

Summary of “An Adoption of the UN Draft Declaration on the Rights of Indigenous Peoples – a Major Breakthrough?” by Mattias Åhrén.

Camilla Brattland, Tromsø Forum Conference 6th of October 2006

Mattias Åhrén was a member of the Saami Council and has been working for five years with the process towards adoption of the Declaration by the General Assembly, a happening Mr. Åhrén was sure will happen shortly: “This fall”, he said, “in a few weeks, the Declaration will be up in the UN General Assembly for final adoption, and will, if nothing extremely unforeseen happens, be finally approved by the UN member states in the General Assembly, and a 22 year old process has come to an end”. The Declaration has been long in making, and has met with many controversies and debates between the member states and indigenous peoples along the way.

Mattias Åhrén pointed out the fact that indigenous peoples’ rights is probably the most difficult human rights area that the world community has ever had to address, which is has only seriously done since the 1980s. Since cultural hierarchist ideas had been abolished from the UN system, the growing idea in the international human rights discourse that human rights must consider not only individuals but also collectives, helped to gain acceptance in the United Nations and among the member states that the human rights system must also apply to indigenous peoples as to any other people – without discrimination. When the ramifications of this principle hit the states – that it would in many cases result in fundamental changes in the societal structures in the states – they wanted indigenous peoples to accept a lesser standard than apply to other peoples. They were essentially saying; “We do want to recognize your rights, but to accept them fully would cost too much for us and would also be problematic with regard to the rest of the population in our country. Hence, could you please accept that we accept some of your rights, accept others to some extent, and perhaps we do not have to talk so much about some of the rights?” From this starting point, and in a unique setting where indigenous peoples and states were equal partners in the discussions, the negotiations on the Declaration text started, drafted in the Working Group. Of course, with this new negotiation setting followed new challenges. First, in purely practical terms, the state representatives were not used to share the floor and speaking time with another group, and in addition, the indigenous peoples’ working methods might not always have been what senior state representatives would label diplomatic. But more importantly, there were of course twice as many people to have onboard before reaching an agreement, people with a very different cultural background than state diplomats.

Given this starting point, it is quite remarkable that the Working Group was able to reach an agreement on the Declaration. That fact that indigenous peoples and non-indigenous peoples could come together in this manner is indeed a major breakthrough in itself. Mattias Åhrén pointed to one factor that made this accomplishment come about, from his point of view: From a deadlock situation

between the member states and indigenous groups, the Inuit and the Saami started to argue that indigenous peoples – if they wanted to have a Declaration - had to let go of the “no-change” position, and start to discuss draft changes to the text. At the same time, the Nordic countries worked on the states to choose a position of compromise, evidenced e.g. by the so called Norwegian proposal in 2003 that grew into the so called CRP 1 document of 2004, where the Nordic countries, together with Switzerland and New Zealand, proposed an entire new Declaration text which built on the original text, but accommodated for some, but far from all, state concerns. This was not enough, however, until a change in the Latin American countries’ positions, preceded by their having to chair various informal negotiation groups, created a new dynamic in the Working Group. Among the indigenous peoples, the change among the indigenous representatives from Latin America was instrumental in the indigenous peoples finally being able to break away from the “no-change” position.

Mattias Åhrén emphasised the point that from this day on, Europe and Latin American delegations – both indigenous and state – worked in close cooperation towards an adoption of the Indigenous Declaration. It was only when Latin America and Europe could form a partnership that there was suddenly a future for an Indigenous Declaration. It was Guatemala who managed to reach an agreement with the United Kingdom on the difficult issue of collective human rights. It was Latin America and Europe that fought Canada, Russia, the United States, New Zealand and Australia to win enough support for the Declaration among the African and Asian states so that the Declaration was voted through with a broad margin in the UN Human Rights Council this year. It is now Mexico who is drafting the resolution calling on the UN General Assembly to adopt the Declaration, and the European Union is first in line to co-sponsor.

On the right to self-determination contained in the Declaration, Åhrén noted that recognizing that the right to self-determination applies also to indigenous peoples not only is extremely important for indigenous peoples, but also constitutes a fundamental shift in international law. “I don’t know how many legal scholars I have read that predicted that the Declaration will never be adopted, but if it had been – with an adoption of Article 3 in its present wording - that would change their perception on international fundamentally”, said Åhrén. He also commented on Article 46, which proclaims that in the exercise of the other rights contained in the Declaration, due consideration shall be given to the rights of third parties and the general interest of the public.

Mr. Åhrén agreed that Article 46 is harmful, and it would have much better had it not been included in the Declaration; “But it is formulated in a very general way, and can as such not take precedent over the more specific provisions contained in the Declaration. Therefore, I do not think that Article 46 is such a threat to the rights contained in the Declaration as it is sometimes portrayed to be”, said he. Finally, Åhrén stated that the Declaration is worthless if not implemented on a grass roots level, and that it is up to us all to make this happen.