

Chapter 10

Decolonization, Food Sovereignty, and Climate Risks: The Case of St. Lawrence Island in the Bering Sea, Arctic



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Abstract Climate change is having catastrophic environmental, economic, and cultural impacts on the Arctic region. Human-induced warming is increasing sea-ice melt, permafrost collapse and altering species migrations on land and sea. These impacts negatively disrupt not only the finely balanced ecosystems of the local flora and fauna, but also the Indigenous peoples who depend upon hunting and fishing for survival. But what exacerbates climate damage and impedes the ability of Indigenous peoples to protect their customary Arctic marine and terrestrial ecosystems are the impacts of past colonization— and its contemporary legacy. This chapter begins with the era of the Russian and European contact to today’s spate of international, American, and other Arctic national domestic laws that continue to impede the ability of Native peoples to help shape domestic and international standards regarding ecosystem protection. Having said this, the chapter describes the ongoing developments by Native peoples to play a greater role in shaping Arctic law and policymaking. The variety of initiatives at domestic, regional, and international levels reflects an ongoing recovery of the right to self-determination, sovereignty and a relationship with traditional lands and waters. In the Arctic context, Native peoples, through a combination of advocacy, litigation and focused strategies, are becoming more sovereign equals among nations within the changing laws and administrative processes of the former colonizing and post-colonial powers. The 2500-year story that is unfolding on the Bering Sea’s St. Lawrence Island, in the midst of the existential threat of climate change, offers an example of courage and resolve that is both an example to a world being engulfed in catastrophe, and also presents a story, in real time, of a people whose self-determination and sovereignty must include a meaningful seat at the table regarding decision-making processes about ecosystem protections and the limits of commerce.

Keywords Indigenous peoples · Arctic · St. Lawrence Island · Bering Sea · Siberian Yupiks · Food sovereignty

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1 The Context

Like many singularly powerful experiences that become deeply rooted in a peoples' psyche and understanding of their history, nearly all of the 1200 people who live in two villages, Savoonga and Gambell, on St. Lawrence Island in the Bering Sea, closer to Russia, are mindful of the 1878 starvation where nearly everyone died. With short summers, scant rainfall, nearly year-round frozen tundra, and sea-ice that surrounded and defined the island, planting was nearly impossible. Only a few types of greens and berries grew wild on the tundra (Ackerman, 1976). The only available meat supply was the Arctic fox or the wolf, red fox, and polar bear that occasionally traversed the ice pack formed on the sea-ice that once connected St. Lawrence Island to the Russian mainland for 9 months of the year (Apassingok, 1985, 1987).

Nearly all of the 4500 inhabitants who lived on this remote island, 40 miles southeast of the Russian Siberian coast and 120 miles south of the Bering Strait, were Siberian Yupik. At 100 miles long and twenty-seven miles at its widest, the volcanic rock island was populated by small coastal communities and fishing camps that inhabit the islands coast (Ackerman, 1976).

The Islander's primary food supply came from the sea. The Yupiks have been hunting, fishing, and whaling in the Bering waters for more than 2500 years. The major marine resources in the Bering include the Pacific walrus, for which St. Lawrence Island is well known, as 'The Walrus Capital of the World' (The Conas Project, 2020). The Bering Sea also hosts a range of bearded seals, ribbon seals, sea lions, and gray, bowhead, and finback whales. Millions of migratory birds, cormorants, ducks, geese, loons, gulls, terns, plovers and more provide an additional food resource as they rest and lay their eggs on the cliffs during their long journey south. Arctic Char and Tom Cod fish round out the human diet, along with eggs that the Islanders collect on the high rock formations that overlook (Audubon Alaska, n.d.) one of the richest peripheral seas on the planet (Alexander, 2020).

In 1867, the U.S. Senate ratified the *Treaty of Cession* with Russia. Through the Agreement, the Emperor ceded all Russian possessions in North America, including the adjacent islands, with his stated purpose to "strengthen, if possible, the good understanding which exists between them" (The Treaty of Cession, 1867).

The U.S. House of Representatives appropriated \$7.2 million to carry into effect the Cession Treaty (Crowell & Oozevaseuk, 2006). The Bering residents, sovereign since 'time immemorial' and living in balance with the Arctic environment for millennia, were not included in the negotiations (Huntington & Noongwook, 2013). Nor was there any acknowledgement of territorial rights in the Agreement. The Bering Sea region is home to over 70 Indigenous communities such as the Iñupiat, Central Yup'ik, Cup'ik, St. Lawrence Island Yupik, Unangan, and Chukchi Peoples, Inuits, Aleuts, Athabascan, Alutia, Haida, Inupiat, Tlingit, Tsimshain, Siberian Yupiks and others (Druckenmiller et al., 2019).

With the United States' purchase of Alaska, all of the resident Indigenous¹ communities became, by decree of two foreign governments, a part of the United States, under the jurisdiction and control of a new, and distant, government authority (The 1867 Treaty). In his report on fur seals, the Special Agent of the Treasury Department, Henry Elliot, mentioned the St. Lawrence Islanders in passing, noting that the Islanders were of little interest to the significant fur trade industry, and indicated that evidence existed of the adequacy of Indigenous peoples' food supply (Ross, 2006: 13).

What followed was a cruel irony. For millennia, the Bering's native communities have been hunting two or three whales annually to preserve ecological harmony. This situation is no longer the same today as the American and European whaling vessels began massive exploitation of sea mammals for commercial purposes. The first time a whaler killed an Arctic whale was in 1848 when the *New Bedford* killed an Arctic bowhead of 65 feet, of more than 100 tons of weight, and possibly aged more than a century (Dolin, 2011). Over the following decades, Boston and West Coast whalers headed north into the Arctic, killing as many as 1000 whales in one season. By 1852, nearly 300 whalers from New Bedford, New England, and the west coast waged ceaseless hunting operations of bowheads until there remain few whales in the Arctic waters. Technological change accelerated the number of whales that could be killed at once. By 1880, a dart gun and a harpoon with an explosive projectile that could kill a whale instantly were introduced (Ross, 2006). The highly valuable bowheads that migrated between the Bering Sea and the Arctic Ocean, close to the ice packs, thereby 'ice whale', contained up to 300 barrels of oil and a possible 2500 pounds of baleen. At a high point in 1887, the year of the starvation, one vessel reportedly caught 28 whales. From 1848 to 1909, commercial whalers killed some 29,500 North Pacific bowheads (Ross, 2006). The purpose was to harness whale oil to provide light. With the oil drained, the whale meat, bones, and organs, were discarded. The industrial scale practices were in direct contrast to Yupik whalers who took only one or two whales annually to feed their entire villages. After butchering the whale on the thick sea-ice, the Yupiks returned to the sea what remained – with prayers of thanks.

It is estimated in Crowell and Oozevaseuk (2006) and Ackerman (1988) that between 1848 and 1885, more than 10,000 whales were hunted for whale oil from the Anadyr gulf to the south to Point Barrow in the high North. Once the whale population began to decline, the commercial whalers shifted in objectives and turned to slaughter more vulnerable and numerous walrus for industrial purposes. In this sense, Ackerman (1988) observes that the whaling industry killed more than 100,000 walrus between 1865 and 1885.

¹In all instances, this chapter capitalizes the term 'Indigenous', as an Indigenous rights movement that emerged in the 1970s. In Academic and political writings, capitalization is a way to describe contemporary efforts to decolonize and recover confiscated lands. More than that, it is a form of style that permits to fight for self-representation, political, cultural sovereignty, and spiritual rights (Weeber, 2020).

It should be made clear that whale and walrus slaughter set the stage for coastal ecocide. In 1875, a year with frequent storms that exacerbated the reduction of access to food, a massive walrus kill reduced the communities' food supply to low levels. Most of the Yupik people survived this double disaster and still remember how the circumstances worsened 3 years later. In 1878, the surge of a storm prevented the sea-ice from freezing around the island refrained hunters from reaching the fewer quantity of walrus that remained in the sea. With a depleted stock, the confluence of events significantly diminished the portion of fish stock that the community took annually from the walrus hunt (Apassingok, 1985). This weakened the physical condition of the hunters. The situation was made worse by an influenza epidemic where nearly 90% of Siberian Yupiks died (Crowell & Oozavaseuk, 2006). Most of the villages disappeared, leaving behind only a few artifacts and random skeletal remains to prove the people and their civilization once existed (Crowell & Oozaaseuk, 2006; Laidler et al., 2009).

The New Bedford Standard reported in August, 1879 that on both the Russian and American sides of the Bering, more than one-third of the populations died from starvation. (Crowell & Oozavaseuk, 2006). Several Savoongan elders thought that a few Yupiks on the American side of the Bering survived by making their way across the Bering ice to Russia; then integrated into with the reindeer herders across the Russian Arctic (Parlow, 2019).²

In 2007, Boston.com reported that an Alaskan Native whaler had cut into a whale caught during their annual subsistence whale hunt and found embedded in its bones the tip of a nineteenth century unexploded bomb-lance used by New England whalers between 1885 and 1895 – a time consistent with the Bering Sea starvation. Whale oil lit the world at that time (Dolin, 2011) and provided Boston with whale oil revenues that made the New England city a citadel for global commerce (Nichols, 2010).

2 Backdrop: Recovery of Indigenous Sovereignty in the Arctic in the Context of Warming

To this day, St. Lawrence Islanders, a fiercely independent and sovereign Indigenous people, celebrate their ancestral way of life that has been culturally, politically, spiritually, and nutritionally connected to the Bering Sea for millennia (Alexander, 2020). Two centuries later, a global and deadly pandemic, called the Great Influenza, surged in 1918 and complicated the life of the local population. It is mentioned in Coggin (2019) that the disease was so fatal that starvation decimated more than half of the native population. The Arctic Indigenous communities, who depend upon a healthy marine ecosystem for their food supply, were on the front lines of the global climate catastrophe (Fig. 10.1).

²Interview with elders at Tribal Government lunch (August 2019).



Fig. 10.1 Waves break near the shore in Savoonga in April. (Source: Demer © 2017)

Consistent with the rest of the Arctic, St. Lawrence Island's Savoongan villages are experiencing warming twice as fast as the rest of the planet. This Siberian Yupik coastal community, with roughly 600 residents, has a front row seat to a wide range of global warming's most severe impacts. As fires rage across Siberia and Alaska, the permafrost melt has caused roads, rail, and onshore oil and gas infrastructure to collapse, and the caribou and reindeer are increasingly infected by ticks that are migrating from lower latitudes. With an acceleration of oil, gas, mining, and shipping, the once inaccessible region and its rich resources have become increasingly available given the increasing rate of sea-ice melt (National Geographic, 2019).

Like many Indigenous peoples who live in the Arctic, the residents of St. Lawrence Island are facing pressures from at least four directions at once: loss of sovereignty and territorial rights; restrictive federal, state, and international regulatory regimes; climate change and sea-ice retreat; and pressures to develop oil, gas, and mining resources in a region increasingly accessible to outsiders. Moreover, the people of St. Lawrence Island differ from the rest of Alaskan Natives in that they fully own their 1.2-million-acre island by virtue of a decision made by the village elders after the 1971 Alaska Native Claims Settlement Act (ANCSA) was enacted, primarily intended to extinguish all Indigenous title to their ancient and historic aboriginal lands (Fig. 10.2).

The two remaining villages, after the great starvation, opted out of their portion of a billion-dollar settlement that would convey their ancestral lands to the US federal government. The Islanders decided to opt out of a cash settlement. Instead, the Yupiks chose to continue to maintain stewardship of the nation's sixth largest island



Fig. 10.2 The Bering Sea visible at the end of a row of houses in Savoonga, on Alaska's St. Lawrence Island. (Source: Parlow © 2019)

with its 900 miles of coastline, mountains, and lakes. In 1979, an interim conveyance of the land left all decisions with St. Lawrence Island's complex governance structures, with final title conveyed in 2016.

The final land conveyance was one of the largest in US history. It was a transfer of title to Native people who have tirelessly fought not only to keep their land despite strong external pressures, but also to maintain and protect their subsistence way-of-life. These same people now face the existential ravages of climate change. Of the decision not to sell their land that has seen 2500 years of Siberian Yupik occupancy, the Tribal leader Perry Pungowiyi expressed the voice of the Elders who came before him by saying that "as long you are owners of the Island, the Island will take care of you." Others noted that the "money runs out, the land is forever" (Khachatoorian, 2016).

Savoongans practice what they preach. Along with Gambell, the other St. Lawrence Island community totaling 1200 people, the Islanders refused the call of a mining operation on the lands to which they hold both surface and subsurface rights, despite the company's promises of jobs and income that would supplement their essentially non-cash economy. "We didn't want to injure our subsistence ways or break with the instructions of our ancestors to protect the ecosystems", said Bryan Rookok, President of Savoonga's Native Corporation, Kukulget, while reaffirming the Yupik philosophy of 'leave no footprint behind' (Parlow, 2019).³

³ Interview undertaken by the author on August 2019.

3 Climate Change and Threats to Food Security

More than 40,000 Indigenous people live on Alaska's Arctic and sub-Arctic Bering Sea coastline, depending upon marine resources to put food on the table. The Bering Sea is a transition zone between the Pacific and Arctic oceans. The relatively narrow Bering Sea, between the coasts of the United States and Russia, hosts millions of seabirds, whales, walrus, seals, fish, and a growing number of oil and gas tankers, as well as commercial fishing vessels and subsistence fishers, hunters, and whalers (US CMTS, 2020).

The dramatic loss of winter sea-ice is having a negative cascading effect on the fine balances of the ice-dependent Bering Sea and Strait and its food chain. Moreover, the Arctic sea-ice melt and loss negatively impacts not only the primarily Indigenous residents of the Bering region, but also a growing instability in circulating currents, changing weather patterns, and air temperatures in the rest of the world (Wadhams, 2016).

Threats to human food security are not trivial. With the global spotlight on regional, national, and international agenda, small villages communities, and their residents – like Savoonga and Gambell on St. Lawrence Island – often remain overlooked. Evidence of warming is visible everywhere on the 1.2-million-acre island – both on and offshore – with visible and dramatic reductions and increasing impediments to the ability to secure food. Melting sea ice and intensifying high velocity storms are causing the collapse of coastal homes, no longer protected by coastal sea ice, into the permafrost thaw. This situation is exacerbated by shore loss and, sinking homes, and collapsed roads due to permafrost melt (Fig. 10.3).

George Noongwook, a Yupik Whaling Captain, a walrus hunter, and former Chairman of the Alaska Eskimo Whaling Commission, is quoted in Parlow (2019) saying that: the reduction in sea ice, from nine-month to three-month seasons means that sea mammals no longer have a platform on which they can rest, feed, and nurse their calves during migration times. This not only interrupts the mammals' life rhythms but also the hunters' access to their food supply. Noongwook's statement emphasizes that despite the critical lost sea ice that upsets the entire food chain, Yupik hunters, fishers, and whalers continue to navigate climate unpredictability with agile hunting strategies that have guided them for millennia.

Noongwook has traveled throughout the United States and Europe to describe how Savoonga's Yupik people are digging deeper into their ancient knowledge to address climate change. Reading the rapidly changing weather conditions is "who we are", he explained. "We take it day by day," he said, reflecting the kind of equanimity that deeply rooted knowledge brings (Parlow, 2019). For hundreds, if not thousands, of years, Yupik's have created quotas to preserve walrus, seals or whales so that the balance of the marine ecosystem is maintained. Further, Noongwook explained that the Yupik philosophy of leaving 'no footprint behind' reflects a people who maintain a "take only what you need" hunting practices, that fiercely protect the biodiversity of the Bering Sea's interconnected ecosystems (Parlow, 2019).



Fig. 10.3 Savoongan whaler and walrus hunter props up his house as it sinks into the melting permafrost. (Source: Parlow © 2019)

The changing fish and mammal migrations and newly-open waters also cause dramatic shifts in hunting and fishing. “You have to be fast”, Noongwook explained as he described how the loss of sea ice impedes access to their food supply, as the walrus no longer regularly stop on nearby sea-ice to feed themselves and their calves, allowing for the annual harvest (Parlow, 2019). Of warming’s impacts, another tribal leader said: “it’s getting scary”. Yet, most Islanders said that their ability to adapt to changing conditions remains grounded in their shared tradition of thousands of years of navigating change, a tradition transferred through oral history and song.

The irony of climate change impacts in the Arctic is that while Savoongans, like most Arctic subsistence hunters, fishers and whalers, contribute among the very least to climate change, they feel its harmful effects disproportionately. Noongwook also described an “alarming” cascade of ecological consequences that included changes in the timing and numbers of algae blooms that form the foundation for the entire food chain, northward migrating fish populations seeking colder waters, and massive bird die-offs in a migration corridor (Parlow, 2019). Further, the retreating sea-ice has left the once ice-protected cliffs vulnerable to raging storms that have significantly eroded the coastal lands leaving scores of Bering Sea and Strait communities sliding into the sea (Gricius-Abbott, 2021).

In terms of subsistence, key resources are moving away. Ice-dependent marine mammals and fish are moving to the new locations of ice edges and flows – often too far away to be safely hunted. Savoongans, like North Slope whalers, report that they must now travel farther out to hunt. Increased travel time and distances garner additional costs for fuel and maintenance, while increasing the risk of accident given choppier ice.

Further, changes in snow cover makes four-wheeler and snow-machine travel to hunting or fishing camps across the island more difficult and dangerous. This forces hunters and fishers to delay travel until later in the fall season when there is more snow, but less prey. Summer hunting has also been upset by permafrost collapse of roads that cross the Island to hunting and fishing camps. As a result, Demer (2017) argues that fewer and more dangerous opportunities are available for hunters to catch fish or whales.

Noongwook noted that whales are now sometimes hundreds of miles beyond what was once the sea-ice edge where they migrated north. This often leaves the small whaling boats with insufficient fuel to reach the changing whale migration paths. Further, a spate of Federal regulations in the U.S. – such as the Endangered Species Act and Areas to be Avoided – have restricted Native peoples whose non-commercial fishing and hunting activities are intended for their own families, communities, and Elders. The laws that prohibit walrus hunting are to regulate wanton commercial hunting practices, mainly by outsiders rather than the allocated take established by local Indigenous communities' customs and rules (Huntington et al., 2017).

To address the widely held concerns about an increasingly impaired marine ecosystem and a food supply reserve, the Food Sovereignty Summit was organized on the Alaskan mainland in 2019. The summit was attended by representatives of nearly a hundred of the Nome Alaskan Native Communities, a population that has been tangibly affected by the severe impacts of global warming. The delegates discussed the most recent signs of a broken ecosystem: birds falling off the cliffs, in part, from hunger; a collapse of the Bering Sea cold pool that served as a marine protected border for varying fish species; fish scattering northward for colder waters; “walrus and seals getting skinnier”; and whales and walrus are harder to reach. As the sea-ice melts there is no guarantee that the walrus or whales will be accessible or available. Equally concerning was discussed whether the small boats are able to return to the shore given the increasingly choppy and dangerous ice (Huntington et al., 2017). Several Savoongan whalers noted that the Elders are worried about the ice conditions that this generation of whalers and walrus hunters must traverse. “They make us take a satellite phone”, one whaler noted, “so, if we get into trouble, we call”, he said flatly (Parlow, 2019).

When it comes to the effects of climate change, the Arctic communities are generally overlooked, ignored, and marginalized in terms of the quest for solutions. Arctic communities offer innovative approaches to resiliency. Their philosophy, science, and theology offer a roadmap to resiliency and restoration of ecosystem balance for environmental and climate practice (Parlow, 2019).

4 Arctic Indigenous Science, Philosophy, and Natural Law

Western scientists and lawmakers must cease perceiving Indigenous contributions to climate research as less than “scientific”. Savoonga, along with Gambell, the only other village on the 1.2-million-acre island that survived the starvation, count amongst the best examples, but not the only, of integrating scientific awareness with hundreds, if not thousands, of years of observation. Observation is the backbone of scientific inquiry. Firsthand experience, reliance for survival, and their deeply rooted philosophy of the region’s rich biodiversity make the Islanders the most knowledgeable people to protect the highly integrated and bio-diverse ecosystems. For more than 2500 years, neither the whales nor the walrus was over-hunted and the ecosystem remained in balance unlike the several decades of ruthless kill before the “starvation” (Ackerman, 1976).

This highlights a fundamental difference between a Western perspective of land ‘ownership’ and that of Indigenous peoples, including the Arctic. When colonial powers take or purchase ‘wild’ or ‘empty’ lands, the perception of those environments is that of property. The ‘owners’ of land utilize resources for financial gain. The Indigenous peoples of the Arctic perceive themselves as stewards, servers, and preservers of the marine and terrestrial ecosystems. (Pennesi et al., 2012)

5 Subsistence: Territorial Rights, Human Rights, Mainly the Right to Food

5.1 *U.S. Treaty of Cession with Russia in the Arctic High North*

Following the Treaty of Cession with Russia, by which the United States gained title to what was Russian territory, Indigenous territorial rights were extinguished in a series of efforts over the next two centuries (Act, 1867). In 1868, the US Congress designated Alaska as a ‘customs collection district’ and extended the US law over the mainland, islands and waters of the territory of Alaska, with no consideration of Native rights.

By virtue of the Doctrine of Discovery, under principals of the international law, the ‘discovering’ nation acquired the exclusive right to engage Indigenous peoples with respect to matters of land ownership and government-to-government relations (Cohen, 1941). In the seminal case, *Johnson v. McIntosh*, Chief Justice John Marshall opined that under the doctrine of Discovery, Indigenous tribes have a “legal as well as just claim to retain possession of the (lands)” they historically occupied. That was the case until the Congress, which held the “plenary authority”, choose to terminate such rights (Anderson, 2016).

On these vast lands held in the aboriginal title, Alaskan Native tribes, like all Native peoples before the discovery era, harvested, processed, distribute, and consumed marine mammals, fish, wildlife, and plants through an economy and

distribution system that became known as subsistence – a legally enforceable right, but often used to further extinguished territorial rights.

Today, subsistence is an intensely political issue as non-subsistence hunters and fishers claim they lose both money and livelihoods if access to traditional Indigenous, aboriginal hunting, and fishing grounds were not available to them. Further, efforts to protect areas from overfishing or hunting often significantly diminishes Indigenous subsistence take, along with a woefully disproportionate impact on nutrition, arguably a human right often linked to territorial dispossession.

5.2 *Alaska Law and Subsistence*

Alaska law defines ‘subsistence uses’ as “[T]he non-commercial, customary and traditional uses of wild, renewable resources by a resident domiciled in a rural area of the state for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation, for the making and selling of handicraft articles out of non-edible by-products of fish and wildlife resources taken for personal or family consumption, and for the customary trade, barter, or sharing for personal or family consumption” (AS 16.05.940 (31), (32), 1978).⁴

The Alaska state and federal law related to subsistence uses (respectively AS 16.05.940 [32] and Title VIII of ANILCA, section 803) define subsistence uses as the “customary and traditional” uses of wild resources for various uses including food, shelter, fuel, clothing, tools, transportation, handicrafts, sharing, barter, and customary trade.

While both Federal and State law differ in who qualifies to participate in subsistence hunting and fishing rights, both the State and Federal governmental definitions miss the core meaning and significance of subsistence to Alaska Natives. Not only has most of the land been in customary use and occupancy for millennia, but also subsistence hunting, fishing, and whaling ‘from time immemorial’ has been the foundation of Indigenous lives, culture, philosophy, ancient and historic sovereignty, and the ongoing ability to put food on the table. Both subsistence laws, arguably, amount to a ‘taking.’ In 1978, the Alaskan statute initially applied ‘subsistence’ to rural Alaskans. Afterward, the authorities expanded it by 1989 for the benefit of all Alaskans. The 1980 federal statute, The Alaskan National Interest Lands Conservation Act (ANILCA), applies only to federal lands but to all rural Alaskans.

Recent initiatives by Indigenous peoples at the United Nations on the development of human rights and customary law as legal and political frames of reference regarding the protection of sovereignty, territory, and customary use and occupancy, are gaining traction (IWGIA, 2010). This includes what is or was sea-ice use and occupancy. Or, as at least one Savoongan repeated an often-mentioned view of what is to be protected in marine terms, the sea is “our grocery store; our refrigerator” (Parlow, 2019) (Fig. 10.4).

⁴https://www.adfg.alaska.gov/static/home/subsistence/pdfs/subsistence_update_2017.pdf



Fig. 10.4 George Noongwook at home in Savoonga preparing a family walrus dinner, and an invited guest. (Source: Parlow © 2019)

6 External Pressures, Increasing Accessibility, and Outside Commercial Interests in Alaska

6.1 Oil, Gas, Mining, and Shipping

The oil and gas industries are well-established in Alaska, Russia, and Norway and the melting sea-ice is opening up new areas of the high North to carbon fuel production (Reiss, 2012; Horowitz et al., 2018). According to the Arctic Marine Shipping Assessment (AMSA) reported in Arctic Council (2009: 76), the “development of rich natural resources in the Arctic is a rapidly growing industry”. Since 2004, several significant new bulk shipments have begun operations, such as the year-round oil shipments out of the port of Varandey in the Russian Arctic. In early 2008, an offshore-lease sale conducted by the U.S. Minerals Management Service for the U.S. Arctic totaled nearly \$US2.7 billion; offshore gas appears to be a significant resource under consideration for development in this Arctic region (Arctic Council, 2009). Although, it is notable that a growing number of investment houses, insurers, shippers and oil and gas companies are withdrawing current and projected investments in the Arctic region given the growing political opposition to carbon fuels production in the High North on climate and environmental grounds.

The AMSA 2009 Report, viewed as a significant foundation for understanding Arctic shipping, reported that the greatest growth in Arctic shipping is likely to be

in the oil, gas, and mining industries – with the greatest increases in bulk and break-bulk vessels generated from Russia, Canada, Norway, and the United States.

During this same period, in 2008, the U.S. Geological Survey (USGS) completed a Circum-Arctic Resource Appraisal (CARA) that evaluated the petroleum potential of all areas north of the Arctic Circle, 66.56° north latitude, for recoverable resources. The USGS concluded that the Arctic Circle, encompassing about 6% of the earth's surface, contains an estimated 90 billion barrels of oil, 1669 trillion cubic feet of natural gas, and 44 billion barrels of natural gas liquids, of which 84% is estimated to occur in the offshore. These resources account for about 22% of the undiscovered, technically recoverable, natural resources in the world (USGS, 2008).

The Russian Federation's Sea Route Administration announced in 2019 that 31.5 million tons of goods were transported through its Northern Sea Route (NSR) – a 56.7% increase over the previous year (Staalesen, 2020). The vast majority of the tonnage (20.5 million tons) was comprised of natural gas from Novatek's Yamal LNG project; a project in cooperation with China. China's growing interest as a producer and consumer in Arctic energy production and consumption, referring to itself as a "near Arctic nation," contains the potential to dwarf marine-ecosystem protections that are vital to subsistence and commercial fisheries (The State Council Information Office of the People's Republic of China, 2018).

Further in energy-and mineral-dependent Alaska, the Red Dog Mine has been embattled by lawsuits from the rural subsistence villagers in coastal Kivalina where their legal battles against a Canadian Mining Company and their native corporation to a settlement regarding destructive environmental practices. Moreover, the highly controversial and massive Bristol Bay gold mine initiative in the world's largest wild salmon run has galvanized both Indigenous and non-Indigenous fishers in opposition to a massive and controversial mine that would be located in the headwaters of the world's largest sockeye salmon run. The salmon hit record numbers in 2021, reinforcing the Indigenous and non-Indigenous opposition to the embattled Pebble Mine to seek to "forever" block an open pit gold mine planned for the headwaters of one of the world richest fisheries. The all-time high of 64.2 million fish, surpassed the previous record of 62.9 million and both exceeding the projected season total of the highly regulated fishing industry that disallows overfishing by subsistence or commercial fishers who generate more than \$2 billion annually for the state of Alaska (Reynolds, 2021).

7 Loss of Territorial Land, Sovereignty, and Reduced Access to Traditional Land and Waters

To understand the power of Indigenous advocacy since post-cession Treaty contact, it is useful to understand the series of laws, codes, treaties and customs that constructed a colonial wall around Indigenous self-determination and sovereignty, even when well-meaning. As the underlying relationship between the Indigenous peoples

and the colonial states that took the land, imposed political jurisdiction and, at best, established policies of assimilation, that serve the dominant culture at the expense of the region's first inhabitants is being increasingly challenged. One sees green shoots of decolonization in advocacy by Indigenous tribes, nations, organizations and Alaskan Native corporations regarding state, national and international law and policy. However, the grim history reflects how much work is to be done.

In its 1867 purchase of Alaska, the United States did not enter into any treaties or agreements with the residents who lived in this ice-covered region for more than two thousand years (Swensen, 2014). Neither the Russians nor the Americans considered the status of Alaskan Indigenous sovereignty or the possession of aboriginal title as had been the case in the American lower 48 U.S. states where a domestic dependent nation status with a federal fiduciary responsibility in a controversial 'guardian-ward-trust' relationship. The Treaty divided the Alaskan population into two categories: 'inhabitants' and 'uncivilized tribes' (Treaty, March 30, 1867).⁵

The "inhabitants" were to be admitted into the United States or could return to Russia. The "uncivilized tribes" were neither acknowledged for their sovereignty over their tribal members – if not "use and occupancy" designation of their traditional, aboriginal lands – nor were they accorded any rights of citizenship (Case, 1984).

The 1867 Treaty of Cession at Article III was explicit in its characterization of the Native peoples, and the status of their sovereign rights, who inhabited the ceded territory. Non-native people would be allowed to return to Russia within 3 years or remain in the ceded territory and, "with the exception of the uncivilized tribes, shall be admitted to the enjoyment of all the rights, advantages and immunities of citizens of the United States". Of the Indigenous peoples, whose oral history reaches back as far as 2500 years on these lands, ice, and waters, "the uncivilized tribes will 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".

A slow but firm development of the implementation of a colonial process followed with a combination of a restrictive interpretation of Indigenous inherent rights of sovereignty, territory, and use and occupancy of land (Case, 1984). The legal process of taking land, extinguishing title, and denying access to culturally and spiritually significant areas that supported hunting, fishing, and whaling has been organized and specific. Efforts to strip Native people of their sovereignty, and a loss of the right to maintain a government-to-government relationship with the United States to pursue political relations (Swensen, 2014), were a foundational step in stripping Native peoples of their rights to use, occupancy, and access to the Arctic lands that formed their universe for thousands of years. Sambo-Dorough (2014) stipulates that access to resources is paramount, be it for sovereignty, self-determination, or the safeguarding of the integrity of distinct peoples.

⁵Treaty concerning the Cession of the Russian Possessions in North America by his Majesty the Emperor of all the Russias to the United States of America, June 20, 1867, https://avalon.law.yale.edu/19th_century/treatywi.asp

The 1867 Treaty of Cession offers a useful point of departure both for analysis and understanding of the necessity for strategies that Indigenous peoples, including Alaskan Natives, have, and continue to use to develop actions to recover and exercise sovereignty over their aboriginal lands. Such efforts are increasingly in tandem with climate change responses, again linked to defending a way-of-life that Indigenous peoples have fought fiercely to protect, defend, and build upon for more than 2500 years.

7.1 The 1884 Organic Act and the Creation of District of Alaska on Aboriginal Lands

The core opposing interests regarding the legal status of Indigenous land rights, oil, gas, and mineral interests were clarified through the 1884 Organic Act,⁶ which created the District of Alaska and allowed for the appointment of a bureaucracy, school system, district, and circuit courts. Perhaps the most important element was the economic driver that drew Federal: the enforcement of mining laws in the resource-rich Alaskan territory.

Arguably, given the deep understanding of ecosystem balances, if Alaskan tribes owned the land on which subsistence activities take place, or if Alaskan tribes were legally empowered to control subsistence resources and their territorial lands and waters, it might be more possible to mitigate the impacts of climate change not only on their local ecosystems, but also around the globe. By sitting at the political table as equals in diplomacy, in such bodies as the Arctic Council or the United Nations, environmental outcomes might improve, certainly for Native peoples and their particular interests (Ristroph, 2010; Cochran, 2013).

7.2 The 1971 Alaska Native Claims Settlement Act

A century after the 1884 Organic Act, the U.S Congress responded to significant Indigenous advocacy and enacted the 1971 Alaska Native Claims Settlement Act (ANCSA) (Moore, 1997). ANSCA extinguished Alaska aboriginal hunting and fishing rights, title to Alaska lands, and constructed a corporate assimilation approach that conveyed 23,040 acres of land for each of the 13-newly created regional Native Corporations. The corporate model was designed to promote commercial activity and was divorced from traditional subsistence land use or the seas where fishing or hunting locations were areas of historical, cultural, traditional, and vital to subsistence fishing, hunting, or whaling. Each of the newly created regional

⁶The 1884 Alaska Organic Act: https://explorenorth.com/library/history/alaska_organic_act-1884.html

Native Corporations received 23,040 acres of land, which gave “preference of land with a commercial purpose,” primarily oil, gas, and mining. (Linxwiler, 2007).

In 1983, the Arctic Indigenous-wide Inuit Circumpolar Conference retained Thomas R. Berger, British Columbia Supreme Court Justice, who wrote his seminal review of ANCSA’s impacts on Alaskan Natives. He concluded that the Congress enacted ANCSA to diminish the ability of Alaska Natives to control their land or meaningfully shape policy regarding land, subsistence or longstanding use and occupancy amongst peoples for whom ownership and private property had been foreign concepts. Berger reported that ANCSA’s replacement of tribal governance with corporate structures, could further alienate any remaining land holdings by Native peoples if corporate failure, corporate takeovers or unpaid taxes led to confiscation (Berger, 1985). After conducting extensive field hearings throughout Alaska, Berger concluded that Alaska Natives believed that, if they owned their own land, they could protect Indigenous traditional economies and a village way of life. Subsistence is at the core of village life and land is the core of subsistence; you cannot protect the one unless you protect the other (Berger, 1985). ANCSA has protected neither.

7.3 The 1980 Alaska National Interests Land Conservation Act

Similarly, pressured by Indigenous advocacy groups, especially those who called ANCSA an encroachment on their subsistence rights, the Congress responded by passing the 1980 Alaska National Interests Land Conservation Act (ANILCA). The Act established a priority for the taking of fish and wildlife on public lands for subsistence uses. But, rather than linking subsistence priorities to Native status, ANILCA focused, generally, on the rights of all local rural residents, leaving Native Alaskans’ subsistence rights again marginalized on their own traditional lands.⁷

By 1989, the Alaska Supreme Court determined that rural preference is a violation of the Alaskan Constitution.⁸ ANILCA has been applied to Federal public lands, about 67% of the state. State law governs subsistence on state and private lands, including those owned by Native Corporations. Given that state law does not distinguish between Native and non-Natives or urban or rural residents, Indigenous peoples who depend upon subsistence way of life were placed as equal status to sport hunters or fishers. This made sovereign interest in food security a lower federal priority.

As the United States sought to avoid acknowledging Native land ownership, the government offered few, if any, legal or administrative tools for tribes to “officially articulate” their political will on the country. Instead, Alaskan Native people, along with the rest of the Arctic region, methodically and persistently used a combination of direct political action, litigation and the separate legal system itself created by the

⁷H. Res. No. 746, 92th Congress, 1st Session (1980).

⁸Supreme Court of Alaska, McDowell v. State, 785 P.2d 1 (1989). Can be found here: <https://law.justia.com/cases/alaska/supreme-court/1989/s-2732-1.html>

government to reclaim and recover the sovereignty over the lands, natural resources and way-of-life that they are denied (Moore, 1997; Ristroph, 2010).

8 Federal, State, Regional, and International Regulatory Processes: What Is Given Can Be Taken

Through a series of Federal regulatory protections within the United States, it appeared that the food supplies for Alaskan Native subsistence hunters, fishers and whalers would be protected. The U.S. Fish and Wildlife Services' (FWS) Endangered Species Act (ESA) and the National Marine Fisheries Services' Marine Mammal Protection Act (MMPA) exempt Alaskan Native subsistence hunting from prohibitions on take.⁹ Additionally, the Migratory Bird Treaty Act¹⁰ exempts Alaskan Native subsistence hunting from a prohibition on the take of migratory birds during the spring and summer seasons (Ristroph, 2010; Koivurova & Hasanat, 2015).

However, changes were relatively easy to affect. The administrative agencies are authorized to alter regulations on subsistence take if the agency finds that subsistence is "materially" and negatively affecting a threatened or endangered species.¹¹ With climate change warming ocean waters and altering species' habitat, it is likely that more species will be listed as threatened or depleted, leaving the Federal agencies to further restrict Indigenous subsistence food gathering to ensure species survival. Alaskan Natives have expressed concern. In 2009, after enacting regulations to protect a type of sae duck named the Eider Steller, subsistence hunters claimed that local observations of causation were disregarded regarding both the actual population status and the non-hunting factors that had changed conditions (Ristroph, 2010). The regulatory agency not only excluded the Alaskan Native hunters but, by omitting their input, missed some of the issues, such as climate-linked changes in food resources that might have more ably protected the Eiders (Ristroph, 2010). Additionally, climate change is altering the timing of seasonal migrations and the presence of the ducks, geese, and birds which, in turn, impacts the ability of subsistence hunters to fill their freezers for the long winter months. (Loring et al., 2011).

Distinctions between Native and non-Native hunters, fishers, and whalers are also significant as Native hunting strategies, developed over thousands of years, well before U.S. Federal policies, have maintained a balance within the ecosystem through their management approaches. Most restrictions on subsistence practices and a general lack of inclusion of Indigenous management strategies not only intrude on customary use, sovereignty, or, self-determination but also misses out on Indigenous best practices that allow for an improved understanding at the local level of how one small change to a marine ecosystem can cascade into a far larger dilemma.

⁹ 16 U.S.C. #1539 (e) (2006).

¹⁰ 16 USC #712 (2006).

¹¹ 16 U.S.C. #1539(e)(4) (2006).

Faced with the mounting restrictions on their right to control subsistence, the development of a joint strategy to co-manage natural resources with state and Federal governments gained traction. In 1994, an amendment to the Marine Mammals Protection Act provided for cooperative agreements between FWS and Alaska Native organizations to conserve marine mammals and co-manage subsistence use.¹² Indeed, FWS entered into agreements with Alaskan Native organizations, including the Eskimo Walrus Commission (EWC) that represents 19 villages (Raymond-Yakoubian et al., 2014). However, while FWS cooperated with funding, monitoring, and outreach, no real transfer of authority to the Alaskan Native subsistence representatives occurred, particularly in enforcement (Metcalf & Robards, 2008; Ristroph, 2010).

Co-management practices that bring together government and tribal structures often don't work because Indigenous and non-Indigenous entities differ in rationality and objectives. Some legal scholars have defined this as a 'post Westphalian resource management' (Shadian, 2010, 2013). Both in conservation and environmental protection outcomes, one would threaten to sweep people from their historic aboriginal lands; the other would establish an ecosystem balance that included subsistence hunters, fishers, and whalers (Ristroph, 2010: 73). Similarly, Alaskan Native tribes that participate in the Alaska Migratory Bird Co-Management Council (AMBCC) face a similar lack of power. The statewide management body composed of government agencies and tribes is charged to develop a recommendation for regulations of spring and summer harvest and conservation of migratory birds. But, for example, in 2008 the collective voice of Alaskan Native tribes to avoid placing further restrictions on their subsistence hunting quotas was disregarded (Fig. 10.5).

The Alaska Eskimo Whaling Commission (AEWC) is one of the few Indigenous organizations that have played a meaningful management role. Within this new dynamic, the tribes are profiting from the specific Open water Season Programmatic Conflict Avoidance Agreements with the oil and gas industry that operated on and offshore during the whaling migrations. The agreements ensure that the communities' fishing activities do not interfere with whaling sonar, fish migration patterns, or other industry practices that might impede whales and subsistence whaling alike.

9 Climate, Sustainability, and Sovereignty in International Law

Drawing from a 2500-year-old history of the Island, an elder Yupik noted that the combination of federal and state restrictions on climate change hinders the protection of land and waters. In this respect, the Yupi man is quoted in Cochran et al. (2013) saying that: "Our ancestors taught us that the Arctic environment is not constant and that some years are harder than others. But they taught us that hard years

¹² 16 U.S.C. #1388 (2006).



Fig. 10.5 As sea-ice melts, tens of thousands of stranded walrus assemble on a beach near Point Lay, Alaska. (Source: Photo by NOAA © CoreyAccardo/AP, 2014)

are followed by times of greater abundance and celebration”. “Almost as a message to self”, she said, “as we have found with some aspects of modern changes along with climate change, we hold onto our culture’s ancestral wisdom, but the enormous changes sometimes make us wonder when the good years will return”.

The lack of meaningful control over subsistence management, along with marine and land use decisions directly threatens the survival of peoples who depend upon what the land, rivers, and sea offer. Climate change further exacerbates the practical and political diminishment of Native peoples’ ability to put food on the table. The situation is made worse by the fact that Alaskan Natives generally no longer directly control their lands or waters. While Alaska Native tribes retain some of the inherent sovereign powers held by all tribes, they generally lack jurisdiction over activities on their aboriginal lands and waters (Ristroph, 2010). Restrictive government policies and Non-Governmental Organizations (NGOs) can curb customary use and occupancy and seek to protect the marine and terrestrial environment. Furthermore, human concern about the region has been integrated into the ecosystem as depicted in geologically ancient walrus sculpture, oral history, ceremony, and songs (Fig. 10.6).

10 Arctic Indigenous Sovereignty in Law and Policy

10.1 *Shortcomings of Domestic Law*

Given the shortcomings of state and Federal law regarding meaningful protection of territorial and subsistence rights, major Indigenous rights groups such as the Inuit Circumpolar Conference, the International Treaty Organization and others continue



Fig. 10.6 The melted early ice leaving walrus hunters with a disrupted hunting season as walrus had no place to rest and feed their young, thus complicating the ability of walrus to feed and hunters without a full food supply. (Source: <http://www.marclesterphoto.com>) (Photo © Marc Lester, Alaska Dispatch News, 2017)

to produce strategies to develop international law instruments that would produce protections for Indigenous sovereignty, self-determination, jurisdiction over aboriginal lands, and territorial rights, along with the sustainability of subsistence ways-of-life (Cornassel, 2014).

The central strategy has been to reverse, or limit, the imposition of colonialism and to challenge the principles of the legal systems that protect the colonial and neo-colonial consumer societies that aggressively exploit natural resources (Whyte, 2016). Perhaps the largest battle from an Arctic perspective was to challenge federal and state support for the oil and gas industries, both on and offshore, and the commercial shipping industry that supports the transit of such resources (Watt-Cloutier, 2015). According to numerous Indigenous leaders, an objective was, and is, to build movements “powerful enough to force the policy changes” needed to stop, if not reverse, policies and processes that prevent Indigenous peoples, who depend upon subsistence living, from continuing to live in an interactive dependency with the natural world. The combination of political movements, careful diplomacy, and well-crafted lawsuits at the national and the regional levels have forced some positive actions to protect the region (Watt-Cloutier, 2015). However, it should be made clear that native oil, gas, and mining corporations can exercise power in Alaska to well-serve the native financial interests. On the complex and controversial issue of development of carbon resources, Karlin Itchoak, Director of the Alaska Branch of The Wilderness Society put it succinctly: “I may disagree with carbon fuel development practices, but I fully support the sovereign right of Indigenous peoples to

generate revenues in the manner of their choosing – whether I oppose it or not, he said” (Parlow, 2021).

10.2 The Arctic Council

The Arctic Council, established in 1996, is the pre-eminent regional, intergovernmental body, whose primary members are the Arctic Coastal States with a central purpose of engaging in cooperative actions, particularly regarding matters of biodiversity, science and protection of marine ecosystems. The 1996 Ottawa Declaration established the Arctic Council, defining as member states: Canada, the Kingdom of Denmark (Greenland), Finland, Iceland, Norway, the Russian Federation, Sweden and the United States. Although the Arctic Council lacks enforcement capabilities, it has produced three Arctic Treaties. Its hard and soft laws are somewhat less bound by the primacy of the sovereign state than most regional or international entities with vigorous state-based structures regarding Indigenous interests. The Arctic Council’s organizational structure includes a special membership category, Permanent Participants, for the increasingly vocal Indigenous participants who have expanded the Council’s scope and vision.

The first three Indigenous Peoples’ Organizations to become part of the Arctic Council were the Inuit through the Inuit Circumpolar Conference, the Saami through the Saami Council, and the Russian Indigenous Peoples through the Russian Association of the Indigenous Peoples of the North, RAIPON. The assigned status was of Permanent Participants, offering a higher status than a growing number of other Permanent Participants such as China, Singapore, and Spain. The number of Indigenous organizations as Permanent Participants has increased to the Aleut International Association (AIA), the Arctic Athabaskan Council, and the Gwich’ in Council International (GCI).

While efforts of Indigenous advocates to be included in the Arctic Council succeeded to provide full consultation rights, this influencing, to an extent, state action, particularly regarding marine ecosystems, the Arctic Council contains a “possibility” (p. 691) for a right’s based approach to Indigenous sovereignty, or, perhaps less quasi-sovereignty, and thus a truly more inclusive Arctic that is meaningfully responsive to the social movements seeking to amplify and realize the right to self-determination in the Arctic. The Arctic Council appears to be increasingly receptive to employ customary law, Treaties and meaningful rule making, particularly on global climate and environmental challenges that are shaping the twenty-first century (Kahn, 2019).

10.3 The United Nations Declaration on the Rights of Indigenous Peoples

In 2007, after three decades of efforts by Indigenous activists, attorneys, political and tribal leaders, and academics, the Declaration of Indigenous Peoples (UNDRIP) was adopted by the United Nations General Assembly (UNGA) with the support of a majority of member states; 143 in favor and 4 opposed: Canada, New Zealand, Australia, and the United States, all four nations with substantial Indigenous populations. Although Canada did endorse the Declaration in 2010, the government stated that UNDRIP is a “non-legally binding document that does not reflect customary international law nor changes Canadian law” (Corntassel, 2014).

UNDRIP has become one of the most important, albeit flawed, standards that protect a modicum of Indigenous interests, particularly where oil, gas, or mining are involved. Art. 26 of UNDRIP declares, for example, that “Indigenous peoples have the right to the lands, territories, and resources which they have traditionally owned, occupied or otherwise used or acquired”. It intends to develop state-based accountability for ratifying states. But, the states must first, ratify.

Art. 19 requires “free, prior, and informed consent” when setting policies or preparing for commercial activities regarding oil, gas or mining, that may have the greatest potential impact on Indigenous peoples’ subsistence economies. Oglala Sioux scholar, White Face (2013) observed that the current language of Art. 19 takes away the right of Indigenous peoples to devise their legislation and cedes that authority to the state. Instead of promoting reciprocal relationships on a nation-to-nation grounds, particularly those on the marginalized communities, Anaya (2009), a Special Rapporteur on the Rights of Indigenous Peoples to the United Nations, observes that the principles stressed in the declaration have political and legal force since they “are simply derived from human rights principles of equality and self-determination that are deemed of universal application”. While this remains an open question in practice, it is incontrovertible that, in the Arctic, Indigenous rights and Indigenous peoples are increasingly successfully advocating to be included in the decision-making bodies that impact their lives; despite still a long way to go (Nicol, 2010).

10.4 The Inuit Circumpolar Council (ICC)

In August, 2021, the Inuit Circumpolar Council (ICC) leadership, and others – representing some 180,000 Inuit across the Arctic region including Alaska, Greenland Canada, and Russia – met to expand strategies for greater inclusion in the stable, rule-based region. Defined by cooperation and coordination as the Arctic faces dramatic and chaotic climate change, the objective is to make the region more accessible to commerce, mainly oil, gas, mining and shipping. The combination of

warming and marine pollution presents an existential threat to those whose lives depend upon hunting, whaling and fishing in the Arctic's bio-diverse marine and terrestrial ecosystems. The increasing commerce, that is structured by law and practice to serve primarily outside interests, threatens the seals, walrus and whales that provides the primary food source to subsistence hunters and fishers, as well as commercial fishers. The Arctic's Native subsistence peoples,

As the Arctic Native peoples are fighting back in policy and law, their millennia of experience and observational science, knowledge, and priorities that have been largely ignored or marginalized, is seeking to mitigate losses from the commercial priorities, which serves not only the interests of the High North, but also the rest of the planet for whom the Arctic serves as its global thermostat.

It is anticipated that a final document developed from a series of ICC Arctic-wide meetings will be released to the public, national governments, and the Arctic Council at the 2022 ICC General Assembly. Jimmy Stotts, the Alaskan ICC representative, stated that in this and other contexts, that "we're rebuilding sovereignty one step at a time".¹³

11 Restoring Balance and the Crime of Ecocide in International Law

Indigenous leaders have signaled their intention to pursue an avenue of Indigenous rights throughout the circumpolar North as part of a post-colonial process that includes the widespread use and creation of international human rights instruments (Kronk Warner & Abate, 2013). Following World War II, a solid body of law transformed the scope and nature of international law by establishing standards on war crimes and crimes against humanity (Bankes, 2004: 103). Native communities are becoming part of an emerging global effort to build a regime of international environmental laws that would criminalize environmental destruction. Advocates of this trend want the crime of 'ecocide' to be included as the fifth crime against peace, which can be dealt with by the International Criminal Court (ICC).

With an existential threat to the planet, combined with the territorial and human rights claims of Indigenous peoples, emerging efforts by Indigenous and non-Indigenous peoples alike to create a crime of ecocide offers not only the ability to bring criminal liability, but also a legal duty of care, and thus, justice for all living beings. These efforts contain the potential to invigorate a mutuality of interests amongst a variety of stakeholders who oppose large-scale decimations of natural resources for any reason. They could soon have an avenue to seek accountability, including animals, mammals, marine, and terrestrial life.

While this is only one step, and short of a recovery of territorial sovereignty, such a tribunal to consider crimes against the environment, would not only be good for

¹³Phone interview by Parlow (August, 2021).

the planet, its ecosystems, and its species, but would also help rebalance the wrongfully disproportionate allocations of environmental injury to the Indigenous peoples who have been stewards of the Arctic region for more than 2500 years.

When a Savoongan Yupik world class walrus ivory carver, whose work is displayed in the Smithsonian Museum in Washington D.C., was asked if he thought St. Lawrence Island might, 1 day, serve as a plaintiff regarding the crimes of ecocide, he nodded in the affirmative, and then smiled.

12 Conclusion

As Indigenous peoples throughout the Arctic assert their long-denied inherent rights to sovereignty through litigation and lobbying for legislative change, successes in advocacy, policy and international law are increasingly visible. With strategic assertions of self-determination at local, state, national and international levels, the headwinds that once appeared insurmountable are beginning to ease.

However, much work remains. Past legal and administrative decisions that still hold Native peoples in a “guardian-ward-relationship” for the “beneficial interest” of the tribe. Furthermore, the United States continues to hold a “fiduciary interest” on behalf of Native peoples, or, even ‘co-management’ of natural resources on customarily used lands. These policies, born of a colonial era, are worthy of a twenty-first century rethink.

In the Arctic region, Indigenous strategies are placing Native inherent rights and interests on a more equitable level. For instance, Indigenous leaders are more often seated at policymaking tables to make decisions on marine and terrestrial ecosystems and development issues. However, while large-scale Alaskan Native Corporations do help set the agenda for commercial development in the energy-rich Alaskan state, the perspectives of subsistence Indigenous leadership, who seek to raise specific questions for scientific inquiry and, ultimately, place their understanding of ecosystem protection policies into a legal, political, and human rights framework, remain restricted. Without the voices of subsistence Indigenous Peoples, there is little legal and political meaning to the inherent rights of self-determination, including its related responsibilities.

Further, the global existential crisis of climate change is upending long-held policy views regarding permissible ranges of shipping, mining, and oil production as it impacts the biodiversity of marine and terrestrial ecosystems. The Arctic Indigenous peoples, like the St. Lawrence Islanders, given their thousand years of observations, have an advanced, broad, scientific, and complex understanding of how ecosystems are integrated. The combination of a cross-political boundary approach, combined with day-to-day insights into migrations, weather patterns, and a profound understanding of the sequence and elements of sustainability in food chains, would serve a planetary interest and the species that inhabit it, to renew, or recover. Broad public support for nation-to-nation status would allow Native people to both exercise their right to self-determination and assist the global citizenry to

improve the world's climate protection and resiliency practices that would, simultaneously, advance broader environmental, economic, and political objectives that positively affect our fragile planetary ecosystem.

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