

SELF-GOVERNMENT PROCESS EVALUATION PROJECT

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Principal Investigator: Rudolph C. Ryser

[Ed. Note: The Final Report of the Indian Self-Government Process Evaluation Project was released in July 1996. Copies of the Final Report may be purchased for \$15.00 (\$US) each plus \$2.00 Shipping & Handling for the first two copies and \$0.50 for each additional copy. See address below for more information.]

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EXECUTIVE SUMMARY  
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Thirty three Indian governments have engaged in negotiations and concluded at least one and sometimes two Compacts of Self-Government with the United States between 1990 and 1995. The principles guiding the original negotiation of these compacts originally defined by Indian leaders in 1986 and 1987 emphasized the establishment of a government-to-government framework with the United States on a tribe-by-tribe basis. Emphasis was placed on the importance of these agreements being between each Indian government and the United States government as a whole instead of Indian governments dealing with agencies. The goals for self-government were based in these original principles, but there was a separation between principles and goals.

Two studies have been conducted to serve as annual self-governance assessments. The first study in 1993 emphasized Indian government compliance with compacts and the effectiveness of accounting and budgetary systems. The second study (1994, 1995) emphasized "costs and benefit," depending on a series of questionnaires to get opinions from Indian governments and officials of the Bureau of Indian Affairs and the Office of Self-Governance. This study was generally approving of the creative and effective activities of Indian governments and critical of the United States government's compliance with Congressional and Compact terms and requirements.

The current study, the Self-Governance Process Evaluation, is a study measuring the increase or decrease of self-governing powers in Indian governments, the effectiveness of parties to Compact negotiations and recommendations to Indian governments for approaches to the exercise of

governmental powers and approaches to negotiating future compacts with the United States.

Based on a review of documents (historical and contemporary), the following preliminary findings are offered for subject governments' consideration:

- \* The United States government generally is not seriously participating in the development and conduct of the self-government initiative.
- \* Compacts have not resulted in each Indian government arranging a government-to-government framework with the United States, and Indian governments are engaged in negotiating Compacts on an agency-by-agency basis resulting in a pattern of relations similar to PL-638 contracting.
- \* The United States government has pledged under the Helsinki Accord of 1975 to conduct government-to-government relations and increase the social, economic and political development of Indian nations, but it has failed to take the initiative to implement these commitments by seriously engaging Indian governments in self-governance compacts.
- \* Baseline Measures Reports from subject Indian governments and the study conducted by the Department of the Interior (August, 1995) confirms that Indian governments have made major progress toward social, and economic development as a direct result of the self-governance initiative.
- \* Indian governments are emphasizing social and economic development at the expense of political development, this possibility suggests the future weakening of governments and their becoming dependent on federal agencies.

The Final Report will test these findings and confirm or deny them. It will also address new findings uncovered by direct research and offer recommendations for approaches to future Indian government actions and negotiations with the United States.

#### PRELIMINARY FINDINGS REPORT

#### NATIONS MOVING TOWARD SELF-GOVERNMENT:

The goal of self-government has been emphasized by Indian nations to reduce or eliminate the influence of "the dominant federal establishment which exercises such great control over their lives and affairs (Commission on State-Tribal Relations, Handbook: State-Tribal Relations:38-39 [undated] as quoted in Ball, 1988:69-70). The only other

concern is that control over Indian interests by a neighboring state is worse. As the Commission on State-Tribal Relations observed in its Handbook (circa 1980) "States stand to inherit governmental authority on reservations if tribes lose it; federal Indian policy makes them natural rivals so long as tribal governments are not considered permanent" (Handbook at page 40 cited in Ball, 1988:70). The long road to self-government has been filled with "pit-falls." Under rules defined by the U.S. Supreme Court and Acts of the U.S. Congress efforts by Indian nations to achieve political and economic self-sufficiency by making stronger governments are met with threats of withdrawing U.S. government support in an effort to force Indian nations under the control of states. If Indian nations have weaker tribal governments then they are more likely to experience state government attempts to take control over Indian people and lands. (Ball, 1987:76) This double edge to federal and state claims on Indian people and territory constitute a constant bind from which Indian nations have long worked to extricate themselves. Self-determination and self-government been the most frequently advanced Indian nation policy.

The noted jurist Felix Cohen recognized the threats to Indian rights from many directions in his 1942 HANDBOOK OF FEDERAL INDIAN LAW, but no threat was regarded greater than that of an agency of government that is not accountable to Indian people. Cohen observed:

The most basic right of all Indian rights, the right of self-government, is the Indian's last defense against administrative oppression, for in a realm where the states are powerless to govern and where Congress, occupied with more pressing national affairs, cannot govern wisely and well, there remains a large no-man's land in which government can emanate only from officials of the Interior Department or from the Indians themselves. Self-government is thus the Indians' only alternative to rule by a government department. (Handbook of Federal Indian Law [Cohen I], 1942:122 as cited in Minugh, Morris, Ryser, 1989:102)

#### THE UNITED STATES AND THE PROMISE OF INDIAN SELF-GOVERNMENT UNDER THE 1975 HELSINKI ACCORD

The United States of America in 1979 first established an international commitment to specifically promote the self-determination of Indian nations and support the resumption of self-government by Indian nations (November 1979 "Report of the Commission on Security and Cooperation in Europe, 'Fulfilling Our Promises: The United States and the Helsinki Final Act,' Chapter: 'American Indians,'" pp 149-161.). Testimony concerning the United States treatment of Indian peoples was received during hearings conducted by the United States Commission on Security and Cooperation in Europe in April 1979. At this hearing the U.S. Commission on Civil Rights, tribal organizations, and Indian interest law firms

presented criticisms of U.S. treatment of Indians -- "both as citizens of Indian nations and tribes, and as individual minority group members" (living off reservations). In its report submitted in compliance with the Helsinki Final Act, the United States stated that Indian nations and Indian Rights are subjects of international concern for which it accepts responsibility:

... Indian rights issues fall under both Principle VII of the Helsinki Final Act, where the rights of national minorities are addressed, and under Principle VIII, which addresses equal rights and the self-determination of peoples. (Fulfilling Our Promises, Annex B: American Indians, 1979:149)

As the National Congress of American Indians observed in its August 10, 1983 statement to the United Nations Working Group on Indigenous Populations :

In accord with Principle VII of the Helsinki Final Act, the United States has pledged itself to applying and upholding inter alia the International Covenants on Human Rights in its dealings with individual Indians and natives as persons. This has particular significances (sic) for those tribal people who were relocated away from Indian territories by the United States government and now reside in non-Indian urban and rural localities.

In accord with Principle VIII of the Helsinki Final Act, the United States of America has solemnly pledged itself to applying and upholding international covenants including the United Nations Charter in its dealings with organized Indian and native nations and communities. Principle VIII applies to United States government dealings with "recognized tribes," "unrecognized tribes" and "terminated tribes." (NCAI, 1983:3-4)

Of particular relevance to the self-governance process is the application of Principle VIII which advocates the same concept as Article 76 of the United Nations Charter which addresses the right of peoples to political self-determination:

...to promote the political, economic, social, and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the peoples concerned.... (United Nations Charter)

Principle VIII also recalls the language of the Declaration on the GRANTING OF INDEPENDENCE TO COLONIAL COUNTRIES AND PEOPLES with the affirmation that peoples "freely determine their political status":

The 'political status' which each people has the right freely to determine by virtue of the equal rights and self-determination of peoples comprises both international status and domestic political status. Consequently the application of the principle of equal rights and self-determination of peoples in the political field has two aspects, which are of equal importance. (UN General Assembly resolution 1514 (XV), 14 December 1960)

The importance of the U.S. report to the Commission on Security and Cooperation in Europe (the Organization on Security and Cooperation in Europe [OSCE] as of 1995) is that it was acting in compliance with an international agreement and in response to criticisms directed at the United States government's treatment of Indians. (The U.S. Commission on Security and Cooperation in Europe was created in 1976 as an independent government agency with 12 members from Congress, representing both houses, and 2 representatives of the executive branch.) While reports about the United States government's response to criticisms was generally ignored domestically, a great deal of attention was given to the report internationally. The Assistant Secretary for Indian Affairs (then Forrest Gerrard) was reported in United States Department of State Special Report No. 73 to have "reached the need to develop a mechanism to improve involvement and participation by tribal governments in the Federal Government decision-making process as it related to the GOVERNMENT-TO-GOVERNMENT relationship and trust responsibility" ("Implementation of Helsinki Accord", US Department of State, December 1, 1979-May 31, 1980:4). This report was submitted by the US Administration as proof that the U.S. government was complying with the Helsinki Accord.

On August 1, 1975, the United States government, Canada and 33 European states signed the Helsinki Final Act to establish a framework for the 35 participating states to deal with security and human rights issues in four parts, divided into three "baskets,":

Basket I: the problems of security,

Basket II: economic relations,

Basket III: contacts among peoples, basic human rights, and standards of international conduct

The United States placed Indian Rights under "Basket III" creating an international commitment to undertake relations with Indian nations within a government-to-government framework of mutual respect and cooperation. While documents attest to United States government commitments made to advance Indian self-government within a government-to-government framework, no officials dealing directly with

Indian nations readily cite compliance with the Helsinki Accords as the reason for such a policy. President Ronald Reagan affirmed in 1983 the commitment of his administration to undertake a policy of promoting Indian self-government within a government-to-government framework, but he failed to note that his policy conformed with the 1979 commitments made under the Helsinki Final Act.

#### PREVIOUS STUDIES:

The process of defining a government-to-government framework, negotiating Compacts, and further elaborating arrangements between Indian governments and other parts of the U.S. government was not the subject of the Annual Assessment authorized by the Department of the Interior's Office of Self-Governance.

No overall study has been undertaken to determine whether or to what degree Indian governments are achieving the goal of self-government, and whether or to what degree the process between Indian governments and the U.S. government is building an effective government-to-government framework that assures a mutually acceptable balance in the exercise of sovereign powers. A first phase evaluation of the process and the goals of Indian governments in connection with shifting powers from the Bureau of Indian Affairs to Indian governments will give answers to these questions.

#### OKLAHOMA STUDY

After a review of the documents and literature, it is apparent that only one study has been undertaken, Northeastern State University's May 1993 ANNUAL ASSESSMENT, to consider the "impact of self-governance" on Indian nations. The Study concluded: "generally that Self-Governance had a positive impact at the Tribal level and should continue."

#### STUDY OF THE TRIBAL SELF-GOVERNANCE DEMONSTRATION PROJECT, DR. KEN REINFELD. 1995

The Department of the Interior was required under section 305 of Title III of Public Law 100-472 to prepare a report of the costs and benefits of the Self-Governance Demonstration Project. Though apparently completed in the Summer of 1994, the report entitled STUDY OF THE TRIBAL SELF-GOVERNANCE DEMONSTRATION PROJECT was not presented in its draft form until August 24, 1995.

Remarkably, the 131 page study conducted by Dr. Ken Reinfeld of the Secretary of the Interior's Office of Policy Analysis was a draft analysis of individual response questionnaires completed by Indian governments concerned with the achievement of tribal goals. While there were questionnaires sent to the Bureau of Indian Affairs and the Office of Self-Governance, the only thing that seems clear about U.S. government responses is that Senior U.S.

officials failed to define U.S. interests and goals resulting in confusion among U.S. officials and staff concerning the self-governance process. No evidence was presented in Dr. Reinfeld's study indicating that Senior U.S. officials either understood U.S. intentions in connection with the self-governance process or whether U.S. officials had any long term policy goals for the government of the United States.

The purpose of the study was to "...[D]etermine what has been learned from the research and demonstration project by identifying its relative costs and benefits and offering suggestions for refinement and improvement as the tribal self-governance program is being established pursuant to title IV." (Reinfeld, 1995 Letter to Reviewer, Deer, DOI, Aug. 24, 1995)

The study generally confirms vigorous and creative developments on Indian reservations and in Indian communities as a direct result of the Self-Governance Demonstration Project. It demonstrates that Indian governments generally consider the flexibility of decision-making as constructive and supportive of tribal cultural, economic and political development.

The planning process used by self-governance tribes allowed them to envision desired results and determine what needs to be done to achieve the desired results. ...the major benefit of the tribal self-governance demonstration project was the significant increase in the involvement and participation of tribal members in tribal government activities, including the setting of tribal priorities and policy directions. (Reinfeld, 1995:21)

When relations between Indian governments and the United States government are discussed, there is generally an unfavorable opinion. This is reflected in the failure of self-governance compacts to define a government-to-government framework effectively, since in the opinion of Dr. Reinfeld these agreements have resulted in "government-to-agency" agreements:

As the tribal self-governance demonstration projects of the DOI and Indian Health Service (IHS) proceeded (sic), RELATIONSHIPS BETWEEN THE UNITED STATES AND PARTICIPATING INDIAN TRIBES HAVE BEEN FORMALIZED ON A GOVERNMENT-TO-AGENCY BASIS. Both of these federal agencies have entered into separate compacts and funding agreements with their own requirements and provisions. UNLESS A CONCERTED EFFORT IS UNDERTAKEN, EACH PARTICIPATING FEDERAL AGENCY IS LIKELY TO DEVELOP ITS OWN POLICIES, SYSTEMS, PROCURES, AND REQUIREMENTS. While this arrangement may be more convenient for the particular federal agencies, it is more burdensome for tribal governments. (Reinfeld, 1995:14)

The suggestion that a "government-to-agency" framework instead of a government-to-government framework has resulted from compacts constitutes a serious indictment of the U.S. government and its failure to seriously monitor its own compliance with Compacts signed with Indian nations. It also suggests that the United States government is not taking the Compact of Self-Governance as a serious matter. Further evidence that the U.S. government is not seriously dealing with its agreements with Indian governments receives attention by the study:

...baseline measurements were not used by BIA. A major weakness of the project involved the lack of mutually determined baseline measurements being developed.  
(Reinfeld, 1995:78)

In addition to the failure of the United States Bureau of Indian Affairs to reduce its personnel, functions and services to match to funding transfers to Indian governments increases the sense that the United States government has not treated the self-governance initiative seriously. Between general praise for the accomplishments of Indian governments and failures by the United States government the study suggests a fundamental re-evaluation of approaches and strategies by Indian governments is essential.

#### THE CURRENT STUDY:

Many Indian governments have been involved in nearly eight years of planning, research, negotiations and social, economic and political change. Two studies confirm that Indian governments can handle funds efficiently and with appropriate controls, and they confirm that Indian governments can be creative when the burden of federal agency controls are removed. The Self-Government Process Evaluation is an eight month study to focus on decision making instruments (resolutions, communications, treaties, constitutions and compacts) and the process of reassuming self-government within a framework of government-to-government relations with the United States government. Are Indian governments reassuming governmental powers? Is the United States government reducing its control over subject Indian governments. Are Indian governments negotiating with the United States as political equals and is a government-to-government framework being defined for each Indian government? Are Indian nations holding the United States accountable for its commitments? Are Indian nations making decisions consistent with growing powers of self-government?

#### PURPOSE

The PURPOSE of 298SGPE is to:

Evaluate and analyze the specific measures demonstrating changes in tribal government self-



government activities, changes in the level of control exercised by the Bureau of Indian Affairs over Compact Tribes, and the effectiveness of negotiations and a government-to-government framework established to advance self-government and the initiative generally.

The GOAL of 298SGPE is specific in relation to this more broadly presented purpose:

Evaluate changes in the Compact between Tribal governments and the U.S. Government, and provide a negotiation and framework analysis with recommendations in two discrete reports to all of the Compact governments in the form of a Preliminary Findings Report in October 1995 and a Final Report by or before March 1, 1996.

#### SCOPE

The Self-Governance Process Evaluation Project is a "documents and records" research effort which emphasizes "descriptive information" and coding of that information in consistent ways to measure "frequency" over time. We will examine whether Indian government decision-making is increasing self-government, maintaining the status quo or decreasing self-government. On the basis of pre-defined measures for self-government and measures for diminished self-government, descriptive information will be compared with these measures and coded accordingly.

Measures have been formulated on the basis of "initial goals" set by the "First Tier Tribes" who originally defined and formulated the Self-Governance initiative in various documents and reports generated by these governments, between Fall 1987 and Fall 1989 including the:

- \* RED PAPER (Hoopa, Lummi, S'Klallam and Quinault) 1989.

Measures have also been based on definitions and goals as set out in:

- \* SELF-GOVERNANCE: A TRIBALLY DRIVEN INITIATIVE, the governments of Hoopa, Jamestown S'Klallam, Lummi and Quinault. 1992.
- \* SELF-GOVERNANCE: A NEW PARTNERSHIP, Lummi Nation Self-Governance Communication and Education Project: Lummi Nation. 1995.

Analysis and further definitions draw also from the following references:

- \* REPORT OF THE MEETING OF EXPERTS TO REVIEW THE EXPERIENCE OF COUNTRIES IN THE OPERATION OF SCHEMES OF INTERNAL SELF-GOVERNMENT FOR INDIGENOUS PEOPLES. (UN Economic and Social Council, Commission on Human Rights, Nuuk, Greenland, 24-28 1991 -

E/CN.4/1992/42/Add.1)

- \* STUDY OF TREATIES, AGREEMENTS AND OTHER CONSTRUCTIVE ARRANGEMENTS BETWEEN STATES AND INDIGENOUS POPULATIONS; First Progress Report, Dr. Miguel Alfonso Martinez, Special Rapporteur, UN Economic and Social Council, Commission on Human Rights, Geneva, Switzerland, (E/CN.4/Sub.2/1992/32) 25 August 1992.
- \* INDIGENOUS PEOPLES EXPERIENCES WITH SELF-GOVERNMENT. Edited by W.J. Assies and A.J. Hoekema. International Working Group on Indigenous Affairs and the University of Amsterdam, Copenhagen 1994.

Measures are further informed by contributions of Indian and other scholars in:

- \* INDIAN SELF-GOVERNANCE (Center for World Indigenous Studies, 1989)
- \* "Constitution, Court, Indian Tribes," by Milner S. Ball AMERICAN BAR FOUNDATION RESEARCH JOURNAL, Chicago. Vol 1987, No. 1, 1987.

Raw documents requested from all the governmental parties directly connected to the self-government initiative further inform the analysis. The information will be codified in data sets and all documents will be catalogued using a bar coding system. From the documentary consolidation and codification, investigators will analyze data results, conduct cross-referenced comparisons of coded results, and evaluate frequency scales to draw conclusions and formulate recommendations in a Final Report.

#### SIGNIFICANCE

This study addresses whether Indian nations are achieving new levels of political development -- offering new measures for determining the political development of Indian nations, and whether intergovernmental agreements with the United States provide a working framework for ensuring a long term and constructive government-to-government relationship.

THE SELF-GOVERNANCE PROCESS EVALUATION PROJECT examines changes in Indian government decision-making and changes in the exercise of governmental powers which specifically addresses the question: To what degree are Indian governments reassuming the capacity to exercise self-government as a direct consequence of each government entering into a COMPACT OF SELF-GOVERNANCE with the government of the United States of America. This study also addresses the subsidiary, but no less important question: Do the current intergovernmental compacts serve as an effective intergovernmental framework to ensure the resumption of governmental powers by Indian governments, or should their be further steps to evolve a stronger framework? This study relies on a process of systematically measuring the relative

level of self-government as reflected in the decision-making instruments of the subject governments.

The current study does not assess "cost-benefit," and it does not examine whether Indian governments have new administrative systems or effective financial management systems. These have been the subjects of previous studies. This study attempts to measure the change in the level of self-government of subject Indian governments and whether the government-to-government framework contributes to achieving self-government goals. To the extent that reassumed powers are those powers formerly assumed by the United States then the Indian governments have the aim of reducing U.S. governmental control over each Indian nation. The result of this process is presumed to be greater self-government. Providing a measurement of whether self-governing powers have indeed increased as a result of the negotiation of Self-Governance Compacts will enable Indian governments to determine whether they are actually achieving their goal of self-government. Indian governments will gain insights from this study into the effectiveness of their decisions and they will gain insights into the negotiation process with the United States and whether this process should be changed to achieve established goals.

#### METHODOLOGY

Thirty-three Indian governments (including Alaskan native corporations and villages) concluded Compacts with the United States government and protocol "Funding Agreements" in relation to the Department of the Interior's Bureau of Indian Affairs between the Summer of 1991 and Winter of 1995. The United States government's Office of the President in the White House, Secretary of the Interior and Assistant Secretary of the Interior for Indian Affairs were the executive participants in the formulation of compacts and protocols. Documentary information is being collected from all of these entities and agents acting on their behalf under the following categories:

1. Key communications and minutes of meetings in connection with negotiations and "framework setting" activities for the period of October, 1987- June, 1995.
2. Compacts formally concluded between 1991 and Winter 1994 and protocol "funding agreements" concerning the Bureau of Indian Affairs, Treaties and other agreements.
3. Constitutions of all Compact parties.
4. Resolutions, laws, binding motions and directives adopted and issued by all Compacting Indian governments for the periods of October 1987 to August 1990, and from September 1990 to March 1995.

Requests are being made of the Self-Governance Coordinators for each of the thirty three Indian governments and of the Self-Governance Director for the U.S. Department of the Interior to supply the materials listed above. Request will be made of SENSE, Inc. Washington, D.C. for documents and records relevant to this study for the periods indicated due to that agency's coordinating role between Indian nations during the early phases of the self-governance initiative. Each document relevant to the study received from Indian governments, the United States government and independent sources will be reviewed and evaluated as a "decision instrument" and be assigned two numeric values and a descriptive value. One numeric value will be assigned to reflect whether a decision is an exercise of governmental power or a relinquishment of governmental power. The second numeric value will be assigned to reflect whether the decision constitutes a resumption of governmental power or a maintenance of governmental power in the United States. While specific requests for documents are made to the governments and independent sources, the study is subject to whether a source wishes to limit availability of documentation or respond fully to the request. Depending on availability, up to five case studies will receive particular emphasis within the overall study.

#### PRINCIPLES OF NEGOTIATIONS AND GOALS OF SELF-GOVERNMENT:

The Tribal Self-Governance Demonstration Project became a part of the Congressional Appropriations Act for 1988 and was passed by the Congress on December 22, 1987. Anticipating the eventual establishment of the initiative as negotiated with Congressman Yates's Sub-committee, Lummi Chairman Larry Kinley formulated the principles for negotiating a self-government agreement. In his December 2, 1987 testimony before the Senate Select Committee on Indian Affairs, the Lummi Chairman listed for the Committee ten basic principles that would become the guide-posts for eventual negotiation of agreements on self-government with the United States. These principles, or intentions, reflected the views of American Indian leaders who had been working to develop a new relationship with the United States for the previous two years.

#### NEGOTIATION PRINCIPLES:

1. THERE ARE NATURAL TENSIONS BETWEEN SOVEREIGNS:  
Tensions between nations and between nations and states over sovereignty and jurisdiction are a natural consequence of geography. To reduce these tensions, or direct the tensions toward peaceful resolution, mechanisms are established between governments. Government-to-government relations, formalized to ensure appropriate resolution of disputes and mutual cooperation are the customary means for neighbors to deal with one another.

2. GREATER-POWERS PROTECTING LESSER-POWERS DOES NOT PRECLUDE LESSER-POWERS FROM EXERCISING FULL POWERS OF SOVEREIGNTY.
3. TRUST RESPONSIBILITY AND THE DUTY OF A GREATER POWER: The U.S. Trust Responsibility toward Indian Nations must be interpreted as a duty to protect and assist an Indian Nation until it achieves the full powers of self-governance on a political plain equal to that of the United States of America.
4. FEDERATION OF MICRONESIA: A MODERN APPLICATION OF TRUST. Some contend that Indian nations should forever remain in a trust status dominated by U.S. bureaucracies or be assimilated and disappear. \* \*  
\* Seeking to govern themselves, the Micronesians entered into direct government-to-government negotiations with representatives of the U.S. government with ambassadorial status to develop a Compact of Free Association. What was once a trust territory is now four separate and distinct national units (THREE OF WHICH ARE NOW MEMBERS OF THE UNITED NATIONS AS RECOGNIZED STATES [RCR]).
5. THE U.S. DOMESTIC LEGAL SYSTEM IS AN INAPPROPRIATE FORUM OF JUSTICE IN INDIAN AFFAIRS. The appropriate arena for these questions is in direct negotiations within the framework of government-to-government relations, and not the alien U.S. Courts.
6. THE COURT SYSTEM VIEWS ALL TRIBES AS THE SAME AND APPLIES ITS DECISIONS UNIFORMLY WHEN, IN FACT EACH TRIBE IS UNIQUE IN ITS TREATY RELATIONSHIP TO THE UNITED STATES. Indian governments must be dealt with individually in relations with the United States government.
7. U.S. INTERVENTION INTO THE INTERNAL AFFAIRS OF INDIAN NATIONS DEGRADES THE PRINCIPLE OF TRUST RESPONSIBILITY AND DELIBERATELY SEEKS DISINTEGRATION OF THE POLITICAL, SOCIAL AND ECONOMIC FABRIC OF TRIBAL SOCIETIES.
8. THE FEDERAL GOVERNMENT SPEAKS WITH MANY VOICES ON INDIAN AFFAIRS PLACING LEGITIMATE LEGAL RIGHTS IN THE POLITICAL ARENA.
9. TRIBAL SELF-GOVERNMENT WITH UNITED STATES SUPPORT IS AN ESSENTIAL, BASIC GOAL OF TRIBAL LEADERSHIP.
10. TRIBES AND THE UNITED STATES MUST INITIATE A MEANINGFUL GOVERNMENT-TO-GOVERNMENT PROCESS TO ACHIEVE INDIVIDUAL TRIBAL SELF-GOVERNMENT. (Lummi, 1987)

SELF-GOVERNMENT PROCESS GOALS:

By 1989, the principles originally announced by the Lummi Chairman in 1987 were amplified by a statement of goals:

1. Formalize relations between the United States and Indian Tribes on a government-to-government basis;
2. Allow Indian Tribes to determine internal priorities, redesign programs and reallocate financial resources to more effectively and efficiently meet the needs of their Tribal communities;
3. Promote greater social, economic and political self-sufficiency among Indian Tribes;
4. Establish better accountability through expanded Tribal Council decision-making authority;
5. Institute administrative cost-efficiencies between Tribal governments and the United States through reduced paperwork burdens and streamlined decision-making process; and,
6. Change the role of the Federal agencies serving Indian Tribes by shifting their responsibilities from day-to-day management of Tribal affairs to that of protectors and advocates of Tribal interests.

The principles stated by the Lummi Chairman set out the broad guidelines and purpose of the negotiation of self-government compacts with the United States. Consideration of goals without taking into account the principles on which the goals are based creates artificial assumptions that can be misleading. The intentions behind goals determines whether these goals can actually be achieved. An initial comparison of principles with goals suggests whether there is any coherence between original intentions and subsequent goals. In the table below, Indian nation principles cohere most strongly with the Goal 1 of formalizing relations between the United States and Indian tribes on a government-to-government basis, and with Goal 6 of changing the role of Federal agencies serving Indian tribes.

COHERENCE OF NEGOTIATION PRINCIPLES WITH TRIBAL GOALS

NEGOTIATION PRINCIPLES	*** SELF-GOVERNMENT GOALS ***					
	1	2	3	4	5	6
1. Gov-to-Gov Mechanism	X					1
2. Lesser Power Sovereignty			X	X		2
3. Trust: Elevate/Protection	X		X	X		4
4. Trust: Modern Application	X		X	X		4
5. Direct Negotiations	X					1
6. Indiv Tribe/US Treaty Rel.	X	X				2

7. Non-Interference Internal		X				X	2
8. Political Relationship	X					X	2
9. U.S. Assistance		X			X	X	3
10. Gov-to-Gov Process	X				X		2

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Level of Coherence: 23

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As earlier studies indicate, Indian governments tended to emphasize Goals 2,3,4,5. Such an emphasis is in part consistent with the original intent of the self-governance process, but the two pillars of the process (as represented by Goals 1 and 6) received less attention (Reinfeld, 1965)

PRELIMINARY FINDINGS:

- \* Though the United States government first stated a policy of self-determination in 1970, it has not expressed its own interests in relation to the self-governance process. The U.S. government entered into negotiations with Indian governments and never presented its own interests as a matter of negotiation. Since the United States government expressed no goals of its own, officials of the U.S. government apparently assumed that there was fundamental agreement with Indian government goals. The failure of the United States government to address its interests and goals in the context of negotiating compacts may prevent the United States from fully complying with Compacts of Self-Governance and Funding Agreements. A failure to comply with compacts is highly likely since unstated interests and goals may become the basis for not complying with intergovernmental agreements with Indian nations.
- \* Of the thirty-three Indian Governments, many have negotiated a second Compact, though the second is with the Indian Health Service. It appears that the negotiation of such additional compacts adds to tribal and federal expenses unnecessarily while undercutting tribal government negotiations with the US. An underlying concept for the self-governance process has been that each Indian nation must have relations with the whole of the United States government and not merely an agency. One Compact per nation appears to be all that is necessary amended by a series of protocols or funding agreements. If nations are obliged to negotiate a Compact with an agency they are bound to experience agency overload and an immense bureaucracy. This is one thing Indian nations were attempting to avoid.
- \* Even though Indian nations have had the right since 1976 to appeal to the Commission on Security and Cooperation in Europe to ensure U.S. compliance with the Helsinki Final Act, no Indian nation has either

contacted the U.S. Commission or the Organization on Security and Cooperation in Europe based in Europe regarding the self-governance process.

- \* Baseline Measures Reports from subject Indian governments and the study conducted by the Department of the Interior (Study of the Tribal Self-Governance Demonstration Project-1994-August 1995) confirm major progress by Indian governments toward the achievement of goals 2,3, and 5 though these reports tend to emphasize program and budget elements at the expense of questions of political development.
- \* Baseline Measures Reports from subject Indian governments confirm little overall measurable progress toward achieving goal 6. Indeed, preliminary evidence suggests the Bureau of Indian Affairs is resisting reductions in functions, and costs corresponding to the levels of pass-through funding, and the United States government paying little serious attention to the commitments contained in Compacts.
- \* While there is some evidence suggesting progress in goal 4 in the first part "better accountability" there is limited evidence of "expanded Tribal Council decision-making authority" which would indicate resumption of greater governmental powers.
- \* Goals 1,4 and 6 most directly address the original principles of negotiations, but primary emphasis has been on the affirmation of Goals 2,3 and 5 in the Baseline Measures Reports and Studies.
- \* Compacts have not resulted in each Indian government arranging a government-to-government framework with the United States, and Indian governments are engaged in negotiating Compacts on an agency-by-agency basis resulting in a pattern of relations similar to PL-638 contracting.

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Questions may be referred to: Director of Research  
Center for World Indigenous Studies  
PMB 214  
1001 Cooper Point RD SW Suite 140  
Olympia, Washington 98502-1107 USA  
360-754-1990  
[www.cwis.org](http://www.cwis.org) <<http://www.cwis.org>>  
[usaoffice@cwis.org](mailto:usaoffice@cwis.org) <<mailto:usaoffice@cwis.org>>

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