

EMOG pan/092  
(an debut EMOG adeljo 092)

12.08.09

Item 4

PAUL JEFF  
ADELFO

Expert Mechanism on the Rights of Indigenous Peoples  
Second session, Geneva  
10-14 August 2009

Agenda Item 4(a): United Nations Declaration on the Rights of Indigenous Peoples:  
(a) Implementation of the Declaration at the regional and national levels

### **Implementation of the *UN Declaration on the Rights of Indigenous Peoples*: Positive Initiatives and Serious Concerns**

Joint Statement of the Grand Council of the Crees (Eeyou Istchee); Assembly of First Nations; Asia Indigenous Peoples' Pact (AIPP); Inuit Circumpolar Council (ICC); International Organization of Indigenous Resource Development (IOIRD); Tebtebba Foundation; Saami Council; International Indian Treaty Council (IITC); Consejo de organizaciones aborígenes de Jujuy (COAJ); First Nations Summit; Indigenous Peoples of Africa Co-ordinating Committee (IPACC); Foundation for Aboriginal and Islander Research Action (FAIRA - Australia); Na Koa Ikaika Kalāhui Hawai'i; Asian Indigenous Women's Network; Asamblea Mixe para el Desarrollo Sostenible; Servicios del Pueblo Mixe; Asociación de Autoridades Mixes; Chiefs of Ontario; Québec Native Women's Association; Samson Cree Nation; Ermineskin Cree Nation; Montana Cree Nation; Louis Bull Cree Nation; First Peoples Human Rights Coalition (FPHRC); Union of BC Indian Chiefs; Koani Foundation; Assembly of First Nations of Québec and Labrador; Native Women's Association of Canada; Indigenous World Association; Ke Aupuni Hawaii; Canadian Friends Service Committee (Quakers); International Work Group For Indigenous Affairs (IWGIA); KAIROS: Canadian Ecumenical Justice Initiatives; Almaciga; Hawai'i Institute for Human Rights; Oceania HR.

1. Indigenous peoples and human rights organizations welcome this opportunity to contribute to the discussion on implementation at the regional and national levels of the *UN Declaration on the Rights of Indigenous Peoples*.
2. The *Declaration* is an historic human rights instrument that has universal application to countless Indigenous contexts in over 70 countries. It provides a principled and normative legal framework for achieving justice and reconciliation between Indigenous and non-Indigenous peoples. UN Secretary-General Ban Ki-moon has emphasized:

The Declaration is a visionary step towards addressing the human rights of indigenous peoples. It sets out a framework on which States can build or rebuild their relationships with indigenous peoples. The result of more than two decades of negotiations, it provides a momentous opportunity for States and indigenous

peoples to strengthen their relationships, promote reconciliation and ensure that the past is not repeated.<sup>1</sup>

3. Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya, stated in his August 2008 report:

[The *Declaration*] represents an authoritative common understanding, at the global level, of the minimum content of the rights of indigenous peoples, upon a foundation of various sources of international human rights law.<sup>2</sup>

4. The *Declaration* is the most comprehensive universal international human rights instrument explicitly addressing the rights of Indigenous peoples. It elaborates on the economic, social, cultural, political, spiritual and environmental rights of Indigenous peoples.
5. Indigenous peoples' collective rights are human rights, as affirmed in the *Declaration* and other international and regional instruments.<sup>3</sup> In its Agenda and Framework for the Programme of Work, the Human Rights Council has permanently included the "rights of peoples" under Item 3 "Promotion and protection of all human rights ..."<sup>4</sup> For decades, the established practice is to address Indigenous peoples' collective rights within international and regional human rights systems.
6. Like other human rights instruments, the *Declaration* is necessarily drafted in broad terms. Its provisions can accommodate the different circumstances relating to Indigenous peoples – both now and in the future. This wide-ranging perspective enhances the effectiveness of the *Declaration*. At the regional level, a similar view has been expressed by the African Commission on Human and Peoples' Rights:

Clearly, collective rights, environmental rights, and economic and social rights are essential elements of human rights in Africa. The African Commission will apply any of the diverse rights contained in the African Charter. It welcomes this opportunity to make clear that there is no right in the African Charter that cannot be made effective.<sup>5</sup>

7. International treaty monitoring bodies are referring to the *Declaration* and using it to interpret the rights of Indigenous peoples and individuals and related State obligations. This practice underlines the significance of the *Declaration* and its implementation at all levels – international, regional and national.

... the Committee [on the Rights of the Child] urges States parties to adopt a rights-based approach to indigenous children based on the Convention and other relevant international standards, such as ILO Convention No.169 and the United Nations Declaration on the Rights of Indigenous Peoples.<sup>6</sup>

8. Even if a State voted against the adoption of the *Declaration* at the General Assembly, international treaty monitoring bodies are free to recommend that the *Declaration* "be used as a guide to interpret the State party's obligations" under human rights treaties.<sup>7</sup>

9. In terms of implementing the *UN Declaration*, the Office of the High Commissioner for Human Rights (OHCHR), specialized agencies and mandate-holders of special procedures are committed to making important contributions at various levels. For example, the OHCHR has confirmed: "The OHCHR's work is to assist States and indigenous peoples in implementing the Declaration".<sup>8</sup>

10. Thirty-one UN specialized agencies are represented in the Inter-Agency Support Group on Indigenous Issues (IASG). The IASG has emphasized that the adoption of the *Declaration*

constitutes a crucial opportunity ... according to Article 42 of the Declaration, to promote respect for and full application of its provisions and follow-up its effectiveness. The IASG pledges to advance the spirit and letter of the Declaration within our agencies' mandates and to ensure that the Declaration becomes a living document throughout our work.<sup>9</sup>

11. With regard to the special procedures of the Human Rights Council, a November 2008 report states: "Mandate-holders agreed that the effective implementation of the Declaration constituted a major challenge ahead, and decided to strengthen their efforts in that regard".<sup>10</sup> In this context, it was also agreed that

the rights of indigenous peoples are a cross-cutting issue that concerns all thematic and geographic mandates and that the work of all special procedures mandate-holders is important for the promotion and protection of the rights of indigenous peoples.<sup>11</sup>

### **Positive initiatives**

12. Regional human rights instruments should complement and reinforce the universal standards in the *UN Declaration*. As affirmed in the 1993 *Vienna Declaration*: "Regional arrangements play a fundamental role in promoting and protecting human rights. They should reinforce universal human rights standards, as contained in international human rights instruments, and their protection."<sup>12</sup>

13. Within the Organization of American States (OAS), the UN Declaration is being used as "the baseline for negotiations and ... a minimum standard" for the draft American Declaration on the Rights of Indigenous Peoples.<sup>13</sup>

14. The African Commission on Human and Peoples' Rights has stated that it is "confident that the Declaration will become a very valuable tool and a point of reference for the African Commission's efforts to ensure the promotion and protection of indigenous peoples' rights on the African continent."<sup>14</sup> Some aspects of the Commission's "Draft Principles and Guidelines on Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights" are reflective of the *UN Declaration*. In regard to Indigenous peoples' rights to lands and natural resources, specific reference is made to the *Declaration*.<sup>15</sup>



15. The Association of Southeast Asian Nations (ASEAN) has adopted the terms of reference for a new ASEAN Intergovernmental Commission for Human Rights (AICHR).<sup>16</sup> While no specific reference is made to the *UN Declaration*, the guiding principles for the AICHR include “upholding the Charter of the United Nations and international law ... subscribed to by ASEAN Member States”. Thus, as part of international law, the *Declaration* appears to be included. As proposed by the Permanent Forum on Indigenous Issues, there should be explicit consideration of the *Declaration*, Indigenous peoples and their human rights issues:

The Forum recommends that ... the commission explicitly recognize indigenous peoples in its terms of reference. We look forward to a strong commission with full investigatory and implementation powers, which uses the United Nations Declaration on the Rights of Indigenous Peoples as its framework in dealing with indigenous peoples’ issues. The Forum also recommends that the commission establish a committee on indigenous peoples in addition to its proposed committees on migrant workers and women and children.<sup>17</sup>

16. In the Americas, the Inter-American Court of Human Rights has relied in part on the *UN Declaration* in determining unanimously that the Saramaka people have “the right to give or withhold their free, informed and prior consent, with regards to development or investment projects that may affect their territory”.<sup>18</sup>
17. In Bolivia, the *Declaration* was adopted at the national level as Law No. 3760 of 7 November 2007 and incorporated into the new Constitution promulgated on 7 February 2009. Bolivia emphasizes that it “has elevated the obligation to respect the rights of indigenous peoples to constitutional status, thereby becoming the first country in the world to implement this international instrument”.<sup>19</sup>
18. In the Democratic Republic of the Congo, the government has endorsed the Declaration. In addition, the “Constitution has reaffirmed in that regard the attachment of the Democratic Republic of the Congo to human rights and fundamental freedoms such as those proclaimed by the international legal instruments to which it has acceded.”<sup>20</sup>
19. In the Arctic, a highly significant example of harmonious and collaborative implementation of the right to self-government and self-determination is taking place. In their March 2009 report to the Permanent Forum on Indigenous Issues, Denmark and Greenland have reported on these initiatives under the agenda item on implementation of the *UN Declaration*.<sup>21</sup> As of 21 June 2009, the new Greenland self-government regime has been in effect.
20. In Belize, the Supreme Court of Belize relied on the *UN Declaration* and other aspects of international and domestic law in upholding the land and resource rights of the Maya people.<sup>22</sup>
21. In Australia, on 3 April 2009, the Labour government in Australia reversed the position of its predecessor and endorsed the *Declaration*.<sup>23</sup> In the spring of 2009, New Zealand and the United States indicated that they are in the process of reconsidering their opposing positions.

22. Colombia abstained in the General Assembly vote on the *Declaration*. In a welcome development in April 2009, Colombia announced its endorsement of the *Declaration*.<sup>24</sup>
23. Implementation of the *UN Declaration* is being further enhanced by the translation of this instrument into different Indigenous and other languages.<sup>25</sup> Such actions promote human rights learning and education and can be highly beneficial for Indigenous communities in developing a human rights-based approach.

### Serious concerns

24. With respect to implementation of the *UN Declaration*, the positions and actions of opposing States require careful scrutiny. Hopefully, constructive dialogue will lead to affirmative results.
25. **In regard to New Zealand**, the national government has positively indicated that it is reconsidering the opposing position of its predecessor and might endorse the *UN Declaration*. However, the government has recently suggested that the debate has shifted to what “exceptions” New Zealand would want. In particular, the government has indicated that it would endorse the *Declaration* “only if it does not trump New Zealand’s constitutional framework and law”.<sup>26</sup>
26. It is misleading to speak of the *Declaration* as “trumping” New Zealand law. The *Declaration* is not an absolute instrument that automatically trumps domestic law. In relation to Indigenous peoples, it elaborates a set of norms that should be effectively applied in all national, regional and international contexts.
27. Human rights are generally relative in nature so that the human rights of all are respected.<sup>27</sup> The *Declaration* reflects and builds upon international human rights standards. It does not exist in a vacuum and allows for full consideration of relevant international and domestic law.

... the Declaration reflects and builds upon human rights norms of general applicability, as interpreted and applied by United Nations and regional treaty bodies, as well as on the standards advanced by ILO Convention No. 169 and other relevant instruments and processes.<sup>28</sup>

28. In *interpreting* human rights and related State obligations within a particular country, domestic courts may choose to consider declarations and other international instruments. Such dynamic interaction between domestic and international law is well-established and growing in different regions of the world.
29. The New Zealand government has suggested that the *Declaration* could be interpreted so that
  - i) Māori would have to give full informed consent to laws being passed in Parliament – thus overriding New Zealand’s democratic institutions; and
  - ii) Māori had the right to occupy all land they had before colonisation or receive full compensation for it.

30. Such absolute perspectives lack balance and accuracy. It is well-established that the principles of democracy, respect for human rights, and the rule of law are interrelated.<sup>29</sup>
31. Such government claims rely on extreme interpretations of individual provisions in isolation from the necessary context of the *Declaration* as a whole and without regard for the body of international human rights law to which it belongs. In the close to two years since the adoption of the *Declaration*, none of the imagined negative consequences have materialized.
32. Like other human rights instruments of a similar nature, the *Declaration* can only complement, and not override, existing human rights protections. The necessity of a balanced interpretation and application of the *Declaration* is made explicit. Every provision must be “interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith” (art. 46(3)). The rights of all interested parties must always be fully and fairly considered.
33. It has been suggested that the Treaty of Waitangi or related framework might somehow be jeopardized by the *Declaration*. As stated by New Zealand’s Justice Minister, “the important point is to make sure that the unique framework constitutionally put in place primarily by the Treaty of Waitangi is not disrupted by any affirmation of the declaration [by the NZ government]”.<sup>30</sup> However, the *Declaration* explicitly affirms:
 

Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements. (article 37(1)).
34. **In regard to Canada**, it has continued its ideological opposition to the *Declaration*. The current minority government has ignored the April 2008 Motion adopted by the House of Commons in Canada’s Parliament – calling for the Parliament and government of Canada to “fully implement” the standards in the *Declaration*.
35. The House of Commons is the elected chamber of Canada’s Parliament. In adopting this resolution on the *Declaration*, the House of Commons rejected positions on the *Declaration* expressed by the current minority government at home and abroad.
36. In relation to Indigenous peoples, Canada has repeatedly violated the rule of law both internationally and domestically. It has failed to “uphold the highest standards in the promotion and protection of human rights” and “cooperate with the Council”, as required of all Human Rights Council members.<sup>31</sup> During its three-year term, Canada pursued the lowest standards of any Council member within the Western European group of States.
37. The Canadian government has opposed the *Declaration* in various international forums. It has encouraged other States to not support the *Declaration*. In taking its opposing positions, Canada has ignored its obligations under s. 35 of the *Constitution Act, 1982*. It has failed to consult and accommodate Indigenous peoples and uphold the honour of the Crown.



The duty to consult arises when a Crown actor has knowledge, real or constructive, of the *potential existence* of Aboriginal rights or title and *contemplates conduct that might adversely affect* them. This in turn may lead to a duty to change government plans or policy to accommodate Aboriginal concerns. Responsiveness is a key requirement of both consultation and accommodation.<sup>32</sup>

38. The Canadian government has encouraged States that are supportive of the *Declaration* to go on record stating concerns or conditions for its implementation. The government has then used these same statements as evidence of a lack of genuine support for the *Declaration*.
39. At the world climate talks in Poland in December 2008, Canada's Environment Minister announced at a press conference that the *UN Declaration* "has nothing whatsoever to do with climate change."<sup>33</sup> Such statements unfairly politicize Indigenous peoples' human rights and undermine global attempts to respond effectively to climate change.
40. This appears to be the first time that Canada has vigorously opposed a human rights instrument adopted by the General Assembly. The government erroneously claims that, in view of its opposing vote, the *Declaration* does not apply in Canada. In its December 2007 report, Amnesty International cautions that Canada's position "attempts to set a very dangerous precedent for UN human rights protection". The Report adds:

The proposition that governments can opt out ... by simply voting against a Declaration, resolution or other similar document, even when an overwhelming majority of states have supported the new standards, *dramatically undercuts the integrity of the international human rights system*. ... It is impossible to recall a similar example of Canada taking such a *harmful position* on the basic principles of global human rights protection.<sup>34</sup>

41. Even as Canada opposes the *Declaration*, implementation is taking place domestically, with the leadership of Indigenous peoples and in partnership with civil society. The *Declaration* is becoming an integral part of human rights education and is used in presentations and materials shared across the country. Indigenous peoples are emphasizing the *Declaration's* standards in their discourse with government and corporations. Academic institutions are including the *Declaration* in curricula, and trade unions are educating their members.
42. Within Canada, there are ongoing efforts from many sectors for the Canadian government to fully endorse and implement the *Declaration*. The opposition of the government was a central issue during Canada's Universal Periodic Review.

#### **"Constitutional frameworks", discrimination and universality**

43. On 13 August 2007, an amendment was proposed unsuccessfully by New Zealand, Canada, Colombia and the Russian Federation in relation to article 46(3) of the *Declaration* that would require all provisions in this human rights instrument to be interpreted in accordance with "constitutional frameworks".<sup>35</sup>

44. The proposed amendment on “constitutional frameworks” was not disclosed to or discussed with Indigenous peoples prior to its submission to the President of the General Assembly. Nor was such an amendment ever tabled during the two decades of discussions in the UN Working Groups that drafted and considered the earlier texts of the *Declaration*.
45. During the standard-setting process, a version similar to article 46(3) of the *Declaration* was initially drafted and proposed by the former government of Canada in collaboration with Indigenous peoples. Canada actively encouraged other States to support this provision. Yet the current government of Canada continues to refuse to accept art. 46(3).
46. To require the provisions of the *Declaration* to be interpreted in accordance with the “constitutional frameworks” of each State could serve to legitimize any existing injustices and discrimination in national constitutions. Treaty monitoring bodies and special rapporteurs could be hampered from recommending amendments to constitutions, so as to recognize or safeguard the human rights of Indigenous peoples.
47. No such limitation or qualification is found in the *Universal Declaration on Human Rights* or the two international human rights Covenants. To impose such a requirement on the rights of Indigenous peoples would run counter to the principle of “equal rights and self-determination of peoples” in the *Charter of the United Nations*. It would also constitute a discriminatory double standard.
48. The interpretation of Indigenous peoples’ human rights in accordance with “constitutional frameworks” could severely undermine the principle of “universality”. Indigenous peoples in States with national constitutions that deny Indigenous rights could be denied rights that exist for Indigenous peoples in other countries.

All human rights are universal, indivisible, interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. ... [I]t is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and freedoms.<sup>36</sup>

49. Canada and New Zealand cannot be selective in what human rights they choose to respect and protect. The principles that govern the Agenda and Framework for the Programme of Work of the Human Rights Council include “universality”, “objectivity” and “non-selectivity”.<sup>37</sup> Double standards or politicization should be carefully avoided.<sup>38</sup>

## Conclusions

50. Indigenous peoples’ human rights and related issues continue to be mainstreamed throughout the UN system. Implementation of the *United Nations Declaration on the Rights of Indigenous Peoples* must remain a central objective. It is welcomed that the Expert Mechanism on the Rights of Indigenous Peoples has added this crucial item to their agenda.
51. The process of implementing the *Declaration* is in its initial stages and there remain formidable challenges to overcome. In the different regions of the world, Indigenous peoples



continue to suffer severe poverty, dispossession of lands and resources, marginalization, discrimination and other widespread and persistent human rights violations.

52. While significant progress is being achieved in some cases, in other situations there may be little or none. In many instances, regional or national human rights institutions may be sorely lacking. There may also be no well-established culture of respect for human rights.
53. In fully assessing implementation of the *Declaration* at regional and national levels, a comprehensive and systematic approach is strongly recommended. It would be highly useful for States and Indigenous peoples to report on implementation, and share best practices and concrete results.
54. In regard to New Zealand, United States and Canada – there is virtually no advantage to retaining regressive or prejudicial positions. The international reputation and credibility of opposing States will likely continue to suffer. Moreover, such actions are not consistent with the purposes and principles of the *Charter of the United Nations*, run counter to the principles of international cooperation and solidarity, and serve to undermine the international system as a whole.
55. In regard to the United States, an additional compelling reason in favour of unequivocally endorsing the *UN Declaration* is that as a member of the Human Rights Council, the United States is required to “uphold the highest standards in the promotion and protection of human rights” and “cooperate with the Council”.
56. In order to play a leadership role internationally, the three opposing States should set positive examples. In particular, it is crucial and urgent to fully endorse the *Declaration* – the most universal comprehensive international human rights instrument relating to 370 million Indigenous people worldwide.

<sup>1</sup> UN Secretary-General (Ban Ki-moon), “Protect, Promote, Endangered Languages, Secretary-General Urges in Message for International Day of World’s Indigenous People”, SG/SM/11715, HR/4957, OBV/711 (23 July 2008).

<sup>2</sup> Human Rights Council, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, S. James Anaya*, UN Doc. A/HRC/9/9 (11 August 2008) at para. 85 (Conclusions) [bold in original].

<sup>3</sup> See, e.g., *UN Declaration*, article 1: “Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law.”

<sup>4</sup> Human Rights Council, *Institution-building of the United Nations Human Rights Council*, Res. 5/1, Annex (18 June 2007), adopted without a vote and approved by the General Assembly

<sup>5</sup> African Commission on Human and Peoples' Rights, *The Social and Economic Rights Action Centre and the Centre for Economic and Social Rights v Nigeria*, Comm. No. 155/96, 15<sup>th</sup> Activity Report 2001-02, 31 at para. 68.

<sup>6</sup> Committee on the Rights of the Child, *Indigenous children and their rights under the Convention*, General Comment No. 11, UN Doc. CRC/C/GC/11 (30 January 2009), para. 82. See also Committee on Economic, Social and Cultural Rights, *Concluding observations of the Committee on Economic, Social and Cultural Rights: Nicaragua*, UN Doc. E/C.12/NIC/CO/4 (28 November 2008), para. 35.

<sup>7</sup> Committee on the Elimination of Racial Discrimination, *Concluding observations of the Committee on the Elimination of Racial Discrimination: United States of America*, CERD/C/USA/CO/6 (9 May 2008) at para. 29: "While noting the position of the State party with regard to the United Nations Declaration on the Rights of Indigenous Peoples (A/RES/61/295), the Committee finally recommends that the declaration be used as a guide to interpret the State party's obligations under the Convention relating to indigenous peoples." [bold in original]

See also Permanent Forum on Indigenous Issues, *Report on the eighth session (18 - 29 May 2009)*, Economic and Social Council, Official Records, Supplement No. 23, United Nations, New York, E/2009/43, E/C.19/2009/14, Annex (General comments to the follow-up to the recommendations of the Permanent Forum on Indigenous Issues on implementation of the United Nations Declaration on the Rights of Indigenous Peoples and on dialogue with the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples and other special rapporteurs - "Article 42 of the United Nations Declaration on the Rights of Indigenous Peoples"), para. 8.

The Declaration is a human rights standard elaborated upon the fundamental rights of universal application and set in the cultural, economic, political and social context of indigenous peoples. It should be applied on this basis regardless of how each State voted in the General Assembly or their subsequent position.

<sup>8</sup> Expert Mechanism on the Rights of Indigenous Peoples, "Statement by Ms. Kyung-wha Kang, Deputy High Commissioner for Human Rights", 1<sup>st</sup> sess., Geneva (1 October 2008) at 4-5.

<sup>9</sup> Inter-Agency Support Group on Indigenous Issues, Statement on the United Nations Declaration on the Rights of Indigenous Peoples, adopted at its Annual Meeting in September 2007.

<sup>10</sup> Human Rights Council, *Note by the United Nations High Commissioner for Human Rights* (report on the fifteenth meeting of special rapporteurs/representatives, independent experts and chairpersons of working groups of the special procedures of the Council, held in Geneva from 23 to 27 June 2008), UN Doc. A/HRC/10/24 (17 November 2008), para. 67.

<sup>11</sup> *Ibid.*

<sup>12</sup> United Nations World Conference on Human Rights, *Vienna Declaration and Programme of Action*, adopted June 25, 1993, U.N. Doc. A/CONF.157/24 (Part I) at 20 (1993), (1993) 32 I.L.M. 1661, para. 37. See also UN General Assembly, *International Covenants on Human Rights*, Res. 62/147, 18 December 2007 (adopted without vote), preamble: "Recognizing the importance of regional human rights instruments and monitoring mechanisms in complementing the universal system of promotion and protection of human rights".

<sup>13</sup> Organization of American States (Working Group to Prepare the Draft American Declaration on the Rights of Indigenous Peoples), *Report of the Chair on the Meetings for Reflection on the Meetings of Negotiations in the Quest for Points of Consensus (Washington, D.C., United States - November 26-28, 2007)*, OEA/Ser.K/XVI, GT/DADIN/doc.321/08 (14 January 2008), at 3:

The majority of States and all of the indigenous representatives supported the use of the UN Declaration as the baseline for negotiations and indicated that this represented a minimum standard for the OAS Declaration. Accordingly, the provisions of the OAS Declaration ha[ve] to be consistent with those set forth in the United Nations Declaration.

<sup>14</sup> African Commission on Human and Peoples' Rights, "Communique on the United Nations Declaration on the Rights of Indigenous Peoples", Brazzaville, Republic of Congo (28 November 2007).

<sup>15</sup> African Commission on Human and Peoples' Rights, "Draft Principles and Guidelines on Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights", no date, note 102 (referring to *UN Declaration*) art. 26), online at: [http://www.achpr.org/english/other/Draft\\_guideline\\_ESCR/Draft\\_Pcpl%20&%20Guidelines.pdf](http://www.achpr.org/english/other/Draft_guideline_ESCR/Draft_Pcpl%20&%20Guidelines.pdf).

<sup>16</sup> Association of Southeast Asian Nations (ASEAN), "Terms of Reference of ASEAN Intergovernmental Commission on Human Rights", adopted by ASEAN Foreign Ministers 20 July 2009, Phuket, Thailand, online: <http://www.aseansec.org/DOC-TOR-AHRB.pdf>.

Although it is a positive step to create the first regional human rights body in Asia, the terms of reference are in need of major improvements. Otherwise, crucial goals of human rights recognition, protection and enforcement may not be achieved. See, e.g., "UN Human Rights Chief welcomes important step towards establishment of ASEAN Commission on Human Rights", United Nations Press Release, online: <http://www.unhchr.ch/huricane/hurricane.nsf/view01/9D27DBCDD08C3C06C12575FB003502C5?opendocument>. See also Asian Forum for Human Rights and Democracy, fortnightly e-newsletter, "The adopted terms of reference of ASEAN human rights body disappoint civil society", Issue 94, 31 July 2009.

<sup>17</sup> Permanent Forum on Indigenous Issues, *Report on the eighth session (18 - 29 May 2009)*, Economic and Social Council, Official Records, Supplement No. 23, United Nations, New York, E/2009/43, E/C.19/2009/14, para. 99.

<sup>18</sup> *Case of the Saramaka People v. Suriname, (Preliminary Objections, Merits, Reparations, and Costs)*, I/A Court H.R., (Judgment) 28 November 2007, Series C No. 172, para. 131 (reference to *UN Declaration*) and para. 214 (8).

<sup>19</sup> Permanent Forum on Indigenous Issues, *Information received from Governments: Bolivia*, E/CN.19/2009/4/Add.2 (24 February 2009), para. 57.

<sup>20</sup> Permanent Forum on Indigenous Issues, *Information received from Governments: Democratic Republic of the Congo*, UN Doc. E/C.19/2009/4/Add.3 (27 February 2009), para. 10.

<sup>21</sup> Permanent Forum on Indigenous Issues, *Information received from Governments: Denmark and Greenland*, UN Doc. E/CN.19/2009/4/Add.4 (3 March 2009).

<sup>22</sup> *Cal v. Attorney General of Belize and Minister of Natural Resources and Environment; Coy v. Attorney General of Belize and Minister of Natural Resources and Environment* (18 October 2007) Claims No. 171 & 172 (Consolidated), (Supreme Court of Belize), paras. 118-135.

<sup>23</sup> Australia (Jenny Macklin, Minister for Families, Housing, Community Services and Indigenous Affairs), "Statement on the United Nations Declaration on the Rights of Indigenous Peoples", Parliament House, Canberra (3 April 2009), online: [http://www.jennymacklin.fahcsia.gov.au/internet/jennymacklin.nsf/content/un\\_declaration\\_03apr09.htm](http://www.jennymacklin.fahcsia.gov.au/internet/jennymacklin.nsf/content/un_declaration_03apr09.htm).

<sup>24</sup> Colombia, "Gobierno anuncia respaldo unilateral a la Declaración de Naciones Unidas sobre los Derechos de los Pueblos Indígenas" (21 April 2009), online: <http://web.presidencia.gov.co/sp/2009/abril/21/10212009.html>.

<sup>25</sup> Permanent Forum on Indigenous Issues, *Report of the international expert group meeting on indigenous languages*, 7<sup>th</sup> sess., New York, E/C.19/2008/3 (21 January 2008) at para. 44 (a): "States, indigenous peoples and international organizations should collaborate in translating the United Nations Declaration on the Rights of Indigenous Peoples into indigenous languages and disseminate these widely."

For versions of the *Declaration* in the six official UN languages and other languages, see online: Permanent Forum on Indigenous Issues <http://www.un.org/esa/socdev/unpfii/en/declaration.html>.

<sup>26</sup> "Govt Only To Support UN Declaration If NZ Law Remains Paramount" (22 July 2009), online: <http://www.guide2.co.nz/politics/news/govt-only-to-support-un-declaration-if-nz-law-remains-paramount/11/9621>.



<sup>27</sup> *UN Declaration*, article 46(3): “In the exercise of the rights enunciated in the present Declaration, human rights and fundamental freedoms of all shall be respected.”

<sup>28</sup> Human Rights Council, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people*, S. James Anaya, UN Doc. A/HRC/9/9 (11 August 2008) at para. 85 [bold in original].

<sup>29</sup> UN General Assembly, *2005 World Summit Outcome*, A/RES/60/1, 16 September 2005, adopted without vote, para. 119: “... all human rights, the rule of law and democracy ... are interlinked and mutually reinforcing and ... they belong to the universal and indivisible core values and principles of the United Nations...”

<sup>30</sup> See New Zealand Parliament (Pāremata Aotearoa), Questions for Oral Answer – “Declaration on the Rights of Indigenous Peoples – Māori Rights”, 30 July 2009 (response of the Hon. Simon Power, Minister of Justice on behalf of the Minister of Foreign Affairs), online: [http://www.parliament.nz/en-NZ/PB/Business/OOA/a/5/0/49HansQ\\_20090730\\_00000008-8-Declaration-on-the-Rights-of-Indigenous.htm](http://www.parliament.nz/en-NZ/PB/Business/OOA/a/5/0/49HansQ_20090730_00000008-8-Declaration-on-the-Rights-of-Indigenous.htm).

<sup>31</sup> UN General Assembly, *Human Rights Council*, A/RES/60/251 (15 March 2006), para. 9 (duty to uphold highest standards and cooperate with Council).

<sup>32</sup> *Taku River Tlingit First Nation v. British Columbia (Project Assessment Director)*, [2004] 3 Supreme Court Reports 550, para. 25 [emphasis added].

<sup>33</sup> Bill Curry and Martin Mittelstaedt, “Ottawa’s stand at talks hurting native rights, chiefs say”, *Globe and Mail* (12 December 2008) A10. Canada’s view is inconsistent with world opinion: see, e.g., Human Rights Council, *Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights*, UN Doc. A/HRC/10/61 (15 January 2009) at para. 53: “The United Nations Declaration on the Rights of Indigenous Peoples sets out several rights and principles of relevance to threats posed by climate change.”

<sup>34</sup> Amnesty International (Canada), *Canada and the International Protection of Human Rights: An Erosion of Leadership?, An Update to Amnesty International’s Human Rights Agenda for Canada* (December 2007) at 7-8.

<sup>35</sup> The amendment was part of a larger package of proposed amendment: see Letter from the Permanent Missions of Canada, Colombia, New Zealand and the Russian Federation, to the President of the United Nations General Assembly (13 August 2007), attaching a “Non-Paper on Proposed Amendments”.

<sup>36</sup> United Nations World Conference on Human Rights, *Vienna Declaration and Programme of Action*, adopted June 25, 1993, U.N. Doc. A/CONF.157/24 (Part I) at 20 (1993), (1993) 32 I.L.M. 1661, para. 5.

<sup>37</sup> Human Rights Council, *Institution-building of the United Nations Human Rights Council*, Res. 5/1, Annex (18 June 2007), at V. Agenda and Framework for the Programme of Work (A. Principles).

<sup>38</sup> UN General Assembly, *Human Rights Council*, A/RES/60/251 (15 March 2006), preamble: “Recognizing ... the importance of ensuring universality, objectivity and non-selectivity in the consideration of human rights issues, and the elimination of double standards and politicization ...”.

See also “Durban Review Outcome Document”, United Nations, Geneva (2009), para. 73, online: [http://www.un.org/durbanreview2009/pdf/Durban\\_Review\\_outcome\\_document\\_En.pdf](http://www.un.org/durbanreview2009/pdf/Durban_Review_outcome_document_En.pdf): “Welcomes the adoption of the UN Declaration on the rights of indigenous peoples which has a positive impact on the protection of victims and, in this context, urges States to take all necessary measures to implement the rights of indigenous peoples in accordance with international human rights instruments without discrimination”.