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Roundtable on Aggregation and First Nation Governance

Summary of the 4th IOG Aboriginal Governance Roundtable

Ottawa, December 8, 2004

Speakers:

John Graham, Institute On Governance

Chief Monague Monague, Beausoleil First Nation

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The Institute On Governance (IOG) is a Canadian, non-profit think tank founded in 1990 to promote responsive and responsible governance both in Canada and abroad. We define governance as the process whereby power is exercised, decisions are made, citizens or stakeholders are given voice, and account is rendered on important issues.

We explore what good governance means in different contexts. We undertake policy-relevant research, and publish the results in policy briefs and research papers.

We help public organizations of all kinds, including governments, public agencies and corporations, the voluntary sector, and communities to improve their governance.

We bring people together in a variety of settings, events and professional development activities to promote learning and dialogue on governance issues.

The IOG's current interests include work related to Aboriginal governance; technology and governance; board governance; values, ethics and risk; building policy capacity; democratic reform and citizen engagement; voluntary sector governance; health and governance; accountability and performance measurement; and environmental governance.

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2004-05 Institute On Governance Roundtable Series:
"Towards a New Aboriginal Governance Agenda - TANAGA"

The IOG Roundtable Series for 2004-05 explored a number of governance issues affecting Aboriginal communities. At each of eight events, 20-25 senior policymakers from Aboriginal organizations and federal departments participated as individuals in the informal discussions. The series was supported by in-depth research and featured expert speakers to stimulate discussion. The eight events in the series were as follows:

Event	Speakers
1. Good Governance Principles: International and Aboriginal Perspectives – September 21, 2004	Frannie Léautier, Vice President, World Bank, responsible for the World Bank Institute Larry Chartrand, Director, Aboriginal Self-Governance Program, University of Winnipeg
2. First Nations Citizenship and Membership Issues – October 20, 2004	Stewart Clatworthy, Four Directions Project Consultants, Ottawa Andrew Delisle Sr., O.C., Elder Advisor (and former Grand Chief), Mohawk Council of Kahnawake
3. Environmental Management and the on-reserve 'Regulatory Gap' – November 17, 2004	John Moffat, Stratos – strategies to sustainability David Nahwegahbow, Senior Partner, Nahwegahbow Nadjiwan Corbiere; Chair of the Board, Forest Stewardship Council
4. Aggregation and First Nations Governance – December 8, 2004	John Graham, Director, Institute On Governance Val Monague, Chief, Beausoleil First Nation
5. Urban Aboriginal Governance – January 20, 2005	Calvin Hanselmann, Senior Policy Analyst, Office of the Federal Interlocutor for Métis and Non-Status Indians Peter Dinsdale, Executive Director, National Association of Friendship Centres Patrick Brazeau, Vice-Chief, Congress of Aboriginal Peoples
6. Indigenous Legal Traditions – February 16, 2005	John Borrows, Professor, Faculty of Law, University of Victoria; Law Foundation Chair of Aboriginal Justice and Governance
7. Métis Governance – March 29, 2005	Jason Madden, JTM Consulting Inc. John Graham, Director, Institute On Governance
8. Government-to-Government Relations in the First Nations context	John Graham, Director, Institute On Governance Alan Latourelle, CEO, Parks Canada Mike DeGagné, Executive Director, Aboriginal Healing Foundation

Roundtable on Aggregation and First Nation Governance

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2004-05 Institute On Governance Roundtable Series:
"Towards a New Aboriginal Governance Agenda - TANAGA"

Speakers:

John Graham, Institute On Governance
Chief Monague Monague, Beausoleil First Nation

The TANAGA Round Table series continued with its fourth session concentrating on *aggregation* in Aboriginal governance: an arrangement amongst communities to share services and powers through the establishment of new bodies or new responsibilities for member governments.

John Graham, a Director at the Institute On Governance, was the opening speaker, providing a presentation entitled "Aggregation and First Nations Governance." Mr. Graham has undertaken extensive research on the subject of aggregation over the past four years and his lecture was a synthesis of the theoretical and empirical results he has compiled during his studies.

His presentation was followed by comments from Chief Monague Monague, who provided some critical insight into the operational challenges of government in Aboriginal communities and their implications for efforts to aggregate services on reserves. Chief Monague also provided opening and closing prayers for the evening's gathering.

Presentation by John Graham

Mr. Graham's talk started from an interesting observation that serves as a reminder of the challenges facing Aboriginal governance, but also of the accomplishments achieved in communities.

"No country in the world has developed local governments like those in Canadian First Nations communities today, that on one hand serve so few citizens, and on the other have such a wide range of responsibilities" (IOG Policy Brief, No. 18)

Local non-Aboriginal governments in North America of the size of First Nations – that is well under a 1000 residents – are responsible for only a short list of services: typically, streets, lighting, water, sewer and recreation. None deal with education, health, social assistance or the numerous other programs for which First Nations have responsibility. The only close parallel

are tribes in the United States, which generally are much larger than Canadian First Nations and have fewer responsibilities.

Based on this observation, the research questions are:

How can the highly disparate and often very small First Nations Communities across Canada manage their wide ranging and complex set of government functions in an effective and legitimate manner?

Is more aggregation part of the answer? And if so, in what form?

The presentation addresses:

1. Models of aggregation
2. Rationales for aggregation
   - Standards
   - "Good Governance"
3. Policy implications

What is aggregation?

According to Mr. Graham, it is important to clearly define what we mean by aggregation:

A formal arrangement among governments to share or delegate services and powers through the creation of new public bodies or by shifting responsibilities from one level of government to another

As we continue to discuss aggregation, it is important to note that historically Aboriginal communities have collaborated to provide better services, protection and representation to their members. For example, the Anishinaabek Nation can trace its roots to the Confederacy of the Three Fires, which existed long before first contact between Europeans and Aboriginal tribes. However, contemporary discussions on aggregation between First Nations should also involve other political actors, such as Provincial and Federal governments, since they have funding and regulatory relationships with these communities.

Research indicates that there are five major models of aggregation, which differ according to the institutional structure and relative power arrangements of governance mechanisms.

Models of Aggregation

1. <u>Single tier</u>
   - These involve the merging of local governments and the sharing of governance functions.
   - They also require legislative change.
   e.g. RCAP proposal, amalgamated municipalities such as the City of Ottawa

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2 (a). <u>Two-tier, delegated powers</u>
- Some functions of two or more local governments transferred to a regional body.
- Opt-out is possible.
e.g. United Anishnaabeg Councils (UAC)

2 (b). <u>Two-tier, not delegated</u>
- Like 2 (a), but powers of the regional government are fixed, not delegated.
- Legislative change also required.
e.g. Nisga'a, Two-tier Municipal (Canada), and the Aboriginal Province (Courchene and Powell proposal)

3   <u>Power-sharing treaties</u>.
- Autonomous nations agree, through an international treaty, to establish an organization to exercise law-making powers over delegation areas of responsibility within their respective jurisdictions.
e.g. European Union (EU)

4. <u>Special purpose bodies – no specific legislative powers</u>.
- Two or more governments agree to establish an organization to provide specialized services to the governments.
- Requires no legislative change.
e.g. Tribal Councils, First Nations Lands Advisory Board

5. <u>Special purpose bodies – specific legislative powers</u>.
- Two or more governments agree to establish an organization to exercise power over delegated areas of responsibility within their respective jurisdictions.
- May require legislative change.
e.g. Cree School Board, FN Policing, FC Child and Family Services, Municipal Finance authority of BC.

Rationales for Aggregation

There are a number of central arguments that are commonly used to support aggregation initiatives, which can be grouped into two categories: standard and "good governance" rationales. Standard rationales are those relied upon most frequently, and yet on closer analysis, may be weaker supporting arguments than those under the "good governance" rubric.

1. <u>Advocacy</u>.
First Nations have traditionally seen collaboration and working relationships in service delivery as a means of achieving a collective voice for increased 'clout'. Yet, a number of complexities arise around the funding arrangements for these bodies.

For example, when advocacy funding comes primarily from the Federal government, accountability relationships become tangled – organizations are to serve both the interests of their members and meet federal funding requirements. Second, a problem exists round

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independence. How critical can any organizations be of its principal funding source? This is especially relevant as levels of government shift funding relationships from "core" to "project-related" means.

Therefore, the long-term policy objective should be to create organizations in which membership is voluntary and which are funded by participating First Nations entities, not by the federal government.

2. Economies of Scale.
This argument is usually the central rationale for aggregation, both in the context of First Nations and other levels of government. It starts by assuming that most Aboriginal communities are too small to carry out most of their service-related functions in a cost-effective manner, so concludes that collaboration will either result in a net reduction in government costs, or in an increase in the purchasing power of existing government funds.

But, is this simple argument supported by the evidence? In fact, evidence from non-Aboriginal communities suggests that skepticism is warranted on the economies of scale argument:

- There is a wide range of ways in which local governments can overcome small size challenges without resorting to aggregation, such as contracting with the private sector, developing service agreements with nearby municipalities.

- Empirical evidence suggests that there is no "ideal" size for local government. Cost drivers are different for each community and for each service and change over time.

- Implementation costs of aggregation are consistently underestimated. For example, after amalgamation, different wages of employees in a particular sector tend to float up to that of the highest paid.

- Aggregation can reduce local competition that can reduce costs and help to stimulate innovation.

- When collaboration is voluntary, participating governments often break down services into individual components and use these to try innovative approaches e.g. they will collaborate in developing a shared arena but will run their other recreation programs geared for children separately

- *Perhaps most importantly, evidence suggests that citizens prefer the local control and choice that comes with smaller government.*

So, these points identify some weaknesses in economy-of-scale arguments supporting aggregation.

That said, some empirical data does show that the costs of general government (that is, the costs associated with the local government politicians and their immediate support staff) are greater in relative terms for smaller communities. For example, the average cost of "general government" for all Ontario municipalities is 13% (of total expenditures); whereas for Ontario municipalities with a population under 1000, the cost is 19%.

Similarly, for the community of Kuujjuang in (population 2056) the cost is 19.5%; higher still is Aupaluk (population 187), where costs are an astounding 30.2%. (Both of these are Inuit communities are in northern Quebec.)

There is some evidence to suggest that, in comparison, First Nation communities in terms of general government costs fare not too badly, and in some instances are below the Ontario average. Consider Kingsclear, NB (population 769; on reserve 601) with costs of 9.9%, and Curve Lake, ON (population 1705; on reserve 697) with costs of 9.6%. These low percentages reflect the fact that First Nation expenditures per capita are so high relative to other local governments.

Finally, in considering aggregation in the First Nation context, it is useful to recognize factors which may dampen voluntary participation in any aggregation initiative. First, because members of these communities do not pay taxes to their local governments, there may be *less citizen demand for efficient, high quality services*. Second, Aboriginal communities frequently see governments and service delivery organizations as *job creation mechanisms*, as opposed to those that minimize costs.

In short, the economies of scale argument, much like in non-Aboriginal Canada, has a lot of mixed evidence which makes it difficult to come to definitive conclusions. Nonetheless, there are more cogent argument for seeking aggregation for First Nation governments.

"Good Governance" Rationales

3. Separating Municipal-like from Provincial-like Responsibilities.
In non-Aboriginal governance arrangements, there are some "good governance" reasons why provinces carry out certain functions and municipalities others. One critical issue here is the **separation of operations from the regulatory authority**. Examples include drinking water, child and family services and natural resources where municipal and provincial levels of government divide jurisdictions to avoid the inevitable conflict of interest when a single level of government is responsible for both service delivery and the regulation of that service delivery. *How can a government, especially a small one, regulate itself?*

This same line of reasoning applies to the separation of other responsibilities, for example, property tax assessment (a provincial responsibility) and the setting of property tax rates (a local responsibility.) Further some provinces have redress mechanisms where citizens can appeal decisions made at the municipal level.

There is also a need for **separate political leaders** at each level to avoid conflicts of interest.

4. Managing with Integrity Funding Programs for Families and Individuals.
As the Royal Commission noted, concerns exist that service delivery and allocation in small communities may be influenced by parochial interests. Where family ties are an important fact of life, perverse incentives may exist that can harm the integrity of important funding decisions. It was this assertion, among others, that led RCAP to argue for larger First Nations governments based on national groupings.

5. Core Capabilities of a Government.

Within any small community, there will clearly be a smaller pool from which core competencies and skill sets can be drawn. Sufficient capacities for political leadership and senior public administration may not be available in small communities, whether Aboriginal or non-Aboriginal.

6. Making the Federation Work Effectively.

Simply put, the number of governments in a country matters. A federation with, for example 600 Aboriginal communities will work differently and with less cooperation, than with 60 communities. So, an argument for aggregation is that fewer, more aggregated governments will be able to work together more effectively and with more harmony to protect the interests of their constituents.

Conclusions

There are two central conclusions of the research. First, there are clear and compelling arguments, based on good governance principles, to advocate two-tier First Nations governments as the long-term, desired direction for self-government agreements. Second, aggregation for other purposes, such as advocacy, cost reduction and building technical capacities, should occur on a voluntary basis and be funded by First Nations governments.

Policy Implications

- When considering aggregation, supporting arguments should rely on good governance principles, not cost rationales.

- "Forced" attempts at constructing and achieving economies of scale – such as federal funding for tribal councils or technical service organizations - should be phased out, to be replaced by First Nation funding to such bodies.

- Taxation of First Nation citizens by First Nation governments and block funding arrangements are likely more effective ways of achieving economies of scale through voluntary aggregation arrangements driven by First Nations .

- *Separation of provincial-like and municipal-like responsibilities is the most compelling argument for a two-tier system of First Nations government*:

  - Provincial-like: regulation, major taxation, revenue equalization, redress functions, justice, health, education and social programs

  - Local-tier: service delivery.

- Combining regulatory and operational responsibilities in a single tier should be avoided. Thus self-government arrangements like the First Nations Land Management Initiative (FNLMA) should be avoided in future because they combine in one level of government regulatory and operational responsibilities.

- In light of the above, the Federal government's Inherent Right Policy should be overhauled.

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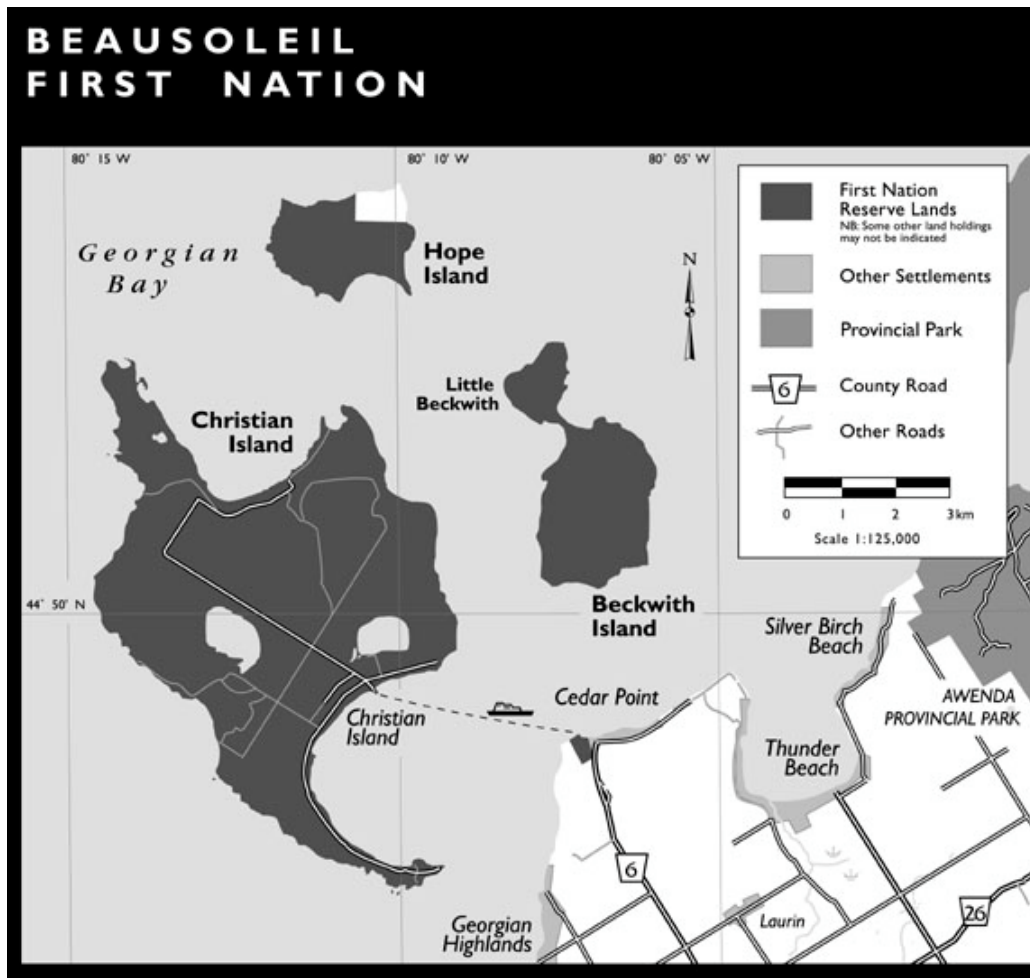Presentations by John Graham, Chief Val Monague.

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Val Monague's Presentation

Chief Monague comes from Christian Island of the Beausoleil First Nation in Ontario. Its total population is 1657 members, although a significant number live off reserve across Canada and even in New Zealand and Australia. Its on reserve population is 612. Beausoleil is one of four communities that form the United Anishnaabeg Councils (UAC), an alliance of Chippewa, Mississauga and Pottawatomi Nations. Its current members are Chippewa First Nation of Beausoleil, the Mississauga First Nations of Curve Lake and Hiawatha, and the Pottawatomi First Nation of Moose Deer Point. They have been negotiating a self-government agreement with the federal government since 1986.

She is the first female Chief of her community and is now serving her third term. She described herself as a passionate believer of self-government for First Nations.

Of interest to discussions of aggregation is the geographic environment of Beausoleil First Nation, which consists of three island communities in Georgian Bay and a small parcel of land on the mainland. The map below shows some of the physical barriers that impede service delivery, especially during winter months.

(from the community website, http://www.chimnissing.ca/map.html)

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Chief Monague noted that the day of the TANAGA round table, December 9, 2004, was also an historic day for her community, as well as others of the UAC. She had attended a press event with the Minister of Indian and Northern Affairs to publically announce the successful negotiation of the Anishnaabe Government Agreement (AGA) with the Federal Government. It is a self-government agreement designed to replace the outdated regime established by the *Indian Act*. To be ratified the agreement requires the consent of community members in a referendum to be followed by legislation enacted by the federal government.

Of interest to the debate around aggregation, the AGA recognizes that the First Nation will have legislative authority in 13 areas:

- Selection of public officials
- Land
- Membership
- Language and culture
- Education
- Natural resources
- Public works and infrastructure
- Environmental protection
- Environmental assessment
- Economic development and operation of business
- Traffic and transportation
- Enforcement and adjudication of First Nations laws
- Public order, peace and safety.

This includes areas of responsibility typically held by Federal, Provincial and Municipal levels of government in Canada. Having said that, an interesting aspect to the AGA and its negotiation was that the provincial government of Ontario was not a party to the agreement.

The UAC has adopted a delegated form of two tier government. Jurisdiction rests squarely with the First Nations, who can then delegate jurisdictional responsibilities to a regional form of government. But instead of creating one central organization to support the regional government operations, these are going to be spread among the four First Nations. Thus, one of Beausoleil's responsibilities will be public works. The regional government's responsibility will be primarily regulatory in nature. To perform these responsibilities, the UAC plans to appoint a regulatory commissioner. This person and his or her small staff will be located at Beausoleil. Other regional functions will be situated in other UAC First Nations.

Chief Monague's discussion of aggregation can be grouped under two headings: challenges facing aggregation initiatives and opportunities for aggregation. As such, they show the complex nature of aggregation when facing practical realities of First Nation communities.

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Challenges Facing Aggregation Initiatives

Each of the communities within UAC has its own decision-making mechanisms and practices, which contribute to siloed services across the member communities and even within communities. This makes deeper collaboration between member First Nations difficult. The Chief gave the example of her own public works staff – those operating ferries, housing portfolios, roads, fire, first response – many of whom are dealing with one another for the first time.

She noted that she has been on a steep learning curve in terms of taking on the public works function for the UAC. One example of the complexities she faces in her own community is deciding when it is safe to allow travel over the ice roads. In essence there are many factors including wind, temperature and snow conditions that create safe or unsafe conditions. She wondered if anyone had heard of regulations governing travel on ice roads.

A function of inter-community relations is also the turf-protecting behaviour that exists at both the decision-making and service delivery levels. People who occupy these positions in each UAC Nation sometimes try to protect their area and jobs associated with it.

The island geography has meant that Beausoleil has not been able to consider sharing service delivery with other, non-Aboriginal communities, or MTAs. Clearly, in small, fragmented communities, especially those including islands, aggregation can be problematic depending on the scope of activities for collaboration.

As an aside, the Chief recounted a meeting with provincial officials on issues dealing with drinking water. One such official rather naively thought that the disparate UAC communities, hundreds of kilometers apart, had a common drinking water system. The Chief noted that educating officials about First Nation realities is an ongoing challenge.

A more fundamental problem was experienced during negotiations for the Anishnaabe Government Agreement, where an initial seven First Nations involved in the process gradually thinned to four. Although the AGA is clearly a significant accomplishment, the process showed how difficult it can be to keep member government on board collaborative negotiations, especially when other factors come into play (such as disagreements over the sharing of revenues from casino operations), factors that have nothing to do with the self-government agreement. Members of First Nations' communities are also concerned that aggregation would result in removing accountability and voice from local communities.

Perhaps most significantly, aggregation relationships between various First Nation communities may be impossible because of historical animosity.

Opportunities For Aggregation

Forms of aggregation are currently underway in some UAC communities, although they are often not recognized as such. Beausoleil First Nation do have some collaborative relationships in health and education with other First Nations.

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Furthermore, in the case of UAC, the negotiations between communities leading up to AGA were a start of closer partnerships in government. Personal relationships between First Nation staffs were developed, which may form the basis for even closer associations in the future. As such, they represented a *de facto* form of preliminary aggregation discussion.

Beausoleil First Nation, presumably similarly to other communities, is experiencing significant administrative burdens regarding regulations: their compliance and enforcement. She gave an example of recent changes to regulations governing the operation of ferries resulting from an inquiry into an accident. Responding to new proposals for regulations imposed by other levels of government, especially because of their technical nature, represent good opportunities for collaboration and aggregation.

But, there is also scope for more modest forms of collaboration between First Nations. Some professional services, such as architectural design, are required periodically by each community and so sharing staff capacity in this area would facilitate reduced costs and perhaps more harmonization in design and safety standards in a region.

Finally, there are also opportunities for the innovative aggregation mentioned earlier by Mr. John Graham. Within, for example the UAC, instead of creating a second bureaucratic tier of government, it is possible if not preferable, that each community handle separate parts of the jurisdiction of the regional government. Curve Lake, say, may be able to manage education and health issues for all four member communities, and Beausoleil public works, natural resources, and so on. This may perhaps be the superior way of ensuring a degree of aggregation based on a single-tier government structure.

Questions and Answers, Open Discussion

Note: Participants spoke as individuals at the event, and because their comments do not necessarily represent the views of their departments or organizations, they are recorded without attribution.

In the question and answer period, one participant noted that the UAC agreement is historic in nature and congratulated the four First Nations for showing the perseverance to negotiate it. Unlike the non-Aboriginal world, which tends to prefer delegating downward, First Nations often prefer the opposite – that is, to delegate upwards. This is the UAC approach. He also noted that there are many approaches to self-government and aggregation, pointing to a governance continuum stretching from the Indian Act to comprehensive self-government. An example of the diversity of self-government agreements is the recently signed agreement with the Dog Rib, which is a public form of self-government. Capacity is clearly an important consideration in drivng the need for aggregation.

This same participant also wondered about the problem of stability in aggregation agreements. Chief Monague replied by noting that stability is achieved through the constitutions being

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adopted by the various UAC First Nations. Another participant noted wryly that the federal government has stability problems of its own when it comes to dealing with First Nations.

Another participant wondered why the UAC had chosen to not create a central body to handle the regional government responsibilities. Chief Monague replied that the communities were very strong in their desire not to create another bureaucracy. Communities need to have "ownership" of these regional responsibilities. They believe in their capacity to manage public affairs.

Finally, the Chief was asked a question about her experience with tribal councils, one approach to aggregation. She had high praise for the expertise of many tribal council staff, many of whom are very busy. Consequently, getting staff to concentrate on your problem can sometimes be difficult. For this and other reasons, her strong preference in self-government is not to rely on tribal councils but rather to control the services within the UAC. That way the First Nations will build their own capacity and have better control.

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[1] Attendees participated in their individual capacity, not as representatives of their organizations.

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