



**STATUS OF THE UNITED NATIONS
DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES:**

How Tribes can Ensure their Human Rights are Recognized and Protected

by the
INDIAN LAW RESOURCE CENTER

This update provides a summary of the status of the United Nations Declaration on the Rights of Indigenous Peoples. This update also provides an outline of possible actions that Indian and Alaska Native nations could consider to increase their participation in the work of protecting indigenous peoples' human rights at the United Nations and the Organization of American States. This update avoids making any judgments about various positions and activities, but rather focuses on providing general, neutral, accurate information so that Indian and Alaska Native nations can make their own judgments.

Current Status of the Declaration

- In June 2006, the UN Human Rights Council adopted by majority vote the UN Declaration on the Rights of Indigenous Peoples. The Declaration was easily adopted, despite opposition announced by the United States, Canada, Russia, Australia and New Zealand. (It is important to note that the United States, Australia and New Zealand are not members of the UN Human Rights Council and therefore could not vote on the adoption. Both Canada and the Russian Federation voted against adopting the Declaration). With adoption by the Human Rights Council, the Declaration was forwarded to the UN General Assembly (which is comprised of 192 countries).
- The majority of the provisions in the Declaration as adopted by the UN Human Rights Council were a result of consultations and negotiations in which indigenous representatives were actively involved.
- In the General Assembly, the African group of states became concerned that the Declaration as adopted by the Human Rights Council had not been actually discussed or debated by states. In addition, they expressed concern about the right of self-determination and the lack of a definition of "indigenous peoples." Because of these concerns, these states sponsored a resolution directing that: 1) action on the Declaration be deferred in order to have time for further consultations about the

Declaration; and 2) consideration of the Declaration be concluded by the end of the current 61st session of the General Assembly. This resolution was adopted, which means that a vote on the Declaration was postponed until the end of the current GA session, in September 2007.

- In early June 2007, the UN General Assembly President appointed the Permanent Representative of Philippines to the United Nations, Hilario Davide, as “Facilitator” and directed him to conduct further consultations on the Declaration. This directive gave Davide discretion to conduct these consultations in any manner he deemed appropriate.
- There was a Mexico proposal to adopt the Declaration without any substantial changes (meaning the Declaration as adopted by the UN Human Rights Council).
- The African states issued a proposal of 34 amendments to the current Declaration. Some of these amendments would seriously alter or weaken the rights set forth in the current text of the Declaration.
- The latest report is that the General Assembly will consider and vote on the draft Declaration on the Rights of Indigenous Peoples on September 13th in New York. This could change. A number of the member countries, including Mexico and the African group, have recently negotiated some changes to the Declaration. The changes do not substantially change any of the rights recognized in the Declaration, except for a change in Article 30, giving states greater latitude to conduct military activities in indigenous territories when “justified by a relevant public interest.” No one knows if there is a majority in favor at this time, but we think there is a good chance of adoption.
- If the vote in the General Assembly is in favor of adoption, that is the final step. We will then begin to work on getting the Declaration implemented and made effective in this country and in other countries.
- If, however, the vote is negative, then we must begin a process of renewed discussions and negotiations to reach some text that can be adopted. The Declaration will not die, even if the coming vote does not result in a majority for adoption; it will just mean continued work. And indigenous government representatives must be involved in this process.

United States Position on the Declaration

As mentioned above, the United States, along with a few other member states, openly opposed adoption of the Declaration by the Human Rights Council based on the following issues.

- Self-determination. The United States maintains that the provisions in the Declaration regarding self-determination go too far. According to the US, self-determination should be limited to “internal self-determination”, that is “self-government” within a country.
- Lands, Resources & Redress. The United States claims that language in the Declaration relating to lands and resources is too broad and may require recognition of indigenous rights to lands without regard to other legal rights to the land. As well, the US opposes the current “free, prior, informed consent” language regarding development on indigenous lands, because the US believes it implies a veto power over democratic legislative processes.
- Collective Rights. The United States disagrees that collective rights – rights held by indigenous peoples as a group – are human rights. Instead, the US maintains that “human rights” are held by individuals and cannot be extended to groups. The US argues that rights of groups should be called by some other name.
- Definition of Indigenous Peoples. The United States, like the African states, also expresses concern that there is no definition of the phrase “indigenous peoples” in the Declaration. This is one criticism of the Declaration as adopted by the Human Rights Council that seems to be fairly universal and could cause confusion in the future for all, including bonafide indigenous peoples.

Although the United States expressed its opposition to the adoption of the current Declaration by the Human Rights’ Council, citing the concerns expressed above, the US did not openly support the African states’ resolution to defer action on the Declaration. Rather, the US abstained from taking a yes or no position.

Options for Participation by the United Tribes Intertribal Council and Member Tribes

- As mentioned above, if the General Assembly does not approve the Declaration, we will need to begin a process of renewed discussions and negotiations to reach some text that can be adopted. It will be important that Indian and Alaska Native nations within the United States get involved to ensure a strong Declaration is negotiated.
- The Organization of American States, a kind of united nations of the Americas, is working also on an American Declaration on the Rights of Indigenous Peoples. That draft Declaration is still under discussion in OAS meetings, usually held in Washington, DC. There is still a great opportunity to fight for indigenous peoples' rights in those meetings. The United States is very active in those meetings, and we need to do all we can to get the United States to take better and more favorable positions on the rights in the OAS draft Declaration. The next meeting will probably be scheduled in the Fall. They are usually five-day meetings. Representatives of

Indian nations and tribes are welcome to participate in these meetings, and doing so would be very helpful. For more information on these meetings and how to participate, please contact Leonardo Crippa or William David, Staff Attorneys, at the D.C. office of the Indian Law Resource Center at (202)547-2800.

- Finally, the Center provides training to Indian leaders and representatives concerning human rights, how to use human rights, and how to take part in these international processes for creating human rights. We do this without charge, and we could consider providing training for one or two days for Indian and Alaska Native nations in your area. For this, please contact Lucy Simpson, Staff Attorney, at the Helena, MT office of the Indian Law Resource Center at (406)449-2006.

Conclusion

International human rights law impacts many different aspects of tribal life, including but not limited to self-determination, language preservation, education, economic development, and access to and protection of sacred sites. We strongly encourage more Indian and Alaska Native nations to learn about the UN and OAS processes in order to ensure that indigenous peoples' human rights are recognized and protected.