

STATEMENT BY THE OBSERVER DELEGATION OF BRAZIL

Madame Chairperson,

First of all I would like to congratulate you on your re-election as Chairperson-rapporteur of this Working Group. Throughout the years, we have learned to appreciate and admire your knowledge, ability and skills which have made possible a fruitful and rich debate among participants in our meetings. My delegation wishes to thank you for submitting a thorough report to the Sub-Commission last year, which covers issues of great complexity and importance, especially in the area of standard-setting activities. My delegation has expressed its recognition of your well-intentioned endeavors in conducting the difficult work of this forum, where more than 600 participants from observer governments and indigenous communities, as well as prominent scholars and human rights experts, were able to express their views on issues of particular interest to indigenous people. We also wish to acknowledge the work of the other members of the Working Group, and in particular that of Mrs. Attah - who has completed her term as member of this body -, Mr. Alfonso Martinez, Mr. Boutkevitch and Mr. Hatano. We would also like to welcome Mr. Ramadame as a new member of this community.

My delegation takes the floor under this agenda item to make a few additional remarks concerning the draft declaration on indigenous rights, which has now been submitted by the Working Group to the Sub-Commission. Last year, at the beginning of the second reading of the draft declaration, my delegation flagged some of the concerns posed by several principles contained in the articles of the draft declaration. I wish to let you know that

since then the draft declaration has been subject to great attention in Brazil, not only in the Government. More than a dozen press articles - among of which several editorials - have been dedicated to it in the main papers throughout the country, which shows the interest public opinion in Brazil has taken on the work of this particular body.

The Brazilian delegation actively participated, as an observer, in the deliberations of the WGIP since its creation. Brazil has always had a positive approach towards the elaboration of a draft declaration on indigenous rights as a new instrument of promotion and protection of human rights and fundamental freedoms of indigenous individuals and societies. We have expressed at several occasions the hope that the Working Group would elaborate a concise, balanced and realistic text which could be adopted by its parent bodies, the Sub-Commission, the Commission on Human Rights, the Economic and Social Council and the General-Assembly. To be universally acceptable, the draft declaration should take into account inter alia the wide diversity of situations in which indigenous communities are found in all parts of the world, as well as their different degrees of economic and social development. Furthermore, the rights enshrined in the declaration should neither conflict with those accruing to all individuals in conformity with international human rights law, nor impair the enjoyment by indigenous people of the human rights and fundamental freedoms conferred on them by universally recognized human rights instruments and standards.

The draft declaration submitted by the Working Group to the consideration of the Sub-Commission took shape after nine years of intense consultations. It includes a great number of articles that are generally positive. I refer, for instance, to those related to the preservation of indigenous cultural identity and traditions and to the development of their traditional economic structures and ways of life. However, some provisions of the draft before us give rise to concerns and in their present formulation would encounter difficulty in being accepted by many Governments, including my own.

One of these provisions, by virtue of which indigenous populations would be attributed the right to self-determination as defined by international law, tends to incorporate new and insufficiently matured concepts which are not, in their present formulation, consistent with constitutional and international law practices. According to that assertion, the notion of "indigenous peoples" as subjects of the rights included in the draft declaration appears throughout the text. In this connection, my delegation notes that references in the document to the concept of "peoples" and to the right of self-determination as defined in Article 1 of both International Covenants, on Civil and Political Rights and on Economic, Social and Cultural Rights, might lead to ambiguous interpretations, incompatible with international law, the principles and purposes of the Charter of the United Nations and the basic principles of State sovereignty and territorial integrity. These provisions might be interpreted as recognizing indigenous communities as subjects of international law and thus exempting them from the jurisdiction of the State where they live. Further clarification would also be required on the meaning and extent of the principles of indigenous people autonomy and self-government in matters relating to their internal and local affairs.

During the eleventh session of the WGIP, my delegation also expressed its concerns on other controversial issues which still appear in the draft before us. I refer, for instance, to the usage in the text of the expression "land, territories and resources" which in our view should be replaced by the words "lands and natural resources" to better reflect the diversity of situations and indigenous land tenure regimes throughout the world. Moreover, the concept of demilitarization of indigenous lands, the prohibition of removal of indigenous groups from their lands and the access of indigenous people to procedures for the resolution of conflicts and disputes with States are also complex issues that require further reflection and elaboration. Finally, the articles which tend to ensure indigenous people access to international cooperation for the environmental protection and

productive capacity of their lands do not reflect adequately the catalyst and coordination role that must be played by governmental agencies in this field.

Since it is the hope of my delegation that the declaration, when adopted in its final version by the General-Assembly, will reflect an adequate balance between the aspirations of indigenous people and the concerns of Governments - so that it can become a real mechanism of change and enhancement of indigenous rights in all parts of the world - we believe it is still useful to reiterate these points, which were also expressed at the last session of the Sub-Commission, when it considered the report of the Working Group. It is our hope that the Sub-Commission will take into consideration these positions when considering the proposed draft this year, and perhaps a modified version may find a smoother review process by the parent bodies of this Working Group.

Thank you, Madame.