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THE NISGA'A TREATY & THE DIVERSITY OF CANADIAN FEDERALISM

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In the next century, federal states around the world will face a growing and critical challenge -- as they grapple with the rising aspirations of their indigenous peoples.

If twenty-first century federalism is flexible -- with legal guarantees of diversity and inclusiveness -- there can be real hope and real solutions.

Let me tell you about one real solution. It comes from the Nisga'a Nation -- my people, from rugged northwestern British Columbia, near the Alaska Panhandle.

I am talking about the Nisga'a Treaty -- a landmark document that, in a matter of weeks, will be the subject of intense debate in Canada's Parliament. It must be ratified -- and I am confident it will be ratified because, in my view, the Nisga'a Treaty is a triumph -- and a beacon of hope for aboriginal people around the world.

A triumph which proves to the international community that reasonable people can sit down and settle historical wrongs. And proves that a modern federal state can correct the mistakes of the past.

A triumph because, under the Treaty, the Nisga'a people will join Canada as free citizens -- full and equal participants in the social, economic and political life of Canada. Because, under the Treaty, we will no longer be wards of the state, no longer beggars in our own lands. We will once again govern ourselves by our own institutions, but within the context of Canadian law.

Because, under the Treaty, we will be allowed to make our own mistakes, to savor our own victories, to stand on our own feet once again.

Because, clause by clause, the Nisga'a Treaty emphasizes self-reliance, personal responsibility and modern education. It also encourages, for the first time, investment in Nisga'a lands and resources, and allows us to pursue meaningful employment from the resources of our own territory, for our own people.

To investors, it provides economic certainty and gives us a fighting chance to establish legitimate economic independence -- to prosper in common with our non-aboriginal neighbors in a new and proud Canada.

It is a triumph, because the Treaty proves, beyond all doubt, that negotiations -- not lawsuits, not blockades, not violence -- are the most effective, most honorable way to resolve aboriginal issues here and around the world.

The Nisga'a Treaty sets out the place that the Nisga'a Nation will occupy in Canada's federation.

We have always said that the goal of the Nisga'a was to negotiate our way into Canada -- and not out of it. The fact that we have achieved this goal through negotiations with the federal and provincial governments illustrates the flexibility and strength of federalism.

Under the Nisga'a Treaty, we have the right to self-government and the authority to make laws. However, it also provides that federal and provincial laws apply to Nisga'a Lands and people.

There is no single rule governing this relationship of laws. In some circumstances Nisga'a laws will prevail while in others, federal or provincial laws prevail. In some areas of law making, Nisga'a will have to comply with federal or provincial standards in order for our laws to be valid.

Generally, Nisga'a laws prevail when it comes to matters that are internal to the Nisga'a Nation -- those things that deal with our lands and people, our assets, our language and our culture.

We have achieved a means whereby we can participate in the larger Canadian federation as citizens of Canada and residents of British Columbia, but at the same time we reserve to ourselves the ability to make laws about matters that are key to our autonomy as an indigenous nation within Canada.

A crucial element is the existence of a land base -- the 2000 square kilometers of land designated as Nisga'a Lands under the Treaty.

However, our rights and activities also extend outside these lands and, accordingly, it is necessary to ensure that those rights are protected within the framework of Canada's Constitution.

We hope that the lessons that we have learned will be of interest to people in other parts of Canada and throughout the world as they grapple with the difficult question of the role of indigenous peoples in 21st century federations.

We took to heart the promises of King George III, set out in the Royal Proclamation of 1763, that our lands would not be taken without our permission, and that treaty-making was the way the Nisga'a would become part of this new nation.

In 1913, the Nisga'a Land Committee drafted a Petition to the Privy Council in London, which still ruled supreme over Canada in those days.

The Petition contained a declaration of our traditional land ownership and governance and it contained the critical affirmation that our land ownership would be respected. In part, the Petition said

". . . We are not opposed to the coming of the white people into our territory, provided this be carried out justly and in accordance with the British principles embodied in the Royal Proclamation. If therefore as we expect the aboriginal rights which we claim should be established by the decision of His Majesty's Privy Council, we would be prepared to take a moderate and reasonable position. In that event, while claiming the right to decide for ourselves, the terms upon which we would deal with our territory, we would be willing that all matters outstanding between the province and ourselves should be finally adjusted by some equitable method to be agreed upon, which should include representation of the Indian Tribes upon any Commission which might then be appointed.

The above statement was unanimously adopted at a meeting of the Nisga'a Nation or Tribe of Indians held at the village of Kincolith on the 22nd day of January, 1913."

And then finally, under the leadership of President Emeritus Frank Calder, the Nisga'a Land Committee was reborn as the Nisga'a Tribal Council in 1955. In 1968, we took our Land Question to the B. C. Supreme Court. We lost but appealed to the Supreme Court of Canada, where in 1973 -- in what is now known as the Calder Case -- the judges ruled that aboriginal title existed prior to Confederation. This initiated the modern day process of land claims negotiations in Canada.

The government of Canada agreed it was best to negotiate modern-day treaties. Canada agreed it was time to build a new relationship, based on trust, respect, and the rule of law. For the past twenty-five years, in good faith, the Nisga'a struggled to negotiate this treaty.

We are not naive. We know that some people do not want this Treaty. We know there are naysayers, some sitting here today. We know there are some who say Canada is "giving" us too much. And a few who want to re-open negotiations in order to "give" us less.

But these are desperate tactics -- doomed to fail. By playing politics with the

aspirations of aboriginal people these naysayers are blighting the promise of the Nisga'a Treaty -- not only for us, but for non-aboriginal people as well.

We expect -- indeed we welcome -- a vigorous debate. Perhaps the last great debate in Canadian Parliament this century.

We are confident that Canadians will come to see the treaty as a historical milestone for aboriginal rights, a triumph of reconciliation -- and a legal acknowledgment of our unique place in Canada's federal mosaic.

What do you expect from this conference? What problems are you encountering? Is federalism in your country flexible to allow for meaningful indigenous participation?

FOR MORE INFORMATION

Nisga'a web site: www.ntc.bc.ca

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