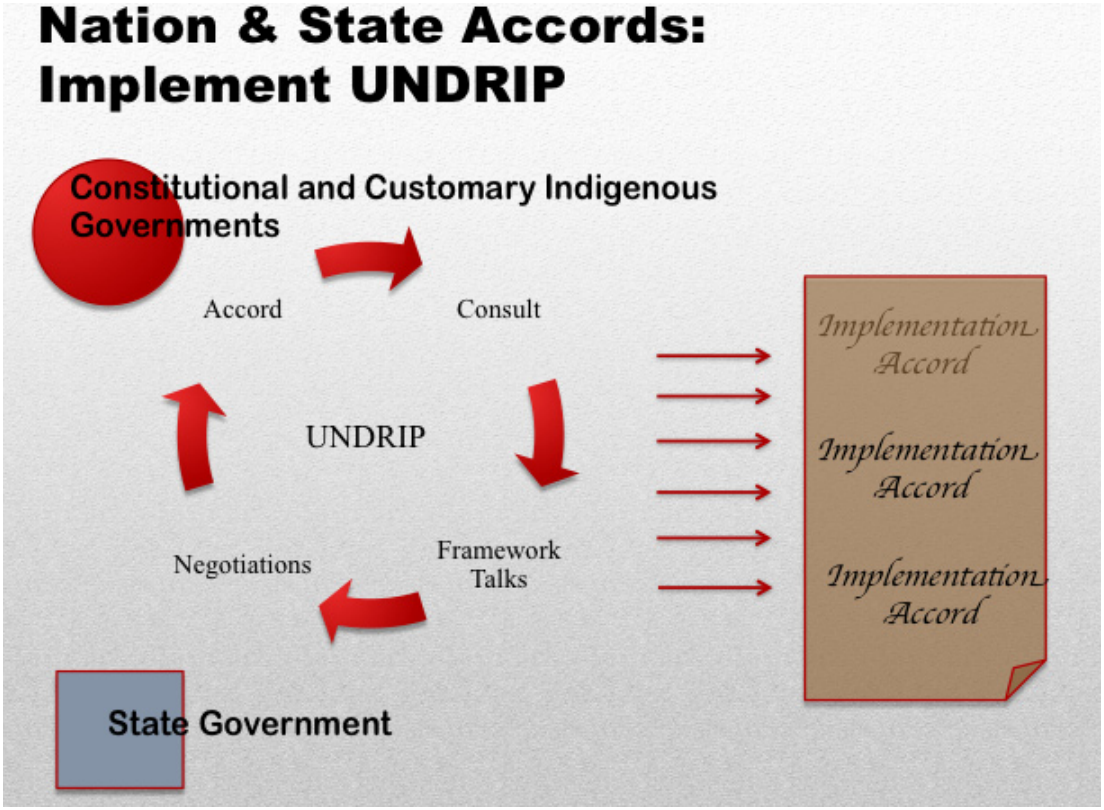
Implementation

In the final analysis states' governments and indigenous nations will meet either at the negotiating table or on the battlefield. These are the options now presented by the dynamic change in international relations. Indigenous nations are a political fact of life in strategic localities such as the choke points throughout Indonesia, between the Philippine islands, and in Crimea entering the Black Sea. The UN Declaration on the Rights of Indigenous Peoples offers a constructive pathway for indigenous nations and states to democratically negotiate 21st century relations. Implementation of mandated provisions in the Declaration will require skill and maturity on all sides. Here we report some considerations for the present and future.

SECTION H: CONTENTS



Nation & State Accords: Implement UNDRIP

How will indigenous nations and states' governments implement the UN Declaration on the Rights of Indigenous Peoples? Dialogue, negotiations and accords may be the most democratic means for assuring lawful implementation, And, it is probable that constitutional and customary indigenous governments will negotiate accords with states' governments when they become familiar with each other and no longer fear each other.

From "Balance of Power" to Democratizing International Relations: Balancing Relations Between Nations and States in a New Era

Rudolph C. Ryser, Acting Chairman, Congress of Nations and States, Preparatory Committee
August 24, 1992

The international system of states was shaken in December 1991, when the Union of Soviet Socialist Republics collapsed into fifteen new states. Other states like Afghanistan, Lebanon, Burma, Ethiopia, Sudan, Cambodia, and Yugoslavia show similar signs of exhaustion. About 190 sovereign states (140 more than when the united Nations was formed) are now said to make up the state system. After twenty years of study, the United Nations says there are 3000 to 5000 nations inside states and divided by states. Many of these nations are unwillingly under the control of states and often do not share in political power within the state. The Russian Federation in cooperation with Germany, Japan and the United States of America has called on the world's nations and states to join in a Congress of Nations and States to discuss and act on new measures for stabilizing international relations. The Congress will formulate and present for ratification by the governments of nations and states four new international protocols. These protocols will prescribe rules of conduct between nations and between nations and states when two or more parties have political, economic, social or strategic disputes. Under new international law since the end of World War II, rules for settling disputes between states have been carefully drawn up under the United Nations Charter, the Geneva Conventions and subsequent protocols. No similar rules for settling modern disputes between nations and between nations and states have been formulated. Though many regional wars, political clashes and legal disputes between nations and between nations and states have persisted for as many as fifty years, no internationally agreed rules exist to aid in the resolution of such disputes.

Political, social, economic and strategic clashes between nations contribute to local and regional instability. Similar conflicts between nations and states directly affect local, regional and sometimes global stability. The call to convene a Congress of Nations and States directly addresses the need for the governments of both nations and states to meet, to deliberate and act on new international conventions concerning resolution of disputes involving nations and states.

The problem of dispute resolution between nations and between nations and states is not a new one. International efforts to establish a system of dispute resolution was forcefully expressed in the development of the League of Nations during the post World War I peace discussions in Paris in 1919. U.S. President Woodrow Wilson's famous Fourteen Points provided the broad outlines within which controversies involving nations and states might be considered and resolved. In particular, Wilson's point five contained a key idea for conflict resolution between nations and states. It said that parties must pay : "...STRICT OBSERVANCE OF THE PRINCIPLE THAT IN DETERMINING ALL SUCH QUESTIONS OF SOVEREIGNTY THE INTERESTS OF THE POPULATION CONCERNED MUST HAVE EQUAL WEIGHT WITH THE EQUITABLE CLAIMS OF THE GOVERN-

MENT..." Existing states and non-self- governing nations were obliged to meet on a basis of mutual equality. For the first time in modern history, negotiated political change instead of dictated or forced political change was being offered as a condition for the peaceful political development of peoples. Wilson's point five provided the framework within which nations could resolve disputes concerning their political development. Unfortunately, the thirty-two countries participating in the peace conference(1) ignored this important principle with most of Wilson's Fourteen Points. In the long established tradition of victors in war, the terms of peace and the terms for establishing a "general association of nations" (the League of Nations) was "dictated, not negotiated." The first opportunity to set a new international political order based in mutual respect and negotiated conflict resolution had been lost. As history now clearly reveals, this failure produced for President Wilson a hollow victory in the creation of the League of Nations. This failure also soon became the fuse for yet another global war and scores of protracted political conflicts and low intensity wars.

What Wilson's Fourteen points first suggested (that many nations exist unwillingly under the weight of state or imperial rule) raised fears in many states about the possibility of separatist movements - the potential dismemberment of existing states. Opportunities for mutual discussions and negotiations between representatives of nations inside a state and state representatives were regarded as difficult if not impossible. Suspicions among nations' representatives and states' representatives proved too difficult to overcome. Discussion of peaceful methods for resolving disputes between nations and between nations and states was abruptly taken from the table. Just as the great powers of the day dictated boundaries in the Balkans at the Berlin Congress in 1878,(2) they dictated Central Europe's boundaries in 1918. The opportunity for a negotiated resolution of conflict instead of a dictated solution was lost in what would become protracted political and civil conflicts. Prolonged "low intensity wars" in countries remote from Europe - in Melanesia, Africa and Asia also began to erupt.

STATE STABILITY AND REEMERGING NATIONS

The modern emergence of nations long under the control of states and empires began anew in 1918. The reemergence became a settled fact when the League of Nations took up the question of self-determination of nations within existing states. But, as noted before, the subject was dropped for fear that the mere discussion of the subject would insight nations to seek separation from the early 20th century states. In the forty years following the collapse of League of Nations talks, many nations began active resistance to state control. Civil disobedience, political reform, and low intensity wars of resistance, political tension and open conflict have characterized relations between many nations and states. Similarly, relations between neighboring nations inside state boundaries have challenged integrity of states and raised the need for international measures for negotiated conflict resolution. Conflicts in the Lebanon, Sudan, Peru, India, and Mozambique show the need for such international measures. Where arbitrary state boundaries divide nations, conflicts have often appeared to be "inter-state," but in reality these conflicts reflect "pre-state" geographic realities and unsettled conflicts. Many nation-and-state conflicts center on the availability of natural resources and territory. Many nation-and-

nation conflicts are also a result of natural resource and territorial competition or questions of access.

Due to long-standing nation-and-state, nation-and-nation conflicts, a multi-national political movement began to unfold in the 1970s. Non- governmental organizations in conjunction with representatives from nations began conducting international conferences on the rights of "native peoples." It was in this decade that multi-national organizations like the International Indian Treaty Council, World Council of Indigenous peoples, Central American Regional Council, South American Regional Council, South Pacific Regional Council and the Inuit Circumpolar Conference were founded.(3) The United Nations reacted to the political movement among nations with the Commission on Human Rights designation of Mr. Jose R. Martinez Cobo as a Special Rapporteur to conduct the "Study of the Problem of Discrimination Against Indigenous Populations" in 1975.(4) As the "Cobo Study" was nearing completion, the UN Economic and Social Council authorized the establishment of the UN Working Group on Indigenous Populations.(5)

In the midst of the political unfolding of nations on the geo- political stage came the swift collapse of the Union of Soviet Socialist Republics. Heralding the collapse of the U.S.S.R. was the toppling in the 1980s of authoritarian rule in Poland, followed by the similar collapse in Hungary, Czechoslovakia, and Eastern Germany. The nations of Lithuania, Latvia and Estonia began the process of pulling away from the U.S.S.R. in 1990 and subsequently proclaimed their sovereignty as states. By December 1991, the super-state structure of the Union of Soviet Socialist Republics had fallen away, replaced tenuously by fifteen states - each proclaiming state sovereignty. One layer of the state system had been peeled away - revealing new members of the state system. These newly visible states are themselves claiming dominion over many nations. In the newly proclaimed Russian Federation, there are more than 65 nations. In newly independent Georgia, there are eight nations.

Before the end of 1991, the Yugoslavian federation began to crumble - revealing at least seven nations - the same nations denied an international identity at the Berlin Conference in 1878, the same nations denied political development in 1918. This time, Slovenia and Croatia quickly petitioned the international community for recognition as states. Recognition by the German government of these newly proclaimed states was soon followed by recognition from many states' governments, the European Community, and the United Nations. A furious and violent conflict over territory in Bosnia erupted months later involving the new state of Croatia and the Serbian dominated (and substantially reduced) Yugoslavia forcing massive population relocations of Serbian, Muslim and Croatian peoples.

In 1948, the people of Naga Land declared their sovereignty and independence from British India and the emerging state of India. Though Naga independence had been guaranteed by M. Gandhi, his death resulted in denial of independence to the Naga. Their war with the state of India began shortly after and continues to the present. In 1952, the people of South Mollucca declared their sovereignty and independence from the collapsing Dutch colonies and subsequently faced violent absorption by the Javanese proclaimed state of Indonesia. The Kanak of New Caledonia (Kanakia) pro-

claimed their right of self-determination and independence from the state of France under a United Nations mandate, but were shortly afterward removed from the U.N. Roster of peoples scheduled for a plebiscite to decide whether they would become a self-governing people. In 1969, the peoples of West Papua voted their independence and were immediately after that occupied by Javanese forces under the flag of Indonesia. They have been at war ever since.

In 1974, more than one hundred Indian nations in the United States of American issued their Declaration of Sovereignty. They proclaimed their inherent powers of self-government and fundamental right as peoples to self-determination. By 1990, ten of these nations began a devolution process toward the full exercise of self-government - negotiating Compacts of Self-Governance with the United States government.

By the end of 1990, the Miskito nation, Sumo nation and Rama nation ended a war with Nicaragua in a stalemate following nine years of violence. Devastated by war and recent hurricanes, the Miskito, Sumo and Rama began the process of rebuilding. Because of Nicaragua's post-war bankruptcy, these nations came out of the war as almost self-governing nations.

In November of 1991, the Chechen-Inguish Autonomous Republic proclaimed its sovereignty distinctive from the sovereignty of the Russian Federation. By March 1992, the Tatar Autonomous Republic voted to proclaim its sovereignty. Questions had been raised about the right of the Tatar (4 millions strong) to return to their homeland territory in the Crimea - now under the control of the Ukrainian government. In May 1992, the Yakut-Sakha Republic declared its sovereignty. In newly independent Georgia, South Ossetians expressing strong irredentist intentions declared their right to separate from the state and become a part of North Ossetia located in the Russian Federation. Shortly afterward, the Abhazians of western Georgia declared their independence and quickly entered into violent conflict with Georgian forces.

Eritrean military forces, long engaged in a war with the Ethiopian state government overwhelmed Ethiopian forces and won a decisive conclusion in 1991 favoring Eritrean independence. The states of Mozambique, Burma, India, Sri Lanka, Monaco, Angola, Peru, Colombia, Nicaragua, Bangladesh, Guatemala, Canada, Philippines, Indonesia, Peoples Republic of China, South Africa and many others, found themselves faced with circumstances not substantially different from the conditions of the U.S.S.R. Fearing state-dismemberment, each of these states has politically or violently engaged nations inside their borders to prevent their separation from the state. While sometimes the state's fears are justified, in many other circumstances such fears are not justified. Many nations simply seek to become partners within the state to share in political power. Other nations want negotiations with the state to ensure their greater control over resources - to share in the value of those resources, and greater control over their political life.

NEW INTERNATIONAL PROTOCOLS FOR A NEW ERA

The century of growing nation-and-nation conflicts contribute to a growing recognition of the need for nations to understand one another

more, and for a new international framework for binding conflict resolution. Similarly, it is clear that states and nations must come to understand each other with greater precision, and establish a new international framework for resolving nation and state conflicts. The stable and prosperous development of states and between states is increasingly dependent on cooperative relations between nations and between nations and states. Nations need the same opportunity for stable and prosperous development. The dearth of economic, social, political and strategic information about the thousands of nations in the world contributes to the tendency for conflict. New approaches to international conflict resolution must be found. Such new approaches are clearly possible from discussions between nations and nations and states in a new international forum that includes all the key players.

Recognizing that so-called "tribal and semi-tribal societies" required special international protection against mistreatment the International Labour Organization drew up without the participation of "tribal and semi-tribal societies" International Labour Organization Convention 107.(6) This convention stands as the only generalized international legislation specifically aimed at protecting the rights of nations.

Despite the shortage of clear information, since 1973, the United Nations, multi-lateral indigenous nation organizations like the World Council of Indigenous Peoples and the Inuit Circumpolar Conference have continued to develop an international climate conducive to nation/state discussions and negotiations. East/West political pressures caused the negotiation of the Helsinki Final Act concluded in 1975. (7) This new instrument may have profound significance for evolving international relations between nations and states. The development of a Universal Declaration on the Rights of Indigenous Peoples by the United Nations is symbolic of further potential openings for negotiations between nations and states.(8)

The Congress of Nations and States must now solidly build on the positive, though tentative, international initiatives that open the way to direct nation and state discussions. The International Labour Organization's Conventions, the Helsinki Final Act, the UN Universal Declaration on the Rights of Indigenous Peoples and new agreements between nations through multi-national organizations now form the basis for sound new international law concerned with conflict resolution. The development and enforcement of new international protocols for resolving disputes between nations and between nations and states is the next logical step toward a more stable and peaceful world. The Congress of Nations and States can contribute to not only wider understanding, but it can contribute to the process of forming a new international fabric of cooperation between nations and between nations and states.

NOTES

(1) United States, Great Britain, France, Italy, Japan, Belgium, Brazil, Serbia, Australia, Canada, China, Czechoslovakia, Greece, Hejaz, India, New Zealand, Poland, Portugal, Rumania, Siam, South Africa, Bolivia, Cuba, Ecuador, Guatemala, Haiti, Honduras, Liberia, Nicaragua, Panama, Peru and Uruguay

(2) Bismark called the Berlin congress to determine the fate of the Balkans following the Russo-Turkish War of 1877. Britain, France,

Austria, Russia, Italy, Turkey and Germany were the represented states.

(3) The Unrecognized Nations and Peoples Organization was founded in February 11, 1991 at The Hague - adding to the growing number of multi- lateral nation organizations.

(4) "Study of the Problem of Discrimination Against Indigenous Populations," Report by Special Rapporteur, Mr. Jose R. Martinez Cobo. United Nations Economic and Social Council. Commission on Human Rights E/CN.4/Sub.2/L. (12 Volumes) 1983.

(5) The United Nations Working Group on Indigenous Populations was authorized by the UN Economic and Social Council under the responsibility of the Commission on Human Rights and the Subcommission on the Prevention of Discrimination and Protection of Minorities in 1982. Its responsibility was originally two-fold: Review evolving standards of the rights of indigenous peoples, and, review developments concerning indigenous peoples. By the middle 1980s the Working Group was mandated by the UN Economic and Social Council to draft a Universal Declaration on the Rights of Indigenous Peoples for consideration by the Commission on Human Rights and the General Assembly.

(6) ILO Convention 107: Convention on the Protection of Indigenous and other Tribal and Semi-Tribal Populations in Independent Countries (1957) revised in 1989. Some "indigenous experts" were invited to participate in the revisions.

(7) The Helsinki Agreement established a framework for the 35 original member states to deal with the problems of security, economic relations, contacts among peoples, basic human rights, and standards of international conduct. Though not a treaty, nor a legally binding agreement, the Helsinki Final Act does, however, carry considerable moral weight because it was signed at the highest levels of each government. The Final Act contains four parts divided into three sections (Baskets). Basket I addresses security in two parts: 1. The first part includes a declaration of 10 principles to guide states in their relations with one another. The second part deals with security issues and commits participating states to implement confidence-building measures. Basket II addresses cooperation in fields of economics, science and technology, and the environment. Basket III deals with cooperation in humanitarian and other fields.

(8) Originating with the United Nations Working Group on Indigenous Populations, the Declaration was nearing completion by the end of 1992.

Trust Arrangements between States and Indigenous Nations in the International Environment

Remarks by Dr. Rudolph C. Ryser, Chair of the Board of Directors, Center for World Indigenous Studies before the Secretarial Commission on Indian Trust Administration and Reform, US Department of the Interior at Seattle, Washington13 February 2013.}

Madam Chair and Members of the Commission on Indian Trust Administration and Reform, thank you for the invitation to present my analysis regarding forms of trusteeship arrangements between states and Indigenous nations that have in the past and currently existed in international relations.

The president of the United Nations Trusteeship Council declared the work of the Council to be done with the termination of the trusteeship of Palau in December 1994. The Council ceased annual meetings suspending its operations in 1994. It was created in 1945 to oversee the "decolonization" of those countries held under the control of recognized states—many of which had been placed under the control of various states under the League of Nations mandates. Eleven so-called dependent countries were formally placed under trusteeship. Of these seven were in Africa, and four were in the Pacific region. The United States government proposed in 1948 that the British Mandate over the territory of Palestine be placed under the Trusteeship Council's supervision, but the declaration creating the State of Israel was thought to have made this unnecessary. The Council's oversight responsibilities during its forty-seven year operation addressed only those territories within the trusteeship system. Other colonial territories not so identified remained outside the UN system. New Caledonia with Advancing the Application of Traditional Knowledge CWIS. ORG 2 of 14 a majority population of Kanaki people, Bhutan and Sik Kim (between India and China), Kuwait, Trans-Jordan, Maldive Islands, French Guiana, Trinidad, and most of the African continent and islands throughout the Atlantic and the Pacific Ocean were among the many colonial territories not included under the Trusteeship Council's oversight. The United Nations Charter spoke to the wide array of colonial holdings in 1945 expressing the principle that UN member states were obliged to administer such territories in ways consistent with the best interests of their inhabitants. While all of the territories under the Trusteeship Council eventually became independent or negotiated commonwealth or other agreements with the authorized state, most of the territories and peoples formerly held as colonies by such states and Britain, France, Italy, Japan, and Germany remained colonized territories or were absorbed by the colonizing state, such as New Caledonia, a territory more than ten thousand miles from the French Republic.

Is the job of the Trusteeship Council accomplished? Has the Council completed its job of supervising the administration of Trust Territories placed under the Trusteeship System? By the standards first defined for the Council, the answer is yes. Have the goals of the System been achieved to promote: "the advancement of the inhabitants of Trust Territories and their progressive development towards self-government or independence?" The five permanent members of the Security Council—China, France, Russian Federation, United Kingdom and the United States—will say that the world has been ordered and settled.

There may remain, however, as many as

1.3 billion indigenous people in the world living in 5000 to 6000 nations and communities who may consider themselves "internally colonized peoples" and still others colonized at a distance without the ability to petition the UN Trusteeship Council for designation as nonself- governing territories requiring international supervision. These populations are presumed to be under the protective care of an administering state or they are presumed to be "absorbed" into an existing state.

Dr. Miguel Alfonso Martinez, Special Rapporteur to the UN Commission on Human Rights and member of the United Nations Working Group on Indigenous Populations after its formation in 1982 directly challenged this presumption in his Final Report, Study on treaties, agreements and other constructive arrangements between States and indigenous populations.[1] He challenged states' governments to prove that indigenous peoples claimed inside their territory "have expressly and of their own free will renounced their sovereign attributes" (Martinez, 1999). Martinez went on to observe, "It is not possible to understand this process of gradual erosion of the indigenous peoples' original sovereignty, without considering and, indeed, highlighting the role played by 'juridical tools', always arm in arm with the military component of the colonial enterprise." [2] Dr. Alfonso Martinez explains that the legal instrumentalities of states' governments serve to perfect and sustain control over indigenous peoples, their territories and their natural wealth through domestic laws, judiciaries that apply the "rule of [nonindigenous] law," as well as international law dictated by the states' governments "validated" through the judiciaries. "The concept of the 'rule of law' began to traverse a long path, today in a new phase, towards transformation into 'the law of the rulers,'[3] Alfonso Martinez concludes.

The United Nations Special Rapporteur gave voice to long-standing complaints by indigenous peoples throughout the world who have come to understand that "protection by the State" is most often a moral and legal justification for confiscating land and resources from indigenous peoples. On one form of that "protection" appears in treaties and in the self-proclaimed trust authority.

Modern day Trusteeships between peoples commonly associated with the United Nations Trusteeship Council and the Mandate System of the League of Nations have deep roots in customary international behavior.

The concept of Trusteeship over indigenous peoples has in many legal, political and academic forums been pronounced as the responsibility of the "administering power" to native rights and property. Indeed, the origins of the concept arose when in 1532 Franciscus de Vitoria wrote in De Indis De Jure Belli that the recently discovered American continent should be exploited for the benefit of the native peoples and not merely for advantage of the Spanish Crown: "The property of the wards, is not part of the guardian's property… the wards are its owners."(Parker, 2003) Notably de Vitoria and those who followed him fore saw the need to give some benefit to the native populations, but they still regarded the indigenous peoples as inferior, weaker and backward requiring tutelage or protection of the civilized

1 (Martinez, 1999)
2 Martinez, 1999, Para 195
3 Martinez, 1999. Para 198

power. The concept of Trusteeship has borne this emphasis from that time to the present.

The noted Swiss philosopher, diplomat and legal expert Emer de Vattel wrote in his treatise The Law of Nations, published in 1758, "Nations, or sovereign states, are to be considered as so many free persons living together in the state of nature." He wrote more to assert that free persons "inherit from nature a perfect liberty and independence, of which they cannot be deprived without their consent" (Vattel, 2005). De Vattel's well-known volume has long served as the foundation for modern international law, custom and practice. At the root of de Vattel's assertion is the well established understanding throughout the international community that "free persons" possess inherent sovereignty which can not be surrendered unless a people is absorbed by another sovereign or consent is given to dissolve all rights and powers of a sovereign people. Note that Trusteeship is well implied by these terms of reference.

Trusteeship Arrangements, States and Nations

Where nations remain internally colonized by States in the modern era, indigenous nations are faced with taking their own initiative to promote a change in political status or they are inevitably faced with absorption into thestate and disappearing as distinct political and cultural identities. It is an historical fact that political powers have absorbed by force or coercion indigenous nations to the extent that their existence as a community ceases. However, whether referred to as a formal trusteeship or a condition of "juridical encirclement," to paraphrase Dr. Alfonso Martinez, indigenous nations and communities recognize the same pattern: 1. Offers to protect the population, 2. Establishment of laws to regulate access to land, and 3. Institution of external, non-indigenous laws to govern the lives and property of the population. Here are some examples of indigenous nations taking the initiative to change their relationship with a dominating state:

Denmark – Kalaallit Nunaat (Greenland)

More than 40,000 Inuit live on a heavily glaciated island of 2.2 million square kilometers. The country called Kalaallit Nunaat has been under colonial rule by European states since 1721. The Danish government ruled the country as a dependency or as a colony until 1953. It was placed under the direct rule of the Danish parliament, which unilaterally passed laws concerning Kalaallit Nunaat lands, resources and people on a regular basis. Distant from Denmark Kalaallit Nunaat was physically and political remote from Danish life. The promise of oil, uranium, fisheries and other natural resources drew Danish parliamentary interest to such an extent that Parliamentary Ministers began to consider "absorbing Greenland." In 1953 the Parliament authorized formation of the Greenland Provincial Council with "limited powers to advise the Danish Parliament on matters of concern to the Greenland residents (Rÿser, 2012). Development in the glacial country proved beneficial to the Danish government during the 1950s and1960s but not to the Inuit of Kalaallit Nunaat.

These rapid changes affecting their culture and way of life caused younger Inuit to begin to politically organize harshly criticizing the Danish government and raising demands for control over their own social, political, economic and cultural life. Using the government Denmark gave them, the Inuit began

to pressure the Danish government for self-government…powers to control Inuit decisions.

In 1972 Inuits created the Greenlandic Home Rule Committee to present a series of proposals to the Danish government. Based on the proposals thus submitted, a Joint Danish-Greenlandic Commission on Home Rule in Greenland was formed in 1975 (Rÿser, 2012). Despite significant opposition, the Inuit leaders pressed Denmark and began to insert themselves into international venues to discuss the Home Rule proposals. By externalizing the debate, Denmark began to feel the presence of political pressure far outweighing the size of the Inuit population.

The Joint Commission concluded that Kalaallit Nunaat would remain under the absolute sovereign dominion of the Danish government; however, Home Rule resulted in a transfer of authority from the Danish government to the Home Rule government of Kalaallit Nunaat. The Inuit secured the power to decide their economic, social and political life and now the Home Rule government is faced with the problems of concentrated urban populations (created by Danish planners in the 1950s and 1960s) and the Danish Government has retained control over access to the land—much to the displeasure of the Inuit people.

United States – Micronesia

The Chuukese, Pohnpeian, Kosraean, and Yaps are the peoples who make up 80% of the populations of hundreds of islands located in western Pacific Ocean whose ancestors are known to have lived in these islands for more than 4000 years. First Portugal and then Spain moored ships off many of the islands in the sixteenth century and by the 19th century Spain claimed and incorporated the archipelago in what that government called the Spanish East Indies. After the Spanish-American War in 1889 forcing Spain to relinquish the Philippines and Cuba, Spain sold the islands to Germany in 1899. During World War I the Japanese Government took possession of the islands in 1914. As a result of World War II, the United States seized the islands and then under agreement with the newly formed United Nations Trusteeship Council became the administering power over the islands. From the date of seizing the Micronesian islands the US government administered the "Trust Territory of the Pacific Islands" in the Department of the Interior. The Department directly governed the islands through Commissioners who had total authority to decide social, economic, political matters affecting the lives and property of the island peoples.

The American Indian Policy Review Commission[4] considered the experiences of the Micronesians under US government administration. One question raised by the Task Force was, "Why did the United States want to seize and control the Micronesian Islands?" Author of the special report to the Task Force Dennis Carroll wrote:

> *The essential reason for the United States' presence in Micronesia has been the military value of the islands. [As a member of the UN Security Council and a member of the Trusteeship Council] … the United States was able to have the islands set aside in a special category as a "strategic" trust.*

4 A Joint Congressional Commission established by the Congress in 1975 to consider past and recommend future policies relating to the administration, trusteeship, health, education, governance and legal status of American Indian and Alaskan Native peoples under the administration of the Department of the Interior.

[Permitting] … the U.S. to fortify the islands, and this, as it turned out, was the only noticeable development which took place for quite some time. (Deloria, Goetting, Tonasket, Ryser, & Minnis, 1976)

The islands remained mainly a "strategic" outpost for the United States until Islanders pressed in the 1960s to establish a governing authority in which people from the Islands would play the dominant role. After much political pressure on Secretary Stewart Udall expressed by Islanders through the Trusteeship Council an agreement was made based on a May 7, 1962 Presidential Executive Order[5] to create a government. The Interior Secretary issued an order on December 27, 1968 "to prescribe the manner in which the relationships of the Government of the Trust Territory shall be established and maintained with the Congress, the Department of the Interior and other Federal agencies, and with foreign governments and international bodies."[6]

While the Secretarial Order was detailed and gave considerable leeway to the newly formed government, "The actual authority in all areas, however, resides with the High Commissioner, and American appointee of the Secretary of the Interior." (Deloria, et al., 1976; Udall, December 27, 1968) The powers of the new Micronesian government were especially limited in the areas of revenue and the budget. The Micronesian government had the power of taxation, but these revenues were a very small part of the overall budget. The Island government had by 1974 established a budget of $5 million resulting mainly from taxes on leases of public land, imports and exports and from income. The US government provided virtually all of the remaining funds. All of the funds were administered through the Department of the Interior. By 1975 the Micronesian Congress petitioned the US government to make direct appropriations to the Micronesian government and terminating the intermediary functions of the Department of the Interior. As one representative remarked: "The uncertainty of the budgetary level from year to year for Micronesia and the fluctuation in the level of expenditures available to us, at any given period, have combined to impede and frustrate our efforts to carry forth effective programmes [sic] and realistically assess our progress and past accomplishments.[7]

The United Nations Charter required that the administrator of the Trust Territory not only seek to elevate the government to a new level, but to advance and improve the Micronesian economy to improve the quality of life in the Islands. The United Nations report on the economic conditions in Micronesia during the 1970s concluded, "the system could easily collapse unless strong measures were taken to reverse migration to the urban centers and the bureaucracy in favor of a stay-at-home-and-tend-the-farm approach." A great portion of the population was dependent on employment by the US government through the defense facilities and government grants. The United Nations specifically targeted inadequacies in the agricultural development program. The federal government had ignored mariculture as a foundation for the economy and the introduced education system ignored the indigenous culture and the combination of neglect and misdirection of resources allowed foreigners living in the islands (Japanese and Ameri-

5 Executive Order No. 11021
6 (Udall, December 27, 1968) (No. 11021 of May 7, 1962)
7 (Deloria, et al., 1976) at page 226.

cans in particular) to profit from fishing.

The dominant controversy between the Island government and the Department of the Interior was over the question of "who will control Micronesia's most valuable asset, the land." Micronesian leaders and community residents were increasingly upset over the misuse of land through allotments, which conflicted with collective ownership patterns. It was the land controversy that finally gave way to demands that the United States government negotiate a new "political status arrangement" that result in a fifteen year period of transition from trust management to independence.

After leaders of Micronesia got the attention of then Vice President Hubert Humphrey, demands for negotiations at the highest levels of government eventually began in earnest in the late 1970s. During those negotiations the United States persisted in demands to control access to the lands and particularly to gain assurance that its military installations would be unaffected. Negotiations over the lands and "strategic Trust" proved central to a conclusion that divided the Micronesian Islands into four separate groups (Federation of Micronesia, Marshall Islands, Palau, and Caroline Islands). Four separate negotiations for a new political status for each group resulted with the Federation of Micronesia and Palau pushing for independence, the Marshall Islands sought Commonwealth Status, as did the Marianas. Micronesia and Palau hold seats in the United Nations and receive the bulk of their revenues from the US government and the UN Development Program.

Spain: Catalonia

Catalonia is a "Country in Spain" as the Catalans will put it. Occupied over the last three thousand years by Phoenicians, Greeks, Corinthians, Romans, Goths and surrounded by Celtic Castilians, the Catalan people have maintained a will to exercise their powers of self-government (Rÿser, 2012). As the government of Catalyuna states in its declaration of Catalonian nationality:

> *The Catalan people have maintained a constant will to self- government over the course of the centuries, embodied in such institutions as the Generalitat - created in 1359 by the Cervera Corts - and in its own specific legal system, assembled, together with other legal compilations, in the Constitucions i altres drets de Catalunya (Constitutions and other laws of Catalonia). After 1714, various attempts were made to restore the institutions of self-government. Milestones in this historic route include the Mancomunitat of 1914, the recovery of the Generalitat with the 1932 Statute, the re-establishment of the Generalitat in 1977 and the 1979 Statute, coinciding with the return of democracy, the Constitution of 1978 and the State of Autonomies. ("Catalunya Preamble," 2006)*

Catalan territories have since the formation of Spain been claimed by the Spanish Crown as a part of the Spanish Domain. Catalunya has resisted those claims and experienced severe and violent punishment by the central government for the resistance. Never officially designated as a trust territory Catalunya nevertheless fell under the administrative control of succeeding governments in Madrid resulting in the declared illegality of Catalan culture, language and institutions. Beginning with the passing in November 1975 of General Francisco Franco, the dictator who ruled Spain with an iron fist, Catalans began the process of

recovering their cultural and political identity.

Their governmental system first instituted in the 14th century was promptly reestablished. On October 25, 1979 the Generalitat issued an "autonomy statute" to the Catalan public for a vote resulting in 88% popular support (Rÿser, 2012). The Catalonian Parliament defined Catalonia "as a nation." The Catalans had elected parliamentary representatives into the Spanish Cortez allowing the introduction of legislation that could benefit the interests of Catalonia. The Catalan delegation pressed for "devolution" of governmental powers to the Generalitat, but the parties in control of the Cortez worked to slow the process. Despite the political obstacles, the Catalan government to proactive initiatives to control schools, social services and most aspects of commerce. Among the very first initiatives was the restoration of territorial divisions (camarcas) within Catalan territory to "reflect the reality of land and people in an ongoing relationship (factors such as economy, landscape, history, urbanism" (Rÿser, 2012). The deliberate and self-initiated actions by the Catalan governing authority and popular voting of the Catalan public stimulated economic growth and Catalan success was clearly evident.

Reversing the influence and controls of the Spanish government through proactive Catalan governance began to increase Catalan confidence. The unwillingness of the Spanish government to convey powers to the Generalitat was trumped by the decision of Catalan leaders to methodically declare their national identity as the Catalan Nation, and they built their economy by establishing direct trade relations with European states, the United States and other countries by establishing "economic missions" or a Catalan business in each of the countries. Trade arrangements advantaged Catalonia, and here control over banking and other aspects of the Catalan economy resulted in Catalunya having an economy constituting 25% of the economic output of the Iberic Peninsula.

In 2012 the Catalan government declared its efforts over thirty years to "transform the Spanish state so that Catalonia could fit in well without having to renounce its legitimate national aspirations" and having been rebuffed the Spain consistently and negatively "a dead end." (CiU & ERC, 2012) The referendum reads in part:

1. **To formulate a "Declaration of Sovereignty of the People of Catalonia"** in the First Session of the 10th legislature [the current one just constituted on 17 Dec], that will have as its goal to establish the commitment of the Parliament with respect to exercising the right of self determination of the People of Catalonia.

2. **To approve the Law of Referendums** starting from the work begun in the previous legislature, taking into account any changes and amendments that are agreed upon. To this end, a commitment is made to to [sic] promote the start of the parliamentary process by the end of January 2013, at the latest.

3. **To open negotiations and a dialog with the Spanish State** with respect to exercising our right to self determination that includes the option of holding a referendum, as foreseen in Law 4/2010 of the Parliament of Catalonia, on popular consultations, via referendum. To this end, a commitment is made to formalize a petition during the first semester of 2013.

4. To create the **Catalan Council on Nation-**

> **al Transition**, as an organ of promotion, coordination, participation, and advisement to the Government of the Generalitat with respect to the events that form part of the referendum process and the national transition and with the objective of guaranteeing that they are well prepared and that they come to pass.

On 23 January 2013 the Catalan Declaration of Sovereignty was adopted by 63% of the parliamentary ministers in the Catalan government declaring the Catalan people "a sovereign political and legal subject" (FR, 2013). The indigenous Catalan's have in thirty years moved the political needle from total external control to a dynamic and forward-looking future that will require careful political skill and effective planning.

CONCLUSION

As the Trust Commission may note from my testimony, the background and examples I have given you do not present a particularly lovely or commodious demonstration of good relations between indigenous nations and states in the last five hundred years. Indeed, perhaps the clearest conclusion on can come to is that a Trust relationship has proved over the centuries to mean precisely the same thing as absorbing a population without their consent. The United Nations expressly emphasized at three different points in the UN Declaration on the Rights of Indigenous Peoples that "free, prior, and informed consent" is essential to the promotion of peaceful relations between peoples. The Trust Relationship or the dominion of one people over another without consent having been given, is demonstrably in the international context a denial of the mature capacity of people to decide for themselves what will be their preferred social, economic, political and cultural future. The only option is to create a gateway out of the cul-de-sac that is the Trust relationship. If it is made perpetual, then there is no truth to a fair and constructive relationship since one party presumes itself to be civilized and imbued with authority and it looks to the other party as weak, backward and unable to exercise mature behavior. The only way to change the international environment where we see literally hundreds of millions of indigenous peoples under the control of governments they have not chosen is to redefine the UN Trusteeship Counsel to elevate the status of indigenous nations to positions of sovereign equality when they choose. Or in the US context, institute open and transparent negotiations between the United States and each indigenous nation on an intergovernmental basis to define a new relationship that is dynamic and mobilizes the continuing growth and development of each nation and tribe.

RECOMMENDATIONS

1. The Trust Commission would do well to consider recommending to the US government engaging Indian and Alaskan Native Governments in negotiations of Trust Compacts that specify the authorities and responsibilities of both the United States and each Indian Nation or Alaskan community. These Compacts should consider social, economic, political and cultural elements in a framework specific to each political community.

2. Negotiation of Trust Compacts must be preceded by individually negotiated "framework agreements" that define the rules, procedures and terms of reference of the Trust Compact negotiations.

3. The Trust Commission should recommend a specific definition of the Trust Responsibility as having the goal of elevat-

ing Indian Nations, Alaskan Native, and Hawaiian Natives to a position of sovereign equality consistent with principals contained in the UN Declaration on the Rights of Indigenous Peoples with special attention paid to the principle of the right to "free, prior and informed consent" to any decisions made before and after a Trust Compact is concluded.

4. Each Trust Compact negotiation must present parties the opportunity to select a "third party guarantor" to mediate and guarantee enforcement of the Compact.

5. Each Trust Compact must contain opt in and opt out provisions to permit adjustments over time.

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