

CONCEPT:

WHAT IS A TREATY?

Transparency #

Instructor's Comments

Text Page

1

A TREATY IS A BINDING, INTERNATIONAL LEGAL AGREEMENT BETWEEN TWO OR MORE SOVEREIGN NATIONS.

1

Key words are:

"Agreement"

"international"

"sovereign"

They have also been called:

Alliances

Conventions

Compacts

Contracts

Treaties are usually written, but may be oral. Indian nations often made treaties with each other orally and symbolized their consent by smoking the pipe or exchanging wampum.

2

CONCEPT:

Who Can Make Treaties?

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3

TREATIES CAN BE MADE BY AUTHORIZED
REPRESENTATIVES OF SOVEREIGN NATIONS.

Indians have been held to be sovereign by the
United States Supreme Court.

The treaty-making powers of the sovereign
nations are generally exercised by heads of nations
personally or through appointed representatives.

Treaties signed between Indian nations and
the United States have the same dignity and full
force of any other international agreement.

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CONCEPT:

Why are Treaties Made?

Transparency #	Instructor's Comments	Text Page
4	<p>Most treaties are made for mutual understanding between sovereign nations.</p> <p>Subject matter usually relates to the following:</p> <ol style="list-style-type: none"> 1) Peace and friendship 2) Military alliance 3) Boundaries 4) Trade 	5
	<p>They also protect and confirm certain rights of the parties -- for example, fishing rights in Washington.</p>	6

Transparency #	Instructor's Comments	Text Page
5	<p>No standard format but most contain the following:</p> <p><u>Statement of Purpose:</u> Most treaties start with a statement of purpose or <u>preamble</u> which names the parties purpose of the treaty, date and place of the convention.</p> <p><u>Terms:</u> Most important aspect of a treaty is the terms or conditions which make up the actual agreement. Some treaties contain many terms while others only contain a few.</p> <p><u>Provisos:</u> Within the terms of a treaty are clause called provisos which introduce a special condition. e.g. contained in the Piankashaw Treaty of 1805, "Provided that the United States may, at any time they shall think proper, divide the said annuity amongst the individuals of the said tribe."</p> <p><u>Consideration:</u> Consideration is something of value which parties exchange as an inducement for the other party to accept the agreement.</p> <p>Consideration given by the United States to the Indian was usually in the form of annuities or services.</p>	<p>6</p> <p>8</p> <p>10</p>

CONCEPT: WHAT DO TREATIES CONTAIN?

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5	<p><u>Consideration</u> (con't): Consideration given by the Indians to the United States was usually land.</p> <p><u>Signatures, Seals & Marks</u>: The signatures of the <u>authorized</u> representatives appear at the end of the treaty. In the case of Indian Treaties the list was quite long.</p>	12
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SUBJECT INTRO: INDIAN TREATIES

CHAPTER 1

CONCEPT:

Colonial Treaties 1660-1776

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Instructor's Comments

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INDIANS SIGNED OVER 400 TREATIES WITH EUROPEAN AND COLONIAL GOVERNMENTS BEFORE THE ESTABLISHMENT OF THE UNITED STATES.

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Most treaties during this time were with:
Great Britain, France, Spain, Holland.

INDIAN NATIONS HELD THE BALANCE OF POWER IN AMERICA DURING THIS PERIOD OF HISTORY.

Even in the 1800's after the United States came into being, Europeans were still making treaties with Indian nations.

CONCEPT:
Early Treaties with the U.S.: 1778-1810

Transparency #	Instructor's Comments	Text Page
6	<p>Originally the U.S. was weak while the Indian nations were still strong militarily and numerically. This gave the Indian a strong bargaining position in treaty-making.</p>	15
	<p>The first treaty between the U.S. and Indian nations was in 1778 with the Delawares which recognized the sovereignty of the Delaware nation.</p>	16
	<p>Early Indian-U.S. treaties dealt with peace and friendship.</p>	17
	<p>Some treaties were to prevent the Indians from forming alliances between themselves and European nations.</p>	18
	<p>Many delineated boundaries.</p>	
	<p>Often the U.S. offered Indian nations "protection" as a way of maintaining peace.</p> <p>Did the so-called Guardian-Ward Relationship come from this "Protection"?</p>	19

CONCEPT:

Beginning of Land Cessions: 1784-1817

Transparency #	Instructor's Comments	Text Page
7	<p>Treaties of <u>land cession</u> began in colonial times in New England and the middle Atlantic States. Beginning with the treaty with the Six Nations and in a treaty with the Wyandot.</p>	20
	<p>This period reflected a policy that treaties would be used as instruments to legally <u>extinguish Indian land title</u>.</p>	21
	<p>Methods used to get Indian land and extinguish their title was to make <u>boundaries</u>, and <u>secure rights of way</u>.</p>	
	<p>With the description of boundaries and land cessions came the concept of the <u>reservation</u>.</p>	21
	<p>U.S. used its duty of protection in this period to extend its authority over Indian people and land.</p>	

CONCEPT:
Treaties of Removal: 1817-1846

Transparency #	Instructor's Comments	Text Page
8	<p>Most of the European powers left North America by 1819 resulting in the loss of much of the Indians' bargaining power.</p>	22
	<p>U.S. expanded westward and the goal for the U.S. in treaty-making was to remove the Indian nations because of conflicts between Indians and whites for land.</p>	23
	<p>The State governments were eager to assert their sovereignty against the U.S. Government and over the Indian people and land. <u>Removal was seen as the answer to these conflicts by the U.S.</u></p>	
	<p>Indians of the Southeast were offered lands west of the Mississippi in the area of Oklahoma, Arkansas, and Kansas.</p>	
	<p>The first removal treaty was between the U.S. and Cherokees on July 8, 1817.</p>	

CONCEPT:

Treaties of Removal: 1817-1846 (Cont'd)

Transparency #	Instructor's Comments	Text Page
	<p>Due to the wealth in the Great Lake region, many non-Indians sought to settle there causing further conflicts over Indian land. Removal again was seen as the solution.</p>	24
	<p>When the Indians refused to move in treaties, the U.S. often threatened military force to make them move.</p>	25
	<p>As a result of removal treaties, many Indian nations were divided into eastern and western groups.</p>	26
	<p>The economic and living conditions of these once powerful Indian nations began to decline rapidly.</p>	26

CONCEPT: Historical Overview:
RESERVATION TREATIES, 1846-1864

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By the middle 1840's California and the northwest territory were added to the Union (Webster-Ashburton Treaty, 1842 did the latter).

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In 1845, Texas became a state.

In 1848, Treaty of Guadalupe-Hidalgo with Mexico, added much of the "southwest."

In 1848, also, gold was discovered in California.

There was a great need to "connect" all the territories of the U. S. together by networks of roads and railroads. The Indians were in the way.

The vast territorial expansion and active trade caused problems for the Indians. Not only were settlers and miners passing through and/or claiming their lands, but they also brought with them sicknesses which the Indians were not able to withstand. Cholera and small pox were rampant.

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Buffalo herds were disturbed by the building of roads and railroads. Indians were beginning to starve.

CONCEPT:

Historical Overview:

RESERVATION TREATIES, 1846=1864, cont.

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The Removal Policy was not working.

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A new policy emerged-- to restrict Indians to reservations-- emerged.

In 1851, a treaty commission was sent to Fort Laramie, to make peace with the Indian nations of the Northern Plains -- and to restrict them to territories away from the trade routes. At this treaty council, the nations of the Northern Plains stated what they believed to be their rightful territory.

In 1853, similar treaties were made with the Indian nations of the Southern Plains.

Also in 1853, Washington Territory was organized. This resulted in a series of treaties (1854-1855) made by Governor Isaac Stevens with the Indian nations of the Pacific Northwest.

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The Civil War (1861-1864) gave the Indians of the Plains and Far West a reprieve, but also enabled the United States to build its military strength.

CONCEPT:

Last Great Peace Commission: 1865-1868

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	<p>Due to the military might of the U.S. after the Civil War, this period was perhaps the bloodiest in the U.S. military history.</p>	29
	<p>Warfare as a method of controlling Indians grew in disfavor to the eastern liberals and christians.</p>	30
	<p>They were in favor of civilizing the Indians through assimilation. This became the popular policy of the federal government.</p>	30
	<p>In 1865, a Peace Commission was sent to make treaties with the tribes of the Southern Plains in an effort to restrict them to the region south of the Santa Fe Trail.</p>	30

SUBJECT INTRO: INDIAN TREATIES CHAPTER 1

CONCEPT:

Last Great Peace Commission: 1865-1868 (Cont'd)

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From 1865-1868 various Congressional treaty-making commissions traveled the plains. These commissions usually consisted of former abolitionists.

They signed many treaties promising the Indians the benefits of civilization in return for land cessions.

Many of the treaties were signed by the Indians out of fear due to the presence of military forces at the treaty councils.

The treaties of this period succeeded in obtaining millions of acres of Indian land.

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Last formal treaties between Indian nations and the United States were the nations of the Plains.

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Most of the United States had been settled by this time except for the Southwest.

The public was outraged by the Indian wars and massacres. Treaties became popularly known as instruments to trick Indians out of their lands.

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In 1871 an Appropriation Act was passed calling for the end of treaty-making with Indian nations.

The law did not in any way repeal or modify treaties that had been signed and ratified prior to that date.

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This meant that all future agreements would have to be ratified by both Houses of Congress.

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After the signing of the Act of March 3, 1871,

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the U. S. continued its negotiations with

Indian governments for land and resources in

the form of agreements.

Agreements required the approval of both

Houses of Congress.

These agreements were referred to by Indians and whites alike as "treaties."

Agreements were entered into for almost 40

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years after the end of treaty-making.

Transparency #	Instructor's Comments	Text Page
	<p>The review of what Indian and non-Indian cultures meant by the act of treaty-making illustrates the greatest communication gap of all time.</p>	37
	<p>The ways of looking at the world were so dissimilar that the English term "treaty" does not coincide with the corresponding concept in Indian culture.</p>	38

CONCEPT: What Did Treaties Mean to the U.S.?

Transparency #	Instructor's Comments	Text Page
	<p>The U.S. understood treaties to be very special and powerful documents.</p> <p>Treaties were agreements between sovereign nations and were matters of international law.</p> <p>The U.S. <u>followed the example of Spain</u> and other European nations and began to make treaties with the Indian nations.</p> <p>The U.S. accepted treaties as the only way in which to legally extinguish Indian land claims.</p>	<p>38</p>
	<p>The whites saw the negotiations as occasions for shrewd bargaining. They were often able to slip provisions into treaties which were either not explained to the Indians or only mentioned in a minor way.</p> <p>The U.S. saw the <u>chiefs and leaders</u> who signed the treaties with having the <u>power to enforce</u> the treaties as did kings and presidents.</p> <p>They did not realize that most of the Indian representatives only had the authority to speak for one of several political subdivisions which comprised the governments.</p>	<p>39</p>

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Instructor's Comments

Text Page

To the United States treaties were not legally binding until ratification by the Senate and this was not understood by the Indian Nations.

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CONCEPT:

Motives Behind the Treaties

Transparency #

Instructor's Comments

Text Page

Both signing parties had very definite objectives or goals to accomplish by signing treaties.

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Most of the motives of the U.S. are documented in the National Archives and libraries.

The motives of Indian nations must be inferred from speeches recorded in the treaty councils and understood in the light of specific Indian cultures and oral histories.

Indian treaties contained what they did because of:

1. Federal Indian and/or land policy
2. Local politics
3. Personal political ambition and greed of U.S. negotiators
4. Strength and location of Indian nations

CONCEPT:

Motives Behind the Treaties (Cont'd)

Transparency #

Instructor's Comments

Text Page

LAND

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The most important goal of the U.S. in making treaties with Indians was LAND. To achieve this goal, the U.S. had to stabilize relations with the Indians. Thus a secondary goal was to establish and maintain PEACE.

TRADE

Perhaps the most ignored of Indian-U.S. treaty-making was the securing of trade arrangements. By making trade agreements with Indians which called for their not trading with European nations, the United States could monopolize Indian trade and increase its economic security.

Trade was also important to the Indians. At first the manufactured goods were luxuries and added to the prestige of those who had them. They soon became necessities, however.

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CONCEPT:

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Motives Behind the Treaties (Cont'd)

Transparency #

Instructor's Comments

Text Page

Prestige and Personal Ambition

Many Indian agents and treaty commissioners used treaties as a way of either gaining land or money for themselves or raising their prestige in the eyes of local interests or the U.S. Government.

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Many Indians made treaties as a way of raising their prestige in the eyes of members of their own tribe and that of others.

Way of Dealing with Each Other

Both whites and Indians made treaties with each other because it was a method for them to get together and work out problems and agreements with each other.

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U. S. CONSTITUTION GAVE PRESIDENT AUTHORITY

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TO ENTER INTO TREATIES ON BEHALF OF U. S.

U. S. usually appointed treaty commissioners
as the primary negotiators.

Indian Treaties could be initiated in several
ways:

1) U. S. could initiate treaty process
in Wash. DC by appointing commissioners or
sending letters of instructions.

2) Military personnel or Indian agent
could request U. S. to negotiate treaty

3) Indians could request treaty
council.

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U.S. Treaty Commissioners, Indian

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agents, military personnel representing

U.S.

Due to difficulty in identifying the Indian leaders from each Indian nation whites usually asked the nations to "elect" chief.

Interpreters who were often half-breeds of traders. They were usually unskilled in both English and the particular Indian language.

Recorders

The official recorder was usually a military secretary of a friend of the commissioner.

Journalists

Newspapermen, writers

Missionaries usually on behalf of the Indians.

CONCEPT: WHAT HAPPENED?

Transparency #

Instructor's Comments

Text Page

Formal Affairs

U. S. commissioners usually sat together and the Indian nations sat together.

U. S. very paternalistic addressing Indians as "Our Red Children" and talked about the President as the "Great White Father".

At many treaty councils there was little negotiation because treaty document was usually partially drafted, if not completely.

Whites frequently lured Indians with desired commodities when Indians became angry or stubborn.

Sometimes an entire nation would reject the talks of the council and leave.

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CONCEPT:

Introduction to Chapter

Transparency #	Instructor's Comments	Text Page
	<p>Legal documents (treaties or agreements) can be changed if parties agree to change.</p> <p>Three legal systems have an effect on treaties:</p> <ol style="list-style-type: none">1. Domestic law of Indian nation2. Domestic law of foreign nation: French, Spanish, United States, another Indian nation, etc.3. International law <p>Changes in Indian treaties have major effect on individual and tribal rights today.</p>	52

CONCEPT:

Changing Indian Treaties

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	Congress has changed Indian treaties by using principles	52
	of International law, such as:	
	1. Entering into new treaties negating sections	53
	of previous treaties	
	2. Mutual consent	
	3. Violations	
	4. Changed circumstances	
	5. War	
	Congress has created its own rules for changing Indian	
	treaties even if inconsistent with the international law.	
	Congress ignored international law and Indian legal	
	systems.	

CONCEPT:

Acts of Congress

Transparency #	Instructor's Comments	Text Page
	<p>One of the most notorious methods used by Congress has been through passing legislation in conflict with treaty terms.</p>	53
	<p>Congress has changed Indian treaties in this manner without consent of the Indian governments.</p>	54
	<p>This one-sided power to amend and abrogate treaties has been upheld by the Supreme Court in <u>Lone Wolf v. Hitchcock</u>.</p>	
	<p>Supreme Court says Congress has power to violate Indian treaties under:</p>	
	<p>1. Plenary Power Doctrine</p>	
	<p>(Congress has full and complete power to act in Indian affairs. It suggests idea that Congress power is unlimited.)</p>	
	<p>2. Political Question Doctrine</p>	
	<p>(Political questions are those which are to be decided by the legislative or executive branches of government rather than the courts.)</p>	

CONCEPT:

Acts of Congress (Cont'd)

Transparency #	Instructor's Comments	Text Page
2	1871 Congress passed law to end treaty-making with Indian governments.	54
	After 1871 Congress made "Agreements" with Indian nations.	
	In international law, agreements between nations have same effect as treaties.	55
	1907 U.S. Attorney General rules if Congress can change treaty with foreign nation, it can change agreement with Indian government.	
	Treaties and agreements are effective today unless changed by later agreements or laws.	
	OTHER METHODS	
	Congress has granted rights of way through Indian land guaranteed by treaties.	
	Congress has repealed treaties (including those made with Indian governments) in times of emergency.	

CONCEPT:

End of Treaty-Making

Transparency #	Instructor's Comments	Text Page
	<p>Act of March 3, 1871 ended treaty-making between the United States and Indian nations.</p>	55
	<p>A contributing factor to the passage of this act was a political rift between the House and the Senate.</p>	56
	<p>By signing treaties the Senate obligated the House to appropriate monies without prior consultations.</p>	
	<p>Another reason was House's disillusionment with the management and organization of the Office of Indian Affairs. Agents were pocketing treaty funds.</p>	
	<p>After 1871 the United States ignored the Act by entering into agreement with the Indian nations until 1911.</p>	57
	<p>According to international law, treaties and agreements have the same effect.</p>	
	<p>The House was now involved in the ratification of agreement.</p>	

CONCEPT:

Introduction

transparency #

Instructor's Comments

Text Page

Courts have significant role in interpreting treaties.

60

Federal courts often resolve Indian treaty disputes.

U.S. Constitution says laws and treaties are supreme law of the land.

Federal courts say Indian treaties:

1. Are treaties in the Constitutional sense.
2. Are the supreme law of the land.

Federal court rules of construction say:

Interpretation of treaty must favor Indian people. Not all federal decisions on Indian treaties are favorable. One unfavorable decision is the 1903 Lone Wolf v. Hitchcock.

COURTS HAVE UPHELD INDIAN TREATY RIGHTS MORE THAN ANY OTHER BRANCH OF FEDERAL GOVERNMENT.

Now we are going to talk about the rulings concerning Indian Treaties.

CONCEPT:

Lone Wolf v. Hitchcock -- An Unfortunate Court Decision.

Transparency #

Instructor's Comments

Text Page

Lone Wolf v. Hitchcock

The Supreme Court upheld the power of Congress to amend and abrogate Indian treaties without the consent of the Indian governments.

Congress ratified a treaty in violation of a previous treaty calling for the approval of at least three-fourths of the adult male members of the tribe before there could be another land treaty. Congress was informed that there were less than the required number of signatures and ratified the treaty anyway. Congress also changed the agreement from what was agreed on without Indian consent.

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CONCEPT:

Principles of Interpretation

Transparency #

Instructor's Comments

Text Page

Interpretation of any legal document is difficult.

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1. One principle is that the court should not apply 1977 standard to a 1867 treaty. The meaning of words often changes over the years.

2. The court must look to the intentions of the parties to the treaty.

3. The court cannot disregard the obvious meaning of words even if they inflict a hardship on one of the parties.

4. Each provision should be interpreted in light of other provisions between the same parties concerning the same subject.

5. Court may also look to other agreements between the parties in order to determine the intent of the parties.

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CONCEPT:

Cardinal Rule of Interpretation of U.S. Law

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	<p>U.S. courts have recognized cultural differences and disadvantages that the Indians were under during the negotiations.</p>	
	<p>As a result, the cardinal rule in interpreting Indian treaties (and statutes) is to be resolved in favor of the Indians.</p>	65
	<p>For example, in the case of <u>Manahan v. Arizona Tax Commission</u>, the phrase, "lands held as Indian lands" -- the courts held that it meant "reserving to the Indians the right of hunting rights."</p>	
	<p>THE SUPREME COURT HAS SAID THAT INDIAN TREATIES ARE TO BE INTERPRETED AS INDIVIDUALS UNDERSTOOD THEM AT THE TIME THEY WERE MADE.</p>	66

CONCEPT:

Role of Historical and Cultural Information in Treaty Interpretation

Transparency #	Instructor's Comments	Text Page
	<p>Courts often seek cultural and historical information in interpreting Indian treaties.</p>	
	<p>An important document used by the courts in interpreting Indian treaties is the council proceedings.</p>	
	<p>Often the written treaties will vary from the oral version of the Indians. Treaty proceedings usually substantiate the Indians' version.</p>	67
	<p>Courts often look at the social and economic conditions, and ethnographical information.</p>	68

CONCEPT:

Summary: Interpretation of Indian Treaties

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Let's review the major points about interpreting Indian treaties:

1. They cannot be changed unless both parties agree to the change. However, U.S. courts have often upheld Congress' plenary power over Indians to change treaties unilaterally.
2. The Courts have said that Indian treaties must be interpreted as the Indians (not the U. S.) understood them to mean at the time they signed them.
3. Historical and cultural information, is often used by the courts in interpreting the meaning of treaties.

SUBJECT INDIAN TREATIES TODAY CHAPTER IV

CONCEPT:

Why are Treaties Important to Indians?

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Instructor's Comments

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Treaties have more than historical importance.

They are not merely old documents.

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MANY INDIAN TREATIES ARE LEGALLY BINDING TODAY!

Remember, according to the U.S. Constitution

(Article IV, Clause 2), TREATIES ARE THE SUPREME LAW

OF THE LAND.

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CONCEPT:

Why are Treaties Important to Indians? (Cont'd)

Transparency #	Instructor's Comments	Text Page
	<p>Indian nations often are:</p> <ol style="list-style-type: none">1. Confused or2. Uninformed <p>about treaty rights.</p> <p>Treaties may guarantee or extinguish rights.</p> <p><u>U.S. v. Washington</u> is an example. (The initial decision was rendered in 1974, 584 F. Supp. 312. The court found it necessary to enforce the decision against the state in 1975, 520 F.2d. 676, and the Supreme Court refused to hear an appeal from the state in 1976, 423 U.S. 1086.) The court upheld the treaty rights of the Indian nations of the area to share 50% of the salmon catch in the area with the white citizens. It is a reminder that treaties are still in full force and effect.</p>	70
	<p>Many treaties extinguish Indian title to land. In a common pattern the U.S. recognized that Indians owned land and wished to purchase land for U.S. citizens. The U.S. offered payment, the Indian government agreed to give up some of the tribal land and reserved other areas of land for the tribes continued use and enjoyment.</p>	71

CONCEPT:

Why are Treaties Important to Indians? (Cont'd)

Transparency #

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In 1975 the federal courts found that there was no treaty to extinguish the claims of the Passamaquoddy tribe to millions of acres in Maine. (See Joint Tribal Council of the Passamaquoddy Tribe v. Morton, 528 F.2d. 370.)