

POLITICAL STATUS OF THE TERRITORY

Ownership of the Lands

Land Tenure System

The Marshallese operate a rather complex land tenure system based on matriarchal lineage.

Twelve Land Categories

Imon Bwij / Kabijuknen or Lineage Land

The majority of the land in the Marshall Islands falls under this category. The meaning of the words “imon bwi/kabijuknen” is a piece of land that belongs to the whole lineage. Land rights of this type are inherited through the mother.

Ninnin Land

It is a type of land that is given to the children by the father. The giving may occur either before the father dies or immediately prior to his death. Land rights on such lands are inherited through the father.

Imon Atto or Imon Tutu

Land that is given to a commoner by an Iroijlaplap as a result of bathing the Iroijlaplap. Land rights on this type of land can be passed down either way. It could be like ninnin land (through the father) or it could be like lineage land (through the mother). It all depends on who the recipient is, for example, if the recipient was a woman, then the land rights will be passed down as lineage land but if it is a man then land rights will be passed down as ninnin land.

Imon Aje Land

Land that is given to a commoner by an Iroijlaplap for outstanding services. Land rights can be passed down in two ways, either ninnin or lineage land.

Kodaelem Land

Land that is given to a commoner who wailed with the Iroijlaplap and bailed out the Iroijlaplap's outrigger or canoe or who had done such an extremely difficult task in order to keep the canoe afloat and enable it to keep under way whilst engaging in warfare.

Metak in Buru Land

Land that is given to a former wife of an Iroijlaplap. The giving is usually meant to be a gift or an alimony to proclaim that the once husband and wife relationship is no longer in existence. The words “metak in buru” literally means “pain in the heart”. Land rights on such type of land are always inherited through the mother. The recipient is always a woman.

Morojinkot Land

Land that is given to a commoner by an Iroijlaplap as a result of being brave during a war. The recipient is someone who fought for the Iroijlaplap and won the war for the Iroij. Land rights are usually passed down from a father to his children.

Kotra or Mo Land

Land that only belongs to an Iroijlaplap. All interests on such land are vested with the Iroijlaplap only. Land rights are usually passed down from the father to his children.

Kalotlot Land

Land that is given to someone by an old Alab who is the last member of his lineage, who is too old or feeble or ill to collect food and care for himself. The recipient, not a relative of the old Alab, offers to care for the old Alab. The old Alab states that when he dies, the recipient will possess such rights as Alab on an individual basis without regard to his lineage.

Tolemour Land

Land that is given to someone for having nursed the Iroijlaplap. Land rights could pass down both ways, it all depends who the recipient is.

Jurlobiden Ne Land

Land that belongs to an Iroijlaplap only. The words “Jurlobiden Ne” means, the foot of an Iroijlaplap. Only the Iroijlaplap can step foot on the land. Some times an Iroijlaplap can give away any rights on this type of land to anyone.

Kitdre Land

Land that is given to a wife by her husband as a gift. The giver can be an Alab or it could be an Iroijlaplap. Land rights are always passed down through the mother.

Northern Ratak Atolls (Ratak En)

The Northern Ratak Atolls of the Marshall Islands, being a distinctly separate group of Marshallese under the authority of the hereditary Iroijlaplap (Tribal King), are owned currently by H.M. King Murjel Hermios, Iroijlaplap of those same Northern Ratak Atolls. In September 1987, this fact was certified by the Republic of the Marshall Islands.

Interestingly, the Republic failed to note the ownership of Eneen-Kio Atoll itself due to the fact that it has never been constitutionally part of the Republic of the Marshall Islands, and is a separate constitutional Monarchy, under the direct control of the same Iroijlaplap who controls Ratak En.

Status of the Lands

New Zealand s View

Interestingly enough the New Zealand Government does not seem to support the United States claim to Eneen-Kio. This is of vital importance to the Kingdom as it lends credence to the right of the people of the Kingdom, and the people of the Northern Ratak Atolls of the Marshall Islands, to recover their islands and exercise traditional and lawful control.

In a "Question for Written Answer" (Question 4469) submitted to the Minister of Foreign Affairs and Trade, the Rt. Hon. Don McKinnon, he states the official position of the New Zealand Government as follows:

"The New Zealand Government formally recognizes the Government of the Republic of the Marshall Islands whose territories include the islands claimed by the so-called Kingdom of EneenKio."

It appears as some surprise that a Government largely dominated by the political and economic policies of the United States, such as New Zealand is, would disagree with the common view of America's sovereignty over the island. The Minister further goes on to state (Question 4470) that:

"New Zealand welcomes the input and participation of indigenous people in consideration of indigenous issues within the UN system, The involvement of indigenous organizations plays an important role in informing the deliberations of member States as they seek to ensure the United Nations system better addresses the diverse situations faced by indigenous groups."

Governance of the Lands

The Marshallese operate a basic monarchy which has managed to survive centuries of European influence. The islands consist of several separate sovereign kingdoms which were basically independent entities until the formation of the Republic. Following is a list of different titles and responsibilities of the historic Marshallese government.

Iroijlaplap

An Iroijlaplap is a tribal king of a sovereign group of Marshallese within the islands. An Iroijlaplap is someone who gave orders and expected them to be carried out. Any decisions made by an Iroijlaplap are final and no one can question any decisions that the Iroijlaplap made.

Iroij Edrik

An Iroij Edrik is like a middle man between the Iroijlaplap and the Alab or Dri Jerbal concerning any matters involving land and also the people who live on the lands that are under the particular Iroijlaplap or Iroij Edrik. An Iroij Edrik is someone who should inform the Alab or Dri Jerbal as to what the Iroijlaplap wants. For example, bringing of foods to the Iroijlaplap.

Alab

An Alab is the one who assigns people to work on different lands and also the one who makes sure that the Dri Jerbal works and plants the land or makes improvements to the land. An Alab is higher than a Dri Jerbal as far as land rights are concerned. For an example, an Alab's decision could occasionally be questioned by the Dri Jerbal.

Dri Jerbal

A Dri Jerbal is the one who plants the land or clears or makes improvements on the land. One of his or her main responsibilities is to make sure that the Irojlaplap and Alab's shares from copra are turned in to each of them.

Status of the Kingdom

Sovereignty of the Kingdom of EnenKio

Introduction

The terms "sovereignty" and "self-determination" are used throughout this document. In this chapter the writer will give a western version of the meaning of sovereignty, and then present the meaning in a Marshallese context through materials and writings of several major sovereignty organizations and leaders. The principle of self-determination is a well-established concept in international law and directly applies to the Kingdom of EnenKio.

Sovereignty

Many writers essentially equate sovereignty with independence, the fundamental authority of a state to exercise its power without being subservient to any outside authority. Indeed, there is much to recommend the criterion of independence as the only one relevant in determining whether or not a state is fully sovereign.

In western political theory, French philosopher Jean Bodin is credited with initiating a "theory of sovereignty" in the 16th Century. This was based on the rule of kings and queens in Europe who had exercised sovereignty as absolute authority or as a sign of divine origin.

The Peace of Westphalia in 1648, established the basis of the modern state system, as the concept of sovereignty became accepted as less than absolute and divine. Among nation-states today equally sovereign rights are at least implied under international law, while states pride themselves on their independence from each other. The principle of non-intervention in the internal affairs of a sovereign state is acknowledged in the United Nations Charter, which forbids states and the UN from intervening "in matters which are essentially within the domestic jurisdiction of any state . . ."

The use of the term "sovereignty" is a common response when initiatives to limit a state's action or independence occurs. As the concept of sovereignty has evolved over the past centuries, independence is apparently the only form of sovereignty possible in today's international multi-state system.

The federal government of the United States exercises political and military authority over Eneen-Kio today. However the Marshallese Irojlaplap Murjel Hermios (The hereditary and recognized monarch over the Northern Ratak Atolls of the Marshall Islands) who has historically owned the island does not recognize the authority of the federal or state government of America. The term "sovereignty" for the Kingdom of EnenKio means "independence," which they proclaimed in March 1994, in joining "the World Community of States as an Independent and Sovereign Nation-State."

To be sovereign, in the western definition, means to be independent, that is: not under the control, influence, or governance of others, being self-reliant, politically free and self-governing.

The people of the Kingdom of EnenKio identifies three main elements of their inherent sovereignty:

Ourselves, as a people with a distinct culture, language and spirituality;
Our lands, waters and other natural resources;
Our self-determined government controlling all internal and external affairs.

In answering, "Is it meaningful to talk about different 'models' of sovereignty?" Many organizations note:

No, not if sovereignty is defined as independence. Various organizations have put forth so-called "models of sovereignty," which are actually forms of governance. Hui Na'auao distinguishes five different "models":

- * Assimilation (status quo);
- * State-within-a-state;
- * Nation-within-a-nation;
- * Free association; and
- * Full independence. Only people who are fully independent are truly sovereign.

Ka Lahui Hawai'i, a Native initiative for Hawaiian self-government with whom the Kingdom of Eneen-Kio has some links and which claims a membership of 21,000 citizens, defines sovereignty as:

The ability of a people who share a common culture, religion, language, value system, and land base, to exercise control over their lands and lives, independent of other nations. In order for Native Hawaiian people to exercise control over their lives and land, they must be self-determined.

This is essentially the same position as the Kingdom of Eneen-Kio. In order for the people of the Kingdom to exercise control over the land illegally seized from them they must be self-determined. One must look at the fact that over the past ten years there has been little progress by the Republic of the Marshall Islands to secure Eneen-Kio for the hereditary monarch of the island.

There is also the issue that the people of the Northern Ratak Atolls of the Marshall Islands are a sovereign people, independent of other Marshallese kingdoms before the unification of the islands under the banner of the Republic. It should also be remembered that the Republic never incorporated Eneen-Kio under the constitution, thus leaving it open for control by the Sovereign of the Northern Ratak Atolls, as it was before the incorporation of the other lands in the Marshalls.

The office of the Minister Plenipotentiary of the Monarch of the Kingdom of Eneen-Kio and the Northern Ratak Atolls of the Marshall Islands, whose goal is "the betterment of conditions of all Marshallese within the historic area of the tribal kingdom controlled by the Iroij," must ask the following question: "What is sovereignty?" "Is Eneen-Kio's sovereignty different?":

Sovereignty is the right of a people to unite for the purpose of forming a government. Typically joined by a shared history, language, culture and values, such a government is empowered by its people to act on their behalf and to make decisions which affect community life.

Like their neighbors, native Marshallese from the Northern Ratak Atolls now express their sovereignty as citizens of the Republic of the Marshall Islands, of the lands of their ancestors, and of the island in which they live. However, as the indigenous or native people of the Northern Ratak Atolls who once controlled the island of Eneen-Kio, they have the inherent right to exercise a unique level of self-determination and to form another government. This inherent native right to exist and to decide those issues related to our future is recognized by both international, American and traditional Marshallese law.

The call for Marshallese sovereignty over the island of Eneen-Kio began 89 years ago with the previous Iroijlaplap of the Northern Ratak Atolls. It has been carried by generations of Iroij's and their subjects throughout the generations, quietly at times, hidden at times, suppressed at times, boisterous at times. It has weathered many storms and has seen the Marshall Islands undergo a multitude of changes. But the basic demand and the moral, historical and political foundation remains the same--the right of a people and nation to self-determination.

During the times of German colonization of the Marshall Islands, the people made their feelings known in respect of the ownership of Eneen-Kio and the use of the islands for farming purposes. Similarly protests have been voiced to the United States and other nations who have attempted to occupy the islands without the consent of the hereditary monarch.

Unfortunately most of the common "models of sovereignty" advanced in many native sovereignty movements are basically forms of self-government or degrees of autonomy, not "sovereignty" as understood in international law today. This applies to the "state-within-a-state," "nation-within-a-nation" and "free association" models. In international law sovereignty is understood among modern nation-states to mean independence. Thus, only the "full independence" model can be equated with sovereignty.

One again must remember that the islands of the Northern Ratak Atolls were an independent entity prior to their incorporation into the Republic of the Marshall Islands. Whilst their independence is not in question there is still a role to play by the people of these islands in many respects of their sovereignty and, perhaps more importantly, the sovereignty of Eneen-Kio.

Self-determination

Self-determination is an ancient political right that is cherished by every people. It connotes the right of a people to have a government of their choice. Both the American and French revolutions were based on the claim of this right and the desire

of the people to be free from external or internal domination. All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

In the international arena, many agree that self-determination concerns “relieving a people from rule it opposes,” although there is less agreement on the attainment of this principle and the collective “people” entitled to this right. When the United Nations was founded in 1945, nearly one-third of the world's population lived in dependent territories. The United Nations concern with dependent territories led to the inclusion of Chapter XI, Article 73, entitled, Declaration Regarding Non-Self-Governing Territories, in the 1945 UN Charter.

In December 1946, 72 territories were listed by the United Nations as Non-Self-Governing Territories, including the Territory of the Marshall Islands. The United States was Administering Power over the Territories of Alaska, American Samoa, Guam, Hawai'i, Panama Canal Zone, Marshall Islands, Puerto Rico and the Virgin Islands. Under Article 73, the Administering Powers were obligated to transmit information regularly to the UN Secretary General regarding the progress and conditions of the peoples of the Territories.

The Administering Powers accepted as a “sacred trust” the obligation, in part:

* to ensure, with due respect for the culture of the peoples concerned, their political, economic, social, and educational advancement, their just treatment, and their protection against abuses;

* to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement.

The term “peoples” throughout UN resolutions refer to “colonial peoples,” “peoples under colonial and alien domination,” and “peoples subject to colonial exploitation.” W. Ofuathey-Kodjoe affirms that in 1946:

Both Chapters XI and XII indicate that the signatories of the UN Charter recognized that the principle of self-determination should be applied to colonial peoples and that it was necessary to develop a system to supervise their development so that they can acquire the capacity for self-government.

In 1985, the United States reported to the United Nations that the Republic of the Marshall Islands had “attained a full measure of self-government,” and the Marshall Islands was subsequently taken off the list of Non-Self-Governing Territories. The UN ruled that the Marshall Islands had effectively exercised their right to self-determination. However, other additional options for achieving self-government, e.g., through “free-association” or “independence,” as outlined in United Nations Resolution 742 (VIII) of 1953, entitled, Factors, which should have been taken into account in deciding whether a Territory is or is not a Territory whose people have not yet attained a full measure of self-government, was not considered and presented to the different Marshallese tribal kingdoms in the statehood plebiscite.

Under Resolution 742 (VIII), the primary manner in which a territory exercised the “right of self-determination” and achieved self-government was through independence:

. . . the manner in which Territories referred to in Chapter XI of the Charter can become fully self-governing is primarily through the attainment of independence . . .

The problem with the issue of Statehood for the Marshallese was that there was never any proper representation of the people. A vast majority of the islanders come from Majuro, the capital of the Republic. Because the Northern Ratak Atolls make up only 8 percent of the entire population of the Republic the ability of the people to have a consultative status over their future, and the future of the island of Eneen-Kio has never been fully realized.

In addition to the confusion at the time of the formation of the Republic many Marshallese citizens abstained from voting, primarily due to the lack of information provided to them about the effects of incorporation into the Republic. Those who did vote were also not adequately informed of the future of the Republic, or of what would happen to their tribal rights and ancestral Kingdom after their incorporation.

Most voters in the plebiscite were apparently not the “peoples” the signatories of Chapter XI had in mind in 1946. As a result of the interference of the United States, the lack of consultation with ALL peoples of the island groups and the overthrow of the Monarch of the Northern Ratak Atolls in relation to Eneen-Kio Atoll, the people were deprived the rights to self-determination. Consequently, until recent times the Native Marshallese population has never exercised its right of self-determination.

The fact remains that the citizens of the Kingdom of Eneen-Kio may still choose to retain their place within the Republic given the opportunity to do so. Should this be the case, there would still be an entitlement to a dual citizenship within the Kingdom, as the Republic of the Marshall Islands has never incorporated Eneen-Kio into its constitution. As an island on the outskirts of the Northern Ratak Atolls, and part of the historically sovereign tribal Kingdom, Eneen-Kio remains a constitutionalized Monarchy under International Law.

Some argue that as citizens of the new Marshallese republic formed in 1979, there were of a multitude of races who remained loyal to various Monarchs and supported independence and that the right of self-determination should be based on allegiance and loyalty to the Marshall Islands as a whole.

In terms of Marshallese citizenship, the Government of the Kingdom of Eneen-Kio argues that when Eneen-Kio was invaded by the United States, Marshallese citizenship was politically defined, not racially or culturally defined. While the vast majority of Marshallese citizens of Ratak En (Northern Ratak Atolls) were Native Marshallese, citizenship was based on allegiance and loyalty to the place one considered his or her "homeland." Consequently, the Government suggests that in asserting self-determination, the "self"--or collective group-- should not be solely the indigenous people of the Northern Ratak Atolls of the Marshall Islands, but must include those who consider Eneen-Kio their homeland, through ties with these islands.

The Government of the Kingdom of Eneen-Kio identifies two distinct areas of international law in relationship to the principle of self-determination: 1) the rights of indigenous peoples, and 2) decolonization. The Government believes decolonization should have been applied to the entire of the Northern Ratak Atolls including Eneen-Kio as a traditionally Marshallese possession.

Furthermore, the United States did not allow the Marshallese of Ratak En any real choice of "determination" by denying the people of this group of islands the right to self-determination as an independent group or the right to remain a territory or to become a state. Had the people known of the subservience of the Republic of the Marshall Islands to the Government of the United States, they may well have opted for total independence in order to recover their native possessions through their own diplomatic relations and means. The additional options of achieving self-government as outlined in the United Nations Charter was unknown to the people of the Northern Ratak Atolls at the time of independence.

The Government of the Kingdom of Eneen-Kio Defines Self-determination:

The law of self-determination is clearly defined in present international law. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. Furthermore, the United States of America is under an obligation to "promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations."

Clearly in the case of the Marshallese of Ratak En, there has been an entrapment situation where they now do not possess enough voting power to force the Government of the Republic into affirmative action over Eneen-Kio, nor do they possess adequate means for self-determination within their own islands. The option of a second state through the tribal island of Eneen-Kio allows for a third, perhaps more realistic approach to the problem of the recovery of their possessions and the eventual realization of the will of the people. The Government of the Kingdom of Eneen-Kio once more must stress that these same people may choose not to secede from the Republic, should that be the case then at least it has been through an informed decision of the people.

The rights of indigenous peoples are universal and directly apply to indigenous Marshallese of Eneen-Kio. The International Labor Organization (ILO) and the United Nations Working Group on Indigenous Populations (UNWGIP) are two organizations which have adopted principles applicable to indigenous peoples worldwide. In 1993, the Working Group proclaimed the Draft Declaration on the Rights of Indigenous Peoples. The "right of self-determination" is defined in Part I of the Declaration:

Indigenous peoples have the right of self-determination, in accordance with international law by virtue of which they may freely determine their political status and institutions and freely pursue their economic, social, and cultural development. An integral part of this is the right to autonomy and self-government.

The Government of the Kingdom of Eneen-Kio embraces the Declaration by the UNWGIP as the first comprehensive document which addresses the rights of indigenous peoples and sets new standards for the global indigenous community.

The Government points out that in the past most international documents have not referred to “Natives” as peoples but as “minorities.” Minorities do not have rights to self-government.

The Declaration affirms that all indigenous peoples have rights to self-government and self-determination. The Government of the Kingdom of EnenKio defines self-determination:

Native Marshallese of the Northern Ratak Atolls and their descendants have the right of self-determination. By virtue of that right, they are entitled to freely determine their political status and freely pursue our economic, social and cultural development.

Two UN General Assembly Resolutions of 1960, the Declaration on the granting of independence to colonial countries and peoples, 1514 (XV), and Principles which should guide Members in determining whether or not an obligation exists to transmit the information called for under Article 73e of the Charter, 1541 (XV), have been instrumental in reaffirming a peoples right of self-determination. Again, the term “peoples” refers to “colonial peoples” and “peoples under colonial and alien domination.” Part of Resolution 1514 (XV) declares that:

The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the charter of the United Nations and is an impediment to the promotion of world peace and co-operation.

All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Inadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence.

Moreover, the principles listed under Resolution 1541 (XV) clarify Resolution 742 (VIII) in terms of identifying a territory in question and the manner in which self-government can be achieved:

Principle I : The authors of the Charter of the United Nations had in mind that Chapter XI should be applicable to territories which were then known to be of the colonial type. An obligation exists to transmit information under Article 73 e of the Charter in respect of such territories whose peoples have not yet attained a full measure of self-government.

Principle IV : Prima facie there is an obligation to transmit information in respect of a territory which is geographically separate and is distinct ethnically and/or culturally from the country administering it.

Principle VI : A Non-Self-Governing Territory can be said to have reached a full measure of self-government by:

Emergence as a sovereign independent State;

Free association with an independent State; or

Integration with an independent State.

The reinstatement of Ratak En back onto the United Nations list of Non-Self-Governing Territories is one option in asserting their right of self-determination. The precedent for Ratak En reinscription is Kanaky (New Caledonia), which was taken off the list by the UN at France's request, but reinscribed in 1987. The Matignon Accords will be held in 1998, when the French territory will choose between independence or remaining a part of the Republic of France through a referendum on self-determination. Under the Accords, all registered voters in 1988, will be eligible to vote in 1998, including their descendants who reach the voting age by 1998. The Government of the Kingdom of EnenKio supports this move entirely as a step forward for the people of those islands to exercise their traditional rights.

The Kingdom of EnenKio in its work to date has chosen to develop a culturally appropriate “separate system of self-government,” which incorporates Marshallese values and traditions and which sets forth the “cultural jurisdiction” of the EnenKio Nation as provided by Part II of resolution 742. The Commonwealth and Free Association options under international law are essentially western forms of government which do not address or protect the rights of the indigenous peoples of the land.

In re-establishing a nation, EnenKio advocates the international right of self-determination, using the 1960 Declaration (1514 XV) to define the term:

All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. Inadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence. All armed action or repressive measures of all kinds directed against dependent peoples shall cease in order to enable them to exercise peacefully and freely their right to complete independence, and the integrity of their national territory shall be respected.

The concepts of EnenKio sovereignty and self-determination appear to closely relate to the western notion of the terms. The principle of self-determination has become of great importance to the EnenKio sovereignty movement. The indigenous Marshallese of Ratak En believe EnenKio is a colony of the United States, and that they are still subject to colonial domination through the illegal occupation of their island. The indigenous Marshallese population of those islands has never legitimately exercised its right of self-determination under international law. Furthermore, the legitimacy of the claim of the United States of their supposed sovereignty to the island is questionable in the extreme considering the fact that the island was previously recognized by German, Spanish and Japanese colonial authorities as a Marshallese possession.

Protection of State Integrity

Following decades of use, abuse and wasting of Eneen-Kio atoll, the US Air Force sought to close the base there, but were denied by Army needs to test weapons and missiles. Having dispatched H.E. Robert Moore to oust the military and take back control, H.M. Murjel Hermios, hereditary Irojilaplap (King) of the Sovereign people of the Northern Ratak Atolls (Ratak En) announced his intention to establish a nation around Eneen-Kio Atoll. In 1994, a referendum was held among Marshallese loyal to the King, a Constitution and Declaration of Sovereignty were signed and the government was established in exile as a Limited Constitutional Monarchy. Since that time the Kingdom has pursued its right to speak for the people and seek self-determination, acceding to UN conventions.

EnenKio as an Independent State

Introduction

Since at least the middle of the 17th Century, following the Peace of Westphalia, states have been the primary actors in international relations. (The system of sovereign states is sometimes referred to as the “Westphalian system.”) In the Nineteenth and early Twentieth Centuries, states were considered by many international law scholars to be the only “subjects” of international law - only states had rights and obligations under international law, as well as the capacity to assert international claims. Recently, international law has begun to recognize that other entities have “international personality” (i.e., are “international legal persons”).

On the one hand, international organizations (IOs) have been recognized as “persons,” with the right to bring claims and the ability to enter into treaties. On the other hand, the development of international human rights law has created rights and duties of individuals under international law. This expansion of international legal persons is one of the most significant features of modern international law. Nevertheless, while other international actors have emerged in the 20th Century - including international organizations, trans-national corporations (TNCs), and non-governmental organizations (NGOs) - the international system is still primarily a system of territorially-defined, jurisdictionally-equal sovereign states.

For EnenKio, statehood has both internal and external aspects. Internally, the hereditary monarch of Eneen-Kio and the rest of the Northern Ratak Atolls has sovereignty over his territory; for the Northern Ratak Atolls, the islands are constitutionalized into the Republic of the Marshall Islands while retaining some semblance of their historic and traditional rule; for the island of Eneen-Kio the Government [of EnenKio] is independent of outside authority; externally members of the international community. Whether an entity is considered a state determines both whether it may govern itself and whether it is entitled to membership in the international community.

In the period since World War II, the number of states in the world has increased dramatically, first as a result of the decolonial movement, and more recently as a result of the dissolution of the Soviet Union and Yugoslavia. Today there are more than 180 states, ranging from China and India, with hundreds of millions of inhabitants, to the nearby Republic of Nauru, with 8000 people occupying an area of eight square miles.

In the situation of Eneen-Kio, the island was part of a pre-existing Marshallese State whose existence and control over the islands dated back nearly two thousand years before European arrival.

EnenKio Meets the Requirements for Statehood

Issues of whether an entity is a state have arisen in a variety of circumstances, including the break up of an existing state (such as Yugoslavia) or the attempted secession by part of an existing state.

On the international level, the issue is likely to arise when the entity whose status is in controversy seeks admission or the right of participation in an international body open to states alone. Issues of statehood have therefore frequently arisen in connection with applications for membership in the United Nations or its affiliated organizations or in international conferences convened under its auspices. These issues are normally decided by decision of the international body concerned.

National governments may also have to determine whether an entity is a state for purposes of bilateral relations. Normally this determination is made by the executive branch by recognition of the entity as a state. . . .

Questions of statehood also arise in national courts particularly in respect of entities which have not been recognized as states by the executive branch. Courts may have to decide whether an unrecognized entity should be regarded as a state for purposes of determining claims to property, issues of nationality, the right to sue, the validity of official acts, immunity from suit, and various other questions linked to statehood.

The 1933 Montevideo Convention on the Rights and Duties of States set forth four conditions of statehood:

Article 1. The state as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) a government; and (d) capacity to enter into relations with other states.

Although the Montevideo Convention was regional in scope, these four conditions have been widely accepted as the test of statehood.

The state of the Kingdom of EneKio as an association of many, in supplementation of the family which consists only of a few members, has the function of promoting the community life. This function signifies not only a loose combination for the promotion of hobbies or interests but a more or less permanent form of association in the sense of a community of fate.

Prior to World War II, there was little support for a right of self-determination in customary international law. In 1920, in the Aaland Islands case, a commission of jurists established by the League of Nations ruled that the Aaland Islands, which were then part of Finland, did not have a right of self-determination. In the Commission's view, recognizing a right of self-determination for entities that were part of established states would lead to anarchy, and was incompatible with the idea of states as territorial and political units.

The UN Charter established as one of its principal purposes "to develop friendly relations among nations based on respect for the principle of equal rights and self-determination." (Article 1[2]) Although the meaning of self-determination was not defined, the Charter requires Member States that administer "non-self-governing territories" (i.e., colonies) to recognize that "the interests of the inhabitants of these territories are paramount," and "to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions." (Article 73)

During the decolonial movement of the 1960s and 1970s, which led to the establishment of literally scores of new states, the principle of self-determination became well established for overseas colonies. In 1960, the UN General Assembly adopted Resolution 1514, on the Declaration on the Granting of Independence to Colonial Territories and Peoples, which stated:

The subjugation of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and cooperation.

All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Immediate steps shall be taken, in Trust and Non-Self-Governing Territories or all other territories which have not yet attained independence, to transfer all powers to the peoples of those territories, without any conditions or reservations, in accordance with their freely expressed will and desire, without any distinction as to race, creed or color, in order to enable them to enjoy complete independence and freedom.

The 1960 Declaration formed the basis of the UN decolonization practice, and, in 1963, the General Assembly established what became known as the Decolonization Committee, to assist implementation of the Declaration.

In 1975, the ICJ considered the status of the right to self-determination in its advisory opinion in the Western Sahara Case. Since the 1880s, Western Sahara had been a Spanish colony. In 1966, the General Assembly decided that Spain should hold a referendum to enable the population of the territory to exercise freely its right of self-determination. Before the referendum was held, however, both Morocco and Mauritania asserted claims to Western Sahara on the basis of “historic title” predating Spain’s colonization in the 19th Century. The General Assembly requested an advisory opinion from the ICJ on the question of the legal ties between Western Sahara and Morocco and Mauritania. In the course of its opinion, the Court considered the basic principles governing the decolonization policy of the General Assembly.

As the Court stated in its Advisory Opinion of 21 June, 1971 [in the Namibia case]:

. . . the subsequent development of international law in regard to non-self-governing territories, as enshrined in the Charter of the United Nations, made the principle of self-determination applicable to them all. (1971 ICJ 31)

The principle of self-determination as a right of peoples, and its application for the purpose of bringing all colonial situations to a speedy end, were enunciated in the Declaration on the Granting of Independence to Colonial Countries and Peoples. . . . The [Declaration] thus confirms and emphasizes that application of the right of self-determination requires a free and genuine expression of the will of the peoples concerned. . . .

General Assembly resolution 1514 provided the basis for the process of decolonization which has resulted since 1960, in the creation of many States which are today Members of the United Nations. It is complemented by General Assembly resolution 1541. . . . The latter resolution contemplates for non-self-governing territories more than one possibility, namely:

- (a) emerge as a sovereign independent State;
- (b) free association with an independent State; or
- (c) integration with an independent State.

The validity of the principle of self-determination, defined as the need to pay regard to the freely expressed will of peoples, is not affected by the fact that in certain cases the General Assembly has dispensed with the requirement of consulting the inhabitants of a given territory. Those instances were based either on the consideration that a certain population did not constitute a “people” entitled to self-determination or on the conviction that a consultation was totally unnecessary, in view of special circumstances. . . .

Separate opinion of Judge Dillard. At the broadest level there is the problem of determining whether the right of self-determination in the context of non-self-governing territories such as EnenKio can qualify as a norm of contemporary international law.

As is well known [this] . . . problem has elicited conflicting views which, in terms of opposing poles, may be described as follows. At one extreme is the contention that even if a particular resolution of the General Assembly is not binding, the cumulative impact of many resolutions when similar in content, voted for by overwhelming majorities and frequently repeated over a period of time may give rise to a general *opinio juris* and thus constitute a norm of customary international law.

According to this view, this is the precise situation manifested by the long line of resolutions which, following in the wake of resolution 1514, have proclaimed the principle of self-determination to be an operative right of decolonization of non-self-governing territories.

At the opposite pole are those who, resisting generally the law-creating powers of the General Assembly, deny that the principle has developed into a “right” with corresponding obligations or that the practice of decolonization has been more than an example of a usage dictated by political expediency or convenience and one which, in addition, has been neither constant nor uniform.

The writer need not dwell on the theoretical aspects of this broad problem . . . Suffice it to call attention to the fact that the present Opinion is forthright in proclaiming the existence of the “right” in so far as the present proceedings are concerned.

The pronouncements of the Court thus indicate that a norm of international law has emerged applicable to the decolonization of those non-self-governing territories which are under the aegis of the United Nations.

Although most former colonies have been granted independence in conformity with the UN General Assembly resolutions on decolonization, the right of self-determination has not been uniformly recognized by states. Indeed, in the Western Sahara case itself, following the ICJ opinion, Morocco and Mauritania divided up Western Sahara two-thirds/one-third, and a guerrilla war ensued. Similarly, in 1975, after East Timor declared its independence from Portugal (the former colonial power), Indonesia invaded the island and took control. Indonesia claims sovereignty over the Island and still occupies it.

While the right of self-determination has been widely recognized in the context of overseas colonies, its application to other situations is far less clear. For example, does the right extend to minority groups within an existing state? Does it provide a basis for part of an existing state to secede and create a new state?

In the case of the Kingdom of EneenKio this situation is not as simple as it seems.

The 1960 Declaration stated that “any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the Purposes and Principles of the Charter of the United Nations.” Until recently, efforts of territories to secede from existing states have generally not received much international support, although there have been some successful examples, such as the separation of Bangladesh from Pakistan in 1971.

On the other hand, the General Assembly has recognized the right of self-determination of “subjugated or dominated peoples.” In particular, the General Assembly has accepted that the Palestinians and the black inhabitants of South Africa are “peoples” with the right of self-determination. The recent breakup of the Soviet Union, Yugoslavia and Czechoslovakia, along with the separation of Eritrea from Ethiopia, seem to reflect a decline in the traditional priority given to the territorial integrity of states. Whether these recent developments will help to create a new customary right to secede, however, is much less clear.

Defined territory.

An entity may satisfy the territorial requirement for statehood even if its boundaries have not been finally settled, if one or more of its boundaries are disputed or if some of its territory is claimed by another state. An entity does not necessarily cease to be a state even if all of its territory has been occupied by a foreign power or if it has otherwise lost control of its territory temporarily.

The Kingdom of EneenKio has a defined territory within the boundaries of Eneen-Kio Atoll. The essentially illegal occupation of Eneen-Kio by the United States does not in any way affect the sovereignty of the nation as a whole. The same can be said for the people in Ratak En, who also have a traditionally defined territory as noted in the section of this document focusing on land tenure systems in the Marshall Islands.

The dual nature of the sovereignty of the people of Ratak En, as citizens of the Kingdom and Marshall Islands is not uncommon on an international level, many Hawaiians, for example, see themselves as members of the sovereign republic of the United States of America and members of their own sovereign kingdom.
Permanent population.

To be a state an entity must have a population that is significant and permanent. Antarctica, for example, would not now qualify as a state even if it satisfied the other requirements of this section.

Ratak En contains a permanent population of around 4,000 individuals with right of residence on Eneen-Kio as the people with sovereign rights to the land. There is also a current permanent population on Eneen-Kio consisting of United States civilian, contract and military personnel of around 100 persons. The international requirement for permanent population has always taken into account the factor of colonial populations in any population group.

Government.

A state need not have any particular form of government, but there must be some authority exercising governmental functions and able to represent the entity in international relations.

There has always been a historic Marshallese system of Government within the Northern Ratak Atolls that has extended to Eneen-Kio itself. This form of Government has been adapted under the Kingdom of EneenKio through the Constitution

whereby the Government is a limited constitutional monarchy, with the IroiJlaplap of the Northern Ratak Atolls as head of the Government, as occurred in historic and prehistoric times.

Capacity to Conduct International Relations.

An entity is not a state unless it has competence, within its own constitutional system, to conduct international relations with other states, as well as the political, technical and financial capabilities to do so. An entity that has the capacity to conduct foreign relations does not cease to be a state because it voluntarily turns over to another state control of its foreign relations, as in the “protectorates” of the period of colonialism, the case of Liechtenstein, or the “associated states” of today.

States do not cease to be states because they have agreed not to engage in certain international activities or have delegated authority to do so to a “supranational” entity, e.g., the European communities. Clearly, a state does not cease to be a state if it joins a common market.

Prior to the formation of the current Republic the people of Ratak En entered into relations with Germany, Spain and other nations for trading rights. Each of these nations accepted the populations governance of Eneen-Kio as an integral part of their territory through which they expressed their national sovereignty.

In more recent times the Kingdom of EneenKio has entered into relations with several other indigenous organizations and sovereign groups such as the Kingdom of Hawaii, Elbasan District Council Albania, Fier District Council in Albania, Kavaje District Council in Albania, the State of Hamburo in Angola, the State of Leribe in the Kingdom of Lesotho, states in Argentine, Brazil and many other countries.

Relations with other indigenous kingdoms are also being expanded in an effort to re-establish the cultural links with other people necessary for the development of the Kingdom and to ensure the goals of the Marshallese of Ratak En who claim dual citizenship within the Kingdom.

The Kingdom also enters into discussions with other states in the areas of tribal rights and the status of indigenous persons as a sovereign state in its own right, just as the monarch of the Kingdom did in historic times.

Recognition of States and Governments

Is statehood of EneenKio a fact, which can be determined by looking at objective factors such as territory, population, and so forth, or does an entity become a “state” only when it has been recognized as such by the international community?

Scholars have taken different positions on this question. “Under the ‘declaratory’ theory, an entity such as EneenKio that satisfies the requirements of [statehood] is a state with all the corresponding capacities, rights, and duties, and other states have the duty to treat it as such.

Recognition by other states is merely ‘declaratory,’ confirming that the entity is a state, and expressing the intent to treat it as a state.” Typical of this perspective is Brierly’s assertion: “Whether or not a new state has actually begun to exist is a pure question of fact; and as international law does not provide any machinery for an authoritative declaration on this question, it is one which every other state must answer itself as best it can.” In contrast, the “constitutive” theory of recognition holds that an entity is not a state in international law unless it is generally recognized as such by other states.

Recognizing a state should be distinguished from two related actions: recognizing a state’s government and establishing diplomatic relations with that government. The break up of Yugoslavia raised the question of whether to recognize entities such as Croatia and Bosnia-Herzegovina as states. The military coup in Haiti and ouster of President Aristide raised the question of whether to recognize the military regime as the government of Haiti. The decision to open an embassy and send an ambassador to the newly-established state of Mongolia involved establishing diplomatic relations with that state.

A distinction is also often made between de jure and de facto recognition of states and governments. De jure recognition refers to the formal act of recognition - for example, a public statement granting recognition of a state or government. De facto recognition, in contrast, means treating a state or government as such - that is, according it the rights and privileges to which it is entitled under international law.

With respect to recognition of states and governments, we must ask a number of questions:

Is there a legal duty of de jure or de facto recognition?

If so, under what conditions?

What are the legal consequences of recognition?

Through the negotiation of treaties with other nations, the acceptance of travel documents issued by the Kingdom and the status afforded to the people of the Kingdom as citizens of a distinctly separate sovereign group the Kingdom is treated as a state in fact and has obtained wide-spread international de jure recognition.

Recognition of Statehood

“Recognition of a state is formal acknowledgment that the entity possesses the qualifications for statehood.” (Restatement, § 202, comment a) The question of recognizing a state arises when an existing state breaks up, when a territory of an existing state attempts to secede, or when existing states merge or form a union.

Restatement (Third) of Foreign Relations Law of the United States

§ 202: Recognition or Acceptance of States

Recognition or treatment as state. Recognition of statehood is a formal acknowledgment by another state that an entity possesses the qualifications for statehood . . . , and implies a commitment to treat that entity as a state. States may recognize an entity's statehood by formal declaration or by recognizing its government, but states often treat a qualified entity as a state without any formal act of recognition.

Statehood and Recognition.

The literature of international law reflects disagreement as to the significance of the recognition of statehood. Under the “declaratory” theory, an entity that satisfies the requirements of [statehood] is a state with all the corresponding capacities, rights, and duties, and other states have the duty to treat it as such. Recognition by other states is merely “declaratory,” confirming that the entity is a state, and expressing the intent to treat it as a state. Another view has been that recognition by other states is “constitutive,” i.e. that an entity is not a state in international law unless it is generally recognized as such by other states. Some writers, while adopting the “constitutive” theory, argued that states had an obligation to recognize an entity that met the qualifications of statehood.

That the Kingdom of EnenKio, meeting as it does the requirements for statehood must be treated as a state “independent of recognition” by other states, is affirmed by such agreements as the inter-American Convention on Rights and Duties of States and the Charter of the Organization of American States.

In the past, when a state treated an entity as a state without formal recognition, it was sometimes said to be extending “de facto” as opposed to “de jure” recognition. . . .

Determining Qualifications for Statehood.

While the grant or denial of formal recognition is a political act within the discretion of governments (and usually of their executive branches), whether an entity meets the qualifications of [statehood] and is entitled to be treated as a state is an objective question, though it is often difficult to determine the relative facts.

Recognition of Governments

Recognition of a government involves acknowledging a regime as competent to act on behalf of a state. “Within existing states, governments come and go and normally the changes raise no questions of recognition.” The question of recognition generally arises when there has been a revolution, coup, or other extra-constitutional change in government, or when more than one regime claims to be the government of a state and other states must decide which to regime to recognize. In the case of EnenKio, there has always been a recognition of the (Tribal) Government of the Northern Ratak Atolls as a separate entity within the Marshall Islands, just as are each of the other Tribal groups within the islands.

Historically, members of the international community have been very reluctant to recognize indigenous peoples governments as equal players in the international arena. The indigenous inhabitants of the various tribal kingdoms within the Marshall Islands, like native Indians and Hawaiians, were generally considered to be factions of the same people. The power and influence that these indigenous kingdoms once exercised was quickly forgotten once European government came to dominate the economic and political arena, consolidating each of the Kingdoms under the same umbrella.

For Marshallese, many of the people still consider tribal links with their own Kingdom of equal, or more importance than that of the State, indeed, many tribal groups have never stopped considering themselves equals within the international community, with islanders such as the Bikinians having separate representatives world-wide.

The people of Ratak En, as they call themselves, have consistently held that they have never ceased to be the same people that stood equal to Germany, Spain, and the United States in the 18th and 19th Centuries.

The claim to such a status is not frivolous, nor is it a reactionary political move. It is a concept intrinsic to Marshallese identity, tradition, and history.

Support for an International Identity

Historical Precedent for International Identity

From the first Europeans encounters with the native inhabitants of the Marshall Islands, customary international norms and other aspects of international law consistently affected their relationship. Despite repeated Marshallese outcries regarding the illegal possession of Eneen-Kio by the United States there was never any affirmative action taken in allowing Marshallese access to the land as had occurred in traditional times. Francisco de Vitoria (1480-1546), a Dominican professor of theology at the Spanish University of Salamanca, was the first European to explore the legal character of the relationship between indigenous kingdoms and early European arrivals. According to Vitoria, claims based upon the Doctrine of Discovery which argued in support of the validity of European title to land were defective, given that international law at that time only recognized land without an owner (*res nullius*) as available to be taken under a Discovery claim. Valid title, Vitoria argued, rested with the intrinsic sovereignty enjoyed by aboriginal peoples. As sovereigns, they consequently possessed the right to negotiate equally with the European nations, and enter into international agreements with them. Although his ideas were not generally accepted, Vitoria's position does represent early assertion of the argument that the indigenous peoples who controlled Eneen-Kio should be recognized as possessing international status.

Bartholomew de Las Casas (1474-1566), a Dominican missionary to the American Indians of the West Indies, also spoke out on the illegitimacy of placing the indigenous people and their lands in conditions of servitude to Spain. After traveling with Columbus to America and Haiti, he vehemently opposed the illegal occupation by Spain of land owned by indigenous peoples. He characterizes European domination as unlawful, tyrannical, and unjust. Like Vitoria, he argued that natives were their own masters, and that they had the only legitimate claim to the land on which they lived. Nevertheless, the “new world” obviously represented too much economic potential to allow adherence to a doctrine of legal equality to interfere with European colonization.

The stage was thus set early on for the domination and exploitation of native Marshallese, regardless of their legal status and claim to Eneen-Kio Atoll. The desire to exploit Eneen-Kio Atoll for military purposes, abetted by an ideology justifying the domination of “inferior beings”, resulted in the paternalistic guardianship known as colonialism.

Conversely the United States has also historically supported an international identity for indigenous peoples provided that it did not conflict with their financial and political aims. The political/legal achievements of native Marshallese were recognized from the very beginning as putting them on par with the achievements of European civilization of that era.

After independence, the stance of the United States towards its indigenous neighbors was unambiguously clear, i.e., it recognized them as independent, sovereign states, with which it was to conduct normal diplomatic relations, including the waging of war. The Northwest Ordinance, passed in 1787, contained the following passage:

The utmost good faith shall always be observed toward the Indians; their land and property shall never be taken from them without their consent; and in their property, right, and liberty they shall never be invaded or disturbed, unless in just and lawful wars authorized by Congress.

The above stance, of course, did not seem to be applied in dealings that the United States had with indigenous populations outside the United States which were in its control. Should this act have been applied to the Marshallese whom the United States had dominated politically for many years, the issue of the surrender of Eneen-Kio may have been a relatively easier situation to resolve.

The Northern Ratak Atolls Were Fully Independent Prior to 1898

The tribal kingdom of the Northern Ratak Atolls of the Marshall Islands was an independent, sovereign nation prior to the coming of European settlers to the islands. The Kingdom at that time presented all the attributes of statehood. Even the

Republic of the Marshall Islands does not dispute that the Marshallese from the Kingdom are a distinct people who, until more recent times, occupied a distinct territory.

Indeed, up until the time of nuclear testing in the Marshalls by the United States after World War II, there were distinct tribal kingdoms in the islands with only limited variations in sovereignty. As the people of Bikini Atoll state:

“We could not move to the islands of another Iroij, or king, because we would not recognize their power.”

The Northern Ratak Atolls also had a fully functioning government headed by the hereditary Iroijlaplap, or monarch. That government, free from outside interference, administered the welfare of the Marshallese people through civil service, judicial and taxation systems, separate from the control of other Marshallese Iroij's in the islands. The Iroijlaplap of the Kingdom controlled the borders of his land and was able to issue . It entered into treaties as a sovereign with other states, including Germany and the United States. The Kingdom also negotiated as an equal sovereign with the Kingdom of Spain prior to the German influence over the islands.

Once a state exists, it is legally presumed to continue as an independent state unless proved otherwise, or it agrees to join with another state under a democratic method of government (i.e. not forced to join). Whilst the rest of the Northern Ratak Atolls of the Marshall Islands joined the Republic, the island of Eneen-Kio did not. The historical evidence not only fails to prove otherwise, but affirmatively demonstrates that Eneen-Kio has always been part of the property of a Sovereign, and in more recent times, an independent state, despite periods during which it was influenced to varying degrees by foreign powers.

Treaty Precedent for International Identity

Felix Cohen, who produced the definitive work on United States treatment of Indigenous peoples under the law, addressed the debate over whether or not treaties had been made with independent nations. Cohen quotes U.S. Attorney General William Wirt in his opinion concerning Treaties with these people:

...The point then, once conceded, that the [different native groups] are independent to the purpose of treating, their independence is, to that purpose, as absolute as that of any other nation.

...Nor can it be conceded that their independence as a nation is a limited independence. Like all other independent nations, they are governed solely by their own laws. Like all other independent nations, they have the absolute power of war and peace. Like all other independent nations, their territory is inviolable by any other sovereignty.

...Whether their title be that of sovereignty in the jurisdiction or the soil, or a title by occupancy only, it is such a title that no other nation can rightfully acquire, but by the same means by which the territory of all other nations, however absolute in their independence, may be acquired- that is, by cession or conquest....

As a nation they are free and independent. They are entirely self- governed, self-directed. They treat, or refuse to treat, at their pleasure; and there is no human power which can rightfully control them in the exercise of their discretion in this respect. In their treaties, In all contracts with regard to their property, they are as free, sovereign, and independent as any other nation.

.... Nor can I discover the slightest foundation for applying different rules to the construction of their contracts, because they reside within the local limits of the sovereignty of [another nation].

Once the treaty system was abolished by the United States Congress in 1871, subsequent conventions came to be known simply as “agreements”. This change meant little to the various colonial nations under United States jurisdiction at the time. Nor did the change in any way reduce the inherent sovereignty of the Native Nations.

The Marshallese have consistently held that the treaties they entered into with Germany during the colonial era support their claim that they should be given recognition as participants in the international community. It is upon the historic treaties where each separate Marshallese nation was treated with a separate identity that they base their assertion that their relationship with the various governments at the time is as one of two parties on an equal footing with one another. Their argument, simply put, is that the treaties the colonial German and United States Governments entered into with native Marshallese carry the full weight of international law and deserve the same distinction as treaties made with other “foreign” countries.

Despite efforts of various international authorities to diminish their status, International Law has consistently supported the native peoples argument that the status of these treaties is as instruments of agreement between two sovereign nations.

During the years when the rivalries of German, American and Spain in the Pacific gave the various Marshallese kingdoms positions of strategic power, negotiations with these kingdoms were carried on by the Colonial Governments at the time and later by the United States on the basis of international treaties. These treaties acknowledged the sovereignty of Marshallese tribes and implied the acknowledgment of a possessory right in the soil that the tribes occupied. After the cession of Louisiana, by France in 1803, the termination of the war with Great Britain in 1814 and the cession of Florida by Spain in 1819, there developed an increasing tendency to deny the sovereignty of Indian tribes and to deal with them by force of arms.

This betrayal of its legal responsibilities on the part of the United States government was not supported by the Supreme Court which, in two landmark decisions excerpted below, reaffirmed the international status of native peoples in American controlled Colonies:

They have uniformly been 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...The acts of our government plainly recognize the [Indigenous Kingdoms] as a State, and the courts are bound by those acts.

Chief Justice John Marshall would also later comment that:

The constitution, by declaring treaties already made, as well as those to be made, to be the supreme law of the land, has adopted and sanctioned the previous treaties with the [tribal] nations, and consequently admits their rank among those powers who are capable of making treaties.

This is an argument that operates powerfully in the Marshallese favor. Although, as mentioned above, while the treaty system was abolished in 1871, previously agreed upon treaties still carry the weight of international law and are protected by both the United States and German. In *United States v. Forty-three Gallons of Whiskey* (1876), the U.S. Supreme Court said:

The Constitution declares a treaty to be the supreme law of the land; and Chief Justice Marshall, in *Foster and Elam V. Neilson*, ...has said, "That a treaty is to be regarded, in courts of justice, as equivalent to an act of the legislature, whenever it operates of itself, without the aid of any legislative provision."

Due to United States government mismanagement, many treaty claims of former U.S. colonies have never reached adjudication. More often than not, the United States left colonies under the rule of the strongest tribal group in any region, leaving those with other pre-existing treaty claims against the U.S. (and other colonial authorities having controlled the islands prior to U.S. occupation) unable to resolve the situation.

In summary, the early treaties between various Marshallese groups and the Spanish, German and United States colonial authorities were entered into as legal commitments between two equal nations, thereby classifying them as international instruments. Since international law is derived from customary law and treaties, these treaties between the Marshallese and the colonial powers in the region are a bona fide component in establishing international norms between the parties involved. Furthermore each new colonial authority was obliged to honor the treaties entered into with the previous State authority. It follows that they should be accorded the same status within the international community as any covenant between nations. In fact, the validity and international character of earlier treaties with indigenous nations has gained increased support within international organizations recently. In its "Study of the Problem of Discrimination Against Indigenous Populations," the UN Commission on Human Rights declared:

Treaties and other agreements entered into by indigenous peoples with other States, whether denominated as treaties or otherwise, shall be recognized and applied in the same manner and according to the same international laws and principles as the treaties and agreements entered into by other States. Treaties and agreements made with indigenous peoples shall not be subject to unilateral abrogation.

The municipal law of any State may not serve as a defense to the failure to adhere to and perform the terms of treaties and agreements made with indigenous peoples. Nor shall any State refuse to recognize and adhere to treaties or other agreements due to changed circumstances where the change in circumstances has been substantially caused by the State asserting that such change has occurred.

International Law and Self-Determination as Precedent

The right to self-determination is the focal point for the people of the Kingdom of EneenKio and other peoples world-wide who have suffered a similar fate. It is the basis for the adoption of the Declaration on the Rights of Indigenous Peoples which provides a method of formal communication to the world community on behalf of indigenous peoples.

The right of a people to determine, for themselves, the character of their political existence has come to be regarded one of the most fundamental human rights. That said, it is also one of the most difficult to define, and controversial to implement. Of the most important international documents referencing the principle self-determination are the 1996 Covenants, the first on Economic, Social, and Cultural Rights, the second on Civil and Political Rights. Article 1 of each declares:

All peoples have the right of self-determination. By virtue of that right, they freely determine their political status and freely pursue their economic, social, and cultural development.

The peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

The State Parties to the Convention, including those having responsibility for the administration of Non-Self-Governing territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

Subsequent initiatives on the part of the UN have reaffirmed the commitment of that organization to the principle of self-determination. Of these, perhaps the most notable is the 1970 General Assembly Resolution # 2625, which proclaimed that:

“All peoples have the right freely to determine without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter..”

The fact of the United Nations affirmation of the principles of self-determination have just begun to be realized for the people of the Kingdom of EneenKio. One must remember that the Kingdom shares a citizens with dual sovereignty, something which is not uncommon.

While the Marshallese in the Northern Ratak Atolls are citizens of the sovereign republic of the Marshall Islands they also have a second, more important sovereign nature, that of their tribal roots under their hereditary monarch. Having formally seceded some of their rights for many of the islands in the Northern Ratak Atolls, they have never authorized the surrender of Eneen-Kio itself, an important factor as the island has never been constituted into the Republic, and remains a separate sovereign property of the people. Similar parallels can be drawn with American Indians, many of whom are citizens of dual nations, one being the sovereign nation of the United States, and second being the sovereign nation of their tribal group. Throughout the world this is not an unusual situation.

The status of the principle of self determination in international law is, however, uncertain, as is the process by which legitimate claims are sorted out from those of, shall we say, “lesser legitimacy”. It is probably safe to say that self-determination is a recognized legal right within the corpus of international law in the context of decolonization, assuming one does not dispute the definition of colonialism too vigorously. The decolonization context is clearly supported by General Assembly Resolution 1514 (XV) - the Declaration on Granting Independence to Colonial Countries and Peoples. Subsequent developments, such as the above cited 1966 Covenants, begin to disassociate the right of self-determination from its colonial origin and begin to vest it with an understanding which accepted the identification of peoples who had a right of self-determination as peoples experiencing oppression. The Helsinki Final Act expresses this development in rather stark language when it refers to “the principle of equal rights and self-determination of peoples...in full freedom, to determine, when and as they wish, their internal and external political status, without external interference, and to pursue as they wish their political, economic, social and cultural development.”

Even though there exists little doubt as to the acceptance of self-determination as an accepted principle of international law, numerous conceptual problems remain to be addressed by those who would wish to invoke this in support of their efforts to obtain legal redress for their grievances. First, there is the problem of defining a “people” who possess the right to make a valid claim to self-determination, i.e., Falkland Islanders; the Kurds; Basques; Palestinians; or the Iroquois? Clearly, defining a people who qualify to invoke the right of self-determination does not lend itself to a generally agreed upon legal definition. The International Court of Justice, in its 1970 decision in the Greco-Bulgarian Case provided the following definition of what constitutes a “people”:

A group of persons living in a given country or locality, having a race, religion, language and traditions of their own and united by the identity of race, religion, language and tradition in a sentiment of solidarity, with a view to preserving their traditions, maintaining their form of worship, insuring the instruction and upbringing of their children in accordance with the spirit and traditions of their race and rendering mutual assistance to each other.

Other attempts, such as that by the International Commission of Jurists in 1972, have been equally futile.

In reality, political dynamics determine which “oppressed” peoples gain sufficient acceptance and support to merit their being recognized as having the right of self-determination. This recognition has most often been expressed by UN Resolutions which “grant” to certain oppressed groups the status as peoples possessing legitimate aspirations of self-determination. Left unanswered is the question of the legal competence of the UN to grant this recognition in the first place. Nevertheless, the United Nations has not shied away from reaffirming the commitment of that organization to the principle of self-determination. Of these, perhaps the most notable is the 1970 General Assembly Resolution # 2625, which proclaimed that: “All peoples have the right freely to determine without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter.”

The second problem with implementing the right of self-determination is the link with competing claims which invariably are part of a larger and complex political dynamic responsible for generating such claims to begin with. Pomerance breaks down this problem into three components:

The demand for secession or separate self-determination by one “self” clashes with the claim to territorial integrity or political independence put forward by the unit of which the first “self” is felt to be a part.

“Self-determination” by the smaller unit conflicts with the “self-determination” to which the larger unit claims to be entitled.

There is an opposition between two claims to territorial integrity - that of the larger as against that of the smaller unit.

Thus understood, the claim of self-determination, carried to an extreme, may generate more claims than it resolves, as successful claimants spawn aggrieved parties which seek to then further their claims as well. As Pomerance put it, “Self-determination, in the sense of full independence and sovereignty, cannot be given to all peoples, unless the 'self' is reduced to the individual 'self' of the term's metaphysical origins.”

Of the prospects of considering self-determination as an individually based claim, rather than a collectively vested one, more will be said below.

The third problem associated with self-determination is that of time. Is there a period of time beyond which claims of self-determination lose their viability and/or credibility? The duration of a claim to self-determination might be one, comparatively strong, factor in assessing its merit. Do more recent cases of oppression merit lesser consideration than older, less serious, ones? Again, the international community is relatively silent on this aspect, with the exception of its consistent support of self-determination within the context of the decolonization process. This would seem to establish a time frame outside of which claims of self-determination would not likely receive widespread support, seeing that they would then likely run headlong into conflict with another, and in ways much stronger, norm of international law - territorial integrity. Yet, if one considers the willingness of the international community to accept the claims of the Palestinian people, neither duration nor decolonization seems, in the final analysis, to be a crucial factor.

The last problem associated with self-determination is that it is tied-in closely with the concept of representative government. This assertion is, in some quarters, controversial. The writer feels, however, that the two cannot be separated without doing harm to both. In self-determination entails the right to pursue one's economic, social, political and cultural development; to be free from political domination, or discrimination based upon race, creed, or whatever; to enjoy fundamental human rights, among them to participate in the selection of a government of one's choice. That said, the fundamental problem which confronts democracies is, can a legitimate claim to self-determination emerge within the context of a democratic political culture? Are not democratic governments by definition representative and, hence, immune to fostering or tolerating the kinds of conditions which ignite “oppressed” peoples to call for self-determination?

If the principle of self-determination is appropriate to Native Marshallese Kingdoms, they could define its relationship with the United States, Germany, Spain, and even the Republic of the Marshall Islands, dominated as it is by a political majority coming from the one distinctive people within the Marshall group; with the support of an international standard. Some may

choose to continue their semi-sovereign status, others may choose total independence. The traditional owners of Eneen-Kio would have the support for the position they have maintained throughout history.

International adjudication provides a precedent by which to operate and define international norms. In the case of the traditional owners of Eneen-Kio, and the sovereign people of the Northern Ratak Atolls of the Marshall Islands this may be the only way in which the issue will be successfully resolved.

Under commonly accepted norms in contemporary international law, the Marshallese of the Northern Ratak Atolls and their traditional monarch (Iroijlaplap) should have the ability to define their own existence and the status of their lands in any manner they please. It is doubtful the Iroij or the people of the Northern Ratak Atolls was consulted on the status of Eneen-Kio before the declaration of the United States over the sovereignty of the Island, nor before the formation of the Republic of the Marshall Islands. In the writer's opinion the United States has taken it upon itself to deny the Marshallese of the Northern Ratak Atolls the very right of self-determination that the UN has set before the international community as a common ideal. In fact, most native Nations in Marshall Islands should be considered states, if the test of the 1933 Montevideo Convention on the Rights and Duties of States is applied. It lists four criteria that demonstrate the existence of a state; "A defined territory, a permanent population, a government, and a capacity to conduct international relations."

As previously argued, the historic relations that the various Marshallese Kingdoms established with the Spanish, German and Americans during the early period of European colonization clearly establishes them in an international role and, thus, provides the basis for modern arguments supporting native sovereignty over Eneen-Kio Atoll, and their right to declare it as a separate nation.

With the encouragement of the hereditary Monarch of Eneen-Kio and the rest of the Northern Ratak Atolls of the Marshall Islands, this interpretation of International relations has remained consistent throughout the history of the Kingdom. The sovereign nation of Eneen-Kio, to this day, maintains an existence even more separate from the dominant political climate in the islands. In addition to religion, language, and ceremonies, they have chosen to stay politically aloof from the rest of Marshallese and United States politics due to their sense of nationhood.

The hereditary owners of Eneen-Kio have never consented to being governed by the U.S. and have always maintained their desire for political autonomy. The ideal of autonomy is only now being fully realized, but in many ways the concept of a national sovereignty has been supported and maintained over time. It is true that they operate within the current Marshallese and U.S. political system, but only because they are powerless to do otherwise.

To the citizens of Eneen-Kio, United States law is de facto law, and there are members of their community who are simply waiting for it to pass away. Changes have made the traditional owners of Eneen-Kio into what they are today, but this does not provide sufficient enough reason for the federal U.S. government to continue to dictate their future. Any attempt by the citizens of Eneen-Kio to assert political autonomy can be viewed as a legitimate response to the overbearing policies of the United States.

By the definition of the term, the word secession could not apply to those Marshallese who have never relinquished their sovereignty over Eneen-Kio, nor desired to be under the direct influence of the U.S. government.

Native Marshallese land is governed by tribal law but overseen by the government of the Republic as a trust relationship. Tribes have never had the status of statehood, and have never been participants in the federal system. They were not formed within the federal system of the Republic, indeed Eneen-Kio itself was never formally constituted into the Republic. If U.S. federal law came to no longer be applied to Eneen-Kio, it need not, nor should it, be considered secession. Rather, it would be a withdrawal of Federal trust responsibilities and law from indigenous Marshallese territories.

The situation would be a restoration of a previous condition, not the birth of an independent polity, for indeed the Republic of the Marshall Islands was not in existence during the illegal occupation of the island and sovereign rights are vested back into the hands of the people who originally inhabited and utilized the island. It would be viewed by the citizens of Eneen-Kio as an end of a long, forced occupation.

There would be no immediate need to drastically alter the face of the Marshall Islands. Reaffirming the international borders and character of Eneen-Kio would be a simple issue requiring very little involvement by the Republic. The boundaries would be redrawn to show Eneen-Kio as a sovereign nation with an overlapping boundary into the Northern Ratak Atolls of the Marshall Islands. Such a step would be small but is more than adequately supported by precedent and history.

Even though it is true that most citizens of EnenKio are economically dependent on the Republic of the Marshall Islands, and in turn, the United States some would gladly trade those benefits for the opportunity to have true autonomy and their independence restored.

For the EnenKio people, total political independence from the United States government would simply be a confirmation of what they already know.

Internationalism

In an attempt to counter the obstacles to their recognition as international entities the Government of EnenKio has continually appealed to international norms. As it is naturally a part of the identity of a sovereign nation to interact with other sovereign nations, the Government of EnenKio periodically does so to further its interests.

Along political lines, the Marshallese of the Northern Ratak Atolls contend they have never surrendered their independence over EnenKio to anyone.

While a group may not be directly involved in the international community, sovereignty dictates that they have the capacity to do so at any time they choose. Not only does the Kingdom of EnenKio claim their political independence, but they have chosen to involve themselves in the international community, nor has the pervasive and domineering nature of the U.S. federal government has not diminished this ability. At many points in history they have behaved in such fashion. Involvement in international discourse is a Marshallese tradition. This tradition has its roots in early history.

The various Marshallese Kingdoms managed not only to preserve a general peace among their own peoples but also conducted formal relations with Germany and Spain on a nation-to- nation basis with Marshallese Monarchs and their representatives given full diplomatic recognition.

The early 20th Century was disruptive for most native Marshallese groups, during this time there is little record of independent Marshallese Kingdoms involvement in the larger world. Yet, involvement towards the end of this century has proved vastly different, with various tribal groups, notably the people of Bikini, sending representatives internationally and maintaining some form of international dialogue.

The ability of the Government of EnenKio to operate on the international level has been severely discouraged by the United States and Republic of the Marshall Islands governments, as well as some points of international law. But at the same time, this ability is supported by history and the very core ideals that gave rise to international law. While this intrinsic Marshallese characteristic may not be recognized by some, it is now re-emerging as a tool to reintroduce the Kingdom back into the international community as it once was before. To involve themselves in such matters is entirely consistent with Marshallese tradition, identity, and their belief in autonomy and independence over Eneen-Kio. They will not wait for either government's blessing.

The acceptance on the part of the government of the United States that Indigenous peoples rights are subjects of international concern for which it accepts responsibility is a significant development for the Government of the Kingdom of EnenKio. The U.S. government has publicly placed Indigenous rights under Basket III topics of the 1975 Helsinki Act, thus creating an international commitment to enter into government-to-government relations with other indigenous founded nations. While this remains largely a paper commitment to date, its significance should not be underestimated. The prestige and credibility of the United States to speak out on minority rights abroad is now increasingly subject to scrutiny based upon its compliance to its commitments at home and in its former colonies abroad.

President Reagan exhibited his sensitivity to this relationship when he committed his administration to promoting a policy of Indigenous peoples self-government. While his motivations may not have been totally in line with the Helsinki Final Act, the end result has been measured improvement in the ability of natives under the colonial umbrella of the United States to exercise higher degrees of autonomy, particularly in the economic arena.

The impact of efforts to evolve ever more local government responsibility (being the independent sovereign Kingdoms comprising the Marshalls) to the level of Federal responsibility under the Republic obviously did not bode particularly well for continued progress over the claim to Eneen-Kio itself. With only a limited group calling for the return of the island, and claiming sovereignty to the island there has never been any great steps forward in the recovery of Eneen-Kio itself.

The impact of the domination of the United States on the Marshallese and the continual denial of the rights of the indigenous peoples of the region are contrary to even the most basic international laws involving self-determination and the cessation of colonial governments and their domination. In the writers opinion the Kingdom of EnenKio has a sound legal

basis for their independent sovereign status based on the principles of decolonization and statehood as defined in international law and discussed herein.

Other arguments for International Recognition

There are many other arguments over the recognition of the Kingdom of Eneen-Kio as a sovereign and independent nation. Many of the arguments have already been discussed, however a summary of these are listed below:

- * A distinctive Marshallese population utilized and inhabited Eneen-Kio.
- * Europeans entered distinctively Marshallese Territory.
- * The Iroijlaplap of the Northern Ratak Atolls of the Marshall Islands was exercising effective control over the island and the population was traveling to the islands.
- * Eneen-Kio has always been an integral part of Marshallese culture.
- * The Iroijlaplap of the Northern Ratak Atolls was capable of entering into international relations and had entered into such relations repeatedly.
- * Claims by the United States of sovereignty over Eneen-Kio is void under international law.
- * Historically, Eneen-Kio has always been part of Marshallese culture and controlled by the Sovereign People of the Northern Ratak Atolls and their King.
- * The Northern Ratak Atolls were indisputably a sovereign nation within the Marshall Islands and included Eneen-Kio.
- * Eneen-Kio did not become part of the Republic after the formation of the Republic of the Marshall Islands Government.
- * Relations between the Iroijlaplaps (Kings) of the Marshall Islands show that the Northern Ratak Atolls were a sovereign nation and peoples.

There has never been any doubt in many Marshallese eyes that Eneen-Kio remains a sovereign nation today with ties directly to the tribal kingdom within the Northern Ratak Atolls, the Iroijlaplap of which, exercises control over Eneen-Kio as its monarch and head of the constitutional government. International law and precedence has always affirmed the right of the people to create a separate political and international entity which they have chosen to do.