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\c\45Treaties and Agreements:\b

\c\44Nations and Their Neighbors\b

\w\j\feFrom the rainforests, deserts, mountains, plains and arctic regions of North America; to the jungles, valleys, savanahs, peaks and marshlands of Central America and South America there are more than two thousand nations and tribes with a collective population of more than ninety million people. Surrounding these peoples are more than thirty-five states occupying space in the same hemisphere of the world. The states' collective population is in excess of five hundred million. The nations have names like \flInuit, Lakota, Queche, Mixe, Cree, Dene\-' , Quechua, Yanomamo\-" , Mapuche\-' , Quinault, Sumo, Shuswap, Boruca, Pipil, \feand \flAymara\fe. The states that surround them have names like Brazil, Mexico, El Salvador, Chile, United States of America and Belize. Western hemisphere nations began in measurable time more than ten thousand year before the present, while the states were formed only within the last 250 years before the present.

On virtually all other continents of the world, the many of the nations that first came to occupy the land and use the fruits of the land continue as vital and vigorous societies - constituted under natural law. Nations and tribes remain today as they have been through out human history: Small, manageable, balanced with the environment and a source of fertile creativity. They have populations as small as a few score to as many as several million. The people of these nations have adjusted their lives and their cultures in such variety that they are able to be located in every corner of the earth, in every climate and in every environment. As nations changed to meet the changing surroundings, they developed \ficustomary rules of conduct \fethat eventually came to be known as \fithe law of nations\fe. The customs practiced by nations within their homelands became the basis for the laws between nations.

As nations searched for food, materials for shelter and space to suit their numbers; they came into contact with other nations. From such contacts came competition and conflicts. The natural process of contact and association between nations gave rise to sharing as well as many disputes. These are the things of \f2inter-national relations\fe. From the customary laws of nations as reflected in their constitutions to the customary laws between nations, the law of nations formed the basis for relations between all tribes and nations.

The rise of states on the European continent, within the the last thousand years, and elsewhere in the world during the last five hundred years, caused dramatic changes in the relations between nations. Many nations were submerged as states were formed on top of them. Unlike small nations that were formed from natural processes, states were created from force. The European state of France was forced upon eight nations: Brittany, Normandy, Aquitaine, Aragon, Languedoc, Burgundy, Alsace Lorraine and the Isle de France. The state of Spain was force upon Asturia, Catalonia, the southern part of Aragon, Castilia and Andalusia; five nations that survived long before the establishment of the state of Spain. Even as the state is now viewed as the primary political entity (there are more than 160 in the modern world) with its own constitution, each of the nations around which the nation was formed continues to have a life of its own - though limited by the

force of the state.

For nations and tribes, the existence of states surrounding them has produced a relatively new dimension to transactions between neighboring peoples. Established by force, the state has sought to impose values, customs, cultural standards, political and economic views on the tribal societies - seeking the breakdown of small nations. In their defense, small nations have sought to challenge state power and they have sought to accommodate state power. From Asia to Africa, Europe to South America, and the South Pacific to North America tribal societies have been occupied with the need to deal with surrounding states and states that claim tribal territories from afar. Whether by violent means or through peaceful accommodations, small nations have continued to conduct international relations with their neighbors despite the smothering influence of the state.

When not wholly occupied with \f2inter-state relations\fe, states have been compelled as a result of competition with nations to conduct relations with tribal societies as well. For many of the same reasons that nations conduct relations (arranging peace after war, changing boundaries, exchanging goods), states and nations have met at the negotiating council to settle differences. Agreements, covenants, contracts, compacts and treaties; whether written or unwritten, have served/as the basic tools for peacefully resolving inter-national, nation and state, and state-to-state conflicts.

1: \f1The Law of Nations and Tribal Societies\b

\feJust as natural law is basic to the formation of nations and the development of sacred contracts or constitutions between members of a society, it is also the foundation of \ficontracts \fe between nations, and between nations and states. As a result of contacts and continuing associations between peoples, a pattern of rules and conventions has developed to minimize violent conflict and to maximize international cooperation. Tribal societies are the original sources of these rules and conventions - rules of conduct that are basic to human behaviour. They include: \fiAll peoples have the right to determine their own political, economic, social and cultural future without external interference; all peoples always have the natural right to use and dispose of their natural wealth according to their needs and wants; all peoples have the inherent right to form and exercise self-government without external interference, and, all peoples may take the protection of another without diminishing their inherent powers of self-government - and they may resume full, independent exercise of their powers whenever they choose. In addition, no peoples can be denied the right to exercise their inherent powers according to their needs and wants.

As one can readily see, the rules of conduct between nations are not very different from the fundamental elements of a nation's constitution. Indeed, the instruments that record commitment between peoples (agreements, compacts, treaties, et cetera.) may take a variety of forms. Treaties may be \fioral agreements\fe, \fibeaded belts\fe, \fimonuments\fe, or \flwritten documents\fe.

Though the presumption between nations is that they are equal in their inherent powers, no matter what the relative population size, territorial size or other differences, relations between states and nations have not always reflected this natural law.

Tribal societies, especially those that have been surrounded by a forming state, are often treated as less than equal, less than a nation with inherent powers. Agreements between tribal societies and states have, as a result, tended to reflect the \f1unequal relationship \fe rather than a growing relationship of equality between nations and states.

2: \f1"When Nations Make Treaties"\b

\feUnder international rules of conduct, treaties between peoples are considered a reflection of collective human honor and commitment to the maintenance of peace and order. Yet the experience of nations, in relations with states, has more often than not been a commentary on treachery and distrust. The important leader of the Chute-pa-lu Nation (Nez Perce\-' as the French called these North American peoples) In-mut-too-yah-lat-lat (known by the Americans as Chief Joseph) expressed his views toward making treaties with the Americans in an address delivered in Washington D.C. before U.S. Congressmen, cabinet members and diplomats, on January 14, 1879.

Parts of his address are excerpted here:

\>.5i\<.5i\ \f1 My friends, I have been asked to show you my heart. I am glad to have a chance to do so. I want the white people to understand my people. Some of you think an Indian is like a wild animal. This is a great mistake. I will tell you all about our people, and then you can judge whether an Indian is a man or not. I believe much trouble and blood would be saved if we opened our hearts more. I will tell you in my way how the Indian sees things. The white man has more words to tell you how they look to him, but it does not require many words to speak the truth. What I have to say will come from my heart, and I will speak with a straight tongue. Ah-cum-akin-i-ma-me-hut \fe(the Great Spirit) \f1 is looking at me, and will hear me.

My name is In-mut-too-yah-lat-lat \fe(Thunder traveling over the Mountains)\f1. I am chief of the Wal-lam-wat-kin band of the Chute-pa-lu. I was born in eastern Oregon, thirty-eight winters ago. My father was chief before me. When a young man, he was called Joseph by Mr. Spaulding, a missionary. He died a few years ago. He left a good name on earth. He advised me well for my people.

Our fathers gave us many laws, which they had learned from their fathers. These laws were good. They told us to treat all men as they treated us; that we should never be the first to break a bargain; that it was a disgrace to tell a lie; that we should speak only the truth; that it was a shame for one man to take from another his wife, or his property without paying for it. We were taught to believe that the Great Spirit sees and hears everything, and that he never forgets; that hereafter he will give every man a spirit-home according to his deserts: If he has been a good man, he will have a good home; if he has been a bad man, he will have a bad home. This I believe, and all my people believe the same.

We did not know there were other people besides the Indian until about one hundred winters ago, when some men with white faces came to our country. They brought many things with them to trade for furs and skins. They brought tobacco, which was new to us. They brought guns with flint stones on them, which frightened our women and

children. Our people could not talk with these white-faced men, but they used signs which all people understand. These men were Frenchmen, and they called our people "Nez Perce\-' e", because they wore rings in their noses for ornaments. * * * These French trappers said a great many things to our fathers, which have been planted in our hearts. Some were good for us, but some were bad. Our people were divided in opinion about these men. Some thought they taught more bad than good. An Indian respects a brave man, but he despises a coward. He loves a straight tongue, but he hates a forked tongue. The French trappers told us some truths and some lies.

* * * It has always been the pride of the Chute-pa-lu that they were the friends of the white men. When my father was a young man there came to our country a white man \fe(Rov. Spaulding) \fiwho talked spirit law. He won the affections of our people because he spoke good things to them. At first he did not say anything about white men wanting to settle on our lands. Nothing was said about that until about twenty winters ago, when a number of white people came into our country and built houses and made farms. At fir our people made no complaint. They though there was room enough for all to live in peace, and they were learning many things from the white men that seemed to be good. But we soon found that the white men were growing rich very fast, and were greedy to possess everything the Indian had. My father was the first to see through the schemes of the white men, and he warned his tribe to be careful about trading with them. He had suspicion of men who seemed anxious to make money. I was a boy then, but I remeber well by father's caution. He had sharper eyes than the rest of our people.

Next there came a white officer \fe(Governor Issac Stevens)\fi, who invited all the Chute-pa-lu to a treaty council. After the council was opened he made known his heart. He said there were a great many white people in our country, and many more would come; that he wanted the land marked out so that the Indians and white men could be separated. If they were to live in peace it was necessary, he said, that the Indians should have a country set apart for them, and in that country they must stay. My father, who represented his band, refused to have anything to do with the council, because he wished to be a free man. He claimed that no man owned any part of the earth, and a man could not sell what he did not own.

Mr. Spaulding took hold of my father's arm and said "come and sign the treaty." My father pushed him away, and said: "Why do you ask me to sigh away my country? It is your business to talk to us about spirit matters and not to talk to us about parting with our land." Governor Stevens urged by father to sigh his treaty, but he refused. "I will not sign your paper," he said; "you go where you please, so do I; you are not a child, I am no child; I can think for myself. No man can think for me. I have no other home than this. I will not give it up to any man. Mf people would have no home. Take away your paper. I will not touch it with my hand."

My father left the council. Some of the chiefs of the other bands of the Chute-pa-lu signed the treaty, and then Governor Stevens gave them presents of blankets. My father cautioned his people to take no presents of blankets, for "after awhile," he said, "they will claim that you have accepted pay for your country." Since that time four bands of the Chute-pa-lu have received annuities from the

United States. My father was invited to many councils, and they tried hard to make him sign the treaty, but he was firm as the rock, and would not sign away his home. His refusal caused a difference among the Chute-pa-lu.

Eight years later [1863] was the next treaty council. A chief called Lawyer, because he was a great talker, took the lead in this council, and sold nearly all of the Chute-pa-lu country. My father was not there. He said to me: "When you go into council with the white man, always remember your country. Do not give it away. The white man will cheat you out of your home. I have taken no pay from the United States. I have never sold our land." In this treaty Lawyer acted without authority from our band. He had no right to sell the Wallowa \fe(winding water) \f1 country that had always belonged to my father's own people, and the other bands had never disputed our right to it. No other Indians ever claimed Wallowa.

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The agent said he had orders, from the Great White Chief at Washington, for us to go upon the Lapwai Reservation, and that if we obeyed he would help us in many ways. "You must move to the agency," he said. I answered him: "I will not. I do not need your help; we have plenty, and we are contented and happy if the white man will let us alone. The reservation is too small for so many people with all their stock. You can keep your presents; we can go to your towns and pay for all we need; we have plenty of horses and cattle to sell, and we won't have any help from you; we are free now; we can go where we please. Our fathers were born here. Here they lived, here they died, here are their graves. We will never leave them."

Soon after this my father sent for me. I saw he was dying. I took his hand in mine. He said: "My son, my body is returning to my mother earth, and my spirit is going very soon to see the Great Spirit Chief. When I am gone, think of your country. You must stop your ears whenever you are asked to sign a treaty selling your home. A few years more, and white men will be all around you. They have their eyes on this land. My son, never forget my dying words. This country holds your father's body. Never sell the bones of your father and your mother." I pressed my father's hand and told him I would protect his grave with my life. My father smiled and passed away to the spirit land.

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\fe[In a council with General Howard later] \f1Then one of my chiefs - Too-hool-hool-suit - rose in the council and said to General Howard: "The Great Spirit Chief made the world as it is, and as he wanted it, and he made a part of it for us to live upon. I do not see where you get authority to say that we shall live where he placed us."

General Howard lost his temper and said: "Shut up! I don't want to hear any more of such talk. The law says you shall go upon the reservation to live, and I want you to do so, but you persist in disobeying the law" \fe(meaning the treaty)\f1. "If you do not

move, I will take the matter into my own hand, and make you suffer for your disobedience."

Not long after this council, which failed to produce a treaty between the United States and In-mut-too-yah-lat-lat's people, the U.S. army led by General Howard began a war to force the Wal-lam-wat-kin band from their homeland to the reservation. In-mut-too-yah-lat-lat and his father rejected the treaty offered to them because it was based on force and not on mutual respect - and so war was the result.

3: Tribal External Relations: Struggle and Coexistence

Surrounded by states, enclave nations face the modern necessity to engage in struggle to defend against outside pressures while seeking to persuade outside forces of the desirability of coexistence. The tribal government carries the principal duty to both defend the interests of the nation, and to advocate the nation's interests to improve relations with neighboring nations and the state. This is an important function of tribal government; for it is through the active external presence of the tribal society that it can ensure defense of the common welfare of its members.

The pursuit of coexistence with neighboring nations and states requires a carefully developed knowledge about the interests of such neighbors. And, the effort places especially difficult demands on the tribal government. What are the interests of surrounding nations and states? What are their strengths and their weaknesses? To what extent does a tribal society share common aspirations and interests with surrounding nations and states; and to what extent do a tribal society's aspirations and interests diverge? Are differences reconcilable? Is there a basis for believing that mutual respect can serve as the foundation for arranging a workable relationship - a relationship based on trust and honor? Coexistence is an attractive goal for tribal society in relation to its neighbors. But, there are many obstacles which if ignored can result in a nation losing some of its freedom to choose its own political, economic and social future.

If a nation's constitutional foundations are strong among its members, its capacity to effectively deal with surrounding nations and states is greatly enhanced. If a nation is successful in its relations with surrounding nations and state, the social, economic and political stability of the nation are equally enhanced. A balance in relations becomes more likely, thus increasing the prospects for coexistence. The opposite is equally true, with the result that their is more struggle.