

**Resolution 96-01-A**  
**DRAFT DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES**

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**WHEREAS** the draft Declaration on the Rights of Indigenous Peoples is being considered by the United Nations Commission on Human Rights, for eventual consideration by the U.N.

General Assembly;

**WHEREAS** the draft Declaration addresses the issues of self-determination and enforcement of historical treaties of indigenous peoples worldwide, and includes the rights to traditional territories and resources, self-government, control of social programs, physical and cultural security, and participation in national decision making;

**WHEREAS** indigenous representatives participated directly in the drafting of the draft Declaration, and a key goal of indigenous peoples in the *U.N. Decade of the World's Indigenous People (1995-2004)* is the adoption of the draft Declaration;

**BE IT RESOLVED THAT** the Canadian Bar Association urge the Government of Canada to:

1. include representatives of Aboriginal peoples in the official delegation to the Commission's Working Group; and
2. engage in a public consultation on the ratification of the draft Declaration on the rights of Indigenous Peoples.

*CERTIFIED TRUE COPY OF A RESOLUTION CARRIED AS AMENDED BY THE COUNCIL OF THE CANADIAN BAR ASSOCIATION AT THE ANNUAL MEETING HELD IN VANCOUVER, BC, AUGUST 23-30, 1996.*

**STEPHEN L. BRESOLIN**  
**ACTING EXECUTIVE DIRECTOR**



## **BACKGROUND TO RESOLUTION 96-01-A DRAFT DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES**

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At the April 1995 meeting of the Aboriginal Law Section, a proposal was made that the Canadian Bar Association be asked to pass a resolution regarding the draft Declaration on the Rights of Indigenous Peoples. The Working Group on Indigenous Populations (WGIP) submitted its final draft in August 1993 to the Sub-Commission on the Prevention of Discrimination and Protection of Minorities who sent it on to the Commission on Human Rights last summer. The Commission has established its own working group, made up of government members of the Commission to revise the text before it is voted upon. There is grave concern amongst indigenous peoples, both in Canada, and throughout the world, that the draft approved by the WGIP could be significantly watered down, particularly the provisions dealing with self-determination and indigenous land rights. The purpose of the Canadian Bar Association's submission regarding the draft Declaration would be to ensure that Canada encourage the further discussion of the Draft Declaration proposed by the Working Group on Indigenous Populations Declaration. Russell Barsch has prepared this introductory statement.

### **What is it?**

The draft Declaration is intended as a statement of policy by the U.N. General Assembly. It will not be legally binding on U.N. Member States, strictly speaking, like a ratified convention. If adopted by consensus or a large majority, however, it can gradually become a part of customary international law. It will certainly be consulted by the U.N. Secretariat, which ECOSOC Resolution 1992/255 requires to act in conformity with the rights of indigenous peoples. It will help guide U.N. financial aid and technical assistance projects. And it will be employed by the U.N. human rights bodies as an interpretive tool when they review individual countries' conduct under binding U.N. treaties, such as the *Convention on the Elimination of Racial Discrimination*, and the *International Covenants of Human Rights*.

### **Who prepared it?**

The draft Declaration was prepared under the auspices of the U.N. Commission on Human Rights. The Commission consists of 53 U.N. Member States, serving in rotation. It has an advisory body consisting of 26 individual legal experts from different countries, the Sub-Commission on Prevention of Discrimination and Protection of Minorities, and five members of this Sub-Commission make up the WGIP. The Group was established in 1982 with a broad mandate to collect information on indigenous peoples, and makes recommendations for U.N. legislation and policy. WGIP began its work on a declaration of rights for indigenous peoples in 1985.

The chairperson for WGIP since 1984 has been Dr. Erica-Irene Daes, a Greek jurist who also chairs the U.N. Joint Inspection Unit, making her one of the most senior officials in the Secretariat. Her advocacy of indigenous peoples' rights has attracted wide attention and won her the biennial U.N. Human Rights Award two years ago. The other members of the WGIP at this time are from Japan, Nigeria, the Ukraine, and Cuba – a diverse mix of cultures and legal traditions. Nevertheless, the draft Declaration was agreed to by all five WGIP members in 1993, before being submitted to the Commission on Human Rights for legislative action.

WGIP's expert members have not been acting alone. An increasing number of indigenous people have been attending WGIP's annual meetings and participating directly in the drafting process. WGIP sessions are routinely attended by 200 or more indigenous people. In the 1993 and 1994 meetings there were over 400 indigenous representatives. Since work began on the draft Declaration, over a thousand different indigenous people, representing organizations in 40 countries, have made contributions to the drafting. Indeed, WGIP is the only official U.N. body that allows such open participation. In the Commission and elsewhere, only groups that have been formally accredited by the Economic and Social Council

(ESOSOC) may attend or speak. Only 11 indigenous organizations in the world have thus far attained this privilege.

### **Why is it important?**

The draft Declaration is important for three major reasons: what it says; how it was prepared; and who it will reach.

It is the only U.N. instrument that deals explicitly with two key concerns of indigenous peoples worldwide: self-determination, and the enforcement of historical treaties. Its other provisions are similar in most regards, to the International Labour Organization's Convention on Indigenous and Tribal Peoples, 1989 (No. 169). They include rights to traditional territories and resources, self-government, the control of social programs, physical and cultural security, and participation in national decision making through their own representatives.

The draft Declaration is the only U.N. instrument largely written by indigenous peoples themselves, and which reflects their aspirations fully. Although indigenous organizations were non-voting observers at the conferences which drafted ILO Convention No. 169, they were unable to overcome the resistance of a handful of governments, such as Brazil and Indonesia, on several key points. As Tian Jin, the Chinese member of the WGIP for many years, explained, the ILO Convention is a solid legal floor for indigenous peoples' rights, while the draft Declaration is a "view from the top of the pagoda."

Unlike the ILO Convention, which only applies to the seven States which have thus far ratified it, the draft Declaration applies (albeit with somewhat less rigorous legal force) to all Member States. It is plain that the worst offenders in the world will not ratify Convention No. 169, but they could still be brought to task for disregarding the Declaration. For example, U.N. agencies could use the Declaration to withhold or condition aid from governments, or to justify providing aid directly to indigenous communities.

### **Where is the draft now?**

In August 1993, WGIP submitted its final draft of the Declaration to the Sub-Commission, which sent it on to the Commission last summer. When the Commission took up its consideration of the draft Declaration in March 1995, several governments (including Canada) insisted on the establishment of a new working group, made up of government members of the Commission itself, to revise the text before voting on it. It was agreed that indigenous peoples' organizations could apply, by June, to obtain accreditation to attend the meetings of this new working group, which is expected to convene for the first time at Geneva in November.

This procedure is a source of much concern to indigenous peoples. In U.N. practice, working groups of governments operate by consensus. Since every government has a vote, there is a tendency to fall to the lowest common denominator. In the case of indigenous peoples, who are engaged in bitter struggles for life and land with governments in many parts of the world, this common denominator could be very low, indeed. The Declaration needs strong government defenders to guard against this.

If the Commission's new working group makes major changes in the text, indigenous peoples will not support it, and the past 14 years of U.N. work in defence of indigenous peoples' rights could be seriously compromised. This is the U.N. Decade of the World's Indigenous People (1995-2004), and indigenous peoples' main aim has been the adoption of the Declaration.