

## INUIT SELF-DETERMINATION IS EXTERNAL JURISDICTION

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Box 211  
Barrow, Alaska 99723

### INTRODUCTION

My name is Charles Edwardsen, Jr., Inupiat from Barrow, Alaska. I am a member of a federally recognized tribe, the Inupiat Community of the Arctic Slope (ICAS), Post Office Box 934, Barrow, Alaska 99723. I, as a member of ICAS have been deprived of my constitutional rights under Article V and Article VI of the Constitution of these United States. By the opinion of the courts of the United States, I, as a tribal official, was denied standing in Edwardsen vs. Morton, 369 Federal Supplement 1359 (1973) and United States vs. Arco, 612 F.2d 1132 (9th Cir.) cert denied, 449 U.S. 888 (1980) and we have exhausted local remedy under the domestic jurisdiction of the United States. Therefore, this is a motion for intervention under Article 38 of the International Court of Justice for an advisory opinion against the United States of America and Russia on the legal question presented.

I'm presenting testimony regarding inherent self-determination, original jurisdiction, territorial sovereignty, and the present constitutional crisis of the United States and Russia, the State of Alaska, and the State of Hawaii regarding the status of Inupiat, Athabascan, Aleut, Tlingit, Haida, Yupik, Eyak and Hawaiian Peoples.

As a young man I had established a claim against the United States. The United States had fostered the trespass by the oil companies in the name of the State of Alaska. This case is Edwardsen vs. Morton. It is also known as United States vs. Arco. The effect of this Supreme Court decision against the Inupiat, Athabascan, Aleut, Tlingit, Haida, Yupik, and Eyak people, has been a confirmation of ourselves as distinct Peoples, outside of the scope of the United States Constitution.

After a close study of the documents produced by myself and the Inupiat Community of the Arctic Slope and the United States Government, we are convinced that the principles laid down in Article 76 of the the United Nations Charter dealing with human and fundamental rights without distinction, and equality of treatment were not being applied in the United States. Firstly, the Inupiat government and the United States have never concluded a treaty binding the two governments. Secondly, myself, and the Inupiat Community of the Arctic Slope, wish to point out that once the United Nations Charter had been ratified, all of the original members of the United Nations, including the United States

and Russia, were obligated to bear in mind the chief aims of the Charter within their domestic legislation.

We have found Sir Hartley Shawcross of the United Kingdom to reflect our opinion. Here is his opinion from Cases and Materials on World Law by John Sohn.

The argument that the political aspect was more important than the legal would strike at the very roots of the rule of law which the United Nations was seeking to establish and it was important to make sure that action was taken within the provisions of the Charter.

Sir Hartley considered that two really important questions of principle were involved: whether the matter was excluded from the competence of the United Nations under Article 2, paragraph 7 of the Charter, and if it were not, whether it involved any denial of some human right or fundamental freedom which the United Nations was bound to respect. He had no wish to put a narrow or legalistic interpretation on the scope of the Charter, but the purpose of Article 2, paragraph 7, was to prevent the United Nations from interfering in matters which were domestic in character.

In the matter of Edwardsen vs. Morton, 359 Federal Supplement 1359 (1973) and in United States vs. Arco, 612 F.2d 1132 (9th Cir.) cert denied, 449 U.S. 888 (1980) we find that this matter is within the competency of the United Nations to review under the International Court of Justice as provided under Article 96 of the Charter that the International Court of Justice was competent to settle authoritatively the various questions involved.

Furthermore, Sir Hartley thought that the Committee ought to be authoritatively informed on the legal position. Some matters could be made the subject of humanitarian intervention under international law, but other matters were obviously domestic and there was no question of the exclusive jurisdiction of a State in regard to them. The Charter recognized that the United Nations should promote higher standards of social progress and development, but did not lay down such standards. When a code of standards of social progress and development had been drawn up and adhered to, any infringement of its provisions would fall within the competence of the United Nations, while anything else, not covered by the code, would be a matter of domestic jurisdiction. The essential legal question was that, in the meantime, it was clearly a matter for the domestic jurisdiction of every State to decide what rights it should grant its citizens.

Therefore, the Inupiat Community of the Arctic Slope, and myself, Charles Edwardsen, Jr., request the International Court of Justice to give an advisory opinion on the following legal question regarding Article II (7); "Nothing

contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state, or shall require the Members to submit such matters to settlement under the present Charter." Therefore, we, the Inuit, are not the benefactors of the Constitution of the United States. We are not within the meaning of domestic jurisdiction.

The United States Constitution and various statutory provisions are no longer neutral. They have become a sword for the taking of all of the inherent rights of the Inuit of Alaska.

(1) Article I, Section 8, paragraph 10

"To define and punish piracies and felonies committed on the high seas, and offences against the laws of nations;"

(2) Article I, Section 8, paragraph 11

"To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;"

(3) Article II, Section 2

"The president shall be commander in chief of the army and navy or the United States, and of the militia of the several States, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment;

He shall have power, by and with the advice and consent of the senate, to make treaties, provided two-thirds of the senators present concur; and he shall nominate, and by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law. But, the Congress may by law vest the appointment of such inferior officers, as they think proper, in the president alone, in the courts of law, or in the heads of departments;

The president shall have power to fill up all vacancies that may happen during the recess of the senate, by granting commissions which shall expire at the end of their next session."

(4) Article III, Section 2

"The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United states shall be a party; to controversies between two or more states, between a state and citizens of another state, between citizens of different Sttes, between citizens of the same state claiming lands under grants of different States, and between a state, or the citizens thereof, and foreign States, citizens or subjects. In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiciton, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make;

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed."

(5) Article IV, Section 2

"The citizens of each state shall be entitled to all privileges and immunities of citizens in the several sttes. A person charged in any state with treason, felony, or oher crime; who shall flee from justice and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime."

(6) Article IV, Section 3

"New states may be admitted by the Congress into this union; but no new state shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned as well as of the Congress;

The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular state."

(7) Article IV, Section 4

"The United States shall guarantee to every state in this union a Republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence."

(8) Article V

"No person shall be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

(9) Article IX

"The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

(10) Article XI

"The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State."

(11) Article XIII, Section 1

"Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

(12) Article XIV, Section 1

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

(13) Title 18, U.S. Code Section 1960

"Act of June 5, 1794, Chapter 50, 1 Statute 381, 383-384, 1794: Whoever, within the United States, knowingly begins or sets on foot or provides or prepares a means for or furnishes the money for, or takes part in, any military or naval expedition or enterprise to be carried on from thence against the territory or dominion of any foreign prince or state, or of any colony, district, or people

with whom the United States is at peace, shall be fined not more than \$3,000 or imprisoned not more than three years, or both.

In addition, the statute also prohibits other hostile activities against foreign countries with which the United States is at peace. The Neutrality Act of 1794 was the first domestic law in the world to deal specifically with the problem of hostile expeditions against foreign countries, and it served as a model for England and other nations.

The United States leadership sought to ground their policy of neutrality upon the Law of Nations. Washington spoke of a "duty" to issue his proclamation of April 22, 1793, while Jefferson wrote "we have produced proofs from the most enlightened and approved writers on the subject that a neutral nation, must in all things relating to the war, observe an exact impartiality toward the parties" The Supreme Court has stated in dicta that the authority for the passage of the Act was Congress' power to define offenses against the law of nations and one recent writer has concluded that Congress was "domesticating" an existing international legal norm under its power to define and punish offenses against international law. However, while at the present time the Neutrality Act reflects a clear international obligation, and although Congress and the executive in 1794 saw an obligation under international law, the Neutrality Act was not enacted primarily to conform to such a legal duty.

Historically, the Neutrality Act was the first municipal statute to criminalize certain activities as violations of the country's neutrality. At the time of its passage, the practice and customs of nations did not obligate any nation to enforce the international law of neutrality by promulgating a strict criminal statute."

(14) Article 1, Section 1 of the United Nations Charter

"To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;"

(15) Article 1, Section 2 of the United Nations Charter

"To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;"

(16) Article 2, Section 1 of the United Nations Charter

"The Organization is based on the principle of the sovereign equality of all its Members."

(17) Article 2, Section 2 of the United Nations Charter

"All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfill in good faith the obligations assumed by them in accordance with the present Charter."

(18) Article 2, Section 3 of the United Nations Charter

"All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered."

(19) Article 2(4) of the United Nations Charter

"That article prohibits "the threat or use of force against the territorial integrity or political independence of any state, or in any manner inconsistent with the purposes of the United Nations."

(20) Chapter VII, Article 39 of the United Nations Charter

"The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security."

(21) Chapter IX, Article 55 of the United Nations Charter

"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, the United Nations shall promote:

- (a) higher standards of living, full employment, and conditions of economic and social progress and development;
- (b) solutions of international economic, social, health, and related problems; and international cultural and educational co-operation; and
- (c) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."

(22) Chapter IX, Article 56 of the United Nations Charter

"All Members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55."

(23) Chapter XI, Article 73 of the United Nations Charter

"Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories, and, to this end:

(a) to ensure, with due respect for the culture of the peoples concerned, their political, economic, social, and educational advancement, their just treatment, and their protection against abuses;

(b) to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement;

(c) to further international peace and security;

(d) to promote constructive measures of development, to encourage research, and to co-operate with one another and, when and where appropriate, with specialized international bodies with a view to the practical achievement of the social, economic, and scientific purposes set forth in the Article; and

(e) to transmit regularly to the Secretary-General for information purposes, subject to such limitation as security and constitutional considerations may require, statistical and other information of a technical nature relating to economic, social, and educational conditions in the territories for which they are respectively responsible other than those territories to which Chapters XII and XIII apply."

(24) Statute of the International Court of Justice. Done at San Francisco, June 26, 1945. Entered into force for the United States, October 24, 1945. 59 Stat. 1055, T.S. No. 993, 3 Bevans 1153, 1976 Y.B.U.N. 1052

Article 37

"Whenever a treaty or convention in force provides for reference of a matter to a tribunal to have been instituted by the League of Nations, or to the Permanent



Court of International Justice, the matter shall, as between the parties to the present Statute, be referred to the International Court of Justice."

#### Article 38

(1) "The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:

(a) international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;

(b) international custom, as evidence of a general practice accepted as law;

(c) the general principles of law recognized by civilized nations;

(d) subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law."

(25) Charter of the Organization of American States. Done at Bogota, April 30, 1948. Entered into force for the United States, December 13, 1951. 2 U.S.T. 2394, T.I.A.S. No. 2361, 119 U.N.T.S. 3. Protocol of Amendment. Done at Buenos Aires, February 27, 1967. Entered into force for the United States, February 27, 1970. 21 U.S.T. 607, T.I.A.S. No. 6847.

#### Chapter I, Article 1

"The American States establish by this Charter the international organization that they have developed to achieve an order of peace and justice, to promote their solidarity, to strengthen their collaboration, and to defend their sovereignty, their territorial integrity, and their independence. Within the United Nations, the Organization of American States is a regional agency."

#### Chapter I, Article 2

"The Organization of American States, in order to put into practice the principles on which it is founded and to fulfill its regional obligations under the Charter of the United Nations, proclaims the following essential purposes:

(a) To strengthen the peace and security of the continent;

(b) To prevent possible cause of difficulties and to ensure the pacific settlement of disputes that may arise among the Member States;

- (c) To provide for common action on the part of those States in the event of aggression;
- (d) To seek the solution of political, juridical, and economic problems that may arise among them; and
- (e) To promote, by cooperative action, their economic, social, and cultural development."

(26) Chapter II, Article 3

- (a) International law is the standard of conduct of States in their reciprocal relations;
- (b) International order consists essentially of respect for the personality, sovereignty, and independence of States, and the faithful fulfillment of obligations derived from treaties and other sources of international law;
- (c) Good faith shall govern the relations between States;
- (d) The solidarity of the American States and the high aims which are sought through it require the political organization of those States on the basis of the effective exercise of representative democracy;
- (e) The American States condemn war of aggression: victory does not give rights;
- (f) An act of aggression against one American State is an act of aggression against all the other American States;
- (g) Controversies of an international character arising between two or more American States shall be settled by peaceful procedures;"

(27) Charter of the Organization of American States

Chapter I, Article 1

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- (d) To seek the solution of political, juridical, and economic problems that may arise among them; and
- (e) To promote, by cooperative action, their economic, social, and cultural development."

(28) Convention on the Prevention and punishment of the Crime of Genocide. Adopted by the U.N. General Assembly, December 9, 1948. Entered into force, January 12, 1961. 78 U.N.T.S. 277."

#### Article I

"The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish."

#### Article II

"In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group."

### Article III

"The following acts shall be punishable:

- (a) Genocide;
- (b) Conspiracy to commit genocide;
- (c) Direct and public incitement to commit genocide;
- (d) Attempt to commit genocide;
- (e) Complicity in genocide."

### Article IV

"Persons committing genocide or any of the other acts enumerated in Article III shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals."

### Article V

"The Contracting Parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the present Convention and, in particular, to provide effective penalties for persons guilty of genocide or of any of the other acts enumerated in Article III."

### Article VI

"Persons charged with genocide or any of the other acts enumerated in Article III shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction."

### Article VII

"Genocide and the other acts enumerated in Article III shall not be considered as political crimes for the purpose of extradition. The Contracting Parties pledge themselves in such cases to grant extradition in accordance with their laws and treaties in force."

### Article VIII

"Any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in Article III."

#### Article IX

"Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in Article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute."

Finally, the United States Senate has given its advise and consent for the passage of the enabling act for the prevention of the crimes of genocide on November 4, 1988, with an overwhelming vote. (Title 18, U.S. Code 1091)

To continue:

(29) Universal Declaration of Human Rights. December 10, 1948, U.N.G.A. Resolution 217 A (III), U.N. Document A/810, at 71 (1948).

"Now, therefore, the General Assembly proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction."

Today I wish to compare the United States and Russian secessionist model of self-determination to the inherent rights of Inuit self-determination. My standard of measure for the Inuit is to follow Chapter 1, Article 1, Section (2) of the United Nations Charter: "to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace."

Finally, we, the Inupiat, Athabascan, Aleut, Tlingit, Haida, Yupik, Eyak and Hawaiian Peoples, are eligible for complete self-determination under the aegis of the United Nations Charter. We, the indigenous Peoples of the Arctic Region, or the Inuit, are essentially outside of the scope of the United States Constitution. Therefore, we are entitled to a United Nations plebiscite for the determination of our own majority.

The Inuit of the Northern Arctic Regions qualify as a nation state under International Law. The Inuit have the right, the ability, and the desire to enjoy full sovereign independent status. Therefore, the Inuit of Canada, Denmark, Russia, and the United States have met the criteria of Article I of the Montevideo Convention on the Rights and Duties of States. This Convention defined a "state" for the purposes of International Law as: "a permanent population, a defined territory, an effective government, and the capacity to enter into relations with other states."

The basis and the methods of recognition of the unceded territory of Alaska and the political existence of an Inuit state is independent of the recognition by other states. Even before the recognition of the State, the State has the right to defend its integrity and independence, to provide for its conservation and prosperity and consequently to organize itself as it sees fit; to legislate upon its interests, administer its services and to define the jurisdiction and the competence of its courts. The exercise of these rights has no other limitations than the exercise of the rights of other States according to international law.

What is the meaning of the word "suzerainty" and what are its essentials? "Suzerainty" is "a term applied to certain international relations between two sovereign States whereby one, whilst retaining a more or less limited sovereignty, acknowledges the supremacy of the other. Such a relation may be either in the nature of a fief, or conventional, i.e., by some treaty of peace or alliance in contrast with the fief, which is a sovereignty granted by a lord paramount over some defined territory accompanied with an express grant of jurisdiction." (from Hudson, 1936)

The form of the legal relations created by such contracts is most generally that of suzerain and vassal, or of the so-called colonial protectorate. Hudson continued in the United State vs. Netherlands decision: "In substance, it is not an agreement between equals; it is rather a form of internal organization of a colonial territory, on the basis of autonomy for the natives. In order to regularize the situation as regards other States, this organization requires to be completed by the establishment of powers to ensure the fulfillment of the obligations imposed by international law on every State in regard to its own territory. And thus suzerainty over the native state becomes the basis of territorial sovereignty as towards other members of the community of nations. It is the sum-total of functions thus allotted either to the natives authorities or to those of the colonial Power which decides the question whether at any certain period the conditions required for the existence of sovereignty are fulfilled. It is a question to be decided in each case whether such a regime is to be considered as effective or whether it is essentially fictitious, either for the whole or a part of the territory."

The Russian government deliberately refrained from claiming, on the basis of the right of prior discovery, more territory than it could claim by virtue of the right

of first permanent settlement. Catherine II and the Admiralty College had presented orders in the form of a Royal Proclamation to Lieutenant Joseph Billings for his expedition to the North Pacific Ocean. Article XVI is quoted in full here.

## ARTICLE XVI

"When you bring newly discovered and independent lands and peoples under Russian suzerainty you are to observe the following instructions. Since such people have probably never been abused by any Europeans, your first responsibility is to see to it that they have a favorable opinion of the Russians. When you discover such a coast or island or promontory you are to send one of two baidaras, with armed men, under the command of an experienced helmsman. Send interpreters and small gifts with them. Have them look for a harbor or bay where vessels may safely be anchored, then take soundings and proceed into these. However, if no harbor is to be found, then send baidaras or boats with part of your men ashore to see if there are inhabitants, forests, animals etc. They are not all to put ashore together. A guard is to remain with the boats, and those who go ashore are to stay together, not to spread out.

If there are inhabitants, your men are to communicate with them through interpreters, but such persons are never to be sent ashore alone. They are always to be accompanied by men who are armed either secretly or openly. It has happened in the past that savages have killed interpreters or taken them prisoner, which is a great loss to the explorers.

The interpreter is to speak to them of your friendly intentions. To prove this, he is to allow them to choose presents, and invite them in a friendly manner to accept these gifts. He is to invite the chieftains on board the ships. To flatter these chieftains, they may be given medals to hang around their necks; you have been provided such medals for this purpose. Tell the savages that these medals are tokens of eternal friendship of the Russians. Ask them for tokens in return, and accept whatever they choose to give you. Persuade them to tell all their fellow inhabitants that the Russians wish to be their friends. Learn their tribal name and its origin or meaning. Discover whether their population is large, especially in men. Ask about their religion and their idols, and be careful that none of your men go near these idols or destroy them. Find out about their food and their crafts, where and how they travel, the names of the places they frequent and what their compass locations are, and whether these places are islands or on the mainland. When they point directions with their hands, observe secretly but accurately the compass directions and note in your journal how far distant these places are. If you do not understand their terms of measurement, ask how many days it takes to travel to these places, so that if you find it necessary to travel there by land or by sea, you will know how to set your course.

Ask if there are large bays on any of the islands or on the coast, and whether ships with one or two or three masts and sails go there, or go to their own islands or those nearby, or to the coasts. If you see that they have any article of European or Asian workmanship, ask them how they came by it. Make all necessary observations so you can describe the place, and ask their permission to come ashore often. Learn how they greet one another, and greet them in that way when you meet.

When they come to like you because of your generosity and friendship, if you are certain they are not subject to any European power, tell them you wish to find other friends like them. Ask them to let you erect some mark on a high place on shore, as your friends in other places do, so you will be able to find again this place where the friends of the Russians live. This should be done in accordance with your own customary ceremonies. When they give permission for this, order that one of the posts you have had prepared at Okhotsk be marked with the arms of Russia and that letters be cut into it indicating the date of discovery, a brief account of the native people and of their voluntary submission to Russian suzerainty. State that this has been done by your efforts during the glorious reign of Catherine II, the Great.

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Neither the Tlingits nor any other native Alaskan people engaged in any treaty making process with the Russians nor sold any land to the Russians. Moreover, the acute competition of international trade by the British and later the United States compelled Russia to enter into diplomatic negotiations resulting finally in the conventions of Russia with the United States of April 17 (5), 1824, and with Great Britain of February 28 (16), 1825. What remained outstanding during the Russian trading occupation was the non-assertion of territorial claims to the Alaska Native land.

The proper status of the Inuit of Canada, Denmark, Russia, and the United States, under international law, must be defined for the whole of the Inuit Nation. Associate Justice Robert H. Jackson defined International Law:

It is that we have no judicial precedent for the Charter. But, International Law is more than a scholarly collection of abstract and immutable principles. It is an outgrowth of treatise and agreements between nations and of accepted customs. Yet, every custom has its origin in some single act initiated by the action of some state. Unless we are prepared to abandon every principle of growth for International Law, we cannot deny



that our own day has the right to institute customs and to conclude agreements that will themselves become the source of a newer and strengthened International Law.

Our inherent rights of sovereignty have never been extinguished by the British, Russians, Danes, French, Americans, nor most recently, the Canadians. The original sovereignty of the Inuit and the indigenous peoples of North and South America continues to confuse those who practice British Law. During the federal convention debate of 1787, Benjamin Rush said; "The people of America have mistaken the meaning of the word 'sovereignty'. It is often said that the sovereign and all other power is seated in the people. This idea is unhappily expressed for it should be all power is derived from the people."

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### HISTORICAL BACKGROUND

Before the arrival of the Europeans, the Inuit Nations of North America were organized self-governing entities with decentralized administration. Our independence and sovereign status was recognized by the Russians and was acknowledged much later by England, France, and the United States, after its own independence, and finally, by the newest member, the Canadians.

The simple act of landing on North America thus did not establish sovereignty. Effective occupation requires effective, uninterrupted and permanent possession. Even in centuries following the Europeans' "discovery", there remains a good deal of territory under native control which has never been occupied by non-Indians.

Let us examine the European sources of recognition of sovereignty and self-determination by the Inuit as a separate independent people and recognition under international law. The three noted scholars of international law, Francisco de Vitoria, Emmerich de Vattel, Hugo Grotius, all gave explicit and conceptual support to Inuit sovereignty. Vitoria considered "whether the aborigines in question were true owners in both private and public law before the arrival of the Spaniards. . ." He concluded that "[t]he upshot of all the preceding is, then, that the aborigines undoubtedly had true dominion in both public and private matters . . ." Grotius considered impermissible the Roman practice of asserting jurisdiction over a territory simply because it was occupied by a people whose government was different from the Roman form. Alberico Gentili, a 16th century Spanish jurist and professor of law, a predecessor of Grotius, considered natives equal to other peoples under the law of nations. Vattel too has stated:

Every nation that governs itself, under what form soever, . . .

is a Sovereign State. Its rights are naturally the same as those of any other state . . . To give a nation a right to make an immediate figure in this grand society, it is sufficient that it be really sovereign and independent, that is, that it govern itself by its own authority and laws.

Later European writers, including Spanish, German, Italian, French, and British, recognized the sovereignty of natives in the "New World." During the Middle Ages the Catholic Church was the only voice advocating a universal order and rule of law, a position that had been developed by the Greek and Roman Empires in earlier times. The church spoke out strongly in support of native sovereignty, a position it did not consider inconsistent with a perceived moral duty to Christianize the heathens. Bartolome' de las Casas, a missionary priest, authored several treatises defending Indian sovereignty in the New World. Pope Paul III declared in the bull *Sublimis Deus* in 1537:

The said Indians and all other people who may later be discovered by Christians, are by no means to be deprived of their liberty or the possession of their property, even though they be outside the faith of Jesus Christ; and that they may and should, freely and legitimately, enjoy their liberty and the possession of their property, nor should they be in anyway enslaved; should the contrary happen, it shall be null and of no effect.

Spanish colonial law (which formed the basis of current United States domestic law on Indian affairs, and was itself heavily influenced by the European scholars Vattel, Vitoria and Grotius) explicitly recognized the rights of Indians, and therefore the authority of Indian nations to establish those rights. The Law of the Indies provided that Indian land rights should not be abridged and that any Spanish farm located to the prejudice of an Indian dweller would be removed.

In response to Spanish claims to the New World based on the Papal Donation resulting from the Spanish discovery, Queen Elizabeth announced that: This donation of what does not belong to the donor and this imaginary right of property ought not to prevent other princes from carrying on commerce in those regions or establishing colonies there in places not inhabited by the Spaniards. Such action would in no way violate the law of nations, since prescription without possession is not valid. This proclamation explicitly recognized the rights of Indians and therefore the authority of Indian Nations to establish those rights. The British, Dutch, Spanish, and French sought alliances with the Indian Nations in their ongoing struggles with each other and recognized Indian sovereignty.

In 1790, in a dispute known as the Nootka Sound Controversy, England and Spain agreed to the principle that areas of Northwest North America not actually occupied were open to free access by the traders of both states. In the dispute

over the Oregon Territory between the United States and Great Britain, both sides agreed by 1826 that mere discovery could not grant a complete title.

The British Commissioners argued: "Upon the question of how far prior discovery constitutes a legal claim to sovereignty, the law of nations is somewhat vague and undefined. It is, however, admitted by the most approved writers that mere accidental discovery, unattended by exploration—by formally taking possession in the name of the discoverers sovereign—by purchase of the territory, or receiving sovereignty from the natives—constitutes the lowest degree of title."

By the early 19th century, therefore, discovery alone was no longer valid as a distributional principle. Indeed, it is questionable if it ever was totally accepted as a sufficient basis for dominion. As a distributional principle it was given limited recognition and various definitions by the European states. The early publicists of the law of nations were in basic agreement that title was dependent on actual possession in addition to discovery. For perspective consider Metternich, in his day the most powerful statesman in Europe, as he fulminates against President Monroe's message of 1823, which we now call the Monroe Doctrine:

These United States have suddenly left a sphere too narrow for ambition, and have astonished Europe by a new act of revolt more unprovoked, fully as audacious and no less dangerous than the former. They have announced their intention to set not only power against power, but alter against alter. In their indecent proclamations they have cast blame and scorn on the institutions of Europe most worthy of respect. In permitting themselves these unprovoked attacks, in fostering revolutions wherever they show themselves, in extending a helping hand to those which seem to prosper, they lend new strength to the apostles of sedition and reanimate the courage of every conspirator. If this flood of evil doctrines and pernicious examples should extend over the whole of America, what would become of our political and religious institutions, of the moral forces of our government, and of the conservative system which has saved Europe from complete dissolution?

Intergenerational racism, ~~and~~ political, and economic aggression are built into the United States treaties of peace, friendship, commerce and navigation and are

transparently interpreted as the function of international law. The American expansion during the nineteenth century campaign invoked these treaties of cession of territories occupied by indigenous Peoples: Louisiana Purchase Treaty, April 30, 1803, art. III, 8 Stat. 200, T.S. No. 86; Treaty with Spain, February 22, 1819, United States-Spain, art. VIII, 8 Stat. 252, T.S. No. 327; Treaty of Guadelupe Hidalgo, February 2, 1848, United States-Mexico, arts. VIII, IX, 9 Stat. 922, T.S. No. 207; Gadsden Treaty, December 30, 1853, United States-Mexico, arts. V, VI, 10 Stat. 1031, T.S. No. 208; Alaska Cession, March 30, 1867, United States-Russia, art. III, 15 Stat. 539, T.S. No. 301; Treaty of Peace between the United States and Spain, December 10, 1898, (Treaty of Paris).

The United States Constitution is ambiguous on many things, but not on this. The president "shall take care that the laws be faithfully executed." Just as the Constitution provides that from time to time the president shall submit the State of the Union. The following is the message of President Grover Cleveland to Congress concerning the indigenous Peoples of Hawaii:

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#### MESSAGE OF PRESIDENT GROVER CLEVELAND

"I suppose that right and justice should determine the path to be followed in treating this subject. If national honesty is to be disregarded and a desire for territorial extension, or dissatisfaction with a form of government not our own, ought to regulate our conduct, I have entirely misapprehended the mission and character of our Government and the behavior which the conscience of our people demands of our public servants."

"I believe that a candid and thorough examination of the facts will force the conviction that the provisional government owes its existence to an armed invasion by the United States. Fairminded people with the evidence before them will hardly claim that the Hawaiian Government was overthrown by the people of the islands or that the provisional government had ever existed with their consent. I do not not understand that any member of this government claims that the people would uphold it by their suffrages if they were allowed to vote on the question."

President Cleveland continued:

"As I apprehend the situation, we are brought face to face with the following conditions:"

"The lawful Government of Hawaii was overthrown without the drawing of a sword or the firing of a shot by a process every step of which, it may safely be

asserted, is directly traceable to and dependent for its success upon the agency of the United States acting through its diplomatic and naval representatives."

"But for the notorious predilections of the United States Minister for annexation, the Committee of Safety, which should be called the Committee of Annexation, would never have existed."

"But for the landing of the United States forces upon false pretexts respecting the danger to life and property the committee would never have exposed themselves to the pains and penalties of treason by undertaking the subversion of the Queen of Hawaii's Government."

"But for the presence of the United States forces in the immediate vicinity and in position to afford all needed protection and support, the committee would not have proclaimed the provisional government from the steps of the Government building."

"And finally, but for the lawless occupation of Honolulu under false pretexts by the United States forces, and but for Minister Steven's recognition of the provisional government when the United States forces were its sole support and constituted its military strength, the Queen and her Government would never have yielded to the provisional government, even for a time and for the sole purpose of submitting her case to the enlightened justice of the United States."

"By an act of war committed with the participation of diplomatic representative of the United States and without authority of Congress, the Government of a feeble but friendly and confiding people has been overthrown. A substantial wrong has thus been done which a due regard for our national character as well as the rights of the injured people requires we should endeavor to repair. The provisional government has not assumed a republican or other constitutional form, but has remained a mere executive council or oligarchy, set up without the assent of the people. It has not sought to find a permanent basis of popular support and has given no evidence of an intention to do so. Indeed, the representatives of that government assert that the people of Hawaii are unfit for popular government and frankly avow that they can be best ruled by arbitrary or despotic power."

"The law of nations is founded upon reason and justice, and the rules of conduct governing individual relations between citizens or subjects of a civilized state are equally applicable as between enlightened nations. The considerations that international law is without a court for its enforcement, and that obedience to its commands practically depends upon good faith, instead of upon the mandate of a superior tribunal, only give additional sanction to the law itself and brand any deliberate infraction of it not merely as a wrong but as a disgrace. A man of true honor protects the unwritten word which binds his conscience more

scrupulously, if possible, than he does the bond a breach of which subjects him to legal liabilities; and the United States in aiming to maintain itself as one of the most enlightened of nations would do its citizens gross injustice if it applied to its international relations any other than a high standard of honor and morality. On that ground the United States can not properly be put in the position of countenancing a wrong after its commission any more than in that of consenting to it in advance. On that ground it can not allow itself to refuse to redress an injury inflicted through an abuse of power by officers clothed with its authority and wearing its uniform; and on the same ground, if a feeble but friendly state is in danger of being robbed of its independence and its sovereignty by a misuse of the name and power of the United States, the United States can not fail to vindicate its honor and its sense of justice by an earnest effort to make all possible reparation." (End of excerpt from Cleveland, 1893)

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### AMERICAN IMPERIALISM CONTINUUM IN LAW SCHOOLS

The following is a treatise written in 1899 by James Bradley Thayer, Dean of the Harvard Law School, which enlarges upon the concept that indigenous Peoples have an External relationship to the Constitution of the United States as contrasted to the Internal relationship to the United States Constitution of the European immigrants.

"Now let us observe an important point: when a new region is acquired it does not at once and necessarily become a part of what we call the "territory" of the United States. Or, to speak more exactly, the people in such regions do not necessarily hold the same relation to the nation which the occupants of the territories hold. It is for the political department of the government, Congress or the treaty-making power, to determine what the political relation of the new people shall be. Neither they nor their children born within the newly acquired region, necessarily become citizens of the United States."

Thayer continued: "Take for illustration, the case of our tribal Indians. Always many of them have lived within the territories of the United States. Our government has mainly followed the example of our English ancestors of recognizing them as tribes rather than individuals. Congress and the treaty-making power have dealt with them as a separate people, who have their own rules, customs and laws, although living on our land. While regulating "commerce with the Indian tribes," to use the phrase of the Constitution, and so laying down rules for governing the intercourse between Indians and others, and punishing crimes committed by tribal Indians on whites, or vice versa, Congress has never yet, by any wholesale provision, undertaken to bring them fully under subjection to us. That Congress might do this at any time, is settled. It has done it partly and by steps and degrees, as much as it pleased, all along. It has

ended the business of making treaties with them, and has begun to punish crimes committed by one tribal Indian on another in the Indians' own country."

"And yet the Supreme Court has held that the Fourteenth Amendment did not make tribal Indians citizens of the United States. That Amendment, coming into effect in July, 1868, provided that "all persons born or naturalized in the United States and subject to the jurisdiction thereof" are citizens of the United States. Distinguished persons used to think that all tribal Indians born in our country, like the Chinese, as recently held, were thus made citizens of the United States. That was the publicly expressed opinion of Senator Hoar and of Senator Morgan. But fifteen years ago the contrary was decided by the Supreme Court of the United States. (Elk v. Wilkins, 112 U.S.94)

Since they are born, said the Court, "members of and owing immediate allegiance to one of the Indian tribes, an alien though dependent power, although in a geographical sense born in the United States," they are in the same case with children of a foreign ambassador here. Yet, remember, we hold those people, the Indians, in the hollow of our hand; it is in our power, and has been from the beginning, and not in theirs, to say whether they shall continue to hold this relation. We can reduce them at any moment to full subjection; so that we are to observe that the question of whether, while living and being born here, they shall become citizens, is a question to be determined by the mere will and pleasure of Congress. Long ago, more than fifty years ago, in affirming the right of the United States to exercise its jurisdiction in the "Indian country," Chief Justice Taney, giving the opinion of the Supreme Court, said, "But . . . were the right and propriety of exercising this power now open to question, yet it is a question for the law-making and political power of the government, and not for the judicial. It is our duty to expound and execute the law as we find it, and we think it too firmly and clearly established to admit of dispute that the Indian tribes residing within the territorial limits of the United States are subject to their authority." We may take it, then, as settled, that it is for Congress or the treaty-making power to say what shall be the permanent political position of the new people. As to not one of them is it yet determined, except in the case of Hawaii, that it is a "territory."

In the first century of U.S. legal history, a major portion of legislative, administrative, and judicial time and effort was devoted to the absorption of foreign legal systems, and to the transformation of rights and claims acquired thereunder into titles familiar to Anglo-American jurisprudence. Customary international law provided the ground rules for determining the effects of state succession on the law of former sovereign, and at least five treaties contained express guarantees of private rights acquired under the law of the former sovereign.

Two principles simplified the unification of the American legal system. First, the law of the former territorial sovereign, to the extent that it had to be applied, represented domestic law to U.S. courts. Second, the law of the former sovereign could be established by expert testimony.

An adjudication might not, strictly speaking, require the proof of international law, but might only necessitate establishing the reasonableness of a party's position as to its rights under international law. Expert testimony relating to international law can establish as the key element of a good faith defense that the counsel upon which the party relied was skilled in the practice of international law.

Although issues of international law were presented to the court by traditional methods, testimonial evidence on international law clearly would have been admissible as well.

In the United States this policy is mandated by the Full Faith and Credit of clause of the United States Constitution: "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State." This constitutional provision has been implemented by federal statute. "Such Acts, records and judicial proceedings or copies thereof, so authenticated, 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."

In the final analysis, the willingness of one country to recognize another country's money-judgments rests upon the paramount yet often elusive concept of comity. Comity is generally analogous to and described as the international equivalent of the full faith and credit clause of the United States Constitution as applied to the sister states. Comity stands for the proposition that, as a general rule, foreign country judgments are as much entitled to the recognition in the United States as judgments between the sister states. The United States Supreme Court recognized comity in the landmark case of Hylton v. Guyot, 159 U.S. 113(1895). The Supreme Court stated that comity is: "neither a matter of absolute obligation, on the one hand, nor of mere courtesy and good will, upon the other. But it is the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of other persons who are under the protection of its laws."

Both the Restatement and the Uniform Foreign Money-Judgments Recognition Act are grounded upon the basic notions of comity.

Comity is, of course, subject to a number of constraints. One of the primary limitations that continues to be acknowledged by some courts in the United



States is that of reciprocity. In Hylton v. Guyot the Supreme Court concluded that comity called for enforcement of foreign judgments only on the basis of reciprocity.

Recently, the United States has attempted to provide a firmer basis for the recognition and enforcement of foreign-country judgments by negotiating its first treaty covering this subject. The Convention Between the United Kingdom and the United States for the Reciprocal Recognition and Enforcement of Judgments in Civil Matters was initialed by the parties in October 1976.

And, finally, in United States v. Belmont, 301 U.S. 324 (1937), the Supreme Court acknowledges that; "Our constitution, laws, and policies have no extra-territorial operations, unless in respect of our own citizens." In context, however, the Court was asserting merely that our Constitution, laws, and policies do not govern the acts of other governments.

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#### THE CONCEPT OF EXTERNAL SELF-DETERMINATION

The concept of self-determination has two applications. The first application is that principle of External Self-determination whereby original peoples, such as the Inupiat, Athabaskan, Aleut, Tlingit, Haida, Yupik, Eyak, and Hawaiians, are entitled to pursue their political, cultural, and economic wishes without interference or coercion by outside states. This principle of Inuit self-determination predates and is therefore outside of the scope of both the Constitution of the United States and Chapter 1, Article 2, Section (7) of the United Nations Charter which states: "Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the applications of enforcement measures under Chapter VII." The principle of External Self-determination is the foundation for the original sovereignty of the Inuit, the indigenous Peoples of Alaska, Canada, Greenland, and Siberia. This principle also applies to the Hawaiians.

The psychological force of this principle of self-determination lies in a basic human desire to associate primarily with one's immediate fellows (family, clan, tribe, or village). The recent moral appeal of this principle seems to arise from a recognition of the harsh treatment and exploitation that have historically been the fate of groups ruled by an "alien people". The anthropologist may tell us that our tribal ancestors gradually acquired a knowledge which equated the unfamiliar with the hostile, and which taught that whatever small security could be found in life would come from a close association with one's insular group. Whether we are now heirs to a legacy of collective consciousness in which these reactions have become instinctive, or whether we have deduced them from the

ample data of recorded history, is of no particular moment here. It is sufficient to recognize that a demand for self-determination will often be deeply rooted in a wish to perpetuate the sense of comfort and security that attends a parochial environment including local self-government, and it may be reinforced by a prejudice that "alien" government will always be harsher, less receptive, and, by definition, supportive of alien values.

If history were a chronicle of the voluntary association and disassociation of human groups, there would be no need for a doctrine of self-determination. Without the effects of conquest, forced annexation, subjugation, dynastic union, and colonial expansion, the world's peoples would presumably now be arranged into freely chosen political units. It is the distinct absence of such a peaceful evolution of mankind's social organization which ultimately gave rise to the principle of self-determination as the twentieth century's primary expression of disapproval of involuntary political association. (from Lee. C. Buchheit, 1978)

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### THE CONCEPT OF INTERNAL SELF-DETERMINATION

The second application is that principle of Internal Self-determination which encompasses the rights of all of the immigrant groups within a population to influence the constitutional and political structures of a system under which they live. The United States and Russia are benefactors of this second application as it was through violent opposition to their original government that the United States and Russia created derivative title. Practical and legal difficulties occur when an assertion of self-determination is made forcibly by a population or part of the population in a state or territory. Within this category, depending upon the size, motives, and success of the claimant group, are instances of rebellion, insurrection, revolution, secession, and movements for colonial independence.

Both the world community and the doctrines of international law find some of these forms of contentious self-determination far less objectionable than others. It is of course understandable that a community composed of States and a legal system that purports only to regulate the rights and duties of States would react adversely to any threat to the present State-centered order. To the extent that self-determination assumes the form of a revolution seeking to replace the existing government of the whole State, or a movement to free a colonial people, colonial domination now being widely regarded as an illegitimate exercise of State authority, it does not seriously threaten the foundations of the inter-State order and is therefore more agreeable to members of the world community. None of these conditions of Internal Self-determination applies to the Inuit as we are not now, nor have ever been, a "colonial people". We are not secessionists.

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## THE AMERICAN AND RUSSIAN EXPERIENCE

It is worthwhile to consider in more detail the reactions of both the United States and Russia towards the problems of secession. These two States warrant special attention for a number of reasons: (1) each was the offspring of a revolutionary parenthood in relatively recent history; (2) each contains a large, heterogeneous population; and (3) each State occupies a central position within its international "camp" and strongly influences the attitudes of its ideological compatriots toward international issues.

First, consider the American experience. The lesson learned by the United States during the first hundred years of its history has been that government should rest on the consent of the governed and that this is a fundamental principle to which we all subscribe. To translate it into a popular right of self-determination is a singularly difficult and hazardous task. The "right" to secede had in fact been accepted both as truth and as treason by each section of the country in turn, depending upon whether or not its interests were temporarily served by affirming or by denying the sovereignty of the central government.

The recognition of this "right" of secession did not, however, impede the trend of Northern opinion in denying the right of secession for their Southern brethren. President Lincoln expressed a somewhat different opinion on this subject. Secession was no longer seen as a "sacred right," but rather as the "essence of anarchy." His argument for the perpetual nature of the union invoked two of the traditional themes of those opposing secession; the need for governmental oppression as a precondition of a legitimate secession and the prospect of indefinite divisibility. Granting that the nature of a democracy is rule by the majority and that this fact will sometimes be the cause of a disaffection in the minority, Lincoln nevertheless reiterated that the United States Constitution guarantees protection for both minority groups and individuals against an undue tyranny of the majority. By implication, in the absence of such tyranny, and in the light of those protections, Lincoln felt that there was no "right" to secede.

The issue decided upon the battlefields of the American Civil War—that the union was indivisible and component states could not unilaterally secede from it—was given judicial recognition at the war's end. The answer in terms of constitutional law was, of course, a reaffirmation of the legality of the unionist wartime cause. In the case of Texas vs. White, (7 Wall.) 700, 725 (1869) decided in April 1869, Chief Justice Samuel P. Chase, speaking for a majority of the United States Supreme Court, did not consider it necessary to discuss at length the question whether the right of a state to withdraw from the union for any cause regarded by itself as sufficient was consistent with the Constitution of the United States. The union of the states, he believed, was never a purely artificial and arbitrary relation. Beginning with the original colonies, the relation

grew out of common origin, mutual sympathies, kindred principles, similar interests, and geographical relations:

It was confirmed and strengthened by the necessities of war, and received definite form, and character, and sanction from the Articles of Confederation. By these the Union was solemnly declared to "be perpetual." And when these articles were found to be inadequate to the exigencies of the country, the Constitution was ordained "to form a more perfect Union." It is difficult to convey the idea of indissoluble unity more clearly than by these words. What can be indissoluble if a perpetual Union, made more perfect, is not?

Next, consider the Russian revolutionary experience. Unlike the United States Constitution, the Constitution of the Union of Soviet Socialist Republic provided in Article 17, that; "the right freely to secede from the USSR is reserved to every Union Republic." The right to secede is a constitutional right in Russia today. Not so for the Americans, nor their subdivisions such as the North Slope Borough within the State of Alaska.

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#### THE ALASKA STATEHOOD COMMISSION

The People of the State of Alaska felt so strongly about the failed assumptions of jurisdiction and the alienating forces of their clouded Constitutional rights that they petitioned themselves for the creation of the Alaska Statehood Commission in 1980 via public referendum. By the vote of the people a report concluded a two-year study of Alaska's relationship to the United States for the Anglo-Saxon inhabitants: "We considered the benefits and liabilities of commonwealth, of free association, of territory-hood, and of partition. We studied independence by legal means. None is preferable to statehood." However, there is a gross self-denial by the Anglo-Saxon of Alaska regarding the Constitutional relationship within the American context as the Commission's report included this statement: "We reject the notion that our governmental system forms a pyramid of power with the federal government seated on top." This reflection of Constitutional ignorance is apparent throughout the majority of the Alaska Supreme Court and the State of Alaska's executive branch as well as the Alaskan delegation in Congress.

On occasion the federal courts have held none of these jurisdictional regulations to be unconstitutional. It is also true that the State of Alaska's Subsistence Regulation is subject to this constitutional test. In Ex Parte McCardle, the Supreme Court, in complying with the 1868 act by dismissing the habeas appeal before it for want of jurisdiction, declared: "Without jurisdiction the court cannot

proceed at all in any case. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause." Taken in isolation, this language suggests that, if Congress removes a federal court's jurisdiction, the federal court is without power to review the constitutionality of the jurisdictional statute since the power to review presupposes the jurisdiction which Congress removed. But this proposition is open to attack on a number of levels. First, it represents a misreading of the *McCardle* opinion; the passage quoted follows a paragraph in which it appears that the Court did indeed decide whether the congressional action was consistent with the Constitution: "We are not at liberty to inquire into the motives of the legislature. We can only examine into its powers under the Constitution; and the power to make exceptions to the appellate jurisdiction of this court is given by express words."

The State of Alaska and its courts cannot operate in a vacuum. Neither can the State of Alaska continue to justify any miscarriage of justice towards the hunting, fishing, and trading rights of the indigenous Peoples through simple desire and a romanticized frontier barbarism. The misguided Alaskans must be informed of the United States Constitutional realities and their legal relationship and responsibility towards the United States government.

#### QUESTION ONE

Can a treaty such as the Genocide Convention of 1988 or the Migratory Bird Treaty of 1920 nullify the provisions of the State of Alaska Constitution?

ANSWER: Yes. A treaty will override the provisions of any state constitution since a treaty becomes the Supreme Law of the Land. Any state constitution which is contrary to the terms and the language of the treaty will be nullified or will be affected so as to bring it in line with the treaty provisions, just as a federal law may affect or nullify the provisions of a state constitution.

#### QUESTION TWO

Can a treaty such as the Genocide Convention of 1988 or the Migratory Bird Treaty of 1920 affect or nullify the State of Alaska's Subsistence Law and its regulations?

ANSWER: Yes, of course. The same as any kind of federal legislation preempts a state's statute covering the same area. [*Ware v. Hylton*, 3 Dall. 199, 204 ("...it was by the Constitution of the United States of America, among other things, expressly declared that treaties which were then made; or should thereafter be made, under the authority of the United States should be the supreme law of the land, anything in said constitution, or of the laws of any state to the contrary notwithstanding ...."); *Id.* at 237 ("....it is the declared duty of any

of the State Judges to determine any Constitution, as the laws of any state, contrary to the treaty (or anyother) made under the authority of the United States, null and void."}]

### QUESTION THREE

Can a treaty such as the Genocide Convention of 1988 or the Migratory Bird Treaty of 1920 affect or nullify a prior judicial decision of the Supreme Court of the State of Alaska?

ANSWER: Of course. As already stated a treaty is the supreme law of the land. Like any federal legislation it will affect or nullify any prior judicial decision of a state supreme court."

### QUESTION FOUR

Can a treaty such as the Genocide Convention of 1988 or the Migratory Bird Treaty of 1920 increase the powers of the Federal Government at the expense of the State of Alaska?

ANSWER: Not only can it do so, but we have history to prove that it does. The migratory birds case [Missouri v. Holland, 252 U.S. 416 (1920).] increased the powers of the federal government by the Supreme Court ignoring the Tenth Amendment. The dictum in Reid [Reid v. Covert, 354 U.S. 1 (1957).] is no help in saying that the holding of the migratory birds case by Justice Holmes has been limited to that case and has put a stop to increasing the powers of the federal government by way of treaty.

Our claim to jurisdiction is inherent and it is for the Inupiat, Athabascan, Aleut, Tlingit, Haida, Yupik, and Eyak to determine the destiny of our territory and not the territory to determine, from afar, the destiny of the Inuit. Our hunting, fishing, and trading rights have not been yielded to Russia nor to the United States during peacetime, at war, nor through the conveyance of a treaty. In United States v. Winans, (198 U.S. 371), the Supreme Court found that the right to resort to the fishing places in controversy was a part of larger rights possessed by the Indians, upon the exercise of which there was not a shadow of impediment, and which were not much less necessary to the existence of the Indians than the air they breathed. In other words, the principle of law in effect is that there has not been a grant of rights to the Inuit, but rather a grant of rights from ourselves, a reservation of those not granted. And, this principle of law includes our inherent hunting and trading rights and "commercial fishing" rights.

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### RECOMMENDATIONS OF THE ALASKA STATEHOOD COMMISSION

Within the power structure of the North Slope Borough and the Arctic Slope Regional Corporation, the blatant ignorance of Constitutional relationships is perpetuated in a study ordered by the North Slope Borough and supported by the Arctic Slope Regional Corporation. This ill-advised study, which considers secession as an alternative to the present relationship, has already been completed by the Alaska Statehood Commission and their findings published in the January 24, 1983 Alaska Statehood Commission Report for the people of Alaska. The Commission report affirms the present relationship between the United States and the State of Alaska and its subdivisions. However, the Commission found a different legal footing for the status of the Inupiat, Athabascan, Aleut, Tlingit, Haida, Yupik, and Eyak of the Arctic Region. For the indigenous Peoples the Commission proposed the concept of Free Association between the United States and the indigenous Peoples of Alaska.

The Inupiat, Athabascan, Aleut, Tlingit, Haida, Yupik, and Eyak Peoples are a group of people living in a geographically distinct portion of an American State governed by people with whom they share no significant ties of history, language, or culture. This difference is of an external source and therefore different from the political and economic aggression of the American government demonstrated through the forcible incorporation of the Territory of Alaska and finally the forcible incorporation of the Statehood Act. Granting the nature of forcible incorporation with a landed majority of Anglo-Saxons, this has been the source of disaffection and alienation of the Inupiat, Athabascan, Aleut, Tlingit, Haida, Yupik, and Eyak. The Constitution of the United States guarantees protection for both minority groups and individuals against the undue tyranny of the majority. This was not the case for the indigenous Inuit Peoples. Just before his death, Senator Bob Bartlett, Democrat of Alaska, said to me that, "The United States stole Alaska from the Natives and they did it with lobbyists in smoke filled rooms with mirrors, Charlie." (September, 1968 Washington, D.C.)

The following are two pertinent sections of the Alaska Statehood Commission Chapter VII Section B in full. The sections are titled; "The Concept of Free Association", and "The Principle of Equal Rights and the Self-determination of Peoples."

### THE CONCEPT OF FREE ASSOCIATION

The subject of free association has been developed by the practice of the General Assembly under Chapter XI of the United Nations Charter. This section deals with non-self-governing territories other than those brought under the trusteeship system, which are governed by other provisions of the Charter. Article 73 of Chapter XI provides as follows:

Members of the United Nations which have or assume responsibilities for the administration

of territories whose peoples have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories, and, to this end:

- a. to ensure, with due respect for the culture of the peoples concerned, their political, economic, social, and educational advancement, their just treatment, and their protection against abuses;
- b. to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement;
- c. to further international peace and security;
- d. to promote constructive measures of development, to encourage research, and to cooperate with one another and, when and where appropriate, with specialized international bodies with a view to the practical achievement of the social, economic, and scientific purposes set forth in this Article; and,
- e. to transmit regularly to the Secretary General for information purposes, subject to such limitations as security and constitutional considerations may require, statistical and other information of a technical nature relating to economic, social, and educational conditions in the territories for which they are respectively responsible other than those territories to which Chapters XII and XIII apply.

The claim of political self-fulfillment by the United States government to the standard of Article 73, Section (e) of the United Nations Charter constitutes



intrinsic and extrinsic fraud upon the indigenous populations of the Inuit and the Hawaiians. Intrinsic fraud is fraud in the underlying transaction; as in the 1867 Treaty of Cession and the 1971 Alaska Native Claims Settlement Act. Extrinsic fraud deprives a party of an opportunity to present adequately his claim. As in Tee-Hit-Ton, and United States vs. Arco (originally known as Edwardsen vs. Morton.) The indigenous Peoples of Hawaii and insular territories have experienced extrinsic fraud in these three cases: Carino v. Insular Government, 12 U.S. 449, Damon v. Hawaii, 194 U.S. 154 and Carter vs. Hawaii, 200 U.S. 255.

Extrinsic fraud must be proved by clear and convincing evidence; Clarkson Co., Ltd. v. Shaheen, 544 F.2d 624, 631 (2d Cir. 1976) and the claim of extrinsic fraud must not have been presented to the court at the original trial; Harrison v. Triplex Gold Mines, 33 F.2d 667, 671(1st Cir. 1929). One court has held that a stranger to a foreign judgment can impeach it for fraud, even extrinsic, only by showing that if it is enforced, his rights will be prejudiced; The W. Talbot Dodge, 15 F.2d 459, 462 (S.D.N.Y. 1926) and Hylton v. Guyot, 159 U.S. 113,206-10 (1895). The grant of statehood for the State of Alaska and the State of Hawaii fall into the legal category of extrinsic fraud.

In 1960, the General Assembly adopted Resolution 1514 which recognized the right to self-determination and implied that this meant independence. However, the General Assembly also adopted Resolution 1541 which recognized that there are three different ways for a non-self-governing territory to reach a "full measure of self government": (a) emergence as a sovereign independent state; (b) free association with an independent state; (c) integration with an independent state.

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## THE PRINCIPLE OF EQUAL RIGHTS AND SELF-DETERMINATION OF PEOPLES

By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter.

Every State has the duty to promote, through joint and separate action, realization of the principle of equal rights and self-determination of peoples, in accordance with the provisions of the Charter, and to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of the principle, in order:

- (a) To promote friendly relations and co-operation among States:

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