

Carsten Smith, member of the Permanent Forum, 20 May 2009

I shall speak on the implementation of the Declaration on the Rights of Indigenous Peoples.

When this Declaration was adopted 13 September 2007 the Permanent Forum was assigned a new function and an extended mandate.

The purpose of the Declaration is to constitute the legal basis for all activities in the areas of indigenous issues. The task of the Permanent Forum in the years to come will be to act towards transforming the Declaration in its entirety to living law.

All acts against the rights of indigenous peoples are taking place within the jurisdiction of states. Therefore is the implementation the very center of the indigenous issues. When we mention the Declaration we should at the same time speak about the implementation.

This implementation is at least a two stage process. First, the Declaration shall be implemented in the national legislation and governmental regulations of the various countries. And we know that there is already in this respect a huge implementation gap. But secondly, the implementation to living law is not fulfilled until the indigenous peoples meet the practical results on the ground. Thus, the implementation gap we can see today, the world around, is very huge, a really wide-open implementation canyon.

However, the new function of the Permanent Forum implies that it has to follow up the effectiveness of the Declaration. That means closing the gap.

Certainly, this function shall according to Article 42 be considered a duty for all UN bodies and specialized agencies. However, the Permanent Forum is, as the only UN body, expressly mentioned. This wording emphasizes that the Forum as a UN body particularly created for indigenous issues has a responsibility for realizing the demands of the Article.

An expert group meeting on the implementation of Article 42 of the Declaration was held in New York in January. We have the

report as the basis for our discussion today. Another meeting on the Declaration was held in Madrid on the initiative of the member of the Permanent Forum Bartelome Clavero. These meetings have contributed much to analyzing and clarifying the impact of the new Permanent Forum function.

In this new Article 42 situation the Permanent Forum has to clarify the content and range of this responsibility. A discussion and adoption of a commentary of the new function, a General Comment if you like, may serve this purpose. The new situation created by the Declaration makes this way of clarification, well known from other UN bodies, a natural line of proceeding.

An attempt has been made within the Forum to draft such a General Comment. This draft is presented to this meeting as a Conference Room Paper.

The Declaration is a legal document and is therefore open for various interpretations. The draft which is presented is, one might say, realistic as well as positive.

The draft takes among others the following positions: The Declaration is not a treaty, and it has accordingly not the binding force of a treaty. On the other hand, there are a number of elements motivating a binding character of at least parts of the Declaration.

In its wording the Article 42 gives only duties to the Permanent Forum with regard to this new function, not any clear authority to accomplish what is required. The authority of the Permanent Forum will therefore have to be decided by a reading of the Declaration as a whole. The draft General Comment makes such a reading.

A General Comment may be adopted at this session, or may be not. In any case, the Permanent Forum shall today and in the future apply the Declaration as the superior norm for all its activities.