

United Nations Committee on the Elimination of Racial Discrimination (CERD) 107th Session

Indigenous People's Alternative Report

Chickaloon Native Village¹ and the Chickaloon Village Traditional Council

re:

List of themes in relation to the combined 10th-12th reports of the United States of America

July-August 2022

Submitted by:

Gary Harrison,² Chief and Chairman of the Chickaloon Native Village and the Chickaloon Village Traditional Council

India Reed Bowers, B.A. LL.M.³

Contact:

Gary Harrison, Chief and Chairman, Chickaloon Native Village and Chickaloon Village Traditional Council, PO Box 1105 Chickaloon, Alaska 99674, email: garyharrison@chickaloon.org

¹ Chickaloon Native Village is an Indigenous People's governing and representative body and also an affiliate of International Indian Treaty Council (IITC)

² Including the supporting 2014 Submission to UN CERD by Chickaloon Village and International Treaty Council (IITC) produced for the 2014 CERD review of USA

³ B.A. Cultural Anthropology, Brown University (United States), LL.M. International Law of Human Rights & Criminal Justice, Utrecht University (Netherlands); Founder & Director, International Organization for Self-Determination and Equality (IOSDE) / Independent freelance consultant. india.bowers@gmail.com

Follow-up and Alternative Report (Indigenous People)

Chickaloon Native Village⁴ and the Chickaloon Village Traditional Council

“Situation of indigenous peoples (arts. 5 and 6)

22. Measures to guarantee, in law and in practice, the free, prior and informed consent of indigenous peoples in policymaking and decisions that affect them. [...]

23. Measures to protect the rights of indigenous peoples, their lands, territories, sacred sites and way of life...”⁵

It is a travesty that, due to the lack of the United States upholding the very backbone Treaty of the United Nations - the UN Charter and its mandates of Decolonization and Peoples’ right to Self-Determination, as well as the CERD Treaty, to this day Indigenous Peoples of the settler State of the United States of America and the World have yet to see genuine redress or access to justice for the ongoing colonialism endured and all that has come with the oppressions of colonialism.

Rather than continue to rehash well-documented and argued points and rights to Decolonization for Indigenous Peoples, points and circumstances that have been already so eloquently been laid out for centuries and still as to our original and ongoing rights as self-determining Peoples, the pains and sufferings of forced conquest, wars and trickeries that have caused our own genocides and long-term, unresolved harm and damages lived by our own people,

We state that the issues of Access to Justice in the form of the Right to Decolonization for Indigenous and all Colonized Peoples and Territories, per the United Nations Charter, Chapter XI, Article 73 and including the Indigenous Peoples of the United States of America, has yet to be established and still urgently must be, and that this lack of access to justice alone is a grave and serious, ongoing act of racial discrimination towards all Indigenous Peoples of the world still living under the occupation of settler States and,

Even more so, the Indigenous Peoples being forced to adhere to said settler States’ Recognition systems and processes i.e. lack of true self-determination, and lack of actual Decolonization and continued existence under political and territorial control;

Especially whereby, such as in the matter of the Chickaloon Native Village, no Free, Prior and Informed Consent (FPIC) was undergone in the (supposed) acquisition (grabbing) by the United States of our people and lands. For example, as detailed in the 2014 Chickaloon submission (attached) to CERD:

“As a [United Nations] charter member, the United States was to decolonize their claimed territories. Alaska and Hawaii were both on the list of the ‘Trust’ Territories, and neither was

⁴ Chickaloon Native Village is an Indigenous People’s governing and representative body

⁵ List of themes in relation to the combined tenth to twelfth reports of the United States of America, United Nations Committee on the Elimination of Racial Discrimination (CERD), 107th session, 8–30 August 2022, CERD/C/USA/Q/10-12

annexed in accordance with the UN Charter, which stood then and stands now as internationally established law.

The UN Charter under Chapter XI (Article 73) lays out the sacred trust and the obligation to promote to the utmost: the well-being of inhabitants; culture; and to the peoples concerned, their political, economic, social and educational advancement; just treatment; and protection against abuses.

To date, none of this has been accomplished.

In 1959, there was a vote taken for Alaska statehood. The Indigenous Peoples were prohibited from voting by law. That law required that in order to vote, the individual concerned had to speak and write in the English language. There was an additional discriminatory and reprehensible requirement that five (5) white people had to verify through documentation, that the individual Indigenous person was “competent” to vote.⁶

Statehood was the only thing that was on the ballot. There was no option to vote for free association, independence, nor commonwealth – these options should have been on the ballot. The military was at this time, and unfortunately continues to be, allowed to vote in local elections in Alaska even though they are mostly residents from other claimed states or countries.⁷ Throughout this period, the US did not provide any reporting on decolonization processes – they simply sent communication declaring that the conversion of Alaska to “statehood” under the United States was a fulfillment of the requirements set out in the UN Charter under Chapter XI (article 73).^{8,9}

In our case, specifically, we attach the afore-submitted documents and continue to pursue dialogue and, finally, prompt resolution on the above and below ongoing serious and grave, urgent matters.

Lastly, and not to be confused as focus of or impetus for this submission, we provide as an additional attachment: a communication that was sent (19 July 2022) to the Justice Director/Police Chief of the Justice & Public Safety Department, Chickaloon Village Traditional Council, from the local Sutton Community Council, exactly while the communications for this 2022 submission to CERD and its preparations were occurring. The letter and its email are but a sampling of conflicts resulting from ongoing racism, colonialism, and unresolved oppression and control of the Settler State, as well as the lack of recognized rights and redress that the Chickaloon Village, Chickaloon Traditional Council, Chickaloon People, and almost if not all Indigenous Peoples, continuously live under or as-affected by the United States. Without real and true access to justice in the form of formal Decolonization, the tortuous

⁶ The Constitution of the State of Alaska, Article V, section 1, 1970 year of legislative action, reference HJR 51 or countries.

⁷ Statement by RW Wade

⁸ The United Nations, Chapter XI, Article 73, sections A-E, page 13

⁹ “Alternative Report Regarding Lack of Implementation of the United States of Recommendation 38 of the Committee’s 2008 Concluding Observations and Related Violations”, submitted jointly by the Chickaloon Native Village and the International Indian Treaty Council (IITC), 25 July 2014, for the United Nations Committee on the Elimination of Racial Discrimination (CERD), 85th Session, Examination of the United States’ 7th, 8th and 9th Periodic Reports, *and its original attachments of*: Supporting Resolutions 2014-23R of the Native Village of Port Lions *and* 2005-10 of the Alaska Inter-Tribal Council, https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/INT_CERD_NGO_USA_17785_E.pdf

nature of living under colonial domination, or even recognized as such, has yet to end. Indigenous Peoples have the right and duty to protect- including, but not limited to, protecting themselves/ourselves.

In this day and age of International Law, it should not be only the oppressor, occupier, or colonizer who has access to submitting situations formally to the UN Decolonization Committee and UN Decolonization system(s) and mechanisms for procedure/review, but, as a most critical matter of both the right(s) to self-determination and equality, as well as access to justice, said processes and procedures should be open to Indigenous and colonized Peoples and Territories to initiate for and by themselves/ourselves. Moreover, said access to justice, via initiating formal UN Decolonization by and for Indigenous Peoples, should occur in a timely manner at last- to prevent further harm, protect what is, indeed, still left, and so as to not be, yet again, another tool of colonial and/or colonizing forces.

Thus, *Recalling*, As a founding member of the United Nations and UN Charter Treaty signatory and with obligations therein, the United States of America is, and always has been, obliged to submit to undergoing formal UN Decolonization.

Requested Questions for Dialogue with the United States of America and CERD:

- 1) Why has the United States failed to Decolonize or agree to consider the rights of the Indigenous Peoples to Decolonize Alaska, as mandated by Chapter XI, Article 73 of the UN Charter?
- 2) Under its CERD obligations, what immediate and effective measures will the United States take to reinstate Alaska and/or colonized Indigenous Peoples and their territories on the Decolonization List, so that the process of actual Decolonization, healing, and reversal of centuries of genocide begin, as called for in Chapter XI, Article 73 of the UN Charter, the CERD Convention, and an abundance and plethora of other International Law obligations?

Requested Recommendations for CERD for the United States of America:

- 1) That the United States agree to take immediate and effective measures to remedy the inherent racism it has applied to the UN Decolonization system and either:
 - a) Place Alaska back on the UN Decolonization list;
 - b) Place the Chickaloon Native Village on the UN Decolonization list;
 - c) Agree that true self-determination is allowing for Indigenous Peoples and other Colonized Peoples to either
 - A) Be allowed to put themselves on the UN Decolonization list or in direct consideration with the UN Decolonization Committee for inclusion as such;
 - B) Formulate their own individual territorial and political statuses without the control and determination of the colonial settler State over the colonized People(s) but as individual Tribes and Peoples.

Attached to this submission:

- “Alternative Report Regarding Lack of Implementation of the United States of Recommendation 38 of the Committee’s 2008 Concluding Observations and Related Violations”, submitted jointly by the Chickaloon Native Village and the International Indian Treaty Council (IITC), 25 July 2014, for the United Nations Committee on the Elimination of Racial Discrimination (CERD), 85th Session, Examination of the United States’ 7th, 8th and 9th Periodic Reports. *And its original attachments of:* Supporting Resolutions 2014-23R of the Native Village of Port Lions and 2005-10 of the Alaska Inter-Tribal Council (also available at: https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/INT_CERD_NGO_USA_17785_E.pdf)
- Email-attached letter re “Chickaloon Tribal Police Powers” from Sutton Community Council

Attachments

**COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION
85th SESSION**

**EXAMINATION OF THE UNITED STATES 7TH, 8TH AND 9TH PERIODIC
REPORTS**

**ALTERNATIVE REPORT REGARDING LACK OF IMPLEMENTATION BY THE
UNITED STATES OF RECOMMENDATION 38 OF THE COMMITTEE'S 2008
CONCLUDING OBSERVATIONS AND RELATED VIOLATIONS**

Submitted jointly by the Chickaloon Native Village and the International Indian Treaty
Council (IITC)

July 25, 2014

*IITC is an Indigenous Peoples Non-Governmental Organization in General Consultative
Status to the UN Economic and Social Council.

** Chickaloon Native Village is an Indigenous Peoples governing and representative
body

*We also express appreciation for Gary Harrison, Chief and Chairman of the Chickaloon
Native Village and the Chickaloon Village Traditional Council, and the supporting
Resolution 2014-23R of the Native Village of Port Lions, and supporting Resolution
2005-10 of the Alaska Inter-Tribal Council, both resolutions attached to this Report.*

Contact:

Gary Harrison, Chief and Chairman, Chickaloon Native Village and Chickaloon Village
Traditional Council

PO Box 1105 Chickaloon, Alaska 99674, Cell: +1(907) 232-0777

Email: garyharrison@chickaloon.org

Andrea Carmen, Executive Director, International Indian Treaty Council (IITC), Non-
Governmental Organization with General Consultative Status to the U.N. Economic and
Social Council (ECOSOC). 2940 16th Street, Suite 305, San Francisco, CA 94103-
3664 Tel: +1 (415) 641-4482 (office), Cell: + 1 (907) 841-7758

Email: andrea@treatycouncil.org

EXECUTIVE SUMMARY

This submission focused on Alaska, including a short synopsis of the on-going systematic destruction of our Indigenous Peoples through racist and discriminatory doctrine, laws, and policies are particularly relevant to the specific rights affirmed in ICERD Articles 2, 5, 6 and 7.

Alaska was established as a State of the United States on shaky legal grounds, effectively repudiating title of Indigenous Peoples without their consent. Alaska never went through the proper process of decolonization as mandated by the UN Charter. No treaties were entered into to allow for the settlement of Alaska, nor were Indigenous Peoples provided the right to have a say in the assumption of legal title of the lands and territories of the Indigenous Peoples. The *UN Declaration on the Rights of Indigenous Peoples* (the “UN Declaration”) noted in preambular paragraph 6 that “Indigenous Peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests.” Article 8 of the Declaration requires that States provide mechanisms for the prevention of, and redress for, 2 (b) “any action which has the aim or effect of dispossessing them of their lands, territories or resources.” However, the Indigenous Peoples of Alaska do not seek redress at this time – instead the Indigenous Peoples want their title appropriately recognized through the decolonization process outlined under the UN Charter so as to allow for the proper consent of Indigenous Peoples.

This on-going lack of recognition of the title of Indigenous Peoples, as well as the way the land was grabbed by the United States, is not taught in schools nor is it contained in curricula taught in schools. Moreover, tribal schools are not recognized or supported by the Federal government. This is effectively a violation of the right of Indigenous Peoples to the right of Indigenous communities to retain shared responsibility for the upbringing, training, education and well being of their children, consistent with the rights of the child as outlined in preambular paragraph 13 of the *United Nations Declaration on the Rights of Indigenous Peoples*, as well as Articles 14 and 15 of the UN Declaration requiring the right of Indigenous Peoples to establish and control their educational systems and the right to have their histories appropriately reflected in education and public information.

The ICERD commits all State parties to promote and encourage universal respect for and observance of human rights and fundamental freedoms for all, without distinction as to race, color, sex, language or religion which the United States ratified in 1994. In particular, ICERD Article 6 stipulates that "State parties shall assure to everyone within their jurisdiction effective protection and remedies... against any acts of racial discrimination" as well as the right to seek "just and adequate reparation or satisfaction from any damage suffered as a result of such discrimination."

The ICERD sets the standards for the United States to take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations that have the effect of creating or perpetuating racial discrimination --

including that carried out against Native Americans. We recommend that the Committee, in its Concluding Observations, call upon the U.S. to take effective measures to address these violations of the ICERD. In particular we propose the following questions and recommendations be made to the US by the Committee:

PROPOSED QUESTIONS

- 1) Why has the United States failed to decolonize Alaska, as mandated by Chapter XI, Article 73 of the UN Charter?
- 2) Under the ICERD, particularly Articles 2, 6, and 7, what "immediate and effective measures" will the United States take to reinstate Alaska on the Decolonization List, so that the process of education and Decolonization can begin, as called for in Chapter XI, Article 73 of the UN Charter?
- 3) Why does the government refuse to recognize tribal schools, which are necessary for the ongoing integrity of Indigenous identity, community, and the rights of the child under the ICERD, the Convention on the Rights of the Child, and the UN Declaration on the Rights of Indigenous Peoples?

PROPOSED RECOMMENDATIONS

- 1) That the United States take immediate and effective measures to place Alaska back on the decolonization list.
- 2) That the CERD call on the United States to, in conjunction with Indigenous Peoples of Alaska, develop a Truth and Reconciliation Process about the history of racism and discrimination against indigenous peoples of Alaska.
- 3) That the CERD call upon the United States to recognize and financially support tribal schools in Indigenous Peoples communities and villages, as well as ensure the proper reflection of the true histories and identities of Indigenous Peoples of Alaska in school curricula.

A HISTORY OF APPROPRIATION WITHOUT CONSENT

This submission outlines racial discrimination and genocide that continues to this day. Indigenous Peoples were in possession of the lands and territories now known as “Alaska” from time immemorial. Indigenous possession was not broken until the arrival of Russians in the mid-1700s. However, even as the Russians claimed Alaska, their settlements were few and limited mainly to Kodiak and Sitka. As the numbers of Russians present on the land numbered only around 550 persons¹, they never posed any kind of threat or significant incursion on Indigenous title.

In September of 1821, the Russian government established special maritime rules limited navigation in the ocean around the Aleutian Islands and the Alaskan mainland coastal waters. These rules implied a claim of sovereignty over Alaska by the Russian government. The governments of the United States and Great Britain immediately protested these rules. The Russian government deliberately refrained from making any claim based on the doctrine of discovery. Russia had not discovered nor had they conquered Alaska in fact, the Russian forts were burned on mainland Alaska, including those in Nulato, Kustatan and Kenai.

The United States takes the position that they succeeded to Russia’s interests when Alaska was “purchased” by the Treaty of Cession in 1867. This transaction was not conducted with the consent or participation of Indigenous Peoples as parties to the Treaty. The Treaty of Cession was not made with the Indigenous Peoples of the specified lands and territories.

Reactions to the “purchase” of Alaska in the US were mixed, with many critics calling it “Seward’s Folly” to suggest that U.S. Secretary of State William Seward had made a “bad” deal.

An important historical document from this time is a Memorandum from Russia to the U.S. Secretary of State William Seward - one of the documents the phrase “Seward's Folly” was based on – also known as the Kostlivtsov Memorandum, stated “the need for the protection of the Inhabitants of Alaska because spoliators would take their possessions and depredatory working out of the riches as well on the surface and as in the womb of the earth. To civilize the savages offer them material comforts, luxury and religion.”² It is our position in this submission that the United States itself became one of the “spoilaters.”

Article VI of the 1867 Treaty of Cession stated that Russia was only selling whatever interest it had in Alaska. All they had was a monopoly for trade with the other countries – the Indigenous Peoples did not sign a treaty nor make any similar agreement related to land. The Kostlivtsov Memorandum was descriptive of what had been purchased and

¹ Getches, David H. et al “Cases and Materials on Federal Indian Law” Sixth Edition, 2011 West Publishing Co. at page 888

² Kostlivtsov Memorandum 1867 Russian Memorandum 1867, Mr. Clay to Mr. Seward No. 163, US, Nov. 21, 1867

sold under the Treaty of Cession. It said that Russia had not owned Alaska, but that they had owned a fort on Kodiak Island and a fort at Sitka on Baranof Island, and various temporary trading posts on the mainland. In reference to Indigenous Peoples, all the Treaty said was that “uncivilized tribes” were to be “subject to such laws and regulations as the United States may, from time to time, adopt in regard to aboriginal tribes of that country.”

The line of US law subsequent to the Treaty of Cession documents a long history of racist and discriminatory lawmaking about Indigenous Peoples, without Indigenous Peoples.

In 1884 Congress stated in the Organic Act for the Territory of Alaska that: “the Indians or other persons in said district shall not be disturbed in the possession of any lands actually in their use of occupation or now claimed by them but under the terms under which such persons may acquire title to such lands is reserved for future legislation by Congress.”

This was effectively an attempt to demonstrate the assertion of the doctrine of discovery by the United States on the lands and territories of the Indigenous Peoples, which was later supported by the US Supreme Court in their ruling *Tee-Hit-Ton Indians v. United States* [1955] 348 U.S. 272, 75 S.Ct. 313, 99 L. Ed. 314, finding that in order to have legal rights or title, Indigenous Peoples in Alaska required recognition by Congress as having legal rights to the land. It was a legal ‘papering over’ of land appropriation by effectively saying that if Congress does not recognize you as an Indian having rights, you don’t really exist. The Supreme Court’s racist holding went on: “Every American schoolboy knows that the savage tribes of this continent were deprived of their ancestral ranges by force and that, even when the Indians ceded millions of acres by treaty in return for blankets, food and trinkets, it was not a sale but the conqueror’s will that deprived them of their land...” As such, Indigenous Peoples in Alaska had no right against takings of lands and resources by the US Government, according to the Supreme Court.

And yet, no treaty existed with the Indigenous Peoples of Alaska. No provision was made in the Treaty of Cession to include Indigenous Peoples as parties to the Treaty. *The US claim to title in Alaska relies upon racist and revisionist court judgments and US policies, created by US authorities and judges who hoped to build statehood on a floor made of paper.* Indigenous Peoples did (for a millennia), and continue to, exist in Alaska.

Resources, Statehood and the Denial of Indigenous Participation in Decision-Making and Consent

Since the time of the Treaty of Cession, decades of individual and collective injustices have been committed ranging from mental, physical, spiritual, cultural and religious abuses. Ethnocidal and genocidal actions against us are evidenced through social and medical statistics, the lack of inclusion in decisions about development activities and potential hazards to our fisheries, hunting, gathering, our food security, and on our

subsistence food practices and well-being in the lands, territories and waters that we have used and navigated since before trading days.

Alaska is, and historically has been, a source of immense wealth for the United States. Resources such as fur, gold, silver and other extractives have been the main revenue generators over the decades.

During World War I, coal was extracted to fuel the Pacific Fleet. That was when the US Navy came to Alaska. Their arrival brought crime, alcohol, disease, devastating environmental damage and destruction (including the decimation of salmon, caribou and sheep) which impacted the Peoples in Chickaloon, and forever changed our health, food security, livelihoods and ways of life.

At the end of World War II in 1945, the United Nations was established with the United States being amongst the first to ratify the UN Charter. In fact, the United States took a leading role in the creation, structure and development of the United Nations. The Charter of the United Nations established in Chapter XI (Articles 73 and 74) the principles that continue to guide United Nations decolonization efforts, including respect for self-determination of all peoples.

The United Nations Charter also established the International Trusteeship System in Chapter XII (Articles 75-85) and the Trusteeship Council in Chapter XIII (articles 86-91) to monitor certain Territories, known as “Trust” Territories. As a charter member, the United States was to decolonize their claimed territories. Alaska and Hawaii were both on the list of the “Trust” Territories, and neither was annexed in accordance with the UN Charter, which stood then and stands now as internationally established law.

The UN Charter under Chapter XI (Article 73) lays out the sacred trust and the obligation to promote to the utmost: the well-being of inhabitants; culture; and to the peoples concerned, their political, economic social and educational advancement; just treatment; and protection against abuses.

To date, none of this has been accomplished.

In 1959, there was a vote taken for Alaska statehood. The Indigenous Peoples were prohibited from voting by law. That law required that in order to vote, the individual concerned had to speak and write in the English language. There was an additional discriminatory and reprehensible requirement that five (5) white people had to verify through documentation, that the individual Indigenous person was “competent” to vote.³

Statehood was the only thing that was on the ballot. There was no option to vote for free association, independence, nor commonwealth – these options should have been on the ballot. The military was at this time, and unfortunately continues to be, allowed to vote in local elections in Alaska even though they are mostly residents from other claimed states

³ The Constitution of the State of Alaska, Article V, section 1, 1970 year of legislative action, reference HJR 51

or countries.⁴ Throughout this period, the US did not provide any reporting on decolonization processes – they simply sent communication declaring that the conversion of Alaska to “statehood” under the United States was a fulfillment of the requirements set out in the UN Charter under Chapter XI (article 73).⁵

A decade later, the *Alaska Native Claims Settlement Act* (ANCSA) of 1971⁶ was passed. The language used in the text of this legislation had the intent of destroying the true legal and political identities of the Indigenous Peoples of Alaska. The tribes were told that they had “relinquished” their claims to vast amounts of land, but unlike treaty-making with Indigenous Peoples, land title was received by corporations chartered under state law, not by Indian tribes with governmental powers.

Thus it was an annihilation of the true identities of Indigenous Peoples in Alaska. Two examples of the tools to accomplish this was the “corporatization” of Indigenous communities, and the forcible taking or transfer of Indigenous children away from such communities.⁷ Both of these actions taken by the US Government qualify as a “genocidal act” under Article II of the *Convention on the Prevention and Punishment of the Crime of Genocide* (adopted by Resolution 260 [III] A of the UN General Assembly on 9 December 1948) and the United States *Genocide Convention Implementation Act*.

The ANCSA made no provision for special hunting, fishing or water rights. The Act stated that it was not intended to establish any “permanent racially defined institutions” or “lengthy wardship or trusteeship” (43 U.S.C.A. §1601(b)) which created ambiguity around the US government relationship with Alaskan Indigenous Peoples. Subsequent amendments to the ANCSA have mainly focused on minor changes to corporate structure, taxation and property distributions under the Act. In the case of *Alaska v. Native Village of Venetie* [1998] 522 U.S. 520, 118 S.Ct. 948, 140 L.Ed. 2d.30, the Supreme Court of the United States held that corporately-held lands selected by Alaska Natives under ANCSA’s settlement provisions cannot be governed as “Indian Country”, which critics have called an outdated and static understanding of ANCSA.

Currently we are witness to corporations attempting to assert, exercise and have recognized the same rights as Indigenous Peoples, except without all the responsibilities that ought to accompany these rights. These are rights to which corporations have no legitimate claim. There is a blatant disregard of the sacred trust that the US agreed to abide by under the United Nations Charter Chapter XI Article 73 – in so doing, the United States and the State of Alaska are disregarding the rights of Indigenous Peoples.

U.S. and Alaskan laws deprive Indigenous Peoples of their subsistence rights under the United Nations *Covenant on Civil and Political Rights*. For instance: with respect to

⁴ Statement by RW Wade

⁵ The United Nations, Chapter XI, Article 73, sections A-E, page 13

⁶ See U.S.C.A. §§ 1601-1628

⁷ See the Joint Alternate Report of the Native American Boarding School Healing Foundation, the National Indian Child Welfare Association and International Indian Treaty Council et. al regarding the Issue of Indian Boarding Schools, Submitted to the CERD 85th Session Review of the United States.

fishing regulations, Indigenous Peoples' inherent and pre-existing subsistence rights are prioritized after commercial and sports fishing, when in fact these subsistence rights should take first priority. Mining, oil and gas exploration and development are privileged above subsistence hunting, fishing and gathering, when it should be the other way around.

Meanwhile, the non-renewable resources continue to be plundered, to the detriment of the environment, traditional food, culture, knowledge / language transmission and informal Indigenous education, and protection of water sources. Foreign and so-called domestic corporations are extracting these resources from the surface waters like streams, groundwater in aquifers, and other extractions from our lands, hills, mountains and valleys – degrading lands and waters as they go and endangering the safety of drinking water and the continued existence of biodiversity and ecosystems. “Spoliators” are digging into the womb of Mother Earth.

CERD Observation and Request for Information in the last review of the United States

38. The Committee also requests the State party to provide, in its next periodic report, detailed information on the measures adopted to preserve and promote the culture and traditions of American Indian and Alaska Native (AIAN) and Native Hawaiian and Other Pacific Islander (NHPI) peoples. The Committee further requests the State party to provide information on the extent to which curricula and textbooks for primary and secondary schools reflect the multi-ethnic nature of the State party, and provide sufficient information on the history and culture of the different racial, ethnic and national groups living in its territory (art. 7).⁸

Alaska Natives make up 15% of the population of Alaska, while according to the American Civil Liberties Union,⁹ Alaska Natives comprise twice the proportion of the prison population relative to their proportion of the statewide population. A nine member Indian Law and Order Commission was established by Congress in 2010 and was directed to report back to Congress and the President on its findings after holding hearings and meetings which included Alaska. The November 2013 30-page report¹⁰ singled out Alaska in a blistering analysis of its governmental abuse and neglect, including ignoring the Government-to-Government relationship, withholding recognition of and respect for Indigenous Peoples of Alaska – effectively denying self-governance.

⁸ CERD/C/USA/CO/6. The US response in its 7th, 8th and 9th Periodic Reports was that they “assist[s] school districts in offering educational opportunities to Native Hawaiians, American Indians, and Alaska Natives.” (at page 22) Offering educational opportunities to individual Indigenous persons at mainstream schools does nothing to address the promotion of culture and traditions, nor does it resolve the outstanding issue of lack of sufficient or accurate information about the histories, identities, cultures, and languages of Indigenous Peoples of Alaska in all school curricula.

⁹ ACLU, *Alaska: Rethinking Alaskans' Correction Policy: Avoiding an Everyday Crisis*: March 2010, at page 9

¹⁰ http://www.aisc.ucla.edu/iloc/report/files/Chapter_2_Alaska.pdf

This is important in regard to the concluding observation of the CERD regarding the United States. Alaska Indigenous Peoples are effectively unable to access any of the funding set aside for federally recognized tribes, nor can they engage in any meaningful forms of self-governance as other tribes do in “Indian Country” that might properly engage their culture and traditions, in particular when it comes to life-ways, dispute resolution, tribal courts, and education. The result of this is partially demonstrated in incarceration rates of Alaskan Indigenous Peoples, lack of economic development, lack of community cohesion, breakdown of Indigenous knowledge and language education for children and youth, amongst many other related outcomes.

The example of the Chickaloon Tribe’s Ya Ne Dah Ah school near Palmer, Alaska is illustrative. Ya Ne Dah Ah began in 1992, and received national recognition for its work through a Harvard Self-Determination Award Honouring Nations. The school is owned and operated by the Tribe, and has structured its curriculum to include Alaska Native culture programs and Ahtna language instruction. The school is entirely grant funded.

Unlike in other states of the US, the US federal government policy specifically does not recognize any tribally run and operated schools in Alaska, despite their support for the UN Declaration which did not include any qualifications or limitations to Article 14 which affirms in paragraph 1 that “Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.”

Due to a 1995 ban against the use of Bureau of Indian Affairs (BIA) funds to support elementary and secondary schools in Alaska, Ya Ne Dah Ah cannot access federal/BIA monies to support language and culture programs. Moreover, state funds are not a reliable or significant source of support. As such, the school runs the risk each year of losing its language and culture programs if it cannot find the funds to continue. The US position regarding funding as well as non-recognition of the Ya Ne Da Ah or any other tribal Schools in Alaska severely curtails the ability of Alaska Natives to ensure truth in education regarding their history as well their ability to ensure the survival of their languages.

Meanwhile, in May of 2014 Alaska recognized Native languages as official languages of the state with the passage of House bill 216 during the 28th Legislature, but the bill is yet to be signed into law. This has not translated into increasing state funds to schools like Ya Ne Dah Ah.

The statute required the recently established Alaska Native Language Preservation and Advisory Council (ANLPAC) to release a report to the Governor and Legislature of Alaska, which was done July 2014. Amongst the 21 recognized Alaska Native languages, all but one is listed as *declining* on the “Expanded Graded Intergenerational Disruption Scale,” commonly used to measure language endangerment. The ANLPAC found in their study that historically, use of Indigenous language was suppressed and assimilation was imposed through punishment and shaming. ANLPAC recommended that federal and state education policies be aligned to support the teaching and learning of Alaska Native

languages through intergenerational immersion-based learning (such as that exemplified at Ya Ne Dah Ah school): “The damaging effects of language suppression has not been widely examined. Surprisingly, language-suppressive policies are noted in some districts that previously have offered Native language instruction. This reinforces the need for open dialogue and reconciliation within communities and at all levels of the state.”¹¹

Importantly, the ANLPAC’s most impactful finding was the continued need for reconciliation in Alaska. In fact, they recommended that government and policy makers foster an environment of reconciliation and healing through the collection of testimonies to gain a fuller understanding, promote public awareness and healing.¹²

CONCLUSION

The individual and collective injustices from ethnocide and genocide encompass mental, physical, spiritual, cultural, linguistic and religious rights violations, proven and demonstrated through laws, policies, socio-economic indicators and statistics. The lack of participation in decision-making on matters of legislation and development, including potentially hazardous environmental impacts to our fisheries, hunting, gathering, and food security relate directly to our economic, social and cultural rights under the ICERD. We rely on our subsistence food practices and life ways for physical, mental, cultural, linguistic and spiritual well-being in the lands, territories and waters that we have used and navigated since before trading days.

The State of Alaska is in the top 10 most corrupt governments in the U.S.¹³ Chickaloon Native Village on the other hand have had 11 clean audits and have a proven track record of fiscal responsibility. Yet the United States and its state of Alaska also have a proven track record of being racist and discriminatory in the treatment of Chickaloon Native Village, and other Indigenous Peoples in Alaska. For the above stated reasons, Alaska needs to be placed back on the decolonization list so the process of education and decolonization can begin, as called for in Chapter XI Article 73 of the U.N. Charter, and as a means to stop the racism and discrimination against Alaska's Indigenous Peoples.

PROPOSED RECOMMENDATIONS

- 1) That the United States take immediate and effective measures to place Alaska back on the decolonization list.

¹¹ ANLPAC Report, July 2014 Online at:
<http://commerce.alaska.gov/dnn/Portals/4/pub/ANLPACReport.pdf>

¹² Ibid Recommendation 5.4.2

¹³ According to a new study released ranking Alaska in the top 10, See: Cheol Liu and John Mikesell, *The Impact of Public Officials' Corruption on the Size and Allocation of US State Spending*, published online 25 April 2014. This study by Indian University and the City University of Hong Kong is based on federal Department of Justice reports, the number of public officials convicted of corruption – related crimes and spanned the period of 1978 to 2006. Available online at:
<http://onlinelibrary.wiley.com/doi/10.1111/puar.12212/full>

- 2) That the CERD call on the United States to, in conjunction with Indigenous Peoples of Alaska, develop a Truth and Reconciliation Process about the history of racism and discrimination against Indigenous Peoples of Alaska.
- 3) That the CERD call upon the United States to recognize and financially support tribal schools in Indigenous Peoples' communities and villages, as well as ensure the proper reflection of the true histories and identities of Indigenous Peoples of Alaska in school curricula.

**NATIVE VILLAGE OF PORT LIONS
PORT LIONS TRADITIONAL TRIBAL COUNCIL**

RESOLUTION NO. 2014-23R

A RESOLUTION OF THE NATIVE VILLAGE OF PORT LIONS TRADITIONAL TRIBAL COUNCIL TO GRANT RELIEF TO THE INDIGENOUS PEOPLES OF ALASKA FOR THE VIOLATIONS OF THEIR RIGHTS TO SELF-DETERMINATION INCLUDING OUR HUNTING, FISHING, GATHERING AND WATER RIGHTS (LAW OF THE SEA).

WHEREAS, the “Native Village of Port Lions” is a federally recognized Indian Tribe as defined in Section 3 (c) of the Alaska Native Claims Settlement Act as amended; and

WHEREAS, the Port Lions Traditional Tribal Council is the governing body of the Native Village of Port Lions; and

WHEREAS, the Indigenous Peoples of Alaska were listed as a Non-Self-Governing Territory under General Assembly resolution 66(I) in 1946; and

WHEREAS, the rights granted by us by our Creator remain intact as the Indigenous Peoples of Alaska have never consented to the annexation of Alaska; and

WHEREAS, the Indigenous Peoples and Nations Coalition (IPNC) presented Shadow Reports to the Human Rights Committee (HRC) and to the Committee on the Elimination of Racial Discrimination (CERD) for the implementation of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on the Elimination of Racial Discrimination, citing the specific violations of the United Nations Charter and international law; and

WHEREAS, the Indigenous Peoples of Alaska are experiencing serious bodily and mental harm causing deliberate infliction and conditions calculated to bring about the physical destruction in whole or in part, and are further damaged by the United States of America’s misadministration; and

NVOPL

Resolution No. 2014-23R

Page 2 of 3

WHEREAS, this lawless administering of Alaska is a deviation from the United Nations factors and principles elaborated in General Assembly decolonization resolutions; and

WHEREAS, the Alaska Native Claims Settlement Act (ANCSA) is based on the jurisprudence of *aboriginal title* born out of the legal fiction that was coined by *Johnson v. McIntosh* (8 Wheat. 543, 1823) and imported to Alaska by 1955 *Tee-Hit-Ton v. United States of America* while Alaska was listed under the Declaration of Non-Self-Governing Territories under Article 73 of the United Nations Charter international law; and

WHEREAS, the use of deception employed by the United States of America misled the General Assembly into adopting General Assembly resolution 1469 on 12 December 1959; and

WHEREAS, the Indigenous Peoples of Alaska are afflicted with untold suffering in the denial of their absolute title rights as peoples with the right to independent governance by the imposition of unlawful extinguishment policies, including Section 4 (b) of the Alaska Native Claims Settlement Act (ANCSA) that continues to deny us the right to govern our territory and resources, including our hunting, fishing and gathering rights, bartering and trading rights and right of navigation; and

WHEREAS, the Human Rights Committee (HRC) has called upon the United States of America to address the permanent trusteeship of Alaska and the Committee on the Elimination of Racial Discrimination (CERD) identified and reported that the petitions presented to CERD belongs with the appropriate bodies of the United Nations, thereby calling upon the United States of America to address the international violations; and

NOW THEREFORE BE IT RESOLVED that the United States of America is called upon to take immediate steps to address the violations of the international right of self-determination of the Indigenous Peoples of Alaska; and

NVOPL

Resolution No. 2014-23R

Page 3 of 3

BE IT FURTHER RESOLVED that the United States of America is called upon to implement the Conclusions and Recommendations by the United Nations Human Rights Committee (HRC) in good faith by, *inter alia*, reconciling 1955 Tee-Hit-Ton v. United States of America (348 U.S. 272) and to address the permanent trusteeship of Alaska in accordance with its international legal and political obligations to the Indigenous Peoples of Alaska; and

BE IT FURTHER RESOLVED that we call upon the United States of America to take immediate steps to revoke the unlawful extinguishment policies emanating from the Alaska Native Claims Settlement Act, in particular to revoke Section 4 (b), the application of the extinguishment of the fictitious aboriginal title rights that may exist in Alaska, including the law and policy stemming from the Act; and

BE IT FINALLY RESOLVED that the AI-TC Resolution 2005-10 remains standing and is committed and will remain seized of bringing these to the United States of America and to the international community along with the proper agents and authorities of the Indigenous Peoples of Alaska.

All rights reserved.



RICHARD PESTRIKOFF, VICE PRESIDENT

7/10/14

DATE

CERTIFICATION:

I, the undersigned member of the Port Lions Traditional Tribal Council, do hereby certify that the foregoing resolution was duly adopted by the Port Lions Traditional Tribal Council, on the tenth day of July, 2014 with a quorum present and 6 votes for and 0 against.



SUSAN KEWAN, SECRETARY/TREASURER

7/10/14

DATE

P.O. Box 243237

Anchorage,

Alaska 99524

907.440.4796

ALASKA INTER-TRIBAL COUNCIL

Advocating for Tribal Governments Across Alaska

Alaska Inter-Tribal Council was created by a gathering of over 170 Tribal Governments who formed a treaty amongst themselves in 1991. AI-TC was provided non-profit status in 1992 and acts as a foundation to advocate, protect and promote the Tribal Nations, the Tribes of Alaska; provides training opportunities; enters into grants with Tribal Resolutions; acts as a clearinghouse of information for the Tribes: sending, receiving information, articles, documents, invitations and opportunities for training, steps up to Public Notices and Public Comment periods on matters essential and critical to preserving, protecting and promoting our ways of lifeways-ancient, historical and spiritual, our culture, our tradition while asserting our political will for our tribal governments, the recognized public authority while advancing with new technologies into the future—for our next seven generations. At the annual convention in 2005 Tribal Government representatives passed Resolution 2005-10 to promote, protect and advance our return to list of Territories, as agreed to in the 1945 United Nations Charter Chapter 11, Article 73e. Several ‘Shadow Reports’ have been submitted to the UN Human Rights Committee since 2001 noting the abuses and violations and denial of our full self-governance, lack of Tribal Government representatives sitting at ‘the table’ on matters that affect our lands, territories, waters and airways, violating our intellectual property rights including our languages, cultures, traditions, our spiritual ways, lack of peace and security for our communities, families, women and children, lack of full self-governance, violations of our subsistence rights of fishing, hunting, gathering, bartering, trading and navigating the waters we have used and occupied since time immemorial. Alaska Inter-Tribal Council reserves the right to bring forward other issues of importance to the CERD in future years.

Attachments



May 25, 2022

This letter is written in response to the recent request made by the Chickaloon Traditional Council, aka CVTC and their Tribal Police Department for a change of state statute that would allow sovereign tribal governments within the State of Alaska, like the CVTC, to have statewide police powers. Residents who reside along the Glenn Highway in the communities of Glacier View, Chickaloon, and Sutton were given the opportunity to speak and ask questions at the recent public meeting held on April 16, 2021 in Sutton. These residents overwhelmingly opposed this request, stating that they do not wish to be policed by a sovereign government in which they have no voice or ability for recourse because of its sovereign immunity. (UAF, n.d.) They also stated that a tribe without a reservation, on the connected road system, in a community that is more than 80% non-native should not be considered for statewide police powers. Currently the only tribal police department with recognized authority in the State of Alaska is in Metlakatla, which is also the only reservation in the state and recognized as a police department because of this special circumstance. (Alaska Law, n.d.)

What CVTC is asking for is to change the law in a way that is not only unprecedented in Alaska, it is not something that can be found in any state in the union on the level in which they are proposing. This kind of statute change would affect the entire state and should be reviewed by all legislators, with input from their constituents, before any decisions are made. It is also important to note that the responsibility for such a change falls to the State of Alaska and not the sovereign governments seeking the authority. (American Bar, n.d.) (UAF, n.d.) Research into federal and state laws across the nation offer some examples of what is being done in other states and we offer this information as reference.

Tribal police powers in the lower 48 states are given by the federal government on “tribal lands” aka reservations. (Bureau of Justice Statistics , n.d.) (Tribal Court Clearing House, n.d.) Less than half of the 50 states allow tribal police to enforce “state laws” on tribal lands, however there are some additional agreements in the form of cross-deputization that happen in areas where, for example, state highways cross tribal lands. (Bureau of Justice Statistics , n.d.) These agreements, made with state authorized departments, are also done to simplify investigations that would normally have to follow the many rules of: location, political identity of victim and perpetrator, plus the nature of the alleged crime. (Bureau of Justice Statistics , n.d.) (Tribal Court Clearinghouse, n.d.) These agreements make it easier for departments to work together and allow for accountability through the state certified department. In addition, agreements for concurrent jurisdiction in court are determined by the Attorney General.

The Supreme Court has made several rulings about tribal authority over the years. In 1978, the Supreme Court ruled that tribal governments could not prosecute non-Indians for any crimes in Indian country. In 1981 the Supreme Court ruled that “a tribe may... retain... power... over the conduct of non-Indians... within its reservation when the conduct threatens or has some direct effect on the political integrity, the economic security, or health or welfare of the tribe.” In June of 2021, the Supreme Court unanimously



SUTTON COMMUNITY COUNCIL
P.O. Box 344
Sutton, Alaska 99674
suttoncommunitycouncil@gmail.com

affirmed the sovereign power of American Indian tribes, ruling that tribal police officers have the power to temporarily detain and search non-Indians on public rights-of-way through Indian lands. This latest ruling clarifies that tribal police can search and detain non-Indians suspected of state or federal crimes on tribal lands until handing them off to federal or state authorities. (The Conversation, n.d.)

Within the State of Alaska, laws regarding tribal police, village police officers (VPO) and village public safety officers (VPSO) are clearly laid out in state statute and certification of officers and departments is done through the Alaska Police Standards Council aka APSC. The term “police department” has been defined by the APSC in its regulations. The definition is a “civil force of police officers organized by the state or a political subdivision of the state whose basic purpose and function is to maintain peace and order and to prevent and investigate criminal offenses.” APSC also currently states that “Tribal police, who’s sovereign authority derives from their tribal entity, are not regarded as peace officers or police officers and have no special authority to enforce laws.” They further say that tribal police officers are appointed by a village traditional council and that tribal justice agencies do not qualify as a police department under current statutes. (APSC Users Guide, n.d.) VPOs and VPSOs are authorized by a separate set of state statutes to work in villages. (AS 18.65.670) Alaska statute defines a village as a community off the interconnected Alaska road system. (AS 11.81.900) If it is decided, as a state, that there is a need to revisit the authority and qualifications of VPO and VPSO positions to allow for better policing in villages, it would not in any way apply to the CVTC and a need for change of statute for tribal departments has not been substantiated.

While it is clear that response times for the Alaska State Troopers create a challenge for addressing emergencies and crime issues in our area, previous attempts by state agencies to partner with CVTC Justice Department have been unsuccessful. Most recently, Alaska State Troopers entered into a Memorandum of Understanding with the CVTC in late 2016 and this agreement is now null and void because the CVTC Department violated the terms of that agreement. CVTC does currently have at least one agreement, dated 2016, with the State of Alaska for the handling of court cases for tribal members. The communities in our area are not in support of police powers for this department, but this current request by CVTC reaches much farther than our local communities and the CVTC department. This is a request to change laws to give policing authority to sovereign governments over people and lands they do not have authority to govern. This is something that requires a much larger discussion than one small community meeting.

Thank you for your attention,

Sutton Community Council

(Approved at June 29, 2022 monthly meeting.)



Site Source Information:

Alaska Law. (n.d.). Retrieved from https://law.alaska.gov/pdf/opinions/opinions_1991/91-076_663790034.pdf

Alaska Leg. (n.d.). Retrieved from http://www.akleg.gov/basis/get_documents.asp?session=31&docid=58225

American Bar. (n.d.). Retrieved from https://www.americanbar.org/groups/business_law/publications/blt/2016/01/05_dreveskracht/#:~:text=Tribal%20sovereign%20immunity%20protects%20tribal,state%2C%20or%20federal%20court).

APSC Users Guide. (n.d.). Retrieved from <https://dps.alaska.gov/getmedia/aaf682f0-b014-486a-99e5-f94869db1e36/apsc-guidebook-w-regs-final-adoptionv5;.aspx>

Bureau of Justice Statistics . (n.d.). Retrieved from bjs.ojp.gov

Department of Justice. (n.d.). Retrieved from justice.gov

Harvard Law Review. (n.d.). Retrieved from harvardlawreview.org.

The Conversation. (n.d.). Retrieved from <https://theconversation.com/supreme-court-affirms-tribal-police-authority-over-non-indians-162050>

Tribal Court Clearing House. (n.d.). Retrieved from <https://www.tribal-institute.org/lists/enforcement.htm>

Tribal Court Clearinghouse. (n.d.). Retrieved from <https://www.tribal-institute.org/lists/jurisdiction.htm>

UAF. (n.d.). Retrieved from <https://uaf.edu/tribal/atcc/atccdocs/atcc2021/Sovereign%20Immunity%20.pdf>