



# Keeping the Promise:

## The Path Ahead to Full Modern Treaty Implementation

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### **International Perspectives: Aboriginal Inherent Rights, Self-Governance and Modern Treaties in the International Context**

#### ***Summary Notes***

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#### **Emil Notti, First President of the Alaska Federation of Natives**

To understand the history of Natives in Alaska, we must look at the history of foreign occupation of Alaska, beginning with the arrival of the Russians, who were, at their peak, maybe 800 people. The Russians however, never wanted Alaska, and the Russian flag was replaced by an American flag. The vast area of land that was owned by neither was transferred from one European group to the offshoot of another, until the current international boundaries were settled.

In 1940 the census counted 72,000 people in Alaska. There was a lot of freedom. Natives hunted, fished and trapped without permits, without asking anybody. We ruled ourselves by the villages. This changed when the State began to encroach on Aboriginal land. The American federal government wanted to populate Alaska, and created a program where they would give land to any homesteader who applied. Natives, however, were not allowed to apply. One third of the land mass of Alaska was granted to the State, this was unprecedented. The State was picking land with no regard to native use. The government wanted to populate Alaska and they were just giving away the land to newcomers. No one was paying attention to the Aboriginals.

Alaskan natives started protesting to the federal government, which prompted the Secretary of the Interior to impose a land freeze. Alaskans hated the land freeze; the

Governor called it illegal and claimed that Natives were taking the state into bankruptcy. Mr Notti wanted the land freeze to remain, and said that the Natives would have to either go to court or the United Nations to assert their claim. They felt they were not being taken seriously, as no one believed they had a legitimate land claim. Virtually every civil group in Alaska opposed the claim. Mr Notti and other Native leaders were perpetually on the covers of newspapers with negative headlines.

Mr Notti met with the Governor of Alaska, who was at that time attempting to become the new Secretary of Interior. At their meeting, Notti agreed to call a meeting with the Alaska Federation of Natives (AFN) if the incoming secretary agreed to hold the land freezes. If the governor agreed to hold the land freeze, he would receive much negative press, and possibly lose the position. Eventually, when asked directly by a Senate committee, he publicly stated that he would maintain the land freeze; an unpopular move, but it earned him the backing of Mr Notti.

The final land claim for Alaska was not negotiated; Congress stopped negotiating land claim treaties at the turn of the 20<sup>th</sup> century. Instead, they put forth a complete bill (there were eight bills before it was over). Everyone had an opinion about what the settlement should be. Congress went behind closed doors and chose from the different bills to create their own, and created a bill that no one liked. The Aboriginal group had no money left to fight and had already accumulated a lot of debt so they decided to take it. Two big losses stem from this acceptance:

- Lost hunting and fishing rights (a major loss)
- Our land is fee title; no protected lands and no reservations. We didn't want reservations (because of high unemployment, high mortality rates, etc)
- In time that land will be lost, and over time it will all be lost unless we can get protection

Over time there has been a growing divide between corporations and the tribes. The situation today is quite unfortunate. The land is being lost to corporations, who have endless resources to battle opposition. Strong action is needed to protect the land and reverse this trend. Whenever there is a conflict between the tribes and the corporations, the tribes fight an uphill battle against corporations with deep pockets.

Federal law recognizes over 200 villages as tribes. The flow of corporate money down to the villages is not happening to the extent it should. One example is the oil business. Before the pipelines were built the villages were 60% unemployed. Today, 45 years later, that unemployment percentage has not changed. Native people are not being hired. The blame for this problem rests with the government, because they do not provide the vocational training that will put people to work. Jobs are better than welfare. The corporations say they will not discriminate, but without training, Natives cannot even apply for jobs.

Another negative change involves the Alaskan system of coastal zone management. There used to be a coastal zone management system with which the state allowed coastal villages to pass resolutions and have their opinions considered regarding offshore drilling. This was taken away, and now all decisions are made in the State departments. Native villages have no say anymore.

Recently there has been migration from villages to the city because people cannot afford to live in the villages anymore (i.e. a gallon of milk is \$9). The people that remain are dependent upon hunting and fishing, but sustenance fishing is limited to two days a week, and even worse, there are few fish left to catch. In protest, Eskimos fished when the season was closed and they were arrested. This proves that the fight is not over. The fight for subsistence fishing and hunting rights and protection of the land will go on for many years.

The reality of this flight from the communities is that when you separate Native people from their land and their lifestyle, they are no longer Native people. The assimilation of the Native community by the state is very serious, and continues today.

### **Sven Roald Nysto: Past President of the Sami Parliament**

The Sami are an indigenous people of the northern part of Western Europe. There are approximately 80,000 living in Europe today. Between 1850 and 1950, there was a strong assimilation policy in Norway that was not dissimilar to that which occurred in Canada.

After World War II (1955-1980) the Sami organized themselves nationally and internationally. They demanded the policy of assimilation be changed, and for recognition of Sami rights to land and natural resources. To some extent, the

government responded with positive changes. New institutions were set up, some of them still functioning today.

An important catalyst for the Sami was the Alta River Dam Project (1970-1987). The Norwegian government intended to dam the river for hydroelectric power, but it was going to flood a Sami village. With this project, environmental and Sami issues became linked, and many protests were held. The police had to get involved to stop demonstrations, however several good things came out of this process:

- The Sami Rights Commission was established in 1980 (existed until 1997)
- The Sami Act was created and an amendment introduced into the Norwegian Constitution recognizing Sami rights
- The Sami became formally recognized as the indigenous people of Norway
- The Sami Language Act also came into play

### **Video: From Norweginization to Sami Movement**

- Educational policy became the initial focus of the Norwegian authorities
- In 1956 the government appointed the Sami Committee, which was charged with discussing principles and looking at Sami issues. It was determined that they should be integrated, but Sami culture should be given special protection
- The “Norwegianization” laws from the 1800s were formally repealed
- The political and cultural consciousness of the Sami increased
- In 1947, shortly after World War II, the reindeer herders formed their own nationwide organizations
- At the same time the Sami in Sweden and Finland also formed organizations (they became organized across national borders)
- The Nordic Sami Institute was the first of many Sami institutions formed
- During the struggle against hydroelectric development projects:
  - Environmental problems and Sami issues became linked
  - They ended up with a smaller dam than originally planned

Now the Sami are protected in the Norwegian Constitution and in several acts as well. This has led to several positive outcomes:

- A procedure now exists for consultation between Central Government authorities and the Sami Parliament
- The previous traditional conflicts between the coast and the interior; the Sami and Norwegians; Reindeer herders and agricultural sector have been eliminated. These groups have linked together and are collaborating against the government of the south.
- A mandatory system of annual reports to the Norwegian Parliament has been introduced
- Annual grants are now provided to Sami Affairs in the state budget

Norway's commitment to international law applies to Sami land rights. On this basis, the government created the Finnmark Act. The Sami parliament met the proposal with a clear "no." The minister was very disappointed, but the reason why we said no was that the government had not consulted the Sami in accordance with international law. The bill did not comply with international law regarding state material provisions and it lacked a mechanism identifying and acknowledging Sami rights to the land in accordance with Sami traditions and customary law.

The Standing Committee on Justice decided to consult the Sami on the Bill. This of course created a lot of challenges. The Sami needed to have a unified public appearance in the media, but it was hard because the Sami parliament was split. They had to boost their communication and legal capacity, and did that by hiring experts. They organized a lot of public meetings and came up with some societal objectives. They started building alliances, which was considered of utmost importance, and targeted the church, which plays a very important role in Sami affairs. They had meetings with academia and urged them to write and give their opinions on the government bill. Municipalities were also very important, because every citizen lives in a municipality in Norway. They also reached out to business people who were looking for secure investments, and looked to the labor unions because a lot of Sami are organized in labor unions. They looked to several NGOs as well.

The Sami also visited the Nisga'a people in Canada, and found that they have negotiated the Nisga'a Nation into Canada, not out of Canada. That was exactly what the Sami wanted with Norway. It was inspirational.

All these efforts led to extensive challenges with the Bill. The Sami introduced constitutional innovations to the Act, such as the Norwegian Parliament's decision to permit the Sami Parliament and Finnmark Council to review and endorse the preliminary proposal before having the Council submit it to parliament. This was huge in terms of influence.

The Finnmark Act was the first land claims settlement in Norway. They obtained partial incorporation of the International Labour Organization (ILO) Convention 169 (this was key). This Act also created the Land Claims Commission and Tribunal for Finnmark, and required the state to withdraw from ownership of Finnmark land. The final result of the Act was that the Finnmark Estate was created, and owns 96% of the total land mass, previously Crown land. A board of six persons is appointed to essentially manage the land.

Some institutions of international law are looking at the Finnmark Estate with a critical eye, and with the purpose of an evaluation. The Act as it stands does offer important protections to the Sami people, but there is considerable room for improvement.

In conclusion, the Finnmark Estate has carried out its mission satisfactorily, but its relationship to its surroundings could use improvement, especially to the Finnmark Council, and regarding communication with the media and the general public. The Finnmark Estate has not finished its work of engendering trust and legitimacy in the general public.

Norway is recognizing Sami rights to land and natural resources, and has given Sami representatives substantial influence in the process of creating the Act, and self-determination regarding the uses of the land and its natural resources.