



"The treaty-making process was resumed in 1990 as a legitimate government-to-government method for arranging political, economic and legal relations between the United States government and Indian governments."

Sovereign Nations recently interviewed Rudolph Ryser, Chair of the Center for World Indigenous studies, who has been commissioned to conduct a study around Self-Governance. Sovereign Nations encourages Tribal leaders to respond to the preliminary findings of the study currently being conducted by the CWIS. Mr. Ryser may be contacted at P.O. Box 2574 Olympia WA 98507

1. Mr. Ryser, you've stated in your Preliminary Findings of the Self-Government Process Evaluation Project, "Indian governments are engaged in negotiating Compacts on an agency-by-agency basis resulting in a pattern of relations similar to PL-638 contracting." Explain what this means, why you think it is occurring and what can be done to change this relationship.

Ryser: Indian nations that entered into a Compact on Self-Governance with the United States government concluded the first treaties with the United States since treaty making was stopped unilaterally by the U.S. Congress in 1871. What this means, is that the treaty-making process was resumed in 1990 as a legitimate government-to-government method for arranging political, economic and legal relations between the United States government and Indian governments. At the same time, these new treaties began the political process of shifting political power back to Indian governments. After 125 years when the US government's Bureau of Indian Affairs took Indian government powers and exercised what Felix Cohen called "government by an agency of the U.S." the new treaty process began to return governmental powers to Indian governments. This is what is meant by the expression "resuming self-government" by Indian nations.

Now that the historic process of treaty-making and shifting-governmental power has begun it is important to measure whether or not Indian nations are actually increasing their self-governing powers or not. When does an Indian government become self-governing? Are the treaty negotiations actually producing the shift in power that is at the foundation of this process? In July 1995, the Center for World Indigenous Studies

was commissioned to undertake a several month's long study to begin answering these questions. The Self-Government Process Evaluation Project, with a team of eight researchers, is a "documents research" project which involves the review of thousands of resolutions, key communications, treaties, and constitutions and the careful coding of information from these papers provided to us by participating Indian governments and the United States government. A preliminary examination of a great many of these documents provided some early indications of what the study's final findings might be.

Given the thrust of the self-governance process (increasing governing powers in Indian governments and reducing US governing powers over Indian nations), it would be natural to assume that the negotiations of compacts would establish a government-to-government framework that fosters the intended transfer of power. Preliminary findings indicated that the first tier Indian governments (Absentee Shawnee, Hoopa, Jamestown S'Klallam, Lummi, Quinalt, and Sac n Fox) were clearly intent on entering into negotiation of compacts as one government to another government. As the negotiations began, they certainly had all of the characteristics of "government to government negotiations." Indeed, the conclusion of compacts and protocols (Funding Agreements concluded are actually protocols—operational and procedural documents supporting the main treaty). In the second round of negotiations during the next year, the U.S. government appears to have shifted its PL 638 contract negotiating approaches into the newly established Office of Self-Governance. This office appears to have become an "annex office" for the Bureau of Indian Affairs instead of an office operating directly under the authority of the Secretary of the Interior. *When tribes began negotiating the second year funding protocols, they faced virtually the same procedures and approaches in the Office of Self-Governance as they had earlier faced in the Area Office 638 contracting desk.* Instead of negotiations, Indian government officials were increasingly met with a "done deal." *Unfortunately, Indian government officials failed to recognize that they did not have to accept the "take it or leave it" approach; they forgot they were negotiating*



a treaty and not an administrative process. The treaty negotiations continue each year, but the tribal officials appear to have ignored this fact as did the U.S. government officials. When tribes were taking the next step to address the Indian Health Service, they appear to have accepted the suggestion that a wholly new compact had to be negotiated concerning the IHS. This was a serious mistake. Compacts had already been negotiated. All that was needed for the IHS was a new protocol for transferring funds. The preliminary thought on this matter is that the only way to change this condition is to go back to the negotiating table to redefine, or refine the compacts and refine the protocols. This must be done at the highest levels of Indian governments and the United States government.

2. *Mr. Ryser, many Tribal leaders have complained that what the Tribe and the federal government call negotiations is not truly negotiations. The definition of negotiations does not usually include one party having control over that being negotiated and, at the same time, having the final say on the outcomes of each negotiation. Does this sound like government-to-government negotiations to you?*

Ryser: The negotiation of a bi-lateral treaty like the Compact of Self-Governance involves the mutual recognition of sovereignty by both parties and the agreement to basic principles and establishment of a framework for the conduct of relations to achieve mutually defined goals. The Funding Agreement is technically called a protocol which describes how the treaty will be carried out in detail. The treaty itself generally does not need to be re-negotiated since it lays down broad principles of agreement by the parties, but may have to be re-negotiated if these principles of agreement change. The protocols are supposed to be re-negotiated each year, but as I indicated before, both parties (Indian governments and the US government) appear to have failed in their understanding that the protocol is a part of the treaty itself. Indian governments have failed to demand the same negotiation conditions for the protocols as they first demanded in 1990 for the compact negotiations. Also, it appears, that the bureaucrats from both governments are more directly in control of the protocol negotiations and this leads to reducing the process to administrators serving administrative purposes instead of the political aims originally set out in the compacts.

3. *Given the current atmosphere of BIA cuts and Senator Slade Gorton's attack on Tribal sovereignty, what do you feel is the future of Self-Governance? What can the Tribes do to ensure the success of Self-Governance? Ryser*

Ryser: In my personal view, Senator Gorton is simply acting out politically what he has always said he wanted to accomplish legally in the US Supreme Court (where he failed). He is interested in promoting state's rights in a way consistent with his interpretation of the US Constitution's Article 10. His is the kind of threat that Indian nations have always experienced from the various states. He is clearly interested in forcing Indian nations to fall under the control of the Bureau of Indian Affairs once again by abrogating the Compacts of Self-Governance. *He is seeking to violate, through abrogation, treaties concluded between the US and Indian nations.* No one should be surprised that Senator Gorton or any other elected US officials would attempt to prevent the resumption of self-government by Indian nations. If Indian nations with agreements recognize that the treaty process is a political process and only secondarily a legal process they will know that they must develop new forms of political leverage inside the United States and in the international community to impress upon the US government the necessity to fulfill its treaty (compact) agreements.

4. *Mr. Ryser, what will the final report entail and how can the Tribes help?*

Ryser: The final report will be an expanded version of the Preliminary Findings with a detailed analysis of data gleaned from the thousands of records. Because the project was cut by half from its original plan as a result of funding cuts we will examine the year-by-year resolutions of up to three Indian governments as case-studies instead of up to 19 governments. We will be examining as many documents from Indian governments and the U.S. government as we are provided. The study will

provide a new measurement tool to evaluate the increasing or decreasing levels of self-government exercised by Indian governments. It will provide an analysis of the compact negotiating process, where the process contributed to achieving self-government and where it may have undermined the process. The study will also address the question of whether the government-to-government framework is adequate to achieve the goals of political sovereignty for Indian nations. Finally, the research team will provide data that support recommendations to Indian governments and the U.S. government for improving the negotiation process and the effective shift of governmental powers to Indian governments.

About a month ago, I sent a letter to each of the self-governing tribes concerned with the Department of the Interior

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Self-Governance is a Tribally driven initiative intended to provide Tribal governments more control over their own destinies. The project fosters the shaping of a "new partnership" between Tribal governments and the government of the United States. We believe that excellence in related communication and education is fundamental to the achievement of these goals.

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Mr. Ryser
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(the scope of the project is limited to DOI because of a lack of funds) requesting that each send documents and records copies for our review. These included key communications concerned with negotiations, treaties, constitutions and related communications concerning changes, and other documents. We also asked that those governments interested in being the subject of a case study send copies of all resolutions adopted by their legislative body from 1988 to December 1994. The results of each case study will be prepared as a separate report for each government. The data used in the Final Report of the Study will be left anonymous for up to three governments. This part of the study is a kind of "political thermometer" to measure whether the Indian government is actually increasing its self-governing powers and in what particular issue areas. **Sending documents immediately would help the process.** Because of the cut in the size of the project, we will attempt to complete as much information coding and analysis as possible. We will prepare a full report, but it will be based on a smaller quantity of information.

Rudolph Ryser is a member of the Cowlitz Indian Tribe and the Chair of the Center for World Indigenous Studies in the United States. He has for more than twenty-five years worked in the field of Indian Affairs as a writer/researcher and Indian rights advocate. His most recent publications include "Resuming Self-Government in Indian Country," Murdoch University E-Law Review, Western Australia (1995) and "State Craft, Nations and Sharing Governmental Power," in **Systems of Self-Government for Indigenous Peoples**, international Work Group on Indigenous Affairs, Copenhagen (1994). He is currently working on a new book publication in 1996 entitled, **Fourth World Geopolitics: Coexistence and the New International Political Order.**

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