

## The Aboriginal Peoples' Position in Land-use Conflicts in British Columbia, Canada

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### Abstract

*This article focuses on a land use conflict in Clayoquot Sound, British Columbia. In 1995, a strong alliance of conservationists and Indigenous Peoples was able to prevent the logging of Meares Island, which is part of the traditional territory of the Nuu-chah-nulth tribe. After the land use decision for Clayoquot Sound was reached by the government of British Columbia, several conservationist organizations tried to form a similar alliance with the Nuu-chah-nulth. However, this time the Nuu-chah-nulth did not join the blockade organized by the conservationists. While the latter sought to have all of Clayoquot Sound declared a national park zone, the Nuu-chah-nulth wanted to be involved in decision-making and participate in resource management.*

During the last 15 years the number of the land-use conflicts in British Columbia, Canada has increased drastically. Most of these conflicts are in connection with the large-size clearcuts in the old-growth temperate rainforests. A strong opposition has been formed against this excessive exploitation of nature. The media presents this as a conflict of interests between the forest industry and the environmental movement: Development supposedly is in opposition to conservation and protection. The solution appears to be obvious: clearcuts or national parks. But in reality these conflicts are much more complex; aboriginal peoples also play an important role, since most conflicts occur in areas with unsettled land claims of First Nations. Since First Nations as well as environmentalists are trying to prevent logging of old-growth forests it seems natural that those two groups would form a perfect alliance. But whereas environmental organizations demand full protection of the temperate rainforests, First Nations take a different look at the situation: They are asking for the acknowledgement of their aboriginal titles and rights and are therefore interested in stopping resource exploitation until the land question is settled, anxious that otherwise there would be no resources left at the end of their negotiations with the government. First Nations oppose the environmentalists' position in protecting most of the forests as parks. The following is an analysis of the land-use conflict in Clayoquot Sound at the West Coast of Vancouver Island. In particular, the position of the aboriginal people living in this area, the Nuu-chah-nulth, is pointed out. Furthermore, it will be shown

how environmentalists as well as the forest companies are trying to form an alliance with First Nations and how resource management could look like after the land claims settlement. For a better understanding of the current land-use conflicts, the analysis of the Clayoquot Sound conflict is based on a short overview of the land claims history of British Columbia.

### Aboriginal Land Rights in British Columbia

Whereas treaties had been signed between aboriginal peoples and the British Crown in all the other Canadian provinces, this has not been the case in British Columbia. The aboriginal peoples of British Columbia still view themselves as the rightful owners of the land, arguing that they had neither been conquered nor have they given up their land or signed a treaty. The First Nations of British Columbia demand the clarification of the land right situation and the negotiation of modern treaties first, before the natural resources are further exploited.

After British Columbia had joined the Canadian confederation in 1871, the federal government assumed the legal authority for the Indians and the land that had been set aside for them. By denying them access to natural resources First Nations were excluded from economic development. At the beginning of the 20th century various First Nations sent delegations to Victoria and Ottawa requesting their reserves to be expanded, specific hunting and fishing rights, monetary compensation as well as a comprehensive education and public health system. Both the provincial and the federal government refused to negotiate any of those demands.

The situation changed when in 1969 the Nisga'a filed a claim against the Province of British Columbia and demanded through court a confirmation, that «their aboriginal title, otherwise known as the Indian title [...] to their ancient tribal territory [...] has never been lawfully extinguished» (cited in TENNANT 1990: 219). At the Canadian Federal Court six out of seven judges decided in 1973, that at the time of colonization aboriginal land-title had been recognized by the English law: «The fact is that when the settlers came the Indians were there, organized in societies and occupying the land as their forefathers had done for centuries. This is what Indian title means» (cited in TENNANT 1990: 221). After this decision the federal government agreed to negotiate the land question in all areas of Canada where not treaties had been signed.

In 1982, aboriginal rights were constitutionally acknowledged for the first time (section 35 of the new constitution of 1982). Thereby aboriginal nations are the only groups within the Canadian society with constitutionally recognized and protected hunting and fishing rights. When in 1986 Ronald Sparrow was accused to have been fishing outside the reserve and thereby having violated the Fisheries Act, the Court of Appeal ruled unanimously that section 35(1) meant, that an aboriginal right to fish for food continued to exist in non-treaty areas (TENNANT 1990: 225). Up to this point the provincial government of British Columbia had stated, that no aboriginal title or special rights existed, and that if such rights should exist, they were only referring to the reserves. After these court decisions the provincial government could no longer withdraw from negotiating the land question.

In June 1991 the Treaty Commission presented 19 suggestions for open and fair negotiations of land claims. The First Nations as well as the federal and the provincial government accepted the report of the Commission. The provincial Minister of Aboriginal Affairs assured the aboriginal chiefs at a press conference: «The provincial government recognizes the political legitimacy of aboriginal title and the inherent right to self-government» (*Ha-Shilth-Sa*, December 24, 1991). One year later the British Columbia Treaty Commission Agreement was signed, whereby the federal and the provincial government committed themselves to accept the First Nations as equal partners and to negotiate on a government-to-government basis. The concept for the procedure of the land-right negotiations, which was elaborated by the Treaty Commission includes six steps: 1) each First Nations that wants to negotiate a treaty submits a statement of intent to the Treaty Commission; 2) the negotiations are prepared by appointing the negotiation-teams and creating a list of the topics to be negotiated; 3) a framework-agreement is negotiated; 4) negotiation of an agreement in principle; 5) negotiation of the final treaty and 6) ratification of the final treaty. Since December 1993 First Nations can submit their statement of intent to the Treaty Commission. Within one year 65% of all First Nations in British Columbia had submitted their statement of intent (*Ha-Shilth-Sa*, November 15, 1994).

### Forestry in British Columbia

Forestry is one of the most important sectors of the Canadian economy: Almost half of the Canadian land-mass is covered with forests. In 1993, 51% of the world-wide export of softwood came from Canada, and 34% of that amount came from British Columbia (COFI 1992: 6).

64% of Canada's woodland is classified as usable. The biggest part of these woodlands (92%) is Crown land. The licenses for these areas are handled by the respective provincial governments in the form of Treefarm Licences (TFL) with a lease of 25 years. The holder of the TFL has the exclusive cutting-right, but is obliged to submit five year plans to the Ministry of Forests about the planned work in that area. This should guarantee that the licence holder meets

the principles of sustained yield. This concept was introduced after the Second World War. Until then, Canada's forests had been considered to be an inexhaustible resource. But when the demand for wood products increased after World War II, the forest-companies introduced new technologies to work more efficiently leading to an increase of production. In British Columbia the easily approachable coastal forests were cut first. Since only about 50% of the cut areas were replanted the forest resources continuously declined. Because of the heavy rainfalls in this area most of the soil gets washed away and reforestation often fails. Fisheries are affected through the erosions, since the soil is washed into the rivers and blocks the way of the salmon to their spawning grounds. Since the 1970s, the ecological awareness has grown enormously and many forest-activities – mainly large scale clearcuts – are questioned by the public.

### The Land-use Conflict in Clayoquot Sound

The Nuu-chah-nulth (also known as Nootka) live at the westcoast of Vancouver Island. Their territory is about half the size of Switzerland. 80% of their territory is used by the forest industry, only 0.5% is reserve land. The Nuu-chah-nulth represent 44% of the population of this area. Their territory is divided into three regions: Northern region, Central region and Southern region, with Clayoquot Sound belonging to the Central region. Most of the Nuu-chah-nulth of that region live in the 4 reserves, some live in the village of Tofino which has approximately 1'000 inhabitants. Fishing, tourism and forestry are the most important economic sectors in this area. Clayoquot Sound includes a surface of 262'000 hectares (without lakes and sea). Approximately 92% of Clayoquot Sound is forested, about half of this is temperate rainforest. It is the biggest lowland temperate rainforest on Vancouver Island (SIERRA CLUB 1993: 26). Until 1860, the beginning of the commercial forest industry, temperate rainforests covered almost three quarters of Vancouver Island. Within 100 years one third was gone. Another 30 years later, in 1990, only one third of the original rainforest on Vancouver Island still existed.

When in 1980 the forest company MacMillan Bloedel, who owns the logging-rights for half of Clayoquot Sound through Tree Farm Licence #44, wanted to start with the clearcutting of the rainforest on Meares Island, some concerned residents of Tofino founded the environmental group called Friends of Clayoquot Sound (FOCS) and started to prevent the logging with blockades. In 1983, the provincial government decided that 90% of the island could be logged now and the logging of the remaining 10% should be put off for 20 years. In the same year, the Nuu-chah-nulth submitted a land claim for their whole territory to the Canadian federal government. Since the land right negotiations concerning the territory of the Nuu-chah-nulth had not begun yet, the Ahousht and Tla-o-qui-aht First Nations<sup>1</sup> also decided to try to stop the logging. An alliance was formed between FOCS and the two Nuu-chah-nulth groups

and together they prevented the loggers from getting on the island and start clear-cutting. Finally, the Court of Appeal decided to annul the logging permission for the time being in order to give the Nuu-chah-nulth time, to have the land question concerning Meares Island settled through court.

In the meantime logging went on in other areas of Clayoquot Sound. In 1989, the District and the Chamber of Commerce of Tofino approached the provincial government with the suggestion to work out a sustainable development strategy for Clayoquot Sound. This should be combined with a two-year logging-freeze and at the same time the focus should be put on adventure tourism. In the years to follow several working groups drafted new proposals and in October of 1992 a final proposal was submitted to the provincial government. In April 1993, the provincial government announced a land-use-plan for Clayoquot Sound that divided the area into three parts: 45% was set aside for logging, 33% should be protected, and 17% were described as specific management areas. Scenic corridors, small strips of trees, should be left along the roads and the coast, so that the logging operations would not be visible to the tourists.

The environmentalists did not accept that decision because it supported the interests of the forest industry more than the protection of the ecosystem. Right after the announcement of the land-use decision the environmental organizations staged different demonstrations to stop the clearcutting and to pressure the government to change its decision and to put the whole area under protection through the creation of a park. On July 1st they started their blockade of the logging road leading into one of the cutting blocks in Clayoquot Sound. For the next three months the road was blocked every morning and the same scene took place every day: after the reading of the injunction – which allowed MacMillan Bloedel the access to the logging area – the demonstrators were asked to step aside. Every person who did not step aside got arrested. Within three months more than 750 people were arrested. In addition to those actions in Clayoquot Sound environmental groups also worked on the international level. Businesses were asked to boycott MacMillan Bloedel products and a request was submitted to the European Parliament asking for an import stop of forest products from British Columbia if they were not coming from a sustainable development area.

Right after the announcement of the land-use decision the Nuu-chah-nulth explained, that they themselves would turn against every decision that did not regard the rights of the First Nations in this region. A local politician stated in a newspaper-interview: «We've tried to protect both the environmental base and jobs. We have indication from the NTC (Nuu-chah-nulth Tribal Council) that they may not be in agreement but they understand and appreciate having been consulted throughout the process» (*Times Colonist*, April 20, 1993). In contrast to this the Nuu-chah-nulth stated: «We have never expressed support for this decision [...] We have been overlooked in this whole process» (*Times Colonist*, April 20, 1993).

In contrast to the event of Meares Island in 1983 no alliance was formed between the environmentalists and the Nuu-chah-nulth although both parties rejected the government's land use decision. Although First Nations and environmentalists have similar interests when opposing the excessive exploitation of natural resources, their relationship is not without conflicts: Whereas the environmentalists fight for the creation of national parks, First Nations are demanding the control over the resources. So far they have no rights to use the resources within in a park. The Nuu-chah-nulth and other First Nations are not primarily against logging but they demand the creation of sustainable practices, e.g. selective logging and a prohibition of large size clearcuts. Today most of the felled trees are exported and manufacturing often takes place abroad. First Nations, with an unemployment rate up to 80% on the reserves, demand that manufacturing is done locally – which would create more jobs.

The demand of creating a national park was not the only reason, why the Nuu-chah-nulth refused to work with the environmentalists. They did not want to take the fast road the environmentalists took to stop the logging: «They are confrontational, they want things immediately. But we take our time [...] we have to talk to the elders, to make sure we get it right» (*The Edmonton Journal*, June 26, 1993). The various environmental groups tried several times to form an alliance with the Nuu-chah-nulth. But while they enthusiastically explained their actions planned to the Nuu-chah-nulth, they did not realize how paternalistic they behaved. At one meeting the Nuu-chah-nulth told the environmentalists that in their view, the environmental groups were sending different messages, but for the Nuu-chah-nulth themselves it was very important that each environmental group understood clearly what the Nuu-chah-nulth demanded from the government and that they had no interest whatsoever to be used by any group for demonstrations and actions. So the Nuu-chah-nulth asked every single group to decide if they wanted to work with the Nuu-chah-nulth under these conditions or not. As a first joint action the Nuu-chah-nulth proposed to have a meeting with the representatives of the forest industry. This suggestion was rejected by all the environmental groups with the argument, the forest industry already had done too much damage in the forests and therefore there were no common grounds for a conversation. The following quotation made by a Nuu-chah-nulth representative after a meeting with some environmentalists clearly shows that communication between the Nuu-chah-nulth and the environmentalists often did not work: «This was like dating: they come here and talk to us and then they leave. We're just dating, but we're not in bed with them.» The environmentalists themselves declared after the meeting that it had been very successful: «The meeting has been very constructive, the understanding was great.»

<sup>1</sup> Meares Island lies within the territory of the Ahousaht and Tla-o-qui-aht First Nations. They are two of the 14 First Nations representing the Nuu-chah-nulth Tribal Council.

Instead of forming an alliance with the various environmental groups, the Nuu-chah-nulth turned towards the US organization Natural Resources Defence Council (NRDC). Together with the Cree First Nations this organization had been successful in stopping the Hydro Quebec project in the Province of Quebec. «This decision on Clayoquot Sound has left our First Nations no other alternative but to seek assistance and help in protecting our interests where we can because it's obvious that the government ignored our concerns [...] We have not invited these people to come and tell us what to do, but to come and talk about what we can do together. We are creating alliances to protect our children's future» (*Tla-o-qui-ah't First Nations press release*, June 8, 1993). With NRDC lawyer Robert Kennedy Jr., who visited Clayoquot Sound, the Nuu-chah-nulth discussed the situation. It was after this meeting that the provincial government asked the Nuu-chah-nulth for a meeting where they tried to prevent the Nuu-chah-nulth to take any action against the planned logging. The Nuu-chah-nulth asked the government to stand up to its promise and accept the First Nations as equal partners and to work on a so-called «government-to-government» basis. Since nothing changed after the meeting with the provincial government, a delegation of the Nuu-chah-nulth travelled to the Natural Resources Defence Council in Washington D.C. There they met with various politicians and representatives of human rights organizations. After having discussed the possibility of a boycott of forest-products from British Columbia in general or from single companies in particular, the Nuu-chah-nulth filed a complaint at the UN against Canada with regard to the Clayoquot Sound land-use decision and the discrimination of the Nuu-chah-nulth in that matter. A speaker of the Nuu-chah-nulth said: «It's too bad we have to come to another country for assistance but there's no other option left for us in Canada» (*Times Colonist*, September 23, 1993). Based on these incidents the Premier of British Columbia immediately wanted to meet with the Nuu-chah-nulth. The result of that meeting was an Interim Measures Agreement. This agreement states, that all decisions concerning the use of land and resources in Clayoquot Sound have to be decided by a new committee made out of representatives of the provincial government and Nuu-chah-nulth. Through the Interim Measures Agreement the Nuu-chah-nulth got a temporary say in the resource use, however their long-term goal, a treaty, remains unsettled. After the Nuu-chah-nulth had submitted their statement of intent to the Treaty Commission on December 15, 1993, the first negotiations between the Nuu-chah-nulth, the provincial government of British Columbia and the Canadian federal government began in April 1995. After the signing of the Framework Agreement in March 1996, the negotiations for the Agreement in Principle started.

### Partners, Allies or Adversaries ?

The assertion of the aboriginal land-rights changed the debate about jobs and economic profit versus environmental protection. By pointing to the spiritual

meaning of different areas, First Nations strengthened the environmentalists in their arguments to conserve non-economic values. The credibility of the claim, that an area is sacred and of spiritual meaning, hinges on the identity of speaker (HORNBERG 1994: 252). The environmentalists cannot assert the spiritual claim for themselves but for this they depend on the aboriginal peoples. If land-use conflicts from the 80ties are compared to each other it results that by absence of a First Nations' claim the struggle for the environmentalists is much more difficult (M'GONIGLE 1988: 119). Yet, on the other hand First Nations can also use some arguments of the environmentalists for themselves, for example by explaining that the intended way of resource-utilization does not correspond with the concept of sustainable development. This reciprocal acceptance of arguments has created a «conceptual symbioses» (HORNBERG 1994: 246). However, the environmentalists see the conservation of the ecosystem as their top priority whereas First Nations set the land question as theirs. The treaty negotiations are a possibility for First Nations to get access to natural resources and become economically independent. Economic independence is a precondition for the political autonomy aboriginal peoples are pursuing. Although First Nations clearly state their environmental commitment, environmentalists are concerned that First Nations will put economic development above environmental protection. Therefore, a permanent alliance between environmentalists and First Nations is hardly possible.

Insecurity and fear about the future also exists in the forest industry. Although they maintain that it does not make any difference whether government or natives own the timber as long as they have the right to go in and cut and remove the timber for their mills, the forest companies still fear that they could lose their licences if big land areas were given to First Nations, that new regulations would be handled in a complicated and bureaucratic way, that businesses held by First Nations would not be able to stand up to the pressures of the world market and that the resources would be used inefficiently. Forest companies have no direct say in the negotiations. All third-parties are represented through the Third Party Advisory Committee, which is part of the government. After having explained that they are not against logging in general, the Nuu-chah-nulth were asked to form joint-ventures by the two forest companies working in Clayoquot Sound. In my opinion the forest companies hoped to bring their own interests to the negotiation table by offering joint-ventures to the Nuu-chah-nulth. However, it was clear for the First Nations that the creation of joint-ventures is not a substitute for aboriginal rights and land-titles.

What natural resource use will look like after the end of treaty negotiations is not determined yet. There is not one solution for all the different land claims, each First Nations has to decide for themselves, what kind of solution they are looking for. Nevertheless, CASSIDY and DALE (1988) present three possible scenarios: In the first scenario the focus lies on the economic development of the natural resources. The land-right-solutions will concentrate on the conditions required for First Nations to take part in the economic profits.

Between First Nations and the companies contracts would be signed, whereby First Nations would be equal partners. The economy would be characterized by a higher stability, because the use of the resources would not be hindered by conflicts between the partners. Environmental protection would not be a first priority of First Nations. In the second scenario, the land question would be solved so that a limited form of security would be established in the political and economic sectors of the province. Considerable money compensations would be paid to First Nations and the industry and in some cases ownership of various land areas would be given to First Nations. In some cases the parties would become allies in using the resources, in other cases they would be adversaries. In the third scenario, the solution of the land question would be based on the acknowledgement of aboriginal title and rights. The aboriginal peoples would get the control over wide land areas. They would have the possibility to protect these areas from the interests of the industry and decide about the extent of the use of the resources themselves. This scenario seems to be the wish of most First Nations. In 1996 the Nisga'a signed the Agreement-In-Principle they had negotiated with the provincial and federal government. Through this Agreement-In-Principle

2'000 square kilometres are defined as Nisga'a lands (Nisga'a Treaty Negotiations). Cassidy and Dale come to the conclusion that most First Nations would take economic as well as protective measures, which is confirmed by the following two citations: «We won't stop logging and fishing when we get control, but we will do it in a manner more conducive to the environment. We won't take as much. There's no reason for clearcutting» (Frank Collison, Vice President of the Council of Haida Nations, cited in SHAPCOTT 1989: 77). «We are changing with the time along with everyone else. And that means some economic development and logging. There are definitely areas we want to preserve. But we don't support the idea of complete preservation. There is a need for consultation on all sides» (Francis Frank, Nuu-chah-nulth, cited in NATHAN 1993: 156).

If the aboriginal peoples get the control over the resources in different areas of British Columbia it has to be seen if the environmentalists are ready to accept the decisions of the First Nations. But in spite of the conflicts between First Nations and the environmental organizations they are connected by a common belief, that is the belief that a fundamental change in the distribution of power in the decision-making process of natural resource use must occur.

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**Resumen**

*Este artículo trata de los conflictos por el uso de la tierra en Clayoquot Sound, en la provincia canadiense de British Columbia. En el 1985 los representantes de la Nación indígena de los Nuuchahnulth y grupos ecologistas formaron una fuerte alianza en la lucha contra el talar de la selva virgen de Meares Island. En el 1993 el gobierno de British Columbia llegó a planificar nuevamente el uso de las tierras en la región de Clayoquot Sound. Después, distintas organizaciones protectoras del medio ambiente trataron de renovar la alianza con los Nuuchahnulth, pero ellos la rechazaron. Mientras los ecologistas quieren transformar la región entera en un parque nacional los Nuuchahnulth quieren que se les incluya en las decisiones políticas y quieren participar en la administración de los recursos naturales.*

**Zusammenfassung**

*In diesem Artikel wird anhand des Beispiels Clayoquot Sound die Situation der Landnutzungskonflikte in der kanadischen Provinz British Columbia diskutiert. 1985 bildeten Vertreter der indigenen Nation der Nuuchahnulth und Umweltschützer eine starke Allianz im Kampf gegen die Abholzung des ursprünglichen Regenwaldes von Meares Island. Nachdem 1993 die Provinzregierung von British Columbia einen neuen Landnutzungsplan für das Gebiet von Clayoquot Sound erlassen hatte, versuchten verschiedene Umweltschutzorganisationen erneut eine Allianz mit den Nuuchahnulth einzugehen. Die Nuuchahnulth lehnten eine solche Allianz jedoch ab. Während die Umweltschutzorganisationen das Ziel verfolgen, das ganze Gebiet in einen Nationalpark umzuwandeln, wollen die Nuuchahnulth in die Entscheidungspolitik miteinbezogen werden und im Ressourcenmanagement partizipieren.*