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Rights and Sovereignty of Indigenous Peoples: Implications for Foreign Policy

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The predominant forms of foreign policy discussed these days are underpinned by an assumption of Crown sovereignty in Aotearoa New Zealand. However, the first diplomatic relations and foreign policy in this country were conducted by hapū and iwi Māori.¹ Prior to the 1800s, Māori had a long history of interaction in the Pacific and with other nations. Such interactions were governed by specific legal and political practices and institutions. A number of the concepts upon which these practices and institutions were based included whakapapa (genealogy), utu (balance), mana (respect) and koha (reciprocity).²

When discussing Māori participation in foreign policy therefore (and what level of participation there should be) it is hard not to return to the issue of sovereignty and how power is shared between Māori and the Crown as per Te Tiriti o Waitangi 1840.³ Foreign policy is unavoidably about how ‘we’ deal with ‘them’. Hence definitions of ‘we’ and ‘them’ are vitally important. In Aotearoa New Zealand, the Crown has assumed the right to define the ‘we’. It has also assumed the right to define by whom and on what terms others are dealt with. In short the Crown assumes total and indivisible control over foreign policy. Māori are only involved/consulted as a token measure, and often only those Māori groups the Crown perceives as non-threatening.

In this chapter I will argue that the levels and forms of Māori participation in Crown foreign policy, formulation and implementation, are inadequate. Why? Because the current framework is based on flawed Crown assumptions about Te Tiriti o Waitangi, tino rangatiratanga (self-determination) and Indigenous rights, and the Crown is resistant to acknowledging its own limitations. I suggest that there should be far greater levels and different forms of Māori participation as per the rights reaffirmed for hapū in Te Tiriti o Waitangi, ongoing tino rangatiratanga,

and the nature of evolving Indigenous rights under international law. In the final part of the chapter I explore how there could be greater levels of participation. In the short term – as a very temporary and interim measure and as a first step towards participation in foreign policy – I suggest the powers of the Waitangi Tribunal could be fully utilized and extended. In the long term, the issue is really one about Crown recognition of tino rangatiratanga, and that requires constitutional change. One model to consider could be the Tikanga House model utilized by the Anglican Church in Aotearoa New Zealand.

Levels of Māori participation in Crown foreign policy currently inadequate

The predominant manner in which Māori are currently involved with government-based foreign policy is determined by Crown agencies. Such foreign policy is based on a number of assumptions, most significantly that Māori ceded sovereignty in Te Tiriti, that the Crown in the course of governing has the sole right to formulate foreign policy, and that while there are many interest groups in a liberal democracy, some with views and opinions regarding foreign policy, Māori are simply one interest group among many.

Government agencies involved with particular treaties or other foreign policy matters determine ‘whether there is a need for engagement’ (MFAT, 2008) with Māori. If it is determined by the agency that Māori involvement is required, then they further determine the nature and extent that engagement should take, tempered by considerations of the ‘most efficient use of resources’ (ibid.). ‘Engagement’ can then range from ‘raising awareness’ to ‘consultation’. In developing the government’s position on international treaties the Ministry of Foreign Affairs and Trade (MFAT) indicates that ‘other interested parties as well as Māori will need to continue to be engaged with and have their interests considered’ (ibid.). Māori participation rests therefore on the assumption that they are simply one interest group among many, rather than as parties to Te Tiriti with tino rangatiratanga, who therefore must be dealt with as sovereign nations.

The case of the China–New Zealand Free Trade Agreement provides a useful illustration where Māori interests are deemed to be narrowly ‘cultural’ and the manner in which consultation took place was selective and minimal. These practices are reminiscent of Crown conduct in previous trade agreements and Closer Economic Partnerships (for further analysis on these agreements see Bargh, 2007a).

In MFAT's 'National Interest Analysis' of the China–New Zealand Free Trade Agreement, reference to Māori interests falls under the 'cultural effects' section (MFAT, n.d., p. 61). Cultural interests are then argued to be protected under the exceptions to the Agreement (as per Article XX of GATT 1994 and Article XIV of GATS) which cover 'measures necessary for the protection of public morals and those imposed for the protection of national treasures of artistic, historic or archaeological value' (ibid., p. 61). This compartmentalizing of Māori interests does not adequately reflect the full extent of potential Māori concerns with an agreement of this nature.

Somewhat incongruously, those Māori groups that MFAT consulted regarding the agreement were not those with 'cultural interests' but rather, as MFAT states, those with 'trade and economic interests, including Federation of Māori Authorities and Māori exporters including Ngai Tahu Seafoods' (ibid., p. 70). Wakatu Incorporation and Tohu Wines are also listed as having been consulted (ibid., p. 70). No detail has been provided of their views and it is unclear whether they supported or opposed the Agreement. Their concerns may have centred on intellectual and cultural property rights given the difficulties some Māori companies have had with breaches of copyright and the theft of Māori designs. Also counted by MFAT as part of the consultation programme is the publication and distribution of an International Treaties List which they argue was 'distributed to iwi, and provided contact details for feedback from iwi' (ibid., p. 69). It is unclear which iwi are being referred to or how providing iwi a list of treaties falls within the definition of consultation.

The agreement contains a clause about the Treaty of Waitangi which states that

nothing in this Agreement shall preclude the adoption by New Zealand of measures it deems necessary to accord more favourable treatment to Māori in respect of matters covered by this Agreement including in fulfilment of its obligations under the Treaty of Waitangi.

(MFAT, 2010)

While inclusion of such a clause may represent some movement forward in terms of having Māori interests at least acknowledged in such an agreement it is still far from adequate inclusion of Māori and Māori interests in the formulation of foreign policy.

The second case which demonstrates limitations of the current framework has been the lack of Crown engagement with Māori over

formulating a position on the Declaration on the Rights of Indigenous Peoples (UNDRIP) 2007. Through the years of the Draft text's negotiation, Māori requested on numerous occasions for consultation to be held, particularly as the New Zealand government's stance on the Draft continued to clash with the position of Māori (Charters, 2007). Māori were instrumental in the drafting of the UNDRIP and were fully supportive of having the right of Indigenous peoples to self-determination recognized. The Crown, on the other hand, often stated during the drafting of the Declaration that it did not support such a position (Whare, 2010a). Over 2005–7 the Aotearoa Indigenous Rights Trust, a Māori organization that has been closely following the Declaration's passage through the United Nations, made several formal requests to have input, and for consultation between Māori and the Crown, but was rebuffed or ignored by the Minister and Ministry of Foreign Affairs and Trade (see Aotearoa Indigenous Rights Trust, 2008a; for letters and petitions to MFAT requesting them to engage with Māori, see Aotearoa Indigenous Rights Trust, 2008b).

The Crown currently has very clear obligations and responsibilities relating to consultation domestically and internationally. Domestically, first and foremost the Crown has obligations and responsibilities stemming from Te Tiriti which clearly have not been met. This has been evident in a number of cases and Waitangi Tribunal Reports have subsequently outlined minimum standards which should be met to be consistent with Te Tiriti. These include engaging with Māori prior to any decisions being made, being open to change the proposed policy or plan, and conducting consultation in good faith (see, e.g., Waitangi Tribunal, 2007). Internationally the Crown also has clear commitments, for example under the Convention on the Elimination of Racial Discrimination (CERD) as well as the UNDRIP (which I will return to shortly) regarding upholding free, prior and informed consent.

The issue of free, prior and informed consent illuminates some of the shortcomings of the Crown's current approach to engaging with Māori. Peace Movement Aotearoa coordinator Edwina Hughes (2008) argues that

[o]ne of the explicit obligations in General Recommendation XXIII [CERD] is that states are to ensure that no decisions directly relating to the rights and interests of Indigenous peoples are to be taken without their informed consent – a right that is generally referred to these days as the right to 'free, prior and informed consent'. Free, prior and informed consent is an obligation which has four elements – 'free',

that is, without coercion or any other form of pressure being brought to bear; 'prior' meaning in advance of any decision; 'informed' meaning that sufficient information is available to make a decision; and 'consent', which is generally understood to mean agreement ... Free, prior and informed consent can be regarded as an absolute minimum requirement for states in their dealings with indigenous peoples, but it is a standard that the New Zealand government has yet to meet.

The issue of Māori free, prior and informed consent has also been raised at the United Nations Expert Mechanism on Indigenous Rights in Geneva. An intervention by Tracey Castro Whare (2010a) of the Aotearoa Indigenous Rights Trust noted that

[i]t is important not to confuse consultation with free, prior and informed consent. In Aotearoa/New Zealand consultation is the way by which government officials communicate with Māori. This has varying forms of success and failure and the terms of consultation are often dictated by the government with little scope for Māori to define how consultation should be undertaken. In comparison, the principle of free, prior and informed consent clearly implies a robust and transparent process with the end result being consent ... It must be accepted that one of the outcomes of implementing the principle of free, prior and informed consent is that indigenous peoples may reject or decline a proposal from a third party.

Levels of participation should be greater and in different forms

As per Te Tiriti

Over the years it has been well established that Te Tiriti created clear obligations for the Crown including a fiduciary duty (Durie, 2005). Determining that extent of Māori interests and how they might best be protected cannot be left to the Crown, who have a history of breaching Te Tiriti, but rather must be determined by Māori.

Te Tiriti reaffirmed the tino rangatiratanga that hapū and iwi held at the time of signing in 1840. This tino rangatiratanga has never been ceded. Tino rangatiratanga is limited by the kāwanatanga (governance) of the Crown – but so too is kāwanatanga limited by tino rangatiratanga (Chen, 2006). The extent of these limitations continues to be disputed by iwi and the Crown. The results of the Waitangi Tribunal claim WAI262 may give some indication of a way forward. The Waitangi

Tribunal is completing its report but claimants in that case argued that the Crown has breached tino rangatiratanga since 1840 including by signing international agreements such as the General Agreement on Tariffs and Trade (see Solomon, 2007). WAI262 claimants argue that 'the Treaty imposes an obligation upon the Crown to put in place mechanisms to ensure it can meet its obligations to Māori under the Treaty prior to entering into any international agreement' (Waitangi Tribunal, n.d., p. 7).

Ongoing iwi tino rangatiratanga

A second reason for the need for greater levels and different forms of Māori participation results from ongoing tino rangatiratanga expressed in iwi involvement in diplomatic relations with other Indigenous nations.

Iwi have long been engaged in diplomatic relations with others, mainly other Indigenous nations (Petrie, 2006). Most recently Ngāti Awa and the Mataatua Assembly have assisted in the formation of the United League of Indigenous Nations to foster relations, including trade, among Indigenous nations in the US, Canada, Australia and Aotearoa. This alliance may be extended in the future (see United League of Indigenous Nations, 2007).

The finalization of the Treaty of the United League of Indigenous Nations in August 2007 between representatives of at least eleven Indigenous nations, aims to foster greater self-determination for Indigenous peoples through direct political, economic and social links among indigenous nations (ibid.). The iwi of Ngāti Awa is one of the signatories to this Treaty and has had representatives involved in its negotiation and other iwi may follow. The Treaty creates the mechanisms by which a United League of Indigenous Nations can be established that all Indigenous nations can be invited to join. Although still in the early stages of development, the League presents an alternative forum for Indigenous peoples to link directly with each other without being encumbered by the presence of colonial state representatives.

There are numerous other examples over the years of iwi diplomatic relations. In the 1800s a number of Māori rangatira (leaders) visited other countries including in Europe and the Pacific (Petrie, 2006). In more recent years diplomatic relations would include the Kingitanga (King Movement) links with other Pacific royalty, and as one example of international Indigenous treaty making, the Mataatua Declaration on Cultural and Intellectual Property Rights of Indigenous Peoples 1993 (for further exploration of Indigenous-Indigenous links, see

Bargh, 2007b). The Mataatua Declaration was signed in Whakatane with over 150 delegates from a range of Indigenous peoples present declaring a number of Indigenous peoples' rights (including the right to self-determination, rights relating to cultural and intellectual property and traditional knowledge) and setting out recommendations for Indigenous peoples, states and international agencies.

Evolving Indigenous rights under international law

The third issue which suggests the need for a reconsideration of current arrangements is the clarifying of Indigenous rights under international law. The UNDRIP was finally adopted in September 2007 and 'recognizes the rights of indigenous people on a wide range of issues and provides a universal framework for the international community and States' (UNDG, 2008, p. 10). Despite the New Zealand government being one of only four countries in the world to vote *against* the adoption of the UNDRIP by the UN General Assembly, the UNDRIP sets out what are now the internationally accepted minimum standards relating to Indigenous rights and a framework for dialogue between Indigenous peoples and States. Since its adoption, the New Zealand government has now supported the UNDRIP as has the Australian government (Sharples, 2010). This leaves Canada and the United States as the only two countries who have failed to support it. A number of nations and UN agencies are moving towards incorporating the norms and standards that the UNDRIP establishes. The UN Development Group has formulated Guidelines to assist those within the UN system to integrate 'indigenous peoples' issues in processes for operational activities and programmes at the country level' (UNDG, 2008, p. 3).

Perhaps the most significant right, which the UNDRIP reaffirms, is the right of Indigenous peoples to self-determination: 'By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development' (UN, 2007, Article 3).⁴ In light of Indigenous peoples' right to self-determination, one of the important frameworks that the UNDRIP establishes to enable dialogue between Indigenous peoples and States, and which could be instructive for assisting the expansion of Māori participation in foreign policy, is respect for free, prior and informed consent.

How?

The third issue therefore is how to create greater levels and different forms of participation.

In the short term

In the short term and only as an interim measure and only to enable participation in foreign policy, one avenue may be to fully utilize and extend the powers of the Waitangi Tribunal.

As is well documented, the Waitangi Tribunal was established by the 1975 Treaty of Waitangi Act as 'a permanent Commission of Inquiry charged with making recommendations on claims brought by Māori relating to actions or omissions of the Crown, which breach the promises made in the Treaty of Waitangi' (Waitangi Tribunal, 2008a). It also includes the power of

inquiring into and making recommendations upon any claim properly submitted to the Tribunal, examining and reporting on any proposed legislation referred to the Tribunal by the House of Representatives or a Minister of the Crown, and making recommendations or determinations in respect of certain Crown forest land, railways land, State-owned enterprise land, and land transferred to educational institutions.

(Ibid.)

There is a mechanism here therefore, which already exists and which could be utilized and that could ensure that new breaches of Te Tiriti are not committed by the Crown. However, it is problematic. It is difficult to imagine the government voluntarily referring legislation to the Tribunal to inquire into and make possibly negative recommendations about. Despite the likely flaws in this process, including the now common occurrence of the Crown blatantly dismissing and ignoring Tribunal recommendations, most significantly perhaps in recent years in the foreshore and seabed case, it is the only kind of process and mechanism of this nature currently available within the New Zealand political apparatus (Waitangi Tribunal, 2008b).⁵

A plan to utilize the Tribunal resonates with the 2006 *UN Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples*, where Special Rapporteur Rodolfo Stavenhagen (2006, p. 20) recommended that:

The Waitangi Tribunal should be granted legally binding and enforceable powers to adjudicate Treaty matters with the force of law ... The Waitangi Tribunal should be allocated more resources to enable it to carry out its work more efficiently and complete its inquiries within a foreseeable time frame.

Extending the powers of the Tribunal could directly impact on Māori participation in foreign policy formulation. If legislation relating to international agreements that the government was entering into, such as free trade agreements, was referred to the Tribunal to assess its compatibility with the Treaty there would be space for Māori to make submissions and participate in a process that, while not completely independent, is at least a step beyond the purview of the government. In addition, hearings could be held on marae (meeting houses) thus being influenced further by Māori worldviews.

In *The Treaty of Waitangi in New Zealand's Law and Constitution*, Matthew Palmer (2008) presents a similar kind of idea, but one which reduces the role of the Tribunal in its current form and creates a Treaty of Waitangi Court. Palmer argues there is a great deal of uncertainty around the Treaty, particularly regarding who is responsible for clarifying issues relating to the Treaty. He argues that the Treaty could be stabilized in law by being clear whose job it is to determine what the Treaty means in times of dispute and in specific contexts. Palmer canvases a range of options and proposes the creation of a Treaty of Waitangi Court which would assess whether the actions of the Crown and Māori are consistent with the Treaty. Palmer's plan for a Treaty of Waitangi Court could be an extension, or subsequent development of the short-term measure for the Tribunal proposed above.

In the long term

In the long term the issue is really one about a change in the Crown's basic assumptions and actions requiring Crown recognition of tino rangatiratanga and constitutional change. The quest for constitutional change, including parallel political systems, has been investigated by hapū and iwi since the imposition by the Crown of their version the Treaty of Waitangi and accompanying political arrangements. There is a long history of ongoing Māori political activities beyond the Crown–iwi binary (Bargh, 2007b), and the Māori parliaments of the 1800s would be one example (Bargh, 2010).

Constitutional change has been identified as important for Aotearoa New Zealand by Special Rapporteur Stavenhagen (2006, p. 20) who commented on constitutional change in his 2006 report, stating that

[b]uilding upon continuing debates concerning constitutional issues, a convention should be convened to design a constitutional reform in order to clearly regulate the relationship between the Government

and the Māori people on the basis of the Treaty of Waitangi and the internationally recognized right of all peoples to self-determination.

Stavenhagen (*ibid.*) suggested that

[t]he Treaty of Waitangi should be entrenched constitutionally in a form that respects the pluralism of New Zealand society, creating positive recognition and meaningful provision for Māori as a distinct people, possessing an alternative system of knowledge, philosophy and law.

The benefits of entrenching the Māori seats or Te Tiriti continue to be debated by Māori;⁶ however, Stavenhagen's suggestions complement many Māori suggestions for constitutional change. The Prime Minister at that time, Helen Clark, dismissed Stavenhagen's comment's as 'unbalanced' (TVNZ, 2006) giving an indication of the difficulty Māori have had in gaining even minor traction on issues of Indigenous rights with successive New Zealand governments.

In 2010, after his visit to Aotearoa New Zealand, the new Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, James Anaya (2010b), stated that

[t]he principles enshrined in the Treaty of Waitangi and related internationally protected human rights must be provided with constitutional security. From what I have observed, the Treaty's principles appear to be vulnerable to political discretion, resulting in their perpetual insecurity and instability.

Anaya (2010a) has also stated that it is not enough for states to express support for the UNDRIP:

States should engage in comprehensive reviews of their existing legislation and administrative programs to identify where they may be incompatible with the Declaration. On the basis of such review, necessary legal and programmatic reforms should be developed and implemented, in consultation with indigenous peoples. Similarly, States should be committed to devoting significant human and financial resources to the measure required to implement the Declaration. These resources will typically be required for the demarcation and protection of indigenous lands, the development of culturally appropriate educational programs, support for indigenous self-governance institutions, and the many other measures contemplated by the Declaration.

If the New Zealand government followed such advice it is likely that Māori participation in government, including foreign policy, would be markedly altered through constitutional change.

The implementation of the UNDRIP may have a significant impact of reconfiguring Aotearoa New Zealand's constitutional arrangements and subsequently foreign policy formulation. Article 38 of the UNDRIP 'encourages States, in consultation and cooperation with indigenous peoples, to take appropriate measures, including legislative measures, to achieve the ends of the Declaration' (Whare, 2010b). Passing legislation which acknowledged the rights of Māori would assist in drawing Māori into more of a partnership role with the Crown. Such moves are not likely, however, in the current political environment where political expediency dominates.

One of the ways in which implementation of the UNDRIP may well be encouraged at the international level is with assistance from the newly established Expert Mechanism on the Rights of Indigenous Peoples (EMRIP). The EMRIP was created by the Human Rights Council to continue the work of the Working Group on Indigenous Populations, which was abolished with restructuring within the United Nations and the replacement of the UN Commission on Human Rights with the Human Rights Council (Global Caucus of Indigenous Peoples, 2007). The EMRIP has a specific mandate to provide thematic expertise on the rights of Indigenous peoples. The thematic advice is to be requested by the Council and 'will focus mainly on studies and research-based advice. Besides, the Expert Mechanism may also suggest proposals to the Council for its consideration and approval, within the scope of its work as set out by the Council' (OHCHR, 2010). Five experts are appointed to conduct the work for three-year terms and are assisted by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, and members of the Permanent Forum on Indigenous Issues.

In the July 2010 meeting the EMRIP adopted ten proposals. One of these was that:

[t]he HRC authorize the EMRIP to on an annual basis review the developments pertaining to the promotion and protection of the rights of Indigenous peoples pursuant to the UNDRIP and to give the HRC thematic advice on possible steps to take to achieve the ends of the UNDRIP.

(Whare, 2010b)

If the Expert Mechanism was able to review the developments pertaining to the UNDRIP then Māori and other Indigenous peoples would once

again have a forum where they could voice concerns about government actions and seek amelioration, as occurred previously at the Working Group on Indigenous Populations. Such a forum, where governments can be 'named and shamed' for any actions contrary to the UNDRIP would be helpful in encouraging behaviour consistent with the UNDRIP, including implementation. The New Zealand government representatives at the UN continue to maintain that it will implement the UNDRIP 'within the current legal and constitutional framework of New Zealand' (UNHRC, 2010, p. 1). Given the kinds of actions, such as in the case of the foreshore and seabed issue, contrary to the UNDRIP that the Crown has pursued 'under the current legal and constitutional framework', it is unlikely therefore to result in any change.

One of the models for constitutional change that has been proposed by Māori on a number of occasions for use in a national context, and which requires a much more detailed analysis, is one currently used by the New Zealand Anglican Church and elaborated upon by Whatarangi Winiata (see Winiata, 2005, 2007). The New Zealand Anglican Church considered the 'Tikanga House model' for many years before its adoption as part of the Church Constitution in 1992. For the Church the model establishes 13 different dioceses, which are essentially for three different electorates: Māori, Pākehā (New Zealand European and other non-Māori) and Pasefika-Polynesia. Different church officials and bishops operate in these 13 different areas. The Māori and Pākehā areas geographically map upon one another in much the same way that the Māori and general electorates do in New Zealand national elections. The Pasefika-Polynesia diocese encompasses Fiji, Tonga, Samoa and the Cook Islands (Anglican Church of New Zealand, 2007). Bishops from each of the Tikanga Houses meet and make decisions with representatives from their diocese (or Hui Amorangi for Te Pihopatanga o Aotearoa) at their own synods utilizing and maintaining their own tikanga. Decisions from each synod of the Tikanga Houses are then discussed and debated at a General Synod/Te Hinota Whanui (Winiata, 2005).

The Tikanga House model presents a potential alternative and one which might be possible, with further analysis of its feasibility, to propose for the New Zealand parliament. The current structure of the electoral system already provides for separate representation from broadly Māori and non-Māori electorates (although many Māori are also enrolled on the general roll and Pasefika communities do not have their own electorate). From a practical view the establishment of meetings involving only the MPs from Māori electorates who would then report their decisions to the rest of parliament/the 'Pākehā' House is not unimaginable, as a first

step. Winiata argues that the current activities of the Māori Party are indeed already those of a Tikanga Māori House within parliament. In 2007 he argued that

[t]he Caucus of the Tikanga Māori House meets on Tuesday mornings when Parliament is in session. In attendance are our four Members of Parliament, three senior staff members and the President; the Caucus is convened by the Whip. In the last twelve months during three periods in which Parliament was in recess, our four members have carried out coordinated visits to the three Māori electorates not held by the Māori Party as well as spending time in their own rohe.

(Winiata, 2007)

Winiata argued further that with an increased share of the party vote (to the Māori Party), and therefore a greater number of seats in parliament the Tikanga Māori House could more adequately reconcile the kāwanatanga of the Crown and tino rangatiratanga of iwi Māori (ibid.).

While a Tikanga House may present some improvement on the status quo, such a model in many respects continues to accept an overriding Crown sovereignty within which a lesser form of tino rangatiratanga must operate. Hapū and iwi continue to be hindered by these presently inadequate constitutional arrangements. Hapū and iwi must continually struggle to maintain their positions of tino rangatiratanga and to explain their position and political realities both to the Crown and other New Zealanders (Bargh, 2006). And this includes struggling to have some participation in foreign policy formation.

Conclusion

Moana Jackson has recently argued that Aotearoa requires the de-constitutionalizing of current power structures to envisage a Māori constitutional system (Jackson, 2008). There is no reason why de-constitutionalizing New Zealand's current arrangements could not suit the needs and human rights of all peoples within Aotearoa. In this chapter I am not suggesting Māori need simply to be 'added in' to the formulation of foreign policy but rather that, in the case of Aotearoa New Zealand, much more fundamental changes need to take place. The basis for this fundamental change must begin with hapū and iwi but may also incorporate many of the minimum rights for Indigenous peoples now clarified under international law and in the UNDRIP.

Notes

1. Hapū (subtribes), iwi (tribes).
2. For further explanation of these concepts see Durie (1995).
3. I am referring here to the Māori version of The Treaty of Waitangi in which, unlike the English version, Māori did not cede sovereignty but rather reaffirmed their own tino rangatiratanga (self-determination) and provided for governing for the British; see Mutu (2010).
4. This article is based on Article One, International Covenant on Civil and Political Rights and the International Convention on Economic, Social and Cultural Rights.
5. The foreshore and seabed case, or the *Ngāti Apa* case ended in the Court of Appeal in 2003 with that Court stating Māori had the right to take claims regarding the foreshore and seabed to the Māori Land Court to determine if customary title continued to exist in those areas. The Crown announced that they had always assumed ownership and therefore legislated to make that a reality. For the Waitangi Tribunal's Report see Waitangi Tribunal (2008b).
6. Māori can select whether to be on the Māori electoral role or the general electoral roll. The Māori electorate seats are those which represent Māori on the Māori electoral roll. There are currently seven.

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