Applying Fourth World Diplomatic Knowledge and Implementing the UN Declaration on the Rights of Indigenous Peoples

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Abstract
Fourth World knowledge systems vary widely but in the contemporary international environment nations may be seen as engaging neighboring nations, states and international institutions with differing capacities. Understanding the different diplomatic capacities and levels of knowledge is critical to the process of implementing the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). Mechanisms for implementing the UNDRIP must be nation specific and state specific agreeable to both sides. Forty or more years after "indigenous rights" was sounded as a human rights goal, and indigenous nations are now obliged to take diplomatic initiatives employing their history of diplomatic experience.

Keywords: *indigenous rights, human rights, diplomacy, Fourth World, UN Declaration on the Rights of Indigenous Peoples, asymmetrical diplomacy*

At the conclusion of the United Nations High-level Plenary Meeting of the General Assembly named the World Conference on Indigenous Peoples (WCIP) on 22 September 2014, United Nations (UN) Members States adopted an action oriented Outcome Document (A/69/L.1). Without objection from the Assembly, the Outcome Document committed the UN Member States to "consult and cooperate in good faith with indigenous peoples through their own representative institutions … to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures" that may affect them. This was the culmination of more than forty years of diplomatic efforts by non-governmental organization (NGO) advocates of indigenous rights, leaders of Fourth World governments stressed by violent and political conflicts with UN member states, and academics interested in the evolution of international human rights law.

Former UN Working Group on Indigenous Populations Special Rapporteur and Chair Dr. Erica Irene Daes of Greece remarked in an interview after the UN adopted the UN Declaration on the Rights of Indigenous Peoples in 2007 how remarkable it is that the topic of "indigenous peoples rights" did not in 1968 exist in international discourse. And, she was essentially correct.

During the 20th century, the voice of Fourth World nations was indeed little if at all heard in international discourse. Apart from the Haudenosaunee in the 1920s speaking for themselves as they sought a seat in the League of Nations, Kurds demanding their own country, and Palestinians seeking their own state, Fourth World nations surrounded by states had no voice and no champion in international relations until the 21st century. Like refugees in their own lands Fourth World nations remained before this time a topic for academics studying "peasants" or "natives" and occasionally non-governmental organizations advocating native rights to states' governments that rolled over Fourth World communities in search of natural resource wealth.

Remarkably, few diplomats, scholars, or activists considered that much of international law before 1948 was based in the relations between Fourth World nations, empires, caliphates, and ancient states. They certainly did not take into account the influence of the "laws of nations" (not Vatell's tome) in the slow emergence of what is now called the modern state system. So-called new international law emerged after the formation of the UN and the United Nations Declaration on the Rights of Indigenous Peoples is based in that body of law. Fourth World nations practiced international relations for thousands of years before the present era. They have much on which they can base their diplomatic, political, and legal thinking as they work to present their voice in the international arena of the 21st century.

The Center for World Indigenous Studies estimates[1] there are between 5000 and 6000 Fourth World nations representing an aggregation of 1.3 billion people (18% of the world's 7.213 billion [2012]) on six continents. These nations range from about 450 people to more than 25 million people and they occupy territories where 80% of the world's last remaining bio-diversity is located. Nations represent the "seeds of humanity" and constitute the world's remaining cultural diversity. Between cultural diversity and bio-diversity the combined result is the world's bio-cultural diversity that sustains all life on the planet.

Experienced and Inexperienced Modern Nations in Diplomacy

The world's Fourth World nations are located in remote jungles, high in the mountains, on ice fields, in deserts and they are located in small towns, villages, medium sized cities and megacities such as Mexico City, Tokyo, Moscow, Legos, and Jakarta. The consequence is that some Fourth World nations have a great deal of experience dealing with more metropolitan societies and others rarely experience large social aggregations typical of states and cities. Given the variety of locational circumstances Fourth World nations may generally function as communitarian, federated, and mini-state societies.

Consider for example the Chứt people in Vietnam, the Jarawa people of the Andaman Islands with 330 people, and the Yanaigua of Bolivia with about 150 people as among communitarian peoples. The Noongar in southwestern Australia, Sami of Norway, Haudenosaunee in North America, and Otomi of central Mexico may be grouped as federated. And, the Naga of northeast India, Kurds bordering Syria, Turkey, Iraq and Iran, Tibet bordering the Peoples Republic of China, and the Euskadi and Catalans bordering Spain and France can be considered mini-states or largely autonomous nations. Some nations have populations greater than many Member UN states, while others have populations equal to small villages or even extended families.

Fourth World Diplomatic Engagement Levels

The variations between Fourth World nations are generally reflected in the extent and degree of international engagement. Some nations engage in essentially localized relationships—one level of international relations with other nations. Other nations engage in a second level of relations with local and more distant nations and states. Still other nations engage in political relations with nations, states, and external states—three levels of engagement. These three levels of political/cultural engagement have been clearly exhibited in the last forty years since the UN began expressing an interest in Fourth World peoples.

Each level of international engagement by Fourth World nations requires different capabilities, levels of organization, and experience. These levels of international engagement also determine the measure of influence nations experience in modern international relations.

Fourth World diplomacy at each of the three levels of international engagement is qualitatively and substantively different. At the *communitarian level*, the ability to deal with inter-national problems (social, economic, political, and cultural) involves a collection of known and understood standards of behavior. This is so since participants in this level of international relations evolved practices, rituals, and ceremonies that produced regularized outcomes acceptable to affected parties. Totem relationships as well as extended family relationships define and determine how diplomatic relations can be conducted. Knowledge about diplomacy is known and understood throughout each community so that there is no mystery concerning diplomatic outcomes. The topics of diplomacy may involve use of land or resources, family relations, property ownership, status, and cooperative efforts. These topics involve social and political decisions and perhaps more rarely may involve decisions about managing violence. Diplomacy is viewed as "personal affairs" that demonstrably affects the lives of community members. Externally inserted influences (remote nations, corporate entities such as cities and states) can corrupt any balance achieved between nations and cause semi-violent or fully violent confrontations between nations.

Fourth World nations are not, of course, all equal in their capacity to reach into the international arena to express their political will. Indeed, most nations located in remote regions of the world have only a very limited projection of their political existence beyond their core community(s). There are nations that conduct social, economic, and political relations only with their neighboring nations and accordingly practice what may be referred to as *communitarian diplomacy*. Family (totem and genetic), community, and extended family relations concerned with social practices, cultural exchanges, economic mutual benefit, and political security dominate the diplomatic sphere of communitarian relations. The language of diplomacy is filled with ceremony, song, story, social respect, symbolism, and demonstrations of strength and weakness in the form of confrontations, dance, dramatic speeches, and exchanges. If there are violent conflicts between these nations or communities such violence is focused and limited intending to achieve replacements for losses or substitutions for losses.

The involvement of Fourth World nations practicing communitarian diplomacy is least likely to engage the state-driven international system that currently dominates international discourse. Indeed, when the state-driven international system seeks representation from indigenous peoples it is least likely to engage nations at this level. As a consequence little or nothing is heard directly from communitarian Fourth World nations.

At the second or *institutional* level Fourth World nations may engage neighboring nations, but more frequently international relations requires engaging distant nations and corporate entities such as cities and states (federated and unitary). These nations practice a second level of diplomacy that uses a combination of communitarian practices with state-driven diplomatic practices. For these nations there is a constant process of "projection and review." There is more likely to be a single leader or a very small core of

leadership who engage their community with ritual, ceremony, dance, song, social respect, while engaging other nations with more truncated versions of these behaviors.

Customary practices become more specialized and limited dealing with outside political parties (nations and states). If a nation has developed experience dealing with more remote nations and states they find that their selected spokespersons may exercise more limited capabilities. Unless the outside parties are familiar with the "internal" practices of a Fourth World nation, then the nation adapts to the behaviors of the outside party. Adaptation becomes the usual response instead of the outside party adapting to the Fourth World nation's diplomatic practices. Such adaptation arises from the perceived differential of political power between the parties. If two nations engage each other and they have limited experience with such contact both sides adopt behaviors of respect emphasizing good health (individuals and communities), honesty and decency, and a willingness to exercise power (economic, physical, or political). There is a strong emphasis on sharing, expressions of respect, and demands for fairness and justice. If the Fourth World nation engaged in international relations is the weaker, then appeals for compassion, tolerance, and good-will are made with the expectation that the more powerful party will extend respect and beneficence in exchange. While these are similar to international engagement at the communitarian level, the ultimate goal is protection of the weaker nation from depredations by the more powerful nation. Diplomatic exchanges are based on a perception of unequal power when focused on the outside parties, and otherwise focused on equal power when focused internally.

The third level of diplomatic engagement may be referred to as the *conventional* level. Customary behaviors and practices of communitarian diplomacy and institutional diplomacy are mainly ritualized in the form of demonstrations of apparel and public rallies where singing and dancing may occur. The dominant diplomatic practice is reflective of the institutional practices of states and their multi-lateral organizations. Non-governmental organization representatives, academics, and occasionally Fourth World nation political leadership, mainly practice this form of diplomatic engagement. The conventional international environment largely determines the language of diplomacy. Practitioners of the third level of diplomacy rarely have the ability, capacity, or inclination to communicate with the respective communities that may be affected by or benefit from decisions resulting from diplomatic activity. The main emphasis is to employ conventional diplomatic norms to secure outcomes that may benefit a broad constituency.

The significance of these three levels is that at the communitarian level whole communities understand and experience the results of diplomatic activity. At the institutional level there is less understanding within a community concerning diplomatic activity, though trust is conveyed by the community to a core of individual leaders who then speak on behalf of the community. At the conventional diplomatic level, diplomacy is decidedly specialized and largely disconnected from the community on whose behalf practitioners present themselves as representative.

Individual communities do not and cannot actually see the benefits from conventional diplomacy whereas such communities may occasionally witness the benefits of institutional diplomacy. In all instances of communitarian diplomacy, individuals in the whole community will understand the

consequences of diplomatic activity.

The Challenge of Asymmetrical Nation and State Relations

Increasingly we see Fourth World peoples practicing institutional diplomacy extended into the broader international arena. This may be readily seen by reviewing how this plays out when Fourth World NGO activists, diplomats, and nations' government representatives from perhaps a dozen different locations in the world conducted an International Indigenous Peoples' Technical Workshop[2] over two days before the UN 20th Conference of Parties. Without identifying themselves or the peoples they represent, the outcome statement from the workshop begins: "We, the indigenous peoples from all over the world are in the frontline and pay the highest price of climate change." The purpose of the workshop was to determine the feasibility of including "indigenous proposals" in the climate treaty agenda.

Instead of convening sub-regional meetings and then regional meetings and finally an international workshop to consider proposals that would be discussed, the main process for determining such proposals involved just those persons who could travel to Peru on the dates of the workshop. Admittedly many of the proposals had been discussed for years by many of the people participating in the workshop at different venues, but actual awareness of these proposals and their meaning to Fourth World nations around the world must be understood to be nil.

How do peoples of the Fourth World understand in concrete terms the "Key Messages from Indigenous Peoples" (see below) issued by the workshop outcome document intended for states' governments?

i. Overarching human rights approach to all climate change interventions - with specific provision for recognition, respect and promotion of Indigenous Peoples' rights as provided in the UNDRIP, International Labor Organization (ILO) Convention No. 169 and other international human rights instruments.

ii. Recognition, respect and promotion of the traditional knowledge of Indigenous Peoples, including their cosmovisions, and its contribution to global efforts to mitigate and adapt to climate change, including community- based monitoring information systems.

iii. Full and effective (sic) participation of indigenous Peoples, including Free, Prior, and Informed Consent (FPIC) – in all climate change related structures of decision-making, UNFCCC subsidiary bodies, financing mechanisms, and capacity building and access to appropriate technologies. Space for IPs to exercise their own decision making processes–right to say NO; and/or to set their terms and conditions for partnership with other entities. FPIC is a substantive mechanism to ensure the respect of Indigenous Peoples' collective rights undertaken in good faith to ensure mutual respect & participation.

iv. Recognition & integration of collective rights to territory, autonomy, self-representation, exercise of customary law, non-discrimination, and customary Land Use principles.

v. Safeguards: Indigenous Peoples' historical marginalization and exploitation must not be compounded through unsafeguarded climate change intervention measures. Clear and robust safeguards,

building from the Cancun agreement, must be integrated in any future global climate change post-2015 agreement.

vi. Synergies and consistency in the provision regarding Indigenous Peoples' rights within and across relevant UN bodies/agencies, especially the human rights system and environment and climate change related agencies, i.e. CBD, UNFCCC.

vii. Indigenous Peoples' lifestyles are integral strategies for mitigation and adaptation to climate change.[3]

The first observation one can make about these "Key Messages" is that they are very general. This may be largely due to the asymmetrical power relationship between nations and states. But, to many communities and nations they may be quite obscure—making it difficult to understand how these ideas have benefits at the ground level. The conventional reply is that "in time, people will feel the consequences of these important ideas."

Here are a few problems the "Key Message" list encounters:

1. Human Rights

What is the meaning of human rights at the ground level? Are all or even some of the principles laid out in the UN Declaration on Human Rights applicable or even relevant in the context of the many different Fourth World cultures? Are the governing institutions of Fourth World nations obligated to implement human rights including women's rights, rights of the child, political rights, social, economic, and cultural rights? Given limitations of economic, human, and institutional resources that may characterize many Fourth World constitutional and customary governments, how are these nations expected to implement their side of the human rights process? The same question may be asked about more than half of the world's state governments that also have limited resources. Human rights as an approach to climate change intervention, is unenforceable for Fourth World nations' or states' governments. While all states' governments and many Fourth World nations' governments use the phrase "human rights" they use it to make radically different arguments about how countries (states or nations) should behave.[4] These top-down policies receive lip service from states' governments, as well as many Fourth World governments—giving strength to the notion that the idea is accepted "in principle," but that actual application varies widely.

Again, it is noteworthy that just as Fourth World nations vary widely in their cultural practices (social, economic, political), so too do states' ideologies. These cultural differences and ideological differences significantly influence behavior and responses to internationally established standards. Some observers make the observation that in the case of western states that heavily influence and even define the standards set out in instruments such as the Human Rights Declaration, their governments need not make significant adjustments in their behavior since they essentially extended their own constitutional laws into international instruments. The states that have not had their ideologies extended into international instruments are put at a disadvantage (Indonesia, India, Saudi Arabia, China, Pakistan, and Russia to mention a few). Is it any wonder that some of these states abstained from voting in favor of the Human Rights Declaration? Several of these states also abstained from the vote on the UN Declaration

on the Rights of Indigenous Peoples. If told that they must implement the UN Declaration on the Rights of Indigenous Peoples many Fourth World nations would also abstain to avoid disruption of their cultural practices.

The concept of human rights contains both political and social implications reflecting an earlier diplomatic time when communism and capitalism were seen as the ideological opposites. Language from both ideologies is built into the UN Declaration on Human Rights and in the UN Declaration on the Rights of Indigenous Peoples. No consideration was given to societies that were as small as 100 people, nor larger Fourth World Societies essentially occupied by newly created states (independence movements) after 1948. The question is, do all nations actually subscribe to the principles contained in the Human Rights Declaration? It is fashionable to advance the idea of human rights, but it is more difficult within the context of many different cultures to implement it.

The UN Permanent Forum on Indigenous Issues (UNPFII) seeks to develop an Optional Protocol to monitor implementation of the UN Declaration on the Rights of Indigenous Peoples, emphasizing implementation of the Declaration by focusing on land, territory, and resources. The premise is that the UN Declaration is a major human rights instrument and it should have an enforceable mechanism. In their study reviewing optional protocols and their utility for enforcing international instruments, UNPFII Chair Dalee Sambo Dorough and Forum member Megan Davis argue that there is "a need for the establishment of a mechanism to monitor both the content and the weight of the Declaration."[5] This top down approach has been tried with human rights instruments over the last sixty years without success. The key to implementation is active diplomatic initiatives by Fourth World nations discussed below and the recognition that optional protocols such as proposed here must be state-specific and nation-specific. Such specificity becomes possible if and only if both states' and nations' governments formally agree to an optional protocol, and the protocol provides a general outline for nation and state mechanisms for dialogue and negotiations. Without the paired agreement at the optional protocol level, neither the state or nation will freely move to a negotiating table to obtain the free, prior, and informed consent needed to determine land, territory, nor resource uses.

2. Respect Traditional Knowledge

Recognition, respect, and promotion of "traditional knowledge" have been repeated with redundant frequency. The problem is that there are, as we might suggest in the context of different diplomatic behaviors, many different knowledge systems that are expressed in different ways among Fourth World nations. When the authors of the workshop document wrote "Key Message Two" they were not considering the varied forms of knowledge practiced by many different nations. Indeed, there is no specificity about the knowledge that should be respected. How are states to show respect if they don't know what the specific knowledge system actually is? How will people in nations know that a state has shown respect? What exactly are they respecting? The cited instruments of international agreement are so general as to be essentially useless when applying the notion of respect and recognition. Each nation and each state will have its own approach.

3. Full and Effective Participation

"Full and effective participation of indigenous peoples," in all climate change related

(read any international body) decision-making raises enormous complications. Consider the different diplomatic levels discussed above. How exactly will 5000 – 6000 nations located in nearly as many different microclimates presumably engage in full and effective participation? This is, of course, impossible for a myriad of reasons—not the least of which is cost, capability, inclination, languages, or community awareness; and certainly since Fourth World nations occupy territories with one or more microclimates. There are literally hundreds of international decision-making bodies that could conceivably serve as venues. Who will be the personages engaging in full and effective participation and who/how will they represent indigenous peoples? The notion of free, prior, and informed consent has a greater likelihood of becoming operationalized since a question logically following this idea is: "What mechanism(s) will make this possible? Dina Gilio-Whitaker and Heidi Bruce and I discuss this very proposition in an essay appearing in Intercontinental Cry Magazine entitled: "Nations and States will be Tested."[6]

Emphasis was on the development of a *Protocol on Intergovernmental Mechanisms to Implement the UN Declaration on the Rights of Indigenous Peoples* (a draft of the instrument was included) to create a mechanism to establish bilateral mechanisms that are country-specific—allowing for variations for Fourth World governments and states' governments. Unless there is a deliberate and concrete mechanism for undertaking dialogue and negotiations it will be impossible to obtain free, prior, and informed consent under terms acceptable to Fourth World nations.

The remaining Key Messages involve institutional-level diplomacy where requests are made of states to behave and be nice to Fourth World peoples. Since there is really no evidence in the last one hundred years that states and empires are interested in making nice to recognize collective rights, non-discrimination, and the like, Fourth World nations will have to take another approach to diplomatically achieve what they cannot now secure from states. The most reasonable approach is for those nations capable of engaging states' at an equal diplomatic level to take the initiative and build the capacity to achieve political equality. Forming an intergovernmental or diplomatic commission between a state and nation may be the most appropriate mechanism. In practice, this would involve a relatively small fraction of the world's Fourth World nations, as those unable (or unwilling) to exercise institutional or conventional diplomatic capabilities would either accept the protection of other Fourth World nations or the protective control by a state. The realities of Fourth World nations throughout the world demonstrates the commonplace practice of extending protections of more powerful nations over weaker ones—or completely absorbing them. Historical mechanisms for negotiating such relationships between powerful and less powerful nations remain in place in many parts of the world. The Haudenosaunee, Cree in Canada, Naga in India, Maya in Southern Mexico, Kurds in Iraq/Syria, Diné in the United States of America, Pashto in Afghanistan/Pakistan and the Igbo in Southern Nigeria are among the many nations drawing on their diplomatic roots to engage in asymmetrical negotiations.

Nations are Now Obliged to Take Diplomatic Initiatives

Fourth World nations, non-governmental organization leaders, and academics must come to grips with emerging circumstances: They have the international community's limited attention. Now what will they do with

it?

It is critical to address the problem of communications from the ground-up, instead of the confusion caused by top-down pronouncements. Fourth World nations must begin to engage themselves and their neighbors to discuss what common political aims they may have in their future relations with a corporate state system that is rapidly enveloping them. Such discussions need to be in concrete terms—at the community level—so that members of each nation grasp the problems they face. This will require fruitful cross-communication that translates what is happening outside the nation to the people inside.

Human rights institutions (international and domestic) and NGOs also need to do a better job of communicating to Fourth World nations about the work they are conducting on their behalf, at the UN and other international meetings. There is a paucity of information shared with Fourth World nations and it is often only provided in English. Documentation is disseminated without substantive analysis, and efforts to reach out to constitutional or customary Fourth World nations are limited if existent at all. Much of the information that has been made available is technical in nature and without a clear analysis of why the ideas or information matter. Fourth World governments would benefit from information so they could convert the generated ideas to useful information at the community level.

Fourth World nations do not actually have a clear means to determine how or whether they represent all or a portion of the world's 1.3 billion indigenous peoples. Unless and until this is resolved, states' governments and multi-lateral organizations will simply claim the right to represent these people. How that is done from the ground up is a matter of urgent concern. If it is not resolved it will be possible for external diplomats to simply ignore Fourth World diplomats as frauds without constituencies.

New agreements and conventions between indigenous nations must be forged and enforced to establish Fourth World nations as actual parties in the international arena. Such agreements must emphasize political equality, no mater the size of the participating political entity. Population size, territorial size, or economic character must not determine whether agreements are negotiated. These agreements begin at the ground level and then build to sub-regional, regional, and global levels (if they are focused globally). Including all Fourth World nations in the dialogue and negotiations over time is essential.

Finally, Fourth World nations must begin to form mutually beneficial agreements with states (domestic) and states (international, [federal, and unitary]), but to do so each nation must define for itself what will constitute their political goals and an acceptable framework for engaging these states. It will be difficult and time consuming, but essential.

Endnotes

1. The Center reported the results of the Fourth World Mapping Project completed in 2005 and this figure is an updated estimate. While the United Nations describes the total figure of 370 million the Center believes this number is used since many states do not count Fourth World peoples as distinct from the main population of the state, e.g., Russian Federation, Peoples Republic of China, Nigeria, South Africa, Namibia, Saudi Arabia, etc.

2. International Indigenous Peoples' Technical Workshop With State on the United Nations Framework Convention on Climate Change (UNFCCC) Negotiations. Lima, Peru, November 26-28, 2014.

3. IBID, page 2-3.

4. In his insightful essay, "The Case Against Human Rights" (2014, The Guardian, http://www.theguardian.com/news/2014/dec/04/-sp-case-against-human-rights) Eric Posner of the Chicago University Law School makes this argument and further holds that the evidence is that "top down" international policy attempting to regulate government behavior (economic development and human rights policies for example) have utterly failed since adoption of the 1948 Human Rights Declaration.

5. Dorough, DS. and Davis, M (2014) "Study on an optional protocol to the United Nations Declaration on the Rights of Indigenous Peoples focusing on a voluntary mechanism." United Nations Economic and Social Council (E/C.19/2014/7).

6. The possibility of implementing provisions of the UN Declaration on the Rights of Indigenous Studies prompted this essay and the proposal for an international protocol to implement the Declaration preceded the UN World Conference on Indigenous Peoples in September 2014. https://intercontinentalcry.org/nations-states-will-tested/

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