PARTICIPATION AND CONSENT and the RIGHT TO SELF-DETERMINATION

Indigenous Peoples and Nations Coalition (IPNC)
Koani Foundation

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The Indigenous Peoples and Nations Coalition (IPNC) and the Koani Foundation submit this document as the response to the United States of America implementation report to the 110th session of the Human Rights Committee, focusing on examples of pro forma consultations that deny right rights of our Indigenous Peoples of their right to self-determination and to the permanent sovereignty over their resources in accordance with Article 1 of the International Convention on Civil and Political Rights. We strictly ask the Human Rights Committee not to consider our recommendations in accordance with Article 27 as the Indigenous Peoples of Alaska and Hawaii are vested with the international right of self-determination and are not minorities within the domestic sphere of a State.

Alaska and Hawaii were placed on the list of Non-Self-Governing Territories in 1946 under General Assembly resolution 66 (I) as recognized peoples vested with the right to self-determination. Both the Indigenous Peoples of Alaska and Hawaii are subjects of international law recognized under the law of nations and under Article 73 of the United Nations Charter. Alaska and Hawaii have a separate and distinct status from the United States of America who also acted as the Administering Power; this principle is supported and exemplified in the legislative history in the development of the “equal rights and self-determination” clause under Article 1.2 of the Charter of the United Nations. This equal rights and self-determination principle is further elaborated under the United Nations Declaration on Friendly Relations, inter alia, “To develop friendly relations among nations based on the respect for the principle of equal right and self-determination of peoples, and to take the other appropriate measures to strengthen universal peace” and that “The territory of a colony or other Non-Self-Governing Territory has, under the Charter, a status separate and distinct from the territory of

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1 This document was originally sent as an Expert Paper by Ambassador Ronald Barnes from Alaska as a contribution from the Indigenous Peoples and Nations Coalition and Koani Foundation for an Expert Seminar on Pro Forma Consultations set up by the Independent Expert Alfred de Zayas on the promotion of a democratic and equitable international order.
2 United Nations Charter, Article 1.2 “To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace”.
the State administering it; and such separate and distinct status under the Charter shall exist until the people of the colony or Non-Self-Governing Territory have exercised their right of self-determination in accordance with the Charter, and particularly its purposes and principles.” This is expounded upon in Section II C of the Shadow Report in regard to the United Implementation Report to the Human Rights Committee as the Treaty Body of the International Covenant on Civil and Political Rights (ICCPR) and was submitted by the Indigenous Peoples and Nations Coalition in March of 2006 (hereafter referred to as the 2006 HRC Shadow Report of IPNC). To elucidate the historical status and relationship between States, nations and peoples under Article 1.2 the Charter, Belgium asserted that the equal rights clause was only between States. The Soviet Union called for a vote asserting that the equal rights clause is between States, nations and peoples. The Soviet Union won the vote making it clear that the “equal rights and self-determination of peoples” clause in Article 1.2 is between States, nations and peoples. This is the underlying principle as to the separate and distinct status of Alaska and Hawaii and of other Non-Self-Governing Territories to its Administering Power(s) who are obligated under Article 73 of the Charter of the United Nations to advance these peoples so they can determine their own status in the exercise of their right to self-determination.

The three main choices in a referendum include 1. Independence 2. Compact of Free Association or 3. to develop their own level of relationship without any form of threat or coercion by the Administering Power or by any other nation-States of the world. The level of participation and consent is elaborated in General Assembly resolutions adopted by the General Assembly that are guidelines to determine whether or not the peoples of the Non-Self-Governing Territory have exercised their right to self-determination. If the factors and principles are not followed then the General Assembly can determine that there is in effect no valid participation and consent on the choice of status by the peoples of the Non-Self-Governing Territory. Their “separate and distinct” status remains intact both legally and politically intact until the peoples have legitimately addressed the occupation due to the violations by the United Nations and the United States of America.

Our recommendations are based on a background of information that supports our claims to the right to self-determination, including the two studies on the right to self-determination completed by the former Sub-Commission on the Promotion and Protection of Minorities by Hèctor Gros Espiell⁴ and Aurelia Critescu⁵. Other supporting studies that has elaborated supporting principles, conclusions and recommendations can be found in the Preliminary Report⁶, the First Progress Report⁷, the Second Progress Report⁸, the Third Progress Report⁹.

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and from the Final Report\textsuperscript{10} of the Sub-Commission on the Promotion and Protection of Minorities in its \textit{Study on Treaties, Agreements and Other Constructive Arrangement between States and Indigenous Populations} (hereafter referred to as the Martinez Treaty Study). I further recommend that other relevant studies such as the report on the \textit{Preliminary study of the impact on indigenous peoples of the international construct known as the Doctrine of Discovery}\textsuperscript{11} by Special Rapporteur Tonya Gonnella Frichner of the the Permanent Forum be used. Further work must be considered on the premise that participation and consent includes a larger process that works hand in hand with the right to self-determination. The situations of Alaska and Hawaii can be expedited by simply recommending that the United Nations Decolonization Committee review these cases in light of the expressed violations in several papers and reports with a view to re-enlisting both to the list of Non-Self-Governing Territories.

The ground rules for participation and consent (where there is no consent, participation is pro forma or meaningless, consent it not intended) in the United Nations Decolonization process is elucidated in the participation paper submitted by the \textit{Indigenous Peoples and Nations Coalition} (IPNC) and \textit{Koani Foundation} on 8 April 2013 to the Independent Expert on the promotion of a Democratic and Equitable International Order. It is clear that the Indigenous Peoples were not, \textit{inter alia}, educated or informed in their own languages to establish equal treatment in the Non-Self-Governing Territories in Alaska and Hawaii (GA resolution 328 and 329 (IV) of 1949) and there were no “associate members” of specialized agencies to promote by peaceful means the colonial peoples to a position of equality with Member States of the United Nations GA resolution 566 (VI) of 1952 and qualified Indigenous representatives did not directly participate in the economic, social and educational policies and conditions of the territories (GA resolution 647 (VII) of 1952) and the political responsibilities based on the validity of the form of association between the States and the Non-Self-Governing Territory and based on the right to self-determination by the freely expressed will of the peoples (GA resolution 742 (VIII) of 1953) and there was no increased

\textsuperscript{11} E/19/2010/13, Report by Tonya Gonnella Frichner, Special Rapporteur, Preliminary study of the impact on indigenous peoples of the international construct known as the Doctrine of Discovery, Permanent Forum, ninth Session 19-30 April 2010
participation by indigenous representatives specially qualified to speak on these matters as they relate to these Territories (GA resolution 744).

ALASKA

Under the Law of Nations, Alaska was considered to be independent. Prior to the 1867 Treaty of Cession of the Territory of Alaska from the Monarchy of the Tsar of Russia to the United States of America, the United States denied in diplomatic communications that the Tsar of Russia had acquired Alaska as part of the Russian Empire, further asserting that these were independent tribes in Alaska (see the 2006 HRC IPNC Shadow Report, Section I. B. and II. A.). This is made clear in the first progress report of the Martinez Treaty Study why the United States of America could not acquire ownership or jurisdiction due to the 1867 Treaty of Cession in the IPNC and Koani Foundation EWUAD to the 80th and 81st sessions of CERD:

Professor Miguel Alfonso Martinez characterized the 1867 Treaty of Cession in his first progress report of 25th August of 1992 in his Study on Treaties, Agreements and Other Constructive Arrangements Between States and Indigenous populations that12: “The transfer of authority took place in October 1867 at Sitka (former Russian fort in Tlingit territory). As “Indian Territory”, the whole of Alaska placed under the authority of the War Department, although the Treaty of cession did not provide for ownership or jurisdiction over this vast territory13” *** “This treaty committed its signatories to obtain the consent of the indigenous peoples of Alaska regarding any future interaction with them or any to any appropriation of their land.14

This explains and further supports why the Territory of the Indigenous Peoples in Alaska could not be ceded or relinquished to another State without their knowledge or consent under the maxim “Nemo dat quod non habet” or “no man can give another any better title than he himself has”. This first progress report in 1992 of the Martinez Treaty Study indicates that the title or jurisdiction of Alaska [that belongs to the Indigenous Peoples of Alaska] could not be transferred to the United States of America. Thus, IPNC still asserts that the 1867 Treaty of Cession did not nor could not grant title or dominion to the United States of America.

The 1958 Referendum and the 1959 referendum in Alaska and Hawaii respectively were irregular and a violation of the right to self-determination of the Indigenous Peoples. This was expressed in Section V entitled The Referendum, of the 2006 HRC Shadow Report of IPNC. The Indigenous Peoples did not participate or consent to relinquish either title or jurisdiction to Alaska and Hawaii. Both referendums suffered irregularities, one example among many, is that the United States of America allowed for the United States military and its citizens living

12 E/CN.4/Sub.2/1992/32
13 Ibid., paragraph 382, the author of this paper underlines portions to emphasize the lack of ownership a jurisdiction acquired by the United States of America in the 1867 Treaty.
14 Ibid., paragraph 383, this small section was also taken from the article.
In the Addendum of the report of the Special Rapporteur on the rights of Indigenous Peoples\textsuperscript{15}, Mr. James Anaya expressed that the Alaska Native Claims Settlement Act was “faulty in its inception”\textsuperscript{16} and that the creation of the federal state [Alaska] was not in compliance with the right to self-determination of the Indigenous Peoples of Alaska\textsuperscript{17}.

In the Final Report of the study on \textit{Indigenous Peoples and their relationship to land}, Ms. Erica-Irene A. Daes explains how the doctrine of discovery is applied to the Indigenous Peoples of Alaska by invoking doctrines of superiority emanating from the Johnson v. McIntosh (8 Wheat. 543) 1823; this case applies its discriminating legal reasoning and principles to the Tee-Hit-Ton v. United States (348 U.S. 272) 1955 by also stating in footnote 18 that the land in Alaska is for the settlement of the white race. She points out that this legal doctrine still exist today and it was used to unilaterally extinguish all right and title of the Indigenous Peoples of Alaska in the 1971 Alaska Native Claims Settlement Act (ANCSA). Ms. Daes points out that Alaska Tribes did not consent to the ANCSA legislation and that this is a violation under the “just compensation” clause of the 5\textsuperscript{th} amendment of the Constitution of the United States of America. This was also the concern of United States Secretary of Interior Donald Paul Hodel under the Administration of President Ronald Reagan in his letter of 6 January 1988 to the Honorable James C. Miller, III, the Director of the Office of Management and Budget (letter attached, see pages 10 and 11) where he also expressed concern of the liability to the Federal Government due to the violation of the just compensation clause of the Fifth Amendment under the Constitution of the United States of America (meaning that ANCSA is unconstitutional). If Secretary of Interior Donald Hodel would have examined the situation of Alaska more carefully he would have found that the creation of the federal state of Alaska also violates the Constitution of the United States of America and the international law obligations of the United States of America, making all subsequent acts passed by the US Congress unlawful.

The Indigenous Peoples of Alaska have a separate and distinct legal and political right to self-determination and continue to hold title and jurisdiction; these unresolved violations of rights are rooted in the denial of the right to participate and consent. The subsistence provisions of the ANCSA legislation was used to adopt ANILCA implement the so-called extinguished subsistence rights (i.e., hunting and fishing rights) and for that matter the state of Alaska unilaterally assumed control over the territory and resources without the participation and consent of the Alaska Native Peoples.

\textsuperscript{15} A/HRC/21/47/Add.1, Report of James Anaya, Special Rapporteur, \textit{The situation of indigenous peoples in the United States of America. Human Rights Council}, 21\textsuperscript{st} session

\textsuperscript{16} Supra, paragraph 61

\textsuperscript{17} Supra, paragraph 63
HAWAII

The Kingdom of Hawaii was a fully operating independent international state with several bilateral treaties with other independent nation-states prior to its illegal overthrow by the United States of America in 1893. The Special Rapporteur on the rights of Indigenous Peoples expressed in September 2012 report \(^{18}\) in the section on Hawaii that “the United States Congress in 1993 issued an apology to Native Hawaiians on behalf of the people of the United States for the overthrow of the Kingdom of Hawaii on January 17, 1893 with the participation of agents and citizens of the United States. The apology recognized that the overthrow resulted in the suppression of the inherent sovereignty of the Native Hawaiian people and called for reconciliation efforts.” \(^{19}\) The same report elucidates the, “call for reconciliation, however, remains unfilled, while a growing movement of indigenous Hawaiians challenges the legitimacy and legality of the annexation of Hawaii following the overthrow, as well as the process by which Hawaii moved from its designation as a non-self-governing territory under United Nations supervision, to being incorporated into the United States as one of its federal states in 1959. In the meantime, indigenous Hawaiians see their sacred places under the domination of others, and they continue to fare worse than any other demographic group in Hawaii in terms of education, health, crime, and employment.” \(^{20}\) The point is, there are strings of legislation, United States Supreme Court Decisions and Executive Orders of the President of the United States of America that violate the Constitution of the United States of America; one cannot expect the colonial occupying power to render justice in the case of Alaska, Hawaii, the Great Sioux Nation or to any other Indigenous Nations occupied by the United States of America. The violations continue despite that in Paragraphs 163-164 of the Final Report of the Martinez Treaty Study, Professor Martinez refers that the 1897 treaty of annexation by the United States of America after the illegal overthrow of the Hawaiian Kingdom is an unequal treaty; Professor Martinez then declares that Hawaii can be re-entered to the list of non-self-governing territories in the United Nations and to other bodies of the Organization competent in the field of decolonization.

Puppet Governments and Manufacturing Consent

To paraphrase the paragraph on puppet governments from Chapter 15 entitled The Imperative To Destroy Traditional Indian Governments, Jerry Manders explains in his book In the Absence of the Sacred\(^ {21}\), how the United States of America Bureau of Indian Affairs (BIA) operates as an administrative arm of the United States Federal Government to unilaterally abrogate the authority of the Traditional Government. This practice was used against the Navajo Nation to allow for Standard Oil, the international oil conglomerate, to access and steal the vast oil wealth on their reservation in the 1920s. Section 3 of this Chapter entitled The Creation of Puppet Governments describes how the BIA failed to obtain consent for this oil exploitation, so they go in and hold their own election and after that is unsuccessful they

\(^{18}\) Ibid., see footnote 9  
\(^{19}\) Supra, paragraph 65  
\(^{20}\) Supra, paragraph 66  
hand pick a puppet Council to draw manufactured consent. This BIA exercise has become the basic model for developing “Federal” legislation that lead to creation of the Indian Reorganization Act (IRA, A.K.A. the Wheeler-Howard Act of 18 June 1934) now known as the creation of IRA puppet governments in the United States. This is the rule of lawlessness in the United States of America, the foundation for manufacturing consent with the so-called “government to government” relationship with Indian Tribes.

The puppet institutions are a mask created by the United States of America to release itself of its obligations and responsibility to protect as a colonizing and occupying State. The puppet governments and institutions are used to confiscate or to cede Indigenous territory and resources. States or corporations are given enough power to manufacture consent through such pro forma consultations that have absolutely no effect on the desired outcome in what appears to be “negotiations”. This form of manufactured consent denies the recognition of the right to self-determination, often extinguishing the rights and title to the territory or resources without the knowledge or consent of the occupied or colonized peoples, denying them of their free, prior and informed consent. Individual puppets, collaborators or quislings are the beneficiaries at the expense of the collective, often incurring irreparable damage to the territory and resources of the colonized or occupied Indigenous Peoples.

The lack of participation and consent can be traced in Alaska from the 1867 Treaty of Cession that led to one-sided acts of the United States Congress, to the Executive Orders of the President to the United States Supreme Court decisions that reduce the rights of the independent Tribal Governments and Indigenous Peoples of Alaska. The same process of colonization is evident in Hawaii after the illegal overthrow of the Kingdom of Hawaii. Among other examples, the United States imposed the puppet institutions through the 1934 Indian Reorganization Act by the United States Congress. The United States the use of puppet machinery and attempts to justify itself after violating our rights by unilaterally imposing the Tee-Hit-Ton v. United States of America (348 U.S. 272) 1955, this case importing the Johnson v. McIntosh (21 U.S. 543) 1823. This was followed by the 1958 referendum in Alaska and the 1959 referendum in Hawaii, both were riddled with irregularities which are expounded upon in the Shadow Reports submitted to the Human Rights Committee and to the Committee on the Elimination of Racial Discrimination. The United States of America incurred international obligations by the United Nations factors and principles under General Assembly resolution by placing us on the list of Non-Self-Governing Territories under General Assembly resolution 66 (I) in 1946. All these were unilateral actions by the United States Government without our participation and consent under the assumption that it acquired title and jurisdiction to both Alaska and Hawaii; both are unresolved international situations.

Subsequently, the United States unilaterally imposes the Alaska Native Claims Settlement Act (ANCSA) in 1971 under domestic law that violates its international to Alaska Indigenous Peoples for a so-called settlement that extinguishes the land and subsistence rights of the Indigenous Peoples of Alaska. This is followed by the Alaska National Interest Lands Act (ANILCA) of 1980, legislation adopted to implement this extinguishment legislation (ANCSA) to deprive us of our right to territory, self-determination and subsistence without
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our consent in a manner that again violates the international law maxim that you cannot use domestic law to settle the international obligations of States. Of course we can now establish that each and every form of legislation, executive order or high court decision based on assumed title or jurisdiction or acquisition of sovereignty are violations of the international obligations and of the Constitution of the United States of America. One particular example is in the Shadow Report of the Indigenous Peoples and Nations Coalition and the Koani Foundation for the Universal Periodic Review of the United States of America (submitted 19 April 2010 to the OHCHR UPR mechanism). This example illustrated how President Thomas Jefferson admitted that it was necessary to approve a new Article of the Constitution of the United States of America since under Article IV, Section 3, clause 2, the Constitution did not provide for the enlargement of Territory without the expressed participation and democratic consent of the peoples of foreign territory, and its unilateral enlargement did not make it “property belonging to the United States of America”. Without correcting the unilateral actions and the expressed democratic will of the peoples of Alaska and Hawaii, the vote of the United States military and its citizens in both territories (as one example) cannot affect the right to self-determination or the title rights of the Indigenous Peoples in Alaska or Hawaii.

**United Nations Reports Reflect our Claims**

The following paragraph originating from the Summary Record of the former Sub-Commission on the Promotion and Protection of Minorities in August of 1999 was presented to the first Expert Seminar on Treaties, Agreements and Other Constructive Arrangements between States and Indigenous Peoples in a paper by Ambassador Ronald Barnes of the :

> “Mr. Barnes (Indigenous World Association) gave an account of the violations of the human rights of the independent tribes and indigenous peoples of Alaska which had been subjugated, dominated and exploited by an administering Power entrusted with bringing them to self-determination. They had not been a party to nor had they participated in the removal of Alaska from the list of non-self-governing territories in 1959. Where they had attempted to participate, they had been subjected to fines or imprisonment or both if they could not read, write or speak English; the United States military and the transferred population had been allowed to vote, and the independent tribes and indigenous peoples had not even been fully informed regarding their annexation by the United States of America.”

I will present examples continuing violations of the Constitution of the United States of America and of the international obligations to the Indigenous Peoples of Alaska. Bear in mind that the creation of the state of Alaska as the 49th state of the United States of America violated the Constitution of the United States of America in its creation. Since the United States of America had neither title nor jurisdiction, it had no right to create the state of Alaska

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22 HR/GENEVA/TISP/SEM/2003/BP.21
23 E/CN.4/Sub.2/1999/SR.3, paragraph 15
or to allocate title or grant jurisdiction since the United States of America had not settled or acquired title and jurisdiction to Alaska.

It is impossible to address the violation of participation and consent at the outset under the so-called domestic occupation law of the United States of America because the basis for settling the issue of subsistence is based on the violation of the right to self-determination under international law. The United States Government refuses to address its unconstitutional and unlawful legislation it created to the situation of the state of Alaska. Further, the unconstitutional and unlawful Alaska Native Claims Settlement Act ANCSA and the legislation that was created to implement ANCSA resulted the Alaska National Interest Land Conservation Act (ANILCA), which is illegal in its inception and implementation; these laws and legislation cannot be properly challenged under international law in their courts of occupation, but only addressed in accordance with the domestic jurisdiction and its rules and procedures of the United States of America. This is accepted and prepared mainly by the puppet machinery set up by the federal United States Government and by the new legislation that makes the ANCSA and its Non-Profit arms Tribal Governments. While this law and legislation is unconstitutional, we cannot find relief in the colonial domestic court at any level since it relies on and only gives standing to its puppet institutions and their provocateurs who claim our international legal and political status is only “pie in the sky”. They attempt to give legitimacy to an unlawful situation and will never attempt to address our international status as puppet institutions.

Based on this premise, here are examples of the violations of participation and consent by the illegal state of Alaska, who invoke their laws of occupation in violation of our right to self-determination:

**ONE**

The state of Alaska was allocated land belonging to the Territory of the Indigenous Peoples of Alaska without their participation or consent in the process of annexation by the United States of America as a result of the irregular 1958 referendum. Although a properly conducted and internationally monitored referendum was to fulfill the obligations of the United States of America for listing Alaska under Article 73 of the Charter of the United Nations and the factors and principles adopted by the General Assembly, this was not implemented. The federal United States adopted the legislation known as the statehood Act without acquiring title or jurisdiction to Territory of Alaska. Despite also UN resolution 626 (VIII) of 21 December 1952 on the right of peoples to freely use and exploit their natural wealth and resources inherent of their sovereignty, it went ahead with the ultra-virus legislation of, inter alia, the Alaska Statehood Act, ANCSA and ANILCA. The state of Alaska attempts to create legislation for its development in violation of the right to subsistence and of any other rights to property and self-determination and feels safe since the federal United States of America

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24 Ibid., see footnotes 14, 15 and 16
will not address its violations of the Constitution of the United States of America and international law. As we can see, the United States of America does not have title or jurisdiction to allocate land or territory that belongs to the Indigenous Peoples of Alaska or to create any other political sub-divisions, since, as the United Nations report states, it did not acquire title or jurisdiction. Thus the state of Alaska does not have clear title or political rights to the land or territory in Alaska; the state of Alaska and its people are occupying foreign territory. United States of America in diplomatic communications declared that this territory belongs to independent tribes inhabiting an independent territory using Emmerich de Vattel and his Treatise Law of Nations that in effect declares that the Alaska Natives are foreign nations to the Monarch of Russia. Despite all this, the representative of the Department of Natural Resources (DNR) Bruce Phelps of the state of Alaska asserted that, “DNR will not recognize the Subsistence Rights of Alaska’s Indigenous People on state controlled land” in a meeting with the Curyung Tribal Council on the 19th of April 2013. Bruce Phelps cannot declare that this is actually state held land, because it has not acquired title or jurisdiction to Alaska, thus it must only refer to this as “state controlled land”. According to one Tribal Chief Adolph Roehl, he is asserting false authority since the state of Alaska does not have clear title or jurisdiction. The subsistence rights are based on absolute title rights of the Indigenous Peoples of Alaska who are being denied their rights by the occupying government United States of America. The pro forma meetings and testimony conducted under domestic occupation laws of the state of Alaska and the federal United States Government must not have any effect on what the state intends to do since it lacks proper title, authority and jurisdiction and will never in that capacity respect the Territorial and subsistence rights of the Indigenous Peoples of Alaska.

The United States of America refuses to address the violation of the right to self-determination and to resolve the title and dominion issue of the Indigenous Peoples of Alaska and Hawaii based on their international legal and political status. For this particular circumstance, Mr. Adolph Roehl refused to give a testimony as a Tribal Chief but did so in his individual capacity, putting the state of Alaska and the United States on notice for crimes against humanity and genocide for attempting to adopt legislation that will harm the environment and ultimately destroy our economy (testimony is also attached). This is one, 25

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25 Senate Document Number 384 of the 18th Congress, 2d Session, 1824 entitled Confidential incorporated with the Russian empire. *** That on the supposition that the natives of the country should be found under the jurisdiction of Russia, the United States would have only to abandon their merchants to the penalties incurred by those who carry on a contraband trade in a foreign jurisdiction; that if, on the contrary, the natives ought to be regarded as independent tribes, Russia could not prohibit foreigners form trading with them unless in contraband of war and in time of war; in which case she can herself put in execution the prohibition on the open sea. From these facts, incontestably proved by historical documents, an irresistible conclusion follows, which agrees with the declaration of Russia, in 1790; and it ought to appear definitive that she had no right to claim, either under the title of discovery or of possession, on the continent east or south of Behring’s Strait, about the 60th degree north latitude. *** The conclusion which must necessarily result from these facts does not appear to establish that the territory in question has been legitimately incorporated within the Russian empire.
among many examples, of pro forma testimonies that will have no effect as to whether or not the state will allow address subsistence rights as its representative stated clearly that, “DNR will not recognize the Subsistence Rights of Alaska’s Indigenous People on state controlled land” despite that it have never itself acquired title or dominion. It is for this, among other reasons, that for non-participation and consent in compliance with the United Nations decolonization process and through subsequent domesticated acts of the occupying Power, that Alaska and Hawaii, must be re-enlisted to the list of Non-Self-Governing Territories to finally address our status.

TWO

Another clear example of pro forma consultation in decision-making through the use of puppet machinery is in the minutes of the Federal Subsistence Board Public Regulatory Meeting on the 9 May 2012 at the Gordon Watson Conference Room at Anchorage, Alaska. In paragraphs 46-50 and page 15 and continuing on in paragraphs 1-6, the Chairman, Tim Towarak states, “And I should probably include a general comment about – I know there’s been a lot of angst about having ANCSA Corporations listed as tribes and for the information of the public and those listening, I pointed out before that this Board has not had a choice about whether or not we wanted to include tribal corporations – I mean ANCSA Corporations as tribes, it was a directive, it has come down through Congress and we have no other choice but to accept the decision that was made to list corporations as tribal members.”

The implementation of Title VIII of ANILCA is being implemented by puppet institutions and by appointed members of the Federal Subsistence Board whose mandate is limited to the draconian ANCSA legislation imposed upon a state of peoples. The Chair instructs the puppet machinery that it has “no other choice but to accept the decision that was made to list corporations as tribal members” as the foundation for implementing violations of our international right to self-determination on grounds of racial discrimination and is therefore directing our Indigenous Peoples of Alaska to accept the many crimes against humanity that the state of Alaska and the United States of America are committing.

These “tribal corporations” referred to by Chairman Tim Towarak are designated by United States Congressional legislation that allows them to operate as “tribal governments” and are also part of the puppet machinery created in what is still foreign territory to the United States of America. I again remind that the Special Rapporteur Erica-Irene Daes reported that the Indigenous Peoples of Alaska did not consent to ANCSA. This is a continuing violation of the “free political institutions” as referred to in Article 73 of the Charter of the United Nations. The tribal corporations and the federally recognized Tribal Governments are not free political institutions created by the Indigenous Peoples of Alaska, but are by definition, puppet

institutions that are given authority to act as a government under the occupation forces created by the United States of America in foreign territory. This is foreign territory because the Indigenous Peoples did not participate or consent to the creation of the federal state of any of the political sub-divisions set up by the United States or its illegal state of Alaska in our territory. None of these institutions emanate from the free political institutions of the Indigenous of Alaska. In this case the United States of America had no right to designate puppet governments to represent us to the United States of America in any way shape or form. It is for this very reason that Morocco, Indonesia and Tunisia, among other examples, were entitled to remain listed after violations of the free political institutions principles under Article 73 of the Charter of the United Nations. Alaska and Hawaii must be re-enlisted to address the violations imposed on still separate and distinct peoples.

The Tribal Governments in Alaska are the “Federally Recognized Tribal Governments” machinery that is set up under the Indian Reorganization Act by the United States Congress in 1934 (see page 5, the section on Puppet Governments and Manufacturing Consent of this paper) This is a continuing violation of the “free political institution” principle under Article 73 of the Charter of the United Nations. This is a direct violation of the decision-making principle related to participation in United Nations resolutions for decolonizing Non-Self-Governing Territories. Thus Alaska and Hawaii were not legitimately annexed into the United States of America and our rights remain intact as peoples.

For example, Alaska is illegally annexed in 1958 through a referendum that was riddled with irregularities in the adoption of General Assembly resolution 1469 of the 12 December 1959. The United States Government illegitimately took it upon itself to extinguish the sovereign right of the Indigenous Peoples to the territory and resources and to the subsistence rights without the participation and consent of the Indigenous Peoples of Alaska. The United States Congress enacted the Alaska Native Claims Settlement Act (ANCSA) in 1971, unilaterally extinguishing all right and title to the territory in violation of the Constitution of the United States of America and of its international law obligations. (See the Shadow Reports submitted to the Independent Expert). The illegally contrived Alaska Supreme Court ruled that the Alaska National Interest Lands Conservation Act (ANILCA) violated Article 12, section 12 of the Alaska Constitution; the Constitution of Alaska has never been accepted by the Indigenous Peoples of Alaska; the state of Alaska a political tool of United States occupation.

Freedom of Association and freedom of assembly are highly regulated by the restricted agendas that are created by the puppet institutions such as the ANCSA corporations in Alaska. Questions and answers are sifted through the corporation “Board of Directors” who regulate and restrict the agenda on behalf of the colonial oppressors to limit the mandate and to deny freedom of expression at meetings so the real human rights and political rights are suffocated by procedure. If anyone attempts to address these violations they are called out of order and their views are never reflected in the reports. Freedom of information is also restricted by the limitations on the agenda. The issue of puppet government, collaborators and quislings must be addressed when discussing the legitimate parameters of participation and consent for any peoples in today’s world.
SUPPORTING EXAMPLE OF RE-ENLISTMENT TO ARTICLE 73

The United Nations General Assembly adopted resolution A/67/L.56 to re-enlist the Indigenous Peoples of French Polynesia to the list of the United Nations Non-Self-Governing Territories. The Human Rights Treaty bodies, including the Human Rights Committee and the Committee on the Elimination of Racial Discrimination refused to transmit a petition stating that there is no precedent for re-enlisting anyone to the list of Non-Self-Governing Territories. There is no legitimate excuse to not make a recommendation to re-enlist Alaska and Hawaii to the list of Non-Self-Governing Territories. Puppet institutions, states or governments cannot unilaterally deny a state of peoples to exercise their right to self-determination. This right belongs to the Indigenous Peoples of Alaska and Hawaii as we are the peoples vested with the right to self-determination.

Conclusions

The Charter of the United Nations, the United Nations decolonization process and the human rights treaties and many other international standards elaborate on the right to self-determination. Indigenous Peoples possess their own laws and did not participate or consent to the imposition colonial law and policy that obstructs the implementation of their right to self-determination.

Indigenous Peoples throughout the world have never ceded or relinquished their status as peoples. The Martinez Treaty Study acknowledges this in the Preliminary Report and in the Progress reports and in the Final report, where it also elaborates on the many principles that are violated by States. The Special Rapporteur Martinez lays down principles and gives conclusions and recommendations in the course of his 10 year mandate as Special Rapporteur for the Study on Treaties, Agreements and Other Constructive Arrangement between States and Indigenous Populations.

There are Indigenous Peoples with the historical recognition of the right to self-determination as a state of peoples by being placed on the list of Non-Self-Governing Territories under Article 73 of the Charter of the United Nations. They also have the right to be re-enlisted to have their cases properly examined. As stated in Shadow Report and other reports there are cases where Indigenous Peoples did not participate and consent to their removal from the list of Non-Self-Governing Territories. Other Indigenous Peoples or unrepresented peoples that are denied their rights as peoples must be able to harness this mechanism. Their right to participate under the factor and principles were presented in a paper to the Independent Expert on the promotion of a democratic and equitable international order for his Expert Seminar on 16 May 2013 that is relevant to his mandate.

Indigenous Peoples and other peoples are faced with the challenges of everyday sequels of colonialism that affect their lives under conditions where there is no relief. There is a need to develop an international reporting procedure to bring to the table such conditions to address
the rights of peoples. The United Nations Decolonization Committee of 24 can serve this purpose.

**Alaska and Hawaii were listed under Article 73 of the Charter of the United Nations:**

What was the level of participation and consent with the factors and principles based on General Assembly resolutions pursuant to the obligations for Article 73 of the Charter of the United Nations for the Indigenous Peoples of Alaska and Hawaii during the respective referendums concerning their status as Non-Self-Governing Territories?

How does the United States intend to address the outstanding issues relating to Alaska and Hawaii?

**The United States of America signed treaties with many Indigenous Nations:**

How did the United States of America allow for participation and consent for Indigenous Peoples in relation to the international treaty obligations, in particular for the participation and consent for their free and democratic choice concerning their international right to self-determination under Article 73 of the Charter of the United Nations?

Has any Indigenous Peoples ceded their treaty rights with Indigenous Peoples or agreed without any threat or coercion to a lesser standard of recognition?

**The United States of America has unilaterally extinguished the title and right to territory, resources and right to subsistence of the Indigenous Peoples of Alaska, a recognized state of peoples under international law.**

How are the United States of America and the state of Alaska going to address the unilateral taking and extinguishment of territory, resources and right to subsistence on territory that it has never settled title or jurisdiction to?

The United States of America created puppet governments and made agreements in violation of its existing treaty and other obligations to undermine the sovereignty of the territory and resource rights encroach upon territory and exploit the resources of Indigenous Peoples.

How is the United States of America going to address the phenomenon of puppet agreements and violation of territory, resource and subsistence rights of Indigenous Peoples?

**Recommendations**

The Human Rights Committee recommends that Alaska and Hawaii be re-enlisted to the list of Non-Self-Governing Territories under Article 73 of the Charter of the United Nations Decolonization Committee.

The Human Rights Committee recommends that a full moratorium on denying the Indigenous Peoples of Alaska their right to subsistence, including any settlement to territory, land and resource rights in both Alaska and Hawaii and in the territories of the Great Sioux Nation and in the territory of other Indigenous Peoples be implemented.