American Indian Law Review

Volume 8 | Number 1

1-1-1980

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Recommended Citation

Judith L. Andress & James E. Falkowski, *Self-Determination: Indians and the United Nations--The Anomalous Status of America's "Domestic Dependent Nations"*, 8 AM. INDIAN L. REV. 97 (1980), <https://digitalcommons.law.ou.edu/ailr/vol8/iss1/6>

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SELF-DETERMINATION: INDIANS AND THE UNITED NATIONS—THE ANOMALOUS STATUS OF AMERICA'S "DOMESTIC DEPENDENT NATIONS"

Judith L. Andress*

and

James E. Falkowski**

Some American Indian nations have always asserted that they are independent nations.¹ Other Indian groups have only recently redeclared their right to self-government.² The United States, however, has denied their rights and instead subjected Native Americans to a domestic trust.³

The United States government as trustee has proven unable to protect Indian interests. Indeed, the domestic trust has been aimed at destroying Indian self-government.⁴ Furthermore, the domestic trust is flawed by the trustee's lack of accountability.⁵ These inadequacies necessitate the search for an alternative.

The best alternative is available through the application of the international trust principles in the United Nations Charter.⁶ The ultimate objective of the international trust is the development of self-government.⁷ The international trust system's supervisory provisions also promote accountability.⁸ Such provisions provide

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1. Most notably the Six Nations Confederacy, who petitioned the League of Nations for membership in 1923, Deskaheh (Six Nations Indian Museum Series, published by Akwesasne Notes), and the United Nations in 1977. Legal Commission Report, 3 AM. IND. J., no. 11, at 9 (1977). The Six Nations Confederacy consists of the Seneca, Cayuga, Onondaga, Oneida, Mohawk, and Tuscarora nations.

2. Most notably the Oglala Sioux at Wounded Knee. Oglala Sovereignty Reaffirmed, 5 AKWESASNE NOTES No. 1, at 32 (1973).

3. *Johnson v. McIntosh*, 21 U.S. (8 Wheat.) 543, 591 (1823). Implicit in the noninternational law analysis is the assumption that Indians are an inferior race. See L. HANKE, *ARISTOTLE AND THE AMERICAN INDIANS: A STUDY OF RACE PREJUDICE IN THE MODERN WORLD* (1975); J. SEPULVEDA, *DEMOCRATES SEGUNDA DE LA JUSTAS DE LA GUERRA CONTRA LOS INDIOS* (1951); Newton, *At the Whim of the Sovereign: Aboriginal Title Reconsidered*, 31 HAST. L.J. 1215 (1980); Berman, *The Concept of Aboriginal Rights in the Early History of the United States*, 27 BUF. L. REV. 637 (1977). For an international law analysis of *Johnson v. McIntosh*, *supra*, see R. BARSH & J. HENDERSON, *THE ROAD* 45-46 (1980). See also note 24 *infra*.

4. See text accompanying notes 45-74 *infra*.

5. See text accompanying notes 75-83 *infra*.

6. U.N. Charter art. 73-91.

7. *Id.*, arts. 73(b), 76(b).

8. *Id.*, arts. 73(e), 87.

for the transmission of information to the United Nations so that violations of trust duties may be exposed to world opinion.⁹

This note will discuss the unique development and grave inadequacies of the domestic trust relationship between Native Americans and the United States. It will outline the international trust provisions of the United Nations Charter, and it will conclude that the recognition of Indians by the United Nations, in some capacity, affords a just and proper solution to the problems inherent in the domestic trust.

Origin of the Domestic Trust Relationship

The seminal case on the status of Indians in the United States is *Cherokee Nation v. Georgia*.¹⁰ The controversy concerned a jurisdictional dispute between the state of Georgia and the Cherokee Nation of Indians. In the 1791 Treaty of Holsten the United States "solemnly guaranteed to the Cherokee Nation, all their lands not hereby ceded."¹¹ In 1802, Georgia ceded its claims to western lands to the United States on the condition that the United States extinguish Indian title to the lands within the borders of the state "as soon as it could be done peaceably and on reasonable terms."¹²

In 1827 the Cherokee Nation adopted a written constitution that reasserted its status as a sovereign power.¹³ The Cherokees also resolved not to sell any more of their land.¹⁴ In reaction to this, and to the discovery of gold on the Cherokees' territory, the state of Georgia passed a series of laws that interfered with the Cherokees' sovereign rights that were guaranteed by treaty.¹⁵

9. "Despite the harsh realities of power politics world opinion is a force to be reckoned with." Dr. Abram, the former United States representative on the Commission on Human Rights, as quoted in R. CLARK, A UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS 92 (1972). See also Eggleston, *Prospects for United Nations Protection of the Human Rights of Indigenous Minorities*, 1970-73 AUSTL. Y.B. INT'L L. 68.

10. 30 U.S. (5 Pet.) 1 (1831) See also Burke, *The Cherokee Cases: A Study in Law, Politics, and Morality*, 21 STAN. L. REV. 500 (1968-69); Swindler, *Politics as Law: The Cherokee Cases*, 3 AM. IND. L. REV. 7 (1975).

11. 7 Stat. 43.

12. Georgia Cession, Apr. 26, 1802, in 1 AMERICAN STATE PAPERS: PUBLIC LANDS 126 (1832).

13. For the constitution, see H.R. Doc. No. 91, 23d Cong., 2d Sess. 10 (1827).

14. The Cherokees put into writing a traditional law imposing the death penalty upon anyone selling Cherokee land without "special permission from the national authorities." T. WILKINS, *CHEROKEE TRAGEDY* (1970).

15. 30 U.S. (5 Pet.) 1, 13-14 (1831). See also Act No. 545, Dec. 20, 1828, and Act

These Georgia laws distributed Cherokee territory among several Georgia counties, nullified all Cherokee laws, and declared that Georgia laws would be enforced within Cherokee territory.¹⁶

The Cherokees sought to enjoin the enforcement of these Georgia laws and to have them declared void as violations of the Constitution, treaties, and laws of the United States.¹⁷ The Cherokees sought original jurisdiction before the Supreme Court as a "foreign state" under article III of the Constitution.¹⁸ The Supreme Court declined to decide the case on its merits because the Cherokees were "not a foreign state, in the sense of the Constitution,"¹⁹ and thus the Supreme Court lacked original jurisdiction. The Court created a new category in its finding that Indians were "domestic dependent nations."²⁰

Although Justice Marshall found that the Cherokees did have the attributes of a foreign nation, within the international sense of the term,²¹ he concluded that they were not a foreign nation within the meaning of article III.²² Justice Marshall concluded that the Cherokees could not be considered "foreign" because they occupied territory within the borders of the United States.²³ However, under recognized principles of international law applicable to enclaves, territorial position was not dispositive.²⁴ The

No. 546, Dec. 19, 1829, in *A COMPILATION OF THE LAWS OF THE STATE OF GEORGIA* 198, (W. Dawson comp. 1831).

16. 30 U.S. (5 Pet.) 1 (1831).

17. *Id.* at 14.

18. *Id.* at 15 (quoting U.S. CONST. art. 3 § 2).

19. *Id.* at 19.

20. *Id.* at 17.

21. *Id.* at 16: "They have been uniformly treated as a state from the settlement of our country. The numerous treaties made with them by the United States recognize them as a people capable of maintaining the relations of peace and war, of being responsible in their political character for any violation of their engagements, or for any aggression committed on the citizens of the United States by any individual of their community. Laws have been enacted in the spirit of these treaties. The acts of our government plainly recognize the Cherokee Nation as a state, and the courts are bound by those acts." See also note 94 *infra*.

22. *Id.* at 19.

23. *Id.* at 17.

24. Justice Johnson's concurring opinion distinguished the Cherokees from the European enclaves on the basis of the American version of the doctrine of discovery, which placed Indian enclaves "a grade below the enclaves of Europe." *Id.* at 27. Under this version of discovery Indian title has been described as "permission from the whites to occupy." *Tee-Hit-Ton Indians v. United States*, 348 U.S. 272 (1955). Justice Johnson proposed a limitation to this doctrine whereby the Indians' adoption of "a more fixed state of society" would destroy any rights obtained by discovery, and Indians could then

dissent found the Cherokees to be "foreign" by applying the judicially developed test of whether a nation is a separate and distinct jurisdiction.²⁵

Justice Marshall also found that the protection language of treaties with the Cherokees precluded any consideration of them as an independent nation.²⁶ The dissent disputed this interpretation and noted that such protection arrangements were common among independent nations.²⁷

The most important aspect of the *Cherokee Nation* decision, nevertheless, is that it laid the foundation for the United States' trust relationship with Indians.²⁸ This domestic trust grew out of Justice Marshall's description of the Indians as persons "in a state of pupillage," whose "relation to the United States resembles that of a ward to his guardian."²⁹ Although Justice Marshall cited no authority for this analogy, he apparently derived the language from the same source from which the international trust developed.³⁰ Although both the domestic and the international trust have a common derivation, they evolved into separate

be able to own land. 30 U.S. (5 Pet.) 1 (1831). This limitation has never been followed, and the rights of Indians are still constrained by discovery. See, e.g., *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978) (discovery limits Indian jurisdiction over non-Indians on Indian land). Currently existing enclaves include Lesotho, San Marino, Vatican City, Singapore, Monaco, and Gambia. V. DELORIA, JR., *BEHIND THE TRAIL OF BROKEN TREATIES* 169 (1974).

25. *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1, 57 (1831).

26. *Id.* at 17-18.

27. *Id.* at 53.

28. See Chambers, *Judicial Enforcement of the Federal Trust Responsibility to Indians*, 27 STAN. L. REV. 1213, 1215 (1975).

29. *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1, 17 (1831).

30. Justice Marshall was influenced by the writings of Edmund Burke, who formulated the "trusteeship" concept of colonialism. 2 A. BEVERRIDGE, *THE LIFE OF JOHN MARSHALL* 10-12 (1919); *WHO WAS WHO IN AMERICA, HISTORICAL VOLUME 1607-1896*, at 404 (rev. ed. 1967). Burke expressed the trusteeship principle as follows: "All political power which is set over men, and . . . all privilege claimed or exercised in exclusion of them, being wholly artificial, and for so much a derogation from the natural equality of mankind at large, ought to be in some way or other exercised ultimately for their benefit. If this is true with regard to every species of political dominion, and every description of commercial privilege, none of which can be original self-derived rights, or grants for the benefit of the holders, then such rights or privileges, or whatever else you choose to call them, are all, in the strictest sense, a trust; and it is of the very essence of every trust to be rendered accountable; and even totally to cease, when it substantially varies from the purposes for which alone it could have a lawful existence." 23 HANSARD, *PARLIAMENTARY HISTORY*, cols. 1316-17, (1783), *quoted in* C. TOUSSAINT, *TRUSTEESHIP SYSTEM OF THE UNITED NATIONS* 6 (1956).

systems with opposite goals.³¹ The unique development of the domestic trust between the United States and American Indians, and its inadequacies, are discussed in the following section.

Development and Inadequacies of the Domestic Trust

Although *Cherokee Nation* created the domestic trust, it established neither the domestic trust's objectives nor the scope of the domestic trust's powers and duties. These aspects of the domestic trust emerged from the evolution of case and statutory law.

The first case to define the domestic trust's objectives was *Cherokee Nation's* companion case, *Worcester v. Georgia*.³² In being appealed through the Georgia state courts, *Worcester* avoided the jurisdictional issue that had prevented *Cherokee Nation* from being decided on its merits.³³ The issue in *Worcester* was whether the Georgia laws extending state jurisdiction over Cherokee territory were unconstitutional as incompatible with treaties between the Cherokee Nation and the federal government.³⁴ The Supreme Court found that the Georgia laws were void and established that the federal government's power over Indians were exclusive.³⁵

The rationale for this exclusivity was developed in a later case: "They owe no allegiance to the States, and receive from them no protection. Because of the local ill feeling, the people of the States where they are found are often their deadliest enemies."³⁶ Thus, one objective of the domestic trust was determined: the federal government had a duty to protect the Indians from the states.

The scope of federal power over Indians did not come before the Supreme Court until more than fifty years later, in *Ex parte Crow Dog*.³⁷ Crow Dog had killed Spotted Tail on Indian land; after being punished according to tribal law,³⁸ he was convicted

31. Justice Marshall found "the relation of the Indians to the United States . . . marked by peculiar and cardinal distinctions which exist nowhere else," 30 U.S. (5 Pet.) at 15, although analogous situations have existed elsewhere. See notes 45, 85, 155 and accompanying text, *infra*.

32. 31 U.S. (6 Pet.) 515 (1832).

33. *Id.* at 535.

34. *Id.* at 520-35.

35. *Id.* at 559-62.

36. *United States v. Kagama*, 118 U.S. 375, 384 (1886).

37. 109 U.S. 556 (1883).

38. See G. HYDE, *SPOTTED TAIL'S FOLK: A HISTORY OF THE BRULE SIOUX* 152, 307

of murder in the federal district court.³⁹ Crow Dog filed for habeas corpus on the ground that federal criminal jurisdiction did not extend to crimes committed by an Indian against another Indian on Indian land.⁴⁰ The government argued that the Sioux had subjected themselves to general federal laws by a treaty in 1868.⁴¹

A unanimous Supreme Court upheld the exclusive jurisdiction of the Sioux Nation.⁴² "The pledge to secure to these people, with whom the United States was contracting as a distinct political body, an orderly government . . . necessarily implies . . . self-government."⁴³ Indians could not be brought within the whites' legal system because "it tries them not by their peers, nor by the customs of their people, nor by the laws of their land, but by superiors of a different race."⁴⁴

Congress reacted to the *Crow Dog* decision by enacting the Seven Major Crimes Act that extended federal jurisdiction over Indians.⁴⁵ The Act's constitutionality was challenged in *United States v. Kagama*.⁴⁶ The Act was upheld based upon the federal government's trust responsibility.⁴⁷ The Indians were regarded as wards and thus incompetent. Accordingly, the federal government as trustee had a duty, and hence the power, to protect them.⁴⁸ The Supreme Court thus found the domestic trust relationship itself to be the source of federal power over Indians.

Kagama rested upon a misinterpretation of the 1871 congressional act that discontinued treaty-making with Indians.⁴⁹ By that act, Indian relations with the United States were thereafter to be governed by agreements.⁵⁰ Agreements were to differ from for-

(1961) (Under the Sioux system of compensatory justice the murderer was required to pay blood money to the victim's family.)

39. *Ex parte Crow Dog*, 109 U.S. 556, 557 (1883).

40. *Id.* at 557.

41. *Id.* at 562.

42. *Id.* at 572.

43. *Id.* at 568.

44. *Id.* at 571.

45. 18 U.S.C. § 1153 (1970). The expansion of interference with the internal affairs of Indians followed the familiar pattern of colonialism that occurred in Africa. M. LINDLEY, *THE ACQUISITION AND GOVERNMENT OF BACKWARD TERRITORY IN INTERNATIONAL LAW* 182 (1926).

46. 118 U.S. 375 (1886).

47. *Id.* at 384.

48. *Id.*

49. 25 U.S.C. § 71 (1970).

50. See F. COHEN, *FEDERAL INDIAN LAW* 67 (1945).

mal treaties only in requiring ratification by both houses of Congress instead of by the Senate alone.⁵¹

Mutual consent was to remain the basis for dealings between the federal government and Indians.⁵² *Kagama* construed the 1871 act to have departed from the policy of dealing with Indians on the basis of consent. Henceforth the United States was to govern Indians "by acts of Congress."⁵³

The scope of the federal government's power over Indians was before the Supreme Court in *Lone Wolf v. Hitchcock*.⁵⁴ The Comanches and Kiowas had signed a treaty that expressly forbid the sale of any more of their land without Indian consent.⁵⁵ Congress passed a statute that authorized the sale of such land without Indian consent.⁵⁶ *Lone Wolf* sued to enjoin the enforcement of the statute on the ground that it conflicted with the treaty's express prohibition.⁵⁷

The Supreme Court upheld the statute because Congress' power over Indians was plenary and not subject to limitation by treaty.⁵⁸ The Court reasoned that the power over Indians must belong to the federal government because "it has never existed anywhere else."⁵⁹ The Supreme Court thus ignored the existence of the Indians' retained rights plainly guaranteed by treaty.

In *Lone Wolf* the Supreme Court allowed Congress' unilateral abrogation of Indian treaties, despite the federal-Indian trust relationship. The congressional power of unilateral abrogation of treaties is well established in the domestic courts of the United States,⁶⁰ although such abrogations violate international law.⁶¹

51. *Id.*

52. *Id.* Cohen stated that "while the form of treaty-making no longer obtains, the fact that Indian tribes are governed primarily on a basis established by common agreement remains, and is likely to remain so long as the Indian tribes maintain their existence and the Federal Government maintains the traditional democratic faith that all Government derives its just powers from the consent of the governed."

53. *United States v. Kagama*, 118 U.S. 375, 382 (1886).

54. 187 U.S. 553 (1903).

55. *Id.* at 553.

56. *Id.* at 560.

57. *Id.* at 561.

58. *Id.* at 565. Although not cited, the first mention of Congress' plenary power was in dicta in *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1, 44 (1831). Congress' power was based upon Indian land being within the territory of the United States according to the American version of the doctrine of discovery. See note 3 *supra*.

59. *Lone Wolf v. Hitchcock*, 187 U.S. 553, 567 (1903), *quoting* *United States v. Kagama*, 118 U.S. 375, 384 (1886).

60. *Chinese Exclusion Case*, 130 U.S. 581, 600 (1889); *Head Money Cases*, 112 U.S. 589, 597 (1884).

61. *Clark v. Allen*, 331 U.S. 503 (1947) (the breach of a treaty by an act of Congress

The ultimate objectives of the domestic trust developed by Congress were the dissolution of Indian self-government and the forced assimilation of Indian nations into mainstream American society.⁶² The General Allotment Act was the first major step toward these goals.⁶³

Under the Act, tribally owned Indian land was broken up and assigned to each Indian as an individually owned parcel.⁶⁴ The United States was to hold title to the allotted parcels in trust for twenty-five years, after which an Indian would, if declared competent, receive fee title.⁶⁵ After being declared competent the Indian became a citizen subject to the laws of the state in which he resided; thus Indian self-government would be extinguished.⁶⁶ Unallotted Indian lands, deemed "surplus," were sold in fee to non-Indians.⁶⁷

The General Allotment Act had predictable results. Previous experiments with allotments had been acknowledged disasters for Indians.⁶⁸ Under the Act, the Indians' land base was reduced by almost two-thirds before Congress admitted the failure of the Act and halted the alienation of Indian land.⁶⁹

is subject to the "law of nations"). In 1977 there was a bill before Congress to "abrogate all treaties entered into by the United States with Indian tribes." H.R. 9054, reprinted in 3 AM. IND. J., No. 10, at 25. See also Thomson, *Federal Indian Policy: A Violation of International Treaty Law*, 4 W.S.U.L. REV. 229 (1976-77).

62. "The dominant policy of the Federal Government towards the American Indian has been one of coercive assimilation." *Special Senate Subcomm. on Indian Education, Indian Education: A National Tragedy—A National Challenge*, S. REP. NO. 501, 91st Cong., 1st Sess., 21 (1969), reprinted in Gross, *Indian Self-Determination and Tribal Sovereignty: An Analysis of Recent Federal Indian Policy*, 56 TEX. L. REV. 1195, 1198 (1978). See also H. FRITZ, *THE MOVEMENT FOR INDIAN ASSIMILATION* (1963).

63. 25 U.S.C. §§ 331 *et. seq.* (1970).

64. 25 U.S.C. § 331 (1970).

65. 25 U.S.C. §§ 348, 352a (1970). This violated the common law trust principle that the guardian may never have an interest or inheritance in the ward's estate, which would be like entrusting the lamb to the wolf, to be devoured. See R. BARSH & J. HENDERSON, *THE ROAD* 55 (1980).

66. 25 U.S.C. § 349 (1970). See also D. OTIS, *THE DAWES ACT AND THE ALLOTMENT OF INDIAN LANDS* (1973); J. KINNEY, *A CONTINENT LOST—A CIVILIZATION WON* (1937); W. WASHBURN, *THE ASSAULT ON INDIAN TRIBALISM: THE GENERAL ALLOTMENT LAW (DAWES ACT) OF 1887* (1975).

67. 25 U.S.C. § 348 (1970).

68. L. PRIEST, *UNCLE SAM'S STEPCHILDREN* 177 (1942); P. GATES, *INDIAN ALLOTMENTS PRECEDING THE DAWES ACT* (1971).

69. F. COHEN, *FEDERAL INDIAN LAW* 216 (1945). See also K. KICKINGBIRD & K. DUCHENEAX, *ONE HUNDRED MILLION ACRES* (1973).

After a temporary suspension of the forced assimilation policy,⁷⁰ it was again reimplemented by the termination policy of the 1950s.⁷¹ Termination differed from the Allotment Act in form only; the ultimate objective remained the same. Termination ended all of the federal government's obligations to Indians, dissolved Indian governments, and incorporated Indians within the states where they resided.

Present congressional policy has purportedly rejected the termination policy and initiated a policy of increasing Indian control of Indian education programs, subject to the approval of the Secretary of the Interior.⁷² This policy is misleadingly called the self-determination policy.⁷³ Moreover, the termination policy could be reimplemented at any time because legislation is always subject to repeal.⁷⁴

70. Indian Reorganization Act, ch. 576, 48 Stat. 984 (1934) (current version in scattered sections of 25 U.S.C. §§ 461-79 (1976)).

71. H.R. Con. Res. 108, 83d Cong., 1st Sess., 99 CONG. REC. 9968 (1953) (House approval), 99 CONG. REC. 10815 (Senate approval) (1953). See also Wilkinson & Biggs, *The Evolution of the Termination Policy*, 5 AM. IND. L. REV. 139 (1977); Menominee Termination: *From Reservation to Colony*, 31 HUMAN ORGANIZATION 257 (Fall 1972); A. Watkins, *Termination of Federal Supervision: The Removal of Restrictions over Indian Property and Person*, 311 ANNALS OF THE AM. ACADEMY OF POL. & SOCIAL SCIENCE 47 (May 1957).

72. Indian Self-Determination and Education Assistance Act of Jan. 4, 1975, Pub. L. 93-638, 88 Stat. 2203 (1975), 25 U.S.C. §§ 450-450n, 452, 455-458e (1976). See also Barsh & Trosper, *Title I of the Indian Self-Determination and Education Assistance Act of 1975*, 3 AM. IND. L. REV. 361 (1975); Ericson & Snow, *The Indian Battle for Self-Determination*, 58 CALIF. L. REV. 445 (1970); Clute, *Indians' Right to Self-Determination*, 22 BUF. L. REV. 985 (1972-73); Gross, *Indian Self-Determination and Tribal Sovereignty: An Analysis of Recent Federal Indian Policy*, 56 TEX. L. REV. 1195 (1978).

73. In international law the right to self-determination means the "right freely to determine without external interference, their political status and to pursue their economic, social, and cultural development." Declaration on the Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations, G.A. Res. 2625, 25 U.N. GAOR, Supp. (No. 28) 121, U.N. Doc. A/4684 (1960) at 123; "The exercise of this right could, of course, result in a decision for something other than independence: free association or even integration with another state. But the choice between these legitimate forms of decolonization must always be the 'result of the freely expressed wishes of the territory's peoples acting with full knowledge of the change in their status, their wishes having been expressed through informed and democratic processes, impartially conducted and based on universal adult suffrage.'" Franck & Hoffman, *The Right of Self-Determination in Very Small Places*, 8 N.Y. U.J. INT'L L. POL. 331, 339-40 (1975-76) (citation omitted). Under the domestic trust integration is the only "alternative" open to Indians.

74. "[T]he history of federal-Indian relations . . . reflects a self-defeating, zigzag course of constantly altering programs, all of them designed to lead to Indian assimila-

Yet another major deficiency of the domestic trust is the federal government's lack of accountability as trustee.⁷⁵ One recent example is *United States v. Mitchell*.⁷⁶ In *Mitchell* the Quinault Indians sought money damages from the United States for the mismanagement of timber resources on land held in trust by the United States as a result of the General Allotment Act.⁷⁷ The Court of Claims held that the language of the Allotment Act created an express trust relationship under which money damages for mismanagement were recoverable.⁷⁸ The Supreme Court reversed, finding only a "limited trust" relationship that does not impose any duty upon the government to manage trust lands.⁷⁹

The Supreme Court has justified federal power over Indians by the implication of a trust relationship.⁸⁰ However, on the issue of duties owed to Indians, the Court held express trust language in a congressional statute to be insufficient to establish standard trust duties.⁸¹

The General Allotment Act is one of the clearest examples of the creation of a trust relationship with Indians. However, the Supreme Court requires not only express trust language but also a clear recitation of the remedies available for a breach of trust duties.⁸² *Mitchell's* practical result is that there will rarely be a remedy available for acknowledged breaches of trust duties. The dissent recognized that this standard offers "little to deter federal officials from violating their trust duties. . . ."⁸³

tion, rather than to the establishment of . . . self-governing . . . Indian communities." A. JOSEPHY, *THE INDIAN HERITAGE OF AMERICA* 348 (1968).

75. See, for example, Coulter, *The Denial of Legal Remedies to Indian Nations Under U.S. Law*, 3 AM. IND. J. No. 9, at 5 (1977); *American Indian Child Welfare Crisis: Cultural Genocide or First Amendment Preservation?*, 7 COLUM. HUMAN RIGHTS L. REV. 529 (1976); *Resource Exploitation: The Cutting Edge of Genocide*, 10 AKWESASNE NOTES, No. 2, at 9; *Killing our Future Sterilization and Experiments*, 9 AKWESASNE NOTES, No. 1, at 4 (sterilization of Indian women "generally not in compliance with" government regulations requiring informed consent, or misinformation, or duress).

76. 445 U.S. 535 (1980). See also *Trust Theory Axed—Almost—U.S. vs Mitchell*, 12 AKWESASNE NOTES, No. 2, at 20.

77. 445 U.S. 535, 541 (1980).

78. *Id.* at 542.

79. *Id.* at 550.

80. See text accompanying notes 10-61, *supra*.

81. The dissent would have found "that the Act creates a bona fide trust, imposes fiduciary obligations on the United States . . . and provides a damages remedy. . . ." 445 U.S. 535, 550 (1980).

82. *Id.* at 542.

83. *Id.* at 550.

Thus the domestic trust's inadequacies seem insoluble. Its hallmarks are nonconsensual government, territorial aggrandizement, constant policy vacillation, and lack of accountability. These inadequacies require the search for alternatives if the rights of Indian people are ever to be respected. These alternatives are provided for by the United Nations Charter.

*Alternatives to the Domestic Trust Available Through
the United Nations*

The application of international law principles to American Indians is not a novel proposition. Vitoria in the sixteenth century,⁸⁴ and Phillimore in the nineteenth century,⁸⁵ advocated this position. It has, more recently, been advanced by an increasing number of writers.⁸⁶

Under the United Nations Charter, Indians could be recognized in any of three categories: (1) full membership,⁸⁷ (2) the trusteeship system,⁸⁸ or (3) non-self-governing territory.⁸⁹ Each alternative will be examined separately to distinguish significant differences among them.

84. F. VITORIA, *DE INDIS ET DE IVRE BELLI RELECTIONES* § 3 tit. 18, at 161 (E. Nys ed. 1971). See also G. SCHWARZENBERGER, *A MANUAL OF INTERNATIONAL LAW* 15 (5th ed. 1967) (Vitoria "held that international law applied no less between Spain and the Indian principalities in America than between Christian States").

85. Phillimore, after reviewing the works of earlier writers, concluded that "the principles of international justice do govern, or ought to govern, the dealings of the Christian with the Infidel Community. They are binding, for instance, upon Great Britain, in her intercourse with the native powers of India; upon France, with those of Africa; upon Russia, in her relations with Persia or America; upon the United States of North America, in their intercourse with the Native Indians. The violation of these principles is indeed sometimes urged in support of an opposite opinion, but to no purpose; for it is clear that the occasional vicious practice cannot affect the reality of the permanent duty." R. PHILLIMORE, *COMMENTARIES UPON INTERNATIONAL LAW*, 23 (3d ed., London, 1879). See also LINDLEY, *supra* note 45, at 45-46.

86. Eggleston, *supra* note 9; *The Rights of Indigenous Peoples: A Comparative Analysis*, 68 AM. SOC. INT'L L. PROC. 265 (1974); Ryan, *Indian Nations Compared to Other Nations*, 3 AM. IND. J., No. 8, at 2 (1977); Clinebell & Thomson, *Sovereignty and Self-Determination: The Rights of Native Americans Under International Law*, 27 BUF. L. REV. 669 (1978); *Accommodation of Indian Treaty Rights in an International Fishery: An International Program Begging for an International Solution*, 54 WASH. L. REV. 403 (1979); G. HALL, *THE FEDERAL-INDIAN TRUST RELATIONSHIP* 54 (1979). See also American Indian Policy Review Comm'n Trust Responsibility Task Force Report at 87-112.

87. U.N. Charter art. 3-6.

88. *Id.* at art. 75-91.

89. *Id.* at art. 73-74.

Full Membership

Full membership is the first alternative available to those Indian nations that have resisted the imposition of the domestic trust.⁹⁰ In international law the requirements for statehood are a permanent population, a defined territory, a government, and the capacity to enter into relations with other states.⁹¹ Although some American Indian nations still meet these requirements,⁹² they have not been recognized as members of the United Nations.⁹³ However, a state's de facto existence does not guarantee its de jure recognition because this is often a highly political question.⁹³

Recognition is important for various reasons. The basis of international law is that through recognition states become mutually obligated to respect each other's fundamental rights.⁹⁴ The most comprehensive right of a state is the right to exist as a sovereign political unit.⁹⁵ Today, moreover, recognition entitles states to bring violations of their rights before the International Court of Justice.⁹⁶ Although immediate recognition of a small

90. See note 1 *supra*.

91. Convention on Rights and Duties of States, Dec. 26, 1933, 165 U.N. T. S. 19, at 25 (1936); 28 A.J.I.L. Supp. 75 (1934).

92. V. DELORIA, JR., *BEHIND THE TRAIL OF BROKEN TREATIES: AN INDIAN DECLARATION OF INDEPENDENCE* (1974). Although recognition in international law can be implied from the negotiation of a bilateral treaty, 1 L. OPPENHEIM, *INTERNATIONAL LAW* 148 (1955), the procedure for United Nations membership is outlined in the Charter, U.N. Charter art. 3-6.

93. For example, the United States recognized Panama three days after it revolted from Columbia and recognized Israel a few hours after it proclaimed its independence. J. BRIERLY, *LAW OF NATIONS* 140 (6th ed. 1963). In contrast, the People's Republic of China, with 1/5 of the world's population, was not recognized for almost 30 years. *Legal Implications of Recognition of the Peoples Republic of China*, 72 AM. SOC'Y INT'L L. PROC. 246 (19__).

94. G. WILSON & G. TUCKER, *INTERNATIONAL LAW* 77 (1901). See also BRIERLY, *supra* note 90, at 49.

95. G. WILSON & G. TUCKER, *INTERNATIONAL LAW* 77 (1901).

96. U.N. Charter art. 92-96. Only two Indian claims have been brought before international tribunals. In 1926, Great Britain brought a claim on behalf of the Cayuga Indians before the American and British Arbitral Tribunal. The right of the Cayuga Indians living on the Canadian side of the international border to annuities under a treaty with the United States was held, although recovery was based upon the Treaty of Ghent between the United States and Great Britain. The Cayugas were determined to be "not a legal unit of international law." Cayuga case (1926) 6 U.N. Reports of International Arbitral Awards at 173; XX A.J. 574, 577.

The only other attempt to come before an international tribunal was the Mohawk Nation of the Grand River in Canada, who attempted to invoke the jurisdiction of the International Court of Justice at the Hague. The Mohawks' complaint was dismissed on the ground that it failed to state a cause of action. O. Ghobashy, *The Claim of the Mohawk*

number of Indian nations is already merited, such recognition is neither appropriate for nor desired by many Indian groups.⁹⁷

Trusteeship System

The second alternative available through the United Nations is the application of its trusteeship system.⁹⁸ Although American Indians served as the model from which the international trust evolved,⁹⁹ it has never been applied to them. The trusteeship system was intended to cover three categories of territories: former Mandates, former enemy territories, and "territories voluntarily placed under the system by states responsible for their administration."¹⁰⁰ To date, only territories within the first two categories have been placed under the system, although it has been suggested that members have a moral obligation to effectuate the third provision.¹⁰¹ Indians could appropriately be brought within this third category.¹⁰²

Nation of the Grand River under the Haldimand Agreement (undated).

These claims should be seen as having very little precedential weight. Both the Cayugas and the Mohawks belong to the Six Nations Confederacy, which might, perhaps, have more appropriately brought the action. See note 1 *supra*. Moreover, the binding authority that Anglo-American law attaches to precedents does not apply to decisions of the International Court of Justice. BRIERLY, *supra* note 94, at 354.

The United States has also reserved from the present International Court of Justice's jurisdiction "disputes with regard to matters which are essentially within the domestic jurisdiction of the United States as determined by the United States. . . ." Yearbook, 1971-1972, [1972] I.C.J. 63. This reservation is of doubtful legality and has been condemned as being contrary to article 36(6) of the International Court's Statute. Article 36(6) expressly places the power to decide any dispute as to the court's jurisdiction in the hands of the court itself. See BRIERLY, note 94, *supra* at 356-59.

97. See note 1 *supra*.

98. U.N. Charter art. 75-91.

99. The earliest concept of a trust over indigenous populations goes back to the sixteenth-century writings of Vitoria with regard to the indigenous inhabitants of the New World. See note 84 *supra*. In 1763 the Royal Proclamation of the British Government, dealing with the lands in the New World, embodies this trust concept. In 1783, Edmund Burke developed this trust concept into the "trusteeship" concept of colonialism upon which the international trust is based. See note 30 *supra*. Under the League of Nations covenant, the international trust was handled through the mandate system and the "native inhabitants" provision. This developed into the trusteeship system and the non-self-governing territories provision in the United Nations Charter. The United States assumed "the role of a trustee in a species of international guardianship" with regard to native populations under its control, from which only Indians were excluded. See Y. EL-AYOUTY, *THE UNITED NATIONS AND DECOLONIZATION* 47 (1971).

100. U.N. Charter art. 77.

101. India argued that it was the clear intention of the Charter that the trusteeship system should apply to other non-self-governing territories besides former mandates. See 2 U.N. GAOR, Annex 51a, at 217-18 (106th plen. mtg.) 655-57.

102. The Supreme Court has found that "the Government . . . under a humane and

The effect of placing a territory under the trusteeship system is merely to recognize the principle of international accountability for the welfare of the territory's native inhabitants.¹⁰³ Historically, the lack of accountability of domestic trusts was the impetus for the development of the international trust system.¹⁰⁴ Accountability is promoted through the United Nations' supervision, which involves periodic visits, examination of annual reports submitted by the administering authority, and other actions in conformity with the trusteeship agreement.¹⁰⁵ These provisions provide no actual enforcement sanctions beyond the direction of world attention to trust violations.¹⁰⁶

The trust period is also temporary. The ultimate objective of the international trusteeship system is the "progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the peoples concerned"¹⁰⁷

Applications of the trusteeship system to a territory is clearly voluntary.¹⁰⁸ It does not apply until the administering power enters into a trust agreement.¹⁰⁹ It can only be suggested, therefore, that the application of the trusteeship system to some Indian groups would be the most appropriate way for the United States to discharge its trust responsibility.¹¹⁰

Non-self-governing Territories Provision

The third alternative available through the United Nations is the application of the non-self-governing territories provision.¹¹¹ The distinction between the non-self-governing territories provision and the trusteeship system is important, for they differ notably in their objectives, obligations, and application.

The objective of the non-self-governing territories provision is

self imposed policy . . . has charged itself with moral obligations of the highest responsibility and trust." *Seminole Nation v. United States*, 316 U.S. 286, 296-97 (1942).

103. C. TOUSSANT, *THE TRUSTEESHIP SYSTEM OF THE UNITED NATIONS* 11 (1956).

104. *Id.* at 3; E. SADY, *THE UNITED NATIONS AND DEPENDENT PEOPLES* 3 (1956).

105. U.N. Charter art. 87. See TOUSSANT, *supra* note 103, at 11, 179-99.

106. See note 9 *supra*.

107. U.N. Charter art. 76(b).

108. *Id.* at art. 75.

109. *Id.*

110. This status may be appropriate for about the fifty largest Indian reservations. See table in V. DELORIA, *supra* note 92, at 166-68.

111. U.N. Charter art. 73-74.

limited to the development of the native peoples' self-government,¹¹² whereas the trusteeship system's objective is self-government *or* independence.¹¹³ This difference recognized that some territories cannot become completely independent, yet recognizes the need for international supervision.

The obligations under the two systems also differ markedly. While the interests of the native inhabitants are paramount under both systems,¹¹⁴ the means of supervision differ. The only concrete obligation under the non-self-governing territories provision is the transmission of information to the Secretary-General.¹¹⁵ There are no petitions, visits, or other supervisory provisions such as may be required under the trusteeship system.¹¹⁶

In addition, the application of the non-self-governing territories provision applies automatically to all "territories whose peoples have not yet attained a full measure of self-government" upon the acceptance of membership.¹¹⁷ The trusteeship system, as noted above, does not apply to a territory until the administering power places it under the system through a trusteeship agreement.¹¹⁸

During the early stages of the implementation of the non-self-governing territories provision, U.N. members debated the issue of which territories were to come within the scope of this provision.¹¹⁹ Belgium contended that members undertook to report on areas inhabited by natives or tribal groups under their jurisdiction.¹²⁰ This position applied the international trust to cover indigenous peoples such as those living in Brazil, the United States, and other American republics.¹²¹ On the issue of the United States, Belgium stated: "There is no doubt that we could place the states of America, from the moment when they acquired their in-

112. *Id.* art. 73.

113. *Id.* art. 76(b).

114. *Id.* arts. 73 and 76.

115. *Id.* art. 73(e).

116. *Id.* art. 87.

117. *Id.* art. 73. See TOUSSANT, *supra* note 103, at 229.

118. *Id.* art. 75.

119. E. SADY, *supra* note 104, at 65-68; TOUSSANT, *supra* note 103, at 236; Y. EL-AYOUTY, *supra* note 99, at 67.

120. Van Langenhove, *The Idea of the Sacred Trust of Civilization With Regard to the Less Developed Peoples* (June 1951). See EL-AYOUTY, *supra* note 99, 50-53. See also Belgian Government Information Center. *The Sacred Mission of Civilization: To Which Peoples Should the Benefits Be Extended? The Belgian Thesis*. New York: 1953.

121. *Id.*

dependence, in the category of those who follow the continental colonization policy."¹²²

The United States suggested that the non-self-governing territories provision should apply "to any territories administered by a Member of the United Nations which do not enjoy the same measure of self-government as the metropolitan area of that Member."¹²³ The United States also indicated that it had used a purely pragmatic approach in selecting the territories on which it would transmit information.¹²⁴ Although many other definitions were proposed,¹²⁵ and a list of factors drawn up to serve as a guide,¹²⁶ none clarified the the issue of what territories are covered by the non-self-governing territories provision. However,

122. *Id.* The Belgians regarded the salt-water theory of colonialism as a myth. The Belgians found support for this position in the writings of Duncan Hall: "The idea that expansion by seaways, in the same space of time and for the same kind of reasons, has been of a quite different kind would have delighted a medieval schoolman." How wide, he might have asked, must be the space of water before a territory ceased to be a detached part of the mainland and became "overseas" and so was presumed to have become incapable of uniting politically with, or being assimilated to, the mother country? And he could have made good play with little-known facts of geography. Newfoundland, he could have pointed out, had a better claim to be regarded as "Overseas Britain" than Hawaii as "Overseas America." The latter was 2,400 statute miles from the American mainland and its population is preponderantly Asiatic and Polynesian. Newfoundland, on the other hand, was wholly British in population—and only 2,300 statute miles away from the mother country. The questioner might have gone on to ask, if the debate had been rather later than 1939, "What did land and sea distances matter anyhow in the air age when no point on the planet was separated from another by more than sixty hours—or had it already dropped to thirty?" "H. HALL, MANDATES, DEPENDENCIES AND TRUSTEESHIP 43 (1948). See also Cohen, *Colonialism: U.S. Style*, THE PROGRESSIVE, (Feb. 1951) at 16; *Enamored with Colonization: Isaac McCoy's Plan of Indian Reform*, 38 KANSAS HIST. Q. 268 (Autumn 1972); *Colonialism-Canadian Style*, 10 AKWESASNE NOTES, No. 1, at 16; *U.S. Colonialism and the Hopi Nation*, 11 AKWESASNE NOTES, No. 2, at 13.

The General Assembly resolved, "that prima facie there is an obligation to transmit information in respect to a territory which is geographically separate and is distinct ethnically and/or culturally from the country administering it." Resolution 1541 XV December 15, 1960, reprinted in L. GOODRICH, *THE U.N. IN A CHANGING WORLD*, at 195.

At least two Indian nations are islands: the Squaxin Nation in Puget Sound, and the Metlakahtla Indians of the Annette Islands in Alaska. See Ryan, *supra* note 86, nn.134 and 138.

123. 8 U.N. GAOR, Supp. 17, p. 21, Res. # 742 (VIII), cited in SADY, *supra* note 104, at 78.

124. 8 U.N. GOAR, Supp. 17, p. 21, Res. # 742 (VIII). The United States transmitted information on the following territories: Alaska, American Samoa, Guam, Hawaii, Panama Canal Zone, Puerto Rico, and Virgin Islands.

125. *Id.* pp. 77-81.

126. 8 U.N. GAOR, Supp. No. 17, p. 21, Res. # 742 (VIII).

when put into historical perspective, the territories "whose peoples have not yet attained a full measure of self-government" becomes clear.

The non-self-governing territories provision was derived from the "native inhabitants" provision of the League of Nations Covenant.¹²⁷ Under the League provision, members agreed to "undertake to secure just treatment of the native inhabitants under their control."¹²⁸ This clearly indicated the universal application of the international trust principle to all native peoples wherever situated.¹²⁹

The non-self-governing territories provision has only been applied to 74 areas that United Nations members have voluntarily placed under the system.¹³⁰ The limitation of the non-self-governing territories provision to areas voluntarily submitted is contrary to the intention of the United Nations Charter.¹³¹ This provision was intended to apply automatically to all territories within its definition.¹³² Due to the self-executing nature of this provision, and the obligation to transmit information, the United Nations can attempt to expand its application to all territories within its purview.

There are two ways to expand the application of the non-self-governing territories provision.¹³³ Article 73(e) requires that members transmit information to the Secretary-General.¹³⁴ Because the Secretary-General is required to receive this information, he is thereby authorized to insist that he receive it. Otherwise, the Secretary-General would be unable to fulfill his duties.

A second method would again arise from the obligation to transmit information under article 73(e). In article 2 members undertake to "fulfill in good faith the obligations assumed by them" in the Charter. For a violation of these principles a member may be expelled.¹³⁵ To determine whether the principles of the Charter in article 2 are being violated the General Assembly must be able to discuss whether obligations under article 73(e) are being fulfilled. This is authorized by article 10.

127. League of Nations Covenant art. 23(b). See HALL, *supra* note 123, at 223.

128. *Id.*

129. TOUSSANT, *supra* note 103, at 10.

130. For a list of the territories, see SADY, *supra* note 104, at 80.

131. TOUSSANT, *supra* note 103, at 229.

132. *Id.*

133. These arguments are also presented in TOUSSANT, *supra* note 103, at 230-32.

134. U.N. Charter art. 73(e).

135. *Id.* art. 6.

Under article 10 the General Assembly is authorized to discuss any matter within the scope of the Charter, and to make recommendations to members on such matters.¹³⁶ The right of the General Assembly to discuss such matters is limited only by the "domestic jurisdiction" clause.¹³⁷ However, the "domestic jurisdiction" clause would only apply to certain "matters" within the domestic jurisdiction of a member and would not extend to the discussion of the territories themselves.¹³⁸ Furthermore, where there is an obligation to act,¹³⁹ the recommendation of the General Assembly has the character of a decision and is not mere advice to members.¹⁴⁰ Given the derivation of the non-self-governing territories provision from the "native inhabitants" clause of the League covenant, the transmission of information on the native inhabitants of American is a proper area for discussion.

Since the 1950s little has been written about the application of the international trust to American Indians.¹⁴¹ However, there has been only one major argument advanced against such application. It has been argued that the international trust was not intended to apply to British possessions where the white settlers achieved independence.¹⁴² The British settlements in Africa and Malaya, where the international trust has been applied, are thus distinguished from the British settlements in the United States and Canada.¹⁴³

The weakness of the argument is suggested by the noted exception of South Africa, which is in this regard analogous to the United States-Indian relationship.¹⁴⁴ The major distinction between South Africa and the United States is the ratio of Euro-

136. *Id.* art. 10

137. *Id.* art 2(7) ("Nothing contained in the present Charter shall authorize the United Nations to intervene in *matters* which are essentially within the domestic jurisdiction of any state . . .") (emphasis added).

138. TOUSSANT, *supra* note 103, at 231.

139. Transmit information under article 73(e).

140. TOUSSANT, *supra* note 103, at 230-31.

141. G. HALL, *THE FEDERAL-INDIAN TRUST RELATIONSHIP* 54-55 (1979); Ryan, *supra* note 86.

142. Green, *North America's Indians and the Trusteeship Concept*, *ANGLO-AM. L. REV.* 137 (1975), reprinted with changes in 3 *DALHOUSIE L.J.* 104, *Trusteeship and Canada's Indians*, (1976-77).

143. Green, *supra* note 142, at 137.

144. *Id.* Additionally, while focusing on the trusteeship system, Green fails to address some of the important differences between it and the non-self-governing territories provision. See notes 111-140 and accompanying text *supra*.

pean settlers to indigenous people.¹⁴⁵ This distinction should have no effect on the rights of the indigenous people. Notably, even South Africa is setting up independent black states in response to international pressure.¹⁴⁶

Conclusion

The domestic trust relationship between Indians and the United States, like those that have previously existed throughout the world, has repeatedly proven itself unable to protect the rights of native inhabitants.¹⁴⁷ The Indians' right to real self-determination has been denied.¹⁴⁸ Under domestic law, Indian land can be taken without consent¹⁴⁹ or even compensation.¹⁵⁰ The federal government as trustee remains unaccountable for acknowledged breaches of trust duties.¹⁵¹

The international trust exists to remedy problems inherent in domestic trust relationships.¹⁵² It recognizes the native inhabitants' right to develop self-government.¹⁵³ The international trust also promotes accountability.¹⁵⁴

Application of international trust principles beyond their present scope has been proposed by a number of writers.¹⁵⁵ The

145. *Id.*

146. *Self-Determination—South African Bantustan Policy*, 17 COLUM. J. TRANS. L. 185 (1978).

147. TOUSSANT, *supra* note 103, at 3-14; SADY, *supra* note 104, at 3-14; EL-AYOUTY, *supra* note 99, at 3-15.

148. Clinebell & Thomson, *Sovereignty and Self-Determination: The Rights of Native Americans Under International Law*, 27 BUF. L. REV. 669 (1977-78). See note 73 *supra*.

149. See notes 54-61 *supra*.

150. *Tee-Hit-Ton Indians v. United States*, 348 U.S. 272 (1955). See note 24 *supra*.

151. See notes 76-83 *supra*.

152. See note 104 *supra*.

153. See notes 107 and 112 *supra*.

154. See note 103 *supra*.

155. Franck & Hoffman, *The Right of Self-Determination in Very Small Places*, 8 N.Y.U.J. INT'L. L. & POL. 331 (1975-76); *Self-Determination and World Public Order: Community Response to Territorial Separation*, 16 VA. J. INT'L L. 779 (1975-76); Carey, *Self-Determination in the Post-Colonial Era: The Case of Quebec*, 1 A.S.I.L.S.L.J. 37 (1977); *Tibet and the Rights to Self-Determination*, 26 WAYNE L. REV. 279 (1979); *The Logic of Session*, 89 YALE L.J. 802 (1980); *Northern Ireland and the United Nations*, 19 INT. & COMP. L.Q. 483; L. Chen, *Self-Determination as a Human Right*, printed in Reisman & Weston, *TOWARD WORLD ORDER AND HUMAN DIGNITY*, 198, 205 (1976): "Among those who have recently claimed the right to self-determination are the Germans, Koreans, Vietnamese, the Biafrans or Ibos, the South Sudanese, the Baltic peoples, the Formosans (Taiwanese), the Somalis, the Kurds, and Armenians, Germans of Rumania, Scots in Scotland, the Catalans and the Basque people in Spain, the Bangalis,

United Nations has taken the first step in this direction¹⁵⁶ and expressed a commitment toward these goals.¹⁵⁷ It is urged that efforts continue in the direction of breaking down the last barriers to the universal application of international trust principles to all dependent peoples to bring "to a speedy and unconditional end colonialism in all of its manifestations."¹⁵⁸

Catholics in Northern Ireland, French Canadians in Quebec, the Welsh people, the Lebanese people, Croats in Yugoslavia, the Tibetan people, and many former colonial people in Asia and Africa who have only recently achieved independence."

156. "In February, 1977, the [International Indian] Treaty Council was granted Category II status within the United Nations becoming the first native people's organization to receive international recognition in the 20th century." 3 AM. IND. J., No. 9, at 4 (1977).

157. Declaration on the Granting of Independence to Colonial Countries and Territories, General 14 Dec. 1960. U.N. GAOR, XV, Supp. 16 (A/4684), Res. # 1514 (XV), pp. 66-67.

158. *Id.* This includes "Soviet imperialism, traditional colonialism, racism, and other forms of domination by one people over another." Final communiqué of the Conference at Bandung, New York Times (Apr. 25, 1955), p. 6; *quoted in* SADY, *supra* note 104.