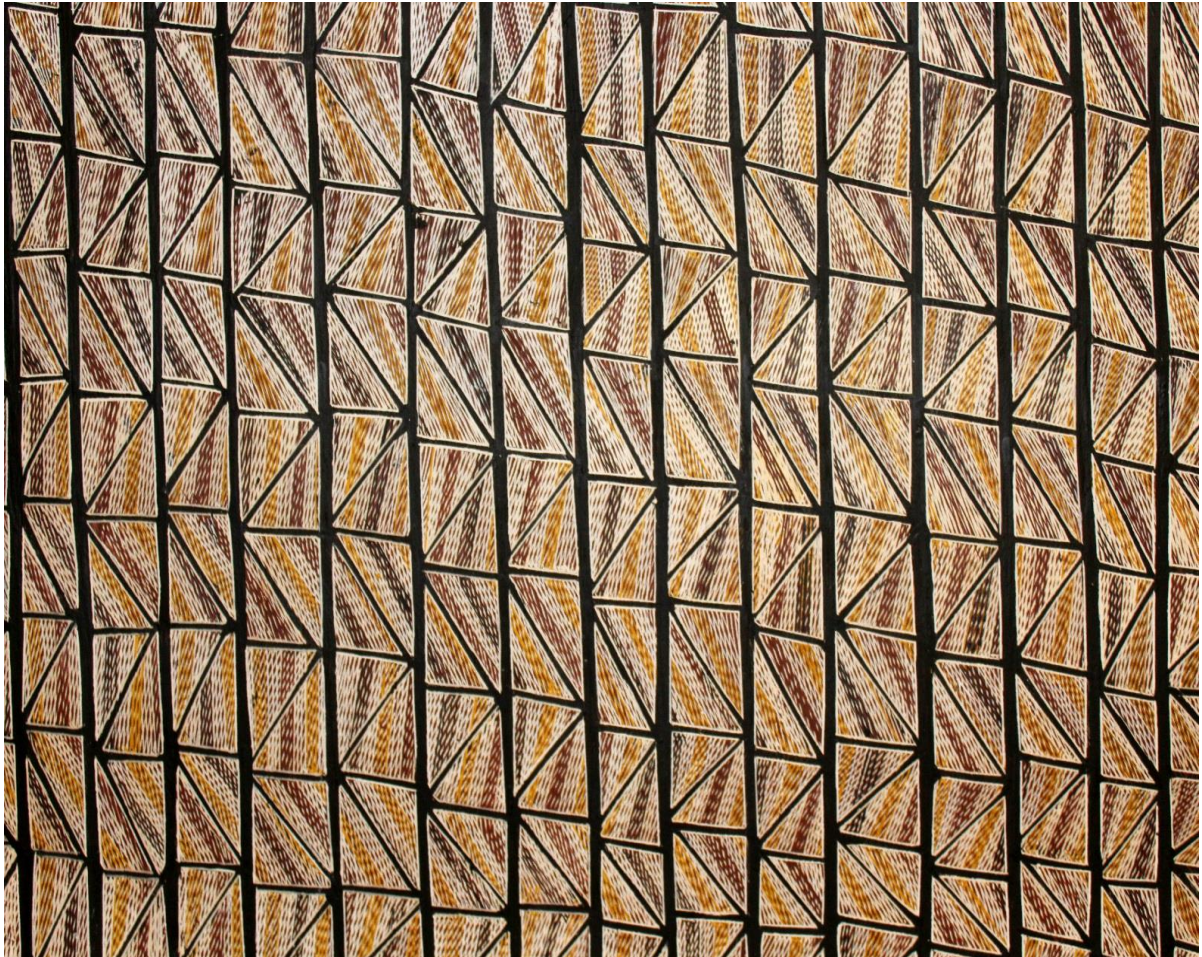




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INTER-INDIGENOUS TREATY MAKING: ANCIENT PRINCIPLES FOR CONTEMPORARY PURPOSES

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ABSTRACT

This paper is intended as a contribution to contemporary Indigenous *practice*. Its aim is to identify *Indigenous* culturally-centred principles and processes of treatying with each other. It does not focus on treaty making with settler-colonial nation states, which is the more common focus of research literature. The distinction is deliberate as the paper's intention is to bring to the fore Indigenous modes of treatying that have been in operation well before Westphalian nation-states sought to impose the political and legal constraints of their concept of sovereign treaty-making.

The paper begins with an examination of the ordinary meanings of the concept of treaty and treatying, emphasising that Indigenous treatying is ancient and includes modes of mediation, negotiation, agreement making, dispute settlement, and the formation of alliances and confederations. Such purposes extend well beyond the confines of Western paradigms.

We then present a series of summaries of specific examples of *inter-Indigenous* treaty-making drawn from First Nations in Australia, the USA, Canada and Aotearoa New Zealand. Each example is based on the authors review of First Nation websites and documents, and of relevant research literature> From this, and our own professional research experience, we designed a set of common criteria for each case to identify: the treaty parties, motivating issues, nature of the treatying, its purposes and scale, and the governance processes and practices used. From each case study, the paper then draws out the *core Indigenous principles* which have been used by groups to *govern* their own treaty making with each other. By 'principles', we mean the fundamental rules, laws, values and propositions that serve as the foundation for a system of belief and behaviour and so for a chain of reasoning. The paper argues that treatying principles are embedded in Indigenous laws, standards, norms, rules, measures and the values.

The intention in using this method is to finally identify any *commonalities of principles and practice* emerging *across* the case studies. These deep treatying principles are collated and discussed. Hopefully these principles will be useful to Indigenous polities in Australia, to adapt and inform their self-determined procedural frameworks for negotiations. For example; for rebuilding, strengthening and self-governing contemporary *inter-Indigenous* relationships and collaborations. And for asserting and implementing *their* preferred ground rules as the bases for treatying and negotiating agreements with Australian governments, industry and each other parties. The paper's conclusion suggests there is a collateral benefit associated with these Indigenous principles of treatying in contemporary contexts; namely, their exercise by First Nations acts as a powerful catalyst for rebuilding their collective solidarity and self-governance capability as polities. In other words, treatying *with each other* (and in turn with the nation-state), is an expression of, and tool for nation-rebuilding.

Foreword


In late 2020, the Centre for Aboriginal Economic Policy Research (CAEPR) and the Australian Indigenous Governance Institute (AIGI) commenced an exciting partnership with several First Nation partners, in a two-year applied research project –*The Indigenous Governance of Development: Self-Determination and Success Project* (IGD) Project) – to explore the ways First Nations in Australia are strengthening and exercising their collective self-governance so they are in the driver’s seat for their development agenda.

The first year in 2021 was an extremely productive one for the Project. A high-calibre multi-disciplinary research team of Indigenous and non-Indigenous researchers was assembled, and the Project established a foundation of partnerships with First Nations and their representative organisations. Our research teams work alongside local communities, native title holders, leaders and their representative organisations. With the ongoing pandemic conditions we have been sensitive to the major COVID-19 pandemic stresses that continue to be faced by our First Nation partners. That has led to many conversations and collaborative innovations in how we do our research work together; we may have become adept at zoom yarns, but also met locally ‘on country’ when we could, to share experiences and insights.

At a time of great uncertainty and policy change in the national political environment, Aboriginal and Torres Strait Islander groups face major challenges in rebuilding their own governance in practically effective, culturally strong ways. This Discussion Paper is part of an IGD Project series, which presents evidence and analyses from the IGD Project’s collaborative case studies. Our aim is to make this research count for First Nations, their leaders and community organisations across Australia, so they can use it for their own local purposes. The important matters raised in the papers also have direct relevance for industry and governments, who need to rebuild their own internal capacity and policy frameworks to better support Indigenous self-determined efforts to govern~development.

This series of IGD Project Discussion Papers is a taste of the remarkable home-based solutions First Nations and their organisations are designing for their collective self-governance and futures. The papers capture a rich sample of changes, resilience and resurgence, describing examples where Indigenous practices of self-determined governance are being strengthened, and where development *with culture and identity* is a priority. We understand that the challenge on the road ahead is not merely to take control and put self-determination into practice, but to govern well and fairly on behalf of all the members of a First Nation. That way, chosen development has a better chance of delivering sustained outcomes.

We would like to thank the AIGI Board and staff, the CAEPR project team and staff, and the participating Indigenous nations and organisations who are working in partnership with us to carry out this applied research project. We believe our collective efforts will make a difference in informing constructive First Nations solutions for self-determined governance of development in Australia, and contribute to the formulation of more enabling government policy and industry engagement.



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1. SCOPE OF THE PAPER

This paper is intended as a contribution to Indigenous *considerations and practice*. Its aim is to identify *Indigenous* principles and procedures of negotiating treaties with each other. Its focus is *not* on treaty making with settler-colonial nation states, which is the more common focus of research publications. The distinction is deliberate as the intention is to bring to the fore Indigenous modes of treatying that have been in operation well before Westphalian nation states sought to impose the primacy of their legal constructions of sovereign treaty-making.

By ‘principles’, we mean the fundamental rules, laws, norms and propositions, which serve as the foundation for a system of belief and behaviour and so for a chain of reasoning (<https://www.merriam-webster.com/dictionary/principle>). We take ‘principles’ to include such things as Indigenous laws, standards, rules, measures and the values underwriting those.

The paper begins with an examination of the ordinary meanings of the English concept of treaty and treatying, beyond the arbitrary confines of Western legal terminology. We then present a series of short overviews of *inter-Indigenous* treaty-making drawn from Australia, the USA, Canada and Aotearoa New Zealand, in order to uncover the Indigenous principles informing each example. Each example is based on the authors’ extensive review of First Nation websites and documents, and relevant international research literature. Based on this evidence, and our own professional research experience, we designed a set of common criteria used for each case to identify: the treaty parties, motivating issues, nature of the treatying, its purposes, scale, and implementation, to extrapolate the governance processes and practices used when First Nations treaty and ally with each other.

From each example, the paper then draws out the core *Indigenous principles* which have been used by groups to *govern* their own treaty making with each other. The intention in using this method is to see if there are any *commonalities of principles and practice* that emerge *across* the case studies. In conclusion, these deep Indigenous treatying principles are then collated and discussed.

In the international Indigenous context, each of the four countries (Australia, the USA, Canada and Aotearoa New Zealand - often referred to as the CANZUS countries) have distinctive Indigenous cultures and colonial histories. However, while they are different in some critical and obvious ways, they also share important commonalities that have been raised and considered by First Nations leaders themselves (See Nikolakis et al. 2019; Smith et al. 2021). Among these commonalities are:

- A continuing deep-seated First Nations’ relationships with their traditional lands and waters.
- Fundamentally similar and largely English legal and political settler colonial heritages.
- Histories of the displacement of First Nations populations by European invasion, with catastrophic results.
- Surviving, but often impoverished First Nations, including groups still located on remnant or newly recognised Indigenous lands.
- 20th Century nation-state government policies focusing, for the most part, on social welfare, unilateral intervention, and assimilation.
- A consistency and resilience of First Nations’ demands for self-determination, self-governance, and sovereignty over their own territories.

These commonalities are often overlooked. They lead us to propose that the principles adopted by First Nations in each country, and regarded as being ‘proper’ ways to negotiate relationships with other First Nations, may also share some important characteristics in common.

Based on this method, the paper’s Conclusion produces a synthesised set of *Indigenous principles* that have been used by groups for *governing* their own treaty making.

2. INTRODUCTION TO THE ISSUES

... Indigenous treaty making has always, since time immemorial, involved more and deeper relations than simply an agreement between states or even merely between political entities. Rather, it has embodied the depth and richness of Indigenous relationship making, which have always included responsibilities not only to other political bodies but also to non-human entities such as animals, the environment and the spirit world. Some Indigenous peoples in the contemporary period are drawing on and reinvigorating their own traditional treaty practices in ways that create multiple possibilities for the conventional understanding of “treaty.”By re-creating and re-defining treaty making for their own purposes, in their own way, and on their own terms, these Indigenous peoples are actively asserting their self-determination in ways that advance its construction well beyond a territorially bounded nation state (Lightfoot 2017, 26 - 27).

With no foundational history in Australia of nation-state governments entering into treaties with Indigenous peoples, the recent overtures by some state governments to discuss treaty frameworks is a potentially momentous shift. In the context of the longstanding Indigenous advocacy for Australian governments to address the ‘unfinished business’ of settler colonisation of Australia, some groups are responding with guarded interest. By comparison, there is a long history of settler-colonial nations in Canada, the USA, and Aotearoa New Zealand negotiating jurisdictional, peace and mercantile treaties with First Nations in those countries. There is also a substantial body of literature about those treaties, critiquing their legal frameworks, purposes, implementation and outcomes¹. Much of it addresses the highly legalistic Western frameworks involved, where notions of ‘imperium’ and ‘dominium’ continue to hold sway.

Interestingly, there is comparatively less documentation of the experience of Indigenous groups entering into the negotiation stage of treaties with nation-state governments. The available international literature suggests the road to arriving at a modern-day treaty is arduous and tumultuous for the groups concerned. For most, the process has meant reaching out to their dispersed citizen members and starting conversations with them about the future. It has also involved mediating internal disagreements, creating initiatives to heal inter-generational trauma, and forging new ways to work and make decisions together. Commonly it has required the use of scarce group resources in order to support years of negotiations. In other words, entering into treaty-making with nation-states raises many internal issues for groups about their collective

1. For Australia, see excellent overview of issues and literature in Marcia Langton 2004, and Woods 2021.

identity, solidarity and self-governance arrangements. Such pressures come to the foreground well before negotiations have even commenced.

This is where we have identified a particularly noticeable gap in the published literature; namely, there is a lack of information about the *Indigenous principles of treaty-making* that groups use to inform their collective engagement and participation in treaty-making. This gap is important and is especially evident in contrast to nation-state governments, which routinely publish and widely advocate their treaty-making principles via policy and financial documents. These assume that Western *legal* conditions and interpretations for treaty making are *sine qua non* – the absolute essential basis upon which treaty negotiations proceed and outcomes are determined.

But what normative frameworks do Indigenous groups operate under when treaty-making? What kind of authoritative principles of right/proper action do they collectively recognise and accept as binding them? What principles do they expect to be given weight during negotiations? What measures or standards do they use to consider and assess their own treaty-making goals and aspirations? And what kind of self-governance norms do they emphasise as being necessary to guide and regulate their efforts?

This paper takes a slightly circuitous path to considering these questions. It deliberately moves away from the context of Indigenous treaty-making with nation-state governments and the legalistic constraints of those, in order to consider the questions in the specific context of *inter-Indigenous* treaty making. This approach is adopted in the knowledge that Indigenous polities have been making treaties and agreements with each other for many thousands of years before and after settler colonisation, and so have their own principles upon which to rely. Long before Westphalian nation-state settler treaties were initiated, First Nations (including those in Australia) were treaty-making as a mode of diplomacy and jurisdictional governance *with each other* for a variety of purposes. For instance, to mark the settlement of major disputes, resolve contested boundaries of their lands and waters, to form political alliances and confederacies, and to collaboratively govern natural resources and places. Today, some First Nations are reasserting their modes of treaty-making with each other, as part of their contemporary governance of their rights, lands and waters.

3. TREATYING – WHOSE CONCEPT AND WHOSE PRINCIPLES?

DEFINITIONS

Treaty/Treaty Making:

Means *discussions or negotiations in order to reach an agreement. An agreement or arrangement made by negotiation; the action of **treaty** and especially of negotiating; to discuss terms of accommodation or settlement*

The Latin root of **treaty** is *tractare*, which means 'to handle.' When two nations sign a treaty, they decide to handle things according to rules defined in their agreement.

Treat (verb.): archaic c. 1300, 'to negotiate, bargain, deal with', from Old French *traitier* 'to deal with, act toward; set forth (in speech or writing)'; (12c.), from Latin *tractare* 'to manage, handle, deal with, conduct oneself toward'; originally 'to drag about, tug, haul, pull violently'.

Treat (noun): late 14century 'action of discussing terms', from treat (v.). (<https://www.etymonline.com/word/treaty>)

An agreement is not necessarily considered to be of a different legal nature to a treaty, particularly if the subject matter of the agreement relates to 'the notion and contents of sovereignty (such as territory/land and other jurisdictional matters)'. In such cases, both treaty and agreement are settlements between parties having rights of dominion or possession (Langton & Palmer 2004, 41).

As long as there have been human societies, people have found ways to make peace after conflict, or enter into mutually beneficial pacts with each other about a wide range of matters. Well before the concept 'treaty' was legally colonised by European nation states to justify their usurpation of First Nations jurisdictions and sovereignties, Indigenous peoples deployed their own principles and understandings of how to treaty with each other.

When the Westphalian straightjacket is removed from the term 'treaty', it simply means the act of negotiation and discussion of the terms of a relationship, in order to reach an accommodation, settlement or agreement with other peoples. As Langton and Palmer point out above, this encompasses forms of agreement making and settlement. The original Latin root of treaty is *tractare*, which means 'to handle.' In other words, parties decide to handle things (such as agreed obligations and responsibilities for a particular matter) according to rules they have defined in an agreement. A treaty thus has a contract-like character in that it is binding on the parties—there is an expectation that the commitments made will be honoured. For these reasons, a treaty also stipulates agreed governing processes for how mutual decisions will be made, and how the conditions will be implemented.

Treaties do not need to follow any special form. The term 'treaty' can be used generically to describe a variety of instruments, including conventions, agreements, protocols, covenants, charters, and acts. Contemporary treaties between Indigenous peoples and nation-state governments are simply *one* of many modes of treatying. Nor does a treaty have to be written down. It can take the form of a social contract, a joint declaration of intention, or an exchange of symbols of intention, or performative expressions of agreement. It may be time-specific, or regarded as operating in perpetuity.

Treaties are a manifestation of jurisdiction, and inter-group relationships. The term 'jurisdiction' (Smith 2002, 3) is defined in its common-sense meaning as 'the right, power, or authority to administer the law by hearing and determining controversies'; 'the extent or range of judicial or other authority'; and the 'territory over which authority is exercised' (see also Langton 2002). A treaty is thus a demonstration of jurisdictional authority and how that authority is/will be exercised. The treaty jurisdiction may refer to a particular institution, a territory, a resource, economic asset,

and so on. It may involve a range of jurisdictions, and clarify how those overlap or intersect in regards to different kinds of power and authority distributed across the parties.

Treatying thus engages the notion of the 'polity'. A polity is an identifiable political entity; a group of people with a collective identity, who are organised to exercise self-governance, who have a system of institutionalised political and social relations, are able to act in solidarity, and have a capacity to mobilise resources that will enable them to wield contemporary power and authority for their own determined purposes. Polities can include countries and nation-state governments, but do not have to take that political form in order to have sovereignty and jurisdiction.

A treaty-making process therefore rests on the mutual recognition of authority—it enacts a polity-to-polity, nation-to-nation, or government-to-government relationship in which each party recognises the political authority of the other to represent a specific community or citizen members for the purpose of treating.

This, in turn, raises the importance of representatives having a negotiation mandate or authorising environment—that is, the authorisation or 'stamp of approval' from a group's members to act in a particular way, on their behalf. It may take the form of a consensus strategy, verbal instructions about the kinds of terms and conditions that can be explored, or simply an acknowledgement that specific leaders have credibility and trust to negotiate (see Brennan et al. 2005).

4. INDIGENOUS JURISDICTION

First Nations are polities with jurisdiction (Langton 2002, 2004; Smith 2002). Entering into treaty-making is an act and instrument of a polity's self-governance, at once both an assertion and a recognition of jurisdictional and representative authority. It is this capacity for collective agency—to act as a polity—that was one of the first bases of Indigenous jurisdiction to suffer under the onslaught of settler colonisation in Australia. (see various papers in Smith et al. 2021, 110).

Through the first two-thirds of the twentieth Century, the government administration of Aboriginal (later 'Indigenous') Affairs was largely in the hands of the Australian states. Today, Indigenous Affairs has been carved up under federal and state/territory jurisdictions, with each taking sometimes quite different policy directions. There has been little formal recognition in Australia of Indigenous peoples as autonomous political actors with jurisdiction over either land or other matters. In 1979, in an earlier High Court decision, Justice Gibbs said the idea '...that there is in Australia an Aboriginal nation exercising sovereignty, even of a limited kind, is quite impossible in law to maintain. (quoted in Reynolds 1999, 139).

It was not until the High Court's 1992 decision in the *Mabo* case—just twenty years ago—that Australia abandoned the doctrine of *terra nullius*, the idea that Australia was unowned land when the British first arrived, so its Indigenous peoples had no sovereign rights. Even in *Mabo*, according to Henry Reynolds, the court 'overthrew the doctrine of *terra nullius* in relation to property, but reaffirmed it in the matter of sovereignty' (Reynolds 1999, 139). This means that Indigenous peoples in Australia lack both the political rights held by Native Nations in Canada and the US, and the economic rights regained by Māori in recent years. (Even though the 1976 statutory recognition of inalienable freehold Aboriginal title to land in the Northern Territory of Australia constitutes a legal

recognition of substantial land rights, it does not recognise an Aboriginal right over resources on the land). *Mabo* affirmed native title, although in the decision's aftermath, all Australian governments have worked to limit its impact, making it difficult for Indigenous peoples to realise the full economic value from the title they hold.

This has implications for Indigenous self-determination, which generally has been perceived by Australian governments as referring not to self-government, but to modest self-management or self-administration beneath an umbrella of nation-state control. Despite this, some First Nations in Australia have succeeded in exercising limited self-governing powers either through corporate structures made possible by federal government and state/territorial legislation, or by working 'below the radar' to rebuild traditional decision-making mechanisms—or through a combination of both strategies (see, for example, the examples in Hunt et al. 2008; Smith et al. 2021).

One of the challenges Indigenous Australians face in treaty-making today is the question of who the 'self' in potential self-government should be. There is huge diversity amongst widely dispersed polities which are networked at local and regional levels based on shared understandings of law, ceremonial life, trade, ecological and seasonal resource management. Such layered and shared understandings shaped decisions in socially complex ways. Smith (2004: 18; see also Sutton 1995, chapters 4 & 5) comments, for example, that, 'In Indigenous societies, certain scales of social aggregation are associated with 'proper' authority and decision-making about particular kinds of matters'.

Indigenous networked polities have relational cores who are attached over multiple generations to specific areas of territory (Country), but are also strategically fluid in their composition. For example, religious, economic and political interests in land are not held exclusively by primary owners. Rather, rights and responsibilities overlap and are dispersed across a range of people and interest groups based on the principle of subsidiarity. For example, extended families deal with particular domestic matters and localities; larger groups of extended kin may come together for particular economic activities; 'clans' may meet across larger regions for ceremonial and dispute-resolution purposes; and responsibility for the conduct of particular ceremonies is distributed across kin who are resident in different locations.

Indigenous law and Country in Australia constitutes an 'original jurisdiction'. Noel Pearson (1977) suggested that the concept of sovereignty resided in Aboriginal law and corporate groups prior to British colonisation. Marcia Langton refers to the 'ancient jurisdictions' of Aboriginal polities, and argues that if, as the common law now holds, 'native title survives, then Aboriginal jurisdictions, that is the juridical and social spaces in which such laws are practices, must also survive' (Langton 2002: 1; see also Reynolds 1996, 1998: 208–15). The practice of Aboriginal governance today is, as Langton (2002: 6) points out, indistinguishable from practices of land/waters ownership, and that jurisdiction is an 'extremely localised one, elaborated across regions, but exercised by individuals with authority'.

This means that different forms and scales of Aboriginal polity have different forms of jurisdictional authority, which may be expressed as reciprocal roles and responsibilities over the same places, events, knowledge and Country. In other words, Indigenous jurisdiction is a sophisticated form of 'decentred federalism' where the autonomy of each group is practiced as an *interdependent*

relational process, in relation to other units (Havemann 1999: 472; Nedelsky 1989; Smith 2011; Young 2000: 238, 253). It creates a system of *inter-related jurisdictional networks*.

The boundaries of these ancient jurisdictions are not cadastral in the Western sense. They are visible in their geographic and ecological form, but may also be invisible in the form of naming, marriage, ceremonial and ritual systems (Arthur and Morphy 2005). Some Indigenous jurisdictions have been partly recognised under Australian legislation and now have gazetted boundaries; eg, land-holding Trusts and native title Prescribed Bodies Corporate. Others have formed the bases for the establishment of various representative organisations such as Native Title Representative Bodies, Land Councils, previous ATSIC Regional Councils, and the now defunct regionalised forms of local government in the NT (see Smith 1995, 1996).

With this background in mind, there is a small body of mostly anthropological and applied research documentation about the formation of various kinds of *inter-Indigenous* alliances and agreements within Indigenous societies across Australia. Prior to colonisation, Indigenous nations in Australia were sovereign entities who treated with each other for their own purposes, based on their own laws. Examples include:

- the operation of regional ceremonial blocs;
- the formation of regional networks to care for powerful sites and dreaming tracks (where regions may cover states and cut across the boundaries of the nation state);
- alliances formed to promote inter-regional trade and economic exchange;
- regional ecological networks of polities who co-govern an entire riverine system, a large desert bloc, or a coastal environment and its resources;
- agreements to resolve disputes; and
- strategic political alliances about land claims and boundaries.

Today, Indigenous nations in Australia continue to assert they have never ceded their sovereignty or jurisdiction to the modern nation-states in which they now reside.

5. INTER-INDIGENOUS TREATY MAKING IN AUSTRALIA

Indigenous nations in Australia have a long history of making accords, alliances such as Makarrata, and agreements with each other for diverse strategic reasons. These are all modes of treatying. Some were short-term for particular seasonal conditions or events, others were enduring and embedded in ongoing ceremonial and knowledge systems. The motivation for many was to secure ongoing collaborative governance over areas of Country, highly valued resource areas, and larger ecological systems (such as riverine systems, deserts, natural resources such as ochre deposits, seafood areas, and so on).

More recently, research has been directed to better understanding Indigenous aspirations, principles and values when entering into contemporary agreements *with each other*, especially across cross-jurisdictional regions (Morgan et al. 2004; Rea 2008; Weir 2009; Maclean and Robinson 2011; Jackson et al. 2012, 2015). A number of these are occurring in the context of native title, settlement and treaty negotiations with nation state governments. For example, there is a growing body of research documentation of the protocols, accords and agreements within the water-stressed

Murray-Darling basin; the Eyre Basin, the Fitzroy River basin, and the Cape York wild rivers region (see Toussaint et al. 2001); Toussaint et al. 2005)

in a paper titled: *Water Ways in Aboriginal Australia: an interconnected analysis* (2005, 61-74) Toussaint et al. discuss Aboriginal relationships to water in northern Australia, characterising Aboriginal practices, beliefs and ideas as 'water ways' to encompass the meanings embedded in both human activity and the water's flow. Similar to what Smith and Kesteven (1982) found when mapping with traditional owners along the Coopers Creek in West Arnhem Land. A number of similar reports include descriptions of the ways multiple First Nations are collectively governing lands and waters today. This paper shows that such collective 'governance ways' continue to have deep resonance across Australia.

The following overviews present summary of evidence on specific inter-Indigenous agreements, alliances and accords, focusing on riverine ecosystems. There are similar collaborative initiatives occurring for desert regions (for example, the Ten Deserts Alliance), tropical rainforests (Rainforest Alliance), and seas and reefs (IPAs). Many Australian research studies have documented the ways in which Indigenous Nations attribute meaning to water and the place of water in their systems of knowledge and social institutions (See Strang 2001; Langton 2002, 2006; Yu 2003; Rose 2004; Toussaint et al. 2005; Jackson 2006; Weir 2009; Maclean and Bana Yaralji Bubu Inc., 2011). The literature highlights that in precolonial times, there were networks of Indigenous groups who worked together to look after and govern riverine tracts of Country and related nature resources. In effect, it was the riverine ecosystem which brought the nations together. These culturally-based relational networks have persisted and today many Nations are enacting alliances, confederations and agreements with each other, to reclaim traditional cooperative modes of riverine governance. Indigenous Nations around the country have worked together to have a number of these invaluable cultural ecosystems formally established as Indigenous Protected Areas (IPAs).

5.1 CASE STUDY: MILDREN AND THE ECHUCA DECLARATION

Website Sources:

<https://www.mldrin.org.au/murray-darling-basin/>
<https://www.mldrin.org.au/what-we-do/aboriginal-water-rights/>
<https://www.mldrin.org.au/membership/nations/>

Indigenous Motivation and Issues: A Riverine Ecosystem

The Murray Darling Basin covers an area over 1 million km and includes three of Australia's longest rivers (including the Murray and Darling Rivers). The Basin is a diverse and rich ecosystem encompassing forests, mountains and valleys, aquifers, soaks, swamps and wetlands through to arid rangelands and Mallee scrub. The tributary rivers flowing into the Murray also nourish more than 30,000 lakes and wetlands, including 11 classified as internationally significant under the *Ramsar Convention on Wetlands*. This diversity is reflected in the rich cultures of more than 40 First Nations (see Cultural Flows Paper).

The Basin spans four States and one Territory, making management of the river systems complex. Over 150 years of land clearing, water extraction, physical disruption of waterways and devaluing of

Indigenous knowledge has seen the natural environment of the Basin severely degraded, with many of the Basin's ecosystems and species under immediate threat. Basin waterways are impacted upon by high levels of salinity, poor water quality, toxic blue-green algae outbreaks and infestations of invasive European carp. Iconic native fish such as the Murray Cod and Macquarie Perch suffer from reduced river connectivity, cold water pollution from dam-releases and altered flow patterns consequent on over-farming and the water licensing systems of different states (<https://www.mldrin.org.au/murray-darling-basin/>).

Governing this complex ecosystem has proved to be highly political, with a range of public, private interests and governments involved. Indigenous nations along these rivers consider their deep knowledge of the waterway ecosystem as offering 'a holistic understanding of flows of water that integrates the environmental, social, cultural, spiritual and economic dimensions'. They were motivated to join into an alliance with each other to bring this knowledge to bear in better governing the Murray-Darling system:

... [We] have always known that the basin is more than just two rivers and more than just a great basin for the catchment of water - it is a complexity of interconnected life with subtle inter-relationships through floods and dry periods. Flood and drought have their effects and place in the preservation of the life force of the land. First Nations people have been the guardians and custodians of this great circulatory system of life in ways that others are only just starting to appreciate and understand through science and learning partnerships.

The First Nations communities up and down the Baaka/Dhungala know and have always known that the state of this great circulatory system of water/life is a reflection of our own health, and beyond that the health of the land, our spiritual well-being and a complex of inter-connected life forms and energy. The healthy "flow" of the various waterways over long distances through filters and underground aquifers across plains and along courses that have never changed in thousands of years is the energy of life itself. Dhungala Baaka is not just water it is energy and spirit that is reflective in humans, animals, flora and the land itself. (<https://www.mldrin.org.au/what-we-do/aboriginal-water-rights/>)

Two well-known First Nations' names are Dhungala for the Murray, and Baaka for the Darling. But there are many First Nations' names for the rivers, billabongs, soaks, and bodies of water that all merge together like blood veins across the great basin from the headwaters through to the Murray mouth. This extraordinary system of rivers, aquifers, swamps and wetlands has been the spirit and life centre for First Nations since the dawn of human time.



Source: NBAN and MILDREN Websites

The Indigenous Parties, Scale and Goals

The rejection of the *Yorta Yorta Native Title Claim* by the Federal Court in 1997 created renewed impetus for First Nations discussions of their rights in south-eastern Australia. In 1999, the Yorta Yorta hosted a two-day meeting in the Barmah Forest for First Nation groups whose country is along the lower Murray River Basin. The aim was to discuss their water values, ownership and aspirations, at a time of growing environmental crisis for the entire Murray-Darling river system.

The meeting resolved to develop a stronger voice for traditional owners in government policy and management responses to the severely degraded Murray River, including to strengthen the relationships *between* traditional owner groups through the development of ‘*Nation to Nation*’ protocols (Weir & Ross 2007: 186-187; Morgan et al. 2006: 142–3). At a second meeting two months later, the traditional owners decided to create an umbrella alliance—a body that could represent all traditional owners and be a platform to engage with government. Specifically, a board of delegates was proposed which would have representation from each First Nations group. A broader consultation process with traditional owners followed, undertaken by Yorta Yorta woman Monica Morgan (working via the Yorta Yorta Nation Aboriginal Corporation) and Mutthi Mutthi elder

Jeanette Crew (working for the New South Wales Department of Land and Water Conservation), and in 2001 MLDRIN held its inaugural meeting.

From these meetings emerged the inter-nation alliance known as the **Murray Lower Darling River Indigenous Nations** (MLDRIN). In 2001 the inaugural meeting of MLDRIN was held, comprising representatives of the Latji Latji, Mutthi Mutthi, Ngarrindjeri, Wamba Wamba, Wiradjuri and Yorta Yorta, Nyampa and Barkandji Nations.

Six years after its establishment and frustrated with not gaining water under the 'Living Murray Initiative', the MLDRIN alliance organised a meeting of its delegates and other First Nation water representatives to create the historic *Echuca Declaration*. A key aspect of the Echuca Declaration was its definition of 'Cultural Flows'. Just as 'environmental flows' are needed to sustain the ecological values of rivers, so the delegates argued, 'cultural flows' are needed to support the cultural traditions and community development needs of First Nations. MLDRIN defined 'cultural flows' as a way of translating Indigenous water and riverine rights, needs and aspirations into the language of modern water governance. Accordingly, the Declaration asserted that:

'Cultural Flows' are water entitlements that are legally and beneficially owned by the Indigenous Nations of a sufficient and adequate quantity and quality to improve the spiritual, cultural, environmental, social and economic conditions of those Indigenous Nations. This is our inherent right.

The Echuca Declaration:

Because the Federal and State Governments have failed to properly care for the Country and not allowed us onto our lands and waters we have been denied our basic human rights and our sacred places have been damaged and destroyed.

WHEREAS the Indigenous Nations each have responsibilities and obligations under their Indigenous Law/Lore and Custom to protect, conserve and maintain the environment and the ecosystems in their natural state to ensure the sustainability of the whole environment; and

We have obligations under our Law/Lore and Custom to care for Country and to respect our neighbours both down and up stream.

The Murray and Lower Darling Rivers Indigenous Nations DECLARE that it adopts the following definition of "Cultural Flows" and processes for engagement and inclusion of the Indigenous Nations in the management of their rivers and waterways; and

We DECLARE that this document says CULTURAL FLOWS means water entitlements that are legally and beneficially owned by the Indigenous Nations of a sufficient and adequate quantity and quality to improve the spiritual, cultural, environmental, social and economic conditions of those Indigenous Nations. This is our inherent right.

<https://www.mdba.gov.au/sites/default/files/pubs/sa-mldrin-echuca-declaration-2009.PDF>

The Echuca Declaration was later also endorsed by the Northern Basin Aboriginal Nations (NBAN), which was created to represent First Nations in the northern NSW and southern Queensland regions (See Overview below).

In the spirit of the Echuca Declaration, the MILDREN First Nations have further argued that:

... water has a right to be recognised as an ecological entity, a being and a spirit and must be treated accordingly, water is essential to creation and many Dreaming and other ancestral beings are created by and dwell within water'. The Dhungala Baaka complex emerges with material and spiritual personality that must be guarded and managed as it has been by First Nations in their nation and family entities for tens of thousands of years. Through owning, thinking, experiencing, managing and meditating about water and life, a radically different living idea of a water system emerges. For this to truly be activated First Nations' custodianship has to be at the centre of all aspects of water management. The whole way governments and non-Indigenous communities think about river complexes and water has to change.

MILDREN constitutes a process of internal treaty-making between First Nations to establish a confederation based on traditional relationships, knowledge and connections, with the aim of collaboratively governing and implementing agreed actions over time for an entire riverine ecosystem.

Today MLDRIN remains a strong alliance of 10 First Nations: the Wiradjuri, Yorta Yorta, Taungurung, Wamba Wamba, Barapa Barapa, Mutti Mutti, Wergaia, Wadi Wadi, Latji Latji, and Ngarrindjeri.

The MLDRIN alliance's core work involves advancing its First Nation members rights to protect, manage and own water resources on their traditional Country, increasing the involvement of traditional owners in natural resource management and planning, particularly ecological restoration projects, and it is lobbying for an Indigenous water allocation. They advocate that:

First Nations have inherent rights to use and manage waterways, in order to sustain our cultural traditions and build sustainable livelihoods for our communities.

(<https://www.mldrin.org.au/what-we-do/aboriginal-water-rights/>)

In 2007, the delegates established a web presence for MLDRIN at www.mldrin.org.au, which details the role of MLDRIN to perform the following functions for the traditional owners of the Murray–Darling River Valleys:

- *to facilitate and advocate the participation of 10 Indigenous Nations within the different levels of government decisions on natural resource management*
- *to develop responses on the cultural, social and economic impacts of development on Indigenous traditional country, and*
- *to be a collective united voice for the rights and interests of their traditional country and its people.*

MILDREN Governance:

MLDRIN governance is described as a direct extension of traditional decision making processes by the traditional owning nations involved:

MLDRIN is an expression of the way First Nations and Aboriginal people have always done governance and treated with each other – ‘by caring for Country and talking to our traditional neighbours upstream and downstream on the Murray and its sister Rivers, Creeks, Lakes, Billabongs and waterways’ (<https://www.mldrin.org.au/membership/nations/>)

MLDRIN is a model of representation and governance which specifically circumvents the native title system, relying instead on *Indigenous self-identification* which is endorsed through the informal networks, kinships and histories held and known between the First Nation groups. The MLDRIN confederation is based on a critical recognition of the autonomy of each First Nation group involved. It operates according to the deep-seated Indigenous principle of relational subsidiarity; that is, the confederation itself is mandated to deal with specific matters agreed upon by all members for their joint overarching riverine goals, but at the same time does not interfere with the internal business of each Nation, because it is recognised that traditional authority is vested in the Nation group and not the alliance.

MLDRIN is thus a creation of the First Nation members seeking to consolidate their cultural identities and self-governance by forming a major regional alliance within which they acknowledge and support each other. The confederation also emphasises the distinct riverine responsibilities that each First Nation holds in their own tracts of traditional country.

MILDREN governance is carried out via what is called the ‘Full Delegation’, which is the main representative and decision-making structure of the confederation. Each Nation that is part of the confederation may nominate two delegates (usually one male and one female) to be representatives. These people make up the MLDRIN Delegation. Delegates have the important responsibility of sharing information back to their broader Nation group and raising relevant matters for discussion at MLDRIN gatherings. The governance processes of the MLDRIN are thus intertwined with how the identity and membership of each First Nation group is self-determined:

By organising themselves along the lines of traditional authority, they are seeking to consolidate their political identity, and build their governance capacity to take care of their Nation and Country (Weir 2009: 199).

MLDRIN meetings, known as ‘Full Gatherings’, are held 2-3 times a year at locations across the Southern Basin. All Delegates are invited. Guests and presenters from government agencies, NGOs and community groups also participate. For minutes of recent Full Gatherings, MLDRIN Delegates can login to the member’s section of their website.

Voting and decision making accord with the principles and values of what could be called collaborative autonomy identified by MILDREN in its establishment. Each Nation has one, equal vote in all decisions of the Full Delegation. All major decisions are made by resolution during full gatherings. Most decisions are determined by a majority vote of the Delegates, but in some cases a

special resolution, entailing a two-thirds majority vote is required. Many of the day-to-day decisions are made by the MLDRIN Board of Directors. The Board is made up of seven to eight Delegates who are voted in at the MLDRIN Annual General Meeting, every second year (<https://www.mldrin.org.au/about-us/>)

Yorta Yorta woman Monica Morgan, who was a key figure in the establishment of MLDRIN, has spoken about how the MLDRIN alliance is founded in traditional authority:

... the development of MLDRIN isn't something new, it is just with the advent of native title Indigenous peoples could then focus on their traditional selves, who they are, their makeup and regain their identity in making decisions that are around that ... So there is a natural progression from old days to now, and so this is a modern concept and Yorta Yorta were the first ones to invite people from along the Murray River to regain our self-determining process within our traditional frameworks (Weir 2009: 188).

MLDRIN advocates a set of fundamental Principles that form the foundation of its confederacy and the way it governs in respect to collaborative riverine issues and initiatives:

1) Our core principle is that only traditional owners are best placed to talk for Country.

'Country' is an English word used by Aboriginal people to describe the complex interplay of animals, plants, landscapes, humans and spiritual beings that define a place or region.

Traditional Owners or Custodians are Aboriginal people who have specific rights and responsibilities covering a place or region through ancestral connection and cultural traditions.

Only Traditional Owners have the right to speak for Country.

2) The Sovereignty and inherent rights of traditional custodians are never ceded.

Despite centuries of colonisation and displacement, Traditional Owners retain their rights and responsibilities over Country, including land and water. These rights survive the imposition of a colonial legal framework and have never been ceded. These rights include : the right to use, enjoy, own and care for our lands and waters, the right to practice our culture and sustain our knowledge systems, the right to determine our own interests and pursue them in our own way.

3) MLDRIN will not interfere with the internal governance of individual Indigenous Nations.

MLDRIN will not interfere with the internal governance of individual Indigenous Nations. The role of MLDRIN is the one of an advocacy & representative body, a united voice for confederated, autonomous Nations.

4) All Indigenous Nations are equal within the MLDRIN Confederacy.

All Indigenous Nations are equal within the MLDRIN Confederacy.

5) MLDRIN respects the diversity of Nations in relation to tradition, sites, stories, cultural practices and governance.

MLDRIN respects the diversity of Nations in relation to tradition, sites, stories, cultural practices and governance.

6) Resources of the Confederation will be shared equally.

The resources of the Confederation will be shared equally between the 25 Indigenous Nations.

7) Self-determination of the Nations and of MLDRIN is the only sustainable way to do business.

MLDRIN will strive to ensure that our objectives and activities are not directed by any outside influences, be it government agencies or companies from the private sector.

8) Informed consent is key principle in how MLDRIN operates.

This ensures all that community members are aware and are in agreement with the operation of projects and have been granted the opportunity to participate.

<https://www.mldr.in.org.au/about-us/principles/>

Importantly, these principles are themselves founded on a set of core Indigenous values:

MILDREN VALUES

The Murray Lower Darling Rivers Indigenous Nations' Values are the following ones :

- *Traditional lore and customs of the respective Indigenous Nations are paramount.*
- *The land and water are sacred, as is our knowledge of it.*
- *The River system must be treated with respect because the land, waters and the people are interconnected.*
- *Caring for Country must be sustainable and respectful.*
- *Caring for Country means talking to each other, upstream and downstream.*
- *The role of Elders is held in the highest esteem and respect.*
- *Young people must be respected and involved in the Care for Country.*

Source: <https://www.mldr.in.org.au/about-us/values/>

The political assertion of the delegates, that they are the ones who speak for country, has been acknowledged by government in a Memoranda of Understanding signed between MLDRIN and the former New South Wales Department of Land and Water Conservation (in 2001), and the Commission (in 2006) (Weir 2009: 188).

Summary of Key Principles underlying MILDREN:

First Nations' riverine governance; Stewardship of Country and resources; Cultural geographies override state jurisdictions; collaborative autonomy in governance; traditional decision-making processes; traditional self-determined mandates for delegates; Indigenous Nation values; alliance based on Indigenous Law and riverine governance practices; inter-generational engagement in the alliance; informed consent; First Nations' sovereignty and jurisdiction.

5.2 CASE STUDY: THE NBAN TREATY

Website Sources:

<https://nban.org.au>

<https://nban.org.au/index.php/treaty/>

<https://nban.org.au/index.php/goals-and-principles/>

Indigenous Motivation and Issues: A Riverine Ecosystem

The First Nations of the *northern* Murray-Darling Basin first came together as the Northern Basin Aboriginal Nations (NBAN) in 2009, united by a common vision of 'Keeping Our Water Spirits and Our Connections Alive' (<https://nban.org.au>). Murray-Lower Darling Rivers Indigenous Nations (MLDRIN), NBAN's sister organisation in the southern Murray-Darling Basin, was formed 11 years earlier. Together, these two organisations represent the 46 First Nations of the entire Murray-Darling Basin. Shortly after 2009, NBAN was registered as a company, which acts as the administrative arm of the alliance that is referred to as the *Union of Sovereign First Nations of the northern Murray-Darling Basin*.

NBAN is the sister alliance network alongside MILDREN and governs the northern Murray-Darling Basin. It is a not-for-profit company and peak body that represents, advocates for and empowers First Nations in water management and ownership:

Since 2009, through the cultural authority of its member Nations, NBAN has been providing strategic advice on First Nations' water rights, interests and ownership. We have been delivering and partnering on projects, at a state and federal level, that fulfil its First Nations' vision of Keeping our water spirits and our connections alive'. (<https://nban.org.au>)

NBAN was created to improve the northern Nations' spiritual, cultural, environmental, social and economic conditions along the top sections of the Murray and Darling River Basin, including goals of the Echuca Declaration and the concept of Cultural Flows. Nations along this section of the basin were similarly concerned that the Murray Darling Basin is experiencing challenges due to a drought since mid-2017 and increasingly, the impacts of climate change:

We have been the Traditional owners of the Basin for over 30 000 years. Whilst our involvement in the management of water is essential for our physical, spiritual, cultural, environmental, social and economic health, our potential to do this has been hindered in recent decades by our relative lack of water license holdings. Nearly 10% of the population of the Murray Darling Basin area in NSW are First Nations people; however, our Nations and organisations legally only hold 0.2% of the available surface water. This is due to a historical series of water trading policies and laws that have compounded to limit the opportunities for First Nations People to gain legal entitlements to water. Not only does this impinge on our ability to take care of water on our lands, but it also denies us the same opportunities as other stakeholders to participate in the Basin's AUD16.5 billion water market.

In its submission to the *Inquiry into the National Water Reform*, NBAN called for:

- a Federal First Nations Representative Body of Water.
- the meaningful inclusion of First Nations peoples in all future discussions for water law reform.
- a review of current water laws and licensing and the exploration of new options for water license redistribution programs that enable First Nations peoples to achieve their social, economic, cultural and environmental goals with respect to water.
- the resolution of outstanding land claims and native title hearings.
- the development of First Nations Economic processes which could include the Development of a Northern basin Futures Fund.

(Friday, 21 August 2020 Northern Basin Aboriginal Nations (NBAN)

https://www.pc.gov.au/__data/assets/pdf_file/0010/255655/sub017-water-reform-2020.pdf)

NBAN's overarching goal is to protect and advance northern Basin First Nations' interests, to be achieved by:

- *Confederating and creating a forum for First Nations in the northern Murray-Darling Basin.*
- *Speaking with a strategic, unified voice about cultural and natural resource matters.*
- *Providing advice and making recommendations to federal and state departments, and other government and non-government agencies.*
- *Supporting northern Basin First Nations' representatives to develop their capacity.*
- *Encouraging and supporting Elders and youth to be involved, and where possible, conducting public programs.*
- *Establishing and maintaining relationships and close communications with, and seeking and co-ordinating funding from government and non-government partners that support NBAN's goals.*
- *Establishing mechanisms to meet the spiritual, cultural, environmental, social and economic interests of First Nations people, in the lands and waters of the northern Murray-Darling Basin.*

<https://nban.org.au/index.php/goals-and-principles/>

NBAN Principles:

NBAN is guided by the following principles, which serve as the foundation for all of our partnerships:

- First Nations people speak with cultural authority. They are connected by bloodlines to their ancestral lands and waters, and have obligations under their law and lore, and through their cultural customs, to care for their Country.
- First Nation peoples are to be engaged through a process of free, prior and informed consent, in an environment where they do not feel intimidated, and where they have sufficient time to discuss in their own language, and in a culturally appropriate way, matters affecting their spiritual, cultural, environmental, social and economic rights and interests.
- First Nation peoples have a right to be self-determining, so that they may participate in a real and meaningful way, in water and natural resource management.
- Federal and state water management policy, programs and projects should result in spiritual, cultural, environmental, social and economic outcomes that are equitable, sustainable and appropriate for all First Nations people.
- Partnerships between NBAN and its government and non-government partners are based on respect and honesty. NBAN encourages two-way learning that builds the capacity of all partners to achieve meaningful outcomes for First Nations people.

NBAN Governance

Every three years, Delegate Members nominate NBAN's Chairperson and a Board of Directors, from NBAN's membership. Elections take place at AGMs held of Nation delegates, in different locations across the NSW and QLD Basin region. The Board of Directors manage and exercise all the powers of the company, except powers that are required by the Constitution or the Corporations Act to be exercised by Delegate Members at their general Gathering.

NBAN's Nations each operate through their own self-determined governance structure to appoint two persons to be Delegate Members of the company. Through this process, each Nation accords NBAN with the cultural authority and mandate to speak on behalf of the First Nations of the northern Murray-Darling Basin. Members meet annually, at a minimum, at a Gathering of Delegate Members.

NBAN Directors and Delegates are the traditional ecological knowledge holders for their Nations. They communicate this knowledge and their expertise of land and water management in the northern Murray-Darling Basin via NBAN by participating in projects and representing NBAN on a number of committees and advisory groups.

The NBAN Treaty:

A particularly innovative initiative by NBAN was the creation of an actual Treaty documents between all the participating First nations

On the 10th of May 2017, First Nations of the northern Murray-Darling Basin Union came together at the Aboriginal Tent Embassy in Canberra, to sign a Treaty (Union of Sovereign First Nations of the northern Murray-Darling Basin).

Via the detailed Treaty document, each signatory Nation agreed to assert its sovereign and inherent right to be self-determining as per the terms and conditions of the treaty document agreed upon by them. Detailed terms were set down for the internal governance of the NBAN Union.

The NBAN Treaty:

Preamble

This Union is an Assembly of Sovereign First Nations of the northern Murray-Darling Basin on the continent of Australia, under each Nation's own Laws and Customs.

Placing our trust in our Creators and the Stories of our Creation we, the representatives of the 22 Sovereign First Nations of the northern Murray-Darling Basin (hereafter referred to as First Nation/s or Nation/s), hereby affix our signatures as representatives of each of the Nations acknowledge and commit our Nations to each other's ambitions to be self-determining through this Union of Sovereign First Nations.

All signatories to this Treaty agree:

Whereas; in affixing our signatures, we declare that we the Sovereign First Nations of the Northern Murray Darling Basin have not ceded our sovereignty nor did any of the Nations acquiesce our Nations' Allodial Title to our Lands, Waters and Airspace to the Crown of the United Kingdom of Great Britain and Northern Island.

Whereas; we do solemnly and wholly declare, that we shall observe our commitment to our sovereign entitlements to water throughout the Northern Murray Darling Basin, so as to ensure the continuation and continuity of our ancient water spirits who traverse every river, waterhole and the off-river springs, throughout the whole of the Australian Continent;

Whereas; we pledge and commit our Nations to govern within the defined laws of each Nation, however they are defined by that Nation, and on our terms to enter into the modern era as the Assembly Sovereign First Nations of the Northern Murray Darling Basin and operate for administrative purposes only through the Northern Basin Aboriginal Nations Ltd the administrative arm of this alliance within the constraints and legal system of the Corporate laws of the occupied State of Australia as are determined from time to time by the Administrative Colonial Governments;

Whereas; in order to promote local, regional and Basin wide co-operation, we commit our respective Nations, always to locate peaceful, balanced and harmonious processes, which will serve to ensure a balance between 'Mother Earth' and humanity, thereby assuring that there be a future of abundance by the establishment of a sustainable and defined program of development for our mutual spiritual, natural and economic wellbeing;

Whereas; through this Alliance, all amicable negotiated outcomes will be controlled by way of registered legal documents between two or more parties;

Whereas; the rights of 'Mother Earth' are upheld by all Nations and she must be assured at all times by the original family of Nations that any decisions taken by the various governing authorities for development must be underpinned by an assurance through this Alliance, and we pledge our commitment to ensuring 'respect' and preservation of her inalienable rights and all things natural. We acknowledge that these guarantees are the absolute inherent rights to the human condition.

This Alliance of Nations provides for:

Article 1

The enhancement of our respective political voices, within both the domestic and international arena;

Article 2

This Alliance establishes our authority under our respective Sovereign First Nations Natural Law and Cultures, free of dictatorship and subjugation by any occupying military power and thereby establishing the absolute need for meaningful engagement in any and all decision and planning for the Northern Murray Darling Basin;

Article 3

Each Nation to take responsibility for increasing our roles and responsibilities in respect of our sovereign inherent rights to be self-determining in accordance 'Jus Cogen'; recognise all known international and accepted legal norms of the United Nations; in particular, UN General Assembly resolution 2625; The UN Charter; International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social; and Cultural Rights (ICSECR); the International Covenant on the Elimination of All Forms of Racial Discrimination (ICERD); the UN Convention on Bio-Diversity, Resolution 69/2 of 22th September 2014 and in accordance with our respective Nations' legal and customary norms;

Article 4

We acknowledge that in order to achieve our liberation and freedom, we assert our sovereign inherent rights as First Nations and Peoples, while recognising that under international law all these rights are preserved and guaranteed. That is: All Peoples and Nations have a right to be self-determining and free from interferences which is a prerequisite to the full enjoyment of all fundamental human rights [UN General Assembly Resolution 637 A (VII) 16 December 1952].

Article 5

We solemnly declare to:

- A) Establish and maintain Nation governance in conformity with each Nation's Law and Culture, based on the principals of best practices of First Nations and Peoples under the original and continuing 'Continental Laws' as were established by our Creation;
- B) Share information and knowledge that will serve to enhance both Murray & Lower Darling Indigenous Nations (MLDRIN) and the Northern Basin Aboriginal Nations (NBAN) to govern and thereby build healthy First Nation communities for everybody's spiritual and physical wellbeing;
- C) Provide any and all necessary support to each Nation when and where required, particularly as it relates to our spiritual, bi-cultural, and bi-lingual education, through continued joint Nation gatherings between MLDRIN and NBAN;
- D) Work towards establishing community gathering centres within the respective Nations, so as to ensure continued communication of our cultures and other related humanitarian matters where required, especially other community needs as identified from time to time by our member Nations;
- E) Promote the right of 'self-determination' with our right to be independent Nations;
- F) Thrive to support our collective right to be economically self-sustaining within our own identified Nation boundaries. We agree to achieve this through our approved Nations economic, social and cultural plans, but not to limit our inter-Nation relationships in respect to our commitment to work with the Murray Darling Basin Authority and other relevant Government and Non-Government bodies;
- G) Review annually the development and growth of all NBAN's governance and its ability to comply with any and all such agreements as may be entered into from time to time between consenting

Nations and/or their clan groups, if and when they required to do so on any particular matter concerning their Peoples;

- H) Establish and maintain a list of member Nations which records its own population through their own Governance Mechanisms to include other actions and undertakings in respect of governance matters, including but not limited to fiscal, cultural, social and diplomatic relations;
- I) Evaluate the Union of Sovereign First Nations operations annually and provide a written report which is to be disseminated throughout the consenting Nations;

Article 6

The consenting Nations agree that the Northern Basin Aboriginal Nations (NBAN) is recognised as the "Assembly of Nations" to meet under the following terms:

- 1) Each consenting Nation agrees to provide two delegates in accordance with NBAN Ltd's constitution;
- 2) The Assembly of Nations of the consenting Nations shall sit as a Parliament to execute decisions and governance in respect to matters of culture, fiscal, and other matters that effect the spiritual, environmental and personal wellbeing of the natural world of the Sovereign First Nations Peoples within the Northern Murray Darling Basin;
- 3) Share at all times, where appropriate, with all other Nations, cultural practices both inter and intra that give authority to Sovereign First Nations governance under each Nation's Respective Law and Culture;
- 4) Support at all material times, other First Nations who seek to re-establish their governance so as to enter into this modern world, while ensuring that their governance is underpinned by that Nation's Laws and Customs;
- 5) That the General Assembly of the Northern Murray Darling Basin Sovereign First Nations commits itself to working with all Sovereign First Nations on the Island Continent known as "Australia" to ensure that they may realise their aspirations to be self-determining and self-governing;
- 6) Comply with all laws governing Corporation activities, while ensuring that the modern governance will not violate the Laws of 'Mother Earth' and Culture of the consenting Sovereign First Nations;
- 7) Maintain a complete record of all governance proceedings to be made available to the Sovereign First Nations of this alliance constituent members, save any matters of confidentiality as may be determined from time to time;
- 8) Establish governance training based on the Laws and Customs of each consenting Sovereign First Nation on the advice of the Elders, together with corporate training in modern governance;
- 9) Provide annual evaluations and reports of self-governance in respect of ensuring the development of an equitable and just system ensuring the freedom and rights of all First Nations constituents to share and develop a sustainable society for the wellbeing of all Peoples within their relevant Nation States;

Article 7

It is mutually understood and agreed by and between the undersigned Nations that this Alliance and other arrangements on any matters pertaining to development, albeit spiritual, social, cultural, economic, legal, and/or political at any time, must be first approved by the independent First Nation whose matters are the subject of any and all respective agreements, and who shall be deemed to have a reservation of rights which may flow from any and all of such agreement(s) for that Sovereign First Nation only;

Article 8

We the undersigned Sovereign First Nations to this Alliance shall have those respective representatives of our Sovereign First Nation make a financial contribution to the First Nations General Assembly's Cultural Fund. These payments shall be made at each of the Full Gathering of Nations;

Article 9

The Sovereign First Nations of this Alliance in accordance with their own Law and Customs allow each Nation member's constituents of this Alliance to freely pass and travel through lands of the consenting Nations, without let or hindrance and to freely afford him or her every assistance and protection of which he or she may stand in need;

Article 10

This Treaty which creates this Alliance shall come into force on the day of execution by the signatures of the consenting Northern Basin Sovereign First Nations representatives.

<https://nban.org.au/index.php/treaty/>

Summary of Key Principles underlying NBAN:

Written Treaty terms and conditions; Treaty-based governance arrangements; First Nations' riverine governance and sovereignty ; Traditional Country and Cultural geographies override state jurisdictions; collaborative autonomy in governance; traditional decision-making processes; traditional self-determined mandates for delegates; Indigenous Nation values; alliance based on Indigenous Law and riverine governance practices; First Nations' sovereignty and jurisdiction.

5.3 CASE STUDY: THE FITZROY RIVER ALLIANCE AND DECLARATION

Website Sources:

<https://www.waterjusticehub.org/mardoowarra-fitzroy-river/>

Indigenous Motivation and Issues: A Riverine Ecosystem

In 2005 Toussaint, S., Sullivan, P., Yu, S. (2005: 149) in a paper titled: *Water Ways in Aboriginal Australia: an interconnected analysis*, the authors described Aboriginal relationships to water in northern Australia, characterising Aboriginal practices, beliefs and ideas as 'water ways' in order to encompass the meanings embedded in both human activity and the water's flow. Later, in unpublished report to NAILSMA on a *Scoping Study of Indigenous Interests in Tropical Rivers*, the Fitzroy River was discussed as an example of rich cultural beliefs about the creation of the River and its tributaries, the riverine environment and the seasonal changes in the river country. The Report describes the cultural significance of the River as it travels through the traditional countries of many language groups:

Whilst each group has distinct cultural responsibilities and articulates their relationship in varying ways, the groups are united through a system of Law that weaves together complex narratives and rituals required for the sustenance of the river country and its complex ecosystems. There is no single name for the river except Marduwarra, which is a generic word for river. Rather, the Fitzroy River is conceptualised as series of linked narratives which arise from the many permanent pools along the riverbed and, which are subjected to the seasonal processes of flooding (warramba) and receding waters.

(<https://www.waterjusticehub.org/mardoowarra-fitzroy-river/>)

This cultural governance arrangement for an entire river, has great similarity to the collaborative arrangement found by Smith and Kesteven (1982) when mapping with traditional owners of the Coopers Creek in West Arnhem Land. Similar 'company', 'alliance' 'unions' are now being documented and acted upon for many larger river systems in Australia (such as the Murray-Darling Rivers above).

Mardoowarra (Martuwarra or Fitzroy River) is an iconic, heritage listed river system of global value and significance. For First Nations peoples of the Mardoowarra, the river was formed in the beginning of time by Nyikina ancestor, Woonyoomboo. Woonyoomboo is the human face of the Mardoowarra and in partnership with Yoongoorrookoo, the sacred ancestral spiritual living being created the river valley tracts. These environmental and cultural values are recognised in both the Western Australian Aboriginal and National Heritage Listings (Toussaint 2008).

The Indigenous motivations and concerns underlying the formation of this modern-day alliance are presented by two of the senior traditional owners involved. The Walmajarri Traditional Owner Anthony McLarty said of their motivations for working together to govern the river:

We know that there are pressures from industry and government to access and use the Fitzroy River, and these pressures have the ability to impact on its many cultural and environmental values ... We are also concerned that the cumulative impacts of development along the river will not be managed or considered appropriately by the Western Australian Government. The Fitzroy River is one living system. The river gives life and has a right to life, and we are determined to protect it for current and future generations.

The River is very important for us. River got the meaning, River got the story, River got the songs (...). We want to protect our River. Our River is like our Mother. (...) We got a rule that we do the right thing, what was given by Woonyoomboo - Law is all there standing (Martuwarra Fitzroy River Council Website, 2020).

Hanson Boxer, Walmajarri Elder emphasised the collective motivation and concern:

Lots of blackfellas been born on that riverside, all along, many tribes and languages, but there is only one River - and all the people worry about that River not to be destroyed (Martuwarra Fitzroy River Council Website, 2020).

Parties, Scale and Goals:

In 2016, Traditional Owners of nations along the Fitzroy River expressed a collective vision for the Mardoowarra where they stated:

In response to increasing development pressure, Kimberley Traditional Owners have pledged to work together to protect and manage the Fitzroy River and its tributaries, one of the most iconic wild rivers in Western Australia.

During a two-day meeting in Fitzroy Crossing, Traditional Owners agreed upon a 'Fitzroy River Declaration', aiming to protect the traditional and environmental values that underpin the river's National Heritage Listing. The historic declaration identifies eight key steps that Traditional Owners agreed were needed to protect and govern the Fitzroy River, including a buffer zone for development, a joint position on fracking, development of a Fitzroy River management plan complemented by an Indigenous Protected Area, and a management body for the river.

Fitzroy River Aboriginal Declaration:



Traditional Owners from the Fitzroy River catchment area met on the 2nd and 3rd of November 2016 in Fitzroy Crossing. Participants from that meeting developed the below statement:

- Traditional Owners of the Kimberley region of Western Australia are concerned by the extensive development proposals facing the Fitzroy River and its catchment and the potential for cumulative impacts on its unique cultural and environmental values.
- The unique cultural and environmental values of the Fitzroy River and its catchment are of national and international significance.
- The Fitzroy River is a living ancestral being and has a right to life. It must be protected for current and future generations, and managed jointly by the Traditional Owners of the river.

Traditional Owners of the Fitzroy catchment agree to work together to:

1. Action a process for joint PBC decision making on activities in the Fitzroy catchment;
2. Reach a joint position on fracking in the Fitzroy catchment;
3. Create a buffer zone for no mining, oil, gas, irrigation and dams in the Fitzroy catchment;
4. Develop and agree a Management Plan for the entire Fitzroy Catchment, based on traditional and environmental values;
5. Develop a Fitzroy River Management Body for the Fitzroy Catchment, founded on cultural governance;
6. Complement these with a joint Indigenous Protected Area over the Fitzroy River;
7. Engage with shire and state government to communicate concerns and ensure they follow the agreed joint process;
8. Investigate legal options to support the above, including:
 - Strengthen protections under the EPBC Act National Heritage Listing;
 - Strengthen protections under the Aboriginal Heritage Act; and
 - Legislation to protect the Fitzroy catchment and its unique cultural and natural values (<http://nationalunitygovernment.org/content/kimberley-traditional-owners-unite-fitzroy-river-declaration>)

The Fitzroy River Declaration set a standard for the role of Traditional Owners as being fundamental to their governance of the environment and informed decision making about development along the river (<http://nationalunitygovernment.org/content/kimberley-traditional-owners-unite-fitzroy-river-declaration>).

Bunuba Traditional Owner, Keith Bedford, said the declaration demonstrates that native title rights of Traditional Owners are central to the ongoing management and protection of the entire Fitzroy catchment:

As native title holders and claimants, Kimberley Aboriginal people respect each other's autonomy, but we are also committed to working together to better manage and look after the river system

Nyikina Mangala Traditional Owner Dr Anne Poelina said the Fitzroy River Declaration sends a clear message to government and industry that Traditional Owners are prepared to stand together for the future of this globally unique living water system:

We want to see the Fitzroy River and catchment protected all the way from its head to its tail, and we will work together to make sure there are strong measures in place that achieve this goal.

We invite industry, government, and other stakeholders to work with us in achieving this outcome (<http://nationalunitygovernment.org/content/kimberley-traditional-owners-unite-fitzroy-river-declaration>).

In 2011, the entire Fitzroy River catchment was added to the National Heritage Listing by the Australian Government because of its exceptional natural and cultural value to the nation, joining other iconic sites such as Uluru and Purnululu National Park. The Fitzroy River is now also listed as an Aboriginal Heritage Site under the Western Australian Aboriginal Heritage Act.

Establishment of The Martuwarra Fitzroy River Council:

Following the declaration, in 2018 traditional owners established the **Martuwarra Fitzroy River Council** (MFRC) as their 'cultural governance model to maintain the spiritual, cultural and environmental health of the catchment' (<https://www.martuwarra.org/>). The Martuwarra Council recognised that the riverine region is subject to a range of statutory and regulatory regimes, and that it is subject to significant resource and economic development interest.

The Council was formed initially as an informal alliance or confederation of groups with traditional land ownership rights and interests along the river:

The Martuwarra Fitzroy River Council is an alliance of Elders from independent nations of the Fitzroy River Catchment in the Kimberley, Western Australia. We are an entirely Indigenous led organisation.

The Martuwarra Council is entrusted by Traditional Owner groups as an independent forum to discuss catchment matters and make recommendations that will ultimately be decided by Prescribed Body Corporates and other authorised organisations.

The management of our river country should be led by the people who have cared for and shared the river since the beginning of time. We need to work together to protect the values of this biodiverse cultural landscape. The Fitzroy belongs to every Australian and, as the largest cultural heritage site, it belongs to the world.

(<https://www.theguardian.com/australia-news/2021/jun/05/a-journey-down-was-mighty-martuwarra-raging-river-and-sacred-ancestor>)

The Council provides coordination and consultation functions and is intended to be the first point of contact on behalf of Traditional Owners for major state government initiatives, especially the Fitzroy River Management Plan and the Fitzroy River Water Allocation Plan.

The Council's 2022 Annual Report notes that they plan to form an organisation to further consolidate the alliance, with functions that include policy development, education, research and advocacy in order to advance capabilities and to develop and represent the interests of its members. It aims to also explore options to establish an enduring statutory river and catchment authority and undertake strategic research to give effect to the aspirations of Traditional Owners.

Anthony McLarty, Walmajarri Traditional Custodian Deputy Chair, Martuwarra Fitzroy River Council emphasised the importance of traditional cooperation and partnership in the Council's work:

I call for unity amongst us people... Us Aboriginal people here in the Fitzroy River. And with that unity comes responsibility. And our responsibility is to take care of the River and of our waterways. ... What we are saying is that we want proper consideration to the land, to the water system, both in the river system, the underground water system, that really need protecting (Martuwarra Fitzroy River Council Website, 2020).

The Council itself stressed that,

... there is also a need to ensure any development does not impact on the shared, custodianship, guardianship and authority responsibilities of Traditional Owners to protect the standing of the cultural and natural values
(<https://static1.squarespace.com/static/5e86add4e98f7421bace70f1/t/5faccd4a0e8bbf646fdde2c0/1605160398501/CMNHP-Plan.pdf>)

Senior Walmajarri elder Mr Brown also points out the direct living relationship between traditional ownership and the river's well-being,

How can governments think they own the river? They've never been born alongside the river, we own the river. If they drain the water, it will kill the culture.

(<https://www.theguardian.com/australia-news/2021/jun/05/a-journey-down-was-mighty-martuwarra-raging-river-and-sacred-ancestor>).

The Martuwarra Fitzroy Council's River Governance:

The Council sees itself as implementing a '*pioneering deliberative governance for the Fitzroy - Martuwarra basin*'. [and] as a collective of Native Title Prescribed Body Corporates (PBCs) is

unique and deserves recognition as an innovative model that builds on traditional governance and self-determination (MFRC Annual Report 2021):

This relationship recognises the ancestral serpent beings as the creator of our law. We have one law for the whole of the Fitzroy River in which all of the nations come together as one society, one ceremony, one songline. And we stand in unity to protect the river (Anne Poelina, MFRC).

In 2018, the Council was established as a collective governance model to maintain the spiritual, cultural and environmental health of the catchment. MFRC considers Martuwarra to be an ‘asset in the commons that belongs to all of us’. *The River must be promoted and protected for the benefit of present and future generations.*

https://assets.nationbuilder.com/martuwarra/pages/10/attachments/original/1666169574/MFRC_Annual_Report_2021_%28For_WEB%29.pdf?1666169574

The Martuwarra and the Law-enshrined river serve as the unifying traditional basis for current strategic governance and planning of the river, underpinned by Indigenous First Law:

First Law is the system of governance and law that Indigenous Australians have developed over tens of thousands of years. Under First Law, the Martuwarra continues to be a sacred living ancestral being. Traditional Aboriginal law focuses on maintaining the balance of the earth so that all things can prosper. This sustainable model, known as Earth-centred Law, is the basis for the Fitzroy River Declaration.

...Two traditional First Laws, Warloongarriy (for the River) and Wunan (for the entire Kimberley region), are ancient laws for a holistic approach to regional governance that continues to be shared and respected by the Indigenous nations. These First Laws ensured the health of the Martuwarra and its Traditional Owners (Poelina et al., 2019).

These laws ... are framed around values and ethics of Indigenous cooperative governance, co-management and co-existence,

which continue to facilitate inter-generational relationships between the shared boundaries of the River nations through ancient Songlines, and contemporary customs and practices. Under First law, the Traditional Owners of the Martuwarra regard the River as a living [sacred] ancestral being (the Rainbow Serpent), from source to seas, with its own “life-force” and “spiritual essence (MFRC Annual Report 2021).

The process for joint decision-making about the river has been effected through the formation of the Council, which is an affiliation of six Native Title PBCs and registered claimants that span the entire Martuwarra catchment and its near shore estuarine environments:

The Martuwarra Council recognises that heritage protection relies on having equitable and continuing models of governance that recognise cultural knowledge and build on customary law.

<https://static1.squarespace.com/static/5e86add4e98f7421bace70f1/t/5faccd4a0e8bbf646fdd2c0/1605160398501/CMNHP-Plan.pdf>

In late 2020, the Council developed and released a strategic heritage conservation plan for the Fitzroy-Martuwarra Basin. This was done on behalf of its member organisations who all endorsed the final plan. The plan lays out a number of clear positions on recognising Indigenous cultural values and engaging Native Title Holders and Indigenous communities in their ongoing governance. The plan outlines a strategic approach to the conservation and management of the Martuwarra Fitzroy River Catchment and its waters. The plan also states how MFRC endeavours to advance desirable futures for the region, and the role of deliberative governance in bringing these to fruition. In this planning process, Elders also made the important decision to focus their leadership and governance efforts on strengthening the Martuwarra Youth Council and sustainable economies for the people of the catchment area (<https://www.martuwarra.org/about>).

Summary of Key Principles underlying the First Nations Fitzroy-Martuwarra Basin:

Written Declaration; Incorporated organisation to represent the union of First Nations along the riverine system alliance; riverine affiliation of 6 PBCs; collaborative decision making via corporate organisation; cultural governance model and values; shared traditional river boundaries; Indigenous riverine knowledge; river is an ancestral being; youth participation in the governance model and knowledge transmission; First Nations' self-determination of riverine governance; unity and solidarity; deliberative consensus decisions; collaborative planning and advocacy via the union and Council.

6. CANADIAN and USA EXAMPLES: INTER-INDIGENOUS TREATY MAKING

Indigenous treaty making has always, since time immemorial, involved more and deeper relations than simply an agreement between states or even merely between political entities. Rather, it has embodied the depth and richness of Indigenous relationship making, which have always included responsibilities not only to other political bodies but also to non-human entities such as animals, the environment and the spirit world. (Lightfoot and McDonald 2017: 26)

First Nation in Canada and the USA have a long history of making agreements with each other well before settler colonisation and the legal treaties promoted by their new nation-state governments. These took the form of treaties, protocols and declarations made for mutually beneficial purposes (Royal Commission on Aboriginal Peoples (RCAP); Erasmus & Dussault, 1996; Lightfoot & McDonald 2017; van der Porten & de Loë 2013) where First Nations have come together to address a shared problem. They invariably reinforced the maintenance of nation relationships with each other and, on occasion, asserted a reunification of fragmented groups into a whole nation. For example, inter-nation agreements referred to as treaties were entered into to form confederacies and political alliances.

Examples include:

- the Blackfoot Confederacy (see below).
- the Sioux Nation Confederacy and the famous Iroquois Confederacy, which is believed to have been founded by a leading Chief at an unknown date estimated between 1450 and 1660, bringing together five distinct nations in the southern Great Lakes area into what became known as 'The Great League of Peace' (Bedford & Workman 1997; Birch & Hart 2018; Gunn 2004).
- the Iroquois Confederacy is said to have informed the political model for the United States of America (Young 2000).

These are all traditional forms of confederation which emphasised 'the virtues of united strength that preserved a high level of local self-determination' amongst member groups (Young 2000, 241).

These agreements were/are often based on shared kinship and historical interactions, as well as Indigenous norms for maintaining diplomatic relationships between nations (L. B. Simpson 2008), aimed at resolving boundary disputes over lands and waters, making arrangements for shared fishing and hunting areas (Deloria & DeMallie 1999; van der Porten & de Loë 2013), and Indigenous nations committing 'themselves to act as relatives toward each other in times of crisis or need' (Williams 1997, 126). During the period of colonisation, treaties used as 'affirmations of Indigenous traditions and identities has served as a powerful weapon of defense' (Hardt & Negri 2009). In effect they were a form of inter-nation diplomacy (Deloria and DeMallie 1999).

Tsalagi First Nation scholar Jeff Corntassel (2008) argues that the contemporary renewal of these inter-Indigenous treaties in the USA and Canada, as well as the making of new treaties, is a way to promote Indigenous unity, regeneration, and alliance. Lightfoot and McDonald (2017) and Van der Porten and de Loë (2013) suggest that contemporary inter-Indigenous collaboration is also oriented toward unity for the purpose of decolonising Indigenous lands. For example, in British Columbia cast, the Coastal First Nations Great Bear Initiative is an alliance of First Nations on the North and Central

Coast and Haida Gwaii formed in 2000 out the recognition of a need for them to work together to address challenges including regional strategic planning of resource governance (Coastal First Nations 2016; Van der Porten & de Loë 2013, 70). Gunn (2004, 336-337) notes that 'Throughout the United States, tribes have united in numerous intertribal councils, associations, and organizations. Many of these coalitions are based on traditional alliances and shared histories, while others are based on geographic proximity or contemporary exigencies' other forms include 'Intertribal reciprocity compacts are an expression of modern intertribal unity'.

Evidence of the significant continuing interest of First Nations in using treaty and declarations for inter-Indigenous collaboration and solidarity is supported in the research of Lightfoot and MacDonald, (2017); Simpson (2008) and Van der Porten and de Loë (2013) . Their reviews of the literature indicated examples of formal, signed agreements of solidarity and collaboration related to Indigenous herring governance (e.g. Treaty of Peace Respect and Responsibility between the Heiltsuk Nation and the Haida Nation, Council of the Haida Nation and HTC, 2015; Herring Declaration of Solidarity of B.C. First Nations, Haida et al., 2015). In the Herring Declaration of Solidarity of B.C. First Nations document (Haida et al., 2015), the First Nations noted the declaration is a 'statement of solidarity is based upon our inherent rights to manage our sea resources' and that it reaffirms their 'sovereignty to protect our land, seas and resources.

Van der Porten & de Loë (2013, 65) used a text analysis software (QSR NVivo 10) to identify common themes across 137 documents as well as transcripts of interviews, meetings, and audio/video sources they gathered about such treaties and agreements over the 2-year period of 2014–2015. They were particularly interested in themes related to resurgence, resistance, assertion of Indigenous legal or inherent rights, collaboration with nations, protection of traditional or unceded lands, strategising with other Indigenous nations, self-determination, and Indigenous nationhood. They found many of these strategies and tools which emerged in the data were being applied simultaneously. Though some strategies and tools appeared more than others. In particular, reference to inter-Indigenous collaboration and solidarity, which included any instance of uniting, collaborating, or allying between and among Indigenous nations, leaders, and organisations, appeared most frequently in the dataset: 'The data revealed 85 references to single Indigenous nations uniting or working with 144 other Indigenous allies'.

The content of these historical and contemporary inter-nation treaties illustrates how these nations continue to position themselves both in mutual solidarity and as the jurisdictional authorities of their lands and resources. Two examples are examined in greater detail below, to identify the underlying First Nation principles informing the goals and content of such treaty making.

6.1 CASE STUDY: THE BUFFALO TREATY

Website Sources:

<https://www.buffalotreaty.com/treaty>

<https://www.buffalotreaty.com/>

<https://vimeo.com/user123783706> (Video interview)

<https://www.nps.gov/articles/bison-bellows-1-21-16.htm>

Indigenous Motivation and Issues

'You keep asking us what do we want and we're telling you. We want to see visible buffalo. We want to see buffalo on the Prairie again'. These are the words that were spoken by Elders at the first discussions. From those words, relationships were re-established between First Nations in the USA and Canada resulting in the signing of the Buffalo Treaty.

For tens of thousands of years, buffalo fundamentally shaped North American prairie ecosystems and linked First Nation peoples to the land and waters. Their large herd grazing affected plant communities, transported and recycled nutrients, created habitat variability that benefited grassland birds, insects, and small mammals, and provided food resources not only for First Nations but also for species such as grizzly bears and wolves. The bison was almost hunted to extinction by American settlers.

To ecologically restore the species, large native prairies that can support far-ranging buffalo are needed. Therefore, preserving the few remaining large intact prairies - many of which are governed by Native American and Canadian First Nations - was identified by First Nations as being critical not only to restoring and recovering American buffalo as wildlife, but critically important to reclaiming the bison as the cultural foundation for a way of life.

Indigenous Parties, Scale and Goals

On September of 2014, American Indians and the First Nations of Canada made history. For the first time in 150 years, 13 nations from 8 reservations across the two nation states of USA and Canada came together and signed the first cross-border inter-Indigenous treaty - known as 'The Buffalo Treaty'. This treaty established an intertribal alliance to restore bison to 6.3 million acres (2.55 Million hectares) of land owned and governed by First Nation tribal governments between the United States and Canada. The treaty covers land that is almost three times the size of Yellowstone National Park. Four additional First Nations signing in Banff, Alberta in August 2015. Now signatories stand at more than 30.

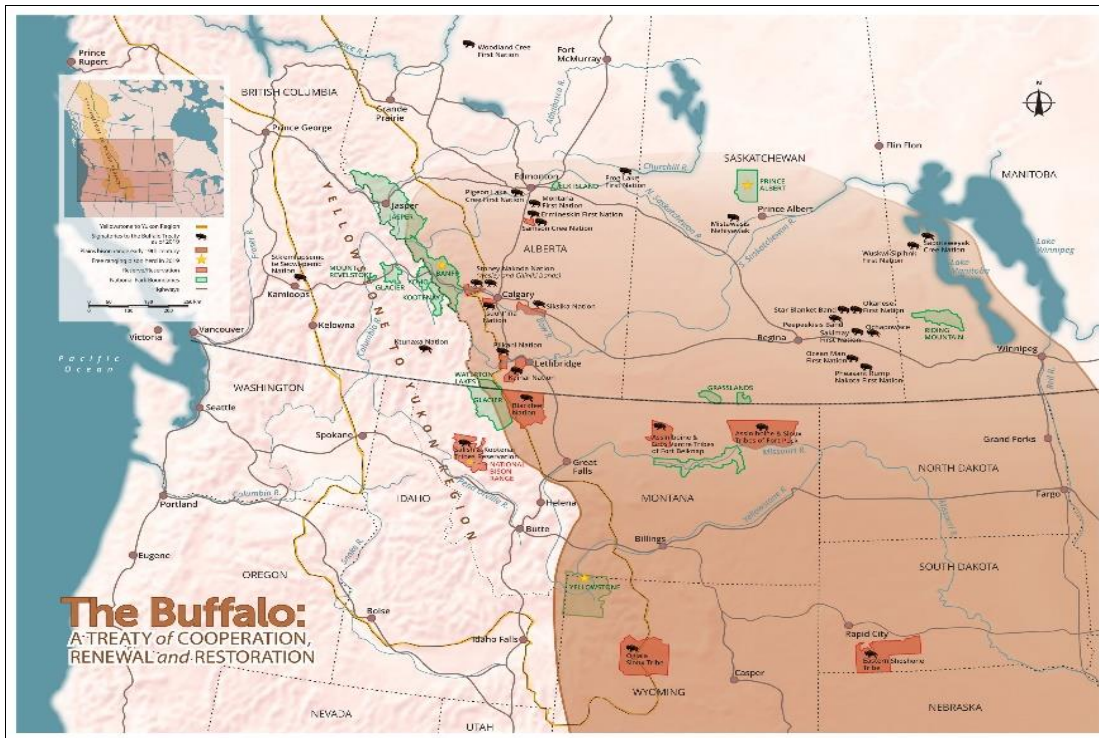
The original First Nation signatories were: Blackfeet Nation, Blood Tribe, Siksika Nation, Piikani Nation, the Assiniboine and Gros Ventre Tribes of Fort Belknap Indian Reservation, the Assiniboine and Sioux Tribes of Fort Peck Indian Reservation, the Salish and Kootenai Tribes of the Confederated Salish and Kootenai Indian Reservation, and the Tsuu T'ina Nation. Collectively, these First Nations had more resources and political influence than they might individually. The groups own and govern a vast amount of grassland and prairie habitats -about 6.3 million acres; almost three times the size of Yellowstone National Park - throughout the United States and Canada.

Through their combined voice and a formal expression of political unity, the goal is to achieve ecological restoration of the buffalo on their respective lands, and in so doing to re-affirm and strengthen ties that formed the basis for traditions thousands of years old. Along with agreeing to work together for bison restoration and grassland conservation on First Nation lands, the treaty encourages youth education and cultural restoration among the tribes as integral aspects of the work with bison.

This is an historic moment that we hope will translate into a conservation movement among

Great Plains Tribes," (Keith Aune, Bison Program Director for the Wildlife Conservation Society (WCS), Chair of the IUCN Bison Specialist Group, and American Bison Society Spokesperson).

The Buffalo Treaty: Nations and Location, USA and Canada.



Source: <https://www.buffalotreaty.com/treaty>

(Map not to be reproduced without written permission from Buffalo Treaty).

The treaty's parties pledged to 'honour, recognize and revitalize' the relationship they have with bison – and to do all they can to live amongst the animals once again. This treaty is 'an agreement of cooperation, renewal, and restoration'. It represents a significant step by indigenous people to preserve prairie ecosystems and their culture.

Buffalo Treaty Content

The treaty document emphasises the importance of Indigenous people and bison nurturing each other spiritually, culturally and ecologically. It sets out the fundamental, core relationship between First Nations and the buffalo, which is regarded as kin:

Since time immemorial, hundreds of generations of the first peoples of the First Nations of North America have come and gone since before and after the melting of the glaciers that covered North America. For those generations, Buffalo has been our relative. Buffalo is part of us and we are part of Buffalo culturally, materially, and spiritually. Our ongoing relationship is so close and so embodied in us that Buffalo is the essence of our holistic eco-cultural life-ways.

The purpose and objective of the treaty are founded on **core First Nation values and principles** of:

- A mutual relationship with people and buffalo of cultural, spiritual and ecological co-nurturing,
- First Nations' role of stewardship and protection in creating a renewed safe environment for the bison on their lands
- Self-governance exercising First Nations governing and geographic jurisdiction

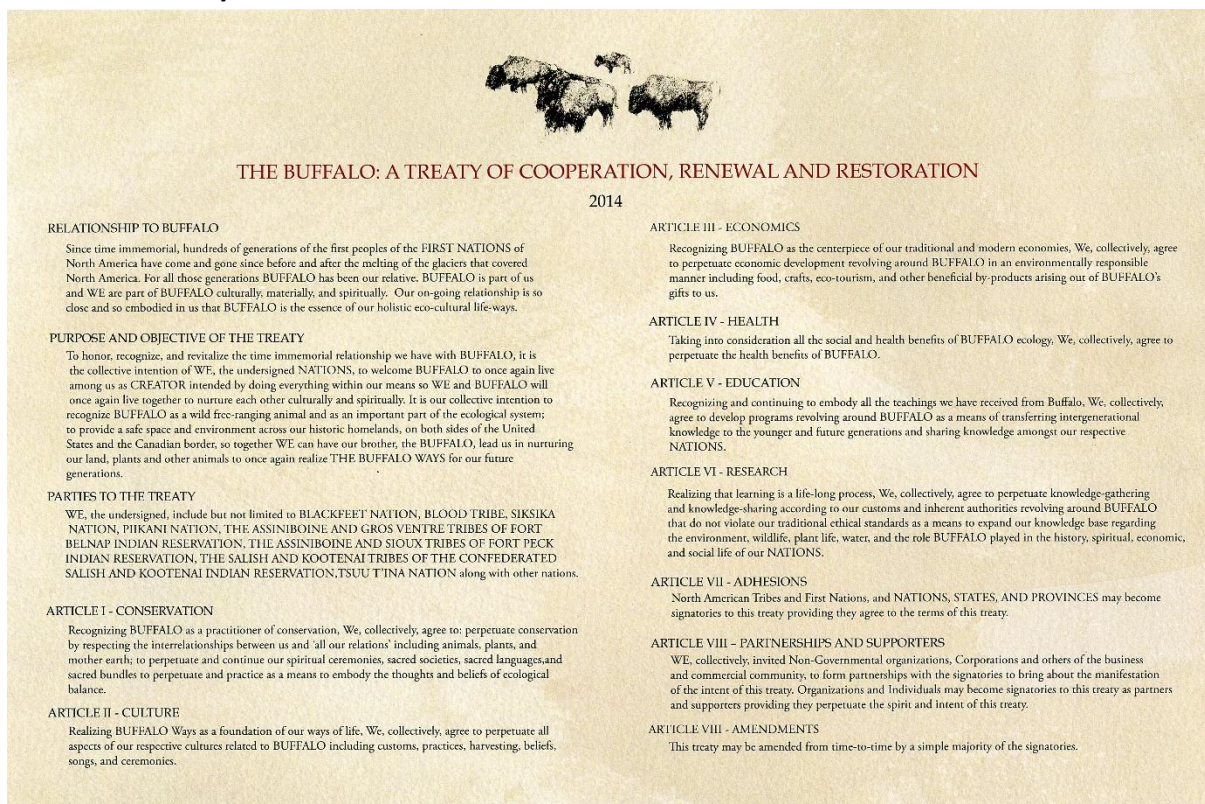
- Collective responsibility to future generations:

To honor, recognize, and revitalize the time immemorial relationship we have with buffalo, it is the collective intention of we, the undersigned nations, to welcome buffalo to once again live among us as creator intended by doing everything within our means so we and buffalo will once again live together to nurture each other culturally and spiritually. It is our collective intention to recognize buffalo as a wild free-ranging animal and as an important part of the ecological system; to provide a safe space and environment across our historic homelands, on both sides of the United States and the Canadian border, so together we can have our brother, the buffalo, lead us in nurturing our land, plants and other animals to once again realize the buffalo ways for our future generations.

Given that it was the first cross-border Indigenous treaty signed in over 150 years, the Buffalo Treaty was also a way of renewing and regenerating old **alliances**, and advancing a wider **political** and **environmental agenda**. It outlined several community-led goals, including:

- Engaging First Nations in continuing dialogue on buffalo conservation;
- Uniting the political power of the First Nations of the Northern Great Plains;
- Advancing an international call for the restoration of the buffalo;
- Engaging youth in the treaty process and strengthening;
- Renewing ancient cultural and spiritual relationships with buffalo and grasslands in the Northern Great Plains.

The Buffalo Treaty Text



Source: <https://www.buffalotreaty.com/treaty>
(Map not to be reproduced without written permission from Buffalo Treaty).

The Buffalo Treaty is regarded as a living document that requires periodic renewal through ceremony and re-interpretation:

Two years after the Treaty was signed, the number of signatories had gone from eight to 21. In September 2016, signatories held a pipe ceremony in Banff National Park to honour the planned reintroduction of sixteen buffalo to the area. In addition to restoring the buffalo population, signatories called on the Government of Alberta in Canada to change the name of Tunnel Mountain in Banff to Sacred Buffalo Guardian Mountain. The vision for the regeneration and perpetuation of buffalo also entails changing the landscape to reflect the places where the buffalo live. New forms of Indigenous treaty-making reflect the complex diplomacies and cultural reawakening that constitute Indigenous inter-nation relations.

As an example of Indigenous international relations, the above-mentioned treaty provisions demonstrate the sacred nature of treaty-making as a way for Indigenous nations 'to extend their relationships of connection to all of the different peoples of the world' (Williams 1997: 50; Buffalo Field Campaign, et al., plaintiffs, v. Martha Williams, [1] et al., defendants. <https://casetext.com/case/buffalo-field-campaign-v-williams>).

Treaty Outcomes

A great range of outcomes – practical, cultural, political and ecological have been secured under the Treaty. Its ongoing governance by the signatories has included a large number of ongoing program and funding initiatives, linked to policy development.

"The most important thing that comes out of this Buffalo Treaty is relationships. And this is a living relationship. This Buffalo Treaty is a living treaty," said First Rider of the Kainai Nation. First Rider said that when 40 buffalo calves were released on her First Nation on Feb. 12, 2021, the Elders said they didn't believe it would happen.

"What we really discovered was that having the buffalo back really made us aware of our environment and all that we needed to take care of because of the damage that colonization had done to the land," said First Rider.

She also pointed to the impact the Buffalo Treaty had with national parks across Canada, where buffalo are now in Banff National Park and returned after a three-and-a-half-year absence due to a wildfire to the paddock at Waterton Lakes National Park. But more than that,

said First Rider, her people are now able to collect food and plants from Waterton Lakes, something they were not able to do before (Buffalo make us better human beings | The Star.)

Bison Newsletter

Bison #611 went first. It made a noisy exit out the back of a semi-trailer and down the chute, hooves clanking, metal rattling. Then, as it galloped onto the snow-covered pasture on Poundmaker Cree Nation, the clatter quieted. The hulking yearling was home.

Another 20 bison followed #611, banging down the chute before running off into the field. Floyd Favel and his fellow elders prayed at the edge of the pasture before the bison were released. Local drummers and singers sang songs honouring the animals. Community members milled around a fire, downing Tim Hortons coffee and doughnuts. One woman wore a ribbon skirt. A braid of sweetgrass smoldered.

It has been more than a century since genetically pure Plains bison – paskwaw mostos in Cree, iinnii in Blackfoot, Bison in scientific literature, and buffalo in casual conversation – dotted the Prairies, sustaining Indigenous people. Now, a handful of bands in Western Canada are hoping to re-establish bison herds on their homelands. Mr. Favel described how the homecoming made him feel in Cree: ninaheyihten. “It was a very spiritual feeling of completion,” he said. “I was completed. ... There’s also gratitude [and] satisfaction mixed in that word.” (The bison are back in town: For this Cree nation, cultural renewal comes thundering home - The Globe and Mail)

The return of the herds also brings practical elements. Indigenous leaders expect the herds will attract tourism dollars. They will also be used for education, such as teaching local youth how to slaughter animals and tan hides. Bison skulls are also especially important in ceremonies, while their meat can be distributed in the community, providing food security from a traditional food source.

A major focus of the goals and outcomes has been to reintroduce younger generations to the Bison Culture and knowledge. The periodic honoring and renewal of the Treaty includes youth delegates at the treaty ceremony to inspire new conservation champions to carry forward the promise of healthy prairies and buffalo into the future. Not surprisingly the Buffalo Treaty website provides multiple ways for First Nation young people to engage in learning about buffalo and its cultural value:

Educational programs linked to the Buffalo Treaty today.

“Recognizing and continuing to embody all the teachings we have received from Buffalo, We, collectively the signatories of the Treaty, agree to develop programs revolving around BUFFALO as a means of transferring intergenerational knowledge to the younger and future generations and sharing knowledge amongst our respective Nations.”

School and students supporting the Buffalo Treaty

Did you know that a class or school can support the Buffalo Treaty? Sometimes it starts with few students or a class and can be the whole school. A signing ceremony can be the culmination of a Buffalo Curriculum.

There is increasing recognition that the loss of bison has led to the deterioration of ecological integrity and directly diminished First Nations health, and an immense loss of culture:

... with the treaty and promotion of conservation, there can be a revitalization of the cultural and spiritual connection between the tribes and the bison, "so together we can have our brother, the buffalo, lead us in nurturing our land, plants and other animals to once again realize the buffalo ways for our future generations." (National Park Services article on the Buffalo Treaty which also contains numerous news letters that followed the treaty about it. at <https://www.nps.gov/articles/bison-bellows-1-21-16.htm>).

The First Nation Treaty partners use the treaty as a tool to forge wide-ranging partnerships and agreements with governments, businesses, NGOs etc, on their specific terms:

The Non-Governmental Organisations, corporations, business, municipalities, museums, zoos, and schools can form partnership with the signatories to bring about the manifestation of the intent of this Treaty. Organisations and Individuals may become signatories to this Treaty as partners and supporters providing they perpetuate the spirit and intent of the Buffalo: A Treaty of Cooperation, Renewal and Restoration.

Summary of Key Principles underlying Buffalo Treaty:

First Nations' self-governance; Stewardship of lands and resources; Cultural geographies override nation-state jurisdictions; Cultural jurisdiction; Governing jurisdiction; Leaders/Elders with cultural mandate; Ceremonial enactment and gift exchange; Relationships central; Periodic renewal through ceremony; Teaching and transmitting cultural knowledge to younger generation; Political alliance; Cooperative governance; Inclusive and living document; education; economic development; Ecological sustainability and restoration; Renewal of inter-nation relationships; Political solidarity; Cultural renewal; Respect; Collective responsibility; Centralised treaty website with updated information.

6.2 CASE STUDY: THE BLACKFOOT CONFEDERACY

Website links:

<https://blackfootconfederacy.ca/>

<https://blackfootconfederacy.ca/environment-lands/>

<http://nativeamericannetroots.net/diary/1379>

The Issue

The International boundary (49th Parallel) between Canada and the United States of America arbitrarily divided the Blackfoot Nations resulting in restricted access to their territories across the nation-state borders, as well as interference with their spiritual, economic, social and political relationships.

In order to reclaim, renew and strengthen their political and economic sovereignty over Kitaowahsinnoon (the whole traditional Blackfoot territory) as a whole nation of approx 35,000, and to maintain, renew and strengthen their spiritual and social relationships within Blackfoot culture, it was decided to create a formal confederacy, which is supported by a regional unification organisation – the Blackfoot Confederacy Tribal Council.

The Indigenous Parties, Scale and Goals

The Declaration of Siksikaitsiitapiwa or Blackfoot Confederacy was signed in Lethbridge on the 25th of May 2000. The Confederacy was established to bring back together the four Nations of the Blackfoot Confederacy or Siksikaitsiitapi across the jurisdictional borders of Canadian and American Nation states. The First Nations joining the confederacy are: the Amsskapipiikunniwa (Blackfeet Tribe) located in northern Montana, U.S.A., Kainaiwa (Blood Tribe), Siksikawa (Siksika Nation) and Aapatohipiikunniwa (Piikani Nation), located in southern Alberta, Canada.

The confederacy aimed to enable Blackfoot to come together again and act as a whole nation - Kainai-Blood Tribe, Siksika, Peigan-Piikani and Aamskapi Pikuni - to act with solidarity to deal with common issues:

Since time immemorial, the Children of the Plains, the Blackfoot, have lived in a territory that stretches from the North Saskatchewan River in Alberta and Saskatchewan to the Yellowstone River in the state of Montana, from the Continental Divide in the west to the Great Sand Hills in the province now known as Saskatchewan.

Formalising the unification of the Blackfoot Nations as a confederacy aims to *'facilitate an integrated and effective approach to implementing initiatives designed for the betterment of the lives of the Blackfoot people'*.

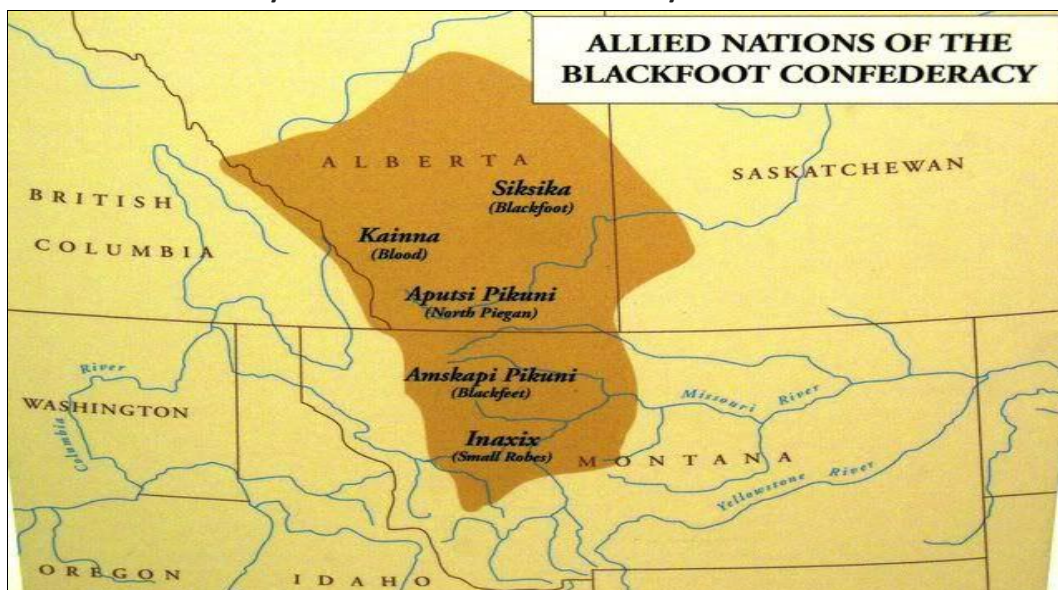
The Blackfoot Confederacy was also established to deal with external governmental entities across USA and Canada, such as the Government of Alberta, Indigenous Services Canada, and the Assembly of First Nations. Once enacted, the Blackfoot Confederacy Tribes then entered into Inaistsyi (Peace Treaties) with the American and Canadian Governments.

The Blackfoot Confederacy Tribal Council governs the implementation of the confederacy, but does not directly govern each individual nation within the confederacy, which maintain their own leaders, elders and so on. This is a classic and effective feature of cultural and governance subsidiarity.

The Tribal Council's functions are directly related to those set out in the Declaration:

The Blackfoot Confederacy Tribal Council strives to maintain, control, protect, develop and strengthen Blackfoot cultural heritage, traditional knowledge, traditional cultural expressions, oral traditions, and literatures. (<https://blackfootconfederacy.ca/culture-language/>)... [and its] priorities and strategies include the protection, and sustainable development of lands and natural resources while incorporating traditional Blackfoot knowledge (<https://blackfootconfederacy.ca/environment-lands/>)

Blackfoot Confederacy Deceleration of Nation Territory



Source: <http://nativeamericannetroots.net/diary/1379>

Confederacy Declaration Content

The stated Vision for the confederacy is: ... *honouring and utilizing the past, into the present, for the future Blackfoot way of life.*

The Mission set down for the confederacy is: *To collaborate, restore, protect, honor and enhance the collective culture, language and self-identity of the Blackfoot People; and to establish political and economic sovereignty over the Traditional Territory, including natural resources, for the benefit of current and future generations of the Blackfoot People.*

A strong set of principles were enshrined into the Confederacy around core Blackfoot Values:

- *Respect for each other*
- *Wisdom from our Elders and our teachings*
- *Courage from our beliefs and history*
- *Hope for our youth*

The Declaration of the Confederacy asserted a shared cultural geography and jurisdiction over land, waters and natural resources:

These Nations have since time immemorial, occupied their collective territory, bounded on the north by the North Saskatchewan River, on the east by the confluence of the North and South Saskatchewan Rivers, on the south by the Yellowstone River, and on the west by the Rocky Mountains. This said territory has been given to us by the Creator to live in harmony with all of creation.

The territory is marked with our sacred sites including, but not limited to Ninastako (Chief Mountain), Iini Ksiskom (Buffalo Springs), Moko' waansin (Belly Buttes), Soyioh'powah'ko (Blackfoot Crossing), Miistuki'sts Koowa (Castle Mountain), Aiyii Ki'mikoi (Cypress Hills), Hand Hills, Old Man River, Yellowstone River, North Saskatchewan River, Table Mountain, Crows Creek, Sand Hills, Big Horn Medicine, Sweet Pine Hills, Kai'skah'piiks (Porcupine Hills), Oiskit'tsi'poi'iystuki (Heart Butte Mountain) and Whale Back Ridge.

The Blackfoot Confederacy continues to connect to these sacred sites thru stories, songs and ceremonies, while collectively maintaining Blackfoot culture and the Blackfoot language in accordance with the Creator's teachings.

Wider Partnerships were then reactivated via written protocols by the confederacy with Canadian Governments after the Declaration that reunited the Blackfoot – a form of nation-to-nation agreement. For example, this was done via a Protocol Agreement in 2019 that provided a framework for collaboration between the Alberta Government and the Blackfoot Confederacy. It established a formal process for Alberta and the Blackfoot Confederacy to work together on issues of mutual interest and benefit. Ministers and Chiefs meet with one another to review and approve joint proposals and initiatives developed by issue-specific Negotiating Tables.

The principles of the Protocol Agreement were to:

- Provide a framework for collaboration;

- Establish mechanisms by which First Nations and the Government of Alberta can work together in the determination of joint strategies to address priority areas
- Provide for regular meetings at the senior official level, the Chiefs and Ministers level, and annually between the Premier of Alberta and Chiefs.

Summary of Key Principles underlying Blackfoot Confederacy:

Collective Blackfoot culture, language and self-identity; Rebuilding and reintegrating their whole nation; Collective nation self-governance; Relationships; 'Whole of nation' sovereignty; Governance subsidiarity in the Declaration; Relational subsidiarity marked by performing nation ceremonies to solidify unity; Stewardship of lands and resources; Blackfoot nation cultural geography overrides nation-state jurisdictions; Honouring the past into the present; Respect for each other; Wisdom Elders and cultural knowledge teachings; Courage from beliefs and history; Hope for youth; Collaboration on strategic approach to issues with eternal governments.

5.3 CASE STUDY: HEILTSUK NATION AND THE HAIDA NATION: THE TREATY OF PEACE, RESPECT, AND RESPONSIBILITY

Website links:

<https://www.haidanation.ca/wp-content/uploads/2017/03/oct.14.pdf>

<https://www.haidanation.ca/tag/peace-treaty/>

<https://globalnews.ca/news/2085293/heiltsuk-and-haida-nations-finalize-peace-treaty/>

The Issue:

The Treaty of Peace, Respect, and Responsibility between the Heiltsuk Nation and the Haida Nation was the first peace treaty between these two nations since the 1850s and was premised on the assumption that *'there are greater troubles facing our lands and waters and depletion of resources generated from forces outside of our nations'*. The two nations historically had some territorial conflicts. One ancient village site in Haida Gwaii, designated a UNESCO World Heritage Site, still shows damage from a Heiltsuk raid. The original 1850 treaty aimed to bring about peace between the two nations:

Like every other coastal nation, the Haida and Heiltsuk have a mixed history – their ancestors intermarried and had children together, but they also have a history of conflict and war. In the mid-1800s, both nations' predecessors knew that they had to make peace, so the hereditary leaders of the day made the decision and agreed on an oral peace-treaty. At the time, the two nations exchanged three songs to symbolize the peace, and they still sing them in ceremonies today.' (<https://www.haidanation.ca/wp-content/uploads/2017/03/oct.14.pdf>)

The new treaty reactivated that early treaty: *On Monday, chiefs met together and recalled the last conflict between the nations occurring in 1852 when, according to oral history... the nations entered into an oral peace treaty in response to an influx of European explorers changing the nature of their relationship.*

The modern treaty of 2014 updated and formalised terms of the 1850 agreement in writing, but only after there was extensive potlatch ceremony between the two nations as the proper way of enacting the new treaty.

The First Nation Parties, Scale and Goals

The updated contemporary Peace and Respect Treaty has the aim of renewing and strengthening relationships in the face of significant threats to lands and waters, including forests and fisheries. The treaty between the Heiltsuk Nation and the Haida Nation celebrates their common commitment to responsible stewardship – to protect their lands and waters from ongoing threats. There was also a strong political desire to challenge a common threat posed by the state sanctioned commercial herring fishery in Heiltsuk waters. Both nations had worked together over the preceding years to oppose the Northern Gateway pipeline and, most recently, to oppose commercial herring fishing in Heiltsuk waters.

The natural world knows no boundaries, and both nations, their people, and their cultures are inherently connected to the lands and seas around them. This message echoed throughout the chiefs' speeches. The Heiltsuk leaders were clear – they came here [to meet with Haida] to protect the coast and their shared resources for future generations to enjoy.

The treaty was initially signed last September in Masset, Haida Gwaii where the Haida Nation hosted chiefs and members of the Heiltsuk Nation for a potlatch. Now, the Heiltsuk Nation is keeping to customary protocol by hosting a potlatch of their own in Bella Bella, inviting chiefs and members of the Haida Nation to finalize the agreement in Heiltsuk territory. This will allow all of the chiefs from the two nations to sign the document.
(<https://globalnews.ca/news/2085293/heiltsuk-and-haida-nations-finalize-peace-treaty/>)

The treaty was seen as a powerful tool for combined advocacy, and an assertion of jurisdictional sovereignty:

The agreement is being coined a “treaty of peace, respect, and responsibility.” [It] will strengthen our political advocacy ties as we work on social and environmental justice together,” said Marilyn Slett, chief councillor of the Heiltsuk Nation.... “We’re both marine people, people of the sea... our way of life needs to be balanced with how we live. the combined force of these two nations, each with clear political and cultural mandates, will change the way business is conducted on the coast.”

“This is a monumental step in the right direction,” stated President kil tlaats’gaa Peter Lantin. “We’re seeing declarations of land title in BC. We’ve known this all along. We’re not waiting for the court or the crown to give a declaration of title to either the Haida or the Heiltsuk. This nation-to-nation business is doing that. We know we have title to our territories and we’re acting on it.”

In order to formalize the written agreement, signed Monday, it must be recognized at today’s potlatch. Everything has to take place in that cultural forum, in a big house setting, with all the chiefs and people, in order to formalize an agreement like this,” said Brown.

The enactment of the Peace Treaty was an elaborate potlatch ceremony which had been banned by colonial Canadian Governments

The Treaty was enacted between the two Indigenous nations through a potlatch ceremony and ... this September a delegation of 65 Heiltsuk people attended a 'waahlg ahl potlatch hosted in Gaaauu to ratify a peace treaty that was initiated prior to 'contact'. The treaty recognizes the family relationships between both nations, the common use of the ocean, and includes an agreement on ocean boundaries. After the formal entrances, the Haida Descendants shared three songs and dances to cleanse the floor before the ceremonies continued. 'We share [the] coast, and we're all here to protect our forests and seas,' said Skil kaatl'aas Reg Davidson.... Another celebration to ratify the treaty is scheduled for the summer of 2015 in Heiltsuk territory.

Treaty Content

A particularly important aspect of this treaty is how it was enacted. Signing the written document was an act that came only *after* a long period of formal ceremonial exchanges called potlatch, which is characterised by numerous speeches by chiefs and members of each nation, singing of traditional song cycles, renewal of relationships, story-telling, and public exchanges of numerous gifts over several days:

The delegation stopped at Kay Lnagaay for a tour of the Haida Gwaii Museum before arriving at the community hall in Hlgaagilda, where they were drummed in for their official welcome. The welcome was hosted by the Skidegate Band Council; Chief Councillor Billy Yovanovich said, "We're so fortunate to be here declaring peace. While other nations are warring, we're making peace. What a great example we're making here....."

Today, the Haida and Heiltsuk will potlatch the legacy of their ancestors with the 2014 Treaty of Peace, Respect, and Responsibility... Singers and drummers soon captured everyone's attention to announce the entrance of the Haida hereditary leaders. Every chief was introduced by their traditional name as they entered the hall and immediately following, the Heiltsuk delegation entered, singing and drumming, announcing their hereditary leaders one-by-one.

Throughout the potlatch, both nations exchanged gifts.... The Haida honoured their Heiltsuk guests with a large cedar bentwood box drum with both nations' logos painted on it, and Guujaaw shared a Heiltsuk song that had been recorded amongst the Haida over 100 years ago by John Wesley. As day turned into night hereditary leaders from the Haida and Heiltsuk nations spoke about their time at residential school. Many of the chiefs recognized their Haida and Heiltsuk counterparts from those early days when they were sent away to school. These connections were a tangible example of the strength of the nations, and this power reverberated throughout the day as each leader shared their words on the significance of this event. Haida and Heiltsuk families also celebrated their common relatives and family ties. The Heiltsuk traced their connections to northern Haida families.

(<https://www.haidanation.ca/wp-content/uploads/2017/03/oct.14.pdf>)

Then, after reading the treaty aloud, Haida and Heiltsuk leaders each took turns putting pen to paper, ratifying the treaty of peace, respect, and responsibility. Hereditary leaders from both nations signed the treaty first, followed by CHN representatives, and respected individuals from each nation.

The Draft Treaty of Peace and Respect

A Treaty of Peace and Respect between the Haida and Heiltsuk Peoples

The purpose of this Treaty is to reaffirm the time honoured relationship between the Haida and Heiltsuk peoples and to delineate jurisdictional responsibilities.

Historic Peace Treaty

The Haida and Heiltsuk peoples hereby affirm our commitment and endorsement of Peace and Respect. This agreement reinforces the pre-existing peace treaty made by our forefathers, which was an Oral Treaty declared at a potlatch held in Heiltsuk territory.

Time Honoured Relationship

We honour and respect the family ties that have been maintained through marriages and the unique genealogy of alliances between or communities. We honour the cultural relationships among our peoples in peaceful links between the Traditional and Elected leaders of our people. We acknowledge that we may require access to each other's territories and agree that we will allow permission for that access. We agree that we will establish required protocols for access and will arrive at management policies based on the principles of our traditional laws and the ability of nature to provide.

Agreement on Ocean Boundaries

We honour the tradition of our special relationship between our people and agree to the boundary line and coordinates shown on the attached map as it applies to the area of the Ocean.

Mutual Support

We are committed to support each other by sharing our knowledge, expertise, and other means of empowering the continued growth and development of our people in accordance to our traditions.

Protection

We pledge to honour the integrity, customs, rights and responsibilities bestowed upon us by our ancestors so that collectively, we continue to create and maintain a quality of life in our communities and an environment which is safe and secure while meeting and protecting the needs of our future generations.

This Treaty of Peace and Respect is signed in solidarity, unity, and honour for the common good of our people and for the sake of our future generations.

Source: https://www.haidanation.ca/wp-content/uploads/2017/03/jl.jun_.06.pdf

Side Note on treaty document states: *"This draft treaty is an example of the type the CHN is developing with First Nations up and down the coast". [CHN = Chiefs Haida Nation]*

A crucially important aspect of the treaty terms and conditions is their common commitment to responsible stewardship – to protect their lands and waters from ongoing threats:

The natural world knows no boundaries, and both nations, their people, and their cultures are inherently connected to the lands and seas around them. This message echoed throughout the chiefs' speeches. The Heiltsuk leaders were clear – they came here to protect the coast and their shared resources for future generations to enjoy (<https://www.haidanation.ca/wp-content/uploads/2017/03/oct.14.pdf>)

After the first ratification by signatures, both nations shared further performances to formalise the treaty:

The Heiltsuk and Haida danced in ceremonies for nearly three hours each, performing into the early hours of the morning.... The momentum and celebratory energy continued over the course of meals, speeches, dances, and ceremonies. Witnesses and guests expressed their honour and privilege at participating in such a historic event and accepted many gifts as payment, including cedar seedlings. The Heiltsuk nation was presented with a 43' monumental cedar, and seedlings were given to those who witnessed the potlatch, to respect the fallen tree.

The many hours of story, song and dance continued at another feast in Gaaw on Wednesday. After feasting, the Haida and Heiltsuk communities danced together in full regalia to songs they and their ancestors had gifted to one another.

Then each year after Heiltsuk and Haida leaders potlatched the treaty again:

The t'aaGuu are just two of many valuable assets exchanged through potlatch law to affirm the alliance since the original oral peace treaty. When kuuniisii established the original peace treaty Haida gave Haítzaqv three songs that both nations continue to sing today. Sometime later Hemas Harry Humchitt received a paddle song at a feast in Haida Gwaii. At a potlatch in Gaaw, in 2014, Haida gave Haítzaqv a box drum, a peace song by SGaalanglaay Vern Williams, and a monumental ts'uu Red cedar. In 2015, in Waglisla, Haítzaqv gave Haida a monumental ts'uu, an iinang herring song, a mask portraying a Haítzaqv and Haida ancestor, Tanis cedar rings and the Tanis ceremony.

Sixty-eight representatives from all levels of Heiltsuk and Haida government signed the document along with Wet'suwet'en and Nuuchahnulth witnesses.

(<https://www.haidanation.ca/to-lay-the-copper-on-the-floor/>):

It's so powerful when our communities get together and work as a group," Chief Councillor of the Heiltsuk Tribal Council Ĝáǵvi Marilyn Slett said. "I think that's where a lot of our excitement, momentum and synergy is from coming from. We're looking forward to the dialogue here and seeing how we can support the Haida Nation, and support each other going forward. I know there's really good things to come from bringing our people together.

After the treaty ratification, the leadership of the two nations spent the days discussing actions and issues that could be progressed together: *the Reconciliation Protocol Agreement, the Haida Title Case, tanker traffic, fracking, forestry, Coastal First Nations, the women's council, and fisheries.*

Senior technical staff and stewardship directors discussed mapping, lands, heritage, marine planning, and Guardian Watchmen.

Summary of Key Principles underlying Haida and Heiltsuk Treaty:

Peace and Respect; delineate jurisdictional ocean boundaries and responsibilities; Jurisdictional sovereignty; Resource governance; Joint political advocacy; Ceremonial enactment is critical for treaty ratification; Annual re-endorsement and honouring of the treaty; Permission to access each other's territory; protocols for access; Agree on management policies for territories; Reaffirm relationship between two nations; Honour the integrity, customs, rights and responsibilities handed down by ancestors; Quality of life in community and environment; Youth and needs of future generations; Sharing knowledge and expertise; Shared growth and development according to traditions;

5.4 CASE STUDY: THE COASTAL FIRST NATIONS-GREAT BEAR ALLIANCE

Website Sources

<https://ca.linkedin.com/company/coastal-first-nations-great-bear-initiative>

<https://coastalfirstnations.ca/>

The Issue:

After decades of industrial logging and over-fishing, the First Nations of the coastal region of British Columbia Canada came together to create a new conservation-based economy in their territories. One important goal was to promote community self-sufficiency and a sustainable approach to economic development that recognises First Nations title and rights and protects First Nations culture and ecosystems. (<https://ca.linkedin.com/company/coastal-first-nations-great-bear-initiative> <https://coastalfirstnations.ca/>)

The traditional territories of the member communities' of this contemporary alliance are located in the Great Bear Rainforest. This region is roughly the size of Ireland (74,000 square kilometres) and has been recognized as the largest relatively intact temperate rainforest ecosystem left in the world – and on the coastal shores of First Nations traditional waters. (Low & Shaw 2011). Apart from the largest city, Prince Rupert, the majority of the population is comprised of First Nations, many of whom live in small remote communities accessible only by water or air. The traditional territories of twenty-seven coastal First Nations are located within the region. The resource-rich region had a history of major industry, government and business players asserting competing demands and rights.

The alliance website describes the context for its establishment:

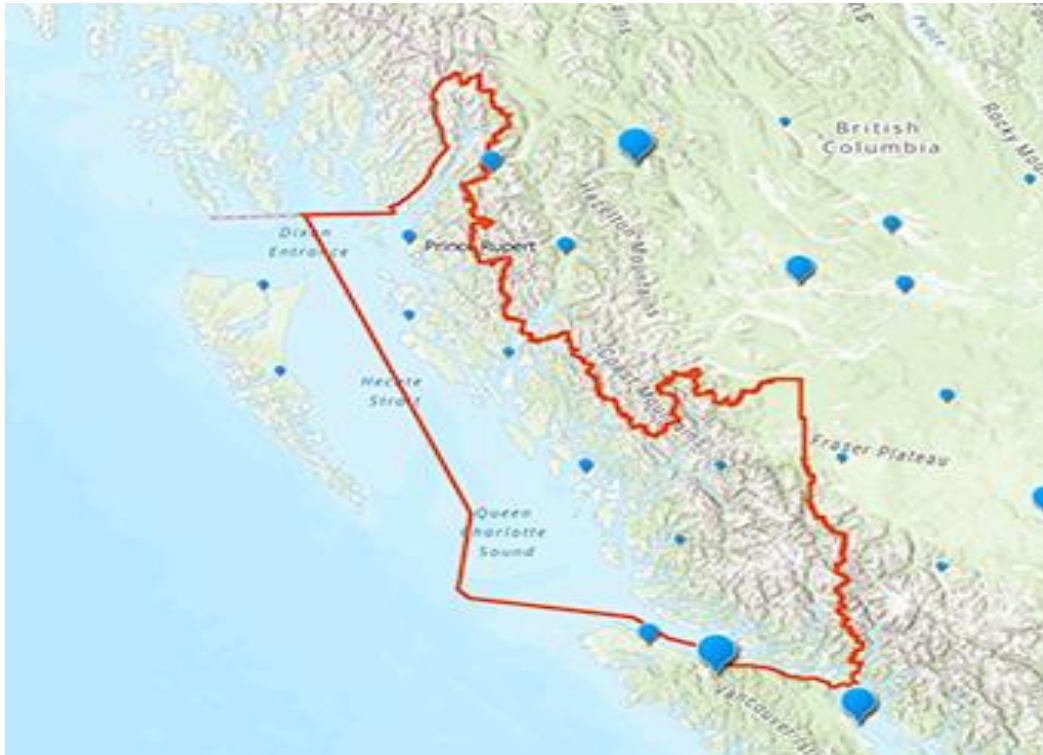
First Nations have forged a rich culture here. Our culture, language and livelihoods are deeply connected to the riches of rainforest and ocean.

For thousands of years, our people carefully managed an abundance of resources – ancient cedars, herring, salmon, halibut, shellfish and more. We relied on our knowledge of seasonal cycles to harvest land and marine resources without harming or depleting them.

Many believed these coastal resources would last forever. They were wrong.

By the end of the 1990s, forest and ocean resources of the Great Bear were being rapidly depleted by heavy industrial logging and commercial fishing. It was clear a new approach was needed.

First Nations Communities of the Great Bear Rainforest Alliance



Source: <https://greatbearrainforesttrust.org/first-nations/>

The First Nation Parties, Scale and Goals

Coastal First Nations is a unique alliance of nine Nations living on British Columbia's North and Central Coast and Haida Gwaii. Each Nation has its own distinct culture, governance and territory. They include the Council of the Haida Nation, Skidegate, Old Massett, Metlakatla, Heiltsuk, Nuxalk, Gitga'at, Kitasoo/Xai'xais, and Wuikinuxv First Nations.

Importantly, although each Nation has its own distinct territory, governance and culture, their territories are all found within the Great Bear Rainforest. This environmental connection brought them together into an alliance, whilst retaining their own self-governing autonomy.

In March 2000, leaders from several First Nations met to discuss the development of a strategy to ensure their interests were included in the land-use plans for the region (Hoberg 2004). This was a new and crucial strategy as First Nations communities have a past of working in isolation from each other (Smith, Sterritt, and Armstrong 2007). These meetings (and the help of the David Suzuki Foundation), initiated the alliance of First Nations now known as Coastal First Nations Great Bear Rainforest Initiative.⁷ Collectively, First Nations agreed that they needed to increase economic development opportunities to create employment while protecting the ecological values of the region. The goal of this new group was to "restore and implement ecologically, socially and

economically sustainable resource management approaches on the central and north coast and Haida Gwaii” (Smith, Sterritt, and Armstrong 2007, 5).

First Nation leaders and researchers reported that (Smith, Sterritt & Armstrong 2007):

Coastal First Nations’ strategic approach to development includes:

- *sustainable ecosystem-based management of marine and land resources;*
- *increased local control and management of forestry and fisheries operations;*
- *coordinated development through regional strategic planning in forestry, fisheries and tourism with an emphasis on value added initiatives;*
- *partnerships and cooperative arrangements with governments, industry, NGOs and other stakeholder groups;*
- *government-to-government relationships; and*
- *stronger governance institutions.*

The Great Bear alliance was envisioned as a tool to assert First Nations leadership in creating a new conservation-based economy in their traditional territories:

Our region’s economy had dwindled, jobs were scarce and our communities were struggling. Operating in isolation, First Nations had little access to resources in our Traditional Territories and little say in how they were managed.

In June 2000, leaders from BC’s Central and North Coast and Haida Gwaii came together to sign the Declaration of First Nations of the North Pacific Coast.

Three years later, in 2003, a coast-wide alliance was born.

<https://coastalfirstnations.ca/our-communities/why-a-coastal-alliance/>

The political and environmental alliance was forged by way of a Declaration statement setting out shared cultural values in respect to responsibilities for natural resources and sustainable communities.

The Great Bear Alliance Declaration

DECLARATION

The North West Coast is a rich, and precious part of the earth. Our Cultures arise from the connection of our people with these lands and seas.

We recognize that our life source remains under the direct threat of industry and from the cumulative impacts of humanity and attendant effects on the climate.

This declaration is our commitment to protecting and restoring the natural world and in doing so, retaining our cultures while designing sustainable economies.

We live with the consequence of any abuse of our territories and the greater perils of climate change.

We commit ourselves to stand together, support each other and work together to fulfil these commitments:

- To making decisions that ensure the well-being of our lands and waters.

- To retain our cultures through our tradition, knowledge, and respect of nature.
- To be respectful of each other and to all life.

PRINCIPLES

- We recognize our responsibilities to future generations;
- We will advance our influence through the affirmation of our Title and Rights;
- Our respect for nature will continue to guide our decisions;
- We seek self-reliance and will design our economies to respect our life source;
- We will share our experiences and support each other to mutual advantage;
- We will respect territorial prerogatives and develop protocols to formalize interplay;
- Our Nations will celebrate our cultural differences while honouring our family ties.

Originally signed by the following First Nations and Councils: Skidegate, Metlakatla, Heiltsuk, Nuxalk Nation; Gitga'at; Kitasoo Xaixais; Council of the Haida Nation; Old Massett; Wuikinuxv; Haisla.

Source: <https://coastalfirstnations.ca/our-communities/cfn-declaration/>

Over a period of two decades, this alliance established strong alliance-governance arrangements. Each Coastal First Nation member has a Stewardship Office or Department of its own, governed by their nation and led by a Stewardship Director that employs Guardian Watchmen and other staff to undertake work based on their nation-specific priorities. In addition to overseeing the efforts of their own nation, these directors work together to achieve stewardship goals that span the North and Central Coast and Haida Gwaii. Through the alliance Stewardship Directors Committee, these directors meet regularly to share information and work together to implement regional stewardship initiatives that have been approved collectively by the CFN Board of Directors.

(<https://coastalfirstnations.ca/our-stewardship/coastal-stewardship-network/governance/>)

The Board of Directors approves an annual strategic plan for the alliance and its governing organisation. It has one representative from each of the nine member Nations. The Board of Directors meets at least three times a year to review progress and provide direction on activities. The Executive Committee meets regularly to review administrative issues and monitor project work at the Vancouver office, which has a core staff of seven people who support the Board with:

- strategic project planning support
- communications
- assistance in developing economic strategies
- support for community capacity-building
- financial management

(<https://coastalfirstnations.ca/our-communities/about-cfn/>)

Outcomes

The outcomes of this alliance has been the creation of a powerful advocacy group, who 'aggressively pursued' several major outcomes including ... *the creation of a new land designation known as "conservancies." These areas were created because the conventional definition of "protected areas" did not meet the needs of all parties in the negotiations, especially those of First Nations. It was reported that as coastal First Nations came together, drawing on their united strength, to reassert*

their traditional title in a way it established a new foundation for governance and economic development on the Central and North Coast and Haida Gwaii (Smith, Sterritt, & Armstrong, 2007).

Celebrating Our Past

The lessons we have learned as an alliance of Nations from the past 20 years comes down to two things. First, think big! Along our 20-year journey, we did things no one else had done before and played an integral role in protecting our lands and waters, developing government-to-government relations and creating economic opportunities is extraordinary. Second, believe in your goals and vision! Over the years, we have demonstrated our resilience, overcome adversity together and learned from our mistakes. (Marilyn Slett FN Coastal Nations Alliance https://coastalfirstnations.ca/wp-content/uploads/2020/12/CFN_StoriesFromtheCoast_Nov2020_FINALFORWEB_SINGLEPAGES.pdf)

Together, we established a network of Coastal Guardian Watchmen who protect our land and sea. And together, we launched the world's largest, Indigenous-led forest carbon project to fund economic opportunities in our communities. (https://coastalfirstnations.ca/wp-content/uploads/2020/12/CFN_StoriesFromtheCoast_Nov2020_FINALFORWEB_SINGLEPAGES.pdf)

Summary of Key Principles underlying The Great Bear Alliance:

Nations' political and jurisdictional sovereignty; Shared cooperative stewardship of the coastal environment; Governance subsidiarity; Cooperative resource governance; Political Allyship; Responsibilities to future generations; An emphasis on economic development with culture and identity.

7. NEW ZEALAND EXAMPLES: INTER-INDIGENOUS TREATY MAKING

The rights to self-government of Iwi, Hapu and Māori are the subject of continuing dispute in New Zealand/Aotearoa; as has interpretation of the intent and principles of the Treaty of Waitangi, signed in 1840. The Treaty established a British Governor of New Zealand, recognised Māori ownership of their lands and other properties, and gave Māori the rights of British subjects. From the British point of view, the Treaty gave them sovereignty over New Zealand. Māori believed they ceded to the Crown only a right of governance in return for protection, without giving up their authority to manage their own affairs; as witnessed by the Māori language version of the Treaty which is what the various Māori chiefs signed.

Before European settlement Māori had no concept of selling land, and few chiefs had the *mana* (authority) to *tuku* (gift) it. The Treaty of Waitangi gave the Crown pre-emptive (sole) right of purchase of Māori land. This arrangement had the potential to protect Māori customs and interests, but instead the Crown used its monopoly to aggressively purchase Māori land. Initially land sales were discussed in open meetings, but by the late 1840s British settler officials were making secret deals with Māori to acquire land. Deals with individual Māori or groups who did not represent all the owners caused major inter-tribal disputes.

7.1 CASE STUDY: THE KĪNGITANGA ALLIANCE/MOVEMENT

Website Links

<https://teara.govt.nz/en/kingitanga-the-maori-king-movement/print>

<https://waikatotainui.com/about-us/>

https://www.waikato.ac.nz/__data/assets/pdf_file/0008/547829/Kotahitanga-Exhibition-CAT_INSERT.pdf

<https://nzhistory.govt.nz/politics/the-maori-king-movement/the-land-issue>

The Issue:

In the context of rapid loss of their lands, in 1854, *hui* (meetings) by Māori leaders in Taranaki and Waikato resolved to retain all the land within certain boundaries. Those who joined this movement swore to maintain a *tapu* on the land on pain of death. Tapu is the strongest force in Māori life. It can be interpreted as 'sacred', or as 'spiritual restriction', containing a strong imposition of rules and prohibitions.

As a consequence, only 18 years after the Treaty of Waitangi was signed, a particularly powerful political alliance was formed across several large iwi in the central North Island - The Māori King Movement, called the Kīngitanga in te Māori. The movement arose as a means of attaining Māori unity to halt the alienation of land at a time of rapid population growth by European colonists:

Pressure to sell land was a key factor in the creation of the Kīngitanga. In 1840 there were only 2000 permanent European residents in New Zealand, and perhaps 70,000 Māori. But by 1858,

Pākehā outnumbered Māori (<https://nzhistory.govt.nz/politics/the-maori-king-movement/the-land-issue>)

Maori Parties, Scale and Goals

The movement sought to establish in 1858 a monarch who could claim status similar to that of monarch of the British colonists and thus allow Māori to deal with *Pākehā* (British settlers) on equal footing. It took on all the appearances of an alternative government with its own flag, newspaper, bank, councillors, magistrates and law enforcement.

The Kīngitanga leaders believed that a pan-iwi alliance, unifying Māori people under one sovereign equal to the then Queen of England, could bring an end to intertribal conflict that was being generated by the land grabbing deals of government officials, keep Māori land in Māori hands, and provide a separate governing body for Māori to deal with their own land issues (<https://teara.govt.nz/en/kingitanga-the-maori-king-movement/print>).

Content of Movement/Alliance

The Kīngitanga Movement was an alliance created to protect Māori land ownership, retain constitutional authority over the Māori world, and unite the country's disparate, and often warring, tribal groups.

It was regarded by many iwi in the North Island as the unifying 'korowai' of Maori. Kīngitanga to unite all tribes under the leadership of Pootatau Te Wherowhero. The korowai is a traditional woven Maori cloak worn as mantle of prestige and honour. The name is symbolic of leadership, and includes the obligation to care for the people and environment.

Its primary goals were to cease the sale of land to Pakeha, stop inter-tribal warfare, and provide a springboard for the preservation of Maori culture in the face of Pakeha colonisation. As it has done for the past 160 years, the role of Kīngitanga will still be the unifying thread of all Iwi, under the seventh monarch, Kingi Tuheitia. Its strategic objectives remain:

- 1. To retain our historical role as Kaitiaki o te Kīngitanga*
- 2. To ensure Kīngitanga remains an eternal symbol of unity* (<https://waikatotainui.com/about-us/>)

The core Maori principles underlying the Kīngitanga alliance were:

- Kotahitanga—to come together in unity;
- Tu Kotahi—to stand together;
- Whakawhanaungatanga—establishing links and relating.

A number of titles were considered for the leadership of this new alliance of iwi, including:

'Father of the Tribes', Ariki Taungaroa (chief of chiefs), Toihau (supreme head) and Rangatira (chief). Critics complained that there was nothing original about the Kīngitanga and that it was simply copying the British monarchy. Te Moananui of Hawke's Bay, however, argued that as there were many chiefs, the title of king should be used – the position had to be unique and the title needed to set the leader apart from others. (<https://nzhistory.govt.nz/politics/the-maori-king-movement/potatau-te-herowhero>)

The first in the line of Kīngitanga was the Waikato chief Pōtatau Te Wherowhero. One of his first actions was to establish a boundary between the territory in which his authority held sway and that of the NZ colonial governor: *'Let Maungatautari [River] be our boundary. Do not encroach on this side. Likewise I am not to set a foot on that side.'* His aim was not to oppose the Crown but to provide authority in the lands placed under his mana (authority). Supporters believed it was possible for the mana of the two monarchs to be complementary. To Māori, the Kīngitanga was a development *for* Māori.

Given the tribal nature of Māori society, there was some surprise that a pan-tribal movement had been established. Most Māori were loyal to their own iwi and hapū. The historian Michael King (1992, p.162-169) believed that as the European population grew it created a sense of Māoriness that made it possible for Māori to think beyond their hapu/iwi affiliations and distinguish between a Māori and a non-Māori world. 'British unity under the Crown was perceived as a strength, and supporters of the Kīngitanga believed that if Māori could replicate this sense of unity they would have a better chance of withstanding the full impact of colonisation'.

(<https://nzhistory.govt.nz/politics/the-maori-king-movement/challenge-to-european-authority>)

The Kīngitanga alliance resisted further British encroachment eg; it opposed the building of new roads into their lands. In effect it sought self-government in Māori areas. The movement took on the appearance of an alternative government with its own flag, newspaper (*Te Hokioi*), councillors, magistrates and law enforcement system. The Kīngitanga government even had a minister for Pākehā affairs (<https://nzhistory.govt.nz/politics/the-maori-king-movement/challenge-to-european-authority>).

At the time, many Māori also saw the Kīngitanga as a spiritual force carried from marae to marae. Its symbols, *such as the king's flags, the pātaka (carved storehouses) and rūnanga (tribal council) houses, the mountains and boundaries, were imbued with tapu (sacredness) and the mana (authority) of the king:*

The Kīngitanga was to hold the mana (authority) and unify the iwi and slow the flow of land from Māori hands. Māori betterment, unity, control over our own resources, inter-tribal peace, base human needs such as sovereignty over our own lives and culture; mana motuhake! Who does not want this? (Hollie Tawhiao, Exhibition Curator

https://www.waikato.ac.nz/__data/assets/pdf_file/0008/547829/Kotahitanga-Exhibition-CAT_INSERT.pdf)

The core principles informing the alliance have been steadfastly sustained over an extremely long period as the Kīngitanga movement is one of the most enduring political institutions in Aotearoa, and continues to this day (Papa & Paul 2012). It has been described as sitting,

...within a culture abound with political activism. Contrary to some depictions, it is not isolated nor fuelled by disorganised 'radicals', but rooted in a long history of negotiating a relationship between state and Māori as well as a resistance to state mandates that Māori recognise as detrimental to the longevity of Māori society and culture (Harris 2004; Ballara 1996).

Since its early establishment, it has continued to work to bring otherwise independent tribal communities together to protect their tribal identities and resources.
(<https://theconversation.com/the-kingitanga-movement-160-years-of-maori-monarchy-102029>)

British Settler Colonial Backlash

Europeans initially treated it as some form of childish imitation, but they underestimated the sophistication of the extended debates preceding Te Wherowhero's election. A significant feature for such an alliance is that the Maori iwi that supported him agreed to give up authority over their land to prevent individual rangatira (chiefs) from selling plots to the British, and so compromising the interests of others. This was unprecedented in Māori tradition. And it was extremely effective in creating a strong mandate and authority to act for the Kīngitanga.

The movement effectively halted land sales by its supporters. It also began to be taken far more seriously in 1860, when some of its members joined Taranaki iwi (tribes) in resisting the military force used to complete a highly disputed land purchase.

The strength of the alliance was such that it was viewed by the NZ colonial government as a challenge to the supremacy of the British monarchy, leading in turn to the 1863 invasion by government army of Waikato, which was partly motivated by a drive to neutralise the Kīngitanga's power and influence.

Land Purchase and The New Zealand Wars Disputes between Maori and the Crown mostly centred on disagreements over land sales. The 1860s saw these disputes leading to the New Zealand Wars, which had a number of causes but were mostly related to the land issue and the Kīngitanga's. The outbreak of war at Waitara in 1860 was the result of a dispute over a land sale. On the 12th July 1863 the British invaded the Waikato, beginning the largest and most important of the NZ wars (Belich, 1990, 90).

A summary of the Waikato conflict is included in this article.

Land had become the focus of economic and political confrontation between Maori and Pakeha. In the Waikato, the conflict centred on the formation of the Kīngitanga (Maori King) movement which opposed the sale of Maori land, and desired autonomy. Pressure from land-purchase agents, and increasing economic and political pressure were motivators for Kīngitanga. The Kīngitanga represented the maintenance of tribal authority and the independent authority of the people (Waitangi Tribunal 1996, 63). The settler government saw the Kīngitanga as a threat to the Queen's sovereignty over New Zealand, and so invaded the Waikato with the intention of crushing the Kīngitanga movement. The Kīngitanga survived the war, but could not prevent the Raupatu of their lands or the usurpation of their authority over the Waikato (and Waaipā) River (Scrimgeour & Way, 114).

Despite its losses, the Kīngitanga was not defeated and certainly not destroyed. For 20 years following the final battle in April 1864 at Orakau, the king ruled an independent sovereign state in the centre of the North Island. There were no colonial police or military and no courts, roads, surveyors or schools. Europeans ventured into the King Country (Rohe Pōtae) at their own risk.

Summary of Key Principles underlying The Kīngitanga Alliance:

Maori political and jurisdictional sovereignty; Pan-Maori alliance and unity; iwi-level political alliance; Self-government; land ownership and jurisdiction; Māori betterment, unity, control over own resources, inter-iwi peace, sovereignty over own lives and culture; Leadership power and authority for the alliance; Spiritual and cultural mandate; Principles of: Kotahitanga—to come together in unity; Tu Kotahi—to stand together; Whakawhanaungatanga—establishing links and relating

8. COMMON INDIGENOUS PRINCIPLES OF TREATYING

The following common principles of how First Nations treaty with other to form agreements, alliances, unions and confederations can be seen at work in all the international and national examples. They arguably constitute a framework of Indigenous treatying principles:

1. Mutual respect and recognition of each First Nation's jurisdiction and sovereignty over land/waters (Country) are foundations of treatying
2. Self-determination and self-governance as basis for right to negotiate treatying
3. Treatying as an exercise of sovereignty
4. Collective cultural mandate of delegates/leaders to 'sign off'
5. Alliances and unions recognise the relational autonomy of each Nation over their own Country, but having shared goals and so mandate to act collectively. This is a traditional Indigenous governance principle of subsidiarity
6. Relational governance based on Law of Country
7. Treaties arise out of desire for confirming or re-establishing connectedness, interdependence, and exchange.
8. Treatying is a mode of peace-making and dispute resolution, reconcile old grievances
9. May be short-term and situational; or long-term and large-scale.
10. Treatying emphasises Indigenous values of decentred local federalisms, building on the virtues of united strength that preserved a high level of local self-determination amongst member groups
11. Can be decentred and accommodate interdependent layers: giving effect to a pooling of sovereignties
12. A negotiated division and allocation of roles, rights and responsibilities across different participating nations
13. Often has an ongoing performative context, which is often seen as being just as being important to the 'proper' enactment and implementation of the treaty, than any formal written document.
14. Ceremonial enactment is critical for treaty ratification; and annual re-endorsement and honouring of the treaty;
15. Informed Consent
16. Consensus decision making, in accordance with Indigenous Law
17. Treatying recognises and reinvigorates collective identities
18. Promotes shared cooperative stewardship of valued ecosystems and environments
19. Cooperative resource governance

20. Enshrines ongoing responsibility to future generations
21. Treatying is an act of sovereignty—as nations exercise their governing powers to decide who their allies will be and the content of that partnership.
22. Boundary delineation is an important principle, as are Protocols for permission about access and use
23. Sharing of knowledge, skills and expertise
24. Collaborative advocacy

We suggest that these principles may be extremely useful to Indigenous polities in Australia, who can adapt them to inform and assert their self-determined procedural frameworks for contemporary negotiations.

We envisage two broad arenas where such Indigenous procedural principles could apply:

1. **For rebuilding, strengthening and governing contemporary *inter-Indigenous* relationships and collaborations.**
For example, to negotiate the resolution of overlapping native title claims; agree on inter-Indigenous land boundaries; collaboratively map and create large-scale environmental sanctuaries; establish cooperative natural resource governance; distribute agreement benefits across groups; enter into new trade or entrepreneurial arrangements; create new political alliances; and to leverage rights at larger political and geographic scales.
2. **For developing, asserting and implementing *indigenous* self-determined ground rules for treatying and negotiating agreements with Australian governments, industry and each other parties.**
For example, rather than accepting a settler-designed treaty framework with its Western legal underpinnings and limitations, First Nations can propose that their own ‘treatying principles’ act as the procedural standards of agreed conduct, basis for dealings, and guiding framework between themselves and Australian governments.

In conclusion, we suggest there is a vital collateral benefit for First Nations from their contemporary *inter-Indigenous* treatying; namely, it acts as a powerful catalyst for rebuilding their collective solidarity and self-governance capability as a polity. In other words, treatying *with each other*, and in turn with the nation-state, is an expression of, and tool for nation-rebuilding.

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