

INTER-TRIBAL AND INTERNATIONAL TREATIES FOR AMERICAN  
INDIAN ECONOMIC DEVELOPMENT

by  
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*American Indian nations and Indian people and Indigenous groups around the world are usually the poorest communities in their countries. These entities must develop and promote economic activities and jobs for their people. Economic development is an absolutely crucial social, political, and legal issue for these governments and their people. Recently, two efforts have been undertaken to create beneficial development based on treaties between Indigenous groups. In August 2007, American Indian nations, Canadian First nations, New Zealand Maori Iwis, and Australian Aborigine groups signed a treaty to engage in international economic activities. In addition, in 2007 and 2008, Pacific Northwest Indian nations drafted an inter-tribal treaty to facilitate the conduct of business on reservations. This Article dissects these two treaties and addresses some of the unique legal issues that the treaties raise.*

I.	INTRODUCTION .....	1104
II.	THE UNITED LEAGUE OF INDIGENOUS NATIONS TREATY..	1106
III.	INTER-TRIBAL ECONOMIC AND TRADE TREATY.....	1110
IV.	POTENTIAL ISSUES .....	1115
	A. Capacity to Enter Treaties.....	1115
	B. United States International Agreements.....	1118
	C. Impairment of the Obligation of Contracts.....	1119
	D. Dispute Resolution .....	1121
	E. Miscellaneous Issues for the Domestic Treaty.....	1121
	1. Tribal Employment Rights Ordinances.....	1121
	2. Taxes .....	1121
	3. Environmental and Cultural Regulations.....	1122
	4. Tribal Business Licenses.....	1123
	5. Uniform Commercial Code Filings.....	1123
V.	CONCLUSION .....	1123
	APPENDIX A. UNITED LEAGUE OF INDIGENOUS NATIONS TREATY.....	1126

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## APPENDIX B. INTER-TRIBAL ECONOMIC AND TRADE TREATY ..... 1129

## I. INTRODUCTION

Economic development in Indian Country is a crucial subject today. In fact, it is probably the most important modern day political, social, and legal issue that American Indian nations and Indian people face. Tribal governments have to provide jobs and economic activity for their reservation populations and if possible for their citizens who reside off reservations. This remains true despite the incredible growth in tribal gaming and the undeniable benefit that this venture has provided some Indian nations and people.<sup>1</sup>

Notwithstanding the phenomenal results from tribal gaming, American Indians remain as a group, the poorest of the poor in the United States.<sup>2</sup> Real economies do not exist on the vast majority of the 300 Indian reservations in the lower forty-eight states or in Alaska Native villages.<sup>3</sup> For example, there are few bank branches, large grocery stores, or retail outlets on reservations, and an almost complete absence of businesses where people can spend their discretionary recreational dollars. Adequate roads and housing, clean water and sanitation, telephones and electricity are all in short supply on most reservations.<sup>4</sup> Many Indian people on reservations today live under conditions that other Americans would not tolerate. In addition, urban Indians who live

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<sup>1</sup> According to the National Indian Gaming Association tribal gaming revenues were \$25.7 billion in 2006. National Indian Gaming Association, <http://www.indiangaming.org/library/indian-gaming-facts/index.shtml>. See also ALAN MEISTER, INDIAN GAMING INDUSTRY REPORT 1 (Casino City Press 2004) (in 2003, Indian gaming revenues were \$16.2 billion).

<sup>2</sup> See, e.g., U.S. CENSUS BUREAU, U.S. DEP'T OF COMMERCE, AMERICAN INDIAN, ALASKA NATIVE TABLES FROM THE STATISTICAL ABSTRACT OF THE UNITED STATES: 2004-2005, at 451 (2005), <http://www.census.gov/statab/www/sa04aian.pdf> (25.7% of American Indians and Alaska Natives live below the poverty line compared to 24.9% of African Americans, 22.6% of Latinos, 17.7% of Native Hawaiians, and 9.1% of White Americans).

<sup>3</sup> Robert J. Miller, *American Indian Entrepreneurs: Unique Challenges, Unlimited Potential*, 40 ARIZ. ST. L.J. (forthcoming 2008), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1153708](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1153708); Robert J. Miller, *Economic Development in Indian Country: Will Capitalism or Socialism Succeed?*, 80 OR. L. REV. 757, 829-37, 859 (2001).

<sup>4</sup> John M. Glionna, *Rural Tribe Gives New Meaning to 'Wireless,'* OREGONIAN, Aug. 12, 2001, at A25 (Yuroks of California live in third-world conditions with nearly half their homes without electricity or phone service; 85% live below the poverty level and unemployment is 80%); U.S. Department of Energy, *Energy Consumption and Renewable Energy Development Potential on Indian Lands* (2000), <http://www.eia.doe.gov/cneaf/solar/renewables/page/pubs.html> (14.2% of Indian homes on reservations have no access to electricity, compared to just 1.4% for all U.S. households); Brenda Norrell, *Clinton's New Market Focus on Indian Country*, INDIAN COUNTRY TODAY, May 3, 2000, at A1 (reporting that only 22.5% of Navajos on the reservation have phone service compared to 94% national average); Miller, *Economic Development*, *supra* note 3, at 759.

off reservations have incomes and family wealth far below the U.S. averages.<sup>5</sup>

I think that Indians and tribal governments are tired of talking about these negative aspects of Indian history and modern day life. Instead, tribal governments and American Indians are looking to the future and want to do something about these negative situations. This Article describes the attempts of indigenous nations to do something about their economic situations.

For the past seven decades, if not more, American Indian governments have been encouraged by the federal government and by legal, political, and business leaders to undertake every type of economic activity known to humans.<sup>6</sup> In the 1970s and 80s, tribes even turned to gambling to create reservation economic activity and jobs, and Congress was forced to agree after a 1987 U.S. Supreme Court case upheld tribal sovereign rights to offer gaming on reservations.<sup>7</sup> But tribal governments realize that the gaming industry will fluctuate and might even recede someday, and they also recognize that gaming does not work for every tribe.<sup>8</sup> Consequently, all tribes, with or without successful gaming ventures, are looking to diversify their economic activities and to create real economies in Indian Country. Many Indian nations are looking towards their own cultures and histories to address this issue.

Recently, tribally led initiatives have formed political, economic, and business relationships with other Indian tribes, and established new political relations with international indigenous sovereign groups. In August 2007, eleven indigenous nations from the United States, Canada, Australia, and New Zealand signed an international economic development treaty at the Lummi Reservation in northwestern Washington.<sup>9</sup> Also in 2007 and 2008, the Affiliated Tribes of Northwest Indians organization and some northwest tribal leaders have created a draft inter-tribal economic and trade treaty (“Domestic Treaty”) for American tribes to consider entering with other American tribes. These new and intriguing initiatives are the subject of this Article. I will closely

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<sup>5</sup> Miller, *American Indian Entrepreneurs*, *supra* note 3, at 5.

<sup>6</sup> See, e.g., FRANCIS PAUL PRUCHA, *THE GREAT FATHER: THE UNITED STATES GOVERNMENT AND THE AMERICAN INDIANS* 954–63, 973–76, 985–88, 1074–79, 1091–1100, 1197–1207 (1995) (1984).

<sup>7</sup> *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987); Indian Gaming Regulatory Act of 1988, Pub. L. No. 100-497, 102 Stat. 2467 (codified as amended at 25 U.S.C. §§ 2701–2721 (2006)).

<sup>8</sup> See, e.g., Scott Van Voorhis, *No Jackpots for Slots: Mohegan Sun, Foxwoods See Revenue Plunge \$78M*, BOSTON HERALD, Aug. 5, 2008, available at [http://www.bostonherald.com/business/general/view/2008\\_08\\_05\\_No\\_jackpot\\_for\\_slots:\\_Mohegan\\_Foxwoods\\_see\\_revenue\\_plunge\\_76M\\_/](http://www.bostonherald.com/business/general/view/2008_08_05_No_jackpot_for_slots:_Mohegan_Foxwoods_see_revenue_plunge_76M_/).

<sup>9</sup> See, e.g., Kevin Graman, *Colville Tribes Sign Multinational Treaty*, SPOKESMAN REVIEW, August 15, 2007, available at [http://www.spokesmanreview.com/tools/story\\_breakingnews\\_pf.asp?ID=11068](http://www.spokesmanreview.com/tools/story_breakingnews_pf.asp?ID=11068).

examine these instruments and the issues that could arise from these innovative types of indigenous economic development.

Section II analyzes the International Treaty that was signed by eleven indigenous nations in August 2007. Section III sets out and examines the terms of the proposed Domestic Treaty for American Indian tribes. Section IV addresses the legal and practical issues involving these treaties. In Section V, the Article concludes with the hope that these initiatives and other innovative ideas can be developed and utilized to improve the economic side of life in Indian Country, and to benefit American Indian nations and their citizens, and indigenous people around the world.

## II. THE UNITED LEAGUE OF INDIGENOUS NATIONS TREATY

On August 1, 2007, authorized representatives of eleven indigenous nations from the United States, Canada, Australia, and New Zealand signed the United League of Indigenous Nations Treaty (“International Treaty”).<sup>10</sup> Since then, six more American Indian nations signed the International Treaty at a National Congress of American Indians meeting in Denver in 2007, and perhaps sixty-four more Maori iwis (tribes) have signed it.<sup>11</sup> The International Treaty addresses far more than just economic development issues because it “establish[es] the political, social, cultural and economic relations contemplated herein.”<sup>12</sup>

The International Treaty sets out six controlling principles:<sup>13</sup> first, the Creator made indigenous peoples inseparable from the natural world and they have a commitment to care for it; second, the Creator bestowed rights of self-governance and self-determination on indigenous peoples; third, their political, social, cultural, and economic relations have existed since time immemorial and they have the inherent sovereign right to continue those relationships; fourth, no other nation or government has power over indigenous nations, people, or their traditional territories;<sup>14</sup>

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<sup>10</sup> United League of Indigenous Nations Treaty, <http://www.indigenousnations.treaty.org/UnitedLeagueTreatyAdopted.pdf>. The treaty is attached as Appendix A. *See also* Graman, *supra* note 9.

<sup>11</sup> Email from Alan Parker to author (Apr. 1, 2008, 11:16 PST) (on file with author). *See also infra* App. A (more information can be found at United League of Indigenous Nations, <http://www.indigenousnationstreaty.org/>); Letter from Interim Governing Body of the United League of Indigenous Nations to the National Congress of American Indians and the Assembly of First Nations (Aug. 10, 2007) (<http://www.indigenousnationstreaty.org/LetterNCAIafnAug10.pdf>) (informing them of the signing of the Treaty).

<sup>12</sup> *See infra* App. A.

<sup>13</sup> *Id.*

<sup>14</sup> The United States, Australia, Canada, and New Zealand might disagree with this statement. *See, e.g.*, Robert J. Miller & Jacinta Ruru, *An Indigenous Lens into Comparative Law: The Doctrine of Discovery in the United States and New Zealand*, 111 W. VA. L. REV. (forthcoming 2009), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1099574](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1099574) (New Zealand enacted the Foreshore and Seabed

fifth, indigenous nations possess inherent, aboriginal control over their territories including the air, water, oceans, etc.; and, finally, indigenous rights include traditional and ecological knowledge and the exercise of conservation practices and traditional ceremonies.

The International Treaty also sets out an expansive definition of the territories in which these indigenous nations exercise their sovereign powers. They claim rights and powers over their “ancestral homelands and traditional territories.”<sup>15</sup>

The goals the International Treaty hopes to achieve are ambitious. The nations have joined together to secure and recover their rights and their homelands, to establish a foundation to exercise sovereignty without regard to the international boundaries of non-indigenous nations; to protect their human rights, cultural properties, lands and environments; to engage in mutually beneficial trade with each other and with businesses owned by indigenous citizens;<sup>16</sup> to promote communication and cooperation on common issues; and to ensure studies by indigenous scholars on self-determination strategies.<sup>17</sup>

The signatory nations promise to exchange economic, legal, political, and traditional knowledge to protect their cultural properties; to collaborate in research on environmental issues; to participate in trade and commerce missions in order to create a foundation for an international indigenous economy; to name officials to coordinate treaty matters; to establish an office and network to assemble data and research;

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Act in 2004 contradicting Maori claims of ownership); ROBERT J. MILLER, *NATIVE AMERICA, DISCOVERED AND CONQUERED: THOMAS JEFFERSON, LEWIS & CLARK, AND MANIFEST DESTINY* 3–4, 43–49, 163–72 (University of Nebraska Press 2008) (2006) (the U.S. claims ultimate sovereignty over Indian Nations and over their lands and their diplomatic and commercial activities); Robert J. Miller, *Exercising Cultural Self-Determination: The Makah Indian Tribe Goes Whaling*, 25 AM. INDIAN L. REV. 165, 267–69 (2001) (the Ninth Circuit has so far prevented the Makah Nation from continuing to exercise its treaty guaranteed whaling rights); 25 U.S.C. §§ 177, 415 (2006) (the U.S. exercises the Discovery power of preemption to control sales and leases of American Indian lands).

<sup>15</sup> See *infra* App. A.

<sup>16</sup> Are American Indian casinos, for example, currently doing business with tribal citizens? See Tom Thayer & Debra Warren, *What Kind of Message Do Tribes Give to American Indian Businesses?*, INDIAN COUNTRY TODAY, Aug. 4, 2004 (arguing that tribes do not patronize individual Indian businesses); Oregon Native American Business & Entrepreneurial Network “Trading at the River” Conference (April 15, 2008) (notes on file with author) (audience member from a mid-west tribe commented that it is hard for Indian entrepreneurs to sell on their reservations). *But see* Interview with Gary George, Chief Operating Officer, Wildhorse Resort Casino, in Pendleton, Or. (June 10, 2004) (notes on file with author) (stating that the business operations of the Confederated Tribes of the Umatilla Indian Reservation create a \$60 million payroll and vendor payments annually, but only a fraction of the vendor benefits go to tribal citizens because so few Indians operate their own businesses).

<sup>17</sup> See *infra* App. A.

to coordinate policy statements; and to participate in periodic review and strategy sessions.<sup>18</sup>

One might wonder if American Indian tribes and other indigenous groups will actually be able to utilize the International Treaty or whether it is mainly an aspirational document. Either way, two points prove that this is a powerful document, even if few concrete results actually ensue. First, in and of itself, the fact that international sovereign indigenous nations are engaging in treaty making with one another is a powerful and worthwhile effort. It is a valuable statement and an important step in advancing the status, working relationships, and rights of international indigenous groups.<sup>19</sup> Second, American Indian nations are already engaging in international business and plan to engage in more, and the International Treaty can be a useful tool to advance these types of economic activities.

Various American Indian nations have already taken preliminary and actual steps into the international business arena. As one example, several tribes have looked into importing and selling cheaper drugs from Canada for internet resale in the United States.<sup>20</sup> In addition, the Seminole Tribe of Florida bought the Hard Rock Café from an English company in 2006 and is now operating 124 cafés throughout the world.<sup>21</sup> Also in 2006, the Chickasaw Nation was reported to have entered a partnership with a Chinese state-owned company to build a British model car on Chickasaw land, and an Oglala Sioux business was reported to be providing support for a U.S.–Chinese joint venture called Iritani.<sup>22</sup> Similarly, the Mississippi Choctaw Tribe has owned and operated an

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<sup>18</sup> *Id.*

<sup>19</sup> *Cf.* UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLE, U.N. Doc. A/61/L.67 (2007). Bolivia has already adopted the Declaration as domestic law. Rick Kearns, *U.N. Declaration Becomes Law of the Land in Bolivia*, INDIAN COUNTRY TODAY, Dec. 10, 2007, at A5, available at <http://www.indiancountry.com/content.cfm?id=1096416239>. There have been calls to make it national law in the United States also. *Coast Salish Leaders Commit to Environmental Action*, INDIAN COUNTRY TODAY, March 12, 2008, at 12.

<sup>20</sup> “We’ve definitely looked at [importing drugs from Canada]. That definitely could go under sovereignty.” Chief Michell Hicks (quoted in Jim Nesbitt, *Cherokees Consider Selling Meds*, CHARLOTTE NEWS & OBSERVER, Feb. 20, 2007, available at <http://www.newsobserver.com/news/v-print/story/545105.html>). The Penobscot Nation of Maine and the Mashantucket Pequot Nation of Connecticut already sell prescription drugs on line but they are not importing their drugs from Canada. *Id.* Apparently, this would take congressional authorization. “Congress has effectively precluded importation of these drugs absent the sort of special authorization contemplated by 21 U.S.C. § 384.” *In re Canadian Import Antitrust Litig.*, 470 F.3d 785, 791 (8th Cir. 2006).

<sup>21</sup> JESSICA R. CATTELINO, *HIGH STAKES: FLORIDA SEMINOLE GAMING AND SOVEREIGNTY* 193 (2008).

<sup>22</sup> *Id.* at 196–198.

automotive wiring harness plant in Mexico for many years.<sup>23</sup> The tribe used the North American Free Trade Agreement to start this business.<sup>24</sup> In 2006, the Navajo Nation signed a trade agreement with Alimport, Cuba's state food purchasing agency.<sup>25</sup> Economic transactions to sell food to Cuba are legal as an exception to the United States trade embargo on Cuba.<sup>26</sup> Pursuant to this agreement, in May 2007 Navajo Agricultural Products Industry sold Cuba 170 metric tons of pinto beans and 62 metric tons of black beans.<sup>27</sup> The Navajo Nation is also working with six Brazilian indigenous nations to develop wireless networks.<sup>28</sup> And, Navajo partnered with the Observatory for Cultural and Audiovisual Communication and the International Telecommunications Union to build a facility to facilitate long distance education and communications with indigenous nations to provide "education, economic opportunity, health, e-government programs and emergency and disaster management."<sup>29</sup>

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<sup>23</sup> Choctaw Tribe, Economic Development History, [http://www.choctaw.org/economics/eco\\_history.htm](http://www.choctaw.org/economics/eco_history.htm); Joel Millman, *Choctaw Chief Leads His Mississippi Tribe Into the Global Market*, WALL STREET JOURNAL, July 23, 1999, available at <http://ns3.azteca.net/aztec/immigrat/choctaw.html> (tribe opened facilities in Empalme Mexico in 1998 and 2000 employing 2,000 workers).

<sup>24</sup> John Porretto, *From Rags to Riches*, <http://www.manataka.org/page47.html>.

<sup>25</sup> Navajo President Joe Shirley, Jr., Expresses Appreciation, Support for Delegation, NAPI Trade Agreement with Cuba, The Navajo Nation, August 25, 2006, <http://opvp.org/cms/kunde/rts/opvporg/docs/659509066-08-28-2006-12-51-43.pdf>; Cynthia Carris Alonso, *The Dough in Trading with Cuba*, BUSINESS WEEK ONLINE (Aug. 6, 2002), [http://www.businessweek.com/bwdaily/dnflash/aug2002/nf2002086\\_8414.htm](http://www.businessweek.com/bwdaily/dnflash/aug2002/nf2002086_8414.htm).

<sup>26</sup> Trade Sanctions Reform and Export Enhancement Act of 2000, 22 U.S.C. § 7207 (2006); see also Brenda Norrell, *Navajo Nations, Cuba Negotiate Trade Agreement*, INDIAN COUNTRY TODAY, Sept. 6, 2006.

<sup>27</sup> Associated Press, *Navajo Agriculture Company to Sell Pinto, Black Beans to Cuba*, HIGH PLAINS JOURNAL, June 7, 2007, available at <http://www.hpj.com/archives/2007/jun07/jun11/Navajoagriculturecompanytos.cfm>.

<sup>28</sup> Press Release, The Navajo Nation, Navajo Nation President Joe Shirley, Jr., Chairs United Nations Conference on Eradicating Poverty (Apr. 20, 2006), <http://www.navajo.org/april06news.html>; *Navajo Agricultural Products Industry Reaches Historic Trade Agreement with Cuba*, REZ BIZ, Sept. 2006, at 11, available at [http://www.rez-biz.com/pdf/REZBIZ\\_0906.pdf](http://www.rez-biz.com/pdf/REZBIZ_0906.pdf); Tara Tidwell Cullen, *Sovereignty Unplugged: Wireless Technology and Self-Governance in Navajo Nation*, CULTURAL SURVIVAL QUARTERLY, June 15, 2005, available at <http://www.culturalsurvival.org/ourpublications/csq/article/sovereignty-unplugged-wireless-technology-and-self-governance-navajo-nat>.

<sup>29</sup> Press Release, *supra* note 28. See also Press Release, Navajo Nation Washington Office, President Shirley Meets with the United Nations Economic and Social Council where Creation of an Indigenous Center for Excellence on the Navajo Nation is Announced (July, 6, 2007), <http://opvp.org/cms/kunde/rts/opvporg/docs/668595042-07-06-2007-17-47-58.pdf>; Press Release, OCCAM, Infopoverty Programme @ World Summit on Information Society, (Nov. 2005), <http://www.occam.org>, click on Press Releases. OCCAM was created by UNESCO in 1997. Infopoverty, <http://www.infopoverty.net/>.

Other tribes have engaged in foreign finance. The Mashantucket Pequot Tribe in Connecticut, for example, opened its world famous Foxwoods Casino with a loan from a Malaysian businessman.<sup>30</sup> The investor will receive 9.99% of the casino's net profits until 2018.<sup>31</sup> The Seneca Nation of New York also acquired its casino financing from this same investor.<sup>32</sup> And, the Mohegan Nation in Connecticut financed its casino by borrowing from Kerzner International, a publicly owned resort operator, in which Kerzner acquired a 50% interest in the Mohegan Sun casino.<sup>33</sup>

It is clear that American Indian nations are looking into and are developing international business activities. The International Treaty and the relationship that international indigenous nations are now developing will further those types of activities and will strengthen the bonds between indigenous peoples.

### III. INTER-TRIBAL ECONOMIC AND TRADE TREATY

In 2007, the Affiliated Tribes of Northwest Indians (ATNI)<sup>34</sup> and some northwest tribal leaders began working on an Inter-Tribal Economic Development Treaty ("Domestic Treaty").<sup>35</sup> This treaty is still in draft form. It was formally presented to the public on March 20, 2008 at ATNI's Third Annual Economic and Planning Summit.<sup>36</sup> This treaty is longer and more complex than the International Treaty, and it requires specific actions from the American Indian tribes that sign it. But like the International Treaty, the Domestic Treaty also proclaims tribal inherent sovereignty as its authority.

The primary purpose of the Domestic Treaty is to promote and expand opportunities for all kinds of economic activity within reservations.<sup>37</sup> The goal is to achieve economic sovereignty and

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<sup>30</sup> Micah Morrison, *Casino Royale: The Foxwoods Story*, WALL ST. J., August 21, 2001, at A18.

<sup>31</sup> Jules Wagman, *Indian Tribe Strike Gold in Casino World*, MILWAUKEE J. SENTINEL, Feb. 25, 2001, at 6E.

<sup>32</sup> Jerry Zremski, *Additional Costs to Casino Loan Deal Revealed*, BUFFALO NEWS, Mar. 2, 2003, at B1.

<sup>33</sup> Funding Universe, Kerzner International Limited, <http://www.fundinguniverse.com/company-histories/Kerzner-International-Limited-Company-History.html>.

<sup>34</sup> ATNI is a non-profit organization that was created in 1953 by northwest tribes. It puts on three conferences each year and has fifty-four tribal members in Oregon, Washington, Idaho, Montana, Alaska, and California. Affiliated Tribes of Northwest Indians Homepage, <http://www.atnitribes.org/About%20ATNI.html>.

<sup>35</sup> The third draft of this treaty is attached as Appendix B.

<sup>36</sup> Annual ATNI Economic & Planning Summit Agenda, <http://www.atnitribes.org/2008%20Summit%20DRAFT%20Agenda.pdf>.

<sup>37</sup> See *infra* App. B. Please refer to this Appendix for the following discussion of the Domestic Treaty.



independence and to permanently end the chronic high unemployment that plagues Indian reservations.<sup>38</sup> The treaty expressly recognizes that successful economic development in Indian Country has to take into consideration the long-term protection of tribal values, the community, and the environment.<sup>39</sup>

The treaty addresses several of the common problems that tribal and reservation economic development has faced for decades. For example, many Indian nations lack business laws and regulatory codes, such as incorporation codes and the Uniform Commercial Code, and court systems that are experienced in litigating principles of business and contract law.<sup>40</sup> Thus, the treaty requires tribes that sign it to, at a minimum, develop and maintain a specific list of tribal codes and to designate at least one “formal trade zone” within their reservation where the treaty terms will apply.<sup>41</sup> Tribes then pledge to abide by and enforce the treaty terms and court decisions for all economic activity the tribe licenses to be operated in that trade zone for businesses run by the signatory tribe or its citizens, and by other signatory tribes, individuals, and corporate entities.

The agreement also tries to address legal issues that have plagued some businesses in the past in Indian Country. The treaty will require that tribes give full faith and credit to court judgments of the Inter-Tribal Business Court established by the treaty, ensure full faith and credit to the business codes of all signatory tribes, adhere to a prohibition on ex post facto laws on business activities, and enact no law or regulation that impairs the obligation of contracts.<sup>42</sup>

The treaty also requires each signatory tribe to set aside a trade zone within its reservation where the treaty will apply and where tribal citizens, other tribes, and other individuals and corporate entities can apply to operate.<sup>43</sup> The designation of trade zones is an inspired idea. Many

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<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at art. IV.

<sup>40</sup> Miller, *Economic Development*, *supra* note 3, at 842–48 (citing numerous authorities); Miller, *American Indian Entrepreneurs*, *supra* note 3, at 22.

<sup>41</sup> *See infra* App. B, art. V.

<sup>42</sup> *Id.* Interestingly, the constitutions the BIA distributed in the 1930s for tribes to consider adopting did not have separation of powers, impairment of contracts, or ex post facto provisions. COHEN’S HANDBOOK OF FEDERAL INDIAN LAW § 4.04[3][a] (2005) (1941). Tribes have been amending their constitutions in the modern day and some have been placing these principles into their constitutions. *Id.* at § 4.04[3][c]; *see, e.g.*, GRAND RONDE CONST., art. IV, § 3, *available at* <http://webblink.grandronde.org/Browse.aspx>; BURNS PAIUTE CONST., Art VII § 1.

<sup>43</sup> *See infra* App. B, art. V. *Cf.* Nisqually Indian Tribe v. Gregoire, No. 08-5069RBL, 2008 WL 1999830, at \*1 (W.D. Wash. 2008) (in a unique factual situation, the court denied a preliminary injunction to prevent the Squaxin Island Tribe from operating and taxing cigarette sales pursuant to a lease with a Squaxin Island citizen at a smoke shop on land allotted to the Squaxin citizen yet located on the Frank’s

reservations actually have limited space where industrial and economic activities can occur, due, for example, to a lack of infrastructure or social and cultural concerns. And on some reservations it is difficult to obtain site leases to operate businesses.<sup>44</sup> Consequently, the defining and development of trade zones makes more certain where on reservations residents and outside investors can locate businesses, and the application of the treaty provisions in these locations makes more certain the activities that can occur therein and the regulations that will apply. This should help tribal governments to better manage business development while protecting sensitive areas.

The provision to enact no law, regulation, or restriction that impairs business activities seems too restrictive, however. It would appear to prevent signatory tribes from ever creating or expanding tribal governmental controls over businesses, even for prospective actions once a business begins operating in a tribe's trade zone. I well understand the problem at which this provision is aimed.<sup>45</sup> But state and federal governments can impose some new requirements on existing businesses, subject to other constitutional provisions such as the Fifth Amendment prohibition on taking private rights for public uses without paying compensation.<sup>46</sup> Perhaps there are less restrictive ways to address this potential problem than with a total ban on tribal governmental authority in this arena for all eternity.

The treaty will also create an administrative body to oversee its operation. No provision is currently provided, however, for paying for the operation of that entity and its functions. Article VI provides that the signatory tribes will make up a general council that will oversee the administration of the treaty. Interestingly, only signatory tribes that have actually adopted the required business codes will have voting rights in the general council. However, new signatory tribes can participate as full voting members for up to eighteen months while they are enacting or considering enacting the required codes.<sup>47</sup> The general council will enact rules to govern its own operation and the operations of the executive council, sovereignty, investment and finance, and legal and technical committees that will also be created by the treaty.

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Landing Indian Community, on land claimed to be part of the Nisqually Reservation).

<sup>44</sup> DEAN HOWARD SMITH, MODERN TRIBAL DEVELOPMENT: PATHS TO SELF-SUFFICIENCY AND CULTURAL INTEGRITY IN INDIAN COUNTRY 63, 68, 96 (2000).

<sup>45</sup> David D. Haddock & Robert J. Miller, *Can a Sovereign Protect Investors From Itself? Tribal Institutions to Spur Reservation Investment*, 8 J. SMALL & EMERGING BUS. L. 173, 201-06 (2004).

<sup>46</sup> See, e.g., U.S. CONST. art. I, § 10; U.S. CONST. amend. V; *Landgraf v. USI Film Prods.*, 511 U.S. 244, 249 (1994); *Mugler v. Kansas*, 123 U.S. 623, 663 (1887).

<sup>47</sup> Non-signatory tribes may participate in the open meetings but they cannot vote or participate as members.

An executive council will be created to exercise the administrative functions necessary to carry out the treaty. A sovereignty committee will address issues that may be raised by any party to the treaty if the party believes there is a violation of its sovereignty due to participating in the treaty. An investment and finance committee will advise the general council and the executive council on issues regarding finance and investment, and on developing an inter-tribal investment pool and a Native American stock market as envisioned in the treaty. The role of the proposed legal and technical committee is not yet defined.<sup>48</sup>

The treaty has a very ambitious and yet visionary goal of creating an inter-tribal investment pool and even a Native American Stock Market.<sup>49</sup> The investment pool is designed to maximize the return for tribes on monies they already have and to attract outside investment. The investment and finance committee is tasked with developing this idea. Danny Jordan, of the Hoopa Valley Tribe, states that Indian Country is ready for this step and that it will create opportunities for local private investments in and local business ownership and buy-in of reservation businesses that are currently going begging.<sup>50</sup> The stock market idea will surely raise eyebrows and all sorts of legal questions about securities regulation, but it is the kind of visionary idea that Indian Country needs.

The treaty also provides a dispute resolution procedure and establishes an Inter-Tribal Business Court to adjudicate all disputes arising under the treaty between signatory tribes and business licensees or applicants for licenses. The treaty currently states that the independent Northwest Inter-Tribal Court System will operate as the treaty court and some discussions have already been held on this point.<sup>51</sup> Ideas of the best way to adjudicate disputes under the treaty are still being considered. The creation (and funding) of an entirely new court for the sole purpose of hearing the few cases that might arise from the treaty seems unfeasible and duplicative: thus, the discussions with the existing Northwest Inter-Tribal Court System.

Provision is also made in the treaty for tribes to designate their own court system as their business court for treaty purposes, at the time they execute the treaty. This alternative would not seem to address the

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<sup>48</sup> Perhaps the entities anticipated to be created under this treaty will draft or develop model codes for the signatory tribes to consider adopting. The main value of a UCC, of course, is its uniformity of application across the country so that businesses feel secure engaging in business in new jurisdictions if they have adopted the uniform laws.

<sup>49</sup> Wells Fargo bank and several tribes recently announced the formation of a tribal investment pool. Babbette Herrmann, *Wells Fargo, Tribes Enter Investment Venture*, INDIAN COUNTRY TODAY, March 12, 2008, at 13.

<sup>50</sup> Interview with Danny Jordan, Policy Analyst, Hoopa Valley Tribe, in Portland, Or. (July 24, 2007).

<sup>51</sup> Email from Mike Rossotto to author (July 24, 2007, 12:06 PST) (on file with author).

“hometown advantage” issue that some businesses assume they will face in tribal courts,<sup>52</sup> nor does it address which court will be used if two tribes attempt to sue each other over treaty issues.<sup>53</sup> The court system that a tribe designates to hear cases concerning its own activities, however, is entirely a sovereign, self-determination decision that is appropriately left to each tribal government. It is up to the individual tribes to weigh the impact of any possible economic cost or lost business opportunities from using their own court systems in lieu of the treaty-created court.

Signatory tribes authorize law suits to be filed against them in the Inter-Tribal Business Court or in the tribe’s own court, as so designated under the treaty.<sup>54</sup> Under this framework, signatory tribes can sue each other. Likewise, private parties who have licenses to operate in tribal trade zones or are applicants for such a license can sue tribes to enforce provisions of the treaty and can sue regarding activities conducted in a trade zone. The choice of law provision states that the controlling law over any suit arising under the treaty is the law of the licensing tribe or as otherwise provided (this provision does not seem to adequately address a suit regarding treaty issues between two tribes).

Signatory tribes can withdraw from the treaty and its obligations by filing a tribal council resolution to that effect with the treaty general council and executive council. In keeping with the treaty provision forbidding the impairment of contacts, such a withdrawal is prospective only and does not impair the rights or obligations of other tribes, individuals, or entities with contracts, investments, or businesses licensed to operate within the withdrawing tribe’s trade zone before the date of the tribe’s withdrawal.<sup>55</sup>

Overall, the treaty holds great promise to be a boon to economic activity in Indian Country. American Indian tribes have been working with each other in economic endeavors and trade for centuries.<sup>56</sup> In more recent times, various tribes demonstrated the potential of entering joint ventures and working cooperatively to advance mutual economic interests. For example, in Oregon, the Confederated Tribes of the Grand Ronde Community and the Confederated Tribes of the Siletz Indians are

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<sup>52</sup> Haddock & Miller, *supra* note 45, at 173, 207–10.

<sup>53</sup> See *infra* App. B, art. IX, § 3.

<sup>54</sup> The treaty purposely does not include the words “waiver of sovereign immunity.” (The author was part of the treaty drafting group when this was decided.) Under Supreme Court precedent, however, this language seems to be clear and express enough so that it should be interpreted by any court as a waiver. See *C & L Enters., Inc. v. Citizen Band Potawatomi Indian Tribe*, 532 U.S. 411 (2001). The tribes guarantee that their representatives who sign the treaty have the requisite authority under all tribal and federal law to bind the tribe to the treaty. See *Chance v. Coquille Indian Tribe*, 963 P.2d 638, 641–42 (Or. 1998) (holding that a tribal official without the constitutional or statutory authority to waive the tribe’s immunity could not effectively do so).

<sup>55</sup> See *infra* App. B, art. X.

<sup>56</sup> Miller, *Economic Development*, *supra* note 3, at 785–91.

working together to develop a fifteen acre property.<sup>57</sup> In addition, the Muckleshoot Tribe from Washington is trying to form a joint venture with other tribes to build an inter-tribal casino on seventy acres in Las Vegas and the Shoshone-Bannock Tribe of Idaho is already on board.<sup>58</sup> Another Washington tribe, the Cowlitz Tribe has partnered with the Mohegan Tribe to develop and manage the Cowlitz casino in Washington and several other tribes are also working together on casino deals.<sup>59</sup> In 2005, four tribes partnered with Marriott to open a \$43 million upscale hotel in Washington D.C., just five blocks from the Capitol.<sup>60</sup> This treaty has the potential to expand those efforts significantly and to provide a mechanism for the growth of functioning economies and more business activity on reservations.

#### IV. POTENTIAL ISSUES

These treaties raise at least two legal questions and several ancillary issues.

##### A. *Capacity to Enter Treaties*

The major legal question that both these treaties raise is whether the United States and the federal courts will prevent American Indian tribes from entering treaties with each other, with foreign indigenous groups, or as is more likely, with foreign countries, foreign individuals, and foreign corporate entities.<sup>61</sup> If the U.S. opposes these actions, it will no

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<sup>57</sup> Aimee Curl, *Grand Ronde, Siletz Tribes Will Develop Keizer Property*, DAILY JOURNAL OF COMMERCE (Portland, Or.), June 9, 2004.

<sup>58</sup> Lynda V. Mapes, *Tribes Are State's New High Rollers—In Business*, THE SEATTLE TIMES, February 23, 2008, available at [http://seattletimes.nwsourc.com/html/localnews/2004186688\\_tribes17m.html](http://seattletimes.nwsourc.com/html/localnews/2004186688_tribes17m.html).

<sup>59</sup> *Id.*; Matt Viser, *Conn. Tribes Explore Mass. for Casino Sites, Race to Maintain Hold on N.E. Market*, BOSTON GLOBE, Nov. 3, 2007, available at [http://www.boston.com/news/local/articles/2007/11/03/conn\\_tribes\\_explore\\_mass\\_for\\_casino\\_sites/](http://www.boston.com/news/local/articles/2007/11/03/conn_tribes_explore_mass_for_casino_sites/).

<sup>60</sup> *Tribes' Washington D.C. Hotel Nears Completion*, INDIANZ.COM NEWS, Dec. 6, 2004, <http://www.indianz.com/News/2004/005650.asp>; Susan Logue, *American Indians Invest in Washington Hotel*, IMDiversity.com, Mar. 15, 2005, [http://www.imdiversity.com/Villages/native/business\\_finance/voa\\_mariott\\_0305.asp](http://www.imdiversity.com/Villages/native/business_finance/voa_mariott_0305.asp).

<sup>61</sup> Since treaties are contracts between sovereign entities, *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass'n*, 443 U.S. 658, 675 (1979) (“A treaty, including one between the United States and an Indian tribe, is essentially a contract between two sovereign nations.”), maybe the United States will argue that a contract between an Indian Tribe and a foreign government is analogous to a treaty. See Joel H. Mack & Gwyn Goodson Timms, *Cooperative Agreements: Government-to-Government Relations to Foster Reservation Business Development*, 20 PEPP. L. REV. 1295, 1305 (1993): “Moreover, these agreements should be enforceable in court . . . . However, because there is very little case law addressing cooperative agreements between tribes and states, it is unclear whether these agreements will be enforceable as contracts. Although this Article treats cooperative agreements as contracts and approaches

doubt claim that American Indian nations lack the legal capacity to enter such treaties and arrangements.<sup>62</sup>

The Supreme Court has stated several times that tribes “cannot enter into direct commercial or governmental relations with foreign nations.”<sup>63</sup> The Court has also noted that the primary areas in which “implicit divestiture of [tribal] sovereignty” has occurred are the “freedom independently to determine their external relations” and “involving the relations between an Indian tribe and nonmembers of the tribe.”<sup>64</sup> Recently, the Tenth Circuit expressly used these very principles in holding that a tribal court did not have jurisdiction over issues arising from a state agency employing tribal citizens on state owned fee land within the reservation borders.<sup>65</sup> Consequently, it is possible that the federal government would try to prevent tribes from signing treaties or contracts with foreign governments, foreign individuals, and foreign corporate entities.<sup>66</sup>

The Supreme Court has taken these ideas from the Doctrine of Discovery, the U.S. Constitution and federal statutes, and the language of hundreds of treaties between American Indian nations and the United States. Under Discovery, Indian nations were presumed to have immediately and somehow mysteriously lost some of their sovereign powers and rights to engage in international political, commercial, and

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cooperative agreements from the perspective of best ensuring their enforceability, it would be a mistake to view them simply as legal contracts. Cooperative agreements are more akin to treaties or compacts, in that they form political policies between two governmental entities, and thereby serve several important purposes for Indian tribes and states without regard to enforceability.” (footnote omitted).

<sup>62</sup> “Unfortunately, in an era where economic policy must be increasingly fashioned in global terms, the economies of Indigenous Nations in present-day Canada and the United States remain isolated from international commerce.” Robert H. Berry III, Note, *Indigenous Nations and International Trade*, 24 BROOKLYN J. INT’L L. 239, 239 (1998).

<sup>63</sup> *United States v. Wheeler*, 435 U.S. 313, 326 (1978) (citing *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515, 559 (1832); *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1, 17–18 (1831); *Fletcher v. Peck*, 10 U.S. (6 Cranch) 87, 147 (1810) (Johnson, J., concurring)).

<sup>64</sup> *Wheeler*, 435 U.S. at 326.

<sup>65</sup> *MacArthur v. San Juan County*, 497 F.3d 1057, 1067, 1071, 1073 (10th Cir. 2007). See also Alexander Tallchief Skibine, *Formalism and Judicial Supremacy in Federal Indian Common Law*, 32 AM. INDIAN L. REV. 391 (2008).

<sup>66</sup> The United States has not to my knowledge commented or taken a position on the international treaty as of yet. On March 20, 2008, a federal employee from the BIA read remarks that touched on the Domestic Treaty at the ATNI conference where the treaty was formally presented to the public. In the BIA employee’s remarks, he stated that there is not yet an official BIA position but that they are still formulating a position. Videotape: 2008 3rd Annual ATNI Economic & Planning Summit (James Parker, Inc. 2008) (March 20, 2008, Day 1, Tape 2, Reno, Nev. ATNI conference) (on file with author).

diplomatic affairs.<sup>67</sup> The federal government has always assumed that under Discovery it had the sole power to control Indian trade and politics. In the 1781 Articles of Confederation, for example, the federal government cut states and individuals out of Indian commerce. Section IX provided that the Congress “shall also have the sole and exclusive right and power of regulating . . . the trade and managing all affairs with the Indians . . . .”<sup>68</sup> The U.S. Constitution, in the Indian Commerce Clause (Interstate Commerce Clause), also adopted this principle because it states that only Congress has the power “[t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes . . . .”<sup>69</sup> The first Congress took advantage of that authority and in July 1790 it enacted the first Indian Trade and Intercourse Act and excluded any person or government other than the U.S. from dealing commercially with American Indians and Indian nations.<sup>70</sup> This Act is still federal law today.<sup>71</sup>

Furthermore, in hundreds of treaties, Indian tribes apparently agreed that the U.S. would control their trade: “the United States . . . shall have the sole and exclusive right of regulating the trade with the Indians, and managing all their affairs in such manner as [the United States] think proper” and the tribes acknowledged themselves “to be under the protection of the United States of America, and of no other sovereign whatsoever.”<sup>72</sup>

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<sup>67</sup> *Johnson v. M’Intosh*, 21 U.S. (8 Wheat.) 543, 574 (1823) (“their rights to complete sovereignty, as independent nations, were necessarily diminished”); Robert J. Miller, *The Doctrine of Discovery in American Indian Law*, 42 IDAHO L. REV. 1, 104–17 (2005); MILLER, *supra* note 14, at 17–21. *See also* VII WRITINGS OF THOMAS JEFFERSON 328–29 (Andrew A. Lipscomb & Albert Ellery Bergh eds., 1903); *Cherokee Nation*, 30 U.S. at 63–64 (Thompson, J., dissenting).

<sup>68</sup> ARTICLES OF CONFEDERATION art. IX (1781), *reprinted in* AMERICAN HISTORICAL DOCUMENTS 90 (Harold C. Syrett ed., 1960).

<sup>69</sup> U.S. CONST. art. I, § 8, cl. 3. This constitutional provision placed the power to control Indian affairs “entirely with congress, without regard to any state right on the subject . . . .” *Cherokee Nation*, 30 U.S. at 64 (Thompson, J., dissenting).

<sup>70</sup> An Act to Regulate Trade and Intercourse with the Indian Tribes, ch. 33, 1 Stat. 137 (1790). *See also* FRANCIS PAUL PRUCHA, *THE GREAT FATHER: THE UNITED STATES GOVERNMENT AND THE AMERICAN INDIANS* 91–93 (1995 ed.) (1984).

<sup>71</sup> 25 U.S.C. § 177 (2006).

<sup>72</sup> Treaty with the Cherokee, Nov. 28, 1785, art. IX, 7 Stat. 18, *reprinted in* 2 INDIAN AFFAIRS: LAWS AND TREATIES 8 (Charles J. Kappler ed., Government Printing Office 1904); Treaty with the Choctaw, Jan. 3, 1786, art. II & VIII, 7 Stat. 21, *reprinted in* 2 INDIAN AFFAIRS *supra* at 11. *See also* Treaty with the Cherokee, July 2, 1791, art. II, 7 Stat. 39; Treaty with the Wyandot, Etc., Aug. 3, 1795, art. V & VIII, 7 Stat. 49; Treaty with the Creeks, Aug. 7, 1790, art. II, 7 Stat. 35; Treaty with the Sauk and Foxes, 1804 U.S.-United Tribes of Sac and Fox Indians, art. 1, Nov. 3, 1804, 7 Stat. 84, *reprinted in* 2 INDIAN AFFAIRS *supra* at 74; Treaty with the Osage, 1808, U.S.-Great and Little Osage Nations, art. 10, Nov. 10, 1808, 7 Stat. 107, *reprinted in* 2 INDIAN AFFAIRS *supra* at 95; Treaty with the Winnebago, art. 3, June 3, 1815, art. 3, 7 Stat. 144, *reprinted in* 2 INDIAN AFFAIRS *supra* at 130.

The Supreme Court has interpreted these provisions to mean that the federal government has the exclusive power to regulate trade and intercourse with Indian tribes. This extensive power also created a trust responsibility that requires the federal government to care for tribes in a ward and guardian relationship and which defines Indian tribes as “domestic dependent nations.”<sup>73</sup>

Also relevant to the issue of tribes signing treaties with foreign countries and maybe with foreign indigenous nations is that the Supreme Court stated in 1831 that any attempt by another country to “form a political connexion with [tribes] would be considered by all as an invasion of our territory, and an act of hostility.”<sup>74</sup>

All of the above principles point to the possibility that the United States would argue that tribes do not have the legal capacity to sign treaties or contracts with foreign countries today. It is an open question whether the United States will try to stop American Indian Nations from signing such documents and whether the U.S. would try to extend these ideas and the *Cherokee Nation* statement to treaties and contracts tribes might sign with foreign individuals, corporate entities, and with foreign indigenous groups.

#### B. *United States International Agreements*

The International Treaty raises another legal issue: If American Indian tribes begin to engage in international economic activity, do the General Agreement on Tariffs and Trade (GATT), the North American Free Trade Agreement (NAFTA), or the World Trade Organization (WTO) apply to tribes?<sup>75</sup> This subject will no doubt raise many other interesting legal questions of first impression.

Other possible questions will also arise: if there are disputes between indigenous nations under the International Treaty where would these disputes be settled? Would the United States be involved in the dispute resolution because of a possible impact on the trust assets owned by the U.S. for the benefit of American Indian tribes? Could an international

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<sup>73</sup> *Cherokee Nation*, 30 U.S. at 17. See also *Cotton Petroleum Corp. v. New Mexico*, 490 U.S. 163, 192 (1989); *Morton v. Mancari*, 417 U.S. 535, 551–52 (1974).

<sup>74</sup> *Cherokee Nation*, 30 U.S. at 17–18.

<sup>75</sup> An in depth discussion of this subject is beyond the scope of this Article. As mentioned above, *supra* note 23 and accompanying text, the Mississippi Choctaw Tribe has already used NAFTA to operate plants in Mexico. An ordinance of the Oglala Sioux Tribe refers to GATT. Oglala Sioux Tribal Council, Hemp Ordinances and Resolution, No. 98-27 (1996) available at <http://www.narf.org/nill/Codes/oglalacode/oglahahemp.htm> (“international treaties and trade agreements including the 1961 Single Convention on Narcotic Drugs, the North American Free Trade Agreement (NAFTA) and the General Agreement on Tariffs and Trade (GATT) specifically classify industrial hemp as a commodity that is separate and distinct from any narcotic . . .”).



indigenous group name the United States as a party in any dispute it might have with an American Indian tribe for that same reason?

The WTO provides a forum for the enforcement of international trade (like that which takes place under the GATT) through its dispute settlement process.<sup>76</sup> Although GATT does not specify whether smaller units of government (*e.g.* states) are subject to the GATT limitations, federal courts have held that these units of government—states, counties, and municipal governments—are subject to its limitations.<sup>77</sup> Thus, the question of whether tribes are smaller units of government within the United States and subject to GATT, the WTO, and any other U.S. international agreement might have to be answered if tribal governments start engaging in international business activities. In addition, are tribes, like states, political bodies against whom the United States, as a contracting party to the WTO, must take reasonable measures to ensure tribal compliance with the United States' international agreements?<sup>78</sup> If a tribunal determined that a tribe is a "regional government" within U.S. territory (which seems logical), the U.S. might have to take steps to force tribes to comply with U.S. international trade agreements, and this might lead to results that tribes would find distasteful.<sup>79</sup>

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<sup>76</sup> CHRIS WOLD, SANFORD GAINES & GREG BLOCK, *TRADE AND THE ENVIRONMENT* 72 (2005). The WTO Agreement explains the scope of the WTO's authority, provides guidelines for governance, and makes the GATT and other trade agreements binding on WTO members. *Id.* at 77. The WTO's Dispute Settlement Body resolves disputes between member countries that arise under the WTO Agreement and the agreements attached to it (which includes the GATT). *Id.* at 86.

<sup>77</sup> JOHN H. JACKSON, *THE JURISPRUDENCE OF GATT & THE WTO: INSIGHTS ON TREATY LAW AND ECONOMIC RELATIONS* 214–15 (2000); JOHN H. JACKSON, *THE WORLD TRADING SYSTEM: LAW AND POLICY OF INTERNATIONAL ECONOMIC RELATIONS* 42 (1989). For further information on these subjects see, *e.g.*, *REGIONAL TRADE AGREEMENTS AND THE WTO LEGAL SYSTEM* (Lorand Bartels & Federico Ortino eds., 2006); JOHN H. JACKSON, *SOVEREIGNTY, THE WTO, AND CHANGING FUNDAMENTALS OF INTERNATIONAL LAW* (2006); NAFTA Secretariat, *Overview of the Dispute Settlement Provisions of the North American Free Trade Agreement (NAFTA)*, [http://www.nafta-sec-alena.org/DefaultSite/index\\_e.aspx?DetailID=8](http://www.nafta-sec-alena.org/DefaultSite/index_e.aspx?DetailID=8).

<sup>78</sup> The United States has been leery of being bound by the decisions of the WTO. Thus, following any adverse WTO decision involving a U.S. administrative regulation or practice, the United States may not, under domestic law, change an administrative regulation or practice until a process takes place in which the Trade Representative and involved agencies go through Congress, get private sector testimony, publish any proposed change in the Federal Register, and, following opportunities for public comment, publish the change in the Federal Register. JEANNE J. GRIMMETT, *WTO DECISIONS AND THEIR EFFECT IN U.S. LAW* (2007), [fpc.state.gov/documents/organization/81991.pdf](http://fpc.state.gov/documents/organization/81991.pdf).

<sup>79</sup> *Cf. Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363 (2000) (holding that a Massachusetts law banning trade with Myanmar, to protest Myanmar's human rights record, was to be superseded by the Supremacy Clause after the European Union and Japan complained about the law to the WTO).

C. *Impairment of the Obligation of Contracts*

The United States Constitution prevents states from enacting laws that impair the obligation of contracts, in what is called the Contract Clause.<sup>80</sup> In contrast, most American Indian constitutions do not contain such a provision.<sup>81</sup> Thus, the draft Domestic Treaty includes a very strong provision that would prevent tribes from ever enacting a “law, regulation or other governmental restriction that impairs the obligation of contracts entered into pursuant to this Treaty or to conduct of business activities undertaken through provision of this Treaty in Trade Zones designated by the Parties.”<sup>82</sup>

But one should not read the U.S. constitutional prohibition so broadly or too literally. The sweeping constitutional language has not been interpreted “absolutely to prohibit the impairment of either government or private contracts.”<sup>83</sup> Instead, the U.S. Supreme Court has developed a three-part test to determine if the Contract Clause has been violated. First, a court asks whether there has been an impairment of a contract.<sup>84</sup> Second, a court asks “whether the state law has, in fact, operated as a substantial impairment of a contractual relationship.”<sup>85</sup> Third, if a court finds substantial impairment, it has to ask “whether that impairment is nonetheless permissible as a legitimate exercise of the state’s sovereign powers.”<sup>86</sup> Consequently, claimants have to show that a substantial contractual impairment has occurred and most importantly that the governmental action is not justified by some legitimate exercise of state power.<sup>87</sup>

In my opinion, tribes should also give themselves this same “wiggle room” and amend the proposed language in the Domestic Treaty to match the federal test set out above. The very strong provision currently in the draft treaty seems unnecessary since the possibility of states using this federal court standard to impair the obligation of contract does not prevent businesses and individuals from carrying on business within state jurisdictions. If the treaty was amended to incorporate something like the

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<sup>80</sup> “No State shall . . . pass any . . . Law impairing the Obligation of Contracts . . . .” U.S. CONST. art. I, § 10, cl. 1.

<sup>81</sup> See, e.g., GRAND RONDE CONST., available at <http://weblink.grandronde.org/Browse.aspx>; Eastern Shawnee Tribe of Oklahoma Constitution (on file with author).

<sup>82</sup> See *infra* App. B, art. V.

<sup>83</sup> *Baltimore Teachers Union v. Mayor of Baltimore*, 6 F.3d 1012, 1014 (4th Cir. 1993); see also *Home Bldg. & Loan Ass’n v. Blaisdell*, 290 U.S. 398, 428 (1934) (“[T]he prohibition is not an absolute one and is not to be read with literal exactness like a mathematical formula.”).

<sup>84</sup> See *U.S. Trust Co. v. New Jersey*, 431 U.S. 1, 17 (1977).

<sup>85</sup> *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 244 (1978).

<sup>86</sup> *Baltimore Teachers Union*, 6 F.3d at 1015.

<sup>87</sup> See *Catawba Indian Tribe v. Rock Hill*, 501 F.3d 368, 371–74 (4<sup>th</sup> Cir. 2007) (holding that a new city ordinance imposing waste water fees on new water service did not impair the Tribe’s preexisting contract with city).

Supreme Court test, and tribes could only impair the obligation of existing contracts when they were justified in doing so under the legitimate exercise of governmental power, then businesses and business people would be protected to the same extent as they are outside of reservations by the U.S. Contract Clause. Tribal governments would then have at least the same amount of authority and flexibility in this arena as state governments.<sup>88</sup>

#### *D. Dispute Resolution*

The Domestic Treaty seems to have adequately provided for resolving disputes that might arise under its auspices.<sup>89</sup> The International Treaty, however, does not have such a provision and thus specific treaties and any contracts that Indigenous nations enter pursuant to that document should set out clearly their dispute resolution mechanisms. The international nature of those arrangements and the potential for misunderstandings and nonperformance demands that dispute resolution issues be addressed in the formation of any treaties or contracts.

#### *E. Miscellaneous Issues for the Domestic Treaty*

The working group for the Domestic Treaty raised other issues that have not yet been fleshed out. I will only briefly mention them.

##### *1. Tribal Employment Rights Ordinances*

Many American Indian tribes have enacted tribal employment rights ordinances (TERO). These laws require reservation contractors and employees to register, file paperwork and reports, give hiring preferences to tribal citizens and Indians, and pay certain fees.<sup>90</sup>

The Domestic Treaty does not address TERO statutes. Hence, it is probably a decision for each signatory tribe to decide whether to apply its TERO to economic activities in the trade zone it designates under the treaty. Tribes could retain their TERO ordinances, for example, but

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<sup>88</sup> The International Treaty does not contain a provision preventing the obligation of contracts. Thus, it might be necessary for indigenous nations to place such a clause in any agreements they enter pursuant to that treaty.

<sup>89</sup> See *infra* App. B, art. V, IX & X.

<sup>90</sup> See, e.g., Hoopa Valley Indian Reservation, Tribal Employment Rights Ordinance, No. 2-80, §§ 13.4, 13.5 (1995), available at <http://www.hoopansn.gov/documents/Codes/Title13-TEROOrdinance.pdf>; WALTER STERN, LABOR AND EMPLOYMENT ISSUES IN INDIAN COUNTRY: A NON-INDIAN BUSINESS PERSPECTIVE (2008), <http://www.modrall.com/0927071190921606.art>; Montana Dept. of Transp. v. King, 191 F.3d 1108, 1111 (9th Cir. 1999) (noting that the Fort Belknap Indian Community's TERO requires hiring, promotion, transfer, and reduction preferences for Indians, filings and permits, cross-cultural training, and payments of fees, including a project fee up to 2% of the total amount of each contract).

decide not to make them applicable to activities carried out in their trade zone. This could be provided for in the tribal licensing process for activities to be allowed in the trade zones under the treaty.<sup>91</sup>

## 2. Taxes

The Domestic Treaty does not mention taxes or taxation.<sup>92</sup> This issue needs to be spelled out clearly so that tribes and businesses know exactly what to expect under the treaty when operating in the trade zones.

As with all governments, tribes are interested in growing their economies and creating a consistent tax base that they can rely on in the future.<sup>93</sup> Since the treaty currently forbids the enactment of any law that impairs the obligation of contracts, one can imagine that businesses would object to the future imposition of any new taxes on business activities in the trade zones as an impairment. Consequently, this issue either needs to be set out in the treaty or in the tribal licensing procedures. Tribes will no doubt want to be very flexible in any such provisions because a tribe's business income and inventory taxes, for example, might be very low or even nonexistent initially, but might justifiably be imposed or raised at a later date. Tribal governments will want to retain their options in this arena but also allay any fears for private businesses that usurious taxation rates might be imposed at some later date.

## 3. Environmental and Cultural Regulations

In addition to whatever federal environmental laws already apply on reservations, tribes will want to consider whether to impose other environmental and cultural regulations on business activities in their trade zones. It is possible that this does not need to be, and maybe cannot even be, set out in the treaty (due to significant tribal and reservation differences). This is a tribal specific issue that tribes can and will want to consider controlling in the licensing phase when they decide what types of businesses they will allow to operate on their reservations.<sup>94</sup> I doubt this can be adequately covered in the treaty because some

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<sup>91</sup> See *infra* App. B, art. V.

<sup>92</sup> The International Treaty does not address taxation either. The issue should be addressed by the Indigenous nations in entering treaties or contracts to engage in business with each other.

<sup>93</sup> American Indian tribes possess the inherent sovereign power to tax businesses and individuals engaged in economic activities on Indian lands within reservations. *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130 (1982) (holding the tribe had authority to impose a tax on oil and gas production by non-Indians on reservation land); *Washington v. Confederated Tribes of Colville Reservation*, 447 U.S. 134, 153 (1980) (holding a tribe could impose cigarette taxes on non-Indians on the reservation: "Federal courts also have acknowledged tribal power to tax non-Indians entering the reservation to engage in economic activity.").

<sup>94</sup> The Domestic Treaty specifically recognizes that a host tribe can protect cultural, religious, and other important community issues through the licensing process. See *infra* App. B, art. V.

reservation communities will accept various economic activities that other reservations will not allow.<sup>95</sup>

#### 4. Tribal Business Licenses

As already mentioned, the gatekeeping option for tribes for any business activity that will occur in their trade zones appears to be at the licensing stage. This is where tribes will set out several important provisions and procedures that the treaty does not address such as taxes, TERO, and the environmental and cultural issues mentioned above. While the treaty currently severely limits tribal powers to impair contracts and what a tribe can do after licensing a business to operate on their reservations, there appears to be few limits on what tribes can require before licensing a new business.

#### 5. Uniform Commercial Code Filings

The Domestic Treaty requires that signatory tribes adopt a Uniform Commercial Code (among other codes).<sup>96</sup> One issue that will arise under that regime, and which is not yet addressed in the draft treaty, is how and where lenders will file UCC notices of their security interests. A few tribes have already made provisions for such filings and operate their own systems,<sup>97</sup> or as the Crow Tribe just did, some tribes use the pre-existing state systems.<sup>98</sup>

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<sup>95</sup> Compare posting by Robert J. Miller to Native America, Discovered and Conquered, Crow Tribe Wants To Exploit Coal, *Liberation* [http://lawlib.lclark.edu/blog/native\\_america/?p=1722](http://lawlib.lclark.edu/blog/native_america/?p=1722) (July 30, 2008), with Al Gedicks, *Sociology and Advocacy for the Sokaogon Ojibwe*, 17 *ORG. & ENV'T* 449, 467 n.6 (2004) (Northern Cheyenne Tribe fighting to avoid coal mining; the two tribes' reservations abut one another). See also *Nance v. EPA*, 645 F.2d 701 (9th Cir. 1981) (the Northern Cheyenne Tribe successfully petitioned the EPA to redesignate its air shed from class two to class one).

<sup>96</sup> Several tribes long ago adopted various provisions of the UCC into their tribal codes. See, e.g., Gregg Aamot, *Tribal Sovereignty Crucial to Economic Development*, *STAR TRIBUNE* (Minneapolis, Minn.), Nov. 15, 2000 (on file with author) (stating that the Ho-Chunk Tribe adopted a corporate code using the state's code as a model and it has helped diversify the economy); Kay Humphrey, *Pierre, S.D. Indians Gain New Tool to Access Financing for Ventures*, *INDIAN COUNTRY TODAY*, Jan. 19 (noting the Cheyenne River Sioux Tribe adopted South Dakota's UCC). In recent times, several tribes have been adopting a model tribal UCC that was drafted by the National Conference of Commissioners on Uniform State Laws. In March 2008, a BIA official reported that the Chippewa Cree, Crow, Umatilla, Warm Springs, and Oglala Sioux tribes had already adopted this model tribal UCC code, and that the Blackfeet and Wind River tribes were about to adopt it. Videotape: 2008 3<sup>rd</sup> Annual ATNI Economic & Planning Summit (James Parker, Inc. 2008) (Mar. 20, 2008, Day 1, Tape 2, Reno, Nev. ATNI conference) (on file with author).

<sup>97</sup> See, e.g., Humphrey, *supra* note 96 (noting the Cheyenne River Sioux Tribe is cooperating with the state in filing loan information to make it easier for businesses to invest in Indian Country and for bankers to extend credit on-reservation).

<sup>98</sup> See, e.g., Compact between Crow Tribe of Indians/Apsaalooke Nation and Office of the Montana Secretary of State for a Joint Sovereign Filing System, *available at* <http://www.nccusl.org/Update/Docs/MTSTA/Final%20UCC%20Compact.pdf>;

## V. CONCLUSION

American Indian nations and Indigenous groups all around the world are among the poorest people in their countries. Indigenous leaders are seeking beneficial economic development and increased income and jobs for their citizens. This is what we expect of political leaders. Thus, Indigenous governments are looking to the domestic and international treaties discussed here as promising new steps to combat poverty and underemployment issues in Indian Country in the United States and for Indigenous peoples around the world.

Looking primarily at the United States, it is certain that creating new economic activities and jobs on reservations is a very promising development and a very necessary objective. Only a few American Indian reservations have a thriving and diverse economy where residents can buy all the necessities and luxury goods of life on or near their reservation. The “leakage” of money and economic activity off reservations benefits states’ economies but impoverishes American Indians as the income of reservation residents is spent in the non-Indian, non-reservation economy.<sup>99</sup> This predicament is a disaster for the economic situation on reservations and for American Indians. The loss of dollars to businesses outside of Indian Country prevents the development of reservation economies and destroys employment opportunities for reservation residents. Therefore, these treaties are worth pursuing for several

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Press Release, Montana Secretary of State, Johnson, Crow Sign Historic Pact (Feb. 6, 2008), <http://sos.mt.gov/News/archives/2008/February/2-6-08.htm>.

<sup>99</sup> Miller, *Economic Development*, *supra* note 3, at 828–32; Robert J. Miller, *Creating Entrepreneurial Reservation Economies*, NATIVE AM. L. DIG., October 2003, at 1; Gregg Paisley, *Economic Development: Defining It and Keeping Score*, TRIBAL FIN. REV., Fall 1995, at 5–6 (claiming that one of the most important economic problems for tribes is that reservation Indians have to cash their checks and spend their money off-reservation; tribes need diverse economies so money can circulate on reservation and fuel further enterprise and profit); Al Henderson, *Tribal Enterprises: Will They Survive?*, in ECONOMIC DEVELOPMENT IN AMERICAN INDIAN RESERVATIONS 114, 116 (Roxanne Dunbar Ortiz ed., 1979) (quoting the Navajo Nation chairman in 1979: “[t]he border towns, where there is a better delivery of goods and services, absorb a majority of incomes earned on the reservation.”); Rodger J. Boyd, Exec. Dir. Div. of Econ. Dev., The Navajo Nation, Remarks at the Federal Bar Ass’n Indian Law Conference, Albuquerque, N.M. (Apr. 7, 1994) (notes on file with author) (a Navajo Nation official stated that eighty cents of every dollar reservation residents receive leaves the reservation immediately); Cathy Siegner, *Making and Keeping Dollars on Montana Reservations*, AM. INDIAN REP., Feb. 1999, at 18 (noting that Montana’s 40,000 reservation Indians spend \$48 million off reservation every year); Ron Selden, *American Indian Leaders Advised to Soften Position on Economic Development*, INDIAN COUNTRY TODAY, June 11, 2001 (reporting on a study commissioned by Montana tribes that tribal, reservation, and BIA salaries equaling \$200 million annually were spent off-reservations and created an economic benefit for the state of Montana of \$1 billion).

reasons: as one more tool to help tribes and Indians increase economic activity on their reservations, and as an exercise of sovereignty.<sup>100</sup>

Through the Domestic Treaty in particular, American tribal governments can work to encourage outside businesses to locate on reservations. Through the licensing process, for example, tribes can use various tax and regulatory strategies to attract business investments in the same manner that states and counties entice new businesses and jobs to their locations with tax abatements and other enticements. And, most importantly, real reservation economies can be created through this process.

The International Treaty shows real promise too; although we will have to wait and see if actual and viable economic activity results on an international scale and stage. But to my mind the sight of international indigenous groups signing treaties with each other is a powerful and valuable act. Even if a single business deal never results from the International Treaty, it has already served the valuable purpose of helping Indigenous groups to coordinate their efforts, to begin working together on mutual concerns, and to strengthen their interrelated bonds. Beneficial results will arise from this effort. Hopefully, American Indian nations and Indigenous groups everywhere can use these treaties and these coordinated efforts to improve the economic, educational, and health levels of their people by increasing the resources the people and their governments possess.

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<sup>100</sup> As already mentioned, these treaties demonstrate the sovereign, governmental status of American Indian tribes and Indigenous people around the world. This fact alone makes the treaties worthwhile.

## APPENDIX A

## UNITED LEAGUE OF INDIGENOUS NATIONS TREATY

*PREAMBLE*

We, the signatory Indigenous Nations and Peoples, hereby pledge mutual recognition of our inherent rights and power to govern ourselves and our ancestral homelands and traditional territories. Each signatory nation, having provided evidence that their respective governing body has taken action in accordance with their own custom, law and or tradition to knowingly agree to and adopt the terms of this treaty, hereby establish the political, social, cultural and economic relations contemplated herein.

*PRINCIPLES*

Recognizing each other as self-governing Indigenous Nations, we subscribe to the following principles:

1. The Creator has made us part of and inseparable from the natural world around us.

This truth binds us together and gives rise to a shared commitment to care for, conserve, and protect the land, air, water and animal life within our usual, customary and traditional territories.

2. Our inherent customary rights to self-governance and self-determination have existed since time immemorial, have been bestowed by the Creator and are defined in accordance with our own laws, values, customs and mores.

3. Political, social, cultural and economic relationships between our Indigenous Nations have existed since time immemorial and our right to continue such relationships are

inseparable from our inherent Indigenous rights of nationhood. Indigenous Peoples have the right of self-determination and, by virtue of that right, our Peoples freely determine our political status and freely pursue our social, cultural and economic development.

4. No other political jurisdiction, including nation states and their governmental agencies or subdivisions, possess governmental power over any of our Indigenous nations, our people and our usual, customary and traditional territories.

5. Our inherent, aboriginal control and enjoyment of our territories includes our collective rights over the environment consisting of the air, lands, inland waters, oceans, seas, sea ice, flora, fauna and all other surface and sub-surface resources.



6. Our Indigenous rights include all traditional and ecological knowledge derived from our relationship with our lands, air and waters from time immemorial, the exercise of conservation practices, traditional ceremonies, medicinal and healing practices and all other expressions of art and culture.

#### *GOALS*

This Treaty is for the purpose of achieving the following goals:

1. To establish supportive bonds among signatory Indigenous Nations in order to secure, recover, and promote, through political, social, cultural and economic unity, the rights of all our peoples, the protection and recovery of our homelands and for the well-being of all our future generations.

2. To establish a foundation for the exercise of contemporary Indigenous nation sovereignty,

without regard to existing or future international political boundaries of non-Indigenous nations, for the following purposes:

(a) protecting our cultural properties, including but not limited to sacred songs, signs and symbols, traditional ecological knowledge and other forms of cultural heritage rights by collectively affirming the principle that our own Indigenous laws and customs regarding our cultural properties are prior and paramount to the assertion of any other laws or jurisdiction including international bodies and agencies,

(b) protecting our Indigenous lands, air and waters from environmental destruction through exercising our rights of political representation as Indigenous nations before all national and international bodies that have been charged, through international treaties, agreements and conventions, with environmental protection responsibilities,

(c) engaging in mutually beneficial trade and commerce between Indigenous nations and the economic enterprises owned and operated collectively by Indigenous peoples and by individual citizens of our Indigenous nations, and,

(d) preserving and protecting the human rights of our Indigenous people from such violations as involuntary servitude, human trafficking, or any other forms of oppression.

3. To develop an effective and meaningful process to promote communication and cooperation among the Indigenous Nations on all other common issues, concerns, pursuits, and initiatives.

4. To ensure that scholarly exchanges and joint study on strategies of self-determination are undertaken by Indigenous scholars.

*MUTUAL COVENANTS*

We, the signatory Indigenous Nations, are committed to providing the following mutual aid and assistance, to the best of our ability and in accordance with our own prior and paramount Indigenous laws, customs and traditions:

1. Exchanging economic, legal, political, traditional and technical knowledge regarding the protection of Indigenous cultural properties.

2. Collaborating on research on environmental issues that impact Indigenous homelands, including baseline studies and socio-economic assessments that consider the cultural, social and sustainable uses of Indigenous Peoples' territories and resources.

3. Participating in trade and commerce missions to lay a foundation for business relations and the development of an international, integrated Indigenous economy, and

Each signatory Indigenous Nation shall:

1. Appoint a coordinator or responsible official for Treaty matters;

2. Identify and establish an inter-Nation coordination office and communication network to assist in assembling data, information, knowledge and research needed to effectively address substantial issues of common concern:

3. Coordinate statements of policy and information on Treaty matters, especially information to be disseminated to the media;

4. Participate in periodic reviews and strategy planning sessions as needed.

*EFFECTIVE DATE*

The effective date of this Treaty is August 1, 2007.

*RATIFICATION*

Following the effective date of this Treaty, any other Indigenous Nation may ratify this

Treaty at a meeting of the United League of Indigenous Nations. Ratifying Indigenous

Nations may attach explanations or clarifications expressing their respective cultural understandings associated with the provisions of the Treaty through a Statement of Understandings which must be consistent with the spirit and intent of the Treaty.

Lummi Nation

Sucker Creek First Nation 150 A

Te Runanga O Ngati Awa

Ngarrindjeri Nation

Douglas Village of the Tlingit Nation

Confederated Tribes of the Colville Reservation

Akiak Native Community

We Wai Kai Nation

Makah Tribe

Songhees Nation

Hoh Indian Tribe

## APPENDIX B

## INTER-TRIBAL ECONOMIC AND TRADE TREATY

*Article I. Proclamation*

Indian tribes are sovereign nations that have, since time immemorial, retained inherent powers of self-governance and authority to regulate commerce and trade within their territories. The exercise of our intrinsic authority has been the cornerstone for protecting and enhancing our community economies, which has in turn allowed for the continual development of our tribal communities in ways that protect and foster our traditions, values and beliefs. Our economies have historically been productive environments for both tribal as well as individual development, which together has made up our local economies.

*Article II. Purpose*

The purpose of this Inter-Tribal Economic and Trade Treaty (Treaty) is to promote and expand opportunities for economic development, formalize ground rules and create a unique special relationship between the Signatory Tribes. We, as Signatory Nations, assert our individual and collective tribal powers to regulate commerce within our territories to achieve economic sovereignty for our reservations. This Treaty is designed to facilitate our tribes and individuals to become economically and politically independent. Within our respective and collective jurisdictions we will maximize and leverage our strengths to create opportunities within the local, regional, national, tribal and international economies. We pledge to take every action necessary to forever eliminate high unemployment within our territories and to provide maximum opportunities for our tribes, Indian people and community members to be economically and politically self-sufficient through the development of successful models of Indian trade.

*Articles III. Parties*

The parties to this Inter-Tribal Economic and Trade Treaty are the undersigned sovereign Tribal Nations, as well as future signatory nations.

*Article IV. Indian Trade*

Unlike typical models of capitalism today that are represented by business ventures seeking short-term gains, Indian trade necessarily includes the protection of the values of the tribe, its citizens and its

communities while still allowing for profit making, business development and expansion, and general economic development.

Indian Trade takes into consideration impacts on the:

Environment

Community

Individuals

Culture

Business

Long and short term impacts.

#### *Article V. Agreements*

Our Parties agree that successful economic development ventures require understandable, stable and generally uniform applications of tribal business regulations and laws. We commit to bring issues that may arise from this Treaty as well as any agreements, terms and conditions arising from an activity under this Treaty, for resolution within the process and procedures outlined in the Treaty.

Parties agree to:

Develop and maintain at a minimum the following tribal codes:

Designation of Issuance Authority (articles of incorporation, license, filing contracts, etc.)

For-Profit Corporations Code

Non-Profit Corporations Code

Uniform Commercial Code, and

Licensing and Business Standards Code

Each Signatory Tribe shall establish at least one formal trade zone within their territory where the terms and conditions of this Treaty will apply. A trade zone is designed to allow for business activities to be carried out by the Signatory Tribe and its citizens, and by other Signatory Tribes, individuals and corporate entities who are licensed by the host Tribe in accordance with the spirit and intent of this Treaty, while still protecting the local issues and concerns, including cultural, religious and other important issues, within the Indian community. By designating a trade zone, the tribe agrees to enforce the terms and conditions of this Treaty, any agreements promulgated under it, and to enforce the business regulations and laws of the Signatory Tribe and enforce the orders of the Inter-Tribal Business Court or the Signatory Tribe's court regarding activities within the trade zone without interference.

Activities to be carried out within a Tribal Trade Zone include:

Enforcement of the Signatory Tribe's UCC;

Authorization for multi-reservation tribal and private business venture without further approval;

Ensuring full faith and credit to the judgments and orders of the Inter-Tribal Business Court or the Signatory Tribe's court;

Ensuring full and credit of the business codes of Signatory Tribes, including articles of incorporation, business license and filed UCC transactions of any Signatory Tribe.

Adhere to a prohibition on ex post facto laws applicable to business activities.

Enact no law, regulation or other governmental restriction that impairs the obligation of contracts entered into pursuant to this Treaty or to conduct of business activities undertaken through provision of this Treaty in Trade Zones designated by the Parties.

Once licensed by a Party, businesses will be allowed to conduct business activities within the specific Parties Trade Zone without fear of the creation or expansion of tribal government controls, which will provide a stable, secure and understandable local environment for business and investors. As Parties to the Treaty, we pledge to describe Party-relevant factors that are important to economic development and, once defined, to strive for a regulatory-free and economically viable environment for businesses operating within our designated Trade Zones.

#### *Article VI. General Council of Signatory Tribes*

The collective group of all Signatory Tribes to this Treaty are the General Council which oversees the administration of this Treaty. It is agreed that only Signatory Tribes that have enacted the codes required by this Treaty shall have voting rights in the Tribal General Council, provided however that any Signatory Tribe may participate as a full member of the General Council for 18 months after the initial signing of this Treaty. The General Council will promulgate by a majority vote the regulations to govern its operations, including policies regarding confidentiality, and that of the Executive Council, Sovereignty, and Investment and Finance Committees.

#### *Article VII. Standing Council and Committees.*

##### *Section 1. Executive Council*

The Executive Council shall be composed of members appointed by the General Council for staggered three year terms for the purpose of carrying out the Treaty. The Executive Council is empowered to exercise the administrative functions necessary to carry out the Treaty and will report on its activities at each meeting of the General Council.

##### *Section 2. Sovereignty Committee*

The Sovereignty Committee shall address issues of sovereignty that may be brought before it by any Party to the Treaty. The purpose of the Sovereignty Committee is to provide the greatest opportunity possible for a Party to raise an issue that it believes is a violation of its sovereignty that

arises from its participation in the Treaty or from having to adhere to its terms and conditions. Any Party to the Treaty may bring an issue before the Sovereignty Committee. The Sovereignty Committee shall make every effort to resolve matters within 60 days of an issue being filed.

*Section 3. Investment and Finance Committee*

The Finance and Investment Committee shall advise the Executive Council and General Council on issues relating to investments and finance involving economic development financing among Parties and within their territories. The Investment and Finance Committee shall be chaired by a representative of a Signatory Tribe and shall consist of at least six members with expertise from areas of business, investment and finance. The Investment and Finance Committee shall provide advice on the development and operations of an inter-tribal investment pool and a Native American Stock Market.

*Section 4. Legal and Technical Committee*

*Article VIII. Investments and Stock Market*

*Section 1. Investment Pool*

The Investment Pool is designed to maximize the investment of tribal and outside investment funds in Indian Country to help build and stabilize businesses in Indian communities while protecting those investments in a manner expected by investors. It is envisioned that the Investment Pool will be an alternative to other types of investments for, but not limited to, tribal and business funds. The Investment Pool shall be regulated by procedures and standards drafted by the Investment and Finance Committee and approved by the Executive Council and General Council.

*Section 2. Native American Stock Market*

The Native American Stock Market is designed to provide maximum opportunities for local private investments and ownership in local economic development ventures and opportunities. It is based on a priority where private investments, including those by individuals, can be made in businesses and economic development ventures. The Native American Stock Market is based on a model of promoting local ownership in Indian economies by both Indian and non-Indian citizens. The Native American Stock Market shall be regulated by procedures and standards approved by the Executive Council and General Council.

*Article IX. Dispute Resolution Procedures*

There is hereby established the Inter-Tribal Business Court that shall consist of a Trial Court and Court of Appeals and shall operate under the individual and collective inherent sovereign powers of the Parties. The

Northwest Inter-Tribal Court System, address XX, will operate as the court system to adjudicate all disputes arising under this Treaty between Parties, or between a Party and a business licensed, or an applicant for license, to operate within the trade zone of a Party, unless a Tribe designates a different court system pursuant to section 3 below.

*Section 1: Authorization for suit*

The Parties expressly authorize lawsuits to be filed against them in the appropriate designated court system as provided in this article. The suits authorized are lawsuits between Parties and those between private parties and a Party to the Treaty to enforce the provisions of this Treaty and/or regarding activities conducted pursuant to this Treaty in a designated Trade Zone. Private parties authorized to sue a Party to the Treaty are individuals or corporate entities that have been granted licenses, or are an applicant for license, under the law of the Treaty to conduct activities in the trade zone of the Party to the Treaty.

*Section 2: Authority under tribal law to authorize suit*

The Signatory Tribes guarantee that the tribal representative signing this Treaty for their Tribe has the requisite authority under all applicable tribal and federal law, or were granted the necessary authority, to bind the Tribe to this Treaty and to the Section 1 authorization for suits provision.

*Section 3: Signatory Tribes' courts*

Signatory Tribes have the right to mandate the use of their own court systems either as the trial court, with any appeal being to the Northwest Inter-Tribal Court System, or that the Signatory Tribe's court system will serve as both trial and appellate court. Such a provision must be made part of this Treaty document when the Signatory Tribe executes it.

*Section 4: Choice of law*

Notwithstanding that suit is filed in any properly designated court, the law that applies in any lawsuit arising under this Treaty or regarding activities carried out pursuant to this Treaty, is the law of the licensing tribe or as otherwise provided.

*Article X. Withdrawal*

A Party may withdraw from this Treaty and any obligations thereunder on the date of filing a resolution, legally enacted by its governing body, with the General Council and Executive Council. The withdrawal from Treaty obligations, however, is prospective and applies to the future only and does not impair any rights or obligations for any other Party, entity, individual under contracts, investments, or businesses licensed within the withdrawing Parties Trade Zone entered into before the effective date of the Party's withdrawal from this Treaty.



*Article XI. Non-Signatory Tribes*

Any tribe may participate in the open meetings of the Inter-Tribal Economic and Trade Treaty General Council, Executive Council, and Standing Committee meetings, but shall not be entitled to vote or participate as members.

We, the undersigned tribes, hereby execute this Inter-Tribal Economic and Trade Treaty