Indigenous Rights Declaration moves to Human Rights Council
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GENEVA - Now that the U.N. Commission on Human Rights has wrapped up its work, the newly formed Human Rights Council will likely consider adoption of the draft Declaration on the Rights of Indigenous Peoples.

Members of the new council will be elected on May 9 to fill 47 seats. The council will be based in Geneva and will hold a minimum of three sessions each year for at least 10 weeks, and may also hold special sessions to deal with urgent human rights situations.

Some indigenous organizations are calling for the council to adopt the declaration at its first session in June, while others worry about limited participation in the process.

Wilton Littlechild, a Cree lawyer and member of the Permanent Forum on Indigenous Issues, sees the restructuring of U.N. human rights bodies in a more positive light.

"We have an opportunity to elevate indigenous issues within the U.N. system because the new Human Rights Council reports directly to the General Assembly," he said. "This signals a more serious interest in indigenous rights globally. We need to ensure that our issues are a priority on the council's agenda when they convene in June."

The permanent forum is one of the U.N. bodies that will monitor the implementation of the declaration on indigenous rights and will be influential in ensuring that countries are held to the human rights standards outlined.

"We also need to look at ways to strengthen the role and increase the effectiveness of the permanent forum under the new U.N. structure," said Littlechild.

Some international law experts caution that a rush to get the declaration approved may leave some critical issues relating to lands and self-determination unresolved. They are lobbying for continued work on the declaration in order to achieve adoption by consensus, rather than calling for a vote.


"If adopted by a vote, the declaration might never become binding law and could remain just a statement of proposed rights. In order to become legally effective and legally binding, it must first become customary international law."

Customary international law is created when member countries, referred to as states, generally engage in a practice with the belief that it is required by law. It is not necessary for every country to follow the practice, but it must be followed by most. A rule of customary international law cannot be made binding on a nation that has consistently objected to the rule.
"When a declaration of human rights is adopted by the U.N. General Assembly by consensus, this shows that every state agrees with or does not object to the declaration of rights. It is a recognition that these rights are binding on member states," said Coulter.

However, if a declaration is adopted by a vote, that declaration will never be binding on the member states that voted against it unless those states stop objecting later.

Even if the declaration becomes customary international law, it would still not be binding upon those states that voted against it and continued to object to it.

This could be very serious when the objecting states are large or have many indigenous peoples as is the case with the United States, Australia and Russia, among others.

"We will have to insist that the Human Rights Council continue the work on the declaration in order to resolve the remaining issues on self-determination, lands, territories and natural resources. If all parties show some flexibility and creativity, these issues can be worked out," said Coulter.

The process of debating and working on possible solutions will continue to educate countries and advance indigenous peoples' goals to gain greater acceptance and greater understanding of their rights.

"We believe the new council should create a new method for settling the remaining issues in the declaration," said Coulter. "We must continue to insist that indigenous peoples have a full opportunity to be heard and to participate in achieving a strong text that can be adopted by consensus."

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