

UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

GENERAL ASSEMBLY RESOLUTION 61/295

The issue of the rights of indigenous peoples was first raised in 1970 during the twenty-third session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, in the context of its basic mandate to make recommendations to the Commission on Human Rights concerning the prevention of discrimination of any kind relating to human rights and fundamental freedoms and the protection of racial, national, religious and linguistic minorities.

At its twenty-third session, held from 10 to 28 August 1970, the Sub-Commission adopted resolution 4 B (XXIII) by which it recommended to the Economic and Social Council, through the Commission on Human Rights, that a complete and comprehensive study of the problem of discrimination against indigenous populations be undertaken (see Report of the Sub-Commission, E/CN.4/Sub.2/316). On 21 May 1971, the Economic and Social Council adopted resolution 1589 (L) by which it authorized the Sub-Commission to carry out this study. At its twenty-fourth session, the Sub-Commission accordingly adopted resolution 8 (XXIV) of 18 August 1971 entitled "Complete and comprehensive study of the problem of discrimination against indigenous populations" by which, inter alia, it appointed Mr. José R. Martínez Cobo as Special Rapporteur on the topic (see Report of the Sub-Commission, E/CN.4/Sub.2/323 and Corr.1).

From 1973 to 1983, the Sub-Commission considered the work of the Special Rapporteur. At its thirty-fourth session, it adopted resolution 2 (XXXIV) of 8 September 1981 by which it recommended to the Economic and Social Council that it decide to authorize the Sub-Commission to establish a Working Group on Indigenous Populations in order to review developments pertaining to the promotion and protection of the human rights and fundamental freedoms of indigenous populations. The Sub-Commission further recommended that the Working Group should give special attention to the evolution of standards concerning the rights of indigenous populations, taking account both of the similarities and of the differences in the situations and aspirations of the indigenous populations throughout the world (see Report of the Sub-Commission, E/CN.4/Sub.2/495). On 7 May 1982, the Economic and Social Council adopted resolution 1982/34 to this effect by which it accordingly authorized the Sub-Commission to establish a Working Group on Indigenous Populations.

At the first session of the Working Group on Indigenous Populations, held in August 1982, the possibility was raised of drafting one or more declarations on the rights of indigenous peoples (see Report of the Working Group, E/CN.4/Sub.2/1982/33). At its second and third sessions, held in August 1983 and 1984 respectively, the Working Group continued its discussions on the matter (E/CN.4/Sub.2/1983/22 and E/CN.4/Sub.2/1984/20).

At its thirty-seventh session, the Sub-Commission adopted resolution 1984/35 B of 30 August 1984 by which, inter alia, having examined the report of the Working Group on its third session, it requested the Working Group to consider, at its next session in 1985, the drafting of a Body of Principles of Indigenous Rights based on national legislation, international instruments and other judicial criteria (see Report of the Sub-Commission, E/CN.4/Sub.2/1984/43).

At the fourth session of the Working Group, held from July to August 1985, there was widespread agreement that emphasis should be placed on the elaboration of a body of principles of indigenous rights with the aim of producing a draft declaration which might eventually be proclaimed by the General Assembly (see Report of the Working Group, E/CN.4/Sub.2/1985/22). At its thirty-eighth session, the Sub-Commission adopted resolution 1985/22 of 29 August 1985 by which, having examined the report of the Working Group on its fourth session, it was convinced of the urgent need to promote and protect indigenous rights by means of a continued and comprehensive review of developments in this field, as well as through the evolution of standards, particularly by means of the preparation of a draft declaration of principles on indigenous rights which might eventually be proclaimed by the General Assembly. By the same resolution, the Sub-Commission requested the Working Group, at its next session, to focus its attention on drafting specific proposals for the content and scope of indigenous rights, on the basis of the conclusions, proposals and recommendations contained in the final report of the Special Rapporteur submitted in 1983 (see Final Report of the Special Rapporteur, E/CN.4/Sub.2/1983/21/Add.8; Report of the Sub-Commission, E/CN.4/Sub.2/1985/57).

At its fifth to twelfth sessions, held from 1987 to 1994, the Working Group considered in detail the issue of a universal draft declaration on the rights of indigenous peoples and made substantial progress towards agreement on a draft text. At its thirty-ninth session, the Sub-Commission adopted resolution 1987/16 of 2 September 1987 by which, having examined the report of the Working Group on its fifth session (E/CN.4/Sub.2/1987/22 and Add.1), it recommended to the Economic and Social Council, through the Commission on Human Rights, that the Council request the Chairperson-Rapporteur of the Working Group, Mrs. Erica-Irene Daes, to prepare a working paper containing a set of principles and preambular paragraphs for insertion in a universal draft declaration for consideration at the sixth session of the Working Group (see Report of the Sub-Commission, E/CN.4/Sub.2/1987/42 and Corr.1). On 27 May 1988, the Economic and Social Council accordingly adopted resolution 1988/36 to this effect.

At the sixth session of the Working Group, held in August 1988, its Chairperson-Rapporteur thus submitted a working paper which contained a preliminary draft declaration on indigenous rights (E/CN.4/Sub.2/1988/25). At the same session, the Working Group discussed the working paper and proposed to the Sub-Commission that it serve as the basis for its continued work towards a universal draft declaration on indigenous rights (see Report of the Working Group, E/CN.4/Sub.2/1988/45).

At its fortieth session, the Sub-Commission adopted resolution 1988/18 of 1 September 1988 by which, inter alia, it endorsed the recommendation of the Working Group to adopt the working paper as the framework for the drafting of a declaration on indigenous rights, and requested the Secretary-General to transmit the Working Group's report on its sixth session to Member States, indigenous peoples, intergovernmental and non-governmental organizations, as soon as possible, for specific comments, observations and proposals for the further elaboration of the draft declaration (see Report of the Sub-Commission, E/CN.4/Sub.2/1988/45).

At its seventh to tenth sessions, held from 1989 to 1992, the Working Group considered revised working papers submitted by its Chairperson-Rapporteur, as amended to reflect comments and observations received annually by Member States and other interested parties, and made substantial progress towards agreement on a universal draft declaration on indigenous rights. At its forty-seventh session, following the submission of a joint draft resolution by forty Member States (A/47/L.33), the General Assembly adopted resolution 47/75 of 14 December 1992 under a sub-item of its agenda entitled "Human rights questions" by which it requested inter alia the Commission on Human Rights to ask the Working Group, at its eleventh session, and

the Sub-Commission, at its forty-fifth session, to complete their consideration of the draft universal declaration on indigenous rights and submit their report to the Commission on Human Rights for consideration at its fiftieth session. In June 1993, an identical request was made by the international community at the World Conference on Human Rights, held in Vienna, as adopted in the 1993 Vienna Declaration and Programme of Action. In addition, the 1993 Vienna Declaration recommended that the Commission on Human Rights consider the renewal and updating of the mandate of the Working Group upon completion of the drafting of the declaration on indigenous rights (A/CONF.157/23). At its eleventh session, held in July and August 1993, following a request from the Commission on Human Rights at its forty-ninth session (E/1993/23), the Working Group thus agreed on a final text for the draft declaration on indigenous rights and submitted it to the Sub-Commission for further consideration (see Report of the Working Group, E/CN.4/Sub.2/1993/29).

At its forty-fifth session, the Sub-Commission adopted resolution 1993/46 of 26 August 1993 by which, having considered the report of the Working Group on its eleventh session, it decided that the draft declaration be entitled “United Nations Declaration on the Rights of Indigenous Peoples”. By the same resolution, the Sub-Commission further decided (i) to postpone consideration of the draft declaration until its forty-sixth session; (ii) to request the Secretary-General to submit the draft declaration, as soon as possible, to the appropriate services within the Centre for Human Rights for its technical revision; (iii) to request the Secretary-General to transmit the technically revised text of the draft declaration to indigenous peoples and organizations, Member States, and intergovernmental and non-governmental organizations; and (iv) to consider the draft declaration at its forty-sixth session and, if possible, to submit it to the Commission on Human Rights with the recommendation that the Commission consider and adopt it at its fifty-first session in 1995, on the understanding that the report of the Working Group on its twelfth session would contain a summary of general views expressed by the participants on the draft declaration (see Report of the Sub-Commission, E/CN.4/Sub.2/1993/45 and Corr.1).

At its forty-sixth session, the Sub-Commission adopted resolution 1994/45 of 26 August 1994 by which, having considered the report of the Working Group on its twelfth session (E/CN.4/Sub.2/1994/30 and Corr.1), it decided, *inter alia*, to adopt the draft declaration on the rights of indigenous peoples, as elaborated by the Working Group and to submit the draft declaration to the Commission on Human Rights at its fifty-first session with the request that it consider the draft declaration as expeditiously as possible (see Report of the Sub-Commission, E/CN.4/Sub.2/1994/56).

At the forty-ninth session of the General Assembly, following the recommendation of its Third Committee (A/49/613 and Add.1), the Assembly adopted resolution 49/214 of 23 December 1994 under an item of its agenda entitled “Programme of activities of the International Decade of the World’s Indigenous People” by which it encouraged the Commission on Human Rights to consider the draft declaration on indigenous rights with a view to achieving its adoption by the General Assembly within the international decade which would come to an end in 2004 in accordance with General Assembly resolution 48/163 of 21 December 1993.

At its fifty-first session, the Commission on Human Rights accordingly adopted resolution 1995/32 of 3 March 1995 by which it welcomed the decision of the Sub-Commission to adopt the draft declaration and decided to recommend to the Economic and Social Council that it authorize the establishment, as a matter of priority, of an open-ended inter-sessional Working Group of the Commission on Human Rights with the sole purpose of elaborating a draft declaration for consideration and adoption by the General Assembly within the international decade. By resolution 1995/32, the Commission on Human Rights also encouraged the Working Group to consider all aspects of the draft declaration, including its scope of application, and submit a progress report to the Commission for consideration at its

fifty-second session. Finally, the same resolution requested the Secretary-General to invite Member States, intergovernmental organizations and certain non-governmental organizations to submit comments on the draft declaration submitted by the Sub-Commission for consideration by the Working Group (see Report of the Commission on Human Rights, E/1995/23). On 25 July 1995, the Economic and Social Council adopted resolution 1995/32 to this effect and accordingly authorized the establishment of the Working Group.

At its first to tenth annual sessions, held from 1995 to 2004, the Working Group considered in detail the draft declaration submitted by the Sub-Commission and made substantial progress towards general agreement on a final draft text. During that period, the Working Group also submitted annual reports to the Commission on Human Rights, which, in turn, took note of the gradual progress made by the Working Group on a draft declaration under an item of its agenda entitled “Indigenous Issues” (see Reports of the Working Group, E/CN.4/1996/84; E/CN.4/1997/102; E/CN.4/1998/106 and Corr.1; E/CN.4/1999/82; E/CN.4/2000/84; E/CN.4/2001/85; E/CN.4/2002/98; E/CN.4/2003/92 and Add.1; E/CN.4/2004/81 and Add.1; E/CN.4/2005/89 and Add.1-2).

At the fifty-ninth session of the General Assembly, following the recommendation of its Third Committee (A/59/500), the Assembly adopted resolution 59/174 of 20 December 2004 under an item of its agenda entitled “Programme of activities for the International Decade of the World’s Indigenous People” by which it urged inter alia all parties involved in the process of negotiation to do their utmost to carry out successfully the mandate of the Working Group and to present for adoption as soon as possible a final draft United Nations declaration on the rights of indigenous peoples. At its sixty-first session, the Commission on Human Rights adopted resolution 2005/50 of 20 April 2005 to the same effect (see Report of the Commission on Human Rights, E/2005/23). In addition, at its sixtieth session, the General Assembly adopted resolution 60/1 of 16 September 2005 by which it inter alia reiterated the request it had made to the Working Group in resolution 59/174. At its eleventh session, held in December 2005 and from January to February 2006, the Working Group accordingly agreed on a final text for the draft declaration on indigenous rights and submitted it to the Commission on Human Rights for consideration at its sixty-second session (see Report of the Working Group, E/CN.4/2006/79).

At its first session, following the submission of a joint draft resolution by Peru (A/HRC/1/L.3), the newly established Human Rights Council adopted resolution 1/2 of 29 June 2006 by which, taking note of the report of the Working Group on its eleventh session, it adopted the United Nations Declaration on the Rights of Indigenous Peoples and, in turn, recommended its adoption to the General Assembly (see Report of the Human Rights Council, A/61/53). At the sixty-first session of the General Assembly, following the recommendation of its Third Committee (A/61/448), the Assembly adopted resolution 61/178 of 20 December 2006 under an item of its agenda entitled “Report of the Human Rights Council” by which it took note of the recommendation of the Human Rights Council contained in its resolution 1/2 of 29 June 2006 and decided to defer consideration of and action on the draft declaration to allow time for further consultations thereon. By the same resolution, the General Assembly also decided to conclude its consideration of the draft declaration before the end of its sixty-first session. At the same session of the General Assembly, following the submission of a joint draft resolution by nineteen Member States (A/61/L.67), as well as a debate in the plenary on that proposal (see A/61/PV.107-108), the Assembly thus adopted, by 143 votes to 4, with 11 abstentions, resolution 61/295 of 13 September 2007 by which it again took note of the recommendation of the Human Rights Council contained in its resolution 1/2 of 29 June 2006 and adopted the United Nations Declaration on the Rights of Indigenous Peoples.