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PROTECTING KNOWLEDGE  
TRADITIONAL RESOURCE RIGHTS IN THE NEW MILLENIUM



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KEYNOTE ADDRESS

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Defending Indigenous Peoples' Heritage



Presented by

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### Keynote Address

Honorable Elders, Grand Chiefs, Chiefs, Distinguished Representatives of the Academic family, Dear students and Young Indigenous Persons, Ladies and Gentlemen

I am deeply honoured by the invitation of the Union of British Columbia Indian Chiefs and the Interior Alliance to address this important gathering of elders, chiefs and community leaders from the Northwest Coast and around the world. You have given me a very great challenge, and I hope that my humble remarks today will prove helpful in some way as you continue your work on Protecting Knowledge over the next few days.

I would like to begin by telling a story, to share with you how I feel about the topic of our conference. This story was written by the Nahuatl (Aztec) historian Tezozomoc, more than four hundred years ago, and was translated into Spanish and English by the great 20<sup>th</sup> century Mexican scholar Miguel Leon-Portilla. Writing just after the Spanish invasion, Tezozomoc told the story of an earlier age, when the Aztecs were still a very young nation. Responding to a powerful vision, or a dream, their elders and teachers left them and traveled East, towards the Sun. Now this, in the words of Tezozomoc, is the song the people sang when their elders left them:

Will the sun shine, will it dawn?  
How will the people move, how will they  
stand?  
How will the earth continue?  
Who will govern us?  
Who will guide us?  
Who will show us the way?  
What will be our standard?  
What will be our measure?  
What will be our pattern?  
From where should we begin?  
What will be our torch, our light?<sup>1</sup>

The story does not end there. Tezozomoc goes on to say that, in the midst of their confusion and despair, the Aztec people discovered that there were still four old men who had not gone away. Of all the Aztec people's ancient teachers and scholars, only these four shy old men were left. But with the memories of these four elders, the Aztec people slowly reconstructed their history, their laws, their calendar, and their sciences. And as they re-learned their history, they became a powerful nation.

Tezozomoc was telling a hopeful story of rediscovery and renewal to his people, who had so recently been crushed and enslaved by Spain. He was telling them that, as long as a few

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<sup>1</sup> Leon-Portilla. *Pre-Columbian Literatures of Mexico* (1969) at 124

fragments of their heritage and history survived in the memories and hearts of their elders, there was still hope of recovering what seemed to be lost. Indeed, he tells us, the generation that re-discovers its history and spirituality will be even more powerful than its ancestors.

I want to emphasize this important point, as we begin our work together. A people's heritage really lives or dies in their hearts. Centuries of foreign occupation and oppression cannot destroy a people's heritage, if they continue to cherish and believe in it. I know this is true, because I am Greek, and because my country survived nearly four hundred years of foreign rule by the Ottoman Empire. But it is also true, in my experience, that a people can lose its heritage in a single generation. People who neither respect nor value their heritage can lose it – or sell it off – in no time at all. It is futile to hoard your heritage in museums and books if your children are ashamed of their parents and grandparents and only value what they see on television. I am saying this, not only as a legal scholar, but as a grandmother.

Out of the love that you have for your children, it is important that you not only speak to them in your own languages, and teach them your cultural knowledge, but that you earn and keep their respect. It is from love of you, that your children will keep your heritage alive. Without this love and respect, there is nothing that the law can do to preserve your histories, your oral literatures, your sciences, or your artistic traditions. I have been very fortunate, in my long career at the United Nations, to travel to many parts of the world and visit a great many indigenous nations and communities. I am absolutely convinced that strong, healthy, and loving families are indispensable to the survival of indigenous cultures.

It is possible for a people to survive *physically* without knowing who they are – without knowing how to contribute the Creator's gifts to them, to the world. This is what colonialism is all about: depriving a nation or people of *self-knowledge*, of full awareness and confidence in their unique contribution to the whole human symphony. Colonialism teaches people to think that they are someone else – it tries to change peoples' identities. A colonized people can free itself physically or legally – it can even become an independent or self-governing state – and yet continue to be completely colonized in its thinking.

One of the most powerful tools of colonialism is making children ashamed of their parents. Genuine decolonization can only be achieved by a means that involves the genuine, deserved love and respect of the children for their elders and grandparents. I have seen too many very tragic situations around the world where people have struggled single-mindedly for their freedom and rights, only to be overthrown by their own children, who view them as obsolete or oppressive.

As we enter a new century and a new millennium, it is appropriate that we reflect carefully on the lessons to be learned from nearly one hundred years of bitter anti-colonial and anti-totalitarian struggles. Power can never completely crush a people that cherishes its heritage – nor can power ever completely liberate a people that has abandoned its heritage.

In a recent collection of essays on the rise and fall of Eastern European Communism, the Czech writer Ivan Klima distinguishes between two kinds of 20<sup>th</sup> Century national liberation

struggles: *power versus power* and *culture versus power*.<sup>2</sup> He argues that power can only exist by creating fear and resentment. Power, he writes, has no soul. As a consequence, a liberation struggle based upon power changes nothing at all. The integrity of a people's identity and culture, however, Klima argues, can neutralize a power and make it look ridiculous. It is quite apparent in my own part of the world, the Balkans, that culture can be absolutely indestructible. Unfortunately, it is also readily apparent from recent events there, that powerful men can use protecting culture as a pretext for new forms of oppression and colonialism.

I have expressed my strong personal feelings on this subject, out of respect and solidarity for what you yourselves have been trying to achieve here in British Columbia.

I am well aware that the Province of British Columbia has become an important test case for the resolution of land claims. The manner by which you achieve a just and lasting settlement, and the manner in which you use the territories and traditional resource rights that you recover, will be studied carefully by indigenous peoples everywhere – and (of course) by international legal experts and the United Nations. We will all be very interested to see whether your struggle to recover your traditional resource rights results in a renewal of your distinct cultures, and in a reorientation of the management and conservation of your magnificent forests and oceans.

I have read some of the historical and cultural material prepared by Gitksan and Wet'suet'en hereditary chiefs for the *Delgamuuk'w* case. What impressed me most, was the way in which the entire system of chiefly titles, names, symbols, and ceremonies has been interconnected with the stewardship of the land and living resources. Everything was completely interdependent in a way that was specific to each house and clan and nation. While present-day Western ways of thinking *separate* arts, religion, political organization, kinship, nature, and science, *your* knowledge systems integrated all aspects of human experience and human responsibilities. In this way, your ancestors had a clear grasp of the total social and ecological implications of their actions – and, I believe from what I have read and heard, your ancestors were careful to deliberate the full consequences before they made changes. Nothing was done without feasting the other houses, the animals and the plants and the ancestors, to maintain good relationships. This approach made your nations successful and prosperous for the long term.

If, in your struggle to regain your rights, you adopt a different relationship with your land, you may gain only power – and you may lose your children and grandchildren. I want to assure you today that the First Nations of British Columbia stand out because you *have* taken guidance from your hereditary chiefs and elders, and have kept them at the center of your struggle. This is your crucial strength and should never change.

We are gathered here together at Vancouver to find stronger ways of protecting knowledge and traditional resource rights. You will talk about law and legislation, about politics and self-determination, about the Canadian political system and the international economic system. Whatever you discuss, I would like to propose three basic principles to consider as a

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<sup>2</sup> Ivan Kima, *The Spirit of Prague* (1994), at 110.

framework for ensuring that you do, indeed, strengthen your heritage in your efforts to regain your lands and resources.

The first principle I would like to propose to you is what I call the principle of *integrity*. By this I mean the integrity of the whole set of relationships between your nations and your territories: names and chiefly titles, knowledge systems and arts, symbols and ceremonies – that is to say, all human dimensions of living together on the land, as well as all of the ecological relationships between humans, animals, fish and plants. A lawyer might refer to this concept as *non-severability*, which simply means that interrelated things should not be separated.

The principle of integrity also implies a continuing responsibility for the health of the land, by maintaining and using the knowledge and practices that belong to the land. In my recent travels among North American First Nations, I have been quite taken by the extent to which land-use administration, environmental protection, human health, education, and cultural activities have evolved into separate institutional domains – separate bureaucratic departments, with inconsistent goals and values. If First Nations self-government results in reproducing the same kinds of governments as the nation-states, I fear that we will see the *same kinds* of results – including the packaging and sale of the land, and of everything sacred and precious that is connected with the land.

The old ceremonies, songs and names kept people tied to the land, and continually reminded people of their responsibilities. Strip away the ceremonies, symbols and knowledge from the land, or sell them off, and people will no longer feel responsible for the land. The heritage of a people is deeply rooted in their traditional territory. Heritage is not only a reflection and a celebration of a people's territory – it is a *management system* for the territory, and separating heritage from the land may have serious adverse ecological and social consequences. I have analyzed the concept of heritage in my study entitled *Protection of the Heritage of Indigenous People*.

A people's ceremonies, symbols, names, and songs contain their laws: the fundamental rules governing who may use the land, who may hunt the animals and fish, who may harvest the medicinal plants – and how all of these things must be done in a proper way. This brings me to a second principle for the defense of traditional resource rights.

The second principle I would like to place before you is the *locality* – by which I mean that every people's territory is unique and has its own laws. The laws of the Tsimishian and the Nu-chah-nulth were not exactly alike because they lived in different territories, with different ecological relationships. Tsimshian law governed the relationships between human beings and the land in one particular place, and I am certain that the Tsimshian would never think of forcing Tsimshian laws on any other peoples. Different countries have different laws. However, indigenous peoples, in my experience, think of their laws as inherently arising from their lands and territories – as inseparable from their territories – while it has become commonplace for Europeans to think that laws can be carried around and applied to any place and any people.

I would like to suggest to you that there is a very simple way of settling the legal issues surrounding indigenous people's cultural and intellectual property rights. The solution is to resolve any disputes over the acquisition and use of indigenous peoples' heritage according to the customary laws of the indigenous peoples concerned. If someone claims to have properly acquired the right to use and sell a Tsimshian song, or story, or house panel, or medicine, let that person show that they have faithfully complied with the requirements of Tsimshian law! In international law, we refer to this as the principle of *lex loci* – that is “the law of the place.” It is a very ancient principle among nations. It was recognized by the Roman Empire, and still applies to disputes over contracts, the ownership of private property, and family relationships, when the parties live in different countries.

The principle of locality means that British Columbia can not properly make laws controlling Tsimshian people's heritage – nor can Canada or the United Nations. Instead, British Columbia, Canada and the United Nations should recognize, respect, and enforce Tsimshian law. I would like to suggest, furthermore, that this principle can be found in the *Convention on Indigenous and Tribal Peoples, 1989 (No. 169)* adopted by the International Labour Organisation, and is implied very strongly in the United Nations *Convention on Biological Diversity*.

The third and final principal I would like to suggest here today may be described as the principle of *effectiveness*. The legal weapons that you choose to defend your traditional resource rights should be genuinely effective. They must be adequate to achieve all results, and not simply be – like many principles of national and international law, I am sorry to say – just so many pretty words and promises. I suggest, then, when choosing your weapons, that you ask yourself two key questions: Who is my real adversary? Who has real power over my adversary?

Nearly all of the laws aimed at protecting indigenous peoples are addressed to the nation-state. They are designed to influence the actions and decisions of national government officials. In the past, of course, indigenous peoples were ordinarily the victims of state action such as military intervention, forced relocation, and forced assimilation. Laws have gradually developed to restrict these abuses of state power, and to compel states to compensate, assist, and protect the indigenous peoples they had previously oppressed. In other words, laws are aimed at the abuses and oppressors *of the past*.

As we embark on the 21<sup>st</sup> century, however, we are entering into a new world of international economic cooperation, trade liberalization, and privatization. Nation-states are yielding more power to international trade and financial institutions such as the World Trade Organization, and international trade and financial institutions are working hard to make the world a safer place for private enterprise and investment.

The net effect of this re-structuring of international relations is obvious. Corporations, and their shareholders and investors, will gain greater global freedom and power. As they gain more global freedom and power, corporations will assume more of the functions of the nation-state. You can see this clearly within your own region, North America. Governments are privatizing everything from post offices and hospitals to prisons and national parks. Corporations will overshadow governments in many ways, and play a growing role in our

daily lives. Many people around the world see this as an extremely dangerous trend, because they believe that corporations are selfish and undemocratic – most of us can vote for the leaders of our states, but very few of us own shares of voting stock in multinational corporations. States are bound, in principle at least, to respect their national constitutions, and the principles of human rights. Corporations are bound by law to make profits for their owners.

On the other hand, the profit motive can be used to influence the decision making of corporations for the better. Corporations are owned mainly by the relatively rich, but they make their profits by selling to everyone. It is increasingly clear that corporations are sensitive to carefully-focused consumer boycotts. It is also clear that some owners and investors in multinational corporations appreciate the fact that, *in the long term*, their investments have greater value when they respect the rights of their workers and consumers, and the people who live close to their activities. Here in the Northwest Coast, you are part of a very important experiment in corporate accountability – boycotts and shareholder complaints have persuaded Home Depot, a giant in furniture manufacturing and retailing, to stop using wood from your old-growth rainforests. This bodes well from the campaign to persuade corporations to withdraw from lands under claim, recently launched by the Interior Alliance.

The draft United Nations Principles and Guidelines of Protection of the Heritage of Indigenous Peoples, which I have had the honour to prepare and which are under consideration of a UN seminar next week, are addressed not only to the governments of states, but also to corporations, universities, museums, artists and scientists. It is my firm belief that defending your traditional resource rights, in the international environment of today, requires the use of tools reaching directly into the conscience, and into the pockets, of the private and non-governmental sectors.

In my opinion, then, whatever legal, political or economic weapons you choose to defend your heritage should be fully consistent with these three principles – *integrity*, *locality*, and *effectiveness*. This important conference has been designed to provide a thorough review of the range of possibilities: what has worked thus far, and what new weapons may work even better in the future. As you work together over the next few days, I urge you to choose wisely – and once you have chosen, to act together in solidarity.

I thank you very warmly, and from the bottom of my heart, for the opportunity you have given me to be present at this historic meeting, and for your kind attention. I should like to conclude by wishing you every success in your noble activities and a fruitful conference.

*Erica-Irene Daes*