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HUMAN RIGHTS VIOLATIONS AND LANDRIGHTS

OF NATIVE AMERICAN NATIONS IN THE USA:

THE CASE OF THE WESTERN SHOSHONE

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I. Legal foundations:

When european settlers founded the United States of America, a military conquest of the continent was unthinkable. Most of today's US territory was still in possession of the original owners, which were acknowledged as sovereign nations and had diplomatic relations with European nation states and the USA.Based on these relations, bilateral treaties were conducted in which the sovereign nations ceded part of their territories. This legal status was confirmed in decisions of the US Supreme Court, where Indian Nations still in 1823 were explicitly defined as "foreign powers".

With the growing demand of land for settlers, for the construction of roads and railways and the exploitation of resources, treaty making increased and Indian Nations ceded larger portions of their territories – often under military threat. But for the remaining land treaties guaranteed inalienable title to them.

In 1863 the Treaty of Ruby Valley was conducted between the USA and the Western Shoshone Nation. In Article V the eastern part of Nevada was defined and acknowledged as Western Shoshone Territory (see App. I and II)

These treaties were unilaterally broken by the USA and undermined by domestic law. The General Allotment Act of 1887 was designed to break up Indian territories that were used in common, by alloting between 8O and 16O acres to each adult or head of family, while all remaining land (roughly two thirds of Indian territory) automatically was turned into United States property.

Almost 9O % of Western Shoshone land and resources gradually came under the control of the US Dpt. of Interior and it's branches (Bureau of Land Management, Forest Service, Park Service, Fish & Wildlife etc.) The Taylor Grazing Act of 1934 authorized the Bureau of Land Management (BLM) to manage vast portions of Western Shoshone Territory, but the act did not cede property or treaty rights to the USA.

In the 19th century the US Supreme Court successivly developed the theory of trusteeship, giving the trustee USA almost unlimited power over indian land and property and Indian Nations the status of wards of the US government. Since the trustee is bound to act in the best interest of it's wards, further landcessions to the trustee often were labeled as being in the best interest of the Indian Nation concerned. The Bureau of Indian Affairs (BIA) became the administering body to manage the government's wards.

II. The Indian Claims Commission

In 1946 the US Congress ratified the Indian Claims Act in order to resolve indian claims to lands taken by the USA. The Indian Claims Commission was founded to handle these claims.

Due to their status as wards, Indian Nations had no free choice of legal representation. Until 1968 contracts with lawyers were arranged and controlled by the BIA.

In 1947 the BIA arranged a contract between the Washington law firm Wilkinson, Cragun & Barker and the Temoak Band of the Western Shoshone in order to solve the issue of their landrights as guaranteed in the Treaty of Ruby Valley.

In 1951 Wilkinson and Wilson filed a petition in the Indian ClaimsCommission on behalf of the Temoak Band, suing on behalf of the Western Shoshone Nation. Thus the Temoak Band became the sole representative of the Western Shoshone Nation, of which it only was a small percentage.

Contrary to the expressed will of their clients, to retain their homelands as guaranteed in the Treaty of Ruby Valley, the attorneys pursued a financial compensation. The Indian Claims Act, which was drafted by Wilkinson, Cragun & Barker, provided 10 percent of the financial award as attorney's fees.

In the course of the proceedings, the claims attorneys chose their own "exclusive representatives" of the Western Shoshone Nation (Western Shoshone Claims Committee, Temoak Band Council, Western Shoshone Identifiable Group, General Council...). They were arbitrarily founded at ad hoc meetings in order to approve and legitimate the attorney's plans and were dismissed if they did not approve. (Memorandum of the Duckwater Shoshone Tribe et al. in Opposition to the Motion and Petition for Attorney's Fees and Expenses. US Court of Claims July 15th, 1980. App. III)

When the Western Shoshone wanted to hire an attorney to support their efforts against the claims attorneys, he was informed that Wilkinson and Wilson already had a contract with the "exclusive representative" of the Western Shoshone and that the Department of Interior would not approve another contract. (Memorandum of the Duckwater Shoshone et al...:p 4)

The Western Shoshone had no access to the proceedings or the files in the ICC. When it became evident, that they had no influence on the claims attorneys and their strategy, they dismissed them in 1976. The dismissal was ignored by the attorneys and the ICC and all their efforts to stopp the proceedings with the support of a new generation of lawyers were denied.

In 1974 Western Shoshone people of different groups and reservations formed the WESTERN SHOSHONE LEGAL DEFENSE & EDUCATION ASSOCIATION to defend their landrights. The ICC denied the right of the Association to participate in the proceedings and dismissed its petition in Feb. 75. On Appeal, the Court of Claims affirmed the dismissal on the ground that the ASSOCIATION had failed to present evidence to support its objections, ignoring the fact that the Commission had completely denied any opportunity to do so. (Report on the Presentation of Human Rights Complaints by Indian Nations to the UN Commission on Human Rights. Indian Law Resource Center, Sept. 1980:43. App. IV)

Also dismissed were attempts of the Temoak Band Council, the original "exclusive representative" of the Western Shoshone Nation to intervene. Though the court conceded, that there has never been a formal extinguishment of titel, it denied a motion of the Temoak Band Council to stay the proceedings (Court of Claims Feb.21, 1979, see also Memorandum of the Duckwater Shoshone et al. 1980)

In 1979 the Court of Claims awarded US $ 26 Million for the taking of the land of the Western Shoshone Nation to an "Identifiable Group" which meanwhile had become the sole "representative" of the Western Shoshone Nation. (Western Shoshone Identifiable Group vs.USA. Docket 326-K, Dec. 6th, 1979)

For the valuation of the land the ICC and the claims attorneys stipulated a fictitious date of taking by "gradual encroachment" (1872). The value was estimatet at 1 US $ and 5 cent per acre. The argument, that the land has been taken by gradual encroachment is disproved by the fact, that 90 % of Western Shoshone territory is "public land" and not in private non-indian ownership.

When the BIA held a Hearing on the distribution of the award, more than 80 percent of the Western Shoshone voted not to accept the money. The award - less US $ 3 Millions for attorney fees and expenses - was accepted by the Dept. of Interior and there it is still today. The Western Shoshone did not cede or sell their land, they request to observe the Treaty of Ruby Valley.

III. The case "Dann vs. USA"

In the course of the Claims proceedings another case on Western Shoshone land rights emerged. Mary and Carrie Dann, members of an extended Western Shoshone family, called the Dann Band, have their ranch in Crescent Valley in the heart of Western Shoshone treaty territory (see map, App. I). In 1973 they were approached by the BLM to apply for grazing permits and to pay grazing fees. They refused to do so, arguing that their cattle is grazing on Western Shoshone territory. When they were sued for tresspassing by the BLM in 1974, they challenged the USA for the absence of proof that they legally obtained title to Western Shoshone land.

While the case "Dann vs. USA" went up to the US Supreme Court and down again, it became the test case for Western Shoshone land and treaty rights. The Western Shoshone Nation had no legal remedies left after the compulsory award and therefore supports the Danns in this struggle to maintain their land and treaty rights.

In April 1980 the Federal District Court of Nevada states, that the Danns still owned the land in 1973, when they were charged by the BLM for tresspassing, but that they lost it in December 1979, due to the claims award. (USA vs. Dann 25.4.80).

From now on it is presumed in the proceedings, that the award extinguished Western Shoshone landrights. No evidence exists of a formal or official act of extinguishment of Western Shoshone title or a cession of land to the USA and the question of title has never been litigated in the courts. The ICC only refered to the stipulated date of taking (1872) by "gradual encroachment".

Faced with the Western Shoshone's insistence, that the USA cannot prove ownership or cession, the court presents the claims award as proof. Conceding that the issue of landrights has not been litigated, the 9th Circuit Court argues that "payment of the award establishes conclusively, that a taking occurred" - ignoring that the money still rests in the US treasury. The court rules, that the Danns are barred from raising the issue of the title. (USA vs. Dann. US Court of Appeals, 9th Circuit, Jan. 11, 1989. App. V) This decision allows the Danns to graze 21 head of cattle.

According to a study on land use, already in the 7Oies a ranch with less than 5OO head of cattle could hardly exist in Nevada (Richard Clemmer "Land Use Patterns and Aboriginal Rights. 1974, p. 36). Non-indian ranchers on Western Shoshone territory are grazing 6OOO and more head of cattle.

When the Court of Appeals indicates, that the Danns could claim individual aboriginal rights, they reject the offer, because they have been struggling for Western Shoshone land rights, which never have been "individual rights". (USA vs. Dann, 9th CC Jan. 11, 1989).

IV The Bureau of Land Management

In June 1991, as a result of the denial of Western Shoshone landrights, the Federal District Court of Nevada authorized the BLM to reduce livestock. The Danns are the first target of the measure.

Faced with broad protest in Nevada and internationally against the confiscation, the BLM changed the issue of landrights into one of "overgrazing", justifying the livestock reduction as a measure to protect the land.

This is inconsistent with the BLM's action to create large clearcuts by chaining pine forests on Western Shoshone treaty territory in order to gain more rangeland for non-indian ranchers. It thus increased erosion in Nevadas halfdesert lands enormously, against the strong protest of the Western Shoshone. In their traditional way of life pine nuts were crucial for survival and pine trees still are important in their ceremonies today.

The same BLM has granted illegally and without public hearings 4.1 million acres for bomber ranges and military operation areas, where now tons of rotten munition are contaminating soil and groundwater. (Richard Misrach "Bravo 2O - The Bombing of the American West". John Hopkins Univ. Press, Baltimore/London 199O)

V. Extinguishment of Western Shoshone Treaty Rights

In december 1991 the 9th Circuit Court ruled, that the claims award has also extinguished all subsistence rights guaranteed in the Treaty of Ruby Valley like the right to hunt, fish and gather. (Western Shoshone National Council vs. Nevada Dpt. of Wildlife Dec. 11, 1991. App. VI)

The claims award was only paid for land, not for the extinguishment of the Treaty of Ruby Valley and treaty rights. Subsinstence rights in treaties with Indian Nations are seperate rights to their natural resources and not automatically extinguished by an award for land. The award did not include compensation for natural resources. For the Western Shoshone the landtheft did not happen in the 19th century, it happened with the claims award. Their struggle against this money is part of their resistance against the violation of their rights and the breach of the Ruby Valley Treaty. Numerous attempts were made to undermine their rejection of the money.

VI. HR 3897 – the "Vucanovich Bill"

One of these ongoing attempts is legislation introduced to congress by Representative Barbara Vucanovich of Nevada in order to enforce the distribution of the claims award (HR 3897 of Nov. 22nd 1991). Especially destructive for the Western Shoshone Nation is the provision to distribute 8O percent of the award on a per capita basis to individuals.

In violation of the government–to–government relationship, which has repeatedly been reaffirmed by the US government (Presidential Proclamation of 1988), the bill was drafted without consulting the Western Shoshone, who are the exclusive subject of the bill.

The enforced distribution of the award would undermine the Western Shoshone's struggle for landrights they never ceded or sold and foster the government's position, that the USA legally obtained title by "legalizing" the landtheft afterwards.

VII. The present situation: the impoundment of livestock

In June 1991 the BLM announced the impoundment of the Dann's livestock, but due to broad protest, including environmentalists, it was finally delayed till spring 1992. On Sept. 24th, 1991 repeated efforts of the Western Shoshone led to an agreement with the BLM: If the Western Shoshone National Council takes responsibility for a reduction of livestock, future range use and management would be negotiated in spring 1992 and Senator Reid of Nevada promised to push for negotiations over landrights in the Senate Select Committee on Indian Affairs (NATIVE NEVADAN Dec. 1991 and CITIZEN ALERT 1/92. App. VII a, b)

During winter cattle was reduced by more than 2O% and horses by 75%. When the BLM and Senator Reid were informed about the reduction, they both denied the agreement of Sept. 1991 and like so often before, the Shoshone's hopes for negotiations were frustrated. In February 1992 the BLM started to confiscate horses, the impoundment of cattle will follow.

On March 26th, the Western Shoshone National Council announced, that it has "nationalized" the Dann's livestock, which thus came under ownership of the Western Shoshone Nation – henceforth the US must deal in this issue on a nation–to–nation basis.

VIII. Western Shoshone Complaint for Genocide

The Western Shoshone National Council prepares to sue the USA for genocide, based on the Genocide Implementation Act (PL 1OO–6O6 at 18 USC Section 1O91, 1O92, 1O93).

The USA has destroyed their traditional way of life, that was in accordance with the fragile eco–system of their land. As agreed in Art. IV of the Treaty of Ruby Valley, many Western Shoshone became herdsmen and are selfsufficient. The confiscation of livestock and the denial of land– and subsistence rights deprives them of their means of existence. Nevadas sagebrush deserts do not allow agriculture and lack the infrastructure for the development of employment.

The denial of their inherent rights as an indigenous people to their homeland and the use of this land leads to their uprooting, the disruption of the social and cultural fabic of their way of life.

IX. The Western Shoshone's quest for a fair solution of the landrights issue.

According to the government-to-government relationship, the Western Shoshone Nation requests the opportunity to talk on the political level, where decisions are made.

Since many years they are requesting a congressional hearing in order to negotiate a fair solution of the landrights issue and an investigation of the fraud in the claims proceedings.

Their numerous efforts in letters, proposals and presentations of their desperate situation to politicians and the Senate Select Committee on Indian Affairs have been ignored (chief Raymond Yowell's letter of June 29th, 1991 to Sen. Inouye, App. VIII)

X. Human Rights Violations against the Western Shoshone Nation by the USA

1. The Western Shoshone were denied due process of law

- The claims proceedings to the effect of extinguishing landrights were forced upon the Western Shoshone Nation

- they were denied access to the ICC and the files of the proceedings

they were denied free choice of legal representation. They had no control over the contract with Wilkinson, Cragun & Barker and were denied to dismiss attorneys who misled them by false information and acted against the expressed will of their clients to retain their landrights, by pursuing a financial award

- the free choice of legal representation after 1968 came too late for any intervention to stop the proceedings and was led to absurdity by the denial to follow an alternative strategy

- the ICC ruled on a financial compensation, alleging the loss of landrights in absence of documented evidence, on the basis of a fictitious date

- the courts denied to litigate basic issues of Western Shoshone landrights, like the Treaty of Ruby Valley and the absence of an act of extinguishment or cession – on the grounds of a payment, that did not occure

- they were denied to own property, because no alternative to the compulsory award was allowed

- they were denied just compensation, since they were paid 1 $ 5 cents per acre, the estimated value of the land in 1872, while their landrights were extinguished by the award in 1979, when the value of the land had multiplied several hundred percent.

2. The arbitrary extinguishment of the Treaty of Ruby Valley violates US law and international law

The Western Shoshone are denied constitutional rights. According to the US constitution, treaties with Indian Nations are "Supreme Law of the Land" and can only be dealt with by congress. The US congress has refused to considder the Treaty of Ruby Valley, which is treated in the courts as beeing extinguished by the ICC

- the ICC was not a court with the authority to decide on legal issues of landrights or to extinguish treaties, but a commission to handle claims awards. Yet its decision on the award was taken like a final court decision on the issue of landrights and used as an instrument to extinguish the Treaty of Ruby Valley. (Dann vs. USA, WSNC vs. Nevada Dpt. of Wildlife)

- the extinguishment of the Treaty of Ruby Valley and the rights contained therein and the compulsory expropriation without just compensation violates US law, the constitution and international law.

3. Violations of Human Rights as defined in International Law on Ethnocide and Genocide

- The arbitrary extinguishment of the Treaty of Ruby Valley and the land– and treaty rights thereof (land use, grazing rights, the right to hunt, fish and gather) is violating an indigenous peoples' inherent rights to its homeland and natural resources

- the destruction of the Western Shoshone Nation's livelihood and basic means of existence violates Art.I(2) of the International Covenant on Civil and Political Rights and Art.I (2) of the International Covenant on Economic, Social and Cultural Rights

- the USA denies the Western Shoshone Nation's right to own property and thus violates Art. 17 (1) of the Universal Declaration of Human Rights

- this denial is based on legislation exclusively enacted for Indian Nations and violates the International Convention on the Elimination of All Forms of Racial Discrimination.