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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, Washington 13 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

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 non-self-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 [non-indigenous] 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*

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

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 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 the state 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. [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

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[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.

[5] Executive Order No. 11021

[6] (Udall, December 27, 1968) (No. 11021 of May 7, 1962)

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 Americans in particular) to profit from fishing.

[7] (Deloria, et al., 1976) at page 226.

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 National 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 elevating 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.

REFERENCE

Catalunya Preamble(2006).

CiU, & ERC (2012). The Agreement on Holding a Referendum.

Deloria, P. S., Goetting, R. C., Tonasket, M., Ryser, R., & Minnis, B. (1976). *Report on Federation Administration and Structure of Indian Affairs*. Washington, D.C.: United States Senate, American Indian Policy Review Commission.

FR (2013). Parliament declares Catalan people "a sovereign political and legal subject". *Nationalia*. from http://www.nationalia.info/en/news/1322.

Martinez, M. A. (1999). *Human Rights of Indigenous Peoples: Study on treaties, agreements and other constructive arrangements between States and indigenous populations, Final Report*. New York: United Nations Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities.

Parker, T. (2003). The Ultimate Intervention: Revitalising the UN Trusteeship Council for the 21st Century. *Center for European and Asian Studies at Norwegian School of Management*, 55.

Rÿser, R. C. (2012). *Indigenous Nations and Modern States*. New York & London: Routledge.

Secretarial Order 2918: Government of the Trust Territory of the Pacific Islands, Order No. 2918 C.F.R. (December 27, 1968).

Vattel, E. d. (2005). *The Law of Nations or the Principles of Natural Law* (E. Joseph Chitty, Trans.): Lonang Institute.