The Legal Bases for the Inughuit Claim to their Homelands

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1. Introduction

The future existence of the Polar Eskimos or as they call themselves: Inughuit1 (Great People) as a distinct indigenous entity is in jeopardy. For more than fifty years, the American Thule Air Base has, based upon agreement between the United States and Denmark, been placed in northern Greenland on a central part of Inughuit territory, which they have occupied and used since time immemorial. The presence and activities of the air base have had and continue to have a negative impact on Inughuit culture and way of living. Shortly after its establishment, the Inughuit were forcibly relocated to an area with sparse ecological resources, unable to provide the foundation necessary to economically sustain their traditional hunting culture. In November 2003, the Danish Supreme Court awarded only a modest sum to the Inughuit in compensation for the interference with their territory and rejected their claimed rights to access, occupy, hunt and live on their homelands.2 The Inughuit have now taken their case to the European Court of Human Rights.

The gradual deterioration of Inughuit existence is caused by factors similar to those indigenous peoples face in almost every part of the world. Here, forced evictions and displacements of indigenous peoples as well as expropriations and confiscations of indigenous territory have taken place on a wide scale largely justified by States’ economic agendas in pursuing developmental projects and exploitation of natural resources.3 Regardless of the attitudes, doctrines and policies developed to justify interferences with and disturbance of indigenous land, resources and territories, the consequences remain devastating; destruction of the natural environment; social and economic problems for the peoples concerned; erosion of indigenous culture resulting in deterioration of the cultural diversity and ecological harmony of human kind. In order to reverse this development, respect must be paid to

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1 Plural nom. and gen. of Inughauq.
indigenous peoples’ land rights as vital elements for their continued survival. As expressed by the indigenous peoples themselves the “spiritual and material foundations of their cultural identities are sustained by their unique relationship to their territories”.4

From a legal viewpoint, indigenous peoples have for a long time been disfavoured in pursuing their land and resource rights. Only recently has the international community clearly distanced itself from the doctrine of terra nullius, according to which indigenous lands were held as legally unoccupied until the arrival of a colonial presence, and could therefore be acquired by the colonial power through effective occupation and recognition of such occupation by other States.5 Things slowly began to change when the International Court of Justice held that the doctrine had been wrongly and invalidly implemented towards the tribal peoples of the Western Sahara in 1975.6 In 1992, the High Court of Australia in the famous Mabo v. Queensland case fully denounced it by concluding that this “unjust and discriminatory doctrine . . . can no longer be accepted.”7 Also, under the auspices of the UN, extensive studies have been completed by Special Rapporteurs Martinez Cobo in 1984 on the historical pattern of discrimination against indigenous peoples and Erica-Irene Daes in 2000 on the relationship between indigenous peoples and their lands, territories and resources.8 In matters of international standard-setting, ILO Convention No. 169 on Indigenous and Tribal peoples (Convention No. 169) providing a comprehensive framework for the protection of indigenous peoples and their lands was adopted in 1989.9 Furthermore, the UN Working Group on Indigenous Peoples is currently undertaking deliberations for the purpose of the adoption of the UN Draft Declaration on the Rights of Indigenous Peoples and similar undertakings are made at the American regional level for the adoption of the Proposed American Declaration on the Rights of Indigenous Peoples. The articulated standards contained in these instruments are increasingly reflected in the jurisprudence of the international human rights monitoring bodies. In particular, the Human Rights Committee, the Committee on the Elimination of Racial Discrimination and the Inter-American Court on Human Rights have acknowledged the crucial importance of lands and natural resources to the existence and cultural survival