U.N. Human Rights Council adopts Declaration on Indigenous Rights

by: Valerie Taliman / Indian Country Today
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GENEVA - It was an emotionally charged moment in a room packed full of hope and hundreds of delegates, human rights advocates and two dozen indigenous participants at the Palais des Nations as the newly established United Nations Human Rights Council decided the fate of the draft Declaration on the Rights of Indigenous Peoples.

As the resolution for adoption was introduced, Luis-Enrique Chavez of Peru, chairman-rapporteur of the U.N. working group on the declaration, reminded members that it was co-sponsored by 45 states. He offered a "brotherly appeal" to the council to adopt the declaration by consensus.

"Indigenous peoples have been subjected to widespread human rights violations - including policies of extermination - since the 15th century," he said. "After more than 500 years, the international community for the first time in history is recognizing the rights of the world's 350 million indigenous peoples. We can change the course of history. It's time to send a positive signal by adopting the declaration by consensus."

The outcome of the roll call vote brought mixed reactions as the votes from the 47-member council came in - 30 in favor, two opposed, three absent and 12 abstaining.

Delegates from Latin American countries such as Mexico, Peru, Guatemala and Cuba seemed exuberant as they mustered a majority vote against large countries like Russia and Canada.

At the end of the day, the declaration - a nonbinding statement of the rights of indigenous peoples in international law - was adopted by majority vote and will now be sent to the U.N. General Assembly for consideration, perhaps as early as its September session in New York.

"We are very pleased by the great number of countries that have stated their support for the rights of indigenous peoples in this draft declaration," said Robert Tim Coulter, executive director of the Indian Law Resource Center based in Helena, Mont., and Washington, D.C., and one of the original authors of the declaration.

"This declaration contains many of the important human rights that we have fought for nearly 30 years to establish - the right of self-determination for indigenous peoples; rights to our lands, territories and resources; the right to exist as distinct peoples and cultures; recognition of our treaties; and many other rights," he said.

"However, because a majority of the member states on the Human Rights Council have chosen to adopt the declaration by a vote rather than to seek consensus, this means that the declaration may have little legal impact and limited application. This abandonment of consensus is a huge disservice to indigenous peoples and our long quest for human rights."

Human rights declarations are normally adopted by consensus in the United Nations, meaning there are no objections. In opposing the declaration's adoption, representatives of Canada and Russia made statements stressing that the declaration was not legally binding and not applicable in their countries.
In explaining its "no" vote, the representative of Canada expressed concern that language in the declaration could give indigenous peoples the right of veto on land and natural resource issues, and may give indigenous peoples claims to lands they had already ceded, creating new problems for ongoing land claims. He insisted the declaration had no legal effect in Canada and that it does not reflect customary international law.

"We are disappointed that in several respects the declaration is inadequate and it falls short of what it should have stated," said Coulter, who lobbied hard to continue working on the declaration for another year in the hope it might achieve consensus.

"We fought hard to persuade countries to do better and to continue the work to strengthen the declaration. But at least these 30 states are willing to accept this improvement over the past, where discrimination and denial of rights have been the norm."

Wilton Little Child, a Cree attorney representing the International Organization of Indigenous Resource Development in Alberta, Canada, said the declaration was the result of many long and difficult years of debate among states and indigenous peoples, and while the text was not perfect, he was convinced that further deliberation would not have produced a stronger text.

"We recognize that some indigenous peoples preferred a stronger text which would go further in recognizing indigenous rights. We also recognize that many indigenous peoples from around the world see it as an acceptable compromise which upholds basic principles such as treaty rights, self-determination, land rights and the right to free, prior and informed consent.

Little Child, who is also a member of the U.N. Permanent Forum on Indigenous Issues, said the declaration is "an acceptable minimum standard for the survival, dignity and well-being of indigenous peoples and a basis for honest partnership, improved relations and much-needed reconciliation between states and indigenous peoples."

The effort to build a strong body of indigenous rights will now move to the General Assembly, where all the member nations of the United Nations have a vote. While the Human Rights Council has a rotating membership of just 47, there are 191 member nations of the U.N.

It is possible that countries in the General Assembly will decide that further debate and negotiation are called for in order to reach consensus among countries.

But indigenous peoples can count on opposition from the United States, Canada, Russia, Australia and New Zealand, all of whom have said they will oppose the declaration in the General Assembly.

In debates last month, the United States, Australia and New Zealand issued a four-page controversial statement that said certain articles of the declaration regarding rights to self-determination and to lands and resources were "unworkable and unacceptable."

"They ignore the contemporary realities in many countries with indigenous populations by appearing to require the recognition of indigenous rights to lands now lawfully owned by other citizens. Such provisions would be both arbitrary and impossible to implement," the statement read.

It is unclear whether there are sufficient votes in the General Assembly in favor of the declaration, but the support of the 30 states voting "yes" in the Human Rights Council will be an important positive factor in that calculation.

At press time, there was no word on whether or not the declaration would be on the General Assembly's agenda for its September session.
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