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SPECIAL RAPPORTEUR

“ Study of the structures, procedures and mechanisms that presently exist and that might be established to effectively address the human rights situation of indigenous peoples and to arrange for indigenous representation and inclusion in such structures, procedures and mechanisms”

Statement to the 7TH Session of UNPFIII on Agenda Item 5 Human Rights

Distinguished

indigenous representatives

V Members of the Forum, your excellences, ladies and gentlemen, dear friends

Preamble

The Human Rights of Indigenous Peoples has been at the very heart of the work of the Permanent Forum on Indigenous Issues ever since its 1st Session in 2002. This is how it should be. To promote respect for human rights and fundamental freedoms is a core principle of the UN Charter, as we all know. The Permanent Forum is in a unique position within the UN system to address the issue, moreover, due to the convening power endowed upon it by ECOSOC.

The Permanent Forum was established by the General Assembly to provide expert advice and make recommendations on indigenous issues to ECOSOC and to the programmes, fund and bodies of the United Nations through the Council and to promote their integration and coordination within the UN system. The Forum was given six mandated areas: socio-economic development, education, culture, environment, health and human rights. Consequently, the main objective of the Permanent Forum is to watch over the interests of indigenous peoples throughout the entire United Nations' system and hence apply a human rights approach to its work. By implication, the human rights of indigenous peoples constitute an integrated part of the Forum's endeavours within all of its mandated areas, not only the one that carries this name-tag.

The Forum's work on the rights of indigenous peoples

The Permanent Forum has worked consistently to address the rights of indigenous peoples, responding to the needs that it has identified within the UN system and spurred by the serious violations against indigenous peoples brought to its attention during Session. The Forum has done so, keeping in mind its role of promoting coordination as well as the requirement of complementarity:

- Firstly, on the basis of information and reports provided by indigenous peoples, UN agencies and states, and the ensuing debates during its sessions, the Permanent Forum has developed a substantial number of recommendations addressing pertinent human rights problems of indigenous peoples.
- Secondly, already, at its very first session of the Forum decided to develop a close collaboration with the UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people. As of the 2nd Session, the Forum designated at least half a day of its agenda to interactive dialogue with the Special Rapporteur in order to absorb the considerable number of interventions by indigenous representatives on human rights violations.
- Thirdly, the Forum has worked determinedly between sessions to address the rights of indigenous peoples as clearly reflected in a review of the state of implementation of the recommendations of the Permanent Forum at its sixth session.¹ This demonstrates the concerted effort to address the wide range of human rights problems facing indigenous peoples.
- Fourthly, Forum members have played a constructive role in the annual meetings of the Working Group on the Draft Declaration and collaborated with the Office of the High Commissioner on Human Rights on a number of initiatives to promote the rights of indigenous peoples.
- Fifthly, noting the underlying human rights aspect of all of the Forums recommendations to UN agencies, programmes and projects and to States, a fair number of its recommendations have been addressed specifically to the Commission on Human Rights

¹ E/C.19/2007/5 "Analysis and state of implementation of the recommendations of the Permanent Forum at its fourth session"

and, since 2006, to the Human Rights Council. The recommendations deal with topics such as:

1. The Special Procedures
2. Implementation and monitoring of human rights standards
3. Inclusion of indigenous peoples' experts in the Council's work.
4. Adoption of creative methods of work, with particular regard for the full participation of indigenous peoples.

It should finally be mentioned that as part of its ongoing deliberations on how to optimize its work on the rights of indigenous peoples, the Permanent Forum requested Ms Victoria Tauli-Corpuz to undertake a study of the "Implementation of the human rights mandate of the Permanent Forum on Indigenous Issues."² The report was presented last year, at the Forum's 6th Session. It provides a historic account of the engagement of indigenous peoples with the United Nations system, an overview of the human rights mandate of the Permanent Forum and of how the Forum has discharged with the issue during its first 5 sessions. The study discusses challenges and future prospects for the Forum's work on indigenous rights.

The background for the expert study

During its session in May 2007, the UN Permanent Forum had in-depth discussions on how to further intensify its work on the rights of indigenous peoples, spurred by uncertainties on how these would be promoted and institutionally addressed in the UN system in the years ahead.

² E/C.19/2007/6, also available at www.un.org/esa/socdev/unpfii.

The Draft Declaration on the Rights of Indigenous Peoples had been adopted by the newly established Human Rights Council, but, in the spring of 2007 it was far from certain how it would fare at the upcoming meeting of the General Assembly.

The Human Rights Council had been established with a mandate to address violations of human rights, including gross and systematic violations, and make recommendations thereon. Its role would also be to promote the full implementation of human rights obligations undertaken by States and provide follow-up to goals and commitments related to the promotion and protection of human rights. The Permanent Forum welcomed the establishment of the Human Rights Council and expressed its wish to engage in constructive dialogue with the Council to further the implementation of indigenous peoples' rights. In this context, it expressed its concern at the persistent, and in many cases even widening, *implementation gap* between the international legal frameworks and the effective protection of indigenous peoples' human rights at country level and urged the Human Rights Council take action to bridge this gap and ensure the implementation and monitoring of indigenous peoples' human rights. The Forum made a number of concrete recommendations in this respect.³

There was a lot of uncertainty, however, of how the Council would address the rights of indigenous people in its programme of work, as this had not yet been adopted at the time of the 6th Session of the Forum. Nor had it been decided, whether the Working group on the Draft Declaration would be replaced by a new mechanism to deal specifically with the implementation of the rights of indigenous peoples, and/or whether this field would be designated as a separate item on the agenda of the Council. Speculations ran high and there was a great deal of worry among indigenous observers at the Session of the Forum and among its members, that this critical issue might be lent insufficient attention by the Council, due to the many pressing issues on its plate.

As we all know now, these worries turned unfounded. The Declaration was adopted on September 13th, 2007 by 144 states, and the new Human Rights Council decided in December 2007 to establish an Expert Mechanism on Indigenous Rights. Its five members are not yet appointed by the Council, but I understand that there are some 78 qualified nominees for the Council to choose among.

The study and recommendations of the rapporteurs

³ E/C.19/2007/12

It was in the context of the above mentioned uncertainties, possible new institutional developments and, not the least the Forum's concern at the persistent *implementation gap* between the international legal frameworks and the effective protection of indigenous peoples' human rights at country level that the Forum decided to appoint two of its members, Ms Ida Nicolaisen (Vice-chair) and Mr. Wilton Littlechild

*“to undertake a study on the structures, procedures and mechanisms that presently exist and that might be established to effectively address the human rights situation of indigenous peoples, to arrange for indigenous representation and inclusion in such structures, procedures and mechanisms and to submit a report on the subject to the Permanent Forum by 31 December 2007”.*⁴

The study was carried out during the autumn of 2007. It is presented at this Session of the Permanent Forum as Document **E/C.19/2008/2**

The study is divided into five sections:

- I. Executive summary
- II. A description of the work carried out under the auspices of the UN Commission on Human Rights and Indigenous Peoples (1947-2006) by the Working Group on Indigenous Populations (1982-2006); the Working Groups on the Draft Declaration (1995-2006); and the UN Special Rapporteur on the human rights and fundamental freedoms of indigenous people.
- III. A description of the initiatives taken by the General Assembly: a) the International Year and the Decades of the World's Indigenous People; b) the UN Funds for indigenous peoples; c) the 2005 Summit; and d) the adoption of the UN Declaration on the Rights of Indigenous Peoples.
- IV. A description of the Permanent Forum's work till date on the rights of indigenous peoples, followed by proposals for consideration by Forum members, UN agencies, states and indigenous observers as to the future work of the Forum in respect to the promotion of the Rights of Indigenous Peoples. The proposals address two key areas of work: a) The impact of the adoption of the UN Declaration on the Rights of Indigenous Peoples on the

⁴ E/C.19/2007/12

work of the Forum; b) the UN Human Rights Council and its interface with the Forum.

- V. Finally, the study addresses the institution-building of the Human Rights Council and advocates for the establishment of an Expert Body on Indigenous Peoples' Rights.

I shall not comment on this last part of the study, as its main recommendations were followed with the establishment of the new Expert Mechanism ~~with five members~~, as already mentioned. I shall mention, however, that an early draft of the study was circulated in November 2007 to relevant parties to offer a constructive contribution to the preparatory deliberations regarding the possible creation of such a body among Indigenous Organizations, States and other interested bodies.

I want to underscore, moreover, that the arguments put forward by the Rapporteurs for the establishment of an Expert Mechanism to provide advice and input to the work of the Council, underscore the need for an ever closer working relationship between the Forum and the new Expert Mechanism, *- and*

I take this opportunity ~~moreover~~, to congratulate the Human Rights Council with the decision and extend my best wishes for the ~~Expert Mechanism~~ to produce great results.

In conclusion I shall turn to that part of the study which pertain to the future work of the Forum and point to the study's recommendations in that respect.

Impact of the adoption of the UN Declaration on the Rights of Indigenous Peoples on the work of the Permanent Forum on Indigenous Issues: a Committee on the UN Declaration on the Rights of Indigenous Peoples within the Forum

The study found that, with the adoption of the UN Declaration on the Rights of Indigenous Peoples (UN-DECRIPS) by the UN General Assembly, the international community has significant new opportunities by which to motivate states to comply with human rights standards, including those set forth in the Declaration. The study calls on the Permanent Forum on Indigenous Issues and the Human Rights Council to seize this historic opportunity and establish mechanisms that can strengthen the protection of indigenous peoples' rights and focus on their attainment. The study points to Article 42 of the UN-DECRIPS, which stipulates that:

The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration.

This important responsibility constitutes a new function for the Forum under its overall human rights mandate, under resolution 2000/22 of ECOSOC, by which the Forum was established. In discharging this, the Forum would rely on its special characteristics, including its mandate, composition and consensus procedures as well as on its role of promoting coordination and the requirement of complementarity. The Permanent Forum has successfully proven that it is able to gather and galvanize the momentum of Governments, the UN system and indigenous organizations into a cooperative forum that is solution-oriented towards practical result on the ground.

In order to enhance the Permanent Forum's endeavours to promote respect for and full application of the provisions of the DECRIPS the study calls on the Forum to:

- a) Ensure that the Declaration is integrated in the Forum's own recommendations on the six substantive mandated areas of the Forum - economic and social development, environment, health, education, culture and human rights - as well as in the Forum's work under the special theme for each session and in its ongoing themes and priorities.
- b) Promote a constructive dialogue with Governments on the challenges, achievements and future action that indigenous issues require in each country under the UN-DECRIPS. Such dialogue would take place periodically and enlist the participation of indigenous organizations as well as the UN system. The discussion and a possible UNPFIII's "Chamber on the UN Declaration on the Rights of Indigenous Peoples" would create an enabling environment of cooperation at national and international level, aiming at practical results on the ground, including through the international development agenda.
- c) Establish a methodology and step-by-step strategy of work that would provide the Forum with the capacity to deal effectively with this new

mandate under the Declaration. The study proposes the creation of a “UNPFIII’s Chamber on the UN Declaration on the Rights of Indigenous Peoples” of and by the Forum, moreover, as an appropriate way of formalizing the work process

It is the hope of the rapporteurs that these recommendations will facilitate the process.

Conclusion

Personally, I can think of no nobler cause than to endeavour to secure the rights of the 375 million fellow indigenous people on this tiny globe, who all too often are deprived ~~of~~ not only ^{of} equal civil rights but also of the right to live a life in accordance with their own values and traditions and on lands that have been theirs since time immemorial. It is more than two hundred years ago since President Thomas Jefferson in the original draft for the Declaration of Independence 1779 of this country from its colonial rulers wrote the moving words:

“We hold these truths to be sacred and undeniable;
that all men are created equal and independent,
that from that equal creation they derive rights
inherent and inalienable, among which are
the preservation of life, and liberty, and the pursuit of happiness”

Let us hope that the work of the Permanent Forum will be able to bring indigenous peoples closer to the fulfilment of their rights and happiness in line with Jefferson’s vision for mankind.