

Item 5: UN Declaration on the Right of Indigenous Peoples

Transforming the declaration into a convention should be one of the main tasks of the next years

In the rapping up of last year's session of EMRIP, I did mentioned the importance of taking up the UN Declaration on the Right of Indigenous Peoples, UN DRIP, of which we had been working for so many years, mostly under the motherly authority of Mme Daes.

Indeed, we spent two weeks in Geneva every year: one week for the **UN Working Group on Indigenous Peoples WGIP**, officially called **UN Working Group on Indigenous Populations**, for its proceedings of which standard-setting was the most important activity. It took as another second week to elaborate the UN DRIP, which has been first called Universal Declaration on the Rights of Indigenous Peoples UDRIP.

Sometimes I was asked "but isn't it boring to spend your time breeding over strong and legally-valid formulations on IPs rights while all the others enjoy their holidays"? That time we did some the latter nevertheless since there was a cocktail or a party almost every evening. And we still had the UN club at the shores of Lake Geneva for some legendary parties, including Indigenous Peoples music and dances, and even for taking a swim. Indeed, the good old times have faded quite a bit.

What happened next was that all of a sudden the declaration was taken out of our hands and given to a newly formed working group with the sole task to continue our work. We suspected—with good reasons—that it had set-up to water-down our Working Group's draft declaration. Hence, quite a large

number of indigenous delegates had to stay even longer in Geneva every year, just to make sure that this watering down would not happen, and they actually did an excellent job. The losses were minor and some of the legal language got better. It was still a historic milestone to which the world's Indigenous Peoples movements have contributed in very critical ways.

The rest of the story is better known: The UN General Assembly adopted the UN DRIP after the space of some years, with four former British settler colonies abstaining. However, feeling the isolation all of them have since reluctantly joined. In most cases this does by no means translate into activities to actually implement the content and the spirit of the declaration.

This, unfortunately, can also be observed in the behavior of many other signatories. Why? Because it is easy to violate a declaration since it is a non-binding instrument. There are no penalties to be paid, not even allowing UN experts to observe its implementation or non-implementation. There is no system of reports on the implementation of declaration. It is basically a matter of free and sovereign decision by state elites to abide to the spirit of the declaration or not. Unfortunately, the latter is much more likely.

What can be done to change this and revive the UN DRIP to real life?

A review of progress on implementation of UN DRIP is a good idea but it will not be enough. We have to remember that there are many rogue states out there.

Obviously the rights of Indigenous Peoples are a matter that should not depend from the goodwill of governments. Only a more inductive and stricter legal form would be of

help. What is needed in this case is a **Convention on the Rights of Indigenous Peoples**.

You may argue that there is the ILO Convention on Indigenous Peoples' Rights. This convention is limited and largely outdated. Its language does not reflect today's international legal and socio-political standards.

■ If the UN Working Group on Indigenous Peoples, WGIP, has been able to elaborate a full-fledged Declaration on the Rights of Indigenous Peoples, this Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) should be able to translate the universally accepted Declaration on IP Rights with significant accuracy and the help of legal experts from among the world's Indigenous Peoples into a viable and full-fledged *Convention on the Rights of Indigenous Peoples*.

■ It should not take another decade to do so, a three to four year period should be sufficient to arrive at a convincing Convention.

The Convention must include well-defined procedures such as

- elaborate and fine-tuned reporting systems,
- control mechanism by the organizations of the Indigenous Peoples themselves and
- a system of independent expert scrutiny to be established by the ECOSOC in Geneva, at a newly formed UN Indigenous Peoples Right Observatory.

■ This Observatory would be independent, manned by competent experts, especially indigenous experts, and would out of reach for possible pressuring by state governments.

■ An Indigenous Elder Council would be the watch for possible pressuring and other violations in relation to settler states and other non-complying governments.

A very worthy and meaningful task

Honorable experts, dear indigenous brothers and sisters, such a task would be a very worthy and meaningful one to fulfill by this assembly of Indigenous Peoples delegates coming together from all over the world.

■ An upgraded voluntary fund should be endorsed to fund indigenous experts to participate in working meeting before or after the EMRIP sessions.

■ Participants at the EMRIP sessions would be welcome contributors to the process of creating a viable Convention on the Rights of Indigenous Peoples, whose implementation will be closely monitored across the world.

Thank you for kind attention and for your support for such a proposal to be implemented in due time. Its realization could indeed change the situation of the Indigenous Peoples of the world in very positive ways.

In solidarity,

Prof. Dr. Chris Scherrer, HPI-HCU