

UN Draft Declaration on the Rights of Indigenous Groups

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November 1, 1996

LETTER OPINION FOR THE DEPUTY LEGAL ADVISER
DEPARTMENT OF STATE

This letter responds to your letter of October 10, 1996, to Associate Deputy Attorney General Seth Waxman, which requested the views of the Department of Justice as to whether the Constitution would permit the federal government to afford other indigenous groups in the United States treatment comparable to that presently afforded federally recognized Indian tribes.

We have reviewed the text and constitutional history of the Indian Commerce and Treaty Clauses of the Constitution, the history of the federal government's exercise of the authority granted by those clauses with respect to Indian tribes in the continental United States and to the indigenous peoples of Alaska, and the relevant case law. Based upon this analysis, we have concluded that the Constitution would not bar the federal government from establishing the kind of government-to-government relationship it presently maintains with federally recognized Indian tribes with other appropriately constituted indigenous communities within the jurisdiction of the United States.

We cannot, however, offer any view as to the permissibility of exercising this authority regarding a particular group of indigenous peoples without a thorough analysis of that group's history, its structure and status, the relationships between its members, and the group's relations with federal and state government authorities. Thus, while Congress has the authority to consider recognizing or extending benefits to indigenous groups other than Indian tribes, we cannot express a view at this time as to whether Congress could lawfully take such action towards any existing community of Native Hawaiians or other indigenous entities. We would be happy to undertake such an analysis if you so desire.

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