Treaty
Research Paper
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A. Defining the Term 'treaty'

The idea of a treaty or treaties between sovereign first nations in Australia and the Australian Government has long been a subject of debate.[1] Treaty in the state of Victoria is causing a strong undercurrent of serious thought for sovereign first nations not only around treaty but sovereignty as well, highlighting the treaty and sovereignty debate once again. It is important to note that the definition of 'treaty' used by the Victorian Government and the definition of 'treaty' used internationally is not one and the same definition.

In 2018, the state of Victoria passed the *Advancing the Treaty Process with Aboriginal Victorians Act 2018* (Vic)(Treaty Act).[2] So, what is the purpose of the Treaty Act?[3]

The purposes of the Treaty Act as set out in the Treaty Act all relate to setting up a mechanism, processes and guiding principles to enable treaties to be negotiated.[4] This process is designed for 'Aboriginal Victorians' as defined in the *Preamble*[5] of the Treaty Act and for Victorian Traditional Owners who live outside the state of Victoria. Sovereign first nations must ask the question, is this a credible process and framework you should engage in? Would this framework as set out in the Treaty Act create a credible treaty? This paper explores these very questions.

The Victorian Government define 'treaty' as an agreement between states, nations or governments.[6] Aboriginal Victoria say this can include an agreement between Indigenous peoples and governments.[7] They do not go into any further clarification as to where the definition of 'treaty' has come from or what type of treaty they are wanting to make. In this treaty definition, the terms 'states', 'nations' or 'governments' have also not been defined. Is a 'state' in this context a country or a state or territory of Australia? Is a 'nation' the Australian nation and is the term 'government' reference to state or federal government or does this relate to Australia being a nation State under international law?

What many sovereign first nations may not have seen on Victoria Government's website through Aboriginal Victoria is a disclaimer at the very bottom of the web page which states:

There may be constitutional limitations on what the State of Victoria can agree to in a treaty with Aboriginal Victorians. A treaty or treaties in Victoria does[8] not remove the possibility of the Commonwealth negotiating a treaty as well.[9]

Sovereign first nations should be informed as to what those constitutional limitations are, can we only assume the Victorian Government means the Victorian Constitution? Has Victoria already agreed or come to some sort of agreement with the Commonwealth about the disclaimer above? Whatever the case may be, 'treaty' is a very misunderstood term,[10] both internationally and domestically. Treaties are made to acknowledge wars, put an end to wars, create commerce, peace and plant new laws. Trading between sovereign first nations has always been part of their cultural economies. Economies under a treaty is essentially the right to trade and should not be

based on dependency or the promise of. The existing right of trade between sovereign first nations was taken from them, at the point of invasion. The restrictions of trade in modern day Australia are steered by government laws and policies which continue to impact loss of country and impact their traditional ecological practices.

British imperialism and colonialism continued to spread across the continent of Australia with military force and without consent. With these new British rules came the harshest of restraints to sovereign first nations. The very innate cultural and ecological traditions practiced under a cultural economy, now a continued struggle.

Is there a possibility that there is confusion in the state of Victoria about defining the term ‘treaty’ versus the definition found under international law?

The International Law Commission was established by the General Assembly, in 1947, to undertake the mandate of the Assembly, under article 13 (1) (*a*) of the Charter of the United Nations to "initiate studies and make recommendations for the purpose of ... encouraging the progressive development of international law and its codification".[11] In understanding the context of treaty internationally and its interpretation, we need to consult the Vienna Convention on the Law of Treaties (VCLT or Vienna Rules). The Vienna Conference on the Law of Treaties was held from 26 March to 24 May 1968 and 9 April to 22 May 1969. VCLT was adopted on 23 May 1969.[12] It was decided to convene the first session of the United Nations Conference on the Law of Treaties at Vienna in March 1968. This paper will focus on four Articles within the VCLT namely; Articles 2, 31, 32 and 33.

Article 2 of the VCLT define ‘treaty’ as *an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.*[13]

The Butterworths Concise Australian Legal Dictionary define ‘treaty’ as ‘an international agreement concluded between states in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.[14] This is the same definition under the VCLT.

The Victorian Government define ‘treaty’ as mentioned above as an agreement between states, nations or governments.[15] Already we can see the differences in defining treaty. Mick Dodson former Chairperson of AIATSIS[16] says that a treaty is essentially a settlement, or an agreement.[17] So, is the state of Victoria simply just wanting to make a contract with the label ‘treaty’ but passing it off with the same meaning as an international treaty?

Treaty interpretation and the general rule of interpretation of the VCLT can be found within Articles 31-33.[18] Some general rules in Article 31 are about interpreting a treaty in good faith with the ordinary meaning to be given to the terms of the treaty.[19] The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes.[20] Supplementary means of interpretation in Article 32 provides that recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31: (a) leaves the meaning ambiguous or obscure; or (b) leads to a result which is manifestly absurd or unreasonable.[21] Interpretation of treaties authenticated in two or more languages can be found under Article 33 where a treaty has been authenticated in two or more languages, the text is equally authoritative in each language, unless the treaty provides or the parties agree that, in case of divergence, a particular text shall prevail.[22]

There can be different approaches to treaty interpretation as J.G Merrills explores in their paper titled, 'Two approaches to treaty interpretations' such as the contents of the Vienna Rules and the concept of ordinary meaning.[23] Merrills who discussed this issue back in 1969 also poses the confusion of judicial reasoning in that one of the supposed strengths of the Vienna approach is that, by focusing attention on the text, it restricts the interpreter's discretion.[24] Merrills further describes that based on a Vienna Conference in 1968 that it was apparent that an interpreter's discretion takes the focus away from the text of the Vienna Rules, so what is the approach in theory is not always practiced and indeed brings about confusion.[25]

Another treaty interpretation can be found with Shai Dothan in their paper, 'The Three Traditional Approaches to treaty interpretation: A Current Application to the European Court of Human Rights' Dothan writes that the rules of the VCLT are quite vague, and they leave a lot of room for judicial discretion[26] as Merrills suggested back in 1969.[27] Dothan suggests in this paper that traditionally, scholars speak about three main approaches to treaty interpretation: (1) the textual approach, suggesting that treaties should be interpreted according to their language; (2) the subjective approach, suggesting that treaties should be interpreted according to the intentions of the state parties that signed them, and (3) the teleological approach, suggesting that treaties should be interpreted according to their object and purpose.[28] The European Court of Human Rights had developed their own version of these rules of interpretation—a version that tracks the three traditional approaches.[29] Be mindful that while there are varying ways to define treaty there are also diverse views about treaty interpretation around the world.

Can you discuss treaty without discussing sovereignty or are they two very separate matters? Or is Australian sovereignty a roadblock to modern treaty making, an idea that Brennan *et al*[30] explore in their paper, "Sovereignty' and its Relevance to Treaty-Making

Between Indigenous Peoples and Australian Governments".[31] This is no doubt a concoction of good debate. They conclude that as a matter of public law the concept of sovereignty itself poses no roadblock to moving forward with a process of treaty-making, in the context of modern-treaty making in Australia.[32] How do sovereign first nations feel about this statement? Brennan *et al* apply the term 'treaty' to comprehensive agreements reached between Indigenous peoples and governments that have a political or governmental character, that involve mutual recognition of the respective jurisdiction each side exercises in entering into the agreement and that have a binding legal effect.[33] Have they described the process of treaty in Victoria to some degree or is this an example of domestic agreements with internal arrangements as described by Dodson?[34]

Brennan *et al* said that it is impossible to use a treaty to remedy the way that the continent was settled, and the Australian nation constructed.[35]

Another question arises around what type of treaty are Victoria proposing and under what platform of recognition are they choosing to engage this treaty with? Is it one of a domestic arrangement under federalism? Or is it an internationally registered treaty under international law? Which instrument of dispute resolution will the Victorian Government propose to engage if any disputes in these so-called treaty or treaties arise? What will their court of equity look like? On this issue of treaty and sovereignty the questions far outweigh the answers.

Brennan *et al* point out that the 'change in sovereignty' in 1788 has imposed a new set of laws and system of governance on Aboriginal people without consent.[36] This is a true statement. The root of this problem not only needs to be acknowledged[37] but addressed once and for all, from one sovereign to another sovereign, from first sovereign nations to the Head of State, the Queen.

As an exercise of sovereignty reach into your pocket and grab an Australian 50 cent coin, heads on the obverse side of the coin depicts the Queen as Head of State, this is known as the head-side of the coin. The reverse side of the coin is the Commonwealth Coat of Arms, there inscribed, the formal symbol of the Commonwealth of Australia. The shield, depicting symbols of Australia's six states, is held by two native Australian animals, a kangaroo to the left and an emu to the right.[38] A coin always depicts a sovereign power, so who is Elizabeth II, she appears on all currency in Australia? Is she the Queen of Australia[39] or is she a Victorian? If Victoria was a sovereign state, then wouldn't Victoria be minting its own money? This is why external and internal sovereignty is a matter of public confusion.

Anne Twomey explores in her paper titled, "The States, the Commonwealth and the Crown - the Battle for Sovereignty" that was presented as a lecture in the Senate Occasional Lecture Series at Parliament House in Canberra on 28 September 2007, where the definitions and the battle for Australian sovereignty were discussed.[40] The

question is, so is Victoria a sovereign state? Twomey[41] links shared sovereignty with federalism, in which she refers to the internal sovereignty of Australia? The High Court commented in *John Pfeiffer Pty Limited v Rogerson* in which they stated, …*sovereignty is shared between the Commonwealth and the member States of the federation*.[42] Twomey's reasoning aligns with the High Court on this issue. It was further stated in *John Pfeiffer Pty Limited v Rogerson* that the states are not foreign powers as are nation states for the purposes of international law.[43] This also confirms the research into sovereignty and federalism in this paper. The people should know that internal and external sovereignty is a matter not understood by all.

Is shared sovereignty much like an octopus? With the head of the octopus being the Commonwealth and the eight limbs planted into the eight states and territories acting as the vacuum in which sovereignty travels from Commonwealth to state, from Commonwealth to territory and vice versa. It is an analogy that can be referred to as the "Octopus Effect", describing the origins of sovereignty since federalism and explaining how sovereignty is shared and collective as Twomey[44] suggests. This is the deeply rooted legal system in which sovereign first nations are navigating.

Brennan *et al* explore the many uses of sovereignty from an Australian constitutional perspective where they discuss *external* and *internal* sovereignty.[45] They also use a leading nineteenth century text on international law:

> Sovereignty is the supreme power by which any State is governed. This supreme power may be exercised either internally or externally. Internal sovereignty is that which is inherent in the people of any State, or vested in its ruler, by its municipal constitution or fundamental laws. This is the object of what has been called internal public laws… but which may more properly be termed constitutional law. External sovereignty consists in the independence of one political society, in respect to all other political societies. It is by the exercise of this branch of sovereignty that the international relations of one political society are maintained, in peace and in war, with all other political societies. The law by which it is regulated has, therefore, been called external public law,… but may more properly be termed international law.[46]

This confirms that there is indeed a distinction between external and internal sovereignty, such as foreign affairs and domestic politics, between international law and constitutional law.[47]

The reader should be mindful that the term 'sovereignty' is a western concept and as a matter of correction sovereign first nations connections to sovereignty varies but ultimately is derived from their language, their jurisdiction and their law. The organs which sovereign first nations operate from is not the legislative, executive or judicial organs which Australia operates from, this is why from a western perspective it is difficult to understand sovereign first nations jurisdictions and laws. They do not operate in the same space that is occupied by western society, *Coe v Commonwealth*[48] does not make a distinction between races, they see sovereign first nations as Australians. *Coe v Commonwealth*[49] suggested that if such organs existed, they would have no powers, except such as the laws of the Commonwealth, or of a State or Territory, might confer upon them.[50]

John Howard former Prime Minister of Australia said publicly on 11 May 2000, 'we recognise that this land and its waters were settled as colonies without treaty or consent'[51] and again, on the 29 May 2000 that 'a nation … does not make a treaty with itself'.[52] If anything, in his public Commonwealth statement the former Prime Minister further supported the reasoning in *Coe v Commonwealth*[53] that the colonialist settlers have made sovereign first nation's peoples subjects to their laws, and that sovereign first nations exercising sovereignty, even of a limited kind, is quite impossible in law to maintain.[54]

This is a clear understanding by the Commonwealth that indeed they see sovereign first nations only as Australians and not as their distinct identity. This is the same view expressed in Victoria, sovereign first nations peoples are seen as citizens of the state and an Aboriginal Victorian and nothing else, as Mr. Anderson suggested in his paper titled *Trick or Treaty: Yorta Yorta or Victorians*.[55] Mr. Anderson states very clearly that Victoria see individual Yorta Yorta People simply as a Victorian and a citizen of the state and not as sovereign first peoples. Mr. Anderson further states in his paper that the *Advancing the Treaty Process with Aboriginal Victorians Act 2018* (Vic)[56] is an exercise of racial supremacy by the Victorian Parliament and this is done so on the basis that under international law one of the fundamental principles of Human Rights is a right to your own identity.[57] From the outset and without any discussion and/or consent, the Victorian Government has denied the Yorta Yorta Nation and its people this fundamental right.[58]

Mr. Anderson also discusses some fundamentals around citizenship and whether the Yorta Yorta Nation people have ever been subjects of the Crown of Britain/England and whether Aboriginal people across Australia became citizens of Australia after the 1948 *Citizenship Act*.[59] Mr. Anderson stresses the point that nowhere in the Australian Constitution, or the Victorian State Constitution, is there anything that makes the people of the Yorta Yorta, citizens of the state of Victoria or of the Commonwealth.[60] This means as Mr. Anderson states that they do not see the people of the Yorta Yorta other than 'Aboriginal Victorians'[61], and this comment echoes what Howard said.[62]

History must be rewritten as suggested many times before, pertaining to the facts of sovereign first nations histories. If we reversed engineered 2019 to 1788 could you find any legal differences? Sovereign first nations sovereignty is intact as Michael Mansell described:

> Aboriginal sovereignty does exist. Before whites invaded Australia, Aborigines were the sole and undisputed sovereign authority. The invasion prevented the continuing exercise of sovereign authority by Aborigines. The invasion and subsequent occupation has not destroyed the existence of Aboriginal sovereignty.[63]

Can treaty be discussed without discussing invasion, how Australia was acquired, federalism, sovereignty, and its connection first with the relevant sovereign, the Queen Head of State under international law?

B. The Character of the State of Victoria

To be Indigenous is to be denied a nationality and to be an Aboriginal is to be denied a nationality. The ultimate question is how did it become this way? How did sovereign first nations become Indigenous in the Australia Governments eyes? The psychological paths travelled from sovereign first nations generation to generation has been a legal and emotional drag, a scar they are still healing. How did that status change? Did it start with colour? Was it racism?

Former Victorian Aboriginal Affairs Minister Natalie Hutchins said the government was hamstrung in previous public comments because the state of Victoria itself did not have sovereignty.[64] "The problem we face with that is that Victoria itself isn't a sovereign entity," Ms Hutchins said. "We're not sovereign, so it's not possible."[65]

So, in which context of 'sovereignty' was Ms Hutchins talking about? The standard legal view is that expressed by Twomey[66] - in Australia's federal system, powers and sovereignty are split between the Commonwealth and each of the states, so each has sovereignty. Who really knows, it depends who you ask, will a constitutional lawyer vary in their analysis around this very question with an international lawyer? Most definitely. This is where the definition of Australia's sovereignty (just like treaty) becomes problematic because it depends in which context you discuss sovereignty as to its different meanings. The difference must be explained to the people. The pursuit of any treaty by any sovereign first nation must be on their terms only, based on their laws and customs and not because the Treaty Act says here is a guide to do so. Should it be consistent with international law? If this future treaty or treaties, the state of Victoria is fussing over is one of or are a series of domestic agreement/s then why the label 'treaty', why not a domestic agreement or some sort of contract?

Ms Hutchins' announcement strongly aligned with The Hon Murray Gleeson, AC, in his Boyer Lectures 2000 on *The rule of law and the Constitution* in which he writes that the colonies which in 1901 became a State in the new Commonwealth and under the new dominion of the Crown were not before then sovereign bodies in any strict legal sense and certainly the Constitution did not make them so.[67] This view differs from Twomey[68] and this illustrates why sovereignty in its different meanings is not only confusing for the public but has multiple meanings in diverse settings. The Treaty Act could simply have just been a policy, and this would have been applied to the people without consent, on the same basis on which they founded Australia. Why implement the words in the Treaty Act into legislation? Should there be more discussion around this particular topic?

The Yorta Yorta Nation note the generic term 'Aboriginal Victorian' is defined in the Preamble of the Treaty Act as, *Victorian traditional owners, clans, family groups and all other people of Aboriginal and Torres Strait Islander descent who are living in Victoria.*[69]

Why is Victoria wanting to treaty with Aboriginal Victorians?

The Victorian Government states that the Treaty Act is the result of the work of over 7,000 Aboriginal Victorians who have worked with government to progress treaty over the past 2 years.[70] The Treaty Act (the Victorian Government says) reflects the intent to help improve the lives of Aboriginal Victorians, and the lives of future generations.[71] What is the difference to what the state of Victoria does now domestically, to what they want to achieve? Are the 7,000 Aboriginal Victorians consulted representative of sovereign first nations? Victoria has indeed designed a democratic process[72] but one that is quite different to a communal governance structure within sovereign first nations. These structures are not recognised because the structure of the registration of the corporate entity is what is recognised as a legal entity and not the communal structures.

Prior to the Amendment to the Australian Constitution in 1967, section 51(xxvi) specifically excluded 'the aboriginal race in any State' from being within the scope of the Commonwealth's legislative power. The effect of the 1967 referendum and subsequent Constitutional amendment to remove this wording is that the Commonwealth Parliament may now legislate for people of any race, including Aboriginal and Torres Strait Islander people. The effects that this had on State power to legislate with respect to Aboriginal people was to diminish, but not remove, the power of the States, because of section 109 of the Constitution.

Is this the shared sovereignty Twomey[73] spoke about where separation of powers dictates the rule of law? The question that still needs to be asked is, do sovereign first nations want to be included in the Australian Constitution? This will be another forced legislative process, only time will tell. Can you see any commonalities between the Treaty Act and the recognizing Aboriginal and Torres Strait Islander people in the Australian Constitution?

C. The Prevailing View by Yorta Yorta Nation

The Yorta Yorta Nation has never allowed the trespass of their Country nor ceded their collective rights to their lands and waters.

Yorta Yorta Nation Elders (Elders) met with Jill Gallagher, Commissioner for Treaty and a Constitutional lawyer at a meeting on 5 July 2018 in Moama. It was at that meeting the Elders did request a pause to the Treaty process. The plea of the Elders was two days, too late, as the Treaty Act was already assented to on 3 July 2018.

To inform the Yorta Yorta People, Yorta Yorta Nation held a Yorta Yorta gathering on 8th and 9th December 2018 at Morning Glory in NSW to discuss the treaty process outlined in the legislation and to hear the views of Yorta Yorta families. Yorta Yorta Nation are also of the strong view that research needs to inform decision-making moving forward.

In summary, the Yorta Yorta Nation are not happy with the process around treaty in Victoria, they sent the following statement to Jill Gallagher, Commissioner for Treaty:

> "…The Victorian Government and the Victorian Treaty Commissioner are placed on notice that the Yorta Yorta Nation Aboriginal Corporation as directed by Yorta Yorta Council of Elders as representative of their 16 Family Groups believe that what is proposed will have significant, long lasting and irreversible consequences for their future of the Yorta Yorta Nation. The Yorta Yorta Nation cannot be rushed through your processes into making a decision without providing all the 16 Family groups of Yorta Yorta Nation with their fully informed consent"...[74]

Article 19 under The *United Nations Declaration on the Rights of Indigenous People* requires States to consult and cooperate in good faith with the Indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative and administrative measures that may affect them.[75] Sovereign first nations should seek legal advice from lawyers specialising in constitutional law, international law, contracts and the impacts of legislation. Final thoughts, could implementing the Treaty Act be a new wave of assimilation and legislative genocide? You can decide on that for yourselves by looking at the fine print.

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[1] Brennan, Sean; Gunn, Brenda; Williams, George --- "Sovereignty' and its Relevance to Treaty-Making Between Indigenous Peoples and Australian Governments" [2004] SydLawRw 15; (2004) 26(3) Sydney Law Review 307. Available at: <http://www.austlii.edu.au/au/journals/SydLRev/2004/15.txt/cgi-bin/download.cgi/download/au/journals/SydLRev/2004/15.pdf>, viewed 15 May 2019.

[2] *Advancing the Treaty Process with Aboriginal Victorians Act 2018* (Vic), available at <http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/PubStatbook.nsf/f932b66241ecf1b7ca256e92000e23be/CDE74BAB9461DECDCA2582BF001C5721/$FILE/18-028aa%20authorised.pdf>, viewed 15 May 2019.

[3] Ibid.

[4] Ibid.

[5] Ibid.

[6] Victorian Government, Aboriginal Victoria, 'What is a treaty', <https://w.www.vic.gov.au/aboriginalvictoria/treaty/what-is-a-treaty.html>, viewed 15 May 2019.

[7] Ibid.

[8] Ibid.

[9] Victorian Government, Aboriginal Victoria, 'What is a Treaty', <https://w.www.vic.gov.au/aboriginalvictoria/treaty/what-is-a-treaty.html>, viewed 15 May 2019.

[10] Organization for the Study of Treaty Law, 'Definition of Treaty', <https://www.treatylaw.org/definition-treaty/>, viewed 15 May 2019.

[11] International Law Commission, <http://legal.un.org/ilc/>, viewed 15 May 2019.

[12] International Law Commission, <http://legal.un.org/ilc/guide/1_1.shtml>, viewed 15 May 2019.

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[14] Nygh, PE and Butt, P (eds) *Butterworths Concise Australian legal dictionary*, 3rd ed, Sydney, Butterworths (2004).

[15] Victorian Government, Aboriginal Victoria, 'What is a treaty', <https://w.www.vic.gov.au/aboriginalvictoria/treaty/what-is-a-treaty.html>, viewed 15 May 2019.
[16] AIATSIS (Australian institute of Aboriginal and Torres Strait Islander Studies). Available at <https://aiatsis.gov.au/>, viewed 15 May 2019.
[17] Mick Dodson, <http://www.50yearjourney.aiatsis.gov.au/stage7/item2.htm>, viewed 15th May 2019.
[18] United Nations of Legal Affairs, Vienna Convention on the Law of Treaties 1969, <http://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf>, viewed 15 May 2019. *Article 31 General rule of interpretation* 1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose. 2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes: (a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty; (b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty. 3. There shall be taken into account, together with the context: (a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions; (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation; (c) any relevant rules of international law applicable in the relations between the parties. 4. A special meaning shall be given to a term if it is established that the parties so intended. *Article 32 Supplementary means of interpretation* Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31: (a) leaves the meaning ambiguous or obscure; or (b) leads to a result which is manifestly absurd or unreasonable. *Article 33 Interpretation of treaties authenticated in two or more languages*. When a treaty has been authenticated in two or more languages, the text is equally authoritative in each language, unless the treaty provides or the parties agree that, in case of divergence, a particular text shall prevail. A version of the treaty in a language other than one of those in which the text was authenticated shall be considered an authentic text only if the treaty so provides or the parties so agree. 3. The terms of the treaty are presumed to have the same meaning in each authentic text. 4. Except where a particular text prevails in accordance with paragraph 1, when a comparison of the authentic texts discloses a difference of meaning which the application of articles 31 and 32 does not remove, the meaning which best reconciles the texts, having regard to the object and purpose of the treaty, shall be adopted.
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[22] Ibid.
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[24] Ibid.
[25] Ibid.
[26] Ibid.
[27] J.G.Merrills, Australian National University (ANU College of Law), *Australian Yearbook of International Law*, 'Two approaches to treaty interpretations', Volume 4, 1969, available at: <http://www.austlii.edu.au/au/journals/AUYrBkIntLaw/1969/4.pdf>, viewed 15 May 2019.

[28] Shai Dothan, *The Three Traditional Approaches to Treaty Interpretation: A Current Application to the European Court of Human Rights*, 42 FORDHAM INT'L L.J. 765 (2019).
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[31] Ibid.
[32] Ibid.
[33] Ibid.
[34] AIATSIS (Australian institute of Aboriginal and Torres Strait Islander Studies). Available at < https://aiatsis.gov.au/>, viewed 15 May 2019.
[35] Brennan, Sean; Gunn, Brenda; Williams, George --- "Sovereignty' and its Relevance to Treaty-Making Between Indigenous Peoples and Australian Governments" [2004] SydLawRw 15; (2004) 26(3) Sydney Law Review 307.
[36] Ibid.
[37] Ibid.
[38] Commonwealth of Australia, <https://www.peo.gov.au/learning/fact-sheets/national-symbols.html>, viewed 15 may 2019.
[39] The Royal Household at Buckingham Palace, 'Australia', <https://www.royal.uk/australia>, viewed 15 May 2019.
[40] Parliament of Australia, Papers on Parliament No 48, January 2008, Anne Twomey, This paper was presented as a lecture in the Senate Occasional Lecture Series at Parliament House, Canberra on 28 September 2007,
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[42] John Pfeiffer Pty Limited v Rogerson [2000] HCA 36 21 June 2000 C14/1998, available at <http://eresources.hcourt.gov.au/downloadPdf/2000/HCA/36>, viewed at 15 May 2019.
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[44] Parliament of Australia, Papers on Parliament No 48, January 2008, Anne Twomey, This paper was presented as a lecture in the Senate Occasional Lecture Series at Parliament House, Canberra on 28 September 2007,
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[47] Brennan, Sean; Gunn, Brenda; Williams, George --- "Sovereignty' and its Relevance to Treaty-Making Between Indigenous Peoples and Australian Governments" [2004] SydLawRw 15; (2004) 26(3) Sydney Law Review 307.
[48] *Coe v Commonwealth* [1979] 24 ALR 118 (Coe No.1).
[49] Ibid.
[50] Ibid.
[51] John Howard, Reconciliation Documents (Media Release, 11 May 2000): <www.pm.gov.au/news/media_releases/2000/reconciliation1105.htm> (23 December 2003). Howard responded to the Council for Aboriginal Reconciliation's Australian Declaration Towards Reconciliation by saying there were several areas of disagreement which prevented the Government offering its full support for the document. 'For the information of the public' he attached a version of the document 'to which the government would have given its full support' as cited in Brennan, Sean; Gunn, Brenda; Williams, George --- "Sovereignty' and its Relevance to Treaty-Making Between Indigenous Peoples and Australian Governments" [2004] SydLawRw 15; (2004) 26(3) Sydney Law Review 307.
[52] John Laws, Interview with John Howard, Prime Minister of Australia (Sydney, 29 May 2000): <www.pm.gov.au/news/interviews/2000/laws2905.htm> (23 December 2003). David Yarrow pointed out to the authors that Prime Minister Howard's statement bears a striking similarity to an assertion made by former Canadian Prime Minister, Pierre Trudeau, at the time his newly elected government released its 1969 White Paper on Aboriginal policy: 'We will recognise treaty rights. We will recognise forms of contract which have been made with the Indian people by the Crown and we will try to bring justice in that area and this will mean that perhaps the treaties shouldn't go on forever. It's inconceivable, I think, that in a given society one section of the society have a treaty with the other section of society. We must all be equal under the laws and we must not sign treaties amongst ourselves': Peter Cumming & Neil Mickenberg (eds), Native Rights in Canada (2nd ed, 1972) at 331. As cited in as cited in Brennan, Sean; Gunn, Brenda; Williams, George --- "Sovereignty' and its Relevance to Treaty-Making Between Indigenous Peoples and Australian Governments" [2004] SydLawRw 15; (2004) 26(3) Sydney Law Review 307.
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[56] *Advancing the Treaty Process with Aboriginal Victorians Act 2018* (Vic), available at <http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/PubStatbook.nsf/f932b66241ecf1b7ca256e92000e23be/CDE74BAB9461DECDCA2582BF001C5721/$FILE/18-028aa%20authorised.pdf>, viewed 15 May 2019.
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[59] Ibid.
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