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Fluid Internationalisms: The Ocean as a Source and Forum of Indigenous International Law

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To rethink 'the international' necessarily enables revisioning where sources of law can be located, how normative paradigms operate in situ, and which processes foster cultural, political, and legal principles. In grounding this international reorientation in the ocean and ocean thinking, this analysis offers a brief point of entry into the worlds of Indigenous internationalisms from a coastal, oceanic reference of analysis. We underline not only how the ocean is an international law forum for Indigenous internationalisms, but also how they are vibrant spaces that foster connections between kin and generate legal principles through the methodology of reading seascapes. Through this process, what follows is a submerging of particular ideologies of 'the international' and an emerging account of 'the international' that facilitates a dynamic transcendence of thinking and being beyond state-premised borders, international relations, law, and sovereignty. Understanding oceans as Indigenous international law fora, as sources of Indigenous legalities, as physical interpretive legal methodologies, and as the connective structures that foster deep connections within and beyond an Indigenous nation, brings us into a socio-legal geography that suspends restrictive, colonial visions of 'the international' for a vibrant oceanic future. Recognizing and affirming these oceanic connections contributes to reinscribing Indigenous sovereignty at the scales of individuals, nations, and international relations.¹

Introduction

Public international law, as it relates to its primary subjects and objectives, is a misnomer. The international legal arena is not concerned with nations, but rather states and the governance of relationships between and among sovereign states as prescribed by international law. For Indigenous people(s), this consideration is often cognizable through a nation's social, political, and legal thought and practice. The conceptualization of the "nation" being synonymous with the "state" is deeply concerning from an Indigenous legal, political, and cultural perspective. The two do not neatly map onto one another, and while the former hypothetically can, among other equivalents in its class, encompass or constitutively

create the latter, the same cannot be said upon a reversal in logical flow. Here, we consider these overlapping, contradicting, and counter-claiming geographies of 'the international' to recognize how oceans are perpetually constituting law and are constituted by Indigenous law, whereby these currents render the ocean as an international subject and where these currents themselves are Indigenous international law fora. Legal reasoning by aquatic analogy is the primary referent of analysis to bring us closer to the intellectual, legal, and physical nature of the sea. Not only does this approach rupture state-centric conceptions of jurisdiction, governance, and law, but it also brings forms of Indigenous reasoning into

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the frame through reading seascapes. This necessarily asks us to reconstitute 'the international' and consider how the ways we decide to trace the cartographic and intellectual boundaries pertaining to international law will either reflect colonial ideological foundations or (re)constitute a past and future based upon Indigenous knowledges, ethics, and ways of social ordering that establish the vibrant patterns of Indigenous life.



The Internationality of Oceans: A State-based Perspective

From a state-centric grounding, one might refer to the ocean as a space of jurisdiction and ownership that is subject to the domestic law of the state whose land territory immediately runs along oceanward spaces and that becomes subject to international law at the point a state's (or multiple states') jurisdiction transitions into decreasingly sovereign waters until becoming international waters. Domesticated oceans are necessarily affixed to a state's land territories which become subsumed by jurisdictional acquisition into a state paradigm of sovereignty and are therefore presupposed as an extension of the territoriality of states to confer analogous exclusive territorial rights in 'territorial waters'. This means that oceans are positioned as a space normatively beyond and outside of state sovereignty with the exception of when state sovereign power can be exerted *from* the referent of lands *into* waters, rendering seas as spaces 'out there' beyond cardinal statehood. In this view, the ocean is situated among a statist imaginary that is culturally affixed to a particular object-oriented paradigm that recognizes the ocean as a series of constituent parts that are bound by definable state jurisdictional borders to govern and exploit sea resources, confer ownership rights that permit the exploration and capturing of the energies of the sea, and confined by the physical severing of aquatic spaces. Physical severing within ocean spaces includes the vertical processes in which waterbeds and waters are legally distinct, divided and severed from one another. Water, being physically transitory, is referentially or incidentally contained by horizontal severing via bordering of submerged lands that confer jurisdictional rights upward into ocean waters to states, international authorities, and/or the world at large.



Upon these factors, which depend upon the spatial position within various horizontal oceanic gradients of authority in state and international law, the sea is rendered an object most beneficial to be leveraged to secure more expansive jurisdictional and economic rights to benefit from the exploitation of the ocean. Through this particular, yet common and dominant statist lens, the sea is cognizable through this narrow and unsustainable understanding, and relationships that function beyond this state paradigm operate at a register that is indiscernible as international but apolitical or under the guise of (un)sanctioned action by a member of the state

in question. The ocean becomes international by virtue of the convergence of state legal systems, interests, and jurisdictions that perpetually encounter each other, in addition to the international law system establishing and enforcing standards within its competent spaces of authority particularly beyond states' domestic waters, but also within maritime zones where states hold varying degrees of authority, rights, and sovereignty. This view is certainly not the full picture of the ocean and to assume or suggest that this is *the* normative landscape of ocean law and governance would be erroneous and certainly contrary to a good life for generations of humans and more-than-humans before us, among us, and those to come. When we begin to rupture the standard units of 'the cognizable' from a state law perspective, we situate ourselves in a network of kinship ties and interconnections that transcend state borders and are embedded within Indigenous internationalisms.

The Internationality of Oceans: A Coastal Indigenous Perspective

From our perspective, the ocean is a source of life, space for healing, and a subject that requires individuals and collectives to be in continual relationship within all (in) actions. What connects us, as coastal Indigenous citizens, to an expansive world of vibrant Indigenous maritime cultures is the water and especially the ocean. The authoritative waves, the tides of knowledge, and the seas of intellectual guidance are all indicative of how deriving meaning and legal principles from reading, being with, and looking to and from the socio-physical space of the ocean is real, compelling, and possible. The ocean, then, becomes more than a physical or geographic space and emerges as an analytical, intellectual, and critical space of and for engagement. Oceans become legal through the vigorous interpretative processes they offer through the continual movement of their authorities and the knowledge that radiates thereof. By way of example, witnessing the strength of the ocean is not a passive act but an active one that can generate legal norms and rules and also the juridical interpretative processes to apply these very laws. The ocean, therefore, becomes a constitutive thread in a broader legal fabric from which fluid legal reasoning and aquatic analogies are nurtured, maintained, and reaffirmed. To grasp the robust social and legal significance, however, particular orientations of thought and practice in how law, international relations, and sovereignty operate ought to be suspended and submerged.

Not dissimilar to rethinking how law and sources of legal authority must be repositioned, so too the theory and practice of international relations. Oceans become international in ways that might not be initially deemed international in a state-based way of thinking. Travel across seas has been integral to the interconnection and international relations between Indigenous nations, a watery transportation passage for kinship, commerce,

and connection. From this, along with the legal and interpretive processes discussed above, it is clear that oceans are not definable by artificial state boundaries, their beds and water are not simply severable and rendered legally distinct, nor are they reducible to their materiality as measured by their potential output of resources that may be exploited. Rather, oceans are healing spaces that have been and continue to be in relationship with Indigenous people(s), commanding deep and enduring respect across generations. They provide avenues for travel to engage in Indigenous internationalisms, to affirm familial and national identities, and to remain nested within the knowledge developed on and by seascapes. Presence with oceans, including their currents and knowledges, reminds us that these pathways of interconnection are not new but built upon enduring international relations by the generations that come before each of us as coastal Indigenous citizens. Engagement with waters, including oceanic knowledge that emerges from the sea, brings to the fore the ways internationalisms emerge from waters both in their physical and intellectual embodiments. Oceans may be seen as becoming international for their interconnections they foster and also the genealogical and historical relationships that previous Indigenous communities nurtured and upheld.

To witness Indigenous internationalism in practice across the ocean, we only need to look so far as the annual Tribal Canoe Journey which takes place along the Pacific Northwest Coast. In 1989, Indigenous nations participated in the Paddle to Seattle, coordinated by Emmett Oliver (Quinault), during the state of Washington's centennial celebration in order to bring recognition of the vibrant maritime culture of coastal Indigenous nations. While in attendance, Frank Brown (Heiltsuk), who had carved a dugout canoe that was paddled to Expo '86 in Vancouver to honour the original transportation of coastal Indigenous nations, issued an invitation for nations to paddle to Bella Bella, British Columbia in 1993 for 'Qátuwás (People Gathering Together). Paddlers from 30 nations embarked on this journey to join a gathering of thousands in a celebration of the resurgence of culture and the honouring of our kinship relations within and across nations. Over time, Tribal Journeys has become an almost yearly paddle wherein Indigenous nations travel expansive distances across the seas, gathering together with other coastal communities to (re)kindle vital relationships interpersonally and with our more-than-human relations. Engagement with the ocean in this way calls on us to consider the responsibilities we maintain within these webs of kinship, how we might practice diplomatic and healthy relations, and how respect is fostered through these various intricate layers.





Several weeks in July and August are marked by a multiplicity of acts of Indigenous international relations. As nations depart from their shores, they are reconnecting to the ancient traditions of their ancestors

who travelled by canoe generations before. Vital acts of governance were and are still carried out by canoe. This (re)connection with our traditional practices embodies the resurgence of our nations, the continual practice of our self-determination, and the exploration of sovereign protocols across nations. Coastal nations have frequently expressed the intimate connection they maintain with the ocean. Through Tribal Journeys, this vital relationship becomes centered once again as the ocean is upheld as a holder of knowledge, a caretaker of a multitude of relations encompassed within, on, and near its waters and as a path of travel drawing us into relations across vibrant waters. While there is a tendency within state-based discourses to understand relationships as solely interpersonal, Tribal Journeys emphasizes not only the interpersonal relations internal and external to our individual nations but also the foundational and lively relations we maintain with the more-than-human world. At every host nation along the way to their predetermined final destination, Indigenous nations honour the protocol necessary to maintain relations with self-determining nations by asking permission to come ashore and permission to leave. We honour and renew our relationship with the ocean as we paddle and practice ethics of care for the depths of the sea to the seascapes that we travel on. We engage in diplomatic practices aimed at renewing and rekindling relations with our relatives across nations such as through sharing meals, stories, songs, and dances. These processes emphasize interconnection through a multiplicity of relations necessary for our survival. Indigenous self-determination is deeply woven within these spaces.

Across these weeks, Indigenous nations traverse the jurisdictional boundaries of other nations, both those legible to state-centered discourses and those illegible. Dipping our paddles into the water, we slip across geographic boundaries that have been tied to state borders, but which do not match Indigenous conceptions of or adherence to territorial jurisdictions that are bound to the intimate relations we have maintained with our homelands/waters for as long as memory serves. Our acts of resurgence through Tribal Journeys not only affirm our continued cultural (re)production, but also a complex adherence to the protocols entwined with maintaining relations between distinct nations. These acts rupture state-centric conceptions of jurisdiction, governance, and law that have sought to force conceptions of the nation to become synonymous with settler colonial sovereignty and statehood.

By now it is clear that this understanding of the ocean, similar to the state-centric view, understands the ocean as international, but perhaps unsurprisingly on different grounds. Oceans are not international for the simple, but subjective and objectionable, position that they are governed under state law that, by its existence, excludes other states, nor are they international for





being objects of international law. Oceans are international for, *inter alia*, the connective forces they foster *within* and *between* Indigenous nations. The distinction in internationalisms between internal to and between communities is notable because it moves beyond state-centric international relations. This is the case because internationalisms often focus not only on the external or outward-facing dimensions that are readily cognizable within the field of international relations, but also the deeply personal, inward-facing dimension of Indigenous international relations that are rendered purely personal or apolitical from a state-based positioning (Corntassel et al. forthcoming; see also Brown et al. 2021; George & Wiebe 2020). This means that there is a distinctive understanding of international law, that being *Indigenous* international law. This species of international law is concerned with the relationships that govern and are governed by Indigenous nations within and among other Indigenous nations, states, members of nations or states, and with a multiplicity of interconnected relations across the vibrant international fora of oceans, lands, and beyond. This is not a nascent emergence of international law but one that particularly lacks attention affixed to a cultural, political, and legal grounding. Indigenous international relations and therefore Indigenous international law must have always existed. To borrow Saulteau law scholar Val Napoleon's contention: if we were to accept that Indigenous people(s) do not have law, which by reasonable extension includes Indigenous international law, it would necessarily mean that Indigenous societies are lawless (Miller 2021, 16:30; Napoleon 2019, 16). To suggest that Indigenous people(s) live absent of legal order within nations and also between nations would be grossly ahistorical, unsubstantiated, and erroneous.

When situated within the ocean, we become situated in a genealogy of relations that stretches back generations and connects us to a future chain of relationships going forward. Enacting diplomacies on the shores, engaging in Indigenous international trade and commerce through oceanic transportation routes, or creating and finding meaning while being on the ocean such as through Tribal Journeys links us to the international relations of the past and foregrounds ethical relationships of the future. Being with water reinforces these internationalist currents of oceans that transcend state borders and the international relations theories of today. Water, in this sense, quite literally can be considered the connective tissue that shapes authority and meaning in relations among kin internal and external to a sovereign political community. Analogous to the process of looking at case law, statutes, and international law treaties to discern legal principles and values, we can, do, and should also turn to the ocean to find and create social meaning, legal principles, legal rules, and normative orders from a coastal Indigenous law perspective. An interpretive method of reading seascapes is one way to sit within the knowledge that is expressed by the ocean, and recursively interpreted and expressed by Indigenous

people(s) through the knowledge of or developed with the sea. Following this legal and ethical thread, we begin to see that the ocean is not simply an object under international law but is an active participant in and forum for Indigenous international law that connects Indigenous nations and contributes to a growing Indigenous international legal fabric. This not only empowers Indigenous individuals and nations but also works toward an international legal analytic that can offer a more ethical approach to affirm Indigenous/Aboriginal rights in matters that would otherwise be restricted to the cultures of state and international law.

The Political and Legal Significance of Indigenous International Law

Indigenous nations' social, political, and legal practices have rigorous processes from theorization and development to application and adaptation. The recognition and affirmation of Indigenous nations as sovereign political units is not nascent. The fields of international relations, international law, and diplomacy studies, however, have not seriously grappled with Indigenous nations' own relationships with nations and states as forms of international law: *Indigenous international law*. These scholarly thresholds act as borders themselves, adjudicating what constitutes as being internal to the standard units of the domestic and a function of diplomacy. The extent of recognition regarding Indigenous people(s) and international relations reaches the threshold of participating in existing international venues and processes, such as the United Nations and international treaties. Recognizing and affirming Indigenous peoples' involvement in international political and legal venues is important but only paints a partial picture. Upholding the authority of Indigenous internationalism, which is deeply intertwined and associated with Indigenous international law, is a vital progression in honoring the sovereignty of Indigenous nations across the globe and indeed the very connections that Indigenous diplomats have forged for as long as memory serves. This process necessarily binds us to a reconsideration of the singular and associated meanings of international, law, sovereignty, and diplomacy. From where legal repositories and expressions live to how diplomacy and international legal ethics develop, a turn toward and viewpoint from Indigenous international law will transform how treaty diplomacies, border politics, ecological borders and trade will be interpreted, enacted, and honored as international relations in a function of international law. The vibrant bodies Indigenous international law offer rigorous pathways to address gender inequities and international relations; to govern sovereignty of individuals, nations, and states; to restore conflicts across the cross-cutting, conflicting, and overlapping geographies of 'the international'; and to create pathways for alternative Indigenous rights processes that honour Indigenous legal orders.

Conclusion

Oceans are not simply a mix of material and jurisdictional rights that, when partnered, confer exclusive and overarching powers to a particular sovereign political unit, but they are in and of themselves sources of law, regulation, and order depending on the legal interpretive frameworks deployed. This analysis suggests that the ocean has important international dimensions to deeply think about, including with respect to international fora, international histories, and international connections. The ocean can be seen as one important source of law, but so too are all relational dimensions of Indigenous life that will likely have international dimensions that express Indigenous international law, ethics, and guidelines for diplomacy. Rekindling the relationships that flow between the personal and every day with the international will reinforce the responsibilities we have as Indigenous citizens with one another and also the obligations that states and their citizens have regarding Indigenous law. Reimagining 'the international' and continuing to uplift Indigenous internationalism will foster meaningful relations across crosscutting, overlapping, and disparate collectives, geographies, and epochs for a brighter internationalist future.

Note

- 1 This essay is part of the Special Section: Honouring Indigenous Land and Water Defenders, edited by Jeff Ganohalidoh Corntassel, in *Borders in Globalization Review* 5(1): 7-53.

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