BIODIVERSITY WARS

CHAPTER 2

A General Theory of International Relations

Human dependence on the Earth's life-supporting ecosystems requires sustained accessibility to plant-based and animal-based sources of food, medicines and materials for shelter as well as daily comforts. All of human survival depends on the sustained availability of biological and botanical diversity. The actions and choices taken by human beings, therefore, directly influence the enduring availability of the Earth's life support systems. While individual and community choices and activities most surely can alter the character and makeup of ecosystems the extent to which nations constructively engage each other; and whether states and nations carry on constructive relations has determined the sustainability of Earth's life support systems. The pursuit of sustenance, control over lands, wealth and power by nations and by states in just the last 300 years has profoundly diminished biodiversity throughout the world; and importantly the diversity of peoples. International relations have become increasingly unbalanced to the degree that states have come to dominate the international landscape reducing the world's nations to subordinate peoples though their role is essential to ensuring the sustainability of ecosystems in the face of unrestrained development and consumption practiced by the world's states.

> The Earth, in the end can do well without human beings, but human beings cannot do well without the Earth's life support systems.

Inspecting the nature of relations between nations and states in pursuit of mutual coexistence and comity is needed. For, one will see that without constructive and respectful political and diplomatic relations between the more than 5000 nations and the 206 states the risk of biological diversity collapse accelerates hazarding the collapse of all human societies. Relations between nations as with relations between states are defined by normally accepted practices and by mutually agreed rules. It is by virtue of this simple formulation that human societies have long engaged each other. But if there are two broadly defined systems of norms and rules of conduct that separate nations and states, the conditions are then created for perpetual conflict—and yes—wars.

Biodiversity Wars between nations and states are being carried out in the 21st century worldwide at the expense of diverse ecosystems and diverse cultures. Biodiversity and biocultural diversity are being destroyed. These wars can only be brought to an end if indigenous nations and the states formed on top of them can bridge the gap between their systems of legal and political norms. From the elimination of the wide gap nations and states must find mutual coexistence within a framework of comity—mutually respected law.

Recognizing this gap between nation-based and state-based legal systems calls on us to inspect the two systems in an effort to find a basis for coexistence. Establishing a balance between the two systems is essential to comity between nations and states and reversing the adverse effects of unrestrained development on biodiversity. The success of respectful relations between the

world's nations and states has and shall determine whether diverse life on the planet will continue. We will go through the process in this chapter examining how these systems have developed and where they may function in common.

Relations between nations have been defined by customary laws since long before the early formation of modern states in the 17th century. What we now refer to as "international law" and "international relations" reflects many of the evolved and accepted customary laws developed in pre-state nations and later adapted to the newly formed states—in the world mainly understood to exist before the middle 17th century. States introduced as strict hierarchical polities were formed out of "dukedoms" to end the Thirty-Years War[1] in Europe. They borrowed from the experiences of nations to structure their internal laws and ultimately the rules for conducting relations between the emerging states. States were thus formed as artificial constructs setting up fixed boundaries, internally defined universal laws, exercising a monopoly on the

[1] Europe's war between the Roman Catholic Austro-Spanish Habsburgs and the Protestant French Bourbons between 1618 and 1648 involving numerous nations engaged in combat over religion, dynastic control, territorial rights and commercial rivalries resulted in an estimate military and civilian deaths in the range of 4.5 million to 8 million. The deceased were killed less by military engagement than by disease and starvation. Numerous other conflicts in Europe were conducted coincident, before and after the Thirty-Years War. Battles between various competing forces struck at towns and principal-ities located throughout the Holy Roman Empire embracing territories and peoples from France to the west, the Swiss Confederation and the Republic of Venice to the South, the Ottoman Empire to the southeast and Poland to the north-east—virtually all of what we would now recognize as central Europe. The Holy Roman Empire consisted of about 1,800 tiny estates owned by families of Imperial Knights the Roman Church granted various attributes of sovereignty. Territories won and lost for example between the combatting forces included Alsace and Metz transferred to French control, Upper Palatinate to Bavaria, and the territories of Eastern Pomerania, Magdeburg Halberstadt, Cleves and Mark to Brandenburg. Meanwhile claims by combatant parties also engaged over religious adherents to extend influence of the Roman Catholics, Lutherans, Hussite minorities and Calvinists. The centrality of religions would determine the future existence of the Holy roman empire led by Ferdinand II who served as the king of Bohemia seeking to impose Roman Catholic absolutism through his. The Protestants objected to Ferdinand's overbearing insistence. Scholars credit the Treaty of Westphalia that brought the Thirty Years War to a close is credited for establishing the concept of state territorial sovereignty. In addition of territorial transfers to France, Sweden, Bavaria sovereignty the United Provinces of the Netherlands and the Swiss Con-federation rose to become independent republics.

use of violence, designating a single person as the "sovereign" and formalizing the requirement that "neighboring states" must recognize each state to legitimize their existence. Nation-based law—the rules by which nations operate, and state-based law—rules by which states operate came into existence with states slowly presuming dominance and subordinating nations usually applying their monopoly on force and asserting claims to land. This division has evolved into a long-term contest between nations and states directly bearing on the sustainability of natural environments and sustainability of nations. It is in this context that one begins to recognize one aspect of Biodiversity Wars—the gap between nation-based law pursuing "balance" between human beings and the natural environment and state-based law pursuing dominance of human beings over the natural world.

To be clear, basing the conduct of international relations on the internal customary laws of nations may also be understood as nation-based international law. Where states conduct international relations, they too base their actions and rules on internal laws that can be understood as state-based international law. One would think that since the "internal/external" legal processes appear to be the same that indigenous nations and internationally recognized states would conduct international relations in the same way. They do not. The differences in the conduct of international relations directly bear upon the sustainability of biodiversity and the continuity of indigenous nations. When either nations or states fail to respect natural life, all life is at risk. To better understand the nature of contentions between nations and states affecting biodiversity it is important to examine the two systems, where they

converge and where they depart. It is where these systems depart that contention defines biodiversity wars.

In the opening Chapter I established that the first subject of this volume is that indigenous nations must be understood to be "peoples," or different peoples around the world. "Peoples" is merely a different term of reference for "nations." They are not States and they are not minorities or ethnic minorities in states.

The divide between nations and states directly contributes to confrontations risking the lives of the peoples of each nation and the ecosystems on which they depend.

There are "nation-states" ruled by nations (i.e., Vanuatu, Timor-Leste, Croatia, Iceland) and nations engaged in self-rule within but not in control of a state. The state and the nation and the nation-state all play a dramatic political role determining the use and abuse of Earth's life support systems.

The subject of this volume is that the life support system on which all of humanity depends is sustained in part by international comity between nations and states and human respect for life that is comprised of all of the life-giving flora, fauna (including human beings), waters, rocks, and soils of the planet. These two subjects are joined out of necessity: Each is dependent on the other for the continuing existence of distinct peoples and diverse ecosystems. While it is true that the Earth can do without human beings, the reverse of that view must be well understood that human beings cannot survive without the natural life of the planet. The peoples

responsible and able to ensure the continuity of diverse ecological systems through the practice of cultures and rules are the peoples—indigenous peoples—whose cultures have adapted over thousands of years to the changes common throughout the natural world. Nations generally have rules embedded in their cultures imposing controls on human behavior toward the natural world and these concepts are expressed domestically and internationally. The ethos of states concerning biodiversity is expressed in international law as sustainability and development, but the rules so enshrined tend to be aspirational but without controls or enforcement. The divide between nations and states directly contributes to confrontations risking the lives of the peoples of each nation and humanity generally and the ecosystems on which they depend.

While 76% of the world's human population has become mainly dependent on consumerism and cultivated—commercially produced—foods and medicines applying the ethos of development, the other 24% (Fourth World [indigenous] peoples) has largely practiced cultures that draw foods and medicines from the natural fecundity of flora and fauna across the lands and in the rivers and seas through the application of the laws of their cultures. The ethos of development seeks by its own definition to dominate and extract short-term wealth from the natural world whereas the laws of indigenous cultures work to balance human needs against the capacity of the natural world to restore itself over the long term. As the adverse effects of human induced climate change envelopes human societies throughout the world it is evident that the ethos of development has reached its limits and can no

longer benefit growing human populations without causing their collective destruction. Economic and military encroachments into Fourth World territories launched by states and their sub-agents pressure increases daily on Fourth World peoples to "step aside or die" to make rich, undeveloped regions of the world available to the corporate states that persist in their demands for unrestrained development and conversion of natural life into commercial products.

Between ethos and culture

A dramatic confrontation between the ethos of development and the culture of balance has been playing out over the last twenty-five generations as a political and violent contest for access to and use of lands and resources in Fourth World territories between the two contenders: corporate states and Fourth World nations. Nations collapse when they set aside their cultural laws and pursue aggressive dominance of other nations and the natural world. In the experience of indigenous nations, states must come to recognize that they too risk collapse and disappearing from the planet from the same conduct.

Now we must discuss the political and legal framework within which Fourth World nations and their culture[2] based natural law and political practices exist. I place nation-based law alongside the corporate states and the state ethos of "positivist"[3] legal

[2] Culture—the dynamic and evolving relationship between a people and their relationship to the land and their cosmos. Relationships between people, the land and what is on the land and the cosmos essentially define and determine human interactions and have so influenced those interactions for tens of thousands of years.

and political practices. The differences are stark between the nations and the states accounting for the struggle between them over sustaining biodiversity or breaking down the diversity of the natural world. Within the political context nations and states engage in warm wars (political confrontations) and hot wars (violent confrontations resulting in deaths and displacement of populations). The states take actions in the form of colonization and the use of force to dominate, incorporate or eliminate Fourth World nations to gain unfettered access to land and raw materials. Nations and states occupy much of the same territorial space and the same political space where decisions are made. This is mainly due to the incomplete decolonization process where "non-self-governing peoples" were recognized by states' governments in the 1940s to have the right of self-government—to form and govern their own state, become associated with existing states as self-governing or to simply absorb into an existing state. Seven-hundred and fifty million people in what became 80 new states chose independence after 1945. Left unresolved was the status of 1.3 billion people in nations located inside the boundaries of 206 existing states not included in the decolonization process. It is in this context where the nation and state conflict over biodiversity and sustainability is being waged today. The international political and legal framework is the possible mechanism for mediating these confrontations.

[3] The notion that one can "posit" or simply assert or set out a concept or idea that forms the basis of a legal or political ar-gument. One invents in one's mind such concepts or ideas and when accepted by other reasoning individuals become the "rules of the road" on which others are expected to base their moral actions. Such rules, the guiding ideals, are the basis for ethos where members of a community are expected to follow as if in a "consensus trance."

State-based international law is the mechanism we are all used to dealing with since it dominates international discourse and sets the rules for conduct between states. Nation-based international law—not so well known in the public discourse—is also a mechanism that serves to mediate relations between indigenous nations, and to a limited degree the conduct of relations between nations and states. It is to the political framework and the legal framework we now turn to as we inspect the nature of state and nation conflicts that directly bear upon the biodiversity war.

Are Fourth World peoples ("indigenous peoples" is used interchangeably) "stewards" of the natural world? One could make that argument and thus romanticize the actual pragmatic relationship between Fourth World peoples and the natural world. Dependence on the natural world requires a practical commitment to sustain that world for personal nourishment and renewal. But the truth is that long evolved cultural practices aimed at balancing human need against the capacity of the Earth to reproduce life stands as a natural law that nations must realistically respect to ensure their sustained survival—sustain the diversity of the biological world and indigenous peoples themselves are sustained. Some nations do not follow this maxim, but rather aggressively act as predators on the land and other nations. It is thus that we come to understand that nations and states can act in ways contrary to the idea that they must limit their demands for resources or to consume natural life so as to ensure Earth's sustained and diverse natural life.

Many Nations as a complex of diversity

The diversity of indigenous cultures is nearly unfathomable. The more than 5000 distinct nations are spread across the planet reflecting the ingenious and successful adaptations human beings have made to the infinitely varied ecosystems that support life—a process that began millions of years ago but accelerated over the last 50,000 years or so. The cultural adjustments made to differing ecosystems by each successful community and its descendants as well as to varied climate conditions, and the changing flora and fauna stand as testimony to the power of culture and enduring flexibility of peoples. Cultural adaptation to natural change to achieve and regain balance accounts for the success of biodiversity and human beings as part of that diversity. Where nations fail to adapt to the natural environment, life becomes impossible.

The complexity of human cultures and the ecological systems in which they thrive is clearer when one considers that indigenous peoples inhabit deserts, rain forests, savannas, frozen tundra, tropical islands, icy valleys, mountains, and deep gorges among many different ecosystems. Indigenous nation inhabit some of the richest and most fertile lands in the world such as the region between the Tigris and Euphrates rivers in eastern Syria and Northern Iraq and the most arid regions including the Sahara Desert.

The very richness and diversity of life in the natural world is reflected in human diversity—cultural responses to the

environment as demonstrated in the practice of *kálhaculture*. It is such a wonder that human beings are like so many other animals and plants. That they are so different is even more remarkable when one considers how much indigenous peoples are the same—they tend most of the time to respect the natural environment and exploit it only to the extent that the earth can replenish. They all practice *kálhaculture*[4] to some degree. They depend on plant and animal-based foods and medicines obtained from the natural environment and they may also practice various forms of agriculture while balancing the relationship between human need and the earth's capacity to restore natural life. Despite the exploitive and encroachment practices of concentrated metropolitan societies, indigenous peoples rely on *kálhaculture* for 80%-90% of their nutrition to as little as 20%. The practice of *kálhaculture* is essential to sustaining biodiversity around the world. The failure to practice this method of harvesting from nature forces the collapse of human and other animal and plant species. *Kálhaculture* is a method of food and medicine harvesting and restoring that ensures biodiversity and bio-cultural diversity—a balance between the natural world and human demands—the root of which is "natural law."

[4] The word *Kálhaculture* is derived from two words. The first is an Oneida word for "forest or woods" and the second word is from the Latin meaning "worshiping Earth" or tending to the earth. I have introduced this word to help readers understand the concept of balanced use of nature that indigenous peoples carry out every day.

International relations—the Ancient Art

The common understanding for mediating the differences between the unrestrained development by states and their sub-entities (corporations, transnational religions, etc.) and Fourth World nations seeking to ensure the balance between human beings and the natural world falls to the ancient art of international relations. Understanding how nations relate to each other and how they relate to the various states is an important part of the story of Biodiversity Wars. As Chapter 3 that follows you will see added features of Biodiversity Wars in the conflict over self-determination and territorial control. Both of these factors figure prominently in international relations and the conduct of Biodiversity Wars. For it is when in-ternational relations—mutually accepted rules of conduct—break down that economic, political and military violence step to the fore. Here we will examine international relations in its various forms and the foundation for international relations: nation-based international law and state-based international law. The challenge is to find a bridge through international relations and the two legal systems to establish a meeting at the "forest's edge." This is the point where Fourth World nations and corporate states must meet to end the war.

International Relations in the Temporal Pause

Since the 17th century, the engagement of newly formed states and nations of long standing have remained in a "temporal pause." The temporal pause has been a time when the rules for conduct

in the international environment and in relation to the conduct of peoples and the earth's natural life has been out of balance—the radical shift from nation rules of conduct to state rules of conduct. At the beginning of the 21st century a shift toward a new balance may be underway where nation-based international law and state-based international law together move toward a balance that will ultimately equalize relations between nations and states. Such a balance may then permit effective dialogue and joint action by nations and states to roll back the adverse effects of climate change and importantly reestablish the balance between peoples and the natural environment to sustain biodiversity and biocultural diversity (human diversity).

While it had been true that nations long dominated international relations until the 17th century longstanding national practices for relations between peoples where interrupted with the advent of the formation of states. The Treaty of Westphalia (1648) mediated by the Roman Catholic Church in Europe established rigid definitions for states that would be applied throughout the world. From the time these few states were formed they were defined as having hierarchical political structures, fixed boundaries, the monopoly over the means and exercise of force (police or military violence internally or externally), and the requirement that to join the "club of states" through mutual recognition. In other words, it would be necessary for other states to recognize the new entity and the sovereignty of its leader for the state to have legitimacy. But this new regime had profound consequences for nations around the world as the state model ruled by central authority became the

standard for human organization and the means for establishing domination over nations and their territories. States proved to be ravenous consumers of raw materials in the spirit of the Roman Empire and other empires following. Colonization and unrestrained exploitation of people and nations' territories that the laws of nations had long observed were swept away, especially in the 18th and 19th centuries—and with profound consequences for all of humanity in the 20th century.

National laws were being replaced by state-based laws through imperial and state colonization. What had been a global environment dominated by nation-based law, was for a very short time equally balanced with emerging state-based law. As state-base laws became the dominant set of rules for the conduct of relations between states, nations were subordinated to the states—to the point of peoples becoming subordinate populations inside settler states.

I refer to the "temporal pause" as a 372-year period of struggle between nations and states that has produced severe damage to both nations and states; and certainly, for the natural environment. What began as local and extended religious wars between kingdoms and "dukedoms" in the 1618 "Holy Roman Empire" (made up mostly of what is now Germany) where the Roman Catholic Church was challenged by the Protestantism of Luther came to an end in 1648 with two treaties that would be known as the Treaty of Westphalia. The treaty that was arduously negotiated produced the structure of what we now know as the modern state system and a new framework for international relations.

The "Westphalian World" served reasonably well to stabilize relations between peoples around the world though the system began to breakdown in startling ways as new states were formed to exploit limited resources in the 20th century at the beginning of the 21st century. With the collapse of many states[5], the conduct of world wars and the advent of global breakdowns from climate change, excessive and unrestricted human development. What was once clearly understood and described as normal in everyday life is no longer certain or even real. The sense of permanence and stability engendered by such a condition is lost and replaced by a sense of anxiety and fear. It is just these conditions that indicate that the relations between nations and states are in a temporal pause. It is just in such times that great shifts take place in human history. Assumptions on which people, nations and states have acted in the past are no longer adequate, suitable or valid. The sense of "knowing what to do" escapes public officials, and the leaderless mobs' fear begins to rise. In international relations and practice, one readily sees a growing tension locally, regionally and globally.

In much the same way individuals and families relate to each other nations and states conduct themselves according to customary practices called norms and various rules called laws. There is nothing really mysterious about the process of human

[5] Ottoman Turkey, Japan, Pomerania, Silesia, Union of Soviet Socialist Republics, Yugoslavia, Czechoslovakia, and now the DR of the Congo, Libya, Yemen, South Sudan, Somalia, Syria, Chad, Central African Republic, Lebanon, Venezuela, Afghanistan. While the names of these states in some cases have been recovered and the state reformed, others have been absorbed and disappeared completely. Perhaps 30 of the world's states in Central Africa, West Asia, South America qualify as collapsed or dysfunctional.

interaction—it evolves as custom as a way of ordering society. Customary practices between nations and between states evolved from internal customs are intended to bring order to the conduct of relations between polities.

As we examine the conduct of nations and states in their international relations, we are confronted with manifest crises of biodiversity collapse, out of control-human caused climate change, the unrestrained destruction of indigenous peoples, and growing incidents of zoonotic disease resulting from unrestrained human exploitation of natural life reaching deeper and deeper into rainforests and other forests formerly left undisturbed by massive human interference. The human-created crises threaten human life the world over—all of human life.

We need to consider the urgency of opening direct and respectful dialogue where nations and states share authority on an equal political plain.

We need to pause to consider relations between nations and states and to consider new pathways for the conduct of nation and state relations to allow for dialogue and the establishment of new mechanisms to halt the destruction diverse ecosystems and cultures. But the conduct of constructive relations between nations and states based in comity is now virtually non-existent—though the United Nations has opened a crack in a door to constructive relations with tentative invitations to nations to sit in

meetings where human rights policies are being discussed. This circumstance requires us to inspect nation-based legal systems and state-based legal systems to identify the most likely alternatives for mutual dialogue and constructive action by nations and states. We need to consider the urgency of opening direct and respectful dialogue where nations and states share authority on an equal political plain. Such a condition is essential for mutual coexistence

Nation-based Law

Though the peoples of nations and their leaders have for centuries recognized the authority of their customary and natural laws applied domestically and internationally it has been only since 1990 that other international legal scholars, political practitioners in international law and diplomatic actors have begun to recognize the authority of indigenous peoples to govern themselves according to their own legal regimes and to apply their legal principles within the international realm. This activity was stimulated by the development of the UN Declaration on the Rights of Indigenous Peoples (1994, 2007), the International Labor Organization Convention 169 (1989) and the draft Declaration of American States on the Rights of Indigenous Peoples and the Outcome Document of the United Nations General Assembly High Level Session designated as the World Conference on Indigenous Peoples (2014). Instead of one state-based legal regime with domestic and international applications emerging understandings among scholars and practitioners alike is that the customary and common laws of indigenous nations do indeed have actualized applications in domestic environments as well as in the international arena.

Toban quotes Bederman as to the efficacy of customary law stating that customary law, "is no mere souvenir of bygone law; it is an integral and coherent part of any healthy functioning contemporary legal system."[6] Customary law of the world's peoples formed the basis for the worlds legal traditions whether rooted in Medieval Europe, Islamic, Igbo, Hindu, Mayan, Buddhist, or Confucian law extending back millennia.

Despite the ancient roots of nation-based domestic and international law, the systematic and formalized practice of state-based international law in the last 300 or so years has dominated and subordinated nation-based law. Thus state-based international law has dominated relations between states and with nations. The fact that state-based international legal frames for international relations are a fairly recent vocation arising in the 13th century with the emergence of the Roman Catholic Church as the dominant political reality in Europe helps to explain the emergence of centralized state authority in regions of the world colonized by European entities. European domination and unrestrained consumption by colonizing powers in most of the regions of the world has formed the predicate on which military, political and economic expansionism have served as the instruments of domination, control and wars against indigenous nations and the breakdown of diverse ecosystems.

[6] Toban, B.M. (2011) "Why Customary Law Matters: The Role of Customary Law in the Protection of Indigenous Peoples' Human Rights" citing, David J. Bederman, Custom as a Source of Law (Cambridge: Cambridge University Press, 2010), at 57

Treaties between nations constitute the most concrete demonstration of nation-based domestic law applied in an international context. Treaties, covenants and protocols have served as effective instruments for nations to settle disputes, arrange economic access to lands and waterways, predict events and formalize social, political and economic arrangements; and to establish acceptable norms for conduct between nations. The oldest text of Mayan speaking peoples (1021 and 1154 AD) in document form performs just these functions. In Europe the oldest documented agreement between nations (2100 BC) formalized a boundary between the Lagash and Umma in Mesopotamia between the Tigris and the Euphrates rivers in what is now northern Iraq and eastern Syria in West Asia. Creating alliances and formalizing the ends of conflicts typically served as the focus of nation-based international agreements. The Treaty of Hudaybiyyah (628 AD) sealed a nine-year peace between the Qurayshi Tribe (an Arabic tribe that historically controlled Mecca) and Islamic prophet Muhammad followed by the Quaresh at-tack on the Banu Huzaa tribe allied to Muhammad—thus breaking the agreement. This arrangement was followed with retributions by Muhammad and made way for what are recognized as the Islamic Pilgrimages to Mecca. The Peace Treaty between the Han Chinese and Tibet (763) followed the same pattern as nation-based international agreements such as those mentioned here.

How does nation-based law work?

Nation-based domestic and international law may take forms strikingly unfamiliar to those who practice state-based law. For

example, consider the story of Maudjee-kawiss, one of the original Anishinaabe ancestors whose primary responsibility was to walk the outside perimeter of his nation's territory. In the course of carrying out this duty Maudjee-kawiss observed neighboring nations—especially their customs, social practices, and the ways of practicing their laws. During his travel he encountered the Bear Nation that had long been a neighbor. Maudjee-kawiss observed that the Bear people were meeting in a great gathering and they were led by a speaker who draped over his left arm a sash that had different designs embedded by beads. He observed that the speaker must be very important for as he spoke, he pointed to different images embroidered on the sash. Entering the Bear territory Maudjee-kawiss approached and interrupted the speaker and asked if the speaker could explain this practice of speaking, pointing to symbols and holding the sash high for all to see. Maudjee-kawiss asked if he could hunt and gather berries in the Bear nation territory to feed himself and expressed a deep desire to learn from the Bear leaders. After sitting with the elders of the Bear Nation Maudjee-kawiss asked for what purpose the speaker used the sash during his speech. The Bear's principal spokesperson said, "historical records of the Bear Nation and that the symbols engraved on the sashes reminded the speakers of everything that was important to the people: ideas, beliefs, stories, rituals, codes, festivals, and the succession of events"

Seeing that the sash was of immense importance and value Maudjee-kawiss quickly grabbed the sash and began to run away. A Bear warrior ran quickly and knocked the stealer down and held

him up to the elders. The Bear speaker reclaimed the sash, but as the sash was reclaimed Maudjee-kawiss struck the warrior and killed him. The Bear people ran and caught up to where the warrior had been killed and immediately cried out for reprisal. Others called out instead for justice that would restore the balance where the Bear people had lost one person who should be replaced. As this was recounted by Bauerkemper and Kiiwetinepinesiik-Stark[7] the story of Maudjee-kawiss is described further as follows:

> Instead of killing the stranger, even though he had wronged the family of the warrior and deserved death, the eldest elder proposed that the family of the deceased adopt Maudjee-kawiss. With the reluctant consent of the slain warrior's family to adopt the Anishinaubae warrior, the elders and leaders officially invited Maudjee-kawiss to be their new war leader, their new champion, and a member of their nation". By bringing Maudjee-kawiss into the Bear Nation, instead of killing him, he would carry certain responsibilities both to the family he had wronged and to the Bear Nation as a whole. On receiving the invitation to become an Ogimaa (chief or leader) of the Bear Nation, Maudjee-kawiss recognized the great responsibility this new duty would entail. Maudjee-kawiss asked the elders of the Bear Nation for time to think about this diplomatic proposal. He assured the Bear Nation that he was not rejecting their invitation to

[7] Bauerkemper, J. and Kiiwetinepinesiik-Stark. (2012). "The Trans/National Terrain of Anishinaabe Law and Diplomacy." American Cultures and Global Contexts Center, University of California, Santa Barbara. Journal of Transnational Ameri-can Studies, 4(1).

> join their nation but that he wanted to discuss the impact this commitment would have for his own family and nation, as his acceptance would necessitate his prolonged absence. Maudjee-kawiss recognized that a newfound commitment to the Bear Nation would not sever his responsibilities and obligations to his own nation.[8]

The decision of the Bear Nation and that of Maudjee-kawiss was to reestablish the balance so that both the Bear Nation that had been offended and Maudjee-kawiss's nation would ensure diplomatic comity. Nation-based law had restored the balance.

The Law of Balance Interrupted

Pre-state international rulemaking began to alter global international law when the Treaty of Westphalia (1648) affirmed sovereignty of the state rulers and formalizing boundaries, domestic monopolies of internal exercise of force to end the 30 years' War and the 80 years' War in the Holy Roman Empire. While nation-based international treaties and the laws on which they were based continued to be negotiated outside of Europe, expanding European States into the 18th and 19th centuries extended the influence of the Europe's experiment with the formation of states claiming sovereignty to other parts of the world. Such states were often established on top of many nations without their consent.

[8] Basil Johnston, The Manitous: The Spiritual World of the Ojibway (St. Paul: Minnesota Historical Society Press, 2001), 21.

Notably, with the expansion of state influences around the world unrestrained development and consumption was also extended into non-European territories with the consequence of growing environmental damage to diverse ecosystems and diverse traditional cultures. The Biodiversity Wars had begun!

What had been the Medieval framework came into full practice by the 18th century (Thompson, 1994 pp. 55-57). Nation-based international relations, of course, had been earlier practiced in Europe by the Romans, the Greeks, the Catalans, Friesians, Saxons, the Flemish, the Celti peoples including the Brigantii, Consuanetae, Estiones, Leuni, Licates. These legal systems set out norms for international laws and agreements. Indeed economic, political and diplomatic relations between nations in Asia, Africa, the Americas and the islands in the Atlantic and Pacific robustly defined how the world was ordered. The Phoenicians, Israelites, Sumerians, Palestinians, Assyrians and the Persians were of course nations engaged in constructive and occasionally contentious relations with their neighbors too. In Asia, the Han of China, Mongols, Manchurians, Tibetans, Pathan, Japanese, Koreans, Hmong, Shan, and numerous other nations had engaged in the practice of international relations for thousands of years. In Africa, the Nubians, Egyptians, Maasai, Zulu, Gambians, Igbo, Zimbabweans, Ghanans, Amazighs (sometimes called Berbers--among the many hundreds of nations--engaged in complex relations between themselves and neighboring nations for millenniums before the 13th century as well. In other parts of the world unknown to the Europeans before the sixteenth century systematic relations between nations had become well developed

over several thousand years. In the Americas the Yucatec, Haida, Quileute, México, Hopi, Mapuché, Oneida, Wampanoag, Cree, Maya, Quechua and scores of other nations conducted economic, social, political and cultural relations with their neighbors and warred on their neighbors too.

Between the many hundreds of nations in Melanesia, and between island nations in the oceans vast distances were no obstacle to the conduct of international relations—or invasions by outside peoples seeking to gain control over new and different lands. The rules of conduct between nations have evolved as a consequence of contacts between nations for millennia, and, virtually all nations in the world share in experience and in responsibility for what we now understand as the art of international relations. Despite this global character of international practices in localities, regions and between regions, in the modern era scholars and practitioners of relations between nations have become wholly dependent on one very limited conception of international relations, and those ideas were born from the experience of nations' experiences with state formation in Europe and the body of thought evolved from the political philosophy of the Greeks and Romans into what became political science in the 19th century.

Nation-based international law, as with other systems of international law as suggested earlier has roots in domestic social-political law subsequently applied in relations between nations. Nation-based laws are most commonly unwritten and committed to memory by keepers of the law. The purpose of such laws is fundamentally intended to ensure social order, restraint on human

"absolute freedom" and the promotion of harmony. Nation-based law extends to interhuman relations as well as human relations mingled with the natural world.

As Obiwulu in his article "The Role of Law in Nigerian Democracy" asserts, what is understood to be "law" must necessarily "command what is good, forbid what is evil, permit what is indifferent and punish what is contrary."[9] And the Diné Law Keepers describe the purpose of "law" as ensuring "balance" in life and relations. Balance between human beings and nature is a central theme among the Naxi, Yunnan, Chain; Haruku in Indonesia [known as Sasi Law] with this theme repeating among the Cree in Canada; Oneida's and many other nations in Asia (including Central, South and West Asia), Europe and South America.

Let's take a brief look at how nations conceive of and practice their law within the domestic environment as well as the international environment recognizing that the laws of nations address not only human relations but relations between human beings and the natural world. It is this point that must be understood to explain the central to the struggle between nations and states in Biodiversity Wars.

Iwu: The Law of Igbo

In Igbo society Nwala serves as the fundamental Igbo world view that embodies beliefs, habits, laws, customs and tradition of reality. Igbo law (iwu) is aimed at maintaining spiritual and

[9] Obiwulu, A. (2007). The Role of Law in Nigerian Democracy. Journal of Nigeria Democracy and Global Democracy at 2007 World Philosophy Day. Awka: Nnamdi Azikiwe University.

social harmony. Legal rules are of two kinds: ordinary human laws and laws dealing with offenses against a supernatural power. The first are made by people and the second are laws "written in the hearts of the Igbo *ab vo*--natural law or customary law *omenala*. For Igbo natural law rules the lives of humans as well all other living creatures. Violations of natural laws carry serious penalties including death. The basic principles of *Nwala* are these:

In Igbo society the law-making process is called "iti iwu" (to make laws) and this process involves the whole of Igbo society through membership in one or more of various law-making agencies. The Umunna is one institution that involves every person born into a family or into extended families. Age groups constitute another institution for lawmaking that focuses on land acquisition and wars. These associations may apportion public duties, establish rules for the protection of public morality and assure companionship. Other parts of Igbo society that make laws include the women who are married (umuada), older women (Umuokpu), medicine men (Umudibia) who perform many roles in Igbo society including making laws that have religious implications. Highly respected men in every community (Ndi nze) deliberate and agree on laws to guide their society and then the Assembly (Oha) holds the power that sanctions laws or vetoes laws. Finally, the "guild of masquerades" or the holders of knowledge of the ancestors that is open only to male participants allow the ancestors to express themselves through the masquerades. Igbo law deals with communal rights, duties and actions.[10]

[10] Omeogu, B. (2012) "Igbo African Legal and Justice System: A Philosophical Analysis." Open Journal of Philosophy 2012. Vol.2, No.2. p. 119.

The keeper of the law is a person, the oldest living father of the community with the authority of the dead fathers who must judge compliance with the law maintaining the traditions of his predecessors. Unlike state-based law Igbo law is culture-based or nation-based allowing for different Igbo laws to apply to different communities. Igbo law in process is economical, present and devoid of complex interpretation. Among nations each has its own laws and customs, and variations may exist between different subgroups within a nation.

Diné Bi Beehaz'áanii Bitse Siléí--Declaration of the Foundation of Diné Law

Natural law of the Diné Nation (the Holy Earth-Surface-People) declares that all things of life are connected to one another and they interact together. Put another way, any disruption in the natural order will eventually result in irreparable damage to the environment and to the people themselves. The Diné law is spelled out in Diyin Dine'é Bitsąądęę Beenahaz'áanii--Diné Customary Law and in Diyin Bitsąądęę Beenahaz'áanii--Diné Traditional Law. These bodies of law inform and instruct understanding of Diné Natural Law and Diné Common Law.

Keeping the world in balance for future generations is essential for all life. Diné Natural law declares, among other relationships between the people and nature that "dominance" over nature is inconsistent with the Law as stated this way:

Mother Earth and Father Sky is part of us as the Diné and the Diné is part of Mother Earth and Father Sky; The Diné must treat

this sacred bond with love and respect without exerting dominance for we do not own our mother or father.

Followed by this:

> The rights and freedoms of the people to the use of the sacred elements of life as mentioned above and to the use of the land, natural resources, sacred sites and other living beings must be accomplished through the proper protocol of respect and offering and these practices must be protected and preserved for they are the foundation of our spiritual ceremonies and the Diné life way.

When a crime is committed against the Diné people or to nature the principle of "talking things out" Nalyeeh is applied in both civil and criminal cases. Nalyeeh or restitution instead of punishment is the accepted process for redress of injuries and wrongs.

K'iche' and other Mayan Speaking Peoples' Law

For the Mayan K'iche' the Four Cardinal Points depicted in the four directions metaphor govern the conception and destiny, and the left and the right of the person. This symbol reflects how it connects the world, life and time. The Cholq'ij (Tzolkin) establishes the relationship between human beings and all the elements surrounding, with visible things and invisible things ultimately pointing to a vision of building a harmonious society with deep respect and human freedom. "We all have a *nawal* that identifies us and connects us with nature, promotes harmony and an existential balance with all that surrounds us. In addition, it

allows for a greater respect and proper use of nature's resources to enable future existence," explains a K'iche' law holder.

The many different Mayan speaking societies practice a complex legal system that evolved over two thousand years before the invasion of the Spaniards in the 15th century (CE). The legal system sees the community leader (*halach uinic*) as the originator of needed laws and when the leader is not available the council of the community takes charge of making the law. Decentralized communities provide that the local heads of the community enforce the laws. All aspects of civil and criminal law are included in law making. The local community head acts as the judge to evaluate guilt and punishments for violations of the law. Murder, rape, incest, arson and acts that offend the Gods are punished with death. If acts that offend the Gods or result in the death or other adverse conduct is unintentional the offender is made to pay restitution to the injured family. Robberies are punished forcing the thief to return what was stolen and is made to serve the offended party. Laws in Mayan speaking nations allowed anyone convicted of a crime to receive forgiveness from the injured party. If in the case of murder, the murder is forgiven then restitution could be paid, and the life of the murderer could be spared.

Cree Natural Law

For the Cree Law Keepers "Cree law" or *nêhiyaw wiyasowêwina*. Cree Elders George Brertton, Fred Campiou, Isaac Chamakese and William Dreaver amplify natural law by giving it the word, "Wahkohtowin"… meaning "kinship," or "everything is related–living together in peace." More particularly the word

means, "a set of obligations which flows from one's role within his or her community." Knowledge of Cree Law comes from deliberations among elders, ceremonial practices and the telling of stories—oral descriptions of relationships. Ceremony, deliberations and stories are typically delivered in a circle of people—a physical demonstration of interconnectedness and relationships. The roles of different people are reflected in the positioning of the "four kinds of people" in the Circle. Four concentric circles may be formed with children in the center and Elders form the next circle. Women form the next circle out from the center and finally men form the circle on the outside. The Circle also performs a metaphoric demonstration of key values: land, home, community and family. This concept is fundamental to Cree Natural Law passed from generation to generation through speeches, song, prayer and storytelling. The essential ingredient in *nêhiyaw wiyasowêwina* is balance/harmony. Events, actions or thoughts that violate the balance and harmony cause the elders to exercise responsibility to determine measures that can include individuals being cast out of the community or given specific direction to perform restitution to restore the balance. Where outsiders commit conduct that violates the balance Cree Elders are obliged to called upon members of the community to shun or obstruct outsider connections to the community.

Examples of nation-based international law demonstrate the remarkable consistency of subjects and protocols. This is demonstrated in part by ratifications of the international agreement on the rights of Indian Nations. These include The Great Law of Peace (1142), More than twenty-five nations have ratified

the International Covenant on the Rights of Indigenous Nations (1992), the United League of Indigenous Nations (2007) and the Outcome Statement of the Alta Conference 2013. Expressions of domestic laws of nations can be found in fairly recent international instruments ratified by nations. I review the main points of several of these instruments here:

The Great Law of Peace – 1142 AD

The Great Law of Peace is a strong example of nation-based international law rooted in domestic customary law given by Dekanawida and Hiawatha about 1142 to establish comity between the Mohawk, Onondaga, Oneida, Cayuga and Seneca to form the Five Nations Confederacy. Indeed, the Great Law of Peace reflects customary law at the community level applied to relations between nations to provide for collective decision-making, maintenance of order and peace. The laws of governing order places the responsibility for maintaining order in the hands of men chosen by the Clan Mothers to serve the community and to make good decisions. If person so chosen by a Clan Mother to have failed in the obligations of service to the community a process is prescribed for removing the man and directing the removal of the person from the whole of the community. The person originally favored by a Clan Mother but now failing to be honest in all manners is “dead to the community.” The same would be true if a person is found to have committed murder. The guilty person will be removed and sent out of the community without any further connections to continue and the Clan Mothers are demoted and replaced.

Further laws customary to one nation are applied to all five nations of the confederacy as expressions of nation-based international law. The Great Law of Peace provides for methods of warning to all the member nations that an invasion from outside is impending and that all must become alert and defend. The Great Law of Peace acting as a treaty between the five nations prescribes 13 clan roles to be distributed between the five nations families. That the clans exercise specific responsibilities, and the female line is to carry the clan designations; and members of the same clan are forbidden to marry. The system of clans essentially established the order of responsibility spread between the nations. And the existence of a wampum belt vests in the people the power to correct the erring conduct of the leaders. The Great Law of Peace provided stability, order and basic law for all the nations.[11]

The Great Peace of 1701 nation-based law meets state-based law Sealed symbolically on paper and a two-row wampum belt, the Great Peace of 1701 known also by the French as *La Grande prix de Montréal* was concluded initially between the Governor of New France in Canada Chevalier de Callières representing the King of France and the Sachems of the Five Nations Confederacy (Seneca, Oneida, Onondaga, Cayuga and Mohawk). Shortly after 34 representatives of other nations joined the Treaty. Each Sachem

[11] The Great Peace of 1701 – between La Chavalier de Callieres, Governor of New France and 37 Sachems of the Kiskakons, Five Nations Confederacy, Hurons, Outawas, Miamis, Sacs, Poutouatamis, Outagamis, MASKOUTINS, SAUTEURS and PUANTS, Nepisings, Algonquins, Amikois, Abenakis, Sault, International Covenant on the Rights of Indigenous (1994).

signed using the symbol of the doodem[12] (clan) indicating the dominance of doodem identity over nation or family identity. Nindoodem identities extend to the original creation of nature and the peoples associating individual animal groups (turtle, bear, wolf, crane, etc.) with individuals then related by doodem instead of blood.

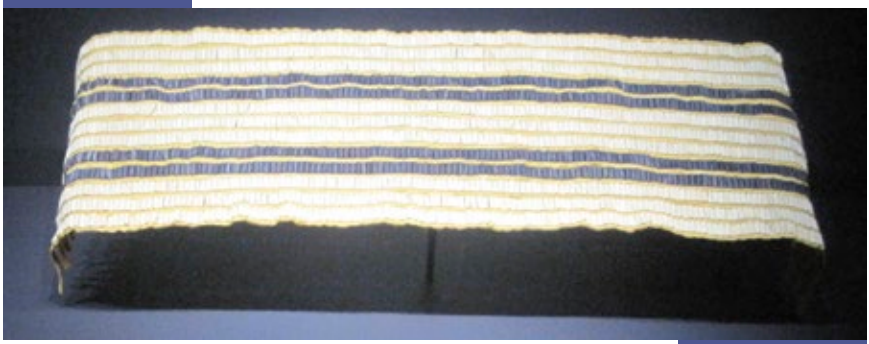

Figure 1Wampum Belt used in Negotiations

While the French used the written word to document the 1701 treaty the nations' representatives employed the wampum belt to document the terms of agreement and long speeches filled with metaphors to announce the meaning of the wampum belt.

[12] Anishenaabe peoples of the Great Lakes region of central-eastern North America inherited their personal identity and social obligations by way of the social institution of nindoodemag. One's oodoodem establishes one's identity and obligations to one another by virtue of shared identification with the first beings that created the Earth—bears, catfish, crane, beaver, plover, thunderbird or eagle, marten, sturgeon, and other fauna. Peoples of differing localities and different cultural practices may include individuals whose nindoodemag also identifies individuals across the continent—establishing a common identity outside the blood relations of a family. The inheritance of an identity from "other-than-human-progenitors" is a cultural practice reaching across continents and across oceans. See: Bohaker, H. (2007) "The Significance of Algonquian Kinship Networks in the Eastern Great Lakes Region, 1600-1701." The William and Mary Quarterly, Third Series, Vol. 63. No 1. (Jan. 2006), pp. 23-52.

Before 1599, when the first sixteen-person French settlement at Tadoussac was established on the Kaniatarowanenneh (St. Lawrence River), blood relations between doodem communities was fluid and there were no "mixed" people. It was impossible for anyone to be "mixed" since one obtained personal identity through inheriting a nindoodemag. Even when individuals were taken from one community and made part of another community as a result of "replacement raids," the nindoodemag ruled. Only with the introduction of the French and then the Dutch, English, and Spanish did the concept of "mixed people" come into being and then it was a concept born of European experience reliant solely on one's blood relations—utterly inconsistent with the social and cultural relations in the Americas. The corrosive effects of colonization by the Europeans caused many nindoodem-identified people generations later to identify by blood, not nindoodem.

The peoples of nindoodem or odoodemag (his/her or their) became subject to systematic socio-cultural and biological destruction by virtue of alien occupation of their territories, killing of their leaders, rape, and enslavement of men and women and engaging in procreation with native women. Members of virtually all of the peoples in and around the Kaniatarowanenneh and the Cree to the north and west fell victim to the insatiable French and English search for wealth and glory, their colonization, and ultimately the cultural and physical breakdown of peoples in whole or in part.

The period between the arrival of French settlements in 1608 and 1689 saw the French demands for natural resources—particularly

beaver pelts used in France to make hats—radically altering the cultural, economic, and strategic environment of this part of the world. The French demands to consume slowly obsessed nations in the Great Lakes area that transformed their societies from engaging the environment on a balanced basis into a hyper consumption basis to win trade items from the French and eventually the English. Nations that had hunted for their food and medicines became dependent on French and English "stores" that demanded beaver pelts in exchange for manufactured goods and commercially made foods.

Contention between the French, the British and the various nations over increasing demands for beaver pelts had become the Beaver Wars pitting the Europeans against each other and the nations against each other. Soon alliances between nations and French and British colonies transformed the region into a battle-theatre that pitted nations against the French and against the British. No better example for Biodiversity Wars can be provided than the escalating violence that reduced the nations—decimating some—and denuding the natural environment of beavers, related animals and plants as well.

After wars between the nations and the French reach a pitch all parties met to negotiate the 1701 treaty that included in form and content representations from the French reality and the nations' reality. In the words of the Treaty spoken by the Five Nations delegation offering three separate wampum belts—one for each speech,

When we came here last, we planted the tree of Peace; now we give it roots to reach the Far Nations, in order that it may be

strengthened; we add leaves also to it, so that good business may be transacted under its shade. Possibly the Far Nations will be able to cut some roots from this Great Tree, but we will not be responsible for that nor its consequences.

Chevalier de Callières replied offering eight separate belts for each speech:

> I make firm, like you, the Great Tree of Peace, which you have planted, with all its leaves, and you need not entertain any apprehension that any of the roots will be cut off by the Far Nations, my allies. Here are some of their Chiefs: The Rat, Kinonchè, 8ta8liboy, Kele8iskingie and others whom I invited early in the Spring; they assure me that the Peace I now conclude with you for all my allies, shall be punctually respected by them, which I shall cause all my Frenchmen, and Indian allies, domiciled among us also to do; some of their Chiefs are here from the Sault and the Mountain, and my Kereadout, Onnag8zny, Nètaminet and other of the principal Abenakis of Acadia, who have come expressly to execute my word.

International Covenant on the Rights of Indigenous Nations (1994)

Five nations convened in Geneve, Switzerland on the occasion of 1994 Session of the United Nations Working Group on Indigenous Populations and considered the shortcomings of the Working Group's Draft United Nations Declaration on the Rights

of Indigenous Peoples (UNDRIP) that was under review by the United Nations Commission on Human Rights. The developing consensus among representatives from the various nations was that while the UNDRIP draft was in many ways helpful and supportive of the rights of indigenous peoples, some principles and concepts were still missing. Accordingly, it was decided that some of the most useful parts of the UNDRIP could be combined with added terms of reference that reflect the political and legal perspectives of indigenous nations should be embedded in a new nation-based international law that would be the International Covenant on the Rights of Indigenous Nations to be ratified by indigenous nations themselves. The representatives of the Crimean Tatars, Nuba People of Sudan, Confederacy of Treaty Six Firs Nations, Opethesaht First Nation and West Papua Peoples Front/OPM took the important step to initial the new Covenant in July of 1994 to set in motion consideration by nations to ratify the new law. It was not until 2020 that eleven nations located in the states of Iran, Turkey, Syria, Iraq, Georgia, and Israel[13] took the initiative to ratify the Covenant and thus gave full meaning of the Covenant in international law. Other nations in Iraq, Canada, Iraq, Guatemala, Turkey and Nigeria are either acceding to the Covenant or have ratified to the treaty.

[13] Ratifications include: Ahwazi [Iran], Anatolian Ezidikhan [Turkey], Al Dulaim Tribal Confederation [Iraq, Syria], Bilad Al-sham Nation [Syria], Afrin Yezidi of Ezidikhan [Syria], Nation of Ezidikhan [Iraq], Mandaean Nation [Iraq], Zoroastri-an Nation [Iraq], Yarasan [Iraq], Palestinian Bedouins [Israel], Palestinians [Gaza].

Notable provisions in the Covenant giving legal meaning to principles generally stated in the UN Declaration on the Rights of Indigenous Peoples include the very first paragraphs on self-determination.

The Covenant notes in Part I §1 "Indigenous Nations are peoples" that links the inherent rights to freely determine their political future as a collective right and not simply an "individual right" as state-based international law asserts. The collective identity of nations is central to the Covenant placing them within the international framework of political bodies. In Part II §5, 6 the Covenant states that nations have the right to protection from ethnocide and cultural genocide—two classes of violence specifically concerning due to the colonial practices of empires and states and their long-term, adverse effects on the existence of nations. In Part VI §23 the Covenant states emphatically that the terms "lands, territories and place" include the "total environment of land space, soils, air, water, sky, sea, sea-ice, flora and fauna, and other resources" that Fourth World peoples historically used and on which they continue to depend to sustain life.

United League of Indigenous Nations, (2007)

This treaty was developed and proposed by the National Congress of American Indians' Special Committee on Indigenous Nation Relationships following meetings with the Assembly of First Nations, Canada, the Mataatua Assembly of Maori Tribes of Aotearoa, (New Zealand) and the Ngarrindjeri Nations of South

Australia. Provisions of the treaty explicitly turn to the principle of balance and the preeminence of nations' laws. Some of the notable provisions include:

1. Protecting our cultural properties …by affirming that our Indigenous laws are prior and paramount,

2. Protecting our Indigenous lands, air and waters from environmental destruction resulting from global warming through exercising our rights of political representation … before all national and international bodies.

3. Engaging in mutually beneficial trade and commerce between Indigenous nations and the economic enterprises owned "collectively" by the citizens of our Indigenous nations.

This treaty remains in force to the present day.

Confederation of Indigenous Nations of the Middle East Treaty 2020

Fifteen Fourth World nations in West Asia (Middle East) ratified the "Confederation of Indigenous Nations of the Middle East Treaty" after three years of negotiations. This is in many ways a quite remarkable accomplishment since states, militias and terror groups have dominated the political landscape of this region since the United States attacked the Iraqi government in a regime change war in 2003. In the midst of genocidal acts, bombing contests between Turkey, Kurdish forces, Iranian forces in Syria,

and Russian and US forces actively engaged as well, the nations of Shabaks, Zoroastrians, Mandaeans, Kawiliya, Ezidikhan[14], Bedouins of Palestine, the Awaz of Iran and Al Dulaimi Tribal Confederation (Iraqi, Syria) negotiated this economic and security pact. The preamble states that the Confederation shall: ***"safeguard the freedom, common heritage and culture of their peoples, founded on the principles of democracy and the rule of law. They seek to promote stability and well-being throughout the Middle East."*** The pact establishes economic, social and environmental cooperation between these governments representing a combined estimated total of 12.5 million people

State-Based International Law

The schools of realpolitik and universalism dominate the theory of international relations as "state-based" concepts. Both realpolitik and universalism have their roots in political events in seventeenth and eighteenth-century Europe without consideration of events elsewhere in the world between other peoples. Both emerge from the progressive intellectual tradition of Descartes that supposes the supremacy of reason and the supreme ability of humans to affect the outcome of events. Both suppose that the pragmatists of *realpolitiks* and humanists of universalism are poles apart, but the reality is that they are merely parts of the same mosaic that makes up a much broader theoretical construct for international relations.

[14] Including Yezidi diaspora in Armenia, Turkey, Georgia, Syria, Iraq, and Russia for a combined population of more than 1.1 million people)

State-based international relations as practiced from the middle of the 17th century in Europe is neither good nor bad. It is a product of European economic and colonial expansion beyond the tiny borders of Portugal, Spain, the Netherlands and eventually the English and the French wrapped in the cloak of Rome's Papal robes. The limitations of Euro-centric concepts of international relations emphasize discussion of international relations, its theory and application, within a broader conceptual context. It is through the inclusion of appropriate Euro-centric concepts and norms for international relations placed in a global context where Fourth World nations are a political reality on every continent that I describe a particular theory of international relations with new modalities and institutions for international collaboration and coexistence to prevent and mediate disputes between nations and between nations and states in the form of Fourth World Geopolitics. Fourth World Geopolitics is a study and practice of relations between nations and nations and states focused on the politics of land and culture that explains and predicts constructive or conflicting relations concerning access to and use of lands and resources. The contest between nations is not as evident, but the contest between nations and states is widely apparent and often threatening to the peaceful relations between peoples. Indeed, instituting the rule of law respecting human rights or the conduct of cold, warm and hot wars between nations and states over land and resources play a major role determining the political and economic stability of various regions in the world.

International Biodiversity Convention (1992)

With 196 members The Convention has three main goals: the

conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of benefits arising from genetic resources.

Article 8J: Article 8(j) states:

Each contracting Party shall, as far as possible and as appropriate:

Subject to national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge innovations and practices.

It is obvious that compliance with Article 8(j) wholly depends on states' government interpretation of "indigenous knowledge," and the features of traditional lifestyles. And, of special importance is the "equitable sharing of the benefits" clause that assumes the state has the inherent right to benefit from indigenous peoples' innovations and practices.

UN Declaration on the Rights of Indigenous Peoples (2007)

Though not a "binding law" the UN Declaration on the Rights of Indigenous Peoples adopted by the UN General Assembly in September 2007 presents a wide range of principles and proposed commitments for states' governments to recognize and apply the social, economic, political and cultural rights of indigenous

peoples. Drafted by the UN Working Group on Indigenous Populations with extensive contributions by representatives of indigenous nations as well as states beginning in 1986 the document was presented in 1994 for approval by the UN Council on Human Rights. As an instrument of international policy in its draft form the Declaration clearly reflected comprises that limited potential political injuries to states while granting international standing to a wide range of broadly stated and specific rights including the right of self-determination, the right of indigenous peoples to not become the subject of acts of genocide, to self-identify as polities, retain control and use over territories and life supporting resources. Such protections were described as "baseline" rights that remained open for broader expression.

The forty-five article Declaration seemed filled with potential until States in preparation for General Assembly approval added Article 46. Echoing the UN General Assembly's 1981 Resolution 36/103 that strictly prohibits a state or group of States from intervening or interfering in any form or for any reason whatsoever in the internal and external affairs of other States. What had been applied to "states" was introduced in a new Article 46 as a prohibition in the UN Declaration specifically aimed at a "people, group, or person." The new article effectively limited all political, economic, social and cultural rights that could be "construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States." Again, states-imposed protections for their claims to territory and sovereignty against any claims, for example, of self-determination or territorial

autonomy. The state would impose its values, political interest and interpretations to preserve its claims in territories as a functional obstruction to indigenous peoples seeking to advance their social, economic, political and cultural interests including to protect the diverse ecological systems on which they depend.

International Relations in Theory

Realpolitik

In the last decades of the 20th century, events began to occur involving the visible influence of Fourth World nations in the international theatre that now form the basis for a new general theory of international relations that includes aspects of realpolitik and universalist politics considered within the framework of Fourth World Geopolitics. Some of the ideas leading to the formulation of Fourth World Geopolitics comprise the substance of the following discussion.

The tensions between pragmatists who follow the Machiavellian model of *realpolitik* presume that politics and power are simply a function of a political equation. Morgenthau leads this school of thought with his "Six Principles of Political Realism" (Morgenthau, 1973 pp. 4-12) with this basic premise:

Realism, believing as it does in the objectivity of the laws of politics, must also believe in the possibility of developing a rational theory that reflects, however, imperfectly and onesidedly, these objective laws. It believes also, in the possibility of distinguishing in politics between truth and opinion—between

what is true objectively and rationally, supported by evidence and illuminated by reason, and what is only a subjective judgment, divorced from the facts as they are and in-formed by prejudice and wishful thinking (Morgenthau, 1973 p. 4).

In the world of realpolitik, the view is that reason, politics and power are all there is. The evidence, as Morgenthau would say, is borne out by history. Despite this view, some theorists contend that the power politics advocated by Morgenthau is responsible for wars. Vasquez argues:

The introduction of power politics drives out accommodative influences and leaders on both sides and increases the influence and power of hard-liners in each rival. (Vasquez, 1993 p. 212).

Politics of Universalism

Those who seek accommodation in international affairs advocate an alternative to realpolitik and advance the politics of universalism. This school supposes optimistically that there will be a great deal of progress domestically and internationally and that it is inevitable that a world government should be formed. As a result of studies concluded by Wallace the argument is made that the more international organizations there are—particularly intergovernmental organizations—the less likely there will be violent conflicts (Vasquez, 1993 p. 66). This view argues that the increased level of representation and participation by different interests in the international system, the greater likelihood issues of controversy will either be resolved or at least left in the political stage of disputes.

A theory of international relations widely accepted for the last one hundred years is that to "understand a phenomenon in international politics is in fact its comparison with others that appear at first sight to be comparable" (Dharamdasani, 1983 p. 72). If one concludes that there is an effective match as a result of comparisons, then one can predict future events. Of course, this idea grows out of a presumption that scientific proofs applicable in the physical and mathematical disciplines can be extended to humanities. Thompson views politics in general and international politics specifically with a less rigid conception:

Political theory is *progressivist*, whereas international politics has historically been a realm of recurrence and repetition. In international theory, 'conviction precedes the evidence' (Thompson, 1994 p.13).

- The making of laws must have a reasonable foundation, recognizably fair, honest and easily observable by the people.
- The law must serve the common good of the people and should not be made for selfish purposes of the law maker or in the interest of a limited number of people.
- The law must be made by those who have a commitment to care for the community for which the law is being made. (Obiwulu, 2007)

To postulate, consider or assume the construction of a law is to posit such a law as a function of thoughtful understanding

of the rules of conduct appropriately constructed for the order and stability of human community. Such laws are identified as "positive" laws. In the case of laws in international relations constructing an orderly and stable inter-state relationship this is "state-based international law." Such laws when considered and constructed for relations between states intend the orderly, stable and cooperative relations according to the rule of law. Positive laws when applied to states, therefore are "conceptual constructs" instituted for the purpose of defining how a state functions and maintains order and stability.

Positive laws are human-made laws that oblige or specify an action. It also describes the establishment of specific rights for an individual or group. Positive international law is the law of states that is made through express or tacit agreements made between states, such as the diplomatic immunity accorded ambassadors and international treaties. Positive law refers to a body of human constructed laws enacted by a political entity. It is opposed to natural law theory. Positive law encompasses all those laws that have been enacted by an instituted and recognized branch of government.

Nations, Nationalism and Statism

Political scientists distinguish between States and Nations and Nation-states though in popular discourse no distinction is offered. The words are not synonymous and to understand the role of nations "re-colonizing" nations we must consider the meanings of these terms.

A "Nation" is defined by a common culture, geographic location and a shared history existing as a result of a dynamic and evolving process of relationships between the land, the people and the cosmos. A "State" is defined as a geographically prescribed area of land with a centralized government that exercises absolute rule (monopoly of force and universal law) within boundaries recognized by other states. Statism is the concept of political and strategic dominance by a state in the international political space to the exclusion of nations or any other polity.

And what about the "Nation-State?"

Many states refer to themselves as a "state," "nation" or a "nation-state," but they qualify as either a constituted state or a nation-state. While modern states are constituted with or without the consent of all peoples or communities within claimed political boundaries they are formed as a result of coercive pressures established by a dominant governing clique. States created as a result of colonization are dominated by political and economic forces comprised of resettled peoples from other lands that dominate governing institutions, or they are nations formerly under the colonial dominance of a state or empire. As Zurbuchen asserts in the 2019 introduction to the anthology, *The Law of Nations and Natural Law 1625-1800*, unlike contemporary interpreters of international law, justifications for colonization and imperial expansion were not the central intention of modern law of nature and nations. Despite this lack of emphasis, state and imperial powers rationalized colonization of territories and peoples under natural law. This is in contrast to the mid-1600s "Peace of

Westphalia" that was intended to promote peaceful coexistence among created European states to promote "diplomacy, alliances, arbitration, guarantees" and the potential for intervention to ensure a balance of power.

The formation of new states constituted a process of constructing a framework for state political order. Several states that claim to be a "nation" include the United States (150 nationalities plus more than 574 Indian tribes) or Brazil with a similar configuration, or Russia with at least 158 nations in addition to Russians). A nation-state more accurately describes a nation or confederation of nations that rule a state. An example of such a nation is Iceland or Vanuatu. So, to be clear, there are states, nations and nation-states but they are not the same thing.

After 1945 more than 80 "dependent territories" remote from the colonizing powers (separated by blue water), became independent states or associated states.[15] Their combined population added up to an estimated 750 million people. Seventeen other dependent territories remain to the present under the control of "Administering Powers." The United Kingdom, France and the United States hold colonial control over peoples in Bermuda, Aquila, British Virgin Islands, Cayman Islands, Guam, New Caledonia, French Polynesia, and the Falkland Islands among other territories to the present day.

[15] Political Status options available for internationally recognized peoples are: Independent State, Free Associated State (a people under the "protection" of another state, and the third option is for a people to absorb into an existing state permitting the existing state to exercise full and lawful jurisdiction over the social, economic and political life of the population. (The Law of Nations and Natural Law 1625-1800. Edited by Simone Zurbuchen. Koninklijke Brill NV, Leiden, the Neth-erlands. ISBN 978-90-04038420-0. 2019)

The apparently idyllic picture of indigenous peoples' societies in all of their diversity is scarred and too often disrupted by realities. As a consequence of the decolonization by empires and United Nations member states, some indigenous and collections of nations became recognized states such as Papua New Guinea, Vanuatu, Kenya and Nigeria, while still others such as Burma, China and India emerged as a result of collapsing empires. Some of these new states were recolonized by the former colonial states through indirect controls and other new states fell under the domination of the most powerful nations given control by the former colonial power over the new states. In the case of China, for example, Mao Zedong a revolutionary of Han origin declared the emergence of the People's Republic of China under the control of the majority Han. A recolonization process by former colonizing states and by "chosen indigenous nations" immediately contributed to continuing exploitation of natural resources in the new states and the consequent increased damage to ecosystems and indigenous nations—the biodiversity war continued. Instead of promoting the balance of nature, some indigenous nations claimed dominance over other nations (i.e., Han in China, Barma in Burma, Kikuyu in Kenya, Oromo in Ethiopia) and seeking to exploit the natural world to enhance their wealth and power breaking down natural ecologic relationships and destroying members of living communities.

Former colonial powers recolonizing newly formed states through indirect economic, political and military means is transparently obvious in many African states, some Melanesian and Asian states. The state-controlling indigenous nations were

enabled by the external colonizers that continued their colonial influences over the new state economy, politics, legal framework and external relations. Recolonizing is usually associated with the "former colonizer" continuing to exercise powers and influence in the former colony, but the role of indigenous nations as "colonizers" enabled by the former colonizer has a firm grip on many states that achieved independence after World War II. The process of recolonizing by indigenous nation colonizers opens many indigenous nations to constant threats from confiscatory land grabbing, population removals, resource exploitation, genocidal crimes and economic exploitation damaging biological diversity and thus undermining life support systems. Empowered by control over the centralized state produced domineering nation-controlled governments subjugating other indigenous nations.

Clearly "recolonizers" can be as destructive to the diverse natural environment as "development-oriented states." The recolonization process compounds the adverse consequences of unrestrained development, enrichment and domination on biodiversity placing immense social, cultural and economic pressure on Fourth World nations that did not give their consent to be located inside the newly "decolonized states."

Examples of indigenous nations conducting themselves as colonizers of other indigenous nations include many so called "decolonized states" including the Hausa with an estimated population of 67 million people Nigeria, the Bamar in Burma, the Han in China, the Punjabis and Pashtuns in Pakistan, Kurds and 30 Arab tribes in Iraq, Kikuyu comprising 22% of the population

in Kenya, and Khmer in Cam-bodia. The Burmese with their large population dominating the Republic of Myanmar exercising military and economic power through the Tatmadaw (military agency) that became a separate institution with virtually no oversight or coordination between civil and military agencies; the five largest tribes in Kenya[16] commanding control over the central government and controlling land and resources at the expense of smaller tribes demonstrate how some nations use centralized state power to the disadvantage of other nations. The Han with 1.2 billion people dominates and controls the PR of China and have colonized 55 other indigenous nations.[17] The Dinka have sought to impose their rule over the Nuba, Nuer, Bari, and the Azande in Southern Sudan.

Recolonization is a dynamic following decolonization where the former external colonizing power continues to exercise political, economic and strategic controls through favored nations selected to become the rulers of the new "decolonized state." The Burman along with other nations[18] are distinct people that fell under British colonial rule in 1824 and remained under rule administered by Scottish officials until 1948. Burmese territory

[16] Kikuyu (6,622,576), the Luhya (5,338,666), the Kalenjin (4,967,328), the Luo (4,044,440) and the Kamba (3,893,157)

[17] The colonized peoples include: Zhuang (16.9 million), Hui (10.5 million), Manchu (10.3 million), Uyghur (10 million), Miao (9.4 million), Yi (8.7 million), Tujia (8.3 million), Tibetan (6.2 million), Mongol (5.9 million), Dong (2.8 million), Buyei (2.8 million), Yao (2.7 million), Bai (1.9 million), Korean (1.8 million), Hani (1.6 million), Li (1.4 million), Kazakh (1.4 million) and Dai (1.2 million) plus the Chuanqing, a Han-Miao population of 640,000 people descendent from an eighth century intervention into Guizhou Province in southwest China to suppress a Miao rebellion. Other diaspora populations under Han control include the Kazakh and Korean peoples.

[18] Including the Karen Nation, Shan, Chin, Kachin, Kayin, Rohingya and Mon among others.

had served as a transport route for Indian traders passing from China to India resulting in strong Indian cultural influences (i.e., Buddhism, cuisine and dress). But more than 100 smaller associated communities also located in the area including the Shan, Kachin, Rohingya, Mon, and Karen that now suffer under Burman dominance exacted by the Tatmadaw.

Such exploitation too frequently results in the dislocation or destruction of Fourth World peoples' societies and the breakdown of natural ecosystem diversity. Extreme exploitation by some indigenous nations and states (and their demands for land and natural resources) met with indigenous peoples' resistance sets up politi-cal and often violent confrontations that can only be characterized as "wars." This is especially true when the state, defined by the requirement[19] to monopolize force, is the party engaged in promoting exploitation. And while destroying natural diversity, they press deeply into indigenous peoples' territories. When indigenous nations also act to monopolize force and engage in unrestrained exploitation, the challenge to ensure ecological balance and human diversity becomes equally demanding. Such conduct forces competition between the corporate societies[20] of states and indigenous nations, and even between indigenous nations create demands for new mechanisms for facilitating the

[19] I emphasize the "state requirements" since monopolizing force is one of the five requirements for a state to exist according to the original agreement in the 1648 Treaty of Westphalia. Absent the ability to monopolize force, a state is considered in the process of breakdown.

[20] I use this expression "corporate society" to distinguish concentrated state populations organized as hierarchies. Indigenous societies tend to organize as egalitarian structures even when they create social structures (governments, for example) that are hierarchical that tend to interface more easily with the corporate societies.

restoration of comity and mutually affirmed commitments to ensure biodiversity and the diversity of indigenous cultures.

At the root of political and violent conflicts between indigenous nations and between indigenous nations and states is access to land, exploitation of resources, food and medicines to sustain life. Nations located inside existing states occupy much of the same territory and political space as territory and political space claimed by the state, thus, creating the potential for contention and competition. As we consider how the interactions of nations and states affect the diversity of ecosystems and human cultures, we must look at the differences and similarities between nation-based law and state-based law that influence the constrained or aggressive conduct of nations and states that can result in the breakdown of biodiverse environments and collapse of culturally diverse communities and stability of states. Accordingly, we have begun to consider "natural law" that forms the basis of nation-based laws that long predate the 18th century publication of the Law of Nations by Emmerich de Vattel—a text that forms the basis of state-based laws. We turn first to indigenous narratives and classical literature to discuss nation-based law and then we turn to the more recent narratives and literature to discuss state-based law. Ultimately, we want to understand how these systems of law drive the conduct of nations and states in the midst of biodiversity wars.