SCSS Response to the Draft General Comment on UN Human Rights Council Resolution 29/22 on “Protection of the Family”
D. Brian Scarnecchia

This statement was submitted to the UN Human Rights Council by the SCSS and a sister organization, the International Solidarity and Human Rights Institute (headed by SCSS Treasurer D. Brian Scarnecchia of Ave Maria School of Law) in their capacity as NGOs. Scarnecchia drafted the statement, which calls upon the Council to insist on the upholding of true marriage and protection of unborn human life as part of the rights of the family and links them with protecting the environment. It says that “human ecology” must be protected along with physical ecology, that they cannot be separated. It proposes use of the Public Trust Doctrine from Anglo-American common law to do this. It especially deplores the attempt to impose same-sex “marriage” and abortion rights on the Developing World.

From: D. Brian Scarnecchia, Society of Catholic Social Scientists Treasurer and NGO Representative
To: UN Human Rights Committee
Date: October 29, 2015
Re: NGO Response to Draft General Comment on Human Rights Council Resolution 29/22 on “Protection of the Family” (N.B.: An almost identical version of this statement was previously submitted on behalf of the International Solidarity and Human Rights Institute.)

Introduction
The Society of Catholic Social Scientists (SCSS) joins another Catholic UN NGO, the International Solidarity and Human Rights Institute (“the Institute”), in its commitment to establishing solidarity among people worldwide by promoting authentic human rights based on Natural-Law principles, as set forth in such documents as the Declaration of Independence, the Universal Declaration of Human Rights, and the Charter of the Rights of the Family. The Institute’s mission is informed and motivated by respect for the inherent dignity and equality of all human beings as endowed by God and as understood by the universal Teaching Office of the Catholic Church.
The Institute’s work involves education and research, public-interest litigation, mediation, and works of mercy so as to eliminate human-rights violations. The Institute, acting alone or in conjunction with other like-minded institutions (like the SCSS) informs the public, students, government officials, international organization delegates, and financial, educational, and cultural leaders and assists them to promote solidarity and human rights. The Institute’s mission is principally directed towards governments, national and supranational institutions, organizations and tribunals.

**Family: The Foundation of Authentic Human Ecology**

The human species, no less than any other species, thrives in its natural ecosystem. As millennia of human history proves, the foundational element of the human ecosystem is the natural reproductive human family “based on marriage, a complementary partnership for life, between one man and one woman of marriageable age, constituted with full and free consent, publically expressed, to which the mission of transmitting life is naturally and exclusively entrusted.”

**Principles of Environmental Law: Their Application to Human Ecology**

Pope Francis agrees with the general thrust of the *Millennium Development Goals*, Goal 8 (Develop a Global Partnership for Development) and *Sustainable Development Goals*, Goal 17 (Revitalizing the Global Partnership for Sustainable Development, in so far as “what is needed . . . is an agreement on systems of governance for the whole range of so-called ‘global commons’”). The global commons is composed of multi-layered ecosystems, each integral in its own right and interdependent with each other. Good stewardship of the planet requires a respectful balancing of the principles of flourishing intrinsic to each ecosystem. Developments in environmental law have made plain that certain basic principles must be employed in order to ensure integral and sustainable human development. The most fundamental of these rational principles is trust, expressed in the *jus cogens* norm that “promises are meant to be kept”—features of which have been recognized in international treaties outlawing crimes against humanity and genocide. In particular, the preemptory norm of trust finds articulation in the Public Trust Doctrine (PTD), the slate upon which all political constitutions are written and “the DNA from which legitimate power is created.” The Public Trust Doctrine rightly understood, therefore, offers promise for the sound governance of the whole global commons including the integral development of the human family.
The Public Trust Doctrine: Its Basic Features and Scope

The PTD is a creature of trust law. It provides for the wise stewardship of common property held in trust for the benefit of all people. It demands that public authorities exercise their fiduciary duty to both conserve and provide public access to the trust resources. Originally the PTD was bound to lands subject to tidal waters under English and American common law. “At common law, the title and dominion in lands flowed by the tide water were in the King for the benefit of the nation. . . . Upon the American Revolution, these rights . . . were vested in the original States.” Today the scope of the PTD has been expanded and it has been adopted by many nations, especially in the Developing World, to protect all natural resources. Moreover, the PTD has been recommended as perhaps the most effective way to realize the goals of Rio + 20 since “the PTD converts stewardship principles to substantive stewardship requirements.” The PTD is analogous to the Common Heritage of Humanity (CHH) provisions already included in both hard and soft international law.

Public Trust Doctrine: The Precautionary and Natural Use Principles

Trustees have an affirmative fiduciary duty under the PTD to be proactive and protect trust assets before it is too late. The law should and must enable them to challenge effectively threats to public trust assets. “Many environmental conflicts result in degradation because there is not adequate scientific evidence to support regulation.” The precautionary principle essentially shifts the burden of proof to those who propose activity that genuinely threatens harm to an ecosystem. “Note that the precautionary approach dismantles the general argument of industry that it should not be regulated until the agency has proven harm from the industry practice.”

Pope Francis endorsed the precautionary principle: “This precautionary principle makes it possible to protect those who are most vulnerable and whose ability to defend their interests and to assemble incontrovertible evidence is limited. If objective information suggests that serious and irreversible damage may result, a project should be halted or modified, even in the absence of indisputable proof. Here the burden of proof is effectively reversed.” The “Natural Use Principle” stipulates that there is no right to develop land so as to change “its natural character” to “non-indigenous property uses” because a landowner is only entitled to reasonable expectations of what can be done to the land given “the natural character of the property and nature’s laws.”
Conclusions and Recommendations

The right of future generations to enjoy ecological-public-trust assets must not be impaired by those living today. Pope Francis warns, “Young people demand change. They wonder how anyone can claim to be building a better future without thinking of the environmental crisis and the sufferings of the excluded.” The Human Rights Committee must ask whether a human-ecosystem crisis, a demographic winter with plummeting population decline, has already been set in motion that threatens the biodiversity of the human race. The Human Rights Committee must employ the Natural Use Principle and investigate whether certain non-indigenous cultural practices being imposed upon native populations in the Developing World, such as same-sex “marriage” and abortion, actually turn the “natural character” of human sexuality from its procreative purpose and threaten irreparable harm to the biodiversity of indigenous peoples. The Human Rights Committee must also invoke the Precautionary Principle and call for a halt to the legalization of same-sex “marriage” in light of substantial evidence from the social sciences that it is not in the best interests of children to be raised by same-sex parents. These public and private actors have failed to meet their burden of proof to show with clear and convincing evidence that a host of social ills will not follow upon violations of the rights safeguarded in the Model Declaration on the Rights of the Family, cited above. The Human Rights Committee cannot ignore that these practices collectively and disproportionately affect the poor whose posterity are “excluded.” An agreement on systems of governance for the whole range of so-called global commons is needed.

THEREFORE, this Human Rights Committee must denounce the antenatal practices of abortion and same-sex “marriage” for what they are: violations of integral human ecology, crimes against humanity and eugenic genocide. Whereas the book of nature is one and includes both the natural and human environment, we may not do less for the human family, made in God’s image, than we do for flora and fauna.

Notes

1. See Pope Francis, Laudato Si (2015) #5 “authentic human ecology”; #6 “the book of nature is one and indivisible,” citing Pope John Paul II, Centesimus Annus #38; #12 “our common home.”


3. Laudato Si, #174.
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11. Ibid., 70.

12. Laudato Si #186.


16. See note 2. Also see Witherspoon Institute, “Marriage and the Public Good: Ten Principles,” http://winst.org/wp-content/uploads/WI_Marriage_and_the_Public_Good.pdf (evidence from the social sciences showing the benefits
that accrue to society from natural marriage and the procreative family); “Brief of Amici Curiae 100 Scholars of Marriage,” Obergefell v. Hodges, http://www.supremecourt.gov/ObergefellHodges/AmicusBriefs/14-556_100_Scholars_of_Marriage.pdf (arguing the natural procreative family is a delicate ecosystem with inherent laws for human flourishing).