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# Indigenous Nations' Responses to Climate Change

ZOLTÁN GROSSMAN

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It's getting hotter, harder to breathe,  
Why should I calm down, I know I've been deceived.  
Like oceans of regret, all these questions rise.  
Will they drown with our mistakes, or will they learn to fly?  
*She said it's over, overwhelming.*  
*We're past the breaking point, the breaking point again.*  
It's getting hotter, and harder to see.  
Balancing the contradictions, how much do we really need?  
Standing on the broken edges of apathy,  
Occupied by your destruction, your waves crashing over me.  
*So restless, she's shaking,*  
*Can you feel her temperature rising?*  
*We're so complacent and apathetic,*  
*while she's given us everything.*

—Blackfire (Diné Nation)<sup>1</sup>

On 1 August 2007, Indigenous nations from within the United States, Canada, Australia, and Aotearoa (New Zealand) signed a treaty to found the United League of Indigenous Nations (figs. 1, 2, and 3). The Treaty of Indigenous Nations offers a historic opportunity for sovereign Indigenous governments to build intertribal cooperation outside the framework of the colonial settler states. Just as the Pacific Rim states have cooperated to limit Native sovereign rights and build polluting industries, Indigenous nations can cooperate to decolonize ancestral territories and protect their common natural resources for future generations.

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**FIGURE 1.** Indigenous nation representatives from the United States, Alaska, Canada, Australia, and New Zealand (Aotearoa) sign the United League of Indigenous Nations Treaty at the Lummi Nation, Washington, on 1 August 2007. Photo by the author, 2007.



**FIGURE 2.** Heiltsuk First Nation youth from Bella Bella, British Columbia, arrive as one of the eighty canoes at the end of the annual Tribal Canoe Journey, at the Lummi Nation, Washington, on 30 July 2007. Photo by the author, 2007.



**FIGURE 3.** *Indigenous nation delegates from the United States, Canada, Australia, and New Zealand (Aotearoa) pose at the United League of Indigenous Nations founding meeting at the Lummi Nation, Washington, on 1 August 2007. Photo by the author, 2007.*

The treaty process has involved Indigenous political alliances such as the National Congress of American Indians (NCAI), the Assembly of First Nations (AFN) in Canada, and the Mataatua Assembly (including forty-four Māori tribes) in Aotearoa. The treaty identifies four main areas of cooperation: increasing trade among Indigenous nations, protecting cultural properties, easing border crossings, and responding to the urgent threat of climate change.<sup>2</sup>

Alan Parker, director of the Northwest Indian Applied Research Institute (NIARI), and co-chair of the NCAI's Special Committee on Indigenous Nation Relationships, says that "we can see that climate change is going to devastate us if we are not prepared, so we have to go out and meet it. The people of the world, and especially our Native communities, no longer have 5 to 10 years to begin planning. *We must begin today!*"<sup>3</sup> As NIARI notes, "Climate change is a potential Culture Killer."<sup>4</sup> Climate change is usually portrayed as a process of "global warming" that is so large it can be addressed only by national governments or international agencies. We are told that we can only respond to climate change in a personal way—by changing our lightbulbs or automobiles—and that we cannot change the industrial policies that generate most greenhouse gases (also called carbon emissions). We are made to feel powerless and fatalistic in the face of the biggest threat to the earth's well-being in history.

Increasingly, the most effective solutions to global warming are not seen on a national or international scale but are seen on a local scale. European cities have taken steps to curb their greenhouse gases, and US cities are beginning to do the same rather than follow the inaction of the federal government. State and provincial governments are also beginning to respond, particularly on the West Coast.<sup>5</sup> On the one hand, Indigenous peoples are on the frontline of climate change—the first to feel its effects, with subsistence economies and cultures that are the most vulnerable to climate catastrophes. Felix Cohen commented in 1953 that, “like the miner’s canary, the Indian marks the shift from fresh air to poison gas in our political atmosphere.”<sup>6</sup> A half-century later, Paul Havemann and Helena Whall observed that “Indigenous Peoples are like the miner’s canary. When their cultures and languages disappear this reflects the profound sickness in the ecology.”<sup>7</sup> On the other hand, Indigenous peoples have certain advantages in responding to the challenge of climate change, compared to non-Native neighbors or local governments. It is critical that tribal climate-change discourse not only warns Native communities of the dangers in climate instability but also empowers them around inherent tribal strengths:

- Traditional ecological knowledge (TEK): Indigenous cultures have centuries of experience with local natural resources. They may observe local environmental changes out in the field before Western scientists detect them and can develop ways to respond to these changes.
- Political sovereignty: Because tribes have a unique status as nations, they can develop their own models of dealing with climate change and managing nature in a sustainable way.
- A sense of community: Native populations still have extended families that care for each other, assume responsibility for each other, and extend hospitality in times of need.

The Treaty of Indigenous Nations builds that sense of community by including other tribal nations in the community, even those who live on the other side of imposed colonial borders or on the other side of the ocean. Indigenous peoples have survived the effects of colonialism and environmental destruction only by cooperating with each other. It is no longer just a good idea to build these relationships; climate change makes them much more urgent. This article explores some of the relationships being built, or that have the potential to be built, among Indigenous nations, local governments, national governments, and international agencies.

### COOPERATION AMONG INDIGENOUS GOVERNMENTS

In the coming years of climate change, intertribal cooperation will become more important in order for Indigenous cultures and communities to survive. Many recent reports and articles have examined in depth the threat of climate change to Indigenous peoples and cultures, but precious little has been written about possible responses. NIARI has described the effects of climate change on the Pacific Rim region in its October 2006 report *Climate Change*

and Pacific Rim Indigenous Nations.<sup>8</sup> In July 2007, NIARI published *Native Peoples: The "Miner's Canary" of Climate Change*, a companion community-organizing booklet.<sup>9</sup> NIARI's climate change and Pacific Rim Indigenous nations project has developed and presented recommendations to tribal governments.<sup>10</sup>

Indigenous peoples of the Pacific Rim already share much in a common natural region, have similar fishing cultures, and have been in contact with each other for many centuries. In the treaty, the second mutual covenant commits the signatory nations to "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."<sup>11</sup> The United League of Indigenous Nations can help facilitate this collaboration by helping to build an Indigenous nations' climate-change network. This network could include different working committees, which would include representatives from tribal or First Nation sovereign governments; Indigenous community members, traditional harvesters, and spiritual leaders; and researchers, educators, and students. Exchanges within this network (working with existing Indigenous organizations) could help implement practical projects to adapt to (or mitigate) survivable climate changes and develop joint responses to more destructive climate changes. These exchanges could include sharing information, connecting tribal youth, training harvesters of shifting plant and animal species, and ensuring access to food, water, and power.

### **Sharing Information**

In order to survive climate change, Indigenous communities will have to share information with each other about the effects of global warming as well as share different responses. But the first priority is to share information within each community. With Indigenous governments' success in establishing tribal environmental departments, many tribal members assume that staff members will take care of all natural resource issues. Some tribal natural resources staff already work on issues related to climate change. However, tribal government officials alone will not meet the challenge of climate change; it is simply too huge a problem and needs to involve the entire community.

The tribal government can gather tribal members together to share information, and tribal members can request their elected tribal officials to respond to their concerns about the effects of climate change. The first step is to bring together tribal members to discuss how climate change might be affecting tribal life and culture and what can be done about it within the tribe or in cooperation with other governments. From 1998 to 2001, the Native Peoples/Native Homelands project held a national conference and a series of regional conferences that sponsored workshops of tribal members documenting the effects of climate change on their cultures and livelihoods.<sup>12</sup> The Tribal Lands Climate Conference held at the Cocopah Nation in Arizona in 2006 was another example of intertribal cooperation to respond to global warming.<sup>13</sup> The Center for Water Advocacy held a climate-change conference hosted by Washington's Squaxin Island tribe in 2007.<sup>14</sup> The University of

Colorado's Natural Resources Law Center also published a 2007 report on Native communities and climate change.<sup>15</sup>

Because their environment is being so drastically altered by climate change, Indigenous peoples in the Arctic and subarctic are leading the way in sharing information about its effects. For example, one Inuit community in Nunavut held large community discussions and produced a video.<sup>16</sup> An educational book was cooperatively produced from interviews with hunters and fishers from twenty-six Inuit and Cree communities around Hudson Bay.<sup>17</sup> In Alaska, according to Aleut leader Larry Mercurieff, Aleut villages have held community meetings of harvesters to discuss changes in the resources. Mercurieff stresses the importance of including elders and youth in these discussions and in collecting field samples and observations together. He says, "As species go down, the levels of connection between older and younger go down along with that."<sup>18</sup>

### **Connecting Youth**

It will be especially important to share information with youth in Indigenous communities, make them more aware of climate change, and get them energized and involved in the issue. Through practicing their culture with their elders, they can learn TEK and be more able to understand changes in the weather or in plant and animal species. Through working with each other, young people can also learn about climate change and educate their entire communities about the issues. The urgency of responding to climate change can be incorporated into tribal youth conferences and become a key part of exchanges among Indigenous nations.

Tribal leadership can encourage middle school, high school, and college-age youth to form activist groups. First Nations youth were among the activists outside the UN conference on climate change held in Montreal in 2005, as part of the Energy Action's youth climate movement "It's Getting Hot in Here."<sup>19</sup> Native youth have represented the Campus Climate Challenge and attended student climate conferences.<sup>20</sup> The Alaska Youth Environment Action sent delegates to Japan and Iceland to attend the International Youth Eco-Forum on Climate Change and Renewable Energy and collected thousands of signatures on a climate-change petition, which they presented to their congressional delegation at the US Capitol.<sup>21</sup>

Youth also can become involved in their local communities. A model already exists among BC First Nations, who have trained Aboriginal youth to map their territories in order to protect natural resources and strengthen land claims. The youth in the Strategic Watershed Analysis Teams (SWAT) interview elders and other harvesters, gather field data with global positioning system (GPS) units, and produce maps.<sup>22</sup> Similar youth teams could also participate in tribal hazard identification and vulnerability assessments to examine how to "harden" their communities against destructive climate change or help tribal planning departments develop long-term plans for survival. Because they will be around to see the full effects of global warming, tribal youth deserve a role in planning for the future.



## **Training for New Species**

As the weather becomes warmer farther north, we will see more species shift out of their usual habitats and into other regions. In the Pacific Northwest, this will both mean that some plant and animal species will move from south to north, and that they will shift up mountain slopes. The most endangered species are those that cannot shift quickly—such as trees—and shifting land-based species that are blocked by a body of water (the Salish Sea), high elevation (the tree line), or high latitude (the tundra) and cannot migrate any farther. Droughts could also severely hurt species just when they are vulnerable, unless urgent measures are taken to protect their habitats.

Plant, animal, and marine species will shift into new areas where tribal harvesters may not be familiar with them, and they may not fit into local Indigenous cultural and spiritual systems. Indigenous communities already think about the implications of traditional resources moving out of their historic territories. Some fish runs, for example, may disappear, and other fisheries may be replaced partially or entirely by new species coming from the south. Whether Indigenous harvesters can adapt to these new species may determine if tribal economies survive. New pests and diseases (such as the spruce bark beetle infestation) already threaten tribal health and economies. In either case, Indigenous nations that choose to adapt to the new species can draw on the expertise of neighbors further south.

Species have migrated before (even if not as suddenly), so tribal ancestors must have helped each other adapt. Indigenous governments can help facilitate a series of exchanges between tribal communities, so they can teach each other about unfamiliar species and train each other how to harvest them. At the Tribal Lands Climate Conference, a Haudenosaunee (Iroquois) woman reported that she had visited relations to her south to learn what was coming into her territories and then visited communities to her north to let them know what may be coming their way. In the Pacific Northwest, we can learn from people in California about their species, and people in British Columbia and Alaska may have to learn about our species. The existing relationships and family bonds among different nations will be immensely helpful in preparation for the arrival of new species and in learning techniques to harvest them.

## **Cooperation in Food Security**

Another important area in which tribes can cooperate is in securing access to food in times of shortage. We have all grown used to going down to the supermarket to get our basic essentials. However, all it takes is one windstorm power outage, flood, or landslide to remind a community of “the old days” when food did not come only out of a grocery bag. Rural Native peoples know from long experience how fishing, hunting, gardening, and so forth can supply needed food in hard times.

A growing movement for Native agriculture and food systems emphasizes locally grown, traditional foods that revitalize tribal cultures and a sense of



community and local control.<sup>23</sup> Traditional foods are also healthier for tribal members than the colonial white flour and sugar diet that has created an epidemic of diabetes.<sup>24</sup> Because traditional crops and animals are historically more locally adapted, they also can be more resilient to climate changes. Some tribes research and adopt these deep-rooted or drought-resistant “ancient seeds for modern needs” into their food systems.<sup>25</sup> Other tribes reintroduce bison and other locally adapted livestock.<sup>26</sup>

What if climate change also affects traditional foods, creating a shortage of fish and wild game or drying up farm crops or gardens? Tribes need to think ahead to these situations when basic needs cannot be met with local foods. Some tribes have food storage facilities, but storage for perishable and nonperishable crops are needed for food security. Intertribal cooperation will become essential because some tribes lack suitable conditions or enough land for sustainable agriculture, while other tribes have adequate land, food crops, and livestock herds. Intertribal agreements could set up a trade network that takes food security into account, particularly within a single region (because fuel shortages may disrupt long-distance transport). A precedent can be seen in the growing network of remote agricultural tribes that supply Native foods (such as bison and salmon) to tribal casinos in more urbanized areas.

Whether they decide to cooperate about food security, harvesting new species, or sharing information, it is to the advantage of Indigenous governments to make agreements with each other now, when they have funds and resources available, rather than in response to a local climate-change crisis, in which resources may be scarce and funding prioritized for other communities. The same situation holds for cooperation between tribes and their neighboring non-Native towns, especially because the relationships between tribal and local governments are often tenuous or even tense. Building a positive relationship before an emergency hits will enhance mutual understanding and cooperative bonds that can help each other survive.

## TRIBAL AND LOCAL GOVERNMENTS

In some areas, Indigenous and local governments have begun to overcome their differences regarding jurisdiction and work together for the common good.<sup>27</sup> This cooperation between Native and non-Native neighbors will become more crucial as climate changes intensify. The most important ways to survive climate change—adequate food, water, shelter, and power—are most efficiently and cheaply found in our own local areas. When cut off from help by floodwaters or mudslides or lacking aid from unreliable national agencies (remember the Federal Emergency Management Agency during Hurricane Katrina), we will all have to rely on our neighbors. When push comes to shove, all that we will have is each other.

### **Renewable Energies**

Tribal and local governments can cooperate to build renewable energy projects that can reduce their dependence on dirty fossil fuels. Tribes can have

access to federal funds and renewable energy credits to start up their own energy projects.<sup>28</sup> If they are successful, they can save utility costs, and inspire non-Native communities to convert to cleaner energy sources that are less reliant on the centralized power grid. Tribes can generate their own clean renewable energy and sell it to urban or regional utilities for a profit. At the Native Renewable Energy Summit in 2005, municipal governments discussed purchasing renewable energy from tribes.<sup>29</sup> West Coast cities such as Seattle, Vancouver, and San Francisco have taken the national lead in reducing their carbon emissions, and some look for tribal partners to generate power. Tribes consider wind, biomass, solar, wave, tidal, or whatever source works best for their location.<sup>30</sup>

In Washington State, for example, the Makah tribe is part of a consortium that operates the Makah Bay Offshore Wave Energy Pilot Project by using special buoys to turn the motion of ocean waves into electricity for the county utility.<sup>31</sup> The Tulalip tribes work with local dairy farms on a biogas project that would create power from cattle methane.<sup>32</sup> In British Columbia, the Gitga'at and other First Nations explore options for small-scale hydroelectric dams that would not endanger salmon runs.<sup>33</sup>

### **Land-Use Planning**

Joint land-use planning by tribal and local governments can prevent some of the most disastrous effects of climate change and build more self-sufficiency. Together, governments also have to anticipate the effects of climate changes, such as preventing hillside erosion, maintaining alternate road access, growing local food crops, and preventing new pests and diseases from getting a local foothold.

One of the most important areas for cooperation is to ensure a supply of freshwater, which may be in demand as glaciers melt and streams and rivers dry up in the summer months. Tribal and local governments can work together to protect and treat their water supplies, conserve water use, and store the glacial runoff in underground aquifers. Tribes can use their federally recognized senior water rights to secure access to freshwater, as it becomes a commodity as valuable as oil or gold.

One of the main threats of global warming is rising sea levels, from melting polar ice and the warmer, expanding oceans. Coastal communities that already face dangers from storms, floods, and tsunamis now also have to contend with the new threat of rising ocean levels, which make the more familiar threats much more dangerous. The Pacific Northwest coast is particularly vulnerable to these risks.<sup>34</sup> Tribal and local governments need to build and retain wave barriers, prevent shoreline erosion, and build new homes above the floodplains.

### **Emergency Planning**

If catastrophe occurs, collaboration by tribal and local governments can also prevent loss of life and community wealth. Many tribes now work with local

governments on emergency services, such as acquiring fire trucks or sharing emergency medical technician services. Deeper relationships will be needed in case of climate-change disasters (such as windstorms, floods, droughts, and landslides) to keep them from wiping out communities and their livelihood. Tribes can lead the way by serving as models to neighboring local governments. For example, during a June 2005 tsunami warning, Washington coastal tribes quickly evacuated their reservations, while non-Native citizens were angered that their own local governments did not respond as quickly. In the December 2006 windstorm blackouts, some Washington tribes opened their emergency shelters and health clinics to adjacent towns. After the devastating floods of December 2007, the Chehalis tribe prioritized jobs at its new resort for local flood victims.

Tribal and local governments can develop hazard identification and vulnerability assessments to deal with short-term emergencies or to develop evacuation procedures. They will also need to look toward pooling their resources for longer-term periods without electricity, gas, or access to supermarkets. People tend to come together in disasters, and sharing will become more essential in the future to meet daily needs of food, water, heat, and power. However, tribal-local cooperation only works if local governments respect the inherent sovereignty of Indigenous nations and understand how tribal sovereignty can actually benefit them—by pressuring state and federal governments into action.<sup>35</sup> By slowly turning local governments from adversaries into allies, tribal governments can strengthen their own sovereignty.<sup>36</sup>

## TRIBES AND NATIONAL GOVERNMENTS

Indigenous nations in different countries have many varied relationships to their national governments—from treaty relationships to autonomous territories and (in the United States) federal trust responsibility. In the United States, the Bush administration has been reluctant to meet international standards on climate change and has even refused to sign on to the minimal standards in the Kyoto Protocol. The new Congress, and perhaps a new president, may be more open to a stronger climate-change policy and a stronger trust relationship with sovereign tribes. Tribal governments should be prepared to shift gears and go from the defensive to the offensive when it comes to protecting natural resources and economies from climate change.

### **Reforming Federal Laws**

An important tribal tool in the United States has been the Treatment-As-State (TAS) status recognized by the Environmental Protection Agency (EPA). The US Congress amended the Clean Air Act in 1977 by adding prevention of significant deterioration provisions that allow a governmental entity to “re-designate” its air quality to a higher standard. The Northern Cheyenne tribe in Montana was the first tribe to use the amendment to secure “Class I” air quality over its reservation.<sup>37</sup> In 1990, Congress again amended the Clean Air Act to authorize the EPA to treat tribes as “states” whenever tribes are capable of carrying out state-like regulatory and enforcement authority.

TAS status and sovereign environmental standards have been an even stronger tribal environmental tool when used to protect a more localized and trackable natural resource: water. In 1987, congressional amendments to the Clean Water Act allowed the EPA to treat “qualified” tribes as states for regulatory and enforcement purposes. The act allowed tribes designated by the EPA to have the same powers as states in setting EPA-approved water-quality standards that would govern upstream polluters inside and outside reservation boundaries. The Isleta Pueblo in New Mexico, for example, successfully secured TAS status in order to force Albuquerque to stop dumping municipal wastes into the Rio Grande upstream from the reservation.<sup>38</sup>

The power to enhance their own air- and water-quality standards represented a new and potentially powerful tool to protect traditional resources and reservation environments but has stimulated strong resistance from state and local governments.<sup>39</sup> As of now, TAS standards can counter threats to air and water that (in the words of one tribal environmental coordinator) are “very close, very big, very nasty.”<sup>40</sup> However, in the emerging political landscape, tribal governments and their allies could begin to lobby for a change in the law to cover impacts on tribal air and water from more distant sources, such as coal plants, in order to address even more severe threats including acid rain and climate change.

### **Using Treaties to Protect Habitat**

Climate change is an environmental violation of treaty rights. Emitting greenhouse gases into the atmosphere alters the climate and so alters or eliminates habitat for species that tribes were guaranteed access to in the treaties. Because it may destroy habitat for tribal resources, climate change can be seen as a violation of treaty rights. Pacific Northwest tribes have used treaty rights to get a seat at the table to decide resource policy that covers treaty resources such as salmon, shellfish, wild game, and medicinal plants. The Northwest Indian Fisheries Commission, Columbia River Inter-Tribal Fish Commission, and tribal resource departments use the treaty powers to protect habitat and in doing so already deal with issues affected by climate change. Salmon and other aquatic life may die when melting glaciers and a reduced mountain snowpack reduce stream flow. However, the treaties only recognize tribal rights within ceded lands and waters, so what happens when the species shift outside the treaty boundaries?

As Terry Williams and Preston Hardison of the Tulalip Tribes Fisheries and Natural Resources Department wrote,

Unlike other citizens, the Tribes are tied to their homelands in a unique relationship to their lands and to the United States. Their identity is deeply rooted to their lands—the places from which they emerged, where their ancestors dwell, about which their stories and language refer, and to which they have continuing spiritual and collective obligations. Because of their unique political history, their recognized prior rights and treaty rights only apply to their

reservations and usual and accustomed lands. Moving from these lands to adapt to large-scale environmental decline would cut them off from their origins, from the places of their collective memory, and the rights to self-determination the Tribes possess as peoples.<sup>41</sup>

In the Pacific Northwest, the Boldt II process opened up the possibility of tribes using treaty rights in federal court to force states and private interests to protect or restore fish habitat and to force effective management of natural resources.<sup>42</sup> The prospect would seem to hand tribes an unprecedented legal trump card to protect the environment. After the 1980 Orrick Decision, Northwest tribes used treaty rights as a political and legal wedge to defeat proposals that threatened fish habitats.<sup>43</sup> However, tribes have been reluctant to pull out their “treaty card” in federal environmental cases. Using the treaties can open tribal sovereignty to unfavorable rulings by federal courts, which have at times interpreted a tribal share in the resources to include a share in the diminishment of the resources.

Despite this tribal reluctance, resource companies were terrified by the implications of the Boldt II process and anticipated that the tribes would continue their string of federal court victories from harvest allocation issues to habitat issues. The industries’ fears provided one more reason for the tribes not to pursue Boldt II in the courts; in short, the tribes did not have to. Industries and state agencies were willing to come to the negotiating table with the tribes, simply out of fear of the drawn-out, expensive, and economically paralyzing lawsuits that would result if they did not. The outcome in Washington State was the present system of tribal-state comanagement. The main point is that tribes did not necessarily need a court victory to bring industry and governments to the table. It would be interesting to see the reaction to a federal lawsuit that seeks damages from the United States or a specific industry because it has enabled climate change.

### **Protecting Coastal Communities**

The projection of rising sea levels is emerging as one of the main threats resulting from climate change. An ocean level rise of seven to twenty-three inches may seem gradual, but it can make a huge difference in coastal erosion and storm damage, and Intergovernmental Panel on Climate Change scientific projections go much higher.<sup>44</sup> Tribal and local governments can shore up beaches against higher waves and protect their freshwater supplies from salt-water intrusion, but they can only do so much. Federal involvement is needed when entire villages are endangered. On the Washington coast, federal-tribal cooperation has been enhanced by the establishment of the Olympic Coast National Marine Sanctuary, which is managed jointly by coastal tribes, the state, and the National Oceanic and Atmospheric Administration.<sup>45</sup>

Several Washington tribes are trying to get federal support to relocate their coastal housing out of floodplains to higher ground. The Quileute Reservation is asking federal agencies for aid in moving tribal housing in La

Push to higher ground, out of the path of tsunamis (like the one that struck the coast in 1964). The tribe closed a trail into a National Park Service beach to put pressure on the federal agencies.<sup>46</sup> The Hoh tribe also seeks to acquire higher land to build housing.<sup>47</sup> The Skokomish tribe plans to move housing out of a low, marshy area (created by a hydroelectric project), partly to help clean up the Hood Canal.<sup>48</sup> The Makah and Lower Elwha Klallam tribes similarly plan to shift new housing plans to higher ground. Though all these moves have not been taken specifically because of climate change, rising sea levels make the tribal goals far more urgent.

### **Affirming Trust Responsibility**

As an ultimate goal, tribes could begin to pressure the federal government to curb carbon emissions as part of fulfilling the federal trust responsibility to protect reservation air and water. In its 2004 decision in the *South Florida Water Management District v. Miccosukee Tribe of Indians* case, the US Supreme Court stated that “the interests being threatened here, including the threat to the Miccosukee tribe’s homeland, sovereignty, economic integrity, resources, and its right to conduct its religious and cultural practices, are precisely the interests the United States is duty bound to protect.”<sup>49</sup> In 2006, the US Court of Appeals for Ninth Circuit reversed a federal permit for a geothermal plant on land sacred to California’s Pit River tribe, saying that federal “agencies violated their duties . . . and their fiduciary duties to the Pit River Tribe by failing to complete an environmental impact statement.”<sup>50</sup>

Many other similar cases in the United States have addressed federal trust responsibility to ensure the health and well-being of tribes but did so generally on a local scale. A compelling exception is the Ninth Circuit ruling in 2006 that held the Teck Cominco mine in British Columbia responsible for violating US laws by discharging mine wastes downstream on the Columbia River that eventually contaminated the Colville Reservation.<sup>51</sup> The Confederated Tribes of the Colville Reservation had the backing of the EPA and the state of Washington against the Canadian mining company, and a 2004 district court ruling held that US environmental laws apply to pollution regardless of where it originates.<sup>52</sup> The case is now on the US Supreme Court’s docket, and a ruling against cross-border, point-source pollution may provide a loose precedent for climate-change litigation.

The Winters Doctrine (from *U.S. v. Winters*) recognizes tribal rights to sufficient water for a reservation, but it is not clear if these laws can be used to seek relief when global warming dries up the rivers and streams. The jury is still out on the question as to whether Native treaty rights can be used to protect natural resource habitat from a threat as global and effusive as climate change. Sovereign tribal governments could make appeals to the federal government to cooperate with international agencies in curbing greenhouse gases, but the effectiveness of this appeal in a new administration is also unclear.

## INDIGENOUS NATIONS AT THE INTERNATIONAL LEVEL

For the past decade, Indigenous nongovernmental organizations (NGOs)—and some Native nations—have been attempting to participate in the international discussion around global warming and to intervene in the UN climate-change framework. The Indigenous Environmental Network, for example, has a Climate Justice Campaign to involve tribal members and communities.<sup>53</sup> Indigenous groups' goals are to urge a reduction in greenhouse gas emissions that threaten Native lands and resources, secure recognition of Indigenous nations as holding a "special status" in climate-change negotiations, and gain international support for their efforts to slow global climate change.

### **International Laws**

A number of international treaties and agreements cover the rights of Indigenous peoples, sometimes in the context of protecting the environment that keeps Native cultures alive. The international laws include the UN Convention on Elimination of All Forms of Racial Discrimination (1963), the International Labour Organization Convention 169 (1989), the Rio Declaration on Environment and Development Principle 22 (1992), and the Convention on Biological Diversity Article 8(j) (1992).

Indigenous organizations have used international law to bring legal complaints to international legal forums, such as the Inuit Circumpolar Conference lawsuit against the United States in the Inter-American Human Rights Commission. The lawsuit accuses the United States of violating Inuit human rights to culture and livelihood, thus violating the 1948 American Declaration of Rights and Duties of Man.<sup>54</sup> The Inuit petition could serve as a precedent to more international legal challenges to emissions of greenhouse gases, which in turn can result in real pressure on the US government. The Inuit concern about Persistent Organic Pollutants (POP) in the Arctic played a role in passing an international treaty outlawing POP pollution.<sup>55</sup>

Indigenous NGOs and nations have also taken a number of other paths to work internationally by calling the attention of other UN agencies to climate change as a pressing issue of economic, social, and cultural rights, and asserted the role of TEK in identifying and adapting to climate change. The Tualip tribes have worked with the UN Environment Program on the Convention on Biological Diversity and now work with the United Nations on climate-change issues.<sup>56</sup> These efforts have been stepped up since the UN General Assembly ratified the Declaration on the Rights of Indigenous Peoples in 2007. Countries such as the United States and Canada can refuse to comply with international law, but then appear hypocritical when they denounce other countries for violating the same laws. In April 2008, the UN Permanent Forum on Indigenous Issues (UNPFII) held its first session since the passage of the declaration, and it focused on the special theme of "climate change, bio-cultural diversity and livelihoods: the stewardship role of indigenous peoples and new challenges."<sup>57</sup>



## **Carbon Trading**

International law has now been directly applied to climate change by regulating greenhouse gases. In 1997, the United Nations agreed to the Kyoto Protocol, which set up a system of carbon trading, in which carbon “credits” could be sold on the global market. For example, growing trees or preserving rangeland could generate carbon credits to sell to a company that wants to continue emitting greenhouse gases. Native nations (who have contributed a miniscule amount of carbon) have weighed whether to join the carbon trading system. An Australian Aboriginal community improved its fire management to receive carbon credit payments.<sup>58</sup> The Nez Perce tribe in Idaho is restoring cleared forests as a “carbon crop”—part of a “tribal portfolio” created by the National Carbon Offset Coalition. The Lummi tribe in Washington is reforestation logged lands and selling the credits to a power company, so its power plants can continue to emit carbon.<sup>59</sup>

Environmental critics maintain that the credit system simply redistributes carbon emissions to those who can afford them (such as large corporations or utilities) and will not curb global warming. Indigenous critics have denounced the system’s restrictions on Indigenous harvesting rights in forests and the evictions on Native communities to create tree plantations in the name of creating “carbon sinks” to offset greenhouse gas emissions.<sup>60</sup> A few tribal governments have symbolically ratified the Kyoto Protocol but “comply” instead by pledging to use more renewable energies rather than trade carbon.<sup>61</sup>

At the 2004 World Summit on Sustainable Development in South Africa, numerous environmental and Indigenous organizations signed the Durban Declaration, which rejected carbon trading as a mechanism to reduce global warming. The declaration states that “the carbon market creates transferable rights to dump carbon in the air, oceans, soil and vegetation far in excess of the capacity of these systems to hold it. Billions of dollars worth of these rights are to be awarded free of charge to the biggest corporate emitters of greenhouse gases. . . . Costs of future reductions in fossil fuel use are likely to fall disproportionately on the public sector, communities, Indigenous peoples and individual taxpayers.”<sup>62</sup>

Tribes can certainly view carbon credits as a source of income but not as a long-term strategy to curb global warming. The Kyoto Protocol expires in 2013 and will be replaced by a new regulatory system. Global pressure is now underway to replace the Kyoto Protocol with a system of taxes or “dumping fees” on carbon emissions or to fine contributors to global warming. Indigenous governments could begin to add to these voices for real change.

## **UN Framework Convention on Climate Change**

One option for Indigenous nations on the international level has been to take grievances to the United Nations. The UNPFII receives Indigenous delegations every year in New York and Geneva.<sup>63</sup> Since 1998, Indigenous NGOs have also approached the United Nations to influence climate-change regulation. They have attended the Conferences of the Parties (COPs) or the

annual meetings of the state signatories of the global warming treaty, which is called the UN Framework Convention on Climate Change (UNFCCC).<sup>64</sup> (The Kyoto Protocol is a part of the UNFCCC treaty.)

The UN forum has only seen representation of the special and unique concerns of Indigenous nations through NGOs; sovereign, recognized Indigenous governments have not been involved. Their direct involvement in the UN processes could gain more results than have been gained by NGOs, by framing Native concerns in a government-to-government context (and, in the United States, through federal trust responsibility). The Biodiversity Treaty and POPs Treaty both involved direct Indigenous input, which may have been critical to their success. A “special status” of Indigenous peoples within the UNFCCC process would at least offer Native representatives a place at the table.

The COP to the UNFCCC rotates its annual COP on five continents. The 2009 COP will be held in Copenhagen, Denmark (Greenland’s Indigenous home-rule government hopes to involve Indigenous peoples in the COP). The next turn for a COP in North America will be in 2015, and the UNFCCC Secretariat will decide the location the previous year.<sup>65</sup> If the conference location was in a US city with a strong municipal climate-change policy, such as Seattle, the conference could pressure the US government to reduce greenhouse gases and highlight the central role of Indigenous and local communities against global warming.

### **Coordinated International Strategies**

At the very least, US tribal governments, First Nations in Canada, Māori tribal nations, and other Indigenous nations could consider a joint, coordinated strategy, through the structure of the Treaty of Indigenous Nations, to have a voice and presence at the international level. A united Indigenous nations delegation to the UNFCCC is one appropriate vehicle for such advocacy but certainly not the only one.

Indigenous governments could also consider putting pressure on Asia-Pacific Economic Cooperation (APEC) Forum states to reduce carbon emissions. APEC has brought together states around the Pacific Rim to improve economic and political ties. APEC members include some of the national governments that have been most resistant to Indigenous sovereignty and to carbon-emission reductions. We can often see how federal Indian policies in the United States and Canada are first “tested” in Australia or New Zealand, and vice versa.<sup>66</sup> If these former British colonies coordinate their efforts against Native rights and greenhouse gas reductions, the responses of Indigenous nations should also become more coordinated.

Most of the international strategies that Indigenous peoples have pursued to combat harmful climate change have been in arenas dominated by the same settler states that have colonized Native lands. The countries that emit the greatest amount of greenhouse gases have been those that have been the most resistant to the recognition of Indigenous sovereignty in the international legal system—particularly the United States. Only if US policy changes will the possibility of coordinated international action exist.

## CONCLUSIONS

The most promising avenues for Indigenous climate-change advocacy appear to bypass the established global system of sovereign states by asserting Native sovereignty in other areas. By not including the settler states, the Treaty of Indigenous Nations recognizes that the sovereignty of First Nations does not stem from its relationship with a federal government but is rather inherent and stems from its existence before the arrival of the colonial powers. The treaty also recognizes that the powers of Indigenous nations are not simply legally confined within the Western system of laws but are also social, economic, cultural, and spiritual. Even if the United States, Canada, and other countries are not responsive to Indigenous concerns, tribal leadership has a responsibility to safeguard the health and well-being of the tribal community by working with other Indigenous peoples, allies, and neighbors.

Indigenous nations can begin to exercise the sovereign right to survive climate change by getting engaged with all levels of government—sharing information within their own communities (especially youth and elders), training and assisting each other to meet the challenges of shifting species, working with neighboring governments to coordinate local responses and planning, challenging industries and governments that contribute to global warming, getting involved directly in the international regulatory process, and much more. US tribes, in particular, have an important role in the middle of the world's largest emitter of greenhouse gases.

The development of renewable energy systems in Indigenous communities can not only protect the environment from fossil fuel burning but also develop tribal economies and build a new web of economic relationships with non-Native local governments and communities. These innovative and creative approaches may be initially reliant on national funding, but they can help build a *de facto* sovereign reality on the ground for Indigenous nations. At the same time, they can demonstrate to non-Native communities that they do not have to be reliant on centralized corporate control of the energy economy—the status quo that generated the climate-change crisis.

The most important Indigenous responses to climate change will not be in tribal government offices or negotiations over political rights with other governments but in the ability of tribal members to pass on cultures that respect the land. Tribes have survived conquest, wars, epidemics, poverty, and resource shortages before but have persevered through keeping the cultures strong. The late Ojibwe environmental leader Walter Bresette proposed a Seventh Generation Principle as language for state, tribal, and national constitutions: “The right of the people to use and enjoy air, water, sunlight, and other natural resources determined to be common property, shall not be impaired, nor shall such use impair their availability for future generations.”<sup>67</sup>

Because climate change is perhaps the most urgent challenge that faces Native peoples today, it is critical that leaders of Indigenous nations do not wait for the development of a United League of Indigenous Nations Secretariat or

for a certain critical mass of nations to sign the treaty. The most effective climate-change cooperation among the nations will not come bureaucratically from above but organically from below, in the direct cross-border relationships among tribal nations. This kind of bilateral and multilateral cooperation has begun to develop across the colonial boundary in the Salish Sea and the Great Lakes and can develop climate-change responses to serve as models for other nations.<sup>68</sup> As Alan Parker observes,

Indigenous nations throughout the Pacific Rim are in a very precarious position in relation to the impacts of climate change. Their survival as Indigenous peoples over the years of contact with European explorers and subsequent colonization has depended upon their ability to remain connected to the land. These connections have served as a wellspring of spiritual energy and have linked them to their ancestors. These links provide a body of knowledge that defines who they are in the cosmos and how they must structure their lives in order to survive. If future generations of Indigenous people are to continue the traditional practices that make culture a source of spiritual nourishment, these vital connections must be maintained.<sup>69</sup>

The United League of Indigenous Nations is one vehicle for tribal nations to help each other survive the changes ahead, and exercise their sovereignty to meet the challenge of global warming, instead of simply asking the colonial system to take action. As Haudenosaunee leader Oren Lyons told the historic treaty gathering at the Lummi Nation: “Sovereignty is the Act Thereof.”

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