SCOMM 108:8

Official Business

MEMBER
Natural Resources
Committee

Alaska State Legislature

Chair, Legislative Council
Chair, World Trade
And
State/Federal Relations

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MEMORANDUM

TO: **RAMONA**

FROM: **MARK**

DATE: **March 18, 1998**

SUBJECT: **Senate Joint Resolution 38/briefing memo (Mackie) Relating to the bombardment of the village of Angoon.**

The village of Angoon was attacked, bombarded and burned by a U.S. Naval vessel on October 26, 1882. The attack resulted in injuries and death amongst the villagers in addition to the destruction of all the homes and most of Angoon's food supplies.

The attack was the end result of a dispute between the village and a whaling company over the accidental death of a member of the village.

The Navy has never apologized to the people of Angoon for the seemingly unwarranted attack.

The people of Angoon would like a formal apology and through SJR 38 the Alaska Legislature urges the President to issue a formal apology.

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

We, the Inuit, charge the United States and the Soviet Union with the infringement of our Territorial Sovereignty. This violation has been recorded in history as the Treaty of Cession of 1867. Our Inuit Declaration hereby terminates the colonial occupation of the Territory of Alaska seceded from Russia to the United States, as a third party contract, in 1867.

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

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

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

Alaska truly is Seward's Folly. For, it is argued by the Inuit that State sovereignty cannot, by its very nature, be derived from another sovereignty and must, therefore, in all cases, be original. Sovereignty is not a transferable commodity. And, our Inuit territorial sovereignty has been the prize of inordinate greed justified in the name of God by the Spanish, Portugese, English, Russian, French, Danish, Norwegians, Dutch, and Americans.

This Folly, in the form of the Treaty of Cession, is largely unrelated to the scope of the Constitution of these United States, Customary International Law, and finally, to the Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States, in accordance with the Charter of the United Nations which concludes the section on self-determination with the

following statement: Nothing 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 possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or color. 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.

The Kasigluk Elders' Conference, on January 4, 5, and 6, 1990 have decided when, where, and under what conditions self-determination shall be exercised. This decision is unlike that of the United States and the Union of Soviet Sovereign Republics, which have both realized their claims to self-determination in the form of secessions from their former territorial sovereigns.

The Inuit of the Republic of the Arctic have customary and traditional ways of resolving problems of self-determination in their noncolonial setting. For this reason the Republic of the Arctic and its indigenous Inuit people, (Aleuts, Athabascans, Haidas, Inupiats, Tlingits, and Yupiks), cannot be subsumed and the United States and Russia cannot assume that we have lost our capacity and willingness to exercise self-governance.

Under customary international law and the United States constitutional process, this original and peaceful occupation of the Inuit cannot be deposed by discovery conquest, symbolic acts, prescription, or cession. Our premise here is to assert that our historical occupation and peaceful coexistence are the only legal modes for the creation of original title. Our original title to entire Alaska cannot be extinguished by the mere political desire of second and third parties; in this instance, Russia and the United States.

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

If a title to sovereignty means anything at all, it means real title, a title ergo omnes. Specifically, in the present case for the indigenous peoples of Alaska, neither a treaty of cession involving the indigenous peoples, nor the consequence of war, discovery and conquest have divested these original peoples of their real title. Thus, sovereignty can never be subordinated or be amenable to any third parties, including Russia and the United States, as on October 18, 1867 at Sitka, Alaska. In the instance of Alaska, cession was executed from Russia to the United States for the simple acquisition of the fledgling Russian American Trading Company and therefore, there never was a transfer of territorial sovereignty from the indigenous peoples to the present colonialists. Moreover, although the Russians made territorial claims of ownership to England, Spain, and the United States, they did not ascert claims to the indigenous peoples Alaska.

In the absence of a declaration of war, or specific statutory authorization from any treaty with indigenous peoples of Alaska, and the inadmissability of conquest, it follows that on October 18, 1867 there was no real transfer of territorial rights, much less an acquisition of sovereignty.

To illustrate the lesser claim of the United States to Alaska, we cite an example from the World Court. The prizes of war and cession were reversed in the case between the United States of America and the Netherlands in a ruling respecting sovereignty in 1928. The World Court found it to be self-evident that Spain could not transfer more rights than she herself possessed. It was found in the United States vs. Netherlands that the United States had based its claim upon discovery, recognition of treaty, and contiguity. However, the court found that the United States could not gain sovereignty by simple desire or acquisition. The Netherlands claim to their sovereignty was, by comparison, based upon a peaceful and continuous display of state authority over the Island of Palmas. Sovereignty was awarded to the Netherlands.

Today, we the Inuit, as an unconsenting third party to the 1867 Treaty of Cession wish to notify the United States and Russia that our mere silence has not dissipated our territorial sovereignty. We discover today, that history has repeated itself with the same players. The President of the United States has submitted, for the advice and consent of the Senate, the ratification of the agreement between the United States and the Union of Soviet Sovereign Republics on the Maritime Boundary with Annexation signed in Washington D.C. on June 1, 1990.

In the agreement the parties are described in Article I of the Convention ceding Alaska, signed March 30, 1867, (the

1867 Convention Line is as defined in the agreement), and delineates the maritime boundary between the United States and the Soviet Union.

We, the Inuit of the Republic of the Arctic, reject the claim of the United States based upon title of discovery, of recognition and treaty, or by continguity. ie. Titles relating to the acts or circumstances leading to the acquisition of sovereignty. The United States has not established the fact that the sovereignty so acquired was effectively displayed at any time in their brief history. The Inuit base their claim to sovereignty essentially on the title of peaceful and continuous display of Inuit authority over the Inuit maritime boundary.

Since the Inuit title would, in international law, prevail over a title of acquisition of sovereignty, not followed by an actual display of state authority, it is now necessary to ascertain, by evidence, actual sovereignty. We, the Inuit, rise in opposition for the Senate of the United States of American to oppose the ratification once again, Seward's Folly II. We will show in the World Court that we, the Inuit, have an indispensible interest to which our consent has not been given for the United States nor the Union of Soviet Sovereign Republics to acquire our God-given sovereignty.

We will file a complaint in opposition in the World Court to show that the United States and the Union of Soviet Sovereign Republics cannot enlarge their sovereignty claims through the Maritime Boundary, while peaceful and continuous coexistence continues by the Inuit of the Rebublic of the Arctic.

The territory of Alaska has never been declared enemy or hostile territory for the United States. The scope of the constitutional test for the declaration of war is Fleming v. Page: "A war, therefore, declared by Congress, can never be presumed to be waged for the purpose of conquest or the acquisition of territory; nor does the law declaring the war imply an authority to the President to enlarge the limits of the United States by subjugation of enemy's country. The United States, it is true, may extend its boundaries by conquest or treaty and may demand a cession of territory as the condition of peace, in order to indemnify the government for the expenses of the war. But, this can be done only by the treaty-making power or the legislative authority and is not a part of the power conferred upon the President by the declaration of war. His duty and his powers are purely military. As commander-in-chief, he is authorized to direct the movements of the naval and military forces placed by law at his command and to employ them in the manner he may deem must effectuate to harass and conquer and subdue the enemy. He may invade the

hostile country and subject it to the sovereignty and authority of the United States. But, his conquest does not enlarge the boundaries of this union nor extend the operation of our institutions and laws beyond the limits before assigned to them by the legislative power...and the relation in which the Port of Tampico stood to the United States while it was occupied buy their arms did not depend upon the laws of nations, but upon our own constitution and act of Congress."

ETOK
7/91

The Kasigluk Elders' Conference
December 9-10, 1991
Kasigluk, Alaska

The Kasigluk Elders' Conference represents the sword, shield, and symbols of sovereignty and self-determination of the Yupik Inuit of Alaska. It is the intergovernmental organization of the Yupik Inuit of Alaska.

The main purpose of the Kasigluk Elders' Conference is to consider the proper status of the Inuit of Alaska under International Law. 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 origen in some single act, and every agreement has to be 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."

The Kasigluk Elders' Conference shall defend, protect, and prosecute the legal principle of Inuit sovereignty and self-determination. The Inuit of Alaska have the right, the ability, and the desire to enjoy their full sovereign independent status. The Inuit of Canada, Denmark, the Union of Soviet Sovereign Republics, 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."

Three European legal scholars of the Middle Ages, Francisco de Vitoria, Emmerich de Vattel and Hugo Grotius all recognized the sovereignty of Natives in the New World. And, 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."

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, <u>since prescription without possession is not valid</u>."

This proclamation explicitely 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 constitues 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 occupation and settlement, more or less permanent--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.

"The Dutch Claims"

The Dutch bolstered their claims to New Netherlands with formal agreements of purchase from the Indian Nations. They argued against the Spanish and the English that the Indian nations were the owners of the land, and that title must be acquired by a purchase or grant from the natives. The Dutch also followed this practice in their colony on the Cape of South Africa, but not in South America. Sweden adopted the purchase theory and recognized Dutch territorial claims based on Indian deeds. In reaction to Dutch expansion into the region of Connecticut, the English colonies of New England hurried to sign their own agreements with the Indians. In sum, although usually invoking the discovery principle, the European states based their claims against each other on whatever theory was most appropriate to their interests. Discovery, even combined with symbolic possession, could be nothing more than a reservation of rights to effect future attempts at actual possession.

"The British Policy"

On October 7, 1763, two-hundred and twenty-eight years ago, the British colonial government issued the famous Royal Proclamation of 1763. In particular, the Proclamation directly addressed three issues of colonial Indian policy. Issues that continued to plague United States Indian policy after the Revolution: Indian property rights, tribal separatism and autonomy, and the primacy of the central government over the colonies in the management of Indian policy. The Proclamation embodied an enlightened colonial policy which sought to facilitate both Native American trade and colonial expansion while recognizing Indian rights on their lands. Here it is in full.

PROCLAMATION OF 1763

WHEREAS, We have taken into Our Royal Consideration the extensive and valuable Acquisitions in America, secured to our Crown by the late Definitive Treaty of Peace, concluded at Paris, the 10th day of February last; and being desirous that all Our loving Subjects, as well of our Kingdom as of our Colonies in America, may avail themselves with convenient Speed, of the great Benefits and Advantages which must accrue therefrom to their Commerce, Manufactures, and Navigation, We have thought fit, with the Advice of our Privy Council, to issue this our Royal Proclamation, hereby to publish and declare to all our loving Subjects, that we have, with the Advice of our Said Privy Council, granted our Letters Patent, under our Great seal of Great Britain, to erect, within the Countries and Islands ceded and confirmed to Us by the said Treaty, Four distinct and separate Governments, styled and called by the names of Quebec, East

Florida, West Florida and Grenada, and limited and bounded as follows, viz.

First--The Government of Quebec bounded on the Labrador Coast by the River St. John, and from thence by a Line drawn from the Head of that River through the Lake St. John, to the South end of the Lake Nipissim; from whence the said Line, crossing the River St. Lawrence, and the Lake Champlain, in 45. Degrees of North Latitude, passes along the High Lands which divide the Rivers that empty themselves into the said River St. Lawrence from those which fall into the Sea; and also along the North Coast of the Baye des Chaleurs, and the Coast of the Gulph of St. Lawrence by the West End of the Island of Anticosti, terminates at the aforesaid River of St. John.

Secondly--The Government of East Florida, bounded to the Westward by the Gulph of Mexico and the Appalachicola River; to the Northward, by a Line drawn from that part of the said River where the Catahouchee and Flint Rivers meet, to the source of St. Mary's River, and by the course of the said River to the Atlantic Ocean and the Gulph of Florida, including all Islands within Six Leagues of the Sea Coast.

Thirdly--The Government of West Florida, bounded to the Southward by the Gulph of Mexico, including all Islands within Six Leagues of the Coast, from the River Apalachicola to Lake Pontchartrain; to the Westward by the said Lake, the Lake Maurepas, and the River Mississippi which lies in 31 degrees North Latitude, to the River Apalachicola, or Catahouchee; and to the Eastward by the said River.

Fourthly--The Government of Grenada, comprehending the Island of that name, together with the Grenadines, and the Islands of Dominico, St. Vincents's, and Tobago.

And, to the end that the open and free Fishery of our Subjects may be extended to and carried on upon the Coast of Labrador, and the adjacent islands, We have thought fit . . to put all that Coast, from the River St. John's to Hudson's Streights, together with the Islands of Anticosti and Madelaine, and all other smaller Islands lying upon the said Coast, under the care and Inspection of our Governor of Newfoundland.

We have also thought fit to annex the Islands of St. John's and Cape Breton, or Isle Royale, with the lesser Islands adjacent thereto, to our Government of Nova Scotia.

We have also annexed to our Province of Georgia all the Lands lying between the Rivers Alatamaha and St. Mary's.

And we have given express Power and Direction to our Governors of our Said Colonies respectively, that so soon as

the state and circumstances of the said Colonies will admit thereof, they shall, with the Advice and Consent of the Members of our Council, summon and call General Assemblies within the said Governments respectively, in such Manner and Form as is used and directed in those Colonies and Provinces in America which are under our immediate Government; and We have also given Power to the said Governors, with the consent of our Said Councils, and the Representatives of the People so to be summoned as aforesaid, to make, constitute, and ordain Laws, Statutes, and Ordinances for the Public Peace, Welfare, and good Government of our said Colonies, and of the People and Inhabitants thereof, as near as may be agreeable to the Laws of England, and under such Regulations and Restrictions as are used in other Colonies; and in the mean Time, and until such Assemblies can be called as aforesaid, all Persons Inhabiting in or resorting to our Said Colonies may confide in our Royal Protection for the Enjoyment of the Benefit of the Laws of our Realm of England; for which Purpose We have given Power under our Great Seal to the Governors of our said Colonies respectively to erect and constitute, with the Advice of our said Councils respectively, Courts of Judicature and public Justice within our Said Colonies for hearing and determining all Causes, as well Criminal as Civil, according to Law and Equity, and as near as may be agreeable to the Laws of England, with Liberty to all Persons who may think themselves aggrieved by the Sentences of such Courts, in all Civil Cases, to appear, under the usual Limitations and Restrictions, to Us in our Privy Council.

And, whereas it is just and reasonable, and essential to our Interest, and the Security of our Colonies, that the several Nations or Tribes of Indians with whom We are connected, and who live under our Protection, should not be molested or disturbed in the Possession of such Parts of our Donimions and Territories as, not having been ceded to or purchased by Us, are reserved to them, or any of them as their Hunting Grounds. We do therefore, with the Advice of our Privy Council, delcare it to be our Royal Will and Pleasure, that no Governor or Commander in Chief in any of our Colonies of Quebec, East Florida, or West Florida, do presume, upon any Pretence whatever, to grant Warrants of Survey, or pass any Patents for Lands beyond the Bounds of their respective Governments, as described in their Commissions; as also that no Governor or Commander in Chief in any of our other Colonies or Plantations in America do presume for the present, and until our further Pleasure be known, to grant Warrants of Survey, or pass Patents for any Lands beyond the Heads or Sources of any of the Rivers which fall into the Atlantic Ocean from the West or North West, or upon any lands whatever, which, not having been ceded to or purchased by Us as aforesaid, are reserved to the said Indians, or any of them.

And, We do further declare it to be Our Royal Will and Pleasure, for the present as aforesaid, to reserve under our Sovereignty, Protection, and Dominion, for the use of the said Indians, all the Lands and Territories not included with the limits of Our said Three new Governments, or within the Limits of the Territory granted to the Hudson's Bay Company, as also all the Lands and Territories lying to the Westward of the Sources of the Rivers which fall into the Sea from the West and North West as aforessaid;

And We do hereby strictly forbid, on Pain of our Displeasure, all our loving Subjects from making any Purchases or Settlements whatever, or taking Possession of any of the Lands above reserved, without our especial leave and Licence for that Purpose first obtained.

And, We do further strictly enjoin and require all Persons whatever who have either wilfully or inadvertently seated themselves upon any Lands within the Countries above described, or upon any other Lands which, not having been ceded to or purchased by Us, are still reserved to the said Indians as aforesaid, forthwith to remove themselves from such Settlements.

And whereas great Frauds and Abuses have been committed in the purchasing Lands of the Indians, to the great Prejudice of our Interests, and to the great Dissatisfaction of the said Indians; In order, therefore, to prevent such Irregularities for the future, and to the end that the Indians may be convinced of our Justice and determined Resolution to remove all reasonable Cause of Discontent, We do, with the Advice of our Privy Council strictly enjoin and require, that no private Person do presume to make any Purchase from the said Indians of any Lands reserved to the said Indians, within those parts of our Colonies where, We have thought proper to allow Settlement; but that, if at any Time any of the said Indians should be inclined to dispose of the said Lands, the same shall be Purchased only for Us, in our Name, at some public Meeting or Assembly of the said Indians, to be held for the Purpose by the Governor or Commander in Chief of our Colony respectively within which they shall lie; and in case they shall lie within the limits of any Proprietary Government, they shall be purchased only for the Use and in the name of such proprietaries, conformable to such Directions and Instructions as We or they shall think proper to give for that Purpose; And we do, by the Advice of our Privy Council, declare and enjoin, that the Trade with the said Indians shall be free and open to all our Subjects whatever, provided that every Person who may incline to Trade with the said Indians do take out a Licence for carrying on such Trade from the Governor or Commander in Chief of any of Our Colonies respectively where such Person shall reside, and also give Security to observe such Regulations as We shall at any Time think fit, by

ourselves or by our Commissaries to be appointed for this Purpose, to direct and appoint for the Benefit of the said Trade:

And we do hereby authorize, enjoin, and require the Governors and Commanders in Chief of all our Colonies respectively, as well those under Our immediate Government as those under the Government and Direction of Proprietaries, to grant such Licences without Fee or Reward, taking especial Care to insert therein a Condition, that such Licence shall be void, and the Security forfeited in case the Person to whom the same is granted shall refuse or neglect to observe such Regulations as We shall think proper to prescribe as aforesaid.

And we do further expressly enjoin and require all Officers whatever, as well Military as those Employed in the Management and Direction of Indian Affairs, within the Territories reserved as aforesaid for the use of the said Indians, to seize and apprehend all Persons whatever, who standing charged with Treason, Misprisions of Treason, Murders, or other Felonies or Misdemeanors, shall fly from Justice and take Refuge in the said Territory, and to send them under a proper guard to the Colony where the Crime was committed of which they stand accused, in order to take their Trial for the same.

Given at our Court at St. James' the 7th day of October 1763, in the Third Year of our Reign.

"The Russian Policy"

The Western World has credited the Russians for the discovery of Alaska by Vitus Bering under Peter the Great. Catherine II, in a response to Captain Cook's voyage for Great Britain, gave a series of instructions to the Admiralty College and Captain Lieutenant Joseph Billings for his expedition to Northern Russia and the North Pacific Ocean. This was 1785 to 1794. Here follows Article XII and Article XVI.

ARTICLE XII

When Bering sailed toward America he made certain observations which were later confirmed by the English captains, C. Clerke and J. Gore, when they returned from the Sandwich Islands to Kamchatka. These observations lead one to suppose there are islands south of those known to be in the archipelago, and east of the Kamchatka meridian, between 40 degrees and 50 degrees northern latitude. Either on your outward or return voyage you may try to discover these unknown islands, and to obtain information about them for the purpose of the Kamchatka trade. However, you are not to spend too much time on these uncertain assignments.

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 or 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 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 origen 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 secretely 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 large 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.

The Russian campaign continued in the disguise of deceptive practices, misinformation, disinformation, and outright fraud. This deception continued in later orders from Lieutenant General Ivan V. Iakobii. Review the following secret orders of June 21, 1787.

SECRET INSTRUCTIONS FROM LIEUTENANT GENERAL IVAN V. IAKOBII, GOVERNOR GENERAL OF SIBERIA, TO AGENTS OF GRIGORII I. SHELIKHOV, KONSTANTIN A SAMOLOV AND EVSTRAT I. DELAROV, TO ESTABLISH RUSSIA'S CLAIM TO NEWLY DISCOVERED PARTS OF ALASKA

First. When you receive the packet which contains fifteen insignia of the Russian Empire and ten iron plates, on which are a bronze cross and bronze letters proclaiming "This land belongs to the Russian Empire," immediately try to emplace these on land in that part of western America known as Alaska. It is desirable that the insignia be placed in the same location where an English ship anchored in the year 1784 and engaged in a rich and profitable trade. To the best of our knowledge that location is 50 degrees 40 minutes.

2. Wherever you emplace one of these insignia, within a few paces you are to bury one of the plates as well, on which are to be described not only the location but also a statement on which side of the insigne it has been placed, and also the depth.

3. Use every possible means to chart the coastline. Note where bays and inlets are located, their depth, names and configuration.

4. Try to bury the plates in such a manner that not only will they not be seen by the natives, but so they are hidden from all of our Russian workmen. This secret is to be preserved and the fact that the plates have been buried is to be erased from the memory of the natives.

5. If it should happen that ships of other nations should reach those regions for the same purpose, you are empowered to declare that the land and the commercial rights belong to the Russian Empire and that the land was first discovered by Russian seafarers.

6. The Company representative G.I. Shelikhov has asked me for permission for the Company to hire workers from among the native inhabitants because of the shortage of Russian workmen. I find no objection to this and so give my permission on this condition: that every man be compensated for his work with decent pay, and that each be treated not only in a manner which human beings deserve, but in a manner which will also carry out the wish and intent of the wise and humane Autocrat. By treating them justly and giving them honest pay for their labor, you will not only provide the Company with help needed in the business, but you will also use this as a means of making them contented subjects of Russia under the wise administration of our great Empress, and will inspire in them the desire to become subjects of the Russian scepter.

7. Whenever a special expedition is sent to a place you have discovered, when vessels carrying our promyshlenniks go there, you should instruct them to try diligently to find new places, places not previously discovered. Thus not only may they claim the discovery of these new areas and thereby gain better trade opportunities for themselves, but also their efforts may be recognized by the Crown with praise and respect. This will also eliminate the constant complaints from one company or another, and the abuse of native inhabitants. Further, it will eminanate the need to search for transgressors, which is required by law, if companies do not remain in one place.

8. Send a detailed description of all vegetation in areas your company visits. If you are in a forested area, identify the trees, state whether there are berries, whether there are fruit trees. Describe the animals and birds that live in that climate. Also describe the quality of the soil and state whether or not it may be possible to develop agriculture there. (Signed Ivan Iakobii)

. "The United States Policy Under British Influence"

Like the British Crown, the framers of the Constitution sought to deal with these problems by asserting complete centralized control of Indian affairs and by adopting a policy that recognized and protected Indian sovereignty and land rights. In adopting the Indian Commerce Clause, the framers deliberately excluded the two reservations of state authority contained in Article IX of the Articles of Confederation. As with the Proclamation of 1763, the drafting of the Indian Commerce Clause reflected a determined policy of eradicating destructive local management of Indian affairs. During the Constitutional Convention, on June 19, 1787, James Madison criticized a conservative plan of union offered by the New Jersey delegation:

> "Will it prevent encroachments on the Federal authority? A tendency to such encroachments has been sufficiently exemplified, among ourselves, as well in every other confederated republic . . . By the federal articles, transactions with the Indians appertain to Congress. Yet in several instances the States have entered into treaties and wars with them."

Madison would later explain in the The Federalist:

> The regulation of commerce with the Indian tribes is very properly unfettered from two limitations in the articles of Confederation, which render the provision obscure and contradictory. The power is there restrained to Indians, not members of any of the States, and is not to violate or infringe the legislative right of any State within its own limits. What description of Indians are to be deemed members of a State, is not yet settled, and has been a question of frequent perplexity and contention in the federal councils. And how the trade with Indians, though not members of a State, yet residing within its legislative jurisdiction, can be regulated by an external authority, without so far intruding on the internal rights of legislation, is absolutely incomprehensible."

Thus, the cycle of history that characterized the evolution of national control of Indian affairs, from the Revolution to the adoption of the Indian commerce clause of the Constitution and its implementation in the 1790 Trade and Intercourse Act, replicated many of the debates between the colonies and British Crown over the British centralization of control of Indian affairs occurring three decades

earlier. Had this cycle been broken in 1787, one might assume that the nation had mastered the hard-learned lessons of history. Unfortunately, the next two centuries of federal Indian policy have replayed the very same debates and have continued the ambiguities of colonial history, even in the wake of the Proclamation of 1763.

"Native Sovereignty Has Not Been Terminated"
---from John Howard Clinebell and Jim Thomson
---Buffalo Law Review

Although Native Americans qualify as states under international law, and were originally sovereign, independent states, the United States has taken the position that circumstances have changed over the years and Native Americans are now, at best, dependent nations subject to the will of the United States government. Several theories have been offered to justify that position, some unique to United States domestic law. This section will analyze these arguments.

1. Discovery and Occupation. International law is often glibly cited as authority for the principle that discovery of North America by European explorers gave their countries authority over the land and its people. That theory is inaccurate both in its factual perception of North America and its analysis of International law. Europeans did not discover North America. Native peoples had been here for centuries before the first contact from Europeans. If discovery is a valid means of acquiring title and establishing sovereignty, then Native Americans are the owners of and the sovereigns over North America. As Vitoria observed, "the aborigines in question had true dominion before the Spaniards arrived."

Even if the continent had been uninhabited, the European arrival would not have satisfied the requirements of international law for establishing sovereignty. Discovery of a territory, the first arrival, does not establish sovereignty until the land is settled and controlled. Discovery must be followed by effective occupation. England reacted to the early Spanish claims in North America by stating that they had "no claim to property there except that they had established a few settlements and named rivers and capes . . . Prescription without possession is not valid. The Permanent Court of Arbitration said in the Island of Palmas case in 1928: "The title of discovery . . would, under the most favorable and most extensive interpretation, exist only as an inchoate title, as a claim to establish sovereignty by effective occupation." The United States government has recognized this principle. In 1924 Secretary of State Hughes stated that "the discovery of lands unknown to civilization, even when coupled with a formal taking of possession, does not support a valid claim

of sovereignty unless the discovery is followed by an actual settlement of the discovered country."

The United States Supreme Court explicitly recognized this principle. Chief Justice Marshall discussed the effect of a charter given by a European crown to a colony in North America:

> "It regulated the right given by discovery among the European discoverers, but could not affect the rights of those already in possession, either as aboriginal occupants or through earlier discovery."
>
> "The extravagant and absurd idea, that the feeble settlements made on the sea coast, or the companies under whom they were made, acquired legitimate power by them to govern the people, or occupy the lands from sea to sea, did not enter the mind of any man."
>
> "These grants asserted title against Europeans only, and were considered as blank paper so far as the rights of the natives were concerned."

The simple act of landing on the shores of 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.

A second failing of this theory is that effective occupation is applicable only to uninhabited lands. The Court in the Island of Palmas case observed that "an inchoate title, however, can not prevail over a definite title founded on continuous and peaceful display of sovereignty." If a land is inhabited, discovery extinguishes the aboriginal right only with the consent of the natives. Some theorists argued that in a legal sense North America was uninhabited because the natives were savages who had not reached a degree of civilization which would give them the right to have their sovereignty or control of the land recognized. That perception of Native Americans is inaccurate, as well as irrelevant. Historians and anthropologists indicate that even at the time of the European arrival Natives had highly developed cultures, governmental systems, laws, religions, and social systems. In fact, based on the treatment which the white people showed toward Indians and vice versa, it was the whites, rather than the natives, who were the savages. Whether from ignorance, or from the inability or unwillingness to appreciate a culture different from their own, Europeans simply misstated the facts in describing Native Americans as uncivilized.

International law recognized that social, political or technical advancement is not a valid measure of the rights to which a people is entitled. Some of the earliest and most respected writers argued that Europeans' actions in North America violated the basic principles of international law. They said that Indians---even if heretics and savages ---were entitled to have their territory and political integrity respected. Vitoria pointed out that this principle was recognized by the Church in Europe and as early as ancient Palestine. Thus, the European nations had no authority over the natives, but could determine rules and guidelines (establish "trade and proselytizing zones") only for their dealings with each other. The continuous attempts by Europeans to force "aid" on natives and assert dominion over them in order to civilize them was deemed contrary to the standards of natural law.

Many writers added a qualification to the principle of discovery which would justify European settlements in North America. Vattel, for example, wrote that the "law of nature and nations" requires that land should be cultivated or otherwise put to use. No group of people has a right to occupy more land than it needs to support itself. Since North America was a vast area capable of supporting more than just the natives, they could be required to surrender portions of the land for settlement by others. But that limitation is in no way inconsistent with native sovereignty, and has no effect on the right to independence and self-government of Native Americans.

Native Americans have always been more than willing to share the resources of this land. From the first European arrival in North America to the prsent, natives have assisted and tried to accommodate foreigners. Many colonies and settlements would not have survived their humble and harsh beginnings without the aid of the natives. Much sharing of resources and skills takes place today, ranging from native medicines and healing skills to natural resources lying on and under Indian land. From their first contact with Europeans, natives sought an accommodation that would allow each group the land and resources it needed, asking only that they be left to maintain their own ways of life. Several hundred treaties, as well as other contractual dealings and outright gifts, attest to the willingness of Native Americans to share the land with non-Indians. As the natives were gradually pushed westward across the continent for four centuries, they maintained their willingness to recognize the rights of all people to coexist on the land, and continually thought they were signing agreements which assured those rights. Conflict has occurred because non-Indians have used the principle to justify their actions but then have ignored it when they have wanted to encroach on the lands natives need to support themselves.

shall include, but not be limited to, murder, ill-treatment or deportation to slave labour or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity;

(c) Crimes against humanity: namely, murder, extermination, enslavement, deportation, and other inhuman acts committed against any civilian population, before or during the war, or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic laws of the country where perpetrated. .

"The International Definition of Fraud"

International legal scholars are in general accord that an agreement whose negotiation involved fraud is invalid. There are no recorded instances of fraud in the history of treaty negotiation. Fears that deception could be used led to the inclusion of provisions dealing with this possibility in international treaty conventions.

Fraud is defined as a "false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive." In order to constitute fraud the false representation must be made at the time of the actual negotiation process with knowledge of its falsity. An unwitting or unintended misstatement is not actionable as fraud, nor is the mere failure to disclose facts. Fraudulent misrepresentations must be substantial in order to void an agreement. Only deliberate misrepresentations, such as the use of inaccurate maps or documents of false statements as to facts, have the effect of invalidating an agreement.

"The International Definition of Duress"

Duress is pressure upon the will of another inducing the commission of an act the person would not ordinarily consider. Freedom of consent is an essential element of a binding international agreement. An agreement is invalid under customary international law when duress has been brought to bear on one party because such pacts are considered onesided and unfairly negotiated. Traditionally, duress has taken the form of either threats of violence or

the actual use of force. International law recognizes that duress arises in two situations: (1) when pressure is employed against the state itself.

The international legal community has increasingly recognized and condemned other forms of pressure as well. The United Nations Conference on the Law of Treaties particularly deplored the "threat or use of pressure in any form, whether military, political, or economic, by any State in order to coerce another State to perform any act relating to the conclusion of a treaty in violation of the principles of the sovereign equality of States and freedom of consent."

"Inuit Jurisdiction for the International Court of Justice"

Like many nations the Inuit have declared that they recognize compulsory jurisdiction of the International Court of Justice (ICJ) in certain legal disputes. These are controversies concerning: (1) the interpretation of a treaty; (2) any question of international law; (3) the existence of any fact which, if established, would constitute a breach of an international obligation; and, (4) the nature or extent of the reparation to be made for the breach of an international obligation.

The United Nations Charter authorizes the General Assembly to request the ICJ to issue an advisory opinion on any legal question.

CONCLUSION

We, the Inuit, of the Kasigluk Elders' Conference support the rhetoric of President Bush calling for "a new world order":

> "lies the reality of an international system hurtling dangerously out of control. The old systems and old ways are no longer adequate to the security needs of member states. Economic pressures, demographic upheavals, political instability exacerbated by ethnic and religious tension and budding conflict over scarce resources are taking place in a world of profound environmental and societal disruptions. If these challenges are to be tackled with any success a period of stability is essential. Pax Americana is not the answer. The United States has neither the power, the wealth, nor the urge to impose an imperial order. At the present crossroads, ideas and institutions to encourage development, democratization and nation building depend on first achieving a condition of security."

2. Conquest. Another explanation sometimes offered to justify assertion of authority over Native Americans is that they were conquered by the Europeans and are therefore rightfully subject to non-Indian jurisdiction. Conquest does not, however, stand up under international law as a justification for restricting native sovereignty. First, it is not an accurate description of the facts. Many native nations were never subdued by means of military force. Many peace and friendship treaties between Native Americans and the United States (or its predecessors) were signed in situations where the Indians held a superior military position. Chief Justice Marshall described the colonists' fear that the natives would join Great Britain, and their consequent effort to enlist the aid of the Indians: "Far from advancing a claim to their lands, or asserting any right of dominion over them, Congress resolved, "that the securing and preserving the friendship of the Indian nations appears to be a subject of the utmost moment to these colonies." Treaties were therefore signed "to preserve peace and friendship."

It is significant to note that the United States has throughout its history used physical force and violence to drive Indians from their land. The military and law enforcement arms of the government have played a central role in this country's taking of native lands and resources and denial of fundamental human rights. Under contemporary international law, United States policies are illegal and contrary to basic standards set forth in a number of international agreements and documents. The movement to ban force as a valid tool in international dealings began around the turn of the century, picked up momentum after World War I and climaxed after World War II in the adoption of the United Nations Charter. Scholars and national leaders now almost unanimously agree that force employed against the political and territorial integrity of another state is illegal, and that this principle is a part of customary international law.

"The Individual Responsibility Doctrine and the Nuremberg Judgments"

From time immemorial, customary international law has established individual responsibility for violation of some of its general norms. Sanctions for the crime of piracy have traditionally been directed "not . . against the State whose subject or whose vessel ahd been responsible for acts of piracy but rather against the master and crew ofthe pirate ship as outlaws of the family of nations."

Areas of individual responsibility can also be found in the laws of war and neutrality, particularly with respect to such acts as espionage, sabotage, and other acts of hostility performed by civilian enemies, including breaches

of blockades and the carrying of contraband. In 1942, the U.S. Supreme Court reaffirmed its long-standing recognition of these principles in Ex parte Quirin. Chief Justice Stone wrote:

> "From the very beginning of its history, this court has recognized and applied the law of war as including that part of the law of nations which prescribes for the conduct of war the status, rights, and duties of enemy nations as well as of enemy individuals.

International treaties have also imposed certain duties directly upon individuals, in the fields of slave trade, freedom of the seas, and war and peace. The Treaty of Versailles provided for a special tribunal to try the former Emperor of Germany for a "a supreme offence against international morality and the sanctity of treaties." More recently, the Convention on the Prevention and Punishment of the Crime of Genocide, which has been ratified by more than 88 nations, provides that "persons charged with genocide . . shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction."

"The Expansion of the Doctrine at Nuremberg"

On August 8, 1945, the Governments of the United States, the United Kingdom, the Soviet Union and the Provisional Government of the French Republic entered into an agreement establishing an International Military Tribunal for the trial of war criminals "whose offences have no particular geographic location." The I.M.T.'s Charter, which has come to be known as the Nuremberg Charter after the German city where the trials were held, defined the tribunal's jurisdiction, functions, and the laws under which it would operate. With respect to individual responsibility, the most pertinent sections of the Charter are contained in Article 6, which reads in part as follows:

> "The following acts, or any of them are crimes coming within the jurisdiction of the Tribunal for which there shall be individual responsibility:
>
> (a) Crimes against peace: namely, planning preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing;
>
> (b) War crimes: namely, violations of the laws or customs of war. Such violations

We, the Elders of the Kasigluk Conference, urge President Bush and President Gorbachov to call for an international conference to further the principles of self-determination that the United States will withdraw the annexation resolutions for Alaska and Hawaii and submit to the United Nations a resolution for the recognition of the Republic of the Arctic and the Republic of Hawaii for a vote at the General Assembly for the final decolonialization of the Arctic and Hawaii.

Moses Pavilla, Conference Administrator
Box ATT Atmautlauk, Alaska 99559
(907) 553-5610

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KASIGLUK ELDERS CONFERENCE
General Delivery
Kasigluk, Alaska 99609
December 10, 1991

INUIT CODE OF OFFENCES AGAINST THE PEACE AND SECURITY OF MANKIND

Article I

Offences against the peace and security of mankind, as defined in this Code, are crimes under international law, for which the responsible individuals shall be punishable.

Article II

The following acts are offences against the peace and security of mankind:

(1) Any act of aggression, including the employment by the authorities of a State of armed force against another State for any purpose other than national or collective self-defence or in pursuance of a decision or recommendation by a competent organ of the United Nations.

(2) Any threat by the authorities of a State to resort to an act of aggression against another State.

(3) The preparation by the authorities of a State for the employment of armed force against another State for any purpose other than national or collective self-defence or in pursuance of a decision or recommendation by a competent organ of the United Nations.

(4) The incursion into the territory of a State from the territory of another State by armed bands acting for a political purpose.

(5) The undertaking or encouragement by the authorities of a State of activities calculated to foment civil strife in another State, or the toleration by the authorities of a State of organised activities calculated to foment civil strife in another State.

(6) The undertaking or encouragement by the authorities of a State of terrorist activities in another State, or the toleration by the authorities of a State of organised activities calculated to carry out terrorist acts in another State.

45-88

(7) Acts by the authorities of a State in violation of its obligations under a treaty which is designed to ensure international peace and security by means of restriction or limitations on armaments, or on military training, or on fortifications, or of other restrictions of the same character.

(8) Acts by authorities of a State resulting in the annexation, contrary to international law of territory belonging to another State or of territory under an international regime.

(9) Acts by the authorities of a State or by private individuals, committed with the intent to destroy, in whole or in part, a national, ethnical, racial, or other religious group as such, including:

(i) killing members of the group;
(ii) causing serious bodily or mental harm to members of the group;
(iii) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
(iv) imposing measures intended to prevent births within the group;
(v) forcibly transferring children of the group to another group.

(10) Inhuman acts by the authorities of a State or by private individuals against any civilian population, such as murder, or extermination, or enslavement, or deportation, or persecutions on political, racial, religious, or cultural grounds, when such acts are committed in execution of or in connection with other offenses defined in the article.

(11) Acts in violation of the laws or customs of war.

(12) Acts which constitute:

(i) conspiracy to commit any of the offenses defined in the preceding paragraphs of this article; or
(ii) direct incitement to commit any of the offenses defined in the preceding paragraphs of this article;

(iii) attempts to commit any of the offences defined in the preceding paragraphs of this article; or

(iv) complicity in the commission of any of the offences defined in the preceding paragraphs of this article.

Article III

The fact that a person acts as a Head of State or as responsible government official does not relieve him from the responsibility for committing any of the offences defined in this Code.

Article IV

The fact that a person charged with an offence defined in this Code acted pursuant to the order of his Government or of a superior does not relieve him from the responsibility provided a moral choice was in fact possible to him.

Article V

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

Article VI

The effective date of the Inuit Code of Offences Against the Peace and Security of Mankind shall be August 5, 1992.

Irwin Brink Sr.

Signed by Chairman Irwin Brink, Sr.
Kasigluk Elders Conference

Moses A. Pavilla Sr

Signed by Secretary Moses Pavilla, Sr.
Kasigluk Elders Conference

Signed and witnessed by the conferees this

10th day of December, 1991.

Charles Edwardsen Jr.

INUIT CODE OF OFFENCES AGAINST THE PEACE AND SECURITY OF MANKIND

Signed and witnessed by the conferees this

_____day of _____, 1991.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
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Juneau, Alaska 99801-2105

MEMORANDUM March 24, 1998

SUBJECT: Angoon bombardment (HCS SJR 38(WTR))

TO: Representative Pete Kott
Attn: Jim

FROM: Michael F. Ford
Legislative Counsel

You have asked if HCS SJR 38 (WTR) has any effect on the sovereignty claims by the Republic of the Arctic. As explained in this memo, I do not believe that passage of HCS SJR 38(WTR) by the legislature would have any effect on these sovereignty claims.

While HCS SJR 38 (WTR) does request an apology, this is merely the expression of the view of the legislature. A resolution is not a law and I do not believe a resolution creates enforceable rights as would enactment of a law. For example, if the legislature wanted to create enforceable rights for damages caused by the bombardment as described in HCS SJR 38(WTR), the legislature would place these rights in statute and provide a private cause of action for their enforcement. To suggest that a person would have enforceable rights as a result of the passage of HCS SJR 38 (WTR) would require treatment of a resolution as having the same effect as enactment of a law. Examination of Uniform Rule 49 reveals the distinction between bills and resolutions. Under this rule the "only type of instrument other than a bill or citation under these Uniform Rules is a resolution." A joint resolution reflects the will or view of the legislature to the President. In that joint resolutions are merely an expression of legislative opinion without the force or effect of law, they are not required to be referred to a committee or to receive three readings as are bills. See Article II, sec. 14 of the Alaska Constitution.

The legislature enacts law by the passage of bills meeting the required, constitutionally imposed formalities. North Slope Borough v. Sohio Petroleum Corp., 585 P.2d 534 (Alaska 1978); State v. A.L.I.V.E. Voluntary, 606 P.2d 769 (Alaska 1980). With some specific exceptions, authorized by the Alaska Constitution itself, such as a resolution to disapprove an executive order, a resolution does not have the force of law or any binding effect. A joint resolution cannot accomplish a change in existing law; therefore, where a resolution and the law, either common law or statute, are in conflict, the law controls.

Please contact me if you have further questions.

MFF:jdr
98-185.jdr

To Rep Pete Kott
From Jim H.

Re: Republic of the Arctic—Declaration of Sovereignty

And effect of Senate Joint Resolution 38 urging US to apologize for shelling of Angoon in 1882.

Back ground: note from Kathleen Moore to Rep. Barnes indicating concern over SJR 38 and the documents declaring sovereignty by the Inuit, Declaration of Sovereignty 1991, Code of Offenses of Kaskigluk Elders Conference 1991; and what appears to notes from the Elders Conference 1991

Traces and proposes an interesting course of history of aggression against Natives and a proposal for sovereignty based upon the general principles that the original and peaceful occupation by the Inuit and others cannot be deposed by discovery, occupation, symbolic acts, prescription or cession. In other words the sale of Alaska to the US is not valid because the Natives never consented to the transaction. Am advised that Charley Edwardson put this together and also argued against the North Slope Borough. He says the neither the Europeans nor the Americans ever validly discovered nor conquered anyway, citing serveral international law cases. US never delcared war on Alaska. The Natives were so the Russians never discovered Alaska. The land was always peacefully inhabited by the Natives and he asks the World Court to take jurisdiction.

Talked with David Gray from Mackie's office who is handling the Angoon apology resolution. He says Venetie affirmed that ANSCA ended Indian Country in Alaska with the exception of Metlakatla.

Congress has authority to regulate commerce with the Indian tribes, per the Constitution, Article I, section 8. Congress passed ANSCA in 1971. In Venetie, the Supreme Court in a unanimous decision rejected Venetie's claim of Indian Country, in essence following Senator Stevens' argument that ANSCA extinguished all aboriginal claims to land in Alaska. Therefore, don't understand the validity of the claim that Alaska belongs to this Native group. If World Court ever accepts jurisdiction, there might be further developments, but the wording in Venetie is pretty strong unless they distinguish the facts in another case. The court clearly said it was up to Congress to modify Indian Country language which is a pretty clear indication Congress has authority and the claims of the Native group to independence and sovereignty have a very tough row to hoe.\

Gray contends that just apologizing for the shelling of Angoon does not recognize another sovereign. I did run this by legal and am awaiting a response.

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SENATOR JERRY MACKIE

ALASKA STATE LEGISLATURE

SPONSOR STATEMENT

SJR 38, Angoon Bombardment

I introduced SJR 38 to bring closure and finality to an incident that occurred in the early years of Alaska's territorial history that continues to be a painful memory to the people of Angoon. The incident was the naval attack that destroyed the village in the early winter of 1882. The action was caused by a dispute between the village and a whaling company over the accidental death of a tribal member in the company's employment. The U.S. Navy interceded by shelling and burning the village and its food stores. In addition to suffering injuries and loss of life, the residents of Angoon struggled to survive the difficult winter without adequate shelter or food supplies.

Memories and recollections of the injustice are still very much alive among residents of Angoon. Almost every family was deeply affected in some way from the death and destruction. It is the opinion of elders in the community that a simple apology by the U.S. government would bring closure and finality to the incident. It would redress long standing feelings of disrespect and victimization by the federal government and its lack of acknowledging the unfortunate event. The resolution requests that President Clinton issue an apologize to the people of Angoon.

FISCAL NOTE

No. 1

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. Bill Version: SJR38
(S) Publish Date: 3/4/98

Revision Date (Note if correction) 2/27/98
Title Apology to Angoon
Sponsor Senator Mackie
Requester Senate State Affairs

Dept. Affected
BRU
Component
Component Serial No.

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

No Fiscal Impact Expected.

Prepared by Renee Howell, staff to
Division Senate State Affairs
Phone 465-4522
Date 2/27/98

Approved by Senator Lyda Green, Chairman
Agency Senate State Affairs
Date 2/27/98

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