

MEMORANDUM

Date: 30 April 2018

From: Professor Alfred M. de Zayas, Geneva School of Diplomacy
United Nations Independent Expert on the promotion of a democratic and equitable international order (2012 - 2018)
Office of the High Commissioner for Human Rights

To: United Nations Secretary General
United Nations General Assembly
United Nations Security Council
Member States and Observer States of the United Nations
United Nations Special Committee on Decolonization
Human Rights Council, President, and Special Procedures
Chairperson, Human Rights Committee
Chairperson, Committee on the Elimination of Racial Discrimination
Chairperson, Committee on Economic, Social and Cultural Rights
United States of America - Executive, Legislative and Judicial Branches
Authorities of the State of Alaska and all functions of government

Re: Self-determination in Alaska;
Revisiting General Assembly resolution 1469 (XIV) 12 December 1959
International Legal and Political Status of Alaska
Rights of Indigenous Peoples of Alaska, including sovereign immunity of agents
Absolute title rights and right of self-determination of the Indigenous of Alaska

As the Independent Expert on the promotion of a democratic and equitable international order I presented a report to the General Assembly in 2014 that is entirely devoted to the theory and practice of self-determination (A/69/272). I was on an official visit to Alaska in June of 2014 at the invitation of the National Congress of American Indians (NCAI) through the work of Mary Ann Mills and indigenous civil society.

The rights of the Indigenous Peoples of Alaska are asserted in the Shadow Reports submitted by the Indigenous Peoples and Nations Coalition (IPNC) and in the Expert Papers presented by Ambassador Ronald F. Barnes, Angulluaq, to the Human Rights Council, its Special Procedures and various bodies and agencies of the United Nations. I can also attest to the good character and professionalism of Ambassador Barnes for his consistent work on the human rights and the right of self-determination of Alaska.

The Special Rapporteur Professor Miguel Alfonso Martinez stated in the first progress report of his *Study on Treaties, Agreements and Other Constructive Arrangements Between States and Indigenous populations* 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 America¹. 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 Peoples².

In my judgment as Professor of law, the Indigenous Peoples of Alaska possess international status that they can assert without threat, duress and coercion as subjects of international law. The United

¹ E/CN.4/Sub.2/1992/32 of 25 August 1992

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

States of America, its political subdivisions and courts cannot reduce, diminish or extinguish the international status of Indigenous Peoples by invoking domestic United States law.

Their land rights and the right of self-determination exist because they have never relinquished their status or ceded their rights to the United States of America. The 2006 conclusions and recommendations of the Human Rights Committee concerning the 2nd and 3rd periodic reports of the United States call upon the United States to address the permanent trusteeship of Alaska³.

During my visit to Alaska I recalled my recommendation in paragraph 69 (n) of my report to the General Assembly (A/68/284) and that Alaska's status should be revisited and placed under Chapter XI of the United Nations Charter, which entails re-enlisting in the list of Non-Self-Governing Territories (Article 73 and other provisions of the Charter and international law). General Assembly resolution 1469 of 12 December 1959 must be reviewed to restore the status of Alaska.

I have reviewed Alaska Inter-Tribal Council Resolution 2005-10 and other resolutions, including Resolution 2018-01, adopted on March 23, 2018 by the Curyurmiut Yupiit Elders Council and Resolution 2018-03, adopted on April 23, 2018 by the T'ináa Gei And Sit'éeti Héeyi Traditional Council. I endorse the claims asserted in the resolutions.

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.

I therefore urge the legislative, judicial and political bodies, including the executive branches of government of the United States of America and of all Foreign Governments, to address the rights and status of the Indigenous Peoples of Alaska in the appropriate venue and jurisdiction. I call for the recognition and due respect to its diplomatic agents, including Ambassador Ronald F. Barnes, as a subject of international law chosen by the free political institutions and the legitimate agents and authorities of the Indigenous Peoples of Alaska.

Respectfully,



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³ CCPR/C/USA/CO/3/Rev.1, 18 December 2006