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Implementing the UN Declaration on the Rights of Indigenous Peoples: A UN Body for Promoting Respect for Indigenous Rights

May, 2014

The UN Declaration on the Rights of Indigenous Peoples now enjoys worldwide support. It is an historic declaration of rights, and the UN General Assembly has decided to hold the UN World Conference on Indigenous Peoples in order to “contribute to the realization of the rights of indigenous peoples, pursue the objectives of the [Declaration], and promote the achievement of all internationally agreed development goals.” A/RES/66/296 (17 September 2012). The General Assembly has explicitly decided to take action to realize or implement the rights in the Declaration, and it is urgent that a body be created within the United Nations to carry on this work after the Conference.

Many indigenous peoples in various regions of the world are now calling for the creation of some form of implementing body to promote compliance with the Declaration and to promote the realization of the rights of indigenous peoples. One group of more than 72 indigenous nations in North America has made the following recommendation for action by the World Conference:

Recommends that the UN World Conference decide to create an implementing and monitoring body with a mandate to promote and monitor implementation of the Declaration and to encourage compliance with the obligations expressed in the Declaration. Such a monitoring and implementation body should have a mandate to receive relevant information, to share best practices, to make recommendations, and otherwise to work toward the objectives of the Declaration. The body should be made up of expert members, including indigenous experts. The General Assembly should, in conjunction with indigenous peoples, establish a process, which would include indigenous peoples’ representatives, for elaborating the structure and mandate of such a body or mechanism at the earliest possible time.

Recommendations for an implementing and monitoring body have also been made by the Alta Outcome Document, by the Inuit and Sami Peoples in the Nuuk Arctic Declaration, by Indigenous Peoples in Asia, by the North American Indigenous Peoples Caucus, by the African Regional Preparatory Meeting, by the Preparatory Meeting of America Latina y el Caribe, and by the Preparatory Meeting for Pacific Indigenous Peoples. All of the recommendations and proposals deserve consideration.

Experience shows that human rights instruments may have practically no effect unless steps are taken to implement the rights in question, that is, to make it possible to exercise or enjoy the rights. An implementing and monitoring body will improve respect for indigenous rights, will encourage and foster implementation at the state level, and will help to achieve the objectives of the Declaration, especially improving the well-being of indigenous peoples and helping to avoid or stop the abuse of their rights.

International oversight is needed especially to guard against fraud, misdealing, and legal manipulation to deprive indigenous peoples of their lands and natural resources. The great disparities in economic and political power that most indigenous peoples endure make them especially vulnerable to wrong-doing. The need for an international mechanism to implement the UN Declaration is discussed in an expert paper submitted to a UN Expert Seminar on indigenous rights in January 2006.
HR/GENEVA/IP/SEM/2006/BP.2

Without strong and effective measures at the international level, the promise of the UN Declaration will be lost. The Declaration needs an implementing and monitoring body because of the grave human rights situations of indigenous peoples in many parts of the world, especially the horrendous violence against certain indigenous people and the pandemic of violence against indigenous women and girls. An implementing and monitoring body is appropriate for the Declaration, because it already enjoys a global consensus, because it contains very specific and detailed provisions, and because the Declaration calls for specific state actions to implement rights.

Implementing bodies or mechanisms have, of course, long been used to promote respect for human rights instruments and to encourage compliance by states. UN practice supports creating a monitoring and implementing body for a human rights declaration. For example, the mandate to monitor and promote the implementation of the Declaration on the Protection of all Persons from Enforced Disappearances was given to the Working Group on Enforced and Involuntary Disappearances in 1992. The Special Committee on Decolonization was created to implement the 1960 General Assembly Declaration on the Granting of Independence to Colonial Countries and Peoples. Of course, many committees of experts, such as the Human Rights Committee, are monitoring implementation of the major human rights treaties.

The UN Permanent Forum on Indigenous Issues and the Expert Mechanism on the Rights of Indigenous Peoples have important roles, but the necessary implementation and monitoring work is beyond what these bodies with their already heavy mandates can do, and it is beyond what they are authorized to do. We believe that a new body, made up of independent experts, including indigenous experts, with a broad, clear mandate, will be the best approach.

We believe an implementing body should be efficient and workable, that is, productive and cost-effective. There are many possible variations for the design and functioning of such an implementing body. To illustrate with one possible example, the body could be comprised of as few as five or six experts (or up to 14) of high moral

character and recognized competence, serving in their personal capacity, including as nearly as possible equal numbers of indigenous and non-indigenous experts. States as well as indigenous peoples should play roles in nominating and selecting the experts, having in mind the need to include experts from all the regions of the world. Expert members of the body should serve terms of at least four years.

The body should have the purpose of promoting respect for the rights of indigenous peoples and encouraging the implementation of these rights by states. For these purposes, the body should be authorized to receive information from states and from indigenous peoples, UN agencies, and NGOs among others; to conduct studies; to invite information from states and other sources; to share information on best practices; to make reports and recommendations to the Human Rights Council; and to make general comments concerning the implementation and interpretation of the Declaration on the Rights of Indigenous Peoples.

The implementing body should meet at least twice per year for up to two weeks per session. The Secretary-General should, of course, provide the necessary staff and facilities for the work of the body. The body should make its own rules of procedure based upon the relevant practices of other such bodies in the UN system.

After states have made the decision to create such a body, it will be necessary to discuss and negotiate the details about the structure, mandate, and functioning of the body. The process of elaborating the structure, mandate, and functioning of the body must be one that includes full and active participation by indigenous peoples.
