

4.048 Indigenous peoples, protected areas and implementation of the Durban Accord

RECALLING previous IUCN Resolutions and Recommendations recognizing, promoting and calling for the appropriate implementation of conservation policies and practices that respect the human rights, roles, cultures and traditional knowledge of indigenous peoples in accordance with international agreements and their right to self-determination;

WELCOMING the adoption by United Nations General Assembly in September 2007 of the United Nations *Declaration on the Rights of Indigenous Peoples*;

UNDERLINING that the use of the term "indigenous peoples" is consistent with the above-mentioned *Declaration*;

RECALLING that the Vth IUCN World Parks Congress (Durban, 2003) adopted the *Durban Accord and the Durban Action Plan*, which *inter alia*:

- (a) established a 'new paradigm' of protected areas according to which indigenous peoples' and local communities' rights are recognized, respected and upheld in the planning, establishment and management of protected areas;
- (b) called for a halt to forced resettlement and involuntary sedentarization of indigenous peoples without their free, prior and informed consent;
- (c) encouraged national reviews of innovative governance for protected areas; and
- (d) called for the establishment by 2010 of participatory mechanisms for the restitution of indigenous peoples' lands that were incorporated into protected areas without their free, prior and informed consent;

ALSO RECALLING Decision VII/28 of the 7th Meeting of the Conference of Parties to the Convention on Biological Diversity (Kuala Lumpur, 2004) which required "that establishment, management and monitoring of protected areas should take place with the full and effective participation, and the full respect for the rights of, indigenous and local communities consistent with national law and applicable international obligations"; and

FURTHER RECALLING that Resolution 3.055 *Indigenous Peoples, Protected Areas and the CBD Programme of Work* adopted by the 3rd IUCN World Conservation Congress, called:

- (a) for IUCN and its members to take action to promote the implementation of the *Durban Accord* and the *Programme of Work* of the CBD related to indigenous peoples; and
- (b) on the Director General to conduct an implementation review of Resolution 1.53 *Indigenous peoples and protected areas* adopted by the 1st IUCN World Conservation Congress (Montreal, 1996) and the document *Indigenous and Traditional Peoples and Protected Areas: Principles and Guidelines* published by the IUCN World Commission on Protected Areas (WCPA) and WWF in 1999;

The World Conservation Congress at its 4th Session in Barcelona, Spain, 5-14 October 2008:

1. RESOLVES to apply the requirements of the United Nations *Declaration on the Rights of Indigenous Peoples* to the whole of IUCN's Programme and operations;
2. CALLS ON governments to work with indigenous peoples' organizations to:
 - (a) reform national legislation, policies and practices so that they contribute to the realization of the relevant parts of the Durban Accord, CBD Programme of Work on Protected Areas, as well as the United Nations *Declaration on the Rights of Indigenous Peoples*; and
 - (b) ensure that protected areas which affect or may affect indigenous peoples' lands, territories, natural and cultural resources are not established without indigenous peoples' free, prior and informed consent and to ensure due recognition of the rights of indigenous peoples in existing protected areas; and

3. CALLS ON IUCN members and international agencies to revise the policies and programmes that fund biodiversity conservation, to ensure their consistency with the *Durban Accord* and IUCN resolutions on indigenous peoples;

In addition, the World Conservation Congress, at its 4th Session in Barcelona, Spain, 5-14 October 2008, provides the following guidance concerning implementation of the IUCN Programme 2009-2012:

4. CALLS ON the Director General, in consultation with IUCN's Commissions to:
 - (a) develop a mechanism to bring together representatives of indigenous peoples' organizations, other supportive member organizations of IUCN, and relevant partners, to work in collaboration to:
 - (i) review the extent to which all relevant resolutions and recommendations referenced in the preamble have been implemented;
 - (ii) advance the key recommendations of the *Durban Accord* and *Durban Action Plan* and the decisions and elements of the *CBD Programme of Work*;
 - (iii) develop practical proposals for enhancing IUCN's capacity to work with indigenous peoples; and
 - (iv) promote the recognition of indigenous peoples' rights and systems pertaining to the use, management, conservation and governance of their territories, lands and natural resources; and
 - (b) raise funds for carrying out these activities; and
5. REQUESTS IUCN Commission Chairs to include experts from indigenous peoples in all the Commissions and their Steering Committees.

State and agency members of the United States refrained from engaging in deliberations on this motion and took no national government position on the motion as adopted for reasons given in the U.S. General Statement on the IUCN Motions Process.

The State member Australia provided the following statement for the record:

Australia has not yet adopted the UN Declaration on the Rights of Indigenous Peoples. Australia has stated it intends to adopt the Declaration after it has consulted with indigenous organizations, other jurisdictions in Australia and other players. This is consistent with Australia's national apology earlier this year, which began a new relationship with Aboriginal and Torres Strait Islander Peoples based on respect, cooperation and mutual responsibility. Australia will abstain from this and subsequent Motions that call for the adoption of measures in support of the Declaration until these consultations are completed.

The State member Canada provided the following statement for the record:

The Government of Canada takes this opportunity to restate its position on the United Nations Declaration on the Rights of Indigenous Peoples (UN DRIP). Canada was unable to support the UN DRIP because the text fails to adequately address Canada's key concerns and lacks clear, practical guidance for States. The UN DRIP is not a legally binding instrument. It has no legal effect in Canada, and its provisions do not represent customary international law. Canada will continue to take effective action, at home and abroad, to protect and promote the rights of indigenous peoples based on our existing human rights obligations and commitments.

The State member New Zealand provided the following statement for the record:

While New Zealand fully supports the principles and aspirations of the UN Declaration on the Rights of Indigenous Peoples (DRIP), the Declaration does not enjoy universal support. On 13 September 2007 New Zealand, along with a number of other countries with significant indigenous populations, voted against the Declaration when it was adopted by the UN General Assembly. Some of the Declaration's key articles are fundamentally incompatible with New Zealand's legal, constitutional and democratic arrangements. Our explanation of vote is a matter of public record.

For the reasons explained, New Zealand will not support those Motions containing references such as adopting, endorsing or implementing the Declaration.

New Zealand will continue to support efforts to promote and protect the rights of indigenous peoples.

The State member United Kingdom provided the following statement for the record:

The UK fully supports the provisions in this Declaration which recognize that indigenous individuals are entitled to the full protection of their human rights and fundamental freedoms in international law, on an equal basis to all other individuals. Human rights are universal and equal to all.

We would like to recall here that, since equality and universality are the fundamental principles underpinning human rights, we do not accept that some groups in society should benefit from human rights that are not available to others. With the exception of the right to self-determination (Common Article 1 of the two International Human Rights Covenants), we therefore do not accept the concept of collective human rights in international law. Of course certain individual human rights can often be exercised collectively, in community with others. Examples are freedom of association, freedom of religion or a collective title to property.

This remains a long-standing and well-established position of the UK. It is one we consider to be important in ensuring that individuals within groups are not left vulnerable or unprotected by allowing rights of the group to supersede the human rights of the individual. This is without prejudice to the UK's recognition of the fact that the governments of many states with indigenous populations have granted them various collective rights in their constitutions, national laws and agreements. Indeed, we warmly welcome this fact, which has served to strengthen the political and economic position of and protections for indigenous peoples in those states.