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## Overview

On 22 October 2007, the Third Committee began discussions under agenda items 67(a) 'Indigenous Issues' and 67(b) 'Second International Decade of the World's Indigenous People' at the 62<sup>nd</sup> session of the General Assembly.

Discussion under these agenda items spanned just one meeting of the Third Committee, which included an introductory statement by the U.N. Under-Secretary-General for Economic and Social Affairs and an interactive dialogue with the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people. The main issues addressed were:

- The need to combat continued violations of the individual and collective rights of indigenous peoples worldwide;
- The interrelationship between the Human Rights Council (HRC), the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, and the UN Permanent Forum on Indigenous Issues in the promotion and protection of the rights of indigenous peoples; and
- Ensuring that the newly adopted Declaration on the Rights of Indigenous Peoples<sup>1</sup> is mainstreamed into the work of the U.N. so that it becomes a living document and bridges the 'implementation gap' between policy and practice.

<sup>1</sup> The Declaration on the Rights of Indigenous Peoples was adopted by the General Assembly on 13 September 2007 under resolution 61/295. For more information, see

<http://www2.ohchr.org/english/issues/indigenous/declaration.htm>

An important development this year was the number of resolutions from the Third Committee that were subsequently adopted by the General Assembly, which called on States to give effect to the human rights of indigenous peoples, as expressed in the UN Declaration on the Rights of Indigenous Peoples.<sup>2</sup> Although the inclusion of such language in a broad range of resolutions was primarily initiated by a few Latin American States,<sup>3</sup> the adoption of these resolutions, mostly by consensus,<sup>4</sup> is a positive indication that the General Assembly is prepared to take a leadership role in mainstreaming indigenous rights through its work. It is also an important means of drawing the international community's attention to the need to give effect to this new standard-setting instrument on indigenous rights that has application at the local, national and international levels.

While the Third Committee was in session, important developments in the advancement of indigenous rights were also occurring at the sixth session of the HRC. These included the renewal and expansion of the mandate of the Special Rapporteur and the establishment of a new Expert Mechanism on Indigenous Peoples. Both of these developments are designed to promote the implementation of the Declaration on the Rights of Indigenous Peoples.

When viewed collectively, the developments outlined in this update indicate the level of recognition and growing acceptance of the human rights of indigenous peoples within the U.N. system. This progress is remarkable given that it was only in the 61<sup>st</sup> session of the General Assembly that the passage of the Declaration was stalled due to lack of support from Member States. However it is important to remember that this apparent 'new dawn' for indigenous rights has been several decades in the making and several influential Western States remain staunch opponents of the Declaration and its implementation within their domestic jurisdictions.

### **Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people<sup>5</sup>**

The report from the Special Rapporteur, **Mr Rodolfo Stavenhagen**, to the General Assembly<sup>6</sup> provided a general overview of the work he has undertaken between 3 October 2006 and 31 July 2007. It incorporated much of the Special Rapporteur's report to the fourth session of the HRC<sup>7</sup> including: the conclusions of the Special Rapporteur's study for the HRC regarding 'best practices carried out to implement recommendations'; an overview of global trends that are having a particularly adverse impact on the human rights of indigenous peoples; and his study on the human rights of indigenous peoples in the Asian region. His report to the General Assembly also included a summary of the Special Rapporteur's official visit to Kenya and references to the numerous seminars, meetings and consultations he was involved in during the reporting period.

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<sup>2</sup> A total of 12 resolutions in the Third Committee refer to indigenous peoples and the Declaration on the Rights of Indigenous Peoples. Details of the individual paragraphs of the resolutions are provided below in this update in the section headed 'Other development in the Third Committee to advance indigenous human rights.'

<sup>3</sup> The main initiators were Guatemala and Ecuador, with support from others.

<sup>4</sup> Three resolutions (relating to the rights of the child, the right to development and the right to food) went to a vote in both the Third Committee and the General Assembly and were adopted in both fora.

<sup>5</sup> Mr. Rodolfo Stavenhagen is the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people. His mandate was created by Commission on Human Rights *Resolution 2001/57* and was renewed for three years by Commission *Resolution 2004/62*. On 28 September 2007, the HRC adopted *Resolution 6/12* by consensus, thereby extending the mandate for three years. Mr Stavenhagen has advised he will not continue in the role when his current term expires in 2008. For more information on his work, see <http://www2.ohchr.org/english/issues/indigenous/rapporteur/>

<sup>6</sup> A/62/286. Available at <http://www.un.org/ga/third/62/doclist.shtml>

<sup>7</sup> A/HRC/4/32. This report covers activities carried out between September 2006 and March 2007 and is available at <http://www.ohchr.org/english/bodies/hrcouncil/4session/reports.htm>

**Statement of the Under-Secretary-General for  
Economic and Social Affairs and Coordinator of the  
Second Decade of the World's Indigenous People<sup>8</sup>**

Delivering the statement on behalf of the Under-Secretary-General was Mr Johan Scholvinck, Director of the Division for Social Policy and Development at the U.N.'s Department of Economic and Social Affairs. He credited the General Assembly's recent adoption of the Declaration on the Rights of Indigenous Peoples (the Declaration) with having improved the future prospects of the world's indigenous peoples. He made particular mention of the Declaration's recognition of the right of indigenous peoples to participate in State decision-making processes that affect them, and to pursue their own vision of economic, social and cultural well-being. He commented that we now have an opportunity to turn the Declaration into a reality by ensuring that indigenous peoples can participate fully and without discrimination in their society, which will be to their own benefit, as well as all humanity.

Mr Scholvinck provided an update on the financial status of the Trust Fund on Indigenous Issues for the Second International Decade of the World's Indigenous People, and referred to some of the key recommendations of the sixth session of the UN Permanent Forum on Indigenous Issues. This session had focused on the theme of 'lands, territories and natural resources'. The next session will focus on the theme of 'climate change, biocultural diversity and livelihoods: the stewardship role of indigenous peoples and new challenges.' This theme reflects not only indigenous peoples' vulnerability to the environmental impacts of climate change, but also the need to integrate their environmental knowledge and sustainable management practices into global responses to climate change.

**Presentation of the report of the Special Rapporteur**

The Special Rapporteur noted that although indigenous issues are now firmly established in the human rights agenda, a range of global trends are adversely impacting on the ability of indigenous peoples to enjoy their human rights. These were elaborated in his report and include:

- the limited level of implementation of the Special Rapporteur's recommendations, the persistence of the 'implementation gap' between norms and practice, and the lack of effective monitoring mechanisms;
- the steady decline in indigenous territories which has been intensified by the process of globalisation, particularly the spread of new ways of exploiting energy and water resources;
- Arctic indigenous peoples are suffering direct consequences of global warming;
- extractive industries, large commercial plantations and unsustainable consumption patterns are causing widespread pollution and environmental degradation, which in turn is resulting in a breakdown in traditional lifestyles and affecting indigenous peoples' unique relationship to their lands. One consequence of these factors is the forced migration of indigenous communities, which leads to increased indigenous poverty and ill-health;
- as indigenous peoples turn to various forms of social mobilisation and protest, these avenues of expression are becoming criminalised, sometimes resulting in serious human rights violations;
- the vulnerability of indigenous migrants, especially women and children; and
- the need for poverty eradication strategies to be redirected to address the needs of indigenous peoples.

The Special Rapporteur identified the adoption of the Declaration by the General Assembly on 13 September 2007 as the most important development in the previous year. Its adoption reflects the growing international consensus on the content of the rights of indigenous peoples. In addition to reaffirming the individual and

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<sup>8</sup> Mr. Sha Zhukang holds both of these positions. However in his absence, the Director of the Division for Social Policy and Development at the Department of Economic and Social Affairs, Mr Johan Scholvinck, delivered the statement. For more information on the Under-Secretary's work, see <http://www.un.org/esa/desa/ousg/>

collective rights enjoyed by indigenous peoples, the Declaration can play an important role in the evolutionary interpretation of existing human rights instruments. It will also provide a valuable tool to assist States to give effect to the longstanding and persistent efforts of indigenous peoples for recognition and protection of their fundamental rights.

Turning to other human rights instruments, the Special Rapporteur welcomed Spain and Nepal's ratification of the International Labour Organisation (ILO) Convention No. 169, and encouraged several members of the EU who are considering ratification, to follow suit.

The Special Rapporteur also credited several of the UN treaty bodies and some regional human rights institutions for their work to promote, clarify and generally raise awareness about the human rights of indigenous peoples.<sup>9</sup>

The Special Rapporteur went on to welcome the Human Rights Council's decision to renew the mandate of the Special Rapporteur for another three years.<sup>10</sup> He noted that although the renewed mandate requires the Special Rapporteur to promote the Declaration, the caveat 'where appropriate' was added to alleviate concerns of some States that this advocacy role should be limited in scope. He concluded his remarks advising that he will step down from the post, and emphasised that it is the duty of his successor to ensure the Declaration is implemented in the interest of *all* indigenous peoples.

### Interactive Dialogue

A diverse group of States participated in the interactive dialogue with the Special Rapporteur,<sup>11</sup> as well as the International Organisation for Migration and the International Fund for Agriculture.

Statements welcoming the adoption of the Declaration and calling for international cooperation to implement its provisions dominated the interactive dialogue. Bolivia, Peru and Cuba referred to its adoption as an historic milestone and a landmark victory for indigenous peoples. Bolivia and Peru went on to suggest that an action plan was needed to ensure the implementation of the Declaration by all parties including States, U.N. agencies, indigenous peoples and others. The representative of Greece and former Chairperson of the Working Group on Indigenous Populations,<sup>12</sup> Professor Erica-Irene Daes, commented that the Declaration was already having a positive effect on the morale of indigenous peoples worldwide.

For some States the interactive dialogue provided an opportunity to express their concerns about particular provisions and concepts incorporated in the Declaration. For example, Mali and Niger's comments on the Declaration's provisions relating to 'strict respect for the sovereignty and territorial integrity of States' reflected the concerns held by the African Group during the final negotiations on the text.<sup>13</sup> Niger reminded

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<sup>9</sup> The Special Rapporteur referred to the Human Rights Committee; Committee on Economic, Social, and Cultural Rights; Committee on the Elimination of All Forms of Racism; Committee on the Rights of the Child; Inter-American Commission and Court; and the African Commission on Human and Peoples' Rights.

<sup>10</sup> A/HRC/RES/6/12. Available at [http://ap.ohchr.org/documents/E/HRC/resolutions/A\\_HRC\\_RES\\_6\\_12.pdf](http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_6_12.pdf)

<sup>11</sup> Participating States included Algeria, Bolivia, Canada, China, Cuba, Ecuador, Fiji, Finland (on behalf of the Nordic States), Greece, Guatemala, Guyana, Kenya, Laos, Mali, Mexico, Myanmar, Nepal, Niger, Peru, Philippines, Portugal (on behalf of the European Union (EU).), Russian Federation, South Africa, the United States of America (USA) and Vietnam.

<sup>12</sup> Under the Chairmanship of Professor Daes, the Working Group on Indigenous Peoples (WGIP) was responsible for developing the draft text of the Declaration on the Rights of Indigenous Peoples, which was adopted by UN Sub-Commission on the Prevention of Discrimination and the Protection of Minorities in 1993.

<sup>13</sup> The Declaration was first introduced into the General Assembly in November 2006, but at that time the GA resolved to delay consideration of the text for up to 12 months. This was due to the fact that the African Group and eight other States including the USA, Canada, Australia, New Zealand and the Russian Federation, had significant concerns with the text, as adopted by the Human Rights Council. Provisions relating to 'territorial integrity', self-determination, 'free, prior and informed consent', intellectual property rights and redress for loss of traditional lands were among the most controversial. Between June and August 2007, the President of the GA initiated an independent facilitation process, led by the Philippines Ambassador and involving the Indigenous Peoples Global Caucus and the States mentioned above, to reach consensus on the text. Although the facilitated negotiations did not

the Committee that although it had voted with the African Group in favour of the adoption of the Declaration, the Special Rapporteur and other experts need to 'spare no efforts' in further clarifying Article 46 and the concept of territorial integrity. Algeria echoed these concerns, advising that the Declaration should not be used to give rise to erroneous interpretations that would threaten territorial integrity and political unity in independent and sovereign States. Fiji acknowledged the reservations of several States in relation to the right of self-determination as expressed in the Declaration, although Fiji was of the view that such a right is held by all peoples. Fiji also commented that the unique experience of indigenous peoples entitles them to exercise free, prior and informed consent with regard to decisions affecting their lives. Fiji further advised that any limitations on the domestic implementation of the Declaration should be non-discriminatory in effect and comply with the just requirements of a democracy.

Several States inquired about the Declaration's role within the UN human rights system. Mexico asked the Special Rapporteur how the international community can work together to bridge the 'implementation gaps' between State policy and practice. Cuba, Portugal (on behalf of the EU.) and South Africa inquired about the interrelationship between the HRC, the Special Rapporteur, and the UN Permanent Forum on Indigenous Issues in promoting and protecting the rights of indigenous peoples. Mexico and Canada asked the Special Rapporteur what advice he would give his successor, and Portugal sought information regarding the Special Rapporteur's role in the follow-up and implementation of his recommendations. The USA stated that the Special Rapporteur had no mandate to promote the Declaration in those States that had voted against the adoption of the Declaration.

In response, the Special Rapporteur stated that by renewing the mandate of the Special Rapporteur, the HRC has bestowed the important duty of promoting the Declaration upon the mandate holder. Such work will require new activities and collaboration to be undertaken by the mandate holder with other Special Rapporteurs, the HRC, the Office of the High Commissioner for Human Rights (OHCHR), the ILO, UNESCO, WHO and other specialised bodies of the U.N. To fulfil his/her mandate and ensure compliance with the Declaration, the Special Rapporteur would also need to continue to work closely with groups representing indigenous peoples and civil society organisations.

The Special Rapporteur advised that in addition to this expanded cooperation, a new body or mechanism that works closely with the Special Rapporteur and facilitates follow-up of his/her recommendations is needed in Geneva. As the successor to the Working Group on Indigenous Populations (WGIP),<sup>14</sup> this mechanism would compliment (not duplicate) the work of both the Permanent Forum on Indigenous Issues and the Special Rapporteur. Being based in Geneva would allow the mechanism to work closely with the HRC to ensure the international community's compliance with various resolutions on the rights of indigenous peoples, as well as the Declaration.<sup>15</sup>

Given that the First Decade on the World's Indigenous Peoples had achieved its two main objectives,<sup>16</sup> some States emphasised the need for the Second Decade to achieve meaningful outcomes. To assist in this regard, Cuba called for the preparation of national guidelines to further actions under the Second Decade. Finland, on behalf of the Nordic States, pointed to the need for greater clarity about how a human rights-based approach

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reach a clear outcome, the African States and the Indigenous Caucus reached consensus in subsequent weeks, allowing the General Assembly to adopt the Declaration on 13 September 2007. The USA, Canada, Australia and New Zealand all voted against the adoption. A total of 11 States, including the Russian Federation, abstained. For further information about the processes leading up to the adoption of the Declaration, see ISHR's report titled *Standard-Setting in 2007: Some milestones achieved and new waters chartered*, available at <http://www.ishr.ch>

<sup>14</sup> The WGIP was established by [ECOSOC Resolution 1982/34](#). It was a sub-organ of the then Sub-Commission on the Prevention of Discrimination and the Protection of Minorities (which became the Sub-Commission on the Promotion and Protection of Human Rights in 1999). For information on the WGIP and its work see <http://www2.ohchr.org/english/issues/indigenous/groups/groups-01.htm>

<sup>15</sup> At the time of the interactive dialogue, the HRC had requested OHCHR to convene an informal meeting in December 2007 to exchange views on the most appropriate mechanism to continue the work of the WGIP. This outcome of this meeting is discussed below in the section headed 'Recent developments in indigenous rights at the Human Rights Council'.

<sup>16</sup> These were the adoption of the Declaration and the establishment of the Permanent Forum on Indigenous Issues.

to development could assist in meeting the needs indigenous peoples and implementing the Millennium Development Goals (MDGs). Echoing earlier comments of the Special Rapporteur, Finland also emphasised the need for the multiple forms of discrimination experienced by indigenous women to receive particular attention during the Second Decade.

Two of the countries mentioned in the Special Rapporteur's report, the Lao People's Democratic Republic (Laos) and Vietnam, sought to clarify the situation of indigenous peoples in their countries. Vietnam voiced its concern regarding the 'unreliable sources' and 'inaccuracies' of a particular paragraph of the report<sup>17</sup> and explained that although some minorities had been oppressed, the individuals responsible for such oppression are currently in exile and will be subject to the rule of the law. Laos expressed similar concerns about the 'ambiguous' and 'misleading' nature of particular paragraphs of the Special Rapporteur's report<sup>18</sup> and stated that no group is subject to repression. In response, Mr Stavenhagen encouraged both States to invite the Special Rapporteur to conduct an official visit to allow a more in-depth examination of the human rights situation. He also explained that he receives information from academic institutions, civil society organisations, and government representatives of the countries he visits.

### **Other developments in the Third Committee to advance indigenous human rights**

Although there was no draft resolution this year solely addressing the rights of indigenous peoples, the Third Committee made reference to the Declaration in pre-ambular and operative paragraphs of nine of its resolutions.<sup>19</sup> Three other resolutions referred to the need for States to take various actions to improve the human rights of indigenous peoples. This compares to last year, when the only resolution referring to indigenous peoples' rights was the General Assembly's decision to delay consideration of the then draft Declaration.<sup>20</sup>

The adoption of these resolutions, mostly by consensus, is a positive indication that the General Assembly is prepared to take a leadership role in mainstreaming indigenous rights through its work. This initiative is also an important means of drawing the international community's attention to the General Assembly's adoption of a new standard-setting instrument on indigenous rights that has application at the local, national and international levels.

The following resolutions incorporate an explicit reference to indigenous peoples and the Declaration:<sup>21</sup>

- 1) Violence against women migrant workers;<sup>22</sup>
- 2) Intensification of efforts to eliminate all forms of violence against women;<sup>23</sup>
- 3) United Nations Development Fund for Women;<sup>24</sup>
- 4) Improvement of the situation of women in rural areas;<sup>25</sup>

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<sup>17</sup> In paragraph 47, the Special Rapporteur states that the forced removal of indigenous communities sometimes reflects a deliberate State policy of pursuing so-called economic 'modernization' and eradication of traditional forms of cultivation.

<sup>18</sup> Laos referred to paragraphs 47 and 55 of the report.

<sup>19</sup> It appears that the Latin American countries which initiated the incorporation of references to the Declaration into the Committee's resolutions originally had even bigger ambitions. However, following discussions with representatives from the USA, they agreed to limit the initiative to nine resolutions.

<sup>20</sup> See A/C.3/61.L.57/Rev.1 available at <http://daccessdds.un.org/doc/UNDOC/LTD/N06/625/20/PDF/N0662520.pdf?OpenElement>

<sup>21</sup> All of these resolutions are available at <http://www.un.org/ga/third/62/proplist.shtml>

<sup>22</sup> A/C.3/62/L.14/Rev.1: PP 11 *Notes* the attention paid in the Declaration to the elimination of all forms of violence and discrimination against indigenous women, as appropriate.

<sup>23</sup> A/C.3/62/L.15/Rev.1: PP 4 *Notes* the attention paid to the elimination of all forms of violence against indigenous women in the Declaration.

<sup>24</sup> A/C.3/62/L.17/Rev.1: OP 21 *Also encourages* the Fund, within its mandate, to continue to assist Governments in implementing the rights of indigenous women, in accordance with international human rights obligations and taking into account, as appropriate, the Declaration.

- 5) Rights of the child;<sup>26</sup>
- 6) The right to development;<sup>27</sup>
- 7) The right to food;<sup>28</sup>
- 8) Global efforts for the total elimination of racism, racial discrimination, xenophobia and related intolerance and the comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action;<sup>29</sup>
- 9) Implementation of the Outcomes of the World Summit for Social Development and of the twenty-fourth special session of the General Assembly;<sup>30</sup>
- 10) Human rights and cultural diversity;<sup>31</sup>
- 11) Cooperatives in social development;<sup>32</sup> and
- 12) Subregional Centre for Human Rights and Democracy in Central Africa.<sup>33</sup>

Although these actions by the Third Committee and the General Assembly reflect the international community's acceptance of the rights of indigenous peoples and their desire to give effect to the Declaration, it is important to acknowledge the strength of resistance to the Declaration, and collective indigenous rights in particular, amongst members of the CANZUS Group.<sup>34</sup> The U.K. for example saw the need to take the floor of the General Assembly following the adoption of the resolution on the right to food<sup>35</sup> to clarify that although it voted in favour of the resolution, it does not recognise collective rights in international law and will not support such language in the future. Similarly, during the interactive dialogue, the USA reminded the Special Rapporteur of its opinion that the mandate holder has no authority to promote the Declaration in Canada, Australia, New Zealand or the USA, given that they did not vote in favour of its adoption in the General Assembly.

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<sup>25</sup> A/C.3/62/L.19/Rev.1: PP 5 *Notes* the attention paid to the improvement of the situation of indigenous women in rural areas in the Declaration; and OP9 *Recalls* that the World Summit on the Information Society held in Geneva in 2003 and Tunis in 2005 ...reaffirmed the commitment to building ICT capacity for all and confidence in the use of ICTs by all, including, inter alia, women, indigenous peoples and remote and rural communities.

<sup>26</sup> A/C.3/62/L.24/Rev.1. *Vote: 176-1-0*. PP 8 *Notes with appreciation* the attention paid to children in the Declaration.

<sup>27</sup> A/C.3/62/L.49 *Vote: 121-52-1*: PP7 *Deeply concerned* that the majority of indigenous peoples in the world live in conditions of poverty and recognising the critical need to address the negative impact of poverty and inequity on indigenous peoples by ensuring their full and effective inclusion in development and poverty reduction programmes; and OP 32 *Stresses* the GA's commitment to the indigenous peoples in the process of realisation of the right to development, in particular in ensuring their rights in areas of education, employment, vocational training and retraining, housing, sanitation, health and social security recognised in human rights obligations and highlighted in the Declaration.

<sup>28</sup> A/C.3/62/L.53/Rev.1 *Vote: 176-1-0*. OP 12 *Stresses* the GA's commitments to promoting and protecting, without discrimination, the economic, social and cultural rights of indigenous peoples in accordance with international human rights obligations and, as appropriate, in accordance with the Declaration and acknowledges that many indigenous organisations and representatives of indigenous communities have expressed in different forums their deep concerns over the obstacles and challenges they face with respect to the full enjoyment of the right to food, and *calls upon States* to take special actions to combat the root causes of the disproportionately high level of hunger and malnutrition among indigenous peoples and the continuous discrimination against them.

<sup>29</sup> A/C.3/62/L.65/Rev.1: OP 25 *Reaffirms* the GA's commitment to eliminate all forms of racism, racial discrimination, xenophobia and other forms of related intolerance against indigenous peoples and, in this regard, notes the attention paid to the objectives of combating prejudice and eliminating discrimination and promoting tolerance, understanding and good relations among indigenous peoples and with all other segments of society in the Declaration.

<sup>30</sup> A/C.3/62/L.10: OP19 *Also reaffirms* the commitment to promote the rights of indigenous peoples in the areas of education, employment, housing, sanitation, health, and social security, and noting the attention paid to these areas in the Declaration.

<sup>31</sup> A/C.3/62/L.39 as orally amended: PP14 *Recognising* that the promotion of the rights of indigenous people and their cultures and traditions will contribute to the respect for and observance of cultural diversity among all peoples and nations.

<sup>32</sup> A/C.3/62/L.6: OP4(b) *Urges* governments, relevant international organisations, and other specialised agencies to ...encourage and facilitate the establishment and development of cooperatives among excluded groups ...and encourage the full participation of ...indigenous peoples in cooperatives.

<sup>33</sup> A/C.3/62/L.91: OP3 During the biennium 2008-09, the Centre is inter alia expected to increase its involvement in raising awareness on the human rights of marginalised groups, especially those of minorities, indigenous people and women.

<sup>34</sup> Canada, Australia, New Zealand and the USA.

<sup>35</sup> A/62/439/Add.2 (draft resolution A/C.3/62/L.53/Rev.1).

At the same time it is important to note that strong support for the Declaration is not confined to a handful of Latin American States. This was evidenced not only by the vote on the Declaration in the General Assembly on 13 September 2007,<sup>36</sup> but also when the resolution on food was considered during the 62<sup>nd</sup> session of the Third Committee. On this occasion Finland took the floor to withdraw its support for the resolution because it thought the Committee should do more than simply 'take note' of the Declaration.<sup>37</sup>

### **Recent developments in indigenous rights at the Human Rights Council**

Following the General Assembly's adoption of the Declaration and while the 62<sup>nd</sup> session of the Third Committee was meeting, the HRC made two important decisions regarding the human rights of indigenous peoples. Firstly it renewed and expanded the mandate of the Special Rapporteur, and secondly it agreed to create a new indigenous expert body to replace the former Working Group on Indigenous Populations (WGIP).

The HRC resolution renewing the mandate of the Special Rapporteur for three years was adopted by consensus.<sup>38</sup> The pre-ambular paragraphs refer to both the HRC's institution building package and the Code of Conduct for Special Procedures Mandate-holders, which the mandate holder must comply with in fulfilling her/her duties. Other key aspects of the mandate include that the mandate holder will:

- work in close cooperation with other special procedures and subsidiary organs of the HRC, relevant U.N. bodies, treaty bodies and regional human rights organisations, avoiding 'unnecessary duplication';<sup>39</sup>
- work in close cooperation with the Permanent Forum on Indigenous Issues and participate in its annual session;<sup>40</sup>
- develop a regular cooperative dialogue with all relevant actors, including indigenous peoples, NGOs and regional/sub-regional international institutions;<sup>41</sup>
- promote the UN Declaration on the Rights of Indigenous Peoples and other international instruments relevant to the advancement of the rights of indigenous peoples, where appropriate;<sup>42</sup> and
- pay special attention to the rights of indigenous women and children, and take into account a gender perspective in his/her work.<sup>43</sup>

To assist the HRC in its decision on a replacement body for the WGIP, it asked OHCHR to convene an informal meeting on 6-7 December 2007 in Geneva to allow States, indigenous peoples and other stakeholders to 'exchange views on the most appropriate mechanisms to continue the work of the WGIP'.<sup>44</sup>

During this meeting, the Indigenous Peoples' Global Caucus<sup>45</sup> presented a draft resolution referred to as CRP12, which became the focus of the discussions.<sup>46</sup> In this way the Indigenous Caucus sought to ensure that

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<sup>36</sup> The vote on the resolution (A/61/L.67) to adopt the Declaration was 143 in favour, 4 against (CAANZUS), 11 abstentions.

<sup>37</sup> Finland was referring to OP12 of resolution A/C.3/62/L.53/Rev.1.

<sup>38</sup> HRC Resolution 6/12 available at [http://ap.ohchr.org/documents/E/HRC/resolutions/A\\_HRC\\_RES\\_6\\_12.pdf](http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_6_12.pdf)

<sup>39</sup> OP1(d), HRC Resolution 6/12.

<sup>40</sup> OP1(e), HRC Resolution 6/12.

<sup>41</sup> OP1(f) of HRC Resolution 6/12.

<sup>42</sup> OP1(g) of HRC Resolution 6/12.

<sup>43</sup> OP1(h) of HRC Resolution 6/12.

<sup>44</sup> HRC Resolution 6/16 was adopted by consensus on 28 September 2007.

<sup>45</sup> The Indigenous Caucus is global coalition of Indigenous Peoples. For more information, see <http://www.ipcaucus.net/>

<sup>46</sup> This document contained proposals for the creation of an 'Expert Body on the Rights of Indigenous Peoples for the Human Rights Council', including mandate, placement within the UN system, composition, terms of membership, organisation of work, and participation.

indigenous peoples themselves would have direct participation in what ever mechanism was established to assist the HRC.

A number of States participated in the meeting<sup>47</sup> and all referred to the need to avoid duplication with the mandates of the Permanent Forum and the Special Rapporteur. This concern was also voiced during the Third Committee's interactive dialogue with the Special Rapporteur. However there was no clear agreement amongst States about whether a replacement mechanism for the WGIP was needed, let alone what its mandate should be.

Following the informal meeting, Bolivia worked closely with the Indigenous Peoples' Caucus to develop and present a draft resolution at the HRC's 6<sup>th</sup> session.<sup>48</sup> The resolution was amended in the final days of the session, following negotiations with several States.<sup>49</sup> When it came time for the HRC to consider the draft resolution, Bolivia, even though it was the main sponsor, decided to withdraw its name from the text. Citing some of the reasons for this decision, Bolivia referred to its desire to include a reference to the 'full implementation of the Declaration' and its regret that 'the full participation of indigenous peoples is not guaranteed.'<sup>50</sup> Despite Bolivia's disappointment, the resolution was adopted by consensus.

The main features of the new expert mechanism include that it will:

- assist the HRC in the implementation of its mandate by providing thematic expertise (i.e. it will focus mainly on studies and research-based advice).<sup>51</sup> The mechanism *may* suggest proposals to the HRC for its consideration and approval;<sup>52</sup>
- consist of 5 independent experts selected according to the same process established for selection of other UN experts. The resolution 'strongly recommends' that when selecting and appointing experts, the Council 'give due regard to experts of indigenous origin'.<sup>53</sup>
- meet once a year and report directly to the Council;<sup>54</sup>
- invite the Special Rapporteur<sup>55</sup> and a member of the Permanent Forum to attend and contribute to its annual meeting – for the purpose of enhancing cooperation and avoiding duplication of their work;<sup>56</sup> and
- participation in these annual meetings will be open to States, UN experts and agencies, NGOs and indigenous peoples' organisations, national human rights institutions, academics and experts on indigenous issues.<sup>57</sup>

The establishment of the expert mechanism has generally been welcomed by indigenous peoples' organisations.<sup>58</sup> The Chairperson of the Indigenous Peoples' Caucus also welcomed its creation, citing the following reasons:

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<sup>47</sup> Participating States included: Bolivia, Argentina, Ecuador, Venezuela, Guatemala, Peru, Denmark, Canada, Cuba, Spain, Philippines, Norway, Mexico, Chile, Japan, Sweden, Finland, Nicaragua, India, Indonesia, Russian Federation and USA.

<sup>48</sup> A/HRC/6/L.42 (HRC Resolution 6/36). Adopted 14 December 2007.

<sup>49</sup> These States included Guatemala, Mexico, Denmark, Greece, Canada, U.K. and Spain.

<sup>50</sup> Bolivia's earlier draft had required that at least 3 of the 5 expert members would be indigenous persons. See ISHR *Council Monitor*, 6<sup>th</sup> session, 14 December 2007, p.8, available at

[http://www.ishr.ch/hrm/council/dailyupdates/session\\_006/14\\_december\\_2007.pdf](http://www.ishr.ch/hrm/council/dailyupdates/session_006/14_december_2007.pdf)

<sup>51</sup> OP1(a) HRC Resolution 6/36.

<sup>52</sup> OP1(b) HRC Resolution 6/36.

<sup>53</sup> OP4 of HRC Resolution 6/36.

<sup>54</sup> OP2 of HRC Resolution 6/36.

<sup>55</sup> The SR on the situation of human rights and fundamental freedoms of indigenous people.

<sup>56</sup> OP5 of HRC Resolution 6/36.

<sup>57</sup> OP9 of HRC Resolution 6/36.

<sup>58</sup> These include the International Indian Treaty Council (including IITC Board President Francisco Cali, Mayan Kaqchikel from Guatemala, who is also a member of the UN Committee for the Elimination of Racial Discrimination (CERD)); Aotearoa

- There was no prior guarantee that a body on indigenous issues would be established;
- The expert mechanism received support from the EU and Western European and Others Group, countries which had opposed the continuation of WGIP after the Permanent Forum on Indigenous Issues was created;
- The expert mechanism will likely have indigenous experts appointed, perhaps to the majority and even unanimously;
- The expert mechanism has 'Indigenous Peoples' in its mandate, the first time this has happened in the UN, and is linked to the Declaration on the Rights of Indigenous Peoples;
- Links to the Special Rapporteur and the Permanent Forum on Indigenous Issues are established.

Other prominent indigenous leaders have welcomed the mechanism because they believe it provides an opportunity to propose ways for the Council, States and the UN system as whole to implement the Declaration.<sup>59</sup> Another reason for their support is their strong expectation that the mechanism will review recommendations from key studies carried out by the WGIP, which include the UN Study on Treaties, the Study on Permanent Sovereignty over Natural Resources, and the Study on Indigenous Peoples' Cultural Heritage.<sup>60</sup> Indigenous peoples provided extensive input into these studies, but their very detailed recommendations are yet to be implemented or, in many cases, fully endorsed, by the UN and its Member States.

## LOOKING FORWARD

The adoption of the Declaration, the renewal of the Special Rapporteur's mandate and the HRC's decision to establish an 'expert mechanism' on the rights of indigenous peoples collectively herald a new era of recognition of indigenous rights within the U.N. human rights system and at the international level more generally. Although the Declaration is not a legally binding instrument, it is already being used by some States as a guide to the minimum human rights standards and obligations they are required to uphold at the national level to ensure indigenous peoples can fully enjoy their human rights.<sup>61</sup> Whether this recognition translates into the world's indigenous peoples being able to more fully enjoy and exercise their human rights, remains to be seen.

Further, it cannot be forgotten that the adoption of the Declaration was more than twenty years in the making and due in large part to the tenacity and skilful advocacy of indigenous peoples and their representatives. Although a core group of States have been strong and effective advocates for the protection and promotion of the rights of indigenous peoples over time, the CANZUS Group remains a staunch opponent of the Declaration and any recognition of collective rights for indigenous peoples.<sup>62</sup> States on the whole remain cautious in their approach to a fuller recognition of indigenous rights, as evidenced by the compromises that

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Indigenous Rights Trust; International Organization of Indigenous Resource Development (IOIRD); and Foundation for Aboriginal and Islander Research Action (FAIRA).

<sup>59</sup> Comment from International Indian Treaty Council (IITC) Executive Director Andrea Carmen, Yaqui Nation in *Native Unity Digest*, 3 January 2008, available at <http://nativeunity.blogspot.com/2008/01/un-establishes-new-subsiary-body.html>

<sup>60</sup> These studies are available at <http://www2.ohchr.org/english/issues/indigenous/groups/groups-01.htm>

<sup>61</sup> See for example the decision of the Supreme Court of Belize (Central America) on 19 October 2007 which affirmed that Belize is obligated not only by its Constitution, but also by international instruments and customary law – including the UN Declaration on the Rights of Indigenous Peoples – to respect and protect Maya customary land rights. This is the first judgment to rely on the Declaration as evidence of general principles of international law. For more information see [http://www.law.arizona.edu/depts/iplp/advocacy/maya\\_belize/index.cfm?page=advoc](http://www.law.arizona.edu/depts/iplp/advocacy/maya_belize/index.cfm?page=advoc)

<sup>62</sup> On 17 February 2008, the newly elected Australian Government announced it is 'positively disposed to the Declaration' and undertaking national consultations with various stakeholders about reversing Australia's opposition to the Declaration. If the Government decides to reverse the decision of the previous Australian Government, it will formally announce its support for the Declaration to the General Assembly. For more information see <http://www.news.com.au/story/0,23599,23228579-2,00.html>

were negotiated to the resolution creating the new 'expert mechanism' on the rights of indigenous peoples in Geneva.

The Permanent Forum, the Special Rapporteur and the new expert mechanism will each have to work to demonstrate that individually they add value to the work of the UN to advance the human rights of the world's indigenous peoples. Similarly, they face the challenge of meeting the expectation that collectively, they should contribute more to this goal than just the sum of their parts.

States on the other hand, face the new experience of participating in the HRC's universal periodic review process as of 2008, and it is to be expected that close attention will be paid to the human rights situation of indigenous peoples in several countries.

## BACKGROUND

The General Assembly is the main deliberative organ of the UN. It is composed of representatives of all Member States and has a general mandate to discuss and make recommendations on any matters within the scope of the *United Nations Charter*. Under Article 13 of the Charter, the General Assembly is specifically mandated to 'initiate studies and make recommendations for the purpose of ... assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion'. The regular session of the General Assembly runs from the beginning of September to the end of December. Each year the GA addresses over 150 agenda items, which are considered either in the plenary or in one of its six committees.<sup>63</sup> The Third Committee (Social, Cultural, and Humanitarian) addresses most agenda items relevant to human rights defenders, including advancement of women, children's rights, the rights of indigenous peoples, the elimination of racism, and human rights questions. Numerous special procedures also report to the Third Committee on a number of these issues and engage in an interactive dialogue with States. The Fifth Committee (Administrative and Budgetary) is also particularly relevant to human rights defenders since it evaluates and approves the budgetary requirements arising out of the work of the other five committees. After completing their work, the Third and the Fifth Committee, as well as the other three main committees, submit draft resolutions to the General Assembly for final adoption.

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<sup>63</sup> Information on the main committees of the General Assembly (GA) is available at <http://www.un.org/ga/maincommittees.shtml>

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