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The United Nations Declaration on the Rights of Indigenous Peoples

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The United Nations Declaration on the Rights of Indigenous Peoples

Megan Davis

Abstract

The United Nations Declaration on the Rights of Indigenous Peoples ('Declaration') recognises putative international norms and evolving human rights standards pertaining to Indigenous peoples. While some of the rights elaborated in the text do not constitute accepted legal standards, the genesis of the Declaration was the need to arrest the protection gap that exists in international human rights law in relation to Indigenous peoples. Australia was one of four states that voted against the Declaration in the General Assembly on 13 September 2007. This has no bearing on its application in Australia because the Declaration is a United Nations organ resolution, meaning it has no binding force in international law and therefore does not create any legal obligations under Australian law, irrespective of Australia's official position. The Declaration does, however, have significant moral force and may contribute to emerging customary international law on Indigenous rights.

This article provides an overview of the Declaration's passage through the United Nations and summarises aspects of the polemical debates that rendered the draft text controversial. The Working Group on Indigenous Peoples was subject to such protracted debate that only two articles were passed between 1995 and 2005. As such, an overview of the central controversies of the 10 year impasse at the annual Declaration working groups in Geneva is provided. The primary focus is on the main arguments employed by states and Indigenous people regarding procedure, the right to self-determination and the concept of collective rights. In concluding, this paper considers the future of the Declaration internationally and domestically.

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Keywords

Declaration on the Rights of Indigenous Peoples, United Nations, Working Group on Indigenous Peoples, Indigenous Peoples, Aboriginal and Torres Strait Islanders, Indigenous Australians

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