

By Ambassador Ronald F. Barnes

The Indigenous Peoples<sup>1</sup> of Alaska have never relinquished their absolute title rights and their international legal and political status. Ambassador Ronald F. Barnes, representative of the Indigenous Peoples of Alaska before the United Nations in Geneva, has lodged several diplomatic protests against the United States of America and the United Nations itself for the denial of the right of self-determination to the Alaska natives on grounds of racial discrimination.

### **How did Alaska achieve this historically recognized international status?**

Alaska was placed on the list of Non-Self-Governing Territories by virtue of General Assembly resolution 66 (I) in 1946, in recognition of its unresolved international legal and political status. The United States of America, Great Britain and others asserted the independence of Alaska from the Russian Monarchy in the 19<sup>th</sup> century and asserted their right to unregulated direct trade with Alaska's Indigenous Peoples.

The historical reasons for Alaska being placed on an equal plane with European Nations can be found in the documents published in 1903 concerning the Alaska Boundary Tribunal between Great Britain and the United States of America and in the diplomatic communication entitled *Confidential Memorial*<sup>2</sup>. Secretary of State John Quincy Adams on behalf of President James Monroe asserted to the Monarchy of Russia using the treatise "Law of Nations" by Emmerich de Vattel that, "she had no right to claim, either under the *title of discovery* or of *possession*" the Northwest Coast of North America (Alaska). The United States indicated that it "does not appear to establish that the territory in question has been legitimately incorporated within the Russian empire". Further, the United States acted on the position that "the natives ought to be regarded as independent tribes" by continuing to trade directly without the regulation or prohibition of the Monarch of Russia. The maxim "*Nemo dat quod non habet*" or "*no man can give another any better title than he himself has*" applies to the 1867 Treaty of Cession between the Monarchy of Russia and the United States of America since Russia had not acquired sovereignty over Alaska, but only special trade rights with the natives. In any event, the Indigenous Peoples did not lose their right to the land and must be seen as an independent and non-consenting third party to the 1867 Treaty.

The United Nations Special Rapporteur Professor Miguel Alfonso Martinez stated in his report to the Sub-Commission on the Promotion and Protection of Human Rights that the 1867 Treaty of Cession of Alaska between the Monarchy of Russia and the United States of America granted neither title nor jurisdiction to the United States of America<sup>3</sup>. In his final report Professor Martinez stated that the burden of proof is on States to prove they have properly acquired the territory of Indigenous Peoples<sup>4</sup>.

The United Nations did not monitor the 1958 referendum that led to removal of Alaska from the list of Non-Self-Governing Territories by General Assembly resolution 1469 of 12 December 1959, violating

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<sup>1</sup> The term 'Indigenous Peoples' is capitalized to underline the importance of our status and rights.

<sup>2</sup> Senate Document Number 384 of the 18<sup>th</sup> Congress, 2d Session, 1824

<sup>3</sup> E/CN.4/Sub.2/1992/32 of 25 August 1992, *Study on Treaties, Agreements and Other Constructive Arrangements between States and Indigenous populations*, First Progress Report

<sup>4</sup> E/CN.4/Sub.2/1999/20 of 22 June 1999

United Nations procedures, principles and international law<sup>5</sup>. The United States denied the right of self-determination to the Indigenous Peoples of Alaska by instituting doctrines of superiority and racial discrimination in Alaska in the US Supreme Court judgments *Johnson v. McIntosh*<sup>6</sup> and the *Tee-Hit-Ton v. United States of America*<sup>7</sup> despite its obligation to remove racial discrimination in law and policy<sup>8</sup> after it asserted absolute title and denied Russia could claim *discovery title* or *possession*. The United States misled the General Assembly in the report, among other violations, by not stating that it had allowed its military and American citizens and immigrants<sup>9</sup> to vote in the referendum. Indigenous Peoples were subject to fines and imprisonment if they attempted to vote if they could not read, write and speak English. The UN did not properly scrutinize the referendum and adopted GA Resolution 1469 without the safeguards foreseen in Chapter XI of the Charter<sup>10</sup>.

At the San Francisco Conference in 1945, the United States delegate, under the leadership of Secretary of State Edward Reilly Stettinius Jr., affirmed to the Netherlands delegate that “protection against abuses” in Article 73 of the UN Charter includes the obligation to protect against *racial superiority*<sup>11</sup>.

### **What other Special Procedures and Mechanisms support your claim for re-enlistment?**

UN Special Rapporteur Erica-Irene A. Daes denounced the racially motivated *McIntosh* and the *Tee-Hit-Ton* cases that were used to confiscate land or property without due process of law and without just compensation<sup>12</sup>. Without Tribal Government consent the US Congress relied on these cases to extinguish title and to unilaterally adopt the 1971 Alaska Native Claims Settlement Act (ANCSA).

The Human Rights Committee called on the United States of America in 2006 to address the permanent trusteeship of Alaska<sup>13</sup>. In 2015 at the Human Rights Council’s debate on the US report under the Universal Periodic Review, the Islamic State of Pakistan recommended the implementation of paragraph 69 (n) of report A/68/284, to essentially re-enlist Alaska, Hawaii and put the Dakotas on the List of Non-

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<sup>5</sup> hr/Geneva/tsip/sem/2003/bp - OHCHR

<sup>6</sup> *Johnson v McIntosh*, 21 U.S. (8 Wheat.) 543, 1823, declares that Indigenous Peoples must adhere to the superior genius of European ascendancy or to the doctrines of superiority based on race and religion.

<sup>7</sup> 348 U.S. 272, 1955, see footnote 18

<sup>8</sup> General Assembly resolution 644 (VII) of 10 December 1952 – this resolution called on all Administering States to abolish discrimination in law and policy in Non-Self-Governing Territories.

<sup>9</sup> Yule F. Kilcher, immigrant from Switzerland, born 9 March 1913, participated in the Alaska Constitutional Convention in 1956 to integrate Alaska into the United States without considering independence.

<sup>10</sup> Professor S. Hasan Ahmad book *The United Nations and the Colonies*: The removal of Alaska and Hawaii from the list of Non-Self-Governing Territories was unilateral as 1) the situations were not examined in sufficient detail 2) the peoples were not granted the right to petition the United Nations and 3) the agencies responsible for examination did not study the change in the political condition and the status in the territories.

<sup>11</sup> Kelsen, Hans. *The Law of The United Nations: A Critical Analysis of Its Fundamental Problems*, New York, Frederick A. Praeger, 1950. The London Institute of World Affairs.; (U.N.C.I.O. Doc.1115, II/4/44 (I) (a), p. 13)

<sup>12</sup> E/CN.4/Sub.2/2001/21 of 11 June 2001, Indigenous Peoples and the Relationship to Land, paragraphs 41-45

<sup>13</sup> CCPR/C/USA/CO/3/Rev.1, 18 December 2006

Self-Governing Territories<sup>14</sup>. The United States equivocated on its promise not to equivocate by the Head of the United States Delegation and refused Pakistan's recommendation<sup>15</sup>.

In a recent letter dated 30 April 2018, the then Independent Expert on the promotion of a democratic and equitable international order endorsed the premise that there is Apartheid in Alaska: The United States Supreme Court instituted doctrines of superiority and racial discrimination in law and policy by the *Tee-Hit-Ton v United States of America* (348 U.S. 272, 1955) making it clear in footnote 18 that "This purpose in acquisition and its effect on land held by the natives [of the Philippines] was distinguished from the settlement of the white race in the United States where the dominant purpose of the whites in America was to occupy the land." Further, the Tee-Hit-Ton judgment relies on the precedent of the *Johnson v McIntosh*, (21 U.S. (8 Wheat.) 543, 1823) case which held that the character and religion of the native inhabitants of America justified "considering them as a people over whom the superior genius of Europe might claim an ascendancy." The denial of the right of self-determination on grounds of racial discrimination and the application of doctrines of superiority constitutes a crime against humanity tantamount to a form of Apartheid.

The 1970 General Assembly Declaration on Friendly Relations<sup>16</sup> adopted by consensus states that the status of a territory or colony remains separate and distinct until the people have exercised their right of self-determination in accordance with the purposes and principles of the Charter. The flagrant violations of the right of self-determination in Alaska and Hawaii justify revisiting the 1958 referenda and re-enlisting Alaska and Hawaii under Article of the UN Charter.

### **Petition to CERD on Article 15 of ICERD for Alaska and Hawaii**

The Indian Council of South America (CISA) on behalf of the Indigenous Peoples and Nations Coalition (IPNC<sup>17</sup>) delivered interventions presented by Ambassador Ronald Barnes concerning the institutional discrimination at the Ninth Working Group of the Ad Hoc on Complimentary Standards<sup>18</sup>. Paragraph 207 of the report gives the essential features succinctly:

The representative of the non-governmental organization Indian Council of South America took the floor to make a statement on behalf of the Indian Council of South America (CISA) and the Indigenous Peoples

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<sup>14</sup> Working Group of Universal Periodic Review, 11 May 2015, placed in HRC Report (A/HRC/30/12) See webcast of Pakistan intervention: <http://webtv.un.org/search/usa-review-22nd-session-of-universal-periodic-review/4229106421001/?term=&lan=english&cat=UPR%2022nd&sort=date&page=2#>

<sup>15</sup> Ibid., USA Review, 22<sup>nd</sup> Session of Universal Periodic Review, 11 May 2015, headed by H.E. Keith Harper, Permanent Representative of the USA for Human Rights and Ms. Mary McLeod, Acting Legal Adviser of the Office of the Legal Adviser of the U.S. Department of State, see webcast: <http://webtv.un.org/search/usa-review-22nd-session-of-universal-periodic-review/4229106421001/?term=&lan=english&cat=UPR%2022nd&sort=date&page=2>

<sup>16</sup> General Assembly ('UNGA') Resolution 2625 (XXV) of 24 October 1970

<sup>17</sup> IPNC is accredited to the World Conference Against Racism and to the Durban Review Conference. IPNC is the "free political institution" under Article 73 (b) of the UN Charter.

<sup>18</sup> The Working Group convenes in accordance to paragraph 199 of the 2001 World Conference Against Racism (WCAR) in Durban, South Africa. IPNC is accredited to the WCAR and the 2009 Durban Review Conference

and Nations Coalition (IPNC) on what they consider an unresolved and institutional racial discrimination that persists in national legislation due to the reluctance to address obligations of Administering Powers and its shortcomings in abolishing racial discrimination in the implementation of Article 73 concerning Non-Self-Governing Territories in light of Article 15 of International Convention on the Elimination of Racial Discrimination (ICERD). In this regard, CISA and IPNC suggested to the Ad Hoc Committee that it request CERD to address the Petition of IPNC, CISA and Koani Foundation: or that it requests CERD to implement its own procedure by transmitting their case to the United Nations Decolonization Committee of 24 for review and instruction to CERD if necessary; or that it requests the General Assembly to adopt a resolution to address shortcomings concerning the implementation of Article 15 of the Convention.

IPNC and Koani called upon CERD to implement paragraph 5<sup>19</sup> of the 1970 procedure it adopted during its 2<sup>nd</sup> session (A/8027) to transmit the cases of Alaska and Hawaii to the United Nations Decolonization Committee of 24 pursuant to Article 15 of ICERD. CERD procrastinated and to this day has declined to invoke its own procedure.

### **What to do?**

The Committee on Complementary Standards must make recommendations to the Human Rights Council to address gaps in the treaty bodies and Special Procedures, including to re-institute self-determination as an agenda item at the Human Rights Council and to explore ways to address the politicization and selectivity and the lack of political will at the United Nations. The Human Rights Council must request the General Assembly and the Special Committee on Decolonization to implement paragraph 69 (n) of report A/68/284 to review and re-enlist Alaska and Hawaii. CERD and the Human Rights Committee can be called upon to address cases such as Alaska and Hawaii in accordance with Article 15 of ICERD and Article 1 of the ICCPR respectively and to send recommendations to the General Assembly concerning denial of the right to self-determination on grounds of racial discrimination and apartheid to the Special Committee on Decolonization and the General Assembly in New York.

The United Nations and the United States and Member States must support an immediate freeze and moratorium on further efforts to exploit the territory and resources belonging to the Indigenous Peoples of Alaska and Hawaii. They must advocate the release of illicit funds held for the exploitation of resources, including oil and gas and lands and for the restoration of territory and for just compensation for the illegal use of territory and resources.

The IPNC and Koani are grateful to Independent Expert Alfred Maurice de Zayas, Erica A. Irene Daes, Miguel Alfonso Martinez, the Islamic Republic of Pakistan and to the Human Rights Council's Special Procedures for their courage and recommendations to address a grave issue against a powerful state who hitherto has granted itself impunity and does not comply with the pertinent recommendations of the Human Rights Committee and other UN bodies.

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<sup>19</sup> The procedure states that CERD could transmit a petition it received directly to not deprive the petitioner or the competent bodies of the United Nations the opportunity to have the petition considered by the appropriate international body.