The International Legal Status of Native Alaska

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On December 12, 1959, the United Nations General Assembly resolved that the people of Alaska had "effectively exercised their right to self-determination and freely chosen their present status" as a State. Why was the United Nations interested in Alaska, and why did the United States itself ask for the adoption of this resolution?

After the First World War, the League of Nations decided that imperialism was a threat to world peace. It called on all countries to give up their colonies as soon as the colonized peoples were ready educationally and economically to "stand by themselves." The United Nations, organized in 1946 at the end of the Second World War, renewed the League's call for decolonization. The United Nations Charter guarantees all people's right of "self-determination"—that is, the right to develop their own institutions and choose their own political relationship with other countries. If a Member of the United Nations is administering a colony (or "non-self-governing territory"), it must report annually to the Secretary-General and explain what it is doing to prepare the colonized people for self-government. This information must be provided every year until the General Assembly determines that the colonized people have exercised their right to self-determination.

The United States originally considered Alaska a non-self-governing territory, along with Puerto Rico, Guam, Hawaii, the Virgin Islands, and Micronesia. It sent the Secretary-General an annual report on what it was doing to prepare Alaskans for self-government. In 1959, however, the United States asked the United Nations for permission to stop reporting because Alaska had become a State. To support its view that Alaskans had exercised their right to self-determination, the United States explained that:

- all Alaskans were citizens of the United States;
- in a special election on August 26, 1958, Alaskans had approved Statehood by a vote of 40,452 to 8,010;
- the new State of Alaska would enjoy the same measure of local self-government as the other forty-eight States; and
- the new State's constitution guaranteed "the enjoyment of civil and political rights regardless of race, color, creed or national origin."

The United States did not mention the fact that nearly one-fifth of Alaskans at that time were Natives, that few Natives could read or were registered to vote. For all the United Nations knew, all Alaskans were of one race, history and culture, and all had participated equally in calling for Statehood. If the true facts had been known, the General Assembly might have concluded that Statehood was only going to give more power to the American colonizers of Alaska, rather than giving freedom to the Native people who had been colonized.

The Annexation of Alaska

How did the United States acquire sovereignty of Alaska? American historybooks say Alaska was purchased from the Russian Empire in 1867, but where did the Tsar get the right to sell it? In those days, international
law recognized three ways a country could acquire new territory: treaties of cession, conquest, or the occupation and settlement of "vacant" lands.

Native Alaskans never made treaties with Russia or the United States selling their lands, nor did Russia or the United States conquer all of Alaska militarily. There were a number of armed conflicts in the southeast, of course, but they involved only a few tribes and a small part of Alaska. In any case, conquest is no longer accepted as a valid principle of international law. The United States itself took the leading role in organizing the 1928 Kellogg-Briand Pact, outlawing the acquisition of territory by force, and in promoting the so-called Stimson Doctrine of Non-Recognition, which called on all countries to disregard territorial claims based on aggression. The United Nations Charter outlaws the use of force in international relations, and the General Assembly had made it clear that colonized peoples' rights of self-determination and territorial integrity cannot be taken away by any "forcible action." In fact, the only legitimate use of violence in contemporary United Nations law is in self-defense. This includes measures taken by a colonized people to free itself from foreign rule.

The United States' strongest argument for claiming Alaska has been occupation settlement—that is, the historical fact that Euro-Americans went to Alaska and stayed there. This is the same basis on which Canada claims the rest of the Arctic, and on which Australia claims the traditional lands of the Aboriginal people. Since Roman times, land that was vacant and had no owners could be acquired simply by settling on it. Of course the Americas were already inhabited by millions of Indians and Inuit when Europeans first arrived. The Americas were not "empty" of people, but European lawyers argued that the Americas were "empty" of laws, government, and true religion. In their view, territory was vacant and subject to settlement if its inhabitants were not European Christians.

This ethnocentric idea no longer has a place in international law. In 1975 the "world court"—the International Court of Justice at The Hague—refused to recognize territorial claims based on the settlement of an inhabited country. According to the Court, territorial claims ordinarily must be based on treaties or agreement with the Native population. Even if the settlement took place a hundred years ago, long before the establishment of the United Nations, the international court will not enforce claims based on the theory that non-European people are inferior and have no right to their ancestral lands.

This means that the United States' claims to Alaska were fairly strong in 1867, but have been growing weaker since the 1920's, when international law began to reject claims based on force and racial discrimination. If the General Assembly had not approved Alaska's statehood in 1959, the United Nations eventually would have questioned the United States' claims to Native land and raised the possibility of a separate Native nation in the Arctic. Reconsideration of Alaska's status still is possible, however. There is a precedent: after approving Puerto Rico's association with the United States in 1953, the United Nations reopened the matter in 1972 and it is still under review.

Decolonization
Self-Determination and Statehood

Under contemporary United Nations law, self-determination means a community's "right freely to determine their political, economic, social and cultural status . . . including permanent sovereignty over their natural wealth and resources." Colonies have the right to exercise self-determination "without any conditions or reservations," and without any delays based on the supposed "inadequacy of (their) political, economic, social or educational preparedness." Self-determination may lead to independence, to some form of voluntary association with another country (such as the Greenlandic Inuits' association with Denmark), or, if
the people choose, to complete integration or assimilation.

Self-determination means that any change in the political status of a colony must be based on the "freely expressed wishes" of the people involved.\(^{18}\) If it is clear that the majority of people favor independence, the first leaders of the new nation must be elected democratically. If there is any disagreement among the people over whether they should become independent, or associate or integrate themselves with some other nation, this question must ordinarily be resolved by a referendum election or plebiscite under international supervision.\(^{19}\) The United Nations sometimes recognizes a new nation's independence without an internationally-supervised election, but never concedes that a people has lost its right to independence without a vote.\(^{20}\)

Was Native Alaska a colony of the United States in 1946 when the United Nations system was organized? According to the General Assembly, a colony is a community "geographically separate and ethnically and/or culturally distinct from the country administering it."\(^{21}\) Alaska was, and continues to be geographically separate from the United States. Within Alaska, Native communities have remained distinct both geographically and culturally. Until the 1940's, moreover, Natives were the majority of the population. We must therefore ask whether Native Alaskans exercised their right of self-determination and became part of the United States by voting in the 1958 statehood referendum, or by participating in the 1971 Alaska Native Claims Settlement Act.

The legal effect of the 1958 referendum depends chiefly on whether Natives should have been given an opportunity to vote separately on their future status. Similar problems have arisen elsewhere. Palestine had an overwhelming Arab majority in the 1920's, but European immigration nearly reversed this by the 1940's. The United Nations abandoned plans for a single independent Palestine and resolved on partitioning the territory so that European-majority and Arab-majority areas could exercise their rights of self-determination separately.\(^{22}\) Ethnic and historical diversity justified separate, regional plebiscites in the Cameroons and Micronesia and regional tabulation of votes in Togoland.\(^{23}\) An exception was Fiji, where East Indian immigrants outnumbered Fijians, but the General Assembly insisted on both populations voting together.\(^{24}\) Neither population was inclined to partition of the islands, however, and the proposed national constitution preserved a degree of autonomy for native Fijians.\(^{25}\)

International law also requires a real choice and one in which the voters are "acting with full knowledge" of the consequences.\(^{26}\) It is far from clear how many Native Alaskans understood the significance of the 1958 ballot. Only about half of all adult Alaska residents voted at all. Natives were moreover given no opportunity to seek greater autonomy or independence from the United States. In fact, Congress deliberately excluded "the legal merits of indigenous rights" from consideration, awaiting "either future legislative action or judicial determination."\(^{27}\) Failure to include independence as an option and harassment of pro-independence organizations were reasons for the United Nations' recent reconsideration of the status of Puerto Rico.\(^{28}\) Similar questions have been raised over the 1978-79 plebiscites conducted by the United States in Micronesia.\(^{29}\)

The Legal Consequences of ANCSA

The "legal merits of indigenous rights" were finally addressed by the 1971 Alaska Native Claims Settlement Act. ANCSA set aside one-eighth of the new State's territory for Natives, and paid for the rest at the rate of about three dollars per acre.\(^{30}\) ANCSA also replaces village self-government with shareholdership in State-chartered business corporations as the collective basis of native life. This was a calculated effort to integrate Natives with non-Natives, and bring Native sociopolitical autonomy to an end. The Senate sponsor,
Washington's "Scoop" Jackson, was "really concerned philosophically whether or not we are going to establish a bunch of enclaves, separating the Natives from the non-native population, at a time when we want to bring all minority peoples together."  

Although ANCSA reflects the views and efforts of many native organizations, it was never put directly to the people for approval. It cannot therefore be considered an exercise of self-determination. Of course, the United States could argue that Native Alaskans "voted" for ANCSA by enrolling themselves and accepting its cash benefits. Native communities might be in a stronger legal position today if they had refused payment for their lands, or accepted payment under protest. Natives had no real choice about enrollment and payment, however. It was an all-or-nothing proposition. Failure to enroll meant the loss of Native status and the few rights Natives had enjoyed. If a thief demands "your money or your life" and you give him your money, you haven't given up your rights to complain and get your money back.  

It is also probably true that few Native communities understood ANCSA until the mid-1970's, when the regional for-profit corporations had been organized and began to assume control of Native lands and resources. You can't agree to something you don't understand. For these reasons, it would be difficult for the United States to convince other countries that Native Alaskans made a free and informed choice to accept ANCSA, giving up seven-eighths of their territory and their right of self-government. Comparison can be made with the 1934 Indian Reorganization Act, which only applied to tribes that voted to accept it in special referenda. Canada's new "Indian Self-Government" policy would also depend on tribal referenda.  

Why were democratic processes ignored in Alaska? As early as the 1940's, the United States viewed Alaska as a strategic necessity, economically and militarily. In the 1950's, Alaska assumed heightened significance as part of the "polar frontier" with the Soviet Union. The rush to settle Native claims in 1969-1971 was a direct result of fears that Native litigation might delay construction of the trans-Alaska oil pipeline. Native Alaskans are not alone. The United States has been criticized for delaying votes on Micronesian independence on strategic grounds. Canada relied on a hasty treaty with Native leaders, rather than a democratic referendum, to settle Native claims in the northeastern Arctic, another mineral-rich territory that forms part of North America's "polar frontier." National expediency simply overwhelmed considerations of human rights.  

Options on the Future  

A number of Native communities have challenged the scope of ANCSA—whether, for example, it extinguished Native claims based on pre-ANCSA trespasses. The underlying legitimacy of the settlement as a whole has simply been assumed, however. Although U.S. courts have long taken the view that Congress has "plenary power" to interfere with Native peoples' lands and self-government without their consent, other countries are unlikely to agree. The strategic significance of Alaska is reason for other countries to take more than an academic interest in possible violations of Native Alaskans' political rights.  

What can be accomplished by drawing international attention to the status of Native Alaskans? The United States has an interest in protecting its credibility with its Western allies, avoiding criticism from the Soviet bloc, and demonstrating the sincerity of democratic ideals to the world's emerging nations. Washington will therefore tend to respond to international concern with greater flexibility in accommodating Native Alakans' interests. It is highly unlikely, to be sure, that the U.S. will agree to independence for native communities. Apart from political considerations, Alaska's changing demography has made setting aside large, self-sufficient and autonomous territories difficult. There is considerable room for strengthening Native self-government short of independence, however. Native villages could exercise much greater municipal
authority, and regional land selections could be organized into native boroughs governing themselves with little or no state control. The important thing is that Native communities enjoy a degree of self-government that cannot be taken away by the State or Congress.

Even if Native Alaskans fail to regain control of their communities in the wake of ANCSA, they can make an important contribution to indigenous populations elsewhere in the world. Native Alaskans' silence has led other countries to believe that ANCSA is a model for settling indigenous land claims. Canada used ANCSA to develop its national policy on "comprehensive" land settlements in the Arctic, and Australia relied on ANCSA in its Aboriginal Land Rights (Northern Territory) Act 1976. Whatever the outcome of Native efforts to exercise meaningful self-determination in Alaska, we all share responsibility for preventing the further exportation of schemes or circumventing international law and defeating indigenous peoples' collective rights.
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