

Can Tribes make intertribal Treaties?

Yes, Tribes can make intertribal treaties and had done so before 1871 and have continue to do so after 1871. After a little research on the topic, the following provides some documentation to support the validity of intertribal treaties:

1. The ***Indian Appropriation Act of 1871*** ended U.S. treaty-making with Indian tribes. After which the United States continued to make agreements with the tribes.

2. In the case, ***U. S. v. Emigrant New York Indians ex rel. Danforth, 177 Ct. Cl. 263 (1966)***,

- The United States appealed a decision made by the Indian Claims Commission in favor of the Tribes. Mentioned in those proceedings was the August 18, 1821, intertribal treaty entered into between representatives of the Oneida, Onondaga, and Seneca Nations on behalf of all the New York Indians and the chiefs and headmen of the Menominee and Winnebago Indians of Wisconsin for the purchase of land.
- Also mentioned was that on September 23, 1822, a new treaty was concluded at Green Bay between deputies of the New York Indians and the chiefs and headmen of the Menominee Nation under the supervision of John Sergeant by this treaty, signed in the presence of Sergeant and the officers of the garrison at Ft. Howard, near Green Bay. The Indians entered this treaty because the New York Indians were unsatisfied with their 1821 purchase under the August 18, 1821 Treaty.
- The Secretary of War, Calhoun, wrote to the Indians:

"Brothers, Your great father, the President wishes you distinctly to understand, that he does not mean, by the partial sanction which he has, or may give, to the arrangement between you and the Menomenees to interfere with, or in any manner invalidate your title to all the lands which you have thereby acquired, including those not confirmed by the government. On the contrary he considers your title to every part of the country conveyed to you by the Menomenees as equally valid against them and has no objection to your occupying and using the same, as if the whole had been confirmed by the government. The acquiescence of the government therefore in the arrangement to the whole extent, altho' it does not think proper to give its special sanction so far, affords sufficient proof that you have not acted without authority, that what you have done has been done with the full assent of the government and that there is nothing which should create dissatisfaction among the Menomenees or your own people to prevent the arrangement as it was originally concluded between you from being carried mutually and faithfully into effect." Calhoun also stated this communication should "remove

all further difficulty to the due execution of the treaty referred to in its whole extent, or their parts respectively."

- There continued to be issues with conflicting claims. Although the commissioners were instructed not to decide the question of the validity of the purchase treaties, the commissioners did determine that the 1822 treaty was valid. "It was a treaty of recognition; it defined the country of the respective Indian tribes; it was not a treaty of cession."
- This appellate court affirmed the earlier decision and the liability, the amount of damages due appellees, and the offsets to which the United States was entitled.

3. In the publication: ***American Indian Diplomacy Treaties, Agreements, and Conventions, 1775-1979 Volume One Vine Deloria, Jr. and Raymond J. DeMallie Inouye University of Oklahoma Press Norman, 1999***, the authors wrote:

- "Making treaties and agreements with foreign nations and the United States did not deter Indian nations from continuing their own diplomatic relations with each other. Many intertribal treaties and agreements were made in the traditional manner, with the exchange of gifts, children, or prized sacred objects, and sometimes with formal adoption of individuals. These agreements continue to be remembered, mainly, by traditional people in the tribes."
- Intertribal treaties and agreements helped Indians resolve boundary disputes; they agreed to share hunting and fishing areas and for sharing annuities or guarantee that whites would not be molested in their lands.
- "For the time period covered by his study, the earliest written treaty to be located was one between the Sioux and a coalition of Ottawas and Chippewas. It was recorded in 1781 by an English officer at Michilimackinac, a military and trading post then still under British control." Then after the Civil War the Cherokees were forced to negotiate with the Shawnees, Delawares, and other, smaller groups to devise a means whereby these groups could become citizens of the Cherokee Nation.
- "With the establishment of reservations in the western states it became necessary for several Indian nations to occupy the same tract of land, and only by mutual agreement could such an arrangement work. Finally, as the western Indian nations were being restricted to specific reservations, their elders realized that warfare with traditional enemies was a thing of the past. They sent delegations to the reservations of their former foes and suggested that a final peace treaty be made. General Custer, strangely enough was a brokered two treaties between the Indians of the Fort Berthold Reservation and the Sioux of the Standing Rock and Cheyenne River Reservations in 1875."
- "Intertribal treaties and agreements still have considerable importance. No case law has ever suggested that any Indian nation surrendered the right or power to make treaties with another Indian nation, even though the federal government

itself insisted that treaties with Indians could no longer be made by the United States."

- EARLY TREATIES BETWEEN INDIAN NATIONS:
 - July 12, 1781, at Michilimackinac between the Chippewa, Ottawa, and Sioux Nations
 - March 30, 1808, between the Seneca and Tuscarora
 - December 21, 1808, between the Miami and the Delaware, Mohican, Munsee.

4. American Indian Treaties: a guide to ratified and unratified colonial, United States, state, foreign and intertribal treaties and agreements, 1607-1911, David H. DeJong, The University Press, 2015.

- Provides an extensive list of over 1,500 Indian treaties from all tribal diplomatic eras, with dates, participants and purpose. They include ratified and unratified treaties with the U.S., State, foreign treaties and intertribal treaties.
- The author noted that "Treaty-making was profoundly influenced by tribal conceptions of diplomacy. Colonial and early U.S. treaties especially were clothed in ritual, metaphor, and covenants that emphasize the sacred nature and purpose of diplomacy and represented a time when tribal nations were equal partners. To understand this, you need to read them and recognize their sacred pledge and meaning, which is still relevant to today. "

5. In the Article *Indian Tribes and Human Rights Accountability*, Wenona T. Singel, 49 SAN DIEGO L. REV. 567 (2012), the author advocates for an intertribal human rights regime that includes intertribal treaty-making as the best method of providing external accountability for tribal abuses of human rights, noting the following:

- "Tribal governments are not externally accountable in any broad sense tribal government abuses of human rights that they commit. This gap in the human rights system exists because tribes do not have direct obligations under public international law, they are largely immune from external accountability under the domestic law of the United States, and they are frequently immune from judicial review within their own systems of tribal law."
- "There is no system apart from the limited federal court review process that allows for external accountability for Indian tribes. Victims of human rights abuses are often unable to obtain a remedy in any forum; their cases are frequently dismissed because of sovereign immunity or lack of subject matter jurisdiction. A third effect is that dismissals create a growing unease with tribal sovereignty in the public, increasing the risk that Congress or the courts will take steps to change the law in a way that diminishes tribal prerogatives of self-government."

6. The Buffalo Treaty of 2014, a cross-border treaty, was signed by First Nation and Tribal Groups from the U.S. and Canada. They formed an alliance to support the restoration of the North American bison, renewing their historic cultural and spiritual ties. Members of the Blackfeet Nation, Blood Tribe, Siksika Nation, Piikani Nation, the Assiniboine and Gros Ventre Tribes of Fort Belknap Indian Reservation, the Assiniboine and Sioux Tribes of Fort Peck Indian Reservation, the Salish and Kootenai Tribes of the Confederated Salish and Kootenai Indian Reservation, Tsuu T'ina Nation, and the Nakoda Nation were signatories.