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**Statement by Professor James Anaya
Special Rapporteur on the rights of indigenous peoples**

Eleventh Session of the United Nations Permanent Forum on Indigenous Issues

15 May 2012

New York



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Mr. Chairperson,

Distinguished members of the Permanent Forum on Indigenous Issues,

Representatives of Indigenous Peoples and Members States,

Friends and colleagues

It is a great pleasure to be able to again address the Permanent Forum and all those attending this year's session. I am grateful for this opportunity to share some of my experiences over the past year as Special Rapporteur on the rights of indigenous peoples, as well as to provide information on the study that I have been carrying out on the issue of extractive industries affecting indigenous peoples. I am also pleased to be able to provide some brief comments on the theme of this year's session of the Permanent Forum, the doctrine of discovery.

Coordination with the Permanent Forum

Since my last presentation to the Permanent Forum a year ago, I have continued to cooperate with the Forum as well as with the Expert Mechanism on the Rights of Indigenous Peoples. I appreciated hearing this morning an update from the chair of the Expert Mechanism about their important work. As in the past, representatives of Permanent Forum, the Expert Mechanism and I met twice over the past year to share work agendas, identify the strengths and limitations of our respective mandates, and explore methods of channeling our work in ways that it will be most effective. We are holding another coordination session in July, following the annual session of the Expert Mechanism.

We also have collaborated on a number of activities. I was pleased to provide some comments in January this year during the Permanent Forum's "International expert group meeting on combating violence against indigenous women and girls" held in New York. I opened the three-day expert meeting with a presentation that emphasized a holistic approach to protecting and respecting the human rights of indigenous women and girls in effectively combating violence against them. I noted that such violence cannot be addressed in isolation from the range of rights recognized for indigenous peoples in general, including and especially, the right of indigenous peoples to self-determination.

Also in January, members of the Expert Mechanism, the Permanent Forum and I participated in a brainstorming session on the upcoming World Conference on indigenous peoples. During the

two-day brainstorming session, which took place in Copenhagen, we discussed issues related to the participation of indigenous peoples in the World Conference as well as the substantive issues to be discussed during this high-level meeting of the UN General Assembly to take place in 2014. In my opening remarks, I noted that the World Conference provides an opportunity, first, for contributing to the development of measures for the direct participation of indigenous peoples in United Nations meetings; second, for advancing greater and more concerted efforts within the UN system to promote the rights of indigenous peoples; third, for promoting action at the national and local levels to secure the realization of indigenous peoples' rights; and fourth, for celebrating indigenous peoples and their contributions worldwide.

Additionally, in October of last year, members of the Permanent Forum, Expert Mechanism, and I participated in a meeting at UNESCO in Paris for the launching of that organization's work to develop a policy on indigenous peoples. Also, we met with representatives of UNESCO programs that are relevant to indigenous peoples, including representatives of the World Heritage Centre and of the Intangible Cultural Heritage Section Division for Cultural Expressions and Heritage. I understand that the Government of Denmark has taken the initiative to organize an expert workshop on the implementation of the World Heritage Convention and the Declaration on the Rights of Indigenous Peoples in September, and I welcome this initiative.

An especially important part of my coordination with Permanent Forum and Expert Mechanism is the practice of holding parallel meetings with indigenous peoples and organizations during the regular sessions of these bodies. I would like to thank all those who submitted requests for meetings during this year's session of the Permanent Forum and I look forward to meeting with you.

Please know that I am committed to examining all cases that are brought to my attention. I would like to remind indigenous peoples and organizations that, even without face-to-face meetings or country visits, I routinely consider and in appropriate cases act upon the information that is submitted to me in writing. Details on how to submit information to me in writing is provided at the web sites maintained for the mandate of the Special Rapporteur on the rights of indigenous peoples by the Office of the High Commissioner for Human Rights and my website maintained by the University of Arizona. These websites can easily be found on the web.

Activities to promote indigenous peoples' rights in fulfillment of the mandate

Mister Chairperson,

I would now like to describe a number of the various activities I have carried out over the past year in fulfillment of my mandate from the Human Rights Council, apart from those just mentioned that have been undertaken in collaboration with the Permanent Forum. These activities fall within four areas of work: promoting good practices, country reports, responding to cases of alleged human rights violations and thematic studies.

With respect to the promotion of good practices, throughout the past year I have continued to join in efforts to strengthen protections for the rights of indigenous peoples at both the international and domestic levels. In Peru and Brazil this year, I participated in discussions with

indigenous leaders and government officials around the development of mechanisms for consultations with indigenous peoples and to attempt to clarify the practical dimensions of the principle of free, prior and informed consent. In Peru, my involvement took place in the context of discussions around a new regulation to supplement an already existing law on consultation with indigenous peoples; and in Brazil, it took place in the context of a conference convened by the Government to start discussions with indigenous leaders towards the development of a new consultation law or regulation.

With respect to my examination of cases of human right violations, on a daily basis I receive allegations of violations of the rights of indigenous peoples in specific situations and often, in response, communicate my concerns about the allegations to the Governments concerned. In some cases, I have conducted on site visits to examine the situations and issued reports with observations and recommendations. In March of this year, I travelled to Costa Rica and met with indigenous leaders and Government official to follow-up on a visit and report I completed last year to that country to examine the situation of indigenous communities that could be affected by possible construction of a hydroelectric project in their area.

In connection with my examination of specific cases, I would like to draw attention to the Joint Communications Report of Special Procedures Mandate Holders issued periodically by the Office of the High Commissioner for Human Rights. The report contains the full texts of letters that I have sent and replies received from governments concerning cases of alleged violations of the human rights of indigenous peoples. The most recent Joint Communications report of Special Procedures Mandate Holders included the communications in cases I have examined in Israel, Thailand, Malaysia, Peru, the United States of America, Mexico, Ethiopia, Bolivia, Finland, Canada, Guatemala, Chile, Costa Rica, China, France, and Brazil.

In addition to letters that I have sent, the Joint Communications Report contains letters to and from other special procedures mandates of the Human Rights Council that could touch upon indigenous issues, including letters sent by Special Rapporteurs on Food, Housing, Human Rights Defenders, Health, Education and Racial Discrimination. The next Joint Communications Report should be released in the coming weeks and you can continue to check my website for updates.

With respect to a third area of my work, reporting on the overall conditions of indigenous peoples in particular countries, since I last presented to the Permanent Forum I have carried out two country visits—to Argentina in November and December last year, and most recently, to the United States, a visit that I completed last week. My reports on these countries will be presented to the Human Rights Council in September of this year and will likely be made public before then. In August, I will go to El Salvador to report on the situation of indigenous peoples there. I have also made requests to Namibia and to Canada to carry out visits to those countries later this year and early next year, respectively. I hope that these requests will be considered favorably. I am also still very interested in examining, during the remaining two years of my mandate, conditions in the several Asian countries to which I have requested a visit.

With respect to my study of thematic issues, I have focused on issues that are of common concern to indigenous peoples across the globe and that arise in all aspects of my work. In

reports to the Human Rights Council I have examined the significance of the United Nations Declaration on the Rights of Indigenous Peoples, the duty of States to consult with indigenous peoples and the responsibility of corporations to respect human rights when engaging in activities that affect indigenous peoples.

Mr. Chairperson,

Building on this previous thematic work, last year I devoted part of my annual report to the Human Rights Council to providing preliminary observations on the issue of extractive industries operating in or near indigenous peoples' territories. In preparation of this report, I distributed a questionnaire to indigenous peoples, Governments, businesses and other relevant stakeholders. The responses revealed a clear understanding of the negative, even catastrophic, impacts on indigenous peoples caused by irresponsible or negligent projects that have been or are being implemented in indigenous territories without proper guarantees or the involvement of the affected peoples.

However, there were, as expected, divergent responses concerning the balance of costs and benefits of extractive development projects. Although responders to the questionnaire were aware of the negative impact that extractive activities had had on the lives of indigenous peoples in the past, many Governments underscored the key importance of such activities for their economies. Many businesses also shared the view that indigenous peoples could benefit from the activities of extractive industries. For their part, in general, indigenous peoples expressed considerable skepticism and, in many cases, outright rejection of the possibility of benefiting from extractive or development projects in their traditional territories.

While many Governments have demonstrated an awareness of the need to protect the rights of indigenous peoples, the responses to the questionnaire also reflected a lack of consensus about the extent of a State's duties concerning resource extraction and the means of ensuring protection of indigenous rights. Concern was also expressed that States' regulatory frameworks regarding indigenous rights, including in relation to the protection of lands and resources, consultation and benefit-sharing, are insufficient or do not exist.

My examination of the issue confirms that there is need for change in the current state of affairs if indigenous rights standards are to have a meaningful effect on State and corporate policies and action as they relate to indigenous peoples in the context of extractive industries. An initial step towards such change would be greater common understanding among indigenous peoples, governmental actors, businesses enterprises, and others about the content of indigenous peoples rights and the means of their implementation. Without such understanding, the application of indigenous rights standards will continue to be contested or ignored, and indigenous peoples will continue to be vulnerable to serious abuses of their individual and collective human rights.

Towards this end, for the remainder of my mandate I am endeavoring to carry out a series of meetings with Governments, indigenous peoples, and representatives of business enterprises, in order to listen carefully and draw extensively on views and experiences that all stakeholders share with me on this issue. Over the past year, I have held or participated in several such meetings, including in Madrid, Spain last April, in Kirkenes, Norway, in February, and in

London, United Kingdom in October of last year. I would like warmly thank the indigenous organizations, NGOs, business enterprises, and Government and parliamentary actors that have facilitated or participated in these meetings. There is a similar upcoming initiative in June in Jokkmokk, Sweden, which I am very much looking forward to.

As a complement to these meetings, I intend to launch an online consultation forum organized around specific questions or issues related to extractive industries. Through this forum, indigenous peoples and others will have the opportunity to submit information on their experiences with extractive industries, as well as to respond to specific questions. I will also continue to gather and analyze empirical information on specific examples of natural resource extraction activities affecting indigenous peoples during my ongoing work examining cases of alleged human rights violations and in carrying out country visits.

My report to the Human Rights Council this year is practically-oriented, and will help to clarify the steps needed in the process of developing extractive projects that affect indigenous peoples. This process should include an inventory of the potential rights of indigenous peoples that could be affected by a proposed project, as well as of course, a process of consultation with and seeking the agreement of affected indigenous peoples for the proposed project, which I describe in some detail in my report. This report will be made public in the coming months and will be presented to the Human Rights Council in September.

As many participants here are aware, the Permanent Forum and the Expert Mechanism on the Rights of Indigenous Peoples have devoted efforts to examining issues related that operate or seek to operate on or near indigenous territories. I intend to build upon and complement the work of the Permanent Forum and the Expert Mechanism, and I look forward to continued discussions with the members of these bodies in this regard, as part of our ongoing effort at coordinating our activities on common interests.

Observations on the theme of the Permanent Forum this session: the Doctrine of Discovery

Mr. Chairperson,

I would like to say a few words about the Permanent Forum's theme this year, which is the doctrine of discovery. In my work examining the situation of indigenous peoples around the world, I have observed the persistent painful legacies of the use of the doctrine of discovery to justify ignoring the presence of indigenous peoples and their rights.

It is clear that the colonial era doctrine of discovery, when coupled with related doctrines of conquest and European racial superiority, was a driving force for atrocities committed against indigenous peoples on a global scale, with ongoing consequences for today, as many have already demonstrated during this session. This doctrine shamefully persists in the jurisprudence of national judicial systems and in many of the domestic laws and regulatory regimes that affect indigenous peoples. Further, the doctrine of discovery and the disregard of indigenous rights that it has promoted has infected the perceptions and outlooks of majority societies in relation to indigenous peoples. I have observed in my work that attitudes associated with the colonial-era discovery doctrine—that is, feelings of superiority on the part of dominant actors and a disregard

for indigenous peoples' cultures, values, and ways of life—continue to permeate various sectors of society in various ways around the world. This doctrinal infection of society results in many places in a continued discrimination against indigenous peoples and an invisibility of indigenous peoples in political, economic, and social spheres of the states in which they live.

However, as we know, the international community, especially through the United Nations system, has expressed strong rejection of the legal doctrines and social attitudes that perpetuate discrimination and disregard for indigenous peoples and their rights, and many developments over the past several decades, especially the adoption of the Declaration on the Rights of Indigenous Peoples, represent this rejection. As I stressed in my statement at the end of my mission to the United States a couple of weeks ago, "The Declaration [on the Rights of Indigenous Peoples] provides a new grounding for understanding the status and rights of indigenous peoples, upon which the legal doctrines of conquest and discovery must be discarded as a basis for decision-making by judicial and other authorities". While I made this statement in the context of the United States, it applies equally to countries where indigenous peoples are found around the world.

My work as Special Rapporteur, the work of the Permanent Forum, and the work of many others in this room strive to tackle the persistent legacies of the doctrine of discovery and related ongoing attitudes towards indigenous peoples. Our challenge is to enter into a new era, one in which the lingering effects of the doctrine of discovery do not continue to be felt, and indigenous peoples thrive and are valued within the countries within which they live. While we still face significant challenges and much work remains to be done, looking around the room today, and considering what has already been achieved, I cannot help but be hopeful about the future.

Mr. Chairperson,

I would like to conclude by expressing my gratitude for the opportunity to address the distinguished members of the Permanent Forum and representatives of indigenous peoples and States present today. As always, I am committed to cooperating with the Permanent Forum in the shared pursuit of promoting and securing the full enjoyment of the rights of indigenous peoples.

Thank you Mr. Chairperson, and all those present, for your kind attention.