of land and awarded "Eskimos, Indians, and Aleuts" 962 million dollars for the extinguishment of Eskimo, Indian, and Aleut claims to the Alaskan land.

Furthermore, the scale of the 962 million dollar settlement has the appearance of generosity and concerned humanity. However, in reality the 962.5 million dollars and the 40 million acres has created a deplorable situation for all of the indigenous Peoples of Alaska. Our deplorable experience of forcible incorporation has created an environment of subservience for a once self-governing, proud, and viable People. The riches of the Alaska Native People have been substituted for welfare payments in the form of poor education, delapidated housing, food stamps, contaminated water, clandestine radioactive dump sites, and poor municipal hand-outs. Inuit wealth and health has been stolen with the acquiescence of our own poorly educated Native people who have transformed their own ill-gotten gains for self-maintenance through the politics of fear and greed.

There are State of Alaska standard bearers such as state incorporated instruments and malpracticing attorneys contracted within the Native Community of Alaska who have pledged themselves to be loyal to the State of Alaska regardless of the constitutionally protected treaty rights of the Natives of Alaska. These standard bearers include some who have misrepresented the interests of the Inuit since the inception of ANCSA; such as Willy Hensley, Emil Notti, Byron Mallott, and John Borbridge. Their deceptive representation began with the State of Alaska Representative Willy Hensley when he chaired the State of Alaska sponsored version of the Alaska Native Claims Settlement Act in the guise of an Alaska Native Land Claims Task Force. Along with Governor Egan's blessing and with Senator Ted Stevens and Henry M. Jackson they forcefully incorporated mandatory state incorporations of ANCSA proceeds for the final resolution of their "Native Problem" in Alaska; all without the consent of the legal representation of the indigenous Peoples governance. The special interest groups, in the guise of national interest, have expropriated the largest takeover of private lands.

The wealth of Alaska has mesmerized the American People when in fact since 1977 there has been a continuing capital flight of the Inuit birthright to England in the form of a British Petroleum lease at Prudhoe Bay. Americans have failed to protect and expose through their leadership that it is not acceptable to destroy the inherent rights of the Inuit People in the guise of a State of Alaska oil and gas lease at Prudhoe Bay. To our best estimates the true owners have become paupers in their own homeland as trespasses have brought home three-hundred-billion dollars to England in a fifteen year period. The scandalous transactions continue and the American People fall further in debt as the foreign

state enterprises continue their ill-gotten gains. The American scapegoat has been the Japanese when the real perpetrator predator is Britain. The Inuit envision a strict enforcement of the Constitutional rights, by the Inuit, and call for the Senate Permanent Investigation Committee to review the foreign state enterprises, particularly British Petroleum's interest at Prudhoe Bay and for the Secretary of Interior, Bruce Babbitt, to conduct and enforce the reciprocal arrangements in oil and gas leases in the State of Alaska.

This forcible incorporation under State of Alaska law is an insult to injury as the historical settlements throughout the United States had never before yielded the tribes to the tyranny of the states as found in The United States vs. Kagama, 118 U.S. 375 (1886). This forcible incorporation destroyed the common heritage, the shared common interests, the natural birthright and the long term inheritance and wealth of the indigenous Peoples of Alaska but it could not destroy the original sovereignty of the indigenous Peoples of Alaska.

While the United States was celebrating its 200th anniversary the Federal Land Management Policy Act of 1976 had extinguished for Alaska Natives the following entitlements: (1) Laws Relating to Homesteads and Small Tracts (2) Laws Relating to Disposal of Alaska Settlement Laws (3) Laws Relating to Land Withdrawals (4) Laws Relating to the Administration of Public Lands and (5) Laws Relating to Rights of Ways. This destroyed all of the entitlements for Natives of Alaska under the American administration. The Alaska Native Claims Settlement Act and the Federal Lands Management Policy Act of 1976 are the most pathological acts to Alaska Native Peoples and to the citizens of the United States. This pathology has been repealed by the American adoption of the International Convention on the Prevention and Punishment of the Crime of Genocide on November 4, 1988.

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### THE SUPREME LAW OF THE LAND

The United States Senate gave its advice and consent for the ratification of the Convention on the Prevention and Punishment of the Crimes of Genocide which became enforceable on November 4, 1988. The following is a statement of Senator Sam J. Ervin, Jr., Senator from the State of North Carolina, on May 22, 1970 before the Committee on Foreign Relations, Washington, D.C.:

If the Senate should ratify the Genocide Convention, these constitutional provisions would automatically make the convention the law of the land, put all of its self-executing provisions into immediate effect as such, and impose upon the United States the obligation to take whatever steps are necessary to make its non-self-executing provisions effective. This means that the provisions of the

Genocide Convention would immediately supersede all State laws and practices inconsistent with them, and would nullify all provisions of all acts of Congress and prior treaties of the United States inconsistent with them.

International practice is law only in so far as we adopt it, and like all common or statute law it bends to the will of Congress. In 1980, using Ware v. Hylton, United States v. Smith, the Paquete Habana and a single sentence in The Neride, Judge Irving Kaufman of the Second Circuit Court of Appeals, taking a dramatic departure from existing practice, claimed that U.S. courts are indeed bound by the prevailing rules of international law and, more specifically, in The Neride, Alaska is a neutral territory. Kaufman's opinion in Filartiga v. Pena-Irala, 630 F.2d 876, 881-85 (2d Cir. 1980) has become a rallying point for those who would make the U.N. Charter, the Universal Declaration of Human Rights, the Genocide Convention, the two International Covenants on Civil, Political, Social, Economic, and Cultural Rights, and the Convention on the Elimination of All Forms of Racial Discrimination self-executing in American law.

The relatively recent effort of the United Nations General Assembly to define aggression and to reiterate its prohibition under the United Nations Charter (Article 1, Paragraph 1) is only partly adequate to this task. It is useful in demonstrating certain proscribed actions directed "against the sovereignty, territorial integrity or political independence of another state," but it falls short of providing any further guidance concerning proscribed acts of aggression by a government against its own people. The Resolution on the Definition of Aggression calls upon all states to refrain from "all acts of aggression and other uses of force contrary to the Charter of the United Nations and the Declaration on Principles of International Law," and reaffirms "the duty of States not to use armed force to deprive peoples of their right to self-determination. . . ." It notes that nothing contained in the definition "could in any way prejudice the right to self-determination . . . of peoples forcibly deprived of that right . . . nor the right of these peoples to struggle to that end and to seek and receive support . . . ," notes that "acts enumerated . . . are not exhaustive" Moreover, the definition affirms that aggression also includes the use of armed force "in any other manner [, than the proscribed attacks against another state, which is] inconsistent with the Charter, " but does not provide further clarification. Nonetheless, "[a] war of aggression," the Declaration affirms, "is a crime against international peace." In this sense, the Declaration reaffirms recognition in the authoritative 1970 Declaration on Principles of International Law that "[a] war of aggression constitutes a crime against the peace, for which there is responsibility under international law."

Under the U.N. Charter, "the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations" is proscribed. As the Declaration on

Principles of International Law affirms, "[s]uch a threat or use of force constitutes a violation of international law and the Charter . . . .," and is tied also to the "duty to refrain from any forcible action which deprives peoples . . . .of the right to self-determination . . . ." Because article 1, paragraph 2, of the U.N. Charter recognizes respect for self-determination of peoples as a major purpose, and because article 2, paragraph 4, prohibits the threat or use of force in any manner inconsistent with the purposes of the United Nations, it is clear that the threat or use of force against the self-determination of a people entitled to such right is proscribed by the Charter.

Other resolutions of the General Assembly have affirmed this interconnected prohibition and implicitly confirm that the use of force in violation of article 2(4) to deprive a people of self-determination constitutes a crime against peace. In fact, the General Assembly has resolutely condemned "all forms of oppression, tyranny and discrimination . . . .wherever they occur," and has strongly condemned racism and all "totalitarian" ideologies and practices. The General Assembly stated that such ideologies and practices:

which are based on terror and racial intolerance, are incompatible with the purposes and principles of the Charter of the United Nations and constitute a gross violation of human rights and fundamental freedoms which may jeopardize world peace and security of peoples.

With respect to the latter practices, the General Assembly has also called upon all states to prosecute the perpetrators of such violations. More recently, the International Law Commission has made an inviting recognition that "an international crime may result . . . .from . . . . a serious breach of an international obligation of essential importance for safe-guarding the right of self-determination . . . ." The Commission also noted that "domination" of a people "by force" may constitute a crime against self-determination. This recognition can undoubtedly apply to the use of force by a government to deprive a people of self-determination and thus to engage in acts of "domination" and political oppression.

The right of a given people to political self-determination is also a fundamental human right and is interconnected necessarily with several other important human rights, including the right of individuals freely to participate in the political process. The respect for and observance of human rights is also a major purpose of the U.N.; and article 2 paragraph 4, of the Charter prohibits the threat or use of force in any manner "inconsistent with the Purposes of the United Nations." Thus, it is clear that an additional interconnected basis exists for the proscription of the threat or use of force against political self-determination. For a similar reason, aggression against authority is proscribed by the U.N. Charter.



Under international law, the legitimate authority of a government exists on the basis of the "will of the people" expressed through a relatively full, free, and equal participation of individuals in the political process. Such a standard of authority is now entrenched in many interrelated human rights and the precept of self-determination; each is ultimately protected in the U.N. Charter and subsequent authoritative decisions. When force is used to oppress individual or group participation in the political process and is used to change the dynamic outcome of such a process identifiable in an aggregate will of individuals, such a use of force constitutes an aggression against authority, human rights and the process of self-determination. Hence, such a use of force violates articles 1(2), 1(3), 2(4) and 56 of the U.N. Charter. It is among the more odious of violations, posing a threat to several fundamental Charter precepts, and can affect the rights of numerous victims—more numerous in fact than the victims of ordinary violations of international law or many other forms of international crime.

Insidious in the silent acts of genocide directed towards all of the indigenous Peoples; Inupiat, Athabaskan, Aleut, Tlingit, Haida, Yupik and Eyak, are those acts motivated by, or resulting in, the political oppression of members of such groups which impermissibly interfere with the process of authority and self-determination. To that extent, the customary prohibition of genocide, with concomitant universal enforcement jurisdiction, can be useful in opposing aggression against authority and political oppression. Additionally, it does not matter that such attacks happen to coincide with attacks on "political groups." Attacks on the groups specified in the treaty and which are motivated by, or result in, political oppression of such persons cannot be criminally sanctioned. Moreover, today it can be recognized that whether or not attacks on "political" groups as such involve acts of genocide, such attacks are necessarily violative of the precept of self-determination and fundamental human rights. As such, they constitute aggression against authority, a violation of the U.N. Charter, the crime of oppression, and what the International Law Commission has recognized as a crime against self-determination.

The Principles of the Nuremberg Charter and Judgment recognize that crimes against humanity include:

Murder, extermination, enslavement, deportation and other inhuman acts done against any civilian population, or persecution on political, racial or religious grounds, when such acts are done or such persecutions are carried on in execution of or in connection with any crime against peace or any war crime.

Since the crime includes acts done against any population and persecution on political grounds, aggression against authority and political oppression can constitute a crime against humanity if done in connection with "any crime against peace or any war crime."

In the modern, post-Nuremberg setting, it has already been recognized that a "war" of aggression is a crime against peace, and that regimes based on totalitarian ideologies and totalitarian practices can jeopardize world peace and the leaders of such regimes should be criminally prosecuted. Furthermore, it has been recognized that apartheid poses a "threat to international peace" and constitutes a crime against humanity.

In 1793, Justice Wilson of the U.S. Supreme Court affirmed a slightly different interconnection between the process of peace and offenses against the international community. While on circuit, Justice Wilson recognized that if an offender against the law of nations is not punished by his own nation such a circumstance can lead to reprisal and even war. The Justice recognized that complicitous acts of aggression "did interrupt, destroy, and break the said firm, inviolable, and universal peace . . . [and offended] against the peace and dignity of the said United States early recognized that private violations of the law of nations can constitute an act of "aggression" and a crime against "peace."

Just as in September of 1939, as Hitler signed an executive order authorizing a directive given to two of Hitler's closest associates, Dr. Karl Brandt and Reichsleiter Philip Bouhler. These two were to set up a program that enabled German physicians to kill anyone deemed "unworthy of life." Under the influence of the apocalyptic theories of eugenics, many German doctors greeted this idea as a "technological breakthrough" and an example of the new regime's advanced thinking, while the majority simply accepted it without protest. (Gallagher, 1990)

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## THE ATOMIC ENERGY COMMISSION

This removal mentality and ethnic cleansing through scientific means has continued to the shores of Beaufort Sea. We don't have to go to Germany to find scientific and ethnic cleansing of a People through national policy. In the United States the Atomic Energy Commission effected a recurring theme against indigenous peoples rights of self-determination and informed consent in the lands of the Inupiat of Point Hope. There, lethal radioactive materials were buried as a scientific experiment in 1962 involving the well-being and livelihood of the oldest Inupiat settlement in that Northern Region. This experiment is the modern day equivalent of the "small pox" blankets of the removal era.

The Atomic Energy Commission's first public defeat for lack of national support to a project based upon scientific findings turned pathological. Instead of demobilizing the project the agents for the project extended the life of the study at the expense of the life of the Inupiat and to experiment upon the very people who opposed the implementation of the project along with the American people. The question is, "Who is responsible for the order to expose the people of Point Hope to experimental radiation tests.?"

It is the folly of the Atomic Energy Commission to rely solely upon science and engineering to establish a predetermined resolution in support of Project Chariot and its peculiar site without reference to the Inupiat tradition of staying alive and happy. In the matter of intergenerational responsibility, just as in more familiar moral choices, caution is in order where great evils are involved. This suggests that in considering policies that affect the future, we must evaluate our actions in terms of the best available estimate of their consequences. (In Green, Intergenerational Distributive Justice and Environmental Responsibility, in Valasquez and Rostankowski, Ethics: Theory and Practice, p. 460.)

The extremely long time horizons create particularly difficult problems. The question arises whether this generation has the right to bury in geological formations wastes which may harm future generations, however small that probability may be. In fact, geological disposal of long-lived radioactive wastes is an attempt to bypass the polluter-pays-principle by transferring some of the potential costs and radiation harm of the nuclear fuel cycle to generations not yetborn. This is more than a theoretical question, since, at least in principle, it is possible to transmute long-lived nuclides to one with much shorter half lives, although at higher cost. (World Commission on Environment and Development, Energy 2000: A Global Strategy for Sustainable Development, p. 42.)

We are not atomistically segregated individuals who only owe interpersonal debts (individual justice). We also owe debts to the social whole (social justice) and may have to sacrifice equality temporarily to bring social fairness. We are constitutionally, not optionally, committed to the common good. That commitment may have to be expressed in the sacrifice of one's life, as in the case of collective self-defense, or in the surrender of one's property in eminent domain. . . . Social justice may require temporary decisions that are not to the benefit of all. . . . (Maguire and Fargnoli, On Moral Grounds: The Art/Science of Ethics, p. 68.)

People have a responsibility to learn to distinguish between what is important and what is trivial; to balance danger and necessity. But to do this, the general public must be treated as a resource for solving complex problems, rather than shunned as an obstacle to expedient solutions. The public must be valued as a key actor in a social process, rather than despised as an inconvenience . . . (Piller, The Fail-Safe Society, p. 205.)

The penalty of any offence defined in this Code shall be determined by the tribunal exercising jurisdiction over the individual accused, taking into account the gravity of the offence.

## Article VI

The effective date of the "Inupiat Code of Offenses Against the Peace and Security of Mankind" shall be November 13, 1992.

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## THE RIGHT TO PREVENT THE COMMISSION OF INTERNATIONAL CRIMES

Within the principles of international law, where does the responsibility of the United States citizens derive? There are two sources of international applicability. First, the Genocide Convention Act of 1988. And, the second source would be the Statute of the International Court of Justice Article 36. Third, the source of international law is what is known as the General Principles of Recognition by civilized nations. One of these general principles of law recognized by all civilized nations is the duty to act to prevent the commission of crime. And so it is our opinion that we can state under international law as a general principle that there is certainly a duty to act to prevent the commission of threatened war crimes, crimes against peace, crimes against humanity, and genocide. It is very clear under international law and under the Paquete Habana case that international law is part of the United States law.

In the event nuclear weapons are deployed by the United States and Russia all United States government officials, also the officials of Russia, who launch or wage their nuclear war on the United States or upon Russia, respectively, would be guilty of crimes against peace, crimes against humanity, war crimes, grave breaches of the Geneva Conventions, and acts of genocide. The net effect of nuclear war would constitute violation of international law.

The United States government became a party to the Geneva Protocol of 1925 in 1975 and the Geneva Protocol prohibits the use in warfare of chemical weapons, bacterial weapons, and all analogous substances and liquids. Many international scholars believe that the radiation coming from nuclear attack is equivalent to poison toxin, and therefore, prohibited by the Geneva Protocol of 1925 which the United States is a party to. In a nuclear war many will die from the blast but then large numbers will die from radiation poisoning as reflected in Nagasaki and Hiroshima.

The use or the threat of nuclear war and the other methods or apparatus for altering a region of earth's atmosphere, ionosphere, and magnetosphere and triggering mechanisms creating a substantial change in Earth's neutral atmospheric characteristics would constitute a war crime against the peoples of

the world. Or any attempted war crime because such use would violate international law by causing unnecessary suffering, failing to distinguish between combatants, non-combatants, and poisoning its targets by radiation. Furthermore, testing some of the Strategic Defense Initiatives (SDI) proposed technologies would violate the pathbreaking 1963 Limited Test Ban Treaty, which specifically prohibits any type of nuclear explosion in outer space. One of the most favored SDI technologies at this time is the so-called x-ray laser, which depends upon a nuclear explosion to generate it. Clearly, the testing and deployment of an x-ray laser in outer space would constitute a material breach of the Limited Test Ban Treaty and the Outer Space Treaty.

The United States Air Force and the Office of Naval Research, through their prime contractor, Atlantic Richfield Oil Company (ARCO) Power Technology, Inc., under the leadership of Ramy Shanny, have developed a method and apparatus for altering at least one selected region which normally exists above the earth's surface. The region is excited by electron cyclotron resonance heating to thereby increase its charged particle density. In one embodiment, circularly polarized electromagnetic radiation is transmitted upward in a direction substantially parallel to and along a field line which extends through the region of plasma to be altered. The radiation is transmitted at a frequency which excites electron cyclotron resonance to heat and accelerate the charged particles. This increase in energy can cause ionization of neutral particles which are then absorbed as part of the region thereby increasing the charged particle density of the region. Patent Number 4,686,605 and date of Patent is August 11, 1987. The Patent Title is "Method and Apparatus for Altering a Region in the Earth's Atmosphere, Ionosphere, and/or Magnetosphere."

We find that this experiment is on its final stages of deployment in Alaska known as "The Proposed High Frequency Active Auroral Research Program." (HAARP) We, the American people, have the defense of necessity against the choices of evil of the ongoing criminal activity by the United States government, namely conspiracy or the complicity in the commission of these heinous crimes: genocide, crimes against peace, crimes against humanity, and war crimes. All of this again is a targeting of the peoples of Alaska, including the indigenous peoples and the newly arrived people.

This testing would automatically breach the principles of the Geneva Conventions, the United Nations Charter, the Genocide Convention, and the Hague Regulations. We wish to point out to President Clinton that this is not simply an act or an activity which may occur in the future but these are inchoate crimes which are going on now. That is, that the planning, the preparation, plotting, and conspiracy to commit these crimes are ongoing crimes themselves.

We urge the Office of the President to utilize its emergency powers to immediately sequester the funds appropriated for the deployment of the HAARP project.

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The Native Village of Point Hope, under its own authority will impanel an International Tribunal for the purpose of implementing "Inupiat Offenses Against the Peace and Security of Mankind" which came into effect November 13, 1992.

The enforcement of the Point Hope Tribunal Judgment in the State of Alaska has the full-faith and credit of the Constitution of the United States and is res judicata. The Full faith and Credit Clause of the Constitution states: "Full Faith and Credit shall be given each State to the public Acts, Records, and judicial Proceedings of every other state. And the Congress may by general Laws prescribe the Manner in which such Act, Records and Proceedings shall be proved, and the Effect thereof."

The statute states:

The records and judicial proceedings of any court of any such State, Territory or Possession . . . shall be proved or admitted in other courts within the United States and its Territories and Possessions . . . Such . . . records and judicial proceedings . . . shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

Furthermore, the Federal Rules of Civil Procedure provide that:

[t]he procedure on execution, in proceedings supplementary to and in aid of a judgment, and in proceedings on and in aid of execution shall be in accordance with the practice and procedure of the state in which the district court is held, existing at the time the remedy is sought, except that any statute of the United States governs to the extent that it is applicable.

The State of Alaska has consented to the Compact of Statehood with the federal government and the "said Natives of Alaska; Eskimos, Indians, and Aleuts". The following is Section 4 of the Alaska Statehood Act.

"SEC. 4. As a compact with the United States said State and its people do agree and declare that they forever disclaim all right and title to any lands or other property not granted or confirmed to the State or its political subdivisions by or under the authority of this Act, the right or title to which is held by the United States or is subject to disposition by the United States, and to any lands or other property (including fishing rights), the right or title to which may be held by any Indians, Eskimos, or Aleuts (hereinafter called natives) or is held by the United States in trust for said natives; that all such lands or other property (including fishing rights), the right or title to which may be held by said natives or is held by the United States in trust for said natives, shall be and remain under the absolute jurisdiction and control of the United States until disposed of under its authority, except to such extent as the Congress has prescribed or may hereafter prescribe, and except when held by individual natives in fee without restrictions on alienation: Provided, that nothing contained in this Act shall recognize, deny, enlarge, impair, or otherwise affect any claim against the United States, and any such claim shall be governed by the laws of the United States applicable thereto; and nothing in this Act is intended or shall be construed as a finding, interpretation, or construction by the Congress that any law applicable thereto authorizes, establishes, recognizes, or confirms the validity or invalidity of any such claim, and the determination of the applicability or effect of any law to any such claim shall be unaffected by anything in this Act: And provided further, That no taxes shall be imposed by said State upon any lands or other property now owned or hereafter acquired by the United States or which, as herein above set forth, may belong to said natives, except to such extent as the Congress has prescribed or may hereafter prescribe, and except when held by individual natives in fee without restrictions on alienation." (End of Section 4 of the Alaska Statehood Act)

The nation of the United States, since its inception, has provided for fair and uniform adjudication. Alexander Hamilton argued emphatically for federal jurisdiction over cases implicating international issues:

The Union will undoubtedly be answerable to foreign powers for the conduct of its members. And the responsibility for an injury ought ever to be accompanied with the faculty of preventing it. As the denial or perversion of justice by the sentences of courts, as well as in any other manner, is with reason classed among the just causes of war, it will follow that the federal judiciary ought to have cognizance of all causes in which the citizens of other countries are concerned. This is not less essential to the preservation of the public faith, than to the security of the public tranquility. A distinction may perhaps be imagined between cases arising upon treaties and the laws of nations and those which may stand merely on the

footing of the municipal law. The former kind may be supposed proper for the federal jurisdiction, the latter for that of the States. But it is at least problematical, whether an unjust sentence against a foreigner, where the subject of controversy was wholly relative to the *lex loci*, would not, if unredressed, be an aggression upon his sovereign, as well as one which violated the stipulations of a treaty or the general law of nations. And a still greater objection to the distinction would result from the immense difficulty, if not impossibility, of a practical discrimination between the cases of one complexion and those of the other. So great a proportion of the cases in which foreigners are parties, involve national questions, that it is by far most safe and most expedient to refer all those in which they are concerned to the national tribunals.

Nevertheless, there have been cases which called tribes "territories" or "possessions" and which required states to give full faith and credit to tribal judgments. In Santa Clara Pueblo v. Martinez the Supreme Court offered this bit of dictum in a footnote: "Judgments of tribal courts, as to matters properly within their jurisdiction, have been regarded in some circumstances as entitled to full faith and credit in other courts." The Court cited United States ex rel. Mackey v. Coxe, and in National Farmers Union, however, the Supreme Court held that there is section 1331 jurisdiction over the Oliphant question and, assuming that many tribal courts will find in favor of their own jurisdiction and go to judgment, the case will arise again in federal court. The "Oliphant question" was "Can Indians could try Anglos in tribal courts?" However, this has been resolved in favor of indigenous Peoples within the Genocide Convention Treaty. The Court did not say in either National Farmers Union or in La Plante whether the tribal court determination of the Oliphant issue would be given great weight at all, or something in between. Finally, the Oliphant issue has been resolved by the Senate ratification of the Convention for the Prevention of Crimes of Genocide effective on November 4, 1988 and concurrently with the Inupiat Code of Offenses Against the Peace and Security of Mankind effective November 13, 1992.

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## PRINCIPLE OF EQUAL RIGHTS AND SELF-DETERMINATION

Within the decades following Wilson's presidency, self-determination gained a considerable amount of currency in the vocabulary of American foreign policy. The nation was gradually weaned from the more flagrant temptations of imperialism and the American position against colonialism became firmer. In the Declaration of Principles of August 14, 1941, known as the Atlantic Charter, Franklin Delano Roosevelt and Winston Churchill agreed that "they would



respect the right of all people to choose the form of government under which they will live; and they wish to see sovereign rights and self-government restored to those who have been forcibly deprived of them." It is significant that exclusion of colonial territories from the meaning of the Atlantic Charter was a British demand secured over Roosevelt's protest.

Within international forums, American pronouncements on the principle of self-determination have sought to convey several themes. Although the United States has consistently reiterated its disapproval of colonialism, it has never agreed to an arbitrary limitation of the principle as encompassing only cases of Western colonial occupation. Instead, the American approach has sought to muster a general recognition of the principle of self-determination as applicable to those countries, such as the nations of Eastern Europe and Tibet, which were forcibly subjected to communist control.

The absorption, forcible incorporation, and belligerent occupation of the Inuit and Hawaiian Peoples is a subject for historical comparison. For example, the annexation of Alaska from the Russians to the United States was just as illegal as the secret protocol between Molotov of the USSR and Ribbentrop of Germany's Third Reich. There, Eastern Europe was carved into the familiar spheres of influence; Estonia, Lithuania, and Latvia fell into the Soviet Union. The Baltic states, Latvia, Lithuania, and Estonia were occupied by Soviet forces in June of 1940 and annexed by the USSR in August 1940. This Soviet annexation has never been recognized by the United States. However, on October 9, 1991 the USSR recognized the independence of Latvia and Lithuania.

The Inuit struggle is beyond the East/West ideology and is a struggle for civilization of its peoples and their right of independence and we ask; "Who are these Russians and Americans to question Inuit Right to independence?" (Irvin Brink, Chairman of the Kasigluk Elders Conference, 1989)

Does external self-determination mean the right of secession for the Inupiat, Athabaskan, Aleut, Tlingit, Haida, Yupik, and Eyak? The answer to this is "no". The indigenous Peoples were never incorporated as "inhabitants" within the meaning of the Constitution of the United States. Therefore, the self-determination effort of the Inuit is not a secessionist movement. We, the Inuit, have met the United States criteria which reads: "The existence of a sovereign and independent state possessing a representative Government, effectively functioning as such to all distinct peoples within its territory, is presumed to satisfy the principle of equal rights and self-determination as regards those peoples." (Report Spec. Comm., 44th Mtg. at 7, para. 10, U.N. Doc. A/AC.125/SR.44)

Indigenous Peoples' inherent rights are founded upon a different legal footing than the self-determination through revolution and secession by Russia and the United States. Their violent revolutionary opposition eventually led to United States and Russian internal self-determination and autonomy. The pre-revolutionary United States and Russian people had suffered the evils of colonial status. This status consists of the domination of a people by foreign governors with its attendant injury to national and cultural pride and the inability of the colonial subjects to control their own political destiny. This was coupled with economic exploitation and a denial of human rights.

The distinction between the secessionist self-determination of the United States and Russia and the external self-determination of the Inuit and Hawaiians is one of violent overthrow versus continuous peaceful co-existence. The Inuit and Hawaiians have not made declarations of war towards any foreign nations. The implied right of self-determination of the Inuit is different from the right of secession as successfully executed by the United States and Russia. The will of the Inuit shall be the basis of the authority of Inuit government. Just as the United Nations General Assembly specified in 1945 that, "All peoples shall have the right of self-determination", and further stipulate that, "All States, including those having responsibility for the administration of Non-Self-governing Territories, will promote the realization of that right."

In its present form the Charter of the United Nations contains two explicit references to the principle of self-determination, Article 1(2) and Article 55. Article 1(2) establishes that one of the purposes of the organization is to "develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples." Article 55 states that the United Nations will promote certain objectives "with a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples."

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#### ORIGINAL TITLE AND TERRITORIAL SOVEREIGNTY

The Inupiat, Athabascan, Aleut, Tlingit, Haida, Yupik, and Eyak claim for jurisdiction, sovereignty, and original title is complete within the first principle of External Self-determination. The Inuit spheres of influence are based upon the inherent rights fundamental to original jurisdiction. This has not been the experience of the United States and Russia. The claims of the United States and Russia for the ownership of Alaska are based upon cession and are disputed upon the grounds that the ceding party possessed no right to dispose of the territory in question or that the manner of the disposal was illegal under international law and foreign relations. The Alaskan situation is that of Russia attempting to cede part of its territory to another State without the consent of the

inhabitants; the Inupiat, Athabascan, Aleut, Tlingit, Haida, Yupik, and Eyak. Although occasionally disputed, a growing opinion suggests that a State, such as Russia, must consult the inhabitants of a region; the Inupiat, Athabascan, Aleut, Tlingit, Haida, Yupik, and Eyak, for which a cession is contemplated and that a failure to do so is a violation of their right to self-determination.

For want of jurisdiction and possession, the United States government maintained in its negotiations with Russia that dominion cannot be acquired but by a real occupation and possession, and a mere intention to establish dominion is by no means sufficient. Russia and the United States negotiated and concluded the Treaty of Navigation, Fishing, and Trading on the Pacific Coast which was signed at St. Petersburg April 17, 1824. (8 Stat. 302, TS 298; 11 Bevans 1205). The desire and political ambition of the Russians and the United States throughout the negotiations of the 1867 Treaty of Cession cannot extinguish the continuous and peaceful occupation by the Inupiat, Athabascan, Aleut, Tlingit, Haida, Yupik, and Eyak within their homeland. This continuous and peaceful occupancy is a constituted element of territorial sovereignty and is a recognized principle of international law.

The Inuit Territorial Sovereignty involves all of the waters, lands, and all navigable streams. It involves the exclusive right to display the activities of an Inuit State. This right has as corollary a duty: the obligation to protect within the territory the rights of other States, in particular their right to integrity and inviolability in peace and in war, together with the rights which each State may claim for its nationals in foreign territory. Without manifesting its territorial sovereignty in a manner corresponding to circumstances, the State cannot fulfil this duty. Territorial sovereignty cannot limit itself to its negative side, i.e. to excluding the activities of other States; for it serves to divide between nations the space upon which human activities are employed, in order to assure them at all points the minimum of protection of which international law is the guardian.

The Inupiat, Athabascan, Aleut, Tlingit, Haida, Yupik, and Eyak are sovereign nations whose rights of self-determination predate the United States Constitution and the Royal Proclamation of 1763 and whose dealings with the United States were governed by principles of international as well as constitutional law.

Probably the most important provisions of the Judiciary Act of 1789 were those which vested the Supreme Court with authority to review the decisions of state courts. The Supreme Court was to have an appellate jurisdiction "from the circuit courts and courts of the several states, in the cases herein after specially provided for:" In the cases "specially provided for" in the famous Section 25 there was to be decisive assurance, once the section had passed the test of constitutionality, that the national law on matters of international concern need suffer no impairment from local jealousies or from a discord of local laws. Section 25 provided:

That a final judgment or decree in any suit, in the highest court of law or equity of a State in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and the decision is against their validity; or where is drawn in question the validity of a statute of, or an authority exercised under any State, on the ground of their being repugnant to the constitution, treaties or laws of the United States, and the decision is in favour of such their validity, or where is drawn in question the construction of any clause of the constitution, or of a treaty, or statute of, or commission held under the United States, and the decision is against the title, right, privilege or exemption specially set up or claimed by either party, under such clause of the said Constitution, treaty, statute or commission, may be re-examined and reversed or affirmed in the Supreme Court of the United States upon a writ or error.

The constitutionality of the "revising power" thus vested in the Supreme Court by Section 25 was first put sharply and dramatically to the test, as every lawyer knows, in the famous case of Martin vs. Hunter's Lessee. Litigation had arisen out of conflict between the treaties with Great Britain and the Virginia laws of escheat. The Court of Appeals of Virginia had virtually defied the Supreme Court of the United States to take up the case under Section 25 and resolve the conflict. It is enough to recall that the case was taken up, the conflict resolved, and the constitutionality of Section 25 completely sustained. Justice Story's opinion in the case was notable, among other things, for its emphasis upon two important objectives of the judiciary article of the Constitution: first, the safeguarding of foreigners or non-citizens against such local prejudices or passions as might prevail in a state court; and second, the assuring of an essential "uniformity of decisions throughout the whole United States, upon all subjects within the purview of the Constitution." That cases arising under the Law of Nations and treaties were considered "subjects within the purview of the Constitution" was made clear enough.

Persisting contentions on the score of constitutionality were rejected a few years later in the even more famous case of Cohens vs. Virginia. Again emphasizing "the necessity of uniformity, as well as correctness in expounding the Constitution and laws of the United States," Chief Justice Marshall took this occasion to declare:

That the United States form for many, and for most important purposes, a single nation, has not yet been denied. In war, we are one people. In making peace, we are one people. In all commercial regulations, we are one and the same people. In many other respects, the American people are one; and the government which is alone capable of controlling and managing their interests in all these respects, is the government of the Union.

The United States Constitution confers the powers of war and peace, of making treaties, and of regulating commerce with foreign nations and among several states, and with the Indian Tribes.

However, we the Inupiat, Athabaskan, Aleut, Tlingit, Haida, Yupik, and Eyak, challenge the Marshall Trilogy and Marshall's unbridled judicial discretion against the Indians which granted the court the power to destroy Indians. These three United States Supreme Court decisions, known as "The Marshall Trilogy", are completely outside of the scope of the United States Constitution.

Furthermore, these three Supreme Court cases do not apply to the Inupiat, Athabaskan, Aleut, Tlingit, Haida, or Eyak Peoples. Hence, the claim to jurisdiction in Alaska is based upon conquest which has never occurred. The Marshall Trilogy cases are titled; Fletcher vs. Peck, 10 U.S., (6 Cranch) 711, 738 (1810), Johnson vs. McIntosh, 21 U.S. (8 Wheat.) 543 (1823) and Worcester vs. Georgia, 31 U.S. (6 Pet.) 515, 561 (1832). Therein the legal theory for the United States is based upon sovereign right of first purchase which refers to the exclusive rights that European explorers claimed over territory they discovered in the "New World".

The source of power that Marshall claimed over the property interests of the indigenous population is absolute legal fiction and done in complete abstention of the intended victims. The claim for jurisdiction for the United States and plenary power is completely outside of its own Constitution. Therefore, the Marshall Trilogy only occurred in the mind of John Marshall.

For Alaska the case for the Inuit is of a different footing than the Indians of the Lower 48 states where formal and informal conquest occurred by colonial powers and the United States. Any claim that conquest has occurred in Alaska is without constitutional footing and a formal or informal declaration of war has never been declared by the United States Congress. Further implication of self-serving desires are outside the scope of another Constitutional test for the lack of declaration of war and the territory of Alaska has never been declared enemy or hostile territory. The test is Fleming vs. Page, 50 U.S. (9 How.) 603 (1850):

A war, therefore, declared by Congress, can

never be presumed to be waged for the purpose of conquest or the acquisition of territory; nor does the law declaring the war imply an authority to the President to enlarge the limits of the United States by subjugation of enemy's country. The United States, it is true, may extend cession of territory as the condition of peace, in order to indemnify the government for the expenses of the war. But, this can be done only by the treaty-making power or the legislative authority and is not a part of the power conferred upon the President by the declaration of war. His duty and his powers are purely military. As commander-in-chief, he is authorized to direct the movements of the naval and military forces placed by law at his command and to employ them in the manner he may deem must effectuate to harass and conquer and subdue the enemy. He may invade the hostile country and subject it to the sovereignty and authority of the United States. But, his conquest does not enlarge the boundaries of this union nor extend the operation of our institutions and laws beyond the limits before assigned to them by the legislative power . . . and the relation in which the Port of Tampico stood to the United States while it was occupied by their arms did not depend upon the laws of nations, but upon our own constitution and act of Congress.

This result, although they put territory of the United States occupied by a foreign country outside the customs territory of the United States, while declining to put within it territory hostilely occupied by the United States, are not necessarily inconsistent. With this construction,

Fleming vs. Page was the principal reliance of the court in the Insular Cases in determining that Puerto Rico remained a "foreign country" after United States occupation of the island but ceased to be a "foreign country" upon ratification of the peace treaty with Spain, which ceded it to the United States. Further, this result was foreshadowed by dictum in American Insurance Company vs. Canter, 26 U.S. (1 Pet.) 511, 542 (1828), wherein; "The usage of the world is, if a nation be not entirely subdued, to consider the holding of conquered territory as a mere military occupation, until its fate shall be determined at the treaty of peace.

On the other hand, Alaska as occupied territory, is generally considered to be part of the occupant's realm as far as belligerent purposes are concerned. This common view was expressed by the supreme Court of the United States in the well-known case of Thirty Hogsheads of Sugar v. Boyle, 9 Cranch 191, (1815),

when it held that; "Although acquisitions made during war are not considered as permanent until confirmed by treaty, yet to every commercial and belligerent purposes, they are considered as a part of the domain of the conqueror, so long as he retains the possession and government of them." Any attempt to supplant the legitimate sovereignty of the Inupiat, Athabaskan, Aleut, Tlingit, Haida, Yupik, and Eyak, by absorption of occupied territory during the course of negotiations must be considered as an unlawful premature annexation, whether in 1867 or 1991.

It is evident that Russia could not transfer any more rights than herself possessed. The question whether the silence of the Inuit state, as a third party and in regard to a treaty notified to it, can exercise any influence on the rights of this power or on those of the power signators of the treaty is a question the answer to which may depend upon the nature of such rights. While it is conceivable that a conventional delimitation duly notified to third Powers and left without contestation on their part may have some bearing on an inchoate title not supported by any actual display of sovereignty, it would be entirely contrary to the principles laid down above as to territorial sovereignty to suppose that such sovereignty could be affected by the mere silence of the territorial sovereign as regards a treaty which has been notified to him and which seems to dispose of a part of his territory.

Article I of the Treaty of Cession for Alaska it is important to note that the metes and bounds were not ceded by the indigenous nations; Inupiat, Athabaskan, Tlingit, Haida, Aleut, Yupik, and Eyak. The United States could not derive valid title from its ostensible inclusion in the Russian concession. The right to Alaska, or claim of the right, as a successor to Russia is first based upon discovery. In this connection a distinction must be made between the discovery of Alaska and the maintenance of a continuous occupation by the peoples of Alaska. As to the question of different legal systems prevailing at successive periods, it is to be applied to this particular case. A distinction must be made between the creation of rights and the existence of rights.

The mere legal description, as in Article I of the lands under the continuous occupation by all of the Inuit of Alaska and the Circumpolar Regions, and the discovery by Russia, does not create definitive title of sovereignty but only an inchoate title. The proclaimed inchoate title under Article I of the Treaty of Cession could not prevail over the continuous display of peaceful authority of the Inuit state. The Treaty of Cession and its conclusion is a mere desire of the United States and Russia on a blank sheet of paper without complete regard to the continuous and peaceful occupation by the Inupiat, Aleut, Athabaskan, Tlingit, Haida, Yupik, and Eyak. We must distinguish, on the one hand, between the mere desire to take possession through a third party cession, which can hardly extend to every portion of Alaska, and on the other hand, the display

of sovereignty as a continuous prolonged manifestation which must make itself felt throughout the indigenous homelands.

Although Russia and the United States had granted sovereignty to themselves, they fell short of their Constitutional tests to conquer, to defeat in war, to honor in peace, to enter into treaties for cession of lands now occupied by Natives of Alaska. The desire and the original transaction of Russia and the United States is infected with fraud. But, the real party, the Inuit of Alaska, have not, with their agents, obligated the acts for the transfer of any rights to the Russians or the United States. Therefore, we the Inuit, are charging the United States and Russia for treaty fraud in the alleged purchase of Alaska. The United States and Russia cannot perfect and grant to themselves sovereignty to the territory and waters historically occupied and used by Inupiat, Athabaskan, Aleut, Tlingit, Haida, Yupik, and Eyak Peoples. Neither can the United States or Russia grant sovereignty they do not possess as on September 16, 1991 in the United States and the Russian Maritime Boundary Agreement.

The claim of the United States to sovereignty over Alaska is derived from Russia

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#### THE MARITIME BOUNDARY AGREEMENT

The United States-Soviet Maritime Boundary Agreement was signed by the Secretary of State Baker and Foreign Minister Shevardnadze on June 1, 1990, after 9 years of negotiation, and was submitted to the Senate for its advice and consent last September, 1991. The Foreign Relations Committee held a hearing on the treaty on June 19, and ordered it reported on June 27, 1990 with the recommendation that the United States Senate consent to its ratification. On September 16, 1991, the U.S. senate gave its advice and consent to the new United States and Soviet Maritime Boundary Agreement.

The Maritime Boundary Agreement addressed these conflicts: 1) declaring that the 1867 Convention Line is the maritime boundary between the United States and the Soviet Union. 2) establishing a precise geographic depiction of the line; and 3) providing for the transfer of jurisdiction and sovereign rights in four potential special areas. A treaty wherein negotiations involve fraud is invalid. Whereas the United States and Russia have granted to themselves claims of sovereignty within the territorial dominion of the Inuit of Alaska. The Inuit of Alaska; the Inupiat, Athabascans, Aleut, Tlingit, Haida, Yupik, and Eyak, never assented nor consented in treaty to the United States and Russian negotiations. This is now a cause of action for the Inuit of Alaska to terminate the military occupation of Alaska by the United States and Russia set forth on September 16, 1991.



The factual situation for the United States and the Russian boundary dispute has raised serious legal questions. By attempting to safeguard the 1867 line as a universal line of marine boundary delimitation, the negotiators are in fact creating a highly legal precedent. According to the customary international law and the relevant provisions of 1982, United Nations Convention on the Law of the Sea, coastal states can exercise in their 200-mile zone a clear-cut list of sovereign rights and jurisdictional powers. They may not behave as if these zones were in their sovereign territory. If the coastal state does not establish an economic enterprise zone (EEZ) or is not exercising its rights there, whatever the reason might be, it may not confer these rights acquired in accordance with international law to any other state.

The "special areas" provisions of the 1990 Agreement, contained in its Article 3, exemplify a broad approach to the interpretation of customary law regulating the regime of the EEZ and the relevant provisions of the 1982 UN Convention. They actually create in the current international legal practice a hazardous bias that could give way to coastal state claims to much wider discretionary powers in their EEZs. In this respect even the statement on the nature of acquired rights in the designated "special areas" (paragraph 3 of Article 3) can do little to justify this unusual and highly contentious approach.

Current international law does not provide states with any universal rules and methods of marine boundaries delimitation. In post-world war international legal practice, especially recently, the process of broadening the scope of applicable circumstances relevant to the delimitation has been constantly and successfully gaining support. This has meant that states engaged in negotiations could imply a variety of geographical, socio-economic, geopolitical, historic, and other arguments to back their specific position on the subject of delimitation. Of course, when negotiating parties cannot reach a mutually acceptable solution they usually submit their dispute to consideration by international judicial bodies (International Court of Justice or third party arbitration). Over time, the decisions of these bodies might ultimately limit the scope of arguments raised by disputing parties, qualify their comparative legal value, and finally identify appropriate ones and reject others as inappropriate. But as long as disputing states seek to handle boundary disputes themselves, they are free to assert any circumstance and try to convince the other side of its relevance and validity.

This reasoning is stressed here mainly to show that states are free to use for the purpose of boundary delineation any particular line agreed upon. Consequently, the use of the 1867 Convention line in the Soviet-American Agreement does not contradict in any way existing international law. The most interesting and at the same time controversial problem lies beyond the strict legal appraisal of the Agreement (although as shown above it reveals at least one serious deficiency from this point of view).

The U.S. position on this subject was very easy to explain. The use of the 1867 Convention line could result in its acquisition of the biggest piece of the Bering Sea "resource pie." As for the Soviet Union, it remains unclear what specific reasons urged the Soviet Foreign Ministry to support this highly unfavorable position. The delimitation based on any other method currently recognized by international law, even given its least favorable interpretation, would have benefited the USSR considerably more. (from Saguirian, 1992)

On September 16, 1991 Senator Jessie Helms made the following remarks during the Executive Session on the Agreement with the Union of Soviet Socialist Republics on the Maritime Boundary:

**MR. HELMS.** Mr. President, the maritime boundary agreement between the United States and the Soviet Union has been a matter of concern to this Senator for a number of years.

I have had four major areas of concern:

First, I have sought to ensure that the agreement be in treaty form and be duly submitted to the Senate for its advice and consent as required by the Constitution.

Second, I have sought to protect the status of the DeLong Islands—Bennett, Henrietta, and Jeanette Islands—in the Arctic.

Third, I have sought to protect the status of Wrangel and Herald Islands in the Arctic. While several islands bear the name Wrangel or Wrangell, the island that I am referring to lies in the Chukchi Sea of the Arctic Ocean about 100 miles off the Siberian coast. The island is about 80 miles long and about 30 miles wide. A harbor in the southeastern part is in latitude 70°57' N. and longitude 178°10' W. The Island is about 2,925 square miles in area.

Finally, I have sought to ensure that the proposed maritime boundary treaty would not foreclose the U.S. right under international law to pursue its claims to sovereignty over the five islands. I believe these four goals have been achieved. The first concern has been resolved to my satisfaction through the submission of the U.S.-U.S.S.R. Maritime Boundary Agreement to the Senate in treaty form for its advice and consent.

The second concern has been resolved to my satisfaction through assurances given by the Legal Adviser of the Department of State, Edwin D. Williamson, to the Committee on Foreign Relations and to me personally and through my staff. The Legal Adviser has assured the committee that this maritime boundary agreement does not affect the status of the Arctic islands. Further, the Legal Adviser has stated that the United States has neither relinquished claims to

these islands nor officially acquiesced to other claims over these islands. Referring specifically to the five American Arctic islands in his testimony before the committee, Mr. Williamson states as follows:

The agreement is a maritime boundary agreement. It does not recognize Soviet sovereignty over those islands.

The third concern has also been resolved to my satisfaction with respect to Wrangel Island, since the statement of the Legal Adviser of the Department of State that the maritime boundary agreement does not affect the legal status of the five Arctic islands clearly includes Wrangel Island.

Therefore, the legal situation that obtains today with respect to these Arctic islands will remain exactly what it is today, namely, one of conflicting claims under international law. The guarantee of the Legal Adviser of the Department of State that the U.S.-U.S.S.R. Maritime Boundary Agreement itself does not take a position with respect to the conflicting claims of the United States and the Soviet Union with respect to these five islands.

This means that the question of ultimate ownership is not prejudiced by the treaty, and remains open for future decision. The Legal Adviser has assured me that the United States has never officially relinquished its claims to these islands. In my judgment, the U.S. claims are sound, and should be pursued vigorously. (End of statement from Helms, 1991)

The United States and Russia have created for themselves an international incident of world class folly. Early in this century Elihu Root argued that the states engaged in illegal use of force or taking other actions which constitute threats to law and order in the international community should be subject to unilateral remedies by third states.

By the actions taken with the concurrence of the United States Senate on September 16, 1991, the Inuit of the Northern World have an indispensable interest and cause of action under Article 36 of the International Court of Justice against the United States and Russia for compulsory jurisdiction in the world court.

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**UNITED STATES DECLARATION RECOGNIZING THE  
COMPULSORY JURISDICTION OF THE  
INTERNATIONAL COURT OF JUSTICE**

Deposited with the Secretary-General of the United Nations, August 26, 1946.  
15 U.S. Department of State Bulletin, (1946), pp. 452-3.

I, Harry S. Truman, President of the United States of America, declare on behalf of the United States of America, under Article 36, paragraph 2, of the Statute of the International Court of Justice, and in accordance with the Resolution of August 2, 1946, of the Senate of the United States of America (two-thirds of the Senators present concurring therein), that the United States of America recognizes as compulsory *ipso facto* and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the International Court of Justice in all legal disputes hereafter arising concerning:

- a. the interpretation of a treaty;
- b. any question of international law;
- c. the existence of any fact which, if established, would constitute a breach of an international obligation;
- d. the nature or extent of the reparation to be made for the breach of an international obligation;

*Provided*, that this declaration shall not apply to:

- a. disputes the solution of which the parties shall entrust to other tribunals by virtue of agreements already in existence or which may be concluded in the future;
- b. disputes with regard to matters which are essentially within the domestic jurisdiction of the United States of America as determined by the United States of America;
- c. disputes arising under a multilateral treaty, unless (1) all parties to the treaty affected by the decision are also parties to the case before the court, or (2) the United States of America specially agrees to jurisdiction;

*Provided further*, that this declaration shall remain in force for a period of five years and thereafter until the expiration of six months after notice may be given to terminate this declaration.

Done at Washington this fourteenth day of August 1946.

HARRY S. TRUMAN

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This enlargement of their claim and resolution for newly acquired territorial sovereignty must be denied in the light of continuous peaceful occupation of their own lands and seas as described by indigenous language and indigenous place names. The Inuit maintain an independent right under customary law which permits unilateral reprisals by state's party to a multilateral treaty in response to a violation by another party. It is also maintained under international law that a breach by any state party to an international agreement constitutes an injury to the legal rights of all parties regardless of whether they have suffered direct tangible injuries. Since these norms concern particularly important interests of the international community, some maintain that bilateral remedies for violations of such norms would not be sufficient. The duties to abide by jus cogens norms may be owed to the entire international community, erga omnes. As such, violations of some or all jus cogens norms may be enforceable by states individually or collectively even in the absence of a direct injury other than the fact that the norm has been violated.

Therefore, in order to succeed on the merits before the International Court of Justice, the Applicant States are required to allege that their legal rights or interests had been infringed. On August 1, 1991 at Anchorage, Alaska Mr. Irvin Brink, the Chairman of the Kasigluk Elders Conference charged the United States and Russia with the infringement of our Territorial Sovereignty. This violation has been recorded in history as the Treaty of Cession of 1867. Our Inuit Declaration hereby terminates the colonial occupation of the Territory of Alaska ceded from Russia to the United States, as a third party contract, in 1867. Furthermore, the United States and Russia advance their claim under questionable circumstance and created a highly dangerous legal precedent in the delimitation of the Maritime Boundary controversy between the United States and Russia.

The Inuit have an interest in finality of justice over self-fulfilling gains outside of international law advanced in the name of the bilateral United States-Russian Maritime Boundary Agreement of 1990. We the Inuit respectfully affirm an international conference for the deliberation of legitimate and permanent sovereignty to be undertaken by the United Nations General Assembly for the rejection of the proposed sovereignty of the Maritime Boundary Agreement between the United States and Russia.

Finally the Inuit concur that our assertion of exclusive control over territory involves an obligation to use due diligence to insure the safety of legitimate foreign interest. We cite Judge Winiarski in the case of United States vs. Netherlands, (1928): "Territorial sovereignty . . . involves the exclusive right to display the activities of the State. This right has as corollary a duty: the obligation to protect within the territory the rights of other States, in particular the right to integrity and inviolability in peace and in war, together with the rights which each State may claim for its nationals in foreign territory. Without

manifesting its territorial sovereignty in a manner corresponding to circumstances, the State cannot fulfill this duty. Territorial sovereignty cannot limit itself to its negative side, i.e. to excluding the activities of other States. . . ."

It is the duty of the United States and Russia to negotiate in good faith with the Inuit and their Republic of the Arctic. We believe that the duty to negotiate in good faith flows from the principle of the sovereign equality of states and the obligation of states to settle their international disputes by peaceful means, which are both recognized in the Charter of the United Nations. This duty is implicit in Article 6 of the Shelf Convention—"the boundary . . . shall be determined by agreement between them"----and it has been expressly affirmed by the International Court of Justice in the North Sea Continental Shelf cases:

The parties are under an obligation to enter into negotiations with a view to arriving at an agreement, and not merely to go through a formal process of negotiation as a sort of prior condition for the automatic application of a certain method of delimitation in the absence of agreement; they are under an obligation so to conduct themselves that the negotiations are meaningful, which will not be the case when either of them insists upon its own position without contemplating any modification of it.

First, under the general principles of international law and the 1958 Geneva Convention on the Continental Shelf, maritime boundaries between adjacent and opposite states are to be determined by agreement in accordance with equitable principles, and each state has an obligation to negotiate in good faith with its neighbors with a view to reaching agreement on the boundary between their respective jurisdictions. Second, as a matter of U.S. constitutional law and practice, the President has the authority to determine, in consultation with Congress, the boundary position to be espoused by the United States in international negotiations and to be applied by it pending entry into force of a permanent boundary treaty.

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THE REPUBLIC OF THE ARCTIC  
A DECLARATION OF SOVEREIGNTY BY THE INUIT

The Inuit Declaration of Sovereignty was asserted on August 1, 1991 in a press conference in Anchorage, Alaska by Chairman Irvin Brink of the Kasigluk Elders Conference. (P.O. Box 19, Kasigluk, Alaska 99609) The following is an excerpt:

We, the Inuit, charge the United States and the Russia with the infringement of our Territorial Sovereignty. This violation has been recorded in history as the Treaty of Cession of 1867. Our Inuit Declaration hereby terminates the colonial

occupation of the Territory of Alaska ceded from Russia to the United States, as a third party contract, in 1867.

Therefore, we at the Kasigluk Elders' Conference, have respectfully submitted to the President of the United States the following agenda for the Conference of Free Association for the fulfillment of all of our inherent rights. Unlike the Trust Territories of the Pacific, who had received a pre-determined constitution with limitation, we the Inuit, will maintain a free and open convention for the purpose of the Compact of Free Association to fulfill the unwritten agenda set below.

## PREAMBLE

### Title One

#### Sovereignty Jurisdiction and Governmental Relations

- ARTICLE 1 -----Self-government
- ARTICLE 2 -----Foreign Affairs/Neutrality
- ARTICLE 3 -----Communications
- ARTICLE 4 -----Immigrations
- ARTICLE 5 -----Representation
- ARTICLE 6 -----Environmental Protection
- ARTICLE 7 -----Education
- ARTICLE 8 -----General Legal Provisions
- ARTICLE 9 -----Judiciary

### Title Two

#### Economic Relations

- ARTICLE 1 -----Grant Assistance
- ARTICLE 2 -----Progrm Assistance
- ARTICLE 3 -----Administrative Provisions
- ARTICLE 4 -----Trade
- ARTICLE 5 -----Finance and Taxation

### Title Three

#### Security and Defense Relations

- ARTICLE 1 -----Authority and Responsibility
- ARTICLE 2 -----Defense Facilities and Operating Rights
- ARTICLE 3 -----Defense Treaties and International  
Security Agreements-----Demilitarization  
and Nuclear Free Zone

- ARTICLE 4 -----Service in the Armed Forces of the United States
- ARTICLE 5 -----General Provisions

Title Four  
General Provisions

- ARTICLE 1 -----Approval and Effective Date
- ARTICLE 2 -----Conferral and Dispute Resolution
- ARTICLE 3 -----Amendment
- ARTICLE 4 -----Termination
- ARTICLE 5 -----Survivability
- ARTICLE 6 -----Definition of Terms
- ARTICLE 7 -----Concluding Provisions
- ARTICLE 8 -----Disposition of Elections

This process of the Compact of Free Association will be executed in the likeness of the Constitution of the United States as derived from the Iroquois Confederacy. The United States Constitution has a civilizing effect upon its citizens.

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THE PACIFIC POLICY REPORT

We concur with the findings of Public Law 99-239 which is Title 48 U.S. Code 1681. This report is the Pacific Policy Report. We the Kasigluk Elders Conference concur with the findings of Congress:

TITLE III---PACIFIC POLICY REPORTS

"SEC. 301. FINDINGS

"The Congress finds that---

- (1) the United States does not have a clearly defined policy for United States noncontiguous Pacific areas (including the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the State of Hawaii, and the State of Alaska) and for United States-associated noncontiguous Pacific areas (including the Federated States of Micronesia, the Marshall Islands, and Palau);
- (2) the Federal Government has often failed to consider the implications for, effects on, and potential of non-contiguous Pacific areas in the formulaton and



conduct of foreign and domestic policy, to the deriment of both the attainment of the objectives of Federal policy and noncontiguous Pacific areas;

(3) policies and programs designed for the United States as a whole may impose inappropriate standards on noncontiguous Pacific areas because of their unique circumstances and needs; and

(4) the present Federal organizational arrangements for liaison with (and providing assistance to) the insular areas may not be adequate—

(A) to coordinate the delivery of Federal programs and services to noncontiguous Pacific areas;

(B) to provide a consistent basis for administration of programs;

(C) to adapt policy to the special requirements of each area and modify the application of Federal programs, laws, and regulations accordingly;

(D) to be responsive to the Congress in the discharge of its responsibilities;

(E) to attain the international obligations of the United States.

The enactment of this joint resolution on January 14, 1986 through the consultation of the Secretary of the Interior and the Secretary of State and therefore the President shall submit to Congress a report on the United States Non-contiguous Pacific Area Policy with such recommendations as may be necessary to accomplish the objectives of such policy including:

(1) the role of and impacts on the noncontiguous Pacific areas in the formulation and conduct of foreign policy;

(2) the applicability of standards contained in Federal laws, regulations, and programs to the noncontiguous Pacific areas and any modifications which may be necessary to achieve the intent of such laws, regulations, and programs consistent with the unique character of the noncontiguous Pacific areas;

(3) the effectiveness of the Federal executive organizational arrangements;

(A) providing liaison between the Federal and the governments of the noncontiguous Pacific areas;

(B) coordinating Federal actions in a manner which recognizes the unique circumstances and needs of the noncontiguous Pacific areas; and

(C) achieving the objective of Federal policy and ensuring that the Congress receives the information necessary to discharge its responsibilities; and

(4) actions which may be needed to facilitate the economic and social health and development of the noncontiguous Pacific areas, consistent with their self-determined objectives.

Finally, the President of the United States, through an executive order, shall direct the good offices of the Secretary of State and the Secretary of the Interior to convene an international conference for the indigenous populations of Alaska and Hawaii for the final determination of sovereign status for each.

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The claims of the United States and Russia are based upon cession and have been disputed upon the grounds that the ceding party possessed no right to dispose of the territory in question or that the manner of the disposal was illegal under International Law and foreign relations.

Unlike the origins of the United States, France, and Russia, the Inuit call to freedom maintains our tradition of the longest peaceful occupation, co-existence, territorial integrity and sovereignty of the Arctic since time immemorial. Based upon our self-determination and supported by International Law, we make this Declaration of Sovereignty which signifies Inuit Independence from all Anglo-european original or derivative states, and from any infringement of Inuit Sovereignty.

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#### THE ORIGINAL UNDERSTANDING

In a review of our original understanding of the constitution and its requirements for civilized activity, the desire of the American administration was to create inchoate title. It was the intent of the United States to perfect title over time. However, we, the indigenous Peoples of the Arctic Region, holding original title, remain in peaceful occupancy. The Inuit not only hold original title but our claim to sovereignty and peaceful coexistence and a continuous display of our authority over our lands is contrary to the claim of the United States which has based their claim on the titles of discovery, of recognition by treaty and of contiguity, i.e. titles relating to acts or circumstances leading to the acquisition of sovereignty; they have, however, not established the fact that sovereignty so acquired was effectively displayed at any time. We, the Inuit, concur with the precedent set in the United States vs. Netherlands, wherein the United States lost its claim to inchoate title. (Palmas Island Arbitration, 1928).

For want of jurisdiction and possession, the United States government maintained in its negotiations with Russia concerning territorial questions that dominion cannot be acquired but by real occupation and possession, and an intention to establish it is by no means sufficient. The mere desire and political ambition of the Russians and the United States throughout the negotiations of the Treaty of Cession of 1867, cannot extinguish the principle of the continuous and peaceful display of the functions of occupation by the Inupiat, Athabaskan, Aleut, Tlingit, Haida, Yupik, and Eyak within the Arctic Region of North America. The principle of continuous and peaceful occupancy is a constituted element of territorial sovereignty which is a recognized principle of international law.

It is obvious that there was no effective occupation by Russia as is revealed in Article I, Article II, and Article III of the Alaska Treaty of March 30, 1867.

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#### ARTICLE I

His majesty the Emperor of all the Russias agrees to cede to the United States, by this convention, immediately upon the exchange of the ratifications thereof, all the territory and dominion now possessed by his said Majesty on the continent of America and in the adjacent islands, the same being contained within the geographical limits herein set forth, to wit: The eastern limit is the line of demarcation between the Russian and the British possessions in North America, as established by the convention between Russia and Great Britain, of February 28-16, 1825, and described in Articles III and IV of said convention, in the following terms:

Commencing from the southernmost point of the island called Prince of Wales Island, which point lies in the parallel of 54 degrees 40 minutes north latitude, and between the 131st and the 133d degree of west longitude, (meridian of Greenwich,) the said line shall ascend to the north along the channel called Portland channel, as far as the point of the continent where it strikes the 56th degree of north latitude; from this last mentioned point, the line of demarcation shall follow the summit of the mountains situated parallel to the coast as far as the point of intersection of the 141st degree of west longitude, (of the same meridian;) and finally, from the said point of intersection, the said meridian line of the 141st degree, in its prolongation as far as the Frozen ocean.

With reference to the line of demarcation laid down in the preceding article, it is understood;

1st that the island called Prince of Wales Island shall belong wholly to Russia,

2nd that whenever the summit of the mountains which extend in a direction parallel to the coast from the 56th degree of north latitude to the point of intersection of the 141st degree of west longitude shall prove to be at the distance of more than ten marine leagues from the ocean, the limit between the British possessions and the line of coast which is to belong to Russia as above mentioned, that is to say, the limit to the possessions ceded by this convention, shall be formed by a line parallel to the winding of the coast, and which shall never exceed the distance of ten marine leagues therefrom.

The western limit within which the territories and dominion conveyed, are contained, passes through a point in Behring's straits on the parallel of sixty-five degrees thirty minutes north latitude, at its intersection by the meridian which passes midway between the islands of Krusenstern, or Ignalook, and the island of Ratmanoff, or Noonarbook, and proceeds due north, without limitation, into the same Frozen Ocean. The same western limit, beginning at the same initial point, proceeds thence in a course nearly southwest, through Behring's straits and Behring's sea, so as to pass midway between the northwest point of the island of St. Lawrence and the southeast point of Cape Choukotski, to the meridian of one hundred and seventy-two west longitude; thence, from the intersection of that meridian, in a southwesterly direction, so as to pass midway between the island of Attou and the Copper island of the Kormandorski couplet or group in the North Pacific ocean, to the meridian of one hundred and ninety-three degrees west longitude, so as to include in the territory conveyed the whole of the Aleutian islands east of that meridian.

## ARTICLE II

In the cession of territory and dominion made by the preceeding article, are included the right of property in all public lots and squares, vacant lands, and all public buidlings, fortifications, barracks, and other edifices which are not private individual property. It is, however, understood and agreed, that the churches which have been built in the ceded territory by the Russian government, shall remain the property of such members of the Greek Oriental Church resident in the territory, as may choose to worship therein. Any government archives, papers, and documents relative to the territory and dominion aforesaid, which may be now existing there, will be left in the possession of the agent of the United States; but an authenticated copy of such of them as may be required, will be, at all times, given by the United States to the Russian government, or to such Russian officers or subjects, as they may apply for.

## ARTICLE III

The inhabitants of the ceded territory, according to their choice, reserving their natural allegiance, may return to Russia within three years; but if they should prefer to remain in the ceded territory, they, with the exception of uncivilized

native tribes, shall be admitted to the enjoyment of all the rights, advantages and immunities of citizens of the United States, and shall be maintained and protected in the free enjoyment of their liberty, property and religion. The uncivilized tribes will be subject to such laws and regulations as the United States may, from time to time, adopt in regard to aboriginal tribes of that country.

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For all of these reasons one is guided to accept the position that conquest as a title to territorial sovereignty has ceased to be a part of the law. The principle of intertemporal law means that this change cannot be regarded as being retroactive to titles made by conquest in an earlier period. However, neither conquest nor a declaration of war has occurred within the territory of the indigenous Peoples of Alaska and the Northern Regions of the Circumpolar World. This is the core concept wherein lies the greatest misunderstanding and ignorance regarding Inuit rights to self-determination. However, since the United States signing of the Genocide Convention Treaty the indigenous Peoples are no longer under the threat of arms as was the case during the signing of the Treaty of Cession in 1867.

But, even if we agree that conquest no longer is of itself a title to territorial sovereignty, we have only dealt with a part---possibly not the most important and certainly not the most difficult part---of the problem of force in relation to title to territorial sovereignty. There remains the case of the treaty of cession forced upon the vanquished State after war. Treaties of cession in the past have probably more often embodied a settlement dictated by force of arms than not. This is, in effect, a conquest under the guise of an ostensibly pacific mode of acquisition. Yet it is a more intractable problem than that of conquest, for here the radical solution is not possible: there can be no question of the complete abolition of cession as a mode of transfer of title, for many cessions clearly are not vitiated by the employment of unlawful armed force. Yet unless we can find that a treaty of cession imposed by illegal force may be vitiated thereby, we shall be forced to reconsider our conclusion regarding straightforward conquest.

For the case of Alaska there is a compounded situation. The first is that conquest has never occurred and secondly the seceding party by its own admission had no effective occupation of the territory ceded to the United States. For Alaska, it follows that a treaty imposed by or as the result of force or threats of force resorted to in violation of the principles of the instruments of a fundamental character is invalid by virtue of the operation of the general principle of law which postulates freedom of consent as an essential condition of the validity of consensual undertakings. The reasons which in the past have rendered that principle inoperative in the international sphere have now disappeared. Moreover, in so far as war or force or threats of force constitute an

internationally illegal act, the results of that illegality—namely, a treaty imposed in connection with or in consequence thereof—are governed by the principle that an illegal act cannot produce legal rights for the benefit of the law-breaker. That principle—*ex injuria jus non oritur*—recognized by the doctrine of international law and by international tribunals, including the highest international tribunal, is in itself a general principle of law.

So we have properly no alternative but to begin from the premise that neither conquest nor a cession imposed by illegal force of themselves confer title. We have found Lord McNair's opinion in his *Law of Treaties* (1961) to conform most closely to our own best interests of self-determination. He wrote;

....it would now be the duty of an international tribunal to scrutinize closely the circumstances in which a treaty or other international engagements was concluded and to decline to uphold in favor of a party which had secured another party's consent by means of illegal use of threat of force. If the treaty in question before the tribunal was a peace treaty, it would be necessary to examine the question whether the outbreak of the war involved a breach of the Kellogg-Briand Pact or the Charter on the part of the party invoking the peace treaty. Two qualifications must, however, be made: (a) a treaty which is induced by collective armed force exercised on behalf of the international community differs from a treaty induced by coercion for the purpose of securing some national objective, and requires the application of different principles; and (b) the change of attitude referred to above in no way impairs the validity of treaties concluded as the result, say, of economic or financial necessity without any use or threat of force; nearly every treaty contains some provisions which represent hard bargaining and which one of the parties would much like to have avoided.

Moreover, there may be a temptation to a government to make an unfounded allegation of the use of illegal force by another merely as a move in a political game. Ideally issues of this sort could always be tested before a Court of law, but we have to fashion a law which will operate in a society where as yet there is no system of compulsory jurisdiction. Admittedly the International Court of Justice has an appropriate jurisdiction if the parties are prepared to submit to it; but it is unlikely that a government prepared to use illegal force will have left itself open to attack in the International Court. In the absence of jurisdiction enabling a judicial determination there is no alternative but to leave the determination of the issues to states working through to the long-standing, traditional procedures of recognition.

Indeed there may be another reason for this. Although in a well-ordered society a question of title must be subject to the determination by a court of law, it must be remembered that in a well-ordered society a title may also, for good political reasons, be changed by legislation. It is well to bear in mind that the international society lacks not only a court of law with compulsory jurisdiction but also lacks any legislature at all. But the working of the general opinion of international society through recognition or non-recognition can at least in some measure take account of political issues as well as purely legal ones. For a court is not necessarily the best kind of body to decide issues of this kind.

It is true that a situation in which abstract title may mean so little in terms of beneficial enjoyment and where the law is easily bent by the facts, is not without danger both to the eventual further development of the law and to the respect which ought to be due to it; and it is tempting, therefore, to look forward to a stage when, through an International Court enjoying general compulsory jurisdiction, the illegal seizure of territory may be remedied by an enforceable order for restitution, instead of the present situation where the aggressor may perhaps with some confidence await the adjustment of the law to accommodate his wrongful act. But here again the seductive private law analogy may be very misleading. For what is in question is not only the possession of an area territory but the exercise of powers of government over a people; whether one legal order be substituted for another, and whether the entire way of life of a people shall be changed. Thus considered, it becomes clear that anything like an action for ejectment, however good the title, must be approached at least with great caution.

We, the Inupiat, Athabaskan, Aleut, Tlingit, Haida, Yupik, and Eyak, have concluded that our territorial sovereignty cannot be violated through the interlocutory process between Russia and the United States. Furthermore, the United States and the Russians are subject to the prohibition of use of force or threat in international relations. This prohibition in international relations rests not only upon the Charter of the United Nations and its antecedent instruments but has become a part of the general customary international law. It seems therefore impossible any longer to concede that the successful seizure of another's territory by force, i.e. conquest, or subjugation, may be itself a lawful title to the territory.

This carries with it the further conclusion that a cession imposed by illegal force is void, for otherwise a conquest could be saved from the sanction of the law by the mere artifice of changing the mode of transfer of sovereignty. The general principles of law that consensual obligations cannot be founded in force, and that *ex injuria jus non oritur* lead to the same conclusion.

If international law had developed possessory remedies as such, no doubt the plaintiff might ask successfully for the restoration of the possession of which it

has been newly deprived, leaving the aggressor to bring another action to prove his superior title to sovereignty over the territory. But the case only needs to be put to show how completely inappropriate to the international scene is any sophisticated distinction between possession and title. A people cannot be handed over to another State as part of an interlocutory process.

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#### THE DISTINCTION BETWEEN ORIGINAL AND DERIVATIVE TITLE

It is true, as a matter of history, that some new states are formed out of the sovereignty of the old, and others are created, in violent opposition, to the former territorial sovereign. It is not unreasonable to propose, therefore, that a distinction between original and derivative titles will be relevant to the proper interpretation of original Inuit territorial sovereignty. This, versus the derivative title which is born when a new state is created in violent opposition to the former territorial sovereign.

The United States and Russia declared their independence and made declarations of sovereignty which were self-proclaimed against their own mother countries. The United States and Russia are secessionists. This self-appointment can best be illustrated by the Soviet jurist D.B. Levin:

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When a nation exercises its right to self-determination, forms an independent state, voluntarily remains in a multinational state, or joins another multinational state, its right to the free determination of its further internal political, economic, social and cultural status passes to the sphere of state law of the state to which the nation now belongs. But, this holds good only as long as the conditions on which the nation became part of the given state are not violated by this state and as long as the nation's desire to stay within it remains in force, and it is not compelled to do so by coercive means. As soon as one of these phenomena occurs, the question again passes from the sphere of state law into the sphere of international law.

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#### CONTINUOUS AND PEACEFUL OCCUPATION

The earliest archaeological evidence of this kind of activity dates back about 5,000 years, and is known to worldwide archaeological societies as the Cape Denbigh Flint complex of Northwestern Alaska. At this time, some of the Denbigh people hunted seal in the summer months with boats, while others hunted caribou in the interior. These Denbigh people were well adapted physically and culturally to survive in the Arctic. Over time they moved eastward across Arctic Canada to Northeast Greenland, which they reached by 2000 B.C.



In Canada, this first migratory wave of the descendants of the Denbigh people is represented by the Pre-Dorset culture. By about 800 B.C., the Pre-Dorset stage had evolved into a Dorset stage, with some minor differences in tool-making and in the range of tools made. The oldest skeletal remains of Inupiat in Canada come from a Dorset site on the south side of Hudson's Bay, and are dated to about 500 B.C.

The Dorset culture lasted from about 800 B.C. to A.D. 1300 in certain Arctic areas. After 1300 A.D. the Inupiat people, known as the Thule culture, moved eastward from northern Alaska and eventually reached Greenland and Labrador. There were cultural exchanges between Dorset and Thule Inupiat. The Thule people became more effectively adapted to life on the Arctic shores, being expert whale hunters. The Thule Inupiat, then, are the direct ancestors of the modern Arctic Inupiat, including the Caribou Eskimo who were to turn inland west of Hudson's Bay. From the archaeology, therefore, we see evidence of at least 5000 years of Inupiat survival. The Athabaskan, Aleut, Tlingit, Haida, Yupik, and Eyak archaeology establishes a similar antiquity. (from F.A. Milan, 1980)

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#### ARCTIC POLICY

There is a sovereignty problem in the Arctic as cited by the Central Intelligence Agency of the United States Government in a May 1978 publication know as The Polar Regions Atlas: "Territorial expansion into the Arctic outside of Europe was generally achieved without the tension and strife that characterized the extension of national sovereignty in temperate regions. Even where there has been disagreements most disputes were not allowed to become serious political issues. The major reason for the lack of sensitivity on the sovereignty issue was the very low estimate of value of most of the North. Of course, in a few decades this perception of the Arctic has changed dramatically. The region has risen in economic value and grown in political significance. After the discovery of oil at Prudhoe Bay in 1968 and the exploration successes in the Canadian and the Soviet Arctic there was little doubt that the area would become a significant source of energy. Never again would states casually establish borders or sell real estate in the Arctic. Although five nations border the Arctic Ocean only two international land boundaries touch the coast; the United States (Alaska)-Canada and USSR-Norway. Neither of these is currently in dispute. There is a lack of agreement, however, on the extent of coastal state jurisdiction over the Arctic seas and on Norway's claim to exclusive control of the resources of Svalbard's continental shelf. Controversy also marks the effort to establish a Norwegian/Soviet continental shelf boundary in the Barents Sea."

One of the most significant issues was the Inuit Campaign for the demilitarization of the Naval Petroleum Reserve Number 4 as an important national political issue in the presidential year of 1976. The Inuit incorporated a powerful environmental research protection regime in the transfer of Naval Petroleum Number 4 to the Department of the Interior. Thus began the concept for the National Arctic Policy for the United States and all of North America including Greenland. The Inuit had persuaded Congress to pass the Arctic Science Policy Act of 1984. Prior to the passage of the act, the lack of national consciousness was unfortunate in that the Naval Arctic Research Laboratory was cut from the budget at a time when science was most needed during the era of the discovery of oil.

In many aspects the modern politics of the Arctic Peoples is not representative of the other United States citizens. First, the relationships of people to institutions, locally and regionally, are unsettled. The planting of the United States flag in Sitka does not give the United States effective occupation or territorial sovereignty to those lands belonging to the indigenous Peoples nor have the indigenous Peoples of the Arctic signed a treaty relinquishing their original title.

In July of 1987 the Arctic Science Policy Act created a document titled the "United States Arctic Research Plan". The following is an excerpt of Part IV, Section B-12 titled "Political Science".

## 12. POLITICAL SCIENCE

### a. An Alaskan Perspective

Political science is the study of human relationships of authority, power and influence, and the relationships of humans with institutions which embody authority and coerce individuals (legitimately) to obey. Politics operates on all levels of human interaction - local, regional, state, national and international. Beyond the local level, however, the conflict and cooperation typifying political relationships occur between organizations acting on behalf of individuals. Because of the hierarchy implicit in political relationships and the supposed "consensual" nature of traditional ties, Arctic communities were once thought to be absent of politics at the village level. However, selection of whaling captains and chiefs was a political process. Relations among villages and between villages and colonial authorities upon contract were indisputably political.

In many respects the modern politics of American Arctic people resembles that of other U.S. citizens. They vote in elections and accept peaceably the decisions made by official bodies. In three broad areas, however, Arctic politics differs from that of other remote areas of the United States. Indeed, in key respects the political situation resembles that affecting Third World peoples.

First, the relationships of people to institutions, locally and regionally, are unsettled. An axiom of comparative politics is that institutional capability should balance representation of affected peoples. With the discrediting of traditional councils after Western contact, Arctic residents lacked vehicles which would represent their views. As a result of the empowerment processes of the 1960s and 1970s, Natives gained representation, but the emergent institutions, such as "Arctic Boroughs," have not yet developed a capability equal to that of established local and regional governments.

Second, intergovernmental relations are problematical. The special relations of U.S. Natives with the Federal government promise them an independent ability to make, enforce and judge law in local councils having sovereign status. The Alaska State government does not agree with this interpretation.

Third, the Inupiat and Yupik Eskimo are part of a transnational community. As such, they appear to strain the traditional model of international relations behavior when, for example, the Inuit Circumpolar Conference (a United Nations Non-Governmental Organization) considers proposing a nuclear-free Arctic, a proposal rejected by the Federal government.

Political development of northern Natives occurs in a context of conflict over Native autonomy within Federal and State political systems. The most important unresolved issues of political development in Alaska and elsewhere in the North are the degree to which Natives will control their own futures and the mix of indigenous and Western values that they pursue.

Three critical elements of Native political development are land, subsistence hunting and fishing, and self-government. The Alaska Native Claims Settlement Act (ANCSA) attempted to deal with the first, and provisions of the Alaska National Interest Lands Conservation Act (ANILCA) were intended to address the second. It remains to initiate systematic research and policy development programs directed to the third. The long-term political development of Alaska Natives will be determined largely by the extent to which they are able to develop self-governing institutions that are effectively integrated with those of the State of Alaska and the United States. The governmental problems are likely to be with us for some time. (End of excerpt from Part IV of the Arctic Research Plan)

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In 1970 the Arctic Slope Native Association, under the leadership of Joe Upicksoun and Charles Edwardsen, Jr., petitioned the United States Government for the incorporation of a federal home-rule tribal charter encompassing 88,000 square miles. A secretariat election was executed under the aegis of the Bureau of Indian Affairs and the largest federal home-rule

enclave was confirmed with a super majority of the Inupiat. This government by the Inupiat and for the Inupiat is the Inupiat Community of the Arctic Slope. (Title 25 U.S. Code 476)

Furthermore, the present Inupiat Community of the Arctic Slope (ICAS) has experienced a governmental problem and has shut-down the offices of ICAS from 1984 to present. This is another example of the tyranny of the government of shifting majorities in the guise of the Bureau of Indian Affairs (BIA) under Public Law 638 Contracting. This fraudulent takeover by the BIA is the legacy of the Jacksonian policies which undermined the legitimate self-determination of indigenous Peoples and the Inupiat.

Another accomplishment by the Inupiat was the formal incorporation and the petition under the Constitution of the State of Alaska for a First Class Home Rule Borough; the first of its kind under State of Alaska law. However, the Inupiat had to face hostile oil companies and its contractors opposing the development of home rule government in the Inupiat Homeland. The Inupiat and the State of Alaska had to defend themselves against the national oil interests. Soon after the Supreme Court of Alaska had ratified the petition for the incorporation of the North Slope Borough the oil companies, through the surrogate Speaker of the House of Representatives for the State of Alaska, Tom Fink, called a special session to constitutionally discriminate the taxation powers of the North Slope Borough and place a tax cap upon the North Slope Borough.

This taxing authority of the North Slope Borough was delimited by the Alaska state legislature under the influence of the oil lobby maintained to date. The leadership under North Slope Borough Mayor Eben Hopson and his attorney, Charles Cranston, never challenged the constitutionality of the illegal taxation cap enacted by the Alaska state legislature. This discriminatory taxation cap was only applied to the Inupiat of the North Slope Borough and not to any of the other state instrumentalities. The succeeding mayors of the North Slope Borough; Jacob Adams, Eugene Brower, George Ahmaouk, and Jeslie Kaleak, have also succumbed to the oil industry.

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#### CUSTOMARY INTERNATIONAL LAW

From the well-established continuous peaceful occupation of our Peoples we base our claim for original sovereignty. The nature of territorial sovereignty and customary international law was expressed by Professor Charles de Visscher:

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The firm configuration of its territory furnishes the State with the recognized setting for the exercise of its sovereign powers. The at least relative stability

of this territory is a function of the exclusive authority that the State exercises in it and of the coexistence beyond its frontiers of political entities endowed with similar prerogatives. This stability is above all a factor of security, of the security that peoples feel in the shelter of recognized frontiers—a confidence that has grown in them with the consolidation, in a community of aspirations and memories, of the bonds uniting them to the soil that they occupy. It is this sentiment that explains the extreme sensitiveness of opinion to everything that touches territorial integrity. Nor is it only in the actual relations between States that territory plays so large a part; for this is true also of the system of international law itself. The mission and purpose of traditional international law has been the delimitation of the exercise of sovereign power on a territorial basis. No rule is clearer than the precept that no State may lawfully attempt to exercise its sovereignty within the territory of another. The definition of Statehood itself has the possession of a more or less defined territory as a necessary element. Nationality too depends upon a relationship of an individual to a territorial State. Unlawful force is that which is employed against the 'territorial integrity' of another State.

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It has been said that the truth is stranger than fiction. In truth, the United States Constitution never conferred power over the Inupiat, Athabaskan, Aleut, Tlingit, Haida, Yupik, or Eyak People. Today we have two-hundred years of decisions by the United States Supreme Court and legislation by Congress and the President lacking Constitutional authority over indigenous Peoples of the Arctic Region. We cite Tee-Hit-Ton vs. United States, 348 U.S. 272 (1955) and the United States vs. Arco, 612 F.2d 1132 (9th Cir.). The United States has abrogated the liberty and the property of the indigenous Peoples under the color of the Constitution.

This abrogation, however, was no part of the original understanding. If the United States, the Congress, the President, or the Supreme Court has any authority, with respect to indigenous peoples of the Arctic Region and Hawaii, then the Constitution must confer it. And, any such provisions at one and the same time establishes and limits the scope of the power. Notwithstanding assignments of a plenary power to the United States, it remains competent to inquire whether the Constitution confers it or whether subsequent legislative or judicial glosses on the Constitution have, because "the Union meant more," concocted the power.

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#### CONSTITUTIONAL TEST

The original understanding—that no plenary power exists in the national government—implies that many acts of the United States respecting Native

Americans were and are ultra vires and therefore these acts cannot become "constitutional" even though Congress enacted them, the President signed them, and the Supreme Court upheld them. Nor could the United States confer upon states powers over Native Americans or Native American lands which the United States did not have itself, such as taxation, civil jurisdiction, criminal jurisdiction, jurisdiction over hunting and fishing rights, and jurisdiction over water rights.

The Inuit inquiry to the original understanding regarding Natives of Alaska should examine not only the Constitution's text and the debates, but also whether the Constitution's structure necessarily implies and the Framers necessarily intended any powers without declaring them. The United States Constitution forever remains silent for the indigenous Peoples of the Arctic Region and Hawaii. The indigenous Peoples are unrestrained by those United States Constitutional provisions specifically as limited on Federal or State authority: Ex Parte Crow Dog, 109 U.S. 556 (1883), Vermilya-Brown Co. vs. Connell, 335 U.S. 377 (1948), Brunell vs. United States, 77 Fed.Supp. 68 (S.D. N.Y 1948), and Dames & Moore vs. Regan, 453 U.S. 654, 669 (1981). It is true that the Supreme Court used the test of sovereignty in Dooley vs. United States, 182 U.S.222 (1901) and Spelar, 338 U.S. at 219, to decide whether a country was foreign. However, even assuming that the United States lacks technical sovereignty over the trust territory, recent cases have criticized the use of technical concepts of sovereignty in determining whether an area is a foreign country. In practice, the policies sought to be effected by statutory reference to "foreign" areas would not apply to a trust territory, over which the United States has complete control and over which it can exercise that control without violation of international law or treaties barring alteration of local law. For example, one apparent reason for the exemption in the Federal Tort Claims Act for torts occurring in foreign countries, the risk of subjecting the United States to liability under peculiar foreign tort laws, is absent in the case of trust territories.

The question remains whether the trust territory is within the "jurisdiction" of the United States. If "jurisdiction" is synonymous with "possession," a possible reading of the Filardo case, Foley Bros., Inc. vs. Filardo, 336 U.S. 281, 285 (1949), the question is governed by the foregoing discussion as to whether the trust territory is a possession; however, the term is very possibly of narrower application. The possibly non-permanent nature of the United States interest, in view of the United Nations Charter objectives of eventual self-government or independence for trust territories, is a factor against considering this area within the jurisdiction of the United States, however, the right of the United States to apply its own laws, subject to precatory language in the United Nations Charter.

Under customary international law and the United States constitutional process, the original and peaceful occupation of the Inuit cannot be deposed by discovery, conquest, symbolic acts, prescription, or cession. Our premise here is to assert that our historical occupation and peaceful coexistence are the only

legal modes for the creation of original title. Our original title to entire Alaska cannot be extinguished by the mere political desire of second and third parties; in this instance, Russia and the United States.

In order to continue this clarification, it is necessary to define "cession". Cession is the transfer of territorial sovereignty by one state to another state. It is a renunciation by one state in favor of another of the rights and title which the former may have to the territory in question. This is effected by a treaty of cession expressing the agreement to the transfer. The title it confers is derivational in the sense that its validity is dependent upon the validity of the title of the ceding state. The assumption of consent by the Inuit for the transaction between the United States and Russia in the Treaty of Cession of 1867 has been fabricated, for there was no consent. "Corruption reveals itself first in language." (Thucydides)

In 1860, at a republican Convention in St. Paul, Minnesota, William H. Seward made this prophetic remark on the subject of Alaska's destiny. He said:

"Standing here and looking far off into the Northwest, I see the Russian as he busily occupies himself in establishing seaports and towns and fortifications on the verge of this continent . . . and I can say, Go on, and build up your outposts all along the coast, even up to the Arctic Ocean---they will yet become the outposts of my own country."

This platform of Manifest Destiny originated with the early Republicans and has resulted in the largest expropriation of private property in North America. First, with the fraudulent exchange of paper which resulted in the 1867 Treaty of Cession, and secondly, with the Alaska Native Claims Settlement Act of 1971 (ANCSA).

However, the legitimate sovereign governments of the Inuit (Athabaskan, Aleut, Haida, Inupiat, Tlingit, Yupik) cannot be displaced by mere acts of symbolic discovery and cession.

In other words, neither the purchase of a trading company in 1867, the Russian American Trading Company, nor ANCSA in 1971, can displace our original sovereignty. The Anglo-European colonial mentality and accompanying philosophy of Manifest Destiny must end so that we, as the original Circumpolar Peoples, can take our rightful place among ethnic nations.

It is important for us to know that historical documents have been excluded in political negotiations and studies vitally important to Alaska Native People (Inuit). This maintenance of disinformation, misinformation, and deception